

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JUWAN D. LOMAX AND)
 DENIA Z. O. DAWKINS,)
)
 DEFENDANTS.)

2011-GS-23-9672A, 9673A & 9676A
2011-GS-23-08019 - 08022

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

APRIL 9 - 11, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

KATRYNA SALISBURY
ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

ROBERT IANUARIO, ESQUIRE
CASSANDRA GORTON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
1				
2				
3	S-1	DAWKINS WAIVER OF RIGHTS -----	34	292
4	S-2	STATEMENT OF DAWKINS -----	36	X
5	S-3	LOMAX WAIVER OF RIGHTS -----	55	318
6	S-4	STATEMENT OF LOMAX -----	58	X
7	S-5	FULL STATEMENT OF DAWKINS -----	78	292
8	S-6	PHOTO -----	143	167
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11	S-9	PHOTO -----	171	172
12	S-10	PHOTO -----	171	172
13	S-11	PHOTO -----	171	172
14	S-12	PHOTO -----	252	253
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DEFENDANT DAWKINS EXHIBITS

2:	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
3	D-1	PHOTO -----	340	X
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5	D-3	PHOTO -----	340	X
6	D-4	PHOTO -----	340	353

7 COURT REPORTER'S NOTE: (No exhibits were presented by
8 Defendant Lomax.)

1	<u>COURT'S EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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1 Monday, April 9, 2012:

2 (Whereupon court commenced at 9:34 am)

3 THE COURT: Thank you. Please be seated, ladies and
4 gentlemen. All right. Ms. Gorton, I believe I -- Defense
5 had a motion.

6 MS. GORTON: Yes, Your Honor. I have a motion to sever
7 and a motion to exclude statements of Co-Defendant, Juwan
8 Lomax. This is based on Holder and Gray and State v.
9 Johnson. I've provided you with Holder and Gray, which are
10 both South Carolina cases.

11 Now, these are both based on both a Bruton issue and a
12 Crawford issue. They're wanting to try the Co-Defendants
13 together. And we have an unusual circumstance in this case.

14 Juwan Lomax gave a statement July 21. The State has
15 presented a redacted version. I don't believe that the
16 redacted version satisfies the requirements of Gray v.
17 Maryland as described in Holder and Johnson because it's
18 still obvious there's only one person who dated the alleged
19 victim. That's her. That's what the evidence is going to
20 be. And there's no other inference that the jury can come
21 up with other than his statement, even the redacted version,
22 is referring to her.

23 We also have the complication that Juwan Lomax then
24 recanted his statement and said that it wasn't freely and
25 voluntarily given. I don't know if you have that

1 information. I didn't have it at the time I submitted this
2 motion. That has since been supplied to me.

3 I believe that Mr. Ianuario has an identical motion
4 pending before you. And that is because there's really no
5 way I can address the statement by Juwan Lomax without going
6 into his motives as he stated in his recanting letter to do
7 so.

8 And that necessarily has to have me bringing up
9 evidence of the other crimes. He was charged not only in
10 this incident, but he was charged with the home invasion.
11 He was charged with the drive by shooting. He's got a
12 couple of other items that he was questioned about. So in
13 order for me to effectively go into his motive for giving
14 this statement, as I'm clearly entitled to do, I'm going to
15 be bringing out information that Mr. Ianuario is moving that
16 is kept out of the trial.

17 It's really the convenience of the State to try the two
18 together. I don't believe that convenience outweighs the
19 individuals' rights to due process. And that is the basis
20 of my motion to sever.

21 THE COURT: All right. Thank you. Ms. Salisbury, ---

22 MS. SALISBURY: Your Honor, ---

23 THE COURT: Of course, I probably need to look at the
24 statement sometime, but I'll be glad to hear from you first.

25 MS. SALISBURY: Well, Judge, I'll be happy to get those

1 for you. And to respond to that specific Bruton issue, I
2 can tell the Court at the outset that a couple of weeks ago
3 I prepared what I believe to be appropriate redacted
4 statements in an effort to resolve this issue before today
5 at trial. I thought that it might be prudent to have that
6 issue resolved so that Your Honor would not have to spend
7 time discussing this exact issue.

8 However, both Mr. Ianuario and Ms. Gorton took the
9 position that the statements in any form, redacted or
10 otherwise, were outright inadmissible. And for that reason,
11 I made no progress on the redacted version.

12 I would certainly be willing to engage with the Court
13 in a conversation about the appropriate redaction that
14 satisfies the Court of its compliance with the rulings in
15 Bruton, but I don't know that that's part of this motion.
16 Instead, -- to answer the precise motion of severance.

17 To educate the Court a little bit, five defendants were
18 charged with these crimes. The crimes are armed robbery,
19 attempted murder, burglary in the first degree and
20 conspiracy. Five defendants are charged with exactly the
21 same offenses.

22 And to the extent that each defendant would be required
23 or would be allowed in some respect to insist on their own
24 independent trial, certainly the Court can appreciate the
25 extensive demand on judicial economy, but more importantly,

1 the strain on the witnesses and the victims to try five
2 separate cases with exactly the same evidence.

3 And so these two Defendants were paired together. And
4 the other three defendants were paired together on next
5 week's docket. And that was done for some strategic
6 reasons, but it's not really relevant to this particular
7 motion.

8 So I'd just point out to the Court that it's at least
9 the Supreme Court's position that defendants are not
10 entitled to separate trials as a matter of right, and that
11 given the burden on judicial economy, given the burden
12 imposed upon the witnesses, and most importantly, the victim
13 in this case.

14 I don't know that there's a specific prejudice to be --
15 to be suffered by either of these Defendants if they're
16 tried together. Obviously, if these redacted statements are
17 admitted at trial, it's my understanding that they will be
18 admitted with the instruction that they will be considered
19 as evidence against the person who gave that statement only.

20 And again, I know that this conversation or that this
21 motion somehow is connected to the issues raised by Bruton,
22 I'm just not sure that it's worthwhile to discuss those and
23 resolve those right now. But I can hand you both this
24 Defendant and the Co-Defendant's statements. And Mr.
25 Lomax's statement is substantially longer because he

1 discussed more crimes than just the one that's on trial
2 today.

3 To correct something Ms. Gorton says, Mr. Lomax is not
4 charged in several other incidents, he's not charged in a
5 shooting. He has a charge for possession with intent to
6 distribute marijuana for which he was charged the date that
7 he made that statement. When the police arrested him, he
8 had some marijuana in his pocket. And he's also charged
9 with an unrelated burglary, first. That's the extent of Mr.
10 Lomax's charges.

11 THE COURT: No convictions?

12 MS. SALISBURY: None, Your Honor.

13 (Pause)

14 THE COURT: Is the highlighted portion what's to be
15 admitted or the entire statement?

16 MS. SALISBURY: No, Your Honor. The highlighted
17 portion is what I used to then create an even more redacted
18 version that addresses only the crime for which we're --
19 we're on trial this week ---

20 THE COURT: So what portion of the statement of ---

21 MS. SALISBURY: The two paragraphs beginning with:
22 about a month ago; on the first page.

23 THE COURT: Okay.

24 MS. SALISBURY: And then the first paragraph on the
25 second page that begins with: that we're talking about.

1 THE COURT: And portions of that are to be redacted?

2 MS. SALISBURY: Yes, sir.

3 THE COURT: Just undetermined yet?

4 MS. SALISBURY: Yes, Your Honor.

5 THE COURT: Okay.

6 (Pause)

7 THE COURT: All right. Ms. Gorton, you believe the
8 entire statement is not admissible?

9 MS. GORTON: Judge, I believe that -- she did provide
10 us with her proposed redacted version. And the one that she
11 provided us, I don't think, is sufficient under Johnson. In
12 Holder -- have you had a chance to read this, Judge? I'm
13 sorry.

14 THE COURT: I've read the statement of Mr. Lomax.

15 MS. GORTON: Okay. I just don't -- in Bruton the
16 Supreme Court held that in a joint trial admission of a non-
17 testing [sic] co-defendant's statement that expressly
18 inculcates the defendant violates the defendant's
19 Constitution under the Confrontation Clause as the use of
20 only a limiting instruction is insufficient to remove any
21 prejudice to the defendant.

22 And, Judge, where I'm reading that from is page 3 of
23 Holder. It's the second paragraph down. That was in 2009.
24 That was the Supreme Court of South Carolina. And they're
25 referring not just to Bruton, but they're talking about the

1 Confrontation Clause, which we all know includes Crawford.

2 Then in 2010 we've got the State of -- the State v.
3 Johnson, also the Supreme Court of South Carolina. And in
4 that case the State tried to do exactly what the State's
5 trying to do here. They said, well, okay, we'll redact it,
6 and we'll take away all references to the Defendant, the Co-
7 Defendant, themselves.

8 And what they said there was that the case presents an
9 unusual Bruton type issue. Under Bruton a non-testifying
10 co-defendant's confession that inculcates the other
11 defendant is inadmissible at a joint trial even if the
12 jury's instructed that the confession can be only used as
13 evidence against the confessor. However, such a confession
14 may be admissible if the confession is redacted in a way
15 that removes any reference to the non-testifying co-
16 defendant. That's what Johnson said.

17 And then they go on to say -- the State argues that
18 this was not truly a Bruton issue because they had redacted.
19 However, the Court held that because there was no reasonable
20 conclusion that that could be a reference to anyone other
21 than the co-defendant, that that was still a Bruton
22 violation. And where I'm reading from is State v. Johnson,
23 page 4.

24 THE COURT: Okay. I don't have page 3 of State v.
25 Johnson. So I can't quite get a context of it going,

1 but ---

2 MS. GORTON: Let me see if ---

3 THE COURT: --- I'll try to review those. I've got
4 page 2 and then page 4.

5 MS. GORTON: Well, you can have my page 3 because I'm
6 not using it.

7 THE COURT: Well, have y'all tried to work together
8 over a possible redaction? What portions are you ...

9 MS. GORTON: Judge, the same day she sent me that
10 information, I wrote an email to her indicating that I felt
11 that under State v. Holder and State v. Johnson that it was
12 still -- the redacted version she had proposed was still not
13 acceptable. And I received no response.

14 THE COURT: Did you give her a proposal that would be
15 acceptable?

16 MS. GORTON: No, Your Honor. My position is is that I
17 can't conceive of one that would be acceptable ---

18 THE COURT: Okay.

19 MS. GORTON: --- under Crawford because we have an
20 unusual situation where my client gave a statement. She has
21 no prior record either except a shoplifting charge when she
22 was sixteen. But she gave a statement which did not
23 incriminate Juwan Lomax. She said not only did I not know
24 beforehand what was going to happen, I don't think he did
25 either.

1 The problem is for Mr. Ianuario is that when his client
2 takes the stand, while he may only be facing those charges
3 right now, he was questioned and made admissions about being
4 involved in the drive-by shooting and the home invasion. So
5 I'm going to need to be able to go into those as far as his
6 motive for the statement that he did give.

7 So it's a Confrontation Clause that goes beyond Bruton.
8 It's also Crawford. So ---

9 THE COURT: So -- all right. So ...

10 MS. GORTON: And she says it's for judicial economy.
11 Well, if we have to try both of these again, there's no
12 judicial economy. If she wants to just withdraw the
13 statements, Juwan's statement, I don't care if she still
14 uses hers. I don't think Mr. Ianuario cares if she still
15 uses hers.

16 But she now has two other co-defendants who have
17 presented statements in the last week. If she wants to
18 proceed with those, that's great. But I don't see any way
19 we can effectively do this with us two tried together when
20 Juwan Lomax's statement is the one that I need to cross
21 examine the most.

22 THE COURT: So if all references to your client were
23 out of Mr. Lomax's statement, do you have a problem then?

24 MS. GORTON: If you mean using her instead, then I
25 would have a problem because there's references to the

1 person dating the victim, being the ex-girlfriend, that if
2 -- if there was no way to determine that that was her that
3 he was talking about, I wouldn't have a problem with it.

4 I think Mr. Ianuario's still going to have a problem
5 with it because I'm still going to want to cross examine
6 Juwan Lomax or cross examine the people who took his
7 statement regarding his motive to give this statement. So I
8 think Mr. Ianuario's going to have a problem with that, but
9 I'm not, as long as there's no way that there can be an
10 inference ---

11 THE COURT: And what ---

12 MS. GORTON: --- that that's who ---

13 THE COURT: And the motive would be that he had other
14 charges? Is that what you're trying to bring out?

15 MS. GORTON: Just as his recanting statement said, they
16 told him he was looking at all these other charges and that
17 he had to give these statements. That's what his statement
18 says. They told him he was looking at all these other
19 charges and that he had to give them a statement that he
20 gave. This isn't a hypothetical. This is something that
21 has been presented to us.

22 MR. IANUARIO: And her fear is exactly the basis of my
23 motion, Your Honor. I'd like to try to separate these so
24 that, again, any outside acts not presently before the Court
25 don't come in and prejudice the jury's opinion of my client.

1 And I don't see a way that Ms. Gorton can establish or
2 do anything with my client's statements that wouldn't open
3 this up to, you know, the jury being -- gaining knowledge of
4 outside acts.

5 MS. SALISBURY: Your Honor, could I respond very
6 briefly to ---

7 THE COURT: Yes, ma'am.

8 MS. SALISBURY: To the extent that either of these
9 attorneys would like to cross examine Juwan Lomax about
10 other pending charges, it's inappropriate impeachment
11 evidence in any respect. So I would object to their
12 examination of him regarding other pending charges.

13 THE COURT: Is there going to be a recanted statement
14 coming in?

15 MS. SALISBURY: I have not planned on offering it. I
16 don't have -- here's what happened, Judge, to give you a
17 little bit more background. I didn't think we were going to
18 get into this. I thought we were going to wait to deal with
19 Bruton later.

20 But Juwan Lomax gave this statement on July 21st. At
21 some point after his arrest and incarceration he delivered
22 handwritten, notarized statements to at least three, I
23 believe, four of his co-defendants, two in this case and, I
24 believe, two in other -- well, three in this case, Judge.

25 And those statements weren't delivered to me. They

(1 were given to those co-defendants. And it's my
2 understanding that those co-defendants were instructed to
3 deliver those statements to their attorneys.

4 So I don't have the originals. It's only what's been
5 provided to me from those attorneys who have received these
6 statements from their clients. And for that reason, I don't
7 have any valid evidence to offer as substantive evidence of
8 his -- of his recantation of that statement.

9 THE COURT: So how is the recantation going to come in?

10 MS. GORTON: I intend to introduce it, Your Honor. And
11 I do take exception with what Ms. Salisbury said as far as
12 it not being relevant to come in.

(13 The South Carolina Supreme Court in State v. Jones said
14 that bias, prejudice or any motive to misrepresent may be
15 shown to impeach the witness either by examination of the
16 witness or by evidence otherwise adduced. And anything
17 having a legitimate tendency to throw light on the accuracy,
18 truthfulness and sincerity of the witness may be shown and
19 considered in determining the credit to be accorded his
20 testimony.

21 What we have here is we have a notarized, signed
22 statement, I, Juwan Lomax, is writing this statement to
23 notify whomever it may concern that I have been threatened
24 and coerced to make a false statement against Joshua Cline.

(25 That statement is the same one he gave against my girl, too,

1 Ms. Dawkins.

2 While in the process of this statement there were
3 promises made by the detectives and even threats made toward
4 me to tell on others so they could be taken off the streets.

5 I was put under stress and made promises like, if I just
6 went along with what the detectives said, they would let me
7 go to the hospital to see my mother.

8 I, Juwan Lomax, did not sign this statement upon my
9 free will. I was threatened by the detectives that if I
10 didn't cooperate with the statement I would be charged with
11 the charges also if I didn't make the false statement. I
12 was also told by the detectives that if I didn't make the
13 statement they would have other people go against me to put
14 me in prison. I will testify that the above statement is
15 true.

16 Now, Judge, that was signed August 21st, 2011. I was
17 provided with it last Monday.

18 THE COURT: From whom?

19 MS. GORTON: Ms. Salisbury.

20 THE COURT: Okay. And she's indicated that she didn't
21 have it until some lawyer gave it to her.

22 MS. GORTON: I believe, if I'm not mistaken, that she
23 got it -- she was referring to the statements of the co-
24 defendants that we also got last Thursday.

25 THE COURT: Okay.

1 MS. GORTON: She did not get this from Mr. Ianuario.

2 THE COURT: She did not get it from him?

3 MR. IANUARIO: No, sir.

4 THE COURT: So ---

5 MR. IANUARIO: And, Your Honor, my plan for laying down
6 a foundation on this particular statement that we're -- was
7 just read into the record was regarding Joshua Cline, who is
8 supposed to be testifying in this matter. And I would like
9 to ask him if this was the statement Juwan Lomax delivered
10 to him, thus laying the foundation to bring this in.

11 THE COURT: So bringing in this -- you want this
12 statement in. I'm trying to ---

13 MS. GORTON: If it's ---

14 THE COURT: --- figure out how that's ...

15 MS. GORTON: If Ms. Salisbury's going to bring in a
16 statement by Juwan Lomax, if she wants to not bring in a
17 statement by Juwan Lomax and proceed on ---

18 THE COURT: But she -- she does. I think she does want
19 to bring in ---

20 MS. GORTON: Then, yes, sir.

21 THE COURT: That's why we're here. So then -- all
22 right. So then you've got -- how is your Crawford -- how is
23 there a Crawford issue with you cross examining him if --
24 assuming that we redact everything about her?

25 MS. GORTON: Well, if we have a separate trial, how I

1 expect it would happen is I would be able to cross examine
2 the officer about these other charges. Well, first of all,
3 I'm sure, I'm confident that Mr. Ianuario would be telling
4 his client to plead the 5th. That makes him an unavailable
5 witness.

6 When a witness is unavailable my understanding is is
7 that you can impeach them as if they testified. And I would
8 be able to present this as impeachment material as to the
9 statement that law enforcement would be presenting that he
10 gave, incriminating my client ---

11 THE COURT: Aren't you going to be able to do that in
12 this case?

13 MS. GORTON: I'm sorry. What?

14 THE COURT: Would you not be able to do that in this
15 case?

16 MS. GORTON: I wouldn't -- Mr. Ianuario doesn't want me
17 impeaching his statement ---

18 THE COURT: Yeah, but you're ---

19 MS. GORTON: --- of his other acts.

20 THE COURT: By bringing in the -- oh, the other acts.
21 So you're talking about the other acts, not the statement
22 itself now? When you're talking about motive, are you
23 talking about the threats and going to see the mother and so
24 forth or are you talking about the other acts that were
25 being charged?

1 MS. GORTON: Both. I mean, we could do it here and he
2 could assert his 5th Amendment right, but then he's
3 unavailable. Well, once he's unavailable I have a right to
4 bring out all this impeachment material as if he had
5 testified.

6 Well, he doesn't want that impeachment material out in
7 his trial. If we had separate trials it wouldn't be an
8 issue. And Johnson has said that the limiting instruction
9 isn't good enough. I can appreciate his position.

10 THE COURT: All right. Let me go down and -- anything
11 else? I need to go down and qualify the jury. I'll study
12 these, and we'll -- think we can get a resolution of it.

13 MS. GORTON: Judge, I also have issues with the
14 statement, but my understanding is is that you want us to
15 wait on those motions for later. And the two ---

16 THE COURT: The statement of your client?

17 MS. GORTON: Mr. Lomax. I have an additional issue.
18 And I just ...

19 THE COURT: What is that issue so we can be ---

20 MS. GORTON: The issue is is that it's not properly
21 authenticated. 19 180 says that no witness in any
22 preliminary hearing or any criminal judicial proceeding of
23 any kind shall be examined or cross examined by anyone
24 regarding -- concerning a written statement formerly made
25 and given to any person employed by this State or any

1 County, City or Municipality unless it first be shown that
2 at the time of making the statement the witness was given an
3 exact copy of his statement. Now at the time of the making,
4 we don't have the showing that Juwan Lomax was given a copy.

5 Furthermore, 19 190 says, again, clear and unambiguous
6 language, unless the provisions of 8 15 50 and 19 180 have
7 been complied with. No statement such as referred to in
8 those sections shall be admissible evidence in any case, nor
9 shall any reference be made to it in trial of any case.

10 And 18 15 50, which they just talked about, says, not
11 only shall you give the original -- give a copy to the
12 person making the statement at the time, you shall also
13 obtain from the person making the statement a signed receipt
14 for the copy so delivered. And I have copies of all these.

15 I just want to let you know ---

16 THE COURT: You talking about this being the statement
17 given in July by Mr. Lomax?

18 MS. GORTON: Yes.

19 THE COURT: Or your -- or your client's?

20 MS. GORTON: Well, the other statement wasn't given to
21 a public ---

22 THE COURT: Right.

23 MS. GORTON: May I approach?

24 THE COURT: Yes.

25 MS. GORTON: The other statement wasn't given to a

1 public officer, we don't think. If it was given to ---

2 THE COURT: So ---

3 MS. GORTON: --- another attorney, that's not a public
4 employee. I'm talking about the July statement.

5 THE COURT: Okay. That there was no receipt given.
6 You're saying ---

7 MS. GORTON: Not only -- not only no receipt, which we
8 know clearly wasn't given, but that he wasn't given a copy
9 of it at the time.

10 THE COURT: Okay. Well, I'm assuming there'd be an
11 officer to testify as to what happened there.
12 Preliminarily, we can do that. Yes, ma'am.

13 MS. SALISBURY: More clearly, Judge, I'd just direct
14 the Court's attention to the bottom of both statements that
15 you have in front of you. Both of them indicate that the
16 person signing the statement has received a copy. It's in
17 writing on the statements that the Court has.

18 MR. IANUARIO: And, Your Honor, if I may draw your
19 attention to that. If you take the redacted copy and the
20 original and you hold them up to the light, the signatures
21 are exact and they overlap. As such, we know that the
22 signature block has been cut and pasted from one document
23 onto another.

24 Since that can be done, we don't have authentication
25 that the original document there is what is offered is the

(1 original document, hasn't had a signature from another
2 document cut and pasted onto it. Without seeing the
3 original, I would argue this hasn't been authenticated
4 properly just because it has been tampered. You can also
5 see the time stamp has been removed from Mr. Lomax's
6 original statement through the course of the redaction.

7 MS. GORTON: Would the Court like to see ---

8 THE COURT: The time stamp for what?

9 MR. IANUARIO: On the date of the statement.

10 MS. GORTON: May I?

11 THE COURT: Yes, ma'am.

(12 MS. GORTON: Judge, what he's talking about is on the
13 original there is a time stamp up here. You also see the
14 initials down the side. I want to show you what happens
15 when you put the two together. Clearly they've been
16 photocopied. This is the ...

17 MR. IANUARIO: They overlap perfectly, Your Honor.

18 MS. GORTON: All the way across.

19 THE COURT: And what ---

20 MS. GORTON: And ---

21 THE COURT: Where are those two pieces of paper you
22 have? The two-page statement?

(23 MS. GORTON: This is the original. And this is her
24 proposed redacted.

25 THE COURT: Okay.

1 MS. GORTON: Even the initials have been cut and pasted
2 over. But if you look, they don't line up. But these line
3 up perfectly. You may have. ---

4 THE COURT: All right. Thank you. All right. That
5 issue, we can address that as well. Perhaps, Ms. Salisbury,
6 the State can revisit the redaction to ---

7 MS. SALISBURY: Well, Judge, I have -- I have some
8 proposed redactions to resolve at the appropriate time. I'm
9 not sure if you want me to respond to this signature issue
10 ---

11 THE COURT: No, I'll -- I don't need to hear from you
12 on that. I'll study that.

13 MS. SALISBURY: But I have -- depending on the Court's
14 ruling on which pieces of Mr. Lomax's statement ought to be
15 redacted before it's appropriately admissible and complies
16 with Bruton, I've got several proposed versions. Of course,
17 they've been tampered with to the extent that they have been
18 cut and pasted in an effort to ---

19 THE COURT: I understand that.

20 MS. SALISBURY: --- make it appear that the statement
21 was on one page and was initialed as it was at the time.
22 Obviously, I would prefer to admit the original since it is
23 the most -- it maintains the most integrity, but I don't
24 have the ability to do that. So ---

25 THE COURT: Well, I understand that.

1 MS. SALISBURY: --- I have several proposals when we
2 visit that issue.

3 THE COURT: Okay. Well, how many are several?

4 MS. SALISBURY: I have ---

5 THE COURT: Four, five or ...

6 MS. SALISBURY: I have four different ---

7 THE COURT: Okay. With different sentences out or
8 portions out?

9 MS. SALISBURY: Yes, Judge.

10 THE COURT: Okay.

11 MS. SALISBURY: And, again, I wished that we had this
12 resolved before trial today ---

13 THE COURT: Do any of them totally eliminate any
14 reference to her, just reference to who this other person
15 was?

16 MS. SALISBURY: Judge, I have -- I have done what I
17 believe to be everything in my power to eliminate references
18 to gender, existing relationship and using the most generic
19 pronouns I could conceive.

20 THE COURT: Okay. All right. Could I -- while we're
21 in recess, could I have copies of those? And, again, you
22 can share those with the opposing counsel. And we'll try to
23 -- none of these -- hopefully, I'm -- am keeping a lot of
24 your papers that everybody has submitted to me. I'll try to
25 keep them separate and distinct. All right.

1 We'll take a short break. And I need to go down and
2 qualify the jury. And then we'll reassemble. I think we'll
3 have a delay anyhow because of the need for the jury in the
4 other trial. So we'll have a little time maybe without
5 delaying our jury.

6 As far as strikes, let's assume that we're going
7 without a severance, how many alternates would we need? Two
8 ---

9 MS. SALISBURY: Judge, I think one will be sufficient.

10 THE COURT: One alternate?

11 MS. SALISBURY: If it makes the Court more comfortable,
12 two is certainly plenty.

13 THE COURT: All right. Would one alternate, each of
14 you?

15 MR. IANUARIO: Whatever the Court's comfortable with
16 ---

17 THE COURT: Okay. We'll probably go with one. And
18 strikes will be -- is everybody in agreement with what the
19 strikes are?

20 MS. GORTON: Ten and ten.

21 THE COURT: Ten and ten. And you're going to get how
22 many?

23 MS. SALISBURY: Five, Judge.

24 THE COURT: Five. Okay. And then y'all are going to
25 use them separately or jointly?

1 MR. IANUARIO: Probably separately, Your Honor.

2 THE COURT: All right. Just so the clerk will know
3 calling those out. All right. So we're going to need a
4 pretty good pool of jurors in here. Okay. All right.

5 Let's take a short break. And I'll go down and get the
6 jury qualified. And then we'll be back.

7 (Whereupon court was in recess at 10:09 am)

8 (Whereupon court resumed at 12:47 pm)

9 THE COURT: Thank you. Please be seated. All right.
10 I understand we've got a statement at issue. And we
11 probably need to have a Jackson/Denno hearing first of all
12 to see if the statements are voluntarily made.

13 And then after that we can hear any other motions you
14 have about the statements and other matters. Hopefully we
15 can get that done in a short time. Anything else we need to
16 take care of before we have a Jackson/Denno hearing that
17 would necessarily need to take place before that? From
18 anybody?

19 (No response)

20 THE COURT: All right. I'll be glad to hear your
21 witnesses, Madame Solicitor.

22 MS. SALISBURY: Thank you, Your Honor. To the extent
23 that these statements were given close in time by the same
24 group of investigators, if it suits the Court, I'd be happy
25 to address them together rather than as ---

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1 THE COURT: That'd ---

2 MS. SALISBURY: --- separate hearings.

3 THE COURT: --- be fine.

4 MS. SALISBURY: In that respect, Your Honor, the State
5 calls Deputy Devin Hoover.

6 MADAME CLERK: Please place your left hand on the Bible
7 and raise your right hand.

8 Devin Hoover, being duly
9 sworn testified as follows:

10 MADAME CLERK: Thank you. Please be seated. Please
11 state your full name for the record.

12 OFFICER HOOVER: Devin Hoover.

13 Direct Examination by Ms. Salisbury:

14 Q. Deputy, where do you work?

15 A. Greenville County Sheriff's Office.

16 Q. And how long have you been with the Sheriff's Office?

17 A. About five years, eight months.

18 Q. And what's your capacity at the Sheriff's Office?

19 A. I'm a master deputy assigned to armed robbery
20 investigations.

21 Q. And what are some of your duties and responsibilities
22 as part of that assignment?

23 A. To follow up with cases.

24 Q. Now were you working in that capacity in June of 2011?

25 A. I was.

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1 Q. Were you involved in the investigation related to each
2 of these Defendants, Mr. Lomax and Ms. Dawkins?

3 A. Yes, ma'am.

4 Q. Did you at some point in the course of your
5 investigation speak with Ms. Dawkins about the case?

6 A. Yes, ma'am, I did.

7 Q. Would you, please, describe for the Court the
8 circumstances leading up to how you encountered Ms. Dawkins
9 and what happened as a result?

10 A. I was assigned this case for follow-up. It is a
11 preliminary background investigation. I was able to locate
12 a vehicle that was also attributed to Mr. Lomax. We found
13 Mr. Lomax shortly thereafter. I was able to locate Ms.
14 Dawkins and question her.

15 Q. When you went to speak with her was she placed under
16 arrest?

17 A. Yes.

18 Q. Did she indicate to you at some point after that arrest
19 that she wanted to speak with you or give a statement?

20 A. Yes. Actually, when -- when we first found her she --
21 she was very adamant that we speak.

22 Q. Where -- where did you actually end up speaking with
23 Ms. Dawkins?

24 A. We located her at the Probation and Parole Office. And
25 we took her down to my office and spoke with her there.

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Which is where?

2 A. At the Law Enforcement Center.

3 Q. At the time that you spoke with her, that you
4 interviewed her, was she in handcuffs?

5 A. Not at the time, no.

6 Q. Who was present with you during that interview?

7 A. I believe at the time there was a lot going on. We
8 interviewed her in my office where there were several other
9 officers around. But just sitting down speaking, it was me
10 and her.

11 Q. Do you recall whether Investigator Brandon Brown was
12 there for this interview?

13 A. He was, yes.

14 Q. Before speaking with her did you read her her Miranda
15 rights?

16 A. I did.

17 Q. Did you read them from a form or did you recite it from
18 memory?

19 A. I read them directly from the form.

20 Q. Was she given a copy of that form?

21 A. Yes.

22 (Whereupon State's exhibit 1 was marked for
23 identification)

24 Q. Deputy, I'm going to show you what's been marked as
25 State's exhibit 1. Do you recognize that document?

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes, ma'am, I do.

2 Q. How do you recognize it?

3 A. My signature is at the bottom.

4 Q. What is it?

5 A. It is the waiver of rights.

6 Q. Is that the same rights form that you read to Ms.

7 Dawkins ---

8 A. Yes, ma'am, it is.

9 Q. Now, before she gave a statement -- well, actually,
10 just -- would you read for the Court what you read to the
11 Defendant?

12 A. Before we ask you any questions you must understand
13 your rights. You have the right to remain silent. Anything
14 you say can be used against you in court. You have the
15 right to talk to a lawyer for advice before we ask you any
16 questions and to have him with you during questioning.

17 If you have no money to pay a lawyer's fee, the court
18 will appoint one to represent you without cost, if you wish.
19 If you decide to answer questions now without a lawyer
20 present, you will still have the right to stop answering at
21 any time. You also have the right to stop answering at any
22 time until you talk to your lawyer.

23 And then at the bottom we have the waiver of rights. I
24 have read the statement of my rights and understand what my
25 rights are. I'm willing to make statements and answer

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1 questions.

2 I do not want a lawyer at this time. I understand and
3 know what I am doing. No promises or threats have been
4 made. No pressure or coercion of any kind have been used
5 against me.

6 I underlined coercion and explained that to her as
7 trickery or threats, which is also highlighted in the
8 statement. And then I explained that to her, asked if she
9 had any questions, and then had her sign and initial each
10 line as understood.

11 Q. So are those -- are those the Defendant's initials
12 beside each of those individual rights that you explained to
13 her?

14 A. Yes, ma'am.

15 Q. And did the Defendant sign the form?

16 A. Yes.

17 Q. Did it -- did it seem to you that she understood her
18 rights?

19 A. Absolutely.

20 Q. Did it seem to you that she wished to give up those
21 rights and give you a statement?

22 A. Absolutely.

23 (Whereupon State's exhibit 2 was marked for
24 identification)

25 Q. Now the document that I've just showed you is State's

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1 exhibit 2. Do you recognize what that document is?

2 A. Yes, ma'am.

3 Q. Does that form also contain a waiver of rights?

4 A. Yes, ma'am, it does.

5 Q. Did you read that waiver of rights to the Defendant?

6 A. I did not read that one verbatim because it came after
7 this one. I explained it to her that it was basically
8 saying the same thing.

9 Q. At that point, again, did it appear to you that she
10 understood her rights?

11 A. Yes, ma'am.

12 Q. Have -- during the course of your duties as an
13 investigator or even before you were assigned to armed
14 robbery, have you ever had an occasion to deal with
15 individuals who are under the influence of alcohol or drugs?

16 A. Yes, ma'am, I have.

17 Q. Did this Defendant appear to you to be intoxicated by
18 either?

19 A. Not at all.

20 Q. Did she respond clearly to your questions?

21 A. Yes, ma'am.

22 Q. Did she appear to understand your questions regarding
23 her rights ---

24 A. Yes, ma'am.

25 Q. --- as you read them to her? Was her speech clear?

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1 A. Very clear.

2 Q. Could you understand what she was saying?

3 A. Yes, ma'am.

4 Q. Did you verify that she could read and write?

5 A. Yes, ma'am.

6 Q. Did you ask her what level of education she had
7 obtained?

8 A. I did. And it is actually written on this rights form.

9 Q. And what level of education did she tell you she had
10 obtained?

11 A. Mauldin graduate of '09, Voorhees College, '09 through
12 '11, and currently in Greenville Tech at the time.

13 Q. Okay. During the course of your interview was she ever
14 threatened, or coerced, or pressured in any fashion or
15 promised a reward in exchange for providing ---

16 A. Not at all.

17 Q. --- a statement? Was she ever deprived of food or
18 water?

19 A. No, ma'am.

20 Q. Was she ever prevented from using the restroom?

21 A. No, ma'am.

22 Q. Did it appear to you that she agreed to freely speak
23 with you without an attorney being present?

24 A. Yes, ma'am.

25 Q. Did it ever appear to you during the course of your

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1 interview that she wanted to change her mind and instead
2 invoke her right to remain silent and not speak with you?

3 A. No, ma'am.

4 Q. How long was your interview with this particular
5 Defendant?

6 A. I don't remember exactly, but it wasn't more than an
7 hour, hour and a half max.

8 Q. Now did the --- did the Defendant then ultimately give a
9 statement?

10 A. Yes, ma'am.

11 Q. Is that the statement that's contained on State's
12 exhibit 2?

13 A. Yes, ma'am, it is.

14 Q. Did you type it for her or did she type it herself?

15 A. I did.

16 Q. Did you give her an opportunity to review it?

17 A. I did.

18 Q. How did that review process work?

19 A. After I finish going over everything, I provide them
20 with a copy of the statement and I have them read it. And
21 as they go down, I have them initial each paragraph all the
22 way down, that they swear to that and that's the truth and
23 nothing needs to be changed.

24 And then at the bottom I have them write that this is
25 the whole truth and everything that I know as the truth at

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(1 the bottom. And then they sign it and initial it. And I
2 provide them with a copy.

3 Q. So on State's exhibit 2 has the Defendant initialed
4 before each paragraph as you just described?

5 A. Yes, ma'am.

6 Q. Has she also signed the statement at the bottom?

7 A. Yes, ma'am.

8 Q. Is your signature on State's exhibit 2?

9 A. My unit number and my position and everything is down
10 there typed in. I didn't hand sign this one. I actually
11 typed it in since I was typing.

12 Q. But did you prepare this statement as ---

(13 A. I did. Yes, ma'am.

14 Q. Okay. To the best of your knowledge was the Defendant,
15 De'Nia Dawkin's statement freely and voluntarily given?

16 A. Yes, ma'am.

17 Q. What did she say in that statement?

18 A. May I just read it directly through?

19 Q. Yes.

20 A. I am -- I, De'Nia Dawkins, do hereby freely give
21 voluntarily this statement to Investigator Hoover and

22 Investigator Brandon Brown, who have identified themselves

23 to me as deputies of the Greenville County Sheriff's Office,

24 Greenville, South Carolina. I have been advised that I do

(25 not have to make this statement, and what I say can be used

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1 against me in the court of law.

2 I have been advised that I have the right to counsel
3 with an attorney of my choice, that if I am financially
4 unable to obtain an attorney, the court will appoint one, an
5 attorney to represent me. I have not been threatened or
6 promised any reward to make this statement.

7 I am twenty years old. And I reside at 218 West
8 Dorchester Boulevard, Greenville, South Carolina. I have a
9 twelve plus two years grade education. I can read and
10 write. I am not under the influence of any drugs or
11 alcohol. I am allowing Investigator Hoover to type this
12 statement for me.

13 On 6/3/2011 at midnight I went to Quadrez Benson's
14 house. He lives in Taylors off of East North Street. I
15 think he lives in

16 I had hung out with him a couple of weeks before, and I
17 wanted to go chill with him again and buy some weed to smoke
18 with him. I had asked someone else to give me a ride to
19 Drez's house. That person asked if everyone else wanted to
20 go. Since everybody else wanted to go, I hopped into
21 another person's ---

22 MS. GORTON: Objection. He's reading a redacted --
23 it's not the statement she gave. He's reading the redacted
24 statement, Your Honor.

25 THE COURT: Okay. For the purpose of this hearing ---

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1 MS. SALISBURY: I guess it's of no consequence what the
2 substance of the statement is, the content of it.

3 MS. GORTON: Well, we don't even want the redacted,
4 Your Honor. There's no issue with her statement.

5 THE COURT: There's no issue with her statement?

6 MS. GORTON: Well, not with the redacted versus the
7 original. And if he's ---

8 THE COURT: Okay.

9 MS. GORTON: --- going to read what she said, I'd
10 prefer him to read what she said.

11 THE COURT: Okay. I've had -- I have the redacted
12 statement. For the purpose of this hearing, will that ...

13 MS. GORTON: I don't even want the redacted statement
14 at trial, Your Honor. She gave a statement. She named
15 names. I would like for that to be the ---

16 THE COURT: Okay.

17 MS. GORTON: --- statement that she gave.

18 THE COURT: All right. Let him read the original
19 statement then. You got a copy of that, Solicitor?

20 MS. SALISBURY: I do, Judge.

21 THE COURT: Okay.

22 MS. SALISBURY: Your Honor, to the extent that in this
23 statement Ms. Dawkins mentions the Co-Defendant Lomax, that
24 is the basis for which I redacted it. And ---

25 THE COURT: Okay.

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1 MS. GORTON: And I believe Mr. Ianuario has an
2 objection to ---

3 THE COURT: Okay.

4 MS. GORTON: --- the original.

5 THE COURT: All right. I'll go ahead and read the
6 original then. You can start with the meat of it, ---

7 OFFICER HOOVER: Yes, sir.

8 THE COURT: --- Officer Hoover.

9 Direct Examination by Ms. Salisbury Continued:

10 A. On 6/3/2011 after midnight I went to Quadrez Benson's
11 house. He lives in Taylors off East North Street. I think
12 he lives in

13 I had hung out with him a couple of weeks before, and I
14 wanted to go chill with him again and buy some weed to smoke
15 with him.

16 I asked Raymond Young to give me a ride to Drez's
17 house. Raymond asked if everybody else wanted to go. Since
18 everybody else wanted to go, I hopped into Juwan's car with
19 Envy. Envy is Shamika Johnson. Juwan's car is a white,
20 four door car. Smoke, Tra'Vis Ware, Fat-So and Raymond
21 Young went into Fat-So's black Nissan Altima.

22 They were following us over there. When we got there I
23 said for them to just stay in the car, and if I decided to
24 stay, I would text them. I took Envy inside with me. I was
25 inside for about five minutes. And Quadrez was going to go

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1 outside with me to break a one hundred dollar bill for the
2 weed. He got his shoes on, and we went to the door. Drez's
3 friends were in the apartment talking to Envy on the couch.

4 When I opened the door the door flew open and they all
5 came in yelling, and I saw Smoke's dreads. I saw Smoke,
6 Fat-So, Raymond -- and Raymond. They were wearing all
7 black. I saw the guns. They were pistols. I heard two
8 gunshots and I took off to the -- out of the door. Envy was
9 running around like a chicken. It scared her too. I was
10 scared.

11 Then Raymond, Smoke and Fat-So went running out of the
12 apartment. When we were outside I was crying and screaming
13 on the ground. Smoke was telling me to get off the ground
14 and get in the car. So me and Shamika went and got into
15 Juwan's car. And the other guys got into Fat-So's car, and
16 we left.

17 I called my mom and told her that they just robbed
18 Drez, and she was crying. I don't think they -- I don't
19 think they included Juwan because he acted like he didn't
20 know about it. He just tried to get me to stop crying.

21 Smoke told me afterwards that I had messed up the whole
22 plan that they had. Drez talked to me afterwards on the
23 phone and he thinks I set him up. Drez was so mad, and
24 yelling and threatening me and my family. So I changed my
25 phone number. And at the bottom handwritten, this is the

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1 whole truth and everything that I know.

2 Q. Okay. Let's shift gears a little bit and talk about
3 the interview of Juwan Lomax. Were you present for his
4 interview?

5 A. Yes, ma'am.

6 Q. Were you present for -- let me start off this way. Did
7 you take Juwan Lomax's statement?

8 A. I did not.

9 Q. Did you participate in the interview?

10 A. I did.

11 Q. Who else participated in the interview?

12 A. I believe Investigator Fortner, Investigator Brandon
13 Brown and, of course, the Solicitor was also there.

14 Q. Now were you present when Investigator Fortner read
15 Juwan Lomax's Miranda rights?

16 A. Yes, ma'am.

17 Q. Did it appear to you that Mr. Lomax understood his
18 rights?

19 A. Yes, ma'am.

20 Q. Did he elect to give a statement?

21 A. Yes, ma'am.

22 Q. At any point during his interview did he indicate that
23 he wished to stop speaking and instead remain silent or
24 request an attorney?

25 A. No, ma'am.

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1 Q. Okay.

2 MS. SALISBURY: I don't have any other questions for
3 the purposes of this hearing, Judge.

4 THE COURT: Okay.

5 MS. SALISBURY: Answer any questions ---

6 THE COURT: Any cross examination from either of the
7 attorneys?

8 Cross Examination by Ms. Gorton:

9 Q. The statement that you're referring to, do you have the
10 original?

11 A. Yes, ma'am.

12 Q. That's the one that was signed at the time, not a
13 photocopy?

14 A. Yes, ma'am. It has a highlighter -- the highlighter
15 marks on it. Yes, ma'am.

16 MS. GORTON: May I approach?

17 THE COURT: Yes, ma'am.

18 Q. When you first approached Ms. Dawkins, she was in
19 Raymond Young's car out in the parking lot, ---

20 A. She ---

21 Q. --- is that correct?

22 A. When I approached her she was already out of the car,
23 yes, ma'am.

24 Q. All right. And you approached her with -- is it Deputy
25 Brandon Brown or is it ---

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1 A. Investigator Brandon Brown. Yes, ma'am, he was ---

2 Q. Okay.

3 A. --- in contact with her.

4 Q. Did he appear to be an FBI agent at the time?

5 A. I was -- I wasn't out there when he approached her. I
6 was actually inside with Raymond.

7 Q. Do you know if he was working with the task force and
8 maybe he was wearing FBI identification ---

9 A. I know he is assigned to the task force, yes, ma'am.

10 Q. Okay. Do you know what was said to her before you
11 approached her?

12 A. No, ma'am.

13 Q. Did you hear her be told -- being told that she was
14 looking at thirty years and she'd better give a statement?

15 A. No, ma'am.

16 Q. You did not say that?

17 A. No, ma'am.

18 Q. And if it was said it was before you approached?

19 A. Yes, ma'am.

20 Q. But if it was said, you wouldn't have known? You
21 weren't there?

22 A. I was not there, no, ma'am.

23 Q. Okay. Did you tell her that you wanted to be able to
24 vouch for her?

25 A. Absolutely.

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1 Q. And did you tell her that the way to do that was for
2 her to come and give a statement?

3 A. I told her the way to do that was for her to come to my
4 office and tell me the truth.

5 Q. And when you took the statement from her did you finish
6 by giving her your card?

7 A. I don't remember. Usually I do.

8 Q. And did you let her know that she could call you if she
9 needed anything?

10 A. Absolutely.

11 Q. Did you stick around to see what happened after you
12 took her over to be booked?

13 A. No, ma'am.

14 Q. Were you aware that Raymond Young was in that same
15 area?

16 A. No, ma'am.

17 Q. Were you aware that they brought Smoke to the same
18 area?

19 A. I wasn't there, no, ma'am.

20 Q. Have you done enough investigation in this case to know
21 who the gunmen were in this incident?

22 A. I believe we -- we don't know for sure, no, ma'am.

23 Q. Did your investigation indicate that Raymond Young was
24 the gunman? Was a gunman?

25 A. Was -- yes. Yes, ma'am.

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1 Q. Did your investigation indicate that Smoke was a
2 gunman?

3 A. Yes, ma'am.

4 Q. And did your investigation also indicate that Raymond
5 Young was the leader of this group?

6 A. Yes, ma'am.

7 Q. Okay. At the conclusion of her -- of your statement
8 from her did you indicate to her that you believed that
9 she'd told the truth?

10 A. Yes, ma'am.

11 Q. You had already spoke with Juwan at that time, correct?

12 A. I'd have to look back at my file. I don't remember who
13 I spoke to first.

14 Q. Could you double check -- I know that you said you
15 didn't actually speak with Juwan, but you ---

16 A. Right.

17 Q. --- were present during that. Could you double check
18 and verify that that date was on July 21st?

19 A. I don't have my file with me. I'd have to look at my
20 file to find the exact dates.

21 Q. If you have Juwan's statement up there -- do you?

22 A. All I have is the first two exhibits that were from Ms.
23 Dawkins.

24 Q. Does that look like Juwan's statement? I'm looking ---

25 A. Yes, ma'am.

DEVIN HOOVER - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. --- at that. It was kind of hidden in ---

2 A. Yes, ma'am.

3 Q. --- between ---

4 A. Yes, ma'am. This would have come first.

5 Q. Okay. So you would have got this first?

6 A. Yes, ma'am.

7 Q. And then you got her statement?

8 A. Yes, ma'am.

9 Q. And you indicated to her that you did believe her?

10 A. Yes, ma'am.

11 Q. Have you done anything since to help her?

12 A. As in?

13 Q. Have you helped her in any way? Offered her your help?

14 A. I extended it at the time when I took her over. And
15 she hasn't contacted me since. So I can only do so much.

16 Q. Okay. Nothing further.

17 THE COURT: Mr. Ianuario, any questions?

18 Cross Examination by Mr. Ianuario:

19 Q. Do you have a copy of the waiver of rights signed by
20 Juwan Lomax?

21 A. It would be in the file.

22 Q. Okay. Do you have a copy of the original statement
23 that was given by Juwan Lomax?

24 A. Yes, in the file. Everything's in the file.

25 Q. Okay.

1 MR. IANUARIO: Could that be made available? I'd like
2 to see the original statement, Your Honor, just to verify
3 the signatures are on there so I can ---

4 THE COURT: I presume the next witness will -- the next
5 witness will probably address that.

6 MR. IANUARIO: If that's the case, Your Honor, then I
7 would argue that Investigator Fortner is more apt to testify
8 about whether or not Mr. Lomax's statement was freely and
9 voluntarily given to him ---

10 THE COURT: I think that's what we're going to have
11 next. I think he'll be coming in to testify. I think this
12 one is just relating to Ms. Dixon's [sic] ---

13 MR. IANUARIO: All right. Then nothing further, Your
14 Honor.

15 THE COURT: All right. Any redirect?

16 MS. SALISBURY: Nothing from the State, Judge.

17 THE COURT: Excuse me, Ms. Dawkins. All right. You
18 can step down, Officer Hoover.

19 MS. SALISBURY: Your Honor, to the extent that Ms.
20 Fortner [sic] referred to a document in her examination of
21 Investigator Hoover, it might be prudent to have that
22 document marked as a Court's exhibit at least for purposes
23 of this hearing.

24 THE COURT: That was the Lomax statement, is that
25 correct?

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1 MS. SALISBURY: I believe it was. It may be resolved
2 completely, but to the extent the document was not
3 identified for the record, I wanted to be clear.

4 THE COURT: The document you showed the witness, Ms.
5 Gorton, was the statement of Mr. Lomax, is that right?

6 MS. GORTON: That's at issue, Your Honor. It was a
7 photocopy of his statement.

8 THE COURT: Okay. A photocopy of the statement of July
9 the 21st or whatever?

10 MS. GORTON: Yes. And I was using it to refresh his
11 memory as to this ---

12 THE COURT: Can we just mark that document that you
13 showed him as a Court exhibit or let the court reporter mark
14 it now as a ---

15 MS. GORTON: I borrowed Mr. Ianuario's copy. I'm
16 sorry.

17 THE COURT: Okay. Since we'll have a record of what
18 was shown to the witness. And then she can hold on to that.
19 That's for ID only.

20 (Whereupon Court's exhibit 1 was marked)

21 MS. SALISBURY: I'll call the next witness. State
22 calls Investigator Mike Fortner.

23 THE COURT: If you'll come around and be sworn, please,
24 sir. Place your left hand on the Bible.

25 Michael Fortner, being

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1 duly sworn testified as follows:

2 MADAME CLERK: Thank you. Please be seated. Please
3 state your full name for the record.

4 OFFICER FORTNER: Michael Eugene Fortner.

5 Direct Examination by Ms. Salisbury:

6 Q. Investigator Fortner, where do you work?

7 A. Greenville County Sheriff's Office.

8 Q. And what capacity?

9 A. Currently as an armed robbery investigator.

10 Q. And how long have you been at the Sheriff's Office?

11 A. A little over eighteen years, about eighteen and a
12 half.

13 Q. And how long have you been an armed robbery
14 investigator?

15 A. About -- almost five years now.

16 Q. Were you working in that capacity in June of 2011?

17 A. I was, yes.

18 Q. Do you recall whether you were assisting Investigator
19 Hoover in the investigation in the case we're at trial in
20 today?

21 A. I was, yes.

22 Q. At some point during that investigation did you have an
23 occasion to encounter the Defendant, Juwan Lomax?

24 A. I did.

25 Q. Would you describe for the Court the circumstances of

MICHAEL FORTNER - DIRECT EXAMINATION BY MS. SALISBURY

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1 how you came to be -- how you came to encounter Juwan Lomax
2 and what happened?

3 A. I was working on a case assisting Investigator Hoover.
4 And as a result of our investigation we had identified a
5 particular vehicle. This vehicle was located at some
6 apartments. I believe they're called Fair Hill Apartments
7 on Welcome Avenue Extension.

8 And as a result we did a search warrant on the
9 apartment where Juwan Lomax resided at. That's how I first
10 came across -- crossed paths with him.

11 Q. Now at some point during that encounter was Mr. Lomax
12 arrested?

13 A. Yes, he was.

14 Q. Did he indicate to you that he wanted to speak with you
15 or give you a statement?

16 A. He did, yes.

17 Q. Where did you end up speaking with Mr. Lomax?

18 A. We spoke with him in the muster room, which is located
19 in the basement of the Law Enforcement Center.

20 Q. And who else was present during that interview?

21 A. Let me see. It was myself, Investigator Hoover,
22 Investigator Brown, Investigator Chad Ayers, and a member of
23 the Solicitor's Office, and at one point Investigator Wayne
24 Campbell also came in.

25 Q. While you were speaking with Mr. Lomax was he in

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1 handcuffs?

2 A. He was, yes.

3 Q. Before you spoke with him, before you began asking him
4 any questions did you advise Mr. Lomax of his Miranda
5 rights?

6 A. I did, yes.

7 Q. Did you read those rights from a form or did you recite
8 them from memory?

9 A. From a form.

10 Q. Was the Defendant given a copy of this form?

11 A. No, he was not.

12 Q. Did you read it along with him so that he could see
13 what you were reading?

14 A. I did, yes, ma'am.

15 (Whereupon State's exhibit 3 was marked for
16 identification)

17 Q. I'm showing you State's exhibit 3. Do you recognize
18 that form?

19 A. Yes, ma'am, I do.

20 Q. Is your signature on it?

21 A. Yes, it is.

22 Q. What is it?

23 A. It's down here at the bottom as a witness.

24 Q. Well, what is the form?

25 A. Oh, it's the waiver of rights form advising somebody of

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1 their rights. And then the bottom part is where they
2 actually waive their rights.

3 Q. Is that the exact form that you read to Mr. Lomax that
4 day?

5 A. It is, yes.

6 Q. Did -- how did you read it to him?

7 A. I read it -- I just start up here at the very first
8 line where it says before we ask you any questions you must
9 understand your rights. As I read each one of those rights
10 I always ask the person I'm reading the rights to to place
11 their initials out to the side of that line.

12 Q. And did the Defendant place his initials at -- one at a
13 time?

14 A. One at a time, yes, ma'am.

15 Q. Did you explain to him what the phrase coercion meant
16 or the word, rather?

17 A. Yes, I did.

18 Q. How did you explain that to him?

19 A. I explained to him that the word coercion is basically
20 another word for pressure. I might use some type of
21 example, I mean, if you don't -- if you refuse to talk to
22 me, I'm not going to do something to somebody in your
23 family, or pry off your fingernails or anything like that.

24 Q. Okay. Would you read then for the Court what you read
25 to Mr. Lomax before your interview began?

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1 A. Yes. It says -- it starts off with before we ask you
2 any questions you must understand your rights. You have the
3 right to remain silent. Anything you say can be used
4 against you in court.

5 You have the right to talk to a lawyer for advice
6 before we ask you any questions and to have them with you
7 during questioning. If you have no money to pay a lawyer's
8 fee, the court will appoint one to represent you without
9 cost, if you wish.

10 If you decide to answer questions now without a lawyer
11 present, you would still have the right to stop answering
12 any time. You also have the right to stop answering any
13 time until you talk to a lawyer.

14 Then once I do that, they place their initials out
15 there. And I always have them read -- the fourth line down,
16 I actually have them read that out loud to me so that I know
17 they, in fact, can read. So after you get done reading that
18 line out loud for me, I always have them sign their name
19 after that line, which just indicates that they read it out
20 loud to me.

21 Q. Okay. Now did the Defendant indicate to you that he
22 wanted to waive those rights and give you a statement?

23 A. He did, yes.

24 Q. How did he do that?

25 A. Well, the waiver of rights part, I always read that

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1 part out loud to them. You want me to read that?

2 Q. Sure.

3 A. Here? I always read the waiver of rights part. It
4 says I've read this statement of my rights and understand
5 what my rights are. I'm willing to make a statement and
6 answer questions. I do not want a lawyer at this time. I
7 understand and know what I am doing. No promises or threats
8 have been made to me. And no pressure or coercion of any
9 kind have been used against me.

10 And then I always ask them -- I explain the word
11 coercion to them, get them to place their initials there.
12 And I tell them that if you're willing to talk to me without
13 an attorney being here, I'll need you to sign your name down
14 there where they sign their name at. And then normally I
15 also get them to print their name below that as well.

16 Q. Did the Defendant sign that form?

17 A. He did, yes, ma'am.

18 Q. Did he also print his name?

19 A. Yes, ma'am.

20 Q. Okay.

21 (Whereupon State's exhibit 4 was marked for
22 identification)

23 Q. Investigator, I'm showing you now what's been marked as
24 State's exhibit 4. Do you recognize that document?

25 A. I do, yes.

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1 Q. And what is that form?

2 A. This is a statement form that was given by Mr. Lomax.

3 Q. Does that form also contain a waiver?

4 A. Yes, it does up at the top. Yes, ma'am.

5 Q. Did you read that to the Defendant?

6 A. I did not read that part, no.

7 Q. Okay. Did it appear to you before this interview began
8 that he understood his Miranda rights?

9 A. Yes, ma'am.

10 Q. Did it appear to you that he wished to waive those
11 rights and give you a statement?

12 A. Yes, he did.

13 Q. Have you had the occasion in the course of your
14 capacity as an investigator or in any law enforcement
15 capacity had an indication to deal with people who were
16 under the influence of alcohol or drugs?

17 A. Yes.

18 Q. Did it appear to you that the Defendant was intoxicated
19 by either of those substances?

20 A. No, ma'am, he was not.

21 Q. Did he respond clearly to your questions?

22 A. Yes, ma'am.

23 Q. Did he appear to understand your questions to him?

24 A. Yes, he did.

25 Q. Was his speech clear?

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1 A. Yes.

2 Q. Could you understand what he told you?

3 A. Yes, I could.

4 Q. Did you ask what his level of education was?

5 A. Yes. That's one of the things I did before I read the
6 rights. In this case he said eleventh grade from Carolina
7 High School.

8 Q. Okay. Was the Defendant ever threatened, coerced or
9 pressured in any fashion in exchange for providing a
10 statement?

11 A. No, ma'am, he was not.

12 Q. Was he ever deprived of food or water during the course
13 of your interview with him?

14 A. No, ma'am.

15 Q. Was he ever prevented from using the bathroom?

16 A. No.

17 Q. Did he -- did the Defendant agree to freely speak with
18 you without his attorney being present?

19 A. Yes.

20 Q. Did it appear to you during the course of your
21 interview at any point that the Defendant intended to invoke
22 his rights to remain silent and not speak with you or to
23 provide a statement to you?

24 A. No.

25 Q. At any point during the interview did he indicate to

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1 you that he wanted to stop speaking and instead have a
2 lawyer present?

3 A. No, he did not.

4 Q. Did the Defendant ultimately give you a statement?

5 A. Yes.

6 Q. Did you type it for him?

7 A. Yes.

8 Q. And did you give him an opportunity to review it
9 afterwards?

10 A. Yes, ma'am, I did.

11 Q. How did that process work?

12 A. Once I get done taking a typed statement from somebody,
13 I always give them the statement itself. I explain to them
14 that I need them to read over their statement. I tell them
15 to read it carefully.

16 If there's anything in the statement that they don't
17 like, they don't like the way it sounds, it's not what they
18 meant to say or whatever, to point it out to me and we'll go
19 back in and we'll change it and get them to go back over it
20 again. In this case here, he said everything looked good.
21 I ask them always to place their initials at the first and
22 last word of each paragraph, which Mr. Lomax did, and at
23 which time I asked him to sign the statement.

24 Q. After he read the whole statement and he placed his
25 initials as you described, did he indicate to you at any

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1 point that he wanted to change any part of the substance of
2 the statement?

3 A. No, he did not.

4 Q. And did he sign the bottom of that statement?

5 A. Yes, ma'am, he did.

6 Q. Did you also sign the bottom of that statement or is
7 your name typed in?

8 A. I signed it, yes.

9 Q. Okay. Did it appear to you that the Defendant
10 understood what was going on during the entire interview
11 process?

12 A. Yes, ma'am, he did.

13 Q. To the best of your knowledge was the Defendant's
14 statement freely and voluntarily given?

15 A. Yes.

16 Q. Would you please tell the Court then what the Defendant
17 said in his statement?

18 A. Sure. You want me to read the whole statement or just
19 the part that goes with what we're dealing with today?

20 THE COURT: I have the statement. Does the other side
21 desire that he read the statement? I've got a copy of the
22 statement that both of you have provided me.

23 MS. SALISBURY: It suits me just fine if ---

24 THE COURT: All right.

25 MS. SALISBURY: --- you want to skip that ---

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1 THE COURT: All right. We don't need to read it.

2 Q. In that event, Investigator, I don't have any other
3 questions for you. If you would, answer any questions the
4 attorneys may have for you, please.

5 THE COURT: Ms. Gorton.

6 MS. GORTON: I don't believe I have standing, Your
7 Honor. So I'm deferring to Mr. Ianuario.

8 THE COURT: All right. Mr. Ianuario, you can ask ...

9 MR. IANUARIO: Thank you, Your Honor. Thank you,
10 Investigator.

11 Cross Examination by Mr. Ianuario:

12 Q. What was the time that Mr. Lomax signed the waiver of
13 rights?

14 A. The time that he actually signed it was 12:54,
15 afternoon.

16 Q. Okay. And what is the time that is on the typed
17 statement? What time was that signed off on?

18 A. It's 15:55 or five minutes til four in the afternoon.

19 Q. So approximately three hours?

20 A. Yes, sir.

21 Q. Does it normally take that long to get a statement from
22 somebody?

23 A. It can. Something this complex with the cases that we
24 were dealing with, yes, sir.

25 Q. Okay. How many police officers were in the room at the

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1 time this statement was being given? You listed quite a few
2 there.

3 A. Let's see. It'd been four initially. And then at one
4 point in time Investigator Wayne Campbell came in for a
5 little bit and then he left. So four initially. Five for a
6 little bit, and then back down to four.

7 Q. Okay. How big was the room this statement was taken
8 in?

9 A. It's probably about three fourths of this size, maybe
10 about half of the size of this courtroom right here that
11 we're in.

12 Q. Was my client sitting or standing during this time?

13 A. He was sitting.

14 Q. And were the police officers, yourself included,
15 sitting or standing during this time?

16 A. We were sitting.

17 Q. Okay. At any point in time did the Defendant say why
18 he wished to give a statement?

19 A. He didn't say why, no, sir.

20 Q. When he was arrested what happened with his mother?

21 A. She had a, I believe, like a panic attack of some sort.
22 She was transported by EMS to the hospital.

23 Q. At any point in time during this statement or the
24 questioning did Mr. Lomax state a desire to see his mother?

25 A. He did, yes.

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1 Q. And what was he told?

2 A. That he couldn't see her right then, he was under
3 arrest.

4 Q. And when was he told he could see her?

5 A. I guess while we were talking.

6 Q. I mean, was he told he could see her after he bonded
7 out, when you're done with the statement you could see your
8 mother like ---

9 A. I didn't tell him any time that he could see her. I
10 just told him that he couldn't see her at that time.

11 Q. Were there reference that any other potential charges
12 could possibly come up against my client?

13 A. I'm not sure I understand. Other than what we were
14 talking to him about, no.

15 Q. Was there reference to anything that he has not been
16 charged with during the time the statement was given?

17 A. Anything referenced that he wasn't charged with?

18 Q. Any potential pending charges that are still looming
19 out there.

20 A. As of today?

21 Q. As of the day the statement was given.

22 A. I mean, the only thing we were talking about was what
23 we were talking about. I don't -- about any other pending
24 charges, no, sir.

25 Q. So did you ask him anything about what would happen if

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1 he gave false testimony or make any reference to previous
2 shootings he was being investigated with or any crimes
3 outside of those regarding the statement?

4 A. I'm not sure if I understand what you're asking.

5 Q. In your conversation with Mr. Lomax when you're getting
6 the statement out, was there any crimes that were referenced
7 that are not mentioned in this statement? Any
8 investigations that were referenced that are not mentioned
9 in the statement?

10 A. In his statement? Not that I'm aware of, no, sir. I
11 believe we covered everything that I was aware of at the
12 time.

13 Q. Okay. But y'all did talk about a home invasion, I
14 believe, correct?

15 A. Yes, sir.

16 Q. Not counting the one on Cunningham Avenue, but the one
17 on East Fairfield, I believe it is.

18 A. Right. Yes, sir.

19 MR. IANUARIO: Just one moment, Your Honor.

20 THE COURT: Yes, sir.

21 (Pause)

22 Q. Do you -- do you know the date with which Mr. Lomax was
23 charged in the East Fairfield home invasion?

24 A. The date in which he was actually charged? No, sir, I
25 don't.

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1 Q. Did you receive any retractions from Mr. Lomax or the
2 attempt to retract his statement?

3 A. I do understand that he wrote a letter. And I believe
4 he sent it to the Solicitor's Office in which he said he was
5 retracting his statement, yes, sir.

6 Q. And did you see that letter? Did you read it?

7 A. I never actually did read it, no, sir. But, I mean, I
8 saw it, but I did not read it, no, sir.

9 Q. And so you're not familiar with the allegations of that
10 letter?

11 A. Nothing other than I think he was saying that he was
12 forced into this -- making a statement.

13 Q. Do you recall it saying that he would be charged with
14 additional charges if did make a false statement?

15 A. No, see I -- I didn't read it. So I don't know what he
16 -- what he says in it, no, sir.

17 Q. How long did he take to review the statement before he
18 initialed it and signed the bottom of it?

19 A. A few minutes. I didn't time him or anything, but, I
20 mean, a few minutes.

21 Q. Did it seem unusually quick, unusually long, about
22 right?

23 A. About right, yes.

24 Q. And do people normally make any revisions to their
25 statement before they sign it?

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1 A. Most the time, no. But every once in a while somebody
2 might point something out, yes, sir.

3 Q. Okay. When you saw the handwritten copy of Mr. Lomax's
4 retraction, where did that come from? Where were you
5 provided with a copy of it?

6 A. I think Investigator Hoover maybe had a copy of it in
7 his case file.

8 MR. IANUARIO: Nothing further, Your Honor.

9 THE COURT: Anything else from the Defense?

10 MS. GORTON: Judge, I needed to clarify. I had
11 submitted two motions to suppress. One was a supplemental.
12 And it had to do -- I realized after I sat down, you asked
13 me before, it had to do with the chain of custody ---

14 THE COURT: But any questions ---

15 MS. GORTON: --- involving ---

16 THE COURT: Do you have any questions of this witness?

17 MS. GORTON: No.

18 THE COURT: All right. Any reply?

19 MS. SALISBURY: No, Your Honor.

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

21 Just, again, focused on the Jackson v. Denno as to the
22 issues here, is there anything from the Defense that you
23 wish to put up in the way of testimony?

24 (Pause)

25 MR. IANUARIO: May we approach a minute, Your Honor? I

(1 have a question about whether if I put my client to testify
2 in a motion hearing if that exposes him to any trial
3 matters, testimony, or if it's limited strictly to the
4 pretrial motion.

5 THE COURT: I tell you what, let's take a lunch break.
6 It's getting late. Let's be back at 2:30. We'll be ready
7 to start back at that time. For your benefit, the jury will
8 be here about 2:15, 2:30. So we'll be ready to hopefully
9 select a jury. We'll take a lunch break.

10 (Whereupon court was in recess at 1:30 pm)

11 (Whereupon court resumed at 1:36 pm)

(12 THE COURT: All right. This is on the record before we
13 break for lunch. The parties at the bench here have,
14 through their attorneys, have agreed that the statement of
15 Dawkins, Defendant Dawkins, will go -- again, depending on
16 my ruling on the Jackson v. Denno hearing, if it is
17 admissible, that the entire statement without redaction will
18 be admitted.

(19 Again, contingent upon my ruling on the Lomax statement
20 on the Jackson v. Denno hearing, which I have not heard all
21 of the evidence in, if the statement were to be admitted it
22 will be admitted pursuant to the conference we had earlier
23 as far as what matters are redacted, what matters are not
24 with the Defendant being protected. And we will state on
25 the record the objections to that going in in addition to

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1 the Jackson v. Denno objection that may be lodged as well.

2 Did I correctly state that?

3 MS. SALISBURY: I believe that's correct, Judge.

4 THE COURT: Everyone agree?

5 MR. IANUARIO: No objection.

6 THE COURT: Okay. All right.

7 (Whereupon court was in recess at 1:38 pm)

8 (Whereupon court resumed at 2:35 pm)

9 THE COURT: Thank you. Please be seated. All right.

10 Mr. Ianuario or Ms. Gorton, any witnesses you wish to put up
11 on the matter of the Jackson v. Denno? I'll be glad to hear
12 from you now.

13 MR. IANUARIO: Thank you, Your Honor. I'd like to call
14 Juwan Lomax to the stand.

15 THE COURT: Come around and be sworn, please, sir.

16 MADAME CLERK: Sir, if you'd please place your left
17 hand on the Bible and raise your right hand.

18 Juwan Lomax, being duly
19 sworn testified as follows:

20 MADAME CLERK: Please be seated. Please state your
21 name for the record.

22 MR. LOMAX: My name is Juwan Lomax.

23 MADAME CLERK: Thank you.

24 THE COURT: You may proceed.

25 MR. IANUARIO: Thank you, Your Honor.

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1 Direct Examination by Mr. Ianuario:

2 Q. Juwan, do you remember being arrested in July of 2011?

3 A. Yes, sir.

4 Q. On the date of your arrest was there an incident with
5 your mother?

6 A. Yes, sir.

7 Q. Okay. Now was she taken to the hospital?

8 A. Yes, sir.

9 Q. Okay. Now when it comes time to give a statement, were
10 you given the waiver of rights form?

11 A. Yes, sir.

12 Q. Is this the form that you were given?

13 A. Yes, sir.

14 Q. Is this your signature on the form?

15 A. Yes, sir.

16 Q. Did you have a chance to read this form over in its
17 entirety or was it read to you?

18 A. I had looked over it. They had -- they had told me to
19 look over it.

20 Q. Was it read to you at any point?

21 A. Yes, sir.

22 Q. Okay. Did you have any questions understanding any of
23 these?

24 A. Yes, sir.

25 Q. What questions did you have?

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1 A. I had asked them about -- that's when I asked them
2 about if I signed it could I go see my mama.

3 Q. And what did they say?

4 A. They told me that we'll see depending on how things
5 are. But later down they told me that they were going to
6 let me go see my mom.

7 Q. They said -- during this time that you were in the room
8 giving this statement they said you could go see your mom or
9 was that after you were done with the statement?

10 A. That was during -- during the statement.

11 Q. Okay. And during the course of this statement did they
12 ask you about any crimes with which you had not yet been
13 charged?

14 A. Yes, sir.

15 Q. Did you provide information on those?

16 A. Yes, sir.

17 Q. Why did you provide that information?

18 A. Because they told me if I didn't tell them they would
19 -- they would add me to those crimes and try to charge me
20 for them.

21 Q. Okay. So they -- if you didn't provide the statement
22 you would have the other charges?

23 A. Yes, sir.

24 Q. Did they tell you to provide a truthful statement or
25 just to provide a statement?

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1 A. Just to provide a statement.

2 Q. On this document, which was used earlier as Court's
3 exhibit number 1, is this the statement that you provided?

4 A. I don't remember because I didn't read over it.

5 Q. Why didn't you read over it?

6 A. Because when it was placed to me, it was placed to me
7 and I was just told that if I signed it I could go see my
8 mom and that I wouldn't -- I wasn't going to get in no other
9 kind of trouble.

10 Q. Are these your initials on this document?

11 A. Yes, sir.

12 Q. Do you recall initialing next to each paragraph?

13 A. Yes, sir.

14 Q. Did you read each paragraph in full before you
15 initialed next to it?

16 A. No, sir.

17 Q. Okay. How many officers were in the room when you gave
18 this statement?

19 A. Approximately like -- it was like five or six.

20 Q. Okay. At any point in time did you feel intimidated?

21 A. Yes, sir.

22 Q. At any time did you have an apprehension of fear?

23 A. Yes, sir. They told me that they was gonna give me
24 thirty years.

25 Q. They said they'd see to it you got thirty years if you

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1 didn't give a statement?

2 A. Yes, sir. Or if I didn't give them names.

3 MR. IANUARIO: Nothing further, Your Honor.

4 THE COURT: Any examination?

5 MS. SALISBURY: Nothing from the State, Judge.

6 THE COURT: All right. Thank you, sir. You may step
7 down. Any other witnesses?

8 MR. IANUARIO: No, Your Honor.

9 THE COURT: Any witnesses from the Co-Defendant?

10 MS. GORTON: No.

11 THE COURT: Okay. Anything in reply from the State?

12 MS. SALISBURY: No, Your Honor.

13 THE COURT: Okay. Has the redacted statement of Mr.
14 Lomax been revised and presented to Defense counsel?

15 MS. SALISBURY: It has been revised. And at the last
16 moment I realized that I neglected something. And a fellow
17 solicitor is photocopying the now correct complete version
18 as we speak.

19 THE COURT: Okay.

20 MS. SALISBURY: I thought this hearing might take up a
21 little bit of time ---

22 THE COURT: All right. As soon as they get here with
23 that, I want the Defense counsel to have a chance to look
24 over it, and then we'll address that.

25 (Pause)

1 MS. GORTON: Judge, may I approach?

2 THE COURT: Everyone can. I'll be glad to ...

3 (Whereupon a bench conference was held off the record)

4 (Whereupon the bench conference was ended)

5 (Pause)

6 THE COURT: Let me know when y'all have had a chance to
7 look over the statement, okay?

8 MS. GORTON: I'm sorry, Judge. No issue. I didn't
9 realize that's what you were waiting ---

10 THE COURT: Okay. I'm sorry. I thought I was. All
11 right. The -- as far as the statements given by the
12 Defendants in this case, I have certainly done the analysis.
13 I've weighed the testimony given.

14 And using all the totality of the circumstances and the
15 factors given as far as the -- certainly it was custodial,
16 certainly it was interrogation, but the -- there's no mental
17 deficiencies, both were very -- sounding intelligent.
18 Certainly the Defendant who testified was. And the other
19 was a high school grad from Mauldin.

20 I find that under the totality of the circumstances the
21 statements are freely and voluntarily given. And based on
22 the standard that I must weigh at this time, I'll allow them
23 into evidence. Certainly the jury will have a decision as
24 to the -- beyond a reasonable doubt as to their propriety.
25 But I'll give them the appropriate instruction on weighing

1 the testimony given through the statements.

2 And, again, my ruling on that is in light of the
3 redaction that has been made by the State on the statement
4 of Defendant Lomax has been seen by both Defendants. At
5 this time only the redacted statement will be admitted. The
6 full statement by the agreement of the parties, both
7 Defendants in agreement of Defendant Dawkins will be
8 admissible based on my ruling. All right.

9 Are there any other matters that we need to take care
10 of before we select a jury in this case?

11 MS. SALISBURY: As I mentioned, Judge, there's the
12 issue of the initial witness' prior record. If you want to
13 take that up after we select a jury, that's just fine with
14 me.

15 And I believe for housekeeping purposes I need to have
16 this -- Ms. Dawkins' statement marked as an exhibit since I
17 believe there was a substitution for the proposed redacted
18 version as opposed to the actual original.

19 THE COURT: Okay.

20 (Whereupon the Court was conferring with the court
21 reporter about exhibits)

22 THE COURT: Is that exhibit 2 that needs to be
23 replaced?

24 MS. SALISBURY: And I'd be happy to replace it as
25 number 2 ---

1 THE COURT: Right. Would there be any objection from
2 the -- does that mess you up?

3 (Whereupon the Court was conferring with the court
4 reporter about exhibits)

5 THE COURT: Is there any objection from the Defense
6 that -- the exhibits in now are the waiver of rights, number
7 1; the statement of Ms. Dawkins, number 2, if we make that
8 as Defendant ID number 2 and not for admission so that the
9 substitute, that's the -- well, we're back on -- was the
10 full statement of Ms. Dawkins the one admitted?

11 MS. SALISBURY: No, Your Honor. The proposed redaction

12 ---

13 THE COURT: Right.

14 MS. SALISBURY: --- was marked as number 2.

15 THE COURT: With the redaction. So we need to make
16 that as an ID number 2, and the full statement of Ms.
17 Dawkins come in as exhibit number 2. Is there any objection
18 to that? That's, I think, what you raised.

19 MADAME COURT REPORTER: Exhibit number 5.

20 THE COURT: Excuse me, that'll be exhibit 5.

21 MS. SALISBURY: And none of these have been offered yet

22 ---

23 THE COURT: So 2 will not be admitted. So it will be

24 ---

25 MS. SALISBURY: Sure.

1 THE COURT: So the full statement will be marked now as
2 exhibit number 5.

3 (Whereupon State's exhibit 5 was marked for
4 identification)

5 THE COURT: And if there are any other ones you have to
6 pre-mark, that'd be great.

7 We want to take up the -- I'll give the jury a break
8 after they -- after they get sworn in. Then we'll take up
9 the record of the first witness before that witness
10 testifies. Anything else from the State?

11 MS. SALISBURY: Nothing from the State, Judge.

12 THE COURT: Yes, ma'am, Ms. Gorton.

13 MS. GORTON: Judge, can you make a ruling on the record
14 regarding the authentication issue on the statements?

15 THE COURT: All right. Have you seen the original
16 statements?

17 MS. GORTON: I saw my original of hers. I don't know
18 if he saw the original of Lomax. I know we talked ---

19 THE COURT: Okay.

20 MS. GORTON: --- about it ---

21 THE COURT: So having seen the original statement of
22 your client, do you still have the issue as far as the
23 statutes and the authenticity?

24 MS. GORTON: Yes, Your Honor, in that she did not sign
25 a receipt for the copy.

1 THE COURT: Okay. Doesn't the statement say that she
2 had received a copy?

3 MS. GORTON: Two requirements, Your Honor, under this.
4 One is that she receive a copy of. The second is that she
5 signed a receipt for a copy. So I get now what you're
6 saying. Let me look at the wording of it.

7 (Pause)

8 MS. GORTON: Yes, Your Honor, she -- it does say that.
9 I withdraw that.

10 THE COURT: All right.

11 MR. IANUARIO: So just for the record, Your Honor, I
12 would like to reference my motion in limine about acts
13 referencing search warrants and other documents.

14 THE COURT: Right. We need to put that on the record.
15 We did talk about it. I understand that in our discussion
16 that your motion, Mr. Ianuario, about the -- any reference
17 to other charges, the State has agreed that none of those
18 will be asked by the State and none will be elicited by any
19 of the State's witnesses on their own. They're admonished
20 now and understand that they won't do that.

21 And also at the bench mentioned of the officer who
22 testified earlier outside the presence of the jury about
23 seeing Ms. Dawkins at the Probation Office. That would be
24 avoided as well in the testimony.

25 MS. GORTON: Judge, when we were talking about that

1 there was one other concern, and that is that the victim
2 witness not disclose that he spoke with the management.
3 And, I believe, the State indicated that he was one of the
4 first ones up. That was also a motion in limine regarding
5 statements allegedly made by the apartment manager. And
6 that's a motion in limine.

7 THE COURT: Okay.

8 MS. GORTON: And since he's present, I thought you
9 might want to address that.

10 THE COURT: Solicitor, did you have a response to that?

11 MS. SALISBURY: I'm sorry, Judge.

12 THE COURT: I guess that's the first thing on the
13 motion in limine about management.

14 MS. SALISBURY: And as I mentioned in chambers, Your
15 Honor, I'm instructed that particular witness that -- it's
16 not appropriate for him to testify about any conversations
17 he's had with anyone ---

18 THE COURT: Okay.

19 MS. SALISBURY: --- about this. So he will testify
20 from what he knows from his personal knowledge and that's
21 it.

22 THE COURT: All right.

23 MS. GORTON: Okay. Thank you, Your Honor.

24 THE COURT: Any other matters?

25 (No response)

1 THE COURT: Okay, Mary, you can have them sent up.

2 (Whereupon court was in recess at 3:05 pm)

3 (Whereupon court resumed at 3:20 pm)

4 (Whereupon the jury panel entered the courtroom at 3:20
5 pm)

6 THE COURT: Ladies and gentlemen, you've been patient
7 with us. We've not been doing nothing. We've had several
8 matters we needed to take care of. And I apologize.

9 Also, that I'm an Administrative Judge for this circuit
10 for the year for civil matters. And sometimes even during
11 lunch I have some emergency matters that lawyers need to get
12 worked out. So I apologize for keeping you waiting, but
13 this is the earliest that we could possibly get you here.
14 And now we're ready to select the jury for the trial of the
15 first case that will be taking place in this courtroom.

16 I have before me indictments. And these indictments
17 charge Juwan Darnell Lomax with the offense of burglary in
18 the first degree. And the indictment basically says that on
19 or about the 3rd of June, 2011 that Mr. Lomax wilfully and
20 unlawfully entered the dwelling of Demetrius Benson, that
21 being on -- at , without
22 consent and with the intent to commit a crime therein.

23 The burglary was accompanied by circumstances of
24 aggravation being that the entering, remaining in the
25 dwelling was during the nighttime and/or armed with a deadly

1 weapon or displayed what appeared to be a firearm or a
2 handgun.

3 And the -- there's a burglary indictment also of a Co-
4 Defendant in this case, Ms. De'Nia Dawkins. It says that on
5 that same date of June the 3rd, 2011 that she unlawfully
6 entered that property of Mr. Demetrius Benson,

7 without consent and with the intent, again, to commit a
8 crime therein with circumstances of aggravation, entering
9 during the nighttime and/or armed with a deadly weapon or
10 displaying what appeared to be a firearm or a handgun.

11 Also charged is the offense of armed robbery. The
12 indictment also says on that same date of June the 3rd, 2011
13 Mr. Lomax, while armed with a deadly weapon or alleged
14 either by action or words that he was armed with a -- by
15 representation a deadly weapon committed the offense of
16 robbery by displaying what was or reasonably could be
17 represented to be a deadly weapon upon a person present
18 during the commission of that robbery and that would --
19 reasonably believe that to be a deadly weapon, took by force
20 or intimidation goods, monies or other properties, that
21 being a laptop computer from the person of Demetrius Benson.
22 Again, both Defendants in this case, Ms. Dawkins and Mr.
23 Lomax, have been charged with an armed robbery.

24 Also, on that same date, same location, Mr. Lomax has
25 been charged with unlawfully and with malice aforethought

1 with the intent to kill attempt to kill Demetrius Benson.

2 Ms. Dawkins also has been charged unlawfully with
3 malice aforethought with an intent to kill Demetrius Benson.
4 Those both being in violation of the law of South Carolina.

5 There's a fourth indictment on each of them, Mr. Juwan
6 Darnell Lomax, this indictment says on or about the 3rd of
7 June, 2011 they wilfully and unlawfully combined with
8 Raymond Young, and/or Tra'Vis Ware, and/or Joshua Cline or
9 De'Nia Dawkins for the purpose of accomplishing an unlawful
10 object or a lawful object by unlawful means, that being
11 armed robbery, this constituting the offense of conspiracy.

12 Ms. Dawkins, likewise, is charged on that same date
13 with wilfully and unlawfully combining with Mr. Joshua
14 Cline, or Raymond -- and/or Raymond Young, and/or Tra'Vis
15 Ware, and/or Juwan Lomax, again, to accomplish an unlawful
16 purpose, that being armed robbery, and/or attempted murder
17 and/or burglary in the first degree constituting, again, the
18 statutory offense of conspiracy.

19 Each of these four charges against each Defendant, each
20 of them -- each Defendant has entered a plea of not guilty
21 to these charges. Now, by entering a plea of not guilty, of
22 course, the State of South Carolina has the full burden of
23 proof to prove guilt beyond a reasonable doubt.

24 Anybody charged in South Carolina with a -- any offense
25 is presumed innocent. And until the State meets that burden

1 of proof they would remain innocent of the charge.

2 I'm going to be the judge of the law in this case to
3 determine what the law is. We need to find twelve fair and
4 impartial jurors to decide what the facts in the case are.
5 The State of South Carolina, Ms. Dawkins, Mr. Lomax, they
6 desire to have fair and impartial jurors to hear this. They
7 deserve to have fair and impartial jurors to hear this case.

8 You've been qualified already to serve as a juror this
9 week. I need to ask you some additional questions to
10 determine your eligibility to serve on this particular case
11 that we're about to start.

12 First of all, ladies and gentlemen, I need to ask you
13 is there any member of the jury panel that has any prior
14 knowledge about this particular alleged incident that took
15 place back in June of last year? I've read you just a brief
16 resume of the allegations made. If you have any prior
17 knowledge of living in the community, hearing something on
18 the radio or television, or hearing about it at a coffee
19 shop or any source of information whatsoever, if you have
20 prior knowledge about this, would you please stand at this
21 time?

22 (No response)

23 THE COURT: Thank you. There is no response.

24 Is there any member of the jury panel related by blood
25 or marriage to Mr. Juwan Darnell Lomax or Ms. De'Nia

1 Dawkins? If so, would you please stand.

2 (No response)

3 THE COURT: Is there a member of the jury panel who has
4 a close business or a social or a personal relationship with
5 either of these individuals, Ms. Dawkins or Mr. Lomax? If
6 so, would you please stand.

7 (No response)

8 THE COURT: Thank you. There is no response.

9 Several witnesses may be called upon to testify in this
10 case. I'm not sure that all of them will be, but I'm going
11 to read you a list of some of the potential witnesses. Then
12 I'll have some follow-up questions, ladies and gentlemen.

13 Among the witnesses who may be called upon to testify
14 with the Greenville County Sheriff's Office would be Deputy
15 David Picone, Deputy Jeremy Jones, Sergeant Mark McCoy,
16 Investigator Devin Hoover, Investigator Mike Fortner,
17 Investigator Brandon Brown.

18 Other witnesses who may be called upon to testify would
19 include Demetrius Benson, Jaquan Boyd, Tyrell Holland,
20 Horrace Tobin, Tim Woodward, Woodard, excuse me, Joshua
21 Cline, Tra'Vis Ware, Karl Allen, Chastity Adams, Kaylin
22 Adams, Michael Hutchins, Myesha Hill, also from the
23 Sheriff's Office Clay Gunter, J.F. Hamilton.

24 Is there any member of the jury panel related by blood
25 or marriage to any of these potential witnesses? If so,

1 would you please stand.

2 (No response)

3 THE COURT: Is there a member of the jury panel who has
4 a close business or a social, a personal relationship with
5 any of these potential witnesses? If so, would you please
6 stand.

7 (No response)

8 THE COURT: Thank you. There is no response.

9 Is there any member of the jury panel expressed or
10 formed an opinion in any way about the facts in this case?
11 If so, would you please stand.

12 (No response)

13 THE COURT: Is there a member of the jury panel aware
14 of any bias or prejudice that would interfere with your
15 ability to be a fair juror if selected in this case? If so,
16 would you please stand. You don't believe you could be a
17 fair juror in this case?

18 MS. BELUSKOV: I know De'Nia. I just recognized her.

19 THE COURT: Okay. So earlier I asked if you ---

20 MS. BELUSKOV: I had looked and I -- yeah.

21 THE COURT: Okay. So you know her socially?

22 MS. BELUSKOV: Yeah, I know about her life. So, yes.

23 THE COURT: Would that -- the fact that you know her,
24 would that interfere with your ability to be a fair juror in
25 this case?

1 MS. BELUSKOV: I think so.

2 THE COURT: All right. Well, if you don't believe you
3 could be fair then you don't need to respond to any of my
4 other questions. I'll excuse you from the trial of this
5 case. If you'd remain seated there. What's your name,
6 please?

7 MS. BELUSKOV: Bridget Beluskov.

8 THE COURT: All right. Thank you, ma'am. I'll excuse
9 you from the trial of this case.

10 Is there any member of the jury panel who is a
11 contributing member of any organization whose primary
12 concern is that of the promotion of law enforcement or
13 victim's rights such as MADD, or SADD, an organization known
14 as CAVE or PAR? If you're a contributing member of any of
15 those organizations, would you please stand.

16 (No response)

17 THE COURT: Thank you. There's no response.

18 Is there any member of the jury panel ever been the
19 victim of a violent crime whereby you were burglarized or
20 robbed? If you've been a -- a crime of violence against the
21 person any, if any of you have been the victim of such an
22 offense, would you please stand at this time. All right.
23 Your name, please.

24 MS. EPPS: Miranda Epps.

25 THE COURT: And when was it that you were a victim?

1 MS. EPPS: About two years ago.

2 THE COURT: All right. And was it an attack upon you
3 or was it a property offense?

4 MS. EPPS: It was a home invasion.

5 THE COURT: Okay. The fact that you had this occur to
6 you approximately a couple of years ago, would that affect
7 your ability to be a fair juror in this case? In other
8 words, we're going to decide this case on what evidence
9 comes out of this courtroom, the testimony that's given, any
10 documentary evidence, the law that I give you. Do you
11 believe that this event that happened in your life some two
12 years ago would affect your ability to be a fair juror?

13 MS. EPPS: No, sir, I don't.

14 THE COURT: You could be fair to the State of South
15 Carolina and you could be fair to both of these Defendants?

16 MS. EPPS: Yes, sir.

17 THE COURT: All right. Thank you. Again, your name,
18 please?

19 MS. EPPS: Miranda Epps.

20 THE COURT: Thank you very much.

21 Is there any member of the jury panel or a member of
22 your immediate family involved in law enforcement in any
23 way? If so, would you please stand. All right. Your name,
24 please, on the front row?

25 MS. BROWN: Jody Brown.

1 THE COURT: All right. Is it you or a family member?

2 MS. BROWN: Ex-husband.

3 THE COURT: Your ex-husband ---

4 MS. BROWN: But my son's father.

5 THE COURT: Your son's father is in law enforcement.

6 And where is he in law ---

7 MS. BROWN: The City of Travelers Rest.

8 THE COURT: Okay. If you'd remain standing just a
9 moment. Yes, ma'am, your name, please.

10 MS. GENCO: Tammy Genco.

11 THE COURT: And what relative do you have in law
12 enforcement?

13 MS. GENCO: My husband is with the highway patrol.

14 THE COURT: Highway patrol. All right. If you'd
15 remain standing. Yes, ma'am, your name, please.

16 MS. JOLLY: Jamie Jolly.

17 THE COURT: And what relative do you have?

18 MS. JOLLY: My father-in-law works for Greenville
19 County.

20 THE COURT: Works for Greenville County?

21 MS. JOLLY: He's a deputy.

22 THE COURT: All right. Those of you who are standing,
23 the fact that you have relatives or former relatives who've
24 been in law enforcement, again I ask you the question, do

1 you believe this will interfere with your ability to be a
2 fair juror? Will it taint in any way your ability to listen
3 to all the evidence, to weigh the testimony that's given and
4 all the evidence that's presented in light of the law that I
5 give you?

6 If you feel, those of you standing, if you feel you
7 could be a fair juror in this case to both the Defendants
8 and to the State, I'm going to ask if you would be seated.
9 If you feel for any reason you can't be a fair juror, please
10 remain standing.

11 (Whereupon all jurors were seated)

12 THE COURT: Let the record reflect that all the jurors
13 have been seated.

14 At this time I'm going to ask the attorneys, if you
15 would, please, stand and introduce yourselves to the jury.
16 Solicitor.

17 MS. SALISBURY: May it please the Court, Your Honor.
18 Good afternoon, ladies and gentlemen. My name is Katryna
19 Salisbury. I'm an assistant solicitor here in Greenville
20 County. I prosecute cases for the Thirteenth Circuit.

21 THE COURT: Thank you. Mr. Ianuario.

22 MR. IANUARIO: Good afternoon, ladies and gentlemen.
23 My name is Robert Ianuario. I'm a public defender. And I'm
24 working with Mr. Lomax and representing him in this matter.

25 THE COURT: Ms. Gorton.

1 MS. GORTON: I'm Cass Gorton. I'm also an attorney.
2 I'm court appointed. And I represent De'Nia.

3 THE COURT: Thank you. Is there any member of the jury
4 panel related by blood or marriage to any of these
5 attorneys? If so, would you please stand. Or their
6 offices, anybody in their offices, if you're related by
7 blood or marriage.

8 (No response)

9 THE COURT: Is there any member of the jury panel who
10 has a close business, or a social or a personal relationship
11 with anyone -- any of these attorneys or members of their
12 staff or their offices? If so, would you please stand.

13 (No response)

14 THE COURT: Thank you. There's no response.

15 Is there any member of the jury panel ever been
16 involved in any litigation in which either of these
17 attorneys represented either you or the opposing side? If
18 you've ever been involved in litigation where they
19 represented you or were on the opposing side would you
20 please stand.

21 (No response)

22 THE COURT: Thank you. There is no response.

23 It bears repeating, I've said it, ladies and gentlemen,
24 the State of South Carolina, Mr. Lomax, Ms. Dawkins, they
25 deserve to have fair jurors to hear this case. Is there any

1 member of the jury panel aware of any reason whatsoever that
2 you believe in this case you could not be fair to both the
3 State and to the Defendants, render a verdict that would be
4 based on the truth, the evidence that's presented, the law
5 that I give you and that alone? If for any reason you
6 believe you could not be a fair juror, would you please
7 stand.

8 (No response)

9 THE COURT: Thank you. There is no response.

10 Any other questions from the State?

11 MS. SALISBURY: Nothing from the State, Your Honor.

12 THE COURT: From the Defense? Any other questions?

13 MS. GORTON: No, Your Honor.

14 MR. IANUARIO: No, Your Honor.

15 THE COURT: All right. Let's empanel our jury.

16 MADAME CLERK: All right. When I call your name if

17 you'll please stand in place and wait for further

18 instructions. Juror 120, Elizabeth Klotz.

19 (Whereupon a white female stood)

20 MADAME CLERK: What says the State?

21 MS. SALISBURY: Please present Ms. Klotz.

22 MADAME CLERK: What says the Defendant?

23 MS. GORTON: Present.

24 MR. IANUARIO: Present.

25 MADAME CLERK: All right. Ma'am, please come have a

1 seat. Bring your things, come and have a seat in the jury
2 box. Juror 75, Rose Grant.

3 (Whereupon a black female stood)

4 MADAME CLERK: What says the State?

5 MS. SALISBURY: Please present Ms. Grant.

6 MADAME CLERK: What says Defendant Lomax?

7 MS. GORTON: Present.

8 MR. IANUARIO: Please present the juror.

9 MADAME CLERK: All right. Thank you. Please come have
10 a seat in the jury box. Juror 230, John Williamson.

11 (Whereupon a white male stood)

12 MADAME CLERK: What says the State?

13 MS. SALISBURY: Please present Mr. Williamson.

14 MADAME CLERK: What says Defendant Lomax?

15 MS. GORTON: I'm Dawkins.

16 MADAME CLERK: All right.

17 MS. GORTON: Strike.

18 MADAME CLERK: Defendant Dawkins. All right. Thank
19 you. You may be seated. You have been excused from this
20 case. Juror 159, Shelia Posley.

21 (Whereupon a black female stood)

22 MADAME CLERK: What says the State?

23 MS. SALISBURY: Please excuse Ms. Posley.

24 MADAME CLERK: All right. You may be seated, ma'am.
25 Juror 92, Mandy Hartsoe.

1 (Whereupon a white female stood)

2 MADAME CLERK: What says the State?

3 MS. SALISBURY: Please present Ms. Hartsoe.

4 MADAME CLERK: What says the Defendants?

5 MS. GORTON: Strike, please.

6 MADAME CLERK: All right. You may be seated, please.

7 That is a strike for Defendant Dawkins. Juror number 3,

8 John Adams.

9 (Whereupon a white male stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Please present Mr. Adams.

12 MADAME CLERK: What says Defendant Lomax?

13 MR. IANUARIO: Please strike the juror.

14 MADAME CLERK: Strike the juror. All right. Strike
15 for Mr. Lomax. All right. Thank you. Juror 100, Rudolph
16 Hill.

17 (Whereupon a black male stood)

18 MADAME CLERK: What says the State?

19 MS. SALISBURY: Please present Mr. Hill.

20 MADAME CLERK: What says Defendant Lomax?

21 MR. IANUARIO: Please present the juror.

22 MADAME CLERK: What says Defendant Dawkins?

23 MS. GORTON: Present.

24 MADAME CLERK: Thank you very much. Mr. Hill, would
25 you please come have a seat in the jury box. Juror number

1 2, Charles Adams.

2 (Whereupon a white male stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Mr. Adams.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please strike the juror.

7 MADAME CLERK: All right. Sir, you may be seated.

8 Juror 157, Stacy Plunkett.

9 (Whereupon a white female stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Your Honor, may we approach briefly?

12 THE COURT: Yes, ma'am.

13 (Whereupon a bench conference was held off the record

14 in the presence of the jurors, but out of their hearing)

15 (Whereupon the bench conference was ended)

16 MADAME CLERK: What says the State?

17 MS. SALISBURY: Please present Ms. Plunkett.

18 MADAME CLERK: What says Defendant Lomax?

19 MS. GORTON: Strike.

20 MADAME CLERK: Thank you. Please be seated, ma'am.

21 Juror 240, Linda Turner.

22 (Whereupon a white female stood)

23 MADAME CLERK: What says the State?

24 MS. SALISBURY: Please present Ms. Turner.

25 MADAME CLERK: What says Defendant Lomax?

1 MR. IANUARIO: Please present the juror.

2 MADAME CLERK: What says Defendant Dawkins?

3 MS. GORTON: Present.

4 MADAME CLERK: Ma'am, please bring your things, have a
5 seat in the jury box. Juror 39, Tammie Capps.

6 (Whereupon a white female stood)

7 MADAME CLERK: What says the State?

8 MS. SALISBURY: Please present Ms. Capps.

9 MADAME CLERK: What says Defendant Lomax?

10 MR. IANUARIO: Please present the juror.

11 MADAME CLERK: What says Defendant Dawkins?

12 MS. GORTON: Present.

13 MADAME CLERK: All right. Ma'am, please be seated in
14 the jury box. Juror 22, Cristi Boling.

15 (Whereupon a white female stood)

16 MADAME CLERK: What says the State?

17 MS. SALISBURY: Please present Ms. Boling.

18 MADAME CLERK: What says Defendant Lomax?

19 MR. IANUARIO: Please excuse the juror.

20 MADAME CLERK: All right. You may be seated. You have
21 been excused from this case. Juror 70, Tammie Genco.

22 (Whereupon a female stood - race unknown)

23 MADAME CLERK: What says the State?

24 MS. SALISBURY: Please present Ms. Genco.

25 MADAME CLERK: What says Defendant Lomax?

1 MR. IANUARIO: Please excuse the juror.

2 MADAME CLERK: All right. You may be seated, Ms.

3 Genco. Juror 183, Michael Sijon.

4 (Whereupon a white male stood)

5 MADAME CLERK: What says the State?

6 MS. SALISBURY: Please present Mr. Sijon.

7 MADAME CLERK: What says Defendant Lomax?

8 MR. IANUARIO: Please excuse the juror.

9 MADAME CLERK: All right. You may be seated, sir.

10 Juror 167, John Reid.

11 (Whereupon a white male stood)

12 MADAME CLERK: What says the State?

13 MS. SALISBURY: Please present Mr. Reid.

14 MADAME CLERK: What says Defendant Lomax?

15 MR. IANUARIO: Please excuse the juror.

16 MADAME CLERK: All right. You may be seated, sir.

17 Juror 221, James Warren.

18 (Whereupon a white male stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please present Mr. Warren.

21 MADAME CLERK: What says the Defendants?

22 MR. IANUARIO: Please present the juror.

23 MADAME CLERK: All right. Ms. Dawkins?

24 MS. GORTON: Excuse, please.

25 MADAME CLERK: Thank you. You may be seated, sir.

1 Juror 51, David Dayton.

2 (Whereupon a white male stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Mr. Dayton.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please excuse the juror.

7 MADAME CLERK: All right. You may be seated, sir.

8 Juror 64, Jessica Fisher.

9 (Whereupon a white female stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Please present Ms. Fisher.

12 MADAME CLERK: What says Defendant Lomax?

13 MR. IANUARIO: Please present the juror.

14 MADAME CLERK: What says Defendant Dawkins?

15 MS. GORTON: Please present.

16 MADAME CLERK: All right. Ma'am, please, will you
17 please have a seat in the jury box. Juror 72, Sara Goetz.

18 (Whereupon a white female stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please present Ms. Goetz.

21 MADAME CLERK: What says Defendant Lomax?

22 MR. IANUARIO: Please present the juror.

23 MADAME CLERK: What says Defendant Dawkins?

24 MS. GORTON: Present, please.

25 MADAME CLERK: All right. Ma'am, please have a seat in

1 the jury box. Juror 60, Miranda Epps.

2 (Whereupon a white female stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Ms. Epps.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please present the juror.

7 MADAME CLERK: What says Defendant Dawkins?

8 MS. GORTON: Excuse, please.

9 MADAME CLERK: All right. Ma'am, you may be seated.

10 You have been excused from this case. Juror 199, Diane
11 Sullivan.

12 (Whereupon a white female stood)

13 MADAME CLERK: What says the State?

14 MS. SALISBURY: Please present Ms. Sullivan.

15 MADAME CLERK: What says Defendant Lomax?

16 MR. IANUARIO: Please present the juror.

17 MADAME CLERK: What says Defendant Dawkins?

18 MS. GORTON: Please present.

19 MADAME CLERK: All right. Ma'am, please take a seat in
20 the jury box. Juror 87, Suelane Hannah.

21 (Whereupon a white female stood)

22 MADAME CLERK: What says the State?

23 MS. SALISBURY: Please present Ms. Hannah.

24 MADAME CLERK: What says Defendant Lomax?

25 MR. IANUARIO: Please present the juror.

1 MADAME CLERK: What says Defendant Dawkins?

2 MS. GORTON: Please present.

3 MADAME CLERK: Ma'am, please have a seat in the jury
4 box. Juror 223, Marissa Webb.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Webb.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please present.

12 MADAME CLERK: All right. Ma'am, have a seat in the
13 jury box, please. Juror 158, Janet Pomponio.

14 (Whereupon a female stood - race unknown)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Ms. Pomponio.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant Dawkins?

20 MS. GORTON: Please present.

21 MADAME CLERK: All right. Ma'am, have a seat in the
22 jury box, please. Juror 147, Adam Owens.

23 (Whereupon a white male stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Mr. Owens.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please excuse the juror.

3 MADAME CLERK: All right. Sir, you may be seated.

4 Juror 11, Teresa Ashley.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Ashley.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please excuse.

12 MADAME CLERK: All right. Ma'am, you may be seated.

13 Juror 215, Rhonda Turner.

14 (Whereupon a white female stood)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Ms. Turner.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant Dawkins?

20 MS. GORTON: Please excuse.

21 MADAME CLERK: All right. Ma'am, you may be seated.

22 You have been excused. Juror 164, Nicole Ramsbey.

23 (Whereupon a white female stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Ms. Ramsbey.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please present the juror.

3 MADAME CLERK: What says Defendant Dawkins?

4 MS. GORTON: Please present.

5 MADAME CLERK: All right. Ma'am, please have a seat in
6 the jury box. And for our alternate, juror 166, John Reese.

7 (Whereupon a white male stood)

8 MADAME CLERK: What says the State?

9 MS. SALISBURY: Please present Mr. Reese.

10 MADAME CLERK: What says Defendant Lomax?

11 MR. IANUARIO: Please present the juror.

12 MADAME CLERK: All right. What says Defendant Dawkins?

13 MS. GORTON: Please present.

14 MADAME CLERK: All right. Sir, please have a seat in
15 the jury box.

16 (Whereupon the Clerk was conferring with the Court)

17 MADAME CLERK: Juror 234, Allen Young.

18 (Whereupon a black male stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please excuse Mr. Young.

21 MADAME CLERK: All right. Mr. Young, you may be
22 seated. Juror 219, Kevin Wallace.

23 (Whereupon a white male stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Mr. Wallace.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please excuse the juror.

3 MADAME CLERK: All right. Sir, you may be seated.

4 Juror 196, Kathryn Stanford.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Stanford.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please strike.

12 MADAME CLERK: All right. Ma'am, you may be seated.

13 Juror 222, Derrius Watson.

14 (Whereupon a black male stood)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Mr. Watson.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant, Ms. Dawkins?

20 MS. GORTON: Please present.

21 MADAME CLERK: All right. Sir, please have a seat in
22 the jury box.

23 THE COURT: Are there any legal matters that we need to
24 take care of as far as the selection of the jury in this
25 case? Anything from the State?

1 MS. SALISBURY: Yes, Your Honor, I believe I do have a
2 matter.

3 THE COURT: Okay. Anything from the Defense? Any
4 matters from the Defense?

5 MR. IANUARIO: No, Your Honor.

6 MS. GORTON: No.

7 THE COURT: Okay. Ladies and gentlemen, what I need
8 you to do is go back to your jury room. Ms. Sims will show
9 you where you are. And, of course, you shouldn't be
10 discussing the case. We've got a matter of law that we need
11 to take care of.

12 My job is to rule on legal matters and yours, of
13 course, will be to -- all the jurors will be to rule on
14 factual matters. So if you'll go back there just for a few
15 minutes, we'll call you back just as soon as we can. Just
16 get to know each other. And if you'll stay back there just
17 for a few moments. If you'll go with the bailiff at this
18 time.

19 (Whereupon the jury exited the courtroom at 3:54 pm)

20 THE COURT: Ladies and gentlemen that were not
21 selected, I need for you to hang close by, but I need you to
22 go, if you would, with Mr. Dougherty. He's going to take
23 you into courtroom number 7. If you'll just have a seat
24 there, he'll let you in. And we'll call you back just as
25 quick as we can. If you'll just -- I'll give you time to

1 get over there. If you'll just stay just for a few moments
2 in courtroom 7.

3 (Whereupon the remaining jurors exited the courtroom at
4 3:55 pm)

5 THE COURT: All right. Solicitor, I believe you have a
6 legal matter that you wanted to raise with the Court.

7 MS. SALISBURY: I do, Your Honor. The State is
8 prepared to make a Batson motion based on my record-keeping
9 during jury selection. The Defendants struck every white
10 male. And I believe that at that point it appears that
11 they're -- appears to be a purposeful discrimination against
12 those white males in the jury pool.

13 THE COURT: All right. I'll be glad to hear from
14 Defense attorneys on the striking as to the non-gender
15 racial ...

16 MR. IANUARIO: We made strikes -- first of all, there
17 wasn't a large significant -- a large portion of white males
18 to choose from. It seemed like it was mainly women.

19 One of the strikes was wearing red, which is a gang
20 color, this being a gang crime where we don't want any
21 possible affiliations with that.

22 The other strikes we made for non-racial, non-gender
23 purposes. And it just so happened that what we selected was
24 mainly women.

25 MS. GORTON: I'm not sure if she's referring to one of

1 us or both of us, but I think that I might have struck some
2 white men and he might have struck some white men.

3 But, Your Honor, I go on eye contact. And the white
4 men, I don't know if it's a cultural thing, but the white
5 men were not making eye contact with me. The women that I
6 accepted were making contact with me, even the extremely
7 conservative looking woman in the front row. So that's what
8 I went by.

9 THE COURT: Were you raising it as to both Defendants,
10 Solicitor?

11 MS. SALISBURY: Well, Judge, to the extent that both
12 Defendants systematically struck every white male in the
13 jury pool, I assume so.

14 THE COURT: Mr. Ianuario, did -- my records show that
15 you struck seven out of nine. You had nine strikes and you
16 struck seven white males. Is that correct or maybe you can
17 look at your list. I want to make sure that my notes ---

18 MR. IANUARIO: I wasn't ---

19 THE COURT: --- would be right.

20 MR. IANUARIO: --- making a strike on the basis of race
21 or gender, or keep track of that. I struck on the
22 impression I got from some of the clients or some of the
23 potential jurors. And I believe one of them stated she had
24 some law enforcement ---

25 THE COURT: Well, we're talking about the males now,

1 the white males.

2 MR. IANUARIO: I had no objection with the white male
3 that was called for the alternate. We didn't have a lot of
4 white males to choose from. If you want to play by the same
5 rules, we don't have a lot of black women on the jury, but
6 there weren't a lot to choose from either. We have to work
7 with what we have.

8 THE COURT: All right. Let's just go down them one by
9 one. First white male that was struck is number 3. Or
10 we'll just go down the printed side on the right, number 3.
11 That was challenged by Ms. Gorton. Was that, again, on the
12 eye contact?

13 MS. GORTON: It would be, Your Honor. I'm not very
14 good with faces and memory. I don't even remember what this
15 gentleman looks like. But if they weren't willing to look
16 at me, I take that as a sign they're not going to listen to
17 me. So I don't pick people who don't look at me regardless
18 of their gender.

19 THE COURT: Mr. Ianuario, do you have an articulatable
20 reason why you struck number 6?

21 MR. IANUARIO: With all due respect, Your Honor, I
22 don't remember who number 6 was. I ---

23 THE COURT: That would be juror John Adams, Jr.

24 MR. IANUARIO: Again, without recalling what she [sic]
25 looked like, I can't say why I struck him. But I went with

1 the gut reaction that I had.

2 THE COURT: Well, ---

3 MR. IANUARIO: If he looked shifty, I would have struck
4 him. If he looked just like a white man, I wouldn't have.
5 You know, if it was a black woman giving me a shifty
6 impression, I would have struck her as well.

7 THE COURT: Well, -- and I understand. But under the
8 Batson analogy can you give me some basis of which you
9 struck that individual?

10 MR. IANUARIO: I didn't like the way he looked at me.
11 That's all I can figure. Without remembering exactly who he
12 is, I base it just upon my, you know, instinctive reaction,
13 not a strategy to get a jury of all white men or a jury free
14 of white men, just on the basis of the feeling I got from
15 him.

16 If you wish to call in each of the ones I struck, I'll
17 happily say I struck this one because of this ---

18 THE COURT: That's what I'm doing. I'm calling you the
19 names of those you struck.

20 MR. IANUARIO: Without looking at their face, Your
21 Honor, I really don't remember who was what.

22 THE COURT: Well, how are we going to get a fair and
23 impartial jury here if you can't tell me the reasons that
24 you struck certain jurors other than he didn't look at me
25 right?

1 MR. IANUARIO: If you let me put a face with a name, I
2 can tell you. Just going on the basis of a name and a
3 number, there were forty-five people in here who went quick,
4 and I don't have that good of a memory.

5 (Pause)

6 MS. GORTON: Judge, I'm getting out the chart we had
7 done ---

8 THE COURT: All right.

9 MS. GORTON: --- to try -- could you tell us where
10 these jurors were sitting by the number?

11 THE COURT: No, ma'am.

12 MR. IANUARIO: How many white men were in the pool of
13 forty-five, Your Honor?

14 THE COURT: Of those that were called, there were ten
15 of thirty-four, of thirty-three. One-third were white
16 males.

17 MR. IANUARIO: Okay. How many white females did we
18 strike? And if it's statistically relevant and within the
19 -- if there's no statistically significant difference and
20 all the white males are adequately represented, we work with
21 what were called.

22 THE COURT: You struck two white females.

23 MR. IANUARIO: How many did Ms. Gorton strike?

24 THE COURT: Again, I thought maybe y'all kept a record.
25 Maybe the State could -- may have a different record. She

1 struck five. He struck two.

2 MR. IANUARIO: I tell you, Your Honor, there's just --
3 there's no scheme or plan here. It's the reaction which I
4 get from -- when I look at them.

5 THE COURT: Can you tell me why we don't have any white
6 males on the jury then?

7 MR. IANUARIO: One of them looked like he might be a
8 Bob Joneser, strictly conservative. I have issues with that
9 any time I go to trial.

10 One of them, I didn't really like the way he looked at
11 my client. I didn't like the way he looked at me. I didn't
12 get a good fuzzy feeling from him.

13 Most of those I just struck on the basis of I didn't
14 like them for whatever reason. Race, gender, nothing to do
15 with it. Did they look at my client, make eye contact? Did
16 they stare me down? Did they look like they'd be fair and
17 open-minded or did they look like any potential person that
18 could be accused of these crimes, must automatically be
19 guilty?

20 THE COURT: Anything else from the State as far as the
21 challenge?

22 MS. SALISBURY: Nothing, Your Honor. I'll leave it to
23 the Court's discretion.

24 (Pause)

25 THE COURT: Well, based upon the totality, while I

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1 don't think that the reasons given have been very articulate
2 by the Defense, I can't say as I find them pretextual, but
3 unfortunately don't have more of a basis. And the burden
4 being on the moving party, I'll overrule your objection, Ms.
5 -- Madame Solicitor, ---

6 MS. SALISBURY: Thank you, Your Honor.

7 THE COURT: --- and allow the jurors to be seated. All
8 right. Mr. Dougherty, you can dismiss our other jurors in
9 courtroom number 7 and have them go back downstairs. All
10 right.

11 I'll be glad to hear from you, Solicitor, about the
12 record on the first potential -- our first couple of -- are
13 there any criminal records on any of the first few
14 witnesses?

15 MS. SALISBURY: The State's first set of witnesses,
16 actually, Judge, I'll just start with the victim. I've
17 prepared or had my investigator prepare fresh NCIC reports
18 as of this morning.

19 With regard to Mr. Benson, I'm showing that he is
20 participating, I believe, in the tail-end of a conditional
21 discharge for a possession of cocaine base conviction. And
22 I'm sure this Court is aware of the procedure by which a
23 conditional discharge is effected. And it's the State's
24 position that that conviction is not a conviction to the
25 extent that it's appropriate for cross examination and

1 impeachment purposes.

2 THE COURT: That's all he's got?

3 MS. SALISBURY: Well, now that I look at it, Judge, I
4 see an April 2011 conviction or maybe July 2011 conviction
5 for possession of marijuana, but I take the position that
6 that is not eligible ---

7 THE COURT: Simple possession of marijuana?

8 MS. SALISBURY: Yes, Judge.

9 THE COURT: Okay. All right. What's the Defense
10 position on impeachment?

11 MS. GORTON: Judge, the Defense position that is that
12 first of all in Detective Hoover's report on 7/24/11 he
13 indicates he called the victim in this case and updated him.
14 He actually chuckled and he advised that he had heard of
15 Young. Keep in mind that Young ---

16 THE COURT: He had what?

17 MS. GORTON: He had heard of Young.

18 THE COURT: Okay.

19 MS. GORTON: Keep in mind that Young is the leader of
20 the Gangster Disciples. Now the big issue in this case is
21 whether they came to rob a drug dealer or whether this was a
22 set-up by De'Nia.

23 Now he denied when he spoke with the police that she
24 was there to buy pot. She told them that she was. This was
25 her first statement as she was arrested.

(1 They thought that it was drug related. The
2 investigators thought that it was drug related. That's
3 throughout the reports. He was shot. He talks about a clip
4 going missing out of the gun when he wrestled with the guy.
5 And then the police show up at the door five minutes later.
6 There's no bullets, there's no casing, there's no clip and
7 there's no marijuana.

8 Ms. Dawkins will be testifying that when she started to
9 leave to go get change with him that there was a jar of
10 marijuana sitting on his dresser. And she can describe that
11 jar. So a big part of our case is to establish that he was
12 a marijuana dealer.

(13 She's also going to be talking extensively about where
14 he kept the marijuana and how he kept it throughout the time
15 they were dating. They dated for three years. They had
16 broke up while she was in college and had just recently
17 started getting back together.

18 So this issue of marijuana is significant. I
19 anticipate that he will continue denying that this was about
20 marijuana. And I need to be able to establish that, yes, it
21 was.

(22 And it's up to the jury to decide whether she was
23 involved with the marijuana issue or not, but I hope to be
24 able to show that the gang -- people knew that he was a
25 marijuana dealer and took it upon themselves. They used her

1 to find out where he was, but they knew about him. They
2 knew each other. They were rivals. And so it's terribly
3 relevant and terribly significant.

4 Furthermore, Your Honor, Ms. Salisbury hasn't raised
5 this yet, but I also have a recording of the victim offering
6 for five thousand dollars not to appear in court. You take
7 that under the totality of the circumstances that he
8 repeatedly refused to cooperate with law enforcement, I
9 don't believe he actually came in until July 13th, perhaps,
10 and even at that he only came in to get a report of this
11 event because he was threatened with eviction. He wasn't
12 coming to talk to the officer like the officer had asked him
13 to, he actually came in for an original of the report and
14 then was escorted to the officer.

15 He was evicted. He's going to say that it was because
16 of what this -- what happened here. I would submit to Your
17 Honor that, again, his marijuana dealings are relevant as to
18 why he was actually evicted.

19 He was pulled over. The possession with intent to
20 distribute -- the marijuana was found in the same place that
21 she'll be testifying that he kept it in throughout their
22 relationship, which was his center console of his car along
23 with crack cocaine. And I think it's relevant, Your Honor.
24 If you'd like, I'll play the recording.

25 THE COURT: I guess we're talking about the conviction

1 of the crime. You consider that to be impeachable under
2 609?

3 MS. GORTON: No, Your Honor. I don't think a
4 conviction is required. I think under the case law that we
5 have wide latitude in establishing motive and bias and that
6 he did not want the police to find out that this was drug
7 related. And he or his roommates hid evidence that this was
8 drug related.

9 THE COURT: So you do not intend to cross examine him
10 on prior convictions?

11 MS. GORTON: No, Your Honor, I intend to cross examine
12 him on his arrest and where the marijuana was found, and the
13 tape and the fact that he stated he knew of Young.

14 THE COURT: Okay. So as far as the prior criminal
15 record, I gather that's not going to be an issue since ---

16 MS. SALISBURY: No, it doesn't sound like the prior
17 record's an issue. Obviously, I take issue with any
18 examination regarding a non-conviction or a pending charge.
19 I don't know that there are any pending charges, but I don't
20 believe that's appropriate cross examination. It's not
21 appropriate impeachment to ask about arrests.

22 THE COURT: I gather she wasn't going to ask about
23 arrests. She was just going to ask about use of marijuana.

24 MS. GORTON: I was going to ask whether he keeps
25 marijuana in his car. And he's going to say no. And then I

1 would use the arrest report as impeachment. He does keep
2 marijuana in his car, Your Honor. He keeps it in his center
3 console.

4 MS. SALISBURY: Your Honor, it's my understanding of
5 the rules that Defendants aren't entitled to offer extrinsic
6 evidence as part of that type of impeachment.

7 THE COURT: How would that be relevant that he was
8 arrested, that he keeps it in his car?

9 MS. GORTON: That he is a marijuana dealer, that this
10 was a drug robbery, that she had ---

11 THE COURT: Well, I understand where you're coming from
12 on that, but how does the prior conviction relate to that?

13 MS. GORTON: It establishes that she's telling the
14 truth when she said that he keeps marijuana, he sells
15 marijuana ---

16 THE COURT: Okay.

17 MS. GORTON: And he's got it in his room and he's got
18 it in his car.

19 THE COURT: But what does that have to do with the
20 conviction? Again, saying all that evidence is admissible
21 for whatever reason that he uses marijuana, but -- or that
22 he keeps it in his car ---

23 MS. GORTON: Yes.

24 THE COURT: How do you tie that into the prior
25 conviction? Was there an other conviction relating to an

1 automobile, possession of marijuana, or was it in the home
2 or was he using it on the corner somewhere? How ---

3 MS. GORTON: I don't know where prior conviction is
4 coming from, Your Honor.

5 THE COURT: Well, ---

6 MS. GORTON: I'm not ---

7 THE COURT: --- that's what we're having this hearing
8 on is whether or not you can impeach him on a prior
9 conviction as far as his credibility.

10 MS. GORTON: I didn't claim he even had any. He had an
11 arrest.

12 THE COURT: Okay. An arrest only, not a conviction?

13 MS. GORTON: That's my understanding. It's my
14 understanding that they have taken that and sent it into
15 conditional discharge, which is not public record. I have
16 no way of knowing that.

17 THE COURT: But how can the arrest come in under prior
18 bad acts?

19 MS. GORTON: I believe that the case law says that I'll
20 be able to do that especially when I establish that that is
21 our defense, that it relates directly to our defense as to
22 what happened.

23 THE COURT: But can't you establish your defense
24 without mentioning arrest or conviction? Your defense, I
25 gather, is that he uses marijuana.

1 MS. GORTON: I suppose if he admits that he's a
2 marijuana dealer, I don't need to impeach him by presenting
3 that he does keep it in his car and that it's in the volume
4 that it is. If he wants to admit that he's a marijuana
5 dealer so that I can argue that that's what was going on.
6 But if he denies that, if he denies that he -- that she was
7 there to buy marijuana, then I've got to be able to impeach
8 him. She went there to buy marijuana.

9 THE COURT: And your impeachment is that from other
10 witnesses that he sells marijuana or that he was arrested
11 some time in the past?

12 MS. GORTON: Well, I'm going to ask him -- he's in
13 here, Your Honor. He's listening to all of this. And I'm
14 revealing my defense. I'm going to ask him, do you keep --
15 are you a marijuana dealer, do you keep marijuana in your
16 car? If he says no, then I think I should be able to
17 present that, yeah, they stopped him, he had marijuana in
18 his car.

19 (Pause)

20 MS. GORTON: Judge, what I'm looking at is State v.
21 Jones. This subsection of rule 608 preserves South Carolina
22 precedent holding that generally anything having a
23 legitimate tendency to throw light on the accuracy,
24 truthfulness and sincerity of a witness may be shown and
25 considered in determining the credit to be afforded his

1 testimony.

2 He lied about what this was about. This was a
3 marijuana deal. The only issue is whether she knew they
4 were going to rob him before she went in to buy her pot or
5 whether she knew after. He didn't tell the truth. He said
6 it was about a ride and her owing money.

7 (Pause)

8 MS. GORTON: Not only do we have State v. Brown that
9 tells us that, we have State v. Baker, 390 SC 56, Court of
10 Appeals 2010. We have State v. Burgess, 393 SC 396, Court
11 of Appeals 2011.

12 You know, in one of those cases, Burgess or Baker, they
13 were talking about a Rape Shield Statute. They were talking
14 about something that specifically by statute is protected.
15 But in that case, because it went to the core of the
16 defense, they said, no, that you can open it up on that.

17 THE COURT: Would that not go to his truthfulness,
18 Solicitor, under rule 608?

19 MS. SALISBURY: No, Your Honor. I think that in the
20 event of the impeaching party offering evidence of a
21 specific instance of conduct the defendant -- the impeaching
22 party is entitled to inquire about it but is not entitled to
23 prove any of that or offer extrinsic evidence of the subject
24 of that impeachment. And whether or not the victim
25 distributes, sells, uses drugs or any kind is no -- not a

1 character trait involving or implicating truthfulness.

2 MS. GORTON: I'm not submitting it entirely for
3 truthfulness, Your Honor. I'm submitting it primarily for
4 his motive to testify untruthfully. He needs to keep hiding
5 the fact that he was dealing marijuana. It's his motive and
6 bias that I'm looking at, not his truthfulness, although, he
7 happens to be lying about it.

8 THE COURT: Solicitor, disregarding the arrest or
9 conviction for a crime and disregarding whether it goes
10 toward impeachment, would not the Defendant be allowed to
11 bring up marijuana use to show the basis of the defense in
12 this case as to what kind of burglary, robbery, conspiracy
13 was taking place?

14 MS. SALISBURY: Well, Your Honor, to the extent that
15 it's a specific instance of conduct not offered for
16 impeachment as originally, I guess, conceived, but instead
17 offered as an element of the defense, I believe that 405
18 would authorize inquiries into the witness' character trait
19 of being a drug user or drug seller. But, again, I don't
20 believe that that allows any latitude for there to be any
21 presentation of extrinsic evidence to prove those character
22 traits.

23 THE COURT: Meaning the arrest?

24 MS. SALISBURY: Or more generally, drug use generally.
25 It doesn't seem to me that the inquiry is designed to be

1 limited to a single arrest, but instead it's designed to
2 inquire into the victim's habits of using or selling
3 marijuana. And to the extent that that is not an arrest but
4 a specific instance of conduct, I don't believe that there's
5 any rule that authorizes the Defendant to offer extrinsic
6 evidence of proof. I believe that the Defendant's allowed
7 to inquire of the witness to the extent that it supports or
8 helps explain the defense, but I don't believe that there's
9 ---

10 THE COURT: Wouldn't 405(b) allow that?

11 MS. SALISBURY: Again, I ---

12 THE COURT: Based on your argument?

13 MS. SALISBURY: I believe that 405 allows an inquiry
14 into that character trait, but I don't know that short of
15 presenting something independent in their case in chief that
16 there would be an opportunity to rebut the victim's
17 testimony with any extrinsic evidence. I believe that so
18 long as the victim is testifying the only appropriate
19 latitude is that designed by the rules of impeachment.

20 If instead we're not talking about the cross
21 examination and impeachment of the witness, then we're
22 talking about the presentation of independent extrinsic
23 evidence. And if that's what's happening, then that's most
24 probably done in the Defendant's case, the Defendant's
25 presentation of evidence.

1 And if there's evidence to be presented that somehow
2 supports this theory of defense, then that's something that
3 the Defendant can concede when they're preparing their case.
4 But, no, Judge, I don't think that 405 allows cross
5 examination to extend latitude ---

6 THE COURT: Okay.

7 MS. SALISBURY: --- to the Defendant ---

8 THE COURT: Only in the defense then, you're saying not
9 in the cross examination?

10 MS. SALISBURY: Yes, Judge. I believe in the
11 affirmative presentation of evidence that the Defendant can
12 call whatever witness they want to to develop their theory
13 of the defense, but in terms of cross examination, I don't
14 believe that's appropriate.

15 THE COURT: Isn't that a fair reading of rule 405, Ms.
16 Gorton?

17 MS. GORTON: It says in cases where the character, a
18 trait or character of a person is an essential element of a
19 charge claimed or defense.

20 THE COURT: Okay. And when you put up your defense,
21 then you'd be able to ...

22 MS. GORTON: Judge, are you ruling that if he gets up
23 there and testifies that this was about money she owed him
24 for a ride? I can't cross examine him about this being a
25 drug buy and that he sold marijuana? Is that what I

1 understand the State to be seeking, that I can't cross
2 examine him about what the true purpose of this was?

3 THE COURT: Well, I'm going to allow you leeway on your
4 cross examination, Ms. Gorton, but I don't believe it meets
5 the elements for the arrest or the conviction. If you have
6 evidence relating to the -- for your defense, I'll certainly
7 allow you -- we don't know what the answers are. You're
8 anticipating the answers. The answers may be something
9 totally different. Maybe if we need to have the jury go
10 out, then we can certainly do that at the time.

11 MS. GORTON: I just don't want to offend this Court by
12 violating any rulings that you're making. So ---

13 THE COURT: Well, ---

14 MS. GORTON: --- I'm trying to clarify them.

15 THE COURT: I don't know what the answer is yet. So I
16 ---

17 MS. GORTON: Okay.

18 THE COURT: --- don't know how my ruling can stand yet.

19 MS. GORTON: All right. Thank you.

20 MS. SALISBURY: In an effort to get back on track, very
21 quickly, Judge, the -- another of the State's witness, Mr.
22 Jaquan Boyd, appears to have some pending charges from
23 February of 2011. Again, I take the position that those are
24 not appropriate in the sense that they are pending charges
25 for impeachment, cross examination.

1 For the Court's information I would note that Mr. Boyd
2 has been convicted of simple possession of marijuana and
3 possession of drug paraphernalia, but it's the State's
4 position that neither of those meets the elements of 609.

5 And with regard to Mr. Woodard, Mr. Woodard has a 2007
6 conviction for assault and battery of a high and aggravated
7 nature. And I believe that -- that 609 makes clear that
8 that is crime for which he could be impeached.

9 THE COURT: All right. Who is your second witness?
10 Boyd?

11 MS. SALISBURY: He's not my second witness, but of the
12 first group ---

13 THE COURT: Okay. Boyd was the other one?

14 MS. SALISBURY: Yes, Judge.

15 THE COURT: Okay.

16 MS. GORTON: Judge, Mr. Boyd, his position in this case
17 was that he was not a roommate, that he stayed behind after
18 the shooting. And while he was there the evidence all
19 disappeared. By the time the police arrived there was no
20 shell casing.

21 THE COURT: So you believe you can cross examine him on
22 his prior record?

23 MS. GORTON: Yes. His prior record was possession with
24 intent to distribute, I believe.

25 THE COURT: Simple possession, did you say, ---

1 MS. SALISBURY: Simple possession, Judge, together ---

2 THE COURT: --- and paraphernalia?

3 MS. SALISBURY: --- possession with intent to
4 distribute is pending.

5 THE COURT: Is pending, but not a conviction?

6 MS. GORTON: Yes. I think it also goes to his motive
7 for testifying ---

8 THE COURT: Well, how we going to get pending -- tell
9 me under the rule how you're going to get a non-conviction
10 in ---

11 MS. GORTON: Well, Judge, ---

12 THE COURT: --- under 609?

13 MS. GORTON: Because it goes to motive and bias. If
14 these gentlemen are out on bond and they're engaged in
15 illegal activity, it gives them motive and bias to testify
16 the way they did with the police and the way they are going
17 to today consistently with the police reports.

18 If they're out on bond and they say, yes, this was a
19 marijuana deal, then they don't get -- they violate bond.
20 It's their motive and bias to testify. They're highly
21 motivated to try to convince the jury that this was not
22 about drugs. And it was.

23 THE COURT: Solicitor, is it any different from a plea
24 and pending a sentence for her to cross examine them on the
25 motive to testify and so forth to get a lighter sentence?

1 MS. SALISBURY: It's dramatically different. I mean,
2 to the extent that it's an unrelated case, it involves not
3 marijuana, but cocaine base, as I understand it, and was
4 pending before this robbery happened. I mean, no, I think
5 they're dramatically different. It's not -- it's not
6 related to this case to the extent that it involves another
7 drug.

8 And, again, it's -- the presumption of innocence
9 follows these defendants the same as it does these that are
10 on trial this week. It's -- the rules are written this way
11 for exactly that reason. The jury should not evaluate the
12 witness' credibility based on something that they alleged to
13 have done, but for which they have not yet been convicted.

14 It's preposterous to suggest that we can quiz them
15 about pending charges that remain unresolved. I don't see
16 any basis in any rule to allow an examination about those
17 charges that are, as I've said, irrelevant to this case, but
18 more importantly, unresolved.

19 MS. GORTON: Rule 608, anything having legitimate
20 tendency. These guys are not fighting for their freedom.
21 They're not on trial. They're not going to be prosecuted
22 based on what I show today.

23 Judge, I think what Ms. Salisbury would like to be able
24 to do is to suggest to the jury that these guys have no
25 reason to testify other than their basic, good, civic duty.

1 And that's simply not the case.

2 One of them was out on bond when this occurred. He's
3 the one who stayed behind. And when he stayed behind there
4 was miraculously no evidence. It disappeared. We know that
5 Drez was shot. It's gone. We know that a whole clip fell
6 on the floor. It's gone.

7 And we have our client who has absolutely no reason to
8 tell the law enforcement, when she did, that she was there
9 to buy marijuana. And that's what she told. And she's
10 going to be able to describe the marijuana that was sitting
11 on the dresser when they left.

12 Now I don't know and she doesn't know whether it was
13 the people who robbed him that took that marijuana or
14 whether it was Mr. Boyd. But Mr. Boyd has an equal motive
15 to hide the marijuana before the cops arrive. And both of
16 them have a motive to give the statement they gave other
17 than it being the truth.

18 **THE COURT:** Well, you know, we've got to overcome the
19 extrinsic evidence. And we don't need to have three trials
20 going on in this one trial. That's -- again, I may have to
21 just wait til I hear the testimony.

22 But other than for the purposes of your defense do you
23 agree that or do you disagree that you'd be able to bring
24 out their prior arrests? You intend to bring up the prior
25 arrests on both of them?

1 MS. GORTON: Yes, Your Honor.

2 THE COURT: Even the conviction of the simple
3 possession of marijuana and paraphernalia?

4 MS. GORTON: Yes.

5 MR. IANUARIO: And so, Your Honor, I would argue in Mr.
6 Boyd's case in particular that if there had been evidence of
7 drug activity his bond would have been violated and he would
8 have been rearrested on the spot and take him back in. So
9 he did have something to lose. It wasn't just on the basis
10 of he hadn't been convicted.

11 He stood a very likely chance of going back to jail had
12 that scene not been cleaned up or had there been drugs found
13 there or whatever happened. But if the situation is as Ms.
14 Dawkins describes it, Mr. Boyd very likely would have gone
15 back to jail for violation of bond conditions. And we
16 believe that that is the essence of his motivation to offer
17 testimony different than what we believe happened.

18 THE COURT: Do other witnesses other than the first
19 group also have records? Are we going to have this to cross
20 later?

21 MS. SALISBURY: No, Your Honor, except to the extent of
22 the co-defendants who plan to testify, obviously have
23 pending charges. But I'm not sure how that -- how that
24 conversation is going to go. We may want to revisit that
25 later in the trial.

1 THE COURT: Okay. I presume you want to ask them about.
2 pending charges?

3 MS. GORTON: Oh, yes.

4 THE COURT: This is not probably an appropriate time
5 this afternoon to require you to make your opening
6 statements to the jury and try to get a witness up. I think
7 what I'm going to do is bring our jury back, make a few
8 preliminary remarks about our process and what will go on
9 and tell them that we'll break for the evening. And then
10 we'll start back at 9:00 in the morning.

11 And I'll -- I think I understand the nature of your
12 request, Ms. Gorton and Mr. Ianuario. I'll study my rules
13 and those cases you had. What were the cases you cited?
14 Hill, ---

15 MS. GORTON: Judge, there's three. There's State v.
16 Jones, 343 SC 562. There's State v. Baker, 390 SC 56.
17 There's State v. Burgess, 393 SC 396. Those are both -- the
18 last two are both Court of Appeals, 2010 and 2011.

19 In one case they said there was no error in failing to
20 allow the cross examination because it did not go to the
21 essence of the defense.

22 In the other case it was a Rape Shield case, Rape
23 Shield issue. And they said it was error not to allow the
24 cross examination in their -- even with the Rape Shield
25 Statute because it did go.

1 THE COURT: All right. Let's have our jury come in if
2 they're ready, Ms. Sims.

3 (Whereupon the jury entered the courtroom at 4:42 pm)

4 THE COURT: Ladies and gentlemen, today has worn on. I
5 needed your fellow jurors -- I had to keep them separate.
6 And we have now dismissed them.

7 You're the jury that's been selected for this case.
8 You've seen the process by which you were selected. Both
9 the State and both the Defendants believe you're the best
10 people to hear this case to decide what the facts are. And
11 I'm honored to have the chance to work with you on this
12 case.

13 As I told you before, you're going to be the judge.
14 I'm going to be a judge of the law and you're going to judge
15 the facts. I'm the one that wears the black robe and
16 referred to as the Judge, but you're every bit as much a
17 judge as I am in this case.

18 You may never have had an opportunity to serve as a
19 juror before. Some of you maybe have never been in the
20 courthouse before, certainly not a courtroom. And then you
21 appeared as you were required to this morning. You answered
22 your summons. You were with a large group. We've moved you
23 around from different floors.

24 And now all of a sudden you've found yourself sitting
25 in a jury box thinking to yourself, well, you know, how can

(1 I be here? I don't have any qualifications whatsoever to be
2 a judge. I assure you, ladies and gentlemen, that what
3 you're going to need to utilize in being judges of the facts
4 is the good common sense with which you've been blessed and
5 the every-day experiences that you enjoy in the course of
6 your life in the home and the workplace and social
7 activities or wherever.

8 You're going to be judging credibility. You're going
9 to listen to the witnesses testify under oath. There may be
10 some documents or other tangible evidence admitted. You're
11 going to decide based upon that testimony and the demeanor
12 of those witnesses and how they sounded on the stand, the
13 believability of those witnesses.

(14 And in light of the other evidence that's given and
15 ultimately the law that I give you at the end, you're going
16 to decide what the truth of this case is and render a
17 verdict that will speak the truth. You've made a
18 commitment, a high commitment to both of these parties, all
19 of these parties to be fair and impartial.

20 Part of my job not only is to instruct you on the law
21 of the case at the end of the case, but to conduct the trial
22 as it progresses. I alluded downstairs when I qualified
23 you, we'll take periodic breaks. Part of my job is to tell
24 us when we'll take breaks.

(25 Normally we'll start about 9:00 in the morning and

1 we'll have a morning break, sometimes go an hour, hour and a
2 half. Sometimes -- rarely we'll be longer than that,
3 depending on where the testimony of the witness is at a
4 particular time. We'll take a lunch break normally around
5 1:00 or so, sometimes a little earlier, as today, a little
6 later. Then we'll have an afternoon break and hopefully be
7 finished each evening by five, 5:30 in the afternoon.

8 You may need a break and I haven't called for a break.
9 It's vitally important that you be a good listener. If
10 you're uncomfortable in any way, if you need to take a
11 break, please let me know, get my attention. Get one of
12 these bailiffs' attention.

13 You perhaps have had a chance to meet with them
14 already. To your right is Ms. Sims, Ms. Katrina Sims.
15 She'll be there to help you. Mr. Dougherty in the back of
16 the room. Those will be taking care of your needs in the
17 jury room and in here.

18 We have other courthouse personnel around. The young
19 lady seated directly in front of me, Ms. Susan Hudgins,
20 she's the court reporter. And she's taking down everything
21 that's said during the course of the trial, keeping a
22 record. If there's exhibits that need to be marked, she'll
23 mark those and keep up with all the exhibits. She's a
24 valuable assistant. And you can certainly get her eye if
25 you need a break.

1 Ms. Troop, Ms. Mary Troop, who called your names
2 earlier and will administer an oath to you in just a few
3 moments. She's also here from the Clerk's Office, able to
4 assist you.

5 Shawn Hinton is the young man seated beside me, recent
6 law school graduate, admitted to the South Carolina Bar, my
7 law clerk. And he's a valuable asset as well. You may see
8 him coming and going during the course of the trial. You
9 certainly can get his attention as well. But any of these
10 folks will be more than glad to help you.

11 Cases take place in stages. Normally there's an
12 opening statement made by the attorneys. There's -- after
13 the opening statement is made the State will have an
14 opportunity to present witnesses to you. They'll be
15 examined and cross examined. And whatever witnesses are
16 testifying, each side will have a chance to ask them
17 questions.

18 Part of my job is to rule on the admissibility of
19 evidence. Sometimes in the course of a trial there's an
20 objection made. One side or the other, based on rules of
21 evidence, or procedure or the law will object to a document
22 or a question or whatever it may be.

23 Frequently I can rule on that objection from the bench
24 here and say overruled or sustained and we move on to the
25 next question. Sometimes, as you've seen already, the

1 attorneys may ask that we huddle up here at the bench and we
2 can whisper and hopefully resolve a legal matter.

3 Sometimes, as you've already seen, even though we
4 haven't started the trial, there's a legal matter that comes
5 up for which you have to go back to the jury room. When I
6 have legal issues that come up, I want to do the very best
7 job I possibly can as the Judge of the law. I want to make
8 sure I have sound footing in the decisions I make.
9 Sometimes that may require me to listen to testimony that
10 wouldn't properly be offered before you. Sometimes I may
11 need to examine law books or hear argument from the legal
12 counsel.

13 In doing that sometimes it's necessary for me to do
14 those things outside of your presence. Not that we're
15 hiding things from you, it's just that I need to resolve
16 those legal issues, and you have no concern with those.

17 You're a fellow judge as I am. And when all the
18 evidence is in, and I've instructed you on the law, and the
19 case is then yours to decide. I won't be back there with
20 you helping you work through the facts because that's not my
21 prerogative. That's only your prerogative and yours alone
22 to decide what the facts are. I decide the law. And you'll
23 be back there deciding the facts without me.

24 It would be improper for me to comment on the facts or
25 have any opinion about the facts. Our Constitution in South

1 Carolina prohibits me from having an opinion on the facts.
2 So you can be assured that I don't have an opinion and I
3 won't have an opinion as the case progresses.

4 Only when all the evidence is in and I've instructed
5 you on the law should you discuss the case while you're back
6 in your chambers. And, otherwise, you should not be
7 discussing the case in any way.

8 Likewise, our Chief Justice in South Carolina has given
9 an instruction to all jurors such as you empaneled to hear a
10 case that we Circuit Court judges are required to instruct
11 you of, and that is that you should not be discussing the
12 case with anyone while you're actually sitting on the trial
13 of a case.

14 You're going to, obviously, have curious family
15 members, and loved ones and business associates who want to
16 know all about your jury service. They know you went today.
17 Did you get picked? And what's the case about? And then
18 they want to give you information. Oh, let me tell you
19 about what I heard about something like that or -- that
20 would be improper, ladies and gentlemen.

21 Certainly, you can tell your loved ones that you're
22 serving on a jury, and it involves a burglary, and an armed
23 robbery, and so forth, but you shouldn't be sharing with
24 anyone about the facts of the case or anything you've heard
25 in the courtroom. When the case is completed, and over and

(1 done with, you'll have an opportunity to share with family
2 and friends and others your experience while serving as a
3 juror, but while the case is going on you should not be
4 doing that.

5 You should not let anyone talk with you about the case.
6 If you see anyone in the hallway or restaurant tomorrow and
7 you overhear conversations about the case, you take the
8 initiative and move to another table. If you're in a
9 restaurant and there's some witnesses talking about it or
10 other folks talking about it, you need to realize the
11 importance of the process we're now in. And we want to
12 maintain the purity of that process by making sure that all
(13 of you jurors maintain that purity and don't have any other
14 influences from anyone.

15 I would not expect that anyone would try to contact you
16 and see you on the street and want to give you information
17 or ask you questions. You would certainly just tell that
18 individual you're a juror and you can't talk about this case
19 with anyone, I've instructed you not to.

20 If that individual were to persist and want to give you
21 information or ask you anything, then, please, excuse
22 yourself as soon as you can. If possible, get the name of
23 that individual, report it back here to me, and I assure you
24 I'll take care of that. I would not expect anything like
(25 that to happen, but I want to emphasize to you how important

1 it is.

2 Our Chief Justice has also instructed us to tell jurors
3 such as you that any kind of social media would be against
4 the law as well while you're serving on a jury. I know that
5 we're curious by nature.

6 And I tell you this not by way of tempting you in any
7 way, but the importance of how vital your service is that
8 you should not do any kind of social media, or do any kind
9 of internet checks, or archives, or go to the library or do
10 anything like that to find out facts about this case or
11 locations or anything like that. These attorneys are going
12 to present everything they need for you to make a good,
13 solid decision about this case. And you certainly should
14 not have that come from extraneous sources.

15 As you come and go in the hallway and outside of the
16 courtroom you may see the attorneys passing in the hall.
17 They may -- or in the elevator. They may seem very distant
18 and high-hat you and not be as friendly as you would expect
19 them to be. Please understand, that's their training.
20 They're trained to make sure there's no appearance of any
21 impropriety with a lawyer talking to a juror.

22 Even though it may be innocent conversation about the
23 weather, or Springtime, or something else, they want to make
24 sure that there's no appearance of any impropriety. So if
25 any of these lawyers seem to be distant and walk the other

1 way, you please don't hold that against them. That's their
2 -- the way they are trained.

3 You are making a commitment to both sides to render
4 justice, both to the State of South Carolina and to each of
5 these two Defendants. It makes me proud that you've
6 accepted this responsibility to work on this case and you've
7 made that high commitment to the parties.

8 I'm going to have the Clerk at this time administer an
9 oath to you. I hope you'll understand and listen carefully
10 as the oath is given you. It's a time honored oath that's
11 been in existence well before the foundation of our Country.

12 Even in England jurors such as you have taken this oath
13 to well and truly try a case both on the criminal side and
14 civil side. I'm confident that throughout our Country today
15 there have been jurors such as you who have taken an oath
16 very similar to this in different States to be the fact-
17 finders and to be the judge of the facts. So after the oath
18 is administered to you I'll give you some final instructions
19 for the day. Ms. Troop, you may swear the jury.

20 MADAME CLERK: All right. Please stand and raise your
21 right hand for the oath. The proper response is I will.
22 I'm going to say this in two sections because there's two
23 Defendants.

24 You shall well and truly try the cases 2011-GS-23-7990,
25 the State versus Juwan Darnell Lomax, indicted for

1 conspiracy, 7991 for armed robbery, 9673A for attempted
2 murder and 9676A for burglary. All right.

3 The second part, you shall well and try the -- well and
4 truly try the cases 2011-GS-23-8019, the State versus De'Nia
5 Zsirita On'Jean Dawkins, indicted for armed robbery, 8082
6 for attempted murder, 8021 for conspiracy and 822 [sic] for
7 burglary and a true verdict rendered according to the law
8 and the evidence so help you God. I will?

9 THE JURY: I will.

10 MADAME CLERK: Thank you. Please be seated.

11 THE COURT: It would be unfair to these attorneys for
12 us to have them make their opening statements to you this
13 evening and maybe get part of the testimony of a witness in
14 and then have to break. So rather than us starting and
15 maybe working for another thirty minutes or forty-five, I'm
16 going to just dismiss you for the day.

17 What I want you to do is in the morning when you come
18 in I need you to select a foreperson from among the first
19 twelve of you who were selected. The last two jurors
20 selected are alternates. They'll occupy those seats back
21 there.

22 They're every bit as much a part of the jury as anyone
23 else. They're going to be listening just as well as any of
24 you do. Don't know how long this trial may take. It
25 certainly won't go into next week. You're serving as a

1 juror for this week.

2 But sometimes events happen, there might be an
3 emergency in your home or hopefully an illness would not
4 befall any of you. But in the event that some problem did
5 develop with one of the first twelve, rather than us having
6 to start this case all over again, we've got alternates who
7 are ready to step into your shoes. And they will occupy
8 those seats on the back where they are now. The rest of you
9 as you come and go, you may want a front row seat or back
10 row seat, but I do want you to select a foreperson.

11 What the foreperson does is -- would occupy the front
12 row seat, the seat closest to the witness chair here. The
13 bailiffs will certainly let you know where the foreperson
14 sits.

15 But what the foreperson will do is sometimes in the
16 course of a trial exhibits may be offered by one party or
17 another and they may want to pass them around to the jury.
18 They'd show them to the foreperson, let the foreperson look
19 at them, pass them on to other folks on the jury.

20 Sometimes when you're back in your jury room you may
21 have a need. The temperature may need adjusting or you need
22 a cup of coffee or you need to make a call about picking up
23 a child or whatever it may be.

24 Your foreperson is going to be your liaison with the
25 Court. That's going to be the individual who will, on

1 behalf of whatever juror, just write out on a piece of paper
2 the particular need that you have, be it from the Clerk's
3 Office or a legal question for me. Get it to one of the
4 bailiffs, and they'll get it to the appropriate person.
5 Hopefully we'll get a satisfactory answer to you. Sort of
6 be the presiding officer, if you would, while you're back in
7 your jury room.

8 Ultimately what the foreperson will do is when all the
9 evidence is in, and the case is concluded, I give you
10 instruction on the law, your foreperson will be the one who
11 will sign the verdict form on behalf of all the jurors and
12 have the verdict delivered back here to the court. Your
13 foreperson will be the one who will facilitate the
14 discussion, make sure everyone on the jury has a full input
15 into the facts as each individual juror sees them and write
16 out the verdict form on behalf of all of you. I'll
17 certainly give instructions on that as the case progresses.

18 But when everyone's in tomorrow, and I'm sure you'll
19 make sure that everyone is in before you start that
20 selection process. But when you have a foreperson selected,
21 if you would just write the name down on a piece of paper
22 that the bailiff will provide you and give it to us.

23 And when we come in the foreman will -- the foreperson
24 will occupy that seat, the alternates in their seats and the
25 rest of you as you come and go can take a front row, or left

1 side, right side, back row, whatever you choose. Sometimes
2 you might want to keep the same seat.

3 But we'll be ready to start tomorrow. If you'll be in
4 at 9:00. And as soon as you have a foreperson selected,
5 we'll be ready to begin with the opening statements of the
6 attorneys. Have a good evening, ladies and gentlemen.
7 Thank you very much. You may be dismissed at this time.

8 (Whereupon the jury exited the courtroom at 5:00 pm)

9 MS. GORTON: Judge?

10 THE COURT: Yes, ma'am.

11 MS. GORTON: I gave you the wrong case cite. Both
12 Baker and Burgess are where there was insufficient nexus to
13 the case. State v. Finley is the one that I was referring
14 to that talked about Rape Shield and how it was in essence
15 of the defense. And State v. Finley is 300 SC 196, South
16 Carolina Supreme Court, 1989.

17 THE COURT: Thank you. All right. We'll be at ease
18 til 9:00 in the morning. Since the case has started now the
19 Defendants will be taken into custody with the Sheriff's
20 Office since the bond is now over for each of them. And be
21 prepared to start back in the morning. All right. We'll be
22 at ease til 9:00 in the morning.

23 (Whereupon court was in recess at 5:02 pm)

1 Tuesday, April 10, 2012:

2 (Whereupon court commenced at 9:13 am)

3 THE COURT: Thank you very much. Please be seated,
4 ladies and gentlemen.

5 MS. SALISBURY: Judge, could we approach very quickly?

6 THE COURT: Yes, ma'am.

7 (Whereupon a bench conference was held off the record)

8 (Whereupon State's exhibits 6, 7 & 8 were marked for
9 identification)

10 THE COURT: All right. Everybody ready to proceed?

11 MS. SALISBURY: Yes, Your Honor.

12 THE COURT: All right. Let's have our jury come in.

13 (Whereupon the jury entered the courtroom at 9:28 am)

14 THE COURT: Good morning, ladies and gentlemen. Madame
15 Forelady, others of the jury, I understand that some of you
16 had made a request about taking notes during the trial.

17 I allow notes to be taken, but let me give you a
18 warning. Sometimes when you're taking notes you miss the
19 trial. You're busy taking notes. And notes, of course, are
20 just your personal recollection of what took place and
21 they're not a piece of evidence.

22 If you do wish to take notes, then what you would need
23 to do is on the legal pad that's provided to you, you need

1 to write your name. The notes will be collected every time
2 you come in and out by the bailiff. They'll be handed back
3 to you as the trial progresses if you want to take notes.

4 But oftentimes when you're busy taking notes you miss
5 the demeanor of witnesses, you miss the actions in the
6 courtroom. But I'm certainly going to allow you to take
7 notes if you feel that that would be a benefit to you.

8 Just remember that those would be notes only for your
9 personal recollection and, of course, would not in any way
10 be considered as evidence. Sometimes notes are in error
11 even. And we have a transcript of everything that's being
12 said that we -- we do have an accurate record here.

13 If -- those of you who need to takes notes, I'll have
14 -- Ms. Sims will be glad to pass out any. If you'll just
15 sort of raise your hand. She's got a few note pads there
16 with pencils if you feel like you need to take notes.
17 Certainly just write your name down and be sure and leave it
18 in your chair when you leave.

19 (Pause)

20 THE COURT: All right. We're now ready for the opening
21 statements of the attorneys. What the attorneys have to say
22 to you, ladies and gentlemen, in their opening statements,
23 that's not evidence. The evidence is going to come from the
24 witness stand, from documents that may be presented, other
25 tangible evidence.

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1 While this is not evidence, I urge you to listen
2 carefully as these attorneys address you. I'm confident
3 they can give you valuable insights to help you as the case
4 develops to be alerted to certain parts of the trial that
5 they feel would be important for you. Solicitor, you may
6 address the jury in your opening statement.

7 MS. SALISBURY: May it please the Court, Your Honor.
8 Good morning, ladies and gentlemen. As I was introduced to
9 you yesterday, my name is Katryna Salisbury. And I
10 prosecute criminal cases here in Greenville County.

11 And before we begin the trial of this case I want to
12 very briefly tell you what this case is about, what the
13 State is required and intends to prove and how we intend to
14 prove it. Ladies and gentlemen, quite frankly, this case is
15 about a lifestyle that very few of us can understand. This
16 is a lifestyle whose mentality is that crime is a source of
17 entertainment, a sport, that victims are specifically and
18 carefully targeted and selected.

19 This is a case about a lifestyle that requires
20 commitment, that everyone committed has a responsibility to
21 fulfill and a specific role to play. But most importantly,
22 this lifestyle is about loyalty because you were never
23 supposed to hear about this crime.

24 The five people who planned, staged and executed this
25 crime never thought they'd be identified. It's for that

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1 reason that crimes like this only get solved from the inside
2 out. It's only when those on the inside abandon that
3 lifestyle and betray that loyalty that crimes like this are
4 prosecuted and all of those involved are held accountable.

5 When Demetrius Benson was robbed and shot in his
6 apartment just after midnight on June 3rd, 2011 he never saw
7 it coming. Demetrius had spoken with his one-time
8 girlfriend, De'Nia Dawkins, who said that she was going to
9 come over to his apartment to hang out.

10 What Demetrius didn't know was that Dawkins had planned
11 to allow three of her friends to force their way into
12 Demetrius' apartment and rob him and ultimately shoot him.
13 And over the course of this trial you will hear exactly how
14 both these Defendants, Dawkins and Juwan Lomax, assisted in
15 that plan and played their role in making sure that plan was
16 carried out.

17 Now, as you've heard from the Judge, each of these
18 Defendants is charged with four crimes. And I'll tell you
19 at the outset, you're not going to hear any evidence that
20 either of these Defendants wielded a handgun, pulled a
21 trigger or took anything from the victim.

22 Nonetheless, each of these Defendants is responsible
23 for the crimes that happened that night because it is the
24 law in South Carolina that when two or more people combine,
25 assist one another, work together to commit a crime,

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1 everyone part of that plan is responsible for the crimes
2 that were committed. What the law refers to that concept is
3 that the hand of one is the hand of all. And over the
4 course of this trial the evidence that you will hear is that
5 each of these Defendants had their hand in this plan.

6 Now, as you've heard from the Judge, the Defendants are
7 charged with armed robbery. To prove that these Defendants
8 are guilty of armed robbery the State has to prove that the
9 Defendants or their co-conspirators took something of value
10 from the victim.

11 The State has to prove that that taking was done by
12 force or intimidation. And most importantly the State has
13 to prove that that force or intimidation was effected by the
14 use of a deadly weapon, in this case, a handgun, or three.

15 These Defendants are also charged with burglary in the
16 first degree. To prove that the Defendants are guilty of
17 that crime the State has to prove that the Defendants or
18 their co-conspirators entered a home without consent,
19 whether that be by force or trick, and that that entry was
20 done with the intent to commit a crime while inside.

21 Now, what makes that burglary a first degree burglary
22 is the presence of an aggravating factor. In this case, the
23 people who entered the apartment were armed and that the
24 entry occurred during the nighttime.

25 These Defendants are charged with attempted murder. To

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1 prove that these Defendants are guilty the State must prove
2 that the Defendants or their co-conspirators with the intent
3 to kill attempted to kill Demetrius Benson with malice
4 aforethought.

5 And, finally, each of these Defendants is charged with
6 conspiracy. To prove conspiracy the State must prove that
7 two or more people combined for the purpose of committing a
8 crime. The crime of conspiracy is the agreement. Nothing
9 else is required. And during this trial you're going to
10 hear evidence that at least five people participated in that
11 agreement to commit this home invasion.

12 Now, to prove that these Defendants are guilty you're
13 going to hear testimony from several witnesses. First
14 you're going to hear from Demetrius Benson, himself. He's
15 going to testify about the circumstances of how he became --
16 how he spoke with Ms. Dawkins on June 2nd, 2011 just before
17 midnight. And he's going to describe what happened when she
18 came over.

19 He's going to testify about what he did when three
20 masked, armed men forced their way into his apartment. And
21 he's going to testify that he struggled with those men
22 before he was shot, twice.

23 After that you'll hear testimony from Demetrius'
24 roommates and friends who were over at the apartment that
25 night. They're going to testify about what they saw and

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1 what they heard.

2 Then you'll hear testimony from the officers who
3 responded to the scene and participated in the investigation
4 of the crime. You'll hear about how they investigated this
5 case and determined how each of these five people charged in
6 the case were involved in the plan and the role that they
7 played in this home invasion, turned violent attack.

8 Finally, you're going to hear from the inside. You're
9 going to hear testimony from two of the masked, armed men
10 who entered Demetrius' apartment. They're going to tell you
11 what they did. They're going to tell you the role that they
12 were assigned. And most importantly, they're going to tell
13 you the role that Juwan Lomax and De'Nia Dawkins played in
14 making sure this plan was executed.

15 And at the end of this trial I believe you'll be
16 certain of three things; that these crimes happened, that
17 the two men who will -- who will say what happened, did what
18 they will say they did and that these two Defendants were
19 part of the plan and are responsible for what happened once
20 that robbery went into motion.

21 And after you've heard all the evidence I'll ask you to
22 return a verdict that these two Defendants are guilty, that
23 despite their best efforts to adhere to that lifestyle that
24 they are nonetheless accountable for exactly what happened
25 on June 3rd of 2011. Thank you.

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1 THE COURT: Ms. Gorton, you may briefly open.

2 MS. GORTON: Thank you, Your Honor. Y'all met me
3 yesterday. My name is Cass Gorton. But this is my client,
4 De'Nia Dawkins. And we not only have De'Nia here today, we
5 have her father, and her brother.

6 And this is an unusual case because two Defendants are
7 being tried together. So we also have Juwan Lomax, and we
8 have his family here.

9 Now, I find opening statements one of the hardest jobs
10 as a -- as a defense attorney because there's nothing to
11 respond to really. There's been no witnesses. There's been
12 no evidence. And we've received police reports. We've
13 received the affidavits by the victims and the witnesses,
14 but we haven't had a chance to talk to them.

15 In a criminal case, unlike a civil case, there's no
16 right to depositions prior to trial. So what you have in
17 front of you is what's on paper. You don't get to ask
18 questions first.

19 Now, I am asking you all to do what doesn't come
20 naturally. I'm asking you all to hold on. The State's
21 going to get to go first. And they're going to get to
22 present all of their evidence and all of their witnesses.
23 And my biggest fear is that you all will make up your mind
24 before you've heard the other side.

25 Now keep in mind, we don't have to give you another

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1 side. It's not required. We're not required to prove
2 anything, but we're going to today. In this case, we're
3 going to.

4 So I want you all to keep an open mind. It doesn't
5 come naturally to us. Our kids come to us, mom, Ethan hit
6 me. Ethan, why did you hit your brother? We don't say,
7 now, wait a minute. Let me hear Ethan's side. Or maybe you
8 do. And in that case, I'm really glad you're on this jury.

9 Now, I'm not sure what we're going to be able to
10 present. I hope to be able to show you that Mr. Benson and
11 his friends are extremely street smart and that they
12 probably know more about what happened that night than my
13 client, De'Nia Dawkins.

14 But even if I can't, that's okay. Because it's
15 perfectly understandable for him to believe that his
16 girlfriend that he had dated for three years, through two
17 years of high school and a year of college, was involved in
18 this.

19 Because essentially we agree with the State as to
20 everything that happened. She called him, they talked, they
21 decided to smoke together, smoke marijuana. He had sold
22 marijuana in the past. She was aware of that throughout
23 their relationship. He was constantly pressuring her to
24 smoke with him. She wouldn't.

25 She made calls that night. They had been broke up for

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1 a while. They had recently got back together, sort of. And
2 she had decided, you know what, okay, I'm ready. But I'm
3 bringing a friend. I'm bringing my friend, Envy.

4 They went over there. She asked for a ride. She and
5 Envy went in. What she didn't know was that they were
6 followed, that the people who took them over there had an
7 ulterior motive. And you're going to ask yourself, well,
8 why? When you hear the State's case you're going to be
9 saying, how did they not know?

10 And what I'm going to show you is going to disturb you
11 because what we know about gangs, that's evolved. They are
12 no longer happy taking our streets. And they're no longer
13 happy taking those kids that have no homes, and no parents,
14 and no education, and nowhere else to turn. Gangs don't
15 live in their own world, they live in our world. And our
16 world has evolved. And uneducated thugs don't cut it
17 anymore.

18 When they steal property, they have to have a way to
19 get rid of it. And what better way than Ebay? They need
20 educated members. But how are you going to get an educated
21 person in your gang? Who in their right mind would give up
22 family and college to join a gang?

23 You're going to find out they do that by presenting two
24 faces. This gang in particular, who the police know as the
25 Folk Nation, and the Gangster Disciples. They have another

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1 face that's called Growth and Development. Sounds pretty
2 good. In fact, they promote a lot of the same things that
3 many civil clubs do. They tell these kids, we're about jobs
4 and education.

5 The way you get accepted and promoted is to provide
6 proof that you've got a GED, provide proof that you're going
7 to work, provide proof that you're contributing to society.
8 There's a process where you're a prospect for two weeks.
9 And then you're blessed in.

10 And at some point shortly after that you're initiated,
11 but you're not told what the initiation process is. With
12 the initiation process gangs have turned in -- have taken
13 good lessons from child molesters. How do you get these
14 kids lured in? You befriend them, you earn their trust and
15 then you do something so horrible and so horrific to them
16 that they are ashamed to go forward, they feel trapped and
17 they're scared to do anything about it.

18 What they did to De'Nia Dawkins is they listened to her
19 talk about going over to see her boyfriend. And when they
20 heard that she wanted a ride over there, they did what they
21 always do, yeah, we'll go too, we'll go too. Yeah, let's
22 all go.

23 But while she and Envy were in the car with Juwan Lomax
24 driving, three of the Gangster Disciples followed them and
25 planned out the robbery. After she went in, they put on

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1 their scarves, they pulled out their guns and they followed
2 her in.

3 And as soon as she or Demetrius opened the door, we're
4 not real clear which one opened the door to go back out,
5 they came in. She lived with that secret for six weeks.
6 And during that time she was not herself.

7 And when we talk about who comes forward and who tells?
8 You're going to hear from two people who waited a long time
9 to come forward. And when they did, they were the gunmen,
10 they were high ranking Gangster Disciples. They were not,
11 excuse me, virgins. They were seasoned gangsters. And
12 their statement came right after these two statements came.

13 Again, we agree on most things. We agree that they all
14 went over there. We agree that Demetrius Benson was shot.
15 We agree that his roommates and him went through a
16 terrifying experience. But De'Nia Dawkins went through a
17 terrifying experience too. She had no idea it was going to
18 happen.

19 And after she realized what had happened and the gang
20 members were ordering her to get back in the car, she didn't
21 know what to do. If she's guilty of anything, she's guilty
22 of doing nothing afterwards. But she's not guilty of
23 knowing any of this happening beforehand.

24 I just ask that you keep an open mind. As you hear
25 these people testify ask yourself what do they have to gain?

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1 Why are they coming forward now? Who came forward first?
2 Who was in a position to know what was going to happen? I'm
3 also going to ask you to pay close attention to who was in
4 whose car and when? That's going to be crucial. Thank you.

5 THE COURT: Mr. Ianuario.

6 MR. IANUARIO: Good morning. My name is Robert
7 Ianuario. And I'm representing Juwan Lomax. I'm also
8 working with Cassandra Gorton in the defense and De'Nia
9 Dawkins since we have our clients testifying together.

10 The same story that you heard Ms. Gorton give is the
11 same story that applies to my client as well. And I don't
12 think I could tell it any better than Ms. Gorton did.

13 What I would like to talk about a little bit is what
14 Judge Welmaker's also mentioned to you. You have a duty in
15 here. Your duty is to determine the facts.

16 We'll represent a version of the facts. The State will
17 present a version of the facts. And in this unique
18 instance, many of the facts that are going to be presented
19 are true, but it's up to you to determine did they know
20 about what was going to happen before it happened? You
21 won't have any concrete evidence of that.

22 We have witness statements. And we have a police
23 investigation based upon those statements. You're not going
24 to see a lot of forensic evidence in this trial. You're not
25 going to see a lot of surprise witnesses. This isn't going

OPENING STATEMENTS - MR. IANUARIO

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1 to be something like you would see on TV, but you are going
2 to hear statements. And you have to base the innocence or
3 the guilt of Mr. Lomax and Ms. Dawkins on whether or not you
4 believe the people providing those statements.

5 If you can believe the people that are providing those
6 statements, and you believe that Mr. Lomax and Ms. Dawkins
7 were more than just two innocent children caught up in this
8 plan, that they are actually criminal masterminds, then
9 please return a verdict of guilty. But if you cannot,
10 beyond a reasonable doubt, believe that Juwan and De'Nia are
11 criminal masterminds, please return a verdict of not guilty.

12 Reasonable doubt, you know, we all have our own
13 interpretation of what that will be. The Judge will
14 elaborate on that. But as an example, if you put a cat and
15 a mouse in a shoe box, put the lid on it, you come back an
16 hour later and the mouse is gone, the cat must have eaten
17 the mouse. But if there's one single hole in that shoe box
18 that's big enough for that mouse to crawl out of, you can't
19 say certainly that the cat ate the mouse. Maybe he did.
20 Maybe the mouse got out. We don't know.

21 By the same analogy, if there's one single hole in the
22 State's case, if there is any place that a reasonable doubt
23 could have escaped in the State's presentation of its case
24 or in the presentation of our defense, I'm going to ask you
25 to return a verdict of not guilty on that.

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1 I ask you to take this duty seriously. These are two
2 bright children. Juwan was college bound before all this
3 happened. And when all this is done hopefully he still will
4 be. He's a very talented musical artist. De'Nia was in
5 college when all this happened. She's also very talented in
6 music.

7 Many of the co-defendants that are not on trial today,
8 but also involved in this conspiracy, are musically
9 talented. Music is the web with which they entrap these
10 children. They got these people in, they got Juwan and
11 De'Nia in and working in a music area, put on concerts every
12 Thursday night, did community benefits, do everything they
13 can to reach out to the community.

14 And on this night in question when De'Nia went to go
15 buy a sack of weed and see her ex-boyfriend, who hung out
16 with some pretty bad characters, and she was scared of being
17 over there by herself, she said, friends, will you please
18 wait on me until I find out if it's safe for me to stay over
19 there? And I'll text you and let you know I'm staying or
20 I'm going to come right back out.

21 Instead what happened is she walked in, spent a few
22 minutes inside. And then when the doors opened there were
23 three masked gunmen out there. All the statements will say
24 that De'Nia ran around crazy, scared, having an emotional
25 break-down.

OPENING STATEMENTS - MR. IANUARIO

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1 You don't do that if you planned part of the crime.
2 She started that before the shooting took place. That
3 wasn't a part of, oh, my God, I can't believe they just shot
4 my boyfriend. It's oh, my God, I can't believe what's
5 happening, and then the shots took place.

6 Who loves somebody for three years and then sets them
7 up to be the victim of gang violence? No one. Especially
8 somebody that still has strong feelings for the victim. And
9 definitely not my client who was doing nothing but the
10 chivalrous thing of giving a girl a ride to a guy's place
11 and then waiting to see if she's comfortable staying there.

12 None of them knew what was going to happen that night
13 before the fact. After the fact, seems like they learned of
14 it. They're going to dispute that. If they're guilty of
15 anything, they should have come forward sooner.

16 But none of them knew before when they jumped in the
17 car to go over there that these crimes were going to take
18 place. And if you can't show that they knew all of this was
19 going to happen, it's very tough to find that beyond a
20 reasonable doubt they conspired to plan this burglary and
21 this armed robbery that led to the attempted murder.

22 I look forward to working with you as does Ms. Gorton,
23 and I'm sure Ms. Salisbury. And I hope that it's a quick
24 and painless process for all of you. I'm going to try not
25 to bore you.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

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1 I understand those chairs are terribly uncomfortable.

2 So I'm going to wrap this up. Again, I thank you for your
3 service. And I look forward to working with you.

4 THE COURT: Solicitor, you may call your first witness.

5 MS. SALISBURY: Thank you, Your Honor. The State calls
6 Mr. Demetrius Benson. Mr. Benson, if you would, please come
7 around and be sworn.

8 MADAME CLERK: Mr. Benson, if you'll pause at the end
9 of the bench. Please place your left hand on the Bible and
10 raise your right hand.

11 Demetrius Benson, being
12 duly sworn testified as follows:

13 MADAME CLERK: Thank you. Please be seated. Please
14 state your full name for the record.

15 MR. BENSON: Demetrius Benson.

16 Direct Examination by Ms. Salisbury:

17 Q. Demetrius, I'm going to stand way back here so that I
18 can hear you. If I can hear you, then the jury can hear
19 you, okay?

20 A. Okay.

21 Q. So just try to speak up. Tell me this, what do your
22 friends call you?

23 A. Drez.

24 Q. So you -- you go by Drez?

25 A. Yes.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Most of the time? Okay. Well, I'll try to -- I'll try
2 to keep that in mind. If I slip back in to Demetrius, I'll
3 -- I apologize.

4 A. Okay.

5 Q. Drez, where do you work?

6 A. I'm currently in school.

7 Q. Okay. Where do you live?

8 A. I stay in Taylors.

9 Q. And how long have you lived in Greenville?

10 A. All my life.

11 Q. Where did you go to school?

12 A. Wade Hampton High School.

13 Q. Now, where were you living in June of 2011?

14 A. Cunningham in Taylors. Cunningham in Taylors.

15 Q. Cunningham? Is that an apartment complex?

16 A. Yes, ma'am.

17 Q. Okay. Do you remember which apartment number you were
18 living in?

19 A. 23.

20 Q. Okay. Is that in a particular building?

21 A. It's the H building at the top.

22 Q. Now, do you remember whether you were at home on the
23 evening of June 2nd, 2011?

24 A. I can't remember.

25 Q. Okay.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. I think I was home.

2 Q. Well, how about this, and during the late morning hours
3 before -- immediately before you were shot, were you home?

4 A. Yes.

5 Q. Okay. Who was at your apartment with you?

6 A. Me, my two roommates, and my friend, Jaquan.

7 Q. Now, who were those people? You said ...

8 A. Tyrell Holland, ---

9 Q. Okay.

10 A. And Horrace.

11 Q. And who else?

12 A. And Jaquan.

13 Q. Okay. Now, are all three of those gentlemen your
14 roommates?

15 A. Two of them was.

16 Q. And who was -- who's not the roommate?

17 A. Jaquan.

18 Q. Okay. And what were y'all doing that night?

19 A. We was watching the NBA finals.

20 Q. Now, stopping right there and jumping out of line a
21 little bit, do you know De'Nia Dawkins?

22 A. I do.

23 Q. How do you know her?

24 A. We used to date.

25 Q. When did you date?

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

162

1 A. I think it was my eleventh grade to like twelfth grade,
2 yeah.

3 Q. How long did y'all date?

4 A. A year and one month.

5 Q. Just a year?

6 A. (Affirmative nod).

7 Q. Well, I thought we've heard all this talk about three
8 years?

9 A. (Negative nod).

10 Q. Okay. Why did y'all split up?

11 A. She went off to college. Long distance don't work.

12 Long distance relationships don't work.

13 Q. Was it -- was it an ugly break-up? Did y'all stay on
14 good terms?

15 A. It was on good terms. We still talked after we broke
16 up.

17 Q. Did you see her after you guys had split up as
18 boyfriend and girlfriend?

19 A. I seen her probably a couple of months later when she
20 came back to town.

21 Q. Okay. Now, how -- how often did you see her?

22 A. Not so often. I probably seen her like out at
23 downtown. But like her coming to my house, she only came to
24 the crib twice.

25 Q. Okay. Did you ever sell her any marijuana?

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

163

1 A. I didn't.

2 Q. How much would you sell her at a time?

3 A. Like nothing really 'cause she didn't smoke.

4 Q. Okay. Did you -- do you remember ever selling her any
5 particularly large quantities of marijuana?

6 A. I don't.

7 Q. Okay. Did she owe you any money for marijuana?

8 A. No.

9 Q. Did she owe you any money for anything else?

10 A. She owed me money for a ride.

11 Q. What does that mean?

12 A. She called me one day and asked for a ride to

13 Fleetwood. And she would give me gas money to take her up
14 there.

15 Q. And did that happen at some point?

16 A. Yeah, it happened at least two or three times.

17 Q. Okay. And how -- how long since you had given her
18 those rides before -- how long was it before this incident
19 happened?

20 A. Probably two months.

21 Q. Do you remember whether you spoke with De'Nia on the
22 night of June 2nd?

23 A. Yes.

24 Q. Who called who? Did you call her or did she call you?

25 A. She texted me.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

164

1 Q. Okay. And did you call her back as a -- after that,
2 you got that text?

3 A. Yeah. I think we continued texting ---

4 Q. Okay.

5 A. --- through that whole night.

6 Q. Well, what happened?

7 A. She text me. She was like, I got your money that I owe
8 you for the ride. And I was like, okay. And she said she
9 also had some friends she wanted to bring over. She asked
10 how many people was at the house. And I told her that it
11 was me and my two roommates and my friend guy.

12 Q. Did at some point she indicate to you that she was
13 planning on coming over?

14 A. Yes, she did.

15 Q. Do you remember when she got there?

16 A. I do.

17 Q. About -- do you remember about what time she got there?

18 A. It was probably around like midnight.

19 Q. Okay. Was anybody with her?

20 A. Yes.

21 Q. Do you know who was with her?

22 A. I didn't know the girl, but ---

23 Q. What did she look like?

24 A. Probably five foot, light skin, skinny, brown skin
25 lady.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

165

1 Q. Okay. Do you know anything -- do you know her name?

2 Do you know anything about her?

3 A. No.

4 Q. Okay. Had you ever seen her before that night?

5 A. No, ma'am.

6 Q. Okay. Well, what happened when De'Nia and her friend
7 got there?

8 A. She got there, she walked in the house, her and her
9 friend. They all spoke to my roommates. Me and her walked
10 to the back of my room, sat on my bed. She gave me a hug,
11 kissed me. And she was like, I have your money outside in
12 the car. It's a hundred dollar bill, but I need change.

13 So I put my shoes on. We walked out. Well, she
14 already had left out of my room while I was putting my shoes
15 on. So by the time I got to my living room she was already
16 at the door. And once I opened the door, three dudes come
17 in.

18 Q. Okay. Now let me -- let me stop you right there and
19 show you some pictures. I'm going to show you State's
20 exhibit 6. Do you recognize that picture?

21 A. I do.

22 Q. What is in -- what's pictured in that picture?

23 A. That's my old apartment.

24 Q. Is ---

25 A. Cunningham.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

166

1 Q. Is that an accurate depiction of what your apartment --
2 that area outside your apartment looked like in June of
3 2011?

4 A. Yes, ma'am.

5 Q. I want you to take a look also at State's exhibit 7.
6 Does that look familiar to you?

7 A. Yes, ma'am.

8 Q. What is that picture?

9 A. That's the downstairs of my building that I stayed in.

10 Q. And is it also an accurate depiction of what those
11 stairs and that area of your building looked like in June of
12 2011?

13 A. Yes, ma'am.

14 Q. Okay. And one more. I want you to take a look at
15 State's exhibit number 8. Do you recognize that picture?

16 A. Yes, ma'am.

17 Q. And I realize there's some cars parked in front of
18 there, but other than that do you know what that is?

19 A. It's the outside of my building.

20 Q. And while those cars may not have been the same cars
21 that were there on June 2nd or June 3rd, 2011, aside from
22 that, is that building -- is that picture of your building a
23 fair and accurate picture of what your apartment building
24 looked like?

25 A. Yes, ma'am.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

167

1 MS. SALISBURY: Your Honor, at this time I'd move in
2 State's exhibits 6, 7 and 8.

3 THE COURT: Any objection?

4 MR. IANUARIO: No objection, Your Honor.

5 MS. GORTON: I haven't seen them.

6 (Whereupon Ms. Salisbury showed State's exhibits 6, 7
7 and 8 to Ms. Gorton)

8 MS. GORTON: No objection.

9 THE COURT: All right. Without objection, exhibits 6,
10 7 and 8 are admitted into evidence and may be published to
11 the jury.

12 (Whereupon State's exhibits 6, 7 and 8 were admitted
13 into evidence)

14 Q. Now let's pick up with your story where we left off.
15 You mentioned that as you were putting your shoes on, you
16 came to the door and do you remember whether you opened the
17 door to go outside or did De'Nia open the door to go
18 outside?

19 A. I opened the door.

20 Q. Okay. And what did you see?

21 A. Three males coming out from the side of my door
22 entering my room, I meant, my house.

23 Q. What did they look like?

24 A. Black shirts over their face, guns in they hand, that's
25 about it.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

168

1 Q. Did all three of them have a gun?

2 A. Yes, ma'am.

3 Q. Could you tell whether all three were black, white,
4 Hispanic?

5 A. They were all black.

6 Q. They were all black, okay. Now you said that their
7 faces were covered. How were you able to tell what race
8 they were?

9 A. Skin. They had like wife-beaters on. So they skin was
10 showing.

11 Q. Okay. Now do you remember anything specific about each
12 one? Let's take them one at a time.

13 A. I remember one was a skinny male, dark skin. One was
14 another dark skinned male. He had, I think, dreadlocks or
15 some kind of hair.

16 Q. Was it long? Were they short braids?

17 A. It was short, but you could still see 'em through the
18 shirt. And the other male I really don't remember 'cause he
19 left out right when it started happening.

20 Q. Do you remember -- and I know you just said this. Do
21 you remember whether each of those men had handguns?

22 A. I do.

23 Q. Okay. Well, once you open your door and you see these
24 three masked men there with guns, what happened?

25 A. I'm shocked.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

169

1 Q. Well, ---

2 A. I mean, I think it's my friend guy playing, but like
3 once I see the guns, I start to grab one.

4 Q. Do you remember whose gun you grabbed? Did you grab
5 the gun or did you grab his arm ---

6 A. I grabbed his arm.

7 Q. Okay.

8 A. It was the dude with the hair. Yeah, I grabbed his
9 arm. And we started scuffling. I think I popped his clip
10 out. And, you know, popped his clip out. Like we got on
11 the ground. And he kept telling the other dude to shoot me.
12 Like, shoot him, shoot him. And then I think the dude
13 hesitated, but then he shot me twice.

14 Q. Where did he -- where did the other guy shoot you?

15 A. Right side of my leg and the left side of my leg.

16 Q. Of the same leg?

17 A. Of a different leg.

18 Q. So ---

19 A. On one side on my left side. One side on my right
20 side.

21 Q. All right. Are those bullets still in your legs?

22 A. On my right leg, that one's still inside.

23 Q. Do you remember how many shots you heard?

24 A. Two.

25 Q. What happened after they shot you?

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. I laid there, blacked out.

2 Q. Did you -- did you follow them?

3 A. No.

4 Q. Did you see what kind of car they got into?

5 A. No.

6 Q. Well, you mentioned you were at home with some people
7 that night. Where were they?

8 A. In the back room.

9 Q. Did you -- do you remember whether they came to your
10 aid or what -- what happened after -- after you're shot and
11 you're laying in the floor?

12 A. Like most everything is dying, over with and they leave
13 my apartment. I know I get up and I get consciousness
14 again. Get up and walk to the back room, knock on their
15 door and tell them I need to go to the hospital.

16 Q. So what happened? Did y'all call the ambulance?

17 A. No. They took me ---

18 Q. Why not?

19 A. I'm trying to get to the hospital. I don't -- I didn't
20 even wait for the ambulance.

21 Q. So what happened next? You told them that you needed
22 to go to the hospital and what did they do?

23 A. They get they stuff on and help me downstairs.

24 Q. Did y'all make it to the hospital?

25 A. We didn't even make it out of the complex.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

171

1 Q. Okay. What happened?

2 A. The police stopped us.

3 Q. Okay.

4 A. Told us to stop. I think they told them to get out the
5 car. And they seen that I was shot. And he called the
6 ambulance for me.

7 (Whereupon State's exhibits 9, 10 and 11 were marked
8 for identification)

9 Q. Now, Demetrius, I'm going to show you some pictures,
10 State's exhibits 9, 10 and 11. I'm going to ask you to take
11 a look at -- you to take a look at those pictures. Do you
12 recognize what's depicted in those photographs?

13 A. Yes, ma'am.

14 Q. What are those photographs?

15 A. When I was in the emergency room. When I had already
16 been shot.

17 Q. So are those pictures of you?

18 A. Yes, ma'am.

19 Q. Are those accurate pictures of how your injuries
20 appeared that night?

21 A. Yes, ma'am.

22 MS. SALISBURY: Your Honor, at this time I'd offer
23 State's exhibits 9, 10 and 11 in evidence.

24 THE COURT: Any objections?

25 MR. IANUARIO: No objections, Your Honor.

DEMETRIUS BENSON - DIRECT EXAMINATION BY MS. SALISBURY

172

1 MS. GORTON: No.

2 THE COURT: Without objection, exhibits 9 through 11
3 are admitted into evidence and may be published to the jury.
4 (Whereupon State's exhibits 9, 10 and 11 were admitted
5 into evidence)

6 Q. Now of the -- of the five people that were in your
7 apartment that night, did you know anybody other than
8 De'Nia?

9 A. No, ma'am.

10 Q. Have you spoken to De'Nia since this incident happened?

11 A. No, ma'am.

12 Q. Did you ever confront her about what happened?

13 A. I did. Probably -- well, when we got stopped leaving
14 out of the complex, the officer stopped us, I called her
15 right then.

16 Q. Okay. What did you say when you called her right then?

17 A. I said, what happened? You set me up? And she was
18 like, no, I didn't set you up. I said, well, you got to
19 deal with it now.

20 Q. What do you think -- what do you think happened that
21 night? Do you think that she set you up?

22 A. I think she did set me up 'cause she -- she -- I think
23 she asked me like two or three times how many people I had
24 over there. Like she was bringing more than one girl, but
25 she only brought one girl.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 Q. Okay. All right. Thank you. If you would, answer any
2 questions these attorneys may have for you, sir.

3 THE COURT: You may cross examine the witness.

4 Cross Examination by Ms. Gorton:

5 Q. Did she tell you she was bringing a girlfriend over?

6 A. Yes.

7 Q. Did she check with you and make sure that was okay?

8 A. Yes.

9 Q. Okay. Now, if she had known about this robbery she
10 wouldn't need a girlfriend with her, would she?

11 A. I don't know.

12 Q. I'm going to ask you to clarify some things. These
13 aren't huge points. And I understand that this was a really
14 big deal. But you gave a statement on this, didn't you?

15 You actually gave three statements. The night in the
16 hospital you spoke with the forensics guy, Hamilton, first,
17 correct?

18 A. I think so. I'm not sure.

19 Q. Did you talk to two law enforcement the night you were
20 in the hospital?

21 A. I talked to one. I think so.

22 Q. Is it possible you talked to two?

23 A. I really only remember seeing one.

24 Q. All right. When you -- the conversation that you
25 remember having with the one, what do you remember saying?

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 A. I really don't remember. That was like almost a year
2 ago.

3 Q. Okay. Would you disagree if I told you that when you
4 spoke with Officer Hamilton there's no mention in his report
5 about you thinking that De'Nia set you up?

6 MS. SALISBURY: Objection, Your Honor.

7 THE COURT: What's your objection?

8 MS. SALISBURY: The report prepared by Forensics
9 Officer Hamilton is obviously not a statement that this
10 defendant was given an opportunity to review or evaluate for
11 its accuracy.

12 THE COURT: Okay. If you would, give him a copy of the
13 statement.

14 MS. GORTON: Sure.

15 MS. SALISBURY: Your Honor, I believe even after
16 reviewing this officer's report I'd still have the same
17 objection. This isn't a statement that the victim gave to
18 this officer. The officer's recitation of what he believed
19 the incident ---

20 THE COURT: Okay. I thought you said he gave a
21 statement. Is it an oral statement?

22 MS. GORTON: It's an oral statement.

23 THE COURT: All right. Then you can just ask him. I
24 think he said what he didn't -- what he remembered and what
25 he didn't remember.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 MS. GORTON: Well, let me rephrase.

2 THE COURT: All right.

3 Q. When you spoke with the officer that you remember
4 speaking with at the hospital did you forget to mention that
5 you thought De'Nia was involved in this?

6 A. Maybe at the hospital, but when leaving out the complex
7 the officer that I talked to at the hospital was the same
8 one I talked to in the complex. And I told him then that I
9 thought I was set up.

10 Q. Now is it possible that De'Nia called you?

11 A. No, ma'am.

12 Q. Right after that happened?

13 A. No, ma'am.

14 Q. So if there's cell phone records available that show
15 that she called you, would there be any other reason why she
16 would call you shortly after that occurred?

17 A. No.

18 Q. Did you call her in the presence of the officer?

19 A. Yes.

20 Q. Did she sound upset when you talked to her?

21 A. A little, but ...

22 Q. Was she saying, no, no, I didn't know?

23 A. Yes.

24 Q. You said you had sold her weed before. Did I
25 understand that right?

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 A. No.

2 Q. No?

3 A. No.

4 Q. Have you sold weed before?

5 A. No, ma'am.

6 Q. No?

7 A. No, ma'am.

8 Q. Did you keep weed in the center console of your car?

9 A. I did.

10 Q. Did you also keep a digital scale in the center console
11 of your car?

12 A. No, ma'am.

13 Q. Did you keep crack cocaine in the center console of
14 your car?

15 A. I had crack cocaine.

16 Q. Did you keep a pistol in your car?

17 A. No, ma'am.

18 Q. Did you have a pistol in the apartment?

19 A. No, ma'am.

20 Q. You did not?

21 A. No, ma'am.

22 Q. When you said that you had last seen her about two
23 months prior, could it have been one month prior?

24 A. Yes.

25 Q. All right. And did she text you -- I'm going back to

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 the night. And I'm sorry to jump around. The night this
2 all happened, did she initially text you from work?

3 A. I don't know where she was at.

4 Q. Was it much earlier in the night? This all happened
5 around midnight.

6 A. It was maybe around nine.

7 Q. Around nine?

8 A. That she started texting me.

9 Q. And you know that -- you all were close enough, you
10 knew she worked, right?

11 A. Yes, I did.

12 Q. And you knew where she worked?

13 A. Yes.

14 Q. Where did she work?

15 A. I forget the name, but I know where it was at.

16 Q. Is it an Italian restaurant over off of Pelham Road?

17 A. No, that was not it.

18 Q. It wasn't? Where was it?

19 A. It was on -- it was off of Pleasantburg, I think the --
20 she say she help kids after school.

21 Q. Are you talking about her prior job or the job she had
22 at the time this incident occurred?

23 A. Um-hum (affirmative).

24 Q. Which one?

25 A. The one that happened when the incident occurred.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 Q. Now you also said that you only dated her for a year.

2 Do you know her father?

3 A. I do.

4 Q. Mike Hutchins?

5 A. (Affirmative nod).

6 Q. Do you also know Chastity Adams and Kaylie Adams,
7 Kaylin Adams?

8 A. I don't know. I need to see their face.

9 Q. Do you recall going over to a house on numerous
10 occasions throughout her high school and first year of
11 college at 6 -- over in Mauldin?

12 A. What house?

13 Q. Now you do know Chastity and Kaylie -- Kaylin Adams,
14 don't you?

15 A. Chastity ---

16 Q. Chastity and Kaylin Adams.

17 A. I got -- I have to see their faces. That's what I'm
18 saying. I ain't -- any of her friends, I haven't seen in
19 over a year.

20 Q. Did you recently have a phone conversation with
21 Chastity Adams?

22 A. I did.

23 Q. So you do know who I'm talking about?

24 A. I know I had a conversation with one of her friends.

25 Q. You do know who I'm talking about, you just don't

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 recall what they look like?

2 A. I know that I talked to one of her friends, but I don't
3 know which one was it.

4 Q. Okay. The same friend that you just recently spoke
5 with. Was that recently?

6 A. Um-hum (affirmative).

7 Q. The same friend that you recently spoke with, is that
8 the same one that you visited De'Nia at their home
9 throughout her last two years of high school and her first
10 year of college?

11 A. I don't know because I don't remember her name. When
12 she called, I don't even think she stated her name.

13 Q. Well, did you go over and visit her friends at a time
14 when you weren't dating?

15 A. No, ma'am.

16 Q. But your recollection is that you only dated for one
17 year?

18 A. And one month.

19 Q. Was she in her last two years of high school when you
20 started dating? What do you recall the time-frame ---

21 A. She -- she was in her last years of -- last year of
22 high school, like first month or two of college.

23 Q. You don't recall her junior year?

24 A. No.

25 Q. But you never socialized with her in the beginning

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 other than dating? How long did y'all socialize before you
2 started dating? Let me ask it that way.

3 A. Maybe a month.

4 Q. Okay. So basically any amount of time that her friends
5 had you around, you were dating during that, minus a month,
6 is that right?

7 A. Yes.

8 Q. Okay. What's your favorite color?

9 A. Red.

10 Q. At the time of this incident, over on Cunningham, did
11 you have three red bandanas above your bed?

12 A. No.

13 Q. No?

14 A. Uh-uh (negative).

15 Q. You seem pretty sure of that.

16 A. Yeah.

17 Q. Did you have a red bandana on your mirror?

18 A. Maybe.

19 Q. Was it on the left side?

20 A. Yes, maybe so.

21 Q. Did you and De'Nia have a conversation when you broke
22 up about you being a Blood?

23 A. No, we didn't.

24 Q. You don't recall that?

25 A. No.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 Q. Do you recall having a conversation, you and De'Nia,
2 about smoking marijuana?

3 A. No, because I didn't know De'Nia smoked marijuana.

4 Q. Did you ever ask her to smoke marijuana with you?

5 A. I mean, I asked her had she tried it, but never with
6 me.

7 Q. How many times do you think you asked her about whether
8 she'd try it or whether she was willing to try it? More
9 than once?

10 A. Once.

11 Q. You think it was only once?

12 A. Yes.

13 Q. And when she contacted you this night didn't she
14 indicate to you that she was willing to smoke with you?

15 A. No, she didn't.

16 Q. So if people say that they were going over to your
17 house to get a twenty dollar bag of weed, is that correct?

18 A. No, it's not.

19 Q. Did you have a jar of weed sitting on your dresser?

20 A. No, I didn't.

21 Q. You had it out in your car, but not on your dresser?

22 A. Yes.

23 Q. And you had weed out in your car that night?

24 A. Yes.

25 Q. Did you have a bag of weed, a twenty dollar bag of weed

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 sitting on your dresser?

2 A. No, I didn't.

3 Q. Now, we were talking about the statement that you gave
4 to the law enforcement officer. You're not sure who he was.
5 You said it was the same one that stopped you in the parking
6 lot. Now, speaking of stopping you in the parking lot, did
7 you or any of your friends call 911?

8 A. No, we didn't.

9 Q. Why not?

10 A. Because I was trying to get to the hospital.

11 Q. When you were trying to get to the hospital, it was two
12 of your friends, but Mr. Boyd stayed behind, correct?

13 A. Yes.

14 Q. Was Mr. Boyd out on bond for anything at that time?

15 MS. SALISBURY: Objection.

16 THE COURT: I sustain the objection.

17 Q. You said when you wrestled with the gunman that the
18 clip fell out?

19 A. Yes.

20 Q. Did you pick up the clip?

21 A. I didn't.

22 Q. Did you see any of your roommates pick up the clip?

23 A. I didn't.

24 Q. Did y'all -- how long did y'all -- now, just to be
25 clear because one of your roommates, I believe Mr. Tobin,

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 said that after all the shooting was done they came out and
2 you were laying on the ground in the livingroom. That's not
3 true, is it?

4 A. I ---

5 Q. You got up on your own ---

6 A. I got up.

7 Q. You got up on your own?

8 A. Um-hum (affirmative).

9 Q. And you walked back to the bedroom, right?

10 A. Yes, to my roommate's bedroom.

11 Q. To go get them and tell them it was okay, they could
12 come out and you needed to go to the hospital, correct?

13 A. Yes.

14 Q. All right. Now, -- hang on just a moment.

15 (Pause)

16 Q. One of the detectives, I believe Detective Hoover, said
17 he kept trying to get a hold of you and he couldn't get a
18 hold of you. Now, your roommates came in for a statement on
19 6/6. This all happened, let's see if you agree, June 2nd,
20 June 3rd, sometime after midnight, a Thursday night, Friday
21 morning. Would you agree with that?

22 A. That they did a statement?

23 Q. Let me ask you first. Do you recall that this happened
24 the night of June 2nd or the early morning of June 3rd,
25 depending on how close to midnight we are, ---

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 A. The early morning.

2 Q. --- which was a Thursday night/Friday morning. Would
3 you ---

4 A. The early morning ---

5 Q. --- agree?

6 A. --- of June 3rd.

7 Q. Huh?

8 A. Early morning of June 3rd.

9 Q. Okay. Now, your roommates went in and gave a statement
10 on June 6th, ---

11 A. Um-hum (affirmative).

12 Q. --- but you didn't go with them?

13 A. No, I didn't.

14 Q. And do you recall that the detective was repeatedly
15 calling you to come in for a statement?

16 A. The detective had the wrong number. He only had my
17 roommate's number.

18 Q. What is your number? What was your number then?

19 A. 346-8719.

20 Q. That was your number at the time?

21 A. Yes.

22 Q. And, I'm sorry, did you say you did sell weed or that
23 you did not?

24 A. Didn't.

25 Q. Where were you working at that time?

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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- 1 A. I was in school.
- 2 Q. Were you working at all?
- 3 A. No, ma'am. I was getting a check every three months
- 4 from school.
- 5 Q. What school was that?
- 6 A. Brown Mackie College.
- 7 Q. What were you majoring in?
- 8 A. Business management.
- 9 Q. And you lived on your own with your two roommates at
- 10 that time?
- 11 A. Yes.
- 12 Q. How much were you getting every three months?
- 13 A. At least a thousand.
- 14 Q. And that was for tuition as well?
- 15 A. No, that was refund. That was a refund check.
- 16 Q. Now, we've already covered that in the weeks prior to
- 17 this incident you and De'Nia were hanging out again, you'd
- 18 broken up. How much prior to that had you broken up?
- 19 A. A year or two. I'm not sure.
- 20 Q. You broke up when she was in college, right?
- 21 A. Yes.
- 22 Q. And she was in her second year of college when this
- 23 occurred, correct?
- 24 A. Yes.
- 25 Q. So about a year?

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 A. Um-hum (affirmative).

2 Q. All right. And you had actually given her a ride to
3 Fleetwood, is that correct?

4 A. Yes.

5 Q. And have you since learned that Fleetwood is where a
6 large part of these gang members live?

7 A. Yes.

8 Q. Did you know that at the time?

9 A. I didn't.

10 Q. Now, you charged her twenty-five dollars to take her
11 from your place in Taylors over to Fleetwood?

12 A. No. I charged her twenty-five dollars to leave my
13 place in Taylors, go to the Greer/Pelham exit and go to
14 Fleetwood.

15 Q. All right. And you don't recall her paying you that
16 same day?

17 A. No.

18 Q. It's your testimony today, here, that she wasn't coming
19 to buy weed, she was coming to pay you back?

20 A. Yes.

21 Q. Was she coming to pay you twenty dollars or twenty-five
22 dollars?

23 A. She was coming to give me twenty dollars.

24 Q. Why twenty? You just said twenty-five for the ride.

25 A. That's what she said she had.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 Q. She was coming to pay you back for a ride, not to
2 smoke, but she was bringing a friend with her?

3 A. Yes. She was also coming to hang out.

4 Q. Also coming to hang out.

5 A. Yes.

6 Q. But not to smoke?

7 A. No.

8 Q. And you're clear that there was no jar or bag of
9 marijuana sitting on your dresser?

10 A. Yes, ma'am.

11 Q. How did you come to decide that Boyd was going to be
12 the one to stay behind in the apartment?

13 A. I didn't decide. He just ---

14 Q. He didn't live there, did he?

15 A. He didn't.

16 Q. But he stayed behind?

17 A. Yes.

18 Q. Do you recall -- I'm sorry.

19 MS. GORTON: May I approach?

20 THE COURT: You may.

21 Q. I hate to put you on the spot like this, but it's going
22 to be easier for everyone to understand what happened that
23 night if you can draw us a diagram of your apartment.

24 A. I'm really not a good drawer.

25 Q. Nobody's going to expect perfection or architectural.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 MS. GORTON: So could I have him step down?

2 THE COURT: He can just draw right there.

3 MS. GORTON: Okay.

4 A. Draw what now?

5 Q. The diagram of your apartment. Where you come in,
6 where the livingroom is, where the sofas were. I believe
7 there's a hallway for your roommates' rooms and the door to
8 your room.

9 (Pause)

10 Q. You can use another sheet if you want to.

11 A. That's all right.

12 (Pause)

13 Q. Okay. Looking at this diagram can you show me where
14 the front door is? How do you come in? Right here?

15 A. Yes, ma'am.

16 Q. Okay. And is this your room straight ahead?

17 A. It leads to all three rooms.

18 Q. Okay. Does your room open in to this main
19 livingroom/foyer area, the door to your bedroom?

20 A. It don't.

21 Q. How do you get to the door to your bedroom? And,
22 again, I'm talking about over at Cunningham.

23 A. Keep straight down this hallway. You will ---

24 MADAME COURT REPORTER: I need you to speak ---

25 THE COURT: You're ---

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 MADAME COURT REPORTER: --- speak into the microphone.

2 THE COURT: You're going to have to speak into the

3 mike. I know she's holding it over there, but ---

4 A. If you walk straight down through the hallway, you will
5 take a left into my room.

6 Q. A left this way?

7 A. Yeah.

8 Q. Okay. Is -- when you call this a hallway, are the
9 walls solid, or are they half walls, or is it just kind of
10 like a tiled hallway where you can see in?

11 A. Like right after the door, it's a kitchen. And then
12 after the kitchen the walls are solid.

13 Q. So right here is the kitchen?

14 A. On the right side.

15 Q. Over here?

16 A. Yeah.

17 Q. Okay. So over here is the kitchen. And this is a
18 solid wall?

19 A. No. That's -- this is just a walkway.

20 Q. Okay.

21 A. It's -- yeah, a walkway.

22 Q. So there's a solid wall here between the kitchen and
23 the hallway?

24 A. No.

25 Q. Oh, I'm sorry.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 A. Can you bring it over some?

2 Q. Yeah.

3 A. Right here is like the kitchen, ---

4 Q. Okay.

5 A. --- an open floor kitchen. This is just a walkway. I
6 was just making a walkway to show you how to get to my room.

7 Q. Okay. And your walkway is here. It's not a walled
8 hallway?

9 A. No.

10 Q. Over here with your roommates' rooms, are they over
11 here sort of?

12 A. Yeah.

13 Q. Is there a hallway down to their room?

14 A. It's the same hallway.

15 Q. The same hallway ---

16 A. It leads from my room to their room.

17 Q. Does it become walled at this point?

18 A. What do you mean?

19 Q. When you talk about a hallway to their room, is it just
20 like a walkway or is it a hallway with walls?

21 A. It's a hallway with walls.

22 Q. But to your room there's not a hallway with walls?

23 A. We're in the same hallway. The hallway has walls. And
24 once you get beyond the walls, it's the three bedrooms.

25 Q. Do you -- have you ever been shown any photos that

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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- 1 maybe they took of the inside of your home?
- 2 A. No, ma'am.
- 3 Q. Okay. What is this?
- 4 A. A couch.
- 5 Q. All right. Who was sitting on this couch?
- 6 A. Jaquan and Horrace.
- 7 Q. Was one of them maybe sitting on the floor in front of
- 8 the couch?
- 9 A. I'm not sure.
- 10 Q. All right. And what is this?
- 11 A. It's a couch.
- 12 Q. All right. And who was sitting on this couch?
- 13 A. I think Envy.
- 14 Q. Envy. All right. And was it -- there like a game over
- 15 here?
- 16 A. Yes.
- 17 Q. Was Jaquan and Tobin -- were your two friends playing
- 18 video games and Envy was over here?
- 19 A. I guess they were playing games. I don't know.
- 20 Q. Did it look like they were?
- 21 A. I think they were watching TV.
- 22 Q. Okay. And you and De'Nia came in here, correct?
- 23 A. Yes.
- 24 Q. And you said that when you got to the door -- I need
- 25 some clarification there. Were you both at the door

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

192

1 together?

2 A. No, ma'am.

3 Q. Where were you?

4 A. Leaving out of my room.

5 Q. And De'Nia was here?

6 A. Yes. By the time I got to the beginning of the hallway
7 she was already at the door.

8 Q. Okay. When you actually opened the door where -- when
9 the door was actually opened where were you?

10 A. I was at the door.

11 Q. When the door actually opened?

12 A. When I opened the door.

13 Q. Was she still there as well?

14 A. No, she was like almost down the steps.

15 Q. When you opened the door and the guy came in where was
16 Envy?

17 A. Gone.

18 Q. She was already gone?

19 A. Yeah.

20 Q. Had you seen her leave?

21 A. No.

22 Q. I asked you about going in and giving a statement and
23 you said that your number had been changed. Is that the
24 reason you didn't go in and give a statement?

25 A. No. I said that Hoover was trying to get in touch with

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 me and had the wrong number.

2 Q. Had your ---

3 A. I think he had ---

4 Q. --- number been changed or did he ---

5 A. No. I think he had like one number different. Like
6 for the 3, I think he had an 8. And he was calling 846-
7 8719.

8 Q. And so when you went into the Law Enforcement Center
9 and you did give a statement, your original intent, was that
10 to get a report to give to your landlord?

11 A. No. I mean, I went in there to talk to them, but I was
12 also getting a report. I wanted to do it at the same time
13 because I was barely walking.

14 Q. What -- why did you need an original report for your
15 landlord?

16 A. So we wouldn't get evicted.

17 Q. Why were you in danger of getting evicted?

18 A. 'Cause people came to my house and shot me. I have
19 neighbors downstairs that could have been shot.

20 Q. So have you been cooperating with the prosecution of
21 this case?

22 A. Yes.

23 Q. Did you make a phone call offering not to come to court
24 in exchange for five thousand dollars?

25 A. Yes.

DEMETRIUS BENSON - CROSS EXAMINATION BY MS. GORTON

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1 Q. Who did you make that call to?

2 A. Well, they called me.

3 Q. They called you? Did you send word for that

4 conversation? Did you send out word -- was the -- the call

5 that they made, was that in response to word that you'd sent

6 out?

7 A. No. They called me and they was like, what can we do

8 for you to drop the charges? I was like, well, I can't drop

9 the charges, but give me five thousand dollars, I won't show

10 up. But ---

11 Q. Did you ---

12 A. --- I had to show up because it says commanded on my

13 paper.

14 Q. So you were just going to take the five thousand?

15 A. For restitution.

16 Q. For restitution.

17 A. Yes, for being shot, hospital and all my pain and

18 suffering I went through.

19 Q. Now, you've been working with the State so that you

20 know that the restitution you get is through paperwork,

21 correct?

22 A. No, I didn't.

23 Q. You didn't know that? You thought it was up to you to

24 offer to not show up for court for five thousand dollars?

25 You thought that was the only way you were going to get

DEMETRIUS BENSON - CROSS EXAMINATION BY MR. IANUARIO

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1 restitution?

2 A. Yes.

3 Q. You thought that's the way it worked?

4 A. No, but I tried it.

5 Q. Did that work?

6 A. I guess not.

7 THE COURT: Mr. Ianuario, any questions?

8 MR. IANUARIO: Just a couple of short ...

9 Cross Examination by Mr. IANUARIO:

10 Q. After you were shot did you see the gunmen leave?

11 A. I like blacked out. I know he took my laptop 'cause
12 that was gone and my wallet was gone too. So ...

13 Q. Okay. And how much money was in your wallet?

14 A. I'm not sure.

15 Q. Ballpark it.

16 A. I don't know.

17 Q. After the gunmen left did you look around in your
18 apartment to see if anything else was missing?

19 A. No.

20 Q. Did you notice anything unusual after you'd been shot?

21 A. I really was just trying to get to the hospital.

22 Q. Did you happen to see the magazine that you ejected
23 laying on the floor?

24 A. No.

25 Q. But you didn't look for it either?

DEMETRIUS BENSON - CROSS EXAMINATION BY MR. IANUARIO

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1 A. No.

2 Q. You said Investigator Hoover had the wrong number for
3 you, that's why he couldn't get in touch?

4 A. He had one number that was different.

5 Q. I believe earlier you said he had the number for your
6 roommates, is that correct?

7 A. Yes.

8 Q. Did he try to get in touch with you through your
9 roommate at all?

10 A. He did.

11 Q. Did your roommate relay that message to you?

12 A. He did.

13 Q. And why did you not get in touch with Mr. Hoover?

14 A. Because I could barely walk. I mean, I had ---

15 Q. Do you need to be able to walk to pick up the phone and
16 call him?

17 A. I needed -- I needed to walk to be able to get to his
18 office to give a statement.

19 Q. But you couldn't return his phone calls because you
20 couldn't walk?

21 A. I mean, I returned his phone calls. It's just when I
22 called him, the answering machine picked up. So it was like
23 ---

24 Q. And did ---

25 A. --- we were playing phone tag.

DEMETRIUS BENSON - REDIRECT EXAMINATION BY MS. SALISBURY

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1 Q. --- you leave your correct number for him?

2 A. I'm not sure.

3 Q. Investigator Hoover, this is Demetrius Benson. You've
4 been trying to get me at the wrong number. This is my
5 correct number. You didn't do that?

6 A. I'm not sure.

7 Q. When did you finally sit down with Investigator Hoover
8 and talk with him?

9 A. I'm not sure.

10 Q. Was it the same day that you showed up to get an
11 incident report at the police station?

12 A. It is.

13 Q. Did you show up at the police station to get an
14 incident report or to talk to Investigator Hoover?

15 A. I did -- I went to do both, kill two birds with one
16 stone.

17 Q. Did you ask to see Mr. Hoover? Or ---

18 A. I did.

19 Q. --- were you taken to see Mr. Hoover?

20 A. I asked to see Mr. Hoover, but he wasn't there. So I
21 talked to another investigator til he got there.

22 Q. Okay.

23 MR. IANUARIO: Nothing further, Your Honor.

24 THE COURT: Anything in redirect?

25 MS. SALISBURY: Very, very briefly, Your Honor.

DEMETRIUS BENSON - REDIRECT EXAMINATION BY MS. SALISBURY

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1 Redirect Examination by Ms. Salisbury:

2 Q. Demetrius, are you a gang member?

3 A. No, ma'am.

4 Q. Have you ever been a gang member?

5 A. No, ma'am.

6 Q. Do you know any of the people that came into your
7 house, forced their way in, other than De'Nia, and shot you
8 that night?

9 A. I do not.

10 Q. Do you remember what they were asking you for that
11 night?

12 A. Money.

13 Q. Have you -- have you cooperated with police by giving
14 them statements every time anybody's asked you for one?

15 A. Uh -- I'm ...

16 Q. Well, anytime you've sat down with the investigators
17 and they've asked you to give me a statement -- asked you to
18 give a statement, have you done it?

19 A. Only once I think I sat down and gave a statement.

20 Q. Okay.

21 MS. SALISBURY: Your Honor, I don't have any other
22 questions.

23 THE COURT: All right. Thank you, sir. You may step
24 down.

25 MR. IANUARIO: Well, Your Honor, if I may recross

DEMETRIUS BENSON - RECROSS EXAMINATION BY MR. IANUARIO

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1 really quickly.

2 THE COURT: All right. Just a minute. Very briefly on
3 the redirect?

4 MR. IANUARIO: Yes.

5 THE COURT: All right. You can have -- just have a
6 seat just a minute. You can have a brief follow-up question
7 on that.

8 Recross Examination by Mr. IANUARIO:

9 Q. Did you admit earlier that you were selling pot?

10 A. No.

11 THE COURT: Wait a minute. Did that have anything to
12 do with ---

13 MR. IANUARIO: Relating back to gang activity, Your
14 Honor.

15 THE COURT: Well, that question doesn't relate to the
16 redirect.

17 MR. IANUARIO: Your Honor, I'd like to establish that
18 earlier he stated he had marijuana and a digital scale in
19 his car, yet he says he's not drug dealing. Now he's also
20 saying he's not a member of a gang, yet he has marijuana and
21 a digital scale in his car. If he's lying about one thing,
22 ---

23 THE COURT: Well, I will overrule your objection. I
24 don't think that ties in. I overrule your objection as
25 stated.

DEMETRIUS BENSON - RECROSS EXAMINATION BY MS. GORTON

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1 MR. IANUARIO: Nothing further, Your Honor.

2 MS. GORTON: Recross on redirect, Your Honor.

3 THE COURT: Yes, ma'am, briefly.

4 MS. GORTON: Thank you, Your Honor.

5 Recross Examination by Ms. Gorton:

6 Q. The Solicitor just asked you about what they asked for.

7 And that was money?

8 A. Um-hum (affirmative).

9 Q. Did they get any money?

10 A. I'm not sure because, I mean, they got my wallet.

11 So ...

12 Q. They got your wallet. What was in your wallet?

13 A. My ID and I'm not sure what else.

14 Q. Do you have a general idea of how much was in your

15 wallet? I mean, we generally know if we carry around five

16 or ten dollars or a couple of hundred.

17 A. (Negative nod).

18 Q. You don't know?

19 A. I don't know 'cause I didn't have it on.

20 Q. They also took something else, didn't they?

21 A. Yes.

22 Q. What else did they take?

23 A. My laptop.

24 Q. Can you describe that laptop?

25 A. It was maybe blue, Toshiba ---

DEMETRIUS BENSON - RECROSS EXAMINATION BY MS. GORTON

201

1 Q. Toshiba?

2 A. Toshiba. Yeah, Toshiba.

3 Q. All right. And did you ever get that back?

4 A. I didn't.

5 Q. All right. Thank you.

6 THE COURT: All right. Thank you, sir. You may step
7 down. Madame Forelady, ladies and gentlemen, this might be
8 a good time to take a short break. If you'll go back to
9 your jury room.

10 I'll remind you each time, don't discuss the case.
11 That would be improper. Just leave whatever notepad's in
12 your -- with the bailiff. We'll take a short break.

13 (Whereupon the jury exited the courtroom at 10:43 am)

14 (Whereupon court was in recess at 10:43 am)

15 (Whereupon court resumed at 11:24 am)

16 THE COURT: Everybody ready to proceed?

17 MS. SALISBURY: Yes, Your Honor.

18 MR. IANUARIO: Yes, Your Honor.

19 MS. GORTON: Yes, Your Honor.

20 THE COURT: Okay. If the jury's ready, you can have
21 them come in, Ms. Sims.

22 (Whereupon the jury entered the courtroom at 11:26 am)

23 THE COURT: Solicitor, you may call your next witness.

24 MS. SALISBURY: Thank you, Your Honor. The State calls
25 Mr. Horrace Tobin. Mr. Tobin, if you would, please, come

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 around and be sworn.

2 MADAME CLERK: Sir, pause at the end of the bench.

3 Place your left hand on the Bible and raise your right hand.

4 Horrace Tobin, being duly
5 sworn testified as follows:

6 MADAME CLERK: Thank you. Please be seated. Please
7 state your full name for the record.

8 MR. TOBIN: Horrace Tobin.

9 Direct Examination by Ms. Salisbury:

10 Q. Mr. Tobin, where do you live?

11 A. Right now or ---

12 Q. Right now.

13 A. Hickory Ridge in Greenville.

14 Q. And how do you know Drez, Mr. Demetrius Benson?

15 A. Went to school with him.

16 Q. Did you ever live with him as his roommate?

17 A. Oh, yeah, yeah, yeah. We lived together after high
18 school.

19 Q. Okay. Were you living with him at that apartment in
20 Cunningham Villas that we've heard all about this morning?

21 A. Yes, ma'am.

22 Q. How long had y'all been living there?

23 A. Probably like four months now, I think about four
24 months, around there.

25 Q. Now, do you remember -- do you remember the night that

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 all this -- this incident happened when the people came into
2 your house and ---

3 A. Yeah, ---

4 Q. --- Drez was shot?

5 A. --- I remember most of it.

6 Q. Okay. Do you remember who was there with you?

7 A. Yes. My roommate Tyrell, he was in the room asleep,
8 and my friend Jaquan and Drez.

9 Q. Okay. And what were y'all doing at the apartment that
10 night?

11 A. Well, we was watching the NBA finals and then til that
12 went off. Then we was about to lay down.

13 Q. Do you know the Defendant, De'Nia Dawkins?

14 A. No, I don't know her.

15 Q. Okay. Do you remember whether she showed up that
16 night?

17 A. Yeah, she showed up 'cause I remember Drez, after the
18 game, said she was coming over.

19 Q. Okay. Had you ever met her before that night?

20 A. I think I probably seen her like once or twice,
21 probably like that.

22 Q. Okay. Did she come over with anybody else?

23 A. I meant, with her little home-girl.

24 Q. Okay. What did -- what happened when they came over?

25 A. They came over. And me and Jaquan was sitting in the

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 livingroom after watching this commercial after the game.

2 Her friend sat on the couch. She went in the room with

3 Drez. Then they came back out. I just remember him -- he

4 saying he needed to go outside or something for like change

5 for a hundred.

6 So after that I was sitting like on the couch over

7 right there by the bar. And then I know he went outside.

8 Then some three dudes came in.

9 Q. Well, before we get to that part, do you remember how

10 long the two girls were in the apartment?

11 A. Probably for like a few minutes, but not long though.

12 Q. Not long?

13 A. Yeah.

14 Q. Okay. So were you still seated on the couch in the

15 livingroom when Drez and De'Nia went to leave?

16 A. Oh, I was getting up. I was about to just sit on the

17 bar. And just -- I watched them go out when he opened the

18 door. So -- so I was basically kind of sitting up, standing

19 up on the bar stool.

20 Q. And what happened when they opened the door and went to

21 leave?

22 A. When Drez opened the door I seen a guy come in with a

23 mask. Then when I seen that, I just basically shot straight

24 to the back room.

25 Q. Okay. Do you remember seeing how many people came in?

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Right then I just seen that one guy came in. And I
2 think it might have been another right behind him, whether
3 I'm mistaken. And then by then after I seen Drez rumble
4 with one, I just took off, you know, for safety. So ...

5 Q. You didn't stick around long enough to ---

6 A. No, I wasn't trying to stay around.

7 Q. Okay. Now you said they were wearing a mask. What do
8 you mean by that? How ---

9 A. I mean, ---

10 Q. How were their faces covered?

11 A. Like little like holes in a mask and stuff like that.

12 Q. Like a ski mask?

13 A. Yeah, like a ski mask.

14 Q. Like a knit mask?

15 A. Yes.

16 Q. Okay. And what else were they wearing?

17 A. I think -- what I saw was like basically all black.

18 Q. Okay. Now, when you -- when you went -- you said you
19 ran. Where did you go?

20 A. Oh, I went to Tyrell's room. Tyrell, my roommate.

21 Q. And was he in the room?

22 A. Yeah, he was asleep.

23 Q. Okay. Did -- what did you do? Did you close the door?

24 Did you try ---

25 A. Oh, ---

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. --- and lock it? What happened?

2 A. Well, when I ran to the room, Jaquan was right behind
3 me. So basically he shut the door, and I pushed him off the
4 bed to wake him up.

5 Q. What did you tell him?

6 A. Huh?

7 Q. What did you tell him?

8 A. Oh, I told him to get up. And about then he heard
9 shots. So he should have known what happened after that.

10 Q. Okay. Do you remember -- did you hear the shots?

11 A. Yeah, I heard two shots. And that's ---

12 Q. Do you remember hearing two?

13 A. Yeah. And that's when everything got quiet for a
14 moment. And then -- but before then all you could hear is
15 just rumbling and stuff in the livingroom.

16 Q. Did you hear anybody shouting?

17 A. I heard Drez saying don't shoot me, but that's about
18 it.

19 Q. Now, what happened after -- you said things got quiet.

20 A. Yeah.

21 Q. You said you heard the shots and ---

22 A. Yeah.

23 Q. --- things got quiet.

24 A. Yeah.

25 Q. What happened after that?

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. After that it was just like -- you heard like a little
2 bit more rumbling. Then Drez, I think, was laying down. So
3 he finally came to the room. And that's -- okay sign. I
4 mean, I came out then. So then he was just like, take me to
5 the hospital. And I was like, let's move then.

6 Q. Did you -- did you load up Drez to go to the hospital?

7 A. Yeah. I helped him downstairs and everything into my
8 car and got him in the backseat. And then Tyrell, my other
9 roommate, that woke up -- I woke him up, he rode also, too.
10 But we ---

11 Q. Okay.

12 A. But we told Jaquan to stay home, like in case somebody
13 come to the house while we take him to the hospital.

14 Q. What do you mean in case somebody comes to the house?

15 A. Just like the police. We knew like somebody was going
16 to call -- shots been fired, so somebody was going to call
17 the police anyway.

18 Q. Did y'all make it to the hospital?

19 A. No. We didn't make it out of the complex.

20 Q. Okay. What happened when you -- when you were trying
21 to leave?

22 A. It was just police everywhere. And they made us get
23 out. They checked us, talked to us, got our IDs. We went
24 back -- me -- they took Drez to the -- well, the ambulance
25 took him to the hospital. Me and Tyrell, we drove back

HORRACE TOBIN - DIRECT EXAMINATION BY MS. SALISBURY

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1 down, went in the house. And they wanted to search the
2 house. We wasn't hiding nothing. So we let them search and
3 looked everywhere.

4 Q. Okay. So while they arranged for an ambulance to take
5 Drez, you and Tyrell then went back to ---

6 A. Yeah.

7 Q. --- your apartment?

8 A. Yes.

9 Q. And you said that you -- you let them search the
10 apartment?

11 A. Yes. They asked me will I sign that says, yes, you
12 can.

13 Q. Do you remember signing a consent to search that the
14 police could come in and search the apartment?

15 A. Yes, ma'am.

16 Q. Okay. Now, did you -- did you ultimately give a
17 statement to the police about everything that you remember
18 happening that night?

19 A. Yes. I gave -- I let them know everything.

20 Q. And after you made that statement, aside from your
21 testimony here today, did you have any other involvement in
22 the case?

23 A. No, that's it.

24 Q. Did you speak to any of the Defendants involved in the
25 case?

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

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1 A. No, ma'am.

2 Q. And just to be clear, do you -- do you know anybody of
3 the -- of the people that came into the house?

4 A. No, ma'am.

5 Q. Since you're not sure how many, of any of the people
6 that came in, do you know any of them?

7 A. No, ma'am. I don't remember any.

8 Q. Okay. Very good. Thank you, Mr. Tobin. If you would,
9 answer any questions these attorneys may have for you.

10 A. Okay.

11 Cross Examination by Ms. Gorton:

12 Q. It must be difficult to listen to your friend testify
13 and then come up and testify as well. Have you had a chance
14 to look over that statement that you gave?

15 A. Yes, I looked over it.

16 Q. When did you last look it over?

17 A. Well, I -- yesterday.

18 Q. Yesterday?

19 A. Yes.

20 Q. And so I -- are you any better at drawing than Mr.
21 Benson?

22 A. No, I ----

23 Q. No offense ---

24 A. --- can't draw.

25 Q. --- to him, but are you any better?

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

210

1 A. No, I'm ---

2 Q. No?

3 A. --- nowhere better.

4 Q. Can you describe for us -- you just talked about being
5 on a barstool. Is that at a bar?

6 A. Yes, it's a bar in our livingroom.

7 Q. And is that a pass-through bar that is related to the
8 kitchen ---

9 A. No.

10 Q. --- or is that separate?

11 A. It's separate. The kitchen's on the left side. The
12 bar is on the right side.

13 Q. Okay. So the bar is closer to where the TV and the
14 game station ---

15 A. Yes.

16 Q. --- and stuff was? All right. You were saying you
17 were getting up as the guys came in. Did I understand ---

18 A. Yes.

19 Q. --- you right?

20 A. I ran to the back.

21 Q. So when you got up and you turned and you saw the guys
22 coming in, did you see both Drez and De'Nia at the door?

23 A. Yes, they was at the door at first when he was coming
24 out of his room putting his shoes on.

25 Q. Which door do you mean?

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

211

1 A. She -- he was at his room or they both came out --
2 well, she came out, then he came out last. She waited for
3 him to get to the door and they both walked out at the same
4 time.

5 Q. Thank you. Your memory -- and it's understandable when
6 something like this happens that people are going to
7 remember things differently. But your memory is is that
8 they -- she waited for him and then they were at the door
9 together?

10 A. Yes.

11 Q. All right. Now, there was a lot of discussion about
12 hallways. Can you describe for me how you get to Drez's
13 room and how do you get to you and your roommate's room?

14 A. All right. Well, the hallway leads, you know, well, it
15 leads right into the rooms, where the rooms at. Tyrell room
16 is straight ahead. Like you can just walk straight to his
17 room.

18 Q. All right.

19 A. Drez, you kind of -- it's a bathroom right here and his
20 room. So you kind of make a left to go into his room. Then
21 my room is all the way to the right. It's kind of like
22 there's a closet right here. So you just turn the corner
23 and go into my room. But they all right next to each other.

24 Q. You said you went back to Mr. Holland's room.

25 A. Yes.

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

212

1 Q. And do I understand correctly from your statement you
2 basically described the three of you huddled under the bed?

3 You wake him up and the three of you get under the bed.

4 A. Yeah.

5 Q. Yeah?

6 A. Yes, ma'am.

7 Q. Okay. And you got up and you started running through
8 the hallway as soon as they came through?

9 A. Yeah, as soon as they came in, I ran.

10 Q. Now when you went to the back do you recall hearing
11 anyone come back in that area as well?

12 A. All I could hear is just a lot of rumbling and Drez
13 just yelling. So I don't too much quite know. I was in the
14 room.

15 Q. And I'm sorry for jumping around, but you just talked
16 about how you specifically remember Drez and De'Nia together
17 at the front door when the door opened, correct?

18 A. Yes.

19 Q. She hadn't walked out -- your memory is she hadn't
20 walked out ahead ---

21 A. No, I just ---

22 Q. --- of him down ---

23 A. I just remember she was just waiting for him while he
24 was coming out of the room.

25 Q. At the -- inside the apartment, ---

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

213

1 A. That was inside, ---

2 Q. --- correct?

3 A. --- yes.

4 Q. And in your statement you actually said she was the one
5 who opened the door, right?

6 A. No, I said Drez opened the door.

7 MS. GORTON: May I approach?

8 THE COURT: You may.

9 Q. Is this your statement?

10 A. Yes, it is.

11 (Pause)

12 A. He said he opened ---

13 THE COURT: Hang on just a minute. You need to speak
14 into the mike. The court reporter needs to pick up what you
15 ---

16 A. When I found out that -- well, after the hospital after
17 I finally talked to him, when I found out -- I heard -- I
18 heard the whole story since I was in the room, and I wanted
19 to know what happened. I asked him and he said that he
20 opened the door. So that's -- at first before I even heard
21 his story, that's what I told them when I gave them my
22 report. I thought she opened the door.

23 Q. This statement you gave you said she opened the door.

24 A. Yeah, that's ---

25 Q. And I'm truly not trying to beat you up. I'm trying to

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

214

1 find out what you actually remember and what you're
2 testifying to based on what you heard Drez say either at the
3 hospital or here in court today. And I'm trying to get to
4 what you remember.

5 A. I just remember both of them just at the door. So ---

6 Q. All right.

7 A. One of them could have just opened it. That night, all
8 I know -- I don't know who opened it that night, but I just
9 know both of them just at that door at the same time.

10 Q. Okay. All right. And you're clear in your mind that
11 they were still in the apartment standing at the door
12 together?

13 A. Yes.

14 Q. All right. Now, you get up and you run down the hall.
15 Before we get there, where was Envy? As you're getting up
16 and turning towards the door from the barstool, where's
17 Envy?

18 A. That's her -- her lady friend, right?

19 Q. The other girl.

20 A. She was on the couch.

21 Q. She's still on the couch when the door opens and they
22 come in, correct?

23 A. Correct.

24 Q. All right. Now, you also say in this statement while
25 running to the bedroom I could hear the subjects telling

HORRACE TOBIN - CROSS EXAMINATION BY MS. GORTON

215

1 everyone to get down, is that correct?

2 A. Yeah, they came in talking.

3 Q. And just so I'm crystal clear about this, you and all
4 your friends, except for Drez, were in Holland's bedroom at
5 that point?

6 A. Yes.

7 Q. So all of you were accounted for, except for Drez, one
8 person?

9 A. Yes. Well, he was just close to the door. So ...

10 Q. Okay. So by necessity when you say they told everyone
11 to get down there would have had to been more than Drez left
12 for them to say get down, correct?

13 A. Yes. Well, when they came in, me and Jaquan was also
14 in the livingroom. So I know they had to see us. So -- and
15 that's when I just took off.

16 Q. So your recollection is that not -- that they were
17 telling the girls to get down as well, correct?

18 A. Oh, I don't know about -- uh-uh (negative). I never
19 ---

20 Q. Was there anyone else left besides Drez in the
21 livingroom for them to be telling everybody to get down?

22 A. By then, that's when we took off. We -- I wasn't
23 listening to anybody.

24 Q. Your statement says while running to the bedroom, is
25 that correct?

HORRACE TOBIN - CROSS EXAMINATION BY MR. IANUARIO

216

1 A. Yeah, while I was running to the bedroom.

2 Q. Do you know if they were making the girls get down on
3 the floor?

4 A. I don't know 'cause like ---

5 Q. You wouldn't know?

6 A. That's ---

7 Q. You're heading back to ---

8 A. Yeah, from then I don't know nothing. I just switched
9 off the hearing.

10 Q. I bet ya. I don't blame you. All right. Then you and
11 your friends waited another couple of minutes?

12 A. Yeah. We waited. Then it -- it was just a few
13 minutes. So -- then he finally, I mean, we got like -- we
14 were about to get up, then seen him at the door.

15 MS. GORTON: Nothing further.

16 THE COURT: Yes, sir, you may proceed.

17 Cross Examination by Mr. IANUARIO:

18 Q. Mr. Tobin, what kind of car do you drive?

19 A. A Jeep Cherokee.

20 Q. What year?

21 A. I think it's like a '99 or '98.

22 Q. Is it a nice one or a base model?

23 A. Just like a base model.

24 Q. What kind of seats are in there? Cloth, leather,
25 vinyl?

HORRACE TOBIN - CROSS EXAMINATION BY MR. IANUARIO

217

1 A. Leather.

2 Q. Leather?

3 A. Yes.

4 Q. And why did y'all not call 911?

5 A. Wasn't really too much thinking. Just making sure he
6 gets to the hospital.

7 Q. Okay. You said earlier that you figured somebody had
8 to call 911 and the cops were on their way?

9 A. Yeah. I mean, you would figure that if you hear shots.
10 So ...

11 Q. Okay. What hospital were you planning on taking him
12 to?

13 A. Well, the closest one, I think, is on Pelham Road,
14 Pelham Village.. So that's the one -- I was just going to
15 drive to the closest one.

16 Q. Okay. About how far is that from where you live,
17 roughly speaking time-wise?

18 A. I'd give it about between five to like ten minutes.

19 Q. Okay. How bad was Drez bleeding?

20 A. He was bleeding pretty bad 'cause it got all over the
21 place. So -- and all over his clothes and shoes.

22 Q. So instead of calling an ambulance to respond you
23 loaded your bleeding friend into your jeep with cloth seats
24 so that you could drive him to the hospital before the cops
25 arrived, is that correct?

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

218

1 A. Correct, but they were leather seats though.

2 Q. Oh, leather seats, I'm sorry. So blood on your leather
3 seats?

4 A. Yes.

5 MR. IANUARIO: Nothing further.

6 THE COURT: Any redirect?

7 MS. SALISBURY: Nothing from the State, Judge.

8 THE COURT: All right. Thank you, sir. You may step
9 down, Mr. Tobin. You may call your next witness, Solicitor.

10 MS. SALISBURY: The State calls Mr. Jaquan Boyd. Mr.
11 Boyd, if you would, please, come around and be sworn.

12 MADAME CLERK: Sir, please place your left hand on the
13 Bible and raise your right hand.

14 Jaquan Boyd, being duly
15 sworn testified as follows:

16 MADAME CLERK: You may be seated. If you would, state
17 your name for the record.

18 MR. BOYD: Jaquan Boyd.

19 Direct Examination by Ms. Salisbury:

20 Q. Mr. Boyd, where do you live?

21 A. I live in

22 Q. And do you work?

23 A. Yes, ma'am.

24 Q. Where do you work?

25 A. I was currently fired this morning.

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

219

1 Q. Okay. Where were you working before this morning?

2 A. McAlister's.

3 Q. McAlister's? Okay. How long have you lived in
4 Greenville?

5 A. Half my life.

6 Q. Did you ---

7 A. Eight years.

8 Q. --- go to high school in Greenville?

9 A. Yes, ma'am.

10 Q. Where did you go to school?

11 A. I went to Riverside.

12 Q. Do you remember where you were living in June of 2011?

13 A. Yes, with my mom.

14 Q. Okay. Do you remember being -- do you -- we'll start
15 over. Do you know Mr. Demetrius Benson?

16 A. Yes.

17 Q. How do you know him?

18 A. I've known -- well, I met him through Tyrell and
19 Horrace. But I've known him for three years.

20 Q. And did you ever hang out at his apartment?

21 A. Yes, ma'am.

22 Q. Do you remember whether you were hanging out at his
23 apartment on the night of June 2nd when all of this incident
24 happened?

25 A. Yes, ma'am.

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

220

1 Q. Who was there with you?

2 A. It was me, Tyrell, but he was asleep, Drez and Horrace.

3 Q. What were y'all doing?

4 A. We was watching the highlights to the finals.

5 Q. Do you know -- have you ever seen or ever met De'Nia
6 Dawkins?

7 A. No, ma'am.

8 Q. Do you remember whether she showed up at the apartment
9 that night?

10 A. Yes, ma'am.

11 Q. Tell the jury what you remember happening that night.

12 A. Well, we was sitting there watching the finals. And
13 Drez came out -- well, Demetrius came out and said I have
14 two females coming over to hang out with us. So we sat
15 there and she came in. She had her friend with her, but I
16 didn't really pay attention. She was sitting on the couch
17 next to me.

18 And then she went to the room with Drez. And then
19 like, I guess, when she left, when she left Drez room she
20 left out the door. And like she came back in and went back
21 there with Drez. She was like, so you going to come down
22 there and get change for the -- for the hundred?

23 Q. Okay. Let me stop you right there. You told us a lot
24 of information. I want to slow down. So do you remember
25 De'Nia and her friend coming in?

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

221

1 A. Yes, ma'am.

2 Q. And I -- to be clear, do you remember her friend
3 staying with y'all in the livingroom and De'Nia then going
4 back with Drez to his bedroom?

5 A. Yes, ma'am.

6 Q. Okay. And I believe that the way you recall it is that
7 De'Nia went to the front door, left, and then immediately
8 came back in?

9 A. Yes, ma'am.

10 Q. Okay. And pick up from there. What happened when she
11 came back in?

12 A. When she came back in I guess she went back there --
13 well, I guess she called Drez 'cause I didn't really see
14 Drez behind me. I was looking at the TV.

15 And then like the next thing I know the door opened and
16 I turned around and I seen a man come in with a gun. It was
17 a revolver. And I just went to the room with Horrace.

18 Q. Did you see -- was he alone? Do you know whether there
19 was any others with him?

20 A. All I seen was him. I mean, I was -- my back was
21 turned.

22 Q. Do you remember what he was wearing, what he looked
23 like?

24 A. All I know is he had on all black.

25 Q. Did he have his face covered?

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

222

1 A. Yes, ma'am.

2 Q. What was it covered with?

3 A. I can't really tell. I wear glasses. Maybe it wasn't
4 on.

5 Q. And you said you remembered that he had a gun?

6 A. Yes, ma'am.

7 Q. Okay. So what did you do when you saw that person
8 coming into the apartment?

9 A. I went to the back room with Horrace.

10 Q. Were you running with him? Were ---

11 A. Yes, ma'am.

12 Q. --- y'all sort of on top of each other down the
13 hallway?

14 A. Yes, ma'am.

15 Q. Okay. And what did you do when you got back to
16 wherever you were going?

17 A. I closed the door behind me when I went in there and
18 just went behind the bed.

19 Q. Y'all went behind the bed. How many of y'all were
20 trying to fit behind the bed or under it or whatever?

21 A. It was three.

22 Q. Okay. So what do you remember happening while you were
23 in the bedroom with Horrace and Tyrell?

24 A. We were just laying in there. And we heard them say
25 give me the money or whatever and then two shots. After

JAQUAN BOYD - DIRECT EXAMINATION BY MS. SALISBURY

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1 that it was all silent. Then we heard rumbling again. I
2 guess they left. And Drez came and knocked on the door.

3 Q. So you remembered hearing somebody ask for money ---

4 A. Yes, ma'am.

5 Q. --- before you heard these shots?

6 A. Yes, ma'am.

7 Q. And just to be clear, how many do you remember hearing?

8 A. Like one.

9 Q. Okay. And so you said you heard some rumbling after
10 that and then things got quiet. What happened next?

11 A. Drez knocked on the door and he said take him to the
12 hospital. Well, they told me to stay 'cause they already
13 knew the cops was coming. So I just stayed.

14 Q. Okay. Do you remember the police showing up?

15 A. Yes, ma'am.

16 Q. And what happened when they showed up at the apartment?

17 A. They investigated the house.

18 Q. Did they search the whole house?

19 A. Yes, ma'am.

20 Q. Did they search every bedroom?

21 A. Yes, ma'am.

22 Q. Okay. Did the police interview you about what
23 happened? Did they take a statement from you?

24 A. Yes, ma'am.

25 Q. Okay. After you gave that statement to them about what

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

224

1 you remember happening that night, did you have any other
2 involvement in the case?

3 A. No, ma'am.

4 Q. Have you ever spoken to any of the people that -- that
5 is charged with going into the apartment that night?

6 A. No, ma'am.

7 Q. And to be clear, do you know anybody that is alleged to
8 have gone -- come into the apartment that night?

9 A. No, ma'am.

10 Q. Okay. All right, Mr. Boyd. Thank you. If you would,
11 answer any questions the attorneys may have for you, sir.

12 (Whereupon the witness got up to leave)

13 A. Sorry.

14 Q. Stay put.

15 Cross Examination by Ms. Gorton:

16 Q. Now, these guys that came into the apartment, they were
17 what, wearing black scarves and they were covered up,
18 correct?

19 A. Yes, ma'am.

20 Q. So you don't really know whether you know any of those
21 people, do you?

22 A. No, ma'am, I don't.

23 Q. In your statement you said that De'Nia opened the door?

24 A. Yes, ma'am, that's what I recall.

25 Q. When she opened the door was the other girl still in

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 the apartment?

2 A. I didn't really pay attention. I was just looking at
3 TV. And the next thing I know I heard the door open, and I
4 looked and he was coming in.

5 Q. All right. So you don't know where the other girl was?

6 A. No, ma'am.

7 Q. You don't disagree with Mr. Tobin that she was sitting
8 on the couch?

9 A. I mean, he probably was looking at her, but I wasn't
10 paying attention. I'm a huge basketball fan.

11 Q. All right. You and Mr. Tobin both ran back to Mr.
12 Holland's room?

13 A. Yes, ma'am.

14 Q. Who was first?

15 A. Horrace.

16 Q. Mr. Tobin was in front of you?

17 A. Yes, ma'am.

18 Q. You were a slower runner?

19 A. Who? Me?

20 Q. You were a slower runner or further away?

21 A. I was further away.

22 Q. All right. And did you hear them as he did saying
23 everybody on the ground?

24 A. I wasn't paying attention to him.

25 Q. You were just trying to ---

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 A. Yeah, I was trying to go.

2 Q. Again, perfectly understandable. But you don't
3 disagree with him?

4 A. No, I don't disagree with him.

5 Q. Now, De'Nia will be saying that she was there to buy
6 marijuana, a twenty bag, a twenty dollar bag of marijuana.

7 A. Um-hum (affirmative).

8 Q. A twenty dollar bag of marijuana. Do you know if there
9 was any marijuana in the apartment?

10 A. No, ma'am.

11 Q. How long have you known Mr. Benson?

12 A. How long I've known Mr. Benson? Three years.

13 Q. Three years today?

14 A. Yes, ma'am.

15 Q. So at the time all this happened, about two years?

16 A. Yes, ma'am.

17 Q. Have you ever ridden in his car?

18 A. Yes, ma'am.

19 Q. And were you aware that he kept weed in his car?

20 A. No, ma'am. He only took me to work a couple of times.

21 Q. You were left behind in case the police came.

22 A. (Affirmative nod).

23 Q. Did you see a clip laying on the floor?

24 A. No, ma'am.

25 Q. Did you go into Demetrius' room?

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 A. No, ma'am.

2 Q. So your testimony today, you didn't find any marijuana
3 in the apartment?

4 A. No, ma'am.

5 Q. You didn't get rid of any marijuana?

6 A. No, ma'am.

7 Q. You didn't get rid of the clip?

8 A. No, ma'am.

9 Q. You didn't get rid of any shell casings or bullets?

10 A. It was a revolver.

11 Q. How many guns were there?

12 A. I only seen one.

13 Q. You only saw one?

14 A. Yes, ma'am.

15 Q. Do you know what the other two had?

16 A. No, ma'am.

17 Q. Do you disagree with Mr. Benson when he says that all
18 three had guns?

19 A. No, ma'am, I don't disagree.

20 Q. So I ask you again, did you get rid of any casings or

21 ---

22 A. No, ma'am.

23 Q. --- anything like that? Now, if there had been any

24 marijuana in the apartment, would that have posed a problem

25 for you?

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 A. Would have?

2 Q. Yes.

3 A. No, ma'am.

4 Q. That's my question. No?

5 A. No, ma'am.

6 Q. Were you released on bond at the time this occurred?

7 MS. SALISBURY: Objection, Your Honor.

8 THE COURT: What's the relevance?

9 MS. GORTON: Your Honor, it's relevant to impeachment
10 as far as his destruction of the marijuana that was left
11 behind. I have case law and I'm prepared to argue it.

12 THE COURT: All right. Ladies and gentlemen, I'll need
13 you to go out just for a moment while we take care of this
14 matter of law. Don't discuss the case.

15 (Whereupon the jury exited the courtroom at 11:52 am)

16 THE COURT: Yes, ma'am.

17 MS. GORTON: Yes, Your Honor. In anticipation of this,
18 in light of yesterday's discussion, I did research last
19 night. In addition to the Finley case that I had cited to
20 Your Honor, I have brought with me Jamie Mizzell, the State
21 versus Jamie Mizzell. This is Supreme Court of South
22 Carolina, 2002. And this case stands for two propositions.

23 The first proposition is the test for proper
24 impeachment. A criminal defendant may show a violation of
25 the -- sorry, Judge. A criminal defendant may show a

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 violation of the Confrontation Clause by showing he was
2 prohibited from engaging in otherwise appropriate cross
3 examination designed to show a prototypical form of bias on
4 the part of the witness and thereby exposed the jury to
5 facts from which the jurors could appropriately draw
6 inferences relating to the reliability of the witness.

7 And ---

8 THE COURT: What -- hang on just a minute. What
9 questions do you want to ask him relating to this? You've
10 asked was he out on bond.

11 MS. GORTON: Right.

12 THE COURT: And when was the charge? And was it
13 related to this or ...

14 MS. GORTON: It was possession of marijuana and
15 possession of crack, I believe, ---

16 THE COURT: From what time-frame?

17 MS. GORTON: It was an arrest in February of 2011,
18 which was four months prior to this. And I am trying to
19 show that he had motive to dispose of the marijuana that we
20 say was on the dresser.

21 THE COURT: What would be his motive? That's not his
22 home, right?

23 MS. GORTON: To not violate bond.

24 THE COURT: But that's not his apartment, is it?

25 MS. GORTON: He's there. If the police had come in and

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 he is the only one there, and there is marijuana, then, yes,
2 he would be in violation of his bond.

3 MR. IANUARIO: Your Honor, if I may interject.

4 THE COURT: Yes, sir.

5 MR. IANUARIO: Whether or not he had valid grounds for
6 being charged when the police showed up is different from
7 whether he was operating under a fear of being charged when
8 the police showed up. And he -- we believe that he was
9 fearful of being charged with something, thus, destroying
10 any evidence that might be potentially incriminating, thus,
11 a violation of his bond.

12 MS. GORTON: And I have for you State v. Smith, which
13 says it's error to deny cross examination of an eyewitness,
14 a non co-defendant, as we have here regarding pending crack
15 charges.

16 And I have State v. Sims, which is different than State
17 v. Smith, that says non co-defendant pending charges totally
18 unrelated to the pending case, the case at issue, but you
19 have a right to cross examine regarding the pending --
20 regarding his pending -- the witness' pending charge. I
21 would give you State v. Smith and State v. Sims.

22 It goes to show his motive and bias for his actions and
23 the way he is testifying now. He's testifying there was no
24 marijuana in the apartment. Your Honor, we submit that
25 there was. That was the whole purpose of her being there.

JAQUAN BOYD - CROSS EXAMINATION BY MS. GORTON

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1 And she saw it there and then it's gone. Somebody got rid
2 of it.

3 THE COURT: Solicitor, how does this not fall within
4 rule 608?

5 MS. SALISBURY: Well, Judge, I think that it's, on its
6 face, outside of what 608 authorizes to the extent that 608
7 contemplates that the Defendant or the witness can be cross
8 examined about convictions. It's apparent this is not a
9 conviction ---

10 THE COURT: Well, how about a bias, or a motive or a
11 prejudice to ---

12 MS. SALISBURY: Well, my response to that, Judge, is
13 whether there was -- I'll say that I think it's a little bit
14 too tenuous. Whether there was marijuana in that apartment
15 is not relevant to whether these two Defendants are guilty
16 of armed robbery, a conspiracy, burglary, first, and
17 attempted murder.

18 The fact that this defendant may have some motive to do
19 something unconnected to the question of whether these
20 Defendants are guilty is not an element of the defense as
21 contemplated by even rule 405. The only way that this kind
22 of evidence is admissible is if we do a 404(b) Lyle analysis
23 for extrinsic character evidence.

24 And I would say at that point that the character of
25 this witness, considering the fact that his drug use or drug

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1 disposal is not probative of an element of truthfulness or
2 his propensity to tell the truth ---

3 THE COURT: Well, I gather that what is being offered
4 is not for character, but for bias and prejudice.

5 MS. SALISBURY: And I understand that, Judge. But what
6 I meant by that was that in the sense that it is not an
7 element of the defense because the elements of the defense
8 are that these Defendants, as I understand it, these
9 Defendants did not know the robbery was planned and were not
10 part of a conspiracy. That's the defense.

11 To the extent that this defendant had some motivation
12 to do something related to drugs that may or may not have
13 been in that apartment, in the testimony thus far it's been
14 that there were not drugs in that apartment, is not
15 connected to this defense. Its only -- its only value is as
16 Lyle character evidence value. It's not 405(b) specific
17 instances of conduct value because it's ---

18 THE COURT: But isn't it 608(c), bias and prejudice of
19 a witness evidence?

20 MS. SALISBURY: No, I don't believe so, Judge, because
21 as I mentioned, 608 is ---

22 THE COURT: 608 relates to character that relates to
23 conduct and finally it relates to bias, which as I
24 understand the rules of evidence, (c) is sort of a South
25 Carolina -- unlike the federal rule. I mean, why doesn't

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1 that go to either a pecuniary or interest to this witness to
2 allow the examination?

3 MS. SALISBURY: Well, quite frankly, Your Honor, I
4 think that to the extent that this is a pending charge, as I
5 said yesterday, the witnesses in this case are entitled to
6 the same presumption of innocence that these Defendants are.
7 And that's why historically the courts have been outright
8 reluctant to allow the examination as it relates to the
9 pending charges. That's -- I don't know how else to put it.

10 To start -- to suggest that it is somehow appropriate
11 to offer impeachment evidence based on unrelated drug
12 charges, and as I understand the pending charge, it's a
13 possession with intent to distribute crack cocaine. That is
14 pending.

15 The incident site for which is not in Taylors, not in
16 Cunningham Villas, and this defendant is one of three co-
17 defendants charged in that case. It's -- and more than
18 that, the information in this case has been that it's --
19 that marijuana was in this apartment. We're talking about a
20 pending crack cocaine charge. So on a few levels I don't
21 believe that it's appropriate impeachment material.

22 MS. GORTON: The Mizzell test says before a judge may
23 limit a criminal defendant's right to engage in cross
24 examination to show bias on the part of a witness the record
25 must clearly show that cross examination is inappropriate.

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1 If the defendant establishes that he was unfairly prejudiced
2 by the limitation, it is reversible error.

3 Judge, our entire defense is she went over to buy a bag
4 of weed, not commit a robbery.

5 THE COURT: Yes, ma'am, I understand that. . . Again, I
6 understand the State's argument that how does that change a
7 robbery or an attempted murder, but you have your theory.

8 I'll allow the question under rule 608(c), but I will
9 -- I don't -- I believe you will be able to effectively
10 cross examine without bringing out the nature of the charge.
11 Wouldn't you agree that he's out on bond? So as you
12 mentioned to begin with, being on bond could violate a -- is
13 there any probative reason that he would need to be out on
14 -- on what particular charge it is if he's out on a bond and
15 that if there's marijuana around, then it's going to be a
16 violation?

17 MS. GORTON: I don't think so, Judge. I think it's all
18 right.

19 THE COURT: Okay.

20 MS. GORTON: As long as I can establish ---

21 THE COURT: That he is out on bond, not the nature of
22 the charge that he's on, but that he's out on bond. And you
23 can follow that up, you know, with just -- don't need to, as
24 I said yesterday, we need to try this case. And I'm
25 certainly going to give you an opportunity to cross examine

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1 the witnesses, but we don't need to try other cases.

2 MS. GORTON: I understand, Judge.

3 THE COURT: All right. If the jury's ready, you can
4 have them come back in.

5 (Whereupon the jury entered the courtroom at 12:04 pm)

6 THE COURT: You may proceed with your examination of
7 the witness.

8 MS. GORTON: Thank you.

9 Cross Examination by Ms. Gorton Continued:

10 Q. I believe we were at the point that I was asking you if
11 you got rid of any marijuana?

12 A. Hmm?

13 Q. Did you get rid of any marijuana?

14 A. No, ma'am.

15 Q. Did you allow the officers in to search?

16 A. Yes, ma'am.

17 Q. Did they find any marijuana?

18 A. No, ma'am.

19 Q. If they had found marijuana would it have been a
20 violation of your bond?

21 A. Would it be in violation of my bond?

22 Q. Were you out on bond at the time this occurred?

23 A. Yes, ma'am.

24 Q. And if they had found marijuana would it have
25 constituted a violation of your bond?

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1 A. I don't know.

2 Q. Did you sign bond paperwork?

3 A. Have I signed -- hmm? Ma'am?

4 Q. Did you sign bond paperwork when you were released on
5 your pending charge?

6 A. Yes, ma'am.

7 Q. Did that bond paperwork instruct you as it instructs
8 everyone else that you were not to commit any new law
9 violations?

10 A. Yes, ma'am.

11 Q. And would possessing marijuana be a new law violation?

12 A. It would have been.

13 MS. GORTON: No further questions.

14 THE COURT: Mr. Ianuario.

15 MR. IANUARIO: Thank you, Your Honor.

16 Cross Examination by Mr. Ianuario:

17 Q. Mr. Boyd, why were you the one that stayed behind?

18 A. 'Cause they told me to.

19 Q. Did it concern you in any way that your name is not on
20 the lease, but you'd be present at the scene of a shooting?

21 A. No, it didn't concern me.

22 Q. Okay. You said the police searched the apartment.

23 What were they looking for?

24 A. I don't know.

25 Q. Did they -- was it a walk-around to see if there were

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1 any people hiding in the house or did they open doors and
2 cabinets?

3 A. I don't know. They just searched the house.

4 Q. You don't recall seeing them open doors or cabinets?

5 A. No, sir. I was at the front door.

6 Q. Would it possibly be more of just a sweep of the
7 apartment just to make sure there's nobody hiding? Or ---

8 A. I don't know.

9 Q. Would you say it constituted an in-depth search?

10 A. I don't know.

11 Q. Don't know. So you didn't watch the police while they
12 were in the apartment? You just let them in.

13 A. That's what their job is.

14 Q. Okay. Do you know if there were any bullet holes
15 found?

16 A. I don't know.

17 Q. Do you know anything about the police search that took
18 place after they showed up?

19 A. No, sir.

20 MR. IANUARIO: Nothing further, Your Honor.

21 THE COURT: Thank you. Any redirect?

22 MS. SALISBURY: No, Your Honor. Thank you.

23 THE COURT: All right. Thank you, sir. You may step
24 down. You may call your next witness, Solicitor.

25 MS. SALISBURY: Thank you, Your Honor. The State calls

TYRELL HOLLAND - DIRECT EXAMINATION BY MS. SALISBURY

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1 Mr. Tyrell Holland. Mr. Holland, if you would, please come
2 around and be sworn.

3 MADAME CLERK: Sir, please place your left hand on the
4 Bible and raise your right hand.

5 Tyrell Holland, being
6 duly sworn testified as follows:

7 MADAME CLERK: Thank you. Please be seated. State
8 your name for the record.

9 MR. HOLLAND: Tyrell Holland.

10 Direct Examination by Ms. Salisbury:

11 Q. Mr. Holland, where do you live?

12 A. I live --

13 Q. Okay. And how long have you lived there?

14 A. I'd say about -- about six months.

15 Q. Do you work?

16 A. Yes, I do.

17 Q. Where do you work?

18 A. I work at UPS.

19 Q. UPS? Okay. And how long have you lived in Greenville?

20 A. All my life.

21 Q. Where did you go to school?

22 A. Riverside.

23 Q. And how do you know Demetrius Benson and the folks
24 we've heard from so far today?

25 A. Let's see. I grew up with Demetrius. I know Horrace

TYRELL HOLLAND - DIRECT EXAMINATION BY MS. SALISBURY

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1 from school and Jaquan from school.

2 Q. Okay. Now, were you living with Demetrius back in June
3 of 2011?

4 A. I was.

5 Q. Where were y'all living?

6 A. Howell -- not Howell. I'm sorry. Cunningham.

7 Q. Okay. What apartment?

8 A. Cunningham Villas,

9 Q. Do you remember whether you were home on the night of
10 June 2nd, 2011?

11 A. I was.

12 Q. Do you know who was there with you?

13 A. My three roommates. And I guess they said -- well,
14 they had De'Nia and a friend come over.

15 Q. Okay. Do you remember -- do you remember anybody
16 coming over that night?

17 A. Well, I didn't actually see anyone 'cause I was asleep,
18 but, I mean, they told me before she came that she was
19 coming.

20 Q. So did Drez tell you that he had people coming over ---

21 A. Yeah.

22 Q. And then at some point after that you went to sleep?

23 A. Yeah, I went to bed.

24 Q. Okay. So you weren't in the livingroom when anybody
25 showed up?

TYRELL HOLLAND - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. No.

2 Q. Okay. Did you see anybody come into the house with
3 masks on?

4 A. I didn't.

5 Q. Did you see anybody with guns come into the apartment?

6 A. I didn't.

7 Q. Okay. What is the first thing you remember about that
8 night?

9 A. I was in my room. Let's see. I was in my room and I
10 remember him, Horrace, busting into my room. And I sat up
11 on my bed. And they kind of got up under the bed. And I
12 didn't know what was going on. I heard two shots. And he
13 was like, get down, get down. So I got down with them. And
14 I heard like a scruffle or like running through the house.
15 And then Drez came and told us to come take him to the
16 hospital. So we proceeded to take him to the hospital.

17 Q. And how long were the three of y'all huddled in your
18 room?

19 A. I'd say a minute, maybe, a minute or two.

20 Q. What do you remember hearing aside from that scuffle?
21 Do you remember hearing anybody saying anything?

22 A. I remember Drez saying don't kill me. And then after
23 that, that was about it.

24 Q. Do you know either of these Defendants?

25 A. I don't.

TYRELL HOLLAND - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Had you -- did you see anybody come into the apartment
2 that night?

3 A. I didn't.

4 Q. By the time y'all came out of the apartment to meet
5 Drez and help him get to the hospital was there anybody else
6 left in the apartment?

7 A. There wasn't.

8 Q. Do you remember the -- do you remember trying to take
9 Drez to the apartment [sic] and being stopped by the police?

10 A. I do.

11 Q. What happened after that?

12 A. Well, we went down, the police stopped us and told us
13 to get our IDs and things like that. And they said they
14 were going to take him in the EMS and have us go back to the
15 house. We went back to the house and they asked us could
16 they search the house. And we agreed to allow them to
17 search the house. And they held us outside while they did
18 do the search. And that was about it.

19 Q. Do you remember signing a consent to search to let them
20 look through the house?

21 A. I do.

22 Q. Okay. But they had y'all stationed outside ---

23 A. Yeah.

24 Q. --- so you can't -- you couldn't ---

25 A. Like on the breeze-way.

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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1 Q. Okay. Do you remember giving a statement to the police
2 after -- a few days after this happened?

3 A. I do.

4 Q. After you gave that statement did you have any other
5 conversations with any investigators or anybody about the
6 case?

7 A. I didn't.

8 Q. Okay. If you would, sir, answer any questions these
9 attorneys may have for you.

10 Cross Examination by Ms. Gorton:

11 Q. I'm not going to ask you anything about what happened
12 before because you were sleeping, right?

13 A. I was.

14 Q. How long did you say you'd known Benson before this
15 happened?

16 A. I'll say about twelve years.

17 Q. Twelve years? And how long had you known Boyd when
18 this happened?

19 A. I'll say three years.

20 Q. Did you know that Benson carried marijuana around in
21 his car?

22 A. I didn't.

23 Q. You didn't?

24 A. I didn't.

25 Q. You've known him twelve years and you didn't know that?

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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1 A. I mean, we're friends, but, I mean, he did his own
2 thing.

3 Q. Did you know that Boyd was out on bond?

4 A. I did.

5 Q. Now you said three roommates.

6 A. Well, I guess -- well, not roommates, but those three
7 ---

8 Q. Well, was Boyd your roommate or not?

9 A. He wasn't.

10 Q. Was he kind of squatting there?

11 A. He was just like -- yeah, squatting there, but ---

12 Q. Spent more nights there ---

13 A. He stayed like ---

14 Q. --- than not ---

15 A. --- a couple of nights and leave, yeah. He was just a
16 friend.

17 Q. Huh?

18 A. He was just a friend. He'd come and stay. I mean, he
19 didn't ---

20 Q. Was he paying rent?

21 A. No. No.

22 Q. But staying there?

23 A. Yeah. I mean, we ---

24 Q. That's a pretty good friend.

25 A. Yeah, we took care of the rent.

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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1 Q. All right. How many nights a week would you say he was
2 staying there?

3 A. I'd say probably two at the time.

4 Q. All right. Did he have his own place?

5 A. He stayed with his mom, I think, mom, or aunt or
6 something like that.

7 Q. All right. Now, have you had a chance to review your
8 statement?

9 A. I did.

10 Q. When did you last review it?

11 A. It was yesterday.

12 Q. All right. In your statement you say Demetrius started
13 beating on the door saying take me to the hospital. I got
14 him some water while he was looking for his hospital card.

15 A. Well, yeah, 'cause we had actually took him outside and
16 he didn't have his insurance card. So he asked me to go
17 look for it and get some water. So I did that. And I
18 couldn't find it. So he wanted to go find it 'cause he said
19 they wouldn't see him without it, that the hospital wouldn't
20 see him without it.

21 Q. Okay. So where were you looking for his hospital card?

22 A. In his room.

23 Q. In his room?

24 A. (Affirmative nod).

25 Q. Hmm. Were you looking on his dresser?

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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1 A. Yeah.

2 Q. In his dresser?

3 A. I couldn't remember. I think it was just on top.

4 Q. Do you remember seeing a jar of marijuana sitting ---

5 A. I don't.

6 Q. --- on his dresser? Had you ever seen a jar of

7 marijuana on his dresser?

8 A. I haven't.

9 Q. You've never?

10 A. Uh-uh (negative).

11 Q. Known him twelve years. Didn't know he had marijuana

12 in his car?

13 A. We didn't stay together for twelve years. We stayed

14 there for, what, four months.

15 Q. So this sounds like kind of a casual situation. I

16 don't know, you know, I was shot. He's walking around?

17 A. No. We actually -- his arms were around both of us, me

18 and our roommate, Horrace.

19 Q. And he wants to go back in to look, you're getting him

20 water.

21 A. (Affirmative nod).

22 Q. And during all this time -- and how long is this?

23 A. It's ---

24 Q. You talk about you went in his room, looked for an

25 insurance card, ---

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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1 A. Well, ---

2 Q. --- can't find it, ---

3 A. --- we had already took him down. He was already in
4 the car. I ran back up.

5 Q. And then you took him all the way back up?

6 A. Yeah, ---

7 Q. He's shot once in each leg and you take him all the way
8 down and all the way back up again?

9 A. Yeah.

10 Q. Wow. How long did all that take?

11 A. I guess three minutes, four minutes.

12 Q. Can he walk that fast when he's shot? Once ---

13 A. I mean, ---

14 Q. --- in each leg?

15 A. --- we were -- he was assisted by us. He wasn't
16 walking.

17 Q. So you're thinking three minutes or so?

18 A. Yeah, it didn't take long.

19 Q. During that time did any of you call 911?

20 A. We didn't.

21 Q. If you'd called an ambulance, wouldn't that have solved
22 the problem?

23 A. I mean, it was just the heat of the moment. He said
24 take him to the hospital. So that's what we done.

25 Q. If you'd called an ambulance, wouldn't that have solved

TYRELL HOLLAND - CROSS EXAMINATION BY MS. GORTON

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- 1 the problem?
- 2 A. I'm guessing so.
- 3 Q. Yeah. So when you talk about the police stopping you
- 4 from going to the hospital and you've got Demetrius and
- 5 you're putting him in the car, that's the second time you've
- 6 taken him downstairs?
- 7 A. It is. Well, we were already proceeding to the
- 8 hospital. And they stopped us in the complex.
- 9 Q. Yet you were already en route after bringing him down
- 10 not once, but twice.
- 11 A. (Affirmative nod).
- 12 Q. Is that right?
- 13 A. That's right.
- 14 Q. So then the police stop you, and you have a
- 15 conversation with them. And I don't imagine they approached
- 16 you right away, here's a consent to search, sign it, did
- 17 they?
- 18 A. They didn't.
- 19 Q. So you have a couple of more minutes of discussion with
- 20 the law enforcement, right?
- 21 A. Well, not really. I mean, they came out guns drawn.
- 22 We were -- put our hands on the car. They made everybody
- 23 get out -- well, us three get out -- well, us two 'cause he
- 24 couldn't get out. And that's about it.
- 25 Q. So it took a couple of minutes for them to figure out

TYRELL HOLLAND - CROSS EXAMINATION BY MR. IANUARIO

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1 what was going on and not to present you with a consent to
2 search, correct?

3 A. I -- yeah, I guess so.

4 Q. All right. So Mr. Boyd's up in the apartment all this
5 time, is that correct?

6 A. It is.

7 Q. Still not calling 911.

8 A. I don't think so.

9 MS. GORTON: Nothing further.

10 THE COURT: Mr. Ianuario.

11 Cross Examination by Mr. Ianuario:

12 Q. You said Drez was looking for his wallet and his
13 hospital card, is that correct?

14 A. I didn't say wallet. I said hospital ---

15 Q. Hospital card? Do you know where he found it at?

16 A. I actually don't remember. I don't even know if he --
17 if it was found at all really.

18 Q. Do you recall if he grabbed his phone on the way to the
19 hospital?

20 A. Yes.

21 Q. He did?

22 A. He did -- well, he had it in the car.

23 Q. Did you take your phone with you to the hospital?

24 A. I can't remember.

25 Q. You don't remember?

TYRELL HOLLAND - CROSS EXAMINATION BY MR. IANUARIO

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1 A. (Negative nod).

2 Q. Do you remember if anyone else took their phone to the
3 hospital?

4 A. I can't remember.

5 Q. But at least one person in the house had a phone that
6 was talking on?

7 A. Yeah.

8 Q. So why did no one call 911?

9 A. I mean, he said let's go to the hospital. So we took
10 him to the hospital. That's where we were taking him.

11 Q. The hospital's only five minutes away. By your
12 testimony it took probably five to ten to get him out of the
13 door. Wouldn't an ambulance have gotten there quicker?

14 A. I don't know how long it takes for an ambulance to get
15 there.

16 Q. Enough time to take him down the stairs, and back up,
17 and then back down, and load him in and then drive off?

18 A. Well, I guess so.

19 Q. Was there any discussion about calling 911?

20 A. No.

21 Q. Nobody said anything about it?

22 A. No.

23 Q. Did anybody say the cops had already been called?

24 A. No.

25 MR. IANUARIO: One moment, Your Honor.

TIMOTHY WOODARD, SR. - DIRECT EXAMINATION BY MS. SALISBURY

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1 (Pause)

2 MR. IANUARIO: That was in another statement. I have
3 no further questions, Your Honor.

4 THE COURT: All right. Anything in redirect?

5 MS. SALISBURY: No, sir.

6 THE COURT: All right. Thank you, sir. You may step
7 down, Mr. Holland. You may call your next witness,
8 Solicitor.

9 MS. SALISBURY: Thank you, Your Honor. The State calls
10 Mr. Tim Woodard. Mr. Woodard, if you would, please come
11 around and be sworn.

12 MADAME CLERK: Mr. Woodard, please place your left hand
13 on the Bible and raise your right hand.

14 Timothy Woodard, Sr.,
15 being duly sworn testified as follows:

16 MADAME CLERK: Thank you. Please be seated. State
17 your full name for the record.

18 MR. WOODARD: Timothy Edwin Woodard, Sr.

19 MADAME CLERK: Thank you.

20 Direct Examination by Ms. Salisbury:

21 Q. Mr. Woodard, where do you -- where do you live?

22 A. Currently, 215 Christine Drive.

23 Q. And how long have you lived there?

24 A. Since 1992, '91 or '92.

25 Q. Do you work?

TIMOTHY WOODARD, SR. - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes.

2 Q. Where do you work?

3 A. I own my own business.

4 Q. All right. And where were you living or at on June 2nd
5 of 2011?

6 A. I was temporarily living at Cunningham Villas,
7

8 Q. With whom were you living?

9 A. My fiancé.

10 Q. All right. Do you remember whether you were home that
11 night?

12 A. Yes, I was.

13 Q. Do you remember what you were doing?

14 A. I was in the bed.

15 Q. All right. Do you recall at some point that night
16 hearing what you thought to be gunshots?

17 A. Yes, I do.

18 Q. Would you describe for the jury what -- what you heard,
19 what happened?

20 A. I was lying in bed with my fiancé and we heard two
21 pops; pop, pop, at which time we jumped up and looked out
22 the bedroom window.

23 Q. Now, how are these buildings situated? How -- we've
24 heard some testimony that the victim and the other witnesses
25 lived in building H and you said you lived in building G.

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1 How were they situated in the apartment complex?

2 A. They were across from each other, right across the
3 parking lot from each other.

4 Q. So how is your line of sight toward building H where
5 the incident happened?

6 A. It's a direct line of sight.

7 Q. Okay. Now, after you -- after you heard those shots,
8 what did you do?

9 A. We looked out the bedroom window, saw a white, four
10 door sedan speeding out of the parking lot. At that time I
11 thought the immediate danger was over. So I stepped out
12 into the parking lot to see if there were -- see if there
13 was anybody laying in the parking lot in the need of
14 assistance.

15 (Whereupon State's exhibit 12 was marked for
16 identification)

17 Q. Okay. Now, I'm going -- I'd like to show you State's
18 exhibit 12. And I want you to take a look at what's
19 depicted in that picture. Do you recognize what's in that
20 photograph?

21 A. Yes, I do.

22 Q. What is shown in that photograph?

23 A. This is building H, which was right across from ours.

24 Q. Is that -- is the view predicted or, I guess, shown in
25 that photograph an accurate version of your sight of

TIMOTHY WOODARD, SR. - DIRECT EXAMINATION BY MS. SALISBURY

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1 building H from where you lived ---

2 A. Yes, it is.

3 Q. Okay.

4 MS. SALISBURY: Your Honor, at this time I'd offer
5 State's exhibit 12.

6 MR. IANUARIO: No objections.

7 MS. GORTON: No objections.

8 THE COURT: Without objection, exhibit 12 is admitted
9 into evidence and may be published to the jury.

10 (Whereupon State's exhibit 12 was admitted into
11 evidence)

12 Q. Now, if you would, Mr. Woodard, could you describe for
13 the jury where you were in relation to building H when you
14 stepped outside to see what the danger may be?

15 A. Directly across from building H, I mean, almost a
16 straight shot like it is from here to the exit.

17 Q. Okay. Where did you -- did you stand in the parking
18 lot, did you walk toward the ---

19 A. Um, ---

20 Q. --- what did you do?

21 A. I walked out in the breeze-way of our building,
22 proceeded across the parking lot looking either way to see
23 if there was anybody laying in the parking lot.

24 Q. And what happened when you got outside in the parking
25 lot?

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1 A. I got about halfway across the parking lot where the
2 concrete median is in the middle of the parking lot and
3 three masked men came running out of H building, pistols in
4 hand, threatening me.

5 Q. Could you tell whether those men were black, white,
6 Hispanic?

7 A. They were black.

8 Q. How could you tell?

9 A. The color of their skin.

10 Q. What could you see of their skin? What were they
11 wearing?

12 A. I believe two of them were wearing dark hoodies. They
13 all had bandanas on, but, you know, I could see a given area
14 of their skin and their hands.

15 Q. And what did they say to you?

16 A. Am I allowed to swear? Curse?

17 Q. Well, tell the ---

18 A. I'll ---

19 Q. --- jury what they told you.

20 A. I'll abbreviate that. They told me, you'd better run,
21 boy. We'll F you up. We'll f-ing kill you. Run. And I
22 just turned on my heels and ran.

23 Q. Okay. Did you see where they went? Did they take off
24 on foot? What happened?

25 A. They ran across the parking lot in my direction and

TIMOTHY WOODARD, SR. - DIRECT EXAMINATION BY MS. SALISBURY

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- 1 hopped into a gray Nissan Altima.
- 2 Q. And ---
- 3 A. Then they sped off.
- 4 Q. Okay. Do you -- do you remember where each of these
- 5 cars were parked? You said -- you mentioned initially when
- 6 you looked out the window you saw a white sedan leaving.
- 7 A. The white, four door sedan had been parked right
- 8 outside our bedroom window. Here's the bedroom window.
- 9 Here's the sedan. I mean, we saw it, the car as it was
- 10 backing up and then take off.
- 11 Q. Could you see inside?
- 12 A. No, I could not. The Nissan Altima was parked on G
- 13 building's side of the concrete median in the parking lot.
- 14 Q. Was it near the white car?
- 15 A. Relatively near, yes.
- 16 Q. Okay. So when you turned -- you said you were in the
- 17 dividing median. When you turned to run back to your --
- 18 toward your apartment, they kind of ran after you?
- 19 A. Oh, yeah. They were coming after me, guns -- guns in
- 20 hand.
- 21 Q. Okay. Now, did you give a statement to the police
- 22 about what you saw out there that night?
- 23 A. Yes, I did.
- 24 Q. And after you gave that statement did you have any
- 25 other involvement in the investigation of the case?

TIMOTHY WOODARD, SR. - CROSS EXAMINATION BY MS. GORTON

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1 A. No, I have not.

2 Q. Did you -- did you have any other involvement with
3 identifying who these people may be?

4 A. No.

5 Q. Okay. All right. Sir, if you would, answer any
6 questions that these attorneys may have for you.

7 MS. GORTON: Permission to approach the witness or have
8 the witness step down. I have a Google Earth I'd like him
9 to refer to in explaining the parking lot.

10 THE COURT: Hang on just a minute. You may -- you may
11 look at them, if you wish, Madame Forelady. Excuse me.
12 Yes, ma'am.

13 MS. GORTON: I'm sorry, Your Honor. I have Google
14 Earth here. And I'd like the witness to step down and
15 explain the median and where he saw the two different cars,
16 if that's all right. I apologize, Your Honor. I tried to
17 print it off poster size at Staples. And they said it was a
18 copyright infringement ---

19 THE COURT: Well, maybe you could have him draw a
20 picture of -- as you have earlier.

21 MS. GORTON: I haven't had a lot of luck with that,
22 Judge, but I'll try.

23 THE COURT: I mean, you're not offering that into
24 evidence, ---

25 MS. GORTON: No. I was ---

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1 THE COURT: --- I'm assuming.

2 MS. GORTON: --- just hoping to ---

3 THE COURT: Well, I think it's -- the jury can probably
4 see it better with glares and so forth if you just have a
5 picture drawn.

6 MS. GORTON: Okay. May I show it to him to help him
7 with his picture?

8 THE COURT: If he needs that assistance for his
9 picture. I don't even know if that's -- shows it the same
10 way it was. And I ---

11 MS. GORTON: I was going to cover that.

12 THE COURT: If you need to present something as a piece
13 of evidence, that'll certainly be allowed, allow you to do
14 that.

15 Cross Examination by Ms. Gorton:

16 Q. Is building H ---

17 MADAME COURT REPORTER: You need to speak up.

18 THE COURT: You're going to -- the court reporter's got
19 to get down everything ---

20 MS. GORTON: I'm sorry.

21 THE COURT: --- that's said now.

22 MS. GORTON: I'm trying to ask him if building H is in
23 this empty lot that is shown on Google Earth. And let me

24 ---

25 MS. SALISBURY: Judge, I'm not sure that I ---

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1 MS. GORTON: Okay. I'll see if he can draw it first.

2 THE COURT: All right. Thank you.

3 Q. First of all, building H and building G, they're right
4 across from each other, right?

5 A. Yes, they are.

6 Q. They face each other?

7 A. Yes.

8 Q. And this apartment complex, it has a couple of
9 different roads that run through it, right?

10 A. There's only one entrance coming in there. It's a
11 conglomeration of parking lots.

12 Q. And when you come in the entrance you can split off
13 this way or you can split off this way, right? Or do you
14 know?

15 A. The split I believe you're referring to just goes into
16 another parking lot.

17 Q. Okay. Well, let me ask you this way. The two
18 buildings, G and H that face each other, are those
19 essentially in a cul-de-sac or a dead-end? Those are the
20 last two buildings?

21 A. They are not the last two buildings.

22 Q. They're not?

23 A. No.

24 Q. There's one more set beyond that?

25 A. Yes.

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1 Q. And I don't know that a drawing's going to work, but is
2 there like a parkway type thing between the two parking
3 lots? Like ---

4 A. The way the buildings are arranged, there is a concrete
5 median between them so that you have two rows of parking for
6 each building.

7 Q. All right. So is building H to the left or to the
8 right? If you're driving into ---

9 A. If you're coming in from the entrance, H would be to
10 the left.

11 Q. And you were in H?

12 A. I was in G.

13 Q. So you were over here?

14 A. I was ---

15 Q. Yeah.

16 A. Gotcha'.

17 Q. I'm not trying to confuse you on purpose, I promise.
18 Okay. So over here you have parking spaces that face the
19 building.

20 A. Right.

21 Q. And parking spaces that face what you're calling a
22 concrete median?

23 A. Right.

24 Q. And then over here on the other side we've got parking
25 spaces that face the concrete median. And we've got parking

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1 spaces that face your building, ---

2 A. Yes.

3 Q. Okay. Now, when you talk about a concrete median, are
4 you talking about a high or a low thing, like ...

5 A. Oh, four to six inches high.

6 Q. So you're talking about a concrete curb, ---

7 A. Right.

8 Q. --- more or less? And is there grass in between?

9 A. No, there is not. It's a concrete sidewalk in between.

10 Q. Oh, concrete sidewalk. So there's a bit of space?

11 A. Yes.

12 Q. So when you talk about them coming across, they were
13 coming across that?

14 A. Yes.

15 Q. Okay. Had you crossed the sidewalk to their side?

16 A. No, I had not.

17 Q. Now, trying to build that visual for everybody to keep
18 in mind. When you looked out your window were -- did your
19 apartment face the parking lot?

20 A. Yes, it does.

21 Q. And I want to make sure I understood your testimony
22 correctly. You said when you looked out the window you saw
23 a white car leave?

24 A. Yes.

25 Q. Are you clear in your mind that that occurred before

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1 the three men came out?

2 A. Oh, absolutely.

3 Q. When the three men came out did they approach another
4 car other than the Altima that you talked about?

5 A. No.

6 Q. Did you see any other white cars leave?

7 A. Not at that time.

8 Q. So you see the white car leave, you think it's all
9 clear, you come out and then you're approached by these
10 guys?

11 A. Right.

12 Q. And you see them get in a dark car and they leave?

13 A. Right.

14 Q. And you don't see anyone else?

15 A. No.

16 Q. When you saw the white car did you see anything that
17 transpired with that white car prior to it leaving?

18 A. No.

19 Q. Are you sure that it was gone from the neighborhood,
20 basically, by the time they get in the car and leave?

21 A. The -- which car? The white one?

22 Q. The white car?

23 A. Yes. Yes.

24 Q. Okay.

25 MS. GORTON: Nothing further.

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1 MR. IANUARIO: I have no questions for this witness,
2 Your Honor.

3 THE COURT: Anything in redirect?

4 MS. SALISBURY: Nothing from the State, Judge.

5 THE COURT: All right. Thank you, sir. You may step
6 down. You may call your next witness.

7 MS. SALISBURY: Thank you, Your Honor. The State calls
8 Deputy David Picone.

9 MADAME CLERK: Please place your left hand on the Bible,
10 and raise your right hand.

11 David Picone, being duly
12 sworn testified as follows:

13 MADAME CLERK: Thank you. Please be seated. Please
14 state your full name for the record.

15 MR. PICONE: David Daniel Picone.

16 Direct Examination by Ms. Salisbury:

17 Q. Deputy, where do you work?

18 A. Greenville County Sheriff's Office.

19 Q. In what capacity?

20 A. Uniform patrol.

21 Q. And how long have you been with the Sheriff's Office?

22 A. About five years and a couple of months.

23 Q. And what are some of your duties and responsibilities
24 on uniform patrol?

25 A. To respond to routine calls for service, make traffic

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1 stops whenever possible, just patrol the area that you work.

2 Q. And how does that process happen? The responding to
3 calls part, how does that work?

4 A. Whenever dispatch receives a call, we're set up into
5 certain beat areas. And the units that are in that beat
6 area, dispatch will dispatch you to a call for service. It
7 will come over your computer or they will send -- they'll
8 send it to you over radio telling you what's going on. And
9 you go to that call.

10 Q. Do you remember being dispatched to a call just after
11 midnight on June 3rd, 2011?

12 A. I do.

13 Q. Where were you instructed to go?

14 A. , which is the Cunningham Villas.
15 It's an apartment complex.

16 Q. Is that apartment complex inside Greenville County?

17 A. Taylors, South Carolina.

18 Q. What could you see when you got there?

19 A. Do you want me to start from when dispatch first
20 initially gave us the call, what they said?

21 Q. Well, no, without relaying what dispatch told you, ---

22 A. Okay.

23 Q. --- what did you see when you arrived where you were
24 directed to go?

25 A. As soon as we pulled into the complex, it was myself

DAVID PICONE - DIRECT EXAMINATION BY MS. SALISBURY

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1 and another deputy, he was in his own patrol car, I was the
2 first one to enter. When we come in the apartment complex,
3 go straight in and the buildings are rowed like this as you
4 go in. I'm pretty familiar with the building. And they'd
5 said, you know, building H.

6 So when I responded in there I see a -- I believe it
7 was a white jeep coming towards me. At that time we had
8 information that that was possibly somebody shot in that
9 car. So we made a traffic stop on it when we were face to
10 face with them.

11 We advised everybody to get out of the car 'cause we
12 didn't know if they were suspects or what was going on.
13 There was -- the front seat, there was a driver and a
14 passenger, two black males. We got them out of the car. We
15 both patted them down to make sure they didn't have any
16 weapons on them.

17 They told us that their friend had been shot. He was
18 laying across the backseat. Nobody else was in the car. At
19 that time I then advised dispatch we had a gunshot victim
20 and to have EMS to respond to the location.

21 Q. Now, did you speak to each of the -- the other two that
22 were in the car?

23 A. We did. Once we got the victim into the, you know,
24 ambulance and got him taken care of, then we kind of
25 separated everybody and talked to each person individually.

DAVID PICONE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. And you've had a general idea about what they told you
2 had happened. What did you do next?

3 A. Myself and another deputy went immediately down to the
4 apartment after we found out what apartment it occurred in,
5 knocked on the door. They told us one of their friends was
6 in there. He came to the door immediately. We -- we did a
7 protective sweep inside the apartment to make sure there was
8 no other victims or nobody in the apartment with weapons.

9 After that we got the actual homeowners to come back up
10 to the apartments with us. And we explained to them that we
11 would like them to sign a consent to search form so we could
12 check for any, you know, shell casings, the magazine, bullet
13 holes in the apartment, anything like that.

14 Q. Now, you said you spoke with the two homeowners. To be
15 clear, are those the same two people that were in that jeep
16 ---

17 A. It was.

18 Q. --- when you first pulled in?

19 A. Yes.

20 Q. Okay. Now, were they cooperative with you?

21 A. Very.

22 Q. Did they let you search their apartment?

23 A. Absolutely.

24 Q. Did you participate in the search of the apartment?

25 A. I did.

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1 Q. Did you find anything inside that was helpful to the
2 investigation or appeared to be criminal to you?

3 A. Did not. I believe in my report I mentioned there was
4 a spot of blood on the floor. We didn't find any shell
5 casings, no bullet holes, no narcotics, nothing like that.

6 Q. What would have happened if you had seen any indication
7 of narcotics inside that apartment?

8 A. I would have -- if we would have saw narcotics in the
9 apartment, we would have gone further and got a search
10 warrant. After we'd have got a search warrant, we would
11 have made the appropriate charges, gone from there.

12 Q. Do you remember seeing any red bandanas in the
13 apartment?

14 A. I don't.

15 Q. Do you remember seeing any jars of drugs?

16 A. I don't.

17 Q. Okay. About how many officers were on-scene? Give the
18 jury an idea about how -- what's the protocol on a shooting
19 case? How many people were there or what's going on?

20 A. A lot of times they're pretty hectic. First thing we
21 do is, you know, make sure the victim's okay, find out the
22 trauma score from the victim from EMS, notify my sergeant so
23 he can respond out there. He needs to notify the, you know,
24 investigators depending on the status of the victim.

25 The units usually and the deputies usually in the area,

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1 there can be anywhere from two to three deputies. Plus,
2 surrounding beat areas sometimes come depending on how large
3 it was. I think there might have been a total of four or
4 five of us out there at that time.

5 Q. Did you -- how did you determine what had been taken
6 from the apartment that day?

7 A. After we did the search of the apartment I went down to
8 the hospital and made contact with Mr. Benson, I believe,
9 his last name is, to talk to him further since he was the
10 gunshot victim to try to get a description of suspects, car,
11 if he knew these people.

12 He then told me that he believed his laptop was stolen.
13 It was -- I believe it was a bluish color Toshiba. He gave
14 me the price value. I listed that in the report.

15 I asked if anything else was stolen at the time. He
16 told me he didn't believe so. But, you know, of course he'd
17 been shot. So he was kind of ...

18 Q. Was he cooperative with you?

19 A. Very cooperative.

20 Q. Now, after your role as the responding officers
21 on-scene do you have any other participation in the
22 investigation of these cases?

23 A. After I wrote the initial report, it gets forwarded up
24 to my supervisor. He then reads the report and will sign it
25 off. And it gets -- something like they usually get sent

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1 over to our investigators. So I didn't have any further ...

2 Q. Did you do anything else to assist in the investigation
3 of this case?

4 A. No.

5 Q. Okay. Thank you, sir. If you would, answer any
6 questions the attorneys may have for you.

7 A. Okay.

8 Cross Examination by Ms. Gorton:

9 Q. Just a couple of clarifications. They list you as the
10 investigating officer. What does that mean exactly?

11 A. As the investigating officer I was the initial report
12 taker. I was the first one to arrive on-scene and conducted
13 the what we call code 5, which is the incident report.

14 Q. So you're not the officer in charge of the entire
15 investigation? That's Hoover, right?

16 A. Once I write the report and it was turned in, I -- no
17 further investigation.

18 Q. So you just have the one report?

19 A. That's it.

20 Q. Okay. Now, Hamilton, who is he?

21 A. He is a forensics.

22 Q. All right. And did you meet Hamilton at the hospital?

23 A. I don't remember if Hamilton was there when I was there
24 or if I talked to him on the phone and told him he just
25 needed to take pictures of the victim's injuries and collect

DAVID PICONE - CROSS EXAMINATION BY MS. GORTON

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1 his clothes.

2 Q. Now, were you supposed to meet Hamilton at the
3 hospital? Do you recall?

4 A. We don't have to. He -- I was -- he's requested. And
5 he does forensics, I don't. So he knows what to do when
6 forensics comes out.

7 Q. Is it possible that Hamilton got there and got a
8 statement from the victim prior to your arriving?

9 A. I don't believe so. They don't get statements. He
10 probably just got a basic of what happened on-scene.

11 Q. Did you have an opportunity to review Hamilton's
12 report?

13 A. I don't know. I don't believe so. I didn't look at
14 it.

15 Q. No? And I know this has been almost a year.

16 A. Um-hum (affirmative).

17 Q. I know you have a lot of cases.

18 A. Um-hum (affirmative).

19 Q. Do you recall speaking with Hamilton about the
20 statement that the victim gave to him in this case?

21 A. No.

22 Q. All right. You're not saying it absolutely didn't
23 happen, you just don't recall it?

24 A. I don't.

25 Q. All right. Now, you also talked to the victim. And

DAVID PICONE - CROSS EXAMINATION BY MS. GORTON

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1 you knew that a magazine -- what's it called with all the
2 bullets in it?

3 A. It's called a magazine.

4 Q. The magazine clip had fallen out.

5 A. Yes.

6 Q. Did you find one?

7 A. Did not.

8 Q. Did any of your officers find one?

9 A. Did not.

10 Q. She asked about not finding marijuana. You also didn't
11 find a magazine clip.

12 A. Nope.

13 Q. Did you find any casings?

14 A. Sure didn't.

15 Q. Did -- were you paying particular attention to whether
16 he had red bandanas?

17 A. Not particular, but I was looking through the house.

18 Q. All right. Red bandanas is not what you were looking
19 for, correct?

20 A. No.

21 Q. All right. Now, when you went in did you smell
22 anything?

23 A. Did not.

24 Q. I am going to hand you a copy ---

25 MS. GORTON: Permission to approach.

DAVID PICONE - CROSS EXAMINATION BY MS. GORTON

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1 THE COURT: Yes, ma'am.

2 Q. Is this the first page of your report?

3 A. That is.

4 Q. And here at the top it says event. And it gives the
5 date of 6/3/2011.

6 A. Yes.

7 Q. And it gives a time. What does that time mean?

8 A. That's what time dispatch received the first call from
9 the -- Mr. Woodard.

10 Q. All right. And then the next time space says ...

11 A. The same thing.

12 Q. What does that one mean?

13 A. It's just -- it's the same thing. That's what time it
14 happened.

15 Q. All right. And then the third time space says what?

16 A. My time of arrival.

17 Q. Which was what?

18 A. 026 ---

19 Q. So ---

20 A. --- 0. Basically at 26 after 12 or midnight.

21 Q. After midnight. And the time -- the time the call came
22 in?

23 A. Well, sometimes there's an elapsed time. Dispatch gets
24 the call from the call taker, the call taker gives it to the
25 dispatcher, which dispatches it to us. So sometimes there's

DAVID PICONE - CROSS EXAMINATION BY MS. GORTON

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1 a three, four minute lapse in the call to the dispatch time.

2 Q. Okay. But this would be when dispatch enters it?

3 A. That's what time the first call came in, yes.

4 Q. All right. So you're saying there could be three to

5 four minutes prior to 01700, is that what that says?

6 A. Yes.

7 Q. So going by this there was a nine minute gap?

8 A. Um-hum (affirmative).

9 Q. But it could have been twelve, thirteen minutes ---

10 A. That's what time -- once they get the call is what time

11 it's put in the system, at 12:17. And then between 12:17

12 and 12:26 is when I arrived on the scene.

13 Q. All right. So the first call, someone has time to pick

14 up the phone, say there's gunshots, ---

15 A. Um-hum (affirmative).

16 Q. --- to when you get on-scene, ---

17 A. Um-hum (affirmative).

18 Q. And trust me, I'm not trying to criticize your response

19 time. I'm just trying to establish that there are nine

20 minutes between shots fired and when you arrive on the

21 scene.

22 A. (Affirmative nod).

23 Q. How much time do you spend down in the parking lot

24 before you send an officer upstairs to check the apartment?

25 A. I know I stayed down there. I think we might have sent

DAVID PICONE - CROSS EXAMINATION BY MR. IANUARIO

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1 somebody up to the apartment right away once we found out it
2 was there just to secure the scene, but maybe four minutes.

3 Q. Okay. So we're nine minutes between, plus another
4 four, maybe?

5 A. (Affirmative nod).

6 Q. So we're up to thirteen minutes. Any idea what Mr.
7 Boyd was doing in the apartment during those fourteen
8 minutes?

9 A. Could not tell you.

10 Q. Not a clue?

11 A. Not a clue.

12 Q. Thank you.

13 THE COURT: You may cross examine the witness.

14 Cross Examination by Mr. IANUARIO:

15 Q. Thank you, deputy. You said first you did a sweep of
16 the apartment, a protective sweep?

17 A. Yes.

18 Q. Can you go into a little bit of detail what a sweep
19 normally involves?

20 A. It's just basically a couple of deputies checking
21 rooms, make sure nobody's hidden in the apartment, nobody's
22 -- else is shot, nobody's a threat. You know, it's not --
23 we don't -- it's not a search of the apartment, it's just a
24 glance-over, check of each room, make sure nobody's there.

25 Q. Okay. I think you said later you went back and

DAVID PICONE - CROSS EXAMINATION BY MR. IANUARIO

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1 searched the apartment?

2 A. After we got a consent to search, yes.

3 Q. What were you searching for?

4 A. Shell casings, bullet holes, anything that would have
5 to do with the gunshot victim or the crime.

6 Q. So you weren't looking for evidence of drug activity?

7 A. We weren't looking for it, but if we would have came
8 across it, we would have definitely documented it.

9 Q. Did you open cabinets and drawers?

10 A. I didn't.

11 Q. Do you know if any of the officers opened ---

12 A. Don't know ---

13 Q. --- cabinets or drawers?

14 A. --- if they did or not.

15 Q. In such a type of search where you're responding to a
16 crime scene is it normal to go through somebody's cabinets
17 and drawers or do you look mainly ---

18 A. Depends on what the crime is. I mean, if we were
19 searching for something that would be in drawers, yes. But
20 for a gunshot, no.

21 Q. So, hypothetically, let's say that marijuana had been
22 present in the apartment, and it had been hidden in the
23 drawers, or toilet tank, or the oven, or wherever, ---

24 A. Um-hum (affirmative).

25 Q. --- hypothetically, would it have been found during

DAVID PICONE - CROSS EXAMINATION BY MR. IANUARIO

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1 that search or could it have been overlooked?

2 A. Not by me 'cause I didn't look through those things.

3 Q. Is it possible it could have been overlooked,

4 generally, in one of those types of searches and

5 hypothetically?

6 A. Most likely not. We usually do thorough searches.

7 Q. Okay. Even going into the toilet tanks for a gunshot?

8 A. Not for a gunshot, no.

9 Q. Okay. Drug cases you would look for stuff like that,

10 ---

11 A. Yes.

12 Q. --- but in a gunshot you wouldn't be looking in the

13 toilet tank ---

14 A. Not unless they got shot in the toilet.

15 Q. And he wasn't shot in the toilet?

16 A. (Negative nod).

17 Q. Okay. Did you ever find a bullet hole?

18 A. We did not. On him, I did, but not in the ...

19 Q. Okay. Did you find anything of note relating to the

20 shooting?

21 A. What do you mean by ...

22 Q. Shell casings, a ---

23 A. No.

24 Q. --- magazine or anything that might possibly be

25 relevant that hasn't come out yet or you've been asked ---

DAVID PICONE - CROSS EXAMINATION BY MR. IANUARIO

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1 A. Didn't find any of that.

2 Q. Did you notice a smell of burnt gunpowder in the
3 apartment?

4 A. No.

5 Q. Did you notice a smell of marijuana in the apartment?

6 A. No.

7 Q. So would there have been enough time -- we don't know
8 whether or not there was marijuana in there, but we do know
9 that a shooting took place and there was at least enough
10 time for the smell of the gunpowder to dissipate.

11 A. I would believe so.

12 Q. Nothing further. Thank you for your service.

13 THE COURT: Anything in redirect?

14 MS. SALISBURY: Nothing in redirect.

15 THE COURT: Thank you, Officer Picone. You may step
16 down.

17 A. Thank you.

18 THE COURT: This might be a good time for us to take a
19 lunch break. I don't know how long the next witness may be,
20 but I'm going to let you go to lunch.

21 I'll remind you, again, ladies and gentlemen, you're
22 not to discuss the case one with another, with anyone else.
23 Don't let anyone discuss the case with you. Remember the
24 commitment you've made to these parties, to be fair and
25 impartial and base your decision when all the evidence is in

1 and what takes place in the courtroom.

2 If you'll be back at 2:00 we'll be ready to start back
3 with further testimony at that time. Everyone else, please
4 remain seated while the jury departs for lunch.

5 (Whereupon the jury exited the courtroom at 12:47 pm)

6 THE COURT: All right. We'll be at ease til 2:00.

7 (Whereupon court was in recess at 12:48 pm)

8 (End of Volume One of Two)

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JUWAN D. LOMAX AND)
 DENIA Z. O. DAWKINS,)
)
 DEFENDANTS.)
 _____)

2011-GS-23-9672A, 9673A & 9676A
 2011-GS-23-08019 - 08022

TRANSCRIPT OF RECORD
 (VOLUME TWO OF TWO)

APRIL 9 - 11, 2012
 GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

KATRYNA SALISBURY
 ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

ROBERT IANUARIO, ESQUIRE
 CASSANDRA GORTON, ESQUIRE

SUSAN W. HUDGINS
 CIRCUIT COURT REPORTER

1 Tuesday, April 10, 2012: (Volume Two of Two):

2 (Whereupon court resumed at 2:10 pm)

3 THE COURT: Ready to proceed, Solicitor?

4 MS. SALISBURY: Yes, Your Honor.

5 THE COURT: If the jury's ready, you can have them come
6 in, Ms. Sims.

7 (Pause)

8 THE COURT: Yes, ma'am.

9 MS. GORTON: Judge, before the jury comes in, yesterday
10 when we talked about releasing on bond you said that maybe
11 you could reconsider it if we got the bondsman here. I
12 believe that Adam with Catch 22 is here. I also understand
13 that he posted the bond on both these individuals ---

14 THE COURT: Let's talk about it at the end of the day,
15 okay? When it becomes an issue, okay?

16 MS. GORTON: All right.

17 THE COURT: Rather than keep the jury waiting now,
18 we'll wait til the jury leaves today, and I'll be glad to
19 hear it then, okay?

20 MS. GORTON: Thank you.

21 THE COURT: All right. You can have them come in.

22 (Whereupon the jury entered the courtroom at 2:11 pm)

23 THE COURT: Solicitor, you may call your next witness.

24 MS. SALISBURY: Thank you, Your Honor. The State calls

MARK McCOY - DIRECT EXAMINATION BY MS. SALISBURY

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1 Sergeant Mark McCoy. Sergeant, if you would, please come
2 around and be sworn.

3 MADAME CLERK: Sir, please place your left hand on the
4 Bible and raise your right hand.

5 Mark McCoy, being duly
6 sworn testified as follows:

7 MADAME CLERK: Thank you. Please be seated. Please
8 state your name for the record.

9 MR. McCOY: Mark McCoy.

10 MADAME CLERK: Thank you.

11 Direct Examination by Ms. Salisbury:

12 Q. Sergeant, where do you work?

13 A. I work for the Greenville County Sheriff's Office.

14 Q. In what capacity?

15 A. I'm a sergeant in uniform patrol.

16 Q. And how long have you been a sergeant?

17 A. I've been a sergeant since 2007/2008. So four years
18 now.

19 Q. And how long have you been with the Sheriff's Office?

20 A. I've been with the Sheriff's Office since 1996.

21 Q. And before that did you have any law enforcement
22 experience?

23 A. I did. I have twenty-five years total. Before that, I
24 was in forensics for five and a half years.

25 Q. Now, as a sergeant in -- for uniform patrol, what are

MARK MCCOY - DIRECT EXAMINATION BY MS. SALISBURY

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1 your specific responsibilities day-to-day?

2 A. Supervise the deputies on the road, the uniform patrol
3 deputies, respond to major incidents, paperwork,
4 evaluations, make sure everything's going good. And we also
5 read and approve reports that are submitted throughout the
6 day.

7 Q. Now, were you working in that capacity in June of 2011?

8 A. Yes, I was.

9 Q. Do you remember becoming involved, whether it be
10 dispatch or another way, responded to the incident involved
11 in this trial?

12 A. Yes, I do.

13 Q. Would you describe for the jury how you became involved
14 in the incident?

15 A. I responded when it came out over the radio. And as
16 part of my duties, the area of town that this happened on,
17 the east side, is my area of responsibility. When the call
18 went out, I responded along with the uniform deputies. I
19 got there a little piece after they did. They arrived
20 first.

21 Q. And what was happening when you arrived on-scene?

22 A. When I arrived they had a white Jeep Cherokee stopped.
23 I believe EMS was already there or was pulling in at the
24 time. And they were -- they were talking to some subjects
25 there along with one of the victims that had a gunshot wound

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1 as we determined later.

2 Q. Now, you've mentioned a lot that you have supervisory
3 responsibilities, generally. On a type of scene like this,
4 what are your specific responsibilities?

5 A. I pretty much coordinate everything that happens there.
6 To determine if we need to notify anybody from our CID unit,
7 any of the investigators at the time depending on the nature
8 of the crime and the extent of the injuries to the person.

9 Q. Did you participate in the search of the incident site,
10 the apartment where the shooting took place?

11 A. I went in there. I don't think I was one of the
12 initial officers that went up there. I walked up there with
13 one of the other officers as they briefed me about what was
14 going on and what we had at the scene, yes.

15 Q. Did you determine whether to call forensics out to the
16 scene to come process anything that was found on the scene?

17 A. Right. I determined that we did not need them at the
18 scene.

19 Q. And why did you make that decision?

20 A. We didn't have any evidence there that I believed would
21 be recoverable that could identify a suspect. The -- from
22 the information we had, the areas that were touched by the
23 people that committed the crime were removed by them. The
24 other areas such as the door at the point of entry didn't
25 seem to be conducive to any processing, which probably the

MARK McCOY - DIRECT EXAMINATION BY MS. SALISBURY

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1 likelihood of any prints or any evidence being there was
2 next to nothing.

3 Q. Do you recall determining whether there was any
4 projectile found inside the house, anything inside that
5 apartment that might have any value for the investigation?

6 A. We saw nothing. That was what we were looking for. We
7 looked under couches, even looked in some of the cushions, I
8 believe, of the couch. And we didn't find anything like
9 that, no.

10 Q. Did you make contact with anybody in forensics to
11 direct them to respond in any capacity?

12 A. Personally, I didn't. I made sure that forensics was
13 notified to go to the hospital, but I don't remember
14 actually talking to them.

15 Q. And, I believe, a minute ago you mentioned also that
16 you had contacted an investigator on-scene. Did you make
17 contact with the investigators in any particular division
18 about following up with what was discovered on-scene?

19 A. We didn't at this time. No, we did not.

20 Q. Okay. How does that process work?

21 A. As far as contacting ---

22 Q. Yes.

23 A. --- an investigator? Well, like I say, it determines
24 -- it's determined by the injury of the person and the
25 extent that they need to get out there, how urgent it is

MARK McCOY - CROSS EXAMINATION BY MS. GORTON

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1 that they get on-scene. If it's in the middle of the night
2 and it's something they can follow up the next morning, then
3 we let them do that. At this time we had one name. We
4 didn't have any further leads to go on. So I made the
5 determination that we'd let them get the case in the morning
6 when they came in.

7 Q. And what name did you have at that point?

8 A. I believe it was Dawkins, De'Nia Dawkins, I believe,
9 was the only name that I was given at the time.

10 Q. Okay. Thank you, Sergeant. If you would, answer any
11 questions these attorneys may have.

12 Cross Examination by Ms. Gorton:

13 Q. I'm not sure if I misheard you, but I thought you said
14 you didn't get -- send forensics because you understood that
15 everything that was there to be examined was taken by the
16 perpetrators?

17 A. That's correct.

18 Q. Well, how did you determine that?

19 A. We learned that a laptop was taken.

20 Q. All right. What about the clip?

21 A. We found no clip in the house.

22 Q. All right.

23 A. In the apartment.

24 Q. So certainly you're not suggesting that anyone said
25 that they saw the perpetrators take the clip?

MARK MCCOY - CROSS EXAMINATION BY MR. IANUARIO

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1 A. We found no clip or magazine in the apartment.

2 Q. Okay. And no one told you that the perpetrators had
3 taken it?

4 A. No, ma'am.

5 Q. All right. Nothing further.

6 Cross Examination by Mr. IANUARIO:

7 Q. Sergeant, when you were searching the house did you
8 find any evidence of drug activity?

9 A. I didn't actually conduct the search. I walked
10 through, but I saw nothing -- no indication of drug
11 activity, no.

12 Q. Okay. Did you see the officers conducting the search?

13 A. No, I didn't.

14 Q. Okay. Nothing further. Thank you for your service,
15 sir.

16 THE COURT: Any redirect?

17 MS. SALISBURY: No, sir.

18 THE COURT: Thank you, Officer McCoy. You may step
19 down. The State may call its next witness.

20 MS. SALISBURY: Thank you, Your Honor. The State calls
21 Investigator Devin Hoover. Investigator, if you would,
22 please come around and be sworn.

23 MADAME CLERK: Please place your left hand on the Bible
24 and raise your right hand.

25

Devin Hoover, being duly

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 sworn testified as follows:

2 MADAME CLERK: Thank you. Please be seated. Please
3 state your full name for the record.

4 MR. HOOVER: Devin Hoover.

5 Direct Examination by Ms. Salisbury:

6 Q. Investigator, where do you work?

7 A. Greenville County Sheriff's Office.

8 Q. And in what capacity?

9 A. I'm a master deputy assigned to the Criminal
10 Investigations Division, Armed Robbery Unit.

11 Q. And how long have you worked in the Armed Robbery Unit?

12 A. I've been there about two years.

13 Q. And how long have you been with the Sheriff's Office
14 all total?

15 A. About five years, eight months.

16 Q. Now, as an armed robbery investigator what are your
17 specific duties and responsibilities?

18 A. Generally, we're given cases to follow up with, you
19 know, that happen over the weekend or over the night. We're
20 usually assigned pretty close to the day afterwards. We
21 follow up with those cases.

22 Q. Is it your job to investigate and essentially solve
23 those cases?

24 A. Yes.

25 Q. Okay. Now, were you working in that capacity in June,

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 2011?

2 A. Yes, ma'am, I was.

3 Q. So how was -- how did you become involved in this
4 particular case?

5 A. Just like I said earlier, I did not respond that night.
6 I received this case later on to follow up.

7 Q. And how did you begin your investigation?

8 A. I basically started speaking with my -- the different
9 witnesses, the people involved, everybody that was on the
10 scene that night, called a couple of the deputies, began to
11 research the databases that we have available to us just to
12 kind of gather some preliminary information.

13 Q. Which element of that did you decide to follow up on
14 first?

15 A. I was able to locate a vehicle that matched the
16 description given by Mr. Woodard, the victim that night, the
17 white, four door sedan. I was able to locate one attached
18 to the name of De'Nia Dawkins, which was also attached to
19 the name of Juwan Lomax.

20 Q. Now, when you stated that it was attached to the name
21 of De'Nia Dawkins, what exactly did you -- how did you
22 connect this white car to De'Nia?

23 A. We have a database available to us. I ran her name,
24 since it was available from the witness of who was there
25 that night, and it pulled up a police report where that

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1 vehicle was pulled over. And it was attached to not only
2 her name, but through the registration or address, I can't
3 remember exactly, but to Mr. Lomax.

4 Q. Now, what did you decide to do next after you had now a
5 second name and a vehicle? What happened next in the
6 investigation?

7 A. We were able to go to that address where the vehicle
8 was registered. We were able to speak with Mr. Lomax.

9 Q. Was Mr. Lomax arrested at that time?

10 A. He was taken down.

11 Q. Now, did Mr. Lomax give you a statement as part of an
12 interview after he was arrested?

13 A. Yes, ma'am.

14 Q. And after that did you speak with -- or what did you do
15 next in the investigation after you spoke with Juwan Lomax?

16 A. We continued to gather information. I then went to
17 seek Ms. Dawkins. And I was able to locate her and speak
18 with her.

19 Q. Had you secured warrants for her arrest at that point?

20 A. I had.

21 Q. And when you located her was she placed under arrest?

22 A. Yes, ma'am.

23 Q. Did she indicate at some point after she was arrested
24 that she wanted to speak with you or give a statement?

25 A. Yes, ma'am.

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Where did that -- where did you speak with her? Where
2 did that conversation take place?

3 A. We initially located her at County Square. And we
4 asked her if, you know, that we could go down to the LEC and
5 speak. And she cooperated fully.

6 Q. During that interview process, after she was arrested,
7 was she in handcuffs?

8 A. Not during the interview, no, ma'am.

9 Q. Who was present during that interview?

10 A. I was present and Investigator Brandon Brown.

11 Q. Before you spoke with her did you read her her Miranda
12 rights?

13 A. Absolutely.

14 Q. Did you read them from a form or did you recite them
15 from memory?

16 A. I read them directly from the form.

17 Q. Did you ensure that Ms. Dawkins read the form?

18 A. Yes, ma'am.

19 Q. I'm going to show you State's exhibit 1. Do you
20 recognize that document?

21 A. Yes, ma'am, I do.

22 Q. What is that?

23 A. This is the rights form with the waiver of rights.

24 Q. Is that the exact form that you read to Ms. Dawkins
25 before you interviewed her?

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes, ma'am, it is.

2 Q. Is your signature on that form?

3 A. Yes, ma'am, my initials. Yes.

4 Q. And what's -- what do your initials on that form mean?
5 Why do you initial the form?

6 A. I initial this that I've explained it to her
7 completely.

8 Q. Now, did you -- did you have Ms. Dawkins read the form
9 or did you read it aloud to her?

10 A. I read it aloud to her. And then I have her read it
11 and I highlight all the areas that I need her to initial
12 that she understood, which is basically each line of the
13 whole form. After she initials each line, she is signifying
14 to me that she has read it and understood it completely.

15 Q. And did she initial beside each of the rights that you
16 read to her on that form?

17 A. Yes, ma'am.

18 Q. Would you read for the jury what you read to Ms.
19 Dawkins?

20 A. Before we ask you any questions you must understand
21 your rights. You have the right to remain silent. Anything
22 you say can be used against you in court. You have the
23 right to talk to a lawyer for advice before we ask you any
24 questions and to have him with you during questioning. If
25 you have no money to pay a lawyer's fee, the court will

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(1 appoint one to represent you without cost if you wish.

2 If you decide to answer questions now without a lawyer
3 present, you still have the right to stop answering at any
4 time. You also have the right to stop answering at any time
5 until you talk to your lawyer.

6 The waiver of rights is at the bottom below that. It
7 says I have read this statement of my rights. And I
8 understand what my rights are. I'm willing to make
9 statements and answer questions. I do not want a lawyer at
10 this time. I understand and know what I am doing. No
11 promises, threats have been made to me. And no pressure or
12 coercion of any kind has been used against me. Which I
(13 highlight coercion. And I explained that to her as tricks
14 or threats.

15 Q. Did she indicate that she understood what that meant?

16 A. Yes, ma'am.

17 Q. Did she indicate to you after she read that form --
18 well, I'll start this way. Did she sign that form?

19 A. Yes, ma'am.

20 Q. And did she indicate to you that she wanted to waive
21 her rights and speak with you and give a statement?

22 A. Yes, ma'am.

23 Q. I'm going to show you State's exhibit 5. Do you
24 recognize that document?

(25 A. Yes, ma'am, I do.

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1 Q. How do you recognize it?

2 A. This is the statement that I typed for her.

3 Q. Does your signature appear on that statement?

4 A. My unit number, I typed it in.

5 Q. Okay. Does that form also contain a waiver?

6 A. Yes, ma'am, at the very beginning.

7 Q. Would you please read for the jury what that -- what
8 that represents?

9 A. I, De'Nia Dawkins, do hereby freely give voluntarily
10 this statement to Investigator D.A. Hoover, star number
11 1029, unit 622, and Investigator Brandon Brown, star number
12 780, unit 442, who have identified themselves to be deputies
13 of the Greenville County Sheriff's Office, Greenville, South
14 Carolina.

15 I have been advised that I do not have to make this or
16 any other statement and that what I say can be used against
17 me in a court of law. I have been advised that I have the
18 right to counsel with an attorney of my choice that I am --
19 if I am financially unable to obtain an attorney, the court
20 will appoint one, an attorney to represent me. I have not
21 been threatened or promised to make any rewards to make the
22 statement.

23 Q. Did it seem to you that Ms. Dawkins understood her
24 Miranda rights?

25 A. Yes, ma'am.

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Did it appear to you that she wanted to waive those
2 Miranda rights and ---

3 A. Absolutely.

4 Q. --- give a statement?

5 MS. SALISBURY: Your Honor, at this time I'd move
6 State's exhibits 1 and 5 into evidence.

7 THE COURT: Any objection?

8 MS. GORTON: No.

9 MR. IANUARIO: Not at all.

10 THE COURT: Without objection, exhibits 1 and 5 are
11 admitted into evidence ---

12 Q. Investigator, ---

13 THE COURT: --- and may be published.

14 MS. SALISBURY: My apologies, Judge.

15 (Whereupon State's exhibits 1 and 5 were admitted into
16 evidence)

17 Q. Investigator, have you ever had an occasion to deal
18 with individuals during the course of your duties at the
19 Sheriff's Office that were under the influence of alcohol or
20 drugs?

21 A. Yes, I have.

22 Q. So you know -- do you know what that looks like?

23 A. Absolutely.

24 Q. During this interview did the Defendant appear to be
25 under the influence of either of these substances?

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- 1 A. Absolutely not.
- 2 Q. Did she respond clearly to your questions?
- 3 A. Very clearly.
- 4 Q. Did she appear to understand your questions?
- 5 A. Yes, ma'am, she did.
- 6 Q. Was her speech clear?
- 7 A. Yes.
- 8 Q. Did she make sense when she spoke to you?
- 9 A. Very much so.
- 10 Q. Did you verify that she could read and write?
- 11 A. Yes, I did.
- 12 Q. Did you ask her what level of education she had ---
- 13 A. I did.
- 14 Q. And what did she indicate that her education level was?
- 15 A. She notated at the top of her rights form that she was
- 16 a Mauldin graduate of '09 and at Voorhees College, '09
- 17 through '11 and was going to Greenville Tech that Fall.
- 18 Q. Was Ms. Dawkins ever threatened, pressured or coerced
- 19 in any fashion in order to provide that statement?
- 20 A. Absolutely not.
- 21 Q. Was she ever promised any reward in exchange for
- 22 providing that statement?
- 23 A. No, ma'am.
- 24 Q. Was she -- during the course of your interview was she
- 25 ever deprived of food or water?

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. No.

2 Q. Was she allowed to go to the bathroom?

3 A. Absolutely.

4 Q. Did she freely agree to speak with you about this
5 investigation?

6 A. Yes, she did.

7 Q. Did she freely agree to speak with you without an
8 attorney being present?

9 A. Yes.

10 Q. Did it ever appear to you during the course of your
11 interview that she changed her mind and she wished to waive
12 those rights ---

13 A. No.

14 Q. --- and not speak to you?

15 A. Not at all.

16 Q. Did -- at any point in the interview did she indicate
17 that she wanted to change her mind and have an attorney be
18 present?

19 A. No.

20 Q. Now, did -- did you -- I believe you've already said
21 this, but did you type that statement for Ms. Dawkins?

22 A. Yes, ma'am, I did.

23 Q. Did you give her an opportunity to read over that
24 statement after you had typed it?

25 A. Yes, ma'am.

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Was she given an opportunity to make any corrections to
2 that statement?

3 A. Yes, ma'am. And actually, the same way I do the waiver
4 of rights, I also highlight and initial each line of the
5 beginning of the -- each paragraph and at the very end. And
6 they handwrite at the bottom -- I have them handwrite
7 whether that's the truth or not. They have the opportunity
8 to read this over and tell me if there's any corrections
9 that need to be made. And we handled that at the time. She
10 was given an opportunity. And she wrote in here and signed
11 it as correct.

12 Q. Did she initial as you've described before each
13 paragraph?

14 A. Yes, ma'am.

15 Q. Did she indicate to you that she wanted to make any
16 changes to that substance -- the substance of that
17 statement?

18 A. No, ma'am.

19 Q. How long did your interview with her last?

20 A. An hour, maybe an hour and a half tops.

21 Q. Did it appear to you during the course of that
22 interview that she understood everything that was going on?

23 A. Absolutely.

24 Q. To the best of your knowledge was her statement freely
25 and voluntarily given?

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1 A. Yes, ma'am, it was.

2 Q. Would you please read for the jury what the Defendant
3 said in her statement.

4 A. I, De'Nia Dawkins, do hereby freely give voluntarily
5 this statement to myself, Investigator Brandon Brown, who
6 have identified themselves to be deputies of the Greenville
7 County Sheriff's Office, Greenville, South Carolina.

8 I have been advised that I do not have to make this
9 statement and that what I say can be used against me in the
10 court of law. I have been advised that I have the right to
11 counsel with an attorney of my choice, that if I'm
12 financially unable to obtain an attorney, the court will
13 appoint one, an attorney to represent me. I have not been
14 threatened or promised any reward to make this statement.

15 I am twenty years old. And I reside at 218 West
16 Dorchester Boulevard. I have a 12 plus 2 years grade
17 education. And I can read and write. I am not under the
18 influence of any drugs or alcohol. I am allowing
19 Investigator Hoover to type this statement for me.

20 On 6/3/2011 after midnight I went to Quadrez Benson's
21 house. He lives in Taylors off of East North Street. I
22 think he lives in

23 I had hung out with him a couple of weeks before and I
24 wanted to go chill with him again and buy some weed to smoke
25 with him. I had asked Raymond Young to give me a ride to

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 Drez's house. Raymond asked if everybody else wanted to go.
2 Since everybody else wanted to go, I hopped into Juwan's car
3 with Envy. Envy is Shamika Johnson.

4 Juwan's car is a white, four door. Smoke, Tra'Vis
5 Ware, Fat-So and Raymond went into -- went in Fat-So's black
6 Nissan Altima. They were just following us over there.

7 When we got there I said for them to just stay in the
8 car, and if I decided to stay I would text them. I took
9 Envy inside with me. I was inside for about five minutes.
10 And Quadrez was going to go outside with me to break a one
11 hundred dollar bill for the weed.

12 He got his shoes and we went to the door. Drez's
13 friends were in the apartment too talking to Envy on the
14 couch. When I opened the door the door flew open and they
15 all came in yelling, and I saw Smoke's dreads. It was
16 Smoke, Fat-So and Raymond. They were wearing all black. I
17 saw the guns. They were -- they were pistols.

18 I then heard two gunshots. And I took off out the
19 door. Envy was running around like a chicken. And it
20 scared her too. I was scared. Then Raymond, Smoke, Fat-So
21 went running out of the apartment.

22 When we were outside I was crying and screaming on the
23 ground. Smoke was telling me to get off the ground and get
24 in the car. So me and Shamika went and got into Juwan's
25 car. And the other guys got into Fat-So's car, and we left.

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1 I called my mom and told her that they just robbed
2 Drez, and she was crying. I don't think they included Juwan
3 because he acted like he didn't know about it. He just
4 tried to get me to stop crying. Smoke told me afterwards
5 that I had messed the whole plan up that they had.

6 Drez talked to me afterwards on the phone. And he
7 thinks I set him up. Drez was so mad and yelling at me,
8 threatening -- I'm sorry. Was so mad and yelling at me,
9 threatening me and my family. So I changed my phone number.
10 This is the whole truth and everything that I know. Signed
11 De'Nia Dawkins.

12 Q. And on what date was that statement taken?

13 A. 7/22.

14 Q. After you finished that interview and you took Ms.
15 Dawkins' statement, what happened next in terms of the
16 investigation?

17 A. We then moved on to locating others involved.

18 Q. Did you arrest the other suspects?

19 A. Yes, we did.

20 Q. Did you take statements from those who wanted to
21 cooperate?

22 A. Yes, I did.

23 Q. Who all total was charged in this incident?

24 A. We have Josh Cline, Tra'Vis Ware, De'Nia Dawkins, Juwan
25 Lomax, Raymond Young. I think that's the five total.

DEVIN HOOVER - CROSS EXAMINATION BY MS. GORTON

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1 Q. Well, what about Envy? We've heard a lot about Envy
2 being at the apartment, present. Why wasn't Envy charged?

3 A. We -- first of all, we couldn't get any information.
4 Nobody was really giving us any kind of information that
5 would have clued us in that she was involved in the planning
6 or the carrying out of the robbery. She happened to be
7 there, but nobody actually involved her in the planning. We
8 couldn't get that information from anybody.

9 Q. Was there anything else to be done in the investigation
10 after you made those arrests?

11 A. No, ma'am.

12 Q. Okay. Thank you, sir. If you would, answer any
13 questions that these attorneys may have for you.

14 Cross Examination by Ms. Gorton:

15 Q. Just to clarify, when you were talking about -- you got
16 information about her being pulled over.

17 A. Yes, ma'am.

18 Q. You received that on July 18th?

19 A. I would have to go back and look at my report ---

20 Q. Could you ---

21 A. --- to see.

22 Q. You've actually got three reports, I believe, on this
23 matter. And did you bring your reports with you?

24 A. I do have them at my -- my desk.

25 MS. GORTON: Permission to approach?

DEVIN HOOVER - CROSS EXAMINATION BY MS. GORTON

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1 THE COURT: Yes, ma'am.

2 Q. I'm handing you what I believe to be your second report
3 dated 7/25. And it starts with a narrative dated 7/18/2011,
4 is that correct?

5 A. Um-hum (affirmative).

6 Q. Could you take a moment and just read over that real
7 quick. Just the first bit.

8 (Pause)

9 A. How far do you want me to read it?

10 Q. You've probably gone far enough.

11 A. Okay.

12 Q. Okay. You received information from Drez Benson that
13 De'Nia had been in jail, is that correct?

14 A. He said that he had heard that that was possible.

15 Q. Advised he had heard that the female suspect, De'Nia,
16 had been locked up in Greenville County?

17 A. Um-hum (affirmative).

18 Q. Right?

19 A. Yes, ma'am.

20 Q. And when you checked, that wasn't true, was it?

21 A. I did not see that, no, ma'am.

22 Q. Okay. And just so that we're really clear here, when
23 you checked and you saw that she had been pulled over and
24 that she was related to this white vehicle, which was also
25 related to Juwan Lomax, was that for a simple traffic

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1 infraction?

2 A. I believe so. I don't have the City report. I don't
3 know exactly.

4 Q. You would need the City report in order to -- did you
5 -- you reviewed it, right, ---

6 A. It was a traffic ---

7 Q. --- when you looked it up?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. I mean, it was a traffic, but I don't know what it was.
11 But I know they pulled her over.

12 Q. Improper use of signal, does that sound familiar?

13 A. That could be it.

14 Q. Okay. So she wasn't arrested, was she?

15 A. No, ma'am.

16 Q. And she wasn't even given a ticket, was she?

17 A. No, ma'am.

18 Q. And you had information that when she was pulled over
19 she freely and voluntarily let them search the car?

20 A. I wasn't there. I don't know about the City's search.

21 Q. Wasn't that indicated in the report?

22 MS. SALISBURY: Your Honor, I object. I think the
23 officer's indicated that he doesn't have any personal
24 knowledge about what happened on the scene of that traffic
25 stop.

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1 THE COURT: Without a better foundation, I sustain the
2 objection.

3 Q. You said that you reviewed the report and learned that
4 she was related to the vehicle and Juwan Lomax was related
5 to the vehicle?

6 A. Yes, ma'am.

7 Q. That same report, did it reference a search of the
8 vehicle?

9 MS. SALISBURY: Your Honor, I make the same objection.
10 There's no more foundation being laid down than there were
11 two minutes ago.

12 THE COURT: What's the relevance of this? How does
13 this relate to this charge, what happened in a search of a
14 car of ---

15 MS. GORTON: It relates to her cooperation, Your Honor.

16 THE COURT: Well, I sustain the objection. I ---

17 MS. GORTON: All right. We'll move on.

18 THE COURT: I fail to see the relevance.

19 Q. But just to be clear, she wasn't arrested? It was ---

20 A. I don't believe so.

21 Q. --- a simple traffic violation?

22 A. Yes, ma'am.

23 Q. Not even a citation was ---

24 A. Yes, ma'am.

25 Q. --- issued? You said that you spoke with Juwan Lomax

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1 when you were investigating these offenses. You spoke with
2 Juwan Lomax first and then you spoke with De'Nia Dawkins?

3 A. Yes, ma'am.

4 Q. Was that within a day of each other?

5 A. I believe it was.

6 Q. Would you agree that one was on July 21st and the other
7 one was on July 22nd?

8 A. Yes, ma'am.

9 Q. And we've heard what her statement was. You took that
10 statement?

11 A. Her statement, yes, ma'am.

12 Q. And we heard you read that.

13 A. Yes, ma'am.

14 Q. Did you question her about it after she gave the
15 statement?

16 A. I questioned her during the time she gave her
17 statement.

18 Q. When she gave her statement did you say, you know what,
19 we know that's not true? Did you question her in any way?
20 Challenge her in any way to her statement?

21 A. Of course I always -- I always try to find different
22 angles. Yes, ma'am.

23 Q. All right. Now, she was giving you information that
24 you hadn't received from the victims, wasn't she?

25 A. Somewhat, yes, ma'am.

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1 Q. She was giving you information that she went there to
2 buy a bag of pot.

3 A. Yes, ma'am.

4 Q. Now, she didn't have any particular reason to tell you
5 that, did she? You weren't investigating her for pot.

6 A. No, ma'am.

7 Q. You didn't ask her about pot.

8 A. No, ma'am.

9 Q. So she just gave you that information?

10 A. Yes, ma'am, she volunteered that information.

11 Q. And that's incriminating information, isn't it?

12 A. Yes, ma'am, ---

13 Q. Isn't that a crime ---

14 A. --- it ---

15 Q. --- to go somewhere ---

16 A. Yes, absolutely.

17 Q. Okay. When she gave you her statement did you give her
18 your card?

19 A. I may have, I don't remember. I usually try to or I
20 usually give them a way to contact me.

21 Q. Did you say anything to her after you gave her your
22 card?

23 A. Absolutely.

24 Q. What did you say?

25 A. I told her if I could be of any assistance to her to

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1 call me.

2 Q. Did you also warn her father of anything? Did you say
3 anything to her father about the danger she was in?

4 A. I never spoke with her father.

5 Q. Did you go to the bond hearing?

6 MS. SALISBURY: Your Honor, I'd object to the relevance
7 of this line of questioning.

8 THE COURT: I'll overrule it for now. Let me see where
9 she's going.

10 A. I believe I did go to the bond hearing, but I've never
11 spoken with her father about it.

12 Q. Do you remember making any comments about the amount of
13 danger she was in since she's given her statement?

14 A. No, ma'am.

15 Q. You don't recall that?

16 A. No, ma'am, I don't.

17 Q. Did you believe her?

18 A. At the time, yes. Early on, I did.

19 Q. All right. No further questions.

20 THE COURT: Mr. Ianuario.

21 Cross Examination by Mr. IANUARIO:

22 Q. In the statement that De'Nia gave she -- I believe she
23 stated that Juwan acted like he didn't know what was going
24 on, is that correct?

25 A. Yes, sir.

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1 Q. Did you ask her any further about Juwan's involvement
2 at the time of her statement?

3 A. I did. That's about as much as she would give.

4 Q. Okay. At any point in time, or this investigation, or
5 later on during, or I'm sorry, at the time of this statement
6 or later on during this investigation did she give any
7 statements incriminating Mr. Lomax?

8 A. I'm sorry, one more time?

9 Q. At any point in your investigation of this crime did
10 Ms. Dawkins later give a statement incriminating Mr. Lomax?

11 A. That's the only statement that I have from her.

12 Q. How did you determine that Juwan Lomax had any
13 involvement in this issue?

14 A. Through basically finding the car and then tracking the
15 car to his residence where we spoke with him. He provided
16 us with that information.

17 Q. Okay. And did anything in your investigation show that
18 he knew about the plan to commit a crime?

19 A. From his statement he did, yes, sir.

20 Q. Okay. And aside from that statement is there anything
21 else verifying that he had information and he knew what was
22 going to happen that night?

23 A. Cooperation from other witnesses.

24 Q. Those witnesses being other victims or other co-
25 defendants?

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1 A. Other co-defendants.

2 Q. Nothing further.

3 A. Thank you, sir.

4 Q. Thank you, Investigator.

5 THE COURT: Any redirect?

6 MS. SALISBURY: Nothing from the State, Judge.

7 THE COURT: All right. Thank you, officer. You may
8 step down. The State may call its next witness.

9 MS. SALISBURY: Thank you, Your Honor. The State calls
10 Investigator Mike Fortner. Investigator Fortner, if you
11 would, please come around and be sworn.

12 MADAME CLERK: Sir, please place your left hand on the
13 Bible and raise your right hand.

14 Michael Fortner, being
15 duly sworn testified as follows:

16 MADAME CLERK: Thank you. Please be seated. Please
17 state your full name for the record.

18 MR. FORTNER: Michael Eugene Fortner.

19 Direct Examination by Ms. Salisbury:

20 Q. Investigator Fortner, where do you work?

21 A. At the Greenville County Sheriff's Office.

22 Q. And in what capacity?

23 A. As a robbery investigator in the Criminal Investigative
24 Division.

25 Q. How long have you been working in armed robbery?

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1 A. Armed robbery, about four and a half years.

2 Q. And how long have you been with the Sheriff's Office?

3 A. About eighteen and a half years.

4 Q. How would you characterize your responsibilities as an
5 armed robbery investigator?

6 A. Very similar to what Investigator Hoover said. We get
7 cases assigned to us that occurred the night before. Our
8 sergeant gets them in. He assigns to us based on our
9 caseload at the time. And at that time we start
10 investigating the case and try to figure out who the
11 suspects are.

12 Q. Is it common for investigators to work together as they
13 solve their cases?

14 A. Yes, it is.

15 Q. Were you working in that capacity as an armed robbery
16 investigator in June of 2011?

17 A. Yes, I was.

18 Q. And how do you recall becoming involved in this
19 particular case?

20 A. Investigator Hoover was working on the case and during
21 the course of the investigation we developed a vehicle
22 description. Through the course of the investigation we
23 learned of a potential location for this vehicle. And we
24 went to this location, which was over on Welcome Avenue
25 Extension over there off of White Horse Road and located

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1 this vehicle in an apartment complex.

2 Q. Now, let me stop you right there. We've talked a lot
3 about this vehicle. I want to be clear, which -- what
4 vehicle description were you working from?

5 A. We were looking for a white Buick LeSabre if I remember
6 correctly. Yes, Buick LeSabre, a 1992 Buick LeSabre.

7 Q. Now, when you went to the address to which this white
8 Buick LeSabre was registered, did you have a search warrant?

9 A. Not at that time, no.

10 Q. Did you secure one at some point?

11 A. Yes.

12 Q. And after -- at some point after you went to that home
13 was the Defendant, Juwan Lomax, placed under arrest?

14 A. Yes, he was.

15 Q. At some point during that encounter did Mr. Lomax
16 indicate to you that he wanted to give a statement?

17 A. Yes, he did.

18 Q. Where did you speak with him? Where did that interview
19 take place?

20 A. It took place in what we call the muster room. It's
21 located in the basement of the Law Enforcement Center.

22 Q. And who was present for that interview?

23 A. During the course of that interview it was myself,
24 Investigator Hoover, Investigator Brown, Investigator Ayers.
25 And then as the investigation was continuing on another

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1 investigator, Wayne Campbell, came in for a few minutes and
2 then left.

3 Q. Now, during that interview was Juwan Lomax in
4 handcuffs?

5 A. Yes, he was.

6 Q. Before you spoke with him did you read Mr. Lomax his
7 Miranda rights?

8 A. Yes, I did.

9 Q. Did you read them from a form or did you recite them
10 from memory?

11 A. I read them from a form that we use.

12 Q. Did you ensure that Mr. Lomax read the form?

13 A. Well, I read it out loud to him, yes.

14 Q. I'm going to show you State's exhibit 3. Do you
15 recognize that document?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. Well, for one, it's got my signature down at the
19 bottom, down here. And then whenever I read somebody their
20 rights, whoever it is that I'm reading their rights to, I
21 list their information up here in the corner.

22 Q. How did you ensure that the Defendant read those or
23 understood those?

24 A. I read each line as you can see it on here one by one
25 out loud to whoever it is I'm reading their rights to. Then

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(1 as I read each line, I have that individual place his
2 initials out to the side of it, which as I tell them
3 indicates to me and them both that they do understand that
4 particular line.

5 Q. Did you have him sign the form?

6 A. I did, yes.

7 Q. Is that the exact form that you read to Juwan Lomax the
8 day of his interview?

9 A. Yes, it is.

10 Q. Would you please read for the jury what you read to
11 Juwan Lomax.

(12 A. It says before we ask you any questions you must
13 understand your rights. You have the right to remain,
14 silent. Anything you say can be used against you in court.

15 You have the right to talk to a lawyer for advice
16 before we ask you questions and to have him with you during
17 questioning. If you have no money to pay a lawyer's fee,
18 the court will appoint one to represent you without cost if
19 you wish.

20 If you decide to answer questions now without a lawyer
21 present, you will still have the right to stop answering at
22 any time. You also have the right to stop answering any
23 time until you talk to a lawyer.

(24 Q. And did you -- did you -- how did you go -- line by
25 line and have the Defendant initial?

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1 A. Right. For example, after I read the first line,
2 before we ask you any questions, you must understand your
3 rights, I would have him at that time place his initials
4 next to that line. Indicates that we went over it and that
5 he understood it.

6 Q. Now, I believe Investigator Hoover mentioned that he
7 placed particular emphasis on this coercion word. Do you
8 engage in the same sort of explanation with a person that
9 you're interviewing about what coercion is and what it
10 means?

11 A. Yes, ma'am, I do.

12 Q. How did you explain or how do you recall explaining it
13 to Mr. Lomax that day?

14 A. The same way I do with anybody else. I just basically
15 say that coercion is basically another word for pressure, I
16 ain't telling them that if they don't talk to me I'm going
17 to do something to somebody in their family or pry your
18 fingernails off or anything like that.

19 Q. Okay.

20 A. I mean, after I explain that word to them I always have
21 them place their initials next to it. That way I know that
22 I did, in fact, explain that word to them.

23 Q. Did the Defendant indicate to you that he understood
24 his Miranda rights?

25 A. Yes, he did.

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1 Q. After going over that form with him did he indicate to
2 you that he wanted to waive those rights and give a
3 statement?

4 A. Yes, ma'am, he did.

5 Q. How did he give you that indication?

6 A. Once I read the waiver of rights portion down here to
7 them, explain the word coercion, I ask them, you know, if
8 you're willing to talk to me without an attorney being here,
9 I need them to sign their name here. And normally I also
10 have them print their name underneath their signature for
11 me.

12 Q. Just to be clear, could you read for the jury that
13 waiver paragraph. I don't know if we got to that part
14 earlier.

15 A. Sure. It says I have read this statement of my rights.
16 And I understand what my rights are. I am willing to make a
17 statement and answer questions. I do not want a lawyer at
18 this time. I understand and know what I am doing. No
19 promises or threats have been made to me. And no pressure
20 or coercion of any kind has been used against me.

21 Q. Did it appear to you that Mr. Lomax understood his
22 rights?

23 A. Yes, it did.

24 Q. Did it appear to you that he wanted to waive those
25 rights and give a statement?

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1 A. Yes, it did.

2 (Whereupon State's exhibit 13 was marked for
3 identification)

4 Q. All right. Investigator, I'm going to show you State's
5 exhibit 13. Do you recognize that document?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is the statement that Mr. Lomax gave me after I'd
9 got done reading him his rights.

10 Q. Now, before we get into the meat of that statement I'll
11 ask you the same questions I asked Investigator Hoover.

12 Have you ever had an occasion to interact with individuals
13 who were under the influence of alcohol or drugs?

14 A. Yes, I have.

15 Q. Do you know what that looks like?

16 A. Yes.

17 Q. Did it appear to you that Mr. Lomax was under the
18 influence of either of those substances?

19 A. No, he did not.

20 Q. Did he appear to understand your questions?

21 A. Yes.

22 Q. Did he respond clearly to your questions?

23 A. Yes, he did.

24 Q. Was his speech clear?

25 A. Yes, it was.

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1 Q. Could you understand the sentences that were coming out
2 of his mouth?

3 A. Yes, I could.

4 Q. Did you verify that he could read and write?

5 A. I did.

6 Q. How did you verify that?

7 A. Back on the waiver of rights, after I get done reading
8 them their rights, this fourth line down here is a line I
9 always use. I always ask them to read this line out loud to
10 me. And once they read the line out loud to me, I know that
11 they can read. And I always have them sign their name after
12 that line, which just indicates to me that they did read
13 that line out loud to me.

14 Q. Did you ask him what his level of education was?

15 A. Yes, I did.

16 Q. What did he indicate was his education level?

17 A. Eleventh grade at Carolina High School.

18 Q. During the course of your interview was the Defendant
19 ever threatened, coerced or pressured in any way to provide
20 a statement?

21 A. No, he was not.

22 Q. Was he ever promised a reward in exchange for giving a
23 statement?

24 A. No, ma'am, he was not.

25 Q. Was he ever deprived of food or water during the

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1 interview?

2 A. No.

3 Q. Was he ever deprived of the opportunity to go to the
4 bathroom?

5 A. No, he was not.

6 Q. Did he freely agree to speak with you about the
7 investigation in this case?

8 A. Yes, he did.

9 Q. Did he freely agree to speak with you without an
10 attorney being present?

11 A. Yes.

12 Q. Did it appear to you that at any point during the
13 interview he wished to instead invoke his rights and remain
14 silent or to have an attorney be present?

15 A. No, he did not.

16 Q. Did he ultimately give you his statement?

17 A. Yes, he did.

18 Q. Did you type it up for him or did you have him
19 handwrite it?

20 A. I typed it.

21 Q. Did you give him an opportunity to review the statement
22 after you had prepared it for him?

23 A. Yeah. Whenever I take a statement from somebody I
24 always hand them the statement and ask them to read over it.

25 I explain to them that if there's anything in it, they don't

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1 like the way it sounds, if it's not right, if there's
2 anything about it at all that they want changed, let me know
3 and we'll go in and we'll change it.

4 Q. Did he indicate to you that he wanted to make any
5 changes at all to the statement?

6 A. He did not, no.

7 Q. Did you have him initial before and after each
8 paragraph the way we heard about with Ms. Dawkins?

9 A. Yes.

10 Q. And why do you do that?

11 A. That would -- that tells me that they read it, each
12 paragraph individually. I always have them initial the
13 first -- the first word and the last word of each paragraph.
14 And that just tells me that they read over it, and they
15 understood their statement and they did not want to make any
16 changes to it.

17 Q. And is your -- does your signature appear on State's
18 exhibit 13?

19 A. Yes, it does.

20 Q. Okay. And what does it mean that your signature's on
21 that form?

22 A. I'm signed as a witness.

23 Q. Okay.

24 MS. SALISBURY: Your Honor, at this time I'd offer
25 State's exhibits 5 and 13.

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1 THE COURT: Is that exhibit 5 or 3?

2 MS. SALISBURY: I apologize, Judge. It is 3.

3 THE COURT: 3 and 13?

4 MS. SALISBURY: I apologize.

5 THE COURT: Any objection?

6 MR. IANUARIO: No objection, Your Honor.

7 MS. GORTON: No objection.

8 THE COURT: Without objection, exhibits 3 and 13
9 admitted into evidence.

10 (Whereupon State's exhibits 3 and 13 were admitted into
11 evidence)

12 Q. How long did the entire interview with Mr. Lomax last?

13 A. I read him his rights. We started going -- with the
14 waiver of rights at approximately 12:50 in the afternoon.

15 So about ten minutes til one in the afternoon. And then we
16 start actually typing the statement out at approximately --
17 almost 4:00, five minutes til four is when we started typing
18 over the statement.

19 Q. And what has happened before that typing process
20 begins? What's going on before you actually start to put
21 ink to paper?

22 A. The interview, going over everything that took place.

23 Q. And at any -- during that interview process was -- did
24 you guys take breaks?

25 A. I'm sure we did, yes. Three hours, I'm sure we did,

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1 yes.

2 Q. Well, if the Defendant, if Juwan had asked for a break
3 would you have stopped and allowed him the opportunity to
4 have a break?

5 A. Yeah, plus the interview -- the actual interview and
6 the talking took place in the muster room. For me to do the
7 typing of the report we would have actually had to gone back
8 to my office to my desk where my desk is at and the
9 computer. So that would have given us an opportunity to
10 take a break if he needed to use the restroom, was thirsty,
11 anything like that.

12 Q. During the interview process did it appear to you that
13 Mr. Lomax understood what was going on?

14 A. Yes, he did.

15 Q. To the best of your knowledge was his statement freely
16 and voluntarily given?

17 A. It was, yes.

18 Q. Did he sign that statement after he had a chance to
19 review it?

20 A. Yes, ma'am, he did.

21 Q. Would you please tell the jury what Mr. Lomax said in
22 his statement.

23 A. It says about a month ago I and two other people were
24 in my car, in the other car was three other people. I don't
25 know what the other -- others real names are. One of the

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1 people in the car is the True Disciple of the G's.

2 We went to some apartments in Taylors. I don't
3 remember where they are. I just drove. We went over there
4 to try to get a lick. It was one of the people in my car's
5 idea.

6 We all went over there and two people in my car went
7 into the house. And then the others got out of the other
8 car. It was supposed to be like a set-up.

9 It was three people that went inside to do the robbery.
10 They went in about ten to fifteen minutes after the first
11 two went inside. They went inside and the first two came
12 outside and they got in my car. We then left. That was it.

13 They were talking about how they came up inside the
14 house. They were talking about how they hoped the dude got
15 shot. I told them that I heard the shot. One person was
16 saying something about somebody was in there shooting.

17 When we left from there we went to someone else's
18 house. I think that person lives in a trailer park on Old
19 Grove Road.

20 Q. I just have one additional question about the substance
21 of that statement. I believe what you read is that Juwan
22 said something about it being a lick?

23 A. Yes.

24 Q. Does that -- does that expression have any significance
25 to you? Do you know what that means?

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1 A. Yes. That's -- doing a lick is street jargon for doing
2 a robbery.

3 Q. And how do you know that?

4 A. From experience, from talking to people, the people
5 I've talked to over my years of investigations.

6 Q. Is it common for the people that you interview to refer
7 to robberies as licks?

8 A. Yes.

9 Q. Now, after you -- after you took Lomax's statement did
10 you have any other role in the investigation of the case?

11 A. At that point, no, ma'am.

12 Q. Okay. All right. Thank you, Investigator. If you
13 would, answer any questions these attorneys may have for
14 you.

15 Cross Examination by Ms. Gorton:

16 Q. Sorry, Detective Fortner, I only have a couple. Were
17 you present for the other statements?

18 A. The one with Ms. Dawkins?

19 Q. Yes.

20 A. I'm in and out of the office, but actually sitting down
21 participating in it, no.

22 Q. Actually, from what I understand, you didn't talk to
23 her in the muster room, did you?

24 A. No, in the ---

25 Q. Let me rephrase that. The people talking to her

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1 weren't talking to her in the muster room, to the best of
2 your knowledge?

3 A. To the best of my knowledge, no. I believe it was at
4 Investigator Hoover's desk.

5 Q. Okay. And that's where I was going with this,
6 Investigator Hoover's desk. You guys are kind of like in
7 cubicles, right?

8 A. Well, they're not really cubicles, they're just desks.
9 No, they're not even -- they're desks. They've got kind of
10 like a -- like a shelving in front of us where we sit at,
11 they kind of got some cabinets up on top of, but they're not
12 actually cubicles or anything, no.

13 Q. You don't get your own office?

14 A. No. No.

15 Q. You don't even get your own cubicle?

16 A. No, there's actually five of us actually in this one
17 room.

18 Q. Okay. But you don't remember if you were there, in and
19 out, you weren't paying attention?

20 A. I was not paying any attention, no.

21 Q. Okay. How about Smoke's statement? That would be
22 Tra'Vis or Tra'Vis Ware.

23 A. We did have a meeting with him, yes.

24 Q. And you were there for that?

25 A. I was, yes.

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1 Q. When was that?

2 A. The exact date, I don't remember.

3 Q. Okay. Well, how about a general date? You got a
4 statement from Mr. Lomax on July 21st, right?

5 A. We did, yes.

6 Q. And you're involved in this case enough to know that
7 the statement from Ms. Dawkins came July 22nd, right?

8 A. Right.

9 Q. Okay. Well, when did you get the statement from Smoke?

10 A. It was a few months, I would say, at least afterwards.

11 Q. Quite a bit after?

12 A. Yes.

13 Q. How about Joshua Cline, also known as Fats?

14 A. Um-hum (affirmative). Now, that one I didn't
15 participate in. So I don't know when that one happened.

16 Q. Have you learned when it happened based on the reports?

17 A. No, I have not.

18 Q. All right.

19 MS. GORTON: No further questions.

20 Cross Examination by Mr. IANUARIO:

21 Q. When Juwan was taken in, picked up after that search
22 warrant and taken in, what was his mother's reaction?

23 A. His mother had -- I'm not a doctor or anything, but I
24 would say like a panic attack. We were there placing him
25 under arrest and doing a search warrant. So we had to call

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1 EMS out for her. And they transported her to the hospital.

2 Q. All right. Did he seem concerned about his mother
3 during this time?

4 A. Yes, he was concerned. Yes.

5 Q. Noticeably concerned?

6 A. Yes.

7 Q. Did he ask about her?

8 A. Yes, he did.

9 Q. Did he ask when he could see her?

10 A. He did, yes.

11 Q. And what was the answer to that?

12 A. My answer to him was whenever you get out of jail. I
13 mean, he was wanting to go see her right then and there,
14 which I couldn't do. He was under arrest at that time.

15 Q. Okay. Now, you said he gave a statement. Did he say
16 why he was giving a statement?

17 A. He did not say why, no, sir.

18 Q. And if I understood correctly, that statement was taken
19 in the muster room?

20 A. Well, the interview part of it took place in the muster
21 room, yes. The actual typing of the statement took place
22 where our office is at, which is still in the basement.
23 It's just in a different room.

24 Q. Okay. And you said Investigators Hoover, Fortner,
25 Brown and Ayers were present?

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1 A. Yes, sir. And then at one point another investigator,
2 Wayne Campbell, came in for a little bit.

3 Q. Okay. Is Investigator Brown in the courtroom today?

4 A. Yes, he is.

5 Q. And would that be ---

6 A. There he is.

7 Q. --- him walking in right now?

8 A. Yep, he walked right in. Yes.

9 Q. And we had Investigator Hoover, ---

10 A. Correct.

11 Q. --- and yourself?

12 A. Yes, sir.

13 Q. No offense, but pretty kind of scary looking guys in
14 the basement?

15 A. Well, I mean, it's a lighted basement. I mean, it's
16 not a dungeon.

17 Q. Okay. But you all were present for that?

18 A. Yes, sir.

19 Q. Can you tell me a little bit about the process of
20 taking this statement? Was it taken as soon as he starts
21 talking and you write it down or do you kind of go over some
22 details and flush out what needs to be said?

23 A. This case here, we -- it was a pretty in-depth case.
24 We talked to him, took down some notes and what he had to
25 say and everything, maybe questioned him about different

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1 parts of his statement that he gave us the information on.

2 Q. Okay. So roughly you interview him for three hours,
3 you agree upon what's to be said and then type that up into
4 the statement?

5 A. Well, agreed upon what he says, yes, sir.

6 Q. Okay. Did he ever attempt to retract his statement?

7 A. My understanding is he did, yes.

8 Q. Okay. Do you know in what way he tried to retract his
9 statement?

10 A. Afterwards, I'm not sure how many months, or weeks, or
11 how long exactly, but I know he wrote up some letters. I
12 don't know if it was his attorney or who it was, and they
13 had them sent out to people, yes.

14 Q. Okay. Have you seen a copy of that letter?

15 A. I have seen a copy of it, but I never did read it. But
16 I've seen a copy of it, yes.

17 Q. So you didn't read a letter that was retracting a
18 previous statement in an investigation that you're
19 conducting?

20 A. Well, it's actually Investigator Hoover's case. So he
21 showed me that he had the letter. And that was enough for
22 me.

23 Q. Okay. I want to clear up one thing in the statement
24 you read onto the record. Would you please re-read the
25 sentence referring to the Disciple of the G's. It was

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1 unclear which car he was in.

2 A. All right. It says in the other car was three other
3 people. I don't know what the others real names are. One
4 of the people in the other car is the True Disciple of the
5 G's.

6 Q. Okay. So the True Disciple was in the other car and
7 not Juwan's?

8 A. Correct. Yes, sir.

9 Q. Okay. I just didn't think that was read in clearly the
10 first time. Maybe I missed it. Were you present for the
11 statement of Tra'Vis Ware?

12 A. I was present for that, yes.

13 Q. Okay. Were you present for the statement of Joshua
14 Cline?

15 A. I was not.

16 Q. Okay. Aside from the statement that Mr. Lomax gave,
17 which he later attempted to retract, what other evidence do
18 you have that he was a part of this plan, that he knew about
19 it beforehand?

20 A. As far as I know, with this being Investigator Hoover's
21 case, just his own statement.

22 Q. Okay. But no concrete smoking gun type of forensic
23 evidence, just basic statements?

24 A. No, sir. No.

25 Q. Nothing further. Thank you, Investigator.

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1 A. Yes, sir.

2 THE COURT: Any redirect?

3 MS. SALISBURY: No redirect, Your Honor.

4 THE COURT: All right. Thank you, officer. You may
5 step down. Can I see the attorneys here just for a moment?

6 MS. SALISBURY: Yes, Your Honor.

7 (Whereupon a bench conference was held off the record
8 in the presence of the jury, but out of their hearing)

9 THE COURT: Solicitor, you may call your next witness.

10 MS. SALISBURY: Thank you, Your Honor. The State calls
11 Investigator Brandon Brown. Investigator Brown, if you
12 would, please, come around and be sworn.

13 MADAME CLERK: Sir, please place your left hand on the
14 Bible and raise your right hand.

15 Brandon Brown, being duly
16 sworn testified as follows:

17 MADAME CLERK: Thank you. Please be seated. Please
18 state your full name for the record.

19 MR. BROWN: Brandon Brown.

20 Direct Examination by Ms. Salisbury:

21 Q. Investigator Brown, where do you work?

22 A. Greenville County Sheriff's Office.

23 Q. And how long have you been with the Sheriff's Office?

24 A. Just shy of ten years.

25 Q. And what is your capacity with the Sheriff's Office?

BRANDON BROWN - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. I am a master deputy within the gang unit. And I am
2 also assigned to the FBI Gang Task Force.

3 Q. Now, what are your responsibilities as an investigator
4 with gang investigations?

5 A. As a gang investigation we're responsible for all types
6 of gang activity, whether it be retroactive or proactive.
7 In the case we're specifically talking about, other
8 investigators that are lead investigators would call on us
9 for our knowledge of the streets or knowledge of monikers or
10 nicknames of individuals to where we can help guide them in
11 specific directions.

12 And we're responsible for day-to-day interviews of
13 various gang members. We're responsible for various
14 different types of investigations involving gang crimes to
15 include anything from public disorderly conduct to murder.
16 It covers the entire gambit of anything that has anything to
17 do with gang members evolving within Greenville County or
18 also within the seventeen counties in the upstate, which the
19 FBI and the upstate covers.

20 Q. And how do you remember becoming involved in this
21 particular case?

22 A. I was contacted by both Master Deputy Fortner and
23 Master Deputy Hoover in reference to a case that had
24 possible gang affiliations or gang ties in it just based on
25 the specific acts that were committed.

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1 Q. Now, after these investigators relayed to you what they
2 knew about the case, what made you think that this crime was
3 gang related?

4 A. Using specific terms as licks, as what you heard
5 earlier, are more of the type of crimes that are committed
6 by gang members these days versus in the 80s and 90s drug
7 dealing was very big with gang members. However, they found
8 that it was a lot easier to get caught and a lot easier to
9 get sentenced doing drug crimes.

10 So they started going towards more of what you just
11 heard was licks. Committing robberies, committing other
12 types of violent crimes to where they can get away with a
13 little bit more bang for their buck, if you will, and harder
14 chances of being caught.

15 Q. And based on what you've learned through your training
16 and experience, was there anything in particular about this
17 case that seemed to indicate that the suspects may be gang
18 members other than it just being a robbery?

19 A. Initially, once I first got involved in it it was some
20 names that I had not been involved in until I heard the name
21 of True Disciple Raymond that was brought up later in a --
22 later in an interview, which kind of tied some of the pieces
23 together.

24 However, the specific act of as many people as we were
25 talking about going into the residence and the people that

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1 were kind of the set-up parties to that is very common with
2 the types of gang related robberies we're seeing in the
3 upstate area. We started seeing to where females were being
4 more and more involved in the gang activity and the males
5 were coming in doing the strong hand work, if you will.

6 Q. Now, how did you initially -- once you became apprized
7 of what -- what the investigators knew about the case and
8 then they relayed that information to you, what did you do
9 to start assisting in the investigation?

10 A. When I first got involved in the case I was advised of
11 the white sedan that you heard of earlier that had
12 significant -- significant items on it. I believe there was
13 a duct tape area on the back window where it was possibly
14 damaged and that it was possibly -- belonged to Juwan Lomax.

15 I was asked to assist in looking in the area of Welcome
16 Avenue Extension for that vehicle. When that vehicle was
17 located we kept eyes on the vehicle.

18 I kind of have a different role. I'm in a -- as you
19 can tell, I'm dressed down a little bit more than uniform
20 deputies do. I drive a regular looking vehicle, and I wear,
21 you know, t-shirt and jeans to work every day. So I can
22 kind of fit in in some areas where other -- other
23 investigators can't.

24 We laid eyes on that vehicle until the search warrant
25 arrived for that vehicle at which time I assisted both

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1 Master Deputy Fortner and Master Deputy Hoover -- Master
2 Deputy Hoover with attempt of the search warrant on that
3 location.

4 Q. In addition to the execution of the search warrant were
5 you present when Juwan Lomax was arrested?

6 A. Yes, I was.

7 Q. Did you take part in the interview that we've heard
8 about where -- that yielded the statement -- the statement
9 that's contained in State's exhibit 13?

10 A. Yes, ma'am, I did.

11 Q. Do you recall being present while Mr. Lomax was read
12 his Miranda rights?

13 A. Yes, ma'am, I do.

14 Q. Did it appear to you at that time that he understood
15 his Miranda rights?

16 A. Absolutely, yes, ma'am.

17 Q. Did it appear to you that he wished to waive those
18 rights and provide that statement?

19 A. He did not make any intention at all to waive those
20 rights whatsoever or, excuse me, to ask for counsel or
21 anything. He did waive his rights.

22 Q. Were you present when he was given an opportunity to
23 review that statement and make any corrections to it?

24 A. Yes, I was.

25 Q. Were you also present -- well, how about this. Do you

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1 know after -- after that time, after that interview, when
2 was Ms. Dawkins arrested?

3 A. I believe it was -- that whole time period was very
4 back-to-back time period. I believe it was shortly the next
5 day, if not later that day. I'm not exactly sure.

6 Q. Were you present for her arrest?

7 A. Yes, I was.

8 Q. Okay. Were you also present during her interview where
9 Investigator Hoover took her statement?

10 A. Yes, ma'am, I was.

11 Q. Do you recall being present when she was read her
12 Miranda rights?

13 A. Yes, ma'am, I do.

14 Q. Did it appear to you at that time that she understood
15 her rights?

16 A. Yes, she did.

17 Q. Did it appear to you that she wanted to waive those
18 rights and give a statement?

19 A. Yes, ma'am.

20 Q. Again, were you present when she was given an
21 opportunity to review that statement and make any
22 corrections?

23 A. Yes, ma'am, I was.

24 Q. After that statement was given what did you do to
25 assist in the -- in this particular investigation?

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1 A. Based on the statements that were given, more names
2 were coming out that I was more familiar with in the gang
3 world and with other previous investigations and things that
4 we've been involved with, interviews and so on and so forth.
5 So it gave me a little more avenue to direct the other
6 investigators to possible individuals involved. From that
7 point on, because I'd already gotten involved in the
8 investigation at such an early point, I was nothing but an
9 assisting tool to both the master deputies involved in this.

10 Q. Did you assist them in locating the other suspects?

11 A. Yes, ma'am, I did.

12 Q. After all of the suspects in this case were arrested
13 and interviewed did you have any other involvement in the
14 investigation?

15 A. Not this one, no, ma'am.

16 Q. All right. Thank you, sir. And answer any questions
17 these attorneys may have for you.

18 A. Yes, ma'am.

19 Cross Examination by Ms. Gorton:

20 Q. In your report, and I'll reference the one date 8/26, I
21 believe.

22 MS. GORTON: May I approach, Judge?

23 THE COURT: You may. She needs to pick up what you're
24 saying for the court reporter, please ---

25 MS. GORTON: I was just giving him guidance as to ---

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1 THE COURT: Okay.

2 A. You're just wanting this paragraph?

3 Q. Just read over it.

4 A. Okay.

5 (Pause)

6 A. Okay.

7 Q. Okay. Do you specialize in the Gang Task Force?

8 A. Specialize as in how?

9 Q. Well, are you assigned to the Gang Task Force?

10 A. Yes, ma'am, I am.

11 Q. And how long have you been assigned there, specifically
12 Gang Task Force?

13 A. Specifically FBI Gang Task Force or ...

14 Q. Specifically Gang Task Force.

15 A. I've been working gangs for seven years.

16 Q. All right. So this group, Folk Nation, do you know
17 them by other names?

18 A. The group or the -- I'm not understanding where you're
19 going with this.

20 Q. Do you know about Growth and Development?

21 A. I do, yes, ma'am.

22 Q. What do you know about Growth and Development?

23 A. Growth and Development was originally started in

24 Chicago by Larry Hoover as a means of hiding the word

25 Gangster Disciple. Gangster Disciple is a subset of the

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1 Folk Nation, which originally started in Chicago, which is
2 where our gangs in Greenville are tied to, directly to
3 Chicago. Growth and Development was nothing more than a
4 means of covering up the dirty name that Gangster Disciples
5 had developed trying to get it more appeared to younger
6 children as had previously been done by several other gangs
7 throughout the Country.

8 Q. And specifically that was done in 1993 by Larry Hoover.
9 As you said, he was trying to get parole, correct?

10 A. No, ma'am, that wasn't in '93. But he was trying to
11 develop that to give a better means to the gang. Yes, he
12 was trying to do that.

13 Q. And his goal was to lure children that they hadn't
14 otherwise been able to lure, is that correct?

15 A. That's what the image was, yes, ma'am.

16 Q. And in Growth and Development it was promoted, what it
17 actually was, I'm not asking you about, I'm asking about how
18 it was promoted. It was promoted as a positive
19 organization, wasn't it?

20 A. Originally, yes, ma'am.

21 Q. Yes, it was. And, in fact, that organization had a
22 huge emphasis on music, didn't it? It had a charity label.

23 A. Most gangs do, yes, ma'am.

24 Q. I'm asking you about Growth and Development.

25 A. Growth and Development, yes, ma'am.

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1 Q. I'm not asking you -- I'm asking you about Growth and
2 Development. They do still promote it as a positive thing,
3 don't they?

4 A. They attempt to, yes, ma'am.

5 Q. And when we say they, who are we talking about?

6 A. The some estimated fifteen thousand Growth and
7 Development or Gangster Disciple members throughout the
8 Country.

9 Q. Now, Gangster Disciples, you admit, that Growth and
10 Development is their front, correct?

11 A. Yes, ma'am.

12 Q. And Gangster Disciples are the ones who represent
13 Growth and Development as being a positive organization,
14 correct?

15 A. Yes, ma'am.

16 Q. And they don't represent it just to you, do they?

17 A. I don't understand the question.

18 Q. Gangster Disciples doesn't seek you out and say this is
19 how we're going to represent Growth and Development, it's
20 widely promoted that way, isn't it?

21 A. One of their rules is to not talk to law enforcement.
22 We have to get information directly from them behind lines,
23 if you will.

24 Q. So you've never infiltrated them?

25 A. No, ma'am, I have not.

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1 Q. Okay. And -- but my question was was that Gangster
2 Disciples, we'll call them the bad guys, you'd agree, ---

3 A. Okay.

4 Q. --- wouldn't you?

5 A. Yes, ma'am.

6 Q. Gangster Disciples are the ones who commit crimes, they
7 commit these drug rings, they do the robberies that you were
8 talking about, is that correct?

9 A. Yes, ma'am.

10 Q. And more and more these days instead of taking the
11 stolen goods down to pawn shops, they're selling the things
12 on Ebay, correct?

13 A. That is one of the ways they get rid of things, yes,
14 ma'am.

15 Q. Partly because law enforcement has gotten so good about
16 tracing things through pawn shops, right?

17 A. We like to think so.

18 Q. All right. But Growth and Development puts out
19 information or Gangster Disciples, the bad guys, puts out
20 information on the internet, in other places about Growth
21 and Development, correct?

22 A. I ---

23 Q. You've seen, haven't you, in your research?

24 A. I have, yes, ma'am.

25 Q. And in some of those sites there's no reference to

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1 crime or Gangster Disciples or any of that. They're
2 promoting it as a good thing.

3 A. No, ma'am, that's actually incorrect.

4 Q. Are there some sites that are out there like that?

5 A. Any time that you see the term Growth and Development
6 as it relates to Folk Nation and Gangster Disciples, there's
7 always ties that directly relate it to Folk Nation and
8 Gangster Disciples.

9 Q. Oh, I understand that. But you're a gang expert,
10 correct? You know that Gangster Disciples and Growth and
11 Development are one in the same, correct?

12 A. Yes, ma'am.

13 Q. But for somebody doing internet research, aren't there
14 sites and information out there representing that Growth and
15 Development is nothing more than a good, positive, civic
16 organization?

17 A. Are you asking my opinion or are you ---

18 Q. No, I'm asking for fact. Have you seen those
19 promotions out there that do not disclose that they are part
20 of Gangster Disciples?

21 A. To an aspect, to an untrained eye, I guess you could
22 possibly say that.

23 Q. To an untrained eye.

24 A. (Affirmative nod).

25 Q. Do you have any idea how much gang involvement De'Nia

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1 Dawkins had prior to June with Gangster Disciples?

2 A. Once again, are you asking my opinion or -- I can't --

3 I can't give an opinion of ---

4 Q. In your investigation did it reveal that she had any
5 association with Growth and Development prior to May, 2011?

6 A. I had no knowledge of it.

7 Q. Have you looked over all the investigation of this
8 case?

9 A. Yes, ma'am, I have.

10 Q. And through all that investigation of the case, you've
11 not seen anything that puts her with Growth and Development
12 prior to May of 2011?

13 A. Not to my knowledge, no, ma'am.

14 Q. Now, you know something about this particular gang,
15 correct?

16 A. Yes, ma'am, I do.

17 MS. GORTON: May I approach?

18 THE COURT: You may.

19 Q. What is this?

20 MS. SALISBURY: Your Honor, I'd ask before the attorney
21 ask questions she'd mark the exhibit.

22 THE COURT: All right. Could you have that marked or
23 certainly show it to the Solicitor to review.

24 (Pause)

25 (Whereupon Defendant Dawkins exhibits 1 - 4 were marked

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1 for identification)

2 Q. Can you tell me who that is?

3 A. Without my notes, they're sitting over there, I
4 wouldn't want to speculate. But I'll be glad to look at my
5 notes if you'll allow me to to give you a direct and
6 accurate answer.

7 MS. GORTON: May he be excused to get his notes?

8 THE COURT: Yes, sir. You can get your notes or
9 someone can get them for you if you need those.

10 A. Thank you, Your Honor.

11 THE COURT: Could you identify the exhibit for ID that
12 he's looking at?

13 MS. GORTON: It's exhibit number 1.

14 THE COURT: All right. You can go get your notes, sir.

15 A. Thank you. As best I can tell, that is Brittney
16 Phillips.

17 Q. When was the last time you saw Brittney Phillips?

18 A. In this courtroom today.

19 Q. Yes. She's been in and out of this courtroom for the
20 past two days, is that correct?

21 A. Yes, ma'am, she has.

22 Q. Are you aware of her rank in the gang?

23 A. I could speculate.

24 Q. High or low?

25 A. Low, actually.

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1 Q. Do you know who she dates?

2 A. I do.

3 Q. Who does she date?

4 A. She dates Raymond Young.

5 Q. And who is Raymond Young?

6 A. Raymond Young is the True Disciple G that was mentioned
7 in the report, in the statement earlier.

8 Q. What does that mean?

9 A. It means that she dates Raymond Young.

10 Q. No, True Disciple G -- True Disciple G?

11 A. He is a high ranking member of the Folk Nation,
12 specifically Gangster Disciples.

13 Q. And, in fact, in this area of Greenville is he the
14 highest ranking?

15 A. No, ma'am, he's not.

16 Q. Who do you know who's higher ranking than Raymond
17 Young?

18 A. I'd prefer not to mention that information in this
19 case, if possible, Your Honor.

20 Q. Well, Raymond Young's currently incarcerated, isn't he?

21 A. Yes, ma'am, he is.

22 Q. Can you tell me who's in Defendant's exhibit 3?

23 A. The male or the female?

24 Q. Both, please.

25 A. The female could be one of two people. I can't really

BRANDON BROWN - CROSS EXAMINATION BY MS. GORTON

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1 see her face the way the guy is laying.

2 Q. Does it look like K-dril (phonetics)?

3 A. She is one of the two, yes, ma'am.

4 Q. And who is K-dril?

5 A. K-dril is also a member of the Sisters of the Struggle,

6 which is the female faction of this gang.

7 Q. Sisters of the Struggle, are you sure that's not a

8 rank?

9 A. That is also a rank, but it is also the subset of

10 Gangster Disciples within Growth and Development under

11 Brothers of the Struggle of Knowledge.

12 Q. It's also a rank. And as to ranks, does it apply only

13 to the females?

14 A. Does Sisters of the Struggle apply only to the ---

15 Q. It's an ---

16 A. --- females?

17 Q. --- obvious question, I know, but I need the answer.

18 A. Yes, ma'am, it does.

19 Q. Okay. And it's the lowest rank other than prospect,

20 isn't it?

21 A. Yes, ma'am, it is.

22 Q. All right. Now the male in this picture, do you know

23 who that is? And I apologize for the quality.

24 A. That could also be one of a couple. I'd really hate to

25 speculate. I mean, it's ---

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1 Q. Does that look to you ---

2 A. The quality's not real good.

3 Q. --- to be the person known as Dreke (phonetics)?

4 A. That is possible, but I couldn't say without a doubt
5 that it is.

6 Q. And who is in charge while Raymond's in jail? Who took
7 his place?

8 A. Once again, I could speculate. I can't give an opinion
9 unless you're qualifying me as an expert.

10 Q. Oh, I thought -- in gangs, generally, what significance
11 does color have?

12 A. More specifically, color as in?

13 Q. Well, the Bloods for example, what's their color?

14 A. Red, green -- red, green, brown and black.

15 Q. Am I a Blood?

16 A. No, ma'am, you're not.

17 Q. Well, why? I mean, why does -- what do you look for?
18 Do you look for bandanas?

19 A. No, ma'am. I base it solely on the evidence that's
20 placed at hand.

21 Q. So when you see someone walking down the street you
22 don't get a sense of whether they're a gang member or not?

23 A. No, ma'am. It's not my job to judge.

24 Q. Okay. Well, on Gangster Disciples, what color are they
25 associated with?

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1 A. Primarily black and gray.

2 Q. Black and gray or black and white?

3 A. Black and gray.

4 Q. Black and gray. And you were with Hoover -- I'm sorry,
5 Detective Hoover, when he questioned De'Nia Dawkins, is that
6 ---

7 A. Yes, ma'am, I was.

8 Q. And you were there when she was specifically asked
9 about this photo, correct?

10 A. Yes, ma'am, I was.

11 Q. And she was specifically asked, well, why was everyone
12 else wearing black, that's not exactly true, we have a guy
13 over here in blue, and she's got blue and black. She was
14 asked, well, why aren't you wearing black, wasn't she?

15 A. I don't recall that question, no, ma'am.

16 Q. Well, this is a very poor copy of the picture, but
17 wouldn't you agree she's wearing pink? And I'm showing you
18 State's or Defendant's exhibit 4.

19 A. That looks white to me, but, I mean, like -- if you say
20 it's a poor quality of the picture, I couldn't say if it's
21 pink or not. It looks white.

22 Q. I think you had a copy of it in there when you flipped
23 through.

24 A. I do.

25 Q. Would you like to look at it for color?

BRANDON BROWN - CROSS EXAMINATION BY MS. GORTON

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- 1 A. If you don't mind, yes, ma'am.
- 2 Q. No. Yours isn't a whole lot better than mine, is it?
- 3 A. Once again, it looks ---
- 4 Q. A pinkish white, ---
- 5 A. It looks white ---
- 6 Q. --- perhaps?
- 7 A. --- or some other colors ---
- 8 Q. Certainly not black?
- 9 A. It looks like a -- just a blouse.
- 10 Q. Yeah, a frilly blouse?
- 11 A. Sure.
- 12 Q. And she's wearing a frilly skirt?
- 13 A. Yes, ma'am.
- 14 Q. And pearls?
- 15 A. Yes, ma'am.
- 16 Q. Not exactly gang attire?
- 17 A. Define gang attire.
- 18 Q. Well, K-drill and Brittney we both saw in the courtroom
- 19 the last couple of days coming in and out -- now, did you
- 20 invite those girls in here?
- 21 A. No, ma'am.
- 22 Q. Okay. So do you know why they keep coming in here?
- 23 A. Couldn't speculate, ma'am.
- 24 Q. You couldn't speculate?
- 25 A. No, ma'am.

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. In this picture everyone's wearing black and white, the
2 men?

3 A. Let me see it. Once again, it's poor quality, but I'm
4 assuming that's white.

5 Q. I apologize.

6 A. Yes, ma'am.

7 Q. And can you identify the individuals in this picture?

8 A. Based on the quality, a couple of them, I can.

9 Q. Which ones?

10 A. Again, I'd have to look back at notes. But, I mean,
11 that's really poor quality. I apologize. But, I mean,
12 there are a couple in there.

13 Q. Okay. Well, when you asked De'Nia about that picture
14 or when Detective Hoover asked her about that picture, did
15 she identify the people in there to the best of her ability?
16 Did it seem like she was trying to ---

17 A. I believe she did.

18 Q. --- do that?

19 A. I believe she did.

20 Q. So she was trying to be helpful?

21 A. Yes, ma'am.

22 MS. GORTON: I have no further questions.

23 THE COURT: Mr. Ianuario.

24 Cross Examination by MR. IANUARIO:

25 Q. Can I ask how old you are, Detective? Just out of

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 curiosity.

2 A. Thirty-three.

3 Q. So roughly since your mid twenties you've been working
4 in gangs?

5 A. Pretty close, yes, sir.

6 Q. You arrest a lot of scum-bags?

7 A. I arrest a lot of criminals.

8 Q. And I'm not being facetious. Thank you. I do
9 appreciate that. It's good for my business and good for the
10 community as well. So you've arrested a good number of gang
11 members that -- and you're familiar with their behaviors
12 under arrest?

13 A. Yes, sir, I am.

14 Q. Have you ever taken statements from another gang member
15 before?

16 A. Many, yes, sir.

17 Q. Have they ever lied to you during that statement?

18 A. Yes, sir.

19 Q. Do they often lie to you?

20 A. Yes, sir.

21 Q. Can you speculate as to why they're lying to you?

22 A. It's part of their gang code.

23 Q. Do you think they're ever doing it to save their own
24 butt?

25 A. Sometimes.

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. They ever turned over information that you later found
2 out to be false that was against another gang member?

3 A. Oh, yeah, absolutely.

4 Q. So we can't automatically assume that if a gang
5 member's giving a statement they're telling the truth, can
6 we?

7 A. Absolutely.

8 Q. How -- how does someone go from being in Growth and
9 Development to becoming a member of the Gangster Disciples?
10 Is there an act, an initiation where you realize I'm not in
11 this organization, I'm really in that one?

12 A. There is no difference. Growth and Development and
13 Gangster Disciples are the exact same gang. They are one in
14 the same. There is no difference.

15 Q. But they're presented differently? Coke and Pepsi are
16 both soft drinks, they're just marked a little differently.

17 A. Difference is Coke and Pepsi are two separate drinks.
18 Growth and Development and Gangster Disciples are the same,
19 it's just different ways of saying it.

20 Q. But at what point in time would someone, let's say, a
21 prospect that's coming through Growth and Development, and
22 the untrained eye as you mentioned earlier, when do they
23 realize that this isn't a community organization, this is
24 something more serious?

25 A. Despite -- in my experience, despite what many tell

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 you, they know what they're getting into from the start.

2 Q. Okay. Do they -- do gangs prey on the youth of
3 America?

4 A. Yes, sir.

5 Q. And we talked about Growth and Development earlier
6 being a way to put a positive spin on Gangster Disciples, is
7 that correct?

8 A. Yes, sir.

9 Q. Have you ever seen anyone associated with members in a
10 gang and get sucked in?

11 A. Get sucked in as in?

12 Q. Let's say hypothetically they have some information on
13 this person and now join the gang or you're going to get --
14 something like that?

15 A. Typically, once again, in my experience we have found
16 that gang members commit crimes together as part of the
17 gang, not in lieu of or because they happen to be around
18 whenever something's being planned. Typically the gang
19 environment is a very close-knit environment. They don't
20 allow outsiders in. There's too much risk involved in both
21 the freedom of the gang members and the gang itself.

22 Q. So once you're in, it's pretty tough to leave?

23 A. Not necessarily.

24 Q. Has anyone ever been physically abused for attempting
25 to leave a gang?

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 A. Yes, sir.

2 Q. Does it happen more often than not?

3 A. Not actually -- not typically, no.

4 Q. But it has happened?

5 A. Yes, sir, it has.

6 Q. Okay. Now, talking a little bit more about Mr. Lomax,
7 is there any evidence other than statements that would show
8 he was aware of the plan, what was going to take place that
9 night?

10 A. Not that I'm aware of, no, sir.

11 Q. Okay. So this is based mainly on the statements of co-
12 defendants?

13 A. What is?

14 Q. Your arresting Mr. Lomax and your investigation of him,
15 your connection with him is based, for these charges, is
16 based mainly upon the statements of his co-defendants,
17 correct?

18 A. Along with evidence that was presented as to the
19 vehicles, tag numbers that was obtained, everything else
20 that's been portrayed here over the past day ---

21 Q. Do we have ---

22 A. --- coupled together.

23 Q. --- any evidence other than statements showing that he
24 was in the vehicle?

25 A. At which time?

BRANDON BROWN - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. Of the night of the robbery?

2 A. Not that I know of, no, sir.

3 Q. But we do know that a week before somebody else was
4 pulled over driving this vehicle, correct?

5 A. It appears so, yes, sir.

6 Q. Or a week after. At some point in time ---

7 A. At some point in time.

8 Q. --- somebody else was pulled over driving this vehicle.
9 So he clearly at least loans it out once in a blue moon?

10 A. Yes, sir.

11 Q. Okay. So all we have is this statement and he owns the
12 vehicle that was seen at the crime, but we don't have hard
13 core evidence where -- we don't have any text messages of,
14 hey, we're going to go rob this guy and I want you three to
15 follow me? There's no plan laid out or anything hard core,
16 just on the statements of the co-defendants and the presence
17 of his vehicle, correct?

18 A. I believe all that evidence compiled together makes a
19 pretty strong statement, yes, sir.

20 Q. Okay. And his co-defendants that will be testifying
21 later are also gang members, correct?

22 A. To the best of my knowledge, yes, sir.

23 Q. And coming back full circle to your testimony, you have
24 seen gang members lie before to save their own butts,
25 correct?

BRANDON BROWN - REDIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes, sir.

2 Q. Nothing further. Thank you.

3 A. Thank you.

4 THE COURT: Any redirect?

5 MS. SALISBURY: Very, very briefly, Judge. And before
6 I begin, could I inquire whether Defense exhibits would be
7 offered for evidence?

8 MS. GORTON: Yes.

9 THE COURT: Are they being offered now or -- they were
10 marked for identification, I understand. Are they to be for
11 identification?

12 MS. GORTON: The one with De'Nia in it, I would like to
13 be moved into evidence.

14 THE COURT: All right. Do you want to -- if you would
15 tell me which exhibit that is.

16 MS. GORTON: Exhibit 4, Your Honor.

17 THE COURT: All right. So Defendant Dawkins exhibit
18 number 4 is offered into evidence. Is there any objection?

19 MS. SALISBURY: I don't have an objection, Judge.

20 THE COURT: All right. So the rest are for
21 identification only. You may redirect your witness.

22 MS. SALISBURY: Thank you, Your Honor.

23 (Whereupon Defendant Dawkins exhibit 4 was admitted
24 into evidence)

25 Redirect Examination by Ms. Salisbury:

BRANDON BROWN - REDIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Investigator Brown, you indicated earlier that you were
2 present for the interview of Juwan Lomax where he gave a
3 statement.

4 A. Yes, ma'am.

5 Q. Did you participate actively in that interview?

6 A. Yes, ma'am, I did.

7 Q. Did you ask him questions?

8 A. Yes, ma'am, I did.

9 Q. Okay. Did you inquire about his affiliation with the
10 gang?

11 A. Yes, ma'am, I did.

12 Q. What did he tell you about his gang affiliation?

13 A. He advised that he was a rapper and that his
14 involvement was very little.

15 Q. Did he ever indicate to you his specific rank?

16 A. Not from him directly, no.

17 (Whereupon State's exhibits 14 and 15 were marked for
18 identification)

19 Q. Investigator, I'm going to show you State's exhibits 14
20 and 15. Do you recognize those photographs?

21 A. Yes, ma'am, I do.

22 Q. How do you recognize them?

23 A. The one photograph, which is marked exhibit 14, is a
24 group of what is called the Sisters of the Struggle, the
25 female faction of the gang, if you will, with multiple

BRANDON BROWN - REDIRECT EXAMINATION BY MS. SALISBURY

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1 different members of various different ranks within that
2 organization.

3 This is also -- this is also another picture of both
4 the males and the females. The male version of that faction
5 is just called the Brothers of the Struggle. It falls
6 underneath the same kind of knowledge which both comes from
7 Chicago as well.

8 And this specific one, they're throwing up what is
9 known as the three point crown. Three point crown typically
10 stands for life, love and loyalty or it could stand for
11 wisdom, knowledge and understanding.

12 The Folk Nation specifically goes underneath what is
13 the six ideology. They use the six pointed star. Each one
14 of -- each point on that star stands for wisdom, knowledge,
15 understanding, life, love and loyalty. Typically when
16 they're throwing up the three pointed crown such as this,
17 it's showing that they both know and understand the
18 philosophies behind the gang of at least love, life and
19 loyalty. All right.

20 This one is a little different. As you can see,
21 they're throwing up what looks to be like this, almost like
22 an L. What that stands for is one love, guns up. It is
23 also another Folk Nation hand sign. It's nothing different
24 than what you'd see on TV in a normal -- normal TV show.

25 They throw those up to both recognize each other and

BRANDON BROWN - REDIRECT EXAMINATION BY MS. SALISBURY

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1 recognize -- so other people in the community recognize them
2 as they should be someone that they're afraid of. This gang
3 thrives on the fear in the community. These hand signs, and
4 running together and specific clothing is how they instill
5 that fear and so that the community understands who they
6 should be fearful of.

7 Also, what you see is a couple of them doing like this.
8 What that is is a pitch fork or it can stand for East Side
9 Folk Nation. The pitch fork itself stands for one of the
10 major identifiers under Folk Nation. These are all
11 identifiers that aren't specific to just Folk Nation, but
12 all these subsets within Folk Nation adopt them. Gangster
13 Disciples or Growth and Development within Folk Nation is
14 one of which that adopts these signs.

15 Q. Is the Defendant, Ms. Dawkins, depicted in each of
16 those photos?

17 A. Yes, she is.

18 Q. Just for curiosity sake, what color is she wearing?

19 A. In this one right here she is wearing a black shirt and
20 blue jeans, throwing up the one love, guns up. And in this
21 one right here she is also wearing a black shirt and blue
22 jeans throwing up the three pointed crown for love, life and
23 loyalty.

24 Q. Investigator, do you recall from where you retrieved
25 those pictures?

BRANDON BROWN - REDIRECT EXAMINATION BY MS. SALISBURY

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1 A. I believe it was on Facebook, but I'm not positive.

2 MS. SALISBURY: Your Honor, I'd offer State's exhibits
3 14 and 15.

4 THE COURT: Any objection?

5 MS. GORTON: No objection.

6 THE COURT: Without objection, 14 ---

7 MR. IANUARIO: Your Honor, I actually would like to
8 object to that. Without establishing a date that those
9 pictures were taken we don't know if this was relevant to
10 incidents before the crime or after the crime. So short of
11 validating when that picture was taken, we don't know if
12 it's at a Halloween party, we don't know if it was two
13 months ago, we don't know if it was last week. Without
14 laying a better foundation I would have to object to that
15 coming in.

16 MS. SALISBURY: To the extent that Mr. Lomax isn't
17 depicted in either of these photographs, ---

18 THE COURT: Okay.

19 MS. SALISBURY: --- I'm not sure that Mr. Ianuario can
20 object to it.

21 THE COURT: I overrule your objection.

22 (Whereupon State's exhibits 14 and 15 were admitted
23 into evidence)

24 MS. SALISBURY: With the Court's permission, I'd like
25 to publish these to the jury.

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 THE COURT: They may be published.

2 MS. SALISBURY: Your Honor, I don't have any additional
3 questions.

4 MS. GORTON: Recross.

5 THE COURT: Briefly.

6 Recross Examination by Ms. Gorton:

7 Q. The photo that I entered as Defendant's exhibit number
8 4, De'Nia Dawkins is wearing non-gang -- non-gang clothing,
9 would you agree?

10 A. No, ma'am, I wouldn't.

11 Q. You wouldn't? She looks different than the rest, would
12 you agree with that?

13 A. Different? Yes, ma'am. She looks ---

14 Q. She's not wearing black there?

15 A. I believe she had a black skirt on, but ...

16 Q. Again, poor quality. But if you looked at yours would
17 you agree that it was a denim ruffled skirt?

18 A. Do you mind me -- you mind if I look?

19 Q. No, not at all. Please.

20 A. Actually, yes, ma'am, it's a dark blue denim ---

21 Q. It's a dark blue denim skirt with a ruffled light
22 colored blouse. That's different than every single person
23 in there, isn't it?

24 A. Yes, ma'am, it is.

25 Q. So she's not wearing gang clothing in that picture?

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 A. Once again, define gang clothing.

2 Q. Okay. Well, you were the one who said there's specific
3 clothing associated with different gangs.

4 A. No, ma'am. I said colors.

5 Q. Now, this picture, the two pictures that were just
6 entered, ---

7 A. I believe the jury's got them.

8 Q. This picture, is she smiling?

9 A. I can't see from that far away, I'm sorry. No, it
10 doesn't look like any of them are.

11 Q. But she's not. And in this, can you tell if that's a
12 smile or a grimace?

13 A. Looks like a smirk, yeah.

14 Q. A smirk?

15 A. Um-hum (affirmative).

16 Q. Well, she didn't know you were going to be looking at
17 this picture. So who do you suppose she's smirking at?

18 A. I couldn't speculate.

19 Q. The person taking the picture, perhaps?

20 A. (No response).

21 Q. Now, as Mr. Ianuario was pointing out, these
22 photographs could have been taken after the Drez incident,
23 after she was trapped, is that correct?

24 A. Once again, I would have to take a closer look to see
25 if those people are -- were -- that were locked up at the

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 time are in the pictures or not. There's no way to know
2 when the picture was taken.

3 Q. Is it possible that that photograph was taken after the
4 Drez incident, after she was trapped by the gang?

5 A. It is possible, yes.

6 Q. Whereas, is it possible that this picture, the one with
7 the ruffles and the denim skirt was taken prior to the Drez
8 incident when she still believed it was Growth and
9 Development?

10 A. No, ma'am. This was quite a bit after the Drez
11 incident.

12 Q. How could you know that?

13 A. Because I know what date and time that was taken.

14 Q. What date and time was it taken?

15 A. It involves another case.

16 Q. I didn't ask you the source of the information. I
17 asked you what date and time it was taken.

18 A. It was taken on the late night hours of July 16th or
19 the early hours of July 17th, 2011 at the Red Planet.

20 Q. Is that taken from Raymond phones -- Raymond Young's
21 phone records?

22 A. No, ma'am.

23 Q. Where do you get that information from?

24 A. That was published on his Facebook page, which was an
25 open page. That is a club photo.

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 Q. So it was published on that date. Do you know what
2 date the photo was taken?

3 A. Yes, ma'am, the late night hours of July 16th or early
4 hours of July 17th, 2011.

5 Q. And how do you know that?

6 A. Because ---

7 Q. Are you saying from the Facebook page?

8 A. No, ma'am, I'm saying there was a shooting that
9 occurred that night with these individuals involved, which
10 is when the picture was taken and published.

11 Q. How do you know the picture was taken then?

12 A. Because I worked ---

13 Q. Were you there?

14 A. Yes, ma'am, I was.

15 Q. When the picture was taken?

16 A. Not when the picture was taken. I was there ---

17 Q. Sir, that is the only thing ---

18 A. --- at 0400 hours.

19 Q. --- I am asking you about is when the picture was
20 taken, when the cameraman pushed the button, when was it?
21 What day was it the button was pushed?

22 A. The late night hours of July 16th, early hours of July
23 17th, 2011 at the club Red Planet.

24 Q. Did you witness the person taking the picture?

25 A. No, ma'am, I did not.

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 Q. So how do you know it was taken on that date?

2 A. Because I responded to a shots fired call with multiple
3 gunshot victims and a gang related ---

4 MS. GORTON: Objection, ---

5 A. --- incident.

6 MS. GORTON: --- Your Honor. Absolutely non-
7 responsive.

8 THE COURT: You asked the question as to how he knew to
9 be -- didn't you ask him how he knew that it was taken at
10 that time?

11 MS. GORTON: That the picture was taken, that the
12 button was taken. He didn't see it.

13 THE COURT: Well, do you want to withdraw your
14 question? I -- you've asked the question of how he knew,
15 then he has a right to answer how he knew.

16 MS. GORTON: He doesn't appear to be answering the
17 question.

18 THE COURT: Well, ---

19 MS. GORTON: If he was standing there and he watched
20 them -- he's already said he didn't see it. Somebody must
21 have told him that.

22 THE COURT: Why don't you rephrase your question as to
23 how he knows of his personal knowledge.

24 MS. GORTON: All right.

25 Q. Did you see the person taking the picture push the

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 button?

2 A. No, ma'am, I did not.

3 Q. Have you spoke with anyone who saw the person push the
4 button?

5 A. That saw the person actually push the button?

6 Q. Yes, who actually saw the picture ---

7 A. I've spoke with most of the individuals in that
8 photograph of which identified that photograph as being
9 taken the late night hours of July 16th, early hours ---

10 Q. By whom?

11 A. --- of July 17th.

12 Q. Who took the picture?

13 A. At any club -- any one of these clubs, as soon as you
14 walk in there's a place where you can have your photograph
15 taken.

16 Q. So you ---

17 A. Many people do that.

18 Q. --- can't identify who took the picture?

19 A. No, ma'am, I can't.

20 Q. All right. You know what, that is when she's not
21 wearing gang clothing anyway. Let's go back to where she's
22 wearing what you call -- I'm sorry, is this funny?

23 A. You keep -- you keep backtracking on various different
24 topics.

25 Q. I'm sorry, I've got her life in my hands. I'm nervous

BRANDON BROWN - RECROSS EXAMINATION BY MS. GORTON

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1 and I'm scared.

2 A. Okay.

3 Q. I'll try to be more focused.

4 A. Thank you.

5 Q. When we're talking about the pictures with her wearing
6 gang clothing, can you say whether those were taken before
7 or after this incident with Drez?

8 A. Once again, I did not identify that clothing as gang
9 clothing. And, no, I cannot identify when that picture was
10 taken. I do not know about that picture.

11 Q. I'm talking about these where she's flashing signs.

12 A. I said those were gang hand signs, not gang clothing.

13 Q. Okay. The signs then, do you know whether that was
14 before or after the incident with Drez?

15 A. No, ma'am, I do not.

16 MS. GORTON: Nothing further..

17 THE COURT: All right. Thank you, officer.

18 (Pause)

19 THE COURT: You may step down, officer.

20 A. Thank you, Your Honor.

21 THE COURT: Ladies and gentlemen, this is a good time
22 for us to take a break. I try to sometimes anticipate how
23 long a witness will take and get some input, but sometimes I
24 don't really know. I apologize for keeping you this long.
25 We'll take a short break, call you back in just a few

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 moments. Don't discuss the case while you're out.

2 (Whereupon the jury exited the courtroom at 3:49 pm)

3 THE COURT: All right. Let's take a short break and
4 we'll be ready to start back in about ten minutes.

5 (Whereupon court was in recess at 3:50 pm)

6 (Whereupon court resumed at 4:17 pm)

7 THE COURT: Keep your seats, ladies and gentlemen.
8 Solicitor, you ready to proceed?

9 MS. SALISBURY: Yes, Your Honor.

10 THE COURT: All right. Let's have our jury come in,
11 Ms. Sims.

12 (Whereupon the jury entered the courtroom at 4:19 pm)

13 THE COURT: Solicitor, you may call your next witness.

14 MS. SALISBURY: Thank you, Your Honor. The State calls
15 Mr. Tra'Vis Ware. Mr. Ware, if you would, please come
16 around to be sworn.

17 MADAME CLERK: And as best you can, please, can you
18 place your left hand on the Bible right there. Stop right
19 there, please. And try to raise your right hand.

20 Tra'Vis Ware, being duly
21 sworn testified as follows:

22 MADAME CLERK: Thank you. Please be seated. And would
23 you state your name for the record.

24 MR. WARE: Tra'Vis Ware.

25 MADAME CLERK: Thank you.

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Direct Examination by Ms. Salisbury:

2 Q. Mr. Ware, it's apparent to everyone here that you're
3 currently incarcerated. Are you charged as part of the
4 crime for which we're on trial today?

5 A. Yes, ma'am.

6 Q. And do -- before you were arrested on these offenses
7 did you live in Greenville?

8 A. Yes, ma'am.

9 Q. How long have you lived here in Greenville?

10 A. All my life.

11 Q. Where did you go to school?

12 A. Woodmont.

13 Q. Now, I'm standing way back here to make sure that I can
14 hear you because if I can hear you, all of the jury can hear
15 you, okay? So just make sure that you speak up loud enough
16 so that -- so that I can hear what you're saying, okay?

17 What do your friends call you?

18 A. Smoke.

19 Q. Smoke? Okay. Let's just jump right to it. Do you
20 remember an incident that happened during the early morning
21 hours of June 3rd, 2011?

22 A. Yes, ma'am.

23 Q. Would you tell the jury what happened on the evening
24 before -- before you ended up going over to Demetrius
25 Benson's apartment?

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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- 1 A. Juwan called me about the lick. I was ready to go.
- 2 Q. Juwan contacted you just on your cell phone?
- 3 A. (Affirmative nod).
- 4 Q. Okay. And what did he tell you exactly?
- 5 A. He told me that he had a lick.
- 6 Q. What do you understand that to mean? What's a lick?
- 7 A. A robbery.
- 8 Q. Okay. And did he ask you if you were -- if you were
- 9 in, if you were willing to participate?
- 10 A. Yes, ma'am.
- 11 Q. Okay. Did you indicate that you would participate?
- 12 A. Yes, ma'am.
- 13 Q. What happened next? Did they come pick you up?
- 14 A. They came to pick me up.
- 15 Q. Where did they pick you up from?
- 16 A. Crooked Creek.
- 17 Q. And where did you -- who picked you up? Who was in the
- 18 car?
- 19 A. Juwan and De'Nia.
- 20 Q. And De'Nia?
- 21 A. (Affirmative nod).
- 22 Q. Was anybody else in the car?
- 23 A. No, ma'am.
- 24 Q. Okay. What kind of car was it?
- 25 A. A white Buick.

TRAVIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Okay. And where did -- where did the three of you go
2 from there?

3 A. We met up with Raymond and Fats.

4 Q. Where did you meet up with the two of them?

5 A. In the parking lot somewhere.

6 Q. Some parking lot. Okay. And then what happened in the
7 parking lot?

8 A. I got in the car with them.

9 Q. And what kind of car did you get into?

10 A. Black Maxima.

11 Q. Okay. And who was driving that car?

12 A. Fat.

13 Q. Do you remember sort of about what time this was
14 happening? Was it still daylight out? Was it real late at
15 night?

16 A. It was nighttime.

17 Q. Now, what -- what happened when you got into the car
18 with Raymond and Fats? What's Fats' real name?

19 A. Josh.

20 Q. Josh. What happened when you got into the car with
21 Raymond and Josh?

22 A. We masked up.

23 Q. What kind of -- what kind of mask did you use?

24 A. Shirts.

25 Q. Shirts? Did you have bandanas on your face?

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. (Negative nod). No, ma'am.

2 Q. What were you wearing other than your face being
3 covered?

4 A. All black.

5 Q. What did they tell you about what was going to happen?

6 A. Said we were going to go in there and take the weed.

7 Q. Did they tell you who you were going to go rob?

8 A. (Negative nod).

9 Q. Did they tell you why?

10 A. (Negative nod). No, ma'am.

11 Q. What did you understand was your -- was your job? What
12 was your role as in part of that robbery?

13 A. Go in there, just hold them up.

14 Q. Did you know how many people would be inside the
15 apartment?

16 A. (Affirmative nod).

17 Q. How did you know?

18 A. De'Nia told.

19 Q. How did -- how did De'Nia communicate that to you? If
20 you guys were in separate cars, how was she able to
21 communicate to you how many people were inside the
22 apartment?

23 A. They told -- they told Raymond what was up. And they
24 told me what was up when I got in the car.

25 Q. Okay. So somehow -- you're not sure, but somehow the

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 information was relayed from De'Nia to your car of people
2 how many -- how many people were inside that apartment?

3 A. Yes, ma'am.

4 Q. Okay. Now, what happened when you arrived at the
5 apartment? Did you wait in the car?

6 A. No, ma'am.

7 Q. Okay. Well, what happened when you pulled up?

8 A. Went to the back of the apartment and we waited on --
9 we waited on her to come to the door.

10 Q. Was that supposed to be your cue when she came to the
11 door, and that's when you know you would go in?

12 A. Um-hum (affirmative).

13 Q. Now, I'm going to show you a picture. It's been marked
14 as State's exhibit 6. Does that look familiar to you?

15 A. Yes, ma'am.

16 Q. Do you remember where you were standing while you say
17 you were waiting for De'Nia to come to the door?

18 A. On the side of the door.

19 Q. Can you -- can you see it this way? I just want the
20 jury to see where you were standing.

21 A. Right there.

22 Q. You were standing to the side of the front door waiting
23 for her to come?

24 A. (Affirmative nod).

25 Q. Okay. And what happened once the door was opened?

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. We rushed in there.

2 Q. Who?

3 A. Me, Raymond and Fat.

4 Q. Okay. And what about De'Nia?

5 A. They was in the back somewhere.

6 Q. They -- I'm sorry?

7 A. They was in the back somewhere.

8 Q. They were in the back. Did they stay inside the
9 apartment while you guys forced your way in?

10 A. They left out.

11 Q. Okay. And what happened once -- once you -- once you
12 got into the apartment?

13 A. They were tussling over the gun. And ---

14 Q. With your gun?

15 A. No. Him and somebody else was tussling over the gun.
16 I shot.

17 Q. Were you -- you mean -- are you referring to the victim
18 wrestling with the gun?

19 A. (Affirmative nod).

20 Q. Okay. How many times was he shot?

21 A. I think twice.

22 Q. Do you remember shooting him?

23 A. (Affirmative nod).

24 Q. Do you remember where you shot him?

25 A. No.

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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- (1 Q. What did you do after that struggle with the gun?
- 2 A. We took him to the back.
- 3 Q. Okay. And what happened?
- 4 A. We was asking where the weed and the money was at.
- 5 Q. Did he give you an answer?
- 6 A. No.
- 7 Q. Then what did y'all do?
- 8 A. Just kept looking for it.
- 9 Q. Did you look in every room of the apartment?
- 10 A. (Negative nod).
- 11 Q. Did you end up finding anything?
- 12 A. Some money and a laptop.
- (13 Q. Now after you -- after you took whatever money you
- 14 found and the laptop where did -- what happened?
- 15 A. We ran out.
- 16 Q. Where did you run to?
- 17 A. To the car.
- 18 Q. Do you remember running into anybody in the parking
- 19 lot?
- 20 A. (Negative nod).
- 21 Q. Do you remember encountering a white guy in the parking
- 22 lot?
- 23 A. (Negative nod).
- 24 Q. Okay. Where did you go after that? Did you get back
- 25 into the same car that you came in? Did you get back in

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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- 1 Josh's car?
- 2 A. Um-hum (affirmative). Yes, ma'am.
- 3 Q. Okay. And where did y'all go?
- 4 A. He took me to Crooked Creek.
- 5 Q. Did they drop you back off at your house?
- 6 A. (Affirmative nod).
- 7 Q. Did you guys split the money?
- 8 A. Yes, ma'am.
- 9 Q. Do you remember how much you got?
- 10 A. No, ma'am.
- 11 Q. Okay. Now, when you came outside the apartment did you
- 12 come with the two other guys with guns? Did the three of
- 13 you guys leave together?
- 14 A. Yes, ma'am.
- 15 Q. Was there anybody else that left with you?
- 16 A. No, ma'am.
- 17 Q. When you came outside was De'Nia on the ground?
- 18 A. No, ma'am.
- 19 Q. Was she standing around outside her car?
- 20 A. No, ma'am.
- 21 Q. Did you tell her to get off the ground and get in the
- 22 car?
- 23 A. No, ma'am.
- 24 Q. Do you understand that what you did that day was a
- 25 crime?

TRA'VIS WARE - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes, ma'am.

2 Q. And did you plead guilty earlier today to armed robbery
3 and conspiracy as part of your involvement in this crime?

4 A. Yes, ma'am.

5 Q. And do you -- is it your understanding that the charges
6 of burglary in the first degree, attempted murder and
7 possession of a weapon during the commission of a violent
8 crime are being dismissed as part of your testimony here
9 today?

10 A. Yes, ma'am.

11 Q. What do you understand to be your responsibility today
12 to uphold your end of the bargain? What do you have to do
13 to take advantage of that -- that plea deal?

14 A. What you mean?

15 Q. What -- in order to get the benefit of this plea deal,
16 what has the State asked you to do?

17 A. Testify.

18 Q. Have -- has the State asked you to do anything other
19 than tell the truth about what happened there that day?

20 A. No, ma'am.

21 Q. Have you told the truth about everything that happened
22 out there today?

23 A. Yes, ma'am.

24 Q. All right, sir. Thank you. If you would, answer any
25 questions these attorneys may have for you.

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 Cross Examination by Ms. Gorton:

2 Q. Now these charges aren't the only charges that have you
3 in jail, are they?

4 MS. SALISBURY: Objection, Your Honor.

5 THE COURT: If you could, approach, please.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 Q. Mr. Ware, this morning, as of this morning you are
9 incarcerated on a total of eleven pending charges, is that
10 correct?

11 A. Yes, ma'am.

12 Q. And as to this incident itself you pled to what?

13 A. Armed robbery and conspiracy.

14 Q. Armed robbery. And armed robbery carries -- let me
15 back up. On the charges that we're not talking about today,
16 on the charges that have nothing to do with Demetrius
17 Benson. On the remaining charges, on those charges alone,
18 are you looking at life in prison?

19 A. Yeah.

20 Q. And on this charge, this case today, that you did the
21 deal on this morning, armed robbery carries a
22 minimum/mandatory of ten years and up to thirty years, is
23 that correct?

24 A. Yes, ma'am.

25 Q. Minimum/mandatory means no youthful offender, no

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 parole, no early release, is that correct?

2 A. Yes, ma'am.

3 Q. So the only way you can get out of that

4 minimum/mandatory of ten years is if the jury finds you not

5 guilty or if the Solicitor drops the charge, is that

6 correct?

7 A. Yes, ma'am.

8 Q. Now, you are also looking at burglary, first degree, is

9 that correct?

10 A. Yes, ma'am.

11 Q. And the State dropped the burglary, first degree,

12 didn't they?

13 A. Yes, ma'am.

14 Q. In this deal. And a burglary, first degree, is even

15 worse than an armed robbery because it carries a

16 minimum/mandatory of fifteen years, correct?

17 A. Yes, ma'am.

18 Q. So if you had been convicted of that you would have

19 faced at least fifteen years and up to -- is it thirty or

20 life?

21 (Whereupon Ms. Gorton was consulting with Mr. Ianuario)

22 Q. Is it your understanding that the maximum was thirty or

23 the maximum was life on a burglary, first?

24 A. Life.

25 Q. Life?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

377

1 A. No, thirty.

2 Q. It's still a long time. And you're, what, eighteen
3 years old?

4 A. Yes, ma'am.

5 Q. You were also facing charges on attempted murder, is
6 that correct?

7 A. Yes, ma'am.

8 Q. Did they drop those charges?

9 A. No, ma'am.

10 (Pause)

11 Q. You were also facing charges on possession of a weapon
12 during a violent felony, is that correct?

13 A. Yes, ma'am.

14 Q. Because you actually had a gun in your hand, correct?

15 A. Yes, ma'am.

16 Q. And you were actually the one who shot the guy, weren't
17 you?

18 A. Yes, ma'am.

19 Q. But they dropped that, didn't they?

20 A. Yes, ma'am.

21 Q. And that was a mandatory, no excuses, do not pass go,
22 five years, correct?

23 A. Yes, ma'am.

24 Q. And what about the conspiracy? Did you plead?

25 A. Yes, ma'am.

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 Q. Conspiracy's not all that scary in the big realm of
2 things. Conspiracy is only five years, correct?

3 A. Yes, ma'am.

4 Q. Did you get your name Smoke from gun smoke?

5 A. No, ma'am.

6 Q. Can you tell me where you got it?

7 A. Ansel (phonetics) from City Heights. He named me Smoke
8 'cause I smoke.

9 Q. Who named you?

10 A. Dude named Ansel from City Heights.

11 Q. I'm sorry, I didn't understand you.

12 A. A dude named Ansel.

13 Q. Is he part of the G's?

14 A. No, ma'am.

15 Q. How long had you been part of Gangster Disciples?

16 A. About a year.

17 Q. About a year. Are you educated?

18 A. Yes, ma'am.

19 Q. What was the latest grade you went to?

20 A. Eleventh grade.

21 Q. Did you drop out of school?

22 A. No, ma'am.

23 Q. How did you get involved with Gangster Disciples?

24 A. Selling beats to Raymond.

25 Q. I'm sorry, I can't understand you.

TRAVIS WARE - CROSS EXAMINATION BY MS. GORTON

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- 1 A. Selling beats to Raymond.
- 2 Q. What's that?
- 3 A. Music beats.
- 4 Q. Beats?
- 5 A. (Affirmative nod).
- 6 Q. Like beets you eat?
- 7 A. (Negative nod).
- 8 Q. I'm trying to understand. Do you mean music?
- 9 A. (Affirmative nod).
- 10 Q. So you're a musician?
- 11 A. Yes, ma'am.
- 12 Q. And that's how you got hooked up with Gangster
- 13 Disciples?
- 14 A. Yes, ma'am.
- 15 Q. Is that right?
- 16 A. (Affirmative nod).
- 17 Q. Do you know an organization called Growth and
- 18 Development?
- 19 A. Yes, ma'am.
- 20 Q. What do you know about them?
- 21 A. I got to talk about that?
- 22 Q. I'm afraid so.
- 23 A. (No response).
- 24 Q. Is that how you were introduced to Gangster Disciples?
- 25 Did you first know them as Growth and Development?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 A. Yes, ma'am.

2 Q. So when you first got involved with the group you
3 didn't know that they were called Gangster Disciples?

4 A. Yes, ma'am.

5 Q. You did know ---

6 A. (Affirmative nod).

7 Q. --- or that's correct? I don't understand your answer.

8 A. I did know.

9 Q. You had heard that they were both Gangster Disciples
10 and Growth and Development from day one?

11 A. Yes, ma'am.

12 Q. Did you know that they were a crime gang?

13 A. Yes, ma'am.

14 Q. When you first got involved with them?

15 A. Yes, ma'am.

16 Q. Are there rankings in Growth and Development/Gangster
17 Disciples?

18 A. Yes, ma'am.

19 Q. What are the rankings?

20 A. I don't remember all of them.

21 Q. Well, is there a ranking called prospect?

22 A. Yes, ma'am.

23 Q. And is a prospect told what the group's about?

24 A. Yes, ma'am.

25 Q. They are? Well, then what's the point of them being a

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 prospect?

2 A. Just showing them -- just showing them what it's like
3 to be a G before you be a G.

4 Q. You said that there were two different cars. Did I
5 understand that right?

6 A. Yes, ma'am.

7 Q. And you were in Fats' car?

8 A. Yes, ma'am.

9 Q. And in Fats' car was you, and Raymond, and Fats,
10 obviously, correct?

11 A. Yes, ma'am.

12 Q. And De'Nia was not in your car?

13 A. No, ma'am.

14 Q. And you weren't at the house. Do you know where they
15 came from before they called you and said we got a lick? Do
16 you know where they called from?

17 A. No, ma'am.

18 Q. You weren't with them until they picked you up,
19 correct?

20 A. No, ma'am.

21 Q. And they picked you up at little, where? Crooked
22 Creek?

23 A. Crooked Creek.

24 Q. So you weren't at a place where this robbery planning
25 occurred, correct?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 A. No, ma'am.

2 Q. You had no part of that?

3 A. No, ma'am.

4 Q. So you can't tell the jury whether De'Nia was there or
5 not?

6 A. No, ma'am.

7 Q. Your information comes from the fact that De'Nia's
8 phone sent information to Raymond, as you understand it,
9 correct?

10 A. Yes, ma'am.

11 Q. Do you know who was operating De'Nia's phone?

12 A. No, ma'am.

13 Q. Who else was in Juwan Lomax's car?

14 A. It was just him and De'Nia.

15 Q. Who is Envy?

16 A. Another girl.

17 Q. Another girl? Who is Envy in the G's?

18 A. G-Queen.

19 Q. She's the Queen? What does the Queen mean?

20 A. High rank.

21 Q. Highest ranking for the women?

22 A. Yes, ma'am.

23 Q. The women have to obey her?

24 A. Yes, ma'am.

25 Q. What happens if they don't?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

383

1 A. Violation.

2 Q. What does a violation mean?

3 A. They get beat on.

4 Q. You get beat on. You and I, we beat on each other, how
5 does that work exactly? Are there two different kinds of
6 physical violations? For the girls?

7 A. I don't know.

8 Q. Is one of the physical violations you're aware of where
9 six of the highest ranking women get to beat on you for six
10 minutes straight, six on one?

11 A. I don't know.

12 Q. You don't know?

13 A. (No response).

14 Q. Would another violation be that one, the highest
15 ranking, gets to beat on you for six minutes straight?

16 A. I don't know.

17 Q. You don't know?

18 A. (No response).

19 Q. What kind of things put you in violation?

20 A. Lying and disrespect.

21 Q. Disrespect. Now that's a pretty broad term in the gang
22 world, isn't it?

23 A. Yes, ma'am.

24 Q. Yeah. So who is the leader of the men in the
25 Greenville G's?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 A. Raymond.

2 Q. Raymond Young. So if Raymond Young calls you up and
3 says I need you to drive me somewhere, do you say, not into
4 it today, I'm busy, I've got to go to work? Is that
5 allowed?

6 A. (No response).

7 Q. Is that a no?

8 A. No.

9 Q. She needs to hear your answer. And if you don't show
10 up, you're in a violation, is that correct?

11 A. Yes, ma'am.

12 Q. And you're beaten?

13 A. (No response).

14 Q. Now, G's have a very segregated world, don't they? The
15 men and the women, they have different roles, they have
16 different leaders, is that correct?

17 A. Yes, ma'am.

18 Q. You guys actually have weekly dues, is that correct?

19 A. Yes, ma'am.

20 Q. And the dues for the men are different than the dues
21 for the women. The women aren't really involved in the
22 criminal aspect of the G's, are they?

23 A. No, ma'am.

24 Q. It's the men. And when the men take care of business,
25 they don't discuss it around the women, is that correct?

TRAVIS WARE - CROSS EXAMINATION BY MS. GORTON

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1 A. Yes, ma'am.

2 Q. Kind of like the Godfather when we watch the Godfather
3 movie and they don't involve their women, is that correct?
4 Is it kind of the same sort of thing?

5 A. I guess so.

6 Q. When a G has to go somewhere and y'all are just hanging
7 around, not committing crimes, just chilling, is there kind
8 of a tradition or a habit that y'all all pile into your cars
9 and drive somewhere together? You kind of stick together?

10 A. Yes, ma'am.

11 Q. So the fact that De'Nia asked for a ride and two car
12 loads of people pile in, that's not unusual, is it?

13 A. No, ma'am.

14 Q. Where did you say you went after this thing with Drez?

15 A. Home back to Crooked Creek.

16 Q. Crooked Creek?

17 A. (Affirmative nod).

18 Q. Nowhere else? You left his house, his apartment, I'm
19 sorry, and you went straight to Crooked Creek? Back home to
20 your place, is that correct?

21 A. Went to Fats' house.

22 Q. You went to Fats' house first?

23 A. (Affirmative nod).

24 Q. What happened there?

25 A. Split the money.

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

386

1 Q. Split money. How much money did you have?

2 A. I don't remember.

3 Q. What kind of bills did you have? Hundreds, thousands,
4 twenties?

5 A. Twenties and hundreds.

6 Q. I'm sorry, what?

7 A. Twenties and hundreds.

8 Q. Twenties and hundreds. So how did you split that up?

9 And who split it up?

10 A. Raymond split it up.

11 Q. I'm sorry?

12 A. Raymond split it up.

13 Q. Raymond split it up. Did you get some?

14 A. Yes, ma'am.

15 Q. Did Fats get some?

16 A. Yes, ma'am.

17 Q. My client didn't get any, did she?

18 A. (Shrugged shoulders).

19 Q. Didn't see her get any, did you?

20 A. (Negative nod).

21 Q. Must be really scary with the requirement being that
22 you testify truthfully. But the truth is is that she didn't
23 get anything, did she?

24 A. (Negative nod).

25 Q. In fact, she was really upset, wasn't she?

TRA'VIS WARE - CROSS EXAMINATION BY MS. GORTON

387

1 A. I think.

2 Q. Was she crying?

3 A. (Negative nod).

4 Q. No?

5 A. (Negative nod).

6 Q. You don't remember that?

7 A. (Negative nod). Uh-uh (negative).

8 Q. You said that you went over there to get weed. Would
9 you agree that that's why she went over there was to buy a
10 twenty dollar bag of weed?

11 A. Uh-uh (negative).

12 Q. No? She wasn't supposed to buy weed?

13 A. Uh-uh (negative).

14 Q. That wasn't part of the deal?

15 A. (Negative nod).

16 Q. She was going over there to see a boyfriend? Was she
17 going over to pay back for a ride?

18 A. Uh-uh (negative).

19 Q. No?

20 A. (Negative nod).

21 Q. Did you not say earlier that part of the deal was to
22 get weed?

23 A. We went to go rob him for the weed.

24 Q. Well, how did you know he had weed?

25 A. She told us.

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

388

1 Q. She told you. But you weren't there. You didn't hear
2 her say it. Is that right?

3 A. (Affirmative nod).

4 Q. You just knew that somehow they had information that
5 De'Nia was going over there to get weed or that De'Nia told
6 them that there was weed over there to be had, is that
7 correct?

8 A. Yes, ma'am.

9 Q. Is it possible that what she said was I'm going to go
10 over and smoke with my boyfriend, can I have a ride? Is it
11 possible she said that?

12 A. Yes, ma'am.

13 MS. GORTON: I have nothing further.

14 Cross Examination by Mr. IANUARIO:

15 Q. Hey there, Mr. Ware. You hanging in there?

16 A. (Affirmative nod).

17 Q. First off, did you say earlier that you shot Drez
18 twice?

19 A. Yes, ma'am. I mean, yes, sir.

20 Q. But they dropped the attempted murder charge as part of
21 your plea this morning, correct?

22 A. Yes, sir.

23 Q. And you have a great attorney, by the way. What was
24 your rank in the Gangster Disciples?

25 A. Baby Gangster.

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

389

1 Q. Gangster?

2 A.. Baby Gangster.

3 Q. Does the term True Foot mean anything to you?

4 A. Yes, sir.

5 Q. What does True Foot mean?

6 A. It's a low rank.

7 Q. True Foot's a low rank?

8 A. (Affirmative nod).

9 Q. So it's not an assassin or anything like that?

10 A. (Negative nod). No, sir.

11 Q. Do you remember giving a statement to the police

12 approximately October 20th?

13 A. No, sir.

14 Q. And if I were to show you a statement of that would it

15 refresh your memory?

16 A. Yes, sir.

17 (Pause)

18 Q. Does that look like the statement that you gave to the

19 police?

20 A. Yes, sir.

21 Q. Okay. So you do recall giving a statement to the

22 police then?

23 A. (Affirmative nod).

24 Q. And does the date on this, October 20th, sound about

25 correct?

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

390

1 A. Yes, sir.

2 Q. Did you go to the station to give them that statement
3 or were you already incarcerated at that time?

4 A. I ---

5 MS. SALISBURY: Your Honor, ---

6 A. --- was incarcerated.

7 MS. SALISBURY: --- I have an objection to this line of
8 questioning.

9 MR. IANUARIO: Your Honor, I believe it goes to the
10 motive for providing false testimony.

11 THE COURT: I'll allow ---

12 MS. SALISBURY: Judge, if I could explain the basis of
13 my objection. This statement is -- it was prepared by the
14 investigators in an effort to recount their notes of the
15 interview with this defendant.

16 THE COURT: Oh, that's not a statement ---

17 MS. SALISBURY: And it's ---

18 THE COURT: --- he gave?

19 MS. SALISBURY: --- not signed. No, Judge.

20 THE COURT: Okay.

21 MS. SALISBURY: He hasn't had a chance to review it for
22 accuracy.

23 MR. IANUARIO: Your Honor, I'm just asking if he talked
24 to the police ---

25 THE COURT: Well, I thought you had a statement that he

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

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1 had given that you showed him.

2 MR. IANUARIO: I was asking if he had spoken with the
3 police.

4 THE COURT: Okay.

5 MR. IANUARIO: Apparently he had, but he refused to
6 sign this statement that ---

7 THE COURT: Okay. Well, ---

8 MR. IANUARIO: --- I believe ---

9 THE COURT: --- then that's not his statement if he
10 didn't sign it. You can certainly ask him questions about
11 ---

12 MR. IANUARIO: I'm not going to ask him about the
13 particular statement. I just wanted to refresh him that he
14 did speak to the police.

15 THE COURT: Yes, sir.

16 Q. So at the time that you spoke to the police were you in
17 incarceration or did you come in voluntarily?

18 A. I was incarcerated.

19 Q. Okay. Do you remember about when you were
20 incarcerated? What date?

21 A. Yes, sir.

22 Q. And when was that?

23 A. I've been here since July 22nd.

24 Q. So at the end of July you were arrested?

25 A. (Affirmative nod).

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

392

1 Q. Why did you wait from the end of July until October
2 20th to speak with the police?

3 A. That's not when I spoke to them.

4 Q. But you do remember speaking with the police?

5 A. (Affirmative nod).

6 Q. Why did you wait so long to speak to the police?

7 A. I was ready to go.

8 Q. You were ready to go?

9 A. (Affirmative nod).

10 Q. You were ready to get this behind you? Is that why you
11 took the plea today because you were just ready to get this
12 behind you?

13 A. (Affirmative nod).

14 Q. Now, according to your testimony earlier you and Smoke,
15 I'm sorry, you and Fat-So and Raymond stood in the breeze-
16 way waiting for De'Nia to open the door, correct?

17 A. Yes, sir.

18 Q. How long were you waiting in the breeze-way?

19 A. About five minutes.

20 Q. You think maybe it's a bad idea to stand in a breeze-
21 way masked up for five minutes waiting on someone to
22 randomly open the door?

23 A. (No response).

24 Q. Who opened the door?

25 A. The victim.

TRAVIS WARE - CROSS EXAMINATION BY MR. IANUARIO

393

1 Q. The victim?

2 A. (Affirmative nod).

3 Q. Drez?

4 A. (No response).

5 Q. After you robbed him -- I know you said you don't

6 remember how much money you had, but do you remember if

7 there was at least eighty dollars, four twenty dollar bills?

8 A. No, sir.

9 Q. Do you remember if the total amount of the robbery was
10 eighty dollars or more?

11 A. It was more than eighty dollars.

12 Q. More than eighty dollars?

13 A. (Affirmative nod).

14 Q. Do you remember how many twenty dollar bills there
15 were?

16 A. No, sir.

17 Q. Could you remember if there was just one, or two or
18 several?

19 A. No, sir.

20 Q. So then you don't know if there was enough there to
21 make change for a hundred dollar bill?

22 A. It was more than that.

23 Q. You think there was enough there to make change for a
24 hundred dollar bill?

25 A. Yes, sir.

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. Okay. You said Juwan contacted you and asked if you
2 wanted to go get a lick. Did he call you or text you?

3 A. I don't remember.

4 Q. You don't remember if he called you or texted you?

5 A. I think they called me.

6 Q. But you remember he called -- he contacted you?

7 A. (Affirmative nod).

8 Q. Was it -- did you hear his voice on the phone or was it
9 text communication? Do you remember having a conversation
10 about the robbery or ---

11 A. He called me.

12 Q. --- how did you get involved? Was it a phone
13 conversation or a text?

14 A. He called me.

15 Q. He called you. Do you remember speaking with him
16 specifically about a robbery?

17 A. He told me to get ready, they had a lick.

18 Q. And what information did he give you so that you would
19 prepare for that robbery?

20 A. Get something to put over my face.

21 Q. Did he tell you who you were going to go rob?

22 A. No, sir.

23 Q. Did he tell you that De'Nia's ex-boyfriend was going to
24 be robbed?

25 A. Yeah.

TRA'VIS WARE - CROSS EXAMINATION BY MR. IANUARIO

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1 Q. So he told you all of that, but you didn't remember at
2 first if it was over a text or a phone call?

3 A. (Negative nod).

4 Q. Aside from the statement that you provided to the
5 police did you show them any text messages or any phone
6 records of having spoken to Juwan that day?

7 A. No, sir.

8 Q. And you were not present at the planning of the
9 robbery, correct?

10 A. No, sir.

11 Q. So you don't really know Juwan's involvement up until
12 the time he supposedly contacted you?

13 A. Yes, sir.

14 Q. Do you think you're going to suffer any consequences
15 for your testimony today from the Gangster Disciples?

16 A. Yeah.

17 Q. Do you think it's going to be bad?

18 A. Yeah.

19 Q. Do you think that by testifying against Juwan Lomax
20 that might aid you in any way, shape or form?

21 A. Yeah.

22 Q. Do you think that by testifying against Juwan Lomax it
23 would save you from what's coming?

24 A. No.

25 Q. But you just said that it would..

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. I mean, it won't.

2 Q. But just a minute ago it sounded like that you had
3 something to gain by testifying against Juwan Lomax. What
4 would that be?

5 A. Say that again.

6 Q. What do you stand to gain from testifying against Juwan
7 Lomax?

8 A. (Negative nod).

9 Q. But you do fear repercussions from testifying against
10 the Gangster Disciples, is that correct?

11 A. Uh-uh (negative).

12 Q. But you just said a moment ago it was. So which is it?

13 A. (Negative nod).

14 MR. IANUARIO: Nothing further, Your Honor.

15 THE COURT: Any redirect?

16 MS. SALISBURY: No redirect, Your Honor.

17 THE COURT: All right. Thank you, sir. You may step
18 down. You may call your next witness.

19 MS. SALISBURY: Thank you, Your Honor. The State calls
20 Mr. Josh Cline. Mr. Cline, if you would, please, come up
21 here and be sworn.

22 MADAME CLERK: Sir, if you would, please, place your
23 left hand on the Bible and raise your right hand. If you
24 would face me, please.

25

Joshua Cline, being duly

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 sworn testified as follows:

2 MADAME CLERK: Thank you. Please be seated. Please
3 state your name for the record.

4 MR. CLINE: Joshua Cline.

5 Direct Examination by Ms. Salisbury:

6 Q. Mr. Cline, where do you live?

7 A. , Mallard Cove.

8 Q. And how long have you lived in Greenville?

9 A. All my life, really.

10 Q. Where did you go to school?

11 A. Southside and Carolina High School.

12 Q. Are you charged as part of the incident for which we're
13 on trial here today?

14 A. Yes, ma'am.

15 Q. How do you know these Defendants? Let's start with
16 Juwan. How do you know Juwan?

17 A. I know Juwan through -- through Raymond and through the
18 music thing or whatever. He was a singer or whatever.

19 Q. How do you know De'Nia?

20 A. I'm not for sure which school I went to with her, but I
21 knew her from school. Then when I seen her again around
22 that neighborhood, that's where I recognized her from.

23 Q. And we've just met Mr. Tra'Vis Ware, Smoke. How do you
24 know Smoke?

25 A. Through Raymond too, through the neighborhood.

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. And how did you meet Raymond?

2 A. Through Dreke and my other friend when he first got out
3 of jail.

4 Q. What do your friends call you?

5 A. Fats.

6 Q. Do you remember meeting up with these Defendants in
7 particular, Ms. Dawkins and Mr. Lomax, or Raymond and Smoke,
8 in June of 2011?

9 A. Yes, ma'am.

10 Q. Do you remember meeting up with them in anticipation of
11 what happened just after midnight on June 3rd, 2011?

12 A. I remember De'Nia and Raymond being at -- it was either
13 at his house or somebody else house. I'm not really for
14 sure. But I know when I came in, she was telling -- she was
15 talking about it. She was like, she had a lick for us, her
16 ex-boyfriend or whatever, he got money and whatever, he sell
17 weed or something like that, whatever.

18 Q. And what time was this conversation taking place?

19 A. It was probably late in the -- late in the afternoon,
20 probably about six or seven.

21 Q. And do you specifically remember De'Nia talking about
22 how she had a lick for y'all to commit?

23 A. Yes, ma'am.

24 Q. What did you understand that to mean?

25 A. A robbery.

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

399

1 Q. Okay. Now, did you immediately go suit up for the
2 robbery? What -- what happened?

3 A. No, ma'am. It was just like I agreed with it or
4 whatever. And it was just like she had to go to work that
5 day or whatever. And when she got off of work, that's when
6 it was supposed to happen or whatever.

7 So around about 11:00, I think, 11:00 or whatever got a
8 phone call from Raymond. And I missed it. I called him
9 back. And I think -- I think it was more phone calls back
10 and forth. I'm not really for sure, but I know we met at
11 the Bi-Lo on East North Street in front of the Zaxby's.

12 Q. And how did you get there?

13 A. I drove my car.

14 Q. What is your car?

15 A. A black 2005 Nissan Altima.

16 Q. Okay. And who did -- who did you meet there?

17 A. I met Juwan, Raymond, De'Nia -- well, I didn't know --
18 well, I knew De'Nia was with Juwan, but I didn't know there
19 was another girl in the car. I didn't know the girl with
20 them, but, like I said, I'm not really for sure, but I think
21 Smoke and Raymond was in the car together, but I know them
22 two got in -- got in the car with me.

23 Q. Okay. So would there have been three cars at the Bi-
24 Lo?

25 A. Yes, ma'am, it was three cars at the Bi-Lo.

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

400

1 Q. Your car and then which other two?

2 A. Juwan's and Raymond's.

3 Q. What kind of car does Juwan drive?

4 A. I want to say a white Buick, I think.

5 Q. Okay. And who do you remember being in that car?

6 A. Just the girls.

7 Q. And Juwan?

8 A. And Juwan, yes, ma'am.

9 Q. And then the third car was?

10 A. The green Crown Vic.

11 Q. Green or gray?

12 A. Green.

13 Q. Green Crown Vic, okay. And what happened to that car?

14 A. It just sat at the parking lot.

15 Q. Did you leave it at the Bi-Lo?

16 A. Yes, ma'am.

17 Q. Okay. So who got in the car with you?

18 A. Smoke and Raymond.

19 Q. All right. And where did you go from there?

20 A. We went to the apartments at Cunningham Villas. And

21 ---

22 Q. How did you know where to go?

23 A. We followed, I think, Juwan and them 'cause De'Nia was
24 in the car with him. And, I guess, she knew where she was
25 going.

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Okay. Now, did you do anything to prepare for the
2 robbery? I mean, if you got a message that you were meeting
3 up to go do a lick together, were you given any instructions
4 about when to meet, what to do, what to bring, any of that?

5 A. No, it was just to bring a black t-shirt, something to
6 tie around your face. Yes, ma'am. And ---

7 Q. Did you have a gun?

8 A. Yes, ma'am.

9 Q. Did you always carry a gun?

10 A. Not just always, no, ma'am.

11 Q. Did you bring it because you knew that a robbery was
12 happening?

13 A. Yes, ma'am.

14 Q. Okay. What kind of gun is it?

15 A. It was a pistol. I want to say a .380 or something
16 around that caliber. It was a small caliber.

17 Q. Do you know whether Raymond and Smoke had guns?

18 A. Yes, ma'am.

19 Q. Did you see them?

20 A. I didn't see what kind of guns they had. I know that
21 they had guns.

22 Q. Okay. So what happened when you -- both cars got to
23 the apartments?

24 A. Both cars -- the two girls got out, De'Nia and the
25 other girl, and went to the apartment. At that point in

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 time, me, Raymond and Smoke was still sitting in my car. We
2 was, you know, getting dressed, tying our shirts around our
3 head or whatever. And it was like she going to text me when
4 she get ready to come out and we're going to already be up
5 the stairs, so when she come out the door, then that's when
6 we going to go in.

7 Q. And who told you that?

8 A. Raymond.

9 Q. Okay. So Raymond was expecting a text from De'Nia?

10 A. Um-hum (affirmative).

11 Q. Okay. And what happened? Did you go ahead and get
12 staged to be waiting outside the door?

13 A. Yes, ma'am. We went up through the breeze-way up the
14 stairs.

15 Q. If you would, take a look -- this picture that's laying
16 up here with you, State's exhibit 6, does that look familiar
17 to you?

18 A. Yes, ma'am.

19 Q. Can you show the jury where y'all were standing,
20 waiting for the signal to come inside?

21 A. We was along this wall right here. It's either this
22 door or that door was his apartment. It might have been
23 this one, but we was along the wall. And we was lined up
24 right there. When he came out, we went in.

25 Q. At what point did you learn that the signal had been

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 given?

2 A. When she sent a text and said -- I think she said we're
3 about to come out now. And at that point in time we was
4 already sitting on the wall right there waiting.

5 And so as the door opened, it was either De'Nia or the
6 other girl that came out first, but I know the victim or
7 whatever, he was like right there with them escorting them
8 to the door. And so we rushed in, but the girls, like, they
9 couldn't come out 'cause as we was rushing in we kind of
10 pushed them like back in the house. So they was just all
11 hysterical screaming or whatever.

12 And the victim or whatever, he -- just like I caught it
13 from like my peripheral, like the side vision, 'cause I was
14 going in. But I don't know -- I think -- I want to say he
15 grabbed Raymond gun, and they got into a tussle. But I know
16 Raymond and Smoke was still at the front of the apartment
17 with the dude.

18 And I rushed to the back of the apartment. So I only
19 seen one dude run back there. When we came in, I only seen
20 one dude. And so when I tried to open the door to the
21 right, it's like somebody was laying on it. They wouldn't
22 open it. So I went to the room on the left that was already
23 open.

24 And it was some -- it was some weed on the -- on the
25 dresser. And so as I was putting that in my pants, I heard

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 -- I heard -- I'm not sure if it was one or two, but I know
2 I heard a gunshot. I heard a gunshot go off and I just
3 blanked out.

4 And so as I was coming back out the room into the --
5 into the hallway, I see the victim, and Smoke and Raymond
6 coming towards me. And I said, y'all stupid. And I kept on
7 going out the door.

8 And so as I get to my car, I'm fumbling around trying
9 to get my keys at the same time or whatever. So as I get to
10 my car, open the door, I see a white man standing like not
11 directly in front of my car, but like towards this side. I
12 think he had a phone in his hand, or a notebook pad or
13 something.

14 And so as I was -- as I was getting in my car, I got in
15 my car and I was looking at my keys, I had my head down and
16 I was looking at my keys trying to see which one go in the
17 ignition. And as I done that, and I looked up I seen a
18 white dude running back towards the breeze-way.

19 And at that same point in time when I was cranking the
20 car up, that's when Juwan and, I mean, not Juwan, but
21 Raymond and Smoke got in my car. And then they got in the
22 car. I said, which one of y'all shot? Nobody said nothing.
23 I said, which one of y'all shot, again? And they said, man,
24 just drive, everything going to be all right.

25 So we get back -- get back to the Bi-Lo ---

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Let me stop you right there before we leave the
2 apartment. I want you to take a look at State's exhibit 12.
3 Does that look familiar to you?

4 A. Yes, ma'am.

5 Q. Could you describe for the jury where you -- where you
6 would have been parked if this is the -- if this is the
7 building where the victim's apartment is?

8 A. My car was backed in like right there, either right
9 here or right here. It was close to the curb and at the end
10 of the sidewalk.

11 Q. On this side of the sidewalk?

12 A. Yes, ma'am, on this side of the sidewalk.

13 Q. Okay. And where was Juwan parked?

14 A. I want to say he was right here.

15 Q. Okay.

16 A. He was either against the building or right there
17 backed in.

18 Q. Okay. So you were right in the middle before I cut you
19 off about you left from there after this guy in the parking
20 lot confronted y'all, and they got in -- Raymond and Smoke
21 got into your car.

22 A. Yes, ma'am.

23 Q. And then you left and went where?

24 A. We went back to the Bi-Lo. And then they got back in
25 Raymond's car. But see, at that point in time we didn't

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 know where Juwan was at because they was -- they was pulling
2 out of the parking lot as I was getting in my car. So I --
3 we didn't know where they was at. But we had called and
4 they had met us at Mallard Cove at my house or whatever,
5 counted the money, whatever.

6 I think it was four hundred dollars, I think it was.
7 And I was -- I was just so mad. And I was like, man, I -- I
8 don't know if I -- 'cause I know he offered me some money,
9 but I want to say I turned it down. But I know he offered
10 me two hundred dollars. And that was that. They left and
11 that was the end of that.

12 Q. Now, when you came outside with the other two, with
13 Raymond and Smoke, did you see De'Nia laying on the ground?

14 A. No, ma'am.

15 Q. Did you see her crying and screaming in the parking
16 lot?

17 A. No, ma'am. I didn't see at all.

18 Q. Now, did you know Demetrius or any of his roommates?

19 A. Never seen them before.

20 Q. Now, Mr. Cline, do you understand that what you did
21 that day was a crime?

22 A. Yes, ma'am.

23 Q. And were you charged as part of your involvement in the
24 crime?

25 A. Yes, ma'am.

JOSHUA CLINE - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. Earlier today did you plead guilty to attempted armed
2 robbery and conspiracy as a part of your involvement in the
3 crime?

4 A. Yes, ma'am.

5 Q. And is it your understanding that your other charges of
6 burglary in the first degree, possession of a weapon during
7 the commission of a violent crime and attempted murder are
8 being dismissed as a part of that plea agreement?

9 A. Yes, ma'am.

10 Q. What do you understand is your responsibility, what do
11 you have to do in order to take advantage of that plea
12 agreement?

13 A. To get up here and completely tell the truth about my
14 involvement in this crime.

15 Q. And have you told the truth today?

16 A. Yes, ma'am.

17 Q. Now, do you remember giving a statement to the police
18 back in September?

19 A. Yes, ma'am.

20 Q. Do you remember what you told the police then?

21 A. I told them I didn't have nothing to do with it.

22 Q. Why did you tell them that?

23 A. I was scared.

24 Q. So what happened? Why did you change your mind?

25 A. I was just -- this has been -- this situation has been

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

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1 like a rehab for me, man. I just came to a point in time
2 where I was -- I'm a man, I want to be a man. So I'm going
3 to take my responsibilities and accept the consequences.

4 And I apologize it happened like that 'cause I'm not
5 even a person to do stuff like that, you know. Just under
6 certain circumstances and I was under a lot of financial
7 pressures. But, I mean, that's not an excuse. But I just
8 felt like this would be -- it would take a lot of -- it
9 would take a burden off of me or whatever.

10 Q: And have you been completely truthful about how you
11 recall the events happening on June 3rd?

12 A. Yes, ma'am.

13 Q. Okay. Why did you do it?

14 A. Like I said, it's just more money when I had lost my
15 job the month before. My daughter, she was almost a month
16 and a half. And I ended up -- I just panicked. And I was
17 under pressure, a new dad. It was just basically a stupid
18 decision.

19 Q. Okay. Thank you, sir. And if you would, answer any
20 questions that these attorneys may have for you.

21 A. Yes, ma'am.

22 Cross Examination by Ms. Gorton:

23 Q. You said you did it because of financial pressure and
24 yet you say you turned down the two hundred dollars?

25 A. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

409

1 Q. How long have you been in the Gangster Disciples?

2 A. Since January.

3 Q. Since January of 2011?

4 A. Yes, ma'am.

5 Q. So you had been with them only six months when this
6 occurred, is that correct?

7 A. Yes, ma'am.

8 Q. Mr. Cline, do you consider yourself a family man?

9 A. Yes, ma'am.

10 Q. Were you known around the Gangster Disciples as being a
11 family man?

12 A. They know I'm -- I'll take care of my daughter or
13 whatever, yes, ma'am.

14 Q. Your daughter means everything to you, doesn't she?

15 A. Yes, ma'am.

16 Q. When was she born?

17 A.

18 Q. Just two months before this?

19 A. Yes, ma'am.

20 Q. When you first became involved with Gangster Disciples
21 did you know them as Growth and Development?

22 A. Yes, ma'am.

23 Q. Did you know that Growth and Development at that time,
24 did you know Growth and Development and Gangster Disciples
25 were one in the same?

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

410

1 A. I mean, it was -- it was -- it wasn't explained to me
2 like that.

3 Q. How was it explained to you, Mr. Cline?

4 A. More like a family thing, organization.

5 Q. Did they talk to you about how there were expectations,
6 that you pursue employment, and education, do positive
7 things?

8 A. Yes, ma'am.

9 Q. Are you involved in the music industry?

10 A. Yes, ma'am.

11 Q. How are you involved?

12 A. I'm a rapper.

13 Q. And were you involved in the music industry prior to
14 becoming involved with Gangster Disciples?

15 A. Yes, ma'am.

16 Q. Mr. Cline, how did they hook you?

17 A. How did they do what?

18 Q. How did they hook you?

19 A. How did they hook me?

20 Q. How did they trap you into Gangster Disciples?

21 A. Basically I just -- I just seen like it was like a lot
22 of love, a lot of family, like a family thing. I didn't --
23 there really wasn't nothing violent going on at the point in
24 time when I came into it.

25 Q. Were you blessed in first?

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

411

1 A. Blessed in?

2 Q. Is there a ceremony called the blessing in?

3 A. I mean, yes, ma'am. Something like that, yes, ma'am.

4 Q. Okay. And at the time you were blessed in did you know
5 they were involved in crime and bad things?

6 A. No, ma'am. I mean, I -- I knew the history of -- of
7 Raymond and stuff like that. Yes, ma'am.

8 Q. Now, history of Raymond. There's really two histories
9 of Raymond, aren't there?

10 A. You could say that.

11 Q. There's the very, very successful musician, correct?

12 A. Yes, ma'am.

13 Q. Now, I'm forty-five and I'm not into hip-hop, or rap or
14 any of that, but my understanding is is that he was so good.
15 He was destined for big labels, is that correct?

16 A. Yes, ma'am.

17 Q. What happened?

18 A. I'm really not for sure what happened to him back then
19 'cause I really just didn't know him as a friend.

20 Q. Is it fair to say that he was famous locally?

21 A. Yes, ma'am.

22 Q. All right. And is it fair to say there's a number of
23 people who know him without knowing he's a Gangster
24 Disciples?

25 A. Yeah, you could say that. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

412

1 Q. Okay. Before I forget, while we're on the music
2 industry, Gangster Disciples, they had a very different role
3 for men and women, is that correct? Y'all had different
4 dues, correct?

5 A. Yes, ma'am.

6 Q. Y'all had different leaders, is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Raymond Young was the leader of the men,
9 correct?

10 A. Yes, ma'am.

11 Q. Envy was the leader of the women, correct?

12 A. Something like that, yes, ma'am.

13 Q. And Envy was the one that was in -- the other one that
14 was in Juwan Lomax's car, correct?

15 A. No, she wasn't. I know what Envy look like.

16 Q. You're saying that wasn't Envy?

17 A. No, ma'am. That was some other girl I've never seen
18 before.

19 Q. Really?

20 A. Yes, ma'am.

21 Q. So when Smoke says that was Envy in the other car,
22 that's not correct?

23 A. Like I said, I did not -- I did not see Envy.

24 Q. Did you see another girl that you didn't know? That's
25 what you're saying?

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

413

1 A. Yes, ma'am.

2 Q. So that would make four in Juwan's car?

3 A. No. I'm saying that I did not see Envy. The other
4 girl, I've never seen her before. When that -- when I seen
5 the other girl is when they opened the door and came out.

6 That's when I seen her face. And it didn't look like Envy.

7 That's why I'm saying it wasn't Envy.

8 Q. Is Envy the leader of the women?

9 A. Yes, ma'am.

10 Q. Is she the Queen?

11 A. Yes, ma'am.

12 Q. And the Queen is the highest ranking in the local
13 group, correct?

14 A. Yes, ma'am.

15 Q. But Raymond is over her, is that correct?

16 A. Yes, ma'am.

17 Q. Is it fair to say that men and women have very
18 different roles as far as what you do?

19 A. Yes, ma'am.

20 Q. The women are not involved in your crime related stuff,
21 is that correct?

22 A. Yes, ma'am.

23 Q. So when there's drive-bys, when there's home invasions,
24 when there's robberies, the women aren't involved?

25 A. (Negative nod).

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

414

1 Q. And when you all do it as men, you don't come back and
2 talk to the women about what you did? That's kept men's
3 business, is that correct?

4 A. I'm positive it is 'cause, I mean, I don't do stuff
5 like that. So I wouldn't know about do they go back and
6 tell -- tell the women about it.

7 Q. You did this time.

8 A. Yes, ma'am.

9 Q. Where did y'all go afterwards?

10 A. We stopped at my house in Mallard Cove. I think they
11 said they counted -- they counted the money or whatever.
12 And the reason why I was upset about not -- 'cause it was
13 four hundred dollars. I said, we went through all this for
14 four hundred dollars? I was mad. So I wasn't -- I don't
15 even want this.

16 But like I said, I can't really just recall if I took
17 it or not. But I know that I was upset and I was like, man,
18 I don't want this, man. We went through all this for four
19 hundred dollars?

20 Q. Well, now you got the weed too, right?

21 A. Yes, ma'am.

22 Q. And it was in a jar, correct?

23 A. Yes, ma'am.

24 Q. And it was on a dresser?

25 A. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

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1 Q. All right. And was there a bag of weed next to the
2 jar?

3 A. I really can't remember.

4 Q. Could have been?

5 A. Could have been.

6 Q. The four hundred dollars, was that in large bills or
7 small bills?

8 (Pause)

9 Q. Do you remember if there were small bills like twenties
10 and stuff or was it all hundreds?

11 A. I'm really not for sure to be honest.

12 Q. All right. So who got the money? Raymond got the
13 money?

14 A. Yes, ma'am.

15 Q. Did he also get the blue laptop?

16 A. I didn't see a laptop.

17 Q. You didn't know anything about a laptop?

18 A. I mean, I heard about it, but I didn't see the ---

19 Q. How did you hear about it?

20 A. I heard that they got a laptop too, but I didn't like
21 -- like when they -- when we got back to my house, the only
22 thing put out was the money 'cause they didn't -- they
23 didn't know I had the weed either. I still had the weed in
24 my pants. And I didn't see no laptop after they counted the
25 money.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

416

(1 Q. Now, did you later see Raymond Young with a baby blue
2 laptop, a Toshiba, kind of a really glossy blue?

3 A. He had a -- they had a number of laptops. But probably
4 ---

5 Q. They did?

6 A. --- so. Yes, ma'am.

7 Q. All right. Going back to the music just real quickly.
8 One of the women's roles was to host a club called the Red
9 Flame, is that correct?

10 A. Yes, ma'am.

11 Q. Every Thursday the women of Growth and Development were
12 required to host at the Red Flame, is that correct?

(13 A. Yes, ma'am.

14 Q. And what did that involve on their part, if you know?

15 A. I'm really not for sure, but I think they probably
16 promoted or they took money at the door or whatever. That's
17 probably really all they had to do. I'm not really for
18 sure.

19 Q. Now, I want to make sure, the Red Flame, is that in any
20 way related to Gangster Disciples or is that a separate
21 thing?

22 A. No, ma'am, that's just a club.

23 Q. Okay. And do legitimate, non-crime involved groups
24 play there, organizations play through there?

(25 A. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

417

1 Q. All right. So it's kind of like a community center for
2 musicians?

3 A. Yes, ma'am.

4 Q. It's not -- other than Growth and Development hosting
5 it on Thursday nights, it's not their gig, correct?

6 A. Yes, ma'am.

7 Q. Okay. Did Growth and Development also have a music
8 band?

9 A. Currency Gang.

10 Q. Courtesy Gang.

11 A. Yes, ma'am.

12 Q. That doesn't sound so scary.

13 A. I said Currency.

14 Q. Currency Gang.

15 A. Yes, ma'am.

16 Q. All right. And did they cut any records or CDs?

17 Sorry. CDs is what's out there now. Did they cut any of
18 those?

19 A. I don't think it was really like CDs fluctuating
20 around, but I think it was songs, like ---

21 Q. Was every member of Currency Gang also a member of
22 Growth and Development?

23 A. Most of them.

24 Q. Most of them, but were there some that weren't?

25 A. Yes, ma'am. That was some that was like on the verge

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

418

(1 of becoming.

2 Q. Verge of becoming?

3 A. Yes, ma'am. It was sort of like prospects or
4 something.

5 Q. Prospects. I was going to get into that. Thank you.

6 A. Yes, ma'am.

7 Q. So as a prospect -- what is a prospect?

8 A. Basically it's a newcomer, basically a newcomer trying
9 to join the organization.

10 Q. Trying to join which organization? Growth and
11 Development and Gangster Disciples?

(12 A. Growth and Development. But with the Currency Gang
13 thing, it's like there might be a new rapper or something, a
14 dude that wants to rap. But then he see this going on too,
15 so he asks about this too.

16 Q. He sees what going ---

17 A. Growth and Development.

18 Q. Okay.

19 A. Yes, ma'am.

20 Q. Sort of like Amway, but not, huh?

21 A. Yes, ma'am.

22 Q. Okay. So he sees this going on. What does he see
23 going on with Growth and Development?

24 A. Just see like the numbers and how everybody just like

(25 -- everybody is like all cool and we all like brothers and

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

419

1 sisters, family and stuff like that.

2 Q. Okay. Do they see the crime aspect of it when they're
3 prospects?

4 A. Not that I would know of. No, ma'am.

5 Q. No? You certainly didn't see the crime aspect of it
6 when you were a prospect, did you?

7 A. No, ma'am.

8 Q. And then there's ranks. We've already talked about how
9 women are not informed about what's going on, they're not
10 involved on what's going on in the crime aspect, correct?

11 A. Yes, ma'am.

12 Q. Now, as far as the men, what is the lowest rank after
13 prospect? You have prospect, ---

14 A. Yes, ma'am.

15 Q. --- you're blessed in, is that correct?

16 A. No. I don't think there's nothing else lower than
17 prospect.

18 Q. Okay. What's the next highest? Nothing lower than
19 prospect, then you have what?

20 A. An F-1.

21 Q. F-1. And then do you have F-2?

22 A. Yes, ma'am.

23 Q. And then you have Brothers of the Struggle? Or what is
24 the next one? I'm sorry. Go ahead and tell me.

25 A. I want to say it's an F-3.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

420

1 Q. In the six months you were involved in Growth and
2 Development what rank did you make?

3 A. Corporal.

4 Q. Corporal. And was this the first violent crime you
5 were involved in?

6 A. First and only.

7 Q. First and only. Attempted murder, you were looking at
8 life?

9 A. Yes, ma'am.

10 Q. It's a long time to be away from your little girl,
11 isn't it?

12 MS. SALISBURY: Your Honor, I'd object to the
13 characterization. That's not ---

14 THE COURT: I sustain the objection. If you would
15 please state your question as far as ...

16 Q. Attempted murder is up to thirty years?

17 A. Yes, ma'am.

18 Q. Armed robbery, ten year minimum/mandatory, no parole,
19 no early release, no youthful offender. Ten years, only way
20 out, not guilty verdict by the jury or the Solicitor drops
21 the charges, is that correct?

22 A. Yes, ma'am.

23 Q. All the way up to thirty. And in that case did the
24 Solicitor drop the charge?

25 A. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

421

1 Q. And you understand that now that it's only attempted
2 robbery, you don't have a minimum/mandatory, it's totally up
3 to the Judge, right?

4 A. Yes, ma'am.

5 Q. And you know that the Judge or you understand that the
6 Judge is going to be considering the level of your testimony
7 in this trial, correct?

8 A. Yes, sir. I mean, yes, ma'am.

9 Q. That's all right. And there's only two people on trial
10 here, right?

11 A. Yes, ma'am.

12 Q. Burglary, first degree, you had that charge as well in
13 this incident, didn't you?

14 A. Yes, ma'am.

15 Q. Fifteen year minimum/mandatory, no parole, no early
16 release, no excuses, two ways out, them or her, correct?

17 A. Yes, ma'am.

18 Q. They dropped it, didn't they?

19 A. Yes, ma'am.

20 Q. Possession of a weapon during a violent felony,
21 dropped?

22 A. Yes, ma'am.

23 Q. Five years, no excuses, no exceptions, gone, correct?

24 A. Yes, ma'am.

25 Q. And so now all you're looking at is conspiracy and

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

422

1 attempted armed robbery. You could get no time or you could
2 get twenty years, correct?

3 A. (Affirmative nod).

4 Q. And you were looking at life, weren't you?

5 A. (Affirmative nod).

6 Q. One of those charges carries up to life.

7 A. Yes, ma'am.

8 Q. Looks like you're in a really hard spot.

9 A. Yes, ma'am.

10 Q. When you came into the apartment that night you said
11 you pushed passed the girls and the girls were kind of
12 pushed back in, did I understand that right?

13 A. Yes, ma'am.

14 Q. They were at the door. He opened the door. Were both
15 girls there at the door?

16 A. Yeah, I think so. Yes, ma'am.

17 Q. You think so?

18 A. I -- I don't know who was in front of who, ---

19 Q. Right.

20 A. --- yes, ma'am.. But I know like both of them was like
21 right there together. And then there was the victim.

22 Q. Are you crystal clear that none of the girls had gone
23 down the breeze-way?

24 A. Yes, ma'am.

25 Q. And none of the girls had come out and then gone back

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

423

1 in?

2 A. I don't remember that.

3 Q. You don't remember a girl coming out and giving you
4 guys a signal or anything, then going back in?

5 A. No, ma'am.

6 Q. You're sure of that?

7 A. Yes, ma'am.

8 Q. Okay. And when you pushed the girls back in I thought
9 I heard you say; and there was hysterical screaming and
10 everything.

11 A. (Affirmative nod).

12 Q. Now, were the girls screaming?

13 A. Yes, ma'am.

14 Q. Did you hear anyone yell; everybody get down?

15 A. I don't remember hearing that.

16 Q. Did the girls get down?

17 A. No, ma'am.

18 Q. Did anyone get down?

19 A. I don't think nobody laid on the floor, no, ma'am.

20 Q. Did the girls run to one of the back rooms at first?

21 A. They was like sort of in the middle like in the
22 hallway.

23 Q. In the hallway?

24 A. Yes, ma'am.

25 Q. And as I understand it, you actually went back to the

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

424

1 hallway while Smoke was helping Raymond with the struggle
2 with Mr. Benson, is that correct?

3 A. Yes, ma'am. After I went to the door on the right,
4 then I went to -- and I entered the room on the left and
5 then I came back out. But when I came back out the room,
6 the girls was going out the door.

7 Q. Right. After all this?

8 A. Um-hum (affirmative).

9 Q. But you did see them run back into one of the rooms,
10 correct? The one straight into the hallway?

11 A. Did I see them run back into it? Like they -- like
12 'cause the way the front door is, if you walk through the
13 front door you're right there at the hallway. And so it was
14 like they -- they backed up like towards like the middle of
15 the hallway when we like rushed in.

16 Q. Did they turn and run? Turn their back to you and
17 start running?

18 A. I can't really recall that.

19 Q. Who was dealing out the money when you got back to
20 Mallard Cove?

21 A. Raymond was counting it.

22 Q. Raymond was counting it out.

23 A. (Affirmative nod).

24 Q. And he offered some to you and you said no, no thanks?

25 A. I could have sworn I said, man, -- 'cause I was upset

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

425

1 and all, I mean, that's all we did for four hundred dollars?

2 Man, I don't want that, not me. But he probably gave me two

3 -- I probably took it, yes, ma'am.

4 Q. But, you know, that reminds me, did he take that as
5 disrespect?

6 A. I don't think he took it any kind of way. It was just
7 like, man, just take it, man, or something. I really can't
8 remember that well -- that part right there.

9 Q. All right. I want to talk a little bit about
10 disrespect. What was Raymond and Envy called? Were they
11 called their Higher, -- your Higher Authority?

12 A. Yes, ma'am.

13 Q. They were?

14 A. (Affirmative nod).

15 Q. And if you showed disrespect to a higher authority what
16 would happen to you?

17 A. You'd be violated.

18 Q. What does a violation mean?

19 A. You could be beat up or you'd either have to pay some
20 type of money or you could be suspended.

21 Q. When you say beat up, are you talking -- like for the
22 girls, was there a rule on a physical violation? Was there
23 a physical violation where six of the highest ranking girls
24 would get to jump on the one? And ---

25 A. Yes, ma'am.

JOSHUA CLINE - CROSS EXAMINATION BY MS. GORTON

426

1 Q. --- she wasn't allowed to fight back? Yes?

2 A. Yes, ma'am. I'm -- yes, ma'am, I think it was like
3 that. Yes, ma'am.

4 Q. And was there another female violation where the
5 highest ranking female got to beat up on the violator for
6 six straight minutes?

7 A. Yeah, but I think she could fight back or something
8 like that.

9 Q. You thought she could fight back?

10 A. Yes, ma'am.

11 Q. But it was the highest ranking female?

12 A. Not necessarily the highest rank. The -- the highest
13 rank would pick one of the other females if she wanted to.

14 Q. So she could pick the biggest one?

15 A. Yeah, if she wanted to.

16 Q. And often they did as part of the violation
17 consequence, correct?

18 A. Yes, ma'am.

19 Q. At Mallard Creek when you were dividing up money and
20 you were upset and you weren't paying that much attention,
21 did you see De'Nia Dawkins get any money?

22 A. Uh-uh (negative).

23 Q. That wouldn't have been part of the culture, would it?

24 A. No, ma'am, I don't think she got any money.

25 Q. You don't think she got any?

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

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1 A. Uh-uh (negative).

2 MS. GORTON: No further questions.

3 Cross Examination by MR. IANUARIO:

4 Q. Do you remember about when Juwan joined the Growth and
5 Development group?

6 A. I really don't remember the exact month. I know it was
7 probably before that Summer.

8 Q. Would May sound about correct?

9 A. Yeah, probably May or March.

10 Q. Was he pretty new when this crime went down?

11 A. Yes, ma'am. I mean, yes, sir.

12 Q. It's fine. You're the second person that's done that
13 today. Is he any good as a musician?

14 A. Yeah, he can sing.

15 Q. And no disrespect, are you any good?

16 A. Yes, sir.

17 Q. Y'all record some tracks?

18 A. Yes, sir. I think we got one song together.

19 Q. Where did y'all record them at?

20 A. We recorded the song me and him got together at his
21 house.

22 Q. He's got a little recording studio?

23 A. Um-hum (affirmative).

24 Q. So he's pretty musically inclined just like you?

25 A. Yes, sir.

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

428

1 Q. The night of the robbery you say y'all met up at the
2 Bi-Lo and Juwan and the girls were in his car and you and
3 Smoke and Raymond rode in your car?

4 A. Yes, sir.

5 Q. What did y'all talk about in the car?

6 A. It was really just quiet ride til we got to the
7 apartments. Then that's when Raymond, he let us know what
8 was going on, that she was going to go up there or whatever,
9 get some weed or whatever, when she come back out the door,
10 that's when we was going to come in. But she was like -- he
11 was like she's going to be texting me and let us know when
12 to be ready.

13 Q. And was Raymond getting texts during this time?

14 A. (Affirmative nod).

15 Q. Do you know where those texts were coming from?

16 A. I want to say De'Nia's phone. I mean, I didn't see his
17 phone or see her number or nothing, but he said it was
18 texting De'Nia.

19 Q. Okay. But you don't know for certain who was on the
20 other end of that phone? It could have been De'Nia, or
21 Envy, or maybe even Juwan, who knows.

22 A. Yes, sir.

23 Q. You just don't know who was sending those texts. You
24 know Raymond was receiving them.

25 A. Um-hum (affirmative).

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

429

(1 Q. What was Juwan's involvement in the planning phase of
2 this?

3 A. I really -- I don't know. Like I said, ---

4 Q. You didn't really know much about the plan until you
5 talked to Raymond?

6 A. Yes, sir.

7 Q. Do you know if Juwan knew anything about what was going
8 to happen that night?

9 A. I did not know. I didn't even know Juwan was going to
10 be coming until I seen his car when we pulled up at the Bi-
11 Lo.

(12 Q. Okay. Now, when y'all pulled up to the apartment -- my
13 understanding is Juwan pulled up first, then you pulled up
14 second?

15 A. Yes, sir.

16 Q. Were you parked behind him, beside him or somewhere
17 completely different?

18 A. I want to say I was behind him. See, I don't know if
19 he was backed up against the apartment building or was he
20 backed up against the sidewalk like I was. I'm not really
21 for sure.

22 Q. If he was sitting in the vehicle in his driver's seat
23 you probably would have had his back to your car ---

24 A. Yes, sir.

(25 Q. --- and not seeing what was going on behind him?

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

430

1 A. Yes, sir.

2 Q. You said after the crime y'all went back to your house

3 -- did you say your house to split the money?

4 A. Yes, sir, Mallard Cove.

5 Q. Mallard Cove. Who all went back exactly?

6 A. Me, Smoke, Raymond, Juwan and De'Nia.

7 Q. Okay. And were Juwan and De'Nia there for -- when

8 y'all were splitting the money or did that happen after they

9 left?

10 A. They got out of the car too, I think so.

11 Q. So do you think they left?

12 A. No, I think Juwan and De'Nia got out of the car too.

13 Q. Okay.

14 A. But I'm not -- I can't really remember that part right

15 off.

16 Q. Okay. So you don't remember for certain if they went

17 in the house or if they just parked outside, then left?

18 A. Uh-huh (affirmative).

19 Q. So they weren't around when the money was being split?

20 A. I'm not for sure. Like I said, I know De'Nia didn't

21 get no money. But I know -- I know distinctly that me,

22 Raymond and Smoke was there when he was playing with the

23 money. I know that distinctly.

24 Q. Okay. So you definitely remember you, Raymond and

25 Smoke being there.

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

431

1 A. (Affirmative nod).

2 Q. And was the money split amongst you, Raymond and Smoke?

3 A. Yes, sir.

4 Q. Do you recall if Juwan got anything out of it?

5 A. Not that I know of.

6 Q. Okay. Let's talk a little bit about violations. What
7 were the consequences of violations for a man?

8 A. Basically the same as women, really.

9 Q. You'd get either six on one or a six minute fight?

10 A. Um-hum (affirmative).

11 Q. Biggest guy that the leader picked?

12 A. Yes, sir.

13 Q. Are you fearful of any violations today?

14 A. Am I fearful?

15 Q. You think anything's going to happen to you for
16 testifying today?

17 A. Basically at this point, sir, I really don't -- I
18 really don't care. If it do, it do.

19 Q. Okay. What rank was Smoke?

20 A. To be honest, I can't remember. I don't ---

21 Q. Was he fairly higher up or pretty low?

22 A. I want to say he might have -- he might have been in --
23 sort of in the middle.

24 Q. All right. Definitely not a peon? I don't mean to be

25 ---

JOSHUA CLINE - CROSS EXAMINATION BY MR. IANUARIO

432

1 A. Um-hum (affirmative).

2 Q. What were the Gangster Disciples' colors that y'all
3 wear here in town?

4 A. Mostly black, black and gray.

5 Q. Okay. Are you still a part of the Gangster Disciples?

6 A. Well, not -- not after this is over.

7 Q. Okay. What color is your shirt?

8 A. Gray.

9 Q. What color are your pants?

10 A. Black.

11 MR. IANUARIO: Nothing further, Your Honor.

12 THE COURT: Any redirect?

13 MS. SALISBURY: No redirect, Your Honor.

14 THE COURT: All right. Thank you, sir. You may step
15 down.

16 Madame Forelady, ladies and gentlemen of the jury, I
17 think we've reached a good time to break for the evening. I
18 ask, if you would, I'll remind you again not to discuss the
19 case, not to let anyone discuss it with you. Don't do any
20 kind of social media, don't do any kind of research.

21 That would be against your oath and against the
22 instructions that the Supreme Court has given us. You've
23 made a commitment. You've fulfilled that commitment so far.
24 I want to remind you of that process and the purity that we
25 need of it.

1 So with that reminder, I'm going to excuse you. I have
2 some matters I'll need to take care of first thing in the
3 morning. So if you'll be back at 9:30, we'll be ready to
4 start then. Hopefully I won't keep you waiting then. Have
5 a good evening. Everyone else, please remain seated while
6 the jury leaves for the evening.

7 (Whereupon the jury exited the courtroom at 5:37 pm)

8 THE COURT: Didn't know if all the exhibits were
9 marked. Is there any other -- obviously we'll put all this
10 on the record before the jury tomorrow. Is the State
11 prepared to rest? All the exhibits in and all the witnesses
12 ---

13 MS. SALISBURY: Yes, Judge. I was planning to rest
14 just now in front of the jury, but ---

15 THE COURT: Okay. Well, I didn't know if all the
16 exhibits that had been marked had been introduced that
17 needed to be introduced. So I'll let you rest on the record
18 first thing in the morning before the jury.

19 Is there any other matters that we need to take care
20 of, the fact that she has said she rested before we settle
21 the record and I talk with the Defendants about their rights
22 to testify and so forth?

23 MS. GORTON: Judge, first of all, I need to clarify for
24 our movement of the directed verdict. Do you want us to
25 wait until she does it in the morning before the jury and

1 then break?

2 THE COURT: Well, let's -- that was one of the things
3 -- do you have a motion for a directed verdict? Do you have
4 any other motions?

5 MS. GORTON: Yes, Your Honor, the motion pertaining to
6 her release tonight, I believe. Catch 22, is he still here?
7 He can be here within five minutes.

8 THE COURT: Okay. That and the motion for directed
9 verdict, why don't we do that first thing in the morning.
10 And we'll get the record to reflect that you're timely.
11 making your motion after -- she has rested now, but has not
12 rested before the jury. So now is the time, but rather than
13 doing them now, let's just wait til first thing in the
14 morning.

15 That's why if y'all could be here at 9:00, we'll get
16 those things taken care of, but I do need to talk with your
17 clients. If y'all could come forward with them now.

18 MS. GORTON: Are you denying the motion ---

19 THE COURT: We're going to do that in just a minute. I
20 thought you needed five minutes for the ---

21 MS. GORTON: Five minutes?

22 THE COURT: --- bondsman to be here.

23 MS. GORTON: Okay.

24 THE COURT: I thought you weren't ready. So if y'all
25 could come forward with your clients. If you'll just stand

1 right there, please, ma'am, and, please, sir, just by your
2 attorney. I need both of you, please, if you would, raise
3 your right hand. Do you swear or affirm the testimony
4 you're about to give me will be the truth, the whole truth
5 and nothing but the truth so help you God?

6 MR. LOMAX: Yes, sir.

7 MS DAWKINS: Yes, sir.

8 THE COURT: Ms. Dawkins and Mr. Lomax, we've reached
9 the stage in the trial where I need to explain to you
10 certain rights that you enjoy under our Constitution under
11 the law of South Carolina. I'm sure you've had a chance to
12 talk with your attorneys and you've probably gone over this
13 with your attorneys, but I need to be satisfied in my own
14 mind that you understand the protections that you enjoy
15 under the Constitution both of South Carolina and of the
16 United States of America.

17 Among those rights that you have, you can claim the
18 protections of the 5th Amendment to the Constitution of the
19 United States, similar language to the Article One of our
20 State Constitution. And it says that no person can be
21 compelled in any criminal case to be a witness against
22 himself or herself.

23 This means, Mr. Lomax and Ms. Dawkins, you can't be
24 required to testify in the case. You have a right to
25 testify on your own behalf, but nobody can make you testify.

1 It's a personal right that you enjoy. And nobody can waive
2 this right except you.

3 Now, if you choose to testify you'll be subject to the
4 same rules that govern any other witness. You can be
5 examined and cross examined on any relevant issue in this
6 case. If either of you have convictions that involve
7 dishonesty, or false statements or any crime punishable by
8 imprisonment for more than one year and the Court determines
9 that the probative value of admitting that evidence
10 outweighs any prejudicial effect to you, then the Solicitor
11 would be allowed to introduce your criminal record to attack
12 your credibility.

13 Now, if you decide to testify, the decision that you
14 make to testify must be made by you in a voluntary way,
15 intelligently made by you with the knowledge of the
16 protections that you're awarded under the 5th Amendment to
17 the Constitution. You also need to intelligently, and
18 knowingly, and freely and voluntarily realize by testifying
19 the consequences that I've explained to you of your decision
20 to testify.

21 Now, either of you or both of you may choose not to
22 testify. If you choose not to testify, I'm going to
23 instruct the jury that they cannot give the fact that you
24 chose not to testify any consideration whatsoever, that it
25 could be absolutely not prejudice to you if you choose to

1 exercise your rights not to testify.

2 Whether to testify or not testify is left entirely up
3 to you. You can certainly talk with your attorney and other
4 members of your family or otherwise, but that decision has
5 got to be made by you and you alone. Do you understand what
6 I've explained to you?

7 MR. LOMAX: Yes, sir.

8 MS. DAWKINS: Yes, sir.

9 THE COURT: Both of you understand. Do you have any
10 questions of me?

11 MS. DAWKINS: No, sir.

12 MR. LOMAX: No, sir.

13 THE COURT: Are there any impeachable offenses,
14 Solicitor, for which you would intend to impeach the
15 witnesses if they testify?

16 MS. SALISBURY: Well, Ms. Dawkins has a 2012 conviction
17 for shoplifting. It's the State's position that that's a
18 crime involving dishonesty or false statement. Mr. Lomax
19 has no criminal charges or criminal convictions, Your Honor.

20 THE COURT: So when was the conviction?

21 MS. SALISBURY: In 2010 ---

22 THE COURT: You said it was this year ---

23 MS. SALISBURY: I'm showing a January 2012 conviction.

24 THE COURT: January? Okay. That's the only conviction
25 of either party?

1 MS. SALISBURY: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. SALISBURY: But to the extent that the Court has
4 allowed the defense attorneys to inquire about pending
5 charges, Mr. Lomax has some other pending charges for which
6 I might attempt the same strategy.

7 MS. GORTON: If we could ask for clarification on the
8 shoplifting charge as to the date. It's important in her
9 decision.

10 THE COURT: Okay. Well, maybe when we ---

11 MS. SALISBURY: Well, it's a 2010 incident.
12 Regardless, it's within ten years.

13 THE COURT: She just wanted to know the date. Do you
14 have when in January it was?

15 MS. GORTON: I believe it went into the court system
16 after she failed PTI in 2010. And I need verification of
17 that since I don't have access ---

18 THE COURT: She can get that for you after we break.
19 I'm sure she can get that. The reason I'm doing this now is
20 to give y'all plenty of opportunities overnight to have a
21 chance to talk with your attorneys to decide whether or not
22 you wish to testify.

23 Ms. Gorton, do you have any -- in other words, you and
24 she can work that out after I finish, okay?

25 MS. GORTON: Yes, sir.

1 THE COURT: You need the information, and ---

2 MS. GORTON: Yes.

3 THE COURT: --- I'm sure she'll get that for you to
4 decide that. But are there any other questions either of
5 you have of me?

6 MR. LOMAX: No, sir.

7 MS. DAWKINS: No, sir.

8 THE COURT: Okay. Certainly, as I said, I won't
9 require your decision tonight as to whether or not you wish
10 to testify, but I'll give you a chance to talk with your
11 attorneys and certainly tomorrow you'll have that
12 opportunity. All right. You can return back to your
13 tables.

14 As far as tomorrow at 9:00 we'll go through your -- any
15 motions you have as far as directed verdicts. If y'all have
16 -- I don't know how long the defenses may take, but probably
17 if we have time tomorrow, before the jury's back at 9:30 we
18 can perhaps talk about charges and verdict forms and things
19 of that nature, assuming that we'll be able to get this case
20 to the jury sometime tomorrow. Do you see any reason that
21 we wouldn't get it to the jury tomorrow?

22 MS. GORTON: I don't think so. I think we can get all
23 the defense in tomorrow.

24 THE COURT: So if you have those requests, then we can
25 -- you gave me some earlier. I didn't know if you had more

1 or not, but ---

2 MS. GORTON: All right.. You should have four from me.

3 THE COURT: I believe we've got those. And I've got
4 those from Mr. Ianuario too. All right. So if y'all will
5 be here at nine in the morning, we'll be ready to talk about
6 that. And then the jury will be ready to present the
7 defense or either the closing statements and the argument if
8 there's no defenses put up at 9:30. All right. Anything
9 else? Do you have the person here?

10 De'NIA'S FATHER: He's on his way.

11 MS. SALISBURY: Well, the building's locked, Judge. I
12 don't ---

13 THE COURT: Oh, he's not going to be able to get in,
14 the building's locked now.

15 THE OFFICER: They do have a guy on the front.

16 MS. GORTON: Judge, if they are going to go into
17 custody my concern is is that she -- by the time they get
18 back to the jail -- she has not eaten other than lunch I
19 brought her today since 2:00 yesterday when she broke for
20 lunch because our schedule is off from the jail's schedule
21 and she's not getting food.

22 THE COURT: Okay.

23 MS. GORTON: These guys are taking great care of her to
24 let me bring her lunch, but over at the jail she's not being
25 fed. So yesterday she had to go from 2:00 until they gave

1 her crackers at ten when we broke.

2 THE COURT: All right. Well, ---

3 MS. GORTON: And I know you can't micro-manage the
4 jail, Judge, but going without food for that long ...

5 THE COURT: We'll be here another ten minutes or so.

6 Can you make sure that she, or a relative, or somebody, if
7 they can just go out and buy her something? Can you work
8 with that?

9 THE OFFICER: Yes, sir.

10 THE COURT: So we'll keep her here. And they can bring
11 -- someone can go get her a hamburger or whatever she wants.
12 And they'll let her have it, examine it. We can't really
13 wait on the bondsman and keep the court reporter here to do
14 that, but we'll certainly provide the food.

15 MS. GORTON: I very much appreciate that, Judge.

16 THE COURT: All right. We'll be at ease til 9:30 or
17 9:00, excuse me. 9:00 in the morning the attorneys and the
18 parties will be here.

19 (Whereupon court was in recess at 5:49 pm)

20 (Whereupon court resumed at 5:52 pm)

21 THE COURT: All right. Ms. Gorton, I believe you have
22 a motion about bond.

23 MS. GORTON: Yes, Judge. I would move to release
24 De'Nia Dawkins on her own recognizance. I believe that her
25 bondsman is here. And I haven't had a chance to speak with

1 him. Obviously, I've been waiting with you. But I am
2 hoping he will say that he is not in opposition to it.

3 MR. MILLS: And I'm sorry I didn't dress better.

4 THE COURT: Yes, sir. What's your name, please?

5 MR. MILLS: It's Adam Mills.

6 THE COURT: All right. Mr. Mills, do you understand
7 your bond expired once this case started?

8 MR. MILLS: Yes, sir.

9 THE COURT: And you're no longer required to be on the
10 bond?

11 MR. MILLS: Yes, sir.

12 THE COURT: All right. Are you wanting to stay on the
13 bond and be responsible for her appearance tomorrow?

14 MR. MILLS: I'd be willing to do that, Judge.

15 THE COURT: All right. You understand then that if
16 she's not here tomorrow you'll owe the full amount. How
17 much is the bond?

18 MR. MILLS: Thirty-five, I think.

19 THE COURT: Thirty-five thousand?

20 MR. MILLS: (Affirmative nod).

21 THE COURT: Okay. So you understand you'll have full
22 responsibility for making sure that she's present tomorrow?

23 MR. MILLS: Yes, sir.

24 THE COURT: And that if she's not present that you'll
25 be required to make the bond payment to the Court?

1 MR. MILLS: Yes, sir.

2 THE COURT: Are you willing to take that on even though
3 the law allows you to be off the bond now?

4 MR. MILLS: That's fine, sir.

5 THE COURT: All right, sir. Ms. Dawkins, if I release
6 you on this bond based upon his statement that he's before
7 the Court that he's assuming the bond, you understand you
8 have to be here tomorrow?

9 MS. DAWKINS: Yes, sir.

10 THE COURT: And you understand that if you're not here
11 the trial is going to proceed in your absence?

12 MS. DAWKINS: Yes, sir.

13 THE COURT: I certainly would recommend you be here for
14 the benefit of your attorney because if there's an empty
15 chair there, that's not going to help your case any. But
16 you understand fully that the case will proceed whether or
17 not you're here?

18 MS. DAWKINS: Yes, sir.

19 THE COURT: And you understand you need to be here, I
20 guess, at 8:30 to talk with your attorney?

21 MS. DAWKINS: Oh, I'm always here when the doors open.

22 THE COURT: All right. All right, Mr. Mills, based
23 upon your statement to the Court, I'll -- Mills or Miles?

24 MR. MILLS: Mills, M-i-l-l-s.

25 THE COURT: Okay. And what was your first name again?

1 MR. MILLS: Adam.

2 THE COURT: Okay. And you're with ---

3 MR. MILLS: Catch 22.

4 THE COURT: --- Catch 22 Bonding?

5 MR. MILLS: Yes, sir.

6 THE COURT: All right. I'll release her for the
7 evening. You need to be back at 8:30 in the morning. And
8 you need to make sure she's here, Mr. Mills.

9 MR. MILLS: Yes, sir.

10 THE COURT: All right.

11 MR. IANUARIO: I'd also like to have the same motion
12 for my client, Your Honor, ---

13 THE COURT: Are you on his bond too?

14 MR. MILLS: Yes, sir.

15 THE COURT: And you're doing that one too?

16 MR. MILLS: Yes, sir.

17 THE COURT: And how much is his bond?

18 MR. MILLS: Twenty thousand.

19 THE COURT: Okay. And you're going to ensure his
20 presence tomorrow ---

21 MR. MILLS: Yes, sir.

22 THE COURT: --- also? Okay. Mr. Lomax, you understand
23 that if you're not here the case will proceed in your
24 absence?

25 MR. LOMAX: Yes, sir.

1 THE COURT: And that your attorneys will be presenting
2 the case without the benefit of the client here?

3 MR. LOMAX: Yes, sir.

4 THE COURT: Presenting any defense.

5 MR. LOMAX: Yes, sir.

6 THE COURT: Do both of you understand that you
7 certainly have the right to talk to your attorneys about
8 this matter, but there should not be any contact with
9 witnesses who have previously discussed -- unless they're
10 going to be witnesses for you, you understand that?

11 MR. LOMAX: Yes, sir.

12 THE COURT: I want to make sure that we have peace in
13 the community during the night.

14 MR. LOMAX: Yes, sir.

15 THE COURT: All right.. I'll -- based on Mr. Mills'
16 statement that he's on the bond for both of these
17 individuals, and will ensure their presence in the morning
18 and with the full knowledge that both Defendants understand
19 the trial will proceed, I'll release them tonight.

20 MR. IANUARIO: Thank you, Your Honor.

21 THE COURT: Okay. Be ready to start back at 9:00 in
22 the morning. I understand the jail will need something to
23 say that I'm releasing them on bond. If y'all would like to
24 prepare something for me to that effect or maybe Mr. Mills
25 has something to that effect.

1 MS. GORTON: I can scribble it out on notebook paper,
2 Judge. Judge, is this technically on her own recognizance
3 or on continued bond?

4 THE COURT: Continued bond. It's not ---

5 MS. GORTON: Yes, sir.

6 THE COURT: --- on PR, no. In fact, it would probably
7 be good to have the Catch 22 representative sign that as
8 well on the bottom that he's continuing on the bond.

9 (Whereupon court was in recess at 5:58 pm)

1 Wednesday, April 11, 2012:

2 (Whereupon court resumed at 9:12 am)

3 THE COURT: Thank you. Please be seated.

4 (Pause)

5 THE COURT: All right. Any matters we need to take
6 care of this morning? I think you said you had some
7 motions, Ms. Gorton.

8 MS. GORTON: Were you wanting to address the directed
9 verdict this morning ---

10 THE COURT: Whatever motions you have before our jury
11 starts -- comes back in.

12 MS. GORTON: She's off the record rested, correct?

13 THE COURT: She has on the record rested.

14 MS. GORTON: On record, okay.

15 THE COURT: Without the jury being here. And then
16 she's going to rest again on the record. But the record
17 will reflect that these motions are being made after the
18 State has rested. And just for the benefit of the jury,
19 I'll let them rest again as a -- in a perfunctory way so
20 that the jury will know where we are right now. I'll be
21 glad to hear from you.

22 MS. GORTON: Judge, I just brought the State v.
23 Johnson. I would move for a directed verdict at this time
24 that the issue here is presence and the State hasn't made a
25 sufficient timing or a sufficient showing of her knowledge

1 of the offences before they occurred or her planning or
2 participation in them.

3 I understand -- for a directed verdict, I understand
4 what the threshold is. I'm preserving the record and doing
5 what I need to do.

6 MR. IANUARIO: Your Honor, I'd also like to join in
7 this motion for the same reasons.

8 THE COURT: All right. Would the State like to be
9 heard on the motions?

10 MS. SALISBURY: Judge, not at length, just that I
11 believe that there's more than sufficient evidence to send
12 the case to the jury based on not only these Defendants'
13 statements, but the co-defendants' testimony at trial.

14 THE COURT: All right. Well, as all of you know I have
15 to weigh all of the evidence in the light most favorable to
16 the non-moving party, that being the State in this case.
17 And I think there's not an absence of evidence. So I
18 believe there is sufficient evidence for the jury to make a
19 determination. So I respectfully deny your motion.

20 MS. GORTON: Thank you.

21 MR. IANUARIO: Thank you, Your Honor.

22 THE COURT: Do you plan to put up a defense, Ms.
23 Gorton?

24 MS. GORTON: Well, I've excused Detective Hoover. And
25 I think that I do, Your Honor.

1 THE COURT: Okay.

2 MS. GORTON: Not the Defendant though.

3 THE COURT: All right. Do you know about how long or
4 how many witnesses? I'm just wanting to know about -- from
5 a timing standpoint for our jury to come back to start our
6 next trial is what I'm ---

7 MS. GORTON: It's extremely short, Your Honor.

8 Detective or Officer Hamilton will be on for -- I'm going to
9 guess five minutes. And then Ms. Adams, depending on how
10 long Ms. Salisbury needs to spend with her, but I wouldn't
11 think more than thirty.

12 THE COURT: Okay. Mr. Ianuario, you plan to put up any
13 witnesses?

14 MR. IANUARIO: No, Your Honor.

15 THE COURT: All right.

16 (Pause)

17 MS. GORTON: Judge.

18 THE COURT: Yes, ma'am.

19 MS. GORTON: I'm changing my mind. I'm sorry. We are
20 not going to put on a defense.

21 THE COURT: Okay. So you've got one exhibit in
22 evidence or two exhibits? I can't remember.

23 MS. GORTON: I think there was only one that was
24 entered as -- four?

25 THE COURT: Yeah, a couple of pictures. Yeah, four

1 exhibits, is that right? Four?

2 MADAME COURT REPORTER: Defendant's exhibit 4 is in
3 evidence.

4 THE COURT: Only ---

5 MADAME COURT REPORTER: But there are four exhibits,
6 but only one ---

7 THE COURT: Only one? All right. Number 4 is in
8 evidence. 1, 2 and 3 were marked for identification only.

9 MS. GORTON: Okay.

10 (Pause)

11 MS. GORTON: Judge.

12 THE COURT: Yes, ma'am.

13 MS. GORTON: I'm sorry, again, I've not done co-
14 defendant trials like this before. Does one of us get
15 rebuttal, assuming no evidence by either Defendants, I got
16 that, any evidence by either defense, no one gets rebuttal
17 on this side, but do both of us get rebuttal or just one?
18 Do you know?

19 THE COURT: As I understand the law, if there's any
20 evidence put up by the defense, then the State will go --
21 argue last. So y'all will have ---

22 MS. GORTON: But we're not.

23 THE COURT: Excuse me?

24 MS. GORTON: We're not -- we're not going to put up any
25 evidence ---

1 THE COURT: But you've got an exhibit in, don't you?
2 You have evidence in through your photograph.

3 MS. GORTON: So we lose rebuttal by the photograph?

4 THE COURT: What's the State's position on that?

5 MS. SALISBURY: The State's position is that any
6 evidence introduced by the Defendant means that the
7 Defendant forfeits last argument. I believe it's the way
8 the law reads that the State goes last.

9 MS. GORTON: And I don't suppose there's any way I
10 could withdraw that evidence?

11 (Pause)

12 THE COURT: Let's move to another issue about charges.
13 Are there any particular charges that we need to address?
14 I'll be charging the law on each of the cases -- on each of
15 the offenses charged. I'll be charging criminal intent,
16 direct evidence, circumstantial evidence, burden of proof,
17 presumption of innocence. I'll certainly charge the jury
18 about the right of the Defendant not to testify. I'll
19 charge mere presence.

20 MR. IANUARIO: May I approach, Your Honor? I have ---

21 THE COURT: Yes, sir, you have some more requests?

22 MS. GORTON: Judge, the mere presence that you'll be
23 charging, is that the one that I requested pursuant to State
24 v. Austin?

25 THE COURT: Well, I'll charge my normal mere presence

1 charge. I'm sure -- it might not be the exact words of your
2 charge, but it'll ---

3 MR. IANUARIO: I also filed those as well. I don't
4 know if you have copies of them yet or not.

5 THE COURT: I've got these. Do you want them back?

6 MR. IANUARIO: If you don't mind, those are my copies.
7 But if you didn't have them ---

8 THE COURT: All right. Has the Solicitor got all
9 those?

10 MR. IANUARIO: All except for the one I just gave ---

11 THE COURT: You got a copy?

12 MR. IANUARIO: Yes, ma'am -- yes, sir.

13 THE COURT: Okay.

14 (Pause)

15 THE COURT: Yes, Solicitor.

16 MS. SALISBURY: I don't know where we're at in the
17 process yet. I have some responses to the proposed charges,
18 but I also -- if the Court's interested in some particular
19 guidance on the closing argument issue, I have some ---

20 THE COURT: Do you have a copy of that case that came
21 out a couple of years ago?

22 MS. SALISBURY: I have what the desk-book marks is
23 State versus Crowe is the particular case that describes
24 when jointly tried defendants introduce evidence, it -- I'm
25 sorry, when one of jointly tried defendants introduces

1 evidence, the State is entitled to close last. That's ---

2 THE COURT: Right. Yeah.

3 MS. SALISBURY: That's that case. And then what State
4 versus Pinkard and State versus Gellis both say is that the
5 presentation of any evidence by a defendant, either
6 testimony or non-testimonial, forfeits their right to last
7 argument. I'd be happy to ---

8 THE COURT: What was that -- what's the date of that
9 last case?

10 MS. SALISBURY: The last one is 1930, but Pinkard is
11 2005. I wondered if that's the one ---

12 THE COURT: Well, no, there's a case. I need to check
13 it. It came out just a couple of years ago about putting
14 the scene into evidence and whether that was -- when the
15 jury went to look at the scene whether that constituted
16 evidence. And I need to check that case. I think the -- I
17 want to be sure that the photograph would not be considered
18 like a scene. But I think putting -- I think putting the
19 scene in was not evidence.

20 MS. SALISBURY: And, for what it's worth, the State's
21 position on that is that that photograph is an exhibit. It
22 is an exhibit ---

23 THE COURT: Right.

24 MS. SALISBURY: --- that has been discussed at length.

25 THE COURT: I think that's -- that's clear. I just

1 want to have the benefit of knowing ---

2 MS. SALISBURY: Yes, Judge.

3 THE COURT: --- that case is -- so if you've got that
4 case, I'll be glad to ---

5 MS. SALISBURY: It doesn't appear that I do. I don't
6 think I've got that one.

7 THE COURT: Well, I'll look for that.

8 (Pause)

9 THE COURT: All right. Are we on ---

10 MS. GORTON: On the charging instructions ---

11 THE COURT: As far as the other, about the -- we know
12 about the argument. Each of you will have a chance to argue
13 first and then the State will then argue its case to the
14 jury.

15 MS. GORTON: Because of the photograph?

16 THE COURT: Because of the photograph being in
17 evidence.

18 MS. GORTON: Is there any way I could withdraw it?

19 THE COURT: I don't know of any way that you can
20 withdraw a piece of evidence. Can you give me any basis for
21 that?

22 MS. GORTON: Move to withdraw it.

23 THE COURT: Once it's been introduced, and then
24 discussed and testified to ...

25 MS. GORTON: Right. I don't know that it being

1 introduced is the prejudice that the State has because we
2 talked about the other photographs just as much at length.
3 So whether it was admitted into evidence or not, there's no
4 prejudice to the State.

5 THE COURT: Well, it was published to the jury once
6 it's introduced into evidence. It's been published to the
7 jury.

8 MS. GORTON: If that's the case, Your Honor, if that's
9 the ruling, I do have some evidence to put up.

10 THE COURT: Okay. Well, that'll be fine.

11 MS. GORTON: Thank you, Your Honor. I appreciate it.

12 THE COURT: Put up whatever evidence you'd like.

13 As to the charge, does the State have any objections to
14 the charges proposed by the Defendants?

15 MS. SALISBURY: Well, I certainly -- I don't have any
16 objection to mere presence or -- I'm not sure of the whole
17 litany of the others. The one that I recall taking
18 particular issue with was the charge that reflects the
19 existence of some independent or intervening act.

20 It's my understanding of the law that if conspirators
21 join together to commit a crime, each conspirator is
22 responsible for the natural and reasonable consequences that
23 flow from that act. And, of course, should there be some
24 evidence of an independent or intervening act, then the
25 Defendants may be entitled to that charge.

1 But short of any evidence indicating that there was an
2 intervening act, it's the State's position that the shooting
3 was a natural and reasonable consequence that flows from the
4 plan of the armed robbery. And for that reason there's no
5 basis to charge intervening act.

6 MS. GORTON: I believe that the charge she has issue
7 with is independent act, which specifically comes from State
8 v. Adams and says specifically when two or more conspire to
9 commit a crime, they're responsible for all incidental and
10 consequential acts growing out of the common design. And
11 then it goes on to say, however, conspirators are not
12 responsible for an independent act committed by another
13 conspirator or conspirators that was not part of the common
14 design.

15 And I do have the case law in support of that, which is
16 not on -- it's just -- stands for the general proposition
17 that you're entitled to an instruction whenever it's ---

18 THE COURT: Okay.

19 MS. GORTON: --- can be inferred from the evidence.

20 THE COURT: State versus Adams is ---

21 MS. GORTON: Adams is the one that specifies -- this,
22 in fact, I believe I plagiarized Adams' instruction in this.

23 THE COURT: All right. I'll charge that over the
24 State's objection. ?

25 MS. GORTON: Judge, in addition to those four written

(1 instructions that I gave you, I'll be asking for a charge of
2 duress. That hasn't been the theme of our case, but it
3 could be reasonably inferred from the jury.

4 The jury could reasonably conclude that she did know
5 about the robbery beforehand, but that due to the physical
6 violations that they've heard of and the nature of the gang
7 itself, it is a reasonable inference that they could draw
8 from the evidence before them that if she did help plan the
9 robbery, she acted under duress to do so.

10 THE COURT: And what is the evidence of that right now?
11 Again, I know we're going a little ahead of things just
12 because we have a few moments here, but maybe I can revisit
13 that after hearing all the testimony. But ...

(14 MS. GORTON: I think both Smoke and Fats talked about
15 what happens if you don't follow orders of those who are in
16 charge, that being Raymond Young and Envy. Raymond Young
17 was the one giving the other members instructions on how
18 this was going to go down. He was the one briefing Fats and
19 Smoke in the car as to how this was going to go down and
20 that if you did not follow the orders of the Higher
21 Authority, the King or the Queen, that you were subject to
22 physical violations, which included six on one beatings for
23 six minutes.

(24 I'd like the record to reflect that Ms. De'Nia Dawkins
25 is a very tiny person. I could have her ---

1 THE COURT: Well, we'll -- let's talk about that one
2 after you put up your defense. But I think that would be a
3 little premature now until I hear what the other evidence is
4 as to whether or not that should be charged. Again, all of
5 our jurors are here now.

6 The charge you proposed on circumstantial evidence, do
7 you have authority for that other than State v. Edwards?
8 Have you ---

9 MS. GORTON: Judge, frankly, I can't even locate my
10 copy of that motion. But all of my motions tend to cite
11 authority. And if you'll ---

12 THE COURT: Well, I'm going to charge circumstantial
13 evidence under the law under Gippon and as Cherry
14 interpreted it. I think the later case law states
15 specifically what we are to charge as ---

16 MS. GORTON: Yeah, I ---

17 THE COURT: --- under circumstantial evidence. So I'll
18 charge the -- I'll charge ---

19 MS. GORTON: My circumstantial evidence charge that I
20 requested was another plagiarism straight out of Manis.

21 THE COURT: Well, that's -- I'll charge circumstantial
22 evidence, but, again, it'll be the charge that I have and
23 not the one you've proposed.

24 MS. GORTON: And you said not the reasonable doubt
25 instruction that we requested pursuant to State v. Manning

1 will also be denied?

2 THE COURT: Under which one now?

3 MS. GORTON: State v. Manning.

4 THE COURT: But under -- which charge are you asking
5 about?

6 MS. GORTON: Reasonable doubt.

7 THE COURT: I'll charge reasonable doubt. I'll charge
8 -- yeah, I think your reasonable doubt charge is to cause a
9 reasonable person to hesitate to act.

10 MS. GORTON: Yes.

11 THE COURT: That will certainly be included in my
12 charge.

13 MS. GORTON: Thank you.

14 THE COURT: And the one Mr. Ianuario just handed me
15 about a statement, I'll certainly give the jury a charge on
16 voluntariness of a statement.

17 MR. IANUARIO: Thank you, Your Honor.

18 THE COURT: So the independent act will be the only one
19 that's not already covered. And then we'll talk about the
20 coercion or duress. Is the State going to seek a hand of
21 one charge?

22 MS. SALISBURY: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. SALISBURY: I believe the facts presented support
25 that.

1 THE COURT: Okay. All right. Let's ---

2 MS. GORTON: Judge, just so that there's no more
3 interruptions once the jury comes in, I am concerned that I
4 see and have heard that Ms. Salisbury will be playing a
5 video tape. And I'm not sure what the video tape is for
6 closing argument, but there is case law that says you can't
7 refer to statements that weren't entered into evidence. And
8 I just don't want a video that wasn't admitted into evidence
9 being played.

10 THE COURT: Okay.

11 MS. SALISBURY: Judge, I have no idea what she's
12 talking about.

13 THE COURT: She heard a bad rumor?

14 MS. SALISBURY: Apparently. I don't have any video.

15 THE COURT: Okay.

16 MS. GORTON: Okay. Thank you. Good. Glad to hear it.

17 THE COURT: So that's put to rest. I'll be -- we'll
18 have a verdict form ready for you to review as to the -- the
19 verdict form will just -- I'm going to try to have it into
20 four pieces of paper. We'll have each Defendant with two of
21 the charges on one, two of the charges on the other, either
22 guilty or not guilty. And then we'll do two on the other.
23 I'll certainly give y'all a chance to look over the verdict
24 forms before they go back to the jury. Okay.

25 We'll proceed with the defense. So that you know the

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1 -- what we'll be doing when the jury comes out, I'll call
2 for the Solicitor for her next witness. She'll say, I rest.
3 All your motions are protected on the record since she has
4 already rested before me.

5 And then you can start with your defense. And after
6 your defense, Mr. [sic] Gorton, then I'll call for Mr.
7 Ianuario, if we haven't had a break. And then he can rest
8 and if we have any reply. And then we'll take a break
9 before we argue and charge. Okay. If the jury's ready, you
10 can have them come in, Ms. Sims.

11 (Whereupon the jury entered the courtroom at 9:49 am)

12 THE COURT: Good morning, Madame Forelady, ladies and
13 gentlemen. We're now ready to proceed with the trial of the
14 case. The State may call its next witness.

15 MS. SALISBURY: Thank you, Your Honor. The State
16 rests.

17 THE COURT: All right. The defense then may present
18 its case, if it wishes. Ms. Gorton.

19 MS. GORTON: Thank you, Your Honor. I call Chastity
20 Adams.

21 MADAME CLERK: Ms. Adams, if you'll come to the end of
22 the bench. Please place your left hand on the Bible and
23 raise your right hand.

24 Chastity Adams, being
25 duly sworn testified as follows:

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1 MADAME CLERK: Thank you. Please be seated. Please
2 state your name for the record.

3 MS. ADAMS: My name is Chastity Veronica Adams.

4 Direct Examination by Ms. Gorton:

5 Q. Ms. Adams, how do you -- do you know De'Nia Dawkins?

6 A. Yes, I do.

7 Q. How long have you known her?

8 A. I've known her since about sixth or seventh grade. She
9 went to school with my son.

10 Q. Is that how you met her?

11 A. That's exactly how I met her.

12 Q. And what is your son's name?

13 A. His name is Dajon (phonetics) Greer.

14 Q. And he is the same age as Ms. Dawkins?

15 A. Yes, he is. Well, he'll be twenty-one this coming
16 June.

17 Q. All right. And do you have any other children?

18 A. Yes, I do.

19 Q. How many do you have?

20 A. I have my daughter, Kaylin Adams. And I have my middle
21 son, who's name is Kareeb (phonetics) Adams.

22 Q. And how old is Kaylin?

23 A. Kaylin is sixteen. And my son, Kareeb, is seventeen.

24 Q. Now, what would you describe your relationship with Ms.
25 Dawkins?

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1 A. My relationship with Ms. Dawkins is that she's more
2 like a daughter to me. She's been around us for, like I
3 said, since like sixth or seventh grade. I treat her as one
4 of my children.

5 Q. Now, when you say us, who are you talking about?
6 You've talked about three children.

7 A. And my husband.

8 Q. Who is your husband?

9 A. My husband's name is Kim Adams.

10 Q. Okay. Now, how often do you see De'Nia, say, in the
11 last couple of years?

12 A. I see De'Nia almost every day. If I did not see
13 De'Nia, probably -- maybe once or twice out the week, and I
14 didn't -- well, I would see her because sometimes I would
15 take her to work and pick her up from work and take her
16 home.

17 Q. Now, where did she work?

18 A. Sortino's is where she worked.

19 Q. All right. Did she have any other jobs?

20 A. Not that I'm aware of.

21 Q. So when she went to college, did you still see her
22 frequently?

23 A. Yes. Whenever she would come home from college or
24 whenever she would visit for the weekend, De'Nia always came
25 by to see us.

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1 Q. Do you see anyone else in the courtroom on this side
2 that you recognize?

3 A. Yes. I see -- I don't know him by his full name, but I
4 call him Drez.

5 Q. And how do you know Drez?

6 A. I met Drez through De'Nia as her boyfriend. I met him
7 -- I think they had been dating two years at that time. And
8 he came to the house with De'Nia and we sat and had a family
9 night. And we had -- we watched movies.

10 Q. Was that the one and only time you saw Drez?

11 A. I've seen him out in downtown Greenville. I've seen
12 him whenever they would come by or whenever he would pick
13 De'Nia up and they were going back to his home. So I would
14 see him on those types of occasions, but that's the only
15 other time.

16 Q. So, -- now, how long did their relationship span?

17 A. They dated for two years in high school and one year in
18 college, for De'Nia's first year in college.

19 Q. Your family, are they involved in music?

20 A. Yes, they are.

21 Q. Tell us what they do.

22 A. They are hip hop artists, R&B artists. They actually
23 go out and perform at any local -- of the local clubs here.
24 De'Nia's role with my music group is she is my secretary.
25 She helps me book shows for them. She helps me manage any

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1 money that we raise for them or we collect from them in
2 dues. So she represented as a secretary and as a supporter
3 for the group.

4 Q. And how long had she been doing that?

5 A. OTK has been established since -- it's been about three
6 years now. It's been going on three years now.

7 Q. Now, OTK, what does OTK stand for?

8 A. It stands for Original Trendsetter Krew. And what that
9 means is that they set trends that people follow.

10 Q. What kind of trends?

11 A. Clothing trends. It's mainly with clothing, but they
12 are hip hop artists, R&B artists. They do a variety of
13 music. So not just one type of music.

14 Q. Now, are they in any way involved with any gangs?

15 A. No, ma'am.

16 Q. Okay. In fact, how do you instruct your daughter?

17 A. I raise my daughter with the instructions of being a
18 lady, being respectful. They must say yes, ma'am, no ma'am.
19 I raise her that -- to wait for marriage. So I have very,
20 very, very strict guidelines for my daughter. Very.

21 Q. And what about your sons?

22 A. My sons, I'm very strict with them, but not to -- one
23 is getting ready to be twenty-one, of course. So there's
24 not a lot that I can say to him now. But my middle son --
25 they're home schooled.

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1 And the reason they are home schooled is because they
2 went through a lot of bullying. And my daughter went
3 through a lot of bullying where she was attacked on the
4 school bus and hit in the face with a swing. So, therefore,
5 I thought it was in their best interest to bring them home.
6 So I home school my children. So they go to a high school
7 on-line.

8 Q. Now you said that your -- you first met De'Nia through
9 your son.

10 A. Um-hum (affirmative).

11 Q. Did he remain your primary contact with De'Nia?

12 A. Yes, he would. Yes.

13 Q. Okay. What about your daughter? What kind of
14 relationship does she have with your daughter?

15 A. De'Nia is like a big sister to my daughter. She like
16 -- she comes and gets her and takes her out to get her nails
17 done. She takes her out to eat. She takes her out
18 shopping. She spends a lot of time with her. She also
19 knows what I expect for my daughter. And she makes sure
20 those things are in effect.

21 Q. All right. Now, going back to OTK and your
22 involvement, are you kind of like the Partridge Family mom?

23 A. Yeah. I am the manager of the group. And because they
24 are under age, they would not be able to perform in any of
25 the clubs here locally in South Carolina or when we travel

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1 afar. So in order for them to be able to come into those
2 clubs, I have to be present because for one, they're under
3 the age of eighteen.

4 I had two artists that were under the age of eighteen.
5 I had one that were under the age of twenty, I mean, three
6 that were under the age of twenty-one. So I had to be there
7 at every performance in the beginning because they were
8 under age and they could not get in without me being there.
9 So I had to supervise them at all times.

10 Q. All right. So in the process of being involved in
11 these clubs and these musical circles, did you ever run
12 across the group called Growth and Development?

13 A. I heard of that name, Growth and Development. And I've
14 seen a lot of the artists on the music scene. So I was
15 aware of that particular organization.

16 Q. And you were aware that these particular artists were
17 associated with Growth and Development?

18 A. Right. And they -- yeah.

19 Q. And what were these people like?

20 A. They were very -- very nice young men, very -- they
21 presented themselves as artists. They were very positive.
22 I never encountered any type of altercations, any type of
23 gang activity.

24 I never seen any of the throwing up the signs. I never
25 experienced any of that. And I've been on the music scene

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1 now over three years. I'm well known throughout all of the
2 youth. So I am very aware of what gang activity looks like.
3 I never experienced any of that.

4 I never saw any type of altercations, no fights ever
5 broke out because if that would have been the case, my group
6 would have never went back and performed again. And they
7 performed at several -- several performances at several
8 locations all the time throughout the year.

9 Q. Was one of those locations called the Red Flame?

10 A. The Red Flame, we actually had our opening by a mixed
11 tape there. They did not get to perform at that particular
12 event, but we were -- we were able to present our mixed tape
13 because they had just dropped their first mixed tape. So we
14 got to present that. We were able to play our music
15 throughout the club throughout that time.

16 Q. So the Red Flame is a legitimate place?

17 A. Yes, it is.

18 Q. Okay. It's some place you would allow your children to
19 be at and to perform at?

20 A. Right. And myself or either my husband would be with
21 them. Mainly me because I work the hours that allow me to
22 be able to do that.

23 Q. All right. Now, OTK, that's your group.

24 A. Um-hum (affirmative).

25 Q. Do you also -- are you also involved in the studios?

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1 A. I take -- yes. I set up the studio time or either my
2 son sets up the studio time. And I normally would go with
3 them to the studio.

4 Q. All right. Had you heard of Raymond Young?

5 A. I've heard of Raymond Young. I do not know him
6 personally. And the only reason I know him is because of a
7 song that he may have made many years ago. And it was a
8 very popular song. So I heard of that particular thing.
9 Again, ---

10 Q. What do you mean by that?

11 A. --- on the music scene. It was -- I think that as good
12 as they said he was as an artist, he should have been signed
13 by -- by a label. So I heard that he made great music, but
14 I don't know him personally. Never met him either.

15 Q. Have you known anything about him being involved with a
16 gang?

17 A. No, did not know that.

18 Q. Had it -- when you heard of Growth and Development did
19 you hear of Growth and Development specifically by that
20 name?

21 A. By that name, yes.

22 Q. And the things you were describing about what they did,
23 did they work with the youth?

24 A. Yeah, that -- from my understanding, that's exactly
25 what they did. They worked with the youth. They were

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1 making young men better themselves by getting jobs, by going
2 to school, by going off to college, which is something that
3 I also represented myself. So that's how I was familiar
4 with Growth and Development.

5 Q. Well, just so we're clear, you weren't ever a part of
6 Growth and Development?

7 A. No, ma'am.

8 Q. And your children?

9 A. No, ma'am.

10 Q. Okay. Since this case has come about have you learned
11 additional things about Growth and Development?

12 A. I've heard things about Growth and Development still
13 being a positive group, but that's the only thing I've
14 heard. I haven't heard anything else.

15 Q. Have you learned of its association with Gangster
16 Disciples?

17 A. I had never heard of Gangster Disciples before.

18 Q. When you and I spoke, we spoke about Gangster
19 Disciples.

20 A. Right.

21 Q. Did you make any association between the Growth and
22 Development you had seen and experienced and what I was
23 describing to you?

24 A. No, ma'am.

25 Q. Okay. And I think you've already talked about no

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1 flashing of signs, no hints ---

2 A. No hints whatsoever.

3 Q. Okay. And you're familiar with gang attire. You know
4 what that looks like?

5 A. Yes, I am.

6 Q. All right.

7 A. Yeah. I'm thirty-eight years old, but I'm -- I work
8 with a lot of youth. So I'm able to hear different things
9 that go on within the youth.

10 Q. All right. Now, De'Nia, were you familiar with the
11 different volunteer things that she was doing outside of the
12 music ---

13 MS. SALISBURY: Your Honor, ---

14 Q. --- world?

15 MS. SALISBURY: --- I object at this point. Ms.

16 Gorton's asked this witness a lot of questions about Ms.

17 Dawkins' employment and volunteer work. If Ms. Dawkins

18 wants to testify about what she's done, she can do that, but

19 I don't think it's appropriate for Ms. Gorton to elicit that

20 testimony from this witness.

21 THE COURT: I overrule your objection. You may

22 continue.

23 Q. You may answer.

24 A. I'm sorry.

25 Q. That's okay. Were you aware of any of the volunteer

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1 work she was doing?

2 A. Yes, because she contacted us at one point in time to
3 -- for my group to perform. And -- for an event that they
4 were having. And I assume and I think now that it was to
5 help some type of charity or to help the youth in their
6 community. So our group was asked to perform in that group
7 -- in that event. At that particular time I think we had
8 already been booked with someone else. So we did not get to
9 attend that event.

10 Q. Okay. Did you -- were you aware -- you said you saw
11 her on a daily schedule at one point. And I want you to
12 focus in the time period of the Summer -- Spring/Summer of
13 2011.

14 A. Okay.

15 Q. Up until May, 2011 were you seeing her on a daily
16 basis?

17 A. Yes, I was.

18 Q. What happened in May?

19 A. For some reason in May or after May we didn't see
20 De'Nia for a while.

21 Q. Why are you so sure that's the correct time?

22 A. Because that was close to my son's birthday. It was
23 June the . And De'Nia -- I don't remember De'Nia being
24 with us for his birthday.

25 And then my daughter's and other daughter and son's

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1 birthday is July 17th and July 12th. And I remember seeing
2 De'Nia July 12th. And she came for my son's birthday
3 because normally she would never, ever miss their birthdays,
4 my birthday, my husband's birthday. She always comes around
5 that time.

6 But my son's birthday, June 9th, I didn't recall seeing
7 her, but I did see her July 12th for my middle son's
8 birthday. She came by and gave him money for his birthday.

9 And my daughter's birthday is the one that she did not
10 get to make. And from my understanding, we -- we were told
11 that she was incarcerated at that time.

12 Q. She wasn't actually incarcerated at that time, was she?

13 A. Later on I found out that she wasn't.

14 Q. But she'd told you that the reason why she missed the
15 birthday was ---

16 A. Right.

17 Q. --- was because she was incarcerated?

18 A. Right.

19 Q. And you don't know why she lied to you?

20 A. No.

21 Q. Was that the first birthday she'd missed?

22 A. First birthday she'd ever missed.

23 Q. So you're very certain it was May that she disappeared?

24 A. Um-hum (affirmative).

25 Q. After her arrest in July, July 22nd and after her

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1 release, did she come around your family again?

2 A. I actually had contacted her parents because I grew
3 concerned 'cause I hadn't seen her. And so after -- not
4 right after her arrest or after her release I would say that
5 I seen De'Nia maybe two weeks afterwards, maybe two weeks
6 after she had been released.

7 Q. And then did she resume her contact with your family?

8 A. Yes. We have seen her every day since then.

9 Q. Okay. Now, you mentioned contacting her parents. Are
10 they in the scene?

11 A. Not -- not with my music group, no.

12 Q. Okay. Let me rephrase that. Are they involved with
13 De'Nia?

14 A. Oh, yes. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. So she has a family?

18 A. Yes, she does.

19 Q. And she has a second family?

20 A. Yes, she does.

21 Q. And they have a home?

22 A. Oh, beautiful home.

23 Q. Okay. Where is it located?

24 A. It's located off highway 14.

25 Q. And have you been there?

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1 A. Yes, I have.

2 Q. Were you familiar with her work schedule the Summer of
3 2011?

4 A. Yes.

5 Q. And what was her work schedule?

6 A. De'Nia mainly worked Thursdays, Fridays, Saturdays and
7 Sundays. And she would go in at eleven am, and she would
8 get off around 10:30 pm.

9 Q. We heard some testimony from one person that she helped
10 plan this robbery in the late afternoon, early evening. And
11 that same person also testified that she worked that day.
12 Was there a work schedule that would have permitted that?

13 A. Not that I'm aware of, no.

14 Q. Okay. So every day that she worked that you're aware
15 of was eleven in the morning til ten at night?

16 A. Right. Yes. Because De'Nia would miss some of the
17 performances on Thursday nights that we would have because
18 of her work schedule.

19 Q. All right.

20 A. She wouldn't be able to make it to the -- to the
21 opening of -- well, she would miss them because my group,
22 being the youngest, I would request that they perform early
23 so we wouldn't be there til real late. And now some nights
24 we had to stay late, but not at all times.

25 But, yes, her work schedule was Thursday, Friday,

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1 Saturday and Sunday. 'Cause on Saturdays we liked to go to
2 the Jockey Lot and De'Nia couldn't go. She wouldn't be able
3 to go with us. So she always worked that schedule.

4 Q. Okay. I need to cover some things because they're
5 going to come out ---

6 A. Oh, yes. I know.

7 Q. And this is embarrassing to you. And I apologize ---

8 A. No, I'm not.

9 Q. Okay. All right. Do you have a record?

10 A. Yes, I do.

11 Q. What's your record?

12 A. I have a fraudulent check charge. I have several
13 fraudulent check charges. And the reason I say that -- if
14 I'm able to say that I have that record, I would like to
15 share with the jury why I have that record as well.

16 I did that when I was young. I started when I was
17 young. My husband -- I got married at a very young age. My
18 husband was in a bad motorcycle wreck and was out of work
19 for two years. He had to have surgery throughout that time.
20 We didn't have any income coming in at the time because I
21 was an at-home-mom.

22 Because we didn't have any food -- and at that time we
23 couldn't -- did not qualify for food stamps. And the reason
24 we did not is because at that time -- when you apply for
25 food stamps, if you had a nice car, then you didn't qualify

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1 based on that.

2 Now, I can't say what law that was, but I can say that
3 we didn't qualify because of the cars we had at the time.
4 And President Clinton went later on and changed that rule
5 and said it doesn't matter what you drive, you should still
6 be able to get assistance. But at the time we did not
7 qualify as a family.

8 So I, not being smart, thinking, okay, well, I'll just
9 deal with it when it comes along, I went and wrote some of
10 the checks for food, some of the checks for clothing. Never
11 over a thousand dollars, never over five hundred dollars.

12 What I did was when I found out what type of trouble I
13 could get into with this, I went to -- I got a letter in the
14 mail saying that I had a warrant for my arrest. I went down
15 to the precinct, I met a nice officer. He said because you
16 came in we're not going to make this hard for you. I was
17 able to sign my own bond. And I was able to be released and
18 returned back to court.

19 I never was offered pretrial. I never was offered any
20 type of intervention to help me, you know, not get in that
21 trouble again. So, yes, I do have a criminal record.

22 Q. Okay. That's ---

23 A. I just wanted to make sure ---

24 Q. --- probably more information ---

25 A. I know, ---

CHASTITY ADAMS - DIRECT EXAMINATION BY MS. GORTON

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- 1 Q. --- than we needed.
- 2 A. --- but, I mean, I just wanted to make sure the jury
- 3 ---
- 4 Q. This was ---
- 5 A. --- understood.
- 6 Q. --- something that you've agonized over, right?
- 7 A. Oh, yeah. And ---
- 8 Q. And ---
- 9 A. --- I've worked to see what I could do to try to get
- 10 some of those removed. So, yes.
- 11 Q. And you knew that if you came and testified ---
- 12 A. Yes, that ---
- 13 Q. --- for De'Nia ---
- 14 A. --- that would be ---
- 15 Q. --- that this would be very publicly ---
- 16 A. Yes, yes. I knew the Solicitor would do her work and,
- 17 ---
- 18 Q. And you came ---
- 19 A. --- yes.
- 20 Q. --- anyway?
- 21 A. Yes, I came anyway. Yes, I did.
- 22 MS. GORTON: I don't believe I have anything further.
- 23 THE COURT: All right. Thank you. Any questions, Mr.
- 24 Ianuario, of this witness?
- 25 MR. IANUARIO: I have no questions for this witness,

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1 Your Honor.

2 THE COURT: All right. You may cross examine the
3 witness, ---

4 MS. SALISBURY: Thank you, Your Honor.

5 THE COURT: --- Solicitor.

6 Cross Examination by Ms. Salisbury:

7 Q. Ms. Adams, have you ever been to Crooked Creek?

8 A. Crooked Creek? Back in my younger days, I remember
9 Crooked Creek.

10 Q. So you know where it is?

11 A. I do.

12 Q. Were you at Crooked Creek on June 2nd, 2011?

13 A. 2011?

14 Q. Last Summer?

15 A. I do not recall being there.

16 Q. Okay. Do you know where Cunningham Villas is?

17 A. I'm not aware of Cunningham Villas.

18 Q. Have you ever been to Cunningham Villas?

19 A. Could you tell me where that is? I'm not sure ---

20 Q. It's an apartment complex in Taylors off of East North
21 Street in Greenville.

22 A. Again, I'm not aware of where that is.

23 Q. So would you recall being at Cunningham Villas late
24 night June 2nd or early morning June 3rd, 2011?

25 A. I do not recall.

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1 Q. Okay. Thank you, Ms. Adams.

2 THE COURT: All right. Thank you, ma'am. You may step
3 down.

4 MS. GORTON: Could I have one moment?

5 THE COURT: Yes, ma'am.

6 (Pause)

7 THE COURT: Yes, ma'am.

8 MS. GORTON: The Defense rests.

9 THE COURT: Okay. Mr. Ianuario, any ...

10 MR. IANUARIO: The Defense rests, Your Honor.

11 THE COURT: Okay. Is there anything in reply from the
12 State?

13 MS. SALISBURY: Nothing from the State, Your Honor.

14 THE COURT: Ladies and gentlemen, you've heard all the
15 testimony in this case. We have a couple of legal matters
16 we need to take care of. I'll try not to keep you very long
17 waiting while we get these resolved. And then the attorneys
18 will have a chance to address you in their closing
19 statements. I'll then instruct you on the law, and the case
20 will be yours to decide.

21 I'll ask you now, if you would, go back to your jury
22 room. Don't discuss the case. We'll call you back in just
23 a few moments and be ready for the closing statements.

24 (Whereupon the jury exited the courtroom at 10:10 am)

25 THE COURT: All right. We'll -- let's take a short

1 break. Y'all can get your thoughts together for your
2 closing statements. And I'll have a verdict form for you to
3 look over to make sure it's in the proper shape. So let's
4 take just a short break.

5 (Whereupon court was in recess at 10:11 am)

6 (Whereupon court resumed at 10:38 am)

7 THE COURT: Thank you. Keep your seats. Let me let
8 y'all look over the verdict forms I have prepared to make
9 sure they're in proper condition and spelled right.

10 MS. SALISBURY: No objection from the State, Judge.

11 MR. IANUARIO: No objection from me, Your Honor.

12 MS. GORTON: No objection.

13 THE COURT: All right. Anything else before the jury
14 comes in? How long do you expect to talk to the jury? I'm
15 not going to hold you to it, unless you want me to be a
16 timekeeper. I'll be glad to.

17 MS. GORTON: No.

18 THE COURT: Just wondering how long you were going to
19 talk to them and whether we'll -- I'll let you make that
20 call then. If I need to take a break before the charge,
21 then we will. All right. If our jury's ready, you can have
22 them come in, Ms. Sims. Ms. Gorton, you going first and
23 then Rob? Is that the way it's going to work?

24 MS. GORTON: Yes, Your Honor.

25 MR. IANUARIO: (Affirmative nod).

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1 THE COURT: Okay.

2 (Whereupon the jury entered the courtroom at 10:42 am)

3 THE COURT: We're now ready to have the closing
4 statements of the attorneys. I told you at the beginning
5 what the lawyers have to say to you in their opening
6 statement and their closing statement is not evidence. All
7 the evidence has been presented to you.

8 I urge you to listen carefully as the attorneys address
9 you, though. I'm confident that all of them can give you
10 valuable information to perhaps help you in your
11 deliberations to take place soon. Ms. Gorton, you may
12 address the jury in your closing statement.

13 MS. GORTON: Thank you, Your Honor. Well, first of
14 all, I want to thank you all because this has been a
15 grueling couple of days. And I've done much shorter trials
16 where jurors are fading out. And every time I look over at
17 y'all to make sure you're still with us and that you're
18 still paying attention, without fail, all of you have been.
19 And I appreciate that.

20 Sometimes we get so caught up in our job as lawyers
21 that we forget that this is a stressful time for you all
22 too. There's other places you've got to be, your work's
23 piling up, your duties are piling up. And thank you.

24 You know how songs get caught in your head? Well, 5:00
25 this morning, Kenny Rogers. I'm not even a country music

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1 person, but Kenny Rogers started, you know, the you got to
2 know when to hold 'em, know when to fold 'em, know when to
3 walk away and know when to run. Well, that applies in so
4 many ways to this case.

5 And you all know what the chips are. You know that
6 from Fats Cline who came here and he testified as to what he
7 was looking at. Attempted murder. Why is attempted murder
8 nothing, for a minimum/mandatory? But it's not. It can be
9 anywhere from nothing, a slap on the hand to thirty years.

10 But burglary, first degree, going into a house without
11 permission, without consent, with intent to commit a crime
12 therein at night, you've got a fifteen year minimum
13 mandatory, two ways out.

14 For armed robbery -- oh, and it can go up to life. You
15 can get life for that. Armed robbery, ten to thirty.
16 Conspiracy, zero to five.

17 Possession of a gun, well, Smoke or Fats had that,
18 Smoke had that. These two don't have that because they
19 didn't possess a gun. The State's case is that they are
20 guilty of this by one way, knowledge that it was going to
21 happen and assistance with making it happen.

22 Everything else we agree on. Everything else happened.
23 Well, you know, back to Kenny Rogers for a minute, they've
24 gone all in. They've gone all in. The two you heard from,
25 they folded. The gunmen gets charges reduced. The guy in

CLOSING STATEMENTS - MS. GORTON

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1 orange, the guy with dreads, the guy with an empty shell,
2 ten minimum/mandatory. They've gone all in.

3 Now, I don't know if it's youth. I'm not sure. It's a
4 lot of faith in the system. It's a lot of faith that you
5 all will follow those instructions and not hold it against
6 them that they didn't testify.

7 It's a lot of faith that you all will hold it to
8 reasonable doubt. And that's the standard we're talking
9 about. You don't even need to worry about reasonable doubt
10 as to the other stuff, but reasonable doubt as to whether
11 they knew beforehand, whether they were part of the plan.
12 What was their knowledge before?

13 And I am so scared I'm going to miss a point that I've
14 written it all out because one of the things that scare me
15 is, from my perspective, the strongest case has been Ms.
16 Salisbury. She does a great job of presentation. She's
17 going to get the last word with you. And she -- she makes
18 great argument.

19 But you can't get caught up in arguments whether you
20 like me or not, whether you like Mr. Ianuario or not,
21 whether you like Ms. Salisbury or not, it's about the facts.
22 That's your job, to judge the facts.

23 And have they shown her knowledge prior to these
24 events? She's not on trial for staying with the gang after.
25 If she were charged with accessory after the fact, I'd say

CLOSING STATEMENTS - MS. GORTON

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1 we're guilty. She didn't tell. She left with them. If
2 that were the charge, we wouldn't be here.

3 But the charge are these events. So it's key to say
4 did she know beforehand? And how do we know she did? Well,
5 let's look at her story. And you all have her story. And
6 it's in evidence. And it will be sent back to you. She
7 gave that story early on. She hasn't waived from it. This
8 is her story.

9 You -- please don't hold it against her that she didn't
10 come and testify when we've got gang members coming in and
11 out of the courtroom. Please understand that.

12 She was going to buy marijuana, wasn't she? The
13 victims denied that. You heard from the two co-defendants.
14 That's what it was about. Why on earth would she make that
15 up when she was giving her statement to the detective? They
16 weren't asking her about marijuana. They weren't fishing
17 for that information. She offered it up. It was
18 incriminating, but she offered it up.

19 About that idea of going getting a ride, you heard that
20 it was normal for them to travel in groups. If she knew
21 that her friends were going to come barging in with guns why
22 would she need to take a friend in there with her? If she
23 knew she was going to be safe because her friends were
24 coming in armed, she wouldn't have needed a friend to go
25 with her.

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1 Now, why would they plan a robbery when she'd talked to
2 Drez and Drez said that two of his home-boys were going to
3 be hanging out with them? That seems like a really poor
4 time to plan a robbery.

5 What did Fats tell you? Fats told you the girls were
6 screaming and they were hysterical. Does that sound like
7 they knew, they were part of the plan? He said they pushed
8 them back in and they were screaming and hysterical. Well,
9 if they knew what was going on why would they be doing that?

10 You heard unrefuted testimony that girls are not part
11 of crimes in this gang. That was unrefuted. It's men's
12 business. They do that.

13 You heard unrefuted testimony that Raymond Young is the
14 leader, he's the King, right? Why would the head honcho be
15 driving around without the two babes in his car if they were
16 part of the plan? Yeah, we're going, we're down with this.
17 Wouldn't the head guy take the two girls in his car? Why
18 would they split it up like that? Well, the reason they
19 split it up like that is so that the three men could plan
20 the robbery in the car.

21 Now, you've heard about the cell phone and messages
22 coming through the cell phone. I don't know if that's true
23 or not. But you don't know who is sending the messages.
24 And it's possible that Envy was using her phone, if Envy was
25 part of this. She was the Queen. You've heard that. So

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1 she's the head of the women. If there was a woman involved,
2 I would submit to you that it's more likely the Queen than
3 some new peon.

4 Also, if the culture of the gang was that women weren't
5 part of the crime business why would the new girl on the
6 block come forward and say, hey, let's go do a robbery?
7 That wasn't their role.

8 Smoke was not there for the planning. Smoke, again, is
9 the guy with the dread -- the braids and the orange. And
10 when he was questioned about it he admitted that, no, he was
11 picked up. He wasn't actually there for the planning of it.
12 And when he was picked up which car did he get into? He got
13 into the car with Raymond and Fats. So, again, who was
14 planning it? Raymond was the one briefing him on how this
15 was going to go down. Of course he was. He was the leader.

16 You heard from Ms. Adams that De'Nia was at work eleven
17 to ten. She couldn't have been part of the plan, when they
18 said she was, getting ready for work. And you don't even
19 have to believe Ms. Adams on that. You can use your common
20 sense. If she's working as a waitress in a restaurant why
21 would she still be at the house, four, 5:00 at night when
22 we're going into the dinner hour? She'd be at work. She
23 couldn't have been there when it was planned.

24 Afterwards De'Nia gets no money. Really? She's the
25 one who came to you with this plan, she was the one with the

CLOSING STATEMENTS - MS. GORTON

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1 bright idea and she gets nothing? That's unrefuted.

2 Violations, six on one beating. I put that in there

3 because the obvious question is is if you weren't part of

4 the plan, why did you stay around them afterwards? You see

5 her sitting over there. You see these pictures. You see

6 the size of these girls. Six on one for six minutes. Is

7 that a good enough reason to do what happened beforehand?

8 That's not our question. Our question is asking why did she

9 stay? That's why.

10 Hoover, Detective Hoover, big guy. Oh, there he is

11 right there. Sorry, Detective Hoover. I didn't mean it in

12 a bad way. He's a trained investigator. What did he tell

13 you? He told you that he -- he sat there through Juwan

14 Lomax's statement. Then he took De'Nia's statement and he

15 believed her. He believed her.

16 Unfortunately it's not Detective Hoover's job to judge,

17 it's yours. It's not his job to say not guilty, it's yours.

18 But he believed her. He believed this statement. You'll

19 get to take this back to the jury room with you. Please

20 read it.

21 How'd she get hooked in Growth and Development? You

22 heard how that was presented to the public. You heard how

23 fairly savvy a thirty some odd year old believed it to be a

24 positive thing. Everything that she saw and observed

25 indicated that. She didn't see anything to the contrary.

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1 So is it -- are you sure beyond a reasonable doubt that
2 De'Nia knew otherwise? Or do you have reason to pause and
3 consider that maybe she really didn't know otherwise.

4 She really thought she was getting involved with a
5 positive organization. They earned her trust. They earned
6 her friendship. She told them about the love of her life
7 that she'd dated for three years and was doing something she
8 hoped would reunite them again. She was going over there
9 finally to smoke with him. And they used that. Weed? Oh,
10 yeah, we'll go. Did De'Nia set him up? Yeah. Did she know
11 it? No.

12 De'Nia was only part of this group one month prior.
13 You heard that. It had a legitimate appearance in the music
14 industry.

15 Investigator Brown, he came in. He was the gang
16 expert. Gave me quite a black eye. He says they're all
17 Gangster Disciples, we know that. Growth and
18 Development/Gangster Disciples, one in the same. All bad,
19 no good, crime.

20 He did tell you, though, that to the untrained eye, to
21 the untrained eye. She's not a trained eye. She had a
22 legitimate background in the music industry. She had worked
23 for three years helping OTK with their music business. This
24 seemed like a way for her to build on her career.

25 Fats -- now, Smoke, the guy in dreads, orange, eleven

CLOSING STATEMENTS - MS. GORTON

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1 charges, these, the actual gunman, there didn't seem to be a
2 lot left there, seemed like an empty shell, didn't he?
3 Didn't seem like there was a person left in there.

4 But Fats came in and it was painful to watch him. He
5 was in a horrible, horrible position. He had just pled in
6 the middle of our trial. Now, his obligation was to tell
7 the truth. And all these chips are riding on that.

8 You're pled that morning in the middle of the trial and
9 told to come to this trial. Tell the truth. But is any
10 part of that going to include she didn't know for these
11 chips? Is that part of the deal?

12 He told you how he got in. Now his reasons for going
13 in are different. His reasons for going in are family. He
14 said it was like a family to him. You don't have that here.
15 She's got family. She's got two families. Her lure was
16 music and management.

17 But he wasn't told at first. He thought it was Growth
18 and Development. He didn't know Growth and Development was
19 the same as Gangster Disciples. He told you he was not
20 aware of that until after he was blessed in. He was lured
21 with music and lies about what the group was about. He told
22 you he'd been with them for six months when he committed his
23 first violent crime, that one being this one.

24 How could she have known what these people were going
25 to get her into if women weren't made part of the world?

CLOSING STATEMENTS - MS. GORTON

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1 She didn't know until she was in a bad situation. Well, you
2 know what? Any other bad situation she could have maybe
3 gone and told the police, but this wasn't just any bad
4 situation and they knew that. They knew that it was Drez,
5 it was someone close to her.

6 And if Drez wasn't going to believe her when she talked
7 to him afterwards and made sure he was okay, if he wasn't
8 going to believe her after three years of a relationship,
9 who was? Who was going to believe her?

10 Adams told you it appeared to be legitimate. It
11 appeared to be positive. She's experienced. She promoted
12 music. She worked with kids. She has a kind heart. That's
13 not what the prosecutor talked to you about in her opening
14 statements. That's not the kind of person she was
15 describing.

16 Investigator Brown, I've got this note to myself, you
17 know, Kenny Rogers, save the trees, forest and the trees.
18 Investigator Brown, bless him, he's got a hard job. He
19 works with gangs day in, day out for seven years. But he's
20 lost his ability to see the trees. We need to get rid of
21 the forest, cut them all down, they're all bad. No
22 difference between Growth and Development and Gangster
23 Disciples.

24 Well, you know what? For the people who are in it,
25 there is a difference. The reason they're part of it is

CLOSING STATEMENTS - MR. IANUARIO

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1 because they think they're part of something good.

2 She's the tree. Bless him for wanting to take down the
3 forest, but she's the tree. Don't cut her down. Look at
4 her. Look at her and the evidence against her and the facts
5 in this case. And if you have to pause about whether or not
6 she knew beforehand what was going to happen, then your
7 verdict has to be not guilty.

8 THE COURT: Mr. Ianuario, you may address the jury in
9 your closing.

10 MR. IANUARIO: Thank you, Your Honor. I'd first like
11 to echo Ms. Gorton in thanking you for your service.
12 Without y'all being a part of this, the entire judicial
13 system wouldn't last. It is because you people in the
14 community that aren't biased by big words, fancy phrases,
15 political procedure, and rules of evidence, the honest
16 opinion, come in and sit down and look what's put to you and
17 make a decision.

18 Now, what information have you been given in here?
19 We've learned a lot about gangs this week. Gangs, they're
20 here in Greenville. And they're real. They're scary. And
21 we've seen their brazen.

22 They send people into the courtroom, they sit in and
23 watch and to intimidate and to report information back. We
24 watched a gentleman stand in front of Judge Welmaker dressed
25 in gang colors to enter a guilty plea and then take the

CLOSING STATEMENTS - MR. IANUARIO

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1 stand and testify against my client.. That's brazen.

2 Gangs are here. Thanks to people like Detective Brown,
3 and Investigator Hoover and Detective -- Investigator
4 Fortner, fine officers of the law enforcement community,
5 we're taking them out, but they're still here. And we still
6 have to fight them one fight at a time or in this case we
7 have two today.

8 We have no concrete evidence saying that Mr. Lomax and
9 Ms. Dawkins knew anything about what was going to happen.
10 There's no text messages that were recovered. There's no
11 phone conversations that have been recorded. All we have is
12 a bunch of statements from a bunch of questionable
13 characters.

14 And if you flip back and you take a look through
15 everything and everyone that we've talked to, we've got the
16 guys that were in the house. We've got conflicting
17 testimony as to whether or not there were drugs in there.
18 And they're not on trial for that. But what is most
19 important, none of those gentlemen saw Juwan Lomax there.
20 They can't even place him at the scene.

21 We talked to Tim Woodard, who was a resident of the
22 community. He saw a white Buick leave. He can't even put
23 Juwan Lomax driving the Buick. He didn't see De'Nia
24 Dawkins. All he saw was masked gunmen. Don't have any
25 evidence against them.

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(1 I don't want to get into, you know, the quality of the
2 investigators, the law enforcement officers' testimony. I
3 believe it's good. I don't have any issues with it. You
4 notice they all testified they had no concrete evidence that
5 these people knew beforehand about what was going to happen.

6 So now we take a look at the State's two best
7 witnesses, Smoke and Fat-So, the guy with the dreads. He
8 was a horrible witness. Didn't even speak up clearly,
9 wouldn't make eye contact.

10 And he said on the record that he knew that bad things
11 were going to happen to him for testifying. And then when I
12 asked him if he thought that maybe those things wouldn't
13 happen if he testified against my client, he said, yes. And
14 I said, would you repeat that? And he said, no. Either
15 he's got the worst memory in the world or he's saying
16 whatever it takes to save his ass.

17 And I believe that's what you heard from him. We don't
18 have anything other than his statement, somebody that's
19 already now a convicted felon and flipped back and forth on
20 the stand saying that my client and Ms. Dawkins knew what
21 was going to happen and they were part of the plan.

22 The next witness we have is Joshua Cline, Fat-So. You
23 could see a lot of struggle with him. He wanted to tell the
24 truth. He wanted to do the right thing. I believe he
25 didn't want to spend his life in prison, missing his baby

CLOSING STATEMENTS - MR. IANUARIO

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1 girl growing up.

2 But he still wore gang colors. And you heard even from
3 Detective Brown, gang colors is a sign, it's important.
4 People wear red, people wear blue, some people wear black
5 and gray. Maybe his mom bought him that shirt that morning,
6 he just happened to wear it, maybe not. That's a big
7 hypothetical. You all can figure out if he was wearing that
8 on purpose or not, but I find it a strange coincidence.

9 So what do we know about the Gangster Disciples? We
10 know that the women weren't involved. And clearly Juwan
11 Lomax is not a woman. If he is, he's an incredibly ugly
12 one.

13 But why would the guy who's a part of the plan drive
14 the women? Now, he's a peon in the group. He's the new
15 guy. He's the chauffeur. He drove his friend, his cousin,
16 De'Nia, over and those guys followed along as is customary
17 to do, go out in groups.

18 He wasn't included in the Altima because he didn't know
19 what was going on in the Altima. He didn't know that the
20 gunmen were going in, because as Josh Cline testified, he
21 parked behind them. His back was to the vehicle behind him.
22 He might not have even seen the robbery taking place.

23 I could have put him on the stand and tried to bring
24 out that testimony, but then I expose him to cross
25 examination. And further, with the people who have been

CLOSING STATEMENTS - MR. JANUARIO

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1 coming in and out of this courtroom, I expose him to grave
2 and serious danger in the real world.

3 I do want to say he's a fine gentleman. Just because I
4 didn't have anyone speak on his behalf like we had for Ms.
5 Dawkins, there's members of his church here, there's members
6 of his family here. He's had a long career in the music
7 industry. Hopefully he's still got a bright future in the
8 music industry when this is all said and done.

9 It all goes back to concrete evidence. And we don't
10 have anything except statements. And the most damning thing
11 that we have against Juwan Lomax is a statement that he,
12 himself, gave, that he gave in a basement, surrounded by
13 big, scary looking cops, all cops, and his mother had just
14 been taken to the hospital.

15 They'd been talking to him for three hours. He was
16 concerned about his mother. He probably would have signed
17 anything that was put in front of him. Whether or not that
18 was given freely and voluntarily is up to you.

19 However, we did hear on the stand Investigator Fortner
20 said that Juwan Lomax did attempt to retract his statement.
21 When I asked if he read it he said, no, no, that was
22 Detective Hoover's case. Don't you think it's important
23 that you should read somebody's statement when they're
24 trying to retract it and to at least give it some
25 credibility and follow it up?

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1 He tried to retract his statement and say, no, that's
2 not what I said. I was under duress, I was made false
3 promises. We don't know what happened in that room. We
4 can't prove what happened in that room. But he has
5 attempted to retract his statement. And that wasn't even
6 followed up on. So we can't even give his statement any
7 credibility.

8 The one statement that has the most credibility out of
9 everything was that of Ms. Dawkins. And her statement was,
10 I went to go buy weed. Juwan gave me a ride. I went in
11 there, gunmen busted through the door, I was screaming, I
12 ran outside, I got in the car.

13 And in that statement she says specifically, Juwan -- I
14 don't think they included Juwan because he acted like he
15 didn't know about it. Notice first off he says we did not
16 include Juwan. If it was her plan she would have said we.
17 He acted like he did not know anything about it.

18 He didn't know anything about it because he was sitting
19 in his car texting, playing games on his phone, whatever the
20 heck it is he was doing, not looking out his rear window,
21 not watching around because he was with his friends. His
22 friends aren't going to go rob somebody, at least not the
23 friends that he thought he had. Not the Growth and
24 Development friends.

25 The Gangster Disciple friends, that's when he found out

CLOSING STATEMENTS - MR. IANUARIO

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1 who his real friends were that night. He found out he
2 didn't have any. And he became a victim.

3 This whole thing is about gang violence. There's
4 victims, you, people that have their homes broken into and
5 people that are robbed. There's victims like them, the
6 innocent kids that are sucked into an evil plan to destroy
7 this community, to increase their numbers and to destroy
8 this community.

9 Now, right now the gang has their life in their hands
10 because they're here today with what happened with the gang.
11 But as soon as you walk back into that deliberation room,
12 you have the lives of these two children in your hands. You
13 have the chance to sit down and to discuss, and to look at
14 the evidence and to see if the State can prove beyond all
15 reasonable doubt that Mr. Lomax and Ms. Dawkins knew what
16 was going to take place that night and if they were involved
17 in it. I don't think they can do that, but that's your job.

18 When you walk out of that door their lives are in your
19 hands. And you've got the first chance to tell the gangs of
20 Greenville County, we're not going to let you take our
21 youth, we're not going to stand for this, the leaders of
22 these crimes are going down in trial, the innocent victims
23 will not be held accountable because we are going to save
24 this County from the gangs. Thank you.

25 THE COURT: Solicitor, you may address the jury in your

CLOSING STATEMENTS - MS. SALISBURY

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1 closing statement.

2 MS. SALISBURY: Thank you, Your Honor. May it please
3 the Court. Good morning, ladies and gentlemen. I know it's
4 been long, but it's been intense. And I appreciate your
5 patience. And I'll try my best to be brief.

6 I told you at the beginning of this trial and I think
7 you'll remember that you were going to hear about a lot of
8 stuff. And you've heard an awful lot about that lifestyle.
9 But I want you to remember some of the things that I've
10 mentioned.

11 This is a lifestyle that emphasizes crime as a source
12 of entertainment, a sport. You heard they got four hundred
13 dollars out of this robbery. This wasn't any cash cow.
14 This was for fun. It was for kicks. It was a lick.

15 I told you that this is a lifestyle where the people
16 involved specifically select their targets, targets that
17 they think will have money or something of value. That's
18 exactly what we heard.

19 I told you that this is a lifestyle about commitment.
20 You're expected to carry your weight. You're expected to
21 play your role. Exactly what they did. They had roles to
22 fill. And they did exactly as they were instructed. But
23 most important, I told you at the very beginning of this
24 trial that this lifestyle is about loyalty because it's only
25 when everyone involved maintains that loyalty, maintains

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

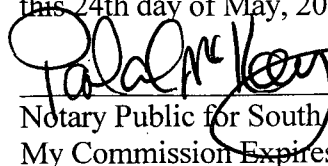
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of May, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 24th day of May, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.