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Volume II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LADORREAN COLLINGTON,

APPELLANT

Appellate Case No. 2011-194088

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #72 (VOICE MAIL MESSAGE ON DVD)

A. I guess.
Q. You guess. And you obviously didn't tell them initially, before they told you all they knew, when you just through they were asking questions and they didn't know the answers, you obviously told them that the Greg was someone other than Greg Floyd, right?
A. Right.
Q. And then that's where the whole Greg Hemmingway thing got started, right?
A. I guess. I don't remember what I told them.
Q. You guess so. You -- you even gave them a description of the guy. You said he was a light-skin fellow, right? Right?
A. I don't remember what I told them.
Q. Okay. But you do not deny it.
A. No.
Q. Okay. And after this crime occurred, between the time that the crime occurred and the time that you spoke with the police, you spoke with Donell James, correct?
A. When?
Q. Okay. The crime occurs sometime on the afternoon of April 14th. You talked to the police for the first time on April 16th. I believe it was in the morning if I remember correctly. Between the time occurred and the time you spoke with the police you spoke with Donell James, correct.

A. Correct.
Q. Yes. And in fact, you were over there braiding his brother's hair and he walks in and y'all have a long discussion, right?
A. Not, not really.
Q. The discussion wasn't long, or it didn't happen.
A. The discussion wasn't long.
Q. Okay. All right. And you talked to him more than one time between the time the crime occurred and the time you spoke to the police, right?
A. Right.
Q. Right, cause he's your first cousin, right?
A. Right.
Q. Okay. And you talked to Gregory Floyd between the time the crime occurred and the time you talked to the police, right?
A. Right.
Q. And you talked to your brother, Andrew, between the time the crime occurred and the time you talked to the police, right?
A. Right.
Q. Okay. So the whole gang we've got here. We've got the James Gang plus, if you were married, your child's uncle, all y'all talking about April 14th, but before any of y'all talk to the police, right?

A. You forgot Ladorrean. She ain't in no James.
Q. Yes Ma'am. Because obviously for you to get the help you need from the State Ladorrean and Quentin gotta be in there somewhere, don't they?
A. I guess.
Q. You guess. No, you know it, don't you?
A. They is in there.
MS. von HERRMANN: Object to that.
THE COURT: I'm going to allow it. Thank you very much. You may continue.
Q. Now you told the Prosecutor -- let's walk through this. Your brother, Andrew, brings over -- well, let me ask you this, first of all. How long had you known Andrew to have that shotgun, Ma'am?
A. I'm not sure how long he had it.
Q. Are we talking weeks, months, years?
A. Probably weeks. I don't remember.
Q. Okay. And when did he first disclose to you that this shotgun was broke, as you say?
A. I want to say New Years -- I want to say New Years, but I don't know.
Q. New Years Eve of 2008?
A. Uh uh **(NODS NEGATIVE)** No. I think it was sometime around my birthday.
Q. When is your birthday again, Ma'am?

A. April the 6th.
Q. April the 6th.
A. Yeah.
Q. Okay.
A. I don't remember when he told me it was broke.
Q. Okay. All right. That's fine. That's fine. I know it's been three years ago. But at some point before this home invasion you and your brother discuss, or end up discussing the fact that this shotgun is broken, correct, or in the condition that it is in, correct?
A. Correct.
Q. Okay. And is that something that you and he, as brother and sister, would normally discuss?
A. No.
Q. I mean, is this a shotgun that he owned legally?
A. No.
Q. So why is it that he felt the need, or how did it come about that he's discussing with you State's Exhibit -- I guess that's 69, what everyone is referring to, and I guess it is -- I don't know -- it's referred to as a sawed-off shotgun.
THE COURT: I think the sticker might be on the box.
MR. HAZZARD: It's -- there's one right here, Your Honor.
THE COURT: All right. Very good.
MR. HAZZARD: So we looked at it correctly. It's 69.

THE COURT: All right. Very good.

Q. Okay. How is it as brother and sister that that even comes up in discussion, that hey, sis, my stolen sawed-off shotgun is malfunctioning?

A. I'm not quite sure how we got on that subject.

Q. Maybe he needed it to put in some more -- put in a job somewhere.

A. What you mean by put in a job?

Q. Go home invade someone else, ---

MS. von HERRMANN: Your Honor, object to ---

Q. ---Rob them for what they've got.

THE COURT: I'm going to allow it.

Q. I mean, honestly, what did he use it for?

A. How I suppose to know? It's his gun.

THE COURT: You need to speak up, Ma'am.

Q. So what did he use it for?

A. How do I pose to know? It's his gun.

Q. Okay. So you didn't know. But at some point you had a discussion and the information came to you, in talking with him, that there may have been some problem, or that his shotgun might have been broken, or malfunctioning, correct?

A. Correct.

Q. Okay. So now on the date in question, at some point your brother, Andrew James, comes over, and he's got his shotgun, right?

A. Can you repeat that?
Q. Okay. On the day in question, the day of the incident, the day that Mr. Smith's home was invaded and he ended up dead, your brother brought over that shotgun to Donell and Tanheshia's apartment, correct?
A. Correct.
Q. Okay. And you testified that he also brought over and left his .22, right?
A. I'm not sure.
Q. Not sure. Not sure if he left a .22. All right. Now, Ma'am, you indicated that you were incarcerated for about thirty-three months, right?
A. Right.
Q. And Mr. McCollum, apparently, did not major in Math at Clemson in undergrad, so that is approximately a thousand days, right? Thirty days a month times thirty, that's nine hundred, and then you add some more on top of that, right?
A. I guess. You did the math.
Q. Okay. And when did you get out on bond?
A. February the 9th.
Q. February the 9th of which year?
A. 2011.
Q. February the 9th of this year, that's when you got out on bond.
A. Correct.

Q. Did they reduce your bond, or your family just happen to come up with enough money, or what happened that, after thirty-three months in jail, you were suddenly able to get out?

A. Because they set me a bond. The whole time I was there I did not have no bond.

Q. Oh, you didn't have a bond before that, because of the serious nature of your charges, right?

A. Correct.

Q. Okay. And you talked with -- you and your attorney, and Ms. von Herrmann sat down and talked on January 5th of 2011; is that correct?

A. I don't remember the date, but yeah.

Q. Yes. That was about a month before you got out on bond, right?

A. Right.

Q. So on January 5th you tell them what they want to hear, all of a sudden, and now you are back walking the streets, charged with murder, kidnapping, armed robbery, and burglary first degree; isn't that right?

A. No.

Q. No, you are not charged with all that? What, did they drop those charges too?

A. No. You said I tell them what they wanted to hear. What you mean by that?

Q. You gave them a statement on January 5th of 2011, right, Ma'am?
A. Right.
Q. And less than thirty -- or thirty-three days, or thereabouts after that, all of a sudden you are back on the streets after being in jail for almost a thousand days; isn't that right?
A. Correct.
Q. Couldn't get no bond set.
A. Nope.
Q. So once you, like you say, you got it off your chest, all of a sudden you are back walking the street, back to your old ways, right?
A. What you mean, back to my old ways?
Q. Whatever your old ways are, Ma'am, driving people around, apparently, and setting up home invasions.
A. Excuse me.
Q. Driving people around and setting up home invasions.
A. Who I drove around when I got out and set up a home invasion?

THE COURT: Stop for a second. All right. I'm talking to the audience. This is not theater, this is not T.V., this is not the movies. If you cannot keep quiet the deputies will remove you.

Continue, Mr. Hazzard.

MR. HAZZARD: Thank you, Your Honor.

Q. But just to make sure we are clear, there's no question that when you first talked with the police this gentleman here had to be the fall guy, you gave up his name, and said he did it all, he master-minded it, he told me where to drive them, everything. That's what you told the police, right?

A. Is that what I said?

Q. Do you deny saying that, Ma'am?

A. No, I'm not quite sure what I said.

Q. Okay. All I'm -- what I can ask you is, do you deny saying it?

A. No.

Q. Okay. Fair enough. All right. And you sat in jail for the better part of a thousand days, correct?

A. Correct.

Q. And then on January 5th of 2011, or thereabouts, you and your attorney and the Prosecutor had a little sit-down out at J. Reuben Long Detention Center; is that right?

A. Correct.

Q. And during that little sit-down you tell them that you will testify against this gentleman here, and you will testify against this lady here, right?

A. Did I just up and tell them that?

Q. No Ma'am. As part of the discussion and negotiation did you tell them that?

A. We ain't have no kind of negotiation.
Q. No negotiation. So there were no document that said proffer on it and all like that.
A. No.
Q. Okay. All right. But your attorney is there, the Prosecutor is there, because the information you've got, or whatever you want to sell, you've got to sell it to the Prosecutor, right?
A. I got to sell it to her?
Q. Yes. Because you want some help on this, right? You don't want to go away for two life terms plus sixty years, do you?
A. No, I don't.
Q. Of course not. So you are hoping this woman here will give you some help, right?
A. No.
Q. No. So you are just ready to stand up, stand trial, and just belly on up to the bar and see what happens, right?
A. Right.
Q. So at any point in the last three years and two months did you ever bother to say, let's get me -- get me into court; I'm ready to go; I'm ready to face justice; I'm ready to see twelve, pick twelve and say I didn't nothing. Did you ever do that?
A. No, I didn't.

Q. So after -- but after talking with the Prosecutor approximately a month later you are out on the street, and you are back in street clothes living your life, right?
A. Right.
Q. And you don't want to go back to jail, do you, Ma'am?
A. No.
Q. All right.
MR. HAZZARD: Thank you. No further questions.
THE COURT: Redirect.
MS. von HERRMANN: Thank you, Your Honor.
REDIRECT-EXAMINATION BY MS. von HERRMANN:
Q. Mr. Hazzard just asked you about why you didn't -- why you hadn't pled guilty, and did you want to -- why weren't you here on trial. That's what he said, wasn't it? Why aren't you in here on trial today?
MR. HAZZARD: Objection. That's actually a mischaracterization of what asked.
THE COURT: Just ask a question. The witness can answer, Ma'am.
Q. Are you sitting there, instead of there, because you are willing to accept responsibility for what you did?
A. Yes Ma'am.
Q. You are willing to accept responsibility for your part in this bad business that resulted in Allen Smith's death?
A. Yes Ma'am.

Q. And Mr. McCollum asked you some questions earlier about whether you knew what was going to happen when you drove them over to that house. Do you remember that?
A. Yes Ma'am.
Q. You didn't know what was going to happen when they went in that house, did you?
A. No Ma'am.
Q. You knew what the plan was, correct?
A. I knew what they was coming to do, but I ain't know what was going to happen when they went in the house.
Q. All right. You had discussed that with Greg, right?
A. Did I?
Q. Did you?
A. Discuss the ---
Q. Let's talk -- let me make sure I'm clear about this. The first time, the first time that they went over, Andrew, Donell and Greg, right?
A. Right.
Q. You had testified before that you had been at Ladorrean's house ---
A. Yes Ma'am.
Q. ---And that she said that she had a lick for them.
A. Yes Ma'am.
Q. And you knew what a lick meant, right?
A. Yes Ma'am.

Q. And you weren't going to participate in the lick, right?
A. Right.
Q. You were going to participate in driving them over there, correct?
A. Correct.
Q. So your part in this was never to go inside that house, right?
A. Right.
Q. And are you taking responsibility for what you did in driving them over there?
A. Yes Ma'am.
Q. And have you told the police from the beginning, and from the time that we took that proffer agreement, that you drove them over there?
A. From when?
Q. That you drove them over to Allen Smith's house.
A. Yes Ma'am.
Q. And ever since you and your lawyer contacted the police and talked to them you have been consistent about the fact that you drove Bait's four-door red car over there, right?
A. Right.
Q. And you have been consistent about the fact that Greg was in the car.
A. Correct.

Q. You've been consistent about the fact that he had .22.
A. Yes Ma'am.
Q. You have been consistent about the fact that Donell was in the car.
A. Yes Ma'am.
Q. And that he had a shotgun.
A. Yes Ma'am.
Q. You've been consistent about the fact that Bait was in the car with a camo shotgun.
A. Yes Ma'am.
Q. You were consistent about the fact that Greg kicked in the door.
A. Yes Ma'am.
Q. You were consistent about the fact that you heard gunshots.
A. Yes Ma'am.
Q. You were consistent about the fact that you drove to TaTa's residence.
A. Yes.
Q. You were consistent about the fact that you and Bait and Donell and Greg went your separate ways at TaTa's, correct?
A. Yes.
Q. You showed the gun in the woods to the police, correct?
A. Correct.

Q. And you have told them about how Ladorrean busted out Allen's window.
A. Yes Ma'am.
Q. So in the important matters you have been consistent in this case; is that correct?
A. Yes Ma'am.
Q. All right. Mr. McCollum seemed to want to make some big deal about you leaving your child with somebody while you rode them over there, I mean, did you want to drive your child over there while somebody is going to rob somebody?
A. No Ma'am.
Q. Who said this was going to be an easy lick anyway; who said that?
A. Ladorrean.
Q. And how long had it been since you had seen this Defendant, Quentin Gause, before all this happened?
A. I really don't be seeing him.
Q. All right. So -- but they would have you -- they would have this jury believe that you just ---
MR. HAZZARD: Objection.
Q. ---Out of thin air ---
THE COURT: Solicitor, rephrase your question.
MS. von HERRMANN: Thank you.
Q. You just came up with Quentin Gause; is that -- is that right; you just came up with it?

A. No, I didn't come up with him.
Q. Why did you give them his name?
A. When I got questioned by the police?
Q. Yes. Why did you -- why did you tell them Bait was there?
A. Cause Ladorrean told me to tell the truth.
Q. All right. And the truth is that he was there.
A. Right.
Q. How many times have you talked to Quentin after this happened?
A. None.
Q. Do you know -- did he try to contact you?
A. No.
Q. Did you try to contact him?
A. No.
Q. Did you know where he was?
A. When?
Q. After ---
A. After it happened? No.
Q. When did you get arrested?
A. When I had went to go turn myself in, on April 16th.
Q. Do you know when he got arrested?
A. No.
Q. Let's talk a little bit about the agreement that you and your lawyer made with the State. The agreement, which is

called a Proffer Agreement, right, is that you will provide testimony ---

MR. HAZZARD: Objection. She is not asking a question. She's testifying.

THE COURT: Ask a question, Solicitor, please.

Q. Is the Proffer Agreement that you will provide testimony in court?

A. I forgot what that said.

Q. Okay. Did you agree to come here and testify today?

A. Yes.

Q. And in return for that, have I -- anybody in the Solicitor's Office promised you anything?

A. No Ma'am.

Q. No promise was ever made.

A. No promises.

Q. You hope -- certainly you hope that something -- that you will get some benefit from it, right?

A. Right.

Q. But you don't know what benefit that will be.

A. No Ma'am.

Q. And the only promise we have said at this point is that we would let the Judge be made aware of your testimony here today; is that correct?

A. Correct.

Q. You have no other promise.

A. No Ma'am.
Q. When you and I discussed this, did I give you any instructions about how to answer questions, or what you should say to questions?
A. No Ma'am.
Q. What did I tell you that you should do here today?
A. You said that I should just tell the truth.
Q. And have you done that here today?
A. Yes Ma'am.

MS. von HERRMANN: Thank you. I don't have any further questions.

THE COURT: Mr. McCollum.

MR. McCOLLUM: May it please the Court.

THE COURT: Yes sir.

RECROSS-EXAMINATION BY MR. McCOLLUM:

Q. Ms. James, you understand me when I talk, right?
A. Yes sir.
Q. And you understand the Prosecutor when she talks, right?
A. Yes.
Q. And we are speaking the same language, and that's your language too, right?
A. Correct.
Q. Why is it so much easier to answer her questions than mine?

A. I guess cause how you rephrase your questions. I don't know.

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

THE COURT: Mr. Hazzard.

MR. HAZZARD: Very briefly, Your Honor.

RECROSS-EXAMINATION BY MR. HAZZARD:

Q. Ma'am, I'm still a little confused about this agreement the Prosecutor was talking about, how you are not expecting anything but hoping for something. If you accepted responsibility you can go ahead and enter your guilty plea to whatever you accepted responsibility to, right?

A. Excuse me.

Q. If you are accepting responsibility, like the Prosecutor says, you know, cause you told your story on January 5th of 2011, so you could get out of jail, if that was your accepting responsibility you could have just gone ahead and stood in front of a Judge and accepted responsibility and said I did such and such, whatever you think you did wrong, right?

A. No.

Q. You couldn't do that.

A. No.

Q. Why not, Ma'am? They could bring you back in ---

A. Because I'm not guilty on the charges that I'm charged with.

Q. So you are not guilty of anything?
A. I ain't say I'm not guilty of anything. I say I'm not guilty with the charges they charged me with, as in murder, kidnapping, burglary first and armed robbery.
Q. You are not guilty. Okay. Because I was going to say, they -- you could -- they could just drive you back from the Department of Corrections to testify. You didn't have to wait on that, did you?
A. Excuse me.
Q. You could go ahead and enter your guilty plea and accept your responsibility ---

MS. von HERRMANN: Objection. That's a legal ---

THE COURT: All right. Mr. Hazzard, you've asked the question and it has been answered. Move along.

MR. HAZZARD: All right. Thank you, Your Honor.

That's all I've got. I'm not going to belabor the point.

THE COURT: Thank you, sir. You may step down, Ma'am.

All right, ladies and gentlemen, we are going to take a break, about ten minutes. Go to your jury room, and we will resume after that.

Just leave your pads and pens, please. Thank you.

Everyone else remain seated.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. We'll be at ease for about ten minutes. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

MS. von HERRMANN: Mr. McCollum and Mr. Hazzard, while we were taking the break, and we talked about the -- about the -- excuse me -- the calendar here, with the month of April, 2008, and I was -- I was just going to have it marked as a State's exhibit, and ask Your Honor to take judicial notice of that. I don't believe they have any objection to it.

THE COURT: All right. Mr. McCollum -- oh, well, let's mark it as an exhibit first, so I know what number we are talking about.

MS. von HERRMANN: Okay.

(CALENDAR SHOWING APRIL, 2008, MARKED STATE'S EXHIBIT NUMBER 76, FOR IDENTIFICATION ONLY.)

THE COURT: What's the number, Solicitor?

MS. von HERRMANN: Your Honor, I apologize. This is State's Exhibit 76. It is a calendar showing April of 2008. It is just blank. It doesn't have any markings on it.

I have discussed it with Defense counsel, and it's my understanding that they do not have any objection to this coming into evidence and ---

THE COURT: All right. Mr. McCollum, is there any objection to that?

MR. McCOLLUM: No, Your Honor, I mean that's -- I'm taking it as a valid calendar. I've referred to it. I don't see any problem with it.

THE COURT: All right. Mr. Hazzard.

MR. HAZZARD: No objection.

THE COURT: All right. And again -- I'm sorry, the number again, please Ma'am.

MS. von HERRMANN: I'm sorry. Number 76.

THE COURT: 76 is in evidence without objection. All right.

Is the State ready for the jury to come back in?

MR. SPRATLIN: Your Honor, there's one matter that we wanted to address. I believe Mr. McCollum is going to have an objection to this. Within the next -- within the next couple of witnesses the State intends to call law enforcement officer, Daniel Cradic, who -- was a former law enforcement officer -- that he responded to the scene of the broken window back on April 8th, 2008, and Your Honor, essentially the testimony the State intends to elicit from that witness is, first of all, that the window was, in fact, broken, and that there was a note left at the scene. The Officer is going to testify that the note has since been destroyed since no arrest was made, under standard police protocol, and that it wasn't done in any sort of bad faith. And then I intend on asking the officer what the note said, which I believe is what Mr.

McCollum is going to have an objection to, which is -- is the exact quote of the note that the Officer is going to testify to is contained in his report, and he remembered what it says based on refreshing his recollection with the report.

THE COURT: All right. Mr. McCollum, what's your objection, please?

MR. McCOLLUM: Judge, the note says that -- has some foul language in it, apparently. Well, actually, first of all let me rephrase it. There's not a note. This is an Incident Report. The note -- whatever the note said was destroyed. We would submit that it's not admissible. They talked about her going over there, breaking a window and leaving a note. I didn't know that -- that this was going to arise.

THE COURT: All right. Well, I appreciate that. Tell me how -- as I understand it, what the State is going to do is ask this witness, you know, did he, as a police officer, investigated the matter, he found this information -- I assume he's going to testify that he read the note, and they are going to ask him what did the note say, and he may say, I remember, or I don't remember, but I did put it on my police Incident Report, and then the Solicitor is going to say, would looking at your Incident Report help refresh your memory, and if he says yes, then he can read it and put it down, and then the Solicitor can ask the question and he can respond to it. So, I don't understand that to be a basis for the objection.

From what -- I'm struggling with the grounds for your objection.

MR. McCOLLUM: And I apologize, Your Honor. The police incident Report says, the victim states he has had a problem with the subject breaking a window at his -- at his before. Victim states, when he returned home he had a note stating, bitch, I will be back -- some other language in here -- and that's what it says. The victim said ---

THE COURT: All right. Well, I mean, if the -- if the Officer is going to testify that he didn't see the note, he didn't collect the note, he didn't read the note, and all he knows about the note is what somebody else told him, I'm not going to allow him to say that. You will have to explore that with the officer, but if he testifies that, as a result of the incident he collected the note, he read it, this is what his memory of the note is, I'm going to allow him to testify about that.

MR. McCOLLUM: Understood.

THE COURT: All right. So we'll just have to see what his testimony is, and then if you have an objection at that point in time I'll hear from you, Mr. McCollum.

MR. McCOLLUM: Thank you, Judge.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: All right. Let's bring the jury in, please.

MR. McCOLLUM: No objection.

THE COURT: Mr. Hazzard.

MR. HAZZARD: No objection.

THE COURT: All right, Ma'am, you are released from your Subpoena. You may go back to your regular activities.

Next witness, Solicitor.

MR. SPRATLIN: Your Honor, the State would then call Daniel Cradic to the stand.

THE COURT: All right.

All right, Mr. Cradic, you can come on all the way up here to be sworn, sir.

DANIEL CRADIC, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Mr. Cradic, where are you currently employed?

A. Currently employed with Corner Cars Towing Service.

Q. And what kind of work is that?

A. Wrecker service, towing vehicles.

Q. Okay. Where were you working back in 2008?

A. 2008, I was employed with the County Police Department here in Horry County.

Q. How long were you with the Horry County Police Department?

A. From October of 2006 to in January of this year.

MS. von HERRMANN: Excuse me, Your Honor.

THE COURT: All right. You need to speak up, sir.

MR. McCOLLUM: And slow down.

Q. Again, Mr. Cradic, let me ask you, how long were you with the Horry County Police Department?

A. From October of 2006, to January of this year.

Q. So you just left law enforcement.

A. Yes sir.

Q. What were your job duties with the Horry County Police Department?

A. Responding to calls for service in the area of 544 in Conway, or countywide, any other police assistant duties.

Q. So 544 would have been, in layman's terms, your beat.

A. That -- that's correct.

Q. Were you working back on April the 8th of 2008, which would have been a Tuesday?

A. Yes, I was.

Q. And what were you doing on that day?

A. Responding for calls for service in my beat area.

Q. All right. Did you have a chance to respond to [redacted], here in Conway?

A. Yes, I did.

Q. All right. Do you remember at approximately what time of the day you responded?

A. It was probably about four-thirty in the afternoon.

Q. What type of incident was it that you were responding

to?
A. We received a call for a malicious damage. Somebody had broke a window at a residence.
Q. What, if anything, did you notice when you pulled up to the residence?
A. When I pulled up the homeowner was there, the front window was broken, and there were several of the neighbors hanging around outside.
Q. Do you remember who the homeowner was?
A. I believe the last name was Smith.
Q. Do you remember the first name?
A. No, I do not.
Q. Is there anything that would refresh your recollection?
A. A copy of the report. Mr. Cradic, what am I showing you?
A. A copy of the written -- or a copy of the handwritten Incident Report.
Q. Okay. Does that refresh your recollection as to who Mr. Smith -- what Mr. Smith's first name was?
A. Yes, it does.
Q. What was that first name?
A. Allen.
Q. Okay. When you were at the scene did you develop a suspect, or have a person of interest as to who broke the window?

A. When I arrived on the scene Mr. Smith had stated that --

MR. McCOLLUM: Your Honor, I'm going to ---

Q. Without going into what Mr. Smith stated.

THE COURT: All right. Don't -- I'm not going to allow that. Just ---

Q. Without going into what -- anything Mr. Smith stated. Based on your investigation did you determine a suspect, or a person of interest in the breaking of the window?

A. During the investigation, it was two females in a white Expedition.

Q. Okay. Were you able to -- or was either name -- were you able to develop a name of that person, or was it people, either one?

A. As far as any witness statements or -- only by the victim's accord.

Q. But as far as one of the persons of interest, were you able to develop a name for one of those people?

A. One of the suspects, yes.

Q. Who was that?

MR. McCOLLUM: Your Honor, I object. It's the same thing. He's getting it the same way.

THE COURT: I -- I'm -- sustained.

Q. Did you notice when you were at the scene any sort of a writing, or a letter of any kind?

A. There was a note found on the scene.
Q. Okay. And did you personally see that note?
A. Yes, I did.
Q. Did you personally look at the contents of that note?
A. Yes, I did.
Q. All right. What, if anything, did you do with that note?
A. I copied down what was said on the note in my report, and then I took the note back to evidence, and placed into evidence.
Q. Okay. And did you copy that note down verbatim, or exactly as it was written?
A. Yes, I did.
Q. All right. Now you say you took it into evidence. Is -- to your knowledge is that note still in evidence?
A. As far as I know.
Q. Is it common for evidence to be destroyed if no arrest is made in the case?
A. To my knowledge, yes. After a certain amount of time they will purge evidence.
Q. Okay. And purging evidence, what is purging evidence?
A. If there's no more use for it -- they believe there's no more use for the evidence, or there's no evidentiary value to the evidence they will get rid of it to make space for new evidence.

Q. Okay. And Mr. Cradic, did you ever make an arrest on this case?
A. No, I did not.
Q. Okay. So, in your opinion, as a law enforcement officer at the time, would there have been any evidentiary value to that note since no arrest was made?
A. Yes, there would.
Q. Was it pretty standard practice when an arrest was not made a case to purge that evidence?
A. For -- for a case like this.
Q. So that evidence would have been purged?
A. To my knowledge.
Q. Okay. So that note would not still be in evidence.
A. To my knowledge, it would not be.
Q. Okay. And would that have been done in the intent to avoid it being brought into court in any way?
A. No, it wouldn't.
Q. Okay. What did the note say that you saw that day?
A. I can't remember exactly, so I'm going to have to look back to the Report.

MR. McCOLLUM: Your Honor, I do have some issues with that, if he can't remember what the note said.

THE COURT: All right. Solicitor, have you ---

Q. Is there anything that would refresh your recollection, Mr. Cradic, as to what the note said exactly?

A. Briefly looking at the Report that I had written.
Q. If you would, please look at the report, and then place it down and state exactly what the note said.
A. According to my report, bitch, I will be back, nigger, fuck you. F.Y. bitch ass, AIDS-infected bitch. Yeah, we all got it. D-baby.
Q. And that's exactly what the note said.
A. Yes, it was.

MR. SPRATLIN: All right. Thank you, Mr. Cradic. I have no other questions for you. Please answer any questions Mr. McCollum or Mr. Hazzard may have.

THE COURT: Mr. McCollum, cross-examination.

MR. McCOLLUM: Just briefly, Your Honor.

CROSS-EXAMINATION BY MR. McCOLLUM:

Q. Mr. Cradic, you left the Department in 2011?
A. Yes, I did.
Q. And where are you employed now?
A. Corner Cars Towing Service.
Q. And had you been a police before 2006?
A. Yes, I did.
Q. Okay. So how long have you been a police officer?
A. Civilian, six years -- I'm sorry -- military, six years, and civilian, approximately five.
Q. So eleven years. And was there any particular reason why you left law enforcement?

A. Yes. Personal reasons.
Q. Personal reasons.
A. Uh huh **(indicating positive)**
Q. Was that related ---
A. Financial reasons.
Q. All right. And so you resigned and went and got -- and started driving a tow truck?
A. Yes sir.
Q. Okay. And that's more lucrative than being a police officer?
A. I had to get some more money for the family.
Q. You got called to a broken window, right?
A. Yes, I did.
Q. Yes. That's what you refer to as a malicious damage, or malicious injury to property, right?
A. Yes.
Q. And that's an offense that's punishable in Magistrate's Court, thirty days in jail, Two Hundred Dollar fine, that sort of thing, right?
A. Yes, it is.
Q. And if a person is charged with that usually they can pay the fine without going to court, right?
A. Yes.
Q. Unless the damage is greater than, at that time probably a Thousand Dollars, right?

A. Correct.
Q. And there wasn't a Thousand Dollars worth of damage done from your assessment, right?
A. To -- from my assessment and my knowledge, no, it wasn't.
Q. Somebody got mad and broke out a window, right?
A. Yes.
Q. And as far as you know, and maybe you don't know, the note itself has been destroyed, right?
A. I have been informed.
Q. And you've been informed the note is destroyed, so we don't have the benefit of the note, right? Yes.
A. Yes.
Q. And did you make an arrest on that case?
A. No, I did not.
Q. Did you further investigate that case?
A. No, I didn't.
Q. At the time were you concerned that anything would happen as a result of somebody breaking out a window and leaving a note?
A. At the time I was concerned, but that was it.
Q. So -- and you see this kind of stuff, right?
A. Yes sir.
Q. Where unfortunately people get mad, right?
A. Yes.

Q. And people break windows, right?
A. Yes, they do.
Q. And people, unfortunately, write each other, sometimes, nasty notes, right?
A. Yes.
Q. And many times that happens, and it's not something that even -- you even have to really go pursue as a police officer, right?
A. We will pursue it if the victim thinks that there's an actual threat.
Q. Oh, I guess what I'm trying to say is, when you -- when you evaluated that situation, and looked at it, it was something that was -- it was a -- I mean, it's -- I know it's serious, but the police have to deal with a lot of serious stuff, right?
A. Yes.
Q. So -- and I know you don't want to prioritize stuff, necessarily, but that's a fairly unofficially low priority thing, a window being broke, right?
A. It can be.
Q. But you are not -- you don't want to prioritize crimes and what the police are working on, right?
A. That's correct.
Q. And that's policy, right?
A. Yes, it is.

Q. You don't -- you are not suppose to be out there saying that this isn't high priority, right?
A. Correct.
Q. And they tell you -- that's pretty clear when you work for the police department, right?
A. That is correct.
Q. But the reality of it is, is if it's a broken window, and an angry note, it's not something that everybody has to go jump on, right?
A. It can be taken -- it needs to be taken seriously.
Q. And -- but in this situation it wasn't even followed up with an arrest, right?
A. That's correct.
Q. Okay. Because you didn't think that much of it at the time, right?
A. No sir. It wasn't my opinion.
Q. Okay.

MR. McCOLLUM: Thank you, sir. I appreciate you being here.

THE COURT: All right, Mr. Hazzard.

MR. HAZZARD: No questions, Your Honor.

THE COURT: All right. Any redirect, Solicitor?

MR. SPRATLIN: No further questions, Your Honor.

THE COURT: All right. Do you wish the witness to be excused?

You decide the case solely and completely on the evidence you hear in the courtroom, and from no other source.

With that, I'll see you back tomorrow morning, nine o'clock.

Please leave your pads and pens. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. McCollum, I'll be glad to hear your motions first.

MR. McCOLLUM: May it please the Court, Your Honor, first I would like to move for a directed verdict of not guilty on the two indictments of which Ms. Collington is standing trial, that being the indictment for burglary in the -- accessory before the fact of burglary in the first degree, and accessory before the fact of armed robbery.

Additionally, Your Honor, at this time I would like to renew all motions previously made, including those made pretrial, all written motions, all motions that were made orally, in court, on the record, and also, Your Honor, at this time I would like to take this time to renew all the objections ---

THE COURT: All right. Well, how about -- we'll just deal with these things one at a time. All right. Let's start off with the directed verdict motion. All right. Any arguments you want to make on that?

MR. McCOLLUM: Your Honor, I would just move for a directed verdict of not guilty on the two charges.

THE COURT: Solicitor.

MS. von HERRMANN: Your Honor, I think there's ample evidence in the record, and I don't think that is appropriate. I would ask the Court to let this go to the jury.

THE COURT: All right. Regarding your motions for a directed verdict, the standard is, the defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. It's my job as the Trial Judge to look at the existence of the evidence, not with it's weight, believability or credibility, that is, does the evidence exist that would substantiate the charges that have been levied against the Defendant by the State. If there's any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused then the case is properly submitted to the jury. It would be my duty to grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty of the crimes charged.

Further, if I would find that the jury would be merely speculating as to the guilt of the accused, or where there's evidence is only -- sufficient only to raise some mere suspicious of guilt a directed verdict would be properly granted.

In this particular matter I do find there is more than

sufficient evidence, that that evidence exists in the record which would substantiate the charges, if so believed by the jury, again, that being their job and responsibility, but if that evidence is so believed that would be sufficient evidence to convict the Defendant, beyond a reasonable doubt, of the crimes of accessory before the fact of a felony, that being the crime of burglary in the first degree, and accessory before the fact of a felony, that being armed robbery, Understanding that the standard would be reasonably tending to prove the guilt of the accused the Court is saying that, in my opinion, there is more than sufficient evidence, if that evidence is so believed by the jury, which would prove the Defendant guilty of those crimes beyond a reasonable doubt, there being more than reasonably tending to prove the Defendant's guilt, therefore, I respectfully decline to grant your motions for a directed verdict on the two charges levied against Ladorrean Chukell Collington by the State in **(10-GS-26-01626)**, and **(10-GS-26-01627)**.

Further motions by the Defense.

MR. McCOLLUM: Your Honor, all the motions that were made previously -- they are in the record -- Your Honor has heard arguments on all of them, ruled on them, but at this time, just for the record, I would just like to renew those motions.

THE COURT: All right. I'm going to respectfully

decline to reconsider those previous rulings. I find that the matters have been previously presented and ruled on by the Court. Further, the evidence that has developed so far in this trial does not give the Court any reason or pause to find that the previous decisions were in error. I respectfully decline to grant your motions to change the Court's decision in those previously filed motions.

Anything else, Mr. McCollum?

MR. McCOLLUM: Just the same thing as to the objections Your Honor, just -- I renew the objections previously made.

THE COURT: The objections that you made during the course of the trial.

MR. McCOLLUM: Yes sir, Your Honor.

THE COURT: All right. I will reaffirm the Court's rulings regarding any objections you made during the course of the trial, and respectfully decline to thereby grant your motions in that regard.

Any other motions?

MR. McCOLLUM: No, Your Honor.

THE COURT: All right. Very good.

All right, Mr. Hazzard, on behalf of the Defendant, Gause.

MR. HAZZARD: Your Honor, at this time Defendant, Quentin Gause, moves for a directed verdict. It is my understanding, on the counts of kidnapping, armed robbery,

any questions about the three verdict forms then.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MS. von HERRMANN: I have no objection to those.

MR. HAZZARD: No objection, Your Honor.

THE COURT: Thank you very much.

All right. Let me go over briefly what I have pulled together so far as a charge to the jury, and then I'll be glad to hear from each of you as to any additions or changes that you would like to this charge to the jury.

Obviously I'm going to talk to them, as I mentioned to them at the very beginning about their job as the judges of the facts, and the issues about credibility and believability and their particular responsibilities in that regard, and I'll talk to them about the note taking. I will reaffirm to them that, you know, some people are better notetakers than others, and the notes shouldn't be given any greater weight than some other jurors' recollection. I will remind them about that as I told them that at the very beginning.

Regarding expert witnesses, I'll explain to them that, sometimes because of a person's education, employment, certain qualifications, that the Court may allow a particular witness to give their opinion, since we don't normally allow witnesses to give their opinion, but I will tell the jury that doesn't give them any greater -- they shouldn't give it any greater weight than any other witnesses, they look at all the

witnesses and the evidence the same, and they judge everybody's credibility and believability the same.

I'll talk to them about the direct and circumstantial evidence that -- that the law doesn't make a distinction between the two, a greater degree of certainty isn't required of one over the other, they weigh all the evidence in the case, and after weighing all the evidence if they are not convinced of the guilt of the defendant of a particular crime, beyond a reasonable doubt, they would find the defendant not guilty.

Prior record of a witness: I'll tell them that the Rule of Evidence provides that testimony of a witness can be discredited or impeached by showing the witness has been convicted of a crime for which he could have been imprisoned for more than one year, or a crime that involved dishonesty; it's offered on the issue of credibility, and for no other purpose.

As I indicated to Ms. Collington and Mr. Gause, I will tell the jury the fact that the Defendants did not testify is not a factor to be considered by them in any way; it must not be considered by them, the fact that they did not testify cannot even been discussed in the jury room, and the State has the burden of proof to prove the Defendants guilty beyond a reasonable doubt.

I will talk to them about the presumption of innocence,

that it's an important rule of law that, unless guilt has been proven by evidence satisfying them of the guilt beyond a reasonable doubt the presumption of innocence doesn't end -- I'll tell them it doesn't -- as I usually do, presumption of innocence didn't end at the beginning of trial, it hasn't ended now, and it doesn't end if, and until they believe the State has proven to them, by evidence they believe, the guilt of the particular defendant of the crime charged beyond a reasonable doubt, and usually -- I don't know that I always do, but I usually talk about the robe of righteousness, and I assume that I will do so in this particular matter. I don't have that specifically written down, but that's something I often do.

Reasonable doubt: The kind of doubt that would cause a reasonable person to hesitate to act; and the State has the burden of proving the defendant guilty of each crime charged, beyond a reasonable doubt, and if they are not firmly convinced that the defendant is guilty of the crime charged they must give the defendant the benefit of the doubt and find them not guilty of the crime charged.

I will tell them that there are two Defendants in this case. I will tell them that Ladorrean Collington is charged with accessory before the fact to armed robbery, and accessory before the fact of burglary first degree, Quentin Lavant Gause is charged with murder, armed robbery and burglary in the

first degree, that the case of each Defendant, and the evidence and the law considering -- or concerning that Defendant is to be considered separately and individually, their verdict does not have to be the same for both Defendants; they can find one Defendant guilty or not guilty, and that doesn't control their verdict as to the other Defendant, and each particular crime is a separate matter to be considered separately. So I will instruct them as to that, and they would arrive at and write a separate verdict, either not guilty or guilty, for each individual Defendant on each charge charged against them.

I will talk about accessory before the fact -- probably one general charge, a definition of accessory before the fact, indicating, again, that the Defendant is charged with two separate crimes, and I will mention both of them, accessory before the fact of armed robbery, and accessory before the fact of burglary in the first degree, and that there's two crimes they've got to make two separate decisions. But then I'll go on and define accessory before the fact to them after I say that. I won't read it to them twice, the basic definition of it.

After that it will be my intention to charge the law of murder, the State must prove, beyond a reasonable doubt, the defendant killed another with malice aforethought, defining malice, and you know, that malice aforethought doesn't require

that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before, and at the time the act is committed; it has to be that combination of the previous evil intent and the act, and
go on to talk about the -- as far as malice, could be express or inferred, and go ahead and talk to jury about that. When we get to the -- I will tell them that inferred malice can arise when the deed is done with a deadly weapon, a deadly weapon is an article, instrument or substance which is likely to cause death or great bodily harm, whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. I will not give examples, because I don't want to go into the area of commenting on the facts, so I'm not going to give examples of what might be a deadly weapon. I'll just leave it at definition.

Go on, talk about the charge of armed robbery, that the State must prove, beyond a reasonable doubt, that the Defendant took personal property from the person or presence of another, the State must also prove, beyond a reasonable doubt, the Defendant carried the property away, intending to permanently deprive the owner of the property, and to keep the property for the Defendant's own use, and that slightest removal can be -- the property is in the presence of a person if it's within the person's reach or inspection, so the person

could keep it if not overcome with violence or prevented by fear.

And the State also has to prove, beyond a reasonable doubt, the Defendant was armed with a deadly weapon, and again, I will read that statement, what -- a deadly weapon is any article, instrument or substance likely to cause death or great bodily harm, whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. Again, I will not give examples.

And finally, I will charge first degree burglary; the State must prove, beyond a reasonable doubt, the Defendant entered a dwelling without consent, define dwelling, that any entrance is sufficient, the smallest entry, it could be any part of a body, and the State does not have to prove that force was used to gain entry, if they entered by deception, artifice, trick or misrepresentation, and they also have to prove, beyond a reasonable doubt, the Defendant intended to commit a crime, either felony or misdemeanor.

And obviously I will, at the very end, tell them that their decision has to be unanimous, and it's twelve zero, not any combination thereof.

Anything that you are aware of at this point in time, Solicitor? And if y'all want to think about it overnight and come to me first thing in the morning and ask me to think about something else I'll be glad for you to do so, but at

this point in time is there anything else, Solicitor?

MS. von HERRMANN: There is, Your Honor. If Your Honor would consider charging hand of one is the hand of all, also, the felony murder inference.

THE COURT: All right. Let's deal with those one at a time.

MS. von HERRMANN: All right.

THE COURT: Hand of one. What's your -- I'll just ask both of you. Mr. McCollum, what's your position on that?

MR. McCOLLUM: As to the -- I think as to the Defendant, Collington, it could be a little bit confusing to charge that. Obviously if someone is present, aiding and abetting they could be convicted as a principal, and that's basically my position on it, Your Honor.

THE COURT: All right. And Mr. Hazzard.

MR. HAZZARD: If the jury believes the testimony of Gregory Floyd, I guess, which is the only actual testimony of uniting, combining and conspiring for some common goal and purpose, then I would -- I would think that it might be appropriate.

THE COURT: All right, sir. Solicitor, what about the point that Mr. McCollum has brought up as to his particular client, about the confusion that there might be by the jury thinking about hand of one and charge of accessory before the fact?

MS. von HERRMANN: Well, I think that Your Honor can explain to the jury that the charge with regard to the hand of one is the hand of all applies to principals, that she has not been charged as a principal, and so that legal concept would not apply to her, it would, rather, only apply to Mr. Gause.

MR. HAZZARD: Which then kind of gives greater inference and impetus that it does -- that it does, in fact, apply to him as someone who is guilty.

MS. von HERRMANN: And here's the situation, Your Honor. I mean, it comes up in several different ways. You've got -- you've got Mr. Floyd, who said that he fired a shot while he was in there, you've got Mr. James, who admits to taking property out of there. If Mr. James takes property out of there, under the hand of one is the hand of all they are all responsible for taking that property out of there, which would make Mr. Gause and Mr. Floyd responsible for taking that property as well, which is, of course, one of the elements of the armed robbery.

MR. HAZZARD: And I understand that, Your Honor, but the -- and maybe this argument is more for Mr. McCollum, but the State chose to try these two together; we tried to sever them; they chose to try these two together, and I don't think they can now get the benefit of possible confusion.

THE COURT: Well, I appreciate that. I guess the point that -- and what -- I should have probably been more clear

about getting a comment from you. The State was suggesting to me that, in the charge that, you know, I was going to talk about accessory before the fact first, and then I was going to talk about murder, armed robbery and burglary in the first degree. That was the order in which I was going to talk to them about that.

Regarding the hand of one charge, as I understand it, Solicitor, you were suggesting that I make it clear that it applies to the charges of murder, armed robbery, and burglary in the first degree, and not accessory before the fact. Is that what you were requesting of me?

MS. von HERRMANN: Yes sir.

THE COURT: All right. That's the question then to you, Mr. Hazzard.

MR. HAZZARD: If it can be made specific in that fashion, without the Court saying, now this doesn't apply to Ladorrean Collington, you know, which ---

THE COURT: No, I'm going to say that, with regard to hand of one it applies to the crimes of murder, armed robbery and burglary in the first degree, and then I would read to them what the hand of one, hand of all is.

MR. HAZZARD: Okay.

THE COURT: All right. That's how I would say it to them. I don't want to say anything else, honestly, other than that, to try and invade their provence. I'll say it applies

to the crimes of murder, armed robbery and burglary in the first degree. That's all I'm going to say.

MR. HAZZARD: Okay. And obviously I would just -- if possible I would like to see the form, the Court's charge on that beforehand.

THE COURT: On hand of one.

MR. HAZZARD: Yes sir.

THE COURT: All right. Let me just -- I'll go over it right now. How about that. Hand of one. If a crime is committed by two or more people who are acting together in committing a crime the act of one is the act of all. A person who joins with another to accomplish an illegal purpose if criminally responsible for everything done by the other person, which occurs as a natural or probable consequence of the acts done in carrying out the plan and purpose. The act of one is the act of all, or as sometimes said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant; the State must prove, beyond a reasonable doubt, by competent evidence, the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime, or who is present

aiding, abetting or assisting in committing the crime. When a person does an act in the presence of, and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent are present at the commission of a crime it does not matter who actually commits the crime, all are guilty; the hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near, to aid, abet and assist in the commission of the crime, however, mere presence at the scene of a crime is not sufficient to convict. Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed with the person aiding or abetting by some overt act, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant, and other circumstances from which you may naturally and reasonably infer intent. The State must prove all these elements beyond a reasonable doubt.

That's what I would intend to charge them, Mr. Hazzard.

MR. HAZZARD: Okay, Your Honor. Thank you.

THE COURT: All right. Any problems with that then?

MR. HAZZARD: None from the Defendant, Gause, Your Honor.

THE COURT: All right. Very good.

And Mr. McCollum, as I indicated, my intention is to charge accessory before the fact, and then go into murder,

armed robbery and burglary in the first degree, and before I talk about hand of one, hand of all I'm going to say, you know, the following theory applies to murder, armed robbery, and accessory -- I'm sorry -- murder, armed robbery, and burglary in the first degree, and then I'll read what I just read.

Do you have a problem with that?

MR. McCOLLUM: No, Your Honor.

THE COURT: All right. Just one second.

MR. McCOLLUM: And Judge, if you are going to charge it I don't object to it. There's so much language in there explaining it that, in some ways, I think it maybe even would benefit Ms. Collington ---

THE COURT: All right.

MR. McCOLLUM: ---Now that I listen to it again, so I don't -- I'm not asking for any special requirements.

THE COURT: Well, I appreciate that, but -- I appreciate that. I think I will stick with what I told y'all about.

All right. And I know there was something else, Solicitor. I got off on this. There was something else you wanted me to charge and ---

THE COURT: I just had two other issues, Your Honor. The first would be that I would ask the Court to consider charging the felony murder inference.

THE COURT: All right. Hold on a second. All right, again, this would be -- and let me just read it, as I understand the felony murder inference charge, so everybody understands -- and I would have to do something to make it clear it doesn't apply to Ms. Collington. As I understand it the felony murder inference says, if one intentionally kills another during the commission of a felony the inference of malice may arise if facts are proved, beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction. This inference would simply be an evidentiary fact to be taken into consideration by you, along with all the other evidence in the case, and you may give it the weight that you decide it should receive.

I appreciate what you are asking, Solicitor, but in the definition of murder -- and let me go back to that.

MS. von HERRMANN: Judge, it's not going to give me -- I'll withdraw my request on that.

THE COURT: All right. I -- because I ---

MS. von HERRMANN: That's fine.

THE COURT: ---I talked about that, and ---

MS. von HERRMANN: I think you do.

THE COURT: ---And honestly, we talk about, you know, malice can be inferred by conduct showing a total disregard of human life. Inferred malice may arise when the deed is done with a deadly weapon. I think ---

State of South Carolina, again, reaffirming that I find that there is more than sufficient evidence, if that evidence is so believed by the jury, to sustain the verdicts of guilty as to the Defendant on both charges, beyond a reasonable doubt.

And then you had also made the motions -- renewed your motions on the pretrial motions; is that correct?

MR. McCOLLUM: Yes sir, Your Honor. At this time, on behalf of the Defendant, Collington, I hereby renew all motions made, all written motions, all motions heard, all motions made verbally or orally on the record, and also renew all objections made before the Court, which were overruled, and additionally, Your Honor, renew the -- specifically also renew the motion for the request for a mistrial based on the evidence of threats. And that's -- that's all I have from the Defendant at this time, Your Honor.

THE COURT: All right. Very good. Again, I would respectfully decline to grant your motions regarding all of the pretrial motions. I'll just reaffirm the rulings that the Court made, and will indicate that nothing that transpired during the course of the trial has caused me to reconsider those decisions in any way, and I reaffirm the decisions made by the Court during the course of the trial, and respectfully decline to grant your motions in that regard.

All right. I'm sorry. Anything else on behalf of the Defendant, Collington?

minutes, then I'll have you come back in, I will give you the law that you will apply to the facts that you find to be true in this matter, and then I will submit the case to you for your deliberation and your unanimous decision on the matters presented.

So with that I'll turn it over to the lawyers for their closing arguments.

Solicitor.

MS. von HERRMANN: Thank you very much. May it please the Court.

THE COURT: Yes Ma'am.

MS. von HERRMANN: Thank you, Your Honor.

Good morning, ladies and gentlemen of the jury, I appreciate your attention that you've given to this case this week. We've been looking at you from time to time, and I know that y'all have paid a lot of attention to the witnesses that have come up here and testified.

Before we get to that, to the witnesses and to the evidence, I want to talk to you about a couple of different things that just sort of come into a trial. There are two different kinds of evidence that are presented to you in a trial. The first kind of evidence is evidence which is called direct-evidence. Direct-evidence is the evidence that someone perceives through their senses; they see it, they hear it, they taste it, they smell it, they touch it. Direct-evidence.

The different kind, the second kind of evidence is circumstantial evidence. And you hear people all the time, just kind of a general vernacular, saying things like, well, they don't have anything against that guy; it's just all a bunch of circumstantial evidence, which makes it sound like there's something wrong with circumstantial evidence, but there's not, and in fact, most evidence is circumstantial evidence, most evidence, and the Judge will tell you, when you go back there to consider this case you are to make no distinction between evidence which is direct evidence, and evidence which is circumstantial evidence. Circumstantial evidence just means that it's something -- it's the kind of evidence from which you can draw a conclusion.

Now, Supreme Court Justice Costa Pleicones, told me a story many, many years ago about his nephew. He said that his nephew was over at his house, and his wife was cooking dinner, and his nephew was a little boy, and the little boy came up to him and said, Uncle Costa, I'm hunger, can I have that banana up there, and Judge Pleicones said, look, we are getting ready to have dinner; you can't have that banana right now. The banana is sitting up there on the counter. Well, Judge Pleicones goes and he leaves, and he hears the little boy going, I want that banana, and so he goes out of the room. Well, he comes back a few minutes later and he looks on that same counter and guess what's there, banana peel, no banana.

So he looks at the little boy and he goes, did you eat that banana, and the little boy looks back at him, and he leans down and he says, let me smell your breath, and the little boy goes, huh, banana, and he looks on the side of his mouth and he sees a little piece of banana. Did he see that child eat that banana, no, he didn't see that child eat that banana. Did the child eat the banana? Sure he did. Of course he did, and anyone can take kind of information and put it together and know that the child ate the banana. The peel is gone, the child wanted the banana, he's got a little piece of banana on his face, and the banana is on his breath. That's circumstantial evidence. That's what it is.

The Judge is also going to give you an instruction about reasonable doubt, and I know you all have all heard about reasonable doubt. You hear about it on television shows, and we just, as citizens of this Country, know, or have a general idea about what we think reasonable doubt is. I want to talk to you about reasonable doubt.

There are many things in life that we know, but there are very few things in life that we can know with absolute certainty, and the law does not require that we know something with absolute certainty. The law requires, what reasonable doubt requires, is that you be firmly convinced that what the fact is that you -- whatever the fact is, that you are firmly convinced about that particular fact. So that's what it is,

proof that leaves you firmly convinced. What is it not? It's not an absolute certainty. We can't prove anything to an absolute certainty. There's a pretty good chance that the sun is going to rise tomorrow, but nobody can prove that to an absolute certainty. It's not beyond all doubt. You can have some doubt. You can have some doubt. And we all have some doubt about almost everything, and it's not beyond some sort of moral certainty, so again, what reasonable doubt is is you want -- we have to give to you -- the State is required to give to you proof that leaves you firmly convinced. It's something that you use every day in your life. You don't act on something if you are not firmly convinced. If you feel like it's appropriate for you to act on something then you are firmly convinced. That's reasonable doubt.

There are also some matters of law that the Judge is going to talk to you about, and as you know, the two different Defendants in this case have been charged with different things, and so I want to take them separately, because it really is confusing, and so I'm going to start over here with Mr. Gause, and I'm going to talk to you about what Mr. Gause is charged with. The first thing that he's charged with is burglary in the first degree. Now, here is the definition, elements, if you will, of burglary in the first degree. Entering a place where people live, without consent, and with an intent to commit a crime therein. While entering, or while

in the house, or when fleeing, the defendant -- and you don't have to have all of these -- you can have one, any single one of these -- is armed with a deadly weapon, or causes injury to anyone not participating in the crime, or uses threats, or the use of a dangerous instrument, or displays a knife or a firearm. I would submit to you that in this case there is no question that he entered into a place where people live. He entered into Allen Smith's house. He didn't have consent to go into that house. And they intended to commit a crime once they got in there. While they entered that residence they were armed with deadly weapons. He was armed with a deadly weapon, he caused an injury to a person who was a non-participant. You remember Frankie Davis testifying about the injury that she received when she slid down under the bed, had to be taken away by E.M.S.. Use of a dangerous instrument. Firearm is certainly a dangerous instrument. And here again, displays a knife or firearm. So I would submit to you that with regard to the burglary in the first degree he doesn't just meet one of these elements, he meets all of the elements, all of the elements of burglary first.

In addition to the burglary first he's also charged with armed robbery. Now these are the elements of armed robbery. The taking or -- taking or attempted taking -- you don't even have to take something, if you just go in there and try to take something -- taking, or attempted taking, and carrying

away of the personal property of another, with intent to deprive him of possession by use of force, threats or intimidation, while armed with a deadly weapon.

There was money in that house, according to Frankie Davis, when they went in. When Robert Deal from Crime Scene got there there was no money. Somebody took that money.

And you also heard Donell James testify about the fact that he took that gun, that .410 out of the bedroom there in that house. So you may be saying to yourself, well, wait a minute, Donell said that he took it, so does that -- does that count if a co-defendant takes it? Sure it does. Yes, it does. And this is what -- it counts. And the Judge is going to instruct you on all these things as well, because there is a theory in the law which is called the hand of one is the hand of all, and that theory states that, if a crime is committed by two or more people who are acting together in committing the crime, the act of one is the act of all, both, or all, are equally responsible. If Mr. Spratlin and Detective Townsend and I go into a residence, and while we are in that residence I take a jewelry box and I leave, I took the jewelry box, he's responsible for taking the jewelry box, he's responsible for taking the jewelry box, because the hand of one, when you are acting in concert, is the hand of all.

And by that same token, each of these co-defendants that you heard testify here, you heard that they were all charged

with the same crime, they are all charged with the same crime, because the hand of one is the hand of all, and everything that Mr. Gause did, they did, and that's why they are charged the same way that he's charged. All right, so the hand of one is the hand of all. So if Donell James takes a weapon out of that residence, carries it away, then we had a taking of the personal property of another, with the intent to deprive him of possession by use of force, threats, or intimidation, while armed with a deadly weapon. That's your armed robbery. Okay. That's it. That's what we are looking for, and that's what we've got to prove with regard to the armed robbery.

Finally, Mr. Gause is charged with murder. Murder is the killing of another with malice aforethought. Well, what in the world is malice aforethought? I've got to tell you, before I went to law school I had heard malice. I had no idea what malice aforethought was. Here's what it is. Malice is the intentional doing of a wrongful act, or ill will, hatred, hostility toward another, or reckless disregard for the lives and safety of others. You don't have to have all of these, again. You can have any one of them. Killing of another while you were doing a wrongful act. If you kill a person while you are committing a burglary, if you kill another person while you are committing an armed robbery, then you have committed that killing with malice aforethought. You can infer that malice by the use of a deadly weapon. There is a -

- often a presumption -- and I've talked to jurors after cases before and they told me that they had gotten back in their jury room and that there was a lot of talk back there about -- people having discussions about premeditation. Premeditation is not a requirement. Premeditation has never been a requirement for murder. There are other states which have different degrees of murder. They've got murder one, murder two, murder three, that sort of thing, and some of those levels of murder require premeditation. In South Carolina that's not what we have. This is the definition of murder right here. This is it. This is the only definition. Killing of another with malice aforethought. All right. And so it's not that they have to plot out, oh, we are going to go in here and shoot this guy, oh, I'm planning on shooting this guy. If you are holding a gun on somebody, and you pull that trigger, and that happens, in the course of a burglary, in the course of an armed robbery, or even if you just pull it with reckless disregard, that, ladies and gentlemen, is murder, murder. And those are the charges that apply to Quentin Gause.

Now, with regard to the Defendant, Ladorrean Collington, she has been charged -- she's got two charges, accessory before the fact to burglary first, and accessory before the fact to armed robbery, and here is what that means. The Defendant, Ladorrean Collington, did one of these things. She

advised, and agreed with, or she urged, or she hired, or in some way aided, counseled, encouraged the perpetrator -- would be the perpetrators in this case -- to commit a felony, burglary, and armed robbery -- defendant is not present -- nobody is saying Ms. Collington was present; that's not the State's position -- and the principal committed the crime. Well, we know the principal committed the crime. We know that there was a burglary committed, and we know that there is an armed robbery committed. So in order for you to convict her of accessory before the fact of burglary, and accessory before the fact of armed robbery, all you've got to believe is that she urged somebody to go break into his house, and try to rob him, that she counseled them to try to break into his house and commit an armed robbery, that she encouraged, aided -- any of these -- urged, hired, advised -- she advised them, that she told them, you should go break in that house and you should rob. That's it. She doesn't have to drive them there. She doesn't have to do anything other than encourage them to do it. So that's what we've got our two Defendants charged with. All right.

In a homicide case it's a little bit different, the way the police deal with it, than they do with other cases. In a homicide case they just want to divide it into two parts. It's divided into a crime scene part, a part handled by crime scene, and then a part that's handled by someone who is

designated as the lead detective in that case.

Now, Investigator Deal came up and he testified for you about the crime scene, and we put a whole lot of pieces of evidence in, and all of those things -- all of those items will go back with you to your jury room, and so you can look at as many of those, or as few of those as you care to look at. But his role is to collect that evidence, to preserve the evidence in order to bring it here to court today, and if any of those items need to be tested that they be sent off for testing.

The lead detective in the case is a separate part of the equation. The lead detective's role is that he goes out and he follows up on leads, he developers leads, he looks for people, he interviews people, they may get some search warrants so that they can collect evidence and that sort of thing, and that's what the lead detective does. The lead detective doesn't have any personal knowledge about what happened at that scene. All right. So defense attorneys like to make a big deal about the lead detective not testifying, but the lead detective could only testify about what somebody else said, and since we've brought those somebodies to you, and put them up there, there's no need for him to be up there. He is here today. He can't tell you what they said. We have to bring the people that he has put together up here and present them to you. He's the gatekeeper, so that's why he

didn't testify in this matter. Okay.

All right. So that being said, the Defendants in this case have been represented by two very fine defense attorneys. They have gotten a good defense. I can tell you that Mr. McCollum and Mr. Hazzard are two of the best lawyers that we have here in Horry County, and they've done a good job for their clients, but here's what their job is. Their job is to get a not guilty verdict for their client. Their job is not to present the truth to you, to enlighten you, to let you know what really happened. Their job is to take your attention away ---

MR. HAZZARD: Your Honor, I'm going to object to that characterization.

THE COURT: I'm going to allow, at this point in time, the Solicitor to continue.

You may continue, Ma'am.

MS. von HERRMANN: Thank you.

Their job is the draw your attention away from the evidence that incriminates their client. That's their job. That's what they are there to do. So what they are going to talk to you about is minor inconsistencies, little bitty pieces. They are going to pick, pick, pick, pick, pick, pick, pick the little bitty pieces, and they are going to want you to look at one little tree here and there. What I want you to do is, I want you to look at the forest. I want you to look

at the big picture, and everything that you heard in it's totality.

Now let's talk a little bit about the physical evidence that we have in this case. We've got two shotgun shells, all right, and we laid those out for you. We've got one .22 casing -- this is what was found at the scene, and you'll have this back there -- two shotgun shells, one .22 casing. We've got a broken door frame, we've got some bedroom -- dresser drawers that are pulled open, and we've got a missing .410 shotgun. We had a lot of other stuff, but those, in particular, are important things, because you heard the testimony of the firearms expert, Ira Parnell, who came in, and he took this shotgun right here, and he compared this shotgun to the two shotgun shells that were collected from the house. And you remember what he said about that. Those two shotgun shells, which were the only shotgun shells collected from the house, were not fired from this weapon. He told you that the .22 casing found in the house was fired from this weapon. The only conclusion that we could logically come to from that is that there's another gun in that house that fired those two shotgun shells.

Now Donell James told you that he took a shotgun out of there, a .410 shotgun. A .410 shotgun doesn't shoot a .12 gauge shotgun shell - that gun didn't fire that shell, all right, so there's another gun out there, and it's the

camouflage gun, and it's the gun that Quentin Gause brought.

Greg -- Greg Floyd -- excuse me -- admits to this .22. He admits to this. And Dr. Proctor came in then and he talked to you about the cause and manner of death, and he told you that the cause of death was the shotgun wound, was a -- were shot -- excuse me -- gunshot wounds. He told you that there was a large shotgun wound, which was a fatal wound, and he also told you that there was a .22 wound in that victim.

All right, now, let's move off of that physical evidence, talk a little bit about the witnesses in this case. There are two kinds of witnesses that we have here. We've got our victims, Mr. Graham and Ms. Frankie Davis, and then we've got our cooperating co-defendants. Let's talk about Frankie Graham -- excuse me -- let's talk about Anthony Graham, just for a few minutes. Anthony Graham is a good -- Frankie Graham is a -- I mean -- excuse me -- Anthony Graham was a good witness, kind of just to lay things out for you, and what he told you was that his friend, Allen Smith, had come -- had come and picked him up, and that -- somewhere around this time period, and then that on April the 8th, that Allen Smith and Ladorrean Collington got into an argument. Remember he says that's where they got in the argument and she pulls the chain off, and tried to, like kick him in the crotch, and they ran off and down the road, and then they see her, she's at the end of the road in her car, and she drives down and breaks out the

window and leaves a note there. That's what's happening here on the 8th. And then the next sort of big event -- and I think I talked to you about some of these in opening argument, is the 10th, Thursday the 10th. That's the day that this, what I call the failed attempt, took place. That's the day when Andrew James, Donell James, and Greg Floyd go over to their house, to Allen Smith's house, and they end up basically, for lack of a better word, chickening out, and heading back to Ladorrean's house, and just had a bad feeling about it, they said.

The next day that is important is Friday, the 11th. This is the day that Frankie Davis told you that she ran into Ladorrean Collington there over in Aynor at the Dollar Store, and at that time she, you know, bless her heart, you know, this is the woman who really and truly is an innocent victim in this thing. I mean, she gets over there and this woman, Ladorrean Collington, is yelling at her, she's calling her names, and what does Ms. Davis do? She says, I'm old enough to be your mom; I'm not getting in any kind of fight with you, and she leaves, and defuses that scene. She didn't want to be involved with Ladorrean Collington. She didn't want to have anything to do with this woman. And she goes -- you know, on that day she goes home, and that's when, the next thing you know Anthony Graham gets a message on his telephone, and here's what that message said -- y'all will have this back in

your jury room too. You can listen to this once you get back there.

(PUBLISHES A PORTION OF STATE'S EXHIBIT NUMBER 72.)

We might want to do something about that. Check that out. Take that and check that out before we put that back in there. We'll get back to that, and again, y'all -- I -- we don't need to play it in here. Y'all will have it back there and you can hear it. And y'all have heard that threat before. But Frankie, on that day, runs into Ladorrean.

And then finally we have the incident date on the 13th. This chart is also going to go back there with you. I know we didn't enter it into evidence in your presence, but you all can use that when you get back there, if you need to, to kind of sort through some things.

Frankie Davis, what does she tell us in addition to that? She says she sees a text that Ladorrean Collington sent to Allen Smith, where she threatens Allen and his mother, and physically sees that on his telephone.

And then, of course, she goes into what happens that day. She is laying there in the bed -- I'm not going to belabor it. You all have heard the testimony. She hears people coming in the house. She says she sees three, and hears three voices, she slides down between the side of the bed, she's under there, and she looks out, she sees two sets of shoes under there, she sees somebody going through the

dresser, and some things that are falling out. She says that -- she describes those shoes. By the way, one pair of those was black, and one pair is black and gold. She runs out, and what does she see? She sees her beloved Allen, laying there, dead, and who can't sympathize with that woman. She calls the police on 911, and she tells them immediately that she suspects Ladorrean Collington, because by this day all of these other things have already happened. There aren't people coming in and out of that house. She didn't have reason to suspect anybody else. That was the only person that she had any problem with.

Then we have some testimony from our cooperating co-defendants, and let's talk about those. Would I like to put up a nun and a priest and a rabbi up here to tell you the story of what happened about Allen Smith being murdered, and his house being burglarized, and him being armed robbed? Sure I would. Absolutely. But the fact of the matter is, drug dealers don't hang around with nuns and priests and rabbis. People who are engaged in this kind of activity hang around with other people who are engaged in this type of activity, and so the witnesses to this crime are going to be people who are willing to participate in this type of crime. Every one of those people, every one of them that came up there and talked to you is charged in this case. And there was some testimony about a proffer agreement, and I just want to make

sure that we are clear about what a proffer agreement is. A proffer agreement -- and once you hear this you will be going, why would anybody enter into a proffer agreement -- but here's what a proffer agreement is. The State says to the defendant, defendant, if you want to come forward and talk to the police, and give us some information about the case in which you were involved, then we will let the Judge know about your level of cooperation, and that may help you out on your sentence, may help you out on your sentence, but there are no promises being made. So those -- are those people hoping that they are going to get some consideration? Sure they are. Absolutely. Because at some point probably somebody is going to come, me, or some other prosecutor, and say, Judge, if we hadn't had this information from this person then we never would have known about these other people, and we wouldn't have been able to solve this crime. So they are looking and hoping for something in return, but no promises are made to them. And so that's where they stand. They are hopeful, but not assured of anything.

So here's what we've got. We've got Andrew James who gets up there. You saw Andrew James, dark skinned, real -- a real dark-skinned guy, okay, and he is the one who went on the first attempt, the failed attempt, brought the gun and the ammo back to Donell's on the 14th. He told you there -- he told you he was there for a short period of time, that he was

dealing with the eviction matter. His girlfriend, fiance, Cecily Hillard, comes up; she confirms that. There's a note up here in evidence showing where they went by the Social Department, and a signature was actually notarized on that day, so that's Andrew James. All right.

He also told you that he talked with Tiffany later on that day, that Tiffany said, Bait shot the man, and he was the one who told the police, during their interview with him -- he went to the interview with them, and he's wearing yellow and black shoes, okay, yellow and black shoes. He's in the Police Department, and you just -- I mean, Frankie Davis had told the police there were some black and gold shoes. He's in the Police Department with black and yellow shoes. He just -- you know, you can draw your own conclusion from that. Black and gold shoes ain't the same as black and yellow shoes. All right. He's in the Police Department with those shoes.

All right. Mr. McCollum, I think, asked him about, well, you drive Ladorrean Collington to work sometimes now, don't you, and he said, yeah, yeah, I do, I drive her sometimes. Well, if he's driving her to work he isn't mad at her. He isn't trying -- he isn't trying to hurt her. If he was up here trying to hurt her he wouldn't be driving her to work. He's up here telling the truth because that's what he needs to do. He needs to tell the truth. He doesn't like being up there, being called a snitch, he doesn't like it, but

he needs to tell the truth, and that's what he did.

Donell James, he's the guy who came out from lock-up, he's still in his jumpsuit, he's still in jail. Other people have gotten out but he hasn't. He lays the whole thing out. And again, I'm not going to -- I'm not going to belabor the testimony, because you all heard it, but he tells you about hospital he had talked to Ladorrean, Ladorrean had told him that there would be things, the money and/or drugs will be in the dresser drawer there in the house, where the house would be, what kind of money there would be there, lays out the details. He's got people coming over to his house.

Greg Floyd. Now here's a guy who's basically never been in trouble with the law in his life until this, and Donell calls him about this lick, and he says, this is the -- of course he goes on the first one, and he discusses that with Ladorrean. She gives him that same information. But the second time Donell calls him on the phone, says, what are we going to do about that lick, come on, let's go on that lick. And he says, ah, you know, I don't know, maybe, maybe not. He gets a call from his friend, Bait. He talks to Bait, he says, I've got this lick; do you want to go on this lick. Bait says sure, I'll go on the lick.

Greg Floyd doesn't have his own car. He's got -- I think he said his girlfriend had a gold Maxima. Quentin Gause comes, picks him up in his red vehicle, takes him over to

Donell James' house. When they get to Donell's he tells you that Quentin Gause has got a camouflage shotgun, that he's got a ski mask, that he's got gloves, that he's got some duct tape, that they are dressed in black, and he says he's got a green shirt that he put over his face. He essentially tells the same story that Donell and Andrew told you. But there's something different about Greg Floyd, because Greg Floyd gets up there and he tells you that he took this gun and that he shot a man. Do you know how many times somebody stands up there on that witness stand and admits that they shot a man? I would submit to you that if he's going to tell you the truth about shooting a man, he isn't going to lie to you about anything else. If he's going to lie to you about anything he's going to lie to you about shooting somebody. So, I would submit to you that his credibility is way, way, way up here, and he's the one who tells you that Quentin Gause was in on this thing. He tells you -- and they all tell you that, but he's the one who tells you how Quentin actually gets into it.

And here -- here's the other thing about him, is this guy has been his friend for fifteen years. If he's going to put somebody in this thing he isn't going to put his friend of fifteen years in there if it isn't true. He could make somebody up to put in there, but he doesn't. He tells you the truth about his friend, Quentin Gause, and he tells you the truth, that he shot that man.

Then we have Tiffany James. What can I say about Tiffany James? Here's a twenty-one year old girl who's barely got a ninth grade education, and they want you to believe that she has written a letter which says, I am available for further inquiry regarding this matter. I want to tell you that one, Ladorrean Collington was not involved in the homicide. If you believe that then we need to just stop right here. Ladorrean Collington was like a sister to her. And this is a girl who, unfortunately, was younger, who needed, or wanted a role model. This was an older girl who was friendly to her, who took her out, and she would have done whatever Ladorrean Collington told her to do, and she did, she did do what -- Ladorrean told her to drive them over there. She drove them over there. Ladorrean told her to write this letter. She wrote the letter. Ladorrean told her to go -- to call Greg or Donell -- and these people can hear Ladorrean in the back, but Ladorrean gets her to do it. She's using her. She used her.

This girl is not smart enough to plan a tea party. She's surely not smart enough to plan all of this, and get everybody on the same page and all of that. Tiffany James, no way.

And the last person that you heard from was Officer Cradic. He's the one who went over there and he grabbed -- saw the broken window and he grabbed the note. How about this

note? Here's what he testified to. He's got a note on the door, written by Ladorrean Collington. Tiffany James told you she wrote it over there. "Bitch, I will be back. Nigger, fuck you and Fa, bitch ass..., and it goes on. Is that a note from someone who is pregnant and just a little bit hormonal, just a little bit. For those of us women who have children, no, hormonal means you might get a little upset when you watch a movie, you might cry when you break something. You don't leave a note that says, bitch, I'll be back. Nigger, fuck you and Fa, bitch ass. That's not what hormonal and pregnant women do.

These Defendants, co-defendants, they differ in some ways, but they were all consistent about these things. All right. Ladorrean planned it, Andrew brought the ammo, shotgun, the .22, Bait, who had dreads back then, brought a camouflage gun, he had a red car, Tiffany drove it, Gregory was in the passenger seat, Donell and Quentin were in the back, Greg kicked in the door, they ran in the first room where there was an air mattress, then Bait and Quentin ran down to the master bedroom, there were three shots, Donell brought out a long case, they drove to TaTa's, Quentin's sister's house, Bait drove off, Tiffany, Donell and Greg walk to Huckabee Heights, they threw a shotgun in the woods, Greg gave the .22 back to Tiffany. All of them told you that same -- they may have differed a little, but they all told you

those things, and ladies and gentlemen, those things, that's the crime. That's the burglary first, that's the armed robbery, that's the murder, and it's certainly the accessory before the fact, certainly.

Now Quentin Gause, most of the co-defendants told you they didn't know him very well, again, before that day, and they didn't -- they didn't, and that's because, as Greg Floyd told you, he's the one who brought him in. So the connection between him and these other people is Greg Floyd, and that's what they told you.

And Ladorrean, she is -- and I -- look back at your notes when you go back. Y'all, she's the only connection any of these people have to Allen Smith. Every one of them told you that, before this time period, none of them knew Allen Smith, none of them. And so, in order not to convict her of accessory before the fact of burglary, and accessory before the fact of armed robbery, you would have to believe that these people got together, absent her, and just miraculously came up with this person, Allen Smith, that they were going to go in there and burglarize and rob. That's what you would have to believe, that they -- they came up with it all on their own, because she is the single, only connection. She's it. She's told them it was going to be an easy lick. Let me tell you what -- let me tell you what this woman did. She sent those people in there. She said, it's going to be an

easy lick; it's going to be a sweet lick; you won't have to worry about guns. We know there were guns in there. She didn't give a rat's ass what happened to them when they got in that home. She didn't care. All she wanted to do was get them to go in there so she could serve her purpose, which was to hurt him, because he didn't want to be with her. She didn't care about Donell or Tiffany. She didn't care about Greg; she didn't care about Quentin. It didn't matter to her what happened to any of them. The only thing that mattered to her was that she got her revenge.

This is Allen Smith. He's somebody's son; he's somebody's family; he's somebody's boyfriend; he's somebody's father, and he may have been a drug dealer, but his life is worth the same amount as yours and mine.

Quentin Gause went in there with that camouflage shotgun and he fired a shot, bamb, bamb. He killed Allen Smith, and she made it happen. She made it happen.

I want you to go back to that jury room, and I want you to find them guilty, on all these counts.

Thank you.

Thank you, Your Honor.

THE COURT: All right. Mr. McCollum, closing argument.

MR. McCOLLUM: May it please the Court.

THE COURT: Yes sir.

MR. McCOLLUM: Ladies and gentlemen, good morning.

There's a couple of things in this case. One is that, when the case started Ms. von Herrmann gave her opening statement, and it seemed like at that time she had a case, but she didn't, she doesn't, she didn't. What she said to you happened didn't happen. She hasn't proved it. What I said to you was that the killers, the burglars, the Defendants, the criminals, who all admitted, finally, their involvement, they are not on trial. They are the State's witnesses, and that's what has come true.

The other thing I want you to think about too, just briefly, or over and over as we go through this, is that throughout the trial the witnesses who haven't been promised anything, oh, want to come clean and bear their sole, if they would say, well, what's your name, they would say, well Dorrea did it. Mr. Hazzard would question them, say, well, you were in there, didn't you. Well, Dorrea told us to go. They signed a proffer. Now, after lying and lying, and lying some more they finally, in different degrees, admitted different involvement in it. But once the police have everybody it doesn't do -- it doesn't do Greg Floyd any good to say Donell James did it, because the police are like, well, we know that. It doesn't do anybody any good to say well, Tiffany drove them and she did it, and they go, we know that. So when everybody involved is being called, and there's evidence against them, they can't help themselves unless they come up with somebody

else.

Now, I promise you -- it's 10:15 -- that I will not talk as long as the Solicitor. I think about you in here this week. I used to go to movies all the time. Sometimes I don't even go to a movie because I don't want to sit still that long. I don't want to sit in the theater for two hours, and you've been in here all day, every day, listening to us, and I thank you for that. I really appreciate it. And I know nobody, when you got summoned here this Monday, this past Monday, have any idea that you were going to be in here all week and have to go through this. And it's been unpleasant, and I'll talk about some of that. It's important, obviously.

Now, you've seen some things that, even for me, are pretty amazing. Years ago -- I've been practicing since '88, so I -- we know my math isn't that good, but I think maybe it's about twenty-three years, I think, and when I started my career it wasn't in this courthouse; it was the old courthouse across the street, but I worked for the Solicitor's Office and I prosecuted cases, and I tried cases, and when you present the case, especially something like this, a murder case, and sometimes even an armed robbery and stuff, you've got to try to figure out what happened, and sometimes it's a daunting task as a prosecutor. There were times I was very uncomfortable as a prosecutor, because you make these God like decisions about people's lives. If I had a reasonable doubt

about the case, even some murder cases, there were cases I dismissed, because -- and my mother couldn't believe that I could do that, that I could make that kind of decision and there wasn't somebody else, a judge or a governor, or somebody, looking over my shoulder. But that's the power that the Solicitor has, and nobody is perfect. But when you get a case like this, and you've got these stories, and you've got these bad actors -- and they are bad, and I've seen bad, and they are bad -- you have to try to decide what happened, and you try to do what's right, and you try to pick the right people, and sometimes you don't get it right. Sometimes as a prosecutor you prosecute the wrong people, sometimes you get the evidence wrong. And Ms. von Herrmann who I have -- who I like, personally, and who I have high regard for, when she got up here and started talking to you she's almost, in the beginning, it's just apologizing to you for not having a case, or saying, well, reasonable doubt, it's not that high of a standard; we can't prove anything beyond all doubt, so don't be too tough on us because somebody got killed.

Now, murder, obviously and Ms. Collington -- and she's not charged with murder, okay, but murder requires malice, it requires a heart fatally bent on mischief, a heart -- a black heart, and Donell James, Andrew James, Tiffany James, and Greg Floyd, they have that. The James Gang, I think as Mr. Hazzard referred to them, those are some bad people. Okay. When I --

Everyone else remain seated.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: We will be at ease for about five minutes. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, it has come now to the stage of the trial where I am going to instruct you, and tell you the law that you are going to apply to the facts as you so find them to be in this particular case. And I told you at the very beginning that I would not indicate, or intimate to you in any way what I thought the facts of this case were because that's not my job, that's your job, and your responsibility. In the same vein, if you came into this courtroom with any pre-conceived ideas of what the law is, what it ought to be, what it should be, what you hoped it would be, you will disregard that. You will take the law as I now give it to you, and apply it to the facts as you so find them to be.

I told you at the very beginning, one of your jobs in this particular case was to judge the credibility and believability of witnesses that come before you and testify under oath. In doing so you can believe one witness against several, several against one. You can believe a portion of what a witness says and disregard the remaining portion of it.

You could disregard the testimony of a particular witness in it's entirety, if you've got a good and sound reason for doing so. How do you do this? As I told you at the very beginning, you use your good common sense, your good judgment that you use in conducting your own affairs, apply it to the facts and evidence you've heard in this case, and find that evidence which convinces you of it's truth. You don't have any friends to reward, you don't have any enemies to punish. Your result can't be the -- can't be the result of -- your verdict can't be the result of any kind of passion or prejudice, or sympathy. It has to be an examination of the facts and evidence in the case, find the facts and evidence which convince you that they are true, and then weigh that evidence against the State's burden to prove the Defendant guilty of the crimes charged against them, beyond a reasonable doubt.

Now, in this particular matter I allowed you to take some notes. I told you at the time, when I allowed this, and I'll remind you again, some people are better notetakers than others, and just because somebody has something written down on a piece of paper does not make it, in and of itself, better than somebody's memory of what happened at the -- or what the witness said. The Court is relying on, and expecting that you will use your collective memory and your collective knowledge regarding the facts and evidence in this case to find that evidence which convinces you of it's truth.

There are two Defendants in this case. Ladorrean Collington is charged with accessory before the facts to armed robbery, and accessory before the fact to burglary first degree. Quentin Lavant Gause is charged with murder, armed robbery, and burglary in the first degree. The case of each Defendant, and the evidence and the law concerning that Defendant must be considered by you separately and individually. There are two cases. Each Defendant has separate charges. You consider them separately and individually. Your verdict does not have to be the same for both Defendants. It doesn't have to be the same on the charges that are levied against them by the State of South Carolina. You might find one Defendant guilty of a particular crime, or not guilty of a particular crime, and that doesn't impact your decision, or make your decision as to the remaining charges against that Defendant, or the charges against the other Defendant.

You can convict one, acquit one, acquit both, convict both, any combination thereof regarding all of the charges. It depends upon your view of the testimony, your examination of the testimony on each Defendant and each charge, finding the evidence which convinces you of it's truth, and again, weighing that evidence against the State's burden to prove each Defendant, on each charge, guilty beyond a reasonable doubt. You will be required to reach a separate verdict on

each charge, and then, Mr. Foreman, you are going to have to report that; and I'll talk to you about that at the very end.

In this particular case I qualified a couple of witnesses to give their opinion. Sometimes they are called expert witnesses. The reason I qualify, and state I qualified to give them their opinion -- give their opinion is, we don't normally allow people to testify as to their opinion. They have to tell you about what they know, what they saw, what they heard, what actually occurred. But some witnesses, by reason of their experience, training, knowledge, are entitled, if so qualified by the Court, to give their opinion on a certain matter. That doesn't give them any special status. That doesn't give them any greater weight than any other witness. You judge all the witnesses the same. You look at all the evidence the same, and find that evidence which convinces you of it's truth.

Now there's two types of evidence, and these two types of evidence are direct and circumstantial evidence. In virtually every case that's tried we will have some type of direct and circumstantial evidence. Direct evidence is the testimony of a person who asserts, or claims to have actual knowledge of a fact. Circumstantial evidence is proof of a chain of facts or circumstances indicating the existence of a fact. The Law doesn't make any distinction between the two. A greater degree of proof is not required of one over the

other. You look at all the evidence and again, find that evidence which convinces you of it's truth, and weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt of the crime charged. After weighing all the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt you would find the Defendant not guilty of that particular offense.

Our Rules of Evidence provide that the testimony of a witness may be discredited or impeached by showing the witness has been convicted, and that means not only charged with, but actually convicted of a crime for which that person could have been imprisoned for more than one year, or if the crime involves dishonesty. As to this evidence, you only use it on the issue of credibility or believability, and for no other purpose.

In this case neither Defendant testified. I instruct you, I tell you, this is not a fact in this case. It is not to be considered by you in any way. You may not discuss it in your jury room. It cannot be used in any way to arrive at your decision. Defendants have the Constitutional Right to remain silent. The assertion of the right cannot, and must not be used against them in anyway. And again, as I told you at the very beginning, it is the State's responsibility to bring you the evidence. It's the State's responsibility to prove, if they can, the Defendants guilty of the crimes

charged beyond a reasonable doubt. The Defendants have nothing to show to you; the Defendants have nothing to prove to you.

In conjunction with that, when we talk about the indictments, or the charges against each Defendant -- and I told you that those were the charges the State had brought against them, and the Defendants had pled not guilty to those charges. At that point in time the burden of proof came upon the State of South Carolina to prove the Defendants guilty of the crimes charged beyond a reasonable doubt, the Defendants being presumed innocent, if, and until the State can prove their guilt beyond a reasonable doubt. No matter what the seriousness of the charges may be, every Defendant is entitled to this right to be presumed innocent of that crime for which the indictment was issued. That presumption of innocence didn't end at the start of the trial. It hasn't ended now. It only ends when you, the jury, collectively believe, if this is your belief, that the State has proved to you the guilt of the Defendant of a particular crime, have proved them guilty beyond a reasonable doubt. That presumption of innocence is likened to a robe of righteousness that's placed on the shoulders of the Defendant, and it stays on the shoulders of the Defendant until you, the jury, believe the State has convinced you of the guilt of that Defendant, or that crime, beyond a reasonable doubt.

Reasonable doubt. It's the kind of doubt that causes an ordinary, reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things that we can know with absolute certainty, and the law doesn't require the State of South Carolina to give you that kind of proof. What is required, if based upon your consideration of the evidence, evidence you find to be true, you are firmly convinced the Defendant is guilty of the crime charged, you must find the Defendant guilty. On the other hand, if you are not firmly convinced that the Defendant is guilty of the crime charged, then you must give the Defendant the benefit of the doubt and find him not guilty.

The Defendant, Collington, is charged with being an accessory before the fact of armed robbery, and accessory before the fact of burglary first degree. These are two crimes; you will need to make two decisions. In order to prove each crime the State must prove to you, beyond a reasonable doubt, that the Defendant, Collington, either advised, agreed, urged, counseled, hired, or in some way aided or abetted another person to commit the particular crime, and the Defendant, Collington, was not present when the crime was committed. Aid means to help, to promote the course or accomplishment of, to give support to, or to give assistance to. Aid means to encourage or support. That's the definition

for both of those accessory before the fact charges.

The Defendant, Gause, is charged with three crimes, and I'll go over each of those, the first one being murder. The State must prove, beyond a reasonable doubt, that this Defendant, Defendant Gause, killed another person with malice aforethought. Malice is hatred or ill will, or hostility toward another person. It's the intentional doing of a wrongful act, without just cause or excuse, and with an intent to inflict an injury on a person under circumstances that the law would infer an evil intent. Now, this malice aforethought does not require that the malice exist for any particular time before the act was committed, but it has to exist in the mind of the Defendant just before, and at the time the act is committed. There has to be this combination of that evil intent and act.

Now, malice aforethought can either be expressed or implied. Express, as you might imagine, means that somebody did something in a manner which expressed this malice. The -- it could be a person speaks words, or when a person prepared beforehand to do the evil act which was later accomplished. Malice can be inferred from conduct showing a total disregard of human life. Inferred malice can also arise when the deed is done with a deadly weapon. A deadly weapon is any kind of article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been

used as a deadly weapon depends upon the facts and circumstances of each case.

The Defendant is also charged with the crime of armed robbery. In order to prove this offense the State must first prove, beyond a reasonable doubt, that the Defendant took personal property from the person, or from the presence of another person. Property is in the presence of a person if it is within that person's reach, inspection, observation or control, so that the person could, if not overcome with violence, or prevented by fear, keep possession of that particular product.

The State also has to prove to you, beyond a reasonable doubt, that the Defendant carried the property away, intending to permanently deprive the owner of the property, and to keep the property for the Defendant's own use. The slightest removal of the property, or the complete possession of the property even for an instance by the Defendant is sufficient to show a taking and carrying away. The taking and carrying away of the property must have been done with violence, or putting the owner of the property in fear of violence.

Finally, the State has to prove to you, beyond a reasonable doubt, that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon, again, any kind of article, instrument, or substance which is likely to cause death or great bodily harm, and whether an instrument has been

used as a deadly weapon depends on the facts and circumstances of each case.

The Defendant is also -- the Defendant, Gause, is also charged with the crime of first degree burglary. The State must prove, beyond a reasonable doubt, that the Defendant entered the dwelling without consent. A dwelling is any kind of building, or portion of a building in which a person ordinarily sleeps.

In order to prove that the Defendant entered the dwelling the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or a foot, or even an instrument. In addition, the State does not have to prove that force was used to gain entry. It could have been done by some kind of deception, or trick, or otherwise.

The State must prove, beyond a reasonable doubt, that the Defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry into the dwelling.

If the intent to commit a crime is formed after the entry into the dwelling it is not a burglary. On the other hand, if the Defendant intended to commit a crime at the time of the entry, and even if the intent was abandoned after the entry, that would still be burglary. Intent may be shown by acts and conduct of the Defendant and other circumstances from

which you could infer intent.

Finally, the State has to prove, beyond a reasonable doubt, that when entering, or while in the dwelling, or when fleeing, the Defendant, or an accomplice, was armed with a deadly weapon. And again, I won't define deadly weapon. It's the same as for murder and armed robbery.

This following theory that I'm going to -- theory of law that I'm going to talk to you about applies to these crimes of murder, armed robbery, and the burglary in the first degree. It's called the hand of one. If a crime is committed by two or more people who are acting together in committing a crime the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural or probable consequence of the act done in carrying out that common plan or purpose. The act of one is the act of all, or it's sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant. The State must prove to you, beyond a reasonable doubt, the theory of the hand of one is the hand of all. A

principal in a crime is one who either actually commits the crime, or who is present, aiding, abetting or assisting in committing the crime. When the person does an act in the presence of, and with the assistance of another, the act is done by all. Where two or more, acting with a common plan or attempt are present at the commission of the crime, it does not matter who actually commits the crime; all are guilty; the hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid, or abet, or assist in the commission of the crime, again remembering, mere presence at the scene of a crime is not sufficient to convict.

Intent is also a necessary element. There must have been some common design or intent to commit the crime, and the crime must have been committed with the person aiding and abetting by some kind of overt act. The State has to prove all these to you beyond a reasonable doubt.

That, ladies and gentlemen, is the law that you are going to apply to the facts as you so find them to be. Now, I've had prepared for you a verdict form in this particular matter to aid you at recording your unanimous verdict. There are two verdict forms for the Defendant, Ladorrean Collington, and the caption of the case says, Accessory Before the Fact of the Felony of Armed Robbery: On the charge of accessory before the fact of the felony of armed robbery we, the jury,

by unanimous consent, find the Defendant, Ladorrean Collington -- and there's two choices -- and I have to put one before the other so don't assign anything to that, two blocks, not guilty or guilty. Once you have reached a verdict on that particular charge you go to the next charge, Accessory Before the Fact of the Felony of Burglary First Degree: On the charge of accessory before the fact of the felony of burglary in the first degree we, the jury, by unanimous consent, find the Defendant, Ladorrean Collington, again, not guilty or guilty.

Once you have arrived at those verdict, and completed those verdicts, you will continue on and consider the verdict and the charges against the Defendant, Quentin Lavant Gause. I have the verdict forms that are prepared for you regarding these three charges. On the charge of murder we, the jury, by unanimous consent, find the Defendant, Quentin Lavant Gause, again, two choices, not guilty or guilty. If you reach a verdict on that particular charge you go to the next charge, that being armed robbery. On the charge of armed robbery we, the jury, by unanimous consent, find the Defendant, Quentin Lavant Gause, again, not guilty or guilty. If you reach a verdict on that particular charge you go to the last charge, burglary first degree. On the charge of burglary first degree we, the jury, by unanimous consent, find the Defendant, Quentin Lavant Gause, not guilty or guilty.

You can see, and I'll remind you again, these are two

separate Defendants, separate charges, separate decisions on all these matters. Your decision on one does not govern your decision on another. They are all separate, independent matters.

Now, I've said unanimous I don't know how many times, at the beginning and now. It means exactly what you think it means. It means twelve zero, not eleven one, ten two, any combination thereof. Whatever the verdict is on each Defendant, and on each charge, it must be unanimous. So, Mr. Foreman, when you take these verdict forms and you check the appropriate block, and you sign your name down at the bottom and put today's date, you are indicating to the Court that each and every member of the jury agrees that's their verdict; everybody is in unanimous agreement that what you place on that piece of paper is what everybody agreed to.

What I'm going to ask at this point in time, Mr. Foreman, is if you will take the twelve members of the jury -- I'm going to ask the two alternates -- gentlemen, if y'all will stay with us, please -- you take the twelve members of the jury to the jury room. Do not begin your deliberations until the bailiff comes in and hands to you -- probably with the assistance of maybe some deputies because we've got some exhibits -- the verdict forms and the exhibits. When the verdict form and the exhibits come into your jury room then you may begin your deliberations, Mr. Foreman.

All right, take your jury to the jury room at this time, please.

And the two alternates, if you will remain with us, please.

(THE JURY RETIRED AT 12:10 P.M.. THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. As to the two alternates, is there any reason the Court should not excuse the two alternates at this time, from the State?

MS. von HERRMANN: No objection from the State.

THE COURT: Mr. McCollum.

MR. McCOLLUM: No, Your Honor.

THE COURT: And Mr. Hazzard.

MR. HAZZARD: No objection.

THE COURT: Very good.

All right, gentlemen, regarding your service in this matter, I want to thank you for your service. Your job was to step in the shoes -- if any one of the twelve members of the jury were, you know, to become ill, or some way could not go forward with the duties -- they seem already willing and able to do so, therefore I'm going to excuse you and discharge you from your responsibility in this case.

Obviously you are free to stay if you wanted to, but that's your choice. You are discharged from your duties and responsibilities.

P.M. AS COURT'S EXHIBIT NUMBER 4.)

THE COURT: All right. Mr. Foreman, based upon your note, what I'm going to do is recharge just the particular crimes and their elements. If -- at the end of it if there's something else you want then please tell me, or if we get to a point and you've heard what it is that you would like to hear, then, you know, please indicate and I will -- I will stop. We are here at your request. All right.

FOREMAN: Yes sir.

THE COURT: All right. Very good.

All right. As to the crime and the law on Accessory Before the Fact. The Defendant, Collington, is charged with being an accessory before the fact of armed robbery, and accessory before the fact of burglary first degree. Again, these are two crimes, and two decisions that have to be made by the jury. In order to prove each of them, each crime, the State has to prove to you, beyond a reasonable doubt, that the Defendant, Collington, either advised, agreed, urged, counseled, hired, or in some way aided or abetted another person to commit that particular crime, and the Defendant, Collington, wasn't present when the crime was committed.

Aid means to help, to promote the course of, or accomplishment of, to give support to, or give assistance to. Abet means to encourage or support. So that's accessory before the fact. And again, that's two -- there's two charges

DEPUTY CLERK OF COURT: Indictment Number (2010-GS-26-01627) State of South Carolina, County of Horry, versus Ladorrean Collington, on the charge of accessory before the fact of the felony of armed robbery we, the jury, by unanimous consent, find the Defendant, Ladorrean Collington, guilty.

Indictment Number (2010-GS-26-01626), on the charge of accessory before the fact of the felony of burglary first degree we, the jury, by unanimous consent, find the Defendant, Ladorrean Collington, guilty.

Indictment number (2008-GS-26-03133), on the charge of murder we, the jury, by unanimous consent, find the Defendant guilty.

(2011-GS-26-01274), The State of South Carolina versus Quentin Lavant Gause, on the charge of armed robbery we, the jury, by unanimous consent, find the Defendant, Quentin Lavant Gause, guilty.

Indictment number (2008-GS-26-03135), The State of South Carolina versus Quentin Lavant Gause, on the charge of burglary first degree we, the jury, by unanimous consent, find the Defendant, Quentin Lavant Gause, guilty.

Dated June 10th, 2011, signed by Foreperson, twenty-two.

Ladies and gentlemen of the jury, if this is your verdict so signify by raising your right hand.

(AT THIS TIME ALL JURORS RESPONDED BY RAISING OF THEIR RIGHT HAND.)

MR. McCOLLUM: Yes, Your Honor, most respectfully. At this time the Defendant would make a motion for a new trial. We would renew the motion for a directed verdict made earlier. We would also renew all motions made earlier, and renew all objections before the Court, Your Honor.

THE COURT: All right. Very good. I will reaffirm my prior rulings in this matter. The -- as you indicated, the -- when I denied your motion for a directed verdict, and the motion at this point in time is for a new trial. I do find, as I did earlier, that there is more than sufficient evidence, and more than sufficient competent evidence to sustain the jury's verdict as against the Defendant, Collington, as to the charges of accessory before the fact of armed robbery and burglary first degree, and having found that this competent evidence exists to sustain the jury's verdict beyond a reasonable doubt, I will not overturn that verdict. Your motion for a new trial is denied.

Anything further as to any motions of any kind by the -- by your client, other than that?

MR. McCOLLUM: No, not other than those motions and the motion -- specifically the motion for a new trial, Your Honor.

THE COURT: All right. Very good. Thank you very much.

All right, Mr. Hazzard, on behalf of the Defendant, Gause.

MR. HAZZARD: Yes sir. At this time, on behalf of the Defendant, Quentin Lavant Gause, we would make a motion for a new trial. At this time we would renew all motions made during the course of the trial, and the pretrial motions made, and would renew and request reconsideration of all objections raised during the course of the trial proceeding, Your Honor.

THE COURT: Thank you very much. The Court reaffirms it's prior rulings that I have made during -- before the trial, during the course of the trial in these matters. Having denied your previous motions for a directed verdict, ad ruling that the evidence was sufficient to submit the question of guilt to the jury; the question would now be whether or not there is competent evidence to sustain the jury's verdict. I do find that there is more than sufficient competent evidence to sustain the jury's verdict beyond a reasonable doubt as to the charges levied against the Defendant, Gause, for murder, armed robbery, and burglary in the first degree, and therefore respectfully decline to grant your motion for a new trial, and reaffirm all my prior rulings.

Thank you very much, sir.

Solicitor, is the State ready to proceed with sentencing?

MS. von HERRMANN: Your Honor, the State is ready to proceed. Mr. -- the victim, Mr. Smith's, mother is here present in the courtroom, and she, just very briefly, wants to

in preparing this case for trial, and we ask for whatever mercy that the Court may see fit to give.

THE COURT: Thank you very much. Y'all can just have a seat while I consider the sentences. Thank you.

Would the Defendant, Collington, please stand at this time.

Regarding **(2010-GS-26-01626)**, that is accessory before the fact of a felony, that felony being burglary in the first degree, the Court hereby sentences -- the Defendant is committed to the State Department of Corrections for a determinant term of twenty-two years. The Defendant is given credit for the time she has already served.

Regarding **(2010-GS-26-01627)**, accessory before the fact of a felony, that being armed robbery, the Defendant is committed to the State Department of Corrections for a determinant term of twenty-two years, concurrent with **(2010-GS-26-01626)**.

You may be seated.

Will the Defendant, Gause, please stand.

Regarding **(2008-GS-26-03133)**, **State of South Carolina, County of Horry, versus Quentin Lavant Gause**, regarding the crime of murder. The Defendant is hereby committed to the State Department of Corrections for a determinant term of forty-two years. The Defendant is given credit for any time that he has served.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)
) No. 10 GS 26 01626; 01627
) 10 GS 26 1225
versus) 11 GS 26 1276
)
LADORREAN COLLINGTON)
)
Defendant)

TRANSCRIPT
OF
RECORD

STATE OF SOUTH CAROLINA)
) No. 08 GS 26 3133; 3135
) 11 GS 26 1274; 1275
versus)
)
QUENTIN GAUSE)
)
Defendant)

Conway, South Carolina
June 2, 2011

B E F O R E :

HONORABLE STEVEN H. JOHN, Judge

HARRIET P. BENNETT
Reporter, S. C. Court Administration
P. O. Box 86
Ladson, S.C. 29456

allegations as to time and place as required by law, if they charge the crime substantially in the language of the common law or of the statute prohibiting the crime so that the nature of the offense charged may be easily understood; that if the offense be a statutory offense, the offense be alleged contrary to the statute and in such cases made and provided.

Thus to pass legal muster, it must charge the crime substantially in the language of the statute prohibiting the crime or such that the nature of the offense charged may be easily understood.

Whether the indictment could be made more definite or certain is irrelevant. The State is not required to prove its evidence in the indictment.

I find in this particular matter that neither Defendant was prejudiced by any lack of information as alleged. I find that the indictments are more than sufficient to place the Defendant or Defendants on notice of the crimes with which they are charged and for which they can defend, if they so choose.

The motions to quash the indictments are denied.

Mr. Hazzard, I would have the Clerk make you a copy of the burglary first indictment. Thank you, sir.

Further motions, Mr. McCollum?

MR. McCOLLUM: I would have a motion to exclude

-- I would ask Your Honor to hear a motion to exclude evidence of prior difficulties between Ladorrean Collington and the alleged victim.

Before I do that, Your Honor, it's my understanding -- this may be a little bit premature, and it may not be necessary, but it is my belief that there is some evidence out there that Ms. Collington is alleged to have gone over to the Allen's house -- they live across from each other and they had a relationship as far as having a child together -- and she had taken up I think a little baton or bat or something and had hit his car, beat on the car or something to that effect. I may be wrong there.

I don't know if the State is planning to introduce this kind of prior difficulty or not and this motion may not be necessary, but if they are then we would move to suppress previous or prior difficulties between Defendant Collington and the victim.

At this point, we would object to that and would like to be heard on it.

THE COURT: I would say that -- correct me if I'm wrong, Solicitor, but is it your position that there were prior actions between the Defendant and the victim?

SOLICITOR: Yes, sir, Your Honor.

THE COURT: And do you intend to present any in the presentation of the case?

SOLICITOR: Yes, sir.

THE COURT: All right. I'll be glad to hear from you on that, Mr. McCollum.

MR. McCOLLUM: Your Honor, we don't have that particulate witness here. Is it possible the State could summarize we could anticipate being used against the Defendant? In other words, is what I have stated essentially correct?

THE COURT: Solicitor, is there some brief summary that you could give as to what may have occurred?

SOLICITOR: Yes, sir, Your Honor. There were a number of threats made by the Defendant Collington directly to the victim, to the victim through a third party, and Anthony Grant, and by a note that was left at the victim's residence.

She did also break out a window at the victim's residence and evidence would be introduced on all of those instances in my case in chief.

These incidents happened within a very short time, a couple of days, prior to the time the victim was killed.

It is my position that that information would come in under 404 B. Also 401 and 403, in conjunction with 404 B, and also pursuant to a res gestae theory.

I have handed up to the Court a Response to the Motion of the Defendant and cited a number of cases . .

THE COURT: Well, let me hear Mr. McCollum's argument. Yes, sir, Mr. McCollum.

MR. McCOLLUM: Just very briefly, the Defendant, Ladorrean Collington, has filed an objection or a Motion to exclude evidence of prior difficulties or a Motion to exclude evidence of just what the Solicitor described.

That is, alleged difficulties or threats between her and the deceased. We also filed a Motion about threats either to Anthony Grant or made through him regarding the victim.

Your Honor, I would ask that -- I have a couple of cases cited here, and I would make the Court aware that until the testimony is presented that the Court reserve Ruling on this.

THE COURT: In general -- that's all I could give you right now is a general rule because I haven't heard any questions nor the answers.

I can't issue a ruling on that, and you would have to obviously object to it at that time, but again, generally, certainly in this prior conflict between the parties it is proper to establish the context of a crime and to establish the presentation of the particular matter so that a full explanation of the situation is given to a jury. I can't take it in a vacuum that on certain days this thing happened and Lord only knows why it happened --

it just happened out of the blue. Who knows why? If there is information that is reasonably tied to and would give context to that particular matter, in general that is allowed under the rules.

Whether or not any particular statements are improper I don't know. If you object to them I would make a ruling at that point in time.

Certainly in general it is a good principal of law that is relied on in the State of South Carolina. Do you disagree?

MR. McCOLLUM: Yes, sir, Your Honor.

THE COURT: You disagree that as a general rule of law in the State of South Carolina that to give context to a crime prior difficulties can be testified to? You don't think that is a general principal of law in this State? That this is proper evidence?

MR. McCOLLUM: Your Honor, I think you've narrowed it down. I would lean more toward agreement, but I do think that in general certainly prior difficulties are admissible by a defendant to show a basis for feeling threatened and to justify the action.

In other words, in a self-defense context certainly I think defendant has to . .

THE COURT: You're telling me that you client specifically threatened the well-being of the victim within a

few days of the victim being killed -- that's not allowed? Is that what you're telling me?

MR. McCOLLUM: It depends on the circumstances. It depends on the degree of prejudice, and it depends on, you know, whether it is related or relevant. If the Defendant has a physical relationship with someone and they have a child together and then they get mad at that person, I don't know that is automatically admissible.

If the State's theory is that somebody concocted a plan and recruited others to go and rob someone, I don't know that automatically ties in the Defendant or is tied together.

I don't think I need to belabor this at this point, and I have to file Motions . .

THE COURT: I appreciate that, but I cannot rule on that Motion at this point in time. I appreciate your bringing it to my attention but when I hear the questions and answers you can make a proper objection.

I can't rule on it at this time, but just for your guidance it is certainly the Court's position that in general prior difficulties, prior threats, prior actions, are certainly -- is certainly evidence that could be relevant and admissible in the trial of a person charged with a crime such as your client is charged.

What those particular things are, I don't know, but

it is certainly a good principal of law. If you take a position that it is not a general principal of law in our State, then obviously we fundamentally disagree.

MR. McCOLLUM: With all respect, Your Honor, it would not be the first time that . .

THE COURT: I understand. Just so we'll be clear, you are really telling me that if there is evidence of a prior difficulty that is related to the crime, and the Court goes through the analysis and finds it is related to the crime, is in context to the crime, gives a factual understanding of the crime to the jury, that that is just not proper in our State?

MR. McCOLLUM: Your Honor, I think you are -- there was mention of res gestae, and there is also an issue as to introducing evidence of the character of the accused. That is basically what this will all evolve into, is that the State cannot introduce evidence that the Defendant is a person of bad character absent proper evidence by Defendant that they are of good character.

In terms of res gestae, certainly the appellate courts of this State have ruled that a thing that would not be admissible can be admitted when it is part of the res gestae.

As I understand res gestae, res gestae is in the immediacy or in the relevance of the act, or whether it is so

interwoven with what the accused is charged with doing it does not make any sense to take that . .

THE COURT: Well, there has to be established a time line before -- I mean, there is no time limit, but it has to be interwoven.

MR. McCOLLUM: I'm just saying that any prior difficulty between Ms. Collington and the deceased is not automatically admissible.

THE COURT: I certainly agree with that. Just became something happened does not automatically mean it is admissible.

I will hear the testimony -- the questions and the answers and rule upon any objections.

SOLICITOR: Let me let the Court know this. The incidents we are talking about in this case happened within a one week period of when this homicide occurred.

It is so intwined that I don't see how I can make an opening argument without mention of this, and I want the Court to be aware of that I will be referring to that.

THE COURT: I appreciate that and I understand. I am sure the Defense will understand as well. I will reserve ruling on this particular matter.

(Portion of discussion not audible on tape. End of tape one.)

THE COURT: We will take that up at the time the

Medical Examiner testifies, but as to crime scene photos do you know which ones that you all have an objections to?,

SOLICITOR: I would ask after the motion hearing today that they take a look at the photographs I intend to introduce to see which ones they might have objections to.

THE COURT: All right. That will be great.

If you would obviously identify to him whatever ones you might be using through the Medical Examiner.

All right. You can take time to do that and review the photos.

MR. McCOLLUM: We'll do that.

THE COURT: Mr. Hazzard?

MR. HAZZARD: Yes, sir.

THE COURT: Very good. Anything else that you are aware of? Anything, Mr. McCollum?

Are there further motions, Mr. Hazzard, on behalf of Mr. Gause? First, Mr. McCollum?

MR. McCOLLUM: I have none.

THE COURT: Mr. Hazzard?

MR. HAZZARD: I have a Motion to sever the trials, Your Honor.

THE COURT: I'll be glad to hear you on that.

(Statement of Mr. Hazzard not audible on tape)

THE COURT: Thank you, sir. All right, Mr. McCollum. Do you have a position?

MR. McCOLLUM: Your Honor, I would join that motion. I don't have anything to add.

THE COURT: Solicitor, I'll hear from you.

SOLICITOR: Yes, sir, Your Honor.

I would just say that the testimony of the individuals with the exception of two would be from the exact same witnesses. I think that the jury will have the ability to differentiate between the Defendants.

I certainly don't think it is necessary to have two separate juries impaneled, and it would be more judicious to try these together.

Thank you. The witnesses would be the same, the testimony would be the same.

THE COURT: Thank you. The Defendants before the Court are not due separate trials as a matter of right. What the Court needs to look at is whether I would specifically find reason, as the case law indicates, that there is a serious risk that a joint trial would compromise a specific right of a codefendant or prevent a jury from making a reliable judgment about a defendant's guilt. I do not find such a risk in this particular case.

I find that a single jury is proper. I find that the arguments presented by Mr. Gause do not impact his

ability to get a fair and just trial by a single jury. The State does not in its case in chief intend to present a statement of Ms. Collington.

The fact that there might be some mutually antagonistic defenses that might be presented in itself is not a reason.

I do not find, based upon an examination of this case, that the rights of either Defendant are substantially impaired or harmed in any way by being tried together before a jury, a single jury.

Therefore, that Motion to sever is denied.

THE COURT: Further motions, Mr. Hazzard?

MR. HAZZARD: No, sir, nothing further.

THE COURT: Very good.

MR. McCOLLUM: Your Honor, the Solicitor has asked that I bring up--Your Honor, there were a number of arrest warrants for the Defendant, Ms. Collington, and we have been told there were indictments and reindictments. We have discussed whether or not they would be served upon the Defendant, physically served upon her.

I would state that we have received copies of those indictments, and as far as the Defendant Collington is concer there is no issue regarding the service of the indictments. We have the indictments provided to us.

There is not any kind of issue in terms of jurisdiction

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)

State of South Carolina,)

vs.) **STATE'S RESPONSE TO DEFENDANTS' MOTION TO SUPPRESS EVIDENCE**

Ladorrean Collington,)
Quentin Gause.)

Case Number: 2008-GS-26-03315 (Kidnapping), 03116 (Burglary 1st), 03117 (Murder), 03118 (Armed Robbery)
2010-GS-26-01225 (Acc. To Kidnapping), 01626 (Acc. to Burglary 1st), 01627 (Acc. to Armed Robbery)

TO: HONORABLE STEVEN H. JOHN, CHIEF ADMINISTRATIVE JUDGE
FIFTEENTH JUDICIAL CIRCUIT:

Comes now the State of South Carolina, by and through Heather von Herrmann, with its Response to Defendants' Motion to Suppress Evidence, stating that Defendants do not have the requisite standing to challenge the sufficiency of the Search Warrants and concomitant Affidavits sworn to and subscribed on April 15, 2008.

I. Void of Statutory Violation

The South Carolina General Assembly, within S.C. Code Ann. Section 17-13-140 (1985) ("Section 17-13-140"), requires that search warrants be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant." A warrant may be issued when "the grounds for the application exist or . . . there is probable cause to believe that they exist." Id.

In challenging the legality of the premises searched, Defendants rely on State v. McKnight, 291 S.C. 110 (1987), holding that respondents were not required to establish standing on constitutional grounds, but could contest the legality of a defective search under Section 17-13-140 on statutory grounds. However, in McKnight, the relevant search warrant was executed *without* an

affidavit, evidencing an overt statutory violation of Section 17-13-140. McKnight, 291 S.C. at 113-14.

Additionally, subsequent state case law relying on McKnight evidences clear statutory violations of Section 17-13-140. See State v. Covert, 368 S.C. 188 (2007) (upholding a statutory challenge when the Magistrate's signature on the search warrant was dated two days after the search of defendant's residence); State v. Dunbar, 354 S.C. 479 (2003) (upholding a statutory challenge when an affidavit did not accompany the search warrant); State v. Jones, 342 S.C. 121 (2000) (upholding a statutory challenge when an affidavit did not accompany the search warrant); State v. Freeman, 319 S.C. 110 (1995) (upholding a statutory challenge when the State could not produce the original search warrant and a signed, sworn return).

Unlike McKnight and subsequent state case law relying on the decision, the record in this matter evidences the requisite compliance with Section 17-13-140. The search warrants executed on April 15, 2008 were accompanied by Affidavits sworn to and subscribed on April 15, 2008, and all other statutory requirements were met. Accordingly, Defendants' reliance on McKnight in order to challenge the sufficiency of the search warrants based on statutory grounds is not instructive in this matter.

II. Void of Fourth Amendment Standing

To challenge the sufficiency of a search warrant under Section 17-13-140 on *constitutional* grounds, Defendants must establish that the search resulted in a violation of "[their] own Fourth Amendment rights." McKnight, 291 S.C. at 114-15. The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV.

Although McKnight held that defendants had standing to challenge a search warrant based on *statutory* grounds because "the primary benefit of [Section 17-13-140] is to the person arrested or searched," state case law provides that such a benefit is enumerated to ultimately advance the criminal process in its *entirety* rather than to merely benefit the individual. State v. Sachs, 264 S.C. 541 (1975).

> The purpose of the statute [Section 17-13-140] is to provide for timely recording of facts presented to a judicial officer. Memories wane and facts will often not be available when the issue of probable cause is raised at a preliminary hearing or at trial. Thus, the primary benefit of the statute is to the person arrested or searched *and to the general public.* When properly complied with, *the police also benefit. This has a very wholesome, salutary effect on our criminal process.* (emphasis added).

Because Sachs provides that the purpose of Section 17-13-140 is to benefit the criminal process in its *entirety*, rather than only the person arrested or searched, consideration of whether constitutional grounds provide standing for Defendants to challenge the existence of probable cause is warranted alongside Defendants' statutory contentions. Similar to the purpose of the statute as enumerated in Sachs, scrutiny of Fourth Amendment jurisprudence requires a balancing of individuals' rights with subsequent effects on the criminal process Section 17-13-140 aims to benefit:

> The *substantial social costs* exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern. Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptable *the truth-finding functions of judge and jury.* An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that *some guilty defendant may go free or receive reduced sentences as a result of favorable plea bargains. . . .* the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the *criminal justice system. Indiscriminate application of the exclusionary rule, therefore, may well generate disrespect for the law and administration of justice.*
>
> United States v. Leon, 468 U.S. 897 (1984) (citations omitted) (quotations omitted) (emphasis added).

Because the application of the exclusionary rule results in substantial societal costs, Rakas v. Illinois, 439 U.S. 128 (1978) provides that "misgivings as to the benefit of enlarging the class of persons who may invoke that rule are properly considered when deciding whether to expand standing to assert Fourth Amendment violations."

The Defendants do not have the requisite standing to challenge the sufficiency of the Search Warrants and concomitant Affidavits sworn to and subscribed on April 15, 2008. One who seeks to have evidence suppressed on Fourth Amendment grounds must establish that his or her rights were violated. McKnight, 291 S.C. at 115. Additionally, he or she must "demonstrate a *legitimate expectation of privacy* in connection with the searched premises in order to have standing to challenge the search." Id. (emphasis added). State v. Bowie, 360 S.C. 210 (2005), provides that a defendant who seeks to have evidence suppressed on Fourth Amendment grounds "bears the burden of proving he had a reasonable expectation of privacy in the area searched or the item seized."

To decide whether a defendant has discharged his burden of proof, Rakas provides that "Fourth Amendment rights are personal rights which, like some other constitutional rights, *may not be vicariously asserted.*" Rakas, 439 U.S. at 133-34 (emphasis added). Additionally, "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of third person's premises or property has *not* had any of his Fourth Amendment Rights infringed." Id. at 134 (emphasis added).

To determine whether a defendant's expectation of privacy is reasonable, "a subjective expectation of privacy is legitimate if it is one that society is prepared to recognize as reasonable." State v. Bowie, 360 S.C. at 224. Rakas limits such an expectation to "more than a subjective expectation of being discovered." Rakas, 439 U.S. at 144. Although ownership of property is not

required to establish an expectation of privacy, a minimal possessory interest to the searched premises is weighed. See Jones v. United States, 362 U.S. 257 (1960); Katz v. United States, 389 U.S. 347 (1967); Bowie, 360 S.C. at 225; State v. Crane, 296 S.C. 336 (1988); Leon, 468 U.S. at 904, FN 3.

Unlike Jones, holding that the defendant had a legitimate expectation of privacy in an apartment to which he possessed a key to enter and had permission to use, the Defendants in this matter neither possessed a key to any of the searched premises nor did they have permission to enter any of the said premises. Likewise in Katz, the Court held that the defendant had a legitimate expectation of privacy in a telephone booth to which he could exclude all others and pay a toll. Katz, 389 U.S. at 352.

Similar to Bowie, holding that defendant did not have a legitimate expectation of privacy in a motel room to which he did not occupy, the Defendants in this matter did not occupy any of the said searched premises. Bowie provided that, "the fact that Bowie had associates staying in Room 309 [searched premises] is not enough to grant him an expectation of privacy in that room." Bowie, 360 S.C. at 225. Likewise in Crane, the Court held that the defendant did not have a legitimate expectation of privacy in another individual's woods located on searched premises "100 to 150 yards away from appellant's outhouse." Crane, 296 S.C. 341-42.

Finally, in Leon, the Court reversed the appellate court's decision to refuse to apply a good faith exception to the Fourth Amendment exclusionary rule after it upheld the District Court's decisions on the defendants' standing. Leon, 468 U.S. at 901-05, 926. In establishing a good faith exception to the federal exclusionary rule, the Court in Leon recognized the District Court's decisions on the defendants' standing to challenge the sufficiency of the relevant search warrants. Id. There, the District Court found that three defendants had standing to contest the legality of

searched premises of their residence. Id. at 901-05. Additionally, the District Court found that none of the defendants had established a legitimate expectation of privacy to contest the legality of searched premises where "material activity" of the relevant drug involvement occurred. Id. As established, the Defendants in this matter do not reside at any of the searched premises and, according to Leon, do not have a legitimate expectation of privacy at any of the searched premises where "material activity" occurred.

III. Good Faith Exception if Fourth Amendment Standing Found

Should this Court find that the Defendants have the requisite standing to contest the legality of the searched premises, and a violation is subsequently found, the South Carolina Supreme Court has recognized a good faith exception to the federal exclusionary rule. In McKnight, the Court held that a defective warrant's seizure can be valid under the good faith exception to the federal exclusionary rule established by the Supreme Court in United States v. Leon. McKnight, 291 S.C. at 114. However, McKnight makes clear that the rule only applies when a search warrant is defective on Fourth Amendment grounds. Id. Should the Court hold for the Defendants, the case at bar is susceptible to a Fourth Amendment violation, and accordingly, the good faith exception is permissible. Additionally, the requirements for Leon have been met because:

> [t]he Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution's case in chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found invalid. Leon, 468 U.S. at 897.

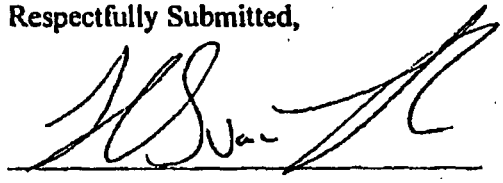
Because the information provided to police was: (1) legitimate and (2) critical evidence was discovered as result of the execution of the search warrant, the good faith provision is instructive in this matter.

In State v. Herring, 387 S.C. 201 (2009), the Supreme Court stated that there was a "good faith" exception to the statute's [Section 17-13-140] requirements where the officers make a good faith attempt to comply with the statute's affidavit procedures. Because the Court in State v. Covert did not discuss whether a warrant should be valid if acted upon in good faith, the Court in Herring decided that:

> [g]iven our recognition of an exception for officers' good faith attempt to comply with the affidavit requirement, we find no reason not to extend such a good faith exception to a warrant reasonably believed to be valid, but later determined invalid. Accordingly, even if we were to determine the affidavit was improper, we would find the SLED agents acted in good faith and reasonably believed the warrant valid, such that the search should be upheld. Id. at FN6.

The Court held that the actions of officers in Herring warranted the good faith exception. Id. The matter at hand presents circumstances that reflect those worthy of the good faith exception in Herring. Horry County Detectives made a good faith attempt to comply with the affidavit procedures, as evidenced by their prompt attention to the requisite documentation and requirements of Section 17-13-140. Accordingly, should this Court find that the Defendants have the requisite standing to contest the legality of the searched premises, and a violation is subsequently found, the good faith exception should be applied and the concomitant warrants upheld.

Respectfully Submitted,



Heather von Herrmann,
Assistant Solicitor

Conway
~~Myrtle Beach~~, S.C.
May 27, 2011

WITNESSES

John Townsend Horry County Police Department

ARREST WARRANT NUMBER

2010GS2601626
CDR: 0002 16-01-0040, 0050
DOA: 4/18/2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 25 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-26-01626

The State of South Carolina

County of Horry

Heather von Herrmann
08H01475

COURT OF GENERAL SESSIONS

MARCH, 2010 TERM

THE STATE

vs.

Ladorrean Chukell Collington
B/ F

Conway, SC 29527
DOB:
SSN:

ATTORNEY: McCollum, M. Gregory

Indictment for

ACCESSORY BEFORE THE FACT OF A FELONY

J. Gregory Hembree, Solicitor

620

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MARCH 25, 2010, the Grand Jurors of Horry County present upon their oath:

ACCESSORY BEFORE THE FACT OF A FELONY

CDR: 0002 16-01-0040, 0050

That Ladorrean Chukell Collington did in Horry County on or about April 14, 2008, advised or agreed with or urged or hired or in some way aided, counseled or encouraged the principal felon to commit the felony of BURGLARY 1ST, but was not present when the crime was committed, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

John Townsend Horry County Police Department

ARREST WARRANT NUMBER

2010GS2601627
CDR: 0002 16-01-0040, 0050
DOA: 4/18/2008

ACTION OF GRAND JURY

TRUE BILL

Marthastlon

Foreperson of Grand Jury
Date: MAR 2 5 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-26- 01627

The State of South Carolina

County of Horry

Heather von Herrmann
08H01475

COURT OF GENERAL SESSIONS

MARCH, 2010 TERM

THE STATE

vs.

Ladorrean Chukell Collington
B/ F

Conway, SC 29527
DOB:
SSN:

ATTORNEY: McCollum, M. Gregory

Indictment for

ACCESSORY BEFORE THE FACT OF A FELONY

J. Gregory Hembree, Solicitor

ORIGINAL

692

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

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ACCESSORY BEFORE THE FACT OF A FELONY

CDR: 0002 16-01-0040, 0050

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. GREGORY HEMBREE
FIFTEENTH CIRCUIT 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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 28th, 2012

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LADORREAN COLLINGTON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of November, 2012.

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of November, 2012.

(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.