

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM HORRY COUNTY

William H. Seals Jr., Circuit Court Judge

RECEIVED

OCT 18 2018

S.C. SUPREME COURT

Case Number 2016-CP-26-02627

Zachary Bullock #357427.....Petitioner,

v.

State of South Carolina..... Respondent.

APPENDIX

VOLUME II

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1 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

2 CLERK: State your full name and spell you last name.

3 MR. FORIEST: Emmanuel Ladon Foriest, F-O-R-I-E-S-T.

4 DIRECT EXAMINATION OF EMMANUEL LADON FORIEST BY MR. GROOMS:

5 Q: Mr. Foriest, where are you from?

6 A: I'm from Detroit, South -- I mean, Detroit, Michigan but
7 live in Socastee.

8 Q: How long have you lived in Socastee?

9 A: About twelve years now.

10 Q: How old are you?

11 A: Twenty-one.

12 Q: Twenty-one. So, what school did you attend? What high
13 school?

14 A: Socastee High.

15 Q: And where were you living during January of 2012?

16 A: Plantation Apartments on Rittenhouse Road.

17 Q: Is that in Socastee?

18 A: Uh-huh (affirmative response).

19 THE COURT: You need to answer yes or no.

20 A: Yes, yes.

21 Q: Do you know the Defendant?

22 A: Yes.

23 Q: And where did you meet the Defendant? I don't really
24 need exact date or anything, just ---

25 A: Previously, I've known him since like fourth grade, but I

1 mean, so -- met him at Plantation around -- picked him up at
2 Plantation, so ---

3 Q: Okay. Let's just back up. I'm not asking about the day.

4 A: Okay.

5 Q: So, you met him first time in middle -- or elementary
6 school.

7 A: Elementary, yes, yes.

8 Q: How would you classify your relationship before all this
9 happened?

10 A: Oh, we was -- we were best friends, very close.

11 Q: How would you classify it today?

12 A: I mean, I have no grudge against him, nothing of that.

13 Q: Thank you. When is the last time you talked to Zachary
14 Bullock?

15 A: Before he bonded out in last year of -- I think it was
16 June.

17 Q: Okay. Do you know Mr. De'Aisha Denton?

18 A: Yes.

19 Q: And where did you meet Ms. Denton?

20 A: At Plantation Apartments when she first came out there
21 like three or four years ago.

22 Q: So, three or four years ago, did she go to school with
23 you?

24 A: Uh-huh (affirmative response); yes, sir.

25 Q: Okay. So, she went to school with you. How long have

1 you known her? I think you just answered that.
2 A: A good three, four, five years now.
3 Q: Three or four --
4 A: Yes.
5 Q: How would you classify your relationship with Ms. Denton
6 ---
7 A: Well, we were -- previously we were dating when I was
8 down the street from ---
9 Q: All right. Let me finish the question and I'll be glad
10 to give you time to answer. How would you classify your
11 relationship during January of 2012?
12 A: We was -- we was seeing each other.
13 Q: Okay. Is -- we were talking, would that be a term that
14 you would use for your relationship?
15 A: Yes, yes.
16 Q: Okay. How would you classify your relationship with Ms.
17 Denton today?
18 A: I wouldn't -- we're not together, so.
19 Q: When was the last time you've spoken to Ms. Denton?
20 A: At a bond hearing when we was in jail together, last
21 year.
22 Q: What did you talk about at the bond hearing?
23 A: Just when she would probably get out and, you know, stuff
24 like that.
25 Q: What was the setting of this conversation? Were you in

1 court?

2 A: Yeah.

3 Q: Were you contacted by the Defendant on or around January?

4 MR. HILLIARD: Objection.

5 Q: Were you hanging out with the Defendant in January?

6 MR. GROOMS: Withdrawn, I'm sorry. Withdrawn

7 BY MR. GROOMS:

8 Q: Were you hanging out with the Defendant prior to your
9 arrest?

10 A: Yes.

11 Q: Were you hanging out with the Defendant prior to this
12 burglary?

13 A: Yes.

14 Q: I'm just gonna let you talk. How did this burglary come
15 about?

16 A: Well, I was hanging out with De'Aisha Denton and she got
17 a call from Zach telling her how we could get some money and
18 whatnot. And we got together and -- to find out that he knew
19 the house where we was at because he said he used live around
20 there. So, we went in the house and, you know ---

21 Q: Was this a neighborhood you were familiar with?

22 A: No, I never been there before.

23 Q: If I were to show you map, would you be able to identify

24 ---

25 A: No.

1 Q: Okay. Was this -- was the home that you're talking
2 about, was this a home in Zach's neighborhood?

3 A: Yes.

4 Q: What was the location of the home to his house?

5 A: Cross the street, I think it was.

6 Q: Okay. All right. I'll let you continue. What was --
7 was there a plan for this burglary?

8 A: Not really. We just -- he said he would go to be back,
9 back of the yard and get in the house.

10 Q: Why did he pick this home?

11 A: Because his ---

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

13 THE COURT: Rephrase your question.

14 BY MR. GROOMS:

15 Q: What if anything made you chose those home amongst
16 others?

17 A: In the beginning he told us that there was a gun involved
18 and he wanted to get it.

19 Q: What kind of gun?

20 A: .45 -- Glock .45.

21 Q: All right. What happened the day of the burglary?

22 A: What you mean?

23 Q: Just tell the jury what happened the day of the burglary,
24 just your story.

25 A: Okay. Well, we went to the back of the yard and I picked

1 up a rock on the back off the ground and threw it against the
2 window and went in. He went one way and I went the other way.
3 I met him in the master bedroom. He called my name and I
4 looked back and had the Glock .45.

5 Q: Where did you get this rock?

6 A: On the ground of the, I guess, what you call the
7 backyard.

8 Q: Okay. I'll show you what's been marked as State's
9 Exhibit Number Two. Can you identify this for the jury?

10 A: Yes, that's it.

11 Q: That's the rock you used?

12 A: Yes.

13 Q: And can you identify this?

14 A: Yeah, that's the back of the house.

15 Q: Who threw this brick through the window?

16 A: I did.

17 Q: Can you identify this?

18 A: I can't see it. I'm sorry. Yeah, that's the -- where
19 the rock was at, I picked it up from.

20 Q: Okay. So, you picked the rock up and you threw it
21 through the window?

22 A: Yes.

23 Q: Is that what you told police?

24 A: Yes.

25 Q: You testified that Zach -- that you originally went in

1 this home because there was mention of a gun.

2 A: Yes, sir.

3 Q: How did you know that?

4 A: I didn't. Zach said cause the man at the house was -- he
5 had a license plate with a Glock .45 and he knew the neighbor.

6 Q: Who drove you to the burglary?

7 A: De'Aisha Denton.

8 Q: Who picked you up from the burglary?

9 A: De'Aisha Denton.

10 Q: How did she know when to pick you up?

11 A: Phone, we all had cell phones.

12 Q: Who called her?

13 A: I'm pretty sure I did. I texted her.

14 Q: And sounds like a little bit of a plan.

15 MR. HILLIARD: I object.

16 MR. GROOMS: Withdrawn.

17 BY MR. GROOMS:

18 Q: Where did you meet that morning?

19 A: We -- the neighborhood that we picked him up from, I
20 don't know where was it, we just picked him up. I was with
21 her the following night. So, we just met up.

22 Q: Were you wearing gloves during this burglary?

23 A: Yes.

24 Q: Was Zach wearing gloves?

25 A: Yes.

1 Q: Were there any cars in the driveway?

2 A: No.

3 Q: Back to inside the home, please tell the jury what
4 happened once you went inside the home?

5 A: I went ---

6 MR. HILLIARD: Objection. Asked and answered.

7 THE COURT: I'm gonna allow it. You may continue.

8 BY MR. GROOMS:

9 Q: When we got inside the house, I went one way, like I said
10 and when I -- and I met him the master bedroom. I was getting
11 TVs and whatnot and he told me, he said my name. I turned
12 around and he had in his hand the Glock .45. He showed me and
13 I just got the TVs together and iPad and we left.

14 Q: What did you he do with the gun?

15 A: He kept it in his belt, you know.

16 Q: Waistband?

17 A: Yeah, waistband.

18 Q: I'm going to show you what's been marked as State's
19 Exhibit Four and Five, if you can ---

20 A: Yeah, that's in the master bedroom.

21 Q: Okay. And Exhibit Number Five?

22 A: Same place.

23 Q: Where did the gun come from?

24 A: I do not know. When I got there, he already had it.

25 Q: Okay. Where were you when he showed you the gun?

- 1 A: In the master bedroom.
- 2 Q: And what items were taken?
- 3 A: TVs, iPad.
- 4 Q: Was there more than one TV?
- 5 A: Yes.
- 6 Q: Was the gun taken from this home?
- 7 A: Yes.
- 8 Q: Were you able to see this gun?
- 9 A: Yes.
- 10 Q: And what type of gun was it?
- 11 A: Glock .45.
- 12 Q: All right. So, how long did this take?
- 13 A: No more than five minutes in and out.
- 14 Q: What happened when you get back to the car?
- 15 A: We got back to the car and she drove off a good bit and
- 16 we parked and we see what we got. He took out the gun and he
- 17 showed it to us and we drove off.
- 18 Q: What if anything did he say about the gun?
- 19 A: Nothing, just that he was selling it to somebody and that
- 20 was it.
- 21 Q: So, what did you do with all the items?
- 22 A: Sold it to the same person.
- 23 Q: Which person?
- 24 A: I don't know his name but the person he sold the gun to.
- 25 Q: Who got in contact with him?

1 A: Zach.

2 Q: Were you with him when he sold it?

3 A: Yes.

4 Q: And how much money did he get?

5 A: I'm not exactly sure. He did business with -- I think it
6 was like \$600.

7 Q: Okay. But you're not sure. What did you do with the
8 money?

9 A: We split it.

10 Q: Were you arrested and charged in this burglary?

11 A: Yes.

12 Q: When you were arrested, who was with you?

13 A: Me, De'Aisha Denton, Zachary and Ben Denton.

14 Q: Thank you. Were you charged with burglary in the first
15 degree?

16 A: Yes.

17 Q: When you were arrested, were you taken to jail?

18 A: Yes.

19 Q: Were you contacted by law enforcement?

20 A: Yes.

21 Q: Please tell the jury the nature of that conversation.

22 A: It was a couple of days after I got arrested. I think J.
23 Reuben, the investigators came and talked to me and they just
24 asked me questions about the gun and all the -- where I been
25 in the house and all that.

- 1 Q: Who was the State investigator? Who was the officer?
- 2 A: I think his name was Bogart, something like that.
- 3 Q: Okay. Were you promised anything by the detective?
- 4 A: No.
- 5 Q: Had you spoken to anyone about what you were gonna say?
- 6 A: No.
- 7 Q: Who did you implicate the burglary?
- 8 A: What you mean?
- 9 Q: You talked to police?
- 10 A: Uh-huh (affirmative response).
- 11 Q: Who did you say committed this burglary?
- 12 A: Oh, it was me and Zachary. De'Aisha just drove.
- 13 Q: And you told police De'Aisha drove?
- 14 A: Uh-huh (affirmative response).
- 15 Q: When the two of you committed burglary?
- 16 A: Yes.
- 17 Q: Did you tell -- did you tell the police who drove you
- 18 away from the scene?
- 19 A: Yes.
- 20 Q: Is your testimony today the same that you told the
- 21 detective?
- 22 A: Yes.
- 23 Q: Were you concerned at all about what would happen to
- 24 De'Aisha?
- 25 A: Yes.

1 Q: I know it's a loaded question but why did you tell the
2 truth?

3 A: Cause I did this.

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

5 Q: Why did you tell the truth?

6 THE COURT: I'm gonna allow that. Well, no, you need to
7 rephrase your question.

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

9 THE COURT: I'm sorry.

10 BY MR. GROOMS:

11 Q: Why did you cooperate with the police?

12 A: Because they caught us. I did it.

13 Q: Have you been promised anything to testify here today?

14 A: No.

15 Q: Did you enter into a proffer agreement with the State?

16 A: No.

17 Q: Mr. Foriest ---

18 MR. HILLIARD: He said, no, Judge.

19 THE COURT: I appreciate that. I'm gonna allow the State
20 to continue.

21 BY MR. GROOMS:

22 Q: Was there a time when you met with the Solicitor's office
23 with your attorney?

24 A: Oh, yes.

25 Q: And what was the point of that meeting?

1 A: To talk about the case.
2 Q: . And did you sign anything that day?
3 A: I didn't, no.
4 Q: Was there ever a day that you signed anything?
5 A: Yes.
6 Q: Okay.
7 MR. GROOMS: Your Honor, can we approach briefly?
8 THE COURT: Certainly.
9 MR. GROOMS: Thank you.
10 (REPORTER'S NOTE: A bench conference was held off the record
11 in the presence of the jury but out of hearing of the jury.)
12 BY MR. GROOMS:
13 Q: Mr. Foriest, do you know what the word proffer means?
14 A: Who?
15 Q: Do you know the word proffer means?
16 A: Pardon?
17 Q: Proffer.
18 A: Are you saying proper?
19 Q: Proffer.
20 THE COURT: Why don't you spell it?
21 Q: P-r-o-f-f-e-r, proffer.
22 A: No.
23 Q: Okay. Was there an agreement between you and the State
24 to testify here today?
25 A: Oh, yes.

- 1 Q: And what was the condition of that agreement?
- 2 A: I would get second degree burglary and zero to ten.
- 3 Q: What did the State require you to do?
- 4 A: Oh, to testify.
- 5 Q: And what were you to testify to?
- 6 A: The burglary of me and Zachary to the first degree.
- 7 Q: Were you indicted in this case to burglary first degree?
- 8 A: Yes.
- 9 Q: And now you just said -- is it true that you pled guilty
- 10 to the lessor included of burglary second?
- 11 A: Yes.
- 12 Q: Have you been sentenced in this case?
- 13 A: No.
- 14 Q: What was the condition that you entered into a proffer
- 15 agreement?
- 16 A: What you mean?
- 17 Q: Were you gonna tell the truth?
- 18 A: Yes.
- 19 Q: Thank you. When you were arrested, when you were
- 20 contacted by law enforcement, did you cooperate?
- 21 A: Yes.
- 22 Q: Is your testimony today the same as it was the day you
- 23 talked to the detective?
- 24 A: Yes.
- 25 Q: And are you facing up to ten years in jail, prison?

1 A: Yes.

2 Q: Thank you, sir. That's all I have.

3 THE COURT: Cross examination.

4 MR. HILLIARD: Thank you, Your Honor.

5 CROSS EXAMINATION OF EMMANUEL LADON FORIEST BY MR. HILLIARD:

6 Q: I think what you said earlier was that Zach had told you
7 there was a license plate on a vehicle that said Glock .45?

8 A: No, it had pictures of a Glock .45 on it.

9 Q: It had pictures of a Glock .45?

10 A: Yes.

11 Q: Not a license plate?

12 A: I mean, the back of the license plate, you know how it
13 has the back of it has like pictures of Glock .45s on it.

14 Q: Was it on the front of the vehicle or the back of the
15 vehicle?

16 A: I didn't see the vehicle.

17 Q: Well, when he was saying that, did he say that it said
18 Glock .45?

19 A: No, he said a picture of a Glock .45.

20 Q: Picture of a Glock .45?

21 A: Yeah.

22 Q: State's Exhibit Number Six, you would agree with me that
23 that's not a picture of anything?

24 A: No, it's not.

25 Q: And the testimony before the jury was that he felt like

1 it was \$600 that you got; is that right?

2 A: Yes.

3 Q: When you were talking -- let me ask you this question.

4 You made a deal with the Solicitor's office to testify; is
5 that right?

6 A: Yes.

7 Q: And part of your deal was that you had to testify
8 consistently with the statement that you made on June the 28th
9 of -- or June the 26th of 2013, right?

10 A: Right.

11 Q: So, you had to say -- here today, you have to say the
12 same thing you said on the 26th of the deal is no good?

13 A: Right.

14 Q: And that's the reason you haven't been sentenced.

15 A: Yes.

16 Q: They want to be sure what you're gonna say, right?

17 A: Right.

18 Q: So, when you walked into the deal, you were facing a
19 minimum of fifteen years no parole up to life without parole,
20 right?

21 A: Yes.

22 Q: And when you walked out of the deal, you were facing zero
23 to ten with parole eligibility, right?

24 A: Right.

25 Q: Are you hoping to go home this afternoon?

1 A: I don't know what's gonna happen. Of course, I want to
2 go home.

3 Q: Right. And you might go home tomorrow; that's a
4 possibility?

5 A: Yes.

6 Q: You've already pled guilty?

7 A: Yes.

8 Q: Just waiting on a sentence?

9 A: Yes.

10 Q: Depending on what you say here today, right?

11 A: Correct.

12 Q: All right, sir. You were the one who called Ms. Denton
13 to come and pick you guys up; is that right?

14 A: Correct.

15 Q: And when you were talking to the Solicitor's office about
16 your testimony, you indicated that y'all had got about \$900.

17 Do you remember telling them that, about \$900?

18 A: I do not but I probably did.

19 Q: You probably did tell them 900?

20 A: Yes.

21 Q: Could've been 900, might've been 600?

22 A: Yes.

23 Q: But you don't remember how it got split up?

24 A: No, it was four years ago or something.

25 Q: And you don't remember exactly how many TVs got taken?

1 A: It was two or three.

2 Q: Two or three TVs?

3 A: Yes, sir.

4 Q: All right, sir. And do you remember indicating that
5 De'Aisha drove to the back area of the house?

6 A: Yes.

7 Q: And that you and Zack jumped over the fence?

8 A: Yes.

9 Q: All right, sir. So, you jumped over the fence to get
10 into the backyard; is that right?

11 A: Yes.

12 Q: You want De'Aisha to get the least amount that she can
13 possibly get out of this, right?

14 A: Yes.

15 Q: And she was your sincere girlfriend at the time that this
16 all happened?

17 A: Yes.

18 Q: Do you remember telling her that you felt like you and
19 she were Bonnie and Clyde?

20 A: No, she told me that.

21 Q: That was her ---

22 A: Yes.

23 MR. HILLIARD: Excuse me just one second.

24 BY MR. HILLIARD:

25 Q: You're saying Glock .45. You would agree with me that a

1 Glock .45 looks identical to a Glock .40 just to look at it?

2 A: I have no idea about guns at all.

3 Q: Sir?

4 A: I have no idea -- I have no idea about guns. I don't
5 carry one, don't know nothing about them. He just told me it
6 was a Glock .45?

7 Q: You don't know anything about guns?

8 A: No.

9 Q: So, whether that was a Glock .45 or not, you don't really
10 know?

11 A: No, and just going on what he said.

12 Q: Could've been anything?

13 A: Yeah.

14 Q: And your recollection is that that Zach's house is across
15 the street from the burglary; is that correct?

16 A: Yes.

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

18 THE COURT: Yes, sir.

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

21 MR. HILLIARD: We'd just mark this for identification.

22 THE COURT: Yes, sir.

23 DEFENDANT'S EXHIBIT NUMBER TWENTY-FOUR

24 MARKED FOR IDENTIFICATION

25 THE COURT: What number was that, please?

1 COURT REPORTER: Twenty-four.

2 BY MR. HILLIARD:

3 Q: Do you remember telling the Solicitor's office that Zach
4 has said there was a sticker in the back window that showed
5 Glock .45; is that what you told them?

6 A: In what window?

7 Q: There was a truck in the driveway with a sticker in the
8 back window that said Glock .45?

9 A: I don't recall that.

10 Q: You do recall saying that you and Zach just jumped the
11 fence in the backyard?

12 A: Yes.

13 Q: And the backyard had a fence?

14 A: Yes.

15 Q: It was about six-feet tall?

16 A: It was pretty tall.

17 Q: And where was De'Aisha parked when y'all came out?

18 A: On the road on the back of the house.

19 Q: On the road on the back of the house?

20 A: Yes.

21 Q: Let me show you Defendant's Exhibit Number Twenty-three
22 for identification and ask if you can identify this.

23 A: Yeah.

24 Q: Do you see where the burglary took place?

25 A: Yes.

1 Q: Where is that?

2 A: Right there (indicating).

3 MR. HILLIARD: Judge he can't reach because of the ---

4 THE COURT: Can you get it closer to him and let him hold
5 it if he can.

6 A: One of these ---

7 THE COURT: You need to speak up, please, sir, nobody can
8 hear you.

9 A: One of these two houses, don't know which one it was but
10 that's the -- right there.

11 Q: You don't know which one of the two houses it was?

12 A: No, because the fence is about the same height.

13 Q: Right. And road is where?

14 A: Right there.

15 Q: So, your testimony is that you and Zach -- De'Aisha was
16 on this road up here?

17 A: Yes.

18 Q: And you and Zach ran through the neighborhood with TVs
19 and ---

20 A: No, in the back right there, where the trees is at, where
21 this is ---

22 Q: Out this way?

23 A: Yes.

24 Q: Up this road?

25 A: Yes.

1 Q: All right, sir. But you don't know which of these two
2 houses it was?

3 A: No, because that one -- the second one ---

4 Q: All right, sir. Did you indicate earlier in your
5 testimony that De'Aisha had called you setting up this
6 burglary?

7 A: No, I was with her at the time.

8 Q: Thank you, sir. That's all I have.

9 THE COURT: Any redirect?

10 MR. GROOMS: Just briefly, Your Honor.

11 REDIRECT EXAMINATION OF EMMANUEL LADON FORIEST BY MR. GROOMS:

12 Q: You were with De'Aisha when what happened?

13 A: Oh, when she was on the phone with Zachary and he was
14 talking about if you want to make some money.

15 Q: Okay. And you testified that the fences were six-feet
16 tall?

17 A: Yes.

18 Q: How tall are you?

19 A: Like five-ten.

20 Q: Were there any gates on these fences?

21 A: Yes.

22 Q: Is it possible you could've walked through the gate?

23 A: No, because it was -- there was something in the way of
24 like the fence. So, we went over and I threw him the TVs and
25 he came on over by me.

1 Q: Did you ever see that license plate?

2 A: No, I never saw it.

3 Q: And what were you going off of?

4 A: Zach -- Zach's word.

5 Q: Okay. Thank you, sir. That's all I have for you.

6 THE COURT: Anything on those questions, Mr. Hilliard?

7 MR. HILLIARD: I don't have any other questions, Judge.

8 THE COURT: Very good. All right. You may step down,
9 sir.

10 MR. GROOMS: Your Honor, could we have just ---

11 THE COURT: Just -- y'all sit down and I'll take care of
12 it.

13 MR. GROOMS: Sorry, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we're gonna
15 take a short break at this point in time for about ten
16 minutes. Go back to your jury room and remember don't talk
17 about the case. All right? Thank you very much.

18 Everyone else remain seated.

19 (REPORTER'S NOTE: The jury exits courtroom. 10:57 A.M.)

20 THE COURT: All right. Mr. Hilliard, you had marked as
21 Defendant's Twenty-four for identification a Facebook page.
22 Apparently, you indicated it was a Facebook page of the
23 witness. I mean, he never identified it as such but I did
24 tell you that I didn't think it was relevant, it was from
25 October of 2011.

1 MR. HILLIARD: Yes, sir.

2 THE COURT: Which obviously predates the incident of
3 January 12th, 2012, didn't contain any information about this
4 particular matter. So, I did not find it to be relevant.

5 MR. HILLIARD: Thank you, Your Honor.

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

7 MR. GROOMS: Your Honor, before you go, we'd ask that Mr.
8 Foriest be excused from his subpoena ---

9 THE COURT: Well, he's not excused from his subpoena, I
10 mean, he's in jail. So, they can take him back to jail and he
11 can be recalled at any point in time. It's not like a regular
12 subpoena. He's at the J. Reuben Long Detention Center. If
13 y'all needed him, they just need to call him back. So, I
14 mean, for the purposes, y'all can take him back the J. Reuben
15 Long Detention Center but he remains until the case is
16 concluded and his matter is concluded about sentencing, he
17 remains at the call of the Court. He's not excused from
18 coming back.

19 MR. GROOMS: Yes, sir.

20 MR. HILLIARD: Thank you, Your Honor.

21 (RECESS - 10:59 A.M.)

22 *****OFF THE RECORD*****

23 (On the Record. - 11:12 A.M.)

24 (REPORTER'S NOTE: The following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. Is the State ready for the jury
2 to come back in?

3 MR. GROOMS: Yes, sir, Your
4 Honor.

5 THE COURT: Defense?

6 MR. HILLIARD: If we could, and this is prior to the jury
7 coming, as I was reviewing my notes and going through the
8 information, it's clear to me that I neglected to ask Mr.
9 Foriest the extent of the benefit that he got from the proffer
10 and I would ask that we be allowed to recall him for the
11 purpose of asking him about the extent of the benefit he gets
12 from the proffer.

13 MR. GROOMS: Your Honor -- I'm sorry, Judge.

14 THE COURT: It's okay.

15 MR. GROOMS: I believe that he did ask him if he was
16 facing zero to ten years and he could go home tomorrow was his
17 exact questioning. Is it true you could go home today? I
18 hope so. You could go home tomorrow? Yes, sir, possibly. I
19 think that's a pretty good benefit of plea bargain possibility
20 that that jury's already heard.

21 THE COURT: Did you not ask Mr. Foriest about that, about
22 -- you went over that he could get what sentence he could get
23 and as the Solicitor indicated, you made the point of you can
24 go home -- you might possibly go home tomorrow. I mean, isn't
25 that covering the benefit of the bargain?

1 A: But the thing that I did not cover, Judge, that I
2 intended to cover and neglected to do was the fact that he has
3 a burglary first degree, a burglary second degree, burglary
4 second degree, four housebreakings and other burglaries and
5 possession of burglary tools all of which are being dismissed.
6 So, I neglected to cover those things. We had talked about it
7 in the very beginning of the case and the Solicitor had asked
8 Your Honor to exclude me from mentioning those things and I
9 was allowed to ask the Defendant that question and ---

10 THE COURT: Well, I'll allow you in your case to recall
11 him and ask him if -- the problem we've got is talking about
12 the particular crimes since he's indicated a connection with
13 your client in his testimony that if you asked him the
14 particular crimes, the four counts and the other counts that
15 could prejudice your client in that matter. Now, it might
16 very well be less depending on how they're classified as
17 felonies or misdemeanors that the State is also dismissing,
18 you know, four other felonies and, you know, if there are any
19 misdemeanors that he is facing. But I am concerned about if
20 you start talking about those particulars, you're hurting your
21 client. Now, if you're not concerned about that ---

22 MR. HILLIARD: The only thing that I would ask him is,
23 Isn't it true that the prosecution is dismissing as part of
24 your plea negotiation four housebreakings, two burglaries and
25 and a possess of burglary tools. And that's a yes or no

1 question.

2 MR. GROOMS: Your Honor, the State's position would be
3 that he's already had the opportunity. He didn't ask Ms.
4 Denton and he didn't ask Mr. Foriest. We took a break and
5 seems to have changed his trial strategy. He's already had
6 that opportunity and did not do so.

7 THE COURT: I appreciate it. I'm going to allow him to
8 recall the -- Mr. Foriest and ask him and find out -- you need
9 to find out if all those are classified as felonies or
10 misdemeanors. Again, I believe there is -- there could be
11 undue prejudice to the Defendant by talking about the
12 particular crimes, but I will allow you to ask him about
13 felonies and/or misdemeanors depending on how they're
14 classified.

15 MR. HILLIARD: It's my understanding if those were all
16 felonies ---

17 THE COURT: Both y'all need to look them up. I'm just
18 saying, look them and see, make sure and then if they're all
19 felonies, then, you know, however many there are, that's what
20 they would dismiss. And I appreciate that, Solicitor, I will
21 be glad to find the case ---

22 MR. GROOMS: Your Honor.

23 THE COURT: I will be glad to find the case that allows
24 the Court in its discretion to reopen a civil criminal case
25 even when the jury is deliberating.

1 MR. GROOMS: I understand your ruling, Your Honor, I was
2 gonna ask if I would be permitted to ask him when these
3 alleged events occurred?

4 THE COURT: No, sir. No, sir. I'm not gonna do that.
5 I'm not gonna do that. It's gonna be a simple question. As
6 part of your agreement with the State, is the State dismissing
7 however many felonies and/or misdemeanors and that's gonna be
8 the question and it's gonna be a yes or a no answer. All
9 right?

10 MR. HILLIARD: Thank you, Your Honor.

11 THE COURT: All right. So, when we get to your case,
12 Mr. Hilliard, you need to make sure you alert the jail so that
13 he is transported back. All right?

14 MR. HILLIARD: Okay. We've done that, Judge.

15 THE COURT: All right. Very good.

16 All right. Ask the jury to come back in, please.

17 Who is your next witness, please?

18 MR. GROOMS: Your Honor, it would be Detective Bogart.

19 THE COURT: All right. So, we can expect to be here
20 until about 1:30 then with Detective Bogart?

21 MR. GROOMS: Your Honor, direct certainly won't take more
22 than ---

23 THE COURT: How long is the cross examination gonna take,
24 Mr. Hilliard?

25 MR. HILLIARD: I hesitate to say this but I'm not sure

1 what Detective Bogart is gonna say that could be -- that would
2 be admissible at this point but I guess I'll find out.

3 THE COURT: All right. Very good.

4 MR. HILLIARD: I guess I'd point out, while the jury is
5 out, we would object to the bolstering of testimony ---

6 THE COURT: Well, I don't know what the questions are
7 going to be, so I'll just hear you whenever it's asked.

8 MR. HILLIARD: Thank you.

9 (REPORTER'S NOTE: The jury enters courtroom. 11:20 A.M.)

10 THE COURT: All right. Solicitor, your next witness,
11 please

12 MR. GROOMS: Thank you, Your Honor. The State would call
13 Detective Scot Bogart to the stand.

14 THE COURT: All right. Please come around and be sworn.

15 SCOTT BOGART, HAVING BEEN DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 CLERK: State your full name and spell your last name.

18 MR. BOGART: My full name is Scott Bogart, B-O-G-A-R-T.

19 THE COURT: Go ahead, Solicitor.

20 DIRECT EXAMINATION OF SCOTT BOGARD BY MR. GROOMS:

21 Q: Thank you, Mr. Bogart. What's your title now?

22 A: I'm a Senior Detective with the Horry County Police
23 Department.

24 Q: Thank you, sir. How long have you been there?

25 A: This will be my fourteenth year.

1 Q: Fourteenth year. How long have you been a detective?

2 A: Since 2004.

3 Q: What types of role in law enforcement have you had?

4 A: Well, this is my twenty-first year in police work. I
5 policed up in Ohio for seven and half years before I came
6 here. I was a patrol officer most of that time. I was a
7 training officer. I trained rookie police officers and
8 evaluated whether or not they were able to do the job, capable
9 of doing the job. I also did bicycle police work for several
10 years during the summertime up in Ohio. I then came down here
11 to Horry County. I spent two years as a patrol officer and
12 then I was promoted to Corporal where again, I assumed the
13 role of field training officer, responsible for evaluating and
14 training new hires. From there I was promoted to detective
15 and went directly from the road to Violent Crimes Division. I
16 spent four years in Violent Crimes from '04 to '08 and that
17 included investigation of multiple homicides and other violent
18 crimes.

19 Q: Would you speak with potential suspects or defendants in
20 those cases?

21 A: Yes, all the time,

22 Q: How many would you say you have spoken to?

23 A: Hundreds.

24 Q: Were you assigned burglary case in January of 2012?

25 A: Yes, I was.

1 Q: And do you remember what the address was at that
2 residence?

3 A: 4194 High Brass Covey.

4 Q: And where is that residence located?

5 A: In Horry County.

6 Q: Thank you, sir. What type burglary was this, please?

7 A: It was a daytime burglary and due to what was taken in
8 the burglary, it was classified as a burglary first degree.

9 Q: And would you please explain that to the jury?

10 A: Yes. A burglary of a residence is normally a ---

11 MR. HILLIARD: Objection.

12 THE COURT: Y'all come talk to me.

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

15 BY MR. GROOMS:

16 Q: Detective Bogart, what was taken in this burglary?

17 A: There was a Glock .45, model 36 pistol, multiple
18 televisions, flat screen televisions, smaller televisions;
19 some miscellaneous jewelry, an iPad and two laptop computers.

20 Q: Was the gun the reason for the charge of burglary first?

21 A: Yes.

22 Q: Thank you. Were you able to return any of these items to
23 the victim?

24 A: No, sir.

25 Q: And what type of gun was this?

1 A: It was a Glock semiautomatic .45, model 36.

2 Q: Were any suspects arrested related to this case?

3 A: Yes.

4 Q: And who were those suspects?

5 A: The Defendant Zachary Bullock and the two Codefendants
6 who testified earlier, Emmanuel Foriest and De'Aisha Denton.

7 Q: Thank you. Were you able to talk with any -- I'm sorry,
8 were you able to talk with De'Aisha Denton?

9 A: Yes.

10 Q: And what did De'Aisha Denton tell you?

11 MR. HILLIARD: Objection.

12 THE COURT: Ladies and gentlemen, go to your jury room,
13 please. Thank you.

14 (REPORTER'S NOTE: The jury exits courtroom. 11:26 A.M. The
15 following takes place outside the presence of the jury.)

16 THE COURT: All right. Your objection, Mr. Hilliard is
17 ---

18 MR. HILLIARD: That he is attempting to bolster the
19 testimony of a witness who has testified by eliciting hearsay
20 from an additional witness that her story is consistent today
21 with the story that she's told in the past.

22 THE COURT: And your reply to that, Solicitor?

23 MR. GROOMS: Yes, sir, Your Honor. I don't believe this
24 is bolstering. This is the lead detective. No arrests were
25 made until after he talked with these Defendants if he didn't

1 believe their statement to be credible, no one would have ever
2 been arrested in the first place. This is how the case
3 developed. The Defendant can testify Ms. Denton took him to
4 this residence. Mr. Hilliard challenged that on the record
5 that she didn't even know which neighborhood she was in. He's
6 gonna testify to his investigation and how his arrests were
7 made as a result of his testimony. He also goes -- testify to
8 the fact that a gun was taken and the type of gun that was
9 taken. I guess we've already gotten into that but, Your
10 Honor, without this testimony, being able to talk to the
11 Defendants, we've got a big gap in this case.

12 THE COURT: All right. You can't frame your questions
13 such that this witness believes their statements to be true,
14 that in any way he's vouching for their truthfulness or their
15 believability or credibility. So, his answers cannot vouch
16 for the truthfulness or credibility or believability of the
17 witnesses. You can ask him what he did, you know, what
18 information he received, how he acted on that information and
19 what he found but you cannot ask him any questions that would
20 indicate his belief of the truthfulness of those two prior
21 witnesses. That is Denton or Foriest.

22 MR. GROOMS: Yes, sir, Your Honor. Would it be proper
23 for him to testify that the statements that they gave were the
24 same statements that they told him? The testimony that
25 they've given today would be the same statements that he was

1 given? I mean, there's a roundabout way without him saying
2 that but that's I think certainly appropriate.

3 THE COURT: I'm not gonna allow you to ask that
4 particular question. I am gonna allow you to ask, you know,
5 what he did, what information he received, whom he received
6 the information, what he did what that information, but I'm
7 not gonna allow you to indicate to the jury that this witness
8 believes the truthfulness of them.

9 MR. GROOMS: Thank you, Your Honor. Just ---

10 THE COURT: Now, obviously, if he's asked such a
11 question, Mr. Hilliard, on cross examination or would call
12 upon him in any way to indicate his belief, he's free to do
13 that but not on direct.

14 MR. HILLIARD: Thank you, Your Honor.

15 MR. GROOMS: Your Honor, I believe this detective has an
16 opinion as to whether or not Zachary Bullock is guilty and I
17 think he is allowed to testify to that.

18 THE COURT: You can ask him as a result of all the
19 information that he collected and gone through everything that
20 he did, did he then go to a magistrate and get, you know, get
21 a warrant and go arrest that Defendant for the crime. But you
22 can't ask him, do you think that defendant is guilty of this
23 crime. I mean, that's the job of the jury. You can't ask him
24 that question.

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

1 THE COURT: But you can get to that, quite certainly.

2 All right. Ask the jury to come back in, please.

3 (REPORTER'S NOTE: The jury exits courtroom. 11:32 A.M.)

4 THE COURT: All right, Solicitor, you may continue.

5 MR. GROOMS: Thank you, Your Honor.

6 BY MR. GROOMS:

7 Q: Detective Bogart, I believe we left off with you were
8 assigned this case and you were able to talk to Ms. Denton.
9 Could you please tell the Court what steps were taken in your
10 investigation and how we arrived here today?

11 A: Yes, sir. Prior to going out to speak with Ms. Denton,
12 the 18th of January, I had already received information from
13 patrol officers that she was willing to cooperate with me.
14 So, I went out to the jail with another detective, excuse me,
15 detective and met with Ms. Denton. I read her the Miranda
16 Warning, she indicated that she understood her rights and that
17 she did not want an attorney present and that she was willing
18 to cooperate with us because she didn't want to be in any more
19 trouble than she had to be. It was her first offense and she
20 was willing to help us out. So, I asked her if she was
21 willing to drive us to the location of the burglary. That was
22 the first step is to show credibility, her statement was to
23 have her show us where the burglary took place.

24 MR. HILLIARD: Objection.

25 THE COURT: Grounds?

1 MR. HILLIARD: He just said that he would -- that was the
2 first step to show her credibility as to ---

3 THE COURT: All right. I'm going to strike that and the
4 witness is cautioned again not to indicate believability or
5 credibility, that's the job of the jury.

6 Continue on, sir.

7 MR. HILLIARD: Thank you, Your Honor.

8 BY MR. GROOMS:

9 Q: Please pick up where you left off. How did you arrive at
10 the residence?

11 A: We asked Ms. Denton to drive us or actually we drove and
12 we asked her to direct us to the residence. And she was able
13 to do that without any assistance from us. We drove right to
14 the scene of the crime which was 4194 High Brass Covey. And
15 if I could just digress just for a moment, we did interview
16 her before we left, head out to the residence or the crime
17 scene and we were able to verify the facts in the case that
18 they had -- the burglary had been set up by Mr. Bullock and
19 they had gone there with the specific intention, the crux of
20 the burglary was namely the gun and we verified the property
21 that was stolen and how it was accomplished.

22 Q: Thank you, Detective Bogart. Who did Ms. Denton
23 implicate in her statement?

24 MR. HILLIARD: Again, Judge, that's my objection as to
25 ---

1 THE COURT: I'm gonna allow the Detective to state what
2 Ms. Denton told him, again, without any additional comments.

3 MR. HILLIARD: Thank you, Your Honor.

4 BY MR. GROOMS:

5 Q: Who did Ms. Denton implicate in this burglary?

6 A: She implicated herself, Emmanuel Foriest, and the
7 Defendant Zachary Bullock.

8 Q: Thank you. Were you able to talk to Mr. Foriest in this
9 case?

10 A: Yes.

11 Q: And when was that?

12 A: I believe that was on January 23rd we spoke with him.

13 Q: Was Manny also charged in the case?

14 A: Yes.

15 Q: And what was he charged with?

16 A: I believe I also charged him with burglary first degree.

17 MR. GROOMS: Court's indulgence just a second, Your
18 Honor.

19 THE COURT: All right.

20 BY MR. GROOMS:

21 Q: When you first talked to Foriest, was he able to give you
22 a statement?

23 A: Yes.

24 Q: Detective Bogart, would it be possible then that he was
25 -- you talked to him before the 23rd?

1 A: No. That would be -- it could've been somewhere around
2 the 19th or the 23rd, I'm not exactly sure, but I think it was
3 the 23rd that I spoke with him.

4 Q: Okay. When did you talk to him? Was there any -- was
5 there anything that you talked to him about or that would've
6 helped you remember the date? Would you have been the one who
7 served the warrant on the Defendant?

8 A: That would be correct. I believe some of the warrants
9 were served on the 19th, some were served on the 23rd. So, if
10 -- I believe there may be a couple of warrants that were
11 served on the 19th, if that's the case, then that would've
12 been the date that we first talked to him.

13 MR. GROOMS: Judge, would it be possible to approach the
14 witness with a copy of the warrant?

15 THE COURT: Show it to Mr. Hilliard first.

16 Y'all come up and talk to me just one second.

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

19 MR. GROOMS: Might I approach the witness, Your Honor?

20 THE COURT: Yes, sir, you may.

21 BY MR. GROOMS:

22 Q: Just to refresh your memory.

23 A: Yes, sir.

24 Q: What is -- what is the date on that warrant?

25 A: January 19th, 2012.

1 Q: So, would that be the day he talked to Mr. Foriest?

2 A: Yes.

3 Q: And as a result -- was this a part of your investigation?

4 A: Yes, it was.

5 Q: What were you -- what did you determine from talking to
6 Mr. Foriest as far as to the case itself about the credibility
7 of Mr. Foriest?

8 A: Mr. ---

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

10 THE COURT: Rephrase your question, Solicitor.

11 MR. GROOMS: Thank you, Judge.

12 BY MR. GROOMS:

13 Q: Were you able to talk to Mr. Foriest on the 19th?

14 A: Yes.

15 Q: Was he forthcoming involving this case?

16 A: Yes, he was.

17 Q: And who did he implicate?

18 A: He implicated himself, he also implicated De'Aisha Denton
19 and the Defendant Zachary Bullock.

20 Q: What did he tell you about a gun?

21 A: He told me that the whole purpose of the burglary was to
22 go and break into Mr. Skipper's residence 48184 High Brass
23 Covey, with the main intention he had of being the pistol. He
24 told me that he ---

25 MR. HILLIARD: We'd just renew our objection to this line

1 of ---

2 THE COURT: All right, sir. I'm gonna allow him to
3 testify as to what the witness or what Mr. Foriest told him
4 but not any other comments. Go ahead.

5 MR. HILLIARD: Thank you, Your Honor.

6 A: Mr. Foriest told me that De'Aisha Denton drove the
7 vehicle and that he and Mr. Bullock were dropped off down the
8 street and they then went, disappeared from her observation --
9 I'm sorry, he told me that they went and actually committed
10 the burglary which I've already indicated what was taken.
11 Upon, after finishing the burglary, they called her or he
12 called her and they met back up with her on the street and got
13 in the car and drove away.

14 BY MR. GROOMS:

15 Q: Thank you. As a result of this information -- actually,
16 I'm gonna withdraw the question.

17 Was this the first time you talked to Emmanuel Foriest?

18 A: Yes.

19 Q: And the statement was given that day?

20 A: Yes.

21 Q: Thank you, sir. Nothing further.

22 THE COURT: Cross examination.

23 MR. HILLIARD: Thank you, Your Honor.

24 CROSS EXAMINATION OF SCOTT BOGART BY MR. HILLIARD:

25 Q: When you were speaking with Ms. Denton, her words to you

1 were -- part of her words to you were that she wanted to be in
2 no more trouble than she had to be.

3 A: Words to that effect, yes.

4 Q: And what she was trying to do was insolate and isolate
5 herself from as much of this criminal responsibility as
6 possible? Right? I'll ask another question. The --
7 essentially what she was telling you was she was just the
8 driver.

9 THE COURT: Sir?

10 A: No, I believe that's incorrect. She didn't confess to
11 her role in its entirety but she did make it clear that she
12 wanted to cooperate with the hopes that the Court would show
13 some leniency.

14 Q: Did she tell you that she did more than just drive?

15 A: No.

16 Q: The information that you've provided to the folks on the
17 jury about the specific make, model, caliber and -- of this
18 weapon is a hundred percent hearsay; is that correct?

19 A: I suppose it would be a legal question. I'm not quite
20 sure ---

21 Q: You never saw this gun?

22 A: No.

23 Q: You didn't saw it before it got stolen, right?

24 A: No.

25 Q: You didn't saw it after it got stolen? Right?

1 A: No.

2 Q: You don't have it for us today? Right?

3 A: Correct.

4 Q: Then you don't know anything about it other than what
5 somebody told you?

6 A: That's correct.

7 Q: All right. Very good. And in fact, Mr. Foriest was
8 charged with -- initially, this was a burglary in the second
9 degree; isn't that true?

10 A: That's incorrect.

11 Q: Initially, the incident report had it listed as burglary
12 in the second degree?

13 A: Correct. But that was incorrect labeling of the report.

14 Q: All right. And Mr. Foriest was charged with burglary in
15 the first degree, burglary in the second degree, another
16 burglary in the second degree, four housebreakings, a burglary
17 in the second degree nonviolent and possession of burglary
18 tools. Isn't that correct?

19 A: I believe that sounds correct.

20 Q: And that's Mr. Foriest?

21 A: Yes.

22 Q: And are you familiar with his plea negotiation?

23 A: No.

24 Q: All right, sir. And Mr. Foriest, that's the person that
25 we've been calling Manny; is that correct?

1 A: Yes, sir.

2 Q: How much money was got for the sale of the stolen items?

3 A: I can only answer by what I heard from the Defendants,
4 which was somewhere between 400 and 900, whatever was told the
5 jury. I don't have any direct knowledge of that.

6 Q: In fact, you don't have any direct knowledge of anything
7 you've said so far, right?

8 A: I don't ---

9 Q: Sir? Right?

10 A: That's -- I believe that'd be correct.

11 Q: Thank you, sir. That's all I have.

12 THE COURT: Any redirect?

13 MR. GROOMS: Your Honor, I hate to belabor it further,
14 but may we approach very briefly?

15 THE COURT: Certainly.

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

18 MR. HILLIARD: Thank you, Your Honor.

19 THE COURT: Any redirect?

20 MR. GROOMS: Just briefly, Your Honor.

21 REDIRECT EXAMINATION OF SCOTT BOGART BY MR. GROOMS:

22 Q: Did Ms. Denton tell you that she received, that she also
23 shared in the proceeds of the burglary?

24 A: Yes.

25 Q: Okay. Thank you, sir. That's all I have.

1 THE COURT: Anything on that question?

2 MR. HILLIARD: No, sir, Judge. Nothing further.

3 THE COURT: You may step down, sir.

4 All right. Solicitor, your next witness, please?

5 MR. GROOMS: Your Honor, the State would call
6 Investigator Ginger Pop.

7 THE COURT: All right, sir.

8 Please come around and meet the clerk right here, please,
9 ma'am.

10 GINGER POP, HAVING BEEN DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 CLERK: Please state your full name and spell your last
13 name.

14 MS. POP: Ginger Pop, P-O-P.

15 DIRECT EXAMINATION OF GINGER POP BY MR. GROOMS:

16 Q: Thank you, Ms. Pop. Can you please tell the jury what
17 your -- who you are employed with?

18 A: I work for the Fifteenth Judicial Circuit as an
19 investigator.

20 Q: And what is your role as an investigator?

21 A: We investigate cases further on than maybe the initial
22 investigating agency did.

23 Q: Thank you. And you said ---

24 THE COURT: Could you move a little closer to the
25 microphone, please, ma'am.

1 A: Sorry.

2 Q: Were you asked to perform an interview in State v
3 Bullock?

4 A: I was.

5 Q: And who was that interview with?

6 A: Foriest is the name that I -- I don't remember his full
7 name. If I could have my notes.

8 Q: Emmanuel Ladon Foriest?

9 A: Yes.

10 Q: Thank you. And where did -- where did this interview
11 take place?

12 A: It took place at J. Reuben Long Detention Center.

13 Q: And was the -- was Mr. Foriest told what to say?

14 A: No, sir.

15 Q: Was it implied in any way that had to testify a certain
16 way?

17 A: No, sir.

18 MR. HILLIARD: Excuse me must one second. We'll have our
19 same objection as to this testimony as to the previous
20 testimony.

21 THE COURT: As to the questions that have just been
22 asked, I don't -- I'll overrule any objection to that.

23 MR. HILLIARD: Yes, sir.

24 THE COURT: If you have further objections, just bring
25 them to my attention.

1 MR. HILLIARD: Thank you, Your Honor.

2 BY MR. GROOMS:

3 Q: Was Mr. Foriest told to tell the truth?

4 A: He was.

5 Q: Thank you. That's all I have for you.

6 THE COURT: Cross examination?

7 CROSS EXAMINATION OF GINGER POP BY MR. HILLIARD:

8 Q: That was June 26th of this year that the interview was
9 done?

10 A: I believe so if I could have a copy just to refresh my
11 memory that would assist me if you don't mind.

12 Q: Sure.

13 A: Yes, it was. Thank you.

14 MR. HILLIARD: Excuse me just one second.

15 THE COURT: Yes, sir.

16 BY MR. HILLIARD:

17 Q: This is a copy of your report; is that right?

18 A: Yes, sir.

19 Q: And Mr. Foriest indicated that the gun had a holster.

20 A: Do you mind if I look ---

21 THE COURT: All right, ma'am. You can read your report,
22 refresh your memory and then answer the question.

23 Q: He indicated that gun had a holster?

24 A: Correct.

25 Q: And he indicated that the items were sold for

1 approximately \$900?

2 A: Correct.

3 Q: That's all I have. Thank you, ma'am.

4 THE COURT: Any redirect?

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

6 THE COURT: You may step down.

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

8 MR. GROOMS: Please, Your Honor.

9 MR. HILLIARD: No objection, Judge.

10 THE COURT: You are released from your subpoena, ma'am,
11 to go back to your regular duties.

12 Further witnesses for the State?

13 MR. GROOMS: No, sir, Your Honor. That would conclude
14 the State's case.

15 THE COURT: All right. The State rests at this time?

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

17 THE COURT: All right. Mr. Hilliard do you have matters
18 of law at this point in time?

19 MR. HILLIARD: I do, Your Honor.

20 THE COURT: All right. Very good.

21 BY THE COURT:

22 All right, ladies and gentlemen. The State has concluded
23 its portion of the case in this matter. There are matters of
24 law that I have to take up with the lawyers at this point in
25 time and they will take some period of time. There's no sense

1 since we're close to 12 o'clock for you to sit in the jury
2 room waiting for that to be done and then for me just to send
3 you to lunch after that. So, I'm gonna give you an extended
4 break. If y'all would come back at 1:30 please. Be back --
5 when do you want them to be back in the jury room by 1:30.
6 When do you want them downstairs?

7 BAILIFF: Quarter after 1:00, 1:15.

8 THE COURT: All right. Be back in the jury assembly room
9 by 1:15. Thank you very much.

10 (REPORTER'S NOTE: The jury exits courtroom. 11:53 A.M.)

11 THE COURT: All right. Mr. Hilliard, be glad to hear
12 from you, sir.

13 MOTIONS:

14 MR. HILLIARD: Thank you, Your Honor. At this time, Your
15 Honor, we'd respectfully request the Court to direct a verdict
16 of not guilty as to the only count in the indictment, that
17 being burglary in the first degree based on an insufficiency
18 of the evidence and its contradictory nature as to the -- the
19 only evidence before the Court, there's no physical evidence,
20 the only evidence before the Court is the contradictory
21 testimony of corroborating codefendants. I recognize that
22 they both say that Zach was there and they both say that Zach
23 was involved with -- there's a lot contradiction in their
24 testimony. So, we would ask you to direct a verdict of not
25 guilty as to the sole count in the indictment.

1 THE COURT: All right. Very good. Regarding a directed
2 verdict, the Defendant is entitled to a directed verdict if
3 the State fails to produce evidence of the offense charged.
4 As the Trial Judge, I'm concerned with the existence of
5 evidence. It's not for the Court to judge its weight, its
6 credibility or believability. If there's any direct evidence
7 of substantial circumstantial evidence which usually tends to
8 prove the guilt of the accused and is properly submitted to
9 the jury. Only when a jury would be merely speculating as to
10 the guilt would be proper for a directed verdict. In this
11 particular case, I do find that there is more than sufficient
12 evidence if that evidence is so believed by the jury -- again,
13 that's their job, judging credibility and believability -- to
14 convict the Defendant of the crime charged. All of the
15 elements have been testified to by the Codefendants in this
16 particular case implicating the Defendant in the planning,
17 executing, purpose of the crime, the taking away of a pistol,
18 the incidental sale of it, the receipt of money for those
19 items; there is more than sufficient evidence regarding all
20 the elements of burglary first even though the crime was
21 committed in the daytime. All the elements are there. Again,
22 credibility and believability is for the jury but the evidence
23 exists. Motion is denied.

24 MR. HILLIARD: Thank you, Your Honor. Judge, as to the
25 -- as to the gun aspect of this case and the part of it which

1 makes it burglary first instead of burglary second, the
2 indictment as I recollect contains two of the three parts of
3 the statute being that they are armed while going to the
4 residence or armed while in the residence. And again, and
5 subject to correction, I don't remember there being a part in
6 there about armed while leaving the residence.

7 THE COURT: Well, let me read it as -- I've got the
8 original indictment here that was true-billed by the Grand
9 Jury on October 25th, 2012. Let me just read what the
10 indictment says. It says, of course, Court of General
11 Sessions, October 25, 2012, the Grand Jury of Horry County
12 present upon their oath, burglary first degree and it has the
13 CDR Code, the statutory code section thereafter that says that
14 Zachary Braxton Bullock, who is the Defendant in this case,
15 did in Horry County on or about January 12th, 2012 enter the
16 dwelling of Joseph Skipper without consent and with the intent
17 to commit a crime therein and when, in effecting entry or
18 while in the dwelling or in immediate flight, he or another
19 participant in a crime was armed with a deadly weapon in
20 violation and again, it talks about the Code Section 1976, as
21 amended, against the peace and duty of the State and contrary
22 to the statute of such a case made and provided.

23 MR. HILLIARD: I stand corrected, Your Honor. Thank you.

24 THE COURT: All right. Very good.

25 MR. HILLIARD: Judge, also just for the purpose of

1 information at this point, I'm gonna ask the Court at the
2 conclusion of the case, for a charge on burglary in the second
3 degree.

4 THE COURT: Well, and I appreciate that and indicate to
5 you that I anticipated that you might ask that. If the Court
6 considers that then we need to consider just labeling it, if
7 I'm gonna do it, as burglary second degree. Does it need to
8 be labeled burglary second degree violent, burglary second
9 degree non-violent. Those are issues because obviously it
10 affects the effect, does that need to be labeled on the
11 burglary, just a question to consider. Not saying I'm going
12 to include it yet, but it is a question to consider.

13 MR. HILLIARD: Of course, our position would be that it
14 would be a burglary -- the basis in theory behind the request
15 would be if they fail to prove the element of the gun then
16 that would be burglary second degree non-violent. So, any
17 burglary second degree found by the jury would be non-violent.

18 THE COURT: All right, sir

19 MR. HILLIARD: And again, part of the theory behind that
20 is State v. McCaskill.

21 THE COURT: I appreciate it. I don't know that we need
22 to argue about it right now. You indicated you're gonna have
23 witnesses testify for the Defense, correct?

24 MR. HILLIARD: The only witness I intend to call is the
25 one from the jail.

1 THE COURT: I'm sorry. Mr. Foriest?

2 MR. HILLIARD: Yes, sir.

3 THE COURT: Okay. All right. Let's get through this
4 then.

5 Any further motions at this point in time?

6 MR. HILLIARD: No, sir, Judge.

7 THE COURT: Is your client prepared at this point in time
8 for me to question him regarding his right to testify in this
9 case?

10 MR. HILLIARD: He is, Your Honor. Yes, sir.

11 THE COURT: All right. Very good.

12 BY THE COURT:

13 Q: All right. Mr. Bullock, could you stand up, please.

14 And Madame Clerk, would you place him under oath.

15 ZACHARY BRAXTON BULLOCK, HAVING
16 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

17 THE COURT: All right. Now, Mr. Bullock, at this point
18 in time, I'm going to explain to you certain of your
19 constitutional rights. If at any point in time, you don't
20 understand what we're talking about, you don't understand me,
21 you've got a question, something that needs to be explained to
22 you, that's confusing in any way, you need to bring that to my
23 attention. You can raise your hand, you can say, I have a
24 question, you can tell your attorney but you've got to
25 affirmatively in some way indicate to me that you've got a

1 question or are confused or something that needs to be
2 discussed.

3 MR. BULLOCK: Yes, sir.

4 THE COURT: All right. So, we're in agreement then?

5 MR. BULLOCK: Yes, sir.

6 THE COURT: All right. Very good. Now, we've reached
7 the stage of the trial where you can present your defense.
8 You have the right to claim the protection given to you by the
9 Fifth Amendment to the Constitution of the United States of
10 America. Now, that states in part that no person shall be
11 compelled in any criminal case to be a witness against
12 themselves. That means nobody can make you testify. Nobody
13 can force you to testify in this case. You can testify if you
14 want to but it's your choice. Nobody can make you do so. Do
15 you understand that?

16 MR. BULLOCK: Yes, sir.

17 THE COURT: All right. If you decide to testify, you
18 would be subject to the same rules that govern all the other
19 witnesses that have testified in this case. You'd be asked
20 questions by your attorney. I would allow the State to cross
21 examine or ask you questions on any matters, any facts the
22 Court would deem relevant to this case. Do you understand
23 that?

24 MR. BULLOCK: Yes, sir.

25 THE COURT: Is there a prior record?

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

2 THE COURT: All right. So, there's no prior record, so
3 we don't have that have that particular issue.

4 Your decision to testify has to be your decision. It has
5 to be freely made, voluntarily made, with knowledge of these
6 protections. Now you can ask your attorney questions or if
7 there was a family member you wanted to ask a question of
8 before you make your decision, I'll allow you to do that but
9 you understand, it's your decision.

10 MR. BULLOCK: Yes, sir.

11 THE COURT: All right. Now, before I ask you whether or
12 not you want to testify, do you understand what we've talked
13 about?

14 MR. BULLOCK: Yes, sir.

15 THE COURT: Do you have any questions that you want to
16 ask your attorney or a family member at this point in time?

17 MR. BULLOCK: No, sir.

18 THE COURT: All right, sir. Do you wish to testify in
19 this case?

20 MR. BULLOCK: Very good, sir. Thank you very much. You
21 may have a seat.

22 All right. What we'll do then is, Madame Deputy, if we
23 could make sure that Mr. Foriest is here at 1:30, please,
24 ma'am, so that he can be recalled for the purpose of that
25 question by Mr. Hilliard.

1 Now, Mr. Hilliard, is now in evidence based upon the
2 Solicitor's questions and the answers within your cross
3 examination of the detective what he was charged with. So,
4 you're gonna be able to ask because it's already in evidence.

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

6 THE COURT: The, you know, as far, you know, X, Y, Z
7 crimes get ---

8 MR. HILLIARD: Dismissed.

9 THE COURT: --- dismissed. All right, sir. So, there's
10 -- just make sure we were clear on any confusion about that,
11 you can ask those questions.

12 MR. HILLIARD: Thank you.

13 THE COURT: All right. So, anything else from the State
14 at this point in time?

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

16 THE COURT: Anything else from the Defense?

17 MR. HILLIARD: Judge, I would only say that the Court has
18 directed in regarding to the bonding situation and ---

19 THE COURT: Yes, sir.

20 MR. HILLIARD: And it's my understanding that the bonding
21 company has indicated a willingness to stay on the bond.

22 THE COURT: All right. If the bonding company has
23 indicated its willingness to stay on the bond, then I'm gonna
24 allow Mr. Bullock to remain out on bond.

25 Stand up for just one second, Mr. Bullock. You

1 understand that while I'm allowing you to stay out on the
2 bond, this case is gonna go forward with or without your
3 presence. If you would not come back after lunch we're gonna
4 continue on with this case to its conclusion; you understand
5 that?

6 MR. BULLOCK: Yes, sir.

7 THE COURT: And obviously, what would happen is a bench
8 warrant will be issued for your arrest. If the jury had
9 already returned a verdict, that verdict would be announced to
10 you at the time that you are arrested and brought back before
11 the Court.

12 Now, I will also tell you -- I'm directing you to be back
13 in the courtroom by at the latest 1:30 P.M. this afternoon.
14 If you are not back in the courtroom, you will have violated a
15 direct order of this Court; you understand that?

16 MR. BULLOCK: Yes, sir.

17 THE COURT: And that could subject you to contempt of
18 court proceedings and a sentence no matter what the jury might
19 decide in this particular case. You understand that?

20 MR. BULLOCK: Yes, sir.

21 THE COURT: All right. Very good. Based on that, he can
22 remain out on bond during -- until the jury returns a verdict
23 in this particular matter.

24 BY THE COURT:

25 All right. I'm not making a decision whether I'm going

1 to include burglary second degree but if you want to tell me
2 very briefly, Mr. Hilliard why you think burglary second is
3 proper?

4 MR. HILLIARD: The cases that I've read and the -- which
5 talk about the burglary statute and how having a gun can make
6 it burglary in the first degree and upholding that have been
7 directed verdict appeals. And so the directed verdict aspect
8 of this, Your Honor has ruled on and is consistent with what
9 the appellate courts have said in regard to that. I've not
10 seen any other cases regarding the prospect of the burglary in
11 the second degree being a lesser included offense. And as the
12 gun aspect of the case is subject to -- it is a specifically
13 independent element of the offense. And if the jury were to
14 believe some of the witness and not all of the witness and
15 they were to find beyond a reasonable -- they were not to find
16 beyond a reasonable doubt that the gun was involved, then it
17 would be possible for them to find the Defendant guilty of
18 burglary in the second degree and that they could find that he
19 went to the house in the daytime with the intent to commit a
20 crime without permission to enter and went in, committed the
21 crime and left and that they were inconclusive or found -- or
22 did not find beyond a reasonable doubt that there was a gun,
23 that he became armed and therefore that that element of the
24 crime was not met and as a consequence they could find him
25 guilty of burglary in the second degree making it appropriate

1 under the circumstances, Judge, to charge burglary in the
2 second degree.

3 THE COURT: All right. What do you say that, Solicitor?

4 MR. GROOMS: Your Honor, I think there's been
5 overwhelming testimony in concluding that this gun was in fact
6 taken. Mr. Hilliard went into talking about the bullets and
7 whether or not the gun was loaded with the victim. I guess I
8 could see how the jury could discredit the other four
9 witnesses as well that no gun was taken but I believe that's
10 at issue -- a question for the jury if they don't believe the
11 gun was taken and he's not guilty.

12 THE COURT: All right. Well, I appreciate that. The
13 problem I've got is and the reason I'm considering it is on
14 cross examination of Ms. Denton, there was a line of
15 questioning by Mr. Hilliard where he asked Ms. Denton did she
16 agree the burglary happened in the daytime. No gun was
17 brought in or used in the robbery and then based upon a
18 question Mr. Hilliard asked, she said he was uncertain where
19 the gun came from. State didn't follow up to clarify that.
20 It could very well be that she was uncertain as to the
21 location of where the gun came from in the house but that's
22 not what she said. Her answer was I'm uncertain where the gun
23 came from. That's her answer.

24 MR. GROOMS: Yes, sir, Your Honor, she ---

25 THE COURT: If the jury -- if the jury believes that

1 portion of her testimony, that she's uncertain where the gun
2 came from, then they could reasonably conclude the gun didn't
3 come from the house. I know that it seems like the
4 overwhelming weight of the evidence is to the contrary but she
5 did testify to that. And it contradicts other statements she
6 made on direct questioning by the State. But I can't make
7 decisions, as I've indicated already, about credibility and
8 believability. The testimony exists. So, if they believe
9 that, then why couldn't they conclude burglary second rather
10 than burglary first?

11 MR. GROOMS: I understand where you're going, Your Honor.
12 The one thing that she was very clear about was that she had
13 the gun as they left. That it is immediate flight.

14 THE COURT: I appreciate that. But you couple that with
15 I'm uncertain where the gun comes from. Unreasonable as it
16 seems, since she wasn't there and saw the Defendant pick up
17 the gun -- I understand Mr. Foriest says otherwise but then
18 you've got people that are -- have got different stories, you
19 know, it wasn't clear. It's unclear what she meant. So, I
20 don't see I have any choice but to send burglary second to the
21 jury. Y'all think about it.

22 All right. We'll be at ease until 1:30.

23 MR. HILLIARD: Thank you, Your Honor.

24 (RECESS - 12:11 P.M.)

25 *****OFF THE RECORD*****

1 (On the Record - 1:32 P.M.)

2 THE COURT: All right. Solicitor, is the State ready for
3 the jury?

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

5 THE COURT: And Defense?

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

7 THE COURT: Very good. Ask the jury to come in, please.

8 (REPORTER'S NOTE: The jury enters courtroom. 1:36 P.M.)

9 THE COURT: All right, Mr. Hilliard.

10 MR. HILLIARD: Thank you, Your Honor.

11 We'd call Emmanuel Foriest.

12 THE COURT: Please come around.

13 State your name again, please.

14 MR. FORIEST: Emmanuel Ladon Foriest.

15 THE COURT: All right, Mr. Foriest, just remember you
16 remain under oath. All right?

17 MR. FORIEST: Yes, sir.

18 THE COURT: Go ahead, Mr. Hilliard.

19 MR. HILLIARD: Thank you, Your Honor.

20 DIRECT EXAMINATION OF EMMANUEL LADON FORIEST BY MR. HILLIARD:

21 Q: Mr. Foriest, you indicated earlier that your first degree
22 burglary charge connected to this incident has been reduced to
23 burglary in the second degree and you have pled guilty to
24 that; is that correct?

25 A: Yes, sir.

1 Q: And you're facing a sentence of zero to ten years on
2 that?

3 A: Yes, sir.

4 Q: And also as part of your agreement with the prosecutor's
5 office to be here today and to testify they have also agreed
6 to dismiss an additional burglary in the second degree,
7 burglary in the second degree, three-four housebreakings,
8 another burglary in the second degree and possession of
9 burglary tools; is that correct?

10 A: Yes, sir.

11 Q: All those cases have been dismissed?

12 A: Yes, sir.

13 Q: In return for your testimony here today?

14 A: Yes, sir.

15 Q: That's all I have. Thank you, sir.

16 THE COURT: All right. Any cross examination by the
17 State?

18 MR. GROOMS: Just briefly, Your Honor.

19 CROSS EXAMINATION OF EMMANUEL LADON FORIEST BY MR. GROOMS:

20 Q: Mr. Foriest, are you aware that those charges have not
21 actually been dismissed?

22 A: Yes, sir.

23 Q: Okay. Thank you, sir.

24 THE COURT: Anything else, Mr. Hilliard?

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

1 THE COURT: All right, sir. You may step down. Thank
2 you very much.

3 Further witnesses by the Defense?

4 MR. HILLIARD: The Defense rests, Your Honor.

5 THE COURT: All right. Very good. Any reply testimony
6 from the State?

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

8 THE COURT: All right. Very good.

9 MR. HILLIARD: And we would renew our motions, Your
10 Honor.

11 BY THE COURT:

12 THE COURT: All right. Just one second, please.

13 All right, ladies and gentlemen, that concludes the
14 evidentiary portion of the trial. What remains, I'll first
15 have to hear some matters of law outside your presence and
16 then we will come back in and you will hear the closing
17 arguments of the attorneys, then I will give you the charge on
18 the law, the law that you will apply to facts and evidence you
19 find to be true. And then I will submit the case to you for
20 your deliberations and your unanimous decision in this
21 particular matter. So, Madame Forelady, if you will take the
22 jury back to the jury room for a few minutes and then we'll
23 come back in and conclude the case.

24 (REPORTER'S NOTE: The jury exits courtroom. 1:40 P.M. The
25 following takes place outside the presence of the jury.)

1 THE COURT: All right. Mr. Hilliard?

2 MOTIONS:

3 MR. HILLIARD: Thank you, Your Honor. Judge once, again,
4 we'd renew our motions for a directed verdict and also for a
5 directed verdict as to the charge regarding the gun. And we
6 wish to again renew our motions to allow us to get into Ms.
7 De'Aisha's Instagram records and ask that Your Honor at this
8 point direct a verdict of not guilty.

9 THE COURT: All right. Very good. Regarding your
10 directed verdict motions, the Court reiterates the arguments
11 and the statements the Court made previously, just before
12 lunch regarding your directed verdict motion at the end of the
13 State. I'm not gonna reiterate the standard of law that I
14 set forth previously but suffice it to say I do believe there
15 is more than sufficient evidence that is properly before this
16 jury. It is for their consideration regarding credibility and
17 believability of the witnesses and with that I would
18 respectfully decline to grant your motions for a directed
19 verdict in this matter.

20 MR. HILLIARD: Thank you, Your Honor.

21 THE COURT: All right. Very good.

22 All right. Any further motions that you have?

23 MR. HILLIARD: Are you gonna speak with us about the
24 charge, Judge?

25 THE COURT: I am.

1 MR. HILLIARD: Thank you.

2 THE COURT: Just a minute. I just want to make sure
3 there weren't any other motions?

4 MR. HILLIARD: Nothing else, Judge.

5 BY THE COURT:

6 THE COURT: All right. Very good.

7 All right. As to the charge and I'm assuming that the
8 Defense at this point and you brought that to my attention
9 previously but at this point in time you are requesting of the
10 Court to charge burglary second degree and to submit that
11 verdict form to the jury; is that correct, Mr. Hilliard?

12 MR. HILLIARD: That's correct, Your Honor.

13 THE COURT: All right. Solicitor, do you want to argue
14 that?

15 MR. GROOMS: Yes, sir. It's the State's position that
16 regardless of whether or not the gun was taken off the shelf
17 or outside the house, whatever it may be, the testimony was
18 clear by Ms. Denton that when he got into that vehicle and
19 they were then fleeing the burglary he had that gun. So, I
20 think where the gun came from is actually irrelevant as far as
21 her testimony goes.

22 THE COURT: And I thought about that and you may be
23 correct about that. Mr. Hilliard made the point and I believe
24 it's a proper point as I said several times now, it's the
25 jury's job to judge credibility and believability. There has

1 been introduced evidence in this case that the two
2 Codefendants were in a relationship. It is clear that the
3 Defendant Foriest, as he stated on cross examination, would at
4 least a reasonable interpretation of what he said would be he
5 would do what he could to try and help Ms. Denton and I
6 believe her testimony can be fairly argued for the same point.
7 There has been also introduced into evidence the benefit that
8 they are getting from their testimony here today. And it is a
9 reasonable conclusion by the jury judging credibility and
10 believability that they have tailored their testimony to place
11 the most damaging evidence upon the Defendant Bullock and away
12 from themselves either in an effort to help the other or self-
13 preservation. Now, whether or not the jury believes that,
14 again, that's their job. The jury, as I will explain it to
15 them, as we've all heard, you can believe a portion of what a
16 witness says, you can disregard a portion of it. You can
17 believe one witness against several, several against one. If
18 you have a good sound reason for doing so, you can disregard
19 in its entirety the testimony of a particular witness. And
20 the jury made you -- based upon the evidence presented and
21 this is based on the attack on their credibility and
22 believability that the weapon was not in the possession of Mr.
23 Bullock or they just choose not to believe that portion of the
24 testimony. I understand that, you know, part of the elements
25 are that you can become armed with a deadly weapon in the

1 immediate flight and that could be considered part of the
2 crime in burglary first and part of that aggravated
3 circumstance but to not allow burglary second as a lesser
4 included I believe would have the Court imposing its beliefs
5 as to the credibility and the believability of the witnesses
6 and not leaving it to the jury for their determination. And
7 therefore, I'm going to include it.

8 MR. GROOMS: Thank you, Your Honor. While we're
9 discussing jury charges, we would be asking for hand of one,
10 hand of all to be included in your jury charge.

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

12 MR. HILLIARD: None that I think I can legitimately ---

13 THE COURT: I mean, it is part of, you know, burglary
14 first, and not only the indictment but proof that you or
15 another participant of the crime became, you know, armed with
16 a deadly weapon while, you know, either carrying it out or
17 while leaving flight.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: It's clear it existed, it seems to me but
20 that ---

21 MR. HILLIARD: I agree, Judge. I'd rather not have it
22 but I can't ---

23 THE COURT: Very good. Well, I'm going to do that.
24 Obviously, included in the hand of one, the hand of all is the
25 mere presence explanation, so that would certainly be part of

1 the hand of one, hand of all charge. And also greater or
2 lesser offense charge will be in that also. So, not in hand
3 of one, hand of all but that will be separate charge, so I'll
4 include that also. Usual things we talk about, again,
5 credibility and believability, direct and circumstantial
6 evidence, reasonable doubt, kind of doubt that would cause an
7 ordinary reasonable person to hesitate to act. Obviously, the
8 charge on the fact that the Defendant did not testify is not a
9 factor and can't be considered by them in their deliberations,
10 it's not part of their deliberations. An explanation of that,
11 obviously, the presumption of -- presumption of innocence and
12 then charge of burglary first and burglary second. Anything
13 else you can think of Mr. Hilliard?

14 MR. HILLIARD: No, sir.

15 THE COURT: Any you can think of, Mr. Hilliard?

16 MR. HILLIARD: No, sir.

17 THE COURT: Solicitor?

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

19 THE COURT: All right. Y'all want a few minutes to
20 organize your thoughts?

21 MR. HILLIARD: I'd like a couple of minutes, Judge.

22 THE COURT: All right. We'll take a short break so y'all
23 can organize your thoughts and then we'll call them back in
24 and get started on the closing arguments. Obviously, during
25 the State's case, you had already introduced some evidence,

1 so, Mr. Hilliard, obviously, you'll go first and the State ---

2 MR. HILLIARD: Thank you, Your Honor.

3 THE COURT: All right. Thank you.

4 All right. We'll be at ease for a few minutes.

5 (RECESS - 1:50 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 2:00 P.M.)

8 THE COURT: All right. State ready for the jury to come
9 in?

10 MR. GROOMS: Yes, Your Honor.

11 THE COURT: Defense?

12 MR. HILLIARD: Defense is ready, Your Honor.

13 THE COURT: Very good. Ask the jury to come in, please.

14 (REPORTER'S NOTE: The jury enters courtroom. 2:02 P.M.)

15 THE COURT: All right. Ladies and gentlemen as I
16 indicated, we have concluded the evidentiary portion of the
17 trial. What remains are the closing arguments and the charge
18 on the law. I will remind you what I told you about opening
19 statements and closing arguments. They are not evidence.
20 They are not to be considered by you as evidence in the case.
21 You have heard all the evidence to be presented in this
22 particular matter. But the closing arguments are important.
23 They are each side's summation to you of what they believe the
24 evidence has shown to you during the course of the trial.
25 Remembering of course, that you are the judges of the facts of

1 this case. And when they are done with the closing arguments
2 then I will give you the law that you will apply to the facts
3 and evidence you find to be true in this case.

4 Mr. Hilliard?

5 MR. HILLIARD: Thank you, Your Honor.

6 CLOSING BY MR. HILLIARD:

7 MR. HILLIARD: Ladies and gentlemen, before 5 o'clock
8 this afternoon, Zachary Bullock could be going to prison for
9 the rest of his natural life. That's the decision, the import
10 of the decision that you're gonna be making today, the
11 mandatory minimum sentence as you've heard of fifteen years
12 with no parole.

13 What is it that the State offers you to attempt to cause
14 you to make that happen? What are they bringing to you? Not
15 a single piece of physical evidence, nothing; a license plate,
16 a few photographs, a Google map. Fifteen to life; license
17 plate, photographs, Google map. Not a fingerprint, not a
18 fiber, not a hair, not a witness without a big, fat reward at
19 the end of this case.

20 Now, the homeowner says that his gun was stolen. Perhaps
21 it was. Is there any proof to you that there was a gun? Do
22 you have a sales receipt, photograph, anything? Which is not
23 to say that he didn't have a gun but what proof do you have?
24 What was the testimony about that?

25 One of the things to think about as you go through this

1 process, as you go through and determine what your verdict is
2 gonna be is to think about the evidence. In fact, that's all
3 that you have to make your decision on, the evidence or the
4 lack of evidence. And as you think about the evidence and the
5 believability of the evidence, one of the ways that you
6 determine believability, I submit to you -- and what the Judge
7 said in the beginning, good common sense. How do common sense
8 folks determine what's true and what's not true? Would it be
9 consistency? Certainly that would be one thing consistency.
10 Back with the gun, we have one person, the homeowner, saying
11 the gun was there fully loaded but nothing else. And we have
12 the person Emmanuel Foriest who says the gun was there in a
13 holster. Both of those things cannot be true. Now, does that
14 matter? It doesn't matter in the crime but does it matter in
15 making a determination about the truth and whether Mr. Foriest
16 really knows what's going on in this case or does not or is he
17 just trying to get himself out of trouble.

18 When you're thinking about this case, one of the filters
19 or lenses to use to look at the evidence is the lens or filter
20 of personal interest and personal bias that a person might
21 have. That is what's their motive to tell something other
22 than the truth. Well, Mr. Foriest's motive -- and remember in
23 the beginning of this, the police officers had a version of
24 what happened at the scene. And that they can certainly say
25 that if we didn't say to the suspects what was -- happened at

1 the scene but there are ways to get around that. So, Mr.
2 Foriest as he gleaned perhaps the story and he's thinking
3 what's in his best interest, how strongly motivated is he to
4 tell what's necessary in order to get his deal. What is the
5 strength of his motivation to say whatever it takes? Remember
6 he started out with burglary in the first degree. Now, he's
7 facing zero to ten years on a burglary in the second degree
8 based on the fact that he testified. That was his deal.

9 Now, what did he say the rest of his deal is? What he
10 said was they are going to dismiss another burglary second,
11 another burglary second, three housebreakings, another
12 housebreaking, another burglary second and a possession of
13 burglary tools. We called him back to let you hear that. You
14 heard him say that from the witness stand just a few moments
15 ago that that was his understanding of the plea offer in
16 return for his testimony. Now, the Solicitor says, well, that
17 hadn't happened yet. All right? Why hadn't that happened yet
18 because they want to be sure he says what the heck he's
19 supposed to say before they do what they're gonna do for him.
20 What did he tell you? He hopes he goes home today based on
21 his testimony. He hopes he goes home today -- life without
22 parole; is that fair? Is that fair?

23 When you're thinking about the accuracy of these people's
24 recollection, when you're thinking about whether they would
25 tell something other than the truth in order to get what they

1 need to get to serve their best interest; when you think about
2 those things, you're gonna have to Defendant's Exhibit Number
3 Twenty-two, which is the letter. It's a letter Ms. Denton
4 wrote when she was in jail to Foriest. Now, when she was
5 testifying in the beginning if you will recall before she knew
6 that we had this letter, she said that they were sort of
7 dating, that they were talking to each other which is some new
8 nomenclature apparently for people who are dating, but when
9 you look at the contents of this letter, I would submit to you
10 that is extraordinarily stronger than that. I ask her if she
11 loved him, she said, well, he loved me, maybe I loved him.
12 The first three words on this letter, I love you. And as you
13 go through it and it's somewhat difficult to make out but you
14 can read it and you'll have it with you and you can read the
15 whole thing in the back. As you go through it you will find
16 that there is a reference in there to the two state's
17 witnesses being Bonnie and Clyde. Now, Ms. Denton says that
18 it was Mr. Foriest who suggested that they were Bonnie and
19 Clyde and Mr. Foriest says that it's Ms. Denton who suggested
20 that they were Bonnie and Clyde but it's clear that one or the
21 other of them and perhaps both thought that they were Bonnie
22 and Clyde. Now, Bonnie and Clyde were the bosses of that
23 operation. They were the ones that were running that show.
24 Read this letter and see what this letter says to you about
25 the State's witnesses and about their believability, about

1 their relative responsibility in this case. Now, the
2 Solicitor indicates when he's talking to Ms. Denton that she
3 is indicted by the Horry County Grand Jury for burglary in the
4 first degree but at the time that she started this out, she
5 indicates in her letter that she is charged with -- she is
6 charged as an accessory to this crime. Now, what's the point
7 of indicting somebody for burglary in the first degree,
8 fifteen to life, if you're gonna give them a deal. What's the
9 point of that? Why would you do that? Well, maybe you do
10 that so it doesn't look like they're getting such a great
11 deal. What do we know about the benefits that she's already
12 gotten? She was in jail. She was charged in this crime, her
13 bond was beyond that which she could make. It was a
14 requirement that she have an ankle bracelet on her leg. But
15 she started in a position of where she was gonna testify, she
16 no longer had to have an ankle bracelet and she no longer had
17 to put up anything to get out of jail. She got out of jail.
18 She drove away in the same car. And the government likes her
19 so much and they are so anxious for her to come in here and
20 talk to you about this case, that when she is arrested, she
21 got on bond, she has a responsibility not to engage in illegal
22 activity. When she is arrested for possession of drugs with
23 intent to distribute driving that same car, they let her get
24 back out on bond again. They let her get back on bond again.
25 And what does she tell you, she has no idea what's gonna

1 happen. She doesn't -- now she says she's got a lawyer and
2 that her lawyer was here in court and she has no idea what's
3 gonna happen in her case. She doesn't know? Now, come with
4 your common sense on that one. What about that? Does that
5 make any sense to you at all that someone -- that a person
6 with a lawyer sitting in the courtroom would get up there and
7 confess to a potential life with no parole sentence and not
8 have any idea what's gonna happen. Is that sensible,
9 reasonable? Is that?

10 When you're trying to determine what's the truth and
11 what's not the truth and you're looking at the consistency and
12 remember this is a burglary case. This is a case where these
13 folks including Mr. Bullock were supposed to have gone to the
14 house -- where is the house? Well, it's on this Google map
15 and Mr. Bullock's house is either across the street or the
16 side neighbor or somewhere. There's no agreement as to that.
17 And they steal some things. The one thing that's certain is
18 what got stolen matches his license plate, although there's no
19 picture on it and there's no .45 on it and the fellow who kept
20 saying Glock .45 doesn't know anything about guns. But in any
21 event, was it one TV, two TVs, three TVs? Who knows how many
22 TVs got taken? And then they all went and sold the items.
23 And how much money was it? Was it 900, 600, 400, 200? Nobody
24 can agree even on their own statements about how much money
25 was got for these things.

1 When I was talking to De'Aisha about the gun -- and let
2 me take this opportunity to say if I say something to you that
3 is inconsistent with what you recollect as the testimony,
4 please recognize it as an honest error on my part. There's
5 twelve of you; there's one of me. I'm trying to go through
6 what I recollect the testimony to be. If I make a mistake,
7 it's a mistake. I'm not trying to mislead you in any form or
8 fashion. And as the prosecutor stands up here to talk to you
9 about the facts and circumstances of the case, same thing. If
10 you remember them, as the twelve of you, differently that what
11 he says, you go with what the twelve of you remember because
12 you will remember that the Judge said in the beginning, the
13 stuff we say is not evidence. We're only up here talking to
14 you about -- pointing out some of the points of the evidence.

15 But when I asked her about her statement to the police
16 officer and pointed it out to her, they were talking about the
17 gun and De'Aisha Denton says but it wasn't used. And
18 Investigator Townsend says, okay, where was that taken? And
19 De'Aisha Denton says, to be honest, I don't know. Where was
20 that taken? To be honest, I don't know. What about that?
21 What about that?

22 You know, the easy thing to do in this case is to just
23 say, what the heck, that's some dumb lawyer standing up there
24 trying to confuse us with a bunch of fuzzy details. Clearly,
25 the homeowner said his gun is gone. The two witnesses said,

1 yeah, it was him who did it. What the heck else would we
2 need? You can say that. You can say that there is nothing to
3 this case other than those details. But have you done your
4 job if you do that? Have you really tried to figure out what
5 the evidence shows? Because it's not just a situation where
6 we're all here for you to come up with the answer in a
7 whodunit. This is not a whodunit. This is a criminal trial
8 in Horry County, in South Carolina, in the United States of
9 America and it has rules. And your duties and
10 responsibilities are based on those rules. Those rules and
11 responsibilities were outlined by the Judge in the very
12 beginning of this case. What's that about? That is the
13 presumption of innocence. That's not just some fancy language
14 that's thrown around in every trial. That is a fundamental
15 liberty concept in South Carolina and in America. And just
16 like the Judge said in the very beginning of the case, Zach
17 didn't have to come to his trial. He has absolutely nothing
18 to prove. He does not have to testify. He didn't testify.
19 The Judge will tell you that you may not consider the fact
20 that he didn't testify. You may not talk about the fact that
21 he didn't testify and that is not to enter into your thinking
22 process or deliberations at all because he is presumed to be
23 innocent. This is not a whodunit where you try to figure out
24 the answer. This is a criminal trial where you apply what
25 you've heard to a framework as given to you by the judge to

1 fulfill your civic responsibility. The presumption of
2 innocence is with Zach. The burden of proof is with the
3 State. It's not your job to try to figure out what happened;
4 it's your job to determine whether or not the State has shown
5 you evidence, all twelve of you, to satisfy all twelve of you
6 that Zach Bullock is guilty beyond a reasonable doubt, beyond
7 a reasonable doubt. So, as you review this evidence, it's
8 your determination to decide whether you are satisfied with
9 the level of evidence in this case.

10 Now, they may jump up here and say, we showed you
11 everything we had. Well, you know, maybe they did and maybe
12 they didn't but whether they did or not, that's not the
13 benchmark for beyond a reasonable doubt. We showed you
14 everything we've got is not a benchmark. We couldn't get any
15 fingerprints is not the answer. Nothing. Nothing. Two
16 witnesses who have everything in the world to gain by telling
17 you what the State wants you to hear. When the Judge charges
18 you on the law in this case he will give you three options as
19 you come to your service and you make a determination of your
20 verdict in this case. The first option and the option that I
21 suggest to you and this will come as no surprise that I
22 suggest this option to you but your first option is that you
23 say the State of South Carolina has failed to prove to my
24 satisfaction beyond a reasonable doubt that Zack Bullock was
25 guilty and therefore, we as a jury find him not guilty. We

1 find him not guilty. As an alternative to that, you can say
2 in your deliberations and as you go through this process
3 together, you can say, well, we are sufficiently satisfied
4 beyond a reasonable doubt that he was involved in this but
5 we're not certain or we're not persuaded beyond a reasonable
6 doubt what his involvement is and therefore we find him guilty
7 of burglary in the second degree. Burglary in the second
8 degree, the thing that the Codefendant pled to. You should
9 say that you find him guilty of that as an alternative to
10 burglary in the first degree. Or if the testimony of these
11 individuals has satisfied you beyond a reasonable doubt that
12 in fact that he was armed with a deadly weapon going into the
13 house, at the house or in direct flight from the house, you
14 could just find him guilty of burglary in the first degree. I
15 submit to you that that would be an unfair result. That that
16 would be unfair based on these facts and circumstances.

17 When I sit down -- can you imagine, can you imagine the
18 responsibility that's on a lawyer standing in front of twelve
19 folks who are gonna go and make a decision about the rest of a
20 client's life? It's a tremendous responsibility. When I sit
21 down, I will have done everything that I can think of to do on
22 behalf of Zach. There is nothing else I can think of. And
23 I'm not gonna have the opportunity to stand back up and say
24 anything at all to you. The prosecutor will have the -- I'll
25 call it the lucky benefit, whatever you want to call it.

1 He'll have the opportunity to stand up here and say
2 essentially whatever he wants within the bounds of the record
3 and answer whatever it is that I've said and to respond to
4 everything that I have thought of. I will ask you on behalf
5 of Zach to think critically of my remarks, think critically of
6 what I've said and also to think critically of what the
7 prosecutor said. To think of what I would have said to his
8 remarks because I won't have the opportunity to do that.

9 On behalf of Zach and his family, I'll ask you to be
10 fair, be fair, be considerate, spend some time thinking about
11 whether this evidence is the kind of evidence that allows you
12 to make this kind of decision. Whether these witnesses who
13 have been put before you are the kind of witnesses -- they're
14 all they got, I get that, but still, is this it? Is this it?

15 Thank you.

16 THE COURT: All right, Solicitor.

17 MR. GROOMS: Thank you, Your Honor. May it please the
18 Court?

19 THE COURT: Yes, sir.

20 CLOSING BY MR. GROOMS:

21 MR. GROOMS: Ladies and gentlemen, the biggest problem
22 with Mr. Hilliard's whole story is that this is not some
23 conspiracy to convict his client. Ms. Denton gave her
24 statement the day after she was arrested. The day after she
25 was arrested, she said me, Zachary and Manny, Manny being her

1 boyfriend at the time, you can argue that she wanted to
2 protect him -- me, Zach, Manny -- and Manny burglarized this
3 home. Here's how we did it. Zach called me and said we could
4 make some money. He's got a house stacked out, there is a gun
5 in it. He wants the gun to get money. Her role was to be the
6 driver. They met up. They -- she drove Manny and Zachary to
7 the house, she let them out, they go in. This is not what she
8 -- I'm sorry. She doesn't go in the home, clearly, you know
9 that. They call her, she comes back and picks them up and
10 they're in possession of this gun. Zach has the gun amongst
11 other things and says, this is what we came for. This is her
12 statement the day after she's arrested.

13 If she's gonna make something up, would she implicate
14 herself? Would she say that we met up and planned it or did
15 she say that after we got the gun, that we went and sold the
16 gun and that we split the money? Or would she say, I picked
17 him up that day. I didn't know what they doing. It may've
18 been a little fishy but I didn't know what they were doing.
19 She didn't. She's told you exactly what happened. And when
20 she did that, she put herself -- that statement against her
21 appeal interest, which means that statement is incriminating
22 against her. The same with with Mr. Foriest. Detective
23 Bogart goes through with Mr. Foriest, talks with Mr. Foriest.
24 Mr. Foriest says, yep, you got us, we're busted, I did it.
25 Not only did I do it, Zachary did it -- his friend since the

1 fourth grade, is what he called his best friend. Me, Zachary
2 and my girl -- well, he didn't say girlfriend but what we
3 found out, De'Aisha was his girlfriend. Now, you saw the
4 letter that was written between the two of them. I've never
5 seen that letter before court but I would suggest that you go
6 back and read that letter and it's clear that there is a
7 relationship there, those two cared about each other deeply.
8 Now, Ms. Denton says she wasn't in love. I don't know what
9 they call it but it certainly seemed like she loved the guy.
10 If De'Aisha and Emmanuel had this grand scheme when they got
11 busted that they were gonna frame Zachary, one, they wouldn't
12 have said they did it. They would've minimized their
13 involvement. Two, they wouldn't have said the other person
14 did it. They would've tried to protect each other. And
15 three, that story was -- that letter was written on the 27th,
16 you can look at the date on it. And it's after she gave her
17 statement, after he gave this statement and nowhere in that
18 letter does it reference, hey, here's what I told police, make
19 sure we're on the same page for -- I cooperated, you should've
20 too. Let's frame Zach. That's not in there because that's
21 not what she's thinking. She's in jail, I think she said she
22 was seventeen years old at the time, she's emotional. I think
23 her letter was a little over the top of the language that was
24 used but not once in that entire, I think two-page letter,
25 you'll see it, does it mention anything about, hey, let's turn

1 this around on Zach. Instead, what happened was, the day she
2 was arrested, she said, okay, here's what happened. Did she
3 expect his cooperation, of course, she did. Everybody has
4 seen TV, seen a movie, they arrest people. The Codefendant
5 says, all right, you got me, here's what happened. If you can
6 help me, please help me.

7 Emmanuel did the same thing. They cooperated fully.
8 When Emmanuel -- Manny, whatever you want to call him, entered
9 into a proffer agreement, the one condition is he tell the
10 truth. The other warrants have not been dismissed because he
11 may be called as a witness in those cases. Those cases are
12 not for us to worry about today.

13 Before I get to the notes I've actually written let me go
14 through some of Mr. Hilliard's statements. The fact that
15 De'Aisha's statement and Manny's statements are so close,
16 they're almost identical. Now, I give you they didn't
17 remember how much money they got exactly but they knew that
18 they got money and that they split it.

19 Emmanuel said the gun was in a holster. The victim said
20 he didn't think the gun was in a holster; he don't remember it
21 being in a holster. That is not an issue in this case. I
22 will give you that over a year's time, minor details, they've
23 been a little off on. But at the crux of their testimony,
24 it's solid. Here's what happened, here's what I told police
25 the day of. Now, remember when they go to jail, Manny is on

1 the guys' side, De'Aisha is on the girls' side. There is no
2 contact between inmates, just keep that in mind.

3 Now, Mr. Hilliard has done everything but implicate
4 myself in this case. He said that -- he's questioned my
5 integrity, he's questioned the State's integrity. He's
6 questioned the police officer's integrity, he's questioned the
7 victim's integrity. He spent, I don't know how long asking
8 the victim about his marital status at the time. Whether or
9 not he broke his lease after a burglary. This is just one
10 example of Defense saying look over here, look over here,
11 forget the fact that the two people who were there with this
12 Defendant told you exactly what happened. It's true we don't
13 have any physical evidence. We don't have -- it wasn't video-
14 taped. There is no eye witnesses. That would be great if
15 there were. But the reason I think there were no eye
16 witnesses, and this is left up to you, the Defendant had lived
17 next-door to the victim. You heard testimony that he knew he
18 had a Glock license plate on his truck. Now, that doesn't
19 mean he has a gun. He also wore Glock t-shirts. I would
20 submit to you that it would be kind of odd for somebody to
21 ride around with at Glock license plate, wearing Glock t-
22 shirts and not have a Glock. But regardless, this guy lived
23 next-door. He waited until his victim was gone. I would
24 submit to you that this victim had a constant work schedule, I
25 believe he said it was 12:00 to 5:30 or 12:00 to 7:30

1 something of that nature. I think he sat there, he planned
2 this burglary, he recruited his help, he waited on him to
3 leave. He busted in and he got his gun.

4 Now, I'm going to the actual burglary itself. You heard
5 Emmanuel testify and you Emmanuel testified that this is the
6 brick he used, this is the door he busted out. This is where
7 it was taken from. You heard testimony from the victim that
8 this fence line is where the brick was taken. This brick was
9 taken on the Defendant's property.

10 Ladies and gentlemen, you heard from the victim in this
11 case, Mr. Skipper, that on the day that he left to go to work,
12 he was working at the school district and got a phone call
13 from his sister-in-law. His sister-in-law had said that his
14 kid, their kid, meaning the sister-in-law's kids, had gone
15 over to jump on the trampoline. Now, can you imagine these
16 kids going over to jump on the trampoline and seeing a brick
17 busted through a back window. Thankfully, they didn't
18 interrupt the burglary. They go over and tell their mom who
19 calls Mr. Skipper. Mr. Skipper calls the police. Mr. Skipper
20 rushes home as any parent/homeowner/victim, what have you,
21 would do. When he goes home, he starts looking around. He's
22 got to be sick to his stomach. He sees items missing.
23 There's where my TV was, there's where my laptop was, wife's
24 iPad is gone, my gun's gone. How do I know my gun's gone; I
25 put it in the same place every day. I've got two little small

1 kids, I put it up high. He reports this to the police. I
2 think it's pretty clear that a gun was taken. I don't believe
3 that's an issue in this case. When the gun is taken in a
4 burglary, whoever takes that gun has become armed. That's how
5 the legislature wrote it out. Either you're armed on the way
6 in, you become armed or you're armed in immediate flight. And
7 the Judge will instruct you on that elements of burglary
8 first. When they arrested him, get a statement from De'Aisha,
9 I've just went over this. She implicates herself, implicates
10 Zach, implicates her boyfriend, tells them exactly what
11 happened. Does she tell the truth? Yep. Why? Because she
12 wanted some help. I think that's pretty clear. Is she a good
13 person? I don't really think she's a good person but I think
14 she told the truth. I think if she hadn't told the truth, she
15 wouldn't have told you how much she was involved. I don't
16 think she would've told you how much the man that she loved
17 was involved. Same thing goes for Mr. Foriest. Whenever he
18 testified, whenever he talked to police, he told you the exact
19 same story, I was involved, Zach was involved, my buddy since
20 middle school, and my girlfriend was involved, who I love very
21 much. He didn't testify to that, that's in the letter.

22 One other thing Mr. Hilliard talked about, he talked
23 about them testifying today because the State promised him
24 something. The State doesn't become involved in a case until
25 sometime down the road. When they're arrested for burglary,

1 the officer goes to them and talks to them and gets his
2 statement. I don't get involved until as much as a month
3 later. I don't even know what's going on. I didn't promise
4 anybody anything. I never told De'Aisha's attorney if she
5 testified that she gets a PR bond. I'll tell you exactly what
6 happened. Detective Bogart came to me and said, hey, this
7 witness has been very helpful ---

8 MR. HILLIARD: Your Honor, I ---

9 THE COURT: Sustained.

10 MR. HILLIARD: Thank you.

11 MR. GROOMS: Ladies and gentlemen, on January the 12th,
12 Zachary Bullock had already chosen a home. He'd already
13 chosen a home because he was familiar with it, because it was
14 the home of his next-door neighbor. He waited until his next-
15 door neighbor was out and he had his chance. He wanted a gun.
16 He knew this guy probably had a gun. He waited until he had
17 gone to work. He already had his best friend and his best
18 friend's girlfriend involved in on it too. One was gonna be
19 the driver. And they drop them off, Zachary and Emmanuel
20 broke into the house. Emmanuel told you he's the one who
21 broke the window. Would he have said that if he wasn't giving
22 a full confession? Would he have said Zachary broke the
23 window? They broke into the home, steal TVs, steal iPads,
24 steal computers, steal the gun. When they did that, they
25 became armed. In South Carolina, whether it's Zachary that

1 picks up that gun or Emmanuel or De'Aisha, they're all guilty
2 of burglary in the first degree. Burglary in the first degree
3 is a serious offense, as the Defense attorney has told you.
4 It does carry fifteen years to life. This is very important
5 to -- this is one that I expect you to put a lot of thought
6 into but I want you think about the testimony that you heard
7 and I want you to think about what's believable, what's
8 consistent, and when you go over the case -- I would agree
9 with Mr. Hilliard -- do what's fair. What's fair is that
10 these two people took responsibility, the owned up to it.

11 They told you what they did. They also ---

12 MR. HILLIARD: Objection. I think ---

13 MR. GROOMS: And they implicated ---

14 THE COURT: Just second. Stop, Solicitor.

15 Y'all come up and talk to me.

16 MR. HILLIARD: Thank you, sir.

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

19 MR. HILLIARD: Thank you, Your Honor.

20 MR. GROOMS: Ladies and gentlemen, I want exactly what
21 Mr. Hilliard asked for, that you be fair. Listen to the
22 statements of the Codefendants. You determine what's
23 believable in this case and that you hold the Defendant
24 responsible and that you apply the facts to the elements in
25 this case and that you come back with a verdict of guilty,

1 burglary first degree. I do appreciate your time. You've
2 been very attentive. I know this is not easy. And thank you
3 so much for being here.

4 THE COURT: Solicitor, if you don't mind, could you take
5 the -- that's all right.

6 CHARGE TO JURY:

7 THE COURT: All right. Ladies and gentlemen, it's my
8 duty and responsibility now to give you the law that you will
9 apply to the facts and evidence you find to be true in this
10 case. I told you at the very beginning I would not indicate
11 to you in any way what I believe the facts of this case are
12 because that's your job, your responsibility. Without saying,
13 if you came into the courtroom with any preconceived ideas on
14 what the law is, what it ought to be, what it should be, what
15 you hoped it would be, you'll disregard that. You will take
16 the law as I now give it to you and apply it to the facts and
17 evidence you find to be true in this case. I told you at the
18 very beginning one of your jobs as the judges of the facts in
19 this case would be to judge the credibility and the
20 believability of the witnesses that have appeared before you
21 under oath in this case. Regarding that, and the testimony of
22 the witnesses that have come before you, you can believe one
23 witness against several, several against one, you can believe
24 a portion of what a witness says and disregard the remaining
25 portion of it. If you've got a good sound reason for doing

1 so, you can disregard it in its entirety the testimony of a
2 particular witness. You look at whether or not that witness
3 has exhibited to you any kind of interest, motive, bias,
4 prejudice, they might have in giving you the testimony they
5 gave from the witness stand and also the opportunity for
6 knowledge. How did they come about that information that they
7 gave you from the witness stand? You can even consider the
8 demeanor of the witness. How did they appear when they
9 testified before you? Your objective is to find the truth
10 from the facts and evidence that have been presented to you.
11 You don't have any friends to reward; you don't have any
12 enemies to punish. You've heard it can't be the result of any
13 kind of passion, prejudice or sympathy. It has to be an
14 examination of the facts and evidence finding that evidence
15 which convinces you is true.

16 There are two types of evidence presented in virtually
17 every single case that's tried, that's called direct and
18 circumstantial evidence. Direct evidence, that's the
19 testimony of a person who asserts or claims to have actual
20 knowledge of a fact. What they saw, what they heard, what
21 occurred in their presence. Circumstantial evidence, that's
22 proof of a chain of facts and circumstances indicating the
23 existence of a fact when the law doesn't make any distinction
24 between the weight or value to be assigned and a greater
25 degree of certainty is not required of one over the other.

1 You look at all the evidence and find that evidence which
2 convinces you of its truth.

3 The prior record of a witness, according to our rules,
4 allow that a witness can be discredited or impeached by
5 showing the witness has been convicted of a crime for which
6 they could have been imprisoned for more than one year for a
7 crime that involves dishonesty. That's offered only on the
8 issue of credibility and believability. A person who has a
9 past criminal record can testify during a trial. Their past
10 record does not affect their ability to testify. It can be
11 considered by you only, if at all, in determining that
12 witness' believability. Remembering, of course, that you are
13 the sole judge of the credibility and believability of all the
14 witnesses that have testified in this case.

15 The Defendant in this case did not testify. That fact
16 cannot be considered by you in any way in arriving at your
17 decision. It is not part of this case. You cannot talk about
18 it in a jury room. You cannot use it mentally to arrive at a
19 decision in this case. This Defendant and every person
20 charged with a crime in the United States has the
21 constitutional right to remain silent. And the assertion of
22 that right cannot be used against them or held against them in
23 any way.

24 The burden of proof, as I told you in the very beginning
25 is on the State of South Carolina to prove the Defendant

1 guilty beyond a reasonable doubt. The Defendant has nothing
2 to prove to you or show to you. The Defendant in this case
3 pled not guilty to the indictment, the charge against him.
4 And that put that burden of proof on the State of South
5 Carolina to prove the Defendant guilty of the crime or crimes
6 charged beyond a reasonable doubt. Every defendant charged
7 with a crime is presumed to be innocent of that crime unless
8 and until evidence has been presented to you that satisfies
9 the elements of the crime and satisfies you of the guilt of
10 the Defendant beyond a reasonable doubt. This presumption of
11 innocence didn't end at the beginning of the trial. It hasn't
12 ended now. It does not end unless and until you believe the
13 State has produced evidence which you find to be true which
14 convinces you of the guilt of the Defendant beyond a
15 reasonable doubt. This presumption of innocence is likened to
16 a robe of righteousness. It's placed on the shoulders of the
17 Defendant and it stays on the shoulders of the Defendant until
18 the State, if it can, rips that robe of righteousness from the
19 State -- from the Defendant by evidence which convinces you of
20 its truth and convinces you of the guilt of the Defendant
21 beyond a reasonable doubt.

22 So, what's reasonable doubt? The kind of doubt that
23 would cause an ordinary reasonable person to hesitate to act.
24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of the Defendant's guilt. Now, there are

1 very few things that we can know with absolute certainty and
2 the law doesn't require the State of South Carolina to give
3 you that kind of proof. But what is required is that based
4 upon your consideration of the evidence, the evidence you find
5 to be the truth, if you are firmly convinced that the
6 Defendant is guilty of the crime charged, you must find the
7 Defendant guilty. On the other hand, if you are not firmly
8 convinced that the Defendant is guilty of the crimes charged,
9 you must find the Defendant not guilty and give him the
10 benefit of the doubt.

11 If a crime is committed by two or more people who are
12 acting together in committing a crime, the act of one is the
13 act of all. A person who joins with another to commit an
14 unlawful act, is criminally responsible for everything done by
15 that other person which happens as a natural or probable
16 consequence of the acts done in carrying out a common plan or
17 scheme. The act of one is the hand -- is the act of all or is
18 sometimes known, the hand of one is the hand of all.

19 Prior knowledge that a crime is going to be committed,
20 without more, is not sufficient to make a person guilty of
21 that crime. Mere knowledge that another person is going to
22 commit a crime even if the Defendant is present is not
23 sufficient to prove and convict the Defendant as a principal.
24 Guilt as principal is shown by actual or constructive presence
25 at the scene with prior arrangement.

1 The State has to prove to you beyond a reasonable doubt
2 this theory of the hand of one is the hand of all. The
3 principal in a crime is the one who either actually commits
4 the crime or who is one who is present, aiding, abetting,
5 assisting in the committing of the crime. When a person does
6 the act in the presence of another and with the assistance of
7 that other person, the act is done by both. It does not
8 matter who actually commits the crime. The hand of one is the
9 hand of all.

10 Now, present at the commission of a crime means to be
11 sufficiently near to aid, abet and assist in the commission of
12 the crime. But again, mere presence at the scene of a crime
13 is not sufficient to convict one on the theory of aiding and
14 abetting. There has to be some kind of overt act in assisting
15 or abetting. And this could be shown by the actions that are
16 shown to exist in the facts and can be shown by the acts and
17 conduct of the Defendant.

18 So, what's the crime charged, first degree burglary. The
19 State has to prove to you beyond a reasonable doubt that the
20 Defendant entered a dwelling without consent. A dwelling,
21 that's any building or portion of a building in which a person
22 ordinarily sleeps. A building is a dwelling even if the
23 residents are temporarily absent from the building. In order
24 to prove that the Defendant entered the dwelling, the State
25 does not have to show that the Defendant's entire body entered

1 the dwelling. The smallest entry can be sufficient. It could
2 be a part of a body, like a hand or a foot. It could even be
3 an instrument, like a hook or some other kind of instrument.
4 And the State does not have to prove force was used to gain
5 the entry. The State must also prove to you beyond a
6 reasonable doubt that the Defendant intended to commit a
7 crime, either a felony or a misdemeanor at the time the
8 dwelling was empty. The mere entry into a dwelling without
9 consent is not burglary. If the intent to commit a crime is
10 formed after the person enters, it's not burglary. On the
11 other hand, if the Defendant intended to commit a crime at the
12 time of the entry and the attempt was abandoned, it's still
13 burglary. It does not matter that the intended crime was not
14 completed. Intent can be shown by the acts and conduct of the
15 Defendant and any other circumstances from which you can infer
16 intent.

17 And then the State has to prove to you beyond a
18 reasonable doubt aggravated circumstance and that is while
19 entering or while in the dwelling or when fleeing, the
20 Defendant or an accomplice was armed with a deadly weapon. A
21 deadly weapon is any kind of article, instrument or substance
22 which is likely to cause death or great bodily harm. Whether
23 an instrument can be used as a deadly weapon depends on the
24 facts and circumstances of each case.

25 If you find the State has failed to you to prove beyond a

1 reasonable doubt all of the elements of first degree burglary,
2 you may consider whether the State has proved to you beyond a
3 reasonable doubt that the Defendant committed the crime of
4 second degree burglary. Second degree burglary includes all
5 the elements of first degree burglary except the circumstance
6 of aggravation.

7 So, for second degree burglary, the State has to prove
8 the Defendant entered a dwelling without consent. Again, a
9 dwelling is any building or portion of a building in which a
10 person ordinarily sleeps and it can be a dwelling even if the
11 residents are temporarily absent. And the State doesn't have
12 to prove that the whole body of the Defendant entered the
13 dwelling, a small portion of the body or some kind of
14 instrument could be entry and they don't have to prove force.
15 The State has to prove that the Defendant intended to commit a
16 crime at the time the entry was attempted or made. If there
17 is no intention to commit a crime when you enter a place, it
18 is not a burglary. But if you abandon the intent to commit a
19 crime even after you have entered, it is still a burglary.

20 If you have a reasonable doubt as to whether or not the
21 Defendant committed a greater or a lesser offense, it is your
22 duty to resolve that doubt in favor of the Defendant and find
23 him guilty of the lesser offense if that is your view of the
24 evidence, the evidence you find to be true and the State has
25 proven that to you beyond a reasonable doubt.

1 That, ladies and gentlemen, is the law that you're gonna
2 apply to the facts and evidence you find to be true in this
3 case. Now, I've had prepared for you a verdict form for this
4 particular case and it's pretty straightforward. It has the
5 caption of the case, State of South Carolina versus Zachary
6 Braxton Bullock. It has, one, burglary first degree. On the
7 charge of burglary first degree, we, the Jury, by unanimous
8 consent find the Defendant -- and there's two choices and I
9 put one before the other don't assign anything to that, you've
10 got to put one before the other -- not guilty or guilty. If
11 you find the Defendant guilty of burglary in the first degree,
12 that ends the matter. You knock on the door and let the
13 Bailiff know that you have arrived at a unanimous verdict. If
14 you find the Defendant not guilty of burglary in the first
15 degree, you can consider the lesser included offense of
16 burglary second degree. On the charge of burglary second
17 degree, we, the Jury, by unanimous consent find the Defendant
18 -- you have two choices -- not guilty or guilty.

19 Now, Madame Forelady, when your jury has well and truly
20 deliberated and reached a unanimous verdict, all of these
21 matters and on this matter, you check the appropriate block or
22 blocks, you sign your name, you put today's date and then you
23 notify the Bailiff that the Jury has reached a unanimous
24 verdict in this matter. And unanimous means exactly what you
25 think it means. It means everybody agrees. It does not mean

1 eleven to one, ten/two, any combination thereof. It means
2 twelve/zero. Everybody agrees.

3 So, Madame Forelady, you check these boxes, you sign your
4 name, you are telling the Court every single member of the
5 Jury agrees this is their verdict.

6 All right. What I'm gonna ask that you do, Madame
7 Forelady is take your jury to the jury room. I'll ask the two
8 alternates, y'all stay here with us in the courtroom. Madame
9 Forelady, take the remainder of the jury to the jury room. Do
10 not -- do not begin your deliberations until the Bailiff hands
11 to you the verdict form and the exhibits. When the Bailiff
12 does that, then you may begin deliberations.

13 Please retire.

14 (REPORTER'S NOTE: The jury exits courtroom. 3:05 P.M)

15 BY THE COURT:

16 THE COURT: All right. At this point in time, the Jury
17 having retired to deliberate, is there any reason the Court
18 could not excuse the alternates?

19 MR. HILLIARD: None of behalf of the Defense, Your Honor

20 THE COURT: On behalf of the State?

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

22 THE COURT: All right. I want to appreciate your service
23 in this particular case. I can't let you go for the whole
24 week for jury service. We still have some other criminal
25 cases that need to be resolved. I will tell you that Judge

1 Cottingham picked a jury in a civil case and that one is gonna
2 take a couple of days and that's gonna be the only civil case.
3 So, there is a -- at least one, if not two, criminal cases
4 that remain. What I will ask that y'all do is to be back
5 tomorrow morning at 9:30 in the jury assembly room. We'll
6 pick the jury for another criminal case tomorrow morning that
7 I'm gonna start in the morning. So, I appreciate the service
8 that you have given us already. I need to impose on you some
9 more and I'll need to see y'all back tomorrow morning at 9:30.
10 Thank you very much. 9:30 downstairs. Thank you.

11 (REPORTER'S NOTE: Alternates released and exit courtroom.)

12 THE COURT: Exceptions, deletions, additions to the
13 charge from the State?

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

15 THE COURT: From the Defense?

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

17 THE COURT: All right, gentlemen. Appreciate the way
18 that both of you tried the case. I would ask if you would
19 please get with the Court Reporter and review all the exhibits
20 and make sure we got all the right exhibits going to the Jury,
21 please.

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

23 THE COURT: Thank y'all.

24 All right. We'll be at ease until the jury needs us
25 then. Thank you very much.

1 MR. HILLIARD: Thank you, Your Honor.

2 (REPORTER'S NOTE: Exhibits delivered to jury and
3 deliberations begin at 3:07 P.M.)

4 (RECESS - 3:07 P.M.)

5 *****OFF THE RECORD*****

6 (On the Record. 4:14 P.M.)

7 THE COURT: All right. The Jury has returned a verdict
8 in this matter. Is the State ready to receive it?

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

10 THE COURT: Defense?

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

12 THE COURT: All right. Before we ask the Jury to come
13 in, I'll just make the comments I always make. I do not know
14 what the verdict is. We will all receive the verdict at the
15 same time. I -- and the attorneys know that we asked this
16 jury to do a difficult thing, that is reach a unanimous
17 conclusion in this matter. Whatever the verdict is that the
18 jury has rendered in this matter, it will be received with
19 respect and it will be received with silence as a directive of
20 the Court. If you violate that, obviously you will be
21 detained by the Horry County Sheriff's Office.

22 All right.

23 (REPORTER'S NOTE: The jury enters courtroom. 4:22 P.M.)

24 VERDICT OF THE JURY:

25 THE COURT: All right. Madame Forelady, has your jury

1 reached a verdict in this matter?

2 JUROR 348: Yes, Your Honor.

3 THE COURT: Very good. Could you hand the verdict forms
4 to the Clerk, please, ma'am.

5 All right. Madame Clerk you may publish the verdict.

6 CLERK: Indictment Number 2012-GS-26-4334, State of South
7 Carolina, County of Horry, versus Zachary Braxton Bullock on
8 the charge of burglary first degree, we, the Jury, by
9 unanimous consent find the Defendant guilty. Dated October
10 8th, 2013 signed by foreperson Rhonda Woodberry.

11 Ladies and gentlemen of the Jury, if is your verdict so
12 signify by raising your right hand.

13 (REPORTER'S NOTE: Jury complies.)

14 CLERK: Thank you.

15 THE COURT: All right. The Jury having affirmed their
16 verdict by the raising of the right hand, does the State wish
17 the Jury polled?

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

19 THE COURT: Does the Defense wish the Jury polled?

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

21 THE COURT: Very good. Madame Clerk if you will poll the
22 Jury by juror number, please.

23 CLERK: When I call your juror number if you will please
24 stand.

25 Juror Number 280, is this your verdict?

1 JUROR 280: Yes.

2 CLERK: Is this still your verdict?

3 JUROR 280: Yes.

4 THE COURT: Thank you.

5 125, is this your verdict?

6 JUROR 125: Yes.

7 CLERK: Is this still your verdict?

8 JUROR 125: Yes.

9 CLERK: Thank you.

10 57, is this your verdict?

11 JUROR 57: Yes.

12 CLERK: Is this still your verdict?

13 JUROR 57: Yes.

14 CLERK: Thank you.

15 268, is this your verdict?

16 JUROR 268: Yes.

17 CLERK: Is this still your verdict?

18 JUROR 268: Yes.

19 THE COURT: Thank you.

20 348, is this your verdict?

21 JUROR 348: Yes.

22 CLERK: Is this still your verdict?

23 JUROR 348: Yes.

24 CLERK: Thank you.

25 235, is this your verdict?

1 JUROR 235: Yes.
2 CLERK: Is this still your verdict?
3 JUROR 235: Yes.
4 CLERK: Thank you.
5 37, is this your verdict?
6 JUROR 37: Yes.
7 CLERK: Is this till your verdict?
8 JUROR 37: Yes.
9 CLERK: Thank you.
10 246, is this your verdict?
11 JUROR 246: Yes.
12 CLERK: Is this still your verdict?
13 JUROR 246: Yes.
14 CLERK: Thank you.
15 197, is this your verdict?
16 JUROR 197: Yes.
17 CLERK: Is this still your verdict?
18 JUROR 197: Yes.
19 CLERK: Thank you.
20 11, is this your verdict?
21 JUROR 11: Yes.
22 CLERK: Is this still your verdict?
23 JUROR 11: Yes.
24 CLERK: Thank you.
25 159, is this your verdict?

1 JUROR 159: Yes.

2 CLERK: Is this still your verdict?

3 JUROR 159: Yes.

4 CLERK: Thank you.

5 334, is this your verdict?

6 JUROR 334: Yes.

7 CLERK: Is this still your verdict?

8 JUROR 334: Yes.

9 CLERK: Thank you.

10 THE COURT: All right. The Jury having been polled and
11 affirmed their verdict, is there anything further as to this
12 jury from the State?

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

14 THE COURT: From the Defense?

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

16 BY THE COURT:

17 THE COURT: All right. Ladies and gentlemen, I want to
18 thank you for your service in this particular case. You did
19 exactly what the Court asked you to do and that is to well and
20 truly try this case, find the facts you find to be true and to
21 reach and render a unanimous verdict in this particular
22 matter.

23 There is one other case for trial. Civil Court is still
24 going on, there won't be any other Civil Court trials.
25 There's one more criminal case. I'm gonna pick that jury.

1 tomorrow morning because of Judge Kelly still has his trial
2 going on and Judge Cottingham still has his trial going on.
3 We need to have all of y'all downstairs so was can have
4 sufficient numbers to pick a jury tomorrow morning, but that
5 will be the last case. So, I appreciate your service. I have
6 to impose on you a little bit more. And I'll see you back
7 downstairs in the jury assembly room tomorrow morning at 9:30.
8 Thank you very much. 9:30 in the morning.

9 (REPORTER'S NOTE: Jury is excused and exits courtroom. 4:27
10 P.M.)

11 THE COURT: All right. Solicitor and Mr. Hilliard, the
12 -- apparently the pen that the foreperson had had given out
13 and she signed a verdict form in pencil. I didn't know what
14 the verdict was but she informed the Bailiff that she needed a
15 pen but she had signed the verdict form in pencil. So, what
16 we did was prepared another one and they signed the verdict
17 form in ink. It's the same verdict. We're gonna have both of
18 them in the record.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: But I wanted to make sure that she signed it
21 in ink and as well as the one they did in pencil. Be glad for
22 you to look at them. They're right here.

23 MR. HILLIARD: Thank you, Judge.

24 THE COURT: But that's -- the top one is the one in ink
25 and then the second one is the one in pencil because

1 apparently when they had a pen, it ran out. So, they
2 apparently, she had a pencil and used it.

3 MR. HILLIARD: Yes, sir, Judge.

4 THE COURT: All right? Thank you.

5 MR. HILLIARD: Thank you, Judge.

6 THE COURT: All right. Motions by the Defense at this
7 point in time?

8 MOTIONS:

9 MR. HILLIARD: Thank you, Your Honor. Judge, at this
10 point, we would move for again a directed verdict of not
11 guilty. We recognize that the Jury has heard the information
12 presented to them and rendered a verdict of guilty and connect
13 it to the burglary in the first degree. However, we would to
14 submit to the Court there is not sufficient evidence in the
15 record for the Jury to have come to that verdict. We'd ask
16 Your Honor to set aside the verdict and enter a verdict of not
17 guilty as to burglary in the first degree. In the
18 alternative, we would ask Your Honor to reconsider the
19 decision made regarding the entry of evidence into the record
20 and to grant a new trial based on Your Honor's previous
21 decision not to allow the Instagram pictures into the record.

22 THE COURT: All right. Very good. Once the Trial Court
23 has decided a motion for a directed verdict, and I do not find
24 that that decision was in error, the Court cannot change that
25 decision and render a verdict of not guilty if I had found

1 there was sufficient evidence for the Jury to consider a
2 particular crime. I did not find that was an error. I find
3 there as more than sufficient evidence if that evidence was so
4 believed by the Jury and they must so believe it to convict
5 the Defendant of the crime charged, that is burglary first
6 degree. I reaffirm that. Therefore, I would consider the
7 motion for a new trial.

8 Regarding the motion for a new trial, when there is
9 competent evidence to sustain the Jury's verdict, the Trial
10 Court may not substitute its judgment for that of the Jury.
11 Again, I reaffirm and reiterate, I find there is more than
12 sufficient evidence in the record. Looking at that evidence,
13 the Jury found based on that evidence and its credibility and
14 believability that the State proved its case beyond a
15 reasonable doubt. There being more than sufficient evidence
16 in the record to convict the Defendant of the crime of
17 burglary in the first degree. I respectfully decline to grant
18 your motion for a new trial.

19 MR. HILLIARD: Thank you, Your Honor.

20 THE COURT: All right. Is the State ready to proceed
21 with sentencing?

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

23 THE COURT: Defense?

24 MR. HILLIARD: Defendant?

25 THE COURT: Yes, sir.

1 MR. HILLIARD: Yes, sir.

2 SENTENCE OF THE COURT:

3 THE COURT: All right. Solicitor?

4 MR. GROOMS: Yes, sir, Your Honor. Your Honor, the
5 Defendant does have no record according to his NCIC, however,
6 this is not an isolated incident. He does have numerous
7 charges which all came about due to the testimony or due to
8 the statements of De'Aisha Denton. Your Honor, I'll just give
9 you the warrants that he currently has pending. The first of
10 which is M971 ---

11 MR. HILLIARD: We'd object to ---

12 THE COURT: I appreciate that, Solicitor, and I mean
13 obviously there's indications in the record and from the
14 motions I heard that the Defendant has other charges, and
15 doing pretrials, I understand that the Defendant has other
16 charges but those have not been brought forward by the State.
17 He has not been tried on those. He has not been convicted of
18 those and therefore, I will not take them into consideration
19 in imposing a sentence in this case.

20 MR. GROOMS: Yes, sir, Your Honor. Your Honor, the
21 State's position is that we do not believe this is an isolated
22 incident and fifteen years to life, I think is deserved. I'm
23 certainly comfortable with that and I'll leave it within your
24 discretion, Your Honor.

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

1 All right. Mr. Hilliard, be glad to hear from you, sir.

2 MR. HILLIARD: Thank you, Judge. Of course, you've heard
3 the evidence and testimony in regards to the situation that we
4 had here. Relative culpability is certainly one thing that I
5 would submit to the Court could be considered in connection
6 with this case. Zach is young man who has no criminal history
7 whatsoever. He has appeared in court and on each occasion as
8 he is been required to do so. He comes from a good family.
9 He has a job. His mom is here. I don't know if she wants to
10 address the Court or not. Obviously, they are upset now as
11 you can imagine.

12 Had we -- and I don't know whether you would consider
13 this or not but in any event, had we had the opportunity to
14 plead to something less than where we were, we would've
15 exercised that opportunity but that's a different question I
16 guess for a different set of circumstances.

17 But in any event, I believe under the law that there is
18 no sentence under and I would hope that I would be wrong but I
19 don't believe there is any sentence under fifteen years, no
20 parole, which would be available as an option to the Court.
21 If there were, I would submit to the Court that that sentence
22 would be absolutely appropriate in this case. However, there
23 are not being anything under that that's available to the
24 Court as I understand the law, I would submit to the Court
25 that certainly fifteen years no parole is more than sufficient

1 for a first offender with no criminal history in this
2 situation.

3 THE COURT: Thank you very much.

4 Do you have the sentencing sheets, Solicitor?

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

6 THE COURT: 2012-GS-26-4334, State of South Carolina,
7 County of Horry versus Zachary Braxton Bullock regarding
8 burglary in the first degree, the potential sentence in this
9 matter goes from a minimum of fifteen years up to life in
10 prison. That is the only sentence range that is available to
11 the Court regarding this particular crime. The Court so finds
12 that the Defendant is committed to the State Department of
13 Corrections for a determinate term of fifteen years. The
14 Defendant is given credit for time he has already served.
15 Thank you very much.

16 MR. HILLIARD: Thank you, Your Honor.

17 THE COURT: All right. Gentlemen, I want to reiterate
18 what I told you at the end of the trial for State and the
19 Defense. I appreciate the way that both of you tried the
20 case. Y'all did a good job presenting the respective issues
21 and to the Court and I appreciate it very much. Thank you
22 very much.

23 MR. HILLIARD: Thank you for your time.

24 MR. GROOMS: Thank you, Your Honor.

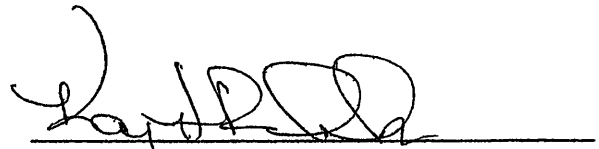
25 (ADJOURNED - 4:36 P.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Zachary Braxton Bullock, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 7-8, 2013.

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



Kay H. Richardson

Official Court Reporter

December 31, 2013.

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State of South Carolina) Court of Common Pleas
County of Horry) 2016-CP-26-02627

Zachary Bullock)
vs.) Transcript of Record
State of South Carolina)

November 27, 2017
Conway, South Carolina

BEFORE:

Honorable William H. Seals, Jr., Judge.

APPEARANCES:

Lacy M. Thompson, Esq.
Attorney for the Applicant

Johnny E. James, Jr., Esq.
Attorney for the State

Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X

	WITNESS	DIR	CROSS	RED	REC
1					
2					
3	Amy Skipper				
4	Ms. Thompson	5	--	--	--
5	Mr. James	--	8	--	--
6	Zachary Bullock				
7	Ms. Thompson	9	--	13	--
8	Mr. James	--	12	--	--
9	Melinda Ellison				
10	Ms. Thompson	14	--	--	--
11	Mr. James	--	15	--	--
12	John M. Hilliard, III				
13	Mr. James	19	--	39	--
14	Ms. Thompson	--	31	--	--
15	Joseph Skipper				
16	Ms. Thompson	44	--	--	--
17	Mr. James	--	--	--	--

E X H I B I T S

	NO.	DESCRIPTION	ID	EV
21				
22		No exhibits submitted.		
23				
24				
25		Exhibits retained by Clerk of Court.		

1 (The hearing commenced at approximately
2 12:07 p.m.)

3 THE COURT: All right. Yes, sir.

4 MR. JAMES: Thank you, Your Honor, if it may
5 please the Court. Zachary Bullock versus State of
6 South Carolina, Docket No. 2016-CP-26-2627.
7 Mr. Bullock is present here today in the courtroom and
8 is represented by Ms. Lacy M. Thompson, Esquire.
9 Mr. Bullock was indicted in October 2012 for burglary
10 in the first degree, and he was represented on that
11 charge by John M. Hilliard, Esquire.

12 He proceeded to trial on October 7, 2013, before
13 the Honorable Stephen H. John, and was found guilty as
14 indicted on October 8th, 2013. After that conviction,
15 Judge John sentenced the Applicant to a term of 15
16 years incarceration.

17 Mr. Bullock appealed and his conviction was
18 affirmed by non-published opinion Court of Appeals
19 decided December 2nd, 2015. I'll cede the floor to Ms.
20 Thompson to the extent that she wishes to make any
21 opening statements or review the allegations.

22 THE COURT: Ms. Thompson.

23 MS. THOMPSON: Thank you, judge. We are moving
24 forward on all three issues. We had in our supplement
25 to the PCR petition trial counsel's failure to

1 investigate the case. As far as the second issue,
2 trial counsel's failure to object to the inadmissible
3 victim impact testimony, we are moving forward on that
4 but not the impeachment part of that issue, judge.

5 And also, we just filed a second supplemental to
6 the PCR petition. I did notify the Attorney General as
7 soon as we sent that second supplemental PCR petition
8 in. And I asked him if he wanted a continuance to
9 prepare on the issue since it was last minute. He did
10 not say anything about wanting that, so we would like
11 to also move forward on that issue.

12 MR. JAMES: I failed to respond to that one, but
13 I'm prepared and ready to go forward on that issue here
14 today, Your Honor.

15 MS. THOMPSON: And that deals with -- it does kind
16 of go hand in hand with trial counsel's failure to
17 investigate, specifically mentions not getting the cell
18 phone records and the cell phone text messages at this
19 time, judge. I do have case law I'll pass up during
20 closing.

21 THE COURT: All right. I'm ready when you are.

22 MS. THOMPSON: Thank you, judge. First, I would
23 like to call Amy Skipper to the stand, please.

24 AMY SKIPPER, after being duly sworn, testified as
25 follows:

1 THE CLERK: State your name, please.

2 COURT REPORTER: And spell your last name, please.

3 THE WITNESS: Amy Skipper, S-K-I-P-P-E-R.

4 THE COURT: Yes, ma'am.

5 MS. THOMPSON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. THOMPSON:

8 Q Ms. Skipper, how do you know Zachary Bullock?

9 A I know him from living beside him, his mother and
10 his late stepfather.

11 Q And were you the victim of a burglary in 2011?

12 A Yes, ma'am.

13 Q And was that the victim that my client,
14 Mr. Bullock, was tried and convicted of?

15 A Yes.

16 Q And for the house that was burglarized, was your
17 name on the lease?

18 A It was.

19 Q Okay. As the victim in this case, were you called
20 to testify at trial?

21 A No.

22 Q Who did testify at trial?

23 A My husband.

24 Q Okay. And did the solicitor contact you before
25 the trial about your wishes or your husband's wishes in

1 this case?

2 A No.

3 Q And did my client, Mr. Bullock, who was
4 represented by John Hilliard, did he ever contact you
5 about what your wishes were in this case?

6 A No.

7 Q And today, what would you have wanted in this
8 case?

9 A Can you explain your question. Like what would I
10 want today or then or?

11 Q He was tried and convicted and sentenced to 15
12 years, the mandatory minimum on the burglary first
13 degree. You're aware of that; correct?

14 A Yes.

15 Q And today, what are your feelings on that?

16 A My feelings are that I feel like the punishment
17 was harsh. He had never been in trouble before.

18 Q Okay. And but Mr. Hilliard never contacted you to
19 see what you wanted in this case?

20 A No.

21 Q And would you have wanted to prosecute on the
22 burglary first degree, which carried 15 years to life
23 in prison?

24 A I'm aware now that there are other options. I
25 didn't realize that.

1 Q Okay. So no one else contacted you about whether
2 or not you wanted restitution in the case?

3 A No.

4 Q Mr. Hilliard never contacted -- would that have
5 been an option?

6 A What's that; restitution?

7 Q Yes.

8 A Possibly.

9 Q Okay. And what about -- one thing I know I've
10 talked to you about is the Youthful Offender Act,
11 because you brought up, you know, him wanting help.
12 And is that something you would have communicated to
13 Mr. Hilliard as well?

14 MR. JAMES: Objection, leading.

15 THE COURT: Sustained.

16 MS. THOMPSON: Thank you, judge.

17 Q What other options would you have been -- would
18 you have wanted in this case?

19 A Well, now I'm aware that there is things that
20 maybe he could have been found guilty but given a
21 second chance kind of -- I'm not sure the legal name.
22 But I was aware that he'd never been in trouble before,
23 and I know prison is not really a place where people
24 are rehabbed, I mean. So...

25 Q And you were never given an opportunity to say.

1 That to his trial attorney or the solicitor; is
2 that correct?

3 A No.

4 MS. THOMPSON: Thank you, judge. No further
5 questions.

6 THE COURT: All right. Cross?

7 MR. JAMES: Very briefly.

8 CROSS-EXAMINATION

9 BY MR. JAMES:

10 Q Good afternoon, Ms. Skipper.

11 A Hello.

12 Q Did you ever make an effort to contact the
13 solicitor regarding your feelings about this case?

14 A I didn't know what my options were.

15 Q Did you ever make an effort to contact defense
16 counsel, Mr. Hilliard, about your feelings about that
17 case?

18 A I didn't know that was an option.

19 MR. JAMES: No further questions.

20 THE COURT: All right. Anything else?

21 MS. THOMPSON: No further questions, judge. And
22 if she can be released from her subpoena, she has her
23 kids to pick up.

24 THE COURT: All right. You have a good day.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 THE COURT: Call your next witness.

3 MS. THOMPSON: Zachary Bullock, please.

4 ZACHARY BULLOCK, after being duly sworn, testified
5 as follows:

6 THE CLERK: You can have a seat. State your name
7 for the Court.

8 THE APPLICANT: My name is Zachary Bullock.

9 THE COURT: Okay.

10 DIRECT EXAMINATION

11 BY MS. THOMPSON:

12 Q Mr. Bullock, what did your trial attorney,
13 Mr. Hilliard, do to investigate your case?

14 A Nothing, by my knowledge.

15 Q Okay. And who in your opinion investigated your
16 case while it was pending?

17 A My mom.

18 Q And what witnesses did Mr. Hilliard talk to or
19 send out a private investigator out to talk to during
20 your case?

21 A None.

22 Q Were you living with someone at the time?

23 A Yes.

24 Q Who were you living with?

25 A A woman friend.

1 Q A friend. And did your trial attorney talk to
2 them about possibly knowing your whereabouts the day of
3 the burglary?

4 A No, ma'am.

5 Q Okay. And we already said today, are you familiar
6 that he ever talked with the alleged victims in this
7 case?

8 A No.

9 Q Okay. Well, victim.

10 MS. THOMPSON: Excuse me, judge.

11 Q The victims in the case, how do you know them?

12 A My mom's neighbor.

13 Q Okay. Do you know about how long they lived
14 beside her?

15 A No.

16 Q And knowing now that they did not want to
17 prosecute you, how do you think that affected your
18 case?

19 A It affected it a lot.

20 Q Can you go into a little bit more detail.

21 A Might have been different on plea agreements
22 maybe.

23 Q Okay. And did you have a cell phone during this
24 time?

25 A Yes, ma'am.

1 Q And who were you in contact with after this
2 burglary?

3 A My codefendants.

4 Q And what are your codefendants' names?

5 A Deasia Denton and Emmanuel Ferrice.

6 Q Could you annunciate a little bit.

7 A Deasia Denton and Emmanuel Ferrice.

8 Q Emmanuel Ferrice and Deasia Denton. And why were
9 you in communication with your codefendants?

10 A Because they had called me, telling me they had
11 something to sell, so I sold it for them.

12 Q Okay. And did you know it was from the burglary
13 of the neighbor of your mom's house?

14 A No, ma'am.

15 Q Okay. And was this documented on your cell phone?

16 A Yes, ma'am.

17 Q Did you tell Mr. Hilliard about it?

18 A Yes, ma'am.

19 Q And did he ever get copies of those text messages?

20 A No.

21 Q And did he ever subpoena your phone records?

22 A No, ma'am.

23 Q All right. And do you still have that cell phone?

24 A No.

25 Q During this time did Mr. Hilliard mitigate the

1 case in any way, such as ask you to take a drug test?

2 A No.

3 MR. JAMES: Objection, leading.

4 THE COURT: Sustained.

5 MS. THOMPSON: Okay.

6 Q What did Mr. Hilliard do to mitigate your case
7 during plea negotiations?

8 A I had a full-time job.

9 Q But he didn't do anything further than proof of
10 employment?

11 A No, ma'am.

12 Q Okay.

13 MS. THOMPSON: No further questions, judge.

14 THE COURT: Thank you. Cross?

15 CROSS-EXAMINATION

16 BY MR. JAMES:

17 Q Mr. Bullock, did you ever tell your defense
18 counsel to go speak with your neighbors?

19 A No, sir.

20 Q Did you ever tell your defense counsel to go speak
21 with your friends?

22 A No, sir.

23 Q Did you ever tell your defense counsel to go speak
24 with the victims in this case?

25 A No, sir.

1 Q Did you give your defense counsel any leads
2 whatsoever to follow up on?

3 A No, sir.

4 Q Did you tell him to pull the phone records?

5 A Yes, sir.

6 Q You did tell him to pull the phone records?

7 A Yes, sir. Yes.

8 MR. JAMES: I have no further questions.

9 THE COURT: All right. Anything further?

10 MS. THOMPSON: Yes, judge, just briefly.

11 REDIRECT EXAMINATION

12 BY MS. THOMPSON:

13 Q Before this arrest, have you ever been in trouble
14 before?

15 A No, ma'am.

16 Q And you had never been arrested before; correct?

17 A No, ma'am.

18 Q And have you ever studied or practiced any type of
19 law?

20 A No, ma'am.

21 MR. JAMES: Objection. This is beyond the scope
22 of cross and previous direct.

23 THE COURT: She's already asked him, he's answered
24 it. Any other questions?

25 MS. THOMPSON: That's it, judge. Thank you.

1 THE COURT: All right. You may step down.

2 (Witness excused.)

3 THE COURT: Call your next witness.

4 MS. THOMPSON: Melinda Ellison, please.

5 MELINDA ELLISON, after being duly sworn, testified
6 as follows:

7 THE CLERK: Have a seat. State your name for the
8 Court.

9 COURT REPORTER: And spell your last name.

10 THE WITNESS: Okay. Melinda Ellison,
11 E-L-L-I-S-O-N.

12 DIRECT EXAMINATION

13 BY MS. THOMPSON:

14 Q Ms. Ellison, where are you employed?

15 A I am employed by Thompson Defense Firm.

16 Q All right. And what is your job title there?

17 A I'm a paralegal.

18 Q All right. And did you work on Mr. Bullock's case
19 in preparing for the PCR here today?

20 A Yes.

21 Q And what specifically with the cell phone records
22 did you do in this case?

23 A I served a subpoena through e-mail and through the
24 mail to the phone carrier.

25 Q Okay. So you assisted in trying to get the phone

1 records; is that true?

2 A Yes.

3 Q Okay. And did you get a response?

4 A They e-mailed us the records that they had.

5 Q Okay. And did that include the text messages?

6 A It did not include text messages.

7 Q All right.

8 MS. THOMPSON: No further questions, judge.

9 THE COURT: All right. Cross?

10 CROSS-EXAMINATION

11 BY MR. JAMES:

12 Q What records did they have?

13 A There were just times of in going and out coming
14 calls.

15 MR. JAMES: Okay. No further questions.

16 THE COURT: All right. You may step down, unless
17 you have any questions.

18 MS. THOMPSON: No further witnesses, Your Honor.

19 THE COURT: Thank you.

20 (Witness excused.)

21 THE COURT: Thank you. Let me hear from you,
22 Mr. James.

23 MR. JAMES: If I may have just one moment, Your
24 Honor.

25 THE COURT: You may.

1 MS. THOMPSON: May I have a moment, judge.

2 (Discussion off the record.)

3 MR. JAMES: Your Honor, respectfully, I would move
4 for a directed verdict as to the allegation that
5 counsel is ineffective for failing to acquire the
6 records of the cell phone companies, GPS data and text
7 message content. None of that information has been
8 presented to this Court for review. And, therefore,
9 any impact that it may have had is purely speculative.

10 Opposing party all but concedes that those records
11 no longer exist, and therefore this Court cannot make
12 any kind of determination as to whether or not their
13 absence is prejudicial or not. The burden for
14 providing that information falls upon the Applicant.

15 And for -- in support of the State's position, I
16 would respectfully hand up the case of Morehead versus
17 State, that is 329 SC 329, 496 S.E.2d 415, and that is
18 a 1998 case of the South Carolina Supreme Court, if I
19 may approach.

20 THE COURT: You may.

21 MR. JAMES: And specifically, Your Honor, I would
22 direct your attention to page three of the printout
23 that I've handed up, that would be page 344 in the
24 South Carolina Reporter. It's the paragraph demarcated
25 by headnote 6. And that first sentence is very clear,

1 failure to conduct an independent investigation does
2 not constitute ineffective assistance of counsel when
3 the allegation is supported only by mere speculation as
4 to the result. And that is the State's position as to
5 the third allegation, Your Honor.

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

7 MS. THOMPSON: Thank you, judge. And that's the
8 problem here, counsel is ineffective in not getting
9 them, and now they are lost forever. My client
10 testified that he did ask him to get his cell phone
11 records, he asked him to subpoena them, he didn't at
12 the time. And that's the greatest prejudice that is
13 shown today.

14 Because there is no way to get them, we tried to
15 get them, we did everything we could to get them in
16 subpoenaing them. Everything is gone. So I think it
17 just goes to show how prejudicial it was in not
18 obtaining the cell phone records at the time of this
19 case, because now they are lost forever and there is
20 nothing that we or the Court can do.

21 My client testified what was in those text
22 messages. I think moving on, its not speculation, I
23 think it boils down to the credibility of my witness at
24 that point, which would be Mr. Bullock.

25 And once again, just to reinstate that that's the

1 most prejudicial part of this is not being able to get
2 them. There are so many things you can do with cell
3 phone records today, GPS, date, text messages between
4 people. And now he's at a disservice forever on that
5 issue because Mr. Hilliard did not subpoena those
6 records at the time.

7 THE COURT: All right. Mr. James?

8 MR. JAMES: Your Honor, at the very bottom of the
9 second supplement to PCR petition where this allegation
10 was originally raised, Applicant indicates, if these
11 records had been obtained they could have shown the
12 actual relationship petitioner had with his
13 codefendants to support that he was not involved with
14 the burglary.

15 So Applicant himself, by the language utilized in
16 the second supplement, doesn't know if it would have
17 actually been helpful and didn't assert as much. So --

18 THE COURT: Did he ask his lawyer to get them?

19 MS. THOMPSON: He did just testify that he did ask
20 him, judge.

21 THE COURT: I'm going to deny the motion to
22 dismiss. And let's go ahead and go forward with your
23 half.

24 MR. JAMES: Thank you, Your Honor. The State
25 would call Mr. John Hilliard.

1 JOHN M. HILLIARD, III, after being duly sworn,
2 testified as follows:

3 THE CLERK: You may have a seat.

4 THE WITNESS: Thank you.

5 THE CLERK: State your name for the Court, please.

6 THE WITNESS: John Hilliard.

7 DIRECT EXAMINATION

8 BY MR. JAMES:

9 Q Good morning, Mr. Hilliard.

10 A Good morning.

11 Q Or afternoon at this point.

12 A Afternoon, yeah.

13 Q How are you doing today?

14 A I'm well.

15 Q How long have you been practicing law?

16 A 37 years.

17 Q And how much of that has been criminal law?

18 A Almost all of it.

19 Q Were you appointed or retained to represent
20 Mr. Bullock?

21 A I was retained.

22 Q Do you recall how many times you met with him in
23 the course of your representation?

24 A I don't recall. I met with him and his mom on a
25 number of occasions, but I don't remember how many.

1 Q In the course of those meetings, did you explain
2 to him the indictments, the offenses and their
3 elements?

4 A I did.

5 Q Did you review the possible punishments he was
6 facing?

7 A I did.

8 Q Did you explain all his constitutional rights?

9 A I did.

10 Q And the State's burden of proof, facts beyond a
11 reasonable doubt?

12 A I did.

13 Q Did he appear to understand everything?

14 A He did.

15 Q Did you discern any mental deficiencies or
16 learning disabilities or?

17 A None.

18 Q What if anything did Mr. Bullock tell you about
19 what happened?

20 A He denied that he was involved in the burglary.
21 He told me that he was a fence for these folks in the
22 beginning. And then on this particular burglary, he
23 denied that he was involved in the burglary.

24 Q Did he give you any leads to pursue?

25 A I'm not sure what you mean by leads. We had --

1 I'll answer it as best I think I can.

2 Q If you'd like, I can break down the question into
3 smaller parts. Did he ask you to go speak with any
4 particular witnesses?

5 A He didn't.

6 Q Did he ever ask you to go seek phone records?

7 A I don't remember that. That's -- his mom and I --
8 his mom is or was at that time a paralegal for a
9 different law firm. She was involved in the case with
10 me. I don't remember the phone record situation. I'd
11 like to believe that if he had ever asked me to
12 subpoena the phone records, that I would have done
13 that. I can't imagine why I wouldn't have done that.
14 And we did work together pretty extensively in this
15 case.

16 Q If he had asked you to seek phone records, would
17 you have made a note of that in your file?

18 A I don't know whether I would have done that or
19 not, that's -- I don't know.

20 Q You have your file here with you today in the
21 courtroom?

22 A I don't. And I'm not -- we've had several floods
23 in my office. There was a flood in October of 2015
24 which caused us to have to leave the office, and a
25 flood in 2016. And my paralegal is here with me today.

1 We made a search for the file and had been unable to
2 locate it.

3 Q So do you deny that Mr. Bullock ever asked you to
4 subpoena phone records?

5 A I don't deny that because I don't remember.
6 Again, I would like to think that I would have done it
7 if he had said it, and his mom is or was at that time a
8 paralegal, and we worked together a great deal. But I
9 won't say that he didn't do it because I don't remember
10 and I don't have a file. So that would be unfair.

11 Q Did you ever consider independently seeking out
12 those phone records?

13 A Again, I don't -- phone records, I remember that
14 phone records were part of the case, that our defense
15 was that the two codefendants who were boyfriend and
16 girlfriend had gotten together to throw him under the
17 bus, to make him the bad guy in the whole case. So the
18 phone information would have been something that was of
19 interest.

20 And, again, I don't have any independent
21 recollection of how that all -- how that all came out.
22 We had a -- I thought we had a pretty good shot at
23 challenging the credibility of the female side of --
24 the other side of the case connected to her.

25 Q If I may interrupt, when you say the female side

1 of the case, are you referring to Ms. Deasia Denton?

2 A Yes.

3 Q Deasia?

4 A Yes. We had gotten a greet deal of information
5 about her and some Facebook things that she had posted
6 and some other things that I thought would challenge
7 her credibility. And the judge wouldn't let any of
8 those come into evidence.

9 And I really thought that was going to be sort of
10 the hook for our appeal, and it turned out, according
11 to the Supreme Court at least, none of that mattered,
12 so...

13 Q So your strategy was simply to impeach the
14 codefendants testifying against Mr. Bullock?

15 A Yes.

16 Q Did you conduct any additional investigation into
17 the facts, either personally or through an
18 investigator?

19 A My investigation into the case and into the
20 contacts was truly through Zach and his mom, they were
21 very active in the case. And we met and talked about
22 it and strategized about it, and that was, again -- and
23 he was correct when he said his mom did the
24 investigation in the case. She did a good job.

25 Q Is that normal that you would rely on the

1 Defendant and relatives to assist in your
2 investigation?

3 A It's normal. And, again, I know I've said this,
4 but it was particularly normal in this case because his
5 mom was a paralegal and a good one.

6 Q But she would report things to you?

7 A Yes.

8 Q All right. And you took them into consideration,
9 or did you take them into consideration in developing
10 your trial strategy?

11 A Absolutely. It was a team effort. It was -- we
12 were all on the same -- all on the same side and all on
13 the same team, trying to get to the same goal.

14 Q Did you file requests for discovery pursuant to
15 Rule 5 and Brady?

16 A I did.

17 Q Did you get everything that you expected to get
18 out of that?

19 A I did.

20 Q All right. Did you get any kind of phone records
21 out of that?

22 A I don't recall that. I don't remember whether we
23 got phone records or not.

24 Q And did you review all of those materials that you
25 received?

1 A Yes.

2 Q And did you review them with Mr. Bullock?

3 A Yes.

4 Q If you could, sir, what -- give us a brief
5 overview what the State's case was against your client,
6 as best as you recall.

7 A The victim in this case, the house, was a
8 neighbor's house. And one of the big things about the
9 prosecution was there was this sticker on the back of
10 the neighbor's car that was something about a gun, I
11 don't remember. Seems like it was a Glock, but it
12 might not have been, some gun. But the neighbor had a
13 sticker on his car about having a gun.

14 And the prosecution's theory was that because
15 there was a sticker on the car, that Zach knew there
16 was a gun in the house. And they went in the house and
17 got the gun. And that's what made it a burglary first
18 was the gun, the gun was missing.

19 And the information that I had and the impression
20 that I had was that the neighbor, the man who owned the
21 gun, was angry about the whole situation. And that was
22 one of the reasons that the prosecutor was so hard in
23 his negotiation of the case. And, you know, I believe
24 today that Zach got a raw deal. And that's a function
25 of the prosecutor having the power to say, well, if you

1 don't take the -- I'm going too far. Go ahead.

2 Q Let's stop and kind of take a pit stop back there
3 at the victim.

4 A Okay, all right.

5 Q You indicated that your understanding was that the
6 victim in this case, or at least the gentleman who
7 owned the gun, was angry?

8 A Yes.

9 Q Did you attempt to speak with that victim?

10 A I did not.

11 Q All right. Why not?

12 A Well, an angry person is only going to get angrier
13 if the defense lawyer calls him up. And I...

14 Q Did you ever talk about the victims with
15 Mr. Bullock, about his relationship to them or
16 knowledge of who they were?

17 A My recollection is that we did talk about that and
18 that he confirmed that the man was, in fact, angry
19 about it. And the man testified at the trial and said
20 he had to move. I mean, he -- at the trial he seemed
21 angry to me.

22 MR. JAMES: Beg the Court's indulgence.

23 THE COURT: Um-hum.

24 Q Did you explain the strengths and weaknesses of
25 the State's case to Mr. Bullock?

1 A I did.

2 Q You previously indicated that your strategy was to
3 impeach the codefendants testifying against Mr.

4 Bullock. Did you explain that strategy to Mr. Bullock?

5 A I did.

6 Q And did you feel adequately prepared to proceed on
7 that strategy?

8 A I did.

9 Q All right. Did Mr. Bullock give you any feedback
10 as to his feelings about that strategy?

11 A We -- let me say again, I think this answers your
12 question, is it was a team effort. It was not me and
13 then talking to him. It was, we developed that
14 strategy all together, me and Zach and his mom.

15 Q Did you get any plea offers in this case?

16 A We did.

17 Q All right. What were they?

18 A As I recollect, it was the prosecutor in the case
19 offered to plea to a reduced burglary and a seven-year
20 active sentence. And we had to accept the seven years
21 without argument in order to get the -- reduce the
22 charge.

23 Q So it would have been seven years negotiated?

24 A Seven years negotiated. That was the only offer
25 that was made.

1 Q And did you present and explain that offer to your
2 client?

3 A I did. We were here. And we talked about it at
4 some length, that the real problem with that offer was
5 that it wasn't fair. The problem with that is if the
6 offer is not fair and it's a burglary first degree,
7 there is no recourse. They wanted him to do seven
8 years, and neither he nor I nor his mom could figure
9 out where they came up with the idea that that was a
10 fair result in this case.

11 At the same time, the alternative -- you know, the
12 only alternative was plead guilty and get seven years
13 or go to trial. And I knew they had a strong case, he
14 knew they had a strong case. So...

15 Q If he had pled straight up, it would have been to
16 burglary first; correct?

17 A He would have gotten 15 years.

18 Q Right.

19 A So there is no -- I mean, that would have been
20 crazy.

21 Q So all of that taken together, Mr. Bullock
22 ultimately declines that plea offer? And I take it
23 from your answer that you agreed with his decision in
24 that?

25 A I didn't interfere with his -- that was his

1 choice. Because I knew their case was strong. We
2 talked about that fact. He didn't want the deal, and I
3 certainly couldn't tell him it was a good deal. But at
4 the same time, the alternative was to have a trial.
5 And we knew the codefendants were going to testify, and
6 we knew the gun was gone, and we knew that he got
7 caught with the codefendants at another burglary. I
8 mean, you know, they had a good case against him. But
9 we had a defense to explain those things.

10 Q And just to be abundantly clear, you never spoke
11 with Mrs. Skipper?

12 A No.

13 Q All right. And Mr. Bullock never suggested that
14 you go speak with Mrs. Skipper?

15 A No.

16 Q And your understanding during plea negotiations
17 was that the victim was pushing this case?

18 A Right. Well, and -- but that's not Mrs. Skipper,
19 it was the guy.

20 Q Mr. --

21 A Mister, right. The other guy, the guy that lost
22 the gun.

23 Q I regret that the names are all running together
24 in my mind right now.

25 A That's okay.

1 Q Joseph Skipper?

2 A Right.

3 Q During trial, during Mr. Skipper's testimony, the
4 solicitor asked him why he moved. Did you object to
5 that?

6 A I did.

7 Q And on what basis did you object?

8 A Relevance.

9 Q Is there any reason why you didn't further object
10 to it as inadmissible victim impact testimony?

11 A I thought relevance covered it. It had no bearing
12 on the guilt or innocence of the Defendant. I think
13 the judge made a mistake, but I don't think it
14 mattered.

15 Q Going, again, back to your investigation of this
16 case, did you ever investigate the tenancy of the
17 victims in the house that was burglarized?

18 A I don't remember, I don't remember that. I do
19 remember there was conversation about it, and I do
20 remember that I spoke with Zach's mom about it.

21 Q What was your understanding after that
22 conversation?

23 A Truthfully, I can't remember whether that
24 conversation took place after the trial or before the
25 trial. But I remember that she -- I remember that she

1 told me that they had -- that they had not moved as he
2 had indicated.

3 Q So you cannot recall if that information was made
4 known to you before or after trial?

5 A I don't remember.

6 Q If that information had been available to you
7 before trial -- I withdraw that question.

8 MR. JAMES: Beg the Court's indulgence.

9 Q Was impeaching the victim part of your trial
10 strategy?

11 A It was.

12 MS. THOMPSON: Objection. Judge, we waived that
13 issue.

14 THE COURT: Sustained.

15 MR. JAMES: No further questions, Your Honor.

16 THE COURT: All right. Cross?

17 CROSS-EXAMINATION

18 BY MS. THOMPSON:

19 Q Mr. Hilliard, you would agree that an attorney has
20 a duty to investigate a case; isn't that true?

21 A That is true, yes.

22 Q And for a burglary that investigation would
23 typically include the star witnesses which are the
24 alleged victims; isn't that true?

25 A That's a little dicier, I think. That has the

1 potential to make them mad. They are fact witnesses,
2 but there are also victims. And if you make them mad,
3 then you didn't help yourself.

4 Q Have you ever had cases dismissed because the
5 victims didn't want to prosecute on a case?

6 A Absolutely, yes.

7 Q And you did that by contacting the victims; isn't
8 that true? Or you have done that?

9 A I have, yes, I have done that by contacting the
10 victims.

11 Q Thank you. And you said that you thought that the
12 victims were driving the prosecutor in this case not to
13 indulge in better plea negotiations, more fair, your
14 wording; correct?

15 A Yes.

16 Q Okay. And you learned -- and there were actually
17 two victims in this case; correct?

18 A The homeowners, yes.

19 Q Yes. Mr. and Mrs. Skipper; correct?

20 A Right.

21 Q But only one of them testified at trial; isn't
22 that true?

23 A Yes.

24 Q Okay. And you now know today from Ms. Skipper's
25 testimony that that was not true at all; is it?

1 A From her point of view, yes.

2 Q Okay. And you never asked them what they wanted
3 done in this case; isn't that true?

4 A I didn't. Yes, that's true.

5 Q And you were aware that the victims were family
6 acquaintances of Mr. Bullock's family; correct?

7 A I knew they were neighbors, and I thought they
8 didn't like each other. I guess I was mistaken about
9 that.

10 Q Okay.

11 A Well, let me phrase this better. Because I don't
12 want to say that Zach and his mom didn't like them. I
13 just believe they didn't like Zach and -- I believe
14 they didn't like Zach, that's what I thought.

15 Q Okay.

16 A And today I have been shown that had been
17 mistaken.

18 Q And from what you have learned today from
19 Ms. Skipper's testimony, isn't it true that's something
20 you could have used to get a more fair deal?

21 A I don't know. If I had known it, I would have
22 tried to use it certainly. I don't know whether the
23 prosecutor would have agreed with that or not.

24 Q Okay. But you have used victims' statements
25 before in practice when they have not wanted to

1 prosecute on a case?

2 A Absolutely, yes.

3 Q Or wanted something specific done in the case such
4 as restitution, you've done that in a case before too;
5 correct?

6 A Absolutely, yes.

7 Q So you would agree that's a mitigating factor you
8 could have used during negotiations?

9 A Yes.

10 Q And you did not use it; correct?

11 A Correct.

12 Q Okay. Zach had no prior record before this; isn't
13 that true?

14 A I can't remember that, but it -- I don't
15 disbelieve him.

16 Q Do you only interview witnesses your clients ask
17 you to talk to?

18 A No. I mean, I interview other witnesses as well.

19 Q Okay. And would you agree that that's part of
20 your job in investigating the case?

21 A Yes.

22 Q And one of those reasons is because many of your
23 clients as well as my clients, any clients, don't know
24 how the criminal justice system works; isn't that true?

25 A In most cases that's true. The way that I do

1 things is I gather everybody up in a big room. And
2 everybody that I can think of, you know, paralegal,
3 secretaries, victim -- or, you know, the client, his
4 family, whoever knows anything about the case, I gather
5 them up and we talk about it. It's a group effort. I
6 don't try to figure it out in a vacuum, and then -- so
7 it all -- I interview witnesses that they don't tell me
8 about.

9 And we do investigations that are led to by things
10 in the -- that I learn about the case through all kinds
11 of discovery or whatever else it is that I do.

12 In this case, again, I know I've said this before,
13 but in this case his mom was an enormous help in
14 putting it all together.

15 Q You mentioned you felt Mr. Skipper was very angry;
16 isn't that true?

17 A Yes.

18 Q However, there was no way for you to know that
19 until the trial; isn't that true?

20 A Except that the -- my recollection is the
21 prosecutor told me that.

22 Q Okay. Do you only interview witnesses that are
23 going to be nice and not angry?

24 A No. I interview witnesses that -- or at least I
25 try to interview people who turn out to be not

1 cooperative.

2 Q During the trial --

3 MS. THOMPSON: And, judge, it's on page 67, line
4 15.

5 Q -- the solicitor asked Mr. Skipper why he moved;
6 isn't that true?

7 A Yes.

8 Q And you objected based on relevance?

9 A Yes.

10 Q But you did not object based on inadmissible
11 victim impact testimony; isn't that true?

12 A Yes.

13 Q However, would you agree that that is
14 inadmissible, victim impact testimony?

15 A Yes.

16 Q And that it matters because you don't want a jury
17 to base their decision on emotion; isn't that true?

18 A Right.

19 Q So it could have prejudiced Zach by that statement
20 pertaining to their emotion instead of the facts of the
21 case; isn't that true?

22 A Yes.

23 Q Zach told you he was not involved in the burglary;
24 isn't that true?

25 A Yes.

1 Q And he was still adamant about that today;
2 correct?

3 A Yes.

4 Q But he did tell you he had heard from his
5 codefendants who committed the burglary; isn't that
6 true?

7 A Yes.

8 Q And that was via his cell phone; correct?

9 A Yes.

10 Q And did you ever subpoena those phone records?

11 A Never.

12 Q Do you only subpoena phone records when your
13 clients ask you to?

14 A I subpoena -- I subpoena phone records even in
15 circumstances where my clients don't ask me to.

16 Q And that's because sometimes they are important,
17 and the client may not realize it; isn't that true?

18 A Absolutely, yes.

19 Q Because they may not always realize the importance
20 of them in a criminal case; correct?

21 A True.

22 Q And you agree that this hurt Zach because now the
23 cell phone records are gone?

24 A I don't know whether it does or it doesn't.

25 Q Having the -- just to wrap it up, had you had the

1 cell phone records, and if the Court were to release
2 Zach's credibility that they were to show that he did
3 not commit the burglary, he was only in communication
4 afterwards, and knowing now how Ms. Skipper feels, the
5 victim of this case, those are things you believe you
6 could have used to get a more fair deal; isn't that
7 correct?

8 A Yes.

9 Q And these are all things that you and any attorney
10 would --

11 MR. JAMES: Objection. The previous question
12 assumes facts not in evidence. It assumes, again, that
13 the phone records were all helpful to the Applicant.

14 THE COURT: Sustained.

15 MS. THOMPSON: Thank you, judge. I was trying to
16 reword it like we did earlier. I apologize.

17 THE COURT: You can do it.

18 Q So would you agree there is a lot of things you
19 missed during plea negotiations?

20 A I don't know that there were a lot of things that
21 I missed during plea negotiations. If I had known --
22 if I had known about Ms. Skipper, I think that could
23 have been an important thing. The prosecutor was so
24 adamant. And I got no real idea why. It makes no
25 sense to me that he would have been as harsh as he was

1 in this case. But that's what he said was it was the
2 victim.

3 Q Okay. You mentioned earlier that it was normal
4 for someone like Zach's mom who is a paralegal to help
5 out in the investigation; correct?

6 A Yes.

7 Q But there was only so much she could do as far as
8 going into the courtroom; would you agree with that?

9 A I don't understand.

10 Q She's not going to know exactly what's important
11 in plea negotiations whereas you would; correct?

12 A True.

13 Q Because many times paralegals are involved in plea
14 negotiations; isn't that true?

15 A True. Well, and let me say also, she's -- she was
16 a medical malpractice paralegal. She was not a
17 criminal defense paralegal, so I don't mean to imply
18 that. She was knowledgeable about the circumstances
19 and helpful in putting the case together.

20 MS. THOMPSON: No further questions, judge.

21 THE COURT: All right. Mr. James?

22 REDIRECT EXAMINATION

23 BY MR. JAMES:

24 Q You didn't only rely on Applicant's mother;
25 correct?

1 A True.

2 Q Did you do things yourself?

3 A I did. You know, I don't recollect the exact
4 sequence of events, but certainly I -- you know, I
5 reviewed all of the discovery, went through all of it.
6 And then we all sat down and went through the discovery
7 together. But no, I didn't only rely on her in the
8 investigation.

9 Q You testified earlier that it was a team effort?

10 A Absolutely.

11 Q You indicated earlier that you have gotten charges
12 dismissed due to friendly victims in the past?

13 A Sure.

14 Q Is this the first case where the solicitor
15 insisted upon the case despite a potentially friendly
16 victim that you've dealt with?

17 A That's happened -- that's happened in the past.

18 Q Who ultimately do you have to negotiate with to
19 arrange a plea deal?

20 A The prosecutor.

21 Q You don't negotiate with the victims?

22 A No.

23 Q Okay. And you did get a plea offer in this case?

24 A Yes.

25 Q Of seven years?

1 A Yes.

2 Q What if any kind of plea deal was Zachary
3 specifically looking for?

4 A We were just trying to beat seven years, and I
5 don't...

6 Q Was there ever established a clear target?

7 A No, we never had a clear -- at least, I don't --
8 let me say this. I don't remember that we had a clear
9 target. That was the only offer we ever got, so...

10 MR. JAMES: No further questions.

11 THE COURT: All right. Anything further?

12 MS. THOMPSON: Nothing further with this witness,
13 judge, but --

14 THE COURT: You can step down.

15 THE WITNESS: Thank you, judge.

16 (Witness excused.)

17 MS. THOMPSON: -- I do have a question.

18 Mr. Skipper is here, and I do feel through the
19 testimony of Mr. Hilliard a lot of things were said
20 about him being angry or things he did and pushed. And
21 while I don't want to ask him -- force him to the
22 stand, judge, I would like to ask him if he -- and ask
23 you if I may ask him if he wants to testify and clear
24 any of that up for the record. Because he is here
25 today. And I would just like to give him that

1 opportunity if he would like that.

2 THE COURT: And what difference would that make?

3 MS. THOMPSON: Because if he's not angry --

4 THE COURT: Because it's the solicitor and the
5 Defense attorney who was cutting deals.

6 MS. THOMPSON: Correct. But if he wasn't -- you
7 know, Mr. Hilliard thought that he was pressing it, and
8 that's why he didn't investigate him and didn't talk to
9 and find out what he wanted in the case, which he also
10 agreed would have helped him during plea negotiations
11 if he -- but he didn't talk to him because he felt he
12 was angry, he was driving it.

13 THE COURT: I think he said the solicitor was
14 saying that the victim was upset.

15 MS. THOMPSON: Correct.

16 THE COURT: And then therefore, he didn't contact
17 him, and I understand that.

18 MS. THOMPSON: Okay. And if he didn't contact the
19 solicitor, if that's an untrue statement --

20 THE COURT: I mean, if this guy is facing 15 to
21 life in jail, and you have a hostile victim, and the
22 solicitor tells him you have a hostile victim, he would
23 be crazy to go contact the --

24 MS. THOMPSON: Correct. But what if that's not a
25 true statement, judge?

1 THE COURT: Either way, I mean, from a trial
2 strategy point of view, from a lawyer's point of view,
3 he could really upset the apple cart if he goes after
4 upset victims, and just from a practical point of view
5 based on my experience in the law.

6 MS. THOMPSON: Yes, judge.

7 THE COURT: But if you want to call your person,
8 you can.

9 MS. THOMPSON: I just want to ask him if he would
10 like it, judge. Thank you.

11 THE COURT: Any objections from the State?

12 MR. JAMES: The State has no further witnesses at
13 this time. Just a procedural clarification, I would
14 understand this to be reply testimony?

15 THE COURT: It would be reply.

16 MR. JAMES: I have no objection.

17 THE COURT: All right. Go ahead and talk to him.

18 MS. THOMPSON: Thank you.

19 (Discussion off the record.)

20 MS. THOMPSON: Judge, he would like to clear up
21 the record on that.

22 THE COURT: All right. Call him on around and
23 have him sworn in.

24 MS. THOMPSON: Thank you, judge.

25 JOSEPH SKIPPER, after being duly sworn, testified

1 as follows:

2 THE CLERK: You can have a seat. State your name
3 for the Court.

4 THE WITNESS: Joseph Skipper.

5 DIRECT EXAMINATION

6 BY MS. THOMPSON:

7 Q Mr. Skipper, I was going to give you an
8 opportunity on the record to clear anything up. As you
9 heard, it was said that you told the solicitor you were
10 angry about this case. How many times did you talk to
11 the solicitor about this case?

12 A A lot.

13 Q Okay.

14 A I don't know how many. I couldn't tell you, it's
15 been a while.

16 Q Okay. And would you agree with the statement as
17 Mr. Hilliard made that it was your anger pushing this
18 case?

19 A Well, I mean, and I wouldn't say anger, I mean, I
20 wasn't mad at Zach. I didn't know he done it. We were
21 in trial. They are trying to -- a jury is trying to
22 figure out whether he done it or not. I'm mad at
23 somebody, because you come in my house and took my
24 stuff.

25 Q Sure.

1 A So I didn't have -- I mean, I didn't have no
2 direct -- I'm not mad at him because I didn't know if
3 it was him, you know what I'm saying. And I wouldn't
4 even say mad, I mean, I was upset. You know, we had to
5 uproot and move and -- because somebody breaks in your
6 house, you don't know, you just -- you don't know. You
7 don't know who it is or if they are coming back or, you
8 know, so...

9 Q And did I send out an investigator to talk to you?

10 A Somebody did. I don't know who, but yeah,
11 somebody did show up at my door.

12 Q And did you openly and willingly talk to them?

13 A Yeah.

14 Q And did Mr. Hilliard ever send out anyone to talk
15 to you, though, when the case was pending?

16 A No. I didn't -- the only person I talked to the
17 whole time was the, I guess, prosecutor or assistant
18 solicitor, whoever does it.

19 Q All right. And did you communicate what you had
20 wanted done in the case to him?

21 A To the solicitor?

22 Q Correct.

23 A No. They told me what was going to happen.

24 Q Okay. So they didn't ask you what you wanted done
25 as the victim of the case?

1 A No. They just -- they said, this is what -- we're
2 going to go after him for this, this and this, and for
3 this much.

4 Q And what would you have wanted done in the case?

5 A Well, it's hard to say because, I mean, I didn't
6 know who done it. You know, I'm not an investigator,
7 I'm not a police officer. I'm just a guy that got his
8 house broken into. But I think 15 years was too much
9 for anybody for breaking into a house, especially with
10 no history of anything.

11 Restitution and probation would have been great
12 for me. I could have gotten my stuff back, and he
13 would have had to stay out of trouble. You know, kind
14 of makes sense. But, you know, it ain't up to me to
15 decide what happens.

16 Q Right.

17 MS. THOMPSON: No further questions, judge. Thank
18 you.

19 THE COURT: All right. Mr. James?

20 MR. JAMES: No questions for this witness, Your
21 Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Anything else from either party, the

1 State? Any other witnesses?

2 MR. JAMES: No other witnesses from the State,
3 Your Honor.

4 THE COURT: All right. Anything else from the
5 Defense?

6 MS. THOMPSON: No other witnesses, just closing,
7 judge.

8 THE COURT: All right. I'm ready when you are.

9 MS. THOMPSON: May I first approach with the case
10 law, judge.

11 THE COURT: Um-hum.

12 MS. THOMPSON: I'll first point out that
13 Mr. Hilliard did have a duty as Zach's -- Mr. Bullock's
14 attorney during plea negotiations as well as during the
15 trial. And that's the basis for our PCR today.

16 I would point to the first case. That actually
17 discusses that extensively as far as an attorney's job
18 during plea deals and plea negotiations. And the cases
19 behind it, Thompson versus State, Gordon versus State
20 and Sprouse versus State, all talk about cases where a
21 client pleads guilty. That didn't happen here, he did
22 proceed to trial in this case. But it just goes to
23 show that an attorney's duties start way before a
24 trial. It's during plea negotiations, it's during plea
25 deals.

1 In Judge versus State, the Court says -- which was
2 overruled on other grounds, judge, not this -- we'd
3 agree with the reasoning of the district court in
4 Turner and thus call it a Sixth Amendment protects
5 criminal defendants against ineffective assistance of
6 counsel during the plea bargaining process, even if the
7 plea offer ultimately is rejected, which is what
8 happened in this case.

9 While the ultimate decision in any case isn't up
10 to the victims, that's not the law, in practical
11 practice I think all criminal defense attorneys and
12 prosecutors would agree that they do have a say. I
13 have had numerous times where prosecutors say, I know
14 I'm going to lose this case, it's -- you know, I don't
15 believe my victim. But they are very adamant about
16 prosecuting, so they take it to trial instead of
17 dismissing it.

18 On the reverse side, Mr. Hilliard had testified
19 and agreed to, I too, have had cases where victims did
20 not want to prosecute, or recently, in very many times
21 cases where we work out restitution. They want some
22 type of restitution, but they don't want the defendant
23 to be punished to the fullest extent of the law.

24 Both victims testified here today, I only
25 anticipated calling one. But I did want to clear the

1 record up from talking him. He was not angry. I sent
2 out an investigator, he told you he willingly and
3 openly talked to them. And that's the call that we as
4 attorneys make many times. We want to know who's
5 hostile, who's on our side, who's going to help our
6 clients. That's our job to find out who is going to
7 help them, you know, not only through the criminal
8 case, but as a person as well. And recently --

9 THE COURT: And sometimes that's a strategic move.
10 Sometimes you have to decide when to call them and when
11 not to call them, and for reasons. Sometimes it can
12 backfire and make things worse. And he didn't say he
13 was necessarily angry, but he was very upset. I mean,
14 he had to move because somebody broke into his house.
15 So whether he called or not, and so a strategic call is
16 based on that.

17 MS. THOMPSON: I would respectfully --

18 THE COURT: But go ahead.

19 MS. THOMPSON: I would respectfully disagree. And
20 the reason for it is I've had, you know, in my practice
21 of law, most of the times I want to call those clients
22 that may not be on our side because I want to see what
23 they're going to say.

24 THE COURT: Yeah, but you got a victim on a burg
25 first. What if that victim got upset with you and

1 said, I want life. I don't want him getting 15 years,
2 and I don't want you calling me, and you're making me
3 mad and you're harassing me. You go to the solicitor
4 and you talk to him.

5 MS. THOMPSON: And in that situation, I would want
6 to know that they wanted life to know what other
7 mitigating circumstances I could prepare for my client
8 to show why he doesn't deserve it.

9 So even in that case, I think it's more important
10 to talk to the victims because then, you know, okay, I
11 know what the victim is going to say when we get to
12 this sentencing hearing or, you know, whatever it may
13 be, I know what he wants. So let me talk to my client
14 to counter that.

15 And a perfect example, judge, is recently in the
16 news. An Aynor teen pled guilty, he accidentally shot
17 his best friend. Judge Hyman, who was here -- I don't
18 know about this week -- he was the judge on that case.
19 And the victims in this case were adamant that he was
20 reckless with the gun, he shouldn't have been doing
21 that with the gun.

22 But the attorney provided such great mitigation.
23 He had numerous people write letters in to show the
24 judge what good things this teenager was doing in life,
25 that this is something that could affect his entire

1 life, just as it has my client, Mr. Bullock.

2 And Judge Hyman ultimately, even though the victim
3 said he was reckless with the gun, ultimately decided
4 no to send him to jail. Because he said it would hurt
5 him. He said -- in explaining why he didn't send Cole
6 to jail to serve a five-year sentence, I know you'll
7 come back and you'll come back less than what you are.
8 Judge Hyman said he heard that people return from jail
9 better, but he also said that's very rare.

10 So I think the prejudice is also shown there,
11 judge, that even when victims may not agree with you
12 and want a lighter sentence or something, that helps in
13 plea negotiations if they do, which would have helped
14 today. We learned that they didn't want --

15 THE COURT: But it could hurt as well, if you have
16 an upset victim.

17 MS. THOMPSON: But if you know beforehand --

18 THE COURT: And sometimes, if you leave victims
19 alone and give them enough time, people cool down and
20 they calm down.

21 MS. THOMPSON: Right.

22 THE COURT: But if you jump in, you have somebody
23 broke into your house and somebody murdered somebody in
24 your house, and I'm representing this person, help me
25 out --

1 MS. THOMPSON: Right.

2 THE COURT: -- they could get real upset.

3 MS. THOMPSON: I agree, judge.

4 THE COURT: So I think it's a strategic call, I
5 mean, it's the call he made. But go ahead.

6 MS. THOMPSON: All right. Thank you, judge.

7 Well, may be strategic in the timing, I would agree
8 with that. In preparation for a trial, if there is any
9 victim or witness willing to talk to me beforehand, I
10 think I always, and very rare, so I can't even think of
11 a circumstance off the top of my head where I wouldn't
12 at least try to talk with them and send out an
13 investigator to talk with them.

14 Because even if they are angry, that prepares me
15 for how I'm going to cross-examine them. So even then,
16 that's material that could have happened then. I can't
17 think of one reason not to talk to these witnesses even
18 if they were angry.

19 THE COURT: Because the victims don't drive the
20 case. The control of case is in the solicitor's hands.

21 MS. THOMPSON: Right.

22 THE COURT: They don't even have to listen to the
23 victim if they don't want to.

24 MS. THOMPSON: In the practice of law, that
25 doesn't happen. There's many times, and I would --

1 THE COURT: CDV cases. I have domestic abuse
2 people come up all the time, we don't want to
3 prosecute, I don't want him to go to jail. And they've
4 been clearly abused. And the solicitor goes forward
5 anyway.

6 MS. THOMPSON: Right. And I've had many times
7 where they've dismissed those cases.

8 THE COURT: I understand. It goes all around.

9 MS. THOMPSON: Right. So just to close, I think
10 it was highly ineffective in not talking to the
11 victims. It is clear today they did not want what
12 happened to Zach to happen. They were both willing to
13 talk to my investigator, they weren't angry. That was
14 all coming from the solicitor.

15 Had Mr. Hilliard talked to them, he would have
16 known truly what was driving this case. And it was not
17 the victims, they wanted to help Zach out, and it seems
18 today they do as well. And that clearly prejudiced
19 Zach in plea negotiations, and as far as moving the
20 trial as well.

21 He didn't get a chance to talk to somebody that
22 was a big witness in this case before trial to prepare
23 for cross-examination questions, how he's going to
24 approach it. There was no strategy because it just
25 wasn't done.

1 And to conclude on the other two issues, he
2 also -- Mr. Hilliard did admit that was an inadmissible
3 victim impact statement. Why he was moving for the
4 burglary, Mr. Skipper -- the reason we don't have that
5 during the trial is because we don't -- we want the
6 jury to look at facts, not emotions. That was
7 emotions, that is not something that was preserved for
8 appeal because he didn't object based on inadmissible
9 victim impact statement.

10 Lastly, Mr. Hilliard also agreed that he did not
11 subpoena the phone records. And we covered that during
12 the motion to dismiss, how prejudicial that was. I
13 think the issue of what was in them comes down to the
14 credibility of my client. And that would be up to you,
15 judge, here today whether or not you believe that there
16 was something in them that would have helped him.

17 My client testified that he was in communication
18 with them after the burglary, he admitted to that. I
19 think I would have -- you know, when John got those, to
20 show that to the solicitor in combination with what the
21 victims wanted done in the case, he would have gotten a
22 more fair deal.

23 You know, we see it in this Aynor case how much
24 mitigation truly can help in plea negotiations, and in
25 going in front of a judge as far as sentencing. It's

1 huge. It's probably, I think, the majority of our job
2 is doing exactly that, not trying cases. You know,
3 most attorneys will tell you, we mitigate and work out
4 way more cases than trials.

5 THE COURT: Sure.

6 MS. THOMPSON: I believe that's probably more
7 important. And it just wasn't done here. And now all
8 the records are completely gone, and there is nothing
9 we can do to even help Zach with this.

10 THE COURT: Well, they had him down to seven
11 years, so that he did mitigate in some regards.

12 MS. THOMPSON: It's my understanding that was just
13 the initial offer.

14 THE COURT: All right, okay. You did a good job,
15 thank you.

16 MS. THOMPSON: Thank you, judge.

17 THE COURT: Let me hear from you, Mr. James.

18 MR. JAMES: I will be very brief, Your Honor, as
19 Your Honor has already stated a number of my thoughts
20 on this case.

21 As to the allegation that defense counsel could
22 have, should have and did not contact the victims, he
23 has articulated an absolutely valid trial strategy, and
24 it is not the place for this Court to go about second
25 guessing it with the gift of 20/20 hindsight.

1 Even if we did, his decision to not speak to the
2 victims doesn't undermine confidence in the outcome of
3 the trial, as is required for a grant of relief
4 pursuant to Strickland versus Washington. As has
5 already been indicated, the victims are not the ones
6 who drive the plea bargains, the solicitors are the
7 ones who drive the plea bargains. They can play a
8 factor in influencing it, but ultimately it comes down
9 to what the solicitor says goes. And there is no
10 constitutional right to any particular plea bargain, so
11 there is not really anything there for Mr. Bullock to
12 seek.

13 He was given a very generous plea offer for a
14 burglary first degree. Let's not forget what this was,
15 this was breaking into somebody's house and stealing
16 guns. That gun is out there somewhere and could
17 potentially be used to do this, that or the other.
18 It's a serious crime.

19 As to the inadmissible victim impact testimony,
20 victim impact testimony is not admissible during the
21 guilt phase of a trial because it's not relevant. So
22 objecting on the basis of relevance is the correct
23 objection to make, and defense counsel did so.

24 And if I may clarify, my understanding is that you
25 dropped the allegation as to the impeachment?

1 MS. THOMPSON: The impeachment, correct.

2 MR. JAMES: Okay. Finally, as to the phone
3 records, the State would reaffirm its argument during
4 its directed verdict motion that there is no evidence
5 set before this Court, and in order to determine what
6 impact, if any, the investigation and acquisition of
7 those phone records would have had. And therefore, no
8 relieve can be granted thereupon.

9 And for all of these reasons, Your Honor, I
10 respectfully request that you find that there has been
11 no deficiency of counsel and that there was no
12 prejudice therefrom and deny relief.

13 THE COURT: All right. Let me take a look at it,
14 and let me study it and think about it. And I'll rule
15 on it by the end of the week.

16 MS. THOMPSON: Thank you, judge.

17 THE COURT: You both did a good job, and thank
18 you.

19 (The hearing concluded at approximately 1:16 p.m.)

20 (End of Transcript of Record)

21

22

23

24

25

1 CERTIFICATE OF REPORTER
2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 16th day of June, 2018.
14

15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17

18
19 *S/Teresa J. F. Bautz*

20 TERESA J.F. BAUTZ, RPR
21 Official Court Reporter
22
23
24
25

WITNESSES

B Odom Horry County Police Department

DOCKET NO. 2012-GS-26- 04334

The State of South Carolina
County of Horry

J. Stephen Grooms

12H00347

COURT OF GENERAL SESSIONS

OCTOBER, 2012 TERM

ARREST WARRANT NUMBER

M971252

CDR: 0079 16-11-0311

DOA: 1/19/2012

THE STATE

VS.

ACTION OF GRAND JURY

Zachary Braxton Bullock W/M
High Brass Covey
Myrtle Beach, SC 29588-8408
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Hilliard, III, John M.

Foreperson of Grand Jury
Date: Oct 25 2012

VERDICT

Indictment for

BURGLARY, FIRST DEGREE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on OCTOBER 25, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Zachary Braxton Bullock did in Horry County, on or about January 12, 2012 enter the dwelling of Joseph Skipper without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. GREGORY HEMBRIE
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

M-971252

STATE OF SOUTH CAROLINA

☒ County☐ Municipality of

Horry

THE STATE

against

Zachary Braxton Bullock

Address: High Brass Covey

Myrtle Beach, SC 29588-8408

Phone: SSN: [REDACTED]
Sex: M Race: Height: 5 6 Weight: 140

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Scott Bogart - 4109

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.B.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Zachary Bullock
1/19/2012
EBB / Bogart 405

RETURN WARRANT TO:

General Sessions
PO Box 577
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Horry

Personally appeared before me the affiant Scott Bogart

being duly sworn deposes and says that defendant Zachary Braxton Bullock

did within this county and state on or about 01/12/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County ☐ Municipality of

Horry

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On or about 1/12/2012, these defendants, identified as Zachary B. Bullock, Emmanuel L. Forrest, and De'Aisha L. Denton, did
without the owners consent, participate in a burglary of the victim's residence located at [REDACTED]
During the burglary Denton drove the car while Bullock and Forrest committed the actual burglary by forcing entry. Bullock and
Forrest carried away a Glock .45 cal pistol, laptop, ipod, T.V.s and jewelry. Upon completion of the burglary Bullock and Forrest
met up again with Denton who then drove them away from the scene. All defendants had prior knowledge in planning the burglary.
A co-defendant has cooperated with the investigation and has provided information corroborating facts only the defendants would
have known. Therefore, there is sufficient probable cause to believe the defendants committed burglary 1st degree.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street
Conway, SC 29526

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/12/2012 defendant Zachary Braxton Bullock

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County ☐ Municipality of Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affidavit having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 01/19/2012

Signature of Court Clerk (L.B.)

Aann C. Butler

Judge Code: 5022

Judge's Address J. Reuben Long Detention Center
Conway, SC 29526-1071

Judge's Telephone (843) 915-5145

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

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