

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable William P. Keesley, Circuit Court Judge

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FEB 12 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DENZIL TORRE JORDAN,

APPELLANT

APPELLATE CASE NO 2018-001509

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

DEFENDANT MOSS’S EXHIBIT NO. 1 (INTERVIEW OF KEONDRA MCKIE)
DEFENDANT JORDAN’S EXHIBIT NO. 1 (VIDEO SURVEILLANCE OF KEONDRA MCKIE)

1 State of South Carolina) In the Court
 2 County of Aiken) Of General Sessions

3
 4 Indictment No.: 2018GS0200078
 5 2018GS0200079
 6 2018GS0200080
 7 2018GS0200081
 8 2018GS0200082

9 State of South Carolina,)
 10 Plaintiff.)
 11 vs.) Transcript of Record
 12 Johnathan Devon Moss,)
 13 Defendant.)

14 State of South Carolina) In the Court
 15 County of Aiken) Of General Sessions

16 Indictment No.: 2018GS0200083
 17 2018GS0200084
 18 2018GS0200085
 19 2018GS0200086
 20 2018GS0200087

21 State of South Carolina,)
 22 Plaintiff.)
 23 vs.) Transcript of Record
 24 Denzil Torre Jordan,)
 25 Defendant.)

July 24-25, 2018
 Aiken, South Carolina

1
2 B E F O R E:

3 The Honorable Doyet A. Early, Judge.
4

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

6 Samuel B. Grimes, Jr., Assistant Solicitor
7 M. Bradley McMillian, Assistant Solicitor
8 Attorneys for the State

9 Derek M. Bush, Esquire
10 Attorney for Defendant Jordan

11 Nicholas R. McCarley, Esquire
12 P. Brianne Steiner, Esquire
13 Attorneys for Defendant Moss
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24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

I N D E XPageTuesday, July 24, 2018

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Wednesday, July 25, 2018

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 TUESDAY, JULY 23, 2018

2 JOHNATHAN DEVON MOSS and DENZIL TORRE JORDAN,
3 were duly sworn.

4 THE COURT: All right.

5 MR. GRIMES: Your Honor, this is the defense motion
6 to sever the trial. I'll just note before we get started,
7 I think we discussed the facts of the case that these two
8 are alleged to have orchestrated and participated in this
9 home invasion together, though at this point neither has
10 confessed to it or implicated the other. So I'm not -- I
11 don't know what the basis of their severance motion is.

12 I was handed the Bruton case just -- or we were
13 handed the Bruton and Spears case just a moment ago.

14 THE COURT: I haven't been handed anything.

15 Mr. Bush, you want to go first?

16 MR. BUSH: I'll be glad to, Your Honor, and may it
17 please the Court. Here we're arguing two things. First
18 we're arguing that not severing the trial would prevent the
19 jury in this case from making a reliable judgment about
20 Mr. Jordan's guilt.

21 The facts in the case are as Mr. Grimes just
22 indicated. Two men entered the home of Mr. Butler and
23 committed this crime. Mr. Moss being one of the
24 codefendants in this case was later identified by the
25 victim in this case and has been also identified by the

1 cooperating testifying codefendant, Ms. Keon McKie.
2 There were close personal relationship ties between the two
3 of them and for those facts and for those reasons, we
4 believe that it would ultimately prevent the jury from
5 making a reliable judgment about Mr. Jordan's guilt in this
6 case.

7 The other issue we have is, is --

8 THE COURT: Do you have case law to support that?

9 MR. BUSH: Your Honor, I can -- I don't have it
10 printed out with me. I'll be glad to pull it up for Your
11 Honor.

12 THE COURT: Well, it would be nice to have when you
13 argue a motion.

14 MR. BUSH: What I will say in terms of a Bruton
15 issue, that only comes into play -- there's some phone
16 calls that we were served with yesterday morning by the
17 codefendant, Mr. Moss, in this case. Within one of those
18 phone calls, there is mention of -- of Mr. Jordan as it
19 relates to some of the facts of this case. If the State
20 were to intend to use that call, I believe that would then
21 ultimately bring in a Bruton issue because the
22 nontestifying codefendant -- well if Mr. Moss didn't tell,
23 the nontestifying codefendant's call could come in that
24 ultimately, potentially implicates Mr. Jordan.

25 As a result of that, Your Honor, he wouldn't have

1 the ability to cross-examine him or confront the statement
2 that's been made by Mr. Moss against him.

3 We got served with nine calls and this is just one
4 call of those nine.

5 THE COURT: Anything else?

6 MR. BUSH: Nothing further, Your Honor.

7 THE COURT: Mr. McCarley?

8 MR. MCCARLEY: Your Honor, Ms. Steiner will be
9 arguing this motion for Mr. Moss.

10 THE COURT: Ms. Steiner?

11 MS. STEINER: Thank you, Your Honor, may it please
12 the Court. It is our contention that Mr. Moss is entitled
13 to have this motion to sever trials granted in order to
14 protect the Fifth and Sixth Amendment rights. We may have
15 two named subpoenaed witnesses take the stand who have made
16 witness statements stating that Mr. Jordan has made
17 inculpatory statements about himself and exculpatory
18 statements about Mr. Moss.

19 Further, Mr. Jordan has given an out-of-court
20 statement to police whereas Mr. Moss has not.

21 Calling Mr. Jordan as a witness in his
22 cross-examination may be a key aspect of our case. In
23 order to fully fulfill Mr. Moss's right to due process,
24 Mr. Jordan would be required to be called to testify. With
25 a joint trial, Mr. Moss loses the right to have Mr. Jordan

1 -- have Mr. Jordan called as a witness and cross-examined.
2 A specific trial right would thus be compromised.

3 At this point, I'd like to call your attention to
4 Bruton. In the overview on page 1, it does say that the
5 supreme -- that a -- instruction of the accomplice's
6 out-of-court statement at defendant's trial violated
7 defendant's Sixth Amendment right to cross-examine
8 witnesses against him. And furthermore, page -- on page 5,
9 Your Honor, it says that Rule 14, Compromises of severance
10 where it appears that a defendant might be prejudiced by a
11 joint trial.

12 And rule 14(C) of the South Carolina State Rules
13 emphasizes that as well. And it says that in all cases,
14 the trial judge shall ensure that the defendant's right
15 under State and Federal Constitutions are preserved.
16 There's also South Carolina State law that echos Bruton
17 State law -- Bruton Federal law, State versus Spears, on
18 page 2, going into page 3, it says that, a severance should
19 be granted only when there is a specific risk that a joint
20 trial would compromise a specific trial right of the
21 codefendant or prevent the jury from making a reliable
22 judgment about a codefendant's guilt. An example --

23 THE COURT: What case is it you're talking about?

24 MS. STEINER: State versus Spears, that's the South
25 Carolina Court of Appeals case from 2011. And I'm on page

1 2 going into page 3.

2 THE COURT: How about page 3, it says, South
3 Carolina law provides that mutually antagonistic defenses
4 or the possibility that codefendants may accuse each other
5 of the crime does not necessarily warrant a severance.

6 MS. STEINER: Correct. And that is not the case
7 here. We contend that the cross-examination is more
8 similar to Bruton than it is to Spears. The decision in
9 Spears was that the motion to sever should not have been
10 granted, but in Bruton, the motion to sever should have
11 been granted. So our -- the facts in the case here are
12 much more similar to Bruton than to Spears.

13 THE COURT: Anything else?

14 MS. STEINER: Just that, Your Honor, we're just
15 asking for the motion to sever be granted.

16 THE COURT: Thank you.

17 MR. GRIMES: Your Honor, there are two things that
18 she mentioned: One, that she plans on calling this
19 defendant who has charges pending against him to testify,
20 which he's not going to do. I guess potentially he could.
21 I can't imagine him testifying.

22 THE COURT: Well, he can exercise his Fifth
23 Amendment right to remain silent.

24 MR. GRIMES: In which case no significant trial
25 right of Mr. Moss is going to be compromised, so that point

1 is null and void as it stands.

2 The other thing she mentioned was she intends to
3 call one or two other witnesses who would testify that he
4 made -- he makes -- that Devon (sic) Jordan made
5 exculpatory comments about Mr. Moss, which is hearsay, and
6 is not going to be admissible in testimony anyway. So
7 that's not a basis to sever the trial, Your Honor. And
8 even if they were going to be admissible, it's just a
9 simple situation of a mutually antagonistic defense if --
10 if Mr. Moss's defense is that Mr. Jordan committed the
11 crime, but he didn't, that's -- that's not even necessarily
12 antagonistic, but that's not a reason to sever the trial.

13 Your Honor, this is all the same evidence, the same
14 witnesses are going to testify. Neither of them has given
15 a Bruton-issue-type statement.

16 And with regard to Mr. Jordan's position that
17 potentially the State could introduce a phone call that
18 would -- wherein Mr. Moss mentions Mr. Jordan, the State
19 has no intention of introducing evidence that would create
20 a Bruton issue in this case, Your Honor. I don't know that
21 that necessarily would create a Bruton issue, but to the
22 extent that it would be a Bruton issue, we don't intend to
23 do that, so there won't be a Bruton issue in this case.

24 There isn't any other right, specific rights been
25 mentioned by either codefendant that would be compromised

1 by a joint trial in this case.

2 THE COURT: Anything else by anyone?

3 MR. BUSH: Nothing else from Mr. Jordan's defense,
4 Your Honor.

5 MS. STEINER: Yes, Your Honor. I would like to
6 point out that Bruton does say that a defendant is entitled
7 to a fair trial, not a perfect one. We are just asking for
8 a fair trial in this case. We understand that we can't
9 determine what witnesses are going to testify and which
10 witnesses aren't going to testify, but the availability to
11 call Mr. Jordan as a witness is a specific right to
12 Mr. Moss and that is what the -- would be violated if it is
13 a joint trial.

14 MR. GRIMES: Your Honor, I would ask that -- seeing
15 as how the case law they submitted indicates that they have
16 to point out a specific right of the defendant that's going
17 to be problematic if there's a joint trial that they
18 present some evidence of what it is that they intend to
19 introduce that's going to create this compromised trial
20 right. At this point, we've just had some kind of loose
21 mentions of potential witnesses that might say this or
22 might say that. None of that indicates that there's a
23 specific right of either defendant that's going to be
24 compromised in the trial or if they intend to actually try
25 to introduce any of this evidence, we don't know what it

1 is. The Court can't consider it because the Court doesn't
2 know what it is.

3 THE COURT: Can y'all be more specific?

4 MS. STEINER: Yes, the witness is subpoenaed and
5 the issues for hearsay that Mr. Grimes is pointing out
6 would be solved by the fact that the witness would be
7 available, so it is a hearsay exception, and that's why
8 we'd be able to call Mr. Jordan. And if it's a joint
9 trial then we won't be able to call and cross-examine
10 Mr. Jordan. And that is the specific trial right that is
11 being compromised in this situation. Mr. Jordan would not
12 be able to be cross examined.

13 THE COURT: Okay.

14 MR. GRIMES: I don't know what their witness is
15 going to testify to.

16 THE COURT: I didn't hear them say --

17 MR. GRIMES: This hearsay that they're eluding to,
18 if we know the substance of it, maybe we'll know whether or
19 not it's going to create an issue or not.

20 THE COURT: Well, they haven't told us. I asked
21 her the specific, she said hearsay.

22 MS. STEINER: Would you like for us to provide you
23 with a statement?

24 THE COURT: Ma'am, it's your motion. It's just a
25 sort of a generalization of what you're saying.

1 MR. MCCARLEY: Beg the Court's indulgence.

2 (There was a pause in the proceedings.)

3 MR. MCCARLEY: May I approach, Your Honor?

4 MR. GRIMES: We'd ask to see the statement, Your
5 Honor.

6 MR. MCCARLEY: If Your Honor deems that proper. I
7 don't necessarily believe Mr. Grimes has a right to see
8 that statement.

9 THE COURT: Why is that?

10 MR. MCCARLEY: We have no been reverse Rule 5'd in
11 this case, Your Honor. I'm not sure that would be
12 applicable under -- that is a witness that approached me.

13 MR. GRIMES: I don't know that hearsay is related
14 to anything that they'd be responsible to give us under
15 reverse Rule 5, but we'd ask that if the Court's going to
16 consider it, we know the substance of it.

17 THE COURT: All right. Well, have you got another
18 copy of this? Can I use this one?

19 MR. MCCARLEY: You can have that, Your Honor, I've
20 produced another copy.

21 THE COURT: All right. I'll take it under
22 advisement and let y'all know something tomorrow.

23 MR. MCCARLEY: Yes, sir, thank you very much, Your
24 Honor.

25 MS. STEINER: Thank you, Your Honor.

1 MR. BUSH: Thank you very much.

2 I think we have just one more brief motion which
3 was something that we had all discussed, which is just the
4 stipulation that neither defendant in the case, Mr. Jordan
5 or Mr. Moss had records that -- of arrest and prosecution
6 that could be used against them on cross-examination by the
7 State if they were to testify in their own defense.

8 THE COURT: That's nothing to stipulate to. Either
9 they do or they don't.

10 MR. GRIMES: I don't think they do, Your Honor.

11 THE COURT: All right. That settled that.

12 MR. BUSH: Thank you very much, Your Honor.

13 MR. MCCARLEY: Thank you, sir.

14 (End of the motion.)

15 (The ruling of the court was heard the following
16 day:)

17 **WEDNESDAY, JULY 25, 2018**

18 MR. BUSH: Do we need our clients, Your Honor?

19 THE COURT: I don't think they have to be out here
20 for me to rule, do they?

21 MR. MCCARLEY: I don't know of anything that says
22 they have to be, Your Honor.

23 THE COURT: Well, normally I rule and hand down an
24 order. I'm just going to orally rule.

25 MR. MCCARLEY: Yes, sir.

1 THE COURT: All right. I find that with regards to
2 the motion to sever that the offenses that are charged in
3 each of these indictments are of the same general nature.
4 They involve connected transactions at a closely related
5 time, place, and character; and in my discretion, I
6 respectfully deny the same unless there is a change in
7 circumstances. And I have not found that there's any
8 serious risk that a joint trial would compromise them
9 specifically.

10 The trial rights of any of the codefendants, I'm
11 not aware of any statement given by either codefendant
12 implicating the other, therefore, I don't think there is
13 any issues dealing with -- that involve Bruton. So, I
14 therefore, deny the same.

15 MR. MCCARLEY: Yes, sir.

16 MR. BUSH: Thank you very much, Your Honor.

17 MR. MCCARLEY: Thank you sir.

18 MR. MCMILLIAN: Thank you, sir.

19 THE COURT: Mr. Grimes had asked whether or not he
20 was going to be entitled to the letter that was sent to Mr.
21 McCarley by a potential witness wherein he made certain
22 statements. Has there been a Rule 5 filed against y'all or
23 anything?

24 MR. MCCARLEY: A reverse Rule 5 has not been filed
25 to the best of my knowledge, Your Honor.

1 MR. MCMILLIAN: It hasn't, Your Honor. We don't
2 believe that statement would even be subject to Rule 5.

3 THE COURT: What is it subject --

4 MR. MCMILLIAN: To the reverse Rule 5. In talking
5 with Mr. Grimes yesterday, Your Honor, we were only
6 interested in seeing the statement for purposes of arguing.
7 If the statement was going to be the basis for you to sever
8 these motions, we believe that we were entitled to see the
9 statement.

10 THE COURT: I agree with that. But the statement
11 does not change my mind. Therefore, I'm returning it to
12 Mr. McCarley.

13 MR. MCMILLIAN: Thank you, Your Honor.

14 MR. MCCARLEY: Thank you, sir.

15 MR. BUSH: Thank you, Your Honor.

16 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the 24th and 25th days
13 of July, 2018.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 22nd day of October, 2018.

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Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

State of South Carolina	)	
	)	Court of General Sessions
County of Aiken	)	
	)	Jonathan Moss
	)	2018-GS-02-00078-82
State of South Carolina	)	
	)	Denzil Jordan
	)	2018-GS-02-00083-87
vs.	)	
Denzil Torre Jordan	)	
	)	
and	)	
	)	
Jonathan Devon Moss	)	
Defendants	)	

August 6th through 9th, 2018

Aiken, South Carolina

B E F O R E:

Honorable William P. Keesley, Judge

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

Bradley McMillian, Assistant Solicitor
 Samuel Grimes, Assistant Solicitor
 Attorneys for the State

Nicholas McCarley, Public Defender - Jonathan Moss
 Brianne Steiner, Public Defender - Jonathan Moss
 Derek Bush, Public Defender - Denzil Jordan
 Grant Gibbons, Public Defender - Denzil Jordan
 Attorneys for the Defendants

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Raymond Butler

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(SW) Luke Sherman

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(SW) Keondra McKie

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	CD		X	138
2	Photo-McKie		X	144
3	Photo-McKie		X	144

Defendant's - Jonathan Moss

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
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AUGUST 6, 2018

THE COURT: Mr. Bush, who do you represent?

MR. BUSH: I represent Denzil Jordan, Your Honor.

THE COURT: Ms. Steiner and Mr. McCarley, who do you represent?

MS. STEINER: Jonathan Moss, Your Honor.

THE COURT: J-O-N-A-T-H-A-N?

MS. STEINER: Yes, sir.

THE COURT: Last name is what?

MS. STEINER: Moss, M-O-S-S.

THE COURT: What is the issue?

MS. STEINER: It is a motion to sever, Your Honor.

THE COURT: Okay. The attorneys advised me earlier that the motion to sever has previously been made to Judge Early and Judge Early had denied it. I indicated that I have a concern under Rule 4 of the South Carolina Criminal Rules about my ability to hear the motion since it had been denied previously, if there has been nothing that has changed. But I do want to give you an opportunity to preserve whatever you need to preserve on the record and make any arguments you might make as to why Rule 4 would not bar me from hearing this or deciding differently. So who wants to go first.

MR. BUSH: I will be glad to start, Your Honor. I believe in terms of why Rule 4 may or may not apply. I

1 think there is a conflict between Rule 4 and the case law
2 and I believe the case that the State may have and that
3 Ms. Steiner may have is State v. Spears. Is that correct?

4 MR. GRIMES: Your Honor, I passed up a copy and the
5 section that deals with severance is on page 8, the
6 numbers are on the bottom right-hand corner of the pages.
7 It is about half way down that page.

8 MR. BUSH: And a portion of that case, Your Honor, it
9 just says that a motion for severance is addressed in the
10 sound discretion of the trial Judge or the trial Court,
11 excuse me. And for purposes of preserving this particular
12 issue we ask to come back before Your Honor. As we
13 indicated here, Mr. Jordan and I are arguing that the
14 trial should be severed. One, that it would prevent the
15 jury from making, not severing the trial would prevent the
16 jury from making a reliable judgment about Mr. Jordan's
17 guilt. And, two, the potential for Bruton issues that
18 arise out of phone calls from or a particular phone call
19 from his Codefendant, Mr. Moss, in this case where Mr.
20 Jordan is, or I guess Mr. Jordan has mentioned, it is kind
21 of in a weird way. But nonetheless, that phone call could
22 potentially raise a Bruton issue. It is my understanding
23 from conversations with the State that they don't intend
24 to introduce the portion of those phone calls. But if
25 they were to be entered into evidence, Your Honor, it

1 would absolutely raise a Bruton issue. And for that
2 purpose, well for those two purposes we would request and
3 requested it from Judge Early that these trials be
4 severed.

5 THE COURT: All right, so they are charged with what?

6 MR. GRIMES: Charged with burglary first, armed
7 robbery and kidnapping, possession of a weapon during the
8 commission of a violent crime. Essentially this is a home
9 invasion case that they alleged to have worked jointly in
10 this, both of them being in the home and participating in
11 the activities that happened inside the home. There is a
12 third Codefendant who will be testifying in the trial and
13 neither of the Codefendants, neither of these two
14 Defendants have confessed, neither of them has implicated
15 the other in any statement that we intend to introduce. I
16 don't know how there would be a Bruton issue in this case.
17 I can't, from the evidence that the State intends to
18 introduce in the case, I don't see how a Bruton issue will
19 exist. Of course, either of the Defendants could make a
20 statement against the other but they would be doing it
21 from the witness stand and a Bruton issue wouldn't exist
22 if that occurred. So, there won't be a Bruton issue in
23 the case. There also isn't, and I point to the Spears
24 case again, on page 9, well initially it indicates that
25 the trial Court in this case noted that a mutually

1 antagonistic defenses do not mandate separate trials. And
2 the, on page 9, the first full paragraph on page 9, a
3 severance should only be granted when there is a serious
4 risk that a joint trial would compromise the specific
5 trial right of the Codefendant or prevent the jury from
6 making a reliable judgment. There just hasn't been any
7 specific trial right that either of the Defendants have
8 pointed to that would cause, give cause for any severance
9 in this case. And the, the Spears case was presented to
10 Your Honor. It is a Court of Appeals case but it cites
11 some other prior cases dealing with this same issue. So
12 most of these paragraphs are full of citations from other
13 cases dealing with severance and Bruton. And this is a
14 citation from State v. Walker, a 2005 case. But this
15 indicates that it is only granted when there is a specific
16 trial right that is violated or if there is a reliable
17 judgment issue. And quite frankly, none of that is going
18 to exist in this trial and there is not any Bruton issues,
19 there is not any reason to try these Defendants
20 separately. Judge, we attempted to try this case last
21 term of court, we didn't get to it, there was a trial
22 ahead of this one. And I think that trial went on to
23 Thursday before it was resolved. But these two
24 Codefendants are charged in the same crime so if they were
25 tried separately they couldn't even be tried with the same

1 jury pool which means it would be taking up two separate
2 terms of court just to resolve this one case, dealing with
3 all the same evidence and nothing that is going to present
4 any possible issues for either Defendants trial rights.
5 So for those reasons we would ask the Court to, I guess,
6 not change the judgment of Judge Early on this case and
7 not sever it.

8 THE COURT: Yes Ma'am, Ms. Steiner.

9 MS. STEINER: Yes, Your Honor. I am passing up a
10 copy of Bruton and another additional copy of State v.
11 Spears. We join in Mr. Bush's motion to have this reheard
12 based upon the, having to be at the discretion of the
13 trial Court as decided in State v. Spears. We do believe
14 that there are specific trial rights that are being
15 violated that solely calls on to Bruton and raises a
16 Bruton issue. Bruton, on the very first page, it says
17 that the, the introduction of accomplices, out of court
18 confession at Defendant's trial violated Defendant's Sixth
19 Amendment right to cross-examine witnesses against him.
20 And in this case we have two witnesses that may take the
21 stand who have made statements stating that Mr. Jordan has
22 made inculpatory statements about himself and exculpatory
23 statements about Mr. Moss. Further Mr. Jordan also gave a
24 statement to the police whereas Mr. Moss did not. In
25 order for Mr. Moss' trial rights of due process and Fifth

1 and Sixth Amendment rights, Mr. Jordan would need to be
2 called as a witness and be cross-examined. I would
3 infringe upon Mr. Jordan's trial rights, due process,
4 Fifth and Sixth Amendment to have to be forced to be on
5 the witness stand, if he does not choose to do so in his
6 own trial. South Carolina Rule 14(c) states that in all
7 cases the trial Judge shall ensure that the Defendant's
8 right under the State and Federal Constitutions are
9 preserved. And we believe that if the trials are not
10 severed that there would be a violation of Mr. Moss'
11 specific trial rights as they relate to his Fifth and
12 Sixth Amendment and due process rights.

13 MR. GRIMES: Your Honor, with regard to the idea that
14 exculpatory statements toward Mr. Moss need to be
15 cross-examined by the person that makes those statements,
16 first of all, exculpatory statements by anybody that are
17 made out of court are not going to be admissible by Mr.
18 Moss because they are not statements against interest of
19 the person making them. The Defendant, Mr. Moss, could
20 call anybody he wants to whether he is tried with the
21 Codefendant or without the Codefendant, either way they
22 can still attempt to call a witness if they want to. I
23 suspect it will be the same result, whether he is tried
24 together or separately. I can't imagine the outcome of
25 that would change one way or the other. But still have

1 the right to call the witness, whether he is tried
2 together or tried separately. And with regard to the
3 statement that they are referring to, they indicate that
4 the statement is inculpatory against his Codefendant which
5 potentially could be a statement against interest and
6 exculpatory against Mr. Moss which that portion or that
7 segment of the statement the State would maintain is not
8 admissible. I haven't seen the statement, I don't know
9 who made the statement but based on what they are telling
10 the Court, it sounds like there is not going to be any
11 issues related to that statement. And for that matter
12 that is a statement that they intend to introduce. And
13 they wouldn't be able to correct their own Bruton issue.

14 THE COURT: So there are jail phone calls that were
15 reported?

16 MS. STEINER: Yes, there are.

17 THE COURT: And they say what?

18 MS. STEINER: We are not so much concerned with the
19 jail phone calls as Mr. Bush's client is. We are more
20 concerned about a confession that was given to a fellow
21 inmate by Mr. Jordan saying that he did the crimes and
22 that Mr. Moss was not there. And, we believe we have the
23 ability to cross-examine or even direct examination of Mr.
24 Jordan if the trials are held together because we cannot
25 force Mr. Jordan to take the stand in his own trial.

1 MR. GRIMES: Your Honor, Mr. Jordan has Fifth
2 Amendment privileges whether he is tried separately or
3 together. So a severed trial would not cure any issues,
4 they can't force somebody to testify if they committed a
5 crime. They can't cross-examine somebody to testify if
6 they committed a crime with that person, it invokes their
7 Fifth Amendment privilege whether they are tried together
8 or tried separately. Furthermore, it wouldn't be a Bruton
9 issue unless Mr. Jordan's statement was that he committed
10 the crime and Mr. Moss committed it with him and they are
11 indicating that the opposite of that is true. Mr. Jordan
12 says that he committed the crime and Mr. Moss wasn't
13 there.

14 THE COURT: And what is your Bruton issue, Mr. Bush?

15 MR. BUSH: Your Honor, there was a phone call by Mr.
16 Moss in which he is, and I don't have it transcribed for
17 Your Honor, but it is a phone call wherein Mr. Moss is
18 discussing what, I guess, he believes the cooperating
19 Codefendant in this case is going to testify to in which
20 he mentions, I think really himself and my client, as
21 being involved in her story of the events. Now it is my
22 understanding from the State that that portion of that
23 call is going to be redacted, if that portion of the phone
24 call is brought in I think it would raise a Bruton issue
25 as he is indicating both himself and my client as being

1 present.

2 MR. GRIMES: I think Mr. Bush would concede that the
3 phone call as provided to him today, a redacted version
4 would not create a Bruton issue.

5 MR. BUSH: It was provided to me, I just haven't
6 listened to it yet, Your Honor. I listened to some of the
7 phone calls but not that specific one.

8 MR. GRIMES: And, Your Honor, in this Spears case, on
9 page 9, in and of that first full paragraph, and it talks
10 about the Bruton issue. A trial right may be prejudice
11 from a joint trial's constitutional right to
12 cross-examination when one Codefendant's confession
13 expressly implicates another Codefendant but the confessor
14 does not take the witness stand. Your Honor, nobody is
15 talking about a situation from either Defense Counsel
16 wherein there is a confession that implicates the
17 Codefendant. Mr. Moss' attorney is talking about a
18 confession that would tend to exonerate the Codefendant
19 which wouldn't be that situation at all. And Mr. Bush is
20 referencing a phone call where there isn't a confession
21 and his client doesn't confess, the Codefendant doesn't
22 confess on the phone call, he is not even on the phone
23 call. And Mr. Bush's client tells an individual on the
24 phone that potentially both of his Codefendants might
25 testify against him. And we redacted that phone call to

1 remove that portion and quite frankly that portion of the
2 phone call is not relevant to the issue we want to address
3 with the phone call. But I don't necessarily think that
4 creates a Bruton issue anyway. But to the extent that it
5 would even be in that round has been removed from the
6 phone call and won't be presented at trial.

7 THE COURT: And there is nothing else other than
8 these phone calls, where you are telling me one implicates
9 the other or exonerates the other?

10 MR. GRIMES: That is correct, Your Honor. There is
11 nothing else that we intend to introduce that, where they
12 implicate or exonerate either of them. In fact, in Mr.
13 Moss' phone call, I don't even think he references the
14 Codefendant, my recollection. And I think from Mr.
15 Jordan's phone call any reference to the Codefendant has
16 been removed as well. So the evidence the State intends
17 to introduce that would implicate both of these Defendants
18 would come from the testifying Codefendant, she is not
19 being tried with them.

20 THE COURT: Anything else?

21 MS. STEINER: Your Honor, I would just like to point
22 out, on page 6 of Bruton, it says simply that a Defendant
23 is entitled to a fair trial but not a perfect one. We are
24 simply just asking for a fair trial, to have both of these
25 severed.

1 THE COURT: All right, based upon what has been
2 presented. Number one, it appears to me that this issue
3 has already been ruled upon. I don't know of any
4 difference between what was addressed to me and what was
5 addressed to Judge Early. The sentencing trial Court of
6 General Sessions is the trial Court. But even if it were,
7 if it were appropriate for me to rule on it, I have
8 considered it and I also deny the motion to severance.
9 Thank you.

10 MR. GRIMES: Thank, Your Honor.

11 MR. BUSH: Thank you very much, Your Honor.

12 AUGUST 7, 2018

13
14 THE COURT: Is the State ready to bring the jury in?

15 MR. GRIMES: We are, Your Honor.

16 THE COURT: Mr. Bush?

17 MR. BUSH: We are, Your Honor.

18 THE COURT: And Mr. McCarley?

19 MR. MCCARLEY: Yes, sir.

20 THE COURT: Mr. Moss is ready?

21 MR. MCCARLEY: Yes, sir.

22 THE COURT: Bring them in, please.

23 (Whereupon, the jury came into open court at
24 approximately 11:30 a.m.)

25 THE COURT: Members of the jury, as I mentioned to

1 you before the break, we are going to change our focus
2 now, we are going to change from the general to the more
3 specific and we are going to qualify a jury that is going
4 to hear, several cases are going to be tried together.
5 These cases are being tried together for purposes of
6 convenience. As I mentioned to you earlier, we will have
7 two Defendants, each Defendant's situation has to be
8 evaluated separately and distinctly. Each individual case
9 against each Defendant has to be evaluated separately and
10 distinctly. We are going to go through a process that is
11 going to look similar to what we did earlier but the focus
12 is going to be different. I am going to be asking you
13 questions that are designed to find out if you have any
14 connection to the case or anybody in it, if you know
15 anything about this matter, if you have anything in your
16 background or the background of someone close to you that
17 might, in any way, affect your ability to be a fair and
18 impartial juror. Again, I remind you that you are under
19 oath and I remind you that if you have any doubt about
20 whether any of these questions apply to you, if you need
21 to discuss it with me and let me resolve the doubt. If
22 you want to discuss something more privately just let me
23 know you want to come down front, that is fine, we will
24 talk about it on the side. There may be times in this
25 next process where I will limit your responses. I may

1 say, for example, just to answer a question yes or no. If
2 you feel that you cannot adequately answer the question
3 within the limitation I place on you come down front and
4 give me the full explanation. Don't just blurt out the
5 answer because otherwise you defeat the purpose of my
6 limitation. So if I say, just answer a question yes or
7 no, and you feel like it is not a yes or no answer, you
8 can come down front and we will talk about it down here.
9 All right, Solicitor, call your cases.

10 MR. MCMILLIAN: The State calls the State of South
11 Carolina versus Jonathan Devon Moss. Indictment number
12 2018-GS-02-00078, an indictment for armed robbery.
13 Indictment number 2018-GS-02-00079, an indictment for
14 kidnapping. Indictment number 2018-GS-02-0080, an
15 indictment for possession of a firearm during the
16 commission of a violent crime. Indictment number
17 2018-GS-02-00081, an indictment for assault and battery in
18 the first degree. And indictment number 2018-GS-02-00082,
19 an indictment for burglary in the first degree.

20 The State also calls the State of South Carolina
21 versus Denzil Torre Jordan. Indictment number
22 2018-GS-02-00083, an indictment for burglary in the first
23 degree. Indictment number 2018-GS-02-00084, an indictment
24 for armed robbery. Indictment number 2018-GS-02-00085, an
25 indictment for kidnapping. Indictment number

1 2018-GS-02-00086, an indictment for possession of a
2 firearm during the commission of a violent crime.
3 Indictment number 2018-GS-02-00087, an indictment for
4 assault and battery in the first degree.

5 THE COURT: May I see the indictments.

6 (Whereupon, the Solicitor hands the indictments to
7 the Court.)

8 THE COURT: Mr. Bush and Mr. Gibbons, I assume your
9 client has been arraigned or waived arraignment, is that
10 correct?

11 MR. BUSH: He is waiving, Your Honor.

12 THE COURT: Mr. McCarley and Ms. Steiner, your client
13 has been arraigned?

14 MR. MCCARLEY: Waived arraigned.

15 THE COURT: He has what?

16 MR. MCMILLIAN: Waived arraigned.

17 THE COURT: Thank you. Ladies and gentlemen of the
18 jury, please give me your attention. We are about to
19 qualify a jury to hear a number of cases which are being
20 tried together for the purposes of convenience. And also,
21 as I have mentioned a couple of times, they involve two
22 different Defendants. And I emphasize to you that each
23 case is separate and distinct, each Defendant is separate
24 and distinct. Each case, each Defendant has to be
25 evaluated, each case as to each Defendant has to be

1 evaluated on its own merit or lack of merit. I am going
2 to read them to you in the order in which they are
3 numbered. First there is an indictment number 78. It
4 alleges armed robbery. It is captioned, the State of
5 South Carolina versus Jonathan Devon Moss. The indictment
6 alleges that Jonathan Devon Moss did in Aiken county on or
7 about August 1, 2017, while armed with a deadly weapon,
8 alleging either by action or words that he was armed while
9 using a representation of a deadly weapon or an object
10 which a person present during the commission of the
11 robbery reasonably believed to be a deadly weapon,
12 specifically a firearm. Take from the person or presence
13 of Raymond Butler by means of force or intimidation, goods
14 or monies of Raymond Butler. Such goods or monies being
15 described as follows. Numerous electronic items; debit,
16 credit cards and a firearm which is alleged to be in
17 violation of code section cited in the indictment.

18 Indictment 79 is the State of South Carolina versus
19 Jonathan Devon Moss and it alleges kidnapping. The
20 allegations are that Mr. Moss did in Aiken County on or
21 about August 1, 2017 unlawfully seized, confined,
22 inveigle, decoy, kidnap, abduct or carry away Raymond
23 Butler without authority of law which is alleged to be in
24 violation of a code section cited in the indictment.

25 The indictment number 80 is the State versus Jonathan

1 Devon Moss. It alleges that Mr. Moss did in Aiken County
2 on or about August 1, 2017 possess or visibly display a
3 firearm during the commission or attempted commission of a
4 violent crime, specifically armed robbery which is alleged
5 to be in violation of a code section cited in the
6 indictment for possession of a firearm during the
7 commission of a violent crime.

8 Indictment 81 is captioned the State versus Jonathan
9 Devon Moss. It alleges that Mr. Moss did in Aiken County
10 on or about August 1, 2017 willfully and unlawfully injure
11 or offer or attempt to injure Raymond Butler with the
12 present ability to do so during the commission of a
13 robbery, kidnapping or theft or burglary. It is alleged
14 to be in violation of code section cited in the indictment
15 for assault and battery in the first degree.

16 Indictment 82 is captioned the State of South
17 Carolina versus Jonathan Devon Moss. It alleges burglary
18 in the first degree. And that indictment charges that Mr.
19 Moss did in Aiken County on or about August 1, 2017
20 willfully and unlawfully enter the dwelling of Raymond
21 Butler located at [REDACTED] Breckinridge Drive, North Augusta,
22 without consent and with the intent to commit a crime
23 therein. And the Defendant armed himself with a deadly
24 weapon and/or entered or remained in the night time which
25 is alleged to be in violation of a code section cited in

1 the indictment for burglary in the first degree.

2 Upon his arraignment on these charges Mr. Moss has
3 entered pleas of not guilty. He is presumed to be
4 innocent. It is incumbent upon the State of South
5 Carolina have brought these charges to prove every
6 essential element of each offense charged beyond a
7 reasonable doubt. An indictment is not evidence, an
8 indictment is nothing more than a charging paper, it is
9 merely the formal means by which someone is charged and
10 brought to trial.

11 And then I have a series of indictments before me
12 which are captioned the State versus Denzil Torre Jordan.
13 Indictment 83 charges burglary in the first degree. That
14 indictment reads that Mr. Jordan did in Aiken County on, or
15 about August 1, 2017 willfully and unlawfully entered a
16 dwelling of Raymond Butler located at [REDACTED] Breckinridge
17 Drive, North Augusta without consent and with the intent
18 to commit a crime therein. And that the Defendant armed
19 himself with a deadly weapon and/or entered or remained in
20 the night time which is alleged to be in violation of a
21 code section cited for burglary in the first degree.

22 Indictment 84 is for armed robbery. It alleges that
23 Mr. Jordan did in Aiken county on or about August 1, 2017,
24 while armed with a deadly weapon or while alleging either
25 by action or words that he was armed while using a

1 representation of a deadly weapon or an object which a
2 person present during the commission of the robbery
3 reasonably believed to be a deadly weapon, specifically a
4 firearm. Take from the, or took from the person or
5 presence of Raymond Butler by means of force or
6 intimidation, goods or monies of Raymond Butler. Such
7 goods or monies being described as follows. Numerous
8 electronic items; debit, credit cards and a firearm which
9 is alleged to be in violation of code section cited in the
10 indictment.

11 The next indictment 85 alleges kidnapping. It reads
12 that Mr. Jordan did in Aiken county on or about August 1,
13 2017, unlawfully seize, confine, inveigle, decoy, kidnap,
14 abduct or carry away Raymond Butler without authority of
15 the law which is alleged to be in violation of a code
16 section cited for kidnapping.

17 Indictment 86, charges that Mr. Jordan did in Aiken
18 County on or about August 1, 2017 possess or visibly
19 display a firearm during the commission or attempted
20 commission of a violent crime, specifically armed robbery
21 which alleged to be in violation of code section for
22 possession of a firearm during the commission of a violent
23 crime.

24 And indictment 87 charges assault and battery in the
25 first degree. It alleges that Mr. Jordan did in Aiken

1 County on or about August 1, 2017 willfully and unlawfully
2 injure or offer or attempt to injure Raymond Butler with
3 the present ability to do so during the commission of a
4 robbery, burglary, kidnapping or theft which is alleged to
5 be in violation of a code section for assault and battery
6 in the first degree.

7 Upon his arraignment on these charges Mr. Jordan has
8 entered pleas of not guilty. He is presumed to be
9 innocent. It is incumbent upon the State of South
10 Carolina having brought these charges to prove every
11 essential element of each offense charged against Mr.
12 Jordan beyond a reasonable doubt. An indictment is not
13 evidence of anything, it is a charging paper, it is
14 nothing more than the formal means by which someone is
15 charged and brought to trial.

16 I will be asking you a series of questions. If any
17 of these apply to you or you have doubt about whether they
18 apply to you please stand and when I call on you I will
19 need your name and your juror number and then listen
20 carefully to the question I ask of you and answer that
21 question. Is Denzil Jordan in the courtroom? Would you
22 please face that way, Mr. Jordan, so the jury can see you.

23 (Whereupon, Mr. Jordan complies.)

24 THE COURT: Thank you very much. Sir, you may be
25 seated. Is there any member of the jury panel who is

1 related by blood or marriage or connected by employment
2 with Mr. Denzil Torre Jordan. If so please stand.

3 (No response.)

4 THE COURT: Is Jonathan Devon Moss in the courtroom.
5 Would you do likewise, Mr. Moss.

6 (Whereupon, Mr. Moss complies.)

7 THE COURT: Thank you, sir. You may be seated. Is
8 there any member of the jury panel related by blood or
9 marriage or connected by employment with the Defendant,
10 Jonathan Devon Moss. If so, please stand.

11 (No response.)

12 THE COURT: Do any of you know anything at all about
13 this matter. Do you have any knowledge whatsoever about
14 the underlying factual allegations, have you heard, seen
15 or read anything about this to the best of your knowledge
16 through any media source or overheard any conversations
17 about it, did you witness anything related to this matter.
18 Do you know anything whatsoever regarding these cases. If
19 so please stand.

20 (No response.)

21 THE COURT: I am going to have the attorneys stand
22 and introduce themselves to you, who they represent and we
23 will start with the State.

24 MR. MCMILLIAN: Thank you, Bradley McMillian. I
25 represent the State of South Carolina. This is my

1 Cocounsel, Sam Grimes.

2 THE COURT: All right, Mr. Bush, you and Mr. Gibbons.

3 MR. BUSH: My name is Derek Bush. This is my
4 Cocounsel, Mr. Grant Gibbons. We represent Mr. Denzil
5 Jordan.

6 THE COURT: Mr. McCarley, you and Ms. Steiner,
7 please.

8 MR. MCCARLEY: My name is Nick McCarley. This is
9 Brianne Steiner, she is my Cocounsel and we represent
10 Jonathan Moss.

11 THE COURT: Ladies and gentlemen, any of you have any
12 relationship, currently or formerly with any of these
13 attorneys, are you related to them in any way, have they
14 ever been involved in any case in which you were involved,
15 have they ever been on the opposite side of any case in
16 which you were involved. To the best of your knowledge do
17 you have any connection with any kind with any of these
18 attorneys or any entity within their affiliate. If so,
19 please stand.

20 What is your name?

21 JUROR: Mary Keigans.

22 THE COURT: 29 is listed as Mary C. Carroll. You say
23 your last name is Keigans?

24 JUROR: Yes, sir.

25 THE COURT: What is your situation, Ms. Keigans?

1 JUROR: I know Mr. Gibbons.

2 THE COURT: How do you know him?

3 JUROR: I know his daughter.

4 THE COURT: Is there anything at all with your
5 relationship with Mr. Gibbons or any member of his family
6 or any experiences with any of them that might in any way
7 affect your ability to be a fair and impartial juror in
8 the case?

9 JUROR: No, sir.

10 THE COURT: Do you have any doubt in your mind about
11 that?

12 JUROR: No, sir.

13 THE COURT: Thank you. Juror number 29 is eligible
14 to stay. The following persons have been identified as
15 potential witnesses in the case. Some of them may not be
16 here at this point, that is normal. If any of them happen
17 to be here I would need for that person to stand and face
18 the jury as his or her name is called. The attorneys, if
19 I miss anybody you let me know. Members of the jury, if I
20 call out a name and it is a common name, you think you
21 know somebody by that name or have some connection with
22 somebody by that name but you are not sure if it is the
23 same individual just let me know, I will get more
24 identifying information from the attorneys so that you can
25 know if we are talking about the same person or not. All

1 right, so the following persons have been identified as
2 potential witnesses. Raymond D. Butler, would you stand
3 and face the jury, Mr. Butler.

4 (Whereupon, Mr. Butler complied.)

5 THE COURT: Sergeant Luke Sherman of the North
6 Augusta Department of Public Safety. Thank you.
7 Lieutenant Nick Gallam of the Aiken County Sheriffs
8 Office. Keondra, K-E-O-N-D-R-A, McKie; Kiana, K-I-A-N-A,
9 Boyd. Teeia, T-E-E-I-A, J-O-B-E-S is her last name. How
10 do you say her last name, Teeia Jobes. Andrea Scott;
11 Travonta, T-R-A-V-O-N-T-A, Langford; Edward Tomago,
12 T-O-M-A-G-O; Todd Gantt. Mr. Gantt is over here to my
13 right. Thank you. To the best of your knowledge, ladies
14 and gentlemen, are any of you related by blood or marriage
15 or connected by employment with any of the potential
16 witnesses in the cases. If so, please stand.

17 (No response.)

18 THE COURT: Now I am going to expand that out as far
19 as I can and it applies to the attorneys, it applies to
20 the Defendants, it applies to all of the potential
21 witnesses. What I need you to tell me is, whether you
22 have any connection of any kind with anybody involved in
23 these cases. That includes being a neighbor, a friend,
24 attending the same church or civic clubs, any connection
25 with the attorneys, any entity with whom they are

1 affiliated. If you have got any connection with the North
2 August Department of Public Safety or the Aiken County
3 Sheriffs Office. Those kinds of things, you need to
4 disclose all of that to us. So if that applies to any of
5 you please stand.

6 Your name, please.

7 JUROR: Alicia Toole, 180.

8 THE COURT: Ms. Toole and who is it that you know?

9 JUROR: Nick Gallam.

10 THE COURT: And how do you know Lieutenant Gallam.

11 JUROR: My brother is married to his sister-n-law.

12 THE COURT: Your brother is married to his
13 sister-n-law.

14 JUROR: Yes, sir. I see him about once or twice a
15 year at family gatherings.

16 THE COURT: Ms. Toole, I am going to set you aside on
17 this trial. Stay with us for further instructions. She
18 is related to a witness. Anybody else? Your name, sir.

19 JUROR: Shayne Farrell, juror 50. I know Mr. Gibbons
20 as our daughters go to high school together for four
21 years.

22 THE COURT: Mr. Farrell, juror number 50. Is there
23 anything at all about your relationship with him or any of
24 the family that might affect your ability to be a fair and
25 impartial juror in the case?

1 JUROR: No, sir.

2 THE COURT: Do you have any doubt at all about your
3 ability to be a fair and impartial juror?

4 JUROR: No, sir.

5 THE COURT: Thank you. 50 is eligible to serve. Is
6 anybody close to you or have you, yourself, ever been
7 employed in any capacity in law enforcement or any agency,
8 Federal, State, local or military. If so please stand.
9 Your name, please.

10 JUROR: Susan Wells, 189.

11 THE COURT: What is your situation?

12 JUROR: My fiancée is a former police chief.

13 THE COURT: Is there anything at all about that
14 relationship or any experiences he may have relayed to you
15 that might affect your ability to be a fair and impartial
16 juror in this case?

17 JUROR: No, sir.

18 THE COURT: Do you have any doubt in your mind?

19 JUROR: No, sir.

20 THE COURT: Thank you. 189 is eligible to serve.
21 Have any of you or has anyone very close to you, I
22 apologize. It is 50, isn't it?

23 JUROR: Yes, sir.

24 THE COURT: Mr. Farrell, what is your situation?

25 JUROR: My son-in-law, my daughter's husband is a

1 member of the South Carolina Highway Patrol.

2 THE COURT: Is he stationed in Aiken County?

3 JUROR: Yes, sir.

4 THE COURT: Is there anything at all about that
5 relationship or any of the experiences he may have had
6 that might affect your ability to be a fair and impartial
7 juror in this case?

8 JUROR: No, sir.

9 THE COURT: Have any doubt in your mind?

10 JUROR: No, sir.

11 THE COURT: Thank you. 50, Mr. Farrell is eligible
12 to serve. Yes, ma'am.

13 JUROR: 180, Alicia Toole.

14 THE COURT: Did I set you aside?

15 JUROR: Yes, sir.

16 THE COURT: I am sorry, you don't have to answer any
17 more questions on this one. Okay. That was Ms. Toole,
18 180. Have any of you, yourselves or has anyone very close
19 to you currently or formerly been employed in any capacity
20 as a prosecutor in any level, Federal, State, local. So
21 that would include things like a District Attorney in
22 another State, we call our prosecutors in South Carolina
23 Solicitors. The Attorney Generals Office, the U.S.
24 Attorneys Office. Any prosecuting entity, if you have
25 ever been involved in that or anybody very close to you

1 has please let us know by standing. Your name, please.

2 JUROR: Mary Keigans, juror 29.

3 THE COURT: What is your situation?

4 JUROR: My brother worked for the Attorney General
5 several years ago.

6 THE COURT: In South Carolina?

7 JUROR: Yes, sir.

8 THE COURT: Anything at all about that relationship
9 or any of his experiences that might affect your ability
10 to be fair and impartial in this case?

11 JUROR: No, sir.

12 THE COURT: Any doubt in your mind?

13 JUROR: None.

14 THE COURT: Thank you. 29 is eligible. Anybody,
15 else.

16 (No response.)

17 THE COURT: Are any of you members of or contributors
18 to or volunteers for any organization that has as a
19 primary purpose support of law enforcement or victims and
20 victims rights. That would include such things as being a
21 member or a contributor to Citizens Against Violent
22 Crimes, Mothers Against Drunk Driving, Students Against
23 Drunk Driving, being a volunteer or working at any type of
24 shelter for anyone who is abused or neglected. If you
25 have any such history of a contribution, volunteerism or

1 working for any such organization that supports law
2 enforcement or victims rights please let us know by
3 standing.

4 JUROR: Number 153, Travis Riner.

5 THE COURT: 153, Mr. Riner. What is your situation?

6 JUROR: I used to volunteer for pilot program with
7 Aiken County.

8 THE COURT: Is there anything about that experience
9 that would affect your ability to be a fair and impartial
10 juror in the case?

11 JUROR: No, sir.

12 THE COURT: Any doubt in your mind?

13 JUROR: No, sir.

14 THE COURT: Thank you. 153 is eligible to serve.

15 JUROR: 29, Mary Keigans.

16 THE COURT: What is your situation?

17 JUROR: I was a forensics nurse and worked for the
18 sexual assault victims.

19 THE COURT: Okay. Anything at all about that
20 position or your experiences that might affect your
21 ability to be fair and impartial in the case?

22 JUROR: No, sir.

23 THE COURT: Any doubt in your mind?

24 JUROR: No, sir.

25 THE COURT: Thank you. 29 is eligible. Yes, ma'am.

1 JUROR: 184, Susan Vernon. I was on the Board of
2 Directors formerly for Helping Hands.

3 THE COURT: Ms. Vernon is 184. She was on the Board
4 of Directors formerly for Helping Hands. Is there
5 anything about that relationship or those experiences that
6 might affect your ability to be a fair and impartial juror
7 in this case?

8 JUROR: No, sir.

9 THE COURT: Any doubt in your mind?

10 JUROR: No, sir.

11 THE COURT: 184 is eligible to serve. Yes, sir.

12 JUROR: Juror 50, Shayne Farrell.

13 THE COURT: What is your situation?

14 JUROR: I was a previous member of the Board of
15 Directors for the Children's Place in Aiken.

16 THE COURT: Anything about that experience that
17 might, or that connection that might affect your ability
18 to be fair and impartial as a juror in the case?

19 JUROR: No, sir.

20 THE COURT: Any doubt in your mind?

21 JUROR: No, sir.

22 THE COURT: Juror number 50, Mr. Farrell is eligible.

23 Yes, sir.

24 JUROR: 65, Larry Glover.

25 THE COURT: What is your situation?

1 JUROR: I work for the City of Aiken.

2 THE COURT: You work for utilities for the City of
3 Aiken?

4 JUROR: Yes, sir.

5 THE COURT: Is there anything at all about your
6 relationship with the City or any experiences you may have
7 had that might affect your ability to be a fair and
8 impartial juror in this case?

9 JUROR: No, sir.

10 THE COURT: Any doubt in your mind?

11 JUROR: No, sir.

12 THE COURT: Thank you. 65 is eligible to serve.
13 Yes, ma'am.

14 JUROR: Juror 75, Connie Herman. Monetary
15 contributions to organizations for shelters for women,
16 battered children.

17 THE COURT: Do you know the names of any of the
18 organizations?

19 JUROR: Safe Harbors and some of the Aiken County
20 Sheriff's Legal Foundation.

21 THE COURT: Okay. Is there anything at all about
22 your situation, your connection with any of those
23 organizations, contributing to them that might in any way
24 affect your ability to be a fair and impartial juror?

25 JUROR: No, sir.

1 THE COURT: Do you have any doubt in your mind?

2 JUROR: No, sir.

3 THE COURT: 75 is eligible to serve. Yes, sir.

4 JUROR: 65, Larry Glover.

5 THE COURT: What is your situation?

6 JUROR: I know a South Carolina Highway Patrol.

7 THE COURT: You donate to the Troopers Association,
8 is that what you are saying? What did you say about the
9 Trooper?

10 JUROR: I am close to a South Carolina Highway
11 Patrol.

12 THE COURT: You have a close friend who is a Trooper?

13 JUROR: Yes, sir.

14 THE COURT: Stationed in Aiken?

15 JUROR: Yes, sir.

16 THE COURT: Is that Trooper stationed in Aiken?

17 JUROR: Lives in New Ellington.

18 THE COURT: Is there anything at all about your
19 relationship with him or any experiences he may have had
20 that might affect your ability to be fair and impartial in
21 this case?

22 JUROR: No, sir.

23 THE COURT: Any doubt in your mind?

24 JUROR: No, sir.

25 THE COURT: Thank you. 65 is eligible to serve.

1 Yes, sir.

2 JUROR: Juror 46, Charles Dynarski. My son-in-law is
3 a lawyer in Sumter, South Carolina.

4 THE COURT: You said your son-in-law?

5 JUROR: Yes sir, married to my daughter.

6 THE COURT: Is he in a firm or does he work for the
7 Government or what?

8 JUROR: He is in private practice.

9 THE COURT: To the best of your knowledge is there
10 anything at all about your relationship or experiences
11 with him that might affect your ability to be a fair and
12 impartial juror in the case?

13 JUROR: No, sir.

14 THE COURT: Any doubt in your mind?

15 JUROR: No, sir.

16 THE COURT: Thank you. 46 is eligible. Yes, Ma'am.

17 JUROR: Number 55, Amber Freeman. I have two uncles
18 that work with the sheriffs department. One in Williston
19 and one in New Ellington.

20 THE COURT: They work for the sheriffs department or
21 the police department?

22 JUROR: One is in Williston and one in Aiken.

23 THE COURT: You have an uncle who works for the Aiken
24 County Sheriffs Office?

25 JUROR: Yes.

1 THE COURT: I am going to set you aside Ms. Freeman.
2 She is related to a prosecuting agency. You stay with us
3 but you are set aside on this case.

4 Ladies and gentlemen, I am going to pose a question,
5 it is going to have multiple parts to it. I am going to
6 try to approach it from a different angle. So, please
7 listen carefully because it is going to have a lot of
8 components to it. And what we are going to do after I
9 pose the question is, if it applies to you or you have
10 doubt about whether it applies to you, I need you to stand
11 and then I will call you up here and we will talk about it
12 on the side, we are not going to talk about these things
13 in front of everybody. If any of you or anyone very close
14 to you, that may be family, that may be close friends, do
15 any of you or anyone very close to you has ever been a
16 victim of any crime involving kidnapping, burglary or
17 assault, any crime of violence, whether or not it was
18 reported to the police. Or if any of you or anybody very
19 close to you has ever been accused of committing any such
20 crime, whether or not it was reported to law enforcement,
21 I need you to tell me about it. If that applies to any of
22 you please stand. Okay. What we will do is just come to
23 this side here and form a line. The attorneys may join me
24 on the side. Tell me your name.

25 JUROR: 110, Michelle Malakar. My aunt was murdered.

1 THE COURT: Who was murdered?

2 JUROR: My aunt.

3 THE COURT: Was that in Aiken County.

4 JUROR: No, it was in Ohio.

5 THE COURT: Anything else?

6 JUROR: My husband had arguments and he, for
7 disorderly conduct. I guess that would be considered
8 something.

9 THE COURT: Was that here in South Carolina?

10 JUROR: Yes, in Spartanburg.

11 THE COURT: Was he charged?

12 JUROR: Yes.

13 THE COURT: And did he, what did he do, go to
14 Magistrates Court?

15 JUROR: Misdemeanor.

16 THE COURT: Is there anything at all about your
17 relationship with your aunt or the experience of her being
18 murdered that might affect your ability to be fair and
19 impartial?

20 JUROR: I have to say I am manic depressive so this
21 whole situation will overwhelm me because my memory isn't
22 very good.

23 THE COURT: So that is a yes?

24 JUROR: Yes.

25 THE COURT: All right. I will set you aside on this

1 case. Don't discuss any of that with your fellow jurors.
2 110 is set aside on this trial.

3 Yes, sir.

4 JUROR: Number 153, Travis Riner.

5 THE COURT: What is your situation.

6 JUROR: My girlfriend's house was broken into about
7 six years ago. It got reported but never went to court or
8 anything.

9 THE COURT: Did they arrest anybody?

10 JUROR: No, they couldn't prove it. Stuff got sent
11 to a pawn shop but they couldn't prove anything.

12 THE COURT: Is there anything at all about that
13 experience or your relationship with her that might affect
14 your ability to be fair and impartial?

15 JUROR: No, sir.

16 THE COURT: Any doubt in your indictment?

17 JUROR: No, sir.

18 THE COURT: 153, Mr. Riner is eligible to serve.

19 Yes, Ma'am. What is your name?

20 JUROR: Dawn Smith, 168.

21 THE COURT: What is your situation.

22 JUROR: I was robbed while at work.

23 THE COURT: Where were you working at?

24 JUROR: Packing shop.

25 THE COURT: Was there a gun involved?

1 JUROR: We are not sure.

2 THE COURT: Anybody arrested?

3 JUROR: No. I believe it was when someone was going
4 around robbing in Augusta and North Augusta.

5 THE COURT: Is there anything about that experience
6 that affects your ability to be a fair and impartial juror
7 in this case?

8 JUROR: Not real--

9 THE COURT: Do you have a doubt?

10 JUROR: Yes.

11 THE COURT: I have to set you aside, Ms. Smith.
12 Don't discuss any of that with your fellow jurors.

13 JUROR: Okay.

14 THE COURT: 168, Ms. Smith, is set aside. Yes,
15 ma'am.

16 JUROR: 75, Connie Herman.

17 THE COURT: What is your situation?

18 JUROR: I had my purse stolen when I was in high
19 school. I had equipment stolen from our house in North
20 August and my sister actually had a husband who abused her
21 and was charged with it.

22 THE COURT: Was or was not?

23 JUROR: He was charged.

24 THE COURT: Did they arrest anybody from North
25 Augusta?

1 JUROR: Not that I am aware of.

2 THE COURT: And your sister was a victim of domestic
3 violence?

4 JUROR: Right.

5 THE COURT: Did they charge her husband?

6 JUROR: Yes.

7 THE COURT: Were you involved in that in any way?

8 JUROR: No.

9 THE COURT: Was that in Aiken County?

10 JUROR: No, that was in Atlanta.

11 THE COURT: Is there anything at all about any of
12 those experiences or relationships that might affect your
13 ability to be a fair and impartial juror in this matter?

14 JUROR: No.

15 THE COURT: Any doubt in your mind?

16 JUROR: No.

17 THE COURT: Ms. Herman, 75, she is eligible to serve.
18 Yes, sir.

19 JUROR: Juror number 5, William Baltzegar.

20 THE COURT: What is your situation?

21 JUROR: I have been burglarized about four times.

22 Once was a home invasion in North Carolina back in '76.

23 And my business in Savannah had an employee to steal about
24 \$1,400.00 dollars. Another guy came in and was going from
25 one building to the next, he didn't get hardly anything.

1 The last one was a couple of years ago, a guy came in and
2 got a couple of compressors, a table saw, lawnmower,
3 ladder, all that kind of stuff. It would be nice to get
4 something back when somebody takes it from you but it
5 don't happen it seems like.

6 THE COURT: Okay. So you had a North Carolina home
7 invasion, did they arrest anybody on that?

8 JUROR: No.

9 THE COURT: The business in Savannah where you had
10 \$1,400.00 dollars stolen, did they arrest anybody?

11 JUROR: No. I made three attempts with the police
12 department, I told them who it was but nobody ever served
13 him. His wife worked with the sheriffs department down
14 there.

15 THE COURT: The guy that was going through the
16 buildings, did they arrest him?

17 JUROR: No, I don't know who that was.

18 THE COURT: And then whoever broke in and took your
19 equipment recently, did they arrest anybody on that?

20 JUROR: I know who it was but I had nothing to prove
21 it.

22 THE COURT: Was the last one in Aiken County?

23 JUROR: No, it was in North Augusta.

24 THE COURT: But in the County?

25 JUROR: Yes.

1 THE COURT: You live in the city limits or was that
2 in the city limits?

3 JUROR: Yes.

4 THE COURT: So is there anything about any of those
5 experiences that might affect your ability to be fair and
6 impartial as a juror in this matter?

7 JUROR: No.

8 THE COURT: Do you have any doubt in your mind?

9 JUROR: No doubt.

10 THE COURT: Juror number 5, Mr. Baltzegar, he is
11 eligible to serve. Yes, ma'am.

12 JUROR: 189, Susan Wells.

13 THE COURT: What is your situation.

14 JUROR: I have a home in Clearwater, South Carolina,
15 it has been burglarized five different times.

16 THE COURT: Did they arrest anybody on any of them?

17 JUROR: The first one.

18 THE COURT: What happened to that case?

19 JUROR: Somebody went to jail, there was a whole ring
20 of them that were working together but two or three of
21 them went to jail.

22 THE COURT: The other four, they didn't arrest
23 anybody?

24 JUROR: No.

25 THE COURT: Okay. And how recent was the most recent

1 one?

2 JUROR: A little over a year ago.

3 THE COURT: And how far out was the most distance
4 one?

5 JUROR: 2005 I think.

6 THE COURT: Is there anything at all about any of
7 those experiences that might affect your ability to be
8 fair and impartial in this case?

9 JUROR: No, sir.

10 THE COURT: Any doubt in your mind?

11 JUROR: No, sir.

12 THE COURT: Thank you. 189, Ms. Wells, is eligible
13 to serve. Yes, ma'am.

14 JUROR: 184, Susan Vernon.

15 THE COURT: What is your situation?

16 JUROR: I have an aunt that was a murder victim in
17 Aiken County.

18 THE COURT: How long ago was that? Well, let me ask
19 this. Is there anything about that that would prevent you
20 from being fair and impartial?

21 JUROR: No.

22 THE COURT: Are you sure? You are kind of emotional
23 about it. It is understandable. Let me ask you, did they
24 arrest somebody?

25 JUROR: No.

1 THE COURT: So, you understand the allegations in the
2 case here, it was a home invasion type deal.

3 JUROR: Yes, sir.

4 THE COURT: And are you confident that there is
5 nothing about your experience with your aunt that might
6 affect your ability to be fair and impartial?

7 JUROR: No.

8 THE COURT: You have no doubt at all?

9 JUROR: No sir, I don't.

10 THE COURT: Again, I am sorry, you stay with us.
11 184, Ms. Vernon is eligible to serve. Yes, sir.

12 JUROR: Steven Holt, number 82.

13 THE COURT: What is your situation?

14 JUROR: My home was burglarized three separate times.
15 One was 30 years ago, 20 years ago and about 5 years ago.
16 Never caught anyone.

17 THE COURT: Is there anything at all about any of
18 those experiences that might affect your ability to be
19 fair and impartial in the case?

20 JUROR: No, sir.

21 THE COURT: Have any doubt in your mind?

22 JUROR: No, sir.

23 THE COURT: Thank you. 82, Mr. Holt, is eligible to
24 serve. Yes, ma'am.

25 JUROR: Juror number 35, Julie Coleman.

1 THE COURT: What is your situation.

2 JUROR: My house was burglarized six years ago. They
3 came back twice, on a Monday and then on a Wednesday. The
4 case came through the Aiken County, came through here.

5 THE COURT: So they arrested somebody.

6 JUROR: They did, one of them was here and one in
7 California. One made restitution to us.

8 THE COURT: Is there anything about that experience
9 that might affect your ability to be fair and impartial?

10 JUROR: No, I can do that.

11 THE COURT: You have any doubt in your mind?

12 JUROR: No, I don't.

13 THE COURT: 35, Ms. Coleman is eligible to serve.
14 Yes, sir.

15 JUROR: 117, Danny McCall. You asked if anybody that
16 has been assaulted. My wife had been raped a few times in
17 her life. I had been sexually assaulted once myself.

18 THE COURT: When your wife was attacked, was that in
19 Aiken County?

20 JUROR: No, sir. It wasn't reported, none of it, not
21 even myself.

22 THE COURT: Anything about any of those experiences
23 or your relationship with your wife that might affect your
24 ability to be fair and impartial in this matter?

25 JUROR: No, sir.

1 THE COURT: Any doubt in your mind?

2 JUROR: No, sir.

3 THE COURT: Thank you. Mr. McCall is 117, he is
4 eligible to serve. Yes, sir.

5 JUROR: 65, Larry Glover.

6 THE COURT: What is your situation?

7 THE WITNESS: I went to school with a friend, Vinson
8 Brown, he was killed about seven or eight years ago, six
9 years ago in Aiken. Ryan Doolittle was the one that shot
10 him.

11 THE COURT: So you were a friend of the--

12 JUROR: The victim..

13 THE COURT: But your friend was murdered?

14 JUROR: Yes, sir. And I was friends with a, he was
15 shot in Aiken. He was kin to Thomas, I think of his real
16 name.

17 THE COURT: Were you involved in any of those?

18 JUROR: No, sir. And Tamari Span is a cousin of
19 mine, he was involved in some type of robbery, maybe like
20 15 years ago.

21 THE COURT: He was the one that committed the robbery
22 or he was the victim?

23 JUROR: I think he was the one who did it, he was in
24 jail for a long time.

25 THE COURT: Anything at all about the situation with

1 either of your friends that might affect your ability to
2 be fair and impartial in the case?

3 JUROR: No, sir.

4 THE COURT: Anything about your cousin, Mr. Span,
5 that might affect your ability to be fair and impartial?

6 JUROR: No, sir.

7 THE COURT: Any doubt at all in your mind?

8 JUROR: No, sir.

9 THE COURT: Thank you. Mr. Glover, 65, he is
10 eligible to serve. Yes, sir.

11 JUROR: 170, Jimmy Snipes. My wife, my ex-wife
12 pulled a shotgun on me and I am charged with simple
13 assault in the third degree.

14 THE COURT: We are talking about one incident?

15 JUROR: Yes.

16 THE COURT: Your wife pulled a shotgun on you--

17 JUROR: And I took it away from her and I got charged
18 with simple assault in the third degree in this court, in
19 a court in Aiken.

20 THE COURT: Did you get convicted of it?

21 JUROR: Yes, sir.

22 THE COURT: Is there anything at all about that
23 experience that affects your ability to be fair and
24 impartial in the case?

25 JUROR: It could, yes sir.

1 THE COURT: So you have some doubt?

2 JUROR: Yes, sir.

3 THE COURT: I will set you aside on this case Mr.
4 Snipes. Just have a seat out there for me. 170, Mr.
5 Snipes is set aside.

6 Have any of you formed or expressed any opinions
7 about these cases. If so please stand.

8 (No response.)

9 THE COURT: Are any of you aware of any interest,
10 biased or prejudiced that you might have for or against
11 the State, for or against Mr. Jordan, for or against Mr.
12 Moss, for or against anyone or any entity involved in this
13 matter. If so please stand.

14 (No response.)

15 THE COURT: Can each of you give both the State of
16 South Carolina and each Defendant, Mr. Denzil Jordan, Mr.
17 Jonathan Moss a fair and impartial trial. If you know of
18 any reason why you cannot please stand.

19 (No response.)

20 THE COURT: Any further questions from the State?

21 MR. GRIMES: No, Your Honor.

22 THE COURT: Any further questions from Mr. Jordan?

23 MR. BUSH: No, Your Honor.

24 THE COURT: Mr. Moss?

25 MR. MCCARLEY: No, sir.

1 THE COURT: Thank you. The jury panel is qualified.
2 All right, ladies and gentlemen, the way that we select
3 jury's in criminal court is different than what we do in
4 civil court. If any of you have ever been on a civil jury
5 or have ever been in civil court you will notice a
6 difference. What is going to happen is, the Clerk is
7 going to instruct the computer to randomly select your
8 names and put them on a list, those of you who are still
9 eligible to serve in these cases. And then she will start
10 at the top, call the first name. If it is your name you
11 need to gather your personal belongings, come down front,
12 go to the closest aisle but come down front and come to
13 that rail right down there in front of me and stand and
14 turn directly away from me, so I am looking at your back.
15 When you get down here the Clerk will ask questions to the
16 State's attorney and each Defense attorney. And based on
17 their responses you will be told whether you need to
18 return to your seat in the courtroom or have a seat over
19 here in the jury box. So the reason you need to bring
20 your personal belongings is because your next stop may be
21 over here in the jury box. Strikes, I believe, are ten
22 for the State, ten for Mr. Jordan and ten for Mr. Moss.
23 We discussed that briefly before coming out here, they are
24 going to exercise strikes separately. Am I correct,
25 Solicitor?

1 MR. GRIMES: Yes, Your Honor.

2 THE COURT: Correct, Mr. Bush?

3 MR. BUSH: That's correct, Your Honor.

4 THE COURT: Mr. McCarley?

5 MR. MCCARLEY: Yes, sir.

6 CLERK OF COURT: Number 178, Payton Tiberi. What
7 says the State?

8 MR. MCMILLIAN: Please present Ms. Tiberi.

9 CLERK OF COURT: What says the Defendant, Jordan?

10 MR. BUSH: Please seat Ms. Tiberi.

11 CLERK OF COURT: What says the Defendant Moss?

12 MR. MCCARLEY: Please seat Mr. Tiberi.

13 THE COURT: Have a seat in the jury box, please.

14 CLERK OF COURT: Number 41, James Deas. What says
15 the State?

16 MR. MCMILLIAN: Please seat Mr. Deas.

17 CLERK OF COURT: What says the Defendant, Jordan?

18 MR. BUSH: Please seat Mr. Deas.

19 CLERK OF COURT: What says the Defendant Moss?

20 MR. MCCARLEY: Please seat Mr. Deas.

21 THE COURT: Have a seat in the jury box, please.

22 CLERK OF COURT: Number 50, Shayne Farrell. What
23 says the State?

24 MR. MCMILLIAN: Please seat Mr. Farrell.

25 CLERK OF COURT: What says the Defendant Jordan?

1 MR. BUSH: Please excuse Mr. Farrell.

2 CLERK OF COURT: You may return to your seat. Number
3 82, Steven Holt. What says the State?

4 MR. MCMILLIAN: Please present Mr. Holt.

5 CLERK OF COURT: What says the Defendant Jordan?

6 MR. BUSH: Please strike Mr. Holt.

7 CLERK OF COURT: You may return to your seat. Number
8 65, Larry Glover. What says the State?

9 MR. MCMILLIAN: Please seat Mr. Glover.

10 CLERK OF COURT: What says the Defendant, Jordan?

11 MR. BUSH: Please present Mr. Glover.

12 CLERK OF COURT: What says the Defendant Moss?

13 MR. MCCARLEY: Please excuse Mr. Glover.

14 CLERK OF COURT: You may return to your seat. Number
15 126, Linda Metcalf. What says the State?

16 MR. MCMILLIAN: Please present Mr. Metcalf.

17 CLERK OF COURT: What says the Defendant Jordan?

18 MR. BUSH: Please excuse Mr. Metcalf.

19 CLERK OF COURT: You may return to your seat. Number
20 125, Emily Mercer. What says the State?

21 MR. MCMILLIAN: Please present Ms. Mercer.

22 CLERK OF COURT: What says the Defendant Jordan?

23 MR. BUSH: Please seat Ms. Mercer.

24 CLERK OF COURT: What says the Defendant Moss?

25 MR. MCCARLEY: Please seat Ms. Mercer.

1 THE COURT: Have a seat in the jury box.

2 CLERK OF COURT: Number 117, Daniel McCall. What
3 says the State?

4 MR. MCMILLIAN: Please present Mr. McCall.

5 CLERK OF COURT: What says the Defendant Jordan?

6 MR. BUSH: Please seat Mr. McCall.

7 CLERK OF COURT: What says the Defendant Moss?

8 MR. MCCARLEY: Please excuse Mr. McCall.

9 CLERK OF COURT: You may return to your seat. Number
10 95, Delano Kennel. What says the State?

11 MR. MCMILLIAN: Please present Mr. Kennel.

12 CLERK OF COURT: What says the Defendant Jordan?

13 MR. BUSH: Please seat Mr. Kennel.

14 CLERK OF COURT: What says the Defendant Moss?

15 MR. MCCARLEY: Please seat Mr. Kennel.

16 CLERK OF COURT: Have a seat in the jury box to your
17 left. Number 59, William Gallop. What says the State?

18 MR. MCMILLIAN: Please present Mr. Gallop.

19 CLERK OF COURT: What says the Defendant Jordan?

20 MR. BUSH: Please present Mr. Gallop.

21 CLERK OF COURT: What says the Defendant Moss?

22 MR. MCCARLEY: Please seat Mr. Gallop.

23 CLERK OF COURT: Have a seat in the jury box to your
24 left. Number 57, Wade Friday. What says the State?

25 MR. MCMILLIAN: Please present Mr. Friday.

1 CLERK OF COURT: What says the Defendant Jordan?

2 MR. BUSH: Please seat Mr. Friday.

3 CLERK OF COURT: What says the Defendant Moss?

4 MR. MCCARLEY: Please seat Mr. Friday.

5 CLERK OF COURT: Have a seat in the jury box to your

6 left. Number 184, Susan Vernon. What says the State?

7 MR. MCMILLIAN: Please present Ms. Vernon.

8 CLERK OF COURT: What says Defendant Jordan?

9 MR. BUSH: Please excuse Ms. Vernon.

10 CLERK OF COURT: 25, Brandon Bryant. What says the
11 State?

12 MR. MCMILLIAN: Please present Mr. Bryant.

13 CLERK OF COURT: What says Defendant Jordan?

14 MR. BUSH: Please present Mr. Bryant.

15 CLERK OF COURT: What says Defendant Moss?

16 MR. MCCARLEY: Please seat Mr. Bryant.

17 CLERK OF COURT: Have a seat in the jury box to your
18 left. Number 194, Cathleen Williams. What says the
19 State?

20 MR. MCMILLIAN: Please present Ms. Williams.

21 CLERK OF COURT: What says Defendant Jordan?

22 MR. BUSH: Please seat Ms. Williams.

23 CLERK OF COURT: What says Defendant Moss?

24 MR. MCCARLEY: Please seat Ms. Williams.

25 CLERK OF COURT: Have a seat in the jury box to your

1 left. 62, Trenton Garvin. What says the State?

2 MR. MCMILLIAN: Please present Mr. Garvin.

3 CLERK OF COURT: What says Defendant Jordan?

4 MR. BUSH: Please present Mr. Garvin.

5 CLERK OF COURT: What says Defendant Moss?

6 MR. MCCARLEY: Please present Mr. Garvin.

7 CLERK OF COURT: Have a seat in the jury box to your

8 left. 78, Tavaris Hill. What says the State?

9 MR. MCMILLIAN: Please present Mr. Hill.

10 CLERK OF COURT: What says Defendant Jordan?

11 MR. BUSH: Please seat Mr. Hill.

12 CLERK OF COURT: What says Defendant Moss?

13 MR. MCCARLEY: Please seat Mr. Hill.

14 CLERK OF COURT: Have a seat in the jury box. Number

15 189, Susan Wells. What says the State?

16 MR. MCMILLIAN: Please excuse this juror.

17 CLERK OF COURT: You may return to your seat. Number

18 174, Gwendolyn Sykes. What says the State?

19 MR. MCMILLIAN: Please present Ms. Sykes.

20 CLERK OF COURT: What says Defendant Jordan?

21 MR. BUSH: Please seat Ms. Sykes.

22 CLERK OF COURT: What says Defendant Moss?

23 MR. MCCARLEY: Please seat Ms. Sykes.

24 CLERK OF COURT: Have a seat in the jury box to your

25 left. Number 100, Justin Kubas. What says the State?

1 MR. MCMILLIAN: Please present Mr. Kubas.

2 CLERK OF COURT: What says Defendant Jordan?

3 MR. BUSH: Please seat Mr. Kubas.

4 CLERK OF COURT: What says Defendant Moss?

5 MR. MCCARLEY: Please seat Mr. Kubas.

6 CLERK OF COURT: Have a seat in the jury box to your
7 left. That is twelve jurors, Your Honor.

8 THE COURT: All right. We will draw an alternate.
9 Strikes are one for the State and two for each Defendant.

10 CLERK OF COURT: Number 5, William Baltzegar. What
11 says the State?

12 MR. MCMILLIAN: Please present Mr. Baltzegar.

13 CLERK OF COURT: What says Defendant Jordan?

14 MR. BUSH: Please excuse Mr. Baltzegar.

15 CLERK OF COURT: You may return to your seat, please.
16 Number 35, Julie Coleman. What says the State?

17 MR. MCMILLIAN: Please present Ms. Coleman.

18 CLERK OF COURT: What says Defendant Jordan?

19 MR. BUSH: Please excuse Ms. Coleman.

20 CLERK OF COURT: Return to your seat. Number 75,
21 Connie Herman. What says the State?

22 MR. MCMILLIAN: Please present Ms. Herman.

23 CLERK OF COURT: What says Defendant Jordan?

24 MR. BUSH: Please seat Ms. Herman.

25 CLERK OF COURT: What says Defendant Moss?

1 MR. MCCARLEY: Please excuse Ms. Herman.

2 CLERK OF COURT: You may return to your seat. Number
3 162, Emily Shakal. What says the State?

4 MR. MCMILLIAN: Please present Ms. Shakal.

5 CLERK OF COURT: What says Defendant Jordan?

6 MR. BUSH: Please seat Ms. Shakal.

7 CLERK OF COURT: What says Defendant Moss?

8 MR. MCCARLEY: Please seat Ms. Shakal.

9 CLERK OF COURT: Have a seat in the jury box to your
10 left.

11 THE COURT: Draw another alternate. Strikes are the
12 same.

13 CLERK OF COURT: Number 121, Allen McGee. What says
14 the State?

15 MR. MCMILLIAN: Please present Mr. McGee.

16 CLERK OF COURT: What says Defendant Jordan?

17 MR. BUSH: Please strike Mr. McGee.

18 CLERK OF COURT: Return to your seat, please. 188,
19 James Weatherford. What says the State?

20 MR. MCMILLIAN: Please seat Mr. Weatherford.

21 CLERK OF COURT: What says Defendant Jordan?

22 MR. BUSH: Please seat Mr. Weatherford.

23 CLERK OF COURT: What says Defendant Moss?

24 MR. MCCARLEY: Please seat Mr. Weatherford.

25 CLERK OF COURT: Have a seat in the jury box to your

1 left.

2 THE COURT: Are there any matters to take up
3 including the composition of the jury, prior to the jury
4 being sworn, from the State?

5 MR. MCMILLIAN: No, Your Honor.

6 CLERK OF COURT: From Defendant Jordan?

7 MR. BUSH: No, Your Honor.

8 CLERK OF COURT: From Defendant Moss?

9 MR. MCCARLEY: No, sir.

10 THE COURT: All right, I am going to send you to the
11 jury room, I have to give you some instructions before I
12 let you go for lunch. I have to get an approximation as
13 to the best time to bring you back in this afternoon.
14 While you are back there I want you to select the person
15 you want to serve as the Foreperson of your jury. It can
16 be any of the twelve jurors, it can't be either of the two
17 alternates who were the last two selected. Now, ladies
18 and gentlemen, do not discuss the case in any way, don't
19 talk about the people involved, the type of cases they are
20 alleged to be, don't talk about the cases in any way
21 whatsoever. If you have cell phones and they haven't
22 taken them up, do not access them for any reason during
23 this break. So, what I need you to do is, without
24 discussing the case select a person you want to serve as
25 the Foreperson of the jury. The Clerk will give you a

1 piece of paper and a pen if you need it and just write the
2 name and juror number of the person who is chosen as the
3 Foreperson. As soon as I can I will get you back out here
4 and give you those instructions and let you go to lunch.

5 (Whereupon, the jury was excused from open court.)

6 THE COURT: Ladies and gentlemen, if you were not
7 selected on this jury, in a few minutes I am going to let
8 you go. I need to keep you on telephone standby for at
9 least one more day. Things can happen in a case, things
10 can come up that cause me to declare a mistrial.
11 Sometimes we get into the case and I have to make rulings
12 and that will cause people to change their minds about
13 various things because of the rulings I made. In short,
14 things can happen would mean that I would have to go to
15 another case. So, I may be able to turn you lose when you
16 call in tonight, I don't know. Call tonight after 6:00
17 and follow the instructions. Thank you.

18 (Whereupon, the remaining jury panel was excused from
19 court.)

20 THE COURT: I was advised right before I walked in to
21 do the jury qualifications, the last time, there was an
22 outstanding order to have Mr. Moss evaluated with mental
23 health. And I was handed the report and I haven't had a
24 chance to read it yet so I need to do a Blair hearing on
25 that. And I believe the attorneys told me yesterday

1 afternoon that we need to have a Jackson versus Denno
2 hearing?

3 MR. GRIMES: Your Honor, we do not intend to
4 introduce that statement in our case-in-chief so I don't
5 think we need to do a Blair hearing--

6 THE COURT: You mean Denno hearing?

7 MR. GRIMES: Denno hearing. Yes, sir. Just to
8 correct one other thing. Yesterday we discussed some
9 audio recordings and then provided to the Defense, the
10 audio recordings. Yesterday, after court yesterday we
11 reviewed those and noticed and there was at least an
12 additional couple of statements that needed to be removed.
13 So we redacted and actually paired down the statements to
14 where they are even shorter than they were yesterday. We
15 provided copies of those redacted portions to Defense
16 Counsel. I am not sure if they even have had an
17 opportunity to listen to them yet. They are actually very
18 short, probably originally maybe an hour's worth of phone
19 calls and now they are probably twenty something minutes
20 left.

21 THE COURT: Is there any issue about this?

22 MR. BUSH: Your Honor, at this time I haven't had a
23 chance to review these phone calls. I would just like to
24 have the opportunity to review them over lunch and if
25 there are any issues raise them at that time.

1 THE COURT: Mr. McCarley?

2 MR. MCCARLEY: The same as Mr. Moss, Your Honor.

3 MR. GRIMES: I anticipate introducing them tomorrow.

4 We may be laying part of the foundation for them today.

5 THE COURT: I think they need to be given a chance to
6 listen to them before the trial starts. Let me know if
7 there is a problem. We will do the Blair hearing first,
8 after lunch. Do you have something else?

9 MR. BUSH: No sir, Your Honor. We will let you know
10 if we have any issues.

11 THE COURT: Yes Ma'am, Ms. Steiner.

12 MS. STEINER: I believe this would be the appropriate
13 time to renew the motion to sever for record
14 preservations.

15 THE COURT: Okay. Mr. Bush, you join in that?

16 MR. BUSH: Mr. Jordan would join in that, Your Honor.

17 THE COURT: Unless there is some new matter that has
18 come up, even because of the change in the recording of
19 what's intended to be introduced the ruling stays the
20 same, the motion is denied. Does the Defense agree there
21 is no Denno hearing needed?

22 MR. MCCARLEY: Yes sir, Your Honor. They don't
23 intend to use that recording. There is no need, not from
24 Mr. Moss.

25 MR. GRIMES: Your Honor, just for a housekeeping

1 matter, did you intend to swear the jury before or after
2 lunch?

3 THE COURT: After.

4 MR. GRIMES: Okay, thank you.

5 THE COURT: I need to do the Blair hearing first
6 because I have an issue with that, I am going to have to
7 bring Mr. Moss out. I don't want to make y'all sit here
8 while I read this and it is five minutes to 1:00 so I have
9 got to tell the jury about ten minutes worth of stuff
10 before I let them go. Bring them in if they are ready.

11 (Whereupon, the jury came into open court at
12 approximately 12:55 p.m.)

13 THE COURT: The jury selected Brandon Bryant, 25 as
14 the Foreperson of the jury. Are you Mr. Bryant?

15 (Whereupon, Court's Exhibit 4 was marked for
16 identification only.)

17 MR. BRYANT: Yes, sir.

18 THE COURT: Members of the jury, I have to give you
19 some instructions before I let you go to lunch. I will
20 have you come back at 2:30. When you come back don't come
21 into the courtroom, the Bailiff will show you where to
22 report, you will report where the Bailiff says and they
23 will take you back to the jury room. Now, you are not to
24 discuss this case in any way among yourselves until I tell
25 you to and that is going to be at the very end of the

1 trial, after you have heard everything. So don't discuss
2 the case among yourselves in any way until I tell you to.
3 Don't discuss the cases with anybody else until you have
4 been completely discharged from jury duty. Now, it is
5 okay for you to tell families, friend, employer that you
6 are on a jury, you have to be able to do that. But you
7 cannot tell them the name of the cases or what the cases
8 are about or anything about the cases. Don't discuss the
9 cases with anybody else until you have been completely
10 released from jury duty. If somebody does attempt to
11 contact you and discuss the cases with you report that to
12 me. I never know if there is going to be media coverage
13 of a trial unless they ask to set up TV cameras. So as
14 far as I know there is, I don't expect any media coverage
15 of the trial but if there is any get away from it, if you
16 are exposed to it, don't let yourselves be exposed to it
17 any further and report to me at the first opportunity what
18 you may have seen, heard or read from the media. I
19 mentioned cell phones earlier, I am going to give you more
20 instructions in this regard when you come back. But at
21 this point let me just tell you, you are not to do any
22 independent investigation. So don't do things like go on
23 the computer or cell phone and look up the law, don't go
24 on the computer and look up names, word searches, even
25 searches, anything like that. Don't do any independent

1 investigation. You are going to take an oath when you
2 come back and that oath you are going to promise us you
3 are going to decide the case based on the evidence and the
4 law and those things are going to come to you in this
5 courtroom. So don't do any independent investigation. If
6 you are on social media do not comment in any way about
7 your jury service until you completely finish jury duty.
8 So don't go on any type of social media account and talk
9 about anything related to the jury service including your
10 experiences so far until you are through with jury duty.
11 Now, I don't know of anything to change the time that I
12 explain to you when we expect to break today. I haven't
13 been alerted to any problems that might have us run long
14 today. As the trial goes on I will try to keep you
15 abreast of that as best I know. So, but you can make your
16 own plans and relay those to the people that you need to.
17 So, I expect us to run a normal day this afternoon and I
18 expect us to start tomorrow, I will give you the exact
19 time, it is probably going to be 1:00 or 1:30 tomorrow
20 because I have to go to a funeral in the morning. Okay.
21 If you would follow the Bailiff and then report where he
22 tells you at 2:30.

23 (Whereupon, the jury was excused from open court for
24 a lunch break.)

25 THE COURT: Ladies and gentlemen, this is an

1 instruction that I give in every case. Please be careful
2 that you don't have any contact with a juror, if you have
3 any interest in this case. Don't be talking about the
4 case or anybody in it in a way that a juror might
5 overhear. Typically the jurors go out a different way and
6 that fools a lot of people that think they are not going
7 to have any contact with them but in most Court Houses the
8 jurors funnel back around into the common area. So they
9 may well be around the corner or close by and you may be
10 talking about the case or somebody in it and it might be
11 overheard by a juror so please be careful you don't have
12 contact with a juror and that you don't say anything about
13 the case that might in any way be overheard by a juror.
14 When you go to a restaurant, check around and make sure
15 you are not near a juror or not within earshot. I need
16 you folks back here at 2:20. Court is in recess until
17 2:20.

18 (Whereupon, a lunch break was taken.)

19 THE COURT: Ms. Steiner and Mr. McCarley, bring your
20 client around. Mr. Moss, your lawyers had indicated that
21 Judge Early reported that you be evaluated at the
22 Department of Mental Health. And they gave me two
23 reports, one is about your competency to stand trial, the
24 other is concerning whether you knew right from wrong at
25 the time of the alleged offense. And that last one only

1 comes up if your side raises it so I am assuming that is
2 not really before me. But any time a Judge orders a
3 Defendant to be evaluated we have to go through a hearing
4 called a Blair hearing, it is after somebody named Blair
5 who was in a case. So I have read the report and it
6 indicates that they did not find any problem with you
7 having the capacity to stand trial. It indicates that you
8 understand the charges, you understand the roll of the
9 various officials. And the diagnosis it gave was Opioid
10 use disorder, cannabis use disorder, had an
11 anti-personality, I am sorry, anti-social personality
12 disorder. Now do you know why you are here?

13 MR. MOSS: Yes, sir.

14 THE COURT: First of all, I need you under oath.
15 Raise your right hand.

16 JONATHAN MOSS, being
17 first duly sworn, testified as follows:

18 THE COURT: Tell me, you know the charges against
19 you?

20 MR. MOSS: Yes, sir.

21 THE COURT: Can you tell me what they are.

22 MR. MOSS: First degree burglary, armed robbery,
23 assault and battery first degree, kidnapping, possession
24 with a firearm during the commission of a violent crime.

25 THE COURT: Okay. And do you know who those two

1 folks are beside you?

2 MR. MOSS: Yes, sir.

3 THE COURT: What is their job?

4 MR. MOSS: To represent me.

5 THE COURT: Do you know what the Solicitor's office
6 does?

7 MR. MOSS: Yes, sir.

8 THE COURT: What is their job?

9 MR. MOSS: To go against me.

10 THE COURT: Okay. You know what a jury does?

11 MR. MOSS: Determine whether I am guilty or not.

12 THE COURT: Right. Do you know what a witness is?

13 MR. MOSS: Yes, sir.

14 THE COURT: What does a witness do?

15 MR. MOSS: To tell what they know.

16 THE COURT: And you know what my job is?

17 MR. MOSS: Yes, sir.

18 THE COURT: Tell me what my job is.

19 MR. MOSS: To determine what goes on.

20 THE COURT: Okay. Do you feel like you know what is
21 going on here today?

22 MR. MOSS: Yes, sir.

23 THE COURT: Now they said you were taking some
24 medications you have been prescribed for a long time. You
25 taking those as the doctor has prescribed them?

1 MR. MOSS: They discontinued that at the jail.

2 THE COURT: Okay. Well they actually said one of
3 them they were giving you was not strong enough to really
4 do anything. But you feel clearheaded, you know what you
5 are doing?

6 MR. MOSS: Yes, sir.

7 THE COURT: Does the Defense have anything else on
8 competency?

9 MR. MCCARLEY: No sir, Your Honor.

10 THE COURT: The State?

11 MR. GRIMES: Just in regards to the evaluation and we
12 looked through the documents and places he had been in
13 regards to mental health, he has not been to Aurora per
14 the DMH evaluation or any conversation with him.

15 THE COURT: Okay. That relates to a juror who works
16 for Aurora.

17 MR. GRIMES: Yes, sir.

18 THE COURT: Okay. Does the State have anything else
19 on competency?

20 MR. GRIMES: Nothing, Your Honor.

21 THE COURT: We will make the report a Court's exhibit
22 and I will give you this one back because it really
23 doesn't concern us unless you raise a McNaughton defense
24 or not guilty by reason of insanity. I find beyond a
25 reasonable doubt that Mr. Moss is competent, is capable in

1 assisting Counsel in his own defense, capable of making
2 rational choices concerning the charge against him. All
3 right. That is it, thank you.

4 MR. MCCARLEY: Thank you, sir.

5 (Whereupon, Court's Exhibit 1 was marked for
6 identification only.)

7 THE COURT: I received a note from juror 174
8 indicating that she is having back pain because of
9 herniated disc. She apparently told the Bailiff that
10 sitting on the pews this morning caused it to be
11 aggravated. So I will have to bring her out here and ask
12 her what is going on I guess. Do y'all have any
13 suggestions or input regarding this?

14 MR. GRIMES: These are uncomfortable, those seats are
15 probably a little bit more comfortable. We will leave it
16 in the Court's discretion.

17 THE COURT: Mr. Bush.

18 MR. BUSH: Leave it in the Court's discretion, Your
19 Honor.

20 MR. MCCARLEY: Nothing from Mr. Moss.

21 THE COURT: Ask juror 174, Ms. Sykes to step out
22 here, please.

23 (Whereupon, juror 174, Ms. Sykes came into the
24 courtroom.)

25 THE COURT: Have a seat in the jury box. All right,

1 Ms. Sykes, I have got a note that you are having back
2 pain?

3 MS. SYKES: I have a herniated disc at L4 and 5 and I
4 have been under a doctor's care for over a year. But it
5 is extremely bad right now, I knew that sitting would not
6 be the best for me. But I thought I would try it today
7 but I have, I went to get a spinal injection but I am
8 allergic to the steroids so I am only able to rest it,
9 take muscle relaxers and pain medicine which I didn't dare
10 do today. I wanted to be fully aware while here and
11 driving. But from what I have already done this morning I
12 am having spasms so bad, I spent my lunch break icing in
13 my car and just trying to get through it, through the
14 afternoon. But I think day-by-day it is going to be
15 worse.

16 THE COURT: If you wish to be excused I will excuse
17 you.

18 MS. SYKES: I would appreciate that.

19 THE COURT: All right.

20 MS. SYKES: I didn't know where I fit in earlier and
21 I did not come with a doctor's excuse this morning because
22 I really wanted to try it but I do apologize getting this
23 far in the process.

24 THE COURT: Well, that is fine, don't worry about
25 that. But before you leave I need you to wait, put her in

1 a different room. And don't leave until I send word you
2 can go.

3 (Whereupon, Courts Exhibit 2 was marked for
4 identification only.)

5 MS. SYKES: Thank you, sir.

6 THE COURT: I believe the process for substituting an
7 alternate in a criminal case is that we randomly draw
8 between the two. Do you all feel any differently?

9 MR. GRIMES: No, Your Honor.

10 MR. BUSH: No, Your Honor.

11 MR. MCCARLEY: No, sir.

12 THE COURT: All right, so what I am going to do is I
13 am just going to write the numbers of the two alternates,
14 I have got 162, Emily S. Shakal and I have got 188, James
15 K. Weatherford, Jr. I have written 162 on one of these
16 little pieces of paper and 188 on the other little piece
17 of paper which I am showing to you. I am going to fold
18 them up, put one in one hand and one in the other and then
19 I am going to mix them around so I don't know which one is
20 in which hand. And I am going to get the Clerk to pick
21 one. Open that up and read it.

22 CLERK OF COURT: Number 188.

23 THE COURT: Okay. 188 is Mr. Weatherford. Is the
24 State ready for the jury now?

25 MR. GRIMES: We are, Your Honor.

1 THE COURT: Mr. Jordan?

2 MR. BUSH: We are, Your Honor.

3 THE COURT: Mr. Moss?

4 MR. MCCARLEY: Yes, sir.

5 THE COURT: Bring them in.

6 (Whereupon, the jury came into open court at
7 approximately 2:40 p.m.)

8 THE COURT: Mr. Weatherford, Ms. Sykes was having
9 some physical issues so I replaced her with you. You are
10 going to be one of the twelve jurors now. So, you can sit
11 anywhere in the jury box you like except in the front
12 seat, front row. You can stay where you are, you can move
13 down one, it is up to you. Y'all can tell Ms. Sykes she
14 can leave.

15 (Whereupon, juror number 18, Ms. Sykes was excused
16 from the trial of the case.)

17 THE COURT: I have to have you placed under the oath
18 of a trial jury. So please stand and raise your right
19 hand. As you know, we have two separate Defendants so you
20 are taking the oath for both Defendants in all cases.

21 (Whereupon, the jury was sworn at approximately 2:41
22 p.m.)

23 THE COURT: Ladies and gentlemen, I have to give you
24 some instructions so it takes ten or twelve minutes to go
25 through this and then I am going to turn it over to the

1 attorneys. I am going to explain to you how the cases
2 will start, I am not going to go through all the steps but
3 I am going to tell you some of the things you can look for
4 as we began. The first thing you are going to hear is the
5 opening statements of the attorneys. In these opening
6 statements the attorneys are not permitted to engage in
7 argument, opening statements are allowed to be an
8 introduction, an outline, an overview. Often is said that
9 an opening statement deals with what each attorney feels
10 that the evidence will show. Once the opening statements
11 are finished then I will call upon the Solicitor to
12 present their case. The State brought these charges
13 against these two Defendants and the State has the entire
14 burden of proof. The Defendants are presumed to be
15 innocent. So the State has the entire burden of proof and
16 has to prove every essential element of each offense
17 charge against each Defendant beyond a reasonable doubt.
18 So I will recognize the State to present evidence in an
19 attempt to meet that burden. When the State finishes
20 presenting its cases the Solicitor will advise me that the
21 State rest. At that point I have to send you out of the
22 courtroom and I have to discuss some legal issues with the
23 attorneys and then I will bring you back out here and tell
24 you where we go from there. But that is how we will get
25 started with the case, those are kind of the landmarks you

1 can look for as we get started. Now, it is really
2 important that you understand some things. That oath that
3 you just took was one in which you promised us that you
4 are going to decide these cases based on the evidence and
5 the law. So you need to know where those things come
6 from. The evidence comes from the sworn testimony of the
7 witnesses. Evidence can also come in the form of
8 exhibits. An exhibit can be anything tangible that is
9 marked in the record. It can be a map, it can be a chart,
10 it can be some kind of documentation, some type of audio
11 or video recording, anything tangible that is marked in
12 the record is evidence. Now, what the lawyers say is not
13 evidence. I want you to pay attention to what the lawyers
14 say, they facilitate the introduction of the evidence.
15 But what comes out of their mouths is not evidence. The
16 evidence comes from the witnesses and the exhibits. There
17 is one exception to the rule about what the lawyers saying
18 not being evidence, if it comes up in the case I will tell
19 you about it otherwise I won't burden you with it. Now,
20 the law comes from me. It is my job to decide what law
21 applies to a case and to instruct the jury on the law at
22 the end of the trial. So now you know where the evidence
23 comes from and where the law comes from. It is also
24 really important that you understand that there are two
25 Judges in the courtroom. I am the Judge of the law, I

1 just told you that I have to decide what law applies and
2 tell it to you. I also preside over the trial, I rule on
3 legal issues as they arise, that is my job. You are the
4 other judge, you need to understand that you are the only
5 judge of the facts. Only you are going to get to decide
6 such things as whether evidence is believable or not.
7 Only you get to decide what weight, if any, should be
8 placed on evidence. Those things are entirely your
9 prerogative and I am not going to invade your province.
10 Now, to give you an example of how our roles interact and
11 how you are the judge of the facts and I am the Judge of
12 the law and we don't invade each other's space. I will
13 tell you from time to time during trials what typically
14 happens is is that one side or the other or one attorney
15 involved in the case may feel that someone else on the
16 other side or one of the other Defendants is attempting to
17 put something before the jury that is not proper for the
18 jury to consider. And if that happens these attorneys
19 took an oath, just like you and I have taken an oath to do
20 our respective jobs. And so the attorney has an
21 obligation to stand up and raise an objection. That calls
22 on me to rule whether that thing fits within the rules for
23 the jury to consider. So if I sustain the objection, that
24 means that I agree that that matter is not within the
25 rules for the jury to consider and you should disregard

1 it, put it out of your mind completely because it is not
2 proper for you to use in evaluating the evidence or
3 deciding the case. But if I overrule the objection, what
4 that means is I let it come before you and then you decide
5 whether it is believable or not and you decide whether it
6 should have any weight and if so how much. All I am going
7 to be doing is looking very narrowly with tunnel vision to
8 determine I believe that thing fits within the rules for
9 the jury to consider. It will not cross my mind to think
10 about whether it is believable or not because that is not
11 my job. It won't cross my mind to decide or think about
12 what kind of weight that piece of evidence should have,
13 that is not my job. You are the sole judges of the facts.
14 Now, while you promise us you are going to decide these
15 cases based on the evidence and the law and you must do
16 that, I am not telling you to leave your common sense at
17 home. We want you to use your common sense, we want you
18 to use your sense of logic and reason and your good
19 judgment. It just makes good common sense that you keep
20 an open mind about these cases and you don't make up your
21 mind until you heard everything, you have heard all the
22 evidence and you know what law applies. So there is a
23 rule that we insist that you follow and it is very
24 difficult to follow. I have already mentioned it to you.
25 That rule is that you are not to discuss this case in any

1 way among yourselves until I tell you to. Don't talk
2 about anything related to the case until I tell you to
3 begin your deliberations. So, don't discuss the people
4 involved, the subject-matter, the type of case it is
5 alleged to be, anything like that. Now, that is hard to
6 follow because you thirteen folks may feel you have little
7 in common except you all live in Aiken County and you all
8 got picked on this jury. So the logical thing you are
9 going to want to do, any time you walk out of the
10 courtroom, is talk about what you just saw, what you just
11 heard. You have to resist that temptation and not discuss
12 the case until I tell you to and then we wait on you. I
13 mentioned to you that if anybody, you are not to discuss
14 this case with anybody else until the week is completely
15 over, you have been discharged from jury duty completely.
16 If anybody attempts to contact you and discuss the case
17 with you report that to me so I can deal with it. If
18 there is any media coverage get away from it, don't let
19 yourselves be exposed to it further, report to me at the
20 first opportunity what you might have seen, heard or read
21 through the media. Do not do independent investigation.
22 Once you learn where this is alleged to have occurred,
23 don't go out there and look around, don't do word
24 searches, don't do searches on the law, don't look up
25 names, don't do anything in an independent nature to

1 investigate concerning the case. Stay away from social
2 media post, don't put anything on social media about your
3 jury service until you are through with jury service. So
4 please understand, I am not going to keep going, harping
5 on those things. What I usually say is don't discuss the
6 case and that is a shorthand for everything I just talked
7 to you about. Now, the Chief Justice, the former Chief
8 Justice issued an order directing the Circuit Judges to
9 read something to each jury that has a trial, across the
10 State. So I have to read this to you, it is duplicative
11 of what I already told you, I have tried to say it in a
12 little bit more every day language than what is written
13 here. But I am going to read to you these instructions.
14 During your jury service you are not to discuss the case
15 with others including other jurors except as authorized by
16 the Court. You are not to read or listen to any news
17 reports about the case. You are not to use a computer, a
18 cell phone or any other electronic device with
19 communication capabilities while attending the trial or
20 during your deliberations. You may use such devices
21 during extended breaks such as lunch breaks but not to
22 obtain or disclose information that is prohibited. You
23 are not to use a computer, a cell phone or any other
24 electronic device with communication capabilities or any
25 other method to obtain or disclose information about a

1 case when you are not in court. And information about a
2 case includes but is not limited to the following types of
3 things. Any information about a party, a witness, an
4 attorney or a court officer, any news accounts of the
5 case, any information collected through juror research on
6 any topics raised or testimony offered by any witness and
7 any information collected through juror research on any
8 other topic the juror might think would be helpful in
9 deciding the case. Now, I have always been a little
10 concerned about that language, I tell you don't do
11 independent investigation so telling you not to share it
12 seems to be a little odd but don't do it, certainly you
13 won't share it. The final thing I want to say to you
14 folks is I want to thank you. Now, you are going to find
15 that I don't sit up here and repeatedly say thank you and
16 it is not because of a lack of appreciation, it is because
17 I think if I do that it just cheapens it. I know you have
18 got other places to be, I know you have got other things
19 to do and I promise you that one of my pet pees is have a
20 jury wait on us. It drives me nuts. If you are back
21 there waiting I promise you we are out here working.
22 Theirs is not going to be a situation where you are back
23 there and we are just out here goofing off. There
24 probably will be hurry up and wait, if it is like every
25 other case I have ever done, it is extremely rare that

1 there is one that just flows straight through without any
2 delays for the jury. But I can promise you the one thing
3 that we are doing is to get you back out here and not
4 waste your time. So I thank you. To honor my commitment
5 to you to try not to waste your time I am going to be
6 quiet now, I am going to invite your close attention and
7 recognize the State for its opening argument.

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

10 THE COURT: Yes, sir.

11 MR. MCMILLIAN: Welcome back, ladies and gentlemen,
12 August 1st of 2017, a little over a year ago Daniel Butler
13 woke up in his apartment in North Augusta, Breckinridge
14 Villas just off of Atomic Road and it seemed a day like
15 any other day. He woke up, he planned to go to work, a
16 regular guy. He talked to a young lady, a young lady that
17 he had known for a while, a prior relationship, mutual
18 fringed, family, that sort of thing. They make plans.
19 She was over in Augusta, he was going to ride over and
20 pick her up and he did just that. He got in his car, went
21 to August and got her and brought her back to Breckinridge
22 Villas. She had a grandfather who lived there in the
23 apartment complex. They went and visited with him for a
24 little while. They went back to his apartment, they went
25 inside, they hung out, talked. They had a drink, she

1 stepped outside to make a telephone call. He realizes the
2 time and thought it best he start getting ready for work.
3 When she came back in she left the door unlocked. Ladies
4 and gentlemen, all of that happened in a matter of a few
5 minutes. But what happened next would make things seem
6 that that day would never end. See, he started out of his
7 bedroom and two men rushed into his apartment. The first
8 one he recognized, somebody he knows as JD. The second
9 man came in wearing a bandanna wrapped around his face,
10 holding a gun. Mr. Butler and JD fought and wrestled.
11 Mr. Butler was more than willing to fight two on one. But
12 everything changed when he heard the hammer of that gun
13 cock back. He stopped fighting and submitted. JD sucker
14 punched him, they ordered him to strip down to his
15 underwear, they tied him up with an HDMI cable from his
16 own television. They taunted him with a gun. They
17 threatened him, they threatened the life of his son. They
18 emptied the contents of his wallet out, they told him he
19 was going to give them the PIN numbers to those cards and
20 threatened when he refused or when the daily limits were
21 met and they couldn't get any more money out of the ATM.
22 As this seemingly short incident started to come to a
23 close they realized he might know JD and they need to
24 blindfold him. The man with the gun took the bandanna
25 off, wrapped it around his face, put him in his own

1 bathtub in his bathroom with the lights off. They were
2 still talking about shooting him, that they needed to
3 shoot him. He begged them, he pleaded with them not to
4 shoot him. He explained that he wouldn't report it, he
5 would not close his bank accounts, he would do anything
6 they wanted as long as they let him live. Eventually they
7 leave. He climbs out of the bathtub, he takes his hand
8 out of that cable, pulls the bandanna down and gets
9 dressed. He leaves his apartment for his mom's house over
10 in Augusta, ultimately calls the police a few hours later,
11 they respond. Now, I know you are wondering, why we are
12 not talking about the girl that was there. Well over the
13 course of that afternoon, that evening, the next couple of
14 days the investigation ultimately identified her and it
15 was determined that she participated in the planning and
16 the execution but ultimately she is just as guilty as the
17 two men who rushed in. That young lady's name is Keondra
18 McKie and at some point in the next couple of days she is
19 going to come sit in that stand, that seat right there and
20 she is going to tell you that JD is Jonathan Moss and that
21 DJ is Denzil Jordan and that the two of them planned and
22 executed this home invasion, armed robbery, kidnapping,
23 burglary first. She is going to tell you that they
24 planned it for a week or more. She is going to tell you
25 that they followed her and Mr. Butler to his apartment

1 from Augusta, that they waited and entered the apartment
2 when she left the door unlocked. She is going to tell you
3 that Mr. Moss gave her the cards and the ATM PIN numbers
4 by telephone. And that when she returned they had loaded
5 up his televisions, some other miscellaneous electronics
6 and that they left and went back to Augusta where they
7 divided up the scores. Ladies and gentlemen, each of
8 these Defendants is charged with burglary in the first
9 degree, armed robbery, kidnapping, assault and battery
10 first and possession of a weapon during a violent crime.
11 I want to talk a little bit about what each of those
12 things mean. Burglary in the first degree is breaking and
13 entering of a dwelling house of another without consent,
14 with the intent to commit a crime when some aggravating
15 circumstance exist. And in this case the State will
16 contend these Defendants were armed with a deadly weapon,
17 that they came in with a gun. Armed robbery is simply
18 taking somebody else's stuff by means of threats or
19 intimidation while armed with a deadly weapon or what the
20 victim perceives to be a deadly weapon. Kidnapping is not
21 what you would think necessarily, they don't have to carry
22 Mr. Butler away in a car and stick him in some basement.
23 You can be kidnapped in your own home. The Judge will
24 explain that part. It is simply to confine somebody, to
25 keep them from going or moving about as they wish.

1 Assault and battery first is essentially the crime of
2 offering or attempting to injure a person, in this
3 specific instance, during the commission of another crime,
4 burglary or robbery. Finally possession of a weapon
5 during the commission of a violent crime is basically
6 exactly what it sounds like. Burglary first, kidnapping,
7 armed robbery are all what the law considers violent
8 offenses. When this is all said and done we believe the
9 evidence is going to be clear and convincing and that all
10 will go back in that jury room and find both of these
11 Defendants guilty of each of these offenses. Thank you.

12 THE COURT: Thank you, Mr. McMillian. Are you going
13 to give the opening statement, Mr. Bush?

14 MR. BUSH: I will, Your Honor.

15 THE COURT: Okay.

16 MR. BUSH: Solicitor, Mr. Jordan, Your Honor. May it
17 please the Court.

18 THE COURT: Yes.

19 MR. BUSH: Ladies and gentlemen, this case is about
20 three things. Connection, deception and protection. Now
21 Solicitor McMillian got up and he indicated to you two of
22 the offenses that he intends to call in his case-in-chief
23 this week. He told you he was going to call Mr. Butler
24 and he told you he is going to call Ms. McKie. Throughout
25 the course of their testimony listen to the connecting,

1 listen to the deception that occurred on the day of the
2 incident and the days that follow. And the protection
3 that occurred throughout this. You see, Ms. McKie is
4 going to be their star witness, she is going to be who
5 they ask you to put all of your faith in in this trial.
6 The Judge has already instructed you, you get to use your
7 common sense through the course of this trial. And when I
8 think of common sense I like to think of a story from my
9 childhood. I have got a twin brother, an older brother
10 and a younger brother and it happened pretty often that my
11 parents would come home and would find my twin, his name
12 is Dustin and they find us, have cookie crumbs on him.
13 And they would say, Dustin, did you have a cookie. Dustin
14 would say, no, Mom, no, Dad, it was Derek. No, no, it was
15 Brandon. No, no, no, it was Ryan. Both of my parents got
16 to use their common sense. And throughout this whole
17 trial that is what we are going to have to do, use your
18 common sense when you hear what is presented to you. Now,
19 as the Judge has already indicated Mr. Jordan, who I
20 represent, he is being charged with burglary in the first
21 degree, armed robbery, kidnapping, assault and battery in
22 the first degree and possession of a weapon during the
23 commission of a violent crime. And he has indicated to
24 you, the State has the burden. In fact their burden is to
25 prove to you beyond a reasonable doubt that Mr. Jordan is

1 guilty of any of these. It is a heavy, heavy burden for
2 them to meet. In fact it is a burden I don't think they
3 will be able to meet. And throughout the course of this
4 trial, using your common sense and listening to the
5 testimony presented I am going to ask you to listen for
6 seven buzz words. Do me a favor and I know you guys don't
7 have pens and pads, okay, do me a favor and take mental
8 notes. Okay. Take mental notes every time you hear the
9 answer to a question with any one of these seven buzz
10 words. Any time you hear a question about DNA take a
11 mental note, what the answer is. Any time you hear a
12 question about fingerprints take a mental note about what
13 the answer is. Any time you hear a question about
14 photographic evidence, video surveillance, call logs, text
15 messages or social media records I want you to take a
16 mental note of what the answer is to each and every one of
17 those questions. And the answer to each and every one of
18 those questions is very important because I think you are
19 going to hear a story throughout the course, probably you
20 are actually going to hear a few. But the answer to each
21 and every one of those buzz word questions is going to be
22 the connection between why at the end of this trial I come
23 back and I ask each and every one of you to find Mr.
24 Jordan not guilty. Thank you.

25 THE COURT: Thank you, Mr. Bush. Mr. McCarley.

1 MR. MCCARLEY: Ladies and gentlemen, I am Nick
2 McCarley, let me reintroduce myself. I know y'all had a
3 number of different names thrown at you. This is Jonathan
4 Moss, my client. I represent Jonathan Moss. Okay. And
5 Jonathan Moss is not guilty because Keondra McKie is not
6 credible, she is not believable, she is not reliable. Mr.
7 Butler is not credible, he is not believable and he is not
8 reliable. And all of that is going to come out from the
9 witness stand. Okay. I am not making you any promises
10 that you are not going to hear about from that witness
11 stand. Okay. Mr. Moss is also not guilty because there
12 is no forensic evidence, which means physical evidence.
13 There is no phone evidence. That is another reason that
14 Mr. Moss is not guilty of what he has been accused of.
15 And he is not guilty beyond a reasonable doubt. Okay.
16 Talking about beyond a reasonable doubt, it is really not
17 are they guilty or are they not. It is not, is Jonathan
18 guilty or is he not, it is is he guilty beyond a
19 reasonable doubt. And the way the law defines reasonable
20 doubt is two main ways. If you are firmly convinced of
21 something then you believe that beyond a reasonable doubt.
22 And, ladies and gentlemen, at the end of this trial you
23 are not going to be firmly convinced that Keondra McKie or
24 Daniel Butler are somebody that you can rely on, somebody
25 that is credible, somebody that is believable. The other

1 main definition for reasonable doubt is the kind of doubt
2 that would make a reasonable person hesitate to act. And
3 at the end of this trial what you hear from Ms. McKie and
4 what you hear from Mr. Butler who is going to make you
5 hesitate to act, the way that reasonable doubt was
6 explained to me and the way I, the first time really,
7 really understood it and the way I have explained it to
8 folks since is a little bit of an analogy, a little bit of
9 a comparison. Say you are buying a house, it is a very,
10 very big deal, it is a very, very serious thing. And you
11 have been in this house, you have been in this house over
12 and over and you love it, it is your dream home. And you
13 are in there on the final day, you are looking around a
14 last time, everything is great. And you go to walk out of
15 this house and you are going to close on this house and
16 you are going to own this house and you might live it in
17 for five, ten, fifteen, thirty years, you might live in it
18 for the rest of your life. And as you are walking out of
19 this house you see a termite on the floor. That one
20 termite in this enormous house, does that make you
21 hesitate to act. It would make any reasonable person
22 hesitate to act. You call the exterminator, you call the
23 home inspector, absolutely going to call your spouse, your
24 family. That one termite in this enormous house and that
25 is what the Solicitor's office is going to try to do, is

1 going to try to build you a house. Okay. And, you know,
2 when they rest their case, when they question the
3 witnesses it is going to look like a big pretty house.
4 Now, I will get to question those same witnesses. In one
5 room there is going to be Keondra McKie, in another room
6 there is going to be Mr. Butler, in another room there is
7 going to be Sergeant Sherman from North Augusta Department
8 of Public Safety. But when you go in those rooms with me
9 you are going to look behind the curtains, you are going
10 to look under the rug, you are going to see the termites.
11 Those termites are going to make you hesitate to act.
12 Those termites are not going to allow you to be firmly
13 convinced that my client, Jonathan Moss, is guilty of
14 anything. My client, Jonathan Moss is not guilty because
15 Ms. McKie is not credible or reliable or believable,
16 because Mr. Butler is not credible and not reliable and
17 not believable and because there is no physical evidence
18 tieing my client, Jonathan Moss, to these crimes.

19 THE COURT: Thank you, Mr. McCarley. Solicitor, call
20 your first witness.

21 MR. MCMILLIAN: The State would call Daniel Butler.

22 THE COURT: Mr. Butler, would you come up to the
23 Clerk please?

24 MR. BUTLER: Yes, sir.

25 RAYMOND BUTLER, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. McMillian:

4 Q Good afternoon Mr. Butler. How are you?

5 A I'm doing good.

6 Q You started there with Raymond. You go by Raymond?

7 A Yes. No sir, I go by Daniel.

8 Q Okay. Where are you from originally?

9 A North Augusta, South Carolina.

10 Q Have you lived there all your life?

11 A Yes, sir.

12 Q And how old are you?

13 A 26 years old.

14 Q And what do you do for a living?

15 A I work at Bridgestone.

16 Q Have you worked at Bridgestone, how long have you
17 worked at Bridgestone?

18 A I worked there about two months.

19 Q Okay. And where do you live now?

20 A I stay in [REDACTED] Breckinridge Drive.

21 Q And is that where you lived at the time this
22 happened?

23 A No, sir. I had to move because when the incident
24 happened, I stayed with my mom for like two, about a month
25 or so because I just couldn't stay in that apartment. It

1 just, I, I was very offended by it.

2 Q Yes, sir. Where were you living on August 1st of
3 2017?

4 A I was staying at Breckenridge at my other apartment.

5 Q And what was that apartment number?

6 A I can't recall. I want to say it was [REDACTED] if I'm not
7 mistaken.

8 Q And that entire apartment complex, that's in Aiken
9 County?

10 A Yes sir, it's in Aiken County.

11 Q What was happening with you on August 1st of 2017,
12 kind of take us through your day.

13 A Pretty much I had planned on meeting Keondra McKie.
14 She had called, she wanted a job. So, she was going to
15 come over, you know, use my Wifi to get a job or whatever,
16 come over and, you know, like hang out.

17 Q And let me, let me stop you right there. I need you
18 to slow down just a little bit.

19 A Oh, yes sir.

20 Q I know this is never-racking.

21 A Yes, sir.

22 Q Just slow down a little bit and tell us.

23 A Yes, sir. Me and Keondra, we had been talking about,
24 it was like a good two weeks. I know her because of her
25 relationship with Alexis Curry. That's my, you know, my

1 son's mom, like stepsister. But like I had mentioned, you
2 know, we had planned on getting together or what not that
3 following evening.

4 Q And where was she on August 1st?

5 A She was in Augusta Georgia. It was somewhere off, I
6 don't know the road, I know she had texted it to me.

7 Q And did you go pick her up?

8 A Yes sir, I did. When I arrived there, there was a
9 female outside that she had hugged. I know she had told
10 me her dad was going to give her some gas money when we
11 got back to North Augusta or what not, but she said
12 someone had her car.

13 Q And where did y'all go once you picked her up?

14 A When we left, we, we took I-20 I think. And we went
15 to my apartment. When we had first went in my apartment,
16 and then she was like she wanted to go see her grandpa
17 because he stayed like down the hill. So, we walked to
18 her grandpa's.

19 Q And he stays in those same apartments?

20 A Yes, sir.

21 Q So after y'all visited with her grandfather, what did
22 you do then?

23 A We returned back to my apartment.

24 Q So and when y'all got back to your apartment what
25 happened next?

1 A So we got back to my apartment, I told her, you know,
2 she could sit and watch a little TV. And I had got, I had
3 a bottle of alcohol and we both, whatever, took a shot or
4 whatever. And she went outside to smoke or whatever.

5 Q Okay. And did she come back inside?

6 A Yes, sir. She came back inside.

7 Q And what happened after she came back inside?

8 A When she came back inside, she was like, she was like
9 she was going to sit on the chair. She was using like the
10 computer or whatever, the Wifi. And I told her, well you
11 know, you can use the Wifi, you know, look for jobs, but
12 I'm fixing to go get ready for work.

13 Q Okay. And so, while you're getting ready for work --

14 A Yes, sir.

15 Q What happened then?

16 A Well, when I was getting ready for work, because like
17 I said, I had took a shower and I came back out or
18 whatever, she, I noticed when I came out the TV was like
19 real loud. Real loud. So, as far as me getting, when I
20 got ready for work, she, I heard like, you know, like a
21 boom or whatever. So I approached my door and that's when
22 they, I noticed Jonathan Moss, he had came out, it was
23 another guy following.

24 Q And let me, let's break that down a little bit. Who
25 was the first person to come into the apartment?

1 A It was Jonathan Moss.

2 Q And did you know him as Jonathan Moss at that time?

3 A No, sir. He, he, I knew him because he would be over
4 there with Keondra McKie.

5 Q Again, slow down for us.

6 A Yes, sir. I know him basically, you know, like
7 family, you know how we like to get together with like
8 Alexis' family, which is Keondra's stepsister. And I just
9 know, like I know him just from seeing him. But we, we
10 knew him as like JD. I didn't know his full name at the
11 time.

12 Q Okay. And so Alexis was your son's mother and she is
13 Keondra's sister?

14 A Yeah, stepsister by marriage.

15 Q And what, what relationship, if any, did you know
16 about between Keondra and JD?

17 A They were, they dated. They were boyfriend and
18 girlfriend.

19 Q So that's why y'all have been at similar family
20 stuff?

21 A Yes, sir. He would just you know, come over, you
22 know, as like a friend.

23 Q And do you see Mr. Moss in the courtroom today?

24 A Yes, sir. He is right there.

25 Q Can you describe what he's wearing?

1 A A white collar shirt. He's got a black and a white
2 collared shirt, kind of like in the front.

3 MR. MCMILLIAN: Your Honor, if the record would
4 reflect that he's identified Mr. Moss.

5 THE COURT: So noted.

6 Q So what happened right when Mr. Moss came in?

7 A When Mr. Moss came in, we, we tussled or whatnot.
8 And you know, we fought. We kinda like hit the wall a
9 little bit and stuff like that. And I, I have a gun, so
10 you know, that was my first instinct, but it wasn't where
11 I, you know, where I had put it because my, my dad moved
12 it when the kids come over. And, but you know, that's
13 first my intention, I was trying to wrestle him. But then
14 when I seen the other guy with the mask on and had a gun.
15 I kinda like just dropped my guard because he cocked the
16 gun and I just stopped and then he sucker punched me.

17 Q You said he. Who was he?

18 A Jonathan, Jonathan Moss.

19 Q And after he hit you, what happened next?

20 A Well after he hit me, the guy, I mean, when he hit me
21 I kind of dropped and I couldn't really know who he was.
22 But he put, they put the gun like on my neck. Like right
23 back there.

24 Q And did they say anything at that point?

25 A I mean, I mean can you use the words they used?

1 Q Yes, sir.

2 A They had just called me, I got you, they called me a
3 pussy nigger.

4 Q And --

5 A They like we got you now, now we been watching you.

6 Q What, what'd they do after that?

7 A After that they hit me, after they hit me with the
8 gun or whatever, well, they put it on my neck. The guy
9 told me like, you know, after they said we got you, you
10 know, called me all kind of names, they told me, you know,
11 to strip down all of my clothes.

12 Q And so you had to get undressed?

13 A Yes, sir. And I, I mean they said take off all my
14 clothes. I mean I kept on my underwear, they blindfolded
15 me.

16 Q And what happened after, after that?

17 A After that, they hit me with, on the side of my face
18 with the gun and that's why I got this scar here. And
19 they told me to sit down in this chair and they pushed it
20 up in the corner and then they hit me with a gun again.
21 And they were just, you know, basically like torturing me,
22 talking, talking just junk.

23 Q And did they, did they threaten you with the gun?
24 Did they do anything with it?

25 A Yes, sir. I, because you know, I was, after that,

1 because they were like, it's just kind of hard to talk
2 about, but I know the guy --

3 Q Just slow down and take your time.

4 A Yes, sir. I think the guy, I mean, I think Jonathan
5 Moss had the gun. Also the other guy, they were going
6 through the apartment looking for stuff. But they took
7 the bullet out of the gun.

8 MR. MCCARLEY: Objection, Your Honor, speculation.
9 He's telling us what he thinks happened.

10 THE COURT: Do you know what happened, sir?

11 A Yes, sir.

12 THE COURT: You can testify what you know happened.

13 A Yes, sir.

14 Q Did you --

15 THE COURT: What you saw or heard.

16 A Okay.

17 THE COURT: You can't testify about what you thought
18 might of happened.

19 A Okay. Yes, sir.

20 Q Did you hear them take the bullets out of the gun?

21 A Yes, sir.

22 Q Did you hear them put one or more of the bullets back
23 in the gun?

24 A No, sir.

25 Q Okay. What happened after that?

1 A After they, after I heard them take the bullets out,
2 they were like you know, they basically like planning,
3 well, people know it as Russian roulette, but they were
4 clicking the gun like you know, like playing the game with
5 me and stuff like that. And just calling me, you know,
6 out my name, et cetera.

7 Q And were they demanding anything of you?

8 A Not, not until after the other guy came in, who, I
9 mean I don't know who it was, but they came in and they
10 was, they said, because I think they had found like my,
11 some stuff in the house or whatever. But they demanded
12 where my money was at. And I told them I only had a card.
13 So they said where is your wallet. They located my wallet
14 on the dresser. Basically, they was just throwing stuff
15 out the wallet. And then they requested my PIN numbers to
16 my card.

17 Q And did you give them -- did you, you got to slow
18 down. She's, she's typing as fast as she can.

19 A Yes, sir. I am just kind of nervous.

20 Q Did you give them those PIN numbers?

21 A Yes, sir. I gave them to them after they demanded,
22 they threat, they threatened me, my son's life. They was
23 like if you don't give us the PIN numbers, they were like
24 they were going to shoot me right then and they told me,
25 they named my son, [REDACTED] (phonetic). They said we know

1 him, they was going to kill him.

2 Q So they, they knew your son, son's actual name?

3 A Yes, sir.

4 Q Take just a second. So, Mr. Butler --

5 A Yes, sir.

6 Q After they got your PIN numbers, did they ask any
7 other questions about your ATM cards?

8 A They, they was on the phone with somebody after they
9 had got the PIN's, and I guess they were going, just
10 driving around to different ATM's and trying to get money
11 out. And they came back in the room and told me I was, I
12 was lying or whatever about my PIN because I guess they
13 couldn't access one of them. And they said they couldn't
14 get all the money off the card. And I was like, you know,
15 they have daily limits on the cards or whatnot, and they
16 were like you know you were lying. And they said they
17 were going to shoot me.

18 Q And what happened after that?

19 A After that they, they told me, because I guess they
20 thought I was going to keep, you know, I kept like, they
21 thought I was looking at them. So they, the guy took the
22 bandanna off his face they had it on, and he put, he put
23 over my eyes so I couldn't see nothing. And then they
24 said grab those cable cords, so I guess they had took the
25 TV cause I heard like a lot of stuff rambling. They took

1 some cords and they put my hands behind my back.

2 Q Okay. Mr. Butler, you gotta slow down.

3 A Yes, sir. I'm sorry. Yes.

4 Q So once they tied you up did, did they move you from
5 the chair?

6 A Yes, sir. They moved me to the chair into a
7 bathroom.

8 Q Were the lights on or off?

9 A They were off.

10 Q And where specifically in the bathroom were you?

11 A I was in the bathtub, but they had made me put my
12 head in the corner of the bathtub.

13 Q And did you hear anything else happening during this
14 time?

15 A I just heard, I just heard, you know, rumbling
16 through the house, you know, tearing up stuff. And then
17 one of the guys was, came back in and they were, you know,
18 they had said something about the PIN code or whatnot.
19 And they, they brought my phone in there, they told me to
20 unlock it with my finger, because that's, you know, an
21 Iphone 7 had fingerprint. And they, you know, they got in
22 my password, because you know, they, they, they were just
23 saying they was going to shoot me, they were going to kill
24 me because they thought that I was holding out my money.
25 And they got in with my password and it said, you know,

1 they basically seen I had the money in there. And they
2 just, they told me, you know, that's when the guy was
3 saying, well, you going, you going to promise us you going
4 to give us this money or you and your son going to die.
5 And he said, he said you going to leave these accounts
6 open, you're not going to tell nobody or whatnot.

7 Q And did you agree to that?

8 A Yes sir, I did. And you know a guy from the back was
9 like we think he lying, you might as well shoot him.

10 Q And we've talked over this part really, really
11 quickly.

12 A Yes, sir.

13 Q About how long did all of this last?

14 A I was in there for, it felt like forever, but it had
15 to be like a good 45 minutes to a hour.

16 Q That you were in the bathroom or --

17 A -- the whole incident. From the time they, you know,
18 barge in my room.

19 Q Okay. And eventually they left your apartment?

20 A Yes, sir. I did, I did, well, going back to you
21 know, when they had, you know, when they requested the PIN
22 numbers and all that information, they, they said
23 something to the reference of we some good robbers. They
24 had some kind of cleaning solution and they, it's like,
25 because when I, when I got up to leave, it smelt like just

1 straight Fabuloso. They were just wiping down stuff.

2 Q And, so once, once they left did you get out of the
3 bathtub?

4 A Yes, sir. Before they left, the guy hit me one more
5 time with the gun. So you know, I dropped, you know, so
6 he could just get on. I didn't want to, you know, I just
7 dropped to my knees. And when he left, I was kind of
8 weak, with my hands behind my back, you know. And I got
9 the cable cords off, they really weren't that tight. And
10 I went back in my room, I got, I got dressed and I, they
11 had took my phone, so I just went to my mom's house.

12 MR. MCMILLIAN: Beg the Court's indulgence for just a
13 minute.

14 THE COURT: Yes, sir.

15 MR. MCMILLIAN: May I approach the witness, Judge?

16 THE COURT: Sure.

17 Q Mr. Butler, I'm going to show you what's been
18 pre-marked as State's Exhibits 1 through 6.

19 A Yes, sir.

20 Q Ask you if you recognize these? You can flip through
21 them.

22 A You want me to say what happened?

23 Q No, sir. If you just, do you recognize what's in
24 those photographs?

25 A Yes, sir.. This my apartment.

1 Q Do those photos fairly and accurately represent your
2 apartment as it looked that day?

3 A Yes, sir.

4 Q And, State's Exhibit, I think it's 7 and 8, do you
5 recognize those photos? No, I'm sorry, those are Exhibits
6 5 and 6.

7 A Yes, sir.

8 Q You recognize those photos?

9 A Yes, sir. That's me and that's where they had hit me
10 beside my face with a gun. Yes, sir.

11 Q Do they fairly and accurately represent you and your
12 injuries on that day?

13 A Yes, sir.

14 MR. MCMILLIAN: Your Honor, at this time the State
15 would move Exhibits 1 through 6 into evidence.

16 THE COURT: Mr. Bush?

17 MR. BUSH: No objections, Your Honor.

18 THE COURT: Mr. McCarley?

19 MR. MCCARLEY: No objections from Mr. Moss.

20 THE COURT: Mark 1 through 6 into evidence please
21 ma'am.

22 (Whereupon, State's Exhibits 1 through 6 were
23 admitted into evidence.)

24 MR. MCMILLIAN: Your Honor, at this time we would
25 like to publish to the jury.

1 Q Mr. Butler, if I could ask you to step down right
2 here in front of the jury. We are going to bring these --

3 THE COURT: You really need, you really need to speak
4 clearly and keep your voice up.

5 MR. BUTLER: Yes, sir.

6 THE COURT: She's got to take down everything you
7 say.

8 MR. BUTLER: Yes, sir.

9 THE COURT: And the jury has to hear you.

10 MR. BUTLER: Yes, sir.

11 Q It might be easiest if you stand here and talk
12 directly toward her, okay?

13 A Yes, sir.

14 Q We're going to start with State's Exhibit 1. Can you
15 tell the jury a little bit about what's in that photo?

16 A Yes, sir. That's my apartment. That's my wallet--

17 THE COURT: I can't hear him.

18 MR. MCMILLIAN: Speak up.

19 A That's my wallet on the dresser, that is all of my
20 personal information. That is my cable and Wifi box and
21 where my TV were attached and they took. That is where
22 they hit me across my face with a gun, right here, and
23 pointed at me.

24 Q And the contents of your wallet right there, were
25 your debit card or ATM cards left there?

1 A No sir, they are gone.

2 Q So they took them?

3 A Yes, sir.

4 Q We can move to State's 2. Can you tell the jury a
5 little bit about what is in State's 2?

6 A Yes, sir. That is basically my dresser. I had
7 clothes and shoes and basically along this area. I had
8 just got my cell phone they took. That is a box, that is
9 basically my room.

10 Q Were these drawers empty?

11 A No, sir. I had clothes and shoes.

12 Q Was any of this in this general disarray before this
13 incident?

14 A No, sir.

15 Q We can move to State's 3. What is featured there in
16 State's exhibit 3.

17 A That is the cable cord they had tied around my neck.

18 Q So that is where you left it after you took them off?

19 A Yes, sir. I took them off, I went to the window to
20 make sure they weren't outside.

21 Q We can move to State's 4. What is in State's exhibit
22 4?

23 A The two red cups, those are the cups that me and
24 Keondra McKie had prior to the incident. And that bottle
25 wasn't there, but I know they made reference to, you know,

1 they were some good robbers. I guess they used that to
2 wipe down stuff.

3 Q Did it smell like cleaning solution?

4 A Yes sir, the whole apartment.

5 Q If we can move to State's 5. State's 5 is kind of a
6 zoomed in photo. What are we looking at here.

7 A That is where my head had split. I had got multiple
8 stitches on my face where they hit me with the gun.

9 Q State's 6.

10 A That is the bandanna they had over my face where I
11 was bleeding.

12 Q Okay. Thank you. You can take your seat.

13 THE COURT: Up here.

14 Q Now, these two men who came into your apartment, did
15 you give either one of them permission to come in?

16 A No, sir.

17 Q And at any time during this incident did you feel
18 like you could leave?

19 A No, sir.

20 Q Now I think you left off, what happened after you
21 came out of your room and got dressed and, I guess, left
22 your apartment?

23 A When I left my apartment I had, you know, returned
24 or, after I left my apartment I went directly to my mom's.

25 Q Slow down.

1 A I was scared to tell anybody because they said, they
2 said, they threatened my son's life so I didn't know where
3 to turn to. So I went to my mom's house and when I got
4 there she told me to call the police.

5 Q And at that time did you call the police?

6 A Yes, sir. Actually my dad, I left my Nissan Ultima
7 at their house and I drove my, my dad drove me back over
8 to the apartment complex.

9 Q And when you called the police did they respond out
10 to your apartment?

11 A Yes sir, they came immediately.

12 Q Did they take those photos?

13 A They took the photos, yes sir.

14 Q Did they talk to you about what happened?

15 A Yes, sir.

16 Q At some point during all of that did you find
17 something on your porch?

18 A Yes, sir. We found, basically my car, where it was
19 parked before I left, someone had threw out a KFC receipt
20 and then I gave it to the police, it had my credit card
21 number on it.

22 Q And you knew that, had you been to KFC that day?

23 A No sir, I had not.

24 Q Do you remember what time law enforcement left your
25 house that evening?

1 A It was around, around 6:00 o'clock.

2 Q And at some point after that did you determine who JD
3 was?

4 A No, sir. I knew him by JD, I didn't know him, you
5 know, as his full name. But I like knew him by face, I
6 knew him, yes sir.

7 Q Did you figure out who JD was, what his real name
8 was?

9 A Yes sir, I did.

10 Q Did you report that to North Augusta?

11 A Yes, sir.

12 Q Had you mentioned JD to them prior to that?

13 A Not at that time.

14 Q Why is that?

15 A The reason I didn't say JD's name at the time because
16 I was scared. They knew where my son lived. And I just
17 was scared. I was just fearing for my life.

18 Q I guess a day or two later did you have occasion to
19 meet with North Augusta again?

20 A Yes sir, I did.

21 Q Did you pull up your bank records?

22 A Yes, sir. I got my papers and took them to North
23 Augusta and from the cash receipt, I guess they went to
24 KFC and they had, showed me some videos, surveillance.

25 Q And did they show you some still images from the ATM?

1 A Yes sir, they did.

2 Q Did you recognize anybody in any of those pictures?

3 A Yes, sir. Keondra McKie.

4 Q And Keondra McKie was the girl that you went and
5 picked up earlier?

6 A Yes, sir. Because at first, you know, I thought she
7 may have stepped outside and they had barged in on her,
8 you know. But when I saw the images I couldn't believe, I
9 was in shock. But when they showed me that she was at the
10 ATM, card and stuff, it was just like, it looked like.

11 MR. MCMILLIAN: I beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 Q Mr. Butler, I have got just a couple more questions.
14 Your apartment is or was located in Aiken County?

15 A Yes, sir.

16 Q And did you initially tell the police that Keondra
17 McKie was in the apartment with you that day?

18 A No, sir.

19 Q Why not?

20 A I didn't tell them because, you know, she was a
21 friend and somebody I trusted. And, you know, me coming
22 out of my room, I didn't know if they, I didn't even know
23 that she was affiliated with it until I seen the ATM, that
24 she was involved. Like I said, it was a shock to me.

25 Q I don't have anything further. If you would answer.

1 anything Mr. Bush has.

2 THE COURT: Mr. Bush, hold on. Ladies and gentlemen,
3 we will take a ten minute break, don't discuss the case.
4 Step in the jury room, please.

5 (Whereupon, the jury was excused from open court for
6 a break.)

7 THE COURT: A juror indicated to the Bailiff that he
8 or she needed a bathroom break. Mr. Butler, during this
9 break you can step down if you like but you are not
10 permitted to discuss your testimony with anyone. Do you
11 understand?

12 MR. BUTLER: Yes, sir.

13 THE COURT: We are at ease for about ten minutes.
14 (Whereupon, a short break was taken.)

15 THE COURT: Are you ready for the jury, Mr. Bush?

16 MR. BUSH: I am, Your Honor.

17 THE COURT: Bring them in.

18 (Whereupon, the jury came into open court at
19 approximately 4:01 p.m.)

20 THE COURT: Cross-examination.

21 MR. BUSH: Thank you, Your Honor, may it please the
22 Court.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 By Mr. Bush:

1 Q Mr. Butler, good afternoon.

2 A How are you, sir.

3 Q I am well, how are you doing today.

4 A Doing good.

5 Q Good, good. Okay, we are going to talk a little bit
6 about some of the testimony you just gave a second ago,
7 okay.

8 A Yes, sir.

9 Q And before we go into that, let me ask you. You gave
10 a statement on the date of the incident, right?

11 A Yes, sir.

12 Q You gave a statement to law enforcement that day?

13 A Yes, sir.

14 Q And you told them the truth that day, right?

15 A Yes, sir.

16 Q And that was on August the 1st?

17 A I don't recall, sir.

18 Q You don't recall the date that this happened?

19 A I recall it happened, I don't recall if I wrote a
20 statement that day.

21 Q Would it refresh your memory if I was able to show
22 you the statement that you wrote?

23 A Yes, sir.

24 Q Take a second to look over it, Mr. Butler.

25 A Yes, sir.

1 Q That is the first statement that you gave law
2 enforcement, correct?

3 A Yes, sir.

4 Q And you told them the truth, right?

5 A Yes, sir.

6 Q Didn't lie about anything in that statement, right?

7 A No, sir.

8 Q Okay. Now, in that statement, just a moment ago on
9 direct examination you stated that the individuals who
10 were in your home, they threatened you by your son's name,
11 right?

12 A Yes, sir.

13 Q And we saw, understand that was an emotional reaction
14 for you?

15 A Yes, sir.

16 Q But in your statement to law enforcement you never
17 made any mention to this, did you?

18 A No sir, I don't recall in my statement. Can I look
19 through it?

20 Q You are welcome to look through it, yes sir.

21 A Okay.

22 Q You have refreshed your recollection?

23 A Yes, sir.

24 Q And no where in there did you mention that they named
25 your son by name?

1 A That's right.

2 Q And no where in there did you say that they
3 threatened the life of your son?

4 A No, sir.

5 Q And you also said something interesting, you said, we
6 some good robbers?

7 A Yes, sir.

8 Q No where in that statement on August 1st did you say
9 that they said that, did you?

10 A No, sir.

11 Q You also talked about cleaning solution, right?

12 A Yes, sir.

13 Q Just a moment ago?

14 A Yes, sir.

15 Q You said that your apartment smelled of Fabuloso?

16 A Yes, sir.

17 Q No where in that statement on August 1st did you
18 mention that your apartment smelled of Fabuloso?

19 A No, sir.

20 Q No where in that statement did you mention anything
21 about Fabuloso?

22 A No, sir.

23 Q Or the smell of your apartment at all?

24 A No, sir.

25 Q Okay. Now, you also gave a statement on August the

1 3rd, do you remember that?

2 A Yes, sir.

3 Q And in that statement you didn't mention anything on
4 August 3rd about them threatening your son, did you?

5 A No, sir.

6 Q You didn't mention anything about knowing your son's
7 name on August 3rd, did you?

8 A No, sir.

9 Q Didn't mention anything about we some good robbers?

10 A No, sir.

11 Q Didn't mention anything about the smell of Fabuloso?

12 A No, sir.

13 Q Didn't mention anything about the smell of your
14 apartment at all?

15 A No, sir.

16 Q That was two days after the incident, right?

17 A Yes, sir.

18 Q And then again on August the 5th, that is four days
19 after the incident, right?

20 A Yes, sir.

21 Q You gave another statement to law enforcement?

22 A Yes, sir.

23 Q - So this is the third time that you met with them?

24 A Yes, sir.

25 Q And in the third time that you met with them you

1 didn't mention anything about your son's name, did you?

2 A No, sir.

3 Q Didn't mention anything about them threatening your
4 son's name?

5 A No, sir.

6 Q Your son wasn't mentioned at all?

7 A No, sir.

8 Q Now on this third interview with law enforcement you
9 didn't say that they said, we some good robbers?

10 A No, sir.

11 Q You didn't say anything about cleaning solution in
12 the house?

13 A No, sir. Basically when I talked to law enforcement
14 I basically, you know, told them the key facts. I didn't,
15 you know, tell them like what they were saying or whatnot.
16 I was just basically, you know, the main facts.

17 Q I understand. But you didn't mention the smell of
18 the Fabuloso in your apartment?

19 A No, sir.

20 Q And you didn't mention the smell of your apartment at
21 all on August the 5th?

22 A No, sir.

23 Q The first time that was mentioned was today, right?

24 A No, sir.

25 Q In written statements?

1 A In written statements, yes.

2 Q Okay. All right. Now, let me ask you this. After
3 all this happened on August the 1st you didn't have any
4 communication with Ms. McKie, did you?

5 A No, sir. I didn't hear from her at all.

6 Q You didn't try to reach out to her on social media?

7 A No, sir.

8 Q And you trusted Ms. McKie, right?

9 A Yes, sir.

10 Q You told us that?

11 A Yes sir, I did.

12 Q And you went to school with her, right?

13 A Yes, sir. We went to school.

14 Q You knew her?

15 A Yes, sir.

16 Q And I think you indicated that the mother of your
17 son, that is her step-sister, right?

18 A Correct.

19 Q So that is how y'all are connected, you have known
20 her through that way?

21 A Yes, sir.

22 Q And you have known her for a while?

23 A Yes, sir.

24 Q And you said, I think when Mr. McMillian was asking
25 you questions, that you guys had been talking?

- 1 A Yes, sir. Communications like we were friends.
- 2 Q And you were excited to see her that day?
- 3 A Yes, sir.
- 4 Q You were looking forward to spend time with her?
- 5 A Yes, sir.
- 6 Q You weren't pressuring her to come over to your house
- 7 that day, were you?
- 8 A No, sir.
- 9 Q And ultimately Ms. McKie, she turned out to be a
- 10 liar, didn't she?
- 11 A Yes, sir.
- 12 Q I mean she lead you down a pretty bad path, right?
- 13 A Yes, sir.
- 14 Q Set you up?
- 15 A Yes, sir.
- 16 Q Lied about why she came over, right?
- 17 A Yes, sir.
- 18 Q She lied to you why she wanted you to be drinking?
- 19 A Yes, sir.
- 20 Q She lied to you about why she wanted to go to your
- 21 bedroom, right?
- 22 A Yes, sir.
- 23 Q She lied why she walked outside of your apartment,
- 24 right?
- 25 A Yes, sir.

1 Q She lied to you who she was texting from your room,
2 right?

3 A No, sir.

4 Q No, she was never in your room?

5 A No, sir.

6 Q Again, you trusted her?

7 A Yes, sir.

8 Q That is why you didn't mention her to law enforcement
9 when you first spoke with them, right?

10 A Yes, sir.

11 Q That is what you just told us, that you trusted her,
12 she was your friend?

13 A Yes, sir. When the incident happened I didn't
14 suspect she was a part of it. I didn't know, you know.

15 Q That is why you didn't tell law enforcement why she
16 was at your house that day?

17 A Yes, sir.

18 Q And I guess why you didn't tell law enforcement about
19 going to her grandfather's place that day, right?

20 A I did tell law enforcement that.

21 Q When did you tell them that?

22 A I told them based on what happened when they came in
23 the apartment.

24 Q So it was the afterwards, right?

25 A Yes, sir.

1 Q Not in the statement that you wrote but afterwards?

2 A Yes, sir. The statement was based on what happened
3 when they came inside.

4 Q Okay. So really you didn't know that Ms. McKie had
5 set you up until law enforcement showed you some pictures,
6 right?

7 A Yes, sir.

8 Q The pictures of her at the ATM?

9 A Correct.

10 Q That is when you knew she had set you up?

11 A Yes, sir.

12 Q Okay. Thank you very much, I have no further
13 questions at this time.

14 THE COURT: Mr. McCarley.

15 MR. MCCARLEY: Thank you very much, Your Honor.

16 CROSS-EXAMINATION

17 By Mr. McCarley:

18 Q I too am going to refer to the three statements that
19 you made to law enforcement, Mr. Butler.

20 A Yes, sir.

21 Q That is correct, you made one statement on the 1st of
22 August, another statement on the 3rd of August and another
23 statement on the 5th of August. Is that correct?

24 A That's correct, sir.

25 Q And in none of those statement do you mention

1 Jonathan Moss or JD, is that correct?

2 A That's correct, sir.

3 Q Okay. And you just told this jury that was because
4 you were scared?

5 A Correct.

6 Q Then why did you not mention Keondra McKie in your
7 first statement, are you scared of Keondra McKie?

8 A No, sir. I was not scared of her, I did not think
9 she was involved. Like I said, she said she stepped
10 outside to smoke and I didn't know if they barged in or
11 whatnot and she ran or what happened.

12 Q She said, she told you when, that she stepped outside
13 to smoke?

14 A She said she was stepping outside to smoke when,
15 before I had to get ready for work.

16 Q Okay. What I am focusing on here is the fact that
17 you said, you told this jury that you left Jonathan Moss
18 or JD out of these statements, all three of these
19 statements you left him out of because you were scared?

20 A Yes, sir.

21 Q Okay. But you also left Keondra McKie out and you
22 told this jury that it was because you believed her so
23 much?

24 A Yes, sir. My statement was based on who came into
25 the apartment.

1 Q In your statement it says, I was laying in bed, you
2 just said you were getting ready for work?

3 A Yes sir, I was sitting on my bed.

4 Q Was Keondra McKie in your bed with you?

5 A No, sir.

6 Q She was not?

7 A No, sir.

8 Q So we have got, so far got two separate reasons that
9 you lied to police. One was because you were scared and
10 one because you couldn't believe Keondra McKie was
11 involved?

12 A I never lied to law enforcement, sir.

13 Q Okay. In your second statement on 8/3, do you have
14 that in front of you, Mr. Butler?

15 A This is 81.

16 MR. MCCARLEY: Beg the Court's indulgence.

17 Q Do you remember that statement or do you need a copy
18 of it, sir?

19 A No, sir. You are talking about the 8/3?

20 Q From the 8/3 statement.

21 A Yes, sir.

22 Q Okay.

23 MR. MCCARLEY: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 Q It says you dozed off?

1 A Yes, sir.

2 Q So you were getting ready for work and sitting on
3 your bed and Keondra McKie was there and you dozed off all
4 at the same time but you never lied to law enforcement?

5 A No, sir.

6 Q Nothing further.

7 THE COURT: Redirect from the State?

8 REDIRECT EXAMINATION

9 By Mr. McMillian:

10 Q Mr. Butler, I just want to go over one thing briefly.

11 A Yes, sir.

12 Q How did you come to know JD's real name?

13 MR. MCCARLEY: Objection, Your Honor, this is not in
14 the scope of cross-examination.

15 THE COURT: You want to be heard?

16 MR. MCMILLIAN: Your Honor,--

17 THE COURT: He asked about how to identify JD, one of
18 them did. Overruled, go ahead.

19 Q Where did you find out JD's real name?

20 A I found out JD's real name when I went to my son's
21 mama's house and I told her, you know, JD came to my
22 house. And she didn't believe me. She said, JD? She
23 pulled up his Facebook or whatnot. And it said Jonathan
24 D. Moss. And that is how I figured out his real name.

25 Q And JD is Jonathan D. Moss that is seated here today

1 that you identified earlier?

2 A Yes, sir.

3 Q Nothing further.

4 THE COURT: Mr. Bush, you got any more questions of
5 the witness?

6 MR. BUSH: No further questions, Your Honor.

7 THE COURT: Do you have any other questions?

8 MR. MCCARLEY: I beg the Court's indulgence for just
9 a moment, Your Honor.

10 RECROSS-EXAMINATION

11 By Mr. McCarley:

12 Q You just told the Solicitor that you found out JD's
13 real name when you went to your son's mother's house?

14 A Yes.

15 Q And then, do you have a copy of your statement from
16 8/5, from August 5th of 2017?

17 A Hold on.

18 MR. MCCARLEY: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 Q In that statement, Mr. Butler, you said that my mom
21 texted me and said she spoke with my son's mother. No
22 mention whatsoever here of going to her house. Is that
23 correct? Which one is correct, what you just said or what
24 you wrote down?

25 A What I wrote down.

1 Q What you wrote down is correct?

2 A Yes, sir.

3 Q So what you just now said to the Solicitor is
4 incorrect?

5 A Yes, sir. They are both correct.

6 Q How can they both be correct. If she texted you and
7 said she spoke with your son's, my mom texted me?

8 A I went and talked to my mom. My mom texted, after I
9 told her she got information about the situation.

10 Q Okay. And you say this was all on Facebook, you
11 identified?

12 A Oh, yes sir.

13 Q And so somebody told you Jonathan Moss' name?

14 A His real name, I know him as JD.

15 Q So somebody told you JD's real name?

16 A Correct.

17 Q Okay.

18 A And I identified him by his picture.

19 Q Do you have that picture with you?

20 A I don't.

21 Q Did you provide that picture to law enforcement?

22 A Yes sir, I did.

23 Q You did?

24 A I did.

25 Q Okay. Thank you very much.

1 THE COURT: Thank you, you may step down. Call your
2 next witness.

3 MR. GRIMES: The State calls Sergeant Luke Sherman.

4 THE COURT: Come to the Clerk please.

5 LUKE SHERMAN, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Grimes:

9 A Sergeant Luke Lanier Sherman. S-H-E-R-M-A-N.

10 Q Sergeant Sherman, where do you work?

11 A With North Augusta Department of Public Safety.

12 Q And what do you do there?

13 A I investigate violent crimes, crimes against children
14 and sexual crimes as well.

15 Q And how long have you been in law enforcement?

16 A For 15 years.

17 Q Were you assigned to work this case? I mean, you've
18 been in here, so you know what case we're talking about,
19 but the August 1st incident in Breckenridge Apartments?

20 A Yes, I was.

21 Q And were you on call the night that it happened?

22 A No, I was not.

23 Q Okay. When were you assigned the case?

24 A I believe August 2nd, the next day when I came into
25 work.

1 Q Okay. So, when you were, when you came into work,
2 and you get assigned, how does that work? What happens
3 with the case?

4 A Basically the case was assigned to me since that's
5 the kind of cases I work and I review the file and start
6 investigating from there.

7 Q Well, were you aware that credit cards had been taken
8 during the incident?

9 A Yes.

10 Q And what would you generally do if you know credit
11 cards are involved or taken in something like this?

12 A Normally when credit cards are used in a crime, it's
13 a good tool to use to look for leads to follow up on.
14 Since the victim had stated his card was used, we
15 immediately asked him to provide records from his bank
16 institution, so we could start to see where those cards
17 were used, so we could try to pull video surveillance to
18 try to identify who might've been using them.

19 Q And were you aware of a KFC receipt?

20 A Yes, I was.

21 Q And what did you do about, what did you do about the
22 receipt?

23 A Looked at the date and time. It was August the 1st
24 during, around the incident time and contacted the manager
25 at KFC who had, who remembered the transaction.

1 Q And what were you interested in, in relation to that
2 receipt?

3 A Looking at the video surveillance to see who was
4 using the credit card at that time.

5 Q Were you aware of where the receipt had been
6 obtained?

7 A I believe it was outside the victim's apartment.

8 Q Okay. So, did it seem to have some relevance?

9 A Yes, it did.

10 Q And what did you ultimate, well, what did, did you go
11 to KFC?

12 A I did.

13 Q And what did you find out about that?

14 A That ex-employee named Keondra McKie had actually
15 gone into the store that day with the victim's credit card
16 and made a transaction for three cookies.

17 Q And did they have a video available?

18 A They did.

19 Q Did, did you get anywhere with the, with the credit
20 cards?

21 A Yes. I was also able to identify the other locations
22 where the ATM cards were used. One was at a Wells Fargo
23 on Knox Avenue at Highway 25. If you're not familiar
24 there, it's kind of where the Walmart, below the Walmart
25 on Knox Avenue. And there was also one at the Gas Plus at

1 East Martin Town Road and Atomic Road. And I believe the
2 ATM, SRP ATM on East Martin Town and Atomic.

3 Q, So, once you located that what did you do to get
4 evidence from that?

5 A I requested from those institutions, the footage.
6 And I was sent still images from the banks and the Wells
7 Fargo, the SRP and the Gas Plus, excuse me. At all of
8 them, Keondra McKie was identified as, by the victim, as
9 all using his card.

10 Q So, well, let's back up. You said you were sent
11 still images. Is that photographs?

12 A Correct. Yes. Photographs of the card being used.

13 Q And where, where are those photographs taken from?
14 The machine itself?

15 A Yes.

16 Q And so, when you had photographs from the ATM
17 machines and the surveillance from KFC, who did you take
18 those to?

19 A I took them to investigations and I contacted the
20 victim to come look at them.

21 Q And did he ultimately come look at them?

22 A He did.

23 Q Did he ultimately talk to you about who was in those
24 photographs?

25 A Yes, Mr. Butler stated it was Keondra McKie that was

1 using his card.

2 MS. STEINER: Objection. Hearsay.

3 THE COURT: You wish to be heard?

4 MR. GRIMES: Your Honor, probably hearsay.

5 THE COURT: Ladies and Gentlemen, disregard the last
6 statement of the witness. It's hearsay.

7 Q Did you find, were you able to create an identity?
8 And don't say who it was.

9 A Yes, I was.

10 Q And after you, after you, after you identified the
11 person that was in those videos, what did you do?

12 A I obtained warrants for their arrest.

13 Q And who did you obtain a warrant for?

14 A Keondra McKie.

15 Q All right. Keondra McKie is the person that Daniel
16 talked about being at his house?

17 A Yes.

18 Q And you had a discussion with Daniel about Keondra
19 McKie?

20 A I did.

21 Q You had the photographs from the ATM machine and the
22 images from surveillance at KFC?

23 A Correct.

24 Q You obtained a warrant for Keondra McKie, or warrants
25 for this incident?

1 A Yes, I did.

2 Q And she's charged with, what is she charged with?

3 A Financial transaction card fraud or thefts for use of
4 the cards, and other charges for the burglary and being
5 involved in that as well.

6 Q The same charges that, that these two have?

7 A I didn't look at the warrants to be exact, but I
8 believe so, yes.

9 Q And charges for the credit cards?

10 A Yes, that's correct.

11 Q For using the credit card?

12 A Yes, sir.

13 Q Were you ultimately able to locate Keondra McKie?

14 A Yes. In Augusta, Richmond County, Georgia.

15 Q And did you go to Augusta, Georgia in an effort to
16 serve those warrants on her?

17 A We did.

18 Q Did you have officers from Richmond County with you?

19 A We did.

20 Q And when she was arrested in Richmond County, Georgia
21 did you interview her?

22 A I did conduct a video interview with her.

23 Q All right. And during this interview, did she, did
24 she initially indicate that she was a participant?

25 A Not initially.

1 Q Ultimately did that happen?

2 A Yes, it did.

3 Q Did she talk to you about who was with her?

4 A She didn't.

5 Q After your interview with Keondra McKie who did you
6 obtain warrants for?

7 A I obtained warrants for a Jonathan Moss and a Denzil
8 Jordan.

9 Q Were they ultimately served with those warrants?

10 A They were.

11 Q Please answer any questions defense counsel has for
12 you.

13 THE COURT: Mr. Bush.

14 MR. BUSH: Thank you very much, Your Honor. May it
15 please the court.

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 By Mr. Bush:

19 Q Sergeant Sherman, how you doing today?

20 A Doing good. How are you?

21 Q I'm well. Thank you. Now you're the lead
22 investigator on this case, right?

23 A That's correct.

24 Q So, you're aware of basically everything that kind of
25 goes on with this case, right?

1 A Yes, sir.

2 Q The officers, they all report to you?

3 A I review the files and their supplements and --

4 Q Okay.

5 A That sort of thing.

6 Q But they make sure all the, any evidence --

7 A Correct.

8 Q -- or any statements that they have, they, they all
9 get to you?

10 A Yes, sir.

11 Q Okay. Now, you're aware of, of the interactions then
12 between law enforcement and Mr. Butler on the day of this
13 incident, right?

14 A Yes, sir.

15 Q And you're aware that he indicated to law enforcement
16 that several black males come into his home that night?

17 A Correct.

18 Q And you're aware that he said those several black
19 males, they woke him up, right?

20 A From my understanding.

21 Q Okay. And he didn't make any mention to law
22 enforcement on August the 1st of Ms. McKie being present
23 in the home, did he?

24 A No, he did not.

25 Q He wanted to protect her?

1 A Sir?

2 Q He wanted to protect her?

3 A I, you'd have to ask him.

4 Q You didn't ask after you found out?

5 A He didn't believe she was involved at that time is
6 what he told me.

7 Q Okay. He said he was actually by himself, right?

8 A Yes.

9 Q Okay. He didn't say anything about drinking that
10 day, right?

11 A I wasn't on the initial scene. I believe there
12 might've been something in there about them having a, no,
13 he didn't actually.

14 Q And--

15 A Not until later.

16 Q Yes, sir. And during any of those initial interviews
17 he didn't mention any, you know, well, I guess none of the
18 other officers and during the course of your investigation
19 there were no other witnesses at this apartment complex,
20 right?

21 A Not at that time.

22 Q Okay. So, to your knowledge nobody at this apartment
23 complex heard anything?

24 A No, sir.

25 Q Nobody at this apartment complex saw anything?

1 A Not that I'm aware of.

2 Q Okay. Now, let's talk about the incident report.

3 You've reviewed the incident report in this case. The
4 incident report indicates that this incident began at 1:55
5 p.m. Is that right?

6 A Can I look at my notes?

7 Q Yes, sir. Please do.

8 A Yes. At 13:55 which is 1:55 p.m.

9 Q Yes, sir. And it indicates an end time of 2:25 p.m.
10 Is that right?

11 A The end time?

12 Q Yes, sir. Of the incident.

13 A Oh yes, yes. Sorry.

14 Q So, so it indicates there on the incident report,
15 that it ended at 2:25?

16 A Un-huh, (Witness indicated in the affirmative.)

17 Q Okay. Now, we know that's not correct, right?

18 A Not according to the information he, Mr. Butler
19 provided.

20 Q Well, we know that's not correct because we know that
21 Ms. McKie was at the Gas Plus ATM at 3:36 that afternoon,
22 right?

23 A I'd have to look at the footage.

24 Q Well, and, and --

25 A The time stamp at least.

1 Q And you, you obtained this footage, right?

2 A Yes.

3 Q And you received this footage, right?

4 A Correct. Correct.

5 Q And you reviewed this footage?

6 A I did.

7 Q Okay. Now, I'm showing you, and I'll, I'll show the
8 State, what's been marked for Defense purposes of
9 identification, Defense Exhibit one. Now, you just
10 indicated that you, you've reviewed the surveillance video
11 from that gas station, right?

12 A That's correct.

13 Q And that you're the one who collected the video from
14 that gas station, right?

15 A I don't recall if I collected it, but I know --

16 Q Well, you received it?

17 A Yes.

18 Q Okay.

19 A I viewed it. Yes.

20 Q And, the State's reviewed it with you as well. Okay.
21 And it's true and accurate to the best of your knowledge,
22 right?

23 A As far as I'm, I know, correct. Yes.

24 MR. BUSH: Your Honor, at this time, Defense would
25 move to enter Defense Exhibit 1 into evidence.

1 THE COURT: Is there any objection from the State?

2 MR. GRIMES: No, Your Honor.

3 THE COURT: Any objection from Mr. Moss?

4 MS. STEINER: No, Your Honor.

5 THE COURT: All right.

6 (Whereupon, Defense Exhibit 1 for Defendant Jordan
7 was admitted into evidence.)

8 MR. BUSH: Permission to publish to the jury, Your
9 Honor?

10 THE COURT: Sure.

11 (Whereupon, a video was played starting at 4:30 p.m.
12 and ended at 4:36 p.m.)

13 Q And that time stamp right there, that says 15:35
14 correct?

15 A That's what it says.

16 Q What time is that if it's not in military time?

17 A That would be, that time would be 3:39 according to
18 that.

19 Q And, Sergeant Sherman, the person who just walked in
20 that gas station, that's Keondra McKie, isn't it?

21 A That's correct.

22 Q That's Ms. McKie approaching the ATM again?

23 A Yes.

24 Q And at 15:40 she walks out, right?

25 A Yes. According to the time stamps.

1 Q Now, before Ms. McKie went to the gas station, she
2 went to the KFC, is that right?

3 A Can I look at the receipt?

4 Q Yes, sir.

5 A What about 3:44 p.m., the transaction at the KFC went
6 through.

7 Q It was actually after, right?

8 A Yes.

9 Q Okay. So she goes to the gas station and then she
10 goes to the KFC. And at the KFC, during the course of
11 your investigation, you learned that, that she had
12 purchased three cookies there?

13 A Yes.

14 Q And that's why she was using the card there?

15 A Yes, she'd made a comment to see if the card was
16 working.

17 Q And you indicated to Mr. Grimes just a moment ago
18 that, that the manager recognized her?

19 A Yes. She was an ex-employee.

20 Q And really during the course of your investigation,
21 you found out why she became an ex-employee, right?

22 A I don't recall.

23 Q There were cash shortages in her drawers, right?

24 A I don't recall exactly.

25 Q Would it refresh your recollection to look at the

1 statement?

2 A Yes, it would.

3 Q Okay. Do you have it in front of you in your case
4 file?

5 A Should be in here. Yes. She put at the end of her
6 statement that she was terminated for cash shortage.

7 Q Okay. And, and just briefly, just to go back to the
8 gas station, now, no one else was in that video with her,
9 right?

10 A In the, in the scene you showed me?

11 Q Yeah.

12 A No.

13 Q No. Mr. Jordan wasn't --

14 A He was not.

15 Q -- at the gas station.

16 A He was not observed.

17 Q Okay. So, no, no video evidence of Mr. Jordan being
18 in that gas station with her, right?

19 A No, sir.

20 Q No photo evidence of him being there?

21 A No, sir.

22 Q Okay. And at the KFC you indicated that, that, I
23 guess there was some sort of video surveillance footage?

24 A Yes, there was.

25 Q And you didn't retain that surveillance footage?

1 A The quality was so poor. It was, it would've been no
2 use. You couldn't identify. It was so pixillated you
3 couldn't identify who the person was from it. That's why
4 I got a statement from the manager.

5 Q Okay. And, and so that's why we don't have that?

6 A That's correct.

7 Q That surveillance video?

8 A That's correct.

9 Q Okay. Now, after she, well, I guess in the
10 pixillated version, right?

11 A Yes.

12 Q Mr. Jordan wasn't in, in that surveillance video,
13 right?

14 A No.

15 Q And nobody indicated that he was there to you, right?

16 A No.

17 Q Okay. Now, after the KFC, that's when Ms. McKie went
18 to the ATM's, right?

19 A I know she went to, according to the time stamp,
20 around 1:00 p.m. She went to ATM's twice. She actually
21 went back to Mr. Butler's apartment and then came back to
22 get more money.

23 Q Right. The Wells Fargo ATM is what I'm talking
24 about.

25 A Yes.

1 Q She went to the Wells Fargo ATM after the KFC,
2 correct?

3 A I believe it was before.

4 Q It was before?

5 A I believe so. Yeah, it's saying. at 1:02 p.m.

6 Q Oh, at 1:02, okay. So she went there first, to the
7 Wells Fargo ATM's first?

8 A According to the time stamp. I didn't verify the
9 time on the, from the footage I got.

10 Q I understand. I understand. So when, when she went
11 to that ATM, you were able to obtain photographs?

12 A That's correct, I was.

13 Q Okay. And, and through those photographs, you, you
14 were able to actually show those photographs to Mr. Butler
15 over here, right?

16 A That's correct.

17 Q Okay. And that's, that's when he finally told law
18 enforcement about Ms. McKie being a part, being at his
19 house at all that day, right?

20 A I'm trying to recall exactly when. No, I believe it
21 was before I got, he told me before I got the photos from
22 the ATM.

23 Q Okay. And, but --

24 A Because I had already talked to Ms. Burns who
25 mentioned there was a female named Keondra McKie and

1 that's why I met with him. And he said well, I left her
2 name out initially.

3 Q And, Ms. Burns is the, the KFC?

4 A Manager.

5 Q Manager.

6 A Yes.

7 Q Okay. Now, these photographs you, you received them
8 in, in the course of your investigation, right?

9 A That's correct.

10 Q And if I were to show you copies of these
11 photographs, you'd be able to recognize them, right?

12 A Yes. I would.

13 Q We are going to mark these as Defense Jordan. I am
14 handing you what's been marked for identification purposes
15 as Defense Jordan 2 and Defense Jordan 3. You recognize
16 these photos, don't you?

17 A I do.

18 Q These are the photos that you received from the Wells
19 Fargo ATM?

20 A That's correct.

21 Q I, and these photos are true and accurate depictions
22 of --

23 A Yes.

24 Q -- of what you saw?

25 A Yes.

1 Q There's a little bit of information redacted out of
2 them?

3 A Yeah.

4 Q But outside of that redaction, these are true and
5 accurate copies?

6 A It appears to be the same image.

7 Q Okay.

8 MR. BUSH: Your Honor, at this time Defense Jordan
9 would seek to enter photographs, well, Defense Exhibit 2
10 and 3 into evidence.

11 THE COURT: Any objection from the State?

12 MR. GRIMES: No, Your Honor.

13 THE COURT: Any objection from Mr. Moss?

14 MS. STEINER: No, Your Honor.

15 THE COURT: Thank you.

16 MR. BUSH: Your Honor, at this time --

17 THE COURT: Wait a second, she's got to mark them.

18 MR. BUSH: Yes, sir.

19 THE COURT: 2 and 3 are in evidence.

20 (Wherefore, Defense Jordan Exhibits 2 and 3 are
21 admitted into evidence.)

22 MR. BUSH: Your Honor, at this time may I publish to
23 the jury?

24 THE COURT: Sure.

25 Q Now, Sergeant Sherman, this is Defense Exhibit 2.

1 This is Ms. McKie?

2 A It's kind of dark over here, but it --

3 Q You, you can get up if you like. You can come down
4 here and see it on this if you'd like.

5 A I can see it on, at this angle, that that's her.

6 Q Okay. So, that, that's her? Right?

7 A That's correct.

8 Q That's at the Wells Fargo ATM?

9 A Yes, sir.

10 Q That's cash in her hand?

11 A It appears to be. Yes.

12 Q Okay. Let's look at Defense Exhibit 3. That's Ms.
13 McKie again, right?

14 A Yes.

15 Q That's her putting money down her bra?

16 A It appears to be. Yes.

17 Q She's smiling in that picture, isn't she?

18 A It appears so.

19 Q All right. Let's talk about Ms. McKie because you
20 interviewed her, right?

21 A That's correct. I did.

22 Q And she, she was your first suspect?

23 A Yes.

24 Q And you interviewed her on August the 8th of 2017, is
25 that right?

1 A Yes. August the 8th.

2 Q And that was the week after the incident?

3 A Yes.

4 Q She lied to you during this interview, didn't she?

5 A Yes, she did.

6 Q And after Ms. McKie told you the first couple of lies
7 you actually told her you could help her, right?

8 A I didn't promise her anything.

9 Q But you told her you could help her, right?

10 A I said if she was honest it would help herself.

11 Q So, do you admit or deny that during your interview
12 of Ms. Keondra McKie, that you told her you could help
13 her?

14 A I said she could help herself by telling the truth.

15 Q Now you told her that you could put in a good word
16 for her with the Solicitor's Office, right?

17 A I did, I did say that.

18 Q Okay. You told her that you could talk to the
19 Solicitor, Mr. Grimes and Mr. McMillian over here and that
20 you'd make sure to let them know she cooperated, right?

21 A That's correct.

22 Q That cooperating can go a long way with these
23 gentlemen, right?

24 A It could help her, yes.

25 Q Well, you said it could go a long way with them.

1 A Okay.

2 Q And you told her that you knew she set Mr. Butler up.

3 A Yes.

4 Q You knew that she was, essentially, she was trying to
5 see how much trouble she could get herself out of, right?

6 A I don't recall exactly what I said.

7 Q You don't recall? You don't remember telling her
8 that she was trying to get her life back?

9 A I remember, I remember saying that, that, you know,
10 the more cooperative she'd be, the better it would be, you
11 know, to tell the truth.

12 Q But you don't, you don't remember whether or not you
13 said that?

14 A I don't recall exactly word for word what I said that
15 day.

16 Q Okay.

17 A I'm sorry. I said I don't recall exactly what I said
18 word for word from the interview.

19 Q Now Ms. McKie told you, I guess during the course of
20 your interview, you learned that these guys were allegedly
21 watching Mr. Butler on Facebook, right?

22 A She had mentioned that they had, he had flashed some
23 clothes or money or something so that they were going to
24 take it from him if he's going to be flashing it.

25 Q Well, she said that that was happening on Facebook?

1 A I don't recall what media platform it was on.

2 Q Snapchat?

3 A I don't recall.

4 Q Instagram?

5 A Could've been.

6 Q Social media platforms.

7 A Social media.

8 Q We could agree on social media platform?

9 A Yeah. Yes.

10 Q Okay. So, she told you that, that they were looking
11 at social media platforms. But we actually don't have
12 any, you didn't receive any social media --

13 A I did not.

14 Q -- records in this case at all, did you?

15 A I did not.

16 Q So, no evidence that Mr. Jordan was looking at any of
17 Mr. Butler's social media accounts?

18 A No.

19 Q Not that they were friends on any of these social
20 media platforms?

21 A No.

22 Q Not that they were connected on any of these social
23 media platforms?

24 A No, sir.

25 Q No evidence about these social media platforms

1 whatsoever, right?

2 A No, sir.

3 Q So, that's right. We don't have any?

4 A That's, that's correct.

5 Q Okay. So, let's talk about cell phones. Because I
6 think during the course of your interview, you found out
7 that Ms. McKie had called or texted some people during the
8 course of this interaction, right?

9 A That's correct.

10 Q And, Sergeant Sherman, you've been doing this a long
11 time. You said 15 years?

12 A Yes, sir.

13 Q You're trained to investigate crimes, right?

14 A Yes, sir.

15 Q Trained to collect evidence?

16 A Yes, sir.

17 Q You've been trained how to work crime scenes. You've
18 been doing it a long time.

19 A Yes, sir.

20 Q So during Ms. McKie's interview with you, she
21 admitted that she texted some of her compatriots, right?

22 A That's correct.

23 Q And wouldn't that of been the most powerful evidence
24 that you could've had, would've been those text messages?

25 A It could've been. Yes.

1 Q So you got those phone records, right?

2 A I did not.

3 Q You didn't get any warrants for the phone records?

4 A I don't believe so, no.

5 Q Didn't want to see the numbers that she was calling?

6 A I didn't get any phone records.

7 Q Didn't want to see any numbers that she was texting?

8 A I didn't receive any phone records through this
9 investigation.

10 Q Okay. So, when you didn't receive the phone records
11 you at least took her phone, right? And conducted a
12 Cellebrite test with it?

13 A I don't believe she had her phone on her when we
14 picked her up.

15 Q You didn't, you didn't conduct a search warrant on
16 her house?

17 A No. It was in Richmond County.

18 Q Okay. Now had you, had you gotten her phone you
19 could've downloaded the contents of that phone, right?

20 A Yes.

21 Q And frankly when you download a phone you can get the
22 text messages back normally, right?

23 A Sometimes.

24 Q More often than not, right?

25 A Sometimes. Depending on the phone.

1 Q I understand. Okay. And those text message would've
2 been really powerful, right?

3 A Yes.

4 Q And connected her story, right? Those phone calls
5 would've been really powerful evidence and connected her
6 story, right?

7 A Sure.

8 Q But we don't have any of that stuff?

9 A No, sir.

10 Q It's been over a year and we still don't have any of
11 that stuff?

12 A No, sir.

13 Q Let's talk about the crime scene. Now I know, did
14 you indicate you didn't actually go there?

15 A I was not at the crime scene.

16 Q Okay. So, we'll talk about what, what you've
17 reviewed I guess as part of the file. How about that? Is
18 that fair?

19 A That's fair.

20 Q Okay. Now in what you've reviewed there's no
21 fingerprint evidence to prove that Mr. Jordan was at that
22 crime scene, is there?

23 A The only fingerprints that were obtained were from
24 cups that Mr. Butler told us that he had touched and
25 Keondra had touched. So, no there would be no

1 fingerprints.

2 Q No fingerprints of Mr. Jordan on any of the
3 doorknobs?

4 A No, sir.

5 Q No fingerprints of Mr. Jordan on any of the light
6 switches?

7 A No, sir.

8 Q No fingerprints on any of the items that you found in
9 that house that belong to Mr. Jordan?

10 A No, sir.

11 Q Okay. No fingerprints on, on the HDMI cord?

12 A No, sir.

13 Q All right. Now another area that, that you're
14 trained in, in recovering is DNA, right, touch DNA?

15 A Sure.

16 Q All right. And you didn't find any touch DNA
17 evidence to prove that Mr. Jordan was in that house, did
18 you?

19 A I wasn't there but they didn't obtain any. No.

20 Q They didn't obtain any. I am sorry, I remember you
21 told me you weren't there. There was no DNA found on the
22 HDMI cord?

23 A No, sir.

24 Q All right. No DNA on any of the light switches?

25 A No, sir. I did note in my attempt to, in reviewing

1 the file, that they believe it had been cleaned.

2 Q Okay. But, but you didn't find any?

3 A No, we did not.

4 Q All right.

5 A That's usually an indication that it's probably not
6 going to be present if they took time to you know, wipe
7 everything down.

8 Q I understand. No shoe impressions?

9 A No, sir.

10 Q All right. No hair follicles or anything like that
11 found belonging to Mr. Jordan in the house, right?

12 A No, sir.

13 Q Or apartment.

14 A No, sir.

15 Q And on the bandanna that Mr. Butler was wearing you
16 didn't find any DNA belonging to Mr. Jordan, did you?

17 A No, sir.

18 Q Didn't find any --

19 A It was never submitted.

20 Q Okay. So, you didn't find any? Didn't find any hair
21 follicles belonging to Mr. Jordan on it either?

22 A No. Nothing obvious.

23 Q All right. Okay. So, I just want to make sure I've,
24 I've got all this straight. We don't have any cell phone
25 records?

1 A No, sir.

2 Q No text messages?

3 A No, sir.

4 Q No call log?

5 A No, sir.

6 Q No social media records of any kind?

7 A Nope.

8 Q No DNA?

9 A No, sir.

10 Q Last thing. You know during the course of your
11 interview with, with Ms. McKie, do you remember telling
12 her and really asking her, you ain't making all this stuff
13 up? Just throwing all this stuff on DJ trying to get out
14 of it, are you? You remember asking her that?

15 A I don't recall.

16 Q You remember saying that you've actually seen that
17 happen before?

18 A I don't, I don't recall.

19 Q And finally, do you remember saying when we arrest
20 the wrong guys it's not good for you? You remember saying
21 that to her?

22 A I don't recall. It's been a year ago.

23 Q But you reviewed that, that interview, right? Before
24 you came to trial?

25 A I did but I don't recall exactly every word of it.

1 MR. BUSH: No further questions, Your Honor.

2 THE COURT: Ms. Steiner, you have any questions of
3 this witness?

4 MS. STEINER: I'm going to try to be mindful of the
5 time. I know that you're all watching the clock over
6 there.

7 CROSS-EXAMINATION

8 By Ms. Steiner:

9 Q Sergeant Sherman you've been in law enforcement for
10 15 years?

11 A Yes, ma'am.

12 Q And some of the things that they teach you throughout
13 all of your training is to be accurate?

14 A Yes, ma'am.

15 Q And it's important to be accurate on the incident
16 reports?

17 A Yes, ma'am.

18 Q And you said that you oversee kind of all the other
19 officers that are working the cases as lead investigator?

20 A I'm the lead investigator, yes.

21 Q But you oversee the other officers?

22 A They don't direct, none of the officers directly work
23 for me, but I've reviewed their reports and stuff.

24 Q So, if they make a report and there is a lead or
25 something for you to follow, you're the one that follows

1 that lead?

2 A Yes, ma'am. Yes, ma'am.

3 Q Okay. And once again you said you never went to the
4 incident location, correct?

5 A That's correct. I was not on call that day.

6 Q Okay. And the officers that went to the incident
7 location, they did a thorough job doing their
8 investigation of what they could. Is that your belief?

9 A That would be my belief. Yes.

10 Q Okay. Mr. Butler did testify that he was the one
11 that found the KFC receipt, correct?

12 A I believe that's what he testified to. Yeah.

13 Q Okay. And do you know if Sergeant, I'm sorry,
14 Officer Collin Bailey was called back after he left the
15 scene to go get the KFC receipt?

16 A I believe they were still on the scene, from my
17 understanding.

18 Q Would you mind reviewing your incident report?

19 A Sure. It does say this officer met with Mr. Butler
20 again who stated he found a receipt outside his apartment
21 from the KFC. So it appears that he went back and met
22 with him for a second time.

23 Q Thank you. All right. So everything that you have
24 to work with your investigation is based upon the written
25 statements from different witnesses, correct?

1 A That's correct.

2 Q And Ms. McKie's interview?

3 A Yes, ma'am.

4 Q And you did that with Corporal Nelson, correct?

5 A I did.

6 Q Okay. So, it's two of you in the room with her?

7 A Yes, ma'am.

8 Q And all of the footage that you picked up from
9 different surveillance places was part of what you
10 reviewed?

11 A Yes, ma'am.

12 Q And all the other officer's reports and their leads,
13 correct?

14 A Yes, ma'am.

15 Q Okay. So let me call your attention to some of the
16 different leads that might've been things that you
17 would've followed up on. On August the 12th, Mr. Butler
18 went back to the police station, correct? And made a
19 report?

20 A August the 12th?

21 Q August 12th.

22 A In reference to?

23 Q He met with Sergeant Ramey.

24 A Yes.

25 Q And do you know what he said in that report?

1 A I believe he had stated he had pinged his phone that
2 was taken during the burglary and it came back to a
3 location off Peters Road somewhere.

4 Q Did you go to that house? Did you see who lived
5 there?

6 A I don't believe I did actually.

7 Q Okay. On August 5th when Mr. Butler went to the
8 police station to make another report, he's talking about,
9 that's the day that he talked about the Facebook records,
10 right?

11 A Yes, ma'am.

12 Q Did anyone subpoena the profiles from Facebook?

13 A No ma'am. It was just a photo identification. He
14 said that this was Mr. Butler. This is the guy he knew as
15 JD.

16 Q Did you go back and look at the profile name he had
17 given you?

18 A I think I did. It's been a while, but I believe I
19 looked, pulled it up on Facebook. I didn't like just ask
20 for any records or anything, but I knew that --

21 Q Did you use that knowledge to create a SLED photo
22 lineup to present to Mr. Butler?

23 A I did not since he had directly knew him, I did not.

24 Q But he also did not ever put in any of his written
25 statements that the suspect was Mr. Moss?

1 A Not in written statements.

2 Q And you also didn't do a SLED lineup, or, or you also
3 didn't do like a driver's license picture or any sort of
4 other identification, just solely went on Facebook for Mr.
5 Moss?

6 A Just the Facebook and cooperation from Ms. McKie.

7 Q All right. So now with Ms. McKie, when you are
8 interviewing her with Corporal Nelson, the two of you
9 spoke to her for quite a while, correct?

10 A Yes, ma'am.

11 Q Over an hour, right?

12 A I don't recall the exact time, but it was a lengthy
13 interview.

14 Q And she lied to you for quite a long time, right?

15 A For a short time, yes.

16 Q What would you qualify as a short time?

17 A Ten minutes. I mean there were several lies in the
18 interview that I kept calling her out on and then she
19 would re-correct herself and admit she had lied, and this
20 is what happened.

21 Q Okay. So, you're saying shortly into her interview
22 she stopped lying?

23 A Well there's lies throughout the interview, but
24 there's a, there's a process of trying to get the story
25 straight with her.

1 Q Okay. Do you know about how long into the interview
2 she actually said that Mr. Moss was one of the
3 co-defendants?

4 A Towards the very end. It was the last information
5 she wanted to give. It was like she was, like struggling
6 to want to give up his name.

7 Q Okay.

8 A She had a, she said she had a, I think they were
9 close friends or dated before.

10 Q Okay. But it was towards the end of the interview?

11 A It was towards the end of the interview. Yes.

12 Q Okay. Did you do any searching of, during the course
13 of the interview, did you ask Ms. McKie what the phone
14 numbers were for either Mr. Jordan or Mr. Moss?

15 A I don't believe so.

16 Q Okay. Do you know if you can get a warrant for a
17 phone, for phone records with just a phone number?

18 A I'd have to have some kind of probable cause to
19 convince the Judge to sign a search warrant.

20 Q Would finding evidence that were taken, phone calls
21 being taken during the use of the credit card at Greg's
22 Gas Plus and that Mr. Butler talking about how they were
23 making phone calls, give me the PIN numbers, would that be
24 probable cause to get a search warrant?

25 A It's possible. Yes.

1 Q Do you know if there were any body worn cameras at
2 all of any interviews with Mr. Butler?

3 A I know none were dropped into evidence. I wasn't on
4 the scene that day, so I don't, I don't know --

5 Q Okay.

6 A -- if they were recording at the time because it was
7 recorded later than when the incident happened.

8 Q So, the only verifiable accounts of the incident from
9 Mr. Butler were his written statements making on, made on
10 the scene that night, correct?

11 A And the officer's reports.

12 Q And the officer's reports. And the officer's report
13 does reflect Mr. Butler's written statement in your
14 opinion?

15 A Yes.

16 Q Okay. You stated previously that you didn't get a
17 search warrant of Ms. McKie's house because it was in
18 Georgia?

19 A That's correct. It, it wasn't even her house. It
20 was a friend of her's house. She was just staying there.

21 Q And you also did not interview the grandfather in the
22 apartment complex or any other neighbors?

23 A I did not.

24 Q Or, okay.

25 A I did not.

1 MS. STEINER: Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 Q Sergeant Sherman, for the second written statement
4 that Mr. Butler made, that should be also reflective of
5 his complaint on August 5th, correct? Between that and
6 what the police officer's --

7 A Do you have a copy?

8 Q Just a second. This is his written statement from
9 August the 5th.

10 A August the 5th.

11 Q Anywhere in that statement does it mention Jonathan
12 Moss by name?

13 A He doesn't mention him by name, no, in the statement.

14 Q Does he mention any of the people on trial or a
15 co-defendant by name?

16 A He mentions Keondra in the statement.

17 Q So, that's almost more of a statement against
18 Keondra?

19 A Yeah.

20 MS. STEINER: No more questions.

21 THE COURT: Anything else from the State?

22 MR. GRIMES: I beg the Court's indulgence for just a
23 moment.

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

1 By Mr. Grimes:

2 Q Sergeant Sherman, could you refer to your incident
3 report for just a moment?

4 A Sure.

5 Q What day did Mr. Butler come to North Augusta and
6 indicate that he was aware of Jonathan Moss's name?

7 A On August the 5th.

8 MR. GRIMES: No further questions.

9 THE COURT: All right. Do you have anything Mr.
10 Bush?

11 MR. BUSH: No further questions, Your Honor.

12 THE COURT: Anything else Ms. Steiner?

13 MS. STEINER: Yes, Your Honor, just a few.

14 RECROSS-EXAMINATION

15 By Ms. Steiner:

16 Q And there is still no mention of Jonathan Moss in Mr.
17 Butler's written statement, correct?

18 A I don't believe I saw it in there. That's the August
19 5th statement?

20 Q Yes. The August 5th statement.

21 A Yeah. He just says it was him. He doesn't call him
22 by name.

23 Q So absolutely no mention of Jonathan Moss by name in
24 Mr. Butler's written statement?

25 A No. He just says he saw the picture on Facebook and

1 it was him. He doesn't call him by name.

2 Q Thank you.

3 THE COURT: Thank you sir. You may step down. Okay.

4 Ladies and gentlemen, we'll stop for the day as far as
5 you're concerned. I'm trying to think of the timing for
6 tomorrow. I had indicated to you earlier we'd probably
7 start at 1:00 or 1:30 but I was advised that there is a
8 matter I need to address which may take some time and I
9 typically have a law clerk but I am between law clerks
10 because they usually serve for one year and then they take
11 a real job. And so my former law clerk has left and my
12 incoming law clerk starts next week, so. I saw a note on
13 my calendar that the outgoing law clerk had scheduled
14 something for tomorrow at 2:00 o'clock. It shouldn't take
15 long. Completely unrelated to this case but if they have
16 all their ducks in a row when they come here, it won't
17 take me ten minutes to do it. That's a big if. I'm going
18 to ask you to be here tomorrow at 2:15. I think by then,
19 hopefully, I can get through everything I need to get
20 through if we start about 1:00 with the other matter, and
21 if the other lawyers are on time on the civil matter that
22 I have. So, 2:15, which probably means you will not get
23 the case tomorrow. Most likely it's going to go into
24 Thursday or perhaps longer. Okay. I hope you have a
25 pleasant evening. Now before you go today, one more

1 instruction and I'll let you go. You saw that we go
2 through a very methodical process to pick a jury that's
3 fair and impartial. So, if, if you're not here at the
4 designated time, I can't just go to the next alternate. I
5 have to find out where you are and what's going on. So if
6 you have some true emergency that arises, and hopefully
7 you won't, but if you have some true emergency that arises
8 overnight please have somebody call the Clerk's Office and
9 let us know what's going on so we can try to be
10 accommodating to whatever you have going on. Remember all
11 those admonishes I gave you earlier. I hope you have a
12 pleasant evening. I need you in the jury room, please, at
13 2:15. Thank you. And don't call that number that they
14 gave you, just be here at 2:15.

15 (Whereupon, the jury was excused from open court for
16 the day at 5:10 p.m.)

17 THE COURT: All right. The lawyers indicate there's
18 some objection that I have to deal with or issue I have to
19 deal with related to the next witness.

20 MR. MCMILLIAN: Yes, Your Honor, and the next witness
21 is going to begin laying the foundation for the phone
22 calls that we referenced in pre-trial hearings. They
23 haven't told us what the grounds for their objection is
24 other than, then they have objections. We'd ask to know
25 the grounds at least today so we can prepare to respond to

1 those objections.

2 THE COURT: You have something Mr. McCarley?

3 MR. MCCARLEY: I, I do know the grounds that I plan
4 on objecting to, what I believe to be what the State is
5 going to try to get in as to jail calls because I have
6 listened to those jail calls. So if the State is going to
7 seek to introduce the jail call where Mr. Moss discusses
8 what he discusses on the jail call that they've indicated
9 that they're going to, to enter, then I am going to object
10 on the ground for relevance.

11 THE COURT: So, how long, how long will it take to
12 hear? I'm assuming I've got to hear something?

13 MR. MCCARLEY: Yes sir, Your Honor. I believe that
14 call can't be more than 15 minutes.

15 MR. MCMILLIAN: Mr. Moss's call is a little under
16 five minutes I believe. Mr. Jordan has several calls that
17 I believe may total 20 minutes. All total, Judge, it's
18 less than 25 minutes. We can certainly provide Your Honor
19 these two CD's to review ahead of time if you like.

20 MR. MCCARLEY: I apologize, I was talking to Mr.
21 Gibbons.

22 THE COURT: Do you have something else?

23 MR. MCCARLEY: I do not.

24 THE COURT: Mr. Bush, you have something?

25 MR. BUSH: Your Honor, I, I also will have objections

1 to the phone calls and on the grounds of relevancy. And I
2 have no objection to, I think I was also kind of listening
3 to what they were saying to Mr. Gibbons, but I think what
4 Mr. McMillian indicated that you can take it back, did you
5 say he could take it with him and listen to it?

6 MR. MCMILLIAN: Whatever suits you, Judge. These
7 are, we could get you two new copies, or we could, we can
8 provide the ones that we would intend to introduce.

9 MR. MCCARLEY: I can be a little bit more specific,
10 Your Honor. The phone call that they're, I believe
11 they're going to try to introduce in their case-in-chief,
12 is my client discussing the possibility of alibi
13 witnesses. We have noticed an alibi as of late last
14 night. But at this time, we have not called an alibi. We
15 have not mentioned an alibi. I have not said anything to
16 any of the witnesses or in opening statements about an
17 alibi. So at this point I believe anything my client is
18 talking about an alibi is irrelevant. Now, if the State
19 wants to, if we do call and put up an alibi case, and the
20 State seeks to rebut that with what, the jail calls, so be
21 it. But at this time, and I could not argue relevance at
22 that time, it would be highly relevant. But at this time,
23 it's irrelevant. It has no bearing on the case.

24 MR. BUSH: Your Honor, and I second a lot of what,
25 what Mr. McCarley said. The phone calls that I've

1 received from the State are some of indication of my
2 client allegedly attempting to solicit alibi's. I haven't
3 mentioned the word alibi. I haven't talked about alibis.
4 I haven't called any alibi witnesses and, and also believe
5 that any, any mention of that is, is irrelevant. On top
6 of that, Your Honor, I'd say that any mention to that is
7 highly more prejudicial than it is probative towards my
8 client giving that it, a) that its relevant, and b) that
9 we haven't even gone into anything about alibi's.

10 MR. MCCARLEY: Your Honor, I would join Mr., Mr. Bush
11 in regards to probative and prejudicial. My client has
12 been detained since his arrest. You know, his, his use of
13 the, of the telephones at the jail is one of the only ways
14 he has to communicate.

15 THE COURT: Yes, sir.

16 MR. MCMILLIAN: Your Honor, I just think it would be
17 clear when the Court hears the phone calls that, they're
18 not seeking an alibi witness that's actually an alibi
19 witness. They're seeking to create an alibi witness that
20 wasn't actually a witness to anything. And I think it's
21 clear from the phone calls that's what they're doing.
22 Attempting to get somebody to come to court to lie for
23 them.

24 THE COURT: Is it possible to email a file to me?

25 MR. MCMILLIAN: I'm not sure that, we have some kind

1 of file limitation on our server, but I'm not, I'm not
2 sure that that's going to prevent it or allow us to email
3 it to you. But we could probably get you a copy of it
4 within the next few minutes.

5 THE COURT: Like on a thumb drive or something?

6 MR. MCMILLIAN: Yes, Your Honor.

7 THE COURT: I just don't want to take evidence home
8 with me.

9 MR. MCMILLIAN: We can make you a copy of what's
10 proposed.

11 THE COURT: Okay.

12 MR. MCCARLEY: I have no objection to that, Your
13 Honor.

14 MR. BUSH: No objection, Your Honor.

15 THE COURT: All right. Well then let's see -- y'all
16 meet me here tomorrow. I'll get here as soon as I can but
17 be here at 1:30. Okay?

18 MR. MCCARLEY: Yes, sir.

19 MR. MCMILLIAN: Yes sir, Your Honor.

20 THE COURT: Have your witness to come testify. And
21 let's try to start at 1:30 and then I told the jury 2:15?
22 Is that what I told them? Did I say 2:15?

23 MR. MCMILLIAN: Yes, sir.

24 THE COURT: All right. The funeral is at 11:00.
25 It's, it's in Aiken so. They're going to bury him before

1 the funeral. Before the service so I don't, I don't think
2 I have to stay around after the memorial service for any
3 length of time. I think I've got arrangements to have my
4 crowd taken back to Edgefield so I'll see y'all at 1:30.

5 (Whereupon, the trial will resume the next day at
6 1:30 p.m.)

7 August 8, 2018

8 THE COURT: All right. We're back on the record.
9 Both Defendants are present. I listened to the recordings
10 last night. I am ready to hear whatever I need to hear.

11 MR. BUSH: Your Honor, I'll start for the defense of
12 Mr. Jordan. First and foremost, I'd like to just, I
13 guess, preserve the arguments that I did make yesterday
14 which I'll add to them here today on the record. First
15 and foremost, under relevancy of these phone calls, I
16 truly believe these calls are absolutely irrelevant. Mr.
17 Jordan at this time has not provided any alibi witnesses.
18 He hasn't provided an alibi at all. He hasn't testified,
19 hasn't called any case himself and the State's trying to
20 enter this evidence under the assumption that he will.
21 Essentially, Your Honor, what I believe the State actually
22 said yesterday is that they're going to try to use this
23 evidence, these phone calls as, as something where they're
24 trying to prove that Mr. Jordan was lying or asking people
25 to come to court to lie. Well, that hasn't happened in

1 this trial. They haven't verified any of that. They
2 don't have those witnesses subpoenaed to come and testify
3 to that fact. They weren't on the witness list when this
4 trial started. Essentially, Your Honor, on those phone
5 calls he never says he's asking people to lie for him.
6 Those words never come out of his mouth. And I think
7 that's what the State's relying on. You know, if Mr.
8 Jordan were to take the stand, Your Honor, I'm sure those
9 calls could probably be subject to, to use on
10 cross-examination if they become relevant at that time.
11 But before he does or before any witness that were to
12 become an alibi or to take the stand, those calls are
13 absolutely irrelevant. Moreover, I believe that those
14 calls, those jail phone calls are highly prejudicial. In
15 fact, more so prejudicial than any probative value that
16 they may have. Again, to reiterate, they're trying to
17 enter these calls preemptively before any defense has been
18 made by Mr. Jordan in this case, before he himself has
19 testified. In fact, I kind of feel like if they're
20 playing these, these phone calls and are trying to put
21 these phone calls in, that it's almost forcing Mr. Jordan
22 to testify to exonerate himself which violates his Fifth
23 Amendment right to remain silent in this trial. And, Your
24 Honor, I think what makes it worse is that it's almost
25 burden shifting. And it's improper. Frankly the jury who

1 may not hear from Mr. Jordan otherwise could give these
2 phone calls the weight of testimony in this trial. And
3 they're not sworn statements. These jail phone calls are
4 not given under oath. And without Mr. Jordan testifying
5 it, it allows the State to spin these calls however they
6 want with words that actually aren't on the call. For
7 those reasons on relevancy and prejudicial, I mean, I'm,
8 Your Honor we find that, we believe that these calls are
9 highly prejudicial. More prejudicial than any probative
10 value that the State may have to offer. I think they're
11 trying to offer them to show that Mr. Jordan was trying to
12 get people to lie for him. That's simply not true. It's
13 not said on the call. And if it were to be allowed in it
14 would be highly prejudicial. More prejudicial than it is
15 probative, Your Honor. Lastly, there's other
16 conversations on these phone calls. Other people who are
17 talking in the background. Those statements, Your Honor,
18 are hearsay. They're out of court statements. They are
19 being offered for the truth of the matter asserted.
20 Again, the State's trying to use these statements to say
21 that Mr. Jordan was trying to get people to come to court
22 to lie for him. And they didn't subpoena any of those
23 witnesses. They're not on their witness list. They're
24 trying to get their statements in improperly without them
25 being present in court and I believe that their statements

1 as well are also hearsay. But to reiterate, Your Honor, I
2 believe that the calls themselves should not come in
3 because they're absolutely irrelevant and they're highly
4 prejudicial. Thank you.

5 THE COURT: Ms. Steiner.

6 MS. STEINER: Thank you, Your Honor. We believe that
7 you should find that the jail calls should not be allowed
8 in based upon them not being relevant with Rule 401.
9 There is no discussion of alibi with anyone at this point
10 and it's completely improper for the State to be using it
11 in their case-in-chief. It could be used to rebut if our
12 client decides to testify, but otherwise it's completely
13 not relevant. Furthermore, in our jail call, there is
14 conversation about the lady on the phone being cold, about
15 her mother, about going to Pizza Hut, about Mr. Moss
16 needing a hygiene pack. A bunch of other things that are
17 completely not relevant at all to this case. Also
18 including the beginning and ending of the call where it
19 talks about it being a collect call from Aiken County
20 Detention Center. We also believe that you should find,
21 for some reason if you're considering it to be relevant,
22 we believe that the probative value is substantially
23 outweighed by the danger of unfair prejudice and it
24 misleads the jury. It's unfairly prejudicial because it
25 is a jail call. It has all the DTL information on it.

1 They're going, the State intends to call Captain Gallam to
2 authenticate the jail call. And this all matters because
3 we take great lengths to make sure that we shield our
4 client's being in jail from the jury. My client's sitting
5 here in a dress shirt and dress pants, not in a red
6 jumpsuit. He's not shackled today. All of this adds to
7 the prejudicial value of these jail calls. Also in our
8 jail call it references Mr. McCarley and what his
9 statements are. Saying that there's a lack of physical
10 evidence. This goes to the fact that what an attorney
11 says is not evidence and opening and closing arguments
12 aren't taken into evidence, so this is making Mr.
13 McCarley's words be part of evidence. Also, there is a
14 lot of swearing in our transcript, in our call. Things
15 such as if they goddamn, other words, GD, the S. word,
16 other words are used. And also the woman in the call is
17 referenced which is highly prejudicial. The woman in this
18 call also curses multiple times, curses much more than Mr.
19 Moss does. And her cussing and cursing is very
20 prejudicial and absolutely not probative. It also
21 violates Rule 403 because it misleads a jury and is
22 confusing. An innocent person wouldn't have an alibi.
23 The State can't assume that the jury will look at the call
24 and draw the worse possible inference. The jury can be
25 mislead to think, you know, even if this guy did, did do

1 this crime he doesn't need to be on the streets just based
2 upon what they hear on the phone call. This suggests that
3 the jury would find a verdict that would be improper.
4 Find a verdict on an improper basis because it confuses
5 the jury. The call also could be used to say that, Mr.
6 Moss asking this lady to come testify doesn't mention her
7 lying, doesn't mention anything improper. So in no way
8 does this phone call actually show how a Defendant is
9 guilty. This doesn't add to his guilt. And furthermore,
10 the statement about Mr. McCarley in here will also further
11 confuse the jury. The third prong of my argument is that
12 the State is simply using these calls to show my client's
13 bad character which is a violation of Rule 608. Mr. Moss
14 doesn't have any other convictions that could be used to
15 bring in bad character evidence. The Defense hasn't
16 offered any good character evidence at this point so it's
17 completely improper to bring in bad character evidence.
18 But the swearing, the woman talking about her actions and
19 her bad character is all imputed on Mr. Moss. And the
20 fact that Mr. Moss is incarcerated and it is a jail call
21 is also showing bad character that should not be put onto
22 Mr. Moss. There is little money that's on his phone
23 availability and it's showing that he's poor and the State
24 is using the fact that he's poor against him. The last
25 prong of my argument is that this is hearsay. There's a

1 statement that Mr. McCarley made in the recording which is
2 clearly hearsay. And the woman on the recording is never
3 identified other than Stank, (phonetic). She hasn't
4 appeared in court. There's no way to ID her and it's just
5 not verified. So everything that the woman says is
6 hearsay. Thank you, Your Honor.

7 THE COURT: What's the State's position?

8 MR. GRIMES: Your Honor, we passed up several cases
9 and I just want to, first of all go over that the phone
10 calls basically depict the attempt to create a false
11 alibi. It's apparent from the face of the phone calls,
12 particularly Mr. Jordan's case, where he tells the first
13 person whose reference is Nina, that she's the only person
14 that can testify to this alibi. When that falls through,
15 he says, well, do you think Angel will do it. And then
16 ultimately the final two phone calls are in relation to a
17 third person, Tia who is going to present this alibi. So
18 initially he says that Nina's the only person that can
19 testify to the alibi. And then he says well, if you won't
20 do it for me all you would have to say is this, this and
21 this about this particular day and do you think Angel
22 would do it. And searched around and ultimately finds
23 this person, Tia, who he's going to get the dates and the
24 time and what the alibi actually is too so she can come
25 testify about what the alibi is. It's facially apparent

1 that he's creating or attempting to create a false alibi.
2 It doesn't need any other sort of addition to it. With
3 Mr. Moss's phone call, it's also apparent that he's
4 created a false alibi. The person he's talking to, it's
5 clear, he doesn't think that she knows what the alibi
6 should be. And so he tells her that, don't worry about
7 anything, I'm going to send you what all the stuff to say
8 and you're going to get a text about all the stuff you
9 need to say when you come and present this alibi. Your
10 Honor, they're both facially apparent that it's an attempt
11 to create a false alibi. So, where does that get us?
12 Well, I passed up several cases. And a lot of them are
13 about the evidence of consciousness of guilt. In South
14 Carolina we recognize evidence of consciousness of guilt.
15 So, the Orozco case, it's a 2011 case. And I would point
16 Your Honor to, it's labeled on the bottom right hand
17 corner, page five. In the middle of that page where the
18 numbers are four, five and then the paragraph begins, I
19 think it's the third full or second or third full
20 paragraph. And this case is about evidence of attempted
21 suicide and the Court's trying to determine whether that
22 falls into the category of evidence, consciousness of
23 guilt. And they decide that it does, and they indicate,
24 the question however is easily analogized to other types
25 of circumstantial evidence of guilt based on the accused

1 behavior after the crime. That's exactly what we're
2 talking about here. And it says, first our Courts have
3 held that as a general rule any guilty act or conduct on
4 the part of the accused is admissible as some evidence of
5 consciousness of guilt. The point of this is in relation
6 to both Defendant's argument that it's not relevant
7 because they haven't raised an alibi. This is not in
8 rebuttal of their alibi. And certainly, potentially it
9 could be admissible in rebuttal with an alibi, but that's
10 not what it's being offered for in the State's
11 case-in-chief. It is independently probative of their
12 guilt. It's also independently relative, relevant because
13 it's evidence of their consciousness of guilt. And that
14 fact alone makes it admissible in the State's
15 case-in-chief whether they ever put up an alibi defense or
16 not. And it should be likened to attempted suicide,
17 intimidation of a witness, attempted flight, all of which
18 in similar situations where the evidence is not admitted
19 to impeach the Defendant statements. It's not admitted to
20 impute the Defendant's character. It's all admitted as
21 evidence of consciousness of guilt. And that's what this
22 evidence is and should be considered in this case, Your
23 Honor. The Orozco case cites right in that area, or in,
24 actually in that sentence, the McDowell case, and I passed
25 that case up to Your Honor. And on what's listed in the

1 bottom right hand corner as page four/five, about
2 two-thirds of the way down that page, the McDowell case
3 indicates as a general rule any guilty act, conduct or
4 statements on the part of the accused are admissible as
5 some evidence of consciousness of guilt. It's not limited
6 to attempted suicide, intimidation of a witness, attempted
7 flight, those are all recognized areas. But this goes
8 further and says any guilty act, conduct or statements on
9 the part of the accused are admissible as some evidence of
10 consciousness of guilt. And then goes on to talk about
11 this Munger case and goes further and says that false and
12 conflicting statements and attempts to run away have been
13 regarded as some evidence of guilty knowledge and intent.
14 And then in the next paragraph it goes further and says,
15 the statement allegedly made was to avoid detection of
16 guilt and as such was properly admitted into evidence.
17 That's the same thing that we're dealing with here. They
18 are trying to avoid detection of guilt by creating a false
19 alibi. And it's clear from, from that case that this type
20 of evidence ought to be considered in the State's
21 case-in-chief. It's relevant on its own, independently
22 probative, whether they put up a case or not, of the
23 Defendant's consciousness of guilt and should be
24 admissible. I presented some other cases, Your Honor.
25 Two of them are from Georgia. The first one, Ballard v.

1 State and what is marked as page two of three on that case
2 in the bottom right hand corner and about the middle of
3 the page it talks about and this is just, for an example,
4 Your Honor. Obviously, this is not a South Carolina case
5 and it is kind of analogous to our situation. But there
6 was testimony in that trial that the Defendant had
7 threatened the witness to create an alibi. Essentially to
8 say that she had walked with him to the bus stop after the
9 shooting and that was admitted in to show consciousness of
10 guilt. And that Court indicated, this is the Supreme
11 Court of Georgia, indicated that that was properly
12 admissible. The next case I think is the Bridges case,
13 also the Supreme Court of Georgia. And what's marked as
14 four of eight in the bottom right hand corner in the third
15 paragraph down, discussed a situation in where an
16 appellant had asked his cellmate to either kill the
17 State's witnesses and/or assist the appellant in creating
18 a false alibi. And that was evidence in that case, Your
19 Honor, in regard to creating a false alibi. And then
20 finally, another case I submitted to Your Honor, is the,
21 it's a Second Circuit Court of Appeals case. It's Henry
22 vs. Poole. And this is what, and I don't know what they
23 call it in Federal Court, but it's equivalent to a PCR
24 type case for us. And it may, they may call it the same
25 thing, I am not sure. But on page 17 of that opinion,

1 that's 17 in the bottom right hand corner of the handout I
2 gave Your Honor. In the third full paragraph right where
3 the number 13 is, they're talking about, and what happened
4 in this case was the defense attorney had put it, actually
5 put up a witness whose alibi was indicated to be false
6 during the trial. And they're talking about the fact
7 that, that that was not proper for the defense attorney to
8 do that or wasn't, it wasn't acceptable representation.
9 But anyway, for that part of the sentence, and the second
10 part of the sentence it indicates for it is generally
11 acknowledged that an attempt to create a false alibi
12 constitutes evidence of a Defendant's consciousness of
13 guilt. And it has some citations of a number of cases.
14 And then toward the bottom of that paragraph it indicates
15 it is axiomatic that exculpatory statements when shown to
16 be false are circumstantial evidence of guilty
17 consciousness and have an independent probative force.
18 Your Honor, all of these are to show that there is a
19 reason to admit this evidence in the State's
20 case-in-chief. They haven't presented an alibi in this
21 case. Although, they have noticed us, both parties have
22 noticed us with potential alibi witnesses. So that
23 potentiality is there for them to present an alibi.
24 However, whether they present an alibi or don't present an
25 alibi, this evidence is admissible as evidence of

1 consciousness of guilt. It's independently probative.
2 It's independently relevant to their guilt. And it is, as
3 we know from Rule 402, any relevant evidence is admissible
4 except as otherwise provided in the Constitution,
5 Constitution of South Carolina statutes, the rules of
6 evidence or any other rules of Court. And, Your Honor, it
7 just doesn't appear that any other rules, statutes, South
8 Carolina Constitution or United States Constitution would
9 prevent this evidence from coming in. Particularly when
10 the Defenses is indicating that their objection is on
11 relevance and the finding of the Court should be that this
12 evidence is relevant of consciousness of guilt which is
13 widely accepted as admissible evidence in, in the
14 prosecution with regard to indications that, I think Mr.
15 Moss' lawyer has indicated that the Defendant says what
16 Mr. McCarley says. Of course, none of this is offered for
17 the proof, to prove the truth of the matter asserted. In
18 fact, it's clear that the, what the Defendants are trying
19 to do in the phone call is not truthful. So we're not
20 trying to prove that they were somewhere else or that
21 these alibis are truthful. So none of it's offered to
22 prove the truth of the matter asserted. In fact, it's
23 offered to prove that what they're trying to do is
24 something false and it's a, it's evidence of a guilty
25 consciousness. And so it's not offered to prove the truth

1 of the matter asserted. So the hearsay objections were
2 inapplicable to this type of evidence. I'm not sure if
3 I've covered every single thing that they've mentioned,
4 but if there's something that the Court's considering that
5 they said I'd be happy to address it.

6 THE COURT: Yes, sir.

7 MR. BUSH: Thank you, Your Honor. This is for
8 Defendant Jordan. Your Honor, one of the elements that
9 they have to prove and I think Solicitor Grimes just
10 indicated to Your Honor, that they have to prove that
11 these statements are false. Now, they haven't done that.
12 The State could've called the people on the other ends of
13 those phone calls and one of them at least I think on the
14 other end of Mr. Moss' phone call, they've got on their
15 witness list. They could've called these witnesses. They
16 could've subpoenaed those witnesses. They could've got
17 them to testify that those statements were indeed false,
18 but they have not laid any foundation that those
19 statements are false. They're just trying, essentially,
20 they're trying to shift the burden back to us to prove
21 that they are false. And Your Honor, I think that's
22 improper. Again, the evidence that they're relying on to
23 say that this is a consciousness of guilt is purely
24 circumstantial. They have nothing to back it up other
25 than their opinion of the phone calls. Your Honor, again,

1 we strongly believe that at this time these calls are not
2 relevant in any way shape or form. And that to allow them
3 in would be unfairly prejudicial and that unfair prejudice
4 would substantially outweigh any probative value that the
5 State believes that they have.

6 THE COURT: Ms. Steiner.

7 MS. STEINER: Thank you, Your Honor. I myself have
8 transcribed Mr. Moss' call and I have a copy for the State
9 and Your Honor if you would like that.

10 THE COURT: Sure.

11 MS. STEINER: Your Honor, our call is separate and
12 distinct to Mr. Jordan's call. There is a discussion of
13 alibi with potential witness. However, there is nothing
14 in the statement that shows that it is false. Similarly,
15 to what Mr. Bush said there has been no foundation laid
16 for this phone call. The woman on the call itself has not
17 been identified. There's no information as to what phone
18 number he's calling. There's no foundation for this call
19 at all. And there's no proof that the State has that
20 this, that this alibi witness is potentially being coerced
21 into telling a false alibi. The State can't be clear
22 about what Mr. Moss was thinking or what this woman was
23 thinking or knew. There's no way for them to know what
24 Mr. Moss was thinking and imply that it's a false alibi.
25 There are alibi's that are true and as I stated before, an

1 innocent person would not be searching for an alibi
2 witness. In the transcript itself Mr. Moss says that
3 there's no physical evidence against him. So he's looking
4 to help his own defense in asking this lady to testify for
5 him. He's not saying that it's a false alibi or asking
6 her to lie at all. So also going back to it being
7 relevant. There is a lot of information that's not
8 relevant. The probative value is completely outweighed by
9 the danger of unfair prejudice and that it misleads the
10 jury for all reasons that I stated before. And it does
11 have the bad character. I still believe that it is
12 hearsay based on the fact that we don't have concrete
13 information as to who this other person is. Thank you,
14 Your Honor.

15 THE COURT: Anything else from the State?

16 MR. GRIMES: Your Honor, I don't know the accuracy of
17 this transcript, but I think even on what's shown on here,
18 it's clear that Mr. Moss doesn't think that the person
19 that he's talking to knows what his alibi is or should be.
20 And that he's going to send her what the alibi is so that
21 she can go tell it to Mr. McCarley. I think it's clear
22 from the face of these phone calls, from the set of three
23 for Mr. Jordan and from the ones of Mr. Moss, they don't
24 need anybody to come testify about what's going on there.
25 It's clear from the face of them that it's an effort to

1 create a false alibi. And that effort is independently
2 probative of their guilt as evidence of consciousness of
3 guilt.

4 THE COURT: I listened to these recordings last night
5 and I honestly, at this point, I don't know who's talking
6 to who. So I don't know what kind of foundation I've got
7 to allow these tapes in because I didn't know who was
8 talking to who. At one point I thought I heard them say
9 dates in April and May. Now, I may have been wrong about
10 that, but --

11 MR. GRIMES: Your Honor, if I may clarify. Mr.
12 Jordan's phone call in one of their early phone calls,
13 particularly, he said, he gives a date that he wants the
14 alibi to be. And that's one of the things that's, that's
15 evidence in it. There's a later phone call that
16 clarifies. Essentially, he says the date that I gave you
17 was wrong. It's not 5-1-17. It's 8-1-17. And 8-1-17 is
18 the date that this occurred. So essentially, he's
19 clarifying that the date I gave you earlier to tell them
20 was my alibi is wrong. I need you to tell them it's this
21 date. It's August 1st, 2017. And he says 8-1-17. But
22 that's part of the purpose for one of the, one of the
23 three calls is to help clarify that point. That initially
24 when he starts to try to create this alibi, he gets the
25 date wrong and then later he tries to clean it up

1 because--

2 THE COURT: Who is he talking to?

3 MR. GRIMES: Well, on the first call he's talking to
4 his sister who does a three-way call connecting in this
5 person Nina. And Nina is the person that he is going to
6 try to get to come do the, testify to the alibi. And
7 ultimately, he talks about Angel in that call. She's not
8 actually on the call. But there's multiple people talking
9 and participating in this phone call. The Co-Defendant is
10 going to testify and identify the voice of Denzil Jordan
11 as being the person making these incriminating statements.

12 MR. BUSH: Your Honor, if I, if I could be heard on
13 just that point. Mr. Grimes indicated I think in that
14 phone call where the date 8-1 is mentioned that he
15 clarifies on that phone call, oh, I didn't mean May 1, I,
16 I meant, that's, that's not on the phone call, Your Honor.
17 That, that's nowhere on that phone call. He says, he does
18 say May 1 in one of the phone calls and he does say 8-1 in
19 another one. He doesn't say, oh hey, you know, I meant to
20 tell you 8-1 and not 5-1. That's, that's wrong. That
21 actually was never said on that. Again, that's, that's
22 Mr. Grimes using circumstantial evidence to try to make
23 his point that these calls are somehow relevant and/or
24 probative. And Judge, you know, we stand behind the fact
25 that, that they're not.

1 THE COURT: All right. I had an issue in the, I'm
2 assuming what you wanted to do, and assumption could be
3 entirely wrong, and you certainly are encouraged to
4 correct me. You are wanting to introduce before the jury
5 based on somebody authenticating that this is a recording
6 of a conversation from the jail. That the jury then hears
7 the recording without any explanation of who they're
8 talking to. And to his point about it being false, no
9 indication at this point that it's false. For me to
10 accept that it's false, I have to have either accepted the
11 State's position, period, which goes to their burden
12 shifting argument or I have to have some kind of
13 foundation to tell me this is what was happening. These
14 cases you handed up to me today, I, I've skimmed them as
15 best I can in the limited time I had. But in one of them
16 you have a situation where the, the Defendant admitted
17 that he tried to set up a false alibi. And there was
18 testimony about it apparently from both sides. It, I'm
19 having a real problem right now with the foundation. Ms.
20 Steiner said you can't put it in your case-in-chief. It
21 may, the relevancy issue as far as what you argued to me
22 about evidence about a consciousness of guilt being
23 admissible, I don't take issue with that. At one time
24 they're talking in some kind of code where he says you
25 know what that means. And I don't know what it means. So

1 how is the jury going to know what it means unless
2 somebody comes in here and explains what those numbers he
3 read off meant. Not telephone numbers, just, I think it
4 was numbers. But he said, do you know what that means.
5 My assumption was that he was trying to set up a false
6 alibi. But I don't know that I could let it in at this
7 point. Now, I don't know what your Co-Defendant's going
8 to testify about. Other than just what you've told me in
9 court, but --

10 MR. GRIMES: So she would testify that the person
11 making those incriminating statements on the phone call,
12 in, on Mr. Moss' phone call is Mr. Moss and the person
13 making the phone call or making the statements. On Mr.
14 Jordan's phone call is Mr. Jordan. So the jury would know
15 the person making the statements that are incriminating.
16 And the State's position is, it's clear from the face of
17 the call or from the, it's clear from the call itself that
18 the alibi is false. Particularly in Mr. Jordan's case
19 because he's already told one person that they're the only
20 person that can testify to this alibi and then when they
21 don't do it, he talks about getting another person to
22 testify. Well, if the first person is the only person
23 that can do it and they don't want to do it, the second
24 person can't be truthfully testifying to an alibi. And
25 still yet a third person to testify to this alibi, when

1 he's already told one person, they're the only person that
2 can do it.

3 THE COURT: I understand. I understand the practical
4 matter where you coming from but I don't see how it comes
5 in right now. I, there's no, there is no authentication
6 of anything at this point. My assumption, as I said, is
7 that you are going to put up somebody who has familiarity
8 with this process of the call and the recordkeeping and
9 then offer that into evidence. I don't know what that
10 person's going to say about how they know who made the
11 call. I don't know who's on the other end except for --

12 MR. GRIMES: But I'm not, I'm not going to try to
13 mislead you. We're not going to be able to authenticate
14 the person that's on the receiving end of the phone call.
15 So we can authenticate where the call was made from. That
16 they used their PIN number, their voice identification to
17 make the phone call and the Co-Defendant can identify the
18 person making the incriminating statements. The recipient
19 in the phone call, you know, we're pretty sure who it is
20 but we're not going to be able to authenticate that
21 person.

22 THE COURT: Well, see, we're in criminal court.
23 Pretty sure this just ain't going to cut it. I mean, I
24 understand what you're arguing. And I listened to them
25 last night and I'm not saying what you're arguing to me is

1 not a valid reading of what's going on. The problem is,
2 like I said, we're in criminal court and I've got to have
3 a foundation. I got, I've got hearsay issues. I've got
4 Rule 403 issues about prejudicial effect outweighing
5 probative value. I've got this issue about if you show
6 that it's false, well, as to one, you've made an argument
7 that it is, it is false because he says the only one who
8 can do this is you and if you won't do it, I'll try to get
9 someone else to do it. I don't know where that leaves the
10 other Defendant. And like I said, you've got language
11 where they're skirting around. The issue, one seems to
12 skirt around it better than the other one does. But at
13 this point, I don't see how I can admit that into
14 evidence. I just don't think there's a foundation for it.

15 MR. GRIMES: Well, I just, our next witness is going
16 to start to lay the foundation. And I told you the extent
17 of the foundation we can lay.

18 THE COURT: Sure, I understand.

19 MR. GRIMES: I guess that's kind of our predicament
20 at this point.

21 THE COURT: I'm probably going to have to have
22 in-camera hearings to make any kind of determination.
23 Because if the, if they're not going to come in
24 eventually, then whenever somebody gets up here and starts
25 talking about jail phone calls is irrelevant.

1 MR. GRIMES: That's, that's correct, Your Honor. So,
2 I'll just tell you, we have a witness here that's going to
3 say basically that these are recordings from jail. They
4 were made from the jail. They keep those. They record
5 all the phone calls. So that's what the phone calls are.
6 And the Co-Defendant is going to identify their voices.
7 And that's the extent of the foundation that we will
8 provide. And our position is that that is sufficient to
9 identify the Defendant's voice and the Defendant's
10 incriminating statements.

11 THE COURT: Okay.

12 MR. GRIMES: As far as the rest of it, it's not
13 admitted for any other reason. So who he's actually
14 making those statements to, it's our position isn't
15 relevant. It could be anybody.

16 THE COURT: I have to accept that your side is
17 absolutely correct in order for me not to have the
18 determination, in order for me to make a determination
19 that it is a false alibi. You see the, you see the
20 conundrum I'm at. I mean, I understand you believe, and
21 you have to believe, it would be unethical of you doing
22 otherwise, that your version of the facts is entirely
23 true. He's presumed innocent and he's presumed innocent.
24 So you are going to have some talk about, with somebody
25 about come into court and have and give me an alibi. With

1 all the uncertainty and all the wording that's going on,
2 and I'm supposed to be able to make a determination that
3 that is a false alibi. I mean, I wasn't born yesterday.
4 I understand what's going on, but I'm an umpire. I've got
5 to call them where I see them and, and I don't see this as
6 across the plate. Not yet. I have, if I hear your other
7 witnesses I may have a different view. If they take the
8 stand it may become --

9 MR. BUSH: Well, if they take the stand, also we'd
10 have a different, we'd have a different basis to admit
11 them.

12 THE COURT: Sure. All right. I'm going to do the
13 best I can with what I got. At this point, the
14 objection's sustained. It may not be sustained later, but
15 it's sustained now. I think I set up a minor settlement
16 or something or my law clerk did.

17 (Whereupon, State's Exhibits 7 and 8 were marked for
18 identification only.)

19 MR. GRIMES: Your Honor, Your Honor, if I may,
20 they've indicated that they have some other motions. I'd
21 like to know what they are so we can address them.

22 THE COURT: I'll hear them when I hear this minor
23 settlement.

24 (Whereupon, a short break was taken on this case to
25 hear another matter.)

1 THE COURT: All right. So at this point I don't
2 think there's proper foundation. I have issues about the
3 authenticity because that, I'm assuming that will be
4 resolved. I have the questions about hearsay that are
5 unresolved. I have strong 403 issues about the
6 prejudicial effect substantially outweighing any probative
7 value. As far as relevancy, I understand the concept in
8 general and do not dispute it as I mentioned earlier.
9 It's evidence of consciousness of guilt is admissible but
10 I think there has to be a stronger showing by it being
11 false before I could admit it, particularly with the 403
12 issues. All right. So now you want to hear their other
13 objections?

14 MR. GRIMES: We've had some recent discussions and I
15 think they may need a couple minutes to talk about another
16 matter, Your Honor.

17 THE COURT: To me or among themselves?

18 MR. GRIMES: Among themselves.

19 THE COURT: All right. Court's in recess.

20 (Whereupon, a short break was taken.)

21 THE COURT: Is the State ready for the jury?

22 MR. MCMILLIAN: We are, Your Honor.

23 THE COURT: Mr. Bush, are you ready for the jury?

24 MR. BUSH: I believe at this time we are, Your Honor.

25 THE COURT: Mr. McCarley?

1 MR. MCCARLEY: Yes, Your Honor.

2 THE COURT: Bring the jury in.

3 (Whereupon, the jury came into open court at
4 approximately 3:13 p.m.)

5 THE COURT: Ladies and gentlemen, I apologize for the
6 delay, we have been working trying to get you out here.
7 But we are ready to continue. Call your next witness,
8 please.

9 MR. MCMILLIAN: The State would call Keondra McKie.
10 KEONDRA McKie, being
11 first duly sworn, testified as follows:

12 CLERK OF COURT: State your name and spell your last
13 name for the Court.

14 MS. MCKIE: Keondra McKie, K-E-O-N-D-R-A, M-C-K-I-E.

15 DIRECT EXAMINATION

16 By Mr. McMillian:

17 Q Good afternoon, Ms. McKie, how are you?

18 A I am good, how about you.

19 Q I can't complain. I am going to start with, do you
20 recognize the two Defendants here today?

21 A Yes, sir.

22 Q What is Jonathan Moss wearing?

23 A A white, kind of like bluish shirt.

24 Q Is he seated on the far side?

25 A Yes, sir.

1 Q And what about Denzil Jordan?

2 A Blue shirt with a yellow tie.

3 Q And he is seated there at the table closest to me?

4 A Yes, sir.

5 MR. MCMILLIAN: Your Honor, let the record reflect
6 that she has identified both Defendants.

7 THE COURT: It is so noted.

8 Q How long have you known JD?

9 A About going on six years now.

10 Q And I guess how do you know him exactly?

11 A I met him in my sophomore year in high school, ever
12 since then we just communicated back and forth and we made
13 it into a relationship.

14 Q So y'all dated for a little while?

15 A Yes, sir.

16 Q And were you living with him in August of last year?

17 A Yes, sir.

18 Q And where were y'all living?

19 A Barton Village on Kenberry Drive.

20 Q And how do you know the other Defendant, Mr. Jordan?

21 A They are brothers and I know him through JD.

22 Q Are they actual brothers?

23 A They are not actually brothers but they have been
24 together since they were little.

25 Q So you have known Mr. Jordan just about as long as

1 Mr. Moss?

2 A Yes, sir.

3 Q And what was the nature of your relationship with Mr.
4 Moss in August, well late July and August of last year?

5 A We were still together, I moved in in May so we were
6 still together.

7 Q And was there anybody else that lived in the house?

8 A Yes, sir.

9 Q And who was that?

10 A His baby's mother.

11 Q Now, I want to go back to August 1st of 2017. Can
12 you tell us a little bit about what you remember or how
13 that day started for you?

14 A Well that day I was just waking up. And I woke up
15 to, Moss was in the bathroom and he had my phone. And I
16 asked him what he was doing, he was texting Daniel off of
17 my phone. And he was just like, I am about to show you
18 how to get money. So he was responding back to Daniel as
19 it was me.

20 Q Let me ask you one question. Is this the first time
21 he talked to you about Daniel?

22 A No. He would bring him up like, because me and
23 Daniel, like, we are close. And Daniel sometimes would
24 text my phone at a certain time and he would ask me
25 questions about him, about what we have going on,

1 everything like that.

2 Q And you mentioned that Mr. Moss told you he was going
3 to show you how to get some money. Had he mentioned
4 anything like that about Mr. Butler before?

5 A Not that I know of.

6 Q So you woke up and Mr. Moss is texting Mr. Butler.
7 What happened next?

8 A Well, after that he was just told me what was about
9 to happen. That Daniel was about to come and give me gas
10 money for my car which I didn't have gas in my car at all.
11 He was about to come pick me up and I wasn't going to
12 drive back to North Augusta with him, he was to pick me up
13 and I would ride back to North Augusta with him.

14 Q And why was that?

15 A Because that is when everything was about to come up,
16 they would come and follow us to North Augusta.

17 Q I apologize. So what was going to come up, what was
18 going to happen?

19 A For Daniel to get robbed.

20 Q Had they talked to you about robbing him prior to
21 August 1st?

22 A All what was said was, it was going to happen, it
23 wasn't any formal details that came up about it, it was
24 just going to happen.

25 Q Did Mr. Butler come over to Augusta and pick you up?

1 A Yes, sir.

2 Q And where did y'all go?

3 A We went back to his place in North Augusta at
4 Breckinridge.

5 Q And what did y'all do when you first got there?

6 A When we first got there I went to go see my
7 granddaddy, he stay over there, he's sick and he is on
8 dialysis so I saw him. We both had went over there for a
9 few minutes, probably not more than ten minutes or less.
10 And then we had went back to Daniel's apartment and, you
11 know, we was talking and having drinks. I was mixing
12 drinks together, we was just drinking and talking.

13 Q And why were y'all drinking?

14 A Because to have a good time, you know, just to have a
15 good time.

16 Q You weren't trying to get him drunk?

17 A I wasn't trying to get him drunk but kind of,
18 probably a little tipsy but not drunk.

19 Q So you and Mr. Butler are in his apartment, y'all are
20 drinking. What happened after that?

21 A Well, after that I had a phone call coming in and I
22 went outside to take the phone call. About the time I was
23 about getting ready to answer it the phone had hung up.
24 And then I had came back inside the house. So after that
25 we was, we went in the back where the bedroom was at.

1 Q And at that time you knew Mr. Moss was coming to rob
2 Mr. Butler?

3 A Yes.

4 Q Did you know Mr. Jordan was coming?

5 A Yes.

6 Q Had they talked to you about that?

7 A Yes.

8 Q Had they planned that?

9 A Yes.

10 Q Did they show up together?

11 A Yes.

12 Q What happened when they got there?

13 A When they got there, like I said, me and Daniel was
14 in the back laying in the bed. And they just came to the
15 door, Jordan was the first one that came to the door.
16 Daniel jumped over me and that is when he was hit with the
17 gun and I jumped up and I went to the bathroom. When I
18 came out of the bathroom that is when I saw Moss.

19 Q Was Mr. Jordan wearing anything to cover his face?

20 A Yes, it was a blue bandanna.

21 Q Was Mr. Moss wearing anything to cover his face?

22 A Not that I know of, not to my knowledge.

23 Q And you are one-hundred percent sure that Mr. Jordan
24 and Mr. Moss are the two people that came into that
25 apartment?

1 A Yes, sir.

2 Q So once they hit Mr. Butler with the gun what did
3 they do next?

4 A All that I remember is when I came out of the
5 bathroom and I saw Mr. Moss I went outside. And then he
6 brings me a card and he tells me to go to the ATM. And
7 whatever went on in that house while I was gone I don't
8 know.

9 Q And did you know the PIN numbers to that card?

10 A Yes, sir.

11 Q How did you know those PIN numbers?

12 A They were given to me, they were given to me from
13 Moss.

14 Q And I am going to show you what has been--

15 MR. MCMILLIAN: Permission to approach, Your Honor?

16 THE COURT: Yes.

17 Q --I am going to show you what has been marked as
18 Defense exhibit number 2 and Defense exhibit number 3 from
19 Mr. Jordan. Is that you in both of these photos?

20 A Yes, sir.

21 Q Where is Mr. Moss and Mr. Jordan while you are at
22 this ATM?

23 A They are at--

24 MR. MCCARLEY: Objection, Your Honor.

25 THE COURT: Yes.

1 MR. MCCARLEY: It is speculation. She has absolutely
2 no idea where these gentlemen are while she is at an ATM,
3 a distance away that I do not know and has not been put
4 into evidence.

5 MR. MCMILLIAN: I will rephrase, Your Honor.

6 THE COURT: All right.

7 Q Where were Mr. Jordan and Mr. Moss when you left for
8 the ATM?

9 A At Daniel's apartment.

10 Q Were they holding him at gunpoint?

11 A When, I am not sure but I believe so.

12 Q When you left?

13 A Yes.

14 Q Was he tied up?

15 A I don't know about that part.

16 Q Were they holding him against his will?

17 A He wasn't able to get out so, yes.

18 Q After you went to the ATM where did you go next?

19 A After I went to the ATM I believe I went to the gas
20 station. I don't remember which gas station, it was
21 probably Greg's Gas Plus. I don't know but it is the one
22 in North Augusta. And I went there to see if I could
23 probably get some more money off the card. So after that
24 I went back to the apartment but I never went back in the
25 house. It was a second card and Moss brought me the with

1 the PIN number already. And when he brought the card to
2 me he brought me the keys to Daniel's car.

3 Q So you took Daniel's car to the ATM?

4 A Yes.

5 Q And Mr. Moss had given you that PIN number?

6 A Yes.

7 Q And did you go to that ATM?

8 A Yes.

9 Q After you went to that ATM where did you go next?

10 A After I had left that ATM, I think I went to another
11 gas station. After that I had went to KFC to see if the
12 card was still working because it wasn't no more money
13 coming off of there or anything.

14 Q Had you hit some sort of daily limit?

15 A I believe so.

16 Q And once you had gotten all the money you could get
17 where did you go?

18 A After that I went back to Mr. Butler's apartment.

19 Q And were Mr. Moss and Mr. Jordan still there?

20 A Yes, sir. When I pulled back up Moss was outside,
21 Daniel has two cars. He had a Nissan and a Crown
22 Victoria. And Moss was outside in the Crown Victoria and
23 he had stuff in his hands loading it into my car. And
24 then he had gave me some, a wet cloth to wipe the doors
25 down on Daniel's car.

1 Q Did he say anything about why he was giving you a wet
2 cloth to wipe the car?

3 A For fingerprints.

4 Q You weren't arrested that day, right?

5 A No, sir.

6 Q You remember about how long after that you were
7 arrested?

8 A Probably a few days later, I got arrested on August
9 8th.

10 Q That is a year ago?

11 A Yes, a year ago.

12 Q And where did you get arrested?

13 A I got arrested at the house we were staying at in
14 Barton Village on Kenberry Drive.

15 Q The house you lived in with Mr. Moss?

16 A Yes.

17 Q And where does that take you from there?

18 A To the police station on Walton Way in Augusta.

19 Q And did anybody from North Augusta Public Safety come
20 and talk to you?

21 A Yes, sir.

22 Q They came and talked to you for a while?

23 A Yes, sir.

24 Q And the tough fact is is that you lied to them?

25 A Yes, sir.

1 Q Why did you lie to them?

2 A Because I was protecting in some kind of way, I
3 didn't want to give them anybody's names.

4 Q Were these two friends of yours?

5 A Yes, sir.

6 Q Had they been friends of yours for a while?

7 A Yes. Well me and Moss was in a relationship.

8 Q And Mr. Jordan was Mr. Moss' best friend?

9 A Yes.

10 Q And at some point after you lied to them they
11 confronted you with these two pictures we were talking
12 about, did they confront you with these pictures?

13 A They hadn't confronted me with the pictures but they
14 told me about them but they hadn't let me see them.

15 Q They didn't let you see them but they told you that
16 you were on the camera?

17 A Yes.

18 Q And whose name did you give them then?

19 A At first I gave them Jordan's name.

20 Q And what did you say about the second guy?

21 A That I didn't know him.

22 Q That is a lie too?

23 A Yes.

24 Q Why did you give them Mr. Jordan's name?

25 A Because he was one of the other one's. Like I said,

1 I was protecting Moss.

2 Q Were you protecting Moss because you were in this
3 relationship with him?

4 A Yes.

5 Q And eventually you told them a third story, right?

6 A Yes.

7 Q Is that when you told them Mr. Moss was involved?

8 A I told them that Mr. Moss was involved when they
9 brought me mug shots. I still lied the first time but
10 then eventually said, yes, I did know him.

11 Q In fact, they asked you a bunch of times, this is the
12 guy who lives in the house with you?

13 A Yes.

14 Q And you denied knowing him?

15 A Yes.

16 Q And you told him he wasn't the one who did this with
17 you and DJ?

18 A Yes.

19 MR. MCMILLIAN: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 Q And, Keondra, here today you are telling a fourth
22 story. You are telling this jury that Mr. Moss set this
23 up?

24 A Yes.

25 Q Why aren't you covering for him any more?

1 A I have been here too long for that. And just by me
2 sitting in this jail, I am better than that and I am not
3 made for all of this at all.

4 Q Has he done anything to try to get you not to come
5 here and talk today?

6 A There was plenty of times when, as a matter of fact,
7 Monday, they had came to court. They both sent messages
8 back with one of the females and to tell me to be quiet
9 and don't say anything.

10 Q You and I have talked several different times in the
11 lead up to this trial, haven't we?

12 A Yes.

13 Q Have I ever made you any promises?

14 A No.

15 Q Have I ever offered to be lenient with you in any
16 way?

17 A No.

18 Q In fact you have all the same charges that the two of
19 them have as well as some additional charges?

20 A No. I have on two of the same charges they have and
21 plus the other five for the car.

22 Q But I haven't made you any promises?

23 A Right.

24 Q And I haven't told you what to say?

25 A Correct.

1 Q Why are you here to cooperate?

2 A Because it would make it easier on me.

3 Q So you do hope to get something?

4 A Yes, I am not saying that I won't get anything.

5 Q But, again, I haven't made you any promises?

6 A Correct.

7 MR. MCMILLIAN: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 Q Ms. McKie, I want to circle back to August 1st at Mr.
10 Butler's apartment. Let's go back a little bit before
11 that. What made Mr. Moss want to rob Mr. Butler?

12 MR. MCCARLEY: Objection, Your Honor, calls for
13 speculation.

14 THE COURT: Lay a foundation.

15 Q Did Mr. Moss tell you why he wanted to rob Mr.
16 Butler?

17 A Not that I know of, he just said it. Like I said, me
18 and Daniel are close and we were communicating back and
19 forth. And we have been knowing each other for about
20 three years. His baby's mother is my step-sister.

21 Q Did Mr. Moss show you anything, tell you anything
22 about why he wanted to rob Mr. Butler?

23 A Not necessarily.

24 Q Did he show you any pictures?

25 MR. MCCARLEY: Objection, Your Honor, asked and

1 answered.

2 THE COURT: Overruled.

3 Q Did he show you any pictures?

4 A Not that I remember of.

5 Q Did he show you any social media posts?

6 A Not that I remember of.

7 Q Did he mention any social media posts?

8 A Not that I remember of.

9 Q Did Mr. Jordan show you any of these things?

10 A Not that I remember. Mr. Jordan actually was
11 included on that day of the incident.

12 Q What do you mean?

13 A On the day of the incident Moss called Jordan and
14 said that he needed him to ride to North Augusta with him
15 so they could handle this thing. But after that I don't
16 know what they discussed on the phone or anything like.

17 Q Now, to fast forward just a little bit, once you were
18 in the apartment what was your part in this? Were you
19 suppose to make Mr. Butler trust you?

20 A Yes.

21 Q Were you suppose to leave the door unlocked?

22 A Yes.

23 Q Did you do both of those things?

24 A Yes.

25 Q Where did y'all go when you left?

1 A We went back to Augusta.

2 Q And what did y'all do when you got there?

3 A When we got there all the things that was in the car
4 was unloaded.

5 Q And what were those things?

6 A Two TV's, Play Station Games, clothes, shoes, his
7 cell phone.

8 Q Was there any cash money?

9 A Yes, it was about \$800.00 dollars in cash.

10 Q Did you ever see a firearm that was taken?

11 A I don't remember.

12 Q What did you get out of all of it?

13 A Nothing. Just me sitting here.

14 Q You didn't get any money?

15 A Nope, no sir.

16 Q You didn't get a TV?

17 A No, sir.

18 Q What did they do with all of that stuff?

19 A Sold it. Where it went, I don't know. But it was
20 sold.

21 MR. MCMILLIAN: I beg the Court's indulgence one more
22 time.

23 THE COURT: Yes, sir.

24 Q Ms. McKie, just, which of these stories that you have
25 told is the truth?

1 A The one that I am giving now.

2 Q Answer anything Defense Counsel has.

3 THE COURT: Mr. Bush.

4 MR. BUSH: I beg the Court's indulgence for just one
5 moment, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 By Mr. Bush:

9 Q Ms. McKie, good afternoon.

10 A Good afternoon.

11 Q How are you doing today.

12 A I am good, how about you.

13 Q I am doing pretty well, thank you. Now, on August,
14 what was it, August the 8th, 2017 that you had that
15 interview with Sergeant Sherman, right?

16 A Yes, sir.

17 Q That interview last quite some time, didn't it?

18 A Yes, sir.

19 Q It was over an hour long, right?

20 A Probably so.

21 Q You remember giving it, right?

22 A Yes, sir.

23 Q And you knew you were being recorded then, right?

24 A Yes, sir.

25 Q And we are going to walk through that interview a

1 little bit and we are going to talk about the different
2 stories that you told Sergeant Sherman. Okay?

3 A Okay.

4 Q I know Mr. McMillian just indicated that you told
5 three or four stories but we are going to go through each
6 one of those. Okay?

7 A Yes, sir.

8 Q Now, do you admit or deny that you told Sergeant
9 Sherman that you were living with your dad at the time?

10 A No, sir.

11 Q You didn't say that?

12 A Not that I remember, I was living with Moss.

13 Q But you remember giving that interview that day?

14 A Yes.

15 Q And you are denying that you said that?

16 A Yes.

17 MR. BUSH: I beg the Court's indulgence, Your Honor.

18 THE COURT: Yes.

19 Q Now, Ms. McKie, I am not asking what the truth is, I
20 am asking you what you said that day. You are saying you
21 did not say you were living with your dad at the time?

22 A I did not say that.

23 Q All right. Do you admit or deny that you told
24 Sergeant Sherman that Mr. Butler is pressing you to come
25 over to his house?

1 A He wanted me to come over there but I didn't say he
2 was pressuring me.

3 Q So you are denying that you said that?

4 A Yes.

5 Q Do you admit or deny that you told Sergeant Sherman
6 that Mr. Butler was calling you every day?

7 A It wasn't every day.

8 Q Do you admit or deny telling him that?

9 A Deny.

10 Q Do you admit or deny telling Sergeant Sherman that
11 you locked that door when you walked back into that house?

12 A Deny.

13 Q Do you admit or deny that you told Sergeant Sherman
14 that you were forced to go to the gas station, like you
15 didn't have a choice?

16 A Yes, sir.

17 Q You admit saying that?

18 A Yes, sir.

19 Q And that was a lie, wasn't it?

20 A Yes, sir.

21 Q Do you admit or deny that you told Sergeant Sherman
22 that it is kind of hard to not do what somebody says when
23 they have got a gun toward your head?

24 A Yes, sir.

25 Q You did say that?

1 A Yes, sir.

2 Q And that was a lie, wasn't it?

3 A Yes, sir.

4 Q Do you admit or deny that you told Sergeant Sherman
5 that when this was all over and done with you were dropped
6 off at a hotel?

7 A Yes, sir.

8 Q And that was a lie, wasn't it?

9 A Yes, sir.

10 Q Now, after you finished that first story, officers
11 confirmed you about these lies, right?

12 A Yes, sir.

13 Q And you actually asked them, well, they asked you for
14 the names at that point, right?

15 A Yes, sir.

16 Q And do you admit or deny that you asked them if you
17 would still have to go to jail if you gave them those
18 names?

19 A Deny.

20 Q So law enforcement gives you another chance to give
21 your story?

22 A Yes, sir.

23 Q Now, do you admit or deny that you told Sergeant
24 Sherman that you planed this two days before it happened?

25 A Deny.

1 Q Do you admit or deny that you told Sergeant Sherman
2 that it was you and Mr. Jordan alone that planned this?

3 A Yes, sir.

4 Q And that was a lie, wasn't it?

5 A Yes, sir.

6 Q Do you admit or deny that you told Sergeant Sherman
7 that you planned this at a park?

8 A Yes sir, deny.

9 Q You deny it?

10 A No, I am sorry, yes I did, yes I did tell him that.

11 Q So you told him that you planned this at a park?

12 A Yes, sir.

13 Q And that was a lie, wasn't it?

14 A Yes, sir.

15 Q Do you admit or deny that you told Sergeant Sherman
16 that you planned this while playing basketball at that
17 park?

18 A Yes, sir.

19 Q And that was a lie, wasn't it?

20 A Yes, sir.

21 Q Do you admit or deny that you told Sergeant Sherman
22 that you didn't know who the other compatriot was?

23 A Yes, sir.

24 Q And that was a lie, wasn't it?

25 A Yes, sir.

1 Q You admit or deny you told Sergeant Sherman that you
2 didn't know his name?

3 A Yes, sir.

4 Q And that was a lie?

5 A Yes, sir.

6 Q You even told him that you promised that you didn't
7 know, right?

8 A Deny.

9 Q You didn't say that?

10 A I didn't.

11 Q Do you admit or deny you told Sergeant Sherman you
12 didn't know him personally?

13 A Yes, sir.

14 Q That was a lie?

15 A Yes, sir.

16 Q Do you admit or deny you told Sergeant Sherman that
17 you had never seen his face?

18 A Yes, sir.

19 Q And that was a lie?

20 A Yes, sir.

21 Q Do you admit or deny you told Sergeant Sherman and
22 Corporal Nelson that you were being totally honest, like
23 totally honest about that?

24 A Deny.

25 MR. BUSH: I beg the Court's indulgence.

1 THE COURT: Okay.

2 MR. BUSH: Your Honor, at this time I would just
3 request a sidebar.

4 THE COURT: Okay.

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 THE COURT: Ladies and gentlemen, please step in the
9 jury room, don't discuss the case. I will get you back
10 out here as quick as I can.

11 (Whereupon, the jury was excused from open court.)

12 THE COURT: At the sidebar Mr. Bush indicated that he
13 wants to play for the jury the interview recording. The
14 State was concerned that the Defense, Mr. Bush was wanting
15 to offer a transcript. Mr. Bush says he is not offering a
16 transcript but he wants to play the interview, the
17 recording. Mr. McCarley says those last ten minutes of
18 the interview are prior consistent statement therefore he
19 has an objection. So what do you all need to put on the
20 record about this.

21 MR. MCMILLIAN: Your Honor, under Rule 106, the rule
22 of completeness says that when a written recorded
23 statement or part thereof is introduced by a party, an
24 adverse party may require the introduction at that time of
25 any other part or any other writing or recorded statement

1 which in fairness would be considered contemporaneously
2 with it. To play snippets of her interview takes the
3 entire, or the statement as a whole out of context. There
4 is going to be some body language and some things that the
5 officers say that need to be considered as well as she
6 makes these statements. She also, Judge, along and alone
7 admits different versions of the same statement. Facts
8 get added essentially to, I went to Mr. Butler's house; I
9 didn't know anybody; well, I knew DJ. And then
10 ultimately, well, I knew JD or JD and DJ. The State's
11 position is that under the rule of completeness this
12 entire interview ought to be played. Finally, Judge, her
13 statement is not complete in any portion of this until the
14 very end and it ought to be played for it to be complete,
15 for the jury to be able to consider the entire picture.

16 THE COURT: Do you need to put anything on the
17 record, Mr. Bush?

18 MR. BUSH: No, Your Honor.

19 THE COURT: Mr. McCarley?

20 MR. MCCARLEY: Yes sir, Your Honor. At approximately
21 the 59 minute mark, my client begins to be discussed by
22 Ms. McKie. At that point in the prior consistent
23 statement is what she has already testified to here today.
24 We are not asking for any complex redaction or anything
25 like that, literally just to cut it off. Your Honor, I

1 have not even asked this witness any questions. At this
2 point obviously the Codefendants here are diverging the
3 interest of my client. I am not seeking to introduce
4 this. In speaking to the State's inclination towards the
5 Rule of Completeness, if they wanted this in they could
6 have put this in. Your Honor, they are not seeking, they
7 are seeking to keep testimony that hurts their case. They
8 are not seeking for anything to be complete. With that
9 being said, Mr. Bush is seeking to put this in to benefit
10 his client. Your Honor, we have no objection until it
11 harms our client, Mr. Moss. And that is approximately at
12 the 59 minute mark. I will do my best to get you an exact
13 time stamp of that, Your Honor. And it is a prior
14 inconsistent statement at that time and, I am sorry, Your
15 Honor, I am sorry, Your Honor, prior consistent statement
16 of Rule 613 from reading from (b), about half way down.
17 However a witness admits making a prior statement,
18 extrinsic evidence if the prior statement was made
19 inadmissible.

20 MR. MCMILLIAN: Just in response to Mr. McCarley,
21 Your Honor. To remove the final 20 minutes of her
22 statement is a direct violation, her statement cannot be
23 complete if we remove 20 minutes of it.

24 THE COURT: So what did she say in the ten minutes
25 period that you are objecting to.

1 MR. MCCARLEY: Your Honor, that is the first time
2 she, well, I can hand Your Honor up the transcript. We
3 had our Court Reporter, it is the first time she mentions
4 Mr. Moss by name. It is the first time she references my
5 client and she does so three to five times in the next ten
6 minutes. I may be able to tell Your Honor where that
7 first mention, I believe it is page 47. I believe it is
8 halfway down page 47, Your Honor.

9 MR. MCMILLIAN: One additional consideration, the
10 unfair part of this to the State is that they are
11 attempting to impeach Ms. McKie on not identifying their
12 clients for some hour of this statement and cut out the
13 part where she identifies both of them. That by
14 definition cannot be a complete statement.

15 THE COURT: Yes, sir.

16 MR. MCCARLEY: Your Honor, the State of South
17 Carolina, the Prosecution had this video, they chose to
18 try these two gentlemen together, that is their decision.
19 As Your Honor knows, we moved against that. We understand
20 and respect your ruling. At the same time they didn't
21 have to put themselves in this situation. And I don't
22 want my client being treated unfairly by the State's
23 decision to try these two together.

24 MR. MCMILLIAN: It seems unfair to treat the State
25 unfairly because Mr. Bush has sought to introduce this

1 statement. The State didn't intend to introduce this
2 statement. In fact that is why we put her on the stand.
3 Mr. Bush is seeking to introduce this.

4 THE COURT: I am reading this statement on page 47 of
5 this transcript. We will make this a Court's exhibit so
6 any Appellate Court can review it.

7 (Whereupon, Court's Exhibit 3 was marked for
8 identification only.)

9 THE COURT: There is a question about why she didn't
10 tell the officers about, on page 47, on page 48, she talks
11 about she was scared, she gives his name as Jonathan. And
12 then Sergeant asked Moss and she nods her head. And then
13 they ask, on page 49, so that is the second guy. Yes.
14 Jonathan Devon Moss is the question. Answer is Yes. And
15 then they start talking about the plan. It appears there
16 is inconsistency between what is in here and what she
17 testified about today concerning the plan. She testified
18 that she knew Moss and Jordan were coming to the
19 apartment. Earlier in her direct examination she
20 basically said she knew Daniel was going to get robbed.
21 That all of things said was, that it was going to go down.
22 So there is more detail in here. It seems to be
23 inconsistent with that assertion. And then the last part
24 of it is a whole bunch of talk about her father and a red
25 car versus a black car and lying about that and things

1 that haven't come out yet. Prior to that, starting on
2 page 46, they are confronting her with information. When
3 the South Carolina Rules of Evidence were implemented we
4 adopted this Federal Rule, in our Rule, 613. Prior to
5 that one party could introduce a portion of a statement
6 which could leave out a great deal of context and
7 conflicting information. And then if you were in a
8 criminal trial and the State did that you would have to
9 wait on the cross-examination to be able to go into those
10 things. Sometimes that would be a lengthy delay. So the
11 rule was implemented in South Carolina in a fairness
12 concept. The Rule is cited, related to the admission of
13 evidence about a prior statement of a witness, Rule 613.
14 I said Rule, 613 is a prior statement of a witness. The
15 Rule of Completeness has been referred to as what I was
16 mentioning earlier. So Rule 13 states, 613 states that if
17 a witness admits making the prior statement, extrinsic
18 evidence, that the prior statement was made is
19 inadmissible. This provision does not apply to a party's,
20 as defined under 801(d)(2) which is not relevant here.
21 And so if the witness admits to making the statement then
22 generally you cannot introduce extrinsic evidence that the
23 statement was made. If the witness does not admit, the
24 prior inconsistent statement, then extrinsic is
25 admissible. It appears to me that basically what we are

1 talking about is, on page 48 of this transcript, line 19,
2 Sergeant asked, what's his name. Line 20, McKie said
3 Jonathan. Line 21, Sergeant Sherman asked Moss. Line 22,
4 Ms. McKie nods her head. Line 23, Sergeant Sherman starts
5 telling her they know a lot more about the situation. On
6 page 49, so that is the second guy. Ms. McKie says yes.
7 Corporal Nelson, Jonathan Devon Moss. McKie says yes.
8 Reading the other things, I don't think they are
9 objectionable under the Rule 613. Now, prior to that on
10 page 47, Sergeant Sherman on page 46 is basically telling
11 her that she needs to cooperate to help herself. They
12 have a picture telling her that the victim is telling the
13 police officers, pictures of the second guy. Apparently
14 that a picture of Mr. Moss. And Sergeant Sherman asked
15 why she had told them that it wasn't him. She said
16 because he has been doing so good for himself since the
17 incident, didn't want him to get into trouble. Sergeant
18 Sherman asked about the relationship. She said he used to
19 be her boyfriend. Sergeant Sherman tells her and Corporal
20 Nelson, Mr. Moss stays with her because they found his ID
21 and pants in the bedroom. Do y'all have anything else you
22 need to put on the record.

23 MR. MCMILLIAN: Your Honor, Rule 106, just the
24 fairness of all of it. To delete the statement where she
25 tells the truth and then bang her over her head and call

1 her a liar in front of the jury is disingenuous and it
2 violates the Rule of Completeness and her statement should
3 be played in full.

4 THE COURT: Do you have anything else, Mr. Bush?

5 MR. BUSH: No, Your Honor.

6 THE COURT: Do you have anything else?

7 MR. GIBBONS: Very briefly, Your Honor. If there is
8 any unfairness the State has brought it upon themselves by
9 trying these two gentlemen together.

10 THE COURT: I think this calls to go either way.
11 And, again, what I am trying to do is interpret the rules.
12 I don't disagree with anything that the State is saying
13 necessarily. I have got a Rule that says extrinsic
14 evidence is not admissible. And I have got a Rule that
15 says, I have to deal with questions of fairness, whether
16 the entire thing should be played. And what I have got is
17 a situation where I have two defendants on trial at the
18 same time and they have a conflicting of positions
19 concerned with. So while I know it is going to be
20 difficult I think the remedy would be to come back on
21 redirect and address the issue that might deal with
22 fairness. I think that that could be handled on redirect,
23 depending on what questions they are asked on cross by Mr.
24 McCarley, it may be that some of this comes in.

25 MR. MCMILLIAN: Your Honor, when considering the

1 severance case law and the Rule under those cases that
2 mutually antagonistic defenses are not a bar to joint
3 trials. The rules should apply.

4 MR. GIBBONS: Your Honor, may I be heard?

5 THE COURT: Yes, sir.

6 MR. GIBBONS: Your Honor, we don't see this as
7 mutually antagonistic. They are not pointing a finger at
8 one another, if I understand what Mr. McMillian has said.
9 We are just asking that it be stopped at the time so it
10 doesn't unfairly prejudice my client.

11 THE COURT: As I believe the situation before me to
12 be, it is that I have the attorney for Mr. Jordan who has
13 asked a series of questions of this witness. And he tells
14 that there are statements in the recorded video of this
15 witness that are inconsistent with what she is saying in
16 her testimony. He asked about a number of things. It was
17 hard for me to keep up writing them down. But she
18 testified that she did not say Mr. Butler was pressuring
19 her to come over to his house. She did not say that she
20 locked the door. Did not say she had no choice about, I
21 am sorry, she did say she had no choice. She admitted to
22 lying about various things. The ruling of the Court is
23 that the attorney for Mr. Jordan can put before the jury
24 evidence of the video that goes to the issue that he
25 raised. If the State is arguing the completeness

1 doctrine, the completeness rule and is requesting to play
2 the entire video that motion is denied. So y'all are
3 going to have to go through, I don't know how much time
4 that is going to take you. You are going to have to go
5 through and find the things that you say are, refute what
6 she says on her cross-examination with you or her direct
7 examination with the State and go to those particular
8 issues that you raised.

9 MR. MCMILLIAN: Your Honor, if that is the Court's
10 ruling, essentially Mr. Bush has been prejudiced by going
11 first.

12 THE COURT: I can't help that. You all don't accept
13 his argument that there are difficulties created because
14 you are trying two people together. I understand why you
15 are trying two people together. I have supported your
16 positions to this point but there is no question, it
17 creates issues in a trial when you try two defendants at
18 the same time.

19 MR. GRIMES: If Mr. Bush intends on asking her some
20 more questions, at this point chronologically they are
21 fairly early in this interview. And I don't know if that
22 is where he wants to stop for good or if he had ten more
23 questions he wanted to ask her about, you know, I think at
24 this point and I don't want to misstate his position. But
25 I think he was trying to ask her enough questions so that

1 he could introduce the interview. And he probably did
2 that but because the entire interview is not coming in it
3 may be more questions that he wants to ask her if he is
4 going to be able to introduce extrinsic evidence on the
5 particular issues that he raises. So I guess my question
6 is, if he intends to ask more questions to introduce more
7 extrinsic evidence are we even at the point where the
8 video needs to come in at this point.

9 THE COURT: I can't tell someone how to try their
10 case. I mean, I realize the resources that are available,
11 things like that. But I have had situations like this in
12 civil court where they have the entire thing on a computer
13 and they can click it on and show the jury that that
14 person lied in a deposition, for example. I understand
15 there are limitations and there are technological issues
16 but I, again, folks, I may be making the wrong call. I am
17 looking and I don't, I have got to try to determine how
18 the best to approach this. And it seems to me that you
19 would have never been able to put this witness on the
20 stand and then have the State play this entire interview.
21 You didn't try to, I know you wouldn't do that. And then,
22 so he has got the right to ask her questions. He is going
23 first, it may be an advantage, it may be disadvantage. I
24 don't know that. She admits that she eventually came
25 around to tell that Mr. Moss, which she says is the truth,

1 I can't decide who is telling the truth, that is not my
2 job. My job is to rule on applying the rules. So she
3 said that the fourth version is the truth. That is a
4 jury's job to decide. All I am telling y'all is how I
5 know the rules. My knowledge is this and I apologize to
6 everybody if I am wrong. He asked her questions. She
7 says she never said those things in the interview. There
8 is a video which he says, Mr. Bush, will refute that.
9 That is what I am allowing. Anything beyond that I am not
10 allowing at this point. Now, if y'all need me to send the
11 jury home and y'all need to work until midnight on this, I
12 am sorry, but that is what we have got to do.

13 MR. GIBBONS: Your Honor, what we probably should do
14 at this point is maybe let us finish our cross and then
15 maybe let Mr. McCarley and finish his cross and then we
16 would do this at once.

17 THE COURT: What if they don't ask anything on
18 redirect, you want to come back and ask more questions?

19 MR. GIBBONS: I am just trying to make a doable. If
20 Mr. McCarley don't ask any questions and they don't ask
21 any questions.

22 MR. MCMILLIAN: My suggestion is they finish talking
23 about what all they want to talk about with this witness
24 and that interview before we decide how much of the
25 interview is actually--

1 THE COURT: I agree with you to a practical matter.
2 But I can't tell him how to try this case. And I wouldn't
3 presume so because I don't know his case.

4 MR. BUSH: Well, Your Honor, I would have the ability
5 to continue. Some of what she said has been read, since
6 she has been in the room. I can still go forward and ask
7 her questions, try to enter it into evidence at this time.
8 Just to get as much as I needed to. I had asked enough
9 questions at that point that I thought I could enter it
10 into evidence. And at this point--

11 THE COURT: Well you could according to the State and
12 but not according to McCarley.

13 MR. BUSH: Yes, sir. And I would just like--

14 THE COURT: If he is going to withdraw it we can let
15 you withdraw it and we can call the jury back in here. I
16 don't really need to talk to y'all 15, 20 more minutes and
17 then we are right at 5:00.

18 MR. BUSH: That's fine, Your Honor, I will withdraw.

19 THE COURT: I am not telling you to, I am asking.

20 MR. BUSH: Yes, sir.

21 THE COURT: Do y'all have something you want to say
22 right now?

23 MR. MCMILLIAN: Just to clarify, we are not going to
24 play the video at this point but later they intend to.

25 THE COURT: I don't know. They are not going to, the

1 first part, yes; the second part, I don't know. Bring the
2 jury in.

3 (Whereupon, the jury came into open court at
4 approximately 4:32 p.m.)

5 THE COURT: You may continue, Mr. Bush.

6 CONTINUE CROSS-EXAMINATION

7 By Mr. Bush:

8 Q Ms. McKie, do you admit or deny that when you
9 returned to the house that day that there were TV's
10 loading into a black car?

11 A I don't remember.

12 Q You don't remember. Do you admit or deny that you
13 told Sergeant Sherman that that car was a Hyundai?

14 A I don't remember.

15 Q Do you admit or deny that you told Sergeant Sherman
16 that you didn't know whose car that was?

17 A I don't remember.

18 Q Do you admit or deny that after being confronted
19 about being in that car that, again, you had never seen
20 the face of the other person that was there?

21 A Correct.

22 Q So you admit that?

23 A Uh-huh. (Witness indicates in the affirmative.)

24 Q And that was a lie, wasn't it?

25 A Yes.

1 Q Do you admit or deny that you told Sergeant Sherman
2 that the guy staying at your house wasn't involved?

3 A Correct.

4 Q And that was a lie, wasn't it?

5 A Yes.

6 Q Do you admit or deny you told Sergeant Sherman that
7 you didn't know his name, the guy staying at your house?

8 A Correct.

9 Q And that was a lie, wasn't it?

10 A Yes, sir.

11 Q You got no problem lying when you get in a tough
12 spot, do you, Ms. McKie?

13 A I was scared.

14 Q Now, again, you were living in Augusta at the time
15 that this happened, right?

16 A Yes.

17 Q And you were actually living with Mr. Moss?

18 A Yes.

19 Q And you had been talking to Mr. Butler for a little
20 while at this point, right?

21 A Yes.

22 Q And he is the father of your step-sister's child?

23 A Yes.

24 Q Is that right. So you have known him for a while?

25 A Yes.

1 Q He had been around your family?

2 A Yes.

3 Q You went to his house that day?

4 A Yes.

5 Q Do you remember, do you admit or deny that you told
6 law enforcement that he wanted you to give him a kiss and
7 a hug when you got in the car?

8 A Yes.

9 THE COURT: Wait a minute, you asked her if she
10 admitted that or denied that.

11 Q Yes, sir.

12 THE COURT: What does yes mean?

13 MR. BUSH: I will rephrase, Your Honor.

14 THE COURT: All right.

15 Q He asked you to give him a hug and a kiss when he got
16 in the car, didn't he?

17 A Yes.

18 Q Now, you told law enforcement that day that there was
19 some drinking involved, right?

20 A Yes.

21 Q You said that Mr. Butler drank an entire bottle of
22 crown?

23 A Yes.

24 Q And he drank that whole bottle of crown, right?

25 A Well, we both were drinking.

1 Q But you told them that he drank it.

2 THE COURT: What is your answer?

3 A I don't remember but I probably did.

4 Q You eventually made your way to his room?

5 A Yes.

6 Q Y'all were kissing?

7 A Yes.

8 Q In his bed?

9 A Yes.

10 Q He wasn't sleeping when this was going on, was he?

11 A No.

12 Q Wasn't getting ready for work?

13 A No.

14 Q Now, let's talk about some of what you, what you
15 testified to just a moment ago with the Solicitor's
16 office. You indicated that this was planned on August
17 1st, right?

18 A Yes, the day of the incident.

19 THE COURT: I did not hear her.

20 A Yes, the day of the incident.

21 Q And that is not what you told the police?

22 A Correct.

23 Q You said you went over there to have a good time,
24 right?

25 A Yes.

1 Q This was your idea of a good time, Ms. McKie?

2 A No, sir.

3 Q Well, let's talk about when you were having a good
4 time, let's talk about when you were at the ATM. I will
5 publish again Defendant Jordan, exhibit 2 and 3 to the
6 jury.

7 THE COURT: Yes, sir.

8 Q Ms. McKie, you can see that, right?

9 A Yes, sir.

10 Q That is you at the ATM, isn't it?

11 A Yes.

12 Q That is a lot of cash in your hand?

13 A I can't tell. It probably is but I can't tell.

14 Q Okay. Well, we will go to the next picture which is
15 Defendant's exhibit 3, Defendant Jordan, excuse me,
16 exhibit 3. That is you again, isn't it, Ms. McKie?

17 A Yes.

18 Q That is you putting money down your shirt, right?

19 A Probably was.

20 Q I mean you were there that day?)

21 A I don't think I was putting money down my shirt. I
22 probably was pulling on my bra or something but I don't
23 think--

24 Q That is a smile on your face, isn't it?

25 A Yes.

1 Q Now, you weren't being forced to be at that ATM, were
2 you?

3 A No.

4 Q Nobody had a gun to your head?

5 A No.

6 Q No one was in the car with you?

7 A No.

8 Q Not being forced to smile there?

9 A No.

10 Q Let me ask you this. When you got a block away from
11 that apartment you called law enforcement, didn't you?

12 A No.

13 Q When you got two blocks away you called law
14 enforcement, right?

15 A No.

16 Q You told law enforcement in your interview you didn't
17 have a choice?

18 A I don't understand that.

19 Q So you deny saying that?

20 A Yes.

21 Q Now, you also said you were forced to go to the gas
22 station, right?

23 A I don't remember but I probably did.

24 Q You went to that gas station alone, right?

25 A Yes.

1 Q Nobody forcing you?

2 A Yes.

3 Q It was your choice?

4 A Yes.

5 Q When you got a block away from the gas station you
6 didn't call the police?

7 A No.

8 Q Two blocks away from the gas station you didn't call
9 the police?

10 A No.

11 Q Even though you said people were forcing you to do
12 it?

13 A Yes.

14 Q In fact at one point you even went to your previous
15 place of employment, didn't you?

16 A Yes.

17 Q You went to the KFC?

18 A Yes.

19 Q You told the people at the KFC to call the police,
20 right?

21 A No.

22 Q You told the people at KFC that you were in trouble,
23 didn't you?

24 A No.

25 Q You bought three cookies that day?

- 1 A Yes.
- 2 Q You went to a place you worked?
- 3 A Yes.
- 4 Q Well, you used to work there?
- 5 A Yes.
- 6 Q Because you have been fired from that KFC, right?
- 7 A Yes.
- 8 Q You were fired for cash shortages in your cash
9 drawers?
- 10 A Yes.
- 11 Q Now, again, when you got back to the house you said
12 that the TV's, they were being loaded into a black car,
13 right?
- 14 A I probably did but I don't remember.
- 15 Q But in reality that car was red, wasn't it?
- 16 A Yes.
- 17 Q It is a Pontiac?
- 18 A Yes.
- 19 Q G6?
- 20 A Yes.
- 21 Q That was your car, wasn't it?
- 22 A Yes.
- 23 Q Certainly wasn't Mr. Jordan's car?
- 24 A No.
- 25 Q Mr. Jordan didn't have a car, right?

1 A Right.

2 Q And after some questioning from law enforcement you
3 told them that the second guy in the car he only went by
4 Bro, right?

5 A Yes.

6 Q That was a lie?

7 A Yes.

8 Q Do you remember when they showed you a photograph?

9 A Yes.

10 Q Law enforcement?

11 A Yes.

12 Q And you said the person that is photographed, his
13 ears aren't that pointy, right?

14 A Yes.

15 Q Do you remember that?

16 A Yes.

17 Q You were asked at that point if you recognized him?

18 A Yes.

19 Q And you told him no?

20 A Yes.

21 Q You had never seen his face?

22 A Yes.

23 Q They asked you if it was the same guy staying at your
24 house?

25 A Yes.

1 Q You answered no?

2 A Yes.

3 Q And while they were trying to get you to tell them
4 what this guy looked like, do you admit or deny that you
5 asked the officer what Mr. Butler said the guy looked
6 like?

7 A Yes.

8 Q So you admit that?

9 A Yes.

10 Q That was a lie, right?

11 A Yes.

12 Q Turns out that Mr. Moss was your boyfriend at the
13 time?

14 A Yes.

15 Q As you testified here to today. So you knew what he
16 looked like?

17 A Yes.

18 Q And you knew who he was?

19 A Yes.

20 Q And you lied?

21 A Yes.

22 Q You told law enforcement, I think you actually just
23 told the Solicitor that you were only charged with two
24 charges in this case, right?

25 A Yes.

1 Q Two charges different than the gentlemen here on
2 trial?

3 A Yes.

4 Q You are charged with burglary in the first degree?

5 A Yes.

6 Q Is that right?

7 A Yes.

8 Q The charge carries a mandatory/minimum of 15 years in
9 prison, right?

10 A Right.

11 Q It carries up to life in prison?

12 A Right.

13 Q Charged with kidnapping, right?

14 A Yes.

15 Q That charge carries up to 30 years in prison, isn't
16 that correct?

17 A Yes.

18 Q And you are not charged with armed robbery?

19 A No.

20 Q You are not charged with assault and battery in the
21 first degree?

22 A No.

23 Q But you are charged, you are also not charged with
24 possession of a weapon during the commission of a violent
25 crime.

1 A Right.

2 Q So you are in a lot of trouble, aren't you?

3 A Yes.

4 Q Possibly spending the rest of your life in prison,
5 right?

6 A Right.

7 Q And you are here to help yourself?

8 A Right.

9 Q That is what you told Mr. McMillian, you are here to
10 help yourself?

11 A Right.

12 Q Tell some stories to help yourself?

13 A No.

14 Q No. And after all of these lies we are suppose to
15 believe you are not trying to help yourself, Ms. McKie?

16 A No.

17 MR. BUSH: No further questions, Your Honor.

18 THE COURT: Do you wish to cross-examine the witness?

19 CROSS-EXAMINATION

20 By Mr. McCarley:

21 Q You said the reason you told all of these lies were
22 to protect Mr. Moss, that is what you just told the
23 Solicitor's office?

24 A Yes.

25 Q You are protecting yourself, correct?

1 A At first I was protecting him, that's not a lie. I
2 was protecting him.

3 Q What are you here today, are you here to help
4 yourself or are you here to help and protect Mr. Moss?

5 A Myself.

6 Q You are here to help yourself, correct. You gave a
7 one-hour, over an hour interview to one of the people,
8 Sergeant Sherman sitting right here, correct?

9 A Correct.

10 Q And you were under arrest at that time?

11 A Yes.

12 Q And there was another police officer in that room?

13 A Yes.

14 Q And you told them during that interview, I am being
15 totally honest, like totally honest?

16 A I don't recall that.

17 Q Do you admit or deny telling Sergeant Sherman and
18 Corporal Nelson that you are, "I am being totally honest,
19 like totally honest."

20 A I don't recall that so I deny it.

21 Q In the course of that interview you said you did not
22 know who the second person was fourteen times?

23 A Yes.

24 Q Please tell me the very first time you talked about
25 or heard about robbing the alleged victim in this case?

1 A Well, before it happened it was only brought up one
2 time that was said and on that same day when it happened,
3 on the same day when it happened.

4 Q The very first time was on that same day?

5 A No. The very first time wasn't on the same day. The
6 very first time was about like a week and a half ago.

7 Q A week and a half before you robbed him?

8 A Yes.

9 Q And just, just to be clear. You admitted to this
10 jury today to robbing him?

11 A That's what happened.

12 Q And to helping people to come into his apartment and
13 take his stuff and assault him?

14 A That's what happened.

15 Q That's what you admitted to this jury, that is what
16 you did?

17 A That's what happened.

18 Q And because of that you could spend your life in
19 prison?

20 A I am aware of that.

21 Q And you are not scared today, you are not scared to
22 spending your life in prison?

23 A I am not saying I am not scared.

24 Q So you are scared today?

25 A Yes, I am scared.

1 Q And you were scared on that day you gave that
2 interview to the police?

3 A Yes.

4 Q And you lied and you are scared?

5 A Not necessarily--

6 Q -- you didn't lie?

7 A I did lie on that interview when I was with the
8 police. But I am not lying now.

9 Q Do you have an attorney, is that correct?

10 A Yes.

11 Q And you have met with your attorney?

12 A Yes.

13 Q Okay. And you have met with the Solicitor's office
14 here?

15 A Yes.

16 Q How many times have you met with these gentlemen?

17 A Two times.

18 Q Two times. Did you meet with them this morning,
19 today?

20 A Well, yeah, a third time.

21 Q Third time now?

22 A Well, I didn't, I didn't count today but when I was
23 at the jail it was two times.

24 Q And I asked to talk with you, is that correct?

25 A Yes.

1 Q You met me, I introduced myself?

2 A Yes.

3 Q Did you want to talk to me?

4 A No.

5 Q That is because I can't help you, right?

6 A Right.

7 MR. MCCARLEY: I beg the Court's indulgence. I am
8 sorry, sir.

9 THE COURT: That's fine.

10 MR. MCCARLEY: Your Honor, at this time the Defense
11 for Mr. Moss moves to introduce the video recording of Ms.
12 McKie's interview in Richmond County with Sergeant Sherman
13 due to prior inconsistent statements up to the certain, up
14 to a certain point in this video.

15 THE COURT: Ladies and gentlemen, please step in the
16 jury room, don't discuss the case. I won't keep you back
17 there long.

18 (Whereupon, the jury was excused from open court.)

19 THE COURT: Mr. McMillian.

20 MR. MCMILLIAN: Your Honor, the State's position is
21 that at this point they are not seeking to impeach her
22 individual statements. He asked those questions to get at
23 impeaching her credibility as a whole. In fact Mr.
24 McCarley specifically asked, you asked about not, that Ms.
25 McKie was asked about not knowing Mr. Moss fourteen times.

1 Mr. McCarley put Mr. Moss' identity at issue, that
2 statement should be played in its entirety.

3 MR. MCCARLEY: Your Honor, those fourteen statements
4 are made before the page 47 mark, before where Ms. McKie
5 says anything at all about Mr. Moss.

6 THE COURT: Well, we are getting back to the fairness
7 part.

8 MR. MCMILLIAN: Yes sir, Your Honor, and if Mr.
9 McCarley--

10 THE COURT: I wrote down what he asked and I put a
11 star beside it because I thought it was significant. And
12 he also asked about whether she made statements about her
13 being totally honest. So what else you need to put on the
14 record. I don't need to cut anybody off. What else y'all
15 need to put on the record?

16 MR. MCMILLIAN: We would just ask that it be played
17 in its entirety, Your Honor. If you are going to admit it
18 we ask that you not admit it up to whatever arbitrary
19 minute mark there is in there but play it in its entirety.

20 MR. MCCARLEY: Yes, sir. And I don't know the quote,
21 the quote I used as being totally honest is on page 25
22 which precedes any admission by Ms. McKie, this interview
23 of Mr. Moss. Also importantly, Your Honor, going back to
24 Mr. Bush's and my cross-examination of Ms. McKie quoting
25 from State. v. Blalock and I am going to paraphrase.

1 Generally where the witness responded with anything less
2 than an unequivocal admission trial courts have been
3 granted wide latitude to allow extrinsic evidence proving
4 the statement. For example, a witness' failure to fully
5 recall her prior statement has been found to be sufficient
6 denial to allow extrinsic evidence. Extrinsic evidence is
7 also usually admitted when the witness simply avoids
8 indirect answer. I will say, Your Honor, and again I say
9 approximately at the 59 minute mark with Mr. Bush's
10 questioning in mind, that if, the first hour is right with
11 denials of lack of recollection and we would ask that it
12 be entered.

13 THE COURT: I grant your motion and I grant their
14 motion. You want to admit it the whole thing has got to
15 be played. So you want to admit it? I don't think we are
16 going to do it today though. But I want this issue
17 decided today. If he is not going to offer it then I am
18 going to come back to them.

19 MR. MCCARLEY: We will enter it, Your Honor.

20 THE COURT: Bring the jury back in. Mark that into
21 evidence, Madam Court Reporter.

22 (Whereupon, Defendant Moss' Exhibit 1 was admitted
23 into evidence.)

24 (Whereupon, the jury came into open court at
25 approximately 4:57 p.m.)

1 THE COURT: Ladies and gentlemen, my understanding is
2 the next thing that is going to be offered is to play a
3 video of what has been discussed about the meeting with
4 law enforcement for this witness. I am told that is an
5 hour and twenty minutes long so we are going to break for
6 the day. I need you here in the morning, please, at 9:30.
7 We will continue. I don't expect any delays then but I
8 didn't any today. I do apologize for making you wait. I
9 need you back in the morning at 9:30. I don't know if you
10 will get the case tomorrow or not. I will try to keep you
11 abreast as we go along. It is still a chance you will get
12 the case tomorrow. Thank you.

13 (Whereupon, the jury was excused from open court for
14 the day at 4:59 p.m.)

15 THE COURT: Ms. McKie, once you take the witness
16 stand you are not suppose to discuss your testimony with
17 anybody else. So we are going to have a break overnight,
18 don't talk about your testimony with anybody during the
19 break. All right.

20 MS. MCKIE: Yes, sir.

21 THE COURT: Thank you.

22 MR. GRIMES: Your Honor, on this interview, I just
23 want to just clarify. On this interview there is, I don't
24 know how many minutes in the beginning and probably 10 to
25 15 minutes, maybe even longer at the end where she is just

1 sitting in this room by herself. I hate to waste
2 everybody's time. I don't care if they introduce that
3 part or not but we don't object if they don't introduce
4 that portion of the video.

5 THE COURT: The attorneys get together and agree and
6 if you want to enter a stipulation just tell the jury that
7 we agree that this is ten minutes of her sitting in the
8 room or twenty minutes of her sitting in a room and we are
9 going to fast forward. And you will have the whole video
10 to take when you go back to the jury room. That is fine
11 with me. If you don't agree to it then we will start it
12 at 000 and we will go from there. Everybody agree?

13 MR. MCCARLEY: Yes, sir.

14 MR. BUSH: Yes, sir.

15 THE COURT: All right, Ms. McKie, you can step down
16 and go with him, please. Court is in recess until 9:30.

17 (Whereupon, the case will resume the next morning at
18 9:30 a.m.)

19 AUGUST 9, 2018.

20 THE COURT: Are you ready, Mr. McCarley?

21 MR. MCCARLEY: I believe I am, Your Honor. I have a
22 copy of a proposed stipulation.

23 THE COURT: What is it.

24 MR. MCCARLEY: In regards to the Rule 5 issue I made
25 yesterday.

1 THE COURT: Let me see it.

2 MR. MCCARLEY: Just seconds ago the State was handed
3 it.

4 THE COURT: We can deal with this issue later.

5 MR. MCCARLEY: Yes, sir.

6 THE COURT: Is the State ready for the jury?

7 MR. MCMILLIAN: Yes, Your Honor.

8 THE COURT: Mr. Bush, are you ready?

9 MR. BUSH: I am, Your Honor.

10 THE COURT: Bring them in, please.

11 (Whereupon, the jury came into open court at
12 approximately 9:35 a.m.)

13 THE COURT: Ms. McKie, you are still under oath, I
14 need you back here on the witness stand.

15 (Whereupon, Ms. McKie sits in the witness stand.)

16 THE COURT: All right, ladies and gentlemen, we will
17 continue with the cross-examination. Mr. McCarley.

18 MR. MCCARLEY: We would ask Your Honor's permission
19 to publish the video of Ms. McKie's interrogation by North
20 Augusta Department of Public Safety.

21 THE COURT: Yes.

22 (Whereupon, a video was played of Ms. McKie's
23 interview starting at 9:40 a.m., ended at 10:50 a.m.)

24 THE COURT: Ladies and gentlemen, we will take a 15
25 minute break. Don't talk about the case..

1 (Whereupon, the jury was excused from open court for
2 a break.)

3 THE COURT: Ms. McKie, you are not allowed to discuss
4 your testimony with anyone during the break. We are at
5 ease for 15 minutes.

6 (Whereupon, a short break was taken.)

7 THE COURT: Bring the jury, please.

8 (Whereupon, the jury came into open court at
9 approximately 11:07 a.m.)

10 CONTINUE CROSS-EXAMINATION

11 By Mr. McCarley:

12 Q Hello again, Ms. McKie. You were in here and watched
13 that video. At approximately the ten minute mark of that
14 video you told Corporal Nelson, Corporal Nelson told you
15 to tell the whole truth?

16 A Yes.

17 Q And then you continued to lie?

18 A Yes.

19 Q While you were getting Daniel Butler drunk in
20 preparation to rob him were you also using your phone?

21 A Yes.

22 Q When you were using his ATM and debit cards, were you
23 also using your phone?

24 A Yes.

25 Q And also on that video you testified that Jonathan

1 Moss, "used to be your boyfriend".

2 A Yes.

3 Q And is that correct?

4 A He was still my boyfriend.

5 Q Okay. Do you know who Alexis Curry is?

6 A Yes.

7 Q Who is that, ma'am?

8 A My step-sister.

9 Q And how long have you known her?

10 A Nine years or so.

11 Q And how old are you again?

12 A 22.

13 Q In that video, towards the end, you say, well, who
14 came to the door on Monterey. My sister questioned Mark
15 because you said something about my sister. Who is that.

16 A Denetria, (phonetic).

17 Q Denetria?

18 A Yes.

19 Q What is Denetria's last name?

20 A McKie.

21 Q And how long have you known her, you have got the
22 same last name?

23 A All of my life.

24 Q Okay. She is older than you?

25 A No, she is younger than me.

1 Q Okay. Alexis Curry is your step-sister?

2 A Yes.

3 Q And is also the mother of Daniel Butler's children?

4 A Yes, well child.

5 Q Child?

6 A Yes.

7 Q Has one child together?

8 A Yes.

9 Q You also told police you were not going to sleep with
10 Daniel Butler because you had a girlfriend. Is that
11 correct?

12 A Yes.

13 Q Who was that girlfriend?

14 A Moss' baby's mother.

15 Q What is her name?

16 A Regine, (phonetic).

17 Q What is her last name?

18 A Johnson.

19 Q And at the time that you robbed Mr. Butler you were
20 living with Jonathan Moss and Regine Johnson?

21 A Yes.

22 Q And who else was living there?

23 A And the kids.

24 Q The kids, whose kids?

25 A Jonathan's kids.

1 Q Jonathan's kids with who, who was their mother?

2 A Regine.

3 Q How many kids?

4 A Two. That I know of anyway.

5 THE COURT: What did you say, the last thing?

6 A Two that I know of anyway.

7 Q And all three of you, Regine Johnson, Jonathan Moss
8 and yourself were in a physical romantic relationship?

9 A Yes.

10 Q In this interview, your testimony yesterday, you said
11 you weren't charged with the same crimes as Mr. Jordan and
12 Mr. Moss?

13 A Yes, I am only charged with two.

14 MR. MCCARLEY: I beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. MCCARLEY: Your Honor, nothing further at this
17 time.

18 THE COURT: Redirect?

19 MR. MCMILLIAN: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 By Mr. McMillian:

22 Q Ms. McKie, in that video statement to investigators,
23 the first person you mentioned was Denzil Jordan?

24 A Yes.

25 Q And did you describe his hair style to them?

1 A Yes.

2 Q Is it different today than it was then?

3 A Yes.

4 Q Do you know when he cut his hair?

5 A No.

6 Q You talked a little bit about planning went into all
7 of this. Did y'all have Daniel come and pick you up so
8 the two of them could use your car?

9 A Yes.

10 Q And initially you lied about that car?

11 A Yes.

12 Q Is that because Jonathan Moss had your car?

13 A Yes.

14 Q Were you trying to protect him?

15 A Yes.

16 Q Is it not until the very end of that interview when
17 you give Mr. Moss' name. Was that difficult for you then?

18 A Yes.

19 Q Is that why you said you were scared?

20 A Yes.

21 Q Is that why you were emotional?

22 A Yes.

23 Q Is it hard for you to name him today?

24 A Not really.

25 Q Mr. McCarley asked you a few questions about the

1 nature of this relationship between you and Ms. Johnson
2 and Mr. Moss. Just to be clear, you considered yourself
3 to be in a relationship with Jonathan Moss in late July,
4 August of last year?

5 A Yes.

6 MR.. MCMILLIAN: I beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. MCMILLIAN: Nothing further, Judge.

9 THE COURT: Mr. Bush, do you have anything?

10 MR. BUSH: I do, Your Honor.

11 RECROSS-EXAMINATION

12 By Mr. Bush:

13 Q Good morning, Ms. McKie.

14 A Good morning.

15 Q How are you doing?

16 A Good.

17 Q Okay. All of this talk in the interview that we just
18 heard about the planning, right. Solicitor McMillian
19 actually just talked to you about that a second ago. You
20 said in that video that you planned it with Mr. Jordan,
21 right?

22 A Yes.

23 Q That was a lie?

24 A Yes.

25 Q Everything that you said about planning with Mr.

1 Jordan was a lie?

2 A Yes.

3 Q In that interview you said Mr. Jordan gave you the
4 card. That was a lie?

5 A Yes.

6 Q In that interview you said Mr. Jordan gave you PIN
7 numbers. That was a lie?

8 A Yes.

9 Q Now, in that interview Sergeant Sherman, he indicated
10 to you, you ain't making all of this stuff up, just
11 throwing all of this up--

12 MR. MCMILLIAN: Objection, Judge, that is outside the
13 scope of redirect.

14 MR. BUSH: Your Honor, if I may be heard.

15 THE COURT: Go ahead.

16 MR. BUSH: Thank you very much, Your Honor.

17 Q So, as I was saying, Ms. McKie, during that interview
18 Sergeant Sherman, he indicated to you, you ain't making
19 all of this stuff up, just throwing all of this stuff on
20 EJ, trying to get out of it, are you? He said that to
21 you, right?

22 A Yes.

23 Q You said no?

24 A Yes.

25 Q You had been lying about him the whole time, right?

1 A That still doesn't change the fact that he wasn't
2 there because he was and he knows that and you probably
3 know that, too.

4 Q But, Ms. McKie, you were lying?

5 A Yes.

6 Q Okay. He told you he had seen that before, right?

7 A Yes.

8 Q And he told you if they arrest the wrong guy it is
9 not good for you, right?

10 A Right. But they didn't arrest the wrong guy.

11 Q But he told you that, right?

12 A Yes.

13 Q And you had been lying to him?

14 A Yes.

15 MR. BUSH: No further questions, Your Honor.

16 THE COURT: Thank you. You got anything else, Mr.
17 McCarley?

18 MR. MCCARLEY: Very briefly, Your Honor.

19 RECROSS EXAMINATION

20 by Mr. McCarley:

21 Q In the video we all just watched you said Mr. Moss
22 used to be your boyfriend. But then you told Mr.
23 McMillian you believed he was your boyfriend at the time?

24 A I did tell him that but he was my boyfriend still at
25 the time. Yes, he was, but I said he wasn't.

1 Q Okay.

2 MR. MCMILLIAN: No further questions.

3 THE COURT: Anything else of this witness?

4 MR. MCMILLIAN: No, Your Honor.

5 THE COURT: Any other witnesses for the State?

6 MR. MCMILLIAN: Your Honor, I think we just need to
7 take up one matter outside the presence of the jury.

8 THE COURT: Ladies and gentlemen, step in the jury
9 room, don't discuss the case.

10 (Whereupon, the jury was excused from open court.)

11 THE COURT: Yes, sir.

12 MR. GRIMES: The Defense indicated a proposed
13 stipulation, the wording of that stipulation is
14 problematic for the State so we would object to it on
15 those grounds. Generally a stipulation is given and
16 provided and read to the jury. And there is some
17 information in the stipulation that doesn't need to be
18 presented to the jury.

19 THE COURT: All right. So if you are not agreeing
20 there is no stipulation.

21 MR. GRIMES: We would agree to stipulate that he has
22 a shoplifting conviction. The initial paragraph talks
23 about the State being in violation of Rule 5 and that is
24 just simply not subject matter for a jury to consider,
25 sir. With the removal of that information we don't have

1 any problem with the stipulation.

2 THE COURT: Do you intend to call the witness or not?

3 MR. GRIMES: We will do it however, we will be more
4 than willing to call the witness and allow the Defense to
5 ask about the shoplifting or have the Court read the
6 stipulation. I don't know that the Defense, can I ask
7 what they were amiable to it either way, with the
8 exception of that language regarding Rule 5.

9 THE COURT: Either one of you wish, any of you wish
10 to say anything?

11 MR. MCCARLEY: The first sentence is where the State
12 has a problem with, with the jury understanding what they
13 did or did not do, Your Honor.

14 THE COURT: So you just want me to read the
15 stipulation to the jury and not put him back on the stand?

16 MR. MCCARLEY: Yes sir, as to Mr. Moss.

17 THE COURT: What about you, Mr. Bush?

18 MR. BUSH: Yes sir, as to Jordan.

19 THE COURT: And the State is okay with that?

20 MR. GRIMES: Yes, Your Honor.

21 THE COURT: Is there any other evidence that is going
22 to come in from the State?

23 MR. MCMILLIAN: No, Your Honor.

24 MR. GRIMES: Can we get a clean copy for the jury.

25 THE COURT: I usually just read it to the jury, I

1 don't usually send back a written copy but I will do
2 whatever you all wish.

3 MR. MCCARLEY: We will get you a clean copy. We
4 would like for it to go back to the jury room!

5 THE COURT: All right.

6 MR. GRIMES: Would you like to make their motions at
7 this time? I am assuming they are going to make some.

8 THE COURT: That is why I was asking about whether
9 you tend to offer any other evidence, try to streamline
10 this a little bit. Let me go through with Mr. Moss and
11 Mr. Jordan. Mr. Moss, you are already under oath, do you
12 understand that?

13 MR. MOSS: Yes, sir.

14 THE COURT: Mr. Jordan, raise your right hand,
15 please.

16 DENZIL JORDAN, being
17 first duly sworn, testified as follows:

18 THE COURT: Y'all have a seat but speak out. All
19 right, we have reached the stage of the trial, we will in
20 just a moment where the State rest. The next thing would
21 happen is that you would have the opportunity to have
22 evidence presented in your behalf. Do you understand
23 where we are in the case, Mr. Jordan?

24 MR. JORDAN: Yes, sir.

25 THE COURT: Mr. Moss?

1 MR. MOSS: Yes, sir.

2 THE COURT: Now, in that regard if you want to
3 testify you certainly may testify. But if you choose not
4 to testify I am going to tell the jury they cannot hold
5 your silence against you in any way at all. They are not
6 to discuss it in their deliberations, that it should not
7 enter their minds in making a decision of whether you are
8 guilty or not guilty. Do you understand all of that, Mr.
9 Jordan?

10 MR. JORDAN: Yes, sir.

11 THE COURT: Mr. Moss?

12 MR. MOSS: Yes, sir.

13 THE COURT: The decision about whether you testify or
14 not is your decision to make and yours alone. I expect
15 you might confer with your attorneys, with family members,
16 friends, anyone's who opinion you value on important
17 decisions. But ultimately you are the person on trial and
18 you are the one that is to make this decision as to
19 whether you testify or not. Do you understand that, Mr.
20 Jordan?

21 MR. JORDAN: Yes, sir.

22 THE COURT: Mr. Moss?

23 MR. MOSS: Yes, sir.

24 THE COURT: Does either of these men have a criminal
25 record that would subject them to impeachment?

1 MR. BUSH: No, Your Honor.

2 THE COURT: So has anybody exercised any type of
3 undue influence, your attorneys or anybody else done
4 anything to force you to testify against your will or to
5 choose not to testify against your will? Mr. Jordan?

6 MR. JORDAN: No, sir.

7 THE COURT: Mr. Moss?

8 MR. MOSS: No, sir.

9 THE COURT: So you understand you have a right to
10 testify, you have a right not to testify. But if you
11 choose not to testify I am going to tell the jury that
12 they cannot hold your silence against you in any way. And
13 that the decision as to whether you testify or not is your
14 decision and yours alone. Is all of that true, Mr.
15 Jordan?

16 MR. JORDAN: Yes, sir.

17 THE COURT: Mr. Moss?

18 MR. MOSS: Yes, sir.

19 THE COURT: I am going to make a finding that each of
20 these men have made a free, knowing, voluntary and
21 intelligent decision as to whether he testifies or not.
22 He understands he has a right to testify or not to
23 testify. That no one could force him to testify, that the
24 decision as to whether he testifies or not is his and his
25 alone. And that he has made his decision upon the advice,

1 will make the decision upon the advice of counsel. That
2 no one has improperly influenced him or forced him in any
3 way to make the decision against his will. I am going to
4 give you a few minutes to talk to your lawyers if you
5 would like and then I will ask you, your attorneys as to
6 whether or not you intend to present any evidence. That
7 would include whether you wish to testify or not.
8 Whatever decision you may have made at this point, if any,
9 you can change your mind up until such time as you take
10 the witness stand. Do you understand all of that, Mr.
11 Jordan?

12 MR. JORDAN: Yes, sir.

13 THE COURT: Mr. Moss, do you?

14 MR. MOSS: Yes, sir.

15 THE COURT: We are at ease for a few minutes.

16 (Whereupon, a short break was taken.)

17 THE COURT: Mr. Bush, does Mr. Jordan intend to offer
18 any evidence, additional evidence?

19 MR. BUSH: Not at this time, Your Honor.

20 THE COURT: Mr. McCarley, does Mr. Moss intend to
21 offer any additional evidence?

22 MR. MCCARLEY: He does, Your Honor.

23 THE COURT: Okay. Does he intend to testify?

24 MR. MCCARLEY: He does, Your Honor.

25 THE COURT: Okay. I will read the stipulation to the

1 jury and let them go to lunch and then hear the motions.
2 And then we can start back with the Defense's case after
3 lunch. Bring the jury in.

4 (Whereupon, the jury came into open court at
5 approximately 11:41 a.m.)

6 THE COURT: Ladies and gentlemen, at the outset of
7 the trial, when I was telling you the landmarks you could
8 look for, I told you that what the lawyers say is not
9 evidence. And that there is one exception to that rule
10 and if we came upon I would tell you about it. Well, the
11 exception is called a stipulation. That is where all the
12 lawyers on behalf of their respective client's positions
13 mutually and specifically agree that something is a given.
14 It is an agreement as to a statement of fact. And so the
15 attorneys have handed up to me and you will have with you
16 in the jury room a stipulation which reads, Raymond Daniel
17 Butler was, in fact, convicted of theft by shoplifting in
18 Georgia in 2015. Does the State have any other evidence
19 to present?

20 MR. MCMILLIAN: No, Your Honor. At this time the
21 State would rest.

22 THE COURT: All right. And I told you at those
23 opening comments that when the State rest I have to
24 discuss issues with the attorneys outside of your
25 presence. So that is where we are right now. What I am

1 going to go is I am going to let you folks go to lunch.
2 And we will stay here and I will finish those things up
3 and then we will have you back here at 1:15 and we will
4 proceed with the trial at that point. You are on your own
5 for lunch, I need you back at 1:15. Thank you.

6 (Whereupon, the jury was excused from open court for
7 a lunch break.)

8 THE COURT: Any motions?

9 MR. BUSH: Yes, Your Honor. Defendant Jordan.

10 THE COURT: Yes, sir.

11 MR. BUSH: At this time the Defense or Mr. Jordan
12 moves for the Court to direct a verdict of not guilty in
13 this case. Taken in light most favorable to the State,
14 Your Honor, the State has failed to provide the jury with
15 sufficient evidence to proceed to deliberation in order to
16 find Mr. Jordan guilty beyond a reasonable doubt. I
17 think, I base these motions on the following, Your Honor.
18 Number one, there has been absolutely no physical evidence
19 presented in this trial whatsoever that Mr. Jordan was
20 involved in this crime. No DNA, fingerprints, no
21 photographic evidence, no video evidence, no cell phone
22 records, no text messages, no social media record.
23 Nothing that connects Mr. Jordan to this crime. In fact
24 the only evidence that the State presented today was
25 circumstantial evidence from Ms. Keondra McKie who is a

1 witness that lacks any credibility whatsoever. Mr.
2 Butler, the victim in this crime, couldn't put Mr. Jordan
3 there. The only other person who could talk about the
4 crime was Ms. McKie and she lacked any credibility. Your
5 Honor, this is insufficient for the jury to be able to go
6 back and deliberate or find Mr. Jordan guilty and for
7 those reasons we ask that you direct a verdict of not
8 guilty. I also, as a second part, Your Honor, wanted to
9 say it is also appropriate now to renew my pretrial
10 motions as it is apparent these cases should have been
11 severed. Thank you.

12 THE COURT: All right, as to the first issues of
13 fact, the jury can decide. The motion is respectfully
14 denied. And to the second, I will rule on that in a
15 minute. Do you have any motions, Ms. Steiner?

16 MS. STEINER: Yes, Your Honor. At this point and
17 time I would like to move for a directed verdict. In the
18 light most favorable to the State they have not proved
19 their case and the elements against Mr. Moss. There is no
20 physical forensic or physical evidence. And the testimony
21 regarding ID's from uncredible witnesses. And, Your
22 Honor, at this point and time I would also like to renew
23 and preserve all pretrial issues and motions made during
24 the State's case-in-chief, along with the objections of
25 the State's case.

1 THE COURT: There are jury issues based on what has
2 been presented and the motion for directed verdict is
3 respectfully denied. The motion related to severance and
4 the other motions and objections that has been raised
5 during the trial have been reconsidered. The rulings
6 stand as previously made. Anything else I need to address
7 at this point?

8 MR. MCMILLIAN: Not from the State, Your Honor.

9 MR. BUSH: Not from the Defendant Jordan, Your Honor.

10 MR. MCCARLEY: Nothing from Mr. Moss, Your Honor.

11 THE COURT: Do you intend to call witnesses other
12 than Mr. Moss?

13 MR. MCCARLEY: Not at this time.

14 THE COURT: Okay. I just wanted to get some
15 timeframe. All right, Madam Court Reporter, mark this as
16 a State's exhibit.

17 (Whereupon, State's Exhibit 9 was admitted into
18 evidence.)

19 THE COURT: Be careful when you leave that you don't
20 have contact with a juror. We will be back at 1:15.
21 Thank you.

22 (Whereupon, a lunch break was taken.)

23 THE COURT: Is the State ready for the jury?

24 MR. MCMILLIAN: We are, Your Honor.

25 THE COURT: Mr. Bush?

1 MR. BUSH: We are, Your Honor.

2 THE COURT: Mr. McCarley?

3 MR. MCCARLEY: Yes, sir.

4 THE COURT: Let's bring the jury in, please.

5 (Whereupon, the jury came into open court at
6 approximately 1:16 p.m.)

7 THE COURT: Ladies and gentlemen, we are going to
8 continue with the case. Does Mr. Jordan have any evidence
9 to offer?

10 MR. BUSH: Not at this time, Your Honor.

11 THE COURT: Ladies and gentlemen, I need to give you
12 an instruction and emphasize to you that the fact that a
13 Defendant elects not to testify is not a factor to be
14 considered by you in any way in your deliberations and in
15 your consideration on the question of whether that
16 Defendant is guilty or not guilty. It must not be
17 considered by you in any manner whatsoever against that
18 Defendant. The accused has a constitutional right to
19 remain silent and the assertion of that right cannot and
20 must not be considered by you in any way whatsoever
21 against him. Under your oath you are to reach no
22 inference, you are to draw no conclusion whatsoever from
23 the fact that Mr. Jordan elected not to testify. His
24 decision not to testify should not be discussed by you in
25 the jury room, it should not enter into your minds in

1 making your decision. The burden of proof, as I have
2 stated to you repeatedly, is entirely upon the State. All
3 right, does Mr. Moss have any evidence to present?

4 MR. MCCARLEY: Yes, Your Honor, we would like to take
5 the stand.

6 THE COURT: Come around, please.

7 JONATHAN MOSS, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. McCarley:

11 Q State your name.

12 A Jonathan Moss.

13 Q Mr. Moss, did you rob Daniel Butler?

14 A No, sir.

15 Q Did you burglarize Daniel Butler?

16 A No, sir.

17 Q Did you hit Daniel Butler with a gun?

18 A No, sir.

19 Q Did you tie Daniel Butler up?

20 A No, sir.

21 Q Did you steal his TV's?

22 A No, sir.

23 Q Did you even go to his apartment on August 1st of
24 last year?

25 A No, sir.

1 Q Did you help anybody else do any of the things that I
2 just mentioned?

3 A No, sir.

4 Q Okay. Jonathan, where are you from?

5 A Augusta, Georgia.

6 Q Where did you go to high school?

7 A North Augusta.

8 Q Did you graduate?

9 A Yes, sir.

10 Q Okay. What year did you graduate from high school,
11 Jonathan?

12 A 2013.

13 Q How do you know, do you know Denzil Jordan?

14 A Denzil Jordan is a friend, I have been knowing him
15 since I was 15. I met him when I was in foster care.

16 Q Okay. And you are how old now?

17 A 24.

18 Q Okay. So you have known him nine years or so?

19 A Yes, sir.

20 Q Okay. When is the, well, I am going to direct your
21 attention to late July and early August of last year,
22 about a year ago. Okay, Mr. Moss?

23 A Okay.

24 Q Do you remember that time?

25 A Yes, sir.

1 Q Why do you remember that time?

2 A I buried a family friend, Jordan King, July 31st.

3 MR. MCCARLEY: Permission to approach, Your Honor?

4 THE COURT: Yes.

5 Q Would you please look at what I am handing you, Mr.
6 Moss?

7 MR. GRIMES: Objection, Your Honor, can we approach?

8 THE COURT: Ladies and gentlemen, step in the jury
9 room, don't discuss the case.

10 (Whereupon, the jury was excused from open court.)

11 MR. MCCARLEY: I apologize, Your Honor, I did not
12 provide one of these to the State previous to handing it
13 to Mr. Moss. This is an obituary from the passing and the
14 funeral that Mr. Moss just referred to.

15 MR. GRIMES: Your Honor, if he intends to introduce
16 this as evidence, we weren't provided a copy of it.

17 THE COURT: Are you going to try to offer this into
18 evidence?

19 MR. MCCARLEY: No, sir.

20 THE COURT: Is there an objection then for me to rule
21 on?

22 MR. GRIMES: Not at this time but in light of him
23 handing it to the Defendant, they intend to read from this
24 document, we would have that objection. Presumably he
25 knows the person that he is going to say he buried because

1 he has already named him. So I am not sure of what the
2 purpose of handing him the document was other than to
3 either read from it or try to introduce it into evidence.
4 We would object to either of those.

5 THE COURT: Did you do a reciprocal Rule 5 motion?

6 MR. MCCARLEY: Did I?

7 THE COURT: No, did they.

8 MR. MCCARLEY: They did, yes sir, last Monday. I
9 have another copy if you would like for me to provide one
10 to Your Honor.

11 THE COURT: So when was the first they knew about
12 this obituary.

13 MR. MCCARLEY: Literally just now when I mentioned it
14 and handed to them after they stood up.

15 MR. GRIMES: We were provided an alibi notice and
16 this is not on the alibi notice.

17 MR. MCCARLEY: It is not an alibi, Your Honor.

18 THE COURT: Well, what is it?

19 MR. MCCARLEY: It is literally where he was on July
20 31st which is the day before the incident. I am just
21 going to take him through where he was and what he was
22 doing.

23 THE COURT: All right. The document is not
24 admissible because I am told there is a Rule 5, reciprocal
25 Rule 5 request by the prosecution. It was provided in a

1 timely fashion. I don't know if he intends to read from
2 this, it is going to be hearsay. So I don't know what it
3 is you intend to do with it. You can ask him where it
4 was.

5 MR. MCCARLEY: Correct. Can I ask him what that was,
6 if he can identify it?

7 THE COURT: Nobody is going to be able to see it.

8 MR. MCCARLEY: Okay, yes sir. I will take it back
9 from him.

10 THE COURT: Bring the jury back in. Do you want to
11 mark it for the record?

12 MR. MCCARLEY: No, sir. Unless Your Honor wants to.

13 THE COURT: Do you want to preserve it?

14 MR. MCCARLEY: No, sir.

15 (Whereupon, the jury came into open court at
16 approximately 1:25 p.m.)

17 THE COURT: The objection is sustained. You may
18 continue.

19 MR. MCCARLEY: Thank you, Your Honor.

20 Q You said a friend of yours had passed?

21 A Yes, sir.

22 Q What was the date of his funeral?

23 A July 31st.

24 Q Of what year?

25 A 2017.

1 Q And what was his name?

2 A Jordan King.

3 Q And did you attend his funeral?

4 A Yes, sir.

5 Q Okay. Did you see Denzil Jordan at this funeral?

6 A Yes, sir.

7 Q Okay. When is the next time you saw Denzil Jordan?

8 A Aiken County Detention Center.

9 Q After you went to the funeral where did you go?

10 A I went home initially. I got drunk and I was taking
11 it to heart. I went to North Augusta, I picked up a
12 friend. You know, we drunk, you know, talked about it, I
13 passed out that night. The next morning I woke up I was
14 home, Canterbury Court. About two or maybe three hours I
15 was picked up by another female and went out of town.

16 Q Where did you go?

17 A I went to Waynesboro, Georgia.

18 Q Say that again, please, sir.

19 A Waynesboro, Georgia.

20 Q At about what time?

21 A 2:00 or 3:00, between 2:00 and 3:00.

22 Q How long does it take to get to Waynesboro, Georgia?

23 A 45 minutes to an hour.

24 Q Okay. And what is in Waynesboro, Georgia. Where did
25 you go in Waynesboro, Georgia?

1 A I went to a woman's name Gayla (phonetic) Walker's
2 house.

3 Q How long did you stay at Ms. Walker's house?

4 A Until Wednesday, I stayed for a whole, I had to work
5 Wednesday, I was scheduled to be back to work Wednesday
6 night.

7 Q Where do you work, where did you work at the time?

8 A Amick's Farm.

9 Q And what shift did you work there?

10 A Night shift.

11 Q And when you referred earlier to your house, where is
12 that, where were you living at the time?

13 A Augusta, Georgia. Barn Village, 2311 Canterbury
14 Court.

15 Q Okay. Who all lived there?

16 A Me, Regine, me and Regine Johnson and Keondra McKie
17 and my two kids.

18 Q And who do you have two children with?

19 A Regine Johnson.

20 Q Have you ever, how long have you been in jail?

21 A A little over nine months.

22 Q For the crimes you are accused of here today?

23 A Yes, sir.

24 Q Is there a telephone at the jail?

25 A Yes, sir.

1 Q Do you make telephone calls?

2 A Yes, sir.

3 Q What have I told you about making telephone calls
4 from the jail?

5 A The Solicitor's office can hear it, it is being
6 recorded and monitored.

7 Q And also the phone system at the jail, does the phone
8 system at the jail also tell you that?

9 A Yes, sir.

10 Q Have I told you not to discuss your case on the jail
11 phones?

12 A Yes, sir.

13 Q Can you also send mail from the jail?

14 A Yes, sir. But I really don't write, the officer said
15 they screen the mail and they read the mail so I would
16 rather use the phone.

17 Q Okay. If you were in Waynesboro, Georgia could you
18 have committed these crimes?

19 A No, sir.

20 Q Did you commit these crimes?

21 A No, sir.

22 MR. MCCARLEY: I beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. MCCARLEY: Mr. Moss, these two gentlemen are
25 going to have questions for you as well and you need to

1 answer those. Okay?

2 MR. MOSS: Yes, sir.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 By Mr. Grimes:

6 Q I am going to go back over some information, you
7 covered a little bit of it already but we are probably
8 going to do it in a little more detail. Okay. July and
9 August of last year who did you live with?

10 A Who did I live with?

11 Q Who did you live with?

12 A Regine Johnson, Keondra McKie, my two kids.

13 Q Your two kids are how old?

14 A Six and four.

15 Q Boy, girl?

16 A Boy and a girl.

17 Q Y'all lived at what address?

18 A 2311 Canterbury Court.

19 Q And where is Canterbury Court?

20 A Augusta, Georgia.

21 Q Is that an apartment, house, what is that?

22 A A house, three bedroom house, two bath.

23 Q How long had you lived there, how long had you lived
24 there?

25 A Three years.

1 Q Where did you live before that?

2 A I was with my step-mama, I stayed with my
3 step-mother.

4 Q Had Regine lived there longer than that?

5 A No, sir.

6 Q Keondra?

7 A No, sir.

8 Q How did Keondra and Regine meet?

9 A They met through me. Keondra, me and Keondra, we
10 dated during high school, throughout high school. At the
11 same time me and my baby's mama was together, me and
12 Regine was together. I had a similar pro football game
13 and my mother sat me down and talked to me about the
14 situation. And I had, brought both of them together and
15 said they need to stop the madness, you know. So my
16 baby's mother, Regine asked to talk to Keondra alone. So
17 I allowed it. You know, the next day she moved in
18 basically.

19 Q Keondra moved in or Regine moves in?

20 A Keondra moved in with us.

21 Q At Canterbury Court?

22 A Yes.

23 Q And when did that happen?

24 A I can't remember the exact month but it was early
25 last year, early 2017.

- 1 Q January, February maybe?
- 2 A I can't remember right off the top of my head.
- 3 Q Months before August, right?
- 4 A Yes, sir.
- 5 Q You worked at Amick Farms?
- 6 A Yes, sir.
- 7 Q Where did Regine work?
- 8 A Regine didn't work, she had just quit her job at, I
- 9 want to say Teller Performance Call Center.
- 10 Q So she didn't work when?
- 11 A It was early last year.
- 12 Q Okay. January, February, March?
- 13 A I can't remember.
- 14 Q Where did Keondra work?
- 15 A She was working at Bojangles at the time but she quit
- 16 her job also.
- 17 Q And when was that?
- 18 A I am not sure, I can't remember.
- 19 Q How long had you worked at Amick Farms?
- 20 A For about six months.
- 21 Q So February?
- 22 A If I am not mistaken it was around the end of
- 23 January, yeah, the end of January, yeah, I was working at
- 24 Spiro first, Spiro Foods first. Then I got the job around
- 25 early January, February.

1 Q How many cars did y'all have?

2 A At the time it was two.

3 Q Who had cars?

4 A Regine and Keondra.

5 Q What kind of car did Regine have?

6 A A mini-coup.

7 Q And what kind of car did Keondra have?

8 A A Pontiac G6.

9 Q What color?

10 A Red.

11 Q All right. You worked at night, were you home all
12 day?

13 A Sometimes I didn't go home when I got out of work.
14 Most of the time I didn't go home.

15 Q You were never there?

16 A I was there but most of the time I didn't go home
17 from work.

18 Q Jordan King, who is he to you?

19 A He is a family friend. I have known him since
20 football. We played on the same team. When I moved to
21 this certain foster home he stayed across the street. I
22 knew them, I knew him before I knew Denzil. I met Denzil
23 later on down the line.

24 Q And that funeral was where?

25 A In Augusta, Georgia. I can't remember the exact

1 funeral home, where the burial was but it was right off of
2 Deans Bridge Road.

3 Q But you lived in Augusta?

4 A Yes, sir.

5 Q So you weren't away, you weren't away from home, you
6 weren't out of town?

7 A When?

8 Q On July 31st?

9 A No, sir.

10 Q You were in town?

11 A Yes, sir.

12 Q And you went home after that funeral?

13 A Yes, sir.

14 Q And you saw DJ in Augusta on July 31st?

15 A Yes, sir. We attended the funeral.

16 Q How did DJ know Mr. King?

17 A They stayed in the same neighborhood, you know, they
18 probably knew each other before I even knew they knew each
19 other. We all stayed on the same street.

20 Q Where did DJ work?

21 A A lumber yard, I don't know the name of it. I didn't
22 even know, it is behind the trailer park off of Gordan
23 Highway. But that is where he was working.

24 Q And how often did you see DJ?

25 A Really not often. You know, as I moved around to

1 foster care we drifted apart. But I come around here and
2 there. But we had known each other so long. He know a
3 lot of my people, you know. So I, if he is at my
4 step-mother's house which her name is Teal, I see him
5 there. But not really, not that often.

6 Q Where does Teal live?

7 A At the time she was living on Assembly Road off of
8 Gordan Highway in Augusta, Georgia.

9 MR. GRIMES: I beg the Court's indulgence for just a
10 moment.

11 THE COURT: Yes, sir.

12 Q July 31st you went to the funeral?

13 A Yes, sir.

14 Q You said that you left the funeral, you went home,
15 you got drunk?

16 A Yes, sir.

17 Q And you went where?

18 A I went to sleep that night after I got drunk.

19 Q So that is July 31st you went to sleep?

20 A Canterbury Court, 2311, Augusta, Georgia.

21 Q Went to sleep drunk at Canterbury Court?

22 A August 1st, Tuesday.

23 Q Hold on a minute, we will get to August 1st in a
24 minute.

25 A Okay.

1 Q July 31st you went to sleep drunk in Canterbury
2 Court, who was there?

3 A Regine Johnson.

4 Q Regine Johnson.

5 A Keondra McKie and my two kids.

6 Q Keondra McKie and your two kids all in the house July
7 31st?

8 A Yes, sir.

9 Q The sun comes up August 1st, who is in the house?

10 A Regine Johnson, Keondra McKie, Bam is a friend, he
11 was there. I picked him up that night, July 31st, that
12 night.

13 Q It is going to have to be better than Bam, who is
14 Bam?

15 A Edward Tomago.

16 Q Edward Tomago. You picked up Edward Tomago where?

17 A North Augusta, the neighborhood is called Ridge, I
18 guess, I don't know the name of the neighborhood.

19 Q Ridge View Manner?

20 A It is houses, I don't know the name of the
21 neighborhood. It is the same neighborhood of Monterey
22 Drive, it is the same neighborhood.

23 Q How do you know Edward Tomago?

24 A I have known him for about two years. Like I tell
25 you, me and Keondra, we have been dating for a long time.

1 I always go to her house, you know. One day I was
2 outside, I was smoking, he smelled the weed and came and
3 asked me can you smoke. You know what I am saying, we
4 just got to talking and I passed the blunt to him. He is
5 a older white guy, military veteran, retired. After that
6 we just started smoking and drinking all the time
7 together, every time I go up there I go see him. We
8 smoke, we drank.

9 Q Edward Tomago smoking and drinking buddy, he is at
10 the house August 1st?

11 A No. I picked him up. I went to North Augusta after
12 the fact of the funeral later on that night. I picked him
13 up, we smoked, we drank, he stayed the night at my house.

14 Q You are going to have to catch me up. I just asked
15 you, July 31st, who was at the house that night?

16 A You asked me who was at the house during the daytime,
17 sir or at that time. You didn't ask me about that night.

18 Q You said you went to sleep drunk on July 31st--

19 MR. MCCARLEY: Objection, Your Honor. He is not
20 allowing Mr. Moss to finish his exclamation.

21 MR. GRIMES: I would like to hear it.

22 A This is what happened, sir. July 31st, as I told
23 Nick McCarley, got drunk, I went to North Augusta. I
24 picked up a friend. We got drunk, finished drinking, you
25 know, passed out. The next morning I woke up, or

1 afternoon really, I woke up, I left around 2:00 or 3:00,
2 went to Waynesboro, Georgia, me and Bam, Edward Tomago.

3 Q So let's do it again. July 31st?

4 A Yes, sir.

5 Q At night, who is at the house?

6 A Regine Johnson, Keondra McKie, my two kids, Edward
7 Tomago and me.

8 Q August 1st, in the morning, who is at the house?

9 A Keondra McKie, Regine Johnson, my two kids, Edward
10 Tomago and me.

11 Q When you said you left that afternoon to go to--

12 A Waynesboro, Georgia.

13 Q At 2:00 or 3:00?

14 A Yes, sir.

15 Q You don't know if it was 2:00 or 3:00?

16 A Between the times.

17 Q With Edward Tomago?

18 A And Kiana Boyd, that is the female that picked me up.

19 Q And Kiana Boyd. Okay. You, Edward Tomago, Regine
20 Johnson and your two kids were at your house on August
21 1st, 2017?

22 A Yes and Keondra McKie. You excluded her.

23 Q I didn't exclude her.

24 A You just didn't say her name.

25 Q I know where she was.

1 A Okay.

2 Q Well, she was there with you on August the 1st of
3 2017?

4 A Before I left the house, me and Edward left the
5 house. Yes, she was there.

6 Q What kind of car does Kiana Boyd drive?

7 A At the time she was driving a brown Impala.

8 Q What is in Waynesboro, Georgia?

9 A Her sister-n-law, Gayla Walker. Gayla has kids by
10 her brother.

11 Q Gayla has kids by who?

12 A Kiana's brother.

13 Q And what did y'all do in Waynesboro, Georgia?

14 A The usual, smoke, drank and cooked out. You know,
15 that is what they do in the country, they always on the
16 grill.

17 Q And when did you leave Waynesboro, Georgia?

18 A Wednesday.

19 Q And where did you head from Waynesboro, Georgia?

20 A Where?

21 Q Yes, where did you go?

22 A Went to the house, Kiana dropped me and Edward off to
23 the house. I got prepared for work.

24 Q Did you go to work?

25 A Yes, sir.

1 Q What did you do after that?

2 A After work. I was incarcerated in Saluda County jail
3 for driving under suspension. I got arrested that
4 Wednesday night.

5 Q How long have you known Kiana Boyd?

6 A I have known Kiana Boyd since I was 14. Her aunt was
7 my foster mother.

8 Q What is her phone number?

9 A 706-840-1825.

10 Q And where does she normally live?

11 A Hephzibah, Georgia.

12 Q And where is that, what address?

13 A I don't know her address.

14 Q Where is it?

15 A Hephzibah, Georgia?

16 Q Where is it in Hetzela?

17 A The neighborhood is called Farrington.

18 Q And Edward Tomago, what is his telephone number?

19 A I don't know his number.

20 Q Does he know Kiana?

21 A In a way, yes.

22 Q In a way as he knows her through you?

23 A Yes.

24 Q So he doesn't know her?

25 A He know of her, the only friend that I really have

1 and had and knew of my girlfriends is Denzil and Jordan
2 King. The ones that actually be around my kids and my
3 family is Denzil and Jordan King.

4 Q And Bam?

5 A When he was at the house my kids was in a room, my
6 girls was in a room, we were in the living room or we
7 would go outside. I never, like I said, the only people
8 that communicated was my family, my kids, my women, Denzil
9 Jordan and Jordan King.

10 Q Edward Tomago knows Gayla Walker?

11 A He knows of Gayla Walker through me.

12 Q Has he ever met Gayla Walker before?

13 A Yes.

14 Q Who else was there at Gayla Walker's house?

15 A Gayla Walker, me, Edward Tomago, Kiana Boyd, Boyd and
16 her four kids.

17 Q How well does Regine and Keondra know Kiana?

18 A That is funny you ask. They hate Kiana, that is the
19 reason they got together to exclude Kiana out of my life.

20 Q That is the reason they got together?

21 A That is the reason they got together.

22 Q And how was that going to exclude Kiana?

23 A You should ask her that. I guess they thought it
24 would help but it didn't.

25 MR. GRIMES: I beg the Court's indulgence for just a

1 moment.

2 THE COURT: Yes, sir.

3 Q Did you talk to Kiana Boyd about your situation
4 today?

5 A Today, no sir.

6 Q Not today. Did you talk about your situation, your
7 trial this week?

8 A Yes, sir. Yes.

9 Q What did you tell her about it?

10 A Just told her what was going on, you know, what else
11 can I tell her exactly what's going on at trial.

12 Q Did you ask her anything about it?

13 A I asked her to come help me, to let the Court know
14 where I was. Yes, I did.

15 Q You asked her, you asked her for what?

16 A To come to court.

17 Q And do what?

18 A To tell the Court where I was.

19 Q Did you talk to Mr. Tomago?

20 A Not until I seen him at Aiken County jail but it was
21 never about court or anything. It was when we always got
22 drunk and we smoked and he asked me what I was doing here.
23 And I told him. And that is when we were together and we
24 was in Burke County. I said, yes. So other than that we
25 readily don't talk, we are not allowed to stand there at

1 each other's door while we are on our recreation.

2 Q Did you talk to him about your trial?

3 A No, sir.

4 Q Nothing about it?

5 A No, sir.

6 Q He didn't know you were up for trial this week?

7 A He know, we are in the same dorm. We are in the same
8 pod, we are housed in the same section.

9 Q Right. So he knows you are up for trial this week?

10 A Yes, sir.

11 Q And just to be clear. Your testimony is that you
12 were at Canterbury Court on August 1st until 2:00 or 3:00
13 in the afternoon?

14 A Can you say that again.

15 Q You were at Canterbury Court on August 1st of 2017
16 until 2:00 or 3:00 in the afternoon?

17 A Yes, sir.

18 Q With Keondra McKie?

19 A Yes, sir. Regine Johnson, my kids and Edward Tomago.

20 Q You didn't have a car back in July and August of
21 2017, right?

22 A No, sir.

23 Q So you might use the other two cars that were there?

24 A Yes, sir.

25 Q Yes?

1 A Yes.

2 Q From time to time you would use Keondra's car?

3 A Only time I used Keondra McKie's car was when we go
4 somewhere or I drove to work.

5 Q You came, your testimony is that you were in or at
6 Canterbury Court on August the 2nd or 3rd, August the 2nd?

7 A I was on Canterbury Court August 1st. July 31st, I
8 stayed there that night, got drunk, me and Edward Tomago,
9 my two girls and my kids. August 1st, I was there, I left
10 at 2:00 or 3:00.

11 Q August the 2nd you were gone?

12 A August the 2nd I was gone.

13 Q August 3rd you came back because you had to work?

14 A August 3rd I was incarcerated.

15 Q You came back to Canterbury Court, you got a car, you
16 went to work and then you got incarcerated. Is that
17 right?

18 A Got incarcerated, I got incarcerated August 2nd,
19 Wednesday.

20 Q July 31st you are at the house, your house?

21 A What time?

22 Q At night?

23 A Yes.

24 Q August 1st you are at your house until the afternoon?

25 A 2:00 or 3:00.

1 Q You said that you went to Waynesboro, Georgia and
2 spent the night on August 1st. You said you were in
3 Waynesboro, Georgia on August 2nd?

4 A Wednesday, August 2nd. I came back at 6:00 or 7:00.

5 Q When did you go to work?

6 A I dropped Edward Tomago off at his house and I left
7 work.

8 Q On August the 2nd?

9 A Yes, sir.

10 Q What time did you go to work?

11 A I leave for work, I try to hit, about 9:00, 10:00
12 o'clock. I start work, I start my, I am scheduled to be
13 on the floor at 11:45. So to Batesburg, Ridge Spring,
14 Monetta it is about an hour drive from Augusta, Georgia.
15 And then I also had to drop Edward Tomago off. During
16 that process when I dropped him off we smoked. You know,
17 I left the house about 8:00, left the house about 8:00,
18 yeah, about 8:00 and then I went and dropped him off.
19 Smoked half a blunt with him and I left, I hit the road.

20 Q And went to work?

21 A Yes, sir.

22 Q You were in Keondra's car?

23 A Yes sir, red Pontiac G6.

24 Q On August 2nd when you went to work?

25 A Yes, sir.

1 Q Where were you driving on August 3rd?

2 A Saluda County.

3 Q You said you were driving under suspension?

4 A I got arrested August 2nd. August 3rd--

5 Q Did you go to work August 2nd or not?

6 A I was on the way to work. I got arrested on a
7 roadblock.

8 Q Okay. July 31st you go to the funeral. You come
9 home after you pick up your buddy, Bam who you smoke and
10 drink with. Just so we are clear, when you talk about
11 smoking that is weed?

12 A Yes, sir.

13 Q You came home, you got drunk, you woke up the next
14 morning, he is still there. Where did he sleep?

15 A On the couch.

16 Q And where do you sleep?

17 A In my room.

18 Q Woke up the next morning, left at 2:00 or 3:00
19 o'clock that afternoon?

20 A Yes, sir.

21 Q And on August the 2nd you were driving Keondra's car?

22 A On the way to work.

23 Q No further questions.

24 THE COURT: Mr. Bush.

25 CROSS-EXAMINATION

1 By Mr. Bush:

2 Q Mr. Moss, good afternoon.

3 A Good afternoon.

4 Q How are you doing today, sir?

5 A All right.

6 Q You are doing okay?

7 A Yes.

8 Q Okay. Just got three quick questions for you. All
9 right?

10 A Okay.

11 Q Solicitor Grimes made a big deal about timeframes and
12 dates and places where you were. When you woke up on
13 August the 1st Mr. Jordan wasn't with you, was he?

14 A No, sir.

15 Q You didn't see him that day?

16 A No, sir.

17 Q You didn't talk to him that day?

18 A No, sir.

19 Q Had nothing to do with Mr. Jordan on August the 1st,
20 2017?

21 A No, sir.

22 MR. BUSH: No further questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. MCCARLEY: Yes sir, I will be very brief.

25 REDIRECT EXAMINATION

1 By Mr. McCarley:

2 Q Mr. Moss, there was a new name introduced in your
3 testimony with Mr. Grimes and that is Kiana Boyd?

4 A Yes, sir.

5 Q And who is that to you?

6 A Honestly she is my girl. She is who I spend most of
7 my time with.

8 Q Okay. Did Regine and Keondra like that?

9 A No, not at all.

10 Q Do you have a tattoo on your left arm?

11 A Yes, sir.

12 Q What does it say?

13 A Kim.

14 Q It does?

15 A Yes, sir.

16 Q You mind rolling your sleeve up and showing the jury.

17 A (The witness complied).

18 MR. MCCARLEY: Your Honor, may he step down? Just
19 not say a word, just walk in front of the jury so they can
20 see it?

21 THE COURT: Sure.

22 (Whereupon, the witness walked in front of the jury.)

23 Q Do you have tattoos of any other women's name, girl's
24 name on your body?

25 A My daughter, my right arm, my right shoulder.

1 Q Say that again, I am sorry.

2 A My daughter.

3 Q Where is that tattoo?

4 A Right here on my right arm.

5 Q I don't want there to be any confusion whatsoever,
6 Mr. Moss. There is now Kiana and Keondra?

7 A Yes, sir.

8 Q Right?

9 A Yes, sir.

10 Q Okay. You woke up at your house and Keondra McKie
11 was there?

12 A Yes, sir.

13 Q And Kiana Boyd picked you up from there?

14 A Yes, sir.

15 Q You were not with Keondra McKie after Kiana Boyd
16 picked you up?

17 A No, sir.

18 Q At approximately 2:00 or 3:00?

19 A Yes, sir.

20 Q Nothing further.

21 THE COURT: Recross?

22 MR. GRIMES: Nothing, Your Honor.

23 THE COURT: Mr. Bush, do you have any questions?

24 MR. BUSH: Nothing, Your Honor.

25 THE COURT: You may step down. Mr. McCarley, do you

1 have other witnesses?

2 MR. MCCARLEY: I beg the Court's indulgence.

3 THE COURT: Yes.

4 MR. MCCARLEY: May we have a quick sidebar, Your
5 Honor.

6 THE COURT: Yes.

7 (Whereupon, a bench conference was held in the
8 presence of the jury but out of the hearing of the
9 jury.)

10 THE COURT: Ladies and gentlemen, we will take a ten
11 minute break. Don't discuss the case. I will get back to
12 you as quick as I can, around ten minutes.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: All right, bring the jury back in.

16 (Whereupon, the jury came into open court at
17 approximately 2:09 p.m.)

18 THE COURT: Does Mr. Jordan have any other witnesses
19 to present?

20 MR. BUSH: Mr. Jordan does not, Your Honor.

21 THE COURT: I apologize, I am trying to do two things
22 at once. Does Mr. Moss have any other witnesses?

23 MR. MCCARLEY: No, Your Honor.

24 THE COURT: Does the State have any reply?

25 MR. MCMILLIAN: No, Your Honor.

1 THE COURT: Do you wish to present any other evidence
2 on behalf of Mr. Jordan?

3 MR. BUSH: No, Your Honor.

4 THE COURT: Thank you. All right, ladies and
5 gentlemen, you now have all the evidence you are going to
6 have to decide the cases. And there are two stages that
7 remain. There is the closing arguments and the charge.
8 And the charge is what we call the part where I tell you
9 the law. I know you have only been out here a minute but
10 we have reached one of those points where I have to
11 discuss legal issues with the attorneys. This is actually
12 the longest of all of them. It typically takes about
13 twenty minutes to go through. So I am going to ask you to
14 step in the jury room, don't discuss the case. We will
15 deal with what we have to deal with then we will bring you
16 back out here and give you the closing arguments and the
17 charge. You are going to get the case this afternoon. I
18 can't say exactly when but the law is going to take about
19 26 minutes to explain to you. I don't know how long the
20 lawyers will talk to you. So you will get the case this
21 afternoon. If you want to make phone calls during this
22 break to tell somebody that you might be running late you
23 can. How long you deliberate is entirely up to you.
24 Thank you and don't discuss the case.

25 (Whereupon, the jury was excused from open court.)

1 THE COURT: Any motions?

2 MR. BUSH: Your Honor, at this time the Defense for
3 Defendant Jordan would renew our directed verdict under
4 the same grounds that we made prior to Mr. Moss' team
5 presenting a defense. We also renew pretrial motions and
6 any objections that we raised.

7 THE COURT: There are jury issues and the motion is
8 denied. The rulings previously made are reaffirmed. Ms.
9 Steiner.

10 MS. STEINER: Your Honor, the Defense for Mr. Moss
11 would like to renew our directed verdict motion for a
12 directed verdict motion and our pretrial motions and any
13 objections made during the case.

14 THE COURT: All right. The ruling is the same.
15 There are jury issues and the rulings that I previously
16 made are reaffirmed. I am going to email a proposed
17 charge, a draft of the charge. Mr. Gibbons who
18 volunteered to print out the draft. So as soon as y'all
19 get those look them over and then we will have a charge
20 conference and then we will be ready to go. We are at
21 ease.

22 (Whereupon, a short break was taken.)

23 MR. MCMILLIAN: Before they come back in. In regard
24 to one of the exhibits that Mr. Bush entered, I believe it
25 is the video, the Rule 5 stands on it, actually says that

1 it went to Nick McCarley. That was an oversight on our
2 office part. I think both CD's actually went out with a
3 stamp that said to Mr. McCarley. This was Mr. Bush's
4 copy, he entered this copy. I don't know if, I think he
5 has some questions about whether he needs to amend that.

6 MR. BUSH: I don't have any issue with the way that
7 it is. I just didn't know with that language on the CD if
8 we needed to amend it. Like when it was released to us
9 and stuff like that.

10 THE COURT: Not that I know of. But if everybody
11 agrees to substitute something else for that exhibit that
12 is fine with me too.

13 MR. MCMILLIAN: I don't even know that we can't just
14 use a sharpie and strike through Mr. McCarley's name and
15 put Mr. Bush's name.

16 THE COURT: Whatever all of you agree to is fine with
17 me.

18 MR. BUSH: Yes, sir. That is fine by me, Your Honor.

19 THE COURT: The charge was circulated to the
20 attorneys and they reviewed it. Are there any things that
21 I need to address with the State about the draft?

22 MR. MCMILLIAN: None, Your Honor.

23 THE COURT: Mr. Bush?

24 MR. BUSH: I will be going into a motion with Mr.
25 Moss, Your Honor.

1 MS. STEINER: Your Honor, for the reasonable doubt
2 jury charge, we are asking for the jury charge to include
3 the hesitate to act definition instead of the, in addition
4 to, not instead of, I apologize. In addition to the
5 firmly convinced of the Defendant's guilt definition.

6 THE COURT: I don't dispute that that is in the
7 precedent that is in the cases. I have never charged
8 that. A lot wiser people than me that have reviewed that
9 and come up with that language and that language doesn't
10 make any sense to me. But I mean I will follow the
11 precedent if I didn't think it was confusing to the jury.
12 The language I use is from the U.S. Supreme Court and I
13 use it consistently and left out the other. So I never
14 prevent the lawyers from arguing to the jury. I will not
15 prevent any of you from arguing it to the jury but I don't
16 charge it. But I note your exception.

17 MS. STEINER: Thank you, Your Honor.

18 THE COURT: It is my understanding everybody has
19 agreed to the order of the closing arguments will be.
20 That Mr. Moss' attorney will go first, Mr. Jordan's
21 attorney will go second and the State will close.

22 MR. BUSH: Yes, Your Honor.

23 MR. MCMILLIAN: That's correct, Your Honor.

24 MR. MCCARLEY: Yes, sir.

25 THE COURT: Are we ready. I assume we are. Bring

1 the jury in.

2 (Whereupon, the jury came into open court at
3 approximately 2:55 p.m.)

4 THE COURT: Ladies and gentlemen, as I have told you,
5 you have all the evidence you are going to have to decide
6 these cases. And there are two stages that remain in the
7 trial. The closing arguments of the attorneys, part of
8 the trial the attorneys are permitted through the art of
9 advocacy to attempt to get you to see things as they would
10 like for you to see them regarding their respective
11 positions. Now, that doesn't change the burden of proof.
12 The burden of proof remains with the State through every
13 stage of the trial. I told you in the opening statements
14 that the attorneys could not engage in what we refer to as
15 argument. They can now, they can attempt to persuade you
16 through the use of the art of advocacy, attempt to get you
17 to focus on things and interpret them as they would, they
18 believe they should be interpreted. The way this will
19 work is that Mr. Moss' attorney will go first, Mr.
20 Jordan's attorney will go second and the State's attorney
21 will go last. Since the State has the burden of proof,
22 they can go last. I always take a break between when they
23 finish and when I start so I can get set up out there,
24 there are a few things I have to get printed. It is
25 usually a very short break. Sometimes I take breaks

1 between the arguments, it just depends on how things are
2 going. So we will play it by ear. But I anticipate, as I
3 said before the break, that you are going to get this case
4 this afternoon. I invite your close attention to the
5 attorneys.

6 MR. MCCARLEY: Ladies and gentlemen of the jury, good
7 afternoon again. While Ms. Steiner is working on that, in
8 the State's opening statement Mr. McMillian, at the very
9 end of that opening statement used the term, clear and
10 convincing evidence. He said that he believed at the end
11 of the trial that you would see that it was clear and
12 convincing evidence. And what this is is something called
13 Black's Law Dictionary.

14 MR. MCMILLIAN: Objection, Your Honor. Reading from
15 the Black's Law Dictionary.

16 THE COURT: I don't know what he plans to read.

17 MR. MCCARLEY: Would you like for us to approach.

18 THE COURT: You may.

19 MR. MCCARLEY: The definition of clear and
20 convincing, Your Honor.

21 THE COURT: What does that got to do with a criminal
22 trial?

23 MR. MCCARLEY: Exactly.

24 THE COURT: Just make your argument without using the
25 dictionary.

1 MR. MCCARLEY: Yes, sir.

2 THE COURT: Okay.

3 MR. MCCARLEY: Ladies and gentlemen, clear and
4 convincing is a lower burden of proof in beyond a
5 reasonable doubt. Clear and convincing evidence is not
6 beyond a reasonable doubt by legal definition. That is
7 telling, the State would tell you in their opening
8 argument that they believe the evidence is clear and
9 convincing. Even if it is, even if you believe what the
10 State said in their opening statement, it is not beyond a
11 reasonable doubt. Ladies and gentlemen, that is a term I
12 ask you in opening statement to look for those in this
13 case by analogy because the State was going to try to
14 build you, build you a house. We went in that house and
15 looked around that house, behind the curtains and under
16 the rugs, that we were going to see the truth and you were
17 going to find the truth and you were going to hear the
18 truth from that witness stand. I also ask y'all to look
19 for witnesses that were credible, reliable and believable.
20 Okay. As I move through these slides to keep in mind,
21 what were the, "termites in this case" that the State
22 presented to you. And who was reliable and credible,
23 okay, and who was believable. The first witness was
24 Raymond Daniel Butler. He told you that he told police
25 the key facts and the main facts yet he never names

1 Johnathan Moss in any of his three separate statements. I
2 imagine that is a key fact, if you are accusing someone of
3 violent crimes that carry life in prison. He also got
4 Johnathan's name from Alexis Curry who is Keondra McKie's
5 step-sister. This is not a man who picked somebody out of
6 a photo lineup that police officers had shown him. He was
7 told the name by the lady who admitted to you being an
8 armed robber. He never told police anything about his son
9 being threatened, that was compelling testimony when he
10 said that and became emotional. The first time anybody
11 ever heard that. Is that a key fact for him, it was
12 clearly important. He would have you believe that it was
13 important. Never told the police Keondra McKie was at his
14 apartment in the first statement. Wouldn't that be
15 important, wouldn't that be a key fact or a main fact.

16 Next slide, please.

17 He mislead the police about Keondra McKie. Said
18 during his testimony, communicated with her like a friend
19 or family. And then he said that he didn't communicate
20 with her at all until four years later. I am sorry, I am
21 sorry, four days later after this supposedly happened. If
22 you are with a friend or family and you are robbed, you
23 wouldn't communicate with that person, for four days?
24 Claims to have recognized Johnathan on Facebook. I never
25 saw any picture of Johnathan Moss, no one here ever saw

1 any pictures of Johnathan Moss. Raymond Butler told you
2 that he had one drink. Ms. McKie said he had a whole
3 bottle of Crown and shots of, I believe, it was Ciroc. He
4 does not know if he was sitting on the bed, laying on the
5 bed, dozing off or getting ready for work when this
6 occurred. And I apologize, I wrote this. He said all
7 four. And a fifth option, so many stories going around,
8 it is hard to keep them all straight. Keondra McKie
9 actually says he was kissing on her or she was kissing on
10 him on the bed, laying on the bed. He made no mention of
11 that whatsoever in his first statement. Raymond Daniel
12 Butler never told the police the truth, the whole truth
13 and nothing but the truth. When I was questioning Mr.
14 Butler he said he never, never lied to police, right. But
15 he took an oath right here when he took the stand to tell
16 the truth, the whole truth and nothing but the truth.
17 That is the definition of truth. You can't leave out
18 things that you are going to tell the truth, ladies and
19 gentlemen. And he left out fact after fact after fact.

20 May I have the next slide, please.

21 Moving on to Keondra McKie. She said she was
22 drinking with Butler to have a good time. That's Keondra
23 McKie's good time. She told police she was living with
24 her dad. She told she was living with Johnathan and her
25 girlfriend. She told police she was threatened by the

1 burglars. She told you she is an armed robber and a
2 burglar. She told police that she locked the door. She
3 told you she left the door unlocked. Don't want to
4 misrepresent anything. I think she actually told the
5 police both things. She then told you she left the door
6 unlocked. She told police 19 times that she did not know
7 who the second person was, 19 times. They weren't going
8 to take no for an answer. North August Department of
9 Public Safety, the police were not going to take no for an
10 answer, they are going to keep her in that room until she
11 said what they wanted her to say. Told police Denzil
12 Jordan planned everything. She told you that Johnathan
13 Moss planned everything. She told police about a gun.
14 She told you she couldn't remember a gun. She doesn't
15 know when the planning happened. Was it the day of, was
16 it the day before, was it a week and a half prior, was it
17 two weeks prior. We have no idea. She is not credible.
18 Continuing with Keondra McKie. She told police I am being
19 totally honest, like totally honest. Said that relatively
20 early in her statement. She told police three stories,
21 she told you four stories. First of all, she is a victim
22 of a crime with a gun to her head. Then she committed the
23 crime of one person she knew, and then she committed a
24 crime of two people she knew. And then, "this one here",
25 which is the story she told you over the course of a

1 couple of days.

2 Moving on to the police. What the police did
3 actually do. They put in the police report that Raymond
4 Daniel Butler had not been completely honest. This was an
5 understatement. Much like the understatement when the
6 police testified here and they said that she had lied for
7 a short time in her video which you watched, which will be
8 in evidence and you can take it back in the jury room and
9 watch that yourself. You don't have to trust me on that
10 video, watch it yourself, I am asking you to watch the
11 video yourselves, there is a lot there. At the one hour,
12 approximately one hour and five minute mark of that video
13 the police tell her, you have got to quit lying. And that
14 video I think is about an hour and eleven minutes long
15 where they are actually meeting with her. So one hour and
16 five minutes is, you have got to quit lying. But here on
17 the stand the police would have you believe she lied in a
18 short amount of time. The police discussed helping
19 Keondra nine times in that video, in that hour,
20 approximately hour and ten minutes. They threatened
21 Keondra three times in that video. And when I say,
22 threaten, they didn't jump up on the table, they didn't
23 and y'all watch the video. Okay. What they did is they
24 said we are going to walk out of that room and you are
25 going to do life in prison. What they did not do which is

1 also important. Okay. When considering this case in the
2 jury room please consider what was presented to you but
3 also what was not. Okay. They did not investigate text
4 messages, multiple people testified that text messages
5 were sent. They didn't go get text messages. You can get
6 text messages off of towers. You don't have to have that
7 actual physical phone. They did not investigate phone
8 records. She is on video that was played for you using
9 the phone. They didn't want to know where people were.
10 They didn't want to know what was really going on. They
11 didn't get phone numbers from anyone. I think the first
12 phone number anybody got from anyone was Mr. Grimes'
13 talking to Mr. Moss. Get search warrants, they didn't get
14 search warrants. They didn't search Keondra's car, the
15 getaway car, what they say was the getaway car. They
16 didn't search it. They didn't interview Keondra's
17 grandfather, they told Keondra, we are going to go check
18 with your grandfather to check out your story. Didn't go
19 to talk to him, no evidence whatsoever presented, they
20 wouldn't talk to him. They didn't interview any
21 neighbors, anything that might have been around. No
22 evidence that they even tried to. Maybe that would have
23 been, and I am moving down a little bit on some body worn
24 camera footage, police officers wear body cameras. Maybe
25 that is on there. They didn't collect it, I don't know if

1 it exist or doesn't exist. But you didn't see it, it is
2 not here in evidence. Didn't take DNA samples, didn't
3 take fingerprints. There is, it is beyond a reasonable
4 doubt. They didn't collect the KFC receipt, actually the
5 alleged victim, Mr. Butler, picked that up for them. They
6 did not investigate social media platforms. Okay. That
7 is very, very important, there was a lot of discussion
8 even in some of the statements that things had been said
9 and done on Snapchat or Facebook or others. They can
10 subpoena this information. Law enforcement can subpoena
11 this information. If they have probable cause to arrest
12 people they very likely have probable cause to get search
13 warrants and go look for this information. They don't
14 want to do that. They wanted to rely on one of the five
15 stories that Keondra McKie told you. Didn't show anybody
16 any photo lineups. What they did is they showed one
17 picture to people. You either pick them out or you don't.
18 If you don't pick them out I am not leaving this room and
19 you are going to prison for life.

20 May I have the next one, please, Ma'am.

21 Johnathan Moss. Johnathan Moss waived his right to
22 remain silent and he took the stand and he told you that
23 he did not rob, burglarize, assault or kidnap Raymond
24 Daniel Butler. He told you that on July the 31st he
25 attended his friend's funeral. He told you that on August

1 1st he went to Burke County, Georgia. He did not even go
2 to Raymond Daniel Butler's apartment. And because all of
3 the things that are on these slides and mainly, ladies and
4 gentlemen, not mainly, solely, because of what you heard
5 from that witness stand and also the information entered
6 into evidence, Johnathan Moss is not guilty. Because to
7 find someone guilty beyond a reasonable doubt you have to
8 be firmly convinced. When you go back in that jury room
9 and begin to discussing this case, consider whether or not
10 you are firmly convinced of anything Keondra McKie said.
11 If you are firmly convinced that Daniel Butler, who
12 learned Johnathan Moss' name from Keondra McKie's
13 step-sister, are you firmly convinced of that, from a
14 Facebook photo that you have never seen. Is that evidence
15 beyond a reasonable doubt of somebody's guilt. It is not.
16 And because of that Johnathan Moss is not guilty of each
17 and every one of the charges that he has been charged with
18 and he took the stand and he told you that. Thank you
19 very much for your time.

20 THE COURT: Thank you, Mr. McCarley. All right, Mr.
21 Bush, you are recognized for your closing argument.

22 MR. BUSH: I beg the Court's indulgence.

23 THE COURT: Sure.

24 MR. BUSH: Solicitor Grimes, Solicitor McMillian, Mr.
25 McCarley, Ms. Steiner, the Court. Ladies and gentlemen of

1 the jury, at the beginning of this trial I told you about
2 three things. Connection, deception, protection. I told
3 you you would hear about the connection between witnesses
4 and you sure heard the connection between Ms. McKie and
5 Mr. Butler. Now, depending upon which witness you believe
6 their connection might be a little bit different. Mr.
7 Butler told you from this witness stand that they were
8 just friends and Ms. McKie was just coming over to look
9 for a job on WiFi. She didn't go to a public library,
10 Starbucks, she went over to his house to get on WiFi and
11 look for a job. He told you that he had met her for a
12 while. He told you that his son's mother is her
13 step-sister. Ms. McKie told you she went over to his
14 house, drank a bottle of Crown and they were in his room.
15 They were in his room kissing. Now, Mr. Butler told you
16 what, three different stories, I think, about what he was
17 doing when this allegedly happened. He told you he was
18 getting ready for work, he told you he was dozing off, he
19 told you he was sitting on the bed. Ms. McKie told you
20 they were in the bed together. Why would Mr. Butler tell
21 you that. Nobody wants the mother of their child to know
22 that they are in the bed with their step-sister. To
23 protect themselves, and to protect Ms. McKie. That is all
24 we get to deception. Ladies and gentlemen, I told you
25 that you would hear a lot of deception. I was right. You

1 see, Mr. Butler told you that he told the truth to law
2 enforcement when he spoke with them on August the 1st.
3 Told them the main facts of what happened. He told them
4 the whole truth. And then he turned around and from this
5 witness stand he told each and everyone of you that he
6 left Keondra McKie's name out. He didn't tell them she
7 was there and he told you, oh, I didn't tell them that she
8 was there because I thought she just ran out. Wrong,
9 wrong. He didn't tell law enforcement that she was there
10 because he was protecting himself, what he had done, what
11 he knew was going to get him in trouble. It was a lie.
12 He says some other things today that he didn't tell
13 police. You got to watch me as I questioned him about it.
14 We talked about his statement on August the 1st, if he had
15 ever mentioned to law enforcement that anybody threatened
16 his son. He didn't. He met with law enforcement again on
17 August the 3rd and never mentioned that anybody had
18 threatened his son. He met with them again on August the
19 5th, a third time, and never mentioned to them that anyone
20 had threatened his son because it wasn't true. He told
21 you from this witness stand that the people in his house
22 said, we some good robbers. That his whole apartment
23 smelled like Fabuloso. He didn't tell law enforcement
24 that on August 1st, he didn't tell law enforcement on
25 August 3rd, he didn't tell law enforcement that on August

1 5th because it wasn't true. Now, the State, they
2 introduced a photo to you, this is State's exhibit 4, I am
3 showing this to you. They introduced the photo, there is
4 a bottle there with some purple stuff in the bottom. And
5 the State is going to tell you that is the Fabuloso he was
6 talking about. See, he was telling you the truth, wrong,
7 wrong. Just because it is in a picture doesn't mean what
8 Mr. Butler said about it was true. Law enforcement,
9 Sergeant Sherman couldn't testify about it because he
10 didn't go to the crime scene. It wasn't true. He
11 deceived law enforcement and he is trying to deceive you
12 to protect himself.

13 Let's talk about Keondra McKie. Keondra McKie told
14 so many lies, frankly I don't even know where to begin.
15 She lied to law enforcement over 21 times. And she lied
16 to police the entire time. She told you, well, she told
17 law enforcement that she had planned this whole thing with
18 Mr. Jordan while they were playing basketball. She
19 admitted on the stand that that was a lie. That she had
20 lied to law enforcement when she met with them. And,
21 ladies and gentlemen, she wants you to believe that today
22 she is telling you the truth, unbelievable. Absolutely
23 unbelievable. You know, Ms. McKie reminds me of the story
24 that I told you guys in opening arguments about my twin
25 brother, Dustin, do y'all remember that story. My parents

1 come home, they find Dustin in the living room covered in
2 cookie crumbs. No one else is around, no one else can be
3 blamed. When they ask Dustin, who did this. He said, oh
4 no, that was Brandon. Oh, no, no, no, that was Derek.
5 No, no, no, that was Ron. But my parents got to use their
6 common sense to know that Dustin was lying to them. Just
7 like you get to use your common sense to know that Keondra
8 McKie lied to you just like she lied to law enforcement.
9 She actually is the one that went to KFC, got three
10 cookies, gets caught by law enforcement, is covered in
11 cookie crumbs and starts pointing the finger at anybody
12 she can think of. Why. She told you from this witness
13 stand, it was because she wanted to help herself. And you
14 heard Sergeant Sherman on there, tell them that they could
15 help them. They could put in a good word with Mr.
16 McMillian and Mr. Grimes and help her out. In fact, she
17 has already gotten some help. She told you that. Mr.
18 McMillian asked her what she was charged with. He asked
19 her, you are charged with the same thing all of these guys
20 are charged with. And she corrected him. She told him,
21 no, I am not. I am only charged with two of those violent
22 crimes. She has already received help. Now, the
23 Solicitor's office told you, oh, we didn't promise her
24 anything. Ladies and gentlemen, she is not even charged
25 with the same. She is the only one with the crumbs on her

1 and she is pointing the finger. Why. Well, to protect
2 herself. Because she was deceiving law enforcement and
3 she has been deceiving you this whole trial. She is the
4 only person throughout the course of all three days of
5 this trial who said Mr. Jordan was involved in a crime at
6 all. Y'all remember that, right. Y'all remember. Mr.
7 Butler, he took the stand. He didn't say Mr. Jordan's
8 name. He didn't identify him from the witness stand,
9 because he didn't see him there that day. The only person
10 who took the stand in this entire trial who said Mr.
11 Jordan had any involvement in this was Keondra McKie.
12 And, ladies and gentlemen, she is lying, period.

13 Now, I did ask you to remember seven buzz words
14 throughout the course of this trial. Do y'all remember
15 those buzz words. DNA evidence, fingerprint evidence,
16 photographic evidence, video evidence, call logs, text
17 messages and social media records. Let's talk about them
18 all real briefly. Okay. DNA, Sergeant Sherman took the
19 stand and he told you that there is absolutely no DNA
20 evidence whatsoever to connect Mr. Jordan of this crime.
21 And that is important. All of these things are important,
22 it is important because the State carries the burden of
23 proving this case. The State, I told you, they had to
24 prove this case beyond a reasonable doubt. I told you it
25 was going to be a heavy burden. Ladies and gentlemen, it

1 has been a heavy burden. I told you they wouldn't meet it
2 and they haven't because you have to be left firmly
3 convinced that the evidence shows that Mr. Jordan has
4 committed any crime. And DNA is one thing that shows
5 reasonable doubt. No DNA evidence whatsoever, not in the
6 house, not on the bandanna that Ms. McKie said he was
7 wearing when he went in there, nothing. No hair
8 follicles, nothing. Fingerprint evidence. No fingerprint
9 evidence whatsoever in this case. Sergeant Sherman told
10 you there were no fingerprints connecting Mr. Jordan to
11 this crime. Not on light switches, not on door knobs, not
12 on door jams, nothing. That is reasonable doubt. Let's
13 talk about social media records. Sergeant Sherman told
14 you he didn't get them. We have absolutely no evidence to
15 connect with Ms. McKie said was going on social media with
16 Mr. Jordan because there wasn't any. That is reasonable
17 doubt. Video surveillance. You watch the video. They
18 didn't bring it with Sergeant Sherman, we did. We showed
19 you the video of Ms. McKie at the gas station by herself
20 dancing around, getting money out of the ATM. She told
21 law enforcement she was being forced to do it. She told
22 law enforcement she had a gun to her head. That was a
23 lie. She was there, she was by herself, she was dancing
24 around. What you heard Sergeant Sherman say was that
25 there is no video evidence whatsoever connecting this

1 crime to Mr. Jordan. Photographic evidence. Well, we
2 have got some photos here. The State introduced some
3 photos of Mr. Butler's apartment, we talked about State's
4 exhibit 4. It is a living room. State's exhibit 6, Mr.
5 Butler and a couple of other pictures of his apartment.
6 What photographic evidence did they not want you to see.
7 They didn't want you to see Ms. McKie, this is State's
8 exhibit 2, you guys remember when we entered this. There
9 is Ms. McKie at the ATM. She has just pulled the money
10 out, no one is with her, no one is in the car with her.
11 No one is forcing her to do this, like she said. Defense
12 exhibit 3. Here is Ms. McKie again. Shoving the money
13 right down her bra with a smile on her face. That's what
14 the State wants you to believe. Because, again, she is
15 the only person in this whole trial who said anything
16 about Mr. Jordan being involved in this crime. She is the
17 only one. Let's talk about call logs. Ms. McKie told you
18 she was making calls. Sergeant Sherman told you that he
19 was told she was making calls. So they went and they got
20 those call logs, right. No. No, they didn't. Why.
21 Because they wasn't going to show that Mr. Jordan was
22 calling. See, you have absolutely no cell phone evidence
23 connecting Mr. Jordan with this crime. None. No text
24 messages, no call logs, phone records of any kind. That
25 gives you reasonable doubt. Now, Ms. McKie, she told you

1 from this witness stand that she is looking at 15 years to
2 life in prison. Charged with the same things, well, two
3 of the same things that these young men are. And the
4 State, Mr. McMillian and Mr. Grimes are asking you to put
5 Mr. Jordan's life in Keondra McKie's hands. And she is a
6 liar. She hasn't said a truthful word this whole time.
7 They are asking you to put his life in her hands because
8 she is the only person who identifies Mr. Jordan, she is
9 the only one. In fact, Mr. Moss told you he didn't even
10 talk to him that day, August 1st, 2017. I think he
11 probably said it 30 times while Solicitor Grimes was
12 talking to him. She didn't see them there because they
13 weren't there. Ladies and gentlemen, I told you that the
14 answer to those seven buzz words, the deception, the
15 connection in this case would all give you reasons to find
16 Mr. Jordan not guilty. The only thing that the State has
17 to rest their hat on is Keondra McKie. There is no
18 physical evidence that connects Mr. Jordan to this crime,
19 no one else even mentions that he was involved, no one.
20 She is absolutely unbelievable. And for all of those
21 reasons, ladies and gentlemen, I ask when you go back
22 there use your common sense, evaluate Ms. McKie and all
23 the lies that she told and find Mr. Jordan not guilty.
24 Thank you.

25 THE COURT: Thank you, Mr. Bush. Which of you wishes

1 to make closing arguments?

2 MR. MCMILLIAN: May we approach very briefly?

3 THE COURT: Yes.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 THE COURT: Mr. McMillian, are you going to make
8 closings?

9 MR. MCMILLIAN: I am, Your Honor.

10 THE COURT: You are recognized.

11 MR. MCMILLIAN: Thank you, Judge.

12 THE COURT: Yes, sir.

13 MR. MCMILLIAN: Counsel. Both Defendants attorneys
14 stood up here and told you nothing that would contradict
15 that Mr. Raymond Butler was the victim of five crimes on
16 August 1st of 2017. They want you to believe that Keondra
17 McKie is unbelievable, their clients didn't do it because of
18 that. Mr. Butler took that stand, he said two men rushed
19 into his apartment with a gun. He told you one of them
20 was Johnathan Moss. He knew him as JD and it took him a
21 couple of days to figure out that JD was Johnathan Moss.
22 They fought, Mr. Butler, got pistol whipped. He said he
23 was tied up with that HDMI cable, ordered to strip down to
24 his underwear and blindfolded him. The fight scattered
25 across his room, sheets, boxes, drawers, everything pulled

1 out, rummaged through, ransacked. He told you that the
2 two assailants dumped his wallet out, took his debit
3 cards. And he heard somebody talking on the phone giving
4 his PIN numbers out. He told you that during that, they
5 played Russian Roulette. I can't imagine that. They
6 threatened his child, told him that if he, they thought he
7 would call the police, they would shoot. He told you the
8 whole thing lasted somewhere between 45 minutes and an
9 hour. He spent an hour getting beat up, tortured,
10 threatened, tied up, blindfolded, shoved in his bathtub.
11 And they want to harp on the fact that he wasn't taking
12 mental notes. That what he told you he remembers today
13 wasn't exactly the same he told, the same thing he told
14 police. Mr. Bush and Mr. McCarley spent an awful lot of
15 time talking about things that the police didn't do.
16 Ladies and gentlemen, this isn't CSI, it isn't Law and
17 Order, these are real people, real jobs. Every case
18 doesn't have fingerprints, DNA or cell logs, text
19 messages, all of this scientific, whatever they want to
20 talk about. The fact is, a lot of this comes down to good
21 ole fashion police. Mr. Butler told officers, hey, I
22 found this receipt and I didn't make this purchase, this
23 was while I was tied up. He gave it to them. Mr.
24 McCarley told you they didn't collect it but you saw
25 Investigator Sherman look in the box and read it. We

1 didn't enter it but you saw that. He told you that he
2 followed up on that lead. That he went to KFC, he talked
3 to the victim and he got the fraudulent transactions and
4 what did he do. Mr. Bush spend an awful lot of time
5 talking about the fact that he had to enter these
6 exhibits. You heard from Luke Sherman, he obtained that
7 video. You watched Luke Sherman, he did this interview
8 with Keondra McKie. Luke Sherman told you that he got all
9 of these pictures and generated a suspect. Keondra McKie.
10 Mr. Bush pointed out that Mr. Jordan is not in these
11 pictures. For whatever reason maybe that makes him not
12 guilty of this. But Keondra McKie told you he is not in
13 those pictures because when she left to go to the ATM
14 they, both of these Defendants had him tied up,
15 blindfolded, had a gun. At some point during Investigator
16 Sherman's, I think the actual date was August the 5th, Mr.
17 Butler goes up to North Augusta to the Department of
18 Public Safety and says, hey, look here, this is the guy,
19 this is him, Johnathan D. Moss, I knew him as JD but this
20 is him. He used Facebook. Mr. Bush said, put a lot of
21 emphasis on the fact that they didn't get or obtain any of
22 these social media records. They want you to believe that
23 those social media records was solving this crime. But,
24 ladies and gentlemen, this was real life, this crime
25 happened at [REDACTED] Breckinridge Villas in the real world here

1 in Aiken County. It didn't happen online. Three days
2 after Mr. Butler went in and identified Mr. Moss, I am
3 sorry, let's back up. At some point between August the
4 1st and August the 5th he was presented with these still
5 photos. That is when he knew Keondra McKie had to be
6 involved. He gave them her name. And so on August the
7 8th, after Mr. Butler had identified Mr. Moss and after
8 they had secured all of these different stills showing
9 that Ms. McKie had to be involved, that is important to
10 note, that she had to be involved, they had this evidence.
11 What did they do. They got an arrest warrant for her.
12 They went and talked to Richmond County, went out to her
13 address, served that arrest warrant and took her into
14 custody. She went in for an interview. I lost count of
15 how many times, between the two of them, they called her a
16 liar. But I think despite all of that we got to talk
17 about why she lied. But I think that is important. The
18 Judge is going to tell you in a little bit that
19 credibility of witnesses is entirely up to you. You can
20 believe all or part of a witness' testimony, you can
21 believe one over the other, you can use just about
22 anything about the witness that you watch while they
23 testify to determine if they were telling the truth or
24 not. I think it is important that we talk about why.
25 They would have you believe that she is not credible

1 because of these inconsistencies in that video statement
2 that you watched. And I am glad you got to watch the
3 video statement because her body language is on it. You
4 can tell that she is emotional. They would have you
5 believe that she pulled these two Defendants out of an
6 imaginary hat and decided this is who I am going to give
7 them so I don't get in trouble. That is simply not the
8 case. She told you that she was involved in a
9 relationship with Johnathan Moss, that she lived with him
10 in Augusta and was his baby's mother, Regine, (phonetic).
11 She told you that they had known each other since high
12 school, high school sweethearts. She told you that Mr.
13 Jordan and he were best friends. In fact Mr. Moss told
14 you that he had known him some nine or ten years or so,
15 that they had always been close. I want to talk for a
16 minute about the actual statement, the stories she gave to
17 law enforcement. The first one she gave, I didn't know
18 either of these two guys, I was at Raymond Butler's house,
19 they made me do it. What does that actually do for her,
20 what does it do for them. That makes everybody not
21 guilty. Right? She didn't do it, she doesn't know who
22 the other two people are, couldn't be them. What do they
23 tell her. Whoops, you are in photos, you are on video,
24 you are using the telephone, you are emptying out his bank
25 accounts. What did she do. She is immediately emotional.

1 And I invite you to re-watch that video if you feel like
2 you need to. She is immediately emotional. She goes, all
3 right, yeah. She gives herself up first and foremost.
4 What does that lie accomplish. It protects Johnathan Moss
5 and it protects Denzil Jordan. They are still out there.
6 Corporal Nelson says, who did you do it with. I can't
7 remember if it is the first thing out of her mouth or the
8 second thing, I don't know the second guy. It is very
9 obvious that second guy is important. Right. Eventually
10 after she acted emotionally, if I give you a name do I
11 still have to go to jail. They told her, yeah, you have
12 got to, that is just part of it. You are charged now.
13 Who does she give up first. Who does she know, who is she
14 not in a relationship with, who hadn't she known since
15 high school, who is she not living with in Augusta.
16 Denzil Jordan. What does that lie accomplish. Still
17 protects Johnathan Moss. His name is still out of it.
18 Like Mr. McCarley said, he stood right here and asked her,
19 you denied knowing who the second person was 14 times. I
20 think actually today he said, all total some 19 times.
21 She lied 19 times to protect Johnathan Moss, to leave his
22 name out of it. She told you that. Finally, at the very
23 end she does identify Mr. Moss. She says, yes, it is him,
24 we live together, he lives in the house with me. And you
25 think he must have the worse luck on earth because now not

1 only has he been identified by a Codefendant, three days
2 prior Mr. Butler, that is the guy, Johnathan Moss, it is
3 totally him, I recognize him, that is Keondra's boyfriend.
4 Think about the facts he was able to give about Mr. Moss.
5 Keondra's boyfriend, they have been together for a while.
6 Keondra's my step-sister's, by baby's brother step-sister.
7 We see each other all the time, I recognize his face.
8 Both Defendants talked an awful lot about, both Defense
9 attorneys talked an awful lot about her telling this story
10 to get her sentence. Ladies and gentlemen, this isn't a
11 story that you tell. Don't come in and jump on the
12 grenade first and ultimately give these people up on an
13 emotional lengthy interview like that to help yourself at
14 every turn. At every turn, at every lie she was
15 confronted with a little bit of extra. The only thing she
16 didn't account for, she identified Mr. Jordan first and
17 y'all already have Mr. Moss' name. I want to talk for a
18 minute about Mr. Butler. They talked an awful lot about
19 the different stories he has told and conflicting stories
20 of Keondra. And I think we need to address those because,
21 like I said, when y'all are evaluating the credibility you
22 can consider why somebody might say that. Why his story
23 is different than Keondra's. I don't think it is
24 farfetched reason, for his reason, for her to be at his
25 house looking for a job, her to say they were there for

1 romantics at that time. He didn't want his baby's mother
2 to know that. That doesn't mean he is a liar. That
3 doesn't mean he is lying about the incident. We talked a
4 little bit about why his testimony might be different on
5 the stand than it was over a year ago and directly
6 following the incident where he spent somewhere between 45
7 minutes and an hour getting beat up, tied up, blindfolded,
8 they played Russian Roulette and he was ultimately shoved
9 in his own bathtub. They held a gun to him and threatened
10 his son. I just want to make sure I haven't missed
11 something, ladies and gentlemen. Finally I want to talk a
12 little bit about Mr. Moss' testimony. Mr. Moss testified
13 that he was at home on August 1st, 2017, that is the date
14 this incident happened. He said that he left 2:00, 3:00
15 in the afternoon, somewhere in between there. He said
16 Keondra was there when he was there which we know isn't
17 true. Daniel had already picked her up. Moss was there.
18 He knew that because he was home around that time. He
19 knew that because he and Mr. Jordan got in Ms. McKie's car
20 and followed her and Mr. Butler back to North Augusta.
21 His alibi just doesn't work. It shows that he left on the
22 afternoon of the robbery, home invasion, kidnapping. What
23 would you do if you had just done this. The country is a
24 great place to hide, perfect. He testified that he was
25 home the night before when this was planned. We know it

1 had to be planned. She said, albeit a little different,
2 it might had been a day, it might have been a week, it
3 might have been two weeks. They had been watched, they
4 had been watched. One of the most telling things, and I
5 jotted them down while he was talking, I will share with
6 you. I would argue that Keondra didn't get picked up by
7 another man. Some Joe off the street. She didn't plan
8 this robbery, some Tom, Dick or Harry that she found
9 online, without Mr. Moss knowing about it. She planned
10 this robbery, they all three committed this robbery, this
11 burglary, this kidnapping, this assault and battery first
12 with Denzil Jordan. How do we know that. Moss was very
13 quick, there wasn't two men he would let be around his
14 women and his kids. And one of them was dead. Thank you.

15 THE COURT: Thank you, Solicitor. All right, ladies
16 and gentlemen, as I said we will take a brief break now
17 and I will get you back out here in five or ten minutes
18 tops and then we will give you the law. Don't discuss the
19 case. Thank you.

20 (Whereupon, the jury was excused from open court for
21 a break.)

22 THE COURT: During the charge please stay still and
23 stay quiet, don't do anything to distract the jury absent
24 an emergency, don't make any sounds, don't move around.
25 Please just stay still and stay quiet. Bring the jury in,

1 please.

2 (Whereupon, the jury came into open court at
3 approximately 4:10 p.m.)

4 THE COURT: Members of the jury, all the evidence has
5 been presented and you have heard the arguments of
6 Counsel. It is now time for me to instruct you on the law
7 that applies to the case. Please continue to pay close
8 attention during the next stage. Thank you for the matter
9 in which you have conducted yourselves.

10 Now first you need to understand these basic ground
11 rules. You, the jury members, are the sole judges of the
12 facts. You decide all the issues of fact, the truth of
13 the evidence, its effect, its value and its weight. You
14 alone judge the credibility of witnesses. In other words,
15 whether or not their testimony is believable. In this
16 regard you may believe all that a witness said or none of
17 it. You may believe part of what a witness said and not
18 believe the balance. You may believe one witness against
19 many or many against one. You may consider any interest,
20 bias, or prejudice that you feel that a witness has in the
21 case. You may consider the demeanor and the appearance of
22 the witness and the opportunity for knowledge that the
23 witness had. You are not to exercise these considerations
24 arbitrarily. However, what I want you to do is use your
25 common sense, use your sense of logic and reason and your

1 good judgment.

2 It is not proper for me to give you a charge on the
3 facts. I cannot discuss the facts with you or even convey
4 to you an impression as to what personal opinions, if any,
5 I might develop about a case. If during any stage of this
6 trial you develop an impression that I have a personal
7 opinion about the facts you are to remove that belief
8 totally from your mind.

9 You are the sole judges of the facts. I am the Judge
10 of the law that applies to the case. And you are bound by
11 your oath to accept and apply the law as I give it to you.
12 You must abandon any conflicting ideas you might have as
13 to what the law is or what it should be. I give you the
14 law, you apply it to the facts as you determine them to be
15 and in that way you reach your verdicts. It is also my
16 job to decide what evidence is admissible. If I have
17 ruled something inadmissible or instructed you to
18 disregard something you are not to consider those things
19 in arriving at your verdicts. Base your verdicts on the
20 competent evidence before you, consider the testimony from
21 the witnesses and the exhibits admitted.

22 Now, there are two types of evidence that are
23 generally presented during a trial. There is direct
24 evidence and there is circumstantial evidence. Direct
25 evidence directly proves the existence of a fact and does

1 not require deduction. Circumstantial evidence is proof
2 of a chain, it is proof of a chain of facts and
3 circumstances indicating the existence of a fact. Crimes
4 may be proven by circumstantial evidence. The law makes
5 no distinction between the weight or value to be given to
6 either direct or circumstantial evidence." However, to the
7 extent that the State relies on circumstantial evidence
8 all of the circumstances must be consistent with each
9 other and when taken together point conclusively to the
10 guilt of the accused beyond a reasonable doubt. It is not
11 enough for the State to merely to show that circumstances
12 portray the Defendant's behavior as suspicious. It must
13 be proven by the State beyond a reasonable doubt that the
14 Defendant is guilty of a particular crime charged. If the
15 State falls short of that then the proof has failed. The
16 burden of proof remains with the State throughout the
17 trial regardless of whether the State relies on direct
18 evidence, circumstantial evidence or some combination of
19 the two.

20 Now, the Defendants in these cases are presumed to be
21 innocent. This is no mere legal theory. It has been
22 described as being like a robe of righteousness and placed
23 around an accused and remains with him through every stage
24 of the trial. It continues with him after you retire to
25 your jury room to deliberate and it continues to exist so

1 that each Defendant is presumed innocent unless and until
2 you, the jury, determine that the State has proved the
3 guilt of that Defendant, on that charge, beyond a
4 reasonable doubt. It is a fundamental and substantial
5 right to which everyone is entitled. A Defendant is not
6 required to prove his innocence, he is not required to
7 prove anything. The burden is on the State, and the State
8 has to prove the guilt of the Defendant beyond a
9 reasonable doubt. It is required that the State prove
10 every essential element of an offense charged beyond a
11 reasonable doubt. Now the State is not required to prove
12 the guilt of the Defendant or a Defendant beyond all doubt
13 or beyond every doubt. The appropriate standard is proof
14 beyond a reasonable doubt.

15 Some of you may have served as jurors in civil court
16 where the burden of proof requires establishing that
17 something is more likely than not and that is called the
18 greater weight or preponderance of the evidence. But in
19 criminal court the standard is much higher and the proof
20 must be much stronger than what we require in civil court.
21 As I have told you repeatedly, the burden of proof in
22 criminal cases such as these is proof beyond a reasonable
23 doubt. So what do I mean by that term. Proof beyond a
24 reasonable doubt is proof that leaves you firmly convinced
25 of the Defendant's guilt. There are few things in the

1 world that we know with absolute certainty and in criminal
2 cases the law does not require proof that overcomes every
3 possible doubt. If based on your consideration of the
4 evidence you are firmly convinced that the particular
5 Defendant is guilty of a crime charged then you must find
6 him guilty of that crime. If on the other hand you think
7 there is a real possibility that he is not guilty you must
8 give him the benefit of the doubt and find him not guilty.
9 There is no obligation on a Defendant to raise any doubt
10 or any other possibility. He is presumed innocent and the
11 State has the entire burden of proof and has to prove to
12 you that a particular Defendant is guilty of an offense
13 charged to the exclusion of any other real possibility.

14 I remind you, ladies and gentlemen, and emphasize to
15 you again that the fact that a Defendant elected not to
16 testify is not a factor to be considered by you in any way
17 in your deliberations and in your consideration on the
18 question of whether that Defendant is guilty or not
19 guilty. It must not be considered by you in any manner
20 whatsoever against that Defendant. An accused has the
21 constitutional right to remain silent and the assertion of
22 that right cannot and must not be considered by you in
23 your deliberations. Under your oath you are to reach no
24 inference and you are to draw no conclusion whatsoever
25 from the fact that a Defendant elected not to testify.

1 His decision not to testify should not be discussed by you
2 in the jury room. It should not enter into your minds in
3 making your decision. The burden of proof, as I have told
4 you, is entirely on the State.

5 Now, I need to explain to you a concept that is known
6 as accomplice liability or the hand of one is the hand of
7 all. A person can be guilty of a crime either by directly
8 perpetrating it himself or by being present at the scene
9 of the crime and aiding, abetting and assisting in the
10 commission of that crime. This is known as accomplice
11 liability or sometimes referred to as the hand of one is
12 the hand of all. A person who was present at the scene of
13 a crime and intentionally or through a common plan aided,
14 abetted or assisted in the commission of that crime
15 through some overt act is guilty as an accomplice. To be
16 liable as an accomplice the Defendant must have knowledge
17 of the principal's criminal conduct. Mere presence at the
18 scene where a crime is being committed is not sufficient
19 to establish guilt as an accomplice. The term,
20 intentionally means willfully, intending the result that
21 actually occurs, not something that occurs accidentally or
22 involuntarily. When I refer to the term, accomplice,
23 through the rest of this charge you should consider that I
24 mean all the conditions of accomplice liability are
25 incorporated into that term.

1 Now, let's turn to the specific charges that are
2 raised in this trial. As you know, there are two separate
3 Defendants and the charges against each Defendant must be
4 evaluated separately. Further, each Defendant is charged
5 with five separate offenses, each of which must be
6 evaluated separately on its own merit or lack of merit. I
7 read the indictments to you at the beginning of the trial.
8 All the indictments allege that the incident occurred in
9 Aiken County on or about August 1, 2017. Each of these
10 Defendants is charged with burglary in the first degree.
11 It is alleged that each Defendant willfully and unlawfully
12 entered the dwelling of Raymond Butler without consent and
13 with the intent to commit a crime therein while armed with
14 a deadly weapon and or in the nighttime.

15 Each Defendant is charged with armed robbery. It is
16 alleged that each Defendant while armed with a deadly
17 weapon and by means of force or intimidation feloniously
18 took from the person or presence of Raymond Butler goods
19 or monies of Raymond Butler described as numerous
20 electronic items, debit or credit cards and a firearm with
21 the intent to deprive the owner permanently of that
22 property.

23 Each Defendant is charged with possession of a
24 firearm during the commission of a violent crime. It is
25 alleged that each Defendant possessed or visibly displayed

1 a firearm during the commission of a violent crime, the
2 violent crime that is alleged in the indictment is armed
3 robbery.

4 Each Defendant is charged with kidnapping. It is
5 alleged that each Defendant unlawfully seized, confined,
6 inveigled, decoyed, kidnapped, abducted or carried away
7 Raymond Butler without authority of law.

8 And finally each Defendant is charged with assault
9 and battery in the first degree. It is alleged that each
10 Defendant willfully and unlawfully injured or offered or
11 attempted to injure Raymond Butler during the commission
12 of a robbery, a burglary, a kidnapping or a theft. Now, I
13 caution you again that an indictment has no evidentiary
14 value. An indictment is nothing more than a charging
15 paper, the formal means by which someone is charged and
16 brought to trial. It is not evidence and you may not
17 accord an indictment any evidentiary value.

18 First I am going to explain to you the law related to
19 armed robbery. Armed robbery is using force, threats or
20 intimidation while armed with a deadly weapon to
21 unlawfully take and carry away personal property of
22 another person with the intent to deprive the owner of
23 possession of the property. In order to prove this
24 offense the State has to prove to you beyond a reasonable
25 doubt that the Defendant or an accomplice, an accomplice

1 of his took personal property from the person or presence
2 of Raymond Butler. In order for the property to be in the
3 presence of a person it must be within the owner's reach,
4 inspection, observation or control so that the owner could
5 keep possession of the property if he was not overcome by
6 threats or violence or prevented by fear.

7 Next, the State has to prove to you that the
8 Defendant or an accomplice carried away the property
9 intending to permanently deprive the owner of the property
10 and to keep the property for the Defendant's own use. The
11 taking and the carrying away of the property must have
12 been done with violence or by putting the owner of the
13 property in fear of violence. And finally the State has
14 to prove to you that the Defendant or his accomplice was
15 armed with a deadly weapon during the robbery. A deadly
16 weapon is any article, instrument, or substance which is
17 likely to cause death or great bodily harm.

18 Next, I am going to explain burglary in the first
19 degree. Burglary in the first degree is willfully and
20 unlawfully entering a residence without consent and with
21 the intent to commit a crime therein where the entering or
22 remaining occurred in the nighttime or where the Defendant
23 or another participant in the crime while entering or
24 while in the dwelling or in immediate flight from the
25 dwelling is armed with a deadly weapon. So to prove the

1 Defendant guilty of burglary the State has to prove to you
2 that the Defendant in question, either as a principal or
3 as an accomplice, did the following things. First, that
4 he entered a dwelling without consent. A dwelling is any
5 building in which a person ordinarily sleeps. Next the
6 State has to prove to you that the entry was done with the
7 intent to commit a crime once inside the dwelling. The
8 mere entry into a dwelling without consent is not
9 burglary. The entry must be made with the intent to
10 commit a crime once inside the dwelling. You evaluate all
11 the facts and circumstances to determine if the State has
12 proven that a particular Defendant intended to commit a
13 crime when he entered the dwelling. And finally the State
14 has to prove beyond a reasonable doubt either that the
15 entering or remaining occurred in the nighttime or that
16 the particular Defendant or another participant in the
17 crime was armed with a deadly weapon when entering while
18 inside the dwelling or in immediate flight from the
19 dwelling.

20 Next I am going to tell you about the law of
21 kidnapping. Kidnapping is defined as knowingly and
22 unlawfully seizing, confining, inveigling, decoying,
23 kidnapping, abducting or carrying away another person
24 without authority of law. To do a thing unlawfully means
25 that it is done willfully against the law. So to do a

1 thing unlawfully requires willfully doing something that
2 is against the law. Something done without authority of
3 the law is something which the law does not sanction,
4 permit, allow, condone or provide justification for.

5 Knowingly means it is done with knowledge and done
6 consciously, not something that occurred by accident. To
7 seize means to hold or take hold of someone suddenly or
8 forcibly and to detain that person against his will. To
9 confine means to limit, restrict or enclose within bounds
10 or to imprison or shut in or keep in. To kidnap means to
11 hold a person against his will by unlawful force. To
12 abduct means to carry off secretly or by force for an
13 illegal purpose and carry away means to remove. Now, the
14 State does not have to prove that the Defendant or someone
15 with whom he was acting as an accomplice did all of these
16 things for it to constitute kidnapping. But if you find
17 beyond a reasonable doubt that the Defendant or an
18 accomplice, of the particular Defendant, knowingly and
19 willfully seized, confined, kidnapped or abducted Raymond
20 Butler against his will, as I have defined those terms for
21 you and as alleged in the particular indictment, you may
22 find the Defendant guilty of kidnapping. Kidnapping does
23 not require a ransom, it does not have to be for any
24 personal or monetary gain in order for it to be unlawful.

25 Now, I need to explain to you about assault and

1 battery in the first degree. A person is guilty of
2 assault and battery in the first degree if the person
3 willfully and unlawfully causes physical injury to another
4 person who is not a participant in the crime during the
5 commission of a robbery, a burglary, a kidnapping or
6 theft. So to prove a Defendant guilty of assault and
7 battery in the first degree the State has to prove to you
8 beyond a reasonable doubt that the particular Defendant or
9 an accomplice of his willfully and unlawfully injured
10 Raymond Butler during the commission of a robbery, a
11 burglary, a kidnapping or a theft.

12 And the final section of law I have to explain to you
13 related to these particular charges is possession of a
14 firearm during the commission of a violent crime. To
15 prove a Defendant guilty of this charge the State has to
16 prove to you that the Defendant is guilty of armed robbery
17 which is the violent crime that is alleged. And the State
18 would then have to prove to you beyond a reasonable doubt
19 that the Defendant was in possession of a firearm during
20 the commission of the armed robbery. A firearm is defined
21 as any revolver, pistol or any weapon which will expel a
22 projectile. The State has to prove to you beyond a
23 reasonable doubt that the weapon furthered, advanced or
24 helped in the commission of the crime of armed robbery.

25 I need to explain to you that an issue has been

1 raised related to alibi. Alibi means that a Defendant was
2 at another specified place at the time the alleged crime
3 was committed and it was therefore impossible for the
4 Defendant to have been at the scene of the crime. Mere
5 denial of presence at the scene of a crime does not
6 constitute an alibi. There is no burden on the Defendant
7 to prove alibi. The burden is on the State to prove
8 beyond a reasonable doubt that the Defendant was actually
9 present at the scene of the crime and actually
10 participated in the crime. In other words, the State has
11 the burden of disproving a Defendant's claim of alibi.

12 A Defendant is entitled to every reasonable doubt
13 arising in the entire case, in all the cases. If upon any
14 issue of fact essential to a conviction you have a
15 reasonable doubt as to how that issue should be resolved
16 you must resolve that doubt in favor of the Defendant. If
17 upon reviewing an entire case you have a reasonable doubt
18 as to whether the State has proven a Defendant guilty of
19 an offense charged that Defendant is entitled to a
20 reasonable doubt and a verdict of not guilty on that
21 charge. On the other hand, if upon reviewing an entire
22 case you find that the State has proven every essential
23 element of an offense charged against a Defendant beyond a
24 reasonable doubt it is equally your duty to find that
25 Defendant guilty of that charge. And that's the law.

1 Folks, I have printed out a draft of the charge. I
2 never read them exactly verbatim but the jest of
3 everything I told you you will have a copy of it back
4 there in the jury room when you are deciding these cases.
5 You will also have with you these verdict forms now.
6 There will only be one set of verdict forms, they will be
7 in possession of the Foreman. But what you are going to
8 find is is that there is ten separate verdict forms
9 because there are two separate Defendants and five sets of
10 charges as to each one. So I used to read the entire
11 thing but rather than read it ten times I am just going to
12 tell you that each verdict form you will see, as I told
13 you, deals with separate and distinct Defendant, separate
14 and distinct offense. And they are numbered and at the
15 top I have written as to the charge of, so it tells you
16 what charge we are dealing with or you are dealing with.
17 And then each one reads, we, the jury, unanimously find
18 the Defendant, and then it names the Defendant that you
19 are dealing with. So as to this one, for example, this is
20 armed robbery. The State versus Jonathan Devin Moss and
21 it has got the case number. And it reads, as to the
22 charge of armed robbery, we, the jury, unanimously find
23 the Defendant, Jonathan Devin Moss and you have two
24 options. You may find him not guilty or you may find him
25 guilty of armed robbery. This, the one on the top, I just

1 got them numbered, going by the numbers on the
2 indictments. This one on Mr. Jordan, as to the charge of
3 burglary in the first degree. We, the jury, unanimously
4 find the Defendant, Denzil Torre Jordan. And you may find
5 him not guilty or you may find him guilty of burglary in
6 the first degree. So, each of these verdict forms has
7 those same two options. You review the case against that
8 particular Defendant and you may find that Defendant
9 guilty, excuse me, not guilty of that charge or you may
10 find the Defendant guilty of that charge. Mr. Foreman, I
11 think the verdict forms will be self-explanatory. You
12 just need to check the option chosen by the jury and sign
13 your name on the signature line. Ladies and gentlemen, as
14 I mentioned, the verdicts have to be unanimous. All
15 twelve of you must agree in order for the Foreman to
16 record a verdict. You cannot do anything to change the
17 requirement that, in order for it to constitute a verdict
18 it will have to be a unanimous decision. When you have
19 reached your verdict the Bailiff will tell you how to
20 notify us. I think they have a light system here, you
21 turn lights on, or knock on the door, turn the lights on,
22 whatever they tell you to do to let us know when you are
23 ready. I have told you probably a dozen times or more not
24 to discuss the case until I tell you to. And believe it
25 or not it is not time yet. The law says that I have to go

1 over with the attorneys what I just discussed with you and
2 that is just common sense. We don't want you back there
3 deciding the case using the wrong law. Now, the truth of
4 the matter is, is that we have already been over this,
5 they have already gotten a copy of it, we have been
6 through it. And I don't think this will take long. But
7 sometimes, as I mentioned, I never read these verbatim so
8 sometimes I say things I don't even know I said. And they
9 have to be given a chance to point out to me what I may
10 have misstated. Here is the signal you need to be looking
11 for. If I am satisfied with what I have told you about
12 the law I will send the exhibits and the verdict forms
13 into the jury room. They will bring the alternate out,
14 when it is just the twelve of you in there and you have
15 the exhibits and the verdict forms, you don't have to wait
16 one more second, you can start talking about the case.
17 But don't talk about the case until then. I know they
18 have got some electronic medium, hopefully they have made
19 arrangements to have something for you to play that on if
20 you would like. If for some reason you don't have
21 something to play that on and you want to look at it you
22 just send word to me and I will make sure you get
23 something back there. All right. Thank you so much for
24 your attention. I do need the alternate to go in now
25 along with the other twelve.

1 (Whereupon, the jury was excused from open court.)

2 THE COURT: Please state for the record exceptions,
3 additions or objections for the charge from the State?

4 MR. MCMILLIAN: No exceptions, Your Honor.

5 THE COURT: Mr. Bush?

6 MR. BUSH: None from the Defendant Jordan, Your
7 Honor.

8 MR. MCCARLEY: None from Mr. Moss.

9 THE COURT: All right. Do y'all want to preserve the
10 hesitate to act issue?

11 MR. MCCARLEY: Yes, sir.

12 THE COURT: You want to do that, Mr. Bush?

13 MR. BUSH: Yes sir, Your Honor.

14 THE COURT: All right. Subject to the previous
15 request which was denied about charging the jury on
16 hesitate to act the Court is going to leave the charge as
17 is. All right. These are the charges.

18 (Whereupon, the jury started deliberations at
19 approximately 4:37 p.m.)

20 (Whereupon, the alternate, Ms. Emily Shakal came into
21 the courtroom.)

22 THE COURT: Ms. Shakal, we made it through with only
23 having to use one of the alternates so you are through
24 with your jury service, you don't have to call in, you
25 don't have to come back. And check with these ladies, if

1 you need anything like a work slip and they can tell you
2 about your juror pay, whenever you can expect that. If
3 you want to stay around you are welcome to stay around but
4 you are free to go. Thank you very much for your service.
5 As you have already saw, we do have to use alternates in
6 about half the cases. Once I swear the jury that is when
7 jeopardy attaches for double jeopardy purposes and I can't
8 stop. So I need the alternates there in case a problem
9 develops. Thank you so much. We are at ease pending a
10 verdict.

11 (Whereupon, a break was taken pending a verdict of
12 the jury.)

13 MR. MCMILLIAN: Your Honor, just a while ago we were
14 notified by the Bailiffs that the jury said they needed a
15 password. Our Investigator went back there and he does
16 the AT stuff and they gave him the laptop. I presume he
17 was attempting to see if it worked or not and I told him
18 to stop until the Court addresses it. But there is a jury
19 profile on there, there isn't anything on there that I am
20 aware of that they should need a password for. He says,
21 our Investigator says that it appeared they were trying to
22 load a player or something on the laptop. You can ask
23 them to explain it if you need to.

24 THE COURT: Can you get it to play?

25 INVESTIGATOR: I believe I can.

1 MR. BUSH: I have no objection to him loading it so
2 they can watch it, Your Honor.

3 (Whereupon, a Jury Note, Court's Exhibit 5 was marked
4 for identification only.)

5 MR. BUSH: Your Honor, if we can go back on the
6 record, Your Honor.

7 THE COURT: Do we need the Defendants in here?

8 MR. MCMILLIAN: I don't think this really pertains to
9 them, Your Honor. It appears that under the jury profile,
10 the player that is needed to play the video of the Gas
11 Plus Station won't work. We don't have the admin password
12 to load that player up on this profile. It is my
13 understanding that there is another profile on there that
14 we used, I don't know what the name of it is. But that
15 profile should be able to play it because I was able to
16 play it during the course of trial. We could play it out
17 here.

18 THE COURT: Well, they can't discuss it out here. Is
19 there anything that they can access another profile that
20 would be a problem. Do y'all have any issue that I need
21 to address?

22 MR. MCCARLEY: Your Honor, the State says there is no
23 other files.

24 THE COURT: Take it back there and ask them if it
25 works. Tell them we don't know the password.

1 All right, the Defendants are back in the courtroom.
2 I received a note from the jury that, wants to know the
3 timestamp on a photo from the ATM. The one to which they
4 are referring I should have noted what exhibit it was but
5 it was the one where I think she appeared to be putting
6 money into her bra. Obviously I can't tell them anything.
7 The timestamp was cut off on the photo that was submitted
8 to the jury. I told the attorneys that if they want to
9 stipulate as to the time or agree to tell the jury the
10 time that is fine. But I can tell them that, all I can
11 tell them is if they want to hear testimony replayed we
12 can replay testimony. I think the attorneys agree it was
13 mentioned in the testimony on cross-examination from Mr.
14 Bush of the Sergeant and it was only mentioned one time.
15 We will have to locate, the Court Reporter will have to
16 have a chance to set up with speakers up and all of that.
17 So what do y'all want to do.

18 MR. MCMILLIAN: I have no, we have had discussions up
19 here. I just don't recall the testimony is different that
20 is actually on the original photograph.

21 MR. BUSH: That is correct, Your Honor. To the best
22 of my recollection, when I asked the question I asked the
23 question that she went to these ATM's, maybe I said 4:00
24 o'clock. And at that point, to the best of my
25 recollection Sergeant Sherman answered, no, it was

1 actually around 1:00 o'clock. I don't think I actually
2 directed him after he said that. But in looking at the
3 photos that the State provided us and the State looked at
4 those, the timestamp for the two particular photos, those
5 were Jordan's Defense exhibit 2 and Jordan's Defense
6 exhibit 3. Defense exhibit 2, the timestamp says 4:03
7 with 56 seconds pm minus 04 hours. We don't know if that
8 means mine is 4 hours from 4:03 or that is the time taking
9 into consideration. The second picture, Defense exhibit
10 3, timestamp on that is 4:03 56 p.m., minus 4 hours. That
11 is what the original say. The pictures that I entered had
12 that information cropped out. And I think that is where
13 we are. I don't know if I can, if we can necessarily
14 stipulate to an exact time only because I don't, I can't
15 say with a hundred percent certainty I recall what
16 Sergeant Sherman answered when I asked that question. We
17 might be able to make that stipulation but at this point I
18 just don't recall, Your Honor.

19 THE COURT: You need anything on the record, Mr.
20 McCarley?

21 MR. MCCARLEY: No, sir.

22 MR. MCMILLIAN: I think if we heard the testimony I
23 think we can so far as to agree that Sergeant Sherman
24 testified it was whatever it is that he testified to
25 versus playing that testimony back. It is easier and

1 faster but other than that I don't know what time it was.

2 (Whereupon, the Court Reporter played the testimony
3 for the Attorneys.)

4 THE COURT: Are we doing anything or are we just
5 talking?

6 MR. MCMILLIAN: Your Honor, I think we have found the
7 time is 1:02. There is an additional question I guess we
8 can take up.

9 MR. BUSH: I think we were going to say that Sergeant
10 Sherman testified, I believe it was 1:02.

11 THE COURT: What is the issue about that not being
12 accurate?

13 MR. BUSH: I mean, Judge, I asked a question I knew
14 the answer to. He answered it, at 1:02, whatever he said
15 and I didn't correct him. That is the issue. The issue
16 is is that the timestamp is really 4:03 by all
17 appearances, the Wells Fargo receipt and of itself
18 reflects that.

19 MR. MCMILLIAN: There was some discussion of the
20 recording of more than one trip to an ATM machine. And
21 then Derek asked him specifically about the Wells Fargo
22 ATM machine. And the time that he testified that he
23 believed it was doesn't seem to match up with the receipt
24 from the Wells Fargo that we have, obviously is not in
25 evidence. If he was talking about, if he had some

1 confusion about between another ATM trip or what ATM trip
2 he was talking about is kind of unclear from the
3 testimony.

4 THE COURT: My inclination, I am not trying to tell
5 you all can't agree to something else. If you all agree
6 to something else that is fine. My inclination is tell
7 them you have to decide the case based on the evidence
8 that was presented to you.

9 MR. BUSH: We are agreeable to that.

10 MR. MCMILLIAN: Agreeable.

11 THE COURT: If the timestamp on that document is in
12 fact something different, that would be my response in
13 every case, virtually every case. But I want to give
14 y'all an opportunity, if you knew, to make a shortcut, but
15 I will shortcut wind up being the long route around the
16 mountain. I am ready to tell them to decide the case
17 based on what was presented.

18 MR. BUSH: Yes sir, Your Honor.

19 MR. MCMILLIAN: Yes, sir.

20 THE COURT: Did you see this other question they had?

21 MR. MCMILLIAN: We did, Your Honor. I think that
22 question goes to the hand of one, hand of all issue.

23 THE COURT: That is what I intend to bring them back
24 out and charge them, accomplice liability.

25 MR. MCCARLEY: May I call Your Honor's attention to

1 the fact that it says charged on the document, on the
2 question as opposed to convicted. If there is something
3 Your Honor would be willing to add in regards to probable
4 cause versus reasonable doubt. I just don't want them to
5 misinterpret, that is what they have written down is
6 charged as opposed to convicted.

7 THE COURT: I will tell them what I want to tell them
8 and you all can object. And if I agree with you I will
9 bring them back out and straighten it out. If not then we
10 will make a decision and move on.

11 (Whereupon, Court's Exhibits 6 and 7 were marked for
12 identification only.)

13 THE COURT: Bring the jury in.

14 (Whereupon, the jury came into open court at
15 approximately 6:37 p.m.)

16 THE COURT: Mr. Foreman, I received two notes from
17 the jury. One asked to see the timestamp on an exhibit.
18 In response to that, ladies and gentlemen, all I can tell
19 you is you have to decide these cases based on the
20 evidence that was presented. So you consider the evidence
21 that was presented or the lack of evidence that was
22 presented. But I can't tell you anything other than that.

23 Then I have a question that reads, to be charged with
24 possession of a firearm during the commission of a violent
25 crime, does the Defendant have to physically have the gun

1 in his or her possession. Now, you use the word, charge,
2 I assume you are asking to be convicted. All right. I am
3 going to read to you part of the instruction and you have
4 the jury instructions back there with you but I am going
5 to read to you about accomplice liability again.

6 I need to explain to you that a person can be guilty
7 of a crime either by directly perpetrating it himself or
8 by being present at the scene of the crime in aiding,
9 abetting and assisting in the commission of the crime.
10 This is known as accomplice liability, sometimes referred
11 to as the hand of one is the hand of all. A person who
12 was present at the scene of a crime and intentionally or
13 through a common plan aided, abetted or assisted in the
14 commission of that crime through some overt act is guilty
15 as an accomplice. To be liable as an accomplice the
16 Defendant must have knowledge of the principal's criminal
17 conduct. Mere presence at the scene of the crime is not
18 sufficient to establish guilt as an accomplice.
19 Intentional means willful, intending the result that
20 actually occurred, not something that occurs accidentally
21 or involuntary. When I refer to the term, accomplice, in
22 these instructions you should consider that I mean all the
23 conditions of accomplice liability that are incorporated
24 into that term. I think that is the best place for me to
25 stop on that. If you have other questions you can send

1 them out. I think I have addressed the ones that I have
2 so far. Thank you.

3 (Whereupon, the jury continued deliberations at
4 approximately 6:45 p.m.)

5 THE COURT: Please state for the record exceptions,
6 additions or objections to the additional instruction from
7 the State?

8 MR. MCMILLIAN: None, Your Honor.

9 THE COURT: Mr. Bush?

10 MR. BUSH: Your Honor, I will go into what Mr.
11 McCarley mentioned a moment ago, that reasonable doubt be
12 read, given the way the question from the jury was worded.

13 MR. MCCARLEY: And just to preserve the record, when
14 Your Honor said that you said you assume they mean
15 convicted the entire jury seem to nod their head yes, for
16 matters of preserving the record, sir.

17 THE COURT: All right. I am going to leave it like I
18 did. They have the charge back there with them and I told
19 them reasonable doubt over and over and over again. So I
20 am going to leave it like I got it. We are at ease
21 pending a verdict.

22 (Whereupon, a break was taken pending the jury
23 verdict.)

24 THE COURT: I have been advised the jury has reached
25 a verdict. I have no way of knowing what they are.

1 Please don't show any signs of approval or disapproval
2 when the verdicts are published or thereafter. Don't
3 shake your head and agree or disagree. Stay still and
4 stay quiet. They did send out a form that is a duplicate
5 so apparently I sent two of the same page back without
6 knowing it. I will have to check, that is my job, I have
7 to check the verdict form before I publish them anyway.
8 So I will double check that and make sure there is not a
9 missing verdict form that I messed up on.

10 BAILIFF: I think he is under the impression he
11 doesn't have to fill out but one.

12 THE COURT: Just bring them in here and let me see
13 what they did.

14 (Whereupon, the jury came into open court with the
15 verdict at approximately 6:50 p.m.)

16 THE COURT: Mr. Foreman, has the jury reached a
17 verdict?

18 MR. FOREMAN: Yes, sir.

19 THE COURT: Will you pass it to the Bailiff, please.

20 (Whereupon, the Foreman passed the verdict forms to
21 the Bailiff, the Bailiff passed the verdict forms to
22 the Court.)

23 THE COURT: The verdicts appear to be in proper form.
24 The State of South Carolina versus Jonathan Devin Moss,
25 case number 2018-GS-02-00078. As to the charge of armed

1 robbery. We, the jury, unanimously find the Defendant,
2 Jonathan Devin Moss guilty of armed robbery. Signed by
3 the Foreman.

4 Indictment 2018-GS-02-00079 as to the charge of
5 kidnapping. We, the jury, unanimously find the Defendant,
6 Jonathan Devin Moss guilty of kidnapping. Signed by the
7 Foreman.

8 Indictment 2018-GS-02-00080, as to the charge of
9 possession of a firearm during the commission of a violent
10 crime. We, the jury, unanimously find the Defendant,
11 Jonathan Devin Moss guilty of possession of a firearm
12 during the commission of a violent crime. Signed by the
13 Foreman.

14 Indictment 2018-GS-02-00081, as to the charge of
15 assault and battery in the first degree. We, the jury,
16 unanimously find the Defendant, Jonathan Devin Moss guilty
17 of assault and battery in the first degree. Signed by the
18 Foreman.

19 Indictment 2018-GS-02-00082, as to the charge of
20 burglary in the first degree. We, the jury, unanimously
21 find the Defendant, Jonathan Devin Moss guilty of burglary
22 in the first degree. Signed by the Foreman.

23 Mr. Foreman and ladies and gentlemen of the jury, as
24 to the charges against Jonathan Devin Moss, if I have
25 accurately read your verdicts, that is guilty on all of

1 these charges would you please signify by raising your
2 right hands.

3 (Whereupon, all jurors raised their hand.)

4 THE COURT: All twelve hands are raised. The State
5 of South Carolina versus Denzil Torre Jordan. Case number
6 2018-GS-02-00083, as to the charge of burglary in the
7 first degree. We, the jury, unanimously find the
8 Defendant Denzil Torre Jordan guilty of burglary in the
9 first degree. Signed by the Foreman.

10 Indictment number 2018-GS-02-00084, as to the charge
11 of armed robbery. We, the jury, unanimously find the
12 Defendant Denzil Torre Jordan guilty of armed robbery.
13 Signed by the Foreman.

14 Indictment 2018-GS-02-00085, as to the charge of
15 kidnapping. We, the jury, unanimously find the Defendant,
16 Denzil Torre Jordan guilty of kidnapping. Signed by the
17 Foreman.

18 Indictment 2018-GS-02-00086, as to the charge of
19 possession of a firearm during the commission of a violent
20 crime. We, the jury, unanimously find the Defendant,
21 Denzil Torre Jordan guilty of possession of a firearm
22 during the commission of a violent crime. Signed by the
23 Foreman.

24 Indictment 2018-GS-02-00087, as to the charge of
25 assault and battery in the first degree. We, the jury,

1 unanimously find the Defendant, Denzil Torre Jordan guilty
2 of assault and battery in the first degree.

3 Mr. Foreman and ladies and gentlemen of the jury, if
4 I have accurately stated your verdicts as to Denzil Torre
5 Jordan, that is guilty of all the charges please signify
6 by raising your right hands.

7 (Whereupon, all jurors raised their hand.)

8 THE COURT: All twelve hands were raised. Are there
9 any matters to take up from the State prior to the jury
10 being discharged?

11 MR. MCMILLIAN: No, Your Honor.

12 THE COURT: Is there anything to take up from
13 Defendant Jordan prior to the jury being discharged?

14 MR. BUSH: No, Your Honor.

15 THE COURT: Is there anything to take up on behalf of
16 Mr. Moss?

17 MR. MCCARLEY: No, sir.

18 THE COURT: Thank you. Ladies and gentlemen, thank
19 you very much for your service, that concludes your jury
20 service. We canceled your dinner order. So it would take
21 an hour and a half to get here. We are sorry. You have
22 an exception from jury service now for 2018, '19 and '20
23 at this level of court. You don't have to serve until
24 2021 at the earliest. Since you sat on a trial jury you
25 are disqualified for a year, so try to remember when you

1 served. If you would, if any of you need work excuses I
2 will send the Clerk back to meet you. Just wait in the
3 jury room. But if you don't need those you are free to
4 go. I will assume they will mail you a check to you.
5 Thank you so much. You are free to go.

6 (Whereupon, the jury was excused from open court at
7 approximately 6:55 p.m.)

8 THE COURT: Now a housekeeping matter. I did have,
9 apparently I did have a duplicate on indictment
10 2018-GS-02-00084, I sent back two verdict forms exactly
11 alike. So they wrote duplicate on one, sent it out. I
12 can mark it as a Court's exhibit if you would like.

13 MR. MCMILLIAN: Whatever suits the Court, Judge.

14 THE COURT: Just to be safe.

15 (Whereupon, Court's Exhibit 8 was marked for
16 identification only.)

17 THE COURT: Do you want to make motions now, do you
18 need some time or what?

19 MR. BUSH: Your Honor, I would be glad to move
20 forward with my motions.

21 THE COURT: Go ahead.

22 MR. BUSH: Your Honor, at this time Mr. Jordan would,
23 on behalf of Mr. Jordan I would move to make a motion for
24 a new trial. Your Honor, basically on the same grounds as
25 I made my directed verdict motion at the halfway point

1 throughout this trial. And we just ask Your Honor at this
2 time to grant Mr. Jordan a new trial based on both my
3 directed verdict motion as well as my motion to sever at
4 pretrial.

5 THE COURT: Those motions are respectfully denied.
6 Ms. Steiner.

7 MS. STEINER: Thank you, Your Honor. At this time on
8 behalf of Mr. Moss we would like to file a motion for a
9 new trial based upon all of our pretrial motions, most
10 significantly our motion to sever. We would like to also
11 include on that motion all objections during the State's
12 case, all objections being after the State's case. We ask
13 that you grant the motion for a new trial at this point.

14 THE COURT: Thank you. Your motion is respectfully
15 denied. Are you all ready to proceed with sentencing or
16 do you want to do it tomorrow?

17 MR. GRIMES: Your Honor, we should be ready to go in
18 a few minutes, depending on what your inclination is, we
19 can have them transported tomorrow for sentencing.

20 THE COURT: Do the people here want to speak.

21 MR. MCMILLIAN: Your Honor, the victim is here.

22 MR. BUSH: I will talk to my client's mother.

23 (Whereupon, a short break was taken pending printing
24 sentencing sheets.)

25 MR. MCMILLIAN: Judge, we have spoken with the victim.

1 and he is indicated that he doesn't want to address the
2 Court. The State would like to be heard with regard to
3 sentencing. I can't speak for the Defense if they prefer
4 to go forward tonight or tomorrow. The victim doesn't
5 want to be heard, I am not sure whether he would need to
6 be here if Your Honor decided to do it tomorrow.

7 THE COURT: Are you ready?

8 MR. MCMILLIAN: Yes, Your Honor. I didn't want to
9 interrupt you.

10 THE COURT: I am ready, go ahead.

11 MR. MCMILLIAN: Your Honor, the facts of the case
12 have already been determined but for purposes of this I
13 don't think I can overstate the egregiousness of this.
14 These two men drove from another State, they planned and
15 executed a vicious home invasion where they pistol whipped
16 the resident, tied him up, blindfolded him, ultimately
17 stuffed him in his own bathroom in the dark, played
18 Russian roulette with him, all for, if the testimony is
19 correct, somewhere between \$800.00 and \$2,000.00 dollars.
20 I just, short of murder I can't imagine something more
21 egregious than that kind of violation in your own home.

22 THE COURT: Said neither had a record involving moral
23 turpitude for impeachment, they don't have a record?

24 MR. MCMILLIAN: Your Honor, I don't believe they have
25 a record for which I can offer to the Court.

1 THE COURT: Mr. Bush, you want to go first?

2 MR. BUSH: I will be glad to, Your Honor.

3 THE COURT: Okay.

4 MR. BUSH: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. BUSH: Mr. Jordan is 25 years old. He grew up in
7 Augusta, Georgia. He graduated high school from the
8 Academy of Richmond County in 2011. Prior to be arrested
9 he was working at Mulherin Lumbar Company, that is in
10 Evans, Georgia. He had worked there for quite some time.
11 I talked to them prior to the trial and he was, by all
12 accounts, a good worker there, showed up for work on time
13 and did what he was suppose to do. He has been nothing
14 but a pleasure as a client. He has been a nice young man,
15 been polite, courteous, respectfully. Can't say that
16 about all of my clients but can indeed say that about him.
17 His mom, Ms. Jordan, is here today and has been throughout
18 the course of this trial, Your Honor. And she would like
19 to have an opportunity to be heard if Your Honor is
20 willing to hear from her. He has been incarcerated for
21 343 days in the Aiken County Detention Center. Your
22 Honor, we are asking for mercy in this case, for the
23 minimum of 15 years.

24 THE COURT: Where is his mom?

25 MR. BUSH: Ms. Jordan.

1 THE COURT: What is your name, Ma'am.

2 MS. JORDAN: Nicole Jordan.

3 THE COURT: What would you like to tell me.

4 MS. JORDAN: Your Honor, I would like to tell you
5 that, it is unfortunate that I have to ask you for your
6 mercy in regards to the sentencing of my son. But I don't
7 know what happened but I do know my son and I know he
8 comes from me and I know what is in him. How we get, why
9 we are here, I know the good that is in him. And this
10 experience I know, I know if he didn't know anything now,
11 he knows now the experiences that these things can take
12 him to. So, Your Honor, I just ask for mercy. That is
13 it.

14 THE COURT: Thank you, ma'am.

15 MS. JORDAN: You are welcome.

16 THE COURT: Anything else, Mr. Bush?

17 MR. BUSH: Your Honor, just to again reiterate that
18 we are asking for mercy and we are asking for the minimum
19 15 year sentence.

20 THE COURT: All right, Mr. Jordan, I will be happy to
21 hear anything you want to tell me, you may want to talk to
22 your lawyer to make sure you don't say anything to
23 incriminate yourself. I am willing to hear whatever you
24 want to tell me.

25 MR. BUSH: He indicates to me, Your Honor, he doesn't

1 wish to speak.

2 THE COURT: Okay. Are you going to speak, Mr.
3 McCarley.

4 MR. MCCARLEY: I am.

5 THE COURT: All right. What would you like to tell
6 me.

7 MR. MCCARLEY: Your Honor, first in regards to the
8 State's position now, the egregiousness and viciousness,
9 obviously there are facts on the record and the jury found
10 what they found. As late as yesterday afternoon both of
11 these gentlemen were made plea offers for significantly
12 less, significantly less amount of time than actually
13 obviously they are exposed to today. That would have been
14 ten years that was offered to both of them. Your Honor,
15 my client has no record of arrest in prosecution that is
16 before you here today. In regards to my client and how,
17 and the kind of person he is outside of what he is being
18 convicted of. He is 24 years of age, he was raised in and
19 out of his mother's home and foster care, Your Honor.
20 Your Honor is privy to his Department of Mental Health
21 evaluation whereabouts they discuss his anti-social
22 personality disorder, OPID use disorder as well as
23 cannabis use disorder. Your Honor, I am going to pass up
24 two pictures. One of the things that my client and I
25 first, probably six months that I represented him didn't

1 agree on much. One of the things we could talk about was
2 football. And Jonathan, when I investigated the case and
3 talked to people about Jonathan, when people knew him they
4 knew that he played high school football at North Augusta
5 and actually in the course of the preparation for this
6 trial Ms. Steiner sent me to a website link of Jonathan
7 playing high school football. And he seemed to be a
8 pretty good outside linebacker and that is coming from a
9 guy that coached high school football. Your Honor, the
10 date previous to this event my client did, I believe, I
11 wasn't there obviously, attend the funeral of his friend.
12 He has told me from the very, very beginning of my
13 representation. I am very seriously requesting the Court
14 to not think that that was any kind of slick, fancy,
15 lawyer trick on my behalf. And I would pass up this
16 obituary, not for any other purpose, my client's state of
17 mind. Your Honor, there was a time when we discussed
18 that, and he told me early on and we talked a couple of
19 times in the course of my representation he becomes very,
20 very emotional. And you heard him testify about that
21 relationship and about that friendship and that was the
22 day previous to what he has been convicted of. He was
23 working two jobs at the time, Your Honor. Very, very
24 early in the process we had a bond hearing and I confirmed
25 at that time that he was working two jobs. One at Amick

1 Farms and the other playing semiprofessional football.
2 Your Honor, I have spoken to his mother, I have spoken to
3 his family. I have spoken with some of the women in his
4 life. He, again, has no record. He has been convicted of
5 obviously very, very serious crimes. Your Honor, in my
6 opinion Mr. Moss is redeemable, he is salvageable and we
7 would ask Your Honor for the opportunity for him to come
8 out and could be the father he could be. We would join in
9 Mr. Bush and ask for the mandatory/minimum sentence in
10 this case, sir.

11 MR. MCMILLIAN: Your Honor, just one additional thing
12 since Mr. McCarley brought up that offer. That offer was,
13 at that time and contingent, they were both offered the
14 same thing if they cooperated. I don't think that offer
15 is something that the Court should consider for purposes
16 of this.

17 MR. MCCARLEY: I disagree and believe the Court
18 should consider it.

19 MR. BUSH: And, Your Honor, I failed to mention and I
20 apologize, my client has no record of arrest and
21 prosecution.

22 THE COURT: All right, Mr. Moss, the same thing
23 applies to you. Whatever you would like to say I will be
24 happy to hear from you.

25 MR. MCCARLEY: Your Honor, I have advised him not to

1 say anything just because I don't know exactly what to
2 tell him to say, sir. He means no disrespect whatsoever.

3 THE COURT: That's fine.

4 MR. MCCARLEY: Yes, sir.

5 THE COURT: Madam Court Reporter, make this a Court's
6 exhibit.

7 (Whereupon, Court's Exhibits 9, 10 and 11 was marked
8 for identification only.)

9 THE COURT: If y'all want to sit you can sit.. It is
10 going to take me a while to write all of this.

11 MR. MCCARLEY: Yes, sir.

12 MR. BUSH: Yes sir, thank you.

13 (Whereupon, a short break was taken.)

14 THE COURT: Mr. Jordan and Mr. Moss, I always want to
15 make sure this is on the record. You understand that if
16 you wish to appeal anything from this proceeding that you
17 have to do so in writing, it has a very short timeframe to
18 file the notice of appeal. If you have any desire
19 whatsoever to appeal or you have any thought you might you
20 need to tell your lawyer to file a notice of intent to
21 appeal because you can always withdraw it if you decide to
22 withdraw it but you can't miss the deadline. Do you
23 understand all of that, Mr. Jordan?

24 MR. JORDAN: Yes, sir.

25 THE COURT: Mr. Moss?

1 MR. MOSS: Yes, sir.

2 THE COURT: I have considered a lot of things in
3 this. And I learned a long time ago not to try to explain
4 a sentence. So basically I just want to say for the
5 record, I have considered the fact from the Defense's
6 standpoint, the age of these two young men. I have
7 considered the ramifications and collateral consequences
8 of this including the no parole provisions and the
9 mandatory time provisions. All of those things and the
10 consequences that flow from this. The sentence for each
11 of these men are the same.

12 The sentence on the possession of a firearm during
13 the commission of a violent crime is that each of you be
14 committed to the South Carolina Department of Corrections
15 for a period of five years plus cost and assessment. The
16 sentence runs concurrently, you are given credit for jail
17 time under 24-13-40 to be calculated and applied by the
18 Department of Corrections. Pay your court cost within 18
19 months when released from prison.

20 On the assault and battery first degree. The
21 sentence for each Defendant is that you be committed to
22 the South Carolina Department of Corrections for ten years
23 plus cost and assessments. The sentences are concurrent,
24 you are given credit for jail time as previously stated,
25 pay your court costs within 18 months when released from

1 prison.

2 Burglary first degree, kidnapping, armed robbery, the
3 sentence on each of those for each Defendant is that you
4 be committed to the South Carolina Department of
5 Corrections for twenty-five years plus cost and
6 assessments. The sentences run concurrently, you are
7 given credit for jail time under 24-13-40 to be calculated
8 and applied by the Department of Corrections. Restitution
9 is deferred on any cases where there might be restitution.
10 Pay your court costs within 18 months.

11 With regards to the crimes which are violent and
12 felonies, I make a specific finding on the record that you
13 are barred from transporting, shipping, receiving or
14 possessing any firearm or ammunition. On the offenses
15 where the sexual misconduct would be a contributing factor
16 or a relevant factor concerning the amount of time to be
17 served or eligibility of programs, I have written on the
18 sentence sheets for the armed robbery and for the
19 kidnapping that the offenses did not involve sexual
20 misconduct. Pay your court costs within 18 months from
21 being released from prison. Good luck to you.

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
23
24
25

1 CERTIFICATE OF REPORTER
2
3

4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Aiken, South Carolina
14 on the days of August 6th through August 9th, 2018.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 January 1, 2019
19

20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

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Division of Inpatient Services
Forensic Evaluation and Outpatient Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 635-5600

February 12, 2018

Michael McMillian
Assistant Solicitor
PO Box 3368
Aiken, SC 29802

Re: The State of South Carolina vs. Moss, Jonathan
DMH #: 1042-8639
Aiken County, Court of General Sessions

Dear Assistant Solicitor McMillian:

In accordance with the court order issued by the Honorable Doyet A. Early, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 8 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

2/12/18
Date

Kelly Gothard, Ph.D.
Clinical Director
Forensic Outpatient Services
Department of Mental Health

cc: Nicholas McCarley, Attorney at Law, PO Box 2247, Aiken, SC 29802

KG/tl

MISSION STATEMENT

To support the recovery of people with mental illnesses.



**CAPACITY TO STAND TRIAL EVALUATION
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE**

DATE OF EVALUATION February 5, 2018

NAME: Jonathan D. Moss

SCDMH #: 1042-8639

DATE OF BIRTH: July 14, 1994

PRESIDING EXAMINER: Richard L. Frierson, M.D., D.F.A.P.A.
Alexander G. Donald Professor of Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Seth Lopic, D.O.
Resident in Psychiatry
University of South Carolina School of Medicine

PSYCHIATRIC DIAGNOSES: Cannabis Use Disorder.
Opioid Use Disorder.
Antisocial Personality Disorder.

OPINION REGARDING CAPACITY TO STAND TRIAL

Mr. Moss currently has the capacity to stand trial.

DISPOSITION

Mr. Moss was returned to the Aiken County Detention Center at the conclusion of this evaluation.

IDENTIFYING INFORMATION

Jonathan D. Moss is a 23-year-old African-American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Aiken County Court of General Sessions. This court order requests an evaluation of the defendant's capacity to stand trial pursuant to State V. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and S.C. Code Ann. §44-23-410 (1976). He is currently charged with Armed Robbery, Kidnapping, Possession of a Weapon During a Violent Crime, Assault and Battery, First Degree, and Burglary, First Degree. According to the court order, it was issued for the following reasons: "The defendant has been prescribed medicine for depression and

has been placed in five mental health homes. The defendant has anger issues and problems sleeping."

STATEMENT OF NONCONFIDENTIALITY

Prior to participating in the evaluation, Mr. Moss was warned regarding the limitations of confidentiality. He was informed that the evaluation was court ordered and was not for the purpose of providing treatment. He was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor in his case. He was informed that after the evaluation was completed a report would be submitted to his attorney, the solicitor, and the judge in his case. He was also informed that the evaluators could be called to court to testify at a hearing related to his competency to stand trial. Mr. Moss was able to answer questions regarding this information correctly and he voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION

1. Court order requesting the evaluation.
2. Arrest Warrant 2017A0220500147 for Armed Robbery.
3. Arrest Warrant 2017A0220500148 for Kidnapping.
4. Arrest Warrant 2017A0220500149 for Possession of a Weapon During a Violent Crime.
5. Arrest Warrant 2017A0220500150 for Assault and Battery, First Degree.
6. Arrest Warrant 2017A0220500151 for Burglary, First Degree.
7. Incident Report for Burglary, First Degree, dated August 1, 2017.
8. Statement of Raymond Butler.
9. Statement of Theresa Burns.
10. Additional statement of Raymond Butler.
11. National Crime Information Center (NCIC) Report for the defendant.
12. Wells Fargo ATM receipt.
13. Medical records from Central State Hospital in Milledgeville, Georgia.
14. A social history obtained from the Defendant's mother, Cassonja Moss by Elizabeth Whetstone, LISW-CP.
15. Medical records from Medical College of Georgia Health, Inc.
16. Medical records from the Aiken County Detention Center.
17. A two-hour clinical forensic interview with the defendant on today's date.

CLINICAL PRESENTATION AND PSYCHIATRIC HISTORY

Mr. Moss is currently incarcerated at the Aiken County Detention Center. He reports that the jail atmosphere is stressful as he has no access to a radio or television. He is in general population and reports that he receives four hours of rec time a day. He is in a cell with three other inmates. He states he spends most of his time in the detention center reading and working out. He reports that he is sleeping well and his appetite is

usually fairly good. When asked about his mood, he responds, "Honestly, I am depressed about my case and not being out with my kids." On a scale of 1 to 10, with 1 being severely depressed and 10 being euphoric, he rated his mood as a 5. He denied suicidal or homicidal ideas. He denied psychotic symptoms such as hallucinations or delusions. He reports that he has been incarcerated since October 2017. He is currently prescribed two medications in the detention center, quetiapine (Seroquel®) and divalproex sodium (Depakote®). The Depakote is given for mood stabilization, but we note that he is on a subtherapeutic dose. Additionally, Seroquel can be used as an antipsychotic or a mood stabilizer. Mr. Moss reports that he was placed on these medications many years ago to assist him with anger control. He was not in psychiatric treatment prior to his incarceration. According to the Aiken County Detention Center mental health department, he had been placed on these medications in the Charles B. Webster Detention Center in Augusta. Apparently, these were the last medications he had been prescribed by a psychiatrist before his current incarceration.

He has a history of multiple psychiatric hospitalizations as an adolescent. He reports that he was hospitalized at Central State Hospital in Milledgeville, Georgia on two occasions. He was also hospitalized for several months at Georgia Regional Hospital in Atlanta, Georgia. He reports that he had two short-term hospitalizations at Serenity Behavioral Health and the Medical College of Georgia.

According to Central State Hospital Records, he was admitted there at age 13 from April 3, 2008 through May 1, 2008. This hospitalization was precipitated by aggressive behavior at home, making threats to family members, and other oppositional behaviors. He received a diagnosis of Oppositional Defiant Disorder and Bipolar Disorder, Not Otherwise Specified. He was hospitalized there a second time at age 14 from October 28, 2008 until November 9, 2008. At that time he was making homicidal threats towards his grandfather after a physical fight. He received a discharge diagnosis of Oppositional Defiant Disorder and Mood Disorder Not Otherwise Specified.

According to records from the Medical College of Georgia, he was seen in the Emergency Department on numerous occasions. In November 2007 he was brought in after stealing his father's money and running away. (His father had been incarcerated a few days before.) He had also threatened to shoot his brother and neighbors and was brought in by police. On interview today, he reports he did not want to stay at a house with no electricity or heat. In December 2007 he was evaluated after being suspended from school and fighting with his mother. In March of 2008 he was taken to the Emergency Department after threatening to burn his grandmother's house down and getting into a physical altercation with his mother. In August of 2008 he bit two police officers who were trying to return him to a foster family. In December of 2008 he pulled a knife on his foster siblings. In June 2011 he was evaluated after throwing TVs, and punching through glass with both hands.

He denies a history of an *adult* psychiatric admission. He denies a history of consistent outpatient treatment, although he was seen at a mental health center in Georgia. He

does not recall the name of the facility. When asked why he was hospitalized so many times, he reported that he was "too much for my grandmother to handle." He reports that he had anger issues and would not do what authority figures wanted him to do. From his description, he appears to have been hospitalized for incorrigibility.

ALCOHOL AND DRUG USE HISTORY

Mr. Moss reports that he could drink a fifth of alcohol in a week, but denies that it caused him social, personal, occupational, or legal problems. He reports that his drug of choice is cannabis. He states that he was a heavy daily user of cannabis and began using around age 11. He has been arrested in the past for simple possession. He reports tolerance to the effects of cannabis and had to use more and more to get the same effect. He also reports that he failed drug tests on probation, which caused him legal problems. He would meet diagnostic criteria for Cannabis Use Disorder.

He also reports that he was addicted to opioid pain medicines, namely Percocet®. He states that he was taking these pills every day and that most of his legal charges are related to his use of opioid pain medications. They led to interpersonal problems as well. He would meet diagnostic criteria for Opioid Use Disorder.

He also reports that he has occasionally used other non-prescribed medications/substances including alprazolam (Xanax®) and Ecstasy. However, he denies legal, social, or occupational problems related to his use of these substances. He denies IV drug use and he denies the use of cocaine or other stimulants.

MEDICAL HISTORY

Mr. Moss is currently prescribed clonidine for hypertension. He has a history of a fractured wrist, which occurred when he was punching through glass and walls due to anger control problems. He reports that he had wrist surgery at the time. He denies other surgeries, and he denies medication allergies.

FAMILY HISTORY

His mother, Casonja Moss, is 43 years of age and works as a long-distance truck driver out of Augusta, Georgia. His father, Darryl Bonner, has had little contact with the patient since childhood. He refers to his father as "the sperm donor." He has one half-sister by his mother. He does not know of a family history of mental illness or suicide. However, his mother reports that there is a strong family history of mental illness in his maternal grandfather's family.

SOCIAL HISTORY

The defendant was born at University Hospital in Augusta, Georgia. There was some problem with his birth and delivery. According to his mother, "He had an asthma attack

in the womb – his heart stopped when he was coming out of the canal so they pushed him back in – then he was delivered normally.” It is unclear what this description means. He would bang his head when upset as a child and he was kicked out of day care for fighting. He was bounced around with different family members for caretaking as a child. Initially, he was raised by his mother, but by the age of 7 he was in the custody of his maternal grandmother. Due to her inability to control his behavior, he was sent to live with his biological father from ages 10 to 11, but his biological father became incarcerated. He states he lived on the streets for some time. Mr. Moss then entered foster care at age 12 or 13. He states that “I grew up fast, there was no real childhood.” He reports one episode where he almost killed his grandfather and at that point his grandmother had to put him on the street. This was approximately the tenth grade, and then he went to live with an aunt. He reports that he was physically abused by his biological father, but he did not want to talk about the extent of the abuse with these examiners.

Despite his chaotic childhood, he was able to graduate from North Augusta High School in 2013. He reports numerous disciplinary problems during his schooling, and was suspended on several occasions for fighting and not listening to teachers. He reports that he was sent to an alternative school in the sixth, seventh, eighth, ninth, and tenth grades. Each of those years he started in regular school, but was then sent to an alternative school. He reports that he made very good grades and was academically gifted in school, but that he had chronic behavioral problems. He lived with his aunt during the eleventh and twelfth grades after he signed himself out of foster care at age 17. He reports that he played football in high school and describes himself as a “star athlete.” He states that football was “the only sport I could hit people and not get in trouble.” He states that he was an outside linebacker. He reports that after high school, he pretty much lived on the streets.

He has worked in a variety of food service jobs, including as a cook at several restaurants (Tin Lizzy's, Sole in Augusta, and JJ Wings). He has also worked construction and has worked in both a chicken processing plant and a slaughterhouse.

He reports that he has been in a three-year relationship with Kiana Boyd. He also reports he had a prior relationship with Regine Johnson. He reports that he has a 5-year-old daughter and a 4-year-old son by Ms. Johnson.

His legal history is remarkable for an arrest at age 18 for disturbing schools, for which he served 21 days. He received a “First Offenders Act” sentence in Georgia for False Statements to Police. He also has prior arrests for Violation of Probation, Simple Possession of Marijuana, Simple Battery, Willful Obstruction of Law Enforcement, Harassing Phone Calls, and Theft By Taking.

MENTAL STATUS EXAMINATION

On today's date he was alert and oriented to person, place, day, date, and time. He was neatly groomed and cooperative with the interview. He made good eye contact. There were no abnormal movements noted. His speech was normal in rate and volume. He was able to register three objects and he had no difficulty recalling all three objects after five minutes. He was able to recall significant past personal information and we found no evidence of clinically significant long- or short-term memory impairment. His fund of knowledge was above average, based on his ability to spontaneously name over 10 NFL teams. He was aware of the current president and the two immediate past presidents. His performance on a test of concentration was good and he had no difficulty spelling the word "world" backwards. He was able to perform a calculation, correctly subtracting 67 cents from a dollar. He demonstrated the capacity for abstract reasoning as evidenced by his ability to interpret proverbs and to place similar objects into abstract categories. His judgment to a hypothetical situation was good.

As mentioned previously, he rated his mood as a 5 on a scale of 1 to 10, with 1 being severely depressed and 10 being euphoric. He denied current suicidal ideas. He denied auditory or visual hallucinations. He denied delusional thinking. His thought processes were logical and goal-directed without loosening of associations or flight of ideas, and we found no evidence of disturbed thought process or thought content.

DIAGNOSTIC FORMULATION

Please refer to the Alcohol and Drug Use History section for the reasoning behind the diagnoses of Opioid Use Disorder and Cannabis Use Disorder.

Additionally, Mr. Moss has a history, beginning in childhood, of failure to conform to social norms with respect to lawful behaviors. He has repeatedly performed acts that are grounds for arrest. He has been impulsive and failed to plan ahead. He has demonstrated irritability and aggressiveness indicated by repeated physical fights or assaults. These symptoms began prior to age 18 and these behaviors are not better explained by another mental disorder. He would meet the diagnostic criteria for Antisocial Personality Disorder.

CONCLUSION REGARDING CAPACITY TO STAND TRIAL

Mr. Moss was able to state the charges against him and he appreciates their seriousness, including the maximum sentence he could receive if he would be convicted. He stated that Burglary, First Degree carries a sentence of 15 years to life. He was able to state his attorney's name and he understands the role of his attorney in assisting him with a defense. He states that the job of his attorney is "to represent me and help me fight my case, and help me to go home." He states he has met with his

attorney on two occasions and can tell his attorney everything he knows about the allegations against him.

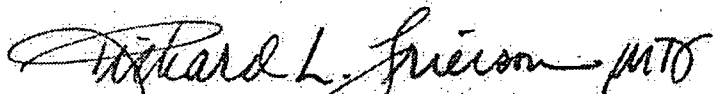
He was aware of the role and function of a solicitor. He states that the solicitor "tries to go against me and wants me to go to prison." He understands that the judge is a neutral party who would "review the case, listen, and determine what he thinks is best." He was aware of the judge's role of deciding a sentence. He was able to define the role and function of a jury. He knew that there were 12 people on a jury. However, he was not aware of the unanimous requirement for a jury verdict, but appeared capable of understanding this information.

Mr. Moss was able to state the pleas available to him. He understands the basic concepts that are involved in plea bargaining. He described a plea bargain as "something the solicitor comes up with to do a certain amount of time." He understands that he would have to plead guilty in order to accept a plea bargain. He would be competent to accept or reject a plea offer in his case.

He was able to rationally discuss evidence in his case including his motion of discovery. He states that the evidence against him would include statements of Keondra McKie and Raymond Butler. He reports that there was a lack of additional evidence. He also believed that the case against him was not very strong.

He demonstrated the capacity for solving a hypothetical problem involving the courtroom. If someone was lying about him on the witness stand, he would "talk to my lawyer." He understands the importance of proper courtroom behavior and understands that if he were to be disruptive, he could get removed from the court and held in contempt. He was aware of his right not to testify at trial.

Mr. Moss has a factual and rational understanding of the proceedings against him and demonstrated the ability to assist his attorney in the preparation of a defense. He was able to answer all of our questions in a rational manner and would be able to answer questions posed by his attorney in a rational manner. Therefore, it is our opinion that he currently has the capacity to stand trial pursuant to S.C. Code Ann. §44-23-410 (1976).

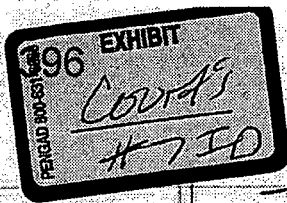


Richard L. Frierson, MD, DFAPA
Alexander G. Donald Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/dmc-6897

D: 02/05/18

T: 02/06/18



To be charged with possession of a firearm during commission of a violent crime.

Does the defendant have to physically have the gun in his/her possession?

A stylized, handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on January 8, 2018, the Grand Jurors of Aiken County present upon their oath:

That **DENZIL TORRE JORDAN** did in Aiken County on or about August 1, 2017, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Luke L Sherman

Law Enforcement Case #: 17-002392

DOCKET NO. 2018GS0200086

The State of South Carolina

County of Alken

MBM

ARREST WARRANT NUMBER

2017A0220500155

FILED Jan. 3 2018

Robert J. White
CCOP. & G.S.

Sharon Skipper
Deputy Clerk

COURT OF GENERAL SESSIONS

JANUARY TERM 2018

THE STATE

vs.

DENZIL TORRE JORDAN

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury
Date: January 3, 2018

VERDICT

CDR #: 0549

Indictment for

**POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

§ 16-23-0490

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ASSAULT AND BATTERY IN THE FIRST
DEGREE

§ 16-3-600(C)(1)

At a Court of General Sessions, convened on January 8, 2018, the Grand Jurors of Aiken County present upon their oath:

That **DENZIL TORRE JORDAN** did in Aiken County on or about August 1, 2017, wilfully and unlawfully injure, or offer or attempt to injure Raymond Butler with the present ability to do so during the commission of a robbery, burglary, kidnapping or theft. All in violation of 16-3-600(C)(1), Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Luke L Sherman

Law Enforcement Case #: 17-002392

DOCKET NO. 2018GS0200087

The State of South Carolina

County of Aiken

MBM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

2017A0220500156

FILED Jan. 3 2018

JANUARY TERM 2018

C.C.P. & G.S.

THE STATE

vs.

Sharon Skipper
Deputy Clerk

DENZIL TORRE JORDAN

ACTION OF GRAND JURY

True B.11

[Signature]

Foreperson of Grand Jury
Date: January 3, 2018

CDR #: 3412

Indictment for

VERDICT

ASSAULT AND BATTERY IN THE FIRST
DEGREE

§ 16-3-600(C)(1)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

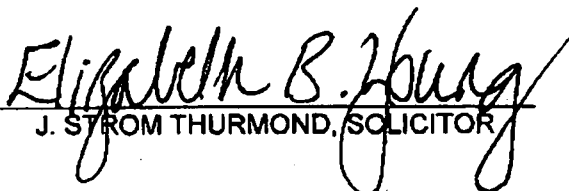
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on January 8, 2018, the Grand Jurors of Aiken County present upon their oath:

That **DENZIL TORRE JORDAN** did in Aiken County on or about August 1, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away Raymond Butler without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Luke L Sherman

Law Enforcement Case #: 17-002392

DOCKET NO. 2018GS0200085

The State of South Carolina

County of Aiken

MBM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED Jan. 3 2018

JANUARY TERM 2018

2017A0220500154

Robert J. White
C.C.P. & G.S.
Sharon Skipper
Deputy Clerk

THE STATE

vs.

DENZIL TORRE JORDAN

ACTION OF GRAND JURY

True B:11.

[Signature]

Foreperson of Grand Jury
Date: January 3, 2018

CDR #: 0095

Indictment for

VERDICT

KIDNAPPING

§ 16-03-0910

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

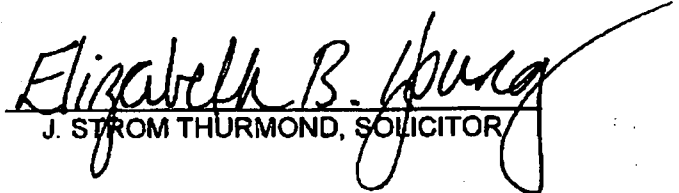
INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on January 8, 2018, the Grand Jurors of Aiken County present upon their oath:

That **DENZIL TORRE JORDAN** did in Aiken County on or about August 1, 2017, while armed with a deadly weapon, or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: firearm, take from the person or presence of Raymond Butler by means of force or intimidation goods or monies of Raymond Butler, such goods or monies being described as follows: numerous electronic items, debit/credit cards, and a firearm, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Luke L Sherman

Law Enforcement Case #: 17-002392

DOCKET NO. 2018GS0200084

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MBM

ARREST WARRANT NUMBER 3 2018
FILED Jan

JANUARY TERM 2018

2017A0220500153

Robert J. White
C.C.O.P. & G.S.
Thomas Blipper
Deputy Clerk

THE STATE
vs.

ACTION OF GRAND JURY

DENZIL TORRE JORDAN

True Bill

[Signature]
Foreperson of Grand Jury
Date: January 3, 2018

CDR #: 0139

Indictment for

VERDICT

ARMED ROBBERY

§ 16-11-0330(A)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on January 8, 2018, the Grand Jurors of Aiken County present upon their oath:

That **DENZIL TORRE JORDAN** did in Aiken County on or about August 1, 2017, wilfully and unlawfully enter the dwelling of Raymond Butler located at [REDACTED] Breckenridge Drive, North Augusta, without consent and with the intent to commit a crime therein and the defendant armed himself with a deadly weapon and/or entered or remained on the nighttime, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

North Augusta Dept. of Public Safety

Luke L Sherman

Law Enforcement Case #: 17-002392

DOCKET NO. 2018GS0200083**The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS**

MBM

ARREST WARRANT NUMBER

FILED

Jan. 3 2018

JANUARY TERM 2018

2017A0220500152

C.C.P. & G.S.

Deputy Clerk

THE STATE

vs.

DENZIL TORRE JORDAN

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: January 3, 2018

CDR #: 0079

Indictment for

VERDICT

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

Foreperson of Petit Jury
Date:**J. STROM THURMOND, SOLICITOR**

CERTIFICATE OF COUNSEL FOR APPELLANT

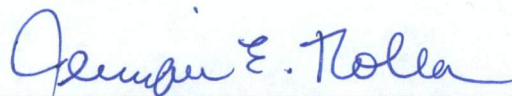
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

FEB 12 2019

SC Court of Appeals



Jennifer E. Roberts
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of February, 2019.