

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY

RECEIVED

Edward B. Cottingham, Circuit Court Judge

FEB 27 2014

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

JEREMY FLEMING,

APPELLANT

APPELLATE CASE NO. 2013-001126

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2012-GS-26-02052

THE STATE OF SOUTH
CAROLINA,

Plaintiff,

vs.

JEREMY FLEMING,

Defendant.

Transcript of Record

May 14, 2013

May 15, 2013

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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MOTIONS

(May 14, 2013)

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THE COURT: Counsel for the Defense, I'm told that the last two jurors are here. I've been here since 9:15 ready to go. But two jurors were late.

Is there anything we need to get on the record before bringing the jury up for voir dire?

Mr. Fox?

MR. FOX: No, Your Honor. I guess this is as good a time as any. The one motion I would have pre-trial is to sequester witnesses other than the victim and the lead detective. I would request that.

THE COURT: That will be granted. And follow that, Josh.

MR. HOLFORD: Yes, sir, Your Honor.

THE COURT: What have you?

MR. FOX: Your Honor, that would be all at this stage. I think anything we need to take up prior to -- I don't believe there is any statement of the Defendant that's going to be introduced. I don't believe we need a Jackson v Denno hearing.

MR. HOLFORD: Your Honor, as to Jackson v Denno, I don't intend on introducing the statement. I do have the detective here that took the statement. If Mr. Fleming later wishes to testify, maybe in rebuttal, but would not be in my case in chief.

THE COURT: That's fine. Jackson v Denno is not

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MOTIONS

1 necessary.

2 MR. HOLFORD: Another issue as to the State, Your Honor,
3 CSI Jill Domogauer, one of our witnesses, her -- she is here,
4 she is present. She has the evidence but her baby has an
5 infection. If it gets worse, if the Benadryl doesn't work,
6 they're gonna have to rush the baby to the ER. I told her
7 that we would certainly accommodate her schedule.

8 THE COURT: Oh, sure.

9 MR. HOLFORD: I don't have her set to testify until later
10 in the trial so I don't see that being an issue.

11 THE COURT: If it is a issue, we're gonna accommodate her
12 in every possible way.

13 MR. HOLFORD: I just wanted to make that clear for Your
14 Honor.

15 THE COURT: That's clear.

16 MR. HOLFORD: And then also, there are a couple of people
17 observing; they are not witnesses but they're clerks with our
18 office and they're observing. I just wanted Your Honor to ---

19 THE COURT: They're entitled to remain in the courtroom.
20 Just both of you follow your rule as to sequestration.

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

22 MR. FOX: Yes, sir.

23 THE COURT: All right. Thank you for those matters.

24 Now, is there any particular voir dire requested by the
25 State?

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MOTIONS

8

1 MR. HOLFORD: No specific voir dire other than the one
2 that one Your Honor normally gives.

3 THE COURT: How about Mr. Fox?

4 MR. FOX: Your Honor, I always request you would ask if
5 any member of the jury panel has ever been the victim of a
6 crime or if a close family member or ---

7 THE COURT: Let's qualify that by saying violent crime.

8 MR. FOX: That's fine, Your Honor.

9 THE COURT: All right. One further thing, anybody have
10 -- y'all have any witness list you want me to voir dire? I
11 don't voir dire witnesses unless you ask me to.

12 MR. HOLFORD: I handed up a witness list.

13 THE COURT: Okay. How about you, Mr. Fox?

14 MR. FOX: Your Honor, it would be Mr. Fleming would be
15 the only potential witness I anticipate. So, I don't have any
16 to hand up to you.

17 THE COURT: All right. Is there anything else,
18 gentlemen?

19 MR. HOLFORD: Nothing from the State, Your Honor.

20 THE COURT: All right. For the purpose of scheduling, we
21 will break at 3:30 tomorrow. I have a dental appointment
22 scheduled for 4:30. But other than that, we'll go as long as
23 necessary.

24 How long do you think the case will take, Mr. Holford;
25 have you got any idea?

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BY THE COURT

9

1 MR. HOLFORD: Your Honor, I believe we should -- the
2 State's case will be over by tomorrow at lunchtime I would
3 say.

4 THE COURT: All right. That's good. Tell Ms. Livesay to
5 be ready. Convey to her I anticipate trying her case with
6 Galmore Thursday.

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: And if necessary, I'll start it Friday.

9 All right. Be seated, gentlemen and thank you.

10 Bring up my jury please.

11 (REPORTER'S NOTE: Brief break in the record for jury panel to
12 arrive.)

13 *****OFF THE RECORD*****

14 (On the Record.)

15 (REPORTER'S NOTE: The jury panel enters the courtroom. 9:55
16 A.M.)

17 THE COURT: Mr. Bailiff, are all forty jurors present?
18 Two were not here at 9:30 when we started. Did they show up?

19 BAILIFF: Yes, sir.

20 THE COURT: Are you saying then that the entire panel is
21 now here?

22 BAILIFF: Yes, sir.

23 THE COURT: Ladies and gentlemen of the jury, good
24 morning to you. I recognize that your time is valuable and
25 we'll respect that as best we can. I want you to know that

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BY THE COURT

10

1 this Judge, my associate Law Clerk and all the witnesses were
2 here ready to go at 9:30. And the only reason we were delayed
3 is that some two were late getting here when we asked for them
4 at that time. But I would respectfully remind all jurors as
5 we go forward, please respect the Court's admonition to be on
6 time. It's not so bad that you're on time but we can't start
7 without you and you are inconveniencing your fellow jurors if
8 you're not here at the requested time. I respectfully ask
9 that you please make every effort to be present when -- at the
10 designated time.

11 By way of introduction, I'm Judge Cottingham from
12 Bennettsville, South Carolina, in my twenty-ninth year on the
13 bench having served here in this beautiful county many times
14 over the past twenty-nine years. You in Horry County have an
15 excellent staff, an excellent bar, a wonderful Sheriff's
16 Department and all Circuit Judges, for those reasons and
17 others, always love to come to Horry County.

18 This young man on my left is Trey Jones of Columbia, a
19 graduate of the law school, a member of the South Carolina
20 Bar, serving as my associate and law clerk and doing a
21 wonderful job in those categories.

22 I want to thank all of you for your presence here today
23 and be assured that I am aware that all of you are here at
24 considerable inconvenience to your families, to your daily
25 pursuits, to your work.

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BY THE COURT

11

1 Under our system of jurisprudence, we say that an
2 individual shall not be deprived of his or her liberty not for
3 one day unless and until a jury of their peers has convicted
4 them by evidence beyond a reasonable doubt. That concept
5 protects your liberty and with equal importance, it protects
6 mine. So, I'm delighted to be here this morning and I thank
7 all of you for your services. From your number this morning,
8 we will be selecting twelve jurors and two alternates to
9 serve. The rest of you not selected will be given additional
10 instructions for the rest of the week.

11 All right. Solicitor, call your case but first -- call
12 your case.

13 MR. HOLFORD: Yes, Your Honor. This is the State of
14 South Carolina, County of Horry versus Jeremy Fleming, two
15 true billed indictments, 2012-GS-26-02052 for burglary in the
16 first degree and a true billed indictment 2012-GS-26-02053 for
17 attempted murder.

18 THE COURT: All right. Mr. Fox, you represent the
19 Defendant?

20 MR. FOX: Yes, Your Honor.

21 THE COURT: Is the Defendant ready for trial?

22 MR. FOX: We are, Your Honor.

23 THE COURT: Are you now ready for the juror selection
24 process?

25 MR. FOX: Yes, sir.

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BY THE COURT

12

1 THE COURT: All right. Ladies and gentlemen, the State
2 of South Carolina has called this case as against the
3 Defendant Fleming, upon two documents that I hold in my hand
4 known as an indictment. One indictment alleges that he
5 committed burglary in the first degree. The second indictment
6 alleges that he committed attempted burglary. To these
7 indictments, this Defendant specifically pleads not guilty,
8 thereby, placing the burden of proof upon the State of South
9 Carolina of proving him guilty, if they can, beyond a
10 reasonable doubt. Now, these indictments are simply the
11 formal way by which any Defendant is brought to trial. The
12 allegations in these documents are simply that, allegations.
13 They are in no sense any evidence. Evidence comes from this
14 jury box from witnesses under oath and from such other matters
15 as may be introduced in the trial of this case.

16 Now, the attorneys for the State and Mr. Fox for the
17 Defendant desire from your numbers twelve jurors. Twelve
18 jurors that can say under their oath, I have no enemies to
19 punish, I have no friends to reward, I have no interest in the
20 case, I am not connected with any of the participants in any
21 way, and a juror who says under oath if I am one of the twelve
22 jurors selected, I will base my verdict on the law and
23 evidence in this courtroom and from no other place. Even
24 prior to beginning in the internet world that we live in, I
25 tell you now, if selected, it is a violation of your oath if

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VOIR DIRE

1 you make any inquiry on the internet about any proceeding in
2 this courtroom. This is very important that you understand
3 this. It is because in this courthouse a few months ago in a
4 serious case, been tried for a week, Bailiff stopped me and
5 said, Judge, I got a problem. I said, what is that? He said
6 a juror stopped me and had made inquiry on the internet about
7 an issue and she wants to share with the jury what she found.
8 Fortunately, she had not done that. Had she done that, that
9 entire case would've had to have been dismissed and we'd have
10 had to start over at some future date. Obviously, I dismissed
11 her from the jury with appropriate sanctions. I give you that
12 as an illustration of what you must not do as jurors because
13 whatever your verdict is, it's got to be on the law and
14 evidence heard in this courtroom.

15 VOIR DIRE:

16 THE COURT: Now, my first inquiry is as follows: Are you
17 connected in any way with this Defendant Fleming? Are you
18 related by blood or connected by marriage to Jeremy Fleming?

19 Mr. Fleming, please stand and face the jury.

20 Do any of you have any close or personal connections with
21 Mr. Fleming, such as church members, neighbors, co-workers?
22 If so, please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: Do any of you know the Defendant Jeremy
25 Fleming in any capacity whatsoever? I ask if so,

VOIR DIRE

1 respectfully, that you stand.

2 (REPORTER'S NOTE: No response)

3 THE COURT: The alleged victim in this case with
4 reference to the attempted murder and burglary in the first
5 degree is David Moran.

6 Is Mr. Moran present, Solicitor?

7 MR. HOLFORD: Your Honor, he is present, he did not wish
8 to be in the courtroom during jury selection but he will be
9 here for the remainder of the trial.

10 THE COURT: All right. Are any of you related by blood
11 or connected by marriage with the alleged victim, David Moran?
12 Please stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Do any of you -- do any of you have any close
15 personal connections with the alleged victim David Moran such
16 as coworker, church worker, neighbor?

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Do any of you know the alleged victim David
19 Moran in any capacity whatsoever?

20 (REPORTER'S NOTE: No response.)

21 THE COURT: These alleged events are said to have
22 occurred in October of 2011, there being an allegation that
23 the Defendant committed burglary in the first degree on the
24 residence of Mr. Moran and that attempted murder, all of which
25 is denied. I state that solely for the following inquiry,

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15

VOIR DIRE

1 would any of you have heard anything about it, discussed it in
2 any way, read it in the newspaper, seen it on T.V.? If
3 anybody has any thoughts about it or had any discussion with
4 anyone, please stand.

5 Come forward please. The individual who is standing,
6 come forward.

7 Counsel, you may join me at the bench.

8 May I have your name?

9 JUROR 342: Marshall Staton.

10 THE COURT: And your juror number?

11 JUROR 342: 342.

12 THE COURT: Real quiet. What do you know about this?

13 JUROR 342: I work at Channel 13; I'm a camera guy. I
14 don't know this particular case. I may or may not have gone
15 to it, I don't know.

16 THE COURT: You don't know anything about it though?

17 JUROR 342: I may have read something or might've heard
18 some details about it but ---

19 THE COURT: Can you dismiss what you may've heard and
20 base your verdict on the law and evidence in this case?

21 JUROR 342: Probably not.

22 THE COURT: Why not?

23 JUROR 342: I've seen a lot of these things.

24 THE COURT: You're not saying that just to get out of
25 jury duty, are you?

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VOIR DIRE

16

1 JUROR 342: I'm not.

2 THE COURT: I can't believe that you can't listen to the
3 law and evidence in this case and be a fair -- but when you
4 tell you cannot, I'll have to excuse you but I'm disappointed
5 in you. You can leave. Be around for further instructions.
6 Call in after 6 o'clock tonight for further instructions.

7 JUROR 342: Yes, sir.

8 THE COURT: Counsel, come forward.

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

11 THE COURT: Now, ladies and gentlemen, for my
12 information, have you or any member of your immediate family
13 been the victim of a violent crime -- I use the word violent -
14 - please stand.

15 Come forward, please, ma'am. Join me at the bench,
16 please.

17 Good morning to you.

18 JUROR 320: Good morning.

19 May I have your name?

20 JUROR 320: Amanda Scolaro.

21 THE COURT: Juror number, please.

22 JUROR 320: 320.

23 THE COURT: What is your response, please, very quietly.

24 JUROR 320: My mother-in-law Laura Ling was murdered by
25 Steven Stanko ---

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17

VOIR DIRE

1 THE COURT: Would that affect your ability to be a fair
2 juror in this case?

3 JUROR 320: I don't think so.

4 THE COURT: Pardon me?

5 JUROR 320: I don't think so.

6 THE COURT: You can set that aside and base your verdict
7 on the law and evidence in this case?

8 JUROR 320: Yes, sir.

9 THE COURT: Pardon me?

10 JUROR 320: Yes, sir.

11 THE COURT: Court Reporter, did you get that reply?

12 COURT REPORTER: Yes, sir.

13 THE COURT: You are sure now, even though your family has
14 had these problems, you will base your verdict on the law and
15 evidence in this case?

16 JUROR 320: Yes, sir.

17 THE COURT: Thank you. You're qualified if selected.

18 MR. RICHARDSON: And that was Juror Number 320, Your
19 Honor?

20 THE COURT: Yes. All right. Solicitor, other than
21 asking some questions about potential witnesses, anything
22 further from the State?

23 MR. HOLFORD: Not for specific inquiry from the State,
24 Your Honor, other than knowing myself and Mr. Richardson.

25 THE COURT: I'll get that. I'm gonna have you identify

VOIR DIRE

1 yourself in just a minute.

2 Mr. Fox, any other inquiries?

3 MR. FOX: Judge, we need to approach -- not inquiry but
4 we do need to approach.

5 THE COURT: Yes, sir.

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

9 THE COURT: All right. Any other inquiry other than the
10 jury list, Mr. Fox?

11 MR. FOX: No, sir, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, my associate
13 here will be calling these various names of potential
14 witnesses that may or may not be called for one side or the
15 other. But my inquiry is do any of you have any special
16 connections with the jurors, such as close personal friend,
17 neighbor, relative -- if you have a -- if just know him, I'm
18 not interested in that but if your relationship is of a close
19 nature, we and the attorneys need to know that. We gonna call
20 three names at a time and if your response to any of these
21 three, I ask respectfully that you stand.

22 LAW CLERK: Detective Allen Large, Horry County Police
23 Department; Detective Damon Vestcovi, V-E-S-T-C-O-V-I, Horry
24 County Police Department; Crime Scene Investigator Jill
25 Domogauer, D-O-M-O-G-A-U-E-R, Horry County Police Department.

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VOIR DIRE

1 THE COURT: Come forward.

2 What is your name, please?

3 JUROR 47: Todd Campbell -- Malcolm Campbell.

4 THE COURT: And juror number?

5 JUROR 47: 47.

6 THE COURT: What was your response?

7 JUROR 47: I stood for Officer Damon Vestcovi.

8 THE COURT: What is your position with him?

9 JUROR 47: He's my brother-in-law.

10 THE COURT: Your brother-in-law. Can you view your
11 brother-in-law's testimony like any other witness or will you
12 be persuaded by what he says?

13 JUROR 47: I feel I can, sir.

14 THE COURT: Sir?

15 JUROR 47: I feel I can.

16 THE COURT: You feel like that you can do that even
17 though he's your brother-in-law?

18 JUROR 47: Yes, sir.

19 THE COURT: I think you can too.

20 JUROR 47: Absolutely.

21 THE COURT: I thank you for coming forward, though.

22 I appreciate your answer. All these attorneys for the
23 State and Defense, they just want somebody who under oath can
24 say I'm gonna base this verdict on the law and evidence heard
25 in this courtroom. All right.

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20

VOIR DIRE

1 MR. RICHARDSON: Thank you, Judge.

2 THE COURT: All right. Proceed.

3 MR. FOX: Your Honor.

4 THE COURT: Yes, sir?

5 MR. FOX: If I need to do this at the end, after we pick,
6 I would make a motion that Mr. Campbell be excused for cause
7 because he's very close -- I'm sure he does -- everyone feels
8 they can be fair. I don't take -- I do take him at his word;
9 however, it is a very close family relationship between
10 himself and one of the people ---

11 THE COURT: Well, no, brother-in-law, I take him at his
12 word. I'm impressed with his position, his posture, I think
13 he can do exactly as to what he said though I understand your
14 position, Mr. Fox, which is respectfully denied.

15 MR. FOX: Yes, sir.

16 LAW CLERK: John G.D. Roberts, SLED; Kenny LeRay, L-E-R-
17 A-Y; Mary Linder, L-I-N-D-E-R; Taylor Smith; Samantha
18 Topolski, T-O-P-O-L-S-K-I; Tyler Topolski, T-O-P-O-L-S-K-I;
19 Eric James Collins -- Solicitor, can you pronounce that one?

20 MR. HOLFORD: That's Abdul Hasan Furquan.

21 THE COURT: Congratulations.

22 All right. That concludes the potential witness list.
23 Anything further, Mr. Holford, prior to selection?

24 MR. HOLFORD: Your Honor, I just ask if anyone here knows
25 myself, my name is ---

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21

VOIR DIRE

1 THE COURT: Well, I'm getting ready to do that. Other
2 than that -- The State is represented by Josh Holford and Brad
3 Richardson. Any of you have any close personal relationship
4 with these two folks? And in this connection, let me ask you
5 this, Do any of you have any close family members now employed
6 by the Solicitor's Office of the Fifteenth Circuit comprising
7 Horry and Georgetown Counties?

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Mr. Fox?

10 MR. FOX: Thank you, Your Honor.

11 My name is Eric Fox. I'm with the Fifteenth Circuit
12 Public Defender's Office.

13 THE COURT: Do any of you have any close family members
14 associated or employed with the Public Defender's Office of
15 the Fifteenth Circuit comprising Horry and Georgetown?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: All right. Gentlemen, as I understand,
18 there's some difficulty in the jury thing. You may retire and
19 look at your jury for a few minutes. The jury, of course, is
20 to be five and ten; two alternates, one and two as to each
21 alternate.

22 Do you need to take a break or sit there? What do you
23 need?

24 MR. RICHARDSON: Your Honor, I think it'll just be quasi
25 difficult as we go through the numbers. We just probably need

JURY SELECTION

1 a minute or so longer on each one.

2 THE COURT: I understand.

3 MR. RICHARDSON: That, I think ---

4 THE COURT: What you want me to do?

5 MR. HOLFORD: Your Honor, there's nothing at this time
6 that we need to really go through. It's just when each juror
7 number is called, they're not listed in the -- they're not
8 listed by their number. So, it's gonna take a second to go
9 through and find the number.

10 THE COURT: Okay. So, we can do that. We can go ahead
11 and call the jury and I'll let you have a few seconds and look
12 and you, too, Mr. Fox; is that appropriate?

13 MR. HOLFORD: Yes, Your Honor.

14 MR. FOX: Yes, sir. That's fine.

15 THE COURT: Well, that's good. Proceed.

16 JURY SELECTION:

17 CLERK: When I call your juror number and name, if you'll
18 come to the front of the courtroom, turn around and face the
19 back of the courtroom.

20 233, Eric Madore.

21 What say the State?

22 JUROR 233: South Carolina.

23 CLERK: If you'll stand right there, I have to inquire of
24 each side.

25 MR. HOLFORD: Please present this juror.

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23

JURY SELECTION

1 CLERK: Defense?

2 MR. FOX: Please seat this juror.

3 CLERK: Please be seated in the jury box.

4 214, Anne Langlo.

5 What say the State?

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MR. FOX: Please excuse this juror.

9 CLERK: You are excused from this particular case. You
10 may go back and have a seat.

11 15, Alan Bailey.

12 What say the State?

13 MR. HOLFORD: Please present this juror.

14 CLERK: Defense?

15 MR. FOX: Please excuse this juror.

16 CLERK: You are excused from this particular case. Go
17 back and have a seat.

18 198, Joshua Kenny.

19 What say the State?

20 MR. HOLFORD: Please present this juror.

21 CLERK: Defense?

22 MR. FOX: Please seat this juror.

23 CLERK: Please be seated in the jury box.

24 93, Kim Dupree.

25 MR. RICHARDSON: Number 93, Madame Clerk?

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JURY SELECTION

24

1 CLERK: Yes, sir.

2 MR. RICHARDSON: Thank you, ma'am.

3 CLERK: What say the State?

4 MR. HOLFORD: Please present this juror.

5 CLERK: Defense?

6 MR. FOX: Please excuse this juror.

7 CLERK: You are excused from this particular case.

8 354, Denise Thomas.

9 What say the State?

10 MR. HOLFORD: Please present this juror.

11 CLERK: Defense?

12 MR. FOX: Please seat this juror.

13 CLERK: Please be seated in the jury box.

14 132, Robert Gravina.

15 What say the State?

16 MR. HOLFORD: Please present this juror.

17 CLERK: Defense?

18 Please excuse this juror.

19 CLERK: You are excused from this particular case.

20 320, Amanda Scolaro.

21 What say the State?

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MR. FOX: Please excuse this juror.

25 CLERK: You are excused from this particular case.

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JURY SELECTION

1 310, Michael Rue.

2 What say the State?

3 MR. HOLFORD: Please present this juror.

4 CLERK: Defense?

5 MR. FOX: I'm sorry, Madame Clerk, the number again?

6 CLERK: 310.

7 MR. FOX: Please seat this juror.

8 CLERK: Please be seated in the jury box.

9 44, Sharron Butler.

10 What say the State?

11 MR. HOLFORD: Please present this juror.

12 CLERK: Defense?

13 MR. FOX: Please seat this juror.

14 CLERK: Please be seated in the jury box.

15 260, Lambertus Mol.

16 What say the State?

17 MR. HOLFORD: Your Honor, may we inquire as to his work?

18 THE COURT: Yes, sir.

19 Where do you work, please?

20 JUROR 260: South Beach Resorts in maintenance.

21 THE COURT: Are you married?

22 JUROR 260: Yes, sir.

23 THE COURT: Where does your spouse -- wife work, please?

24 JUROR 260: She doesn't work.

25 THE COURT: Thank you.

JURY SELECTION

1 Is that your inquiry, Mr. Holford?

2 MR. HOLFORD: Thank you, Your Honor.

3 THE COURT: And I would give you the same courtesy, Mr.
4 Fox?

5 MR. FOX: I'm fine; thank you, Your Honor.

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MR. FOX: Please seat this juror.

9 CLERK: Please be seated in the jury box.

10 341, Eugene Stanton.

11 What say the State?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. FOX: Please seat this juror.

15 CLERK: Please be seated in the jury box.

16 20, Greg Barsnica.

17 What say the State?

18 MR. HOLFORD: Please excuse this juror.

19 CLERK: You are excused from this particular case.

20 3, Winston Akers.

21 MR. RICHARDSON: What number?

22 CLERK: 3.

23 MR. RICHARDSON: 3, okay. Thank you. Sorry.

24 CLERK: What say the State?

25 MR. HOLFORD: Please present this juror.

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JURY SELECTION

1 CLERK: Defense?

2 MR. FOX: Please excuse this juror.

3 CLERK: You are excused from this particular case.

4 367, Eugene Verna.

5 What say the State?

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MR. FOX: Please excuse this juror.

9 CLERK: You are excused from this particular case.

10 108, Michael Ferris.

11 What say the State?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. FOX: Please seat this juror.

15 CLERK: Please be seated in the jury box.

16 261, Robert Morrison.

17 What say the State?

18 MR. HOLFORD: Please present this juror.

19 CLERK: Defense?

20 MR. FOX: One moment, please. The number again, Madame

21 Clerk?

22 CLERK: 261.

23 MR. FOX: 261. Thank you. Please seat this juror.

24 CLERK: Please be seated in the jury box.

25 239, Sylvia Martin.

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JURY SELECTION

28

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 CLERK: Defense?

4 MR. FOX: Please excuse this juror.

5 CLERK: You are excused from this particular case.

6 122, Jeffrey Gibbins.

7 What say the State?

8 MR. HOLFORD: Please present this juror.

9 CLERK: Defense?

10 MR. FOX: Please seat this juror.

11 CLERK: Please be seated in the jury box.

12 288, Tracy Prevatte.

13 What say the State?

14 MR. HOLFORD: Please present this juror.

15 CLERK: Defense?

16 MR. FOX: Please excuse this juror.

17 CLERK: You are excused from this particular case.

18 97, Michael Dickens.

19 MR. RICHARDSON: Is that 197?

20 CLERK: 197 -- I'm sorry -- 97.

21 MR. RICHARDSON: 97, okay.

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MR. FOX: Please seat this juror.

25 CLERK: Please be seated in the jury box.

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JURY SELECTION

1 200, Nicole Kindzia.

2 JUROR 200: Kindzia.

3 CLERK: What say the State?

4 MR. HOLFORD: Please present this juror.

5 CLERK: Defense?

6 MR. FOX: Please seat this juror.

7 CLERK: Please be seated in the jury box.

8 THE COURT: That is the twelfth juror and will constitute

9 the jury as selected. We'll now have two alternates. The
10 strike as to each one is one and two. Proceed.

11 CLERK: 334, Jesse Smithwick.

12 What say the State?

13 MR. HOLFORD: Your Honor, may I inquire as to his work?

14 THE COURT: Where do you work, sir?

15 JUROR 334: I work at Chick-fil-A.

16 THE COURT: Where are you?

17 JUROR 334: Murrells Inlet.

18 THE COURT: And where does your wife work?

19 JUROR 334: I'm not married.

20 THE COURT: Okay. Thank you.

21 MR. HOLFORD: Please present this juror.

22 CLERK: Defense?

23 MR. FOX: Please seat this juror.

24 CLERK: Please be seated in the jury box.

25 THE COURT: He will be seated as Alternate Number 1.

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JURY SELECTION

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1 CLERK: 228, Walton Long.

2 What say the State?

3 MR. HOLFORD: Please present this juror.

4 CLERK: Defense?

5 MR. FOX: Please excuse this juror.

6 THE COURT: You're excused from this particular case.

7 263, Paula Muti.

8 What say the State?

9 MR. HOLFORD: Please present this juror.

10 CLERK: Defense?

11 MR. FOX: Please excuse Ms. Muti.

12 CLERK: You're excused from this particular case.

13 349, Theresa Strebe.

14 What say the State?

15 MR. HOLFORD: Please present this juror.

16 CLERK: Defense?

17 MR. FOX: Please seat this juror.

18 CLERK: Please be seated in the jury box.

19 THE COURT: That will constitute the jury.

20 Bailiff, please escort my jury to the jury room just a

21 moment and I'll be calling them right back out.

22 BAILIFF: Yes, sir.

23 (REPORTER'S NOTE: The jury exits courtroom. 10:32 A.M.)

24 THE COURT: First inquiry, any position with reference to
25 the -- to this jury from the State?

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JURY SELECTION

1 MR. HOLFORD: Not from the State, Your Honor.

2 THE COURT: Or the Defense?

3 MR. FOX: No, Your Honor.

4 THE COURT: The record will so reflect that the jury will
5 stand as selected.

6 Ladies and gentlemen, again, I express to you my
7 appreciation for your attendance here this morning. You are
8 excused.

9 Nobody don't need them this afternoon, do they, Madame
10 Clerk?

11 CLERK: No, sir.

12 THE COURT: You are excused for the rest of the day with
13 the understanding that you are to call in after six o'clock
14 tonight for further instructions. If you don't understand the
15 call-in please check with my clerk before you leave. Other
16 than that, you may go. Have a good day and thank you for your
17 appearance.

18 (REPORTER'S NOTE: Remaining jury panel exits courtroom.

19 10:34 A.M.)

20 THE COURT: All right, sir. Are we now ready to proceed?

21 MR. HOLFORD: Your Honor, if I may have five minutes to
22 use the restroom and then get the witnesses?

23 THE COURT: Sure. Be sure now, we're gonna break -- go
24 ahead in five minutes now. Make sure you adhere to the
25 sequestration order. And Mr. Fox, that applies to you.

MOTIONS

1 Obviously, the main investigator will remain in the courtroom.

2 MR. HOLFORD: As will the victim, Your Honor.

3 THE COURT: All right, sir. You may be excused. Hurry
4 back.

5 (10:35 A.M.)

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

7 (On the Record.)

8 (10:48 A.M.)

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

11 MOTIONS:

12 THE COURT: Solicitor, are you ready to go?

13 MR. HOLFORD: Your Honor, I believe we have a couple of
14 pre-trial motions just to bring before the Court.

15 THE COURT: Hold on. Sam, wait a minute.

16 What are they?

17 MR. HOLFORD: It's just one of -- one of my witnesses,
18 Eric Collins, who will be testifying does have a criminal
19 record. I have provided Defense counsel with that record.
20 It's a possession with intent to distribute marijuana. He was
21 convicted in 2012, five years suspended to ninety days and
22 three years probation.

23 THE COURT: All right, sir.

24 MR. HOLFORD: I believe it's the Defense's position that
25 there would be able to question him on that.

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MOTIONS

1 MR. FOX: Without question, Your Honor, it carries more
2 than a year in prison within a ten-year ---

3 THE COURT: I will permit it.

4 MR. HOLFORD: Also, in running NCICs, we did not return
5 the search but I believe Mr. Fox has magistrate level offenses
6 that he found on one of our other witnesses.

7 THE COURT: Not gonna ---

8 MR. FOX: Judge, but it's for -- it's Samantha Topolski
9 ---

10 THE COURT: Sir?

11 MR. FOX: It's on witness Samantha Topolski, she has
12 three magistrate court convictions for shoplifting which has
13 been held to be a crime of dishonesty, which is subject to
14 impeachment.

15 THE COURT: It is if it's -- even though it's
16 magistrate's if it's subject of dishonesty, it's entitled to,
17 yes ---

18 MR. HOLFORD: Yes, Your Honor.

19 THE COURT: Ordinarily, it would not be but that caveat
20 makes it so.

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: All right. Who has those charges?

23 MR. HOLFORD: Eric Collins has the marijuana charge and
24 Samantha Topolski has the shoplifting charges.

25 THE COURT: Yes, sir. Crimes of dishonesty are

MOTIONS

1 admissible as to credibility.

2 MR. HOLFORD: The State agrees, Your Honor.

3 THE COURT: All right. What else?

4 MR. FOX: Your Honor, and just to clarify, Witness Number
5 12, which is Abdul Furquan, I understand he also -- I just
6 want to clarify, we agreed that is some things but if we could
7 clarify what exactly he has in his background.

8 MR. HOLFORD: Your Honor, if we may address that at a
9 later time if the State decides to call Mr. Furquan.

10 THE COURT: We'll do it at a later time.

11 MR. HOLFORD: He's the CoDefendant in this case and he
12 does have a criminal history.

13 THE COURT: All right. We'll address it at a later time.

14 MR. FOX: That's fine, Your Honor.

15 THE COURT: All right. Anything further?

16 MR. FOX: Your Honor, I do have just a couple of kind of
17 bookkeeping things. There is ---

18 THE COURT: One minute, are you through, Mr. Holford?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Yes, sir.

21 MR. FOX: Judge, there are a couple of witnesses that I
22 believe will testify that they knew -- that were at the scene
23 when these events happened that will testify and they were
24 asked in conversation with police how they knew the Defendant
25 and in their recorded statements with the police, they make

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MOTIONS

1 reference to knowing him or knowing that he had been in prison
2 previously. I'd simply ask Mr. Holford and he said he would
3 caution his witnesses not to mention ---

4 THE COURT: And Mr. Holford knows to do that. I rely on
5 Mr. Holford's assertion.

6 MR. FOX: And I do too, Your Honor. He said he would do
7 that and I ---

8 THE COURT: All right.

9 MR. FOX: And finally, Judge, there was a search warrant
10 issued in this case that resulted in some pieces of evidence I
11 expect will be introduced, some gloves, a weapon, bandanas. I
12 have seen -- I have been provided with and seen a copy of a
13 search warrant but I think I -- as a precaution, I would make
14 a motion to suppress those items and have the Court make a
15 finding, take testimony as to the search warrant affidavit and
16 make a finding as to its validity.

17 THE COURT: I'm just curious, why didn't we do this this
18 morning when I asked you were there any motions prior to the
19 jury selection?

20 MR. FOX: We should have, Your Honor. I apologize.

21 THE COURT: Well, we've got a jury selected now but
22 you're entitled to it but this is why I asked you this morning
23 before a jury -- I hate to keep the jury waiting but ---

24 MR. FOX: Yes, sir. I do too.

25 THE COURT: Is that witness here, Mr. Holford?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 MR. HOLFORD: Yes, sir, Your Honor, he's here. As to
2 reminding the witnesses not to testify about Mr. Fleming's
3 prior record, they've all been instructed.

4 THE COURT: Okay. Let's do the search warrant issue.

5 MR. HOLFORD: The State calls Detective Allen Large to
6 the stand.

7 DETECTIVE ALLEN LARGE, HAVING BEEN

8 SWORN, TESTIFIED AS FOLLOWS:

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

10 THE COURT: Do you have a copy of the warrant so ---

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: May I have it?

13 MR. HOLFORD: Would you like to see it?

14 THE COURT: I do if you have a copy.

15 DIRECT EXAMINATION OF DETECTIVE ALLEN LARGE BY MR. HOLFORD:

16 Q: Detective Large, where are you currently employed?

17 A: I am currently employed at the Horry County Police
18 Department.

19 Q: And did you have incident to do a search on October 19,
20 2011?

21 A: Yes, sir; I did.

22 Q: And do you remember where that search was performed?

23 A: In the Myrtle Beach section of Horry County, off of 707.

24 Q: Do you know the exact address?

25 A: I would have to look at the search warrant, but it was a

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 trailer park, a trailer that was on the corner -- I forgot the
2 exact roadway.

3 MR. HOLFORD: Your Honor, may I approach to refresh his
4 recollection?

5 THE COURT: You may.

6 BY MR. HOLFORD:

7 Q: Detective Large, I'm handing you the return that has the
8 address on it. Can you just state the address for the record
9 that was searched?

10 A: It'd be [REDACTED], [REDACTED], Myrtle Beach, South
11 Carolina.

12 Q: And how did you obtain consent to search that residence?

13 A: On this particular thing, we obtained a search warrant
14 based on an ongoing investigation of an incident that occurred
15 back on the 16th of October where there was a burglary and an
16 attempted murder case that we were investigating. We got
17 information on possible suspect location. We went to the --
18 did some research on the possible two suspects. Also got
19 information by going by the residence and confirming the exact
20 location of it at the -- that why we got two actual addresses
21 here, [REDACTED], [REDACTED] is because there was two
22 different markings to that particular address. So, we
23 confirmed based on a witness' testimony that the two subjects
24 were staying at that residence.

25 Q: And that copy of the search warrant that you handed me

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 that I just handed up to the Court, was that the search
2 warrant you obtained?

3 A: Yes, sir.

4 Q: And do you recall which judge signed that search warrant?

5 A: I can't tell the signature on that, I ---

6 MR. HOLFORD: Your Honor, if I may approach and have the
7 search warrant.

8 A: I apologize, Your Honor.

9 Q: I'm handing you the search warrant which I just previously
10 handed up to the Court.

11 A: Yes, it'd be Judge Mayers.

12 Q: Thank you.

13 MR. HOLFORD: May I approach, Your Honor?

14 THE COURT: For the record, tell us who he is, please,
15 the judge who signed it.

16 MR. HOLFORD: Your Honor, I believe Detective Large said
17 it was Judge Brad Mayers.

18 A: Judge Mayers in the Conway section of Horry County, the
19 Magistrate.

20 THE COURT: That's what I needed for the record.

21 MR. HOLFORD: Nothing further from the State, Your Honor.

22 THE COURT: All right. What -- Mr. Fox?

23 MR. FOX: Thank you, Your Honor.

24 CROSS EXAMINATION OF DETECTIVE ALLEN LARGE BY MR. FOX:

25 Q: Detective, who were the witnesses that provided the

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 information that was the basis of your affidavit for the
2 search warrant?

3 A: It would be Tyler and I believe it's pronounced Topolski.

4 Q: Topolski?

5 A: Topolski, Topolski.

6 Q: So, it was one witness or plural witnesses?

7 A: Plural witnesses.

8 Q: Do you have the name of the other?

9 A: The younger brother of Topolski and the Tyler.

10 Q: And your testimony this morning was that they -- that it
11 was based on witness testimony. Were they sworn when they --
12 when you spoke to them, were they under oath?

13 A: No. They filled out voluntary statement forms indicating
14 that -- what they were saying was truthful.

15 Q: So, it wasn't a court setting?

16 A: No, it wasn't a court setting.

17 Q: Okay. It was just talking with these ---

18 A: Right.

19 Q: And what was it, why were they credible that you would
20 base a search warrant investigation on their statements?

21 A: Basically, they came forward with the information that
22 nobody else would know. I mean, the shooting incident that
23 happened in the neighborhood where the victim lived; they had
24 knowledge that no one else would've had that was not given out
25 to the press.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 Q: They also had a motive to be less than totally truthful,
2 didn't they? They put themselves at the scene of the crime,
3 did they not?

4 A: Right. They placed themselves there.

5 Q: Thank you. (To the Court) Thank you, Your Honor, that's
6 all I have.

7 THE COURT: All right, sir. Anything further?

8 MR. HOLFORD: Nothing further from the State.

9 THE COURT: Do you have any witnesses?

10 MR. FOX: No, Your Honor.

11 THE COURT: Having examined the affidavit under oath and
12 hearing his testimony, there was certainly probable cause for
13 the Magistrate to issue that search warrant and I find it
14 appropriate.

15 You may come down.

16 DETECTIVE LARGE: Thank you, Your Honor.

17 MR. HOLFORD: Thank you, Your Honor.

18 THE COURT: All right, sir. Anything further?

19 MR. HOLFORD: May I approach and have the search warrant
20 returned back?

21 THE COURT: Yes.

22 MR. HOLFORD: Thank you, Your Honor. Nothing further
23 from the State.

24 THE COURT: Anything further from Mr. Fox?

25 MR. FOX: No, Your Honor.

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BY THE COURT

1 THE COURT: All right. Bring the jury in and let the
2 foreman know he's the -- and sit them appropriately.

3 (REPORTER'S NOTE: The jury enters courtroom. 11:00 A.M.)

4 BY THE COURT:

5 THE COURT: Swear the jury, please.

6 CLERK: If you'll please stand and raise your right hand.

7 (REPORTER'S NOTE: Jury is duly sworn.)

8 THE COURT: Mr. Rue, I have selected you as the
9 foreperson of this jury. I will keep you fully informed of
10 your duties throughout the trial. Please occupy that seat at
11 all times. The two alternates will occupy their present seats
12 at all time. The rest of you may, of course, sit as you
13 choose.

14 Now recognizing that this may be the first time that you
15 have served on the jury or particular in a criminal case, let
16 me tell you how we will proceed. State of South Carolina has
17 the burden of proof in this case. And Mr. Holford,
18 representing the Solicitor's Office and the State, will make
19 an opening statement to you as to their position. Following
20 that, Mr. Fox, of the Public Defender's Office, representing
21 the Defendant, will make a similar opening statement regarding
22 his position. Following that, we will take testimony of
23 various witnesses and other matters may or may not be
24 introduced into the trial of this case. After all of the
25 testimony is complete, we'll have final summation of counsel

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BY THE COURT

1 and I will, at that time, give you the instructions in the law
2 as it relates to any issue in the trial of this case.

3 Now, at the outset, there are several things you need to
4 know. First, the State has the burden of proof and that
5 burden is that they must prove to your satisfaction all twelve
6 unanimously that this Defendant is guilty of the crime and
7 they must prove it by evidence satisfactory to you beyond a
8 reasonable doubt, reminding you that as to these charges, this
9 Defendant has specifically pled not guilty. I tell you, too,
10 that you twelve are the sole and only finders of the facts in
11 this case. I'm not entitled to a factual opinion as to what
12 occurred and I have none. You may say to me, well, Judge, we
13 just got here, How do we know what the facts are in this case?
14 Well, you will judge -- there will be various witnesses
15 called, you will be judging their credibility and
16 believability. Other documents may or may not be introduced.
17 From the testimony and the evidence produced, you will
18 conclude what the facts are in this case and, thereafter,
19 reach your verdict. Remembering that this Defendant is
20 presumed innocent and the State's got to prove him guilty if
21 they can as to one or both charges beyond a reasonable doubt,
22 you and you alone are the sole and only judge of the facts in
23 this case. And when you come into Court, you bring your
24 common sense to bear.

25 In judging credibility of the witness, we all know that

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OPENING BY MR. HOLFORD

1 in our life's experiences, when we talk to other people or our
2 children, we kind of size them up as to whether we want to
3 believe all of what they say or none or some. Obviously, that
4 is your judgment in believing a particular witness. You will
5 decide whether or not a witness has some bias or prejudice
6 with regard to his testimony. You then decide whether a
7 particular witness' testimony is consistent or inconsistent
8 with other testimony. There are other tools that you may have
9 used in your life's experiences in believing credibility or
10 believability. As I indicated before as to any witness, you
11 may believe all of what he says or none. You may believe
12 small portions and disregard others. In that connection, you
13 may believe one witness against many or the other way around.
14 As I indicated, after all the testimony, I will be with you
15 with some additional instructions.

16 Mr. Holford, you may have your opening.

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

19 THE COURT: Yes, sir.

20 OPENING BY MR. HOLFORD:

21 MR. HOLFORD: Miracle, malice and money, that's what this
22 case boils down to. Ladies and gentlemen, it is a miracle
23 that David Moran, the victim in this case, is sitting here
24 today. It was with malice that the Defendant Jeremy Fleming
25 acted on October 16th, 2011, and it was over money.

OPENING BY MR. HOLFORD

1 Good morning. My name is Joshua Holford, I'm a
2 prosecutor for the 15th Circuit here in Horry County. We all
3 have a role to play into this. Mr. Moran, the victim in this
4 case, reports a crime. Detective Large, the police,
5 investigates that crime. Then I come forward and prosecute
6 those crimes. At the end of the trial, it will be your duty
7 to render a verdict that you believe that is just and true,
8 after listening to the facts and evidence provided on this
9 witness stand.

10 Now, I told you that it was miracle that Mr. Moran is
11 sitting here with us today. You see, Mr. Moran was at his
12 home on October 16th, 2011 when he heard a knock on his door,
13 Mr. Fleming along with his CoDefendant, knocked on his door,
14 pushed their way into the apartment here in Horry County at
15 Ivystone, an apartment complex, and shot Mr. Moran in the
16 head. I don't use the term miracle lightly and I think it's
17 overused. But, ladies and gentlemen, when you are shot in the
18 head and survive and are able to come testify, I think that's
19 nothing short of a miracle. On that night, Mr. Fleming, along
20 with his CoDefendant Abdul Hasan Furquan approached that
21 apartment complex because they needed money. Now, I don't
22 know if they were gonna steal objects and sell them; I don't
23 know if they thought there was a safe in the house; I don't
24 know if they thought there were piles of cash; those are just
25 things that I don't know and won't be able to prove it. They

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1 | went there with the intention to commit a crime.

2 | Now, another thing in this case, you'll hear from Eric
3 | Collins, Mr. Moran's roommate. My belief had it not been for
4 | Mr. Collins, Mr. Moran might be dead. We may not be at trial
5 | here because when Mr. Collins came around the corner of that
6 | apartment, out of his room, Mr. Fleming and his CoDefendant
7 | Abdul Hasan Furquan, were both inside that apartment, one of
8 | them standing over David who had already been shot laying on
9 | the ground. Now, luckily, Eric Collins came out with a rifle
10 | and a pit bull. The Defendant and his CoDefendant fled the
11 | scene. You'll hear from three independent witnesses that were
12 | in the car downstairs that drove and can identify this
13 | Defendant and the CoDefendant as going to Ivystone Apartments,
14 | as going up the stairs, hearing a loud bang, watching this
15 | Defendant and his CoDefendant run down, get in the car, one of
16 | them pulling a gun. The testimony from my witnesses -- I'll
17 | put this out there -- the testimony from my witnesses will be
18 | that the CoDefendant was carrying the gun. Now, the
19 | CoDefendant is not on trial today; this Defendant is. The
20 | CoDefendant will have his day in court later. For you, today,
21 | we're trying Mr. Jeremy Fleming.

22 | In the State of South Carolina, the hand of one is the
23 | hand of all. When two people or more act in concert together
24 | to commit a crime, they are both guilty of the act. I cannot
25 | tell you with absolute certainty if Mr. Furquan shot David or

OPENING BY MR. HOLFORD

1 if it was this Defendant who shot David. Luckily for me, I
2 don't have to. What I have to prove to you beyond a
3 reasonable doubt is that they were both there, that they acted
4 together and that as a result of their actions a burglary
5 occurred and an attempted murder occurred.

6 Now, what is burglary in the first degree? It's the
7 breaking and entering of a dwelling, that's to say where
8 someone lives, with the intent to commit a crime therein. You
9 don't have to bust down a door, you don't have to kick it
10 through, you can enter through deceit. You'll hear from the
11 witnesses, they were not -- there was not consent to be in
12 that apartment. You'll also hear from the witnesses there was
13 a struggle at the door; that's the breaking and entering in
14 this case with the intent to commit crime therein.

15 Ladies and gentlemen, this Defendant and his CoDefendant
16 went there with masks and gloves and a gun to either take
17 personal items or to take money. And they did commit a crime
18 while inside, shooting the victim in the head.

19 That brings us to the second indictment, attempted
20 murder. Attempted murder is the attempt to murder someone
21 with malice. Malice is a difficult legal term that the Judge
22 will explain to you at the end of the case but it means a
23 malignant heart, evil, bent on mischief. Pointing a gun at an
24 innocent individual's head and pulling the trigger is malice.

25 Now, like I said, you're gonna hear from three

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1 independent witnesses that can identify this Defendant and his
2 CoDefendant as the ones going up to the apartment. You'll
3 hear from the victim, you'll hear from his roommate. There
4 were two individuals in there. They had bandanas on, we'll
5 call them masks, they're black bandanas. They had gloves on,
6 skeleton pattern. They had hoods over them. You'll hear when
7 they ran down and got back in the car, they held a gun to
8 these three young adults, kids at the time really, and told
9 them drive. You tell anyone, we're gonna kill you. The
10 driver of that vehicle will testify she drove them back to
11 where Mr. Fleming was staying, 5586 Rocky Road, Lot 49, Myrtle
12 Beach, South Carolina. Those kids were held there at gun
13 point and told, You better not say a word or we'll come after
14 you and we'll come after your family.

15 You know what's amazing in this case, two of those young
16 girls came forward. They went to the police, they gave a
17 written statement and they said, this is what happened, we
18 were there, we were in the car, we had no idea what was going
19 to happen but I can tell you that it was this Defendant. I
20 can tell you that it was the CoDefendant. I can tell you they
21 held us at gunpoint. I can tell you they had a gun. And I
22 can tell you where we drove them to. Based on that
23 information, Detective Large obtained a search warrant, went
24 to the house, searches the premises. What's he find?
25 Skeleton gloves, black bandanas, silver revolver.

OPENING BY MR. FOX

1 After you hear all the testimony, all the witnesses and
2 you link all the pieces together, you hear how they can be
3 identified as the ones going up there, you hear exactly what
4 happened in that apartment, you hear the independent
5 corroboration leading detectives to the search. You hear from
6 the people at the house when the search was occurring, when
7 the search occurred and what was found and that that matches
8 the same description given by the victim of the items used by
9 the Defendant and CoDefendant.

10 Ladies and gentlemen, at the end of this trial, I'll have
11 the opportunity to stand up and address you again. Once
12 you've heard all the witnesses, once you've used your common
13 sense, once you've weighed their credibility, once you've seen
14 all the facts into evidence in this case, I'm assured you'll
15 return a verdict of guilty of both burglary first and
16 attempted murder committed by this Defendant, who acted with
17 malice, Jeremy Fleming. Thank you.

18 THE COURT: Thank you, Mr. Holford.

19 Mr. Fox?

20 MR. FOX: Thank you, Your Honor. May it please the
21 Court.

OPENING BY MR. FOX:

23 MR. FOX: Good almost afternoon, good morning. Once
24 again, my name is Eric Fox. I'm here today and this week
25 representing Mr. Jeremy Fleming. Jeremy, would you stand up

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1 again, please. And he, of course -- thank you; you may sit
2 down -- is the man accused of the attempted murder and first
3 degree burglary. I am not gonna spend a whole lot of time --
4 you've heard no evidence -- let me start right there -- what
5 the Solicitor just talked, this is called opening argument
6 which means that is the Solicitor's version of events. And
7 we'll have a chance at the end of the case, when you've
8 actually heard evidence and seen evidence, seen and heard
9 witnesses, been able to evaluate witnesses, we'll get a chance
10 to talk to you again. I'm gonna save my comments on the facts
11 of this case until then. But a few things I would like to
12 keep in mind, you to keep in mind, the State is absolutely
13 within their rights to try Mr. Fleming and Mr. Abdul Furquan
14 separately. They are CoDefendants, they are each implicated
15 by witnesses, really not to the same degree but they were each
16 there according to witnesses, there is evidence that connects
17 Mr. Furquan, certainly. It is the State's choice and decision
18 to try them separately. You can ask yourself why they've
19 chosen to do that and why Mr. Fleming sits there and Mr.
20 Furquan is listed on the potential witness list. Again, that
21 is within their power and their right to do so.

22 As the Judge told, as with any witness, all the witnesses
23 that come up, you can believe everything they tell you, you
24 can believe some of it, you can believe none of it. Do what
25 you would do in your everyday life. Why does this person have

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OPENING BY MR. FOX

1 any -- does this person have any motive to lie to me, what
2 incentive do they have to be less than truthful, what were
3 their motives, not just now but when they talked to the police
4 in the past. It is absolutely true -- at the end of the case,
5 Judge Cottingham, who can probably do it from memory at this
6 point he's done it so well and so long, is gonna give you the
7 law of the case. That's called a jury charge or the jury
8 instructions. He'll define first degree burglary, he'll
9 define attempted murder, he'll define reasonable doubt. There
10 is a burden of proof in this case.

11 One of the things I'm sure he will talk to you about and
12 Mr. Holford has alluded to is this legal theory, this idea
13 that the hand of one is the hand of all. That is true. The
14 best example I've ever been able to come up with is a bank
15 robbery. You have people like in the movies that go in with
16 the mask, you know like the mask of the presidents or
17 something, they go in with the guns and take the money and
18 then you've got the look-out across the street or on the roof
19 that doesn't go in the bank, doesn't touch a gun, doesn't say
20 anything to anybody, never touches any money but he knows
21 exactly what's going on, he's the look-out, the get-away
22 driver, he is absolutely as responsible as if he were to go
23 inside. And if anyone gets hurt inside, he's got criminal
24 responsibility to the people that get hurt, if he's a part of
25 it and he knows what's going on. The fact that he may be

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1 there, even the fact that he may've gone to the location with
2 these people isn't enough because the Judge will also tell
3 you, I believe that mere presence at the scene of a crime is
4 not enough to satisfy the burden of proof. So, hand of one
5 the hand of all -- is the hand of all, is true if the State
6 can convince you beyond a reasonable doubt in this case that
7 Mr. Fleming was present and knew what was happening, was an
8 active participant in what was gonna happen, that he knew that
9 there was a crime and participated in that plan to commit a
10 burglary and attempted murder.

11 I disagree with much of what the Solicitor said but
12 again, we'll see. I just urge you to pay attention to what
13 the witnesses tell you, what the evidence is because sometimes
14 what's not presented to you is every bit as important as what
15 is. Sometimes, the absence of something is -- so, I'd simply
16 ask you to pay very close attention. Remember that reasonable
17 doubt is the highest burden of proof of the law. It's not
18 maybe something happened; it's not it could've happened this
19 way. You must base your verdict based on what you hear in
20 court and what's presented to you not on guesses and
21 intuition, that is the oath that you swore. And I'm confident
22 when you take all that into account at the end that you'll
23 find Mr. Fleming not guilty.

24 THE COURT: Call your witness.

25 MR. HOLFORD: Your Honor, the State calls Eric Collins to

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ERIC COLLINS - DIRECT BY MR. HOLFORD
the stand.

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THE COURT: Thank you, Mr. Fox.

ERIC COLLINS, HAVING BEEN SWORN,

TESTIFIED AS FOLLOWS:

CLERK: If you'll scoot up, speak into the microphone.

State your full name and spell your last name.

MR. COLLINS: Eric James Collins, C-O-L-L-I-N-S.

DIRECT EXAMINATION OF ERIC COLLINS BY MR. HOLFORD:

Q: Mr. Collins, good morning.

A: Good morning, sir.

Q: Would you please introduce yourself to the jury and tell them a little bit about yourself?

A: I'm Eric Collins. I've lived here about seven years. I was roommates with David. I lived with him probably about six months. I do body work and set up event tents.

Q: Now, you just said you were roommates with David. I talked a little bit about him in opening but will you explain who David is?

A: David is pretty much my brother. I have known him for about six years. I -- he's not blood but it's as close as I've got right here.

Q: And how is he related in this case?

A: He was the victim.

Q: What apartment were you living in that night?

A: I cannot tell you the actual house number, it's been a

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1 little while but I know it was Apartment F.

2 Q: In what apartment complex?

3 A: Ivystone.

4 Q: In what city?

5 A: Myrtle Beach.

6 Q: And that is here in Horry County?

7 A: Yes, sir.

8 Q: Now, let's dispense with this at the beginning. You have
9 a criminal conviction on your record, do you not?

10 A: Yes, sir. Yes, sir.

11 Q: I'm not gonna hide the ball, I don't suggest you do
12 either.

13 A: No, sir.

14 Q: Tell the jury what that conviction is?

15 A: I was caught possessing marijuana. It was possession with
16 intent. Pretty much what it came down to is I picked up a
17 package and give it to ---

18 MR. FOX: Objection, Your Honor. It's -- he's not
19 allowed to explain the records here. He can't give details or
20 mitigate it.

21 THE COURT: Sustained.

22 BY MR. HOLFORD:

23 Q: You can't explain ---

24 A: Understood.

25 Q: You can just say you were charged with something.

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1 A: Yes, sir. I was charged.

2 Q: And when did that -- when was that conviction?

3 A: It was last year.

4 Q: Which was 2012?

5 A: Yes, sir.

6 Q: When did these events occur?

7 A: I -- what we're here for?

8 Q: Yes.

9 A: It was October 16th the year before.

10 Q: In 2011?

11 A: Yes, sir.

12 Q: Now, if you will, walk me through and walk this jury
13 through your memory of the events of October 16th, 2011.

14 A: I had come home from work and I was taking a nap at the
15 time. I was laying in my room. My dog was asleep with me. I
16 woke up to the sound that when a light bulb cracks, the
17 popping sound it makes. It was just an amplified sound is
18 what I figured it as. I had my .22 rifle next to my
19 doorframe. I grabbed it and me and my dog had turned the
20 corner and I was looking down the hallway at David on the
21 ground and two -- one guy standing over him and one guy off of
22 his shoulder. Off of his back right shoulder.

23 Q: Was one outside the house or the apartment?

24 A: No, sir. Both were -- both inside the threshold of the
25 door.

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1 Q: And how is David positioned?

2 A: David was on the ground face up with his hands to his side
3 and his legs kind of sprawled out a little bit.

4 Q: Now, you referenced the sound of a light bulb. Did you
5 believe a light bulb burst?

6 A: No, it was much louder than that. That's what prompted me
7 to grab my rifle.

8 Q: And what happened when you came around the corner?

9 A: I was holding my rifle lengthwise. It was still standing.
10 I had it in one hand. My dog came to left-hand side. I
11 looked down the hall at him and he had the gun kind of
12 pointing straight but in front of him slanted down, he was
13 looking down at David. At the point I turned the corner, he
14 looked up at me and said, Oh, shit, and they both ran. That's
15 when I'd gone to make sure David was okay. And I went to grab
16 his phone but I was in panic so I didn't know how to use it at
17 the time, so I just started yelling for somebody to help us,
18 just anybody that could hear me, I was just yelling for help.

19 Q: Did you know who the two men in that house -- in the house
20 were?

21 A: I've never seen either of the men before.

22 Q: Can you tell me what they were wearing, what they looked
23 like?

24 A: I remember black hoodies, gloves and they were wearing
25 bandanas over both their faces.

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1 Q: And this is how you saw them when you first came around
2 the corner?

3 A: Yes, sir.

4 Q: After they ran and you called the police, what happened
5 after that?

6 A: The police showed up within about fifteen minutes, I want
7 to say roughly, two hours, I sat the bottom of my apartment
8 steps while the investigators and everybody was in our
9 apartment.

10 Q: Did the police search your apartment?

11 A: From my understanding they did.

12 Q: And did they have consent to search your apartment?

13 A: Yes, sir.

14 Q: Did you give them consent?

15 A: Yes, sir.

16 Q: Did you have any issue with them searching?

17 A: No, sir; none at all.

18 Q: When you say that when you first came around the corner,
19 that one of the two had a gun pointed down at the victim, will
20 you describe that?

21 A: It was more -- it was more up and at him because when he
22 had looked at me, he was pointing the gun down the hallway at
23 me and that's how I was able to -- it was a silver revolver, I
24 remember that very distinctly because it was pointed at me.
25 They had complete advantage because my gun was still

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ERIC COLLINS - CROSS BY MR. FOX

1 lengthwise. I didn't have the safety -- or I had the safety
2 on and I didn't have anything in the chamber, so I froze
3 there. They had complete advantage over me at the time. And
4 that's when he said, Oh, shit, and they ran.

5 Q: Are you sure it was a silver revolver?

6 A: Pretty positive.

7 Q: How can you be so sure? It was October 16th, 2009.

8 A: That's a night I'll never forget, sir. It's burned to my
9 memory.

10 MR. HOLFORD: Thank you, Your Honor. I have no further
11 questions.

12 THE COURT: Thank you. Mr. Fox?

13 CROSS EXAMINATION OF ERIC COLLINS BY MR. FOX:

14 Q: Mr. Collins, how many guns did you see?

15 A: One, sir.

16 Q: Okay. Either of these guys have a hood like a hoodie
17 sweatshirt?

18 A: Yes, sir.

19 Q: Had it on?

20 A: Yes, sir.

21 Q: Okay. And one is behind the other from your point of
22 view, correct?

23 A: Yes, sir. It would be to my left as I'm looking down the
24 hallway, the gentleman is standing behind him to my left.

25 Q: All right. So, partially blocked by the fellow with the

1 gun?

2 A: Yes, sir. I could see probably his torso up.

3 Q: The door from outside leads right in to the hallway?

4 A: Yes, sir.

5 Q: Okay. And David was right there?

6 A: Yes, sir.

7 Q: And you were asleep?

8 A: Yes, sir.

9 Q: And then heard a pop, so you're not -- don't have -- did
10 not see or hear what occurred at the door, correct?

11 A: No, sir.

12 Q: In terms of when these gentle -- when these people arrived

13 ---

14 A: No, I did not see it.

15 Q: You don't know if they knocked on the door, if the door
16 was open, you didn't hear any conversation or anything like
17 that?

18 A: No, sir.

19 Q: Okay. You heard the sound and responded to that?

20 A: Yes, sir.

21 Q: Happened to have the .22 laying there next to you?

22 A: Yes, sir.

23 Q: Okay. You keep that -- you never fired any shot, correct?

24 A: No, sir.

25 Q: You said you didn't even have a -- didn't even have it ---

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1 A: No, there was none in the chamber and the safety was still
2 on.

3 Q: And I missed it, did you call the police?

4 A: No, sir. I yelled for a neighbor to call.

5 Q: Cause you were in panic, right?

6 A: Yes, sir.

7 Q: Okay. So, obviously, you've been woken up suddenly out of
8 sleep?

9 A: Yes, sir.

10 Q: You've heard a noise that at least made you think I'd
11 better grab a gun.

12 A: Yes, sir.

13 Q: It sounded like a loud light bulb, a pop, something -- did
14 you think it was a gunshot?

15 A: I've never heard a gunshot before, so it was new to me.

16 Q: Okay. Hear any screaming or yelling?

17 A: No, sir.

18 Q: But anyway, uncertain, you grabbed a gun and went out.

19 A: Yes, sir.

20 Q: You see these gentlemen, you say one's got a gun that gets
21 turned at least in your direction, correct?

22 A: Yes, sir.

23 Q: All right. So, your words are you're in a panic.

24 A: Yes, sir.

25 Q: To the point where you're not able to later use the phone

ERIC COLLINS - CROSS BY MR. FOX

- 1 to call anybody, correct?
- 2 A: Yes, sir.
- 3 Q: Okay. Now, you say the police -- somebody called, the
- 4 neighbor or somebody called the police, because they came,
- 5 right?
- 6 A: Yes, sir.
- 7 Q: All right. And by your testimony a few minutes ago, they
- 8 were there about two hours, right?
- 9 A: Yes, sir.
- 10 Q: And you were either there or right on the -- you live on
- 11 the first or second floor?
- 12 A: We were on the second floor, sir.
- 13 Q: And there are stairs that go right down between -- there
- 14 are two apartments up on that landing, right?
- 15 A: Yes, sir.
- 16 Q: And kind of -- the doors face each other; is that correct?
- 17 A: Yes, sir.
- 18 Q: There's short landing ---
- 19 A: Probably about all of five/six-foot wide.
- 20 Q: And the stairs kind of come up right in-between, correct?
- 21 A: Yes, sir.
- 22 Q: Okay. And those are the only two apartments, you go up
- 23 the stairs for those two apartments, right?
- 24 A: Yes, sir.
- 25 Q: And you were sitting around in that area, is that what

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ERIC COLLINS - CROSS BY MR. FOX

1 you're talking about?

2 A: I was at the bottom of the steps.

3 Q: Okay. And police were able to identify who you were,
4 correct?

5 A: Yes, sir.

6 Q: Did the police ever talk to you?

7 A: I gave them my recollection the night while I was sitting
8 there.

9 Q: Do you remember what -- who you spoke to? Do you remember
10 ---

11 A: I could not tell you a name, sir.

12 Q: Anybody who is in the courtroom today if you recognize.

13 A: Not off the top -- no, sir.

14 Q: Did they take the -- did they ask you to write down your
15 statement, to give a written statement?

16 A: No, sir.

17 Q: Did they ever -- did they record it there at the scene?

18 A: I spoke to a few -- I want to say an investigator and I
19 spoke to a few police officers as well.

20 Q: Okay. So, you spoke to more than one?

21 A: Yes, sir.

22 Q: Did any of them that you're aware of record your
23 conversations?

24 A: Not that I'm aware of.

25 Q: Okay, did you later ever, at their invitation or your own

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1 go back to speak to any of the detectives?

2 A: No, sir.

3 Q: Okay. So, whatever it was that first night is, is all?

4 A: Yes, sir.

5 Q: Okay. Thank you. (To the Court) That's all the
6 questions, I have, Your Honor.

7 MR. HOLFORD: No redirect, Your Honor.

8 THE COURT: You may come down. And now may remain in the
9 courtroom if you choose to.

10 Next witness, please.

11 A: Thank you, sir.

12 MR. HOLFORD: Tyler Topolski.

13 TYLER TOPOLSKI, HAVING BEEN SWORN,

14 TESTIFIED AS FOLLOWS:

15 CLERK: State your full name and spell your last name and
16 speak into the microphone.

17 MR. TOPOLSKI: Tyler Topolski, T-O-P-O-L-S-K-I.

18 DIRECT EXAMINATION OF TYLER TOPOLSKI BY MR. HOLFORD:

19 Q: Good morning, Mr. Topolski. Will you tell this jury a
20 little bit about yourself, introduce and where are you from?

21 A: I'm from Florida.

22 Q: Where do you live now?

23 A: I live in Myrtle Beach.

24 Q: How old are you?

25 A: I'm seventeen.

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TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

1 Q: Seventeen. How old were you in October of 2011?

2 A: I was fifteen.

3 Q: Is it fair to say you might be a little nervous today?

4 A: Yes, sir.

5 Q: Have you ever testified before?

6 A: No, sir.

7 Q: I'm gonna try and make this a little easier. I know it
8 can be a nerve wracking experience.

9 A: Yes, sir.

10 Q: Will you adjust the microphone just a little bit towards
11 you so the jury can hear you?

12 A: Is that better?

13 Q: Yeah. Can everyone hear? So, you are seventeen years old
14 now?

15 A: Yes, sir.

16 Q: And you were fifteen in October of 2011?

17 A: Yes, sir.

18 Q: Do you know the Defendant, Mr. Jeremy Fleming?

19 A: Yes, sir.

20 Q: And how do you know the Defendant?

21 A: Through my sister.

22 Q: Who is your sister?

23 A: Samantha Topolski.

24 Q: On October 16th of 2011, lead me through -- what happened
25 in connection with this case?

TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

1 A: I got a text message from Jeremy saying that he needed to
2 go pick up some money. I've hung out with him before, so not
3 anything unusual and ended up going to pick him up. We went
4 over to David's house, I guess, and we were sitting outside
5 and we heard a gunshot.

6 Q: Now, did you know it was David's house at the time?

7 A: No, sir.

8 Q: Did you know where you were going?

9 A: No, sir.

10 Q: Were you driving the car?

11 A: No, sir.

12 Q: Who else was with you in the car?

13 A: My friend Taylor Smith and my sister, Samantha Topolski.

14 Q: And then you picked up ---

15 A: Freak from Olive Garden. I don't know his -- I don't know
16 his real name.

17 Q: Okay.

18 A: Antoine or something.

19 Q: That's fine. Freak. And you picked up the Defendant, Mr.
20 Fleming?

21 A: Yes, sir.

22 Q: So, it was yourself, Taylor, Samantha ---

23 A: Yes, sir.

24 Q: Freak and the Defendant?

25 A: Yes, sir.

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TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

1 Q: And you say you went to David's house but you didn't know

2 ---

3 A: I didn't know where I was going.

4 Q: --- where it was at the time?

5 A: Huh-uh (negative response).

6 Q: Can you say what apartment complex it was?

7 A: Ivystone; that's all I knew.

8 Q: Now, where were you situated?

9 A: I was in the front passenger seat.

10 Q: Did you ever get out of the car?

11 A: No, sir.

12 Q: You said you heard a loud bang, what happened after that.

13 A: I heard a loud bang, I thought it was like a trashcan
14 being kicked over or something. I've never heard a gunshot
15 that close. My sister Samantha, she automatically knew and
16 Jeremy and Freak ran out of the apartment with masks on and
17 Freak had a gun.

18 Q: Do you remember what kind of gun?

19 A: It was a silver revolver.

20 Q: Now, when you say masks, do you mean like a ski mask, like
21 a bank robber?

22 A: Bandana.

23 Q: Do you remember what color the bandanas were?

24 A: I think Jeremy had a black one, that's all I really know.

25 Q: And did anyone else go up to the apartment?

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TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

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- 1 A: No, sir.
- 2 Q: So, the three of you remained in the car?
- 3 A: Yes, sir.
- 4 Q: It was just the Defendant and Freak that went up to the
5 apartment?
- 6 A: Yes, sir. Yes, sir.
- 7 Q: When they came back down, could you see what apartment
8 they went into?
- 9 A: No, sir.
- 10 Q: And why is that?
- 11 A: There is a staircase and then it's a dark hallway.
- 12 Q: When they came back out after you heard a loud bang, what
13 happened then?
- 14 A: They got in the car, Jeremy got in the middle and then
15 Freak got in behind the driver's seat and Freak put the gun up
16 to Taylor and told her to drive. And then we drove back
17 Jeremy's house and told us to get out. We went inside and he
18 told us if we said anything that he'd know exactly who it was.
- 19 Q: That's all he said to you?
- 20 A: (Indicates affirmatively.)
- 21 Q: What were Jeremy and Freak wearing when they ran back to
22 the car?
- 23 A: Jeremy was wearing crossbone gloves, hoodie. Freak was
24 wearing, I think, a grey hoodie; I'm not too sure. It was a
25 long time ago. I think it was a grey hoodie that he was

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TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

1 wearing. Also, a bandana that was ---

2 Q: When they got out of the car at first, is that what they
3 were wearing when they got out of the car?

4 A: No. They -- Jeremy had gloves on, that was all that --
5 they didn't have masks or anything on.

6 Q: How long would you say that you were in the car between
7 the time that the Defendant and Freak got out by the time they
8 ran back?

9 A: Not even five minutes.

10 Q: Now, you say you drove them to the Defendant's house, do
11 you know where that is?

12 A: In Socastee.

13 Q: Okay. You wouldn't know the address?

14 A: I don't know the exact address.

15 Q: What kind of -- is it an apartment complex or ---

16 A: It's a trailer park.

17 Q: It's a trailer park. So, he lives in a mobile home?

18 A: Yes, sir.

19 Q: What time of day was it?

20 A: It was about 11 o'clock at night.

21 Q: And you said when you got back to the Defendant's home,
22 that you were threatened?

23 A: Yeah. They told us to come inside and they said that if
24 we said -- if anybody said anything, that they knew who it was
25 gonna be.

TYLER TOPOLSKI - CROSS BY MR. FOX

1 Q: What did you felt that meant?

2 A: That they were gonna kill us if we said anything.

3 Q: Who said that?

4 A: Jeremy said that he was -- that if anybody -- if anybody
5 found out, he knew it was gonna be us.

6 MR. HOLFORD: Thank you, Your Honor. I have no further
7 questions.

8 THE COURT: Mr. Fox.

9 CROSS EXAMINATION OF TYLER TOPOLSKI BY MR. FOX:

10 Q: Mr. Topolski, you called a minute ago, Mr. Moran, whose
11 apartment you went to David. How do you know David?

12 A: Just through today -- just through today's interactions.

13 Q: But you're comfortable enough to refer to him as David?

14 A: Yes, sir.

15 Q: Why did you think that -- you were -- no question you were
16 in the car that went over to Mr. Moran's apartment?

17 A: Yeah, I was in the car.

18 Q: Your sister also?

19 A: Yes, sir.

20 Q: How old was your sister in 2011?

21 A: I think she was twenty-one, maybe twenty-two?

22 Q: She was an adult?

23 A: Yes, sir.

24 Q: Any mention of anyone going there to purchase marijuana?

25 A: Huh-uh (negative response).

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TYLER TOPOLSKI - CROSS BY MR. FOX

- 1 Q: So -- you need to answer out loud, yes or no, please.
- 2 A: No, sir.
- 3 Q: Okay. So, it was just a ride for you?
- 4 A: All I had known was it was to go pick up money.
- 5 Q: Why did you need to go?
- 6 A: He asked me for a ride.
- 7 Q: But you weren't driving?
- 8 A: I wasn't driving, no. I had one of my friends take us.
- 9 Q: I got you. And that's Taylor?
- 10 A: Yes, sir.
- 11 Q: She's Lindsey Taylor Smith, right?
- 12 A: Yes, sir.
- 13 Q: Who is -- I'm confused; who is Freak?
- 14 A: Jeremy's friend. I don't know his real name; Antoine or
- 15 something like that.
- 16 Q: Abdul?
- 17 A: Yeah, Abdul. I only know him as Freak.
- 18 Q: He stayed in that trailer that y'all went back to?
- 19 A: Yes.
- 20 Q: You've been to that trailer before, right?
- 21 A: Yes, sir.
- 22 Q: Hung out at that trailer?
- 23 A: Yes, sir.
- 24 Q: Okay. So, you've seen him there, that Freak we're talking
- 25 about?

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1 A: Yes, sir.

2 Q: All right. Your sister hangs out there as well?

3 A: She did, yes, sir.

4 Q: And Lindsey Taylor Smith also?

5 A: Only with me whenever I was there.

6 Q: I got ya. Who else that you know of that stayed in that
7 trailer at that time or at least was in and out as you saw it?

8 A: Some guy named Boogie, I don't know his real name; some
9 girl named Ariel; and I think that was it that stayed there
10 and Jeremy, Freak.

11 Q: What about Freak? Did Freak have a girlfriend that stayed
12 there?

13 A: I'm not sure.

14 Q: Mary? You ever see Mary there?

15 A: No.

16 Q: Boogie, you don't know his name?

17 A: No, sir.

18 Q: All right. Is there -- are Ariel and Boogie ---

19 A: Yeah, they were together.

20 Q: So, that's Freak, Jeremy, Boogie, Ariel ---

21 A: Yes, sir.

22 Q: --- at least. Any others you can think of?

23 A: Not that I can think of, no, sir.

24 Q: Did any of -- All right. So, you went over to Mr. Moran's
25 and your testimony is you were completely unaware of what the

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TYLER TOPOLSKI - CROSS BY MR. FOX

1 purpose of going there was, correct?

2 A: Yes, sir.

3 Q: Other than you thought it was to pick up money, something

4 ---

5 A: Yes, sir.

6 Q: Some legitimate purpose in your mind?

7 A: Yes, sir.

8 Q: All right. Did not see -- did you see a gun on the ride
9 over?

10 A: No, sir.

11 Q: Okay. Who got out ---

12 A: When we ---

13 Q: When you got to the apartment, who got out?

14 A: Jeremy and Freak.

15 Q: Okay. Anybody else?

16 A: No, sir.

17 Q: Okay. Could you see where they went to?

18 A: I saw the hallway. I couldn't -- I couldn't see past the
19 front hallway, I couldn't see any further.

20 Q: Was that an interior hallway or was it like a passage
21 between buildings?

22 A: I think it was a passage between buildings.

23 Q: So, they went -- if you're in the car right now, facing
24 the front of the car ---

25 A: Yes.

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TYLER TOPOLSKI - CROSS BY MR. FOX

- 1 Q: Did they leave to your left or your right?
- 2 A: They were straight up ---
- 3 Q: Straight ahead, okay. Could you tell if they then turned
- 4 off either direction?
- 5 A: No, sir.
- 6 Q: You just lost sight of them?
- 7 A: Yes, sir.
- 8 Q: Okay. And then how long till they came back?
- 9 A: Less than five minutes.
- 10 Q: Well, that's a big range. Was it thirty seconds, closer
- 11 to one minute or five minutes.
- 12 A: Closer to one minute.
- 13 Q: Okay, so briefly. Came back, Jeremy came back first?
- 14 A: Yeah, Jeremy was running out first.
- 15 Q: Okay. So, he came back first and got in the car, and then
- 16 you saw Freak.
- 17 A: Uh-huh (affirmative response).
- 18 Q: And what was Freak doing?
- 19 A: Freak had the gun in his hand running right behind Jeremy.
- 20 Got in the passenger -- the backseat driver's side and put the
- 21 gun up to the -- to Taylor.
- 22 Q: He put the gun up to Taylor?
- 23 A: Freak did, yes.
- 24 Q: And said?
- 25 A: Drive.

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TYLER TOPOLSKI - CROSS BY MR. FOX

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1 Q: See any other weapons?

2 A: No, sir.

3 Q: Okay. Anybody have any money?

4 A: No, sir.

5 Q: Okay. Were you paying attention -- on the ride over, you
6 were thinking you were going pick up money. Were you paying
7 close attention to what everybody was wearing?

8 A: No, sir.

9 Q: You have any reason to?

10 A: No, sir.

11 Q: What was Samantha wearing that night?

12 A: I ---

13 Q: What were you wearing?

14 A: I have no idea.

15 Q: What was Tiffany wearing -- sorry, not Tiffany -- Lindsey
16 wearing?

17 A: I have no idea.

18 Q: Okay. Did you ever go back after -- you say you went on
19 back to the trailer, was that -- do you ever go back to that
20 trailer?

21 A: No, not after that time.

22 Q: That was in October of 2011. Did the police ever --
23 anybody from the police department ever come and interview
24 you?

25 A: No, sir.

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TYLER TOPOLSKI - CROSS BY MR. FOX

1 Q: Nobody ever in these last two years?

2 A: No, sir.

3 Q: In preparing for this trial, did anyone from the
4 Solicitor's office meet with you?

5 A: The Solicitor, Josh.

6 Q: Mr. Holford?

7 A: Yes, sir.

8 Q: Okay, the one who was questioning you awhile ago?

9 A: Yes, sir.

10 Q: Anybody else?

11 A: No, sir.

12 Q: Okay. Did you ever -- your sister -- if you know this --
13 do you know if your sister ever went to the police to give a
14 statement?

15 A: Yes, sir. I went with my sister and Taylor but they never
16 talked to me.

17 Q: You actually went with them to the police department?

18 A: Yes, I went them to go.

19 Q: But nobody ever thought to come out and talk to you ---

20 A: No, sir.

21 Q: --- about your observations?

22 A: No, sir.

23 MR. FOX: Thank you, Your Honor, no further questions.

24 MR. HOLFORD: No redirect, Your Honor.

25 THE COURT: You may come down and may now remain in the

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 courtroom if you choose to.

2 Next witness.

3 MR. HOLFORD: Your Honor, I'd ask that he be released
4 from his subpoena if he wishes to.

5 THE COURT: He is released and he may leave.

6 Any objection, Mr. Fox?

7 MR. FOX: No, Your Honor.

8 MR. HOLFORD: The State calls Samantha Topolski.

9 SAMANTHA TOPOLSKI, HAVING BEEN SWORN,

10 TESTIFIED AS FOLLOWS:

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

12 MS. TOPOLSKI: Samantha Topolski, T, as in Tom, -O-P-O-L-
13 S-K-I.

14 DIRECT EXAMINATION OF SAMANTHA TOPOLSKI BY MR. HOLFORD:

15 Q: Good morning, Ms. Topolski. How are you today?

16 A: I'm all right.

17 Q: How old are you right now?

18 A: I am twenty-three.

19 Q: If you bring the mic a litter closer. I know this can be
20 nerve-wracking.

21 A: I'm twenty-three.

22 Q: How old were you in October of 2011?

23 A: Twenty-one -- well, I'd just turned twenty-two, sorry.

24 Q: And where do you live now?

25 A: I live with my mother by the airport in Myrtle Beach.

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 Q: Myrtle Beach. And how long have you lived in Myrtle
2 Beach?

3 A: In June it will be seven years.

4 Q: Are you a little worried to be here today?

5 A: Yeah.

6 Q: You ever testified in court before?

7 A: No.

8 Q: It's a little nerve-wracking?

9 A: Yeah.

10 Q: I can understand that. Do you know the Defendant Jeremy
11 Fleming?

12 A: Yes, sir. Yes.

13 Q: I know -- I really do know this is difficult for you.

14 You're just gonna have to speak up a little bit so the court
15 reporter can take everything down.

16 A: Okay.

17 Q: I'm not trying to be harsh with you.

18 A: No, it's okay.

19 Q: How do you know the Defendant Jeremy?

20 A: I met Mr. Fleming through his baby's mother. She was a
21 close friend of mine.

22 Q: And who is that?

23 A: Olivia Ward.

24 Q: No one involved in today's case?

25 A: No, sir; huh-uh (negative response).

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 Q: And let's jump to -- Do you know Freak?

2 A: Yes, sir.

3 Q: We heard that name earlier. Who is Freak?

4 A: Abdul, I think his real name is.

5 Q: Okay. And on October 16th of 2011, do you remember where
6 you were that evening?

7 A: I was at my mom's house.

8 Q: And how did you become involved in this case?

9 A: Mr. Fleming and I, we had a personal relationship. I was
10 -- I fell in love with Mr. Fleming. I trusted him and
11 believed him when he said things to me. The day of Mr.

12 Fleming's text messages, he'd sent through my brother -- my
13 brother is Tyler that was just in here -- he just asked if we
14 could pick up Abdul from work, he was out at the Olive Garden
15 in North Myrtle Beach. He has ---

16 Q: Abdul or Jeremy?

17 A: Abdul, he was in -- he was at work at Olive Garden, that
18 was where he was working. He asked if we could pick him up.
19 They said that they would give us gas money. So, we went out
20 to North Myrtle Beach and picked up Abdul and we came back to
21 bring him to the house and within the meantime, somehow, there
22 was a text message sent asking if we could take Mr. Fleming to
23 go pick up some money. We just told him that we would take
24 him to go pick up the money, it wasn't -- you know, he didn't
25 -- we didn't seem to feel like anything was out of order or

1 out of place or anything. We didn't have anything to worry
2 about.

3 Q: Let me try and break it down just a little bit. When you
4 picked up Abdul, or Freak, up from Olive Garden you said you
5 were gonna take him back to the house, what house was that?

6 A: It was -- I think the address was like Rocky Road, but it
7 was behind, it was off of Terry Drive and Socastee Boulevard.

8 Q: What kind of house was it?

9 A: It was a mobile home.

10 Q: Now, you said you get a text, the Defendant wants to be
11 picked up. Who is driving the car?

12 A: Taylor Smith.

13 Q: And how do you know Taylor?

14 A: She is my brother's and my best friend.

15 Q: So, we just established that Taylor is driving.

16 A: Uh-huh (affirmative response).

17 Q: You're in the car?

18 A: Yes, sir.

19 Q: Tyler, who's your brother ---

20 A: Yes, sir.

21 Q: --- is in the car?

22 A: Uh-huh (affirmative response).

23 Q: You pick Freak up?

24 A: Yes.

25 Q: From work?

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

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1 A: Uh-huh (affirmative response).

2 Q: And then you pick Jeremy up?

3 A: Yes.

4 Q: Is there anyone else in the car?

5 A: No.

6 Q: What happened when the five of you got in the car, where
7 did you go?

8 A: Well, before we left the driveway, there was another
9 female that was trying to get in the door of the vehicle and
10 all the seats were filled by all of us, you know, Jeremy, my
11 brother, Taylor and me and then Abdul. So, the girl, Brie, we
12 told her that she couldn't get in the car. She seemed like
13 she got kind of upset with that. She pulled Mr. Fleming aside
14 and had said something and then even ---

15 Q: You can't say what she said if you even -- even if you
16 know.

17 A: Okay. I'm sorry. She just -- she had a bit of an
18 attitude after that. So, Mr. Fleming said that we could
19 leave. She goes in the house and we left and we went over to
20 Ivystone Apartments.

21 Q: So, where did you leave from?

22 A: We left ---

23 Q: That same mobile home?

24 A: Yeah, Rocky Road mobile home.

25 Q: Okay. When you got to -- you just said you went to

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 Ivystone. When you got to Ivystone, did you know who you were
2 going to see?

3 A: No; huh-uh (negative response).

4 Q: Do you know what apartment you were going to?

5 A: No, I had no idea what apartment he was going to.

6 Honestly, when I first pulled up the driveway, I've known Mr.
7 Fleming for years now, since I first moved here, I thought it
8 was the apartment of one of Mr. Fleming's friends or family
9 members. I don't -- his name was A.J., I thought that was the
10 apartment that they were going to. So, I really didn't assume
11 anything because like I said, I've known them for a long time
12 so I thought that's where they were going.

13 Q: Did he say why he was going over to Ivystone?

14 A: He just asked if we could pick up some money.

15 Q: Now, once you got to Ivystone, did you -- did you get out
16 of the car or did you stay in the car?

17 A: No, the only two that got out of the car was Mr. Fleming
18 and Abdul. I was in the backseat on the passenger side. My
19 door was open. I had put my feet up on the window. Like I
20 said, I was comfortable; I didn't feel like anything was gonna
21 happen. My brother opened his car door, he got something out
22 of the trunk, I don't really remember what exactly he got out
23 of the trunk. And then we heard a noise and I said, oh, I
24 think that's a gunshot and my brother looked at me and said,
25 oh, no. And then we just heard everyone screaming and

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

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1 running.

2 Q: Now, as you were in the car, could you see the apartment
3 that you say the Defendant and Freak went to?

4 A: No.

5 Q: Why is that?

6 A: Because the way we were parked, if the parking lot was the
7 -- your table right there, that's the front of it, the
8 apartment was in a hallway. They walked through the hallway.
9 I honestly thought it was downstairs because I didn't see them
10 go up the stairs, so I assumed that they were downstairs. I
11 don't know what apartment that they went to.

12 Q: What time of night was it?

13 A: It was probably a little bit after 11:30.

14 Q: So, it was dark?

15 A: Yes, sir; uh-huh (affirmative response).

16 Q: Now, let me bring you back, you just said that you heard
17 what you thought was a gunshot?

18 A: Uh-huh (affirmative response).

19 Q: Have you heard gunshots before?

20 A: Yes.

21 Q: So, you thought it was a gunshot. Let me move back a
22 little before that. When Jeremy and Abdul were in the car,
23 were they wearing ---

24 MR. FOX: Your Honor, I've been letting it go. He's
25 leading all of his witnesses but he's continued to ask leading

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD
and suggestive questions.

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THE COURT: Rephrase -- ask them what they were wearing?

BY MR. HOLFORD:

Q: What were they wearing?

A: It was very cold outside that day. I believe, if I'm not mistaken that Mr. Fleming had gloves on. I had gloves on too as well, my hands were cold. They had a jacket on, I think. I think he had a jacket on. He sat next to me in the vehicle and that's why I can remember what he was wearing.

Q: What happened after you heard the loud bang?

A: Mr. Fleming came running and I let him in the car. I asked him if he was okay. And then Abdul got in the car and he sat right behind Taylor Smith, which was the driver and he put the gun to the back of her shirt and told her to drive. And he was cussing and screaming. Mr. Fleming wasn't saying anything really. I asked him if he was okay and that was it. I didn't know what happened.

Q: And what -- what were they wearing when they ran back down?

MR. FOX: Your Honor, again -- withdrawn.

THE COURT: Sir?

MR. FOX: Withdrawn.

THE COURT: Sir?

MR. FOX: No objection, Your Honor, withdrawn.

THE COURT: There's nothing wrong with that question.

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 MR. HOLFORD: The question was what were they wearing.

2 MR. FOX: Yes, sir, no problem.

3 A: When they went into the building, they only had the gloves

4 on and a jacket. When they came out, they had like covered

5 faces, like I think it was a bandana or a scarf of some kind.

6 Abdul had it pulled up still. Mr. Fleming, he had it down and

7 he had the gloves on and that was ---

8 BY MR. HOLFORD:

9 Q: Do you know what kind of gloves?

10 A: I think they were like a glow-in-the-dark like skeleton-
11 looking glove.

12 Q: You said there was a gun. What kind of gun?

13 A: It was just a silver gun. I don't know. I'm not good
14 with guns. I've never been around guns like that.

15 Q: What happened after they got back in the car?

16 A: They were -- they just told us that we had to go, that
17 they -- you know, they were screaming and cussing and honestly
18 I don't remember what was said, I just remember them pulling
19 the gun out -- well, it wasn't them that pulled the gun out,
20 it was Mr. Abdul, he pulled the gun out and put it to the back
21 of Taylor and as soon as we seen it -- I have a son, so
22 instantly, I just told her to go.

23 Q: And where did you go?

24 A: We brought Mr. Fleming and Abdul back to the Rocky Road
25 trailer park.

1 Q: Who lives at that trailer park, do you know?

2 A: I think Mr. Fleming was moving in there. It was someone
3 else that was there. If I'm not mistaken, his street name was
4 Boogie and his girlfriend Ariel. There was another female
5 that was dating Abdul. I don't really know her name or
6 anything. I don't really talk to her.

7 Q: When you got back to the mobile home, what happened?

8 A: They told us to come inside. They said that, you know,
9 they would prefer that we didn't leave until after the sirens
10 stopped so that we didn't -- you know, so that they didn't
11 have the cops on them or anything. I was very shaken up, so I
12 was shaking and I just was sitting in the corner of the room.
13 Everyone just dispersed, you know, they left me and my brother
14 and Ms. Taylor Smith and we just were left in the living room
15 and everyone went to the back room. It was kind of just --
16 you could just hear them, like, you know, putting -- to me it
17 sounded like they were ruffling with things, putting stuff
18 away. They were just moving very quickly but everything
19 happened so fast and we were all asking so many questions. It
20 was just -- kind of a, you know, a blur after hearing the
21 gunshot.

22 Q: Did Jeremy say anything to you while you were there?

23 A: No. I don't -- he -- they told us that we couldn't leave
24 the house or that we couldn't -- you know, they said that when
25 the sirens were going that we couldn't leave the house so that

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

1 they knew that we didn't turn them in or whatever. I -- you
2 know, I kept asking them what was going on because we didn't
3 know why the sirens were getting so close and like I said, we
4 didn't really know what happened anyways. So, we were trying
5 to get information and no one was answering any of us, we were
6 kind of just being pushed to the side and told what to do and
7 what not to do.

8 Q: Let me go back one more step. When you were at Ivystone,
9 did anyone else get out of the car with the Defendant Freak?

10 A: Huh-uh (negative response), no.

11 Q: Did anyone else go up to the apartment?

12 A: No.

13 Q: Did you -- what did you do after -- after you left the
14 Rocky Road mobile home?

15 A: We drove to the end of the parking lot. There's a pawn
16 shop down there and we just sat there and cried for a few
17 minutes. We were so scared, you know, my brother, he was only
18 fifteen and like I said, I have a baby. So, we were -- we
19 were worried about the situations that we'd be put in or what
20 would happen after, you know. I kept trying to get in contact
21 with Mr. Fleming to ask him what was going on so that at least
22 we knew what we had gotten ourselves into. At that point, he
23 just kept brushing us off. We weren't told anything until we
24 watched the news and that was when we knew that that was what
25 we were there for.

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1 Q: What did you do then?

2 A: I went in and got my mom and I told my mom that we were
3 involved in an attempted murder and at that point she
4 proceeded to call the Horry County Sheriff.

5 Q: And what happened after she called the Horry County
6 Sheriff?

7 A: We were taken to -- I think it was the -- it was two years
8 ago so I'm not really sure but I think it was the police
9 department that was down on Holmestown Road off of 707 or
10 whatever it is down there. We were taken there, we gave
11 statements, expressed how nervous we were and, you know, our
12 worries. And they told us that everything would be okay and
13 later that evening, my brother and myself, we were both
14 arrested upon other charges. I do remember my brother was --
15 he was arrested for something that was completely unrelated
16 but they had come and they arrested both of us, took us both
17 off at that point.

18 Q: What were those other charges you were arrested on?

19 A: Honestly, I don't even remember; they were dropped. It
20 wasn't anything, I mean, I was released within a couple of
21 hours. I think it was just breach of peace.

22 Q: Do you have any convictions on your record.

23 A: Yes, sir.

24 Q: And what do you have convictions for?

25 A: Shoplifting.

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1 Q: How many?

2 A: Two.

3 Q: How long ago?

4 A: The last one was in September.

5 Q: Did it have anything to do with this case?

6 A: No, sir; huh-uh (negative response).

7 MR. HOLFORD: Your Honor, I have no further questions at
8 this time.

9 THE COURT: Mr. Fox? Thank you, Mr. Holford.

10 CROSS EXAMINATION OF SAMANTHA TOPOLSKI BY MR. FOX:

11 Q: Ms. Topolski ---

12 A: Yes, sir.

13 Q: When you went -- finally went to the police, did your
14 brother to with you?

15 A: Yes, sir.

16 Q: Are you aware, did the police ever talk to your brother?

17 A: No, they didn't. My mom wouldn't -- she didn't want to
18 involve him in it, he was still young.

19 Q: Now, no question you told the police that your brother was
20 with you in the car, correct?

21 A: Yes, sir; uh-huh (affirmative response).

22 Q: So, Taylor, your brother, you, Jeremy, Freak.

23 A: Yes, sir.

24 Q: All right. What do you think about -- had you met Freak
25 before that night?

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1 A: Yes, sir.

2 Q: What's your -- what do you think about Freak?

3 A: I told Mr. Fleming that I really didn't feel comfortable

4 ---

5 MR. HOLFORD: Objection.

6 THE COURT: I sustain that.

7 MR. FOX: Yes, sir.

8 BY MR. FOX:

9 Q: You had been to this trailer before; is that right?

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

11 Q: Okay. Because you had -- you were at least at some point
12 a personal relationship with Mr. Fleming.

13 A: Yes.

14 Q: Had you been there more than one time?

15 A: Yes.

16 Q: Okay. Would you say you were a frequent guest over there?

17 A: Yeah.

18 Q: Who stayed at that trailer that you know?

19 A: I don't know who was on-the-lease person but I know that
20 the residents that were in the house were Boogie, Ariel, Abdul
21 and Mr. Fleming was going to move in there. He actually asked
22 me if I wanted to move in there with him. At that point I
23 couldn't, you know, I have a baby, so...

24 Q: And you mentioned another person that you thought was with
25 Freak, is that right, a female?

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SAMANTHA TOPOLSKI - CROSS BY MR. FOX

1 A: Uh-huh (affirmative response), yeah. I think her name
2 started with an M, Missy, Mary ---

3 Q: Mary? Okay. So, that's four besides Mr. Fleming?

4 A: Uh-huh (affirmative response).

5 Q: Okay. And Boogie, is that Brett Lanier (spelled
6 phonetically)?

7 A: I don't know his real name.

8 Q: You just know him as Boogie?

9 A: Yeah.

10 Q: Okay. And if you said it I didn't catch it. Do you know
11 his girlfriend's name?

12 A: Whose girlfriend?

13 Q: Boogie.

14 A: Yeah, her name was Ariel.

15 Q: Ariel, like the Little Mermaid Ariel?

16 A: Uh-huh (affirmative response).

17 Q: Okay. Now, why were you going over to Ivystone -- in your
18 mind, why were you going?

19 A: He asked us if we could take him to go pick up some money.

20 Q: Okay. That's it?

21 A: Yes, sir.

22 Q: Okay. Now, you remember taking to the police?

23 A: Uh-huh (affirmative response).

24 Q: You need to answer yes or no, please.

25 A: Yes, sir.

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1 Q: And when you spoke to the police, did they record that
2 conversation?

3 A: I'm not aware; I don't know.

4 Q: Did they tell you they were gonna record it?

5 A: I believe they said that, I don't -- you know, I really
6 don't ---

7 Q: Okay. It's been two years ago.

8 A: Yeah, I really don't know.

9 Q: Did you write anything out?

10 A: Yes, sir.

11 Q: Okay. And they in fact read you your rights and made you
12 aware that if you felt uncomfortable and needed to talk to a
13 lawyer, you certainly had that right, correct?

14 A: Uh-huh (affirmative response).

15 Q: All right. They didn't threaten you or bully you while you
16 were there, did they?

17 A: No, huh-uh (negative response).

18 Q: They gave you the chance to tell them everything that you
19 needed to tell them?

20 A: Yes, sir.

21 Q: Okay. Do you remember telling them the reason at that
22 time why you went to Ivystone; do you remember what you told
23 the police in 2011?

24 A: Yes. That we were going to pick up money.

25 Q: And anything else?

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1 A: No. There -- I mean, there was question of picking up
2 marijuana but there was never any confirmation that there was
3 marijuana in the house. That was what the female Brie, I
4 think her name was, that was what she had ---

5 Q: Are Brie and Ariel the same person?

6 A: Huh-uh (negative response), no.

7 Q: Okay. Now, ---

8 A: Brie didn't live in the house.

9 Q: I understand. Who is Brie?

10 A: I don't -- I don't know her. I know of her only because
11 she bailed Mr. Fleming out of jail.

12 Q: Wait ---

13 THE COURT: Sustained. Leave that alone. But you asked
14 the question.

15 MR. FOX: Well, not specifically but...

16 BY MR. FOX:

17 Q: Now, have you met Brie face-to-face?

18 A: Yeah.

19 Q: Okay. So, she's a person -- you say you don't know her,
20 you mean you don't have friendship with her, is that fair to
21 say?

22 A: Uh-huh (affirmative response). I mean, I couldn't like
23 pick her out of a crowd her of people or ---

24 Q: But you had actually met -- she was not just a name, she's
25 someone that you had at least seen; is that correct?

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- 1 A: Yeah, I seen her, uh-huh (affirmative response).
- 2 Q: Okay. Now, I want to get back to the reason you went to
- 3 Ivystone.
- 4 A: Uh-huh (affirmative response).
- 5 Q: What I think you just said in response to my question was
- 6 it turned out there wasn't any weed when we got to Ivystone.
- 7 I'm interested in your mind why you were going to Ivystone.
- 8 A: We were under the assumption, the text messages said that
- 9 we were going to pick up money, that was what the text
- 10 messages said.
- 11 Q: And that's it?
- 12 A: That's it.
- 13 Q: But in fact, you told the police you were going to get
- 14 money and bud.
- 15 A: Well, that was what -- it wasn't confirmed that there was
- 16 marijuana anywhere in the house or that there was ---
- 17 Q: I'm not worried about confirmed. I'm asking what was your
- 18 motivation for going or anybody's that you know. Was there
- 19 any discussion we're gonna get money that's owed to us or any
- 20 kind of money and some weed or bud?
- 21 A: Well, I don't -- I'm not under the assumption or was I not
- 22 under the assumption that there was any bud, marijuana,
- 23 whatever, in the house. I knew that at some point we were
- 24 going to be going to pick up some marijuana but we were asked
- 25 to pick up money.

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1 Q: I understand. You have no recollection of telling the
2 police though that you were gonna get money and go get -- you
3 went to go get money and for bud.

4 A: But the marijuana wasn't ---

5 Q: Now, listen to my question, I don't mean to cut you off.

6 A: Yes.

7 Q: The question was, Did you tell the police that in October
8 of 2011?

9 THE COURT: She's entitled to explain her answer.

10 MR. FOX: Yes, sir.

11 THE COURT: Go ahead.

12 A: I wasn't -- I didn't -- when I said that statement I was
13 not saying that there was marijuana in that apartment or that
14 that was what we were going to get from that apartment. We
15 were going specifically for money that was -- I mean, we have
16 text messages and things to show that to back that up.

17 BY MR. FOX:

18 Q: Now, whose phone were you texting and calling with?

19 A: They were my phones.

20 Q: Okay. You were the only one getting and receiving
21 messages, I'm talking about the ride between the trailer park
22 and ---

23 A: Oh, no, no, no; huh-uh (negative response). No, he was --
24 he text -- Jeremy -- Mr. Fleming text me earlier that day and
25 then he had asked my brother through the text message but the

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1 phone was still in my name, he asked if we could go pick him
2 up and take him to go get money.

3 Q: Okay. Once you all were in the car together, I'm talking
4 about Jeremy and you and Taylor and Tyler ---

5 A: Uh-huh (affirmative response).

6 Q: On the ride over, you were sitting next to Jeremy, weren't
7 you?

8 A: Yes.

9 Q: Okay. And then Freak is on the other side in the back?

10 A: Uh-huh (affirmative response).

11 Q: Was Jeremy still getting text messages?

12 A: I believe he was.

13 Q: And you were kind of curious because you thought it might
14 be another female?

15 A: No.

16 Q: You didn't tell the police that?

17 A: No. There was -- I mean, if the text messages were from
18 another female, I wasn't worried about them being from another
19 female, it was ---

20 Q: What happened to your phone? Do you still have that
21 phone?

22 A: No, no, not currently, no.

23 Q: Do you know what happened to that phone?

24 A: I think we sold them.

25 Q: When?

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SAMANTHA TOPOLSKI - CROSS BY MR. FOX

- 1 A: I would say maybe January of 2012.
- 2 Q: So, it's a couple of months after all this happened?
- 3 A: Yeah.
- 4 Q: Okay. Now, did the police ever ask you for your phone?
- 5 A: Yeah.
- 6 Q: And did you give it to them?
- 7 A: Yeah. And then they said that they weren't ---
- 8 Q: I don't care what they said, but they gave it back?
- 9 A: Yeah, uh-huh (affirmative response)..
- 10 Q: Okay. Court's indulgence, Your Honor. You could not --
- 11 when they got out, when you say Jeremy and Freak got out of
- 12 the car at Ivystone, did they immediately go down that
- 13 passageway or did they go to an apartment on the first floor
- 14 first?
- 15 A: I don't know where they went when they got out of the
- 16 vehicle. I just seen them ---
- 17 Q: You were not paying attention to what they were doing at
- 18 that point?
- 19 A: Well, it wasn't that we weren't paying attention because
- 20 we were still -- they were invisible to us but when he got out
- 21 -- when Mr. Fleming and Abdul got out of the car, they walked
- 22 into the apartment under the -- you know, the apartment
- 23 buildings. There wasn't any lights on or anything and where
- 24 the car was positioned, we couldn't see down the hallway so we
- 25 didn't know where they went.

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1 Q: So, you don't know where they went?

2 A: Yeah.

3 Q: Do you know David Moran?

4 A: No, I just met him today.

5 Q: Okay. So, you certainly didn't see him in October of
6 2011?

7 A: Huh-uh (negative response), no.

8 Q: Okay. So, you didn't see or know what -- and you don't
9 know what happened in his apartment that evening, of your own
10 knowledge. Obviously, you're aware of the charge -- I mean,
11 what -- the reason why we're all here today?

12 A: Well, I assumed ---

13 Q: You did not witness anything that happened in Mr. Moran's
14 apartment?

15 A: No.

16 Q: Okay. And when -- the testimony was shortly after you
17 heard a loud noise that you from experience figured it was a
18 gunshot.

19 A: Uh-huh (affirmative response).

20 Q: You didn't see any weapon fired, though, correct?

21 A: No.

22 Q: Okay. And shortly after Jeremy and then Freak come back
23 to the car, correct?

24 A: Yes.

25 Q: All right. Freak's face is still covered?

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- 1 A: Uh-huh (affirmative response).
- 2 Q: Jeremy's face not covered, correct?
- 3 A: No, he didn't have his face covered at that point.
- 4 Q: Who had the gun?
- 5 A: Freak.
- 6 Q: When they got back in the car, who was giving directions
- 7 ---
- 8 A: Freak.
- 9 Q: --- to Taylor? Freak?
- 10 A: Uh-huh (affirmative response).
- 11 Q: Now, do you recall when you talked to the police in 2011
- 12 telling the police that when y'all got back to the trailer,
- 13 you had a conversation with Ariel?
- 14 A: I don't remember what we talked about.
- 15 Q: Well, is that a yes you had a conversation or no you
- 16 didn't have a conversation with Ariel?
- 17 A: If I said that we had a conversation, we probably did have
- 18 a conversation. I don't -- I really don't remember.
- 19 Q: I understand. Do you remember telling the police that
- 20 Ariel said, Don't worry about that guy, we'll take care of
- 21 him?
- 22 MR. HOLFORD: Objection, Your Honor, hearsay.
- 23 THE COURT: Sustained. Strike that remark.
- 24 BY MR. FOX:
- 25 Q: You indicate you've been arrested -- you've been convicted

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1 how many times for shoplifting?

2 A: Twice.

3 Q: And that is in 2011 and 2012?

4 A: Uh-huh (affirmative response).

5 Q: And you were arrested shortly after -- at the time you
6 went to talk to the police in October of 2011, it was
7 immediately after that that you were arrested or served a
8 warrant for another charge that you say was dismissed?

9 A: Yeah, it was a breach of peace.

10 Q: That warrant was pending when you talked to the police?

11 A: No, at that point I wasn't charged with anything. It was
12 an altercation, we -- it was yelling outside. I mean, with
13 the situation we were all upset and everyone's emotions were
14 very high. It ended up being that we -- my brother and I both
15 had gotten into an argument with our grandfather and mother
16 and that was the breach of peace charge.

17 MR. FOX: No further questions, Your Honor.

18 THE COURT: All right. You may come down.

19 MR. HOLFORD: No redirect, Your Honor.

20 THE COURT: And may remain in the courtroom if you care
21 to.

22 Call your next witness, please.

23 MR. HOLFORD: Your Honor, we ask that she be excused from
24 her subpoena if she wishes to leave.

25 THE COURT: She is excused but you may remain if you care

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TAYLOR SMITH - DIRECT BY MR. HOLFORD

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1 to.

2 A: Okay. Thank you.

3 MR. HOLFORD: Your Honor, may we approach for scheduling.

4 THE COURT: Yes, sir.

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

7 MR. HOLFORD: The State calls Taylor Smith to the stand.

8 TAYLOR SMITH, HAVING BEEN SWORN,

9 TESTIFIED AS FOLLOWS:

10 CLERK: Scoot up, speak into the microphone and state
11 your full name and spell your last name.

12 MS. SMITH: Lindsey Taylor Smith, S-M-I-T-H.

13 DIRECT EXAMINATION OF LINDSEY TAYLOR SMITH BY MR. HOLFORD:

14 Q: Ms. Smith, how are you doing -- it looks like it's the
15 afternoon now -- how are you doing this afternoon?

16 A: I'm good -- nervous.

17 Q: Will you tell this jury a little bit about yourself; where
18 you're from; what you do; how old you are?

19 A: I'm from Myrtle Beach. I'm twenty years old. And I work
20 two jobs; I work at the Landmark as a server and I work at
21 Arby's as a cook.

22 Q: If you could move the microphone just a little closer. I
23 want to make sure these last jurors here at the very end can
24 hear what you're saying.

25 A: Okay.

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TAYLOR SMITH - DIRECT BY MR. HOLFORD

1 Q: You might be a little nervous. Have you ever testified in
2 court before?

3 A: No, sir.

4 Q: I'm gonna try and take this a little slow then. How hold
5 did you say you are now?

6 A: Twenty.

7 Q: And how old were you in October of 2011?

8 A: Eighteen.

9 Q: Eighteen years old. How are you involved with this case
10 today?

11 A: I was the driver in the car when it all happened.

12 Q: And we've heard a lot about the car. Who else was in it?

13 A: It was Sam, Tyler, Jeremy and Abdul.

14 Q: No one else in the car?

15 A: No.

16 Q: Was this your car?

17 A: Yes.

18 Q: What kind of car was it?

19 A: Gold Chevy Cobalt.

20 Q: And it -- how did you happen to be the driver on this
21 night?

22 A: Because it was my car, so I was driving anyway.

23 Q: Why were you driving them?

24 A: To pick up Abdul from work and went back to Jeremy's
25 house, picked him up.

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TAYLOR SMITH - DIRECT BY MR. HOLFORD

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- 1 Q: Where was Jeremy's house; do you know?
- 2 A: The -- off 707, I don't know the exact address, it was ---
- 3 Q: Was it a house, apartment?
- 4 A: It was a mobile home, trailer.
- 5 Q: Mobile home. And that -- you said that was Jeremy's
- 6 address?
- 7 A: Yes.
- 8 Q: When you picked Jeremy up, after you picked Abdul up, what
- 9 did you do then?
- 10 A: We went to Ivystone and then they told us which apartment
- 11 to go to.
- 12 Q: What apartment did he say?
- 13 A: He just told us -- I don't know which one it was, he just
- 14 told us to park at one apartment.
- 15 Q: Did you know why you were going there?
- 16 A: I was under the impression that we were gonna go pick up
- 17 money for Jeremy because he said he was owed money.
- 18 Q: And when you got there, what happened?
- 19 A: Jeremy and Abdul got out of the car and they went around
- 20 the walkway to the apartment. Me, Tyler and Sam were sitting
- 21 in the car. And we heard a noise and I didn't know what it
- 22 was. Sam heard it, she automatically assumed it was a gunshot
- 23 and I thought something had fallen over. And I look up and
- 24 see the two running out of the apartment.
- 25 Q: When you say the two, who are you talking about

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specifically?

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2 A: Jeremy and Abdul.

3 Q: Jeremy, the Defendant?

4 A: Yes.

5 Q: Did anyone else get out of the car?

6 A: No.

7 Q: Did anyone else go up to that apartment?

8 A: No.

9 Q: Was anyone else with you other the five of you?

10 A: No.

11 Q: What were Jeremy and Abdul wearing that night?

12 A: Hoodies but when they first got in the car they were
13 wearing just hoodies and then when they came out of the
14 apartment, they had the masks on and the hoods over their
15 heads.

16 Q: Now, when you say masks, describe that for me.

17 A: Bandanas around their face.

18 Q: Do you know what color?

19 A: Not exactly, no; it was dark.

20 Q: Were they wearing anything else?

21 A: Gloves.

22 Q: Do you know what kind of gloves?

23 A: A pair -- I know one was a pair of skeleton gloves.

24 Q: When they got back in the car, did you notice anything
25 else that they had?

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TAYLOR SMITH - DIRECT BY MR. HOLFORD

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1 A: Just the gun and ---

2 Q: What kind of gun?

3 A: A silver revolver.

4 Q: And who had the gun?

5 A: Abdul.

6 Q: Did you see anything in the apartment?

7 A: No. We were in the car the whole time.

8 Q: And were you able to see what apartment they went to?

9 A: No.

10 Q: Why was that?

11 A: Because when they went around the walkway, they just got
12 out of sight and I don't know if they went to a downstairs or
13 an upstairs apartment.

14 Q: What time of night was it?

15 A: About probably eleven, eleven-thirtyish, something around
16 there.

17 Q: After the Defendant and Abdul got back in the car, what
18 happened?

19 A: Abdul put the gun to me and told me to drive back to their
20 house.

21 Q: Their house being ---

22 A: The mobile home.

23 Q: And what did you do when you got to the mobile home?

24 A: They told us to get out and go inside until the sirens
25 died down, so we did. And Jeremy gave me \$10 in gas money and

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1 we just sat there.

2 Q: How long -- let me take you back to the apartment at
3 Ivystone, how long would you say it was between the time the
4 Defendant and Abdul got out of the car and the time they came
5 back to the car?

6 A: It was five or ten minutes.

7 Q: How long would you say after you got back to the mobile
8 home that you were at the mobile home?

9 A: We were probably there for about thirty or forty-five
10 minutes.

11 Q: And what happened while you were at the mobile home? You
12 say you just sat down?

13 A: We sat down and we smoked marijuana in the house and he
14 gave me the gas money and watched T.V. and they just told us
15 not to say anything and if we said anything that they would
16 know who it was and then they would come after our families
17 and us.

18 Q: Who said -- who said that to you?

19 A: This girl Ariel -- I don't know her last name. I just
20 know her name is Ariel.

21 Q: Ariel said that she would come after your families if you
22 said anything?

23 A: She said that they all would.

24 Q: Did Jeremy say anything to you?

25 A: No.

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TAYLOR SMITH - DIRECT BY MR. HOLFORD

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1 Q: Did Abdul say anything to you?

2 A: No. He offered me like free weed forever and money if I
3 needed anything.

4 Q: Court's indulgence. You talked to -- you gave a statement
5 to the police afterwards?

6 A: Yes.

7 Q: Do you remember who told you to go to Ivystone?

8 A: Jeremy.

9 Q: And do you remember what you told the police who
10 threatened you that they would come after your family?

11 A: It was Ariel.

12 Q: In your statement you said they said they would come after
13 the families.

14 A: Ariel directly told us. She came up to my car window
15 before we left the mobile home and she said, we know who did
16 it and if they go to jail, they're gonna merk us, their term
17 for ---

18 Q: What did you think that meant?

19 A: Kill us.

20 Q: Were you scared?

21 A: Yes. I've been scared for the last year and a half.

22 Q: Are you scared today?

23 A: Yes. I'm terrified to be in this room right now.

24 MR. HOLFORD: Your Honor, no further questions at this
25 time.

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TAYLOR SMITH - CROSS BY MR. FOX

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1 THE COURT: Mr. Fox?

2 CROSS EXAMINATION OF LINDSEY TAYLOR SMITH BY MR. FOX:

3 Q: Ms. Smith, Tyler is Samantha's younger brother, correct?

4 A: Yes.

5 Q: You're friends with Tyler?

6 A: Yes.

7 Q: Tyler Topolski, right?

8 A: Uh-huh (affirmative response).

9 Q: Yes or no, please. In your mind, why were you going over
10 to Ivystone that night?

11 A: Because I was under the impression that they owed Jeremy
12 money.

13 Q: Okay. Any worry on your part that something illegal was
14 gonna happen?

15 A: No.

16 Q: So, there certainly would've been no worry that someone
17 was gonna end up shot?

18 A: No.

19 Q: All right. Would you have -- and Tyler is your friend,
20 correct?

21 A: Yes.

22 Q: All right. And he's -- he was only fifteen at the time,
23 correct?

24 A: Uh-huh (affirmative response).

25 Q: Is that a yes?

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1 A: Yes.

2 Q: The court reporter has to take down a yes or a no, not a
3 nod. Would you, even though he's not your brother, as his
4 friend, would you have -- if you thought anything bad was
5 gonna happen before you left, would you have ---

6 A: No, not at all.

7 Q: Would you have gone?

8 A: Not at all.

9 Q: Was there any discussion -- who was it that asked you to
10 pick up Freak from work?

11 A: It was ---

12 Q: Was it Freak?

13 A: No, it wasn't him himself. Tyler or Sam got a text
14 message saying he needed a ride from work and he'd give me gas
15 money.

16 Q: And it was your car, correct?

17 A: Yes.

18 Q: And what was the last part about gas money?

19 A: They said that they'd give me gas money to pick him up
20 from work and to take them to Ivystone.

21 Q: And take them to Ivystone?

22 A: Yes.

23 Q: So, you got \$10 from Jeremy back at the trailer, you
24 figured that was your gas money that had already been
25 discussed before, correct?

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1 A: Yes.

2 Q: Okay. And when you got back, everybody just sat there and
3 smoked weed and watched T.V., correct?

4 A: Yes.

5 Q: How long before then you left?

6 A: Left the mobile home?

7 Q: Yes.

8 A: About thirty to forty-five minutes.

9 Q: Okay. And you walked out freely, correct?

10 A: Yes.

11 Q: Okay. Who left with you?

12 A: It was me, Tyler, Sam and they all walked -- Jeremy and
13 Freak and Ariel all walked out with us. And when we got in
14 the car, that's when Ariel had said that they would know who
15 did it and if we came forward, then they would merk us.

16 Q: Now, and that was Ariel?

17 A: Yes.

18 Q: Now, do you know where Ariel is now?

19 A: Nuh-uh (negative response).

20 Q: You don't know if she's still around Myrtle Beach?

21 A: No.

22 Q: Who else -- is that the first time you'd been to that
23 trailer?

24 A: No, it wasn't the first time. We've been there a few
25 times before.

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TAYLOR SMITH - CROSS BY MR. FOX

1 Q: Okay. Who stays there that you know of?

2 A: Jeremy -- I saw him most of the time, I don't know if he
3 permanently lived there but he was there every time we were
4 there; Abdul was there every time we were there.

5 Q: Abdul is Freak?

6 A: Yeah, Freak.

7 Q: Okay.

8 A: And then this one they called Boog or Boogie; and then
9 Ariel.

10 Q: Boogie is a man?

11 A: Yes.

12 Q: Ariel?

13 A: That was his girlfriend, I think, I believe it was his
14 girlfriend. And then this other girl, I don't know if she
15 stayed there or not but her name was Brie.

16 Q: Okay.

17 A: And that was all -- the only ones I can remember that were
18 in the house.

19 Q: Was there -- did Freak have a girl that stayed with him
20 that you know of?

21 A: Not that I know of.

22 Q: Okay. Anybody ever you hear of?

23 A: (Indicates negatively.)

24 Q: Okay. So, that's at least four besides Mr. Fleming,
25 that's Ariel, Boogie, Freak and Brie.

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TAYLOR SMITH - REDIRECT BY MR. HOLFORD

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1 A: Yes.

2 Q: That are at least there but you're not sure who stays
3 there on a permanent basis; is that right?

4 A: Right.

5 Q: Okay. Well, four other individuals in addition to Mr.
6 Fleming that you would see there frequently; is that fair to
7 say?

8 A: Uh-huh (affirmative response), yes.

9 Q: Thank you. I have no further questions.

10 MR. HOLFORD: Your Honor, one -- just one question on
11 redirect.

12 REDIRECT EXAMINATION OF TAYLOR SMITH BY MR. HOLFORD:

13 Q: Did any of those individuals who stayed there at that
14 mobile home other than the Defendant and Abdul go with you to
15 Ivystone?

16 A: No.

17 MR. HOLFORD: That's all, Your Honor.

18 THE COURT: You may come down. Can this witness be
19 excused?

20 MR. HOLFORD: Yes, Your Honor, I ask that she be released
21 from her subpoena.

22 THE COURT: Any objection, Mr. Fox?

23 MR. FOX: None, Your Honor.

24 THE COURT: You are excused buy may remain in the
25 courtroom.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Please call your next witness.

2 MR. HOLFORD: Your Honor, this could be a lengthy
3 witness.

4 THE COURT: That's all right. Let's go. We didn't start
5 this case until 11 o'clock, so I think the jury is fine. Does
6 anybody need to stop for a few moments?

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Proceed.

9 MR. HOLFORD: Yes, Your Honor. The State calls
10 Detective Allen Large to the stand.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 DETECTIVE ALLEN LARGE, HAVING BEEN
14 SWORN, TESTIFIED AS FOLLOWS:

15 CLERK: State your full name for the record.

16 MR. LARGE: My name is Troy Allen Large, L-A-R-G-E.

17 DIRECT EXAMINATION OF DETECTIVE TROY ALLEN LARGE BY MR.

18 HOLFORD:

19 Q: Detective Large, where are you currently employed?

20 A: I'm currently employed with the Major Crimes Unit of the
21 Horry County Police Department.

22 Q: And how long have you been employed there?

23 A: Twenty-five years.

24 Q: And do you have any training or expertise, skill in this
25 area?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 A: Yes, sir. I've spent twenty-one years working major
2 crimes, sex crimes, homicides, violent crimes, those type of
3 crimes are what I initially investigate.

4 Q: And what's your rank right now?

5 A: Detective, Senior Detective since I'm an older guy; I've
6 been for a long time.

7 Q: You're not that old. How did you become involved with
8 this case here today?

9 A: Basically, we have an on-call schedule where we work
10 several days out of the month where we're the primary response
11 to a violent crime. Back on the 16th of October, 2011, there
12 was a home invasion, gunshot victim that I responded to at
13 Ivystone Apartments.

14 Q: Do you remember what apartment that was?

15 A: I believe it was Apartment F.

16 Q: And how did you become the one to respond?

17 A: Basically, I was on call, received a call, left my
18 residence, responded to the Myrtle Beach section of Ivystone
19 Apartments, arrived on scene. Also, basically, since we had a
20 victim who had suffered a gunshot wound and was transported to
21 Grand Strand Regional Hospital, we knew that it was a major
22 crime scene, so Jill Domogauer is our CSI, crime scene
23 specialist, was also dispatched to meet me at the location to
24 conduct a crime scene investigation from her end of the
25 investigation.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: Was the victim present at the scene when you arrived?

2 A: No, the victim had been transported to Grand Strand
3 Regional Hospital.

4 Q: Do you know why that was?

5 A: He suffered a gunshot wound to his head.

6 Q: When you did arrive at Ivystone, who was present?

7 A: His roommate.

8 Q: Do you know his roommate's name?

9 A: Excuse me, I have to refer to it since there was so many

10 ---

11 MR. HOLFORD: Your Honor, I'd ask that the detective be
12 allowed to refresh his recollection.

13 THE COURT: You may do so.

14 A: Thank you, Your Honor.

15 THE COURT: If you can make a representation that it was
16 so-and-so, we can accept it.

17 A: Yeah, it's Eric Collins, Your Honor, I'm sorry. I --
18 like I said, there was ---

19 THE COURT: No, that's fine; no, that's fine.

20 A: Eric Collins.

21 BY MR. HOLFORD:

22 Q: And did you search the crime scene?

23 A: Yes. Basically, Mr. Collins was on-scene. The severity
24 of the injury to the victim, we didn't know if he would
25 survive or not, so we went ahead and got consent from Mr.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Collins to search the residence to document what had happened.

2 Q: Did the victim ever give you consent to search residence?

3 A: Eventually when I spoke to him, he was very cooperative.

4 I was actually shocked when I arrived at Grand Strand and he
5 was talking.

6 MR. HOLFORD: Your Honor, may I approach the witness with
7 State's Eighty-one?

8 THE COURT: You may as long as you've shared with Mr.
9 Fox?

10 MR. HOLFORD: I have, Your Honor.

11 BY MR. HOLFORD:

12 Q: Detective Large, I'm handing you what's been marked as
13 State's Eighty-one for ID.

14 STATE'S EXHIBIT NUMBER EIGHTY-ONE

15 MARKED FOR IDENTIFICATION

16 Q: Can you identify what that is?

17 A: Yes, sir. This is what we refer to as our Horry County
18 Police form for consent to search that we read to any
19 individual that we're preparing to search their residence or
20 cars and have them sign that and waive consent.

21 Q: And did you perform this Consent to Search form?

22 A: Yes, sir, I did.

23 Q: And who signed it?

24 A: Mr. Moran, the victim, signed it at the hospital.

25 Q: Mr. Moran?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 A: Moran, yes.

2 Q: Now, you said -- how long were you in Ivystone?

3 A: Probably maybe an hour. I was there outside the
4 residence. I didn't go on because Jill Domogauer was going to
5 do crime scene analysis and I didn't want to contaminate the
6 scene. I stayed outside the apartment.

7 Q: You never went into the apartment?

8 A: No, never went into the apartment.

9 Q: After you left the scene -- did you interview any
10 witnesses on scene?

11 A: There was no witnesses outside from the neighboring
12 apartments that saw anything. I did briefly speak to Mr.
13 Collins who said that he heard a commotion, grabbed his gun
14 and went down the hallway and confronted two suspects that
15 were standing over his roommate, Mr. Moran.

16 Q: And then where did you go after that, after you left the
17 apartment?

18 A: I went to the hospital to check on the condition of the
19 victim.

20 Q: And what did you find when you got to the hospital?

21 A: I was surprised that he was able to talk. He was in the
22 emergency room and they were treating him for a gunshot wound
23 to the head. He was very lucky to -- that the bullet had
24 grazed his skull and ridden his skull line to the back of his
25 head. They were preparing him -- I basically asked him a few

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 brief questions because of -- if he knew who had done this to
2 him and he did not.

3 Q: He could not identify the individuals?

4 A: No, he said that they were covered up and that he's ---

5 MR. FOX: Objection to any hearsay, Your Honor.

6 A: He ---

7 Q: Yes, sir.

8 THE COURT: Yes, sir, it is sustained.

9 Q: Sorry, Detective Large, you can't say what Mr. Moran told
10 you.

11 A: Okay. I apologize; sorry. He just -- can I tell you what
12 he described or ---

13 Q: What did you do as a result of your conversation with Mr.
14 Moran?

15 A: Basically, reached out to the news media, which is our
16 protocol. If we have a violent crime, we try to reach out to
17 the public. Also, the news media likes to cover the stories
18 but we reach out to the news media to see if there's any
19 information. So, we had the story published but tried to
20 check to see if there was any other home invasions like that
21 in the South Strand area and also work with Jill Domogauer to
22 see if there was any forensic evidence that might lead to the
23 -- us developing a suspect or suspects.

24 Q: And what were you looking for?

25 A: Basically, we were looking for two subjects that were

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 masked and armed with a handgun.

2 Q: Did you have -- did you have a chance to figure out who
3 these two subjects were?

4 A: Yes. During our investigation, Detective Daryl Williams
5 originally got the call and then we started working it
6 together where we found out that there was three individuals
7 that might have knowledge of what happened. They called in or
8 there was a call that came into the police department that
9 Detective Williams received and then met with the witnesses at
10 the South Precinct off the Holmestown Road.

11 Q: And as a result of this -- these interviews, what did you
12 do after that?

13 A: Well, as part of our interview, we were able to identify
14 the two subjects. One, we had to go back and go all the way
15 to the Olive Garden to confirm who we were looking at. So, it
16 was a process of about -- a little over twenty-four hours that
17 we worked on the two suspects and also were able to obtain a
18 location where they lived at and to confirm that address to
19 obtain a search warrant from the Magistrate.

20 Q: Who did you ultimately determine the two subjects were?

21 A: Mr. Fleming and Mr. Abdul Furquan.

22 Q: Now, you just said you obtained a search warrant. Where
23 did you obtain a search warrant to search?

24 A: The residence located in the -- off of 707, the exact
25 address is [REDACTED], [REDACTED], Myrtle Beach, South

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Carolina. It's a trailer park off of 707.

2 Q: It's a trailer park?

3 A: Yes, sir.

4 MR. HOLFORD: Your Honor, may I approach the witness with
5 State's Eighty-two for ID?

6 THE COURT: You may and I assume, Mr. Fox, you've been
7 pre -- been given that document?

8 MR. HOLFORD: He's being shown a copy of the exhibit
9 right now.

10 THE COURT: All right, sir. Thank you.

11 MR. HOLFORD: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 STATE'S EXHIBIT NUMBER EIGHTY-TWO

14 MARKED FOR IDENTIFICATION

15 BY MR. HOLFORD:

16 Q: Detective Large, I'm handing you what's been marked as
17 Exhibit Eighty-two by the State. Can you identify what this
18 document is?

19 A: Yes, sir. It's the search warrant I obtained from Judge
20 Mayers out of Conway, the Magistrate, to search the residence.

21 Q: What residence is that?

22 A: The residence located -- Woodlawn Mobile Home Park at the
23 corner of Gwen Drive and Rocky Road, this is the front of the
24 residence. It's marked 5586 or Lot 49 in the Myrtle Beach
25 section of Horry County.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: Now, when you do a search warrant like this, tell us the
2 process. How do you get a search warrant?

3 A: Well, in this particular process, we had two persons come
4 forward, one that said that they take ---

5 MR. FOX: Objection.

6 THE COURT: Wait a minute. Just say as a result of your
7 investigation ---

8 A: Yes, sir. As a result of my investigations, we confirmed
9 that one of the CoDefendants did indeed work at Olive Garden
10 Restaurant in the North Myrtle Beach section of Horry County.
11 And that we also confirmed that they were the two subjects
12 that were involved at about the same time that we had an
13 incident at Ivystone Apartments. Based on that and the fact
14 that we had Ms. Smith drive us to the residence so we made
15 sure we hit the right residence and not the wrong residence in
16 the time we were executing a search warrant. We confirmed
17 this and went to a magistrate and presented our probable cause
18 as to reason why we believe there might be items such as a
19 gun, a mask or bandanas, materials that would use ballistics,
20 bullets or anything like that that might be used in a robbery.
21 And we also -- also at that time, had obtained to arrest
22 warrants for the Defendants.

23 Q: And what did the Judge do when you presented him with the

24 ---

25 A: He signed both the warrants and the search warrant.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: And so what did that allow you to do?

2 A: It allowed us to go in the residence and make a -- execute
3 a search warrant by making an entry by knocking and announcing
4 and then going in by force.

5 Q: And what did you find when you entered that residence, the
6 mobile home park ---

7 A: As we hit the residence, we secured it down and did a
8 search. As we were doing the -- hitting the house with a
9 search warrant, a person threw a gun out the window. We
10 retrieved that gun, placed it into evidence. We also
11 retrieved gloves and what you would either call bandanas or
12 handkerchiefs that we also collected as evidence during our
13 search of the residence.

14 Q: Do you remember what color the bandanas or handkerchiefs
15 were?

16 A: No, sir, but we photographed them and documented them. I
17 could look and see.

18 Q: Were you present during this search?

19 A: Yes, sir; I was.

20 Q: And who took most of the photographs?

21 A: I believe Jill Domogauer, our crime scene specialist.

22 MR. HOLFORD: Your Honor, may I approach ---

23 THE COURT: You may.

24 MR. HOLFORD: --- with Thirty-seven, Thirty-eight and
25 Thirty-nine? Let the record reflect, I'm showing opposing

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD
counsel.

1

2

THE COURT: All right, sir.

3

BY MR. HOLFORD:

4

Q: Detective Large, I'm approaching you with State's Thirty-

5

seven, Thirty-eight and Thirty-nine. Can you identify what

6

these are without going into too much description?

7

A: Yes, sir. These are photographs that were taken during

8

the investigation at the residence located in the Myrtle Beach

9

section of Horry County when we executed the search warrant.

10

Q: Are they a true and accurate reflection of what you found

11

at that residence?

12

A: Yes, sir.

13

MR. HOLFORD: Your Honor, I'd ask that State's Thirty-

14

seven, Thirty-eight and Thirty-nine be entered into evidence.

15

THE COURT: They are.

16

Let me say, Mr. Foreman, ladies and gentlemen, when

17

matters are introduced into evidence, they may publish them

18

and at that are not but they will be with you in the jury --

19

in the room during your deliberations. Do you care to publish

20

at this time, Mr. Holford?

21

MR. HOLFORD: May I publish. Your Honor?

22

THE COURT: You may.

23

STATE'S EXHIBIT NUMBER THIRTY-SEVEN, THIRTY-EIGHT

24

AND THIRTY-NINE ADMITTED INTO EVIDENCE

25

BY MR. HOLFORD:

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: Detective Large, will you hold those up one at a time and
2 just show the jury what it's a picture of?

3 A: Yes, sir.

4 Q: Everyone see that picture?

5 A: This is a picture of a bed with a -- what you would call
6 either a handkerchief, bandana or scarf that was taken at the
7 residence.

8 Q: And again, just for clarification, that -- that residence
9 was where?

10 A: In the Woodlawn Mobile Park section off of the Myrtle
11 Beach section of Horry County off of 707.

12 Q: And what are Thirty-eight and Thirty-nine?

13 A: This is a second handkerchief, scarf, bandana, cigarettes,
14 cell phone and money that was on the floor that was also
15 collected as evidence during our execution of the search
16 warrant.

17 THE COURT: Please pass them around?

18 MR. HOLFORD: I am, Your Honor.

19 BY MR. HOLFORD:

20 Q: And Thirty-nine?

21 A: Thirty-nine is a picture of a cell phone and also the
22 scarf, handkerchief or bandana that was found during the
23 execution of our search warrant at the residence off of 707.

24 MR. HOLFORD: May I approach the witness with State's
25 Forty through Forty-four?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 THE COURT: You may.

2 MR. HOLFORD: Let the record reflect that Defense counsel
3 is being provided these exhibits.

4 BY MR. HOLFORD:

5 Q: Detective Large, I'm approaching you with what's been
6 marked as Exhibit Forty through Forty-three, excuse me,
7 State's for identification purposes. Without identifying the
8 contents, can you describe what these are?

9 A: Okay. During our ---

10 Q: You can't -- without holding up, first -- just describe
11 ---

12 A: Okay. I'm sorry.

13 Q: --- what the exhibit is.

14 A: Oh, the exhibit is a couch pushed against a wall.

15 Q: And what is Forty-one, Forty-two and Forty-three, just
16 without describing what you're actually looking at just tell
17 me what they are.

18 A: Again, the Forty-two is representing the couch pushed
19 against the wall that's -- there's an object that's brought to
20 our attention that we're documenting where we -- what we like
21 to do is photograph something before we collect it into
22 evidence. So, these pictures, two pictures here indicating
23 that we have interest in that area.

24 Q: And Forty-two and Forty-three?

25 A: Forty-two and Forty-three is a picture of the item that we

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 were interested in that we found back behind the couch pressed
2 up against the wall.

3 Q: And were you there at the time that these pictures were
4 taken?

5 A: Yes, sir, I was.

6 Q: Is it a true and accurate reflection of what you found at
7 the scene?

8 A: Yes, sir.

9 Q: And that's where you conducted the search warrant?

10 A: Yes, sir.

11 MR. HOLFORD: Your Honor, I'd ask that State's Forty,
12 Forty-one, Forty-two and Forty-three be entered in evidence.

13 THE COURT: They are.

14 STATE'S EXHIBIT NUMBER FORTY, FORTY-ONE, FORTY-TWO

15 AND FORTY-THREE ADMITTED INTO EVIDENCE

16 MR. HOLFORD: May I publish to the jury?

17 THE COURT: You may.

18 BY MR. HOLFORD:

19 Q: Now, Detective Large, now you can show the jury. What is
20 State's Forty?

21 A: What it -- what we've got here is a couch and a wall and
22 we've spotted something in-between here that, like I said,
23 before we go ahead and pull it out, we wanted to document
24 where it was located at so that's the first picture.

25 Q: And Forty-one?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 A: Forty-one is a little bit closer in. When you are able to
2 hold the picture, there's a, like I said, a little black-like
3 area here that brought our attention and this is the couch and
4 the wall of the residence.

5 Q: And Forty-two?

6 A: This is where we removed what we found against the wall.
7 It is a set of gloves that's got skeletal decoration on it.
8 And that's what was pulled out of this area here.

9 Q: And where did you find these gloves?

10 A: At the residence in the living room section.

11 Q: And Forty-three?

12 A: This is another picture of the gloves that were retrieved
13 during the execution of the search warrant at the residence
14 off of 707 in the Woodlawn Mobile Home Park, another picture
15 of the gloves.

16 MR. HOLFORD: Your Honor, may I approach the witness with
17 State's Ten, Eleven and Twelve. The record will reflect I'm
18 showing opposing counsel.

19 MR. FOX: Your Honor, just so the record is clear, I have
20 been provided these items in discovery previously.

21 THE COURT: Thank you so much.

22 MR. HOLFORD: May I approach?

23 THE COURT: You may. Based on his comments, since you've
24 provided them, if you got any more, you may go forward. He's
25 agreed that they've been provided to him. Just identify them

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 and move on.

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Thank you, Mr. Fox.

4 BY MR. HOLFORD:

5 Q: I'm handing you Ten, Eleven and Twelve, State's Exhibit
6 for ID. Can you just identify what these are pictures of?

7 A: Yeah. This picture is a picture of the backyard of the
8 residence where the gun was thrown to. We documented it from
9 going from the outside of distance and moving up closer to it.
10 The photographs are in a chronological order to indicate how
11 we come up on it to identify it.

12 MR. HOLFORD: The State moves Exhibits Ten, Eleven and
13 Twelve into evidence.

14 THE COURT: It is.

15 STATE'S EXHIBIT NUMBER TEN, ELEVEN AND TWELVE

16 ADMITTED INTO EVIDENCE

17 MR. HOLFORD: May I publish, Your Honor?

18 THE COURT: You may.

19 BY MR. HOLFORD:

20 Q: Detective Large, I'm just gonna pass these around the jury
21 but again, will you tell them what they're looking at?

22 A: Yeah. The first photograph is taken from a distance. It
23 indicates the grass area of the residence towards the back of
24 the yard where the gun was thrown to and as you see on the
25 other two pictures, we go up closer to the object to document

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 it as to what it is.

2 Q: And what is it?

3 A: It's a silver revolver.

4 Q: Help me go back just a little bit. State's One and Two,
5 can you identify these documents?

6 A: Yes, sir.

7 Q: And are they a clear and accurate representation of the
8 pictures that were taken at the time?

9 A: Yes, sir. Those were taken at the South Precinct.

10 Q: Were you present?

11 A: I was not present when these two pictures were taken.

12 Q: Do you know what those pictures represent?

13 A: Yes. Those pictures represent the two female witnesses
14 that came forward. Ms. Smith and Ms. Top -- how you pronounce
15 it -- Topo ---

16 Q: Topolski?

17 A: Topolski, I'm sorry.

18 MR. HOLFORD: Your Honor, the State offers Exhibit One
19 and Two in evidence.

20 THE COURT: They are admitted.

21 STATE'S EXHIBIT NUMBER ONE AND TWO

22 ADMITTED INTO EVIDENCE

23 BY MR. HOLFORD:

24 Q: This is -- we'd talked earlier about written statements.

25 A: Right. As detective -- what we try to do is any time we

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 have someone come forward, we try to document as much as
2 possible. They came forward with this story about being
3 somewhere and hearing a loud noise. So, what we -- our
4 standard procedure is identify who we're talking to and either
5 take a tape or written statement from that person. At that
6 time, we took -- Detective Williams took a written statement.

7 MR. HOLFORD: Your Honor, may I approach with Three ---

8 THE COURT: You may.

9 MR. HOLFORD: --- Five, Six, Seven, Eight and Nine.

10 THE COURT: And the record will reflect that Mr. Fox has
11 been previously provided copies.

12 MR. FOX: And Your -- I just wanted -- I believe I have
13 everything but I just want to quickly review and make sure ---

14 THE COURT: I'm sure -- you're certainly entitled to
15 that, Mr. Fox.

16 BY MR. HOLFORD:

17 Q: Detective Large, will you just flip through these and tell
18 me what they are pictures of, where they are pictures of.

19 A: These are photographs of the residence that we executed
20 the search warrant on the 19th of October of 2011, the one
21 that's off of 707 in the Woodlawn Trailer Park.

22 Q: Are they true and accurate representations of that mobile
23 home park at the time?

24 A: Yes, sir. Also one of the pictures indicate that it's
25 5586 and it's Lot 49 on the side of the trailer.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 MR. HOLFORD: Your Honor, the State moves State's Three,
2 Five, Six, Seven, Eight and Nine into evidence.

3 THE COURT: They are admissible. You may publish.

4 STATE'S EXHIBIT NUMBER THREE, FIVE, SIX, SEVEN,
5 EIGHT AND NINE ADMITTED INTO EVIDENCE

6 MR. HOLFORD: May I publish, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. HOLFORD:

9 Q: Detective Large, what are these pictures of?

10 A: The side of the residence and you see that there is a
11 officer in gear that's stationed outside that we secure the
12 scene when we do execute a search warrant we have an entry
13 team and we also have those that stay out on the perimeter.
14 That is the window of the residence, that's the backdoor of
15 the residence and that is the ground area where the pistol was
16 found.

17 Q: And this is ---

18 A: It's just the distance away that you can't quite see it.

19 Q: This is all where you conducted the search?

20 A: Yes, sir.

21 MR. HOLFORD: May I approach with Thirteen, Fourteen,
22 Fifteen, Sixteen, Seventeen and Eighteen, State's Exhibits.

23 BY MR. HOLFORD:

24 Q: I'm handing you what's been marked as Exhibits -- State's
25 Exhibit Thirteen through Eighteen, can you identify what these

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 pictures are?

2 A: Yes, sir. Those are the -- these are six pictures of six
3 individuals that were present during the execution of the
4 search warrant.

5 Q: Are they true and accurate reflection of how those
6 individuals appeared at the time?

7 A: Yes, sir; they are.

8 MR. HOLFORD: Your Honor, State moves Exhibit -- State's
9 Exhibit Thirteen through Eighteen in evidence.

10 THE COURT: They are in evidence and you may publish.

11 STATE'S EXHIBIT NUMBERS THIRTEEN, FOURTEEN, FIFTEEN,
12 SIXTEEN, SEVENTEEN AND EIGHTEEN ADMITTED INTO EVIDENCE

13 BY MR. HOLFORD:

14 Q: And these are the individuals who were there at the time
15 you conducted the search warrant?

16 A: Yes, sir.

17 Q: Do you know who State's Thirteen is?

18 A: I can't remember but I know we did an interview with each
19 one of them.

20 Q: Do you know who State's Fourteen is?

21 A: Not right off hand.

22 Q: Do you know who State's Fifteen is?

23 A: No, not right off hand.

24 Q: How about State's Sixteen?

25 A: Not right off hand.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: State's Seventeen?

2 A: That's Furquan.

3 Q: And State's Eighteen?

4 A: That's Mr. Fleming.

5 Q: Were those the only individuals present?

6 A: Those were the only individuals present during the time of
7 the search warrant.

8 MR. HOLFORD: May I approach with State's Thirty-six?

9 THE COURT: You may do so.

10 BY MR. HOLFORD:

11 Q: Detective Large, can you identify State's Thirty-six?

12 A: That was a picture inside the residence that's near a bed.
13 There's several items, cell phone, electrical ---

14 Q: Is it a true and accurate reflection of the scene as you
15 searched?

16 A: Yes, sir.

17 MR. HOLFORD: Your Honor, the State moves Exhibit Thirty-
18 six into evidence. Your Honor, we move Exhibit Thirty-six
19 into evidence.

20 THE COURT: Yes, sir. And you may publish.

21 MR. HOLFORD: May I publish it?

22 STATE'S EXHIBIT NUMBER THIRTY-SIX

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: Detective Large, what's of importance on that?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 A: Yeah, the scarf over here at the top -- can I show the
2 jury?

3 Q: Yes.

4 A: Right here, the scarf that was found on the bed, black
5 scarf or handkerchief or bandana ---

6 Q: Is that the same one that they've already seen a picture
7 of that was on the floor?

8 A: No, there's -- there was more than one found. I believe
9 there was more than one found.

10 Q: So, did you move any of this stuff?

11 A: No.

12 Q: You just photographed them as you saw them?

13 A: Right. They were photographed as seen.

14 Q: What did you collect from the scene that was of importance
15 to this case?

16 A: We collected the revolver, collected the gloves and also
17 collected what we considered the masks. We didn't find any --
18 we didn't -- any hoodie anything like that, we didn't have,
19 that fit the description but those three items were very
20 important to us.

21 Q: And what did you do with these items when you collected
22 them?

23 A: They were placed in evidence and pending examination,
24 further examination or testing.

25 Q: When you say placed into evidence, what do you mean?

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 A: Our Horry County Police Department has a secure crime
2 scene and evidence area that keeps all our items that are
3 collected and secures them so that no one else can get to them
4 other than the property and evidence personnel at our police
5 department. They're stored and categorized in a area that's
6 secure in the police department.

7 MR. HOLFORD: Your Honor, we talked about State's Exhibit
8 Eighty-one the consent to search of Ivystone. I'd ask that it
9 be entered into evidence. I didn't enter it earlier.

10 THE COURT: You may do so.

11 STATE'S EXHIBIT NUMBER EIGHTY-ONE

12 ADMITTED INTO EVIDENCE

13 MR. HOLFORD: May I publish?

14 THE COURT: You may.

15 BY MR. HOLFORD:

16 Q: After you submitted the bandanas and the pistol and
17 skeleton gloves in evidence, what did you do after that?

18 A: Basically, that was pretty much, you know, collecting the
19 evidence and then trying to make sure there was any loose ends
20 that needed to be done as far as make sure that we talked to
21 everybody possible. That's why the pictures that you saw,
22 those other people, we have statements that we took from them.

23 Q: Were you able to tell who the handgun you collected
24 belonged to?

25 A: No.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 Q: Why is that?

2 A: Because like I said, there -- well, one is, based on the
3 description, there was gloves worn during the time of the
4 incident that we're looking at.

5 MR. HOLFORD: Your Honor, may I approach with State's
6 Eighty-three.

7 THE COURT: Yes.

8 BY MR. HOLFORD:

9 Q: Detective Large, I'm handing you what's been marked as
10 State's Exhibit Eight-three for ID, can you tell me what that
11 is?

12 A: Smith and Wesson ---

13 Q: No, just -- sorry ---

14 A: I'm sorry.

15 Q: Just the document itself; what is it?

16 A: Oh, I'm sorry. The document itself is a evidence record.

17 Q: And how do you know that?

18 A: Because I filed it out. This is our -- can I -- it's our
19 standard form that we use when we collect evidence. Every
20 officer with the Horry County Police uses this form when we
21 collect evidence and property and take it to the police
22 department.

23 MR. HOLFORD: Your Honor, I'd ask that State's Eighty-
24 three be entered into evidence.

25 THE COURT: I admit them and you may publish.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

STATE'S EXHIBIT NUMBER EIGHTY-THREE

ADMITTED INTO EVIDENCE

MR. HOLFORD: May I publish?

BY MR. HOLFORD:

Q: Detective Large, now you can talk about what's actually on here. What is it?

A: This is our evidence form that we have. I documented that we collected a Smith and Wesson Airweight silver revolver with a black handle and I've got the serial number and then there was also five bullets that were taken into evidence with the gun and that's my signature going to Donna Bell in our evidence department.

Q: Can you read the serial number from the gun?

A: Yeah. It's DAZ3828.

Q: Thank you, Detective.

MR. HOLFORD: May I publish, Your Honor?

THE COURT: Yes, sir.

MR. HOLFORD: Court's indulgence.

THE COURT: All right.

MR. HOLFORD: No further questions, Your Honor.

THE COURT: All right. Since it's the lunch hour, does it suit you, Mr. Fox, to have your cross examination after lunch?

MR. FOX: It absolutely does, Your Honor.

THE COURT: All right. Mr. Foreman, ladies and

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 gentlemen, we're gonna break for lunch. Please be back in the
2 jury room ready to go at 2:30. These are the following
3 admonitions. You must not discuss this case with anyone,
4 permit no one to discuss it with you. Make no independent
5 inquiry and you must not even discuss it among yourselves
6 until I have given you the case for your deliberation.
7 Sometimes, when we break for lunch, two or three jurors want
8 to talk about the case among themselves. And inasmuch as this
9 verdict, whatever it is, has got to be unanimous, you are
10 depriving your fellow jurors of your thought process. So, any
11 discussion involving this case must be only in the jury room
12 and after I have given it to you for your deliberations. You
13 are now excused. Please be back at 2:30.

14 Thank you. You may be excused.

15 (REPORTER'S NOTE: The jury is excused for lunch and exits
16 courtroom. 1:04 P.M.)

17 THE COURT: Mr. Witness, you are permitted now to come
18 down for lunch understanding that you'll be back on the stand
19 for cross examination at 2:30.

20 A: Yes, sir.

21 THE COURT: Do not discuss your testimony with anyone
22 including the Solicitor's office.

23 A: Yes, sir.

24 THE COURT: Or the Defendant. Any discussion with the
25 lawyers must be in the courtroom in my presence under oath.

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DETECTIVE ALLEN LARGE - DIRECT BY MR. HOLFORD

1 All right, sir. Anything further prior to breaking for
2 lunch, Mr. Holford?

3 MR. HOLFORD: No, Your Honor.

4 THE COURT: Mr. Fox?

5 MR. FOX: No, Your Honor.

6 (1:05 P.M.)

7 *****OFF THE RECORD*****

8 (On the Record.)

9 (2:40 P.M.)

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

12 THE COURT: Mr. Holford, anything before we bring the
13 jury out?

14 MR. HOLFORD: Just the Defendant and Mr. Fox.

15 THE COURT: Yes.

16 Where is my witness, have him come forward.

17 MR. RICHARDSON: He's right there, Your Honor.

18 THE COURT: I'll remind you, sir, you're still under
19 oath.

20 DETECTIVE LARGE: Yes, sir.

21 THE COURT: I want that on the record.

22 DETECTIVE LARGE: Yes, sir.

23 THE COURT: Mr. Fox, the State says they are ready to
24 proceed; are you, sir?

25 MR. FOX: I am, sir.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 THE COURT: Bring my jury. I remind the witness that
2 he's still under oath.

3 (REPORTER'S NOTE: The jury returns to the courtroom.
4 2:42 P.M.)

5 THE COURT: Good afternoon, Mr. Foreman, ladies and
6 gentlemen. At the recess prior to lunch, this witness was on
7 the stand and the State had completed its questioning. We now
8 move to the Defendant, Mr. Fox.

9 MR. FOX: Thank you, Your Honor.

10 THE COURT: And the Defendant -- the witness understands
11 that he is still under oath.

12 DETECTIVE LARGE: Yes, sir.

13 CROSS EXAMINATION OF DETECTIVE TROY ALLEN LARGE BY MR. FOX:

14 Q: Detective, you were the lead investigator in this case,
15 correct?

16 A: Yes, sir.

17 Q: So, you in fact, took -- and you testified about active
18 participation, interviewing witnesses, responding to the
19 victim's apartment, correct?

20 A: Yes, sir.

21 Q: Interviewed personally a few witnesses, correct?

22 A: Yes, sir.

23 Q: Okay. Also, you were present when the search warrant was
24 issued; is that correct?

25 A: Yes, sir.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 Q: Okay. And let's start with that. That's easy enough.

2 How many officers went to the trailer to secure that and serve
3 the search warrant; do you recall that?

4 A: When we executed the search warrant? It was -- we
5 considered it a high risk search warrant. I'd say twenty --
6 twenty officers at least.

7 Q: And from -- if you'll recall, I know you were shown a
8 bunch of pictures but some of the pictures that you were
9 shown, photographs, were of several individuals that were
10 photographed -- that were at that trailer when the search
11 warrant was served. Do you recall those photographs?

12 A: Yes, sir.

13 Q: Okay. Do you recall how many there were, how many
14 photographs?

15 A: Not exactly, no, sir.

16 Q: Okay. Let's see. Do you recall how many persons were in
17 the trailer?

18 A: Well, the entry team went in and secured the -- which we
19 call our -- would be our SWAT high entry team. They go in,
20 they execute, knock on the door, yell County Police and then
21 they go in through the door, they clear each room. As they
22 clear the rooms, they bring out anybody that's in the -- their
23 area that they're searching. What we call it is catch and
24 clean. If you come across somebody, you catch them and you're
25 responsible for that person. So, there was an entry team and

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 then we entered and secured the scene and then we did our
2 search which we swept the area and then took photographs
3 before we collected any evidence.

4 Q: I understand. And I may have not phrased that very. What
5 I was specifically trying to determine was the number of
6 individuals, not officers, people that were in the trailer at
7 the time that you served the warrant. And I'm going to show
8 you -- the State's already showed you State's Exhibits
9 Thirteen through Eighteen and you can look at those again if
10 you need to refresh your memory. How many photographs is
11 that?

12 A: There's six -- let me make sure -- I believe there was six
13 or seven. Yeah, six.

14 Q: Six, okay. And one of those is in fact Mr. Fleming,
15 correct?

16 A: Yes, sir.

17 Q: So, if Mr. Julinson (spelled phonetically), my third grade
18 teacher is correct, six minus one is how many?

19 A: Six minus one is five.

20 Q: Five. So, there were five people in that trailer aside
21 from the Defendant?

22 A: Right; yes, sir.

23 Q: Okay.

24 THE COURT: I'm glad you had a good first grade teacher.

25 MR. FOX: Me, too, Your Honor.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

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1 BY MR. FOX:

2 Q: Now, did you yourself see this revolver come flying out
3 the window?

4 A: No, sir.

5 Q: Okay. But you were around someone -- you had information
6 ---

7 A: Right, we -- the person hollered gun and -- that was
8 securing the perimeter.

9 Q: But no indication of who threw that gun out?

10 A: No, sir; no, we never found out who threw the gun.

11 Q: Okay. Now, and the revolver that you testified about --
12 and it was a revolver, correct, and that simply means it has a
13 cylinder that spins with the bullets rather than a cartridge.

14 A: Yes, sir. There's two types where you have a
15 semiautomatic or a revolver and this was a revolver.

16 Q: Okay. And it was -- I think you testified there were five
17 bullets or cartridges in the gun?

18 A: Right, yes, sir; five bullets were taken into evidence.

19 Q: No empty chambers, correct?

20 A: No.

21 Q: Now, the gloves that we saw or found, where was the -- I
22 think you were showed a photograph and testified that there
23 were these skeleton kind of gloves and they were found on the
24 sofa or on the back of the sofa or something?

25 A: It was wedged between the sofa and wall, sir.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

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- 1 Q: Where was that sofa located?
- 2 A: In the living room area.
- 3 Q: Okay. So, in a common area?
- 4 A: Yes, sir.
- 5 Q: It was not a bedroom?
- 6 A: Not a bedroom.
- 7 Q: Okay. And the bandana, how many bandanas did you take
- 8 into custody?
- 9 A: I believe there were two.
- 10 Q: Two. Anything unusual about those bandanas?
- 11 A: No.
- 12 Q: Just kind of everyday thing you might find at Wal-Mart for
- 13 a couple of bucks?
- 14 A: Yeah. Handkerchief, bandana.
- 15 Q: Right. You see people all the time with them used
- 16 literally as handkerchiefs?
- 17 A: Yeah.
- 18 Q: All right. Okay. No obvious blood or anything else like
- 19 that that would get your attention?
- 20 A: Nothing; no, we didn't.
- 21 Q: As lead investigator were you aware -- now a cell phone
- 22 was also one of things on the evidence record you had of the
- 23 property returned as part of that search warrant. You've got
- 24 to go back to the Magistrate later, right, and say here's what
- 25 we found, here's the search warrant you gave us ---

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 A: Right.

2 Q: --- and we found these items.

3 A: Yeah. They have to be returned within ten days.

4 Q: Within ten days. And so you listed obviously the
5 revolver, gloves, bandanas and I think there were a couple of
6 cell phones, right?

7 A: Right. Yes, sir.

8 Q: Anything -- your job as lead investigator is to get
9 anything of evidentiary value relating to this case, correct?

10 A: Yeah, if if -- we come across, yeah.

11 Q: You have to coordinate that, of course, I realize with
12 other people working on the case. Okay. On the phone, you
13 might find text messages, things of that nature, right?

14 A: It depends. The phone companies don't keep the text
15 messages like you would think they would. A lot of times,
16 they dump them or they won't give them to us.

17 Q: Well, you can get subpoenas for that sort of thing.

18 A: Well, even when you get a search warrant, they've already
19 dumped their ---

20 Q: You can't get what doesn't exist any longer, I understand
21 that.

22 A: Yeah, right.

23 Q: But it's certainly something that's done commonly. You
24 can serve AT&T or T-Mobile or whoever and say we need a list
25 of phone calls, phone records.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 A: Yeah, we usually try to -- mostly we try to identify
2 either who the phone belongs to or incoming/outgoing phone
3 calls.

4 Q: And you can do things like location because they have
5 different -- depending on the service, they've got cell phone
6 towers around and so you can say this person was within such
7 and such range of this cell tower at, say, 12:00 midnight or
8 something. I know that you can use them sort of like mini GPS
9 devices?

10 A: Yes, we can do that.

11 Q: And of course, you would do that if you were able to've
12 done that, correct?

13 A: Right.

14 Q: The bandana, I know I'm jumping around but since we have a
15 break, the bandanas that were found, do you recall if they
16 were both found in the same location or in different
17 locations?

18 A: Different locations.

19 Q: No question, obviously, based on your investigation, Mr.
20 Fleming was ultimately charged in this case, 'cause here we
21 are at trial, correct?

22 A: Oh, yes, sir.

23 Q: He wasn't the only one charged, correct?

24 A: Right. We made two charges.

25 Q: And who was the other individual that was charged?

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 A: Furquan -- Abdul Furquan ---

2 Q: And a middle name that no one can pronounce.

3 A: Right.

4 Q: Abdul Furquan is the last -- Furquan is the last name,
5 correct?

6 A: Yes, sir.

7 Q: Okay. Was he charged with the same thing that Mr. Fleming
8 was?

9 A: Yes, they were both charged with attempted murder and
10 charged with burglary first.

11 Q: Okay. So, based on everything you knew about the case,
12 Mr. Furquan was also charged with the exact same thing,
13 correct?

14 A: Yes, sir.

15 Q: The search warrant, when you go to the process, when you
16 go to a Magistrate with a search warrant, there's a place --
17 there's an affidavit where you've got to say and the officer
18 would have to say, here are the reasons, Judge, why we believe
19 a search warrant is justified, correct?

20 A: Yes, sir.

21 Q: And that standard is what we know as probable cause,
22 correct?

23 A: Right; yes, sir.

24 Q: And that just means, there's a good reason to believe
25 that's so.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

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- 1 A: Right.
- 2 Q: A fair layman's ---
- 3 A: Yes, sir. That's what you go to the Judge, giving him
4 reason for him, who is supposed to be detached, to make a
5 decision that's not involved in the case whether it's fair to
6 go in someone's home or property.
- 7 Q: In other words, we don't want even trustworthy officers
8 with a lot of experience, we want a check behind them, an
9 independent judgment, assessment of the facts?
- 10 A: Yes, sir.
- 11 Q: Okay. However, that's not a trial like this. Correct?
12 There's no -- you don't have to impanel a jury for that, to
13 get a search warrant, when you go to the judge, there's not a
14 jury there?
- 15 A: No, there's no jury there.
- 16 Q: All right. The witnesses that you've relied on, they
17 don't have to appear and give sworn testimony, do they?
- 18 A: No, I'm the one that has to swear to it.
- 19 Q: And in that context, you can rely on hearsay or someone
20 told me, I heard, correct?
- 21 A: Yeah, you can go off of what your investigation has lead
22 to you and explain that ---
- 23 Q: Because it's --
- 24 A: --- to the judge.
- 25 Q: I'm sorry; I didn't mean to cut you off.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 A: No, that's all right.

2 Q: Because it's not a determination at that stage of
3 innocence or guilt?

4 A: No, it's part of the investigative process.

5 Q: And in fact, you would be derelict in your duty if you had
6 some information that was at least credible if you didn't at
7 least pursue it, wouldn't you say that, being a detective for
8 twenty-one years?

9 A: Well, like I said, to go enter someone's home, you want to
10 make sure that you have good probable cause to violate their
11 Fourth Amendment right to search and seize their property.

12 Q: And to be clear, aside from the math about it, the
13 individuals, the photographs we talked about, the five other
14 individuals that were in the trailer when the search warrant
15 was executed, obviously Mr. Fleming was one, Abdul Furquan the
16 second; there were two females, correct?

17 A: Yeah, Lindsey and Ariel, I believe were the two females
18 because I ended up interviewing those.

19 Q: Was it Mary and Ariel?

20 A: It might've been Mary and Ariel.

21 Q: Mary is in fact -- was identified as being Furquan's
22 girlfriend or ---

23 A: Yes, sir.

24 Q: Okay. So, Mary and Ariel and then two males, correct?

25 A: Two males, yes, sir.

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DETECTIVE ALLEN LARGE - CROSS BY MR. FOX

1 MR. FOX: Court's indulgence, just one moment.

2 BY MR. FOX:

3 Q: This may seem silly but of all those five people, all
4 right, two females and three other males, Furquan, the two
5 other males, those five people, did you have a chance to see
6 them yourself at some point when they came out?

7 A: Yes, sir. Yes, sir. They were, like I said, initially
8 all of the people that were there were cuffed, brought out and
9 ---

10 Q: Based on your twenty-some years experience as a detective,
11 did they appear to have operating limbs, hands and arms, all
12 five of them?

13 A: Yeah, yeah. They were detained, yeah, they were ---

14 Q: Any one of them capable of tossing an object?

15 A: Oh, yeah.

16 Q: Thank you. No further questions.

17 THE COURT: All right, sir. You may come down.

18 Is there any other questions, Mr. Holford?

19 MR. HOLFORD: No redirect, Your Honor.

20 THE COURT: You may come down. Thank you.

21 Call your next witness, please.

22 MR. HOLFORD: Your Honor, the State calls Mary Linder.

23 MARY LINDER, HAVING BEEN SWORN,

24 TESTIFIED AS FOLLOWS:

25 CLERK: If you will, scoot and speak into the microphone.

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MARY LINDER - DIRECT BY MR. HOLFORD

1 State your full name and spell your last name.

2 MS. LINDER: Mary Linder, L-I-N-D-E-R.

3 DIRECT EXAMINATION OF MARY LINDER BY MR. HOLFORD:

4 Q: Ms. Linder, how are you doing this afternoon?

5 A: Good; how are you?

6 Q: I'm fine. How old are you?

7 A: Twenty-one.

8 Q: How old were you back in 2011 of October?

9 A: Eighteen.

10 Q: And what's your connection to this case?

11 A: I was Devonte's girlfriend.

12 Q: Devonte, I haven't heard that name yet today. Who is
13 that?

14 A: Abdul.

15 Q: Abdul. Abdul Furquan?

16 A: Yes.

17 Q: But you knew him as Devonte?

18 A: Yes.

19 Q: Were you present with Abdul Furquan on October 16th, 2011?

20 A: Yes.

21 Q: At what time?

22 A: It was before -- like eight o'clock that night.

23 Q: Later that night?

24 A: And then later on that night, he came back.

25 Q: Do you -- so there was a period where you weren't with

1 him?

2 A: Right.

3 Q: You were at -- where did you live?

4 A: In a trailer, I don't know the address.

5 Q: You don't know the address?

6 A: No.

7 Q: But you do know it was a trailer?

8 A: Right.

9 MR. HOLFORD: May I approach the witness with what's been
10 marked as -- or entered as State's Five and Three.

11 THE COURT: You may do so.

12 BY MR. HOLFORD:

13 Q: Ms. Linder, these are pictures of the trailer.

14 A: Uh-huh (affirmative response).

15 THE COURT: Identify which one as you do it, please, Mr.
16 Holford.

17 MR. HOLFORD: Yes, Your Honor.

18 BY MR. HOLFORD:

19 Q: State's Five, can you identify what this is?

20 A: It's the trailer that we were living in.

21 Q: And can you read off what the numbers and the lot?

22 A: Lot 49, 5586.

23 Q: And State's Number Three?

24 A: 5586.

25 Q: And was this the trailer that you were living in?

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MARY LINDER - DIRECT BY MR. HOLFORD

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1 A: Yes, it was.

2 Q: Who were you living there with?

3 A: Brent, Ariel and Jeremy and then Devonte.

4 Q: Now, you say -- you say Brent, I don't know if we've heard
5 Brent before. Does he have another name?

6 A: Boogie.

7 Q: Boogie. I'm gonna show you a series of pictures.

8 Hopefully, you can clear up for the jury who some of these
9 people are.

10 A: Okay.

11 Q: Where were you on October 19th, 2011?

12 A: I was at the trailer.

13 Q: You were at the trailer. Do you remember Detective Large?

14 A: Yes.

15 Q: How do you know him?

16 A: I believe he was the one that spoke to me after we got
17 raided.

18 Q: You got raided?

19 A: Yes.

20 Q: So, a bunch of police came to the trailer?

21 A: Yes.

22 MR. HOLFORD: May I approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. HOLFORD:

25 Q: I'm showing you State's Exhibit Thirteen that's been

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MARY LINDER - DIRECT BY MR. HOLFORD

- 1 entered into evidence. Can you identify who that is?
- 2 A: Ariel.
- 3 Q: This is Ariel. Who is she?
- 4 A: She was Brent's girlfriend.
- 5 Q: Brent or ---
- 6 A: Boogie.
- 7 Q: Boogie, okay. State's Number Fourteen, who is that?
- 8 A: Kenny.
- 9 Q: Kenny. Who is Kenny?
- 10 A: He was a friend who was just over there.
- 11 Q: Do you know Kenny's last name?
- 12 A: No, I don't.
- 13 Q: He didn't live there, though?
- 14 A: No.
- 15 Q: Okay. State's Number Fifteen?
- 16 A: Brent.
- 17 Q: So, if Fifteen is Brent or ---
- 18 A: Boogie.
- 19 Q: --- Boogie -- a lot of people have been calling him Boogie
- 20 today. How about State's Sixteen, look familiar?
- 21 A: That's me.
- 22 Q: That's you. So, State's Sixteen is Mary.
- 23 Seventeen?
- 24 A: Devonte.
- 25 Q: Devonte?

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MARY LINDER - DIRECT BY MR. HOLFORD

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- 1 A: Or Abdul.
- 2 Q: Abdul. Did he change his name afterwards?
- 3 A: When I started ---
- 4 Q: Or has he always been Devonte.
- 5 A: That's -- all I've known him has.
- 6 Q: And State's Eighteen.
- 7 A: Jeremy.
- 8 Q: Jeremy ---
- 9 A: --- Fleming.
- 10 Q: Fleming? Do you see him in the courtroom?
- 11 A: Yes.
- 12 Q: Is he the Defendant?
- 13 A: Yes.
- 14 Q: That'll help us out. We didn't know who everyone was.
- 15 Do you know what happened on October 16th, 2011?
- 16 A: No, I don't.
- 17 Q: Were you involved with it in any way?
- 18 A: No, I wasn't.
- 19 Q: But you -- as you previously stated, you lived at that
- 20 trailer with -- and who else lived there?
- 21 A: It was Devonte, Brent, Jeremy and Ariel.
- 22 Q: Did you own a gun?
- 23 A: No, I did not.
- 24 Q: On October 19th, 2011, did you know what was happening
- 25 when the place was raided?

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KENNY LERAY - DIRECT BY MR. HOLFORD

1 A: No, I didn't.

2 Q: And what happened after October 19th, 2011?

3 A: Within a week, I left and I went back to Spartanburg to
4 live with my mom.

5 MR. HOLFORD: No further questions, Your Honor.

6 THE COURT: All right. Mr. Fox?

7 MR. FOX: No questions, Your Honor.

8 THE COURT: All right. You may come down and may remain
9 in the courtroom.

10 May this witness be excused from her subpoena?

11 MR. HOLFORD: Your Honor, I would ask that she be excused
12 from her subpoena so she can return to Spartanburg.

13 THE COURT: Granted. You may leave.

14 Next witness.

15 MR. HOLFORD: Kenny LeRay.

16 KENNY LERAY, HAVING BEEN SWORN,

17 TESTIFIED AS FOLLOWS:

18 CLERK: Speak into the microphone, state your full name
19 and spell your last name.

20 MR. LERAY: Kenny LeRay, L-E-R-A-Y.

21 DIRECT EXAMINATION OF KENNY LERAY BY MR. HOLFORD:

22 Q: Good afternoon, Mr. LeRay.

23 A: How you doing?

24 Q: How you doing?

25 A: I'm doing okay.

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KENNY LERAY - DIRECT BY MR. HOLFORD

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- 1 Q: How old are you?
- 2 A: Twenty.
- 3 Q: Twenty?
- 4 A: Yes, sir.
- 5 Q: So, how old would you have been in October of 2011?
- 6 A: Eighteen.
- 7 Q: Were you involved in this incident on October 16th, 2011?
- 8 A: No.
- 9 Q: Were you involved October 19th of 2011?
- 10 A: Of the raid? Yes.
- 11 Q: Do you know what happened?
- 12 A: No.
- 13 Q: I mean, you don't know what happened on the 19th?
- 14 A: Of the raid?
- 15 Q: The raid.
- 16 A: Yes.
- 17 Q: We call it search but ---
- 18 A: Well, sorry.
- 19 Q: You can call it raid if you like. I bet it felt like that
- 20 when the cops busted in. I'm gonna ask you some similar
- 21 questions I just asked someone else. How many people were at
- 22 that -- where was it?
- 23 A: Woodlawn.
- 24 Q: Woodlawn?
- 25 A: Yes.

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KENNY LERAY - DIRECT BY MR. HOLFORD

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- 1 Q: What kind of place was it? Was it a house, a ---
2 A: A trailer.
3 Q: It was a trailer?
4 A: Yes.
5 Q: Do you know the exact address?
6 A: No..
7 Q: If I showed you a picture of the trailer, would you be
8 able to identify it?
9 A: Yes.
10 Q: Had you been there before?
11 A: Yes.
12 Q: How come?
13 A: My cousin lived there.
14 Q: Who is your cousin?
15 A: Brent.
16 Q: Brent? Does Brent have another name?
17 A: Boogie.
18 Q: I'm gonna show you what's been marked and entered into
19 evidence as State's Five and Three. Can you identify what
20 these are pictures of?
21 A: Corner of the house.
22 Q: The corner -- and this is where you live?
23 A: Where he lived, yes.
24 Q: You didn't live there?
25 A: No.

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KENNY LERAY - DIRECT BY MR. HOLFORD

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1 Q: No. But this is where Brent lived?

2 A: Yes.

3 Q: Is Brent your biological cousin?

4 A: No.

5 Q: But you call him your cousin?

6 A: Yes.

7 Q: Y'all are pretty close?

8 A: Yes.

9 Q: Who all was in that trailer during the raid, or the
10 search?

11 A: Me, Brent, Ariel, Mary, Jeremy and Abdul, if that's his
12 name.

13 Q: Now, just make some connections for me. How are people
14 related who were in that trailer?

15 A: Ariel was Brent's girlfriend. Mary was Abdul's.

16 Q: Okay.

17 A: And Abdul and Jeremy was friends of Boogie or Brent.

18 Q: And who all lived there. There were six people who were
19 there at the time of the search, who all lived there?

20 A: All of them but me.

21 Q: All of them but you?

22 A: Yes.

23 Q: So, five of them lived there. I want to show you State's
24 Eighteen. (To the Court) May I approach, Your Honor?

25 THE COURT: You may.

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KENNY LERAY - DIRECT BY MR. HOLFORD

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- 1 Q: Can you identify who that is?
- 2 A: Jeremy.
- 3 Q: Jeremy. And is he in the courtroom today?
- 4 A: Yes.
- 5 Q: Is he the Defendant?
- 6 A: Yes.
- 7 Q: I need you to speak a little louder?
- 8 A: Yes.
- 9 Q: State's Seventeen, can you identify who that is?
- 10 A: Abdul.
- 11 Q: That's Abdul. How about Sixteen; do you know who this is?
- 12 A: Mary.
- 13 Q: That's Mary?
- 14 A: Yes.
- 15 Q: And she was Abdul's ---
- 16 A: Girlfriend.
- 17 Q: Girlfriend. Fifteen?
- 18 A: Brent.
- 19 Q: That's Brent and that's who you said your cousin was?
- 20 A: Yes.
- 21 Q: But not blood?
- 22 A: No.
- 23 Q: How about Fourteen; do you recognize that?
- 24 A: Me.
- 25 Q: That's you. And then Thirteen?

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KENNY LERAY - DIRECT BY MR. HOLFORD

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- 1 A: Ariel.
- 2 Q: Ariel. And how was Ariel related again?
- 3 A: Brent's girlfriend.
- 4 Q: Brent's girlfriend. Were you with Jeremy or Abdul on
- 5 October the 16th, 2011?
- 6 A: No.
- 7 Q: Do you know what happened that night?
- 8 A: No.
- 9 Q: But you were there for the search on October 19th?
- 10 A: Yes.
- 11 Q: You own a gun?
- 12 A: No.
- 13 Q: You don't own a silver revolver?
- 14 A: No.
- 15 Q: Do you know if Brent had a silver revolver?
- 16 A: No.
- 17 Q: Do you know if Ariel did?
- 18 A: No.
- 19 Q: Do you know if Mary did?
- 20 A: No.
- 21 Q: Do you know if Abdul or Jeremy did?
- 22 A: No.
- 23 Q: You just don't know?
- 24 A: No.
- 25 MR. HOLFORD: No further questions, Your Honor.

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KENNY LERAY - CROSS BY MR. FOX

1 THE COURT: All right, sir. Mr. Fox?

2 CROSS EXAMINATION OF KENNY LERAY BY MR. FOX:

3 Q: It's your testimony you have no idea how that revolver got
4 inside the trailer?

5 A: Uh-huh (affirmative response).

6 Q: Is that your testimony?

7 A: Yes, sir.

8 Q: Okay. If it had of been your revolver would you admit
9 that?

10 A: Yes.

11 Q: Now, you referred to Abdul Furquan, have you ever heard
12 him referred to or did he go by any other names?

13 A: Freak.

14 Q: Any other's you've heard?

15 A: No.

16 Q: Just Freak. So, you knew him as Abdul or Freak?

17 A: Yes.

18 Q: Ever heard him called Devonte?

19 A: No.

20 Q: And just to be clear, Ariel, who was to your knowledge
21 stayed at that trailer, she was Brent's girlfriend, correct?

22 A: Yes.

23 Q: Not Jeremy's?

24 A: No.

25 MR. FOX: No further questions, Your Honor.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 THE COURT: All right. You may come down. Thank you.

2 MR. HOLFORD: No redirect. Your Honor, I would ask that
3 he be excused from his subpoena.

4 THE COURT: He may be. Thank you.

5 You can leave.

6 MR. HOLFORD: The State calls CSI Jill Domogauer.

7 INVESTIGATOR JILL DOMOGAUER, HAVING
8 BEEN SWORN, TESTIFIED AS FOLLOWS:

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

10 MS. DOMOGAUER: Jill Domogauer, D-O-M-O-G-A-U-E-R.

11 DIRECT EXAMINATION OF INVESTIGATOR JILL DOMOGAUER BY MR.

12 HOLFORD:

13 Q: Good morning, Investigator -- or afternoon now. How are
14 you doing? How are you?

15 A: Tired.

16 Q: I bet. How long have you been with CSI?

17 A: I've been with the Horry County Crime Scene Division for
18 about going on three-and-a-half years. I was previously
19 employed with the City of Conway and was a Crime Scene
20 Investigator for them for seven years.

21 Q: So, you've been a Crime Scene Investigator for how long?

22 A: About ten-and-a-half years.

23 Q: Did you have a chance to respond to a scene on October
24 16th, 2011?

25 A: Yes, I did.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 Q: And what's your normal protocol when you respond to a
2 scene? What's your job? Sorry, just let them know, what do
3 you do?

4 A: I'm a Crime Scene Investigator. Unlike T.V., it's a
5 little bit different. When I respond to a scene, I'm equipped
6 to do the photography documentation. I also gather evidence,
7 forensic evidence whether it be swabs, any type of physical
8 evidence, hairs, guns, things like that nature. I also do
9 sketching and follow up with my investigation until we get to
10 trial.

11 Q: And here we are.

12 A: Yeah.

13 Q: How did you happen to be called out to this scene?

14 A: I was notified by my lieutenant. I was on call that
15 evening. I was notified by my lieutenant to respond to a
16 shooting incident that occurred at the Ivystone Apartments.

17 Q: Did you choose to go? You said you were on call, I mean

18 ---

19 A: I mean, I always have a choice but it's my job, so I went.

20 MR. HOLFORD: May I approach with State's Forty-seven?

21 THE COURT: You may.

22 MR. HOLFORD: Let the record reflect, I'm showing
23 opposing counsel Forty-seven through ---

24 THE COURT: It will.

25 MR. HOLFORD: May I approach with Forty-seven -- State's

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 Forty-seven through Seventy-two.

2 THE COURT: Proceed.

3 BY MR. HOLFORD:

4 Q: Investigator, without identifying specifically what these
5 are, can you just tell me generally what they all pertain to?

6 A: They are my crime scene -- my crime scene photography from
7 that night.

8 Q: From which night?

9 A: October 17th, 16th.

10 Q: Now, you said 17th, why is that?

11 A: The initial incident started on the 16th and then you have
12 the turn of midnight made it the 17th.

13 Q: So, by the time you got there, what time was it would you
14 say?

15 A: I can tell you exactly.

16 MR. HOLFORD: Your Honor, can she refresh her
17 recollection?

18 THE COURT: Sure.

19 A: I'm sorry.

20 THE COURT: You may do so.

21 A: I arrived on scene at 0142 hours.

22 BY MR. HOLFORD:

23 Q: So that would've been ---

24 A: The 17th.

25 Q: --- on the 17th?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: Yes.

2 Q: So, even though you were called out, by the time you got
3 there it was the 17th?

4 A: Yes.

5 Q: And what I just handed you, a stack, they are all your
6 crime scene photos?

7 A: Yes, sir, copies of my crime scene photos.

8 Q: Did you take these pictures?

9 A: Yes, I did.

10 Q: Are they a true and accurate reflection of how the scene
11 was when you arrived?

12 A: Yes, they were.

13 MR. HOLFORD: Your Honor, at this time, the State offers
14 State's Exhibit Forty-seven through Seventy-two into evidence.

15 THE COURT: Mr. Fox, as I understand it, you've reviewed
16 these documents?

17 MR. FOX: I have, Your Honor.

18 THE COURT: They are admitted.

19 MR. HOLFORD: Thank you, Your Honor. All right. May I
20 publish?

21 THE COURT: You may and -- you may publish.

22 STATE'S EXHIBIT NUMBERS FORTY-SEVEN THROUGH SEVENTY-TWO

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: Let's talk about these one at a time now. State's Forty-

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 seven, what is that showing?

2 A: That is the first shot I take on all of my crime scenes.
3 It's a title card showing the incident date and time and the
4 specific case number. It also shows the photographer who is
5 taking the pictures.

6 Q: Now, State's Forty-eight, Forty-nine, what do they show?

7 A: Forty-eight shows a straight sign, it's just for
8 orientational purposes on where I responded to and the same
9 thing as Forty-nine, it's just the overview of the location of
10 where I was at.

11 Q: And where did you respond to?

12 A: I responded to the Ivystone Apartments, [REDACTED] --
13 Unit F.

14 Q: And where are the Ivystone Apartments located; in what
15 city?

16 A: In Myrtle Beach.

17 Q: In what county?

18 A: Horry County.

19 Q: Fifty through Fifty-four.

20 A: As I go to a crime scene, I photograph as I approach until
21 I get on top of the scene, also any kind of identifier such as
22 a numerical address or anything identifying where I'm at.

23 Fifty is the walkway up to the apartment I was responding to.

24 Fifty-one is the floor of the landing by the front door of

25 that apartment. Fifty-two is the actual apartment with the

1 letter identifier. Fifty-three would be the front door of
2 said apartment. Fifty-four would be the doorknob of the
3 apartment.

4 Q: Let's go through these one at a time. Fifty-five ---

5 A: Would be after I opened the apartment door, just the
6 inside area.

7 Q: So, this is as you're walking into the apartment?

8 A: Yes, I'm actually standing outside and then I open the
9 door and take a quick shot of how you would view it if you
10 were standing on the outside.

11 Q: And then State's Fifty-six?

12 A: That would be the inside of the door on the opposite side.

13 Q: Now, this is closed.

14 A: I closed it.

15 Q: Fifty-seven and Fifty-eight?

16 A: Would be the carpet right in front of the doorway, just
17 zooming in on the floor and a broader picture of the carpet
18 area.

19 Q: Why did you zoom in on that spot?

20 A: A red substance believed to be blood on the floor.

21 Q: And where was that in the house or in the apartment?

22 A: Right at the front door.

23 Q: Fifty-nine and Sixty.

24 A: Fifty-nine is an overview of the living room and Sixty is
25 an overview again, towards the front door, you see the living

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 room, the kitchen and the hallway, they're just overview shots
2 of the apartment.

3 Q: All right. Sixty-one?

4 A: Bedroom doors.

5 Q: And where would that have been in relation to State's
6 Sixty?

7 A: The back hallway.

8 Q: All right. Sixty-two through Sixty-seven -- I'll give you
9 a second to look through those and just explain as you're
10 looking through.

11 A: These would be pictures of the bathroom in the apartment,
12 the sink area, the tub, the toilet, the floor. Took these
13 pictures there because there was large amount of blood in the
14 area.

15 Q: How about State's Sixty-eight?

16 A: Is the light switch. I believe it's in the bathroom.

17 Q: And again that was important because ---

18 A: Again, the blood on the light switch.

19 MR. HOLFORD: Court's indulgence, I'm gonna give them
20 just a minute. I handed them a bunch of photographs.

21 BY MR. HOLFORD:

22 Q: Now, what is State's Sixty-nine?

23 A: That was a picture of me standing in the back hallway
24 looking back towards the front door in the living room area.

25 Q: And State's Seventy?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: The carpet area in front of the door.

2 Q: Right in front of the doorway?

3 A: Yes, sir.

4 Q: Which -- I'm sorry, which door?

5 A: Front door.

6 Q: And then State's Seventy-one and Seventy-two?

7 A: Seventy-one would be the lock plates on the doorknobs on
8 the actual exterior door, front door; and Seventy-two is going
9 to be the lock plate that's on the doorframe.

10 Q: Is that normal for you to take pictures?

11 A: Yes, I take them.

12 MR. HOLFORD: May I approach with Seventy-three?

13 THE COURT: You may.

14 MR. HOLFORD: I have shown opposing counsel.

15 BY MR. HOLFORD:

16 Q: Can you identify what State's Seventy-three is for ID?

17 A: State's Seventy-three is my crime scene sketch.

18 Q: Do you normally do a crime scene sketch?

19 A: On certain cases, yes, sir.

20 Q: Is that a clear and accurate representation of the sketch
21 you did?

22 A: Yes, sir.

23 Q: And what is it a sketch of?

24 A: It's a sketch basically of the layout of the apartment
25 giving titles to rooms and entrances and exits. Also, any

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 evidence or anything that I gather will also be there, plus
2 possibly a street indicating again point of origin. Also, you
3 have your directional north, south and also a title box
4 indicating where I was, the case number that's assigned to
5 this sketch that's specific to this sketch, who drew it and
6 all that information.

7 Q: And you compiled this sketch?

8 A: Yes, I did.

9 MR. HOLFORD: Your Honor, the State offers Seventy-three
10 in evidence.

11 THE COURT: Permissible. Go ahead and you may publish.

12 MR. HOLFORD: May I publish. Thank you.

13 STATE'S EXHIBIT NUMBER SEVENTY-THREE

14 ADMITTED INTO EVIDENCE

15 BY MR. HOLFORD:

16 Q: Now, we just saw a lot of pictures about this sketch --
17 Your Honor, can this witness come down and show the jury?

18 THE COURT: Yes, sir. If it will aid the jury, she may
19 do so.

20 MR. HOLFORD: Thank you, Your Honor.

21 BY MR. HOLFORD:

22 Q: Just so they can see what we're talking about, will you
23 just point out the photographs that you were taking and how
24 you first came in and where you went after that and where you
25 found the blood that you took pictures of.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: When I first come in ---

2 THE COURT: I want her to talk loud enough for my court
3 reporter to hear because her back is to my court reporter.

4 Q: Yes. There's actually a microphone right there.

5 THE COURT: Thank you.

6 A: Okay. When I approached, when you saw the street sign
7 over here -- this area here would be an intersection, that
8 gives you the orientation of where was I at. As I approached
9 this apartment was on the backside of the buildings so I took
10 that overall picture of the backside of the building as I made
11 my approach. Then you have the stairs and then this would be
12 the landing to the second floor apartments. There was blood
13 on the outside of this landing. There was blood in this door
14 area, this front door to Unit F. I dusted the door, exterior
15 door for fingerprints. I also took -- swabs and things of the
16 blood on the outside of the door. Right side this door on
17 this little area here, is a square that you see the carpet
18 where you had a blood trail on the carpet. You had a small
19 blood trail leading into this bathroom in the back here and
20 that bathroom had some blood in it as well. And just the
21 overview of the living room, the back hallway and the bedrooms
22 and kitchen area.

23 Q: Thank you. Now by the time you arrived on the scene, was
24 the victim present?

25 A: No, he was not.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 Q: Did you collect anything from that Ivystone Apartment ---

2 A: Do you mind if I ---

3 Q: --- evidence-wise?

4 A: Can I refer to my notes? From the actual crime scene, I
5 collected to items.

6 Q: And what were those two items?

7 A: Blood swab from the front door and a fingerprint card from
8 the front door.

9 Q: All right. Were you able to do anything with the
10 fingerprint card?

11 A: No. The fingerprint card was checked by me as indicative
12 of a smooth surface like gloves. No ridge detail for
13 fingerprints.

14 Q: Did you send it off for any further analysis?

15 A: The fingerprint card?

16 Q: Yes.

17 A: We have an in-house fingerprint person. I'm also trained
18 with fingerprints.

19 Q: Did it give you anything evidentiary in this case?

20 A: No, it did not.

21 Q: Is that normal?

22 A: For it not to or ---

23 Q: Yes.

24 A: Sometimes. I don't know ---

25 Q: I'm sorry. Let me -- I'm trying to help. On CSI, we see.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 a lot that there are fingerprints everywhere and they're

2 easily lifted. Is that the case in real life?

3 A: No.

4 Q: There's not a fingerprint everywhere you go, every crime
5 scene?

6 A: No, and doors are generally one of the hardest surfaces.

7 Q: Why would that be?

8 A: Everybody touches a door.

9 Q: Did you have a chance to do further investigation, not on
10 the 16th but then on October 19th, 2011?

11 A: Yes. Some evidence was turned in by Detective Large and I
12 processed the evidence. That's also part of my job as a crime
13 scene investigator is to process evidence turned in on cases.

14 Q: And what evidence was that?

15 A: I received -- again, I'm referring to my notes if that's
16 okay. I received a silver revolver. I also received bandanas
17 and gloves.

18 Q: Do you know what color the bandanas were?

19 A: Black.

20 Q: And do you -- was anything distinct about the gloves?

21 A: They were black gloves but they were kind of unique. They
22 had like a skeletal type hand pattern on them.

23 MR. HOLFORD: Your Honor, may I approach with Exhibit
24 Seventy-four, Seventy-five, Seventy-six, Seventy-seven,
25 Seventy-nine and Eighty for ID.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 THE COURT: And they have been shown to Mr. Fox?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: You may do so and may publish.

4 BY MR. HOLFORD:

5 Q: Can you identify what those are?

6 A: These are my processing photographs for the gloves.

7 Q: The gloves -- and who gave you these gloves?

8 A: They were turned in, if I'm not mistaken, by Detective
9 Large.

10 Q: Now, how do you know that?

11 A: Chains of custody.

12 MR. HOLFORD: Your Honor, I'd ask that Seventy-four,
13 Seventy-five, Seventy-six, Seventy-seven, Seventy-eight,
14 Seventy-nine and Eighty be entered in evidence.

15 THE COURT: They are.

16 STATE'S EXHIBIT NUMBER SEVENTY-FOUR THROUGH EIGHTY

17 ADMITTED INTO EVIDENCE

18 THE COURT: They are.

19 MR. HOLFORD: Publish?

20 THE COURT: You may.

21 BY MR. HOLFORD:

22 Q: Now, Seventy-six, Seventy-seven, Seventy-eight, Seventy-
23 nine and Eighty, how are those gloves oriented?

24 A: Well, when you take photographs, you take both sides, top
25 and then you flip them over and you photograph both sides of

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 every item. These pictures look a little bit different

2 because I'm using an alternate light source and using a orange
3 filter on my camera to fluoresce any type of metals that would
4 be indicative of gunshot residue.

5 Q: And ---

6 A: And these are the -- what I believe to be the palm side.

7 Q: And those are of the gloves that Detective Large turned
8 into evidence?

9 A: Yes.

10 Q: And what do you see on them?

11 A: They fluoresce with fluorescent little specs which is
12 usually gunshot residue.

13 Q: What is gunshot residue?

14 A: When you fire a firearm, there is a so-to-speak invisible
15 cloud of the gun powder and the metals caused by the firing of
16 the weapon. And that cloud is called the gunshot residue.

17 Q: I'm gonna show you what's been entered as State's Eighty-
18 three first. Can you tell me what that is?

19 A: It is a chain of custody.

20 Q: And who signed that?

21 A: The original collecting officer was Detective Large.

22 Q: And then what did he do with it?

23 A: He turns it into our evidence custodians, this was is
24 Donna Bell and ---

25 Q: And this is a chain of custody on what?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: Smith and Wesson Airweight Silver revolver with handle,
2 with serial number ---

3 Q: And did you receive that revolver in evidence?

4 A: Yes, I did.

5 Q: Do you recognize State's Twelve?

6 A: Yes, I do.

7 Q: And what is State's Twelve?

8 A: Without looking at the other side, I believe it to be the
9 weapon that was turned in.

10 Q: Investigator, did you bring anything with you to court
11 today?

12 A: Yes.

13 Q: Box of goodies, maybe?

14 A: Yes, sir.

15 Q: Will you please -- now, you've said a little bit about a
16 chain but explain to us what a chain of evidence is and why
17 it's important.

18 A: It shows you -- a chain of evidence is a documentary
19 record of anything that is gathered in relation to a crime
20 scene or a case. And then it basically follows that piece of
21 evidence everywhere it goes.

22 Q: And why would you do something like that?

23 A: To ensure the purity of your evidence.

24 Q: I have not had these marked yet. Would you mind opening
25 up the boxes.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: You want me to break the seals?

2 Q: That one first, yes, please. Let the record reflect,
3 these seals -- what is this box you're holding?

4 A: This box is the Smith and Wesson Airweight revolver in
5 this case.

6 THE COURT: Now, let's be sure, has that weapon been
7 examined to make sure there's no bullets in it?

8 A: Yes, sir; it has been.

9 THE COURT: No question about that?

10 A: Absolutely no question, sir.

11 THE COURT: All right.

12 MR. HOLFORD: May I have it marked? At this time, I'm
13 gonna have it marked as State's Exhibit Eighty-four for
14 identification.

15 STATE'S EXHIBIT NUMBER EIGHTY-FOUR

16 MARKED FOR IDENTIFICATION

17 BY MR. HOLFORD:

18 Q: Tell me a little bit about this box and why it looks the
19 way it is and its condition at this point?

20 A: This box has a case number on it -- I don't know if you
21 guys can see the case number -- which coincides with this
22 particular case. It also has an area where an officer can
23 describe date of collecting and what's inside the box and also
24 a chain on the actual box.

25 Q: And what date was it collected?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: On the 19th.

2 Q: And who collected it?

3 A: Detective Large. This box is also sealed -- it has been
4 sealed by me, that's the -- the red tape, the box has been
5 completely sealed. We sent this to SLED and that's the yellow
6 tape.

7 Q: And since it's come back from SLED, has it been opened?

8 A: No, it has not.

9 Q: How can you tell that?

10 A: The seals are intact.

11 Q: Can you please open that one.

12 A: (Opening box.) A lot of tape; sorry.

13 Q: Why do they tape it so much?

14 A: To ensure that it stays sealed.

15 Q: Now, what's inside the box that you just opened?

16 A: A Smith and Wesson Air revolver.

17 Q: And is this the same revolver that was turned in under
18 State's Eighty-three in evidence by Detective Large that you
19 just saw?

20 A: If I may see the chain real quick. Yes, it is.

21 Q: And how can you tell that?

22 A: By the description and also the serial number.

23 MR. HOLFORD: Your Honor, the State offers Eighty-four in
24 evidence.

25 THE COURT: It is admitted.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 MR. FOX: Your Honor, the actual revolver at this point?

2 MR. HOLFORD: Just the revolver.

3 MR. FOX: Your Honor, I would -- the testimony is the gun
4 went from this witness to SLED. At some point it was in
5 someone else's hands for whatever they did at SLED. There's
6 been no testimony about how long it was there, who had it and
7 handled it. It came back packaged, that's fine, but I believe
8 there is a significant missing link in the chain. I'd object
9 at this time.

10 THE COURT: No, I would refer you to State v Hatcher
11 tried by me in Marlboro County about ten years ago.

12 MR. FOX: I'm familiar with that, Your Honor; thank you,
13 Your Honor.

14 THE COURT: Supreme Court in that case said there could
15 be -- if there's a sufficiency it'd be satisfactory -- under
16 any circumstances, I leave it to the jury as finders of the
17 facts to determine the issue in the case. I am going to admit
18 it for the jury's consideration. And if you have any
19 additional testimony on that issue later you may do it.

20 MR. HOLFORD: Thank you, Your Honor.

21 STATE'S EXHIBIT NUMBER EIGHTY-FOUR

22 ADMITTED INTO EVIDENCE

23 BY MR. HOLFORD:

24 Q: Just for the record ---

25 A: And as you can see, it its clear and safe.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 Q: It is unloaded?

2 A: There is no rounds that come back with it.

3 Q: There are no rounds with it?

4 A: No, sir.

5 Q: It cannot be fired at this point in this courtroom?

6 A: It can be fired, nothing will happen but yes.

7 THE COURT: Remember, if you point it at anybody, point
8 it to the lawyers not to me or the jury.

9 A: Yes, sir.

10 THE COURT: All right. Just be sure, the jury wants to
11 know that too.

12 Q: Will you please show the jury this gun?

13 A: Also, to clarify, the only thing in the box was wire ties,
14 that's what was shaking.

15 Can I ---

16 THE COURT: You may proceed. You may approach the jury
17 for demonstration purposes.

18 BY MR. HOLFORD:

19 Q: And where is the serial number on that gun?

20 A: We've got a serial number that is right here (indicating)
21 and also if you're looking at the revolver chamber, the wheel,
22 it's also right there (indicating).

23 Q: And can you read that serial number?

24 A: D, Delta, A, Alpha, Z, Zulu, 382.

25 Q: And does that match State's Eighty-three?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: Yes, sir.

2 Q: Did you bring anything else with you today?

3 A: Yes, sir.

4 Q: I believe you still have that knife. Would you mind
5 opening up that box?

6 A: Put it back in the box? Okay.

7 Confirming you want me to break the seals on this?

8 Q: Yes, please.

9 THE COURT: You may do so and the Court record will
10 reflect that I have authorized it.

11 A: Yes, sir.

12 THE COURT: Thank you.

13 BY MR. HOLFORD:

14 Q: Can you tell what's in this box from the outside?

15 THE COURT: Mr. Fox, you may join her as she breaks the
16 seals if you care to?

17 MR. FOX: No, Your Honor. I can see from here.

18 THE COURT: All right, sir.

19 A: I'm sorry, what was that?

20 BY MR. HOLFORD:

21 Q: Can you tell what's in the box from the outside?

22 A: Yes, sir.

23 Q: What is it?

24 A: The boxes are labeled again with the case number and
25 evidence location that I've assigned it to. Also, evidence

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 labels with item numbers that itemize what's in here and the
2 labels are on the outside of the box.

3 MR. HOLFORD: Your Honor, I know you already made your
4 ruling about the gun State v Hatcher but the State would also
5 argue that it's a non-fungible item identified by a serial
6 number.

7 THE COURT: I understand. I've made my ruling. But I
8 thank you for the additional information all of which is for
9 the jury to consider as finders of the facts.

10 MR. HOLFORD: Yes, Your Honor.

11 Your Honor, may I approach with State's Eighty-five. It
12 just came out of the box.

13 THE COURT: All right, sir.

14 BY MR. HOLFORD:

15 Q: Can you identify this investigator, what's inside the
16 packaging?

17 A: This is Item 006 in reference to this case. These are
18 gloves that were turned in by Detective Large that I processed
19 and also sent to SLED.

20 Q: And how is the packaging right now?

21 A: It's in a manila envelope and also has tamper-proof seals
22 on it.

23 Q: Will you please open it at this point?

24 A: Opening the seal, sir?

25 THE COURT: You may do so.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: Continue opening?

2 Q: Yes.

3 A: Okay.

4 Q: Now what are these, now that you opened it?

5 A: These are the black gloves from -- that Detective Large
6 turned in.

7 Q: And how can you be so sure that those are the same gloves
8 that Detective Large turned in?

9 A: They have the item number and the case number. Other than
10 the physical description, they have a case number and an item
11 number. They have a label that's been sealed with my initials
12 and then resealed by SLED.

13 Q: And then after SLED examined them, where did they go?

14 A: I took them back to Horry County.

15 Q: And if -- have they been with anyone else since then?

16 A: No, sir.

17 Q: Until ---

18 A: We just broke the seal in court.

19 MR. HOLFORD: Your Honor, I believe we labeled the bag.

20 BY MR. HOLFORD:

21 Q: Will you please show the jury what these are?

22 A: Go down there?

23 Q: No, you can just hold them up.

24 A: (Witness holds up gloves for jury's review.)

25 Q: And these are what Detective Large turned in to you?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 A: Yes.

2 MR. HOLFORD: Your Honor, I'd ask that State's Eighty-
3 five be entered into evidence.

4 THE COURT: It is and you may publish if you care to.

5 MR. FOX: Your Honor, I would just place on the record
6 the same objection I did with the revolver. I'm aware of
7 Hatcher and your decision. We would just place on the record
8 our objection for the same reason about the chain.

9 THE COURT: I will permit it and I'll let the jury make a
10 determination as to whether or not the chain is there or not.
11 Go ahead.

12 MR. HOLFORD: Thank you, Your Honor.

13 STATE'S EXHIBIT NUMBER EIGHTY-FIVE

14 ADMITTED INTO EVIDENCE

15 MR. HOLFORD: May I approach with State's Eighty-six for
16 ID?

17 BY MR. HOLFORD:

18 Q: Investigator, can you identify what State's Eighty-six is?

19 A: That's projectile that was recovered from David Moran's
20 head.

21 Q: And how is it packaged at this time?

22 A: It's in a heat-sealed outer plastic package. Inside is a
23 plastic specimen cup with a evidence seal on it.

24 Q: And how can you tell what's inside that?

25 A: I can see it.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 Q: Is there a label on it?

2 A: There's not -- there's a label on the box for it.

3 Q: And was this projectile sent anywhere?

4 A: No, it was not.

5 Q: And how did you receive it?

6 A: I received it just like this minus the bag.

7 Q: And who gave it to you?

8 A: Trauma surgeon.

9 Q: How do you know it was the projectile from David Moran?

10 A: He was in surgery and they gave it to me outside the room.

11 Q: To you physically?

12 A: To me physically.

13 Q: Have you turned it over to anyone else?

14 A: No, sir.

15 Q: So, where has it been the entire time until now?

16 A: In this box on the shelf.

17 Q: At?

18 A: The Horry County Police Department in evidence.

19 MR. HOLFORD: Your Honor, at this time, the State offers
20 Eighty-six into evidence.

21 THE COURT: It is permitted and you may publish.

22 BY MR. HOLFORD:

23 Q: Now, you sent some stuff off to SLED but you didn't send
24 the projectile off the SLED, why not?

25 A: With my training, the projectile was too damaged. It's

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 actually fragmented inside there. There is no ballistic
2 value.

3 Q: When you say no ballistic value, what's that mean?

4 A: You can't tell where it came from. Basically, it's a
5 projectile, you can tell by the metals and such but you can't
6 identify it to a weapon because of the damage.

7 Q: And if you couldn't identify what gun that bullet came out
8 of you wouldn't send it for testing?

9 A: There would be no purpose to other than the same
10 compromised metals and bullets.

11 MR. HOLFORD: Let the record reflect, I'm showing
12 opposing counsel State's Eighty-seven and Eighty-eight.

13 May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. HOLFORD:

16 Q: Investigator, I'm showing you State's Eighty-seven for ID.
17 Can you identify what that is?

18 A: They are RP .38 Special rounds, live rounds.

19 Q: Live rounds?

20 A: Yes, sir.

21 Q: Was this sent anywhere?

22 A: No, sir. It was not. It was turned in by Detective Large
23 with the weapon and housed at the Horry County Police
24 Department.

25 Q: And how do you know -- how do you know it came with the

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 weapon?

2 A: The chain of custody.

3 MR. HOLFORD: Your Honor, I'd offer State's Eighty-seven
4 in evidence.

5 THE COURT: I will permit it.

6 STATE'S EXHIBIT NUMBER EIGHTY-SEVEN

7 ADMITTED INTO EVIDENCE

8 MR. HOLFORD: Your Honor, at this time, I'm not gonna
9 open Eighty-seven, leave it in the package. It's five live
10 rounds ---

11 THE COURT: That's fine.

12 MR. HOLFORD: --- as we do have a gun.

13 THE COURT: No, leave it -- separate it.

14 MR. HOLFORD: I'll just leave it in the package.

15 BY MR. HOLFORD:

16 Q: Can you identify State's Eighty-eight for ID?

17 A: This will be Item 007; they are bandanas, two black
18 bandanas.

19 Q: And did you send those off for testing?

20 A: No, I did not. We processed them in-house; I processed
21 them in-house.

22 Q: And who turned this in to you?

23 A: Detective Large.

24 Q: Can you open that?

25 A: It is okay to break the seal?

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 MR. HOLFORD: Your Honor, she's gonna break the seal on
2 this package, the bandanas.

3 THE COURT: The record will reflect that the seal has
4 been broken in open court in my presence.

5 MR. HOLFORD: Offer State's Eighty-eight into evidence.

6 THE COURT: That is permissible.

7 STATE'S EXHIBIT NUMBER EIGHTY-EIGHT

8 ADMITTED INTO EVIDENCE

9 BY MR. HOLFORD:

10 Q: Can you tell me what was in State's Eighty-eight?

11 A: Two black bandanas.

12 MR. HOLFORD: May I publish, Your Honor?

13 THE COURT: Yes.

14 BY MR. HOLFORD:

15 Q: Do you know where those bandanas were found?

16 A: I'll have to reflect on the chain of custody. They were
17 recovered from 5586, Lot 49, Rocky Road, Myrtle Beach.

18 Q: There are five live rounds in State's Eighty-seven. Could
19 the gun be shot and then there still be five live rounds in
20 it?

21 A: Yes.

22 Q: How could that happen?

23 A: Replace the ones you shoot.

24 Q: I know that seems like a simple question.

25 A: Okay.

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INVESTIGATOR JILL DOMOGAUER - DIRECT BY MR. HOLFORD

1 MR. HOLFORD: Your Honor, I ask that Exhibit Eighty-
2 eight, the black bandanas be placed into evidence.

3 THE COURT: Yes, sir.

4 BY MR. HOLFORD:

5 Q: They were not sent to SLED. They stayed.

6 A: I processed them in-house and packaged them back up in-
7 house.

8 MR. HOLFORD: Court's indulgence.

9 THE COURT: All right, sir.

10 BY MR. HOLFORD:

11 Q: Did you have any further involvement with this case? Was
12 that the end of your job, you take the evidence in and you
13 process it and you bring it to court today?

14 A: I write reports and I -- I'm sorry, I don't really know --
15 I know it's a generic question -- I don't know.

16 Q: It's a little too open-ended. But your job as you have
17 explained was to collect the evidence from Detective Large, to
18 process it in-house and then to bring it to court today. And
19 how can you be so sure once again that everything that we've
20 opened here in court is what was collected from that scene?

21 A: Via the chains and the seals that are on them.

22 MR. HOLFORD: Your Honor, I have no further questions at
23 this time.

24 THE COURT: Mr. Fox?

25 MR. FOX: Thank you, Your Honor.

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INVESTIGATOR JILL DOMOGAUER :- CROSS BY MR. FOX

1 Q: And I believe I understood you to say you're qualified to
2 do that analysis if you were able to life something, you can
3 do that yourself. You don't have the send the fingerprints
4 off to SLED, correct?

5 A: Yes.

6 Q: And that didn't happen in this case because you had
7 nothing to compare?

8 A: Yes, sir.

9 Q: With the revolver -- where did the revolver go ---

10 A: It's over here.

11 Q: Okay. I don't need it. All right. So, the revolver you
12 don't have any -- you did what you did to get victim's
13 apartment -- at the crime scene. In other words, took
14 pictures, tried to get fingerprints, et cetera. There was a
15 search warrant issued -- executed later, three days later, you
16 didn't have any part of that, that's not your job to execute
17 search warrants?

18 A: I was not called in that one. I've done warrants before
19 but in this case, no, I was not called in.

20 Q: This is not -- Detective Large collected or at least took
21 into possession several items and you've testified about the
22 gloves and so forth but you were not present when those were
23 taken into evidence initially, correct?

24 A: No, sir.

25 Q: Okay. You don't know anything about the origin of that

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX

- 1 A: Uh-huh (affirmative response).
- 2 Q: Outside on that landing, correct?
- 3 A: Yes, sir.
- 4 Q: Were you able to take -- was there any reason to take
- 5 samples of that?
- 6 A: The blood outside?
- 7 Q: Yes, or anywhere, now that we're talking about blood, you
- 8 also found blood inside the apartment, correct?
- 9 A: Yes, sir.
- 10 Q: And, again, that's reflected in your photographs. Any
- 11 reason to process or take blood samples?
- 12 A: We did.
- 13 Q: You weren't able to get fingerprints from the door, we
- 14 heard about that, correct?
- 15 A: Yes.
- 16 Q: And that's not unusual?
- 17 A: No.
- 18 Q: Sometimes you can but often can't. Anywhere else -- did
- 19 you process for fingerprints anywhere else in the apartment?
- 20 A: No, sir.
- 21 Q: Anywhere on the -- anywhere else outside on the landing,
- 22 the frame of the door or the railing or anything else?
- 23 A: The door frame was done, the exterior portion of it, the
- 24 railing was like a wood type deck, too porous of a surface for
- 25 dusting.

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX

1 CROSS EXAMINATION OF INVESTIGATOR JILL DOMOGAUER BY MR. FOX:

2 Q: Officer, what's your proper title, so I can address you
3 correctly?

4 A: Investigator.

5 Q: Investigator, okay. You've earned it, so I'll call you
6 that.

7 When you arrived at Ivystone Apartments, the scene of
8 where Mr. Moran was shot, you took photographs, correct, and
9 you've testified as to what photographs you took. Where was
10 the first place you encountered what appeared to be blood?

11 A: On the landing outside the front door.

12 Q: Outside the front door. And do you recall what the setup
13 is of that apartment? Is that the first floor apartment,
14 second floor apartment?

15 A: It was a second floor apartment.

16 Q: And accessed how?

17 A: Stairs.

18 Q: Okay. On the outside?

19 A: Yes.

20 Q: Okay. And when you get up to the top of that stairway,
21 you've got one way one apartment and one way the other,
22 correct?

23 A: I believe so, yes, sir.

24 Q: Okay. Once you found what appeared to be blood, you went
25 and you got photographs here.

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX
1 revolver.

2 A: Like where it was found or anything?

3 Q: Exactly.

4 A: No, sir.

5 Q: In other words, it appeared in your office or in your lab?

6 A: Well, I mean, the chain of custody tells me where it was
7 gathered.

8 Q: Exactly. But you weren't personally involved in that end
9 of it?

10 A: No, sir.

11 Q: Okay. And if I understood were the live rounds in the gun
12 still when it came to you or had they already been removed?

13 A: It is -- when it was photographed originally, the gun was
14 loaded and ---

15 Q: When it came to you?

16 A: When it comes to us, it has to be unloaded.

17 Q: Okay, makes sense. Okay. So, they already knew by the
18 time you got there.

19 You testified that this, which is State's Eighty-six,
20 which is this little plastic cup with what is almost certainly
21 -- I'll call it a bullet, projectile, that was given to you at
22 the hospital, correct?

23 A: Yes, sir.

24 Q: No way to compare that really to anything, is that your
25 testimony? In other words, it is damaged enough that ---

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX

1 A: The only testing that SLED can do would tell you that that
2 bullet compromised is the same type of chemical makeup of
3 another bullet, which is not identifiable.

4 Q: So, there was nothing that could connect -- that you're
5 able to do that bullet to that revolver?

6 A: For me, no.

7 Q: Okay. Well, you're here so that's what I'm asking.

8 You've got nothing that connects that bullet to that revolver.

9 Is that the only weapon that was submitted to you in relation
10 to this case for any kind of analysis testing?

11 A: I believe so.

12 Q: Okay. You testified about the gloves that you did -- was
13 it a filter on the camera that you used ---

14 A: Yes.

15 Q: --- that revealed what appeared to be residue ---

16 A: Yes, sir.

17 Q: --- or something in the photographs. That final
18 determination of whether or not it's gunshot residue or not,
19 that actually is done at SLED, is it not?

20 A: Yes.

21 Q: Okay. So, you can look at it and say, ah, that got my
22 attention but I cannot make the call ---

23 A: It is a presumptive.

24 Q: So, it's not an absolute, that goes to SLED, they make
25 that determination, correct?

1 A: Yes.

2 Q: Were you able to obtain anything of evidentiary value
3 inside the apartment, other than the photographs, obviously
4 you photographed what you saw inside the apartment at the
5 Ivystone location. Were you able to obtain anything of
6 evidentiary value in there, able to collect any specimen
7 samples or ---

8 A: We took blood swabs.

9 Q: And that was all?

10 A: Yes, sir.

11 Q: And what's -- what did you hope that may lead to in
12 general if you collect blood swabs, what's it for?

13 A: To identify the source of where the blood came from.

14 Q: Thank you. No further questions.

15 THE COURT: Mr. Holford.

16 MR. HOLFORD: Your Honor, I have no further questions.

17 THE COURT: All right. You may come down. May this
18 witness be excused?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: You may be excused.

21 Let's take a quick afternoon break. You've been here
22 very patient. We'll call you back in about ten minutes.

23 MR. HOLFORD: Your Honor, for the record, I'm gonna place
24 a gun lock on the gun.

25 THE COURT: Well, for the record, when we send the

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX

1 evidence in, I'll send the gun in and then if they want to
2 examine the bullets, I want the gun to come back out. I do
3 not want the gun and the bullets in the jury room at the same
4 time.

5 MR. HOLFORD: Yes, Your Honor. Could I ask Investigator
6 Domogauer just to break the seal on the bullets. She doesn't
7 need to take them out, just break the seal.

8 THE COURT: Can't they be viewed on the plastic bag?
9 They can't ---

10 MR. HOLFORD: They're in a paper bag right now, Your
11 Honor.

12 THE COURT: Cannot be viewed.

13 Do you have any objection to breaking the seal?

14 MR. FOX: I do not, Your Honor. They're in evidence. I
15 have no objection.

16 THE COURT: Okay. That's fine. But if -- just remember,
17 I don't want the gun and the projectiles back there at the
18 same time.

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: The jury will understand that if they want to
21 examine the bullets, send the gun out of vice versa. All
22 right. Let's go -- take quick break Mr. Foreman and then
23 we'll come back out quickly in about ten minutes if we can.

24 You may come down, Madame Witness.

25 We're in recess for ten minutes.

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INVESTIGATOR JILL DOMOGAUER - CROSS BY MR. FOX

1 MR. HOLFORD: Yes, Your Honor.

2 (REPORTER'S NOTE: The jury exits courtroom. 3:59 P.M.)

3 *****OFF THE RECORD*****

4 (On the Record.)

5 (4:15 P.M.)

6 THE COURT: All right. Is the State ready to proceed?

7 MR. HOLFORD: Yes, Your Honor. The State is ready to
8 proceed.

9 THE COURT: Defendant?

10 MR. FOX: Yes, sir.

11 THE COURT: The Defendant is in court. Bring my jury in
12 please.

13 Let the record reflect that the Defendant is present.

14 (REPORTER'S NOTE: The jury returns to the courtroom. 4:16
15 P.M.)

16 THE COURT: The jury is present. You may proceed,
17 Solicitor.

18 MR. HOLFORD: Thank you, Your Honor. The State calls
19 David Moran to the stand.

20 DAVID THOMAS MORAN, HAVING BEEN
21 SWORN, TESTIFIED AS FOLLOWS:

22 CLERK: Please state your full name and spell your last
23 name.

24 MR. MORAN: David Thomas Moran, M-O-R-A-N.

25 DIRECT EXAMINATION OF DAVID THOMAS MORAN BY MR. HOLFORD:

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 Q: Good afternoon, Mr. Moran; how are you doing this
2 afternoon?

3 A: I've been better.

4 Q: Fair to say this is a little bit tough?

5 A: Sorry?

6 Q: Tough circumstance?

7 A: Yes, sir.

8 Q: How old are you now?

9 A: I'm twenty-nine now.

10 Q: How old were you back in October of 2011?

11 A: Twenty-seven.

12 Q: Where were you living at that time?

13 A: [REDACTED], Myrtle Beach, South Carolina, 29588,
14 Apartment [REDACTED].

15 Q: F. Obviously, you've been in the courtroom and heard all
16 the testimony today. How are you connected to this case?

17 A: I am the victim.

18 Q: And what happened the night of October 16th, 2011.

19 A: Well, starting off from the time I had gotten off work. I
20 had just left work at 11 o'clock. I was working at Wal-Mart.
21 I got home about -- I'd say somewhere around a quarter after
22 11:00, sat down at my computer and I was sitting there just
23 playing a game. I'd say about 11:30, I hear a knock at my
24 door. I was not expecting anybody at my house at that time
25 notably but I still got up. I didn't really think I had

1 anything to worry about. Went to my door. The hallway lights
2 in my apartment complex have been out for the previous six
3 months so I couldn't use my peep hole to pop out like -- to
4 peek out. But like I said, I wasn't worried about anything.
5 Unlocked my door, opened it up and see two people standing
6 there wearing a mask, a hat, a hoodie and all I could see was
7 their eyes. Instantly, my first reaction was to try to shut
8 the door. The one on the right which was the shorter of the
9 two of them got his foot in the door and started wiggling his
10 way through while I was sitting there trying to force it
11 closed. He swung around with his left hand and caught me on
12 the side of my face which made me stumble back long enough for
13 the door to swing open. I focused up and as soon as I
14 focused, all I saw was a small silver revolver about this far
15 with my head and I heard a pop gun. The next thing I know I'm
16 picking myself up off the ground. I see my roommate's feet
17 run by me and he's pretty much out on the patio at this point
18 and I'm just standing up -- I'm a little shook up. I'm like,
19 I think I got shot. At this point, I start feeling the blood
20 just start pouring down my face. I start freaking out a
21 little bit. We run to the bathroom, I turn the shower head
22 on, hose my head off and flick it around. Blood went
23 everywhere all over the bathroom door. At this point, we're
24 starting to get somebody to call 911 from somewhere because my
25 phone had a password lock on it, he couldn't figure out how to

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 work it. We couldn't find his phone. Our neighbor across the
2 way decided, I guess, had heard the commotion and the
3 screaming, probably the gun fire and came out with her phone
4 and she already had 911 on there and she give me her phone to
5 call. After that it's just -- everybody starting showing up.
6 It's kind of a hustle and bustle after that. I was at the
7 hospital shortly after that.

8 Q: Now, let me take you back -- let's go through it. You
9 said you weren't expecting anyone that night?

10 A: Not at 11:30. There was a girl I was texting earlier in
11 the night probably shortly after I got off work and about ten
12 minutes before the knock came, the last text I had got from
13 her she was waiting for her sister to come -- get off work and
14 then she was gonna be coming over and hanging out. We were
15 supposed to have my roommate's little sisters come over and
16 play Wii that night but when I got there he was passed out in
17 his room with his dog and I was like, okay, I guess our plans
18 got cancelled. So, I decided to make others.

19 Q: Who was the girl you were texting earlier?

20 A: Her name is Brie, but I don't know any more about her. I
21 had met her briefly with my previous roommates and just really
22 didn't talk to her that much so I was kind of shocked that she
23 had texted me that day and asked me if you want to hang out,
24 this was when I was at work. I told her I'd get back in touch
25 with her when I got off.

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 Q: And then when the knock came at the door and you answered,
2 you saw -- what did you see?

3 A: Like I said, I opened my door wide enough, which probably
4 about this much (indicating) and I saw two figures, one
5 extremely tall, one a little shorter than that and pretty much
6 all I could see because the hallway was black as it was, there
7 wasn't any distinct color, it was all black, two black figures
8 and all I could see was their eyes and instant reaction was to
9 shut the door.

10 Q: Did you let them in your apartment?

11 A: No, sir; they forced their way in.

12 Q: Did they have any permission to be in your apartment?

13 A: No, sir.

14 Q: And you're sure there was two?

15 A: There was two of them.

16 Q: Did one of them stay outside?

17 A: Well, like I said, I was trying to force one of them out
18 as it was because when he got his foot in, there's a small
19 table right next to my door so they couldn't just slide in.
20 They had to go around the door to get in. So, from where I
21 was pinning him, I had him pinned in the door and he had this
22 half, the left half of his body through the door, the other
23 half was being shoved trying to keep out. That's when he
24 slugged me and the door obviously was opened up after I
25 couldn't resist it any more.

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

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1 Q: And where were you shot?

2 A: Directly in the forehead here.

3 Q: And where in the apartment were you when you were shot?

4 A: I was right by the front door, probably no more than two,
5 maybe a foot in.

6 Q: And you said -- do you know what type of gun was it?

7 A: I thought it was a .22 silver revolver but then again my
8 eyes didn't focus on it long enough because shortly after I
9 saw it was pointed at my forehead, the pop came and I was on
10 my back apparently.

11 Q: You already said what these individuals were wearing
12 around their face?

13 A: Right, it was like a mask type here. It looked like they
14 had a ball cap on the top of their head here or at least one
15 of them did. I remember seeing the bill of ball cap and a
16 hoodie over that. They were pretty masked up. I know I was
17 hit with a gloved hand though because it wasn't straight flesh
18 that hit me in the face. It was kind of padded.

19 Q: Now, you know the Defendant, Jeremy Fleming -- do you know
20 him?

21 A: Only by pictures.

22 Q: And you know we've talked today about his CoDefendant
23 Abdul Furquan, did you know Abdul?

24 A: Neither one of them.

25 Q: Did they have any reason to be at your apartment that

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

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1 night?

2 A: Not by my means. I didn't invite them over; I didn't know
3 who they were; I had no intention of letting them in my house.

4 Q: Had you seen either of them before?

5 A: No, sir.

6 Q: Do you know if Eric was friends with them, your roommate?

7 A: No, sir. I mean, I know he was not friends with them. He
8 has a very small social circle and I was part of it.

9 Q: Do you know why they chose your place?

10 A: No, sir, other than hearsay and rumors that I've heard
11 after this.

12 Q: Let's not get into hearsay and rumors.

13 A: Right.

14 Q: Had -- you said you had texted this girl Brie, had she
15 been over there before?

16 A: Like two or three times.

17 Q: Do you know if she knows the Defendant?

18 A: Again, only by hearsay.

19 Q: Now, you said you mentioned after you were shot, it
20 knocked you back and you were laying on the ground, and you
21 say your roommate Eric's feet run by.

22 A: Right.

23 Q: And you said you got up at that point?

24 A: Right.

25 Q: Where did you go after that?

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 A: Instantly just kind of stood up. At this point, he was
2 outside the front door, I guess, he was looking at where they
3 had gone to. At -- I was kind of like a little bit dazed,
4 kind of like, if you've ever played a video game where a
5 grenade goes off, it has that ringing sound and kind of
6 everything is in slow motion, that's pretty much what it was
7 like. I stood up and I was -- I thought it was a cap gun at
8 first because I didn't feel any pain. Then I slowly started
9 feeling something trickle down my nose and I put my hand there
10 and it was covered in red and I was like, uh, I think I got
11 shot. That's when we ran to the bathroom because I wanted to
12 take a better look at it and told him to pop on the shower and
13 I just stuck my head under there long enough and splashed my
14 hair around and it just went all over the place. I looked and
15 it was just gushing blood from here. At that point, we
16 grabbed a towel and stuck it to my forehead but I was still
17 dripping blood everywhere along the way.

18 Q: Did you see all the pictures we passed around to the jury
19 about the inside of your apartment and the blood?

20 A: I did, sir.

21 Q: And so, it's your testimony that that's why there's blood
22 in the bathroom?

23 A: Correct.

24 Q: What happened after you went to the bathroom?

25 A: We just -- we started pretty much screaming for help, we

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 couldn't, like I said, I was covered in blood and frantic, I
2 couldn't get my phone to work. He didn't know my password for
3 the little pass code and neither one of us were in the sane
4 mind to realize there was an emergency button at the very
5 bottom of the password that we could've easily called 911.
6 So, we started screaming for our neighbors or somebody to call
7 911 and luckily enough the lady that lives right across from
8 me had already had her phone dialed. She brought it out to me
9 and I started talking to the police at that time until they
10 showed up. We sat outside on the stairs. All my neighbors
11 were out by that point.

12 Q: One of the witnesses earlier when crossed said that they
13 may've been coming over to get bud or weed. Do you sell
14 drugs?

15 A: No, sir.

16 Q: Did you have drugs in the house?

17 A: We had personal marijuana.

18 Q: Had you been -- did your roommate sell drugs?

19 A: Not at the time; no, sir.

20 Q: After you -- after you left the bathroom and you went to
21 the hospital, do you recall much of that?

22 A: I remember Detective Large visiting me in the ER room.

23 Other than that, I just was shuffled from room to room and I
24 was kind of in a daze. The adrenaline started wearing off and
25 I started feeling the pain so I asked for pain killers.

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

1 Q: Do you remember any type of surgery or anything like that?

2 A: I just remember getting pulled in to surgery.

3 Q: And ---

4 A: I went to like three or four different rooms before they
5 actually stuffed me in one until I went to surgery and then
6 got moved around to three more rooms afterwards.

7 Q: And do you remember what they pulled out of your head?

8 A: I was told there was fragmented bullets in my head.

9 Q: And again, you don't know the Defendant?

10 A: I've never seen him in person -- well, I've never seen his
11 face before today in person.

12 Q: And you don't know Abdul?

13 A: No, sir.

14 Q: They had no reason to be there?

15 A: No, sir. I did not personally invite them to my house for
16 any reason at all.

17 Q: Did Eric invite them to your house?

18 A: No, sir.

19 Q: Did they come inside?

20 A: They forced their way. By the time I was shot, they had
21 to at least have each a foot in the door.

22 Q: What were the -- do you know the extent of your injuries

23 A: I just know that my skull was impacted here and fractured.
24 It didn't penetrate the membrane, so I had no permanent brain
25 damage. And then this part of my skull was fractured so now I

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1 have wire mesh and a titanium plate here.

2 MR. HOLFORD: Court's indulgence.

3 BY MR. HOLFORD:

4 Q: And do you have any idea why they chose your place?

5 A: No, sir. Again, hearsay, but ---

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

7 THE COURT: All right, sir. Mr. Fox, you may examine
8 him.

9 CROSS EXAMINATION OF DAVID THOMAS MORAN BY MR. FOX:

10 Q: So, this is just a completely random event?

11 A: As far as I know but, like I said, hearsay, again.

12 Q: Obviously, you can only testify about what you know,
13 correct?

14 A: Correct, sir.

15 Q: Okay. So, let's -- you can't say anything you heard
16 because you can't testify about anything said.

17 A: Right.

18 Q: Now, your roommate, Mr. Collins, you're not with him
19 twenty-four hours a day, are you?

20 A: No, sir. I was working.

21 Q: So, he certainly has a life outside your existence in his
22 life, correct?

23 A: Mostly involves his computer, but yes.

24 Q: Again, you're not with him all the time, are you?

25 A: No, sir.

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DAVID THOMAS MORAN - CROSS BY MR. FOX

1 Q: Okay. So, y'all don't do anything wrong; you don't sell
2 drugs; you're not doing anything illegal out of your apartment
3 other than possessing some for personal use?

4 A: Correct.

5 Q: Okay. Were you aware that your roommate gave permission
6 to the police to search your apartment that evening?

7 A: I am.

8 Q: Okay. Did they find anything?

9 A: Not as far as I know.

10 Q: Okay.

11 A: There shouldn't have been anything but ---

12 Q: I got you. No big amounts of cash or no stash of drugs or
13 anything like that?

14 A: No, sir.

15 Q: Outside of -- your apartment is on the second floor,
16 correct?

17 A: Correct.

18 Q: You go up the stairway and there's a landing between your
19 apartment and another apartment?

20 A: Correct.

21 Q: The doors face each other?

22 A: Correct.

23 Q: Any light out there?

24 A: The lights have been out for the past six months.

25 Q: You're very specific about that.

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- 1 A: Yes.
- 2 Q: The lights were out for six months.
- 3 A: That's because we had had some complaints about it.
- 4 Q: And this was night time?
- 5 A: Correct.
- 6 Q: Okay. No sun light obviously?
- 7 A: No.
- 8 Q: What about inside when you opened -- you open your door
- 9 and there's a hallway, correct?
- 10 A: It's more like an open area but the way I had my couch and
- 11 table set up, you could -- you had to open the door all the
- 12 way to go into the house.
- 13 Q: Exactly, but there's at least a strip before you get into
- 14 where your couch and T.V. are, there's a few steps, right, a
- 15 few feet between that door and the living room or whatever you
- 16 want to call it.
- 17 A: Well, if the couch and stuff was there, then no, if you
- 18 open the door, it's completely open ---
- 19 Q: What lights were on? Let's just cut to that.
- 20 A: The living room light.
- 21 Q: Now, all you could see, you say, were the eyes of these
- 22 people, correct?
- 23 A: Correct.
- 24 Q: No question there were two?
- 25 A: Yes.

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1 Q: Could you see down the landing?

2 A: No, sir.

3 Q: Okay. So, you don't know who was down the landing?

4 A: No, sir.

5 Q: Okay. Or if anybody was down the landing?

6 A: Correct.

7 Q: All right. So, no question in your mind that at least one
8 of the individuals had a hat on his head?

9 A: Right. I saw a bill. I couldn't tell you -- it was dark.
10 I just know I saw a bill of a hat on one of them.

11 Q: So, that would indicate like a baseball hat?

12 A: Yes, sir.

13 Q: Okay. Was it a baseball hat?

14 A: I mean, it was ball cap type style but I don't know if
15 there was a logo on it or anything of that sort.

16 Q: Okay. So, logo -- can't tell the color of the hat?

17 A: It was all -- if I had to guess a color, I'd say black
18 because everything looked black and white.

19 Q: I don't want you to guess; I want you to tell what you
20 remember?

21 A: It was all dark. It was either black or it was just dark.

22 Q: I'm sorry; I don't mean to talk over you so if you need to
23 finish something, go ahead.

24 A: Right.

25 Q: It was all dark. You just saw a bill, no color, no logo

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1 or anything like that?

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2 A: Correct.

3 Q: What about what kind of clothes?

4 A: All I saw was a black hoodie. And the only reason I knew
5 it was a hoodie was because the hood was up.

6 Q: All right. Anything on the hoodie?

7 A: I really couldn't recall.

8 Q: What about the other guy?

9 A: I really couldn't recall.

10 Q: Which one had the hat?

11 A: The one that was pushing through the door.

12 Q: The one that was pushing through the door.

13 A: Correct.

14 Q: All right. So, no other hat, no other -- and just the
15 two. Where is your roommate when this all began?

16 A: He was sleeping. When I got home, he was already laying
17 down in his bed. He had his -- he still had his room light
18 on, T.V. was on and his dog was sitting there next to his bed.

19 Q: Okay. What kind of dog?

20 A: It's a pit bull.

21 Q: How old?

22 A: Three, four.

23 Q: Okay. Pit bull a pretty good guard dog?

24 A: Actually, she's more like a pansy.

25 Q: Scared of things?

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1 A: She's a baby.

2 Q: Okay.

3 A: She's more like a lap puppy than anything else.

4 Q: I got you. Did you know your roommate slept -- kept a
5 rifle by his bed when he slept?

6 A: Yeah, actually, he just recently got it from his older
7 brother for that Christmas. It was more -- honestly, it was
8 never cleaned and we probably never would've fired it because
9 we weren't sure.

10 Q: I'm sorry. You didn't want to test fire it; is that what
11 you're saying?

12 A: I'm sorry?

13 Q: I didn't mean to cut you off, you were saying as far as
14 you know he'd never fired it?

15 A: We both had talked about it. He wanted to clean it before
16 he had fired it. He got it as a gift for his birthday that
17 year.

18 Q: Had he gotten a license for that?

19 A: I don't think you need a license for a long rifle like
20 that, do you?

21 Q: Did he ever take -- you know, I honestly don't know. Did
22 he ever have to take any kind of class ---

23 A: No, sir.

24 Q: --- did he have to go to take a class or a shooting class,
25 anything like that?

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1 A: No, sir.

2 Q: Okay. And as far as you know, he'd never fired that gun?

3 A: Correct.

4 Q: Okay. Obviously, it had to be scary and traumatizing when
5 someone you say you don't know tries to force in, even if you
6 didn't know at the time, end up with a bullet in your head.

7 You used the word dazed to describe how you felt after it,
8 correct?

9 A: Correct.

10 Q: Okay. Obviously, scared, nervous, all those things.

11 A: The adrenaline at that point kicked in and I wasn't really
12 scared, I was just ---

13 Q: So, your testimony was one person tried to force his way
14 in and you've got him pinned in the door.

15 A: Correct.

16 Q: He's got an arm through and you've got him pinned?

17 A: Right.

18 Q: Okay. At that point, you can see his arm and that's it,
19 right?

20 A: Like this half of his body, the left half of his body.

21 Q: But what you see is the door shut on ---

22 A: Right.

23 Q: --- this part of his body?

24 A: Well, I'm more like forcing the door, the last thing I was
25 paying attention to was him.

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DAVID THOMAS MORAN - CROSS BY MR. FOX

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1 Q: You weren't worried about taking a photograph of him,
2 you're trying to keep him out of your house?

3 A: Right.

4 Q: Exactly. Now, who is Brie?

5 A: A girl I had briefly met through my previous roommates.

6 Q: Okay. She was texting your phone, it wasn't like an
7 instant message on the computer or anything -- you said you
8 had a message from her earlier when you were at work, that was
9 on like your cell phone?

10 A: Correct.

11 Q: Okay. The police ever ask to see that phone?

12 A: No, sir.

13 Q: Okay. Any other messages from anybody during the day that
14 you might've expected to come over?

15 A: No, I mean, like I said, my roommate was planning on
16 having his little sisters over that night and we were gonna
17 sit there and play -- we had rented a game for the Wii and we
18 were all gonna play it but I suppose that plan got cancelled
19 because by the time I got home, he was already passed out.
20 That's why it prompted me to make these other plans.

21 Q: What did -- if you remember -- what did the dog do when
22 all this was going on?

23 A: Honestly, she didn't come out of the room during the
24 commotion at the door and I don't know what she was doing
25 after that because she was sleeping in his room.

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1 Q: Okay. Were you yelling when this was going on, a person
2 trying to force his way into ---

3 A: Actually, no, I don't think I yelled once. I was just
4 more like struggling at the door.

5 Q: I got you. So, knock on the door; you open the door; no
6 words, nothing, just immediately trying to get in?

7 A: I instantly tried to -- yes, sir, I instantly just tried
8 to shut the door and he had gotten his foot in.

9 Q: You didn't yell anything?

10 A: No, sir.

11 Q: Help, Eric, anything?

12 A: Honestly, it wasn't even on my mind at the time.

13 Q: All right. Now, -- Court's indulgence.

14 You described one fellow as being extremely tall; is that
15 right?

16 A: There was a significant height difference from what I
17 remember in the two guys.

18 Q: All right.

19 A: When I opened the door, as I was looking out, the taller
20 one was on the left, the shorter one was on the right. The
21 shorter one is the one who tried to breach the door and I'm
22 assuming the one on the left is the one who pulled the
23 trigger.

24 Q: The taller fellow?

25 A: It was the taller fellow.

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MOTIONS

1 MR. FOX: Thank you. No further questions, Your Honor.

2 THE COURT: Any further questions for the State?

3 MR. HOLFORD: Nothing further from the State, Your Honor.

4 THE COURT: You may come down, sir.

5 A: Thank you.

6 Any further witnesses?

7 MR. HOLFORD: Your Honor, at this time, the State rests.

8 THE COURT: All right, sir.

9 Mr. Foreman, ladies and gentlemen, I'll let you go to the
10 jury room just a moment. I'll be calling you back in about
11 five minutes... Thank you.

12 (REPORTER'S NOTE: The jury exits courtroom. 4:37 P.M. The
13 following takes place outside the presence of the jury.)

14 THE COURT: All right. The State has rested. Mr. Fox is
15 there any motions at this time?

16 MOTIONS:

17 MR. FOX: Yes, Your Honor. At this time, I'd like to
18 make a motion for a directed verdict as to each charge,
19 attempted murder and burglary 1st. The State has not carried
20 its burden of proof as to each element. There is no evidence
21 that ties -- at least no inconsistent -- I'm sorry -- all the
22 testimony that does connect Mr. Fleming, which is only from a
23 couple of witnesses who don't claim to have witnessed the door
24 of the apartment being breeched of the attempted break-in is
25 inconsistent. That being Samantha Topolski and Taylor Smith.

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MOTIONS

1 They contradict each other in terms of who went up, who had
2 what covering their face, who came back with the gun. There
3 is no physical evidence such as DNA evidence, ballistics, no
4 connection with that revolver to Mr. Fleming or the gloves in
5 the testimony other than him living in a house with six
6 people. So nothing that directly connects him to any of that
7 and we believe it's insufficient for the State to carry its
8 burden of proof, Your Honor.

9 THE COURT: Counsel, I would respectfully disagree.
10 Uncontradicted that somebody shot this unfortunate victim in
11 the head. There is testimony immediately after the shot that
12 these two ran down -- came out of the apartment with their
13 masks on. That statement was made by -- all the three people
14 in the car specifically identified this Defendant and the
15 CoDefendant. There is obviously testimony sufficient to say
16 that the culprits attempted murder and shot him in the head.
17 There's also obvious testimony that there was an entering
18 without consent and with intent to commit a crime therein.
19 All of these issues, of course, are for the jury to determine
20 but the jury could well believe by the testimony of the three
21 people in the car that he and a CoDefendant came down masked,
22 got in the car and drove them to his place of business. All
23 of which is for the jury to determine, not me. Your motion is
24 respectfully denied.

25 Mr. Holford, is there anything else you care to add to

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MOTIONS

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1 that?

2 MR. HOLFORD: Your Honor, the State's position is that we
3 have provided sufficient evidence and there are three
4 independent witnesses that corroborate testimony. They were
5 sequestered. They all placed Mr. Fleming at the scene. There
6 are two independent witnesses that say that two individuals
7 entered Ivystone, they were masked, that's corroborated by
8 different witnesses who didn't know Mr. Collins or Mr. Moran.
9 And then further the search warrant where Mr. Fleming lives,
10 the Defendant as well as the CoDefendant lived, that's where a
11 silver revolver was found which was corroborated by multiple
12 witnesses as being the gun that was used. As well as black
13 bandanas and skeleton gloves which were found at their
14 residence were corroborated by three independent witnesses as
15 well as Ms. Moran and Mr. Collins. I believe there is ample
16 evidence to send it to the jury, Your Honor.

17 THE COURT: There is in my view a plethora of evidence if
18 believed by the jury as finders of the facts sufficient to
19 convict Mr. Fleming of both charges.

20 All right. That motion is respectfully denied.

21 Now, Mr. Fox, we of course at this time will be glad to
22 hear any witnesses you may have or the Defendant may testify
23 in his own behalf. Would you like for me to inquire as to
24 whether his desire is testify or not?

25 MR. FOX: I would like you to cover his rights, Your

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1 Honor, and then I would also request a few minutes so that we
2 may go back and discuss that.

3 THE COURT: I will grant that. Mr. Fleming, please
4 stand.

5 CLERK: Swear him, Judge?

6 THE COURT: Pardon me?

7 CLERK: You want me to swear him?

8 THE COURT: He's already been sworn. That's fine.

9 MR. HOLFORD: Your Honor, I'd just ask for the record
10 that he would be sworn at this time.

11 THE COURT: I think it's appropriate and this is -- swear
12 the witness, please.

13 CLERK: Sir, please raise your right hand.

14 JEREMY FLEMING, HAVING BEEN SWORN,

15 TESTIFIED AS FOLLOWS:

16 THE COURT: Now, Mr. Fleming, please listen to me very
17 carefully. I want to make sure that your rights are fully
18 protected in this case in as much as you are charged with two
19 very serious offenses, you understand that?

20 MR. FLEMING: I do.

21 THE COURT: You're gonna have to talk a little louder for
22 my court reporter.

23 MR. FLEMING: I said, I do, Your Honor.

24 THE COURT: Now, we are at that stage where you have the
25 absolute right to get on this stand and testify under oath and

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JEREMY FLEMING - BY THE COURT

1 thereafter be cross examination by the State with regards to
2 your testimony. That is your absolute right; do you
3 understand that?

4 MR. FLEMING: I do.

5 THE COURT: Okay. Now, you are also under a presumption
6 of innocence, have the absolute right not to testify. And if
7 you exercise that right, I would charge the jury that you are
8 presumed innocent, you don't have to prove a thing. The
9 State's got to prove you guilty beyond a reasonable doubt.
10 Furthermore, if -- and I say that advisedly, if it was your
11 decision not to testify, I would charge the jury that the fact
12 that you did not testify raises absolutely no adverse
13 inferences against you. I would charge the jury that you are
14 presumed innocent. The State has got to prove you're guilty
15 if they can; you don't have to prove a thing. I would charge
16 the jury that the fact that you did not testify could not even
17 be used against you in the jury room and that they could not
18 even bring that fact up in their discussion; do you understand
19 that?

20 MR. FLEMING: I do.

21 THE COURT: Okay. Now, obviously, you will discuss this
22 important issue with your lawyer, you understand that, and I'm
23 gonna give you an opportunity in a moment. However understand
24 this, the decision to testify or not testify rests solely with
25 you; do you understand that?

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JEREMY FLEMING - BY THE COURT

1 MR. FLEMING: Yes, sir.

2 THE COURT: You cannot later be heard to say I wanted to
3 testify but my lawyer wouldn't let me; do you understand that?

4 MR. FLEMING: Yes, sir.

5 THE COURT: Your lawyer knows that you have the right to
6 testify, equally important you have the absolute right not to
7 testify. You understand that?

8 MR. FLEMING: Yes, sir.

9 THE COURT: In fairness to you now, you would not offend
10 me, do you have any questions about this issue that I spoke to
11 you about?

12 MR. FLEMING: No, sir.

13 THE COURT: Mr. Fox, is there any additional inquiry that
14 you would have me propound to this Defendant?

15 MR. FOX: Judge, only that I have discussed this with Mr.
16 Fleming the fact that he does have -- if he takes the stand,
17 he does have prior convictions and I believe that would
18 subject him to impeachment and I have covered that with him
19 and that's specifically the 2008 ---

20 THE COURT: I would -- if he testified and if that
21 occurred, I would charge the jury that those prior records are
22 in no sense any evidence of his guilt in this case but only
23 can be used as credibility if the jury decided to do that.

24 MR. FOX: And that's exactly what I have told him.

25 THE COURT: I understand but I want the record to reflect

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JEREMY FLEMING - BY THE COURT

1 that too.

2 MR. FOX: Yes, sir.

3 THE COURT: You want to let's take a break and let you
4 talk about it?

5 MR. FOX: Yes, sir. I would like a few minutes to speak
6 to Mr. Fleming.

7 THE COURT: All right. Let it be clear, it's his -- yes,
8 sir?

9 MR. HOLFORD: Your Honor, I just didn't know if you
10 wanted that record on the record, his prior convictions on the
11 record.

12 THE COURT: No, sir. Don't need them at this time. For
13 what purpose? He knows what his records are and Mr. Fox has
14 not requested that.

15 MR. HOLFORD: Okay.

16 THE COURT: No. Mr. Fox has told him and I'm telling him
17 if under the statute the prior convictions are admissible and
18 I say that if, I haven't dealt with it, I would charge the
19 jury that those prior convictions are absolutely no evidence
20 of guilt in this trial but can be used if the jury pleases to
21 as credibility and credibility only. I see no record, no
22 basis to put his prior record in at this time; do you, Mr.
23 Fox?

24 MR. FOX: No, Your Honor.

25 THE COURT: No, sir. Thank you though.

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1 All right. Let's be in recess and let's come back as
2 quick as you can, I got a jury waiting.

3 MR. HOLFORD: Thank you, Your Honor.

4 THE COURT: All right. All participants remain in the
5 courtroom now.

6 (4:48 P.M.)

7 *****OFF THE RECORD*****

8 (On the Record.)

9 (4:49 P.M.)

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

12 THE COURT: Yes, Mr. Fox?

13 MR. FOX: Your Honor, if you could inquire, I had a
14 chance to speak with Mr. Fleming about his desire to testify
15 and I answered any questions he had about that and explained
16 as Your Honor as about the consequences if he chose to, let
17 the jury be told either way if he chooses not to or chooses to
18 testify and I believe he is ready to give Your Honor his
19 answer at this time.

20 THE COURT: All right, sir. Now, you are certainly
21 entitled to talk to your distinguished counsel, get his ideas,
22 but I affirm to you again and reaffirm ---

23 MR. FLEMING: Yes, sir.

24 THE COURT: --- the decision to testify or not testify is
25 yours and yours alone. Do you understand that?

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JEREMY FLEMING - BY THE COURT

1 MR. FLEMING: Yes, sir.

2 THE COURT: Will you tell me your decision?

3 MR. FLEMING: I will desire to testify on my behalf.

4 THE COURT: You desire to?

5 MR. FLEMING: Yes, sir.

6 THE COURT: All right, sir. We'll bring the jury out and
7 start at this moment. Thank you.

8 State ready?

9 MR. RICHARDSON: You're gonna start the testimony now,
10 Your Honor?

11 THE COURT: Yes, sir, right now.

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: The Defendant ready?

14 MR. HOLFORD: The State is ready.

15 MR. RICHARDSON: Your Honor, if we could just address the
16 prior record.

17 MR. HOLFORD: Just address the prior record before we ---

18 THE COURT: Yeah, we need to do that.

19 MR. HOLFORD: Your Honor, the Defendant has a 2008
20 conviction for either manufacturing, distribution or
21 possession with intent to distribute cocaine. He also has a
22 2009 assault and battery of a high and aggravated nature and a
23 burglary 2nd nonviolent.

24 THE COURT: And what is your proposal to do?

25 MR. HOLFORD: Your Honor, I believe that those are

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JEREMY FLEMING - BY THE COURT

1 convictions that I could use against him in impeachment.

2 THE COURT: Burglary -- well, what's your position, Mr.
3 Fox?

4 MR. FOX: Your Honor, I think while all three of those
5 would be within the ten-year window and would certainly be
6 crimes that carry a potential sentence of more than a year,
7 we'd argue with regard to the burglary 2nd, although a
8 different degree of burglary than what Mr. Fleming is on trial
9 for today, it is still a burglary. I'm not sure the jury will
10 appreciate the distinction and I would argue that that is
11 still a -- that its value it outweighed by the prejudicial
12 effect on my client and ask that that be excluded.

13 THE COURT: Yeah, Mr. Holford, our federal courts have
14 addressed that issue and they have concluded that bringing in
15 a prior record for the same offense that he's being tried
16 would be too prejudicial and I'm not gonna let you do that in
17 that way. You may ask are you guilty of another felony; do
18 you understand?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: But do not use the word burglary since he's
21 being tried for burglary in fairness and the federal decisions
22 on that I think it would be highly prejudicial.

23 MR. HOLFORD: Yes, Your Honor.

24 THE COURT: Mr. Fox, do you understand? I'm going to let
25 the other two in. And with regard to burglary, I'm going to

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JEREMY FLEMING - BY THE COURT

1 permit him to say, were you convicted or pled guilty to
2 another felony.

3 MR. FOX: And since I'll likely address that with him on
4 direct examination, if I use that language, then that will not
5 open the door to if I say you've also been convicted of
6 another felony ---

7 THE COURT: Will not open the door, not gonna let that
8 in.

9 MR. FOX: Yes, sir.

10 THE COURT: No, that would be too prejudicial. You
11 understand that, Mr. Holford?

12 MR. HOLFORD: Yes, Your Honor, certainly.

13 THE COURT: Okay. And it opens no door.

14 All right. Bring the jury in.

15 (REPORTER'S NOTE: The jury returns to the courtroom. 5:03
16 P.M.)

17 THE COURT: All right, sir. At the conclusion of the
18 testimony just prior to recess, the State had concluded all of
19 its testimony. We now go to the Defendant.

20 You may proceed, Mr. Fox.

21 MR. FOX: Thank you, Your Honor. Defense would call
22 Jeremy Fleming.

23 JEREMY FLEMING, HAVING BEEN SWORN,

24 TESTIFIED AS FOLLOWS:

25 CLERK: Please be seated. State your full name and spell

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1 your last name.

2 MR. FLEMING: Jeremy Fleming, F-L-E-M-I-N-G.

3 DIRECT EXAMINATION OF JEREMY FLEMING BY MR. FOX:

4 Q: Mr. Fleming, how old are you?

5 A: I'm twenty-five.

6 Q: And where do you live?

7 A: I currently reside at [REDACTED], Murrells Inlet,
8 SC.

9 Q: How long have you lived at that address?

10 A: For approximately, say, six months, since 2011 before I
11 got incarcerated.

12 Q: And that was with relation to this charge, correct?

13 A: Yes, sir.

14 Q: Now, who do you stay with -- did you stay with down there
15 in Murrells Inlet?

16 A: It's my mother and she's currently a nurse, so she's
17 staying in a household with one of her patients and we resided
18 there together.

19 Q: Where did you go to school?

20 A: I went to school at Myrtle Beach High.

21 Q: Graduated?

22 A: No, sir.

23 Q: Okay. Now, you grew up in Horry County?

24 A: Yes, sir.

25 Q: All right. You've obviously been present during your

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JEREMY FLEMING - DIRECT BY MR. FOX

- 1 trial today. Do you know Samantha Topolski?
- 2 A: Yes, sir.
- 3 Q: And you know Lindsey Taylor Smith?
- 4 A: Yes, sir.
- 5 Q: And you know Tyler Topolski?
- 6 A: Yes, sir.
- 7 Q: Okay. And you know, although we haven't seen him here in
- 8 the courtroom, you know Abdul Furquan?
- 9 A: Yes, sir.
- 10 Q: Do you know Abdul Furquan by any other names?
- 11 A: Yes, sir. I know him as Freak.
- 12 Q: Any others?
- 13 A: No, sir.
- 14 Q: Ever heard him referred to or hear him refer to himself as
- 15 Devonte?
- 16 A: No, sir.
- 17 Q: All right. Do you know a Mary Linder?
- 18 A: Yes, sir.
- 19 Q: Do you know Boogie?
- 20 A: Yes, sir.
- 21 Q: Who is Boogie?
- 22 A: Boogie is a close friend and we grew up together.
- 23 Q: What's his -- that's not his real name is it?
- 24 A: No, sir.
- 25 Q: What's his real name?

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1 A: Brent E. Lanier.

2 Q: Okay. Do you know Kenny -- what's his last name? He was
3 here this afternoon.

4 A: LeRay.

5 Q: Right. Do you know him?

6 A: Yes, sir.

7 Q: Okay. So, basically, you know all those people that
8 testified here, correct?

9 A: Yes, sir.

10 Q: Okay.

11 The officers you only know from meeting through your
12 case, correct?

13 A: Yes, sir.

14 Q: All right. How long have known -- what about David Moran,
15 do you know him?

16 A: No, sir. I never seen him before.

17 Q: Ever seen him before today in this courtroom?

18 A: No, sir.

19 Q: What about Eric Collins? He testified first this morning.
20 Do you know Eric Collins?

21 A: No, sir.

22 Q: Ever seen him before?

23 A: No, sir.

24 Q: Let's talk about Freak. How long have you known Freak?

25 A: I met Mr. Abdul probably a week prior to the incident that

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1 happened.

2 Q: And that was -- this happened October 15th or 16th, 2011;
3 is that right?

4 A: Yes, sir.

5 Q: Okay. And you met -- how was it you met him?

6 A: From Mr. Lanier, him and Lanier were friends and they
7 currently had moved together in the trailer together, Mr.
8 Abdul was helping Lanier pay the rent.

9 Q: Which trailer are we talking about? Where is this
10 trailer?

11 A: The one that the cops or authorities raided.

12 Q: Is that the one that -- Rocky Road or whatever it is?

13 A: Yes, sir.

14 Q: Okay. Lot 49. Okay. You were present when the police
15 came, correct?

16 A: Yes, sir.

17 Q: Okay. And that was October 19th, 2011; is that right?

18 A: Yes, sir.

19 Q: There's a picture of you there?

20 A: Yes, sir.

21 Q: Do you remember who all else was there when the police
22 showed up, in the trailer, I mean?

23 A: It was me, Abdul, Brent, Ariel, Mary and Kenny.

24 Q: Ariel, did she testify here today?

25 A: No, sir.

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1 Q: Do you know where Ariel lives now?

2 A: No, sir.

3 Q: Who is Ariel? What's her connection to all these people?

4 A: That's Mr. Brent Lanier's girlfriend.

5 Q: And you say Brent was good friend of yours?

6 A: Yes, sir.

7 Q: So, you know Ariel pretty well?

8 A: No, sir.

9 Q: Okay.

10 A: Recently met Ariel, I would say three months before the
11 incident happened.

12 Q: She -- does she -- did she stay -- I'm talking about --
13 everything I ask you, I'm asking about October of 2011. In
14 that timeframe, did she stay with Brent in the trailer at that
15 time?

16 A: Yes, sir.

17 Q: How about you; did you stay in that trailer?

18 A: No, sir. I currently visit them from time to time that's
19 all, to hang out over there.

20 Q: Okay. Well, Brent, would you say he's your best friend?

21 A: Yes, sir.

22 Q: So, how often would you say, on average, would you be over
23 there during the week, how many times a week?

24 A: It's likefully [sic] every day.

25 Q: So, if someone came to see anybody at that trailer, it

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1 wouldn't be unusual to see you?

2 A: No, sir, it wouldn't.

3 Q: Okay. Did you keep your stuff there?

4 A: No, sir.

5 Q: Okay. Because -- where is your stuff, your personal
6 belongings?

7 A: At my current address at [REDACTED].

8 Q: In Murrells Inlet?

9 A: Yes, sir.

10 Q: All right. You've seen pictures of, and you probably were
11 close enough to see, when it was introduced into evidence, the
12 revolver that's in that box but you saw a picture of that and
13 then did you see it when the Solicitor brought it out for the
14 jury?

15 A: Yes, sir.

16 Q: Okay. Had you ever seen that weapon before?

17 A: Yes, sir.

18 Q: You had? Who had that -- where and how have you seen that
19 weapon before?

20 A: Mr. Abdul was currently the one in possession with the
21 weapon.

22 Q: You say currently, he's not literally now in possession of
23 it, is he?

24 A: No, sir, but currently is in whenever I seen it ---

25 Q: All right. And when was that.

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- 1 A: --- it was in Mr. Abdul's possession.
- 2 Q: When was that?
- 3 A: Probably from the whole month of October.
- 4 Q: And how do you -- when you say in possession, does that
- 5 mean it would be near where he was -- where? Where were you
- 6 when you saw him in possession of it?
- 7 A: I seen him in the household with the weapon tucked in his
- 8 waistband.
- 9 Q: Let's be specific. You know what you mean by household,
- 10 whose household -- which household?
- 11 A: In his household.
- 12 Q: You're talking about the trailer?
- 13 A: Yes, sir.
- 14 Q: Okay. And that's a trailer that we heard testimony about
- 15 today, correct?
- 16 A: Yes, sir.
- 17 Q: Okay. Now, when you say in his possession, does that mean
- 18 in a pocket, in his hand -- what do you mean exactly?
- 19 A: In his hand, in his waistband tucked between his pants and
- 20 his shirt.
- 21 Q: Do you have any idea -- and only if you know, do you know
- 22 -- he ever say anything to you about why he had that gun?
- 23 Don't tell me what -- yes or no, did he ever say anything to
- 24 you about that, give you any indication why he had the weapon?
- 25 A: Yes.

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JEREMY FLEMING - DIRECT BY MR. FOX

1 Q: And what was that reason?

2 MR. HOLFORD: Objection, Your Honor, hearsay; he's gonna
3 say why ---

4 THE COURT: Sustained.

5 MR. FOX: Okay.

6 BY MR. FOX:

7 Q: Anybody else you ever see with that weapon?

8 A: No, sir.

9 Q: Okay. How long had Brent been staying at that trailer,
10 Boogie?

11 A: Probably say the whole month of October.

12 Q: Any time before that?

13 A: Maybe September; I'm not ---

14 Q: Okay. But you would be visiting him during that whole
15 period?

16 A: Yes, sir. I went since he moved into the trailer, he
17 would call me over there.

18 Q: Ever see any other weapons while you were at the trailer?

19 A: No, sir.

20 Q: Okay. Who was it on October the 16th, and again that's
21 three days -- that's when the testimony is that's when the
22 shooting occurred, who was living there or paying rent in that
23 trailer, not just come by and visit, but who was staying there
24 overnight on a regular basis that you know?

25 A: Mr. Lanier, Ariel, Abdul Furquan and Mary Linder.

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- 1 Q: Okay. And who was Mary?
- 2 A: Abdul's girlfriend.
- 3 Q: Okay. And then on the -- three days later when the police
- 4 came, you were there, correct?
- 5 A: Yes, sir.
- 6 Q: Was Mary Linder there?
- 7 A: Yes, sir.
- 8 Q: Was Freak there?
- 9 A: Yes, sir.
- 10 Q: Was Brent there?
- 11 A: Yes, sir.
- 12 Q: Was Ariel there?
- 13 A: Yes, sir.
- 14 Q: Okay. And was Kenny there?
- 15 A: Yes, sir.
- 16 Q: So, counting yourself, a half a dozen people, correct?
- 17 A: Yes, sir.
- 18 Q: How many bedrooms in that trailer?
- 19 A: It was a three-bedroom trailer.
- 20 Q: What other rooms, I'm assuming a bathroom?
- 21 A: It's three bedrooms and two bathrooms.
- 22 Q: Living area, common room, kind of den/living room kind of
- 23 thing?
- 24 A: Yes, sir, a living room and a kitchen.
- 25 Q: Okay. Anything else inside?

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1 A: No, sir.

2 Q: So, several rooms, it's not one big room or one room and a
3 bedroom?

4 A: No, sir. It's one living room, one bedroom past the
5 kitchen and two bedrooms and a hallway.

6 Q: Now, how was it that -- you told me you met Freak when he
7 moved into the trailer, correct?

8 A: Yes, sir. I seen -- I met him recently but I never talked
9 to him or observed him he was talking to Mr. Lanier.

10 Q: Okay. You ever when you there ever had -- I don't care
11 about what you were talking about, ever have any conversations
12 with him?

13 A: Yes, sir.

14 Q: Okay. Friendly with him?

15 A: Yes, sir.

16 Q: Okay. Comfortable with him?

17 A: Yes, sir.

18 Q: Okay. Do you know what he did, how he got his money?

19 A: Supposedly he works at Olive Garden.

20 Q: Now, on October the 16th, were you at the -- Mr. Lanier's
21 trailer?

22 A: Yes, sir.

23 Q: Do you remember what time you got there?

24 A: Late afternoonish, five, six o'clock.

25 Q: How did you get there?

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1 A: My mother took me over there.

2 Q: Anybody else with you?

3 A: No, sir, not at the time.

4 Q: Okay. Do you recall who was there when you got there?

5 A: Mr. Lanier, Ariel and Mary.

6 Q: And they all lived there?

7 A: Yes, sir.

8 Q: Anybody else come while you were there?

9 A: Yes, sir, a young female named Brie.

10 Q: Now, and what -- how do you know Brie?

11 A: I met Brie occasionally from Murrells Inlet -- not

12 Murrells Inlet but Garden City -- not Garden City, Carolina

13 Forest is where I originally met her from.

14 Q: What about at any time that evening did you see Samantha

15 and her brother Tyler Topolski?

16 A: I seen them later on that night.

17 Q: How did they -- and what about Taylor Smith?

18 A: I seen her, she comes with them.

19 Q: Okay. And how did that -- how was it that you saw or met
20 them?

21 A: Originally, Ariel caused them to get Freak or Abdul a ride
22 from work. So, they called Ariel, they called Taylor and they
23 called Samantha and tell them they need Freak a ride from
24 work.

25 Q: Taylor have a car?

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- 1 A: Yes, sir.
- 2 Q: Do you have a car?
- 3 A: No, sir.
- 4 Q: Freak have a car?
- 5 A: No, sir.
- 6 Q: Okay. They're dependent on people to give them rides
- 7 around, you're dependent on people to get rides around?
- 8 A: Yes, sir.
- 9 Q: And Taylor would do that sometimes?
- 10 A: Yes, sir.
- 11 Q: Like, you'd have to pay her money to do that, offer her
- 12 gas money?
- 13 A: Yes, sir.
- 14 Q: Okay. So, this night did you contact Freak about getting
- 15 a ride home?
- 16 A: No, sir. Freak contacted Ariel to get him a ride home.
- 17 Q: Okay. Did you contact Taylor about getting a ride ---
- 18 A: I contacted ---
- 19 Q: --- from work, about getting Freak a ride from work?
- 20 A: No, sir.
- 21 Q: Okay. Did you ever talk to or have any contact with
- 22 Taylor about asking her for a ride for yourself to go
- 23 anywhere?
- 24 A: Yes, sir.
- 25 Q: And what was -- explain what that was about?

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1 A: It was when Mr. Abdul contacted Ariel, he specifically
2 said, when I get off, I want to smoke.

3 Q: He want a pack of Marlboros?

4 A: No, sir. He was talking about marijuana.

5 Q: Why would you think that?

6 A: That's what he specifically said, I want to smoke.

7 MR. HOLFORD: Objection, Your Honor.

8 THE COURT: I will permit that but we're going -- that's
9 hearsay obviously.

10 MR. FOX: I understand

11 BY MR. FOX:

12 Q: You can't testify about what someone else said, okay. You
13 can talk about your knowledge but -- is that conclusion of
14 yours that when Mr. Furquan said smoke, is that -- that he
15 meant marijuana?

16 A: Yes, sir.

17 Q: Is that based -- yes or no -- is that based on your
18 previous experience with him, being around him?

19 A: Yes, sir.

20 Q: Okay. So, all right, was that message to you?

21 A: Yes, sir.

22 Q: That he wants to get -- it was, it was to you? Why would
23 he contact you?

24 A: Because I was like -- the whole group, I would be the one
25 that would know somebody that has some weed sometimes.

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1 Q: Okay. Do you smoke?

2 A: Yes, sir.

3 Q: Okay. So, if you smoke, you got to buy it from somewhere;
4 is that right?

5 A: Yes, sir.

6 Q: Okay. You didn't have any yourself, did you?

7 A: No, sir.

8 Q: So, he made that request to you, did that come on a phone
9 call, text message, telegraph, how did he do that?

10 A: It was a text message.

11 Q: Okay. Now, did you respond in any way?

12 A: Yes, sir.

13 Q: By what means?

14 A: I told him I probably would find some.

15 Q: I'm sorry, when you said -- when you say you told him,
16 does that mean on the phone, text message, how did you tell
17 him?

18 A: I text him reply, I probably know where I could find some.

19 Q: Okay. Now, where did you have in mind you were gonna find
20 some?

21 A: At first, I called a friend of mine and he told me he
22 didn't have any.

23 Q: Who did you call?

24 A: At the time?

25 Q: Yeah.

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- 1 A: I called my friend Lo.
- 2 Q: And so that again, I didn't understand what you said.
- 3 A: I called my friend Lo.
- 4 Q: Spell that. I'm not sure what you're saying.
- 5 A: L-O,
- 6 Q: Okay. Lo. Does Lo have a name?
- 7 A: No, sir -- I don't know.
- 8 Q: Lo doesn't want to give it out -- doesn't like to go by
- 9 his real name when he's selling?
- 10 A: I don't know his real name.
- 11 Q: But you had purchased marijuana from him before?
- 12 A: Yes, sir.
- 13 Q: Where does Lo stay at?
- 14 A: Lo stays in Garden City, I think. I don't know
- 15 specifically where his residence is but that's where he would
- 16 meet me at.
- 17 Q: Okay. But that was no go?
- 18 A: No.
- 19 Q: No go with Lo?
- 20 A: No go.
- 21 Q: Now, what did you do after that? You struck out with Lo,
- 22 now what you gonna do?
- 23 A: Well, a young female that was at -- that came over there
- 24 to see me over there was named Brie. She said she knows a
- 25 friend that she thinks maybe she could help out.

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- 1 Q: All right. Did she give you a name?
- 2 A: She said she knows him as Harry Potter.
- 3 Q: Henry Potter?
- 4 A: No, Harry Potter.
- 5 Q: Harry Potter?
- 6 A: Yes, sir.
- 7 Q: Like the wizard?
- 8 A: Yes, sir.
- 9 Q: You ever met Harry Potter?
- 10 A: No, sir.
- 11 Q: Now, all right, so what was the plan then, was she gonna
- 12 contact him, were you gonna contact Harry Potter?
- 13 A: She said she was contacting him, she was texting him and
- 14 he was at work at the time.
- 15 Q: He was at work?
- 16 A: Yes.
- 17 Q: And do you recall roughly what time of night this was
- 18 going on?
- 19 A: This was -- I would say seven-thirtyish, eight o'clock.
- 20 Q: Okay. What time -- did you go along to pick up Freak from
- 21 Olive Garden?
- 22 A: No, sir; I didn't go.
- 23 Q: Okay. Did you see him later that night?
- 24 A: Did I see him ---
- 25 Q: Yeah, Freak.

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1 A: Leave the residence?

2 Q: No, no, did you see him that night?

3 A: Oh, yes, sir.

4 Q: Okay. Did you see him at the trailer?

5 A: Yes, sir.

6 Q: Okay. Who went to get him at Olive Garden?

7 A: Taylor and Samantha and Tyler went to pick him up from
8 work and brought him back to the trailer.

9 Q: Okay. So, they came back to the trailer again. Do you
10 know what time this was?

11 A: I would say after ten o'clock.

12 Q: Okay.

13 Had you had any more communication with them after he
14 said, I'm gonna get -- I'd like to smoke and you say I think I
15 can help you out there. Had you let him know what had
16 happened since with calling Lo and -- had you updated him
17 about what was going on on that ---

18 A: No, sir.

19 Q: Okay. Did y'all have any conversation when he got back
20 from work at the trailer about that?

21 A: Yes, sir. I talked to him briefly whenever he came back.
22 He went to the room to talk to Mary, came back, I said I know
23 where I can get you some weed from but I have to wait for Brie
24 to be in contact with her person until he gets off from work.

25 Q: Okay. How long then were you at the trailer, you know,

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1 once Freak gets back to the trailer, how long would you say it

2 was until then you all left to go?

3 A: It was it, say, roughly a fifteen/twenty minute time
4 period.

5 Q: Okay. What changed that made y'all leave? What happened
6 that made y'all leave?

7 A: The change was Brie got in contact with her person and he
8 said he was expecting her.

9 Q: Don't tell me what he said, but anyway, okay, so she got
10 in touch with somebody ---

11 A: And he said, you can come on by.

12 Q: So, what was the plan? Did you leave the trailer?

13 A: Yes, sir.

14 Q: Okay. Anybody go with you?

15 A: Yes, sir.

16 Q: Who?

17 A: Mr. Abdul, Tyler, Samantha and Taylor.

18 Q: Okay. And Abdul again was Abdul Furquan?

19 A: Yes, sir.

20 Q: Also known as Freak?

21 A: Yes, sir.

22 Q: Tyler, a young boy?

23 A: Yes, Samantha's little brother.

24 Q: Samantha.

25 A: Yes.

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- 1 Q: So, she went also?
- 2 A: Yes.
- 3 Q: And then Taylor?
- 4 A: Yes, the driver.
- 5 Q: Okay. So, counting yourself, that would be five in
- 6 Taylor's car?
- 7 A: Yes, sir.
- 8 Q: Okay. Who is where in the car when you left?
- 9 A: When I left, I was -- it was Taylor driving, Tyler was in
- 10 the passenger seat, Samantha was in the right rear. I was in
- 11 the middle and Abdul was on the end.
- 12 Q: So, he would be behind the driver?
- 13 A: Yes, sir.
- 14 Q: Okay. And where was it you were going?
- 15 A: To Ivystone.
- 16 Q: You ever been to Ivystone before?
- 17 A: Yes, sir.
- 18 Q: Okay. Why had you been to Ivystone?
- 19 A: I have family members that live in Ivystone.
- 20 Q: Okay. What's that person's name?
- 21 A: My family member?
- 22 Q: Yes.
- 23 A: A.J. Vereen.
- 24 Q: Now, had you ever been there with any of the people that
- 25 were in the car, the other four people that were with you that

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1 night, had any of them been with you to Ivystone before?

2 A: No, sir.

3 Q: Okay. How did Taylor know where to go?

4 A: We gave her directions that I was told ---

5 Q: We is who?

6 A: I myself personally gave her the directions that I was
7 told from Brie.

8 Q: Okay. And you're familiar with Ivystone because you have
9 someone that lives there or knew someone who lives there?

10 A: Yes, sir.

11 Q: All right. How far from the trailer is it to get over to
12 Ivystone, driving time?

13 A: I would say five minutes.

14 Q: So, it's nearby?

15 A: Yes, sir.

16 Q: Okay. Either in the trailer or on the ride over, was
17 there any conversation, again I don't need to know what, any
18 conversation about the purpose of the trip?

19 A: No, sir.

20 Q: Okay. But you and Freak had discussed it, correct?

21 A: Yes, sir.

22 Q: All right.

23 A: We discussed partially that we're just gonna go buy some
24 weed. I told him to ---

25 MR. HOLFORD: Objection, Your Honor.

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1 MR. FOX: To what he said, he said what he -- he's
2 testifying to what he said.

3 THE COURT: He can testify to what he said.

4 A: Yeah, specifically what I was saying is I told him that
5 we're going to buy weed and come back.

6 BY MR. FOX:

7 Q: Where -- if you recall -- and that would've been while
8 you're still at the trailer, right?

9 A: Yes, sir.

10 Q: Were -- when you had that conversation was Samantha
11 present?

12 A: No, sir.

13 Q: Was Taylor present?

14 A: No, sir.

15 Q: Okay. Was Tyler present?

16 A: No, sir.

17 Q: Okay. And I'll ask again because I've forgotten already,
18 in the car on the way from the trailer to Ivystone, any
19 further conversation about what you were doing?

20 A: No, sir.

21 Q: What was -- did you tell Taylor? Taylor had been
22 requested to pick up Freak from work and she did, mission
23 accomplished, right? She's -- someone said, hey, can you go
24 to Olive Garden pick him up and bring him back and that was
25 done, right?

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1 A: Yes, sir.

2 Q: Did you ask Taylor for the ride to go to Ivystone?

3 A: Yes, sir. I text her to ask her can she take me to
4 Ivystone to get some weed and some money real quick ---

5 Q: Okay.

6 A: Because Abdul says he has a hundred dollars.

7 Q: So, you didn't have a conversation with Taylor but you
8 communicated by text with her?

9 A: Yes, sir.

10 Q: Okay. Did she respond to you?

11 A: Yes, sir.

12 Q: And you saw the text yourself?

13 A: Yes, sir. She replied she would do it.

14 Q: Okay. Did you have any -- and when I say conversation
15 what I mean is anything text, an email, anything with Samantha
16 or Tyler about going to Ivystone?

17 A: No, sir.

18 Q: Okay. Because I've forgotten for the second time, any
19 conversation, contact on the way over the Ivystone with the
20 people in the car about what you're doing?

21 A: No, sir.

22 Q: Okay. Now, so it takes about five minutes. What happens
23 when you get to the con -- and is Ivystone is what exactly?

24 A: It's an apartment complex.

25 Q: Okay. More than one building?

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1 A: Yes, sir.

2 Q: Okay. More than one place to park?

3 A: Yes, sir.

4 Q: Okay. So, who is giving directions?

5 A: I was giving Taylor directions to the wrong apartment
6 building at first.

7 Q: Well, let's start generally getting to Ivystone, who is
8 giving directions?

9 A: Taylor knows how to get to Ivy -- she already knew how to
10 get to Ivystone but she didn't know exactly where at.

11 Q: Gotcha. Okay. So, where did y'all -- once you got the
12 complex itself, where did you go?

13 A: We made -- well, there's two ways to get into the
14 apartment complex. We went to the second one, made a left and
15 went to the wrong building at the first stop. After we went
16 to the first building, we left, came back, jumped in the car,
17 went to the second building and parked.

18 Q: Let me stop you. At whose direction did you go to the
19 first building?

20 A: That was my direction, my mistake.

21 Q: Okay. You think you're going to see Harry Potter, is that
22 right?

23 A: Yes, sir.

24 Q: You'd never been to that apartment before?

25 A: Yes, sir. I never know Harry Potter, didn't know ---

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1 Q: You'd been to Ivystone but not to that particular
2 apartment?

3 A: Yes, sir.

4 Q: Okay. Did you actually -- so, you stopped at the first
5 building, did anybody get out?

6 A: Yes, sir. Me and Abdul.

7 Q: And did what?

8 A: Went to the apartment complex.

9 Q: Well, I mean, the complex is a building full of -- I mean,
10 where did you go exactly?

11 A: We went specifically upstairs on the flight of stairs and
12 knocked on the door.

13 Q: Okay.

14 A: A woman came with a small baby.

15 Q: I gotcha.

16 A: And I told her is there a Harry Potter here, she said
17 that's the wrong building.

18 Q: Did she know where -- did she point you in any direction?

19 A: No, sir.

20 Q: Okay.

21 A: That's when I got -- called Brie and asked her what the
22 apartment building was. She told me which building it was. I
23 said, did you call your friend to let him know that we're
24 coming to get some weed. She said, yeah, he should know I
25 told him I was coming.

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1 Q: Now, did she give you further directions of where to go
2 within Ivystone, more specific?

3 A: She just told me the building and the number and I didn't
4 knew what the building number was, I can't remember
5 specifically whether it was 128 or something in the back.

6 Q: But now you got a number to go with the place?

7 A: Yes, sir.

8 Q: Okay. Did you -- were you able to -- how did you get to
9 that location, to that apartment?

10 A: We drove to the second complex, parked in front of the
11 building. Whenever we exited the vehicle, that's whenever Mr.
12 Abdul and me, I went first through the door, I went first
13 through the entryway.

14 Q: So, it'd be -- you were still within the Ivystone complex?

15 A: Yes, sir.

16 Q: You went from one location to the second location?

17 A: Yes, sir.

18 Q: Okay. Still the same people in the car?

19 A: Yes, sir.

20 Q: When you get to the second place, what happened?

21 A: I jump out the vehicle, Abdul gets out first, we close the
22 door, we're walking, I go in front of Mr. Abdul.

23 Q: All right. Now, where are you -- I'm gonna take this a
24 step at the time -- where were you? You're in the parking lot
25 obviously?

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1 A: Yes.

2 Q: When you get out, you walk, you say through a passageway;
3 what do you mean a passageway?

4 A: It's a little hallway that's connected with four buildings
5 on the bottom floor. We were walking past the first two going
6 towards the two in the back.

7 Q: All right. How far would you estimate that is, that
8 passageway?

9 A: Fifteen -- ten/fifteen feet.

10 Q: Could you see -- once you got to the end, could you see
11 back to the car?

12 A: No, sir. You could see down the hallway but you couldn't
13 see to the car.

14 Q: So, when you get to the end of that passageway, what's
15 next?

16 A: You go up the back staircase.

17 Q: Again, not what he would say but is Freak saying anything
18 to you, any conversation between the two of y'all at this
19 point?

20 A: Yes, sir.

21 Q: About what? Again, not what he said but what are y'all
22 discussing?

23 A: Basically discussing about ---

24 THE COURT: Wait a minute now, you're getting ready to go
25 into hearsay with another individual and that's not

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1 permissible.

2 MR. FOX: Yes, sir. I'm trying to be very careful with
3 Freak.

4 THE COURT: I understand but you're getting ready to go
5 into a discussion which on its face is with another individual
6 who is not here in this courtroom and that's inadmissible.

7 MR. FOX: Yes, sir.

8 BY MR. FOX:

9 Q: At that time, what was Freak wearing?

10 A: A grey hoodie and some dark pants.

11 Q: Did he have anything on his hands that you could see?

12 A: Yes, sir. He had on a pair of gloves.

13 Q: Anything about -- what kind of gloves?

14 A: Knit, they were like winter gloves.

15 Q: What were you wearing?

16 A: I was wearing a black, a black sweatshirt hoodie, black
17 pants and black skeleton design gloves on my hands.

18 Q: Were you wearing a baseball hat?

19 A: No, sir.

20 Q: What about Freak; was he wearing a baseball hat?

21 A: No, sir.

22 Q: Who went up the steps first?

23 A: I was currently going up the steps first, talking with Mr.
24 Abdul and he started talking, communicating with me while we
25 were going up the steps.

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1 THE COURT: All right. I don't want any conversation
2 with that individual now.

3 MR. FOX: I understand.

4 THE COURT: Let me say this to you, Mr. Foreman and
5 ladies and gentlemen so that you'll understand. The State has
6 raised objection about hearsay testimony. Under our rules,
7 testimony of another individual is not admissible unless that
8 person is on this witness stand under oath so that you can
9 judge his credibility and believability. Our rules do not
10 permit a witness to start testifying as to what somebody else
11 said because you would not've had an opportunity observe that
12 witness for yourself. Consequently, testimony from other
13 people not here is hearsay and is simply not admissible.

14 All right, sir.

15 BY MR. FOX:

16 Q: Mr. Fleming, did you have a weapon when you left that
17 trailer?

18 A: No, sir.

19 Q: Of any kind?

20 A: No, sir.

21 Q: Did you see anybody -- did you see anybody in the car with
22 a weapon?

23 A: Yes, sir.

24 Q: Okay. And that's during the ride?

25 A: Yes, sir.

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1 Q: Who was that?

2 A: Mr. Abdul.

3 Q: All right. Where did he have it?

4 A: In his jacket pocket -- in his sweater pocket.

5 Q: Okay. When you -- as you went up the steps, who went up
6 first?

7 A: I was going up the steps first.

8 Q: All right. And what happened?

9 A: I went up the steps and back towards the second doorway
10 that was up the stairs.

11 Q: All right. Describe when you get to the top of the stairs,
12 what's there, literally when you get to the last step?

13 A: When you get to the steps, it's a door on your left and
14 another door on your right.

15 Q: Okay. And there's what, a little landing or something
16 there?

17 A: Yes, sir.

18 Q: How big is that?

19 A: Say, five feet.

20 Q: So, when you got to the steps, what did you do when you
21 got to the top, what did you do?

22 A: I stuck to the right.

23 Q: All right. And where did Mr. Furquan go?

24 A: Mr. Furquan was faced towards the doorway of Mr. Moran's
25 house.

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1 Q: Did you know at the time it was Mr. Moran's house?

2 A: No, sir, I didn't until Mr. Furquan knocked. Once he
3 knocked -- Brie told me that Mr. Harry Potter, he had dogs,
4 something and then whenever Mr. Furquan knocked, that's when
5 the dog started barking.

6 Q: So, you heard a dog barking?

7 A: Yes, sir.

8 Q: Again, you can't say what he said, did Furquan announce
9 himself in any way when he knocked?

10 A: No, sir.

11 Q: Just a knock on the door?

12 A: Yes, sir.

13 Q: And then what happened?

14 A: Well, I noticed Furquan pulled a gun and when I seen the
15 gun I didn't know want no part of anything what he had in mind
16 to do with that because once he pulled the gun -- I didn't
17 even see Mr. Moran open the door, I seen him pull the gun and
18 seen him try to go his way in, that's whenever I took off down
19 the stairs. While I was taking off my way down the stairs, I
20 heard a gun pop. When I heard the popping noise, I heard
21 somebody screaming help and Mr. Abdul was following me so I
22 ran straight down there, went down the -- back through the
23 alleyway and jumped in the car and Mr. Abdul jumped in behind
24 me. As soon as I jumped in the car, Samantha was asking me,
25 are you okay, did you get shot and I told her no. That's

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1 whenever Mr. Abdul put the gun behind the driver and told her
2 to drive the fucking car, take off. And we drove off from
3 there. But when we got back to the trailer, everybody jumped
4 out, we went to a back room inside the trailer and I was
5 asking Mr. Abdul, like what ---

6 Q: Stop so we can get -- we can take a step at a time, okay.
7 Go back to the landing. Who knocked on the door?

8 A: Mr. Abdul.

9 Q: Who had a weapon?

10 A: Mr. Abdul.

11 Q: When the door was answered, could you see the person who
12 answered the door from where you were?

13 A: No, sir.

14 Q: You have any idea whether it was a man or woman, a boy, a
15 girl?

16 A: No, sir.

17 Q: Did you hear from the other side of the door at that time
18 any voices, any words spoken by the person that answered the
19 door?

20 A: No, sir.

21 Q: Or before they opened the door, any who is it or anything
22 like that?

23 A: No, sir. A brief conv -- I heard a brief conversation
24 with somebody on the phone but ---

25 Q: So, you heard voices but ---

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1 A: Yes, sir.

2 Q: Okay. When the door opened what happened?

3 A: When the door opened, I seen Mr. Abdul went to push
4 towards the door, that's when I ran past Mr. Abdul.

5 Q: Were you able to see whether Freak got inside?

6 A: No, sir.

7 Q: Did you see what happened? When you say he tried to get
8 in, what did he do?

9 A: He specifically put his foot on the door and pushed at it
10 and it looked like he was entering the house.

11 Q: Could you see into the apartment?

12 A: No, sir.

13 Q: At this point, Freak's got his foot in the door, can you
14 now see the person on the other side of the door?

15 A: No, sir.

16 Q: Is that the last thing you saw before you went downstairs?

17 A: Yes, sir.

18 Q: Now, you went back to the car, correct?

19 A: Yes, sir.

20 Q: Start from there. What happened when you got to the car?

21 A: Well, I jumped inside of the car. Abdul jumped in behind
22 me. Samantha was screaming, Did you get shot? I told her no.
23 Mr. Abdul jumped in the car beside me and said -- he waived
24 the gun back at Taylor, Ms. Smith's head, and told her, drive
25 the fucking car, take off.

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1 Q: So you drove the same drive back, right, about five
2 minutes?

3 A: Yes, sir.

4 Q: All right. When you got back to the trailer, did you go
5 inside?

6 A: Yes, sir.

7 Q: Okay. Did everybody come inside?

8 A: Yes, sir.

9 Q: Okay. What happened when you got inside?

10 A: Everyone went to the back room except for Samantha, Tyler
11 and Taylor. So, we was ---

12 Q: Everyone is who?

13 A: Me, Ariel, Boogie, Abdul and Brie was there.

14 Q: Now, so when you say the backroom, the bedroom?

15 A: Yes, sir.

16 Q: All right. Whose room?

17 A: I think this was Mr. Abdul's room.

18 Q: And in there what happened?

19 A: As soon as we entered the room, I was talking to Mr. Abdul
20 like, Why did you shoot him; why did you do that; we were
21 going there by buy weed, what, what ---

22 THE COURT: Now wait a minute. I'm not gonna listen to
23 any hearsay testimony. If you want that testimony in, we'll
24 issue a subpoena for him but not gonna let this testimony --
25 this witness testify about what somebody else said unless that

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1 witness is on this stand so the jury can observe him.

2 Proceed, please.

3 BY MR. FOX:

4 Q: Did you still -- did you see that revolver that's been
5 into evidence when you got back to the trailer?

6 A: Yes, sir.

7 Q: Who had the revolver?

8 A: Mr. Abdul.

9 Q: Did you at that time know what happened at the apartment
10 to Mr. Moran?

11 A: Yes, sir. No, sir, not -- did not know what happened to
12 him at that time period, no, sir, I didn't.

13 Q: When did you learn what had happened to Mr. Moran?

14 A: Whenever Brie called Mr. Eric Collins or she tried to call
15 Mr. Moran's phone ---

16 Q: Again, don't get into their conversation but did you get
17 that information through Brie?

18 A: Yes, sir.

19 Q: Okay. Was that the same night?

20 A: Yes, sir.

21 Q: Did you do anything with that information?

22 A: No, sir.

23 Q: Did anybody that you're aware of do anything -- let me ask
24 you this, When you found out was that information available --
25 shared to other people -- was this still at the trailer?

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- 1 A: Yes, sir.
- 2 Q: Okay. Was anybody around when you came to have that
3 information?
- 4 A: Yes, sir.
- 5 Q: Who else was around?
- 6 A: Everyone that was in the back room.
- 7 Q: Okay. So, not Samantha or Taylor or Tyler, correct?
- 8 A: Yes, sir.
- 9 Q: Okay. Were they still at the trailer?
- 10 A: Yes, sir.
- 11 Q: Did you get high with them or did they get high, do you
12 know?
- 13 A: Yes, sir.
- 14 Q: Did you stay there that night?
- 15 A: No, sir.
- 16 Q: How did you get home?
- 17 A: I left the residence when Brie left, she went to her
18 residence in Carolina Forest and I went to my cousin's
19 residence who stays nearby Brie.
- 20 Q: And what's your cousin's name?
- 21 A: Cody Heyward.
- 22 Q: You were at the trailer when a search warrant was served a
23 couple of days later, correct?
- 24 A: Yes, sir.
- 25 Q: All right. On that day, did you see that revolver?

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- 1 A: No, sir.
- 2 Q: Were you present -- you were obviously inside the trailer,
3 did you see anybody heave that gun out the window?
- 4 A: No, sir.
- 5 Q: Did you -- between the night of going to Ivystone and
6 three days later when the search warrant was served and you
7 were there, were you back at the trailer? You say you left
8 that night and stayed with a cousin?
- 9 A: Yes, sir. I went back the next day.
- 10 Q: Okay. Who was there at the trailer the next day?
- 11 A: Brent, Mary, Abdul and Kenny.
- 12 Q: Okay. Did you see Samantha or Tyler or Taylor that day?
- 13 A: Yes, sir. They came back that night.
- 14 Q: The next night?
- 15 A: Yes, sir.
- 16 Q: Got to jump back to the previous night again when you went
17 to Ivystone. Did -- do you know whether Taylor, Samantha and
18 Tyler stayed at the trailer that night?
- 19 A: No, sir, they didn't.
- 20 Q: Were you present when they left?
- 21 A: Yes, sir.
- 22 Q: Did you go outside with them when they left?
- 23 A: Yes, sir.
- 24 Q: Anybody else come outside?
- 25 A: Yes, sir, everybody that was inside the house stepped on

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1 the porch but ---

2 Q: Did you, again, not anybody else, did you have any -- did
3 you yourself say anything to them before they left?

4 A: No, sir, I didn't.

5 Q: Now, the next night, Samantha, Tyler and Taylor are back
6 at the trailer; is that correct?

7 A: It was Samantha and Taylor came back; Tyler wasn't with
8 them this time.

9 Q: Okay. But the girls came back?

10 A: Yes, sir.

11 Q: And everybody who lived at the trailer was there, Ariel,
12 and Freak and Boogie and Mary, right?

13 A: Yes, sir. Everybody was there except for Mr. Furquan.

14 Q: Where as he; do you know?

15 A: I think he was at work.

16 Q: Mr. Fleming, twenty-five years old -- in 2009, were you
17 convicted of possession with intent to distribute cocaine?

18 A: Yes, sir.

19 Q: And that same day were you were convicted of assault and
20 battery of a high and aggravated nature?

21 A: Not the same day, but yes, sir, I was convicted.

22 Q: And in 2009 were you -- did you get a conviction for
23 another felony?

24 A: Yes, sir.

25 THE COURT: Madame Foreman, Mr. Foreman, ladies and

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JEREMY FLEMING - DIRECT BY MR. FOX

1 gentlemen, there has been introduced into the testimony an
2 alleged prior record of this Defendant. If you conclude that
3 that record is true, you may use it if you choose as to his
4 credibility and believability. But that prior record is
5 absolutely no evidence of his guilt in this case. It may be
6 admissible only as to his credibility and believability.

7 Any further instructions requested on that issue, Mr.
8 Fox?

9 MR. FOX: No, Your Honor; thank you.

10 THE COURT: Thank you.

11 BY MR. FOX:

12 Q: Mr. Fleming, when you left the trailer on October the 16th
13 to go to Ivystone, why were you going to Ivystone?

14 A: Well, honestly, I thought we were going to buy some bud
15 and ---

16 Q: And bud is?

17 A: Buy weed, get high.

18 Q: Weed, again, for everyday folks who don't smoke bud or
19 weed, which is ---

20 A: Marijuana.

21 Q: Marijuana, all right. So, did anything between --
22 anything happen between leaving the trailer and arriving at
23 Ivystone that changed your mind about the reason you were
24 going?

25 A: No, sir.

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JEREMY FLEMING - DIRECT BY MR. FOX

1 Q: Anything happen from the time you left that car until you
2 reached the top of the landing of that apartment to make you
3 change your mind?

4 A: Yes, sir.

5 Q: About what was happening?

6 A: Yes, sir.

7 Q: And what was that?

8 A: Actually seeing Mr. Abdul pull out the weapon made me
9 change my mind about even being there. That's why as soon as
10 he pulled it out, I tried to run away and get away from there.

11 Q: Prior to that, was there anything from formulating a plan
12 to go over there, until you see him pull out the weapon that
13 changed your opinion about what the real purpose of that visit
14 was?

15 A: No, sir.

16 Q: At any time, did you knock on the door of Mr. Moran's
17 apartment?

18 A: No, sir.

19 Q: At any time, did you make any effort to enter that
20 apartment?

21 A: No, sir.

22 Q: And I'm talking about even the attempt -- you did not
23 enter the apartment, did you?

24 A: No, sir.

25 Q: All right. Did you even make the attempt to enter the

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JEREMY FLEMING - CROSS BY MR. HOLFORD

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1 apartment?

2 A: No, sir.

3 Q: Did you assist Mr. Furquan in any way in attempting to get
4 in the apartment?

5 A: No, sir.

6 Q: Did you have a gun?

7 A: No, sir.

8 Q: Did you shoot a weapon?

9 A: No, sir.

10 Q: Please answer any questions that Mr. Holford has for you.

11 THE COURT: Mr. Holford?

12 MR. HOLFORD: Yes, Your Honor.

13 CROSS EXAMINATION OF JEREMY FLEMING BY MR. HOLFORD:

14 Q: Mr. Fleming, normally I like to stand over here but I want
15 you to tell the jury this story. Let's talk about what we
16 agree about first. No doubt about it, October 16th, 2011, you
17 went up to that man's apartment with your CoDefendant?

18 A: Yes, sir; yes, sir.

19 Q: No doubt about it, you knew your CoDefendant had a gun?

20 A: Yes, sir.

21 Q: No doubt about it, your CoDefendant was wearing gloves?

22 A: Yes, sir, he was wearing gloves.

23 Q: No doubt about it you were wearing gloves?

24 A: Yes, sir.

25 Q: What about a mask?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

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- 1 A: No, sir.
- 2 Q: No bandanas?
- 3 A: Yes, sir.
- 4 Q: He was wearing a bandana?
- 5 A: Yes, sir.
- 6 Q: When did he put that bandana on?
- 7 A: Simply when he was coming up behind me, I guess, because
- 8 he was not wearing it when we were going in there.
- 9 Q: You didn't have a bandana though?
- 10 A: No, sir.
- 11 Q: No doubt about it, your CoDefendant was wearing a grey
- 12 hoodie and dark pants?
- 13 A: Yes, sir.
- 14 Q: No doubt about it you went up that hallway, up the back
- 15 staircase?
- 16 A: Yes, sir.
- 17 Q: You were leading the way?
- 18 A: Yes, sir.
- 19 Q: No doubt about it, you saw your CoDefendant with a weapon
- 20 while you were in the car on the way to Ivystone?
- 21 A: No, sir. I seen -- the revolver he has inside of his
- 22 pocket.
- 23 Q: While you were in the car on the way to Ivystone?
- 24 A: Yes, sir. But I never seen the weapon, I seen his hand
- 25 with the revolver shape in his pocket.

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 Q: But on the record you testified that you saw Abdul with
2 the weapon while you were in the car? ..

3 A: Yes, sir.

4 Q: No doubt about it, Mr. Furquan knocked on this victim's
5 door?

6 A: Yes, sir.

7 Q: No doubt about it, your CoDefendant pulled a gun?

8 A: Yes, sir.

9 Q: Now, here's where the stories change. You said you didn't
10 see Moran at all?

11 A: No, sir.

12 Q: You just ran right when he pulled the gun?

13 A: Yes, sir. I ran as soon as the door was opening up.

14 Q: But you knew he had the gun the whole time?

15 A: Yes, sir. I did say I knew he had the gun but I would
16 assume if he had one if it looks like one under his sweater.

17 Q: And then after you said you didn't even seen Moran, you
18 did say that Abdul pushed past the door?

19 A: No, sir. I seen Abdul force his way towards -- in the
20 door.

21 Q: In the door.

22 A: Yes, sir.

23 Q: So, the door opened?

24 A: No, sir. The door opened when Mr. -- whoever Moran or
25 Eric or whoever, whenever they opened the door, the door

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 opened a crack. I seen when the crack opened when the light
2 hit the hallway. Once I seen the light hit the hallway and
3 Abdul went to force and push the door open, that's when I
4 tried to run past Abdul.

5 Q: So, did you run when he pulled the gun or when he pushed
6 into the door?

7 A: He had the gun withdrawn before he even pushed on the
8 door.

9 Q: Right. So, you said at first you ran right when you saw
10 him pull the gun?

11 A: That's no, sir.

12 Q: No.

13 A: No, sir. When I seen Mr. Abdul ---

14 Q: Did you run when he pulled the gun or did you run when ---

15 A: He pushed in the door. When he pulled the gun, I didn't
16 want to be in the area, sir.

17 Q: But you did see him push through the door?

18 A: Yes, sir.

19 Q: And it looked like Abdul got in the house, or in that
20 apartment, that's what you said to your attorney. It looked
21 like Abdul entered the house.

22 A: Yes, sir.

23 Q: So, you saw him get in it?

24 A: Whenever I seen him ---

25 Q: But you were running?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 A: --- his way into the apartment. I never seen him go step
2 foot into the apartment or not.

3 Q: But you said on direct it looked like he entered.

4 A: Yes, sir.

5 Q: You're CoDefendant?

6 A: Yes, sir. It looked like he entered; I never said if he
7 did or if he didn't, sir.

8 Q: He had gloves and a bandana?

9 A: Yes, sir.

10 Q: Now, later you said when you got back to the mobile home,
11 you didn't learn about Moran and what happened to him, the
12 victim, until Brie told you?

13 A: Yes, sir.

14 Q: But before that, just a minute before, you said you asked
15 Furquan why did you shoot him. So, which one is it? You knew
16 he shot him or you didn't learn until Brie told you?

17 A: Whenever we went over to the residence, Brie called him
18 first, whenever we went in there because ---

19 Q: Brie called him whenever he was walking in with you?

20 A: No, Brie went with us to the back room.

21 Q: Uh-huh (affirmative response).

22 A: We were in the back room, I told Brie specifically, you
23 need to call your man and she was like, why, what's going on?

24 I said, I don't know but I heard a gunshot. She called Mr.

25 Moran and his roommate or somebody, Mr. Eric, picked up the

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 phone and told her it was a bad time and he specifically told
2 her, I mean, he got shot. That's what he told her.

3 Q: So, Brie called either Eric or David and they picked up
4 the phone?

5 A: Yes, sir.

6 Q: Okay. No doubt about it, there were only five people in
7 that car, Sam, Taylor, Tyler, you and Abdul?

8 A: Yes, sir.

9 Q: But you only went to Ivystone to buy a little marijuana?

10 A: Yes, sir.

11 Q: And seeing Abdul with the gun is what changed your mind?

12 A: Yes, sir.

13 Q: Except you had seen him with the gun in the car?

14 A: But I never knew he was intentionally gonna do something
15 with the gun.

16 Q: You gave directions to get to Ivystone, right?

17 A: Yes, sir.

18 Q: Abdul didn't give directions?

19 A: Not directions to get to Ivystone but where to go at when
20 we were in Ivystone.

21 Q: Right, because Brie gave those to you?

22 A: Brie gave us directions after we went to the first
23 apartment.

24 Q: So, you went to the first apartment, did your CoDefendant
25 have a mask on at that apartment?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 A: No, sir.

2 Q: Okay. So, you go to some first apartment, no mask, no gun

3 -- he didn't pull a gun at the first one, did he?

4 A: No, sir.

5 Q: On the mom with the baby?

6 A: No, sir.

7 Q: No reason to do that. But you go to a second apartment,

8 apparently, right?

9 A: Yes, sir.

10 Q: And as he's walking up the stairs to this second

11 apartment, that's when he puts the mask on?

12 A: Yes, sir.

13 Q: So, he must've known the first apartment wasn't the one he

14 wanted to go to? Is that what you're saying?

15 A: I don't know, sir.

16 Q: I don't know either. So, you talked to Brie, you get

17 better directions, right?

18 A: Yes, sir.

19 Q: You go to the right apartment this time?

20 A: Yes, sir.

21 Q: The victim's apartment?

22 A: Yes, sir.

23 Q: No one else went upstairs with you and your CoDefendant,

24 did they?

25 A: No, sir.

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 Q: Now, as confusing as -- you said that you knew Abdul or
2 you saw him with the weapon the whole month of October?

3 A: Yes, sir.

4 Q: And this happened on the 16th, right?

5 A: Yes, sir.

6 Q: But before that you had said you had only met him a week
7 before the incident?

8 A: No, sir. I said, I recently known Abdul the whole month
9 of October but I recently known who he was a week prior before
10 the incident. I seen him at Mr. Lanier's house more times at
11 the household, you know, I mean but I never knew who he was
12 until a week prior to this situation whenever he was showing
13 us his gun and telling us all my name is Freak and...

14 Q: You got a street name, too, right?

15 A: Yes, sir.

16 Q: He's not the only one who goes by a different name?

17 A: No, sir.

18 Q: And you're saying you never lived at the trailer?

19 A: No, sir.

20 Q: So, Kenny is lying there?

21 A: Actually, Kenny is not lying because he wouldn't even know
22 if I was living there or not because I've been there as much
23 as Kenny was.

24 Q: You sat here, you heard him. He said you lived there.

25 A: I heard what he said but that's not exactly where the

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 proof was, my plan was I was going to move in the residence
2 with Mr. Lanier for the time period but once this incident
3 happened, I never moved into the trailer with them.

4 Q: I see. So, you weren't living there.

5 A: No, sir.

6 Q: So, when Mary said you were living there, she was lying
7 too?

8 A: Yes, sir.

9 MR. FOX: Objection, Your Honor, pitting the witnesses
10 against each other. It's an improper question.

11 THE COURT: Proceed.

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: He hasn't got to that point yet.

14 MR. FOX: Almost.

15 THE COURT: Go ahead.

16 MR. HOLFORD: Yes, Your Honor.

17 BY MR. HOLFORD:

18 Q: No question, you left that trailer on October 16th, 2011
19 with Sam, Tyler, Taylor and your CoDefendant?

20 A: Yes, sir.

21 Q: That's mostly what we can agree to. Did you give a
22 statement to the police when you were picked up, when you were
23 arrested?

24 A: No, sir. I didn't write a statement to the police.

25 Q: Did you give an oral statement?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

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1 A: I think I did.

2 Q: I think you did too. You don't remember though? How
3 about two statements?

4 A: I never gave two statements, sir.

5 Q: You didn't?

6 A: I only saw the detectives one time.

7 Q: One time?

8 A: Yes, sir.

9 Q: Were you read Miranda on those statements? You know what
10 Miranda Warnings are.

11 A: Like, yeah, your right to remain silent and stuff like
12 that?

13 Q: Yes.

14 A: Yes, sir.

15 Q: I mean, you've been through it as Defense counsel says.

16 A: Yes, sir.

17 Q: So, you know what Miranda is?

18 A: Yes, sir.

19 Q: And you were read those warnings?

20 A: Yes, sir.

21 Q: At the police station?

22 A: (Indicates affirmatively.)

23 Q: Is that a yes?

24 A: Yes, sir.

25 Q: And did you tell police when they questioned you about

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JEREMY FLEMING - CROSS BY MR. HOLFORD

1 this event, what are you talking about or I don't know what
2 you're talking about, or you can't ---

3 MR. FOX: May he answer the question? That's a multiple
4 question. The first question ---

5 Q: All right. Is that what you told them?

6 A: The first question, yes, sir. The second question, yes,
7 sir.

8 Q: How about ---

9 A: You can't prove anything.

10 Q: You can't prove anything; I wasn't there.

11 A: No, sir. I don't remember saying that.

12 Q: But you didn't say that?

13 A: I don't remember saying that, sir.

14 Q: You don't remember saying that. How about, I didn't do
15 nothing?

16 A: That I remember saying.

17 Q: How about, I don't know nothing about this charge; do you
18 remember saying that?

19 A: No, sir.

20 Q: No. How about saying you had an alibi, Brie, that you
21 with that night, that you weren't even there; do you remember
22 saying that?

23 A: No, sir. No, sir. I told the detectives when they asked
24 me where I was at, I was with a female that night.

25 Q: You said you were with a female that night?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

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- 1 A: Yes, sir.
- 2 Q: You even gave her phone number?
- 3 A: Yes, sir.
- 4 Q: Said she stays around Tanger?
- 5 A: Yes, sir.
- 6 Q: Because that's where Brie stays?
- 7 A: Yes, sir.
- 8 Q: She's like your girlfriend?
- 9 A: No, sir.
- 10 Q: You didn't tell them that?
- 11 A: No, sir.
- 12 Q: You sure?
- 13 A: I don't remember telling the authorities that she was like
- 14 my girlfriend.
- 15 Q: Okay.
- 16 MR. HOLFORD: Court's indulgence.
- 17 THE COURT: Sure.
- 18 BY MR. HOLFORD:
- 19 Q: Now, you knew that your CoDefendant shot someone on 10/17;
- 20 shot him on 10/16 but on 10/17 you knew it?
- 21 A: Yes, sir.
- 22 Q: On 10/19, no doubt about it, you were in that home that
- 23 got raided?
- 24 A: Yes, sir.
- 25 Q: With your CoDefendant?

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JEREMY FLEMING - CROSS BY MR. HOLFORD

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1 A: Yes, sir.

2 Q: But you didn't live there?

3 A: No, sir.

4 Q: Brent lived there?

5 A: Yes, sir.

6 Q: Mary lived there?

7 A: Yes, sir.

8 Q: Ariel lived there?

9 A: Yes, sir.

10 Q: Your CoDefendant lived there?

11 A: Yes, sir.

12 Q: And you're saying you didn't?

13 A: Yes, sir.

14 Q: If you knew your CoDefendant shot somebody -- let me
15 rephrase that. Did you tell the police on the 17th that your
16 CoDefendant shot somebody?

17 A: No, sir.

18 Q: Did you tell the police on the 18th that a person you went
19 with upstairs to an apartment broke in and shot somebody?

20 A: No, sir.

21 Q: Did you tell police on the 19th that someone you went with
22 with a mask, with gloves, with a hoodie, broke into someone's
23 house, shot someone?

24 A: No, sir.

25 Q: You said, I don't know nothing.

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JEREMY FLEMING - REDIRECT BY MR. FOX

1 A: I can't remember what I told the detectives.

2 Q: Now, you can't remember, okay. You don't remember that?

3 A: I remember I told them I didn't do anything. I don't
4 specifically remember telling them I don't know anything. I
5 remember I said I didn't do anything.

6 Q: You didn't know anything about charges. You didn't know
7 why you were getting charged? You don't remember telling them
8 that either?

9 A: No, sir. I can't recall that.

10 Q: But knowing that someone you were with shot somebody, you
11 didn't come forward and tell, did you?

12 A: No, sir.

13 Q: That was those two girls in the car. They're the ones who
14 went to the police and told them.

15 A: Yes, sir.

16 MR. HOLFORD: No further questions, Your Honor.

17 THE COURT: Anything in reply?

18 MR. FOX: Yes, Your Honor.

19 REDIRECT EXAMINATION OF JEREMY FLEMING BY MR. FOX:

20 Q: Your testimony was that when you learned through Brie that
21 Mr. Moran had been shot, others were present too and got the
22 same information; is that correct?

23 A: Yes, sir.

24 Q: Okay. To your knowledge, did any of those people that
25 learned about the shooting when you did, did any of those

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JEREMY FLEMING - REDIRECT BY MR. FOX

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1 people go to the police?

2 A: No, sir. We were all scared.

3 Q: Why were you scared?

4 A: Because Mr. Abdul is -- he got his name Freak for a
5 reason.

6 Q: Now, when you talked to the police, you saw them how many
7 times?

8 A: One time.

9 Q: All right. Was there ever a time -- do you remember how
10 many detectives or how many officers you talked to?

11 A: Yes, sir. There was two in a room.

12 Q: Okay. Was there ever a time when the conversation stopped
13 and either of the officers left?

14 A: Yes, sir.

15 Q: Okay. Did the conversation resume ever?

16 A: Yes, sir.

17 Q: Okay. How long from the time it stopped, one officer gets
18 up to leave -- do you know why he left, did he tell you? Did
19 he give any indication ---

20 A: Yes, sir, he said ---

21 Q: Don't tell me what he said but -- they were questioning
22 you, you were talking to police, one of them got up and left,
23 correct?

24 A: Yes, sir.

25 Q: Okay. Conversation stops. Do you remember how long it

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JEREMY FLEMING - REDIRECT BY MR. FOX

1 stopped, any idea?

2 A: I would say twenty or thirty minutes.

3 Q: Okay. Did it start back up?

4 A: Yes, sir.

5 Q: Okay. Same day?

6 A: Yes, sir.

7 Q: Same location?

8 A: Yes, sir.

9 Q: Same cops involved?

10 A: Yes, sir.

11 Q: Okay. So, really, it was one -- and I'm gonna say
12 statement, one conversation with the police, right?

13 A: Yes, sir.

14 Q: It just got interrupted; is that fair?

15 A: Yes, sir.

16 Q: They never did actually tell you what they were charging
17 you with, did they?

18 A: No, sir.

19 Q: In the beginning, you were asking why am I here; is that
20 right?

21 A: Yes, sir.

22 Q: And since the Solicitor asked if you remember saying so
23 many things, do you remember the officer saying to you, we
24 don't think you're the shooter, do you remember that?

25 A: Yes, sir. I remember that.

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JEREMY FLEMING - RECROSS BY MR. HOLFORD

1 MR. HOLFORD: Objection, Your Honor, that's hearsay.

2 That's not this Defendant's statement..

3 THE COURT: Yes, sir, that is hearsay. Strike that,
4 please.

5 Again, as to that witness, you're entitled to call them
6 if you want to.

7 MR. FOX: Yes, sir.

8 THE COURT: And the Court will subpoena them for you.

9 MR. FOX: Thank you. That's all the questions I have.

10 THE COURT: All right, sir. Do you have any further
11 redirect?

12 MR. HOLFORD: Just one more.

13 RECROSS EXAMINATION OF JEREMY FLEMING BY MR. HOLFORD:

14 Q: You were so scared of your CoDefendant; is that right?

15 A: Yes, sir.

16 Q: All right. And you were with him two days later when they
17 did the search?

18 A: Probably I was with him for the whole time period but
19 discussing upon that I honestly, every one of us that was in
20 the household, like we didn't -- we was scared because if he
21 shot that man in the head, what would he do to one of us if we
22 tried to tell on him.

23 Q: And that's why you stayed with him?

24 A: No, I didn't stay with him. I went over there to see ---

25 Q: You were in the same house ---

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BY THE COURT

1 A: Yeah.

2 Q: --- on the 19th?

3 A: Yes, I went over there to see Mr. Lanier.

4 MR. HOLFORD: No further questions.

5 THE COURT: All right. You may come down. Thank you.

6 A: Thank you, Your Honor.

7 THE COURT: Any further witnesses for the Defense?

8 MR. FOX: No, Your Honor.

9 THE COURT: Anything in reply for the State?

10 MR. HOLFORD: No reply, Your Honor.

11 THE COURT: That will end the testimony; is that what I
12 hear?

13 MR. FOX: Yes, Your Honor.

14 THE COURT: For the State, too?

15 MR. HOLFORD: Sorry, Your Honor?

16 THE COURT: That ends the testimony?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: So, in the morning at 9:30, we'll have the
19 charge and final summation to the jury; can we agree with
20 that?

21 MR. HOLFORD: Yes, Your Honor.

22 MR. FOX: Yes, sir.

23 THE COURT: Mr. Foreman, ladies and gentlemen, I've kept
24 you here a little later than usual so that we could have
25 concluded all of the testimony in the case. When you return

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BY THE COURT

1 at 9:30 in the morning, we'll have final summation of counsel
2 and at that time I will give you the instructions in the law
3 with reference to all the issues that are raised. Please
4 remember my admonitions, make no independent inquiry, discuss
5 the case with no one, let no one discuss it with you. Do not
6 discuss it among yourselves until I have given you the case
7 for your deliberation.

8 Please be back in the chambers at 9:30 in the morning and
9 I would estimate that I'll be giving you this case for your
10 deliberation sometime -- if we start at 9:30, I think we can
11 give it to you by 11:00 or 11:30 for your deliberation. So,
12 this case will conclude sometime tomorrow morning and we'll
13 proceed from there. So, have a good evening and be back,
14 please, at 9:30 promptly.

15 Now, Mr. Bailiff, I want somebody to provide country ham
16 biscuits for my jury in the morning. Be here a little early.

17 All right. Thank you. We do that in Marlboro County
18 and we're gonna do it in Horry.

19 (REPORTER'S NOTE: The jury exits the courtroom and is excused
20 for the day. 6:07 P.M. The following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. We are outside the presence of
23 the jury. We've concluded all the testimony. Mr. Fox, I'll
24 be glad to hear any motions at this time.

25 MOTIONS:

MOTIONS

1 MR. FOX: We would renew our motion for a directed
2 verdict on both charges, Your Honor.

3 THE COURT: For the reasons stated by the Solicitor's
4 Office and given by me at that stage, all of which are now
5 incorporated again. That motion is respectfully denied.
6 There is evidence for the jury as finders of the facts to make
7 the determination as to guilt or innocence.

8 Now, we are preparing charges, any specific -- obviously,
9 I'm gonna charge the elements of attempted murder and that of
10 burglary in the first degree. Any other charges?

11 MR. HOLFORD: Hand of one, hand of all.

12 THE COURT: Hand of one, sure.

13 MR. FOX: Mere presence, Your Honor,

14 THE COURT: Mere presence will be incorporated.

15 MR. HOLFORD: I believe it's included in the hand of one,
16 hand of all.

17 THE COURT: Now, Mr. Fox, I'll ask you, given the
18 testimony there can be a lesser included charge to attempted
19 murder. Would you desire that I charge a lesser included
20 burglary, assault and battery first degree?

21 MR. FOX: Yes, Your Honor.

22 THE COURT: How about second degree? All three are
23 lesser included.

24 MR. FOX: Your Honor, I would -- any and all that apply,
25 any and all lesser included offenses, I would request that you

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1 charge.

2 THE COURT: Well ---

3 MR. HOLFORD: Your Honor ---

4 THE COURT: Sir?

5 MR. FOX: I think it's a fact question for the jury.

6 MR. HOLFORD: Your Honor, it may be a fact question for
7 the jury as to high and aggravated and possibly first degree
8 but I believe the difference between first and second is
9 serious bodily injury and moderate bodily injury.

10 MR. FOX: If Your Honor determines ---

11 THE COURT: Our case -- our case law has not been settled
12 on that but at the CLEs there was a suggestion that the lesser
13 included include all three. However, I'm not sure that the
14 third one is where a actual shooting was occurred. In an
15 abundance of caution, I'm gonna charge all three until the
16 Supreme Court tells us otherwise.

17 MR. FOX: Thank you, Your Honor.

18 MR. HOLFORD: A shooting in the head is moderate bodily
19 injury?

20 THE COURT: Sir?

21 MR. HOLFORD: That a shooting in the head is moderate
22 bodily injury?

23 MR. FOX: It doesn't say potential injury, certainly that
24 is potentially very bad but he was able to talk to the police
25 officers ---

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1 THE COURT: Till the Supreme Court -- the last I heard
2 under the CLE you need to charge all three. I agree with you
3 that it seems to me that the factual situation certainly -- in
4 abundance of caution, I'm gonna charge all three.

5 MR. HOLFORD: Your Honor, when you say all three, just
6 for clarification, we have attempted murder ---

7 THE COURT: Right.

8 MR. HOLFORD: Assault and battery high and aggravated.

9 THE COURT: Right.

10 MR. HOLFORD: Assault and battery first.

11 THE COURT: Right.

12 MR. HOLFORD: Assault and battery second.

13 THE COURT: Right.

14 MR. HOLFORD: What about assault and battery third?

15 THE COURT: I decline to charge assault and battery
16 third.

17 MR. HOLFORD: Thank you, Your Honor.

18 THE COURT: I don't regard any lesser included burglary
19 first, it's either burglary first or nothing.

20 MR. HOLFORD: Yes, Your Honor.

21 THE COURT: But then the testimony -- everybody agrees
22 that whatever occurred occurred at night plus even the Defense
23 witness agrees that a gun was involved. Do you agree with
24 that, Mr. Fox?

25 MR. FOX: I'm sorry. Could you repeat the very end, Your

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1 Honor?

2 THE COURT: I say I don't see a -- burglary first,
3 there's no lesser included under the facts in this case.

4 MR. FOX: I would agree, Your Honor.

5 THE COURT: Okay.

6 All right. Let me ask you one further thing. I'm going
7 to be preparing this charge tonight and I will provide both of
8 you with copies of my charge. In the last several weeks while
9 I'm recovering from some eye problems, I have permitted my
10 associate and law clerk to read my charge after I tell the
11 jury that it is my charge and accept it as being my charge and
12 then I'll have some concluding remarks. Anybody object to
13 that?

14 MR. FOX: No, Your Honor, I assume as always we're
15 provided a copy before. I don't have any problem with that,
16 Your Honor.

17 THE COURT: Sure, okay.

18 MR. HOLFORD: No objection.

19 THE COURT: All right, sir. Well, be back at -- I'll
20 tell you what, be back at 9:15 so I can have these charges for
21 you.

22 MR. FOX: Yes, sir.

23 THE COURT: Thank you.

24 MR. RICHARDSON: Thank you, Judge.

25 MR. HOLFORD: Thank you, Your Honor.

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1 THE COURT: All right.

2 *****OFF THE RECORD*****

3 (On the Record.)

4 (May 15, 2013.)

5 (REPORTER'S NOTE: The following takes place outside the
6 presence of the jury.

7 THE COURT: Mr. Holford, for the State, anything further
8 before we begin?

9 MR. HOLFORD: Yes, Your Honor. As to, I believe it's
10 State's Eighty-two, that was the search warrant, it was never
11 entered in evidence, never meant to be entered in evidence
12 because it's hearsay but I do believe for purposes of the
13 record that it would be a Court's Exhibit since we talked
14 about the consent to search.

15 THE COURT: Needs to be a Court Exhibit and it is so
16 ordered. Any objection to that, Mr. Fox?

17 MR. FOX: No, Your Honor, I agree.

18 THE COURT: Okay.

19 MR. HOLFORD: But it would not go back to the jury.

20 THE COURT: No, no, will not.

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. FOX: No, Your Honor.

24 THE COURT: Okay. And we've agreed that the charge will
25 be before summation and I'm gonna let my law clerk assist me

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BY THE COURT

1 with giving the charge and everybody has agreed to that.

2 MR. HOLFORD: Yes, sir.

3 MR. FOX: Yes, sir.

4 THE COURT: All right. Bring the jury in, please.

5 (REPORTER'S NOTE: The jury enters the courtroom. 9:56 A.M.)

6 THE COURT: Good morning, Mr. Foreman, ladies and
7 gentlemen. I trust that the ham biscuits provided by the
8 Clerk of Court were satisfactory to everybody. My two were
9 good, too.

10 I want to thank again all of you for being here. I was
11 very much impressed with this jury on yesterday in that all of
12 you were very intent on listening to all the testimony and
13 that is just simply the sign of a splendid jury preparing to
14 do their work under their oath and that's appreciated not only
15 by me as the presiding judge but by the State of South
16 Carolina and Mr. Fox who represents the Defendant.

17 In just a few moments, we are going to give you the law
18 with regards to the issues that has been raised remembering
19 that you take the facts as you find them to be and apply those
20 facts to the law as I give it to you at this time. At the
21 beginning of this trial, I discussed with you certain
22 fundamental issues of law and we're gonna be revisiting those
23 again, such as the presumption of innocence of this Defendant,
24 the burden of proof of the State which is beyond a reasonable
25 doubt, and the fact that you and you alone are the sole and

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1 only finders of the facts and you are the judges of the
2 credibility and believability of the issues. My charge will
3 deal with these issues again because they are so important and
4 so fundamental to our system of justice. I have prepared this
5 charge on the law and I'm going to ask that my associate and
6 law clerk, Trey Jones, read my charge to you. Please accept
7 his rendition as my charge to you. After that charge is
8 complete, we will have final summation from counsel by the
9 State and the Defendant and at the conclusion I will go over
10 with you the verdict forms which will be used by you as
11 finders of the facts.

12 At this time, I'm going to ask Mr. Jones to read the
13 charge that I have prepared for you and I have given counsel
14 for the State and the Defense a copy of my remarks.

15 Mr. Jones.

CHARGE TO JURY:

17 LAW CLERK: The indictment charges the Defendant with
18 attempted murder and burglary first degree. I remind you that
19 the fact that the Defendant was arrested, charged and indicted
20 in this case is not evidence in this case and cannot be
21 considered by you as evidence of guilt in this case nor does
22 it create any presumption or inference of guilt. This
23 document is simply the formal, written instrument which
24 contains the charge made against the Defendant. It is the
25 formal document by which this case is brought in this Court.

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1 The Defendant has pled not guilty to this indictment and that
2 plea puts the burden on the State to prove the Defendant
3 guilty. A person charged with committing a criminal offense
4 in South Carolina is never required to prove himself innocent.
5 I charge you that it as an important rule of the law that the
6 Defendant in a criminal trial, no matter what the seriousness
7 of the charge may be, will always be presumed to be innocent
8 of the crime for which the indictment was issued unless guilt
9 has been proven by evidence satisfying you of that guilt
10 beyond a reasonable doubt. This presumption of innocence does
11 not end when you begin your deliberations but it accompanies
12 the Defendant throughout the trial until you reach a verdict
13 of guilt based on evidence satisfying you of that guilt beyond
14 a reasonable doubt.

15 The presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the Defendant
17 which remains with the Defendant until it has been stripped
18 from the Defendant by evidence satisfying you of the
19 Defendant's guilt beyond a reasonable doubt. The presumption
20 of innocence is not mere legal theory, it is not just a legal
21 phrase, it is a substantial right to which every Defendant is
22 entitled unless you the jury are satisfied from the evidence
23 of the Defendant's guilt beyond a reasonable doubt.

24 The State has the burden of proving the Defendant guilty
25 beyond a reasonable doubt. Some of you may have served on

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1 |juries in civil cases where you were told that it is only
2 |necessary to prove that a fact is more likely true than not
3 |true, such as by the greater weight or preponderance of the
4 |evidence. In criminal cases, the State's proof must be more
5 |powerful than that. It must be beyond a reasonable doubt.
6 |Proof beyond a reasonable doubt is proof that leaves you
7 |firmly convinced of the Defendant's guilt. There are very few
8 |things in this world that we know with absolute certainty and
9 |in criminal cases, the law does not require proof that
10 |overcomes every possible doubt. If based on your
11 |consideration of the evidence, you are firmly convinced that
12 |the Defendant is guilty of the crime charged, you must find
13 |the Defendant guilty. If on the other hand, you think there
14 |is a real possibility that the Defendant is not guilty, you
15 |must give the Defendant the benefit of the doubt and find him
16 |not guilty.

17 | I remind you that during this trial, you and I have
18 |certain duties to perform. As the Trial Judge, it is my
19 |responsibility to preside over the trial of this case and I
20 |also have the duty to rule on the admissibility of the
21 |evidence offered during this trial. You are to consider only
22 |the competent evidence before you. If there was any testimony
23 |ordered stricken from the record in this case, you must
24 |disregard that testimony. You are to consider only the
25 |testimony which has been presented from this witness stand,

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1 any exhibits which have been made part of the record in this
2 case and any stipulations of counsel. I have the additional
3 duty to charge you the law applicable to this case. As the
4 Presiding Judge, I am the sole judge of the law in this case
5 and it is your duty as jurors to accept and apply the law as I
6 now state it to you. If you already have any idea as to what
7 you think the law is or what the law ought to be and it does
8 not agree with what I now tell you the law is, you must
9 abandon this idea because you are sworn to accept the law and
10 apply the law exactly as I state it to you. In every case
11 tried in this court before a jury, the jury becomes the sole
12 and exclusive judge of the facts in the case, a trial judge
13 cannot intimate, state, comment on or make any statement to a
14 trial jury about facts in a case. Since you, the jury, are
15 the sole judge of the facts in this case, you are not to infer
16 from what I have said during the progress of this trial in
17 ruling upon the admissibility of evidence or otherwise or
18 anything that I say now during the course of this instruction
19 to you that I have any opinion about the facts in this case.
20 The law does not allow me to have an opinion about the facts
21 in this case. This is a matter solely for you, the jury, to
22 determine. As jurors, it is your duty to determine the
23 effect, value, weight and truth of the evidence presented
24 during this trial.

25 There are two types of evidence which are generally

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1 presented during a trial, direct evidence and circumstantial
2 evidence. Direct evidence is the testimony of a person who
3 claims to have actual knowledge of a fact, such as an eye
4 witness. It is evidence which immediately establishes the
5 main fact to be proved.

6 Circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the existence of a fact. It is
8 evidence which immediately establishes collateral facts from
9 which the main fact may be inferred. Circumstantial evidence
10 is based on inference and not on personal knowledge or
11 observation. The law makes absolutely no distinction between
12 the weight or value to be given to either direct or
13 circumstantial evidence, nor is a greater degree of certainty
14 required of circumstantial evidence than of direct evidence.

15 You should weigh all the evidence in the case. After
16 weighing all of the evidence, if you are not convinced of the
17 guilt of the Defendant beyond a reasonable doubt, you must
18 find the Defendant not guilty.

19 Necessarily, you must determine the credibility of
20 witnesses who have testified in this case. Credibility simply
21 means believability. It becomes your duty as jurors to
22 analyze and to evaluate the evidence and determine which
23 evidence convinces you of its truth. In determining the
24 believability of witnesses who have testified in this case,
25 you may believe one witness over several witnesses, or several

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1 witnesses of one witness. You may believe a part of the
2 testimony of a witness and reject the remaining part of the
3 testimony of that same witness. You may believe the testimony
4 of a witness in its entirety or reject the testimony of a
5 witness in its entirety. You may consider whether any witness
6 has exhibited to you any interest, bias, prejudice or other
7 motive in this case. You may also consider the appearance and
8 manner of a witness while on the witness stand.

9 A person who has a past criminal record is competent to
10 testify during a trial. A past record does not affect the
11 ability of that witness to testify. The past record may only
12 be considered by you if at all in determining the witness'
13 believability. Remember that you are the sole judges of the
14 facts in the case and of the believability of any and all of
15 the witnesses. You have heard evidence that the Defendant was
16 convicted of a crime other than the one for which the
17 Defendant is now on trial. This evidence may be considered by
18 you if you conclude that it's true only in deciding whether
19 the Defendant's testimony is believable and for no other
20 purpose. You must not consider the Defendant's prior record
21 as any evidence of the Defendant's guilt of the charge we are
22 trying today.

23 If a crime is committed by two or more people who are
24 acting together in committing a crime, the act of one is the
25 act of all. A person who joins with another to commit an

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1 unlawful act is criminally responsible for everything done by
2 the other person which happens as a probable or natural
3 consequence of the acts done in carrying out the common plan
4 and purpose. If two or more people are together acting
5 together, assisting each other in committing the offense, the
6 act of one is the act of all, or as it is sometimes said, the
7 hand of one is the hand of all.

8 Prior knowledge that a crime is going to be committed
9 without more is not sufficient to make a person guilty of that
10 crime. Mere knowledge that another person is going to commit
11 a crime, even if the Defendant is present when the crime is
12 committed, is not sufficient to convict the Defendant as a
13 principle. Guilt as a principle is shown by actual or
14 constructive presence at the scene as a result of prior
15 arrangement. Therefore, a finding of a prior arranged plan or
16 common scheme is necessary for a finding of guilt as a
17 principle. The State must prove beyond a reasonable doubt by
18 competent evidence the theory of the hand of one is the hand
19 of all.

20 A principle in a crime is one who either actually commits
21 the crime or is present, aiding, abetting or assisting in
22 committing the crime. When a person does an act in the
23 presence of and with the assistance of another, the act is
24 done by both. Where two or more acting as a common plan or
25 intent are present at the commission of a crime, it does not

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1 matter who actually commits the crime, all are guilty; the
2 hand of one is the hand of all.

3 Present at the commission of a crime means to be
4 sufficiently near to and aid and abet and assist in the
5 commission of the crime. However, mere presence at the scene
6 of a crime is not sufficient to convict one as a principle on
7 the theory of aiding and abetting. Intent is also a necessary
8 element for there must have been a common design or intent to
9 commit the crime and the crime must've been committed pursuant
10 thereto with the person aiding and abetting by some overt act.
11 Intent means intending the result which actually occurs not
12 accidentally or involuntarily. Intent may be shown by acts and
13 conduct of the Defendant and other circumstances from which
14 you may naturally and reasonably infer intent. The State must
15 prove these elements beyond a reasonable doubt.

16 Mere presence at the scene is not sufficient to prove
17 someone guilty of a crime. A Defendant's presence where a
18 crime is being committed or mere association with a person who
19 commits a crime does not make a Defendant an accomplice or an
20 aider and abettor of the person committing the crime.

21 The burden is on the State to prove every element of the
22 crime charged. If you find after reviewing all of the
23 evidence that the State has proved that the Defendant was only
24 present at the scene of a crime and that they have not proved
25 beyond a reasonable doubt any other participation in the crime

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1 then you must find the Defendant not guilty. The law is that
2 proof of at the scene of the crime is not sufficient to find
3 someone guilty.

4 The Defendant is charged with attempted murder. In order
5 to prove this crime, the State must prove the Defendant
6 attempted to kill another person with malice, aforethought,
7 either express or implied. Malice is hatred, ill will or
8 hostility towards another person. It is the intentional doing
9 of wrongful act without just cause or excuse and with an
10 intent to inflict an injury or under circumstances that the
11 law will infer an evil intent. Malice aforethought does not
12 require that the malice exists for any particular time before
13 the act was committed but malice must exist in the mind of the
14 Defendant just before and at the time of the act being
15 committed. Therefore, there must be a combination of the
16 previous evil intent and the act. Malice aforethought may be
17 expressed or inferred. These terms, express and inferred, do
18 not mean different kinds of malice but merely the manner in
19 which the malice may be shown to exist. That is either by
20 direct evidence or by inference from the facts and
21 circumstances which are proved. Express malice is shown when
22 a person speaks words which express hatred or ill will for
23 another or when the person prepared beforehand to do the act
24 which was later accomplished. For example, lying in wait for
25 a person or any other acts of preparation going to show that

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1 the deed was within the Defendant's mind would be express
2 malice. Malice may be inferred from conduct showing a total
3 disregard for human life. Inferred malice may also arise when
4 the deed is done with a deadly weapon.

5 A deadly weapon is any article, instrument or substance
6 which is likely to cause death or great bodily harm. Whether
7 an instrument has been used as a deadly weapon depends on the
8 facts and circumstances of each case. A gun is a deadly
9 weapon. A gun may be a deadly weapon even if it is not
10 operating.

11 If facts are proved beyond a reasonable doubt sufficient
12 to raise an inference of malice to your satisfaction, the
13 inference would be simply and evidentiary fact to be
14 considered by you, the jury, along with the other evidence in
15 the case and you may give it the weight you decide it should
16 receive.

17 A specific intent to kill is not an element of attempted
18 murder but there must be a general intent to commit serious
19 bodily injury. Intent means intending the result which
20 actually occurs, not accidentally or involuntarily. Intent may
21 be shown by acts and conduct of the Defendant and other
22 circumstances from which you may naturally and reasonably
23 infer intent. Evidence of the character of the act, the
24 character of the instrument used, the manner in which it was
25 used, the purpose to be accomplished and the resulting wounds

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CHARGE TO THE JURY

1 or injuries may be considered in determining the intent with
2 which the acts were committed. Intent may also be inferred
3 when it is demonstrated that the Defendant voluntarily and
4 willfully commits an act, the natural tendency of which is to
5 destroy another's life.

6 If the State fails to prove the Defendant guilty of
7 attempted murder to your satisfaction, you may consider
8 several lesser included offenses. A person commits the
9 offense of assault and battery of a high and aggravated nature
10 if the person unlawfully injures another person and great
11 bodily injury to another person results or the act is
12 accomplished by means likely to produce death or great bodily
13 injury. Great bodily injury means bodily injury which causes a
14 substantial risk of death or which causes serious permanent
15 disfigurement or protracted loss or impairment of the function
16 of a bodily member or organ.

17 A person commits the offense of assault and battery in
18 the first degree if the person unlawfully injures another
19 person and the act occurred during the commission of a
20 robbery, burglary, kidnapping or theft. A person may also
21 commit the offense of assault and battery in the first degree
22 if the person unlawfully offers or attempts to injure another
23 person with the present ability to do so and the act either is
24 accomplished by means likely to produce death or great bodily
25 injury or occurred during the commission of a robbery,

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1 burglary, kidnapping or theft. Great bodily injury means
2 bodily injury which causes a substantial risk of death or
3 which causes serious permanent disfigurement or protracted
4 loss or impairment of the function of bodily member or organ.

5 A person commits the offense of assault and battery in
6 the second degree if a person unlawfully injures another
7 person or offers to or attempts to injure another person with
8 the present ability to do so and moderate bodily injury to
9 another person results or moderate bodily injury to another
10 person could have resulted. Moderate bodily injury means
11 physical injury requiring treatment to an organ system of the
12 body other than the skin, muscles and connective tissues of
13 the body except when there is penetration of the skin, muscles
14 and connective tissues that require surgical repair of a
15 complex nature or when treatment of the injuries requires the
16 use of regional or general anesthesia.

17 The Defendant is charged with first degree burglary. The
18 State must first prove beyond a reasonable doubt that the
19 Defendant entered a dwelling without consent. A dwelling is
20 any building or portion of a building in which a person
21 ordinarily sleeps. A building constructed as a dwelling that
22 has never been occupied cannot be considered a dwelling for
23 purposes of burglary but a building is a dwelling even if the
24 residents are temporarily absent from the building. In order
25 to prove that the Defendant entered the dwelling, the State

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1 does not have to show that the Defendant's entire body entered
2 the dwelling. The smallest entry is sufficient. It may be
3 any part of the body such as a hand or a foot or even an
4 instrument such as a hook or other instrument. In addition,
5 the State does not have to prove that force was used to gain
6 entry. If a person enters a building by using deception,
7 artifice, trick or misrepresentation to get consent to enter,
8 this is an entry without consent.

9 Next, the State must prove beyond a reasonable doubt that
10 the Defendant intended to commit a crime either a felony or a
11 misdemeanor at the time of the entry. The mere entry into a
12 dwelling without consent is not burglary. If the intent to
13 commit a crime is formed after the entry, it is not a
14 burglary. On the other hand, if the Defendant intended to
15 commit a crime at the time of the entry, it is a burglary even
16 if the intent was abandoned after the entry. It does not
17 matter that the intent and the intended crime was not
18 completed. Intent may be shown by acts and conduct of the
19 Defendant and other circumstances by which you may naturally
20 and reasonably infer intent.

21 Finally, the State must prove beyond a reasonable doubt
22 that when entering, while in the dwelling or when fleeing, the
23 Defendant or an accomplice was armed with a deadly weapon or
24 explosive. A deadly weapon is any article, instrument or
25 substance which is likely to cause death or great bodily harm,

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1 whether an instrument has been used as a deadly weapon depends
2 on the facts and circumstances of each case. A gun is a
3 deadly weapon. When entering, while in the dwelling or when
4 fleeing the Defendant or an accomplice caused physical injury
5 to anyone not participating in the crime; when entering, while
6 in the dwelling or when fleeing, the Defendant or an
7 accomplice used or threatened to use a dangerous object; when
8 entering, while in the dwelling or when fleeing, the Defendant
9 or an accomplice displayed what was or appeared to be a knife,
10 pistol, revolver, rifle, shotgun, machine gun or other
11 firearm; or the Defendant entered or remained in the dwelling
12 in the nighttime. Nighttime is the period between sunset and
13 sunrise during which there is not enough daylight to recognize
14 a person's face except by artificial light or moonlight.

15 THE COURT: Mr. Foreman, ladies and gentlemen, please
16 accept the foregoing as my charge to you on the law and issues
17 in this case remembering that you are finders of the facts and
18 as finders of the facts, you take the facts as you find them
19 to be and apply those facts to the law as I have given it to
20 you.

21 Now, Mr. Foreman, I am in the process of preparing a
22 verdict form that I will submit to you and explain to you
23 after summation that will be some clarification and help to
24 you.

25 At this moment, I'm going to ask that you step out just

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1 for a few seconds. I have an issue I need to talk to the
2 lawyers about and I'm gonna bring you right back. Thank you.

3 Mr. Bailiff, I propose to bring them -- turn around and
4 bring them right back.

5 (REPORTER'S NOTE: The jury exits courtroom. 10:20 A.M. The
6 following takes place outside the presence of the jury.)

7 THE COURT: With reference to the charge, we've had a
8 pretrial conversation wherein we went over the charge and it
9 appeared to be satisfactory to the State and the Defendant.
10 However, I'm compelled to put it on the record. Any
11 exceptions or additions to the charge? What says the State?

12 MR. HOLFORD: None from the State, Your Honor.

13 THE COURT: What says Mr. Fox?

14 MR. FOX: None, Your Honor.

15 THE COURT: Thank you, gentlemen.

16 Bring my jury back. I had to do that for the record, I
17 hope you understand.

18 All right. Let me -- one further thing, is it gonna be
19 two arguments for the State or one?

20 MR. HOLFORD: Your Honor, we'll just close.

21 THE COURT: That suitable to you, Mr. Fox?

22 MR. FOX: Yes, sir.

23 THE COURT: All right. Mr. Fox will start. And I
24 propose to hear both charges without sending out the jury, so
25 take care of your time constraints.

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CLOSING BY MR. FOX

1 (REPORTER'S NOTE: The jury returns to the courtroom. 10:24
2 A.M.)

3 THE COURT: The jury is present, Mr. Fox. You begin,
4 sir.

5 MR. FOX: May it please the Court.

6 CLOSING BY MR. FOX:

7 MR. FOX: Good morning, ladies and gentlemen. I'm gonna
8 take a quick second to thank you. I agree with the judge,
9 you've been very attentive. Yesterday was a little bit
10 unusual day. We usually do not fit a trial like this, the
11 testimony at least, all into one day. We stayed a little bit
12 late to do that and I appreciate it; that makes it nice and
13 neat when you can come back and finish up everything this
14 morning. I will try not to talk you too death. Mark Twain
15 said it's a horrible death to be talked to death and it must
16 be especially so by a lawyer. But there are -- you've heard
17 an awful lot of witnesses and awful lot of testimony
18 yesterday. There are a lot of moving parts in this case, a
19 lot of interlocking wheels and a lot of things that I do want
20 to bring to your attention.

21 The first thing that I want to remind you, the Judge has
22 already told you what reasonable doubt is. I would simply
23 emphasize and remind you that is the highest standard of proof
24 in our court system. If we were here on a civil jury suing
25 over a contract or a car wreck or something, the standard

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CLOSING BY MR. FOX

1 would be a preponderance of the evidence. You tilt the scales
2 a little bit in your favor and you win. That's not the case
3 here. We're in General Sessions Court, criminal court. The
4 State must satisfy all twelve of you beyond a reasonable doubt
5 that Mr. Fleming is guilty of each of these charges and it can
6 be separate verdicts. He's got -- been charged with burglary
7 in the first degree and attempted murder. He's entitled to a
8 separate determination and separate verdict as to each.

9 Witnesses, what do you have that puts Mr. Fleming in the
10 middle of all this? Well, clearly, no question Mr. Fleming
11 was at Ivystone Apartments. He has said as much himself.
12 Every witness that you heard from, the girls that were in the
13 car, the little brother, Tyler, everybody that you heard from
14 put him at the Ivystone Apartment building and he told you as
15 much himself. The question is what did he know and when did
16 he know it.

17 Samantha Topolski, Tyler Topolski, Taylor Smith, they
18 were the ones in the car. They testified yesterday. They're
19 not in agreement about everything but one thing they all
20 agreed is the only reason we thought we were going over there
21 was to make a run to pick up money. Mr. Fleming told you that
22 there was a little bit more to it than that, that he'd been
23 asked by Freak, by Abdul Furquan, to get some weed also and he
24 had another friend that said, yeah, I think I know where you
25 can go to do that. I suspect that those little girls and the

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CLOSING BY MR. FOX

1 little brother had a pretty good idea what was going because
2 otherwise it didn't really make sense for five people to make
3 that run. They needed Ms. Smith because she had a car to
4 drive them with. It really didn't make a lot of sense that
5 they needed five people to go pick up some money. But they
6 deny having any other purpose than going for money. But they
7 all agree they went for some legitimate purpose.

8 It's a little bit interesting that the police never
9 talked to the little boy -- I say a little boy, he was fifteen
10 at the time and seventeen now -- Tyler Topolski. And the
11 detective said, well, his momma didn't want to talk to him --
12 want us to talk to him. Well, he wasn't a suspect, he's a
13 witness like any other and they certainly could've insisted
14 and allowed momma to be there -- he was a juvenile, she would
15 have every right to be present -- and say, hey, I've got
16 someone that I believe is an eye witness to a very serious
17 crime or at least to the immediate aftermath, it was a very
18 serious crime, Tyler, tell us what you saw -- instead of, two
19 years later, him coming into court and by his own admission
20 not having discussed this with anyone other than the
21 Solicitor. You know darn good and well that when the
22 Solicitor -- and this is not in any way to impugn Mr. Holford.
23 He's doing his job when he meets with witnesses and prepares
24 for trial; that's what he is supposed to do. It doesn't take
25 a lot of imagination to see the scenario of what he's telling

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1 them. Here's what Mr. Fleming is on trial for, here is the
2 crime, here are the things we need to prove; what can you tell
3 me? Which is why I'm very sure Mr. Collins, his roommate,
4 uses this word threshold. Think about your everyday life.
5 Have you ever in your everyday life heard a person use that
6 phrase threshold? You carry a bride across the threshold, but
7 in any other context -- you see it in books. That struck me
8 as a very strange word to use, one that was meant to emphasize
9 how many people came into the apartment because -- why is that
10 important? Because that's a part of burglary, you've got to
11 have a breaking and entering into -- you know, as the Judge
12 said, you don't have to get all the way in, you can use an
13 instrument but it's critical to the State's case that they get
14 Mr. Fleming inside that doorframe, across the threshold. No
15 one talked to Mr. Collins either. He is right there. He is
16 the roommate, probably the best first witness you'd have got
17 because Mr. Moran unfortunately has been shot, is dazed, is
18 scared and has been taken to the hospital but you've got the
19 roommate who is the only other eyewitness to what happened and
20 he says I sat there for two hours and there was never any
21 statement taken. I find that very, very strange. A lot going
22 on but I don't see how they failed to do a formal interview
23 with him and see what he would've said at the time and not
24 what he would've said two years later after having met with
25 and prepped with the Solicitor.

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1 Back to the people in the car, Tyler, Taylor and
2 Samantha, they are not in agreement about what they saw.
3 Tyler does say I saw Freak -- they all say they saw Freak and
4 Jeremy leave the car, no question about that, they say the
5 same. Tyler says they came back running and both had masks
6 on, and that's been the bandanas but they've been described as
7 masks, something pulled up. And that directly contradicts
8 what Taylor, rather Samantha, his sister told you. She's very
9 specific in Jeremy came back down, he had nothing covering his
10 face, didn't have anything on it at all and did not have
11 anything when he came back down. They directly contradict
12 each other on that point. Same thing with any threats that
13 were made afterwards. Tyler says, yeah, it was Jeremy, nobody
14 else. Samantha very sure that in fact the one making the
15 threats was Freak both in the car and back at the trailer.
16 Also, that as they left -- remember later that night, they
17 left the trailer, they were allowed to leave, no one was
18 keeping them there, and Ariel, this girl Ariel that stays at
19 the trailer, friend of -- girlfriend or Boogie, of Brent, is
20 the one that comes out and making threats, if anything gets
21 said, we know who did it.

22 The man you didn't hear from -- let me backtrack one
23 second. The one thing all three of them agree to is this,
24 they heard a sound. Samantha pretty sure it was a gunshot
25 because she'd been around guns and weapons and has heard

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1 | gunshots. Tyler and Taylor weren't sure -- it sounded like a
2 | trashcan falling or something -- but heard the shot, sound,
3 | and down back to the car come Jeremy and Freak. All three of
4 | them agree Jeremy comes first, gets in, followed by Freak.
5 | Freak has the gun. Freak is the one who puts it to poor
6 | Taylor's head and says, fucking drive. No dispute about that
7 | between the three of them, completely consistent.

8 | What is it physically that ties Mr. Fleming to the
9 | shooting? Again, he's there, he's on the landing. I'll talk
10 | about what he testified to in a bit. He's clearly there.
11 | They've introduced into evidence that revolver. There is
12 | nothing, no witness, no physical evidence, nothing that
13 | connects that weapon, even to the shooting, that belonged to
14 | Mr. Fleming. It is a revolver. I believe Mr. Moran and Mr.
15 | Collins said they thought they saw a revolver, they thought
16 | maybe a .22. It is a revolver, true, but it's three days
17 | later, they were unable to because the bullet that was
18 | fortunately recovered from Mr. Moran, and thank goodness it
19 | didn't kill him, was too obliterated, fragmented, for them to
20 | do any tests with. In other words, they can't do any
21 | ballistics to see if that bullet came from any type of gun.
22 | That's nobody's fault but there is no connection between that
23 | bullet and that revolver recovered at trailer. No indication,
24 | no testimony from anybody that you heard yesterday that Mr.
25 | Fleming ever had that gun, ever touched it, ever kept it and

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1 certainly not that he took it with him to Ivystone Apartments.
2 In fact, the only testimony about that revolver is that Freak
3 had the gun and had it when they went over and absolutely had
4 it running back down the steps when all three people say he
5 had the mask on. But no dispute about who had the gun coming
6 back from Ivystone down the steps and who absolutely had the
7 mask on, others in dispute.

8 You heard testimony from Jill Domogauer, who was the
9 crime scene person. She's the one that brought all this stuff
10 in and opened it up. Very interesting. The gun and the
11 gloves that she testified to when to SLED. You have no
12 evidence reports, testimony about why they were sent to SLED,
13 they clearly came back from SLED because they made it to the
14 courtroom. So, you have no idea the purpose they were sent
15 there for or what the results of that was if any. You can
16 pretty well defer, it wasn't anything that connected that
17 revolver to Mr. Fleming because Mr. Holford has demonstrated
18 he's a very capable prosecutor. If there had been such a
19 thing, I feel very confident it would've been presented to you
20 in his case in chief. The same thing with the gloves, Jill
21 Domogauer said they found these gloves, skeleton gloves and I
22 used by camera -- now pay attention, think back to what she
23 said, she testified that there were particles on one of the
24 gloves that she thought was gunshot residue. That's not
25 pretty strong. But think about what she actually said, she

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1 said, I'm taking pictures with my camera and I used a
2 different light filter. Now, and I'm gonna say black lights,
3 it's not a black light, but you know how -- I think it's a
4 similar thing where you see people go in the hotel rooms and
5 they use a black light over a bedspread to show how dirty it
6 is and why you shouldn't sleep on the Best Western hotel
7 sheets or whatever. So, she got a filter on her camera and
8 when she takes a picture of the gloves, there's little sparkly
9 things in there and she says that's presumptive for gunshot
10 residue. Now, she admitted, that's not a conclusive statement.
11 What that means -- presumptive in that context is not a legal
12 term. Presumptive doesn't mean that's it, over and done with.
13 Presumptive means, there's something there, we should check
14 this out further with the people that can actually make the
15 determination. Who are those people? Not Jill Domogauer; she
16 admitted that. Who does that? SLED does that. Was that
17 done? You have no idea. Is there really any gunshot residue
18 on that glove? You have no idea. You got the magic light
19 that says it might be but, again, it's a filter on a camera.
20 It's not a specially designed instrument that detects
21 particles, gunshot residue particles. Gunshot residue is a
22 combination of minerals -- different minerals, barium is one
23 -- there are little particles of different metals that compose
24 the residue when you fire the gun. So, all she did was
25 illuminate what could be -- SLED would have to make that

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1 determination whether it really is. You don't have the
2 evidence, don't know what that may've been. There was someone
3 from SLED listed as a potential witness, not called. I don't
4 know what that witness would've said, I don't even know if he
5 was a ballistics firearm guy but the point is, you do not have
6 anything from SLED, who would have to make the determination
7 as to whether that was actually gunshot residue. And if it's
8 not, you can't guess, you can't say, well, it could've been,
9 maybe it was; no, you've taken an oath to make your -- to
10 decide your verdict based on the evidence you have, not what
11 could be or should be or might be.

12 The other thing you don't know is what happens to those
13 gloves in the three days between the shooting on October 16th
14 and their recovery at that trailer on October 19th. You've
15 already heard testimony that Freak ran around with a gun all
16 the time, the entire -- you can't time and date what was on
17 the gloves, even if he was -- and I would say no, but even if
18 you would accept that it was gunshot residue, you've got no
19 evidence, no way to determine when it got there. You've got a
20 three-day gap and Freak running around with a gun in the three
21 days since. You've got no idea when that got on there.
22 Nothing to -- that would let you come to the conclusion that
23 it got there on October 16th when Mr. Moran was shot.

24 Phone records, everybody testified there was lots of
25 contact back and forth that night, Furquan needed a ride home,

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CLOSING BY MR. FOX

1 Jeremy wanted to go pick up money, Jeremy saying I want to go
2 get weed. Different people, how do I get to Ivystone; this is
3 where you need to go; I have a friend that might have
4 something for you. I would agree with Detective Large that
5 phone companies don't just keep that stuff indefinitely but I
6 would bet that three days is probably within the window in
7 which they keep, at the very least, the records of which
8 number called which number. You may not get the actual text
9 but you certainly would get such-and-such a phone number
10 dialed such-and-such a phone number at this time. You might
11 well retrieve from the phones themselves if they weren't
12 deleted, the text. There's no indication that was even
13 attempted. That may well have pointed one way or -- might've
14 pointed to Mr. Fleming but that wasn't even attempted to be
15 done. That seems like a treasure trove of potential evidence
16 that was completely overlooked like not talking to Eric
17 Collins, like not talking to Tyler Topolski.

18 Let me talk about the hand of one is the hand of all and
19 mere presence. Let me quote this correctly, the Judge charged
20 you that indeed if one commits an act and another person with
21 prior knowledge and planning joins him in that act that
22 they're both responsible for what happens. I gave you the
23 analogy of the bank robbery yesterday. But he also told you
24 prior knowledge of a crime is going to be committed without
25 more is insufficient. Simply knowing that someone is about to

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CLOSING BY MR. FOX

1 do something wrong is not enough. Why is that important? Mr.
2 Fleming told you I went with all these people to go get some
3 weed, some marijuana, we got there, we got out, no one has
4 said Furquan, no one has given any indication that there was
5 gonna to be any attempt to rob or hurt anybody. I think I'm
6 just buying weed for the evening. We go upstairs, I see a gun
7 before the knock on the door. But I've got no idea what he's
8 about to -- no plan of what he's about to do. I'm sure when
9 the gun comes out and the knock on the door and the man now
10 has a bandana on his face, that he's figured it out. But
11 there has been no testimony, no evidence that there was any
12 prior arrangement, any prior planning between Freak and
13 Jeremy. The only thing you've heard is Freak wanted a ride
14 home and that actually didn't involve Jeremy, that was between
15 Tyler and Taylor Smith. Once they got to the trailer then
16 there was a conversation, Freak comes home, Freak comes home
17 and says, I'd like to smoke and I want to get high. That's
18 when they go to get weed. No testimony, no evidence, nothing
19 about what he's gonna do when he gets there. So, the fact
20 that, yes, Mr. Fleming figured out what was gonna happen but
21 it was too late and didn't take immediate action, that is not
22 hand of one. That is mere presence. That is the definition
23 of mere presence.

24 Mr. Furquan is the man who didn't speak. He was -- the
25 Solicitor sets their case. They decide which witnesses to

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CLOSING BY MR. FOX

1 call. The fact that a witness is listed has no constraint on
2 them to actually call that witness -- excuse me -- and the
3 fact that Freak Furquan was listed as a potential witness
4 doesn't mean that they were obligated to call him. But it is
5 interesting that the man that undisputedly by all testimony
6 had the gun obviously had a plan and pulled the trigger that
7 very nearly ended Mr. Moran's life. And he may well have his
8 day in court and I assume that based on what we've heard this
9 week that he'll be found guilty and charged with and held to
10 account for attempted murder. That is another courtroom and
11 another determination and another jury and another day. But
12 regardless, you didn't hear from him and he's not on trial
13 today.

14 Ladies and gentlemen, you're gonna have the option -- I
15 don't think there's evidence enough to convict Mr. Fleming of
16 either of these charges, either the burglary or the attempted
17 murder. They are separate verdicts but I would agree they
18 more than likely go hand-in-hand. I'm asking you to return
19 verdicts of not guilty on both of these charges. However, the
20 Judge has given you the option of what are called the lesser
21 included offenses of the attempted murder. That, having
22 considered everything that's been presented to you, you reach
23 the determination by all twelve of you beyond a reasonable
24 doubt that Mr. Fleming is guilty of the burglary. I would
25 urge you, because I think it fits the law, to find him not

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CLOSING BY MR. FOX

1 guilty of the attempted murder and of one of the lesser
2 offenses of assault and there's several and I'm not gonna read
3 them again. There's assault of a high and aggravated nature;
4 there's first degree, second degree, third degree. They
5 basically involve causing great bodily injury. They're all
6 the way down to third degree. But they involve great bodily
7 injury that occurs during the commission of a crime or a
8 robbery. So, if you have decided that Mr. Fleming is in fact
9 guilty of the burglary, I think it would be an injustice based
10 on what you heard this week to hold him responsible for the
11 attempted murder when clearly one man had the gun, clearly one
12 man did the shooting. That doesn't mean you will be saying
13 Mr. Fleming is escaping responsibility; it would simply be
14 saying that he's responsible for what he signed on for. He
15 certainly has some responsibility for those injuries but he
16 doesn't have the ultimate responsibility that Freak has, who
17 undisputedly was the shooter in this case. I believe for all
18 the things I've told you before, you should find him not
19 guilty of both charges and that's what I'm asking you to do.

20 THE COURT: Thank you, Mr. Fox.

21 Mr. Holford, for the State, please.

22 MR. HOLFORD: Your Honor. May it please the Court.

23 CLOSING BY MR. HOLFORD:

24 MR. HOLFORD: Ladies and gentlemen, let's dispense with
25 one thing first off, before I get started, Freak Abdul Furquan

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CLOSING BY MR. HOLFORD

1 is not on trial today. The Defense repeatedly refers to him
2 as Freak. The Defendant has a street name, too. I'm not
3 gonna us it; it's not necessary. That's just bringing you
4 away from the facts, bringing you away from the evidence that
5 you heard. There's no SLED evidence, that's true; I don't
6 need it. There are no phone records, that's true; I don't
7 need it. All that is taking you away from what you heard on
8 this witness stand in this trial and that's what they want you
9 to do. They want you to look over here, what wasn't
10 presented. We don't speculate as to that. Here's what I'm
11 gonna tell you, what you heard from that witness stand and
12 what you heard from that Defendant and the evidence that was
13 presented in this courtroom is enough to convict this
14 Defendant who is on trial. Abdul will have his day in court;
15 that's not important. That's for another hearing. That's for
16 another Judge. That's for another time. What's before you
17 today is this Defendant and the role that he played in the
18 attempted murder of this victim, David Moran, and in the
19 burglary first.

20 Now, I told you at the beginning, miracle, malice, money.
21 It is a miracle that David Moran is sitting here. There are
22 different levels of attempted murder. He was talking about
23 assault and battery of a high and aggravated, assault and
24 battery first, assault and battery second. They vary in the
25 degree of severity of the injury. Attempted murder is the

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CLOSING BY MR. HOLFORD

1 assault with the intent to kill with malice. Malice can be
2 inferred with the deadly weapon, a gun, like the revolver we
3 have in this case.

4 Now, I told you from the beginning that my theory of the
5 case is hand of one, hand of all. I wish, I really do, I wish
6 he had surveillance in this apartment, I wish we could see
7 that both of them walked in there. I wish we could see which
8 one actually pulled the trigger. We don't have that. Here's
9 what we have. We have an independent witness, Eric Collins, a
10 roommate who comes around the corner -- does he see one inside
11 the apartment? He sees two. What's the difference? Think
12 about that. Use your common sense. Why would he say there
13 are two people? Does he have any reason to try to convict two
14 people if only one committed the crime? No. He's telling you
15 what he saw and what happened. That's corroborated by the
16 victim, Mr. Moran. Does he have any reason to tell you there
17 were two people in there? What if only one walked in, only
18 one broke in, only one shot him. Why say there were two?
19 That does not make sense. Now, it makes sense why Mr.
20 Fleming, the Defendant, would say that only one went in there
21 because he's on trial today, because he and his Codefendant,
22 Abdul, went to that apartment, he admits it, no one else was
23 there.

24 I think it was interesting that the Defense's theory
25 changed throughout the trial. Because you heard my witnesses

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CLOSING BY MR. HOLFORD

1 get up during cross examination there was a lot of talk about
2 who else was at the trailer, maybe Boogie did it, Brent; maybe
3 Ariel had the gun; maybe someone else who was there did it.
4 It wasn't until after I rested and the Defendant took the
5 stand that that theory changed to, man, I just can't get
6 around all these facts, all the different witnesses that
7 testified to the same thing, that it was Abdul and the
8 Defendant that went up there alone together, with gloves. He
9 admits to having the skeleton gloves. He doesn't admit to
10 living where the gloves were found but he admits to wearing
11 them that night. He admits to walking up to that apartment,
12 he admits to going with the Codefendant, he admits to seeing
13 the gun in the car. He's the only one who tells you a
14 different story about some other apartment that they went up
15 to -- that apparently, they were going up to and didn't wear
16 masks to that one because they were just going to buy -- buy
17 the weed. But then they get to the right apartment and he
18 sees him with the mask. He sees him with gloves. He sees his
19 Codefendant with a gun. The Defendant testified that he saw
20 the Codefendant start to get in. You know why that's
21 important? He had to tell you just enough of a story to
22 change the theory, to get you to think that he was just there
23 because he can't get around the facts that everyone else puts
24 him there. Three independent witnesses put him and his
25 Codefendant there and no others. Three independent witnesses

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CLOSING BY MR. HOLFORD

1 say they both come running down with gloves, with a mask, with
2 a hoodie. One has a gun. I told you from the beginning, I
3 don't know who had the gun and so I can't say with certainty
4 that this Defendant is the one that shot the victim. I can't
5 do that and I'm not going to. I don't need to. You heard the
6 Judge charge you on the hand of one is the hand of all. When
7 two or more people act in concert, they commit an act
8 together, it doesn't matter who pulls the trigger. The result
9 of their actions in concert, together, you can find this
10 Defendant guilty. So, if you assume that Abdul was the one
11 who actually had the gun, you can still find him guilty of
12 attempted murder.

13 I submit to you that both of them were in that apartment;
14 both of them were in that apartment. The testimony is that
15 one of them wedged his foot in the door. The other swings
16 around and punches him. They pushed through and then one
17 shoots him, two people in the apartment. The story you heard
18 from the Defendant is just because his theory changed after he
19 realized that he couldn't tell you a different story because
20 the facts and the evidence were too strong against him.

21 You heard from independent witnesses, you heard from
22 Kenny LeRay, you heard from Mary Linder, he lived at that
23 trailer. He's the only one who told you he didn't. Samantha
24 said he lived at the trailer. The gloves he was wearing that
25 night were found at the trailer. He was at the trailer three

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CLOSING BY MR. HOLFORD

1 days later although he was terrified of Abdul.

2 Use your common sense in judging the credibility in what
3 the Defendant told you on that stand. Use your common sense
4 in judging whether what he told you was the full truth or
5 whether or it was just enough of the truth to try and make you
6 think that he saw a gun and ran because all the other
7 evidence, all the other facts, all the other witnesses point
8 to a different conclusion. Both of them went back to the
9 trailer that night, all three, Samantha, Taylor, Tyler say
10 that. Samantha, Taylor, Tyler say they were held there, they
11 were threatened. There might be inconsistencies about who
12 threatened them but they were threatened. This Defendant
13 didn't come forward. He didn't go tell the police, man, I was
14 there and the Codefendant shot somebody, I didn't have
15 anything to do with it. But he testified today that that's
16 what -- or yesterday that that's what happened. Two
17 independent witnesses had to do that and they told you the
18 same story when they were up on the stand that this Defendant
19 and his Codefendant went up to that apartment -- now, they
20 don't know what happened in there and that's why we have these
21 two. A burglary occurred, the entering of a dwelling, where
22 they lived, with the intent to commit a crime. If you're
23 going up to buy drugs, do you wear gloves, wear a mask and
24 hoodie, carry a gun? I don't know but I don't think so.

25 Mr. Fox read the mere presence. I'd like to read hand of

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CLOSING BY MR. HOLFORD

1 one hand of all. Principle in a crime is one that either
2 actually commits the crime or who is present in aiding,
3 abetting or assisting in committing the crime. When a person
4 does an act in the presence of and with the assistance of
5 another, the act is done by both. Intent may be shown by acts
6 or conduct of the Defendant and other circumstances which you
7 may naturally and reasonably infer intent.

8 I want to talk about Brie just for a second because Brie
9 is the link. I don't know who Brie is to be honest with you
10 but she knew the victim and she knew the Defendant. Mr.
11 Fleming got on the stand and he told me he was the one on the
12 phone with Brie, not Abdul. He was the one giving directions
13 to Mr. Moran's apartment, not Abdul. The Defendant in this
14 case together committed those acts with his Codefendant and
15 what happened as a result will leave you, the jurors, with
16 what I believe is one possible verdict, guilty of both
17 attempted murder and burglary in the first degree. And that's
18 what I ask you to find. You know verdict comes from Latin
19 verdico, it is to speak the truth. Based on everything you've
20 heard, render a verdict that speaks the truth and find this
21 Defendant guilty.

22 Thank you.

23 THE COURT: Thank you, Mr. Holford. And thank you again,
24 Mr. Fox.

25 Mr. Foreman, you and your distinguished jury have now

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INSTRUCTIONS TO THE JURY

1 heard all of the testimony in the case. You've heard final
2 closing arguments from the State and the Defense. I have
3 given you the instructions in the law and advised you that as
4 finders of the facts, you take the facts that you find them to
5 be and apply those facts to the law as you find appropriate.
6 Understanding that whatever your verdict is, it must be the
7 unanimous verdict of all twelve. It cannot be a verdict of
8 the majority. Obviously, it would not one of the minority.
9 Now, I have instructed you fully with regard to the law but
10 Mr. Foreman in your deliberations there may be some request
11 for additional charge on some matter. If that be so and
12 that's entirely proper, there will be pencil and paper
13 provided, you write that request down and hand it to the
14 Bailiff. He'll bring it to me and if there's something that I
15 can deal with, I'll be glad to do it. Remember, I am not
16 entitled to a factual opinion in this case, I absolutely have
17 none. I can instruct you on the law but cannot and would not
18 instruct you on the facts.

19 Now, as you are well aware, there are two separate
20 charges in this case. Let's talk about burglary in the first
21 degree. There are only two verdicts. One is guilty and one
22 is not guilty. And whatever your verdict is, you would so
23 signify, sign your name, knock on the door and let the
24 Bailiff know.

25 The other charge is attempted murder. There is a theory

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INSTRUCTIONS TO THE JURY

1 in our law that under certain circumstances, depending on the
2 facts, a lesser charge may be included in the greater and that
3 would depend on your findings of the facts. I have listed
4 then upon this paper, the possible verdict forms with regards
5 to attempted murder. This is as follows -- and there's no
6 significance in the way I give you these charges. I could
7 turn them around and give them the same way. You may find him
8 guilty of attempted murder if you choose, no suggestion by me
9 that you do that. You can find him guilty of a high and
10 aggravated nature if you choose. A lesser included of that is
11 assault and battery of the first degree, a lesser included of
12 that is assault and battery second degree. So, you've got
13 attempted murder, assault and battery of a high and aggravated
14 nature, assault and battery first, second or third. You take
15 the evidence as you find them to be and apply that. And then
16 the last verdict is not guilty. So, you decide unanimously
17 what verdict is appropriate in this case. There is absolutely
18 no suggestion by me as to what your verdict should be.

19 Now, as I've told you, there are two separate
20 indictments, for burglary and attempted murder. Mr. Foreman,
21 you and your distinguished jury will consider the evidence
22 separately as to each indictment. Your verdict can be the
23 same as to both indictments. It can be one as to one and the
24 other as to a different -- as to the other. They don't have
25 to be the same; they can be but that's your decision as

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INSTRUCTIONS TO THE JURY

1 finders of the facts. I just emphasize to you that you
2 consider the evidence separately as to each indictment and
3 thereafter reach your verdict. As I've indicated, Mr.
4 Foreman, I've given you these two forms and they are self-
5 explanatory. Remembering again that whatever your verdict is,
6 it must be the unanimous verdict of all twelve.

7 In just a moment, I'm going to send the evidence in with
8 included in the evidence, I'm going to send in that weapon.
9 If you desire to see the exhibit concerning ammunition, have
10 the Bailiff bring the weapon out and I'll bring the ammunition
11 in. I just don't like the weapon and ammunition in the jury
12 room at any time together.

13 I'll let you go to the jury room, please, I'll have the
14 -- do not begin your deliberations until I send this in and
15 it's coming in just a moment.

16 Now unfortunately, under our law, we do not permit the
17 alternates to participate unless somebody gets sick or ill.
18 And Mr. Bailiff, I'm going to ask that you make the alternates
19 comfortable in another room outside the presence of the jury.
20 You may now go to your jury rooms.

21 (REPORTER'S NOTE: The jury retires to the jury room. 11:06
22 A.M.)

23 THE COURT: Any exceptions or additions to the charge,
24 further charge, Mr. Holford?

25 MR. HOLFORD: None from the State, Your Honor.

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INSTRUCTIONS TO THE JURY

1 THE COURT: Mr. Fox?

2 MR. FOX: None, Your Honor.

3 THE COURT: All right. Gentlemen, come forward and let's
4 agree on what goes in now. There were one or two matters that
5 were Court's exhibits; make sure that they don't go in. And
6 do you want to send the gun in first or the weapon [sic]
7 first, I don't care -- or the ammunition? I suggest we send
8 the gun in first.

9 MR. HOLFORD: And for the record, there is a lock on the
10 gun.

11 THE COURT: I understand but I ---

12 MR. HOLFORD: Yes, Your Honor. But the Clerk of Court
13 has the key to the lock.

14 THE COURT: That's fine but I -- we'll do it my way in an
15 abundance of precaution.

16 MR. HOLFORD: Of course, Your Honor.

17 THE COURT: Gentlemen, let me say to you, this case was
18 professionally tried by both of you.

19 MR. FOX: Thank you, Your Honor.

20 (REPORTER'S NOTE: Exhibits and verdict forms stipulated to
21 and presented to jury. Deliberations commence at 11:09 A.M.)

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

23 (On the Record.)

24 (REPORTER'S NOTE: The following takes place outside the
25 presence of the jury at 12:09 P.M.)

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NOTE FROM THE JURY

1 THE COURT: Come to order. We have received from the
2 jury the following communication -- go ahead. Where is the
3 defendant?

4 (REPORTER'S NOTE: Brief break to retrieve Defendant from
5 holding cell.)

6 THE COURT: All right. The Defendant is now in court. I
7 want the record now to reflect that I've received the
8 following communication, which I've shown to Mr. Holford and
9 Mr. Fox. Read it for us.

10 LAW CLERK: Judge, the Jury would like the definitions
11 for attempted murder, assault and battery of a high and
12 aggravated nature, assault and battery first degree. Thank
13 you. Foreperson.

14 THE COURT: I have shown counsel for the State and the
15 Defendant that portion of my charge which deals with this
16 issue. I am sending those definitions back to the jury room.
17 Is that agreeable to you, Mr. Holford?

18 MR. HOLFORD: Yes, Your Honor, since your Law Clerk read
19 directly off that, I believe it's the exact same language you
20 used in your charge.

21 THE COURT: It is the exact same language that we charged
22 initially.

23 MR. HOLFORD: The State has no objection.

24 THE COURT: Mr. Fox.

25 MR. FOX: Your Honor, I've had a chance to review what

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NOTE FROM THE JURY

1 you propose to send back and it is exactly the same as you
2 charged before and I have no objection to that.

3 THE COURT: Thank you.

4 All right. Madame Clerk, take these back, please, and
5 let that -- I want to make the inquiry be a part of the
6 record.

7 COURT'S EXHIBITS NUMBER TWO AND THREE

8 ADMITTED INTO EVIDENCE

9 THE COURT: All right. Gentlemen, that resolves that.
10 Be close by in case we have some other inquiry.

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: Okay. I'd like to if at possible, security,
13 keep the Defendant up here in case the jury has another
14 question for us.

15 All right. Thank you.

16 (12:14 P.M.)

17 *****OFF THE RECORD*****

18 (On the Record.)

19 (1:34 P.M.)

20 THE COURT: Thank you. Be seated. Gentlemen, I
21 understand we have a verdict.

22 Mr. Bailiff, bring the jury in.

23 (REPORTER'S NOTE: The jury returns to the courtroom. 1:35
24 P.M.)

25 THE COURT: Given the time of day, I bet this jury was

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VERDICT OF THE JURY

1 ready for another ham biscuit. Mr. Foreman, have you and your
2 distinguished jury reached a unanimous verdict as to these
3 issues?

4 FOREMAN: Yes, Your Honor; we have.

5 THE COURT: Thank you. If this be the unanimous verdict
6 as to both indictments, please signify by raising your right
7 hand.

8 The jury has so signified.

9 Heather, accept the verdict and hand it to me.

10 The foreman has properly signed the verdict. Please
11 publish, Heather.

12 VERDICT OF THE JURY:

13 CLERK: Indictment number 2012-GS-26-2052, 2012-GS-26-
14 2053, the State of South Carolina versus Jeremy Fleming, We --
15 as to the Indictment 2012-GS-26-2053, attempted murder, We the
16 jury unanimously find the Defendant Jeremy Fleming guilty of
17 attempted murder.

18 As to Indictment under 2012-GS-26-2052, We, the jury,
19 unanimously find the Defendant Jeremy Fleming guilty of
20 burglary first degree. Signed by Foreperson Michael Rue.

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

23 (REPORTER'S NOTE: All jurors comply.)

24 THE COURT: Any other inquiry required of the Jury?

25 MR. FOX: No, Your Honor.

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VERDICT OF THE JURY

1 THE COURT: For the jury's edification, let me hear the
2 prior record of this Defendant, some part was read in the
3 trial.

4 MR. HOLFORD: Your Honor, Defendant's prior record for
5 conviction in 2009, either manufacturing, distribution or PWID
6 cocaine, first offense; and then a conviction in 2009 for
7 assault and battery high and aggravated nature and burglary
8 second non-violent. That's -- those are the convictions.

9 THE COURT: Thank you.

10 Mr. Foreman, I knew that he had a prior record for
11 burglary. I did not permit them to disclose that fact to the
12 jury because I felt like it was so highly prejudicial, he
13 being tried for burglary at this time but I now want you to
14 know, if you happen to read in the paper that he had a prior
15 record for doing the same thing, our courts have held that if
16 an individual is being tried for a certain crime and got a
17 prior record for doing the same thing, it might be too highly
18 prejudicial. So, if was for that reason that it was referred
19 to as a felony and not as a burglary.

20 I have no comment to say except that based on the
21 totality of the evidence, you as finders of the facts were
22 certainly justified in the verdict that you've reached. I
23 tell you, too, that the County of Horry, the people of South
24 Carolina deserve your gratitude and appreciation for your
25 efforts on this case. These sort of cases occur too

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MOTIONS

1 frequently particularly here in Horry County and hopefully
2 when this verdict is publicized, it will get somebody to think
3 two or three times before they do the same thing. You are now
4 excused for the day and for the week and please go with my
5 thanks and my gratitude. Thank you.

6 (REPORTER'S NOTE: The jury is excused and exits courtroom.
7 1:40 P.M.)

8 THE COURT: Have the Defendant come forward for
9 sentencing, please.

10 MR. FOX: Your Honor, I do have a quick matter to put on
11 the record prior to sentencing.

12 THE COURT: Yes, sir.

13 MOTIONS:

14 MR. FOX: Your Honor, at this time, we would like to
15 renew our motion for a new trial based on the grounds
16 previously argued. We'd also specifically on our belief it
17 was error for the Court to admit the revolver and the gloves
18 without a more complete -- Hatcher does not require every
19 single step in the chain but I believe that the testimony was
20 that both the revolver and the gun left Horry County Police
21 possession, went to SLED and then came back. It was at SLED
22 for some period of time and there was no one from SLED to
23 account for that portion of the chain. We think that's fatal
24 to the chain and it was error to admit those items in ---

25 THE COURT: Even if that chain was not complete, Mr. Fox,

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BY MR. HOLFORD

1 there was so much evidence pointing directly to his guilt.
2 There's no question about the fact that that victim was
3 horribly shot. And there's no question about the fact that
4 three of his friends identified him as running from the scene
5 of the crime, masked. The evidence is just -- the case was
6 professionally tried by you. The evidence is just simply
7 overwhelming. There was no way that a jury in my view could
8 discount the testimony of the three witnesses in the car, who
9 were at the scene and took him home, all of whom were his
10 friends. It was just simply overwhelming. So, that motion is
11 respectfully denied and I conclude that the chain of custody
12 was substantially okay.

13 Mr. Holford, I'll let you speak to those issues for the
14 record.

15 MR. HOLFORD: Your Honor, Your Honor, as to those issues,
16 the gun did leave Horry County, it did go to SLED and it did
17 come back packaged in the SLED seal. It was opened here in
18 court by Horry County who had possession of it every since
19 them. There is no indication of any testing that had been
20 done. There was no DNA evidence or GSR entered. Any of the
21 testing that SLED might've done did not come into this trial.
22 It was just the fact that there was the gun, plus the serial
23 number matches the same serial number collected and the same
24 serial number that came back to the gun. It's not a fungible
25 item. As to the gloves, they were easily recognizable and

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BY MR. HOLFORD

1 based on the totality of the circumstances of all the law --
2 of all the facts and evidence otherwise, the State believes
3 there is enough to convict him of both charges even without
4 those being entered.

5 THE COURT: Clearly the evidence is overwhelming. They
6 didn't need the gun because there was uncontradicted evidence
7 that gunfire had grievously harmed the victim and some gun
8 somewhere did it. But the evidence is that he along with the
9 Codefendant was there, the victim identified two witnesses in
10 the place, a disinterested witness with the rifle identified
11 two witnesses, and three in the car who took them, they all of
12 which said that two masked men who were they came down. The
13 evidence is just simply overwhelming.

14 All right. Mr. Fox, I thank you for your position.

15 MR. FOX: Yes, sir.

16 THE COURT: Bring the Defendant here please.

17 MR. HOLFORD: Your Honor, the Defendant is here. If the
18 State could be heard first before the Defendant gives
19 mitigation before the Court sentences.

20 THE COURT: However you want to handle it. Surely I'll
21 be glad to hear from you.

22 MR. HOLFORD: Yes, Your Honor. I've spoken to the victim
23 and he does not wish to be heard again. You obviously heard
24 his testimony. He would like to bring to the attention to the
25 Court that he obviously suffered severe injuries. He was shot

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BY MR. HOLFORD

1 in the head and it is a miracle that he's alive. It fractured
2 his skull which he needed intensive surgery for and there were
3 fragments of the bullet left back there. The impact on the
4 victim is certainly severe. The impact on the individuals who
5 had to testify is also severe. In coming to trial, obviously,
6 there's no penalty for choosing a trial over choosing to plead
7 but in coming to trial, we had to call witnesses that were
8 threatened for their life if they chose to testify against
9 this Defendant and against the Codefendant. Those individuals
10 have now been outed. The ones that the Defense may've known
11 about and others who testified in this trial against him ---

12 THE COURT: In that connection, now, I have some concerns
13 about the three who testified in this case. Where is the
14 Codefendant? He apparently is a dangerous individual.

15 MR. HOLFORD: Your Honor, the Codefendant is in jail. He
16 is awaiting -- he will either be tried or he will chose to
17 plead guilty ---

18 THE COURT: You make sure he stays in jail because these
19 victims ---

20 MR. HOLFORD: He is not out on bond. But, Your Honor, I
21 would like to bring that to your attention as well that -- the
22 fact that they had to come and testify at trial brings a
23 greater weight. In addition to his prior record, which you
24 already know, something that also bears weight is that on June
25 11th of 2011, this Defendant was accused of an armed robbery.

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BY MR. FOX

1 He was arrested on October 5th, 2011. He was arrested on
2 October 5th because on October 4th, 2011, he had a possession
3 of a weapon by a person convicted of a violent crime and
4 receiving stolen goods which I believe is the stolen gun.
5 Those arrest warrants were presented on October 6th, 2011. He
6 was bonded out of jail on those three charges on 10/13/2011.
7 Not three days later after being arrested for armed robbery,
8 possession of a weapon which he wasn't allowed to have, and
9 possession of a stolen gun, he committed these offenses with
10 his Codefendant by breaking and entering, burglary first with
11 a weapon, and attempted to murder Mr. Moran by shooting him in
12 the head. And so I would hope that Your Honor would take that
13 into account that while out on bond, he committed these
14 offenses. And prior to that, there are other pending charges
15 in the office but those are just pending charges, Your Honor.

16 THE COURT: Thank you..

17 Mr. Fox?

18 MR. FOX: Your Honor, Mr. Fleming told you he is twenty-
19 five years old and a native here. I'm sure Your Honor will
20 not punish him for exercising his constitutional right.

21 THE COURT: Never would do that.

22 MR. FOX: He has been consistent with me and he
23 understood the danger of the hand of one scenario but he's
24 adamant he didn't realize it was gonna go that far but he
25 would certainly admit that they were up to no good but he

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BY MR. FLEMING

1 certainly did not expect or want it to go to the degree it
2 did. However, he also understands the jury's verdict, his
3 responsibility and the fact that he'll now be held responsible
4 for that, Judge. We'd simply ask for whatever consideration
5 Your Honor can get. I can't really address some of the things
6 that are pending other than to say independently I would not
7 worry about some of those. One was a ---

8 THE COURT: I would not take into consideration any
9 pending charges. He's presumed innocent.

10 MR. HOLFORD: Your Honor, I wasn't asking you to take
11 that into consideration.

12 THE COURT: Oh, I understand.

13 MR. HOLFORD: I was just saying he was out on bond for
14 something when he committed this crime.

15 THE COURT: Allegedly -- oh, when he committed this
16 crime, yeah. Yes, I understand.

17 MR. HOLFORD: Yes, Your Honor, which he was convicted of.

18 THE COURT: All right, sir. Mr. Fleming, anything you
19 want to tell me?

20 MR. FLEMING: Actually, Your Honor, I would like to say
21 that I feel sorry for the stuff that I done, I know I done
22 some violent things in my past and whatnot. I know the
23 situation happened between me and the victim and the witnesses
24 were not properly addressed but I'd like to say I'm sorry to
25 the victim, I'm sorry for the pain I caused to him and his

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SENTENCE OF THE COURT

1 family members but I honestly didn't shoot that man and I wish
2 I could take that back but I can't. I have nothing else to
3 say, Your Honor.

4 THE COURT: Your Honor.

5 MR. HOLFORD: May I approach with the sentence sheet?

6 SENTENCE OF THE COURT:

7 THE COURT: Sure. Mr. Fleming, I've listened to this
8 very carefully and there's no doubt in my mind that y'all went
9 up there to steal for money and you ran into more trouble than
10 you had anticipated. I can understand that. But when you
11 start stealing people's property, they're gonna resist and
12 often that resist results in gunfire, which it did in this
13 occasion.

14 In addition to the grievous facts in this case, I am
15 deeply concerned with your prior record, assault and battery
16 and burglary. I conclude frankly that you are a dangerous man
17 to the community.

18 With reference to burglary first degree, it is the
19 sentence and judgment of this Court that you be confined in
20 the State Penitentiary for twenty years.

21 With reference to the attempted murder, it would be the
22 sentence and judgment of this Court that you be confined in
23 the State Penitentiary for twenty years consecutive. You're
24 going to jail for forty years.

25 Thank you, sir.

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SENTENCE OF THE COURT

1 Anything further from anybody?

2 MR. HOLFORD: Nothing further from the State, Your Honor.

3 THE COURT: All right. Thank you.

4 ADJOURNED AT 1:51 P.M.

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the plea held in the case of The State versus Jeremy Fleming, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 14 and 15, 2013.

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



Kay H. Richardson, CVR

Official Reporter

July 23, 2013

WITNESSES

Heather Anderson Horry County Police
Department

DOCKET NO. 2012-GS-26-02052

The State of South Carolina

County of Horry

Nancy G. Cote

11H04580

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

M841280

CDR: 0079 16-11-0311

DOA: 10/19/2011

THE STATE

vs.

Jeremy Fleming B/M
5586 Lot 49 Rocku Road
Myrtle Beach, SC

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Fox, Eric

Indictment for

BURGLARY FIRST DEGREE

J. Gregory Hembree, Solicitor

ORIGINAL

ACTION OF GRAND JURY

TRUE BILL

Brandon Cannon
Foreperson of Grand Jury

Date:

MAY 24 2012

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY FIRST DEGREE

CDR: 0079 16-11-0311

That **Jeremy Fleming** did, in Horry County, State of South Carolina, on or about October 16, 2011 enter the dwelling of David Moran without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon and/or caused physical injury to a non-participant in the crime and/or the entering or remaining occurred in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Heather Anderson Horry County Police
Department

DOCKET NO. 2012-GS-26-02053

The State of South Carolina

County of Horry

Nancy G. Cote

11H04580

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

M841281

CDR: 3410 16-03-0029

DOA: 10/19/2011

THE STATE

vs.

Jeremy Fleming B/M
5586 Lot 49 Rocku Road
Myrtle Beach, SC

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Fox, Eric

ACTION OF GRAND JURY

TRUE BILL

person of Grand Jury
Date: MAY 24 2012

VERDICT

Indictment for

ATTEMPTED MURDER

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That **Jeremy Fleming** did, in Horry County, State of South Carolina, on or about October 16, 2011 with intent to kill David Moran, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

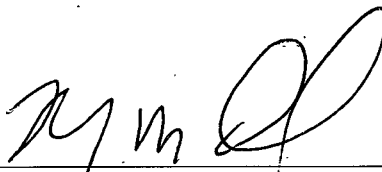
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 27, 2014



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

FEB 27 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

ORIGINAL

RECEIVED

FEB 27 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

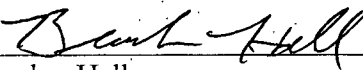
JEREMY FLEMING,

APPELLANT

APPELLATE CASE NO. 2013-001126

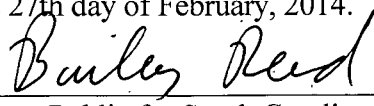
CERTIFICATE OF SERVICE

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 27th day of February, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of February, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.