

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Horry County
Honorable William H. Seals, Circuit Court Judge
—————

KEIRON K. COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000088

—————
APPENDIX
—————

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CASE NO.: 2013-GS-26-02238

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 JORDAN DUDLEY,)
 KEIRNON COLEMAN,)
)
 DEFENDANTS.)
 _____)

JURY TRIAL

VOLUME 1 OF 2

held before the Honorable Larry B. Hyman, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Horry County Courthouse
 Conway, South Carolina
 on Wednesday, March 12, 2014, Commencing at 9:53 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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Proceedings
March 12, 2014

PROCEEDINGS

MR. DEBUSK: Your Honor, the State calls
indictment 2013-GS-26-2238, the State vs. Keirnon
Coleman, for burglary in the first degree, 2013-GS-26-
2251, the State vs. Jordan Dudley, burglary second
degree nonviolent.

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PRETRIAL MATTERS

THE COURT: All right. Are there any pretrial matters we need to take up before we bring in the jury for selection?

MR. DEBUSK: None from the State, Your Honor.

THE COURT: Mr. Mureddu?

MR. MUREDDU: Thank you, Your Honor. May it please the Court.

Your Honor, first, we would make a motion to have the witnesses in the case sequestered. From my experience, I've seen --

THE COURT: What is the State's position?

MR. DEBUSK: Your Honor, we would like to keep our chief investigator, who is Investigator Bogart.

THE COURT: Well, you may keep the chief here, the chief investigator.

MR. DEBUSK: But now Mr. Tibbott is the only one that's in the courtroom. We can have him removed.

THE COURT: Great. The chief investigator may be present.

MR. MUREDDU: Your Honor, I would have a voir dire question added on, if you want to take that up now.

THE COURT: Yes, we may.

MR. MUREDDU: I would ask the Court inquire if

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1 there's any member of the jury panel ever been a
2 victim of a home burglary --

3 THE COURT: Mr. Long has already made that
4 request and I granted it.

5 - - - - -

6 MOTION TO SEVER

7 MR. MUREDDU: Okay. Your Honor, I don't know
8 exactly specifically how we're going to proceed and
9 when. I do feel that in the interest of my client I
10 must bring to the Court's attention that Mr. Jordan --
11 or Mr. Dudley and Mr. Coleman in this case occupy
12 conflicting points of view in relation to how this
13 evidence is going to unfold during the course of the
14 trial. I think that it is in Mr. Dudley's interest
15 for the cases to be severed.

16 THE COURT: Be more specific.

17 MR. MUREDDU: Judge, there are various
18 statements out there that I've been given assurances
19 that the prosecutor is going to do their best to keep
20 them from coming out. There's going to be a
21 temptation on the part of all the witnesses to get
22 into various statements that were made by Mr. Dudley,
23 statements that were made by Mr. Coleman, and
24 statements that a corroborating defendant that they
25 may or may not use. I think that that could turn into

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1 a potential Brewton issue if strategically we were,
2 for instance, to decide to take the stand -- or if Mr.
3 Coleman, or not.

4 I mean, not knowing who's going to testify, I
5 think that there are out-of-court statements that are
6 admissions and/or inculpatory that could come to light
7 and be improperly admitted into evidence against my
8 client.

9 THE COURT: Nothing more specific than that?

10 MR. MUREDDU: No, sir.

11 THE COURT: I'll hear you, Mr. DeBusk.

12 MR. DEBUSK: Your Honor, in this case the two
13 defendants were arrested together at the same time.
14 All the evidence points to them cooperating in the
15 commission of this crime. Of course, judicial economy
16 would mitigate towards trying them together. The
17 statements that Mr. Mureddu is worried about will not
18 be coming in. We're not going to bring in any of the
19 statements made by the defendants to law enforcement.

20 We may go into certain statements made in the
21 presence of another witness, non-police witness, when
22 the police were not present but we're not bringing in
23 any custodial or even pre-custodial statements to
24 police officers.

25 THE COURT: All right, sir.

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MR. DEBUSK: We're not bringing any of those in.

THE COURT: All right. I would --

MR. DEBUSK: And we have so instructed our witnesses, Your Honor.

THE COURT: I deny the motion for severance.

I believe that there has been no showing that any substantial rights of the defendant would be jeopardized by trying these two cases today, together, and I believe that judicial economy would certainly override any other matters and I'm going to allow the trial of the cases together. Okay?

Mr. Long, did you want to be heard on that? I know you didn't join --

MR. LONG: Yes, Your Honor.

Two matters we would like to bring up on behalf of Mr. Coleman. Your Honor, I think you've known me long enough to know I'm no legal scholar. But I do like to think I think rationally.

I have an issue with the statute, burglary first degree, bringing in prior records as a governmental proof. The Supreme Court has a long history of determining what is admissible and what is not admissible concerning prior convictions based on prejudice. Okay? And for it to be put in the statute by the legislature and ruled on, kind of glancing

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1 blow, as I understand by the Supreme Court.

2 Your Honor, there's an easy way around the
3 prejudice that occurs. And there's no question I
4 think --

5 THE COURT: You're talking about the record of
6 prior convictions for burglary?

7 MR. LONG: As an element of proof submitted to
8 the jury in the case in chief.

9 Your Honor, if the jury -- and it's always been
10 my opinion -- I'm no legal scholar. But trafficking,
11 drug offenses, shopliftings, things of that nature,
12 where you have two priors or one prior, those are all
13 properly elements of sentencing. And it is in this
14 Court's authority to model a sentence based on prior
15 convictions.

16 What the legislature meant to do, I felt, was if
17 somebody has got two prior burglary convictions and
18 he's convicted of another burglary, then we're going
19 to make it a life sentence, fifteen years, in the
20 discretion of the Court. And there's no question
21 that's what they meant to do: toughen it up on
22 somebody with prior convictions.

23 But as the Supreme Court has ruled in so many
24 cases, and as Your Honor is fully aware, the prejudice
25 of having those prior convictions come in cannot be

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1 ignored. I mean, it's highly prejudicial for a jury
2 to hear that. A solution, something we would offer as
3 a solution, is to have Mr. Coleman charged and tried
4 as the codefendant. And if a jury should convict him,
5 then it is appropriate. Without objection from us, we
6 would consent that Your Honor must sentence him
7 pursuant to the burglary first degree statute. And,
8 of course, sentencing proceedings take place at that
9 time. That takes care of the jury's responsibility of
10 determining innocence or guilt, without highly
11 prejudicial evidence coming in for that decision. It
12 also then does what the legislature intends: for a
13 Court or the sentence of the Court to be much higher
14 for somebody with two prior convictions.

15 And, Your Honor, we raise that argument for the
16 record. I'm sure the Supreme Court has kind of
17 touched on it in many other opinions. But I think
18 that there is an easy solution to doing it so that
19 doesn't suffer the high amount of prejudice that comes
20 from the admissibility of that evidence.

21 THE COURT: Mr. Long, I think that the Supreme
22 Court has touched on it and has just clearly ruled on
23 it on a number of occasions. There are statutes
24 whereby the defendant may -- or is entitled to a
25 stipulation without further proof of prior -- of

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1 convictions that are necessary to be made in a trial.
2 For instance, I think in our DUI statutes, the statute
3 very clearly says that the defendant has a right to
4 stipulate. However, that is not the case in the
5 burglary statute. I think we've had this burglary
6 statute, '95 -- since 'about '95 or '96 -- almost
7 twenty years. Our legislature has had ample
8 opportunity to clarify its intent, if it intended
9 anything other than the clear meaning or reading of
10 the statute.

11 I understand your concerns, but I would
12 respectfully deny your motion. The State has that
13 right to make that proof.

14 MR. LONG: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. LONG: Your Honor, the second motion is by
17 way of motion in limine. Mr. Coleman is charged with
18 this offense on March 25th, 2013.

19 THE COURT: Right.

20 MR. LONG: As a result of investigators or
21 common scheme or modus operandi of burglaries, he was
22 charged March 28th, 2013. And there's also discovery
23 materials and maybe even warrants on a March 11th,
24 2013.

25 THE COURT: I understand he has several burglary

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1 firsts.

2 MR. LONG: No. These are pending, Your Honor.

3 THE COURT: That are pending.

4 MR. LONG: Yes, sir.

5 THE COURT: That's what I understand.

6 MR. LONG: And I just want to make sure that the
7 State has cautioned not to go into -- or witnesses not
8 to go into those. There is a likelihood that the
9 State may try to say under Lyle, or something of that
10 nature, that the acts or the way the burglaries were
11 committed, the dates, the times that they were
12 committed, whatever -- and maybe we wouldn't have as
13 much objection, specifically under Lyle, if it comes
14 up that way.

15 THE COURT: Well, Lyle goes to prior bad acts
16 and the State may or may not attempt that. But if the
17 State does, the State would have to comply with the
18 Lyle exceptions. You understand that common plan,
19 scheme, design, things of that nature --

20 MR. DEBUSK: Your Honor, we do not plan to
21 bring in any of the other charged burglaries. There
22 are certain actions on the day that this occurred
23 before -- immediately before and immediately after the
24 burglary. In fact, they're probably res geste --
25 really the only thing we would go into. The other

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1 days --

2 THE COURT: I understand.

3 MR. DEBUSK: -- we won't even touch.

4 THE COURT: I understand.

5 He's not going to go into that, Mr. Long or Mr.
6 Mureddu.

7 MR. LONG: Thank you very much, Your Honor.

8 I just wanted to make he was aware, because
9 sometimes the witnesses will pop up and say some
10 things that's unanticipated.

11 THE COURT: We're not going to let them do that.
12 Mr. Mureddu?

13 MR. MUREDDU: Certainly I join in on Mr. Long's
14 concern.

15 THE COURT: Your objection is noted. Okay?

16 MR. LONG: Thank you, Your Honor. That takes
17 care of all defendants preliminary motions.

18 THE COURT: All right. Let's bring in the jury.
19 [Off the record momentarily]

20 MR. COLEMAN: I would like to thank Your Honor
21 in taking --

22 THE COURT: Sit down, please, sir. Don't make a
23 statement, please. Everything you say in on the
24 record. Your attorney is not in the courtroom.

25 MR. LONG: I'm sorry, Judge. I just wanted him

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to thank you for allowing him --

THE COURT: Okay. Thank you. I didn't even see you there, Mr. Long. You were stuck around behind him.

MR. LONG: I am behind, Your Honor.

MR. DEBUSK: Your Honor, I don't know if we said on the record yet, but my understanding is the strikes are ten, ten and ten?

THE COURT: That's my understanding, as well. Is that correct, counsel?

MR. LONG: [No response]

MR. MUREDDU: [No response]

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State vs. Dudley and Coleman
Jury Voir Dire
March 12, 2014.

1 JURY VOIR DIRE

2 [Whereupon, the jury panel enters the courtroom
3 at 10:09 a.m.]

4 THE COURT: Ladies and gentlemen, it's good to
5 see you again. I qualified you generally on Monday.
6 I haven't had a chance to see any of you yet, but it's
7 not for lack of effort. This will be our first one
8 that we've gotten started, first trial we've gotten
9 started this week.

10 We are about to begin the trial of Mr. Keirnon
11 Coleman.

12 Mr. Coleman, stand up, if you would.

13 [Whereupon, Mr. Coleman complies]

14 THE COURT: And Mr. Jordan Dudley.

15 Mr. Dudley, if you would stand up.

16 [Whereupon, Mr. Dudley complies.]

17 THE COURT: Gentlemen, please sit down, if you
18 would.

19 [Whereupon, Mr. Coleman and Mr. Dudley comply]

20 THE COURT: These gentlemen will be tried
21 together.

22 Mr. Coleman has been indicted and charged with
23 the events of burglary in the first degree.

24 Let me make it very clear to you that the fact
25 that a person has been arrested, charged, and indicted

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Jury Voir Dire
March 12, 2014.

1 is not evidence of that person's guilt. An indictment
2 is nothing more than the document by which a case is
3 brought to the Court. We have to have paper in the
4 judicial system, and that is all an indictment is.

5 The fact that the indictment, in Mr. Coleman's
6 case, alleges that on March the 25th of 2013 that he
7 did enter the dwelling of Susan Marotte without
8 consent and with the intent to commit a crime therein,
9 and in this case having had a prior record of two or
10 more convictions for burglary or housebreaking. Those
11 are the allegations but those are nothing but
12 allegations. They are not proof. The indictment is
13 not proof. The burden remains upon the State to prove
14 his guilt to you beyond a reasonable doubt.

15 The codefendant, Mr. Jordan, who you met a
16 moment ago, is charged with the offense of burglary
17 second degree nonviolent. It is alleged in his
18 indictment that on that same date, March 25th of 2013,
19 he did enter without consent, with the intent to
20 commit a crime therein, the dwelling of Susan Marotte
21 , and nothing more. Please understand that this
22 indictment, just as in the case of Mr. Coleman, is
23 just the document by which the case is brought before
24 the Court. The indictment is not evidence and should
25 not be considered by you as evidence, if you are

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1 seated on this jury, in any way, form or fashion. As
2 I said, the burden remains upon the State to prove the
3 guilt of each defendant beyond a reasonable doubt.

4 At the end of the trial, I will give you
5 complete and full instructions as to what the State
6 must have shown. But I tell you about the indictment
7 just so that you will be familiar with the case as we
8 go through this jury selection process.

9 On Monday I pointed out to you that we were just
10 doing general qualifications on Monday, we were going
11 to have to qualify you again to determine whether or
12 not it would be proper for you to sit as a juror on
13 any particular case. And in that regard, this morning
14 I'm going to ask you some questions about any
15 knowledge or any concerns that you may have about
16 these particular cases and we're going to go through
17 that process again.

18 But before we get started, let me tell you a
19 little bit about how that process works. I think I
20 made it fairly clear on Monday that circuit judges in
21 this state are required to try all kinds of cases.
22 Generally -- or this week, I was initially assigned to
23 try civil cases. That is, disputes between
24 individuals where someone is generally looking for
25 monetary damages for some wrong that has been

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1 committed to them. I have been reassigned so that I
2 can help out with the criminal docket this week
3 because our civil docket resolved itself. So we have
4 a general sessions side where cases are tried where
5 the State has charged -- and, again, let me emphasize
6 that -- just charged someone with the commission of a
7 crime.

8 The way we select a jury in the two different
9 courts is quite different. If this were a civil case,
10 these attorneys would have been given a jury list and
11 they would -- the jurors are all given new numbers --
12 and they would strike from that list. No juror would
13 stand, no juror would present himself to the Court.
14 And if you happen to be struck on that case, because
15 you wouldn't know what the new numbers are, you
16 wouldn't even know if you were even considered as a
17 juror. Isn't that a nice, pleasant way to do it?

18 In the criminal side, though, the general
19 sessions side, we follow the traditions of the court
20 that go back for 200 years. Your name will be called.
21 We have selected fifty of you. We have jumbled it up
22 and put you in random order, again. And your names
23 will be called and you will be asked to come forward
24 and stand right down here in front of me and turn
25 around and face the attorneys, the parties, and your

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1 fellow jurors.

2 At that point in time, the State moves first.
3 The State will say something like, Your Honor, excuse
4 this juror and if the State says that, you will simply
5 return to your seat and you will be excused from
6 service on this particular case. If the State, on the
7 other hand, would say present the juror, then you are
8 presented to the defense and the defense has an
9 opportunity to either say excuse the juror on this
10 particular case. And in that event, you would return
11 to your seat and you would be excused from service as
12 a juror on this particular case. But if the defense
13 says swear the juror, you'll come around and have a
14 seat in our jury box over here by Mr. Roth and you
15 will serve as a juror.

16 Now, many people find that process to be
17 intimidating and even somewhat embarrassing. They
18 have to come around and stand in front of everybody
19 and listen to the lawyers say present them or swear
20 them or excuse them.

21 And let me say this. Before I came on the
22 bench, and I've been on the bench I think it's my
23 seventh year, I practiced law and I practiced with all
24 these lawyers. For thirty-plus years I did that. And
25 I did lots of trial work. And when they're going

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1 through that selection process, you'll will look at
2 these attorneys and they'll scrunch up their faces and
3 they'll make notes on their paper and they'll talk
4 back and forth with one another. Let me make this
5 very clear to you. They don't have a clue what
6 they're doing. They don't know.

7 There is nothing harder, there is nothing more
8 difficult, than selecting a jury because these
9 attorneys, they don't know you. They don't know
10 anything about you. They are out there just basically
11 looking at a jury panel and they've got some bare-
12 bones information, if you sent in your questionnaire
13 or when you answered up during qualification, and
14 they're looking for jurors that they feel will be more
15 sympathetic to their position on the case. And all of
16 the attorneys are doing that.

17 So don't be upset or embarrassed if you are
18 struck. You know why I'm telling you all this, and
19 you're probably out there all sitting, I hope I get
20 struck. And you may be feeling that way. But you
21 should not be embarrassed if you are struck by either
22 side, because that same attorney on another case may
23 have wanted you as a juror.

24 I believe that at the end of the case, if you
25 are selected as jurors -- and I talk to many jurors

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Jury Voir Dire
March 12, 2014.

1 and they all tell me that, you know, I've known about
2 the system all my life and I've watched all these
3 things on TV, these trials and all, but it's different
4 when you're actually in the jury box. And they find
5 it to be an enlightening, and, in most cases, a
6 rewarding experience to sit as a juror on a case.

7 Now, with all that said, let me get to the
8 qualifying or voir dire questions that I'm going to
9 need to ask you. Now, before I ask you these
10 questions, please understand me. It is very important
11 that you fairly, candidly and honestly answer all the
12 questions that I'm going to put to you. It's not
13 going to be a very long, drawn-out process. I've
14 already talked to the attorneys about questions they
15 would want me to ask you and there are not that many.

16 To make sure that everyone appreciates the fact
17 that you must honestly answer these questions, we're
18 placing you under oath again. As I said, there's a
19 lot of swearing going on before you ever get on the
20 jury or in the jury box.

21 So if you would please stand. And, Madam Clerk,
22 would you administer the oath again.

23 THE CLERK OF COURT: Please raise your right
24 hand.

25 [Whereupon, the jury panel is duly sworn by the

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Jury Voir Dire
March 12, 2014.

1 clerk of court as follows: do you solemnly swear or
2 affirm to truthfully answer the questions by the
3 Court]

4 THE COURT: All right. Let me ask you -- please
5 be seated -- was there anyone who did not take that
6 oath or affirmation?

7 [Whereupon, there is no response]]

8 THE COURT: Let the record reflect that --
9 that's a word I say a lot, let the record reflect,
10 because everything that happens in this court has to
11 be recorded by my able court reporter here and a lot
12 of times there are things there's no response to, or
13 verbal response, so I have to tell her let the record
14 reflect. So that's what we're doing when I say that.

15 So the record does reflect that there was no one
16 on the jury panel who indicated that they did not take
17 the oath or affirmation.

18 Now, listen very carefully to my questions. The
19 victim -- and I'll say the alleged victim, because
20 we're all dealing with allegations now. The alleged
21 victim in this case, as I indicated earlier, was Susan
22 Marotte. Is anyone related by blood or marriage or
23 are you a close personal friend or do you have some
24 social relationship with Ms. Marotte or the defendants
25 in this case, Mr. Jordan and Mr. Coleman? And you met

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Jury Voir Dire
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1 them a few moments ago.

2 MR. DEBUSK: Your Honor, that's actually
3 Mr. Dudley. His first name --

4 THE COURT: Mr. Dudley. I'm sorry. Mr. Jordan
5 Dudley.

6 Mr. Dudley or Mr. Coleman: is anyone related by
7 blood or marriage do you have a close personal
8 friendship or social relationship with any of -- the
9 victim or the defendants?

10 [Whereupon, there is no response]

11 THE COURT: Let the record reflect that there
12 was no response to that inquiry.

13 There are several possible witnesses in this
14 case. I've been provided with a list. And those
15 possible witnesses would be -- and, again, I say
16 possible. If you hear a name called and you get to
17 the end of the case and you say, well, what happened
18 to such-and-such, a witness, I heard that person's
19 name, draw no conclusion from the fact that a witness
20 didn't testify. What I ask the attorneys to do is
21 give me the names of anyone they think might testify.
22 Okay? So we may or we may not have all these persons
23 to testify. Rick Tibbott, who was, at some time,
24 associated with the Horry County Police Department;
25 Detective Scott Bogart, again with the Horry County

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1 PD; Detective Mark Cooper, again with the Horry County
2 PD; Corporal Jack Johnson, with the Horry County PD;
3 Lance Corporal Natalie Boyd, Horry County PD;
4 Shakerra, S-H-A-K-E-R-R-A, Cowan, C-O-W-A-N; Nancy Sue
5 Ross; Susan Marotte, as I -- and let me give you a
6 spelling for that last name. It's M-A-R-O-T-T-E. And
7 Sharon Lilly. And, of course, the defendants, if they
8 chose to, would have the right also to testify.

9 Anyone related by blood, marriage, do you have a
10 social relationship, you're close friends of, any of
11 these witnesses that I have named?

12 [Whereupon, there is no response]

13 THE COURT: And there is no response.

14 The attorneys in this case, I should have
15 introduced them to you earlier. Over to my left, your
16 right, that's what we call the prosecution table, is
17 Ms. Nancy Livesay.

18 Stand up there, Nancy, and let these folks look
19 at you.

20 [Whereupon, Ms. Livesay complies]

21 THE COURT: She's with the Horry County -- or
22 the Fifteenth Circuit Solicitor's Office and has been
23 prosecuting cases here in the fifteen circuit for a
24 number of years.

25 With her is Mr. George DeBusk. Mr. DeBusk is,

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1 again, with the Fifteenth Circuit Solicitor's Office.
2 He works for -- they both work for Mr. Jimmy
3 Richardson, who is our solicitor. And Mr. DeBusk has
4 been defending -- or prosecuting cases for a number of
5 years here.

6 Over at the defense table we have Mr. Dean
7 Mureddu. Mr. Mureddu has been practicing, oh, great
8 day, a long time. Back when I was practicing, he had
9 been here for years. He has a civil and criminal
10 practice, I believe, over in Myrtle Beach.

11 MR. MUREDDU: Yes, sir.

12 THE COURT: Thank you, Mr. Mureddu. And he is
13 here representing today Mr. Jordan Dudley.

14 Over to my far right is Mr. Buddy Long.
15 Mr. Long has been practicing for quite a few years.
16 He's over in --

17 Is your office in Myrtle Beach or Conway now?

18 MR. LONG: Conway, Your Honor.

19 THE COURT: -- here in Conway. Been doing civil
20 and criminal defense work for a number of years. And
21 he is representing Mr. Coleman.

22 Now, is anyone related by blood or marriage,
23 have you been represented by, do you have a social
24 relationship with, are you close friends of any of the
25 attorneys that I have just introduced to you?

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1 [Whereupon, there is no response]

2 THE COURT: And let the record reflect there was
3 no response.

4 Has any member of the jury panel formed or
5 expressed an opinion about any issue or matter
6 involved in this case? You know, if they would let me
7 write that question out, I could write it out better,
8 I think. But what they want to know is -- I gave you
9 a brief explanation of what the charge was. I told
10 you briefly what the facts are. It involves an
11 alleged burglary that occurred March the 25th of 2013
12 at the home of Susan Marotte. And that would be over
13 on Capers Creek Drive in Myrtle Beach, South Carolina.
14 Do you know anything about it? Do you live in that
15 neighborhood? Have you read anything about it? Did
16 you see anything going on in that location March 25th?
17 Do you have any knowledge at all about the case?

18 [Whereupon, there is no response]

19 THE COURT: And there is no response to that
20 inquiry.

21 Have any of you been the victim of a burglary?
22 Okay. Now, I want to address each one of you. Well,
23 raise your -- would you stand? I think I can pick you
24 out and get you --

25 The lady with the blue-and-white blouse, your

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1 name?

2 MS. JEFFORDS: Vivian Jeffords.

3 THE COURT: All right. And, Ms. Shepard [sic],
4 was this a burglary at your home?

5 MS. JEFFORDS: Yes.

6 THE COURT: Okay. And how long ago was that?

7 MS. JEFFORDS: Approximately ten, fifteen years.
8 A while.

9 THE COURT: All right. Now, Ms. Shepard [sic],
10 would the fact that you have been the victim of a
11 burglary affect your ability to be a fair and
12 impartial juror in this case? Could you give both the
13 State and the defense a fair trial?

14 MS. JEFFORDS: Yes.

15 THE COURT: All right. Thank you, ma'am. And
16 your number again was?

17 MS. JEFFORDS: 253.

18 THE COURT: 253. All right.

19 The gentleman right behind her. Yes.

20 MR. CROSS: James Cross. 112.

21 THE COURT: 112. Mr. Cross, you were a victim
22 of a burglary?

23 MR. CROSS: Yes, sir. This --

24 THE COURT: How --

25 MR. CROSS: This happened in 2002.

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1 THE COURT: 2002. All right. Would that --

2 MR. CROSS: They broke into my garage and broke
3 into my vehicle inside the garage.

4 THE COURT: Would that affect your ability to be
5 a fair and impartial juror?

6 MR. CROSS: None whatsoever, sir.

7 THE COURT: Could you give both the State and
8 the defense a fair trial in this case?

9 MR. CROSS: Yes, sir.

10 THE COURT: Can you set that aside? All right,
11 sir. And, again, your number was?

12 MR. CROSS: 112.

13 THE COURT: Thank you very much.

14 The gentleman right here on the second row with
15 the --

16 MR. BEATTY: Robert Beatty.

17 THE COURT: -- red shirt. Pardon?

18 MR. BEATTY: Robert Beatty.

19 THE COURT: Mr. Beatty?

20 MR. BEATTY: Yes, sir.

21 THE COURT: What is your number?

22 MR. BEATTY: My number is 29.

23 THE COURT: And you were the victim of a
24 burglary?

25 MR. BEATTY: Yes, sir.

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1 THE COURT: And how long ago was that?

2 MR. BEATTY: Probably about four years ago.

3 THE COURT: All right. And would that affect
4 your ability to be a fair and impartial juror in this
5 case?

6 MR. BEATTY: Yes, sir. I believe it would.

7 THE COURT: You believe it would. You do not
8 think you could set that aside?

9 MR. BEATTY: Well, it's kind of a little fresh
10 on me, because they broke in on my birthday, so --

11 THE COURT: All right, sir. Then I am going to
12 excuse you from service in this case.

13 MR. BEATTY: All right.

14 THE COURT: And your number was?

15 MR. BEATTY: 29.

16 THE COURT: 29.

17 All right. And the gentleman behind him? Yes,
18 sir?

19 MR. BROWN: Lawrence Brown.

20 THE COURT: Mr. Brown. What is your number?

21 MR. BROWN: 63.

22 THE COURT: 63. Mr. Brown, you were the victim
23 of a burglary?

24 MR. BROWN: Yes.

25 THE COURT: And would that affect your ability

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1 to be fair and impartial in this case?

2 MR. BROWN: No.

3 THE COURT: Could you set that aside and give
4 both the State and the defense a fair trial?

5 MR. BROWN: Yes.

6 THE COURT: Thank you, Mr. Brown.

7 The gentleman here, with the fleece. Yes, sir?

8 MR. REEVES: Thomas Reeves, 382.

9 THE COURT: Mr. Reeves. And your number is
10 what?

11 MR. REEVES: 382.

12 THE COURT: And you were the victim of a
13 burglary?

14 MR. REEVES: Yes, sir.

15 THE COURT: And how long ago was that?

16 MR. REEVES: About five years.

17 THE COURT: And would that affect your ability
18 to be a fair and impartial juror?

19 MR. REEVES: No, sir.

20 THE COURT: Could you set that aside and give
21 both the State and the defense a fair trial?

22 MR. REEVES: Yes, sir.

23 THE COURT: All right. Thank you very much.
24 Yes, sir?

25 MR. FENIMORE: Ralph Fenimore. 160. Burglary.

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1 THE COURT: How long ago, Mr. Fenimore?

2 MR. FENIMORE: Twenty years.

3 THE COURT: Would that affect your ability to be
4 fair and impartial?

5 MR. FENIMORE: No.

6 THE COURT: Could you give both the State and
7 the defense a fair trial? Set that aside?

8 MR. FENIMORE: Yes, sir.

9 THE COURT: Mr. Fenimore, thank you very much.
10 Yes, sir? On the back row.

11 MR. LOCASCIO: Locascio. 293.

12 THE COURT: Yes, sir. And your name?

13 MR. LOCASCIO: Frank Locascio.

14 THE COURT: All right. Mr. Locascio, you were
15 the victim of a burglary?

16 MR. LOCASCIO: Yes, sir.

17 THE COURT: And would that affect your ability
18 to be a fair and impartial juror?

19 MR. LOCASCIO: Yes, it would, sir.

20 THE COURT: You do not think you could set that
21 aside?

22 MR. LOCASCIO: No, sir.

23 THE COURT: All right, sir. And your number?

24 MR. LOCASCIO: 293.

25 THE COURT: I will excuse you for cause. Thank

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1 you very much.

2 The lady in the pink.

3 MS. WHITE: Sandra White. 476.

4 THE COURT: Ms. White? All right. Ms. White,
5 you were the victim of a burglary?

6 MS. WHITE: Yes, sir. Two times.

7 THE COURT: And do you believe that you could
8 set that aside and be a fair and impartial juror?

9 MS. WHITE: I'm really not sure. I really don't
10 know.

11 THE COURT: You have a question as to whether
12 you could do that?

13 MS. WHITE: I do question whether I could do
14 that.

15 THE COURT: All right. Your number, please? 17
16 -- excuse me -- 476.

17 THE COURT: 476 is excused for cause.

18 And the lady with the black suit.

19 MS. EVERETT: Yes, sir. 153. Nancy Everett.

20 THE COURT: Ms. Everett, you were the victim of
21 a burglary?

22 MS. EVERETT: Two years ago.

23 THE COURT: Would it affect your ability to be
24 fair and impartial?

25 MS. EVERETT: No, I don't think so.

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1 THE COURT: You could be fair to both the State
2 and the defense in your deliberations?

3 MS. EVERETT: Sure.

4 THE COURT: And your number again?

5 MS. EVERETT: 153.

6 THE COURT: 153.

7 All right. And, finally, back in the corner.

8 MR. SHEA: My name is Patrick Shea. 417 is my
9 number.

10 I got robbed, six years ago, three times.

11 THE COURT: All right. Would that affect your
12 ability to be fair and impartial?

13 MR. SHEA: To be honest with you, yes, it could,
14 because I have an attitude about it.

15 THE COURT: Okay. Your number?

16 MR. SHEA: 417.

17 THE COURT: 417. 417 will be excused for cause
18 by the Court.

19 MR. SHEA: Thank you, sir.

20 THE COURT: All right. Is there any member of
21 the jury panel who is aware of any bias or prejudice
22 that you may have for or against either the State or
23 the defendants in this matter? Can you think of any
24 reason why you would not be a fair and impartial
25 juror?

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1 [Whereupon, there is no response]

2 THE COURT: Is there any member of the jury
3 panel that has been in -- and we should have covered
4 this, and I think we did, in general qualifications.
5 But have you been a member of the Horry County Grand
6 Jury since January of last year?

7 [Whereupon, there is no response]

8 THE COURT: And there is no response.

9 Is there any member of the jury panel who is a
10 contributor or a member of a group which has as its
11 primary concern the promotion of law enforcement or
12 victims' rights? And those would be groups like MADD,
13 or SADD, or CAVC, which I understand is Citizens
14 Against Violent Crime, things of that nature?

15 [Whereupon, there is no response]

16 THE COURT: And there is no response.

17 Finally, is there any member of this jury panel
18 that knows any reason why he or she should not serve
19 as a juror in this case, with particular emphasis
20 being placed on your ability to be fair and impartial?
21 That's all we're looking for, a fair and impartial
22 jury.

23 [Whereupon, there is no response]

24 THE COURT: And there is no response.

25 Anything further from the State?

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MR. DEBUSK: Nothing further, Your Honor.

THE COURT: Anything further for the defense?

MR. MUREDDU: Nothing for Mr. Dudley, Your Honor.

MR. LONG: No, Your Honor.

THE COURT: All right. Very well.

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1 STRIKING OF THE JURY

2 THE COURT: Now, if you would, Madam Clerk, give
3 us a jury.

4 THE CLERK OF COURT: When I call your name and
5 juror number, please come in front of the courtroom,
6 turn around and face the back of the courtroom. And
7 please bring all your belongings, also.

8 Juror Number 1, Grover Johnson, juror 258

9 [Whereupon, Mr. Johnson comes forward]

10 THE CLERK OF COURT: What say the State?

11 MR. DEBUSK: Please present the juror.

12 THE CLERK OF COURT: Defense?

13 MR. MUREDDU: Swear the juror.

14 THE CLERK OF COURT: Please be seated in the
15 jury --

16 THE COURT: Wait, wait, wait.

17 THE CLERK OF COURT: I'm sorry. Excuse me.

18 Mr. Johnson, stand here just a moment.

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

21 THE COURT: All right. Thank you.

22 [Whereupon, Mr. Johnson returns to the audience]

23 THE COURT: And I failed to mention to you that
24 since we're trying two defendants at once, they each
25 have a chance to either say they want a juror sworn or

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1 excused.

2 THE CLERK OF COURT: Christopher Ward, juror
3 468.

4 [Whereupon, Mr. Ward comes forward]

5 THE CLERK OF COURT: What say the State?

6 MR. DEBUSK: Please present the juror.

7 THE CLERK OF COURT: Defense?

8 MR. MUREDDU: Please swear Mr. Ward.

9 MR. LONG: Please swear the juror.

10 THE COURT: Mr. Ward, if you would step around
11 and have a seat in the jury box.

12 [Whereupon, Mr. Ward is seated in the jury box
13 as a juror]

14 THE CLERK OF COURT: Mark Pierandozzi, juror
15 366.

16 [Whereupon, Mr. Pierandozzi comes forward]

17 THE CLERK OF COURT: What say the State?

18 MR. DEBUSK: Please present the juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please swear the juror.

21 MR. LONG: Please swear the juror.

22 THE CLERK OF COURT: Please have a seat.

23 [Whereupon, Mr. Pierandozzi is seated in the
24 jury box as a juror]

25 THE CLERK OF COURT: Tony Marze, juror 310.

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1 [Whereupon, Mr. Marze comes forward]

2 THE CLERK OF COURT: What say the State?

3 MR. DEBUSK: Please present the juror.

4 THE CLERK OF COURT: Defense?

5 MR. MUREDDU: Please excuse Mr. Marze from this
6 particular case.

7 THE COURT: You may have a seat.

8 [Whereupon, Mr. Marze returns to the audience]

9 THE CLERK OF COURT: David Nagy, juror 342.

10 [Whereupon, Mr. Nagy comes forward]

11 THE CLERK OF COURT: What say the State?

12 MR. DEBUSK: Please present the juror.

13 THE CLERK OF COURT: Defense?

14 MR. MUREDDU: Please present Mr. Nagy.

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

17 THE CLERK OF COURT: You may have a seat.

18 [Whereupon, Mr. Nagy returns to the audience]

19 THE CLERK OF COURT: Nancy Everett, juror 153.

20 [Whereupon, Ms. Everett comes forward]

21 THE CLERK OF COURT: What say the State?

22 MR. DEBUSK: Please present the juror.

23 THE CLERK OF COURT: Defense?

24 MR. MUREDDU: Please excuse Ms. Everett.

25 THE CLERK OF COURT: Okay. Just have a seat.

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1 [Whereupon, Ms. Everett returns to the audience]

2 THE CLERK OF COURT: Fatishia Gillings, juror

3 192.

4 [Whereupon, Ms. Gillings comes forward]

5 THE CLERK OF COURT: What say the State?

6 MR. DEBUSK: Please present the juror.

7 THE CLERK OF COURT: Defense?

8 MR. MUREDDU: Please swear the juror.

9 MR. LONG: Please swear the juror.

10 [Whereupon, Ms. Gillings is seated in the jury
11 box as a juror]

12 THE CLERK OF COURT: Lorne Green, 204. Graham.

13 I'm sorry.

14 [Whereupon, Mr. Graham comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. DEBUSK: Please present the juror.

17 THE CLERK OF COURT: Defense?

18 MR. MUREDDU: Please swear the juror.

19 MR. LONG: Please swear the juror.

20 [Whereupon, Mr. Graham is seated in the jury box
21 as a juror]

22 THE CLERK OF COURT: Thomas Cooke, juror 102.

23 [Whereupon, Mr. Cooke comes forward]

24 THE CLERK OF COURT: What say the State?

25 MR. DEBUSK: Please present the juror.

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1 THE CLERK OF COURT: Defense?

2 MR. MUREDDU: Please excuse Mr. Cook from this
3 case.

4 THE CLERK OF COURT: Have a seat.

5 [Whereupon, Mr. Cooke returns to the audience]

6 THE CLERK OF COURT: Donna Foster, 174.

7 [Whereupon, Ms. Foster comes forward]

8 THE CLERK OF COURT: What say the State?

9 MR. DEBUSK: Please present the juror.

10 THE CLERK OF COURT: Defense?

11 MR. MUREDDU: Please swear Ms. Foster

12 MR. LONG: Please excuse the juror from the
13 trial of this case.

14 [Whereupon, Ms. Foster returns to the audience]

15 THE CLERK OF COURT: Maggie Smith, 429.

16 [Whereupon, Ms. Smith comes forward]

17 THE CLERK OF COURT: What say the State?

18 MR. DEBUSK: Please present the juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please swear Ms. Smith.

21 MR. LONG: Please swear the juror.

22 [Whereupon, Ms. Smith is seated in the jury box
23 as a juror]

24 THE CLERK OF COURT: Jesse Richardson, 388.

25 [Whereupon, Mr. Richardson comes forward]

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1 THE CLERK OF COURT: What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK OF COURT: Defense?

4 MR. MUREDDU: Please swear the juror.

5 THE CLERK OF COURT: Defense?

6 MR. LONG: Please swear the juror.

7 [Whereupon, Mr. Richardson is seated in the jury
8 box as a juror]

9 THE CLERK OF COURT: Charles Wilson, Jr., 485.

10 [Whereupon, Mr. Wilson comes forward]

11 THE CLERK OF COURT: What say the State?

12 MR. DEBUSK: Please excuse the juror.

13 [Whereupon, Mr. Richardson returns to the
14 audience]

15 THE CLERK OF COURT: Robert Bates, 27.

16 [Whereupon, Mr. Bates comes forward]

17 THE CLERK OF COURT: What say the State?

18 MR. DEBUSK: Please present the juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please excuse Mr. Bates from this
21 case.

22 [Whereupon, Mr. Bates returns to the audience]

23 THE CLERK OF COURT: Betty Hearl, 224.

24 [Whereupon, Ms. Hearl comes forward]

25 THE CLERK OF COURT: What say the State?

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1 MR. DEBUSK: Please present the juror.

2 THE CLERK OF COURT: Defense?

3 MR. MUREDDU: Please swear the juror.

4 THE CLERK OF COURT: Defense?

5 MR. LONG: Please excuse the juror from the
6 trial of this case.

7 [Whereupon, Ms. Hearl returns to the audience]

8 THE CLERK OF COURT: Lisa Bradford, 57.

9 [Whereupon, Ms. Bradford comes forward]

10 THE CLERK OF COURT: What say the State?

11 MR. DEBUSK: Please present the juror.

12 THE CLERK OF COURT: Defense?

13 MR. MUREDDU: Please swear Ms. Bradford.

14 MR. LONG: Please swear the juror.

15 [Whereupon, Ms. Bradford is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Gwendolyn Edge, 146.

18 [Whereupon, Ms. Edge comes forward]

19 THE CLERK OF COURT: What say the State?

20 MR. DEBUSK: Please present the juror.

21 THE CLERK OF COURT: Defense?

22 MR. MUREDDU: Please swear Ms. Edge.

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

25 [Whereupon, Ms. Edge returns to the audience]

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1 THE CLERK OF COURT: Brett Goodyear, 200.

2 [Whereupon, Mr. Goodyear comes forward]

3 THE CLERK OF COURT: What say the State?

4 MR. DEBUSK: Please excuse the juror.

5 [Whereupon, Ms. Edge returns to the audience]

6 THE CLERK OF COURT: Toni Orientale, 354.

7 [Whereupon, Ms. Orientale comes forward]

8 THE CLERK OF COURT: What say the State?

9 MR. DEBUSK: Please present the juror.

10 THE CLERK OF COURT: Defense?

11 MR. MUREDDU: Please excuse Ms. Orientale from
12 this case.

13 [Whereupon, Ms. Orientale returns to the
14 audience]

15 THE CLERK OF COURT: Kathy Davis, 125.

16 [Whereupon, Ms. Davis comes forward]

17 THE CLERK OF COURT: What say the State?

18 MR. DEBUSK: Please present the juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please swear Ms. Davis.

21 MR. LONG: Please swear the juror.

22 [Whereupon, Ms. Davis is seated in the jury box
23 as a juror]

24 THE CLERK OF COURT: Judith Wells, 472.

25 [Whereupon, Ms. Wells comes forward]

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1 THE CLERK OF COURT: What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK OF COURT: Defense?

4 MR. MUREDDU: Please excuse Ms. Wells from this
5 case.

6 [Whereupon, Ms. Wells returns to the audience]

7 THE CLERK OF COURT: Regina Bosman, juror 51.

8 [Whereupon, Ms. Bosman comes forward]

9 THE CLERK OF COURT: What say the State?

10 MR. DEBUSK: Please present the juror.

11 MR. MUREDDU: Please swear Ms. Bosman.

12 MR. LONG: Please swear the juror.

13 THE CLERK OF COURT: Cynthia Guy, 210.

14 [Whereupon, Ms. Guy comes forward]

15 THE CLERK OF COURT: What say the State?

16 MR. DEBUSK: Please present the juror.

17 THE CLERK OF COURT: Defense?

18 MR. MUREDDU: Please swear the juror.

19 MR. LONG: Please swear the juror.

20 [Whereupon, Ms. Guy is seated in the jury box as
21 a juror]

22 THE CLERK OF COURT: Pamela Whitney, 477.

23 [Whereupon, Ms. Whitney comes forward]

24 THE CLERK OF COURT: What say the State?

25 MR. DEBUSK: Please present the juror.

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1 THE CLERK OF COURT: Defense?

2 MR. MUREDDU: Please excuse Ms. Whitney from
3 this case.

4 [Whereupon, Ms. Whitney returns to the audience]

5 THE CLERK OF COURT: Dione Leak, 286.

6 [Whereupon, Ms. Leak comes forward]

7 THE CLERK OF COURT: What say the State?

8 MR. DEBUSK: Please present the juror.

9 THE CLERK OF COURT: Defense?

10 MR. MUREDDU: Please excuse Ms. Leak.

11 [Whereupon, Ms. Leak returns to the audience]

12 THE CLERK OF COURT: Denise Ruggiero? I'm
13 sorry.

14 MS. RUGGIERO: Ruggiero.

15 THE CLERK OF COURT: Juror 397.

16 [Whereupon, Ms. Ruggiero comes forward]

17 THE CLERK OF COURT: What say the State?

18 MR. DEBUSK: Please present the juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please swear Ms. Ruggiero.

21 MR. LONG: Please swear the juror.

22 [Whereupon, Ms. Ruggiero is seated in the jury
23 box as a juror]

24 THE CLERK OF COURT: Jill Hauer, 223.

25 [Whereupon, Ms. Hauer comes forward]

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1 THE CLERK OF COURT: What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK OF COURT: Defense?

4 MR. MUREDDU: Please swear Ms. Hauer.

5 MR. LONG: Please excuse the juror from the
6 trial of this case.

7 [Whereupon, Ms. Hauer returns to the audience]

8 THE CLERK OF COURT: Thomas Reaves, 382.

9 [Whereupon, Mr. Reaves comes forward]

10 THE CLERK OF COURT: What say the State?

11 MR. DEBUSK: Please present the juror.

12 THE CLERK OF COURT: Defense?

13 MR. MUREDDU: Please swear Mr. Reaves.

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

16 [Whereupon, Mr. Reaves returns to the audience]

17 THE CLERK OF COURT: Hollis Erskine, 151.

18 MR. ERSKINE: You got it right.

19 [Whereupon, Mr. Erskine comes forward]

20 THE CLERK OF COURT: What say the State?

21 MR. DEBUSK: Please present the juror.

22 THE CLERK OF COURT: Defense?

23 MR. MUREDDU: Please swear Mr. Erskine.

24 MR. LONG: Please swear the juror.

25 [Whereupon, Mr. Erskine is seated in the jury

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1 box as a juror]

2 THE COURT: Give me two alternates, please.

3 THE CLERK OF COURT: Okay.

4 Steven Dame, juror 120.

5 [Whereupon, Mr. Dame comes forward]

6 THE CLERK OF COURT: What say the State?

7 MR. DEBUSK: Please present the juror.

8 THE CLERK OF COURT: Defense?

9 MR. MUREDDU: Please excuse this juror.

10 [Whereupon, Mr. Dame returns to the audience]

11 THE CLERK OF COURT: Dale Whitten, 478.

12 [Whereupon, Mr. Whitten comes forward]

13 THE CLERK OF COURT: What say the State?

14 MR. DEBUSK: I'm sorry. What was the juror's
15 number?

16 THE CLERK OF COURT: 478.

17 MR. DEBUSK: Thank you. Please present the
18 juror.

19 THE CLERK OF COURT: Defense?

20 MR. MUREDDU: Please swear the juror.

21 MR. LONG: Please excuse the juror from the
22 trial of this case.

23 [Whereupon, Mr. Whitten returns to the audience]

24 THE CLERK OF COURT: Dorothy Miller, 329.

25 [Whereupon, Ms. Miller comes forward]

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1 THE CLERK OF COURT: What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK OF COURT: Defense?

4 MR. MUREDDU: Please excuse Ms. Miller.

5 [Whereupon, Ms. Miller returns to the audience]

6 THE CLERK OF COURT: Ralph Faircloth, juror 154.

7 [Whereupon, Mr. Faircloth comes forward]

8 THE CLERK OF COURT: What say the State?

9 MR. DEBUSK: Please excuse the juror.

10 THE CLERK OF COURT: Defense? I'm sorry.

11 Go ahead. I'm sorry.

12 [Whereupon, Ms. Faircloth returns to the
13 audience]

14 THE CLERK OF COURT: Lawrence Brown, 63.

15 [Whereupon, Mr. Brown comes forward]

16 THE CLERK OF COURT: What say the State?

17 MR. DEBUSK: Please present the juror.

18 MR. MUREDDU: Please present Mr. Brown.

19 MR. LONG: Please excuse the witness -- I mean,
20 the juror from this case.

21 [Whereupon, Mr. Brown returns to the audience]

22 THE CLERK OF COURT: Milton Harcum, 217.

23 [Whereupon, Mr. Harcum comes forward]

24 THE CLERK OF COURT: What say the State?

25 MR. DEBUSK: Please present the juror.

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1 MR. MUREDDU: Please swear Mr. Harcum.

2 MR. LONG: Please swear the juror.

3 THE COURT: Mr. Harcum, have a seat.

4 [Whereupon, Mr. Harcum is seated in the jury box
5 as an alternate juror]

6 THE CLERK OF COURT: James Cross, 112.

7 [Whereupon, Mr. Cross comes forward]

8 THE CLERK OF COURT: What say the State?

9 MR. DEBUSK: Please present the juror.

10 MR. MUREDDU: Please swear the juror.

11 MR. LONG: Please excuse the juror from the
12 trial of this case.

13 [Whereupon, Mr. Cross returns to the audience]

14 THE CLERK OF COURT: John Cupo, 117.

15 [Whereupon, Mr. Cupo comes forward]

16 THE CLERK OF COURT: What say the State?

17 MR. DEBUSK: Please present the juror.

18 MR. MUREDDU: Please swear Mr. Cupo.

19 MR. LONG: Please seat the juror.

20 [Whereupon, Mr. Cupo is seated in the jury box
21 as an alternate juror]

22 THE COURT: Would there be a challenge to the
23 panel?

24 MR. DEBUSK: None, Your Honor.

25 MR. MUREDDU: None, Your Honor.

State vs. Dudley and Coleman
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March 12, 2014

1 MR. LONG: No, Your Honor.

2 THE COURT: Very well.

3 Ladies and gentlemen, we have our jury, so the
4 rest of you have avoided jury service on this
5 particular case. I understand that we need you to go
6 back downstairs because Judge Cottingham may be
7 pulling another jury.

8 [Off the record momentarily]

9 THE COURT: All right. So we'll ask you to
10 return to the jury assembly room. One of the deputies
11 will help you get back down there in case you get
12 lost. Thank you very much.

13 [Whereupon, the jury panel exits the courtroom
14 at 10:54 a.m.]

15 THE COURT: All right. Ladies and gentlemen,
16 you will serve as our jurors in this particular case.
17 I'm going to give you a little break and let Mr. Roth
18 take you back to your jury room to refresh yourselves.

19 Before we do that, let me advise: the last two
20 jurors selected, and that was --

21 MR. HARCUM: Harcum. Harcum.

22 THE COURT: Lockham?

23 MR. HARCUM: Milton Harcum.

24 THE COURT: Hobb? Okay.

25 MR. CUPPO: And Cuppo. John Cuppo.

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March 12, 2014

1 THE COURT: And Mr. Cuppo.

2 Always occupy those two seats. You will be our
3 alternates. Always sit there.

4 And the gentleman right here on the front
5 corner. Your name, sir?

6 MR. ERSKINE: Hollis Erskine.

7 THE COURT: Mr. Erskine, guess what? You won
8 the lottery and you will be our foreperson. I'll ask
9 you to please always occupy that particular seat.

10 The rest of you, of course, may sit wherever you
11 chose when you reenter the courtroom, but I need my
12 alternates off to one side and my foreperson there in
13 the middle.

14 Now, Bobby, if you would take them back to their
15 jury room for just a few minutes. We have some things
16 we're going to have to take up, and I'll call for them
17 shortly. All right?

18 [Whereupon, the jury exits the courtroom at
19 10:55 a.m.]

20 THE COURT: Anything we need to take up before
21 we bring the jury back in? What I intend to do is let
22 you do -- I'll do a preliminary charge. We'll do
23 opening remarks. By then, it's probably going to be
24 over close to noon. We'll take some time for lunch.

25 Please be advised that I rarely reconvene court

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1 at two o'clock. That's only when we have been very
2 late going over. One o'clock or 1:30 is when I like
3 to reconvene. I don't see any necessity of having
4 three-hour lunches or two-hour lunches, so we don't do
5 that. So unless you hear otherwise, one o'clock is
6 the start-back time.

7 Now, anything further from the State?

8 MR. DEBUSK: Your Honor, if we have a few
9 moments we can pre-mark some exhibits or we can just
10 mark them --

11 THE COURT: I would love for you to do that.
12 That's why I'm taking a break.

13 MR. DEBUSK: Okay. Thank you, Your Honor.

14 THE COURT: Mr. Mureddu, anything?

15 MR. MUREDDU: Nothing, Your Honor.

16 THE COURT: Mr. Long, anything we can do for
17 you?

18 MR. LONG: Just the length of the break, Your
19 Honor. I know my client would like to take a short
20 break.

21 THE COURT: Well, as long as he's back up here.
22 It will be about ten minutes.

23 MR. LONG: Thank you, Your Honor.

24 [Whereupon, a recess is taken from 10:57 p.m. to
25 11:10 p.m.]

State vs. Dudley and Coleman
Striking of the Jury
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1 [Whereupon, State's Exhibit Numbers 1 through 14
2 are marked by the court reporter]

3 THE COURT: Let's get the jury.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 [Whereupon, the jury enters the courtroom at
7 11:13 a.m.]

8 THE COURT: All right. I see that we have our
9 jurors and our alternates back in the courtroom and
10 we're ready to proceed:

11 Are you ready to proceed? From the State? Is
12 the State ready to proceed?

13 MS. LIVESAY: Yes, sir.

14 THE COURT: Mr. Long, ready to proceed?

15 MR. LONG: Yes, sir, Your Honor.

16 THE COURT: Mr. Mureddu?

17 MR. MUREDDU: Yes.

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State v. Dudley and Coleman
Court's Opening Comments
March 12, 2014

1 COURT'S OPENING COMMENTS

2 THE COURT: Okay. Before we start, let me make a
3 few comments to you, talk to you a little bit, about
4 how we're going to proceed in this case and what's
5 expected of you and what you can expect of us.

6 I failed when I was introducing the attorneys
7 this morning to introduce Drew Postal, who is seated
8 up here with me. He's that young man here to my
9 right. He's my law clerk. They let us have or assign
10 us a young lawyer whenever we -- well, every year or
11 so they do it. And he's the one that keeps me out of
12 the ditch. You'll see him passing things over to me
13 all during the trial. And that's usually things I
14 need to address or things that I need to do during the
15 trial. Drew is a lot of help.

16 You know, when I first started practicing law --
17 I told you it was a long time ago -- we had a judge
18 and he used to bring his dog up on the bench with him.
19 Now they've got a whole lot better than the dog.
20 We've got someone smart to get --

21 You know, whenever I turn on my TV it seems like
22 everything on TV now -- or there's something on any
23 station at any given time about a trial or somebody
24 being charged with a crime or somebody suing
25 something. We seem to have a fascination with it.

State v. Dudley and Coleman
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1 Let me say that what you see on TV is probably not
2 what you're going to see here. Not to say that from
3 time to time trials don't have exciting moments. But
4 generally speaking, the search for the truth -- and
5 that's what we're here today for is the search for the
6 truth -- is very slow and deliberate. And you may
7 find some of the attorneys' presentations to be almost
8 tedious in the way they do it or present a piece of
9 evidence, and that's because we have very specific
10 rules about how it has to be done and how they have to
11 go about it. And they have to follow those rules in
12 doing so. So you're probably going to find that this
13 case is not nearly as action-packed as what you might
14 see on TV. But it makes it no less important.

15 Here in this courtroom setting, we all have a
16 job and we are expected to conduct ourselves
17 professionally and ethically. It's my job to preside
18 over this trial and it's my job to make sure that both
19 the State and these defendants receive a fair trial.

20 Mr. DeBusk and Ms. Livesay have the duty to
21 represent the State and present the evidence that the
22 State has with an eye towards convincing you of the
23 defendant's guilt beyond a reasonable doubt. Mr.
24 Mureddu and Mr. Long, they're here, of course, to
25 represent the interest of those defendants that they

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1 have with them. It's their job to challenge the
2 State's position in this case. I expect all these
3 attorneys to conduct themselves professionally and
4 ethically, and I'm sure that in this case they will.

5 But you should understand that there is also a
6 high expectation placed on you as jurors, a high
7 responsibility. You are the keystone of the American
8 judicial system. Everything that's done in this
9 courtroom is for your benefit. It is done to transmit
10 information to you. And at the end of the trial it
11 will be you, not me, who determines whether the State
12 has met its burden of proving the defendants guilty
13 beyond a reasonable doubt. You will make that
14 decision totally independent of any fact-finding on my
15 part or anyone else's.

16 I want to impress upon you that you, as jurors,
17 are the sole and exclusive judges of the facts. You
18 are going to weigh all the evidence that's presented
19 to you. I do nothing more than make sure that the
20 evidence is presented in an orderly fashion. You will
21 take that evidence and you will weigh it, you will
22 look at it, and you will give it such weight as you
23 think it deserves.

24 I will tell you that you can accept or reject
25 the testimony of a witness based on your view of that

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1 witness' credibility. You can accept all of it, part
2 of it, or none of it, depending on your view of that
3 witness.

4 Now, with equal emphasis, let me tell you that I
5 will provide you with the law that you will follow
6 during your deliberations. I am the judge of the
7 facts -- I mean, the law in this case. You are the
8 judges of the facts. That's an important thing to
9 wrap your minds around because the deliberation
10 process which happens at the end of the trial is a
11 process where you take the facts as you have found
12 them, you, the jury, have found them, and you take the
13 law as I have given it to you, and then you move to
14 the third step: you bring them together and you see
15 if it fits.

16 Think about great big wheels or gears in a mill.
17 One's the facts; one's the law. When they come
18 together, how they fit, determines whether or not the
19 State has carried its burden or has failed to convince
20 you of the defendant's guilt beyond a reasonable
21 doubt. But you, as jurors, will make that
22 determination.

23 If I say or do anything during this trial, if I
24 make any facial expression or I do any -- make any
25 movements of my body that you think is a signal to you

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1 about my understanding or my view of a piece of
2 evidence, please disregard it because I assure you
3 that was unintentional and that's not the message that
4 I'm trying to send. I don't have the right to even
5 have an opinion about the evidence in this case. That
6 is entirely up to you, as jurors, to determine what
7 evidence you will use in this case and what you will
8 consider.

9 Now, during the trial of this case I'm going to
10 ask you not to -- we'll probably go over into
11 tomorrow. But this evening, or when you're in your
12 jury room or at lunch, don't go on the internet and
13 try to find out anything about this case, look up an
14 old newspaper article, anything like that. Don't
15 e-mail your buddy or your friend who used to work for
16 a lawyer and ask them about what the law is. That
17 would be highly improper. Don't discuss the case with
18 anyone during the trial of this case. Don't discuss
19 it even among yourselves, because that would be pre-
20 deliberations.

21 I want you to keep an open mind. Listen to both
22 sides of the testimony in this case before you make
23 any decision. Wait until I have given you the law
24 before you decide to begin your deliberations. And
25 that is a very important concept.

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1 Let me tell you how we're going to proceed.
2 Now, in just a moment Mr. DeBusk or Ms. Livesay are
3 going to begin with an opening statement. That
4 opening statement is not evidence. It's just like the
5 indictments. It's how -- the indictment is how -- is
6 the document we use to bring the charge to court. The
7 opening statement is where the prosecutor tells you
8 about the case. He tells you from his perspective or
9 her perspective what they think they can show, what
10 they believe they can show, what evidence they may
11 have. And they present that to you. But that is not
12 evidence, merely a summation of the State's position.

13 That will be followed by the defense attorneys.
14 Mr. Mureddu and Mr. Long both have an opportunity to
15 make an opening statement and they will tell you their
16 position in the case. And I think you'll have a
17 better understanding of what to expect in the trial of
18 the case once you've heard the attorneys' opening
19 statements.

20 Following that, the State will put up its case.
21 They'll put up witnesses and evidence. And whatever
22 they may have, they will put that up. Following the
23 State's case, the defense has an opportunity -- not
24 obligated in any form or fashion to put up anything.
25 These defendants do not have to prove their innocence.

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1 But if they wish to, they may at that time put up a
2 case or their witnesses or evidence.

3 Following that, we will have closing arguments
4 again. The State will do a summation of what it has
5 shown during the trial of the case. The defense will
6 have an opportunity to do a summation. And following
7 that, I will instruct you fully on the law that you
8 will use in your deliberation of the case and the case
9 will be given to you for deliberations.

10 Let me point out that during the trial of this
11 case, from time to time you may have one of these
12 attorneys stand up and say something like, Your Honor,
13 we have a matter, Your Honor, we need to take up
14 something out of the presence of the jury, things of
15 that nature. Don't be concerned about that. They're
16 not trying to keep anything from you. The Court is
17 not trying to keep anything from you. I will probably
18 send you out of the courtroom if that occurs.

19 Let me tell you what happens when that's going
20 on. It usually involves the manner or way in which a
21 piece of evidence is presented. The Court has to make
22 a ruling on that and in doing so I may have to express
23 an opinion about my thoughts on the relevancy or the
24 importance of a particular piece of evidence and it
25 would be highly improper for you to hear me say that.

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1 So that's why we send you out. We're not trying to
2 keep anything from you. It's just that that's the
3 rule and that's how we have to do it.

4 Now, again, we're going to do opening remarks
5 now in just a few moments. I will probably send you
6 to lunch after that, and we'll start the actual
7 testimony in this trial right after lunch.

8 Mr. DeBusk, Ms. Livesay, who will argue for the
9 State?

10 MS. LIVESAY: Yes, sir. Thank you, Your Honor.

11 THE COURT: All right.

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State vs. Dudley and Coleman
Opening Statement by Ms. Livesay
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OPENING STATEMENT

MS. LIVESAY: Ladies and gentlemen of the jury, I'm Nancy Livesay. I'm a prosecutor here in Horry and Georgetown Counties, which is the fifteenth judicial circuit.

I'm going to tell you that these two defendants, like the indictment told you, are charged with burglary. Now, basically, I'm going to tell you what a burglary is. It is the unlawful entering of another's home without permission with the intent to commit a crime.

Now, I'm going to tell you right off the bat we have a burglary. The victim, Susan Marotte, is going to tell you she came home that day, opened the door. She said it was unusual because the door was unlocked, and then when I walked in I saw mud trickled off somebody's shoes all through the house so I knew somebody had been in the house. She said, I then go to the window and the window is cracked and the screen has been removed off the window.

So right off the bat, we have a burglary. She's going to tell you, I don't know who entered the house, all I know is when I came home the house had been broken into and I called the police -- that's what she's going to tell you -- and items were stolen;

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1 jewelry boxes were stolen from my daughter's room; one
2 had a skull on it and one had flowers on it.

3 So we already know we've got a breaking and
4 entering through that window. We already know they
5 had an intent to commit a crime, because they stole
6 the jewelry boxes. They didn't have permission to go
7 in that house. She's going to tell you, I don't even
8 know these folks; all I know is I came home and my
9 house has been broken into, I called the police.

10 So we've got a burglary. The question is who
11 did it. That's the case that we're presenting to you:
12 who did it?

13 Now, the same day -- you're going to hear from
14 Nancy Ross, the witness sitting right here. She's
15 going to be the first witness we call. She's going to
16 tell you, I live in that same neighborhood; that
17 morning while I was home, two black males wearing
18 hoodies came to my front door, knocked on the door,
19 ringing the doorbell. She said, I didn't know them so
20 I didn't let them in. She said, and I didn't let them
21 see me in the house. She looked out, she said, and I
22 saw a silver car that I had never seen before, so I
23 didn't know the car, I didn't recognize the car; there
24 was a black female with curly hair in the driver's
25 seat. She said, I didn't know any of these people so

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1 I was not opening the door. She said after they did
2 the ringing of the doorbell, I then see them walk
3 around the side of the house. She calls 911. She's
4 on the phone with 911. She says, I then see them at
5 the back window; I see them then at my back door; and
6 then what do I hear? Jiggling at my door, trying to
7 get in, trying to get in. When they don't have a way
8 to enter the house, they then get back in the car and
9 leave.

10 She would -- she calls the police to let them
11 know what had happened. Now, the police show up.
12 They're taking the report from Ms. Ross. Low and
13 behold, she lives on a cul-de-sac, not a well-traveled
14 area. This neighborhood is not a well-traveled area.
15 You're going to hear about that. There's cul-de-sacs
16 at the end of each of the main roads. She's going to
17 tell you, I'm standing there giving the report and,
18 low and behold, here comes that silver car again while
19 the police is standing there taking the report. She
20 then looks at them and says, that's the car right
21 there, that's it, I recognize it, there's the car
22 right there.

23 And you're going to see this all on video
24 because the police officer that arrives at her house
25 keeps that videotape rolling the whole time. You're

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1 going to see that silver car come right back down and
2 right back out. Then you're going to see him jump in
3 the car and take after the silver car. So he gets in
4 his car to investigate, what's going on, why are these
5 people approaching these houses jiggling at doors of
6 homes they don't know the people.

7 So they pull the car over. They get everybody
8 out to investigate. Well, who's in the car? These
9 two defendants right here, Mr. Coleman and Mr. Dudley,
10 two black males. And who else is in the car? A young
11 lady named Shakerra. Curley hair. She was the
12 driver. Now, that's important.

13 But what else is important is what's in the car
14 when they searched the car. Low and behold, it's two
15 jewelry boxes that belong to the victim, one with a
16 skull on it and one with a flower on it. Two jewelry
17 boxes in the car belonging to that victim.

18 Now, they further investigated by talking to the
19 driver. What's going on? What are y'all doing in
20 that neighborhood? Why were y'all there? Why are
21 y'all jiggling on peoples doors? And then the driver
22 said, I was driving these two guys through that
23 neighborhood; they would get out of the car, go to a
24 house; I wouldn't always see what was going on around
25 the house; I'd park a little ways away, and then they

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1 would come back with stuff they didn't have before.
2 Two of those things were the jewelry boxes stole from
3 the victim's house.

4 Now, you're going to hear all this information
5 from witnesses like Nancy Ross, the victim, and the
6 officer that has the video tape that ran the in-car
7 camera.

8 All I ask you is to listen to all of this
9 evidence. Listen to whatever evidence is presented by
10 the defense, and then we're going to come back at the
11 end and tell you that they're guilty of burglary. And
12 the judge will tell you more details about the law.
13 And Mr. DeBusk will tell you more details as the
14 testimony unfolds.

15 Now, there are different degrees of burglary.
16 The basics is is the breaking and entering into
17 another dwelling without permission with the intent to
18 take something. We already know we've got a burglary.

19 Now, Mr. Coleman, this gentleman with the
20 glasses, the defendant, is charged with burglary
21 first. He's charged with burglary first because it's
22 statutory. He has two prior burglary convictions, so
23 he's charged with burglary first. Mr. Dudley, this
24 defendant, is charged with burglary second. Both are
25 charged with burglary because both were acting in

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1 concert going to these homes, breaking into them, and
2 removing items that did not belong to them.

3 I appreciate your time and attention. This case
4 is very important to Mr. DeBusk and the State of South
5 Carolina, as well as the defense attorneys. I
6 appreciate your time.

7 THE COURT: Yes, sir?

8 MR. MUREDDU: Thank you, Your Honor. May it
9 please the Court.

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State vs. Dudley and Coleman
Opening Statement by Mr. Mureddu
March 12, 2014

1 OPENING STATEMENT

2 MR. MUREDDU: Good morning, ladies and
3 gentlemen. My name is Dean Mureddu. I represent
4 Jordan Dudley. Jordan is my client here today.

5 At one time or another we have all probably told
6 our children to be careful who you hang out with,
7 don't hang out with the wrong crowd. The reason why
8 we tell our children this is because we know, as
9 parents, that if our children -- if they do, in fact,
10 hang out with the wrong crowd, they will most
11 certainly be led into trouble. But we know, more
12 importantly, that when they are, in fact, led into
13 trouble, that nobody will believe that they weren't
14 involved in it, willingly participating knee-deep in
15 it. Everybody's going to think that.

16 This is a situation, unfortunately for Jordan,
17 that he finds himself in here today, hanging with the
18 wrong crowd and knee-deep in trouble. As this case
19 unfolds, the evidence will show, as I said, that
20 Jordan was with these two other folks, the wrong
21 crowd. Hopefully for Jordan it won't turn out for him
22 like we know so often it turns out for those folks who
23 hang with the wrong crowd, that nobody ever believes
24 that they weren't involved in the crime.

25 Now, the solicitor did indicate in her statement

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1 and argue that she will present evidence that shows
2 that both of these individuals were operating together
3 in concert. I ask you to pay very close attention to
4 the evidence, but more importantly, very close
5 attention to what Jordan and I will present. There
6 will be serious, serious doubt as to the acting of
7 those two together in concert as they say.

8 The State, as the judge indicated, has the
9 burden of proving beyond a reasonable doubt the guilt
10 of anyone charged with a crime. And as the judge
11 pointed out, everyone is presumed innocent.

12 Now, as I said, there is going to be some highly
13 suspicious circumstances and there is going to be some
14 circumstances that will make you take a hard look at
15 Jordan. I have absolutely no doubt about that. But
16 if you listen closely, if you listen to some of the
17 particulars of the evidence, at the end of the case
18 you will see that while Jordan is knee-deep in trouble
19 having been led into it with the wrong crowd, he was
20 not a knowing involved participant in these crimes.

21 THE COURT: Mr. Long?

22 MR. LONG: Thank you, Your Honor.

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OPENING STATEMENT

MR. LONG: Good morning, ladies and gentlemen.
I'm Buddy Long. I won't take a whole lot of your time. I do want to explain a couple of things that I think are very important about this trial, about this process, and what your responsibilities are.

With all due respect to His Honor, there's no doubt in my mind you have the hardest job in this courtroom. You have to find what the truth is, you have to find it beyond a reasonable doubt, then you have to test the evidence through the presumption of innocense. I'll explain those some more to you in just a moment.

My wife and I can't agree on what we want to eat for supper sometimes, and that's a minor decision, but the two of us together, okay, just -- we'll have arguments, et cetera, things of that nature, and a simple little decision like that can be difficult to make. You have to make a very difficult decision that is complex. You have to try to determine what can we believe, what don't we believe, what could be right, what could not be right. That's tough, and I sympathize with you about that.

The presumption of innocense is highly important and it's not a term that defense attorneys just

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1 created and said, okay, that's a way to get my client
2 off. If I were to say, okay, I saw y'all holding
3 hands, just a few moments ago, y'all were holding
4 hands and cutting eyes at each other, how do you prove
5 a negative? How do you prove it didn't do something?
6 It's very difficult. And for that reason, the State
7 has the burden of proof. And it's a high burden of
8 proof, beyond a reasonable doubt, to prove that you
9 did do something. And that's why it's important to
10 every one of us here today in this courtroom, this
11 state, this country.

12 Now, you will have testimony and evidence. And
13 I'm not going to tell you what I think it's going to
14 be. Y'all haven't heard it yet. You will listen to
15 the testimony and evidence. The State will present
16 it, the defense will test it through cross-
17 examination. And that's simply, hopefully, to help
18 you with your job of trying to determine, now, is that
19 correct, not correct, is that true, not true, is that
20 possible, is it not possible, and the twelve of you,
21 fourteen now -- but twelve of you will have to decide
22 beyond a reasonable doubt.

23 I trust and I know that you'll pay attention
24 because this is high stakes. And I trust that you
25 will look at the evidence as if this was your son or

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1 daughter or mother or father or wife or husband or
2 grandparents or aunt or uncle or neighbor or
3 something. If one of those people, someone near and
4 dear to you, were seated there beside me, what would
5 your heart tell you? What would your mind tell you?
6 Oh, no, that's not possible, they didn't do that,
7 there's no way. That's the presumption of innocence.
8 And that's what Mr. Coleman is entitled to.

9 Throughout this trial, test everything to
10 examine it carefully. And if you do that, we'll
11 accept your verdict. Thank you.

12 THE COURT: All right. I intend -- well, I'm
13 going to.

14 Ladies and gentlemen, we're going to take a
15 break now for lunch. It's about twenty of 12:00.
16 I'll ask you to be back about one o'clock. That will
17 give you about an hour twenty minutes to get some
18 lunch, then we'll start the evidence at that time.

19 Mr. Roth, take them into the jury room, please.

20 [Whereupon, the jury exits the courtroom at
21 11:42 a.m.]

22 THE COURT: Okay. We're at ease until one
23 o'clock.

24 [Whereupon, a recess is taken from 11:42 a.m. to
25 1:21 p.m.]

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PLEA OF JORDAN DUDLEY

THE COURT: All right. Mr. Mureddu, it's my understanding, after a conference in chambers, that your client now wishes to change his plea; is that correct?

MR. MUREDDU: That's correct, Your Honor.

THE COURT: All right. And, Mr. DeBusk, I believe that the State has a motion in reference to that plea?

MR. DEBUSK: We would ask Your Honor to hold the sentence in abeyance so that we debrief Mr. Dudley for possible testimony tomorrow.

THE COURT: Very well. Okay.

MR. MUREDDU: Can I just have a minute, because this was -- I need just a second.

THE COURT: Is there a sentencing sheet prepared, Mr. DeBusk?

MR. DEBUSK: Yes, Your Honor. They're signing it right now.

Your Honor, that's going to take a moment. I have unredacted copies of the prior convictions of Mr. Coleman I would like to make Court's Exhibits of, as we have redacted the documents under seal.

THE COURT: All right.

MR. DEBUSK: May we make one Court's Exhibit out

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1 of all three, Your Honor?

2 THE COURT: I'm going to let the court reporter
3 tell you how she wants that done. Sometimes it's
4 easier to do it as one and other times it's easier to
5 do it as three.

6 [Whereupon, Court's Exhibit Number 1 is marked
7 by the court reporter]

8 THE COURT: Mr. DeBusk, are you requesting an
9 elocution?

10 MR. DEBUSK: Your Honor, at this time we ask
11 that the sentencing be held in abeyance.

12 MR. MUREDDU: Your Honor, I think that we are
13 ready to proceed.

14 THE COURT: May I have the sentencing sheet?

15 MR. MUREDDU: Yes.

16 [Whereupon, Mr. Mureddu proffers documents to
17 the Court]

18 THE COURT: Place the defendant under oath,
19 please.

20 THE CLERK OF COURT: Please raise your right
21 hand.

22 [Whereupon, Mr. Dudley is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm to tell the truth, the whole truth, and nothing
25 but the truth, so help you God]

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1 MR. DUDLEY: I do.

2 THE COURT: All right. Mr. Dudley, you are
3 represented by Mr. Mureddu; is that correct?

4 MR. DUDLEY: Yes, sir.

5 THE COURT: And do you understand that you are
6 presently on trial for burglary non violent second
7 degree?

8 MR. DUDLEY: Yes.

9 THE COURT: Has Mr. Mureddu had an opportunity
10 to explain that to you?

11 MR. DUDLEY: Yes, sir.

12 THE COURT: And do you realize that for that
13 offense I could give you up to ten years?

14 MR. DUDLEY: Yes, sir.

15 THE COURT: Okay. Now, Mr. Dudley, we are in
16 the midst of a trial. I would assume that Mr. Mureddu
17 has had an opportunity to go over the evidence or
18 discovery materials in this case with you; is that
19 correct?

20 MR. DUDLEY: Yes, sir.

21 THE COURT: Do you understand that you do not
22 have to plead guilty? You may proceed with this trial
23 and have a jury determine your fate. Do you
24 understand that?

25 MR. DUDLEY: Yes, sir.

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1 THE COURT: Is anyone forcing you, coercing you,
2 doing anything inappropriate to pressure you, into
3 doing this?

4 MR. DUDLEY: No, sir.

5 THE COURT: Is this your idea as much as it is
6 your attorney's?

7 MR. DUDLEY: Yes, sir.

8 THE COURT: Do you think that it is the
9 appropriate thing, the best thing, for you to do?

10 MR. DUDLEY: Yes, sir.

11 THE COURT: Okay. Do you realize that if you
12 enter this plea, you are waiving your rights to a jury
13 trial, which you are in the midst of right now, that
14 you will be waiving your right to continue the trial?
15 Do you understand that?

16 MR. DUDLEY: Yes, sir.

17 THE COURT: And is that what you want to do?

18 MR. DUDLEY: Yes, sir.

19 THE COURT: Okay, sir. Now, do you realize that
20 during this trial, in addition to your general right
21 to a jury trial you have many, many rights that are
22 attached, rights that go along with your trial? One
23 of those rights would be your fifth amendment right to
24 remain silent. In this trial you do not have to
25 testify. No one can make you testify. You can if you

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1 want to, but no one can make you. Do you understand
2 that?

3 MR. DUDLEY: Yes, sir.

4 THE COURT: And if you plead guilty, you would
5 be waiving that. Do you understand that?

6 MR. DUDLEY: Yes, sir.

7 THE COURT: You also, of course, have your sixth
8 amendment right to have your attorney here with you
9 throughout this trial, as you have seen so far. Mr.
10 Mureddu has been with you all through this trial. He
11 will continue. Do you understand that?

12 MR. DUDLEY: Yes, sir.

13 THE COURT: Do you understand that you are
14 waiving your right to have me tell this jury at the
15 conclusion of this trial that they can only convict
16 you if the State has convinced each and every one of
17 them of your guilt beyond a reasonable doubt?

18 MR. DUDLEY: Yes, sir.

19 THE COURT: You understand that?

20 MR. DUDLEY: Yes.

21 THE COURT: Okay. Do you understand that once
22 you have entered this plea, the State may very well
23 call you to testify in this case?

24 MR. DUDLEY: Yes.

25 THE COURT: You understand that?

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1 MR. DUDLEY: Yes.

2 THE COURT: And you're willing to do that?

3 MR. DUDLEY: Yes.

4 THE COURT: All right, sir. Do you want to
5 waive your right to a jury trial and all the other
6 rights that go along with it?

7 MR. DUDLEY: Yes, sir.

8 THE COURT: And you've discussed this with your
9 attorney?

10 MR. DUDLEY: Yes, sir.

11 THE COURT: You think it's the right thing to
12 do?

13 MR. DUDLEY: Yes, sir.

14 THE COURT: Tell me about Mr. Mureddu. Are you
15 satisfied with his representation?

16 MR. DUDLEY: Yes, sir.

17 THE COURT: Do you think that he's done
18 everything that he could to help you?

19 MR. DUDLEY: Yes, sir.

20 THE COURT: Do you need any more time with
21 Mr. Mureddu?

22 MR. DUDLEY: No, sir.

23 THE COURT: Do you need to ask him anything
24 else?

25 MR. DUDLEY: No, sir.

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1 THE COURT: Has anything that I have told you
2 been unclear? Do you have any questions about this
3 process? I may not give you legal advice. That would
4 not be permitted. But I would be happy to answer any
5 questions you might have about this procedure that
6 we're going through here or the rights that you may
7 have. I'll be happy to answer any questions. Do you
8 have any such questions for me and have I been unclear
9 in anything that I have asked you?

10 MR. DUDLEY: No, sir.

11 THE COURT: Okay. Now, Mr. Dudley, I would
12 assume, then -- or let me ask you, are you satisfied
13 fully and completely with your attorney?

14 MR. DUDLEY: Yes, sir.

15 THE COURT: Okay. I see you're twenty-five
16 years of age; is that right?

17 MR. DUDLEY: Yes, sir.

18 THE COURT: Are you married?

19 MR. DUDLEY: No, sir.

20 THE COURT: Do you have children?

21 MR. DUDLEY: Yes, sir.

22 THE COURT: How many?

23 MR. DUDLEY: I have two, sir.

24 THE COURT: Do they live with you?

25 MR. DUDLEY: Currently. Yes.

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1 MR. MUREDDU: Judge, he's been incarcerated for
2 almost a year.

3 THE COURT: Okay. They were when you became
4 incarcerated?

5 MR. DUDLEY: Yes, sir.

6 THE COURT: What kind of work do you do,
7 Mr. Dudley?

8 MR. DUDLEY: Well, I did asphalt, pavement,
9 paving.

10 THE COURT: Who did you work for?

11 MR. DUDLEY: I worked for Ellis Asphalt Company.

12 THE COURT: Okay. Mr. Dudley, how far did you
13 go in school?

14 MR. DUDLEY: I dropped out in the eleventh and
15 came back and obtained my GED, sir.

16 THE COURT: You have your GED? Okay.

17 MR. DUDLEY: Yes, sir.

18 THE COURT: Good for you.

19 Mr. Dudley, have you ever had any mental health
20 problems or addiction issues, of any kind or sort,
21 that you feel might keep you from understanding what
22 we're doing here today?

23 MR. DUDLEY: No, sir.

24 THE COURT: Do you understand what we're doing?

25 MR. DUDLEY: Yes, sir.

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1 THE COURT: Have you taken any drugs or alcohol
2 in the last twenty-four hours?

3 MR. DUDLEY: No, sir.

4 THE COURT: Can you think of any reason, any at
5 all, why you wouldn't understand what we're doing?

6 MR. DUDLEY: No, sir.

7 THE COURT: I want you to listen carefully as
8 Mr. DeBusk tells me about -- or why you're charged.
9 He already has, but let's put it on the record and be
10 clear about it.

11 MR. DEBUSK: Your Honor, March 25th of 2013, the
12 defendant and codefendant, Mr. Coleman, went to a
13 house on Capers Drive, Capers Creek Drive, in the
14 Myrtle Beach section of the county. In that
15 neighborhood, they had been seen prowling around a
16 prior house together. When -- according to a witness,
17 they then left that house, went to another house, got
18 out of the car together again, went to the house, came
19 back carrying jewelry and items stolen from that
20 house. They then were stopped by the police a short
21 time later and those items were recovered. The
22 defendant was wearing the same clothes seen by the
23 original witness. Thank you, Your Honor.

24 THE COURT: Mr. Dudley, is that what occurred?
25 You entered this lady's house and took things?

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1 MR. DUDLEY: [No response]

2 THE COURT: Were you present when the house --

3 MR. DUDLEY: Yes, sir.

4 THE COURT: -- when the house was entered?

5 You were there when your codefendant removed
6 things from the house? Is that your position?

7 MR. DUDLEY: Yes, sir.

8 THE COURT: Okay. And do you understand the
9 concept of hand of one being the hand of all?

10 MR. DUDLEY: Yes, sir.

11 THE COURT: So let me ask you this. Are you
12 pleading guilty because you are guilty?

13 MR. DUDLEY: Yes, sir.

14 THE COURT: All right, sir. Mr. Dudley, has
15 anyone promised you anything, threatened you in any
16 way, coerced you? Has anyone done anything
17 inappropriate, or something that you felt was
18 inappropriate, in order to make you feel like you had
19 to enter this plea against your free will?

20 MR. DUDLEY: No, sir.

21 THE COURT: Are you pleading freely and
22 voluntarily?

23 MR. DUDLEY: Yes, sir.

24 THE COURT: This is your idea?

25 MR. DUDLEY: Yes, sir.

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1 THE COURT: You've had all the time you need to
2 think about it?

3 MR. DUDLEY: Yes, sir.

4 THE COURT: Do you need anymore time with your
5 lawyer?

6 MR. DUDLEY: No, sir.

7 THE COURT: Do you believe that this is in your
8 best interest?

9 MR. DUDLEY: Yes, sir.

10 THE COURT: Okay. Do you have anymore questions
11 for me or anyone else?

12 MR. DUDLEY: No, sir.

13 THE COURT: Are you asking me to accept your
14 plea?

15 MR. DUDLEY: Yes, sir.

16 THE COURT: Okay. And I'll ask you ultimately
17 one more time. Is your plea freely and voluntarily
18 made?

19 MR. DUDLEY: Yes, sir.

20 THE COURT: All right, sir. I find that there's
21 a substantial factual basis for the plea, that the
22 plea is made freely, voluntarily, knowingly and
23 intelligently, after the advice of a very competent
24 attorney with whom Mr. Dudley tells me he is
25 satisfied, and I will accept his plea.

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1 Now, I will grant the State's motion for
2 deferred sentencing.

3 Mr. Mureddu, I would assume that you want to
4 reserve any remarks until sentencing?

5 MR. MUREDDU: Yes, sir, Your Honor.

6 And we're going to discuss this in greater
7 detail.

8 THE COURT: Then I will allow you to do so.
9 He's in custody, of course, pending sentencing. All
10 right.

11 MR. MUREDDU: Thank you, Your Honor.

12 MR. LONG: Your Honor, before we break up, would
13 it be an appropriate time at this point to have a
14 brief proffer done so that we could hear basically
15 what some of the testimony is? I realize it's up to
16 the State, their discretion.

17 THE COURT: Well, I asked the State if they were
18 requesting the elocution and they said no.

19 MR. LONG: Okay. Very well, Your Honor.

20 THE COURT: I would have thought they would, but
21 they don't want one, so --

22 MR. LONG: Understood, Your Honor.

23 [Whereupon, Mr. Long and Mr. DeBusk confer]

24 MR. DEBUSK: Mr. Long raised a good point. You
25 can hold it up and see the parts we've redacted.

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1 MR. LONG: It's just got the sticky tape.

2 MR. DEBUSK: I guess we could stipulate that
3 they are true and correct copies of documents under
4 seal?

5 MR. LONG: Yes, sir. And just so --

6 THE COURT: I would think that the best thing
7 you could both do is not even introduce them and
8 stipulate that that's what they say. That way you
9 don't have to worry about the jury doing -- but
10 Mr. Long may have some question about it. He may want
11 to examine a witness on it or something like that. I
12 don't know. We'll do it the way you think best.

13 Mr. Long, how do you want to do it?

14 MR. LONG: Your Honor, we can't quite stipulate,
15 for a couple of reasons I won't go into. But if we
16 could substitute copies, with our consent, so that
17 they cannot be viewed --

18 THE COURT: All right. All right. That's fine.
19 That's fine.

20 MR. LONG: Thank you.

21 THE COURT: That's what will go to the jury.

22 All right. Now, are we prepared to bring the
23 jury in?

24 MR. DEBUSK: Yes, Your Honor.

25 THE COURT: Sam, if you would find me a bailiff

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1 and let's get a jury in.

2 [Whereupon, the jury enters the courtroom at
3 1:35 p.m.]

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, please forgive us for the delay in bringing
6 you back. I told you to be here at one o'clock and
7 it's now 1:35 and we've had you sitting back there
8 wondering why we don't write. I would like to report
9 to you that we were at the Court's business during
10 that period of time.

11 This case is no longer a case against
12 codefendants. The case will proceed, but it will
13 proceed only against Mr. Coleman. Mr. Jordan Dudley
14 is no longer a defendant in this jury trial. Okay?
15 You'll receive more info about that at a later time,
16 but for right now we have one defendant. Okay?

17 All right, Mr. DeBusk.

18 MS. LIVESAY: Thank you, Your Honor.

19 At this time, the State is going to call Nancy
20 Ross to the stand.

21 [Whereupon, Ms. Ross comes forward]

22 THE CLERK OF COURT: Place your left hand on the
23 Bible. Raise your right hand.

24 [Whereupon, Ms. Ross is duly sworn by the clerk
25 of court as follows: do you solemnly swear or affirm

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1 the evidence you're about to give the Court in this
2 case will be the truth, the whole truth, and nothing
3 but the truth, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Okay. Please be seated.
6 [Whereupon, Ms. Ross takes the witness stand]

7 THE CLERK OF COURT: State your full name.
8 Spell your last name for the Court, please.

9 THE WITNESS: Nancy Sue Ross. R-O-S-S.

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Testimony of Nancy S. Ross
Direct Examination by Ms. Livesay
March 12, 2014

1 NANCY S. ROSS,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. LIVESAY:

6 Q. Ms. Ross, if you don't mind, tell the jury how
7 old you are.

8 A. Sixty-six.

9 Q. And where are you currently living?

10 A. In Planter's Creek, Myrtle Beach, on Ashepoo
11 Creek Drive.

12 Q. And how long have you been living there?

13 A. Three years.

14 Q. And do you live there alone, or who else lives
15 there with you?

16 A. I'm alone.

17 Q. I'm going to show you what's been marked as
18 State's Exhibit 2, 3 and 4. If you don't mind, tell the
19 Court if you recognize those pictures.

20 A. Yes, I do.

21 Q. Go ahead and look through all of them, just to
22 make sure.

23 [Whereupon, the witness reviews documents]

24 A. Yes.

25 Q. [Ms. Livesay] And what are those pictures of?

Testimony of Nancy S. Ross
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March 12, 2014

1 A. Front of my house, the street going up to my
2 house, and an inside shot of sliding-glass doors out my
3 back.

4 MS. LIVESAY: Your Honor, at this time can the
5 State introduce State's Exhibit 2, 3 and 4 into
6 evidence?

7 THE COURT: Mr. Long, do you have any objection
8 to the photographs that this witness is holding?

9 MR. LONG: No, Your Honor.

10 THE COURT: All right. Without objection.

11 MS. LIVESAY: Thank you, Your Honor.

12 THE COURT: 1, 2 and -- or 2, 3 and 4. Why did
13 I --

14 MS. LIVESAY: Yes, sir. Just 2, 3 and 4.

15 THE COURT: All right.

16 [Whereupon, State's Exhibit Number 2 is admitted
17 into evidence by the Court]

18 [Whereupon, State's Exhibit Number 3 is admitted
19 into evidence by the Court]

20 [Whereupon, State's Exhibit Number 4 is admitted
21 into evidence by the Court]

22 [Whereupon, the witness proffers documents to
23 Ms. Livesay]

24 MS. LIVESAY: Thank you.

25 Q. [Ms. Livesay] Now, if you mind -- if you don't

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1 mind, before I show the pictures to the jury, describe
2 that little area you live in, that little neighborhood.

3 A. There's one entrance off of a main road and all
4 the other streets end in a cul-de-sac.

5 Q. Okay. Now --

6 A. And there's maybe a hundred houses.

7 Q. Okay. Now, where your house is, is that on a
8 cul-de-sac type road?

9 A. Yes.

10 Q. Okay. And you've lived there for how long,
11 again?

12 A. About three years.

13 Q. Now, if you don't mind, I'm going to publish
14 this picture to the jury: This is State's Evidence Number
15 2. Is this your house?

16 A. Yes.

17 Q. And this was your house last year when you
18 contacted the police?

19 A. Yes.

20 Q. Now, if you don't mind, tell the jury why you
21 contacted the police on or around March 25th of 2013.

22 A. Shall I start at the beginning when --

23 Q. Yes, ma'am.

24 A. -- I first got up?

25 Q. Yes, ma'am.

Testimony of Nancy S. Ross
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1 A. Okay. I got up a little late that morning. And
2 my master bathroom is on the front of the house and I
3 usually open the blinds and look out. And I saw a car
4 parked out front that was unfamiliar to me, and that's
5 kind of odd because everybody has driveways and garages
6 and it didn't look like a construction truck or something,
7 so I took note.

8 And do I go -- shall I go on?

9 Q. Yes, please.

10 A. I saw a woman in the driver's seat with big,
11 curly, dark hair. And I saw two gentlemen get out of the
12 car and head towards my neighbor to the left, towards
13 their driveway. And I became concerned at that point
14 because usually we don't have people in the neighborhood
15 that -- you know, that don't live there. We don't have
16 solicitors.

17 So I went back to my bedroom and got my cell
18 phone. And then they came to my door. And I was looking
19 through the other bathroom window and I saw somebody come
20 to the door. I didn't let anybody see that I was home.
21 And they rang the doorbell several times. And, of course,
22 I'm not going to answer the door. I'm home alone. And at
23 that point I was on the phone with 911 saying, you know, I
24 had concerns, that I didn't think these people belonged,
25 you know, at my house.

Testimony of Nancy S. Ross
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March 12, 2014

1 Q. Now, what did they do after -- and there were
2 two men; is that correct?

3 A. Correct.

4 Q. Okay. So did you get a good look at them?

5 A. Yes.

6 Q. Okay. If you don't mind, describe the two men
7 you saw that day.

8 A. Okay. They were both African American. One was
9 taller, had on a gray sweatshirt with a hood, zip up the
10 front. That's what I noticed. The other was a little
11 shorter, stockier, and he had the same type of sweatshirt
12 but it was a plaid red and gray, so it was very
13 distinctive.

14 Q. Okay. Now, could you see the woman driver?

15 A. I saw from the shoulders up.

16 Q. Okay. And describe her.

17 A. She looked like a darker complexion person. I
18 wasn't sure of the nationality. But she had big, curled,
19 dark hair, long dark hair.

20 Q. And after you see them and they're ringing the
21 doorbell, you contact the police?

22 A. Yes.

23 Q. Okay. Where did they go after they ring the
24 doorbell?

25 A. Okay. There's a little hallway where I could

Testimony of Nancy S. Ross
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1 sort of peep around the corner by my door. And I was on
2 the phone and I peeked around the corner and I saw I
3 assume this gentleman at my back door. And then I heard
4 the door try to be opened. And I was very frightened at
5 that point so on 911 I said, you need to get here now,
6 they're trying to get in my house. So I heard that noise.

7 Q. Now, how many men were at the back of your
8 house? One or two?

9 A. Two.

10 Q. Okay. And what were each of them doing?

11 A. The taller one was at -- came up on the deck to
12 my back slider door, that's the taller one, tried to open
13 that door.

14 The shorter one came around after him, looked,
15 came up -- I have a screen porch next to the deck, also in
16 the back. That -- the screen door is not locked. So he
17 came in there on the screen porch, looked through that
18 window of those doors, then went out. And I have another
19 room off the side of the garage. He looked in that slider
20 door. And then they both left the back and went around
21 front.

22 Q. So both, without a doubt, were looking in the
23 house and looking for an open window or open --

24 MR. LONG: Objection. Leading, Your Honor.

25 THE COURT: That is a leading question. Please

Testimony of Nancy S. Ross
Direct Examination by Ms. Livesay
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1 rephrase your question. Ask her what she thought they
2 were doing.

3 MS. LIVESAY: Thank you, Your Honor.

4 Q. [Ms. Livesay] And is this the picture of your
5 neighborhood?

6 A. Yes.

7 Q. And could you point out where the car was?

8 MS. LIVESAY: I'm sorry. Your Honor, could I
9 ask her to step down?

10 THE COURT: Certainly.

11 MS. LIVESAY: Thank you. Just because it's a
12 small picture.

13 [Whereupon, the witness complies]

14 MS. LIVESAY: I'm showing now what's been marked
15 as State's Evidence Number 3.

16 Just come right here in front of the microphone.

17 Q. [Ms. Livesay] If you don't mind, show the jury
18 where you saw the car.

19 A. This is my house. The car was parked right back
20 here. My driveway is over here. The car was parked
21 almost straight out in front of my house, to the right a
22 little bit, as I looked out my window. It was sort of
23 between me and the next house.

24 Q. Okay. I'm showing the jury now what's been
25 marked as State's Evidence Number 4. Tell the jury what

Testimony of Nancy S. Ross
Direct Examination by Ms. Livesay
March 12, 2014

1 that's a picture of.

2 A. This is the back slider doors from my family
3 room off to the deck. This is where I saw the person
4 standing right here and tried to open the door.

5 Q. Now, is this exactly how it looked on the day,
6 March 25th?

7 A. Yes.

8 Q. Okay. So you had both -- all these doors were
9 just glass doors you could see through?

10 A. Correct.

11 MS. LIVESAY: Thank you, Ms. Ross. Just have a
12 seat.

13 [Whereupon, the witness retakes the witness
14 stand]

15 Q. [Ms. Livesay] So you called the police.
16 Eventually they leave. Is that right?

17 A. Who leaves?

18 Q. The two black men that were trying to get in
19 your house.

20 A. Right.

21 As I was on the phone with them saying hurry,
22 please, they walked around to the front, got into the car,
23 and left. So then I said, well, they're leaving now. And
24 I walked out my front door to try and get a better look at
25 the car, maybe get a driver's license number, and they

Testimony of Nancy S. Ross
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1 drove away.

2 Q. And how would you describe the vehicle they were
3 in?

4 A. It was a silver four-door sedan type car

5 Q. Okay. Now, did the police still come?

6 A. Yes, they did, in a couple of minutes.

7 Q. Tell the jury what happened once the police got
8 there.

9 A. Okay. The police officer came and I told him
10 what happened. And he had me writing my report. And he
11 was talking to me. And you saw the sort of an open-style
12 family room. I could look out the front while we were
13 sitting at the kitchen counter and I said, that's the car.
14 I saw the car. And people just don't come down there for
15 any reason. And the police officer looked at me and I
16 said, yes, that really is the car, go get them. So he got
17 up and got in his car and went -- followed them.

18 Q. Okay. Now, when you saw the car that second
19 time come back through, could you tell who was in the car
20 then?

21 A. I didn't really notice. You know, I saw people
22 in the car but --

23 Q. Okay. You just knew that was the same car?

24 A. Yeah.

25 Q. And did the officer then run after that vehicle?

Testimony of Nancy S. Ross
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March 12, 2014

1 A. Yes.

2 Q. Okay. Now, I'm going to show you your statement
3 that you gave on that day. Is that your statement?

4 A. Yes.

5 Q. Has it been altered in any form or fashion?

6 A. No.

7 Q. Do you mind breezing through it really quickly
8 to refresh your memory?

9 A. Okay. Read? Or read out loud?

10 Q. Just silently to yourself, please.

11 A. Okay.

12 [Whereupon, the witness reviews documents]

13 A. Okay.

14 Q. [Ms. Livesay] And that statement is the one you
15 gave on the day in question?

16 A. Yes.

17 Q. Okay. Is there anything in that statement that
18 you didn't tell this jury today?

19 A. I don't know if we mentioned the woman driving.
20 The person driving was the woman. But other than that,
21 it's the same.

22 [Whereupon, Mr. Long review documents].

23 MR. LONG: State's Exhibit Number 1, Your Honor,
24 when it's offered, without objection.

25 THE COURT: All right.

Testimony of Nancy S. Ross
Direct Examination by Ms. Livesay
March 12, 2014

1 MS. LIVESAY: Thank you, Your Honor.

2 At this time, I'm going to ask to place it in
3 evidence as State's Evidence Number 1 and publish it
4 to the jury.

5 THE COURT: Certainly.

6 MS. LIVESAY: Thank you.

7 [Whereupon, State's Exhibit Number 1 is admitted
8 into evidence by the Court]

9 THE COURT: Bobby, assist her with that easel.
10 She may need it.

11 Do you need the easel?

12 MS. LIVESAY: Yes, sir.

13 THE COURT: The bailiff will get it for you.

14 MS. LIVESAY: Actually, I can hold it, Bobby.
15 Thank you. I'll hold it.

16 I'm going to ask her to get down, if you don't
17 mind, and show the jury where your house is.

18 [Whereupon, the witness complies]

19 A. [Witness indicates]

20 THE COURT: If anyone on the jury can't see,
21 just let us know. We'll move everybody around so that
22 you can.

23 Q. [Ms. Livesay] Is this your neighborhood?

24 A. Yeah. This is an aerial view of my
25 neighborhood.

Testimony of Nancy S. Ross
Direct Examination by Ms. Livesay
March 12, 2014

1 Q. And if you don't mind, show the jury where your
2 house is.

3 A. Okay. Well, this is an older view, so my house
4 is -- okay. This is my lot where my house was built a
5 couple of years ago. Between these two.

6 Q. Now, is this cul-de-sac accurate as to how it
7 looks today?

8 A. Yes.

9 Q. So there's nothing that's different about that?

10 A. Not other than my house and another house across
11 the street.

12 Q. Okay. Now, if you don't mind, just briefly show
13 me how you get back onto this main road over here.
14 Because this is the entire neighborhood; is that correct?

15 A. Right. And this is the only exit.

16 Q. So there's only one way in and one way out?

17 A. One way out of the neighborhood.

18 So I would just come around here, take a right,
19 and then hit to the main road. And everybody that lives
20 over here comes out this one road.

21 MS. LIVESAY: Okay. Thank you, Ms. Ross. If
22 you don't mind, have another -- have a seat.

23 [Whereupon, the witness retakes the witness
24 stand]

25 Q. [Ms. Livesay] Now, you remember what the people

Testimony of Nancy S. Ross
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1 looked like that came into your house; is that correct?

2 A. Uh-huh. I remember what they were wearing, and
3 their stature, and their origin, national origin.

4 MS. LIVESAY: Okay. No further questions, Your
5 Honor.

6 THE COURT: Mr. Long?

7 MR. LONG: Thank you, Your Honor.

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Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

CROSS-EXAMINATION

1

2

BY MR. LONG:

3

Q. Ms. Ross, how long was the police officer at your home, total, would you estimate?

4

5

A. Estimate? Before he left? Before the car came back and he left?

6

7

Q. Yes, ma'am.

8

A. It was probably five or ten minutes.

9

Q. Okay. And that was time for you to explain to him what had happened, what you saw, things of that nature?

10

11

12

A. Right.

13

Q. All right. And were you in the process of writing your written statement with him at the time when he went to chase, or was this given by you at a later date?

14

15

16

17

A. I was in the process of writing it.

18

Q. And do you remember where it was when -- how far you had gotten with it when you said, wait, that's the car?

19

20

21

A. I can't remember that.

22

Q. Okay. Now, your neighbor's house I believe from the photo looked like it's not right next to your house. There is some space in between. Is that correct?

23

24

25

A. Correct.

Testimony of Nancy Ross
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March 12, 2014

1 Q. Would you estimate that to be about as far apart
2 as we are now, the alleyway or whatever you want to call
3 it, between the houses?

4 A. The house to my left?

5 Q. The house that you said you saw them go to a
6 front door.

7 A. Go to first? That's the house to my left. My
8 driveway and their driveway would probably be a little --
9 like from here to that [indicates] wall.

10 Q. Okay. And so the space between the houses would
11 be about the same?

12 A. About, yeah. They're angled, so it changes.

13 Q. Okay. Now, was anybody home, to the best of
14 your knowledge, at your neighbor's house?

15 A. Yes. I spoke to her afterwards.

16 Q. Was there a car in the driveway of that home?

17 A. I know there's a truck.

18 Q. So there was a truck in the driveway; is that
19 correct?

20 A. Uh-huh.

21 Q. What about your driveway? Do you park in the
22 driveway or do you park in a garage?

23 A. In the garage.

24 Q. So there would have been no car in your
25 driveway?

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

1 A. Correct.

2 Q. All right. And you said they went to the other
3 house first and knocked on the door; is that correct?

4 A. I saw them. Once they go past the driveway, I
5 don't --

6 Q. They went up to the door?

7 A. I can't see their door because of bushes. But I
8 saw them go that way.

9 Q. All right. They approached the house as if they
10 were going to the front door to knock --

11 A. Correct.

12 Q. -- on the door?

13 A. Yes.

14 Q. And I don't want to put words in your mouth, I
15 promise you. But how was their body posture when they
16 were walking to the front door? Were they walking as
17 anybody else would in a mall, or were they crouching and
18 creeping? What were they doing?

19 A. They were walking as you would normally expect.

20 Q. So it didn't appear from their outward
21 appearance that they were trying to hide anything; is that
22 correct?

23 A. I suppose you could say that, right.

24 Q. And then when they left that home, then they
25 came straight to your front door; is that correct?

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

1 A. Yes.

2 Q. All right. And they came straight to your front
3 door and knocked on the door; correct?

4 A. And rang the doorbell.

5 Q. Okay. Rang the doorbell and knocked on the door
6 to announce, or whatever, there's somebody at the front
7 door; correct?

8 A. Yes.

9 Q. You didn't see them peeping in windows or
10 peering in windows or trying to look in the front door or
11 the front-door windows; correct?

12 A. My front-door windows are pretty high --

13 Q. Okay. But you didn't --

14 A. -- so you can't see.

15 Q. -- see anybody prowling around on your front
16 door trying to see in the windows or door?

17 A. No. The blinds were shut, so --

18 Q. Now, the car, the silver car, was parked in the
19 road or off the road near the front of your house?

20 A. On the road. Not in the grass.

21 Q. Okay. Between your house and your neighbor to
22 the left?

23 A. My neighbor to the right, if I look out my front
24 door.

25 Q. All right. So then as they parked to your

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

1 neighbor [phonetic], closer in front of your neighbor to
2 the right side, they walked across your front yard, to
3 your neighbor to your left's door, and rang the doorbell
4 or knocked on the door or whatever they did there; is that
5 correct?

6 A. I wouldn't necessarily say their car was closer
7 to my neighbor to my right. It was in front of my house
8 to the right side of my property.

9 Q. Okay. So --

10 A. But they did walk -- I was assuming they were
11 going to come to my door, because they walked past the
12 front part of my property and kept going.

13 Q. And the neighbor's house had a truck in the
14 driveway?

15 A. Yes.

16 Q. Now, then after the doorbell or knocking on the
17 door, whatever, I believe you told the officer or wrote in
18 your statement that, they were at the back of my house; is
19 that correct? Meaning both of them --

20 A. Yes.

21 Q. -- is that correct?

22 Okay. And one tried to grab the back slider
23 door or tried to open the back slider door and the other
24 was peering in a window?

25 A. Yes.

Testimony of Nancy Ross
Cross-Examination by Mr. Long
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1 Q. All right. Now, I understand your predicament
2 and I would be hiding, also. Did they possibly see you in
3 the house?

4 A. Not that I know of. I was peeking around a
5 corner in the hallway.

6 Q. And you were making sure that you weren't seen;
7 is that correct?

8 A. I was -- yes. I was very scared.

9 Q. I understand. I understand.

10 So as far as whoever was out there, this
11 appeared to be in all aspects an unoccupied home; is that
12 correct? No car in the driveway, nobody answered the
13 door, somebody is peeking in the window in the back,
14 nobody they could see in the house. It appeared to be
15 unoccupied; is that correct?

16 A. I would think that's what someone would think.

17 Q. How long were you on the phone with the 911
18 operator? Estimate. I'm not --

19 A. Yes, estimate.

20 Q. -- trying to pinpoint you.

21 A. Five minutes or so. A little more.

22 Q. All right. And were you on the phone
23 continuously with 911 until the officer pulled up and then
24 you said, he's here, and hung up?

25 A. I don't recall. It was very close in time.

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

1 Q. So shortly after the arrival of the officer was
2 when you would have disconnected the 911?

3 A. Right. Either before or after.

4 Q. How much of what you've testified here today did
5 you tell the 911 operator? Everything, pretty much?
6 What's happening, what's going on, things of that nature?

7 A. Yes. Mainly, that there were men trying to get
8 in my door.

9 Q. All right. But was that as short and sweet and
10 you put it, or did you expound the same way you have here
11 today?

12 A. I didn't describe the clothes that they had on
13 but I described, you know, that there were two men and
14 they were looking through my window. And then I said, oh,
15 no, I hear a noise, they're -- he's trying to open my
16 door, please get here quickly.

17 Q. Now, from the time they left your neighbor's
18 home and came to your front door, could you tell if the
19 driver of the vehicle and those two men had -- having
20 conversation? Yelling at each other, or talking to each
21 other, anything of that nature? Did you see that?

22 A. I don't recall that.

23 Q. You don't recall it.

24 Do you -- were you -- did you have an
25 opportunity to see it if it occurred, or did you just not

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

1 simply have a view or opportunity to see it?

2 A. As I recall, they just came right from the other
3 house to my house. They didn't go back to the car. I
4 know that.

5 Q. I understand they didn't go back to the car.
6 But could you tell if they were communicating with each
7 other in any way?

8 A. No.

9 Q. You said one was taller and had a gray hoodie
10 and he was the one who did what at the back?

11 A. Tried to open my slider door.

12 Q. Okay. Does your slider door have a bar as well
13 as a latch on it?

14 A. Just a latch.

15 Q. Okay. And the other with the plaid hoodie was
16 looking in the door or in a window near the door?

17 A. He came -- he went in my screen porch, which is
18 next to the slider, and looked through -- those are French
19 doors with full glass, and he looked through there.

20 Again, I'm in the hallway peeping around the
21 corner so I could see them but the person looking in the
22 window would be looking straight ahead --

23 Q. Understood.

24 A. -- couldn't see around the corner.

25 MR. LONG: The Court's indulgence just one

Testimony of Nancy Ross
Cross-Examination by Mr. Long
March 12, 2014

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moment.

[Whereupon, Mr. Long and Mr. Coleman confer]

MR. LONG: Thank you, ma'am. No further
questions.

MS. LIVESAY: Just a few, Your Honor.

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Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

REDIRECT EXAMINATION

1

2

BY MS. LIVESAY:

3

Q. Ms. Ross, how long have you been living in that house again?

4

5

A. About three years.

6

Q. About three years.

7

How many times have you called the police since you've been living in that house?

8

9

MR. LONG: Objection. Irrelevant, Your Honor.

10

MS. LIVESAY: Your Honor, the question is regarding whether or not they were prowling or lurking around the house.

11

12

13

THE COURT: I'll let her ask the question.

14

Q. [Ms. Livesay] How many times have you called the police since you moved in that house?

15

16

A. None. Just that one time. That time. That day.

17

18

Q. Okay. So in three years, you've called the police one time?

19

20

A. Correct.

21

Q. And that was about the two guys that were ringing the doorbell and jiggling your back door; is that correct?

22

23

24

A. Correct. Yes.

25

Q. Okay. So you may not have used the word prowl

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

1 or sneak, but you were concerned enough to call the
2 police?

3 A. Yes.

4 Q. Okay. Now, there was a question about whether
5 or not someone could assume the house was unoccupied. Do
6 you remember Mr. Long asking you that question?

7 A. Yes.

8 Q. I'm going to show you -- there was one more
9 picture, I believe, I had of this house.

10 MS. LIVESAY: Now, if you don't mind -- do you
11 mind stepping down for just one second?

12 [Whereupon, the witness complies]

13 Q. [Ms. Livesay] I'm showing you what has been
14 marked as State's Evidence Number 2. Now, I want -- and
15 this is your house; is that correct?

16 A. Yes.

17 Q. Okay. Now, looking just at the yard, this is
18 your landscaped yard?

19 A. Yes.

20 Q. Would you say that that yard looks like somebody
21 keeps it up, or nobody has been in that house for three
22 years?

23 A. Oh. It's regularly mowed and mulched.

24 Q. It looks well-manicured; wouldn't you say?

25 A. I would say.

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

1 Q. Okay. Would you expect a house that nobody
2 lives in to have a well-manicured yard that looks like
3 this one?

4 A. No.

5 MS. LIVESAY: Okay. Have a seat, Ms. Ross.

6 [Whereupon, the witness retakes the witness
7 stand]

8 Q. [Ms. Livesay] Now, I'm going to show you one
9 more picture. I'm going to show this to the jury. This
10 is State's Evidence Number 4. Do you recognize that?

11 A. Yes.

12 Q. What is that?

13 A. That's my family room.

14 Q. Okay. And if you don't mind, describe what
15 furniture is inside that family room.

16 A. Two sofas and a chair and a lamp and some end
17 tables.

18 Q. Okay. Does that room look like it would be
19 unoccupied? an unoccupied house?

20 A. I don't think so. It's got a TV remote and a
21 box of tissues.

22 Q. Okay. So it looks like somebody's in that room
23 fairly regularly?

24 A. Yes.

25 Q. Okay. Now, is that what it looked like on the

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

1 day in question?

2 A. Yes.

3 Q. Now, were the curtains open just like that on
4 March 25th?

5 A. Yes.

6 Q. Okay. So when you looked in there, you saw all
7 this furniture; is that correct?

8 A. Yes.

9 Q. So you didn't have to jiggle the knob to see
10 whether or not it was occupied? Would you say that was a
11 correct statement?

12 A. You're saying if somebody looked through the
13 window?

14 Q. Right.

15 A. Right.

16 Q. Okay. So you would be able to look in and see
17 there's furniture in there; is that correct?

18 A. Yes.

19 Q. Okay. Now, let me ask you one more question
20 because we were talking about you just kind of remember
21 what the person was wearing and general statute.

22 A. Yes.

23 Q. Because you were -- how were you feeling when
24 all of this was going on?

25 A. I was very nervous because I was alone and

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

1 somebody's trying to get in my door.

2 Q. Okay. But you were able to describe them to the
3 police and in your written statement?

4 A. Yes. Because I know that that's important to be
5 able to give a description.

6 Q. Okay. And, in fact, you went out and tried to
7 get the license plate?

8 A. Yes, I did.

9 Q. And you were that concerned?

10 A. Yes.

11 Q. Okay. Now, do you see the defendant sitting on
12 this table -- at this table with Mr. Long?

13 A. I do.

14 Q. Okay. Have you -- do you know him?

15 A. No.

16 Q. Okay. Have you talked to him since March the
17 25th?

18 A. No.

19 Q. Would he have any business being around your
20 house?

21 A. No.

22 Q. Looking in the windows?

23 A. No.

24 Q. Jiggling the doorknob?

25 A. No.

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

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

2 MR. LONG: One more, Your Honor.

3 THE COURT: You may step down.

4 MR. LONG: One more, Your Honor.

5 THE COURT: Okay. I'm sorry.

6 MR. LONG: I'm sorry. I meant to ask you -- or
7 tell you, first off, you have a very beautiful home.
8 I saw it in the photographs. It's very nice. I'm
9 sorry you had to go through all this.

10 THE COURT: All right. Step down.

11 MR. DEBUSK: Your Honor, may Ms. Ross be excused
12 from her subpoena so she can resume her daily
13 activities?

14 MR. LONG: No objection.

15 THE COURT: Without objection, she's excused.

16 MR. DEBUSK: Thank you.

17 [Whereupon, Ms. Ross is excused and exits the
18 witness stand]

19 MS. LIVESAY: Your Honor, at this time the State
20 is going to call Susan Marotte to the stand.

21 [Whereupon, Ms. Marotte comes forward]

22 THE CLERK OF COURT: Please raise your right
23 hand. Put your left hand on the Bible, please. Raise
24 your right hand. Put your --

25 [Whereupon, Ms. Marotte is duly sworn by the

Testimony of Nancy Ross
Redirect Examination by Ms. Livesay
March 12, 2014

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clerk of court as follows: do you solemnly swear or
affirm the evidence you're about to give the Court in
this case will be the truth, the whole truth, and
nothing but the truth, so help you God]

THE WITNESS: I do.

THE COURT: Okay. Just have a seat.

THE WITNESS: All right.

[Whereupon, Ms. Marotte takes the witness stand]

THE CLERK OF COURT: State your full name.

Spell your last name for the State, please.

THE WITNESS: Susan Marotte. M-A-R-O-T-T-E.

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Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 SUSAN MAROTTE,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. LIVESAY:

6 Q. Ms. Marotte, if you don't mind, tell the jury
7 how old you are.

8 A. I'm fifty years old --

9 Q. And do you --

10 A. -- but I do --

11 Q. That's probably the hardest question I've got
12 for you.

13 A. It will be.

14 Q. Now, where are you currently living?

15 A. Myrtle Beach.

16 Q. Okay. And what's your address? Is it the same
17 as it was --

18 A. Yes.

19 Q. -- March 25th?

20 A. Yeah. Yes.

21 Q. So you're living in that same house?

22 A. That's correct.

23 Q. Okay. And I'm going to show you what's been
24 marked as State's Number 5 and 6.

25 A. Uh-huh.

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 Q. If you don't mind, tell the Court if you
2 recognize that picture.

3 A. I sure do.

4 Q. Is that -- what is that a picture of?

5 A. That's a picture of my house and my vehicles.

6 THE COURT: Okay. Your Honor, at this time I'm
7 going to ask to place State's Exhibit Number 5 into
8 evidence.

9 MR. LONG: Without objection, Your Honor.

10 THE COURT: Without objection.

11 [Whereupon, State's Exhibit Number 5 is admitted
12 into evidence by the Court]

13 Q. [Ms. Livesay] And how about this, which has
14 been marked State's Exhibit Number 6?

15 A. That's correct. Those are my house -- that's my
16 house --

17 Q. And that's accurate what it looks like now?

18 A. It looks the same.

19 Q. Okay. And the same as it looked March 25th?

20 A. Well, yes. The grass is dead, so it probably
21 looks the same about now.

22 MS. LIVESAY: Okay. At this time, I'm going to
23 ask to put State's Exhibit Number 6 into evidence.

24 MR. LONG: No objection, Your Honor.

25 THE COURT: Without objection.

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 [Whereupon, State's Exhibit Number 6 is admitted
2 into evidence by the Court]

3 Q. [Ms. Livesay] Now, about how long have you
4 lived at that residence?

5 A. Two years.

6 Q. And who all lives in that residence with you?

7 A. My husband and my children.

8 Q. Okay. And since you've been living at that
9 residence, have you had to call the police regarding a
10 burglary?

11 A. No.

12 Q. Okay. Have you had to call the police about
13 somebody breaking into your home?

14 A. You mean the day of the accident --

15 Q. Right.

16 A. -- I mean, of the crime?

17 Q. I'm sorry --

18 A. I'm sorry. I didn't hear you. What were you
19 saying?

20 Q. Have you ever had to call the police because you
21 came home and your house had been broken into?

22 A. Yes. That day it was broken into.

23 Q. I'm sorry. I should have --

24 A. That's okay. I didn't understand.

25 Q. -- used that instead of the word burglary.

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 Tell the jury what you saw that day when you
2 came home.

3 A. Well, when I came in, the dog looked out of
4 sorts and I was concerned about the dog. And he never
5 went to the bathroom in the house, so I was kind of
6 concerned and I was a little angry. And then I saw that
7 there was a cigarette burn on my rug and that the window
8 looked ajarred and the alarm was tripped.

9 Q. Okay. So you saw a cigarette burn on the rug?

10 A. Yes, ma'am.

11 Q. Okay. And there was mud on the floor?

12 A. Uh-huh. Yes. Yes.

13 Q. Okay. And none of that was there when you left
14 the house?

15 A. Prior to, no.

16 Q. Do you remember what kind of cigarette it was?

17 A. Yeah. I believe it was Newport. I don't smoke,
18 but I think it was Newport.

19 Q. Okay. And was anything missing from the house?

20 A. Yes. Jewelry and jewelry boxes and a camera.

21 Q. Okay. And were you able to determine how they
22 got in the house?

23 A. Yes.

24 Q. Tell the jury how they got in the house.

25 A. They got in through the window in the bedroom.

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 Q. Now, did anybody have permission to come in your
2 house that day?

3 A. No.

4 Q. Did anybody have permission to take anything
5 from your house --

6 A. No, ma'am.

7 Q. -- that day?

8 A. No.

9 Q. Okay. Now, were there any cars in the driveway
10 that day?

11 A. I don't believe so.

12 Q. Now, I'm going to show the jury what's been
13 marked as State's Exhibit Number 5. That's a picture of
14 your house?

15 A. Uh-huh.

16 Q. Okay. What is that right here on the driveway?

17 A. Basketball court.

18 Q. Okay. And is this about how the yard looked on
19 that day?

20 A. Probably. It's pretty similar in time. I
21 believe so.

22 Q. Okay. So you guys keep your yard pretty
23 manicured?

24 A. Yes. I do it myself.

25 Q. Okay. And was this basketball goal up that day?

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 A. No. That's recent, so you must have took that
2 picture fairly recent.

3 Q. Okay. But everything else looks the same?

4 A. Correct.

5 Q. Okay. Now, did you call the police?

6 A. Yes. After I saw that I was broke into, I did.

7 Q. Okay. And did you report what was missing from
8 your house?

9 A. Well, my daughter came in a little bit after
10 that. At that time I was actually more upset about my dog
11 than I was about materialistic items. But then when my
12 daughter came in and she was like, mom, they stole
13 everything, I was like, you're right. So then I told the
14 cop everything that they took.

15 Q. Now, were -- any of those items that were
16 missing, were they eventually returned to you?

17 A. They all were.

18 Q. Okay. So they recovered all the missing items,
19 the police did, and returned them to you; is that correct?

20 A. Everything except \$100 that was taken from my
21 daughter. That was her birthday present, and they stole
22 that. But she never -- I don't know if they could
23 distinguish with the money unless you write on it. You
24 know, I'm not sure. But the \$100 was not returned to her.

25 Q. Okay. Now, and correct me if I'm wrong about

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 this. Were there two jewelry boxes stolen from the house?

2 A. Uh-huh.

3 Q. Can you describe what they looked like to the
4 jury?

5 A. Yes.

6 One was a -- I guess had like a skeleton head on
7 it, was my daughters. And the other I think was -- maybe
8 had flowers. I'm not sure. I don't usually go in her
9 room that much.

10 Q. Okay. Now, is your house -- because that
11 picture doesn't show -- is it on a cul-de-sac type road?

12 A. Yes.

13 Q. Okay. So it just -- it's kind of at the end and
14 you have to turn around to get back out?

15 A. On a corner lot.

16 Yes, it is a cul-de-sac. Uh-huh.

17 Q. Okay. Ms. Marotte, do you know this man sitting
18 here?

19 A. No.

20 Q. Have you ever seen him before?

21 A. No.

22 Q. Would he have any reason to be at your house?

23 A. No.

24 Q. Would he have any reason to have any of your
25 jewelry?

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 A. No.

2 [Whereupon, Ms. Livesay and Mr. DeBusk confer]

3 MS. LIVESAY: One more question, Your Honor.

4 One more question, Ms. Marotte, and then I'm
5 going to let Mr. Long ask you some questions.

6 THE WITNESS: You've got water in here. I can
7 go ahead and take this.

8 MS. LIVESAY: If you don't mind, could you step
9 down for one second?

10 THE WITNESS: Do you want me to step down over
11 here?

12 MS. LIVESAY: Yes, ma'am. Please.

13 I'm going to use this picture. If you don't
14 mind, step right here by the microphone so they can
15 hear you.

16 [Whereupon, the witness complies]

17 Q. [Ms. Livesay] Using this picture, show the jury
18 which window was broken into. You can hold it.

19 A. Right here. We put a tree in since that time.

20 Q. If you don't remember, that's fine.

21 A. No. I know it's the window right by the
22 bedroom. It would have to be the end one. I'm sorry. We
23 put a tree in since that time. But it's the end one here
24 that was broken into.

25 MS. LIVESAY: Thank you. Have a seat, if you

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

1 don't mind.

2 [Whereupon, the witness retakes the witness
3 stand]

4 Q. [Ms. Livesay] Now, do you have screens on all
5 your windows?

6 A. Yes, they're screened.

7 Q. Okay. And when you got home, was -- were any of
8 the screens removed off your window?

9 A. It was ajarred.

10 [Whereupon, Ms. Livesay and Mr. DeBusk confer]

11 Q. [Ms. Livesay] Ms. Marotte, I'm going to show
12 you a document regarding the chain of custody.

13 A. Uh-huh.

14 Q. Can you tell me whether or not that's your
15 signature?

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

17 Q. And is that your signature?

18 A. Yes.

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

20 MR. LONG: Thank you, Your Honor.

21 Ms. Marotte, you have a beautiful home, I see
22 from the pictures of the --

23 MS. LIVESAY: I'm sorry. One more thing, Your
24 Honor. And I hate to interrupt Mr. Long.

25 Your Honor, at this time the State wishes to

Testimony of Susan Marotte
Direct Examination by Ms. Livesay
March 12, 2014

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have this marked and placed into evidence.

THE COURT: Tell me what it is. What is it?

MS. LIVESAY: It's the chain of custody document
with --

THE COURT: Mr. Long?

MS. LIVESAY: -- Ms. Marotte's signature on it.

MR. LONG: She didn't prepare it, Your Honor.
She can't place it into evidence. It could be marked
for ID.

THE COURT: I would agree it can be marked for
ID only.

[Whereupon, State's Exhibit Number 13 is marked
by the court reporter]

[Whereupon, State's Exhibit Number 14 is marked
by the court reporter]

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Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

CROSS-EXAMINATION

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BY MR. LONG:

Q. You say you do the outside of the yard and everything?

A. Sometimes, yes, I mow the lawn.

Q. Is the inside of the home, as meticulously well-kept as the outside?

A. Yes, I clean my house.

Q. From looking at the photos, the solicitor asked you if that's how the home appeared on that day. Do you recall whether March 25th of 2013 was accompanied by any rain?

A. I really don't remember if it rained the day prior to or -- you know what I mean -- or the day after.

Q. I believe you testified earlier, and you may have told police officers, that you discovered mud in your house --

A. Uh-huh.

Q. -- correct?

A. That's correct.

But it could be -- grounds could be soft. It doesn't have to rain that day.

Q. But you're a good housekeeper. There wouldn't have been mud from you or your daughter or your husband brought into the house without being cleaned --

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 A. There was --

2 Q. -- is that correct?

3 A. -- no mud in my house prior to me leaving.

4 Q. Understood.

5 So whoever broke into your house and stole
6 jewelry brought the mud in; is that correct?

7 A. Yes.

8 Q. Describe for me, if you will, where the mud was
9 and where it was tracked.

10 A. It was in the bedroom.

11 Q. All right. You said they came in through a
12 bathroom window, or the screen was ajar on the bathroom
13 window and you --

14 A. No. I did not say the bathroom window.

15 Q. Bedroom window?

16 A. Bedroom window.

17 Q. Which bedroom window?

18 A. The master bedroom.

19 Q. And the mud you found was underneath that
20 window?

21 A. It was on the -- it was on the rug. So it was
22 underneath that window, yes, but there's a night stand
23 there so it was a little farther than underneath the
24 window. It was on the rug.

25 Q. Okay. And what type of rug? Carpet?

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 A. Uh-huh.

2 Q. Okay. Shag carpet, low-pile --

3 A. No.

4 Q. -- carpet?

5 A. Low.

6 Q. Low-pile carpet?

7 A. Uh-huh.

8 Q. Similar to what's here --

9 A. Yes, sir.

10 Q. -- in the courtroom?

11 Okay. And was it -- believe me, I've been
12 caught too many times by my wife. Was there distinctive
13 ways that the mud was put down? In other words --

14 A. I have no idea --

15 Q. -- if I come in with tennis shoes --

16 A. -- what you're talking about.

17 Q. -- that have --

18 A. Yeah. I --

19 Q. -- small grooves and I walk in the house with
20 muddy shoes --

21 A. Right.

22 Q. -- my wife will real quickly point out, Honey,
23 those are your shoes, I can tell that it's your shoes,
24 look at the pattern.

25 A. Right. I understand what you're saying. But

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 everyone has to take their shoes off prior to coming into
2 my house. So I really don't know. Were they tennis
3 shoes, where they cleats? I haven't a clue.

4 My concern at the time was about my dog. And
5 then --

6 Q. I understand.

7 A. -- you know, was there mud prints? Yes.

8 The police officer was there. I'm sure they
9 made a note of it.

10 Q. All right. Could you tell, by looking at the
11 mud prints, was it a smudge or a smear on the carpet or
12 was there little pellets of mud --

13 A. I have no idea.

14 Q. -- that were left?

15 A. I have no idea.

16 Q. Did you think it was maybe your dog had had an
17 accident?

18 A. He had the accident in -- not in the bedroom,
19 though.

20 Q. But not there where the mud was on the carpet?

21 A. That's correct.

22 Q. Okay. And, by the way, your dog was not harmed
23 in any way; is that correct?

24 A. I have no idea. I wasn't there. How would I
25 know?

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 Q. Was your dog okay afterwards?

2 A. Well, he --

3 Q. Other than being --

4 A. -- seemed to be. I don't know. Who knows what
5 they could have done to him.

6 Q. Now, you were asked by the solicitor that you
7 didn't -- whether there was any cars in the driveway that
8 day and you said you didn't think so. Which vehicle do
9 you drive?

10 A. I drive several vehicles.

11 Q. Okay. How many vehicles does the family own?

12 A. I don't know. Do I have to tell all my
13 business? I don't mean --

14 Q. No. I just need to know --

15 A. -- to be rude, but I kind of really, you know --

16 Q. I just need a number.

17 THE COURT: Answer the question, please.

18 THE WITNESS: Yeah.

19 A. I don't really know because my daughter's not
20 home at the time. She doesn't live in this state, so she
21 took her car back, so I really don't know.

22 Q. On March 25th of 2013, how many vehicles could
23 have been driven or parked in the driveway of your home?

24 A. I don't remember.

25 Q. All right. Do you drive your own vehicle?

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 A. Uh-huh. Yes, I do.

2 Q. Does your husband drive his own vehicle?

3 A. Yes.

4 Q. All right. Is his vehicle a truck?

5 A. Yes.

6 Q. All right. Does your daughter have her own
7 vehicle?

8 A. Sometimes.

9 Q. Was she living at home at that time?

10 A. I can't remember, because she comes back and
11 forth. You know what I mean?

12 Q. I understand.

13 A. Between college and stuff, they don't -- I
14 don't -- I can't keep track.

15 Q. Do you park cars in the driveway?

16 A. Uh-huh. Yes.

17 Q. All right. Are any cars parked in the garage?

18 A. Yes, they are.

19 Q. All right. How many vehicles are parked in the
20 garage, how many vehicles are left in the driveway?

21 A. It all depends on the weather. It could be some
22 inside, it could be some outside, depending on the
23 weather.

24 Q. Okay. So there would be at least three vehicles
25 that could be parked in the driveway or in the garage --

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 A. Usually two. Usually two.

2 Q. Usually two?

3 A. Uh-huh.

4 Q. Where was the cigarette burn that you said was
5 on the rug?

6 A. That was in the bedroom.

7 Q. In the bedroom, also?

8 A. In the master bedroom. Uh-huh.

9 Q. The master bedroom?

10 A. That's correct.

11 Q. Was there anything missing out of the master
12 bedroom?

13 A. Yes.

14 There was -- my jewelry was missing out of there
15 in the master. And in the bathroom I had some.

16 Q. And then your daughter's jewelry?

17 A. Yes.

18 Q. Was there any mud from the master bedroom into
19 the bathroom or into your daughter's room?

20 A. You know, I can't recall from back then. I
21 don't remember. You know, I was a little too upset so I
22 really can't remember then.

23 Q. Did you call a housekeeper to come clean it up
24 or did you clean it up yourself?

25 A. I clean my own house.

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 Q. Okay. And you don't recall whether --

2 A. I can't remember --

3 Q. -- how far it was tracked?

4 A. -- that far back, to be honest with you.

5 Q. What time of day was it, approximately, when you
6 discovered that your home had been broken into?

7 A. I believe it was like mid afternoon.

8 Q. Roughly at three o'clock?

9 A. I don't -- I can't recall. It's so long ago. I
10 kind of put it out of my head.

11 Q. What was your work schedule at that time? Were
12 you working outside the home?

13 A. Yes.

14 Q. And what were your work hours?

15 A. It varies sometimes. It depends on my needs.
16 As needed, you know.

17 Q. Where were you working?

18 A. I was in-home with a resident.

19 Q. I'm sorry?

20 A. I was working in a person's home. I'm a med
21 tech, so I was taking -- yeah. So it depends on the
22 needs, if they need more -- you know, whatever. Uh-huh.

23 Q. Which is why your hours are flexible, I guess?

24 A. Yes.

25 Q. All right. So you think it was mid afternoon

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 when you got home?

2 A. Uh-huh.

3 Q. And when you went in the house, you said you
4 noticed the door was ajar or open or something?

5 A. I said the window was ajarred.

6 Q. Okay. How long did it take you before you
7 discovered the window?

8 A. Well, first I was looking at the dog, so a
9 couple minutes after that.

10 Q. How long, then, after that, was it when your
11 daughter came home?

12 A. She came home after the bus, so probably -- I
13 don't know. It could have been like forty minutes. I
14 don't know.

15 Q. All right. And then after --

16 A. It could have been later than that.

17 Q. -- she reported items missing was then when you
18 found out that you had items missing?

19 A. Uh-huh. Well, I knew -- you know, I just
20 couldn't think at that moment, you know.

21 Q. Understood.

22 And then how long was it after that when you
23 called the police?

24 A. No. The police were there already.

25 Q. They were there already?

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1. A. Yes.

2 Q. The police were there. When did you call
3 police?

4 A. When I realized the house was broke into. I
5 can't give you a time. I can't remember --

6 Q. Understood.

7 A. -- a year ago. You know --

8 Q. I just want --

9 A. -- I don't remember what --

10 Q. -- some idea of how long --

11 A. -- I did yesterday, sir.

12 Q. -- it took.

13 A. I can't remember a year ago what time I called
14 them.

15 Wouldn't that be on the police report? no? what
16 time I called them?

17 Q. I'm asking you.

18 A. No, I'm just wondering.

19 If you needed a time, I think the police might
20 have wrote it down, though, just in case.

21 Q. I'm asking you what time --

22 A. I don't remember, but --

23 Q. -- do you recall --

24 A. -- I'm saying it might have been on the police
25 report so in case you need that time. Okay.

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 Q. How long after you discovered the dog, okay, do
2 you think it was before you called the police?

3 A. Probably about five, ten minutes after that.

4 Q. Okay.

5 A. Uh-huh.

6 Q. Checking to make sure the dog is okay first?

7 A. Yeah. That was my concern.

8 Q. Then called the police about it?

9 A. That's correct.

10 Q. How long did it take for the police to respond?

11 A. The police came fairly quickly.

12 Q. Did you have conversation -- did you call 911 or
13 did you call Horry County police? Who did you call?

14 A. I don't know. I don't believe I called 911. I
15 don't think so. I think I called Horry County police. I
16 don't remember, though.

17 Q. Were you given any information about that when
18 you called them? Did they seem to know anything about it?

19 A. About what?

20 Q. About your home being burglarized? When you
21 called them.

22 A. I don't -- I don't know about having a
23 conversation with them. I just told them that my -- you
24 know, my house was robbed. And someone came over.

25 Q. When the officer came to your home, did he seem

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 to know, or did he suggest, that they had people in
2 custody for it?

3 A. I don't remember. You know, I can't really
4 think back that far, so --

5 Q. When did you first find out that there were
6 arrests made concerning the burglary of your home?

7 A. I don't know. Sometimes we get like a voicemail
8 and it would come on the voicemail on my house. That's
9 how I know that people got arrested. They would leave an
10 Horry County voice mail. So I would know then, like if
11 they were let out.

12 Q. Any idea if it was that day, the next day? Do
13 you have any idea how long it was --

14 A. I don't know.

15 Q. -- before you --

16 A. I don't know.

17 Q. -- found out?

18 A. I don't remember.

19 MR. LONG: Court's indulgence just one moment.

20 [Whereupon, Mr. Long and Mr. Coleman confer]

21 MR. LONG: Thank you, ma'am. No further
22 questions.

23 THE WITNESS: Good.

24 THE COURT: Ms. Livesay?

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

Testimony of Susan Marotte
Cross-Examination by Mr. Long
March 12, 2014

1 THE COURT: You may step down.

2 MR. DEBUSK: May Ms. Marotte be excused from her
3 subpoena? She has a --

4 MR. LONG: Without objection, Your Honor.

5 THE COURT: Without objection, you are released
6 from your subpoena.

7 [Whereupon, Ms. Marotte is excused and exits the
8 witness stand]

9 MR. LONG: Your Honor, the State calls Rick
10 Tibbott.

11 [Whereupon, Mr. Tibbott comes forward]

12 THE CLERK OF COURT: Please raise your right
13 hand.

14 [Whereupon, Mr. Tibbott is duly sworn by the
15 clerk of court as follows: do you solemnly swear or
16 affirm the evidence you're about to give the Court in
17 this case will be the truth, the whole truth, and
18 nothing but the truth, so help you God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Please be seated.

21 [Whereupon, Mr. Tibbott takes the witness stand]

22 THE CLERK OF COURT: State your full name.

23 Spell your last name for the Court, please.

24 THE WITNESS: My name is Rick Tibbott.

25 T-I-B-B-O-T-T.

Testimony of Rick Tibbott
Direct Examination by Mr. DeBusk
March 12, 2014

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RICK TIBBOTT,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DEBUSK:

Q. Mr. Tibbott, where do you live now?

A. I live in Iowa.

Q. What do you do there?

A. I'm a college student.

Q. What are you studying?

A. Right now I'm studying liberal arts. I plan to transfer to State University for journalism.

Q. How about in March of 2013, about a year ago? where were you?

A. I was here. I was working for the county as a road officer.

Q. Okay. What was your rank?

A. PFC.

Q. So you were with the Horry County police?

A. Yes, sir.

Q. What were your duties at that time?

A. Generally, we worked the road, traffic stops, responded to calls.

Q. Did you respond, on March 25th, to a call on Ashepoo Creek Drive?

Testimony of Rick Tibbott
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir, I did.

2 Q. What address did you go to?

3 A. [REDACTED]

4 Q. [REDACTED] Ashepoo Creek?

5 A. Ashepoo Creek.

6 Q. I hate to ask the obvious, but what town is that
7 in?

8 A. That's in Horry County.

9 Q. Okay. Is that part of a housing development?

10 A. It is.

11 Q. Has several roads back there?

12 A. Correct.

13 Q. Let me show you State's Exhibit 1 and ask if you
14 recognize this.

15 [Whereupon, the witness reviews documents]

16 A. That is an aerial view of the subdivision that
17 Ashepoo Creek is in.

18 Q. [Mr. DeBusk] Could you come here and indicate
19 to the --

20 MR. DEBUSK: May he step down, Your Honor?

21 THE COURT: Yes.

22 Q. [Mr. DeBusk] Indicate to the jury where Ashepoo
23 Creek Drive -- [REDACTED] Ashepoo Creek Drive is.

24 A. It's right here.

25 Q. Okay. How did you get into that neighborhood?

Testimony of Rick Tibbott
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. I came from Brook Hill up McCormick and turned
2 left onto Planter Creek and then turned left onto Ashepoo
3 Creek Drive.

4 Q. What does McCormick connect to at the other end?

5 A. If I remember correctly, it's Forrest Brook.

6 Q. Okay. So it's the Forrest Brook section of
7 town?

8 A. Correct.

9 MR. DEBUSK: Thank you. Please have a seat.

10 [Whereupon, Mr. Tibbott retakes the witness
11 stand]

12 Q. [Mr. DeBusk] What did you do when you got to
13 ■ Ashepoo Creek?

14 A. When I arrived on the scene, I went to the back
15 of the house. Based on how the call came in, I --

16 Q. What was the general nature of the call?

17 A. The call came in as a prowler where two male
18 subjects initially went to the front of the house.

19 Q. Let's approach it a different way. You
20 responded to a prowler call. What would your protocol be
21 when you respond to a prowler call?

22 A. Be looking for the vehicle that you're going
23 there -- if they left in a vehicle, or be looking for
24 subjects that stand out as you're going to the call. When
25 you get --

Testimony of Rick Tibbott
Direct Examination by Mr. DeBusk
March 12, 2014

1 Q. Did you notice anything in your first check of
2 the property?

3 A. No, I didn't.

4 Q. Did you speak to anyone?

5 A. I made contact with the complainant.

6 Q. Do you know -- remember her name?

7 A. I believe she told me it was Sue Ross.

8 Q. Okay. Did you interview Ms. Ross?

9 A. I did.

10 Q. Did you get a description of potential prowlers?

11 A. I did.

12 Q. Did she tell you anything about the vehicle they
13 may or may not have been in?

14 A. She did.

15 Q. Did you put all this in your report?

16 A. It is on the report.

17 Q. Okay. Did anything happen, while you were
18 interviewing Ms. Ross, to give you further access to
19 potential suspects?

20 A. Yeah. As I was talking to Ms. Ross, she gave
21 me -- she described everybody, described the vehicle. And
22 I just happened to look out her front window and a vehicle
23 matching the description that she gave happened to drive
24 by.

25 Q. Where was your vehicle?

Testimony of Rick Tibbott
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1 A. It was -- I turned around in the cul-de-sac and
2 parked. It would have been next to her house, pointing
3 out of the cul-de-sac.

4 Q. Do you have one of those cameras that films out
5 of your front window?

6 A. Yes, I do.

7 Q. Was it on?

8 A. It was.

9 Q. Was that recorded?

10 A. It was.

11 Q. I'm showing you what's been marked --

12 MR. DEBUSK: Get it marked as a State's Exhibit.

13 [Whereupon, State's Exhibit Number 15 is marked
14 by the court reporter]

15 Q. [Mr. DeBusk] -- now as State's Exhibit 15, ask
16 if you recognize that.

17 A. Yes, I do. It's the --

18 Q. What is it?

19 A. It's the copy of the dash-cam video.

20 Q. Okay. Is it a fair accurate representation of
21 the recording from you your dashboard camera?

22 A. I believe it is.

23 Q. Have you reviewed it and checked it?

24 A. I did.

25 MR. DEBUSK: Your Honor, at this time we would

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1 move this into evidence and we'll publish it in a
2 moment.

3 MR. LONG: I would just object on general
4 principle.

5 THE COURT: Okay. It's admitted. It's
6 admitted.

7 MR. DEBUSK: Thank you, Your Honor. We'll
8 publish it in a moment.

9 [Whereupon, State's Exhibit Number 15 is
10 admitted into evidence by the Court]

11 Q. [Mr. DeBusk] Okay. You told us you were
12 standing there, you saw the car that was described --

13 A. Correct.

14 Q. -- described; right?

15 A. Yeah. I verified with Ms. Ross at that time. I
16 pointed out at first that a car had just driven by that
17 matched the description. She verified that it did match
18 the description and that it was the car that she saw
19 leaving.

20 Q. What did you do?

21 A. I left the house and left her development and
22 made that right going back towards McCormick. I caught up
23 with the vehicle just before that stop sign. They made a
24 right onto McCormick. I followed them and initiated a
25 traffic stop.

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1 Q. Now, are you sure that was the same vehicle,
2 that you saw drive by, that you stopped?

3 A. Correct. There was no other vehicles that had
4 come or gone the entire time I was there except for that
5 vehicle.

6 Q. Did you have it in sight before you left the
7 development where all this happened?

8 A. There was a brief period where it went around
9 that left curve that I lost it. But it was the only other
10 vehicle in the area leaving the development.

11 Q. Okay. Where did you stop?

12 A. It would be the next street up. If I can refer
13 to my notes?

14 Q. Sure.

15 A. It looks like it was on -- at the intersection
16 of Hammerstone and Clyde Creek Court.

17 Q. I've got State's Exhibit 7 and 8. Ask if you
18 recognize these.

19 A. I do.

20 Q. What are they?

21 A. Those are aerial views of the area where the
22 traffic stop and the incident in question took place.

23 Q. Okay. Are the locations fairly and accurately
24 represented on that?

25 A. They are.

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1 Q. And is the -- I believe it was Hammerstone you
2 said where you stopped the vehicle. Is that fairly
3 represented on there?

4 A. It is.

5 Q. And I may have asked you this already, but how
6 many ways are there in and out of that development where
7 the Ashepoo Creek Drive is?

8 A. There is only one way in and out.

9 Q. And if you miss --

10 A. In a vehicle there's only --

11 Q. Right.

12 A. -- one way in and out.

13 Q. Okay. One road in and out?

14 A. Yes. Yes.

15 [Whereupon, Mr. DeBusk and Mr. Long confer]

16 MR. LONG: No objection, Your Honor.

17 THE COURT: Without objection, they're admitted
18 into evidence. 5, 6 and 7?

19 MR. DEBUSK: Only 7 and 8, Your Honor. 7 and 8.

20 THE COURT: 7 and 8.

21 [Whereupon, State's Exhibit Number 7 is admitted
22 into evidence by the Court]

23 [Whereupon, State's Exhibit Number 8 is admitted
24 into evidence by the Court]

25 Q. [Mr. DeBusk] So, again, on State's Exhibit 8,

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1 that shows the location of Ashepoo Creek Drive, as well as
2 the location of McCormick and Hammerstone where you
3 stopped the vehicle; correct?

4 A. Correct.

5 MR. DEBUSK: May I publish it, Your Honor?

6 THE COURT: Certainly.

7 [Whereupon, Mr. DeBusk proffers documents to the
8 jury]

9 Q. [Mr. DeBusk] I'm going to show you State's
10 Exhibit 9 and ask you if you recognize this.

11 [Whereupon, the witness reviews documents]

12 A. I do. This is the -- a still from the dash cam
13 showing the vehicle I conducted a traffic stop on entering
14 and leaving the cul-de-sac.

15 Q. And that's the cul-de-sac where Ms. Ross lived?

16 A. Yes.

17 MR. LONG: Your Honor, I would object unless the
18 officer pulled the still himself.

19 THE COURT: Question him a little further --

20 MR. DEBUSK: Yes, Your Honor.

21 THE COURT: -- about the basis of his --

22 Q. [Mr. DeBusk] Is this a fair and accurate
23 representation of the appearance of that vehicle on your
24 dash-cam tape?

25 A. Yes, it is.

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1 MR. DEBUSK: Your Honor --

2 THE COURT: I'm going to admit it.

3 MR. DEBUSK: Thank you.

4 [Whereupon, State's Exhibit Number 9 is admitted
5 into evidence by the Court]

6 MR. DEBUSK: May I publish it, Your Honor?

7 THE COURT: Yes.

8 [Whereupon, Mr. DeBusk proffers documents to the
9 jury]

10 Q. [Mr. DeBusk] Okay. You followed the car from
11 Ms. Ross' house to Hammerstone where you got it stopped?

12 A. Correct.

13 Q. What did you do next?

14 A. Approached the vehicle and made contact with the
15 driver. Had her turn the vehicle off, and then attempted
16 to identify everyone in the vehicle.

17 Q. Okay. Were you able to identify the individuals
18 in the vehicle?

19 A. I was.

20 Q. Who was sitting where?

21 A. [No response]

22 Q. Just for the jury to know, what is it you are
23 consulting there?

24 A. I'm referring to the report that I wrote
25 following the incident.

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1 Q. Okay. So these are your notes from the time and
2 date that this happened?

3 A. Correct.

4 Mr. Coleman was in the front passenger seat, Mr.
5 Jordan Dudley was in the rear seat, seated behind the
6 driver, and driving the vehicle was Shakerra Cowen.

7 Q. What did you do next?

8 A. I asked them what they were doing in the area,
9 what they were --

10 Q. Not what they said, but after you made your
11 initial inquiries, what did you do?

12 A. After trying to figure out what they were doing
13 in the area, it didn't -- what they were saying didn't
14 line up, so I waited for backup and proceeded to pull
15 everyone out of the vehicle.

16 Q. Okay. How were they attired?

17 A. They were -- they pretty much matched the
18 description Ms. Ross gave to a tee.

19 Q. Okay. Let me show you State's Exhibit 10.
20 Well, let's just go through all of them, 10, 11 and 12,
21 ask if you recognize these.

22 [Whereupon, the witness reviews documents]

23 A. Again, these are stills from the dash cam
24 indicating the three subjects that were in the vehicle.

25 Q. [Mr. Debusk] Are those fair and accurate

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1 representations of what was shown on your dash-cam video?

2 A. Yes, they are.

3 [Whereupon, Mr. DeBusk proffers documents to
4 Mr. Long]

5 [Whereupon, Mr. Long and Mr. Coleman review
6 documents]

7 MR. LONG: Without objection, Your Honor.

8 THE COURT: All right. Without objection.

9 [Whereupon, State's Exhibit Number 10 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 11 is
12 admitted into evidence by the Court]

13 [Whereupon, State's Exhibit Number 12 is
14 admitted into evidence by the Court]

15 Q. [Mr. DeBusk] All right. Let's start with
16 State's 10. Ask if you recognize that.

17 A. I do. That is Mr. Coleman as I'm taking him out
18 of the vehicle.

19 Q. What is he wearing?

20 A. He's wearing a gray-hooded sweatshirt and black
21 pants. Short, dark-colored pants.

22 Q. Is that consistent with what Ms. Ross --

23 MR. LONG: Objection, Your Honor. Self-serving.

24 THE COURT: I haven't heard the question yet.

25 MR. LONG: I'm sorry.

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1 MR. DEBUSK: I was asking him if that was
2 consistent with what Ms. Ross described the prowler as
3 wearing.

4 THE COURT: To him?

5 MR. DEBUSK: To him.

6 THE COURT: I'll allow it.

7 Q. [Mr. DeBusk] Is that consistent with the
8 description given to you by Ms. Ross of what one of the
9 prowlers was wearing?

10 A. Yes, what one of the prowlers was wearing.

11 Q. And, again, where was Mr. Coleman seated?

12 A. He was seated in the front passenger seat.

13 Q. State's 11. Ask if you recognize that.

14 A. I do. This is Mr. Dudley. It shows, the photo
15 shows, me taking him out of the rear seat on the driver's
16 side.

17 Q. Okay. What is he wearing?

18 A. He's wearing a flannel type jacket and gray
19 pants.

20 Q. Is it consistent with what Ms. Ross described to
21 you as the other fellow was wearing?

22 A. Yes.

23 Q. Go ahead and show you State's 12.

24 [Whereupon, the witness reviews documents]

25 A. This is a still of Ms. Cowen.

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1 Q. [Mr. DeBusk] Is that an accurate representation
2 of her hairstyle at the time?

3 A. Correct. It was.

4 Q. Is that consistent with the hairstyle described
5 by Ms. Ross?

6 A. Yes.

7 MR. DEBUSK: May I publish, Your Honor?

8 THE COURT: Yes.

9 MR. DEBUSK: Thank you.

10 [Whereupon, Mr. DeBusk proffers documents to the
11 jury]

12 Q. [Mr. DeBusk] When you got these individuals out
13 of the car, what did you do?

14 A. I began to detain them for our safety. Patted
15 them down, doing Terry stop and frisk.

16 Q. Okay. Who did you pat down first?

17 A. I patted down Mr. Dudley first.

18 Q. Did you find anything on him?

19 A. Not that I can recall, no.

20 Q. Okay. Did you pat down Mr. Coleman?

21 A. Yeah. After I secured Mr. Dudley, I moved to
22 Mr. Coleman.

23 Q. And did you find anything of interest on
24 Mr. Coleman?

25 A. As I patted him down, in the front pocket of his

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1 sweatshirt there was miscellaneous types of jewelry.

2 Q. Could you tell: was it male jewelry, female
3 jewelry?

4 A. Most of it looked like female jewelry.

5 Q. Okay. What did you do with that?

6 A. After finding out I had permission to take it
7 from his pocket, he consented to doing so and I placed it
8 on the hood of my car. Of the roof, rather, of the
9 suspect car.

10 Q. Did you ultimately secure that jewelry --

11 A. Yes.

12 Q. -- that you took out of his pocket?

13 A. Yes.

14 Q. What did you do with it?

15 A. I put it into a paper evidence bag and secured
16 it in my vehicle.

17 Q. Did you find anything of interest elsewhere in
18 the vehicle? You or anyone assisting you.

19 Q. An officer assisting me found jewelry boxes and
20 other --

21 MR. LONG: Objection, Your Honor.

22 The other officer can best testify what happened
23 as a result of that officer's efforts.

24 THE COURT: Was he present?

25 MR. DEBUSK: I can lay a little more foundation.

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1 THE COURT: All right.

2 Q. [Mr. DeBusk] Were you present when this officer
3 conducted that search?

4 A. I was.

5 Q. Did you see where it came from?

6 A. It came from the front passenger seat.

7 Q. Again, who was seated there?

8 A. Mr. Coleman.

9 Q. Okay. What did they find in the front passenger
10 seat?

11 A. Several jewelry boxes were found in a style that
12 is more where you can place a lot of jewelry. And there
13 were also boxes found where you would buy jewelry, and
14 jewelry was in it.

15 Q. Were any of those boxes distinctive?

16 A. One of them was black with like a gray or
17 light-colored skull on it.

18 Q. Was there also one with flowers on it?

19 A. There was a light-colored box. I do not
20 remember if there were flowers on it or not.

21 Q. So you did find two jewelry boxes?

22 A. Yes.

23 Q. And some other boxes?

24 A. Yes.

25 Q. You received those from another officer?

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1 A. Yes, I did.

2 Q. Who was that officer?

3 A. That officer was Officer Boyd.

4 Q. Would that be Natalie Boyd?

5 A. Natalie Boyd.

6 Q. Lance Corporal Natalie Boyd?

7 A. Yes.

8 Q. What did you do with those items that you
9 received from Ms. Boyd -- from Officer Boyd?

10 A. I secured them, the same way I secured the other
11 ones, in an evidence bag and in my vehicle.

12 Q. Okay. You have the jewelry that you take from
13 Mr. Coleman's pockets and the other items that you
14 received from Officer Boyd --

15 A. Correct.

16 Q. -- secured. What did you do with them,
17 ultimately?

18 A. Ultimately, I transported them back to the
19 police department at Conway and signed them over to
20 Detective Cooper.

21 Q. Detective Mark Cooper?

22 A. Correct.

23 Q. While you had those, after you seized them from
24 the defendant, did you alter them or change them in any
25 way?

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1 A. No, I did not.

2 Q. And you kept them secured?

3 A. Correct.

4 Q. And, again, where were all those items found?

5 A. All the items were either found on Mr. Coleman's
6 person or in the immediate area that he controlled in the
7 vehicle.

8 Q. Did you get permission to search the car before
9 you searched it?

10 A. Officer Boyd got permission before searching it.

11 Q. Now, the driver, Ms. Cowen, was she cooperative
12 with you and Officer Boyd?

13 A. She was cooperative, yes.

14 Q. Okay. Did she speak with you?

15 A. She did.

16 Q. And you took a statement from her?

17 A. Yes.

18 Q. Let me ask you: in your notes did you list, in
19 particularity, the items that you found in that car?

20 A. Yes. All the items that were taken into
21 evidence were listed in the evidence section of --

22 MR. DEBUSK: Have this marked as a State's
23 Exhibit.

24 [Whereupon, State's Exhibit Number 16 is marked
25 by the court reporter]

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1 Q. [Mr. DeBusk] Let me show you what's been marked
2 as State's Exhibit 16, three pages, ask if you recognize
3 these.

4 A. I do. This is an evidence form that the County
5 uses for property used in crime or anything we seize.

6 Q. Who filled that out?

7 A. I did.

8 Q. Okay. What items did you put into evidence that
9 were taken from that car? Are they all listed on that
10 document? Specifically, the jewelry and the jewelry
11 boxes.

12 [Whereupon, the witness reviews documents]

13 A. Yes, they are.

14 Q. [Mr. Debusk] Could you tell the jury what those
15 items were?

16 A. A gold-in-color ring with three red stones and
17 eight clear stones, 14 carats; three multi-color earrings,
18 triangular, silver-in-color with three clear stones; a
19 necklace with silver-in-color key; a woman's watch, silver
20 and gold, Casio, stainless steel; wing-shaped gold-in-
21 color necklace, one -- with one dark stone and two clear;
22 silver-in-color bracelet with flower shape and clear
23 stone; a pair of earrings, one square with black center,
24 another clear and oval; another that is gold with clear,
25 also oval, and Celtic knots; gold-and-silver-in-color

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1 cross; miscellaneous earrings; bakery-fresh lid; brown
2 leather pouch with three zippers with miscellaneous amount
3 of change; a Hitchcock tie clip, cufflinks; a deadbolt --
4 a Dibolt-Five tie clip; fifteen miscellaneous earrings;
5 four jewelry boxes; two miscellaneous necklaces; a Sony
6 camera with serial number 0334717; a Judas Priest patch; a
7 black box with skull containing miscellaneous earrings,
8 necklaces, keys and locks, with body jewelry; and a white
9 flower box with pliers and body jewelry.

10 Q. Again, those are the same items you took
11 from either the front passenger seat or the person of
12 Mr. Coleman?

13 A. Correct.

14 Q. And you turned those over to Detective Cooper?

15 A. Yes, I did.

16 Q. How many items were --

17 [Whereupon, the witness reviews documents]

18 A. Twenty.

19 Q. [Mr. DeBusk] Twenty.

20 So those twenty items were given to Detective
21 Cooper.

22 What did you do after you secured the defendants
23 -- I mean, the suspects and the jewelry?

24 A. After transporting them to the police
25 department, we waited -- initially, we waited until during

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1 the questioning --

2 Q. They were taken to the detectives at the police
3 department?

4 A. Yes.

5 [Whereupon, Mr. DeBusk and Ms. Livesay confer]

6 MR. DEBUSK: Your Honor, at this time we would
7 ask to publish State's Exhibit --

8 THE COURT: That's the video?

9 MR. DEBUSK: -- 15 to the jury. Or a portion
10 thereof.

11 MR. LONG: May we approach, Your Honor?

12 THE COURT: Yes.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: All right. Mr. DeBusk, I'll let you
16 set that up.

17 Mr. Roth, if you would let the jury have a
18 break. Okay?

19 We're at ease for about ten, fifteen minutes.

20 MR. DEBUSK: Thank you, Your Honor.

21 [Whereupon, the jury exits the courtroom at
22 2:50 p.m.]

23 [Whereupon, a recess is taken from 2:50 p.m. to
24 3:11 p.m.]

25 [Whereupon, State's Exhibit Number 17 is marked

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1 by the court reporter]

2 [Whereupon, State's Exhibit Number 18 is marked
3 by the court reporter]

4 THE COURT: Be seated.

5 MR. LONG: As Mr. DeBusk told you, it's five CDs
6 long. I think we're going to start at the point where
7 the officer's car was parked in front of the Ross
8 residence and the suspect vehicle drives by, the low-
9 speed chase or following, the stop, and the identity
10 when he pulls the occupants out of the vehicle and
11 gets their identity.

12 Following that, there is some audio
13 interrogation that occurs. And this, of course, is
14 pre-Miranda so the solicitor and I have agreed that
15 basically once the officer gets them out of the car
16 and determines their identity, we're going to turn the
17 speakers off on the video, continue to watch the
18 video, but we will not have any possibility of
19 interrogation or interview.

20 THE COURT: All right. How long are we going to
21 watch it?

22 MR. DEBUSK: Your Honor, it's going to be thirty
23 minutes, starting from where the officer turns onto
24 McCormick Road until they get Mr. Coleman out of the
25 car.

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1 THE COURT: Okay.

2 MR. DEBUSK: Turning off the audio after he
3 secures the names.

4 THE COURT: Okay.

5 [Whereupon, the jury enters the courtroom at
6 3:13 p.m.]

7 [Whereupon, Court's Exhibit Number 2 is marked
8 by the court reporter]

9 THE COURT: All right. We have all our jurors
10 and alternates back in the courtroom.

11 Mr. DeBusk?

12 MR. DEBUSK: Thank you, Your Honor.

13 Q. [Mr. DeBusk] Mr. Tibbott, just to review. You
14 said that you saw the vehicle, at Ms. Ross' house,
15 returning; correct?

16 A. Correct. It drove past and turned around in the
17 cul-de-sac.

18 Q. And you pursued that vehicle and you stopped it?

19 A. I did.

20 Q. That was the same vehicle the whole time?

21 A. Yes, sir.

22 Q. And you pulled three individuals out of there?

23 A. Yes, I did.

24 Q. And they were, again -- the names were -- could
25 you give us the names again?

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1 A. The names were Keirnon Kyle Coleman, Jordan
2 Dudley, and Shakerra Cowan.

3 Q. And where was Mr. Coleman sitting?

4 A. He was seated in the front passenger seat.

5 Q. And where was the jewelry recovered?

6 A. In the front passenger seat and on Mr. Coleman.

7 Q. And do you see Mr. Coleman in the courtroom
8 today?

9 A. I do.

10 Q. Where is he?

11 A. He's seated to my right.

12 Q. At the defendant's chair?

13 A. Correct.

14 MR. DEBUSK: All right. Your Honor, at this
15 time we would like to publish part of State's Exhibit
16 15.

17 THE COURT: All right. Ladies and gentlemen of
18 the jury, we're about to watch part of a disk that was
19 -- an audio disk and video disk that was introduced
20 earlier by agreement. The parties have limited this.
21 This was actually about five CDs long, a very
22 extensive and long video, but by agreement the parties
23 are going to introduce only about thirty minutes of it
24 and part of that is going to be muted. And that's
25 what you will consider. Okay?

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1 [Whereupon, State's Exhibit Number 15, car-cam
2 video, is played from the jury with questions from
3 Mr. DeBusk]

4 [Whereupon, State's Exhibit Number 15 is not
5 transcribed by the court reporter]

6 Q. [Mr. DeBusk] Mr. Tibbott, why did you touch the
7 car right there?

8 A. You touch the vehicle in that spot, generally,
9 when you approach. That way, if they drive off or
10 something happens to you, your fingerprints are on the
11 car.

12 [Whereupon, State's Exhibit Number 15 resumes]

13 MR. DEBUSK: Your Honor, this is the point we
14 agreed to --

15 THE COURT: Very well.

16 MR. DEBUSK: -- take the video down.

17 [Whereupon, State's Exhibit Number 15 resumes]

18 Q. [Mr. DeBusk] Mr. Tibbott, while we're watching,
19 what were you doing at this point in the video?

20 A. At this point in the video, Mr. Coleman and
21 Mr. Dudley didn't have IDs so I was writing their names
22 down so I could transfer the information to dispatch to
23 have them --

24 Q. Standard procedure?

25 A. Yes.

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1 Q. Okay. When you were in that housing development
2 where Ms. Ross made her report, did you see any other cars
3 in there --

4 A. No.

5 Q. -- on the road?

6 A. No.

7 Q. This was the only one?

8 A. Yes, sir.

9 Q. And she identified that as the vehicle --

10 A. Yes.

11 Q. -- that had been at her house?

12 A. Yes. And I double-checked with her, before I
13 left, that it was the vehicle.

14 Q. And by the time you approached that vehicle, did
15 you already have her descriptions of the dress and the
16 appearance of the people in it?

17 A. Yes, I did.

18 Q. Since there's no audio and there's a quiet
19 moment here: is it normal procedure in a stop like this
20 to call for backup?

21 A. When there's a prowler complaint in a call like
22 that, yes. And on traffic stops, we generally try to have
23 more than one person there.

24 Q. And this wasn't really traffic. This was a stop
25 for suspicion; is that correct?

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1 A. Correct. Correct.

2 Q. Who is this walking up on the right --

3 A. That is a sheriff's deputy. I do not remember
4 her name right now.

5 Q. She was one of your backups?

6 A. Correct.

7 Q. And this?

8 A. That is Officer Natalie Boyd.

9 Q. She is with the --

10 A. Horry County.

11 Q. -- Horry County police; correct?

12 A. Yes.

13 Q. The other deputies were with the sheriff's
14 office?

15 A. Yes.

16 Q. At this point, now that your backup has arrived,
17 what does your task change to?

18 A. Trying to get everyone out of the vehicle based
19 on reasonable suspicion.

20 Q. Okay. Who is that?

21 A. That is Mr. Dudley.

22 Q. And he's gotten out of the rear passenger
23 door -- or rear driver's-side door?

24 A. Correct.

25 Q. What are you doing at this point?

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1 A. I'm patting him down for my safety and the other
2 officers' safety.

3 Q. Looking for potential weapons, potential --

4 A. Correct.

5 Q. Why are you doing this? Is he under arrest at
6 this point?

7 A. He is not under arrest. This was done with his
8 permission.

9 Q. Okay. Is he going to be detained?

10 A. He was detained, yes.

11 Q. Not arrested, but investigatively detained?

12 A. Investigative detention.

13 Q. And who is this?

14 A. That is Mr. Coleman.

15 Q. Getting out of the front passenger side?

16 A. Correct.

17 Q. At this point, did the dress of these two
18 individuals match the description from the victim --

19 A. They --

20 Q. -- or the reporting Ms. Ross?

21 A. Yes, they do.

22 Q. What are you doing here? Same pat-down?

23 A. Yes.

24 Q. What are you doing at this point?

25 A. At this point, with consent I'm searching the

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1 pocket of his sweatshirt.

2 Q. And you asked permission before you did that?

3 A. Yes, I did.

4 Q. What are you taking out?

5 A. I'm taking out miscellaneous jewelry items.

6 Q. Are these the items -- among the items that you
7 ultimately turned over to Detective Cooper?

8 A. Among them, yes.

9 Q. At this point, why did you chose to handcuff
10 Mr. Coleman?

11 A. Because earlier he wasn't following the
12 instructions that I was giving him and I wasn't sure if he
13 might try to take off.

14 Q. So that's officer safety?

15 A. Yes.

16 He was advised at this point that he was not
17 under arrest, though.

18 Q. So at this point you've taken Mr. Dudley out of
19 the rear portion of the car, Mr. Coleman out of the front
20 passenger. Who's left in the car?

21 A. The driver, Ms. Cowen.

22 Q. At this point, are you interviewing Ms. Cowen?

23 A. Yes, I am.

24 Q. Was she being cooperative?

25 A. She was.

Testimony of Rick Tibbott
Direct Examination by Mr. DeBusk
March 12, 2014

1 Q. Is this the same sort of pat-down that deputies
2 are performing on Ms. Cowen?

3 A. Yes.

4 Q. Is it standard procedure to have a female
5 office, when available, do that for a female?

6 A. Yes, it is.

7 Q. And at this point, you're securing the jewelry
8 you had placed on top of the car previously; correct?

9 A. Yes.

10 [Whereupon, State's Exhibit Number 15, CD,
11 concludes]

12 MR. DEBUSK: Your Honor, that's the portion we
13 wish to publish at this time.

14 THE COURT: Lights.

15 MR. DEBUSK: No further questions for
16 Mr. Tibbott.

17 THE COURT: All right. Mr. Long?

18 MR. LONG: Thank you, Your Honor.

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Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

CROSS-EXAMINATION

1

2

BY MR. LONG:

3

Q. Mr. Tibbott, when did you separate from Horry County Police Department, their employment?

4

5

A. I was employed for about two and a half years. I left June of 2013.

6

7

Q. All right. And what were the circumstances for your separation?

8

9

A. I had some family stuff going on back home that I needed to be closer to.

10

11

Q. You have family in Iowa?

12

A. Yeah. That's where I grew up.

13

Q. And it was at that time you decided to re-enroll in college?

14

15

A. Yes.

16

Q. Now, approximately where were you in relation to the Ross house when you received the dispatch call?

17

18

A. I was in the area of Berkell Road.

19

Q. Okay. And then that put you, of course, as we saw, in the distance. When your camera came on, was that when, approximately, you got the call from dispatch?

20

21

A. Correct.

22

Q. So it took you however long the video shows to get to her house?

23

24

A. Yes.

25

MIA PERRON, CVR-CM-M

-173-

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 Q. And then while you were there interviewing her,
2 would you estimate it to be no more than say seven or
3 eight minutes?

4 A. What am I estimating?

5 Q. While you were there interviewing her, would you
6 estimate it to be no more than say seven, eight minutes or
7 so before the vehicle went by and then you pursued the
8 vehicle?

9 A. I would say definitely less than ten minutes,
10 yes.

11 Q. All right. The entry -- when -- you made into
12 the cul-de-sac that her house was on --

13 A. Yes.

14 Q. -- that, of course, is a closed cul-de-sac?
15 There's no other roads or streets or anything there; is
16 that correct?

17 A. Yes.

18 Q. How far would you estimate it is from the cul-
19 de-sac up around the curve to where that stop sign is? A
20 block? No more than a block, block and a half?

21 A. No more than a block, yeah.

22 Q. And from that intersection there that I'm
23 describing, your vehicle and the cul-de-sac is clearly
24 visible; correct?

25 A. Yes.

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 Q. All right. Did you still have the lights on
2 your vehicle while you were talking with Ms. Ross?

3 A. No, I didn't.

4 Q. Were you talking with her on the outside of the
5 house, at the door of the house, or inside the house?

6 A. It was inside the house.

7 Q. All right. And inside the house where? In the
8 hallway, in the kitchen? Do you recall where?

9 A. If you walk into the back of the house, it opens
10 up into like a dining area. Through that, it opens up
11 into a foyer and then into another dining area. It was in
12 that dining area.

13 Q. That dining area?

14 A. Yeah.

15 Q. Okay. Now, you saw the vehicle go by through a
16 window?

17 A. Yes, sir.

18 Q. And you said, is that the vehicle?

19 A. Yes.

20 Q. And she went to the window and looked and saw.
21 She then said that was the vehicle; correct?

22 A. Yes.

23 Q. When the vehicle went past, there was no
24 question that vehicle could identify your vehicle as an
25 Horry County Police Department car; is that correct?

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 A. Yes.

2 Q. It was not an unmarked vehicle?

3 A. That's correct.

4 Q. And it was -- your car was visible for quite
5 some ways up the road; is that correct?

6 A. Yes, it was.

7 Q. This was a relatively short distance from your
8 getting in your car at the Ross residence to where that
9 vehicle was ultimately pulled over and stopped, wasn't it?

10 A. Yes, it was.

11 Q. And half mile or less?

12 A. Yeah.

13 Q. Did that vehicle make any attempts to speed up
14 or evade you?

15 A. Not that I saw.

16 Q. All right. And that vehicle clearly would have
17 had -- would have had an opportunity, had it circled the
18 cul-de-sac and spotted your vehicle, okay, and then if it
19 saw you run -- saw you running out to the vehicle, it
20 clearly could have gone highspeed at that point in time;
21 correct?

22 A. It could have.

23 Q. And it would have been much farther down the
24 road before it occurred, the stop occurred, correct, if at
25 all?

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 A. Yes.

2 Q. Now, when the vehicle was stopped, you wanted to
3 get identifications first?

4 A. Yes.

5 Q. And the driver had a driver's license; correct?

6 A. Yes.

7 Q. And neither of the other occupants told you they
8 had a driver's license?

9 A. That's correct.

10 Q. And you asked Mr. Coleman about, and he told
11 you, his name; correct?

12 A. Yes, he did.

13 Q. Did he also give you his date of birth?

14 A. He did.

15 Q. He wasn't trying to evade or avoid giving you
16 any identification or telling you who he was; correct?

17 A. That's correct.

18 Q. Now, for that length of time that you were
19 behind the vehicle -- I realize your eyes work better than
20 the camera or the video played -- didn't you observe some
21 activity in the vehicle going on while you were behind
22 that vehicle? The occupants. Some activity movement with
23 the occupants?

24 A. I noticed there were occupants in the vehicle.

25 Q. All right. But couldn't you tell there was some

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 activity or movement of the occupants?

2 A. Other than normal driving occupants, no -- or
3 movements, no.

4 Q. Aren't you trained in your police training to
5 identify that as possible criminal activity when there is
6 a lot of activity in the vehicle?

7 A. Yes.

8 Q. Now, when you turned on your blue lights, the
9 driver immediately applied brakes; correct?

10 A. That's correct.

11 Q. Put on her turn signal and very shortly turned
12 into that little driveway of the subdivision?

13 A. Yes, sir.

14 Q. You, of course, were not immediately out of your
15 vehicle and immediately upon the suspect vehicles;
16 correct?

17 A. That's correct.

18 Q. All right. You had to take your time. You had
19 to take proper precautions; correct?

20 A. Yeah.

21 Q. Isn't it apparent that you have one eye on that
22 vehicle, as well, to see the activity going on in the
23 vehicle?

24 A. Yes.

25 Q. And was there activity going on at that time?

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 A. At that time, I don't remember.

2 Q. When the other officers arrived was when you
3 first then moved -- removed Mr. Dudley from the vehicle;
4 is that correct?

5 A. That's correct.

6 Q. And we saw the video of you patting him down for
7 weapons; et cetera, and things of that nature. And then
8 was he told to sit on the ground?

9 A. He was.

10 Q. The other officers, of course, were responsible
11 for watching the car and the occupants of the car,
12 especially for officer safety, to make sure they weren't
13 grabbing a weapon or had a weapon or anything of that
14 nature; correct?

15 A. Correct.

16 Q. But I noticed from the video they were not
17 always watching the occupants of the car at all times,
18 were they?

19 A. I can't testify to what they did or didn't do.

20 Q. Did you see it on the video, then, as well?

21 A. From what I saw, it seemed like there was at
22 least one set of eyes on the vehicle.

23 Q. When you asked Mr. Coleman for consent to
24 search, he gave it, didn't he?

25 A. He did.

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 Q. And wasn't there some confusion at first about
2 you asked him for consent to search his pockets and I
3 think he must have thought you asked him to remove stuff
4 from his pockets, which is why he started to reach and you
5 put his hand back on top of his head?

6 A. That's how he explained it, yes.

7 Q. Okay. Do you have a breakdown of the items that
8 were found in Mr. Coleman's pockets versus the other items
9 that were found in the vehicle?

10 A. An itemized list?

11 Q. An itemized list of what was found in his pocket
12 and what was found elsewhere in the vehicle.

13 [Whereupon, the witness reviews documents]

14 A. My notes have listed women's jewelry containing
15 a fourteen carat gold-in-color ring with three red stone
16 and eight white or clear stones.

17 Q. [Mr. Long] And of the twenty items found in
18 that vehicle, how many items, two? were found in his
19 pockets?

20 A. My notes don't list the exact number of items
21 listed or found on his person.

22 Q. But there were many other items in the vehicle?

23 A. There were other items in the vehicle.

24 Q. Was Mr. Dudley arrested at the scene that day?

25 A. He was.

Testimony of Rick Tibbott
Cross-Examination by Mr. Long
March 12, 2014

1 Q. Was Ms. Cowen arrested at the scene that day?

2 A. She was.

3 Q. And she was charged with what?

4 A. Simple possession of marijuana.

5 Q. Any other offenses?

6 [Whereupon, the witness reviews documents]

7 A. No.

8 MR. LONG: Court's indulgence just one moment.

9 [Whereupon, Mr. Long and Mr. Coleman confer]

10 MR. LONG: Thank you, sir. No further
11 questions.

12 THE WITNESS: Thank you.

13 THE COURT: Follow up, Mr. DeBusk?

14 MR. DEBUSK: Thank you. Just a few.
15 Could I have the screen again?

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Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

REDIRECT EXAMINATION

1

2

BY MR. DEBUSK:

3

Q. This is a portion of the video not yet

4

published.

5

[Whereupon, State's Exhibit Number 15 is played

6

for the jury, with questions from Mr. DeBusk]

7

[Whereupon, State's Exhibit Number 15 is not

8

transcribed by the courtroom]

9

Q. [Mr. DeBusk] Do you recognize this spot? Let

10

me play it forward and see if you recognize this. Notice

11

the timing stamp on there. It's 9:57:12. Okay. 9:57 and

12

a half, about --

13

A. Uh-huh.

14

Q. -- you left that location. Do you know where

15

you were going?

16

A. I'm at this point, heading in the direction of

17

Ashepoo Creek.

18

Q. So you responded to that call?

19

A. Yes.

20

Q. Beginning at 9:57:30?

21

A. Yes.

22

[Whereupon, State's Exhibit Number 15 concludes]

23

MR. DEBUSK: Thank you. You can put the screen

24

back up.

25

Q. [Mr. DeBusk] Now, is that timestamp also

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 visible on State's Exhibit 9?

2 A. It is.

3 Q. Approximately what time did that car pull back
4 around to your view at Ms. Ross' house?

5 A. 10:13:50 a.m.

6 Q. So that was some sixteen minutes after you
7 received the dispatch?

8 A. Correct.

9 Q. And, of course, the dispatch doesn't -- she
10 doesn't call directly to you, she calls through a
11 dispatcher down here in Conway --

12 A. Yes.

13 Q. -- and they send you?

14 A. Yes.

15 Q. So there are at least sixteen minutes between
16 when she called and when they came back around?

17 A. Yes.

18 Q. Now, Mr. Long mentioned some other items found
19 in the car. Where were those items found?

20 A. Well, everything that was found was in the front
21 passenger side.

22 Q. Okay. In the front passenger seat. And who was
23 seated there again?

24 A. Mr. Coleman.

25 MR. DEBUSK: Okay. Could you step down and step

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 before the jury here.

2 [Whereupon, Mr. Tibbott complies]

3 Q. [Mr. DeBusk] I'm going to refer to State's
4 Exhibit 1, the large map. Again, this -- do you remember
5 the name of this housing development?

6 A. I don't.

7 Q. This is Ashepoo Creek Drive --

8 A. Yes.

9 Q. -- is that correct? You identified that
10 previously.

11 And this one is called Capers Creek Drive,
12 according --

13 A. Yes.

14 Q. -- to the map?

15 Okay. If you're on Capers Creek Drive or
16 Ashepoo Creek Drive, is there any other way out other than
17 down Planter's Creek?

18 A. No.

19 Q. So that's the only exit in and out?

20 A. Yes, it is.

21 Q. If you're driving down Capers Creek and you miss
22 that turn on Planter's Creek, where do you end up?

23 A. You end up on Ashepoo Creek.

24 Q. And is there any place to turn around, other
25 than the cul-de-sac at the end there?

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 A. No.

2 Q. After coming around that curve, there's just
3 that cul-de-sac?

4 A. Yes, sir.

5 MR. DEBUSK: Okay. Thank you. Please be
6 seated.

7 [Whereupon, Mr. Tibbott retakes the witness
8 stand]

9 Q. [Mr. DeBusk] The time you were in that
10 subdivision, did you see any other cars on the road?

11 A. In the subdivision?

12 Q. Yeah.

13 A. No.

14 Q. And you're certain that that car that you saw
15 pull up to Ms. Ross' house was the same one you stopped?

16 A. Yes, it is.

17 Q. And the descriptions given to you by Ms. Ross,
18 of the prowlers, match the description of the people in
19 that car?

20 A. Yes, they do.

21 Q. And does the description of the person driving
22 the car match the description given by Ms. Ross?

23 A. It does.

24 Q. Down to the long curly hair?

25 A. Yes.

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 [Whereupon, Mr. DeBusk and Ms. Livesay confer]

2 MR. DEBUSK: Thank you. No further questions.

3 THE COURT: Mr. Long?

4 MR. LONG: The Court's indulgence just one
5 moment.

6 [Whereupon, Mr. Long and Mr. Coleman confer]

7 MR. LONG: Thank you, Your Honor. No further
8 questions.

9 THE COURT: You may step down.

10 MR. DEBUSK: Your Honor, may Mr. Tibbott be
11 released from his subpoena so he can return to Iowa?

12 THE COURT: Do you have any objection, counsel?

13 MR. LONG: No objection, Your Honor.

14 THE COURT: All right. Mr. Tibbott -- or
15 Officer Tibbott or Mr. Tibbott, you are released from
16 your subpoena. Thank you.

17 [Whereupon, Mr. Tibbott is excused and exits the
18 witness stand]

19 MR. DEBUSK: Your Honor, at this time the State
20 offers into evidence State's Exhibit 17 and 18. These
21 are documents that were provided to us, and documents
22 under seal, from the state of New Jersey, self-
23 authenticated as documents under seal. These are
24 actually copies because certain items were redacted --

25 THE COURT: I understand.

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 MR. DEBUSK: -- by consent with the defense.

2 THE COURT: We've discussed that.

3 MR. DEBUSK: And we would offer these into
4 evidence as evidence of two prior convictions for
5 burglary by Mr. Keirnon Coleman in the state of New
6 Jersey.

7 MR. LONG: Objection, Your Honor.

8 Prior to publishing, I would like to be -- well,
9 at least get a formal objection in.

10 THE COURT: Let's take the jury out.

11 [Whereupon, the jury exits the courtroom at
12 4:04 p.m.]

13 THE COURT: All right. Mr. Long, I thought we
14 had this worked out.

15 MR. LONG: Yes, Your Honor. But for the record,
16 these matters are being introduced at this time. I
17 would renew my objection that -- made at the pretrial
18 matter. If I do not make it at this time --

19 THE COURT: I understand.

20 MR. LONG: -- it is deemed lost. And so I
21 wanted to renew that objection based on the
22 prejudicial effect it has.

23 THE COURT: I understand.

24 And, you know, evidence offered in a criminal
25 trial is always prejudicial to some extent --

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 MR. LONG: Yes, sir.

2 THE COURT: -- and I think that this -- although
3 403 controls that, the legislature has seen fit to
4 require proof.

5 Unlike some other situations, they require proof
6 of the elements of the offense. In this case the
7 State is proceeding under the fact it's aggravation, I
8 guess you would call it aggravation, that he has two
9 prior housebreaking burglary convictions. And they're
10 required to prove it.

11 They're not required to enter into a
12 stipulation. They have the right to prove it. The
13 legislature enacted this statute I think about 1995 or
14 1996. They have had ample time to amend it. The
15 Supreme Court has addressed it. I think it's proper
16 that they enter their proof.

17 Your objection is noted, and I will allow them
18 to bring these records in under seal.

19 MR. LONG: Thank you, Your Honor.

20 And we have gone over the documents themselves,
21 redacted it, made copies of it, so that there's
22 nothing inappropriate or irrelevant that should be in
23 those documents themselves.

24 THE COURT: Okay. Very well.

25 MR. DEBUSK: Your Honor, we would ask to make

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

1 the original document with the seal a Court's Exhibit.

2 THE COURT: Okay. But I understand that what
3 you're going to do is to have a redacted copy?

4 MR. DEBUSK: Correct, Your Honor. We're just
5 making the original document, with the seal, part of
6 the record as a Court's Exhibit.

7 THE COURT: Okay. As a Court's exhibit.

8 MR. DEBUSK: Yes, sir.

9 THE COURT: And the redacted exhibit as --

10 MR. DEBUSK: State's Exhibit.

11 THE COURT: -- a regular exhibit that goes in
12 the jury.

13 All right. Thank you. Bring them in.

14 Mr. DeBusk, I don't think you finished.

15 MR. DEBUSK: No. I'll finish --

16 [Whereupon, Court's Exhibit Number 2 is marked
17 by the court reporter]

18 [Whereupon, the jury enters the courtroom at
19 4:09 p.m.]

20 THE COURT: All right, Mr. DeBusk.

21 MR. DEBUSK: Thank you, Your Honor.

22 As I was saying before we took a break, State's
23 17 and 18, at this time the State is proffering them
24 in as evidence. They are documents under seal from
25 another state trying to prove one prior conviction by

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
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1 Keirnon Coleman for burglary from the Bergen County,
2 New Jersey on December 9th, 1994, the second count,
3 State's Exhibit 18, for one count of burglary from
4 January 22nd, 1988, to prove the two prior convictions
5 for burglary.

6 THE COURT: All right, sir. They're admitted
7 over the objections.

8 MR. DEBUSK: Thank you, Your Honor.

9 [Whereupon, State's Exhibit Number 17 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 18 is
12 admitted into evidence by the Court]

13 MR. DEBUSK: Thank you, Your Honor.

14 The State calls Corporal Jack Johnson.

15 [Whereupon, Mr. Johnson comes forward]

16 THE CLERK OF COURT: Please raise your right
17 hand.

18 [Whereupon, Mr. Johnson is duly sworn by the
19 clerk of court as follows: do you solemnly swear or
20 affirm the evidence you're about to give in court in
21 this case will be the truth, the whole truth, and
22 nothing but the truth, so help you God]

23 THE WITNESS: I do, ma'am.

24 THE CLERK OF COURT: Okay. Please have a seat.

25 [Whereupon, Mr. Johnson takes the witness stand]

Testimony of Rick Tibbott
Redirect Examination by Mr. DeBusk
March 12, 2014

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THE CLERK OF COURT: State your full name and
spell your last name for the Court]

THE WITNESS: Hello. My name is Corporal Jack
Johnson, Jr. J-A-C-K J-O-H-N-S-O-N, J-R.

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Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

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JACK JOHNSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DEBUSK:

Q. Corporal Johnson, who is your employer?

A. Horry County Police Department.

Q. I'm sorry to ask you all of this. How long have
you been with them?

A. Ten years.

Q. Okay. What are your duties?

A. Currently, I'm a corporal assigned to A Squad.
I supervise about six people.

Q. What are your regular duties? What do you do on
the A Squad?

A. What I do currently?

Q. Yes.

A. Yes. I supervise six other officers. I give
advice in cases, make sure they're doing everything
properly.

Q. Are these patrol officer, I guess is the
question.

A. Yeah. The other officers, yes, sir.

Q. How about March of 2013? What were you doing
then?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. I was on a community outreach team.

2 Q. Were you on duty on March 25th, 2013?

3 A. Yes, sir.

4 Q. Did your duties on the community outreach team
5 bring you to the Forest Brook Road area of the county?

6 A. Yes, sir.

7 We were working in the area. What happened --
8 do you want me to go on?

9 Q. Well, let me ask you this. Were you aware of a
10 traffic stop made by then PFC Tibbott at Hammerstone and
11 McCormick Drive?

12 A. Yes, sir.

13 Q. Did you go to that scene?

14 A. Yes, sir.

15 Q. When you were there, did you consult with other
16 officers?

17 A. Yes, sir.

18 Q. Based on your consultation with the other
19 officers, what were you doing in the early afternoon hours
20 of March 25th?

21 A. We went back through the neighborhood in the
22 area looking to see if any houses had been broken into.

23 Q. So you were looking for a burglary?

24 A. Yes, sir.

25 Q. Okay. Did you receive any calls that afternoon?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir, I did.

2 Q. And where did that call come from?

3 A. A house on Capers Drive. Can I refer to the
4 report?

5 Q. Yes.

6 These are -- again, is this the report you wrote
7 at the time with your recollections --

8 A. Yes, sir.

9 Q. -- that were fresh in your mind?

10 A. Yes, sir.

11 Q. Yes, you may.

12 A. It was [REDACTED] Capers Drive.

13 Q. State's Exhibit 5, ask if you recognize that.

14 A. Yes, sir. That's the address, the house, I
15 responded to.

16 Q. And is that the house you went to?

17 A. Yes, sir.

18 Q. What kind of call was it?

19 A. It was a report of a burglary.

20 Q. Okay. Who did you talk to there?

21 A. A Ms. Susan Marotte.

22 Q. Okay. How far were you from that scene when you
23 got the call?

24 A. Not far. We were in the neighborhood. I was
25 pretty much walking from house to house, walking around

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 every house in the neighborhood.

2 Q. You were on foot?

3 A. Pretty much.

4 Q. But you had your car with you?

5 A. I moved my car up every now and then, but for
6 the most part I was on foot.

7 Q. What did you see at that scene?

8 Well, let me go back for a minute and get this
9 on the record. That particular house where you responded
10 to the burglary address complaint --

11 A. Right.

12 Q. -- what county is that in?

13 A. In Horry County.

14 Q. Okay. Thank you.

15 What did you see when you went to that certain
16 house?

17 A. When I got there, I met with Ms. Marotte. A few
18 minutes later I believe her husband arrived. She told me
19 that --

20 Q. Well, let's not go into what she told you.

21 A. Oh. I'm sorry.

22 Q. What did you see? Did you examine the house for
23 evidence for burglary?

24 A. Yeah. That's what I was --

25 After meeting with Ms. Marotte, I did a walk-

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 through of the house. I noticed on the floor there were
2 little chunks of mud that were throughout the house and
3 they looked like they led back to the bedroom. Walked
4 into the bedroom. Ms. Marotte pointed out that there was
5 a cigarette butt on the floor. I observed that. It was
6 at the end of the bed in the bedroom, master bedroom.
7 Also, a window was cracked open and the screen had been
8 removed. I walked through the rest of the house. I
9 really didn't see anything out of the ordinary.

10 I then checked outside of the residence and I
11 walked around the outside. I didn't observe any pry marks
12 or anything on any of the other windows or anything. The
13 window at the master bedroom where the window was cracked
14 underneath the --

15 Q. By cracked, do you mean partially open or
16 broken?

17 A. No. It was cracked open, partially open.

18 Q. Partially open?

19 A. Yes, sir.

20 Q. And under the windowsill in the dark was a shoe
21 print but it wasn't enough definition in it to take a
22 cast.

23 Q. Was it muddy in that spot that could explain the
24 tracking through the house?

25 A. Yes, sir.

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 Q. Referring back to State's Exhibit 5, can you see
2 which window it was that had the screen removed and was
3 partially open?

4 A. It's the one on the back corner right here by
5 the bush.

6 Q. The one, if you're facing the house, all the way
7 to the right just before the corner?

8 A. Yes. All the way to the right of this picture,
9 the very last window there.

10 Q. Thank you.

11 Did you take any pictures of the scene?

12 A. Yes, sir, I did.

13 [Whereupon, State's Exhibit Number 19 is marked
14 by the court reporter]

15 Q. [Mr. DeBusk] Let me refer to State's Exhibit 19
16 and ask if you recognize this.

17 A. Yes, sir. That's a picture of the bedroom
18 window. And, also, you see some of the mud here on the
19 floor that I observed.

20 Q. How is the focus on those pictures?

21 A. It's not too good.

22 Q. You're probably not getting a job with National
23 Geographic any time soon. But that does fairly and
24 accurately represent the tracks on the floor and the open
25 -- and the window that was open?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir, Your Honor.

2 [whereupon, Mr. DeBusk proffers documents to
3 Mr. Long]

4 [Whereupon, Mr. Long reviews documents]

5 MR. LONG: I thought it was taken by him, I
6 believe he testified?

7 THE WITNESS: Yes, sir, Your Honor.

8 MR. LONG: No objection, Your Honor.

9 THE COURT: All right. Without objection.

10 Those are which ones, Mr. DeBusk?

11 MR. DEBUSK: State's Exhibit 19, Your Honor.

12 THE COURT: All right..

13 [Whereupon, State's Exhibit Number 19 is
14 admitted into evidence by the Court]

15 MR. DEBUSK: I would like to publish 19 and 5 to
16 the jury, Your Honor.

17 THE COURT: You may.

18 [Whereupon, Mr. DeBusk proffers documents to the
19 jury]

20 Q. [Mr. DeBusk] Did you find any other evidence
21 there at the scene that was at the house that appeared to
22 be a foreign object in the house

23 A. The cigarette butt, I went back and I collected
24 it.

25 Q. Could you tell what brand of cigarette it was?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. I believe it was a Newport.

2 Q. Okay. How could you tell?

3 A. I think it's got Newport written on it.

4 Q. So you found a cigarette with Newport written on
5 it?

6 A. Right.

7 Q. And was anybody in the house a smoker?

8 A. According to the people that I interviewed, no
9 one in the house smoked Newport cigarettes.

10 Q. Did you speak to anyone at the house about
11 things that were missing?

12 A. The -- Ms. Marotte was -- said she didn't see
13 anything missing at that time.

14 Q. Did she ultimately report anything missing to
15 you?

16 A. Yes.

17 A few days later I did a follow up, after she
18 inventoried the house better, and she found some jewelry
19 and stuff missing. She said it was like a little -- she
20 didn't have a jewelry box, but it was like a little cup
21 tote or something that she kept the stuff in.

22 Q. And on the day you did your report -- or I'm
23 sorry. On March 25th, the day you were there, did you
24 find anything missing at that time?

25 A. I was talking to Ms. Marotte, and her daughter

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 come in. She was upset and she was crying.

2 Q. What was her emotional state at that time?

3 A. She was very upset. She --

4 Q. Excuse me.

5 A. Okay.

6 Q. Go ahead, please.

7 A. She -- the little girl come in. She was crying.

8 She was very upset. I believe she said her earrings --

9 MR. LONG: Objection. Hearsay, Your Honor.

10 MR. DEBUSK: Your Honor, we're offering it as an
11 excited utterance.

12 THE COURT: An excited utterance. I'll allow
13 it.

14 MR. LONG: Your Honor, this was several days
15 following the --

16 MR. DEBUSK: No. No, Your Honor.

17 THE COURT: I think he just testified it was
18 while she was upset.

19 MR. DEBUSK: I'll clarify it.

20 THE COURT: Clarify it, if you would. I think I
21 know where you're going.

22 Q. [Mr. DeBusk] We're talking about when you went
23 to this house on March 25th to take the initial report of
24 the burglary; correct?

25 A. Yes, sir. We were in the master bedroom.

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 Q. The same day you took that picture we just saw?

2 A. Right.

3 I was processing the same -- I was talking to
4 the mother. The little girl come in. She was visibly
5 upset. She was crying.

6 Q. About how old do you think she was?

7 A. Middle teens. Between thirteen and fifteen
8 somewhere.

9 Q. Okay.

10 A. She was crying to her mom that her earrings were
11 missing. She got them for -- I can't -- I forgot why she
12 got them, Your Honor.

13 MR. LONG: I object to hearsay. It's okay for
14 an excited utterance but now we're getting into
15 hearsay that's not related to an excited utterance,
16 where they were arrived -- or where they came from or
17 things of that nature.

18 MR. DEBUSK: It's all connected to the excited
19 utterance, Your Honor. She's still under a state of
20 excitement.

21 THE COURT: All right. Continue.

22 I'm going to allow it. I think it's an 803
23 issue. I think it would come under present sense
24 impression or even -- or excited utterance.

25 Q. [Mr. DeBusk] What else happened after you

Testimony of Jack Johnson, Jr.
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March 12, 2014

1 started -- you began talking to the young lady?

2 A. Right. Well, she identified that as some
3 earrings that were pretty precious to her were missing.
4 At that time, I stopped her. I said, hey, let's go look.
5 We went back to the bedroom. She was still upset. And I
6 asked her to slow down two or three times and calm down,
7 and asked her if there was anything else missing. At that
8 time, she noticed there was a few other things missing.

9 Q. Did she mention anything in particular?

10 A. There was a jewelry box with a skull on top of
11 it. And I think there was another jewelry box, too, with
12 some cosmetic -- costume jewelry, I think you call it.
13 Not too -- anything too expensive. And I believe her
14 camera was also missing.

15 Q. Now, do you -- are you qualified to collect
16 latent fingerprints?

17 A. Yes, sir.

18 Q. Did you collect any prints at that point?

19 A. Yes. I completed -- I processed the scene. I
20 dusted for fingerprints around the windowsill.

21 Q. Did you ever receive any reports on them?

22 A. I didn't receive any reports back on them.

23 Q. Were they -- they weren't identifiable?

24 A. No, sir.

25 Q. Now, you went to the scene. You discovered a

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 window that was partially ajar and the screen taken out,
2 footprints on the floor, things missing.

3 A. Right.

4 Q. Did you inform anybody else of what you had
5 found here? Any of the other officers?

6 A. I'm pretty sure I informed Officer Tibbott and
7 also Detective Cooper, I believe.

8 Q. And again, after that day, after you finished
9 with that scene, you did talk to Ms. Marotte again to take
10 what's called a supplemental report; is that correct?

11 A. Yes, sir.

12 Q. Some days later?

13 A. Yes, sir.

14 Q. How many days later was that?

15 A. I filed a supplemental report on the 30th.

16 Q. And at that time, she reported even more things
17 missing?

18 A. Yes, sir.

19 She said it was between thirteen -- \$1,350 and
20 \$1400, right in there, of jewelry that was missing.

21 Q. Okay. Thank you.

22 Now, I've got a large map here I ask if you
23 recognize. We talked about that earlier.

24 A. Yes, sir.

25 Q. Do you recognize the map?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir, I do.

2 MR. DEBUSK: Okay. Would you step down for a
3 moment.

4 [Whereupon, Mr. Johnson complies]

5 Q. [Mr. DeBusk] Do you recall the scene where you
6 talked with Officer Tibbott and the other officers about
7 the traffic stop?

8 A. Officer Tibbott was here [indicates].

9 Q. That's at Hammerstone and McCormick?

10 A. Correct.

11 We had had another complaint over on Ash -- what
12 is that --

13 Q. Ashepoo Creek?

14 A. -- Ashepoo Creek. I went over there with now
15 Corporal, was Lance Corporal, Stevens.

16 MR. LONG: Objection, Your Honor. I don't know
17 where we're going with this.

18 Q. [Mr. DeBusk] Let me ask you this --

19 THE COURT: I don't know, either.

20 Q. [Mr. DeBusk] -- did you visit this scene at [REDACTED]
21 Ashepoo Creek?

22 A. Yes, sir, I did.

23 Q. As part of your investigation?

24 A. Yes, sir.

25 Q. Did you take the report at [REDACTED] Capers Street?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir.

2 Q. About how far is it from one to the other?

3 A. Driving, it's a pretty good distance.

4 MR. LONG: Again, Your Honor, I'm going to
5 object. I don't know where we're going with this.

6 THE COURT: Well, I think he's just trying to
7 show the proximity of the Marotte burglary and the
8 residence of Ms. Ross.

9 MR. DEBUSK: Your Honor, I think the map speaks
10 for itself. I'll move on.

11 THE COURT: All right.

12 Q. [Mr. DeBusk] And you were canvassing this same
13 neighborhood for a burglary when you got that report; is
14 that correct?

15 A. Yes, sir.

16 Q. Is there more than one way in and out of this
17 neighborhood?

18 A. I don't think so.

19 Q. Okay. If you are leaving --

20 A. Not by road, anyway.

21 Q. If you are leaving [REDACTED] Capers Creek Drive and
22 you miss the turnoff to Planter's Creek Drive, where do
23 you end up?

24 A. You come back around to Ashepoo.

25 Q. Ashepoo Creek?

Testimony of Jack Johnson, Jr.
Direct Examination by Mr. DeBusk
March 12, 2014

1 A. Yes, sir.

2 Q. Thank you.

3 And just to summarize, you took a report of a
4 burglary at [REDACTED] Capers Creek Road; is that correct?

5 A. Yes, sir.

6 Q. You talked to Susan Marotte?

7 A. Yes, sir.

8 Q. And you also talked to her daughter as much as
9 you could because she was upset?

10 A. Yes, sir.

11 Q. You found out certain items were missing and you
12 found signs of entry?

13 A. Yes, sir.

14 Q. And you passed that on to the detectives?

15 A. Yes, sir.

16 MR. DEBUSK: Thank you. Please answer any
17 questions defense may have.

18 THE COURT: All right. Mr. Long?

19 MR. LONG: Thank you, Your Honor.

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Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

CROSS-EXAMINATION

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BY MR. LONG:

Q. Corporal Johnson, when you said you were on the community outreach in the neighborhood, whatever, checking to see if there were any reports of burglary, did you receive a call from Ms. Marotte or did you receive a call from the dispatch saying go to that location and talk to a Ms. Marotte?

A. The call was from dispatch.

Q. All right. And so when you arrived at the scene was she outside and said, here I am, this is me, come here?

A. Yeah. I'm pretty sure she was.

Q. What time of day was that?

A. It was right after two o'clock, I believe.

Q. Two o'clock?

A. I think so.

Q. Was she the only one home at the time you arrived?

A. Her husband got there right when I did or right after. He was right there somewhere.

Q. Her daughter, was she there at that time?

A. I don't remember if she was there then or if she got home off the bus while I was processing the scene. I'm not sure exactly when she got -- when she got there.

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 Q. Would it surprise you to know that her daughter
2 attends college?

3 A. Some kids are gifted.

4 Q. All right. But you said she looked like she was
5 in the middle teens?

6 A. Yes, sir.

7 I think I wrote in my report -- after I looked
8 again, I put sixteen years old in my report.

9 Q. But she wasn't riding a school bus, as far as
10 you know?

11 A. I don't know how she gets back and forth to
12 school.

13 Q. Now, as a result of her call, you were looking
14 for signs of entry in the residence; correct?

15 A. Yes, sir.

16 Q. And you went into the residence first. Didn't
17 she point out and say, right here, here looks like where
18 they came in? In other words, she was making your job
19 easier for you?

20 A. Yes, sir.

21 Q. And she showed you, look here, here's dirt and
22 mud, none of us put that here, that must have been from
23 whoever came in the window; correct?

24 A. Yes, sir.

25 Q. Describe the size of the window for me.

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 A. Regular average window.

2 Q. All right. What is that? Thirty inches wide,
3 thirty-two inches wide by thirty-six high or by forty-
4 eight inches high?

5 A. About that wide [indicates] by that tall
6 [indicates], I would say.

7 Q. All right. So I would estimate from your hands
8 that you're talking thirty inches wide by thirty-six
9 inches high?

10 A. Most likely.

11 Q. And is this a metal-frame, plastic-frame, or
12 wood-frame window?

13 A. It looked like it was a metal frame.

14 Q. Okay. So metal. And it had the metal slides on
15 the side?

16 A. I would think so.

17 Q. The screen: what was the screen made of?
18 Light-framed aluminum?

19 A. Just a regular one. I believe so.

20 Q. And was it put back in place or was it off and
21 on the ground?

22 A. It was off and on the ground, I believe.

23 Q. Off and on the ground?

24 A. Yes, sir.

25 Q. So if the window was ajar when you saw it -- or

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 cracked, you called it --

2 A. Yeah, it was cracked.

3 Q. -- but it was open a little bit?

4 A. Yeah.

5 Q. And the screen was on the ground?

6 A. Yes, sir.

7 Q. Did you question her about whether or not she
8 removed the screen or moved the screen?

9 A. I can't remember what she said.

10 Q. Are you married?

11 A. No, sir.

12 Q. All right. Have you been married?

13 A. Yes, sir.

14 Q. All right. What type of housekeeper was your
15 wife?

16 A. She was pretty good.

17 Q. Is she a clean freak like mine? I know you
18 don't know my wife. But was she a clean freak?

19 A. Sometimes.

20 Q. All right. You said that when you went into the
21 bedroom you could see like pellets or pebbles or mud from
22 where the person, perpetrator, came in the window; is that
23 correct?

24 A. Right.

25 Q. All right. And the photograph we have of those

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 is out of focus. But they were clearly, to your eye,
2 distinguishable as footprints or shoe prints, weren't
3 they?

4 A. The one right there beside the bed, yes, it was
5 about like the one outside the window. But the -- how do
6 you say this -- it was described to me that she thought it
7 was dog poop when she walked in --

8 Q. Okay. So we're --

9 A. -- until she got to looking at it better and
10 realized it was dirt.

11 Q. All right. So we're talking about pieces of
12 dirt or mud that could have resembled small dog poop or
13 something?

14 A. Right.

15 Q. Correct?

16 A. Yes, sir.

17 Q. So in other words, it was out of some tread of a
18 shoe?

19 A. Yes, sir.

20 Q. Now, the tennis shoes -- and, I mean, I'm sure
21 your familiar with evidence of tennis shoe and shoe prints
22 and things of that nature. There are tennis type shoes
23 that have tiny little wavy lines in them, correct, that
24 are spaced very tightly together. And those are made for
25 tennis courts, aren't they?

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 A. I don't know where you're going.

2 Q. Are you familiar with certain types of tennis
3 shoes --

4 A. Certain types, yes, sir.

5 Q. -- tightly compressed --

6 MR. DEBUSK: I object, Your Honor.

7 I'm not sure what this line of questioning is
8 about but --

9 THE COURT: Well, if the witness says, I don't
10 know about those things. He's a crime-scene officer
11 but if he says, I don't know about that, that's the
12 answer that Mr. Long is going to get.

13 MR. LONG: And I'm satisfied with --

14 THE COURT: If he does know, then Mr. Long can
15 explore it.

16 MR. LONG: Thank you, Your Honor.

17 Q. [Mr. Long]. You're familiar with shoes that have
18 compressed tread patterns and some that have widely-spaced
19 tread patterns?

20 A. Right..

21 Q. The dirt or mud in this photograph, did it
22 appear to come from a tightly-pressed tread pattern or a
23 widely-spaced tread pattern?

24 A. I couldn't tell.

25 Q. All right. But it was mistakable by Ms. Marotte

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 as dog poop?

2 A. Yes, sir.

3 Q. So would that suggest that it was made by a
4 wide-tread-pattern tennis shoe?

5 A. I don't think so.

6 Her dog was like a little Chihuahua or
7 something, so it was a very small dog.

8 Q. It wasn't the size of mice poop, was it?

9 A. In some spaces.

10 Q. Now, did you take a close-up photograph of that
11 dirt or mud?

12 A. I don't think so. I think I probably tried and
13 I couldn't get my camera to focus.

14 [Whereupon, the witness reviews documents]

15 A. I don't have record of me doing one.

16 Q. [Mr. Long] Isn't that evidence that is used in
17 many cases of tread pattern or tread prints?

18 A. There -- as I testified earlier, there wasn't
19 anything -- there wasn't enough -- you've got to have
20 specific ridges and patterns, and everything else, for
21 crime scene to come out and cast them. And there wasn't
22 enough.

23 I took a picture of one outside the window, the
24 best I could, and I think it pretty much shows there
25 wasn't enough definition in the footprint to call out a

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 crime-scene tech to cast it.

2 Q. Corporal, stick with me here. I'm talking about
3 the dirt and mud print inside the bedroom.

4 A. Okay.

5 Q. In your training and your experience, are
6 footprint patterns commonly used as evidence for
7 prosecutions?

8 A. Yes, sir.

9 Q. And wasn't there enough of a pattern, or the mud
10 or whatever, to roughly figure or match that to someone's
11 shoe?

12 A. No, sir.

13 Q. All right. Someone stepped in the mud outside
14 the window?

15 A. Right.

16 Q. They deposited the mud inside the window?

17 A. That's what it appears to be.

18 Q. And you're saying that that could not be used as
19 evidence to match to a shoe?

20 A. No, sir.

21 Q. All right. Just couldn't be done?

22 A. No, sir. Not in my skill level.

23 Q. Okay. I'm going to introduce you to my wife,
24 then.

25 A. Okay.

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 Q. Now, a cigarette butt was taken into evidence;
2 correct?

3 A. Yes, sir.

4 Q. By you?

5 A. Yes, sir.

6 Q. Do you know if it was touched or moved or
7 anything by Ms. Marotte?

8 A. Not that I know of.

9 Q. All right. Tell me why cigarette butts are
10 commonly good evidence.

11 A. If you've got the same cigarette butt and you've
12 got a suspect in possession of that cigarettes [phonetic],
13 it's a good indicator.

14 And, also, with new technology, DNA and stuff is
15 starting to come around, so it's good to pick them up.

16 Q. And, specifically, when someone is smoking a
17 cigarette, they may leave saliva on the filter?

18 A. Right.

19 Q. Or even better, there may be a little piece of
20 skin or something that would come off and stick to the
21 paper of the thing; is that correct?

22 A. Yes, sir.

23 Q. Was this cigarette butt submitted for DNA
24 testing?

25 A. I submitted it into evidence. I don't know what

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
March 12, 2013

1 they did with it after that.

2 Q. Did you submit it for DNA testing?

3 A. I submitted it to evidence.

4 Q. Did you submit it for DNA testing?

5 A. No, sir. I submitted it to evidence.

6 If the detective wanted to submit it for DNA
7 testing, that was his prerogative.

8 Q. You didn't do it yourself -- ?

9 A. No, sir, I didn't.

10 Q. -- and you don't know whether or not anybody
11 else did?

12 A. I do not know, sir.

13 Q. All right. Were any prints recovered around the
14 windowsill?

15 A. Yes, sir, but they were not usable.

16 Q. All right. They were not --

17 A. They were not of quality to make a determination
18 to identify anybody with.

19 Q. All right. Now, you said -- this was on the
20 25th when you were there and it was until the 30th, five
21 days later, that there was the supplemental report of
22 additional items they had discovered missing; is that
23 correct?

24 A. Yes, sir.

25 MR. LONG: The Court's indulgence just one

Testimony of Jack Johnson, Jr.
Cross-Examination by Mr. Long
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moment.

[Whereupon, Mr. Long and Mr. Coleman confer]

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

THE WITNESS: Thank you, sir.

THE COURT: One second, please.

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Testimony of Jack Johnson
Redirect Examination by Mr. DeBusk
March 12, 2014

REDIRECT EXAMINATION

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BY MR. DEBUSK:

Q. Now, you went to the scene where they had the car stopped at Hammerstone; right?

A. Yes, sir.

Q. That was in the morning, wasn't it? Around 10:00?

A. Yes, sir.

Q. And this report was made around 2:00?

A. Yes, sir.

Q. Approximately three or four hours later; right?

A. Right.

Q. Did the victim report to you that she discovered this burglary when she came home?

A. I believe so.

Q. Okay. How many kids did she have?

A. I believe -- I only met one.

Q. Do you think she might have had more?

A. I don't remember.

Q. Is it possible she had a daughter twenty-four and also a daughter in her mid teens?

MR. LONG: Objection, Your Honor. That --

THE COURT: That's speculation --

MR. LONG: -- calls for speculation.

THE COURT: -- Mr. DeBusk, and I don't think he

Testimony of Jack Johnson
Redirect Examination by Mr. DeBusk
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1 would know that.

2 Q. [Mr. DeBusk] The daughter you met you noted as
3 age sixteen, right, not age twenty-four; is that correct?

4 A. Yes, sir. Sixteen. There was no way she was
5 twenty-four.

6 Q. Did Ms. Marotte implicate anyone in this
7 burglary?

8 A. No, ma'am. No, sir.

9 Q. Did she give you any ideas of who a suspect
10 might be?

11 A. No, sir.

12 Q. Did she seem to know any idea who the suspect
13 might be?

14 A. No, sir.

15 Q. Now, you -- Mr. Long asked you a lot about those
16 footprints, the muddy footprints. What were they on?
17 What were the footprints on? What surface?

18 A. It was a dark surface outside the window.

19 Q. Inside the house.

20 A. Right.

21 And on the carpet you could just see pretty much
22 the outline where somebody had stepped.

23 Q. So it was a carpet?

24 A. Right.

25 And then throughout the house there was like

Testimony of Jack Johnson
Redirect Examination by Mr. DeBusk
March 12, 2014

1 little chunks of mud going out of the bedroom into the
2 living room.

3 Q. Now, you've been working crime scenes for a
4 while; right?

5 A. Yes, sir.

6 Q. And you've been trained in crime scene analysis;
7 right?

8 A. I've been trained to process scenes, yes, sir.

9 Q. Was there enough definition on any of the
10 footprints inside the house to compare to a shoe?

11 A. No, sir, there was not enough.

12 Q. Was there enough definition on the footprint in
13 the mud outside the house to compare to any shoe?

14 A. No, sir.

15 Q. If there had been, would you have sought more
16 crime scene analysis from others?

17 A. Yes, sir.

18 Just for the record, I've made like seven or
19 eight cases where I've been able to arrest somebody with a
20 footprint, so I --

21 Q. So if this had been a sufficient footprint to
22 use, you would have pursued it?

23 A. Most definitely.

24 Q. Were you responsible for deciding what DNA tests
25 were done?

Testimony of Jack Johnson
Redirect Examination by Mr. DeBusk
March 12, 2014

1 A. Not when the case is going to be taken over by a
2 detective.

3 Q. And you did a fingerprint, though; correct?

4 A. Yes, sir.

5 Q. And there was some fingerprint there but wasn't
6 able to identify it; is that correct?

7 A. Correct.

8 Q. The same is sometimes true with DNA, isn't it?
9 Sometimes --

10 A. Yes, sir.

11 Q. -- there's not enough to identify?

12 Okay. But in this case you had a specific
13 report of very characteristic items that were missing from
14 the burglary victims' house; correct?

15 A. Yes, sir.

16 Q. Including the skull box a -- a skull jewelry box
17 and another jewelry box with flowers on it; correct?

18 A. Right.

19 Q. And you passed that information on to
20 detectives; correct?

21 A. Yes, sir.

22 MR. DEBUSK: Thank you.

23 MR. LONG: Very briefly, Your Honor.

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25 - - -

FORM C-100 - LASER REPORTERS PAPER & MFG CO. 800-626-6313

Testimony of Jack Johnson, Jr.
Recross-Examination by Mr. Long
March 12, 2014

RECROSS-EXAMINATION

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BY MR. LONG:

Q. Corporal Johnson, if in a hypothetical there were three suspects and two of them were --

MS. LIVESAY: Your Honor, at this time I have to question whether or not he can answer a hypothetical. It's my understanding that only experts can handle those type of questions.

THE COURT: Well, we won't know unless we hear the question.

Go ahead.

THE WITNESS: Okay.

MS. LIVESAY: Well, we know it's a hypothetical, Your Honor.

THE COURT: Well, have a seat.

Ask the question.

MR. LONG: Thank you, Your Honor.

Q. [Mr. Long] Your training and experience with footprints, are you telling us, for example, in a hypothetical where you have three suspects, two in leather-soled shoes and one in tennis shoes, if they left mud or prints on a carpet like that, you couldn't distinguish between a leather sole and tennis shoes?

A. I'm going to go more than hypothetical in this case. If I had enough to get impressions and match it to

Testimony of Jack Johnson, Jr.
Recross-Examination by Mr. Long
March 12, 2014

1 a shoe, knowing I had suspects, I would have most
2 definitely taken extra steps to gather that evidence.

3 Q. And that would have been a closer photograph of
4 it itself?

5 A. I would be calling a crime scene tech out to do
6 a casting of the one outside the window --

7 Q. I'm not talking about the one outside. I'm
8 talking about the one inside.

9 A. And the one inside, they would have come and
10 gotten better pictures of it than what I had with my --
11 the cheap cameras that they issue us.

12 Q. And was that done in this case?

13 A. It was not done.

14 Q. Okay. Thank you, sir. No further questions.

15 THE COURT: All right. Thank you, sir. You may
16 step down.

17 MR. DEBUSK: Your Honor, may Corporal Johnson be
18 excused from his subpoena?

19 THE COURT: Any --

20 MR. LONG: No objection, Your Honor.

21 THE COURT: Without objection, you're released
22 from your subpoena.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. Mr. DeBusk, what do you
25 have next?

Testimony of Jack Johnson, Jr.
Recross-Examination by Mr. Long
March 12, 2014

1 MR. DEBUSK: I call Detective Mark Cooper, Your
2 Honor. That would be a brief witness.

3 THE COURT: Okay.

4 MR. DEBUSK: Mark Cooper.

5 [Whereupon, Mr. Cooper comes forward]

6 THE CLERK OF COURT: Hey.

7 MR. COOPER: Hello.

8 THE CLERK OF COURT: How are you?

9 MR. COOPER: Doing good.

10 [Whereupon, Mr. Cooper is duly sworn by the
11 clerk of court as follows: do you solemnly swear or
12 affirm the evidence you're about to give in the court
13 in this case will be the truth, the whole truth, and
14 nothing but the truth, so help you God]

15 THE WITNESS: I do.

16 THE CLERK OF COURT: Okay. Please be seated.

17 [Whereupon, Mr. Cooper takes the witness stand]

18 THE CLERK OF COURT: State your full name.

19 Spell your last name for the Court.

20 THE WITNESS: My name is Mark Cooper. Last name
21 is C-O-O-P-E-R.

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Testimony of Mark Cooper
Direct Examination by Mr. DeBusk
March 12, 2014

1 MARK COOPER,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 BY MR. DEBUSK:

5 Q. Who's your employer?

6 A. Horry County police.

7 Q. Detective Cooper, how long have you been with
8 them?

9 A. Twenty-six years.

10 Q. Okay. What are your duties?

11 A. Burglary detective on the south end.

12 Q. Okay. And how about in March of 2013?

13 A. Responsible for that area all the way from 501
14 to Georgetown.

15 Q. Okay. Were you involved in the investigation of
16 a burglary at [REDACTED] Capers Creek?

17 A. Yes, sir.

18 Q. Did you receive any evidence in the course of
19 that case?

20 A. I did.

21 I believe it was Officer Tibbott signed some
22 evidence to me and I turned --

23 Q. What was the nature of that evidence?

24 A. Oh, my goodness. Have y'all got some -- the
25 evidence sheet up there?

MIA PERRON, CVR-CM-M

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Testimony of Mark Cooper
Direct Examination by Mr. DeBusk
March 12, 2014

1 Q. The --

2 A. Yeah. It's laying right here.

3 [Whereupon, the witness reviews documents]

4 Q. [Mr. DeBusk] That's State's Exhibit 16. What
5 is that?

6 A. Tibbott filled this out. It's basically a list
7 of some jewelry and some other stuff that he had gotten
8 off the defendants.

9 Q. You received those items from Officer Tibbott?

10 A. I did.

11 Q. What did you do with them?

12 A. I turned them into the evidence locker. Sharon
13 Lilly was the evidence custodian.

14 Q. So they were placed into evidence?

15 A. Yes, sir.

16 Q. Was this your case or was this another officer's
17 case?

18 A. Detective Bogart. Senior --

19 Q. You were --

20 A. -- Detective Bogart.

21 Q. You were assisting -- you were assisting
22 Detective Bogart?

23 A. Yes.

24 MR. DEBUSK: Thank you. Please answer any
25 questions the defense might have.

Testimony of Mark Cooper
Direct Examination by Mr. DeBusk
March 12, 2014

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THE COURT: Mr. Long?

MR. LONG: Thank you, Your Honor.

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO 800-626-6313

Testimony of Mark Cooper
Cross-Examination by Mr. Long
March 12, 2014

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CROSS-EXAMINATION

BY MR. LONG:

Q. Have you ever taken any footprint castings off of carpet or hardwood?

A. Did I?

Q. Have you ever.

A. Oh. No, sir.

Q. Is that part of your job responsibilities? You said you were a crime scene technician?

A. Negative. I'm a detective.

Q. Detective. Okay.

A. Yes, sir.

Q. Being a detective, have you ever taken photographs of footprints, kick mark on doors --

A. Yes.

Q. -- things of that nature?

A. Yes, sir.

Q. Is that useful in evidence in prosecutions?

A. Yeah. I would think so.

Q. Can you distinguish between a narrow-tread pattern of a tennis shoe and a wide-tread pattern of a tennis shoe?

A. The definition, yeah. I mean, with what you do with your fingers, yeah.

Q. And if I had mud in a narrow-tread-pattern

Testimony of Mark Cooper
Cross-Examination by Mr. Long
March 12, 2014

1 tennis shoe and mud in a wide-tread-pattern tennis shoe
2 and I left that on somebody's carpet, could you tell me
3 which shoe it came from?

4 A. I would try my best.

5 Q. It wouldn't be impossible, though, would it?

6 A. No, no. No, no.

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

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Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

REDIRECT EXAMINATION

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BY MR. DEBUSK:

Q. Detective Cooper?

A. Yes.

Q. Wouldn't you require some degree of definition to be able to make identification to a shoe from a footprint?

A. Oh. Yeah.

But I was just going off of his finger size. He was talking about wide and narrow. But, I mean --

Q. But if a footprint wasn't sufficient quality to compare, it would be of no evidentiary use, would it?

A. No.

MR. DEBUSK: Thank you.

THE COURT: Mr. Long?

MR. LONG: Nothing further, Your Honor.

THE COURT: Step down, please.

MR. DEBUSK: May Detective Cooper be excused, Your Honor?

THE COURT: Any objection?

MR. LONG: No objection, Your Honor.

THE COURT: All right. Very well.

[Whereupon, Mr. Cooper is excused and exits the witness stand]

MR. DEBUSK: Your Honor, our next witness might

Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

1 be a little lengthy. Should we proceed or --

2 THE COURT: Well, it's a quarter of 5:00 and I
3 don't want to keep this jury past five o'clock. I'm
4 going to let them go.

5 I'm going to remind counsel you're probably
6 aware that I have to do a presentation at 11:30
7 tomorrow until 1:00. That will be our lunch hour,
8 from 11:30 to 1:00, while I do that. So we'll have
9 the jury back in here at 9:30. I expect the attorneys
10 to be here at 9:00. Okay?

11 MR. DEBUSK: Understood, Your Honor.

12 THE COURT: Mr. Roth, if you would take your
13 jurors to the jury room and let them gather their
14 personal property so they can be excused for the
15 evening.

16 Please remember my admonitions earlier about
17 don't look up anything about the case, don't do any
18 independent research. Don't discuss it with anyone.
19 I know it's hard to go home to your wives, boyfriends,
20 husbands and say, I can't talk with you about the
21 case. But that's what we're going to ask you to do.
22 Don't. Tell them you'll tell them all about it after
23 you've deliberated. All right.

24 Hold that jury a moment when you get them back
25 in there. Tell Mr. Roth to hold the jury, please, for

Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

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just one second.

[Whereupon, the jury exits the courtroom at
4:44 p.m.]

THE COURT: Something occurred to me just as I
was sending this jury out. Has this jury been sworn?

THE CLERK OF COURT: This morning?

THE COURT: Yes.

THE CLERK OF COURT: No, sir, it has not.

THE COURT: This jury has not been sworn.

Okay. I'll hear you both on that. What we can
do is swear the jury now --

MR. DEBUSK: That would be the State's motion,
Your Honor, swear the jury now and instruct them that
the -- that it applies for the entire case.

THE COURT: Mr. Long?

MR. LONG: Your Honor, that puts me in a
difficult point, as far as PCR appeal, et cetera,
things of that nature. I don't know how I can consent
to a cure of that technical an error at this --

THE COURT: Well, if the jury has not been
sworn, the case has not begun.

MR. LONG: I understand, Your Honor.

THE COURT: And the remedy is for you to move
for a mistrial. And if you do that, we'll start the
case again. So you tell me which way you want to go

Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

1 with it.

2 MR. LONG: The Court's indulgence just one
3 moment.

4 THE COURT: I don't know why that occurred to me
5 as they were walking out.

6 [Whereupon, Mr. Long and Mr. Coleman confer]

7 MR. LONG: Your Honor, would that involve the
8 drawing of a new jury?

9 THE COURT: Certainly.

10 [Whereupon, Mr. Long and Mr. Coleman confer]

11 THE COURT: Mr. Long, I'll hear from you.

12 MR. LONG: Your Honor, he does not wish to waste
13 the time of the Court. The testimony has already come
14 through. We would consent to the jury being sworn now
15 and continue with the case in the morning.

16 THE COURT: All right. Bring that jury back in,
17 please.

18 [Whereupon, the jury enters the courtroom at
19 4:48 p.m.]

20 THE COURT: Mr. Foreperson and ladies and
21 gentlemen of the jury, as I was sitting here a moment
22 ago just, before I sent you out, it occurred to me
23 that I could not recall you being sworn in as jurors.

24 I conferred with the clerk of court and counsel
25 and we are all of the opinion that you were not sworn

Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

1 in as jurors.

2 Everyone has agreed that rather than retry this
3 whole case, that they would all agree that it would be
4 appropriate to give you the jury charge now. I am
5 always reluctant to do that, but since the parties
6 have agreed and since you have not gone home or spent
7 any overnight time, I am going to allow the clerk to
8 swear you.

9 Please remember that this oath that you take
10 binds you throughout this trial and it applies to the
11 evidence that you've already heard.

12 If you would, Madam Clerk, give them the oath.

13 THE CLERK OF COURT: Please stand. Raise your
14 right hand.

15 [Whereupon, the jury is duly sworn by the clerk
16 of court as follows: do you solemnly swear or affirm
17 you will truly try issues joined in the case and true
18 verdict rendered according to the law and evidence, so
19 help you God]

20 THE COURT: Did you all -- or did any of you
21 fail to take the oath or affirmation?

22 [Whereupon, there is no response]

23 THE COURT: And there is no response. Thank
24 you.

25 Now you may take them in the jury room.

Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

1 [Whereupon, the jury exits the courtroom at
2 4:50 p.m.]

3 THE COURT: We're adjourned for the evening.

4 MR. LONG: Your Honor, one matter before --

5 THE COURT: Yes.

6 MR. LONG: May we approach?

7 THE COURT: Yes.

8 [Whereupon, an off-the-record bench conference
9 is held]

10 THE COURT: All right. Very good.

11 [JURY TRIAL ADJOURNS AT 4:51 P.M.]

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Testimony of Mark Cooper
Redirect Examination by Mr. DeBusk
March 12, 2014

C E R T I F I C A T E

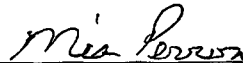
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Larry B. Hyman, Jr., on Wednesday, March 12, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 14th day of June, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2013-GS-26-02238

STATE OF SOUTH CAROLINA)
)
VS.)
)
JORDAN DUDLEY,)
KEIRNON COLEMAN,)
)
DEFENDANTS.)
_____)

JURY TRIAL

VOLUME 2 OF 2

held before the Honorable Larry B. Hyman, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Horry County Courthouse
Conway, South Carolina
on Thursday, March 13, 2014, Commencing at 9:24 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

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Proceedings
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PROCEEDINGS

THE COURT: Are we ready?

MR. DEBUSK: The State is ready, Your Honor.

MR. LONG: Yes, sir, Your Honor.

THE COURT: I understand the jury is back.

Sam, could you get the jury for me?

[Off the record momentarily]

THE COURT: All right. We're going to have to
take a little break. We don't have -- we are a juror
short.

We're at ease.

[Whereupon, a recess is taken from 9:25 a.m. to
9:35 p.m.]

THE COURT: I think our jurors are ready to come
out.

All right. Sam, bring them in, if they are
ready.

[Whereupon, the jury enters the courtroom at
9:35 p.m.]

THE COURT: All right. We have our jurors and
our alternates back in the courtroom.

I hope you had a good evening and that Mr. Roth
had some refreshments for you this morning and we're
ready to go.

Now, Mr. DeBusk?

State vs. Dudley and Coleman
Proceedings
March 13, 2014

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MS. LIVESAY: Thank you, Your Honor.

At this time, the State calls Officer Boyd to
the stand.

[Whereupon, Ms. Boyd comes forward]

THE COURT: Come around, Office Boyd.

THE CLERK OF COURT: Left hand on the Bible,
please. Raise your right hand.

[Whereupon, Ms. Boyd is duly sworn by the clerk
of court as follows: do you solemnly swear or affirm
the evidence you're about to give the Court in this
case will be the truth, the whole truth, and nothing
but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Please be seated.

[Whereupon, Ms. Boyd takes the witness stand]

THE CLERK OF COURT: State your full name.
Spell your last name for the Court, please.

THE WITNESS: My name is Natalie Boyd. B-O-Y-D.

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Testimony of Natalie Boyd
Direct Examination by Ms. Livesay
March 13, 2014

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NATALIE BOYD,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. LIVESAY:

Q. Officer Boyd, tell the jury where you're currently employed.

A. The Horry County Police Department.

Q. And how long have you been employed with the police department?

A. Just short of ten years.

Q. And what kind of training have you undergone to work at Horry County Police Department?

A. I attended the Criminal Justice Academy. I also have yearly in-service training and advanced criminal enforcement training.

Q. Okay. And what are your current duties and responsibilities?

A. I work on the community outreach team. We do a variety of functions. We go out to the communities, and we also back up patrol. And so we go wherever we're needed.

Q. And what were your responsibilities on or around March 25th of 2013?

A. I was patrolling in the south end of the county

Testimony of Natalie Boyd
Direct Examination by Ms. Livesay
March 13, 2014

1 on that day.

2 Q. And are you familiar with the case that we're
3 here today for?

4 A. Yes, I am.

5 Q. If you don't mind, tell the jury how you became
6 involved in this case.

7 A. I heard the call dispatched for Officer Tibbott
8 for a prowler call and so I started to head towards his
9 way because when it came in, it was in progress.

10 Q. Okay. And when you arrived at the scene, what
11 did you see?

12 A. When I arrived, Officer Tibbot had a silver-in-
13 color Impala stopped. He was at the driver's window and I
14 observed three subjects in the vehicle.

15 Q. Okay. And can you describe the people that were
16 in the car?

17 A. There was a female driver and two male
18 passengers.

19 Q. And can you -- were they black, white, older,
20 younger?

21 A. Black. All three.

22 Q. And when you got there, what was being done as
23 part of the investigation?

24 A. Officer Tibbott had asked for their
25 identification. I was watching the subjects in the

Testimony of Natalie Boyd
Direct Examination by Ms. Livesay
March 13, 2014

1 vehicle for officer safety reasons.

2 Q. Okay. And while you were present, who did
3 Officer Tibbott take out of the car?

4 A. He first took out the back passenger and patted
5 him down for any type of weapons.

6 Q. Okay. And did he take anybody else out of the
7 car while you were present?

8 A. Yes, he did. He took out the front passenger.

9 Q. And what, if anything, did you notice about the
10 front passenger that caused you concern?

11 A. When he was in the vehicle, he had had his hands
12 in his pocket and I had asked him to remove them. And so
13 I had some concerns about that.

14 When he got out, I noticed there was a bulge in
15 that same pocket. And Officer Tibbott patted him down and
16 asked him what that was. And at that time, he gave
17 Officer Tibbott permission to remove.

18 Q. Okay. And what was removed from the pocket that
19 you saw?

20 A. I saw jewelry. The only thing I actually could
21 describe was I noticed a gold ring with a red stone.

22 At that time, I was watching the other subjects
23 for officer safety reasons so I wasn't concentrating on
24 everything that he took out of the pocket.

25 Q. Okay. So you were kind of keeping your eye on

Testimony of Natalie Boyd
Direct Examination by Ms. Livesay
March 13, 2014

1 what was in his pocket, as well as keeping your eye on
2 this subject --

3 A. Yes.

4 Q. -- and the lady that was in the driver's seat?

5 A. Correct.

6 Q. Okay. Could you tell if that was men's jewelry
7 or ladies jewelry?

8 A. Well, ladies jewelry, yeah.

9 Q. Okay. And did you learn anything about who the
10 jewelry belonged to?

11 MR. LONG: Objection. Hearsay, Your Honor.

12 MS. LIVESAY: That's fine, Your Honor. I'm
13 going to rephrase the question.

14 THE COURT: Okay.

15 Q. [Ms. Livesay] What did you do next as part of
16 your assistance in the investigation?

17 A. I spoke to the driver of the vehicle.

18 Q. And did you learn anything from the driver that
19 furthered this investigation?

20 A. Yes.

21 Q. Okay. And if you don't mind, tell the jury what
22 you learned that furthered this investigation.

23 MR. LONG: Objection, Your Honor. Hearsay.

24 She's going to have to be stating what the
25 victim told her based on --

Testimony of Natalie Boyd
Direct Examination by Ms. Livesay
March 13, 2014

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MS. LIVESAY: Your Honor --

THE COURT: How about that, Ms. Livesay?

MR. LONG: -- what the driver told her.

THE COURT: Let's send the jury out.

[Whereupon, the jury exits the courtroom at
9:41 p.m.]

THE COURT: Let me hear from you. What would
the response be? Let me hear what the response would
be first.

MS. LIVESAY: Your Honor, she -- actually, I
guess she can tell you what the response is going to
be as to what she learned.

THE COURT: Restate your question and let her
answer for the record so I'll be clear.

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Testimony of Natalie Boyd
Proffer by Ms. Livesay
March 13, 2014

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PROFFER

BY MS. LIVESAY:

Q. What did you do to assist in the investigation of this case?

A. I spoke to the driver of the vehicle.

Q. Okay. And did you learn anything from that that furthered this investigation?

A. Yes.

Q. And what did you learn that furthered this investigation?

A. I learned that she drove -- the subject in the front seat requested her to drive him to a friend's house to get some money. She -- I learned that they stopped at two different houses and that the two passengers exited the vehicle and that they -- the subject in the front returned with items that he did not leave the vehicle with.

THE COURT: Now, tell me, Ms. Livesay, what exception to hearsay does that cover?

MS. LIVESAY: Your Honor, I'm not asking her to tell us what the driver said. I'm just asking --

THE COURT: Yes, you are.

MS. LIVESAY: -- her to find out --

THE COURT: Exactly what you're asking her. You're asking her to tell, to repeat, what the driver

Testimony of Natalie Boyd
Proffer by Ms. Livesay
March 13, 2014

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told her. How is that an exception to the hearsay rule?

MS. LIVESAY: I can withdraw the question, Your Honor.

THE COURT: All right. Bring them back in.

[Whereupon, the jury enters the courtroom at 9:44 a.m.]

THE COURT: All right. Go ahead now.

MS. LIVESAY: Thank you, Your Honor.

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Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

CONTINUED DIRECT EXAMINATION

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BY MS. LIVESAY:

Q. Ms. Boyd, what did you do to assist in the investigation to further assist Officer Tibbott?

A. I spoke to the driver of the vehicle.

Q. And did what she tell you further the investigation?

A. Yes, it did.

Q. Okay. And after speaking to her, what did you do next?

A. I gained consent to search the vehicle.

Q. Okay. And before we get that far, did she speak with you?

A. Yes, she did.

Q. And did she give you information again that furthered the investigation?

A. Yes, she did.

Q. And then that led to the consent to the search of the car; is that correct?

A. That's correct.

Q. And did you search the car?

A. Yes, I did.

Q. Okay. And if you don't mind, tell the jury what you found from searching the car.

A. I found on the passenger -- on the front

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

1 passenger floorboard, I found two jewelry boxes. One was
2 a black box with a white skull on it, and the other was a
3 white jewelry box with flowers on it, and they both
4 contained miscellaneous jewelry in them. I also found two
5 plastic baggies with a green, leafy substance in them.
6 And in the -- in the glove box, I found more jewelry items
7 and a blue Sony camera.

8 Q. And if you don't mind, you may have but I wanted
9 to hit on it. Did -- can you describe some of the jewelry
10 boxes that were in the vehicle?

11 A. I did. The black-in-color jewelry box with a
12 white skull on it, and a white jewelry box with some sort
13 of flower pattern on it.

14 Q. And through your investigation, were you able to
15 determine who that vehicle belonged to?

16 A. Yes. It belonged to the driver.

17 Q. Okay. And were you able to determine whether or
18 not those items that were in the vehicle belonged to the
19 driver?

20 MR. LONG: Objection. Asking for hearsay.

21 THE COURT: Repeat your question.

22 MS. LIVESAY: Certainly, Your Honor.

23 Q. [Ms. Livesay] Through your investigation, were
24 you able to determine whether or not the items that were
25 found in the driver's vehicle belonged to the driver?

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

1 A. Yes, I was.

2 MR. LONG: That would be an objection to --

3 Q. [Ms. Livesay] And did they belong to the
4 driver?

5 THE COURT: Wait a minute. Wait a minute.

6 I'll let her answer the question. Go ahead.

7 Q. [Ms. Livesay] Did they belong to the driver,
8 Ms. Boyd --

9 A. No.

10 Q. -- Officer Boyd?

11 A. No. The driver told me, which I --

12 MR. LONG: Objection --

13 THE COURT: No.

14 MR. LONG: -- hearsay, Your Honor.

15 THE COURT: No. Rephrase your question.

16 Q. [Ms. Livesay] Other than the jewelry, did you
17 get any other items from the car?

18 A. Yes.

19 Q. What other items did you remove from the car?

20 A. A blue Sony camera and two plastic baggies with
21 green leafy type substance in them.

22 Q. And if you don't mind, just so I'm clear and the
23 jury is clear, do you mind running off and telling us a
24 full list of what you removed out of that car.

25 A. Well, as far as what was in the additional

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

1 jewelry boxes, I carried the boxes out of the vehicle and
2 turned them to Officer Tibbott. So -- and when Officer
3 Tibbott went through the items, I did observe that there
4 was miscellaneous jewelry but I can't list exactly what
5 type of jewelry it was.

6 Q. And other than the jewelry, what, if anything,
7 did you find in the car that you removed?

8 A. The blue Sony camera.

9 Q. Okay. And at any point, did you remove anything
10 that did belong to the driver from the car?

11 A. Yes, I did.

12 It was a pack of Newport -- it was a Newport
13 cigarette box, which was empty and -- other than, as far
14 as cigarettes go, and it had an item in it.

15 Q. And where did you remove that Newport box from?

16 A. It was on the driver's side in the door pocket.

17 Q. And through your investigation, did you find out
18 if that belonged to the driver?

19 A. Yes, I did.

20 Q. Okay. And did it belong to the driver?

21 A. Yes, it did.

22 Q. Okay. Now, were you out there during the -- or
23 for most of the investigation done at the roadside?

24 A. Yes, I was.

25 I think I arrived about three minutes into the

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

1 traffic stop. Three or four minutes.

2 Q. And as you were out there, and as part of your
3 investigation, were you able to determine the names of the
4 people that were in the car?

5 A. Yes.

6 Q. And if you don't mind, tell the jury the names
7 of the people that were in the car.

8 A. Is it okay if I refer --

9 Q. Yes.

10 A. -- to my report?

11 [Whereupon, the witness reviews documents]

12 A. It was Keirnon Kyle Coleman, Jordan M. Dudley,
13 and Shakerra Patrice Coleman -- Cowan.

14 Q. And while you were out there investigating on
15 the side of the road, did you take a voluntary statement
16 from anybody?

17 A. I stood by while the driver wrote a voluntary
18 statement.

19 Q. Okay. And who -- tell the jury, please, who the
20 driver of the car was.

21 A. The driver was the female, Shakerra Cowan.

22 Q. Okay. So she was the one you watched fill out a
23 voluntary statement?

24 A. Yes.

25 Q. Okay. And at any point, while you were on the

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

1 roadside investigating this case, did the driver not
2 cooperate?

3 A. No.

4 Q. Who was present for the search of the car?

5 A. Myself and Officer Tibbott. And there was also
6 a warrant officer, who was there, who was standing by.

7 Q. And were items from the car placed into an
8 evidence bag?

9 A. Yes.

10 Q. And who did that?

11 A. Officer Tibbott.

12 Q. Okay. As your -- as part of your investigation,
13 is it protocol to get the name and license or registration
14 from the people in the vehicle?

15 A. Absolutely. Yes.

16 Q. Okay. And is that what you did in this case?

17 A. Yes.

18 Q. Okay. And is that how you got their names?

19 A. Yes. From the traffic stop, yes.

20 Q. And were you able to determine through your
21 initial investigation where these people were living
22 during that time?

23 A. Yes.

24 Q. And where were they living during that time?

25 A. At the Budget Inn hotel in -- on the Boulevard.

Testimony of Natalie Boyd
Continued Direct Examination by Ms. Livesay
March 13, 2014

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Q. At the Budget Inn in Myrtle Beach?

A. Yes.

Q. Now, do you recall where you made that stop or where you were at on the road investigating this stop?

A. Just off of McCormick Road on -- I'll have to -- I was trying to find my report for where we turned.

[Whereupon, the witness reviews documents]

A. Hammerstone Run was the road. It was Hammerstone Run and McCormick.

Q. [Ms. Livesay] And is that an area with a lot of houses or an area with a lot of businesses? What is that area like?

A. It's a residential area.

Q. Okay. And is that area anywhere near the Budget Inn in Myrtle Beach?

A. No. It's a ways from it.

MS. LIVESAY: No further questions for this witness, Your Honor.

MR. LONG: Thank you, Your Honor. Briefly.

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Testimony of Natalie Boyd
Cross-Examination by Mr. Long
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1 CROSS-EXAMINATION

2 BY MR. LONG:

3 Q. Officer Boyd, did you transport any of the
4 suspects in this case to jail?

5 A. I did.

6 Q. All right. And would that have the female,
7 Ms. Cowen?

8 A. Yes.

9 Q. And do you recall who transported the others to
10 jail?11 A. I don't recall. We first transported them to
12 the police department and I know that was Officer Tibbott,
13 initially.14 Q. And was Ms. Cowen talking occasionally to you on
15 the way to the jail?

16 A. I don't recall that.

17 Q. If she made any statements to you, wouldn't you
18 have recorded those or wouldn't you have made notes about
19 the conversations you had with her on the way to the jail?20 A. If there was any importance, it probably would
21 have been in my report --

22 Q. Probably --

23 A. -- my first report.

24 Q. Now, you testified that you saw Mr. Coleman get
25 out of the vehicle and you said you were concerned because

Testimony of Natalie Boyd
Cross-Examination by Mr. Long
March 13, 2014

1 there was like a bulge in his jacket pockets; is that
2 correct?

3 A. No. That's incorrect. It was his -- he had a
4 front pocket.

5 Q. Isn't it like a hoodie jacket and it was those
6 pockets that you were concerned about?

7 A. It was like a sweatshirt, a gray sweatshirt.

8 Q. And some jewelry was removed from those pockets
9 by Officer Tibbott; correct?

10 A. That's correct.

11 Q. All right. Did you see Mr. Tibbott remove a
12 pack of cigarettes from Mr. Coleman?

13 A. I was focusing on the other subjects for officer
14 safety reasons. So like I stated earlier, I did observe a
15 gold ring with a red stone and some miscellaneous jewelry,
16 but I really was not focused on what the specific of the
17 items coming out of his pocket were. I was more focused
18 on our safety at the time.

19 Q. If he had had a box of cigarettes on him at the
20 time when Officer Tibbott was pulling stuff out of his
21 pocket, would you have seen them?

22 A. Again, I was watching two other subjects and
23 also watching for officer safety.

24 Q. But you did see a gold ring with a red stone
25 and a --

Testimony of Natalie Boyd
Cross-Examination by Mr. Long
March 13, 2014

1 A. I did.

2 Q. -- ladies watch, I believe you said? Silver
3 watch?

4 A. No, I didn't sat that. I said I observed a gold
5 ring with a red stone and --

6 Q. Being removed from his pocket.

7 A. -- then the other subject at the time was
8 sitting on the curb and so I was watching that subject.
9 And the driver was still at the vehicle. So they were a
10 little bit spread apart, so it was difficult to keep my
11 eye focused on exactly what was coming out of his pocket.

12 Q. So you saw the jewelry removed but nothing else
13 that may have been removed; is that correct?

14 A. Again, I just observed --

15 Q. Please say yes or no.

16 A. -- the like miscellaneous jewelry and the gold
17 ring and the red stone.

18 MR. LONG: The Court's indulgence just one
19 moment, please.

20 [Whereupon, Mr. Long and Mr. Coleman confer]

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

22 MS. LIVESAY: No further questions from the
23 State, Your Honor.

24 THE COURT: You may step down. Thank you.

25 [Whereupon, Ms. Boyd is excused and exits the

Testimony of Natalie Boyd
Cross-Examination by Mr. Long
March 13, 2014

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witness stand]

MR. DEBUSK: The State calls Detective Scott Bogart.

[Whereupon, Mr. Bogart comes forward]

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Bogart is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the evidence you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Okay. Have a seat.

[Whereupon, Mr. Bogart takes the witness stand]

THE CLERK OF COURT: State your full name. Spell your last name for the Court, please.

THE WITNESS: Scott Bryan Bogart. B-O-G-A-R-T.

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Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

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SCOTT BOGART,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DEBUSK:

Q. Detective Bogart, who is your employer?

A. The Horry County Police Department.

Q. How long have you been with them?

A. Fifteen years.

Q. Okay. What are your duties?

A. Right now I'm a senior detective with the north precinct and I work property crimes.

Q. How about in March of 2013?

A. I was assigned to the south precinct as Detective Cooper's partner and working property crimes.

Q. Were you involved in the investigation of a burglary at [REDACTED] Capers Creek Drive?

A. Yes, I was.

Q. What was your role?

A. I was the lead investigator.

Q. Was it part of your job to decide what investigation and what analysis was done on the evidence in that case?

A. Yes.

Q. Did you handle a cigarette -- or did you have a

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 cigarette butt in evidence?

2 A. Yes.

3 Q. Did you order anymore analysis of that cigarette
4 butt?

5 A. No, sir.

6 Q. Why not?

7 A. In this particular case there was an
8 overabundance of evidence that clearly pointed -- we had
9 suspects in custody, recovered the entire amount of stolen
10 items that were stolen from the crime scene. Also had
11 interviews that were quite fruitful from one of the --

12 MR. LONG: Your Honor, I'm going to have to
13 object.

14 At this point, he's just doing a recital of the
15 case. It all has to be hearsay. He can certainly
16 testify to anything he did, but --

17 THE COURT: He was testifying as to why he did
18 not --

19 MR. LONG: And it has to be based on hearsay.

20 THE COURT: -- have any testing.

21 Well, he was the investigator. I think he can
22 testify as to what evidence he thought was available.
23 He hasn't gone into the specifics of the evidence.
24 He's just generally spoken concerning the evidence.

25 MR. LONG: Understood.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 THE COURT: I'm going to allow it.

2 Q. [Mr. DeBusk] Isn't it -- it's quite tedious. I
3 mean, you could send off the DNA and get an answer back in
4 ten minutes; right?

5 A. No, sir.

6 Generally speaking, in a property crime case a
7 piece of evidence like a cigarette butt, or any DNA
8 evidence, can take up to a year to three years in some
9 cases.

10 Q. Just to get the results back?

11 A. That's correct.

12 Q. Do you always get a positive result for DNA?

13 A. No, sir.

14 Q. Okay. Is it your job to decide, based on all
15 the facts of the case, whether you think it's justified to
16 send that?

17 A. Yes..

18 Q. What kind of case would you send for DNA?

19 A. I would say involved in a case where I didn't
20 have a suspect, I didn't have a confession, I didn't have
21 basically a case that can be put together without it.

22 In this particular case, there was really no
23 need to send the butt off. We had like -- again, we had
24 an overabundance of evidence that pointed to who actually
25 committed the crime so there was no sense to, you know,

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 send it away.

2 Q. Okay. And, again, you've been working with the
3 police for fifteen years. And that was based on your
4 knowledge and experience?

5 A. That's correct. Yes, sir.

6 Q. And, again, it takes a while to get DNA
7 evidence; right?

8 A. Yes, sir.

9 Q. And you're aware of all the facts in this case
10 when you made that call?

11 A. Yes.

12 Q. Did you handle other evidence in this case?
13 Specifically, any stolen property?

14 A. Yes, I did.

15 Q. Where did you get that from?

16 A. That property would have come from the property
17 evidence section.

18 Q. Let me show you what's been marked as State's
19 Exhibit 16 and ask you if you recognize this.

20 [Whereupon, the witness reviews documents]

21 A. I do, yes. I'm looking at the property evidence
22 chain that details what evidence was relinquished from
23 Officer Tibbott to Detective Cooper. And then later on it
24 was relinquished to -- the pieces of evidence were
25 relinquished to me and I later relinquished these items to

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 the victim in this case.

2 Q. [Mr. DeBusk] Now, you have items there numbered
3 2 through 20; is that correct?

4 A. That's correct.

5 Q. Were all those items in evidence and all those
6 items pulled out by you?

7 A. Yes.

8 Q. And who did you meet with to relinquish those
9 items?

10 A. I met with Ms. Marotte.

11 Q. With the victim --

12 A. Yes.

13 Q. Anyone else with her?

14 A. Her daughter.

15 Q. You met her daughter?

16 A. Yes, I did.

17 Q. How old is her daughter?

18 A. At that time I would estimate she was probably
19 sixteen.

20 Q. And do you know if was she in high school or
21 college?

22 A. I believe she was in high school.

23 Q. Okay. Do you know of any other daughter she
24 has?

25 A. No.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. Do you know for a fact whether she does or
2 doesn't?

3 A. No.

4 Q. Those two individuals looked at those items 2
5 through 20; is that correct?

6 A. That is correct, yes.

7 Q. And did they recognize them?

8 A. Immediately. They identified every item, number
9 2 through 20.

10 Q. And that was all the items put into evidence by
11 Officer Tibbott; correct?

12 A. Well, indirectly through Detective Cooper, yes.

13 Q. All the items -- right after --

14 A. Everything that was taken from the car. Yes.

15 Q. Okay. Everything taken from the car.

16 And all of that was returned to the victim and
17 her --

18 A. Yes.

19 Q. -- daughter?

20 A. That's correct.

21 Q. Did you make a form to memorialize the fact that
22 you turned it over?

23 A. I did.

24 Q. Let me show you what's marked as State's Exhibit
25 14, ask if you recognize this.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 [Whereupon, the witness reviews documents]

2 A. This is the continued chain of custody where
3 it shows where I relinquished items 2 through 20 to
4 Ms. Marotte. Her signature and printed name are on the
5 form.

6 Q. Who prepared that form?

7 A. I did. I also signed it.

8 Q. Okay. And who else signed it?

9 A. Ms. Marotte signed it.

10 Q. Indicating that she received all those items
11 from you?

12 A. Yes.

13 Q. Each one of those 2 through 20, all went to
14 Ms. Marotte?

15 A. Yes.

16 Q. And you only turned them over because she
17 recognized them --

18 A. Yes.

19 Q. -- or her daughter?

20 Her and her daughter recognized them as their
21 property?

22 A. Yes.

23 MR. DEBUSK: Your Honor, at this time I believe
24 we've laid all the foundation for these two exhibits.
25 We would move them into evidence.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 THE COURT: I don't know why they didn't come
2 into evidence. They've already published them.

3 MR. DEBUSK: We would like to place them into
4 evidence, Your Honor.

5 MR. LONG: The only objection is it's
6 unnecessary. They've already published them.

7 THE COURT: Okay. I'm going to admit it, then.

8 MR. DEBUSK: Thank you.

9 [Whereupon, State's Exhibit Number 14 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 16 is
12 admitted into evidence by the Court]

13 Q. [Mr. DeBusk] Now, as part of the investigation,
14 did you receive a description of the items that had been
15 stolen?

16 A. Yes, I did.

17 Q. Did you receive that description before
18 Ms. Marotte saw those items in your custody?

19 A. I'm sorry. Could you repeat that again?

20 Q. Did you receive those descriptions of the stolen
21 items before Ms. Marotte met with you to receive them?

22 A. Yes.

23 Q. Was the description given to you beforehand --

24 MR. LONG: Objection, Your Honor.

25 The descriptions provided has to be hearsay and

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 he's relying on hearsay to try to make a match. I
2 don't think that's appropriate.

3 THE COURT: I'm going to allow it.

4 MR. DEBUSK: Actually -- I'm sorry, Your Honor.

5 THE COURT: Go ahead. I'll allow it. Go ahead.

6 Q. [Mr. DeBusk] Were those descriptions consistent
7 with the items that you had in evidence?

8 A. Identical.

9 Q. And the items that were returned to Ms. Marotte?

10 A. Yes.

11 MR. DEBUSK: Thank you. No further questions.

12 THE COURT: All right. Mr. Long?

13 MR. LONG: Thank you, Your Honor.

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Testimony of Scott Bogart
Cross-Examination by Mr. Long
March 13, 2014

CROSS-EXAMINATION

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BY MR. LONG:

Q. Detective Bogart, you, as the lead investigator, have no interview responsibilities in this case; is that correct?

A. I would say that's incorrect.

Q. All right. Did you interview Ms. Cowen?

A. Yes, I did.

Q. Did you interview Mr. Dudley?

A. Yes, I did.

Q. All right. Did you interview Mr. Coleman?

A. Yes.

Q. Were you present at the scene --

A. No, sir.

Q. -- of the arrest?

A. No, sir.

Q. Did you conduct investigations of the incident location?

A. No.

Q. Did you take photographs of the incident location?

A. No.

Q. Did you take clothing and evidence from the defendants following their arrest?

A. No.

Testimony of Scott Bogart
Cross-Examination by Mr. Long
March 13, 2014

1 Q. Did you do fingerprints on the defendants at the
2 time of the arrest?

3 A. Personally, no. They would have been done at
4 the jail.

5 Q. So, basically, other than the interviews that
6 you had with the three of them, everything else was done
7 by someone else and provided to you for your review; is
8 that correct?

9 A. Yes, that's correct.

10 Q. Now, you say you didn't request DNA because the
11 evidence was so overwhelming. The evidence was so
12 overwhelming based on what other officers told you; is
13 that correct?

14 A. No, sir.

15 Q. You didn't collect or make or create or take
16 the evidence into custody yourself through your
17 investigations. The other officers told you, we've got
18 an overwhelming case; correct?

19 A. I believe I used the word overabundance.

20 Q. Overabundance.

21 A. But in the particular case, you're correct. The
22 evidence was brought to me, the facts were brought to me,
23 from several different officers.

24 Q. And some of the facts brought to you would have
25 been based on conversations with Ms. Cowen; is that

Testimony of Scott Bogart
Cross-Examination by Mr. Long
March 13, 2014

1 correct?

2 A. Yes.

3 Q. And your view of the case would have taken that
4 into consideration? When you view everything else
5 concerning the case, you all fit it together to reach an
6 opinion or conclusion; correct?

7 A. Yes.

8 Q. Now, was fingerprints requested off of the
9 jewelry boxes?

10 A. No.

11 Q. All right. Did you yourself look at them to
12 determine if the surfaces was appropriate and any latent
13 prints existed?

14 A. No, sir.

15 Q. Whose responsibility would that have been in the
16 Horry County Police Department?

17 A. It would have been mine.

18 Q. What about the person who takes those items into
19 custody? Wouldn't it be their responsibility to determine
20 if there's latent prints on those surfaces and whether
21 they could be recovered?

22 A. You know, it really varies on a situation.

23 This particular case, it tied up quite a few
24 officers on the street. Our goal is to try to eliminate
25 that from happening. We have more time as investigators.

Testimony of Scott Bogart
Cross-Examination by Mr. Long
March 13, 2014

1 So once we found out that the arrests had been made, you
2 know, basically we told them to bring everything they had
3 to the police department so we could free them up, because
4 they are running nonstop and we have more time to actually
5 sit down and go through the evidence.

6 Q. And I appreciate that answer, but is that a yes
7 or no?

8 A. I believe I answered it. But you can -- ask the
9 question again and I'll say yes or no.

10 Q. Isn't it normally the officer at the scene's
11 responsibility, who takes evidence into custody, to look
12 and determine if there's a latent print on the surface
13 that could be recovered for evidentiary purposes?

14 A. Yes, sir.

15 That would be -- again, it varies. It depends
16 on the case. If the officer feels that it might be a
17 difficult lift to lift a print or latent print, they may
18 not attempt to lift it themselves in fear of destroying
19 it. If it appears to be an easy lift where it's visible,
20 even though it's considered a latent print you can
21 sometimes still see them and if you think you can lift it
22 yourself, they may lift it themselves.

23 But, again, this case, we just told them to
24 bring everything to the police department. I was already
25 working a string of cases in the area and I just told them

Testimony of Scott Bogart
Cross-Examination by Mr. Long
March 13, 2014

1 to bring everything to the police department.

2 Q. Would that be useful in evidence?

3 A. I can't see that from here, sir.

4 Q. Would that be useful in evidence?

5 A. Again, I would have to look at the --

6 Looking at it with the naked eye, I couldn't say
7 yes or no. I don't see any oil excreted on there. But
8 it's possible.

9 Q. This type of surface collects fingerprints
10 easily, doesn't it?

11 A. The top portion there, where you have your
12 fingers, that would be extremely difficult.

13 Q. You say the top portion, it would be difficult
14 to get my fingerprint off of that?

15 A. Very difficult.

16 Q. Aren't fingerprints recoverable off of paper and
17 wood surfaces and many places?

18 A. They can be, yes, sir.

19 Q. But the jewelry boxes and items were not tested
20 or dusted or looked at, as far as you know, for
21 fingerprints as to who had held them or touched them or
22 moved them?

23 A. They were not. Correct.

24 Q. As the lead investigator, did you review
25 photographs taken by officers at the scene?

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1 A. Yes, I did.

2 Q. All right, sir. And did you ever see
3 photographs taken by a crime scene technician? Was
4 there a crime scene technician sent to the scene?

5 A. No. I don't believe there was.

6 Q. Was there approximately thirty or thirty-five
7 photographs that you looked at that were taken at the
8 scene by investigating officers?

9 A. I don't recall the number being that high but I
10 remember reviewing the photographs, yes.

11 Q. All right. Do you recall how many it was?

12 A. No, sir.

13 Q. All right. Do you recall ever seeing any better
14 photographs of footprints than that one that we have here
15 in evidence?

16 A. It seemed to me that there was one that was a
17 little closer up, if I recall, but it was quite blurry.

18 Q. You looked over to someone for review. Did
19 someone else have an answer for you?

20 A. No, sir.

21 Q. So there may have been one other one of a
22 footprint but this is the one -- the blurry one is the one
23 we got in today in evidence? This is the blurry one?

24 A. There were several that were blurry.

25 Q. So they all were blurry? All the other ones?

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1 A. No, sir.

2 I didn't say they were all blurry. I said there
3 were several. We're speaking of the footprint that --

4 Q. All the pictures of the footprint were blurry?

5 A. Yes. I believe the ones I saw were blurry.

6 Q. Any problems with any of the other photographs
7 being blurry?

8 A. Not that I recall.

9 MR. LONG: The Court's indulgence just one
10 moment.

11 [Whereupon, Mr. Long and Mr. Coleman confer]

12 MR. LONG: Thank you, sir. No further
13 questions.

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Testimony of Scott Bogart
Redirect Examination by Mr. DeBusk
March 13, 2014

REDIRECT EXAMINATION

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BY MR. DEBUSK:

Q. Detective Bogart, I noticed that like Mr. Long and the defendant and me, you use glasses. Would you put those on for a moment?

A. Yes, sir.

Q. Watch me carefully. Do you need a fingerprint to know that was in my possession?

A. Would I need one? Yes.

Q. Would you need a fingerprint to know that was in my possession?

A. No. Not if you just handed it to me just now.

Q. If you saw it come out of my pocket, would you need a fingerprint to tell that was in my possession?

A. Absolutely not.

Q. If you have a video of that coming out of my pocket, do you need a fingerprint to --

A. No, sir.

Q. -- know it was in my possession?

MR. DEBUSK: Thank you.

THE COURT: Mr. Long?

MR. LONG: Nothing further, Your Honor.

MR. DEBUSK: Your Honor, I'm sorry. I'm --

THE COURT: Have you still got something? I'm sorry.

Testimony of Scott Bogart
Redirect Examination by Mr. DeBusk
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1 MR. DEBUSK: I just turned around to get my
2 notes.

3 THE COURT: I thought you were done.

4 Q. [Mr. DeBusk] Now, you were the overall
5 coordinator of the investigation; correct?

6 A. Yes.

7 Q. And you gather all the information from other
8 officers; right?

9 A. That's correct.

10 Q. And you have the reports and you talked to them
11 personally?

12 A. Yes.

13 Q. And you saw Detective -- you saw Officer Tibbott
14 and talked to him personally; correct?

15 A. Yes.

16 Q. You also gathered some information directly
17 yourself, didn't you?

18 A. [No response]

19 Q. You interviewed people, didn't you?

20 A. That's correct.

21 Q. You interviewed Shakerra Cowan, didn't you?

22 A. Yes.

23 Q. So that was actually a piece of evidence you had
24 yourself?

25 A. Yes. That's correct.

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1 Q. And you had the testimony of Detective Tibbot,
2 which was on tape; correct?

3 A. That's correct.

4 Q. I'm sorry. PFC Tibbott.

5 So you have those items to your direct
6 knowledge, not indirect knowledge?

7 A. Correct.

8 Q. So you knew at that time that the boxes
9 described by the victim had been found in the vehicle?

10 A. Yes.

11 Q. And you knew they had been found underneath the
12 feet of the defendant, Keirnon Coleman?

13 A. Yes. That is correct.

14 Q. And you knew that jewelry had been found in his
15 own pockets --

16 A. Yes.

17 Q. -- is that correct?

18 Did you need a fingerprint to know that that
19 jewelry that came out of his pocket was in his possession?

20 A. No, sir.

21 MR. DEBUSK: Thank you. No further questions,
22 Your Honor.

23 THE COURT: Mr. Long?

24 - - -

25 - - -

Testimony of Scott Bogart
Recross-Examination by Mr. Long
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1 Q. All right.

2 A. -- there's no way to determine --

3 Q. All right. But not the last?

4 A. -- who was the last one to touch it.

5 Q. All right. The fingerprint would be useful to
6 tell you who, in fact, had touched it --

7 A. Yes.

8 Q. -- not who last touched it?

9 A. That's correct.

10 MR. LONG: All right. Thank you. No further
11 questions.

12 MR. DEBUSK: Your Honor, no further questions.

13 THE COURT: You may step down.

14 MR. DEBUSK: Detective Bogart is to remain with
15 us.

16 THE WITNESS: Thank you.

17 MR. DEBUSK: Thank you.

18 [Whereupon, Mr. Bogart is excused and exits the
19 witness stand]

20 THE COURT: Counsel?

21 MS. LIVESAY: Thank you.

22 THE COURT: Next witness.

23 MS. LIVESAY: Thank you, Your Honor.

24 At this time, Your Honor, the State calls
25 Shakerra Cowan to the stand.

Testimony of Scott Bogart
Recross-Examination by Mr. Long
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[Whereupon, Ms. Cowen comes forward]

THE CLERK OF COURT: Please raise your right hand and put your left hand on the Bible, please.

[Whereupon, Ms. Cowen is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the evidence you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes.

THE CLERK OF COURT: Okay. Please be seated.

[Whereupon, Ms. Cowen takes the witness stand]

THE CLERK OF COURT: State your full name.
Spell your last name for the Court, please.

THE WITNESS: Shakerra Cowan. C-O-W-A-N.

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Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1

SHAKERRA COWAN,

2

Having Been First Duly Sworn,

3

was Examined and Testified as Follows:

4

DIRECT EXAMINATION

5

BY MS. LIVESAY:

6

Q. Shakerra, if you don't mind, tell the jury how

7

old you are.

8

A. Twenty-four.

9

Q. And where are you currently living?

10

A. Morrisville, North Carolina.

11

Q. Okay. And are you working or in school?

12

A. I'm working. I'm not in school right now. I

13

work at Ruby Tuesday's.

14

Q. And how long have you been working there?

15

A. Five, six months.

16

Q. Okay. And do you know the defendant in this

17

case --

18

A. I do.

19

Q. -- Mr. Coleman?

20

A. I don't know him, though.

21

Q. Okay. But you've had contact with him?

22

A. I have.

23

Q. If you don't mind, tell the jury how you came

24

across this defendant.

25

A. I was staying at the Budget Inn motel on the

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 beach. I was on my way to the store when he walked past
2 me. We said hello, talked a little bit, met up at my room
3 later, chilled, conversated for a little bit, and that's
4 how we got to know each other a little bit.

5 Q. And was that on or around March 25th of last
6 year?

7 A. Yes.

8 Q. And if you don't mind, where were you living at
9 that time?

10 A. In Charlotte, North Carolina.

11 Q. And if you don't mind, tell this jury why you
12 were down here in Myrtle Beach.

13 A. I had -- at that time I was a stripper, a
14 dancer, so I just came to Myrtle Beach so I can just make
15 actually a little bit of money and then go back home.

16 Q. Okay. And you were staying at the Budget Inn?

17 A. Yes.

18 Q. Where was the defendant staying?

19 A. At the Budget Inn, as well. He was -- his room
20 was underneath mine.

21 Q. And how did you get down to Myrtle Beach?

22 A. I drove with my roommate and her boyfriend.

23 Q. Okay. And you had a car at that time?

24 A. I did.

25 Q. If you don't mind, tell the jury what kind of

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 car you had at that time.

2 A. A Chevy Impala, 2004, I think. I don't
3 remember.

4 Q. Would you recognize it if I showed it to you?

5 A. Of course.

6 MS. LIVESAY: Your Honor, can I ask her to step
7 down real quick?

8 THE COURT: Certainly.

9 MS. LIVESAY: Thank you.

10 Do you mind stepping down? These pictures are a
11 little small.

12 [Whereupon, the witness complies]

13 MS. LIVESAY: Stand right in front of this
14 microphone.

15 Q. [Ms. Livesay] I'm showing you now what's in
16 State's Evidence as Number 9. Do you recognize that car?

17 A. I do. That's my car.

18 Q. Okay. And is that your car?

19 A. Yes.

20 Q. And do you remember driving it down that road?

21 A. I do.

22 Q. Now, I'm showing you now what's been marked as
23 State's Evidence Number 10. Do you recognize that car?

24 A. Yes.

25 Q. Whose car is that?

Testimony of Scott Bogart
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March 13, 2014

- 1 A. That's my car.
- 2 Q. Do you know the guy there getting out of the
3 car?
- 4 A. Yes.
- 5 Q. And who is that?
- 6 A. The defendant over there.
- 7 Q. Okay. Do you remember this incident?
- 8 A. I do.
- 9 Q. Now, this is State's Evidence Number 11 I'm
10 showing you. Do you recognize that car?
- 11 A. I do.
- 12 Q. And is that your car?
- 13 A. Yes, my car.
- 14 Q. Do you know the man getting out of that car?
- 15 A. I do not know him.
- 16 Q. Okay. Have you seen him before?
- 17 A. I have seen him.
- 18 Q. And where had you seen him?
- 19 A. He drove with the defendant, or I guess he came
20 down with the defendant, and when I was going to the
21 store, both of them was walking with each other --
- 22 Q. Okay. And was he in your car, as well --
- 23 A. Yes, he was.
- 24 Q. -- March 25th?
- 25 And this defendant was in your car?

Testimony of Scott Bogart
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1 A. Yes.

2 Q. Now, this is State's Evidence Number 12. Whose
3 car is that?

4 A. Mine.

5 Q. And who is that by the car?

6 A. That's me.

7 Q. Is that what you looked like on March 25th,
8 2013?

9 A. Yes.

10 MS. LIVESAY: If you don't mind, have a seat,
11 Shakerra. Thank you.

12 [Whereupon, Ms. Cowen retakes the witness stand]

13 Q. [Ms. Livesay] Okay. So you met this defendant
14 and the guy that's in that picture while you were down
15 here in Myrtle Beach?

16 A. Yes.

17 Q. Okay. Now, did you actually start talking to
18 him, hanging out with him?

19 A. I've seen him around the hotel at one point. I
20 didn't start hanging out with Coleman until after he
21 invited me to chill after we had gone to the store. We
22 went back to my room for a little bit. I haven't seen the
23 other defendant until that Sunday morning.

24 Q. Okay. So you came down here on what day?

25 A. I don't remember the date --

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. I'm sorry.

2 A. -- but it was on a --

3 Q. What day? Like Saturday, Sunday?

4 A. Saturday.

5 Q. Saturday.

6 And what day did you meet this defendant?

7 A. Sunday.

8 Q. And on Sunday, is that also when you met his
9 friend that's in that picture, Mr. Dudley?

10 A. Yes.

11 Q. Okay. Now, did you actually start talking to
12 Mr. Coleman?

13 A. Not until we bumped into each other on the way
14 to the store. We conversated for maybe two minutes before
15 we went -- I went to the store. He went back to the room.
16 And then after I went back to my room, that's when we
17 really started hanging out.

18 Q. Okay. And about how long did you talk with him
19 on Sunday?

20 A. Once I got back from the store, we hung out all
21 night.

22 Q. Okay. Hung out all day?

23 A. Yes.

24 Q. Okay. Now, did you stay that night at the
25 Budget Inn?

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 A. Yes.

2 Q. Okay. Do you know if this defendant stayed that
3 night at the Budget Inn?

4 A. I don't know.

5 I know that he had a room underneath mine. If
6 he stayed at the Budget Inn that night, I don't know.

7 Q. Okay. When was the next time you saw him?

8 A. The next morning.

9 Q. And that was Monday morning?

10 A. Monday morning.

11 Q. Okay. And tell the jury about that.

12 A. Like I -- he wanted me to take him somewhere
13 at 9:00 a.m. -- or at 9:30 a.m so he came over roughly
14 7:45-ish, chilled with me for a little bit while I took a
15 shower, and then we had left.

16 Q. Okay. And when you say we had left, how did you
17 leave?

18 A. Well, we drove my car.

19 I went down to my car and he came in the car and
20 then that's when his friend had also got in the car. I
21 wasn't aware that his friend was coming. I thought it was
22 just going to be me and him. I thought I just had to drop
23 him off somewhere. But, yeah. But they both got into the
24 car and then we drove to an apartment complex -- no, a
25 housing complex.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
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1 Q. Okay. Now, who was driving the car?

2 A. I was.

3 Q. Who was in the front seat?

4 A. Coleman.

5 Q. Okay. And who was in the back seat?

6 A. Dudley?

7 Q. Yeah.

8 A. Yes.

9 Q. Okay. The guy that's in that picture?

10 A. Yes.

11 Q. You didn't -- did you know him as well as you
12 knew this defendant?

13 A. No.

14 Q. Okay. Now, what -- these pictures that I've
15 showed you, is that what you were wearing on that day?

16 A. Yes.

17 Q. When I showed you that picture of this
18 defendant, was that what he was wearing on that day?

19 A. Yes.

20 Q. Okay. When I showed you a picture of the guy
21 that was sitting in the back, was that what he was wearing
22 that day?

23 A. Yes.

24 Q. So all three of you get in the car. You're the
25 driver. You're driving, he's in the passenger seat, and

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 the other guy is in the back seat?

2 A. Yes.

3 Q. Okay. Now, y'all take off. Are you familiar,
4 or were you familiar at that time, with Myrtle Beach --

5 A. No.

6 Q. -- the area, in general?

7 A. Just around the beach area. Anything outside of
8 that, no.

9 Q. So when you get in the car and you start
10 driving, who is directing you where to drive to?

11 A. Coleman.

12 Q. Okay. So you get in the car and he's directing
13 you. Tell me what happens next.

14 A. As soon as I get the directions to where he
15 needs to be dropped off at, I pulled over. Him and the
16 guy in the back seat got out of the car, went to the
17 house, then I saw them go from in front of the house to
18 the back of the house, then they came back into the car.
19 We drove to a different house and they got out, went to
20 the front, went to the back, came back to the car for --
21 Coleman came back to the car for a cigarette. And then
22 the both of them went I don't know where. I didn't see.

23 And then when they did get back in the car, I
24 didn't see the guy in the back seat with anything, but
25 Coleman had quite a few things in his pockets when he came

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 back.

2 Q. Before we get too far along, describe the area
3 that you were driving them around in.

4 A. Just a bunch of nice, expensive houses.

5 Q. Okay. Was it a housing development or --

6 A. Yes.

7 Q. -- was it any businesses nearby?

8 A. No. It was just a bunch of housing development.

9 Q. Had you ever been in that neighborhood before?

10 A. I have not.

11 Q. Okay. How would you describe the houses in the
12 neighborhood?

13 A. [No response]

14 Q. Were they close together, right on each other,
15 or --

16 A. Not necessarily. They had like a little space
17 thing. Probably like big yards in the back, two-story
18 houses. Yeah. That's the way I can describe it. I can't
19 really remember.

20 Q. Okay. Now, when you see -- at the first house
21 when you dropped them off, okay, they both get out of the
22 car?

23 A. Uh-huh.

24 Q. Okay. And at this point, what do you think was
25 going on?

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1 A. I really wasn't paying attention. I was
2 listening to music, smoking a cigarette. I thought he was
3 just going to a friend's house to go get something, or
4 whatever it is. I don't know. I was just dropping him
5 off.

6 Q. Okay. But then was the -- did you know that
7 they were coming back to get in your car?

8 A. Yes, I did, because I was pretty sure after I
9 dropped them off we were going to go back to the hotel
10 room.

11 Q. So when you get back -- they get back in the
12 car, what conversation is going on at that point?

13 A. That they needed to get dropped off somewhere
14 else, somewhere still in that housing development.

15 Q. Okay. So you drive up. The first house that
16 you drop them off at, do you remember if there was a car
17 in the driveway?

18 A. I really don't. I don't think so, though.

19 Q. Okay. You don't think there was a car in the
20 driveway?

21 A. I don't think so.

22 Q. Okay. Now, so then you take off and go to a
23 second house?

24 A. Uh-huh.

25 Q. In that same neighborhood?

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 A. Uh-huh.

2 Q. Okay. And what happens at that house?

3 A. Like I said, they got out, went to the front,
4 went to the back, came back to the car, then they
5 disappeared somewhere, then came back to the car with some
6 stuff in their hands.

7 Q. And when they came back to the car, who had
8 stuff in their hands?

9 A. Coleman did.

10 Q. Okay. And could you tell what he had in his
11 hands?

12 A. A bunch of boxes, and then like a couple of
13 bags. And it looked like jewelry may be in there. A
14 couple of pictures and little gadgets.

15 Q. Okay. And did the guy in the back seat have
16 anything in his hands?

17 A. If he did, I didn't see it.

18 Q. At this point, what do you think is going on?

19 A. They probably took something from somebody's
20 house, or got something from somewhere. I'm not sure.
21 But at that time, I knew that they went to go do something
22 that they shouldn't have done.

23 Q. Now, when they get back in the car, what is the
24 conversation going on then?

25 A. Let's just go. They came -- they got to the

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
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1 housing development, I guess they did what they had to do,
2 and it was just time to go.

3 Q. I'm sorry. What, Shakerra?

4 A. They had to go. It was time to leave.

5 Q. Okay. So then where do y'all go after you leave
6 that second house?

7 A. We were on our way out of the neighborhood but I
8 kind of missed my turn. So we saw a cop, we turned
9 around, and drove off out of the neighborhood.

10 Q. Okay. Now, when you saw the cop, had you been
11 down that cul-de-sac before?

12 A. They were around the first house that we went
13 to.

14 Q. That was the first house y'all went to?

15 A. Yes.

16 Q. And that was the one that you came back through
17 when you missed the turnoff?

18 A. Yes.

19 Q. Now, once y'all saw the police officer, what
20 conversation is going on then?

21 A. Don't panic, don't speed, stay calm, just keep
22 going.

23 Q. Now, did either one of the houses y'all stopped
24 at have a car in the driveway?

25 A. No.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. Did y'all ever talk to anybody that was in that
2 neighborhood?

3 A. No. I didn't.

4 Q. Okay. Had you ever been to that neighborhood
5 before?

6 A. I have not.

7 Q. Now, when you're in there going around in the
8 neighborhood, is he giving you an address to go to? Or
9 how is that working?

10 MR. LONG: Objection. Leading, Your Honor.

11 THE COURT: I'll allow her to answer.

12 MS. LIVESAY: Thank you, Your Honor.

13 A. Can you repeat it, please?

14 Q. [Ms. Livesay] I'm sorry?

15 A. Can you repeat your question?

16 Q. When you were in there driving in that
17 neighborhood, did he give you a certain address to go to?

18 A. No. As I was in the car, he was just giving
19 directions, turn here, turn there. That's it.

20 Q. Okay. Now, when he gets back in the car from
21 the first house, you're telling me there's no conversation
22 that's going on?

23 A. Not too much. It's just more looking around,
24 okay, back up, go this way instead, go that way. Like
25 nothing outside of directions.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
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1 Q. Okay. Now, did he appear to be familiar with
2 that neighborhood?

3 A. I guess so. I think he's probably been there
4 before.

5 Q. Okay. Now, when you go to the second house,
6 okay, and he comes back with this stuff, at this point is
7 there any conversation going on within the car?

8 A. Not necessarily. It's all right, let's go, turn
9 here, try to get out of here. That's it.

10 Q. At any point while you were in the car with
11 them, did they indicate to you whether or not they noticed
12 if there was somebody at the house or leaving a house or
13 anything as to that nature?

14 A. As we were leaving the second house, the guy in
15 the back seat was like -- I guess we drove past the house
16 and somebody was leaving. He goes, oh, they're about to
17 leave. And Coleman was like, no, not now, we've got to
18 go, we'll come get it another time. So maybe they were
19 going to come back to that particular house another point
20 in time. But at that moment, no, we just had to leave.

21 Q. Now, what happened once you -- so you're going
22 around the neighborhood. You miss the turn. Is that
23 correct?

24 A. Yes.

25 Q. Okay. Now, do you know how many ways there are

Testimony of Scott Bogart
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1 to get into that neighborhood and out of that
2 neighborhood?

3 A. I don't. I only saw one.

4 Q. Okay. So you only know of one?

5 A. Yes.

6 Q. Now, the two houses that you stopped at that day
7 in that neighborhood, were they at the end of a cul-de-
8 sac?

9 A. When you go into the neighborhood, you make a
10 left and then it's like a dead-end, like a circle. And
11 then on the other house there was a couple of streets that
12 you could still turn down and stuff like that.

13 Q. But neither one -- were either of them near an
14 outlet to get out of the neighborhood?

15 A. No.

16 Q. Okay. While you were in there, did you see a
17 lot of traffic moving around in that neighborhood?

18 A. No. I think it was just me in -- I felt like it
19 was just me in the neighborhood, I had so much space.

20 Q. Okay. So you felt like you were basically --
21 y'all were the only car on the road in that neighborhood?

22 A. Yes.

23 Q. So when you come back through that cul-de-sac
24 and you see the police officer, what happens next?

25 A. Turn around and find an exit.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. Okay. Then what happened?

2 A. The cop started following us and then he pulled
3 us over. And they didn't talk to me first. They talked
4 to the two gentlemen. Asked him what did he have in his
5 hands and can you come out -- get out of the car so we can
6 pat you down. And what conversation went on between them
7 I don't know. But when it got to me, they asked me to get
8 out of the car and they pat me down and asked what did I
9 know or did I see anything. Because they pretty much know
10 what happened, I guess.

11 Q. Now, when Coleman got in the car, did he have
12 stuff in his pocket?

13 A. He did.

14 Q. Okay. Now, did he -- before he went into the
15 house, did he have anything in his pocket?

16 A. No.

17 Q. So it was obvious he came out with additional
18 items?

19 A. Yes.

20 Q. Now, while y'all were in the car, is he passing
21 these items around?

22 A. No.

23 But when we were getting pulled over, he went
24 ahead and took whatever that was in his pockets into my
25 glove compartment and tucked it underneath my seat.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. So nobody else in the car touched the stuff that
2 had come out of the house?

3 A. No.

4 Q. Okay. Now, when they start talking to you, do
5 you tell the police what y'all were doing and what had
6 happened?

7 A. Not in the beginning.

8 Then the officer kind of -- and was trying to
9 tell me that -- they were trying to let me know that, you
10 had a lot of involvement to do with whatever was going on.
11 So instead, I was like, I dropped this man off, he told me
12 he needed to be here, got out of the car, went to a second
13 house, he got out of the car, came back. Pretty much told
14 him what happened without going into full details.

15 Q. Okay. So did you tell what had happened while
16 you were on the road out there?

17 A. Not at first.

18 Q. Okay. Eventually did you tell --

19 A. I did.

20 Q. -- what had happened?

21 Okay. So eventually you told what y'all had
22 been doing earlier that day when you were out on the road
23 with those officers?

24 A. Yes.

25 Q. Now, did you eventually talk to a detective?

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 A. Yes.

2 Q. Okay. And did he interview you?

3 A. He did.

4 Q. And did you tell him what had happened?

5 A. Yes.

6 Q. Now, is what you told the officer on the road
7 and what you told the detective, is that the same thing
8 you're telling us here today?

9 A. It is. I probably have a lot more details than
10 what I told the first officer. But, yes, everything was
11 the same.

12 Q. Now, did you do a voluntary written statement?

13 A. I did.

14 Q. Okay. Do you recognize what I'm showing you
15 now?

16 A. I do.

17 Q. And if you don't mind, tell the jury what that
18 is.

19 A. A voluntary statement. Do you want me to read
20 it all?

21 Q. Oh, no, no, no. no, ma'am.

22 Is that the statement that you gave the police?

23 A. It is.

24 Q. Is that your handwriting?

25 A. It is. And I signed it.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. Now, if you don't mind, breeze through that
2 statement and tell me: the information in that statement,
3 is that the same thing that you're telling us here today?

4 A. Yes.

5 It pretty much says that we met Saturday, then
6 he asked me to take him somewhere, came back --

7 MR. LONG: Your Honor, I'm going to object. He
8 hasn't --

9 THE COURT: He hasn't challenged it yet. That's
10 a prior consistent statement and so it's not
11 admissible until a challenge has been made.

12 MS. LIVESAY: That's fine, Your Honor.

13 Q. [Ms. Livesay] Is the information in that
14 statement the same as what you're telling us?

15 A. Yes.

16 Q. Okay. Thank you.

17 Now, that day on the roadside -- you were
18 driving the vehicle; is that right?

19 A. Yes.

20 Q. Okay. And these two boys were jumping out,
21 going to houses, and they would come back with stuff they
22 didn't have before?

23 A. Yes.

24 Q. You still let them in the car?

25 A. Yes.

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 Q. You weren't like, you ain't coming in the car
2 with that stuff?

3 A. No.

4 Q. And you continued to drive them around?

5 A. Yes.

6 Q. Okay. And, in fact, you were driving the
7 vehicle when it rolled --

8 MR. LONG: Your Honor --

9 Q. [Ms. Livesay] -- right past --

10 MR. LONG: -- I'm going to object --

11 Q. [Ms. Livesay] -- that police officer?

12 MR. LONG: -- to the form of these questions.

13 She's continuing to lead this witness. I would
14 prefer to hear the testimony from the witness.

15 THE COURT: Yes, Ms. Livesay. I know you're
16 trying to move it along, but let's don't lead the
17 witness.

18 Go ahead.

19 Q. [Ms. Livesay] Did you drive the vehicle past
20 that police car that day?

21 A. Yes.

22 Q. Okay. You never stopped?

23 A. No.

24 Q. And you were -- were you the one that was
25 driving this defendant and the other guy around in that

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 neighborhood?

2 A. Yes.

3 Q. Okay. And did they both jump out at these
4 houses?

5 A. Yes.

6 Q. And did they both come back together?

7 A. Yes.

8 Q. Okay. Now, who was arrested on that roadside
9 that day?

10 A. All three of us. First it was Dudley, then
11 Coleman, then me.

12 Q. Okay. Now, when that police officer pulled you
13 over that day, was there any conversation then going on in
14 the car?

15 A. Pretty much no panicking, everything's okay, act
16 like nothing happened, just stay cool and calm. That's
17 it.

18 Q. Okay. Now, where are you working today?

19 A. Today?

20 Q. I'm sorry. Where are you -- where are you
21 currently employed?

22 A. At Ruby Tuesday's in Statesville.

23 Q. Okay. So you are no longer --

24 A. No.

25 Q. -- doing entertainment?

Testimony of Scott Bogart
Direct Examination by Mr. DeBusk
March 13, 2014

1 A. I haven't done entertainment in a year.

2 Q. Okay. Now, what got you to change your
3 occupation?

4 A. Honestly, after being in jail I realized I have
5 done some really dumb things in my life and it's not worth
6 it. I had rather do -- I had rather work hard for it
7 instead of making it easy.

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

9 THE COURT: All right. Mr. Long?

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Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

CROSS-EXAMINATION

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BY MR. LONG:

Q. Ms. Cowen, you're lying, aren't you?

A. No.

Q. About any of it?

A. No.

Q. Everything you've said is the truth?

A. Yes.

Q. All right. You're claiming that you met him in
a motel lobby?

A. No.

Q. Motel hallway?

A. No.

Q. Store?

A. I said I was on the way to the store and we ran
into each other while I was on my way to the store.

Q. Never met him before in your life?

A. No.

Q. And y'all talked for like two minutes?

A. Uh-huh.

Q. And then he was invited to your room?

A. Yes.

Q. Okay. Now, don't get me wrong. I like my
client a lot and you're a very attractive young woman. He
doesn't appear to be your type. Is he your type?

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 A. No.

2 Q. Strange man, never met before, never talked to
3 before, two minutes and he's in your motel room?

4 A. Well, I smoked weed and he was offering to smoke
5 with me. So, yes.

6 Q. Okay. So within two weeks, you're -- within two
7 minutes you're saying he offered you marijuana?

8 A. Yes.

9 Q. Now, you said he had a room underneath yours in
10 the motel?

11 A. Yes.

12 Q. How do you know if it was his room?

13 A. I'm not sure if it was his room exactly, but I
14 believe his belongings were in there.

15 Q. What about Mr. Dudley? You acted like you had
16 never heard his name before. When you testified you said,
17 Dud -- Dudley?

18 A. Because I haven't talked to him --

19 Q. He had been staying there --

20 A. -- but probably two times.

21 Q. He had been staying there for two or three days,
22 hadn't he?

23 A. Probably.

24 Q. All right. In the room underneath yours?

25 A. Probably.

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

- 1 Q. Registered in his name?
- 2 A. I wouldn't know.
- 3 Q. Now, wasn't it a fact that you and Mr. Dudley
4 had been dating some?
- 5 A. No, we haven't.
- 6 Q. Isn't Mr. Dudley more your type?
- 7 A. No.
- 8 Q. He's not?
- 9 A. No.
- 10 Q. Clearly Mr. Coleman is not your type; correct?
- 11 A. No.
- 12 Q. Mr. Dudley is younger?
- 13 A. I guess so.
- 14 Q. More fit?
- 15 A. My baby daddy is white. I've always been into
16 white guys.
- 17 Q. All right. Mr. Dudley is younger?
- 18 A. I guess.
- 19 Q. More physically fit?
- 20 A. Okay.
- 21 Q. More attractive?
- 22 A. Yeah, he's attractive.
- 23 Q. He wasn't your type, either?
- 24 A. No.
- 25 Q. Now, you're claiming then after y'all went back

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 to your room, that he was at your motel room again at 7:45
2 the next morning?

3 A. Uh-huh.

4 Q. Okay. And what about Mr. Dudley? He stayed in
5 the room, as well? Is that what you're trying to say?

6 A. I didn't see Dudley until after me and Coleman
7 got into the car. I didn't even know Dudley was coming
8 with us until he had got in my car.

9 Q. Now, you say you're not familiar with Myrtle
10 Beach and that you went back to North Carolina after. Did
11 you have like a guest appearance this weekend dancing? Is
12 that --

13 A. No. I just needed some extra money.

14 Q. Did you come frequently on weekends to dance?

15 A. During the summers, yes, for like the past three
16 summers.

17 Q. Okay. And sometimes during off-seasons?

18 A. No, not really.

19 Q. Was this off-season?

20 A. Yes, I guess.

21 Q. Okay. So you sometimes would come during the
22 off-season?

23 A. Sure.

24 Q. Whenever you needed money and whenever someone
25 said, come on, you can come dance here; correct?

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 A. No.

2 More -- I usually came during the summer. And
3 it was just that one moment where I really felt like I
4 needed extra money. So that's why I came at that
5 particular time.

6 Q. Okay. Isn't it true that when you met him, it
7 was a result of you knew his friend, Mr. Dudley?

8 A. I have never seen or met that man before that
9 day.

10 Q. And yet you allowed him just to come waltzing
11 down and jump in the back of your car --

12 A. Because I was aware --

13 Q. -- and take him for a ride?

14 A. -- that it was his friend.

15 Q. And you knew him for one day?

16 A. Yes.

17 Q. All right. Now, you claim that you didn't
18 really pay attention, weren't really seeing whatever was
19 going on, because you were just there listening to music
20 in the car --

21 A. Uh-huh.

22 Q. -- while they got out of the car and came back;
23 correct?

24 A. Yes.

25 Q. All right. But then while you're sitting there

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 listening to music, what were you doing, looking over your
2 shoulder trying to see what they're up to? Because you
3 said they went to the front door, they went around to the
4 back door, and they were gone a total of four minutes,
5 then they went to the next house and they were gone a
6 total of six to seven minutes, then they came back to the
7 car. I mean, were you listening to music or were you
8 watching them?

9 A. I was listening to music while I was still
10 looking around. I mean, you can kind of see if someone's
11 going from the front of the house or the back of the
12 house.

13 Q. When the police pulled in behind your car, he
14 didn't turn the blue lights on right away, did he?

15 A. I really don't remember.

16 Q. You didn't see him in the rearview mirror?

17 A. I did, but I don't remember when he turned his
18 lights on.

19 Q. So he followed behind you for a little while
20 without his blue lights on? Do you recall?

21 A. Yes.

22 Q. And then after he turned his blue lights on, you
23 did the right thing. You slowed down, you put on your
24 signal, you pulled in, and he sat behind you for a little
25 while before he approached the vehicle; correct?

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 A. Yes.

2 Q. And you're saying there wasn't any conversation,
3 no activity, whatever, other than just be cool, be calm,
4 that kind of stuff, between the three of you; correct?

5 A. Yes.

6 Q. All right. The first officer approached you and
7 asked you for a driver's license and registration;
8 correct?

9 A. Yes.

10 Q. All right. And you gave him that information?

11 A. Yes.

12 Q. And then after that, no one spoke to you for,
13 again, quite some period of time; correct?

14 A. Yes.

15 Q. So you had plenty of time while you were there
16 to think and talk about what was going on; correct?

17 A. Yes.

18 Q. Isn't it true that when you met Mr. Coleman, you
19 told him a story about some people that owed you money for
20 services you had provided and gave him a sob story for him
21 to try and help you?

22 A. No.

23 Q. You deny that?

24 A. I do.

25 Q. All right. And isn't it true that you asked

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 Dudley to come with you and Dudley said, okay, let my
2 friend come along, too, to try to collect --

3 A. I have never met Dudley and never talked to him.
4 It's only me and him.

5 Q. -- to try to collect money from these people who
6 owed you money?

7 A. No.

8 Q. Okay. That's not true?

9 A. No.

10 Q. In your written statement, you basically told
11 them, we met yesterday, chilled, hung out, he gave me
12 earrings?

13 A. Uh-huh.

14 Q. Okay. Are you saying Mr. Coleman gave you
15 earrings?

16 A. Yes.

17 Q. The evening before?

18 A. The -- before we got pulled over, yes.

19 Q. Did you give the police those earrings?

20 A. No, because they were in the hotel room.

21 Q. Okay. Did the police recover those earrings?

22 A. I believe so.

23 Q. All right. Were they ever returned to you?

24 A. No.

25 Q. And so you're saying he gave you earrings;

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 correct?

2 A. Yes.

3 Q. All right. And then he asked me. You mean
4 Coleman --

5 A. Yes.

6 Q. -- asked if I could take -- you could take him
7 to a friend's house?

8 A. Yes.

9 Q. All right. Did anywhere in your written
10 statement you talk about when or how Dudley became
11 involved?

12 A. No.

13 Q. All right. Because next in your statement you
14 say they got out --

15 A. They.

16 Q. -- and went.

17 Okay. And you're referring to Coleman and
18 Dudley; is that correct?

19 A. Yes.

20 Q. Did he pay you any money for taking him to a
21 friend's house?

22 A. No.

23 Q. Did he offer to pay your gas for taking him to a
24 friend's house?

25 A. No.

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

1 Q. Did he offer to give you weed for taking him to
2 a friend's house?

3 A. No.

4 Q. Did he offer you any kind of consideration or
5 payment whatsoever to get you to do this?

6 A. Yes.

7 Q. All right. What was that?

8 A. If I did not work Sunday, he was going to give
9 me \$500 just for just chilling with him. So the next
10 morning he said, well, if you take me to this place at
11 9:30, I promise you I can give you \$1,000.

12 Q. Okay. And he was going to pay you this money?

13 A. Yes.

14 MR. LONG: All right. Court's indulgence one
15 moment.

16 [Whereupon, Mr. Long and Mr. Coleman confer.]

17 Q. [Mr. Long] Did you tell police about that?

18 A. I really can't see that.

19 Q. That he offered you \$500 and then --

20 A. No, I didn't.

21 Q. -- he offered you \$1,000 if you would just take
22 him, or anything of that nature?

23 A. No.

24 Q. Have you ever told police about that?

25 A. I told the detective after I got to the police

Testimony of Shakerra Cowan
Cross-Examination by Mr. Long
March 13, 2014

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station.

Q. All right. But you didn't include it in your written statement?

A. No.

MR. LONG: The Court's indulgence one moment.

[Whereupon, Mr. Long and Mr. Coleman confer]

MR. LONG: Thank you, ma'am. No further questions.

MS. LIVESAY: Just a couple, Your Honor.

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Testimony of Shakerra Cowan
Redirect Examination by Ms. Livesay
March 13, 2014

REDIRECT EXAMINATION

1
2 BY MS. LIVESAY:

3 Q. Shakerra, Mr. Long asked you a lot of questions
4 about Mr. Dudley. You gave a statement, just so I'm
5 correct, to the road officer, a voluntary written
6 statement --

7 A. Uh-huh.

8 Q. -- and to Mr. Bogart; is that correct?

9 A. I only wrote one statement.

10 Q. One recorded statement; is that correct?

11 A. Yes.

12 Q. You sat down and talked to a detective and told
13 him what happened?

14 A. Yes.

15 Q. And then you wrote this statement?

16 A. That was the first statement I wrote.

17 Q. Right.

18 A. And then it was a recording.

19 Q. In any of the statements, including today, have
20 you ever said that Dudley didn't get out of that car with
21 Coleman?

22 A. No.

23 Q. Did you ever say that they didn't get out
24 together and then came back together?

25 A. Huh-uh. They always got out together and came

Testimony of Shakerra Cowan
Redirect Examination by Ms. Livesay
March 13, 2014

1 back together.

2 Q. Okay. So it wasn't like you said he sat in the
3 car with me and then Coleman got out by himself; is that
4 correct?

5 A. No. Huh-uh. They both got out.

6 Q. Now, were you watching what was going on when
7 the officer got Coleman and Dudley out of the car?

8 A. Actually, I really wasn't paying too much
9 attention. I was trying to figure out what was all going
10 on, what was going down.

11 Q. Okay. So did you notice who they took stuff out
12 of the pockets of?

13 A. Coleman, because they were -- he was right in
14 front of my window so I was able to see the officer going
15 through his pockets and everything else.

16 Q. Did you see them take anything out of Dudley's
17 pockets?

18 A. No, because that was back there. I couldn't
19 really see that part.

20 Q. But you know that stuff came out of --

21 A. Coleman's pocket.

22 Q. -- Coleman's pocket?

23 A. Yes.

24 Q. Now, when they came back together, who had the
25 stuff in their hands?

Testimony of Shakerra Cowan
Redirect Examination by Ms. Livesay
March 13, 2014

1 A. Coleman.

2 Q. Now, Mr. Long asked you a lot of questions,
3 which I'm sure were relevant, about your job as an
4 entertainer.

5 A. Uh-huh.

6 Q. Okay. So you talked to Mr. Coleman Sunday for
7 about how long?

8 A. The first time I ever met him, for about two
9 minutes. And then after I came back from the store, he
10 pretty much stayed with me all night.

11 Q. Hung out most of the day?

12 A. Uh-huh.

13 Q. Okay. Now, and then you hung out with him
14 Monday?

15 A. Just to do the driving around.

16 Q. Right.

17 Now, did he ever mention what he did for a
18 living?

19 A. No.

20 Q. Okay. But you noticed Sunday he didn't ever go
21 to no job place?

22 A. No.

23 Q. Okay. And Monday morning you didn't drop him
24 off at no job?

25 A. No.

Testimony of Shakerra Cowan
Redirect Examination by Ms. Livesay
March 13, 2014

1 Q. And he didn't tell you nothing about having a
2 job?

3 A. No.

4 Q. Okay. Shakerra, did you -- when you met Coleman
5 or when you were driving him around on that day, did you
6 notice -- let me see. I'm sorry. Let me check the
7 pictures.

8 Did you notice whether or not he was wearing
9 glasses?

10 A. He was wearing glasses, I believe.

11 Q. Okay. And is he wearing glasses today?

12 A. Yes.

13 Q. The same type of glasses?

14 A. Yes.

15 MS. LIVESAY: No further questions; Your Honor.

16 MR. LONG: Nothing further, Your Honor.

17 THE COURT: You may step down.

18 [Whereupon, Ms. Cowen is excused and exits the
19 witness stand]

20 MR. DEBUSK: Your Honor, may I check the
21 evidence just to make sure it's in?

22 THE COURT: Yes.

23 [Off the record momentarily]

24 MR. DEBUSK: Your Honor, at this time, the State
25 rests.

Testimony of Shakerra Cowan
Redirect Examination by Ms. Livesay
March 13, 2014

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THE COURT: Very well.

Ladies and gentlemen -- Mr. Roth, would you take
the jury to their jury room so that we might hear
motions.

[Whereupon, the jury exits the courtroom at
10:54 a.m.]

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State vs. Dudley and Coleman
Motion for a Directed Verdict by Mr. Long
March 13, 2014

1 MOTION FOR A DIRECTED VERDICT.

2 THE COURT: Mr. Long?

3 MR. LONG: Thank you, Your Honor.

4 At this point we respectfully move for a
5 directed verdict.

6 It's not a motion I make lightly or merely for
7 the record, Your Honor. As you're well aware of the
8 elements of the proof of the crime, the State has
9 utterly failed to produce any evidence concerning an
10 entry. There was stolen items that were found within
11 the constructive and actual possession of the
12 defendant, but that's not sufficient to prove an
13 entry.

14 THE COURT: But don't they have evidence that
15 someone entered the house, property was taken from the
16 house, there were -- there was mud on the floor,
17 cigarette butts in the house? I mean --

18 MR. LONG: None of that --

19 THE COURT: -- they've shown that there was an
20 entry, haven't they?

21 MR. LONG: An entry by the defendants, Your
22 Honor.

23 THE COURT: By someone.

24 And haven't they produced substantial
25 circumstantial evidence --

State vs. Dudley and Coleman
Motion for a Directed Verdict by Mr. Long
March 13, 2014

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MR. LONG: That there was an entry.

THE COURT: -- that it was entered by the defendant?

MR. LONG: No, Your Honor.

You have a co-defendant who's already pled. They're trying him. The evidence could go to either one of the co-defendants. They have not tied the entry evidence to Mr. Coleman whatsoever.

THE COURT: Well, taking the evidence in the light most favorable to the State and considering that there is a wealth of circumstantial evidence here -- the mere fact that he had the materials that were removed from the residence, is substantial circumstantial evidence that he was the person who entered,

I'm going to respectfully deny your motion.

MR. LONG: Understood, Your Honor. Thank you.

THE COURT: All right. Anything further?

MR. LONG: Nothing further.

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State vs. Dudley and Coleman
Defendant's Rights
March 13, 2014

DEFENDANT'S RIGHTS

1
2 THE COURT: Now, Mr. Long, what about your
3 client's right to testify? Do you -- have you
4 discussed that with your client?

5 MR. LONG: I have, Your Honor, in depth.

6 THE COURT: And does your client intend to
7 testify in this case?

8 MR. LONG: It's my understanding he intends to
9 testify.

10 THE COURT: Let me discuss that with him. I
11 want to make sure he understands.

12 Mr. Coleman?

13 MR. COLEMAN: Yes, sir.

14 THE COURT: I'll ask you if you will please be
15 sworn.

16 THE CLERK OF COURT: Please raise your right
17 hand.

18 [Whereupon, Mr. Coleman is duly sworn by the
19 clerk of court as follows: do you solemnly swear or
20 affirm to tell the truth, the whole truth, and nothing
21 but the truth, so help you God]

22 MR. COLEMAN: Yes, ma'am.

23 THE COURT: Now, Mr. Coleman, at this time I'm
24 going to explain to you certain of your rights. If
25 you don't understand anything I say, please let me

State vs. Dudley and Coleman
Defendant's Rights
March 13, 2014

1 know. And if you want me to explain it in a more
2 detailed fashion, let me do that. I'll be happy to do
3 so. Do you understand?

4 MR. COLEMAN: Yes, sir.

5 THE COURT: Okay. Now, we have reached the
6 stage in the trial where you can present evidence.
7 And you certainly have the right to present a defense.

8 You have the right, also, to claim the
9 protection of -- given you by the fifth amendment to
10 the Constitution of the United States. And this
11 amendment says, in part, no person shall be compelled
12 in any criminal case to be a witness against himself.
13 This means you cannot be required to testify in this
14 case. Obviously, and surely, you have the right to
15 testify on your own behalf if you wish to do so.
16 However, no one can make you testify. And this is a
17 personal right and no one can waive this right except
18 you. Not me, not your attorney, no one but you.

19 If you decide to testify, I want you to
20 understand that you will be subject to the same rules
21 that govern other witnesses and you may be examined,
22 that is, questioned, and cross-examined on any
23 relevant issue in the case.

24 In addition, if you have any convictions
25 involving dishonesty or false statements for crimes --

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1 or for crimes punishable by imprisonment for more than
2 one year and this Court determines that the probative
3 value of admitting the evidence outweighs its
4 prejudicial effect to you, the solicitor will be able
5 to introduce your record to attack your credibility.
6 That's your believability.

7 It's my understanding from our pretrial
8 conferences and what we've discussed during the course
9 of this trial that you do have a prior record, so I
10 want to make sure that you understand --

11 MR. COLEMAN: Yes, sir.

12 THE COURT: -- that some of those convictions,
13 if not all of those convictions, may be used against
14 you if you testify. Do you understand?

15 MR. COLEMAN: Yes, sir.

16 THE COURT: If you decide to testify, this
17 decision on your part must be freely, voluntarily and
18 intelligently made with knowledge of the protections
19 given you by the fifth amendment and the consequences
20 of your decision to testify.

21 If you decide not to testify, that is, not to
22 testify, I will instruct the jurors that they cannot
23 give the fact that you did not testify any
24 consideration whatsoever and there is to be absolutely
25 no prejudice to you because you did not testify.

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1 It's left entirely up to you whether or not you
2 testify. You may talk with your attorney, your
3 family, your friends, or anyone else, but the final
4 decision will be left entirely up to you.

5 Do you understand what I've explained to you?

6 MR. COLEMAN: Yes, sir.

7 THE COURT: Do you have any questions about what
8 I've explained to you?

9 MR. COLEMAN: No, Your Honor.

10 THE COURT: Have you discussed with your
11 attorney whether you should or should not testify?

12 MR. COLEMAN: Yes.

13 THE COURT: Okay. Now, we are going to break
14 for lunch in just a minute because I have a
15 presentation that I committed myself to make from
16 11:30 to 1:00. If you come back and you tell me --
17 it's my understanding at this point you want to
18 testify.

19 MR. COLEMAN: Yes, sir.

20 THE COURT: If you decide over lunch that you do
21 not want to testify, you certainly may change your
22 mind. You just need to let me know.

23 MR. COLEMAN: Okay.

24 THE COURT: Now, as I understand it, at this
25 time you do wish to testify?

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1 MR. COLEMAN: Yes, Your Honor.

2 THE COURT: Mr. Long, do you anticipate calling
3 any other witnesses?

4 MR. LONG: No, Your Honor.

5 THE COURT: Okay. Just the defendant?

6 MR. LONG: Yes, Your Honor.

7 THE COURT: Very well.

8 Over lunch, Drew will prepare and make copies of
9 my proposed charges, then, for you. As you all know,
10 it's been my practice to provide the jury with a
11 transcript of my charge, so we'll have that for you
12 before you argue so you'll at least have an
13 opportunity to review what I have done.

14 If you -- or what I propose to charge.

15 If you have any specific charges, please have
16 them prepared to submit to the Court at one o'clock.
17 All right?

18 So we're going to be at ease, then, until one
19 o'clock.

20 MR. LONG: Before we break, Your Honor --

21 THE COURT: Pardon?

22 MR. LONG: Before we break, one or two little
23 housekeeping matters.

24 THE COURT: Certainly.

25 MR. LONG: We discussed his NCIC. Within the

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1 last ten years, a conviction for PWID. I believe it
2 was cocaine, first offense. That was October 13th of
3 2010.

4 The solicitor seems like he had something else
5 in connection with that that he planned to use for
6 impeachment or credibility, should he testify. I
7 don't recall what it was. Everything else is beyond
8 ten years.

9 MR. DEBUSK: Your Honor, obviously, one was
10 under ten years. The other ones are beyond the
11 ten-year limit. The seven prior burglaries, attempted
12 burglaries --

13 THE COURT: Is there any crimes of dishonesty
14 that you intend to try to use outside the ten years?

15 MR. DEBUSK: I believe burglary is a crime of
16 dishonesty, Your Honor.

17 There are also two counts of larceny from New
18 Jersey in the year --

19 THE COURT: Well, are you going to try to use
20 it?

21 MR. DEBUSK: I would like to, Your Honor.

22 THE COURT: I'll hear you on that matter when we
23 return. Okay?

24 MR. DEBUSK: Yes, Your Honor.

25 THE COURT: I point you to the Rule -- I think

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it's Rule 900. It's in the 900s, is it not, prior convictions? Well, I'm sure you gentlemen can find it while we -- it may have been even in the 400s. But there's a rule on it.

All right. Thank you. We'll reconvene at one o'clock or shortly thereafter.

Sam, if you would release the jury for lunch. Ask them to return at one o'clock.

[Whereupon, a recess is taken from 11:05 a.m. to 1:08 p.m.]

THE COURT: Will your client testify?

MR. LONG: Yes, sir, he will, Your Honor.

THE COURT: All right.

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1 MOTION TO TAKE JUDICIAL NOTICE

2 MR. LONG: Before you bring back the jury --

3 THE COURT: Yes, sir?

4 MR. LONG: -- Your Honor, the jury at this point
5 is unaware of the circumstances concerning the
6 Codefendant Dudley. We, as part of our case, I
7 imagine could call the clerk of court to testify about
8 the circumstances of that. I think the preferable
9 matter in doing that would be Your Honor to take
10 judicial notice in something along the lines of a
11 simple charge, you know, that he, in fact, pled guilty
12 to the offense. That I think is relevant --

13 THE COURT: All you have to do is ask your
14 client if he knows what happened to Mr. Dudley. He
15 was here, wasn't he?

16 MR. LONG: Yes, sir, he was here.

17 However, part of the agreement, his sentence was
18 held in abeyance pending his compliance and
19 cooperation and assistance in testifying. And I think
20 that the State, having failed to call him, creates
21 some inferences that the jury may consider -- may use
22 in their decisions.

23 THE COURT: They haven't heard anything about
24 Mr. Dudley. I didn't even tell them Mr. Dudley had
25 even pled.

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1 MR. LONG: That's correct, Your Honor.

2 THE COURT: I just said that Mr. Dudley would
3 not be a party to this trial.

4 MR. LONG: That's correct, Your Honor.

5 THE COURT: I mean, what sort of inference do
6 you think that the jury might draw from that?

7 MR. LONG: That if his guilty plea was
8 contingent upon, or sentence was contingent upon,
9 cooperation and assistance, cooperation in testifying
10 against Mr. Coleman, and was not called to testify
11 against Mr. Coleman, I think there's a logical
12 inference disclosed from that.

13 THE COURT: What inference?

14 MR. LONG: That he didn't say anything bad about
15 Mr. Coleman. If he had, they would have put him on
16 the jury stand -- I mean, on the -- in the box.

17 THE COURT: Well, you can call him.

18 MR. LONG: Pardon me, Your Honor?

19 THE COURT: You can call him.

20 MR. LONG: No. I don't want to call him.
21 The State failed to call him. It was the
22 State's deal with that defendant, not ours.

23 THE COURT: Mr. DeBusk?

24 MR. DEBUSK: Your Honor, I don't think that
25 inference follows at all. It could be that we decided

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1 we didn't need him. It could be that we saved him for
2 rebuttal. There is no inference there, Your Honor.

3 THE COURT: I mean, what could I tell the jury
4 other than -- you want me to just say he pled guilty?

5 MR. LONG: That's correct, Your Honor. Just
6 judicial notice of that fact.

7 THE COURT: Again, I don't see why the Court
8 should engage in providing information of that sort to
9 the jury when your client is perfectly able to do
10 that. I mean, I just don't see where the Court should
11 involve itself in that.

12 Do you have any precedent for that or --

13 MR. LONG: Your Honor, no precedent for it.

14 However, credibility is always in question with
15 every witness that takes the witness stand. For it to
16 be done by way of judicial notice, there's no
17 credibility as to whether he pled guilty or not.

18 If I call the clerk, which is not something that
19 I want to do, but the clerk can testify according to
20 public records that he did plead guilty to such and
21 such offense on such and such a date. That's not
22 something I want to have to do.

23 I think it's easier done either, like I say --
24 if you want my client to do it and think that's the
25 way it's proper, then my client can do that.

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1 THE COURT: Well, I think your client certainly
2 can. And you have several avenues, if you want that
3 in, which you can certainly do it. But the Court
4 doesn't have to take judicial notice of it. I'm not
5 sure that that would be the correct thing to do. You
6 could call the clerk. You could have your client --
7 he was sitting here and -- or I think he was. He
8 certainly knows. He can testify that --

9 MR. LONG: Yes, sir.

10 THE COURT: -- the codefendant pled guilty.

11 MR. DEBUSK: Your Honor, I'm not sure that the
12 guilty plea is relevant in this case. The defendant
13 is on trial. It's not Mr. Dudley.

14 THE COURT: I understand.

15 And if he had testified, that would be certainly
16 something that you could explore. But he hasn't
17 testified. He -- I mean, I don't see where there's
18 any logical conclusion that the judge -- I mean, that
19 the jury should draw from it. I think that the best
20 thing to do is just to leave it alone. But, you know,
21 that's up to you. I would probably let you put that
22 in, if that's what you wanted to do. But I'm not
23 going to make -- tell the jury that we're taking
24 judicial notice of the fact that he's pled. I don't
25 think that's proper for the Court to do, and I would

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1 deny your motion in that regard.

2 MR. LONG: All right, Your Honor. Understood.

3 Then at such time as I do -- and I just simply
4 want to play this out a little bit before such time as
5 I do inquire of my client about that.

6 Are we going to deal with the objection and
7 excuse the jury --

8 THE COURT: Well, let me say this. If you were
9 to say to your client, or ask your client, if he knows
10 what happened to the codefendant and he said the
11 codefendant pled guilty, I think it does have some
12 relevance. Two people were charged with this.

13 I think it can cut both ways, though. It's
14 certainly a double-edge sword. You may, in fact, be
15 opening yourself up to a charge of hand of one is hand
16 of all if you put that in. What do you say about
17 that, Mr. DeBusk?

18 MR. DEBUSK: We would be asking for a charge of
19 hand of one hand of all, anyway, Your Honor, because
20 there's testimony on the record that the two of them
21 were operating in unison.

22 THE COURT: I think you're probably right.
23 You're probably entitled to that.

24 Mr. Long, I'll let you ask. But if I were you,
25 I would be very cautious about doing that.

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1 MR. LONG: Yes, sir, Your Honor.

2 THE COURT: I certainly would. Mr. DeBusk
3 probably wants you to.

4 MR. DEBUSK: Matter of fact, I do, Your Honor.

5 MR. LONG: I'm sure he wants me to put him on
6 the stand, period. But, yes.

7 The second matter, Your Honor, that we were
8 talking about, credibility impeachment: I've had an
9 opportunity to review Rule 609. Basically, there's a
10 ten-year limit. The legislature put that in effect to
11 try to provoke uniformity and the length of
12 convictions and things of that nature.

13 I think his last prior conviction for burglary
14 was in 1994, some twenty years ago. I think the
15 prejudicial effect of those -- there's already
16 prejudice in the record. But the --

17 THE COURT: There's absolutely evidence of two
18 prior convictions for burglary, which the State was
19 required to produced.

20 Now, what I would do is I would give a modified
21 instruction to the jury, if Mr. DeBusk raises it. I
22 would tell the jury that that conviction could be
23 considered only for the purposes of determining
24 credibility of your client, not as evidence that he
25 perpetrated the offense that he is charged with.

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1 MR. LONG: That would be for the twenty-year-old
2 burglary conviction? Or are you talking about the
3 drug charge that --

4 THE COURT: The drug charge.

5 MR. LONG: All right. Very good.

6 THE COURT: Okay. The others were put in for
7 different reasons.

8 MR. LONG: Understood, Your Honor.

9 And I'm just simply asking about if my client
10 takes the stand and testifies, then on cross-
11 examination is he subject to credibility impeachment
12 using twenty-year-old burglary convictions?

13 THE COURT: What do you say about that,
14 Mr. DeBusk?

15 MR. DEBUSK: Your Honor, I think they're in the
16 record. We're clearly --

17 THE COURT: They are in the record.

18 MR. DEBUSK: -- going to say they're prior
19 convictions that go to credibility and whether I can
20 argue it or not. It's --

21 THE COURT: There's a burglary. Do you believe
22 that a burglary would be a --

23 MR. DEBUSK: Crime of falsehood, Your Honor?
24 Yes, I do. I would argue that --

25 THE COURT: I'm not so sure.

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1 What do you say about that?

2 MR. LONG: Your Honor, I think if it was within
3 ten years, there's no question it would come in under
4 the rule. I believe so.

5 THE COURT: Right.

6 MR. LONG: Being that it -- with the charge as
7 Your Honor states you give -- and it's for the
8 purposes of elements of the crime only, and no other
9 purpose, we fall back to 609, which says evidence of
10 convictions of prior crimes, et cetera. And I think
11 under 609 it clearly would not be admissible. One,
12 it's more than ten years old, and, two, the
13 prejudicial effect.

14 Now, there's already a prejudicial effect
15 because of the two priors that have been placed in for
16 the elements of the crime. But then to allow him to
17 go into each and every, or all, prior convictions
18 would be highly prejudicial as far as Rule 609 is
19 concerned. He's already got them in. He doesn't need
20 to ask him about them. I mean, they're of record.
21 The convictions are there in front of the jury.

22 THE COURT: Well, 609 is for the purpose of
23 attacking the credibility of a witness. It allows
24 that sort of impeachment. But only on the
25 determination by the Court that it's not violative of

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1 Rule 403. That is, it is more probative -- or, excuse
2 me -- that its probative value outweighs its
3 prejudicial effect.

4 MR. LONG: Yes, sir.

5 THE COURT: And it's a little different from
6 403. 403 requires substantially outweighs prejudicial
7 effect. Rule 609 says that the Court must determine
8 whether the probative value of admitting this evidence
9 outweighs the prejudicial effect of the accused. It
10 also goes on to say that evidence that an witnesses
11 has been convicted of a crime shall be admitted if it
12 involves dishonesty or false statement, regardless of
13 the punishment.

14 MR. LONG: Correct,

15 THE COURT: Now, the question is whether or not
16 those burglaries were offenses that involved
17 dishonesty and false statement. And there have been
18 some decisions on matters that raise questions about
19 whether or not burglary would or would not, if you'll
20 give me a moment.

21 MR. LONG: Yes, sir.

22 [Whereupon, the Court reviews documents]

23 THE COURT: What I'm going to do is this. What
24 I'm going to do is this. If Mr. DeBusk wants to
25 impeach him, I will tell the jury that for the

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1 purpose of attacking his credibility, it may consider
2 the drug offense but only to the extent that that
3 offense may reflect on his credibility, not on whether
4 or not he --

5 MR. LONG: Committed the crime.

6 THE COURT: -- committed the crime. Okay?

7 And I will not do a 609 analysis for -- I'll
8 tell you what, Mr. DeBusk. In light of the fact that
9 we already have evidence of two prior burglaries, I
10 think that diminishes the evidentiary value of the
11 drug offense which occurred how long ago?

12 MR. DEBUSK: Four years ago.

13 THE COURT: Four years ago. I think that it
14 substantially diminishes the probative value of that
15 particular offense for impeachment purposes. And the
16 probative value of it would not outweigh the
17 prejudice, and I'm not going to allow it. Okay?

18 MR. DEBUSK: Your Honor, does that mean that we
19 can argue the burglary convictions on the record go to
20 credibility?

21 THE COURT: Pardon?

22 MR. DEBUSK: Does that mean that we can argue
23 the burglary convictions already on the record go to
24 credibility --

25 MS. LIVESAY: For impeachment purposes.

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1 MR. DEBUSK: -- for impeachment purposes?

2 MR. LONG: Your Honor, under 609, they are
3 twenty years old.

4 MR. DEBUSK: In that case, then --

5 THE COURT: I understand.

6 MR. DEBUSK: -- takes away the argument. There
7 is --

8 THE COURT: I understand. But I believe that
9 since they were introduced otherwise, that Mr. DeBusk
10 can use them in this trial.

11 MR. LONG: On impeachment.

12 THE COURT: During the cross-examination of him?

13 MR. LONG: Yes, sir.

14 MR. DEBUSK: And arguments, Your Honor.

15 THE COURT: In argument, I think so. I'm not
16 going to allow it on the issue of credibility.
17 They're in. I don't think we need to address it. I
18 want to keep the case as clean as possible.

19 MR. LONG: And you've already said what your
20 charge will be, as far as the use of those.

21 THE COURT: Yeah. So they're not going to be
22 used.

23 MR. LONG: Understood. Yes, sir. Thank you.

24 THE COURT: Let's bring the jury in. One
25 second, please.

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1 CHARGE CONFERENCE

2 THE COURT: Gentlemen, what I intend to charge
3 is, first of all, the general duties of the judge and
4 the trial jury. I'm sure you've all heard me charge
5 it before. It essentially let's the jury know that
6 they are the finders of the fact and I define -- and I
7 determine what the law is.

8 I will charge on indictment, arrest, not being
9 evidence.

10 I will give a charge on the presumption of
11 innocense. That charge is directly from the charge
12 book. It's a recommended charge. I will give that
13 charge.

14 I will give a charge on reasonable doubt.

15 I will give a charge on direct and
16 circumstantial evidence. That charge has been
17 modified, as you all know, in the last year or so.

18 I will testify -- I mean, charge on he
19 credibility of witnesses.

20 I will give a charge as to first degree
21 burglary, what constitutes it. We will only talk
22 about the elements in aggravation that are -- there's
23 been evidence of in this case, that being two prior
24 convictions.

25 MR. LONG: Your Honor, what about burglary

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1 second as a lesser included?

2 THE COURT: What about that, Mr. DeBusk?

3 MR. DEBUSK: Your Honor, the only evidence on
4 the record is that he had two prior convictions for
5 burglary. Therefore, the only offense that he could
6 be charged on is burglary first. There is no burglary
7 second for a person who has two prior convictions for
8 burglary.

9 THE COURT: What if the jury was not satisfied
10 with your proof of the two prior convictions?

11 MR. DEBUSK: Your Honor, at this time there's
12 been no challenge to that evidence.

13 THE COURT: Do you intend to challenge that,
14 Mr. Long? I mean, is there any doubt that this was a
15 dwelling? Is there -- do you challenge the fact that
16 your client had two prior convictions? If you do,
17 then those are the elements.

18 MR. LONG: Yes, sir. I think the jury is free
19 to find those convictions credible or not and based on
20 the jury's determination that we don't know what it
21 is. However --

22 THE COURT: Then they would have to find your
23 client not guilty. If they're not satisfied beyond a
24 reasonable doubt that Mr. DeBusk has proven guilt or
25 two prior convictions, then your client would be found

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1 not guilty unless I give a charge of second degree.

2 MR. LONG: And the reason we were requesting
3 second degree was if they should decide to not find
4 those convictions credible, or whatever the case may
5 be, then second would be appropriate.

6 And I understand your reasoning, possibly even
7 your advice, that maybe it's not in our advantage to
8 do so. Your statement, not advise. Your statement.

9 We stand on Your Honor's ruling, whatever you
10 feel is appropriate with second or not.

11 THE COURT: This is the charge. I charge that
12 they must find that there were two prior convictions,
13 where that would be one of the circumstances that
14 would make it burglary in the first degree. Then I
15 finish by saying, if you find beyond a reasonable
16 doubt that the burglary was committed, then you may
17 consider the evidence of the prior convictions as
18 evidence of one of the circumstances which would make
19 the burglary first degree burglary. If you do not
20 find beyond a reasonable doubt that the defendant
21 committed these prior offenses, then you cannot return
22 a verdict of first degree burglary.

23 MR. LONG: And if -- what I'm concerned about,
24 and maybe I'm overly concerned, is if the jury should
25 find that he committed the burglary, and they choose

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1 not to because the statute says may consider -- if
2 they choose not to consider, then I'm worried about
3 where we stand there and what happens then. And I
4 understand the statute is explicit. The charge is
5 explicit. But if they don't find where it says may,
6 circumstances of aggravation, I guess you're saying
7 the proof would fail and they would have to return not
8 guilty.

9 THE COURT: Yes.

10 MR. LONG: Okay.

11 THE COURT: If they don't get a charge on second
12 degree --

13 MR. LONG: Understood.

14 THE COURT: -- they have failed to show first
15 degree. Mr. DeBusk says there's no evidence of second
16 degree. He wants it all or nothing.

17 MR. LONG: Understood.

18 THE COURT: Now, the question is whether or not
19 you want a second degree burglary.

20 [Whereupon, Mr. Long and Mr. Coleman confer]

21 MR. LONG: Your Honor, after speaking with my
22 client, he says he agrees that possibly if there's
23 convictions been introduced into evidence, there is no
24 reason to request second degree. So we prefer the all
25 or nothing on first.

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1 THE COURT: All right. Now, the hand of one is
2 the hand of all.

3 MR. DEBUSK: Your Honor, we've got statements on
4 the record from two witnesses they were acting in
5 concert, by Ms. Ross and by Shakerra Cowan. They went
6 in there together, they acted together, they're acting
7 in concert --

8 THE COURT: All right. Mr. Long --

9 MR. DEBUSK: -- that's clearly a basis for hand
10 of --

11 THE COURT: -- how about that?

12 MR. LONG: Your Honor, I really have no
13 opposition to it. From the start, this case has been
14 all about two defendants having committed the offense.

15 Technically, from our view of the case, we
16 thought Ms. Cowen should have been charged as lookout
17 or something of that nature, if the case was as the
18 State proposed it to be. The fact that they've chosen
19 not to --

20 So, I mean, you can't include statements from
21 her as basically being hand of one hand of all. She
22 has just simply testified as a witness. There are no
23 statements or testimony from the Defendant Dudley.

24 THE COURT: Yeah. But what we have is we have
25 the testimony of Ms. Ross who said she observed --

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1 MR. LONG: Understood --

2 THE COURT: -- both individuals --

3 MR. LONG: -- yes, sir.

4 THE COURT: -- coming and attempting to open her
5 house, walking around the house. You have Ms. Cowen
6 testifying that they went together --

7 MR. LONG: Yes, sir.

8 THE COURT: -- to the house. I think that it's
9 an appropriate charge.

10 MR. LONG: Yes, sir. No opposition really to
11 that, Judge.

12 THE COURT: All right. We'll get that.
13 Anything else that you want charged?

14 MR. LONG: No, sir, Your Honor.

15 MR. DEBUSK: No, Your Honor.

16 THE COURT: We'll have that for you in just a
17 moment.

18 All right. Let's bring the jury back in.

19 And the verdict form just simply says: as to
20 the charge, we, the jury, unanimously find the
21 defendant -- and place a circle.

22 MR. LONG: Yes, sir. No objection from the
23 defense.

24 [Whereupon, the jury enters the courtroom at
25 1:35 p.m.]

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THE COURT: All right. We have our jurors and our alternates back in the courtroom.

Ladies and gentlemen, I hope you had a nice lunch. As you heard just before we broke, the State has rested its case. During the time we were out, I was able to discuss other matters with these attorneys and we're ready to proceed now with the defense.

MR. LONG: Thank you, Your Honor.

Mr. Long?

MR. LONG: Thank you, Your Honor.

The State would call Keirnon Coleman -- I mean, the defense would call Keirnon Coleman to the stand.

[Whereupon, Mr. Coleman comes forward]

THE CLERK OF COURT: Place your right hand -- raise your right hand. Place your left hand on the Bible, please.

[Whereupon, Mr. Coleman is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the evidence you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

THE CLERK OF COURT: Okay. Please be seated.

[Whereupon, Mr. Coleman takes the witness stand]

THE CLERK OF COURT: State your full name.

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Spell your last name for the Court, please.

THE WITNESS: My name is Keirnon Coleman.

Keirnon is K-E-I-R-N-O-N. Coleman is C-O-L-E-M-A-N.

MR. LONG: Keirnon, you've been very patient with me. I think I've called you Kieron for how long?

THE WITNESS: For a while.

MR. LONG: Okay. And it's Keirnon?

THE WITNESS: Keirnon.

MR. LONG: Keirnon.. Keirnon. All right.

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Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

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KEIRNON COLEMAN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. LONG:

Q. Mr. Coleman, how old are you?

A. I'm forty-five years old.

Q. And how far did you go in school?

A. My junior year in high school.

Q. All right. Did you drop out at that time?

A. Yeah.

Q. Did you drop out -- what for?

A. Problems in the home. It was a dysfunctional home. There was things going on in the home.

Q. Did you start working then after you got out of school?

A. Yes.

Q. And what type of work do you do now or last did?

A. Time share. I sold time share.

Q. What company did you work for?

A. Spinnaker Resorts.

Q. And how long did you work for them?

A. Couple of years.

Q. All right. And when were you separated from them?

Testimony of Keirnon Coleman
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1 A. After my wife had my last son.

2 Q. All right. Were you laid off or fired or
3 discharged or quit?

4 A. No.

5 Q. What was the status?

6 A. It was my hours were in conflict with her hours.

7 Q. Okay. Now, you're married?

8 A. Yes.

9 Q. And what is your wife's name?

10 A. Evonica.

11 Q. And how long have y'all been married?

12 A. Ten years.

13 Q. All right. And you have how many children?

14 A. Four.

15 Q. What are their names and ages?

16 A. Javell is eight, Sory is six, Calio is four, and
17 Mason is three.

18 Q. That's two boys, two girls?

19 A. Yes.

20 Q. For how long have you been out of work --

21 A. It's been --

22 Q. -- approximately?

23 A. It's been -- well, like I said, since the birth
24 of my son. So it's been three years.

25 Q. Okay. And your wife works where?

Testimony of Keirnon Coleman
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1 A. She works at Bennett's Calabash.

2 Q. And that's a seafood restaurant?

3 A. Yes.

4 Q. And what is her position or her duties there?

5 A. She's a server.

6 Q. All right. What we call a waitress?

7 A. Yeah.

8 Q. And approximately how much is the family income
9 per month?

10 A. It fluctuates because it's based on tips. It
11 can be, during the summer, anywhere from 1500 to 2,000 a
12 month.

13 Q. And approximately what does it average, then,
14 throughout the year?

15 A. Around twelve to fifteen.

16 Q. Okay. And is that for the four of you to live
17 off of?

18 A. Yes, sir.

19 Q. What are your monthly expenses as far as rent,
20 car payments, or things -- groceries, things of that
21 nature. What is the family's expenses per month?

22 A. About \$1,000.

23 Q. Okay. And that includes groceries?

24 A. Yeah.

25 Q. How many cars do y'all own?

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
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1 A. One car.

2 Q. And what type of car is that?

3 A. It's a Toyota Caprice, I think. Because I don't
4 know too much about cars. It's the hybrid.

5 Q. Toyota Prius?

6 A. Yeah. The hybrid.

7 Q. How old is it?

8 A. 2008.

9 Q. And is it paid for? Or do you make payments on
10 it?

11 A. It's paid for.

12 Q. Okay. Now, you say the hours conflicted with
13 your wife's job. What type of hours were you working in
14 time share?

15 A. It's day. Because I OPC'd. I worked outside.
16 It's from 9:00 in the morning to five o'clock in the
17 evening.

18 Q. And her hours? What was she customarily
19 working?

20 A. She works from 1:00 in the afternoon until 9:00
21 in the evening.

22 Q. And what was the conflict, then, that was caused
23 by those different hours?

24 A. That we -- I couldn't -- at five o'clock, she
25 have to, you know, go -- she would have to be at work

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1 before I got off, and I worked up until 5:00.

2 Q. Did it involve the children and the school
3 transportation?

4 A. Yeah. We didn't have no babysitter. No -- we
5 don't have no immediate family down here.

6 Q. What were the costs of babysitting, either after
7 school or instead of school, when the kids were underage?
8 What were the costs per week of child care?

9 A. \$100 per child.

10 There's -- right across the street from where we
11 live at is a child care.

12 Q. And were your children enrolled there for some
13 time?

14 A. For a brief moment because how much it cost,
15 being \$100 per child.

16 Q. And that was when y'all made an economic
17 decision --

18 A. Yes.

19 Q. -- for you not to work?

20 A. Yes.

21 Q. Now, the State has put into evidence that you
22 have convictions for burglaries from what state?

23 A. From New Jersey.

24 Q. And how long ago was that?

25 A. I would say round about twenty years ago.

Testimony of Keirnon Coleman
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1 Q. Okay. And you are how old now?

2 A. Forty-five.

3 Q. So that was back when you were twenty-five? In
4 your twenties?

5 A. Yes, sir.

6 Q. What was going on in your life in the twenties
7 that would have caused you to commit burglaries?

8 A. Well, I got to explain. I come from a
9 dysfunctional home. My mother, she was abused as a child.

10 Q. Let's don't go into all that.

11 A. Okay.

12 Q. But what was -- that was what caused you --

13 A. Yeah.

14 Q. That was what led to you doing that?

15 A. The self-worth part. I didn't have that. I
16 didn't have that self-worth. I didn't care at that time.
17 I had nothing of value at that time.

18 Q. Did you serve time in prison on those
19 convictions?

20 A. Yes, sir.

21 Q. What have you learned from it?

22 A. The loss. What you can learn in the course of
23 committing a crime and doing something that you're not
24 supposed to do.

25 Q. How long did you stay in jail for?

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

1 A. I served forty months, I think. Forty months
2 worth.

3 Q. Now, 2013, you and your wife were still living
4 together; correct?

5 A. Yes.

6 Q. Four children in the home?

7 A. Yes.

8 Q. All right. Did you have a friend by the name of
9 Dudley Johnson [phonetic] -- or Johnson Dudley [phonetic].
10 Excuse me.

11 A. Yes.

12 Q. All right. Where did he live in relation to
13 where you lived?

14 A. He lived above me.

15 Q. This is an apartment complex?

16 A. Yes.

17 Q. All right. He lived directly above?

18 A. Yes, he lived directly above me.

19 Q. Who did he live with?

20 A. With his kids' parent -- his kids' mother.

21 Q. That would be his girlfriend?

22 A. Yeah.

23 Q. Did he call her fiancé or girlfriend?

24 A. His baby mother, he referred to her.

25 Q. All right. And they lived in the apartment

Testimony of Keirnon Coleman
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1 above you?

2 A. Yes.

3 Q. For how long did they live like that above you?

4 A. They had some problems towards the end and then
5 he moved out. He didn't have -- well, she kicked him out
6 and he wasn't allowed on the property anymore.

7 Q. Were you party to discussions with him, and/or
8 her, about why they separated? I'm not asking you what
9 they said. But did they explain those things to you?

10 A. It was public. Like I said, it was --

11 MR. DEBUSK: Your Honor, I object to hearsay.

12 A. It was --

13 Q. [Mr. Long] It was known --

14 THE COURT: Mr. Long?

15 Q. [Mr. Long] It was known why they separated?

16 A. Yeah.

17 Q. Okay. What type of relationship did you have
18 with him before the separation? I mean, y'all were
19 neighbors. How often did y'all see each other? What did
20 y'all do, if anything?

21 A. On an everyday basis, because he lived directly
22 over top of me.

23 Q. All right. Was he working?

24 A. No. He was at home, also.

25 Q. Okay. Did he care for his child?

Testimony of Keirnon Coleman
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1 A. Yeah.

2 Q. Now, on March 24th or 23rd -- and I believe we
3 determined March 25th was a Monday; is that correct?

4 A. Yes.

5 Q. On Sunday or Saturday, did you have some contact
6 from him?

7 A. I received a call from him Sunday evening.

8 Q. Okay. And he called you?

9 A. Yeah, he called me.

10 Q. All right. Was he still living above you at
11 that time?

12 A. No. He was staying down on Ocean Boulevard at
13 the Budget Inn.

14 Q. At the where?

15 A. At the Budget Inn.

16 Q. Budget Inn. Okay. So he was staying in a motel
17 room?

18 A. Yeah.

19 Q. Do you know how long he had been staying at the
20 motel room?

21 A. It was for a while.

22 Q. Meaning a day, a week, a month, a year?

23 A. I would say a week or so.

24 Q. All right. And was that a result of the
25 separation with his girlfriend?

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
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1 A. No. It was problems that -- like I said, that
2 it got where the property found out that they were -- you
3 know, there was noise and they was, you know, arguing and
4 fighting, and he was told that he could no longer stay on
5 the property by management.

6 Q. Okay. So then when you received a call from him
7 on Sunday, what was it concerning?

8 A. That he met --

9 MR. DEBUSK: Your Honor, I'm going to object as
10 to hearsay again.

11 THE COURT: I'm sorry.

12 MR. DEBUSK: I object as to hearsay to the last
13 question, Your Honor.

14 THE COURT: Repeat the question, please,
15 Mr. Long.

16 Q. [Mr. Long] You received a telephone call from
17 Mr. Dudley. On Sunday, March 24th, he called you; is that
18 correct?

19 A. Yes, sir.

20 Q. All right. What was the basis for the call?
21 What was the substance of the call?

22 MR. DEBUSK: Objection, Your Honor. Hearsay.

23 THE COURT: I believe he's right, Mr. Long.
24 That would be hearsay.

25 MR. LONG: As codefendant, Your Honor?

Testimony of Keirnon Coleman
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March 13, 2014

1 THE COURT: Yes, sir.

2 MR. LONG: All right.

3 Q. [Mr. Long] As a result of the telephone call
4 you received from him, what did you do?

5 A. I met with him the following morning in regards
6 to a situation that occurred.

7 Q. All right. Now, how long did you have a
8 conversation with him on Sunday? How long were you on the
9 phone with him for?

10 A. Fifteen, twenty minutes.

11 Q. All right. And did he ever mention a name South
12 Carolina?

13 MR. DEBUSK: Your Honor, objection. That goes
14 to hearsay again.

15 THE COURT: I'm going to let him answer that.

16 A. He said he met --

17 MR. DEBUSK: Your Honor, objection. Hearsay.

18 THE COURT: If he can --

19 Q. [Mr. Long] Did he say the name Shakerra Cowan
20 to you?

21 THE COURT: If he can say whether he knew him, I
22 have no objection to that, but I don't want him to go
23 any further in any other conversation he may have had
24 with Mr. Dudley.

25 Q. [Mr. Long] Was the name Shakerra Cowan

Testimony of Keirnon Coleman
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1 mentioned during the telephone conversation?

2 A. No, sir.

3 Q. All right. Thereafter, on Monday, as a result
4 of that conversation, you said you met with him. Where?

5 A. They picked me up where I live at.

6 Q. All right. And who picked you up?

7 A. Him and Shakerra.

8 Q. All right. And was she indicated to you as his
9 girlfriend?

10 A. As someone that he met and he had an interest
11 in.

12 Q. Do you know how long -- based on the
13 conversation, do you know how long --

14 MR. DEBUSK: Your Honor, that calls for hearsay,
15 too.

16 THE COURT: Well, I think it goes to his state
17 of mind. It doesn't go to the truth of the matter
18 asserted.

19 MR. DEBUSK: Your Honor, he's asking based on
20 the conversation. That's hearsay.

21 THE COURT: Okay. I'm going to let him answer
22 it.

23 Q. [Mr. Long] Based on the conversations you had
24 with them that morning, did you have any idea of how long
25 they had been together, if at all?

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

1 A. No.

2 Q. Now, the conversations you've had with him, and
3 the meeting Monday morning, was for what purpose?

4 A. That they needed money and she had got into a
5 situation where she was escorting or something of that
6 nature --

7 MR. DEBUSK: Your Honor, this is calling for
8 hearsay, as well. He's asking what they said to him
9 about the situation.

10 THE COURT: Mr. Long, isn't this calling for
11 speculation on the part of the witness?

12 MR. LONG: No, Your Honor. What --

13 THE COURT: Then establish your proper basis for
14 it, then.

15 Q. [Mr. Long] Did you speak with him in detail
16 about the reason they wanted you to accompany them?

17 A. Yes.

18 Q. Did she also explain or corroborate the reasons
19 why they wanted you to be there with them?

20 A. Yes.

21 Q. All right. And in your mind, was there a
22 definite purpose or reason for going with them what they
23 wanted you to do?

24 A. Yes.

25 Q. And what was it they wanted you to do?

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

1 A. To assist as being a dominate presence. More of
2 a -- you know, of a backup. Because of the situation that
3 they were in, they needed someone else to aid and assist
4 them.

5 Q. Was she in financial straights?

6 A. Yes.

7 Q. And did someone owe her money?

8 A. Yes.

9 Q. And were you being sought for your assistance in
10 collecting the money?

11 A. Yes, sir.

12 Q. All right. Now, they came over to pick you up
13 in her car?

14 A. Yes, sir.

15 Q. All right. And when they came over, I would
16 imagine Mr. Dudley was seated in the front seat; is that
17 correct?

18 A. Yes, sir.

19 Q. All right. And thereafter you rode in the front
20 seat. Why is that?

21 A. My legs. And you can adjust the seat and you
22 can have more space in the front seat to sit.

23 Q. In other words, the back seat was too tight?

24 A. Yes.

25 Q. And on the way over to where you were going,

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

1 were there conversations by her and conversations by him
2 about where they're going, who you're looking for, et
3 cetera, that kind of stuff?

4 A. No.

5 Q. All right. Basically, you were there to ride
6 with them?

7 A. Yes.

8 Q. Now, tell me what happened when you first went
9 into I guess the subdivision we're talking about. What
10 happened at that point?

11 A. Well, we got out of the car. We approached the
12 first house.

13 Q. All right. How -- why were you at that house?

14 A. From where she stated and he stated, that that
15 was where the person owed them the monies.

16 Q. All right. So then what happened?

17 A. When we got there, we knocked. There was no
18 answer at the door.

19 Q. All right. Were you then going back to the car
20 after that?

21 A. As we were coming back to the car, she directed
22 the other house next door. I would think Ms. Ross house.

23 Q. Did she appear to know where the person lived
24 that owed her money? Did she know exactly?

25 A. It didn't seem sure. I didn't know. I just

Testimony of Keirnon Coleman
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1 was -- like I said, I was assisting him as me being his
2 friend.

3 Q. So then the second house, who knocked on the
4 door of the second house?

5 A. I knocked on the door.

6 Q. All right. And did you hear or observe anything
7 inside the house at that time? In other words --

8 A. I thought I heard a little commotion in the
9 house. And that's where I told him, hey, you want to go
10 around and see if there's somebody in there.

11 Q. Was that to see if in case the guy was hiding
12 out?

13 A. If he was in there, generally. If the person
14 that she was looking for was in the house. If the male
15 was in the house.

16 Q. After determining there was no one in the house,
17 what did you do?

18 A. We got back into the vehicle.

19 Q. All right. And then where did she drive after
20 that?

21 A. She drove, I don't know, in the direction
22 towards the Marotte house.

23 Q. Okay. The Marotte house?

24 A. Marotte. Yeah, Marotte house.

25 Q. Now, what happened at that location?

Testimony of Keirnon Coleman
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1. A. Dudley got out of the car. He went to the
2 house. He went around the house. It was about a few
3 minutes. Then he came back. When he came back from
4 behind the house, he had the items.

5 He handed me the items in the front seat. He
6 said, put them in the glove compartment, put the stuff up
7 and everything. So at that point, I've got everything in
8 my hands so I'm trying to put stuff in there and
9 everything. Everything was intact. Everything was in the
10 box.

11 Q. Did she talk to him or direct him once she
12 pulled up at the Marotte house?

13 A. [No response]

14 Q. Did she say anything like, this is it, I'm sure,
15 or --

16 A. Yeah.

17 Q. -- anything like that?

18 A. Yeah. She said, yes, this house right here
19 looks familiar.

20 Q. All right. Did you hear her say anything to him
21 about break in and steal stuff if nobody's home, or
22 anything like that?

23 A. No.

24 Q. So then we know what basically happened from
25 that point in time. She drove -- left that residence,

Testimony of Keirnon Coleman
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March 13, 2014

1 pulled past the police car, police car gave pursuit,
2 stopped, and pulled. During the time that the police car
3 was behind you, what was taking place in the vehicle?

4 A. Everybody was quiet. It was the shock of just
5 the police responding that quickly and getting behind us.
6 So once we got farther down to where -- I guess in the
7 picture where it show where we got to the curb, it was the
8 notion to be quiet. That came from Dudley. He was like
9 just y'all be quiet, everybody just don't say nothing,
10 just be quiet.

11 Q. Was there every any attempt by you to conceal or
12 hide any of this stuff from anyone else?

13 A. No.

14 Q. Okay. What was done with the items that were on
15 the floor?

16 A. The items that was on the floor, in the course
17 of when we were stopped I was told, get that, pick that
18 up, move that. And out of, I don't know, my reaction,
19 that's when I started putting the stuff that I could try
20 to conceal and put it away.

21 Q. Okay. And you weren't successful in moving,
22 covering, hiding any of it by the time the police officers
23 arrived?

24 A. No.

25 Q. Did you ever try to hide it from police officers

Testimony of Keirnon Coleman
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March 13, 2014

1 once you were out of the car?

2 A. No.

3 Q. Did they ask you for consent to search?

4 A. Yes.

5 Q. Did you tell them that there were items of
6 jewelry in your pocket --

7 A. Yes, I did.

8 Q. Did they suspect or they had a concern about you
9 having any weapon?

10 A. None.

11 Q. All right. Did you have any weapon?

12 A. No.

13 Q. Were there any weapons, that you knew of, in the
14 car?

15 A. No.

16 Q. Following that, you were placed under arrest; is
17 that correct?

18 A. Yes, sir.

19 Q. And you were taken to jail; is that correct?

20 A. Yes.

21 Q. And when you were booked into the jail, what
22 took place? What happened?

23 A. We got strip-searched and patted down and then
24 processed, and then we were placed in a little holding
25 cell before you go into direct population.

Testimony of Keirnon Coleman
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1 Q. And what was done with your clothing and what
2 clothing, if any, were you given?

3 A. It was processed.

4 Q. Okay. What does that mean? You get an orange
5 jumpsuit and flip-flops?

6 A. Yes.

7 Q. All right. And what was done with your
8 clothing?

9 A. It was put into property.

10 Q. All right, sir. Was there any mud or dirt or
11 anything on your shoes?

12 A. No.

13 Q. Did you step in any mud or water or dirt any
14 time that morning?

15 A. No.

16 Q. From the moment you were processed in, who had
17 possession of your clothing and your shoes?

18 A. The County.

19 Q. Horry County, South Carolina?

20 A. Yes. Horry County jail.

21 Q. Now, how long were you in jail until your wife
22 was able to post bail for you?

23 A. Three months.

24 Q. And during that three months, who had possession
25 of your clothing and shoes?

Testimony of Keirnon Coleman
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1 A. Horry County.

2 Q. When bail was posted, were your items returned
3 to you?

4 A. Yes, they were.

5 Q. And did the County clean and polish your shoes
6 for you?

7 A. No, they didn't.

8 Q. Were they returned to you in the same condition
9 that you gave them to them?

10 A. Yes, sir.

11 Q. Was there any dirt, mold, mildew, clothing -- I
12 mean, insects, leaves, branches, anything of that nature,
13 on any of your clothing?

14 A. No.

15 Q. And in what general condition were your shoes?

16 A. They were clean.

17 Q. Was Mr. Dudley processed at the same time you
18 were?

19 A. Yes.

20 Q. All right. Was he processed within your view or
21 within your earshot?

22 A. No. They processed us separately.

23 Q. Do you know whether or not they did the exact
24 same thing with him? kept his clothes for him?

25 A. I don't know.

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1 Q. Once you were released -- it was your wife that
2 posted bond for you?

3 A. Yes.

4 Q. Once you were released, then, you've been
5 awaiting trial at this time; correct?

6 A. Yes.

7 Q. Are you working now?

8 A. I'm still at home.

9 Q. All right. And you're still at home with the
10 children?

11 A. Yes.

12 Q. Are two in school and two not in school? What's
13 the status?

14 A. Yes. Two of my daughters attend school -- two
15 of my sons -- Javell [phonetic] is to start once she turn
16 five.

17 Q. Did you conspire with any other persons to
18 commit a burglary on that date?

19 A. No, sir.

20 Q. Was there any conversations between you and any
21 other persons about perpetrating, planning, or committing
22 a burglary that day?

23 A. No, sir.

24 Q. Did you see Mr. Dudley enter the residence?

25 A. Yes, I did.

Testimony of Keirnon Coleman
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1 Q. And did he come out with the items?

2 A. Yes, he did.

3 Q. Did you enter that residence?

4 A. No, I didn't.

5 Q. When the police arrested you that day, did you
6 have cigarettes on you?

7 A. No, sir.

8 Q. All right. You do smoke menthol cigarettes;
9 correct?

10 A. Yes, I do.

11 Q. All right. But you did not have any, did not
12 have a pack, that day?

13 A. No cigarettes.

14 Q. Was there any cash or any money on you? In
15 other words, did you have \$500 or \$1,000, anything of that
16 nature --

17 A. No, sir.

18 Q. -- on your person?

19 A. No, sir.

20 Q. How much cash, if any, did you have on you?

21 A. I think about 150. 120, maybe.

22 Q. All right. And where was that money from?

23 A. That was my own money.

24 Q. Now, if you had planned with others to commit
25 burglaries that day, was the house next door to the Ross

Testimony of Keirnon Coleman
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March 13, 2014

1 house as good as any to burglarize?

2 A. Yeah.

3 Q. Was there anybody home? Did anybody answer --

4 A. Nobody answered.

5 Q. All right. And that house was on a cul-de-sac?

6 A. Yes.

7 Q. Was the Ross house as good as any to burglarize
8 on that day?

9 A. Yes.

10 Q. All right. As far as you know, there was no
11 cars in the driveway, no one at home?

12 MR. DEBUSK: Your Honor, this calls for
13 speculation.

14 THE COURT: I'm going to let him answer the
15 question.

16 A. Yes.

17 Q. [Mr. Long] And then when you went to the
18 Marotte house, were you asked to accompany them at that
19 time?

20 A. No, I wasn't.

21 Q. Did there appear to be anybody home?

22 A. I couldn't -- I didn't know. I didn't know
23 because no one answered the prior houses that we went to,
24 so I didn't know whether or not there was anybody at the
25 residence.

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1 Q. Did Mr. Dudley ring the doorbell or knock on the
2 door of this residence?

3 A. He rung the doorbell and then he proceeded to
4 the back of the house.

5 Q. Did anyone answer the door or open the door?

6 A. Nobody answered or opened it.

7 Q. I want to ask you again, to your knowledge. It
8 looks bad, doesn't it?

9 A. Yeah.

10 Q. All right. Did you have any agreement with
11 either of those -- any of those people about committing a
12 burglary that day?

13 A. No, sir.

14 Q. Now, yesterday your codefendant, Mr. Dudley, was
15 here in court with us; correct?

16 A. Yes, he was.

17 Q. All right. And very shortly after we got
18 involved in the case, he was no longer here; is that
19 correct?

20 A. Yes.

21 Q. Were you here in the courtroom yesterday when he
22 was taken from the courtroom?

23 A. Yes, I was.

24 Q. All right. And what happened before that?

25 A. He made a plea.

Testimony of Keirnon Coleman
Direct Examination by Mr. Long
March 13, 2014

1 Q. All right. And he pled guilty to what?

2 A. To burglary.

3 Q. Okay. He pled guilty to burglary of what
4 residence?

5 A. Of the Marotte house.

6 Q. Are you guilty or not guilty?

7 A. I'm not guilty.

8 Q. And is that why you're going forward with your
9 trial?

10 A. Yes.

11 MR. LONG: Thank you, sir. Answer any questions
12 the State may have.

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Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

CROSS-EXAMINATION

1

2

BY MR. DEBUSK:

3

Q. Mr. Coleman, let me get this straight. Your
4 testimony is, today, that you were going to that
5 neighborhood to collect money for Shakerra Cowan and/or
6 Dudley Jordan; right?

7

A. Yes.

8

Q. You were not collecting money for yourself?

9

A. No.

10

Q. You're absolutely sure of that?

11

A. Yes.

12

Q. Isn't it true that that very day when police
13 officer Tibbott stopped you and he asked you what are you
14 doing in that neighborhood you said, looking for a
15 gentleman that owes me money, sir.

16

A. Did I say that? I don't recall --

17

Q. Isn't it true you said that

18

A. I don't recall.

19

Q. So you don't -- do you want to see the video?

20

A. I don't recall it.

21

Q. It's in evidence. You said four minutes later,
22 he owes me money. Isn't that correct?

23

A. I said that?

24

MR. LONG: Your Honor, I object. At the time we
25 cut the video, I think the last statement on there was

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 from Mr. Dudley, looking for a guy, click. And I
2 think the officer was standing on Mr. Dudley's side of
3 the car when that happened.

4 MR. DEBUSK: Your Honor, he is --

5 THE COURT: Well, if it's in the evidence, the
6 jury will remember it.

7 MR. DEBUSK: Your Honor, we would ask to publish
8 it at this time.

9 THE COURT: The part we've already seen?

10 MR. DEBUSK: Your Honor, the part we saw without
11 sound. I would like to publish the sound portion.

12 THE COURT: All right.

13 MR. DEBUSK: It won't be long --

14 MR. LONG: Your Honor, I'm going --

15 MR. DEBUSK: -- less than two minutes.

16 THE COURT: Okay.

17 MR. DEBUSK: Thank you.

18 THE COURT: It's disputed, Mr. Long. Let's see
19 what it said.

20 MR. LONG: May we approach, Your Honor, prior
21 to?

22 THE COURT: Yes.

23 [Whereupon, an off-the-record bench conference
24 is held]

25 THE COURT: I'm going to allow it.

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 [Whereupon, State's Exhibit Number 15, CD, is
2 played for the jury]

3 [Whereupon, State's Exhibit Number 15 is not
4 transcribed by the court reporter]

5 [Whereupon, State's Exhibit Number 15, CD,
6 concludes]

7 MR. DEBUSK: Your Honor, there's one other
8 portion I --

9 [Whereupon, State's Exhibit Number 15, CD, is
10 played for the jury]

11 [Whereupon, State's Exhibit Number 15 is not
12 transcribed by the court reporter]

13 Q. [Mr. Debusk] So, Mr. Coleman, not only did you
14 say he owed you money, you gave a name, Jeffery Williams,
15 didn't you?

16 A. Yeah.

17 THE COURT: Are you done, Mr. DeBusk, so we can
18 get the lights back on?

19 MR. DEBUSK: Your Honor, I will -- in a moment,
20 but we can bring it up.

21 THE COURT: Okay.

22 MR. DEBUSK: It will be a few minutes.

23 THE COURT: I just want some lights back on.

24 Q. [Mr. Debusk] So your testimony today and what
25 you told that officer both can't be true, can they?

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 A. That's what I said at the time.

2 Q. Was it a lie?

3 A. Yes, it was a lie.

4 Q. So you're going to lie to get out of trouble?

5 A. No. I was trying to protect all of us.

6 Q. All of us?

7 A. That was in the car.

8 Q. So you were lying to keep yourself out of
9 trouble?

10 A. No. I was lying to try to protect everybody
11 that was in the car.

12 Q. Including yourself?

13 A. Including myself.

14 Q. But you did lie to the officer?

15 A. Yes, I did lie to the officer.

16 Q. That's your position?

17 A. Yes.

18 Q. Okay. You said that Jordan Dudley gave you that
19 jewelry and jewelry box; is that correct?

20 A. Yes.

21 Q. Did you tell the officer that?

22 A. No.

23 Q. What did you tell the officer?

24 A. I didn't tell him anything.

25 Q. Oh. You didn't tell him that it was your

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 jewelry?

2 A. It was my jewelry?

3 Q. Yeah.

4 A. That was in my pocket.

5 Q. Did you tell the officer that was your jewelry
6 in your pocket?

7 A. That was in my pocket.

8 Q. You told him that's your jewelry?

9 A. Yes.

10 Q. And you told him, that's my stuff?

11 A. I said --

12 MR. LONG: I've got a matter we may have to take
13 up outside the presence of the jury.

14 THE COURT: All right. Let's take it up outside
15 the presence of the jury.

16 [Whereupon, the jury exits the courtroom at
17 2:11 p.m.]

18 THE COURT: All right.

19 MR. LONG: Your Honor, I realize we all have
20 perspectives of viewing evidence and arriving at
21 different conclusion based on our perspectives.
22 However, I don't think anybody can deny that this is a
23 custodial interrogation. Clearly, none of those
24 three parties were -- could simply walk away and leave
25 without answering questions at that point in time.

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
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1 Yes, Your Honor, they had not been put into
2 handcuffs, had not been told the magic words I'm
3 placing you under arrest. As you heard the officer
4 testify yesterday, he was talking about after Mr.
5 Coleman was handcuffed, okay, and moved to the back of
6 his car, he was still not under arrest.

7 THE COURT: Mr. Long, how about Oregon vs.
8 Elstadt?

9 MR. LONG: You would have to --

10 THE COURT: That is a Supreme Court case. It
11 goes back to '85. And it says: even if there is an
12 insufficient Miranda warning and the State cannot use
13 a confession, if this were a confession that the
14 statement still may be used for impeachment purposes.

15 MR. LONG: Then, Your Honor, I can't dispute the
16 wisdom of that decision.

17 I can simply say that no matter what they call
18 it, the custodial interrogation, answers, et cetera,
19 this, that and the other, the purpose and spirit of
20 Miranda is is that he be advised to shut your mouth or
21 else everything you say could be used against you, for
22 whatever reason, whether it be impeachment or
23 credibility or whatever.

24 And so, Your Honor, I understand the decision.
25 I appreciate your schooling me on that. I still think

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
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1 we're opening up a can of worms, as far as his
2 continuing statements or continuing answers in
3 response to interrogation leading us down the wrong
4 way.

5 THE COURT: Well, I think it is admissible.
6 Okay? Or at least -- I've not been asked to rule on
7 whether or not a statement was made freely and
8 voluntarily in this case. I don't know whether it was
9 or not. I don't know even about Miranda, when it was
10 given or if it was not given or what the circumstances
11 are. But I don't think it makes any difference. Even
12 if Miranda was required, this is impeachment and I
13 think it can be used, even if there was a Miranda
14 violation, for impeachment purposes. And I think
15 that's clear in the law. I'm going to allow it.

16 MR. DEBUSK: Not only that. I believe the South
17 Carolina Supreme Court affirmed the same rule in State
18 v. Brown 296 S.C. 191, and also the U.S. Supreme Court
19 case of Oregon vs. House, 420 U.S. 714, that the rule
20 is that even a statement made in violation of Miranda
21 can be used for impeachment purposes, for that limited
22 purpose. That's how I presented it.

23 THE COURT: Thank you.

24 MR. LONG: Thank you, Your Honor.

25 THE COURT: All right. Bring the jury back in.

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 [Whereupon, the jury enters the courtroom at
2 2:16 p.m.]

3 THE COURT: All right. Mr. DeBusk, you may
4 continue.

5 MR. DEBUSK: Thank you, Your Honor.

6 Q. [Mr. Debusk] Let's step back where we were
7 before.

8 You did tell the officer you were looking for a
9 gentleman that owes me money, sir; is that correct?

10 A. Yes, sir.

11 Q. You're saying now that that was a lie?

12 A. That was a lie.

13 Q. You were lying in the face of a law enforcement
14 officer for purposes of evading responsibility; is that
15 correct?

16 A. Yes. For all of us.

17 Q. Now, when he was patting you down and you
18 touched that pocket, he asked you, what's in that pocket,
19 what did you tell him?

20 A. Jewelry.

21 Q. And he asked you again later. Did you tell him
22 again that was your jewelry?

23 A. Yes.

24 Q. And that you do business with that jewelry?

25 A. Do I do business with the jewelry?

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
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1 Q. Yes. Is that what you told him?

2 A. I don't remember verbatim.

3 Q. Well, let's check the tape.

4 MR. DEBUSK: Your Honor, the portion is
5 approximately two minutes long.

6 THE COURT: Okay.

7 [Whereupon, State's Exhibit Number 15, CD, is
8 played for the jury]

9 [Whereupon, State's Exhibit Number 15 is not
10 transcribed by the court reporter]

11 MR. DEBUSK: Your Honor, I'm finished.

12 Q. [Mr. Debusk] Mr. Coleman, where were your
13 children when you were riding around in a car -- for
14 another guy who used muscles to collect money?

15 A. At home.

16 Q. Okay. And you said you were there to assert a
17 dominance presence. Does that mean you were prepared to
18 do violence if you needed to?

19 A. No.

20 I don't have -- on my record, I don't have --
21 I've never done any violence to anyone.

22 Q. But there's no doubt today that you testified
23 that you were collecting money for Shakerra and Dudley?

24 A. Yes.

25 Q. But on March 25th, when the officer asked you

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
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1 directly, you said you were collecting money for yourself
2 from a man named Jeffery Williams?

3 A. Like I said, at that time and at that moment,
4 under the circumstances of being stopped immediately like
5 at -- where we were stopped, I said whatever would put us
6 in a position where no one would get in trouble. That was
7 just my instinct at the moment.

8 Q. So you would lie to save others but you wouldn't
9 lie to save yourself?

10 A. I thought it would save all of us.

11 Q. Okay. So you're prepared to lie to save
12 yourself?

13 A. I was prepared to lie to save all of us at the
14 time.

15 Q. Including yourself?

16 A. That's all of us.

17 Q. So you were prepared to lie to save yourself?

18 A. To save all of us.

19 [Whereupon, Mr. DeBusk and Ms. Livesay confer]

20 Q. [Mr. Debusk] So you recognize Ms. Ross in the
21 courtroom; is that correct? She testified earlier?

22 A. Do I recognize Ms. Ross?

23 Q. You went to her house; right?

24 A. Yes.

25 Q. And you tried to open the door to her house; is

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 that correct?

2 A. No. I peered. I didn't pull the --

3 Q. Do you deny you were the one who jiggled the
4 handle to her house?

5 A. I didn't jiggle no door to the house, no.

6 Q. Okay. Did you have any business going in her
7 house or trying to get in her house?

8 A. Well, my business was, like I said, on a
9 collection. That's what we thought we were going to do,
10 we was going to collect.

11 Q. So you thought it was your right to go into the
12 house of someone you didn't know?

13 A. Go in the house you say?

14 Q. Why else would you grab the door and attempt to
15 open it?

16 A. No, it -- no, I wasn't trying to go in the
17 house.

18 Q. You weren't trying to go in the house? You were
19 just --

20 A. No.

21 Q. -- checking the knob for security?

22 A. We were looking in the house to see if the
23 gentleman was in the house.

24 Q. So if she says she saw you jiggling the knob,
25 she's lying?

Testimony of Keirnon Coleman
Cross-Examination by Mr. DeBusk
March 13, 2014

1 A. [No response]

2 Q. Saw and heard you jiggling the knob?

3 MR. LONG: Pitting witnesses, Your Honor.

4 Objection.

5 MR. DEBUSK: Withdrawn, Your Honor.

6 THE COURT: All right.

7 MR. DEBUSK: I apologize. No further questions,

8 Your Honor.

9 THE COURT: Any redirect, Mr. Long?

10 MR. LONG: Briefly, Your Honor.

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Testimony of Keirnon Coleman
Redirect Examination by Mr. Long
March 13, 2014

REDIRECT EXAMINATION

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BY MR. LONG:

Q. Keirnon, what time did your wife go to work that day, as far as you know? Do you remember?

A. She would have been went to work at one o'clock.

Q. All right. Did you tell her you needed to go do some things or that Dudley needed some things when you left the house that day?

A. Yes. I told her that I was going out of the house.

Q. And had she already taken the two girls to school?

A. Already.

Q. All right. And so the two boys were home?

A. Yes.

Q. And what was the intention, what were the discussions, concerning what time you would be home to take the boys so she could go to work?

A. Before she went to work, one o'clock.

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

MR. DEBUSK: Nothing further, Your Honor.

THE COURT: All right. You may step down.

[Whereupon, Mr. Coleman is excused and exits the witness stand]

Testimony of Keirnon Coleman
Redirect Examination by Mr. Long
March 13, 2014

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THE COURT: Mr. Long?

MR. LONG: The defense would rest, Your Honor.

THE COURT: Very well.

Ladies and gentlemen, if you would please retire
to your jury room for just a moment.

[Whereupon, the jury exits the courtroom at
2:24 p.m.]

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State vs. Dudley and Coleman
Renewed Motion for a Directed Verdict by Mr. Long
March 13, 2014

1 RENEWED MOTION FOR A DIRECTED VERDICT

2 THE COURT: Mr. Long?

3 MR. LONG: Your Honor, for the same reasons
4 stated, I won't go back into them verbatim, we would
5 move for a directed verdict for the reasons previously
6 stated at the conclusion of the State's case. I
7 foresee or see no other motions that need to be made
8 at this time, other than a restatement of that one.

9 THE COURT: All right. Mr. DeBusk?

10 MR. DEBUSK: Your Honor, there is evidence on
11 the record of each and every element of this offense.
12 The fact the defendant admitted he has two prior
13 burglaries, we have evidence of entry to the house of
14 a victim, the fact of items from the house, we have
15 evidence that the defendant went there and brought
16 back items from the house. They were on his person.
17 He was, at best, acting in concert with another when
18 he did it, and one of the two had to go into the house
19 to get the items, Your Honor. There's clearly
20 evidence on this record to support burglary in the
21 first degree.

22 THE COURT: Mr. Long, I believe that there is
23 not only direct but also substantial circumstantial
24 evidence to support the State's case and, as such, I
25 would respectfully deny your motion.

State vs. Dudley and Coleman
Renewed Motion for a Directed Verdict by Mr. Long
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1 MR. LONG: Thank you.

2 THE COURT: Okay. Gentlemen, would you like a
3 moment before we argue?

4 MR. LONG: Yes, I would, Your Honor.

5 THE COURT: Okay. And I have copies of the
6 charge for each of you. You might want to look it
7 over before you begin your arguments. Or if you would
8 like to, you may do so. One for each of you.

9 MR. DEBUSK: Thank you, Your Honor.

10 THE COURT: We'll take about ten or fifteen
11 minutes? All right? Then we'll come back and argue
12 and I'm going to charge.

13 [Whereupon, a recess is taken from 2:27 p.m. to
14 2:37 p.m.]

15 THE COURT: Please be seated. Please be seated.
16 Are we ready?

17 MR. DEBUSK: Ready, Your Honor.

18 MR. LONG: Yes, sir.

19 THE COURT: All right. You have seen the
20 charges, Mr. Long?

21 MR. LONG: Yes, I have, Your Honor.

22 THE COURT: No objections?

23 MR. LONG: No objections, Your Honor.

24 THE COURT: Mr. DeBusk, no objections to --

25 MS. LIVESAY: No, sir.

State vs. Dudley and Coleman
Renewed Motion for a Directed Verdict by Mr. Long
March 13, 2014

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THE COURT: None at all. Okay.

So everybody is satisfied with the charge and
you've been provided with written copies.

Okay. Sam, if you would?

[Whereupon, the jury enters the courtroom at
2:38 p.m.]

THE COURT: All right. Ladies and gentlemen, we
have completed all the evidence in this case, both the
State and the defense have rested, and we are now
about to hear closing arguments.

All right. Mr. Long?

MR. LONG: Thank you, Your Honor.

THE COURT: Well, will the State open?

MR. DEBUSK: Open on the law, Your Honor?

THE COURT: Yes.

MR. DEBUSK: Be glad to.

THE COURT: If you wish to.

MR. DEBUSK: I would. Thank you.

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State vs. Dudley and Coleman
Closing Statement by Mr. DeBusk
March 13, 2014

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CLOSING STATEMENT

MR. DEBUSK: Ladies and gentlemen, I'll be back to talk to you in a few minutes about the facts in the case, but I get a chance to talk to you at the beginning about the law in the case.

In this case, the law is simple. It's burglary in the first degree. Burglary is entering. You don't need a breaking, just an entering of someone's residence with the intent to commit a crime therein. You get to infer that intent from what they did when they got in. Entering the dwelling with the intent to commit a crime therein, that's a burglary.

What makes it burglary first: there are different things they can do, including doing it at night time, committing an act of violence on somebody inside the house, but that's not what applies here. What applies here is having two or more prior convictions for burglary. That's why we put those prior convictions in here and that's the reason. You've heard about those two prior convictions -- because that's an element of this crime. He has two prior convictions for burglary, those other elements, it makes it burglary first.

There's another very important piece of law that you have to understand. It's called the hand of one,

State vs. Dudley and Coleman
Closing Statement by Mr. DeBusk
March 13, 2014

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hand of all. When two people are acting in concert, it doesn't matter which one did an act. They're both responsible for it. So if one person shoots a person and there's somebody helping him, they're both guilty of shooting that person, murder or assault. And if one person goes in with burglary, you're both guilty of entering if they're working in concert. The hand of one is the hand of all.

That's the law in this case. Now, the judge is going to instruct you on the law. And his instruction is what you follow. I'm just giving you a guide so you can understand the closing arguments. Burglary in the first degree, entering a dwelling with the intent to commit a crime therein. First degree because he has two prior burglary convictions.

Thank you and I'll be back to talk to you again in a few minutes.

THE COURT: Mr. Long?

MR. LONG: Thank you, Your Honor.

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State vs. Dudley and Coleman
Closing Argument by Mr. Long
March 13, 2014

CLOSING ARGUMENT

1
2 MR. LONG: Ladies and gentlemen, I don't
3 overvalue my words. This part of this trial is the
4 most -- least, least, productive of any part of the
5 trial, because as His Honor has told you, what I tell
6 you is not evidence, what the solicitor tells you is
7 not evidence. Evidence comes from the witness stand.
8 And as I sympathize with you, the hardest job is to
9 determine what's possible, probable, a lie, untruth,
10 et cetera. That's your province. And for me to stand
11 here and make an argument, which the law calls it,
12 about what you should consider, what you should think,
13 how you should view, what you should decide, okay, is
14 unproductive.

15 You are at least fourteen times more capable
16 than I am of recalling what came from the witness
17 stand. I'm doing other things in the courtroom. I'm
18 thinking about the next question to be asked, et
19 cetera. I'm not taking notes while some witnesses are
20 testifying or while I'm asking those witnesses
21 questions. So the pages of notes I have, incomplete.
22 I could spend all last night, if I wanted to, going
23 through and trying to recount every witness and every
24 statement and every contradiction and things of that
25 nature. That's for you to do, not me.

State vs. Dudley and Coleman
Closing Argument by Mr. Long
March 13, 2014

1 But I would be failing to do my job if I didn't
2 point out to you some important parts of the case that
3 maybe you should give a little greater weight in your
4 deliberations. His Honor will charge you the law. If
5 I make a misstatement of what the law is, disregard
6 what I say. Take what His Honor says. The same with
7 the solicitor.

8 What this case boils down to is, in my opinion,
9 is that law enforcement did a good job for what law
10 enforcement is hired and paid to do. When they
11 arrived upon the scene of what they felt was three
12 persons committing a burglary and they found items on
13 one of the persons, that's it, we've got our guy,
14 we've seen this before, we've done this a million
15 times, case closed. And they didn't know some of the
16 facts and circumstances, some of the things leading up
17 to -- and as you know, everybody is different. Every
18 case is different. Every person's circumstances are
19 different. And there's a lot of stuff that goes along
20 with it. The police say, got our man, let's go, let's
21 go, we know who did it, all of them did it.

22 Now, the first person they talked to was
23 Ms. Cowen. And she gave them some half story or half
24 truths or untruths, or whatever the case may be. But
25 they said, yep, that matches what we think happened in

State vs. Dudley and Coleman
Closing Argument by Mr. Long
March 13, 2014

1 this case, we're not going to charge her, it's these
2 two guys that did it.

3 The evidence as it comes forward, the State has
4 said, got to be one of the two. She said it was both
5 of them that went around back of the house. It's got
6 to be one of those two who did it. But has the State
7 proven that to you beyond a reasonable doubt? Can you
8 go to bed tonight, after issuing a verdict in this
9 case -- can you, a week from now, driving to work and
10 have it pop back in your mind, can you a month from
11 now say with absolute certainty in your mind that you
12 made the right decision? And that's kind of what
13 reasonable doubt means. I think he may have done it
14 but, wait a minute, there's something that causes me
15 that little nagging in my conscience, there's
16 something that if it were a month from now may wake
17 you up or may pop into your head and say, well, did I
18 do the right thing.

19 Now, that may seem insignificant to you. It may
20 seem an insignificant distinction on how you look at
21 the evidence, how you look at the case. Ladies and
22 gentlemen, that's precious. When the State is trying
23 to take away your life and your liberty and things of
24 that nature, that little distinction is huge.

25 You've heard testimony that he was at the scene.

State vs. Dudley and Coleman
Closing Argument by Mr. Long
March 13, 2014

1 The thing that I find most incriminating is that he's
2 got jewelry in his pocket. Come on. I mean, if I
3 were a police officer, I would probably go, case
4 closed, got the guy, put him in jail.

5 But we all aren't police officers. And police
6 officers, God bless them, I respect and admire the job
7 they do. I don't expect them to do anything beyond
8 what any of us could do, because we're all human, we
9 all make mistakes, we all have opinions, perceptions,
10 things of that nature. And I understand all that:
11 But police officers, and as I'm afraid I would be,
12 become a little calloused, become a little prejudiced.

13 I mean, I would rather dig ditches in the hot
14 summertime sun than be a highschool school teacher
15 now. I know I would be guilty of assault and battery
16 or somebody would kill me, because I just don't think
17 I would have the patience to deal with what I hear
18 some of the teachers having to deal with. I would
19 become calloused. And, yeah, I would become calloused
20 digging a ditch, but it wouldn't affect other people.
21 It wouldn't affect my students.

22 The story the police got, first impression, was
23 from Ms. Cowen. Now, listening to her story, is it
24 improbable? Is it impossible? Is it factually
25 correct? Is it factually incorrect? Is it untrue?

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1 Is it true? There was lots of shades of that in her
2 testimony. And you try to sort out, well, what did
3 she tell us or what did she not tell us, or what did
4 she mean to say, or what did she say that we don't
5 think -- that's your mental exercise. I can't begin
6 to try to do that. I sympathizes with y'all having
7 to.

8 The codefendant, Dudley, pled guilty in this
9 courtroom yesterday outside your presence and he pled
10 guilty to committing a burglary at this residence. It
11 used to be part of the charges the judge gave -- and I
12 don't know if Judge Hyman includes it in his charge
13 specifically, that you can find the truth from the
14 evidence or the lack of evidence, from the testimony
15 or from the lack of testimony. And all of that is
16 beneficial to you, using your good common sense in
17 determining the truth of the matter. You've heard the
18 evidence and you have to weigh the credibility of
19 that. But the lack of evidence in this case should
20 concern you.

21 Wouldn't it be nice if the police brought in
22 Mr. Coleman's tennis shoes and placed them into
23 evidence, handed them to you and said, look at the
24 dirt, he was outside the window that day. Look at the
25 tread pattern. You see these lines in the carpet, the

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1 little chucks that kind of resembles a piece of dog
2 poop or something, whatever? doesn't that fit
3 perfectly in the tread pattern of the shoe he wore?
4 Or if they had Mr. Dudley's. And I don't think they
5 have to bring Mr. Dudley's in, because he said, I'm
6 guilty. But to say, look, here's his shoe, it's
7 muddy, it's dirty, it matches the print, he went in
8 the house.

9 Remember what I told you in opening statement.
10 How do you prove you're not guilty? How do you prove
11 a negative? You don't. The State has control over
12 the evidence. They have control over presentation of
13 the case. They choose what to present and what not to
14 present, as far as State witnesses and evidence,
15 because they have the burden of proof. Wouldn't it be
16 nice for Mr. Dudley to take that stand and say, yep, I
17 pled guilty because I'm guilty, and he's guilty, too,
18 because we talked about it, we planned it, we decided
19 what we were going to do, we talked about how we're
20 going to split the stuff. Wouldn't that be nice?
21 Okay? But there's been lack of evidence.

22 Wouldn't it be nice -- you've got a Newport
23 cigarette butt, okay. And the officers reluctantly
24 didn't want to agree with me, but we know that DNA
25 evidence is useful. And, matter of fact, it's pretty

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1 much overwhelming sometimes. Wouldn't a better
2 photograph of a footprint help? Because, believe me,
3 raising two daughters, married to my wife for thirty-
4 four years, if we come in from the yard, me and my two
5 daughters in tow, and somebody leaves a track of mud
6 on that floor, okay, she's going to be able to,
7 without any schooling, police training, whatever, say,
8 Buddy, that's your shoe, you did it, or Jennifer,
9 that's your shoe, you did it, you get out and wipe
10 those feet and get a paper towel and clean that up.
11 It doesn't take any special training to do that.

12 But we have fuzzy pictures of what appears to
13 be, that they claim could not, be used for
14 identification. They've got their shoes at the jail.
15 Okay? They were arrested in the car supposedly
16 minutes after this happened. Okay? Show me the
17 shoes. Show me who stepped in the mud. Show me who
18 went through the window. Wouldn't that be useful to
19 you in your determination, in your fact-finding
20 process?

21 I asked him a question that I probably asked him
22 close to a year ago. You know, that looks bad, don't
23 it; I mean, you've got jewelry in your pocket; they
24 got you dead of rights. And his response then was the
25 same response it is now: I know it looks bad, but I

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1 didn't commit a burglary; I didn't do it; I'm not
2 taking a plea; I want a trial. And that's what he's
3 said for a year. And that's what he's receiving
4 today, what he's asked for.

5 Look at the video. I can only imagine what I
6 might do or what an average person would do, what
7 somebody would do, under those circumstances. Let's
8 assume, let's assume, that everything he said was
9 correct: Dudley came out, dropped the stuff in his
10 [phonetic], ran and got in the car, drove off, trying
11 to get out of the subdivision, past the police car,
12 the police car pulls in behind, and police car
13 follows. I can only imagine what I would hear from
14 the driver's seat, what I would be thinking about
15 sitting there with the stuff there, what I may or may
16 not be hearing from the back seat, I ain't got no
17 stuff, I'm in good shape, don't do nothing, stuff it
18 down your pants, I don't care what you do with it.
19 Okay? What he may be thinking or saying. But
20 certainly you want to make some attempts to try to,
21 you know, put some of this stuff aside. Okay?

22 Is it bad for him to admit he lied to the police
23 officer? No one would want to admit that. Do you
24 believe that was the truth when he told you that he
25 had lied to the police officer? Yeah, he told the

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1 truth, something he didn't want to have to admit.

2 Would it be nice if the State had simply looked
3 at the jewelry boxes for fingerprints, okay, to
4 determine, okay, this has Keirnon Coleman's prints on
5 it and it has Dudley's prints on it and/or it has
6 Ms. Cowen's prints on it. Wouldn't that be nice to
7 know? But the State's theory of the case is hand of
8 one, hand of all, you're there, you're guilty, okay;
9 if y'all planned it, if y'all plotted it or if y'all
10 participated in it, no matter if one or the other of
11 you went in, all were guilty. Okay? And they'll try
12 to tell you that the hand of one is the hand of all.

13 I think what His Honor will tell you with his
14 charge is the hand of one is -- the hand of all
15 applies to certain cases when there is evidence to
16 substantiate your finding somebody guilty for being
17 present and participating.

18 Common example: Defendant A is being tried for
19 murder. It is alleged that he shot and killed a bank
20 guard while robbing a bank. Defendant B owns an
21 automobile and he's sitting at the curb with the
22 engine idling waiting for Defendant A to come out from
23 their planned bank robbery. Now, the hand of one,
24 hand of all doctrine means Defendant B is just as
25 guilty at murder as Defendant A. Because any crime

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1 that occurs during the commission of a felony, it's
2 foreseeable that if somebody is going into a bank
3 armed with a gun, they may have to use it and if
4 you're planning to participate and assist with an
5 armed robbery, you're just as guilty of foreseeable
6 circumstances as the person that pulled the trigger.

7 Now, hand of one hand, hand of all works when
8 you've got testimony of some witness that says, we
9 planned it, we plotted it, I had the gun, he had the
10 car, we were going to split the money fifty-fifty, I
11 come running out of the bank, jump in his car, he'll
12 peel rubber, we'll go out to the woods and spilt it.
13 Okay? That's typically what's involved with a bank
14 robbery. What evidence do you have of that in this
15 case? Again, there's that suspicious lack of evidence
16 that should cause you to hesitate the act -- to act,
17 to hesitate when you say, yeah, it looks bad, but I
18 don't know.

19 I rely on my notes sometimes too much, but
20 unless I'm making notes to myself, sometimes I won't
21 remember things.

22 [Whereupon, Mr. Long review documents]

23 MR. LONG: Did Ms. Cowen testify that there was
24 a planned, arranged, robbery, burglary, that was to
25 occur? I seem to think that if these three are going

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1 to go out breaking into houses and she's involved for
2 whatever reason, she's got the car, they're going to
3 pay her money, or she's boyfriend of Dudley, or she's
4 Mr. Coleman's -- spent the night with Mr. Coleman,
5 that that's enough for her to get involved. Seems
6 like there would be some testimony from her, I heard
7 them talking about it, I heard them planning it, and,
8 I mean, I know they were going there to steal stuff,
9 they were trying to steal stuff to get me the money I
10 needed to pay for my motel room so I wouldn't be
11 kicked out on the street. It's not there. It's just
12 not there.

13 I don't have an opportunity to speak to you
14 again, because we have put testimony up in the defense
15 case. That means we lose the last argument. The
16 State is permitted to make the last argument. And I
17 respect and admire both of these prosecutors. They do
18 a good job. They are effective in the courtroom.
19 They know how to handle cases. They know how to try
20 cases. They know how to make closing arguments. So a
21 lot of the things I have dealt with in my closing
22 argument, they have the last word on that. I simply
23 ask you to keep an open mind throughout this entire
24 process until the case is yours for your deliberation.

25 And, again, as I said in the first part, I

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1 sympathize with you. And maybe it's unnecessary. You
2 may walk into your jury room and say, everybody
3 reached a verdict, yeah, we've reached a verdict, I
4 don't know what the issue is, let's go tell them what
5 the verdict is. Okay. I understand. But what the
6 judge instructs you to do and the judge asks you to
7 do, the law asks you to do, consider all the evidence
8 and hear each other's viewpoints, things of that
9 nature.

10 I hate to borrow other people's words, but I
11 think it somewhat prophetic when Mr. Mureddu came to
12 you and stood here and made his opening statement.
13 And what was his point that he wanted buried in your
14 mind for you to think about throughout this trial?
15 Sometimes you get involved with some people that will
16 get you in trouble, that you didn't otherwise intend
17 or plan, that you otherwise wouldn't have done.
18 That's what happened in this case. Is that possible?
19 Is it possible?

20 So I'll ask you to keep an open mind until
21 you've heard His Honor's charge of the law, have the
22 jury -- case is in front of you, and we ask you to
23 make your decision. Thank you.

24 THE COURT: Mr. DeBusk?

25 MR. DEBUSK: Thank you, Your Honor.

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CLOSING ARGUMENT

1
2 MR. DEBUSK: Ladies and gentlemen, what we learn
3 about the criminal justice system is from television,
4 which is unfortunate because that's not a very
5 accurate teacher. And today, the rage of shows like
6 CSI and NCIS where you just plug the stuff into the
7 computer and it pops -- there's an answer. Abby on
8 NCIS, they give her the evidence, she puts it in the
9 computer, fifteen seconds later there's your answer.
10 It's not that simple. This case goes back to a
11 different era. You can tell by the gray hairs I have,
12 I go back a little farther than many. There were some
13 shows when I was young called Adam 12 and the Rookies.
14 It's about patrol officers, about when you solved
15 crimes by getting there quickly before the bad guys
16 could get away. And that's what this case is.

17 Now, we had an officer -- you remember Officer
18 Jack Johnson, Corporal Jack Johnson. He wanted to
19 turn it into a CSI case. He did his best. He went in
20 there, he lifted a print. But the print wasn't good
21 enough to identify. He looked at those footprints and
22 using his judgment he said, they're not good enough to
23 identify. He tried. But the fact is, this is more
24 the Rookies and Adam 12. This is getting there
25 quickly and finding the bad guy before he got away.

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1 And I'm going to sit here and tell you today why
2 the evidence points to the defendant, Keirnon Coleman,
3 as a person who entered Susan Marotte's house and
4 stole her and her daughter's things. But first I'm
5 going to tell you something that's going to make all
6 that moot; that is, when you're present aiding and
7 abetting another in a burglary, you're just as guilty.
8 The hand of one is the hand of all. Now, if there's
9 evidence in this record that those two were working in
10 concert, then they're both guilty. Both Mr. Dudley,
11 who pled guilty and admitted his guilt, and Mr.
12 Coleman, who has chosen to take a trial. Both guilty,
13 because they were present aiding and abetting each
14 other.

15 What evidence do we have of that? Let's start
16 with Ms. Ross. Ms. Ross is at her house and two
17 individuals, who she described to a tee, their
18 clothing, got it in evidence, the tall man with the
19 gray hoddie, shorter man with the plaid gray and red
20 hoodie. Described them to a tee. That they came to
21 her house, they knocked on her door together, after
22 first walking into the house next door together. When
23 she didn't answer her door because she was scared,
24 what do they do? They walk around back together.
25 Then they approached the back door. And who was it

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1 that tried to open her back door? Who was it she
2 heard that rattling that she said to them on the 911
3 call, hurry up, they're trying to get in? The tall
4 man in the gray hoodie, Keirnon Coleman.

5 And while he was doing that, while he was trying
6 to get into Ms. Ross' house, and not succeeding,
7 fortunately, where was Dudley Jordan -- Jordan Dudley,
8 excuse me? He was looking in the windows, present,
9 aiding and abetting. They were working together in
10 concert.

11 And then they went to the other house. And you
12 heard Shakerra Cowan tell you they got out together,
13 they went to that house together, and when they came
14 out they -- well, actually, they didn't have things
15 that they didn't have. Mr. Coleman had things he
16 didn't have when he went in there. Working together.
17 Present, aiding, abetting each other. That's why
18 they're both guilty.

19 But we still want to know what it was that
20 happened, even though they're guilty together. I'll
21 tell you in this record there's plenty of evidence of
22 what happened. The first thing you have to do is
23 there are two completely different stories about the
24 events of that day. Shakerra Cowan, she came to you
25 from North Carolina. Her charges are gone. She's

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1 finished. She's not facing any charges. She had no
2 reason to lie, no reason to help anybody. She came
3 here and she told a story that was equally bad for
4 both Mr. Coleman and for Mr. Dudley. She told a story
5 where both of them got out and both of them were
6 acting together. And her story was corroborated by
7 Ms. Ross. She had no friends to help, no enemies to
8 hurt. She came here and told you the truth. The same
9 story, incidentally, she told the very day of that
10 stop, at the stop, when she talked to detectives.
11 Same story. She wasn't talking any lies. She didn't
12 have any reason to lie. She relied on the truth to
13 get her out.

14 The completely different story we have come from
15 the same stand, the story of Mr. Coleman. Does he
16 have reason to lie? Yes. If he can get you to
17 believe his lie, he can get out of the burglary
18 charge. He won't have to pay for his crime. That is
19 the ultimate motivation, the ultimate bias, in
20 testimony. Did he lie? Well, he either lied to the
21 police or he lied to you. I concede that he did lie
22 to you because he didn't tell you that when the police
23 came, he told them, oh, that's my jewelry, I'm going
24 to cover up this burglary, that's my jewelry. He
25 didn't tell you that when the police came he said --

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1 he told the police, you know, I was just here looking
2 for this fellow that owes me money. Wouldn't it be
3 easier to say, we were here looking for someone that
4 owes Mr. Dudley money, or trying to help Ms. Shakerra
5 Cowan collect money? No. He said, we were looking
6 for someone that owes me money. They weren't doing
7 that at all. The lie that he told them then is a lie
8 now. He's the one that had the motivation to lie.
9 He's the one that had the history of lying. He's the
10 one that benefits from the lie, and his little -- the
11 lie that's inconsistent with the testimony of the
12 other witnesses. He says he never tried to get into
13 Ms. Ross' door. Ms. Ross says, I saw the man, tall
14 man with the gray sweatshirt, trying to open my door
15 and I said over the phone, hurry up, he's trying to
16 get in. So he's got a history of lying and a reason
17 to lie. Ms. Cowen had neither.

18 Now, let's look at the story that's told by
19 Ms. Cowen. She says they got together. They met. It
20 doesn't really matter how. At some point, they asked
21 her to drive them around. And the whole reason for
22 Ms. Cowen even being in this came out in the first
23 couple of minutes of that traffic stop when the
24 officer went up there and said, let's have the
25 driver's licenses, and only one person in that car

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1 produced a driver's license: Shakerra Cowan. The
2 other two didn't have a license. Mr. Coleman said he
3 has a car, but he doesn't have a license. So they
4 needed Shakerra Cowan to drive them where they needed
5 to go. That was the reason she was there. That was
6 probably the reason they told her they would give her
7 all that money, 500, \$1,000. They need somebody to
8 drive. Give her a reason. So that's why she was
9 there.

10 She says they came over to -- or Mr. Coleman
11 came to her hotel room about 7:45 to pick her up.
12 They go down to the car and all of a sudden it's both
13 Mr. Coleman and Mr. Dudley. Look where they were
14 sitting when they're stopped. Coleman in the front
15 seat, Dudley in the back. Dudley behind Ms. Cowen,
16 where she couldn't see him or hear him now. He wasn't
17 giving directions. The person that was driving that
18 train was sitting in the front seat, in the
19 passenger's seat. That was Mr. Coleman. He was in
20 the front where he could see well. He was next to the
21 driver where he could communicate her, not behind her
22 where he couldn't see it. What happened when the
23 police stopped them? Who did the talking? The first
24 person who did the talking, who was it? Mr. Coleman.
25 He was the one in charge. He's the one telling the

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1 story. We're here to collect money someone owes me;
2 this gentleman owes me money, this Jeffery Williams
3 owes me money, feeding that story to the police in
4 hopes that they'll go away and not arrest him, that
5 they will not arrest him until -- before they found
6 out there was a burglary over at Capers Creek Road --
7 Capers Creek Drive.

8 Who was it that went to the door and tried to
9 open it at Ms. Ross' house? Mr. Coleman. Ms. Ross
10 saw him. Again, he was the one leading the charge.
11 He was the one in charge. He was the driver of that
12 train. He was sitting in the front. He was doing all
13 the taking. He had every bit of the stolen goods
14 taken from the house of Ms. Marotte. He's the one
15 that told the lies to the police. He was driving the
16 train.

17 Something else Ms. Cowen, again, who had no
18 reason to lie, told you. She waited at that first
19 house, they came back, she drove over to the second
20 house. And what happened? They both got out again
21 and went and knocked on the door, then Mr. Coleman
22 came back and bummed a Newport cigarette from her.
23 What was found at the house? A Newport cigarette.

24 That would have been great if those footprints
25 had been of sufficient quality to compare. They

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1 weren't. And maybe there could have been DNA on that
2 cigarette but. But the fact is, when the car was
3 stopped, who had all the stolen goods? Coleman.

4 Something else, if you listen closely, that
5 Ms. Marotte told you. She said when she came home,
6 the front door was open and it shouldn't have been,
7 and then she found a window that was open. In through
8 the window, out through the door. And she told you
9 something else. The alarm went off. She said the
10 alarm was triggered. When that alarm went off, don't
11 you bet they were in a hurry to get out of there?
12 Don't you bet they were madly stuffing things in
13 pockets and running to the car? They didn't have time
14 to change possession. They were jumping in that car
15 and getting out of there as quick as they could. As
16 they were leaving, Dudley, he wanted to stop at
17 another house. Said, that guy's leaving; let's try
18 that one. No, we're getting out of here. Such a
19 hurry. Such a hurry that they missed their turn.

20 Lucky they did, because who was at Ms. Ross'
21 house taking the report? Officer Tibbott. Parked his
22 car just in the right location to see them coming back
23 up the road. Lucky for us. Here comes that gray car.
24 Comes there, turns around, starts going back out. Go
25 down the street or the cul-de-sac. So he follows

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1 them. And you've got the tape in evidence. You see
2 that. He stops them. Again, Coleman does all the
3 talking. Coleman's got all the jewelry, just minutes
4 after that burglary has happened.

5 Something else Ms. Cowen told you. As they were
6 leaving -- about that other house. Remember that.
7 Because they were talking together between Dudley and
8 Coleman about hitting another house. Again, evidence
9 of acting in concert. Evidence of a hand of one is a
10 hand of all.

11 So once again, I would argue to you that the
12 evidence in this case shows defendant Keirnon Coleman
13 was the one that went in that house. He's the one
14 that dropped that Newport cigarette. He is the one
15 that shoved all that stuff in his pockets. He's the
16 one that carried all that stuff to the car and put it
17 under the seat and in the glove box in front of him.
18 It wasn't in the center console, which was closer to
19 Ms. Cowen or Mr. Dudley. It was in the glove
20 compartment where only he had access to.

21 He was the one who went in that house. But once
22 again, it doesn't matter whether it was Mr. Dudley or
23 Mr. Coleman that went in that house because they were
24 acting together. And when you're acting together, the
25 hand of one is the hand of all. Each is as guilty as

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1 the other. And, again, the record is replete with
2 evidence that they were acting together, acting
3 together at Ms. Ross' house, acting together when they
4 went to Ms. Marotte's house, acting together when they
5 tried to plan another burglary on the way out. They
6 were working together. But the lead dog was Mr.
7 Coleman, the one who had all the stuff on him. The
8 one that was talking -- did all the talking to the
9 police officer, and the one who tried to open
10 Ms. Ross' door.

11 So, again, even though I argued to you that he
12 was the one that went into Ms. Marotte's house, and
13 the evidence proves that, remember, because of hand of
14 one hand of all, both of them were equally guilty,
15 just as Mr. Dudley admitted when he got up and pled
16 guilty. Both of them were equally guilty.

17 Now, a little proof here. Mr. Long talked a
18 little bit about that. Proof beyond a reasonable
19 doubt. And that's not absolute proof. You can't
20 prove anything absolutely. The judge will instruct
21 you on what reasonable doubt is. He'll give you some
22 idea. But he can't draw you a picture of reasonable
23 doubt. He'll tell you things like reasonable doubt is
24 proof that leaves you firmly convinced that the
25 defendant is guilty. But you can't draw a picture of

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that. You can't do a mathematical formula. That's a standard that comes from within you as a cross-section of the community. You decide is there sufficient proof to find the defendant guilty.

I put to you when you've got two people acting together at Ms. Ross' house, acting together at Ms. Marotte's house, you have the defendant coming out with all the goods stole from Ms. Marotte's house, when you've got him lying to the police to cover up the burglary when the police stopped them, there's only one verdict you can find here. That is, the defendant is guilty of burglary in the first degree beyond a reasonable doubt. Thank you very much.

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State vs. Dudley and Coleman
Charge of the Court
March 13, 2014

CHARGE OF THE COURT

1
2 THE COURT: Ladies and gentlemen of the jury,
3 you have heard the arguments of counsel and I'm now going
4 to instruct you on the law. I have come to realize that
5 in these cases -- well, in all cases -- the law that I
6 must instruct you on is somewhat complex and it's not fair
7 to you as jurors to expect you to hear me recite the law
8 and be able to go in your jury room and remember it as
9 laypersons. So I do something. I've adopted a policy of
10 many years now of preparing a transcript of my charge.
11 And I will be providing you with that transcript for your
12 use during your deliberations. The Supreme Court has said
13 that that is appropriate and proper for me to do as long
14 as I give you a verbatim transcript. You're going to
15 notice that I am reading you this charge from the
16 transcript that I have provided. And the fact that I am
17 going to give it to you does not mean you should not
18 listen me. I ask you to do that while I am charging you.
19 But you will have a copy of this charge on the law
20 available to you.

21 I remind you that during this trial, you and I
22 have certain duties to perform. As the trial judge, it's
23 my responsibility to preside over the trial of the case
24 and I also have the duty to rule on the admissibility of
25 evidence offered during the trial. You are to consider

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1 only the competent evidence before you. If there was any
2 testimony ordered stricken from the record in this case
3 during this trial, you must disregard that testimony. You
4 are to consider only the testimony which has been
5 presented from this witness stand, any exhibits which have
6 been presented during the trial of this case and made a
7 part of the record, and any stipulations or agreements of
8 counsel.

9 I have the additional duty to charge you the law
10 applicable to this case. As the presiding judge, I am the
11 sole judge of the law of the case and it's your duty as
12 jurors to accept and apply the law as I now state it to
13 you. If you already have any idea of what the law is or
14 what the law ought to be and it does not agree with what I
15 now tell you the law is, you must abandon this idea
16 because you are sworn to accept the law and apply the law
17 exactly as I state it to you.

18 In every case tried in this court before a jury,
19 the jury becomes the sole and exclusive judge of the facts
20 in a case. A trial judge cannot intimate, state, comment
21 on, or make any statement to a trial jury about the facts
22 in a case. Since you, the jury, are the sole judge of the
23 facts in the case, you are not to infer from what I have
24 said during the progress of this trial in ruling upon the
25 admissibility of evidence, or otherwise, or anything that

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Charge of the Court
March 13, 2014

1 I say now during the course of this instruction to you,
2 that I have any opinion about the facts in the case. The
3 law does not allow me to have an opinion about the facts
4 in this case. This is a matter solely for you, the jury,
5 to determine. As jurors, it is your duty to determine the
6 effect, value, weight, and truth of the evidence presented
7 during this trial.

8 The indictment charges the defendant with first
9 degree burglary. I remind you that the fact that the
10 defendant was arrested, charged, and indicted in this case
11 is not evidence in this case and cannot be considered by
12 you as evidence of guilt in this case, nor does it create
13 any presumption or inference of guilt. That document is
14 simply the formal, written instrument which contains the
15 charge made against the defendant. It is the formal
16 document by which the case is brought into the Court.

17 The defendant has pled not guilty to the
18 indictment and this plea puts the burden on the State to
19 prove the defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove himself innocent.

22 I charge you that it is an important rule of the
23 law that the defendant in a criminal trial, no matter what
24 the seriousness of the charge may be, will always be
25 presumed to be innocent of the crime for which the

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Charge of the Court
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1 indictment was issued unless guilt has been proved by
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt. This presumption of innocence does not mean --
4 does not end when you begin your deliberations but it
5 accompanies the defendant throughout the trial until you
6 reach a verdict of guilt based on evidence satisfying you
7 of that guilt beyond a reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the defendant,
10 which remain with the defendant until it has been stripped
11 from the defendant by evidence satisfying you of the
12 defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not mere legal theory. It's
14 not just a legal phrase. It is a substantial right to
15 which every defendant is entitled unless you, the jury,
16 are satisfied from the evidence of the defendant's guilt
17 beyond a reasonable doubt.

18 What is reasonable doubt in the law? Reasonable
19 doubt is that kind of doubt that would cause a reasonable
20 person to hesitate to act. The State has the burden of
21 proving the defendant guilty beyond a reasonable doubt.
22 Some of you may have served as jurors in civil cases where
23 you were told that it's only necessary to prove that a
24 fact is more likely true than not true, such as by a
25 greater weight or preponderance of the evidence. In

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1 criminal cases, the State's proof must be more powerful
2 than that. It must be beyond a reasonable doubt. Proof
3 beyond a reasonable doubt is proof that leaves you firmly
4 convinced of the defendant's guilt. There are very few
5 things in this world that we know with absolute certainty
6 and in criminal cases, the law does not require proof that
7 overcomes every possible doubt. If based on your
8 consideration of the evidence you are firmly convinced
9 that the defendant is guilty of the crime charged, you
10 must find the defendant guilty. If, on the other hand,
11 you think there is a real possibility that the defendant
12 is not guilty, you must give the defendant the benefit of
13 the doubt and find him not guilty.

14 Now, there are two types of evidence which are
15 generally presented during a trial: direct evidence and
16 circumstantial evidence. Direct evidence is the testimony
17 of a person who claims to have actual knowledge of a fact,
18 such as an eyewitness. It is evidence which immediately
19 establishes the main fact to be proven. Circumstantial
20 evidence is proof of a chain of facts and circumstances
21 indicating the existence of a fact. It is evidence which
22 immediately establishes collateral facts from which the
23 main fact may be inferred. Circumstantial evidence is
24 based on inference and not on personal knowledge or
25 observation.

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1 The law makes absolutely no distinction between
2 the weight or value to be given to either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence. You should weigh all of the evidence in
6 the case. After weighing all of the evidence, if you are
7 not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not guilty.

9 Necessarily, you must determine the credibility
10 of witnesses who have testified in this case. Credibility
11 simply means believability. It becomes your duty as
12 jurors to analyze and to evaluate the evidence and
13 determine which evidence convinces you of its truth. In
14 determining the believability of witnesses who have
15 testified in this case, you may believe one witness over
16 several witnesses or several witnesses over one. You may
17 believe a part of the testimony of a witness and reject
18 the remaining part of the testimony of that same witness.
19 You may believe the testimony of a witness in its entirety
20 or reject the testimony of a witness in its entirety. You
21 may consider whether any witness has exhibited to you any
22 interest, prejudice, bias, or other motive in the case.
23 You may also consider the appearance and manner of a
24 witness while on the witness stand.

25 Now, the defendant is charged with first degree

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1 burglary. The State must first prove beyond a reasonable
2 doubt that the defendant entered a dwelling without
3 consent. A dwelling is any building or portion of a
4 building in which a person ordinarily sleeps. A building
5 constructed as a dwelling that has never been occupied
6 cannot be considered a dwelling for purposes of burglary.
7 But a building is a dwelling even if the residents are
8 temporarily absent from the building. In order to prove
9 that the defendant entered the dwelling, the State does
10 not have to show that the defendant's entire body entered
11 the dwelling. The smallest entry is sufficient. It may
12 be any part of the body, such as a hand or foot, or even
13 an instrument such as a hook or other instrument.

14 In addition, the State does not have to prove
15 that force was used to gain entry. If a person enters a
16 building using deception, artifice, trick, or
17 misrepresentation to get consent to enter, this is an
18 entry without consent.

19 Next, the State must prove beyond a reasonable
20 doubt that the defendant intended to commit a crime,
21 either a felony or a misdemeanor, at the time of the
22 entry. The mere entry into a dwelling without consent is
23 not burglary. If the intent to commit a crime is formed
24 after entry, it is not a burglary. On the other hand, if
25 the defendant intended to commit a crime at the time of

State vs. Dudley and Coleman
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March 13, 2014

1 the entry, it is a burglary even if the intent was
2 abandoned after entry. It does not matter what the
3 intended crime -- that the intended crime was not
4 completed. Intent may be shown by acts and conduct of the
5 defendant and other circumstances from which you may
6 naturally and reasonably infer intent.

7 Finally, the State must prove beyond a
8 reasonable doubt that the defendant has a prior record of
9 two or more convictions for burglary. Evidence of prior
10 offenses committed by the defendant was not offered to
11 prove the defendant has a bad character or to prove that
12 the defendant committed the burglary on this occasion.
13 The prior convictions may be considered by you only for
14 the purposes of determining whether or not it satisfies
15 the elements of the offense that makes it first degree
16 burglary if you enter a dwelling without consent to commit
17 a crime and you have two prior conviction for burglary.
18 Before you can even consider the evidence of the
19 defendant's prior burglary convictions, you must first
20 find that the State has proved beyond a reasonable doubt
21 that a burglary was committed by the defendant. If you
22 find beyond a reasonable doubt that the burglary was
23 committed, then you may consider the evidence of the prior
24 convictions as evidence of one of the circumstances which
25 would make the burglary a first degree burglary. If you

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1 do not find beyond a reasonable doubt that the defendant
2 committed these alleged prior offenses, then you cannot
3 return a verdict of first degree burglary.

4 If a crime is committed by two or more people
5 who are acting together in committing a crime, the act of
6 one is the act of all. A person who joins with another to
7 commit an unlawful act is criminally responsible for
8 everything done by the other person which happens as a
9 probable or natural consequence of the acts done in
10 carrying out the common plan and purpose. For example,
11 two people can be guilty of killing another person when
12 only one of the two had a gun, there was only one bullet,
13 and only one of the two fired the shot that caused the
14 death. If two or more people are together, acting
15 together, assisting each other in committing the offense,
16 the act of one is the act of all, or, as it is sometimes
17 said, the hand of one is the hand of all. Prior knowledge
18 that a crime is going to be committed, without more, is
19 not sufficient to make a person guilty of that crime.
20 Mere knowledge that another person is going to commit a
21 crime, even if the defendant is present when the crime is
22 committed, is not sufficient to convict the defendant as a
23 principal. Guilt as a principal is shown by actual or a
24 constructive presence at the scene as a result of prior
25 arrangement. Therefore, a finding of a prior arranged

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1 plan or common scheme is necessary for a finding of guilt
2 as a principal. The State must prove beyond a reasonable
3 doubt, by competent evidence, the theory of the hand of
4 one is the hand of all. A principal in a crime is one who
5 either actually commits the crime or who is present,
6 aiding, abetting, or assisting in the commission of the
7 crime. When a person does an act in the presence of and
8 with the assistance of another, the act is done by both.
9 Where two or more acting with a common plan or intent are
10 present at the commission of a crime, it does not matter
11 who actually commits a crime. All are guilty. The hand
12 of one is the hand of all. Present at the commission of a
13 crime means to be sufficiently near to aid and abet and
14 assist in the commission of the crime. However, mere
15 presence at the scene of a crime is not sufficient to
16 convict one as a principal on the theory of aiding and
17 abetting. Intent is also a necessary element but there
18 must have been a common design or intent to commit the
19 crime and the crime must have been committed pursuant
20 thereto with the person aiding and abetting by some overt
21 act.

22 Intent means intending the result which actually
23 occurs, not accidentally or involuntary. Intent may be
24 shown by acts and conduct of the defendant and other
25 circumstances from which you may naturally and reasonably

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1 infer intent. The State must prove these elements beyond
2 a reasonable doubt.

3 Now, Madam -- Mr. Foreperson, there are two
4 possible verdicts which you may find in this case: guilty
5 and not guilty. There's no significance whatsoever in the
6 order in which I stated these possible verdicts. It
7 simply means that one has to be stated first and the other
8 second.

9 Ladies and gentlemen, your verdict must be a
10 unanimous one.

11 Mr. Foreperson, when the jury agrees on the
12 verdict, I want you to circle that verdict on the verdict
13 form that I'm going to provide for you, and sign your name
14 as foreperson, then knock on the jury room door and inform
15 the bailiff that you've reached a verdict. At that time,
16 we'll receive you back into the courtroom.

17 I ask that you now return to your jury room but
18 do not begins deliberations until you are told by the
19 clerk or the bailiff to do so. There are some matters
20 which must be discussed with the attorneys before you
21 begin your deliberations.

22 Mr. Foreperson, I will either bring you back
23 into the courtroom, if it's necessary for me to do so, or,
24 in the alternative, I will send into the jury room via the
25 bailiff or a sheriff's deputy the exhibits in this case, a

State vs. Dudley and Coleman
Charge of the Court
March 13, 2014

1 copy of my charge, and a verdict form. If I send the
2 exhibits, the charge and the verdict form into the jury
3 room, that's the signal for you to begin your
4 deliberations and you can start at that time. All right?
5 I may not have to bring you back. If I do, I'll give you
6 further instructions. But if I send in the exhibits and
7 these other documents, that's your signal to begin your
8 deliberations. And just let us know when you have
9 completed them.

10 All right. Mr. Roth, if you would take them
11 into the jury room.

12 [Whereupon, the jury exits the courtroom at
13 3:36 p.m.]

14 THE COURT: Ms. Perron, if you would mark the
15 charge as Court's Exhibit -- is that 1? Court's
16 Exhibit --

17 THE COURT REPORTER: 3.

18 THE COURT: All right. Just mark it, if you
19 would.

20 [Whereupon, Court's Exhibit Number 3 is marked
21 by the court reporter]

22 THE COURT: All right. Gentlemen, if you would
23 gather the exhibits and let's make sure that we have
24 the complete list and that it comports with
25 Ms. Perron's list.

State vs. Dudley and Coleman
Charge of the Court
March 13, 2014

1 Ms. Perron, I also hand you the witness list
2 which was submitted earlier.

3 [Whereupon, Court's Exhibit Number 4 is marked
4 by the court reporter]

5 [Off the record momentarily]

6 THE COURT: I think we've established that
7 there's no exception to the charge; is that correct?
8 Mr. DeBusk?

9 MR. DEBUSK: None from the State, Your Honor.

10 THE COURT: Mr. Long?

11 MR. LONG: None from the defense, Your Honor.

12 THE COURT: All right. Ms. Perron, did I give
13 you the verdict form, as well?

14 THE COURT REPORTER: No, sir.

15 THE COURT: Okay. Here's the verdict form.

16 [Off the record momentarily]

17 THE COURT: All right. I'm going to have to
18 take the defendant into custody at this point.

19 All right. We're at ease.

20 Sam, if you would take these back, exhibits and
21 the charge and the verdict form, to the foreperson and
22 let him begin his deliberations.

23 [Whereupon, exhibits out to the jury at
24 3:39 p.m.]

25 THE COURT: All right. We're at ease.

State vs. Dudley and Coleman
Charge of the Court
March 13, 2014

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[Whereupon, a recess is taken from 3:39 p.m. to
4:15 p.m.]

[Whereupon, alternate jurors are excused by the
Court]

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FORM C-100 - LASER REPORTERS PAPER & MFG CO. 800-826-6313

State vs. Dudley and Coleman
Sentencing of Mr. Dudley
March 13, 2014

SENTENCING OF MR. DUDLEY

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THE COURT: All right. Mr. Mureddu, I'll hear you.

Well, first of all, let me ask Mr. DeBusk about his prior record. Does he have a prior record?

MR. DEBUSK: He has a breach of the peace, Your Honor, from 2012. And that's it.

THE COURT: That's all magistrate --

MR. DEBUSK: Yes, Your Honor --

THE COURT: -- level -- the only record that he has?

MR. DEBUSK: Yes, Your Honor. Correct.

THE COURT: All right. Mr. Mureddu, let me hear from you.

MR. MUREDDU: Thank you, Your Honor. 'May it please the Court.

Judge, you have heard some of the things about Jordan, as far as his personal life. He is twenty-five years old. He has a GED. He had a job at Ellis Asphalt Company as a laborer.

He has two children with Ms. Desiree Harps, his fiancé. They were living together. She still lives basically where they were living. I think she's moved since he got incarcerated, but they still have contact. They have two children together, ages three

State vs. Dudley and Coleman
Sentencing of Mr. Dudley
March 13, 2014

1 and the age of one. Judge, he's originally from the
2 Washington-Pennsylvania area. He came down to Horry
3 County a few years back and was with Ms. Harps and
4 their children.

5 Judge, there has been talk back in chambers
6 about a sentence structure for Jordan and there was
7 also talk about the consideration of if he were to
8 cooperate in the case. What I can tell you is, Judge,
9 is that he was willing to. Yesterday afternoon, when
10 court broke, he was submitted to questioning by
11 Mr. DeBusk and Ms. Livesay and was prepared to help
12 them if they chose to use him. I think strategically
13 they decided that their case would be stronger without
14 him.

15 THE COURT: Is that correct, Mr. DeBusk?

16 MR. DEBUSK: Yes, Your Honor.

17 The story wasn't consistent enough with the
18 other witnesses.

19 THE COURT: Okay.

20 MR. MUREDDU: But he was prepared to do that.

21 And he is prepared here to accept responsibility
22 for his actions in this case.

23 Judge, contrary to what Mr. Coleman said, Jordan
24 was not the leader in this and he was not the one who
25 went in the house. And I think his record speaks as

State vs. Dudley and Coleman
Sentencing of Mr. Dudley
March 13, 2014

1 much as anything, or a lack thereof, and I think
2 Mr. Coleman's record speaks to what went down. I say
3 that not to assert that Jordan is not guilty and
4 should not be punished. I just say that in the form
5 of mitigation for the Court to take it into --

6 Judge, I would ask here today that whatever
7 sentence that the Court is imposing today that it be a
8 straight sentence, not a split sentence. We're not
9 asking for probation, and we know that probation is
10 not part of the equation. I would ask the Court to
11 consider fashioning some type of straight sentence at
12 five years or less.

13 THE COURT: All right. Does Mr. Jordan want --
14 I mean, Mr. Dudley want to make a statement to the
15 Court?

16 MR. MUREDDU: Judge, I think he wants a brief
17 apology and accept his part.

18 MR. DUDLEY: Yes, sir. I'm willing to take
19 responsibility for my actions. And for the people
20 that we victimized, I apologize. I just made a
21 mistake and I'm trying to better myself and go past
22 it. And I want to do better for my children, as well
23 as myself.

24 THE COURT: Mr. Dudley, I have considered the
25 fact that you are pleading to non-violent second

State vs. Dudley and Coleman
Sentencing of Mr. Dudley
March 13, 2014

1 degree burglary, which carries ten years as a maximum
2 sentence. I have considered the fact that you have no
3 prior record and that you were willing to cooperate in
4 this matter. Therefore, I believe an appropriate
5 sentence is five years. Thank you, sir.

6 MR. MUREDDU: Thank you, Your Honor.

7 MR. DEBUSK: Thank you, Your Honor.

8 But, Your Honor, he does get credit from --

9 THE COURT: Yes.

10 MR. DEBUSK: -- March 26th, 2013, to today?

11 THE COURT: He will have credit for the time
12 that he has served.

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State vs. Dudley and Coleman
Verdict
March 13, 2014

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VERDICT

THE COURT: All right. Let's bring in the jury.

[Off the record momentarily]

[Whereupon, the jury enters the courtroom at
4:30 p.m.]

THE COURT: All right. We have all our jurors
back.

Mr. Foreperson, have you reached a verdict?

THE FOREPERSON: Yes, Your Honor, we have.

THE COURT: Was it a unanimous verdict?

THE FOREPERSON: Yes, sir.

THE COURT: Would you please give your verdict
to the clerk.

[Whereupon, the foreperson proffers documents to
the clerk of court. The clerk of court proffers
documents to the Court]

THE COURT: Thank you.

THE FOREPERSON: You're welcome.

[Whereupon, the Court reviews documents]

THE COURT: All right. Madam Clerk, you may
publish.

[Whereupon, the Court proffers documents to the
clerk of court]

THE CLERK OF COURT: In the Court of General
Sessions, indictment number 2013-GS-26-2338, the State

State vs. Dudley and Coleman
Verdict
March 13, 2014

1 of South Carolina, in the County of Horry. The State
2 of South Carolina vs. Keirnon Coleman. As to the
3 charge of burglary first degree, we, the jury,
4 unanimously find the defendant guilty. Signed by
5 foreperson, Erickson --

6 THE FOREPERSON: Erskine. Hollis.

7 THE CLERK OF COURT: -- Erskine Hollis.

8 Erskine.

9 THE FOREPERSON: Hollis Erskine.

10 THE COURT: Hollis Erskine.

11 THE CLERK OF COURT: -- Hollis Erskine, March
12 13th, 2014.

13 THE COURT: All right. Would you poll the jury,
14 please.

15 THE CLERK OF COURT: Yes.

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State vs. Dudley and Coleman
Polling of the Jury
March 13, 2014

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POLLING OF THE JURY

THE CLERK OF COURT: Please stand when I call your number. I will ask you two questions. After the answer, please be seated.

Juror 468, is this your verdict?

JUROR 468: Yes.

THE CLERK OF COURT: Is this still your verdict?

JUROR 468: Yes.

THE CLERK OF COURT: Please be seated.

Juror 366, is this your verdict?

JUROR 366: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR 366: Yes.

THE CLERK OF COURT: Juror 192, is this your verdict?

JUROR 192: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR 192: Yes.

THE CLERK OF COURT: Please be seated.

Juror 204, is this your verdict?

JUROR 204: Yes.

THE CLERK OF COURT: Still your verdict?

JUROR 204: Yes.

THE CLERK OF COURT: Juror 429, is this your verdict?

State vs. Dudley and Coleman
Polling of the Jury
March 13, 2014

1 JUROR 429: Yes.

2 THE CLERK OF COURT: Still your verdict?

3 JUROR 429: Yes.

4 THE CLERK OF COURT: Juror 388, is this your
5 verdict?

6 JUROR 388: Yes.

7 THE CLERK OF COURT: Still your verdict?

8 JUROR 388: Yes.

9 THE CLERK OF COURT: Juror 57, is this your
10 verdict?

11 JUROR 57: Yes.

12 THE CLERK OF COURT: Still your verdict?

13 JUROR 57: Yes.

14 THE CLERK OF COURT: Juror 125, is this your
15 verdict?

16 JUROR 125: Yes.

17 THE CLERK OF COURT: Still your verdict?

18 JUROR 125: Yes.

19 THE CLERK OF COURT: Juror 51, is this your
20 verdict?

21 JUROR 51: Yes.

22 THE CLERK OF COURT: Still your verdict?

23 JUROR 51: Yes.

24 THE CLERK OF COURT: Juror 210, is this your
25 verdict?

State vs. Dudley and Coleman
Polling of the Jury
March 13, 2014

1 JUROR 210: Yes.

2 THE CLERK OF COURT: Still your verdict?

3 JUROR 210: Yes.

4 THE CLERK OF COURT: Juror 397, still your
5 verdict?

6 JUROR 397: Yes.

7 THE CLERK OF COURT: Is this your verdict?

8 JUROR 397: Yes.

9 THE CLERK OF COURT: Still your verdict?

10 JUROR 397: Yes.

11 THE CLERK OF COURT: Juror 151, is this your
12 verdict?

13 JUROR 151: Yes.

14 THE CLERK OF COURT: Still your verdict?

15 JUROR 151: Yes.

16 THE COURT: Any further polling from the
17 defense?

18 MR. LONG: None, Your Honor.

19 THE COURT: Any reason my sentencing shall not
20 take place at this time?

21 MR. DEBUSK: Your Honor, may I have just one
22 minute to go make a sentencing sheet, or do we need
23 it?

24 THE COURT: I think we can fill that out after.

25 MR. DEBUSK: Yes, Your Honor.

State vs. Dudley and Coleman
Polling of the Jury
March 13, 2014

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THE COURT: We're holding up the jury.

MR. DEBUSK: Then we're ready.

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State vs. Dudley and Coleman
Motion for Judgment of Acquittal
March 13, 2014

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MOTION FOR JUDGMENT OF ACQUITTAL

THE COURT: Mr. Long?

MR. LONG: Yes, Your Honor.

THE COURT: Do you have motions to make?

MR. LONG: Yes, sir, Your Honor.

THE COURT: Okay.

MR. LONG: Your Honor, for the same reasons we stated at the conclusion of the State's case and the conclusion of all testimony, we would ask for a judgment of acquittal notwithstanding the verdict, Your Honor.

We feel the evidence was insufficient, inappropriate, less than credible, and we would ask Your Honor to set aside the verdict.

THE COURT: Mr. Long, I have looked at the evidence in this case, I heard the trial, of course, and not only was there sufficient, there was overwhelming, evidence of your client's guilt in this matter. I will deny your motion, respectively.

MR. LONG: Thank you, Your Honor.

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State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

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SENTENCING OF MR. COLEMAN

THE COURT: All right. Mr. DeBusk, if you would.

MR. DEBUSK: Your Honor, the victim, Ms. Marotte, is not going to be here this afternoon. She did lose \$100 that was not recovered in this case.

In this case, the primary consideration of sentencing is the prior record.

THE COURT: All right. Share the record.

MR. DEBUSK: He has seven prior convictions for burglary. From 1987, Patterson, New Jersey, guilty of burglary, two counts; from 1988, again, Patterson PD, burglary; 1990, Patterson Police Department, burglary; 1991, Paset [phonetic] County Sheriff's Office, guilty of burglary; 1992, Hackensack PD, guilty of attempted burglary; from Paset County, New Jersey, again, 1993, guilty of burglary; from 1994, from Hackensack PD, guilty of burglary; and then in Horry County in 2008 -- I'm sorry -- 2010, guilty of possession with intent to distribute cocaine.

THE COURT: So we have seven prior burglaries?

MR. DEBUSK: Six burglaries and an attempted burglary, Your Honor.

THE COURT: Okay. And then a drug --

MR. DEBUSK: Drug conviction.

State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

1 MR. LONG: He tells me that was a marijuana
2 conviction. Possession with intent, marijuana.

3 MR. DEBUSK: Okay. Marijuana, Your Honor.

4 THE COURT: All right. Anything further from
5 the State?

6 MR. DEBUSK: No, Your Honor. Thank you.

7 THE COURT: Mr. Long?

8 MR. LONG: Thank you, Your Honor. Keirnon is a
9 headstrong man. We've had discussions in chambers
10 about the status of this case. And I'm not saying
11 anything bad about him, because he is of definite
12 opinions and he's not proud -- ashamed to speak them.

13 He does appear to be a sympathetic man,
14 intelligent man. He's certainly old enough and lived
15 long enough and had enough life experiences to know
16 the value of freedom.

17 It amazed me yesterday when I was talking to him
18 after court, and we had a meeting of the minds, so to
19 speak, as to what he's involved with, what he's
20 facing, what he's risked, things of that nature, and
21 it touched me that he broke down and cried, Your
22 Honor, when he was talking to me. And this was not
23 anything put on, not anything that he did for my
24 benefit. My job is to give him a fair trial. I have
25 to do that whether he cries on my shoulder or not.

State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

1 THE COURT: And you have, Mr. Long.

2 MR. LONG: Thank you, Your Honor. Thank you.

3 But what impressed me about it was the fact that
4 he realized what he was facing, what he had risked,
5 what he was facing, and he was crying not for himself.
6 The words that came out of his mouth when he broke
7 down was, I've let my family down, I've let my
8 children down. And I tried to change the topic quick
9 to get him -- get it off of that, hopefully we could
10 discuss some other things, you know. But it impressed
11 me, Your Honor, because he realized the significance
12 of what he's done, what he's involved himself in, what
13 he's now guilty of.

14 This statute carries life in prison. He was
15 aware of that.

16 THE COURT: I think I made Mr. Coleman fully
17 aware of that during his arraignment.

18 MR. LONG: Yes, sir, Your Honor.

19 THE COURT: I explained to him the jeopardy he
20 was subjecting himself to --

21 MR. LONG: Yes, sir.

22 THE COURT: -- a minimum of fifteen years up to
23 life.

24 MR. LONG: And that only through the mercy and
25 discretion of the Court could the Court sentence him

State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

1 to not less than fifteen years, of which he would have
2 to do eighty-five percent, no parole, no probation, no
3 work release, nothing of that nature.

4 I don't think this case, the fact that his prior
5 record is from twenty years ago, that he did fall back
6 into some prior things, means that he cannot be or
7 should not try to be rehabilitated. For you to give
8 him a fifteen year sentence at his age could be a life
9 sentence, Your Honor. But fifteen years of which he
10 would have to serve eighty-five percent of in the
11 Department of Corrections knowing that his family and
12 his children are doing without him I would think would
13 be enough to rehabilitate even the hardest,
14 staunchest, most miserable criminal. And I personally
15 don't think he is that, Your Honor.

16 THE COURT: How many times has your client been
17 to prison, Mr. Long?

18 MR. LONG: Mr. Coleman, can you answer that?

19 MR. COLEMAN: Four times.

20 THE COURT: All right, sir. Go on, Mr. Long.

21 MR. LONG: That's it, Your Honor. We just ask
22 for the mercy of the Court.

23 THE COURT: Does Mr. Coleman want to address the
24 Court?

25 MR. COLEMAN: I throw myself on the mercy of the

State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

1 Court, Your Honor.

2 My involvement -- as far as -- the jury has made
3 their decision, I respect, and as well as Your Honor.

4 And like my attorney said, you know, my
5 possibility of being able to see my family again, I --
6 you know, I understand the mistakes that were made in
7 this situation. I can never see myself ever repeating
8 these same mistakes ever again in my life, ever.

9 THE COURT: Anything further?

10 MR. COLEMAN: No, Your Honor.

11 THE COURT: Mr. Coleman, you have six prior
12 convictions for burglary. You have been to prison
13 four times. I handled your arraignment and you were
14 offered to reduce this charge down significantly and
15 given an opportunity to take advantage of a parolable
16 sentence. I think everyone in this courtroom, after
17 hearing the evidence in this case, wonders what you
18 were thinking. There was overwhelming evidence of
19 your guilt. You have three more, I believe, Mr.
20 Dudley --

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: -- three more pending burglaries
23 that you could be tried for in this county. I don't
24 know whether the solicitor is going to try you for
25 them now or not. But, Mr. Coleman, you do not

State vs. Dudley and Coleman
Sentencing of Mr. Coleman
March 13, 2014

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deserve, nor shall you receive, the minimum sentence.

The sentence of this Court is that you be confined in the State Department of Corrections for a period of twenty-five years.

Thank you, sir.

- - -
- - -
- - -

State vs. Dudley and Coleman
Proceedings
March 13, 2014

PROCEEDINGS

1
2 THE COURT: All right. Ladies and gentlemen of
3 the jury, thank you for your service. We could not
4 resolve these difficult cases without your
5 participation, your willingness to be here. You
6 listened very attentively. There's certainly ample
7 evidence to support your verdict. No one can
8 criticize you for what you have done here today. No
9 one has a right to criticize you. It's your decision,
10 not anyone else in the world.

11 But I want to make sure you leave here
12 understanding how much we appreciate your being here
13 and, I hope, understanding a little bit more about the
14 judicial process.

15 I am from here. I'm in and about the county all
16 the time. If you encounter me somewhere, I probably
17 won't remember you because I have so many jurors that
18 come before me and so many people. But if you do
19 recognize me, don't hesitate to approach me. I love
20 to talk to jurors. Tell me what you thought about it.
21 I'll answer any questions you might have. I would
22 enjoy speaking with you. And I hope we do see each
23 other again. Thank you for being here.

24 Now, Mr. Roth, if you would make sure they get
25 back to their jury room and they get their belongings.

State vs. Dudley and Coleman
Proceedings
March 13, 2014

1 We're not going to need another jury this week. We
2 certainly try not to start a case that could go into
3 the weekend, so we're not going to do that.

4 You are excused for the balance of the week.
5 Thank you very much for your participation. Thank
6 you.

7 [Whereupon, the jury exits the courtroom at
8 4:44 p.m.]

9 THE COURT: All right. It was a pleasure.
10 Always good to hear and appear before good attorneys.
11 Thank you very much.

12 MR. LONG: Thank you, Your Honor.

13 MR. DEBUSK: Thank you, Your Honor.

14 [JURY TRIAL CONCLUDES AT 4:45 P.M.]

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State vs. Dudley and Coleman
Proceedings
March 13, 2014

C E R T I F I C A T E

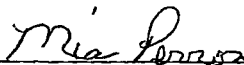
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Larry B. Hyman, Jr., on Thursday, March 13, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 13th day of June, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

* *False*

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
Keirnon Kyle Coleman 354333)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

15 *7569*

APPLICATION FOR
POST-CONVICTION RELIEF

RECEIVED
2015 OCT 20
Horry County

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 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 McCormick Correctional Institution McCormick, SC 29899
2. Name and location of Court which imposed sentence Horry County Court of general sessions
3. Name(s) of co-defendant(s) (if any) Mr Jordan Dudley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS-2602238 Burglary 1st degree
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March '13 2014 for a determinate term of 25 years
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty I was found 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. The state of South Carolina in the court of appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Dismissed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. Submitted June 1, 2015 - Filed July 29, 2015
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Dismissed
- 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: see attachments

- (a) Counsel failed to object to prosecution's misconduct vouching
- (b) Counsel statements prejudiced defendant's defense
- (c) Counsel failure to request suppression and pre-trial hearing

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to object to state's witness state a sworn testimony.
- (b) Appellate counsel failed to argue or assert prosecutorial misconduct
- (c) Counsel failed to object to trial prejudice statements and abuse of discretion

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (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. Anders Brief
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Court of appeals Columbia
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Dismissed
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. Submitted June 7, 2015 - filed July 29, 2015
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Anders v California 386 US 738 (1967)
 - 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. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- 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) I went pro se after counsel filed anders brief defendant
- (b) failed to submit brief or reply brief because appellate did not
- (c) understand the process in filing a brief and appellate counsel issues
were good giving appellate the impression that his appeal would be seen

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. J. m. Buddy Long III Horry County Public Defender office
 - ii. Post Office Box 1666 Conway, SC 29528
 - iii. Wanda H. Carter SCCID Division of Appellate defense po Box 11589 Columbia SC 29211
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Court of appeals
 - iii. _____

19. State clearly the relief you seek in filing this application:

Sentence vacated

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

15

7569

I, KC, 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.

Kuron Coleman

SWORN to and subscribed before me this 14
day of October, 2015.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

NOTARY PUBLIC
2015 OCT 20 AM 9:15

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

15

7569

I, ZC, 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.

Kuron Coleman
Applicant

SWORN or affirmed to and subscribed before me this
14 day of October, 2015.

J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

CLERK OF COURT
2015 OCT 20 AM 9:16
HARRIS COUNTY

P.10 Attachment(a)

(1)

Counsel failed to object to prosecutive misconduct
vouching and bolstering of witnesses prejudiced
defendants defense. The prosecution may not
vouch for the credibility of government witnesses.

In the follow testimony you'll hear prosecutor
 Mr DeBusk vouch and bolster witness in order
 to win a conviction by what ever means
 during closing argument had this to say.

Trp 909 p 10-11 Mr DeBusk: Mr Dudley who pled guilty
 and admitted his guilt. Trp 917 p 14-16 Mr DeBusk:
 both of them were equally guilty, just as Mr Dudley
 admitted when he got up and pled guilty.

U.S. v. Blevins, 960 F2d 1252, 1261 (4th Cir 1992)

prosecutors reference to defendants that pled
 guilty" improper absent curative instructions.

These statements leave the jury with the
 expectation that I should have pled guilty
 leaves the jury prejudiced. Trp 110 p 24-25

Mr DeBusk: Shakerra Cowan, she came to
 you from North Carolina, her charges are gone
 she's finished. Trp 11, 1-2 Mr DeBusk: she's
 not facing any charges. She had no reason
 to lie. Trp 911 p 8 Mr DeBusk: she came here
 and told you the truth. Continue on back page

D

Trp 411 p 10-13 Mr DeBusk: She wasn't talking any lies. she didn't have any reason to lie.

She relied on the truth to get her out.

Trp 412 p 11-15 Mr DeBusk: And the whole reason for ms Cowan even being in this came out in the first couple of minutes of that traffic stop when the officer went up there and said lets have the drivers licenses and only one person in that car produced a driver's license, Shakerra Cowan. Trp 412 16-17

Mr DeBusk: So he's got a history of lying and a reason to lie, MS Cowan had neither. in fact in her own testimony ms Cowan admitted she didnt tell the truth when first questioned. Trp 300 p 4-7 MS Livesay:

Okay. Now when they start talking to you you tell the police what ya'll were doing and what had happened? MS Cowan:

"Not in the beginning". Trp 300 p 15-17

Mr Livesay: Okay. so did you tell what had happened while you were on the road out there? MS Cowan: Not at first. Those

replies went unchallenged because a statement my Counsel made during closing arguments is why i rendered him

ineffective assistance Counsel's. continue on next page

③

Trp 396 p [#]22-[#]25 Mr Long: I could spend
 all last night, "if I wanted to" going through
 and trying to recount every witness and
 every statement and every contradiction and
 things of that nature. That's for you
 to do, not me. "Counsel holds a obligation
 to the people they represent. Cullen v. Pinholster 131
 S. Ct. 1388. 1403 (2011) ("Counsel should be strongly
 presumed to have rendered adequate assistance
 "and made all significant decisions" in the
 exercise of reasonable professional judgment).
 Trp 414 p [#]17-[#]18 Mr DeBusk: something else. Ms
 Cowan again, who had no reason to lie. Trp 415 p
[#]4-[#]6 Mr DeBusk: something else. "if you listen
 closely", that ms. marotte "told you". She
 said when she came home "the front door
was open" and it shouldn't have been,
 there is no record in her statement to
 ever making the above statements or the
 next statement. Trp 415 p [#]7-[#]8 Mr. DeBusk:
 in through the window, out through the door.
 there is no record of these last two
 statements by Mr DeBusk because counsel
 failed to perform any of what is described
 in Trp 396 p [#]22-[#]25 i was further prejudiced
 as to witness testimony. continue on back page

④

U.S. v. Young: 470 U.S. 1 18-19 (1985) (the prosecutor's vouching for the credibility of witnesses carries with it the imprimatur of the government and may induce the jury to trust the government's judgment rather than its own view of the evidence) U.S. v. Spinelli: 551 F.3d 159, 168-70 (2d Cir 2008) prosecutor's statement that none of the witnesses had ever falsely testified improper. U.S. v. Loayza: 107 F.3d 257, 261 (4th Cir 1997) prosecutor's comment during closing argument that he believed government witness was telling truth improper. U.S. v. Dispoz-O'Plastics inc: 172 F.3d 275, 286 (3d Cir. 1999) error not harmless because curative instructions given to jury insufficient to remedy harm done by prosecutor vouching for government witness.

P.10 Attachment(b)

Counsel's statements prejudiced defendant's defense rendering counsel ineffective assistance

Counsel made statements that were harmful to the defense exhibiting a lack of confidence to the jury showing submission and defeat at trial.

The court at trial: All right, now, the hand of one is the hand of all. Trp 346 p 1-2

The Court at trial: All right Mr Long, Trp 346 p

8. The Court at trial: now about what? Trp 346

p 11. Mr. Long at trial: Your Honor, I really have no opposition to it, from the start, this

case has been all about two defendants having committed the offense Trp 346 p 12-14 Mr Long at

trial: And I respect and admire both of

these prosecutors, they do a good job, they are effective in the courtroom, they know how to handle a case, they know how to try a

case, they know how to make closing

arguments Trp 406 p 16-20. Asher v Gibson: 282 F3d 1253

1307 (10/11/2002) Counsel's unprofessional conduct at trial including attacking defendant's credibility and bolstering state's case was ineffective assistance because it was objectively unreasonable and evidence of defendant's guilt was not overwhelming.

Continue on back page →

Mr Long at trial: This part of the trial is the most
 least least productive of any part of this trial Trp 396
 p 3-5. Mr Long at trial: And for me to stand here and
 make an argument, which the law calls it, about
 what you should consider, what you should think, how
 you should view what you should decide okay is
 unproductive Trp 396 p 10-14. Cuyler v Sullivan: 446 us
 335, 349-50 (1980) prejudice presumed if counsel
 actively represents conflicting interest in manner
 affecting adequacy of representation. Mr Long at trial:
 you are at least fourteen times more capable than I am
 of recalling what came from the witness stand, Trp
 396 p 15-17. Mr Long at trial: I'm not taking notes
 while some witnesses are testifying or while I'm asking
 these witnesses questions so the pages of notes I have,
"incomplete" I could spend all last night if I want to
 going through and trying to recount, every witness and
 every statement and every contradiction and things
 of that nature, "that's for you to do" Not me" Trp 396 p
 19-25. Kimmelman v Morrison 477 us 365 385 (1986)
 Counsel's failure to conduct any pre-trial discovery
 and file timely suppression motion was prejudice
 because counsel was ignorant of law and below
 prevailing professional norms.) Cuyler v Sullivan 446
 us 335, 349-50 (1980) prejudice presumed if counsel
 actively represents conflicting interest in manner
 affecting adequacy of representation. Next page →

Mr Long at trial: Okay and one tried to grab the back slider door or tried to open the back slider door and the other was peering

in a window? Ms Ross at trial: yes Trp 108 p[#]22-25

Mr Long at trial: All right, now, I understand your predicament and "i would be hiding also" Trp 109 p[#]1-2

Mr Long at trial: I'm sorry you had to go through all this. Trp 110 p[#]8-9.

The following testimonies are from State witnesses that by the same reason Mr Long stated that he need not to take notes, or look for misstatements because of this he was not able to do Bunk the hands of one the hands of all nations. From here are missed errors by State witnesses that prosecution swore to the jury that their testimony were the truth and nothing but the truth.

MS Ross at trial; MS Livesay at trial: Okay

So did you get a good look at them?

MS Ross at trial: yes. MS Livesay at trial:

Okay. if you don't mind describe the two men you saw that day, MS Ross at trial: Okay they were both African American, one was taller, had on a gray sweatshirt with a hood zip up the front, that's what I noticed. The other was a little shorter, stockier, and he had the same type of sweatshirt but it was plaid red and gray, so it was very distinctive. MS Livesay at trial: Okay, Now

Could you see the woman driver? MS Ross At trial: I saw from the shoulders up. Trp 95 p 4-15

If Mr Long would have taken notes he would have looked at her voluntary statement and saw
(continue on back page →)

That the first part of her interview was interrupted once the car came back to her house the second time then Mr Gibbott pursued them she had not finish her statement until he returned and you can see where in the second part of the interview she Ms. Ross now knew what we had on and there was a woman driver after Mr Gibbott had a chance to stop us and see what we had on and who was driving no where in her 911 call did she describe what we had on or who was driving or in the first part of her voluntary statement. MS Livesay at trial: Okay now when you saw the car that second time come back through, could you tell who was in the car then?

MS Ross at trial: I didn't really notice you know I saw people in the car but -- Trip # 99p # 18-21

MS Livesay at trial: so you called the police eventually they leave, is that right? MS Ross at trial:

Who leaves? MS Livesay at trial: The two black men

that were trying to get in your house? MS Ross at trial:

Right. MS Livesay at trial: Okay, is there anything in that statement that you didn't tell this jury today?

MS Ross at trial: I don't know if "we" mentioned the woman driving, the person driving was the woman, but other than that it's the same. Trip 100p 17-20

MS Livesay at trial: And that statement is the one you gave on the day in question? MS Ross at trial: yes Trip 100p 14-16

Trip 98p
15-20

MS Livesay at trial: Now, you remember what the people, Tip 10a p²⁵, MS Livesay at trial: looked like that came into your house is that correct? MS Ross at trial: Uh-huh. I remember what they were wearing, and their stature, and their origin, national origin. Tip 103p⁷⁻⁸. Mr Long at trial: How much of what you've

testified here today did you tell the 911 operator?

MS Ross at trial: yes mainly that there were men trying to get in my door; Mr Long at trial: All right

but was that as short and sweet and you put it or did you expound the same way you have here today? MS Ross at trial: "I didn't describe the clothes that they had on" Tip 110p⁴⁻⁵⁻⁷⁻⁸⁻⁹⁻¹².

Morris v. U.S. 447 F3d 735 744 (9th Cir 2006)

Failure to investigate known inconsistencies in testimony and inability to do so later supported inference that at least some of witness's testimony was false and prosecution improperly presented it.

P.10 Attachment (c)

Counsel's failure to request suppression, pre-trial hearing the trial court erred in admitting statements to police into evidence that came way by Miranda violation which prejudiced his case.

The state subsequently introduced defendants video taped statements at trial over defense counsel's objection defendant said he was looking for some one who owed him some money and that the jewelry found on him belong to him. The jury ultimately found defendant guilty of 1st degree burglary and the trial court sentenced the defendant to twenty-five years.

My appeal on the record as follows
 Counsel knew during pre-trial matters that defendants at the time of stop were never issued Miranda warnings even after marijuana was located in Shakerra Cowan's car there was no Miranda warning by the officer who even found it was Natalie Boyd or a arrest made this is all on video.
 Continue on back page.

2

The following testimony is from where the Court and both counsel agree on suppression of statements by all three defendants arrested that day. motioned by Mr Dean N Mureddu defense for Mr Jordan Dudley. Mr Mureddu at trial: Judge, there are various statements out there that i've been given assurances that the prosecutor is going to do their best to keep them from coming out. Trp 9 p 17-20. U.S. V. Allen 491 F3d 178, 191. (4th Cir 2007) 5th amendment applied to witness because possibility of self-incrimination existed. Mr DeBust at trial: The statements that Mr. Mureddu is worried about "will not be coming in". were not going to bring in any of the statements made by the defendants to law enforcement. We may go into certain statements made in the presence of another witness, non-police witness, when the police were not present but were not bringing "in any custodial or even pre-custodial statements" to police officers Trp 10 p 16-25. prosecution may not use statements where or whether exculpatory or inculpatory, stemming from custodial interrogation of defendant unless it demonstrates use of procedural safeguards effective to secure

Continue on next page

privilege against self incrimination U.S. CA
 Const Amend 5th U.S. v. Jackson 544 P.3d
 351, 360 (1st Cir 2008) Statements inadmissible
 because miranda warnings not given prior to
 custodial interrogation. Kimmelman v. Morrison
 477 U.S. 365, 385, (1986) Counsel's failure to
 conduct any pre-trial discovery and file timely
 suppression motion was prejudicial because counsel
 was ignorant of law and below prevailing
 professional norms. Mr Long at trial: Following
 that, there is some audio interrogation that occurs
 and this of course, is "pre-miranda" so the
Solicitor and I have "agreed" that basically
 once the officer gets them out of the car
 and determines their identity were going to
 "turn the speakers off" on the video continue to
 watch the video but we will not have any
possibility of interrogation or interview" Trp 164 p
 12-25. The court: Allright, how long are we
 going to watch it. Mr DeBust: your honor, its
 going to be thirty minutes, starting from where
 the officer turns onto mc Cormick road until
 they get Mr Coleman out of the car. Trp 164
 p 20-25. The court: Okay, Mr DeBust:
 turning off the audio after he secures the
 names. Trp 165 p 1-4 continue on back page

④

Mr DeBusk At trial: Allright your Honor at
 this time we would like to publish
 part of states exhibit #15. The Court At trial:
 All right, Ladies and gentleman of the
 jury, we're about to watch part of a disk
 that was an audio disk and video disk
 that was introduced earlier by agreement.
 The parties have limited this. This was
 actually about five CD's long. a very
 extensive and long video, but by agreement
 the parties are going to introduce only about
 thirty minutes of it and part of that
 is "going to be muted". And that's what
 you will consider "Okay Trp 166p #14-25.
 Where upon state's exhibit number #15, car
 cam video is played for the jury with
 questions from Mr DeBusk Trp 167p 1-3
 where upon state's exhibit number #15 resumes
 Trp 167p #12. Mr DeBusk At trial: your Honor,
 this is the point we agreed to. The Court
At trial: Very well Mr DeBusk take the video
 down where upon state's exhibit number #15
 resumes Trp #167p #13-17. from this point on
 abuse of discretion occurs when trial court's
 ruling is based on an error of law. continue on
 Back page

⑤

Whereupon states exhibit Number 15 CD
 "Conclude's" MR DeBuse At trial: Your Honor

What's the portion we wish to publish at this
 time. The Court At trial: Lights Trip 172p 10-14
 This is where the video end everything else
 beyond this point violates the agreement
 made during pre-trial matters the judges
 ruling and instructions to the jury which
 all of which come by way of Miranda
 violated statements that the court erred
 in allowing the jury to hear prejudiced
 my case beyond repair. What strikes me
 is through all the testimony all the witnesses
 all the interrogations and questioning not one
 police officer has read the miranda warning
 even after locating marijuana in the car
 and in the drivers cigarette pack. MS Natalie Boyd
 At trial: I also found two plastic baggies with
 a green leafy substance in them. Trip 251p 4-5
MS Natalie Boyd At trial: It was a Newport
 cigarette box which was empty and other than
 as far as cigarettes go and it had an item in
 it. MS Livesay At trial: And where did you
 remove that Newport box from. MS Boyd At
 trial: It was on the drivers side in the door
 pocket. Continue on next page

⑥

MS Livesay at trial: And through your investigation did you find out if that belonged to the driver. MS Boyd at trial: Yes I did. MS Livesay at trial: And did it belong to the driver. MS Boyd at trial: yes it did. No action was taken no arrest no miranda warning. U.S. V. Johnson 437 F3d 665, 678 (7th Cir 2006) 5th Amendment applied when government had basis to believe that witness was possible subject of prosecution. The court at trial: Follow up Mr DeBust. MR DeBust at trial: Just a few, could I have the screen again? Trp 181 p 13-15. MR DeBust at trial: This is the a portion of the video "not yet published" where upon states exhibit number 15 is played for the jury Trp 182 p 2-6. Government seeking to punish individual's must produce evidence against him by its own independent labors rather than by cruel simple expedient of compelling it from his own mouth U.S. CA Const Amend 5th. That was part of the video not agreed on which exceeded the thirty minutes that the trial judge ruled on and instructed the jury the next statement is where the agreement is all out violated and my case is violated beyond cure. Continue on next page

(7)

Mr DeBusk at trial: Do you want to see the video? Mr Kerron Coleman at trial: I don't recall it. Trp 377p 19-21. S.C. 2005
 An instruction is deemed to have cured an error unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced State v. Vasquez 613 So2d 359, 364 S.C. 293. Mr DeBusk at trial: It's in evidence.
The Court at trial: Well, if it's in the evidence the jury will remember it. Mr DeBusk at trial: Your Honor, we would ask to publish it at this time. The Court at trial: The part we've already seen? Mr DeBusk at trial: Your Honor the part we saw without sound, I would like to publish the "sound portion". The Court at trial: Allright, Trp 378p 5-12. U.S. v. Kasenge 660 F.3d 537, 541-42 C10 Cir 2011 Court considered whether obvious error affected defendant's substantial rights or outcome of trial. The trial judge erred in allowing the audio to be played was a fatal error by all means the judge didn't not remember him ruling or instructing the jury that the Audio portion of the video would be muted because the statements were made to law enforcement during Custodial interrogation in violation with miranda.

8

The Court at trial: It's disputed, Mr Long
 let's see what it said. Trp 378p[#]18-19. G.A.
 App. 1964: questioning of defense witness under
 guise of testing his memory. As to whether he
 remembered being in business of making
 liquor was improper as attempt to discredit
 him by inadmissible testimony for purpose
 of impeachment. Rewis v. State 134 SE 2d
 875. 109 GA. App 83. The Court At trial: I'm going
 to allow it Trp 378p[#]25. Where upon States
 exhibit number 15 CD, is played for the
 jury, where upon State exhibit number
 15 concludes. Mr. DeBust at trial: your Honor
 there's one other portion I. Trp 378p[#]718.
 Where upon states exhibit number 15 CD
 is played for the jury. Mr DeBust at trial:
 yes. is that what you told him. Mr Coleman
at trial: I don't remember verbatim. Mr
DeBust at trial: well, lets check the the tape
 your Honor the portion is approximately two
 minutes long. The Court at trial: Okay Trp 385p[#]16.
 where upon states exhibit number 15 CD is
 played for the jury. So not only was the audio
 portion violated but the thirty minute time limit
 also was violated this violation would allow
 prosecution to call me a liar fourteen times
 during cross-examination and a liar eighteen times during closing.

⑨

the jury hear me being call a Liar thirty two times
in fact prejudiced my case. U.S.V. Earle 375 F3d

1159, 1165-66 (D.C. Cir 2004) prosecutorial misconduct
Implying in closing that defendant lied in testimony
not harmless because no curative action taken and
likely that misconduct affected verdict.

Bloomer v. U.S. 162 F3d 187, 194-95 (2d Cir 1998)
error not harmless because conflicting instructions
left jury "uncertain" of standard it was charged
with applying and correct instruction were not
"styled" as a curative.

P. II Attachment (a)

Ineffective Assistance Counsel

Counsel failed to object to state's witness's
MS Shakerra Cowan testimony at trial to see
if statements were valid under the miranda
rule.

During a custodial interrogation states
 witness was interrogated and gave a repeat
 statement in her voluntary statement's
 from what she initially gave first.

The court held that unless the suspect is
 warned of his or her Fifth Amendment
 rights, any pretrial statements elicited from
 the suspect are inadmissible at trial.

Prosecution may not use statements, whether
 exculpatory or inculpatory, stemming from
 • Custodial interrogation of defendant unless
 it demonstrates use of procedural safeguards
 effective to secure privilege against self
 incrimination U.S. CA Const Amend 5th

①

Trip 171p 22-23: MR DeBuse: At this point, are you interviewing Mrs. Cowan. MR Fibbott: yes. I am

Trip 248p 3, 17: MS Livesay: what did you do to assist in the investigation of this case?

MS Boyd: I spoke to the driver of the vehicle.

MS Livesay: Okay. and did you learn anything from that, that furthered this investigation?

MS Boyd: yes. MS Livesay: and what did you learn that furthered this investigation?

MS Boyd: I learned that she drove the subject in the front seat requested her to drive him to a friend's house to get some money. she learned that they stopped at two different houses and that the two passengers exited the vehicle and that they the subject in the front returned with items that he did not leave the vehicle with. Trip 254p 21-25:

MS Boyd: The driver was the female, Shakerra Cowan. MS Livesay: Okay. so she was the one you watched fill out a voluntary statement?

MS Boyd: yes. MS Livesay: Okay. and at any point, while you were on the roadside investigating this case, did the driver not cooperate? MS Boyd: No.

②

Trp 299 p 2-6: MS Livesay: Okay And what happens at that house? MS Cowan: Like

I said they got out, went to the front went to the back came back to the car with some stuff in their hands: Trp 299 p 2-3:

MS Cowan: The cop started following us and then he pulled us over. Trp 299 p 7-10: But

when it got to me they asked me to get out of the car and they pat me down and asked what did I know or did I see anything. Because

they pretty much know what happened I guess. Trp 300 p 4-19

MS Livesay: Okay, Now, when they start talking to you, do you tell the police what you were doing and what had happened?

MS Cowan: Not in the beginning. When the officer kind of... and was trying to tell me that, they were trying to let me know that, you had a lot of involvement to do with whatever was going on. So instead, I was like, I dropped this man off, he told me he needed to be here got out of the car, went to a second house, he got out of the car, came back. Pretty much told him what happened without going into full details. MS Livesay:

Okay, so did you tell what had happened while you were on the road out there? MS Cowan: Not at first.

Tip 300 p[#] 25 : MS Livesay: Now did you eventually talk to a detective? Tip 301 p 1

MS Cowan: yes. Tip 301 p[#] 2 - [#] 13 : MS Livesay: Okay, and did he interview you? MS Cowan: He did, MS Livesay: And did you tell him what happened?

MS Cowan: yes, MS Livesay Now is what you told the officer on the road and what you told the detective, is that the same thing you're telling us here today?

MS Cowan: It is, I probably have a lot more details than what I told the first officer, but yes everything was the same. Tip 301 p[#] 12 - [#] 13

MS Livesay: Now did you do a voluntary written statement? MS Cowan: I did,

Tip 410 p[#] 11 - [#] 16 : Mr DeBuse: And you heard Shaker & Cowan tell you they got out together they went to that house together, and when they came out, well actually they didn't have things that they didn't have. Mr Coleron had things he didn't have when he went in there. Tip 10 p[#] 18 - [#] 24 : Mr DeBuse: We're not going to bring in any of the statements made by the defendants to law enforcement. We may go into certain statements made in the presence of another witness, non-police witness, when the police were not present but were not bringing in any custodial or even pre-custodial statements to police officers.

①

Keirron Coleman, Jordan Dudley, and Shakerra Cowan statements were during custodial interrogation not one of the defendants were read their miranda, prior to given statements already made by Keirron Coleman, Jordan Dudley, and Shakerra Cowan, Shakerra Cowan was not mirandarized before she filled out the voluntary statement form she had already given that statement to police officers which they had her write her repeated statements which were in miranda violation in her voluntary statement she testified that the same thing she told police on the roadside she wrote in her statement before her signed waiver. Her statements were in violation of miranda and helped prejudice my case they never played (state exhibit number 15 Cur-com video because it will show the reason why they muted her part Shakerra Cowan is because the audio would prove they didn't mirandarize her and how long they interrogated her before she told them her statement which there after they would have her sign a voluntary statement and both counsel reviewed the video and knowing her testimony was in violation.

⑥

Me Keimon Coleman, Jordan Dudley, and
 Ms Shakerra Cowan were stopped and
 interrogated without Miranda warnings
 even after they found a marijuana cigar
 in her Newport box during a search of
 the car they still didn't read us our
 Miranda or arrest us. After locating drugs
 in the car the procedure would be to advise
 us our rights but none made. Video will show
 evidence that she didn't get mirandized
 until she confessed to what happened
 only after did she sign a voluntary statement
 Thank you. The following testimony proves
 that Shakerra Cowan testimony should not
 have been used by prosecutions own words
 committed a fatal error. Mr DeBusk at trial:
 were not going to bring in any of the statements
 made by the defendants to law enforcement Trp 10p 15-19
Mr DeBusk at trial: were not bringing in any
 custodial or even pre-custodial statements to
 police officers. The court at trial: All right Trp 10p 22-25
Mr. DeBusk at trial: We're not bringing any of those
 in. The court at trial: All right I would. Mr DeBusk
at trial: "And we have so instructed our witnesses,
 Your Honor. Validates that he was speaking about
 Shakerra Cowan when making that statement

⑦

His witness about what "statements made do cow enforcement to which both counsel agreed came way by pre-miranda. Mr Long at trial: When he pulls the occupants out of the vehicle and gets their identity, following that, there is some audio interrogation that occurs, and this of course, is "pre-miranda" so the "solicitor" and "i" have "agreed" that basically once the officer gets them out of the car and determines their identity, we're going to turn the speakers off" on the video, continue to watch the video, but we "will not" have any possibility of interrogation or interview.

The court at trial: All right, how long are we going to

watch it? Mr DeBusk at trial: Your Honor, its going to be

thirty minutes, starting from where the officer turns onto McCormick road until they get Mr. Coleman out of the

car. Trp 164 p 10-25. The court at trial: Okay. Mr DeBusk

at trial: Turning "off" the audio after he secures the

names. The court at trial: Okay. Where upon, the jury

enters the courtroom at 3:13 p.m. Trp 165 p 1-6. The court at

trial: All right. Ladies and gentlemen of the jury we're about

to watch part of a disk that was an "audio" disk and video disk that was introduced earlier by "agreement" the parties

have limited this, this was actually five CDs Long, a very extensive and long video, but by "agreement" the parties are

going to introduce only about thirty minutes of it and part of that is going to be "muted" and that's what you will

consider. Okay. Trp 166 p 17-25. This testimony shows

what prosecution knew any further review of Ms Cowan

statements would show she also felt under the same

⑧

Statements and testimony should have never been used at trial prosecution tried to cover up her testimony by mentioning her signed voluntary statement that only came after the miranda violation that he never objected to when Mr Long said that the statements made to law enforcement were pre-miranda prosecution had a chance to review police dash cam video and knew her statements were fainted but still had her testify was a fraud on the court to further his misconduct I asked when and now that my case be vacated or sentence Thank you. MS Shakerra Cowan statements [REDACTED] were inadmissible at trial and prejudiced defendant's case.

P. 11 Attachment (b)

Appellate Counsel failed to argue or assert prosecutorial misconduct on defendants

Appeal when there was evidence of such misconduct during trial and closing arguments.

I will show through testimony at trial the prejudice the defense suffered by the misconduct by prosecution throughout this case as recorded in defendants trial transcript.

"The misconduct"

(1)

The police cam-video

Mr DeBusk at trial: No further questions
for Mr. Fibbott Trp 172 p 15-16. The Court

at trial: Follow up, Mr DeBusk? Mr DeBusk

at trial: Thank you, just a few could I have
the screen again? This is where the

prejudice occurs prior to Mr DeBusk asking
to play states exhibit number 15 CD police
car-cam video during pre-trial matters

An agreement was made by Mr DeBusk. Stopped

had this to say at trial, Mr DeBusk at trial:

The Court at trial: I'll hear you, Mr DeBusk

Trp 10 p 11. Mr DeBusk at trial: The statements

that Mr Muredda is worried about will not
be coming in. We're not going to bring

in any of the statements made by the
defendants to law enforcement Trp 10 p 16-

19. Mr DeBusk at trial: We're not bringing
in any custodial or even pre-custodial

statements to police officers. The Court

at trial: All right sir. Trp 10 p 22-25.

Mr DeBusk at trial: We're not bringing in

any of those in. The Court at trial: All right

I would. Mr DeBusk at trial: And we have

so instructed our witnesses" your Honor.

Back page continue →

②

This issue of misconduct by prosecution is dealing with state witness Shakerra Cowan statements at trial that were made in violation of miranda and then to by on agreement made to play any of the statements by defendants to law enforcement also included his witnesses by his own testimony there for Shakerra Cowan's testimony should've never been heard by the jury like her statements made on the video were never heard for the same reason if showed she also was not mirandized and her statements were tainted. Fields v Howes 617 F3d 813, 823-24 (6th Cir 2010) improper admission of confession critical to prosecution case in violation of miranda had substantial and injurious effect. US v Jackson 544 F3d 351, 360 (7th Cir 2008) statements inadmissible because miranda warnings not given prior to custodial interrogation. US v Nguyen 565 F3d 668, 674-75 (9th Cir 2009) Confrontation Clause violated by admission of defendant statement during interrogation because testimony offered to prove truth of matter asserted.

(Continue on next page)

③

That ends the inadmissible statements by state witness Shakeria Cowan. Now back to the video violation from page #1 where an agreement was made by both counsel on how much time and video would be seen and no audio heard by the jury, during cross-examination by Mr DeBust. The agreement was forgotten by prosecution and the trial judge no one mentioned the prior agreement while it was decided to further play video past its time as well as the audio portion that was ruled on and instructed to the jury no re instruction to the jury the judge just over ruled the objection with his answer being "Let's see what the video says" and every request by the prosecution to play the video and audio was given by the judge without being reminded about the agreement. The testimony proved to prejudice my defense cause from the additional play of video prosecution used from my statement that I lied during police interrogation at cross-examination, using the word liar, lie, or lied fourteen times and eighteen times during closing the jury would hear me being called a liar or he lied thirty two times at the very end of trial, continue on back page →

④

Leaving that ringing in the jury ears was beyond
 prejudicial. Edmart v Konteh 584 F3d 337
 345-46 (6th Cir 2009) erroneous admission
 of deposition video not harmless because prosecution
 had a much weaker case without testimony and
 testimony served to clear up conflicting evidence.
 Now the misconduct at closing arguments
 (p's from prosecution making statements that no
 where on the record can be found and turning
 MS Ross testimony that was to show intent
 into a actual crime committed when there
 was no charges ever filed in connection to
 MS Ross complaint. The testimony as follow"
 from Mr DeBusk at trial: Hurry up they're
 trying to get in the tall man in the gray hoodie.
 Keirnon Coleman and while [redacted] he was
 doing that, while he was trying to get into
 MS. Ross house, and not succeeding
 fortunately. Trp 410p³⁻⁷, Mr DeBusk at trial:
 Both Mr. Dudley who pled guilty and admitted
 his guilt and Mr. Coleman, who has chosen to
 take a trial, Both guilty. Trp 409p¹⁰⁻¹², Mr DeBusk
at trial: But we still want to know what it was
 that happened, even though they're guilty
 together. Trp 410p¹⁴⁻²⁰. Continue on next page →

(3)

Mr DeBuse at trial: Both of them were equally guilty just as Mr Dudley admitted when he got up and pled guilty. Both of them were equally guilty. Trp 417 p 74-76. USV Zehrbach 47 F3d 1252 1264 (3d Cir. 1995) prosecutor's statement that jury should disbelieve defense witnesses because they were guilty of same fraud as defendants improper. USV Smith 982 F2d 681 684 (1st Cir 1993) prosecutor's statement that defendant was guilty improper because it implied personal belief rather than government position. These last two statements by prosecution never was said by Ms Cowan or Ms Marotte but did prejudice my case beyond harmless error because of these false statements. Mr DeBuse at trial: And you "heard" Shattera Cowan tell you she got out together they went to that house together and "when they came out" they well actually they didn't have things that they didn't have, Mr. Coleman had things he didn't have when "he went in there". Trp 410 p 71-76.

Continue on next page →

⑥

MI DeBusk at trial: something else, if you
 listen closely that ms. marotte told you
 She said when she came home the
"front" door was "open" and it shouldn't have
 been. Trp 415 p^{*4-6}. MI DeBusk at trial: I n
 through the window, out through the door. Trp
 415 p^{*7-8}. These statements to the jury are
 improper because they inject an arbitrary
 factor into jury deliberations the danger is that
 a juror might be persuaded to rely on the
 opinion of others instead of exercising his
 independent as to the facts. Prejudicial to
 Rudd, As the Supreme Court has warned:
 We caution Solicitors that arguments of
 this kind can rarely be harmless. S.C. 1994
 Counsel in Criminal Case must "Confine themselves
 to the record in addressing jury. Mincey v State:
 444 SE2d 510 314 SC 355. GA 4 NC 2004
 A prosecutor should not portray as fact matters
 that are not in evidence, and he should not
 "misstate the facts" or the law. US Volivierre:
 378 F3d 912 Certiorari granted Vacated S.C.
 I also for my sentence to be vacated
 thank you

Appellate Counsel was ineffective
assistance counsel.

Failed to find any issues with merit on trial.

Counsel filed a Anders' Brief in defendant's
Appeal Citing a no merit claim defendant
counter-claimed and proceeded in his
Appeal pro'se.

Defendant states that Counsel assistance
during his appeal was non-existence in
instructing defendant the process of going
pro'se and how to format a brief. Instead
defendant sent the Clerk of Court paper
work that was not properly formatted Counsel
assured defendant that he had strong
issues and was lucky to have those issues
when on appeal the appellate court dismissed
defendant's appeal stating no grounds
Counsel cited no merit and my case
may have never been reviewed. Garcia v US
278 F3d 134 137-38 (2d Cir 2002) Counsel's
mistake in advising defendant that no appeal
could be made and court's confirmation of that
mistake was ineffective assistance because
(defendant had right to appeal)

①

There are grounds for argument throughout my entire transcript "prosecutorial misconduct" being the lead issue. Counsel both defense and prosecution both had access to a police car cam video for review and both knew of the violations of law that took place during that stop and filtered out the scenes that showed statements and testimonies that should not been allowed because they were tainted and came way by miranda violations Counsel used deception by limiting the video to thirty minutes which was in total five CD's then both counsel agreed only to play a portion that best helped prosecution's case. Instead of showing and telling how the video shows there was no miranda warning given during the search and seizure of the jewelry found on the defendant or after marijuana was found in the car there was no action taken no miranda warning no arrest not until MS. Shakeria Cowan took police officers over to MS Marottes house that we were taken to Harry County police station

②

But back to the video they would only play statements I made to law enforcement no one else's statements defense never asked to hear when Rick Gibbott said I gave him permission to go in my pocket or the confession Shakerra Cowan gave to police prior to miranda warnings that she later gave a repeat statement in her written statement which the first came way by miranda violation taints the second voluntary statement they knew that and that statement would or could not be used these things and others were hidden from evidence and the jury Appellate counsel failed to see any other issues than "the one" issue when my trial was beyond unfair and prejudiced.

Delgado v Lewis 223 F3d 976, 980-82 (9th Cir 2000) Counsel's failure to raise any arguable issues in appellate Brief was ineffective assistance.

P. 11 Attachment (C)

1

Counsel failed to object to trial judge prejudice statement and abuse of discretion based on trial judge's own opinion without implying defendant's guilt or innocence in order to establish defendant is separated by his own trial and plea agreement in which was to be based on what he pleaded guilty to the trial judge asked the question knowing Mr Dudley would not admit to being the one who entered, only accepting the hands of one hand of all charge, me being the only other person on trial now switch the burden of proof on me because if Dudley didn't enter then by the judge's statement Mr Coleman is the only other person so he had to because the trial judge suggested that "so Mr Dudley you were there when your co-defendant removed things from the house" is not only his own opinion and admission to my guilt his presumption of my guilt while my trial had yet to be decided is seen there after in the denial of my two direct verdicts which the trial judge based his reason for denial of my direct verdict, "guess" his answer was "that it was entered by the defendant." Back page

2

In the judges charge he said the defendant has the presumption of innocence until be proven guilty some where between pre-trial matters where my counsel told the trial judge i had pending charges and my first direct verdict prosecution and the court made sure i would be the one to answer for this burglary even if it meant violating trial and courtroom rules the oversights made by both counsel and trial judge was deliberate because i did not plea guilty i became their target they believed i did it Sgt Det Bogart charged me with additional burglaries where he took a photo to one witness so they would say i did it and they never prosecuted me on that charge or the others or was i charged for the prowling at ms Ross house. This trial by far violated my rights from the start of the to the very end in closing arguments I hold my appellate ineffective worst then all because ms carter cited no merit for my entire transcript her representation was below standard and unreasonable.

3

Counsel was ineffective and failed to object to trial judge prejudice statements when defendant is entitled to a fair and impartial trial.

During trial co-defendant Jordan Dudley pled guilty to 2nd degree burglary, during the sentencing phase the Honorable Larry B. Hyman, Jr. had this to say at trial:

Trp. 84 p 24-25: The court Mr. Dudley, is that what occurred you entered this lady's house and took things.

When Mr Dudley didn't answer the question the trial judge then changed his line of question to accommodate

Mr. Dudley. At trial the court had this to say Trp. 85 p 4-6:

The court: When the house was entered? you were there when your codefendant removed things house? is that

your position, Mr. Dudley: yes sir. The judge's line of question indicating the defendant in order to get Mr Dudley to accept his plea violates my presumption of innocence until proven guilty there is no testimony on record by

any of the witness to support that I removed anything from the house when the state had not even proven a entry. for the trial judge to even suggest that I removed things has to be his own stated opinion as well.

During direct verdict by defense counsel the question of who entered the house came up Trp. 323 p 1-14: Mr Long

that there was a entry. The court: That it was entered by the

defendant? Mr Long: No, your Honor. you have a codefendant who's already pled. They're trying him. The evidence could go to either one of the codefendants. They have not tied the entry evidence

to them what so ever. Continue on back page

The Court: Well, taking the evidence in the light most favorable to the state and considering that there is a wealth of circumstantial evidence here the mere fact that he had the materials that were removed from the residence, is substantial circumstantial evidence that he was the person who entered. I'm

going to respectfully deny your motion. Mr Long understands your Honor thank you. The court: All right anything further?

Mr. Long: Nothing further. The trial judge could not grant me a direct verdict because he allowed Mr Dudley to plea out to the hands of one or as the judge put it you were there when your codefendant removed things from the house already decided at that time that Mr Coleman had been the one who entered I contribute his reasoning to statement made

during pre-trial matters. Tip 14 p 5: The court: I understand he has several burglary first. Tip 15 p 2-5: Mr Long: No these are pending, your Honor. The court: That are pending!

Mr. Long: yes sir. The court: That's what I understand.

I have to question from the point of the trial judge knowing that I had prior's as well as pending charges for burglary that there was not a presumption of guilt already planted when the judge denied my direct verdict his reason was that he believe that I entered the home of the victim was said also when my codefendant was making his plea "you were there when your codefendant removed things from the home" almost the same statements expressing me being the perpetrator premature by conviction prejudgment by the trial judge prevented me a fair trial in 11/11/87