

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED

OCT 20 2016

S.C. SUPREME COURT

LAROLD LEE MORRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000197

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF PICKENS) TRANSCRIPT OF RECORD
State of South Carolina,
Plaintiff,) Case No(s):2012GS3900699,
-VS-) 2012GS3900700,
Larold Lee Morris,) 2012GS3900752,
Defendant.) 2013GS3900456,
2013GS3900457,
2013GS3900458

State of South Carolina,
Plaintiff,) Case No(s):2012GS3900694,
-VS-) 2012GS3900696,
Deandre Derrell Draper,) 2013GS3900452,
Defendant.) 2013GS3900453,
2013GS3900454,
2013GS3900455

March 18, 2013
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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Circuit Court Reporter

I N D E X

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 18th day of March, 2013 at approximately 10:46 a.m.)

THE COURT: Mr. Aaron, do you think you'll have any witnesses at this point?

MR. AARON: I think I might, Your Honor, but I don't know that I have a client. I just talked to his mother, and she doesn't know where he is. I don't know the answer for that. I think I notified the Solicitor's office last week I would have -- his mother would be a potential witness.

THE COURT: Okay. What's her name?

MR. AARON: I'll have to look in the file.
(Pause.)

Her name is Kim Draper.

THE COURT: Kim Draper. Anybody else that you know of?

MR. AARON: Well, his girlfriend was allegedly to be a witness.

THE COURT: Do you know her name?

MR. AARON: I have that here also, Your Honor. (Pause.)

THE COURT: And Mr. Brown, this is on another case just in case you're wondering what we're doing here.

Motions

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1 MR. AARON: Anesha Robinson.

2 COURT REPORTER: Say it again.

3 MR. AARON: Anesha, A-N-E-S-H-A, Robinson I
4 believe is her last name.

5 THE COURT: Robinson. Okay. Anyone else
6 you know of?

7 MR. AARON: There were a couple of people
8 who I was given their names but I have not had any
9 contact with them.

10 THE COURT: If you want to go ahead and give
11 me those.

12 MR. AARON: Okay. Antonio Cannon,
13 C-A-N-N-O-N.

14 THE COURT: Okay.

15 MR. AARON: William Wingard, Missy Cannon
16 and I believe that would be it.

17 THE COURT: All right.

18 (WHEREUPON, there is a pause.)

19 MR. CLEVELAND: I have a housekeeping matter
20 regarding the indictment, Your Honor.

21 THE COURT: Yes, sir.

22 MR. CLEVELAND: On the indictments for Mr.
23 Morris and Mr. Draper, 2013-GS-39-4058 [sic],
24 that's on Morris and 2013-GS-39-4053 [sic], a Mr.
25 Draper, those are indictments for Conspiracy. The

1 text of the conspiracy or the allegations that are
2 -- we're going forward on trial, but there is a
3 scrivener's error on the front.

4 The code section and CDR code are for the
5 lottery code section of conspiracy, not the
6 codified common law one. It should read on the
7 front code section 16-17-410 and CDR code 49. The
8 penalty for both of those offenses are the same.
9 The text of the indictment actually has the correct
10 code section within it. We don't think there's any
11 flaws with notice or anything like that. We would
12 just move to amend the indictments.

13 THE COURT: Okay. Tell me the statute
14 number again.

15 MR. CLEVELAND: 16-17-410.

16 THE COURT: And that's conspiracy on Morris
17 Indictment 13-458 and which other one?

18 MR. CLEVELAND: Uh, 453 is the indictment on
19 Mr. Draper. It's an identical charge.

20 THE COURT: Any objection to that?

21 MR. CANTRELL: None from the defendant, Your
22 Honor.

23 MR. AARON: None from Defendant Draper.

24 THE COURT: All right.

25 MR. CLEVELAND: And lastly, going to the

Motions

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1 next indictments, on the Possession of a Pistol
2 with an Obliterated Serial Number, uh, this is
3 Indictment 2012-GS-39-752 on Mr. Morris and it is
4 Indictment number 2013-GS-39-453 on Mr. Draper.
5 Everything on that indictment is correct with the
6 exception of just a computer merge error on the
7 back. It merged in the language "possession of a
8 pistol by a person convicted of a violent crime."

9 The front has the correct charge on it. It's
10 all the same code section. I guess the computer
11 just spit that out on the back. The front is
12 correct. It says possession of a pistol with an
13 obliterated serial number. Again, the penalties
14 and everything are the same for those charges. The
15 language on the back, top right corner is
16 incorrect. We would just move to amend that to
17 mirror the front, Possession of a Pistol with an
18 Obliterated Serial Number.

19 THE COURT: Any objection to that?

20 MR. CANTRELL: None from Mr. Morris.

21 THE COURT: Anything from Mr. Draper?

22 MR. AARON: Only, Your Honor, if they intend
23 to let the jury see those indictments at all.

24 MR. CLEVELAND: Absolutely. That's why I
25 wanted to bring it up.

1 **THE COURT:** Okay. And you don't -- in as
2 far as the indictment -- of course, you can cross
3 this bridge with Judge Miller when you get to it --
4 but my suggestion would be either that you find
5 some way -- that we find some way to black that out
6 on the indictment or that these indictments don't
7 go back.

8 **MR. CLEVELAND:** I will be -- the State would
9 just request probably a jury form instead of the
10 indictments.

11 **THE COURT:** All right. All right. All
12 right then.

13 **MR. CLEVELAND:** I guess one last thing
14 regarding the jury before they come in, there is
15 one juror on the list. She is number -- she's
16 number 83, Jessica N. Jones. Her address is listed
17 at [REDACTED]. There was
18 a search warrant executed on the defendant, Mr.
19 Morris' house which is apartment , which is in
20 the same building, the same apartment complex. I
21 don't know if two years ago she lived there, if she
22 knows Mr. Morris' sister who lived there at the
23 time. But it's pretty close. The State would move
24 that she be stricken for cause just because I think
25 it's too close to what's going on in this case.

Motions

9

1 THE COURT: Any objection?

2 MR. CANTRELL: No objection.

3 THE COURT: All right.

4 MR. AARON: No objection.

5 THE COURT: All right. Her name is Jessica
6 Jones?

7 MR. CLEVELAND: Juror number 83.

8 THE COURT: Juror number 83. Let's take her
9 out of the pool.

10 MR. CANTRELL: There was another one, Your
11 Honor.

12 THE COURT: Sure.

13 MR. CANTRELL: I've lost it now. The juror
14 whose address was in the apartment complex of the
15 alleged incident in this case. If I could just
16 find her, we would ask that she be stricken for
17 cause also. That would be Juror Number 63, Kara
18 Garber.

19 THE COURT: Okay.

20 MR. CANTRELL: She lived in the same
21 apartment complex and for the same reason
22 essentially, we would ask that she be stricken for
23 cause.

24 MR. CLEVELAND: She lived at the
25 where they alleged the crimes took place.

1 THE COURT: Any objection to that from the
2 State?

3 MR. CLEVELAND: No objection.

4 THE COURT: Any from you, Mr. Aaron?

5 MR. AARON: No, ma'am.

6 THE COURT: All right. We'll take her out.

7 THE CLERK: What was the name?

8 MR. CANTRELL: Kara Garber.

9 MR. CLEVELAND: 63.

10 THE CLERK: Okay. Thank you.

11 MR. AARON: I have one question, Your Honor.

12 THE COURT: Yes, sir.

13 MR. AARON: Since my client is not here, how
14 do you, if at all, attend to address that with the
15 jury?

16 THE COURT: I'll probably just tell them
17 that he's not present here today. I probably won't
18 go into it much more than that unless there's some
19 language you would like for me to use. I'll just
20 say he's not here today.

21 MR. AARON: We're not going to swear the
22 jury today?

23 THE COURT: Right.

24 MR. CLEVELAND: Uh, I guess we have a bench
25 warrant prepared for Mr. Draper if it would add in

Jury Qualification

11

1 the search to get him here tomorrow if Your Honor
2 is inclined to sign it.

3 MR. AARON: I don't have a position either
4 way to that, Your Honor. He's not here. He was
5 bond-carded.

6 MR. CLEVELAND: I'm just handing up as well
7 the copies of the bond cards.

8 THE COURT: I appreciate you leaving those.
9 All right.

10 (WHEREUPON, there is a pause.)

11 THE COURT: All right. Y'all ready? All
12 right. Let's bring the jury in.

13 (WHEREUPON, the jury panel enters at approximately
14 11:00 a.m.)

15 THE COURT: All right. Ladies and
16 Gentlemen, I appreciate your patience with us, uh,
17 here. We were getting two cases ready to go ahead
18 and pick the jury. Now, a few minutes ago, I had
19 some questions for you about your qualifications to
20 serve as jurors generally this week in Pickens.
21 Now, I need to ask you some questions related to
22 whether or not you are qualified to serve on the
23 trial of this particular case.

24 This is -- get my ducks in a row -- the State
25 of South Carolina versus -- is it Larold?

1 MR. MORRIS: Yes.

2 THE COURT: Larold. I just want to be sure.
3 Larold L. Morris and Deandre D. Draper. Most of my
4 questions are going to relate to if you know
5 anybody involved in this case. And I'll ask you
6 some questions too about if you know anything about
7 this particular case.

8 Now, I don't want you to be scared when we
9 read these list of witnesses. The attorneys
10 involved in this case are excellent attorneys. All
11 of them are excellent attorneys. They list
12 everybody who might possibly ever be called in the
13 trial of this case whatsoever just in case. So we
14 make sure you don't know anybody involved. Now,
15 I'm going to go through in just a moment and read
16 out a list of witnesses and have some other
17 questions for you.

18 Our procedure is going to be a little bit
19 different. This time, I want you to stand. When I
20 call on you, if you will, tell me your name and
21 juror number for the record. Then you can tell me
22 how you know the person or think you might know the
23 person or something along those lines. If you
24 think you might know them, in other words, they've
25 got a common name and you're just not sure, it's

1 better to stand up and let's talk about it and try
2 to figure it out than it is to get into trial and
3 realize you know somebody involved in the trial of
4 the case. All right. All right.

5 We're going to begin by -- I'm going to
6 introduce you to the prosecutors involved in this
7 case.

8 Mr. Cleveland, would you stand and introduce
9 yourself and the folks at your table please.

10 **MR. CLEVELAND:** Yes, Your Honor. May it
11 please the Court.

12 Good morning, Ladies and Gentlemen. My name
13 is Baker Cleveland. I'm an assistant solicitor
14 here in Pickens county. Seated at counsel table is
15 Sam Tooker. He's an assistant solicitor in the
16 county as well. We got Khristy Justice, a
17 detective with the Central Police Department.

18 **THE COURT:** Ladies and Gentlemen of the
19 jury, is anyone, uh, related by blood or marriage
20 or otherwise acquainted with in any way any of the
21 folks here on behalf of the State today? Mr.
22 Cleveland -- I mean, excuse me, Mr. Baker [sic]. I
23 knew I was going to do that. Mr. Baker [sic], Mr.
24 Tooker or Deputy Justice. Anyone in the jury panel
25 related by blood or marriage or otherwise

Jury Qualification

14

1 acquainted with any of these attorneys or this
2 investigator? If so, please stand. (No response.)

3 And none is standing.

4 Mr. Cantrell, would you please introduce
5 yourself and your client.

6 MR. CANTRELL: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. CANTRELL: My name is David Cantrell.
9 I'm an attorney in Easley. Seated to my right is
10 Larold Morris.

11 THE COURT: All right. Mr. Morris, do you
12 mind just standing. There's a lady over here kind
13 of straining to see you. I just want to make sure
14 that -- there you go.

15 THE JUROR: Uh, Mr. Cantrell is my attorney.

16 THE COURT: Okay. Hold on just one second.
17 I'll be right with you. Any member of the jury
18 panel ever been represented by Mr. Cantrell,
19 related by blood or marriage or otherwise
20 acquainted with Mr. Cantrell, ever been opposite
21 Mr. Cantrell in a case or related by blood or
22 marriage or otherwise acquainted with Mr. Morris,
23 Larold --

24 MR. MORRIS: It's like saying Harold. Just
25 take the "H" off.

Jury Qualification

15

1 **THE COURT:** Larold Morris. I got it.

2 That's the tip I needed. Thank you.

3 Larold Morris. Any member of the jury panel
4 related by blood or marriage or otherwise
5 acquainted with either of those folks? If so,
6 please stand.

7 And, sir, you who are represented by Mr.
8 Cantrell.

9 **THE JUROR:** Yes. He represents my family in
10 a matter.

11 **THE COURT:** Okay. Tell me your name and
12 juror number please.

13 **THE JUROR:** I'm 95, Joe Looper.

14 **THE COURT:** Joe Looper. All right. And he
15 represents your family in a matter.

16 **THE JUROR:** Yes, sir.

17 **THE COURT:** All right. Thank you so much.
18 You can have a seat.

19 Yes, sir.

20 **THE JUROR:** Uh, Mr. Cantrell has represented
21 me in the past.

22 **THE COURT:** All right. Tell me this, sir,
23 about how long ago did he represent you?

24 **THE JUROR:** '97.

25 **THE COURT:** Okay. What's your name and

Jury Qualification

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1 juror number please?

2 THE JUROR: Marvin Williams, 157.

3 THE COURT: Oh, I'm so sorry. I cut you
4 off. Let me ask you this. Is the fact that Mr.
5 Cantrell represented you in a matter, do you still
6 believe you could be a fair and impartial juror in
7 the trial of this case?

8 THE JUROR: I do.

9 THE COURT: Thank you so much.

10 Mr. Aaron, will you please stand and introduce
11 yourself to the jury?

12 MR. AARON: Yes, ma'am. My name is Paul
13 Aaron. I practice here in Pickens county.

14 THE COURT: All right. Any member of the
15 jury panel related by blood or marriage or ever
16 been represented by Mr. Aaron? And if so, please
17 stand. Or opposite Mr. Aaron in a case, please
18 stand.

19 Yes, ma'am. Tell me your name and juror
20 number.

21 THE JUROR: Michelle Voyles, 146.

22 THE COURT: All right. Yes, ma'am.

23 THE JUROR: I have a conflict with Mr.
24 Aaron.

25 THE COURT: Okay. And is it related to a

Jury Qualification

17

1 case?

2 THE JUROR: Yes.

3 THE COURT: Something related to a case.

4 Mr. Aaron, are you aware of that potential
5 conflict?

6 MR. AARON: I think I may represent her
7 husband. I'm not sure.

8 THE COURT: Ma'am, if you'll approach for
9 just a moment.

10 THE JUROR: Thank you.

11 THE COURT: Will the attorneys come up?

12 (WHEREUPON, the following bench conference is held
13 with Juror Number 146, Michelle Voyles.)

14 THE JUROR: Thank you for allowing me to
15 approach.

16 THE COURT: Okay. Just give me a little
17 flavor of it.

18 THE JUROR: He represents a -- I'll tell
19 you. My son was the one that was beaten a year ago
20 by a daycare owner. He represents them.

21 THE COURT: Okay. Thank you.

22 MR. AARON: Oh..

23 THE COURT: Thank you. Thank you so much.

24 (WHEREUPON, the bench conference is concluded.)

25 THE COURT: Anyone else related by blood or

1 marriage or otherwise acquainted with Mr. Aaron or
2 represented by Mr. Aaron? If so, please stand.

3 (No response.)

4 And no further are standing.

5 **THE COURT:** Mr. Deandre Draper is not
6 present here today. Is any member of the jury
7 panel related by blood or marriage or otherwise
8 acquainted with Deandre D. Draper? Deandre D.
9 Draper. If so, please stand. (No response.)

10 And none are standing.

11 All right. All right. Now, I'm going to go
12 through a list of witnesses. I again tell you that
13 if you believe you know any of these witnesses, if
14 you will, please stand. I'm going to go through my
15 whole list of witnesses. If you will, just wait to
16 stand at the end if you know any of them. I'm
17 going to go through the whole list, then we'll come
18 back through and see who folks know. Okay.

19 Again, these are just potential witnesses that
20 may be called or may not be called. All right.
21 Any member of the jury panel related by blood or
22 marriage or otherwise acquainted with in any way
23 Kyle Whitaker, D.J. Grant of the Central Police
24 Department, Michael Capo or Capo, Capo, Brandon
25 Cody Adams, Cameron Spencer, Dustin Vance, Chad

Jury Qualification

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1 Roper of the Pickens County Sheriff's Office
2 formerly with the Central Police Department, Zeke
3 Quinn, Derek Mahaney, Kevin Peppers of the Central
4 Police Department, Ren Johnson of the Clemson
5 Police Department, Khristy Justice whom you've met
6 of the Central Police Department, Kerry Avery of
7 the Central Police Department, Nate Heard of the
8 Clemson Police Department, Anthony Raines of the
9 Pickens County Sheriff's Office, Brian Gibson of
10 the Pickens County Sheriff's Office, Tony Robinson
11 of the Pickens County Sheriff's Office, Doris
12 Yarborough of SLED, Betty Butler of SLED, Amanda
13 Webb of SLED, Sheree or Sheree Brown of SLED, Josh
14 Morgan, Anthony Massingill of the Pickens County
15 Sheriff's Office, Keith Galloway of the Pickens
16 County Sheriff's Office, Drew Cisco of the Pickens
17 County Sheriff's Office, Kim Draper, Deidre or
18 Deidre Cade, Anesha Robinson, Antonio Cannon,
19 William Wingard or Wingard and Missy Cannon. Any
20 member of the jury panel related by blood or
21 marriage or otherwise acquainted with in any way
22 any of these potential witnesses that I've just
23 listed? If so, please stand.

24 All right. Let's see. I'll start here.
25 Ma'am, tell me your name and juror number.

1 You can stay standing.

2 **THE JUROR:** I was just standing cause I
3 couldn't see.

4 **THE COURT:** Oh, you can't see.

5 **THE JUROR:** I thought it was someone else.
6 Sorry.

7 **THE COURT:** Oh, okay. All right. Okay.
8 Good.

9 Yes, ma'am. Tell me your name and juror
10 number.

11 **THE JUROR:** Kimberly Flory, number 58.

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

13 **THE JUROR:** Keith Galloway and Anthony
14 Massingill.

15 **THE COURT:** All right. And tell me how you
16 know those two individuals.

17 **THE JUROR:** I went to school with them. I
18 know their family. My daughter graduated from high
19 school with them.

20 **THE COURT:** All right. Tell me this, ma'am.
21 Would the fact that you were acquainted with
22 Anthony Galloway, excuse me, Anthony Massingill and
23 Keith Galloway, uh, do you believe you could still
24 be a fair and impartial juror in the trial of this
25 case if they were witnesses?

Jury Qualification

21

1 **THE JUROR:** I believe so.

2 **THE COURT:** All right. Thank you so much.

3 Yes, ma'am. Tell me your name and juror

4 number.

5 **THE JUROR:** Cary Williford, 158.

6 **THE COURT:** 158. Yes, ma'am.

7 **THE JUROR:** I know the two Cannons as

8 acquaintances.

9 **THE COURT:** Antonio Cannon and Missy Cannon?

10 **THE JUROR:** Yes.

11 **THE COURT:** Tell me how you believe you know

12 them.

13 **THE JUROR:** I know their families.

14 **THE COURT:** Okay. If they are witnesses in

15 the trial of this case, do you believe you could be

16 a fair and impartial juror in this trial?

17 **THE JUROR:** Yes.

18 **THE COURT:** Thank you so much, I appreciate

19 it.

20 Yes, sir. Tell me your name and juror number.

21 **THE JUROR:** Kenneth Cain, Juror 31.

22 **THE COURT:** Yes, sir.

23 **THE JUROR:** Acquainted with Keith Galloway

24 for several years.

25 **THE COURT:** Okay. And tell me how often do

1 you believe you see Keith Galloway? Every so
2 often?

3 **THE JUROR:** Yeah. Whenever I'm having to
4 change a pole out.

5 **THE COURT:** Okay. I got you. I got you.
6 Do you believe the fact that you know Keith
7 Galloway that you could still be a fair and
8 impartial juror?

9 **THE JUROR:** Yes.

10 **THE COURT:** Anyone else acquainted by blood
11 or marriage or otherwise related? Excuse me.
12 Acquainted or otherwise related to -- I'm getting
13 all mixed up this morning, any of these potential
14 witnesses. Anyone else? (No response.)

15 And no further are standing.

16 All right. Ladies and Gentlemen, if you serve
17 on any trial this week, you will hear lots more
18 about what an indictment is and what an indictment
19 is not. For our purposes here today, an indictment
20 will only serve to be -- this is the document by
21 which someone is brought into court. That's it.
22 And it has a synopsis or a little summary of the
23 alleged facts in this case. It's the easiest way
24 for me to tell you what the State is alleging
25 against the defendants to find out if you know

1 anything about the facts of this particular case.
2 So I want you to listen carefully. I'm going to
3 read these indictments. Some of them will be
4 repetitive but I want to be sure that I don't miss
5 anything all right.

6 MR. CLEVELAND: Your Honor, I hate to
7 interrupt you.

8 THE COURT: Yes.

9 MR. CLEVELAND: Can we approach for --

10 THE COURT: Yes, yes, yes, yes.

11 (WHEREUPON, a bench conference is held off the
12 record.)

13 THE COURT: All right, Ladies and Gentlemen.
14 These attorneys had a suggestion for me of a way to
15 do this without being repetitive in any way. Any
16 member of the jury panel know anything about the
17 alleged robbery of -- these alleged victims some
18 time between February 3rd and March the 8th. Is
19 that correct? Is that my date?

20 MR. CLEVELAND: Yes, 2011.

21 THE COURT: The alleged robbery of the
22 alleged victim Dustin Vance, Cameron Spencer,
23 Brandon Cody Adams, Kyle Whitaker, Michael Capo or
24 Capo, Zeke Quinn or Derek Mahaney at [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]? If so, please stand. (No
2 response.)

3 | . None are standing.

4 Ladies and Gentlemen, I don't know if there
5 was any media interest in this case or any reports
6 or anything like that about an upcoming trial in
7 this case by any means, but I do have to ask the
8 question. Any member of the jury panel read
9 anything in the newspaper or read any news reports
10 about this particular case or any news report about
11 any trial of this particular case? If so, please
12 stand. (No response.)

13 And none are standing.

14 One question I failed to ask. Any member of
15 the jury panel related by blood or marriage or
16 otherwise acquainted with anyone who works in the
17 13th Circuit Solicitor's Office? Again, the 13th
18 Circuit is Pickens and Greenville county and the
19 Solicitor's office is the prosecutor's office.
20 Anyone related by blood or marriage or otherwise
21 acquainted with anyone in the Solicitor's office
22 here in Pickens or Greenville county?

23 Yes, ma'am. Please stand.

24 THE JUROR: I just have a question of
25 clarification. Does that include police officers

Jury Qualification

25

1 or just attorneys?

2 THE COURT: Is it a police officer that is
3 involved in this case?

4 THE JUROR: No.

5 THE COURT: Okay. Tell me what your
6 relationship is with him.

7 THE JUROR: I'm married to a police officer.

8 THE COURT: Okay. Where, uh, --

9 THE JUROR: Greenville.

10 THE COURT: In Greenville. Greenville
11 county?

12 THE JUROR: City.

13 THE COURT: Greenville City Police. Now,
14 you know the nature of the allegations in this
15 case. Do you believe you could be a fair and
16 impartial juror in the trial?

17 THE JUROR: Yeah.

18 THE COURT: And tell me your name and juror
19 number.

20 THE JUROR: I'm Juror Number 69, Julie
21 Hammett.

22 THE COURT: All right. Thank you. All
23 right.

24 All right. Now, you've heard the nature of
25 the allegations in this case. I've told you the

Jury Qualification

26

1 name of all the witnesses, potential witnesses in
2 this case. You've met the attorneys. You've met
3 the folks involved in this case. Is there any
4 reason that any juror believes that he or she could
5 not be a fair and impartial juror in the trial of
6 this particular case? If so, please stand.
7 Anyone? (No response.)

8 And no further are standing.

9 Let me ask one more question. Any juror --
10 has any juror or member of your immediate family --
11 and let me define immediate family. Brother,
12 sister, mother, father, children, spouse -- okay --
13 ever been the victim of a robbery? If so, please
14 stand. Member of your immediate family ever been
15 the victim of robbery. If so, please stand.

16 Yes, ma'am. Tell me your name and juror
17 number.

18 **THE JUROR:** Catherine Vincent, 144. My mom
19 had her home broken into.

20 **THE COURT:** Okay. Do you believe you could
21 be a fair and impartial juror in the trial of this
22 case knowing the nature of the allegations?

23 **THE JUROR:** I do.

24 **THE COURT:** All right. Thank you so much.
25 Anyone else need to respond to that question?

Jury Qualification

27

1 (No response.)

2 Any further voir dire from the State?

3 MR. CLEVELAND: Nothing from the State, Your
4 Honor.

5 THE COURT: Anything further the defense?

6 MR. AARON: Nothing further.

7 THE COURT: Mr. Cantrell?

8 MR. CANTRELL: No.

9 THE COURT: All right then. All right,
10 Ladies and Gentlemen. Next, we're going to move to
11 the part where we're actually selecting jurors in
12 this case. What's going to happen is you are going
13 to hear your name and juror number called by the
14 clerk. You will come forward. You will stand.
15 They will show you exactly where to stand, but up
16 from these -- in between these attorney tables but
17 up just a little bit. Turn and face your fellow
18 jurors. Don't face me. Face your fellow jurors.

19 You're going to hear the State say something
20 like please present this juror or please excuse
21 this juror. If you are excused, you will go back
22 to your seat. If they say please present the
23 juror, then the defendants are going to have a
24 chance to say -- to either seat this juror or swear
25 this juror or excuse this juror. If you are

1 excused again, you go back to your seat. If you
2 are seated by the defense, you'll go over and sit
3 in the -- in our juror seats over here in our jury
4 box. We'll guide you through it: Don't worry.
5 It's easy once we get going. It really is easy.

6 A couple of things. First of all, if you get
7 excused, don't take it personally. I know not too
8 many of you will. But there's a million reasons
9 that attorneys excuse jurors in a case. They are
10 really not personal. Okay. Secondly, when you
11 come up, bring all your things with you just in
12 case you do get picked. Then you won't have to go
13 back and get them. You can just sit over in the
14 jury box. All right.

15 All right. We're going to start with our jury
16 selection now again. Come and stand. Turn. Face
17 your fellow jurors. We'll give you instructions
18 from there. All right.

19 **THE CLERK:** Juror Number 58, Kimberly A.
20 Flory.

21 **THE COURT:** I always feel bad for the first
22 one that has to come up, but we're going to walk you
23 through it.

24 **THE CLERK:** What says the State?

25 **MR. CLEVELAND:** Please present Ms. Flory.

Jury Selection

29

1 THE CLERK: And the defense?
2 MR. AARON: Please strike Ms. Flory.
3 THE CLERK: If you would, return to your seat
4 please.
5 Juror Number 14, Amanda L. Black.
6 What says the State?
7 MR. CLEVELAND: Please present Ms. Black.
8 THE CLERK: And the defense?
9 MR. AARON: Please seat this juror.
10 THE COURT: Mr. Cantrell?
11 MR. CANTRELL: Please seat.
12 THE COURT: All right.
13 THE CLERK: Juror 74, Kimberly F. Hines.
14 What says the State?
15 MR. CLEVELAND: Please present Ms. Hines.
16 THE CLERK: And Mr. Aaron?
17 MR. AARON: Please seat the juror.
18 THE CLERK: And Mr. Cantrell?
19 MR. CANTRELL: Please seat the juror.
20 THE CLERK: Juror 23, Pamela T. Brown.
21 What says the State?
22 MR. CLEVELAND: Please present Ms. Brown.
23 THE CLERK: And Mr. Aaron?
24 MR. AARON: Please seat the juror.
25 THE CLERK: And Mr. Cantrell?

1 **MR. CANTRELL:** Please excuse Ms. Brown from
2 this trial.

3 **THE CLERK:** If you would, return to your seat
4 please, ma'am.

5 Juror 5, Tonya D. Bagwell.

6 What says the State?

7 **MR. CLEVELAND:** Please present Ms. Bagwell.

8 **THE CLERK:** And Mr. Aaron?

9 **MR. AARON:** Please seat the juror.

10 **THE CLERK:** And Mr. Cantrell?

11 **MR. CANTRELL:** Please seat Ms. Bagwell.

12 **THE CLERK:** If you would, have a seat in the
13 jury box please.

14 Juror Number 26, Brenda K. Buckner.

15 What says the State?

16 **MR. CLEVELAND:** Please excuse Ms. Buckner
17 from this case.

18 **THE CLERK:** If you would, return to your seat
19 please, ma'am.

20 Juror 94, William D. Linkenhoker.

21 What says the State?

22 **MR. CLEVELAND:** Please present Mr.
23 Linkenhoker.

24 **THE CLERK:** And Mr. Aaron?

25 **MR. AARON:** Please seat the juror.

Jury Selection

31

1 **THE CLERK:** And Mr. Cantrell?

2 **MR. CANTRELL:** Please seat the juror.

3 **THE CLERK:** If you would, have a seat in the
4 jury box please, sir.

5 Juror Number 85, Nancy Keith.

6 What says the State?

7 **MR. CLEVELAND:** Please present Ms. Keith.

8 **THE CLERK:** And Mr. Aaron?

9 **MR. AARON:** Please excuse this juror.

10 **THE CLERK:** If you would, return to your seat
11 please, ma'am.

12 Juror 4, Hector Arrendondo.

13 What says the State?

14 **MR. CLEVELAND:** Please present Mr.
15 Arrendondo.

16 **THE CLERK:** And Mr. Aaron?

17 Sir, hold up.

18 **THE COURT:** Just one second.

19 **THE CLERK:** Just a minute.

20 **MR. AARON:** Please seat the juror.

21 **THE CLERK:** And Mr. Cantrell?

22 **MR. CANTRELL:** Please seat Mr. Arrendondo.

23 **THE CLERK:** Sir, if you would, have a seat in
24 the jury box.

25 Juror Number 54, Dustin R. Dosier.

1 What says the State?

2 **MR. CLEVELAND:** Please present Mr. Dosier.

3 **THE CLERK:** And Mr. Aaron?

4 **MR. AARON:** Please excuse this juror.

5 **THE CLERK:** If you would, return to your seat
6 please, sir.

7 Juror Number 102, Tina L. McConnell.

8 What says the State?

9 **MR. CLEVELAND:** Please present Ms. McConnell.

10 **THE CLERK:** And Mr. Aaron?

11 **MR. AARON:** Please seat this juror.

12 **THE CLERK:** And Mr. Cantrell?

13 **MR. CANTRELL:** Please seat this juror.

14 **THE CLERK:** If you would, have a seat in the
15 juror's box please, ma'am.

16 Juror 72, David A. Hickey.

17 What says the State?

18 **MR. CLEVELAND:** Please present Mr. Hickey.

19 **THE CLERK:** And Mr. Aaron?

20 **MR. AARON:** Please excuse this juror.

21 **THE CLERK:** If you would, return to your seat
22 please, sir.

23 Juror Number 39, Jennifer B. Clark.

24 What says the State?

25 **MR. CLEVELAND:** Please present Ms. Clark.

Jury Selection

33

1 THE CLERK: And Mr. Aaron?
2 MR. AARON: Please seat the juror.
3 THE CLERK: And Mr. Cantrell?
4 MR. CANTRELL: Please seat Ms. Clark.
5 THE CLERK: If you would, have a seat in the
6 jury box, ma'am.
7 Juror 121, Jonathan C. Riddle.
8 What says the State?
9 MR. CLEVELAND: Please present Mr. Riddle.
10 THE CLERK: And Mr. Aaron?
11 MR. AARON: Please excuse this juror.
12 THE CLERK: All right. If you would, return
13 to your seat please, sir.
14 Juror Number 87, Donna C. Kent.
15 What says the State?
16 MR. CLEVELAND: Please present Ms. Kent.
17 THE CLERK: And Mr. Aaron?
18 MR. AARON: Please seat the juror.
19 THE CLERK: And Mr. Cantrell?
20 MR. CANTRELL: Please seat Ms. Kent.
21 THE CLERK: If you would, have a seat in the
22 jury box, ma'am.
23 Juror 91, Rodney G. Laye.
24 What says the State?
25 MR. CLEVELAND: Please present Mr. Laye.

1 THE CLERK: And Mr. Aaron?
2 MR. AARON: Please seat the juror.
3 THE CLERK: And Mr. Cantrell?
4 MR. CANTRELL: Please seat Mr. Laye.
5 THE CLERK: Mr. Laye, if you would, have a
6 seat in the jury box please, sir.
7 Juror Number 145, Brandon D. Vinson.
8 What says the State?
9 MR. CLEVELAND: Please present Mr. Vinson.
10 THE CLERK: And Mr. Aaron?
11 MR. AARON: Please seat the juror.
12 THE CLERK: And Mr. Cantrell?
13 MR. CANTRELL: Please seat Mr. Vinson.
14 THE CLERK: If you would, have a seat in the
15 jury box, sir.
16 Juror Number 34, Linda J. Champion.
17 What says the State?
18 MR. CLEVELAND: Please present Ms. Champion.
19 THE CLERK: Mr. Aaron?
20 MR. AARON: Please excuse this juror.
21 THE CLERK: If you would, return to your seat
22 please, ma'am.
23 Juror 140, Ashley N. Tinsley.
24 What says the State?
25 MR. CLEVELAND: Please present Ms. Tinsley.

Jury Selection

35

1 **THE CLERK:** And Mr. Aaron?

2 **MR. AARON:** Please seat the juror.

3 **THE CLERK:** And Mr. Cantrell?

4 **MR. CANTRELL:** Please seat Ms. Tinsley.

5 **THE CLERK:** If you would, have a seat in the

6 jury box please, ma'am.

7 Juror 138, Sandra F. Thomas.

8 What says the State?

9 **MR. CLEVELAND:** Please present Ms. Thomas.

10 **THE CLERK:** And Mr. Aaron?

11 **MR. AARON:** Please seat the juror.

12 **THE CLERK:** And Mr. Cantrell?

13 **MR. CANTRELL:** Please seat Ms. Thomas.

14 **THE CLERK:** If you would, have a seat in the

15 jury box please.

16 This will be for the first alternate. Juror

17 52, Rickey T. Day.

18 What says the State?

19 **MR. CLEVELAND:** Please excuse Mr. Day from

20 this trial.

21 **THE CLERK:** If you would, return to your seat

22 please, sir.

23 Juror Number 108, Jamie A. Moore.

24 What says the State?

25 **MR. CLEVELAND:** Please present Ms. Day.

1 **THE CLERK:** Ms. Moore.

2 **MR. CLEVELAND:** Ms. Moore. I'm sorry, Mr.

3 Clerk.

4 I'm sorry, Ms. Moore.

5 **THE CLERK:** And Mr. Aaron?

6 **MR. AARON:** Please seat the juror.

7 **THE CLERK:** And Mr. Cantrell?

8 **MR. CANTRELL:** Please excuse Ms. Moore from

9 this trial.

10 **THE CLERK:** If you would, return to your seat

11 please, ma'am.

12 Juror 45, Jared S. Colton.

13 What says the State?

14 **MR. CLEVELAND:** Please excuse Mr. Colton from

15 this trial.

16 **THE CLERK:** If you would, return to your seat

17 please, sir.

18 Juror Number 11, Tammy J. Batson.

19 What says the State?

20 **MR. CLEVELAND:** Please present Ms. Batson.

21 **THE CLERK:** And Mr. Aaron?

22 **MR. AARON:** Please excuse the juror.

23 **THE CLERK:** If you would, return to your seat

24 please, ma'am.

25 Juror 103, Kathryn McCroskey.

Jury Selection

37

1 What says the State?

2 MR. CLEVELAND: Please present Ms. McCroskey.

3 THE CLERK: And Mr. Aaron?

4 MR. AARON: Please excuse her from this
5 case.

6 THE CLERK: Okay. If you would, return to
7 your seat please.

8 Juror Number 75, Scott S. Holliday.

9 What says the State?

10 MR. CLEVELAND: Please present Mr. Holliday.

11 THE CLERK: And Mr. Aaron?

12 MR. AARON: Please seat the juror.

13 THE CLERK: And Mr. Cantrell?

14 MR. CANTRELL: Please excuse Mr. Holliday
15 from this trial.

16 THE CLERK: If you would, return to your seat
17 please, sir.

18 Juror Number 68, Robert J. Hall.

19 What says the State?

20 MR. CLEVELAND: Please present Mr. Hall.

21 THE CLERK: And Mr. Aaron?

22 MR. AARON: Please excuse the juror.

23 MR. CLEVELAND: Judge?

24 THE COURT: Will y'all approach for just one
25 second?

1 (WHEREUPON, a bench conference is held off the
2 record.)

3 **THE CLERK:** If you would, return to your
4 seat, Mr. Hall.

5 **THE COURT:** Will the attorneys approach
6 again? I'm sorry.

7 (WHEREUPON, a bench conference is held off the
8 record.)

9 **THE COURT:** Mr. Aaron?

10 **MR. AARON:** Yes.

11 **THE COURT:** All right.

12 **THE CLERK:** Juror 107, Lincoln E. Milhoan.
13 What says the State?

14 **MR. CLEVELAND:** Please excuse Mr. Milhoan.

15 **THE CLERK:** If you would, return to your seat
16 please, sir.

17 Juror Number 1, Joseph Acampora, Jr.

18 What says the State?

19 **MR. CLEVELAND:** Please present Mr. Acampora.

20 **THE CLERK:** Mr. Aaron?

21 **MR. AARON:** Please excuse this juror.

22 **THE CLERK:** If you would, return to your seat
23 please.

24 Juror Number 19, Reginald T. Bowers.

25 What says the State?

Jury Selection

39

1 MR. CLEVELAND: Please present Mr. Bowers.

2 THE CLERK: And Mr. Aaron?

3 MR. AARON: Please seat the juror.

4 THE CLERK: And Mr. Cantrell?

5 MR. CANTRELL: Please seat Mr. Bowers.

6 THE CLERK: If you would, have a seat in the
7 jury box please, sir.

8 Okay. This will be for the second alternate.

9 Juror 37, Bradley A. Cisson.

10 What says the State?

11 MR. CLEVELAND: Please present Ms. Cisson.

12 THE CLERK: And Mr. Aaron?

13 MR. AARON: Please seat the juror.

14 THE CLERK: And Mr. Cantrell?

15 MR. CANTRELL: Please seat Mr. Cisson.

16 THE CLERK: If you would, have a seat in the
17 jury box, sir.

18 Okay.

19 THE COURT: Any objection to the manner in
20 which the jury was selected from the State?

21 MR. CLEVELAND: None on behalf of the State,
22 Your Honor.

23 THE COURT: All right. Any from the defense,
24 Mr. Aaron?

25 MR. AARON: No, ma'am.

1 **THE COURT:** All right. Any, Mr. Cantrell?

2 **MR. CANTRELL:** None.

3 **THE COURT:** All right then. Will the
4 attorneys approach one more time? I'm so sorry to
5 be doing this. Y'all are going to be in Judge
6 Miller's courtroom, so I have a lot of questions for
7 the attorneys. They know better than I do what the
8 schedule is.

9 (WHEREUPON, a bench conference is held off the
10 record.)

11 **THE COURT:** All right. Ladies and Gentlemen,
12 you will serve as jurors in the trial of this
13 particular case. The good news for y'all is y'all
14 get to be in Judge Miller's courtroom, so you won't
15 be with me for the remainder of your time as jurors,
16 although I'll hate I'm not going to get to work with
17 you. Secondly, you do not need to show up until
18 1:30 tomorrow. You are free to go for the rest of
19 the day today and show up tomorrow morning --
20 tomorrow afternoon at 1:30.

21 I'm going to ask y'all to show them where they
22 should assemble.

23 We're going to be in this courtroom?

24 **THE CLERK:** No, we will be upstairs.

25 **THE COURT:** Where's this trial going to be?

Remarks

41

1 **MR. CLEVELAND:** This one.

2 **THE COURT:** Down here? Okay. I'm going to
3 be upstairs. Okay. We have to do a lot of
4 logistics today. I'm sorry about that. The
5 bailiffs are going to show you where to assemble
6 tomorrow morning before the trial -- excuse me --
7 tomorrow afternoon before this trial begins.

8 Now, a couple of things I want to say to you
9 about the trial of this case. Please do not do any
10 independent research in any way. You know very,
11 very little about the case itself. Please do not
12 try to do any independent research in any way on
13 this case. If someone asks you, you'll go home,
14 they'll say did you get picked for a jury. You can
15 tell them you are on a jury but nothing else past
16 that.

17 While you might not have heard anything about
18 this case -- oh, goodness -- maybe somebody in your
19 household knows something about this case. Please
20 do not discuss this case with anyone whatsoever.
21 All right. Do not discuss this case in any way with
22 anyone. We want you to come in here as a clean
23 slate with an open mind. All right. All that being
24 said, I'll excuse you for the balance of the day
25 until tomorrow at 1:30. Thank you so much for your

Remarks

42

1. service this week.

2 (WHEREUPON, the jury exits at approximately
3 11:52 a.m.)

4 (END OF TRANSCRIPT)

5

6

7

8

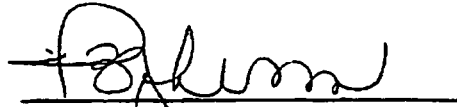
CERTIFICATE

43

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens, South Carolina, on this 3rd day of July, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

A handwritten signature in dark ink, appearing to read 'T. B. Johnson', is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF PICKENS) IN THE COURT OF GENERAL SESSIONS
 3
 4 The State,) TRANSCRIPT OF RECORD
 5 -vs-) 2012-GS-39-0700,-0752;
 6 Larold Morris,) 2013-GS-39-0457,-0458
 7 Defendant.) March 19 and 20, 2013
 8 Pickens, South Carolina
 9

10 B E F O R E:

11 HONORABLE EDWARD W. MILLER, JUDGE; and a jury
 12
 13

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

15 JOHN BAKER CLEVELAND, III, ESQUIRE
 16 SAMUEL BARTON TOOKER, ESQUIRE
 17 Attorneys for the State

18 DAVID D. CANTRELL, JR., ESQUIRE
 19 Attorney for the Defendant

20 S. PAUL AARON, ESQUIRE
 21 Attorney for D'Andre Draper
 22

23
 24 ORIGINAL
 25

Margaret A. Woods
 Circuit Court Reporter

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25	S-114	Black and camo mask	228	253

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-115	Black mask	228	253
S-116	Glove and ID card	228	252
S-117	Stipulation regarding chain of custody	276	277
C-1	Search warrant	85	
C-2	Returns(2)	85	
C-3	Note from the jury	228	
C-4	Note from the jury	332	
C-5	Note from the jury	332	
C-6	Note from the jury	333	
C-7	Conspiracy 16-17-410 charge	333	
C-8	Actual or Constructive Possession and Mere Presence charge	333	

MOTIONS AND MATTERS

1 (Proceedings March 19, 2013)

2 (Photographs marked State's Exhibit Nos. 1 through 101
3 for identification.)

4 MR. TOOKER: Your Honor, we we've got several pretrial
5 motions for ya this mornin' and, uh, and State thinks that
6 Mr. Cantrell's first motion, uh, because it's a motion to
7 sever these several indictments probly should be heard first
8 'cuz it might control what other motions need to be heard this
9 mornin'.

10 THE COURT: Okay, I don't know anything about your case
11 so what is it?

12 MR. CANTRELL: And we're in agreement with that and, Your
13 Honor, I think they're bringin' my client in ---

14 THE COURT: Oh, ---

15 MR. CANTRELL: --- if you'll wait ---

16 THE COURT: --- oh, yeah, I'm sorry, ---

17 MR. CANTRELL: I ---

18 THE COURT: --- let's just wait.

19 MR. CANTRELL: --- well I I failed to ask him to.

20 THE COURT: That's alright, it's my -- it's...

21 (Pause.)

22 (Whereupon, the defendant entered the courtroom.)

23 MR. CANTRELL: Okay, Your Honor, I believe we're ready
24 when when you are.

25 THE COURT: Yeah, well I got discombobulated. Okay, what

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1 ya got?

2 MR. CANTRELL: Your Honor, we have in this case this is
3 the cate [sic] of State vs. Larold Morris, I represent
4 Mr. Morris, Mr. Aaron represents Mr. Draper who is also a
5 defendant in this case.

6 THE COURT: Well where is he? Let's get him out here.

7 MR. AARON: He's not in jail, Your Honor, he's comin'
8 from Alabama, he'll be hear about one o'clock and he's fine
9 without him bein' present for the motions.

10 THE COURT: Okay, alright.

11 MR. CANTRELL: And, Your Honor, a brief synopsis is there
12 are three sets of charges, one arising out of an alleged, uh,
13 break-in on February the 3rd 2011 in the town of Central, one
14 February the 15th 2011 in the town of Central and one March
15 8th 2011 in the town of Central. Uh, the charges are armed
16 robbery and larceny ---

17 MR. TOOKER: Burglary.

18 MR. CANTRELL: Burglary at let's say event number 1 ---

19 THE COURT: And that was February 11th?

20 MR. CANTRELL: That was February the 3rd ---

21 THE COURT: Third, okay.

22 MR. CANTRELL: --- 2011.

23 THE COURT: Alright.

24 MR. CANTRELL: Armed robbery and burglary February the
25 15th 2011 and on the March 8th incident it is conspiracy and

MOTIONS AND MATTERS

1 possession of a firearm with I believe with an obliterated
2 serial number. They have, these were all charged by either
3 warrants at the time of the incidents, uh, the armed robbery
4 came about by direct presentment two terms ago.

5 THE COURT: Which armed robbery?

6 MR. CANTRELL: Uh, both: the first ---

7 THE COURT: Okay.

8 MR. CANTRELL: --- and the second.

9 THE COURT: Alright.

10 MR. CANTRELL: And I think conspiracy is always a ---

11 MR. TOOKER: Yes, sir.

12 MR. CANTRELL: And the conspiracy on the third event was
13 a direct presentment two months ago.

14 THE COURT: Alright.

15 MR. CANTRELL: Uh, the solicitor has had these on the
16 trial docket all three incidents to be tried at the same time,
17 this motion is to sever those incidents and, uh, simply by way
18 of presenting that the reasons for our motion is that we would
19 show to the Court that, and some a this, if not all of it, is
20 I think uncontroverted or not necessarily stipulated but
21 reasonably well agreed, the incident on the first one,
22 incident February the 3rd happened at [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] Uh, one individual was present in that apartment,
24 uh, there was a knock on the door, look through the the, uh,
25 peephole and thought it was a friend so he opened the door, he

MOTIONS AND MATTERS

1 then stated that he did not know the individual, uh, and made
2 made no identification, there were two males that entered the
3 apartment and the alleged robbery/burglary took place.

4 Uh, ---

5 THE COURT: What time a day was it?

6 MR. CANTRELL: This was in the evening I think around,
7 uh, ten.

8 MR. TOOKER: Yes, sir, Your Honor, each incident was
9 between 10 and 11 p.m. on a weeknight.

10 MR. CANTRELL: Uh, there was no vehicle identified and,
11 uh, one individual wore a hoodie that was zipped up to his
12 face, there was no report at that time I believe of a mask or
13 anything else. There was a report of one one gun, one weapon,
14 there were individ -- they were identified as two males one
15 5'8, one 5'10, two black males, and these individuals I guess
16 essentially you would say plunder the apartment, took
17 electronics and other items: cell phones, electronics, a
18 backpack, various personal items out of the apartment and
19 left. The next incident for which we're here today is on
20 February the 15th, it occurred on [REDACTED] [REDACTED] [REDACTED] in
21 Central, it was [REDACTED] [REDACTED] I think we will agree or
22 stipulate is at least a mile from the the [REDACTED]
23 location still in the town of Central. The individuals, uh,
24 at that apartment returned to the apartment and found that
25 someone had broken in, found individuals inside the apartment.

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1 When, uh, the first individual walked in, he was confronted by
2 an individual, uh, there were two males identified as being
3 5'6 to 5'8, one had, uh, dreadlocks, there was, uh, and they
4 took in -- took the property, allegedly took property and
5 left, told these individuals to stay in the apartment, not
6 call the police right away. Then on Feb -- on March the, uh,
7 8th the allegations are that one of the individuals that had
8 been ---

9 THE COURT: Well wait a minute, where, which location is
10 it?

11 MR. CANTRELL: Uh, this is back at [REDACTED]
12 [REDACTED] same site as the incident number one and the
13 allegations there are that one of the individuals that had
14 lived in [REDACTED] [REDACTED] when it was broken into
15 previously had moved to another apartment but he was in the
16 parking lot I believe it was, he looked and saw three
17 individuals at the door for [REDACTED] [REDACTED] Uh,
18 he -- there were no masks, he reported that all three were
19 wearing black hoodies. He saw one individual knock at the
20 door, another individual standing in the hallway, a third
21 standing further away, could not identify any of these except
22 to say they all had on black hoodies, they knocked at the
23 door, no one came to the door, they left. That is the charge,
24 that is the incident that led to the conspiracy for armed
25 robbery charge. They, uh, he called one of his roommates that

MOTIONS AND MATTERS

1 had been living in that same apartment previously 'bout five
2 or six weeks earlier, they moved to another apartment, and
3 asked him to see what he could see, that roommate reportedly
4 saw three individuals with black hoodies standing at and then
5 getting in a Chevrolet Impala, that one was bald, one was
6 unknown and one had dreads. Uh, I will state and I think I
7 left this out that there were allegations as to possibly a
8 Impala being involved in the previous I think the first ---

9 MR. CLEVELAND: Second.

10 MR. CANTRELL: --- the second, I'm sorry, the second
11 situation. Police were called and they subsequently stopped a
12 black Impala that had these two defendants plus a third
13 individual who was charged with the conspiracy but is not on
14 trial. Uh, there was no, no one saw a gun, no one saw a mask,
15 there was nothing going on but knocking on the door and
16 leaving, that's the third incident. It would be our position
17 that though the Court has discretion in whether to allow
18 charges to be joined or not that, uh, based on our case law
19 there does need to be a showing that the offenses are the
20 same in nature, uh, if they -- and arise outta the same chain
21 of circumstances generally should be provable by the same
22 evidence and ties to place, circumstances, individuals.. Now
23 again at this point no, there were no identification until
24 these individuals were stopped in a silver Impala after the
25 third incident.

MOTIONS AND MATTERS

1 THE COURT: There were what now? Say that again.

2 MR. CANTRELL: They were stopped, there was no
3 identification or nobody was identified as even being
4 allegedly to be involved until these defendants were stopped
5 shortly after the third incident on March the, uh, the March
6 incident and that led to their suspicions and that led to them
7 bein' charged with these previous two charges, uh, and, Your
8 Honor, I will, again, I will point out that there are two
9 weeks, we went from February the 3rd to February the 15th
10 between the first two incidents, from February the 15th to
11 the 8th till the third incident, the second incident was a
12 mile away from the other two incidents, then there were
13 differing circumstances. First incident two individuals
14 allegedly individual involved, second individual -- second
15 incident two individuals allegedly involved were found inside
16 the apartment, they had kicked open or forcibly entered the
17 apartment, no knocking on the door, well they don't know if
18 there was knocking on the door because no one was there. Uh,
19 first incident they knocked on the door, were let in, third
20 incident our opinion is there's no crime. The people that
21 were observed by both alleged witnesses can only testify that
22 these three people came to the door, knocked and left and
23 left, the second witness says they left in a silver Impala.

24 THE COURT: Silver?

25 MR. CANTRELL: Silver or gray Impala ---

MOTIONS AND MATTERS

1 THE COURT: And ---

2 MR. CANTRELL: --- which was subsequently stopped.

3 Uh, ---

4 THE COURT: Thought you said it was a black Impala.

5 MR. CANTRELL: No, black hoodies were the, and if I did I
6 misspoke, the car was silver or gray.

7 THE COURT: Alright.

8 MR. CANTRELL: Uh, the third incident alleged black
9 hoodies. All of those are differences, significant
10 differences in these three different situations, most
11 significantly a difference in time, most significantly a
12 difference geographically in the first and second incident,
13 third incident there's no crime committed. Uh, it takes
14 distinctly different evidence to prove each event. In all
15 candor these are being tried or the effort is being made to
16 try all three together because it is only with evidence a
17 little bit from this event, a little bit from this event that
18 they can tie anybody to anything and that is, uh, slight at
19 best, so the simple fact is these are separate incidents,
20 these are incidents that have different sets of
21 circumstances, require totally different proof, totally
22 different locations. Uh, the middle incident the vict -- the
23 perpetrators were alleged to be 5'6 to 5'8, every defendant in
24 this case along with a third who's not being called for trial
25 are 5'10 to 6 feet tall, uh, numerous differences, numerous

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1 issues and then finally of course there's always the primary
2 purpose or primary issue and that is this procedure, this
3 joinder cannot infringe upon the substant -- substantive
4 rights of these defendants and we certainly believe that that
5 in this case greatly outweighs any possibility of a connection
6 between these two for trial together and, uh, for that reason
7 we're asking these be severed and all dealt with separately.

8 THE COURT: Alright, yeah.

9 MR. TOOKER: Thank you, sir. Uh, and now I'll I'll touch
10 on the law in a second. The the State does sort of dispute a
11 little bit Mr. Cantrell's recitation of the facts.

12 THE COURT: Okay, well tell me what that is 'cuz this is
13 a very fact intensive.

14 MR. TOOKER: Yes, sir, yes, sir. On the 2/3 incident,
15 and all three incidents occurred on weeknights, uh, after
16 10 p.m., on the 2/3 incident, uh, the victim will testify that
17 he overheard one of the, uh, one of the defendants call the
18 other defendant Junior. Now the testimony and evidence in
19 this case is gonna be that the defendant Larold Morris's
20 nickname is Junior, uh, that one of the, and and the State
21 will agree with Mr. Cantrell that, uh, the victim who was on
22 scene on the first incident cannot identify the people who
23 robbed him. He'll say that that he saw a light-skinned black
24 man, uh, thought it was one a his friend's friends, opens the
25 door and then all of a sudden there's a dude with a a mask or

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1 not a mask a hoodie zipped all the way up so only his eyes are
2 visible, that he is, he is a slightly taller, darker skin and
3 that he's got a gun in his face, that he backs him into the
4 place, has him lay down on the floor, only identifying
5 characteristic he's able to pick up on at that point in time
6 is the name Junior. Now these perpetrators, uh, they proceed
7 to ransack the apartment and take electronic equipment. They
8 take TVs, they take Xboxes, they take video games, they
9 take ---

10 THE COURT: Okay.

11 MR. TOOKER: --- iPads, that kinda stuff. Now this is at
12 [REDACTED] this in the city of Central. One of the Xboxes that
13 was ---

14 THE COURT: And that was at [REDACTED]

15 MR. TOOKER: In [REDACTED] [REDACTED] yes, sir.

16 THE COURT: Okay.

17 MR. TOOKER: And and the victims in these cases are all,
18 uh, you know, young students living in these sorta
19 dormatare -- tory-type arrangements.

20 THE COURT: Okay.

21 MR. TOOKER: Uh, one a the Xboxes taken in that event was
22 an Xbox that the I guess say the user's very tech savvy and he
23 will testify that he gets online, notices that somebody is
24 playing his Xbox, gets online under another person's account,
25 sees that his Xbox is logged in, goes and and gets online,

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1 what, just stop, they get online and they see that the name
2 has been from his name was Capo, Capo Almighty to Lil Abbe,
3 L-I-L A-B-B-E 1. Eventually, after a search warrant is
4 executed on the third, after the third incident on Mr.
5 Morris's apartment that same Xbox is recovered from inside his
6 apartment. Uh, now in the second incident there's a silver
7 Impala reported, again and Mr. Cantrell's right, think it's
8 about a mile away from the first incident in the City a
9 Central, it's on 2/15, so about two weeks later, silver Impala
10 is, uh, is reported, uh, is the vehicle that the defendants
11 got away in. These three victims in this case, it used to be
12 four people that lived there but it was three of them and, uh,
13 and they reported that they arrived home after gettin' dinner,
14 found their back door kicked in, they go inside, uh, the
15 residence and there are two guys with masks and a a shiny
16 silver handgun, I forgot to mention this in the first incident
17 was a black handgun, this time they have a shiny silver
18 handgun, uh, they put them into a room, they start askin' 'em
19 about dope, you know, where's the dope, where's the dope,
20 uh, ---

21 THE COURT: Wait a minute, wait a minute, wait a minute.
22 This is the second offense?

23 MR. TOOKER: Yes, sir, ---

24 THE COURT: Okay.

25 MR. TOOKER: --- second offense.

MOTIONS AND MATTERS

1 THE COURT: Silver Im -- Impala, a silver handgun?

2 MR. TOOKER: Silver handgun and and they take again
3 nothin' but electronics. They take TVs, they take Xboxes,
4 phones, iPods that kinda thing. Again, they're described as
5 two black males, uh, one a whom I believe is described as
6 lighter skin than the other one, the other one is described as
7 havin' dreadlocks. Uh, this is again at at [REDACTED] and
8 it's again at a a weeknight after 10 p.m.. Now one of the
9 things Mr. Cantrell failed to mention that that is of
10 particular importance the State believes these guys are
11 described in this incident as havin' those, uh, those those
12 plastic gloves that you see oftentimes like cleaning ladies at
13 hotels usin', they're kind of an opaque color ---

14 THE COURT: Surgical gloves?

15 MR. TOOKER: Well not so tight, the looser fitting kinds,
16 the kind, they're not made out of, uh, they're not made out of
17 the same rubber material, they're more ---

18 THE COURT: No.

19 MR. TOOKER: --- plasticky but anyhow ---

20 THE COURT: Are they Latex? Are they ---

21 MR. TOOKER: They're not Latex, they're vinyl, vinyl
22 gloves, ---

23 THE COURT: Okay, alright.

24 MR. TOOKER: --- yes, sir.

25 THE COURT: Alright.

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1 MR. TOOKER: And then on 3/8, uh, so the kids who lived
2 on the first, uh, incident location at [REDACTED] after they were
3 robbed they were all very much scared and so they moved out so
4 they actually moved to a different apartment. Uh, two of the
5 the former roommates, former residents a [REDACTED] are comin' home
6 that night and they see, uh, three black males outside a their
7 apartment, uh, one of 'ems bangin' on the door now, and and
8 this is different than what Mr. Cantrell said, that I believe
9 their testimony would be one a those black males was wearing a
10 mask, uh, and that one of 'em had dreadlocks. Uh, what they,
11 what they do is they sit up on this apartment, they call the
12 police, uh, they monitor what's goin' on until the police are
13 able to arrive and they they will actually testify or one of
14 them will testify that it, that same car, that same silver
15 Impala that he watched them get into on 3/8 he he watched the
16 police pull 'em over, he actually went so far as to try to
17 block the separate entrance to the parking lot so they only
18 had one way to leave and then he watched the police pull them
19 over. Police pull him over, get a consent search on the
20 vehicle and then in the vehicle they find, uh, a a shiny
21 silver handgun, a black handgun, a box of those vinyl gloves,
22 those those plasticky gloves, and, uh, and then they execute a
23 search warrant on the car and a search warrant on, uh,
24 Mr. Mr. Morris's residence and and ---

25 THE COURT: Excu -- what -- why get a search warrant,

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1 they had consent ---

2 MR. TOOKER: Well 'cuz they had it towed. At that point
3 they took the guys into custody, they had it towed, uh, and,
4 you know, that they wanted to make sure that consent hadn't
5 been revoked by them arresting these defendants ---

6 THE COURT: Okay, ---

7 MR. TOOKER: --- and towing the car so ---

8 THE COURT: --- alright.

9 MR. TOOKER: --- they get a search ---

10 THE COURT: Alright.

11 MR. TOOKER: --- warrant. Anyhow, they get a search
12 warrant for the car and they find two more masks in the car as
13 well as some more gloves stuffed i -- stuffed in various I
14 guess compartments in the car and again with that search
15 warrant of the residence, Morris's residence, they're able to
16 obtain the Xbox stolen from the first location. Now
17 Mr. Morris in a statement to Detective Justice, and of course
18 we have some *Jackson v. Denno*, but, uh, in a statement to
19 Detect -- Detective Justice told her that his his gamer tag,
20 his user name, his Xbox account was Little Abbe, uh, and in
21 addition to that a statement from defendant Draper to
22 Detective Justice was that I got a text message, uh, from
23 Larold Morris that night sayin', Let's get Zeke. Zeke is Zeke
24 Quinn, Zeke Quinn was a resident of [REDACTED] Uh, ---

25 MR. AARON: The first time. Not the third time, the

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1 first time.

2 MR. TOOKER: No, on both. Well he wasn't living there on
3 the third occasion, they moved out, uh, but but he had been a
4 resident of [REDACTED] and and so on that night defendant Draper
5 says I got a text message from Morris sayin', Let's get Zeke,
6 and that he had known Zeke to be a drug dealer in the UV and
7 he had known, uh, that Morris had ripped off, uh, Zeke before
8 and Zeke's apartment was the one, uh, or I say his room is the
9 one that was thoroughly trashed in the first incident. If if
10 you look at the pictures of the incidents, that location in
11 particular was more, uh, more rooted through than the other
12 bedrooms when when the robberies and and burglaries occur and
13 and so it's it's these several I guess pieces a evidence that
14 the State argues is sufficient, uh, ---

15 THE COURT: What cases you gonna han -- what do ya have?

16 MR. TOOKER: I've got, uh, six cases I'm handin' up and I
17 think they're interesting. They're all South Carolina cases
18 and they're all cases where you've got a burglary or a
19 robbery, oh, I'm sorry, Paul, I just did one for ---

20 MR. AARON: That's fine.

21 MR. TOOKER: --- defense, uh, a burglary or a robbery, a
22 robbery and conspiracy, robbery and a murder, um, and they
23 sorta outline the different circumstances, uh, in which these
24 common scheme or plan type trials, uh, are are employed in
25 these circumstances 'cuz a lotta the case law of course out

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1 there that relies on *Lyle* is stuff that has to do, uh, with
2 criminal sexual conduct cases. The first case and and I
3 believe this is at the far end of the spectrum is *State v. ---*

4 THE COURT: You don't have ---

5 MR. TOOKER: --- Pa ---

6 THE COURT: --- *State v. Simmons*?

7 MR. TOOKER: Uh, there's *State v. Timmons*.

8 THE COURT: *Simmons*.

9 MR. TOOKER: *Simmons*, I I did not, I did not read ---

10 THE COURT: 573 S.E.2d 856.

11 MR. TOOKER: I'll have to, uh, ---

12 THE COURT: Ralph King Anderson so as you can imagine
13 it's got a number of cites in it.

14 MR. TOOKER: Okay, uh, ---

15 THE COURT: Let let me just ---

16 MR. TOOKER: Sir.

17 THE COURT: "Offenses which are of the same nature but
18 which do not arise out of a single chain of circumstances and
19 are not provable by the same evidence may not be properly
20 tried together," *State V. Middleton*, uh, "Joinder of offenses
21 in one trial is proper if the offenses are of the same general
22 nature or character and spring from the same series of
23 transactions, are committed by the same offender and require
24 the same or similar proof."

25 MR. TOOKER: And then that's a lot of the the same

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1 language that's used in the cases the State's ---

2 THE COURT: Right, ---

3 MR. TOOKER: --- relyin' on.

4 THE COURT: --- so let me ask ya this: ---

5 MR. TOOKER: Yes, sir.

6 THE COURT: --- What what crime was committed in the
7 third offense?

8 MR. TOOKER: Well in the third offense based on the
9 testimony of the witnesses that these individuals, one a whom
10 is masked, they're standin' outside their apartment, that
11 there's a text message from one co-defendant, co-conspirator
12 to the other saying, "Let's get Zeke," a a former re ---

13 THE COURT: How do they know Zeke?

14 MR. TOOKER: Again, according to the statement that
15 Mr. Draper provided to law enforcement that he knew Zeke to be
16 a big drug dealer in the UV, in the , ---

17 THE COURT: Alright.

18 MR. TOOKER: --- that that that's his awareness of Zeke,
19 uh, so so he ---

20 THE COURT: Does Zeke know the defendants?

21 MR. TOOKER: Yes, he said, All I know is that Zeke has
22 weed because I used to smoke slash buy from him through Chris
23 Jackson so so Zeke is not aware of these individuals, uh, but
24 they are somehow aware of him. The, uh, and I'm sorry you
25 asked me another question and I I got sidetracked.

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1 THE COURT: Well what crime is -- was committed the third
2 go-round?

3 MR. TOOKER: Okay, so we've got these three individuals
4 stand outside their apartment, one a whom's wearin' a mask,
5 this is a place that was robbed just five weeks prior, uh,
6 they are pulled over by law enforcement. When pulled over
7 they have two guns and three masks inside their car, uh, they
8 also have the the plastic gloves that fit the description from
9 from the second incident and there's the text message from one
10 individual to another saying, Let's get Zeke, who up until a
11 couple weeks prior was a resident of [REDACTED] Now as opposed to
12 attempt where you have to show that it was possible to
13 actually commit the act, now of course it be impossibility in
14 this case 'cuz nobody was livin' at [REDACTED] at the time, with
15 conspiracy all you need to show is is the meeting of the
16 minds, the intent to to get together to accomplish some act
17 and that intent is what the State must prove with regards to
18 the 3/8 incident and, uh, the statement about gettin' Zeke and
19 and the fellas standin' outside the apartment one a whom's
20 wearin' a mask and in the traffic stop where, uh, guns and
21 masks are found in the car alongside the rubber gloves.

22 THE COURT: Okay, you got a gun, you got and I guess one
23 a the guns has got an obliterated serial number?

24 MR. TOOKER: Yes, sir, that that is the ---

25 THE COURT: Okay, ---

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1 MR. TOOKER: --- silvery, the the chromed out ---

2 THE COURT: --- so question ---

3 MR. TOOKER: --- handgun. . . .

4 THE COURT: --- then for the -- that that you have to
5 answer is what's the validity of the stop and you do have a
6 crime, you've got the obliterated serial number ---

7 MR. TOOKER: Yes, sir.

8 THE COURT: --- but what is illegal about goin' to knock
9 on the door of an apartment? What is illegal about texting,
10 Let's get Zeke? Let's assume that he is a drug dealer and
11 that the defendants whoever they, the texters were are drug
12 users, now how else do they communicate? We all know they
13 communicate by texting.

14 MR. TOOKER: And I I think that that is certainly an
15 argument the defense can make to the jury and I think the
16 State can also argue that ---

17 THE COURT: No, no, you gotta get, you gotta get it to
18 the jury.

19 MR. TOOKER: No, I I understand that, sir.

20 THE COURT: Okay.

21 MR. TOOKER: What I'm tryin' to say is that that I
22 believe that all that evidence taken together, the totality of
23 those circumstances indicates that these guys were getting
24 together that night to again rob the same residence. The
25 statements made by the defendant in the case indicate that

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1 that was what was goin' on so, uh, that and and I wanna kinda
2 back up ---

3 THE COURT: Well wait a minute. What -- their
4 statements, I haven't seen 'em but their statements are Zeke
5 was a drug dealer.

6 MR. TOOKER: Zeke Zeke was a drug dealer in the UV that
7 Larold Morris, uh, or Junior texted me sayin', Let's get Zeke,
8 uh, and that is a text message that ---

9 THE COURT: Could be tryin' ---

10 MR. TOOKER: --- that ---

11 THE COURT: --- to get Zeke to buy some dope.

12 MR. TOOKER: Okay, and I understand that that could be an
13 explanation for the text, however, taken in light of the other
14 circumstances, the circumstances in this case bein' a a guy
15 with a mask standin' outside an apartment that had been robbed
16 five weeks beforehand, gettin' into a car ---

17 MR. AARON: Your Honor, I I don't wanna interrupt Mr.
18 Tooker but there's nothing in the evidence that we've been
19 given that says there was a mask at the third incident, and
20 I'm lookin' at Zeke's statement to the police, there's nothin'
21 about a mask, he talks about a hoodie so I just want the Court
22 to know we're not talkin' about a mask.

23 MR. TOOKER: Okay, well based on my my pretrial
24 discussions with him, uh, that that is the information that
25 I've come to understand. Uh, when I spoke to him on the

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1 phone, it he said that it was his testimony or it was going to
2 be his testimony that one of the individuals on scene was
3 wearing a mask, the other ones did have hoodies on,
4 uh, ---

5 MR. CANTRELL: And, Your Honor, that was never reported
6 in his statement or in the incident report, no -- this is the
7 first mention of a mask at Incident Number 3.

8 THE COURT: That's fairly significant ---

9 MR. TOOKER: Uh, be that as it may for the purposes ---

10 THE COURT: --- because if he didn't report it at the
11 time ---

12 MR. TOOKER: Sir.

13 THE COURT: --- and that's what we're talkin about, I'm
14 not talkin' about the after-discovered evidence that you get
15 once you make the stop, talkin' about the stop.

16 MR. TOOKER: Um-hum.

17 THE COURT: What is the basis for the stop?

18 MR. TOOKER: That the basis for the stop is, I mean,
19 these individuals called the police when they saw these guys
20 outside their apartment, ---

21 THE COURT: Okay.

22 MR. TOOKER: --- you know, they they were understandably
23 cautious and and ---

24 THE COURT: Sure, ---

25 MR. TOOKER: --- where ---

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1 THE COURT: --- and they're, and they're, I I can
2 appreciate that and it's im -- ya know, it's good that they
3 called the police.

4 MR. TOOKER: And so the police receive information that
5 these individuals then get into a silver Impala which the
6 police know to be a vehicle described at an incident two weeks
7 before this one, a similar ---

8 THE COURT: How may silver Impalas are there?

9 MR. AARON: Well ---

10 MR. TOOKER: And and there are, there are ---

11 THE COURT: Wait a minute, you just wait a minute.

12 MR. AARON: Yes.

13 MR. TOOKER: Of course there's several and and I think
14 what Mr. Aaron was about to mention in the video after they
15 get pulled over another silver Impala actually drives by, uh,
16 so again silver Impala is not dispositive, that the State's
17 just, everything taken together in this case and that this is
18 why it's important that the State be able to try these cases
19 together is 'cuz every single little piece a evidence in each
20 case indicates identity and indica -- indicates a common
21 scheme or plan, so the police rely on the information ---

22 THE COURT: Just like a defendant can't get s -- can't
23 get a severance because he might be more likely to be
24 acquitted if he's tried separately, the State doesn't just get
25 to try -- join cases because it be more likely they get a

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1 conviction.

2 MR. TOOKER: Yes, sir.

3 THE COURT: What's good for the goose is good for the
4 gander and, in fact, ---

5 MR. TOOKER: Yes, sir.

6 THE COURT: --- it's weighted in favor of the citizen.

7 MR. TOOKER: Yes, sir, the State's aware a that and
8 again, it's one of the reasons why I wanted to specifically
9 address several a these cases because in each case it's a
10 factual determination like Your Honor said and and in each
11 case the facts vary, I mean, that that is the nature of uh,
12 you know, ---

13 THE COURT: Crime.

14 MR. TOOKER: --- crime, uh, so, you know, there are cases
15 where the courts deemed admissible, for instance, the *State v.*
16 *Patrick*. Two weeks apart there were, uh, robbery slash
17 burglaries, one in Georgia, one in South Carolina, they were
18 similar because the individuals were masked, uh, they they
19 entered the residence in a similar way through the back door,
20 they they all occurred at night and they all used a similar
21 sort of way to trick the people to come outside. They made
22 noises outside, got the people outside, once the people were
23 outside they committed ---

24 THE COURT: So ---

25 MR. TOOKER: --- the crimes.

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1 THE COURT: --- among the three events that you are
2 pursuing ---

3 MR. TOOKER: Sir.

4 THE COURT: --- two of 'em have similar MOs.

5 MR. TOOKER: Well I think the MO is the same in all
6 three, the MO is to commit a robbery. Now just because on the
7 third incident the defendants weren't successful ---

8 THE COURT: No, no, I'm -- the first and the third have
9 similar MOs, ---

10 MR. TOOKER: You think the MO in the second inc ---

11 THE COURT: --- the second is the kicked in back
12 door, ---

13 MR. TOOKER: Yes.

14 THE COURT: --- how is that similar?

15 MR. TOOKER: Well it it's different in as much as the
16 locations are different. The the second incident location is
17 not an apartment so the first one's an apartment at [REDACTED]
18 [REDACTED] the second is a series of small houses that are
19 rented out, uh, to these college students and so the back
20 door's kicked in, the back door is what backs up to a vacant
21 lot which is where these individuals see, uh, the perpetrators
22 get into the silver Impala and drive off. Uh, the the means a
23 ingress and egress ---

24 THE COURT: Who was the ---

25 MR. TOOKER: --- while while ---

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1 THE COURT: --- drug dealer ---

2 MR. TOOKER: --- while different ---

3 THE COURT: --- in that house?

4 MR. TOOKER: Excuse me?

5 THE COURT: Who was the drug dealer in that house?

6 MR. TOOKER: The the, uh, kids in that case say that
7 their fourth roommate, the one that doesn't live there
8 anymore, uh, sold drugs outta there. Anyhow, and and that
9 that is another aspect the State feels is similar, that these
10 are crimes, these individuals are not being targeted randomly,
11 it's not, it's not, Hey, we see some college kids out last
12 night, that one night, let's follow 'em back and rob their
13 place, it's it's somehow because these people become known to
14 these individuals in the community that they become targets
15 and the State's, uh, theory a the case is that they're
16 becoming known because of their involvement in drug
17 activity, ---

18 THE COURT: Okay, ---

19 MR. TOOKER: --- alright.

20 THE COURT: --- but you -- look, I think you're
21 overreaching. I think the conspiracy is a real stretch and I
22 think tryin' to try the two robbery events together is a
23 stretch. What proof in one is necessary for proof in the
24 other?

25 MR. TOOKER: Well, uh, ---

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1 THE COURT: Just because they're -- they occurred at
2 night during the week and involve two black males ---

3 MR. TOOKER: They use guns, uh, individ ---

4 THE COURT: Different guns.

5 MR. TOOKER: Different guns but but the ---

6 THE COURT: Which ---

7 MR. TOOKER: --- gun ---

8 THE COURT: --- which then yes you found later.

9 MR. TOOKER: Okay, and and so ---

10 THE COURT: How does the, how does the February 3rd and
11 the February 15th what proof in one, other than being similar,
12 what do ya have to prove in one that you have to prove in the
13 other?

14 MR. TOOKER: Well in each incident is that, I'll first
15 compare the first two and then talk about the importance of
16 the third but but ---

17 THE COURT: Well leave the third out 'cuz the third
18 is ---

19 MR. TOOKER: Okay.

20 THE COURT: --- different, ---

21 MR. TOOKER: Okay.

22 THE COURT: --- okay?

23 MR. TOOKER: So for the first two we have masked gunmen
24 of course, we have the robbery ---

25 THE COURT: Wait a minute.

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1 MR. TOOKER: --- but ---

2 THE COURT: What mask -- you, in your recitation on the
3 first one, 10 to 11 p.m., weekend, silver, they took
4 electronics, uh, ---

5 MR. TOOKER: Weekday, that they're all ---

6 THE COURT: --- co-defendant ---

7 MR. TOOKER: --- weekday events.

8 THE COURT: --- called the, uh, co-defendant Junior, the
9 victim can't ID, ya had a light skin black male, ya had a
10 co-defendant with a hoodie with a gun, he was taller, had a
11 black gun, they took electronics, they found the, they found
12 the Xbox later, that's separate, that's subsequent
13 investigat -- vestigatory proof. The second one ya got
14 silver Impal -- Impala, the silver handgun, electronics, two
15 black males, one's light skin, one with dreads, they're
16 wearing gloves, what proof in one is necessary in the other?

17 MR. TOOKER: Okay, in each incident you have an
18 individual obscuring his identity. Now I understand that's
19 that's probably robbery 101, ya know, wearin' a a mask,
20 zippin' the hoodie up so only your eyes are seen and the State
21 appreciates that that alone and there's a case on point for
22 that, that masks alone or obscuring your identity alone not
23 sufficient, ---

24 THE COURT: Yeah.

25 MR. TOOKER: --- uh, but in addition to that, that they

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1 each target the same demographic of person, uh, and and this
2 too I think is important, Detective Just ---

3 THE COURT: Well there are all kindsa Clemson students
4 gettin' robbed over there, it's happenin' all the time, ---

5 MR. TOOKER: We ---

6 THE COURT: --- we we gotta stop it, I'm with ya, ---

7 MR. TOOKER: --- actually, Your Your Honor, dete ---

8 THE COURT: --- well or Anderson University, I don't know
9 where they're from.

10 MR. TOOKER: --- Detective Justice will testify that for
11 that period of time, we asked her to pull these records
12 between the first a January and April 1st, that that period a
13 time, these are the only incidents like this in the City of
14 Central ---

15 THE COURT: Okay, well, I mean ---

16 MR. TOOKER: --- so and and I I ---

17 THE COURT: --- but it's not ---

18 MR. TOOKER: --- men ---

19 THE COURT: '--- like durin' that period a time maybe yeah
20 but how 'bout the previous six months or the previous year,
21 that's not, that that that doesn't really come into into the
22 de -- into the factual determination.

23 MR. TOOKER: Well I I mention that because actually in in
24 the footnotes of one particular case, *State v. Timmons*, uh,
25 327 SC 48, it was a case where where all the State had really

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1 was masks and guns and the Court found important and this in
2 footnote 3 of the text, "There were many armed robberies of
3 all-night establishments in Lexington and Richland Counties on
4 weekend nights during that time period making the features of
5 the robbery too general." Now in this case we don't have
6 many, we we have in this area two that fit the bill, we have
7 two that fit the bill then we have a third incident that
8 indicates identity of the perpetrators in the first two and
9 that that indication of identity is is and I I'm gonna quote
10 some other language here but, uh,, "The common scheme or plan
11 in identity exceptions are so interrelated as evidence a
12 common scheme or plan essentially goes to prove the identity
13 of the perpetrator," that's *State v. Kennedy*, 339
14 SC ---

15 THE COURT: Look, ---

16 MR. TOOKER: --- 243 ---

17 THE COURT: --- okay, and here's, uh, in your, in the
18 *Simmons* case, One of the bases, accepted bases for the
19 admissibility of evidence of other crimes arises when such
20 evidence "furnishes part of the context of the crime" or is
21 necessary to a "full presentation" of the case or is so
22 intimately connected with and explanatory of the crime charged
23 against the defendant and is so much a part of the setting of
24 the case and its "environment" that its proof is appropriate
25 in order "to complete the story of the crime on trial by

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1 proving its immediate context or *res gestae*" or the "uncharged
2 defense is 'so linked together in point of time and
3 circumstances with the crime charged that one cannot be fully
4 shown without proving the other...", that's what you're
5 talkin' about, they're part of the *res gestae*, not that
6 they're committed by the same people, that's not what we're
7 talkin about, and you may well be right but ya can't, you
8 ca -- and and you know and we apparent from what I've heard
9 this is not a really strong case, right, which is if you had a
10 slam dunk on the first one and ya had a weak case on the
11 second one, ya can't tell me you'd be tryin' the second one,
12 you'd go after that slam dunk, nail him and then come back and
13 try the second one later, we all know how that works, so the
14 question is do you, can you prove one, what proof of one is
15 intimately connected with the proof of the other one even
16 though they're committed by the same people 'cuz people commit
17 multiple crimes all the time and and so you you wanna make
18 sure that when you joined a crime -- you join crimes that you
19 don't have to do it again later, it doesn't come back because
20 of overly aggressive pursuit.

21 MR. TOOKER: Of course.

22 THE COURT: Okay, so where, you know, e -- there are
23 similarities but can you prove one without proving the other?
24 I think the third case, I don't -- that seems, it seems fine
25 with me with either and it probably if you have to try each of

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1 these two cases it should be, it can be used with both of 'em
2 individually. I don't see the connection, uh, between the
3 first and the second, why you have to try those two together
4 'cuz that's the meat and potatoes here.

5 MR. TOOKER: Of course ---

6 THE COURT: Yeah.

7 MR. TOOKER: --- and suppose what what the State is
8 relyin' on most here, uh, is the lack of similar incidents for
9 this time frame. I mean, what we're talking about ---

10 THE COURT: Well that's not evidence.

11 MR. TOOKER: But but but it is stuff that that courts
12 have considered. I mean, and and if you'll look at this
13 outline I gave you ---

14 THE COURT: Alright, tell ---

15 MR. TOOKER: --- State v. ---

16 THE COURT: --- me which one you're talkin' about.

17 MR. TOOKER: In *State v. Aiken*, uh, court admitted
18 several robberies in Orangeburg, uh, where where all ya had as
19 a description is young black male, handgun, covered face. Now
20 now they're in a a more rapid succession, they're all about
21 seven days apart, uh, but but in those incidents, uh, in those
22 incidents, what you have is essentially the same sort of
23 allegations we have here where a person with a gun coverin'
24 his face is robbin' places in the similar part a town. Now
25 what distinguishes our case from that case is in that case a

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1 juvenile co-defendant testified against the defendant on trial
2 for each incident and and we don't have that here but the fact
3 of the ma ---

4 THE COURT: Let me ask you th -- which which ---

5 MR. TOOKER: Sir.

6 THE COURT: --- which, uh, case was the Xbox found in?

7 MR. TOOKER: It was found off -- after the third
8 incident.

9 THE COURT: I I know that but out of which of the two
10 cases?

11 MR. TOOKER: The first one.

12 THE COURT: Okay, so you pretty much have him nailed on
13 the first one.

14 MR. TOOKER: Uh, I would never presume to have anybody
15 nailed ---

16 THE COURT: Yeah, well ---

17 MR. TOOKER: --- in this courtroom ---

18 THE COURT: --- you got solid evidence here, right?

19 MR. TOOKER: Yes, sir.

20 THE COURT: Why would you, why risk ---

21 MR. TOOKER: Well because the second incident and the
22 third incident are so interrelated the State believes based on
23 the evidence obtained when they searched the vehicle. I mean,
24 what you have ---

25 THE COURT: You can use the evidence from the search of

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1 the vehicle in the second offense and you can use the evidence
2 from the search of the vehicle in the first offense, ---

3 MR. TOOKER: Yes, sir.

4 THE COURT: --- what evidence in the second offense is
5 necessary in the first offense other than the fact that it is
6 similar, we all, we're all on the same page with that, even
7 the defendant knows that, but what evidence do you -- is
8 required to be proved from the second offense in order to
9 prove the first offense?

10 MR. TOOKER: Well I I don't think that and I I might be
11 misunderstandin' the case law but I don't think the case law
12 to admit the two together is that you have to have something
13 from here to prove your case here, my understanding is that
14 that they are so related to each other by the existence of a
15 common scheme or plan and by the establishment of a common
16 identity that it warrants admission of of subsequent or prior
17 bad acts for the purposes of of proving a particular case.

18 THE COURT: I I -- just 'cuz they're, they're, I mean,
19 what do ya have, what do ya have to prove in one in order to
20 prove the other one? Your IDs are different, the guns are
21 different, the, you know, you -- yeah, they stole electronics
22 but what else do students have in their apartments that are
23 worth anything other than maybe drugs, uh, ya know, what proof
24 do ya have to have? I see, I connect the third one with each
25 of the other two but I don't connect the actual, the first two

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1 offenses.

2 MR. TOOKER: Okay, and and so it's Your Honor's position
3 that that goin' one to three and two to three isn't sufficient
4 to try one, two and three at the same time.

5 THE COURT: Yeah, they're they're they're individualized.
6 I agree with you that the, that the the third incident is
7 necessary for the second one and I agree that the third
8 incident is necessary for the first one, but I don't see why
9 the second one is necessary for the first one. Let me tell
10 ya, ya get a conviction on on one of 'em and these guys are
11 hammered.

12 MR. TOOKER: No, and and the State's aware a that, I
13 mean, the charges are very serious charges.

14 THE COURT: Yeah.

15 MR. TOOKER: Uh, it is, it is a circumstantial case.
16 Circumstances in this case are ---

17 THE COURT: Well yeah, it is ---

18 MR. TOOKER: --- well go to ---

19 THE COURT: --- but you got, you got the guy with the
20 goods and you got a lotta evidence, uh, who had the -- who was
21 the guy -- who was Little Abbe or whatever's ---

22 MR. TOOKER: Uh, that that again is Mr. Morris.

23 THE COURT: Okay, well, I mean, he's he's got a tough
24 hill to climb there. Do you -- I mean, te -- give me
25 somethin' that has to be proved from one and two.

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1 MR. TOOKER: Uh, ---

2 THE COURT: Ya'll take a few minutes to talk about it.

3 MR. TOOKER: Yes, sir.

4 THE COURT: Okay.

5 MR. TOOKER: Yes, sir.

6 THE COURT: We'll go off the record for a sec.

7 COURT REPORTER: Okay.

8 (Pause.)

9 THE COURT: I see the prosecutor rising to comment, ---

10 MR. TOOKER: I ---

11 THE COURT: --- yes, sir.

12 MR. TOOKER: --- just get a little antsy in my pants here
13 and stand. Uh, I I entirely understand Your Honor's position
14 what what what you're sayin', uh, and I I feel like I'm I'm
15 beatin' a dead horse and I don't wanna do that here, ---

16 THE COURT: Okay, ---

17 MR. TOOKER: --- uh, ---

18 THE COURT: --- well whatever.

19 MR. TOOKER: --- what we have ---

20 THE COURT: I ain't dead yet if that's what you're
21 sayin'.

22 (Laughter.)

23 MR. TOOKER: And, uh, and we we we have a first incident
24 where where there's, you know, no identified parties, only a
25 description of what happened, we have a second incident with a

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1 similar description, now granted not the exact same but a
2 similar description in a similar area, with similar victims,
3 uh, with what the State believes to be a similar MO and again,
4 we we have no perpetrators and then we have a third incident,
5 uh, that that indicates the identity of the perpetrators in
6 the first two. Uh, the State thinks it's important to be able
7 to try all these things together because each one builds on
8 the other, uh, ---

9 THE COURT: Which is exactly what you cannot do. You
10 can't convict somebody for their conduct, you can't convict
11 somebody in one case for their conduct in a separate case,
12 that's what the rules are are there for.

13 MR. TOOKER: Of of course un -- unless it's a common
14 scheme or plan.

15 THE COURT: Well and and this may well be a, you know,
16 they got the same sorta basic MO, okay, ---

17 MR. TOOKER: Okay.

18 THE COURT: --- but, you know, there's a reason why we
19 have RICO actions, there's a reason because that that allows
20 you to do that and I mean it's a federal court of course but
21 you're talkin' about two separate armed robberies both ugly,
22 serious offenses and, ya know, you -- they gotta stand on
23 their own merits. Ya can't build a case in one case by, ya
24 know, throwin', ya know, ya can't just throw spaghetti at the
25 wall and hope it all sticks or ---

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1 MR. TOOKER: Again, ---

2 THE COURT: --- some of it sticks.

3 MR. TOOKER: --- yeah, it's it's the State and I I I
4 guess where we're disagreein', Your Honor, we're not on the
5 same plain is is the way the State views these acts is that
6 they are in in, uh, a common scheme or plan and and it's we've
7 got the same motive for each, the intent to commit the crimes
8 there, uh, you ---

9 THE COURT: Yeah, I know.

10 MR. TOOKER: --- know, is is, you know, motivated by, you
11 know, the desire to get introduced so that they have drugs.

12 THE COURT: They're they're very similar offenses and
13 it's good ---

14 MR. TOOKER: Okay.

15 THE COURT: --- police work to have connected these dots
16 but that doesn't give you, just because all this good work has
17 been done, it doesn't give you the the, uh, authority to to,
18 you know, do 'em all at once.

19 MR. TOOKER: Again, I, you know, State agrees, it's just
20 we think that that there are enough sim -- and that's why I I
21 provided Your Honor with that case law 'cuz 'cuz each case ---

22 THE COURT: These are real tough, this is a tough issue
23 always.

24 MR. TOOKER: Well a -- again and it's not, you know, in
25 those sex cases I think it's a lot easier sometimes to to lump

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1 'em together like, Oh, it's it's a child and a child that's
2 enough, uh, and in in this South Carolina Court of Appeals and
3 Supreme Court been pretty clear that each case needs to be
4 analyzed on its merits, uh, and the reason that that I
5 provided you with all that case law is that there are several
6 incidents where, uh, the State believes that there's not that
7 much, uh, more or much different than what we have here and
8 the courts deemed it permissible, uh, to try those those cases
9 together. Uh, you end up with cases like *State v. Kennedy*
10 where ya got 3-month time span but the incidents are in the
11 same part a town, same time a day, they take the same kinda
12 items, uh, and they target, uh, the master bedroom in each
13 case. Now again, a lotta that stuff seems like burglary 101,
14 go in master bedroom, ya take jewelry, ya do it in the same
15 time a day, ya do it in part a town where people have things,
16 uh, but in our case what we have the same kinda kids are
17 gettin' targeted, it's occurrin' at the same time a day, uh,
18 they're occurrin' on weekdays, they're takin' the same kinda
19 items and and those similarities, you know, are enough per the
20 Court of Appeals in *State v. Kennedy* to try multiple incidents
21 together. Now again and and this is what distinguishes a case
22 like *Kennedy* from our case in *Kennedy* each one a those
23 incidents was then, was then verified by outside evidence, the
24 identity of the perpetrator so ya have the perpetrator in the
25 first incident usin' a car that he took later and that was

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1 proven, in the second incident he did a similar thing, third
2 incident they they figured his identity again, uh, but they
3 tried all those together as a common scheme or plan based on
4 the similarity of those acts, uh, and in several of these
5 cases what the Court's really lookin' at is is how similar are
6 the actors and and how similar are, uh, are the events in as
7 much as sort of the chronology in the way they transpire and
8 who it is and where it is that these incidents, uh, take
9 place, uh, and in our case I, you know, we we've a 5-week time
10 span which is shorter than several of the cases the State
11 cited, you know, they occur in the same part a town, uh,
12 they're again, these are dormitory-type livin' situations with
13 multiple college kids, same time of day, there's always an
14 obscured face, there are always handguns. Uh, the State's
15 tryin to show these are always drug-related, uh, these are
16 always black males, uh, they always take electronics, uh, and
17 and they trash each location every time they rob 'em and I I
18 didn't mention this before but each incident they don't go in
19 there, rip out a TV and run, each incident they stay there for
20 some time and loot these locations, I mean, they they pilfer
21 each apartment so severely that and we have plenty a pictures
22 this that the places are thoroughly ransacked, um, and and the
23 State's of the opinion that that those things taken together,
24 uh, are enough to show that these actors were acting in a
25 common scheme or plan and that that common scheme or plan goes

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1 to illustrate the identity of the perpetrators in this case.

2 THE COURT: These in -- this isn't really a joinder case,
3 this is just a other prior bad acts or somethin' Kennedy?

4 MR. TOOKER: Uh, yes, sir, in Kennedy it was, uh, I think
5 they were tryin' 'em for the, uh, the December 23rd incident
6 but in that trial they introduced evidence from the November
7 17th, February 2nd and February 7th incidents.

8 THE COURT: Alright, anything ya'll wanna tell me?

9 MR. CANTRELL: Your Honor, the only thing I would say
10 without goin' into much greater detail is I think the
11 arguments of the State to a certain degree highlight the
12 arguments for the reason there should not be joinder of these
13 cases. There are differences in each case, that's what makes
14 it necessary for them to join them to make an effort to prove
15 their case and there are significant differences, one is a
16 a are attached apartments, one is a separate house, one entry
17 was forcible through the back door of an empty or unoccupied
18 property, the first one, uh, was a knocking on the door, an
19 entry of an apartment, uh, I think it's very significant
20 that ---

21 THE COURT: Okay, I'm not gonna let ya, I'm gonna, I I'm
22 gonna grant the defendant's motion and to the extent that they
23 can't, ya can't try one, two an three together but I deny it,
24 uh, with respect to trying one and three or two and three and
25 you all select which one you think is appropriate.

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1 MR. TOOKER: Yes, sir.

2 THE COURT: Okay.

3 MR. TOOKER: Thank you, sir.

4 THE COURT: I don't know -- the jury has been
5 selected, ---

6 MR. TOOKER: Yes, sir.

7 THE COURT: --- is there any problem ---

8 MR. TOOKER: We actually addressed that when, uh, we
9 picked the jury in front of Judge Verdin.

10 THE COURT: Okay.

11 MR. TOOKER: What she read to them was between one date
12 and one date do you know anything about the robbery and she
13 just named some names, uh, and and the two incident locations,
14 didn't say that these are separate incidents or anything like
15 that, uh, and Mr. Cantrell and Mr. Aaron I believe were ---

16 MR. CANTRELL: There was a discussion and we we agreed,
17 it was by stipulation.

18 THE COURT: Okay, alright.

19 MR. AARON: That that, Your Honor, there will be an issue
20 depending on what the State selects which ones they're gonna
21 try as to whether the defendants in this case need to be
22 severed. There's a third defendant who's not here who's
23 indicted for all this, the State has chosen for whatever
24 reason not to have him here today, these two are
25 the ---

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1 THE COURT: Maybe he's gonna be a surprise witness.

2 MR. AARON: Well I don't believe he is, Your Honor. He,
3 uh, he's probably other than than the evidence you've already
4 heard about the machine that was found, he's probably one that
5 has the most culpability in the, in the, uh, ---

6 THE COURT: Of course.

7 MR. AARON: --- stop. He had, he actually had the
8 evidence that they're gonna rely on that was in the car when
9 they stopped him so but he's not here and there was only two
10 in each of the first two incidents and my fellow obviously was
11 in the third incident but that's the only link to this,
12 uh, ---

13 MR. TOOKER: And, Your Honor, uh, Mr. Cleveland and I
14 would like, you know, now that we've got sort of a
15 different ---

16 THE COURT: Okay, ---

17 MR. TOOKER: --- angle, ---

18 THE COURT: --- well let's just take about ---

19 MR. TOOKER: --- opportunity to talk.

20 THE COURT: --- ten minutes? How long you want? fifteen
21 minutes?

22 MR. TOOKER: Ten minutes fine, sir.

23 THE COURT: Okay.

24 MR. CANTRELL: And, Your Honor, to make sure the Court's
25 aware and I don't believe we told you this there are

MOTIONS AND MATTERS

1 additional motions, one, uh, uh, well they're suppression
2 motions that we will need to argue on search warrants and
3 stops that, uh, we nee -- we will be getting to but this was
4 the first one, this was our, this was the ---

5 THE COURT: Yeah, ---

6 MR. CANTRELL: --- I think ---

7 THE COURT: --- well I figured ---

8 MR. CANTRELL: --- the first one ---

9 THE COURT: --- you might have some. Alright, ya'll talk
10 about it.

11 MR. TOOKER: Yes, sir.

12 MR. AARON: Thank you.

13 (Whereupon, a recess was taken.)

14 THE COURT: Alright, what are we doin'?

15 MR. TOOKER: Uh, Your Honor, the State is going to call,
16 uh, incidents 2/3/11 and 3/8/11 against, uh, defendant Larold
17 Morris solely.

18 MR. CLEVELAND: The jury was not sworn yesterday, Your
19 Honor.

20 MR. TOOKER: Yes, sir.

21 THE COURT: Okay, alright, so we don't have to argue
22 the ---

23 MR. CLEVELAND: Or that the Bruton issue issue goes away
24 at this point in time if there was one.

25 THE COURT: Okay, alright.

MOTIONS AND MATTERS

1 MR. CLEVELAND: Uh, search warrants I guess are still and
2 a Jackson v. Denno. Uh, just out of an abundance of caution
3 State intends to do a Jackson on both defendants Draper and,
4 uh, Morris if you think it's necessary, just to show it's
5 voluntary. There's a issue with the statement but if ---

6 THE COURT: Well is Draper ---

7 MR. CLEVELAND: Drapers' not going to be tried. If it's
8 not an issue, I guess if they don't have standing to object to
9 it then it's not issue but if he indeed does testify for the
10 State ---

11 THE COURT: Oh, oh. Well how would that be, if he's
12 gonna testify for the State, you're not introducing, you're
13 not tryin' him so there's no ---

14 MR. CLEVELAND: That's fine. I just I -- out of a --
15 well we'll bring up the issue if it gets there.

16 THE COURT: Okay. Let me get the right -- talkin' about
17 the March ---

18 MR. TOOKER: The March 8th and ---

19 THE COURT: March 8th ---

20 MR. TOOKER: --- the February 3rd.

21 MR. CLEVELAND: These are Indictments Numbers
22 2013-GS-39-0457, 2012-GS-39-700, those are the burglary and
23 the robbery from the first two.

24 THE COURT: Alright, and so the February 15th I'm handing
25 back to the clerk at this time.

MOTIONS AND MATTERS

1 MR. CLEVELAND: Thank you, ---

2 MR. TOOKER: Yes, sir.

3 MR. CLEVELAND: --- Your Honor, and regarding the
4 conspiracy charge 2013-GS-39-458 against Larold Morris and the
5 possession of a pistol with an obliterated serial number
6 2012-GS-39-752 against Larold Lee Morris.

7 THE COURT: Okay, and now let me get this straight, so
8 conspiracy, no, the pistol case carries 5 years, ---

9 MR. TOOKER: Yes, sir.

10 MR. CLEVELAND: Yes, Your Honor.

11 THE COURT: --- the conspiracy carries 5 years, ---

12 MR. CLEVELAND: Yes.

13 THE COURT: --- the armed robbery carries 30 years, ---

14 MR. CLEVELAND: Yes.

15 THE COURT: --- and the burglary first carries life ---

16 MR. CLEVELAND: Right.

17 THE COURT: --- in prison, is that right?

18 MR. CLEVELAND: That is correct.

19 MR. TOOKER: Yes, sir.

20 THE COURT: Okay. Let's go with your whatever it is you
21 wanna do.

22 MR. CLEVELAND: Uh, the State can do a *Jackson v. Denno*
23 or we can -- that's probly temporally what comes next so we
24 can go ahead and do that.

25 THE COURT: Okay, let's do it.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. CLEVELAND

1 MR. CLEVELAND: Alright, State would call Kevin Pepper.
2 (Whereupon, the witness came forward.)

3 KEVIN PEPPERS, having been
4 first duly sworn, testified as follows:

5 THE CLERK: Have a seat and state your name for the
6 record, please.

7 THE WITNESS: My name's Kevin Peppers.

8 DIRECT EXAMINATION BY MR. CLEVELAND:

9 Q. Officer Peppers, who do you work for?

10 A. Ce -- Town of Central.

11 Q. Alright, and on March 8th 2011 were you the arresting
12 officer against Mr. Larold Lee Morris?

13 A. Yes.

14 Q. Uh, did you take him into custody that evening?

15 A. I did.

16 Q. And where did you take him to custody?

17 A. I took him to Clemson Police Department.

18 Q. Uh, did you obtain, did you speak with him that evening
19 and obtain a statement?

20 A. I did.

21 Q. Alright. Uh, prior -- where were you when you took a
22 statement from him?

23 A. I was at the jail.

24 Q. Alright, uh, did you advise him of his Miranda Rights
25 before you spoke with him?

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Yes, sir, I did.

2 Q. Uh, can you tell the Court, well first off, was that the
3 first time you advised him of his Miranda rights?

4 A. No, sir.

5 Q. When did you do it prior?

6 A. First time was, uh, once he was outside the vehicle at
7 the traffic stop.

8 Q. Okay, uh, so the time of day woulda been the second time
9 you actually Mirandized him.

10 A. Correct.

11 MR. CLEVELAND: Mark this statement.

12 (Whereupon, a discussion was held off the record.)

13 (Advisement of Rights form marked State's Exhibit No. 103
14 for identification.)

15 Q. Where did this, when you spoke with the defendant, had he
16 been booked and was in custody at the time?

17 A. He was in the process of bein' booked.

18 Q. Okay, uh, could you please elaborate for the Court where
19 you were and where he was when you -- when he made the
20 statement to you.

21 A. Uh, we was inside the jailhouse, uh, within the booking
22 area, he was just to my left, I was to his, to his left as
23 well, uh, at the computer.

24 Q. Okay, uh, was anybody else in the room at the time?

25 A. No, sir.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Okay, uh, was he cuffed at the time?

2 A. No, sir.

3 Q. Okay, uh, did he complain to you ---

4 (Whereupon, a discussion was held off the record.)

5 (Voluntary statement of Mr. Morris marked State's Exhibit
6 No. 102 for identification.)

7 Q. Did he have any complaints to you at the time about his
8 condition?

9 A. No, sir.

10 Q. Did he appear to be under the influence of anything or,
11 uh, seem to not understand your questions in any manner?

12 A. No, sir.

13 Q. Uh, I'm gonna hand up what's marked State's Exhibit 102,
14 do you recognize that (indicating) document?

15 A. Yes, sir, I do.

16 Q. Alright, what is that document?

17 A. This is a voluntary statement form that Mr. Morris has
18 completed.

19 Q. Alright, uh, please tell the Court at this point in time
20 how you advised him of his rights or what you told him.

21 A. At this time I asked him if he was willin' to give me a
22 voluntary statement, uh, he stated that he would. Uh, due our
23 policy at Central Police Department we have these statement
24 forms who -- which has, uh, a diven -- a condensed version of
25 the Miranda Warning within it, uh, I read this aloud to

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. CLEVELAND

1 Mr. Morris, he said, he stated he understood and completed it.

2 Q. Could you read that portion aloud for the Court, please.

3 A. It starts off, uh, top a the page date, time, place, it
4 reads, "I, Larold Morris, ---

5 MR. CANTRELL: Your Honor, and quite candidly in the
6 interest of time if nothin' else we would stipulate to the
7 content of that voluntary statement form. I don't know it be
8 necessary to ---

9 THE COURT: Okay, are you contesting the voluntary and
10 intelligent nature of the, of the statement?

11 MR. CANTRELL: Uh, no, certainly not to the signing of
12 this form. I'm I'm not exactly sure which statement they're
13 gonna talk about now, I need to see that but, uh, when I see
14 that we may can stipulate to that also.

15 THE COURT: Well the *Jackson v. Denno's* just about
16 voluntary intelligent waiver ---

17 MR. CANTRELL: I think, uh, we've got a written
18 statement, it was my understanding there would be some oral
19 statements that are gonna be ---

20 MR. CLEVELAND: That's correct, Judge. This is the
21 written statement that was taken on the night of the arrest,
22 that we'll do a *Jackson v. Denno* with Detective Justice on the
23 oral statement that was done later in time.

24 MR. CANTRELL: And if if I can have one second, I ---

25 THE COURT: Okay, ask him, see if they're -- if he's not

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. CLEVELAND

1 contesting it, we don't need to go ---

2 MR. CLEVELAND: Okay.

3 THE COURT: --- through it unless you just wanna make
4 sure for the record.

5 MR. CANTRELL: Your Honor, we would stipulate that the
6 written statement was given after warnings and was given
7 voluntary, that this written statement, uh, we would stipulate
8 to.

9 THE COURT: Okay, and has your your client, uh,
10 understood the rights, there's an intelligent waiver?

11 MR. CANTRELL: Yes.

12 (ATTORNEY/CLIENT DISCUSSION HELD OFF THE RECORD.)

13 THE COURT: What's his, uh, what's his education level?

14 THE DEFENDANT: Tenth grade.

15 MR. CANTRELL: Tenth grade.

16 THE COURT: He can read and write?

17 MR. CANTRELL: Yes.

18 THE COURT: Okay.

19 MR. CANTRELL: And I I will go further to state in my
20 many discussions with him there's no doubt in my mind that he
21 is, uh, has intellectual ability to understand, uh, and waive
22 his right and I believe he did that in this case as to the
23 written statement.

24 THE COURT: Alright, Mr. Morris, you, anything you wanna
25 tell me with respect to that? You don't have to say anything

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 but if you would like to contest what your attorney has said,
2 now is the time to do that. You wanna contest it in any way?

3 (Whereupon, a discussion was held off the record.)

4 THE DEFENDANT: No, go ahead.

5 THE COURT: Okay, he he says we can go ahead, I will take
6 as an affirmation of what his attorney has said, okay.

7 MR. CLEVELAND: Thank you, Your Honor, uh, being that the
8 statement is it's I guess stipulated voluntary, no further
9 questions for this witness.

10 THE COURT: Ya'll got any questions you wanna ask him?

11 MR. CANTRELL: I don't, Your Honor.

12 THE COURT: Okay, thank you, Officer.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness left the stand.)

15 MR. CLEVELAND: State would next call Detective Khristy
16 Justice.

17 THE COURT: Alright.

18 KHRISTY JUSTICE, having been
19 first duly sworn, testified as follows:

20 THE CLERK: State your name for the record, please.

21 THE WITNESS: Khristy Justice.

22 DIRECT EXAMINATION BY MR. CLEVELAND:

23 Q. Detective Justice, who do you work for?

24 A. Central Police Department.

25 Q. And did you work there on March 9th 2011?

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. I did.

2 Q. And on March 9th 2011 did you have an opportunity to
3 speak with the defendant Larold Lee Morris?

4 A. I did.

5 Q. Where did that conversation take place?

6 A. In a interview room at Clemson Police Department.

7 Q. Why was Mr. Morris at Clemson Police Department?

8 A. Officer Peppers had arrested him the night prior, uh, so
9 the next day I came in, got my things together and pulled him
10 out of a jail cell and interviewed him in the interview room.

11 Q. Is Clemson Police Department where the Centr -- where
12 Central Police Department houses inmates?

13 A. That's correct.

14 Q. Alright, uh, so you agree with me that he was in custody
15 at the time, correct?

16 A. He was in custody, yes, sir.

17 Q. What condition was Mr. Morris in or what time and date
18 was this statement, do you recall?

19 A. It was a little after one if I remember correctly.

20 Q. Alright. And what, uh, what condition was Mr. Morris in
21 when you spoke with him?

22 A. He was in fine condition.

23 Q. Okay. Uh, he had been arrested the night before, did he
24 seem under the influence of any substance or medication or
25 anything?

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. No, sir.

2 Q. Uh, did he appear to intelligently respond to your
3 questions?

4 A. Yes, sir.

5 Q. Did he know why he was there?

6 A. Yes, sir.

7 Q. Okay. Uh, did he complain to you requesting food,
8 bathroom, drink or anything like that during the interview?

9 A. No, sir.

10 Q. Uh, at any point in time, did you deprive him of anything
11 that he may have requested or deny him any request?

12 A. No, sir.

13 Q. Uh, did he -- I'm gonna show you what's been marked as
14 State's Exhibit 103, you recognize that item?

15 A. I do.

16 (Whereupon, defense counsel examined the exhibit.)

17 MR. CANTRELL: No objection, Your Honor.

18 THE COURT: Okay.

19 Q. What is that item?

20 A. That is an advisement of rights.

21 Q. And whose signatures are on that piece a paper?

22 A. Mine and Mr. Morris's.

23 Q. Alright, uh, did you go through that advisement of the
24 rights with Mr. Morris?

25 A. Yes, I did.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Please read that form for the Court to tell him and
2 elaborate as to what Mr. Morris did when you read it to him.

3 A. Okay, "Before we ask any questions you must understand
4 your rights. You have the right to remain silent, anything
5 you say can be used against you in court. You have the right
6 to talk to a lawyer for advice before asking questions and
7 have him with you during questioning. If you have no money to
8 pay for an attorney's fee, the Court will appoint one to
9 represent you without cost if you wish. If you decide to
10 answer questions now without a lawyer present, you still have
11 the right to stop answering any time, you have also have the
12 right to stop answering any time till you talk to a lawyer."
13 At that point I ask him if he understood what I read him, he
14 said yes. I X'ed 'em as I read them off and then I ask him to
15 initial 'em which he did. Below it is a waiver of rights, I
16 had him read it out loud. Prior to this I asked him if he
17 could read and, uh, and write and he stated yes he could. I
18 had him read this paragraph to me, um, "I have read the
19 statement of my rights and understand what my rights are. I'm
20 willin' to make a statement and answer questions. I do not
21 want an attorney, a a lawyer at this time. I understand and
22 know what I'm doin'. No promises or threats have been made
23 against me or made to me and no pressure or coercion of any
24 kind has been used against me," and then he signed his name, I
25 signed it and dated it.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Alright, is that when the interview began after that form
2 was completed?

3 A. Yes, sir.

4 Q. At any point in time during the interview, did he request
5 to remain silent or request an attorney before the interview
6 concluded?

7 A. No, sir.

8 Q. Uh, did he respond to all your questions as you asked him
9 and understand what you were askin' him?

10 A. Yes, sir.

11 Q. Uh, during that time did you just take a verbal account
12 of the statement or did you take a written statement?

13 A. I took a verbal.

14 Q. Alright, did you memorialize that statement in any way,
15 do you write ---

16 A. Yes, ---

17 Q. --- it down ---

18 A. --- in my, in my incident report.

19 Q. Okay, uh, is that accounting of the statement in your
20 incident report accurate as to what Mr. Draper said to you --
21 Mr. Morris, I apologize, said to you on March 9th?

22 A. Yes, sir.

23 MR. CLEVELAND: Uh, he -- as to the voluntariness, Judge,
24 I don't have any other questions at this time.

25 THE COURT: Okay, cross?

MOTIONS AND MATTERS

1 MR. CLEVELAND: Please answer anything Mr. Cantrell may
2 have.

3 MR. CANTRELL: No questions, Your Honor.

4 THE COURT: Alright, thank you, ma'am, you can step
5 down.

6 THE WITNESS: Thank you.

7 (Whereupon, the witness left the stand.)

8 MR. CLEVELAND: Judge, this time State requests a finding
9 that the statement was voluntary and I guess move that both of
10 these two items be marked as Court's Exhibit not to go to the
11 jury just for the purposes of this hearing to show the
12 advisements of rights.

13 (Whereupon, State's Exhibit Nos. 102 and 103 were
14 previously marked on pages 57 and 58.)

15 THE COURT: Alright, any objection?

16 MR. CANTRELL: No objection, Your Honor.

17 THE COURT: Okay. Alright, what's your next motion?

18 MR. CANTRELL: Your Honor, I think those would be mine.
19 I think the State's through with any motions I believe..

20 MR. TOOKER: Yes, sir, Your Honor, State doesn't have any
21 other motions. I believe Mr. Cantrell has a motion to
22 suppress.

23 THE COURT: Okay.

24 MR. CANTRELL: And, Your Honor, the, uh, motion to
25 suppress and it comes under several different categories so

MOTIONS AND MATTERS

1 I'll I'll just go through the category ---

2 THE COURT: What are ya tryin' to suppress?

3 MR. CANTRELL: Uh, Your Honor, there is the, uh, the
4 initial stop that Court has already heard about ---

5 THE COURT: Okay.

6 MR. CANTRELL: --- that was made pursuant to the report
7 of this, uh, alleged incident on, uh, in March at [REDACTED]
8 [REDACTED] uh, and that is just very simply that
9 there's nothing in the record, nothing in the discovery,
10 nothing anywhere that reports that there was any criminal
11 activity or conduct. It was reported the vic -- the witnesses
12 said and it was reported to police that three black males were
13 knocking on the door of Apartment ---

14 THE COURT: Okay, ---

15 MR. CANTRELL: --- [REDACTED]

16 THE COURT: --- okay, you don't have to go through that
17 recitation of the evidence again but I thought I heard the
18 officer testify that there was a traffic stop of the
19 Impala, ---

20 MR. CANTRELL: That's ---

21 THE COURT: --- didn't I hear that?

22 MR. CANTRELL: I believe what my understanding of traffic
23 stop was pursuant to this information that was dispatched to
24 the officers ---

25 THE COURT: Well ---

MOTIONS AND MATTERS

1 MR. CANTRELL: --- so he he stopped based on that
2 information of black ---

3 THE COURT: This ---

4 MR. CANTRELL: --- individuals leavin' the apartment.

5 THE COURT: --- okay, this is not an anonymous tipster
6 though. What was the traffic, I mean, you can call the
7 officer up and find out what the traffic, the reason for the
8 traffic stop was, he's got -- if they got a valid reason for a
9 traffic stop.

10 MR. CANTRELL: Your Honor, I don't, I don't believe
11 there's any not any information other than it was pursuant to
12 a call saying somebody in in a silver Impala left this place
13 and that was it. There was no indication there was criminal
14 activity.

15 THE COURT: I mean, I don't know was there a tag light
16 out or a, why did ---

17 MR. CLEVELAND: It's the State's understanding that
18 there -- we don't, I guess we weren't proffering the evidence
19 as there was any traffic violation.

20 THE COURT: Oh, ---

21 MR. CLEVELAND: The traffic violation ---

22 THE COURT: --- okay.

23 MR. CLEVELAND: --- was based on the the st -- and again,
24 in our brief recitation of the facts I guess there were some
25 other things associated with the folks up there that might

MOTIONS AND MATTERS

1 make it relevant but basically that's what they did was they
2 called after ---

3 THE COURT: Okay, so ---

4 MR. CLEVELAND: --- they saw the folks at the apartment,
5 the police were on their way then they told the police they
6 watched 'em go get a silver Impala, they pulled 'em over and
7 we're talkin' within yards ---

8 THE COURT: --- okay, so this is an investigatory
9 stop ---

10 MR. CLEVELAND: Yes.

11 THE COURT: --- based on, so that the whole question is
12 based on the the tip, is that right?

13 MR. CANTRELL: They, I guess my question would be
14 investigation of what because there was no allegation or no
15 information that anything had happened.

16 THE COURT: Well there is, there is a an assertion that
17 one of the three were wearing a hoodie, I mean, what -- a mask
18 and the others wearing hoodies.

19 MR. CANTRELL: Your Honor, I don't believe there are any
20 masks ---

21 MR. CLEVELAND: I I ---

22 MR. CANTRELL: --- involved but all ---

23 MR. CLEVELAND: --- will ---

24 MR. CANTRELL: --- the rest was hoodies.

25 MR. CLEVELAND: And it is in the statement, it didn't

MOTIONS AND MATTERS

1 come out in the first recitation, that one of them, the guy
2 was, kept pulling his hoodie down is what he said to him and
3 grasping at his waistband as if he had a gun or something in
4 it and and the posture of which these guys were set up, uh, is
5 better laid out with the witness testimony. One was knocking
6 and peeping through the peep hole, the other had his back to
7 the vinyl of the apartment as if not to be seen through the
8 peephole which is the way the first victim will describe, you
9 know, he only saw one person and then immediately there was
10 two 'cuz the other was hiding, that's the same posture it was,
11 furthermore, there's the lookout down the hall. These
12 apartments are, they're building with internal hallways that
13 are open ---

14 THE COURT: Yeah, okay.

15 MR. CLEVELAND: --- aired so that's the the the posture
16 was so similar that's what, it wasn't just guys standin'
17 around knockin' at the door like this (demonstrating), I mean,
18 they were staged similar ---

19 THE COURT: So ---

20 MR. CLEVELAND: --- to first ---

21 THE COURT: --- it was a suspicious-looking, correct?

22 MR. CLEVELAND: Yes.

23 THE COURT: Alright.

24 MR. CANTRELL: And and quite honestly, Your Honor, my
25 my position would be it's a, it's a stretch to call it that.

MOTIONS AND MATTERS

1 He looked like he had his hand in his belt, he may have a gun,
2 this fella had a heardie -- hoodie on pulling it over his,
3 over his, uh, head. We're talkin' March, these guys coulda
4 been cold very simply. Nothing suspicious about three
5 individuals standin' outside an apartment knocking on the
6 door.

7 THE COURT: Well it's March today, I think it's gonna be
8 69 degrees out there.

9 MR. CANTRELL: And, uh, March a week ago was very cold
10 quite honestly and in all honestly, Your Honor, what I
11 should've done, meant to do was check the the whether ---

12 THE COURT: Well, I mean, that's -- you can observe -- I,
13 uh, so you're -- well I'm gonna overrule your motion to
14 suppress the stop. I think that there is sufficient basis,
15 uh, uh, to to allow that based on the the what's been, uh,
16 represented to me will be the testimony of the of witnesses to
17 that event, okay.

18 MR. CANTRELL: Uh, Your Honor, secondly, well I'm sorry,
19 after the stop, uh, the Court is aware that there were in,
20 items found in the vehicle, vehicle was taken to, uh, by
21 wrecker to the I believe the premises or property owned by the
22 wrecker company and held there. Uh, subsequent to that there
23 was a search warrant sought to search the vehicle, uh, some
24 items had already been removed but a search warrant was sought
25 on March the 11th three days after the initial stop and the

MOTIONS AND MATTERS

1 search warrant was executed by the, by the judge, there was,
2 uh, apparently a search that took place. Two issues with that
3 procedure, one is this vehicle was simply located in a, uh, a
4 yard belonging to the wrecker company. I think there
5 allegations that the gate was kept locked most of the time but
6 it was not locked, it was not under surveillance, it was not
7 secured, uh, and consequently the vehicle itself was not
8 secured, it was not protected and, uh, for that reason I
9 believe any search of this vehicle three days later which did,
10 uh, result in the discovery of some items that were taken into
11 possession, some that may be submitted, some that may not, uh,
12 that any and any evidence or purported evidence taken from the
13 vehicle would be, uh, improperly obtained because this vehicle
14 was not properly secured and that's the first part of that of
15 the motion so I'll I'll stop there and say that that any time
16 something is not properly secured there's no proper chain of
17 custody or chain of evidence of this vehicle, it was sit --
18 sitting out there, uh, behind a fence, possibly locked some of
19 the time but always individuals could have had a -- have had
20 access to it and any individual could have so I believe that
21 that would taint any evidence taken from the vehicle pursuant
22 to this search warrant.

23 THE COURT: Well, yeah, what do you wanna tell me?

24 MR. TOOKER: Um, and and the State can proffer testimony
25 at this point but, uh, the State understands the testimony

MOTIONS AND MATTERS

1 with regards to where the vehicle was stored is it was stored
2 at a particular wrecker's impound lot, uh, that's fenced, that
3 it's locked and that the wrecker had the keys, that they got
4 the keys from the wrecker and they got to the car, the car was
5 locked, they unlocked the car and then they they did a more
6 detailed search than the consent search on the night in
7 question, uh, and the State I -- is kinda is approachin' this
8 from twofold way. Uh, there is I I I believe a sufficient
9 argument that it's been preserved for the purposes of
10 admitting what was found inside. Uh, now I can understand
11 that that Mr. Cantrell might want to cross-examine the State's
12 witnesses about that, um, certainly is ---

13 THE COURT: Well it makes for good jury argument but I'm
14 gonna ---

15 MR. TOOKER: Yeah.

16 THE COURT: --- deny his motion, okay.

17 MR. CANTRELL: And, Your Honor, the second issue with
18 that search warrant if I can have just a second is the initial
19 search warrant which was provided to to me through discovery
20 was the standard search warrant with the proper affidavit or
21 with the affidavit on front and, uh, then a return. The
22 return was signed by the officer but not executed by the
23 judge, so what had to happen is the search warrant was issued,
24 the search warrant was apparently executed and filled out,
25 signed by the officer and then taken somewhere to be copied

MOTIONS AND MATTERS

1 because those are the copies that were sent to the solicitor's
2 office subsequently to me through discovery. At some later
3 point, and we don't know when, there is a date on there but we
4 don't know how or when or if the affiant was before the
5 magistrate or the the judge, I'm sorry, it was, it was signed
6 by the judge but the simple fact is there was a signature on
7 that document, uh, prior to the judge signing it and we
8 believe just by the face of the document itself signed not in
9 front of the magistrate or the judge involved. Uh, I have
10 subsequently been given this week -- last week a copy of the
11 return that did have the judge's signature on it and it is
12 dated the 11th day of March 2011 but it is, it is the same
13 document that was sent to me or appear appears to be the same
14 document that was sent to me executed without the judge's
15 signature. There's no indication that this document was ever
16 signed actually in front of the judge and I think that would
17 would taint the entire document and any evidence secured
18 through that document.

19 THE COURT: Well that, I mean, that would be one, uh,
20 hypothesis. Young Booker is rising to speak. Alright.

21 MR. TOOKER: And and we can again proffer testimony but,
22 uh, you know, we we talked to Detective Justice about this
23 when, uh, initially I was under the impression that it had not
24 been signed so we actually started calling down to the
25 magistrate's office, uh, we just had to go down there. Judge

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1 Keller who signed the search warrant on the residence no
2 longer works there and Judge Wolfe who signed the search
3 warrant on the car no longer works there but, uh, Detective
4 Justice will testify and of course we can proffer this that
5 what they did when they did a return and it's because they
6 didn't have carbon papers they filled two out, uh, and then
7 they took one for their records at Central and then because
8 one search warrant was in the county that was given and this
9 was, uh, Anthony Raines in this case, Anthony Raines took that
10 and turned that in to the magistrate that signed it Judge
11 Wolfe and then in the City a Clemson, ---

12 THE COURT: Okay, ---

13 MR. TOOKER: --- uh, they ---

14 THE COURT: --- you got, based on what you're, uh, I'm
15 gonna deny your motion, uh, there's a reasonable explanation
16 that doesn't prevent you from presenting proof that it was
17 improper but right now based on what I have I deny your
18 motion.

19 MR. CANTRELL: And, Your Honor, I believe lastly
20 there was a search warrant issued for the residence of, uh,
21 Deidra Cade who is the sister of Larold Morris. Uh, first, I
22 would present to the Court that, uh, the affidavit for this
23 warrant, uh, I'm I'm I'm just gonna read it out to the Court
24 with Court's permission, "The reason for the affiant's belief
25 that property sought is on the subject premises," uh, this was

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1 by Detective Justice, "Larold Morris, a tenant in the
2 above-referenced apartment, is suspected in several armed
3 robberies," this was on the 9th, the morning after the stop
4 that you've heard about, uh, "suspected in several armed
5 robberies in the city of Central. During the course of the
6 robbery, such items as iPods, laptops, televisions, Xbox games
7 systems games, cell phones and other electronics were taken
8 from the victims' home," victims' plural homes, "The suspect
9 in this case in these cases used a handgun, Latex gloves,
10 mask, dressed in all black driving a Silver Impala. This
11 vehicle was stopped on March 8th 2011 in the town limits of
12 Central and once I began interviewin' the subjects and
13 locating the firearms it is believed that the stolen property
14 is located in the apartment," that is a, I believe a, uh,
15 general statement of opinion by Ms. Justice. Uh, under our
16 case law a search warrant is, uh, if it's exploratory is in
17 violation of our Fourth Amendment. Mere conclusory statements
18 which give the magistrate no basis to make a judgment
19 regarding the probable cause are insufficient, that's *State*
20 *vs. Watson*, 493 S.E.2d 801, 1997 case, uh, and I I'm sorry
21 this -- and, uh, the same case or I'm sorry, it may be *Smith*,
22 *State vs. Smith*, 392 S.E.2d 182, the Court said that, A an
23 affidavit is defective because it set forth no facts as to why
24 police believe such rob -- such, uh, in this case individual
25 committed the offense. This affidavit is conclusory, does not

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1 give anything approaching specific information as to why a
2 magistrate would think that property from these alleged
3 incidentces [sic] would be found in this gentleman's
4 residence, it's all conclusory. Uh, once again, "Once I began
5 interviewing the subjects and locating firearms, I believed it
6 was, I believe that the stolen property be located in said
7 apartment," that's her belief. There's no reason, no
8 foundation, no specifics and, uh, quite candidly the Court at
9 this point is aware of what happened at the stop and some of
10 the underlying facts that could have and should have been
11 used. This affidavit, this search warrant taken on its face
12 is insufficient, does not give the magistrate proper
13 information and for that reason, uh, do believe that this, uh,
14 any evidence secured, uh, would be improperly secured, we ask
15 that it be suppressed.

16 THE COURT: Can I read it? Can I see it?

17 MR. TOOKER: Yes, sir, Your Honor, I got a co -- copy for
18 you.

19 MR. CANTRELL: I've got it here.

20 MR. TOOKER: Okay.

21 MR. CANTRELL: This is just the affidavit itself, Your
22 Honor.

23 (Whereupon, counsel handed the document to the Court.)

24 THE COURT: Okay, that's all I need. Well it's certainly
25 not, uh, there are some conclusory statements in there but,

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1 uh, sh -- the affiant said they interviewed the subjects and,
2 uh, located the firearms and as a result of that she believed
3 the stolen property's located in the apartment as a result of
4 the statements. It coulda been more specific, should be more
5 specific but it's not, uh, does not fall to a level that I
6 feel is requires it to be, uh, your motion to be granted,
7 okay.

8 MR. TOOKER: Yes, sir.

9 MR. CANTRELL: And, Your Honor, one last, uh, argument on
10 this and let me get, uh, get the chronology correct. With my
11 discovery that I received in this case, ---

12 THE COURT: Yeah.

13 MR. CANTRELL: --- I received a, uh, a search warrant
14 that had the officer signature and no judge's state -- no
15 judge's signature again, didn't receive one, well in all
16 honesty, Your Honor, here's one, one of the returns that I
17 will hand up that is signed by the officer, is notarized by
18 the judge, uh, and is not filled out except for one portion
19 here and then I would also ask the judge to note that the
20 magistrate's signature is dated one day before the warrant was
21 executed March 10th instead of March the 11th, so we've got,
22 first I have one with no judge's signature then I receive one
23 with the judge's signature, the information not filled out and
24 the the date before the warrant was actually executed received
25 a third one which, uh, was a totally new document, separate

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1 document, new different handwriting signed by that same
2 officer, signed by that same magistrate with the same March
3 10th date, the date before the, uh, warrant, the search took
4 place but it's verifying the receipt of this, the return of
5 this information. This is a little bit different than the
6 previous situation on the search of the car 'cuz there's one
7 apparent error that could have been a, uh, scrivener's error.
8 Uh, this case there's a series of errors including a
9 significant issue with the date, significant copies of returns
10 that were signed without proper signatures. I did send out
11 subpoenas to request the original on those, uh, documents that
12 didn't have proper signature and apparently they don't exist
13 anymore so we got documents that ---

14 THE COURT: What?

15 MR. CLEVELAND: I received no co -- no originals and I to
16 my knowledge have not had produced originals of the return
17 that was improperly signed.

18 MR. TOOKER: I I provided the original to Mr. Cantrell in
19 his office, uh, ---

20 MR. CLEVELAND: The original unsigned ones or just the
21 original signed ones?

22 MR. TOOKER: No, the original signed ones. The original
23 unsigned ones Khristy Justice still has.

24 MR. CLEVELAND: And I subpoenaed that from the Central
25 Police Department and have received nothing.

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1 MR. TOOKER: I I I think there's some sort of
2 misunderstanding here, I I apologize for that. I was, I was
3 aware that Khristy had the ones from which we made copies, uh,
4 and again what they did is they wrote out two sets, uh, the
5 officer who was, uh, I guess turning the the return into the
6 magistrate had a set and so he turned in, Khristy Justice also
7 had a set that she kept in her file and that's what we were
8 copied and provided. Uh, now the original, and the original
9 witness ---

10 THE COURT: How does a return get dated the day before
11 the search?

12 MR. TOOKER: Well if if ya look on the top of the return,
13 it says March 9th 2011, uh, which is the day that the search
14 occurred then it says March 11th 2011 and the State believes
15 that's the scrivener's error, that the the search ---

16 THE COURT: I I'm not ---

17 MR. TOOKER: --- warrant itself ---

18 THE COURT: --- looking at the same thing you're lookin'
19 at. This doesn't have a March 9th date on it.

20 MR. TOOKER: Not sure ---

21 THE COURT: When is the jury comin'?

22 THE CLERK: 1:30.

23 MR. CANTRELL: 1:30.

24 THE COURT: Okay.

25 (Whereupon, a discussion was held off the record.)

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1 MR. TOOKER: Okay, uh, and and there are two returns in
2 this case, uh, one return is on sorta the I guess the standard
3 Central form and then one return on the, uh, on the the
4 Clemson form. Uh, I I don't -- I see that one is not dated at
5 all, it's it's the second return, uh, ---

6 THE COURT: This is all from the same search warrant?

7 MR. TOOKER: Yes, sir, it's one not dated, the other one
8 dated and March 9th was the the day that that search warrant
9 was executed, it was then turned into the magistrate,
10 magistrate signed it on the 10th. Uh, now I believe
11 Mr. Cantrell has second return.

12 MR. CANTRELL: Here is the third return, ---

13 MR. TOOKER: Third?

14 MR. CANTRELL: --- the second one that was completely
15 filled out or was filled out and signed by both it again
16 states March the 11th as the search date.

17 MR. TOOKER: Well no, it says, "I received the attached
18 search warrants on March 9th and executed as follows". March
19 11th I believe is is a misstatement or an error on the part of
20 the officer.

21 MR. CANTRELL: Your Honor, I think they're limited to
22 their document and it says, ---

23 MR. TOOKER: Well, ---

24 MR. CANTRELL: --- two of 'em say the search was executed
25 on March the 11th, one was not filled out but was signed. Two

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1 of 'em state March 11th 2011 at 1740 p.m. and is signed by the
2 ma -- by the judge March 10th and I think they're limited,
3 they're stuck with that, that is what it says and it's not
4 like it was an error or oversight 'cuz it's the second
5 document that did the same thing.

6 MR. TOOKER: Okay, uh, and and it -- if -- it's an error,
7 I mean, it's a, it's a error in the document certainly, the
8 question then becomes, uh, I mean, so, I mean, I I think that
9 the defendant has to show prejudice in order to request any
10 sort of exclusion ---

11 THE COURT: Well ---

12 MR. TOOKER: --- of anything for ---

13 THE COURT: --- it's it's bad recordkeeping but what
14 constitutional rights are violated?

15 MR. CANTRELL: Your Honor, I believe the constitutional
16 rights are violated in that this warrant was not properly
17 executed and served and maintained. The solicitor says well
18 there's an error so what, the simple fact of the matter is we
19 don't know and the Court has no information for it to know
20 that this search took place the way it was supposed to, in
21 fact, there's documentary evidence furnished by the State that
22 would imply it was not and I think that in and of itself is a
23 significant violation of Mr. Morris's rights in that we don't
24 know how, when and where these items were secured, most
25 specifically when and how and the State I believe is limited

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1 to their document. Again, it's not like it happened once, it
2 happened twice, there two documents with the same ---

3 THE COURT: Yeah, the documents are bad ---

4 MR. CLEVELAND: And that I believe ---

5 THE COURT: --- and it's bad ---

6 MR. CLEVELAND: --- infringes on his rights.

7 THE COURT: --- it is bad recordkeeping, okay, but what
8 constitutional rights have been violated with respect to the
9 search?

10 MR. CANTRELL: I believe the the constitutional rights
11 are the the harm to the defendant is in fact that all
12 documents were signed before any items were ever retrieved,
13 that will cast a question over how and when the documents were
14 received ---

15 THE COURT: Well ---

16 MR. CANTRELL: --- or it's ---

17 THE COURT: --- that's a good jury argument and, uh, but
18 I'm gonna, I'm not gonna throw out the search based on that
19 but that is a good jury argument for sure. These are,
20 Mr. Cantrell, these are your documents.

21 MR. CANTRELL: Oh, I -- and, Your Honor, if I can look
22 one second I believe ---

23 THE COURT: Alright.

24 MR. CANTRELL: --- we have addressed all all my issues
25 but let me look ---

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1 THE COURT: Okay.

2 MR. CANTRELL: --- just to be sure. Your Honor, with
3 those, uh, motions and my objections to the ruling noted for
4 the record, have no further motions at this time.

5 THE COURT: Alright, you wanna enter those docum -- are
6 they gonna be entered? I mean, you gonna put 'em in as a, as
7 parta the record?

8 MR. CANTRELL: Yes, sir, and I will need to with the
9 Court's permission attempt to re-sort them a little bit.

10 THE COURT: Alright, ---

11 MR. TOOKER: But ---

12 THE COURT: --- they'll be court's exhibits.

13 MR. TOOKER: --- the the State has the original here and
14 if Your Honor would like to to mark the original and admit
15 that as the Court's exhibit ---

16 THE COURT: I I'm just, I'm concerned about down the road
17 the appellate process, post-conviction relief process, that's
18 what I'm, uh, thinking of.

19 MR. TOOKER: Mr. Cantrell, I have an extra copy if you
20 only have the one copy.

21 THE COURT: Well you can, I tell ya you can make 'em over
22 lunch, I gotta let folks ---

23 MR. TOOKER: Okay.

24 THE COURT: --- break for lunch, ya'll be back at 1:30.

25 MR. TOOKER: Yes, sir.

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1 THE COURT: Okay.

2 MR. CANTRELL: And, Your Honor, for the record what I
3 will submit is the search warrant that, uh, has no judge's
4 signature, I will submit not the full search warrant but just
5 another return that has the judge's signature with some
6 blanks, spaces and then the third return that we discussed
7 that, uh, is filled out and has the proper signatures on it so
8 that will be one complete search warrant plus two additional
9 returns.

10 THE COURT: Alright, that's fine, you can put 'em in as a
11 Court's exhibit for the purposes of this motion only. Let me
12 see the lawyers up here real quick.

13 MR. TOOKER: Yes, sir.

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: Okay, we'll break till 1:30.

16 (Whereupon, a recess was taken.)

17 (Whereupon, a discussion was held off the record.)

18 (Search warrant marked Court's Exhibit No. 1 for
19 identification and two returns marked Court's Exhibit No. 2
20 for identification.)

21 MR. CANTRELL: Your Honor, we're prepared to move forward
22 with the trial.

23 THE COURT: Okay, be just fine.

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: Mr. Cantrell, you got a witness list or voir

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1 dire anything?

2 MR. CANTRELL: Uh, no witness list, Your Honor.

3 THE COURT: Okay. Alright, ready to go?

4 MR. TOOKER: State's ready to proceed, Your Honor.

5 MR. CANTRELL: Yes, Your Honor.

6 THE COURT: Okay.

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

8 THE COURT: Alright, ladies and gentlemen, welcome to
9 Courtroom 1. I changed my hairdo from yesterday when we
10 picked ya. I'm glad to meet ya. My name's Ned Miller, I am,
11 uh, one a your circuit judges here in the Thirteenth Circuit,
12 my office is primarily out of Greenville and I am gonna be the
13 presiding judge in this -- the trial of this case. I
14 appreciate Judge Verdin handling the selection of the jury
15 yesterday and I was engaged over in Greenville at the time so
16 I thank you all for being there and that I hope explains why
17 you're seeing me for the first time but let me intro -- let me
18 introduce the case to ya so you know what we're doing exactly.
19 We are here in the case of the State vs. Larold Lee Morris.
20 Indictment 2012-752 is for possession of a pistol with an
21 obliterated serial number and it alleges, this indictment
22 alleges that Larold Lee Morris did in Pickens County March 8th
23 of 2011 knowingly buy, sell, transport, pawn, receive or
24 possess a handgun from which the original serial number had
25 been removed or obliterated; we are also here on Indictment

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1 2013-458, State vs. Larold Lee Morris, an indictment for
2 conspiracy that alleges that he did in Pickens County on or
3 about the 8th 8th day of March 2011 wilfully, unlawfully
4 combine, conspire with D'Andre Derrell Draper for the purpose
5 of accomplishing an unlawful object or a lawful object by
6 unlawful means, that is armed robbery; we're also here on
7 Indictment Number 2013-457, State vs. Larold Lee Morris. an
8 indictment for armed robbery, it alleges that he did in
9 Pickens County on or about February 3 of 2011 while armed with
10 a deadly weapon or while alleging either by action or words he
11 was armed while using a representation of a deadly weapon or
12 any object which a person present during the commission of the
13 robbery would reasonably believe to be a deadly weapon take by
14 means of force or intimidation goods or monies described as
15 various personal electronic items from the person or presence
16 of Kyle Whitaker, and finally, we are here on Indictment
17 2012-700, State vs. Larold Lee Morris, an indictment for
18 burglary and this alleges that Larold Lee Morr -- Morris did
19 in Pickens County on or about February 3rd of 2011 wilfully
20 and unlawfully enter the dwelling of Kyle Whitaker and/or
21 Michael Capo and/or Zeke Quinn, and/or Derek Mahaney located
22 at [REDACTED] Central, South Carolina
23 without consent and with the intent to commit a crime therein
24 and the unlawful entry occurred at night and/or while the
25 defendant was armed with a deadly weapon.

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1 Now, ladies and gentlemen, to these offenses Mr. Morris
2 has pled not guilty and that requires the attachment of
3 certain rights which you all should keep in your heads
4 throughout the course of the proceedings and that is that
5 every citizen who is charged with a crime is presumed to be
6 innocent unless and until the State can prove them guilty
7 beyond any reasonable doubt so please keep that in mind
8 throughout the course of the proceedings. The burden is
9 always on the moving party and the moving party in this case
10 is the State of South Carolina.

11 Now I also wanna remind you and tell you and instruct you
12 that these indictments are nothing more than they appear to be
13 and that is just pieces of paper that contain allegations
14 against Mr. Morris and you should make no presumption or take
15 no inference from the fact that these pieces of paper exist or
16 that these indictments have been issued, they simply contain
17 allegations which allow the case to wind through our system
18 and arrive here in court for disposition so please remember
19 those things throughout the course of the trial.

20 Now, ladies and gentlemen, at this time I will ask the
21 clerk of court place you under oath so if you would please
22 stand.

23 (Whereupon, the jury was sworn.)

24 THE CLERK: Thank you.

25 THE COURT: Alright, thank you very much. Now, ladies

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1 and gentlemen, I wanna tell you that we have a dispute about
2 the facts in this case which can't be resolved in any fashion
3 other than to ask a jury come up here to the courtroom and
4 listen to the evidence presented in the court and the law
5 that's presented in the court and to reach a verdict which
6 will resolve this dispute. I again remind you to keep in mind
7 that every person charged with a crime is presumed to be
8 innocent unless and until the charging body, in this case the
9 State of South Carolina, can prove beyond a reasonable doubt
10 each and every element of each offense that is charged and
11 each offense must stand or fall on its own merits using those
12 guidelines, that is proof beyond a reasonable doubt.

13 I will tell ya, ladies and gentlemen, that I break a
14 trial into five parts and you you can break a trial into as
15 many parts as you like but I ma -- just so you all have a
16 procedural road map you'll kinda know where you are in the
17 trial. The first part we're sort of engaged in right now and
18 will engage as soon as I turn it over to the attorneys and
19 that is the opening statements to you, that will be brief
20 non-argumentative statements made to you by the lawyers. The
21 second part of the trial is the meat and potatoes of every
22 case and that is the presentation of the testimony and the
23 evidence in the case and the evidence'll come to you generally
24 in one of three ways, the first most common way that we all
25 think of is oral testimony from the witness stand, second most

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1 common way would be through the introduction of tangible
2 documents or items and then the third most common way is when
3 the parties agree that some fact is so beyond dispute that you
4 should accept it as being true and that's what we call a
5 "stipulation", stipulation of the parties as to the truth of
6 the fact. I don't know what combination that these, uh, uh,
7 the evidence will be presented to you but it should come to ya
8 in one a those three ways throughout the course of the trial.
9 The third part of the trial will be at the close of the
10 evidence when all of the evidence has been presented then we
11 go to the closing arguments of the attorneys, there's a
12 difference: There's a brief opening statement to you and then
13 a closing argument where the parties advocate on behalf of
14 their client and urge you to resolve the dispute in their
15 client's favor. The fourth part of the trial will be my
16 charge to you on what the law is and the fifth part of the
17 trial will be when you all retire to your jury room to
18 deliberate, so e -- they're not of equal length but you'll
19 know sort of where you are procedurally in the trial if you
20 can keep that in mind.

21 I wanna tell ya, I'll ask ya to do a buncha things, first
22 one is to keep an open mind. We go through all the process of
23 qualifying you all to serve and so that we have a jury that is
24 fair and impartial and will judge the case solely on the
25 merits of the evidence that's presented while applying the law

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1 that's presented in this courtroom so keep an open mind.
2 Second thing I ask you do is very simple but very important,
3 it's vital in fact, that you all pay attention throughout the
4 course of the trial. If you are to let your mind wander off,
5 you might miss an important piece of evidence, testimony or
6 the way a witness acts on the witness stand and that would put
7 you at a disadvantage in deliberations at the conclusion of
8 the trial so please pay attention and then finally, I instruct
9 you and I ask you not to discuss this case with anyone until
10 the conclusion of the trial when you all are are deliberating
11 the case and you might say, Well why is that, because this
12 case will last into tomorrow so we'll break for the evening
13 and you all will, ya know, go home, see people who you like
14 and trust, people who I like to say I can't even decide what
15 to eat for dinner without consulting my wife and you all I'm
16 sure have friends and and relatives that you depend on for the
17 same thing and it's human nature to wanna talk about it, human
18 nature for them to wanna talk to you about it but you can't do
19 it, that's part of your oath and the reason for that is even
20 an innocent comment from someone who you like and trust or
21 even someone who you don't like might impact your state of
22 mind with respect to the outcome of this dispute and that
23 would be unfair to these parties, it would be unfair to your
24 fellow jurors and very importantly it would be unfair to
25 yourself to allow someone who is not making the sacrifices

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1 that you are making to have any input in the outcome of the
2 trial. We don't care what they think, they're not up here
3 listening to the evidence and the law and they should not have
4 any input, it's difficult to do but I know ya'll can do it,
5 and I will tell ya again you can't go out and do any
6 independent research, you can't get on the internet, ya can't
7 go visit the scene, anything like that. Everything that you
8 need to know to decide this case you will hear in this
9 courtroom and it will all be subject to constitutional
10 protections and scrutiny so keep that in mind throughout the
11 course of the trial, that's just how we ensure the best
12 justice system in the world.

13 I wanna tell you that you all are the sole judge of the
14 facts, trial judges by law not allowed to have an opinion
15 about the facts of the case so please don't think by anything
16 I might say or do throughout the course of the trial that I
17 have an opinion, I don't, the law does not allow it and you
18 all are the sole judges of the facts, that is what to believe
19 and what not to believe. That same law makes me the same --
20 the sole judge of the law and so if you have any idea as to
21 what you think the law is or what the law should be and it
22 differs from what I tell you the law is throughout the course
23 of the trial and at the end of the trial then you have sworn
24 an oath to set aside your own opinion and apply the law
25 precisely as I state it to you and that ensures that everyone

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1 tried in our court system receives fair justice given by an
2 impartial judge so I'll ask you do some other things
3 throughout the course of the trial like I'm gonna gonna ask
4 ya'll to see if you can elect a foreperson when you come back
5 in the morning and the foreperson will be the jury
6 spokesperson in the courtroom if that becomes necessary and
7 the moderator of discussions at the close of the trial and I
8 also will tell ya that occasionally from time to time I might
9 ask the lawyers come to the bench or I might have to ask ya'll
10 to leave and go back to your jury room so we can discuss some
11 point of law or some issue with respect to the potential piece
12 of evidence and we, while we might be trying to keep something
13 from you, we are not trying to deceive you in any way, we just
14 wanna ensure that whatever you hear is constitutionally proper
15 and so you can imagine if a piece of evidence should not be
16 admitted then you all shouldn't hear about it so that's what
17 we're doing when when we do that.

18 Alright, I'm done with my remarks to ya and at this time
19 I'm gonna turn it over to the attorneys for their opening
20 statements.

21 MR. TOOKER: Thank Your Honor, may it please the
22 Court, ---

23 THE COURT: Yes.

24 MR. TOOKER: --- Mr. Cantrell. Ladies and gentlemen of
25 the jury, uh, I was briefly introduced to you yesterday when

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1 Mr. Cleveland was picking the jury in this case, my name is
2 Sam Tooker and I am assistant solicitor here in Pickens
3 County. Uh, I'm from Georgia originally and in Georgia we
4 call 'em prosecutors, in South Carolina they're called
5 solicitors and what we do is we prosecute criminal offe --
6 offenses in the the court of general sessions. Now the judge
7 thanks you for your presence and I also want to thank you as
8 I'm sure Mr. Cantrell and his client thank you because without
9 you we cannot do our jobs, I mean, your role is so integral to
10 this process that we cannot function without your presence.
11 The the big clock work mechanism that is our judicial system
12 in this country, the most important cog in that system is not
13 the judge, it's not the lawyers, it's not the witnesses, it is
14 the jury and for that I do, I do wanna thank you.

15 Now judge mentioned this and and it's important and I'd
16 like to mention it as well we have the burden of proof in this
17 case. As in any criminal case, State has the burden a proof
18 and that burden a proof is beyond a reasonable doubt, alright,
19 and that is a a burden that we are comfortable with, that is a
20 a a burden that we are prepared to meet in this case, uh, but
21 I do want you to remember that's a burden goin' back 200 some
22 o -- odd years until, uh, I guess 1782, 1783, we have our
23 Constitutional Convention, at that point that's when our
24 current judicial system was created and ever since then any
25 time somebody's been found guilty in a criminal court in this

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1 country, the burden has been on the State and the burden has
2 been beyond a reasonable doubt. Judge mentioned this too, uh,
3 every crime's got elements, every crime has specific elements
4 that have to be met in order to establish a defendant's guilt.

5 Now there are four crimes that are before you, four
6 charges, and each one of those charges has specific elements
7 and at the close of the case after all the evidence and
8 testimony has been presented and after we have made our
9 closing statements, the judge will give you the law, he'll
10 explain to you what the law is and what the elements are for
11 each a those charges. Now we're dealin' with with two
12 incident's, we're dealin' with an incident on February 3rd
13 2011 and then one on March 8th 2011. On February 3rd 2011 we
14 have a burglary and an armed robbery and the elements that we
15 have to show to satisfy those two offenses and I'm gonna
16 paraphrase, let me say this: If anything I say differs from
17 what the judge says, take the judge's word, the judge is is
18 the judge of the law, he's the expert on the law so if I get
19 sumtin' wrong, listen to what the judge says, uh, but the
20 elements that we have to show for burglary are that somebody
21 enters a residence, a dwelling, unlawfully without permission
22 and once inside they commit a crime. Now this particular
23 offense also has an additional element: it has to occur at
24 night or the defendant has to be armed with a deadly weapon.
25 In addition to that, armed robbery is, and we think a robbery,

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1 it's ya know, stick 'em up, give me your money, I want what
2 you got, armed robbery is taking something from someone under
3 the threat of harm and that harm if it's armed robbery has to
4 be the threat of a deadly weapon so we have to show that
5 things were taken from the victim or victims and that they
6 were taken under the threat of violence and that violence, uh,
7 was threat with a deadly weapon. Now those are the first two
8 charges, second two charges, the charges on Marth
9 8 -- March 8th 2011 are conspiracy and possession of a weapon
10 with an obliterated serial number. Now the second one's, I
11 mean, pretty simple, it's it's either, ya know, the person was
12 in possession or could exercise control or custody over that
13 weapon and that weapon has no serial number, it's a very
14 specific offense, or the person did not possess that weapon,
15 it it's kind of an either, or. Conspiracy's a little more
16 complicated and conspiracy is people gettin' together to do
17 somethin', two people comin' together to accomplish some sort
18 of unlawful act. Uh, if myself and Detective Justice, uh,
19 meet outside the courthouse and say, Hey let's go, um, let's
20 go get guns and go into Michael's Restaurant across the street
21 and take all their money, uh, just by getting together and
22 saying those things together that's the conspiracy and and
23 that's what we would have to show in this case. Now I I
24 mention that and that there are specific evidence or specific
25 elements, uh, and what we have to do is we have to establish

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1 those elements with facts, facts and evidence, and that's what
2 the testimony's for, that's what the individual pieces of
3 evidence that we will submit to you are for, uh, and I wanna
4 say this: There there there are two different types of
5 evidence and the judge'll explain this to ya later too but
6 there's what we call "circumstantial evidence" and what we
7 call "direct evidence" and judge will instruct you that
8 neither one is more important than the other, I mean,
9 circumstantial evidence and direct evidence are both forms of
10 evidence that you can consider and you weigh and you give it
11 whatever weight you deem appropriate because that is up to
12 you, I mean, that's in your purview, you decide what you
13 think's important, how important it is, is it very important,
14 do I believe what that person says, do I only believe a little
15 bit, do I think this pieces a -- piece of evidence is
16 important or or do I not but that's up to you, uh, but I
17 mention circumstantial and direct because this is a case where
18 there's a lot of circumstantial evidence. This is a case
19 where we have, uh, a robbery and a burglary and and when that
20 occurs there's no identified suspect, then a month later the
21 same residence, uh, individuals are seen outside, those
22 individuals are identified and the circumstantial evidence
23 will indicate the identity of the perpetrator in this case is
24 Larold Morris the defendant this case. Circumstantial
25 evidence is, well I'll start with direct, you walk outside and

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1 it's rainin' and you feel the rain on your skin then that's
2 direct evidence that it's raining. If you walk outside and
3 you see that the ground is wet and there's some steam comin'
4 off the sidewalk, uh, maybe there's some thunder clouds in the
5 distance, that's circumstantial evidence that it just rained
6 so so that's the difference and and you can be confident in
7 both. You can be confident that it just rained because you
8 noticed all those things just like you can be confident that
9 it just rained 'cuz you felt rain.

10 Now I I wanna briefly mention a couple of the individual
11 facts in this case that that we intend to show. On the first
12 incident, uh, the victim who was at home, Kyle Whitaker, is
13 gonna testify that a person came into his apartment with a
14 gun, uh, with a a zipped up hoodie so he couldn't see his
15 face, that the other individual, uh, didn't have a hoodie but
16 he can't remember what that person's face looked like, that a
17 gun was pointed at him and that the apartment was robbed, and
18 this is very very important too, he will also testify that he
19 heard one of the defendants call the other one Junior, gonna
20 say, I heard one of the actors call the other one Junior, then
21 a month later these roommates move out, they leave the
22 apartment that they were livin' at in Central, they move out
23 and they're comin' back from dinner one night and they're
24 comin' back and what they see is three men with hoodies pulled
25 up outside that former apartment [REDACTED] in Central, they think,

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1 Man, this is, this is certainly something that is is kinda
2 scary given what we've just experienced so they call law
3 enforcement. They call law enforcement and law enforcement
4 pulls over the car that these men get into, law enforcement
5 with consent a the driver searches the car and finds two guns
6 and a mask, then law enforcement executes a search warrant on
7 Mr. Morris's house, finds the Xbox that was stolen from [REDACTED]
8 in the original robbery and they execute a search warrant on
9 the car and find two additional masks and there are other
10 elements and other aspects of the case that we intend to show,
11 we won't go into all the details but after we present all that
12 evidence, after we show you our case we'll come back before
13 you and like the judge said right now we're just tryin' to
14 give you an overview, ya know, this is a table a contents, uh,
15 but at the end a the case we present our summation and at that
16 point we're going to request a specific verdict from you, uh,
17 and I say verdict, verdict comes from a latin word "veritas"
18 which means truth and, uh, "dicere" which means to speak and
19 we're gonna request a verdict that speaks the truth and the
20 verdict that speaks the truth in this case, at the end a this
21 case we believe will be guilty. Thank you.

22 MR. CANTRELL: Please the Court, ---

23 THE COURT: Yes, sir.

24 MR. CANTRELL: --- sir, ladies and gentlemen, I too was
25 briefly introduced to you yesterday, my name's David Cantrell,

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1 I'm, uh, the attorney for Larold Morris and I too join in the
2 the Court and the solicitor's office in thanking you for your
3 attention, asking you to, uh, just carefully to listen to
4 what's goin' on and render a verdict which speaks the truth.
5 I also join in with the Court in telling you that will be
6 based on what you hear from this (indicating) witness stand,
7 the evidence, the testimony that you hear and I encourage you
8 to do that intently, I encourage you to hold the State to the
9 burden that everyone is entitled to, you and me as jurors, as
10 attorneys and certainly Mr. Morris as the defendant, uh, of
11 proof beyond a reasonable doubt. The judge will tell you what
12 that means but that essentially is unless it is proven to you
13 beyond a reasonable doubt a reasonable person would find no
14 other solution, no other options other than that Larold Morris
15 guilty then you must find him guilty if there is no other
16 reasonable solution or that it and and in addition to that
17 it's gotta be proven beyond that doubt, beyond a reasonable
18 doubt, and that is where you act as a reasonable person based
19 on your hearing, seeing and analyzing evidence. You just
20 heard that, uh, Mr. Morris is charged with two other
21 individuals, alright, stop right there. One person's over
22 there (indicating), there's two more, you've got a right to
23 wonder, you've got a right to question why there's some empty
24 chairs over there (indicating), I encourage you to do that, I
25 encourage you demand answers, demand reasonable explanations.

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1 Let's go back. Charged with conspiracy to commit armed
2 robbery. You've just been told and I challenge the State to
3 prove more than this that three individuals went to an
4 apartment, knocked on the door, happened to have hoodies on,
5 knocked on the door, no one came to the door and they left,
6 absolutely all. Proof beyond a reasonable doubt of conspiracy
7 that's up to you. I think not. Knock on the door, nobody
8 comes, you leave. What are you guilty of? nothing.

9 You've heard about a break-in at, uh, that address five
10 weeks or more prior to that, you will hear that nobody was
11 identified, no victim was able to identify anyone so why are
12 we here? because of a mass arson, guns found in a car five
13 weeks later, 'cuz somebody was named Junior and because of an
14 Xbox. Proof beyond a me -- reasonable doubt, you got a right
15 to demand that that be proven to you. In fact, you got an
16 obligation to demand that that be proven to you and in this
17 case, ladies and gentlemen, it's not gonna happen. I truly
18 believe when you listen to all this testimony that you will
19 not be convinced or have proven to you beyond a reasonable
20 doubt that Larold Morris is guilty. Again, he's sitting here
21 alone. He's here, he's responding to the charges that were
22 presented to him, he's denying those charges. He's exercising
23 his right and he's going to be given a fair and impartial
24 trial by a fair and impartial jury that will I believe demand
25 those explanations and demand that proof beyond a reasonable

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 doubt but you've also got the right to try to figure out why
2 him, why not the other others and I will tell you, and you
3 will not have an answer for this, you just simply will not,
4 that for some reason he's not just a defendant, he is an
5 innocent person but in addition to that he is a target, he's
6 got a bullseye on him as he sits there, I have no idea why, no
7 idea, but one out of three is before you to be prosecuted to
8 the fullest extent of the law with proof that's supposed to be
9 beyond a reasonable doubt, please demand and require that in
10 this case and render a verdict, I will join with Mr. Tooker, a
11 verdict which speaks the truth. Thank you.

12 THE COURT: Okay, call your first witness.

13 MR. TOOKER: Thank you, sir. The State calls Kyle
14 Whitaker.

15 (Whereupon, the witness came forward.)

16 KYLE WHITAKER, having been first
17 duly sworn, testified as follows:

18 THE CLERK: Have a seat and state your name for the
19 record, please.

20 THE WITNESS: Kyle Whitaker.

21 DIRECT EXAMINATION BY MR. TOOKER:

22 Q. Alright, Mr. Whitaker, where are you from?

23 A. I'm from Clover, South Carolina, sir.

24 Q. And, uh, why don't you say that again, where you from?

25 A. Clover, South Carolina.

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

- 1 Q. Clover, South Carolina. This is a -- let's see if we
2 can't get you just to approach that microphone a little bit so
3 just wanna make sure the last person down here can hear you
4 real quick. Alright, say you're from where?
- 5 A. Clover, South Carolina.
- 6 Q. Okay. Can ya'll hear? Okay. So Clover, South Carolina.
7 Uh, back in in 2011, back in February 2011 where were you
8 living?
- 9 A. In Central, sir.
- 10 Q. Central?
- 11 A. Yes, sir.
- 12 Q. Okay, and what were ya doin' in February 2011?
- 13 A. I was goin' to school ---
- 14 Q. Okay, ---
- 15 A. --- Tri-County.
- 16 Q. --- where were you goin' to school?
- 17 A. Tri-County, sir.
- 18 Q. And were you livin' with any roommates?
- 19 A. Yes, sir.
- 20 Q. Okay, who who were your roommates?
- 21 A. Uh, Michael Capo, Derek Mahaney and Zeke Quinn.
- 22 Q. Okay, and, uh, and I'm gonna jump ahead real quick. What
23 do ya do now? Where are you now?
- 24 A. Uh, right now I'm in Illinois ---
- 25 Q. Why are you in Illinois?

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

- 1 A. I'm stationed there, I'm in the Air Force.
- 2 Q. Okay. So you're in the Air Force?
- 3 A. Yes, sir.
- 4 Q. What do ya do in the Air Force?
- 5 A. I'm a physical therapy technician.
- 6 Q. Okay, how long have you been doin' that?
- 7 A. Um, since August.
- 8 Q. Ya like it?
- 9 A. Yes, sir, ---
- 10 Q. Okay.
- 11 A. --- very much.
- 12 Q. You think you're gonna stay in the Air Force a long
- 13 time?
- 14 A. As of right now yes, definitely.
- 15 Q. Okay. Uh, so back to 2011 you're livin' with
- 16 Mr. Mahaney, Mr. Capo, Mr. Quinn you said
- 17 A. Yes, sir.
- 18 Q. Where were ya'll livin'?
- 19 A. In [REDACTED] [REDACTED] [REDACTED]
- 20 Q. Okay. Your other roommates were they students as well?
- 21 A. Yes, sir.
- 22 Q. Okay. How how'd you guys know each other?
- 23 A. Um, I know Zeke from high school and the other two were
- 24 assigned, I didn't know them prior.
- 25 Q. Okay. How's that work at at at the [REDACTED] [REDACTED]

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 [REDACTED]?

2 A. Um, they just assign 'em randomly. They -- if you come
3 in there with three people then you got three rooms filled and
4 they might put a another person in the last room.

5 Q. Okay, uh, and and ya have four four bedrooms in each
6 residence?

7 A. Yes, sir.

8 Q. Okay. Do you rent it by the room or one apartment
9 total?

10 A. By the room.

11 Q. Okay. So if if you rent out two rooms then they have to
12 fill the other two.

13 A. Yes, sir.

14 Q. Okay, alright. Now let's just jump ahead, do do you know
15 why you're here today?

16 A. Yes, sir.

17 Q. Okay, and you and I have talked before.

18 A. Yes, sir.

19 Q. Okay. Uh, on February 3rd 2011, uh, what do you remember
20 about the robbery a your residence?

21 A. Well I was playin' video games in my apartment and heard
22 a knock at the door so I went over, answered it and well but
23 first I looked through the peephole and I saw I, what I
24 thought was one a my friends, I just kinda glanced through it
25 really quickly and opened the door and it was not. There was

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

- 1 two individuals, one was to the side that I didn't see and he
2 had a gun already pulled. Um, from that point forward I was
3 kind of focused on where the gun was so, uh, the guy with the
4 gun had a mask on or a hoodie that zipped all the way up
5 including the face and there was eye holes on it and there
6 were mesh in front of the eye holes and the s -- the hoodie
7 had a skull on the face. Uh, they told me to get in, get on
8 the ground so I did that. Um, from there I I didn't really
9 see a whole lot. Um, I heard them goin' from room to room,
10 um, I think they kicked in a couple doors, I don't remember
11 exactly, I think they did and, uh, I heard at one point
12 through it they were talkin' to each other back and forth and
13 one of 'em called the other one Junior. Um, ---
- 14 Q. Okay, I'm gonna stop ya there. You say ya heard one of
15 the perpetrators call the other one Junior, ---
- 16 A. Yes, sir.
- 17 Q. --- how confident are you that that's what you heard?
- 18 A. Hundred percent.
- 19 Q. Hundred percent.
- 20 A. Yes, sir.
- 21 Q. It wa -- wasn't another name?
- 22 A. No, sir.
- 23 Q. Okay, alright, so how long total do ya think they were in
24 your apartment?
- 25 A. Um, I couldn't be exactly sure but it couldn't have been

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 longer than 15 minutes I would think, 15, maybe 20 minutes.

2 Q. Okay, and you said you thought that ya knew, uh, the
3 person that you saw through the peephole, ---

4 A. Uh, yes, sir, Bran ---

5 Q. --- did ya actually know him?

6 A. No, sir, ---

7 Q. Okay, ---

8 A. --- I didn't ---

9 Q. --- do you remember what that person looks like?

10 A. Very vaguely. I don't, I I I don't remember any
11 specifics, I couldn't pick out a face but just glancing
12 through the peephole it just resembled one a my friends.

13 Q. How quickly after you opened the door did you see the gun
14 in your face?

15 A. Immediately.

16 Q. Okay, immediately.

17 A. Yes, 'cuz we had, ---

18 Q. And ---

19 A. --- I guess 'cuz we had the lo -- door locked, maybe they
20 heard me unlocking it, I don't know, it's just that as soon as
21 I open the door it was right there.

22 Q. Okay, and that person with the gun what did they have you
23 do?

24 A. Get in my apartment, get on the floor in my living
25 room.

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Were you given specific instructions to do that?

2 A. Yes, sir.

3 Q. Okay, so they backed ya up and and put ya on the floor.

4 A. Yes, sir.

5 Q. Alright, what happened over the course of the robbery,
6 what they take?

7 A. Um, they took electronics, um, Xbox, some iPods, um,
8 laptops, just things a that nature. Um, they took a couple
9 suitcases I think and put all the stuff into it, um, and ---

10 Q. Did they take your Xbox?

11 A. No, sir, my my ---

12 Q. How how come?

13 A. --- Xbox was left. Um, they mentioned because I was
14 being cooperative they left my Xbox and I guess 'cuz there was
15 another Xbox maybe they didn't need it, I don't, I'm not
16 sure.

17 Q. Okay. Um, now your roommate Mr. Capo was his Xbox
18 taken?

19 A. Yes, sir.

20 Q. Okay, and you said a variety of other items was taken as
21 well?

22 A. Yes.

23 Q. Uh, did they leave a laptop behind?

24 A. Yes, I believe they left, uh, Michael Capo laptop behind.

25 Q. And why'd they leave that laptop behind?

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 A. Because it had Le -- LoJack on it and I had mentioned it
2 to 'em. I I don't know why I did it, I -- it was just in the
3 I guess spur of the moment, I was, I wasn't really thinkin'
4 about it I just...

5 Q. Okay, and and this is kind of a personal question now but
6 were you scared when this ---

7 A. Yes, ---

8 Q. --- happened? Okay.

9 A. --- I was scared.

10 Q. Very scared?

11 A. Probably more scared than I've been in my life.

12 Q. Okay, and, uh, as a result of this, uh, did you stay in
13 school, did you leave school?

14 A. No, sir, I left school.

15 Q. Why'd ya leave school?

16 A. Um, my grades fell, um, I have -- I had trouble sleeping
17 at night, um, that led to me pretty much not makin' it to
18 class, I had morning classes, I couldn't wake up so I ended up
19 movin' back home and decided to join the military and get away
20 from everything.

21 Q. Okay. After, uh, these two individuals left your
22 apartment, wha'd you do?

23 A. Um, I believe I I went and looked for my keys to and then
24 left, locked the door and went to a friend's apartment.

25 Q. Okay. Did you call 911?

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes.

2 Q. Did you call your roommates?

3 A. Yes.

4 Q. Okay. Uh, after law enforcement responded to the scene,
5 did you give a statement to them?

6 A. Yes, sir.

7 Q. Okay, did you tell them the truth?

8 A. Yes, sir.

9 Q. Okay. Uh, and you mentioned that that ya knew, uh, the
10 parties who robbed ya, what was their, I say you knew, you
11 thought you knew the party who you saw through the peephole,
12 what was that person's ethnicity?

13 A. Uh, black, sir, it was African-American.

14 Q. Okay, and the person that you, uh, said had -- and
15 describe this to me again, you said it was a zip up hoodie
16 with eye holes?

17 A. Yes, sir, almost like a Halloween mask like where they
18 have like the the holes where you can't see their eyes but you
19 can wearing the mask you can see through it.

20 Q. Could you determine that individual's ethnicity?

21 A. Um, I thought he was of the same but I I that's just by
22 voice, that that that would be ---

23 Q. By voice?

24 A. Yes.

25 Q. So could you see his hands?

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 A. Um, I don't really remember exactly seeing the hands, I I
2 was pretty much only focused on the gun.

3 Q. Okay. And and that gun what color was it?

4 A. It was black.

5 Q. Black?

6 A. Yes, sir.

7 Q. Is it a rifle or a handgun?

8 A. Was a handgun, sir.

9 Q. Was a handgun. Uh, I'm gonna show you a couple pictures
10 now, I'd like you to tell me if you recognize these images.

11 Would you like any water?

12 A. I'm fine, thank you.

13 Q. Okay.

14 (Pause.)

15 Alright, I'm gonna show you a series of images and we'll
16 do 'em in sets of five. I'm gonna present to you what's been
17 marked as State's 21, 22, 23, 24 and 25, would ya look at
18 these images and, uh, say what's depicted in those images.

19 A. There are boxes for, uh, electronics and a case, uh, then
20 the next picture has a printer ---

21 Q. Well you you don't have to describe 'em one by one, just
22 look at each ---

23 A. Okay.

24 Q. --- each picture and make sure you recognize each pi --
25 picture.

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes, sir. Yes, sir, I recognize them.

2 Q. Okay, uh, is that your apartment depicted?

3 A. Yes, sir.

4 Q. Okay, you, would you say those are fair and accurate
5 representations of your apartment that night?

6 A. Yes, sir.

7 Q. Okay.

8 MR. TOOKER: Uh, at this point, Your Honor, State wants
9 to move State's 21 through 25 into evidence and publish to the
10 jury.

11 MR. CLEVELAND: No objection, Your Honor.

12 THE COURT: Alright.

13 (State's Exhibit Nos. 21, 22, 23, 24 and 25, photographs,
14 admitted into evidence.)

15 BY MR. TOOKER:

16 Q. Alright, now in all these pictures, um, things are pretty
17 trashed, aren't they?

18 A. Yes, sir.

19 Q. Okay, did that happen during the course of the robbery?

20 A. Yes, sir.

21 Q. Okay, so it's not like you guys are just complete slobs.

22 A. Yes ---

23 Q. I mean, I understand college kids you can be kinda messy
24 but this happened durin' the course of the robbery?

25 A. Yes, sir.

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay. I'm gonna show you the the next five that's
2 State's 16, 17, 18, 19 and 20. Look at these and, uh, and
3 tell the jury whether or not these are also images of your
4 apartment after it was robbed.

5 (Whereupon, the witness examined the exhibits.)

6 A. Yes, sir.

7 Q. Okay. Would ya say each a those is a fair and accurate
8 representation of your apartment after the incident that
9 night?

10 A. Yes, sir.

11 MR. TOOKER: At this point, Your Honor, State wants to
12 move the previously mentioned exhibits into evidence and
13 publish to the jury.

14 MR. CANTRELL: No objection, Your Honor.

15 THE COURT: Okay.

16 (State's Exhibit Nos. 16, 17, 18, 19 and 20, photographs,
17 admitted into evidence.)

18 BY MR. TOOKER:

19 Q. Alright, on to the next set. I'm gonna show you what's
20 been marked as State's 11, 12, 13, 14 and 15, same drill, are
21 these pictures of your apartment after it was robbed?

22 (Whereupon, the witness examined the exhibits.)

23 A. Yes, sir.

24 Q. Okay, and would you say those are fair and accurate
25 representations of your apartment the night of the incident?

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes, sir.

2 MR. TOOKER: This point, Your Honor, State wants to move,
3 uh, previously mentioned exhibits into evidence and publish to
4 the jury.

5 MR. CANTRELL: No objection.

6 THE COURT: Okay.

7 (State's Exhibit Nos. 11, 12, 13, 14 and 15, photographs,
8 admitted into evidence.)

9 BY MR. TOOKER:

10 Q. And then finally, I'll show you the last seven here and
11 that's, uh, State's 4, 5, 6, 7, 8, 9 and 10. Are these all
12 pictures from your apartment from the night a the incident?

13 (Whereupon, the witness examined the exhibits.)

14 A. Yes, sir.

15 Q. Okay, and would you say they're fair and accurate
16 representations of your apartment the night a the incident?

17 A. Yes, sir.

18 MR. TOOKER: Uh, Your Honor, State would like to move
19 the, uh, previously mentioned exhibits into evidence and
20 publish to the jury.

21 MR. CANTRELL: No objection, Your Honor.

22 THE COURT: Alright.

23 (State's Exhibit Nos. 4, 5, 6, 7, 8, 9 and 10,
24 photographs, admitted into evidence.)

25 BY MR. TOOKER:

KYLE WHITAKER - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, so all these pictures are pictures of your
2 apartment on the night of the incident.

3 A. Yes, sir.

4 Q. Okay, and the the state a the apartment, uh, in -- the
5 state a your apartment that night that was a a result of the
6 robbery?

7 A. Yes, sir.

8 Q. Okay, and it wasn't just bein' messy.

9 A. No, sir.

10 Q. Okay. Now, uh, you you kinda hesitated to call the cops
11 that night, do you remember why?

12 A. I do not remember, sir.

13 Q. Do you remember ---

14 A. I know it's not ---

15 Q. --- whether or not, whether or not the folks robbin' you,
16 uh, made any threats ---

17 A. Yes, sir, they did.

18 Q. --- before they left? What did they say?

19 A. They said if you call the cops there'll be bloodshed.

20 Q. There will be bloodshed.

21 A. Yes, sir.

22 Q. What did you take that to mean?

23 A. I took that to mean that they would take my life.

24 Q. Okay, uh, I mean, I understand and seems kind of intuit --
25 if somebody points a gun at you you're scared, ---

KYLE WHITAKER - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Yes, sir.

2 Q. --- uh, if you had tried to stop them from takin' your
3 stuff, uh, what do you think woulda happened?

4 MR. CANTRELL: Objection, Your Honor, ---

5 A. Might not ---

6 MR. CANTRELL: --- he'd have no way to ---

7 THE COURT: Can't speculate.

8 Q. Okay. You you were fearful though?

9 A. Yes, sir.

10 Q. Fearful that harm might come to you?

11 A. Yes, sir.

12 Q. Fear a little harm might come to you if you didn't do
13 what they said.

14 A. Yes.

15 Q. Okay.

16 MR. TOOKER: No further questions at this time, Your
17 Honor.

18 THE COURT: Cross?

19 MR. CANTRELL: Please the Court.

20 CROSS-EXAMINATION BY MR. CANTRELL:

21 Q. Mr. Whitaker, essentially you testified that someone came
22 to your apartment and robbed you, ---

23 A. Yes, sir.

24 Q. --- you testified you don't know who that was, ---

25 A. Yes, sir.

KYLE WHITAKER - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. --- you've testified, uh, that items were taken, ---

2 A. Yes, sir.

3 Q. --- they did not take your Xbox, ---

4 A. No, sir, they didn't.

5 Q. --- and they did not take one laptop 'cuz you told 'em
6 there was LoJack ---

7 A. Yes.

8 Q. --- installed in that, uh, and that you did wait for a
9 little while to call call the police, ---

10 A. Yes.

11 Q. --- is that correct? Now you gave a written statement to
12 the police but it did not mention anything about a threat, did
13 it, in the written statement?

14 A. I don't believe so, sir.

15 Q. And your statement only mentions that one a these
16 individuals had a full mask but it doesn't indicate that it
17 was a zip up hoodie or anything like that, does it?

18 A. I'm not sure, sir.

19 Q. Okay. But then once time had passed you did call law
20 enforcement, they came, they investigated and that was the end
21 of the incident that evening, is that correct?

22 A. Yes, sir.

23 Q. No further questions. Thank you.

24 THE COURT: Any redirect?

25 MR. TOOKER: Nothin' from the State, sir.

KYLE WHITAKER - CROSS-EXAMINATION BY MR. CANTRELL

1 THE COURT: Thank you, sir, you can step down.

2 (Whereupon, the witness left the stand.)

3 MR. TOOKER: Uh, permission for Mr. Whitaker to be
4 excused, uh, ---

5 THE COURT: Any objection?

6 MR. TOOKER: --- he's traveled a long way.

7 MR. CANTRELL: No no objection, Your Honor.

8 THE COURT: Alright, you're released from subpoena.

9 MR. TOOKER: Would you mark this stipulation, please.

10 (Stipulation marked State's Exhibit No. 104 for
11 identification.)

12 MR. TOOKER: Your Honor, the State would next like to,
13 uh, to introduce the stipulation in this case into evidence,
14 it's been marked as State's 104, uh, State would like to
15 introduce it and publish to the jury.

16 THE COURT: Any objection to the stipulation?

17 MR. CANTRELL: No objection, Your Honor.

18 THE COURT: Alright, go ahead.

19 (State's Exhibit No. 104, stipulation, admitted into
20 evidence.)

21 MR. TOOKER: Alright, the stipulation in this case,
22 ladies and gentlemen of the jury, is that the above-named
23 defendant stipulates to the following: That Larold Lee Morris
24 is known as and goes by the nickname Junior.

25 THE COURT: Alright, call your next witness.

DJ GRANT - DIRECT EXAMINATION BY MR. TOOKER

1 MR. TOOKER: Yes, sir, State calls D.J. Grant to the
2 stand.

3 (Whereupon, the witness came forward.)

4 D.J. GRANT, having been first
5 duly sworn, testified as follows:

6 THE CLERK: Have a seat and state your name for the
7 record, please.

8 THE WITNESS: D.J. Grant.

9 DIRECT EXAMINATION BY MR. TOOKER:

10 Q. Where do you work, sir?

11 A. Town of Central Police Department.

12 Q. How long you work there?

13 A. Almost three years.

14 Q. Okay, before that you have any other law enforcement
15 experience?

16 A. I do.

17 Q. What was that?

18 A. I worked approximately four years in Oconee County with
19 the City of Westminster Police Department.

20 Q. Uh, do any time in the Army?

21 A. I did.

22 Q. How long were ya in the Army?

23 A. Eight years.

24 Q. Okay, uh, do any other kinda law enforcement-type work?

25 A. I did. I spent a year in the State a Georgia workin' in

DJ GRANT - DIRECT EXAMINATION BY MR. TOOKER

1 a female maximum security prison as a drill instructor for
2 drug and alcohol offenders as well as in the State a South
3 Carolina I spent four years workin' as a supervisor at Perry
4 Correctional Institution as a Supervisor over solitary
5 confinement.

6 Q. Okay. Now you just heard the testimony of
7 Mr. Whitaker, ---

8 A. I did.

9 Q. --- okay, uh, did you encounter him on the night a the
10 incident?

11 A. I did.

12 Q. Okay, were you one of the officers that responded on
13 scene?

14 A. I was.

15 Q. Would you say, uh, that your understanding a the case
16 that night, uh, was pretty much how Mr. Whitaker explained it
17 on the stand?

18 A. Yes, sir.

19 Q. Okay. Um, when you responded and you encountered
20 Mr. Whitaker, how would you describe his demeanor

21 A. He was very upset and distraught.

22 Q. Okay.

23 A. He, uh, he he -- I sensed a level of fear in a, uh,
24 young person.

25 Q. Okay, and and after I guess you and the other responding

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 officer talk to the people on scene, uh, what was the
2 description of the parties you were lookin' for?

3 A. We were lookin' for a lighter skin black male
4 approximately 5 foot 8, a hundred sixty pounds and the other
5 description was a, uh, darker skin, uh, black male
6 approximately 5 foot 10, a hundred and seventy pounds.

7 Q. Okay. No further questions. Thank you.

8 CROSS-EXAMINATION BY MR. CANTRELL:

9 Q. I'm sorry, Officer Grant, did you say two black males?

10 A. Yes, sir.

11 Q. And you did that based on the t -- report to you of the
12 gentleman who just left?

13 A. Yes, sir.

14 Q. No further questions.

15 THE COURT: Alright, thank you, sir, you can step down.

16 (Whereupon, the witness left the stand.)

17 MR. TOOKER: State calls Michael Capo to the stand.

18 MICHAEL CAPO, having been first
19 duly sworn, testified as follows:

20 THE CLERK: Have a seat and state your name for the
21 record, please.

22 THE WITNESS: Michael Capo.

23 DIRECT EXAMINATION BY MR. TOOKER:

24 Q. Alright, Mr. Capo, uh, where are you from?

25 A. Uh, originally from, uh, Long Island, New York.

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, and what brought you down to South Carolina?

2 A. Uh, parents moved down ---

3 Q. Okay.

4 A. --- when I was younger.

5 Q. And in February 2011, uh, why were you livin' with these
6 fellas in Central [REDACTED]

7 A. Uh, I went to school and at Tri-County ---

8 Q. Okay.

9 A. --- and I knew a buncha people that lived in UV but
10 unfortunately all the other apartments they lived in were
11 booked up.

12 Q. Booked up?

13 A. Yeah, like they, ya know, four people to an apartment so
14 they were full.

15 Q. Okay, so so and Mr. Whitaker said you you wanted an
16 apartment there and they assigned you ---

17 A. Yeah.

18 Q. --- this one? Okay. And, uh, on the night of the
19 robbery, were you at home?

20 A. Uh, no, I was not.

21 Q. Okay, well what about your other roommates Mr., uh,
22 Quinn, Mr. Mahaney?

23 A. I do not believe so.

24 Q. Okay. What I guess -- when were you first alerted to the
25 fact that your residence had been robbed?

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 A. I believe I had a phone call that night.

2 Q. Phone call?

3 A. Yeah.

4 Q. Okay, uh, and do you know who the phone call was from?

5 A. I believe it was, uh, I believe it was Kyle.

6 Q. Okay, and, uh, specifically -- well you and I have met
7 and talked about this case, haven't we?

8 A. Yeah.

9 Q. What materials of yours were stolen from your room during
10 the robbery?

11 A. Uh, actually, I believe the only thing that was stolen of
12 mine were the Xbox and couple games.

13 Q. Okay, the Xbox and a couple ---

14 A. Yeah.

15 Q. --- games were stolen? And, uh, the that Xbox well why
16 don't you just give us sort of a an explanation as to Xboxes
17 and and gamer tags.

18 A. Okay, uh, when you, when you first buy an Xbox, you set
19 up the online, uh, you know, your your gamer tag which is
20 essentially your name, your user ID, and with that you can go
21 online and play the different games you have with other people
22 online and the way they know you is by your gamer tag. Mine
23 happened to be, uh, Capo Almighty, ha ha, uh, and pretty much
24 what you would do is you would type in, you know, the person's
25 name and then you'd add them as a friend and much like, you

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER.

1 know, other things that people use with user names and, um,
2 pretty much that's that's gamer tags yeah.

3 Q. Okay, and so your gamer tag was Capo Almighty.

4 A. It was.

5 Q. After your Xbox was stolen did you ever have I guess
6 occasion to see your gamer tag online again?

7 A. Uh, actually we were at a friend's house, um, little bit
8 after this and, uh, it says I was online and that's impossible
9 because I didn't have my Xbox at the time so, uh, ----

10 Q. So you were playin' Xbox with ---

11 A. I was playin' Xbox at a friend's house and it said I was
12 online.

13 Q. Okay, so when you say it said you were online, where did
14 you see that on the screen?

15 A. Uh, when you, when you hit the middle button on the
16 controller ---

17 MR. CANTRELL: Your Honor, I'm gonna have to object at
18 this time 'cuz this is essentially, uh, uh, hearsay of another
19 person's statement but it's, uh, not the best evidence of what
20 was seen online, just, uh, ---

21 MR. TOOKER: Well and ---

22 THE COURT: Ask the question again.

23 MR. TOOKER: The the question was, uh, how is it that
24 that someone is aware of who is online, which a their user ---

25 THE COURT: He can ---

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 MR. TOOKER: --- account ---

2 THE COURT: --- testify ---

3 MR. TOOKER: --- friends ---

4 THE COURT: --- to what his understanding of how the
5 thing works.

6 BY MR. TOOKER:

7 Q. Yeah, so so you press the middle button ---

8 A. Press the middle button and you go down and it says
9 friends, when ya hit that it shows all the user names of your
10 friends that are online ---

11 Q. Okay.

12 A. --- and since I was at a friend's house we were on his
13 Xbox, I was one of his friends on Xbox and it said I was
14 online.

15 Q. Okay, when that saw ya or when you saw that wha'd ya
16 do?

17 A. I immediately clicked on the name.

18 Q. Okay, and when you clicked on the name, wha'd ya see?

19 A. Uh, I saw my bio was changed, my -- the state that I
20 lived in was changed and the motto that I put on there was
21 changed.

22 Q. Okay, but Capo Almighty was still ---

23 A. Was still there at the time.

24 Q. Okay. I'm gonna show you what's been marked as
25 State's 88, do you recognize those (indicating) two images?

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes.

2 Q. Okay, what are those images of?

3 A. Uh, the first one is shows me as my -- I mean, it shows
4 my name as Capo Almighty, um, then on the right of it it shows
5 a little, a figurine of what you can create to represent you
6 as opposed so people know that, ya know, this is what you look
7 like and stuff and that is definitely not me.

8 Q. What what did your figurine look like?

9 A. Uh, it was, it had, uh, actually had a little suit on, it
10 was a, it was a white male with, uh, orange hair.

11 Q. Okay, and, uh, and this is all under Capo Almighty, ---

12 A. Yes.

13 Q. --- uh, what about you've mentioned a a motto or profile?

14 A. Yeah, um, you have, you have like your your motto and
15 then you have, uh, where you're from and then you have, uh,
16 like your little, you know, something you can say to people,
17 um, and all three of those are changed.

18 Q. Okay, um, now those two images in front of you, uh, would
19 you say they're fair and accurate representations of what you
20 saw on that day?

21 A. Yes.

22 MR. TOOKER: Okay, at this point, Your Honor, State wants
23 to move State's 88 into evidence, publish to the jury.

24 MR. CANTRELL: No objection, Your Honor.

25 THE COURT: Alright.

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 (State's Exhibit No. 88, photograph, admitted into
2 evidence.)

3 BY MR. TOOKER:

4 Q. Alright, so so Capo Almighty is the same on there, right?

5 A. Yes.

6 Q. What did the, uh, the little bio part change into or the
7 the ---

8 A. I mean, ---

9 Q. --- motto ---

10 A. --- it it -- they changed it to Flight Risk, uh, North
11 Carolina Get Money.

12 Q. Okay, and the, uh, the little person, your identifier,
13 how'd they change that?

14 A. Uh, it is now an an African-American male with a white
15 t-shirt and cargo pants but it still has my orange hair.

16 Q. Still has your orange hair.

17 A. Yes.

18 Q. Alright, now after ya notice that you become I guess more
19 aware of your Xbox account?

20 A. Yes.

21 Q. Okay, did you notice any further changes to your
22 account?

23 A. Uh, the name was changed from Capo Almighty and, uh, the
24 avatar was also changed to put other clothes on and stuff.

25 Q. Okay, and what was the name change from?

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 A. Uh, Lil Abbel.

2 Q. Lil, okay, and did ya give that information to Detective
3 Justice?

4 A. Uh, the -- I went down to the police station and I told
5 them all this, yes.

6 Q. Okay. Uh, how do you know that the, ya know that the
7 account was initially yours 'cuz it said Capo Almighty ---

8 A. Yes.

9 Q. --- and that information was changed but how do you know
10 that once they changed Capo Almighty to Lil Abbel it's the
11 same account?

12 A. Well, um, it was the same account 'cuz it was still on my
13 friend's, uh, it was still on their, uh, friends list and the
14 only way you can, you know, have somebody on your friends list
15 is either you add them or they're already on there.

16 Q. Okay, and then when you access that was the the motto the
17 same?

18 A. The motto was sa -- it it was changed slightly to, uh, it
19 still said Flight Risk but North Carolina was changed to NC
20 and Get Money was still on there, yes.

21 Q. Okay, alright. Did you, uh, did you ever get your Xbox
22 back?

23 A. I did.

24 Q. Okay, when did you get your Xbox back?

25 A. Um, shortly after I believe that they were caught.

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, uh, who gave you your Xbox back?

2 A. Um, one of the police officers.

3 Q. Okay, from the City of Central?

4 A. Yes.

5 Q. Alright, and how how you know it was your Xbox?

6 A. Well it had, um, had all my stuff still on it, the only
7 thing that was changed was, uh, the user name and the the
8 little bio on the side.

9 Q. Okay, and when you got it back what was the user name?

10 A. Uh, it was still Lil Abbe.

11 Q. Okay, what was the little bio part?

12 A. Uh, the same that it was.

13 Q. Okay, Flight Risk, ---

14 A. Yeah, Flight Risk.

15 Q. --- Get Money?

16 A. Yeah.

17 Q. Okay. What about, uh, gamer points, the the point system
18 how you can sort of I guess keep track a how well you're doin'
19 in a game?

20 A. Uh, essentially every time you play a game, um, depending
21 on how far ya get in the game you get a score for it so say
22 you you buy a new game and you beat the game, every every so
23 often you'll get a little achievement, ya know, like 15G or
24 20G and essentially it all adds up, um, and it only, certain
25 achievements can only be, you know, received for doing some

MICHAEL CAPO - DIRECT EXAMINATION BY MR. TOOKER

1 things, you know, spectacular like you can only get an
2 achievement for doing something that rarely no one does and
3 it's pretty hard to get and, uh, usually, you know, the Xbox
4 it has a list of all the games you played and all the
5 achievements.

6 Q. When you got your Xbox back were the achievements the
7 same?

8 A. Yes.

9 Q. Okay. Is that somethin' that can be duplicated?

10 A. Unless they were to buy the game and look up all how to
11 get all the achievements and sit there and waste countless
12 hours doin' those achievements, I don't believe so.

13 Q. How how many hours did you put into it to, uh, get all
14 those achievements?

15 A. I had, uh, at that time I had almost a thousand
16 points ---

17 Q. Okay.

18 A. --- so...

19 Q. Thousand hours playin' a game?

20 A. Well no, just a thousand points ---

21 Q. Okay.

22 A. --- but usually the highest achievement you can get for a
23 single game is a hundred is the highest.

24 Q. So you you had a lot of achievements ---

25 A. Yes.

MICHAEL CAPO - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Okay, is that -- that's not something you can do in a
2 short period a time?

3 A. Uh, unless you play every single hour of the day for a
4 while, yeah.

5 Q. Okay. Alright, no further questions.

6 THE COURT: Cross?

7 MR. CANTRELL: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. CANTRELL:

9 Q. And, Mr. Capo, go easy on me 'cuz you've lost me ---

10 A. I'm sorry.

11 Q. --- several times. No, that's not your fault, that's my,
12 that's my problem but, uh, the only thing you had stolen from
13 the apartment was the Xbox?

14 A. Yes, sir.

15 Q. Now did -- is, uh, [REDACTED] the only apartment you lived in
16 at [REDACTED]

17 A. No, it is not.

18 Q. Okay, what other apartments did you ---

19 A. I lived upstairs in the same building and, uh, I had
20 roommates but they all either fizzled out or one of 'em
21 actually got in real big trouble so I moved down there with,
22 uh, Kyle, Zeke and Derek.

23 Q. And when did you move down there?

24 A. Uh, a couple months before the incident.

25 Q. Couple months before this?

MICHAEL CAPO - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Yes.

2 Q. And all of your property was moved there at the same
3 time?

4 A. Yes, believe so, yeah.

5 Q. So but prior to that you were in [REDACTED], is that ---

6 A. Yes.

7 Q. --- correct? And when did you move out of [REDACTED]

8 A. Uh, went with everybody else.

9 Q. Okay, shortly after this?

10 A. Yeah.

11 Q. Okay. And is it your testimony that you could only could
12 be or you're the only per -- person that could be identified
13 on this system as Capo Almighty, ---

14 A. Yeah.

15 Q. --- there's no other way for anyone else to be ---

16 A. Uh, the ---

17 Q. --- identified?

18 A. --- it is impossible to duplicate a name.

19 Q. And you said is it Little Abel is that the ---

20 A. Uh, it was, it was yeah, Little Abel.

21 Q. That showed up on your friends list. Now did you tell us
22 how you could prove that that was from Capo Almighty?

23 A. Well Ca -- when you, when you look at the friends and
24 only the friends can be there is if you have added them or
25 they add you and it has a little request pending. The only

MICHAEL CAPO - CROSS-EXAMINATION BY MR. CANTRELL

1 other way that someone can appear there is if they change
2 their name and Capo Almighty was no longer on the friends list
3 but Little Abel was.

4 Q. Okay, now did your friend go through to see how many
5 other friends had been were missing, deleted or no longer
6 there?

7 A. Well they didn't, there really wasn't that many friends
8 on the friends list at the time but, uh, my name was no longer
9 there and that name was and no one, none of us knew who that
10 was.

11 Q. Okay, but that's not foolproof, it could've that name
12 coulda come from other sources, you just don't know where.

13 A. Uh, not unless my account was deleted at the exact same
14 time and that one was added at the -- someone else, one a my
15 friend's changed which means that their name woulda had to
16 have been deleted as well.

17 Q. Okay, and I'm sorry, I thought you were looking at all of
18 this on a friend's Xbox not ---

19 A. Yes.

20 Q. --- yours.

21 A. Well it was a friend's, it was online, it was the Xbox
22 server.

23 Q. And just to be sure, you were not there at the apartment
24 that night, you have no idea what went on at the apartment,
25 uh, ---

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 A. No, I was not there.

2 Q. --- when it was broken into?

3 A. No, I was not.

4 Q. No further questions. Thank you.

5 THE COURT: Anything else?

6 MR. CANTRELL: No.

7 THE COURT: Alright, thank you, sir, you step down.

8 MR. CANTRELL: Permission for Mr. Capo be excused?

9 THE COURT: He's released.

10 (Whereupon, the witness left the stand.)

11 MR. CANTRELL: State next calls Zeke Quinn.

12 (Whereupon, the witness came forward.)

13 ZEKE QUINN, having been first
14 duly sworn, testified as follows:

15 THE CLERK: Have a seat and state your name for the
16 record, please.

17 THE WITNESS: Zeke Quinn.

18 DIRECT EXAMINATION BY MR. TOOKER:

19 Q. Alright, Mr.. Quinn, where are you from, sir?

20 A. Clover, South Carolina.

21 Q. And where ya livin' now?

22 A. Uh, back at Clover, South Carolina my parent's home.

23 Q. Okay, now these first two fellas that testified were they
24 your roommates?

25 A. Yes, sir.

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, and, uh, back in February of 2011 where were
2 ya'll ---

3 A. [REDACTED] [REDACTED] [REDACTED]

4 Q. Okay, and how long did ya'll live there together?

5 A. Um, around three or four months.

6 Q. Okay, three or four months? When this happened and
7 Mr. Whitaker was robbed, where were you?

8 A. I was across the parking lot at [REDACTED] [REDACTED] at a
9 friend's apartment watching a game.

10 Q. Okay, and I guess how were you made aware of what had
11 happened?

12 A. I had a call from some neighbors across the hall
13 notifying me that Whitaker was over there upset, distraught
14 and couldn't really speak too well about what had happened and
15 notified that I needed to get over there and try to see what
16 happened 'cuz they believed my apartment had been robbed.

17 Q. Okay. Now I'm gonna show you a, uh, a handful a pictures
18 and these are the pictures that have already been admitted
19 into evidence, uh, from that stack will you pull out the
20 pictures, uh, that depict your bedroom.

21 (Whereupon, the witness complied.)

22 A. This is them right here (indicating).

23 Q. Thank you, sir. Now what you've pulled out that's State
24 22, 24, 14, 15, 13, 20, 19, 17, 18 and 16, State's 16
25 that's your closet?

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes, sir.

2 Q. Okay, and and that's pretty thoroughly ransacked wouldn't
3 you say?

4 A. Uh, completely emptied, not one item left unturned.

5 Q. Okay, and State's 18 is that your drawer?

6 A. Yes, sir.

7 Q. Okay, and that's, what do ya keep in that drawer?

8 A. That would be my socks, my belts, anything, ankle braces.

9 Q. Okay, and again another picture a your closet, ---

10 A. Yes, sir.

11 Q. --- is that right? That's, uh, that's State's 17 and
12 then State's 13, uh, that bottom picture depict your bed?

13 A. Yes, sir.

14 Q. Okay, and, uh, and what condition is your mattress in?

15 A. It's completely overturned, pushed up against the wall.

16 Q. Alright, and State's 15 what do those two images depict?

17 A. My entire room floor from where things had been rummaged
18 through out of the closet within the room tossed around.

19 Q. Okay, so that stuff wasn't already on the ground?

20 A. Absolutely not, I kept my room in quite pristine
21 condition.

22 Q. Okay, and No. 14, uh, the top image is that also your
23 bed?

24 A. That is.

25 Q. Okay, and, uh, and again what what happened to the

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 mattress?

2 A. It was turned up, tossed up against the wall.

3 Q. Okay. Now how would you compare the state a your room to
4 the state of your roommates' rooms after ya came back and saw
5 the sort of the aftermath the robbery?

6 A. Variously worse, um, I would scale mine as by far the
7 worst and Mahaney's is probably second worst and the other two
8 quite unblemished compared to mine.

9 Q. Okay, and, uh, what was stolen from it?

10 A. Various electronics, um, cash, iPods, laptops, I had cash
11 on the dresser for a speeding ticket, cell phones, anything of
12 electronic variance, ---

13 Q. Okay.

14 A. --- some personal items.

15 Q. And, uh, and did ya have any drugs in your room?

16 A. Um, I was a college student so I would lying if I said I
17 hadn't experienced with marijuana so yes, there was a couple,
18 um, glass pieces taken and a small amounta marijuana.

19 Q. Okay, so some marijuana and I guess smoking
20 instruments?

21 A. Yes, sir.

22 Q. Okay. Uh, now did ya tell the cops that that night?

23 A. At that night, um, no, I was still quite confused and I
24 hadn't really honestly went through that entire mess of what
25 was in there ---

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay.

2 A. --- so I wasn't quite aware, it's not like it was a huge
3 item.

4 Q. Okay, uh, and when I guess you saw -- well you and
5 Mr. Whitaker are pals goin' back to high school, right?

6 A. Yes, sir.

7 Q. Okay, when you and Mr. Whitaker talked to each other that
8 night, what kinda state was he in?

9 A. Um, extreme distraught, he could barely speak, his hand
10 wasn't steady enough to even open a door, much less hold a
11 piece a paper.

12 Q. Okay, and, uh, now you're back in Clover, South Carolina,
13 what are you doin' now?

14 A. I am a full-time college student at York Technical
15 College, I'm full-time employed at Dick's Sporting Goods.

16 Q. Okay. Uh, about what time were ya called and alerted to
17 the fact that, uh, that your place had been burglarized and
18 robbed?

19 A. The exact time frame is hard to describe, it was pretty
20 late and there was a game on so it coulda been approximately
21 any time between 8 and 11 roughly.

22 Q. Okay, uh, one moment please. Now there there was a
23 second incident, ---

24 A. Yes, sir.

25 Q. --- when, uh, when that second incident occurred in in

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 March of '11 where were you livin' at that time?

2 A. We had been relocated, uh, think the number of the
3 building was [REDACTED]. We had been moved from a flat to a
4 condominium apartment that used to be a police officer's
5 apartment.

6 Q. Why did you guys move?

7 A. Uh, we, after what had happened we were really not
8 feelin' too secure at that location as we were warned by
9 officers and many people that these situations occur multiple
10 times at the same location.

11 Q. Okay, and, uh, so you guys thought it be best to move
12 out?

13 A. Yes, sir.

14 Q. Alright, and you said you moved to a different place in
15 the UV?

16 A. Yes, sir, as advised by them they would not let us break
17 our lease which we requested.

18 Q. Oh, so you guys actually wanna move outta the UV.

19 A. We did not feel safe, we also contemplated leavin' the
20 town in general.

21 Q. Okay, alright. Um, now on March 8th of 2011, um, and I
22 wanna preface this, you and I have talked before, ---

23 A. Yes, sir.

24 Q. --- have we not? Okay, and you know why you're here to
25 testify today?

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes, sir.

2 Q. Okay, what did you observe on March 8th of 2011, uh, with
3 regards to to this situation and and these incidents?

4 A. I was returning to the vicinity of where my old apartment
5 was, there's a walkway that runs between building [REDACTED] and [REDACTED]
6 which are adjacent buildings, I still had friends from where I
7 lived in [REDACTED] across that lived in [REDACTED] that we used to play
8 Xbox with, study and hang out, go to football games with and
9 stuff, I was just returnin', I was gonna go over there hang
10 out, do a little bit a studying and as I was walking through
11 the walkway I just paid attention to my old apartment, as the
12 situation had happened it caused attention just every time I
13 went by that area I looked over there. As I look up I
14 noticed, um, a male African-American with a hood on with his
15 back to the vinyl, to the side of the door as if the door was
16 here (indicating), his back was here (indicating), I noticed
17 another African-American male with a hood on, peering through
18 the peephole and looking through the window all the while
19 while knocking on the door, I noticed a third African-American
20 male with the dreadlocks approximately at the shoulder length
21 with a hood up at the other end of the corridor at the top a
22 stairwell on the second floor peering over around the ledge,
23 looking down the road to see if any cars were comin', lookin'
24 down the staircase ---

25 MR. CANTRELL: Objection, Your Honor, he doesn't know

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 what this gentleman was looking at ---

2 MR. TOOKER: Well he can comment as to his observations.

3 THE COURT: Well he can say in what general direction, he
4 doesn't, he can't, ya know, he can tell what he thinks he was
5 lookin', give his state a mind.

6 BY MR. TOOKER:

7 Q. Alright, now I'm gonna show you what's been marked as
8 State's 1, 2 and 3, what do these images depict?

9 A. Um, building [REDACTED] from the corridor angle in between [REDACTED],
10 um, that would be [REDACTED] yet again from that walkway and this
11 (indicating) would be [REDACTED] all the way from the parking lot ---

12 Q. Okay.

13 A. --- all the way from the corridor and the tip up to the
14 left is [REDACTED] [REDACTED].

15 Q. Now would ya say that those images are fair and accurate
16 representations of of [REDACTED] from those various angles?

17 A. Yes, sir.

18 MR. TOOKER: Okay, at this point, Your Honor, State wants
19 to move, uh, State's 1, 2 and 3 into evidence and publish to
20 the jury.

21 MR. CANTRELL: No objection, Your Honor.

22 THE COURT: Okay.

23 (State's Exhibit Nos. 1, 2 and 3, photographs, admitted
24 into evidence.)

25 BY MR. CANTRELL:

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, so which a these three pictures I guess best best
2 depicts the angle that you've sorta approached by?

3 A. All of them. I park back in the middle, the mailboxes
4 are over here (indicating) in this picture, I parked over here
5 (indicating) so I approached from this (indicating) way, uh,
6 this (indicating) woulda been my view from the right along,
7 I'm not quite sure how to do the numbers on this, on this one,
8 that was an approach from the right and the same with this,
9 other two are approaches from the right as to where 186 would
10 be on the left.

11 Q. Okay, now you said, uh, two of the the black males you
12 observed were were closer to the door?

13 A. Yes, sir, they were right at the door.

14 Q. Okay, now again, uh, you said one is looking in the
15 peephole bangin', ---

16 A. Um-hum.

17 Q. --- and you said the other one is backed up against the
18 wall, if you don't mind for the jury, uh, I know this is gonna
19 be somewhat awkward, uh, but if you would come up off the
20 witness stand and just, uh, stand and we'll pretend, uh, this
21 (indicating) is the front door, that's (indicating) the the
22 hallway how that other individual was standing.

23 (Whereupon, the witness left the stand.)

24 A. The one with his back to the vinyl?

25 Q. Yes.

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 A. He was just kinda right here (indicating) fidgeting with
2 his belt, head turned to the door, maybe looked twice and
3 other than that he was focused on the door.

4 Q. Okay, and this is the front door right ---

5 A. This (indicating) ---

6 Q. --- here (indicating)?

7 A. --- is the door right here (indicating).

8 Q. Okay, alright, thank you, you can get back on the stand.

9 A. Thank you.

10 (Whereupon, the witness returned to the stand.)

11 Q. Did ya call anybody and let 'em know what was goin' on?

12 A. Yes, sir, I called Derek Mahaney as sometimes he returned
13 to the apartment as we still had most of our belongings
14 there.

15 Q. Okay, and and you were concerned for his well-being?

16 A. Yeah, he returned more fluently than the rest of us and
17 if that was gonna happen I didn't want him to be there.

18 Q. Okay, did ya get in touch with him?

19 A. Yes, sir.

20 Q. Okay. Now, uh, law enforcement's called of course ---

21 A. Um-hum.

22 Q. --- and what what's I guess you and Mr. Mahaney what did
23 you two do?

24 A. I had left immediately, I didn't feel comfortable, I was
25 returnin' back to meet with Whitaker. I had called my friend

ZEKE QUINN - DIRECT EXAMINATION BY MR. TOOKER

1 I was going to see to inform him of the situation that might
2 be occurring to my speculation based on what had happened, I
3 asked if he could look at them and possibly follow them to get
4 a ID on what they got into as far as a vehicle, uh, ---

5 Q. That you asked that of Mr. Mahaney.

6 A. I asked that of my friend I was gonna see.

7 Q. Okay.

8 A. I told Mahaney and he said he wanted to be involved as
9 well and he was gonna come and also try to ID the car.

10 Q. Okay, and did you go back and see Mr. Whitaker or did you
11 get up with Mr. Mahaney?

12 A. I went and met with Whitaker and then yet again I met
13 with Mahaney as well, I met with both of them.

14 Q. Okay, and what did you and Mr. Mahaney do?

15 A. We essentially got his truck. When the police had
16 arrived in the parking lot, we had a ID on the car already,
17 um, it was a 4-door silver Impala with very dark tinted
18 windows. We essentially informed the police of where their
19 car was, it had traveled to the other end of the parking lot.
20 As they went down there, we blocked off one a the exits in his
21 truck and as they followed them out and we notified them that
22 they were leaving they went on down the road, pulled them over
23 and we went to the gas station as well just to see if we could
24 possibly get an ID for future reference.

25 Q. Okay, and the car that you saw them pull over are you

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 confident that was the car that you saw those three
2 individuals get into?

3 A. Without a doubt.

4 Q. Okay.

5 MR. TOOKER: Alright, uh, no further questions, Your
6 Honor.

7 THE COURT: Any cross?

8 CROSS-EXAMINATION BY MR. CANTRELL:

9 Q. So you went to the driveway and blocked it?

10 A. There's two entrances, it's, uh, four buildings on one
11 corridor, two on the other.

12 Q. You went to the driveway and blocked it.

13 A. He did. I was not in the car, I met up with him at that
14 point.

15 Q. Okay.

16 A. I was already still the existence of the apartment
17 complex.

18 Q. So you were walking or were you driving?

19 A. I was walking, it's a small complex.

20 Q. So you were suspicious of what you saw.

21 A. Oh, yeah.

22 Q. Oh, yeah, very suspicious in other words.

23 A. I was scared.

24 Q. You were scared?

25 A. That's how suspicious I was, it caused fear..

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. And you called your friends, ---

2 A. Um-hum.

3 Q. --- did you call the police immediately?

4 A. Derek had immediately notified, I wanted to ensure their
5 safety and afterwards I called the police as well.

6 Q. You're scared, you're suspicious so you think anything's
7 up.

8 A. Uh, not quite in that manner and the demeanor. If they
9 were just knocking on the door, no but the demeanor and the
10 manner, yes.

11 Q. Okay, that's your perception of the demeanor and the
12 manner of ---

13 A. Yeah, it's just one's percep ---

14 Q. --- and you're, and you're scared and suspicious already,
15 right?

16 A. Not every day living no, in that ---

17 Q. That night.

18 A. --- situation yes, sir.

19 Q. You saw no crime committed, did ya?

20 A. Not at that moment, no.

21 Q. Did you see a crime committed there with these three
22 gentleman at this [REDACTED] [REDACTED]

23 A. No, sir, I just saw them at the door.

24 Q. Pardon me?

25 A. I just saw them outside of the door in suspicious

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 demeanor.

2 Q. You never saw them commit a crime that night, did you?

3 A. No, sir.

4 Q. Being suspicious, being scared, you still walked through
5 the parking lot, your friend still blocked the driveway which
6 could have created problems had they come that direction,
7 couldn't it?

8 A. The police were there with us so at that point I felt
9 safe.

10 Q. I've just gotta ask you why would you put yourself,
11 thrust yourself or your friend thrust yourself into a police
12 situation that you thought was suspicious and had you scared,
13 why would you put yourself in that position?

14 A. Psychological demeanor, calls to my roommate and
15 long-time friend from high school based on the first crime I
16 was willin' to help.

17 Q. What were ya gonna do to help?

18 A. Whatever the police needed.

19 Q. But remember you didn't see anything wrong, you didn't
20 see anything happen, did you?

21 A. No, sir, it was just suspicion.

22 Q. You and your friend you are, presume you're friends were
23 suspicious and scared also?

24 A. I don't know their personal demeanor, I just couldn't
25 give their emotions personally.

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Did you observe 'em?

2 A. I was just there for a brief moment, I was more focused
3 on the situation at hand out there.

4 Q. The situation at hand which meant you were gonna go block
5 'em and join in with the police.

6 A. I was just tryin' to assist the police and make sure they
7 didn't get away.

8 Q. Okay. Now let me back up, uh, how long had you been
9 living in that apartment?

10 A. Since the beginning of the school year. I moved in as
11 soon as leases opened up.

12 Q. Okay, and what month was that?

13 A. Probably July.

14 Q. So you had been in this apartment with these gentlemen
15 for since July?

16 A. With Mahaney and Whitaker, yes, Capo lived upstairs as
17 you spoke upon before.

18 Q. Okay. So two of the other three had been in that
19 apartment as long as you had.

20 A. Yes, sir.

21 Q. Okay. And I think you testified that your apartment was
22 the one that was destroyed the most.

23 A. Yes, sir.

24 Q. Uh, and you reported drugs taken from your apartment,
25 from your room.

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Just now yes, in the police report no.

2 Q. What other drugs were taken?

3 A. None.

4 Q. No other drugs were taken from anywhere within the
5 apartment?

6 A. I'm not sure if they had any personally, I didn't really
7 ask or go inside their rooms too often.

8 Q. But yours had drugs and yours was the apartment that was
9 torn up the most.

10 A. Indeed.

11 Q. Pardon me?

12 A. Indeed.

13 Q. And you I think testified that you got your call, uh, the
14 night of the first occasion somewhere between 8 and 11?

15 A. That's just a guess. It's been over two years to for an
16 exact time I can't remember.

17 Q. Okay, but ju -- you could narrow it down only to three
18 hours give or take a little bit?

19 A. That's a rough estimate, I couldn't really pinpoint it.

20 Q. Now did you say that, uh, how many a these gentlemen did
21 you say were wearin' hoodies?

22 A. They all had hoodies but you could visibly still see,
23 only one of 'em used was a zip hoodie all the way up.

24 Q. Okay, the other two just had hoodies but the hoods were
25 not up?

ZEKE QUINN - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Their hoods were up but they weren't coverin' like over,
2 hangin' over their face.

3 Q. I'm sorry, I think you said in addition to blockin' the
4 driveway, joinin' with the police there you drove down the
5 road and joined in at the stop of the vehicle too, is that
6 right?

7 A. I did not drive, I rode with Mahaney. I didn't have my
8 vehicle ---

9 Q. I'm sorry, you were in a vehicle and went down the
10 road ---

11 A. Yes, sir.

12 Q. --- to the, to the stop.

13 A. Indeed.

14 Q. Okay. While you were there this -- that location did you
15 notice any other silver cars, silver Impalas or anything pull
16 up ---

17 A. No, s ---

18 Q. --- to the store or stop or get gas or anything?

19 A. No, other than the gas station clerk and ourselves we
20 were the only one in the vicinity.

21 Q. No other car there?

22 A. Nope other than the police car.

23 Q. And you're as sure a that as you are all the rest of your
24 testimony.

25 A. Yes, sir.

ZEKE QUINN - REDIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, thank you.

2 THE COURT: Anything else?

3 MR. TOOKER: Uh, just briefly, sir.

4 REDIRECT EXAMINATION BY MR. TOOKER:

5 Q. Uh, Mr. Cantrell asked you a buncha questions about, uh,
6 'bout your suspicions, ---

7 A. Indeed.

8 Q. --- uh, you've been robbed a month before, ---

9 A. Indeed.

10 Q. --- uh, at that same location ---

11 A. Yes, sir.

12 Q. --- on a weeknight?

13 A. Yes, sir.

14 Q. Okay, and it's another weeknight ---

15 A. Yes, sir.

16 Q. --- and there are three African-Americans individuals
17 outside your apartment?

18 A. Um-hum.

19 Q. Okay, and you thought that they seemed suspicious based
20 on their demeanor.

21 A. Yeah.

22 Q. Alright, no further questions.

23 MR. CANTRELL: Your Honor, just one quick question.

24 RECROSS-EXAMINATION BY MR. CANTRELL:

25 Q. Mr. Quinn, do you think that made you hypersensitive?

ZEKE QUINN - RECROSS-EXAMINATION BY MR. CANTRELL

1 A. Um, explain that to me.

2 Q. Do you think your prior situation even though you weren't
3 present at the first, uh, incident, you think that made you
4 hypersensitive to this situation on the 3rd on this night?

5 A. I wouldn't say hypersensitive as more determined to find
6 the facts and answers of what had happened, it caused me to
7 question things, not be sensitive. I was seeking ---

8 Q. Oh, not sensitive, ---

9 A. --- knowledge.

10 Q. --- you were determined.

11 A. Uh, I wouldn't say determined either, more
12 knowledgeable.

13 Q. Well you just did.

14 A. Yeah, I wanted to find knowledge. You're tryin' to
15 construe my word of determine there.

16 Q. No, sir, I'm just asking you what you meant when you said
17 determine.

18 A. Determined to seek the knowledge and answers of what had
19 happened on the previous one.

20 Q. That was your thought process in your head.

21 A. Indeed.

22 Q. Thoughts, thank you.

23 THE COURT: Alright, thank you can step down.

24 THE WITNESS: Thank you, sir.

25 (Whereupon, the witness left the stand.)

ZEKE QUINN - RECROSS-EXAMINATION BY MR. CANTRELL

1 MR. TOOKER: Your Honor, may Mr. Quinn be excused?

2 THE COURT: Yep. How ya'll doing? Anybody need a break?

3 UNIDENTIFIED JUROR: (Nodded in the affirmative.)

4 UNIDENTIFIED JUROR: What time is it?

5 THE COURT: 3:15, do ya need to take a short break?

6 THE BAILIFF: Yeah, they need a break.

7 THE COURT: Okay, let's take a short break. Don't talk
8 about the case.

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

11 THE BAILIFF: Door's closed.

12 THE COURT: Okay.

13 (Whereupon, a recess was taken.)

14 THE COURT: Alright, ya'll ready?

15 MR. TOOKER: Yes, sir.

16 THE COURT: Okay.

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

18 THE COURT: Alright, call your next witness.

19 MR. TOOKER: Thank Your Honor. State calls Derek
20 Mahaney.

21 (Whereupon, the witness came forward.)

22 DEREK MAHANEY, having been first
23 duly sworn, testified as follows:

24 THE CLERK: Have a seat and state your name for the
25 record, please.

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

1 THE WITNESS: Derek Mahaney.

2 DIRECT EXAMINATION BY MR. TOOKER:

3 Q. How ya doin', Mr. Mahaney?

4 A. Alright, how are you?

5 Q. Well. Alright, where, uh, where you from?

6 A. Greenville, South Carolina.

7 Q. Okay, where ya live right now?

8 A. Central, South Carolina.

9 Q. Okay, and you know why you're here today?

10 A. I do.

11 Q. Okay. In 2011 back in February where were you guys
12 livin'?

13 A. [REDACTED]

14 Q. Okay, in Central, South Carolina?

15 A. Yeah.

16 Q. Alright, and, uh, and we've heard testimony but what is
17 it you remember about when ya'lls residence was, uh, I guess
18 robbed and burglarized February 3rd?

19 A. I remember gettin' a phone call from Zeke and I was on my
20 way home from work, I was about fifteen minutes away, by that
21 time I worked in Greenville so 'bout a 45-minute drive, uh, he
22 called me and said the place had been broken into. I mean, I
23 get there and I see Kyle and he's frantic, you know, he's like
24 shaking, can't even talk, uh, go in my room, room's trashed, a
25 laptop was taken, TV, iPod, iPod player, laundry basket, a

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

1 bottle of cologne, pretty much it.

2 Q. And and after that happened, uh, what did you guys do as
3 roommates?

4 A. With what?

5 Q. Wha'd ya'll do as roommates? Did ya'll stay in that
6 location or did you move?

7 A. Uh, after that we moved to a, they had a officer in a
8 3-story place and they were waitin' for him to move out so we
9 moved into a model home and we lived there for about a week
10 and then we moved into the 3-story place ---

11 Q. Okay.

12 A. --- in the UV.

13 Q. Alright. And you didn't hear or or know anything about
14 this case until March 8th?

15 A. Correct.

16 Q. Okay, on March 8th what happened?

17 A. On that day when we -- the time that I saw them at our
18 apartment?

19 Q. Yeah.

20 A. I get a phone call from Zeke, um, he says there's three
21 guys at our apartment, looks like they're tryin' to rob us
22 again so I get in my car, at that time I'm I'm at a friend's
23 house in the UV so I get in my car, uh, go to my building then
24 I drive by slowly, I see three guys up top, uh, one of 'em has
25 a half mask on, I see one of 'em like adjustin' his hood and

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

1 he had long dreads and they were shoulder length and then I
2 see another one tryin' to look into the window, uh, knockin'
3 on the window.

4 Q. What what are the ethnicity of these three individuals?

5 A. They were all African-American.

6 Q. Okay, alright, continue please.

7 A. So I drive around my building and then when I drive
8 around I see one a the guys with a half mask on, he, uh, looks
9 over at my truck, when I'm drivin' by I'm lookin' up, I can
10 see him like lookin' down at me so then I circle the building
11 then, uh, think at that time I already called, uh, police so
12 then I get my truck go to the second entrance, park there so I
13 could still see my building and next thing I know I see, uh,
14 Peppers coming by and ---

15 Q. And by Peppers who do ya mean?

16 A. Officer Peppers.

17 Q. Okay, with the Central Police Department?

18 A. Yeah.

19 Q. Alright, so ya see him comin' by then what ---

20 A. Yeah.

21 Q. --- happens?

22 A. And he parks at the office aside of where our building
23 was and he gets out and he's lookin' around and then I see
24 three African Americans get into a silver Impala, start it
25 up ---

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

- 1 Q. Now the three people you saw get into that Impala they
2 match what you saw ---
- 3 A. Yeah, it was ---
- 4 Q. --- on your balcony?
- 5 A. --- the same guys, yeah.
- 6 Q. It was the same guys.
- 7 A. Yeah.
- 8 Q. How confident are you in that?
- 9 A. Hundred percent, ---
- 10 Q. Okay.
- 11 A. --- all dressed in black and you could still see where
12 they were.
- 13 Q. Dressed in black, ---
- 14 A. Parkin' lot's pretty -- yeah ---
- 15 Q. --- hoodies?
- 16 A. Yeah, they had hoodie.
- 17 Q. Did the guy with the half mask still have that on or
18 no?
- 19 A. That I'm not sure of.
- 20 Q. Okay.
- 21 A. So I see them get in the car, um, they waited a while and
22 then Officer Peppers goes by the middle and then you see them
23 put the car in reverse and they start to leave and then see
24 Peppers run to his car put it in reverse and then chase after
25 them and then later he pulls 'em over at the gas station and

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

1 we drive by later to see the three guys.

2 Q. Okay, now now the car that you saw pulled over at the gas
3 station ---

4 A. Um-hum.

5 Q. --- or, I mean, is that the same car that you saw these
6 guys get ---

7 A. Yeah, ---

8 Q. --- into?

9 A. --- same car, dark tint silver Impala.

10 Q. Okay, and you said it was a guy with dreads and then a
11 couple other black males?

12 A. Yeah, two others.

13 Q. Okay, uh, how's --

14 A. I noticed the one who had dreads 'cuz you could see him
15 when he was adjustin' his hood I saw long hair from when I was
16 pullin' in when I was lookin' up at the second floor.

17 Q. Okay. And, I mean, you say you see Peppers go to pull
18 him over?

19 A. Yeah.

20 Q. Okay, did ya actually see Peppers pull him over?

21 A. No, at that point I saw Peppers shoot in reverse and then
22 probly at that time we were at the red light right next to
23 where the, uh, UV is and so I I guess he got to the red light
24 and he saw the tail lights, I mean, of course the closest car
25 and I guess he took a right and pulled him over.

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

- 1 Q. Okay, and then ya'll drove by immediately after ---
- 2 A. Right after ---
- 3 Q. --- that?
- 4 A. --- yeah.
- 5 Q. And were the guys outta the car yet or were they still in
- 6 the car when ya'll drove by?
- 7 A. We drove by, we parked at a gas station, they're already
- 8 outta the car.
- 9 Q. Okay, and the guys that you saw outta the car do they
- 10 match the description of the guys ---
- 11 A. Same guys, ---
- 12 Q. --- you saw ---
- 13 A. --- um-hum.
- 14 Q. Alright, how confident are ya a that?
- 15 A. Hundred percent.
- 16 Q. Okay. Uh, okay, and I'm gonna show you what's been
- 17 entered as State's 3, which apartment there in that picture
- 18 is, uh, [REDACTED]
- 19 A. Right here (indicating).
- 20 Q. Right there?
- 21 A. There (indicating).
- 22 Q. So if you're approachin' the entryway, it be on your
- 23 left?
- 24 A. Um-hum, correct.
- 25 Q. It's on the second floor?

DEREK MAHANEY - DIRECT EXAMINATION BY MR. TOOKER

1 A. Second floor.

2 Q. Okay. How confident are ya in, uh, your tellin' of the
3 facts that you just told the jury?

4 MR. CANTRELL: Your Honor, I object, he ---

5 THE COURT: Yeah, you can't ---

6 Q. Okay. Is there anything else that you remember from
7 either the first incident or the second incident that ya
8 haven't told the jury?

9 A. I mean, that's all that I remember, then I mean to add to
10 that when we lived in our new place Kyle, I mean, he just, he
11 never came out of his room, nothin', like he'd always stay in
12 his room, always like just played video games in his room,
13 scared to even come out. I remember one night, uh, he even
14 knocked on my door and it was probly like two o'clock in the
15 mornin', we had exams, studyin' for exams, he knocks on my
16 door, he's like, Man, I just can't like take this anymore,
17 like I feel like I'm hearin' stuff, I can't sleep, nothin', I
18 mean, we'll tell him he needs to go see a doctor, he's like, I
19 don't have money for that, he's like I think I need to get
20 outta school, I think I need to go back home and get outta
21 this town, whatever so...

22 Q. So he was very much affected by ---

23 A. Yeah.

24 Q. --- by what had happened, okay. No further questions.

25 THE COURT: Cross?

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 CROSS-EXAMINATION BY MR. CANTRELL:

2 Q. Mr. Mahaney, as far as the, uh, February incident, you
3 were not around at the time that took place?

4 A. No, sir.

5 Q. Okay. And, uh, would you acknowledge that Mr. Quinn's
6 room was the one that was most trashed ---

7 A. Yes, sir.

8 Q. --- at that time? Was there anything else taken from
9 your room other than what you listed for the police that
10 night?

11 A. That's all that I know of.

12 Q. Okay, that's all that was taken?

13 A. Yes, sir.

14 Q. Now on the March 9th incident, uh, and did you say the
15 [REDACTED] is on the second floor?

16 A. Yes, sir.

17 Q. Okay, that's where these individuals would be?

18 A. Yes.

19 Q. Alright, now if you can, point out for me where they
20 woulda been in reference to that picture.

21 A. One of 'em was at this (indicating) window, one was at
22 the door and one was closer to the railing.

23 Q. Okay, so they were all three right there at the door?

24 A. Yeah, and then when I pulled around on the other side one
25 of 'em walked over there and looked down at me.

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Can you give us an estimate as to how much floor space
2 there is in that little area right there (indicating)? Is it
3 bigger than this box you're sitting in or about that same size
4 or ---

5 A. Well I mean, it's probly a little bit bigger.

6 Q. So you had three individuals all in that one area there
7 which means they were all at the front door, not spread out or
8 scattered around on the, on the porch or the deck or anything,
9 they were all there together at the door.

10 A. Um-hum. Yes, sir, one at the window, door and then
11 rail, ---

12 Q. Okay.

13 A. --- pretty much together.

14 Q. And quite frankly if that area is not a whole lot bigger
15 than this (indicating), that's the only way they coulda been
16 configured: One near the window over there (indicating), one
17 near the door and one right here (indicating) if they were all
18 standing there, uh, while one of 'em was knocking on the door.

19 A. Yes.

20 Q. They couldn't, if they were gonna be together, they all
21 would have to be in that area in those positions, right?

22 A. Um-hum.

23 Q. So nothing suspicious about that, is there? If three
24 individuals came to visit somebody in any of these apartments,
25 they would be standing more or less in that same area,

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 right?

2 A. I mean, suspicious that they're wearin' hoods, one with
3 half a mask, one tryin' to look in through a window keep
4 knockin' on the door.

5 Q. Nothing suspicious about them standing in that, that way.

6 A. I guess standing no ---

7 Q. Okay.

8 A. --- but the way they're acting, yes.

9 Q. But that's because, is it not, you had just been robbed
10 five weeks earlier so anything woulda been suspicious with
11 somebody standin' around your old apartment or anywhere near
12 your old apartment, wouldn't it?

13 A. Pretty much ---

14 Q. Okay.

15 A. --- but what would give 'em a reason to look through the
16 window try to see in someone's room?

17 Q. Okay, if you knock on a door thinkin' someone's there and
18 they don't answer, would you look through the window to see if
19 maybe someone's around?

20 A. Not if I didn't know 'em.

21 Q. Pardon me?

22 A. Not if I didn't know 'em.

23 Q. Okay. Now is this -- what time a day was this?

24 A. Uh, the nighttime, probly around ten o'clock, 11.

25 Q. Okay, and can you point out to us where the lighting is

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

- 1 for that area right there (indicating), ---
- 2 A. See ---
- 3 Q. --- do you know?
- 4 A. --- there's a light right there (indicating) right above
- 5 the door and there's one right in the hallway.
- 6 Q. How far down the hallway?
- 7 A. Uh, probly middle.
- 8 Q. And would you say that hall -- hallway is 25, 30 feet
- 9 long?
- 10 A. Yeah, ---
- 11 Q. Okay.
- 12 A. --- it's pretty well lit at night.
- 13 Q. With just one light there?
- 14 A. Uh, one light then one at the door ---
- 15 Q. One at the door. Now was anyone living in that apartment
- 16 at that time?
- 17 A. I still had my stuff there, just cause of work and school
- 18 I'd been too busy to move it ---
- 19 Q. Okay.
- 20 A. --- so I was the only one who still had my mattress
- 21 there, I planned on movin' it couple days after that
- 22 happened ---
- 23 Q. So that means no one else was living there, ---
- 24 A. No.
- 25 Q. --- you still had a key to it.

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Correct.

2 Q. And were you the one that left the light or are you sure
3 the light was on?

4 A. The light stays on.

5 Q. Is that that's automatic, it will never go off?

6 A. Never goes off.

7 Q. Okay. And you were able to provide the description of
8 these three individuals, now let me ask you how far were you,
9 where were you, you may have already answered this, where were
10 you parked, uh, ---

11 A. I can't really show you on ---

12 Q. Is the parking lot out this (indicating) way away from
13 the building?

14 A. It's towards this (indicating) way so if I'm lookin' at
15 it, these are the only ones I can see, I cannot see any over
16 here (indicating).

17 Q. So were you over in this (indicating) direction?

18 A. Correct.

19 Q. How far? How many feet away would you have been?

20 A. Uh, probly 50 feet.

21 Q. Now is this (indicating) picture taken from the sidewalk
22 or the parking lot?

23 A. That one is from the sidewalk so I was a little bit
24 farther back in the ---

25 Q. Now were ---

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 A. --- parking lot.

2 Q. --- you parked against the sidewalk, are you another row
3 back, or how ---

4 A. I wasn't parked, I was drivin' by really slow.

5 Q. So you were in the road, not in the ---

6 A. Right.

7 Q. --- parking area.

8 A. Correct.

9 Q. So you woulda been maybe twice this (indicating) far away
10 from that, from ---

11 A. I won't say twice as far, just a little bit farther away.

12 Q. So we are sayin' this (indicating) is the sidewalk or is
13 there parking there next to the ---

14 A. Yes, ---

15 Q. --- sidewalk?

16 A. --- yeah.

17 Q. So there would be the sidewalk, then the parking spaces
18 and ---

19 A. Um-hum.

20 Q. --- then the lane you were traveling in.

21 A. Correct.

22 Q. And you were in a moving vehicle and you looked up and
23 saw three individuals right there (indicating), ---

24 A. Correct.

25 Q. --- is that right? Did you keep going or did you, uh,

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 I'm sorry, let me ask about this. What is this a picture of?

2 A. Uh, that's where the parking lot is and that's where you
3 could drive by.

4 Q. Okay, is the a -- is that apartment shown on here
5 (indicating)?

6 A. Yes, this one right here (indicating).

7 Q. Okay, so you woulda been out a little bit further from
8 this vehicle looking up there (indicating) ---

9 A. Correct.

10 Q. --- at ten or eleven o'clock at night and from this
11 (indicating) angle I'm assuming that post was was in your way
12 just like it is in this picture, ---

13 A. Uh, ---

14 Q. --- your line a view?

15 A. --- the way ya drive you could actually see everything
16 that you could see past the post the way I was drivin'.

17 Q. But by drivin' you'll be gettin' further away from the
18 apartment also ---

19 A. I was driving towards it.

20 Q. Driving this (indicating) way?

21 A. Correct.

22 Q. So you're driving in this (indicating) direction looking
23 at that apartment, ---

24 A. Correct.

25 Q. --- at ten o'clock at night ---

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Yes.

2 Q. --- and that's how you made your identification or your
3 descrip -- or determined your description of these
4 individuals.

5 A. Yep.

6 Q. Are you the one that saw them knocking on the door?

7 A. I am -- well ---

8 Q. And ---

9 A. --- Zeke's the one who originally saw 'em but then, I
10 mean, even when I got there they're still knockin' on the door
11 and tryin' to look through a window.

12 Q. And did anyone come to the door?

13 A. No, 'cuz no one was home.

14 Q. Did you see them leave that area?

15 A. To go downstairs?

16 Q. Did they leave the door? Did they leave from the area of
17 the door?

18 A. Uh, no, they did not. They stayed there then when I
19 circled around I saw one of 'em that had the half mask on he
20 looked over at me and I still circled around and went to the
21 second entrance.

22 Q. Did they leave at that point or did you -- do you know
23 when they left?

24 A. They left a little bit after I got to the second entrance
25 is when I saw 'em get into the car. At that point I didn't

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 know what kinda car they they had and then I see the Impala
2 and I see them get into it, start it up.

3 Q. Now was their car parked in that parking area where you
4 were driving the first time?

5 A. Yes.

6 Q. Okay.

7 A. If I was the dri -- it woulda been to my left ---

8 Q. Okay.

9 A. --- is where his car was, closer to our road.

10 Q. So ya drive by, you've been put on alert by Zeke, you see
11 them that way, you go around the building and come back and
12 see one of 'em still on the second floor or coming down the
13 steps?

14 A. Still on the second floor.

15 Q. Okay, and it was a moment or two after that that they
16 left?

17 A. Correct. Well they stayed there I guess they went to
18 their car and stayed in there for a little bit 'cuz took, I
19 mean, Officer Peppers got there couple minutes after I called
20 and he was lookin' around and then that's when they left.

21 Q. So your testimony is you saw from whatever vantage point
22 you saw they're knocking on the door, you drove around, they
23 have not left yet and then a moment or two later they go and
24 get in their car.

25 A. Correct.

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. And they didn't just tear outta the place, they didn't
2 leave immediately, ---

3 A. Drove ---

4 Q. --- they stayed ---

5 A. --- very slowly, ---

6 Q. --- in the car.

7 A. --- went to the stop sign, did a complete stop and
8 obviously they're not gonna try to break any rules.

9 Q. Pardon me?

10 A. Obviously they're not gonna try to run a stop sign or
11 break any rules or speed outta there cause suspicious.

12 Q. Now that's, I don't know how many times both you and Zeke
13 have talked about how you were so suspicious, you're kind of
14 implying some things, you're transferring some things to these
15 people, the simple fact of the matter is they drove up and
16 stopped at a stop sign, is that correct, ---

17 A. Yeah.

18 Q. --- and then they pulled out and left legally.

19 A. Correct.

20 Q. You never saw a criminal offense take place.

21 A. While driving no.

22 Q. While at the door did you ---

23 A. No.

24 Q. --- see a criminal offense take place?

25 A. No.

DEREK MAHANEY - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. While on that apartment property did you see a criminal
2 offense take place?

3 A. No.

4 Q. Tell me about this mask you thought you saw, a half mask
5 did you say or what was it?

6 A. Half mask.

7 Q. Okay, show me how it was worn or how it was used.

8 A. I mean, it was either a half mask or a half hoodie, it
9 looked like it ---

10 Q. So ---

11 A. --- was under his hoodie.

12 Q. --- so now you don't know, you, it was either the hoodie
13 or the mask.

14 A. I mean, it was a mask but it still could be sumtin'
15 that's, I mean, they have hoodies where it has cloth
16 underneath and you can pull it up.

17 Q. You don't know what you saw?

18 A. I mean, it was a mask.

19 Q. Not part of the hoodie?

20 A. No.

21 Q. You're sure of that now.

22 A. Pretty sure.

23 Q. You remember the temperature at ten o'clock at night on
24 March the 8th?

25 A. I don't remember what I was wearin'.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Do you remember the temperature that night?

2 A. Can't remember the temperature.

3 Q. And your testimony also is that all three individuals had
4 on black, solid black hoodies ---

5 A. Yes.

6 Q. --- is that what you're testifying to?

7 MR. CANTRELL: No further questions, Your Honor.

8 THE COURT: Anything else?

9 MR. TOOKER: Nothin' from the State, sir.

10 THE COURT: Alright, thank you can step down.

11 (Whereupon, the witness left the stand.)

12 MR. TOOKER: Uh, permission for Mr. Mahaney be excused.

13 Thank you.

14 THE COURT: Yes.

15 MR. TOOKER: State next calls Officer Kevin Peppers to
16 the stand.

17 (Whereupon, the witness came forward.)

18 KEVIN PEPPERS, having been
19 first duly sworn, testified as follows:

20 THE CLERK: Have a seat, state your name for the record,
21 please.

22 THE WITNESS: Kevin Peppers.

23 DIRECT EXAMINATION BY MR. TOOKER:

24 Q. Okay, Officer Peppers, where do you work, sir?

25 A. Central Police Department.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. And how long have you worked there?

2 A. Three years.

3 Q. Okay, and, uh, you know why you're here to testify
4 today?

5 A. Yes, sir.

6 Q. Alright, uh, were you workin' for the City of Central
7 Police Department back on February 3rd of 2011?

8 A. Yes, sir, I was.

9 Q. Okay, and were you dispatched that night?

10 A. I was.

11 Q. Where were you dispatched to?

12 A. [REDACTED], uh, reference to so -- we're
13 talkin' about February, correct?

14 Q. Yeah, February 3rd.

15 A. I apologize.

16 Q. Yeah.

17 A. Uh, ---

18 Q. You a little nervous?

19 A. Little bit.

20 Q. Okay, that's alright, just take your time.

21 A. Uh, dispatched to [REDACTED] in reference to
22 a break-in that already occurred, uh, dispatch did advise us
23 to use caution due to verbal threats that had been made to the
24 victim, uh, of the apartment. Uh, myself and Officer Grant
25 led me over to the apartment, spoke with Mr. Whitaker.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, and after you spoke with Mr. Whitaker, uh, who were
2 ya lookin' for, what was the description of the parties you
3 were lookin' for?

4 A. Uh, the only description he was given was just a, uh, a
5 black male that had a mask.

6 Q. Okay, and after that occurred who'd you next contact?

7 A. After everything was done with the apartment a report was
8 done as, uh, Detective Justice was notified.

9 Q. Okay, and a buncha pictures been introduced to -- into
10 evidence on that case, were there pictures taken at the scene?

11 A. Yes, sir, there was.

12 Q. Okay, and, uh, and at the scene if you would just briefly
13 for the purpose of the jury, uh, describe what you saw.

14 A. Chaos, uh, rooms turned, gone through each by bit, by
15 bit, every room, uh, one of course more destroyed than the
16 others, just about it.

17 Q. Okay, and, uh, and I meant to ask this too [REDACTED] in
18 [REDACTED] [REDACTED] is that in Pickens County, South
19 Carolina?

20 A. Correct, yes, sir, it is.

21 Q. Okay, and did you meet with all the victims or just
22 Mr. Whitaker?

23 A. Uh, Mr. Whitaker was first contact and then all victims
24 did come to, uh, the apartment kinda simultaneously after.

25 Q. Okay, and did you get statements and everything from

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 those guys?

2 A. They were collected, yes.

3 Q. Okay. Now, uh, I guess your next involvement in this
4 case was that on 3/8/2011?

5 A. That's correct.

6 Q. Okay, and on 3/8/2011 what were you dispatched to respond
7 to?

8 A. On 3/8/2011 I was dispatched to three suspicious black
9 males wearing all black clothing -- correction all dark
10 clothing, uh, in the vicinity of [REDACTED] Um,
11 while going to the, uh, apartment complex I notified Clemson
12 cu -- because I was the only officer working that night have
13 another unit, uh, dispatched with me, I requested a Clemson
14 unit due to this, uh, availability, they're in closed, uh,
15 once on scene I did, I did, uh, I did exit my vehicle and
16 start a foot patrol of the area near [REDACTED]. Uh, my approach to
17 the, to the buildin' was to the side of [REDACTED]. Once I exited my
18 vehicle I walked the sidewalk and was approached by a, I still
19 don't know who he is, but it was an unknown male who, uh,
20 advised me that there were three black males in dark clothing
21 that had just ran through the adjacent buildin' into a silver
22 Impala, uh, at that time I then looked up to the corner and
23 saw the silver in color Impala, I then retreated back to my
24 vehicle and, uh, advised the Clemson unit of what I was
25 advised and what I saw and myself along with the Clemson unit,

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Clemson unit was of course closer, he then followed in behind
2 the vehicle, I then proceeded out and behind the Clemson unit
3 at which point I I observed both vehicles, being the silver
4 Impala and the Clemson unit, take a right onto Highway 93.
5 Uh, once I was able to maneuver my way to the front of the
6 Clemson unit I performed a traffic stop in the area by the
7 Dollar General with the vehicle being a silver in color
8 Impala. Uh, reason for the traffic stop was, ya know, a an
9 investigative stop just because of my previous knowledge
10 of ---

11 Q. I'm I'm gonna stop ya there. Uh, why is it that you
12 initiated a stop as opposed to the Clemson officer?

13 A. Jurisdiction.

14 Q. Okay, and what does that mean just for the purpose of the
15 jury?

16 A. Uh, jurisdictional boundary just basically means, uh, I
17 have a certain area that I can go to, he had a certain area
18 that he can go to. Uh, by us being neighboring departments,
19 uh, there is that, there is a what they call a "mutual aid
20 agreement" in which they can come and assist if we need it and
21 we can do the same with them, uh, ---

22 Q. Okay, and so you called him when you respond to the scene
23 initially ---

24 A. Correct.

25 Q. --- sayin' I might need some backup.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes.

2 Q. Okay, and then he gets behind the Impala soon as it pulls
3 out?

4 A. Yes.

5 Q. Okay, and that's how you were able to find them?

6 A. Uh, no, sir, as soon as, uh, I saw the vehicle,
7 physically saw a silver Impala, I watched it, I advised the
8 Clemson unit which was, it's hard to describe, the nose a his
9 vehicle was easier to exit than mine, I had to reverse and
10 then turn around and get out, uh, so he was able to fall in
11 behind the vehicle in which I described to him.

12 Q. Okay, and after, uh, I guess you you initiated that stop,
13 uh, who'd ya find out was drivin' that car?

14 A. Uh, D'Andre Draper.

15 Q. Okay, D'Andre Draper. Who'd the car belong to?

16 A. I wanna say his mother.

17 Q. Okay, were there other individuals in the car?

18 A. There was.

19 Q. Who were, who were in the car also?

20 A. There was, uh, Mr. Morris, he was in the front passenger
21 seat along with Mr. Cade who was in the back rear behind the
22 pi -- uh, driver backseat.

23 Q. Okay. And who is Mr. Cade?

24 A. To my knowledge I believe Mr. Cade is Mr. Morris's
25 brother.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, um, and when I say who he is what what is his first
2 name?

3 A. I ---

4 Q. Uh, ---

5 A. --- can't recall.

6 Q. --- is it Ernest, does that sound right?

7 A. Ernest, yes sir.

8 Q. Okay, and, uh, and so you initiate a stop on that car and
9 and Mr. Draper is the one who's drivin', do ya speak to
10 Mr. Draper?

11 A. I do.

12 Q. Okay, and do you ask him to search the vehicle?

13 A. Uh, well upon my approach to the vehicle notice the
14 driver, I spoke with him, asked for his driver's license,
15 registration. While speaking with him, uh, the Clemson
16 officer of course is on the passenger side has a flashlight
17 inside the vehicle, uh, I look down and I see Mr. Morris of
18 course sittin' in the passenger side, I see a box of gloves in
19 between his, uh, legs at which time I asked him to step outta
20 the vehicle, he, Mr., uh, Draper, did so, uh, we spoke for a
21 little bit and I asked Mr. Draper if there was anything inside
22 the vehicle that shouldn't be there, he said, No, I asked him
23 for consent to search the vehicle he said, Yes, that's fine.
24 Q. Okay, and at that point did you search the vehicle?
25 A. I did.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, and when you searched the vehicle what did you
2 find?

3 A. Upon a search of the vehicle two guns were collected, a
4 silver in color handgun along with a I believe to be a TEC-9.

5 Q. Okay, what color was that kinda gun?

6 A. It was black and green, ---

7 Q. Alright.

8 A. --- along with gloves. Under my assumption at the time I
9 believe they were latex gloves, uh, to my knowledge that's
10 what I thought they were.

11 Q. Okay, and where were those items found in the car?

12 A. They were found at the rear passenger compartment behind
13 the passenger seat.

14 Q. Behind Mr. Morris's seat?

15 A. Correct.

16 Q. Okay, where was Mr. Cade sittin' in the car?

17 A. Behind the driver seat.

18 Q. Okay, and were those items contained in any sort of, uh,
19 luggage item or in a ---

20 A. They were ---

21 Q. --- a case?

22 A. --- in a backpack.

23 Q. They were in a backpack.

24 A. Yes.

25 Q. Okay, and in just, uh, one moment I'm gonna ask ya to

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 take a look at some pictures. Alright, I'm gonna show you
2 what's been marked as State's 65, 66, 67, 68, 69, 70, 71, 72,
3 73 and 74, would you take a moment and just look at all of
4 these images, please.

5 (Whereupon, the witness complied.)

6 Q. Okay, ya look at all those?

7 A. Yes.

8 Q. Uh, now those images what are those pictures of?

9 A. Uh, these images are the items in which was located in
10 the vehicle of the stop ---

11 Q. Okay, so the two guns and the gloves and the masks and
12 the backpack?

13 A. Yes, sir.

14 Q. Okay, would you say those images are fair and accurate
15 representations a what you found that night ---

16 A. Yes, sir.

17 Q. --- and the condition they were in that night?

18 A. Yes.

19 MR. TOOKER: Okay, at this point, Your Honor, State wants
20 to move believe what has been marked as State's 65 through 74
21 into evidence and publish to the jury.

22 MR. CANTRELL: No objection, Your Honor.

23 THE COURT: Alright.

24 (State's Exhibit Nos. 65, 66, 67, 68, 69, 70, 71, 72, 73,
25 and 74, photographs, admitted into evidence.)

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

- 1 BY MR. TOOKER:
- 2 Q. Alright, so what we got here State's 65 that's the
- 3 backpack as you found it?
- 4 A. Yes.
- 5 Q. Okay, and State's 66 that also is is that backpack?
- 6 A. Correct.
- 7 Q. Alright, now when you opened it up State's 67, is is this
- 8 (indicating) what you found?
- 9 A. Yes.
- 10 Q. Okay, now now what are we lookin' at here? What are
- 11 these items, you'll just point it out to the jury?
- 12 A. This item here (indicating) is a hooded mask, uh, this
- 13 here's (indicating) a silver in color or chrome, uh, handgun
- 14 and this here (indicating) is the handgun as well.
- 15 Q. Now is that how those items were stuffed into that
- 16 backpack in this ---
- 17 A. Yes, inside ---
- 18 Q. --- picture?
- 19 A. --- the backpack yes, sir.
- 20 Q. Okay. Now State's 68, 69 and 70 ---
- 21 A. Right.
- 22 Q. --- these are just more pictures of the weapons found?
- 23 A. Correct.
- 24 Q. Okay. Now, uh, on State's 70 if ya look at that now
- 25 what's significant about that aspect of that image?

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 A. Uh, in this area here (indicating) is where a serial
2 number is normally found, uh, course a close look upon it
3 it's, uh, filed, obliterated -- obliterated, ---

4 Q. Okay.

5 A. --- it's gone.

6 Q. --- so serial number's gone and that's on that that shiny
7 silver handgun?

8 A. Yes, sir.

9 Q. What kinda gun is that?

10 A. That's a .380.

11 Q. And what about that big gun?

12 A. Again, I believe to be a TEC-9.

13 Q. Okay. And now I'm gonna show you what's been marked as
14 State's 71, 72, yeah 71 and 72, uh, what are these
15 (indicating) items?

16 A. Uh, top item here (indicating) is a, is a top view of a,
17 uh, magazine for the .380, this item here (indicating) along
18 with the other two are a box of vinyl gloves and one in
19 particular glove which was located.

20 Q. Now you mentioned a box of vinyl gloves, is that the box
21 of vinyl gloves that you found between the defendant
22 Mr. Morris's legs?

23 A. Yes, sir.

24 Q. Okay, and finally I'm showing you what's been marked as
25 State's 73 and 74, what is the significance of these two

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 images in 73?

2 A. Uh, top image is a front view of the pullover mask, the
3 bottom image is, uh, this here's (indicating) a pin and, uh,
4 down the barrel of the .380 is mud, dirt, um, some ---

5 Q. Okay.

6 A. --- sorta item blocking the barrel.

7 Q. Okay, and and dried out?

8 A. Yes, sir.

9 Q. Alright. Uh, now you keep track all the evidence now
10 down at at Central, right?

11 A. Correct.

12 Q. That gun is it still, uh, about in that shape?

13 A. Yes.

14 (Whereupon, a discussion was held off the record.)

15 MR. TOOKER: Uh, and, Your Honor, at this point the State
16 would request, uh, while the court reporter is marking these
17 exhibits, uh, that Your Honor I guess just charge the jury
18 with regards to to guns in the courtroom.

19 THE COURT: Let's let her do her job.

20 MR. TOOKER: Okay.

21 (Guns marked State's Exhibit Nos. 105 and 106 for
22 identification.)

23 COURT REPORTER: I'm done. I'm done.

24 MR. TOOKER: Oh, wonderful.

25 THE COURT: What kinda charges do you want?

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 MR. TOOKER: Uh, well and I would hate to to presuppose
2 anything, uh, but the last time I've had them in here, uh,
3 there's just general instruction as to, uh, that they are
4 locked and that we keep them locked and ---

5 THE COURT: Okay, well that's just for everybody's
6 protection. We have a court order that guns of course you can
7 imagine other than those guns held by officers in their duty,
8 uh, anything that's evidence in a case is now being locked so
9 you can't use it. Okay, thank you.

10 BY MR. TOOKER:

11 Q. Alright, I'm gonna show you what's been marked as State's
12 105 and 106, do you recognize those items?

13 A. I do.

14 Q. Okay, are those items firearms?

15 A. Yes, sir, they are.

16 Q. Okay, uh, are they properly locked?

17 A. Yes, sir, they are.

18 Q. How they got looked?

19 A. I did it myself.

20 Q. How did you do that?

21 A. Uh, with gun safety locks.

22 Q. Okay, and, uh, when'd you put those on? recently or a
23 while back?

24 A. They have always been locked, the cables have just been
25 recently added.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, was that at the request of the solicitor's
2 office?

3 A. Yes, sir.

4 Q. Okay.

5 (Whereupon, a discussion was held off the record.)

6 MR. TOOKER: Uh, at this point, Your Honor, the State
7 would like to move State's 104 [sic] and 105 into evidence.

8 MR. CANTRELL: No objection.

9 THE COURT: Okay.

10 (State's Exhibit No. 105 and No. 106, guns, admitted into
11 evidence.)

12 (Magazine for the .380 marked State's Exhibit No. 107 for
13 identification.)

14 BY MR. TOOKER:

15 Q. I'm gonna show you what's been marked as State's 107, you
16 recognize that item?

17 A. Yes, sir, I do.

18 Q. Alright, what's that?

19 A. This is a magazine for the .380.

20 Q. Okay, uh, is that the magazine for the .380 in this case?

21 A. Yes.

22 MR. TOOKER: Okay, at this point, Your Honor, State wants
23 to move State's 107 into evidence.

24 MR. CANTRELL: No objection, Your Honor.

25 THE COURT: Okay

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 (State's Exhibit No. 107, magazine for the .380, admitted
2 into evidence.)

3 (Whereupon, a discussion was held off the record.)

4 BY MR. TOOKER:

5 Q. Now you mentioned a a black, uh, backpack, was that item
6 collected by you as well?

7 A. Yes, sir, it was.

8 Q. Okay, and that item was entered into evidence?

9 A. Yes.

10 (Brown bag with black backpack marked State's Exhibit
11 No. 108A for identification.)

12 Q. You recognize this (indicating) bag?

13 A. I do.

14 Q. How do you recognize this bag?

15 A. I'm the one who placed the book bag inside this brown
16 bag.

17 Q. Alright, and, uh, is that the book bag from the, from the
18 scene?

19 A. Correct.

20 MR. TOOKER: Alright, this point, Your Honor, the State
21 would like to move State's 108 into evidence.

22 MR. CANTRELL: No objection, Your Honor.

23 THE COURT: Okay.

24 (State's Exhibit No. 108A, brown bag with black backpack,
25 admitted into evidence.)

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 (Box of vinyl gloves marked State's Exhibit No. 109 for
2 identification.)

3 BY MR. TOOKER:

4 Q. And, I'm gonna show you what's been marked State's 109,
5 what is State's 109?

6 A. This is the box Insanity gloves, vinyl gloves.

7 Q. Okay, and it is the box a gloves from this incident?

8 A. Correct.

9 MR. TOOKER: State would like to move State's 109 into
10 evidence, Your Honor.

11 MR. CANTRELL: No objection.

12 (State's Exhibit No. 109, box of vinyl gloves, admitted
13 into evidence.)

14 (Black mask marked State's Exhibit No. 110 for
15 identification.)

16 BY MR. TOOKER:

17 Q. I'm gonna show you what's been marked as State's 110, you
18 know what's contained in that bag?

19 A. A black in color mask.

20 Q. Okay, the black in color mask seized, uh, durin' the
21 consent search?

22 A. Sorry?

23 Q. The black in color mask seized during your consent
24 search?

25 A. Correct.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 Q. Okay, and, uh, and on it there it says, "Passenger area
2 of floor of the Impala", you mean the back passenger area of
3 the floor of the ---

4 A. Yes.

5 Q. --- Impala?

6 MR. TOOKER: Okay, this point, Your Honor, State moves
7 State's 110 into evidence.

8 MR. CANTRELL: No objection, Your Honor.

9 THE COURT: Alright.

10 (State's Exhibit No. 110, black mask, admitted into
11 evidence.)

12 BY MR. TOOKER:

13 Q. I'm gonna show you what's been marked as State's 59, 60
14 and 61, uh, would you look at these pictures and tell the jury
15 who's depicted in each of those images.

16 A. Uh, Mr. Morris, Mr. Draper along with Mr. Cade.

17 Q. Alright, would you say that those images are fair and
18 accurate representations a how each a those guys looked on the
19 night that you encountered 'em on ---

20 A. Yeah.

21 Q. --- 3/8/11.

22 A. Yes, sir.

23 MR. TOOKER: Okay, a this point, Your Honor, State wants
24 to move those three images into evidence, publish to the jury.

25 MR. CANTRELL: No objection, Your Honor.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 THE COURT: Alright.

2 (State's Exhibit Nos. 59, 60 and 61, photographs,
3 admitted into evidence.)

4 BY MR. TOOKER:

5 Q. Okay, so you said Mr. Draper was the driver, is that
6 right?

7 A. Correct.

8 Q. Is No. 60 Mr. Draper?

9 A. Yes.

10 Q. Okay. Mr. Draper how would you I guess describe his
11 hair?

12 A. Long, dreads.

13 Q. Dreads?

14 A. Yes.

15 Q. Dreadlocks, okay. Now No. 59 is that defendant Morris?

16 A. Yes.

17 Q. Okay. And No. 61 is that Mr. Cade?

18 A. Correct.

19 Q. Now all three a those parties were inside the car?

20 A. Yes, sir.

21 Q. And the book bag you said was in the back behind
22 Mr. Morris's seat, ---

23 A. Correct.

24 Q. --- uh, I guess in the same passenger compartment as
25 Mr. Cade was located.

KEVIN PEPPERS - DIRECT EXAMINATION BY MR. TOOKER

1 A. Yes.

2 Q. And Mr. Draper was drivin' the vehicle at the time?

3 A. Yes, sir.

4 Q. Okay. One moment, Your Honor. When, uh, when ya
5 encountered these parties, uh, did you have occasion to read
6 them their rights?

7 A. Did I have an opportunity to?

8 Q. Yes, sir.

9 A. Yes, sir, I did.

10 Q. Did ya read them their rights?

11 A. I did.

12 Q. Okay, each individual person was read their rights?

13 A. Correct, not individually but as a group.

14 Q. Okay, and I wanna mention this too you said you pulled
15 them over in a silver Impala, uh, were there any other silver
16 Impalas on the road that night?

17 A. Uh, during the, uh, during the stop there was another
18 silver Impala that, uh, came through the parkin' area.

19 Q. Okay, so you saw is this after you stopped the
20 defendants?

21 A. Correct.

22 Q. And you saw another silver Impala drive by?

23 A. Yes, sir.

24 Q. Okay. How come you didn't pull that one over?

25 A. Uh, due to the facts that that one, the Silver Impala

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 that we stopped was in fact the one that had left the
2 ██████████ area.

3 Q. Okay, and that fit the description that was called in to
4 you?

5 A. Correct.

6 Q. Okay. Alright, no further questions.

7 THE COURT: Cross.

8 MR. CANTRELL: Please the Court, Your Honor.

9 CROSS-EXAMINATION BY MR. CANTRELL:

10 Q. So you, neither you nor the Clemson officer ever lost
11 view of the silver Impala that was seen in the apartment
12 parkin' lot?

13 A. Between the two of us no, sir.

14 Q. Uh, now Mr. Cade and Mr. Draper who are pictured there,
15 they're not in the courtroom right now, are they?

16 A. No, sir.

17 Q. Now as far as the bags that were found in the backseat
18 with Mr. Cade, did you remove those from the car?

19 A. I did.

20 Q. Okay, now you were on the driver's side of the car when
21 you did that?

22 A. Yes, sir.

23 Q. So were these bags kind of in the middle floor of the
24 back or ---

25 A. Yes, sir, they were -- passenger seat, front passenger

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 seat's here (indicating), the bag was located directly, not
2 directly behind, however, if you're sittin' in the seat a
3 little to the left of the passenger seat.

4 Q. So they were in very close proximity to Mr. Cade the bags
5 were.

6 A. Right, they were in the proximity of all three, yes, sir.

7 Q. Well, I mean, he's only one in the backseat, ---

8 A. Yes, sir.

9 Q. --- they were in closest proximity to Mr. Cade ---

10 A. Understood.

11 Q. --- and, uh, Mr. Cade also I believe was, uh, found to
12 have some a these gloves on his person at the time, did he
13 not?

14 A. Correct.

15 Q. Now that you conducted the search of the vehicle,
16 correct?

17 A. Yes, sir.

18 Q. Did you conduct this this search thoroughly, did you
19 search this car thoroughly?

20 A. Due to conditions of the nighttime and the findings of
21 what I found, I I believe I did not do a thorough search, uh,
22 however, I feel that a search was done and completed enough to
23 where, uh, the findings were legit.

24 Q. Okay. You found two guns in these bags, ---

25 A. Yes, sir.

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. --- did that cause you to search more to be sure you
2 found all the guns?

3 A. If you want me to be completely honest, at the time I was
4 a year rookie basically so when I found two guns I kinda got
5 excited.

6 Q. And so your answer is did you just stop looking at that
7 point or did you look more ---

8 A. No, ---

9 Q. --- because of the ---

10 A. --- I looked, however, I was more focused on the the fact
11 that I found two guns.

12 Q. Okay. Are you aware of anything you left in the back a
13 that car at the time? Alright, well I'm sorry let me rephrase
14 that, strike that. Were you aware at the time of anything you
15 left in the back of the car unsearched?

16 A. There were within the backseat of the vehicle there was a
17 pile of clothing, uh, again all over to the passenger side
18 away from Mr. Cade, uh, which was not thoroughly gone
19 through.

20 Q. Okay. Even though you had found guns prior to that.

21 A. Correct.

22 Q. And you found a box of gloves in the car, found one on
23 Mr. Cade but with -- had there been any reference or mention
24 of plastic gloves prior to you finding them in the car?

25 A. No, sir.

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Okay. And I believe you indicated that you did determine
2 that, uh, Mr. Draper who's in one of those pictures was driving
3 the vehicle and it was owned by his mother, is that
4 correct, ---

5 A. I believe so yes, sir.

6 Q. --- that the bag with guns and masks and that sorta thing
7 were found in the backseat with Mr. Cade ---

8 A. Correct.

9 Q. --- and there was a box of gloves under the seat where
10 Mr., uh, Morris was sitting.

11 A. It was in the front seat yes.

12 Q. Until you made that stop, were you made aware of any
13 criminal offense that had taken place?

14 A. That evenin' no.

15 Q. Okay. The only thing you heard or were sent for were
16 suspicious individuals ---

17 A. Correct.

18 Q. --- and by the time you got there or Clemson got there
19 these individuals were in their cars either leaving or
20 preparing to leave.

21 A. Upon my arrival, uh, again I was approached by an unknown
22 individual who advised me that three black males all black
23 clothing or all dark clothing had just ran through the
24 adjacent buildin'.

25 Q. Did you see these individuals in the car before it

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 left?

2 A. No, sir, the only thing I saw was the vehicle.

3 Q. And was it lea -- was it leaving at the time or was in
4 motion I guess I would say?

5 A. Correct.

6 Q. High rate of speed, burning rubber, anything like that or
7 just pullin' out?

8 A. Uh, just a normal drive.

9 Q. You heard one witness say they stopped at a stop
10 sign, ---

11 A. Correct.

12 Q. --- did you observe that?

13 A. I did not personally, no, sir.

14 Q. Okay, but you did know they weren't goin' out in a big
15 hurry.

16 A. Correct.

17 Q. You were told they all were dressed in all black?

18 A. All dark clothing.

19 Q. Okay. Did you observe them when they got outta the
20 vehicle?

21 A. Yes.

22 Q. Did they all have dark clothing on?

23 A. Darkish clothing yes, sir.

24 Q. Would you identify this (indicating) as being the
25 clothing that Mr. Morris was wearing that night?

KEVIN PEPPERS - CROSS-EXAMINATION BY MR. CANTRELL

1 (Whereupon, the defendant stood.)

2 A. Positively no, sir, but it looks fairly familiar.

3 Q. So you can't deny this is what he had on that night.

4 A. I'm sorry?

5 Q. You cannot deny that this is what he had on that night.

6 A. Um, ---

7 Q. Cannot?

8 A. I cannot, I'm sorry.

9 Q. Were you also told that all three of these individuals
10 had hoodies on?

11 A. Yes, hoodies, mask.

12 Q. Dark clothing.

13 A. Dark clothing, yes.

14 Q. Stand up again and turn around.

15 (Whereupon, the defendant complied.)

16 This (indicating) is not a hoodie, is it? And I'm sorry
17 I won't pick it up, could you re -- remind me which gun had
18 something in it based on the pictures was ---

19 A. Uh, ---

20 Q. --- dirty or something.

21 A. --- the silver or chrome in color with the black
22 grips ---

23 Q. Okay.

24 A. --- had dirt in the barrel.

25 Q. Not being an expert I'm assuming that made it not a very

KEVIN PEPPERS - REDIRECT EXAMINATION BY MR. TOOKER

1 efficient weapon at that point in time.

2 A. I, 'bout like you said, I'm not an expert but I would
3 agree.

4 Q. Okay. I don't have anything further, thank you.

5 THE COURT: Anything else?

6 MR. TOOKER: Briefly, sir.

7 REDIRECT EXAMINATION BY MR. TOOKER:

8 Q. Mr. Cantrell, was, uh, was asking you about I guess sort
9 of, uh, how thorough of a search ya did that night, uh, how
10 many officers were on scene?

11 A. There were two.

12 Q. And how many, uh, suspects were there?

13 A. There were three.

14 Q. And how many guns were there?

15 A. Two.

16 Q. Okay, uh, so you're two officers and and three suspects
17 and two guns, what goes through your mind when you find those
18 guns?

19 A. Danger immediately, uh, fear, however, you gotta overcome
20 'em, uh, all three subjects at that time were placed in
21 investigative detention.

22 Q. Okay, would it be safe to say at that point you were
23 concerned with ---

24 A. Safety.

25 Q. --- making sure nothin' bad was gonna happen?

KEVIN PEPPERS - REDIRECT EXAMINATION BY MR. TOOKER

1 A. Correct.

2 Q. Okay. Now Mr. Cantrell also mentioned the location of
3 the bag in the car, he said it's within Mr. Cade's reach, ---

4 A. Um-hum.

5 Q. --- uh, would it be fair or not fair to say that it was
6 i -- within the reach of all three individuals?

7 A. It was in, uh, in reach of all three yes, sir.

8 Q. Okay, how how would Mr. Morris have gotten to it sittin'
9 in the front seat?

10 A. Uh, front seat it was in proximity, he could take his
11 left hand clearly picked it up that way.

12 Q. Okay. Now, uh, finally he mentioned, uh, if that's
13 consistent with what Mr. Morris is wearing that night, uh,
14 that there's not a hood on that piece a clothing, correct?

15 A. Correct.

16 Q. Uh, you said there were other articles of clothing in the
17 car, ---

18 A. Correct.

19 Q. --- uh, a lot or a little?

20 A. Uh, about a medium.

21 Q. Okay, would would you call it a pile?

22 A. Yes, sir.

23 Q. Okay, so there's a a pile of clothing in the car.

24 A. Yes.

25 Q. Okay. No further questions.

KEVIN PEPPERS - RECROSS-EXAMINATION BY MR. CANTRELL

1 RECROSS-EXAMINATION BY MR. CANTRELL:

2 Q. Just a couple quick questions. You secured the
3 individuals, that means you cuffed 'em ---

4 A. Correct, that's ---

5 Q. --- behind their backs?

6 A. --- correct.

7 Q. Put 'em in your patrol car?

8 A. Uh, at first no, sir.

9 Q. Okay, but they were cuffed, hands behind their back so
10 they were secure, they were not a risk at that time, were
11 they?

12 A. For officer safety they were placed in investigative
13 detention and placed, uh, and they were standing behind the
14 Impala.

15 Q. And could've been put in the backseat of your car had you
16 chosen to.

17 A. Could have, yes, right.

18 Q. Uh, and at that point nothin' would prevent a complete
19 thorough search of the Impala.

20 A. No, sir.

21 Q. Okay. Uh, you indicated that both the guys in the front
22 seat could've reached back to the backseat but the simple fact
23 of the matter is Mr. Cade could simply put his hand on the bag
24 from where he was sitting, true?

25 A. True, however, all individuals were in proximity and had

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 fairly easy access to the bag.

2 Q. And, uh, you're not testifying that you found three black
3 hoodies in that clothing that was in the backseat of the car,
4 are you?

5 A. No, sir, just a pile of clothing.

6 Q. No further questions, thank you.

7 THE COURT: Alright, thank you, sir, you can step down.

8 THE WITNESS: Okay.

9 (Whereupon, the witness left the stand.)

10 MR. CLEVELAND: Thank Your Honor. State calls D'Andre
11 Draper to the stand.

12 THE COURT: Alright.

13 (Whereupon, the witness came forward.)

14 D'ANDRE DRAPER, having been first
15 duly sworn, testified as follows:

16 THE CLERK: Have a seat and state your name for the
17 record, please.

18 THE WITNESS: My name is D'Andre Draper.

19 DIRECT EXAMINATION BY MR. CLEVELAND:

20 Q. Mr. Draper, where do you live?

21 A. Right now I live with my auntie.

22 Q. And where is that? what town?

23 A. Uh, uh, Clemson, South Carolina.

24 Q. Alright, and where did you live back in March of 2011?

25 A. 2011 I stayed at [REDACTED], it's called the

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

- 1 [REDACTED].
- 2 Q. Okay, and what city and tow -- town is that in?
- 3 A. Uh, it's is considered Clemson ---
- 4 Q. Okay.
- 5 A. --- I think, yes.
- 6 Q. Is that here in Pickens County?
- 7 A. Yes, sir.
- 8 Q. Do you remember the night March the 8th 2011?
- 9 A. Yes, sir.
- 10 Q. I ask you first do you know the defendant Larold Lee
- 11 Morris?
- 12 A. Yes, sir.
- 13 Q. What name does he go by?
- 14 A. The -- they call him Junior.
- 15 Q. Is that what you call ---
- 16 A. Yeah, ---
- 17 Q. --- him?
- 18 A. --- or J.R.
- 19 Q. Okay.
- 20 A. Yes, sir.
- 21 Q. Did you go pick Junior up that evenin'?
- 22 A. That night yes, sir.
- 23 Q. Okay, uh, and where did ya'll go?
- 24 A. Uh, I picked him, him and his brother up and we went to
- 25 the the [REDACTED] [REDACTED] 'cuz he had asked me to get him a

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 ride there since I was going there already because I was
2 supposed to be going to the club.

3 Q. Okay. Uh, was he the only one you arrived with?

4 A. No, sir.

5 Q. Who else was in the car?

6 A. Uh, his brother C -- I think they call him Cade.

7 Q. Okay. Uh, you ended up gettin' arrested that night,
8 didn't you?

9 A. Yes, sir.

10 Q. Now before we go into what happened after that I wanna
11 talk a little bit about your cases.

12 A. Yes, sir.

13 Q. You're charged along side Mr. Morris, correct?

14 A. Yes, sir.

15 Q. As a matter of fact, you were sitting at that table when
16 this jury was picked yesterday, isn't that correct?

17 A. No, sir.

18 Q. No, your attorney was though.

19 A. Yes.

20 Q. Okay. Um, it's obvious that you're not on trial right
21 now but has any offers been made to you for your testimony
22 today?

23 A. No, sir.

24 Q. Has any promises been made by me or anyone else in the
25 state or law enforcement to get you to testify today?

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. No, sir.

2 Q. Now has -- no clemency, no deals, no anything like that
3 has been offered to you.

4 A. No, sir.

5 Q. Are you testifyin' today here on your own free will?

6 A. Yes, sir.

7 Q. And has your testimony so far has it been the truth and
8 is that your intent today?

9 A. Yes, sir.

10 Q. When you were arrested on the night of March 9th, uh, did
11 you consent to allow --- 8, I'm sorry, ---

12 A. March 8th.

13 Q. --- on March the 8th, did you consent to allow law
14 enforcement to search your car?

15 A. Yes, sir.

16 Q. Alright, and ultimately, uh, wha'd they find?

17 A. They found a bag with two ski masks, two guns and bl -- a
18 box of latex gloves.

19 Q. Okay. Uh, did you give a statement to police after you
20 were arrested?

21 A. Yes, sir.

22 Q. Uh, was that statement, those statements that you gave
23 voluntary on your own free will?

24 A. Um, yes, sir.

25 Q. Alright, uh, go ahead and and tell me what happened that

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 night leading from the time you picked up Mr. Morris to when
2 you were arrested ---

3 A. Well, ---

4 Q. --- wha'd you tell police?

5 A. When like talkin' about when I pick -- after I picked him
6 up?

7 Q. Yeah, wha'd wha'd ya tell the poli -- or what happened
8 that night, yeah after you picked him up.

9 A. Well the night started off by he had text me and asked me
10 to give him a ride somewhere and I thought it was just him but
11 I picked him and his brother up. We went to the UV because I
12 was gonna go borrow some money from my friend to go to the
13 club that night and once we had pulled outta the UV we got
14 pulled over by Officer Peppers in front of Dollar General.

15 Q. Alright, what happened at the UV?

16 A. Uh, I walked over to my friend Josh house but I didn't
17 get no answer and I came back and we was in, got in the car
18 and we gettin' ready to leave and when we got to the red light
19 that's, um, think Officer Peppers and another cop were
20 followin' us, they pulled us over.

21 Q. Now and isn't that what you told the police after you got
22 arrested?

23 A. Sir?

24 Q. Isn't that what, isn't that what you told Detective
25 Justice the next day after you got arrested?

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Oh, the the next day when I talked ---

2 Q. Yeah.

3 A. --- to Detective Justice?

4 Q. Yes.

5 A. Talkin' about my statement I wrote? Which ---

6 Q. Yeah, ---

7 A. --- which statement ---

8 Q. --- yeah, the ---

9 A. --- you talkin' ---

10 Q. --- first one you wrote for her. Ya wrote two
11 statements ---

12 A. Yeah, I wrote one for Officer Peppers and one for
13 Detective Justice.

14 Q. Okay, I'm gonna show you, I'm gonna mark these three
15 items and I'm gonna show 'em to ya.

16 (Voluntary statements marked State's Exhibit Nos. 111,
17 112 and 113 for identification.)

18 (Whereupon, a juror stood.)

19 THE COURT: Woa, woa, ---

20 THE BAILIFF: Sit down.

21 THE COURT: --- ho, woa, woa.

22 THE BAILIFF: Sit down.

23 UNIDENTIFIED JUROR: I was gonna ---

24 THE BAILIFF: You gotta ---

25 UNIDENTIFIED JUROR: --- use the ---

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 THE BAILIFF: --- sit down.

2 UNIDENTIFIED JUROR: --- restroom.

3 THE BAILIFF: Sit down.

4 THE COURT: Sit down. Sit -- well ---

5 UNIDENTIFIED JUROR: I've gotta pee.

6 THE COURT: --- I'll tell you what, that's alright, we'll
7 take a short break, ya'll go ahead.

8 UNIDENTIFIED JUROR: I only need like five minutes.

9 THE COURT: That's fine, ya'll, everybody thank you,
10 don't ---

11 THE BAILIFF: Everybody's gotta ---

12 THE COURT: --- talk about it.

13 UNIDENTIFIED JUROR: Okay.

14 THE COURT: Let him go, he's about to burst.

15 UNIDENTIFIED JUROR: I'm sorry, I can barely hold it.

16 (The following takes place outside the presence of the
17 jury.)

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Alright, Mr. Draper, you can stand down but
20 you may not talk about your testimony with anybody. You can
21 stay there if you want to, whatever you wanna do.

22 (Whereupon, a discussion was held off the record.)

23 (Whereupon, a recess was taken.)

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

25 THE COURT: Alright, resume your examination.

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 MR. CLEVELAND: Thank you, Your Honor.

2 BY MR. CLEVELAND:

3 Q. Where we were, Mr. Draper, you review those three pieces
4 of paper I put up marked for identification at this time as
5 State's Exhibits I believe 111 through 113.

6 (Whereupon, the witness examined the exhibits.)

7 A. Yes, sir.

8 Q. You told the police exactly what you told this jury the
9 first time you were questioned, isn't that correct?

10 A. Yes, sir.

11 Q. That wasn't the whole story, was it?

12 A. What you mean? You to -- you said two a my statements
13 that you show me and you gave me two of the statements ---

14 Q. Yeah, ---

15 A. --- too.

16 Q. --- yeah, well what I'm talkin' about is when you told
17 the police what you testified to today that you just went to
18 Josh's, you came back and then you left, you then got pulled
19 over, that wasn't the whole story, was it?

20 A. Yes, that's the story.

21 Q. What about when Detective Justice told you that the other
22 defendants were pegging those guns and stuff on you?

23 A. And I told 'em they wasn't mine.

24 Q. Huh?

25 A. I told 'em that they wasn't mine.

D'ANDRE DRAPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. What else did you tell 'em about Junior?

2 A. Oh, that I got a text message from him sayin', Let's get
3 Zeke.

4 Q. Let's get Zeke?

5 A. Yeah.

6 Q. Who's Zeke?

7 A. Zeke is Zikee, that's what I wrote in my statement.

8 Q. Yeah, who is he?

9 A. A drug dealer.

10 Q. Where does he live?

11 A. The UV.

12 Q. Do you know him?

13 A. I mean, I met, I I know him, yeah, I spoke to him.

14 Q. Do you know if Junior knows him?

15 A. Yes, sir.

16 Q. Alright, to be clear your first statement to the police
17 didn't include anything about let's, this let's get Zeke text
18 message from Morris, did it?

19 A. Yes, sir. Yes, sir.

20 Q. Your first text message was innocent, I went to see a
21 friend and got left and got pulled over.

22 A. My first -- in my statement?

23 Q. Yeah.

24 A. My sta -- my first statement was yeah, I went to UV to
25 get money.

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. What did you take the message, "Let's get Zikee" to mean
2 from Morris?

3 A. I mean, mostly when somebody say sumtin' like that that
4 means they're gonna I I guess gonna rob 'em.

5 Q. No further questions. Answer anything the defense may
6 have.

7 CROSS-EXAMINATION BY MR. CANTRELL:

8 Q. You didn't say anything that was incriminating against
9 Larold Morris 'til you were told by the officer that they were
10 sayin' things incriminating against you, did ya?

11 A. I can't -- can you repeat that question again, sir.

12 Q. You did not say anything incriminating against anyone
13 until you were told by someone that somebody was tryin' to rat
14 you out, isn't that what happened?

15 A. Yes, sir.

16 Q. And the simple fact is that's not true, you were tryin'
17 to get back at Larold Morris, isn't it?

18 A. No, sir. And what do you mean by get back at Morris ---

19 Q. You'd been told he was tryin' to rat you out, which by
20 the way wasn't true, but you decided because a that you had to
21 say somethin' against him.

22 A. No, sir. Actually my attorney have told me that, um,
23 they tried to pin everything on me and I would not not like to
24 answer any more question unless my attorneys are here.

25 MR. CANTRELL: Your Honor, I I guess I've gotta ask the

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 Court to address that. He's askin' -- he's ---

2 A. 'Cuz all they ---

3 MR. CANTRELL: --- appears to be refusing ---

4 THE COURT: Hold it.

5 MR. CANTRELL: --- to answer question.

6 THE COURT: No, just don't ---

7 A. Yes, sir.

8 THE COURT: Alright, ladies and gentlemen, this one a
9 those times we gotta take sumtin' up outside your presence so
10 if you would please, uh, don't talk about the case.

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

13 THE BAILIFF: Door's closed.

14 THE COURT: Alright, what do you want?

15 THE WITNESS: Yes, sir, my law -- my attorney told me
16 that they was supposed to just be askin' me about my
17 statements and they goin' outside a my statements.

18 THE COURT: Well, what they're, what they're asking you
19 about is what happened, ---

20 THE WITNESS: Yes, sir.

21 THE COURT: --- okay, --- and that's what you're here to
22 testify to.

23 THE WITNESS: Yes, sir.

24 THE COURT: Just tell the truth.

25 THE WITNESS: I'm telling the truth.

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 THE COURT: Is he st -- okay, well then what are you,
2 what are you worried about?

3 THE WITNESS: I don't know, he's just -- I'm feelin'
4 uncomfortable with his questions.

5 THE COURT: What was the question?

6 MR. CANTRELL: That he did not re -- reveal this
7 so-called text until he was told that the other co-defendants
8 were rattin' him out.

9 THE WITNESS: But that's also in my second ---

10 THE COURT: Well wait.

11 THE WITNESS: --- statement.

12 THE COURT: Well then you just tell him the truth,
13 okay.

14 THE WITNESS: Yes, sir.

15 THE COURT: You want your lawyer here?

16 THE WITNESS: Yes, sir.

17 THE COURT: Alright, well I'll tell you what, we'll just
18 adjourn till tomorrow mornin'. Where is he from?

19 MR. TOOKER: It's the State's understanding that he drove
20 in from Alabama, is that right, Mr. Draper?

21 THE WITNESS: Yes, sir.

22 THE COURT: I'll ---

23 MR. TOOKER: He needs to stay here.

24 THE WITNESS: Oh, no ---

25 THE COURT: Yeah, we're gonna put you, we're gonna take

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 ya into custody. He's on bond?

2 MR. TOOKER: Yes, yes, sir.

3 THE COURT: We'll take him into custody, let him spend
4 the night, come back in the mornin'.

5 THE WITNESS: No, what?

6 THE COURT: Huh? There's nothin' else I can do. Where
7 where is his lawyer?

8 THE WITNESS: No, I mean, ---

9 MR. CLEVELAND: I ---

10 THE WITNESS: --- I can stay in Clemson.

11 MR. CLEVELAND: --- the the State's understanding we
12 contacted Mr. Aaron, he left, our understanding was that I
13 told him I was gonna question about the contents of his
14 statement, that's what I've done. Mr. Aaron remarked to me
15 that he wasn't concerned with what Mr. Cantrell asked him, he
16 just, that's what I told him I was gonna examine him about,
17 that's what we have done.

18 THE COURT: Well if you want your lawyer here, that's
19 what I'm I'm gonna have to...

20 THE WITNESS: Well I'm tellin' the truth, I mean, that's
21 what ---

22 THE COURT: Okay, well if you, I'm just tellin' ya if you
23 want your lawyer, that's fine, we'll adjourn, uh, and we'll
24 come back in the morning and we'll get him here. What do ya
25 need him for?

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 THE WITNESS: No, I'm just sayin' I'm telling you, I'm
2 telling you everything that you asking me that's what I'm
3 sayin', I just felt uncomfortable with the question he just
4 asked me.

5 THE COURT: Well what are ya uncomfortable with, just
6 tell him the truth?

7 THE WITNESS: I am tellin' the truth that I received a
8 text message from him.

9 THE COURT: Okay, well then why do ya need your lawyer if
10 that's ---

11 THE WITNESS: I'm sorry, I just felt uncomfortable with
12 what he just asked me. He just threw it at me like I was
13 tryin' to lie to him.

14 THE COURT: Well we're here just to get the truth so
15 if you, ---

16 THE WITNESS: Yes, sir.

17 THE COURT: --- if you want your lawyer here you know
18 what I'm -- you know what we're gonna do and I'll be happy to
19 get him here.

20 THE WITNESS: Yes, sir.

21 THE COURT: Is that what you want?

22 THE WITNESS: I'm fine, I don't need him here, yes, sir.

23 THE COURT: You sure?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay, alright, bring the jury on back.

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

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

2 THE COURT: Okay.

3 BY MR. CANTRELL:

4 Q. Mr. Draper, you, the the question was you did not make a
5 statement about an alleged text message until you were told by
6 someone with law enforcement that other co-defendants in this
7 case were sayin' bad things about you and that's when you gave
8 the statement about the text message, is that correct?

9 A. No, sir, he asked me first what I wrote in my first
10 statement. The second statement what I wrote to Detective
11 Justice totally different from what I wrote to Officer
12 Peppers, it's two different statements.

13 Q. Well what I'm asking you is this alleged statement about
14 this alleged text message ---

15 A. Yes, sir.

16 Q. --- took place and was given to Khristy Justice but only
17 after she told you that the co-defendants were makin'
18 statements about you, is that true?

19 A. No, sir, 'cuz I seen Detective Justice before they did.

20 Q. So she -- you're say -- your testimony is she did not
21 tell you that they were ratting you out or sayin' bad things
22 about you?

23 A. No, sir.

24 Q. Is your testimony she never said that to you?

25 A. No, sir.

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

- 1 Q. So you're saying she never said that to you.
- 2 A. Yes, sir.
- 3 Q. Okay. Let's back up then to your visit there to, uh, UV
- 4 that night, ---
- 5 A. Yes, sir.
- 6 Q. --- whose apartment did you go to?
- 7 A. I went to Josh Morgan's apartment.
- 8 Q. Who went to that apartment with you?
- 9 A. No one.
- 10 Q. Whose apartment, if any, do you know of that Larold
- 11 Morris or Mr. Cade went to?
- 12 A. I know I know a couple people but no I don't know anybody
- 13 that they would probably go to. I knew that Zigee stayed out
- 14 there.
- 15 Q. That who?
- 16 A. Zigee the drug dealer.
- 17 Q. Zigee?
- 18 A. Yes, sir.
- 19 Q. Not Zeke but Zigee, is that right?
- 20 A. They call him Zigee like for a nickname.
- 21 Q. Okay. Do you know his last name?
- 22 A. No, sir.
- 23 Q. Do you know what apartment he lives in?
- 24 A. No, I know he stayed towards the front.
- 25 Q. Don't know an -- anything else about him?

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Um, I mean, all I know is I bought Bud from him a couple
2 times, that's about it.

3 Q. Did you see him that night?

4 A. No, sir.

5 Q. Did you see Larold Morris or Mr. Cade either one go to an
6 apartment?

7 A. I didn't see him. All I did, like I said, I got in my
8 car and I went to Josh house and I came back as he got in my
9 car, we got to a red light and then that's when Officer
10 Peppers got behind us.

11 Q. So now what apartment did the three of you fellas go to?
12 Did you three altogether go to anybody's apartment?

13 A. No, sir.

14 Q. Did Mr. Morris stay in your car while you went to Josh's
15 apartment?

16 A. I have no idea, sir. Like I said, I left my car, went to
17 Josh house and came back.

18 Q. And where was Mr. Morris at that point?

19 A. He was comin', they was comin' to the car when I got to
20 my car.

21 Q. Okay, you have no idea where they were.

22 A. No, sir.

23 Q. Now is this the truth: The three of you never went
24 anywhere together that night at the apartment complex?

25 A. No, sir, we never, us three never went anywhere but I

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 took him to the UV, that was it. I parked my car, went to
2 Josh house.

3 Q. Now whose idea was it to go to the UV?

4 A. It was mine because I was goin' by myself until I got a
5 phone call from him.

6 Q. Okay, now you weren't, you didn't pick him up to take him
7 to the UV, did ya?

8 A. Yes, sir.

9 Q. Why were you takin' him to the UV?

10 A. 'Cuz he asked for a ride so I gave him a ride to the UV.

11 Q. Okay, but he didn't ask, did not ask for a ride to the
12 UV, he was goin' somewhere else, wasn't he?

13 A. No, sir, he asked to go to the UV.

14 Q. But he didn't -- you don't know where he went or what he
15 did.

16 A. No, sir.

17 Q. And you just happened to be going to the UV also.

18 A. I was already goin' there because my -- I was plannin' on
19 goin' to the club that night and I was gonna get some money
20 from Josh.

21 Q. But again you, Mr. Morris, Mr. Cade didn't plan anything
22 at the UV, you just got in the car or they got in your car and
23 you went to the UV.

24 A. Yes, sir.

25 Q. Didn't do anything together at the UV.

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

1 A. No, sir.

2 Q. Now when the, uh, police stopped you, you were surprised
3 'cuz you had no idea anything was goin' on, did ya?

4 A. No, sir.

5 Q. And in fact nothing had gone on, right?

6 A. Besides the fact that I I went to Josh house and came
7 back and they pulled us over and asked to search the car and
8 he asked me to search and I said yes he can ---

9 Q. And ---

10 A. --- search.

11 Q. --- after -- I'm sorry, go ahead.

12 A. Oh, you go ahead.

13 Q. After he asked you to search and he found some gloves in
14 the car, you told him that they belonged to who?

15 A. They belonged to my mother.

16 Q. That true?

17 A. Yes, sir.

18 Q. That is true they belonged to your mother?

19 A. Yep, they ---

20 Q. They ---

21 A. --- di -- that that they did.

22 Q. What does your mother do for a living?

23 A. She works at, she had worked at a plant in Walhalla and
24 another plant in Easley.

25 Q. Did that require her to use or have those gloves?

D'ANDRE DRAPER - CROSS-EXAMINATION BY MR. CANTRELL

- 1 A. Yes, sir.
- 2 Q. And that is a true statement also?
- 3 A. Yes, sir.
- 4 Q. And there was a whole box fulla these gloves under your
5 passenger seat in the front, is that right?
- 6 A. Yes, sir, and my glove compartment.
- 7 Q. And in your glove compartment?
- 8 A. Yes, sir.
- 9 Q. And were all those your mother's?
- 10 A. Yes, sir, she keep three or four boxes.
- 11 Q. And I'm sorry, couple other questions.
- 12 A. Yes, sir.
- 13 Q. You were, you're here today because you were going to
14 trial on this case, weren't ya?
- 15 A. Sir?
- 16 Q. You are here today because you were gonna go to trial on
17 this case.
- 18 A. Yes, sir.
- 19 Q. You're not goin' to trial now, are ya?
- 20 A. Sir?
- 21 Q. You're not goin' to trial today now, are you?
- 22 A. What do you mean by that?
- 23 Q. You're not on trial today.
- 24 A. I don't know what that means.
- 25 Q. Uh, you're you're not in here being accused of any a

D'ANDRE DRAPER - REDIRECT EXAMINATION BY MR. CLEVELAND

1 these crimes today, are you?

2 A. No, sir.

3 Q. But you were this morning, right?

4 A. No, sir.

5 Q. You were not?

6 A. Uh, ---

7 Q. Did you not meet your attorney here today prepared to go
8 to trial?

9 A. Yeah, I met my attorney here to discuss on what was goin'
10 on.

11 Q. And your attorney was here yesterday and drew this jury
12 for your trial, didn't he?

13 A. Yes, sir.

14 Q. No further questions.

15 REDIRECT EXAMINATION BY MR. CLEVELAND:

16 Q. Mr. Draper, ---

17 A. Yes, sir.

18 Q. --- let's let's talk about a few things we can agree on.
19 Your testimony is that Larold Morris sent you a text message
20 that said, "Man, let's get Zeke or Zikee", correct?

21 A. Yes, sir.

22 Q. And you went, picked him up after he sent you that text
23 message.

24 A. No, that wasn't the same day, that was a different day.

25 Q. Oh, so you didn't tell Detective Justice that Junior text

D'ANDRE DRAPER - REDIRECT EXAMINATION BY MR. CLEVELAND

1 you and he was like let's get Zikee tonight and he was texting
2 me about it and that's how I know.

3 A. Yeah, that wasn't that same night though.

4 Q. Tonight?

5 A. Hum?

6 Q. You said tonight in your statement to to Detective
7 Justice.

8 A. Yeah, but that wasn't the night that we got arrested,
9 that's what I'm tryin' to tell you.

10 Q. So it's your testimony that he didn't text you about
11 let's get Zeke that night.

12 A. Sir, can you speak up, please.

13 Q. When you talked to Detective Justice, ---

14 A. Yes, sir.

15 Q. --- did you not say that, "Junior text me and was like
16 let's get Zeke tonight and he was textin' me about it and
17 that's how I know", is it -- did you not say that to Detective
18 Jus ---

19 A. Yes, sir, I say that to her, I wrote a statement on it.

20 Q. Show me in your statement where you said it wasn't the
21 night wasn't March 8th.

22 MR. CANTRELL: Your Honor, that question's been asked and
23 answered, he's already testified to that.

24 MR. CLEVELAND: It's impeachment prior inconsistent
25 statement, Judge.

D'ANDRE DRAPER - REDIRECT EXAMINATION BY MR. CLEVELAND

1 MR. CANTRELL: Your Honor, there's no contradictory
2 statement before us.

3 THE COURT: Go ahead and answer it and then let's move
4 on.

5 THE WITNESS: There's no date on this one.

6 BY MR. CLEVELAND:

7 Q. When did ya give that statement to Detective Justice?

8 A. I got arrested on March the 8th and we wrote this, she
9 came to see me on the 9th.

10 Q. And you agree that you never told her that that wasn't
11 the night you got arrested.

12 A. Yeah, I got arrested on March 8th.

13 Q. But what I'm sayin' is wouldn't you agree with me that
14 it's pretty important if you're makin' an ascertainment like
15 that Zeke text -- he -- that Morris text you about let's get
16 Zeke, that you tell her that it wasn't the night that ya'll
17 got arrested, it was a different night?

18 A. Yes, sir.

19 Q. Well where's it in your statement?

20 A. Well, I mean, the statement don't have a date on it.

21 Q. Well but you didn't say it wasn't the night in question,
22 did you?

23 A. Yeah, I said it's right, it's in here.

24 Q. Where? Read for the jury. Hold on, show me where.

25 A. Well alls know that Zikee, Zikee was a big drug dealer in

D'ANDRE DRAPER - REDIRECT EXAMINATION BY MR. CLEVELAND

1 the UV, Junior text me and was like let's get Zikee tonight.

2 He was textin' it, texting me all about that's how ---

3 Q. Okay. So you said, can I see that please, so you said to
4 the detective he text you about let's get Zeke tonight but
5 it's your testimony today that that was a whole nother night
6 in question.

7 A. But that -- what -- I'm ---

8 Q. Okay, ---

9 A. --- got lost.

10 Q. --- you told the detective that Junior texted you and
11 said, Let's get Zeke tonight.

12 A. Yes, sir.

13 Q. Isn't it true you actually showed her your phone where
14 you had that text message from Junior on it that said, "Man,
15 let's get Zikee"?

16 A. Yes, sir, but it was not the same night that I got
17 arrested.

18 Q. But you agree you never told her that that was a
19 different night in question. You never told anybody that that
20 text message came from some other day, not the day ya'll got
21 arrested at Zikee's apartment.

22 A. I, we, I told her that when we was, when I was in there
23 with her when we had our conference.

24 Q. So you testified that those gloves belonged to your
25 mother, correct?

D'ANDRE DRAPER - REDIRECT EXAMINATION BY MR. CLEVELAND

1 A. Yes, sir, and my mother's here if you need to see her
2 too.

3 Q. Say again.

4 A. My mother's here too if you need to see her about the
5 gloves too.

6 Q. Did you ever see Morris with any glo -- those gloves
7 on?

8 A. No, sir.

9 Q. So the next day at the police department when you were
10 talkin' to Detective Justice, did you not tell her that he --
11 you saw Morris remove some gloves from his hands and put them
12 in the glove compartment?

13 A. No, sir.

14 Q. You never said that.

15 MR. CLEVELAND: Beg the Court's indulgence for just one
16 moment, Your Honor, I apologize.

17 Q. Now also your testimony today is those gloves belong to
18 your mother, ---

19 A. Yes, sir.

20 Q. --- did you not tell Detective Justice at the jail when
21 you were talkin' to her that you got scared when the officer
22 asked you about the gloves but the gloves were actually
23 Morris's and he, and he had them when he got in the vehicle
24 with the book bag? At the police station the next day when
25 you were talkin' to Detective Justice, did you not tell her

D'ANDRE DRAPER - RECROSS-EXAMINATION BY MR. CANTRELL

1 that those gloves were Morris's?

2 A. No, sir.

3 Q. Nothing further.

4 THE COURT: Alright, you got anything?

5 MR. CLEVELAND: Your Honor, if I can, I just need one
6 second with counsel.

7 (Whereupon, a discussion was held off the record.)

8 MR. CANTRELL: Your Honor, if I can beg the Court's
9 indulgence, I need a minute to coordinate here.

10 (Pause.)

11 RECROSS-EXAMINATION BY MR. CLEVELAND:

12 Q. Mr. Draper, I want us take a deep breath and wanna ask
13 one question about this text thing. Is it not true that what
14 you were tellin' Detective Justice just pure and simple was at
15 some point I got a message from Larold Morris that said let's
16 get Zikee tonight, but that had nothin' to do with the date
17 that you were talking about, it was a message you had received
18 sometime in the past ---

19 A. Yes, sir.

20 Q. --- and the tonight he was talking about was sometime in
21 the past.

22 A. Yes, sir.

23 Q. Okay. And let me ask you that you have three separate
24 statements that you gave to either Khristy Justice or ---

25 A. Officer Peppers.

D'ANDRE DRAPER - RECROSS-EXAMINATION BY MR. CANTRELL

1 Q. --- Officer Peppers so is it safe to say that every time
2 you said something of significance one of them but and
3 specifically Ms. Justice would have you put it in a written
4 statement and sign it? If you, if you told her something that
5 was important or gave her new information, you ended up givin'
6 a new written statement, didn't you?

7 A. No, sir, 'cuz I only wrote one statement to Detective
8 Justice.

9 Q. One plus the one about the text?

10 A. Oh, yes, sir.

11 Q. Okay. So when you told her this new information about a
12 text, she had you write it down, didn't she?

13 A. Actually, she didn't tell me about it.

14 Q. I said when you told her about the supposed text
15 message ---

16 A. Yes, sir.

17 Q. --- she asked you to write it down for her ---

18 A. Yes, sir.

19 Q. --- and you did and you signed it ---

20 A. Yes, sir.

21 Q. --- where you don't know what date and time but you did.

22 A. Yes, sir.

23 Q. And that was after you provided her with what appeared to
24 be new information, right?

25 A. Yes, sir.

D'ANDRE DRAPER - RECROSS-EXAMINATION BY MR. CANTRELL

1 Q. You were trying to cooperate with Ms. Justice, weren't
2 ya?

3 A. I mean, it was no cooperating 'cuz I didn't do anything,
4 that's what I'm tellin' you.

5 Q. I mean, you were, you were tryin' to accommodate her and
6 sign statements or write out statements when necessary.

7 A. Yes, sir.

8 MR. CANTRELL: No further questions, Your Honor.

9 THE COURT: Alright, you can stand down, thank you.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Alright, ladies and gentlemen, we're gonna
12 break for the evening, I know you're probly ready for that.
13 Uh, let me remind you not to discuss the case and I know the
14 temptation is great, we all know human nature and, uh, and
15 that you're gonna wanna talk about it and the people you see
16 are gonna wanna talk to you about it we know that, I've
17 explained to you why you cannot do that, uh, and you have
18 taken an oath to do that so remember that and tell 'em, tell
19 whoever wants to talk to you about it why you can't talk about
20 it, okay. Don't do any research, don't go visit the scene,
21 ya'll have a pleasant evening, see you back at, uh, 9:30 in
22 the morning, okay, and ya'll get to work on electin' a
23 foreperson.

24 (The following takes place outside the presence of the
25 jury.)

D'ANDRE DRAPER - RECROSS-EXAMINATION BY MR. CANTRELL

1 THE COURT: Alright, anything before we break?

2 THE BAILIFF: Door's closed, Your Honor.

3 MR. CLEVELAND: Nothing from the State, Judge.

4 MR. CANTRELL: Nothing from defense, Your Honor.

5 THE COURT: Alright, see ya'll at 9:30.

6 MR. CANTRELL: Yes, sir.

7 MR. CLEVELAND: Thank you, Judge.

8 (Proceedings March 20, 2013)

9 (Magazine and bullets marked State's Exhibit No. 108B,
10 black and camo mask marked State's Exhibit No. 114, black mask
11 marked State's Exhibit No. 115 and glove and ID card marked
12 State's Exhibit No. 116 for identification.)

13 THE COURT: Alright, our foreperson is Brandon Vinson
14 Number 145. Maggie, I'll give this to ya make it ---

15 COURT REPORTER: Okeydoke.

16 THE COURT: --- a Court's Exhibit.

17 (Note from the jury marked Court's Exhibit No. 3 for
18 identification.)

19 THE COURT: Yeah, Mr. Tooker, we ---

20 MR. TOOKER: Uh, Mr. Cantrell would like, would like to
21 approach briefly, sir.

22 THE COURT: I'm sorry?

23 MR. TOOKER: Mr. Cantrell and I would like to approach
24 briefly.

25 THE COURT: Yeah, okay, c'mon.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 MR. TOOKER: Thank you, sir.

2 (Whereupon, a bench conference was held off the record.)

3 THE COURT: Okay, ready to go?

4 MR. CLEVELAND: State's ready, Your Honor.

5 THE COURT: Alright.

6 MR. CANTRELL: Defense ready, Your Honor.

7 THE COURT: Ms. Dill, please.

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

9 THE COURT: Alright, thank you for agreein' to serve as
10 the foreperson and we are ready to begin. Alright.

11 MR. CLEVELAND: Thank Your Honor. May it please the
12 Court, State calls Khristy Justice.

13 (Whereupon, the witness came forward.)

14 KHRISTY JUSTICE, having been
15 first duly sworn, testified as follows:

16 THE CLERK: Have a seat, state your name for the record,
17 please.

18 THE WITNESS: Khristy Justice.

19 DIRECT EXAMINATION BY MR. CLEVELAND:

20 Q. Good mornin', Ms. Justice.

21 A. Mornin'.

22 Q. What is your, uh, job title?

23 A. Investigator.

24 Q. Alright, and who does -- who do you work with?

25 A. Central Police Department.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Alright, and how long have you worked with the Central
2 Police Department?

3 A. Ten years.

4 Q. Alright, and how long have you served as an investigator
5 with them?

6 A. Six years.

7 Q. Alright, uh, tell the jury what your main role as a
8 investigator in criminal cases is usually.

9 A. Basically the officer, the responding officer, will take
10 the initial report and my job is to follow up, um, whatever
11 means that may be, um, and just, you know, until an arrest is
12 made or the case is closed.

13 Q. Alright, were you the follow-up investigator on the
14 burglary and armed robbery that occurred on February 3rd 2011
15 at ---

16 A. Yes, I was.

17 Q. And did that occur within the town limits of Central?

18 A. Yes, sir.

19 Q. Tell me a little bit about what your jurisdiction is and
20 and what your bounds of your investigation are I guess.

21 A. Uh, jurisdictionally-wise in anything that occurs within
22 the town limits of Central is mine, ---

23 Q. Oh.

24 A. --- uh, anything outside that I would need to a -- have
25 an assistant, uh, agency.

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Alright, and is this apartment that was in question that
2 got robbed on February 3rd is that in the town limits of
3 Central?

4 A. Yes, sir.

5 Q. And is that within Pickens County?

6 A. Yes, sir.

7 Q. Uh, that's [REDACTED] [REDACTED] [REDACTED] correct?

8 A. Yes, sir.

9 Q. Alright. Uh, did you conduct the follow-up investigation
10 after that robbery?

11 A. Yes, I did.

12 Q. Uh, initially were you made aware that that call had come
13 in on the night of February 3rd?

14 A. Yes, I did.

15 Q. Alright, were you on duty at the time or off duty?

16 A. I was off duty.

17 Q. Alright. What did you, if anything, do at that time once
18 when the call came in?

19 A. Uh, when I spoke with Officer Peppers over the phone, uh,
20 and he gave me a brief summary of what occurred, I asked him
21 to please call Pickens County and have a, uh, forensic
22 technician come in and try to, uh, prints, take prints or, um,
23 you know.

24 Q. Okay, and did that happen? Did someone come out from
25 Pickens County to look for fingerprints and stuff like that?

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Yes, sir.

2 Q. Uh, to your knowledge were any fingerprints found at the
3 location [REDACTED] on the night of February 3rd?

4 A. No, sir.

5 Q. Okay. Uh, what was your understanding of the items that
6 were taken during that burglary and armed robbery?

7 A. A lot of electronics, um, iPods, televi -- televisions,
8 uh, Xbox, uh, a cell phone, uh, small ele -- la -- laptops,
9 small electronics, two suitcases I assume to put items in.

10 Q. Alright. Uh, after the initial incident happened did you
11 come into any information that, uh, pertained to locating
12 those items that were stolen?

13 A. One item particular.

14 Q. Okay, tell the jury about that.

15 A. Uh, it was a Xbox, uh, system, game system. Um, the
16 victim came into the police department, stated that his ---

17 MR. CANTRELL: Your Honor, objection ---

18 A. --- ga ---

19 MR. CANTRELL: --- to hearsay.

20 THE COURT: Well he's a, he's a victim party, I'm gonna
21 overrule it. Go ahead.

22 THE WITNESS: The victim stated that his gamer tag, uh,
23 and I'm not game savvy, uh, but his gamer tag had changed from
24 Capo Almighty to Little Abe and, um, he said that he pulled
25 the information up on a friend's Xbox, um, so at that point I

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 took the information that he gave me and I already had the
2 serial number for his system, uh, and I subpoenaed Xbox.

3 BY MR. CLEVELAND:

4 Q. Alright, did you ever receive anything back from Xbox
5 relating to that ---

6 A. Actually it was Microsoft but no I did not.

7 Q. Okay, uh, but it's your understanding that there'd been
8 some activity on that Xbox, correct?

9 A. That is correct.

10 Q. Alright. Uh, did you come into any other information
11 about any of the other items stolen, uh, after that
12 incident?

13 A. No.

14 Q. Okay. Uh, moving forward were you made aware, uh, of the
15 incident that occurred on March 8th of 2011?

16 A. I was.

17 Q. Uh, did you -- when were you made aware of that incident
18 or arrest?

19 A. The night of.

20 Q. Okay. Uh, did you conduct any follow-up based on that
21 arrest, uh, in any manner?

22 A. Yes.

23 Q. Okay, what did you do or ---

24 A. The next mornin' when I returned to work, uh, I got all
25 proper paperwork and I went to Clemson City Jail where we

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 house our prisoners at.

2 Q. Okay, and at that time was the defendant Larold Morris in
3 custody at the Pickens -- at the Clemson City Jail?

4 A. He was.

5 Q. Okay. Uh, what about D'Andre Draper, was he in
6 custody?

7 A. He was.

8 Q. Okay. Did you speak with those individuals that day?

9 A. I did.

10 Q. Who'd you talk t -- did you talk to Mr. Draper first?

11 A. I did.

12 Q. Uh, I wanna talk about that conversation a little bit.

13 Uh, when you spoke to Mr. Draper he was in custody, correct?

14 A. Correct.

15 Q. Uh, did you advise him that he had the right to a lawyer
16 and a right to remain silent and all that?

17 A. Yes, I did.

18 Q. What did you advise him of, just just kinda tell the jury
19 I guess, uh, so they know your normal procedure when you talk
20 to a ---

21 A. When I interview ---

22 Q. --- suspect.

23 A. --- that basically anyone, I read them their rights, um,
24 you know, the basic you have the right to remain silent, you
25 don't have to talk to me if you don't want to. I go through

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 the whole form and I "X" off everything that I read to them
2 and I have them initial it. At the bottom of the page is a
3 waiver and it states at this time I don't want an attorney and
4 I I will speak to you but they have the right to stop
5 answering any time ---

6 Q. Okay.

7 A. --- but that's a waiver of rights.

8 Q. Did Mr. Draper seem to understand your questions and
9 respond intelligently I guess?

10 A. Yes, sir.

11 Q. Uh, did he at any point in time say, No, I don't wanna
12 talk to you ---

13 A. No.

14 Q. --- or did he say that he wanted his lawyer, that he just
15 wished to remain silent about the ordeal?

16 A. No.

17 Q. Okay. Uh, during that conversation, uh, did Mr. Draper
18 testi -- tell you that he had ---

19 MR. CANTRELL: Your Honor, again ---

20 THE COURT: Yeah, don't lead just ---

21 Q. Okay.

22 THE COURT: --- what did he do?

23 Q. Uh, what did he say he was doin' that night or wha'd he
24 tell ya?

25 A. He stated ---

KRRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 MR. CANTRELL: Your Honor, ---

2 A. --- to me ---

3 MR. CANTRELL: --- again objection to ---

4 THE COURT: Well ---

5 MR. CANTRELL: --- hearsay. This is not ---

6 THE COURT: --- this i ---

7 MR. CANTRELL: --- a victim, this is the defendant,
8 co-defendant.

9 THE COURT: Yeah, well this is i -- you're offerin' it
10 for impeachment?

11 MR. CLEVELAND: I'm offerin' it for impeachment purposes,
12 yeah.

13 THE COURT: So I'm gonna allow it on that basis.

14 THE WITNESS: Mr. Draper stated to me that that he was
15 going to his homeboy's house, uh, Josh to get some money and
16 that he spoke with Mr. Morris and Morris said he needed a ride
17 to , UV, is ---

18 MR. CLEVELAND: Okay.

19 THE WITNESS: --- what they say.

20 BY MR. CLEVELAND:

21 Q. Alright, did he state, uh, specifically about that night
22 when they were at , did he state to you that
23 when Morris returned to the car he said, Hey, man, let's go,
24 and he stated that he saw Morris remove some gloves from his
25 hands and put them in the glove compartment?

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Yes, sir, he did.

2 Q. Also durin' that conversation, uh, I wanna talk about
3 those gloves a little bit. Did he state -- whose gloves did
4 he say they were?

5 A. To the officer who took the original report, he stated
6 that they were hers -- his mother's.

7 Q. Okay. Who did -- what did he tell you about the
8 ownership of those gloves?

9 A. He stated to me that they were Larold Morris's.

10 Q. Alright, ---

11 A. He stated ---

12 Q. --- did he give any reason why his story was different?

13 A. He said he was scared.

14 Q. Okay. Uh, did he say, did he state to you that his
15 mother works at a plant or anything of that nature?

16 A. No, he stated that his mother was in nursing.

17 Q. Okay. And at that point in time was that the end of the
18 conversation with Mr. Draper?

19 A. Yes.

20 Q. Did you speak to the defendant Mr. Morris?

21 A. I did.

22 Q. Did you advise Mr. Morris of his rights?

23 A. I did.

24 Q. Just briefly was it in the same manner that you did
25 Mr. Draper?

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. It was.

2 Q. At any point in time did Mr. Morris tell you that he
3 wished to remain silent, ---

4 A. No.

5 Q. --- that he wanted his attorney?

6 A. No.

7 Q. Did he appear to acknowledge and answer your questions
8 intelligently like he understand what you were, what was goin'
9 on there?

10 A. Yes, sir.

11 Q. Okay. And at any point in time durin' the conversation,
12 did he decline to speak to you?

13 A. No.

14 Q. Did you force him or coerce him in any way to make a
15 statement to you?

16 A. No.

17 Q. Okay. Uh, did Mr. Morris durin' that conversation say
18 anything about the book bag that was found in the car?

19 A. He did.

20 Q. And what did he say about that?

21 A. He stated ---

22 MR. CANTRELL: Your Honor, ---

23 A. --- that that ---

24 MR. CANTRELL: --- again objection. This is not a
25 victim, it's not impeachment, this is defendant's ---

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 THE COURT: It's ---

2 MR. CANTRELL: --- conversation.

3 MR. CLEVELAND: Statement again interest, Your Honor.

4 THE COURT: Well ---

5 MR. CANTRELL: Uh, I I object ---

6 THE COURT: Whoa, whoa, whoa, ---

7 MR. CANTRELL: --- that.

8 THE COURT: --- come up.

9 (Whereupon, a bench conference was held off the record.)

10 THE COURT: For the record that objection's overruled.

11 BY MR. CLEVELAND:

12 Q. Alright, Detective Justice, we were discussing
13 Mr. Morris's conversation, uh, did he say anything about the
14 book bag that was located in the car?

15 A. He did.

16 Q. Uh, what did he say about that?

17 A. He stated that it was not his.

18 Q. Okay. Uh, what did he state that he was doing earlier
19 that night before he was arrested?

20 A. He said he was at his, at his house, um, he lived with
21 his sister, playin' the Xbox.

22 Q. Alright, and, uh, where did he live, what was his
23 address?

24 A. It's [REDACTED] [REDACTED] [REDACTED] [REDACTED].

25 Q. Okay. Uh, I wanna talk a little bit more, did you

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 discuss with him anything else about Xbox or anything?

2 A. I did.

3 Q. Tell us, tell the jury about that conversation with the
4 defendant.

5 A. He stated to me that he was playing the Xbox so I told
6 him well give me your gamer tag, I can verify that you were
7 online, you know, that just bein' truthful. I asked him for
8 his gamer tag and he stated that it was Little Abe. Um, at
9 that point I already had knowledge that the gamer tag been
10 changed from Capo Almighty to Little Abe, um, and then I
11 confronted him with that that information.

12 Q. Okay. Did he say anything else about it then?

13 A. Yeah, he said, I don't know nothin' about that.

14 Q. Okay. Uh, did he tell you -- who picked him up that
15 night, did he tell you that?

16 A. D'Andre Draper.

17 Q. Alright. And other than those details was that basically
18 the end of your conversation with Mr. Draper, I mean, with
19 Mr. Morris the defendant?

20 A. Yes, sir.

21 Q. Uh, did you have a chance to talk to Mr. Draper again
22 after that conversation?

23 A. I did.

24 Q. Alright. And did you, uh, inform Mr. Draper that
25 Mr. Morris wasn't, didn't take ownership of the book bag?

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

- 1 A. I did.
- 2 Q. What was his reaction to that?
- 3 A. You want his words?
- 4 Q. Yes, ma'am.
- 5 A. Ah, nah, I need you to go get my phone, I'm gonna show
- 6 you sumtin'.
- 7 Q. How did he appear when you told him that Mr. Morris
- 8 wasn't claiming the book bag?
- 9 A. Upset, scared.
- 10 Q. Alright, uh, did you go get his phone?
- 11 A. I did.
- 12 Q. Where was his phone located at the time?
- 13 A. It was in his property bag, um, within the detention, uh,
- 14 at the poli -- at Clemson Police Department.
- 15 Q. Okay, is that what woulda been taken off of him at the
- 16 time of arrest and put in for safekeeping?
- 17 A. Yes, sir.
- 18 Q. Uh, what did he do -- wha'd you do with his phone when
- 19 you got it out?
- 20 A. I brought it straight to him.
- 21 Q. Okay, and what -- did he show you anything on that
- 22 phone?
- 23 A. He did.
- 24 Q. Alright, describe the manner and ho -- what he showed you
- 25 and I guess what was it.

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. He powered his phone on and I -- he scrolled maybe once
2 or twice and he said, Look, and it was a text message and all
3 it said wa -- it it stated from from Junior and, uh, it said,
4 "Man, let's get Zeke or Zikee".

5 Q. How -- do you remember the way Zeke or Zikee was spelled?
6 Was it strange?

7 A. Yes, it was Z-I-K-E-E.

8 Q. Okay, uh, did he give a statement to that, to that
9 effect?

10 A. He did.

11 Q. Okay, and in that statement -- well beg the Court's
12 indulgence for one moment.

13 (Whereupon, a discussion was held off the record.)

14 MR. CLEVELAND: I beg the Court's indulgence, Your Honor.
15 I'm sorry, I got a lotta paperwork here.

16 BY MR. CLEVELAND:

17 Q. Alright, I'm gonna show you what's just been marked for
18 identification only State's Exhibit 111, ---

19 A. Um-hum.

20 Q. --- is that in Mr. Draper's handwriting?

21 A. Yes, sir.

22 Q. And is it his signature at the bottom a the page?

23 A. Yes, sir.

24 Q. Was that done in your presence?

25 A. It was.

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

- 1 Q. Alright. Would you read the sentence to the jury,
2 please, starting at line 2, sentence beginning with the word
3 "then".
- 4 A. "Then Junior text me and I," um, "Then Junior text me and
5 was like let's get Zeke tonight. He was textin' me about it
6 and that's how I know."
- 7 Q. Alright, and what's you're read from is that an exact
8 copy of what I'd marked State's Exhibit 111?
- 9 A. Yes, sir.
- 10 Q. Did he ever during that conversation indicate that that
11 text message wasn't either sent on or about the night that he
12 was arrested?
- 13 A. Never.
- 14 Q. Alright, was that the basically the end of the
15 conversation with Mr. Draper at that point in time?
- 16 A. It was.
- 17 Q. Now you testified earlier that Mr. Morris had given
18 you some idea about his gamer tag or gamer information, uh,
19 did you use that information? Wha'd ya do with that
20 information?
- 21 A. I used that, um, to secure a search warrant for his
22 apartment.
- 23 Q. Alright, uh, what was the basis of that search? I mean,
24 what what pieces did you put together in your head that led
25 you to his apartment?

KRRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Well the fact that's in the original incident that's one
2 referred to the other as Junior ---

3 Q. Okay.

4 A. --- and now I know Mr. Morris, at this time I knew that
5 they called him Junior, ---

6 Q. Okay.

7 A. --- the fact that his gamer tag was Little Abe or Little
8 Abel, uh, and that's what he confirmed to me, uh, durin' the
9 interview, uh, and I -- the Xbox was of course stolen so I
10 went to Clemson City ---

11 Q. What about the fact that he said he was playin' Xbox the
12 night of March 8th?

13 A. Yes.

14 Q. Okay. Uh, did a judge grant you a search warrant for
15 that address?

16 A. She did.

17 Q. Uh, and when did you go and execute that search warrant
18 at the apartment?

19 A. March the 9th, that afternoon.

20 Q. Alright, uh, was anybody home? Well first off who went
21 with you to go do that search warrant?

22 A. It was, uh, Lieutenant Heard from Clemson City.

23 Q. Alright, is that apartment in Clemson or is it in
24 Central?

25 A. It's in Clemson.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Okay, is that why you used Clemson PD to assist in the
2 investigation?

3 A. Yes, sir.

4 Q. Okay. Uh, was anybody home when ya'll arrived initially?

5 A. Initially no.

6 Q. Alright, while ya'll were there did anybody come home?

7 A. Yes, his sister.

8 Q. Alright, whose sister?

9 A. Mr. Morris's sister.

10 Q. Do you know her name?

11 A. Deidra ---

12 Q. Okay.

13 A. --- Cade, I I mean, excuse me.

14 Q. Yeah.

15 A. Yeah, Deidra Cade.

16 Q. Okay, uh, did ya'll have to force your way into the
17 apartment or did she let ya'll in once ya'll ---

18 A. She let us in.

19 Q. Alright. Uh, what, during your search of that apartment
20 what did you locate?

21 A. Well, immediately when you walk into the, um, home you're
22 basically in the living room, in the floor in front the TV
23 was a Xbox.

24 Q. Alright, was that Xbox on or off when ya got there?

25 A. It was on.

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. Alr -- was the TV on?

2 A. It was not.

3 Q. Okay. Did you do anything with the TV or the Xbox?

4 A. I cut the TV on.

5 Q. Okay. Uh, what was -- wha'd ya see when ya cut the TV
6 on?

7 A. When I cut the TV on, it had the profile for the Xbox,
8 um, it showed Little Abe on there and had a little avatar, I
9 took pictures of it.

10 Q. Okay. Uh, did you take pictures of anything else?

11 A. I took pictures of the serial number.

12 Q. Okay, uh, I'm gonna show you what's been marked as
13 State's Exhibits ---

14 (Whereupon, a discussion was held off the record.)

15 MR. CANTRELL: Your Honor, I -- we'll look at this
16 this -- these pictures but we are stipulating that the Xbox
17 that was recovered was the Xbox taken from the, uh, February
18 2nd, uh, incident so we will stipulate to that.

19 THE COURT: Okay.

20 BY MR. CLEVELAND:

21 Q. Okay, yeah, uh, I just wanna show you what's been marked
22 State's Exhibit 76 through 96, I know you've seen the ---

23 THE COURT: Do you object to the photographs?

24 MR. CANTRELL: No objection ---

25 THE COURT: Alright, they're in then.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 (State's Exhibit Nos. 76 through 96, photographs,
2 admitted into evidence.)

3 Q. Okay, State admits 'em into evidence. Just are those the
4 photos you took that day?

5 (Whereupon, the witness examined the exhibits.)

6 A. Up until these (indicating).

7 Q. Alright. Which numbers are those?

8 A. To 93. These (indicating) were taken at the police
9 department.

10 Q. Okay, but are they all, are all the photos fair and
11 accurate depictions with the exception of the bottom picture
12 on 96 of ---

13 A. That's correct.

14 Q. --- items taken from the search? Okay, State offers 76
15 through 96 into evidence. Uh, ---

16 THE COURT: They're already in.

17 MR. CLEVELAND: Yeah, thanks.

18 Q. Um, did -- was the Xbox returned to the rightful owner?

19 A. It was.

20 Q. Okay, and who was that?

21 A. Uh, Mr. Capo.

22 Q. Okay. Uh, did you do any other searches pursuant to this
23 investigation?

24 A. I did.

25 Q. Alright, what was -- tell us about that.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Officer Pep ---

2 Q. Well I tell you what, I wanna stop you right quick there.
3 Uh, before you testified that Cle -- this was in the City of
4 Clemson and in, uh, you used Clemson to assist you, uh, what's
5 the procedure when you finish a search warrant, what do you
6 do?

7 A. The original return has to go back to the ---

8 Q. What's a return?

9 A. Okay, when when you get a search warrant, uh, you have to
10 let them know what you took from their home and that's listed
11 on what we call the "return", it's got spaces you can write,
12 uh, and I li -- it was put on there the items that we took
13 from that place: the Xbox game, things of that nature, that
14 return has to be given back to the judge who originally issued
15 the search warrant to begin with so the original copies went
16 back with, uh, Clemson City with Officer Heard.

17 Q. Okay, a -- what about were there other copies made?

18 A. Yes.

19 Q. Are those copies photo copies, are they handwritten
20 copies? carbon paper? what?

21 A. No, they were, uh, through the Xerox.

22 Q. Okay, what about at the scene do you ever handwrite out
23 multiple copies, did you ---

24 A. Yes.

25 Q. --- do it in this case?

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

- 1 A. Yes.
- 2 Q. Okay, uh, did you take one a those copies back with you
- 3 to Central?
- 4 A. I did.
- 5 Q. Alright. Uh, moving along tell us about another if any
- 6 other search you did during this investigation.
- 7 A. Uh, I did con -- do a thorough search, uh, I obtained a
- 8 search warrant for the vehicle that they were in that night.
- 9 Q. Alright, whose vehicle was that?
- 10 A. Ken Draper's vehicle.
- 11 Q. Alright, what type of vehicle was it?
- 12 A. It was a Chevy Impala silver in color.
- 13 Q. Alright, where was it located after this arrest?
- 14 A. Uh, it was towed to James Bryant's, uh, Towing, it's in
- 15 Central but it's actually out in the county.
- 16 Q. Okay. Uh, did a judge grant you a search warrant for
- 17 that car?
- 18 A. He did.
- 19 Q. And, uh, did you go search it?
- 20 A. I did.
- 21 Q. Did you have anybody with you when you did?
- 22 A. I did.
- 23 Q. Uh, who was with you?
- 24 A. Uh, Deputy Raines, ---
- 25 Q. Okay.

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. --- Anthony Raines.

2 Q. And who does he work for?

3 A. Pickens County Sheriff's Office.

4 Q. Alright, describe for us the way the car was or where
5 where the car was stored, what ya'll had to do to get into it.

6 A. Okay, uh, I called Mr. Bryant prior to us arrivin'
7 because it was in a locked, uh, gated area, uh, secured so,
8 uh, had to make sure that he was on site to let me into the
9 gate, ---

10 Q. Okay.

11 A. --- uh, he did, he unlocked the gate and then he provided
12 me the keys because he towed it, ---

13 Q. Okay.

14 A. --- brought me the keys, I unlocked the door and then our
15 search began.

16 Q. Alright, had the car to your observations did it look
17 like it had been tampered with? Any windows broken or
18 anything like that?

19 A. No, sir.

20 Q. Did ya'll have to unlock the car when ya got there?

21 A. Yes, sir.

22 Q. Alright. Uh, what did you find in the car of
23 significance?

24 A. Okay. In the, in the backseat when I opened up the door,
25 there was a, uh, let me make sure it was the right mask, there

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 was a mask in the backseat and that one was the one that was
2 black and camo in color that was sittin' just kinda off of the
3 the edge of the back passenger seat; in the floorboard right
4 below it, uh, there was a bundle of clothes, just clothes, uh,
5 there was a a magazine, a TEC-9 magazine ---

6 Q. Okay.

7 A. --- uh, that was just shoved kinda like at a angle in the
8 floor, it was, it was loaded, had twelve rounds in it; there
9 was, when I kinda unbundled the clothes, there was another
10 magazi -- excuse me, there was another mask, uh, that was
11 black in color; there was a used glove or it seemed to be a
12 used glove, uh, in the floorboard and then in the driver side
13 door was an ID that didn't belong to any of those subjects
14 that I also took.

15 Q. Alright, did you, uh, let me show you what we've marked
16 as State's Exhibits 108B and 116, do you recognize those
17 items?

18 A. I do.

19 Q. Would you tell the number and tell the jury what each or
20 tell me what they are.

21 A. This (indicating) is a magazine that, uh, fits the TEC-9
22 that we recovered the night prior, uh, it was loaded, of
23 course I unloaded it for safety safety reasons, uh, twelve
24 rounds. This (indicating) is the glove, uh, that looked to me
25 to be used and it was in the black floorboard area as well and

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 this (indicating) is the ID belonging to a Ronald Hammett, um,
2 outta Kingtree -- Kingstree and it was just in the driver's
3 side door, wasn't sure if he was a potential victim or what so
4 I took this one.

5 MR. CLEVELAND: Alright, State would like to submit Item
6 108B and 116 into evidence at this time.

7 MR. CLEVELAND: No objection, Your Honor.

8 THE COURT: Okay.

9 (State's Exhibit 108B, magazine and bullets, and State's
10 Exhibit No. 116, glove and ID card, admitted into evidence.)

11 BY MR. CLEVELAND:

12 Q. I also show you two bags we've marked State's Exhibits
13 114 and 115, uh, can you tell me what those items are.

14 A. This (indicating) one would be the black and camo in
15 color face mask that was in the rear passenger seat.

16 Q. Alright, is that your handwriting on the bag?

17 A. It is.

18 Q. Okay, and did you put that mask in that bag?

19 A. I did.

20 Q. Is it identifiable based on I guess what you, uh, what
21 you wrote on the bag and what your recollection of puttin' it
22 in there?

23 A. Yes, sir.

24 Q. Alright, what's the other one?

25 A. This (indicating) was the solid black in color mask that

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 was located in the backseat area as well of the vehicle.

2 Q. And that's No. ---

3 A. 115.

4 Q. Okay.

5 MR. CLEVELAND: This time State move to offer 115, 114
6 into evidence.

7 MR. CANTRELL: No objection, Your Honor.

8 THE COURT: Alright, without objection.

9 (State's Exhibit No. 114, black and camo mask, and
10 State's Exhibit No. 115, black mask, admitted into evidence.)

11 BY MR. CLEVELAND:

12 Q. Did that conclude your search warrant, your search of the
13 car those items?

14 A. It did.

15 Q. Uh, again, you said you had someone helpin' you with
16 this, did, uh, tell me about the return fillin' out process
17 that day.

18 A. Again, there's three copies, uh, of the search warrant,
19 we left one in the vehicle, uh, Anthony Raines took the
20 original back to his jurisdiction, uh, and gave it to Judge
21 Wolfe ---

22 Q. Okay, wa ---

23 A. --- and then I took just a copy.

24 Q. Okay, was it a handwritten copy or a, uh, or a carbon
25 copy or ---

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. No, it was handwritten.

2 Q. Okay, um, so is your testimony there were three each
3 independently created documents but contained the same
4 information?

5 A. Correct.

6 Q. Okay. I wanna just briefly show ya a few pictures just
7 around that search warrant of the car out; I'm gonna show you
8 State's Exhibits 97 through 101.

9 MR. CANTRELL: No objection, Your Honor.

10 THE COURT: Alright.

11 MR. CLEVELAND: If there's no objection, State would just
12 like to move these pictures into evidence.

13 THE COURT: Okay.

14 (State's Exhibit Nos. 97, 98, 99, 100, 101, photographs,
15 admitted into evidence.)

16 BY MR. CLEVELAND:

17 Q. Were those taken of the car and the items found?

18 A. Yes, sir.

19 Q. Thank you.

20 A. Welcome.

21 Q. Now at this point in time were you aware of any other
22 firearms or items that had been recovered in this
23 investigation?

24 A. Yes.

25 Q. Uh, what other firearms I guess had been recovered?

KHRISTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

- 1 A. Uh, the night of the arrest ---
- 2 Q. Okay.
- 3 A. --- Officer Peppers retrieved some weapons outta the
- 4 vehicle.
- 5 Q. Uh, did you do anything with that weapon or those
- 6 weapons?
- 7 A. I did.
- 8 Q. What were those two guns?
- 9 A. Lorcin .380 and a TEC-9.
- 10 Q. Okay, wha'd ya do with those guns?
- 11 A. I signed them out of evidence and I took them to Pickens
- 12 County to, uh, Tony Robinson ---
- 13 Q. Okay.
- 14 A. --- to see if he could lift prints from them.
- 15 Q. Alright, to your knowledge were there any prints taken
- 16 off those guns?
- 17 A. Uh-uh (negative).
- 18 Q. Uh, did he, uh, did ya'll do anything regarding the
- 19 serial number of the gun?
- 20 A. Tony attempted to lift, uh, the serial number off the one
- 21 that was filed off ---
- 22 Q. Okay, ---
- 23 A. --- and ---
- 24 Q. --- but was he successful with that ---
- 25 A. No, sir.

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 Q. --- to your knowledge? Okay, uh, did you you -- at this
2 time my recollection is we had three masks in custody,
3 correct, three masks in evidence, correct?

4 A. Correct.

5 Q. Uh, did you attempt to do any other forensics or any, uh,
6 other investigation regarding those masks?

7 A. I did.

8 Q. Alright, what is that?

9 A. Um, I was to send the mask down to Columbia to SLED for
10 DNA.

11 Q. Alright, uh, did you obtain a DNA sample from the
12 defendant?

13 A. Yes, I did.

14 Q. Okay. Was that pursuant to a court order?

15 A. Yes, it was.

16 Q. Alright, uh, and tell me about I guess how that's done
17 just briefly how you handled that DNA sample.

18 A. The solicitor's office actually assist in getting the
19 court order, um, once it was ordered I took that to Pickens
20 County, he was at the LEC, um, with assistance of Tony
21 Robinson I actually took a swab and swabbed his cheek ---

22 Q. Alright.

23 A. --- and sealed it up and it was taken to Columbia.

24 Q. When you say you sealed it up, did you put it in a bag
25 that was permanently sealed or just like a Ziploc?

KIRSTY JUSTICE - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. No, it was permanently sealed.

2 Q. Alright, and what did you do with that bag once you had
3 it permanently sealed at the LEC?

4 A. Pli -- I brought it back to Central Police Department,
5 placed it in property and evidence.

6 Q. Alright. Uh, do you know if there was a sample taken on
7 the co-defendant Draper in this case?

8 A. There was.

9 Q. Uh, do you have knowledge of who took that sample?

10 A. Tony Robinson did.

11 Q. Okay, and he works with the ---

12 A. Pickens County Sheriff's Office.

13 Q. Okay. Uh, did that sample, did you handle that sample
14 any way, shape or form?

15 A. I did.

16 Q. Okay, tell the jury what you did with that sample.

17 A. He took the sample and then bagged it up, sealed it, um,
18 I went to the sheriff's office, retrieved it, took it back to
19 our police department, um, and then request that it be taken
20 to SLED ---

21 Q. Uh, ---

22 A. --- for ---

23 Q. --- when it's in your police department, is that a secure
24 facility?

25 A. It is in ---

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Right, ---

2 A. --- property and evidence.

3 Q. --- and and but Pickens County, is Pickens County
4 evidence the room to your knowledge a secure and controlled
5 facility?

6 A. Yes, sir.

7 Q. Uh, beg the Court's indulgence just one moment here. Did
8 that, did that conclude your investigation of this case?

9 A. Yes, sir.

10 Q. Thank you. I don't have any further questions at this
11 time, Detective, please answer anything Mr. Cantrell may have.

12 A. Yes, sir.

13 MR. CANTRELL: Please the Court.

14 THE COURT: Yes.

15 MR. CANTRELL: Your Honor, I and for the record we have
16 stipulated to all the chain of custody or chain of evidence of
17 these swabs and the -- this evidence, uh, ---

18 THE COURT: Okay.

19 MR. CANTRELL: --- so I'm not gonna go there on on ---

20 THE COURT: Alright, thank you.

21 MR. CANTRELL: --- cross.

22 CROSS-EXAMINATION BY MR. CANTRELL:

23 Q. Uh, you indicated, uh, that you took the swab from
24 Mr. Morris ---

25 A. Yes.

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. --- and Mr. Robinson from Pickens County took the swab
2 from Mr. Draper ---

3 A. Yes.

4 Q. --- and now the gentleman in the backseat Mr. Cade, who
5 took his swab?

6 A. To my knowledge there wasn't any taken from him.

7 Q. No swab from the ge -- from the individual in the
8 backseat of the car where the masks were, where the guns
9 were, ---

10 A. That's correct.

11 Q. --- that correct? Okay. And you are the lead
12 investigator on this case, is that correct?

13 A. Yes, sir.

14 Q. And, uh, from the standpoint of any fingerprints that may
15 that you were looking for there were no fingerprints detected,
16 is that correct?

17 A. That's correct.

18 Q. And when you went out to the lot, that's a lot that's
19 owned by James Bryant towing, is that correct?

20 A. That's correct.

21 Q. And he's he's not affiliated with or a an officer with
22 the Central or Clemson Police Department, he's a wrecker, uh,
23 car lot owner, is that correct?

24 A. Yeah, he he's on a rotation list for towin' vehicles.

25 Q. So anybody could have towed this car, he just happened to

KHRISTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 be the one.

2 A. That's correct.

3 Q. And once he let you in it, make sure I understood you
4 correctly, you said you opened the door and did you say you
5 opened the door and saw the mask on the seat?

6 A. It actually was on the seat.

7 Q. Okay. Now are you testifying that the officers that
8 searched two nights before just left that mask sitting on the
9 seat?

10 A. Well the fact that it's was dark, it was dark when they
11 searched and daylight when I did.

12 Q. So you are sayin' that you believe they just left it
13 sitting on the seat?

14 A. It's -- yes, I do.

15 Q. Okay. When you search a car at night you think guns are
16 present, you use flashlight I would presume, is that
17 correct?

18 A. Personally I do.

19 Q. And you search thoroughly to make sure you're not missing
20 anything relevant to what you're investigating.

21 A. Yes, sir.

22 Q. And there was a mask on the seat of this car.

23 A. There was.

24 Q. Uh, on the passenger, that was on the passenger side or
25 I'm sorry, the driver side or passenger side of the

KHRISTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

- 1 backseat?
- 2 A. That was the passenger side backseat.
- 3 Q. You also noted some clothes in the, ---
- 4 A. That's correct ---
- 5 Q. --- in the floor or on the seat?
- 6 A. They were on the floorboard.
- 7 Q. Okay. You also noticed a magazine for a TEC-9, is that
- 8 what I understood?
- 9 A. Yes, sir.
- 10 Q. Was that in plain view when you opened the door?
- 11 A. Not in plain view.
- 12 Q. Okay. Uh, then you found another mask, was it in plain
- 13 view, the ---
- 14 A. Was not.
- 15 Q. --- second mask? Okay, so there was a mask in plain view
- 16 but none a these other things were in plain view when you
- 17 opened the car.
- 18 A. Correct.
- 19 Q. Uh, you found an ID but you have no idea who that is?
- 20 A. I don't.
- 21 Q. Okay. Now the ID has driver's license information, it
- 22 has address, picture, everything but your investigation didn't
- 23 lead you to who that individual was.
- 24 A. No, sir.
- 25 Q. Who'd this car belong to?

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 A. Kimberly Draper.

2 Q. And who based on your investigation was driving the car
3 that night?

4 A. D'Andre Draper.

5 Q. And who was in the backseat of the car that night?

6 A. Mr. Cade.

7 Q. Okay. Mr. Cade's not here today and not in trial today,
8 is that correct?

9 A. That's correct.

10 Q. Now, you executed a search warrant at the residence that
11 you understood that Larold Morris was living in that of his
12 sister, is that correct?

13 A. That's correct.

14 Q. And when you got there the only thing you found of any
15 relevance to you was one Xbox, ---

16 A. And a game.

17 Q. --- uh, and a game with that Xbox.

18 A. That's correct.

19 Q. Nothing else from that was that to your knowledge was not
20 supposed to be there otherwise.

21 A. That's correct.

22 Q. The only reason you got to that game was because Larold
23 Morris answered your questions and in fact told you he was
24 playing an Xbox earlier in the evening of March the 8th, is
25 that right?

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 A. That's correct.

2 Q. He volunteered that information to you and then when you
3 ask him his gamer tag he volunteered and gave you what in fact
4 was a gamer tag that he was using, ---

5 A. That's correct.

6 Q. --- is all that true? Now we've also heard some of your
7 testimony about, uh, this text and first of all, let me go
8 back. You indicated in your testimony that you went after
9 talking to Larold Morris, I'm sorry, let me stop -- start with
10 that. Mr. Morris told you that the black bag was not his.

11 A. That's correct.

12 Q. Okay, did he say anything else blo -- about the black bag
13 or just that ---

14 A. Uh-uh (negative.)

15 Q. --- it was not his?

16 A. He stated to me personally it just was not his.

17 Q. Okay. You then went to Mr. Draper and your testimony
18 was, I told him that Mr. Morris said the bag was not his, but
19 what you actually told him was that Junior and Cade were
20 puttin' the blame on him for the book bag, is that what you
21 told him?

22 A. Yes, that's what he put in his, uh, statement.

23 Q. But you already had that statement earlier, is that
24 correct?

25 A. Mr. Morris's statement?

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Yes.

2 A. Yes.

3 Q. So this wasn't new information to you but you went back
4 to Mr. Draper and chose at that point to tell him Junior and
5 Cade were putting the blame on him for the book bag.

6 A. They were.

7 Q. Okay, is that what you told him ---

8 A. Yes, I did tell him that.

9 Q. --- at that point?

10 A. I did.

11 Q. But you had known that even earlier in the process.

12 A. Well my pol -- my procedures is to interview everybody
13 and then come back and do it again when I find out new
14 information.

15 Q. Um-hum, but the answer to that is yes, you knew that they
16 said the bag wasn't theirs earlier in your interview
17 process ---

18 A. That's correct.

19 Q. --- than than this point.

20 A. That's correct.

21 Q. Okay. And it's true, is it not, just, uh, and you heard
22 Mr. Draper's testimony yesterday, he told you that the message
23 said, Let's get Zikee tonight, is that what he told ya?

24 A. Yes.

25 Q. Okay. Now we have, can have all sorts of discussions

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 whether he could've, should've did say, Well that tonight
2 doesn't mean tonight, that meant some other night, the fact of
3 the matter is he told you the statement was, Let's get Zikee
4 tonight, and that's all he told ya.

5 A. That's correct.

6 Q. And you, uh, say you saw this on his cell phone, that now
7 do you still have that cell phone?

8 A. I do not.

9 Q. Okay, was it returned to Mr. Draper?

10 A. It was.

11 Q. And why would that be if it was evidence in a crime?

12 A. Well to to be honest at the time, you -- I didn't know
13 what kind of importance everything was gonna be and he was
14 cooperatin' at the time.

15 Q. Well at that point you thought it was important because
16 he's given it to you right after you told him that Junior and
17 Cade were puttin' the blame on him so you ---

18 A. And ---

19 Q. --- had to know it was important information, didn't ---

20 A. --- and that's why it's documented in my incident
21 report ---

22 Q. But that is ---

23 A. --- if there was any importance.

24 Q. --- but not important enough to keep this cell phone.

25 A. I just didn't keep it.

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Okay. Whether you, I don't know if you remember on the
2 cell phone since you don't have it but you do have the
3 statement, it says, "Man, let's get Zikee tonight," and that's
4 Z-I-K-E-E, ---

5 A. That is ---

6 Q. --- is that right?

7 A. --- correct.

8 Q. Okay. Now did you attempt or did you in fact look at,
9 look at Larold Morris's cell phone that night?

10 A. I did not.

11 Q. Did he have one there in in property?

12 A. I'd have to look at his Property and Evidence sheet, I I
13 I couldn't advise you.

14 Q. Okay, but you can't deny that he had, if he had a cell
15 phone.

16 A. I can't confirm or deny whether he had one.

17 Q. If he had would you have looked at it to try to follow up
18 on this?

19 A. He wasn't what I would call cooperative.

20 Q. Did you have to have his cooperation to look at his cell
21 phone once you had this information?

22 A. I would've had to have his comp -- uh, cooperation or
23 search warrant.

24 Q. Did you do either one?

25 A. No.

KHRISTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Would that have been helpful information?

2 MR. CLEVELAND: Object, calls for speculation, Judge.

3 MR. CANTRELL: Well it's parta the investigative process.

4 THE COURT: Nah, I overrule, go ahead.

5 Q. Would that have been helpful?

6 A. Yes, sir.

7 Q. Okay. Now there was some other statements you've
8 attributed to Mr. Draper, one implying that Mr. Morris had
9 gloves, plastic gloves, uh, you did not see fit to have
10 Mr. Draper write that down even though you did about this cell
11 phone message or this text message, is that correct?

12 A. Uh, what part about the gloves?

13 Q. Where you you report Mr. Draper said something about
14 Larold Morris having plastic gloves in his hands or on his
15 hands.

16 A. Yeah, he stated that to me and I put that in my incident
17 report.

18 Q. But you chose not to put that in a written statement like
19 you did about the text message.

20 A. If it's not in there then it wasn't put in there.

21 Q. And you heard Mr. Draper deny even making that statement
22 when you were hear yesterday, correct?

23 A. Yes, I heard that.

24 Q. So but for Mr. Morris tellin' you all about his Xbox and
25 his name, you would have never searched for that Xbox at his

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 home, would ya?

2 A. That's not the only reason, I mean, the fact that the
3 original incident he -- one person was called Junior and now I
4 have someone in front of me who states that, you know, their
5 gamer tag is Little Abe and his name is Junior, I mean, it's
6 just a totality of everything.

7 Q. Well let me ask you this: Tell the jury had you only had
8 that the person in this residence was someone who was referred
9 to as Junior, you're tellin' the jury you woulda gone to a
10 magistrate or a judge and asked for a search warrant.

11 A. Not just based on the name Junior alone, no.

12 Q. And you have indicated you were the lead investigator and
13 in response to Mr. Cleveland you indicated that after the
14 search warrant and then the swab's taken and then evidence
15 transported either to Pickens Sheriff's Department or to SLED
16 you had completed your investigation, is that pretty much
17 it?

18 A. To my knowledge yes, sir.

19 Q. Give us approximately when that was if you remember or
20 you may have the exact date. When was, when was that
21 concluded?

22 A. Are you speaking of when the SLE -- the DNA evidence came
23 back?

24 Q. Uh, yeah, wha -- basically when you concluded everything
25 in your investigation.

KHRISTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 A. If you give me just a minute.

2 Q. Sure. And we may have a document here, let me look.

3 A. If you do I would appreciate it.

4 Q. Alright.

5 (Whereupon, a discussion was held off the record.)

6 Detective, I think we've got a document that stipulates
7 when those reports came back and I -- that may be ---

8 A. Okay, ---

9 Q. --- what you're looking ---

10 A. --- that would be great.

11 Q. --- for. Okay, this document indicates that SLED
12 analysis was done January 5th, 2012, is that the close to the
13 date we're talking about where you can could say you
14 officially wrapped up your investigation?

15 A. Uh, I, yes, I would say say that.

16 Q. And I'm -- we're not tryin' -- I'm not tryin' to pin you
17 down to ---

18 A. Please don't.

19 Q. --- exact date, time, just approximate date. And prior
20 to that it had been I would assume several weeks since you had
21 done anything but collect these samples and send 'em to SLED.

22 A. That's correct.

23 Q. When you, uh, based on this investigation sometime in
24 mid-2011, and I'm sorry I don't have the dates exactly in
25 front of me but I think we've agreed on that time frame, you

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 went to the magistrate and signed an arrest warrant against
2 Mr. Morris for this burglary we're talkin' about, is that --
3 did you do that?

4 A. That was just a day or so after he was arrested I did
5 that.

6 Q. So you signed arrest warrant for the burglary ---

7 A. Um-hum.

8 Q. --- and I believe at that same point were you the one
9 that signed the arrest warrant on this gun charge, this
10 obliterated obliterated serial number?

11 A. That one I believe was under direct indictment.

12 MR. CLEVELAND: Judge, I'm gonna object to this line a
13 questioning, I don't see the relevance of the -- the charging
14 documents are just that, the piece a paper which comes in with
15 a warrants, indictments.

16 THE COURT: That's alright it's cross-examination, go
17 ahead.

18 MR. CANTRELL: Yes.

19 BY MR. CANTRELL:

20 Q. So you signed, so you signed a warrant on a burglary back
21 in ---

22 A. March.

23 Q. --- March of 2011.

24 A. That's correct.

25 Q. And that's the charge that you placed against Mr. Morris

KIRSTY JUSTICE - CROSS-EXAMINATION BY MR. CANTRELL

1 at that time, uh, that burglary is the charge you placed
2 against him at that time?

3 A. That and I believe the possession of a firearm ---

4 Q. Okay.

5 A. --- at ---

6 Q. Alright.

7 A. --- yes.

8 Q. You signed no other warrants, I I I'm I'm sorry, strike
9 that. You signed no other warrants that are on trial here
10 today: burglary, uh, you know there's a charge for armed
11 robbery, there's a charge for conspiracy, uh, and there's a
12 charge for the obliterate -- obliterated serial number, you
13 signed no warrants regarding those charges.

14 A. No, those came through direct indictment.

15 Q. And those charges to your knowledge were placed against
16 Mr. Morris last month, is that correct?

17 A. It was either last month or the month prior that I went
18 to grand jury with it yes, sir.

19 Q. So only one charge before this court today was one you
20 placed against him in March 2011, all the remaining charges in
21 front of you -- the Court today were made within the last
22 sixty days let's say.

23 A. Yeah, I don't remember if you said the possession of
24 firearm, I don't know if that's still in but yes those two.

25 Q. Alright. And from mid-Fall of 2011, except for these DNA

KIRSTY JUSTICE - REDIRECT EXAMINATION BY MR. CLEVELAND

1 analyses, you've done absolutely no more investigation on this
2 case.

3 A. I have not.

4 (Attorney/client discussion held off the record.)

5 MR. CANTRELL: No further question, Your Honor.

6 Mr. CLEVELAND: Just very briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. CLEVELAND:

8 Q. Uh, regarding these charges that was brought up about the
9 time frame, uh, did you present this evidence I guess to the
10 grand jury to bring about these indictments?

11 A. I did yes, sir.

12 Q. And did you use any evidence that was not obtained in
13 your original investigation to present all the charges that
14 are on trial here today?

15 A. No, sir, did not.

16 Q. Uh, regarding going back just to cover the bases, back at
17 the search warrant of the house at [REDACTED], the
18 serial number on that Xbox did you observe it?

19 A. I did, ---

20 Q. And is it ---

21 A. --- I took a picture of it.

22 Q. --- depicted in those pictures?

23 A. Alright, is that the same serial numbers was provided
24 your office when that Xbox was taken ---

25 Q. It was.

CHAD ROPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. --- at some point in time? Okay, no further questions.

2 THE COURT: Alright, thank you. Oh, you got some now?

3 MR. CANTRELL: No, I don't, no.

4 THE COURT: Alright, thank you, ma'am, you can step down.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness left the stand.)

7 THE COURT: Alright, call your next witness.

8 MR. CLEVELAND: State calls Chad Roper.

9 (Whereupon, the witness came forward.)

10 CHAD ROPER, having been first
11 duly sworn, testified as follows:

12 THE CLERK: Have a seat and state your name for the
13 record, please.

14 THE WITNESS: Chad Roper.

15 DIRECT EXAMINATION BY MR. CLEVELAND:

16 Q. Mr. Roper, who you work for?

17 A. Pickens County ---

18 Q. Uh, ---

19 A. --- Sheriff's Office.

20 Q. Alright, uh, back in Februa -- back in 2011 who'd you
21 work for?

22 A. Central City.

23 Q. Alright, uh, what was your position at Central City?

24 A. I was an officer and I also was over evidence.

25 Q. Okay, when you say you were over evidence, did you

CHAD ROPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 maintain the evidence collection at Central City?

2 A. I did.

3 Q. Uh, was that your job to handle items that come in and
4 out that relate in criminal investigations?

5 A. It was.

6 Q. Uh, is that a secure facility where those items are
7 logged and kept?

8 A. It is.

9 Q. Okay. Uh, in this case, um, did you handle any of the
10 evidence in this case, namely, uh, three masks and two DNA
11 swabs?

12 A. I did.

13 Q. Uh, what was your role with these items?

14 A. When they were placed into evidence, I went ahead logged
15 'em, they're placed in temporary storage and then I placed 'em
16 into the evidence room and then had to get 'em down to SLED
17 and test ---

18 Q. Alright, ---

19 A. --- 'em.

20 Q. --- do you recall what day you took them to SLED?

21 A. I don't.

22 Q. Uh, if I show you for Items 12, 13, 2, 14 and 11, I'm
23 gonna show you a various stack of paper, see if you can
24 re -- look at that and refresh your memory and answer the
25 question.

CHAD ROPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Looks like it was on 8/3 2011 is whenever it was taken to
2 SLED.

3 Q. Alright, were all items taken to SLED at that point in
4 time?

5 A. Uh, ---

6 Q. Take ---

7 A. --- as far as agency item number's gonna be 12, 13, ---

8 Q. --- take your time and review those.

9 A. --- 2, 14 and 11, ---

10 Q. Okay.

11 A. --- uh, which was gonna be a black and camo in color face
12 mask, black in color face mask, additional black in color face
13 mask and then buccal swabs from Mr. Morris and Mr. Draper.

14 Q. Okay, did you withdraw those items from evidence and
15 transport 'em to SLED?

16 A. I did.

17 Q. Uh, tell me about the SLED facility, is that a secure
18 facility?

19 A. It is.

20 Q. Uh, did you have to sign in those items when you got
21 there?

22 A. Yes, sir.

23 Q. Is just anybody allowed to take stuff to SLED or ---

24 A. No, sir.

25 Q. Okay, who can take items like that to SLED?

CHAD ROPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 A. Uh, only law enforcement that has been prior approved or
2 or or is is slotted as someone who can bring somethin' down
3 there to 'em, ---

4 Q. Alright.

5 A. --- you're you're placed into a computer system.

6 Q. Uh, were the items, mainly the DNA swabs, were they, uh,
7 sealed when you took 'em down there?

8 A. They were.

9 Q. Uh, did they appear, did they or any of the other items
10 appear to have been tampered with in any way, shape or form?

11 A. No, sir.

12 Q. Thank you. Uh, no further questions.

13 MR. CANTRELL: Your Honor, no questions. We stipulate to
14 all of that information.

15 THE COURT: Alright, thank you, you're -- you step down.

16 (Whereupon, the witness left the stand.)

17 THE COURT: Alright, why don't we, uh, just take a short
18 mornin' break before anybody gets overburdened. Don't talk
19 about the case, alright.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: How much you got left, one? Okay, sorry.
23 Alright, we'll just take ten, fifteen minutes.

24 MR. TOOKER: Thank you, sir.

25 (Whereupon, a recess was taken.)

CHAD ROPER - DIRECT EXAMINATION BY MR. CLEVELAND

1 (Stipulation regarding chain of custody marked State's
2 Exhibit No. 117 for identification.)

3 THE COURT: Okay, ya'll ready?

4 MR. TOOKER: Yes, sir.

5 THE COURT: Okay, let's go.

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

7 THE COURT: Alright, Mr. Tooker.

8 MR. TOOKER: Thank you, sir, may it please the Court.

9 Uh, before we call our last witness State has a an additional
10 stipulation to to read to the Court, uh, and at this time we
11 admit State's 117.

12 THE COURT: Alright.

13 (State's Exhibit No. 117, stipulation regarding chain of
14 custody, admitted into evidence.)

15 MR. TOOKER: The above-named defendant Larold Lee Morris
16 stipulates to the following: The chain a custody on SLED lab
17 number L1108789 is established and sufficient to allow for the
18 admissibility of the DNA analysis prepared by SLED examiner
19 Amanda Webb. At this point State calls SLED examiner Amanda
20 Webb.

21 THE COURT: Okay.

22 (Whereupon, the witness came forward.)

23 AMANDA WEBB, having been
24 first duly sworn, testified as follows:

25 THE CLERK: Have a seat and state your name for the

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 record, please.

2 THE WITNESS: Amanda Webb.

3 DIRECT EXAMINATION BY MR. TOOKER:

4 Q. Alright, Ms. Webb, where where do you work, ma'am?

5 A. I work with SLED.

6 Q. And what do ya do for them?

7 A. I'm a forensic DNA analyst.

8 Q. And how long have you done that?

9 A. A little over five years.

10 Q. Okay, and what are your duties as a forensic DNA
11 analyst?

12 A. Any evidence items that are collected at crime scenes
13 throughout the whole state, um, if they want those analyzed
14 for DNA, uh, they're brought to SLED and I analyze the items
15 of evidence for DNA and then I also analyze what are called
16 "known standards" and that's DNA collected from a certain
17 individual so we know it belongs to them, uh, usually they're
18 victims or suspects and I compare any DNA that's developed
19 from evidence items to a victim or suspect to see whether
20 they're, uh, it matches or it doesn't match.

21 Q. Okay, and, uh, so that sounds pretty scientific, what
22 kinda qualifications or education do ya have to have to do
23 that?

24 A. Uh, you're required to have a Bachelor's of Science
25 degree and you're required to have genetics, statistics, uh,

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 biochemistry and, uh, molecular biology coursework and, uh,
2 I've completed all of those. I have a Bachelor's of Science
3 in Forensic Chemistry and a Master's of Science in Forensic
4 Science.

5 Q. And, uh, do ya have any additional training or
6 qualifications that you have to do for SLED?

7 A. Uh, yes, upon hire, uh, I trained under a court qualified
8 analyst for approximately a year and a half before I was given
9 independent test, uh, my independent casework and also, uh, I
10 have to complete, uh, testing from an outside laboratory twice
11 a year and I have to get those answers correct to continue to
12 practice and keep doing casework.

13 Q. Okay. So far, uh, you said you've been workin' 'bout
14 'bout five years, uh, how how many cases have you worked on
15 approximately in that five years?

16 A. About 600.

17 Q. Okay, and how many times have you testified in court?

18 A. Think this will be my fifteenth.

19 Q. Okay.

20 MR. TOOKER: At this point, Your Honor, the State would
21 like to move, uh, to have Ms. Webb admitted as an expert in
22 the field of forensic DNA analysis.

23 THE COURT: Any voir dire?

24 MR. CANTRELL: No objection, we would stipulate, Your
25 Honor.

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 MR. TOOKER: Okay.

2 THE COURT: Alright.

3 BY MR. TOOKER:

4 Q. And do you know why you're here today?

5 A. Uh, yes, I do.

6 Q. Okay, and why is that?

7 A. Uh, to testify to the evidence items and the standards I
8 receive for, uh, this case, uh, SLED Lab Number L118789.

9 Q. Okay, I'm gonna hand you what's been marked as State's
10 117, uh, the second page of that, uh, that group a paperwork
11 you recognize that page?

12 A. Yes, I do.

13 Q. What is that?

14 A. That is the report I issued, um, with the results of my
15 DNA testing for this case.

16 Q. Okay, and and what kinda work did you do in this case?

17 A. I did, um, DNA testing on, um, evidence items and some
18 known standards.

19 Q. Okay, what were the evidence items?

20 A. I had a swab from a black and camo face mask, a second
21 swab from a black face mask and then a third swab from a a
22 different, a a third, uh, black face mask ---

23 Q. Okay, ---

24 A. --- an ---

25 Q. I'm sorry, ---

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 A. Oh, that's okay.

2 Q. --- what known standards did you have?

3 A. Um-hum, I had a known standard from Larold Morris and
4 also a a known DNA standard from D'Andre Draper.

5 Q. Okay. How is it, ya know, evidence goes into SLED, how
6 is that evidence processed before it comes to you?

7 A. Um, in this particular case, uh, the face masks were
8 processed, uh, by an evidence processing technician also in
9 the DNA department and basically it's just any sort of large
10 items like clothing or or bedding, uh, will go to the evidence
11 processing, uh, technicians and what they do in this case a a
12 face mask, uh, they will take a scraper and scrape the inside
13 and and outside of the face mask 'cuz you're not sure
14 sometimes which side that it is worn on and they scrape it
15 down and that sort of releases the skin cells, after somebody
16 has been wearing the mask your your skin cells sort of come
17 off on the inside of it, and so they scrape down and then they
18 take a swab, a cotton swab, a sterile cotton swab and swab the
19 mask and also, uh, swab over a clean sheet of paper where they
20 scraped if any material fell off and then they seal up the
21 swab and the swab in in this case would have come to me for
22 DNA analysis.

23 Q. Okay, uh, what is technical review?

24 A. A technical review happens after every report that's
25 written, uh, in SLED and it's a review of my findings and

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 results and also, uh, the the data generated, uh, for the case
2 so it it's a review of the whole process that I've done, it's
3 another analyst who, uh, is technically qualified to review
4 everything to ensure, uh, correctness and quality of work.

5 Q. And was technical review done in this case?

6 A. Yes, it was.

7 Q. Okay. Now, uh, did you perform DNA analysis on those
8 five items that you mentioned?

9 A. Yes, I did.

10 Q. Okay, now the two buccal swabs, uh, who were they
11 attributed to?

12 A. Uh, Item Number 4 was Larold Morris and Item 5 is D'Andre
13 Draper.

14 Q. Alright, now let's first talk about D'Andre Draper, was
15 he a contributor, was his DNA found on any of the masks that
16 you tested?

17 A. No, he was not.

18 Q. Okay. Now Mr. Morris, uh, with regards to the first mask
19 listed there, was he a contributor?

20 A. No, he was not, that was the black and camo face mask.

21 Q. Okay, and the third mask was he a contributor?

22 A. No, he was not.

23 Q. Okay, but what about the second mask?

24 A. Yes, his DNA profile was found on that face mask.

25 Q. Now what does that mean: His DNA profile was found on the

AMANDA WEBB - DIRECT EXAMINATION BY MR. TOOKER

1 face mask?

2 A. Uh, when I test for for DNA, I test, uh, sixteen
3 different locations on the DNA and basically, uh, what I end
4 up is is with numbers really and you compare, uh, numbers at
5 each location, each sixteen spots and if they match up that
6 means a person's there, their DNA profile is there and in this
7 case, uh, Larold Morris's DNA was found at all sixteen
8 locations and so I can say that that he did, uh, donate DNA to
9 this item so, uh, I would say that he handled or or had worn
10 the the ski mask at some point in time, uh, and and so his DNA
11 profile was there and actually I have a a statistic for that
12 as well, uh, ---

13 Q. What is that statistic?

14 A. Well it's a probability of randomly selecting an
15 unrelated individual who could have contributed to this
16 mixture is approximately 1 in 59. Now I say mixture because
17 in this instance, uh, on this face mask I didn't find just one
18 person's DNA, I found more than one person's DNA and so that's
19 a mixture. Uh, ---

20 Q. The the other two items tested were those also
21 mixtures?

22 A. Yes, they were.

23 Q. So all the masks had a mixture and Mr. Morris was a
24 contributor to the second item tested.

25 A. Yes, that's correct.

AMANDA WEBB - CROSS-EXAMINATION BY MR. CANTRELL

1 Q. Okay. Now you gave a statistic 1 in 59, um, if you've
2 got a church of a hundred and twenty people, how many people,
3 ya know, could be or would be eliminated from that church to
4 contribute to that item?

5 A. Well eliminated if you have a hundred and and sixty so
6 there'd be, uh, two that could be possible contributors to the
7 mixture and so that would eliminate a hundred and, uh,
8 fifty-eight, yes.

9 Q. Okay, so you're not sayin' that outta the entire world,
10 ya know, this is the only person who coulda contributed this
11 DNA, right?

12 A. Yes, that's correct.

13 Q. Okay, but you are sayin' that this is consistent with his
14 DNA profile.

15 A. Yes, his DNA was on the item, um-hum.

16 Q. Okay, alright, no further questions.

17 CROSS-EXAMINATION BY MR. CANTRELL:

18 Q. Ms. Webb, how are you?

19 A. Hi.

20 Q. Uh, now in your report, we've all heard your testimony,
21 but in your report your statement on the report said Larold
22 Morris cannot be excluded as a possible contributor to this
23 mixture, is that, uh, your official report?

24 A. Yes, that's correct.

25 Q. So he cannot be excluded as a possible contributor, is

AMANDA WEBB - CROSS-EXAMINATION BY MR. CANTRELL

1 that correct?

2 A. Yes, that's correct.

3 Q. Okay, and then it goes on to say the probability of a
4 rand -- of randomly selecting an unrelated individual; when
5 you say unrelated individual, what do you mean?

6 A. Well an unrelated individual in the population, uh,
7 related individuals, uh, actually share more DNA, that's why
8 you end up having a lotta physical characteristics looking
9 like your family is 'cuz you share a lotta DNA, uh, and so our
10 statistics are based upon unrelatedness so it's possible that
11 if there was somebody who was related, uh, they could have a
12 higher probability of of showing up, uh, their DNA profile
13 showing up and and possibly matching the mixture.

14 Q. So a brother of Larold Morris could have a higher than
15 1 in 59 or or be more, a more exact match.

16 A. It's possible.

17 Q. No further questions. Thank you.

18 THE COURT: Anything?

19 MR. TOOKER: No, sir.

20 THE COURT: Alright, thank you Ms. ---

21 MR. TOOKER: May Ms. Webb be excused, sir?

22 THE WITNESS: Thank you.

23 MR. CANTRELL: No objection.

24 THE COURT: Alright, you're excused.

25 THE WITNESS: Thank you.

MOTIONS AND MATTERS

1 (Whereupon, the witness left the stand.)

2 MR. TOOKER: Thank you so much.

3 THE COURT: Alright, call your next witness.

4 MR. TOOKER: At this point, Your Honor, the State rests
5 its case.

6 THE COURT: Okay. Alright, Mr. Foreman, ladies and
7 gentlemen of the jury, uh, this is one of those times when I
8 have to go over some legal issues with the attorneys so I
9 excuse you to your, to your jury room, I'll get back with you
10 very shortly, okay.

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

13 THE BAILIFF: Door's closed.

14 THE COURT: Alright, any motions?

15 MR. CANTRELL: Yes, Your Honor. At this time on behalf
16 of the defendant, I would, uh, move for a directed verdict
17 that there is no evidence that it re -- would reasonably tend
18 to prove this defendant's guilt, uh, particularly -- well I'll
19 start out there is testimony of a person named Junior,
20 possibly a person named Junior, and possession of an Xbox and
21 nothing else and, uh, believe that that is insufficient to
22 meet the standard. As to the, uh, alleged conspiracy, uh,
23 given the definition of conspiracy and the absence of any
24 testimony that could in any way reasonably can prove the
25 defendant's guilt, uh, and I I won't re -- recount it for the

MOTIONS AND MATTERS

1 Court, I know you you've heard it all, Your Honor, but the
2 simple fact is that, uh, even in the light taste -- taken most
3 favorably to the State there does not appear to be any signs
4 of a conspiracy of armed robbery or any sign of a conspiracy
5 of anything else for that matter and I would move for a
6 directed verdict on that charge. Uh, then the testimony is
7 the two guns were found and one with the obliterated serial
8 number was in a bag in the floor in the backseat of the
9 vehicle, uh, even if you stretch constructive possession to
10 try to include that, I don't believe that that is sufficient
11 because it was in the backseat in a bag under clothing from
12 what, uh, we were told and none of that would indicate that
13 this defendant had possession or constructive possession of
14 this this gun, so, uh, on all charges but, uh, especially
15 conspiracy and possession of the weapon, I move for a directed
16 verdict.

17 THE COURT: Alright, tell me about the conspiracy.

18 MR. TOOKER: Yes, sir. Uh, conspiracy of course can be
19 proven just by circumstantial evidence, um, and the State ---

20 THE COURT: Yeah, what and what what circumstantial
21 evidence is there?

22 MR. TOOKER: Uh, circumstantial evidence in this case
23 the, uh, the three individuals identified by Mr. Mahaney and
24 Mr. Quinn standing outside the apartment, uh, they formally
25 lived at on the night in question, uh, after they'd been

MOTIONS AND MATTERS

1 robbed a month prior, uh, one a whom's wearin' a mask, then
2 got into a silver Impala, that was pulled over, they found
3 masks and guns, uh, and then the testimony of, uh, Mr. Quinn
4 and then or excuse me, Mr. Mr. Draper and the further, uh,
5 testimony of Detective Justice that a text message was sent
6 from Junior, the defendant's nickname, to Mr. Draper saying,
7 Let's get Zeke tonight, uh, indicating a a plan to execute a
8 robbery of these parties, I believe it was actually
9 Mr. Draper's testimony that ---

10 THE COURT: Alright, I yeah, I'm gonna -- there is a
11 reasonable inference so I'll deny your motions. Alright, you
12 gonna put up a defense?

13 MR. CANTRELL: No, Your Honor, defense rests.

14 THE COURT: Alright, well Mr., uh, Morris stand up for me
15 please.

16 (Whereupon, the defendant complied.)

17 THE COURT: Raise your right hand, you swear to tell the
18 truth?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Alright, I want you, you can put your hand
21 down, I want you to understand you have an absolute
22 constitutional right to testify in your own defense, uh, you
23 have equal absolute right not to testify in your own defense
24 and, uh, I will be, I give a strong instruction with respect
25 to the jury's, uh, constitutional obligation not to consider

MOTIONS AND MATTERS

1 that, uh, or I'll not mention it, whatever you all want me to
2 do, uh, that there a lotta, uh, strategic decisions that go
3 along with the decision whether to testify or not to testify,
4 have you had enough time to talk with your attorney about that
5 decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: Not to testify, sir.

9 THE COURT: Okay, is that your free and voluntary
10 decision?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay, alright, uh, well then what we'll do I
13 think is, uh, we'll break for lunch but let's talk about what
14 jury charges we're gonna -- let's have a charge conference.
15 What do ya'll want?

16 MR. TOOKER: Well, uh, I think with regards to the
17 firearm, uh, I I think there's enough evidence to do active
18 possession, constructive possession and mere presence; on
19 armed robbery, uh, burglary first and conspiracy, and of
20 course Mr. Cantrell I have have talked about this together,
21 uh, he and I both looked at the same, uh, set of perspective
22 charges, it's actually on the Charleston Bar's website, uh,
23 and and those standard charges looked appropriate so ---

24 THE COURT: The Charleston Bar?

25 MR. TOOKER: Yeah, they host, uh, I guess essentially a a

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1 PDF version of, uh, judges' jury charges and, uh, so we were
2 lookin' at those items, uh, and if Your Honor's charges look
3 the way those look, we think that they seem fine.

4 MR. CANTRELL: And I'm under the assumption ---

5 THE COURT: Ya know there probly some fine lawyers down
6 in Charleston, maybe some fine judges, I ain't, uh, ---

7 MR. CANTRELL: Your Honor, it's my assumption that this
8 is probably what is in the, in the, uh, your charge book but I
9 did not confirm that, uh, so I'm I'm just assumin' it is or
10 close ---

11 THE COURT: Well who ---

12 MR. CANTRELL: --- to it anyway.

13 THE COURT: Alright, let's go through, let me help you
14 guys out. You want failure to den -- the defendant to
15 testify?

16 MR. CANTRELL: Uh, yes, I believe so.

17 THE COURT: Alright, what I got is duties of the judge
18 and jury, the indictment and arrest not evidence, credibility
19 of the witnesses ---

20 MR. TOOKER: State would request, uh, circumstantial and
21 direct ---

22 THE COURT: Just a ---

23 MR. TOOKER: --- evidence.

24 THE COURT: --- minute. I'll let you talk in a minute.

25 MR. TOOKER: Yes, sir.

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1 THE COURT: Multiple charges, course the presumption of
2 innocence or the failure the -- you want a charge on
3 his ---

4 MR. CANTRELL: I I do, Your Honor.

5 THE COURT: Okay. Presumption of innocence, reasonable
6 doubt, circumstantial evidence. Now do you want hand of one
7 is the hand of all.

8 MR. TOOKER: Yes, sir.

9 MR. CANTRELL: Your Honor, and I'm not even ---

10 THE COURT: You want anything on ---

11 MR. CANTRELL: --- I'm not sure ---

12 THE COURT: Oh, yeah ---

13 MR. CANTRELL: --- that there's evidence for that or or
14 sufficient grounds for the hand of one is the hand of all.

15 THE COURT: Possession of the pistol for instance. Uh,
16 alright, we'll think about that. Ex -- you want anything on
17 expert witnesses? do ya need that?

18 MR. TOOKER: I don't think so, Your Honor.

19 THE COURT: Do you, you want it? Okay, I I don't -- do
20 you want anything on identification?

21 MR. TOOKER: Uh, we don't have an identification in this
22 case.

23 MR. CANTRELL: I don't think so.

24 THE COURT: You want sumtin' on the statement of the
25 defendant? It's whether it's, you know, they can decide

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1 whether or not it's freely and voluntarily made. I don't
2 think you contested ---

3 MR. CANTRELL: I ---

4 THE COURT: --- it.

5 MR. CANTRELL: --- don't we, I think we stipulate I would
6 say no.

7 THE COURT: Alright. Somebody said sumtin' about mere
8 presence?

9 MR. TOOKER: Yeah, this sorta me makin' Mr. Cantrell's
10 argument but with regards to the firearm, uh, I think there's
11 enough evidence there for, uh, active possession, constructive
12 possession or mere presence. Well and again that's
13 Mr. Cantrell's call.

14 MR. CANTRELL: Could I, I I prefer to look at mere, your
15 mere presence.

16 THE COURT: Well think about it over lunch ---

17 MR. CANTRELL: Right.

18 THE COURT: --- how 'bout that?

19 MR. CANTRELL: That and the ID charge both I'd like to
20 look at before before I...

21 THE COURT: Alright, constructive possession, I think
22 that's about it, so mere presence, hand of one, I I think it's
23 appropriate just because you got one guy with a gun and it's
24 an armed robbery and two guys go in.

25 MR. TOOKER: Yes, sir, Your Honor, that would be the

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1 State's ---

2 THE COURT: I ---

3 MR. TOOKER: --- argument.

4 THE COURT: --- I think it's appropriate. Uh, alright,
5 we'll talk about -- alright, the mere presence, okay, anything
6 else?

7 MR. CANTRELL: And, Your Honor, if I could look either
8 now or when we get back at your charge as to identification I
9 I, before I say for sure on that.

10 THE COURT: Well it's just kinda the tell fair thing.
11 Uh, issue is the identification is the defendant as the person
12 who committed the crime. Nobody has said it's him, nobody has
13 said I can say it's him, you know, nobody nobody has pointed
14 their finger at him it's just ---

15 MR. CANTRELL: Sure.

16 THE COURT: --- been the subsequent police investigation.
17 I don't think it's ---

18 MR. CANTRELL: I, I I would agree, yes.

19 THE COURT: Okay. Well, we got burglary first, armed
20 robbery, conspiracy and possession of a gun with obliterated,
21 anything else?

22 MR. TOOKER: No, sir.

23 MR. CANTRELL: I think that's it.

24 THE COURT: Alright. Well let's let's get the jury back,
25 cut 'em -- well I tell you what, yeah, bring 'em back, we'll

MOTIONS AND MATTERS

1 cut 'em loose and then we'll go eat.

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

3 THE COURT: Alright, ladies and gentlemen, uh, I wanna,
4 if you remember yesterday I gave ya a brief procedural road
5 map, outline of the case, uh, five parts to a trial, we have
6 now completed the first two parts so all of the testimony, all
7 of the evidence that you're gonna receive has now been entered
8 and, uh, we will move to the next part of the trial which are
9 the closing arguments of the attorneys, follow that with a
10 charge on the law and then the case belongs to you and you all
11 will deliberate to resolve the dispute about the facts in the
12 case but we're not gonna try and do that before lunch so it's
13 12:15, ya'll -- can I ask you to be back at, uh, is 1:15 too
14 soon or 1:15 good, that gives ya a little bit over an hour.
15 Remember, don't talk about the case, it's about to belong to
16 you, so we'll see ya back at 1:15. Okay, thank you.

17 (The following takes place outside the presence of the
18 jury.)

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Alright, see ya'll 1:15.

21 MR. TOOKER: Yes, sir.

22 MR. CANTRELL: Thank you, sir.

23 (Whereupon, a recess was taken.)

24 THE COURT: Anything else?

25 MR. TOOKER: Not from the State, sir.

CLOSING ARGUMENTS

1 MR. CANTRELL: Nothing from the defense, Your Honor.

2 THE COURT: Okay, alright.

3 THE BAILIFF: Bring the jury?

4 THE COURT: Yep.

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

6 THE COURT: Alright, ladies and gentlemen, welcome back,
7 hope you had a pleasant lunch and, uh, as I told you, uh,
8 before we broke that we had finished the first two, uh, parts
9 of the trial so all the testimony and all the evidence is now
10 before you, it's been presented to ya, there will be no more
11 evidence presented and, uh, you all have paid close attention
12 throughout the course of the trial, I ask you to continue to
13 do that throughout the arguments of these fine attorneys,
14 alright.

15 MR. TOOKER: Thank Your Honor, may it please the
16 Court, ---

17 THE COURT: Yes.

18 MR. TOOKER: --- Mr. Cantrell. Mr. Foreperson, ladies
19 and gentlemen of the jury, it's been a a longer trial, had
20 been real quick, uh, and I'm just gonna jump into it. We had
21 an armed robbery and an almost armed robbery, that that's what
22 you heard, that's the cases you heard. You heard an armed
23 robbery and and a not quite and why did we have an armed
24 robbery and a, and a not quite well 'cuz, uh, 'cuz they wanted
25 to get Zeke. Let's get Zeke. We wanna get Zeke. Zeke's got

CLOSING ARGUMENTS

1 drugs. Let's steal drugs from Zeke. Junior was the party
2 identified during the first armed robbery by the victim
3 Mr. Whitaker. Junior is the nickname of the defendant Larold
4 Morris. The Xbox stolen from the victim Michael Capo was
5 recovered from the defendant Junior's apartment, that's the
6 beginning of our case. We have a party identified on the
7 front end and on the tail end stolen merchandise from the
8 initial robbery recovered in the perpetrator's apartment.

9 Uh, I'm gonna go ahead and talk about the elements real
10 quick and just get 'em outta the way. The judge is gonna give
11 you like I said before a charge on the law and he'll explain
12 to you, uh, the law in the case and what it is specifically
13 that each crime is supposed to show but I would like to touch
14 on the elements very briefly.

15 With regards to burglary in the first degree, gotta have
16 an unlawful entry into the dwelling of another with intent to
17 commit a crime inside and that occurs at night or while the
18 person's armed with a deadly weapon. With regards to armed
19 robbery, you gotta take items, take things, belongings from
20 somebody else under the threat of harm or harm and there has
21 to be either a deadly weapon used or the threat of a deadly
22 weapon used. On 2/3 there is an unlawful entry into the
23 victims' apartments at night while they're robbed with a de --
24 or armed with a deadly weapon. While inside with that deadly
25 weapon they put the victim on the ground, they put him on the

CLOSING ARGUMENTS

1 ground and they take his things, they take his things, they
2 take his roommates fi -- things. There's a burglary in the
3 first degree and an armed robbery, no doubt about that, what
4 we're seekin' to prove is identity. We're seeking to prove
5 the identity of the perpetrator in those cases.

6 Now conspiracy and a weapons charge are different. A
7 conspiracy's gotta be an agreement between two or more people
8 to accomplish some unlawful act, in this case an agreement
9 between Mr. Draper and Mr. Morris to commit a robbery or a
10 burglary upon the victims in this case, that is an unlawful
11 act. It is never lawful to commit a burglary or a robbery.

12 Now possession with a handgun with an obliterated serial
13 number, you've gotta possess a handgun from which the original
14 serial number's been removed or obliterated, that that's
15 relatively succinct and I'll touch on those in a moment.

16 Uh, I wanna mention one more thing about the judge's
17 charge on the law that he's gonna give ya. One a the things
18 he's gonna talk to you about is sumtin' called "the hand a
19 one, hand a all" and that's, uh, it's a legal theory, it's a,
20 it's somethin' that we rely on in the criminal justice system
21 and, uh, and I'll just give ya example and it's the example we
22 always use in the the hand a one, hand a all and fortunately
23 this is an armed robbery case but if two parties commit an
24 armed robbery, one of 'em has the gun, the other guy's just
25 taking the things, they are both responsible for the armed

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1 robbery under the theory hand a one, hand a all. That means
2 if you and another party act in concert, you are both
3 responsible for, uh, the charge that that one of you, you
4 know, committed so again, if if two people go in and point a
5 gun, one will has the gun, the other one doesn't, they're both
6 responsible for armed robbery.

7 Now the facts in this case, the facts in this case are
8 important because of the similarities and the first
9 similarity, the most glaring similarity, is that both
10 incidents occur at [REDACTED] Central, South
11 Carolina in Pickens County, South Carolina, it's the same
12 location, the same location a month apart. Not only is it the
13 same location but it's the same target. In the first
14 incident, whose room is rattled the most thoroughly? Zeke
15 Quinn's. Bed is upside down, mattress is up off the ground,
16 stuff everywhere, everywhere, targeting Zeke Queen. Second
17 incident, Let's get Zeke. Let's get Zeke tonight. Let's get
18 Zeke tonight and do the same thing that we did a month ago.

19 Masks. In the first incident, an individual with a black
20 gun puts that gun in Kyle Whitaker's face and he's wearin' a
21 mask, I believe a hoodie zipped up with with eyes life-size.
22 When Mr. Quinn and Mr. Mahaney saw outside their apartment
23 [REDACTED] on 3/8 three black males standing there, one of 'em had a
24 mask, again, one unmasked party, one masked party.

25 The posture of the attack. Now Mr. Mahaney or excuse me,

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1 Mr. Whitaker said he looks through the peephole and he sees a
2 person, this person's not wearing a mask, a a black male,
3 thinks it it might be a friend a his or a friend of a
4 friend's, he opens the door and all of sudden outta nowhere
5 there's an individual with a mask and a gun, Get on the floor,
6 get on the floor. On 3/8 what do Mahaney and Quinn say? They
7 say, When we come up we see three fellas, three black males
8 standing outside our apartment one a whom is lookin' through
9 the peephole just like Mr. Whitaker said, looks through the
10 peephole, person's face is there, lookin' through the
11 peephole, the other guy has his back against the wall as if
12 not to be seen, fella with his back against the wall, other
13 guy lookin' through the peephole, somebody opens the door,
14 what's gonna happen? give me your stuff, give me your things,
15 give me the drugs, give me your TVs, give me your Xboxes, give
16 me your electronics 'cuz that's what they want, that's what
17 they're tryin' to do, it's the same plan, it's the same act
18 just on a different, different day.

19 Now I think this is interesting and Detective Justice
20 testified to this they printed everything. The first incident
21 they printed the entire apartment, they printed the apartment
22 and nothin' came up, there were no fingerprints on scene and
23 you think if you're there for fifteen minutes taking items
24 there will be fingerprints on the scene, uh, the guns too were
25 printed and there were no fingerprints developed. You think

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1 somebody's holdin' these guns, there will be fingerprints
2 developed unless unless what, right, unless what, ya got
3 gloves on, unless you're wearing gloves. If you're wearing
4 gloves, there won't be fingerprints and what's right between
5 defendant Morris's feet when they pull him over, when he's
6 sittin' in the car, what is right between his legs? a box of
7 gloves.

8 Now there was follow-up investigation to this case, in
9 that follow-up investigation there was and you heard the
10 testimony about this talk a little Abel or Lil Abbe, L-I-L
11 A-B-B-E I believe and and that information came from Mr. Capo
12 who I think we all will agree is pretty savvy when it comes to
13 the Xbox stuff, uh, sayin', Yeah, I got online, I saw that
14 they changed my my user name, used to be Capo Almighty then it
15 became Capo Almighty with all this stuff about NC Flight Risk
16 Get Money and then all of a sudden it's Lil Abbe NC Flight
17 Risk Get Money. How do I know that? because I got on my
18 friend's account, the only name that was gone was mine and the
19 only new one was Lil Abbe. Detective Justice when
20 interviewing defendant Morris says, Well what's your Xbox tag,
21 ya know, if if you didn't have anything to do with this, we
22 can verify that you were at home or or whatever, what's your
23 Xbox tag, we'll check on that. Oh, it's it's Lil Abbe, it's
24 Lil Abbe. Yeah, yeah, I was on the Xbox, yeah, I didn't do
25 anything I was on the Xbox, it's Lil Abbe. Lil Abbe of course

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1 according to Mr. Capo two days after the incident or three
2 days after the incident but days after the incident he says
3 the Xbox identification changed, it changed in that
4 description area and a couple days after that it changed to
5 Lil Abbe. It wasn't immediately before the second incident,
6 it was days after the first robbery Lil Abbe and sure enough
7 what happens? They get a search warrant. They get a search
8 warrant, they execute that search warrant on the residence of
9 the defendant Junior and what did they find? they find that
10 Xbox. How do we know it's the Xbox? the serial number
11 matches. How do we know it's the Xbox? Capo talked about all
12 that game stuff with points and the different games and how
13 many points you get when ya ya play the games, that's how we
14 know.

15 I wanna address sumtin' else too before I start talkin'
16 about the evidence. Mr. Cantrell in his opening statement
17 talked about well, three people were in the car, there were
18 three people in the car when it was pulled over on 3/8 and in
19 addition to that there were two people who committed the
20 robbery on 2/3, so there are two people that commit the
21 robbery, three people in the car, uh, on the second occasion
22 and we're trying the defendant Morris. I I bring that up to
23 tell you everyone gets their day in court. This is
24 Mr. Morris's day in court, this is his day and this is the day
25 that you determine his guilt. Each one of those individuals

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1 will have their day. You heard Mr. Draper's testimony his
2 charges are still pending, he's received no benefit and he
3 will have his day, he will have his occasion to sit in that
4 (indicating) chair, he will have his occasion to argue his
5 case before a jury like you, a jury of twelve people and he
6 will have occasion, uh, to present whatever evidence he
7 chooses to but in this case you determine the guilt of
8 defendant Morris.

9 Now I've spoke to you, you know, we've got these
10 similarities and we have these similarities, we say these are
11 the facts in the case, these are the facts, how do you know
12 these are the facts? well these are the facts because that is
13 what the evidence shows. We'll start I suppose at the
14 beginning there's a robbery, there's a robbery and the victims
15 testified that this is what happened to their apartment. It
16 got trashed and in particular Zeke Quinn's room was trashed,
17 trashed more thoroughly according to them than the other
18 rooms. The individual that robbed Mr. Whitaker had a, had a
19 black handgun, a black handgun, a black handgun put in his
20 face, a black handgun put in his face to make him fear, to
21 prevent him from resisting. There's an Xbox and of course we
22 touched on this but Mr. Capo was actually savvy enough when
23 this occurred to take a picture of the screen he saw few days
24 after the incident. What does the screen say? it says Flight
25 Risk North Carolina Get Money. Detective Justice after they

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1 execute the search warrant on Mr. Morris's apartment what do
2 they find? find gamer tag Lil Abbe. What's it say? Kill or be
3 killed, flight Clemson SC gettin' money. The Xbox itself is
4 the same Xbox, again, we know that because the serial number's
5 the same.

6 The stop. I mention the gloves. What happens? they
7 seize gloves, we have the gloves for you to look at, the glove
8 between his legs, the glove that stuffed in the book bag,
9 stuffed inside the car, in the backseat, not just in the box,
10 not just in the box as if it were a woman who worked in
11 manufacturing or wait, oh, no, no, who worked in nursing, no,
12 all over the place as if people who just had them on got into
13 a car and took 'em off.

14 Detective Peppers found a book bag and ya have the book
15 bag and in that book bag he found a gun and like I said a
16 black gun. A black gun is the kind of gun described by the
17 victim Mr. Whitaker, the kinda gun the individual that robbed
18 him on 2/3 put in his face. In the car, again, additional
19 masks, one a those masks and what was the testimony of
20 Mr. Mahaney? well it was like a half mask, didn't cover your
21 whole head, covered about half your head. One a those masks
22 is a half mask. Rubber glove, a clip on the floorboard,
23 everything's not tucked up in one book bag. They execute the
24 search warrant on Heritage Pointe Apartments and again they
25 find Xbox, the Xbox the serial number coincides with what the

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1 information provided by Capo indicated.

2 Uh, now we've got the pictures here of the apartment and
3 I think this is interesting too, uh, Mr. Cantrell asked about
4 how tight, uh, the the inside of that, uh, that breezeway was,
5 ya know, where can ya stand relative to anybody else; somebody
6 is standin' at the front door knockin', somebody is back
7 against the wall there and somebody's standin' by the
8 stairwell. Somebody's standin' by the stairwell, why they by
9 the stairwell? maybe lookin' out, maybe makin' sure nobody's
10 comin'. What happens on the first incident? two people come
11 inside. Now Mr. Whitaker of course remains inside and
12 nobody's outside. Is there a third party standin' in the
13 stairwell? What do we have? we have three parties, three
14 parties charged, one party on trial, Mr. Morris, Mr. Draper,
15 Mr. Cade, three parties and three masks. Three masks found in
16 the car. Coincidence? Seems like an awful big coincidence.

17 Now Mr. Draper a course was excluded, his DNA was
18 excluded from that DNA that was gathered from from the masks.
19 Is that indicative of him not havin' conspired in this case?
20 well he got the text message sayin', Let's get Zeke, let's get
21 Zeke who I know to live in UV and have drugs, what I take
22 let's get Zeke to mean? to rob him. We have this information,
23 he says, Well yeah, but I wasn't doin' anything, I wasn't
24 doin' anything. Why does he say that? Well he cannot not say
25 that because again his charges still remain pending. He gets

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1 up there and says, Yeah, we were there to rob Zeke, I was
2 there, I wanted to rip him off, put a gun in his face and take
3 all his money. What does that mean? he he just confessed.
4 Instead he has to get up here try to minimize his culpability
5 in some way, how does he do that? Well, yeah, yeah, it's
6 Morris alone, it was Morris alone, wasn't me, wasn't me, just
7 Morris, he's the one, he just sent the text message to me. In
8 reality what's happenin'? We have three parties, three
9 parties conspiring, getting together to commit an unlawful
10 act, to commit another armed robbery, to commit another armed
11 robbery 'cuz they committed an armed robbery before. They
12 committed the same act at [REDACTED] the same act gettin' Zeke,
13 let's get Zeke. They committed the same act because well,
14 Junior got away with it before. Junior showed up once, put a
15 gun in somebody's face, took his stuff and got away with it so
16 why not do it again, why not do it again. These these little,
17 uh, weed-possessin' college kids well they're an easy target,
18 all this stuff they've got. Got these TVs and these Xboxes
19 and these computers, we left a computer and Xbox last time, if
20 nothin' else we can get those. They come in and they rob and
21 they burglarize and they get away with it and they think they
22 can do it again. Unfortunately for them this time victims
23 left, the victims moved out, they spotted 'em, they called law
24 enforcement, law enforcement responded and law enforcement
25 gathered this evidence.

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1 Now I mentioned before at the start a the case this is a
2 case of circumstantial evidence, that these circumstances
3 indicate the identity of the perpetrator in this case, that
4 these circumstances indicate that Mr. Morris (points to the
5 defendant) committed the acts in question. I gave you an
6 analogy of, uh, of rain. You walk outside and it's raining
7 and you feel it on your body, that's direct evidence of the
8 rain. If you walk outside and the ground's wet and it's humid
9 and there are dark clouds in the distance and steam comin'
10 from the pavement, well that's circumstantial evidence that it
11 rained. Now in this case what do we have? we've got three
12 masks and three defendants; we've got DNA linking Morris to
13 one of those masks, it's a dark cloud in the distance; we've
14 got the posture of the defendants matching that same posture
15 the original incident was committed; we've got the incident
16 location, humidity in the air; we've got a man named Junior
17 identified by the victim, the only person on scene, and we
18 have a defendant named Junior, steam comin' off the sidewalk,
19 and ultimately; we've got an Xbox, an Xbox stolen from the
20 incident, an Xbox where the user name was changed days after
21 the incident to the user name that the defendant admits to
22 using and that Xbox was recovered from his residence, we've
23 got water on the ground. Because we've got this evidence,
24 because these things before you indicate the defendant's
25 identity and indicate the defendant's guilt we ask that you

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1 return the only verdict that speaks the truth in this case and
2 that is that the defendant Larold Morris is guilty. Thank
3 you.

4 THE COURT: Alright.

5 MR. CANTRELL: May it please the Court, Mr. Tooker and
6 Mr. Baker. Ladies and gentlemen, you've just been asked to
7 make an awful lot of presumptions and the only thing you're
8 allowed to presume is that Larold Morris is is innocent of
9 this charge. You're being asked to make a lot of presumptions
10 and I tell you you don't have that luxury. Law enforcement,
11 Clemson Central Police have the ability and opportunity or
12 even the luxury to say, you know, I've decided this man did it
13 so let's work backwards from there and prove he did it with
14 whatever we come with up with. Solicitor's office gets a case
15 that's been investigated and been sent up to them, they can
16 presume that Larold Morris is guilty, they've done that, I
17 think they've made that obvious to you, and then they start
18 working from there to figure out how to show it or convince
19 you or get you to presume he's guilty but again you don't have
20 that luxury. You have a tough job, you have to start at the
21 point that you were at yesterday and you have to work forward
22 and then render a verdict which speaks the truth and you do
23 that only from what you've heard and from that what evidence
24 you've seen and then you use your reasonable judgment, your
25 common sense to render a verdict which speaks the truth.

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1 You've heard that there's a charge of conspiracy and
2 you've already seen the the definition of that, the judge will
3 tell you that and I'll certainly agree with Mr. Tooker and I
4 believe that's exactly what the judge will tell you a
5 combination or an agreement. They've gotta prove to you that
6 there was an agreement or an a combination of people. There's
7 gotta be more than two or more people and then it's got to be
8 proven to you beyond any reasonable doubt that they are
9 together and they have agreed or combined for the purposes of
10 accomplishing an unlawful act or accomplishing an unlawful
11 object, unlawful object by an unlawful, uh, actions and I
12 would submit to you what you've heard testified to about the
13 night that three people were seen at the apartment proves only
14 that three people went to an apartment. If they had a mind to
15 do evil, if they were inclined to do evil, if they had
16 combined together or agreed to do evil, they could've done it.
17 They determine nobody was there, that makes it an easy target.
18 They turned around and walked away. Now remember they didn't
19 walk away because somebody saw them, they didn't know that,
20 there's no indication they knew anything about themselves
21 being observed. They walked away. There's no indication that
22 they had weapons, there's not even indication they had gloves
23 on. Three young men walked to this apartment, knocked on the
24 door, nobody came so they looked and how many others have
25 looked through a peephole from the outside. You can do it,

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1 you can try it and you're gonna see nothing. Look in the
2 window, is anybody movin' around, should we knock again, still
3 nothing that implies that they were up to no good, nothing
4 that can prove, quite frankly I I don't think there's any
5 doubt whatsoever but certainly nothin' that proves beyond a
6 reasonable doubt that they were conspiring to do evil to
7 commit, uh, an offense, nothing whatsoever, but what you're
8 being asked to do is to determine that they were based on the
9 ter -- testimony of two young men, I'll leave it to you to
10 make your decision about their testimony, but we have two
11 young men that I would believe easily could be considered
12 hypersensitive, hypervigilant, hyperactive, I don't know what,
13 but enough so that they took off and followed the police, the
14 two guys that they, in their own minds were convinced were up
15 to no good probly with guns. How many of you woulda done
16 that? You heard their testimony, you saw their demeanor, for
17 whatever reason particularly Mr. Quinn the one that just
18 implied implied was a drug dealer, he knew in his mind what
19 was going on, he just knew there was no good goin' on, these
20 were bad guys, they had guns, they were gonna rob, they were
21 gonna do this and do that, I better call the police and then I
22 better follow the police make sure they do what they're
23 supposed to do. Do you, any one of you, want someone to
24 observe your actions with that attitude and then come and talk
25 about it or testify in court about your actions with the kind

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1 of attitude that both of those fellas came into this with? I
2 think not, that's not credible testimony and they are the ones
3 that told you this was criminal. Put yourself in a reasonable
4 person's position, there was nothing criminal about that
5 conduct or that activity.

6 Well let's take another witness about that night. The
7 State called D'Andre Draper, now we'll get into Mr. Draper's
8 presence or lack of presence here in just a minute, but the
9 State called him. Think back to the testimony of Mr. Draper,
10 he was questioned by the solicitor about his statement. His
11 statement was, I got outta the car and I went to my friend's
12 house, Mr. Morris, Mr. Cade, not sure what they did, where
13 they went, that was his testimony. That testimony was never
14 questioned or never doubted by the solicitor; in fact, the
15 solicitor appeared to believe that testimony, he didn't
16 question it or raise a doubt about that being the truth. If
17 that's the truth then Mr. Quinn and his friend had to be
18 lying. Their witness said, I went one direction, the other
19 two went another direction or stayed in the car. You can't
20 believe both. Solicitor's office appeared to believe
21 Mr. Cade, I'm sorry, Mr. Draper 'cuz they never questioned it
22 when they said every opportunity to. Cannot be true if
23 Mr. Draper was tellin' the truth and apparently he was 'cuz he
24 was not challenged on that story, not for one moment. They
25 tried to challenge some other things and that didn't work,

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1 they did not challenge that statement. I'd submit to you on
2 that incident there's no conspiracy to do anything. Maybe
3 they had an agreement to go to an apartment complex, that's
4 not against the law, that's not, uh, guilty of conspiracy and
5 you have seen nothing, no evidence. I submit to you that what
6 was found in the car, we'll talk about that in a minute, is
7 irrelevant to what happened on that door porch because it was
8 in the car. Go by the evidence that was presented to you, the
9 reliability and believability of the evidence presented to you
10 to render your verdict which speaks the truth.

11 Let's talk about armed robbery and burglary and again we
12 agree and the judge will tell you what the definition of those
13 two offenses are, I won't, uh, try to bore you with more
14 details about that, but there are allegations of an armed
15 robbery, allegations of a burglary. The witness to this
16 incident is Mr. Whitaker, I'm gonna hopefully make things a
17 little easier for ya. We've got pictures of the apartment, a
18 lot of pictures of the apartment, and there may be more up
19 under here, tons of pictures of the apartment, feel free look
20 at those, we are not denying that that happened, we are not
21 denying that those are accurate pictures of an apartment that
22 was broken into so those happened, they're there, they are
23 what they are.

24 What else do we know happened at the apartment? We know
25 based on what Mr. Whitaker says that two males broke in, he

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1 doesn't know if both of 'em were black, there was some
2 confusion because somebody, one officer said that he -- there
3 were reported two black individuals, that was never stated or
4 reported by Mr. Mr. Whitaker and one other officer said, No,
5 we had identification of one black and one unknown so there's
6 confusion there but two individuals broke into this apartment
7 and we truly believe that happened no doubt. The reasons or
8 the motives for breakin' in, we don't know, I'll submit you
9 don't know either but you know there was a break-in.

10 Mr. Whitaker opened the door, thought it was a friend, but he
11 opened the door, what's the first thing he sees? he sees a
12 gun. Uh, he did what I think I woulda done, I focused on the
13 gun, I couldn't identify anybody, I focused on the gun, think
14 any of us would do that. I submit to you you've got a gun
15 here, nobody in this room believes this (indicating) to be the
16 gun that was used in that robbery and how can I say that?
17 because this gun was sitting right there (indicating),
18 Mr. Whitaker was sitting right there (indicating), when was he
19 ever asked to look at this gun and identify it? When was he
20 asked? five weeks after the break-in to identify this gun.

21 Everybody knows that this gun that was found in the car is
22 totally irrelevant to this case. Give me any other
23 explanation for the failure to identify this gun. Can you
24 think of any better way to tie the evidence found in the car
25 with this robbery with other than to identify the gun?

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1 We also heard that the person that broke in had a hoodie
2 that zipped up over his face. Show me a hoodie that was found
3 anywhere in this case that zipped up over a person's face and
4 he was very specific that it zipped up. Nothing found in the
5 car the night of March the 8th is related to a break-in that
6 took place on February the 2nd, if it was it would be
7 identified for you, it could have been identified for you. We
8 had witness, we had evidence, same room, same time so all I
9 ask you to do, have no right to tell you to do anything, all I
10 ask you to do is think about the lack of connections of the
11 evidence that was in the possession of law enforcement
12 because, remember to do your duty, do what you're chosen to do
13 is to find guilt beyond a reasonable doubt on all elements of
14 the crime or to find Mr. Morris not guilty. You're sayin'
15 okay, Mr. Cantrell, what about these other ties that I've been
16 told about, one of those is Junior, Larold Lee Morris Jr.,
17 David D. Cantrell, Jr., probly several more in this courtroom
18 at the same time. Being called Junior is not uncommon and I
19 submit to you is not proof of anything beyond a reasonable
20 doubt. I don't doubt Mr. Whitaker probly heard somebody
21 called Junior, he was very nervous, maybe they were calling
22 something else and he misheard it but the fact is maybe he's
23 right but I submit to you there's a lot of us, lot of us
24 juniors out there, that is not proof of anything beyond a
25 reasonable doubt.

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1 Anyway, you wanted me to tell you and I'm, uh, the best I
2 can tell you what's happenin' with the Xbox. What I know,
3 what you know is that Khristy Justice would have no clue about
4 an Xbox in Larold Morris's possession he had not told her, he
5 did not volunteer it. Your first thought might be, Well how
6 stupid, why would he do that, but your second thought should
7 be, Well, ya know, maybe he had nothing to hide. He said, I
8 was playin' my Xbox. They're sayin' this is five weeks after
9 a robbery that Larold Morris committed and he's gonna tell
10 this officer he's playin' an Xbox that he knows was stolen
11 from -- by him from an apartment? I don't, I don't think so,
12 I just don't think so, that make -- that is not logical at
13 all.

14 Another thing I ask you take into account is they
15 searched his house, they searched Larold Morris's house and
16 they allege that Larold Morris went into an apartment and took
17 a ton of electronics, a ton of equipment, what did they find
18 and you know they searched it thoroughly, what did they find?
19 they found one Xbox, that was the Xbox that was stolen, we
20 don't deny that. Look at all the information about the games,
21 look at all the pictures about gaming, we agree with it, he
22 had the Xbox from this residence. Logic, reasonableness tells
23 you he would not tell the officer about it, he would not only
24 have one item from a place that he had robbed when his home is
25 searched and he had no clue the search was coming. The only

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1 logical thing is yes he ended up with this Xbox but not that
2 he stole it. Either he bought it, friend gave it to him, we
3 all are lookin' for bargains, sometimes we look too much for
4 bargains but the fact of the matter is there's no real
5 reasonable or logical explanation for the Xbox that places him
6 in this home; in fact, I think it shows just the opposite. It
7 was not his lucky day that he bought it because it's what is
8 helping put him here in front of you but it does not show him
9 guilty of this charge.

10 Okay, what about Zikee and remember we're talkin' two
11 different names. There was a Zeke Quinn who you had
12 opportunity to meet, there was an alleged text that said,
13 "Let's get Zikee," Z-I-K-E-E, "tonight", not the date we're
14 talkin' about, some other time. At worst that is a
15 communication about some guy name Zikee, Z-I-K-E-E, at best
16 it's totally irrelevant and I submit to you it's irrelevant
17 anyway but at best it's it's totally irrelevant, it proves
18 nothing, absolutely nothing because it's not that night, it's
19 not the same person and there's just some doubt about it to
20 begin with, like some of the other statements that were
21 attributed to miss, uh, Mr. Draper but there's no record of
22 it. It might sound damning but there's no record, there's no
23 ver -- verification of it. Why not? we verified this text
24 message not by the phones but the text message, that brings me
25 back to another thing that I told you at the very beginning

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1 yesterday: All of that focus is on Larold Morris and Larold
2 Morris could just as easily be sitting there with a red target
3 on his clothes 'cuz he's the one that's being picked, he's the
4 one that's being prosecuted, add that fact that these clothes
5 were not all black and it was, it was not denied these could
6 well been the clothes he had on that night and they're not all
7 black, there's no hoodie which I think helps verify that there
8 was some bad descriptions. Why was he targeted? we have no
9 idea except he happens to be named Junior and he happened to
10 come across and come into possession of a stolen Xbox game.
11 You've got every right, and I hope you will, in doing your due
12 diligence in this case to ask about those two chairs over
13 there (indicating). One a those is for D'Andre Draper who was
14 a defendant starting this trial and he's no longer here and
15 Ernest Cade, the gentleman who was in the backseat of the car
16 with the mask who was that relative, that brother that could
17 have been the primary contributor to the one and only mask
18 that may have, may have implicated Larold Morris. You've got
19 every reason, every reason to wonder why in the world you
20 don't have that information, you don't have that explanation,
21 what's the deal, what's going on, and you have no explanation,
22 that in and of itself can and should be absolute reasonable
23 doubt as to guilt on any of these charges. Law enforcement
24 has put together as much as they can in case, solicitor's
25 office has prosecuted the case they were given to the best of

JURY CHARGE

1 their ability and you still have doubts about descriptions
2 about the people involved, about DNA, maybe no doubts about
3 DNA, pretty well was taken care of for ya except for one
4 maybe. If the evidence in this case has given you any doubts,
5 there any doubts or numerous doubts about this case, every one
6 a those doubts as to each crime must be proven beyond a
7 reasonable doubt to you, those must be resolved before you can
8 find -- render a verdict which speaks the truth if it is to be
9 guilty. If those doubts are there, they're not resolved,
10 you've not received the proof, you've not received the
11 explanation and it's not proven to you, you'll return a
12 verdict of not guilty. I'm gonna leave it with you simply
13 because you got everything in front of ya, you got evidence,
14 you got testimony, I believe you got doubts, I believe you
15 should have significant doubt, and when you address those and
16 they're not answered beyond a reasonable doubt, you will
17 return a verdict of not guilty on all charges in this case and
18 that's what we ask of ya. Thank you.

19 THE COURT: Okay, ladies and gentlemen of the jury,
20 during this trial you and I have certain duties to perform and
21 as the trial judge it is my responsibility to preside over the
22 trial of the case and to rule on the admissibility of the
23 evidence that's offered during the trial, it is also my duty
24 to charge you the law applicable to the case and it is your
25 duty as jurors to accept and apply the law as I now state it

JURY CHARGE

1 to you. You think you have any idea as to what the law is or
2 what the law ought to be and it does not agree with what I now
3 tell ya the law is, you have sworn an oath to set aside your
4 own opinion and apply the law precisely as I state it to you.
5 I would also remind you that in every case tried in this court
6 before a jury the jury is the sole and exclusive judge of the
7 facts and a trial judge cannot comment on or make any
8 statement about the facts of the case so please don't think by
9 anything I may have said or done throughout the course of the
10 trial I have an opinion about the facts, I do not, the law
11 does not allow it and you all are the sole judges of the
12 facts.

13 I instruct you again that the fact that the defendant was
14 arrested, charged and indicted in this case is not evidence of
15 guilt nor does it create any presumption or inference of
16 guilt, these documents are simply the formal written
17 instruments which contain the charge made against the
18 defendant and they serve as the formal documents by which the
19 case is processed and brought into this court for resolution.
20 Now the indictments in this case allege several di --
21 different offenses against the defendant and the the different
22 offenses are for conspiracy, uh, possession of a pistol with
23 an obliterated serial number, armed robbery and burglary in
24 the first degree. Each indictments charges a separate and
25 distinct offense and you must decide each indictment

JURY CHARGE

1 separately on the evidence and the law applicable to it
2 uninfluenced by your decision as to any other indictment. The
3 defendant may be convicted or acquitted on any or all of the
4 offenses charged and you will be asked to write a separate
5 verdict of guilty or not guilty for each indictment; in other
6 words, each indictment must stand or fall on the merits of
7 that particular case.

8 Now necessarily your job as jurors is to determine the
9 credibility or believability of the witnesses who have
10 testified. It becomes your duty as jurors to evaluate the
11 evidence and determine which evidence convinces you it is true
12 and in determining the believability of the witnesses you may
13 believe one witness over several or several over one, you may
14 believe a part of the testimony of a witness and reject the
15 remaining part, you may believe the testimony of a witness in
16 its entirety or reject that same testimony in its entirety and
17 you may consider whether the witness has an interest in the
18 result of the trial, whether the witness is prejudiced
19 towards either the State or the defendant, the opportunity for
20 the witness to have seen the matters and things about which
21 the witness has testified and the way the witness acts on the
22 witness stand or what we call a "witness's demeanor".

23 I would instruct you and I emphasize that the fact that
24 the defendant did not testify is not a factor to be considered
25 by you in any way in your deliberations on the question of the

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1 guilt or innocence of the defendant, it must not be considered
2 by you in any manner whatsoever. Every citizen has the
3 constitutional right to remain silent and the assertion of
4 this right must not be considered by you in your
5 deliberations.

6 Now the defendant has pled not guilty to each of these
7 indictments and that plea puts the burden on the State to
8 prove the defendant guilty. A person charged with committing
9 a criminal offense in South Carolina is never required to
10 prove themselves innocent and I charge you that it is a
11 cardinal and a signal rule of the law that a defendant in a
12 criminal trial will always be presumed to be innocent of the
13 crime for which an indictment has issued unless guilt has been
14 proven by evidence satisfying you, the jury, of guilt beyond a
15 reasonable doubt and a reasonable doubt is the kind of doubt
16 which would cause a reasonable person to hesitate to act and
17 reasonable doubt may arise from the evidence which is in the
18 case or from the lack or absence of evidence in the case and
19 you, the jury, must determine whether or not reasonable doubt
20 exists as to the guilt of this defendant. The State has the
21 burden of proving each and every element of a crime beyond a
22 reasonable doubt and any reasonable doubt that you may have
23 in your deliberations should be resolved in favor of the
24 defendant.

25 Now in every trial there are two types of evidence which

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1 are generally presented, they are direct evidence and
2 circumstantial evidence. Direct evidence is the testimony of
3 a person who claims to have actual knowledge of a fact such as
4 an eyewitness, it is evidence which immediately establishes
5 the main fact to be proved. Circumstantial evidence is proof
6 of a chain of facts and circumstances indicating the existence
7 of a main fact, it is evidence which immediately establishes
8 collateral facts from which the main fact may be inferred.
9 Circumstantial evidence is based on inference and not on
10 personal knowledge or observation. The law makes absolutely
11 no distinction between the weight or value to be given to
12 either direct or circumstantial evidence nor is a greater
13 degree of certainty required of circumstantial evidence than
14 of direct evidence.

15 Now the defendant is charged with conspiracy. The State
16 must prove beyond a reasonable doubt that the defendant
17 combined with one or more persons for the purpose of
18 committing an unlawful act or committing a lawful act by
19 unlawful means. There must be a mutual understanding,
20 agreement or common intention and plan. Mere passive
21 knowledge of or consent to the criminal conduct of another is
22 not enough to make a person a conspirator, there must be
23 guilty knowledge and participation. Similarly, the mere fact
24 that the defendant may have associated with another person or
25 met with another person and discussed common aims and

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1 interests does not necessarily establish proof of the
2 existence of a conspiracy or that the defendant was involved
3 in a conspiracy. On the other hand, it is not necessary that
4 the agreement be a formal one, that it be in writing, that the
5 persons hold a meeting and expressly state the terms of the
6 common plan or that the agreement be stated in words between
7 them. The agreement of a criminal conspiracy may come into
8 being through an implied mutual understanding, the willful,
9 intentional and knowing adoption by two or more persons of a
10 common plan is sufficient. No overt acts need to be shown to
11 establish a conspiracy. A conspiracy may be shown by
12 circumstantial evidence and the conduct of the parties and in
13 order to convict the defendant of conspiracy the State must
14 prove beyond a reasonable doubt not only that the defendant
15 knew of the unlawful conduct, but that the defendant agreed to
16 combine with the other persons for the purpose of
17 accomplishing the unlawful conduct.

18 With respect to armed robbery, the defendant is charged
19 with armed robbery and in order to prove this offense the
20 State must prove beyond a reasonable doubt that the defendant
21 took personal property from the person or presence of another
22 person. Property is in the presence of a person if it is
23 within the person's reach, inspection, observation or control
24 so that the person could, if not overcome with violence or
25 prevented by fear, keep possession of the property. The State

JURY CHARGE

1 must also prove beyond a reasonable doubt that the defendant
2 carried the property away intending to permanently debri --
3 deprive the owner of its use. The slightest removal of the
4 property or the complete possession of the property even for
5 an instant by the defendant is suvvicient -- sufficient to
6 show a taking and carrying away of the property and the taking
7 and carrying away of the property must have been done with
8 violence or by putting the owner of the property in fear of
9 violence and finally with respect to armed robbery the State
10 must prove beyond a reasonable doubt that the defendant was
11 armed with a deadly weapon during the robbery or alleged
12 either by action or words he was armed using a representation
13 of a deadly weapon or any object which a person present during
14 the commission of the robbery reasonably believed to be a
15 deadly weapon and a deadly weapon is any article, instrument
16 or substance likely to cause death or great bodily harm.

17 With respect to first degree burglary, the State must
18 prove beyond a reasonable doubt that the defendant entered a
19 dwelling without consent. A dwelling is defined as any
20 building or portion of a building in which a person ordinarily
21 sleeps. A building constructed as a dwelling that has never
22 been occupi -- occupied cannot be considered a dwelling for
23 purposes of burglary but a building is a dwelling even if the
24 residents are temporarily absence -- absent from the building.

25 Now in order to prove that the defendant entered the

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1 dwelling the State does not have to show that the defendant's
2 entire body entered the dwelling, the smallest entry is
3 sufficient. It may be any part of the body such as a hand or
4 foot or even an instrument such as a hook or other instrument
5 and in addition the State does not have to prove that force
6 was used to gain entry and if a person enters a building by
7 using deception, artifice, trick or misrepresentation to get
8 consent to enter, this is an entry without consent.

9 Next, the State must prove beyond a reasonable doubt that
10 the defendant intended to commit a crime, either a felony or a
11 misdemeanor, at the time of the entry. The mere entry into a
12 dwelling without consent is not burglary. If the intent to
13 commit a crime is formed after the entry, it is not burglary.
14 If, on the other hand, uh, the defendant intended to commit a
15 crime at the time of the entry, it is a burglary even if the
16 intent was abandoned after the entry and it doesn't even
17 matter that the intended crime was not completed. Intent may
18 be shown by the act and conduct of the defendant and other
19 circumstances from which you may naturally and reasonably
20 infer intent. And with respect to burglary, finally the State
21 must prove beyond a reasonable doubt at least one of the
22 following: When entering while in the dwelling or when
23 fleeing, the defendant or an accomplice was armed with a
24 deadly weapon or explosive and again a deadly weapon is
25 defined as any article, instrument or substance which is

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1 likely to cause death or great bodily harm and whether an
2 instrument has been used as a deadly weapon depends on the
3 facts and circumstances of each case. The following are
4 examples of instruments which may be a deadly weapon: a
5 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
6 slingshot, metal knuckles, a razor, gasoline, a fire bomb or
7 Malotov cocktail, even lighter fluid, and a gun may be a
8 deadly weapon even if it is not operating; secondly, uh, that
9 was the first, they have, the State has to prove one of these,
10 that was the first one, the second one when entering while in
11 a dwelling or when fleeing, the defendant or an accomplice,
12 uh, caused physical injury to anyone not participating in the
13 crime; third, when entering while in the dwelling or when
14 fleeing, the defendant or an accomplice -- complice used or
15 threatened to use a dangerous object; four, when entering
16 while in the dwelling or when fleeing, the defendant or an
17 accomplice displayed what was or appeared to be a knife,
18 pistol, revolver, rifle, shotgun, machine gun or other
19 firearm.

20 Now the defendant is also charged with possessing a fi --
21 a pistol from which the, uh, a serial number had been
22 obliterated and it is unlawful for a person to knowingly buy,
23 sell, transport, pawn, receive or possess any stolen handgun
24 or one from which the original serial number has been removed
25 or obliti -- obliterated. Now I would tell you to prove

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1 possession the State must prove beyond a reasonable doubt that
2 the defendant had both the power and the intent to control the
3 disposition or use of the illegal object. Possession may be
4 either actual or constructive. Actual possession means that
5 the illegal object was in the actual physical custody of the
6 defendant. Constructive possession means that the defendant
7 had dominion and control or the right to exercise dominion or
8 control over either the illegal object, uh, or the property on
9 which the illegal object was found. Proof of constructive
10 possession requires a showing that the defendant had dominion
11 and control over either the illegal object or the premises
12 where it was found and a showing that the defendant had
13 knowledge of the presence of the illegal object. I will tell
14 ya that mere presence at a scene where an illegal object is
15 found is not enough to prove possession nor is mere presence
16 enough to prove knowledge of the presence of the illegal
17 object. The defendant's knowledge and possession may be
18 inferred when a an illegal object is found on the property
19 under the defendant's control, however, this inference is
20 simply an evidentiary fact to be taken into consideration by
21 you along with all of the other evidence in the case and to be
22 given the weight that you, the jury, thinks it should have and
23 I will tell you that two or more persons may have joint
24 possession, and if a crime is committed by two or more people
25 who are acting together in committing a crime, the act of one

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1 is the act of all. The person -- a person who joins with
2 another to accomplish an illegal purpose is criminally
3 responsible for everything done by the other person which
4 occurs as a natural consequence of the acts done in carrying
5 out the common plan and purpose. For example, two people can
6 be guilty of killing another person when only one of the two
7 had a gun, there was only one bullet and only one of the two
8 fired the shot that caused the death. If two or more people
9 are together, acting together, assisting each other in
10 committing the offense, the act of one is the act of all or as
11 it is sometimes said the hand of one is the hand of all.

12 Now, ladies and gentlemen, as I told you each indictment
13 stands or falls on its own merit and each must be considered
14 separately based on the evidence and the law as I've given it
15 to you and I wanna tell you for each in -- each indictment
16 there are two possible verdicts: guilty or not guilty. We
17 have prepared a verdict form, uh, which I think is
18 self-explanatory and it's got, it lays out each indictment and
19 has a place to either check guilty or not guilty and there's
20 no significance in the order in which I state the two possible
21 verdicts, one has to be said first, one before the other and
22 then if you would when the jury, uh, well let me, let me just
23 tell you all twelve of ya have to agree, your verdict on each
24 case has to be unanimous and you should calmly consider the
25 evidence and your verdict cannot be based on sympathy,

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1 passion, prejudice, bias, or any other emotion that is not in
2 evidence in the case, you have no friends to reward, you have
3 no enemies to punish so, Mr. Foreperson, when you have reached
4 a unanus -- uman -- unanimous decision on each separate
5 indictment, please indicate the correct verdict that you found
6 and when you've completed all of 'em please sign, uh, and
7 indicate to the, uh, ba -- knock on the door, we will receive
8 you back and take your verdict. I'm gonna excuse ya now, uh,
9 to your jury room, I'm ask you not to begin deliberate quite
10 yet, I have to go over my charge on the law to make sure I
11 didn't misstate something or omit something but when the
12 evidence comes back to you with the verdict form then you all
13 can begin your deliberations so at this time I would excuse
14 everyone except Mr. Bowers and Mr. Cisson.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Gentlemen, I hate it, uh, you all are just as
18 good as every one of those twelve that filed past and, uh,
19 just as qualified, uh, but and I wish I could let you
20 deliberate but the law only allows twelve. I hope you
21 understand we knew we were goin' overnight and and that you'd
22 be surprised how many times jurors have been taken ill or some
23 emergencies come up so that's why we asked you to to to be
24 here. We appreciate your service, uh, as I said we couldn't
25 do this if you all wouldn't be here for us and I would just

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1 tell ya that that, uh, this justice system doesn't belong to
2 me, the lawyers, court personnel, it belongs to all of us,
3 equally to you and, uh, so I hope you feel proud that you
4 participated, uh, in your justice system this week in a, in a
5 vital way so thank you so much for your service, you're free
6 to talk about the case, you're free to go, you're done for the
7 week and, uh, ya'll have a great great afternoon. Thank you
8 so much.

9 UNIDENTIFIED JUROR: Thank Your Honor.

10 THE COURT: Any exception or objection to the, to the
11 charge?

12 MR. CLEVELAND: Uh, just briefly, Judge. During the on
13 the elements of burglary, I didn't hear nighttime. I think I
14 heard the deadly weapon thing twice, I know you went through
15 it, you said that's the first ---

16 THE COURT: You know you're right, I left it off.

17 MR. CLEVELAND: --- in that.

18 THE COURT: How did I do that? Walker messed up. Let's
19 bring 'em back out. Anything else before I do it?

20 MR. CANTRELL: Nothin' from the defense, Your Honor.

21 THE COURT: Okay.

22 (Whereupon, a discussion was held off the record.)

23 THE COURT: Ya'll wanna look at this verdict form?

24 (Whereupon, a bench conference was held off the record.)

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

MOTIONS AND MATTERS

1 THE COURT: Okay, ya'll don't even have to sit down when
2 ya come back if you don't want to, you're welcome to but let
3 everybody just so everybody can get in. This won't take but a
4 second. Uh, that was a mouthful a jury charge I gave ya and I
5 left one part out, uh, it's with respect to the, remember I
6 tell ya the State has to prove at least one of the following
7 elements and I read, uh, three or four of 'em to ya, there was
8 one I left off, uh, and you not to give this any more weight
9 than any of the others. If you'd like I will char --
10 re-charge you the whole charge on burglary first, would you
11 like that?

12 UNIDENTIFIED JUROR: (Nodded in the negative.)

13 THE COURT: Okay. One of the other elements, uh, and the
14 State has to prove one of these elements, uh, is that the
15 defendant entered or remained in the dwelling in the
16 nighttime. Nighttime is the period between sunset and sunrise
17 during which there is not enough daylight to recognize a
18 person's face except a course by artificial light or moonlight
19 so that along with, the State has to prove either that one
20 beyond a reasonable doubt or, uh, that the defendant while
21 entering in the dwelling or fleeing, the defendant or an
22 accomplice was armed with a deadly weapon, uh, while entering;
23 two, that's the first one; two, entering in the dwelling or
24 fleeing, the defendant or accomplice caused physical injury to
25 anyone not participating in the crime; three, when entering

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1 while in the dwelling or when fleeing the defendant or an
2 accomplice used or threatened to use a dangerous object; four,
3 while entering while in the dwelling or when fleeing the
4 defendant or an accomplice displayed what appeared to be a
5 knife, pistol, revolver, rifle, shotgun, machine gun or other
6 firearm or as I just told you the defendant entered or
7 remained in the dwelling in the nighttime, the nighttime being
8 the period between sunset and sunrise when there's not enough
9 daylight to recognize a person's face. Okay, ladies and
10 gentlemen, you may retire to your jury room. Thank you.

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

13 THE COURT: Alright, Mr. Cleveland, any objection?

14 MR CLEVELAND: None at all, Your Honor.

15 THE COURT: Alright, Mr. Cantrell?

16 MR. CANTRELL: No objection, Your Honor.

17 THE COURT: Okay. Alright, let's, uh, take 'em the
18 evidence, give 'em the verdict form, let 'em go.

19 (Whereupon, a discussion was held off the record.)

20 (Whereupon, the jury began deliberations at 2:45 p.m.)

21 THE COURT: "We wanna request an alternate juror due to
22 an individual being tired after working third shift, not
23 getting sleep and not feeling good about making a sound
24 decision on this case." I'm gonna write back, The alternates
25 have been released, please continue deliberating, is that

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1 good?

2 MR. TOOKER: Yes, sir, Your Honor.

3 MR. CANTRELL: Yes, sir.

4 (Whereupon, a discussion was held off the record.)

5 (Note from the jury marked Court's Exhibit No. 4 for
6 identification.)

7 (Whereupon, a recess was taken.)

8 THE COURT: Need to get Mr. Cantrell.

9 (Pause.)

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: Alright, got a note from the jury, "Can we
12 review the written statements from Draper?" My reply will be
13 you have all of the evidence that's been introduced in the
14 case. Satisfactory?

15 MR. CLEVELAND: Yes, Your Honor.

16 MR. CANTRELL: I believe so, yes.

17 (Whereupon, a discussion was held off the record.)

18 (Note from the jury marked Court's Exhibit No. 5 for
19 identification.)

20 (Whereupon, a recess was taken.)

21 THE COURT: Okay, "Can we have the elements of the law
22 concerning conspiracy and possession?"

23 MR. TOOKER: State's not opposed.

24 THE COURT: Huh?

25 MR. TOOKER: Just if you were to give them the written

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1 charge, the State's not opposed to that.

2 THE COURT: Yeah, is that alright with you?

3 MR. CANTRELL: Yes.

4 THE COURT: Alright, let's see what we've got.

5 (Note from the jury marked Court's Exhibit No. 6 for
6 identification.)

7 (Whereupon, a discussion was held off the record.)

8 (Conspiracy 16-17-410 charge marked Court's Exhibit No. 7
9 and Actual and Constructive Possession and Mere Presence
10 charge marked Court's Exhibit No. 8 for identification.)

11 THE COURT: You guys wanna look at it before it goes?

12 (Whereupon, a discussion was held off the record.)

13 MR. TOOKER: Yeah.

14 MR. CANTRELL: That's fine.

15 THE COURT: Alright, Walker send those.

16 (Whereupon, Court's Exhibit Nos. 7 and 8 were sent back
17 to the jury for review.)

18 MR. CANTRELL: Judge, for for the record, the Charleston
19 Bu -- Bar agrees with your charge.

20 THE COURT: Oh, is this ---

21 MR. CANTRELL: I'm I'm ---

22 THE COURT: --- what they got?

23 MR. TOOKER: It is.

24 MR. CANTRELL: It is.

25 (Whereupon, a discussion was held off the record.)

VERDICT

1 (Whereupon, a recess was taken.)

2 (Whereupon, the jury reached a verdict at 4:24 p.m.)

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

4 THE COURT: Alright, Mr. Foreman, I understand you've
5 reached a verdict.

6 JURY FOREMAN: Yes, sir.

7 THE COURT: Alright, thank you very much, would you hand
8 it to the bailiff.

9 (Whereupon, the jury foreman complied.)

10 THE COURT: Thank you, sir. Alright, madam clerk, would
11 you publish for us, please.

12 THE CLERK: State of South Carolina vs. Larold Lee Morris
13 as to the charge of burglary first degree, we, the jury, find
14 the defendant guilty; as to the charge of armed robbery, we,
15 the jury, find the defendant guilty; as to the charge of
16 conspiracy, we, the jury, find the defendant guilty; as to the
17 charge of possession of a pistol with an obliterated [sic]
18 serial number, we, the jury, find the defendant guilty. I
19 certify this decision was the unanimous decision of the jury.
20 If this was your verdict and is still your verdict so say you
21 all by raising your right hand. Thank you.

22 THE COURT: Alright, anything further of the jury from
23 the State?

24 MR. TOOKER: No, not from the State, sir.

25 THE COURT: From the defense?

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1 MR. CANTRELL: Nothing for the defense, Your Honor.

2 THE COURT: Alright, Mr. Foreman, ladies and gentlemen of
3 the jury, I wanna thank ya'll for your service. Uh, as I told
4 you we -- this was a dispute that couldn't be resolved in any
5 other way than to ask a jury to come up and participate in our
6 justice system and, uh, as I told the alternates this isn't,
7 the justice system doesn't belong to me, it doesn't belong to
8 the lawyers, it doesn't belong to the courthouse staff, it
9 belongs to each and every one of us as citizens and we
10 couldn't operate it without all of us participating so I thank
11 you so much for your service. Happy to tell you you're free
12 to talk about the case with whoever you want to now, uh, or
13 you don't have to talk about it. If someone approaches you
14 and bothers you about it, uh, you just let the clerk's office
15 know and we will fix the problem 'cuz we're not gonna have any
16 of ya be harassed or bothered by your service so thank you so
17 much for your service, you're released and you're free to go,
18 stay, whatever you'd like to do, okay. Thank you.

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: And, Mr. Foreperson, we're gonna need to, uh,
21 get your John Han -- John Hancock on some other stuff.

22 (Whereupon, the jury left the courtroom.)

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: Ya'll got the sheets?

25 MR. CLEVELAND: Yes, Your Honor.

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1 THE COURT: Okay, c'mon around.

2 (Whereupon, the defendant came forward.)

3 THE COURT: Alright, tell me about it. What's his prior
4 criminal history like?

5 MR. CLEVELAND: Yes, Your Honor, his prior record goes
6 back to 2005; he has two convictions for ABHAN, he was
7 sentenced to 5 years suspended on 5 years probation, I'll note
8 that one of those was pled down from a CSC third degree; 2007
9 trespass after warning; a 2009 burglary second degree
10 non-violent and a strong armed robbery that was pled down from
11 armed robbery and burglary first degree I believe, he was
12 sentenced to a YOA not to exceed 6 years on that and that was
13 in August of 2 -- of 2009 so he presumably did about 13 months
14 whatever the Y sentence is and was released late in 2010, uh,
15 also in 2009 he was convicted of grand larceny over \$5,000, he
16 was given 5 suspended on 5, uh, in 2009 he also had a simple
17 possession of marijuana. Uh, in North Carolina in addition to
18 the other burglary and armed robbery that's pending here, he
19 has a trafficking in marijuana and a conspiracy to traffic in
20 marijuana in North Carolina that actually happened on February
21 22nd 2011 in the middle of when these incidents were, I spoke
22 with the DA, those are still pending, um, uh, ---

23 THE COURT: Okay.

24 MR. CLEVELAND: --- that's his prior record, Your Honor.
25 Uh, like I said he still has the other burglary and armed

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1 robbery pending, um, ---

2 THE COURT: Okay.

3 MR. CLEVELAND: --- in this case and the co-defendants
4 are pending as well on all those.

5 THE COURT: Alright, Ms. Ford.

6 MS. FORD: Yes, sir, he's on probation for a grand
7 larceny outta Greenville County you sentenced him to on
8 October 13th 2009, his sentence was 5 years suspended to
9 5 years probation which began after he was released from
10 his Y.

11 THE COURT: Okay, what you wanna tell me?

12 THE DEFENDANT: I tried, sir, mean, ---

13 THE COURT: Tried what?

14 THE DEFENDANT: -- I'm innocent but I got found guilty.
15 I tried, I mean, I maintain on the st -- when I was on the
16 outside.

17 THE COURT: Innocent but you're found guilty? How'd ya
18 get the Xbox?

19 THE DEFENDANT: Like I told the detective I bought it
20 from a dude and I gave her the name but she didn't follow it
21 up.

22 THE COURT: Yeah.

23 THE DEFENDANT: I di ---

24 THE COURT: Where'd ya get the guns?

25 THE DEFENDANT: They weren't my guns, ---

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1 THE COURT: Yeah.

2 THE DEFENDANT: --- they was my brother's, I mean, he
3 didn't show up to testify. He wrote a statement sayin' they
4 was his but wasn't no follow-up.

5 THE COURT: Alright, Mr. Cantrell, anything you wanna
6 tell me?

7 MR. CANTRELL: Uh, Your Honor, I will verify and everyone
8 has it, solicitor and my office, that Mr. Cade did early on in
9 this process sign a statement saying those guns belonged to
10 him him so so the Court will have that information, otherwise,
11 Larold's 25-years-old, he's a resident of Pickens County, uh,
12 in Clemson, he's got sister, mother and cousin here -- is that
13 your daughter?

14 THE DEFENDANT: My niece.

15 MR. CANTRELL: And his niece. He does have one child?

16 THE DEFENDANT: Yes, sir.

17 MR. CANTRELL: --- uh, one child and, uh, he's been
18 consistent with me throughout my representation of him in
19 this, in this case. Uh, the jury has reached its verdict but
20 I would ask the Court to, uh, to consider anything the Court
21 can in, uh, his sentence.

22 THE COURT: Yeah.

23 MR. CLEVELAND: Just very briefly regarding the gun
24 issue, um, evidence wasn't presented at trial but actually on
25 the in-car tape there's a discussion between Mr. Morris and

SENTENCE

1 Cade 'cuz Mr. Cade had no record, somethin' along the lines
2 of, You just take the guns, you'll get PTI, I'm on parole, I
3 can't do this, so that ---

4 THE COURT: Yeah.

5 MR. CLEVELAND: --- was the reason the State didn't go in
6 any a that.

7 THE COURT: No, sir, I don't buy his assertion that he's
8 innocent. He's not innocent, he's been found guilty..
9 Anything else?

10 MR. CANTRELL: Nothing, Your Honor.

11 (Pause.)

12 THE COURT: Can't imagine the terror that that guy felt
13 when you broke into his house. Okay, burglary, armed robbery
14 twenty-five (25) years, on the other two five (5) years, it's
15 all concurrent, credit for any time he's entitled to, revoke
16 him and run it concurrent.

17 MS. FORD: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. CLEVELAND: Thank you, Your Honor.

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on March 19 and 20, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 11 through 339, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

August 1, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

Larold MORRIS, #336461)

Full name and prison number (if any) 2015 JAN - 8 A 9 14)

2015-CP-39-00044

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention S.C.D.O.C. [PERRY CORR. Inst.; 430 Oaklawn Road; Pelzer, S.C. 29669].
2. Name and location of Court which imposed sentence Pickens General Sessions; P.O. Box 215; Pickens, S.C. 29671
3. Name(s) of co-defendant(s) (if any) DeAndre Draper; Ernest O. Code
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
2013-GS-39-00457 / Armed Robbery
 (a) 2013-GS-39-00458 / Conspiracy
2012-GS-39-00752 / Possession of unlawful pistol
 (b) 2012-GS-39-00700 / Burglar, First degree
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
25 years on March 20, 2013 (concurrent)
 (a) 5 years on March 20, 2013 (concurrent)
5 years on March 20, 2013 (concurrent)
 (b) 25 years on March 20, 2013 (concurrent)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Assirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 26, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Up. Op. No. 2014-UP-420
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Trial Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failed to renew objection to introduction of evidence in violation of the 4th, 6th and 14th Amendments of the United States Constitution.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) —any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) *Ineffective Assistance of Trial Counsel - must be raised in PCR application.*
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. David D. Contrell, Jr., Esquire; P.O. Box 955; Easley, South Carolina 29641
 - ii. Robert M. Dudek, App. Dfr.; P.O. Box 11589; Columbia, S.C. 29211-1589
 - iii. Chris Paton, Esquire; 40 Calhoun Street, Suite 411; Charleston, S.C. 29401
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment, plea of not guilty, trial, sentencing
 - ii. direct appeal
 - iii. direct appeal

19. State clearly the relief you seek in filing this application:

Vacate/Reverse and Remand

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)
)
 County of Pickens)

VERIFICATION

Larold Morris, #336461

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Larold Morris

SWORN to and subscribed before me this 5th
 day of January, 2015.

Nancy C. Merchant (L.S.)
 Notary Public

My Commission Expires: 1-23-2021

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 2015 JAN - 8 A 9 14

2015-CP-39-00244

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Larold Morris #336461

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Larold Morris
Applicant

SWORN or affirmed to and subscribed before me this
5th day of January, 2015.

Nancy Chapman
Notary Public

My Commission Expires: 1-23-2023

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2015 JAN - 8 A 9:15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-39-0044
COUNTY OF PICKENS	)	
	)	
Larold Morris,	)	
S.C.D.C. No. 336461,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed January 8, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the February 2013 term of General Sessions for first-degree burglary (2012-GS-39-0700), possession of a pistol with obliterated serial number (2012-GS-39-0752), armed robbery (2013-GS-39-0457), and conspiracy (2013-GS-39-0458). David D. Cantrell, Jr., Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On March 20, 2013, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 25 years for first-degree burglary, 5 years for possession of a pistol with obliterated serial number, 25 years for armed robbery, and 5 years for conspiracy.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek,

Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense and Chris Paton, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Morris, Op. No. 2014-UP-420 (S.C. Ct. App. filed Nov. 26, 2014). The Remittitur was sent on December 12, 2014.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel.
 - a. "[F]ailed to renew objection to introduction of evidence in violation of the 4th, 6th and 14th Amendments of the United States Constitution."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

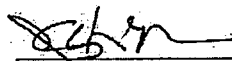
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

May 29, 2015

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

LAROLD MORRIS, 336461

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

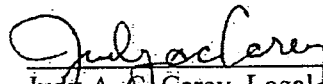
2015-CP-39-0044

AFFIDAVIT OF SERVICE BY MAIL

10. I am an employee of the Respondent in the above-captioned action.
11. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
12. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Larold Morris, 336461
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 29th day of May, 2015.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Larodl Lee Morris,	)	
	)	
Applicant,	)	
v.	)	Case No. 15-CP-39-0044
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on December 14, 2015, before The Honorable Perry H. Gravely in Courtroom 2 of the Pickens County Courthouse, Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

Mills Arial, Esq.
... appearing for Applicant

Karen Ratigan, Esq.
Assistant Attorney General
... appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616-7145
dgarrison@sccourts.org

Larold Lee Morris v. State of South Carolina
Case No. 15-CP-39-0044
Hearing of December 14, 2015
Before The Honorable Perry H. Gravely

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Larold Lee Morris v. State of South Carolina

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Case No. 15-CP-39-0044

Hearing of December 14, 2015

Before The Honorable Perry H. Gravely

1 THE COURT: Which one is next, Ms.
2 Ratigan?

3 MS. RATIGAN: This is Larold Lee
4 Morris versus the State of South Carolina.
5 Docket number is 2015-CP-39-0044.

6 Mr. Morris was indicted for first
7 degree burglary, possession of a pistol with
8 an obliterated serial number, armed robbery
9 and conspiracy. He was represented on these
10 charges by Mr. Cantrell.

11 After the case was brought to trial
12 he was found guilty. On March 20th, 2013,
13 Judge Miller sentenced him to concurrent
14 terms of twenty-five years for first degree
15 burglary; five years for the weapons charge;
16 twenty-five years for armed robbery; and,
17 five years for conspiracy.

18 He did file an appeal. The Court of
19 Appeals affirmed his convictions and
20 sentences in November of 2014. This
21 application was timely filed and the State's
22 ready to proceed.

23 THE COURT: All right. Mr. Arial.

24 MR. ARIAL: Yes, Your Honor, we're
25 ready to proceed and I call Mr. Morris to

Larold Lee Morris v. State of South Carolina

4

Case No. 15-CP-39-0044

Hearing of December 14, 2015

Testimony of Larold Lee Morris - Direct Examination

1 the stand.

2 THE COURT: All right. Good
3 morning, Mr. Morris.

4 (WITNESS TAKES STAND)

5 LAROLD LEE MORRIS, having been duly sworn
6 to tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ARIAL:

10 Q. Mr. Morris, please state your name
11 for the record?

12 A. Larold Lee Morris.

13 Q. And you filed a PCR in regards to
14 your representation, I guess, by Mr.
15 Cantrell; is that correct?

16 A. Yes, sir.

17 Q. Okay. Tell me, we've heard the
18 charges that he represented -- did he
19 represent you on all those charges?

20 A. Yes, sir.

21 Q. Okay. Was he appointed or retained
22 by you?

23 A. Appointed.

24 Q. Okay. And I'd like to start off a
25 little bit and go through exactly how long he

Larold Lee Morris v. State of South Carolina
Case No. 15-CP-39-0044
Hearing of December 14, 2015
Testimony of Larold Lee Morris - Direct Examination

5

1 represented you. You were arrested on these
2 charges. Were you out on bond?

3 A. No, sir.

4 Q. Okay. So you were incarcerated the
5 whole time until trial?

6 A. Yes, sir.

7 Q. Okay. How long after you were
8 arrested was he appointed as your attorney?

9 A. I think like two weeks.

10 Q. Okay. Two weeks. And a lot of
11 these times what I'm trying to decipher,
12 you've got a PCR application you filed. What
13 I want to go back to is whether or not you're
14 claiming he did anything in regards to an
15 investigation of your case that was
16 ineffective?

17 A. Yes, sir.

18 Q. Did he meet with you and talk to you
19 about your case?

20 A. Not like he was supposed to.

21 Q. Well, and let's go through that a
22 little bit. How many times did he meet with
23 you prior to your trial?

24 A. Probably five.

25 Q. Five times?

Larold Lee Morris v. State of South Carolina

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Case No. 15-CP-39-0044

Hearing of December 14, 2015

Testimony of Larold Lee Morris - Direct Examination

1 A. (Affirmative response).

2 Q. Okay. And were you down at the LEC?

3 A. (Nodding head)...

4 Q. Okay. When he came and met with
5 you, did y'all discuss the discovery?

6 A. Yes, sir.

7 Q. Now, you discussed the facts of the
8 case that were against you; is that right?

9 A. Yes, sir.

10 Q. Did you ask any questions?

11 A. Yes, sir.

12 Q. Did he answer your questions?

13 A. He answered them but he didn't do
14 what I needed him to do.

15 Q. Okay. Now, that's where we're going
16 to -- we'll get into that in a second.

17 A. All right.

18 Q. As you discussed these items, did
19 y'all go back and forth and talk about what
20 the elements of each of the crimes was? Did
21 he give you that information?

22 A. (No verbal response).

23 Q. Did he tell you, 'hey this is what
24 the solicitor's got to prove to be able to
25 show that you did these crimes'?

Larold Lee Morris v. State of South Carolina
Case No. 15-CP-39-0044
Hearing of December 14, 2015
Testimony of Larold Lee Morris - Direct Examination

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1 A. Yes, sir.

2 Q. Okay. So he told you about that.

3 A. Yes, sir.

4 Q. Did he tell you, 'hey, this is how
5 much time you can be looking at'?

6 A. Yes, sir.

7 Q. Okay. And a little earlier you said
8 he didn't do things you wanted him to do.
9 What did you ask him to do or investigate
10 that you're saying he didn't do?

11 A. Okay. I gave Mr. Cantrell a copy of
12 -- well, he had a copy of my codefendant's
13 statement admitting guilt. On the gun
14 charge, I was charged -- I was charged with
15 unlawful carrying of a weapon. I told him to
16 subpoena my codefendant to court and he told
17 me we was all going on trial together. When
18 I went to trial, nobody was there but me.
19 And my codefendant wasn't subpoenaed.

20 Q. Okay. Tell me who your codefendant
21 was?

22 A. Ernest O'Brian Kaye.

23 Q. Ernest Kaye?

24 A. Yes, sir.

25 Q. Okay. And Mr. Kaye, you're saying,

Larold Lee Morris v. State of South Carolina

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Case No. 15-CP-39-0044

Hearing of December 14, 2015

Testimony of Larold Lee Morris - Direct Examination

1 pled guilty to the gun charge that you were
2 on trial for?

3 A. Yes, sir.

4 Q. Okay. And did y'all have any
5 discussions about that or why he didn't want
6 to call him or what the issue was?

7 A. No, sir.

8 Q. Okay. So you wanted him at trial to
9 be able to testify that the gun was his?

10 A. Yes, sir.

11 Q. Put him on the stand and say, 'hey,
12 look, I'm not going to be responsible for
13 that gun'?

14 A. Yes, sir.

15 Q. Did y'all have a discussion about
16 that?

17 A. Yes, sir.

18 Q. And what was his response to 'hey,
19 I'm not...' ---

20 A. He said he was going to do it.

21 Q. He said he was going to do it?

22 A. Yeah.

23 Q. Okay. Did y'all have a discussion
24 at the trial as to, hey, why he didn't do it?

25 A. He didn't do his job, sir.

Larold Lee Morris v. State of South Carolina
Case No. 15-CP-39-0044
Hearing of December 14, 2015
Testimony of Larold Lee Morris - Direct Examination

9

1 Q. Okay. I know you're saying he
2 didn't do his job. But did he ever say, 'hey
3 this is the reason I'm...' ---

4 A. No, he never gave me a reason.

5 Q. Okay.

6 A. He didn't even bring the issue up in
7 trial.

8 Q. Okay. Now, there were other things
9 that you asked him to do prior to ---

10 A. Like the search warrant.

11 Q. Okay. Search warrant. Tell me a
12 little bit about that search warrant?

13 A. Okay. The search warrant -- okay.
14 The search warrant was served on my apartment
15 the day when -- the next day I got arrested.
16 And the signature, the return signature was
17 signed the day before the search actually
18 took place. And I had told Mr. Cantrell
19 about it. He knew about it. And the
20 detective, she never had a probable cause to
21 serve the search warrant. She never showed
22 probable cause. She just said based on her
23 theory she believed this is what happened so
24 this is why she did it. And I told him that
25 I needed this suppressed because it was

Larold Lee Morris v. State of South Carolina

10

Case No. 15-CP-39-0044

Hearing of December 14, 2015

Testimony of Larold Lee Morris - Direct Examination

1 conclusionary statements in there. And he
2 said he was going to file the motion. He
3 filed the motion at pretrial hearing. And
4 when the solicitor's office admitted their
5 error, said it was an error. And they said
6 -- when the judge asked them where the
7 original search warrant was at, they said it
8 don't exist.

9 And they asked Mr. Cantrell, 'well,
10 how did we prejudice Mr. Morris? What
11 constitutional rights did we violate?' Mr.
12 Cantrell never put forth any constitutional
13 amendments. He never said they violated my
14 Fourth Amendment. So the judge allowed the
15 search warrant in. And the judge admitted
16 that the search warrant admitted that the
17 search warrant was conclusionary statements.
18 He said it should have been -- should have
19 been more specific, but it doesn't fall to a
20 level he feels to grant my motion.

21 Q. Let me jump back a little. Because
22 we've got a lot of things you allege right
23 there. Okay. So there was a search warrant
24 in the case?

25 A. Yes, sir.

Larold Lee Morris v. State of South Carolina
Case No. 15-CP-39-0044
Hearing of December 14, 2015
Testimony of Larold Lee Morris - Direct Examination

11

1 Q. For your residence?

2 A. Yes, sir.

3 Q. Okay. And you're saying that it was
4 nonissue? I mean, there was no probable
5 cause to issue it?

6 A. No, sir.

7 Q. But did he -- y'all discussed that;
8 correct?

9 A. Yes, sir.

10 Q. And did he file a motion?

11 A. Yeah. He filed a motion.

12 Q. Okay. But you're saying that the
13 motion that he filed was not sufficient and
14 didn't argue the right things?

15 A. No, sir. He didn't. And he never
16 renewed his objections.

17 Q. Okay. So that -- okay. There's two
18 different things.

19 First of all you're saying he didn't
20 allege what he needed to in the motion to be
21 able to be successful; is that right?

22 A. Yes, sir.

23 Q. Okay. And you're saying that --
24 what are you saying he didn't argue or allege
25 in the motion that would have helped you be

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1 successful?

2 A. When the State challenged Mr.
3 Cantrell to show prejudice, Mr. Cantrell
4 failed to show prejudice. And he failed to
5 state the constitutional amendment of my
6 Fourth Amendment of due process of law right.

7 Q. Okay. But didn't he -- and this is
8 what I'm trying to figure. Didn't he make
9 the motion to suppress because it was a
10 violation of your constitutional rights?

11 A. Yes.

12 Q. Okay. But you're saying he didn't
13 specifically give or give the specific you'd
14 think you'd win it?

15 A. Yes, sir.

16 Q. All right. The next thing you're
17 saying is he didn't renew his objections to
18 the search warrant, which the Court of
19 Appeals concluded he didn't do that; is that
20 right?

21 A. Yes, sir.

22 Q. Okay.

23 A. Because I had -- if Mr. Cantrell had
24 renewed his objections, I would have been
25 preserved, and so he errored by not renewing

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1 his objection. Had he renewed his
2 objections, I would have been preserved for
3 appellate review.

4 The appeals court took my case and
5 said they couldn't rule on it because Mr.
6 Cantrell failed to renew his objections.

7 And asked in the jury trial, when
8 they entered the photographs, did he want to
9 object. And affirmly stated no twice. And I
10 have copies of where the Supreme Court
11 saying. And I'd like to put that on record.

12 Q. And that's part of your PCR package.

13 A. Okay.

14 THE COURT: And I have the *State v*
15 *Morris* from the Court of Appeals.

16 MR. ARIAL: Right.

17 THE WITNESS: Okay.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. ARIAL:

20 Q. And I'm going to put in right now --
21 and we've got a search warrant and we have a
22 search warrant for the car?

23 A. Yes, sir.

24 Q. So are you saying both of these
25 things he didn't do and didn't preserve for

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1 you so that you could have that argued by the

2 ---

3 A. Yes, sir.

4 Q. Here's the reality of the situation.

5 What do you believe would have -- I guess if
6 this stuff was excluded, how would that have
7 affected your case?

8 A. If the evidence would have got
9 excluded it wouldn't have been no trial,
10 because the State, the only evidence they had
11 was the search warrant that can show guilt
12 towards me.

13 Q. Okay.

14 A. And without the gun charge, I would
15 have never have had an armed robbery charge
16 and I would have never had the unlawful
17 carrying of a weapon. I could have gotten a
18 lighter sentence if I was found guilty.

19 Q. Okay. Where did they find the gun?

20 A. In the back seat with my
21 codefendant, Ernest O'Brian Kaye.

22 Q. Okay. And they also found black in
23 color ammo clip with ammunition loaded, clear
24 latex gloves. So you're saying that if they
25 had -- if that was preserved the way it

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1 should have been and argued the way it should
2 have been, then that would have been --
3 pretty much it would have been -- you would
4 have been able to get this dismissed?

5 A. Yes, sir.

6 Q. Okay. Because that was what they
7 had?

8 A. Yes, sir. That's what they used to
9 charge me with armed robbery and unlawful
10 carrying of a weapon. That's the facts they
11 used to show to the jury that I used this
12 weapon to rob the victim.

13 Q. Right. Did y'all discuss at any
14 time the hand of one hand of all?

15 A. No, sir. I knew I was charged with
16 the hand of one the hand of all. They
17 charged that when I got arrested.

18 Q. But I mean -- I guess my question is
19 when you were talking with Mr. Cantrell, did
20 he explain to you, 'hey, look, you can be
21 responsible for what he did if you were a
22 part of this'?

23 A. No, sir. It was never posed that
24 way.

25 Q. Okay. If you had known would that

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1 have affected your view of how to handle this
2 case if you knew, 'hey, I'm as responsible as
3 that guy for the crime'?

4 A. Yes, sir.

5 Q Okay. So what would you -- how
6 would you have handled this differently if
7 you had known that?

8 A. I still would have went to trial
9 because normally, I know for a fact, the gun
10 was not in my possession. I didn't know the
11 gun was in the car.

12 Q. Okay.

13 A. So that's why when the codefendant
14 made guilt, I presented it to Mr. Cantrell.

15 Q. Okay.

16 MR. ARIAL: I'm going to approach.
17 Your Honor, may I. And show him these?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. CANTRELL:

21 Q. These are some documents you
22 presented to me. This is a search warrant,
23 I think for the premises and the house and
24 the car. You would like to make those part
25 of the record?

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1 A. Yes, sir?

2 Q. Okay.

3 MR. ARIAL: Your Honor, if I may
4 move these into evidence as Mr. Morris'
5 Number 1

6 (SO MARKED AS APPLICANT'S EXHIBIT 1)

7 MS. RATIGAN: I have no objection,
8 Your Honor.

9 THE COURT: All right. They're
10 admitted without objection.

11 COURT REPORTER: Applicant's
12 Exhibit 1, collectively.

13 (SO ENTERED AS APPLICANT'S EXHIBIT 1)

14 MR. ARIAL: And if you could mark this
15 one also.

16 (SO MARKED AS APPLICANT'S EXHIBIT 2)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. ARIAL:

19 Q. Do you recognize that document?

20 A. Yes, sir.

21 Q. What is that document?

22 A. That's the statement from my
23 codefendant pleading guilty?

24 Q. Mr. Kaye?

25 A. Yes, sir.

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1 Q. Okay. So this is -- you want to put
2 this into evidence to show that basically he
3 admitted the gun was his?

4 A. Yes, sir.

5 Q. Okay.

6 MR. ARIAL: Your Honor, If I may
7 move that into evidence as ---

8 MS. RATIGAN: I have no objection.

9 THE COURT: All right. In without
10 objection.

11 COURT REPORTER: Applicant's
12 Exhibit Number 2.

13 (SO ENTERED AS APPLICANT'S EXHIBIT 2)

14 DIRECT EXAMINATION CONTINUED

15 BY MR. ARIAL:

16 Q. And I know -- I'm trying to move
17 along and summarize as best I can. I know
18 we've talked about a lot of different issues.
19 Went over the house, the car, codefendant
20 admitting the gun was his.

21 You say -- you've just advised me you've
22 got some additional points you want to raise?

23 A. Yes, sir.

24 Q. My normal process is -- and I'll be
25 glad to do it with your -- but the Court

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1 would like if you could -- instead of reading
2 a document, if you can kind of summarize it
3 for us and we can discuss those points. I
4 know some things ---

5 A. Okay. I mean I can summarize it.

6 Q. Sure.

7 A. I want to show -- under my Sixth
8 Amendment due process right, counsel clearly
9 violated by my Sixth Amendment due process
10 right. Counsel was clearly ineffective by
11 failing to object, challenge unconstitutional
12 evidence by not suppressing evidence in
13 dealing with the gun charge, which was
14 unlawful carrying of weapon. Had counsel
15 suppressed -- counsel prejudiced me because
16 had counsel suppressed the evidence of the
17 gun charge and produced the evidence in the
18 evidence from the codefendant, I would have
19 been able to preserve that for direct appeal.
20 And had Mr. Cantrell subpoenaed codefendant
21 to trial, he could have got on the stand and
22 admitted his guilt and it would show the jury
23 that I was not guilty. And possibly I could
24 have got a lighter sentence and exonerated
25 from the gun charge.

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1 And, also, Mr. Cantrell errored by not
2 challenging the State's only witness who said
3 he could not identify nobody. He could only
4 remember seeing the gun.

5 Mr. Cantrell prejudiced me because he had
6 the statement. Also he excused the witness
7 from the courtroom. The witness left the
8 courthouse. They produced a gun. It was a
9 Tec 9 machine gun. And they used that and
10 saying it was the black handgun. We all know
11 a Tec 9 is not a handgun. The victim said
12 all he saw a black handgun that was used in
13 the robbery. And Mr. Cantrell never raised
14 this issue.

15 Q. Did he cross-examine the witness in
16 regards to that?

17 A. He never crossed the witness about
18 no gun.

19 Q. Okay.

20 A. He cross-examined the witness but
21 never about the gun.

22 Q. Okay.

23 A. And Mr. Cantrell waited until he
24 errored because he waited until -- he errored
25 because he waited until the trial was over

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1 with to explain to the Judge that I had no
2 knowledge and that my codefendant made a deal
3 of the gun. He pressured him because had he
4 raised this issue up to the trial and the
5 jury, I could have had a fair trial. And he
6 dismantled my defense. I wasn't able to set
7 up a defense against the State. I couldn't
8 challenge them because he didn't raise these
9 issues at trial. He waited until after I was
10 found guilty to tell the judge he had a copy
11 of my codefendant's statement. You can see
12 it on Page 337 and Page 338, Lines 24 and 10,
13 when Judge Miller asked me about whose gun it
14 was.

15 Q. Here's my question for you and I
16 just want to make sure I understand. So he
17 didn't call him to the stand. Did y'all ever
18 have a discussion about 'hey, if you call him
19 to the stand he might hurt you with his
20 testimony about...' ---

21 A. He never told me it was going to
22 hurt. He allowed -- he cross-examined the
23 victim. But he never raised any questions
24 about any gun. And, also, Mr. Cantrell knew
25 that, uh, -- if the victim was to say this

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1 wasn't the right gun, the case would have
2 been over with. And I would have got found
3 not guilty and possibly they would have threw
4 the armed robbery out. So he didn't help me
5 in no type of fashion. He hurt me by not
6 challenging the State. So he errored by
7 having the evidence of the statement and not
8 challenging it.

9 Q. Okay. About that gun ---

10 A. About the gun, yes.

11 Q. --- you're saying he should have
12 cross-examined him ---

13 A. He should have crossed him about the
14 gun.

15 Q. --- because it wasn't a handgun it
16 was Tec 9?

17 A. It was a Tec 9. And they produced
18 the gun on page 182, line 12. The victim he
19 say I was pretty much focused on the gun and
20 the color was a black handgun. And you can
21 see that on Page 111, Lines 1 through 7.
22 Because he never asked the victim about the
23 gun in his cross-examination he errored. And
24 had he -- he prejudiced me because had he
25 asked the victim to identify the gun in front

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1 of the jury, the jury would have saw that
2 this is the wrong gun and they would have saw
3 how the State was trying to manipulate the
4 whole trial.

5 They was allowed to do what they wanted
6 because Mr. Cantrell never objected to no
7 evidence throughout the whole trial.

8 Q. He's objected to some of the stuff.
9 But you're saying he didn't object ---

10 A. No. He never objected to none of
11 the evidence that was presented against me:
12 the photographs, the gun, the mag; he never
13 objected to nothing. That's how it wasn't
14 preserved for no arguments on appeal.

15 Q. You're saying -- there is a
16 difference between not objecting and not
17 preserving.

18 A. No. He didn't object.

19 Q. Right?

20 A. He didn't object to no evidence.

21 Q. Okay.

22 A. So when I got found guilty and I
23 went to direct appeal, they said I wasn't
24 preserved for any arguments.

25 Q. Okay. Have you got other -- have

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1 you got other issues on there?

2 A. Yeah. That's for the gun charge.

3 Q. Got it.

4 A. Okay. My search warrant violated
5 part of my Fourth and Sixth and Fourteenth
6 due process right. Counsel was ineffective
7 by failing to object, challenge
8 unconstitutional evidence that was utilized
9 to establish probable cause.

10 Counsel was ineffective by suppressing
11 the evidence at pre-trial motions dealing
12 with the search warrant on the apartment.

13 After the motion was denied, counsel
14 failed to renew his objections. Had counsel
15 renewed his objections, I would have been
16 preserved for direct appeal.

17 Q. This is the one we've already
18 discussed; correct?

19 A. Yeah. .

20 Q. Okay. You can go ahead. We've got
21 that taken care of.

22 A. Okay. Also, counsel was clearly
23 ineffective during the pretrial motion by not
24 renewing his objections after he heard the
25 judge clearly admit the search warrant was .

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1 conclusionary statements in there and could
2 have been specific, should have been more
3 specific, but that does not alter or rise to
4 the level required to for the Motion to be
5 granted. You can see that on Page 77, line
6 24 and Page 78, line 7.

7 Also, he errored because the trial judge
8 also noted that the return was dated the day
9 before the search. That's on Page 80, line
10 ten.

11 Had counsel been effective, counsel could
12 have challenged the judge and showed the
13 judge that no magistrate, no trial judge --
14 let me get it right -- no trial judge can
15 assume that a magistrate inferred certain
16 facts sufficient to support probable cause.
17 Trial judge could have suppressed the
18 evidence had Mr. Cantrell done his job.
19 Okay.

20 Also, the trial judge asked the State
21 where the original copies was. They said it
22 was an error, that it don't exist. You can
23 see that on Page 82, line 6 and line 7.

24 Q. And that's another issue you've got
25 with the search warrant. It wasn't signed

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1 appropriately. Is that what you're saying?

2 A. Yes, sir.

3 Q. Okay.

4 A. And had Mr. Cantrell raised the
5 correct issues -- he prejudiced me by not
6 raising the correct issues to challenge the
7 State back ---

8 Q. Right.

9 A. --- under the Fourth Amendment. Had
10 he done that, the motion could have got
11 suppressed. And without the evidence, I
12 could have been found not guilty or given a
13 lighter sentence.

14 Q. Okay.

15 A. Counsel was also ineffective for not
16 objecting to evidence in trial when the
17 photographs was introduced. Counsel was
18 asked twice did he have any objections. And
19 counsel clearly stated "no."

20 He prejudiced me because I wasn't
21 preserved to have my issues heard in the
22 Supreme Court. Had I been preserved, I could
23 have easily got a reversal and a remand on
24 the search warrant. Okay.

25 Also, counsel errored by failing to

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1 challenge Detective Justice when her
2 affidavit failed to explain why she believed
3 I committed these crimes charged.
4 Investigator Justice stated that I was
5 suspected in several armed robberies. She
6 stated that certain items were used in the
7 robberies and the perpetrators were driving a
8 silver Impala. She then stated that this
9 vehicle was stopped. And once she began
10 interviewing the subjects and locating the
11 firearms, she came to believe that the stolen
12 property was located at my apartment. She
13 did not, however, explain in her affidavit
14 why she believed that I committed the crimes
15 charged. Only 'this is what I did and I
16 believe he did it.' There is no connecting
17 of the dots, no explanation of why she
18 believed I did it. The affidavit, therefore,
19 fails to support the finding for probable
20 cause. You can see *Jenkins v State* and
21 *Baptist Hill v. State* (phonetic).

22 Indeed, the only way the trial court
23 could have concluded that the magistrate was
24 presented with information sufficient to
25 establish probable cause was for it to assume

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1 inference on the part of the magistrate that
2 the subjects were in the car and they
3 implicated me in the crimes. *Jenkins*
4 prohibits the court from making such
5 assumptions because the affidavit in support
6 of the search warrant for the apartment was
7 insufficient for the magistrate to find
8 probable cause.

9 And, also, lastly, Cantrell erred by
10 not failing -- he failed to challenge the
11 trial judge when the trial judge noted the
12 importance of the apartment search when he
13 stated that the prosecution pretty much had
14 me nailed with the X-box. You can see that
15 on Page 42, lines 4 through 19. Had he
16 challenged the judge and showed to the jury
17 that the judge was showing favoritism to the
18 State, and had he produced the search warrant
19 to the jury, it would have showed that the
20 search was defective on its face and it would
21 show the bad documents and errors from the
22 State. I probably could have got a not
23 guilty plea -- I mean, not guilty or a
24 lighter sentence.

25 Q. Okay.

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1 A. Also, Mr. Cantrell didn't allow me
2 to set up a defense to put up against the
3 State because the counsel failed to produce
4 the search warrant as bad documents, which
5 could have led to the not guilty plea. And,
6 also, if Mr. Cantrell were to show that the
7 statement from codefendant was confusing, had
8 he showed that the only eyewitness couldn't
9 identify nobody but except with the gun,
10 which didn't hold any weight.

11 And if he would have showed that there
12 was no crime on March the 8th, if you silent
13 -- if you at school all day there's no way
14 beyond a reasonable doubt that the X-Box did
15 not contribute to the guilty verdict. And
16 Mr. Cantrell errored and prejudiced me. His
17 error was not harmless.

18 Q. Right. And that's going back to if
19 you had those items excluded they wouldn't
20 have been for the jury to consider whether or
21 not you committed the armed robbery?

22 A. Yes, sir.

23 Q. Okay.

24 A. And I asked that the judge reverse
25 my convictions and my sentencing and remand

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1 for a new trial. In the alternative, I
2 ask the judge to set up a hearing to see if
3 Detective Christy actually gave a sworn
4 testimony to the magistrate to uphold the
5 warrant. If not, I ask that a trial be held,
6 a new trial be held.

7 Q. Okay. I have no further questions,
8 thank you.

CROSS-EXAMINATION

9
10 BY MS. RATIGAN:

11 Q. Just a couple of quick questions,
12 Mr. Morris. Now, your codefendant, Mr. Kaye,
13 is that your brother?

14 A. Yes, ma'am.

15 Q. And you told Mr. Cantrell that Mr.
16 Kaye was your brother and that he'd given a
17 statement about the guns?

18 A. Yes, ma'am.

19 Q. Did y'all talk about your brother's
20 statement?

21 A. The last time -- the whole time I
22 spoke to Mr. Cantrell about it, I tried to
23 stay on top of him to get the statement in
24 trial and get my codefendant, my brother, in
25 trial to testify.

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1 Q. Uh-huh.

2 A. And he said he was on top of it. He
3 -- it was hard, really, talking to Mr.
4 Cantrell. I had to really show my tail off
5 in the county jail just to get him to pull me
6 out to talk to me.

7 Q. Well, I believe you said originally
8 that Mr. Cantrell said that the two of y'all
9 would be tried together, you and your
10 brother?

11 A. All three of us.

12 Q. Okay.

13 A. He told me the county -- the month
14 before I went to trial, because I only had a
15 couple of charges. And a month before I went
16 to trial they hit me with an armed robbery,
17 conspiracy to robbery, all type of charges.
18 And he was, like, 'They're not offering no
19 pleas. They're trying all three of y'all
20 together.'

21 Q. Uh-huh.

22 A. I go to trial, I don't see none of
23 them in trial but I see my codefendant's --
24 Draper -- his lawyer. He's not there but his
25 lawyer is. We pick our jury together. And

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1 then the next day, I'm on trial by myself.

2 Q. And Mr. Draper testified against
3 you?

4 A. Yes, ma'am.

5 Q. And when you saw that your brother
6 wasn't there, did you say anything to your
7 attorney at the time? You know, 'Where is my
8 brother? Why isn't he here?'

9 A. Yes, ma'am.

10 Q. And what did he say?

11 A. He said he don't know what's -- he
12 basically said he don't know what's going on.
13 Like he was saying "you a target." That's
14 what he kept -- and he pushed that to the
15 jury that I'm just a target. They got a beam
16 on me for some reason.

17 Q. And Mr. Cantrell after you were --
18 after the verdict came back he brought up --
19 or the two of y'all brought up about the fact
20 that your brother had said the guns were his?

21 A. Yes, ma'am. Judge Miller asked me
22 after I got found guilty whose guns they
23 were. And I told Judge Miller they was my
24 codefendant. He admitted guilt. And Judge
25 Miller said, "I don't believe you." That's

1 when Mr. Cantrell stood up and said, "Your
2 Honor, I can verify that Mr. Kaye wrote a
3 statement admitting guilt, that Mr. Morris
4 had no knowledge that the guns was in the
5 car."

6 Q. But didn't the assistant solicitor
7 say there was an in-car audio tape where you
8 asked Mr. Kaye to take the blame for the gun?

9 A. Uh-huh. He said that after the
10 trial was over but that was hearsay. That
11 was never produced. Never showed.

12 Q. Okay. And even though Mr. Cantrell
13 argued for suppression of the search warrant
14 and argued constitutional issues, you think
15 that he needed to be more specific. Is that
16 correct?

17 A. The search warrant didn't have
18 nothing to do with the gun charge.

19 Q. No, I'm talking about a different
20 issue.

21 A. Okay. Yes, ma'am. He should have
22 been more specific.

23 Q. All right.

24 A. Because when the State admitted
25 their guilt and the State admitted that the

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1 search warrant was messed up and wrong and
2 the State admitted that the original copy
3 don't exist, this search warrant should have
4 never been allowed in trial.

5 Q. Okay.

6 A. And the judge errored along, by
7 admitting the search warrant was messed up.
8 He said it was conclusionary statements. And
9 should have been, the statement should have
10 been more specific but what constitutional
11 right was violated, Mr. Cantrell never said
12 no constitutional amendments.

13 Q. Okay. So he should have actually
14 listed out the amendments?

15 A. Yes, ma'am.

16 Q. Now, you also said that Mr. Cantrell
17 should have objected when the photographs
18 were introduced into evidence?

19 A. Yes, ma'am. Because ---

20 Q. Okay. Hold on a second?

21 A. Oh, okay.

22 Q. Now, all the photographs. There
23 were a ton of them. All the photographs or
24 just some of them?

25 A. He should have objected to the

1 photographs dealing with the search warrant.
2 Because if you file a pretrial motion at
3 pretrial, you supposed to object to the same
4 evidence that you tried to get suppressed.
5 He never objected to the evidence. He
6 allowed the search warrant to be entered.

7 Q. So your argument is that he should
8 have objected to the introduction of
9 photographs because the search warrant was
10 bad?

11 A. Ma'am?

12 Q. So your argument is he should have
13 objected to the photographs being admitted
14 because the search warrant was bad?

15 A. Yes, ma'am.

16 Q. Okay. That's all I have. Thank
17 you.

18 A. It would have preserved me for my
19 direct appeal.

20 Q. All right.

21 MS. RATIGAN: That's all I have,
22 Judge.

23 THE COURT: All right.

24 MR. ARIAL: No further questions,
25 Your Honor.

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1 THE COURT: All right. You may step down.

2 (WITNESS STEPS DOWN)

3 THE COURT: All right. Anything
4 else, Mr. Arial?

5 MR. ARIAL: No, Your Honor. That
6 is our case. Thank you.

7 THE COURT: Ms. Ratigan?

8 MS. RATIGAN: We'd call Mr.
9 Cantrell.

10 (WITNESS TAKES STAND)

11 DAVID CANTRELL, having been duly sworn to
12 tell the truth, and nothing but the truth,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. RATIGAN:

16 Q. Do you recall representing Mr.
17 Morris on these charges?

18 A. Yes, I do.

19 Q. And were you appointed or retained?

20 A. Appointed.

21 Q. Did you file the usual discovery,
22 the Brady and Rule 5 motions?

23 A. Yes, I did.

24 Q. To the best of your knowledge, did
25 you receive full discovery from the State?

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1 A. Yes, I did.

2 Q. And was there another set of charges
3 in addition to these; do you recall?

4 A. There was an original set of charges
5 and there may well have been direct
6 presentments. I don't remember for sure --
7 to the Grand Jury the month before or the
8 month of trial.

9 Q. Did you meet with Mr. Morris at the
10 jail?

11 A. Yes, I did.

12 Q. Can you remember how many times you
13 would have met with him? He testified five,
14 does that sound about right?

15 A. I represented him for a while. It
16 would have been more than that because we had
17 motions. And I think the week of -- within
18 the several weeks before trial, I met with
19 him several times during that period of time.
20 I do not have the specific dates.

21 Q. When you met with him, did you
22 review discovery materials?

23 A. Yes, I did.

24 Q. Did you review his version of what
25 had happened on both of these nights?

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1 A. Yes, I did.

2 Q. And is it true that he originally
3 had two codefendants, Mr. Kaye and Mr.
4 Draper; does that sound accurate?

5 A. That sounds accurate.

6 Q. And do you recall that Mr. Kaye had
7 given a statement regarding the guns?

8 A. Not independently. I don't remember
9 that at this time.

10 MS. RATIGAN: May I approach, Judge?

11 THE COURT: Yes.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. RATIGAN:

14 Q. I'm handing you Exhibit 2.

15 A. Okay. Yes, ma'am.

16 Q. Does that refresh your recollection
17 of Mr. Kaye's statement?

18 A. Yes, ma'am.

19 Q. And is that something you would have
20 discussed with Mr. Morris?

21 A. Yes.

22 Q. Do you recall whether Mr. Morris
23 asked you to subpoena Mr. Kaye?

24 A. I don't recall.

25 Q. Do you recall why it was that he was

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1 not jointly tried with Mr. Kaye?

2 A. That was -- to the best of my
3 recollection that was a decision the State
4 made, not to proceed against Mr. Kaye. I
5 do believe we learned that either the day of
6 or shortly before the trial.

7 Q. And there was a statement at the end
8 of the transcript, Pages 338 and 339. So
9 it's after the verdict but prior to
10 sentencing, wherein the assistant solicitor
11 states there's an in-car audio of your client
12 asking Mr. Kaye to take the blame for the
13 gun. Do you recall having knowledge of that
14 prior to the trial?

15 A. I just don't recall.

16 Q. Okay. And there was both -- there
17 were search warrants for both the home and
18 the car; is that correct?

19 A. I believe so, yes. I don't remember
20 independently whether there was one search
21 warrant or two.

22 Q. Obviously, it's kind of a Monday
23 morning quarterback question. But can you
24 think of anything else you could have argued?
25 You argued for suppression between Pages 73

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1 and 83 of the transcript. Is there anything
2 else, looking back on it, you believe you
3 could have added to that argument to get a
4 different outcome?

5 A. I do not.

6 MS. RATIGAN: Court's indulgence.

7 DIRECT EXAMINATION CONTINUED

8 BY MS. RATIGAN:

9 Q. What was your defense strategy at
10 trial?

11 A. Very simply that Mr. Morris did not
12 commit this crime and, more specifically,
13 that there was not sufficient evidence to
14 prove him guilty of this crime.

15 Q. Did you ever seriously consider
16 putting Mr. Morris on the stand?

17 A. We discussed that, I think probably
18 at length, several times including the day of
19 trial, including at the close of the State's
20 case. And the decision was made and that is
21 always the client's decision. Mr. Morris
22 declined to testify.

23 MS. RATIGAN: That's all I have,
24 Your Honor.

25 THE COURT: Mr. Arial?

1 MR. ARIAL: Thank you, Your Honor. May
2 it please the Court?

3 CROSS-EXAMINATION

4 BY MR. ARIAL:

5 Q. Mr. Cantrell, just to go back
6 through a little bit. The search warrant,
7 I want to start off a little bit with this
8 search warrant issue.

9 I know you argued about this and filed a
10 motion to basically have it suppressed.
11 Pages 73 to 83, y'all argued about that.
12 You've heard Mr. Morris testify that he
13 thought you could be more specific in regards
14 to that. Were there other things that you
15 could have argued in there that you've heard
16 him talk about that you thought would have
17 gotten that motion granted?

18 A. No. Quite candidly, I threw
19 everything I could possibly come up with at
20 the time. And since then, nothing new has
21 come up. I think I presented absolutely
22 everything that could be presented.

23 Q. Okay. There were was some issues in
24 regards to -- I guess, that he's alleged
25 whether or not it was signed on it. Anything

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1 formally that you see now that you thought
2 you could argue then or anything differently?

3 A. Not really. In fact, specifically,
4 there were some copies that I received
5 through discovery that apparently the
6 solicitor's office did not have. And I'm not
7 sure how that happened. So I was able to
8 present to the judge one copy of the search
9 warrant that I think the solicitor's office,
10 if I remember correctly, did not have or did
11 not have a copy of. So what we did in the
12 motion hearing was present three separate
13 versions of the same identical search
14 warrant.

15 Q. Okay.

16 A. One had a signature of a judge with
17 no notary. One had a notary signature on it
18 but no judge signature. And then I believe
19 there was a third one. So what we were
20 trying to do is show the judge that there
21 were three versions. The face of the search
22 warrant was the same on each one but the
23 return was different on a couple of them.

24 Q. Right.

25 A. So I was very simply trying to show

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1 the Judge that there were too many different
2 versions of one document, that it was
3 improper and inappropriate. And for that
4 reason everything in the search warrant
5 should have been suppressed.

6 Q. Right?

7 A. So I presented all of that, along
8 with any of the legal case law that I could
9 come up with to present to the judge.

10 Q. Okay. Here's my question. If you
11 were able to be successful on that motion to
12 suppress, do you believe that he would have
13 been found not guilty in this?

14 A. I think that there was -- my thought
15 and my position was that that would have made
16 a huge difference.

17 Q. Okay. And I guess before this, and
18 I should have asked Mr. Morris this too, was
19 there any plea offers that were given to you
20 for a plea for him?

21 A. I'm sure there was. I do not
22 remember specifically but there almost always
23 is, but there was substantial jail time if --
24 if that. So I believe so but I can't say
25 specifically.

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1 Q. All right. Here's the next question
2 off of that. Even if you had, did you
3 discuss these with him?

4 A. Yes.

5 Q. And was his view, "I'm going to
6 trial on this"?

7 A. Yes.

8 Q. Okay. Because he wanted to be found
9 not guilty on all of them?

10 A. That's correct.

11 Q. Okay. Now, the other issue that
12 came up, and we've seen the Court of Appeals
13 decision in regards to this not being
14 preserved. Do you remember -- you know, I
15 mean, clearly objecting to it in the
16 beginning and not reserving at the end. Do
17 you think that has any impact potentially on
18 his case? I mean, clearly if he's successful
19 with that, then he would have -- the
20 likelihood is that it would be difficult for
21 them to convict him.

22 A. Yes, I do.

23 Q. Do you know -- the question, do you
24 know why you didn't object or was there any
25 reason for it?

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1 A. I did not see a reason to object to
2 pictures. The judge had ruled that the
3 evidence was coming in, was going to be
4 admitted after a lengthy and detailed
5 suppression hearing.

6 Q. Okay.

7 A. And had ruled that the evidence
8 could come in. At the trial, it seemed
9 simple enough. 'Your Honor, we move to see a
10 picture of the X-box and not put the X-box
11 into evidence', I believe was the request.

12 Q. Okay.

13 A. Since the X-box had been admitted,
14 it was my position that there was no basis to
15 object to a picture of the X-box.

16 Q. Okay. Regarding this gun, I've
17 heard him testify. You know, there's a
18 question as to whether it was a handgun or a
19 Tec 9. Do you remember, I guess, cross-
20 examining or not cross-examining the victim
21 in regards to the handgun versus a Tec 9?

22 A. Again, not specifically, but I
23 believe I did. Based on what Mr. Morris
24 testified to, that that victim's testimony
25 was contrary to what I believed the State

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1 would submit when they submitted.

2 Q. Okay. I guess that comes to -- if
3 there was discussion in regards to whether or
4 not they believe that was a Tec 9 or handgun.
5 He's saying you didn't cross-examine and I
6 don't have the transcript in front of me
7 exactly. But do you think that had an impact
8 on the jury as to whether or not that witness
9 is credible or not?

10 A. I think if -- that what I did would
11 have had an impact on the jury.

12 Q. Okay.

13 A. This witness testified as to this
14 being a handgun.

15 Q. Okay.

16 A. I believe I asked the solicitor to
17 reaffirm that it was a handgun. And then I
18 believe when the jury saw what gun the State
19 was alleging was really was used, that that
20 would have created a question as to the
21 witness' credibility. I think they could
22 have found that that was not the gun that the
23 witness described.

24 Q. Okay. Now, we went through a little
25 bit about -- there's three different

1 individuals in this case: the defendant,
2 Draper and Kaye.

3 Kaye, you've read his deposition -- I
4 didn't mean deposition. Excuse me -- his
5 statement now showing that he acknowledges
6 the gun is his. What was your thought
7 process in regards to why you didn't call him
8 to trial?

9 A. I don't remember specifically. I
10 can't even remember at this point whether we
11 knew where Mr. Kaye was at the time. I'm not
12 sure.

13 Q. Okay.

14 A. If that was the case, I do believe
15 one of the two codefendants was not present
16 and possibly could not be found. And I'm
17 just going on that from a memory of several
18 years ago.

19 And also there's concern, even though
20 this was Mr. Morris' brother, I had not had
21 an opportunity or he had not been interested,
22 I believe, in talking to me. So I would be
23 calling a witness that I had no idea of what,
24 in fact, they would say.

25 And we still had the issue that the gun

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1 was found in the car within arms-reach of all
2 three parties, including Mr. Morris.

3 Q. Okay. And I guess off that, so you
4 weren't sure how that would help or if that
5 would have an impact on a jury with that.

6 A. Correct. My concern was that it
7 would do more harm that -- or could do more
8 harm that...

9 Q. Okay. And you believe that, I
10 guess, out of this -- did y'all discuss the
11 hand of one the hand of all or ---

12 A. Yes, sir. Anytime there is a gun
13 found in a car with codefendants, that's the
14 first thing that I would discuss with them,
15 with the client is that because -- just it's
16 a given. All three have been charged. That
17 has to be what the law enforcement was
18 alleging. So that's the first thing we
19 discussed.

20 Q. Okay. Did you discuss with him at
21 any time that 'hey, let's try to get the gun
22 charge put off on your brother to take the
23 heat off of you in this trial for that'?

24 A. I don't recollect.

25 Q. Okay.

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1

2

MR. ARIAL: Your Honor, I have no
further questions.

3

4

MS. RATIGAN: I have nothing further
and the State would rest, Your Honor.

5

6

THE COURT: All right.
Anything else from you Mr. Arial?

7

8

MR. ARIAL: No, Your Honor.

9

10

THE COURT: All right. Any
closing remarks?

11

12

MR. ARIAL: I'll make a short one,
Your Honor, but I will let the transcript to
speak for itself.

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I think one of the key things I
think I look at when I talk with Mr. Morris
is for the preservation of that, I mean, I
think everybody -- I think Mr. Cantrell said
if the search warrants was -- if those
objections were preserved, if the search
warrant was not -- if it was suppressed, and
that information came out. There's a
likelihood he would be found not guilty. My
concern is that it wasn't preserved. But I
read the Court of Appeals decision and maybe
I missed it, but normally they'd say, you

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Summations & Ruling by The Court

1 know, it would not have been prejudicial to
2 him if he even had preserved it or it would
3 have been the same result. I don't see
4 anything in the decision about that. So my
5 concern is, and that's one thing I discussed
6 with him, if he was successful in that search
7 warrant at appeal, we're back to having this
8 tried again. That's coming out.

9 There's clearly issue with the
10 search warrant as Mr. Cantrell said. There's
11 three different versions of this. You know,
12 I think there is a legitimate appellate
13 argument on that if was preserved. And
14 that's my concern as to whether or not he's
15 prejudiced by not being able to have that
16 heard.

17 Then the other arguments, Your
18 Honor, you can just rely on the testimony
19 that was set forth. But I think that's the
20 main one I'd like to draw your attention to.

21 THE COURT: Anything from you, Ms.
22 Ratigan?

23 MS. RATIGAN: Just very briefly.
24 We'd rests mostly on the record, Your Honor,
25 and the record speaks for itself. Instead of

1 boring everyone present with my recitation of
2 the Fourth Amendment law and facts, I would
3 direct Your Honor to the response for direct
4 appeal, on pages twelve to sixteen. The
5 State's brief goes into all of the reasons
6 why even if it had been preserved, the issue
7 would have not been successful anyway.
8 And, again, it's four pages of very dense
9 Fourth Amendment case law.

10 So our argument would be that even
11 assuming there was an error in not objecting
12 to the search warrant contemporaneously
13 during the trial, that it would not have been
14 ultimately successful anyway. Thank you,
15 Judge

16 THE COURT: All right. And in
17 looking at this, the Court of Appeals Opinion
18 clearly says that that issue was not
19 preserved. But I believe the applicant is
20 assuming or speculating that if that had been
21 preserved then they would have sent it back
22 because it was improper. But in looking at
23 the transcript, I mean, they go through that
24 argument. Even though Mr. Cantrell may not
25 have set forth a specific amendment, I mean,

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Summations & Ruling by The Court

1 there was about ten pages of transcript here
2 that discuss about that. I think everybody
3 knows exactly what's going on. And it was
4 determined, you know, that all those issues
5 were brought out.

6 I don't believe that they have shown
7 that -- the Applicant has shown that that
8 would have changed the outcome if it had been
9 preserved and that the Appellate would have
10 overturned it on that. The Court found that
11 it was some type of bad recordkeeping or
12 scrivener's error but it was not a basis for
13 suppressing it and I will -- and I agree with
14 that.

15 The other objections, failure to
16 subpoena and the other issues, I mean, I
17 think that, you know, the Applicant still has
18 to, one, show that the counsel was deficient
19 and that that would have changed the outcome
20 of the proceedings. I mean, you know, I
21 don't believe that the Applicant has met that
22 burden so I'm going to deny the application.

23 MR. ARIAL: Thank you, Your Honor.
24 I'll draw up the Order.

25 (HEARING CONCLUDED)

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Certificate of Court Reporter

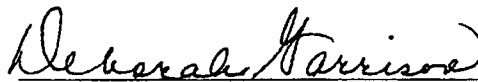
STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on December 14, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



 Deborah Garrison

Greenville, South Carolina
March 18, 2016

Reprinted 5/23/16

DATE _____

PURPOSE _____

CUE COLUMN

NOTES

Exhibit Receipt

No. 15-CP-39-0044

Barold Morris

v

StateApplicants

1. Bench Warrant
2. Statement by Calia

Received exhibits in above-captioned
Case from Deborah Garrison, Court
Reporter, this 14th day of December
2015

Cheryl Y. Watson

Clerk

12/14/15

SUMMARY

STATE OF SOUTH CAROLINA)

COUNTY OF Pickens)

SEARCH WARRANT

Form Approved by
SC Attorney General
Section 19-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Clemson :

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

Heritage Pointe Apartment . The
apartments are light green in color with beige shutters. The doors are red in color and the are in
brass and are located to the right side of the door just below the porch light. This apartment is located on the
bottom floor and to the right just as you enter the breezeway.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

IPods, X-box game systems/games, laptops, luggage, backpacks, masks, televisions, cell phones or any other
electronic devices.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Judge Keller within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Clemson, South Carolina

Martha J. Keller
Signature of Judge

Dated: March 9, 2011

SCCA 513
(3-1978)



RETURN

I received the attached Search Warrant , and have executed it as follows:

On , at o'clock PM, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Xbox 360, Call of Duty 2 Modern, Madden 2008, Madden 2011

This inventory was made in the presence of AND

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me

this _____ day of _____, 2 .)

Signature of Judge

(Signature of Officer Executing Warrant)

RETURN

I received the attached Search Warrant , and have executed it as follows:

On 3/11/11, at 2:15 o'clock ^PA.M., I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with Vehicle

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- Black in color mask located in the back passenger area
- Black /camo face mask located in the back seat (drivers side)
- clear latex glove back seat floor board
- black in color ammo clip w/ammunition loaded
- ID belonging to Ronald Terrell Hamlet (SC 011533450)

This inventory was made in the presence of Anthony Raines AND Kristy Justice.

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me
this _____ day of _____, 20____)

Signature of Judge)


(Signature of Officer Executing Warrant)

RETURN

I received the attached Search Warrant on March 8, 2011, and have executed it as follows:

On March 11, 2011 at 1740 o'clock P M,

I searched 811 Issaquena Trail Apt 2106 described in the warrant and

I left a copy of the warrant with Debra Cade
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Xbox 360, Call of Duty Modern War Part 2, Madden 2011
Madden 2009

This inventory was made in the presence of Det. Justice, Ofc Grant
AND MPO Smith, MPO Hudson, MPO Arlin, Lt Heard

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____

Day of _____, 20____

(L.S.)
Signature of Judge

}

[Signature]
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

AFFIDAVIT

Personally appeared before me, one DETECTIVE KHRISTY JUSTICE, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

IPods, X-box game systems/games, laptops, luggage, backpacks, masks, televisions, cell phones or any other electronic devices.

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

Heritage Pointe

Apartment number

The apartments are light green in color with beige shutters. The doors are red in color and the numbers are in brass and are located to the right side of the door just below the porch light. This apartment is located on the bottom floor and to the right just as you enter the breezeway.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Larold Lee Morris, a tenant in the above referenced apartment, is suspected in several armed robberies in the City of Central. During the course of the robberies items such as, IPODS, laptops, Televisions, Xbox game Systems/games, cell phones and other electronics were taken from the victim's homes. The suspect(s) in these cases used a handgun, latex gloves, masks and dressed in all black driving a silver Chevy Impala. This vehicle was stopped on 3/8/2011 in the Town limits of Central and once I began interviewing the subjects and locating the firearms it is believed that the stolen property is located in said apartment.

Sworn to and Subscribed before me
9th day of March, 2011

Martina L Keller
Signature of Judge

)
)
) Address
) Phone

Kristy Justice
Affiant

964-376598

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PAGE No. 1 OF 1 PAGE

I, Ernest O. Bryan, Sr. am not under arrest for, nor am I being detained forany criminal offenses concerning the events I am about to make known to OFF. GRANT
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.I am 27 years of age, and I live at 7013 Jesse Avenue, New Orleans, LA 70118

On March 8, 2011, I was arrested for voluntarily carrying of a pistol with two other passengers, Dandre Draper and Leah Williams. The other two were from the guns were in the car. I was arrested at Central when we were pulled over. I heard the officer say "the officer was accusing us of attempting to rob someone as soon as he pulled us over, which was not true so I panicked and just didn't accept responsibility. At which point he said he was going to go to the station admitting to having them in my possession. EOC"

EOC

EOC

EOC

EOC



I have read each page of this statement consisting of 1 page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at Central Police Dept. this 5th day of May, 20 11

WITNESS: OFF. GRANTErnest O. Bryan, Sr.

Signature of Person Making Statement

WITNESS:

May 5 2011 12:28pm P001/001

Fax:

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Larold Lee Morris,
S.C.D.C. No. 336461,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2015-CP-39-0044**ORDER OF DISMISSAL**CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2016 JAN 19 AM 11 55

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 8, 2015. The Respondent made its return on May 29, 2015. An evidentiary hearing was held on December 14, 2015 at the Pickens County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, David D. Cantrell, Jr., Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1 and 2.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the February 2013 term of the Pickens County Grand Jury for first-degree burglary (2012-GS-39-0700), possession of a pistol with obliterated serial number (2012-GS-39-0752), armed

PJH

robbery (2013-GS-39-0457), and conspiracy (2013-GS-39-0458). He was represented by David D. Cantrell, Jr., Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 20, 2013, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 25 years for first-degree burglary, 5 years for possession of a pistol with obliterated serial number, 25 years for armed robbery, and 5 years for conspiracy.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense and Chris Paton, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Morris, Op. No. 2014-UP-420 (S.C. Ct. App. filed Nov. 26, 2014). The remittitur was sent on December 12, 2014.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. "[F]ailed to renew objection to introduction of evidence in violation of the 4th, 6th and 14th Amendments of the United States Constitution."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

A.

The Applicant stated he asked trial counsel to subpoena his co-defendant (whom he identified as his brother, Cade) for trial because the co-defendant admitted guilt on the gun charge. The Applicant stated trial counsel told him he would be on trial with the co-defendant.

Trial counsel testified there were originally two co-defendants in this case but did not recall if the Applicant wanted to have one of them subpoenaed. Trial counsel testified the co-defendant may have done more harm than good at the Applicant's trial. Trial counsel testified there was not going to be a joint trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should

PAC

have subpoenaed his co-defendant, Cade, for trial. Trial counsel testified they may not have known Cade's whereabouts and that, regardless, as he had not spoken to him there would be concerns about calling him as a witness. This Court finds the Applicant's main contention— that trial counsel should have subpoenaed Cade because he admitted his guilt on the gun charge — is without merit. When the Applicant made a similar argument to the trial judge before sentencing, the assistant solicitor noted "on the in-car tape there's a discussion between [the Applicant] and Cade 'cuz Mr. Cade had no record, somethin' along the lines of, 'You just take the guns, you'll get PFI, I'm on parole, I can't do this'" and the Applicant did not refute this. (Trial transcript, pp.338-39). This Court finds the Applicant cannot demonstrate either that trial counsel was deficient in not subpoenaing Cade for trial or that he was prejudiced as a result. See Porter v. State, 368 S.C. at 383, 629 S.E.2d at 356.

B.

The Applicant stated trial counsel failed to make specific constitutional challenges to the search warrant and failed to challenge probable cause.

Trial counsel testified he made all possible arguments at trial when arguing against the search warrant. Trial counsel testified he could not think of an additional argument he should have made.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the search warrants in this case. This Court has examined the trial record and notes trial counsel made arguments in his motion to suppress in which he challenged various aspects of the search warrants. (Trial transcript, pp.66-83). This Court notes trial counsel is an experienced criminal defense attorney and finds he thoroughly attacked the search warrants. While the Applicant argues trial counsel should have made a constitutional challenge to the

PHC

search warrants, trial counsel made such an argument. (Trial transcript, pp.82-83). This Court finds the Applicant has failed to articulate what additional arguments trial counsel could have made that would have been more successful. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

C.

The Applicant stated trial counsel should have moved to suppress the gun charge based on the statement of his co-defendant.

Trial counsel testified the gun was found in reach of both the Applicant and his co-defendants.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved for dismissal of the gun charge based upon a statement by his co-defendant. As noted supra, however, there was a recording of the Applicant and Cade in which the Applicant asks Cade to take the blame for the guns. (Trial transcript, pp.338-39). Further, the weapons were found in the vehicle (after a consent search) and within reach of all three original co-defendants. This Court finds the Applicant has failed to articulate what – based upon these unassailable facts – trial counsel could have argued in order to successfully have the gun charge dismissed. See id.

D.

The Applicant stated trial counsel should have cross-examined the victim about the gun. The Applicant argued the victim mentioned a handgun but the State admitted a weapon (a TEC-9) into evidence that is not a handgun.

This Court finds the Applicant failed to meet his burden of proving trial counsel was

PHL

deficient. The victim stated the suspects had a black handgun. (Trial transcript, p.111). When the Applicant and his co-defendants were arrested, a .380 handgun and a TEC-9 were in a backpack in their vehicle. (Trial transcript, pp.179-82). This Court notes, however, that the Applicant and his co-defendants were arrested more than one month after the burglary and armed robbery. The Applicant's weapons charge in this case was not related to these crimes. Rather, the charge was possession of a pistol with an obliterated serial number. As such, this Court finds trial counsel was not deficient in not cross-examining the victim about the handgun.

E.

The Applicant stated trial counsel should have objected to the introduction of the photographs at trial because they were taken because of the execution of the search warrant and the search warrant was not valid.

Trial counsel testified he did not see a reason to object to the photographs during trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the introduction of the photographs. While the Applicant argues the search warrants were invalid, this Court notes the trial judge the search warrants were proper. As such, the photographs were taken as the result of the execution of valid search warrants. This Court finds the Applicant has failed to articulate a how the introduction of the photographs into evidence was improper or what legal arguments trial counsel could have made in order to prevent their introduction. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

File

F.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

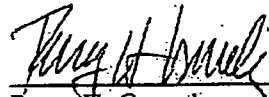
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

File

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11th day of January, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

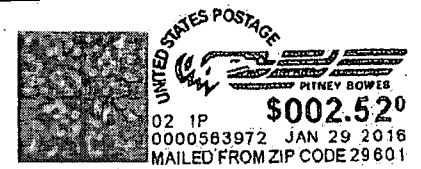
Greenville, South Carolina.

2016 JUN 19 AM 11 55
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

R. MILLS ARIAIL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Larold Lee Morris, Appellant.

Appellate Case No. 2013-000682

Appeal From Pickens County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2014-UP-420
Heard November 6, 2014 – Filed November 26, 2014

AFFIRMED

Chris Paton, of Chris Paton, LLC, of Charleston, and
Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Norman Mark Rapoport, both
of Columbia; and Solicitor William Walter Wilkins, III,
of Greenville, for Respondent.

PER CURIAM: Larold Lee Morris appeals his convictions for burglary in the first degree, armed robbery, possession of a handgun with an obliterated serial number,

and conspiracy. He argues the circuit court erred in denying his motion to suppress evidence found during the execution of a search warrant, which Morris alleges was based on a conclusory affidavit.

Morris moved pretrial to suppress the evidence obtained pursuant to the search warrant, and the circuit court denied that motion. At trial, Morris not only failed to renew his objection when photographs of that evidence were offered, he twice affirmatively stated that he had "no objection" to the introduction of the photographs. These statements constituted waivers of any right Morris had to challenge the admissibility of the evidence seized during the execution of the search warrant. Therefore, the issue is not preserved for appellate review. *See State v. Dicapua*, 373 S.C. 452, 455-56, 646 S.E.2d 150, 152 (Ct. App. 2007) (holding the defendant's statement that he had no objection to a videotape coming into evidence "amounted to a waiver of any issue" the defendant had with the videotape and reasoning the defendant's "express waiver of objection to the admission of the evidence . . . was tantamount to a withdrawal of his previous motion to suppress" (citation omitted)); *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."). Accordingly, Morris's convictions are affirmed.

AFFIRMED.

FEW, C.J., LOCKEMY, J., and CURETON, A.J., concur.

WITNESSES

Kristy Crawford

Central Police Department

3/10/2011

ARREST WARRANT NUMBER

J466045

ACTION OF GRAND JURY

TRUE BILL

FEB 19 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

X Guilty

B. D. L.
Foreperson of Petit Jury
Date:

3/20/13

DOCKET NO. 2012-GS-39-C-700

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 19 2013 TERM 2012

THE STATE

vs.

LAROLD LEE MORRIS

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

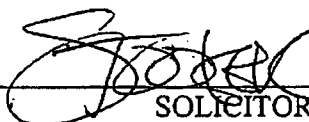
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **FEB 19 2013** the Grand Jurors of Pickens
County present upon their oath:

That LAROLD LEE MORRIS did in Pickens County, on or about the 3rd day of February, 2011, willfully and
unlawfully enter the dwelling of KYLE WHITAKER and/or MICHAEL CAPO and/or ZEKE QUINN and/or
DEREK MEHANEY located at [REDACTED] , Central, South Carolina, without consent and
with the intent to commit a crime therein. And the the unlawful entry occurred at night and/or while the
Defendant was armed with a deadly weapon. This is in violation of §16-11-311 of the South Carolina 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.


SOLICITOR

WITNESSES

Kristy Crawford

Central Police Department

3/10/2011

ARREST WARRANT NUMBER

J466043

ACTION OF GRAND JURY

TRUE BILL

FEB. 19 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

B. ADV = 3/20/13

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-39-

WDR

0752

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 19 2013

TERM 2012

THE STATE

vs.

LAROLD LEE MORRIS

Indictment for

2364

POSS OF A PISTOL WITH OBLITERATED
SERIAL NUMBER

VIOLATION § 16-23-0030(C), 0050

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF PICKENS)

~~POSS OF A PISTOL BY A PERSON CONVICTED OF A VIOLENT~~
lv CRIME

At a Court of General Sessions, convened on

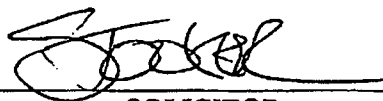
FEB 19 2013

the Grand Jurors of Pickens

County present upon their oath:

That LAROLD LEE MORRIS did in Pickens County, on or about the 8th day of March, 2011, knowingly buy, sell, transport pawn receive or possess a handgun from which the original serial number has been removed or obliterated . This is in violation of § 16-23-30 of the South Carolina 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.



SOLICITOR

WITNESSES

Khristy Crawford

Central PD

3/10/2011

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB:

B/M, SSN:

ACTION OF GRAND JURY

TRUE BILL

Date FEB 19 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

B. D. W. 3/20/13
Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39-0457
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 19 2013 TERM 2013

THE STATE

vs.

LAROLD LEE MORRIS

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330(A)

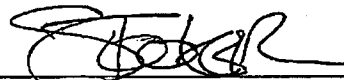
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **FEB 19 2013** the Grand Jurors of Pickens
County present upon their oath:

That LAROLD LEE MORRIS did in Pickens County, on or about the 3rd day of February, 2011, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: various personal electronic items from the person or presence of KYLE WHITAKER. This is in violation of §16-11-330 of the South Carolina 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.



SOLICITOR

WITNESSES

Christy Crawford

Central Police Department

3/10/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB:
B/M, SSN:

ACTION OF GRAND JURY

TRUE BILL
FEB 19 2013

Steven Richards
Foreperson of Grand Jury

VERDICT

Guilty

B. L. D. W. 3/20/13
Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39-
WDR 0458
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 19 2013 TERM 2013

THE STATE

vs.

LAROLD LEE MORRIS

Indictment for

2903
0049

CONSPIRACY

VIOLATION § 59-150-0400(D)

16-17-410

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on
County present upon their oath:

FEB 19 2013

the Grand Jurors of Pickens

That LAROLD LEE MORRIS did in Pickens County, on or about the 8th day of March, 2011, willfully and unlawfully combine with DANDRE DERRELL DRAPER for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: ARMED ROBBERY. This is in violation of §16-17-410 of the South Carolina 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.



SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens
 STATE VS.
Larold Lee Morris

AKA:

Race: BLACK Sex: M Age: 25DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degreeINDICTMENT/CASE#: 2012GS3900700A/W#: J466045Date of Offense: 2/3/2011S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

15-LIFE☐ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson Doug
TOCCL, SAM

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5003% to County (if paid in installments) \$ 390TOTAL \$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2012 W. M. C.
2 / 1 / 30
3/20/13

ARREST WARRANT

J466045

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CENTRAL

THE STATE

against

MORRIS, LAROLD LEE

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: [REDACTED] Weight: [REDACTED]DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1987 Agency ORI#: SC0390100

Prosecuting Agency: CENTRAL POLICE DEPTProsecuting Officer: JUSTICE, KHRISTY CRAWFORDOffense: BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREEOffense Code: G0079Code/Ordinance Sec. 16-11-0311

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to
 defendant MORRIS, LAROLD LEE
 on 10 MAR 11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

TINA M. GALBREATH
 PO BOX 549
 1057 W MAIN ST
 CENTRAL, SC 29630

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
 CENTRAL)

AFFIDAVIT

CASE #: 11-0067

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

Personally appeared before me the affiant SGT. KHRISTY C JUSTICE who
 being duly sworn deposes and says that defendant MORRIS, LAROLD LEE
 did within this county and state on FEB 03, 2011 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CENTRAL)
 in the following particulars:

DESCRIPTION OF OFFENSE:

BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE
16-11-0311

I further state that there is probable cause to believe that the defendant named above did commit the
 crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT FEBRUARY 3, 2011 THE ACCUSED, LAROLD LEE MORRIS, DID BREAK AND ENTER A
 DWELLING WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME AND THAT THE ACCUSED
 ENTERED, REMAINED AND EXITED DURING THE NIGHTTIME.

INCIDENT OCCURED AT [REDACTED]
 CENTRAL, SC.

WHICH IS LOCATED WITHIN THE TOWN LIMITS OF

INCIDENT REPORT 11-0067 IS ON FILE WITH CENTRAL POLICE DEPARTMENT.

Signature of Affiant

Affiant's Address 1067 W MAIN ST (PO BOX 549)CENTRAL, SC 29630Affiant's Telephone (864) 639-4070 Ext: 129

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on FEB 03, 2011 defendant MORRIS, LAROLD LEE
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of CENTRAL) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE
16-11-0311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
 on MARCH 10, 2011)

Tina M Galbreath (L.S.)
 Signature of Issuing Judge)

Judge Code: 6099
TINA M. GALBREATH

ORIGINAL

Judge's Address PO BOX 549 1067 W MAIN STCENTRAL, SC 29630Judge's Telephone (864) 639-6381 Ext: 121

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

MAR 31 2011

492

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.Larold Lee Morris

AKA:

Race: BLACK Sex: M Age: 25DOB: 1987 SS#: Address: City, State, Zip: Central, SC 29630DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistolin violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sam
Tooker, Sam7879
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Maggie Woods

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3900752A/W#: J466043Date of Offense: 3/8/2011S.C. Code § : 16-23-0030CDR Code #: 2364

SENTENCE SHEET

O-S

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sam
Tooker, Sam7879
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Maggie Woods

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 02Sentence Date: 3/20/13ED/C. W. Mc
02
3/20/13

ARREST WARRANT

J466043

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CENTRAL

THE STATE

against

MORRIS, LAROLD LEE

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5' 09" Weight: 160DL State: SC DL #: [REDACTED]DOB: [REDACTED] Agency ORI#: SC0390100Prosecuting Agency: CENTRAL POLICE DEPTProsecuting Officer: PEPPERS, KEVINOffense: POSSESSION BY CERTAIN PERSONSUNLAWFUL; STOLENOffense Code: G2364Code/Ordinance Sec. 16-23-0030This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to
defendant MORRIS, LAROLD LEE
on 10 MAR 11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

TINA M. GALBREATH
PO BOX 549
1067 W MAIN ST
CENTRAL, SC 29630STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
CENTRAL)

AFFIDAVIT

CASE #: 11-0131

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618Personally appeared before me the affiant SGT. KHRISTY C JUSTICE who
being duly sworn deposes and says that defendant MORRIS, LAROLD LEE
did within this county and state on MAR 08, 2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CENTRAL)
in the following particulars:

DESCRIPTION OF OFFENSE:

POSSESSION BY CERTAIN PERSONS UNLAWFUL; STOLEN
16-23-0030I further state that there is probable cause to believe that the defendant named above did commit the
crime set forth and that probable cause is based on the following facts:THAT ON OR ABOUT MARCH 8, 2011 THE ACCUSED, LAROLD LEE MORRIS, DID UNLAWFULLY POSSESS
TWO HANDGUNS (BLACK IN COLOR LUGER AND CHROME IN COLOR LORCIN) AFTER BEING PROHIBITED
FROM DOING SO DUE TO A FELONY CONVICTION.

INCIDENT OCCURED AT [REDACTED] W MAIN ST WHICH IS LOCATED WITHIN THE TOWN LIMITS OF CENTRAL, SC.

INCIDENT REPORT 11-0131 IS ON FILE WITH CENTRAL POLICE DEPARTMENT.

Signature of Affiant

Affiant's Address 1067 W MAIN ST (PO BOX 549)CENTRAL, SC 29630Affiant's Telephone (864) 639-4026 Ext: 129

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on MAR 08, 2011 defendant MORRIS, LAROLD LEE
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of CENTRAL) as set forth below:

DESCRIPTION OF OFFENSE:

POSSESSION BY CERTAIN PERSONS UNLAWFUL; STOLEN
16-23-0030Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.Sworn to and subscribed before me)
on MARCH 10, 2011)Signature of Issuing Judge)
Tina M. Galbreath)Judge Code: 6999
TINA M. GALBREATH

ORIGINAL

Judge's Address PO BOX 549 1067 W MAIN STCENTRAL, SC 29630Judge's Telephone (864) 639-6381 Ext: 121Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

MAR 31 2011

494

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens
STATE VS.

Larold Lee Morris

AKA:

Race: BLACK Sex: M Age: 25

DOB: [REDACTED]-1987 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

SENTENCE SHEET

10-30

INDICTMENT/CASE#: 2013GS3900457

A/W#: 2013GS3900457

Date of Offense: 2/3/2011

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☒ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, Deane

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

E. W. W. L. L.
2/3/13
3/20/13

496
STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.
Larold Lee Morris
AKA:
Race: BLACK Sex: M Age: 25
DOB: 1987 SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy, (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900458
A/W#: 2013GS3900458
Date of Offense: 01/20/2013 3/1/2013 3/31/2013
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 78999
Richardson, Doug SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2 / 3 / 0
3/20/13