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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM HORRY COUNTY

William H. Seals Jr., Circuit Court Judge

Case Number 2016-CP-26-02627

Zachary Bullock #357427.....Petitioner,

v.

State of South Carolina..... Respondent.

APPENDIX

VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

ZACHARY BULLOCK, #357427.

Applicant.

v.

STATE OF SOUTH CAROLINA,

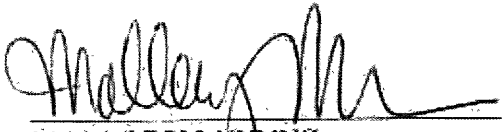
Respondent.

CERTIFICATE OF SERVICE

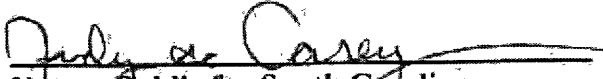
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Lacey M. Thompson, Esquire
516 29th Ave. N.
Myrtle Beach, SC 29577

This 15th day of March, 2018.


MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 15th day of March, 2018.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

2016-CP-26-2627

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Zachary Bullock,
S.C.D.C. No. 357427,

) Case No.: 2016-CP-26-02627
)

Applicant,

) ORDER OF DISMISSAL
)

v.

State of South Carolina,

Respondent.

REBEKAH ELIAS
CLERK OF COURT
HORRY COUNTY, SC

2018 FEB -5 PM 1:01

HORRY COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by Zachary Bullock ("Applicant") on April 21, 2016. Respondent made its return on or about January 27, 2017. Applicant thereafter amended by filing on March 6, 2017. Respondent made its amended return on October 13, 2017. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Lacey M. Thompson, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, John M. Hilliard, III, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and copies of caselaw provided by the parties at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2012 term of the Horry County Grand Jury for burglary, first degree (2012-GS-26-04334). John M. Hilliard, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Steven H. John and a jury on October 7, 2013. The jury found Applicant guilty as indicted on October 8, 2013. Judge John sentenced Applicant to imprisonment for a term of 15 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrin H. Hudgins, Esq., who raised the following issue to the South Carolina Court of Appeals:

Did the trial judge err in allowing a detective to testify about inadmissible hearsay statements implicating [Applicant] made by two co-defendants when both co-defendants testified against [Applicant] at trial, the trial testimony was consistent with the prior statements, the hearsay testimony improperly bolstered the testimony of the co-defendants and the credibility of these two co-defendant witnesses was a critical factor for the jury to determine?

By unpublished opinion decided December 2, 2015, the Court of Appeals affirmed Applicant's convictions. State v. Bullock, Op. No. 2015-UP-549 (S.C. Ct. App. 2015). The Remittitur was issued on December 22, 2015.

Present Application

In his post-conviction relief application, as supplemented by filings on March, 6, 2017, and November 7, 2017, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel failed to investigate the first degree burglary charge by failing to contact the victims of the burglary."
 - a. "The victims of the burglary have said they were never contacted by trial counsel or the solicitor during the time the case was pending. The victims said they were never asked by trial counsel or the solicitor as to what they wanted in the case."

- b. "This was highly prejudicial during his case because Mrs. Skipper, one of the victims, would not have wanted to press charges. This information is extremely favorable to [Applicant] and should have been used by trial counsel when negotiating with the solicitor, as the solicitor did not have this information as well when he made [Applicant] a plea offer of seven years to burglary second degree or when he offered probation to both co-defendants after their testimony against [Applicant]. With the homeowner's statement that they did not want to press charges against [Applicant], there is a reasonable probability that trial counsel could have negotiated a significantly more favorable plea offer than seven years in prison, especially since Petitioner had no prior record."
2. "Trial counsel was ineffective for failing to object to inadmissible victim impact testimony, which was also irrelevant."
- a. "During Mr. Skipper's testimony, the solicitor asked him why he moved. Trial counsel objected based on relevance, but it was also inadmissible victim impact testimony. The judge allowed the question over the relevance objection, but trial counsel did not object based on the fact that it was inadmissible victim impact testimony."
- b. "Mr. Skipper testified during trial that they left that night and moved the next day. He said 'We didn't sleep another day in that house.' This was directly implying that he and his family moved because of the burglary, which was not true at all."
- c. "In addition to not objecting to the inadmissible victim impact statement, trial counsel failed to impeach the credibility of Mr. Skipper. In the initial police report, Mr. Skipper testified to the officer that he and his family were moving in two weeks. Furthermore, after the trial, trial counsel was able to obtain newly discovered evidence which further shows Mr. Skipper was not being truthful about moving out that night due to the burglary. Mr. and Mrs. Skipper's landlord, James Perkins, signed an affidavit dated October 13, 2013 stating that Mrs. Skipper had contacted him around January 1, 2012 about breaking the lease because she could not afford to pay the rent. The landlord, James Perkins, said he agreed to allow her to break the lease. Furthermore, trial counsel failed to speak with Jill Lankford. Ms. Lankford is Mrs. Skipper's sister as well as the neighbor who called the police after noticing a burglary had occurred at her sister's house. Ms. Lankford could have also impeached Mr. Skipper's testimony that they moved out that night due to the burglary. Ms. Lankford would have testified that although she is not sure if Mr. and Mrs. Skipper were moving before the burglary, that she did know they

were looking because the house was too small, and they needed more room."

3. "[I]neffective assistance of counsel based on trial counsel's failure to investigate the case by failing to subpoena [Applicant's] phone records."

a. "[Applicant] did own and operate a cell phone during the time of the burglary. He had communications with his co-defendants, some of which may have been exculpatory. Trial counsel never subpoenaed these phone records. PCR counsel did subpoena the phone records, however, because of retention policies of the cell phone companies, was unable to retrieve the necessary data for GPS location or text message content. If these records had been obtained, they could have shown the actual relationship [Applicant] had with his co-defendants to support that he was not involved in the burglary."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented. Because Applicant's first and third allegations involve common questions of law, they are addressed together.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure

of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696.

A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Investigate Victim Witnesses, Cell Phone Records

Applicant alleges Counsel was deficient for failing to contact the burglary victims prior to trial in order to inquire as to their disposition regarding the case. Applicant further alleges Counsel was ineffective for failing to investigate and obtain potentially exculpatory cell phone records, which could have shown his location at the time of the crime and/or his text messages.

In order to prevail upon a claim that counsel did not adequately investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Victim Joseph Skipper testified on behalf of the State at trial. Tr. 59-74. Mr. Skipper explained Applicant, his neighbor, knew he was a fan of Glock firearms and knew he owned guns. Tr. 65-66. Mr. Skipper also testified he and his family moved out of the burglarized house immediately after the crime and never slept in it again. Tr. 67-68.

At the evidentiary hearing, victim Amy Skipper testified her name was on the lease of the house burglarized, but neither Counsel nor the State ever inquired as to her desired disposition of the investigation and case. Ms. Skipper expressed her belief that Applicant's punishment was harsh. Ms. Skipper admitted she never attempted to call either Counsel or the State.

Counsel testified his understanding in preparing for trial was that Mr. Skipper was angry about the burglary. Counsel explained he affirmatively decided against contacting Mr. Skipper due to the risk of only further angering a hostile victim witness. Counsel discussed with Applicant his relationship with the victim and believed that Mr. Skipper disliked Applicant. Counsel admitted he has gotten charges dismissed due to friendly victims in his experience as a criminal defense attorney, but was uncertain as to whether the State would have "played ball" in this case if the victim was actually favorable to Applicant.

In reply testimony, Mr. Skipper testified he spoke with the solicitor and investigators frequently before trial. The prosecution kept Mr. Skipper aware of what was going to happen. Mr. Skipper explained he wasn't mad at Applicant specifically, but was generally upset at whoever was responsible for the burglary. The victim expressed he did not know what he would have wanted in terms of resolution at the time of trial.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel articulated clear and valid strategic reasoning for not contacting the victims—the risk of inflaming an already hostile victim. The information available and known to Counsel prior to trial supports his reasoning. Because a valid strategic reason has been provided by Counsel on the record, this Court finds no ineffectiveness of counsel on this ground, and Applicant's request for relief by way of this allegation is **DENIED**.

As for the cell phone records, Counsel testified at the evidentiary hearing he could not recall considering whether to seek phone records. Melinda Ellison, a member of PCR counsel's staff, testified she attempted to attain such records, but was informed they no longer existed. As such, no records were introduced at the hearing. Consequently, this Court is left only to speculate as to what, if anything, the records would have shown—they could have exculpated Applicant by placing him somewhere other than the location of the crime or they could have further inculpated him by placing him on scene. Mere speculation is not enough. See *Harris*, 377 S.C. at 75, 659 S.E.2d at 145. Accordingly, this Court finds no ineffectiveness on the part of counsel and Applicant's request for relief by way of this allegation is also DENIED.

2. Failure to Object to Victim Impact Testimony

Applicant alleges Counsel was ineffective for failing to adequately object to inadmissible victim impact testimony at trial. There is no *per se* rule regarding the treatment of victim-impact evidence during the guilt phase of a non-capital trial; rather, the decision to admit or exclude such evidence is guided by the standard issues of relevance and, even if relevant, whether its probative value is outweighed by the risk of undue prejudice. See Rules 401-403, SCRE.

As previously noted, Mr. Skipper testified at trial that he and his family moved out of the burglarized house immediately after the crime and never slept in it again. Tr. 67-68. Counsel immediately objected on the basis that the testimony was not relevant and was overruled by the trial court. Tr. 67, ll. 15-18. Because the record shows that Counsel timely objected on the appropriate ground, the allegation is without any factual support. Accordingly, this Court finds no ineffectiveness on the part of counsel and Applicant's request for relief by way of this allegation is DENIED.

III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 day of Jan, 2018.


WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

 _____, South Carolina

COUNTY OF Horry
 STATE VS.
Zachary Braxton Bullock
 AKA:
 Race: Sex: M Age: 20
 DOB: SS#: [REDACTED]
 Address: High Brass Covey
 City, State, Zip: Myrtle Beach, SC 29588-8408
 DL#: SID#:

INDICTMENT/CASE#: 2012GS2604334
 A/W#: M971252
 Date of Offense: 1/12/2012
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment in Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Grooms, J. Stephen SCB79104 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
 Set by SCDPPPS

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal consecutive weekly install-
 ments of \$ 25.00 beginning 10/03/12
 \$ _____ paid to Public Defender Fund

Recipient: _____

*Fine:	\$	\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>138.90</u>

Other: _____

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 OCT 17 2013
 Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk of Court of Appeals during probation.

Clerk of Court/ Deputy Clerk: Melanie Higgins Wood
 Court Reporter: Kay Richardson
 SCCA/217 (03/2011)

Presiding Judge: _____
 Judge Code: _____
 Sentence Date: 10/8/12

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Zachary Braxton Bullock, Appellant.

Appellate Case No. 2013-002229

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2015-UP-549
Submitted October 9, 2015 – Filed December 2, 2015

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, for Respondent.

PER CURIAM: Zachary Bullock appeals his conviction for first-degree burglary, arguing the trial court erred in allowing Detective Scott Bogart, of the Horry County Police Department, to testify about prior statements made to him by

Bullock's codefendants. Specifically, Bullock contends Detective Bogart's testimony was inadmissible hearsay that improperly corroborated his codefendants' testimony. We affirm.¹

We find the trial court erred in admitting Detective Bogart's testimony regarding prior consistent statements of Bullock's codefendants, as it did not qualify as nonhearsay under Rule 801(d)(1), nor did it fall under an exception to the hearsay rule. *See* Rule 801(c), SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); Rule 801(d)(1)(A), (B) ("A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose . . ."). Here, the codefendants' testimony at trial was consistent with the prior statements they gave to Detective Bogart. Bullock did not explicitly or implicitly accuse either codefendant of recently fabricating their statements, nor did he allege they were acting under improper influence or motive. *See State v. Forester*, 354 S.C. 614, 622, 582 S.E.2d 426, 430 (2003) ("The plain language of Rule 801(d)(1)(B) only permits evidence of a prior consistent statement when the witness has been charged with recent fabrication or improper motive or influence." (quoting *State v. Saltz*, 346 S.C. 114, 124, 551 S.E.2d 240, 245 (2001))). Contrary to the State's argument that Detective Bogart's testimony was not hearsay because it was offered for the limited purpose of explaining why the government investigation was undertaken,² we find that Detective Bogart's testimony was, in fact, offered to prove the truth of the matter asserted. *See* Rule 801(c), SCRE (defining hearsay); Rule 802, SCRE ("Hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the [s]upreme [c]ourt of this State or by statute.").

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² *See State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (holding the police officers' testimony about complaints they received from declarants in the neighborhood, prior to setting up surveillance, was admissible for the nonhearsay purpose of explaining why the officers began surveillance of the defendant's apartment).

However, we find the trial court's error in admitting Detective Bogart's hearsay testimony was harmless. Bullock alleges the admission of Detective Bogart's testimony was not harmless error because it corroborated and improperly bolstered the credibility of his codefendants' testimony. *See Saltz*, 346 S.C. at 124, 551 S.E.2d at 246 ("Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, 'it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.'" (quoting *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994))). Despite Bullock's contention that such cumulative corroboration testimony is per se prejudicial, South Carolina jurisprudence does not favor such a rule. *See State v. Jennings*, 394 S.C. 473, 482, 483–84, 716 S.E.2d 91, 95–96 (2011) (Kittredge, J., concurring in a separate opinion joined by Hearn, J., and Toal, C.J., dissenting) (indicating a plurality of justices rejecting a rule of per se prejudice in favor of a case-by-case determination of prejudice); *see also Saltz*, 346 S.C. at 124, 551 S.E.2d at 246 (determining cumulative corroboration testimony was prejudicial and, thus, not harmless error where the testimony sought to be corroborated was weak and not particularly credible). Therefore, the admission of Detective Bogart's hearsay testimony is evaluated under the harmless error analysis. *See State v. Weston*, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) ("The improper admission of hearsay is reversible error only when the admission causes prejudice."); *see also State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (stating the harmless-error doctrine preserves the central purpose of a criminal trial, which is to decide the factual question of a defendant's guilt or innocence) (citing *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991))); *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 910 (2015) ("[A]ppellate courts must determine the materiality and prejudicial character of the error in relation to the entire case."). Bullock's codefendants both testified not only to Bullock's involvement in the burglary but also to their own involvement. Their testimony was consistent with one another's testimony and with the victim's testimony as to what items were stolen and how the burglary was effectuated. Because there was strong evidence of Bullock's guilt independent of the hearsay testimony, the admission of the hearsay testimony was harmless. *See State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) ("Error is harmless when it 'could not reasonably have affected the result of the trial.'" (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971))); *id.* (finding the improper admission of hearsay testimony to be harmless error where there was abundant evidence in the record from which the jury could have found the defendant guilty, notwithstanding the hearsay testimony); *see also State v.*

Tapp, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012) ("Engaging in [a] harmless error analysis . . . requires [the court] not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.").

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
SUPREME COURT

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MAR 22 2018

S.C. SUPREME COURT
APPEAL FROM Horry COUNTY Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge


Case No. 2016-CP-26-02627

Zachary Bullock, #357427Appellant,
v.
The State,Respondent.

NOTICE OF APPEAL

Zachary Bullock appeals the denial of post conviction relief in this case.
The Order of Dismissal was served on Appellant on March 19, 2018.

March 19, 2018


Lacey Thompson Esq.
Thompson Defense Firm
516 29th Ave. North
Myrtle Beach, SC 29577
843-444-6122

Other Counsel of Record:
Attorney General's Office
Johnny James, Esq.
P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ZACHARY BULLOCK, #357427
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2016-CP-26-02627


CERTIFICATE OF SERVICE

I certify that on the 19th day of March, 2018, a copy of the Notice of Appeal and request for transcript in the above referenced matter was served by U.S. mail to the following addresses:

Horry County Common Pleas
Clerk of Court
PO Box 667
Conway, SC 29526

Attorney General's Office
Johnny James Esq.
P.O. Box 11549
Columbia, SC 29211

Supreme Court Building
Daniel Shearouse
1231 Gervais Street
Columbia, SC 29201


Mindi Ellison
Legal Assistant

RECEIVED

MAR 23 2018

S.C. SUPREME COURT

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Zachary Bullock, #00357427)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

16 CP 26 2627

APPLICATION FOR
POST-CONVICTION RELIEF

2016 APR 21 PM 1:57
Horry County
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Horry County General Sessions Court, 1301 Second Ave., Conway, SC 29526
3. Name(s) of co-defendant(s) (if any) De'Aisha Denton, Emmanuel Foriest, and Ben Denton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st degree, 2012-GS-26-04334
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2008
copy

- (a) October 8, 2013; fifteen 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 X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. The Court of Appeals affirmed the trial court's decision. They found that the trial court did err but that it was harmless.
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 2, 2015
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. State of South Carolina v. Zachary Braxton, Unpublished Opinion No. 2015-UP-549 (Court of Appeals 2015).
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

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) Ineffective assistance of counsel. This claim is appropriate for post-conviction

STATE OF SOUTH CAROLINA)
)
County of HORRY)

VERIFICATION

I, Zachary Bullock, 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.

Zachary Bullock

SWORN to and subscribed before me this 6
day of April, 2014.

Debra Eastbridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

HORRY COUNTY
2016 APR 21 PM 1:57
MELANIE HUBBARD-WARD
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Zachary Bullock, 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.

Zachary Bullock
Applicant

SWORN or affirmed to and subscribed before me this
6 day of April, 2016.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2026

Horry County
2016 APR 21 PM 1:57
MELANIE HUBBARD
CLERK OF COURT

Certificate of Service

I certify that on the 18th day of April, 2016, a copy of the Application for Post Conviction Relief in the case of Zachary Bullock v. State of South Carolina was served by U.S. mail to the following address:

Melanie Huggins
Clerk of Court for Horry County
P.O. Box 667
Conway, SC 29526



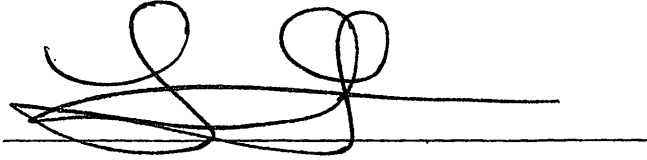
Mindi Ellison
Legal Assistant

HORRY COUNTY
2016 APR 21 PM 1:57
MELANIE HUGGINS-WARD
CLERK OF COURT

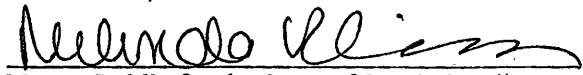
STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

VERIFICATION

I, Lacey M. Lee, 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.



SWORN to and subscribed before me this 18th
Day of April, 2016.


Notary Public for the State of South Carolina

My Commission Expires: 11.26.23

HORRY COUNTY
2016 APR 21 PM 1:57
MELANIE HUGHES-WALKER
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Zachary Bullock, #357427,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

2016-CP-26-2627

RETURN AND MOTION FOR
MORE DEFINITE STATEMENT

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on April 21, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. Applicant was indicted by the October 2012 term of the Grand Jury for Horry County for one of burglary, 1st degree (2012-GS-26-04334). Applicant was represented by John M. Hilliard, Esq. at trial. On October 8, 2013, Applicant was convicted by a jury as indicted and sentenced by the Honorable Steven H. John to imprisonment for fifteen (15) years.

Applicant filed a timely notice of appeal. The appeal was perfected by Kathrine H. Hudgins, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed December 2, 2015. State v. Bullock, Op. No. 2015-UP-549 (S.C. Ct. App. 2015). The Remittitur was returned on December 22, 2015.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial,

Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

III.

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of the allegation of "Ineffective Assistance Counsel" enumerated in his original application for post-conviction relief. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Applicant claims ineffective assistance of counsel in his application. Notwithstanding the need for a more definite statement, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact.

that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

[Signature block to follow]

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

By: 
ATTORNEYS FOR RESPONDENT

January 27 2017

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

ZACHARY BULLOCK, 357427,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-26-2627

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definite Statement on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Lacey Thompson, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

DATED this 27th day of January, 2017.



Mallory Morris, Legal Assistant
For Respondent

This falls below the standard under Strickland. The victims of a burglary case are typically the primary witnesses in the case. Trial counsel failed to contact them prior to trial to see what they wanted the outcome to be in the case. This was highly prejudicial in that the victims did not want to press charges. Mrs. Skipper has said if she were asked about the case, she would not have wanted to press charges. This information is favorable to Petitioner, and it is information trial counsel could have used when representing Petitioner during plea negotiations.

Petitioner is entitled to effective counsel during all stages of his case, including plea negotiations and plea offers. (See Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988)). During Petitioner's case, trial counsel never investigated his case at all. He did not contact the alleged victims in the case, and Petitioner was never made aware that they did not want to press charges.

This was highly prejudicial during his case because Mrs. Skipper, one of the victims, would not have wanted to press charges. This information is extremely favorable to Petitioner and should have been used by trial counsel when negotiating with the solicitor, as the solicitor did not have this information as well when he made Petitioner a plea offer of seven years to burglary second degree or when he offered

probation to both co-defendants after their testimony against Petitioner. With the homeowner's statement that they did not want to press charges against Zach, there is a reasonable probability that trial counsel could have negotiated a significantly more favorable plea offer than seven years in prison, especially since Petitioner had no prior record.

- 2) Trial counsel was ineffective for failing to object to inadmissible victim impact testimony, which was also irrelevant. During Mr. Skipper's testimony, the solicitor asked him why he moved. Trial counsel objected based on relevance, but it was also inadmissible victim impact testimony. The judge allowed the question over the relevance objection, but trial counsel did not object based on the fact it was inadmissible victim impact testimony.

Mr. Skipper testified during trial that they left that night and moved the next day. He said, "We didn't sleep another day in that house." This was directly implying that he and his family moved because of the burglary, which was not true at all.

In addition to not objecting to the inadmissible victim impact statement, trial counsel failed to impeach the credibility of Mr. Skipper. In the initial police report, Mr. Skipper testified to the officer that he and his family were moving in two weeks. Furthermore, after the trial, trial counsel was able to obtain newly discovered

evidence which further shows Mr. Skipper was not being truthful about moving out that night due to the burglary. Mr. and Mrs. Skipper's landlord, James Perkins, signed an affidavit dated October 13, 2013 stating that Mrs. Skipper had contacted him around January 1, 2012 about breaking the lease because she could not afford to pay the rent. The landlord, James Perkins, said he agreed to allow her to break the lease. Furthermore, trial counsel failed to speak with Jill Lankford. Ms. Lankford is Mrs. Skipper's sister as well as the neighbor who called the police after noticing a burglary had occurred at her sister's house. Ms. Lankford could have also impeached Mr. Skipper's testimony that they moved out that night due to the burglary. Ms. Lankford would have testified that although she is not sure if Mr. and Mrs. Skipper were moving before the burglary, that she did know they were looking because the house was too small, and they needed more room.

Trial counsel's failure to object to the inadmissible victim impact statement as well as failure to impeach Mr. Skipper falls below the reasonableness standard in Strickland and is highly prejudicial, as made evident in Petitioner's appeal where the credibility of Mr. Skipper was used as one of the reasons the court found harmless error.

Any attorney would have objected to the solicitor asking why the homeowner moved out after a burglary because it was eliciting victim impact testimony. This type of question and statement is only admissible during sentencing, not the trial itself.

In addition, the statement was not truthful, and trial counsel had a copy of the original police report where Mr. Skipper told the officer his family was moving in two weeks. After that, trial counsel had newly discovered evidence which further shows that Mr. Skipper's statement was not truthful. The landlord of the property signed an affidavit stating Mrs. Skipper asked him around the first of January if she could break her lease as she could not afford the rent. The landlord, James Perkins, agreed. Trial counsel also failed to talk to the person who called the police and reported the burglary, who would have testified that she knew her sister and now brother-in-law were looking to move already because the house was too small.

Trial counsel's failure to impeach Mr. Skipper on that statement prejudiced Petitioner during trial and in his appeal. This trial was all about credibility of witnesses. There was no physical evidence connecting Petitioner to the first degree burglary.

The jury based their verdict on the following: (1) two co-defendants who got probation after their testimony; (2) one of the victims whose credibility should have been called into question; (3) Detective Scott Bogart, who was called to bolster the

co-defendants testimony, and according to the appellate court, the court erred in allowing his testimony regarding the co-defendants prior consistent statements; (4) an investigator who was only called to testify to the fact the co-defendants were told to tell the truth; and (5) the responding patrol officer. In determining it was harmless, one of the factors the court used in upholding that was the victim's testimony, which is now called into question with credibility.

Based on (1) trial counsel's failure to investigate and (2) trial counsel's failure to object to inadmissible victim impact testimony and impeach victim, Petitioner respectfully asks the court to vacate his first degree burglary conviction and grant him a new trial.



Lacey Thompson
Attorney for the Petitioner
516 29th Ave. N.
Myrtle Beach, S.C. 29577
843-444-6122

March 2, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Zachary Bullock,)	Case No.: 2016-CP-26-02627
S.C.D.C. No. 357427,)	
)	
Applicant,)	
)	AMENDED RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the application for post-conviction relief filed by Zachary Bullock (Applicant) on April 21, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2012 term of the Horry County Grand Jury for burglary, first degree (2012-GS-26-04334). John M. Hilliard, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. The underlying facts, as summarized in the Final Brief of Respondent, are that "[o]n January 12, 2012, [Applicant], De'Aisha Denton, and Emmanuel "Manny" Foriest burglarized Joseph Skipper's (Victim) house and stole three televisions, an iPad, at least one laptop computer, a necklace, and a .45 caliber Glock handgun." (record citations omitted). Applicant, Denton, and Foriest were all caught and arrested during the commission of an entirely separate burglary. Tr. 33-36.

Applicant proceeded to trial before the Honorable Steven H. John and a jury on October 7, 2013. Applicant's co-conspirators Denton and Foriest testified against him at trial. See Tr.

74-158, 195-98. The jury found Applicant guilty as indicted on October 8, 2013. Judge John sentenced Applicant to imprisonment for a term of 15 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrin H. Hudgins, Esq. By unpublished opinion decided December 2, 2015, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Bullock, Op. No. 2015-UP-549 (S.C. Ct. App. 2015). The Remittitur was issued on December 22, 2015.

II.

In his post-conviction relief application, supplemented by filing on March 6, 2017, Applicant alleges he is being held unlawfully for the following reasons (excerpted):

1. "Trial counsel failed to investigate the first degree burglary charge by failing to contact the victims of the burglary."
 - a. "The victims of the burglary have said they were never contacted by trial counsel or the solicitor during the time the case was pending. The victims said they were never asked by trial counsel or the solicitor as to what they wanted in the case."
 - b. "This was highly prejudicial during his case because Mrs. Skipper, one of the victims, would not have wanted to press charges. This information is extremely favorable to [Applicant] and should have been used by trial counsel when negotiating with the solicitor, as the solicitor did not have this information as well when he made [Applicant] a plea offer of seven years to burglary second degree or when he offered probation to both co-defendants after their testimony against [Applicant]. With the homeowner's statement that they did not want to press charges against [Applicant], there is a reasonable probability that trial counsel could have negotiated a significantly more favorable plea offer than seven years in prison, especially since Petitioner had no prior record."
2. "Trial counsel was ineffective for failing to object to inadmissible victim impact testimony, which was also irrelevant."
 - a. "During Mr. Skipper's testimony, the solicitor asked him why he moved. Trial counsel objected based on relevance, but it was also inadmissible victim impact testimony. The judge allowed the question over the relevance objection, but trial counsel did not object based on the fact that it was inadmissible victim impact testimony."

- b. "Mr. Skipper testified during trial that they left that night and moved the next day. He said 'We didn't sleep another day in that house.' This was directly implying that he and his family moved because of the burglary, which was not true at all."
- c. "In addition to not objecting to the inadmissible victim impact statement, trial counsel failed to impeach the credibility of Mr. Skipper. In the initial police report, Mr. Skipper testified to the officer that he and his family were moving in two weeks. Furthermore, after the trial, trial counsel was able to obtain newly discovered evidence which further shows Mr. Skipper was not being truthful about moving out that night due to the burglary. Mr. and Mrs. Skipper's landlord, James Perkins, signed an affidavit dated October 13, 2013 stating that Mrs. Skipper had contacted him around January 1, 2012 about breaking the lease because she could not afford to pay the rent. The landlord, James Perkins, said he agreed to allow her to break the lease. Furthermore, trial counsel failed to speak with Jill Lankford. Ms. Lankford is Mrs. Skipper's sister as well as the neighbor who called the police after noticing a burglary had occurred at her sister's house. Ms. Lankford could have also impeached Mr. Skipper's testimony that they moved out that night due to the burglary. Ms. Lankford would have testified that although she is not sure if Mr. and Mrs. Skipper were moving before the burglary, that she did know they were looking because the house was too small, and they needed more room."

Attached to Respondent's previous "Return and Motion for More Definite Statement," and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Respondent reserves the right to further amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. A victim’s preference as to the outcome of a criminal investigation is not relevant to the outcome of trial, nor does a victim’s preference require a solicitor to offer a more generous plea offer. As to the victim impact allegation, “[u]nder South Carolina law, victim impact evidence is relevant for a jury to meaningfully assess the defendant’s moral culpability and blameworthiness.” Stone v. State, 419 S.C. 370, 381, 798 S.E.2d 561, 567 (2017)(quotations omitted). In the absence of any *per se* bar,

the admission or exclusion of the victim impact testimony falls squarely within the sound discretion of the trial judge and his or her application of the general rules of evidence. Id., 419 S.C. at 382, 798 S.E.2d at 567-68. Trial counsel timely objected to the admission of the testimony on an appropriate ground under the rules of evidence—relevance—and the trial judge overruled the objection. Tr. 67. Thus, on the record already before the Court, Trial counsel's conduct was well within the scope of competence expected of attorneys. Regardless, the allegation of ineffective assistance of counsel may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC, Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VI.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

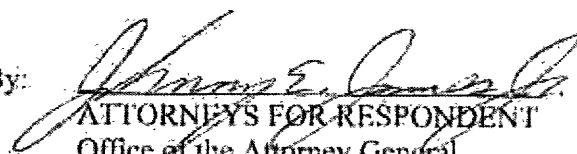
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Attorney General

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Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

13 Oct, 2017

STATE OF SOUTH CAROLINA
COUNTY OF Horry

ZACHARY BULLOCK, #357427,
Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

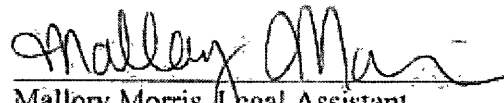
2016-CP-26-2627

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lacey Thompson, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

DATED this 13th day of October, 2017.


Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ZACHARY BULLOCK, #357427
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2016-CP-26-2627

SECOND SUPPLEMENT TO
PCR PETITION

FILED
Horry County
2017 NOV -7 AM 10:27

Petitioner was convicted of first degree burglary on October 8, 2013. He was sentenced on indictment 2012-GS-26-04224 to the State Department of Corrections for a term of fifteen years.

On March 2, 2017, Petitioner filed a Supplement to PCR Petition through his PCR attorney. In addition to the supplement, Petitioner also requests that this Court vacate his burglary first degree conviction for ineffective assistance of counsel based on trial counsel's failure to investigate the case by failing to subpoena Petitioner's phone records.

Petitioner did own and operate a cell phone during the time of the burglary. He had communications with his co-defendants, some of which may have been exculpatory. Trial counsel never subpoenaed these phone records. PCR counsel did subpoena the phone records, however, because of retention policies of the cell phone companies, was unable to retrieve the necessary data for GPS location or text message content. If these records had been obtained, they could have shown the actual relationship Petitioner had with his co-defendants to support that he was not involved in the burglary.

Trial counsel had a duty to make reasonable investigations. In addition to contacting the alleged victims, trial counsel had a duty to investigate records from the defendant that would have shown he did not participate in the burglary.



Lacey Thompson
Attorney for the Petitioner
516 29th Ave. N.
Myrtle Beach, S.C. 29577
843-444-6122

November 1, 2017

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

ZACHARY BULLOCK, #357427
Applicant,

2016-CP-26-2627

v.


AFFIDAVIT OF SERVICE

STATE OF SOUTH CAROLINA,
Respondent.

I certify that on the 1st day of November, 2017, a copy of the Second Supplement to PCR Petition in the case of Zachary Bullock v. State of South Carolina was served by U.S. mail to the following address:

Clerk of Court for Horry County
The Honorable Renee Elvis
P.O. Box 667
Conway, SC 29526

Office of the Attorney General
Asst. AG Johnny James Jr.
PO Box 11549
Columbia, SC 29211


Mindi Ellison
Legal Assistant

FILED
HORRY COUNTY
2017 NOV -7 AM 10:27

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry)

2012-GS-26-04334

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

October 7-8, 2013

ZACHARY BRAXTON BULLOCK,)

Defendant.)

B E F O R E:

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

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

J. Stephen Grooms, Esquire
Attorney for Plaintiff

John M. Hilliard, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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1 (October 7, 2013)

2 THE COURT: All right. Ladies and gentlemen, we are
3 going to pull the jury for the case of the State of South
4 Carolina versus Zachary Braxton Bullock.

5 Now, in this particular matter, the State has charged the
6 Defendant with the crime of burglary in the first degree.
7 Now, how a case comes to court is the State presents an
8 indictment. Now, to this charge, the Defendant has pled not
9 guilty. And normally, we would not publish the -- what is in
10 the indictment but what I'm gonna do is to read to you the
11 substance of the indictment to see if you happen to know
12 anything about this case, have any information that you need
13 to bring to the Court's attention. Before I do that, I need
14 to tell you, the indictment is merely the charging document.
15 The document which brings the matter to court. It is not
16 evidence. It cannot be considered by anyone as evidence in
17 the case. As I've stated, the only reason I'm reading it to
18 you is to see if you happen to know anything about this
19 particular matter or you need to bring something to the
20 Court's attention.

21 Now, the State of South Carolina charging the Defendant
22 with the crime of burglary in the first degree says that
23 Zachary Braxton Bullock did in Horry County on or about
24 January 12th, 2012 enter the dwelling of Joseph Skipper
25 without consent and with the intent to commit a crime therein

VOIR DIRE

1 while -- when in the dwelling or affecting entry, he or
2 another participate in the crime was armed with a deadly
3 weapon in violation of the Code of Laws of the State of South
4 Carolina, 1976, as amended.

5 VOIR DIRE:

6 Is there any member of the jury panel that knows anything
7 about this case, has any information about this case, anything
8 they need to bring to the Court's attention at this time?

9 (REPORTER'S NOTE: No response.)

10 THE COURT: All right. The possible potential witnesses
11 in this particular case are as follows: Officer William Odom,
12 he's formerly of the Horry County Police Department, he's
13 currently employed at a different police department at the
14 present time; Detective Scott Bogart, Horry County Police
15 Department; Detective Alex Smith, Horry County Police
16 Department; De'Aisha Denton; Emmanuel Foriest; Joseph Skipper;
17 Investigator Ginger Pop of the Solicitor's office; Brad
18 Townsend of the Solicitor's office; Zachary Braxton Bullock.

19 Is there any member of the jury panel that's related by
20 blood or marriage, close personal friends, acquaintances of
21 any of these possible or potential witnesses? If so, please
22 stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right. Is there any member of the jury
25 panel that either you yourself or a member of your immediate

1 while -- when in the dwelling or affecting entry, he or
2 another participate in the crime was armed with a deadly
3 weapon in violation of the Code of Laws of the State of South
4 Carolina, 1976, as amended.

5 VOIR DIRE:

6 Is there any member of the jury panel that knows anything
7 about this case, has any information about this case, anything
8 they need to bring to the Court's attention at this time?

9 (REPORTER'S NOTE: No response.)

10 THE COURT: All right. The possible potential witnesses
11 in this particular case are as follows: Officer William Odom,
12 he's formerly of the Horry County Police Department, he's
13 currently employed at a different police department at the
14 present time; Detective Scott Bogart, Horry County Police
15 Department; Detective Alex Smith, Horry County Police
16 Department; De'Aisha Denton; Emmanuel Foriest; Joseph Skipper;
17 Investigator Ginger Pop of the Solicitor's office; Brad
18 Townsend of the Solicitor's office; Zachary Braxton Bullock.

19 Is there any member of the jury panel that's related by
20 blood or marriage, close personal friends, acquaintances of
21 any of these possible or potential witnesses? If so, please
22 stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right. Is there any member of the jury
25 panel that either you yourself or a member of your immediate

VOIR DIRE

1 family has ever had a matter of any kind in any way handled by
2 the Fifteenth Circuit Solicitor's Office, now that's the
3 prosecuting office that prosecutes crimes in Horry and
4 Georgetown Counties. If so, please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Is there any member of the jury panel that's
7 related by blood or marriage, close personal friends,
8 acquaintances of anybody employed in the Fifteenth Circuit
9 Solicitor's Office either here in Horry or in Georgetown
10 County? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Solicitor, if you'd stand and identify
13 yourself, please, sir.

14 MR. GROOMS: My name is Stephen Grooms. I'm a prosecutor
15 with the Horry County Solicitor's Office. Thank you.

16 THE COURT: All right. Very good.

17 Mr. Hilliard?

18 MR. HILLIARD: Thank you, Your Honor. Ladies and
19 gentlemen, my name is John Hilliard. I'm an attorney. My
20 office is in Georgetown. I practice in Georgetown with Katie
21 Loignon. Katie does a hundred percent Family Court practice
22 and I practice primarily in Criminal Court.

23 THE COURT: All right. Is there any member of the jury
24 panel that's related by blood or marriage, close personal
25 friends, acquaintances of these lawyers that have introduced

1 themselves to you or with regards to Mr. Hilliard's private
2 practice of law or his firm's private practice of law, have
3 y'all been clients of his in the past or currently? If any of
4 that pertains to you, please stand at this time.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: All right. Is there any member of the jury
7 panel that you believe that you have any kind of personal,
8 political religious, philosophical belief that you believe
9 would prevent you from being a fair and impartial juror in
10 this case? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: All right. Is there any member of the jury
13 panel that you yourself were a former law enforcement officer
14 or you've got a current family member who is now in law
15 enforcement or was in the past in law enforcement? So, if any
16 of that applies to you, please stand.

17 All right. Very good. Yes, ma'am, in the center there.

18 JUROR 200: My husband is a retired police officer ---

19 THE COURT: I'm sorry. First, I need your name and juror
20 number.

21 JUROR 200: Linda Meseroll, Number 200.

22 THE COURT: All right. Very good. And your husband is
23 ---

24 JUROR 200: A retired police officer from New Jersey.

25 THE COURT: From New Jersey, okay. Can you give to the

1 State of South Carolina and to the Defendant a fair and
2 impartial trial? Can you be a fair and impartial juror in
3 this case?

4 JUROR 200: Yes.

5 THE COURT: Thank you very much, ma'am.

6 Yes, sir?

7 JUROR 167: 167, Joseph Leone.

8 THE COURT: Yes, sir. And do you -- were you a former
9 law enforcement or do you have somebody, a relative who is in
10 law enforcement?

11 JUROR 167: I'm a retired peace officer for the City of
12 New York.

13 THE COURT: All right, sir. Can you give to the State of
14 South Carolina and to the Defendant a fair and impartial
15 trial? Can you be a fair and impartial juror in this case?

16 JUROR 167: Yes, sir.

17 THE COURT: Thank you very much.

18 All right. Anybody else?

19 (REPORTER'S NOTE: No response.)

20 THE COURT: All right. Is there any member of the jury
21 panel that you yourself or a member of your immediate family
22 is a member of any kind of victim's rights or law enforcement
23 support organization? Let me give you some examples now, this
24 is not an exhaustive list of any kind, I'm just trying to give
25 you a couple of examples of what I'm talking about. Mothers

1 Against Drunk Driving, Citizens Against Violent Crime, The Law
2 Enforcement -- South Carolina Law Enforcement Officer's
3 Association, South Carolina Sheriff's Association -- just some
4 kind of victim's rights or law enforcement support
5 organization, you, yourself or a member of your immediate
6 family; if so, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: All right. Very good. The next question,
9 ladies and gentlemen, I'm gonna ask whether you yourself or a
10 member of your immediate family has ever been the victim of a
11 crime. Now, I am not going to ask you what occurred. I do
12 not want you to volunteer any information to me about what
13 occurred. The question is gonna be straightforward. You're
14 gonna tell me it was myself or a family member or both and
15 then I'll ask the qualification question. So, is there any
16 member of the jury panel that either you yourself or a member
17 of your immediate family has ever been the victim of a crime,
18 please stand.

19 All right. Very good. We'll start at the end here.

20 Yes, ma'am, your name and juror number, please.

21 JUROR 75: Pam Dewitt, 75.

22 THE COURT: Yourself or a family member?

23 JUROR 75: Both.

24 THE COURT: All right, ma'am. Can you give to the State
25 of South Carolina and to the Defendant a fair and impartial

1 trial, can you be a fair and impartial juror in this case?

2 JUROR 75: I believe so.

3 THE COURT: All right. And I need from you, ma'am, an
4 absolute yes I can or no I can't.

5 JUROR 75: Yes.

6 THE COURT: Thank you very much, ma'am. Thank you very
7 much.

8 Yes, ma'am?

9 JUROR 107: 107, Annie Grainger, myself.

10 THE COURT: Can you give to the State of South Carolina
11 and to the Defendant a fair and impartial trial? Can you be a
12 fair and impartial juror in this case?

13 JUROR 107: Yes, sir.

14 THE COURT: Thank you very much, ma'am.

15 Yes, sir?

16 JUROR 169: 169, Jerry Loftin, myself.

17 THE COURT: Can you give to the State of South Carolina
18 and to the Defendant a fair and impartial trial? Can you be a
19 fair and impartial juror in this case?

20 JUROR 169: Yes, sir.

21 THE COURT: Thank you very much.

22 All right, going back over here. Yes, ma'am?

23 JUROR 91: Sara Frabizio, Number 91.

24 THE COURT: Yourself?

25 JUROR 91: Both

1 THE COURT: Both of them. All right. Can you give to
2 the State of South Carolina and to the Defendant a fair and
3 impartial trial? Can you be a fair and impartial juror in
4 this case?

5 JUROR 91: Yes, sir.

6 THE COURT: Thank you very much, ma'am.

7 Yes, ma'am?

8 JUROR 197: 197, Meredith McWharter, myself.

9 THE COURT: Can you give to the State of South Carolina
10 and to the Defendant a fair and impartial trial? Can you be a
11 fair and impartial juror in this case?

12 JUROR 197: Yes.

13 THE COURT: Thank you very much, ma'am.

14 All right. Yes, sir?

15 JUROR 13: Juror 13, Ryan Averson, me and my wife.

16 THE COURT: Can you give to the State of South Carolina
17 and to the Defendant a fair and impartial trial? Can you be a
18 fair and impartial juror in this case?

19 JUROR 13: No.

20 THE COURT: All right. Very good. Come up here and talk
21 to me. Counsel, y'all can come on up, please.

22 MR. HILLIARD: Thank you, Your Honor.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the jury but out of hearing of the jury.)

25 THE COURT: All right. I'm sorry.

VOIR DIRE

1 All right. Yes, ma'am, here at the end over here. Yes,
2 ma'am, please.

3 JUROR 219: Juror 219, Terry Newton.

4 THE COURT: And was it yourself or a family member?

5 JUROR 219: Myself and my husband.

6 THE COURT: All right. Very good. Can you give to the
7 State of South Carolina and to the Defendant a fair and
8 impartial trial? Can you be a fair and impartial juror in
9 this case?

10 JUROR 219: Yes.

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

12 All right. Yes, ma'am?

13 JUROR 187: Julia Mastroberti, Juror Number 187. It was
14 myself and our family.

15 THE COURT: All right. Can you give to the State of
16 South Carolina and to the Defendant a fair and impartial
17 trial? Can you be a fair and impartial juror in this case?

18 JUROR 187: Yes, sir.

19 THE COURT: Thank you very much, ma'am.

20 Yes, ma'am, right there.

21 JUROR 336: Constance Wilder, Juror Number 336. It was
22 my son.

23 THE COURT: Can you give to the State of South Carolina
24 and to the Defendant a fair and impartial trial? Can you be a
25 fair and impartial juror in this case?

1 JUROR 336: Yes, sir.

2 THE COURT: Thank you very much, ma'am.

3 All right. Yes, sir?

4 JUROR 11: Leonard Arone, Juror 11, both.

5 THE COURT: Can you give to the State of South Carolina
6 and to the Defendant a fair and impartial trial? Can you be a
7 fair and impartial juror in this case?

8 JUROR 11: Yes, sir.

9 THE COURT: Thank you very much.

10 All right. Yes, sir. Back there.

11 JUROR 167: 167, Joseph Leone, both.

12 THE COURT: Can you give to the State of South Carolina
13 and to the Defendant a fair and impartial trial? Can you be a
14 fair and impartial juror in this case?

15 JUROR 167: Yes, sir.

16 THE COURT: Thank you very much.

17 Yes, sir?

18 JUROR 148: Yes, sir. 148.

19 THE COURT: 148:

20 JUROR 148: Yes, sir.

21 THE COURT: And your name, please, sir?

22 JUROR 148: Larry James.

23 THE COURT: All right, sir. And was it yourself or a
24 family member?

25 JUROR 148: Myself.

1 THE COURT: Can you give to the State of South Carolina
2 and to the Defendant a fair and impartial trial? Can you be a
3 fair and impartial juror in this case?

4 JUROR 148: I don't think so.

5 THE COURT: All right, sir. Come on up and talk to me
6 for just a second, please, sir.

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of the jury but out of hearing of the jury.)

9 THE COURT: All right. My last question, ladies and
10 gentlemen, what I call my general or catchall question. Do
11 you know of any reason, have any question in your mind, any
12 doubt in your mind that you believe you cannot give to the
13 State of South Carolina and to the Defendant a fair and
14 impartial trial? That is for any reason whatsoever you
15 believe you cannot be a fair and impartial juror in this case?
16 If so, please stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: All right. Very good.

19 Further questions from the State?

20 MR. GROOMS: No, sir, Your Honor.

21 THE COURT: Further questions from the Defense?

22 MR. HILLIARD: No, sir, Your Honor.

23 THE COURT: Very good.

24 All right, ladies and gentlemen. How we're gonna proceed
25 now is your names have been placed in a random order and the

1 Clerk of Court is going to call out names. If and when your
2 name is called, what I want you to do is you come forward and
3 you come around and you'll come basically right here in front
4 of the Court Reporter, over here next to the podium and you
5 stand and you turn around and you face to the back of the
6 courtroom. At that point in time, the Clerk will inquire of
7 the State to excuse or present the juror. If you are excused,
8 you'll go back and have a seat from whence you came. If you
9 are presented by the State, the Clerk will inquire of the
10 Defense to seat or excuse the juror. If you're excused, you
11 go back have a seat over there. If you are seated by the
12 Defense, that is accepted, the Clerk will instruct you to go
13 over to the jury box and have a seat as a member of the jury.
14 So, if you happen to have a personal item with you, a book or
15 whatever the purse, whatever the item may be, bring that up
16 with you in case that you are seated you can go directly to
17 the jury box. All right?

18 All right, Madame Clerk.

19 JURY SELECTION:

20 CLERK: Juror Number 280, Wendy Sherman.

21 THE COURT: All right. Very good. Just right -- yeah,
22 right there and just turn around. There you go. Thank you,
23 ma'am.

24 CLERK: What say the State?

25 MR. GROOMS: Please present the juror.

1 CLERK: Defense?

2 MR. HILLIARD: Please seat Ms. Sherman.

3 CLERK: Please be seated in the juror box.

4 104, Arthur Gore.

5 What say the State?

6 MR. GROOMS: Please present the juror.

7 CLERK: Defense?

8 MR. HILLIARD: Please excuse Mr. Gore from this
9 particular case.

10 CLERK: Please be seated. You're excused from this
11 particular case.

12 22, David Bell.

13 What say the State?

14 MR. GROOMS: Please excuse the juror.

15 CLERK: Please be seated, you're excused from this
16 particular case.

17 113, Terrence Groves.

18 What say the State?

19 MR. GROOMS: Please excuse the juror.

20 CLERK: Please be seated. You're excused from this
21 particular case.

22 333, Mandy White.

23 What say the State?

24 MR. GROOMS: Please present the juror.

25 CLERK: Defense?

1 MR. HILLIARD: Please excuse Ms. White from this
2 particular case.

3 CLERK: Please be seated. You're excused from this
4 particular case.

5 38, Shawn Brown.

6 What say the State?

7 MR. GROOMS: Please excuse the juror.

8 CLERK: Please be seated. You're excused from this
9 particular case.

10 219, Terri Newton.

11 What say the State?

12 MR. GROOMS: Please present the juror.

13 CLERK: Defense?

14 MR. HILLIARD: Please excuse Ms. Newton from this
15 particular case.

16 CLERK: Please be seated. You're excused from this
17 particular case.

18 200, Linda Meseroll.

19 What say the State?

20 MR. GROOMS: Please present this juror.

21 CLERK: Defense?

22 MR. HILLIARD: Please excuse Ms. Meseroll from this case.
23 Thank you.

24 CLERK: Please be seated. You're excused from this
25 particular case.

1 107, Annie Grainger.

2 What say the State?

3 MR. GROOMS: Please present the juror.

4 CLERK: Defense?

5 MR. HILLIARD: Please excuse Ms. Grainger from this
6 particular case. Thank you, Ms. Grainger.

7 CLERK: Please be seated. You're excused from this
8 particular case.

9 125, Christopher Heaton.

10 What say the State?

11 MR. GROOMS: Please present this juror.

12 CLERK: Defense?

13 MR. HILLIARD: Please present Mr. Heaton.

14 CLERK: Please be seated in the juror box.

15 57, Sonya Cooper.

16 What say the State?

17 MR. GROOMS: Please present this juror.

18 CLERK: Defense?

19 MR. HILLIARD: Please seat Ms. Cooper.

20 CLERK: Please be seated in the juror box.

21 239, Timothy Powe.

22 What say the State?

23 MR. GROOMS: Please excuse the juror.

24 CLERK: Please be seated. You're excused from this
25 particular case.

1 92, Christine Farry.

2 What say the State?

3 MR. GROOMS: Please excuse the juror.

4 CLERK: Please be seated. You're excused from this
5 particular case.

6 MR. HILLIARD: Do I understand the strikes are ---

7 THE COURT: Y'all come up here and talk to me for a
8 second.

9 (REPORTER'S NOTE: A bench conference was held off the record
10 in the presence of the jury but out of hearing of the jury.)

11 CLERK: 268, Ladawn Samuel.

12 What say the State?

13 MR. GROOMS: Please present this juror.

14 CLERK: Defense?

15 MR. HILLIARD: Please seat Ms. Samuel.

16 CLERK: Please be seated in the juror box.

17 348, Rhonda Woodberry.

18 What say the State?

19 MR. GROOMS: Please present this juror.

20 CLERK: Defense?

21 MR. HILLIARD: Please seat Ms. Woodberry.

22 CLERK: Please be seated in the juror box.

23 86, Barbara English.

24 What say the State?

25 MR. GROOMS: Please present the juror.

1 CLERK: Defense?

2 MR. HILLIARD: Please excuse Ms. English from the trial
3 of this particular case.

4 CLERK: Please be seated. You're excused for this
5 particular case.

6 169, Jerry Loftin.

7 What say the State?

8 MR. GROOMS: Please present this juror.

9 CLERK: Defense?

10 MR. HILLIARD: Please excuse Mr. Loftin from the trial of
11 this particular case.

12 CLERK: Please be seated. You're excused from this
13 particular case.

14 6, Nidia Anderson.

15 What say the State?

16 MR. GROOMS: Please present this juror.

17 CLERK: Defense?

18 MR. HILLIARD: Please excuse Ms. Anderson from the trial
19 of this particular case.

20 CLERK: Please be seated. You're excused from this
21 particular case.

22 235, Ronald Peterson.

23 What say the State?

24 MR. GROOMS: I'm sorry. What was the number?

25 CLERK: 235, Ronald Peterson.

1 MR. GROOMS: Please present this juror.

2 CLERK: Defense?

3 MR. HILLIARD: Please seat Mr. Peterson.

4 CLERK: Please be seated in the juror box.

5 91, Sarah Fabrizio.

6 What say the State?

7 MR. GROOMS: Please present this juror.

8 CLERK: Defense?

9 MR. HILLIARD: Please excuse Ms. Fabrizio from this case.

10 CLERK: Please be seated. You're excused from this

11 particular case.

12 37, Katherine Brown.

13 What say the State?

14 MR. GROOMS: Please present this juror.

15 CLERK: Defense?

16 MR. HILLIARD: Please seat Ms. Brown.

17 CLERK: Please be seated in the juror box.

18 167, Joseph Leone.

19 What say the State?

20 MR. HILLIARD: May we approach, Your Honor?

21 THE COURT: Yes, sir.

22 MR. HILLIARD: Thank you.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the jury but out of hearing of the jury.)

25 CLERK: What say the State?

1 MR. GROOMS: Please present this juror.

2 CLERK: Defense?

3 MR. HILLIARD: Please excuse Mr. Leone from the trial of
4 this particular case.

5 CLERK: Please be seated. You're excused from this
6 particular case.

7 246, Michael Raley.

8 What say the State?

9 MR. GROOMS: Please present this juror.

10 CLERK: Defense?

11 MR. HILLIARD: Please seat Mr. Raley.

12 CLERK: Please be seated in the juror box.

13 197, Meredith McWhorter.

14 What say the State?

15 MR. GROOMS: Please present this juror.

16 CLERK: Defense?

17 MR. HILLIARD: Please seat Ms. McWhorter.

18 CLERK: Please be seated in the juror box.

19 11, Leonard Arone.

20 What say the State?

21 MR. GROOMS: Please present this juror.

22 CLERK: Defense?

23 MR. HILLIARD: Please seat Mr. Arone.

24 CLERK: Please be seated in the juror box.

25 159, Danny King.

1 What say the State?
2 MR. GROOMS: Please present this juror.
3 CLERK: Defense?
4 MR. HILLIARD: Please seat Mr. King.
5 CLERK: Please be seated in the juror box.
6 334, Michael White.
7 What say the State?
8 MR. GROOMS: Please present this juror.
9 CLERK: Defense?
10 MR. HILLIARD: Please seat Mr. White.
11 THE COURT: All right, gentlemen, we'll have two
12 alternates. It'll be one and two on each alternate, please.
13 MR. HILLIARD: Thank you, Your Honor.
14 CLERK: 336, Constance Wilder.
15 What say the State?
16 MR. GROOMS: Please present this juror.
17 CLERK: Defense?
18 MR. HILLIARD: Please seat Ms. Wilder.
19 CLERK: Please be seated in the juror box.
20 152, William Johnson.
21 What say the State?
22 MR. GROOMS: Please present this juror.
23 CLERK: Defense?
24 MR. HILLIARD: Please excuse Mr. Johnson from this
25 particular case.

1 CLERK: Please be seated. You're excused from this
2 particular case.

3 299, James Steele.

4 What say the State?

5 MR. GROOMS: Please present this juror.

6 CLERK: Defense?

7 MR. HILLIARD: Please seat Mr. Steele.

8 CLERK: Please be seated in the juror box.

9 THE COURT: All right, Ms. Wilder and Mr. Steele, y'all
10 have been selected as the alternates in this particular case.

11 All right?

12 All right. Any objections to the jury as empaneled from
13 the State?

14 MR. GROOMS: No, sir, Your Honor.

15 THE COURT: From the Defense?

16 MR. HILLIARD: None, Your Honor.

17 THE COURT: Very good. I find the jury has been
18 empaneled pursuant to Batson vs. Kentucky and JEB vs. Alabama.

19 BY THE COURT:

20 All right. Ladies and gentlemen, what we're gonna do now
21 is I'm gonna send you back to the jury room to do an important
22 thing and that is select your foreperson. Let me tell you
23 very briefly what the foreperson's duties and responsibilities
24 are. If we're here in the courtroom and the jury needs
25 attention to some matter or detail, the foreperson will raise

1 their hand and get the Court's attention and we'll handle the
2 matter, whatever it is. And if you're back in the jury room
3 and some matter comes up, the foreperson will take the pad and
4 pen provided, write out a note, sign it, hand it to the
5 Bailiff. It'll come to me and again we'll handle the matter
6 whatever it might be.

7 When we have concluded the evidentiary portion of the
8 trial and we've heard the opening statements of the attorneys,
9 we've heard all the witnesses that are gonna testify in this
10 case, all of the documentary evidence that's gonna be
11 introduced has been introduced. Then we hear the closing
12 arguments of the attorneys and then we -- you will hear the
13 law that you will apply to the facts and evidence you find to
14 be true in this case. And after that, I'll submit the case to
15 you for your deliberations and your unanimous decision in this
16 particular matter. At that point in time, the foreperson's
17 duties and responsibilities change in this regard. The
18 foreperson is gonna act like the chairperson. Hopefully,
19 there's no need to keep good order, but an important duty that
20 the foreperson has is to make sure that everybody that wants
21 to has an opportunity to speak. Everybody's voice has an
22 opportunity to be heard. Now, the foreperson's voice and vote
23 carries no more weight than any other member of the jury.
24 Everybody is on an equal plane in that regard but somebody
25 does need to be in charge. Again, if some question or matter

1 comes up, the foreperson again takes out that pad and pen and
2 writes out the note, gives it to the Bailiff and we'll handle
3 the matter, whatever it might be. The final duty and
4 responsibility of the foreperson is once the jury has well and
5 truly deliberated in this case and you have reached your
6 unanimous decision in this particular matter, the foreperson
7 will take the verdict form that the Court will provide to you
8 and check the appropriate block or write out the appropriate
9 word, thereafter signing their name as the foreperson
10 indicating that verdict is indeed the unanimous verdict of
11 each and every member of the jury in this particular case.
12 So, understanding what the duties and responsibilities of the
13 foreperson are, I'm gonna ask you to go back to the jury room,
14 select your foreperson, knock on the door, let the Bailiff
15 know who that foreperson is. Now, again, Ms. Wilder and Mr.
16 Steele, y'all can vote on the foreperson but being the
17 alternates, y'all cannot be the foreperson. All right?

18 If y'all will go back the jury room, select your
19 foreperson and let us know.

20 Thank you very much.

21 (REPORTER'S NOTE: The jury exits courtroom. 12:36 P.M.)

22 THE COURT: All right. Ladies and gentlemen of the jury
23 panel that were not selected for this particular case, I am
24 gonna need for you to go back downstairs to the jury assembly
25 room. Judge Cottingham is gonna select his jury for the Civil

1 Court at this point in time. I've just sent my Clerk to let
2 Judge Cottingham know, so y'all know that he knows and he'll
3 have you come up to his courtroom shortly. So, if y'all would
4 go downstairs to the jury assembly room, please, and await a
5 call from Judge Cottingham. Thank you very much.

6 (REPORTER'S NOTE: The remaining jury panel exits courtroom.
7 12:37 P.M.)

8 THE COURT: All right. Just to remind y'all, I'm sure
9 y'all know but just remember, when the jury comes in and out,
10 if y'all would remain seated when the jury leaves and enters.
11 All right.

12 MR. HILLIARD: Yes, sir.

13 THE COURT: Thank y'all.

14 All right. Anything from the State at this point in
15 time?

16 MR. GROOMS: Your Honor, are you asking in reference to
17 pre-trial matters or ---

18 THE COURT: Yes, sir.

19 MOTIONS:

20 MR. GROOMS: Your Honor, just a few -- not necessarily
21 motions but, Your Honor, in this case we have two cooperating
22 codefendants.

23 THE COURT: All right.

24 MR. GROOMS: They have roughly nine charges apiece
25 related to different burglaries that were committed where this

1 codefendant or -- this Defendant is the codefendant in those
2 cases. I'd ask that Mr. Hilliard be restricted from talking
3 about these other charges. Your Honor, I think it would be
4 overly prejudicial to talk about the nine he has pending and
5 not be able to talk about the ten that this Defendant has.
6 They're all codefendants.

7 THE COURT: Well, were those taken into consideration
8 regarding the -- their status? I mean, have they pled guilty
9 to anything? Have they been offered any ---

10 MR. GROOMS: Your Honor, the first one, De'Aisha Denton
11 has not pled to anything. She has an open indictment for
12 burglary first in this case as well as others.

13 THE COURT: Okay.

14 MR. GROOMS: All her charges are open. The male,
15 Emmanuel Foriest has entered into a proffer agreement. He's
16 pled to burglary second in this case and is awaiting
17 sentencing.

18 THE COURT: All right. And in regards to that, what
19 happened to the other charges that he was facing when he pled
20 guilty in the one matter?

21 MR. GROOMS: They are still open but they were part of a
22 proffer agreement.

23 THE COURT: All right. Very good. Well, let me hear
24 from you, Mr. Hilliard.

25 MR. HILLIARD: Thank you, Your Honor. Judge, of course,

1 the critical part of that is the credibility of the witness is
2 affected by the benefit that they derive from their agreement
3 with the government and their testimony. Part of their
4 agreement with the government and their testimony is in
5 anticipation that the balance of their cases will be
6 dismissed, certainly for the person I'll call Manny, his
7 agreement is that his cases will be dismissed with the
8 exception of the fact that he pled to burglary second
9 nonviolent and this ---

10 THE COURT: How about the person that hasn't pled to
11 anything and is awaiting trial or resolution on all matters?
12 Are they in a different status than that particular person in
13 any way, do you believe?

14 MR. HILLIARD: I don't believe they're in a different
15 status, Judge. I anticipate that she anticipates that her
16 cases will be dismissed and, in fact, it is my belief that she
17 believes that she will plead guilty to some accessory charge
18 and then the balance of her cases or her pending charges in
19 this case will be dismissed as well as she was re-arrested and
20 upon her re-arrest, she was then bonded out again and those
21 cases are pending as well. My thinking is, again, that her
22 thinking is that she's gonna testify here today and plead
23 guilty to one accessory and everything else will go away.

24 THE COURT: All right. I appreciate the request of the
25 State but I believe it is proper for the witnesses' full

MOTIONS

1 extent of their exposure to be explored by the Defense. Now,
2 I would limit it somehow but as to whether or not they are
3 facing those charges, I think it is necessary for the jury to
4 understand and look at their answers in light of what they are
5 facing and their credibility and believability. I understand
6 they are not convictions but since there is a connection to
7 this Defendant and since they are facing other charges, I
8 believe that they should be -- that matter should be raised in
9 front of the jury.

10 Now, Mr. Hilliard, obviously, you're gonna need to be
11 careful in how you answer or ask the questions because you
12 could very well get an answer that would include your
13 Defendant based upon how you, again, ask the question. And it
14 might be a proper answer and by how you've asked the question,
15 you may waive any objection you have to their answer. So, you
16 know, you -- I'm not gonna tell you how to ask the questions
17 but obviously you need to understand that and explain that to
18 your client and, you know, keep that in mind when you're
19 asking questions.

20 Now, it might very well be that you want to ask the
21 person if they are facing, you know, nine other charges or in
22 some way, but the more explicit your question, the greater
23 risk you run that their answer will include your Defendant.
24 And again, you having asked the question, you may waive any
25 objection to it.

1 MR. HILLIARD: In that regard, Judge, we would ask that
2 Your Honor instruct the prosecutor to instruct his witnesses
3 not to mention any ---

4 THE COURT: Well, it depends on how you ask the question,
5 you know. You may ask the question in such a way that it
6 calls for them to include your client in the answer. So, I'm
7 not gonna so instruct them. It all depends on how you ask the
8 question. Now, you can ask the question that brings out
9 they've got other criminal charges -- that they are facing
10 other criminal charges and you can ask them and do you hope
11 that the one person that hasn't entered into a proffer
12 agreement, do you hope that the State's gonna give you some
13 leniency and they're either gonna dismiss those and let you
14 plead to something else or -- you know, you can ask questions
15 but the more specific you get, the greater risk you run and
16 that's just gonna be how it is. All right?

17 MR. GROOMS: Thank you, Your Honor.

18 MR. HILLIARD: Judge, could we have a situation where the
19 prosecutor will instruct his witness prior to giving that
20 answer that we could have an in camera hearing regarding the
21 content of my questions. Obviously, it is my sincere intent
22 not to step on that particular landmine. But at the same time
23 and without the benefit of the sophistication or the absence
24 of sophistication on the part of a witness, it would certainly
25 be reasonable for their mind to include the notion that, well,

1 yeah, I'm charged with ten things but so is he, which is true,
2 but he's the Defendant facing a trial with no responsibility
3 of testifying and they are testifying cooperating witnesses
4 whose testimony is subject to cross examination and scrutiny
5 whereas he can exercise his right not to testify and is not
6 subject to any scrutiny at all. They occupy different classes
7 that concern ---

8 THE COURT: They do. And again, if you are asking
9 general questions that you are facing other charges, then I'm
10 sure the State is gonna be talking to their witness and to be
11 truthful to that and not to expound on any answer. But again,
12 if you bring up a matter in your questions that calls upon
13 them to give an answer that might include your Defendant, I
14 can't protect you from that. That's your job as the attorney.
15 You're an able and skilled defense attorney, I know you know
16 how to ask questions and I'm gonna leave it to you and your
17 skill to do so. Thank you.

18 MR. HILLIARD: Thank you, Your Honor.

19 MR. GROOMS: Thank you, Your Honor. The second matter is
20 under res gestae, Your Honor. These Defendants were all
21 arrested together while committing another burglary and I
22 would like to be able to ask my Defendants when they were
23 arrested and who were they with. And it goes to show the
24 impletteness of the crime and show the relation between the
25 codefendants and the Defendant. Your Honor, they were

1 arrested by while committing a burglary. This was a month
2 later. I realize it's not within hours or a day but I believe
3 it does show the complete picture of how these three know each
4 other and if what they were doing on this day goes to show
5 capability of the crime that he's on trial for.

6 THE COURT: Mr. Hilliard?

7 MR. HILLIARD: Thank you, Your Honor. Judge, if you
8 wanted to try that case, certainly we could be trying that
9 case but that's a different -- that's a different set of
10 circumstances and it is certainly substantially more
11 prejudicial than it is probative in the sense that it's a --
12 it is proof from an additional and different crime that we're
13 not trying here today. I very specifically asked the
14 prosecutor which crimes we would be trying here today and he
15 picked this one. So, I would submit to the Court, Your Honor,
16 that it would be inappropriate for him to elicit testimony
17 regarding a separate and independent crime for which the
18 Defendant is not being tried for.

19 THE COURT: Solicitor, you cannot go into particulars of
20 crimes for which he is not facing a penalty at this point in
21 time. You -- I don't see how it's part and parcel of the
22 crime for which he is charged.

23 MR. GROOMS: Very well, Your Honor. I would request that
24 I be able to ask when you were arrested and who were you with
25 -- I think that doesn't get into additional crimes, it

1 certainly talks about they were arrested and charged in this
2 crime, when they were arrested, who they were with. They were
3 all three together.

4 THE COURT: Mr. Hilliard? I mean, obviously, your client
5 has been arrested, so I mean, that -- that's not a fact that
6 could prejudice -- cause any prejudice to him, be prejudicial
7 to him. As long as the question is confined to at the time
8 that you were arrested by law enforcement, who were you with
9 and not go into any details or particulars about what was
10 going on at the time. I don't see how that would be a
11 problem. How would that be a problem, Mr. Hilliard?

12 MR. HILLIARD: Just so that I can understand what we're
13 talking about, he's talking about asking his cooperating
14 witnesses that at the time that they were arrested, and they
15 were arrested together ---

16 THE COURT: Right.

17 MR. HILLIARD: Who were they with?

18 THE COURT: Who, right.

19 MR. HILLIARD: And it will dovetail and certainly it
20 would be sensible for a jury to infer that if three people are
21 charged with this crime and three -- and two people are
22 arrested and my client is also obviously arrested because he's
23 here, that they were committing a crime at that point and in
24 particular, that's one of the crimes that they are charged
25 with, so ---

1 THE COURT: I fail to -- you know, without further
2 explanation, I fail to see how that could be. They could've
3 been at a convenience store or they could've been at
4 somebody's house, they could've been wandering down the
5 street. Just because they're all arrested all at the same
6 time doesn't mean they were doing anything other than they
7 were all together indicates that the witness that is
8 testifying knows your client and therefore would lend some
9 credibility or believability to other testimony that that
10 witness might have about on January 12th, 2012, the crimes for
11 which he is charged. We were all together and this was going
12 on, that it wasn't just some unknown John Doe down the street
13 that wandered in and here we are and we all get arrested. So,
14 I'm gonna allow the State to say -- ask the question, At the
15 time that you were arrested by law enforcement, who were you
16 with, but you have got to be extremely careful, Solicitor --
17 we're not going into any further details about what was going
18 on, where they were, what they were doing, and the answer
19 better not include any of that.

20 MR. GROOMS: Yes, sir, Your Honor.

21 THE COURT: All right. Very good.

22 MR. GROOMS: That's all I have, Your Honor.

23 THE COURT: All right. Mr. Hilliard?

24 MR. HILLIARD: Thank you, Your Honor. Judge we would ask
25 that the witnesses be sequestered.

MOTIONS

1 THE COURT: Any problem with that, Solicitor?

2 MR. GROOMS: Your Honor, I would just like my lead
3 detective to be here, the other witnesses ---

4 THE COURT: Any issue with that, Mr. Hilliard?

5 MR. HILLIARD: No, sir, Judge, that's standard.

6 THE COURT: All right. Very good. Well, I don't know
7 that there are gonna be any defense witnesses, but it would be
8 a sequestration, that's mutual then. Okay?

9 MR. GROOMS: Thank you, Your Honor.

10 THE COURT: All right. Anything else, Mr. Hilliard?

11 MR. HILLIARD: One other thing, Judge, and I sort of
12 hesitate to bring this up but I don't know whether to say
13 anything about it or not. There was one juror that as they
14 were leaving, it was Juror Steele, one of the last ones that
15 we put on, it seemed to me that he made eye contact with the
16 Solicitor and I don't know whether she knows him or doesn't
17 know him but it seemed that there was an exchange of smiles.
18 If Your Honor would just inquire as to whether she knows that
19 individual or does not.

20 THE COURT: Who was it?

21 MR. HILLIARD: Steele.

22 THE COURT: Oh, the alternate, okay, one of the
23 alternates.

24 Solicitor Elder, do you know Mr. James D. Steele?

25 MS. ELDER: Not at all, Your Honor, and I believe he was

1 talking to one of the jurors directly behind me. I think they
2 may've been talking about something that ---

3 THE COURT: Something ahead -- okay. Very good.

4 MR. HILLIARD: And that's why I hesitated to bring it up,
5 Judge, I just -- I meant no ---

6 THE COURT: It's fine. That's fine. You understand the
7 situation, so ---

8 MR. HILLIARD: Thank you. Yes, sir. Thank you, Your
9 Honor.

10 THE COURT: We're good. Okay.

11 All right.

12 MR. GROOMS: Your Honor ---

13 THE COURT: Yeah.

14 MR. GROOMS: I don't know if we can address this. Are we
15 gonna take a break. I got my witnesses ---

16 BY THE COURT:

17 THE COURT: Oh, we're definitely taking a break because
18 at two o'clock, I'm supposed to take some other pleas. So, I'm
19 gonna -- on cases that are on the trial roster, apparently
20 some people are ready to go forward and plead on cases that
21 are on the trial roster and if they are, I'm gonna take them
22 and make sure that the individual either pleads or not pleads
23 and we know exactly where that case is on the trial roster.
24 So, I'm gonna do those at 2 o'clock. And it may end up being
25 one, it may end up being five. I don't know how many there's

1 gonna be. So, I want to do all of those until we're done.

2 So, I'm gonna tell this jury to come back at 3 o'clock.

3 MR. GROOMS: Okay.

4 THE COURT: So, they're not coming back till 3 o'clock.

5 MR. GROOMS: Thank you, Your Honor.

6 MR. HILLIARD: Good enough.

7 THE COURT: Do we know who the foreperson is?

8 BAILIFF: Yes, sir.

9 THE COURT: All right. Great.

10 All right. Gentlemen, the foreperson is Juror Number
11 348, Rhonda Woodberry, Juror Number 348, Rhonda Woodberry has
12 been named as the foreperson by the jury in this case.

13 All right, gentlemen, I'll see y'all back at 3 o'clock.
14 Thank you very much.

15 MR. GROOMS: Thank you, Your Honor.

16 MR. HILLIARD: Thank you, Your Honor.

17 (RECESS - 12:55 P.M.)

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

19 (On the Record. - 3:19 P.M.)

20 THE COURT: All right. Is the State ready for the jury?

21 MR. GROOMS: Yes, sir, Your Honor.

22 THE COURT: Defense?

23 MR. HILLIARD: Yes, sir. We're waiting on one of my --
24 one of my staff members went to the restroom. They'll be here
25 in just one second.

1 THE COURT: Ask the jury to come on in. Thank you very
2 much.

3 MR. GROOMS: Your Honor, would you like for us to go
4 ahead and sequester our witnesses?

5 THE COURT: Go ahead and do that then.

6 MR. HILLIARD: Thank you, Judge.

7 MR. GROOMS: Everybody except for the lead detective,
8 correct?

9 THE COURT: That's correct. And the victim.

10 (REPORTER'S NOTE: The jury enters courtroom. 3:21 P.M.)

11 THE COURT: All right. Ms. Woodberry, the jury has
12 selected you to be the foreperson; is that correct?

13 JUROR 348: That's correct.

14 THE COURT: All right. Very good. All right. I will
15 just always need for you as well as the two alternates to
16 always occupy those particular chairs when you come back from
17 the jury room. The rest of you, ladies and gentlemen,
18 wherever it is that you happen to come in to the courtroom,
19 you can occupy those seats. There's no other assigned seats
20 except for the foreperson and the two alternates.

21 The very first thing that's going to happen in this case
22 is the Clerk is going to administer your oath to you. So, if
23 you would all please stand at this time.

24 CLERK: Please raise your right hands.

25 (REPORTER'S NOTE: JURY IS DULY SWORN.)

1 THE COURT: All right, ladies and gentlemen, we are going
2 to commence the case now of the State of South Carolina versus
3 Zachary Braxton Bullock on the charge of burglary in the first
4 degree. Now, I told you that and just remind you that the
5 indictment was the charging document, the document which
6 brought the mater into court. It wasn't evidence and can't be
7 considered as evidence. The evidence will be presented to you
8 from witnesses that come before you under oath and testify in
9 this particular matter as well as any other type of
10 documentary or other type of physical evidence that might be
11 introduced in this particular case. How we will proceed in
12 this particular matter is when I get done with these brief
13 statements you, we'll have the opening statements of the
14 attorneys. The opening statements as well as the closing
15 arguments, those are not evidence and they cannot be
16 considered as evidence in this case. They are merely the
17 position of the attorneys relative to the facts of this
18 particular case. They are not testifying; they're trying to
19 give you their position. The evidence will be as it comes
20 from the witnesses and again any other type of physical
21 evidence that might be introduced. When we get done with the
22 opening statements, we'll have the evidentiary portion of the
23 trial. When we have concluded the evidentiary portion of the
24 trial, we'll have the closing arguments of the attorneys,
25 which again are not evidence and can't be considered as

1 evidence, they're each side's summation of what they believe
2 the facts have shown to you. And then I will charge you the
3 law, give you the law that you will apply to the facts and
4 evidence you find to be true in this particular case and then
5 I will submit the case to you, give the case to you for your
6 deliberations and your unanimous decision in this particular
7 matter.

8 The reason I went over this basic outline of the trial is
9 to tell you that during the course of it, certain things may
10 arise. There may be certain motions or objections made by the
11 Defense attorney or by the State regarding particular matters
12 that are happening in the course of the trial. One of my
13 duties is to govern the conduct of the trial, that is how it
14 will proceed. You and I have two different roles. While I
15 govern the conduct of the trial am. and the judge of the law,
16 giving you the law which would apply, you essentially are the
17 judges of the facts of this particular case. Collectively,
18 you will find the facts you find to be true and base your
19 decision upon them. So, if the Court rules on any matters in
20 your presence and I don't send you to the jury room so I can
21 talk to the lawyers more fully about it, please remember I'm
22 not making any comments on the facts because that's not my job
23 -- that is your job and your responsibility -- I'm about some
24 other duty and responsibility do I have in giving them a
25 ruling, a direction as to how the matter will proceed but I'm

1 not making any comments on the facts.

2 Now, in your job as the judges of the facts, one of your
3 jobs is to judge credibility and the believability of
4 witnesses that come before you, people that are testifying
5 under oath before you. And you might be thinking, well, how
6 am I gonna judge somebody's credibility of believability? You
7 do it every single day of your life. When somebody tells you
8 something, you're automatically judging whether or not you
9 believe them. You use your good common sense. You use your
10 good judgment that you use in conducting your own affairs.
11 That's exactly what we're gonna be asking you to do here
12 today, during the course of the trial. Use your good common
13 sense. Apply it to what you hear. Find those facts and that
14 evidence that you believe to be true and then you're gonna
15 have to take that evidence you believe to be true and weigh it
16 against the State's burden. The State brought this case
17 against the Defendant. The State must prove the case to you
18 beyond a reasonable doubt. That is the State's job and
19 responsibility. The Defendant has nothing to prove to you.
20 The Defendant has nothing to show to you. As a matter of
21 fact, the Defendant need not show up for trial because they
22 don't have anything to show to you. It is the State's
23 complete burden to prove the Defendant guilty of the crime or
24 crimes charged beyond a reasonable doubt. So, at the end of
25 the trial, we'll be asking you to collectively judge the

1 facts, find the facts you find to be true, weigh that evidence
2 you find to be true against the State's burden to prove the
3 Defendant guilty beyond a reasonable doubt and render your
4 true and just verdict based upon that.

5 I will ask you not to talk about this case until I send
6 it to you at the very end. If you were to discuss it during a
7 break after we heard one or two witnesses or however many,
8 you'll be making comments, forming opinions before you've
9 heard all the evidence in the case, before you know the law
10 that you have to apply to the facts and evidence you find to
11 be true. So, you talk about anything else you want to but not
12 about this case until I send it to you at the very end.
13 You'll have all the time you deem necessary to talk about the
14 case before you come up with your unanimous verdict in this
15 particular matter.

16 Now, in conjunction with the State having to prove the
17 Defendant guilty beyond a reasonable doubt, the Defendant is
18 presumed innocent of the charges the State has brought against
19 him unless and until at the very end you believe from the
20 evidence that has been presented you find to be true and the
21 law that I have told you to apply to those facts and evidence
22 you find to be true, you believe the State's -- the State has
23 proved the Defendant guilty beyond a reasonable doubt. Then
24 and only then does this presumption of innocence end.

25 We understand and have tasked you with an awesome job and

1 we understand that. I know that you will give to the State
2 and to the Defense and to all evidence presented, your
3 complete attention because that's what we're gonna need
4 because you're gonna have to make your decision on what you
5 hear in the courtroom, the facts and evidence you hear in the
6 courtroom. So, with that, and knowing that you will abide by
7 your oath, I'm gonna turn it over to the lawyers for their
8 opening statements.

9 Solicitor?

10 MR. GROOMS: Thank you, Your Honor.

11 OPENING BY MR. GROOMS:

12 MR. GROOMS: Ladies and gentlemen, on January 12th, 2012,
13 this Defendant did break into the home of Mr. Joseph Skipper.
14 This isn't just any home; this is his neighbor's home. And he
15 didn't do this by himself, he had two people with him.

16 Normally, in a trial, you'll see actual items of
17 evidence. In this trial, it's kind of unique, you're gonna
18 actually hear testimony from the people who burglarized that
19 home. You're gonna hear testimony from the person who was
20 inside that home with the Defendant and you're gonna hear
21 testimony from the person who drove them there to that house
22 with the intent to burglarize it, with the intent to steal a
23 gun.

24 Now, in South Carolina when you break into a residence,
25 of course, that's a burglary. When you break into a home

1 during the daytime, it's burglary second. Now, there's
2 aggravated factors involved which make this a burglary in the
3 first degree. One which of is if you break into a home in
4 South Carolina with a gun, meaning -- or any weapon, you are
5 armed -- or when you in that home you become armed. In this
6 case, the Defendant and his Codefendants broke into this home
7 looking for a gun, found that gun. When they take that gun
8 into their possession, they are therefore guilty of burglary
9 in the first degree.

10 I'm not gonna get very long-winded. It's my job with the
11 State to prove to what happened. It's pretty simple. I just
12 put up the witnesses. In this case, they'll tell you what
13 happened; they were there. You don't have to believe every
14 word that they say but I think you'll understand that they're
15 telling you the truth. They were arrested and when Detective
16 Bogart went and talked with them, they gave statements
17 immediately. They said exactly what happened. Here's what
18 happened; I was in the wrong; here's who I was with. Those
19 same statements, they're gonna repeat to you again today and
20 Detective Bogart is here and he's gonna tell you if there's
21 any difference in them.

22 So, hopefully, we won't keep you that long. I'm gonna
23 try to keep it short and to the point and let you get back to
24 your daily lives. Once again, I'm gonna prove this is
25 burglary in the first degree. This Defendant did plan, did

OPENING BY MR. HILLIARD

1 recruit people to help him with this burglary, he did execute
2 that plan and broke into his neighbor's home while he was away
3 at work. And when he did that, he did take a firearm and
4 therefore became armed.

5 Thank you.

6 THE COURT: All right. Mr. Hilliard?

7 MR. HILLIARD: Thank you, Your Honor.

8 OPENING BY MR. HILLIARD:

9 MR. HILLIARD: Well, so far, we have heard from the Judge
10 that nothing that the lawyers say to you is evidence and then
11 we have the Solicitor tell you a little bit about what he
12 thinks the evidence is gonna show. And he says to you that
13 the folks who -- that his evidence will show that the folks
14 who broke in the house had my client with them and that they
15 fessed up and now they're gonna come here and talk to you
16 about it and then the case is gonna be over. It's gonna be
17 short, sweet and simple.

18 One of the Judge -- one of the things that the Judge told
19 you was that part of your job and duty and responsibility as
20 you put all this together is to judge the credibility of the
21 witnesses. Now, the prosecutor also told you that you didn't
22 have to believe everything that his witnesses tell you. What
23 about that? What about a fellow who is gonna put up his
24 witnesses starting off by saying that you don't have to
25 believe everything they're gonna say? When the Judge says use

1 your good common sense when you're deciding how to judge the
2 credibility or believability -- credibility is just
3 believability. How do you do that? How do you bring your
4 commons sense to bear? When you do that, ladies and
5 gentlemen, the evidence will show in this case that the
6 witnesses that the prosecutor is gonna put up here to tell you
7 that my client is a thief, those witnesses are thieves. The
8 evidence will show that those witnesses are liars. The
9 evidence will show that those witnesses have a substantial, a
10 substantial reason to tell you what -- something other than
11 the truth. The thing he didn't tell you was what kind of deal
12 did they get? What kind of bargain did he make with them?
13 What kind of substantial benefit do they get out of telling
14 their story? What reason do they have to lie, to tell you
15 something other than the truth? When you're judging
16 credibility of the witnesses, what motive do they have not to
17 tell the truth? That's one of the ways to judge the
18 credibility of the witnesses.

19 And ladies and gentlemen, that's what this case is about.
20 There are not gonna be a lot of witnesses in this case but
21 when you're making a determination -- one of the things that
22 the law requires is that the prosecutor be fair. One of the
23 prosecutor's responsibilities is to -- he may strike harsh
24 blows but he may not strike unfair blows; he has to be fair.
25 I'll ask you as you go through this case and listening to this

1 testimony and make a determination about a proper and
2 appropriate verdict as the Judge told you, to think about
3 what's fair, to think about what's fair and reasonable. And
4 to think about what reason that these witnesses have to tell
5 you something other than the truth. There is no evidence in
6 this case other than a very small group of photographs and
7 perhaps a couple of other things. There's no gun. There's no
8 fingerprints. There's nothing other than a couple of people
9 who say, yeah, I did it and he did it with me but I want to
10 home and I want him to go to prison.

11 Thank you.

12 THE COURT: All right. Solicitor, your first witness,
13 please, sir.

14 MR. GROOMS: I'm sorry, Your Honor?

15 THE COURT: Your first witness, please.

16 MR. GROOMS: Thank you. Your Honor, the State calls
17 Officer Odom.

18 MR. HILLIARD: Who?

19 MR. GROOMS: Officer Odom.

20 MR. HILLIARD: Okay.

21 BLAKE ODOM, HAVING BEEN DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK: Please state your name and spell your last name
24 for the Court.

25 MR. ODOM: Blake Odom, O-D-O-M.

1 DIRECT EXAMINATION OF BLAKE ODOM BY MR. GROOMS:

2 Q: Thank you, Officer Odom. Can you please tell the jury
3 where you're -- where you work?

4 A: I'm currently a police officer with Mt. Pleasant Police
5 Department in Mt. Pleasant, South Carolina.

6 Q: Thank you. Where did you work during January of 2012?

7 A: Horry County Police Department.

8 Q: All right. And what was your role as a Horry County
9 Police?

10 A: Patrol Officer.

11 Q: All right. And how long have you been in that position?

12 A: Three years.

13 Q: Three year? What were your general duties, as I guess --
14 you were patrol?

15 A: Yes.

16 Q: What were you general duties on patrol officer?

17 A: Respond to 911 calls, generally.

18 Q: Did you go through any particular training and education
19 at this position?

20 A: Yes, sir.

21 Q: Could you please tell the jury what that is?

22 A: South Carolina Criminal Justice Academy.

23 Q: All right. Were you working on January 12th, 2013?

24 A: Yes, sir.

25 Q: All right. And can you tell me if you received any calls

1 in regards to why we're here today?

2 A: Yes, sir.

3 Q: All right. Please just tell the jury what the nature of
4 that call was.

5 A: We received a call that a house had been broken into, a
6 burglary call.

7 Q: All right. And what was the address?

8 A: I don't recall off the top of my head.

9 MR. GROOMS: Your Honor, can I give the witness a copy of
10 his report to refresh his memory?

11 THE COURT: Would that help you to refresh your memory,
12 sir?

13 A: Yes, sir.

14 THE COURT: All right. You may do so. You want to show
15 that to Mr. Hilliard, first, please.

16 BY MR. GROOMS:

17 Q: Thank you. Would you tell the jury what the address,
18 please, sir.

19 THE COURT: Excuse me. First, officer, you may use the
20 report to refresh your memory, you may read over it, you may
21 not testify from it.

22 A: Okay.

23 THE COURT: You can look it over and put it down and
24 answer the questions. Thank you.

25 BY MR. GROOMS:

1 Q: All right. Did you respond to ---

2 THE COURT: I got it. I got it. That's good.

3 Q: Did you respond to burglary in the Hunter's Ridge section
4 of Horry County?

5 A: Yes, sir.

6 Q: Thank you. Where is Hunter's Ridge?

7 A: It is off the Forestbrook Road area.

8 Q: All right. And what county is that?

9 A: Horry County.

10 Q: Thank you, sir. What happened when you arrived?

11 A: I arrived on-scene and met with the victim and he pointed
12 out to the rear of his residence where the back sliding door
13 glass was shattered.

14 Q: Okay. And so you -- you testified it was a burglary
15 call.

16 A: Yes, sir.

17 Q: And you were able to determine what you thought was the
18 entry point?

19 A: Yes, sir.

20 MR. HILLIARD: I've reviewed the pictures already, Judge.
21 We have no objection.

22 THE COURT: All right, sir.

23 MR. GROOMS: Your Honor, I'd like to approach with the
24 pictures.

25 BY MR. GROOMS:

1 Q: I'm going to show you a series of pictures. Can you tell
2 me if you recognize these?

3 A: Uh-huh (affirmative response). I do.

4 Q: You do?

5 A: I do.

6 Q: All right. And are those pictures that you took that
7 day?

8 A: Yes, sir.

9 Q: Would you say that's a fair and accurate representation
10 of the home when you responded?

11 A: Yes, sir.

12 MR. GROOMS: Your Honor, I'd like to move to have those
13 entered into the case in chief.

14 THE COURT: Any objection to that, Mr. Hilliard?

15 MR. HILLIARD: No, sir, Your Honor. No objection.

16 THE COURT: All right. Let's state in the record what
17 the exhibit numbers are.

18 MR. GROOMS: Your Honor, this is State's Exhibits One
19 through Five, being photographs.

20 THE COURT: All right. One through Five are in evidence
21 without objection.

22 STATE'S EXHIBIT NUMBERS ONE THROUGH FIVE

23 ADMITTED INTO EVIDENCE

24 THE COURT: You may proceed.

25 MR. GROOMS: Thank you, Your Honor.

1 BY MR. GROOMS:

2 Q: Tell me what's been -- please tell the jury what's been
3 marked as State's Exhibit Number One.

4 A: Number One is the rear sliding glass door. As you can
5 tell a decorative brick at the bottom, that was used to
6 shatter it.

7 Q: Thank you. And obviously, this is a little closer up?

8 A: Closer up picture of the brick.

9 Q: Thank you. State's Exhibit Number Three.

10 A: And as I walked around the residence and checked on the
11 neighbor's residence, I found a -- as you can see an empty
12 spot where there's a similar brick in their yard.

13 Q: Thank you, sir. State's Exhibit Four and Five, please.

14 A: Number Four, what you see here is the dresser that was
15 located in the master bedroom, I believe where the handgun was
16 taken from. And Five is the dresser that is also located in
17 the master bedroom.

18 Q: Okay. Thank you very much.

19 MR. GROOMS: Your Honor, may I publish these to the jury?

20 THE COURT: You may do so.

21 MR. GROOMS: Thank you. Feel free to look at those and
22 pass them around.

23 THE COURT: Solicitor.

24 BY MR. GROOMS:

25 Q: Officer Odom, what was reported missing from the home?

1 A: A Glock handgun, I believe an Apple iPod, computer,
2 Toshiba laptop and also a TV and a necklace.

3 Q: Thank you. What was your involvement as far as -- I
4 guess your investigation during this burglary?

5 A: I'm sorry. Can you repeat that?

6 Q: What did you do when you responded?

7 A: First of all, when I responded, I did a protective sweep
8 of the residence and then I lead into my investigation and
9 attempted to lift latent prints off the objects I believed he
10 touched.

11 Q: All right. How does that work?

12 A: Typically, we take, you know, the print kit that we're
13 given at the -- for the police department, from the police
14 department and you dust and you lay tape and try to lift
15 prints.

16 Q: Thank you. Detective, were you able to speak with any --
17 anyone about a possible lead in this case?

18 A: No, sir.

19 Q: Thank you. What did you do with the case other than what
20 you've testified to? What's the next step?

21 A: I notify my Sergeant and I believe he notifies the
22 detectives.

23 Q: What were the results of the fingerprints you took?

24 A: The results -- I had negative results.

25 Q: And negative meaning?

1 A: I was unable to lift them due the general size of the
2 area and the -- I guess, texture.

3 Q: Unable to lift a usable print.

4 A: Print, yes.

5 Q: All right. And you -- so, you reported your
6 investigation and turned it over to your Sergeant; is that ---

7 A: Yeah, and I believe he further pushed it to the
8 investigators.

9 Q: Okay. Thank you. Is that the extent -- was that your
10 entire involvement in this case?

11 A: Yes, sir.

12 Q: Thank you, sir. Please answer any questions Mr. Hilliard
13 may have.

14 THE COURT: Cross examination.

15 MR. HILLIARD: Thank you, Your Honor.

16 CROSS EXAMINATION OF BLAKE ODOM BY MR. HILLIARD:

17 Q: How many TVs were stolen?

18 A: I believe one, as I recall.

19 Q: Could you take a look -- do you have your incident report
20 there?

21 A: I do.

22 Q: Take a look at Page 4.

23 A: Yes, I see a -- yeah, twenty-four-inch flat screen.

24 Q: Right. There at the very bottom where it says property
25 notes, do you see that?

1 A: Yes.

2 Q: And what does that say?

3 A: Okay, it's three, three twenty-four inch unknown brands.

4 Q: Does that refresh your recollection that three twenty-
5 four-inch TVs were allegedly taken?

6 A: It does.

7 Q: And when it says you were unable to obtain latent prints,
8 you didn't actually try to take any fingerprints, did you?

9 A: Like I said, the general area that -- that he -- that
10 looked to be opened that he opened, and the decorative brick,
11 due to the structure of it, I was unable to, you know, get any
12 prints off of them.

13 Q: All right, sir. But ---

14 A: Yeah, I ---

15 Q: What that means is you didn't try to take any
16 fingerprints because you didn't think you'd be able to take
17 any?

18 A: No, I did not.

19 Q: That's true?

20 A: Yes, sir.

21 Q: And as to the determination at the time that you did the
22 incident report, this was indicated as a burglary second
23 degree; isn't that correct?

24 A: Yes.

25 Q: So, at the time, it was a burglary second degree?

1 A: I'm aware, yes, sir.

2 Q: Did you make any investigation of the area there to
3 determine how the folks may have gotten -- how the folks who
4 broke into the house may have gotten to the backdoor?

5 A: There's a gate to the backyard area, yes, sir.

6 Q: All right, sir. Did you look to see if there were trails
7 or tracks or anything like that?

8 A: Huh-uh (negative response), no; there was grass, no.

9 Q: Excuse me just one second.

10 THE COURT: Yes, sir.

11 Q: Thank you, sir.

12 THE COURT: Any redirect?

13 MR. GROOMS: No, sir, Your Honor. We'd ask that this
14 witness be excused from his subpoena.

15 THE COURT: Any objection?

16 MR. HILLIARD: No objection.

17 THE COURT: All right, sir. You're released from your
18 subpoena and may go back to your regular duties. If you'd
19 just give the report back.

20 All right. Your next witness, please, sir.

21 MR. GROOMS: Thank you, Your Honor. The State would call
22 Joseph Skipper.

23 THE COURT: All right, sir. Please come around and meet
24 the Clerk right up here, please, sir.

25 JOSEPH SKIPPER, HAVING BEEN DULY

1 SWORN, TESTIFIES AS FOLLOWS:

2 CLERK: Please state your name for the Court.

3 MR. SKIPPER: Joseph Skipper.

4 THE COURT: All right, Solicitor.

5 MR. GROOMS: Thank you, Your Honor.

6 DIRECT EXAMINATION OF JOSEPH SKIPPER BY MR. GROOMS:

7 Q: Mr. Skipper, where are you from?

8 A: Horry County, Conway.

9 Q: Thank you. And how long have you lived here?

10 A: My whole life, thirty-two years.

11 Q: Thank you. Mr. Skipper, where did you live during
12 January of 2012?

13 A: 4194 High Brass Covey.

14 Q: Thank you, sir. Let me show you a map, if you could, Mr.
15 -- Judge, I've already shown this to Mr. Hilliard. It's just
16 a map of the area.

17 THE COURT: All right, sir.

18 Q: Can I get you -- would you point out for the jury where
19 your residence is on that map?

20 THE COURT: Do you want to put it in?

21 MR. GROOMS: Yes, Your Honor. For ID purposes, Your
22 Honor, this will be State's Exhibit Number Seven.

23 THE COURT: All right, sir.

24 MR. GROOMS: Thank you.

25 MR. GROOMS: Can everybody see that? Mr. Hilliard?

1 MR. HILLIARD: Yes, sir.

2 BY MR. GROOMS:

3 Q: Okay. You pointed out this star. Can you tell me, who
4 is your neighbor?

5 A: Who was my neighbor?

6 Q: Who was your neighbor?

7 A: Zachary Bullock.

8 Q: Zachary Bullock, did he live by himself?

9 A: No, his parents, his mom and stepdad live next-door.

10 Q: Thank you. Who did you live with in that residence?

11 A: Me and my then girlfriend. Now, she's my wife.

12 Q: All right. Does she have any children?

13 A: Yes, a five-year-old and a two-year-old.

14 Q: Thank you. Is the picture I showed you a fair
15 representation of the neighborhood?

16 A: Absolutely.

17 MR. GROOMS: All right. I guess we need to get that
18 marked. I'm sorry, Your Honor.

19 THE COURT: All right, sir. This is just for
20 identification at this time?

21 MR. GROOMS: Yes, sir, Your Honor.

22 THE COURT: Very good.

23 STATE'S EXHIBIT NUMBER SEVEN

24 MARKED FOR IDENTIFICATION

25 BY MR. GROOMS:

- 1 Q: Have you ever met the Defendant before?
- 2 A: Yes, sir.
- 3 Q: Just seen him around the neighborhood?
- 4 A: Yes, sir
- 5 Q: How long did you live in this neighborhood?
- 6 A: About ten months.
- 7 Q: Ten months? Okay. Where do you work?
- 8 A: I work for Horry County School District.
- 9 Q: And what are your hours there?
- 10 A: At the time that this happened, it was 12 noon to 10:30
- 11 in the evening.
- 12 Q: That's 9 -- I'm sorry, not 9:00 to 5:00 -- that's Monday
- 13 through Friday?
- 14 A: Monday through Thursday, four ten-hour work days, off
- 15 Friday, Saturday, Sunday.
- 16 Q: Thank you. And what about your wife, does she work?
- 17 A: Yes, she teaches second grade. She works 7:30 to 3
- 18 o'clock Monday through Friday.
- 19 Q: All right. Would she have been working during January?
- 20 A: Yes, sir.
- 21 Q: Okay. Do you have an alarm on your house?
- 22 A: No.
- 23 Q: All right. Did you have any signs saying you had an
- 24 alarm?
- 25 A: No, sir.

1 Q: What were you doing on January 12th, 2012?

2 A: I left to go to work at 11:30 as always. -And I went to
3 the shop and I got -- when I got a phone call, I was on top of
4 the roof of St. James Middle School, changing the air filters.

5 Q: And you got a phone call. Please tell the jury what you
6 mean by when you got a phone call?

7 A: Oh, I got a phone call from my soon-to-be sister-in-law
8 who lived across the street about the broken glass.

9 Q: What did your sister-in-law tell you?

10 A: She told me that -- we had a trampoline in the backyard
11 and she told me she had sent the kids over -- they wanted to
12 go jump and she sent them over. When they got back there,
13 they seen the glass was broken. They run back home, told her
14 and she called me and I told her to call 911.

15 Q: Okay. What did you do next?

16 A: I got off the roof and hurried home as fast as I could
17 get there.

18 Q: And when you got there, what did you find?

19 A: The brick was through the back glass and ---

20 Q: I'm gonna show you what's been marked as State's One
21 through Five.

22 A: Yeah. This was -- that's the back of the house, that's
23 the back patio. There's a -- I guess it's a six to eight-foot
24 white fence around the backyard. It has three gates.

25 Q: Which -- could you please tell the jury -- you may have

1 to stand up if that's all right, Judge -- which side of the
2 house you're talking about?

3 A: The ---

4 THE COURT: All right. You're gonna have to be in front
5 of a microphone, so ---

6 Q: I'll ---

7 THE COURT: Move it and put it in front of a microphone.
8 That's fine.

9 A: Let's see -- if you're standing right here, this is the
10 front of the house. If you standing in the front of the
11 house, there's a gate on the left side and the right side and
12 in the very back. When I got there, I went in the gate on the
13 left and walked around the backyard and I seen it was broken
14 but I wasn't going in the house because I didn't know if
15 anybody was in the house, so I waited on the police to get
16 there. And he went in and when he come out and said we could
17 go in, we all went in and just kind of looked around to see
18 what was missing.

19 Q: Who is we all? Who ---

20 A: Just me. I ---

21 Q: You and officer?

22 A: Yeah, me and him. Actually, I didn't go in until he come
23 out.

24 Q: I got you. So you testified as to what State's Exhibit,
25 I believe, One was. Would you mind -- I'll try to make it a

1 little easier -- do you recognize that?

2 A: Absolutely.

3 Q: And please tell the jury ---

4 A: This was the paver, through the backdoor -- this is
5 actually the spot it was in; it never actually got moved when
6 these pictures were taken.

7 Q: Thank you. And you can identify this?

8 A: Yes, this is the -- if you're standing in front of the
9 house, Zach Bullock's house is on the right-hand side. This
10 is the paver that's right beside -- that was right beside my
11 fence on the right-hand side.

12 Q: Thank you. And just two more. Hold on just a second.
13 Please describe for the jury the condition of the home.

14 A: Sorry. This is the, I guess you'd call it a hope chest.
15 I'm not sure what you call it but I kept my gun on the top
16 shelf because I had a five-year-old -- I got a five-year-old.
17 And it was in plain sight but it was out of reach but that's
18 all that was missing out of here, I think. It's been so long
19 I can't remember.

20 Q: What type of gun was this?

21 A: It was a Glock 36, 45 caliber, subcompact.

22 Q: Would you have kept this gun loaded?

23 A: Absolutely. It was my concealed carry gun but I work at
24 the School District and I couldn't carry it.

25 Q: Okay. What's the second picture there?

1 A: This is just a picture of -- I guess, the dresser with
2 the drawers pulled out and gone through. I guess they were
3 looking for little stuff or -- I don't know what they were ---

4 Q: How would you describe your home that day?

5 A: The master bedroom was probably the dirtiest of the whole
6 house but, I mean, it was gone through bad. There was stuff
7 all over the floor. You know, it was -- it was a terrible
8 feeling.

9 Q: All right. Was there -- was there any way for someone
10 from the outside to have known that you had a gun?

11 MR. HILLIARD: Objection to the form of the question.

12 THE COURT: Rephrase the question.

13 BY MR. GROOMS:

14 Q: Did anyone know you had a gun?

15 MR. HILLIARD: Objection to the ---

16 THE COURT: I'm gonna allow that. Go ahead.

17 Q: Anyone know you had a gun from the outside of your
18 residence?

19 A: Absolute, yes.

20 Q: Please explain to the jury how that was.

21 A: Well, I have a 2010 four-door Z71. And on the front of
22 that truck, I had a Glock Perfection license tag which was the
23 same brand as the gun I had. I had purchased several shirts
24 also and I had it on the front of my truck.

25 MR. GROOMS: Your Honor, I'd like to approach with

1 State's Exhibit Number Six.

2 THE COURT: All right, sir.

3 MR. GROOMS: Referenced in discovery.

4 BY MR. GROOMS:

5 Q: Can you identify what State's Exhibit Number Six is?

6 A: Yes. This is the tag that's was on the front of my
7 truck. That is the Glock symbol ---

8 Q: Just identify it. Is that the plate that was there in
9 January?

10 A: Oh, yeah, this is it.

11 MR. GROOMS: Your Honor, I'd like to have that moved into
12 discovery as well.

13 THE COURT: Have you shown it to ---

14 MR. HILLIARD: He has, Judge.

15 THE COURT: Any objection?

16 MR. HILLIARD: Yes, sir. We object to that as to
17 relevance.

18 THE COURT: I'm gonna allow it into evidence. What is it
19 marked as?

20 MR. GROOMS: State's Exhibit Number Six, Your Honor.

21 THE COURT: All right, sir. State's Six is in evidence
22 over the objection of Defense.

23 MR. GROOMS: Thank you.

24 STATE'S EXHIBIT NUMBER SIX

25 ADMITTED INTO EVIDENCE

1 BY MR. GROOMS:

2 Q: As you were saying, that license plate was where?

3 A: It was on the front of my truck.

4 Q: And when you pull in your driveway, how do you park it?

5 A: It varies. Depends on if I have anything to do in the
6 morning because usually I'll do stuff before I go to work.
7 Sometimes, I back it in, sometimes I pull it in.

8 Q: Thank you. Were you able to recover any of the items,
9 excuse me, that were stolen from your home?

10 A: No, sir, not one thing.

11 Q: Where do you live today?

12 A: I live in Conway.

13 Q: How long did you live in this residence?

14 A: I lived here about ten months at High Brass Covey.

15 Q: Okay. And why did you move?

16 A: We actually ---

17 MR. HILLIARD: Relevance, objection.

18 THE COURT: I'm gonna allow it. Go ahead.

19 A: We actually -- the night, the day that it happened, we
20 actually went and stayed with some friends that night because
21 there was a big gaping hole in the back of the house and I --
22 we actually got a house in Conway the very next day and moved.
23 We didn't sleep another day in that house.

24 Q: Would it be safe to say that it's taken quite a toll on
25 your family?

1 A: Absolutely.

2 Q: Thank you, Mr. Skipper. Please answer any questions Mr.
3 Hilliard may have.

4 THE COURT: Cross examination.

5 MR. HILLIARD: Thank you, Your Honor.

6 CROSS EXAMINATION OF JOSEPH SKIPPER BY MR. HILLIARD:

7 Q: When you're describing this house that we're talking
8 about, it didn't start out -- let me ask the question maybe a
9 better way -- Your girlfriend at the time lived in that house
10 before you did; is that correct?

11 A: Before I did?

12 Q: Right, before you came to that house, your girlfriend
13 lived there?

14 A: No, we lived there the whole time together.

15 Q: She was married at that point in time; is that correct?

16 A: No, she was divorced.

17 Q: She was divorced?

18 A: Yes, sir.

19 Q: The whole time that you and she lived there?

20 A: Oh, no, at first she wasn't but she did get divorced.

21 Q: And in fact, you didn't park your truck there all the
22 time; isn't that true?

23 A: Pretty much every day.

24 Q: But not all the time?

25 A: Yeah, for probably eight of the ten months, yeah.

1 Q: All right, sir. So, some of the time, you didn't park
2 your truck there?

3 A: Maybe two out of the ten months.

4 Q: All right, sir. And when you say to the Solicitor the
5 fact that you had a license plate on your truck that said
6 Glock, does that mean you have a gun?

7 A: I don't know if it means you do but I did have a gun.

8 Q: You had a gun and you had a license plate, but the
9 Solicitor's question as I recall was, was there any indication
10 that you had a gun in your house. Do you remember him asking
11 you that question?

12 A: Was there indication that I had a gun in the house? I
13 mean, I didn't have a sign out in front of the house.

14 Q: Right. And the fact that you had a license plate on your
15 car doesn't really mean you have a gun?

16 A: Well, Zach Bullock knew I had a gun in the house.

17 Q: For example, I have a sticker here that says, I love my
18 Glock. That doesn't mean I have a gun, right?

19 A: True.

20 Q: And a picture of a Glock doesn't mean I have a Glock -- a
21 sticker -- right?

22 A: Right.

23 Q: And all the rest of these Glock stickers, they don't
24 really mean anything about whether I have a gun or not, right?

25 A: Uh-huh (affirmative response).

1 THE COURT: Is that a yes or a no, sir?

2 A: Yeah, yeah, right.

3 Q: So, the fact that you had a license plate that says Glock
4 doesn't really mean anything at all, does it?

5 A: No, I don't guess it does; no, sir.

6 Q: Before this event occurred, you had already told your
7 landlord you were moving; isn't that true?

8 A: No, sir.

9 Q: That's not true?

10 A: No, sir, because we were under a lease.

11 Q: I'm sorry?

12 A: We were under a lease and this happened in January. We
13 were under a lease until April and he let us out because this
14 occurred.

15 Q: Your testimony here today is that this one event occurred
16 and your landlord let you out of the lease?

17 A: Sir?

18 Q: Your testimony before the jury today is, this one event
19 occurred and your landlord let you out of the lease?

20 A: Right. The lease was up in April.

21 Q: And you moved out the very next day?

22 A: Yes, sir.

23 MR. HILLIARD: May we approach the bench, Your Honor?

24 THE COURT: Yes, sir.

25 (REPORTER'S NOTE: A bench conference was held off the record

1 in the presence of the jury but out of hearing of the jury.)

2 BY MR. HILLIARD:

3 Q: State's Exhibit Number Five, the dresser, that's not
4 where the gun was; is that right?

5 A: No, sir.

6 Q: That was ransacked while whoever broke in your house was
7 looking for stuff to steal?

8 A: Right.

9 Q: And State's Exhibit Number Four was -- would you call
10 that chifferobe -- what would you call it?

11 A: I'm not real sure. It's a shelf you can take the shelves
12 out and it's a dresser on the bottom. I don't know what it's
13 called, the technical term.

14 Q: Is that like for a TV or something maybe?

15 A: Yeah, you can take the shelves out and put the TV in it,
16 yes.

17 Q: All right. And the gun was in plain view on this?

18 A: That's correct. I believe it was in this space right
19 here.

20 Q: All right, sir. And there -- nobody would have to
21 ransack your house in order to get the gun, it was in plain
22 view?

23 A: Right.

24 Q: So, clearly the people who were in your house robbing you
25 were trying to steal whatever they could find of value?

- 1 A: Right. That's why the drawers from the dresser were
2 pulled out.
- 3 Q: All right, sir. And how many TVs were taken? Were there
4 three TVs taken?
- 5 A: I believe it was three.
- 6 Q: Three TVs?
- 7 A: Yes, sir.
- 8 Q: So, it's three TVs, a laptop computer, and iPad ---
- 9 A: iPad.
- 10 Q: And a .45 caliber ---
- 11 A: Handgun. I think -- it's been so long I can't remember
12 but I think it was two laptops.
- 13 Q: Two laptops.
- 14 A: I'm not a hundred percent.
- 15 Q: All right, sir. And the gun was in a holster, is that
16 ---
- 17 A: No, sir. No, it was laying up there with nothing.
- 18 Q: No bullets, no ---
- 19 A: Yes, sir. It was fully loaded, one in the chamber.
- 20 Q: But other than that, there were no bullets?
- 21 A: There were bullets in the house but it was not with the
22 gun, no. They did not get the bullets.
- 23 Q: So, whoever robbed your house, didn't steal any bullets?
- 24 A: Right. They were actually under the bed.
- 25 Q: And a Glock pistol, for the purpose of ---

1 A: Sir?

2 Q: I said a Glock pistol for the purpose of us who may not
3 know any better, if you just pick it up -- if that were a
4 Glock pistol sitting right there and I wanted to steal it and
5 I just picked it up and ran away with it, I wouldn't have any
6 way of knowing it was loaded or not, right?

7 A: You probably wouldn't, no, sir. But it weighs almost ten
8 ounces more loaded fully.

9 Q: Right, but if I'm stealing it ---

10 A: You probably are not paying attention.

11 Q: And was -- at one time, did you believe a diamond
12 necklace was stolen?

13 A: Yes.

14 Q: Did it turn out that that had not been stolen?

15 A: I don't know that it ever come back up. I mean, I don't
16 know where it's at. Also, my class ring is missing, too.
17 It's been missing but at the time we filed the report, that
18 was found later that we couldn't find it, later in the
19 evening.

20 Q: All right. Excuse me just one second.

21 THE COURT: Yes, sir.

22 BY MR. HILLIARD:

23 Q: Thank you very much, sir.

24 THE COURT: Redirect?

25 MR. GROOMS: Just briefly.

1 REDIRECT EXAMINATION OF JOSEPH SKIPPER BY MR. GROOMS:

2 Q: Mr. Skipper, what was the value of the necklace Mr.
3 Hilliard was referring to?

4 A: The bad thing is it was my wife's and I didn't wear it.

5 Q: Just ballpark?

6 A: 800 to \$1,000, maybe.

7 Q: Okay. But we're not talking about ---

8 A: No, it wasn't a thousand-dollar piece or nothing.

9 Q: Thank you, sir. I appreciate your time.

10 THE COURT: Okay. You may step down, sir.

11 MR. HILLIARD: No objection to him being excused.

12 THE COURT: Go ahead and have a seat, sir.

13 All right. Who is your next witness, sir?

14 MR. GROOMS: Judge, the State would call De'Aisha Denton.

15 THE COURT: All right, ma'am, if you'd please come up and
16 meet the Clerk all the way up here, please. Come around.

17 DE'AISHA DENTON, HAVING BEEN DULY

18 SWORN, TESTIFIES AS FOLLOWS:

19 CLERK: Please state your name and spell your name for
20 the Court.

21 MS. DENTON: De'Aisha, D-E-A-I-S-H-A, Denton.

22 THE COURT: All right, ma'am. You're gonna need to speak
23 up and speak directly into the microphone. Get close to the
24 microphone and speak up.

25 DIRECT EXAMINATION OF DE'AISHA DENTON BY MR. GROOMS:

- 1 Q: Thank you, Ms. Denton. Please tell the jury where you're
2 from?
- 3 A: Originally, Woodbury, Connecticut.
- 4 THE COURT: You need to speak up, ma'am.
- 5 Q: You have to speak loud; it's a big room. What town or
6 city were you living in during January of 2012?
- 7 A: Surfside Beach.
- 8 Q: Okay. What high school did you go to?
- 9 A: Socastee.
- 10 Q: Do you know the Defendant?
- 11 A: Yes, sir,
- 12 Q: Can you tell me how you know the Defendant?
- 13 A: I met him through friends.
- 14 Q: When was that?
- 15 A: During the school year of January.
- 16 Q: So, when you were high school?
- 17 A: Yes.
- 18 Q: Not asking for a specific date.
- 19 A: Okay.
- 20 Q: Were you -- would did you hang out with Defendant?
- 21 A: Plantation Apartments in Socastee.
- 22 Q: No, I'm saying would you hang out with the Defendant?
23 Were you friends?
- 24 A: Oh, yeah.
- 25 Q: Were you hanging out with the Defendant during late 2011,

- 1 early 2012?
- 2 A: No, we just started hanging out.
- 3 Q: Just had started hanging out?
- 4 A: Yeah.
- 5 Q: Okay. When is the last time you talked with the
6 Defendant?
- 7 A: January 17th, I guess.
- 8 Q: Okay. Do you know Emmanuel Foriest?
- 9 A: Yes.
- 10 Q: What does he go by to you?
- 11 A: Manny.
- 12 Q: Okay. How do you know Manny?
- 13 A: I assume through school.
- 14 Q: Okay. He went to Socastee with you?
- 15 A: No, his sister did but, I mean, just friends that went to
16 Socastee, yeah.
- 17 Q: Okay. Gotcha. What was the relationship with Manny
18 during January of 2012?
- 19 A: He was my boyfriend at the time.
- 20 Q: Okay. What's your relationship with Manny today?
- 21 A: I don't have one.
- 22 Q: When is the last time you talked with Manny?
- 23 A: The last time in January.
- 24 Q: The last time in January?
- 25 A: Yeah.

1 Q: Have you talked to either the Defendant or Manny since
2 you were arrested?

3 A: No.

4 Q: Thank you. Were you contacted by the Defendant in
5 January 2012?

6 A: Yes.

7 Q: And please tell the jury what happened.

8 A: I was just contacted and I was just asked if I was
9 interested in making some money.

10 Q: Okay. Did you meet the Defendant?

11 A: Yeah, we met up.

12 Q: Who were you with when you met the Defendant?

13 A: Manny.

14 Q: Manny, Emmanuel Foriest?

15 A: Yeah.

16 Q: Thank you. Where did you meet him?

17 A: In Plantation, Socastee.

18 Q: Okay. And what did he ask you to do? Why did he want to
19 meet you?

20 A: Drive him to a house so they could burglarize it.

21 Q: And did you agree to this?

22 A: Yes, sir.

23 Q: Where was this house?

24 A: It was near Zach's house.

25 Q: All right. Was this a neighborhood you'd been in

1 before?

2 A: Since -- before the burglary, no, but ---

3 before? No.

4 Q: Okay. All right. So, you testified that yourself and
5 Manny and Zach went to a home near Zach's house. Why did you
6 go to this home?

7 A: They knew there was merchandise in there.

8 Q: All right. Let's just -- little more broad -- tell the
9 jury what happened the day of this burglary, January of 2012,
10 on the 12th.

11 A: Okay. I dropped them off and they went inside and I just
12 drove around, came back and picked them up and they had like a
13 TV, iPad, and a Glock .45.

14 Q: How did you know when to pick them up?

15 A: I received a phone call from one of them.

16 Q: Do you remember which one?

17 A: Manny, I believe.

18 Q: Okay. And was this burglary planned?

19 A: To my knowledge, yes.

20 Q: I mean, you were there, as to your knowledge, you took
21 them to this home -- that's I mean ---

22 A: Yeah.

23 Q: You knew what you were doing that day?

24 A: Yes.

25 Q: Okay. Who picked the house?

- 1 A: Zach.
- 2 Q: And did he say why?
- 3 A: Well, he knew there was a gun in there.
- 4 Q: Okay. Where -- okay, so, Manny and Zach got out of the
5 car and came back with items?
- 6 A: Yes.
- 7 Q: You weren't there when they went in the house?
- 8 A: No.
- 9 Q: Were they wearing gloves when they got out of your car?
- 10 A: I believe so.
- 11 Q: Okay. When they got back in the car, what happened?
- 12 A: When they got back in the car?
- 13 Q: Yes.
- 14 A: We drove off and sold the items.
- 15 Q: And who made the phone call to sell the items?
- 16 A: Zach.
- 17 Q: Who did you sell them to?
- 18 A: Some guy that he knew.
- 19 Q: And where was that?
- 20 A: It was in Socastee.
- 21 Q: Okay. What did you do with the money?
- 22 A: Used it.
- 23 Q: For what?
- 24 A: For like gas and stuff like that.
- 25 Q: I guess, did everybody get a piece of the money?

- 1 A: Yeah.
- 2 Q: Okay. What, if anything, were Zach and Manny talking
3 about when they got back in the car?
- 4 A: We had a lot of stuff but this is what we mainly came for
5 and Zach held up the gun. That's when I knew that there was a
6 gun.
- 7 Q: Said this is what we came for?
- 8 A: Yeah.
- 9 Q: And he held up the gun. Did you see the gun yourself?
- 10 A: Yeah.
- 11 Q: What kind of gun was it?
- 12 A: A Glock.
- 13 Q: Ms. Denton were you arrested and charged in this
14 burglary?
- 15 A: Yes, sir.
- 16 Q: And when you were arrested, who were the people that were
17 with you when you were arrested?
- 18 A: My brother, Zach and Manny.
- 19 Q: Your brother, Zach and Manny, being Emmanuel Foriest?
- 20 A: Yeah.
- 21 Q: Thank you. Were you arrested the day of the burglary?
- 22 A: No.
- 23 Q: Okay. Thank you. When you were arrested, did you tell
24 the police what happened?
- 25 A: Not the arresting officers, no.

- 1 Q: Okay. Who did you talk to?
- 2 A: Detective Bogart and Smith.
- 3 Q: Okay. Thank you. Were you able to show the Detective
- 4 which house they broke into?
- 5 A: Yes.
- 6 Q: And when I say detective, you said two, was Detective
- 7 Bogart there?
- 8 A: Yes.
- 9 Q: When you confessed to the burglary, who did you implicate
- 10 in the burglary?
- 11 A: Zach and Manny.
- 12 Q: As well as yourself?
- 13 A: Yes.
- 14 Q: And is the story that you're telling the jury today the
- 15 same story that you told the police after being arrested?
- 16 A: Yes, sir.
- 17 Q: Were you incarcerated as a result of your arrest?
- 18 A: Yes, sir.
- 19 Q: And how long were you there?
- 20 A: Five months.
- 21 Q: Until you were able to make bond?
- 22 A: Yeah.
- 23 Q: Have you been promised anything to testify here today?
- 24 A: No, sir.
- 25 Q: Are you aware that there is an indictment listing you as

1 a Defendant for burglary in the first degree?

2 A: Yes, sir.

3 Q: Are you aware that that indictment carries potentially
4 serious prison time?

5 A: Yes, sir.

6 Q: And is that the charge you're admitting to today under
7 oath?

8 A: Yes, sir.

9 Q: And are you hoping that your cooperation here today will
10 result in some consideration from the State?

11 A: Yes, sir.

12 Q: Have I promised you anything?

13 A: No, sir.

14 Q: Thank you, Ms. Denton. Please answer any questions Mr.
15 Hilliard might have for you.

16 THE COURT: Cross examination.

17 MR. HILLIARD: Thank you, Your Honor.

18 CROSS EXAMINATION OF DE'AISHA DENTON BY MR. HILLIARD:

19 Q: You have an attorney, right?

20 A: Yes, sir.

21 Q: And your attorney has told you that burglary in the first
22 degree carries a minimum sentence of fifteen years with no
23 parole.

24 A: Yes, sir.

25 Q: So, what you're telling the folks on the jury is that you

1 know that you have just confessed in open court under oath to
2 a crime where the minimum sentence is fifteen years with no
3 parole?

4 A: Yes, sir.

5 Q: And the maximum sentence is life in prison without
6 parole, right?

7 A: Yes, sir.

8 Q: And you know that?

9 A: Yes, sir.

10 Q: Is your lawyer here with you today?

11 A: Yes, sir.

12 Q: So, your lawyer is here with you today, right?

13 A: Yes.

14 Q: You have talked this over with your lawyer?

15 A: Yes.

16 Q: And you don't have any guaranties at all that the
17 prosecutor is gonna give you anything less than the fifteen
18 years no parole that is the minimum?

19 A: No, sir.

20 Q: Would you be surprised if that were to happen?

21 A: No.

22 Q: You wouldn't?

23 A: No, I haven't been promised anything.

24 Q: Yes, ma'am. But would you be surprised if you got
25 fifteen years in prison for testifying here today?

1 A: No.

2 Q: You would not be surprised?

3 A: No, sir.

4 Q: When you were in jail, do you recall how much your bond
5 was?

6 A: 60,000.

7 Q: Pardon?

8 A: 60,000.

9 Q: 60,000. And after you -- and also it required electronic
10 monitoring; isn't that true?

11 A: No.

12 Q: It did not?

13 A: No. When Magistrate Court set the bond as high as it
14 was, 60,000, then when I went to General Sessions, I guess
15 they just ran it concurrent or something but they left it at
16 60,000 and he did a motion for me to be on house arrest also.
17 So, no, I was not on home detention or anything.

18 Q: But at one time, your bond had included a requirement for
19 home detention?

20 A: From Magistrate Court, yeah.

21 Q: For Magistrate. So, in Magistrate's Court you had
22 \$60,000 bond and home detention, right?

23 A: Uh-huh (affirmative response).

24 Q: And you came ---

25 THE COURT: You need to answer yes or no, please, ma'am.

- 1 A: Okay.
- 2 Q: Right?
- 3 A: Yes.
- 4 Q: And you came to the Circuit Court and had your bond
5 modified?
- 6 A: Yes, sir.
- 7 Q: After you agreed to testify, right?
- 8 A: I believe so.
- 9 Q: So, after you agreed to testify, they modified your bond
10 and let you out of jail, right?
- 11 A: My bond was set two months later I received a PR bond.
- 12 Q: Pardon?
- 13 A: I said my bond was set then and then two months later I
14 received a PR bond.
- 15 Q: So, after you agreed to testify they took away your
16 electronic monitoring and gave you a personal recognizance
17 bond, right?
- 18 A: Yes, sir.
- 19 Q: And a personal recognizance bond means you sign your name
20 and you get out of jail, right?
- 21 A: Yes.
- 22 Q: So, you agree to testify to something that you believe
23 could put in prison for fifteen years and the next thing that
24 happens is you get out of jail, right?
- 25 A: Yes, sir.

1 Q: But you're telling the folks on the jury that you would
2 not be surprised ---

3 MR. GROOMS: Objection, Your Honor. This is asked and
4 answered three times and she's talking about ---

5 THE COURT: I'm gonna allow it one more time, Mr.
6 Hilliard.

7 MR. HILLIARD: Thank you, Your Honor.

8 BY MR. HILLIARD:

9 Q: So, having been let out of jail after agreeing to
10 testify, you're telling the folks on the jury that you would
11 not be surprised if you ended up in prison for fifteen years?

12 A: No, sir.

13 Q: Very good. And then the next thing, sometime down the
14 road, you're riding down the road, the blue light comes on,
15 you're pulled over to the side and you are found to be in
16 possession of a weight of drugs which causes you to be charged
17 with what?

18 A: Possession.

19 Q: Possession with intent to distribute?

20 A: I believe that's the charge.

21 Q: Pardon?

22 A: I believe that was the charge, yes.

23 Q: And what else? Do you remember?

24 A: No, sir.

25 Q: Simple possession of another drug perhaps?

1 A: Yes, sir.

2 Q: All right. The car that you're driving at the time that
3 you get rearrested for possession with intent to distribute
4 narcotics, that car that you're driving is the same car that
5 you were driving when this burglary occurred, isn't that true?

6 A: Yes, sir.

7 Q: So, you're in jail, you still have agreed to come here
8 today and testify, right?

9 A: Yes, sir.

10 Q: And you get let out of jail again? Right?

11 A: Yes, sir.

12 Q: You were home last night?

13 A: Yes.

14 Q: All based on the fact that you're coming here today and
15 testifying, right?

16 A: Yes.

17 Q: All right. And your -- can you tell us when was the last
18 time that you smoked marijuana?

19 MR. GROOMS: Objection, Your Honor. Relevance?

20 THE COURT: Y'all come over here and talk to me.

21 MR. HILLIARD: Thank you.

22 (REPORTER'S NOTE: A bench conference was held off the record
23 in the presence of the jury but out of hearing of the jury.)

24 THE COURT: Ladies and gentlemen, y'all go to the jury
25 room, please. Thank you very much.

1 (REPORTER'S NOTE: The jury exits courtroom. 4:27 P.M. The
2 following takes place outside the presence of the jury.)

3 THE COURT: All right. Mr. Hilliard, you can ask your
4 last question again.

5 MR. HILLIARD: Thank you, Your Honor.

6 BY MR. HILLIARD:

7 Q: When was the last time that you smoked marijuana?

8 A: In January of 2012.

9 THE COURT: January -- I'm sorry, I didn't hear the rest
10 of the answer. January when?

11 A: Of 2012.

12 MR. GROOMS: Your Honor, I would object to him showing
13 the pictures. I don't believe any foundation has been laid
14 whatsoever.

15 THE COURT: All right. The jury is not here and I'm
16 gonna allow him to ask the questions. That's the purpose of
17 the jury being out.

18 MR. HILLIARD: Thank you, Your Honor.

19 THE COURT: Go ahead.

20 MR. HILLIARD: Thank you.

21 DEFENDANT'S EXHIBIT NUMBER ONE

22 MARKED FOR IDENTIFICATION

23 BY MR. HILLIARD:

24 Q: Defendant's Exhibit Number One for identification, can
25 you -- let me ask you this question before I do this. Can you

1 tell me what Hunnicutt is?
2 A: It's a female artist's name.
3 Q: Pardon?
4 A: It's a female artist's name.
5 Q: A female artist's name?
6 A: Yeah, that's where I got it from.
7 Q: Okay. Is it also known a type of marijuana?
8 A: No, sir, not that I'm aware of.
9 Q: Very good. Let me show you Defendant's Exhibit Number
10 One and ask if you can identify that?
11 A: Yes, that's myself.
12 Q: That's you?
13 A: Yeah.
14 Q: And what are you pointing at?
15 A: A marijuana stick but that doesn't mean I was smoking it?
16 Q: All right. So, that is a marijuana stick?
17 A: Yeah.
18 Q: And that's you holding it?
19 A: Yes, sir.
20 Q: And you're pointing at it?
21 A: Yeah.
22 Q: And you're smiling?
23 A: It was more like a can-you-believe-this kinda manner, but
24 not like a happy-go-lucky.
25 Q: Not a happy-go-lucky smile?

1 A: No, it was more like unbelievable, like wow, this is
2 unbelievable.

3 Q: Okay. And do you recall when this was on your Instagram?

4 A: The exact date, no.

5 Q: But it was after January of -- after the last time you
6 smoked marijuana?

7 A: Okay, yeah.

8 THE COURT: I'm sorry. I didn't hear the answer, ma'am.

9 A: Yes.

10 Q: Would you pass a drug test right now?

11 A: I mean, I am pregnant, so ---

12 THE COURT: Again, I didn't hear your answer, ma'am.

13 A: I am pregnant, so I mean, yes, I could..

14 Q: And while we're back on Defendant's Number One for
15 identification, all the photographs that would be on
16 Hunnicutt05 would be on your Instagram; is that true?

17 A: Yes, sir.

18 THE COURT: All right. Before we continue, Mr. Hilliard,
19 Solicitor, y'all come up here and talk to me.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 and outside the presence of the jury.)

22 THE COURT: Go ahead, Mr. Hilliard.

23 MR. HILLIARD: Thank you, Your Honor.

24 DEFENDANT'S EXHIBIT NUMBER TWO THROUGH TWENTY-ONE

25 MARKED FOR IDENTIFICATION

1 BY MR. HILLIARD:

2 Q: This is Defendant's Number Two for identification,
3 Hunnicutt05, can you identify that for us, please?

4 A: That's marijuana.

5 THE COURT: I'm sorry, ma'am. I'm having a hard time
6 hearing you. You've got to ---

7 A: It's marijuana.

8 Q: Marijuana on the top and the bottom?

9 A: It's the same, just a different kind.

10 Q: Two different kinds of marijuana and that's all here on
11 your account?

12 A: Yes, sir.

13 Q: And then Number Ten off of your account, can you identify
14 that?

15 A: That's marijuana.

16 Q: Marijuana and a fifty-dollar-bill?

17 A: Yes, sir.

18 Q: And Number Eleven, can you identify that?

19 A: A soda and cigars.

20 Q: And when you say a soda and cigars, those are -- those
21 cigars are commonly called blunts, is that true?

22 A: Just cigars.

23 Q: Those are not the kind of cigars that people ---

24 A: They can.

25 Q: Is that your experience with these cigars?

- 1 A: Yes, sir.
- 2 Q: And how about the Orange Crush soda. Is there a
3 particular specific thing related to the fact that that's an
4 Orange Crush?
- 5 A: No, sir.
- 6 Q: Number Twelve for identification; what is that?
- 7 A: Marijuana.
- 8 Q: And that's with one of those blunt cigars?
- 9 A: A cigar, yeah.
- 10 Q: Pardon?
- 11 A: And a cigar, yes.
- 12 Q: And that's on your -- Number Eight for identification,
13 are those marijuana cigarettes?
- 14 A: No, it's a cigarette, a blunt and a Black & Mild.
- 15 Q: A cigarette, a blunt and a Black & Mild. The blunt being
16 marijuana?
- 17 A: Yes.
- 18 Q: And is that the ashtray in your car?
- 19 A: It was, yes.
- 20 Q: It was the ashtray in your car?
- 21 A: Yes, sir. I don't have a car anymore.
- 22 Q: And then Number Nine, is that your fingernails?
- 23 A: Yes, sir.
- 24 Q: And is that holding a ---
- 25 A: From the previous picture that you first showed, it's a

- 1 piece of what was off of that branch.
- 2 Q: The branch of marijuana?
- 3 A: Yeah.
- 4 Q: And then Number Six is what?
- 5 A: The same picture as that.
- 6 Q: Pardon?
- 7 A: It's the same picture as that, it's just Photoshopped.
- 8 Q: Number Six and Number Two are the same picture.
- 9 A: Yeah, just with the top part cropped.
- 10 Q: Okay. And on the bottom where that says Hunnicutt05, is
- 11 that you? Did you write that?
- 12 A: No.
- 13 Q: But that is your ---
- 14 A: Yeah, it is my name but I didn't write it.
- 15 Q: Do you know who wrote on your ---
- 16 A: One of my friends did when they posted it because that's
- 17 who took the picture.
- 18 Q: So, one on of your friends took the picture and posted
- 19 it?
- 20 A: Yes, sir.
- 21 Q: And what it says at the top is what you -- which is this
- 22 up here and the bottom is what lame people smoke.
- 23 A: Yeah, I guess.
- 24 Q: I'm paraphrasing to ---
- 25 A: Well, yeah, I mean it just sounds like nothing I would

1 say so it's -- I'm like, wow, yeah.
2 Q: But it's on your ---
3 A: Yes, sir.
4 Q: All right. And then Number Seven is the same marijuana;
5 is that right?
6 A: Yeah.
7 Q: And then Number Three, what is that?
8 A: Same thing.
9 Q: But that's a different marijuana, isn't it?
10 A: No, those -- the picture is Photoshopped.
11 Q: Pardon?
12 A: The picture is photoshopped.
13 Q: What does that mean?
14 A: As in there's filter to it, the color change.
15 Q: Say that again, I'm sorry.
16 A: I mean, like when you're on Instagram, like, you can
17 change, like, you can edit your pictures, change the colors,
18 yes.
19 Q: So you edited this picture?
20 A: Yes.
21 Q: And did you write, this is my Christmas tree under it?
22 A: Well, yes.
23 Q: So, on this picture, you Photoshopped the photograph and
24 wrote this is my picture -- this is my Christmas tree under a
25 photograph of a marijuana plant?

- 1 A: Yes, sir.
- 2 Q: Number Four, what is that? Is that a bunch of roaches in
3 ashtray?
- 4 A: Seeds.
- 5 Q: Seeds in an ashtray?
- 6 A: No, that was on the side of a door.
- 7 Q: Inside the door?
- 8 A: It was on the side of a door.
- 9 Q: And Number Five, the same thing?
- 10 A: Yeah.
- 11 Q: How old are you, please, ma'am?
- 12 A: Nineteen.
- 13 Q: Nineteen. And then this is a bottle of Absolut on your
14 Instagram?
- 15 A: Uh-huh (affirmative response); yes, sir.
- 16 Q: Do you drink?
- 17 A: No, sir. My mother is an alcoholic and I don't drink.
- 18 Q: Your mother is an alcoholic and you don't drink?
- 19 A: Yeah.
- 20 Q: And that's a bottle of Absolut Grey on your Instagram; is
21 that right?
- 22 A: Yes, sir.
- 23 Q: And then here's Hennesey and Iroc, mixed drink?
- 24 A: It's Ciroc, and yes, sir.
- 25 Q: I'm sorry Ciroc. IROC, I guess, would be a car.

1 A: I don't know.

2 Q: So, that's Number Fifteen. Number Sixteen on your
3 Instagram, that's another bottle of Hennesey.

4 A: Yes, sir.

5 Q: And Number Seventeen is another bottle of Ciroc with a
6 bag of marijuana?

7 A: Yes, sir.

8 Q: And Number Eighteen is a number of mixed drinks.

9 A: Yes, sir.

10 Q: Number Nineteen is two grades of Hennesey, Grey Goose?

11 A: Yes, sir.

12 Q: Number Twenty is a handgun, right?

13 A: Yes, sir.

14 Q: Is that your handgun?

15 A: No, sir.

16 Q: Number Twenty-one is a red handgun and a regular handgun,
17 right?

18 A: Yes, sir.

19 Q: And Number Thirteen is a marijuana cigarette?

20 A: Yes, sir.

21 Q: And these all came off of your Instagram after the last
22 time you smoked marriage?

23 A: Yes, sir, but some of those pictures were taken before
24 the incident and were put on my Instagram afterwards when I
25 had the proper phone to do it. My pictures were transferred

1 from my phone to an Android phone, a smart phone, so when my
2 pictures could upload a lot easier so, therefore, I was able
3 to edit the ones that wanted up there and a lot of old
4 pictures. So, the time that those were taken were before the
5 incident, some of those.

6 Q: You were smoking marijuana when this incident occurred,
7 were you not?

8 A: Yes, sir.

9 Q: You were smoking marijuana when this happened?

10 A: When the arrest took place, no.

11 Q: No, when the burglary took place?

12 A: No, sir.

13 Q: Well, when I said you were smoking marijuana when this
14 incident occurred ---

15 A: When you clarified, I meant like the exact burglary, so
16 ---

17 Q: When you said yes, when were you smoking marijuana?

18 A: Well, at that point in time, just the time period.

19 Q: Right.

20 A: Yeah, but not at the incident of the crime, no.

21 MR. HILLIARD: Excuse me just second.

22 THE COURT: Yes, sir.

23 BY MR. HILLIARD:

24 Q: At the point in time that this burglary occurred, could
25 you have passed a drug test at that point in time?

1 A: No, sir.

2 Q: You could not?

3 A: No..

4 Q: Is it fair to say that you were under the influence of
5 marijuana at that point in time?

6 A: No, sir.

7 THE COURT: All right. Mr. Hilliard, I assume you want
8 to ask these same questions in front of the jury?

9 MR. HILLIARD: Yes, sir.

10 THE COURT: Tell me the relevance.

11 MR. HILLIARD: Judge, she has said at the -- not to go
12 into it further, we have -- perhaps that would be thing to do
13 at this point if I could ask a few more questions regarding the
14 relevance.

15 THE COURT: All right.

16 MR. HILLIARD: As a threshold position, I would say that
17 she has indicated under oath that she has not smoked marijuana
18 since back in January and yet she has published an
19 extraordinary group of marijuana related photographs on her
20 Instagram account which clearly indicates that she is
21 certainly involved in the marijuana culture and would call
22 into question her veracity regarding whether or not she was
23 smoking marijuana since January of this year. So, we would

24 ---

25 THE COURT: Assume that to be the case, how is that

1 relevant at all to her testimony here about what happened on
2 January 12th, 2012?

3 MR. HILLIARD: It has to do with her credibility as a
4 witness. She has said something that clearly is ---

5 THE COURT: I don't see how it's inconsistent. You're
6 trying to say there's something on the issue of credibility,
7 how is it inconsistent?

8 MR. HILLIARD: Well, she said she didn't smoke marijuana
9 since January and yet here's a substantial amount of evidence
10 that she is certainly involved in the marijuana subculture
11 since January. So, she has said that she doesn't smoke it.
12 Clearly, this is an indication that would cause people using
13 their common sense to believe that in fact she does smoke
14 marijuana and ---

15 THE COURT: Again, what relevance does it have to the
16 crime at hand?

17 MR. HILLIARD: She's testified under oath to something
18 that's not true. Whether it's directly related to the case or
19 not, she's -- I asked her the question ---

20 THE COURT: She hasn't testified to anything under oath
21 in front of the jury.

22 MR. HILLIARD: No, sir, not yet. But I asked her the
23 question and she answered it and we went forward from there.
24 But let me go further ---

25 THE COURT: The only reason it would be relevant is if

1 she was under the influence at this time and there's no
2 indication of that. Continue on.

3 MR. HILLIARD: Thank you, Your Honor.

4 BY MR. HILLIARD:

5 Q: When you were giving a statement to the police officers
6 in this case, this is on July the 2nd of 2013 -- here let me
7 -- this is at Page 17 ---

8 THE COURT: Why don't you ask her a question? She may or
9 not need to refresh her memory.

10 MR. HILLIARD: Thank you, Your Honor.

11 BY MR. HILLIARD:

12 Q: Do you recall the police officers asking you whether or
13 not there was any drug use going on during the point in time
14 that these burglaries were occurring?

15 A: I'm sorry. Can you ask me that again?

16 Q: Yes, ma'am. I'm sorry. Do you recall the police officer
17 who was doing your interrogation asking you whether or not
18 there was any drug use going on when these burglaries were
19 occurring?

20 A: No, sir.

21 Q: You don't?

22 A: No.

23 Q: All right. On Page 17, this is where it says
24 Investigator Townsend, that's who was doing your
25 interrogation.

1 A: Okay.

2 THE COURT: What's your answer, ma'am?

3 A: Okay. Yes.

4 Q: And it says, Okay, any drug use going on or involved?

5 Right?

6 A: Yes, sir. Yes, sir.

7 Q: And then you say, No, sir. And then you say, I mean,
8 they would smoke but I wouldn't smoke.

9 A: Yes, sir.

10 Q: And then it said, Investigator Townsend says, Smoke? And
11 you say, Weed.

12 A: Yes, sir.

13 Q: And then you say, Yeah. And he said, And were they
14 smoking weed at this time? And you said, No, it would be like
15 -- it would always be after cause they would need money or
16 whatever so it would always be after. They weren't under the
17 influence of anything.

18 A: Yes, sir.

19 Q: So, at the point in time that you were going through this
20 process, what you were telling the investigator is that they
21 were smoking marijuana, buying and smoking marijuana during
22 this period of time and that you were not?

23 A: Yes, sir.

24 MR. HILLIARD: And what she said today, Judge, was that
25 in fact she was smoking marijuana during that period.

1 THE COURT: I don't recall that at all.

2 MR. HILLIARD: She said that she could not have passed a
3 drug test very specifically.

4 THE COURT: Okay. Not passing a drug test does not mean
5 she was smoking marijuana. Okay? She could not pass a drug
6 test for any number of reasons.

7 MR. HILLIARD: Let me ask her that question.

8 BY MR. HILLIARD:

9 Q: When you said you -- when I was asking you if you were
10 smoking marijuana and you said you had not smoked at the time
11 of the burglary and I asked you if you could pass a drug test
12 and you said no. Did you mean at that point in time that you
13 could not pass a drug test from marijuana because you were
14 smoking marijuana during that time?

15 A: Yes, sir.

16 MR. HILLIARD: That's what she meant, Judge.

17 THE COURT: All right. Very good. During that time, you
18 asked her was she smoking marijuana at the time of the
19 incident. No. That's what she told the investigators, no,
20 not at the time of the incident. They would do the robberies
21 to get money for drugs.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: Now, if you want to ask her in front of the
24 jury what was the purpose of all these burglaries to get money
25 for drugs, I'll be glad for you to ask that. Of course, that

1 implicates your client too but you can go ahead and ask that
2 question. But other than that, there is no relevance here.
3 There's no relevance to the matter at hand. I'm not gonna
4 allow you to ask these questions in front of the jury or show
5 those Instagram accounts. I do not see any relevance to the
6 particular matter as to the matters she has testified to.
7 Anything else?

8 MR. HILLIARD: Excuse me just a second, Judge.

9 And these will be part of the record, Judge.

10 THE COURT: That's why I let you do it, to develop the
11 record, Mr. Hilliard.

12 MR. HILLIARD: Thank you, Your Honor.

13 THE COURT: Are you ready for the jury to come back in?

14 MR. HILLIARD: If you'll give me just a second, Judge,
15 I'm sorta focused on that and I got to do something different.

16 THE COURT: All right, sir. Can you give me some idea
17 how long you think the cross examination might extend,
18 ballpark?

19 MR. HILLIARD: Depending on what you do, more than an
20 hour.

21 THE COURT: We're gonna stop.

22 Ask the jury to come back in.

23 (REPORTER'S NOTE: The jury enters courtroom. 4:56 P.M.)

24 BY THE COURT:

25 THE COURT: All right. Ladies and gentlemen, when you

1 came here this morning, you obviously did not know whether or
2 not you were gonna be on a jury and it appears we'll be here
3 for some extended period of time with this witness. And since
4 y'all were not prepared regarding that, I'm gonna send you
5 home for the evening because to do otherwise I think would put
6 you under undue burden and I do not intend to do that.
7 Because otherwise you might be here for a long period of time,
8 depending upon how things go. So, I'm gonna send you home.

9 Now, please remember what I told you. You're not
10 investigators, you're not researchers. Do you not look up
11 anything. You must decide the case solely and completely on
12 the facts and evidence presented in the courtroom and from no
13 other source. I'd ask collectively y'all not to talk about
14 this case until I give it to you at the very end. That
15 extends when you leave the courthouse. You cannot communicate
16 with anyone about this case. You can't tell your husband,
17 boyfriend, person down the street, your best friend, whomever.
18 You may not talk about this case. Now, once it's all over
19 with, you can tell them all you want to, as little or as much
20 as you want to. But until the case is over with, you will not
21 communicate with anyone about this case. I would like for
22 y'all to be back -- I've got other hearings, so I'm gonna have
23 y'all be back tomorrow morning at 9:20. Y'all be in the jury
24 assembly room tomorrow morning at 9:20. The Clerk of Court
25 will have something for you in the jury room. They'll bring

1 you up and we'll get started shortly thereafter. But y'all be
2 in the jury assembly room by 9:20, please.

3 Now, while we're here, Madame Forelady -- and I probably
4 should've dealt with this earlier, but you were taking some
5 notes. Were you taking some notes during the course of the
6 trial? Okay. Normally, court procedure is we do not allow
7 the taking of notes unless the opportunity is given to all.
8 We did not start to do that and we also find it's a common
9 practice of people taking notes to pay attention to what
10 they're doing and maybe not pay attention to the next question
11 and the answer which are the -- maybe the most important. So,
12 when you go back to the jury room, I'm gonna ask you to give
13 those to the Bailiff so they can be destroyed.

14 All right. With that, I'll see y'all back tomorrow
15 morning. Thank you very much.

16 (REPORTER'S NOTE: The jury exits courtroom. 4:59 P.M.)

17 THE COURT: All right. We've got a couple of --
18 hopefully, they will not be lengthy hearings if they -- I'll
19 talk to the attorneys in the morning on these criminal matters
20 and if any of them expect them to be of any length, I'll
21 postpone them to a different time. So, I would like y'all to
22 be back at least by 9:20, please, in the morning.

23 MR. HILLIARD: Thank you, Your Honor.

24 THE COURT: Anything further from the State at this point
25 in time?

1 MR. GROOMS: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MR. HILLIARD: No, sir, Your Honor.

4 THE COURT: Now, Ms. Denton ---

5 MS. DENTON: Yes, sir.

6 THE COURT: You're under subpoena, you need to be back
7 here by 9:20 in the morning. You may not talk to anyone about
8 this case in the meantime until tomorrow morning. You may not
9 talk to the Solicitor's office, you may not talk to the
10 Defense, you may not talk to anyone about your testimony
11 regarding this matter until you get back here tomorrow
12 morning. Are we clear about that?

13 MS. DENTON: Yes, sir.

14 THE COURT: Thank you very much.

15 MR. HILLIARD: Thank you, Your Honor.

16 THE COURT: We'll be at ease until then. Thank you.

17 MR. GROOMS: Thank you.

18 (RECESS - 5:01 P.M.)

19 *****OFF THE RECORD*****

20 October 8, 2013

21 (On the Record - 9:33 A.M.)

22 THE COURT: Mr. Hilliard, the issue of bond, your client
23 is currently out on bond?

24 MR. HILLIARD: Yes, sir, Your Honor.

25 THE COURT: Have you communicated with the bonding

1 company to have them state to you that they will stay on the
2 bond during the pendency of the trial?

3 MR. HILLIARD: I have not communicated with them, Judge.

4 THE COURT: All right. Why don't you have your staff do
5 that. If they will not do that then, at lunch, Mr. Bullock
6 will be remanded to the custody of the Sheriff's Department.

7 MR. HILLIARD: Yes, sir, Judge, we'll do that while we're
8 here.

9 THE COURT: Thank you. Ask the jury to come in, please.

10 (REPORTER'S NOTE: The jury enters courtroom. 9:37 A.M.)

11 THE COURT: Good morning, ladies and gentlemen.

12 All right. Ms. Denton, you remain under oath and Mr.
13 Hilliard, you may resume.

14 MR. HILLIARD: Thank you, Your Honor.

15 CONTINUATION OF CROSS EXAMINATION OF DE'AISHA DENTON:

16 Q: Good morning.

17 A: Good morning.

18 Q: Do you recall back on July the 2nd of 2013 when you were
19 giving a statement to Investigator Townsend?

20 A: Yes, sir.

21 Q: And when you were giving a statement to Investigator
22 Townsend it was being audio recorded; is that correct?

23 A: Yes, sir.

24 Q: And you knew it was being audio recorded at the time?

25 A: Yes.

1 Q: And Investigator Townsend was asking you about Zachary,
2 the Defendant Zachary Bullock; is that right?

3 A: I don't remember that.

4 Q: You don't remember him asking you about Zachary?

5 A: No, sir.

6 Q: Do you remember him asking you about Manny?

7 A: No, sir.

8 Q: And who is Manny? Who is Manny?

9 A: Emmanuel Foriest.

10 Q: Emmanuel Foriest?

11 A: Yes, sir.

12 Q: And you don't recall him asking you whether or not Manny
13 was your boyfriend?

14 A: Oh, yes, sir.

15 Q: You do remember that?

16 A: Yes, sir.

17 Q: And he said, is Manny your boyfriend? Right?

18 A: He's not any more. At that point in time he was.

19 Q: But what you told Investigator Townsend at that time was
20 that we were talking but really weren't really dating, we were
21 just talking?

22 A: Yeah.

23 Q: So, at the time that you were making the statement to
24 Investigator Townsend, you were telling him that Manny was not
25 your boyfriend?

- 1 A: Well, it was just a easier label to give him than to say
2 all that.
- 3 Q: I'm sorry. I don't understand.
- 4 A: To say he was my boyfriend was just easier way of just
5 saying, yeah, we were talking, we had relations.
- 6 Q: So, it says -- is it fair to say that what you said was
7 we were talking but really, weren't really dating, we were
8 just talking?
- 9 A: Yes, sir.
- 10 Q: But that wasn't true, was it?
- 11 A: Yes, sir, it was.
- 12 Q: In fact, you and Manny had a substantial relationship?
- 13 A: No, sir.
- 14 Q: You wouldn't say that you were in love with him?
- 15 A: No, sir.
- 16 Q: You wouldn't say that he was in love with you?
- 17 A: I would say that, yeah.
- 18 Q: But you weren't in love with him?
- 19 A: No, sir.
- 20 Q: Would you be trying to trick Manny for any particular
21 reason?
- 22 A: No, sir.
- 23 Q: Do you remember writing Manny a letter while y'all were
24 in jail?
- 25 A: Yes, sir.

1 Q: Let me show you something.

2 MR. GROOMS: Your Honor, could I see if I've seen this
3 before?

4 MR. HILLIARD: Sure.

5 THE COURT: Yes, sir.

6 MR. HILLIARD: Can you mark this for identification.

7 BY MR. HILLIARD:

8 Q: Now, as I understood what you said, what you said was
9 that you were not in love with Manny; is that right?

10 A: Yes, sir.

11 Q: But Manny was in love with you?

12 A: Yes, sir.

13 Q: Let me show you Defendant's Exhibit Number Twenty-two for
14 identification and ask if this is a letter that you wrote to
15 Manny?

16 A: Yes, sir.

17 Q: This is a letter that you wrote to Manny?

18 A: Uh-huh (affirmative response).

19 Q: And the very first line of that letter is what, please?

20 A: It says I love you.

21 Q: So, when you wrote Manny a letter that said I love you,
22 you weren't being truthful with Manny?

23 A: It's not in love.

24 Q: So, being in love and saying I love you are two different
25 things?

1 A: Having love for someone and being in love is two
2 different things.

3 Q: Well, let me ask you to take a look at this letter and
4 read it and see. Are the things that you wrote in this letter
5 true at the time?

6 A: Most of it. I mean, I just had a lot of emotions going
7 on at the time. I mean, I was seventeen. You had a lot of
8 emotions going on at the time?

9 A: Yes, sir.

10 Q: And most of it is true?

11 A: I would say I felt that way at that point in time with
12 how overwhelmed I was, yes, but not -- I mean, I can still
13 honestly say that, no, I was not in love with him.

14 Q: At the point in time that you wrote that letter, you were
15 trying to get out of trouble; is that correct?

16 A: No, sir.

17 Q: And you were trying to help Manny get out of trouble?

18 A: No, sir.

19 Q: Did you want Manny to get out of jail at the same time
20 that you did?

21 A: It would've been nice to see that happen, yeah.

22 Q: And you would help him if you could?

23 A: If I could, I guess.

24 Q: In fact, the story that you tell helps him, right?

25 A: I don't see how.

1 MR. HILLIARD: Your Honor, we'd offer the letter into
2 evidence.

3 THE COURT: Objection?

4 MR. GROOMS: No objection, Your Honor.

5 THE COURT: All right. Very good. It's in evidence
6 without objection.

7 DEFENDANT'S EXHIBIT NUMBER TWENTY-TWO

8 ADMITTED INTO EVIDENCE

9 THE COURT: What number is it, please?

10 MR. HILLIARD: Twenty-two, Your Honor.

11 THE COURT: Defendant's Twenty-two?

12 MR. HILLIARD: Yes, sir.

13 THE COURT: All right. Defendant's Twenty-two is in
14 evidence without objection.

15 MR. HILLIARD: And in that regard, Judge, we have
16 transcribed it. We'd offer -- we have transcribed it and we'd
17 offer the transcription into evidence.

18 THE COURT: No, sir. The original documentation is
19 what's proper.

20 MR. HILLIARD: Thank you, Your Honor. I'd like to
21 publish it, Your Honor.

22 THE COURT: You can have the witness publish it.

23 MR. HILLIARD: Thank you.

24 THE COURT: Have the witness publish it. Have her read
25 her letter.

1 MR. HILLIARD: Thank you, Your Honor.

2 BY MR. HILLIARD:

3 Q: Please read your letter. I guess I have to give it back
4 to you. Would you read this letter to the jury, please?

5 A: The whole thing?

6 Q: Yes, ma'am.

7 A: Wow. It says, I love you. Just thought you should know,
8 I saw you cry for the first time in my life today. That has
9 brought us closer than ever. I know you're scared. I am too.
10 I'm being charged as an accessory. I ---

11 Q: Let me interrupt you at that point. So, at that point,
12 you're saying, I'm being charged as an accessory; is that
13 right?

14 A: Yes, sir.

15 Q: Not burglary in the first degree but as an accessory?

16 A: Yes.

17 Q: Thank you. Go ahead.

18 A: I know you're scared; I am too. Oh, I already read that.
19 When I asked about you, they told me to find a new man. I'm
20 not giving up on us. If I'm out before you, I will ---

21 Q: Wait, you left a part there, didn't you?

22 A: I'm not giving up on us, Baby.

23 Q: Okay.

24 A: If I'm out before you, I will write you every day and
25 visit every visitation day. I can't live or function right

1 now without my better half. You make me fall out of the bed,
2 sing like bird, dizzy in my head. Just the thought of you can
3 drive me wild. You make me smile. Baby, to be honest I don't
4 know if I'm going to survive before I see daylight. They keep
5 denying me medical attention. I haven't eaten or drinken
6 anything since I've been here and I don't see that changing.
7 Like sorry, it's hard to read, it's hard to write when you're
8 crying and have a four-inch pencil to write with. I feel like
9 I'm going insane especially when you're so close but so far at
10 the same time. My cell mate that I've been with since we got
11 in here bonded out while we were at court so I'm alone. I'm
12 trying to be strong but I can't. Knowing that you're hurting
13 and that you could be in here anywhere between one year to
14 life.

15 Am I allowed to curse?

16 Q: Yes, ma'am.

17 A: Okay. That shit fucks me up so bad inside. I love you
18 with all my heart. You should know that but you know I love
19 to show you how much I love you rather than tell you.

20 Oh, my goodness.

21 Your lips felt so good ---

22 Q: Let me interrupt you at that spot. When you say your
23 lips felt so good, when was it that you had kissed him?

24 A: We had kissed before like jail or anything.

25 Q: At the jail?

1 A: No. I don't believe so.

2 Q: Well, think about that for a second.

3 A: I think he had tried to but when we were like walking
4 back from court or something, it was kind of like silly.

5 Q: You kissed him -- you gave him a kiss while you were
6 walking back to the jail?

7 A: No, he had kissed ---

8 Q: He kissed you?

9 A: Yeah.

10 Q: Okay. Very good.

11 A: Okay.

12 Q: Keep on.

13 A: All of the two milliseconds that I got to enjoy it. My
14 heart hurts without you. I'm lost mentally without you. I
15 need you.

16 Q: And that's underlined and all capitals, right?

17 A: Yeah.

18 Q: Okay. Please continue.

19 A: They said I can't write you while I'm in here so I'm
20 saving this until I'm out and hopefully you're out too. This
21 is my first charge but I know it's not yours. I don't know
22 what's gonna happen to us, Babe. I'm not scared that I'm in
23 here, I'm scared because I don't know when we're getting out.
24 I love you so much, Babe, I can't take not being in your arms.
25 I dream about us every night and I don't see that changing. I

1 dream about our past, present and future. Present, like now,
2 doesn't seem as bad as it is because I know what we're going
3 through now isn't gonna be for forever. I want to be able to
4 walk out of here with you by my side but when I ask about you,
5 they say, it doesn't look good. They won't tell me everything
6 but enough to kill me inside. I love you so much and I can't
7 handle the thought of you not walking out of here. If you
8 don't get out with me, would you want me to bring Peyton here?
9 I doubt you would but I know you want to see your baby. Babe,
10 I don't know, my mind is scrambled, I can't focus, can't think
11 straight. I bet this letter is hard to follow because I'm all
12 over the place but I don't -- but I can't -- can't organize my
13 thoughts, everything is going all at once. I need you, I love
14 you.

15 Do I have to read all this stuff, too?

16 Q: Please.

17 A: Okay. Babe, this shit is fucking crazy.

18 Q: Well, you left out the part that says ---

19 A: Oh, your gold is waiting for you, Baby. I love you so
20 much more.

21 Q: Thank you.

22 A: Okay. I'm about to kill myself. I feel love because I
23 know I can write you a book but I can't even manage to fill up
24 these lines. It's taken me like three hours to get this much
25 down. I talked to my grandpa a little while ago. They got my

1 car out and I get to keep it. Thank God. Which means, if
2 you're still in here and I'm not on house arrest, then I'll be
3 able to see you. I don't want to fill these lines up with a
4 whole bunch of I love you's but that's all I want to do is
5 tell you how much I fucking love you. And I don't know for
6 some reason I feel like we're all in here because, because of
7 me. I had a dream about us again last night. We were married
8 and on the run, still in our modern day Bonnie and Clyde
9 bullshit. LOL. I miss you so much, love being able to see
10 you when we're at court. All I do is look at you the whole
11 time and think about us. Still have eaten. I def losing
12 weight, trying not to lose my -- trying not to lose my ass and
13 tits for you, LOL, but I know you'll love me the same. Every
14 bone that pokes out when I lay down fucking hurts. I'm in
15 this pink ass fucking, cold ass fucking, small ass room. You
16 can only imagine how my day -- I think my days have been
17 going. And then that's it.

18 Q: Thank you, ma'am. And in that letter, you compared
19 yourself and Manny to Bonnie and Clyde; is that correct?

20 A: Well, yeah, because he had said it before. Most of that
21 stuff is just sentimental stuff that he had said to me.

22 Q: So, Manny had said to you that he felt like you and he
23 were Bonnie and Clyde?

24 A: Yeah, just as a joke because we just -- I don't know, we
25 just felt bad ass, I guess, I don't know. It was lame.

1 Q: Pardon?

2 A: I said, I don't know, I guess we just felt bad ass.

3 Q: You and Manny felt bad ass; is that -- is that what you
4 said?

5 A: Well, I guess that's how he felt about it, yeah. I mean,
6 I just thought it was cute. It was funny to me.

7 Q: And it's clear that you wanted to do what you could do to
8 help yourself to get out of jail, right?

9 A: How do you -- I don't understand.

10 Q: Well, it's clear from your letter that being in jail was
11 a very unpleasant experience for you?

12 A: Yes, sir.

13 Q: And at the point in time that you agreed to testify, then
14 the Solicitor's office agreed for you to have a personal
15 recognizance bond?

16 A: No, sir. Not at that point, I didn't receive a personal
17 recognizance bond until five months later. I didn't get out
18 until like May and I got a bond set in April.

19 Q: And then when you were rearrested after that, they didn't
20 try to keep you in jail?

21 A: No, I was out another bond.

22 Q: You got another bond?

23 A: Yes, sir.

24 Q: In your letter, when you say that you were being charged
25 as an accessory, that was true -- that's true, right?

1 A: Yes, sir.

2 Q: So, you were charged with accessory to the crime?

3 A: Yes, sir.

4 Q: So, at this point, you're not facing that fifteen years
5 that we talked about?

6 A: No, sir.

7 Q: Going back to -- well, and let me -- it's clear from the
8 letter and you would agree with me that you're at least at
9 that point in time fond of Manny; is that correct?

10 A: Yes, sir.

11 Q: You wanted to help him if you could.

12 A: If I could.

13 Q: And give him the opportunity to help himself?

14 A: What do you mean?

15 Q: I'll ask another question. Let's go back to the day of
16 this event that you've talked about and you were driving a
17 car; is that right?

18 A: Yes, sir.

19 Q: And you drove the car and let out the people who did the
20 burglary. Where did you let them out?

21 A: On the side of the house, like on the -- in the street.

22 Q: This is State's Exhibit Number Seven. Can you identify
23 this at all?

24 A: Some of the names ---

25 THE COURT: You need to ---

1 A: Some of the names look familiar but, no, I mean, I'm not
2 very good with maps, so ---

3 Q: Okay. So, State's Exhibit Number Seven, you can't really
4 identify as being connected to this case at all?

5 A: Oh, no, I can -- I mean, like I said, the names look
6 familiar. I mean, if there's a better picture or something of
7 if I was there, I'd be able to tell, like landmarks and such.

8 DEFENDANT'S EXHIBIT NUMBER TWENTY-THREE

9 MARKED FOR IDENTIFICATION

10 Q: Okay. This is Defendant's Number Twenty-three for
11 identification. Is this a better picture, ma'am?

12 A: It's a little better, yeah.

13 Q: Can you identify this as being connected to the house?

14 A: Yes, sir.

15 Q: And where is the house that was the burglary?

16 A: I'm assuming the one that's marked.

17 Q: Okay. When you say you're assuming the one that's marked
18 then other than the fact that it's marked, would you know
19 which one it was.

20 A: Not unless if I was there, no. But seeing off of this,
21 no, I would have to be physically driving in order to tell. I
22 was new to the area at the time, so I didn't go by street
23 names or anything. I just took left and rights.

24 Q: Okay. And can you tell from this picture where you let
25 the folks out?

1 A: I mean, I want to say -- I mean, that is ---

2 Q: You want to step down? Would that help at all or no, get
3 it closer to you?

4 A: Okay. Can I hold it up?

5 Q: Yeah, sure.

6 A: Okay. I mean, if this is the fence or something, I just
7 feel as though there was like a side road that we came off of.

8 Q: Do you see this -- do you see a side road?

9 A: Yeah, but it's like -- it just seems super far compared
10 to where the house is and it just doesn't seem like that what
11 I remember.

12 Q: So, this doesn't look like what you remember?

13 A: Like I said, I would have to physically be there. This
14 map is just -- the scale is off or something because if this
15 is the fence this like border-looking stuff, then it would've
16 been right here. And then I would've drove ---

17 Q: Okay, so, again, I'll ask you the question. You -- from
18 looking at this map, you see where it says Google Earth?

19 A: Yes, sir.

20 Q: So, from looking at this map, you can't really identify
21 the place that the burglary took place; is that right?

22 A: No, sir.

23 Q: And you don't know where you let the people off?

24 A: Well, I mean, like I said, if this is a fence and stuff,
25 I was on the side road but it just seems like it would be too

1 much space to run through and there's another house to get
2 through and that doesn't seem right. It seems like the house
3 was much closer unless if I'm just remembering a different
4 time or something. But I mean, that looks like it would be
5 Zach's house right there and that was the house that they went
6 into.

7 Q: Where would you have been? Where would you have let them
8 out?

9 A: I guess up here.

10 Q: Up here?

11 A: On the side.

12 Q: Okay. And where would you have picked them up?

13 A: Relatively the same spot, maybe I came down a little
14 closer.

15 Q: Could you point to it, please?

16 A: I mean, we came down a little closer.

17 Q: And when the people who went into the house and
18 burglarized it came away from there, what did they have?

19 A: TV, iPad, merchandise like, I believe, jewelry, and the
20 Glock .45.

21 Q: How many TVs did they have?

22 A: Just one.

23 Q: There was only one TV?

24 A: That I recall, yeah.

25 Q: Does this now more -- does this now represent the place

1 that was burglarized?

2 A: Yes, sir.

3 MR. HILLIARD: We'd offer Defendant's Number Twenty-three
4 into evidence, Your Honor.

5 MR. GROOMS: I have an objection, Your Honor.

6 THE COURT: You need to question her more fully about
7 that -- her testimony was very confusing as to whether or it
8 looks like it or not.

9 MR. HILLIARD: Yes, sir.

10 THE COURT: Because all her earlier testimony was she
11 doesn't recognize it at all.

12 MR. HILLIARD: Yes, sir.

13 THE COURT: You need to question her further.

14 MR. HILLIARD: Thank you, Your Honor.

15 BY MR. HILLIARD:

16 Q: So, your earlier testimony was that you didn't recognize
17 it at all; is that correct?

18 A: Yes, sir, on the first map.

19 Q: Yes, sir.

20 A: Yes, on the first map.

21 Q: When you say the first map but then when I was asking you
22 about Defendant's Exhibit Number Twenty-three for
23 identification, your testimony was you didn't recognize it
24 all, originally?

25 A: I said it looked familiar but I just -- the way it's set

1 up just doesn't look right.

2 Q: So, the way that it's set up does not look right?

3 A: As how I remember it, no, sir.

4 Q: As how you remember it. (To the Court) We'll withdraw
5 it, Judge.

6 THE COURT: All right.

7 BY MR. HILLIARD:

8 Q: Your recollection is that there was one TV that was
9 stolen?

10 A: Yes, sir.

11 Q: When you were talking to Investigator Townsend, do you
12 recall indicating to Investigator Townsend that you were
13 uncertain whether the gun had come from Zach's neighbor's
14 house or not?

15 A: No, sir.

16 Q: Do you remember Investigator Townsend saying, okay, where
17 was that taken? And you saying that to be honest, I don't
18 know?

19 A: No, sir.

20 Q: Let me show you where this is Page 7 of that when
21 Investigator Townsend says, okay, where was that taken? Do
22 you see that?

23 A: Yeah, as in where was it taken from or where was it taken
24 to?

25 Q: This was your interview, right?

1 A: Uh-huh (affirmative response).

2 Q: All right. Speak up.

3 A: Yes, sir.

4 Q: And were you -- and then you say, To be honest, I don't
5 know. Right?

6 A: Yes, sir.

7 Q: When you agreed to testify on behalf of the government,
8 the police officers drove you to the house where the burglary
9 is alleged to have taken place, right?

10 A: Yes, sir.

11 Q: And when they drove you to the house where the alleged
12 burglary was to have taken place, you saw in the driveway of a
13 house near there, a car that you recognized as having been
14 driving by Zack in the past?

15 A: Yes, sir.

16 Q: So, at that point, you knew that it was near Zach's
17 house?

18 A: Yes, sir.

19 Q: And when I say Zach, we're talking about Zach Bullock,
20 the Defendant in this case, right?

21 A: Yes, sir.

22 Q: So, you recognized his car when the police took you to
23 where the burglary was allegedly taking place?

24 A: Yes, sir.

25 Q: And then yesterday when you told folks on the jury that

1 you were facing fifteen years no parole, that's not really
2 accurate, is it?

3 A: If the accessory doesn't carry the same amount of years,
4 then I guess no, it wouldn't be.

5 Q: Your lawyer hasn't talked to you about that?

6 A: Well, the last time we talked, it still is a possibility.

7 MR. GROOMS: I'm not sure she understands the question.
8 If she could talk to Mr. Stampfle, I think it would be very
9 helpful to the jury.

10 THE COURT: Well, I appreciate it but she has answered
11 the question and we'll move along.

12 MR. HILLIARD: Thank you, Your Honor.

13 BY MR. HILLIARD:

14 Q: So, what you're telling the folks on the jury is you
15 don't have any idea how much time you could get in jail?

16 A: Right.

17 Q: And your lawyer never told you?

18 A: (No audible response.)

19 MR. HILLIARD: Excuse me just one second, Judge. I'm
20 almost finished.

21 THE COURT: All right.

22 BY MR. HILLIARD:

23 Q: I almost forgot. So, when the items from the burglary
24 were sold, you were present; is that correct?

25 A: Yes, sir.

- 1 Q: How much cash money was there got for those items?
- 2 A: In total, I want to say maybe like 200 to 400, something
3 around there. It was an even number, I mean, we were able to
4 split it.
- 5 Q: Pardon?
- 6 A: It was an even number because we were able to split it.
- 7 Q: It was an even number, it was either 2 or \$400 as best
8 you ---
- 9 A: It was around there, yeah. I just know at least a couple
10 of hundred.
- 11 Q: It was at least a couple of hundred?
- 12 A: Yes.
- 13 Q: And is it fair to say it was not more than 400?
- 14 A: I would say so, yeah.
- 15 Q: And what was sold was a pistol, right?
- 16 A: Yes, sir.
- 17 Q: And one TV?
- 18 A: Yes, sir.
- 19 Q: Not three TVs?
- 20 A: Three TVs could've been sold but from the one burglary
21 that you were talking about, only one TV was taken from that
22 house.
- 23 Q: So, there was only one TV that was stolen?
- 24 A: Yes, sir.
- 25 Q: Okay. So, between 2 and \$400 was received and how much

1 did you get?

2 A: Like 150, 180, something like that.

3 Q: 150 or 180?

4 A: Yes, sir.

5 Q: Out of the 2 or \$400?

6 A: Yes, sir.

7 Q: And there is no question but what this burglary happened,
8 excuse me, this burglary happened in the daytime?

9 A: Yes, sir.

10 Q: And there was no gun carried into the house?

11 A: No, sir.

12 Q: And there was no gun used in the burglary?

13 A: No, sir.

14 Q: And you told police that you were uncertain as to where
15 the gun came from?

16 A: Yes, sir.

17 MR. HILLIARD: That's all I have.

18 MR. GROOMS: Your Honor?

19 THE COURT: Yes, sir. Redirect?

20 MR. GROOMS: Thank you.

21 REDIRECT EXAMINATION OF DE'AISHA DENTON BY MR. GROOMS:

22 Q: Ms. Denton, how old are you?

23 A: Nineteen.

24 Q: How old were you at the time?

25 A: Seventeen.

1 Q: Was it tough -- was it fair to say that you were having a
2 tough time in jail?

3 A: Yes, sir.

4 MR. HILLIARD: Object.

5 THE COURT: I believe it's proper redirect. You may
6 continue, Solicitor.

7 MR. HILLIARD: Leading, Judge.

8 BY MR. GROOMS:

9 Q: Was it an emotional ---

10 THE COURT: I am going to allow it based upon the cross
11 examination questions. You may continue.

12 MR. HILLIARD: Thank you, Your Honor.

13 A: Yes, sir.

14 BY MR. GROOMS:

15 Q: Thank you. Do you still have the letter, State's Exhibit
16 -- I'm sorry, Defendant's Exhibit Number Twenty-two? Can you
17 review that letter briefly and tell me if anywhere in that
18 letter doesn't mention the burglary?

19 A: It doesn't.

20 Q: Is there any mention of a plan to frame Zachary Bullock?

21 A: No, sir.

22 Q: Is there any mention of your cooperation with the police?

23 A: No, sir.

24 Q: Is there any mention of what Manny should say to the
25 police?

1 A: No, sir.

2 Q: Did that letter even mention Zachary Bullock at all?

3 A: No, sir.

4 Q: Would you tell me -- please tell the Court what the date
5 is on that letter?

6 A: 1/20/12.

7 Q: And isn't it true that you'd already given your statement
8 to the police before that?

9 A: Yes.

10 MR. HILLIARD: Objection.

11 A: Sir?

12 MR. HILLIARD: Objection.

13 THE COURT: Y'all come over here and talk to me.

14 MR. HILLIARD: Thank you.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of the jury but out of hearing of the jury.)

17 MR. HILLIARD: Thank you, Your Honor.

18 THE COURT: Sustain the objection. Continue.

19 BY MR. GROOMS:

20 Q: Ms. Denton, what day were you arrested?

21 A: January 17th, 2012.

22 Q: Okay. Thank you. And what day did you talk to the
23 police?

24 A: I believe it was the same day or the next day.

25 Q: And what day was the letter?

1 A: January 20th, 2012.

2 Q: Thank you. So, it's safe to say you had already talked
3 to the police before the letter?

4 A: Yes, sir.

5 MR. HILLIARD: Objection.

6 THE COURT: I'm gonna allow that.

7 MR. GROOMS: Thank you.

8 BY MR. GROOMS:

9 Q: Ms. Denton, in the letter you mentioned seeing him at
10 court, meaning Manny; is that correct?

11 A: No. When I talked about seeing him at court, I was
12 talking about Manny.

13 Q: If you'll look at the second page towards the bottom.
14 Last line.

15 A: I'm not seeing it. Is it on like the back of this page?

16 Q: Under what's dated 1/22 at the bottom of the page.

17 A: Okay. I'm still not seeing the line.

18 Q: Okay. I'll ask you in a different way. Was there ever a
19 time when you saw Manny at court?

20 A: Yes, sir.

21 Q: And were you able to talk with Manny?

22 A: No, sir.

23 Q: Okay. Thank you. When you were in jail, did they keep
24 the females and the males separate?

25 A: Yes, sir.

1 Q: Were you able to call Manny?

2 A: No, sir.

3 Q: Were you able to make a phone call?

4 A: Uh-huh (affirmative response). I was able to make a
5 phone call but not to him.

6 Q: Thank you. Ms. Denton, did you go into the home?

7 A: No, sir.

8 Q: Your testimony was that you dropped them off?

9 A: Yes, sir.

10 Q: Ms. Denton, who planned this burglary?

11 A: Zach.

12 Q: Who picked the home?

13 A: Zach.

14 Q: Why did he pick that home?

15 A: He knew what was in there.

16 MR. HILLIARD: Objection to the form of the question.

17 THE COURT: I will allow the -- answer the question if
18 she knows.

19 MR. HILLIARD: Thank you.

20 BY MR. GROOMS:

21 Q: Do you know why Zachary picked that home?

22 A: Because he knew there was a gun in there.

23 Q: When you picked him up that day, what did they have with
24 them?

25 A: TV, iPad and the gun and other accessories.

1 Q: Okay. And what type of gun was it, again?

2 A: A Glock.

3 Q: And what did Zach say about the gun?

4 A: This is what he mainly came for.

5 Q: Thank you. Ms. Denton, you addressed this yesterday in
6 direct but are you aware that you've been indictment for
7 burglary in the first degree?

8 A: Yes, sir. I went over my papers yesterday that I
9 received from lawyer.

10 Q: And when you testified yesterday, you testified that you
11 were aware and that you -- that you were pleading guilty or
12 not pleading guilty, I'm sorry, that you were admitting to
13 that charge?

14 A: Yes, sir.

15 Q: And are you aware that it carried fifteen years to life
16 in prison?

17 A: Yes, sir.

18 Q: Were you aware that this indictment came as a result of
19 your charged accessory?

20 A: Yes, sir.

21 Q: Thank you, Ms. Denton; that's all I have.

22 THE COURT: Anything on the questions just asked by the
23 State?

24 MR. HILLIARD: Yes, sir, Judge, thank you.

25 THE COURT: All right.

1 RECROSS EXAMINATION OF DE'AISHA DENTON BY MR. HILLIARD:

2 Q: What was the date that you were arrested, again, please?

3 A: January 17th, 2012.

4 Q: And what was the date of the letter?

5 A: January 20th, 2012.

6 Q: And you indicated to the Solicitor that you made your
7 statement before you wrote the letter?

8 A: Yes, sir.

9 Q: This is a transcript of the statement that you made to
10 the Solicitor's officer; is that correct?

11 A: Yes, sir.

12 Q: And the date of this statement to the Solicitor's office
13 is what?

14 A: November 15th, 2012.

15 Q: And you would agree with me that November is after
16 January?

17 A: Yes, sir.

18 Q: Do you know what a proffer interview is?

19 A: A proffer?

20 Q: Proffer interview.

21 A: No, sir.

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

23 MR. GROOMS: Very briefly, Judge.

24 BY MR. GROOMS:

25 Q: Who was your original statement to?

1 A: The investigators, Scott Bogart and Detective Smith.

2 Q: Thank you. And what day was that original statement?

3 A: Like I said, it was either the day of the arrest or the
4 day after on the 18th.

5 Q: Was your statement that day the same as your testimony
6 that you've given this Court?

7 A: Yes, sir.

8 Q: And I'm sorry if I talked over you. What day was that
9 statement given?

10 A: January 18th.

11 Q: Thank you, ma'am. That's all I have.

12 A: Yes, sir.

13 THE COURT: All right. We've gone over this enough. You
14 may step down, ma'am.

15 Do you wish the witness to be excused?

16 MR. GROOMS: Yes, sir, Your Honor.

17 THE COURT: Any objection?

18 MR. HILLIARD: No object, Your Honor.

19 THE COURT: All right. Ma'am, you are released from your
20 subpoena and may go back to your regular activities.

21 All right. Next witness, Solicitor.

22 MR. GROOMS: Your Honor, the State would call Emmanuel
23 Foriest.

24 THE COURT: All right.

25

EMMANUEL LADON FORIEST, HAVING