

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Michael G. Nettles, Circuit Court Judge

LADORREAN C. COLLINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001413

APPENDIX

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JURY OUT/ON RECORD

1 Honor, that I have presented it.

2 THE COURT: All right. Well, I certainly disagree.
3 It's certainly not been presented. Thank you.

4 MR. HAZZARD: Your Honor, ---

5 THE COURT: Mr. Hazzard, do you have a position in this
6 particular matter?

7 MR. HAZZARD: My only position is with regard to the
8 question the Court asked.

9 THE COURT: I appreciate that. I'm asking do you have
10 a position as to this particular matter on Rule 609 regarding
11 your particular client? You would like to cross-examine this
12 particular witness and impeach him by the use of this 1996
13 crime?

14 MR. HAZZARD: No, Your Honor, I don't have a position
15 in that regard at all. I have provided to Mr. McCollum a
16 transcript of Tanheshia Smith and he may, after reading that
17 one page, want to re-visit the question the Court asked him.

18 THE COURT: All right, Mr. McCollum, do you want to
19 call a witness to try and establish some facts in evidence?

20 MR. McCOLLUM: Do you mean in an in camera hearing?

21 THE COURT: Yes sir, right now.

22 MR. McCOLLUM: May I confer, Your Honor?

23 THE COURT: I'm sorry, confer with who?

24 MR. McCOLLUM: Co-counsel.

25 THE COURT: I'm sorry. I thought the matter that y'all

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1 were presenting to me was these parties had no connection and
2 that they were separate and apart and were not connected in
3 any way in this particular matter? Are you changing your
4 position?

5 **MR. McCOLLUM:** Your Honor, let me ask a question. May
6 I talk to Mr. Hazzard?

7 **THE COURT:** You certainly can talk to him, but I -- I
8 appreciate you want to get some advice, but again, y'all are
9 presenting a legal argument to the Court that your clients
10 have no connection whatsoever. Is that correct, Mr. Hazzard?

11 **MR. HAZZARD:** That is absolutely correct, Your Honor.

12 **THE COURT:** All right.

13 **MR. HAZZARD:** I don't -- I don't have any problem with
14 talking with Mr. McCollum, have known him for twenty years,
15 but these two clients are totally and completely separate and
16 I want the record to reflect ---

17 **THE COURT:** All right. Well, he said co-counsel, so
18 that has a legal import.

19 (Mr. McCollum and Mr. Hazzard speak quietly off the record.)

20 **MR. McCOLLUM:** Your Honor, just briefly. There is a
21 statement from, I guess, one of the co-defendants or one of
22 the State's witness. I think it's pronounced Tanheshia
23 Smith, which made the allegation that -- that -- that this
24 man and others were using drugs in the house and, quote,
25 getting ginked up, and just doing that sort of thing on a

JURY OUT/ON RECORD

1 daily basis.

2 **THE COURT:** All right, and that would allow you to
3 impeach this witness by this 1996 conviction how? Just
4 assume that to be true.

5 **MR. McCOLLUM:** Your Honor, without delay, bring it -- I
6 understand, you know, the Court has ---

7 **THE COURT:** No. I'm asking you, tell me how that would
8 allow you to use this 1996 conviction. Assume what you've
9 told me is absolutely a hundred percent true. How does that
10 allow you to, under Rule 609, impeach this witness using this
11 1996 conviction for possession with intent to distribute?

12 **MR. McCOLLUM:** Your Honor, I just -- I think it's
13 within the Court's discretion. I think the rule allows that.
14 I'm asking the Court to do it. I think that's clear. I
15 can't obviously do more than that. If Your Honor rules, I
16 understand the ruling. I'm just making the motion.

17 **THE COURT:** All right, thank you, sir.

18 All right, under 609(b), I find, number one, that the
19 prejudicial effect substantially outweighs any probative
20 value. Further, the Court does not find it has been
21 presented to me sufficient specific facts and circumstances
22 that would have the Court rule that the probative value
23 substantially outweighs its prejudicial effect, and I will
24 not so allow the conviction in 1996 to be used for cross-
25 examination purposes.

JURY OUT/ON RECORD/JURY IN
ANTHONY BERNARD GRAHAM - DIRECT BY von HERRMANN

1 All right, anything else before we bring the jury back
2 in, please?

3 MS. von HERRMANN: Nothing from the State, Your Honor.

4 THE COURT: Mr. McCollum?

5 MR. McCOLLUM: Nothing on behalf of the defendant,
6 Collington, Your Honor.

7 THE COURT: And Mr. Hazzard?

8 MR. HAZZARD: Nothing, Your Honor.

9 THE COURT: Ask the jury to come in, please.

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
11 JURY.)

12 THE COURT: You may proceed, Solicitor.

13 MS. von HERRMANN: Thank you, Your Honor.

14 I don't know if he stated his name on the record.

15 THE COURT: I'm sorry. Madam Clerk, if you will again
16 swear the witness, please Ma'am.

17 ANTHONY BERNARD GRAHAM, being first duly
18 sworn, states as follows:

19 DIRECT-EXAMINATION BY MS. VON HERRMANN:

20 Q. Mr. Graham, how old are you?

21 A. Forty-three.

22 Q. Forty-three years old. Do you have a nickname that
23 you go by?

24 A. Everybody call me Loc.

25 Q. They call you Loc?

ANTHONY BERNARD GRAHAM - DIRECT BY von HERRMANN

- 1 A. Yeah.
- 2 Q. How do you spell that, L-O-C ?
- 3 A. L-O-C.
- 4 Q. All right. Did you know the victim in this case,
- 5 Allen Smith?
- 6 A. Yeah. I been knowing Allen for a while.
- 7 Q. How did you first meet Allen?
- 8 A. Well, basically I was coming to Aynor since '79, and
- 9 me and his cousins was already friends, and he was good in
- 10 basketball and stuff, but he used to get in a little bit of
- 11 trouble, so I had a job and we see he was advanced in
- 12 basketball, so me and my brothers used to give him money to
- 13 try to keep him out of trouble because we wanted him to go to
- 14 college.
- 15 Q. And so did y'all become friends as a result of that?
- 16 A. Yeah. We was friends for over probably like twenty-
- 17 five years.
- 18 Q. How much younger was he than you?
- 19 A. I think like three -- three years younger, so like
- 20 three -- three years and some change, so
- 21 Q. Did you kind of treat him like a little brother?
- 22 A. Yeah, always did.
- 23 Q. Did you have occasion to be in his company in April of
- 24 2008?
- 25 A. Yes Ma'am.

ANTHONY BERNARD GRAHAM - DIRECT BY von HERRMANN

1 Q. All right, and how did you end up -- how did you end
2 up meeting up with him in two thousand -- April of 2008?

3 A. Well, I had just came from North Carolina working on
4 Cherry Point Marine Base, and I came to Florence to hang out
5 with my blood brothers because I ain't been down here in a
6 minute, and so Allen happened to call me and say he was
7 coming. Well, he called my other brother, God bless, he just
8 passed this last Tuesday, matter of fact, but Allen called my
9 other brother when he and Dora got to the house and was with
10 them, and he asked me to go back with them, to come back to
11 Conway with them because we ain't seen each other in a while.

12 Q. Let me ask you this.

13 MS. von HERRMANN: I'm having a -- I don't know if the
14 members of the jury are, but I'm actually having a little bit
15 of trouble hearing. See if you can slide up to that
16 microphone a little bit -- a little bit more. Sometime we
17 have a bit of a hard time hearing you from back here.

18 Q. Okay, so you were in Florence?

19 A. Yes Ma'am.

20 Q. And he came and met you in Florence?

21 A. Yeah. He came to my brother, Carol, house.

22 Q. All right. Was he alone or was somebody with him?

23 A. Dora was with him.

24 Q. Who is Dora?

25 A. (Witness indicating.) Right there.

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1 **MS. von HERRMANN:** Let the record reflect that he has
2 indicated the defendant, Ladorrean Collington.

3 Q. Is that correct?

4 A. Yes Ma'am.

5 Q. And had you ever met Ladorrean Collington before that
6 day?

7 A. That was my first time I seen her.

8 Q. And what -- what vehicle were they driving that day?

9 A. A white Expedition.

10 Q. Was that Allen's vehicle?

11 A. It was her vehicle.

12 Q. Okay, and so then do you remember precisely what day
13 that is, or if I showed you a calendar maybe of that month,
14 would that help you?

15 A. Yes Ma'am, probably so.

16 **MS. von HERRMANN:** Let me show this to these attorneys
17 real quick.

18 You don't have any objections?

19 **MR. McCOLLUM:** No Ma'am, no objections.

20 **MR. HAZZARD:** No objection.

21 Q. All right, I'm going to just -- I'm going to just show
22 you this calendar here and maybe this will help you out a
23 little bit. Do you know which day it was that Allen came to
24 get you in Florence?

25 A. It was on a Sunday. I think it was like on -- had to

ANTHONY BERNARD GRAHAM - DIRECT BY von HERRMANN

1 have been on the 6th.

2 Q. Sunday the 6th, okay, so what did you all do when you
3 left -- did you spend the night in Florence, or did you come
4 back to Conway, or where did you go?

5 A. No Ma'am. We went back to Conway, and we stopped in
6 -- I don't know the name of the apartments, but it was back
7 in the day it used to be Rulease Terrace, and I think she
8 went to check on her kid.

9 Q. Okay. Who -- who do you think checked -- went to
10 check on her kid?

11 A. Dora went to check on her kids.

12 Q. All right. When you say you went to these apartments,
13 who lived in those apartments?

14 A. She went to see Tiffany or somebody.

15 Q. Okay. She went to go see Tiffany James?

16 A. To check on her kid.

17 Q. All right, and then where did you all go from there?

18 A. Well, basically we went back to Dora house.

19 Q. All right, and where did Dora -- Ladorrean Collington,
20 right?

21 A. Yes.

22 Q. All right, so when you say Dora, that's who you
23 are ---

24 A. Yes Ma'am.

25 Q. All right. Where did she live?

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1 A. I don't name -- I don't know the name of the
2 apartments, but it's like it used to be the Crossroads back
3 in the day when I used to live here long ago.

4 Q. Okay, and I want to show you what's been marked here
5 as State's Exhibit 40 and I'm going to ask you if you can --
6 step down here for just one moment if the Court doesn't mind.

7 THE COURT: Yes Ma'am.

8 Q. Take a look at that. Have you seen that -- have you
9 seen that map before? Kind of get oriented here. I think
10 there's an indication on there of where Allen's house is. Do
11 you see that? All right. Do you see where his house is?

12 A. There's a Scotchman right in here ---

13 THE COURT: He's got to speak up. Y'all move back
14 closer to that microphone right over there.

15 A. The Scotchman is right here, and Dora was staying
16 right somewhere over here.

17 Q. All right. When you said that -- do you know what
18 this highway is that's running through here?

19 A. It's 544.

20 Q. All right, Highway 544, and the Scotchman, is like a
21 little mini-mart or something?

22 A. Yeah, it's like -- and the -- and like when 544 come
23 out, it's basically the Scotchman right there.

24 Q. Okay, and show me again where her apartment would have
25 been.

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1 A. It was -- if I'm not mistaken it was somewhere up in
2 here.

3 Q. Okay, right in that area?

4 A. Yes Ma'am.

5 Q. Okay, and then where would Allen's duplex have been?

6 A. Down here, because I remember walking through the path
7 through here and walking down there to get to his house.

8 Q. Okay, so when you -- that little cul-de-sac that you
9 can see at the end of Allen's road, ---

10 A. Yes Ma'am.

11 Q. --- you're saying that there's a path there?

12 A. Yeah. It's a path behind these buildings right here.

13 Q. Okay, and so you can just walk right through there?

14 A. Yeah, and it's a little -- like a little -- not really
15 a ditch, but like -- and you can go across the ditch and go
16 down the other side.

17 Q. All right, so if you -- you were staying with Allen
18 for a little bit, right?

19 A. For like a week.

20 Q. All right, so if you were at Allen's house and you
21 wanted to go to the Scotchman, would you go up here and go
22 all around, or where would you go?

23 A. No. I would come straight to the path.

24 Q. You would just walk through that?

25 A. Yeah.

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1 Q. Okay. Go ahead and have a seat back up there.

2 All right, so I believe that the last thing that you
3 testified to before we looked at the map was that you had
4 gone to Ladorrean's house, is that correct?

5 A. Yes Ma'am.

6 Q. All right, and what did you do at Ladorrean's house?

7 A. Well, we sit there for a minute and talk, and so we
8 was getting ready to go to Fa house.

9 Q. Okay. Who is Fa?

10 A. Frankie Davis.

11 Q. Frankie Davis. Is Frankie Davis here in the courtroom
12 today?

13 A. (Witness indicating.) Sitting right there.

14 Q. Okay.

15 MS. von HERRMANN: Okay. We'll let the record reflect
16 that he's pointed out Ms. Davis here in the courtroom as
17 well.

18 Q. And how long had you known Frankie?

19 A. Really for some years because I remember like a long
20 time ago my Aunt Eloise, that her husband used to have family
21 reunions and she kin to Aunt Eloise husband, and so I used to
22 -- like I said, I was in their family for the longest and ---

23 THE COURT: Just hold on one second. All right, so
24 you've got to ---

25 A. I'm sorry.

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1 **THE COURT:** --- scoot up close because the jury is
2 having a hard time hearing you.

3 A. All right.

4 **THE COURT:** Thank you.

5 Go ahead.

6 A. So I always used to go to their family reunions and
7 stuff, so I met her way, way back then. I think Allen was
8 probably still in high school when I first met her.

9 Q. Okay, so when you all get to Conway that day, what was
10 the relationship between Allen and Frankie?

11 A. That was his girlfriend.

12 Q. All right, and did they live together?

13 A. Yes Ma'am.

14 Q. And when you came to Conway with Allen, was it y'all
15 were going to stay with -- you were going to stay with him
16 and Frankie, is that correct?

17 A. That's what I was assuming.

18 Q. Okay, so at some point did you leave Ladorrean's
19 apartment?

20 A. Yes Ma'am.

21 Q. All right. Now, let me ask you this. Was Allen
22 messing around with Ladorrean a little bit, too?

23 A. Yes Ma'am.

24 Q. All right, so you get ready to leave Ladorrean's house
25 and tell the jury, if you will, about that.

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1 A. Well, when we got ready to leave, she was like -- she
2 told him that she was going to cook something to eat for him,
3 but she also said, I know you're going to -- excuse my
4 language, but I know you going to that bitch house, but if
5 you're not coming back, let me know and I won't cook, so he
6 kept saying, I'm coming back, I'm coming back. She said,
7 well, if you ain't coming back, let me know, so after that,
8 me and him left.

9 Q. Okay, and when y'all left, where did you go?

10 A. We went to Frankie house.

11 Q. All right, and that would have been still on
12 Sunday, ---

13 A. Yes Ma'am.

14 Q. --- is that correct?

15 A. Yes Ma'am.

16 Q. And what did you do for the rest of the day on Sunday?
17 Did you hang out at ---

18 A. It was already Sunday evening, so we was over there
19 watching T.V., whatever, but he was planning on going back to
20 Ladora house, but Frankie basically knew where he was going,
21 so she like, well, if you going, I'm going, too, so we end up
22 staying over there.

23 Q. All right. How about on Monday, did y'all stay there
24 at his house, or Frankie's house, on Monday?

25 A. It was at Frankie house.

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1 Q. All right, and on -- how about on Tue
2 on ---

3 A. Well, Tuesday, the thing was, I didn't
4 my clothes was still at Ladora's house, so I didn't even have
5 a change of clothes yet, so I was like, I'll go get my
6 clothes, so we basically went back over there.

7 Q. All right. When you say we went back over there, who
8 went back over there?

9 A. Me -- me and Allen went back to Ladora's house.

10 Q. All right, and when you got there, what kind of mood
11 was Dora in?

12 A. She's was kind of upset.

13 Q. What was she upset about?

14 A. Because he didn't come back over there.

15 Q. All right, and tell -- tell the jury what happened
16 next.

17 A. Well, she was basically -- when we went to the house,
18 Tiffany was in the house, which that was the first time I met
19 her, and she was arguing because Allen didn't come back, and
20 her words was, you're not going to -- excuse my language once
21 again -- you're not going to fuck me for three days and then
22 run back over there to that crackhead bitch, this, that, and
23 this.

24 Q. All right, and did she say anything else?

25 A. So Allen was basically trying to calm her down, this,

ANTHONY BERNARD GRAHAM - DIRECT BY von HERRMANN

1 that, and this, so she -- she basically start trying to push
2 him. They end up going in the room and he was trying to talk
3 to her, and after a while, I heard her like -- I heard Allen
4 say, oh, this how much you care for me, like that, and she'd
5 been trying to snatch the chain off of -- here, like this,
6 this how much you love me, like that, how much you care for
7 me, like that, and she told Tiffany, let me go get my -- no,
8 told Tiffany, let me go get my shit. That's what she said,
9 go get my shit.

10 Q. Let me go back a little bit, and when you said she
11 snatched his chain off, she actually snatched it off of his
12 neck?

13 A. Yeah. She end up popping his chain, because on the
14 way back to his house, he showed me the chain.

15 Q. All right, so it was a verbal argument that ended up
16 turning into a physical argument, is that fair enough?

17 A. Yeah, and he -- yeah, and he ---

18 Q. I'm sorry, and do you know if she assaulted him in any
19 way?

20 A. Well, he told me she try to take him between the --
21 between the legs.

22 Q. And then, I'm sorry, I did interrupt you. Tell me
23 what you were -- you were saying that she said, go get my
24 shit?

25 A. Yes.

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1 Q. And when somebody says go get my shit, what do you
2 think that -- what did you think that meant?

3 MR. McCOLLUM: Objection, Your Honor.

4 THE COURT: Why don't you rephrase your question.

5 Q. How did you interpret that?

6 MR. McCOLLUM: Speculation, Your Honor.

7 THE COURT: I'm going to allow that.

8 A. Well, from what I -- from being out here, that's go
9 get my gun. That's what I was assuming.

10 Q. All right, so when she said that, what did you and
11 Allen do?

12 A. Allen was like let's go, man, and so we walk out the
13 house, and we was going -- went back through the little cut
14 behind the house, the little path, to go back to Allen house.

15 Q. That's the path that you showed the jury ---

16 A. Yes Ma'am.

17 Q. --- a few minutes ago?

18 A. Yes Ma'am.

19 Q. All right, and so where did you go from there?

20 A. So -- well, we was going back towards the house, and
21 the whole -- whole time he kept looking back behind, like
22 this, so I kept looking behind me, too.

23 Q. What do you think he was -- what were you looking for?

24 A. I guess he was -- I didn't know, but I guess he
25 was ---

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1 **MR. McCOLLUM:** Objection.

2 **THE COURT:** All right, let's just --

3 **MS. von HERRMANN:** I'll move on.

4 **THE COURT:** Just answer the question as to what you
5 were doing and why you were doing it.

6 A. All right. I was looking back because he was looking
7 back. I thought she was coming behind us or whatever.

8 Q. All right, and then tell the -- tell the jury what
9 happened next.

10 A. We kept walking, looking back, looking back, then we
11 happened to look up. She already had drove around and was
12 park at the head of the cul-de-sac.

13 Q. All right. Let's get this map out. So she had gotten
14 in her car and she had driven around to where?

15 A. She was -- she was up this way, like this is the road
16 right here, so she was at the head of the road.

17 Q. Okay, so you saw her vehicle up there?

18 A. Yeah.

19 Q. And what vehicle was that?

20 A. The Expedition.

21 **THE COURT:** Wait until you sit back down so everybody
22 can hear you.

23 A. That was the Expedition.

24 Q. What color was it?

25 A. A white Expedition.

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1 Q. All right. Did you try to go into the house?

2 A. Well, basically when he seen her, he just -- he's like
3 let's go, Loc, and he took off running, so I seen him running
4 and I figured it was something serious, so I start running
5 behind him.

6 Q. All right, and where did -- what -- where did he run
7 to?

8 A. He ran -- all right, he got a privacy fence, so he ran
9 to the privacy fence, so he was -- it was locked, so he was
10 trying to get in the privacy fence, but it was taking a
11 while, so he couldn't get through the fence, so he start
12 climbing over the fence.

13 Q. Let me stop you for just a second. I'm going to show
14 you what's been marked as State's Exhibit 4 and ask you to
15 take a look at that picture.

16 A. Yes Ma'am.

17 Q. Is that the fence that you're talking about?

18 A. Yes Ma'am.

19 Q. All right, and tell the jury then what -- what did you
20 all do with regard to that fence?

21 A. So like when -- the fence is like a privacy fence.
22 One side was for us and this side here was for the neighbors,
23 and it's got like two doors, so he was trying to get in his
24 door and he couldn't get through, so he start climbing over
25 the fence, so he was taking too long, so I ran to the

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1 neighbor fence and jumped their fence, so he was like don't
2 go home.

3 He told me don't go home, because I was getting ready
4 to run in the house. He said don't go home. Just run -- run
5 down to the front, so we ran -- it's like a canal or
6 something right behind the building, so we ran behind
7 everybody house and ran up to the front, to the front of the
8 complexes, ---

9 Q. All right -- I'm sorry. I didn't want to interrupt
10 you.

11 A. And we was at the front of the complexes, so he told
12 me to look for the -- from the front side, and I was like
13 this way at the front and he was looking for the back, seeing
14 if she come through or whatever.

15 Q. All right. Let's talk about Allen for just a little
16 bit. How big of a guy was Allen?

17 A. He was pretty big, two hundred and some change. He
18 was a good football player. He had some size on him.

19 Q. Athlete, pretty -- pretty heavy, pretty -- a big guy?

20 A. Yes Ma'am.

21 Q. Okay, so once y'all are in the location that you've
22 just described, did you see her vehicle again?

23 A. Well, we was -- like I said, we was looking for --
24 well, we was looking both ways so basically she couldn't
25 sneak up on us or whatever, so after a while we heard the

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1 window bust, and after the window bust, that's
2 the truck going back out.

3 Q. When you say you heard the window bust, I know
4 was that?

5 A. Well, we just heard a window bust, and we didn't know
6 what window it was until we walk back to the house and we
7 seen the front window was -- she threw something through the
8 front window.

9 Q. So you -- you heard the window break and then you saw
10 her drive back ---

11 A. Back by.

12 Q. Back by the house.

13 A. And then she left, I guess, when she threw the rock or
14 whatever it was, it was a note.

15 Q. She left a note there?

16 A. Yeah, it was a note.

17 Q. Do you know what the note said?

18 A. No, 'cause when we got there, by the time we walk back
19 to the house, the police was already coming 'cause this guy
20 was out there playing with a dog, so I guess he seen what
21 went on or whatever. He said he thought somebody was
22 breaking into the house, so he ended up calling the police.

23 Q. Okay, and the police arrived?

24 A. Yeah.

25 Q. All right, and did they make a report?

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1 A. Yeah, 'cause the guy who made the report, come to find
2 out him and Allen play football together in high school, so
3 he was out there cracking jokes like this is the second time
4 this girl done bust out your window, Allen. You might need
5 to hire your brother with a catcher mitt to catch the rocks
6 she's throwing so you can save some money from paying from
7 them windows, like that.

8 Q. Okay, so she had -- this wasn't the first time she had
9 broken out a window?

10 A. No, from -- well, I wasn't here when she did the first
11 time. From what I understood from him and the cop was
12 talking, she did it before.

13 Q. And was Frankie home at the time that this happened?

14 A. No, she wasn't home.

15 Q. All right. Did you or -- did you get any phone calls
16 from her or do you know if Allen got any phone calls from her
17 around that period of time?

18 A. Well, I don't know. She was calling my phone back and
19 forth, you know, and she also was texting him and calling
20 him.

21 Q. Do you know was he answering her phone calls?

22 A. No, he wasn't; he wasn't.

23 Q. Did she start -- were ---

24 A. That's why -- that's why she start calling my phone
25 basically because he wouldn't answer his phone.

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1 Q. All right, and were these just a couple of calls or
2 were these a lot of calls?

3 A. Nah. She called a few times.

4 Q. And then when she called you, did you and Allen have a
5 conversation about that?

6 A. Yeah. He told me to quit answering her phone calls.

7 Q. And the phone that -- the phone number that she would
8 be calling you from, is that [REDACTED]-2151?

9 A. Yes Ma'am.

10 Q. All right, and you gave that information to the
11 police ---

12 A. Yes Ma'am.

13 Q. --- later on, did you not?

14 A. Yes Ma'am.

15 Q. All right, and your phone number at that time was [REDACTED]-
16 2817, was it not?

17 A. Yes Ma'am.

18 Q. Was that a prepaid phone?

19 A. Yeah. I think it was a Virgin Mobile Prepaid.

20 Q. Do you remember what Allen's telephone number was?

21 A. It was -- just almost like Dora -- Dora's, but the
22 last two numbers was different. I think it was fifty-five or
23 fifty-four, or something like that.

24 Q. Do you think it was [REDACTED]-2155?

25 A. Yeah.

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1 Q. Does that sound right to you?

2 A. Yeah.

3 Q. And so that was on the 8th, Tuesday the 8th, and then
4 let's go and look at this map again. Are you still getting
5 phone calls on the 9th?

6 A. Yes Ma'am.

7 Q. And then let's talk about Thursday, the 10th of April,
8 2008. Do you recall a certain incident that took place on
9 that day?

10 A. Yes Ma'am.

11 Q. Tell the jury, if you will, what happened on that day.

12 A. That particular day when I got up -- well, basically I
13 was in the room looking at T.V. I was looking at T.V. Then
14 I heard some like -- somebody around the door or something
15 because the window was up, so I heard somebody around the
16 window, so when I -- my room was right there, so when I look
17 down the hall, I seen a couple of shadows or whatever.

18 So I end up trying to wake Allen and Frankie up because
19 I didn't want to open the door because I -- I'm just
20 visiting, so I don't know who was who, so I didn't open the
21 door, so I try to wake them up, but he was still asleep, and
22 so I end up -- I end up going -- when I was walking to the
23 door, I seen the guys left the door, so I walk -- I walk on
24 outside. I didn't have any shoes on, so they was walking
25 like going back toward Dora house.

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- 1 Q. And how many people were there?
- 2 A. There was three people.
- 3 Q. All right. Were they male or female?
- 4 A. Three males.
- 5 Q. Black or white?
- 6 A. Black guys.
- 7 Q. And you say they were walking back toward Ladorrean's
- 8 house?
- 9 A. Yes Ma'am, and I kind of -- I figured something was
- 10 funny because it was hot like it is now and they -- two of
- 11 them had on hoods in the middle of the summer.
- 12 Q. So that seemed odd to you?
- 13 A. Yeah, so when I -- I went -- when I went outside with
- 14 no shoes on, I was like, what y'all doing at my brother
- 15 house, but they was already up, so I couldn't really see.
- 16 One guy turn around, and -- and the other ones kept walking.
- 17 They didn't turn around, but he was -- he turn around, but he
- 18 was walking backwards, just kept walking backwards, so he
- 19 yell out, y'all got some work over there? Your brother got
- 20 some -- no, he say y'all got some work? So I was like ain't
- 21 nothing like that going on around here. Come here for a
- 22 minute and let me holler at you, because I want to see who it
- 23 was, because I was thinking something funny was going on, so
- 24 they kept walking.
- 25 So I ran in the house and put on my shoes and I told

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1 Frankie there's some guys around the door, so to wake Allen
2 up, but when I put on my shoes, I went walking behind, and so
3 when I came out through the path I seen Dora and -- it was a
4 lot of people out there, like everybody was outside on their
5 balconies and everything.

6 So I asked them, y'all seen three guys just walk through
7 here, and everybody said no, like that, but I knew that they
8 had to come -- go through that path because I seen them when
9 they went through the path, so she -- she called me in her
10 house at the time basically and she was like, why Allen
11 acting like this, that she said she hadn't even told me,
12 asked me why Allen was acting like that, and so I was like
13 you did just break out a window.

14 Give him a time to cool, you know, and maybe he will
15 cool down -- calm down, like that, and so I ran into this
16 girl who stay out there that I know, and I talked to her for
17 a minute, and so I went back to the house and told Allen what
18 went on.

19 Q. And you said that Allen was asleep and that you woke
20 -- you woke Frankie up, is that correct?

21 A. Yes Ma'am.

22 Q. All right, and what time of day was it when this took
23 place, do you know?

24 A. I don't really know exactly.

25 Q. And how long of a -- is it pretty close? How long did

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1 it take you to walk from your house down there?

2 A. Not far, probably not even three minutes, really.

3 Q. But you weren't ever able to get a good look at any of
4 those ---

5 A. No, at the guys, I ain't.

6 Q. --- particular people on that day?

7 All right, and then let's talk about the next day,
8 which would have been Friday, April the 11th.

9 A. Yes Ma'am.

10 Q. Do you recall an incident which took place on that
11 particular day?

12 A. Well, on -- on -- Dora had call Allen phone. Allen
13 didn't answer. So the next thing I know, Frankie had call
14 Allen phone and was telling that Dora was down there up in
15 her face or whatever. Then after that, Dora end up calling
16 my phone.

17 Q. Let me get you to -- and this is Friday, April the
18 11th?

19 A. Yes Ma'am.

20 Q. This is three days prior to when Mr. Smith was killed,
21 is that correct?

22 A. Yes Ma'am.

23 Q. All right. I'm going to show you what's been marked
24 as State's Exhibit 72, and I'm going to ask you if you can
25 identify that?

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1 A. Yeah. I remember the phone call.

2 THE COURT: You need to speak up, sir.

3 A. Yes. I remember the phone call.

4 Q. Let's get back to that because we actually don't have
5 anything to play that C.D. on right now.

6 A. Yeah.

7 Q. All right. Let's go -- let's go to Sunday, April the
8 13th. Did you receive -- were still receiving calls from
9 her?

10 A. Well, she -- she ask how are you doing, or whatever,
11 where Allen at, or whatever.

12 Q. All right, and were you and Allen talking back and
13 forth about her during this period of time?

14 A. Yes Ma'am.

15 Q. And do you recall whether or not -- did he say that
16 she had been leaving him any type of text messages?

17 A. She had ---

18 MR. McCOLLUM: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q. Are you aware of any other communication that she had
21 with him?

22 A. Yeah. She left him a text message.

23 Q. All right, and did you actually see these particular
24 text messages?

25 A. Yes. He showed me the message. He was like, man --

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1 .excuse me -- this bitch is crazy, and I
2 show. She said something about you and
3 it.

4 Q. She said what?

5 A. You and your mother could get it.

6 Q. You and your mother could get it?

7 A. Yes.

8 Q. All right. That's the day before?

9 A. Yeah. That was Sunday, if I'm not mistaken.

10 Q. All right. Now let's go to Monday, April the 14th.

11 What did you do that day just prior to this burglary, and
12 armed robbery, and murder taking place?

13 A. Well, basically she call my phone and I didn't call
14 her back, but I was getting ready to go to the store, so I
15 know I had to go by her house, so after, I went to the store
16 and got two cigars and a orange soda.

17 Q. When you say you went to the store, is this the same
18 Scotchman ---

19 A. To the Scotchman.

20 Q. --- that you referred to earlier?

21 A. Yes.

22 Q. All right.

23 A. And got a two liter orange soda and two cigars, so
24 when I was going back home, I -- since she was calling my
25 phone, I'll just stop by her house, but she wasn't there, you

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know, so I call -- I had -- but I went on home, and I had
2 called -- I think I had called her then. She didn't answer
3 the phone, so when I got home, I rolled me a blunt and sit on
4 the bed, and she had call me back, and she was like, what you
5 doing -- no, she said where you at, and I say, I ain't home
6 at the moment. I told her a lie because really I didn't want
7 to be bothered with her. I told a lie. I say my cousin,
8 Crip, came and picked me up and I'm on Teller Square at my
9 aunt Carrie Brown house, so she said when ---

10 Q. Okay, so I'm sorry; let me just make sure I'm
11 following you on this. She asked where you are. You are
12 really at home, ---

13 A. Yeah.

14 Q. --- but you say that ---

15 A. But I told her that my cousin, Crip, came and picked
16 me up and I'm on Teller Square at my aunt Carrie Brown's.

17 Q. Okay, I'm sorry, and so tell me about the rest of that
18 conversation.

19 A. All right, and so she was like before you go home,
20 come by my house, like that, so I was like all right, so she
21 said now before you go home, make sure you come by my house,
22 so I said all right, and so I lit the blunt, turn on Sports
23 Center ---

24 Q. Did you think it was unusual that she was so adamant
25 about you coming by her house?

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1 A. Well, really I ain't really, you know, I didn't think
2 -- think of it really. I didn't think, you know. I just
3 figured really she wanted to ask me about Allen or whatever,
4 you know.

5 Q. You didn't have anything going on with her, did you?

6 A. No.

7 Q. All right, and so tell me what happened next?

8 A. And so -- so like -- like I said, I went and cut on
9 Sports Center, so I heard the doorbell ring.

10 Q. Let me ask you about this. Did she ask you where
11 Allen was in that phone call y'all had?

12 A. Yeah. She -- she's -- before I hung up she was like
13 where Allen at? I say he at the house asleep, and -- and so
14 she -- that's when she told me before -- to come by her house
15 before I go home.

16 Q. Okay, so you said Allen was at the house sleeping and
17 I'm out going to my aunt's?

18 A. Yeah, I'm at my aunt house.

19 Q. All right.

20 A. So like I said, I lit the blunt -- well, better yet, I
21 rolled the blunt ---

22 Q. When you say you rolled the blunt, you're smoking some
23 marijuana, right?

24 A. Yeah; yeah, so I heard the doorbell ring. It rung at
25 first. Then I open my door and I look. I seen some shadows

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1 around the door, but once again, Allen was asleep, so I said,
2 well, I ain't worrying about going to the door. You know, if
3 it was important, they will come back, so I went back in the
4 room and lit ---

5 Q. What was in the room where you were staying?

6 A. Just like -- because I don't know if they just
7 recently move in or what, but in the particular room I was
8 in, it was like a T.V. I think he put the chair in there for
9 me to put the T.V. on, and it was a air mattress.

10 Q. An air mattress?

11 A. Yes.

12 Q. Okay, I'm sorry. You're sitting in there?

13 A. And so they -- after the doorbell and whatever, a
14 little knock on the door, I laid back and cut on Sports
15 Center and lit the blunt. After while, I just hear boom, and
16 so I got up and -- I thought it was -- I still had a little
17 bit of weed, so really I thought it was the police. I
18 thought it was the police, so I grab my little bit of weed
19 and covered my weed, and when I looked to the door, I seen
20 three guys running in the house.

21 Q. All right, and where were they com- -- they were
22 coming in the front door?

23 A. The front door.

24 Q. All right. What happened next?

25 A. So the first thing I thought, you know, I say, dog, I

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1 was going to go back to his room and try, you know, but I say
2 maybe if I go in the room, because which he had -- he showed
3 me he had a gun up in there, you know, because I was thinking
4 maybe if I go in the room and make some noise or something,
5 he will come out, and -- and ---

6 Q. When you say he, you mean Allen?

7 A. Allen, you know.

8 Q. You're hoping that he's going to wake up?

9 A. Yeah, and -- and it will be different, but I
10 didn't ---

11 Q. Did you see any of these people's faces?

12 A. I couldn't see their face because when they came in,
13 they had on hoods and they had like -- like tee shirts like
14 right across here, so I couldn't really see, but you could
15 see two of them had dreads, but you couldn't see -- really
16 see their face because they had shirts across here.

17 Q. All right, so when they come running in, tell me where
18 they go.

19 A. Well, I -- I was thinking maybe if I go in my room and
20 make some noise, you know, so I just back off in my room, and
21 they -- the guy came in the room and like cock the pistol.
22 Then it was like, where that mother-fucker at, like that.
23 Then the second guy came in and he had the shotgun. The guy
24 cock the pistol and put it like between my eyes, so I was
25 like put my hand up like this, trying to, you know, just like

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1 get it out of my face, so when the guy came and cock the
2 shotgun, it was in my chest, I fell back, you know, so I kept
3 saying, you know, I ain't got nothing, so ---

4 Q. Let me -- let me ask you about this. Three guys come
5 in?

6 A. Yes Ma'am.

7 Q. Who -- which one of them was the first one in your
8 room?

9 A. It was kind of a tall, slim guy, ---

10 Q. A tall, slim guy?

11 A. --- and he had -- he had the pistol.

12 Q. He had a pistol. How tall do you think he was?

13 A. I don't really know, probably like my height or so.

14 Q. Okay. How tall are you?

15 A. About six foot.

16 Q. All right, and he's got a pistol?

17 A. Yeah.

18 Q. What color was the pistol?

19 A. I think it was black.

20 Q. All right.

21 A. I know it was black, but I don't know if it had a
22 different handle or what.

23 Q. All right, and then who -- who else comes in the room?

24 A. The next guy in line, he was a little bigger than him,
25 but he had the shotgun.

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1 Q. When you say he was a little bigger, do you mean he
2 was a little stockier ---

3 A. Wider.

4 Q. --- or a little taller?

5 A. I think they was about the same height. I'm not sure,
6 but I know for sure he had a little bit more size on him than
7 the other guy.

8 Q. Okay. Now, the guy with the pistol, did he have
9 something over his face? Do you remember?

10 A. I think he had his shirt across his face, too, ---

11 Q. Okay, so ---

12 A. --- like -- they had it like across like this ---

13 Q. All right.

14 A. --- so you couldn't see nothing but really the eyes
15 and their head.

16 Q. Okay, and then so the second guy that comes in, you
17 say he's got a shotgun?

18 A. Yeah.

19 Q. All right. Let me show you what's been marked as
20 State's Exhibit 69 and tell me if you recognize that.

21 A. I'm not quite sure, but ---

22 Q. Does that look similar to that?

23 A. Yes, it's similar.

24 Q. So it was a sawed-off shotgun?

25 A. Yeah, for sure it was sawed off, but ---

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1 Q. All right, and I believe you said it was black and
2 brown, right?

3 A. Yeah.

4 Q. Does that look similar to it?

5 A. That looks similar.

6 Q. All right, and so what about the third individual who
7 comes into the house?

8 A. He -- he was a little lighter than the rest of them.

9 Q. All right. He was a little what?

10 A. Light- -- his skin was a little lighter than the rest
11 of them.

12 Q. All right, and was he shorter or taller?

13 A. Yeah, he was shorter than them, but he didn't -- the
14 whole time he just stood in the back. He just stood like
15 behind them and they was like all -- with all the ---

16 Q. And you're focusing on these two guys?

17 A. Yeah, and so like I say, he just stood in the back,
18 you know.

19 Q. All right, and then did you see him go somewhere?

20 A. After a while, he left out of the room ---

21 Q. All right.

22 A. --- and just went walking in the back.

23 Q. When you say -- when he went walking in the back,
24 which way did he go?

25 A. Next to Allen room.

ANTHONY BERNARD GRAHAM - DIRECT BY von HE

- 1 Q. He went down towards Allen's room?
- 2 A. He turned out and went -- made the
- 3 the hall next to Allen room.
- 4 Q. All right, and tell me again, what
- 5 when they came in?
- 6 A. Where that mother-fucker at.
- 7 Q. They say where that mother-fucker at?
- 8 A. Yes Ma'am.
- 9 Q. All right, and what did you think they were referring
- 10 to?
- 11 A. Well, really, after I didn't see it was the police due
- 12 to the stuff that was going on, I automatically thought --
- 13 the first thing I say -- excuse my expression -- that bitch
- 14 done sent them boys over here because -- because of so much
- 15 stuff was going on.
- 16 Q. All right, when you say that bitch, who ---
- 17 A. Dora.
- 18 Q. Ladorrean Collington?
- 19 A. Yes Ma'am.
- 20 Q. And so you were -- you were suspicious at that time
- 21 that she had sent them over?
- 22 A. Yeah, because like I say, I know all kind of stuff
- 23 been going on, and when they came to the house that Thursday
- 24 and just -- just hanging around the door and the way the
- 25 incident, I knew something was funny then.

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1 Q. Okay, and so you've got two guys in the room with you
2 and one guy, the shorter, lighter-skinned guy had gone down
3 the hall toward the bedroom. Did the two guys that were in
4 there with you, did they both stay in there with you?

5 A. Well, at first, the other -- the guy who had the
6 shotgun, he went in the back, too.

7 Q. All right, so the guy with the sawed-off shotgun, he
8 goes in the back as well?

9 A. Yes Ma'am.

10 Q. So you were in the front room with one guy with a
11 pistol, ---

12 A. Yes Ma'am.

13 Q. --- is that correct?

14 A. And they had put the air mattress, like threw it over
15 my head, so I thought they was going to shoot, so I was up
16 under the air mattress rolling around like this.

17 Q. So you were under there?

18 A. That's -- yes Ma'am. That's after this second guy
19 with the shotgun went down the hall.

20 Q. All right. Did you hear -- what was the next thing
21 that you heard?

22 A. After a while, I hear Allen.

23 Q. What did you hear?

24 A. I hear Allen say yo -- yo, Loc; yo, Loc, like that,
25 and then I hear the gunshots went off, pow, boom, like that.

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1 All I heard is two gunshots.

2 Q. Were they loud gunshots?

3 A. The second one was louder than the first one.

4 Q. And what did you -- what did you do next?

5 A. After the gunshots, I kind of pulled the mattress

6 down, and that's when I seen everybody like running out in

7 single file, ran by the room.

8 Q. You saw all three of them leave?

9 A. Yes Ma'am, ran by the room.

10 Q. What did you do then?

11 A. I got up. I don't know why because I ain't had

12 nothing, but I kind of ran behind them, but when I got to the

13 door, I ain't seen nobody.

14 Q. Did you see that Allen was in the hallway?

15 A. When I first got up, I ran to my door and I looked to

16 the left. I seen him laying down, but I didn't know if he

17 was dead or not, so I guess I just like ran -- ran to the

18 door, but I didn't see them, so I ran on outside and I went

19 across the street, because my mind was going -- I wasn't

20 thinking, because like I said, I gave them my phone and

21 everything, and Allen had just got a phone in the house that

22 Saturday, but I wasn't thinking, so I ran across the street

23 and seen this girl outside and I told her to call 911, my

24 brother had just got shot, so she said she ain't had no

25 phone.

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1 So I ran back across the street, and some kids stay
2 right beside Allen, and there was a lot of cars in the yard,
3 so I went over there and started beating on their door, but
4 nobody never came to the door, so when I ran back in the
5 house, I seen -- I was yelling for Frankie, and I was telling
6 her to call the police, call the police, and I went in the
7 room, and when I pull up the mattress, I seen my phone, so I
8 call 911, and come to find out, Frankie was calling at the
9 same time.

10 Q. You called 911, and she was calling 911 ---

11 A. I think so.

12 Q. --- at the same time?

13 All right, and did the police get there fairly
14 quickly?

15 A. Yes Ma'am.

16 Q. And when they get there, did you tell them about your
17 suspicions?

18 A. Yes Ma'am.

19 Q. What did you tell them?

20 A. The thing was, I told them I thought Dora had
21 something to do with it because everything that was going
22 down. He always was a good guy and he ain't had no problems
23 with nobody. Everybody had loved him. I don't care, because
24 he'd been staying in Florence with us for a while. Everybody
25 in Florence loved him, so everybody -- he had been a good

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1 guy, so everybody liked him, so I know he ain't had no
2 problems with nobody.

3 Q. Now, let's just -- let's be honest about it. He did
4 -- he did sell some cocaine, ---

5 A. Yeah.

6 Q. --- did he not?

7 A. Well, at the time -- I know he went to jail back in
8 the day for selling -- selling drugs, but like I said, I was
9 working in North Carolina. As far as what he was doing then,
10 which I heard he was selling drugs, but I didn't know what
11 was going on. I just came because I ain't seen him in a
12 while.

13 Q. So you didn't see him selling any drugs?

14 A. I ain't -- I ain't seen none of that.

15 Q. Did you see people coming in and out of that house
16 buying drugs?

17 A. No, it wasn't that. In fact, the only people came
18 over there the whole time I was there, his uncle came over
19 there one time. Then this guy we know worked for Coastal,
20 and we been knowing him since we been young, he came over
21 there and seen him one time.

22 Q. So that whole -- that whole week, the only people you
23 remember seeing was maybe two people?

24 A. Well, the Sunday before it happened, my nephew,
25 Marcus, his girlfriend, and he brought his little daughter

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1 over there to see Allen for the first time. He seen his
2 daughter Sunday and got killed Monday, and other than that,
3 ain't nobody really was over there.

4 Q. All right, and did you -- there was not a lot of
5 activity going on in that house. And did you show the police
6 where Ladorrean Collington lived?

7 A. Well, when -- when it all went down, I think the
8 officer name was San- -- Mr. Santiago or something, he was
9 taking me over to see if I could identify somebody, but I was
10 telling him the whole time I ain't never seen nobody face, so
11 when we was walking over there and then they was -- it's in
12 the same apartments, but he was taking me over there, and
13 when we was walking through, I seen Dora out there in front
14 of her -- in her parking lot.

15 Q. You saw Ladorrean in her parking lot?

16 A. Yes Ma'am, and I was like y'all taking me to the wrong
17 place. I say that's the girl I was talking about right
18 there, and he say, well, we got somebody car around here, so
19 I guess they had snatched somebody up and want to see if he
20 had something to do with it, you know, but I was telling him
21 I can't I.D. nobody because I ain't never seen no face.

22 Q. All right, and did -- and when you saw her in that
23 parking lot, did she speak to you?

24 A. She was like -- her words was what's up, Loc? Allen
25 all right, like that, and so I was wondering. That's how I

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1 knew she had something to do with it because I was wondering
2 how you know, you know what I'm saying, it's about Allen?
3 She didn't know why the police was walking with me and for
4 her to come out and say that, that's why I thought she really
5 had something to do with it.

6 Q. Did she have any particular look on her face?

7 A. She had a little smirk on her face.

8 Q. A smirk on her face?

9 A. Yeah, a little grin.

10 Q. What was your interpretation of that -- that little
11 grin?

12 **MR. McCOLLUM:** Objection, Your Honor.

13 **THE COURT:** Sustained.

14 Q. Let's go back now that we've got our player back, and
15 I think I had asked you before to take a look at State's
16 Exhibit 72, and tell me what that is again.

17 A. That was like when she had called that Friday. I
18 guess she had went to Aynor and ran into Fa and try to start
19 a fight with Fa, but Fa wouldn't fight her because she was
20 pregnant, so she call my phone and like, yeah, I'm in this
21 bitch face now, so Allen was like, hang up on the bitch, and
22 he grab my phone and hung it up, but everything she was
23 saying went to the voice message at the time.

24 It wasn't my phone -- well, the girl I was going with at
25 the time, she gave me the phone so she could stay in touch

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1 while I was in -- down here.

2 Q. Okay, but did you have an opportunity to listen to
3 this tape?

4 A. Yes Ma'am.

5 Q. All right, and does this disk here that you listened
6 to, does it fairly and accurately represent the message ---

7 A. Yes Ma'am.

8 Q. --- that she sent to you on your telephone?

9 A. That was left on my voice mail.

10 MS. von HERRMANN: I would move to have this admitted
11 into evidence.

12 THE COURT: Mr. McCollum, any objection?

13 MR. McCOLLUM: Yes sir, Your Honor, just based on the
14 earlier motion we had prior to the start of the trial.

15 THE COURT: All right. I'm going to allow State's 72
16 in evidence over the objection of the defendant, Collington.

17 Mr. Hazzard, any objection from your client?

18 MR. HAZZARD: No sir.

19 THE COURT: All right. It's in evidence ---

20 MR. McCOLLUM: Also, Your Honor, just for the
21 record, ---

22 THE COURT: Yes sir?

23 MR. McCOLLUM: --- we -- we've been going through a lot
24 of this stuff, and I would just like for the record to
25 reflect that I had objected earlier in the pre-trial motions

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1 and I would like for that objection to be ongoing.

2 **THE COURT:** You raised other issues and I've ruled on
3 them. I can't tell you how you need to operate to protect
4 the interest of your client, Mr. McCollum. Thank you.

5 (DVD OF VOICE MAIL ADMITTED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBER 72.)

7 (STATE'S EXHIBIT NUMBER 72, DVD OF VOICE MAIL, IS
8 PUBLISHED TO THE JURY.)

9 Q. Is that a message that you had there on your phone?

10 A. Yes Ma'am, but I didn't know the message was on the
11 phone 'til a couple of days after it happened because I guess
12 my ex-girl, she had checked the message. She seen me on the
13 -- on the news, so she didn't know what -- what was
14 happening, so she checked the messages. Then that's when she
15 told -- called my brothers and was ---

16 **THE COURT:** Sustained. That's all right. Just move
17 along.

18 **MS. von HERRMANN:** I don't have any further questions
19 for this witness. Please answer any questions they may have.

20 **THE COURT:** All right, cross-examination, Mr. McCollum.

21 **MR. McCOLLUM:** May it please the Court, Your Honor.

22 **THE COURT:** Yes sir.

23 **CROSS-EXAMINATION BY MR. McCOLLUM:**

24 Q. Mr. Graham, are you okay here to answer questions?
25 Yes sir?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. When you said that the individuals had come over to
3 the house where you were staying on Barberry Court and you
4 followed them and one of them turned to you and said, quote,
5 y'all got some work over there, said work, what does work
6 mean?

7 A. In the street, that mean drugs.

8 Q. And so if somebody says you've got any work, that
9 doesn't mean they want a job, right?

10 A. No, it don't.

11 Q. And this is just common, I say parlance, but just
12 common -- commonly known that if somebody says you got some
13 work, they mean you got some drugs?

14 A. Yeah.

15 Q. And you just -- you just know that?

16 A. I used to be in the street myself before I start work,
17 so yeah, I -- I knew that.

18 Q. All right, so -- so you just knew what that meant,
19 right?

20 A. Off the muscle.

21 Q. I'm sorry?

22 A. Yes, I did, because due to the fact for a strange guy
23 just come and say you got some work, like that. That's --
24 like I said, I used to be in the street, so I already knew
25 what it meant.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. And when you say drugs, does it -- is work a specific
2 kind of drug?

3 A. Well, not -- not particular. It's according to what
4 you mess with. No. Work could mean crack cocaine or
5 cocaine.

6 Q. So work could mean crack cocaine, right? is that
7 correct?

8 A. Yeah.

9 Q. And work could mean cocaine, right?

10 A. Right.

11 Q. Could work mean marijuana?

12 A. I ain't never heard nobody call marijuana work.

13 Q. Does work -- is heroin, is that work?

14 A. I don't know about heroin because I ain't never dealt.
15 with none of that.

16 Q. How long have you known what work means, and I don't
17 mean -- I'm not trying to pin you down here or anything, but
18 in terms of using the phrase, work, you know, this is, you
19 know, 2011. That was 2008. Had you known work to mean crack
20 cocaine or cocaine for a long time at that point?

21 A. Yes, I did.

22 Q. When did people, to your knowledge if you know, when
23 did people start calling crack cocaine or cocaine work?

24 A. I don't -- different people got different lingo.

25 Q. Was this local to South Carolina?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 A. Like I say, you could go -- come to Conway, they say
2 one thing. Florence say something else, but that just me
3 being in the street, I know -- know what he was talking
4 about.

5 Q. So Conway cocaine or Conway crack cocaine is work?

6 A. I ain't saying no Conway. I said different people got
7 different lingo.

8 Q. Okay. I must have misunderstood you. Now, you lived
9 outside of this area for some time, right?

10 A. Right.

11 Q. Back and forth between Horry County and where,
12 North ---

13 A. North Carolina, Florence.

14 Q. Is that about as far away?

15 A. Nah. I also been on the West Coast, Seattle,
16 Washington.

17 Q. Do they call it work out there?

18 A. Yes, they do.

19 Q. They do?

20 A. Well, when I was there, they did.

21 Q. So even out on the West Coast, out in Seattle,
22 Washington, if somebody says you got any work, you know
23 that's what they're talking about?

24 A. Nine times out of ten.

25 Q. And that would be the context of who is saying it,

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1 right?

2 A. It's -- I mean, ---

3 Q. Because if somebody went with a job application down
4 to Wal-Mart and said you got any work, they would be thinking
5 about a job, right?

6 A. That's a whole -- that's a whole different category
7 right there.

8 Q. But if somebody is looking to rob somebody and they
9 want to know if they got some work in the house, then that's
10 what they're talking about, right?

11 A. I guess so.

12 Q. And if somebody is looking to buy something, to buy
13 some cocaine, to buy some crack cocaine, that's what they
14 would be talking about, right?

15 A. I guess so.

16 Q. You guess so or you know so?

17 A. It's according to the individual who talk, what's
18 their main purpose.

19 Q. Back on -- back in April of 2008, say the Solicitor
20 asked you some questions about some dates here, let's say
21 April the 8th of 2008, a Tuesday. At that time, you knew
22 Ladorrean Collington, right?

23 A. Yes.

24 Q. Yes? Yes?

25 A. Yes.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. And she and Allen or Big A, I think you called him,
2 picked you up in Florence or something, right?

3 A. Yes.

4 Q. And she went up there in a vehicle with him and they
5 picked you up so you could come down to Conway, right?

6 A. Yes. Well, ---

7 Q. And so she ---

8 A. Well, excuse me. Really, that's what end up
9 happening, but their main reason wasn't coming to get me.
10 Once he got to Florence and I see him, he's like we ain't
11 seen each other in a minute. Let's go hang -- you want --
12 why don't you come down here and hang out with me, because I
13 wasn't intending on going to Horry because I didn't know I
14 was going to even see Allen.

15 Q. So you just ran into him?

16 A. Well, she -- I guess she was going to the flea market,
17 so she know he got some brothers stay in Florence, so he got
18 dropped off at my brother house while she was at the flea
19 market.

20 Q. And then he hadn't seen you, so she and he brought you
21 back to Conway, right?

22 A. Yes.

23 Q. So at that point, bringing you down here, I mean, she
24 was helping you come down here and spend time with him,
25 right?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

- 1 A. Well, if you want to say that.
- 2 Q. Well, she didn't say don't -- you can't get in the
3 car, did she? Right?
- 4 A. No, she ain't said that.
- 5 Q. She didn't have a problem with you coming to Conway to
6 see him, right?
- 7 A. Why would she?
- 8 Q. And -- no reason, and -- and Mr. Smith, that's your
9 brother?
- 10 A. Not blood, but you could say he's my brother.
- 11 Q. He was that good of a friend?
- 12 A. Yes.
- 13 Q. So -- and when you came down here, you had -- you put
14 some clothes or some of your stuff over at Dora's apartment,
15 right?
- 16 A. Yeah, because that's who I was riding with, and I
17 basically left the clothes in her truck because I thought we
18 was coming right back because he told her we was coming back.
- 19 Q. Okay, so you left your -- you rode down here in her
20 truck or her SUV, right?
- 21 A. Uh huh (**indicating positive**).
- 22 Q. Right?
- 23 A. Yes.
- 24 Q. So she brought you here from Florence?
- 25 A. Yes, she did.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. And did you -- were you going to spend some time at
2 her -- at her house or her apartment?

3 A. I -- I was coming to spend time with Allen. I didn't
4 know what his plans was.

5 Q. And at the time, I think Allen's girlfriend, or you
6 call her Fa?

7 A. Yes.

8 Q. Frankie? Is her name Frankie?

9 A. Yes.

10 Q. And she had come into town from somewhere else, right?

11 A. She from Jersey, but I wasn't -- I don't know when she
12 came in or what.

13 Q. And you had some issues about -- you had some problems
14 -- I don't know how to say it, but you had some problems
15 getting along with her, right?

16 A. I ain't never had no problems getting along with
17 Frankie.

18 Q. So you deny that?

19 A. I ain't -- I ain't -- I don't -- never had no problems
20 with Frankie.

21 Q. All right, so at the time that you saw Ms. Collington,
22 Ladorrean, she was pregnant, right?

23 A. Well, I didn't -- I didn't know she was pregnant. I
24 heard later on she was pregnant. I didn't know if she was
25 pregnant or not. We didn't get into all that.

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- 1 Q. You said -- you just made a statement where you said
2 that this other lady didn't want to fight her or stand up to
3 her because she was pregnant, right?
- 4 A. That's after the fact.
- 5 Q. All right, but whether it was before the fact or after
6 the fact, but standing here now, at that time in April, she
7 was pregnant, right?
- 8 A. Yeah, I guess so.
- 9 Q. And since that time, she had a baby, right?
- 10 A. Yes.
- 11 Q. And that's Allen's baby, right?
- 12 A. I don't know if it's Allen's baby or not.
- 13 Q. You don't know that. Now, have you ever been around a
14 pregnant woman?
- 15 A. Yeah, I've been around a pregnant woman before.
- 16 Q. Are they emotional?
- 17 A. Yeah.
- 18 Q. Have you ever been around a pregnant woman whose
19 baby's father takes up with another woman a hundred yards
20 away? Have you ever seen anything like that?
- 21 A. Yeah. I went basic through the same thing myself.
- 22 Q. You did? Okay.
- 23 A. But it was the other situation.
- 24 Q. And does that upset normal people?
- 25 A. In a way.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. In a way. Is it normal for a pregnant woman to be mad
2 if the father of her child is living and taking up with
3 somebody else?

4 A. But -- but if -- if -- you got to -- you got to think
5 because she knew that he wasn't just messing with her, so why
6 all of a sudden that get you that upset?

7 Q. Well, I'm not talking about that. I'm just saying
8 she's pregnant, right?

9 A. Yeah.

10 Q. And whether you know that Allen is the father of her
11 baby, unborn child, or not, you know that Allen was laid up,
12 sleeping over there, living with Frankie, right?

13 A. Yeah.

14 Q. And you know that this Dora, as you call her,
15 Ladorrean, she didn't like it, right?

16 A. Yeah.

17 Q. And she would try to call Allen and talk to him,
18 right?

19 A. Yeah.

20 Q. Right?

21 A. Yes.

22 Q. And there's nothing unusual about a woman who is
23 pregnant trying to call the father of her unborn child, is
24 there?

25 A. Are you asking me that?

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1 Q. With all due respect, Mr. Graham, I am asking you
2 that. I am asking you. When I am asking questions in here,
3 I am asking you.

4 THE COURT: Mr. McCollum. You know the rules. If you
5 have a problem about how a witness is answering a question,
6 you direct that to the Court. You do not instruct the
7 witness. Thank you.

8 MR. McCOLLUM: Thank you, Your Honor. I'm sorry.

9 Q. Mr. Graham, ---

10 A. Yes sir.

11 Q. --- Ms. Collington, you testified in response to the
12 Solicitor's questions, you testified here today under oath
13 that Ms. Collington kept trying to call Allen Smith?

14 A. Yes.

15 Q. Right?

16 A. Yes.

17 Q. And there's nothing unusual about a pregnant woman
18 trying to contact the person who is the father of her unborn
19 baby, is there?

20 A. There ain't nothing unusual.

21 Q. And you also testified that the deceased, your friend,
22 Allen Smith, Big A, would not on many occasions take her
23 calls, right?

24 A. That's right.

25 Q. He wouldn't take the call, right?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

- 1 A. He wouldn't take them.
- 2 Q. And he even said some derogatory things about her,
3 right?
- 4 A. And that was going back and forth.
- 5 Q. He called her names and said nasty things about her,
6 right?
- 7 A. Right.
- 8 Q. Okay.
- 9 A. Back and forth.
- 10 Q. And then when she -- when he wouldn't take her calls,
11 she would call you, right?
- 12 A. A couple of times, yeah, she called me.
- 13 Q. She's calling you, right?
- 14 A. Trying to get in touch with him.
- 15 Q. And that makes sense, doesn't it, because you lived
16 with him, right?
- 17 A. Yeah, I was staying there that week.
- 18 Q. You're staying right there with him. You see him
19 every day, right?
- 20 A. Yeah.
- 21 Q. So when you called her -- or excuse me -- when she
22 called you, you'd call her back, right?
- 23 A. A couple of times.
- 24 Q. When she called you, you'd call her back, wouldn't
25 you?

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- 1 A. A couple of times I did call her.
- 2 Q. The day that you went to get -- you went to get two
- 3 cigars and something -- what was the other thing?
- 4 A. A two liter Sunkist.
- 5 Q. A two liter Sunkist, okay, so you went to get -- you
- 6 wanted to go to the store, right? Right?
- 7 A. Yeah.
- 8 Q. And you didn't have a car, right?
- 9 A. No, I didn't. Well, I had a car, but it wasn't down
- 10 here.
- 11 Q. So you -- so when you went to the store to get two
- 12 cigars and a two liter of Sunkist -- what's that, a orange
- 13 drink?
- 14 A. Yes.
- 15 Q. All right. You went to the Scotchman, right? Yes?
- 16 A. Yes.
- 17 Q. And the Scotchman -- you said you walked by where Dora
- 18 lived, right?
- 19 A. Yes.
- 20 Q. And by that, you mean Ms. Collington, right?
- 21 A. Yes.
- 22 Q. And you walked down a path?
- 23 A. Well, it's not really a path. It's like I say, behind
- 24 her apartment. It's like a little spot and it's a little
- 25 ditch you go over to get to the other section it is on where

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1 Allen was living.

2 Q. So you went from where you were staying with Allen to
3 get to the Scotchman, you went down whatever you call it, a
4 path or ---

5 A. Yeah.

6 Q. --- anything you want to call it, which goes right by
7 the apartment complex where she was living, right?

8 A. Right.

9 Q. And that's where people walked, right?

10 A. That was the way to go to the store unless you're
11 going to walk all the way back around the street down 544.

12 Q. So that wasn't -- who would do that, right?

13 A. Right.

14 Q. So people that lived over there in Barberry Court all
15 knew -- the college students, anybody that lived over there
16 that wanted to go to that Scotchman could just walk right by
17 the unit where Ms. Collington lived, right?

18 A. Well, I don't know -- not just right by, because I
19 don't think she stayed on the corner. When -- she stayed in
20 the same building. You had to go by her building, but not
21 right by her house, but you had to go by the complex she
22 stayed in.

23 Q. It goes near there?

24 A. Yeah.

25 Q. So earlier you testified that people -- you saw those

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1 three guys looking for work going down the path, did they go
2 to her house?

3 A. No, they didn't.

4 Q. So they went on the same path that you went on, is
5 that true?

6 A. Right.

7 Q. So at that time if they were going to the store, they
8 wouldn't have gone any closer to her house than you would
9 have gone that day if you were just walking straight to the
10 store, right?

11 A. You're right.

12 Q. And people will be using that path all the time,
13 right?

14 A. Well, I guess so.

15 Q. I mean, there's hundreds of people living in that area
16 of Barberry Court, right?

17 A. Really, I don't know how many people live out there.

18 Q. Well, there are duplexes everywhere, aren't there?

19 A. Yeah, it is.

20 Q. I mean, there's a hundred or fifty something duplexes
21 there, aren't there, right?

22 A. I guess so.

23 Q. Every other -- you look down the street this way, you
24 look down the street that way, or that way, all you see are
25 those same duplexes, right?

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1 A. Right.

2 Q. And when you go down the street, there will be people
3 out there and you see people coming and going, right?

4 A. Well, not all the time. This particular day, that's
5 the first time I ever seen people just standing out there
6 chillin' like that. All before I walk through there and
7 nobody would be standing around, but that particular day, it
8 was a good day, so a lot of people was out.

9 Q. Now, when you said that you went down the path to get
10 the cigars and the orange soda, you said that you stopped by
11 her house, right?

12 A. Yes sir.

13 Q. And she wasn't home, right?

14 A. Right.

15 Q. And then -- this is Sunday, April the 13th, right?

16 A. On Sunday -- Sunday.

17 Q. The day before your house was robbed.

18 A. That wasn't no Sunday. You're trying ---

19 MS. von HERRMANN: I'm going to -- I'm going to object.
20 That's a mischaracterization of his testimony.

21 A. --- to cross me up.

22 THE COURT: I'm going to allow the cross-examination.
23 You may proceed, sir.

24 Q. Well, all right, maybe I don't understand the
25 testimony. Let me back up.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 A. I say it was Sunday me and my nephew and Allen was
2 chillin' all day. I didn't go by her house Sunday. I didn't
3 say that.

4 Q. So what day did you go by -- what day did you get the
5 cigars and orange soda?

6 A. That was Monday, the day it happened.

7 Q. Oh, I'm sorry, so it was the same day that your house
8 was broken into, right, ---

9 A. Yes sir.

10 Q. --- the same day, right?

11 A. Yes sir.

12 Q. Okay, I'm sorry. So even though the previous Tuesday
13 you thought she was threatening somebody and dangerous,
14 right?

15 A. Yes.

16 Q. I mean, I don't have to go through all that again. I
17 mean, you testified that she was mad and angry ---

18 A. Yes.

19 Q. --- and you basically were afraid of her, right? Is
20 that wrong?

21 A. I ain't said I was afraid of her.

22 Q. Okay, good; good, because on Monday, April the 14th
23 when you went to the store to buy two cigars and two liters
24 of Sunkist, you went to her house, right?

25 A. Yeah.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. The same woman that chased you down a couple of days
2 earlier that you were looking back, didn't know if she had a
3 gun or something?

4 A. Yeah, and ---

5 Q. Her, quote, pardon my French, her, quote, shit?

6 A. Yeah.

7 Q. The same woman that you were running from, right?
8 Right?

9 A. Yeah.

10 Q. That you didn't know if she had gotten her shit,
11 meaning a gun, right?

12 A. Right.

13 Q. Right, that had come and busted out a window, right?

14 A. Right.

15 Q. That the police had been called on, right?

16 A. Right.

17 Q. In going to get your cigars and your two liters of
18 orange soda, you stopped by the house?

19 A. Yes, I did.

20 Q. So you were going to see her, right?

21 A. And do you want me to tell you why?

22 Q. I didn't ask you why.

23 A. All right.

24 MS. von HERRMANN: Well, I would ask him to be
25 allowed ---

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1 THE COURT: Solicitor ---

2 MS. von HERRMANN: --- to explain his answer.

3 THE COURT: I don't know that he was explaining his
4 answer, but you can certainly deal with it on the Redirect.

5 Q. So for whatever reason, okay, you went and stopped by
6 her house, right?

7 A. Yeah.

8 Q. Right? Yes?

9 A. Yes.

10 Q. I'm sorry. It's just the way we do it. You've got to
11 say ---

12 A. I said yes. Yes.

13 MR. McCOLLUM: I'm sorry, Judge. I apologize.

14 Q. So ---

15 MR. McCOLLUM: Your Honor, may I ---

16 THE COURT: Do you want me to say anything. Do you
17 wish me to instruct the witness in any way?

18 MR. McCOLLUM: Not at this time, Your Honor.

19 THE COURT: Thank you. Continue on.

20 MR. McCOLLUM: I'm sorry, Your Honor. I just have
21 certain habits.

22 Q. So not only did you stop by the house, you called her,
23 right?

24 A. Yes, I returned her call.

25 Q. You called her, right?

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- 1 A. Yes.
- 2 Q. And she didn't answer, right?
- 3 A. No, she didn't answer.
- 4 Q. And you either left a message or your phone indicated
- 5 -- or her phone indicated that you had called her, right?
- 6 A. Yes, I did call.
- 7 Q. And then she called you back, right?
- 8 A. I returned her call; she didn't answer, and she called
- 9 me back.
- 10 Q. And there's nothing unusual about you calling somebody
- 11 and them calling you back, right?
- 12 A. Right.
- 13 Q. That's not suspicious, is it, that if you call
- 14 somebody, they call you back, right?
- 15 A. Right.
- 16 Q. That's normal, isn't it?
- 17 A. Well, when you're asking me where I'm at. Allen
- 18 should have been her concern. Why she was asking was I'm in
- 19 the house or not. That's suspicious.
- 20 Q. Okay, all right, so that's suspicious, okay, but
- 21 that's a suspicion that you developed later, right?
- 22 A. (No response.)
- 23 Q. You weren't suspicious of her when you tried -- you
- 24 stopped by her house, were you?
- 25 A. (No response.)

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1 Q. Sir?

2 A. I wasn't suspicious. I was basically --
3 called me, I stopped by her house to see what she --

4 Q. All right.

5 A. That's why I stopped by her house.

6 Q. And you weren't doing anything to avoid her?

7 A. I was trying to keep the peace, because to tell the
8 truth, she had -- the police -- and I say I ain't came down
9 here to get caught up in their situation. I was just trying
10 to make it back home and get my job back because I was on
11 leave, so I was trying to keep the peace between them, and
12 that's why when I did go to her house, that's what I told
13 her, give him a chance to call you when he calm down because
14 you did bust out the windows.

15 Q. All right, and you saw her bust out the windows?

16 A. No.

17 Q. You heard her bust out the windows?

18 A. I heard the window bust and her truck went back up the
19 street.

20 Q. And she left?

21 A. And she left.

22 Q. And that was that?

23 A. That particular day, because the police came over
24 there and stayed over there because probably like five or six
25 of the county cops play football in high school with Big A,

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 so they stood over there with us until it was time for them
2 to get off and talk to us.

3 Q. And in response to the Solicitor's questions, you
4 talked about Tuesday, April the 8th; you talked about
5 Thursday, April the 10th, and then Friday, April the 11th,
6 and then Sunday the 13th, and then also about going to the
7 store, which was actually on the 14th, and I apologize for
8 getting that wrong, but do you know what day it was that she
9 broke out the window?

10 A. Let me see. I think that was the Tuesday if I'm not
11 mistaken.

12 Q. And when that happened, somebody, a bystander or
13 somebody you didn't even know, called the police, right?

14 A. Yeah.

15 Q. And once the police were called, the police came out
16 there, right?

17 A. Right.

18 Q. And you knew who -- or you knew who had -- or you knew
19 who that you were running from? You knew it was Dora, right?

20 A. Right.

21 Q. And -- and Mr. Smith knew that, too, right?

22 A. Right.

23 Q. And then so there's no question that the police would
24 know that she got mad and allegedly or did, or whatever,
25 knocked out the window, right?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 A. Right.

2 Q. So that was all out in the open, right

3 A. Right.

4 Q. In fact, everything she did to show her anger or
5 frustration with Allen Smith was out in the open where
6 anybody could see it, right?

7 A. That I know of.

8 Q. And so she called attention to herself by doing those
9 things, right?

10 A. You're right.

11 Q. And so that would draw the police's attention to her
12 as being somebody that was mad at him or committing assault
13 or domestic violence or act against him, right? That would
14 just put the police on her, right?

15 A. Right.

16 Q. They would be very much aware of her, right?

17 A. They already was on her because when the police came
18 to the scene, he said I don't know why they ain't snatch her
19 up because she bust out your window before, so I don't know
20 why they ain't snatch her up for that. That's what a police
21 said.

22 Q. And that's not -- that's not consistent with trying to
23 set up a housebreaking or a robbery or something, is it?

24 A. Well, that could have got in her mind later on. You
25 never know. I can't say what she was thinking at the time.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 Q. I'm not -- I'm not asking you to say what she was
2 thinking, but if somebody is going to go do something
3 nefarious or go do something terrible, she wasn't very well
4 positioned to do that, was she?

5 MS. von HERRMANN: Object; calls for speculation.

6 THE COURT: Sustained.

7 Q. Because you had observed her behavior and observed her
8 anger, you told police to check her out, right?

9 A. Yes.

10 Q. She lived right behind there, right?

11 A. Yes.

12 Q. She was mad at him, right?

13 A. Yes, she was.

14 Q. There is even a path that goes from that subdivision
15 over to her apartment, right?

16 A. Yes.

17 Q. Right?

18 A. It's a path. Yeah, it lead to by the apartments.

19 Q. And it's just -- that's it, that's what you were
20 thinking, right?

21 A. What you mean, what I -- that's what I was thinking?

22 Q. Well, when these individuals came in the house on
23 Barberry Court, you said they were wearing -- they were
24 wearing hoods and had their shirt pulled up over their face,
25 right?

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 A. Yes.

2 Q. Did you see their hands?

3 A. Well, I had the gun in my face. I seen -- well, I was
4 looking more at the gun than his hands. You know, you don't
5 notice too much when you got a gun in your face.

6 Q. I respect that. Were they wearing gloves?

7 A. I don't think so. I can't remember.

8 Q. Nobody was wearing gloves, right?

9 A. I can't remember.

10 Q. When they went out the door, was -- the door had been
11 busted open, right?

12 A. Yes.

13 Q. When they went out the door, was the door open or
14 closed?

15 A. I think it was still open.

16 Q. I'm sorry. I -- did you answer? I didn't ---

17 A. Yes, I did. I say I think it was still open.

18 Q. When you saw them go out the door, did you see anybody
19 touch the door?

20 A. Like I said, when I come out the -- they ran by my
21 room when they was running out the door. I ran behind them,
22 so I couldn't see nothing. They was already through the door
23 when I was coming out my room, so I didn't see them touching
24 nothing or what.

25 Q. At the time that you heard the door being broken down,

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

1 because your door was broken down, the outside door where you
2 come in was broken in, right? Yes?

3 A. Yes.

4 Q. You went in or retreated to your bedroom, right?

5 A. When the door was kicked in, I jumped up and went,
6 like I said before, and went and looked to see what was going
7 on, ---

8 Q. I understand.

9 A. --- because I thought it was the police, like I said.

10 Q. You thought the police were coming in for you?

11 A. No, not for me. I thought -- really I thought the
12 police was raiding his house.

13 Q. Raiding Mr. Smith's house?

14 A. Yes.

15 Q. And why would you think the police would raid Mr.
16 Smith's house?

17 A. Why did I thought they would be raiding his house?

18 Q. Yes sir.

19 A. I thought you said yourself he was out in the streets.

20 Q. And what does that mean?

21 A. He was out in the streets.

22 Q. Can you please explain to me what does that mean, out
23 in the streets?

24 A. I guess he was still hustling.

25 Q. Still hustling, and please sir, if you will bear with

ANTHONY BERNARD GRAHAM - CROSS BY MCCOLLUM

1 me, what does that mean?

2 A. Selling drugs.

3 Q. Okay, work?

4 A. If you want to use that.

5 Q. Okay. Is that a yes?

6 A. Yes.

7 Q. Okay, I understand. You don't want to talk about it,
8 right? You don't want to say anything bad about him, right?

9 A. It ain't that I don't want to say nothing bad about
10 him. I want to tell the truth like I been doing.

11 Q. I respect that. When you went in your bedroom, did
12 you close the door?

13 A. No, I did not.

14 Q. So you left the door open?

15 A. Yes, I did.

16 Q. All right, and while you were in the bedroom with the
17 air mattress over you, did anybody else close your door?

18 A. Not that I know of.

19 Q. When -- when Mr. Smith was in his bedroom, and he was
20 in there with Fa or Frankie, right?

21 A. Yeah.

22 Q. As far as you know, they were sleeping, right?

23 A. Right.

24 Q. It was what, 3:30 in the afternoon, right?

25 A. Something like that.

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM

- 1 Q. Something like that.
- 2 A. I don't remember the exact time.
- 3 Q. And that was normal, for him to be in there sleeping
- 4 all day, right?
- 5 A. Well, I ain't going to say it's normal for him to be
- 6 -- like I said, I just got there, so I don't know his
- 7 everyday routine.
- 8 Q. That's right. You had only been there a week, right?
- 9 A. Yes.
- 10 Q. So that was normal for the week you were there, right?
- 11 A. Well, not every day he'd get up at three o'clock.
- 12 Sometimes he might rest late, just like anybody.
- 13 Q. But he wasn't -- he wasn't getting up going to work
- 14 somewhere or on a job, right?
- 15 A. No.
- 16 Q. All right. When he was in his bedroom, his bed, or in
- 17 there with Frankie, was his door open or closed?
- 18 A. His door was closed.
- 19 Q. All right, and would he keep his door locked or would
- 20 he keep his door unlocked?
- 21 A. I couldn't tell you none of that.
- 22 Q. To your knowledge, was his bedroom door -- was it
- 23 kicked in? Do you know?
- 24 A. I don't -- I don't -- I don't think so.
- 25 Q. So whoever came in the house and went in his bedroom,

ANTHONY BERNARD GRAHAM - CROSS BY McCOLLUM
CROSS BY HAZZARD

1 at least the first person there would have had to have put
2 their hand on the door knob and open it to go inside, right?
3 A. Well, like I told you before, I had heard him say, yo,
4 Loc, and then I heard a scuffle came out, so he could have
5 came out the door, so I can't just say that. He could have
6 met them in the hallway. I don't know because I wasn't back
7 there. I was in my room.

8 Q. All right.

9 A. And I can't see through the walls.

10 Q. When the police came in and did the crime scene of the
11 house, you weren't present then, right?

12 A. Not in the house, but I was outside.

13 Q. All right.

14 MR. McCOLLUM: Thank you, sir.

15 That's all I have, Your Honor.

16 THE COURT: Cross-examination, Mr. Hazzard.

17 MR. HAZZARD: I appreciate that, Your Honor. I would
18 ask that we take a short break ---

19 THE COURT: We will continue with this witness until
20 he's finished. Thank you. Continue on.

21 MR. HAZZARD: All right. Thank you, sir.

22 CROSS-EXAMINATION BY MR. HAZZARD:

23 Q. How are you today, Mr. Graham?

24 A. I'm all right.

25 Q. Okay. Now, I noticed when you took -- do you recall

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD
JURY OUT

1 talking to the police the day of the incident on April 14th
2 of 2008?

3 A. Yes, I remember talking to the police, a couple of
4 different -- every few minutes, they had a different officer
5 or whatever.

6 Q. I'm sorry, sir. I can't understand what you are
7 saying.

8 A. I converse with a couple of different officers.

9 Q. Yes sir, on April the 14th of 2008, is that correct?

10 A. Yes.

11 Q. Okay. I'm going to hand ---

12 **MR. HAZZARD:** May I approach, Your Honor?

13 **THE COURT:** Yes sir.

14 Q. Sir, I'm going to hand you a transcript ---

15 **THE COURT:** Y'all come talk to me, please.

16 **MS. von HERRMANN:** Your Honor, objection.

17 **THE COURT:** Yes. Y'all come over here and talk.

18 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

19 **THE COURT:** Ask the questions that you'd like to ask.

20 **MR. HAZZARD:** Your Honor, we have a matter to take up
21 outside the presence of the jury.

22 **THE COURT:** Ladies and gentlemen, go to your jury room,
23 please.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
25 **JURY.)**

JURY OUT/ON RECORD

1 **THE COURT:** Yes sir, Mr. Hazzard.

2 **MR. HAZZARD:** Your Honor, as the Court well knows, on
3 behalf of the defendant, Quentin Gause, I filed a motion
4 sometime ago for funding to obtain transcripts of the
5 State's ---

6 **THE COURT:** Yes sir. Let's just cut to the chase. You
7 can ask these -- ask this witness the questions that you'd
8 like to ask him. If you believe there are some problems with
9 his answers, you may then go to the audio interview. This
10 transcript is not an official court document. It's not an
11 official court proceeding. It is not done by anyone that has
12 court certification, so you go to the audio interview and you
13 may use that, but you may not use the transcript.

14 **MR. HAZZARD:** So I can't show it then and ask him if it
15 refreshes his recollection?

16 **THE COURT:** No, sir, because it is not -- I have no
17 proof that this is an accurate and true transcription,
18 because it was not done by a certified court reporter
19 authorized by the State of South Carolina. What you do have
20 is the actual audio interview between the police and the
21 witness. You may use that. If you are unsatisfied with his
22 answers and find there to be problems or issues, you
23 certainly may use that to show any changes that you believe
24 have been brought out by your questions.

25 **MR. HAZZARD:** All right, no problem.

JURY OUT/ON RECORD

1 **THE COURT:** All right?

2 **MR. HAZZARD:** No problem.

3 **THE COURT:** Very good, sir.

4 Ask the jury to come back in.

5 **MR. HAZZARD:** Your Honor, do you want to do that in a
6 stop and start fashion if I ask him a question and I don't
7 like his answer?

8 **THE COURT:** However you would like to proceed.

9 **MR. HAZZARD:** All right.

10 **THE COURT:** Do you have facilities to play the
11 recording? Do you have something to play the recordings?
12 Sir? Do you have something to play the recordings, the audio
13 interview?

14 **MR. HAZZARD:** No sir. I wasn't planning on doing that
15 today.

16 **THE COURT:** Did you bring the matter to the Court's
17 attention at any point in time to get any help from the Court
18 as to the situation?

19 **MR. HAZZARD:** Which situation might that be, Your
20 Honor?

21 **THE COURT:** What you're raising to the Court right now,
22 that you said you're not prepared for, you did not bring the
23 matter to the Court's attention at any time until now,
24 correct?

25 **MR. HAZZARD:** That is correct because the Court

JURY OUT/ON RECORD

1 authorized the transcriptions, which I indicated in my
2 motion ---

3 **THE COURT:** To use -- to use to help you prepare the
4 defense. You did not indicate -- you did not tell the Court
5 -- I did not authorize you in any Order to use them for
6 cross-examination.

7 **MR. HAZZARD:** Your Honor, in the motion I specifically
8 indicated that one of the purposes for the transcript would
9 be for the purpose of cross-examination.

10 **THE COURT:** I do not believe the Order allows you to
11 use them for cross-examination. It was not presented to me
12 in that fashion. It was certainly allowed to use for the
13 purposes of your defense.

14 You have the actual recording. You may use the actual
15 recording. Again, I have no factual information before me
16 that shows us this is an accurate and true transcript of the
17 proceedings.

18 **MR. HAZZARD:** Well, Your Honor, you have the
19 certifications of the court reporters themselves.

20 **THE COURT:** That she did the best job that she could
21 do.

22 **MR. HAZZARD:** Yes sir, as every court reporter
23 certifies, Your Honor.

24 **THE COURT:** But she is not a court reporter for the
25 State of South Carolina. She is a private court reporter.

JURY OUT/ON RECORD

1 She is not a court reporter for the State of South Carolina.

2 I will just tell you, it was not my understanding that
3 it was to be used for cross-examination purposes. It was to
4 be used so you could prepare the defense and know what was in
5 the transcripts for your help.

6 **MR. HAZZARD:** Your Honor, Paragraph 8 of the motions
7 says undersigned counsel is informed and believes that
8 certified transcripts of approximately sixteen hours of the
9 recorded statements of co-defendants and other potential
10 State's witnesses is necessary for full and appropriate
11 cross-examination of these witnesses.

12 **THE COURT:** I understand that.

13 **MR. HAZZARD:** And that said transcripts will help
14 ensure the veracity of the record regarding these statements,
15 as well as potentially save a great deal of time at trial
16 that would otherwise be spent listening to audio or reviewing
17 video of all or portions of multiple conflicting statements
18 made by multiple co-defendants to the police in the days
19 following the incident.

20 **THE COURT:** That's your motion, correct?

21 **MR. HAZZARD:** Obviously ---

22 **THE COURT:** Mr. Hazzard?

23 **MR. HAZZARD:** Yes sir.

24 **THE COURT:** That's your motion, correct?

25 **MR. HAZZARD:** Yes sir, that is my motion.

JURY OUT/ON RECORD

1 **THE COURT:** That is not my Order. That is not my
2 Order. That is not what I authorized.

3 **MR. HAZZARD:** Yes sir, you authorized the transcription
4 of the record.

5 **THE COURT:** To be done so to help you prepare your
6 defense. Again, you have the audio transcripts.

7 **MR. HAZZARD:** Okay.

8 **THE COURT:** You may play them.

9 **MR. HAZZARD:** But I would say that that is the reason I
10 misunderstood the Court's position and that is why I am not
11 in a position to play them at this time.

12 **THE COURT:** What do you need?

13 **MR. HAZZARD:** I would need to go back to the office and
14 get the disks, and I would need to go back to the office and
15 get an audio recorder.

16 **THE COURT:** Do you have the actual recordings,
17 Solicitor?

18 **MS. von HERRMANN:** If I don't have them up here -- I
19 can run downstairs and get those, and we have a laptop right
20 here that could be used.

21 **THE COURT:** All right. We'll take a break for five
22 minutes. If you will please go get the original transcripts
23 so that Mr. Hazzard can use them. Thank you.

24 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**
25 **PRESENCE OF THE JURY.)**

JURY OUT/ON RECORD

1 **THE COURT:** Re-take the witness stand, please sir.

2 **MR. HAZZARD:** May I refer to the transcript for my
3 purposes?

4 **THE COURT:** Absolutely. You just can't have the
5 witness say this is what he said, and so we're clear about
6 this, Mr. Hazzard, the reason that I'm not allowing you and
7 asking you to refer -- acknowledge to the original disk is,
8 again, this is a court reporter who is not certified by the
9 State of South Carolina to produce official court
10 transcripts. Therefore, it is a private court reporter who
11 is, I'm sure, doing the best job she can, but it is her,
12 then, interpretation. It has no court authority. It's her
13 interpretation of what the question was and this particular
14 witness's answer.

15 What I'm asking you to do is so this jury can have and
16 judge for themselves the actual question that was asked, the
17 actual answer given by this particular witness so the jury is
18 in the best possible position to interpret, and hear, and
19 decide for themselves if there is a conflict, not relying on
20 somebody who has no color of State authority to produce this,
21 again being her private interpretation of it, understanding
22 that's helpful to you to prepare a defense, but it cannot be
23 recognized by the Court.

24 So what I'll be glad for you to do is you can question
25 him and ask him, you know, the questions you'd like to. If

JURY OUT/ON RECORD

1 you think there are conflicts and he gave a different answer,
2 in using your transcript to aid you in that and you think
3 there is, then you can go to the actual recording and play
4 that for the jury, and they can judge for themselves whether
5 or not there's an issue or a problem, all right?

6 **MR. HAZZARD:** All right. As we were playing it on the
7 equipment that belongs to the Solicitor's Office and using
8 their original disk, I would ask Assistant Solicitor
9 Spratlin, and I believe that's his laptop, so I will be
10 asking him if that becomes necessary.

11 **THE COURT:** You don't have any problem with that,
12 Solicitor?

13 **MR. SPRATLIN:** No sir, Your Honor.

14 **THE COURT:** Very good.

15 **MS. von HERRMANN:** Well, as long as they provide us
16 with the number so we don't look like we're fumbling around.

17 **THE COURT:** Well, I appreciate that. I mean, do you
18 have a copy -- I assume what you're going to try to do is
19 refer to some index of some kind that you have prepared?

20 **MR. HAZZARD:** No sir. I do not have an index with the
21 time and signature ---

22 **THE COURT:** So what is it that you intend to do?

23 **MR. HAZZARD:** I intend to ask him a series of questions
24 and if he answers inconsistently with his statements as I
25 know him -- know them to be on the transcript of record, I

JURY OUT/ON RECORD

1 would then ---

2 THE COURT: Again, it's not a transcript of record.

3 MR. HAZZARD: Yes sir, the transcript. If he answers
4 inconsistently in one or more particulars, then I would
5 simply ask that his statement be played to the jury so they
6 could make their determination.

7 THE COURT: No sir. You can go to the actual questions
8 and the answers. We're not going to play the entirety of the
9 transcript. The problems that you have, you could go to
10 those particular parts of the transcript and have those
11 played, but not the entirety of the transcript. That is not
12 proper cross-examination.

13 MS. von HERRMANN: Your Honor, ---

14 THE COURT: Yes Ma'am.

15 MR. SPRATLIN: I would have no way of knowing where the
16 question that he is asking and the answer that he is giving
17 would be found on the ---

18 THE COURT: I appreciate that. You will have to rely
19 on directions by Mr. Hazzard ---

20 MS. von HERRMANN: How about ---

21 THE COURT: --- to find that for you.

22 MS. von HERRMANN: I think we would prefer for someone
23 from his -- we will give them the equipment and have them
24 handle that if that's okay with the Court.

25 THE COURT: I will ask for your assistance, all right?

JURY IN
ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 Thank you.

2 MR. SPRATLIN: Yes sir, Your Honor.

3 THE COURT: Bring the jury in, please.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right, Mr. Hazzard, you may proceed,
7 sir.

8 MR. HAZZARD: Thank you, Your Honor.

9 CONTINUING CROSS-EXAMINATION BY MR. HAZZARD:

10 Q. Your name is Anthony Graham, again, correct?

11 A. Correct.

12 Q. Okay, and you spoke with the Horry County Police
13 Department on April 14th of 2008, right?

14 A. Right.

15 Q. And you talked with them regarding the death of your
16 friend, Allen Smith?

17 A. Right.

18 Q. Okay, and everything around that, the breaking in,
19 everything having to do with that, correct?

20 A. Right.

21 Q. Okay, and you and Mr. Smith were very close, weren't
22 you?

23 A. Yes.

24 Q. And you kind of thought of him maybe as a little
25 brother or a little cousin, correct?

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 A. Brother.

2 Q. Okay, and on that afternoon when you were speaking
3 with the police or maybe just before you spoke with the
4 police, you were actually -- you were so overcome, you were
5 actually sitting out there crying, weren't you?

6 A. Yeah.

7 Q. And there's nothing wrong with that because you cared
8 about him very deeply, right?

9 A. Yeah.

10 Q. And there's no doubt you want the people who were
11 involved in this, you want them caught, don't you, sir?

12 A. Yes, sure do.

13 Q. Now, you also were considered to be a victim in this
14 crime, right?

15 A. Right.

16 Q. Okay, because obviously there's no question that guns
17 were held to your face, right?

18 A. Right.

19 Q. Okay, and as a victim, you've had some dealing with
20 the Solicitor's Office, correct?

21 A. Right.

22 Q. Okay, and with the victim's assistance folks, right?

23 A. Excuse me?

24 Q. The -- I think the office is called the Victim's
25 Assistance or Victim's Advocate ---

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

- 1 A. Yes.
- 2 Q. --- Office?
- 3 A. Yes.
- 4 Q. Okay, and do they kind of keep you apprised of what's
5 going on with the case?
- 6 A. Well, yes, now. Well, basically it was telling my
7 second moms, and I'll find out through her.
- 8 Q. Okay. I didn't understand that, so I apologize.
- 9 A. Well, basically I was finding out through Allen
10 mother ---
- 11 Q. Okay.
- 12 A. --- and his family.
- 13 Q. Okay, so you have a method of staying abreast of
14 what's going on, right?
- 15 A. Well, basically.
- 16 Q. Okay, and you are aware that two individuals have
17 given statements to the police saying they were involved in
18 entering Mr. Smith's residence, right?
- 19 A. Well, I didn't hear about all that was who gave
20 statements or none of that.
- 21 Q. Are you aware that two people -- I'm not asking if you
22 know their names or identities?
- 23 A. No, I really didn't know.
- 24 Q. Okay, so you didn't know, had no idea?
- 25 A. I didn't really know that.

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 Q. Well, I mean, sir, you knew it or you didn't.

2 A. I did not know that.

3 Q. Did not know that?

4 A. Yeah.

5 Q. Okay, so as far as you knew, the crime was completely
6 unsolved when you got here today?

7 A. Right.

8 Q. Okay. Now, you mentioned, I think, when Ms. von
9 Herrmann was talking to you, or it might have been Mr.
10 McCollum, one of them was talking to you, and you mentioned
11 that after you got back to the house after the trip to the
12 store to get the orange sodas and the cigarillos, that you
13 lit up a blunt, right?

14 A. Not -- not at first.

15 Q. Not at first, okay. At some point prior to the three
16 assailants entering the home, did you light up a blunt?

17 A. Probably, about even twenty, thirty seconds before
18 they kick in the door.

19 Q. Okay, so then you did not have the opportunity to get
20 the full benefit of that marijuana?

21 A. Not -- in fact -- in fact, when I ran out the house
22 and -- and went across the street to get the girl to call the
23 police and all, I still had the blunt because I didn't even
24 know I still had the blunt between my fingers, although I had
25 stashed the other weed because I knew the police was coming.

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 I didn't even know that I had the blunt still between my
2 fingers. I didn't -- I dropped the blunt when I realized he
3 was dead, when I went back and touch his body, and when we
4 went back in there to get our clothes at the house, the blunt
5 was still on the floor right beside the blood, so I didn't
6 even get to smoke the blunt.

7 Q. Where in the house would that blunt have been found?
8 That was out in the hallway, correct?

9 A. Yeah, like right in front of his doorway where the
10 body was laying, and like you could see where he was laying,
11 well, the blood splatter or whatever, and like when I touch
12 him and realize he was dead, I just like -- and the blunt was
13 like -- like I said, when we came back in the house to get
14 our clothes or whatever, the blunt was still right beside
15 where the body was.

16 Q. Now, do you recall speaking to at least two detectives
17 on April 14th, is that correct?

18 A. Right.

19 Q. Okay, and when you talked to them, do you recall
20 telling them that when you saw the three black -- well, first
21 of all you told them that three black men entered the house,
22 right?

23 A. Right.

24 Q. Okay, and do you recall telling them that you saw the
25 three black men running out the door?

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 A. Yes.

2 Q. Okay, and I think you testified that after they ran
3 out the door you saw their shadows run past your bedroom
4 window. Is that a correct statement, sir?

5 A. Well, they ---

6 Q. Or what window was it? I apologize. Don't let me
7 assume.

8 A. Well, really, it's the -- when they ran by my room,
9 when I -- when they got out the door, it's the same window
10 that was busted. You could see, you know. It's right at the
11 door, so they cut by the door, so you could see the shadow.

12 Q. Okay.

13 A. It wasn't my bedroom window.

14 Q. Okay, so then it would have been the front room or
15 living room window?

16 A. Yeah.

17 Q. So right there by the front door?

18 A. Yes sir.

19 Q. So when they ran out, is that window -- as you are
20 standing in the house looking out the front door, is that
21 window to the left of the door or to the right of the door as
22 you are facing in the house, facing -- looking out?

23 A. It's to the right of the door.

24 Q. So it's to the right. As you are standing in the
25 house, inside, and let's say here's the doorway right here

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 and that's outside of there, and I'm standing in the living
2 room and I'm looking out the door. Is the window to the left
3 or to the right of the door?

4 A. If I'm -- if I'm looking at the door, the door -- the
5 window was on the right of the door.

6 Q. Okay, the right of the door, all right, and so they
7 ran out and you saw their shadows, all three shadows, go by
8 that window?

9 A. I -- I seen -- when I -- when I ran out in the hall, I
10 seen shadows, and it was like when they went out. The window
11 was open -- well, the shade was like open, so you could see
12 the shadows right there, but they couldn't run and cut to the
13 right because the storage room was right there, ---

14 Q. Okay.

15 A. --- so I seen them when they ran outside.

16 Q. Okay, and when they ran outside, did they -- did you
17 ever hear a car start?

18 A. No, I didn't.

19 Q. Did you ever hear any tires squeal away?

20 A. No, I didn't.

21 Q. Did you ever see a car drive away?

22 A. No, I didn't.

23 Q. Okay. Now, from where that street, Barberry Court or
24 Drive -- Mr. Smith lived almost at the end of the cul-de-sac
25 or turnaround, correct? In other words, when you came down

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1 to his house, ---

2 A. Yes.

3 Q. --- you were almost running out of -- running out of
4 road?

5 A. No. It's a little -- it's a little further down. He
6 stay like at the top of the hill, almost ---

7 Q. Okay. Now, ---

8 A. --- like in the middle. It wasn't -- it wasn't like
9 at the end of the cul-de-sac.

10 Q. Okay. When they ran out and ran to the -- well, if
11 you're standing in the street, ran to the left of the house,
12 what direction -- where does that take you?

13 A. Some more apartments. It's like a housing complex out
14 there, you know, ---

15 Q. Uh huh (**indicating positive**).

16 A. --- and to the right lead to the -- to the cul-de-sac,
17 the dead end, and to the left lead back out. That's the only
18 way you could get back out of it.

19 Q. And so they ran towards the cul-de-sac?

20 A. Really, I don't know. Like I said, they ran out the
21 house.

22 Q. In the direction of the cul-de-sac, is that correct?

23 A. They ran out the house, and when I -- I seen the
24 shadow went by the window.

25 Q. And that window was ---

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1 A. I don't ---

2 Q. --- in the direction ---

3 A. But I'm saying ---

4 Q. --- of the cul-de-sac?

5 A. --- once you -- you can't tell. The window was right
6 there, the storeroom right there. You can't tell which way a
7 person went unless you right there looking at them or right
8 behind them. I wasn't right behind them, ---

9 Q. Okay.

10 A. --- so I can't tell you that.

11 Q. Okay. How far behind them were you, sir, because you
12 said you ran outside as well, right?

13 A. When I got outside, I ain't seen nobody.

14 Q. So I will repeat my question. How far behind them
15 were you?

16 A. I don't -- I don't really know, like I ain't -- I
17 didn't -- ain't like I was right behind them like that. I
18 was -- like I said, the guns went off. They ran by my room.
19 My first -- before I went behind them, I had looked to the
20 left and I seen Allen on the floor, so that took a little
21 while. When I turned back, they was running out the door,
22 and that's why I said the door and the window right there, so
23 I seen the shadows going out the door, so by the time I got
24 to the door, I ain't seen nobody.

25 Q. Okay, so when you saw -- or when you saw them run past

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1 your bedroom door and down the hall, back into the living
2 area and out the front door, was that what they did, sir?

3 A. Yeah.

4 Q. Okay, and you were close enough behind them that by
5 the time you came out of your bedroom, went to the end of the
6 hall to the front room, you could still see their shadows as
7 they passed the ---

8 A. Well, where I was standing, I could see -- you know,
9 it's like from where he was lying and the door was about from
10 here to that door right there, so I could see from here to
11 there, ---

12 Q. Okay.

13 A. --- so I ain't had to run behind them to see -- see
14 what I seen.

15 Q. Okay, so you never lost sight of them in that regard?

16 A. Not -- not until they got out the door.

17 Q. Okay, and eventually at some point you went outside as
18 well, correct?

19 A. Yes.

20 Q. Now, how long from the time they ran out the door did
21 you go out the door?

22 A. It wasn't too long after. Like I said, I ran -- ran
23 out my room, seen Allen, seen them. When I looked back,
24 looked back to the right, I seen them going out the door. I
25 ran -- ran to the door. That's when I ain't seen nobody, so

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1 I was looking -- I was looking back next door house because I
2 figure they ran through the path, but I didn't never -- I
3 didn't never see them.

4 Q. You figured they ran through the path, correct?

5 A. Yes, because like I said, I thought she had something
6 to do with it from day one, you know, so obviously it's
7 normal to look towards there to see -- you know, I looked
8 towards next that way because I figure they was running back
9 that way, the same direction the other guys went in the few
10 days before that.

11 Q. The same direction the other guys went in, went in a
12 few days prior?

13 A. Yes.

14 Q. Okay. Now, it only made sense to look towards that
15 direction, correct, because obviously you didn't see any
16 cars, didn't hear any squealing tires, or even see anybody
17 driving off in the other direction?

18 A. And -- and I couldn't hear it no way, because the
19 smoke detector -- when the guns went off, the smoke detector
20 went off and it was so loud. They thought it was the police
21 because it had a sound just like a police siren, so the first
22 thing they said, the police, and then that's when all of them
23 start running, so I couldn't -- if a car was cranking up, I
24 couldn't hear it no way, because the house was real loud from
25 the fire alarm and it was fill up with smoke from the gun

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1 blast.

2 Q. But there's no question that you get out there, no car
3 in either direction, because one direction is headed towards
4 the cul-de-sac and the other direction is straight for a
5 ways, correct?

6 A. Right.

7 Q. Okay, but no car?

8 A. I ain't seen no car.

9 Q. All right, and when you talked to the police, do you
10 recall telling them that the three guys were big, at least --
11 well, I won't say bigger than you, but about your size, maybe
12 just a tad shorter?

13 A. I remember telling the police it was three different
14 guys and the last guy came in was smaller than the rest of
15 them and he stood behind. That's what I remember telling the
16 police.

17 Q. That's what you remember telling the police. Okay, so
18 when they asked you, you deny saying when asked were they
19 tall or little, how big were they, and you deny saying they
20 about my size; man, they were big? Do you deny saying that?

21 A. I don't remember saying that. I remember saying the
22 first guy was the -- slim, but he was -- he was kind of tall
23 and slim and had dreads. The second guy a little bigger than
24 him. The third guy had dreads, but he was light-skinned.
25 That's what I remember saying.

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1 Q. But you do not deny making the statement that ---

2 MS. von HERRMANN: We object. He's denied it.

3 THE COURT: No, no, he has not, Solicitor, and you may
4 ask the question, Mr. Hazzard.

5 MR. HAZZARD: Thank you, sir.

6 Q. But do you not deny making the statement when asked
7 were they tall or little, they about my size; man, they were
8 big, and I understand that you -- they asked you three or
9 four different times and you gave three or four ---

10 A. In fact, it was like they was asking me so many
11 questions ---

12 Q. Yes.

13 A. --- back to back. Then the same guy come asked me ---

14 Q. Yes sir.

15 A. --- the same questions, ---

16 Q. Yes sir.

17 A. --- but, all right, like I said before, I remember
18 saying the first guy came in and he was tall, about my
19 height, and slim, and had dreads. The next guy came in was a
20 little bigger than him, and the third guy came in had dreads
21 and he was kind of light-skinned. That's what I remember
22 saying.

23 Q. Do you recall saying, and this is about the same thing
24 as far as their description, because the police wanted to get
25 the description of these guys from you, correct?

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1 A. Right.

2 Q. Okay. Do you recall saying like two of them was a
3 little bit shorter than me, but they were slim like me.

4 A. I don't remember.

5 Q. They were darker than me, though. Do you recall
6 making that statement?

7 A. No. I remember saying what I just told you.

8 Q. Okay, so you do not recall making that statement to
9 the police on April 14th, 2008?

10 A. (No response.)

11 Q. Well, let me rephrase it. Do you deny making that
12 statement to the police ---

13 A. I don't deny it, but I don't remember saying it. I
14 remember saying what I just told you.

15 Q. Okay, and it's been three years. I understand.

16 A. Yeah.

17 Q. But you don't deny it. That's fine. Let's see, and
18 you've already told the jury about how you told the police
19 that three guys came knocking at the door a day or so
20 earlier, correct?

21 A. Right.

22 Q. Okay, and you told them at that time that Big A, Mr.
23 Smith, was asleep, correct?

24 A. I ain't -- I ain't -- the only conversation I had with
25 the guy when I asked him what the f--- he doing at my brother

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1 Q. Okay, in the same direction that you possibly saw the
2 three assailants on the day of the incident head towards,
3 correct?

4 A. I -- I told you they ran out the door. I didn't see
5 which way they went. I didn't say they headed toward --
6 towards Dora house.

7 Q. Okay. You indicated they went past the window,
8 correct?

9 A. Yes.

10 Q. Now, if you go past that window in that direction,
11 even if you've got ---

12 A. I didn't say no direction. That's the thing. I
13 didn't say a direction. I said they ran out the door. From
14 where I was standing, I could see the shadow, because the
15 window was right beside it. I didn't say I seen them turn
16 right or left. I did not say that.

17 Q. So they ran out the door and didn't turn right or
18 left?

19 A. No, I didn't say that. I didn't see which way they
20 went. By the time I got outside, I ain't seen nobody.
21 That's the same thing I just told you.

22 Q. So this whole thing about the shadows going by the
23 window is not true?

24 A. Far as the shadow going by my bedroom window, I didn't
25 -- ain't no shadow went by my bedroom window because that's

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1 on the side of the house.

2 Q. I'm asking you ---

3 MS. von HERRMANN: I'm going to object, asked and
4 answered.

5 THE COURT: I appreciate that. I'm going to allow Mr.
6 Hazzard to ask the question again.

7 MR. HAZZARD: Thank you, Your Honor. I will not
8 belabor the point.

9 Q. Sir, and I apologize if I'm not grasping what you're
10 saying, and I'm going to try to ask my questions in such a
11 way that you can help me with the answer. At some point the
12 three assailants exited the front of the house. They came --
13 went out the front door, right?

14 A. Right.

15 Q. Okay, and I believe you testified that you saw their
16 shadows go past a window. Is that a fair statement, sir?

17 A. When they ran out the house, I could see the shadow by
18 the window. Like I said, the window was right by the door.

19 Q. Okay, so unless they just went straight out the door
20 and straight across the street to the neighbor's across from
21 Mr. Smith, they had to have gone either left or right, is
22 that a fair statement, sir?

23 A. Yeah, but I couldn't tell you which direction they
24 went because I didn't see them.

25 Q. Yes sir, and the window where you saw their shadow

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1 reflecting was to the left or to the right of ---

2 A. It's at the right of the door.

3 Q. Okay. Now, when you talked to the police back on
4 April 14th of 2008, you referred -- or do you recall
5 repeatedly referring to the assailants, the people who broke
6 into Mr. Smith's house, as kids?

7 A. Kids?

8 Q. Yes sir, and I'll -- you referred -- do you recall
9 referring to them as kids, as boys, and I'll ask you the
10 direct statement so you can tell me. Do you recall Detective
11 Townsend, I believe, asking you on -- something about Ms.
12 Collington, where is she right now, and do you recall giving
13 the statement, me and Santiago seen her at the house right
14 there. That's why I figured them kids had run back through
15 there?

16 A. Kids, that's just like guys, kids. That was just a
17 figure of speech as far as on that situation right there.

18 Q. I got'cha.

19 A. Yeah.

20 Q. I got'cha.

21 A. Not as in a juvenile, something like that.

22 Q. Of course not, and do you recall referring to them as
23 boys and as being little?

24 A. No, I don't remember that.

25 Q. So you do not recall saying the same people -- well,

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1 let me ask you this. Let's back up. In the -- in the
2 conversation with the police initially, do you recall there
3 being a discussion about one of the assailants might have
4 been someone named Jeremiah Parker ---

5 A. No.

6 Q. --- or Jeremiah Parker's cousin?

7 A. How is -- how -- see, I know Jeremiah from back in the
8 day because me and him used to hang out.

9 Q. Okay.

10 A. We'd go to the same club. How his name came out
11 basically, when the guys came and knock on the door a few
12 days earlier, and I kind of describe them to Big A, Big A say
13 that sound like Jeremiah little nephew, them Parker boys.
14 That's how that got up in the -- I don't know if they ---

15 Q. How old are the Parker boys?

16 A. Excuse me?

17 Q. Roughly how old are the Parker boys?

18 A. I don't -- I don't know. I don't know the Parker
19 boys. I know Jeremiah.

20 Q. Okay, but no question talking about somebody's little
21 nephew? Okay, so anyway, in the process of asking about
22 that, do you recall indicating at that time, and the same
23 people, Parker, what Jeffrey just said, and my brother said,
24 that look like -- that sound like Jeremiah Parker little
25 brother, little nephew, you know what I'm saying, so that's

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JURY OUT/ON RECORD

1 how you referred to him, little ---

2 MS. von HERRMANN: I'm going to ---

3 Q. --- little guys, right?

4 MS. von HERRMANN: I've got an objection, Your Honor.

5 THE COURT: All right, ladies and gentlemen of the
6 jury, go to the jury room, please. I'll call you out as
7 quickly as I can. It won't be very long.

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

10 THE COURT: Yes, Solicitor.

11 MS. von HERRMANN: Your Honor, my objection is to Mr.
12 Hazzard reading the transcript into the record and then
13 asking him questions. I think the appropriate way to ask a
14 question is to ask a question and then if he needs to go to a
15 recording, to go to a recording. To try to bootstrap the
16 transcript in over Your Honor's ruling is not appropriate.

17 MR. HAZZARD: Your Honor, I'm not trying to bootstrap
18 it in. I'm actually trying to limit it as much as possible.

19 THE COURT: I appreciate that. My understanding of
20 Rule 613 is that the defense attorney is -- or any attorney,
21 has asked a question and gotten a answer which they believe
22 does not comport to an answer given to the same or similar
23 question at a previous time, a statement made by them, and
24 then the attorney asking the questions must then inform the
25 witness, do you remember talking to officer whomever on this

JURY OUT/ON RECORD/JURY IN
ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 date and time, and when Officer John Doe asked you this
2 question, you told Officer John Doe X, do you remember doing
3 so, and if he says yes, I remember now, or I don't remember
4 that, that's probably where we are.

5 Now, if he specifically denies it and says no, I never
6 said that, then Mr. Hazzard can go back to the -- to the
7 actual recording and play that for the jury so they can hear
8 the question and the answer, but I believe Mr. Hazzard is
9 doing exactly what he's supposed to be doing, asking a
10 question he believes he's getting a inconsistent answer, and
11 then he must inform the witness, now didn't you tell on this
12 date and time Detective John Doe X, Y, and Z, so I believe
13 Mr. Hazzard is doing what he's supposed to be doing,
14 Solicitor. Thank you.

15 Ask the jury to come back in.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right, Mr. Hazzard, you may continue,
19 sir.

20 MR. HAZZARD: Thank you, Your Honor.

21 CONTINUING CROSS-EXAMINATION BY MR. HAZZARD:

22 Q. Sir, none of the -- none of the assailants were
23 wearing a ski mask, were they?

24 A. No. I ain't never seen no ski mask. All I've seen is
25 like shirt, shirt around his face.

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1 Q. And you mentioned previously when you were talking to
2 the police that one of the assailants had a -- a green shirt
3 up over their face, ---

4 A. Yes.

5 Q. --- is that correct?

6 A. Yes.

7 Q. Okay. Now, would it be a fair statement to say that
8 you never told the police that any other of the assailants
9 had any shirts up, that they had hoodies on, but not shirts
10 up? Do you recall that or not, sir?

11 A. I don't -- I don't remember.

12 Q. Okay, that's fine; that's fine. Do you recall telling
13 the police on April 14th of 2008 that each of the assailants
14 had a weapon?

15 A. Yes.

16 Q. And did you -- do you recall describing those weapons
17 as a pump shotgun, apparently a short barrel, and they asked
18 -- do you recall them asking you whether it was sawed off,
19 and you said no, it was made that way? Do you recall that?

20 A. (NODS HEAD NEGATIVE.)

21 Q. Okay.

22 THE COURT: You need to answer out loud, sir.

23 A. No, I -- I don't -- I don't remember that, but I
24 remember it was a shotgun.

25 Q. Okay. Do you deny that you made that statement, sir?

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD

1 A. No, I don't deny it, but I don't remember it.

2 Q. Okay, that's fine, and do you recall telling them that
3 the second gun or weapon looked like a .380, black with a
4 brown handle?

5 A. Yes.

6 Q. Okay, and do you recall telling them that the third
7 weapon was a small black gun being held by the person
8 standing behind the other two?

9 A. Well, I told them I thought it was a small gun, but I
10 also told them I couldn't see nothing but the barrel of the
11 gun coming down because I was -- he was standing behind the
12 two, so I just seen he had a gun, you know what I'm saying.
13 I just seen the barrel.

14 Q. Okay, and do you recall telling the police, then as
15 you have today told the Court, that you did not recognize
16 anything about the three assailants?

17 A. Right.

18 Q. Let me -- let me be clear. You do not deny telling
19 the police on April 14th that all three of the assailants
20 were darker than you?

21 A. I ain't said all three because I always said, and I
22 remember this, the last kid came in was lighter than the rest
23 of them.

24 Q. And do you recall telling the police that
25 specifically?

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1 A. Yes.

2 Q. All right, and this third assailant was light-skinned
3 like the guy that been at the house a couple of days before,
4 is that correct?

5 A. Yes.

6 Q. Now, I think you told Mr. McCollum that your main --
7 or your initial concern when the door was kicked in was that
8 the house was being raided by the police, is that correct,
9 sir?

10 A. Yes.

11 MR. HAZZARD: The Court's indulgence, Your Honor.

12 THE COURT: Yes sir.

13 Q. I'm going to -- I'm going to ask, sir, and this is
14 going to be my last question, sir, but I do need some
15 clarification. Do you recall telling the police on April
16 14th of 2008, like I say, when she, meaning Ladorrean
17 Collington, bust the window, that's how I knew she was
18 pregnant? Do you recall making that statement to the police,
19 sir?

20 A. That don't even make no sense. I don't remember
21 that.

22 Q. Do you deny making that statement to the police?

23 A. I don't remember saying it.

24 Q. But you don't remember saying it, but you don't deny
25 it?

ANTHONY BERNARD GRAHAM - CROSS BY HAZZARD
REDIRECT BY von HERRMANN

1 A. I don't remember saying it.

2 THE COURT: You need to answer the question, sir. I
3 understand you're explaining it, but you need to answer his
4 question yes or no.

5 Q. My question is I understand you do not remember making
6 the statement, but I am specifically asking do you deny
7 making the statement?

8 A. I'm not denying it because it's a lot.

9 Q. Okay -- I'm sorry, not denying it, but what?

10 A. I say I'm not denying because it's a lot, you know
11 what I'm saying. A lot happened, so I'm not going to deny
12 that, but I don't remember saying it.

13 Q. Okay. You're not denying it because a lot happened.
14 Okay.

15 MR. HAZZARD: All right, thank you. No further
16 questions.

17 THE COURT: Redirect, please.

18 MS. von HERRMANN: Thank you.

19 REDIRECT-EXAMINATION BY MS. von HERRMANN:

20 Q. Mr. Hazzard just asked you about making a statement
21 where he asked you if you said, man, they were big. Do you
22 think there's a possibility that you made a statement saying,
23 man, they weren't big?

24 A. Could have been.

25 Q. When you think back now, do you think in talking to

ANTHONY BERNARD GRAHAM - REDIRECT BY von HERRMANN

1 the police that it's more likely that you would say man, they
2 were big or man, they weren't big?

3 MR. HAZZARD: I have an objection.

4 THE COURT: Sustained. You need to rephrase the
5 question, Solicitor.

6 Q. Did you describe them as lanky?

7 A. I don't -- I don't remember. I don't remember.

8 Q. The guy that had the green shirt on, Mr. Hazzard asked
9 you about that as well. Do you remember that -- that guy
10 with a green shirt over his face?

11 A. I think he was the first guy who came in, if I'm not
12 mistaken, and cocked the gun and put it in my face.

13 Q. All right, so would he be the one with the -- with the
14 handgun ---

15 A. Yes.

16 Q. --- that had it in your face?

17 A. Yes.

18 Q. Is he also the tall guy?

19 A. Yeah, kind of slim, about my height, and slim with
20 dreads.

21 Q. All right, so your testimony then that the guy with
22 the green shirt over his face had a handgun and was the
23 tallest of the three, is that correct?

24 A. Yes.

25 Q. All right, and the guy that had the sawed-off shotgun,

ANTHONY BERNARD GRAHAM - REDIRECT BY von HERRMANN

1 I believe you said that he was shorter, but a little
2 stockier?

3 A. I think he was -- yeah, he was a little shorter than
4 the first guy, but he was like a little wider.

5 Q. All right, and then the third guy ---

6 A. He was ---

7 Q. --- you said he was in -- sort of at the back?

8 A. But look like he was shorter than the rest of them.

9 Q. He was shorter than the rest of them?

10 A. But he was a lighter skin.

11 Q. And light skin, and you talked about seeing some sort
12 of a weapon on him. Where -- where was that weapon located?

13 A. It's like when he was standing up -- like I was laying
14 down, but I could see the barrel of the gun like, you know,
15 like right here, like the side, but I couldn't tell really --
16 I thought it was a pistol, but I couldn't tell what -- what
17 kind of gun it really was.

18 Q. Okay, so it's your testimony then that you really
19 couldn't tell if it was a -- if it was a handgun or if it was
20 a longer gun?

21 A. I couldn't -- I couldn't really because he was
22 standing behind the other two guys.

23 Q. Okay. Now, Mr. McCollum asked you some questions
24 about why you would go by Ladorrean Collington's house.
25 Ladorrean Collington wasn't mad at you, was she?

ANTHONY BERNARD GRAHAM - REDIRECT BY von HERRMANN

1 A. No, she wasn't.

2 Q. She was mad at Allen?

3 A. Yes Ma'am.

4 Q. And she was calling you, and I believe you testified
5 that you were trying to sort of facilitate some things
6 between them?

7 A. Yes, basically.

8 Q. So you wouldn't have a problem going to her house,
9 would you?

10 A. No Ma'am.

11 Q. Because she wasn't threatening you, was she?

12 A. No Ma'am, and ...

13 Q. He also asked you some questions -- and let me mention
14 this, too. When those three guys came in to Allen's
15 house ---

16 A. Yes Ma'am.

17 Q. --- and he was killed, they didn't hurt you, did they?

18 A. No Ma'am.

19 Q. They went after him?

20 A. Yes Ma'am.

21 Q. They also mentioned to you something about Ms.
22 Collington doing all these overt acts, but you don't know
23 what she was planning behind the scenes, do you?

24 A. No Ma'am.

25 Q. And you don't know who else she was talking to?

COURT TO JURY

1 **THE COURT:** Sir, you are released from your subpoena
2 and you may stay as you choose.

3 All right, ladies and gentlemen, as I understand it,
4 Solicitor, the -- from what you've told the Court, the next
5 witness you believe would be of similar length to this last
6 witness, is that correct?

7 **MS. von HERRMANN:** I think that's correct.

8 **THE COURT:** All right, very good.

9 All right, ladies and gentlemen, obviously that would
10 have us staying here for a considerable period of time. It's
11 twenty-five after five, so I'm going to let y'all go home for
12 the evening. I'm going to have you come back -- I want you
13 back in your jury room at nine o'clock tomorrow morning. Be
14 back in the jury room by 9:00 A.M. We'll start the case at
15 that point in time and resume the testimony in this case.

16 Remember again don't talk about the case, don't allow
17 anybody to talk to you about it. Don't do any research on
18 your own. You make your decision solely and completely on
19 the evidence you hear in this courtroom and from no other
20 source.

21 With that, I'll excuse you. Be back tomorrow morning at
22 9:00 A.M. Thank you very much. You can leave your pads
23 there if you want to and the bailiff will pick them up. We
24 will secure them all. Thank you.

25 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**

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1 JURY.)

2 THE COURT: All right, Solicitor, anything further from
3 the State at this point in time?

4 MS. von HERRMANN: No sir, Your Honor.

5 THE COURT: Mr. McCollum?

6 MR. MCCOLLUM: No, Your Honor.

7 THE COURT: All right, and Mr. Hazzard?

8 MR. HAZZARD: No sir.

9 THE COURT: All right, very good. All right, we'll be
10 back tomorrow morning at nine o'clock, and please, if you
11 would, make sure the defendants are here at the courthouse by
12 8:30; the defendants are at the courthouse by 8:30. Thank
13 you very much.

14 (THE FOLLOWING TAKES PLACE ON JUNE 8, 2011, AND OUTSIDE
15 THE PRESENCE OF THE JURY.)

16 THE COURT: All right, I understand there may be some
17 matter that we need to address, is that correct?

18 MR. MCCOLLUM: Yes sir, Your Honor.

19 THE COURT: All right, Mr. McCollum, be glad to hear
20 from you, sir.

21 MR. MCCOLLUM: May it please the Court, Your Honor.

22 The -- as you recall, we started pre-trial motions on
23 this case and actually had motions, I believe, on two
24 separate days, and one of the issues was the defendant,
25 Collington, had filed a motion before the Court to suppress,

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1 or limit, or restrict any evidence of prior difficulties
2 between Ms. Collington and the deceased, Allen Smith, and
3 also between her and Anthony Graham or anything as
4 communicated to Anthony Graham.

5 Additionally, Ms. Collington, back in the beginning of
6 the case, with indictments that were going back to 2008, she
7 had been indicted for a number of offenses, namely murder,
8 kidnapping, armed robbery, and burglary in the first degree.
9 Later she was indicted for other offenses, accessory before
10 the fact of kidnapping, armed robbery, and burglary first
11 degree, and then in 2011, she was indicted with the offense
12 of accessory before the fact of murder.

13 Now, when we started the pre-trial motions, we were
14 dealing with more indictments than we're actually dealing
15 with here. It's been a little bit confusing, and so Your
16 Honor had ruled on these motions when she was indicted for
17 accessory before the fact of murder, I think all of us
18 understanding that we would be going forward on that
19 indictment.

20 For whatever reason, the Solicitor, between the time of
21 the motions hearing in the case, when the indictments are
22 actually put up, when we started the trial here in the front
23 of the jury, the Solicitor elected to go forward on -- and I
24 understand -- and if I'm incorrect on any of this, I'd ask if
25 somebody could correct me, but it's my understanding that Ms.

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1 Collington is going -- is being tried on two indictments,
2 that being 2010-GS-26-01626, which is accessory before the
3 fact of burglary in the first degree.

4 The other indictment that she's on trial here today is
5 2010-GS-26-01627, which is accessory before the fact of armed
6 robbery.

7 Now, my position in front of the Court, Your Honor, is
8 that while earlier we were asking to have those prior
9 difficulties kept out of evidence, Your Honor and I had had a
10 discussion where you had stated that it was Your Honor's
11 position that in a homicide case, that those are admissible.

12 As it turns out, as the way things have unfolded now,
13 the defendant, Ladorrean Collington, is not on trial for
14 homicide. She's not even on trial for assault. She's not
15 accused of harm -- of trying to physically harm anyone.

16 Now, the Solicitor has gone into some of that even in
17 opening statement and then with this last witness, Mr.
18 Graham, which she was alluding to the fact that not only that
19 Mr. Smith was killed, while Mr. Graham was not harmed,
20 implying, you know, that this was incriminating to Ms.
21 Collington because of the threats specifically to harm only
22 him.

23 At this point, Your Honor, evidence has been admitted.
24 I would ask for two things. One, I would ask for a curative
25 instruction on that, and the other thing I would ask, the

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1 Court to seriously consider is declaring a mistrial as to
2 Defendant Collington, and pursuant to that in addition to
3 asking for the curative instruction, I would so move for a
4 mistrial at this time, Your Honor.

5 **THE COURT:** All right, Solicitor, the position of the
6 State, please Ma'am.

7 **MS. von HERRMANN:** Well, the position of the State is
8 the same position that we had earlier, which is this. The --
9 although the indictment, the indictment for the accessory
10 before the fact of murder, has been removed, the facts and
11 circumstances that are being presented in this case are
12 exactly the same. These threats form a part of the res
13 gestae and they are 404(b).

14 They show a pattern of behavior, escalating behavior,
15 where she becomes angrier and angrier and ultimately elicits
16 these other people to go in and commit what ultimately turns
17 out to be a murder, so it's not necessary that she commit the
18 murder for that evidence to come in. That evidence comes in
19 to prove that pattern of behavior, that motive of her sending
20 those other individuals in there, so it goes to her motive,
21 it goes to her intent, it goes to her planning, and it's part
22 of the res gestae.

23 I don't believe that it is overly prejudicial. I
24 certainly don't think it calls for a mistrial, and I don't
25 believe it calls for a curative instruction either.

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1 **THE COURT:** All right, thank you, Ma'am.

2 Mr. Hazzard, do you have a position?

3 **MR. HAZZARD:** No sir.

4 **THE COURT:** All right, very good..

5 Mr. McCollum, certainly you raised the matter to the
6 Court. You had the motion to exclude the evidence of
7 threats, and we discussed it on a couple of occasions, and
8 again at the -- you know, before the trial started. My notes
9 reflect, and I believe the record will reflect that I told
10 you that I would rule on the matter when it was raised at
11 trial.

12 We had the entirety of the testimony of one of the
13 victims in this matter, and that was Mr. Anthony Graham. At
14 no time during his testimony did you raise the issue before
15 the Court. All of his testimony as to prior difficulties is
16 in evidence. It's in evidence without objection. It's in
17 evidence without the defendant, Collington, raising an issue
18 to it. The Court's first position is you've waived it. It's
19 over. The evidence is in the record. It is too late to
20 object to the problem, if there was one, now.

21 Secondly, I think the evidence is admissible. I think
22 it is proper in the prosecution of the case against Ms.
23 Collington. Regarding the testimony and looking at the
24 issues and examining the Rules of Evidence, 401, 403, 404,
25 and the issue of res gestae, I believe it's admissible, but

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1 the first position is the matter has been waived. It's in
2 evidence. It was not raised to the Court at the time that it
3 was discussed, and therefore, your motions are respectfully
4 denied. Thank you very much.

5 **MR. McCOLLUM:** Your Honor, ---

6 **THE COURT:** Yes sir.

7 **MR. McCOLLUM:** --- understanding your ruling, may I be
8 heard further?

9 **THE COURT:** About what?

10 **MR. McCOLLUM:** The -- I understand the ruling, Your
11 Honor, so I'm -- I'm -- I'm asking for permission to be heard
12 further. I don't ---

13 **THE COURT:** I'm sorry, but what is it else that you
14 want to tell me? I mean, I appreciate what you've -- your
15 issues, but -- all right, go ahead. Let me hear what you
16 want to say. Go ahead.

17 **MR. McCOLLUM:** The -- I respect what the Court is
18 saying about the objection, but even though it had started,
19 the evidence has started, I did object at some point, so ---

20 **THE COURT:** Not on these grounds.

21 **MR. McCOLLUM:** Not on these specific grounds, okay.
22 Now, the other thing I would like to do at this time is if
23 there is a question about the admissibility of these threats
24 or difficulties, I would ask the Court to consider limiting
25 or stopping further evidence of threats based on the fact

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1 that Ms. Collington is on trial for burg -- accessory before
2 the fact of burglary and armed robbery. I would ask Your
3 Honor to -- most respectfully to consider that so that more
4 evidence of threats is not introduced.

5 **THE COURT:** Again, I respectfully decline to grant your
6 motion on the same grounds I declined to grant your previous
7 motions. Again, I think the issue has been waived.
8 Secondly, again, conducting an examination of the Rules of
9 Evidence as I quoted, 401, 403, 404, and the theory of res
10 gestae, I find that it is proper and admissible in this
11 particular case, so on both of those grounds, I respectfully
12 deny your motion.

13 Now, if you have a specific objection to a particular
14 question and -- that is posed by the State, because I've made
15 this general rule does not mean you are prohibited from
16 making other objections or objections you deem proper
17 regarding a specific question. You've asked for a ruling in
18 general and I've given you a ruling in general. If you've
19 got a problem about a particular question, you need to raise
20 that at that time, so we're clear about that.

21 **MR. McCOLLUM:** Yes, and also, Your Honor, you know,
22 when we're in a situation where we have these pre-trial
23 motions and rulings, and the Court has ruled in a certain
24 fashion, you know, I will -- I will stand up at the
25 appropriate time and make a contemporaneous objection, but I

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1 don't want to interrupt the proceedings where we have to go
2 in camera over and over, so I would ask the Court when I am
3 making the objection that you will -- that that's the basis
4 for it.

5 **THE COURT:** And I appreciate that, you know, and at
6 this point in time you've made it clear what your objection
7 is to the particular matter, and I have ruled, but again,
8 I'll be glad for you to raise the objection, and again, I
9 just don't want you to have the understanding that if you've
10 got some other grounds, or some other reason, or something,
11 some matter that you need to bring to my attention, just
12 because I ruled on this matter prevents you from doing so,
13 all right? You are free to raise whatever objections you
14 deem necessary and proper.

15 I'm not addressing a specific question and answer. I am
16 addressing a general question that you have posed to me and
17 ruled on it, but as to particular things, obviously I don't
18 know what those are, so I can't have ruled on that particular
19 question or answer, so that's what I want, to be clear about
20 that, but in general, I find the testimony and the evidence
21 to be admissible under both those grounds that I have -- I
22 have stated in the record in general.

23 **MR. McCOLLUM:** Thank you, Your Honor.

24 **THE COURT:** All right. Anything else?

25 **MR. McCOLLUM:** Just -- there is one other thing. In

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1 terms of the issue about the prior statements made by -- I
2 guess what I would describe State's witnesses are testifying,
3 co-defendants, we do have the disk and the statements. It's
4 my understanding that under Rule 801, sub-section (d), if the
5 Defense chose to introduce those, that we could do so.

6 **THE COURT:** All right, hold on a second. Let me get to
7 Rule 801 real quick. I'm sorry; you were referencing which
8 part of 801?

9 **MR. McCOLLUM:** Your Honor, it's the Rules of Evidence,
10 South Carolina Rules of Evidence.

11 **THE COURT:** I understand that. You said 801. Was
12 there a particular part of 801?

13 **MR. McCOLLUM:** Yes sir, Your Honor, sub-section (d).
14 It just briefly says that statements which are not hearsay.
15 A statement is not hearsay if it's a prior statement by a
16 witness.

17 **THE COURT:** Okay.

18 **MR. McCOLLUM:** The declarant testifies at the trial or
19 hearing and is subject to cross-examination concerning the
20 statement, and the statement is (A) inconsistent with the
21 declarant's testimony, or (B) consistent with the declarant's
22 testimony and is offered to rebut an express or implied
23 charge against the declarant of recent fabrication for
24 improper influence or motive.

25 **THE COURT:** All right.

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1 **MR. McCOLLUM:** So just before we get back into the flow
2 of the case, just so it's -- just trying to get some clarity
3 on that. I think sitting over here or standing over here
4 that this statement can be admitted by the Defense if we so
5 choose, and that's what I'm asking for clarification on.

6 **THE COURT:** I'm sorry. You want to use -- you want to
7 actually introduce the statement into evidence when you're
8 cross-examining the witness? Is that what you're -- you're
9 saying?

10 **MR. McCOLLUM:** Well, when the foundation is laid. I
11 just want to know -- I'm not sure I'm going to do it, but I
12 want to know if I can if I deem it's necessary without us
13 stopping and having to go through it at that time.

14 **THE COURT:** Mr. Hazzard, do you want to be heard on
15 this?

16 **MR. HAZZARD:** With regard to ---

17 **THE COURT:** It's the introduction of evidence and it
18 might impact your client.

19 **MR. HAZZARD:** I'm well aware of that, Your Honor, and I
20 thank the Court for pointing that out and bringing it to my
21 attention.

22 801 says what it says with regard to a statement that is
23 a prior statement that is inconsistent, or a consistent
24 statement to rebut the issue of subsequent fabrication or
25 previous fab- -- subsequent fabrication.

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1 **THE COURT:** I guess I'm more pointed towards the
2 introduction of it, not the use of it, ---

3 **MR. HAZZARD:** Okay.

4 **THE COURT:** --- the introduction of it.

5 **MR. HAZZARD:** Yes. Our po- -- or my position would be
6 that under 801(d) it can be submitted on cross-examination
7 without having to be entered into evidence.

8 **THE COURT:** Evidence. It could be used, but it does
9 not necessarily need to be made an evidentiary item for the
10 jury.

11 **MR. HAZZARD:** Yes sir, that is my position. That is
12 Defendant Gause's position.

13 **THE COURT:** As to 801?

14 **MR. HAZZARD:** Yes sir.

15 **THE COURT:** Solicitor, what -- what comments do you
16 have?

17 **MS. von HERRMANN:** I think my understanding and your
18 understanding of the rule are the same. Mr. McCollum brought
19 this up yesterday in my conversation with him, and correct me
20 if I'm wrong about this, he seems to want to put the entirety
21 of the -- let's say one of the co-defendant's interview with
22 police officers into evidence, and that clearly is not
23 appropriate.

24 This rule contemplates a particular statement, a -- it's
25 a -- it's a, you know, a prior inconsistent statement, Rule

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1 613 kind of argument that he's making. I understand that
2 he's citing 801, but the prior inconsistent statement, the
3 statement itself, that one statement, comes in, not the
4 entirety of the interview, because, of course, the entirety
5 of the interview contains tons and tons of hearsay.

6 I mean, we'd have to redact that thing until the end of
7 time, so if he's saying that he wants to put the entirety of
8 the interview in, then yes, I have an objection to that.

9 Otherwise, I think we had this conversation yesterday and
10 they can use a defendant's prior inconsistent statement to
11 impeach him with.

12 **THE COURT:** At this point in time, I would say that
13 we're not introducing any statements into evidence without --
14 I mean, 801 doesn't talk about that and I don't think it
15 indicates that it should be introduced into evidence.

16 Now, regarding the actual introduction of it, then you
17 go to 613 and you have to go through that particular issue as
18 to, you know, did they specifically deny the previous
19 statement after you've made them aware of the statement and
20 say, you know, on this particular date and time, didn't you
21 talk to whomever, I'm saying Detective John Doe, and he asked
22 you Question A, and you gave Answer B. Do you deny that?
23 And if they specifically deny it, then we'll get into the
24 issue of whether that particular part of it can be published
25 to the jury to show an inconsistent statement or to judge the

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1 credibility and believability of the witness, but not the
2 entirety of the statement.

3 I don't think either of the rules cover that, but I'll
4 be glad to hear from you when we have a particular issue and
5 problem that comes up, but in general, I don't see that in
6 any circumstance we'd have -- the entirety of the statement
7 would -- would come in, but let's just wait until we see what
8 the issue is, but you have to look again at 613 and follow
9 the rule of 613 to even to be able to try to introduce part
10 of the prior statement into -- into evidence.

11 Anything else, Solicitor?

12 **MS. von HERRMANN:** Yes sir, Your Honor. The next
13 witness that I intend to call is Ms. Frankie Davis. I had
14 provided previously a copy of her N.C.I.C. to opposing
15 counsel. My reading of the N.C.I.C. is that the only
16 conviction that could be used with regard to her is a 2002
17 attempt to elude police, and I just wanted to see if Mr.
18 Hazzard or Mr. McCollum had a different opinion with regard
19 to that.

20 **THE COURT:** Is there any question about that, Mr.
21 McCollum?

22 **MR. MCCOLLUM:** Your Honor, I think that the felony
23 attempt to elude police is admissible. She also has a
24 contempt of court, it looks like, from 1998.

25 **THE COURT:** Okay. All right. Were you asking to be

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1 able to examine the witness about that particular offense
2 also?

3 **MR. McCOLLUM:** Yes.

4 **THE COURT:** And, Mr. Hazzard, what's your position?

5 **MR. HAZZARD:** We aren't going to take a position on
6 this one, Your Honor. We agree that the felony of attempting
7 to elude the police would be proper for cross-examination or
8 impeachment purposes. Other than that, I don't have a
9 position on the contempt of court citation.

10 **THE COURT:** All right, very good.

11 Certainly the 2002 felony conviction is proper to be
12 used in the cross-examination. I would say that the 1998
13 contempt of court falls without the or outside of the ten
14 year limitation. I do not find any reason that would -- that
15 the probative value of it would outweigh any -- or outweigh
16 the prejudice, in other words the prejudice outweighs the
17 probative value, and I would not allow it.

18 It is not -- I don't have anything in front of me that
19 would put it within the other aspect of the rule, something
20 of dishonesty. I don't have anything in front of me that
21 says the contempt of court order indicates that this
22 particular witness, you know, lied to the Court and,
23 therefore, the Court held them in contempt of court, which
24 might go under the dishonesty part of it, but I don't have
25 any of that, so I find it violative of the ten year

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FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

1 limitation and again don't find that the -- or do find that
2 the prejudice outweighs the probative value.

3 All right, ask the jury to come in, please.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right, Solicitor, your next witness,
7 please Ma'am.

8 MS. von HERRMANN: Thank you, Your Honor. The State
9 calls Frankie Davis.

10 THE COURT: Please come around to be sworn, Ma'am.

11 FRANKIE YVONNIE DAVIS, being first duly sworn,
12 states as follows:

13 DIRECT-EXAMINATION BY MS. VON HERRMANN:

14 Q. Good morning, Ms. Davis.

15 A. Good morning.

16 Q. You have sort of a low voice, so I want you to kind of
17 concentrate a little bit on getting up close to that
18 microphone so that everybody can hear you, okay.

19 Tell the jury, please, how old are you?

20 A. I'm forty-five.

21 Q. And where are you originally from?

22 A. Patterson, New Jersey.

23 Q. And do you have family here in Horry County?

24 A. Yes, I do.

25 Q. What family members do you have here?

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

1 A. I have aunts. My mom is originally from here. I have
2 aunts and a lot of cousins.

3 Q. Okay, and so during the time that you were living in
4 New Jersey, did you come down to South Carolina fairly
5 regularly?

6 A. Ever since I was born into this world.

7 Q. And did you know the victim in this case, Allen Smith?

8 A. Yes, I did.

9 Q. How did you know him?

10 A. His aunt is married to my mom cousin, so when we came
11 down every summer, we always hung out together.

12 Q. So that was from the time that you were a small child?

13 A. Yes.

14 Q. And then at some point did a relationship develop
15 between the two of you?

16 A. Yes.

17 Q. And when did that happen?

18 A. When I was around maybe seventeen.

19 Q. And so tell me did you move down to South Carolina?

20 A. Yes.

21 Q. And did you live here for a period of time?

22 A. Yes.

23 Q. When was that?

24 A. I moved down here in 2004.

25 Q. Let me ask you this. Did you -- in 2002, ---

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

- 1 A. Uh huh (**indicating positive**).
- 2 Q. --- you had gotten in a little bit of trouble with the
- 3 law, is that correct?
- 4 A. Yes; yes.
- 5 Q. And you had pled guilty to eluding police?
- 6 A. Yes.
- 7 Q. And so you have that conviction on your record?
- 8 A. Yes.
- 9 Q. All right. Let's go back to you talking about coming
- 10 down here. So you come down here in 2004?
- 11 A. Yes.
- 12 Q. And are you friends with the victim, with his whole
- 13 family?
- 14 A. Yes.
- 15 Q. And where are they from? Where do they live?
- 16 A. They live in Aynor.
- 17 Q. And so do your relatives then live in Aynor as well?
- 18 A. Yes.
- 19 Q. Now, when did you move to [REDACTED] Barberry?
- 20 A. In 2007, October.
- 21 Q. October of 2007?
- 22 A. Yes.
- 23 Q. And who was living in that house?
- 24 A. Me and Allen.
- 25 Q. And which room -- I'm going to show you the diagram,

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

1 which is going to be State's Exhibit 1(B), and can you show
2 me -- just point out the different rooms in this house for me
3 if you will.

4 A. Okay. This is the kitchen.

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

6 A. This is the kitchen. This the living room. This was
7 a bedroom. This was a bedroom. No, this was the bath --
8 yeah, bedroom. That's the front door -- I mean the front
9 area.

10 Q. All right, let me orient you here.

11 A. Yeah, okay, because we had two bathrooms.

12 Q. Okay. Do you see the two bathrooms here?

13 A. Okay. There was two bathrooms.

14 Q. All right. Where is the master bedroom?

15 A. The master bedroom was right here.

16 Q. Up here in this upper right-hand corner?

17 A. Uh huh (**indicating positive**). Uh huh (**indicating**
18 **positive**).

19 Q. All right, and is that where you and Allen stayed?

20 A. Yes.

21 Q. All right, and point out to me, or to the jury rather,
22 if you will, show me where the bed is located in that room.

23 A. The bed was against -- up against the wall.

24 Q. When you say up against the wall, the headboard ---

25 A. The headboard was up against the wall.

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

- 1 Q. All right, and was there a long dresser in there?
- 2 A. Yes, there was.
- 3 Q. And then a chest of drawers?
- 4 A. Yes.
- 5 Q. All right. Do you remember -- do you know what
- 6 Allen's phone number was?
- 7 A. Yes.
- 8 Q. What was that phone number?
- 9 A. [REDACTED]-2155.
- 10 Q. All right, Frankie, I -- I know this is unpleasant,
- 11 but let's just -- let's -- what did Allen do for a living?
- 12 A. He sold drugs.
- 13 Q. What kind of drugs did he sell?
- 14 A. Cocaine.
- 15 Q. And were there -- did he have any guns in the house?
- 16 A. Yes.
- 17 Q. All right. Tell me what kind of guns were in the
- 18 house.
- 19 A. They was shotguns, I guess. I thought they was B.B.
- 20 guns. He never used them. They was just there.
- 21 Q. All right. How many of them were there total?
- 22 A. There was three.
- 23 Q. All right, and tell me where those three guns were
- 24 located?
- 25 A. There was two in the closet, in our bedroom closet, up

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

1 against the wall, and there was one in our bedroom up against
2 the wall by his dresser.

3 Q. Okay. Let me show you -- all right, let me show you a
4 picture of what's been marked State's Exhibit 26 and show you
5 that and you take a look at that, ---

6 A. Uh huh (**indicating positive**).

7 Q. --- and can you tell me what that is a picture of?

8 A. Our closet.

9 Q. All right, and can you see the two guns that you just
10 mentioned in there?

11 A. Yes.

12 Q. All right. Where were those -- point -- point to
13 those on the picture, please.

14 A. Right here. This was Allen's side of the closet, and
15 I had one side.

16 Q. All right, so those guns were in a case?

17 A. Yes.

18 Q. And you can sort of see the case in this picture, but
19 what color was that case?

20 A. Brown.

21 Q. Did it zip up?

22 A. Yes.

23 Q. And were those guns, were they just out in the open,
24 or were they sort of tucked back there, or ---

25 A. No, they was tucked back there.

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1 Q. And let me also show you State's Exhibit 13 and ask
2 you to tell me what that is.

3 A. That's our bedroom.

4 Q. And where was the gun -- the other gun that you said
5 was in the bedroom, where would that gun have been placed?

6 A. Right in the corner over here behind this dresser.

7 Q. So it would have been in the corner sort of behind
8 that chest of drawers?

9 A. (NODS HEAD AFFIRMATIVE.)

10 Q. Let me show you State's Exhibit 11. Can you tell me
11 what that is?

12 A. It's a do-rag.

13 Q. Did that belong to either you or Allen?

14 A. That was Allen's.

15 Q. And State's Exhibit 12?

16 A. That was one of his tee shirts, like a sweatshirt.

17 Q. So these were items that were already in your home?

18 A. Yes.

19 Q. These weren't items that were left there by someone
20 who came there?

21 A. No.

22 Q. Okay. Let's talk a little bit about the defendant,
23 Ladorrean Collington. Do you know Ms. Collington?

24 A. Now I do.

25 Q. Had you met her before?

FRANKIE YVONNIE DAVIS - DIRECT BY von HERRMANN

1 A. When I came back down here.

2 Q. And how did you become aware of her presence?

3 A. I had went to one of Allen's friend's house and she
4 was there, but I -- I didn't know who she was.

5 Q. And did you then happen to see her again or be in her
6 presence again?

7 A. Yes.

8 Q. When was that?

9 A. She was -- she was -- started hanging in Aynor. She
10 started being down there.

11 Q. All right, and did you eventually realize that there
12 was some sort of relationship between she and Allen?

13 A. Yes, after someone told me, yes.

14 Q. And did you talk with Allen about that?

15 A. Yes.

16 Q. And tell me what your discussion was with him about
17 that.

18 A. That he -- it's either going to be me or her.

19 Q. And what did he tell you with regard to that?

20 MR. McCOLLUM: I object, Your Honor, hearsay, what did
21 he tell you.

22 MS. von HERRMANN: I'll rephrase it.

23 THE COURT: Rephrase the question.

24 Q. Based on your conversation with him, ---

25 A. Uh huh (indicating positive).

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- 1 Q. --- did you expect him to stay with you?
- 2 A. Yes.
- 3 Q. And no question about that?
- 4 A. Uh uh (**indicating negative**).
- 5 Q. Do you know where Ms. Collington lives?
- 6 A. No -- afterwards, behind me. She -- we moved there
- 7 and she moved right behind us.
- 8 Q. So you moved onto Barberry Drive?
- 9 A. Uh huh (**indicating positive**).
- 10 Q. You said in October of 2007?
- 11 A. Uh huh (**indicating positive**).
- 12 Q. And then she moved right down the road after that, is
- 13 that what you're saying?
- 14 A. Yes.
- 15 Q. And how did you come to find out where she lived?
- 16 A. Allen's sister-in-law told me.
- 17 Q. Do you recall an incident which took place at your
- 18 house on Thursday, April the 10th?
- 19 A. Yes.
- 20 Q. All right. Tell the jury, if you will, about what
- 21 happened at your house that day.
- 22 A. Some guys came there. Anth came and he woke me up.
- 23 He was trying to wake Allen up, and he woke me up.
- 24 Q. And when you say -- I'm sorry -- who woke you up?
- 25 A. Anth, Loc. Loc.

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1 Q. Okay, is that the same ---

2 A. Yeah. Anth and Loc is the same person.

3 Q. Okay.

4 A. And I went outside. He told me there was some guys
5 looking in my window and checking my door, so I went back in
6 the house and I tried to get Allen up, but he wouldn't wake
7 up, so I went outside, and there was three guys, and two of
8 them had on sweat hoods, and it had to be like a hundred
9 degrees outside that day, and I went behind them and I asked
10 them what they want, but they was trying to walk fast and
11 hide their face, and one of them was like, oh, we trying to
12 -- but their face was towards me.

13 They was looking for some work, and I was like don't
14 nobody sell drugs here. I was like, don't come to my house,
15 disrespecting my house, so I went back in the house, and I
16 woke Allen up and I told him, I was like, now the girl is
17 sending people to our house.

18 Q. And those -- there were three individuals?

19 A. There was three guys.

20 Q. Were they white or black?

21 A. They was all black.

22 Q. All right. When you saw them leaving, you weren't
23 able to see any of their faces?

24 A. One of them was tall, brown skin, I know that, because
25 I looked right at him.

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- 1 Q. How about the other ones?
- 2 A. The other ones was kind of fair height and dark-
- 3 skinned. The tall one had dreadlocks in his hair.
- 4 Q. Okay, and which direction were they walking?
- 5 A. Towards her house.
- 6 Q. And you said Allen was sleeping at that time?
- 7 A. Yes, but I woke him up.
- 8 Q. Was that during the daytime?
- 9 A. Yes.
- 10 Q. Was it pretty common for Allen to be sleeping during
- 11 the daytime?
- 12 A. Yeah.
- 13 Q. And you mentioned earlier that he sold some drugs?
- 14 A. Uh huh (indicating positive).
- 15 Q. Is this a situation where you had people coming in and
- 16 out of your house ---
- 17 A. No.
- 18 Q. --- purchasing drugs?
- 19 A. No.
- 20 Q. So when he sold the drugs, are you saying that he
- 21 wasn't selling them out of that house?
- 22 A. No, uh uh (indicating negative).
- 23 Q. So is that he was or he wasn't selling them out of the
- 24 house?
- 25 A. He wasn't selling them out of my house.

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11 right, so it would be unusual for someone that you know to come by your house?

es.

4 Q. And were you suspicious about it?

5 A. Yes.

6 Q. And why were you suspicious about that?

7 A. Because Ladorrea, she had broke my window out twice,
8 and it was just things with them going through stuff.

9 Q. When you say the window, would that be the window in
10 your house?

11 A. Yes, my living room window.

12 Q. Two times?

13 A. Two times.

14 Q. And let's move on to the following day. That would be
15 Friday, April the 11th?

16 A. Uh huh (indicating positive).

17 Q. Did you have some type of a run-in with her on that
18 particular day?

19 A. Yes, I did.

20 MR. McCOLLUM: Your Honor, object, based on the grounds
21 we went through earlier.

22 THE COURT: All right. I'm going to allow it into
23 evidence over the objection.

24 You may continue.

25 Q. Did you have a run-in with her on that day?

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1 A. Yes.

2 Q. Where did that take place?

3 A. In Aynor.

4 Q. Tell the jury, please, what happened.

5 A. Allen had dropped me off at the Dollar Store, because
6 he had just bought me a puppy, so I went to go get some food
7 and stuff for the dog, and I seen Ladorrea, and there was
8 another girl in the car. I don't know who it was, and I
9 asked her could I talk to her, and I asked her like why she
10 keep coming to my house busting out my windows.

11 I was like I have kids. I was like if -- you have
12 kids, too. I said what if I were coming in and do something
13 like that to you, and she was getting all irate and stuff,
14 and I told her, I told her for one thing, I said, I'm old
15 enough to be your mother, because I have a daughter that's
16 older than her, I said, and you're pregnant; I wouldn't dare
17 put my hands on you.

18 So one of my cousins had came. He was driving, and he
19 stopped the car.

20 Q. Okay. Let's -- I don't want to talk about your
21 cousin.

22 A. Okay.

23 Q. Then we're going to get into the hearsay issue.

24 A. Okay.

25 Q. But just with that issue with her, did she say -- did

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1 she say anything back to you?

2 A. Yeah.

3 Q. What did she say to you?

4 **MR. McCOLLUM:** The same objection, Your Honor.

5 **THE COURT:** I'm going to allow it.

6 Go ahead.

7 A. Go ahead?

8 Q. Go ahead.

9 A. She was calling me names.

10 Q. What kind of names?

11 A. Like names. I don't curse. She was calling me the b-
12 word and things like that, but like I just ignored her, you
13 know, and just got away from her as fast as I could.

14 Q. Describe -- I mean, was she calm? What was her
15 demeanor like?

16 A. She was acting like crazy.

17 Q. All right, and did you then become aware that she left
18 a message on Allen's cell phone or Loc's cell phone with
19 regard to that?

20 A. Yes, because I called Allen and I told him, and he
21 told me he was like, now she keep ---

22 **MR. McCOLLUM:** Objection, Your Honor.

23 A. --- calling my phone.

24 **THE COURT:** I'm going to allow that. It's already in
25 evidence.

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1 Q. And let's talk then about Sunday, April the 13th,
2 which was the night before the incident took place. Tell --
3 tell the jury what you had been doing that evening.

4 A. Okay. We stayed in the house all that day. Allen's
5 son came over and brought his girlfriend and his baby, and it
6 was me, Allen, his son, the girlfriend and the baby, and Loc.
7 We all stayed around the house, and two of Allen friends came
8 over and visit, and Allen cooked dinner. We sat down and we
9 ate. After while, his son and his -- his son and his son
10 baby and the girlfriend, they left, so it was just me, Allen,
11 and Loc in the house. Allen cooked. Me, him, and Loc, we
12 sat down and we ate.

13 Q. Did anybody -- did anybody -- were y'all partying that
14 night?

15 A. No.

16 Q. How about cocaine, did he have any cocaine in the
17 house at that point?

18 A. No.

19 Q. All right. Why didn't he have any cocaine in the
20 house?

21 A. Because he's supposed to have went and picked it up
22 the next day.

23 Q. Okay, so -- and -- and the jury is probably not
24 familiar with this, but people who deal cocaine will sell
25 what they have and then they'll go and buy some more, is that

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1 correct?

2 A. Yes.

3 Q. All right, and so was he at the stage that he had
4 gotten the money from the cocaine and he was going to buy
5 some more?

6 A. Yes.

7 Q. All right, so there was no cocaine in the house?

8 A. No.

9 Q. Was there money in the house?

10 A. I assume so.

11 Q. Did he have a particular place where he kept his drugs
12 and/or his money?

13 A. Yes.

14 Q. All right, and where was that particular place? Tell
15 me first.

16 A. In his -- all right, you know how a dresser have two
17 small drawers, top drawer and the second drawer.

18 Q. I'm going to show you a picture of State's Exhibit 13
19 and ask you to take a look at that.

20 A. Uh huh (*indicating positive*).

21 Q. All right, is that the -- is that the dresser where he
22 kept ---

23 A. Yes.

24 MS. von HERRMANN: I'd ask to publish these pictures to
25 the jury.

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1 **THE COURT:** - You may do so. It's in evidence.

2 Q. And this particular -- I think you called it a dresser
3 or chest of drawers, whichever we want to refer to it. Did
4 you all typically leave those drawers open like that or were
5 they typically closed?

6 A. They were closed.

7 Q. Were you a pretty good housekeeper?

8 A. Yes.

9 Q. Keep things straight?

10 A. Yes.

11 Q. So this would not have been normally how those dresser
12 drawers were kept?

13 A. No.

14 Q. And he didn't keep anything in a drawer in the
15 kitchen?

16 A. No.

17 Q. He didn't keep anything in somebody else's room?

18 A. No.

19 Q. Always in that dresser drawer?

20 A. Yes.

21 Q. All right. Tell me about what happened mid-afternoon
22 on April the 14th. What was the first thing that you heard?

23 A. The first thing that I heard was we was asleep and we
24 woke up to them saying, where that nigger at, where that
25 nigger at. I heard three voices. Allen jumped up. He

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1 pushed me. I got under the bed, and the next thing I heard,
2 I heard him say, yo, Loc, yo, Loc. The next thing I heard
3 was a big bang.

4 Q. When you were in that bedroom. Let me stop you for a
5 minute. You just take a breath. Is the bedroom -- I show
6 you a picture of that bedroom that we've looked at before,
7 which is State's Exhibit 13; were y'all sleeping in that bed?

8 A. Yes.

9 Q. And is there a space between -- which side of the bed
10 did Allen sleep on?

11 A. The front.

12 Q. And so he slept on the side that was closest to the
13 dresser drawers?

14 A. Uh huh (indicating positive).

15 Q. And then you slept on the side that was closest to the
16 exterior wall?

17 A. Yes.

18 Q. And was there a space there in between the bed and the
19 wall that you slept on?

20 A. Yes.

21 Q. And is that the area where you're saying you slipped
22 down into that area?

23 A. Uh huh (indicating positive).

24 Q. And were you all the way down?

25 A. Yes.

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1 Q. And do you know if anybody ever saw you in there?

2 A. No, they didn't. They didn't see me. They didn't
3 even know I was in there.

4 Q. Okay. When you heard those voices, where were those
5 voices when you first heard them?

6 A. In my bedroom -- outside -- no, outside the door,
7 because our bedroom door was closed.

8 Q. And you're under the bed?

9 A. Uh huh (indicating positive).

10 Q. You hear a shot?

11 A. Uh huh (indicating positive).

12 Q. And what do you see next from under that bed?

13 A. I see four feets, and I hear them going through
14 Allen's drawers and talking, and I was under that bed, and
15 all I could do is say God, please help me. They stayed in
16 there and they looked through the drawers and they was
17 talking. Then I guess God just heard me, and the fire alarms
18 went off. One of them said, we got to leave because here
19 come the police.

20 They left out the house. I got from under the bed. I
21 had scraped my stomach all up, and when I got from under the
22 bed, I seen the air mattress moving, but I didn't care if
23 they was still in the house because I seen Allen on the floor
24 and I ran over there to him and I was rubbing his face and I
25 was talking to him, and I was like, baby, I've got 911 on the

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1 phone.

2 I said please don't leave me. Just hold on. Allen was
3 dead and I didn't know. Oh, my God. Oh, my God. I don't
4 understand why they did that. I didn't bother nobody. Lord,
5 have mercy. Oh, my God. Lord, have mercy for me. Oh, my
6 God.

7 Q. Take as long as you need. Do you think you're going
8 to be able to answer?

9 A. (No response.)

10 Q. All right, when you were under the bed, you said that
11 you saw four feet. Do you mean that you saw two people?

12 A. Two people.

13 Q. And tell me what color the shoes were that they were
14 wearing, if you know.

15 A. One of them was black and like a gold and white, and
16 one of them was black and green. They was Nike Air Max&.

17 Q. Frankie, how long do you think they were in that house
18 total?

19 A. Fifteen minutes, like ten to fifteen minutes.

20 Q. And you said that you knew that they were going
21 through the drawers?

22 A. Yes.

23 Q. How do you know that they were going through the
24 drawers?

25 A. Because I was facing and I seen their feets, and they

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- 1 were standing like by Allen drawer throwing out stuff.
- 2 Q. And in this picture that I've showed you before,
- 3 State's Exhibit 13, there's some items that are laying there
- 4 on the floor. Do you see those?
- 5 A. Uh huh (indicating positive).
- 6 Q. Were those items on the floor before they came in?
- 7 A. No.
- 8 Q. And would those have been the types of things that you
- 9 saw coming from out of that drawer?
- 10 A. Yes.
- 11 Q. When you came out, you said you -- you -- that you saw
- 12 Allen?
- 13 A. Yes.
- 14 Q. And you also said that you saw the air mattress
- 15 moving?
- 16 A. Yes.
- 17 Q. Where was that air mattress?
- 18 A. It was in the front room -- in the front -- that room.
- 19 Q. Is that where Loc was?
- 20 A. Yes.
- 21 Q. All right, so did you -- was he under there? Could
- 22 you see that he ---
- 23 A. It was Loc. He came out.
- 24 Q. He came out from under the air mattress?
- 25 A. Yes.

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1 Q. All right, and did they -- you said that you had an
2 injury on your stomach?

3 A. Yes.

4 Q. Did they -- did they take you to a hospital?

5 A. Yes.

6 Q. I'm going to show you State's Exhibit 17 already in
7 evidence and ask you to take a look at that and tell me,
8 please, what that is.

9 A. That's the quilt top, and it was a towel on the floor.

10 Q. Would that have been -- did you all typically sleep
11 underneath this ---

12 A. Yes.

13 Q. --- this particular quilt right here?

14 A. Yes.

15 Q. All right, and how about Allen, did he sleep in any
16 particular way?

17 A. Yes.

18 Q. How did he sleep?

19 A. On his side.

20 Q. Which side?

21 A. On his left side.

22 Q. Facing which way?

23 A. Towards the door. He always slept with his face
24 towards the door.

25 Q. Would that be facing towards that dresser?

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CROSS BY McCOLLUM

1 A. Uh huh (*indicating positive*).

2 MS. von HERRMANN: Thank you, Ms. Davis. Please answer
3 any questions they may have.

4 THE COURT: All right, Mr. McCollum, cross-examination.

5 MR. McCOLLUM: May it please the Court.

6 THE COURT: Yes sir.

7 CROSS-EXAMINATION BY MR. McCOLLUM:

8 Q. Ms. Davis, the Solicitor asked you about the guns that
9 were in the house. You said there was a third gun that was
10 kept behind the chest of drawers or behind the dresser,
11 whatever we're calling it?

12 A. Yes.

13 Q. That's correct, right?

14 A. Yes.

15 Q. And what kind of gun was that?

16 A. I don't know. I -- I guess it was a shotgun. I don't
17 know nothing about guns.

18 Q. Let me rephrase it. Was it -- was it a pistol or what
19 was called a long gun?

20 A. It was a long gun.

21 Q. Okay, and so it could have been a shotgun or it could
22 have been a rifle?

23 A. Uh huh (*indicating positive*).

24 Q. Okay. To your knowledge, after this incident
25 happened, was that gun still behind the dresser?

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1 A. I don't know. I -- I don't -- I didn't look after
2 this happened. My focus was on Allen.

3 Q. I understand. Had you seen that gun behind the chest
4 of drawers within a few days prior to April the 14th?

5 A. Yes.

6 Q. And was it in a case or outside of a case?

7 A. It was in -- it was outside of a case.

8 Q. All right. Do you know if the gun was loaded or not?

9 A. I don't know.

10 Q. It may have been loaded or may not have been?

11 A. I don't know.

12 Q. Okay. Do you know what color it is or was?

13 A. It was brown, I guess. I really didn't pay it
14 attention.

15 Q. All right. In terms of -- and those three guns, to
16 your knowledge, those belonged to Allen Smith?

17 A. Yes.

18 Q. And did you ever have any discussions with him about
19 the guns?

20 A. No.

21 Q. Okay. Did you know whether or not he was allowed to
22 have guns legally?

23 A. No.

24 Q. You don't know or he was not?

25 A. No, I don't know.

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1 Q. Okay. There's no question in your mind that they
2 belonged to him?

3 A. Yes.

4 Q. Okay. Now, in terms of the bedroom door, you said
5 that prior to these two intruders coming inside, that the
6 bedroom door was closed?

7 A. Yes.

8 Q. Does that door have a lock on it?

9 A. Yes, it does.

10 Q. When you were in there prior to waking up, do you know
11 if your bedroom door was locked or unlocked? You know, like
12 I'm going to ask you questions, and other people will, you
13 may not know the answer. You're not expected to know
14 everything, so -- but I'm asking if you know whether or not
15 the door was locked?

16 A. I don't remember.

17 Q. Is that -- when you would be sleeping in there like
18 that during the day, would you normally -- would you normally
19 lock the door?

20 A. No. Normally the door wouldn't be closed. The only
21 reason why it was closed that week, because Loc stayed that
22 week. Usually we leave our bedroom door open.

23 Q. Okay, so you just closed it because somebody else was
24 in the house?

25 A. Yes.

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1 Q. And prior to the intruders coming into the bedroom,
2 did you hear anybody in the house?

3 A. No.

4 Q. So after this incident you discovered that the front
5 door had been locked, right?

6 A. Yes.

7 Q. It had been locked certainly with a deadbolt lock that
8 was in there, right?

9 A. Yes.

10 Q. And I don't know if the bottom lock was locked or not,
11 do you know?

12 A. I keep both of my doors locked, the bottom and the
13 top.

14 Q. Okay, and is there a -- and that front door, is that
15 the only door to the residence or is there a back door?

16 A. In the kitchen area we had sliding doors.

17 Q. All right, and those weren't disturbed, right?

18 A. No.

19 Q. Okay, so when later you found out that the front door
20 had been physically forced in ---

21 A. Yes.

22 Q. --- or kicked in, as we say, right? Right?

23 A. Yes.

24 Q. And when that happened, you don't remember if that
25 didn't wake you up?

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1 A. No, I didn't hear the door. Prior to that, that
2 Sunday night, we went to -- we really stayed up. We stayed
3 up that night and we talked. We didn't go to sleep until
4 about -- it had to be around 9:30 because my sister had
5 called and I talked to her for a while. Then we dozed off.
6 We went to sleep, because I didn't know what time it was when
7 it happened until the officer let me know that it was in the
8 afternoon.

9 Q. So -- so you stayed up all night and went to bed at
10 9:30 in the morning?

11 A. Yes; yes.

12 Q. So your first recollection was that Allen physically
13 woke you up and shoved you behind the bed?

14 A. No. When we -- when they came into the house, they
15 was so loud they woke us up.

16 Q. Woke you up?

17 A. Yes, they woke me up, because they say, where is that
18 nigger at, where is that nigger at.

19 Q. All right, and then did you see the bedroom door
20 opening?

21 A. Did I see the bedroom door opening?

22 Q. Yes Ma'am.

23 A. I heard them once they got in the room.

24 Q. Okay, and what's the -- what's the -- what's the door
25 knob like on the bedroom door? In other words, is it made

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1 out of plastic, like glass, is it metal, or brass? What does
2 it look like?

3 A. It's metal.

4 Q. Okay, shiny metal?

5 A. Yes.

6 Q. Okay, so whoever opened the door in all likelihood
7 would have put their hand on it, ---

8 A. Yes.

9 Q. --- turned the knob and pushed it open, right?

10 A. Yes.

11 Q. Okay, and you've also testified that these individuals
12 after shooting Allen, right, ---

13 A. Uh huh (indicating positive).

14 Q. --- while you're still hiding either behind the bed or
15 under the bed ---

16 A. Under the bed.

17 Q. --- were going through the dresser drawers?

18 A. Yes.

19 Q. I think we've been calling it a chest of drawers, but
20 you ---

21 A. A dresser, yes.

22 Q. Okay, so you heard them pulling drawers out?

23 A. Yes. I heard them. I seen their -- I could see their
24 feet.

25 Q. And so they were touching and putting their hands all

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1 over the dresser?

2 A. Yes.

3 Q. When the police questioned you, did any
4 about that? In other words, did they ask you about if the
5 people had put their hands anywhere to the degree that the
6 intruders would have left some fingerprints?

7 A. No.

8 Q. They never asked you that?

9 A. No.

10 Q. At any time, and you probably weren't in any condition
11 to do anything like this -- it's weird when you go through
12 something like that, but at any time did you tell the police
13 that they should check the door handle, or check the dresser
14 or anything for fingerprints?

15 A. No, I did not.

16 Q. Just you were -- I understand, so you say that Ms.
17 Collington broke out your window ---

18 A. Yes.

19 Q. --- at your house?

20 A. Yes.

21 Q. And there's no question she was mad about you living
22 with Allen, right?

23 A. Yes.

24 Q. And she was pregnant, right?

25 A. Yes.

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1 Q. And was it your understanding that her unborn child,
2 that Allen was the father?

3 A. I don't know. I don't know who the father is. I
4 don't know who the father is.

5 Q. But that would upset a lot of people, right, if
6 someone was pregnant and they were living with somebody else,
7 right? I mean, that would be upsetting?

8 A. Yes.

9 Q. And that's a normal emotion to understand, right?

10 A. Yes.

11 Q. Right?

12 A. Yes.

13 Q. Okay, so and when a woman is pregnant, too, you have
14 some hormonal issues about -- it affects your emotions,
15 right?

16 A. Yes.

17 Q. Okay. At times you are more emotional than you would
18 be otherwise, right?

19 A. Yes.

20 Q. Is that a fair statement?

21 A. Yes.

22 Q. I mean, I'm not trying to put words in your mouth, but
23 you agree with me about that, right?

24 A. Yes.

25 Q. Okay, thank you. Now, this incident happened on --

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- 1 the home invasion happened on April the 14th?
- 2 A. Yes.
- 3 Q. Monday, right?
- 4 A. Yes.
- 5 Q. And the day that Ms. Collington supposedly came over
- 6 there and broke your window, that was the week before, right?
- 7 A. Yes.
- 8 Q. And was that -- I can't remember. Was that on a
- 9 Tuesday or a Thursday, do you remember?
- 10 A. It was a -- I remember it was on a Wednesday because
- 11 of the simple fact my cousin asked me was I going to Bible
- 12 study.
- 13 Q. Okay.
- 14 A. Yeah, it was on a Wednesday.
- 15 Q. All right, and did you go to Bible study?
- 16 A. No, I did not.
- 17 Q. In terms of when -- when she broke the window out, the
- 18 police were called, right?
- 19 A. I was not there.
- 20 Q. But -- so you don't know if the police came or not?
- 21 A. When I got home, he had the record showing that the
- 22 police did come.
- 23 Q. So they -- they -- that drew the police's attention to
- 24 her, right?
- 25 A. Yes.

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1 Q. And so -- and this was just a -- you say the Wednesday
2 prior to the 14th?

3 A. Yes.

4 Q. So that would have been what, the 9th? Does that
5 sound right?

6 A. Yes.

7 Q. I think there's a calendar right here.

8 MR. McCOLLUM: With the Court's permission?

9 THE COURT: Yes sir.

10 Q. So I'm going to hold up -- I think this is the
11 calendar of April 2008.

12 MR. McCOLLUM: I don't see an exhibit number on it,
13 Your Honor.

14 Q. So the calendar shows that that Wednesday would have
15 been ---

16 A. The 9th.

17 Q. --- the 9th, right?

18 A. Yes.

19 Q. Okay, and to your knowledge, she got mad, broke a
20 window, and went home, right?

21 A. Yes.

22 Q. She didn't physically come after you, right?

23 A. I wasn't there.

24 Q. Okay. Now, in terms of the deceased, Allen Smith,
25 when -- it's your testimony that he had just sold a quantity

FRANKIE YVONNIE DAVIS - CROSS BY McCOLLUM

- 1 of cocaine, right?
- 2 A. Yes.
- 3 Q. And he had money?
- 4 A. Yes.
- 5 Q. And that the people, the intruders, were there for the
- 6 money, right?
- 7 A. Yes.
- 8 Q. And that's -- in your understanding, that's what they
- 9 were there for is to get the money?
- 10 A. To rob him.
- 11 Q. To rob him?
- 12 A. Uh huh (indicating positive).
- 13 Q. Okay, and how much money do you say was in the drawer?
- 14 A. I don't know, roughly -- I don't know.
- 15 Q. Was it a Hundred Dollars? Was it a Thousand Dollars?
- 16 Was it Five Thousand Dollars? Was it Fifty Thousand Dollars?
- 17 A. I don't know.
- 18 Q. Okay. Did you -- did you ever see the money?
- 19 A. I seen him counting the money, yeah.
- 20 Q. And what day did you see him counting the money?
- 21 A. That Sunday.
- 22 Q. Okay, and where was he when he was counting the money?
- 23 A. He was standing by his dresser.
- 24 Q. And you were in the bedroom?
- 25 A. Yes.

FRANKIE YVONNIE DAVIS - CROSS BY McCOLLUM

- 1 Q. And was anyone else in the bedroom?
- 2 A. No.
- 3 Q. And was the door open or closed?
- 4 A. Open.
- 5 Q. And he had his back to you?
- 6 A. He was in the bedroom. I was in the bathroom.
- 7 Q. All right, and besides knowing that he was counting
- 8 money, did you see any of the money?
- 9 A. Yeah.
- 10 Q. Okay, and could you tell what denominations it was in?
- 11 In other words, was it ones, fives, tens, twenties, fifties,
- 12 one hundreds?
- 13 A. Ones, twenties, tens.
- 14 Q. I'm sorry?
- 15 A. I said ones, twenties, tens.
- 16 Q. All right, and so it might have been less than Two
- 17 Hundred Dollars?
- 18 A. No. I knew it was more than that.
- 19 Q. It was more than ---
- 20 A. Yeah -- yes.
- 21 Q. Okay, more than Five Thousand?
- 22 A. No, I don't -- uh uh (indicating negative).
- 23 Q. So to your understanding, it was a couple thousand
- 24 dollars?
- 25 A. Yes.

FRANKIE YVONNIE DAVIS - CROSS BY MCCOLLUM

1 Q. And you came to that conclusion because that's just
2 what it looked like in terms -- or was he counting out loud?

3 A. He was counting to himself.

4 Q. Was he putting it in stacks?

5 A. Yes, like the twenties with the twenties or tens with
6 the tens.

7 Q. All right, and so there was a stack of tens, a stack
8 of twenties, right?

9 A. Yes.

10 Q. Was there a stack of fifties?

11 A. No.

12 Q. It was just -- was there a stack of lower
13 denominations, fives and ones?

14 A. No, just ones.

15 Q. So it was ones, tens, and twenties?

16 A. Yes.

17 Q. And how many stacks did he put out, do you know?

18 A. No, I don't.

19 Q. Okay, but you think just from observing it, without
20 him telling you, that it was maybe about a Thousand or Two
21 Thousand Dollars, something like that?

22 A. Yes.

23 Q. Okay, and that's to the best of your knowledge?

24 A. Yes.

25 Q. Okay. Was it just loose in the dresser or was it in

FRANKIE YVONNIE DAVIS - CROSS BY McCOLLUM
CROSS BY HAZZARD

1 some kind of container?

2 A. It was loose in the dresser.

3 Q. All right. Now, in terms of ---

4 MR. McCOLLUM: Thank you, Ma'am.

5 A. Huh?

6 MR. McCOLLUM: Thank you.

7 A. You're welcome.

8 MR. McCOLLUM: That's all the questions I have, Your
9 Honor.

10 THE COURT: All right, very good.

11 Mr. Hazzard.

12 MR. HAZZARD: Thank you, Your Honor.

13 THE COURT: Yes sir.

14 CROSS-EXAMINATION BY MR. HAZZARD:

15 Q. Good morning, Ma'am.

16 A. Good morning.

17 Q. When you were talking with Ms. von Herrmann, I think
18 you told her that Mr. Smith was a drug dealer, correct?

19 A. Yes.

20 Q. Okay. How long had he been a drug dealer to your
21 knowledge?

22 A. I don't know. When I got here, he was. I don't know
23 how long he was.

24 Q. And when did you arrive, again? I'm sorry.

25 A. At the end of 2004.

FRANKIE YVONNIE DAVIS - CROSS BY MR. HAZZARD

1 Q. Okay, so the end of 2004; from November or December of
2 '04, he was a drug dealer to your knowledge consistently
3 through the time of his tragic demise April of 2008?

4 A. Yes.

5 Q. And that was his -- that was his line of work? That's
6 what he did for a living, correct?

7 A. Yes.

8 Q. He didn't go to any other job during the day and then
9 swing a little rock on the side, did he?

10 A. No.

11 Q. Now, like any business, a dealer has to have
12 clientele, correct?

13 A. Yes.

14 Q. Okay, because that's how you stay in any businesses,
15 you're moving product, right?

16 A. Yes.

17 Q. Okay, and I would assume that Mr. Smith was fairly
18 successful at his business since he was able to do this
19 business consistently over at least a four year period?

20 A. Yes.

21 Q. Now, you had indicated to Ms. von Herrmann, I believe,
22 that Mr. Smith -- and that was your home, correct?

23 A. Yes.

24 Q. You had indicated that Mr. Smith did not deal drugs
25 out of your home?

FRANKIE YVONNIE DAVIS - CROSS BY MR. HAZZARD

1 A. Yes, I did.

2 Q. Where did he deal drugs out of to your knowledge?

3 A. Outside.

4 Q. Outside, okay, and where did he store the drugs to
5 your knowledge?

6 A. In my house.

7 Q. In your house, okay. To your knowledge, did Mr. Smith
8 have a storage unit or anything like that in his name?

9 A. No.

10 Q. So someone knew that Mr. Smith, Allen Smith, was a
11 drug dealer and they were inclined to want to take his drugs
12 and/or his money? They would be inclined to go to where he
13 lives, would that be a fair statement, Ma'am?

14 A. Yes.

15 Q. And he didn't live anywhere but with you, correct?

16 A. Yes.

17 Q. And I think you told Mr. McCollum and Ms. von Herrmann
18 that a couple of days prior to this incident, three young
19 males apparently came and knocked on the door and then were
20 walking away, correct?

21 A. Yes.

22 Q. And as they were walking away, I believe one of them
23 turned around and then said something or may have shouted
24 something back about looking for some work?

25 A. Yes.

FRANKIE YVONNIE DAVIS - CROSS BY HAZZARD
JURY OUT

1 Q. And that you quite forthrightly told them you don't
2 come around here, don't be no drug dealing or no drug dealing
3 in my home?

4 A. Yes, I did.

5 Q. Okay, and these guys were on foot?

6 A. Yes.

7 Q. And they walked toward the path, correct?

8 A. Yes.

9 MR. HAZZARD: All right, thank you, Ma'am. No further
10 questions.

11 THE COURT: Any redirect, Solicitor?

12 MS. von HERRMANN: No sir, Your Honor.

13 THE COURT: All right.

14 You may step down.

15 All right, Solicitor, your next witness, please Ma'am.

16 MS. von HERRMANN: Your Honor, may we approach for a
17 moment?

18 THE COURT: Yes Ma'am.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 THE COURT: All right, we'll take a five minute break,
21 ladies and gentlemen. Go to your jury room and we'll be back
22 in about five minutes. Thank you very much. Leave your pads
23 and pens. Thank you.

24 Everyone else remain seated.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JURY IN
PETER CESTARE - DIRECT BY von HERRMANN

1 JURY.)

2 THE COURT: All right, we'll be at ease for five
3 minutes. Thank you very much.

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

6 THE COURT: All right, are you ready for the jury,
7 Solicitor?

8 MS. von HERRMANN: Yes sir, Your Honor.

9 THE COURT: All right, Mr. McCollum?

10 MR. MCCOLLUM: Yes, Your Honor.

11 THE COURT: And Mr. Hazzard?

12 MR. HAZZARD: Yes sir.

13 THE COURT: Very good.

14 Ask the jury to come in, please.

15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, Solicitor, your next witness,
18 please Ma'am.

19 MS. von HERRMANN: Thank you. The State calls
20 Investigator Peter Cestare.

21 THE COURT: All right.

22 Please come around and be sworn, sir.

23 PETER CESTARE, being first duly sworn, states
24 as follows:

25 DIRECT-EXAMINATION BY MS. VON HERRMANN:

PETER CESTARE - DIRECT BY von HERRMANN

- 1 Q. Investigator Cestare, how are you this morning --
2 afternoon, I guess, close to it.
- 3 A. Very good, Ms. von Herrmann, and you?
- 4 Q. I am doing well. How long -- how are you employed?
- 5 A. I am employed with the Horry County Police Department.
6 I have been employed there for eight years. I am the
7 commanding officer to the Crime Scene Investigations Unit.
- 8 Q. And did you have an occasion to execute a search
9 warrant with regard to this particular case?
- 10 A. Yes Ma'am, I did.
- 11 Q. And was that a search warrant on [REDACTED] Grainger Road,
12 Apartment [REDACTED]-8 in Conway, South Carolina?
- 13 A. Yes, that's correct.
- 14 Q. And did you collect a number of items of evidence as a
15 result of that search warrant?
- 16 A. Yes Ma'am, I did.
- 17 Q. I'm going to show you what's been marked as State's
18 Exhibit 70 and ask you to take a look at this. I ask you to
19 take a look at that and see what that is. I believe you have
20 70(A), (B), and (C) in there.
- 21 A. Yes Ma'am, that's correct. This is -- these are items
22 of evidence that I collected at Apartment [REDACTED]-8 that day.
- 23 Q. All right. What do those items -- I believe Item
24 70(A) is a weapon, is that correct?
- 25 A. Yes Ma'am. May I handle these?

PETER CESTARE - DIRECT BY von HERRMANN

1 Q. Has it been secured?

2 A. Yes, it has. Thank you. These are not going to work,
3 but we will be fine. Yes Ma'am, this is the weapon I
4 collected at that apartment that day.

5 Q. And that's State's 70(A)?

6 A. Yes.

7 Q. And what is that?

8 A. It is a Ruger pistol, a .22 caliber pistol. It is
9 secured, so please don't anybody get offended if I point it
10 in any direction. It is secured. There's a locking
11 mechanism through it. This was placed on it by me after the
12 weapon was obtained that day.

13 Q. Does that weapon have a serial number on it?

14 A. Yes Ma'am, it does.

15 Q. Can you check that serial number, please, and read
16 that into the record.

17 A. It is 229873.

18 Q. And was that particular item sent up to S.L.E.D. for
19 testing?

20 A. Yes Ma'am, it was.

21 MS. von HERRMANN: I would move State's 70(A) into
22 evidence at this time.

23 THE COURT: Any objection, Mr. McCollum?

24 MR. MCCOLLUM: Just the earlier motion, Your Honor.

25 THE COURT: All right, very good.

PETER CESTARE - DIRECT BY von HERRMANN

1 Mr. Hazzard?

2 MR. HAZZARD: Just with regard to the earlier motions,
3 Your Honor.

4 THE COURT: All right, very good.

5 I'm going to allow it into evidence over the objection
6 of the Defense.

7 You may proceed.

8 (.22 RUGER PISTOL ADMITTED INTO EVIDENCE AS STATE'S
9 EXHIBIT NUMBER 70(A).)

10 Q. And let me -- let me ask you one more question about
11 the serial number on that. I asked you if you sent that up
12 to S.L.E.D. Why do you -- you indicated a serial number on
13 paperwork when you send it to S.L.E.D.?

14 A. Yes Ma'am. Anything that's collected by myself or any
15 of the investigators is logged onto a chain of custody. That
16 shows how we received it, when we received it, and it shows
17 the motion of that or the movement of that item after that,
18 so yes, it was logged onto an Horry County Police Department
19 evidence record and of which I've got a copy of it here with
20 me.

21 Q. Okay, thank you, and if you'll look at 70(B), please,
22 and tell the jury what that is.

23 A. 70(B) -- let me just lower this box down so that you
24 can see it as well. 70(B), as indicated by the State's
25 Exhibit label, is a magazine. It's a .22 caliber magazine

PETER CESTARE - DIRECT BY von HERRMANN

1 for a Ruger Strom. It fits this weapon here.

2 Q. Where -- where does that go into that weapon?

3 A. On this weapon, there is a locking mechanism placed on
4 it by us that goes up through the magazine well or magazine
5 port on the weapon, and it comes out through the chamber
6 area. With this lockout, this magazine would slip up into
7 the weapon enabling it to -- to be activated.

8 MS. von HERRMANN: The State would move State's Exhibit
9 70(B) into evidence as well.

10 THE COURT: Mr. McCollum, any objection to 70(B)?

11 MR. MCCOLLUM: No, Your Honor.

12 THE COURT: Mr. Hazzard?

13 MR. HAZZARD: No objection.

14 THE COURT: All right. It's in evidence without
15 objection.

16 (MAGAZINE FOR PISTOL ADMITTED INTO EVIDENCE AS STATE'S
17 EXHIBIT NUMBER 70(B).)

18 Q. Can you tell by looking at that how many bullets that
19 magazine would hold?

20 A. No Ma'am, I can't. I could -- I can guess by the
21 retraction of it, it will hold several -- several rounds,
22 several bullets.

23 Q. Would it be more than five, less than five?

24 A. I would -- I would venture to think it would be more
25 than five.

PETER CESTARE - DIRECT BY von HERRMANN

1 Q. Okay, and also, 70- -- if you'll take a look at
2 State's 70(C).

3 A. Yes Ma'am.

4 Q. What is that item?

5 A. That is four live .22 caliber cartridges that were --
6 that were loaded in this magazine when I retrieved it, when I
7 found it. They are labeled State's Exhibit 70(C).

8 MS. von HERRMANN: I would move that into evidence as
9 well.

10 THE COURT: Any objection, Mr. McCollum?

11 MR. MCCOLLUM: No, Your Honor.

12 THE COURT: Mr. Hazzard?

13 MR. HAZZARD: No objection, Your Honor.

14 THE COURT: All right. State's 70(C) is in evidence
15 without objection.

16 (FOUR LIVE .22 CALIBER CARTRIDGES ADMITTED INTO EVIDENCE
17 AS STATE'S EXHIBIT NUMBER 70(C).)

18 Q. All right, I'm also going to show you State's Exhibit
19 43, 44, and 45 and ask you to take a look at those
20 photographs.

21 A. Yes Ma'am.

22 Q. And are those photographs of this same weapon?

23 A. Yes, they are. These photographs were done by me
24 prior to collecting that weapon. When I first observed it, I
25 took a photograph of it. I then placed an evidence marker

PETER CESTARE - DIRECT BY von HERRMANN
CROSS BY HAZZARD

1 next to the weapon, which corresponds with my Horry County
2 Police Department evidence record showing Item 2 as that
3 Ruger Strom .22, and then that's a photo of the item after I
4 collected it out of the closet to show what it consisted of.

5 Q. Thank you.

6 A. And, I'm sorry, those are marked State's 43, State's
7 44, State's 45.

8 MS. von HERRMANN: Thank you so much. I don't have any
9 further questions. Please answer any questions that Defense
10 Counsel may have.

11 THE COURT: All right, Mr. McCollum.

12 MR. MCCOLLUM: I don't have any questions, Your Honor.

13 THE COURT: Mr. Hazzard?

14 MR. HAZZARD: Very briefly.

15 CROSS-EXAMINATION BY MR. HAZZARD:

16 Q. Good morning. How are you, sir?

17 A. Very well, sir, and you?

18 Q. I'm good; I'm good. Thank you.

19 You said you've been with the Horry County Police
20 Department for eight years?

21 A. Yes sir.

22 Q. Is that the full extent of your law enforcement
23 training?

24 A. No sir, it's not.

25 Q. Okay. Tell us about that if you would.

PETER CESTARE - CROSS BY HAZZARD

1 A. I've been employed in law enforcement for
2 approximately thirty years now. I am retired from the
3 N.Y.P.D. where I was in charge of Manhattan-Bronx Major Case
4 to Homicide Division.

5 Q. All right. Now, whose residence was this that you --
6 that's at [REDACTED] Grainger Road? I believe you said [REDACTED] as in
7 [REDACTED] ?

8 A. If you will, let me just refer back to my notes for
9 one minute. It was [REDACTED] Grainger Road in the Conway Section
10 of Horry County, and Apartment [REDACTED], as in George, [REDACTED].

11 Q. [REDACTED], okay. Whose residence is that, sir?

12 A. It was the residence of last name James. I'm sorry,
13 the first name escapes me at the moment.

14 Q. Okay, last name James, all right, and when was the gun
15 seized?

16 A. Sir?

17 Q. When was the gun seized? When was the search ---

18 A. On the 15th of April 2008 at approximately ten o'clock
19 in the morning.

20 Q. From the residence of someone named James, last name
21 James?

22 A. Yes sir, from that [REDACTED] residence, yes, sir.

23 Q. [REDACTED], all right.

24 MR. HAZZARD: All right, thank you, sir.

25 No further questions.

1 **THE COURT:** Any redirect, Solicitor?

2 **MS. von HERRMANN:** No sir, Your Honor.

3 **THE COURT:** You may step down. Thank you.

4 **MS. von HERRMANN:** Your Honor, I do have a quick matter
5 that I think we can take up at the bench.

6 **THE COURT:** All right.

7 Do you wish the witness to be excused?

8 **MS. von HERRMANN:** Yes sir, I do.

9 **THE COURT:** Any objection to that, Mr. McCollum?

10 **MR. MCCOLLUM:** No, Your Honor, not on behalf of the
11 defendant, Collington.

12 **THE COURT:** Mr. Hazzard?

13 **MR. HAZZARD:** No objection, Your Honor.

14 **THE COURT:** All right, Investigator, you are released
15 from your subpoena and may go back to your regular duties,
16 sir.

17 **MR. CESTARE:** Thank you, sir.

18 **THE COURT:** If y'all want to come around here, please.

19 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

20 **THE COURT:** All right, Solicitor, your next witness,
21 please Ma'am

22 **MS. von HERRMANN:** The State calls Andrew James.

23 **THE COURT:** All right, Mr. James, come around all the
24 way up here, please sir.

25 **ANDREW JAMES,** being first duly sworn, states

ANDREW JAMES - DIRECT BY von HERRMANN

1 as follows:

2 **DIRECT-EXAMINATION BY MS. VON HERRMANN:**

3 Q. Good morning, Mr. James.

4 A. Good morning.

5 Q. You are a co-defendant in this particular case, is
6 that correct?

7 A. Yes Ma'am.

8 Q. And you have been charged with accessory before the
9 fact of a felony, is that correct?

10 A. Yes Ma'am.

11 Q. I am looking here at your criminal record, and you've
12 never been convicted of anything before, have you?

13 A. No Ma'am.

14 Q. But you do have some charges that are pending?

15 A. Yes Ma'am.

16 Q. All right, and you have this charge that's pending,
17 which is the attempted -- the accessory before the fact of a
18 felony, right?

19 A. Yes Ma'am.

20 Q. And you've got a couple of drug charges on here?

21 A. Yes Ma'am.

22 Q. And you've also got an assault and battery first
23 degree?

24 A. Yes.

25 Q. And you've got an attempted murder that you were

ANDREW JAMES - DIRECT BY von HERRMANN

1 charged with, is that correct?

2 A. Yes Ma'am.

3 Q. All right, but you have not -- how have you pled to
4 each of those charges?

5 A. I haven't pled nothing yet.

6 Q. All right, so those are out there and you haven't pled
7 guilty to any of those charges?

8 A. No Ma'am.

9 Q. All right. You've simply been charged?

10 A. Yes Ma'am.

11 Q. You and I have spoken before, is that correct?

12 A. Yes Ma'am.

13 Q. And we have talked about this case, and you had agreed
14 through your lawyer to come and cooperate and give us some
15 information, is that correct?

16 A. Yes Ma'am.

17 Q. And with regard to that information, were you promised
18 anything in return for that?

19 A. No Ma'am.

20 Q. And you understood that there was nothing that we were
21 willing to do for you in order -- other than to tell the
22 Judge about your level of cooperation with regard to your
23 cooperating, correct?

24 A. Yes Ma'am.

25 Q. And did I give you some instructions about your

ANDREW JAMES - DIRECT BY von HERRMANN

1 testimony?

2 A. Yes Ma'am.

3 Q. And what did I tell you about your testimony here
4 today?

5 A. That basically it was going to be about what I did and
6 what part I played in this position.

7 Q. And did I ask you to be truthful about it?

8 A. Yes Ma'am.

9 Q. And did I ever at any time try to tell you what to
10 say?

11 A. No Ma'am.

12 Q. All right. Now, let's talk about a couple of
13 different people that we -- the jury has heard about. Who is
14 Tiffany James?

15 A. That's my sister.

16 Q. Tiffany is your sister?

17 A. Yes.

18 Q. Do you know where Tiffany lived during the time that
19 this happened?

20 A. [REDACTED] Grainger Road, Apartment [REDACTED]-8.

21 Q. Apartment [REDACTED]-8?

22 A. Yes.

23 Q. Okay, and where were you living at the time?

24 A. I was at [REDACTED] Grainger Road, at [REDACTED]-5.

25 Q. All right, and do you know a Greg Floyd?

ANDREW JAMES - DIRECT BY von HERRMANN

- 1 A. Yes Ma'am.
- 2 Q. Where did Greg Floyd live?
- 3 A. He stayed in Bucksport.
- 4 Q. Okay.
- 5 A. And I'm not -- well, I'm not familiar with the
- 6 address, but it was down in Bucksport.
- 7 Q. All right. How about Donell James, do you know Donell
- 8 James?
- 9 A. Yes. That's my cousin.
- 10 Q. He's your cousin. Where was he living?
- 11 A. He stayed on Palmetto Street right there -- I think it
- 12 was [REDACTED] Palmetto Street.
- 13 Q. Is that where his mother lived?
- 14 A. Yes.
- 15 Q. And is that close to the -- close to the apartments
- 16 where you lived and where Tiffany lived?
- 17 A. Yes Ma'am.
- 18 Q. And y'all lived in different apartments?
- 19 A. Yes Ma'am.
- 20 Q. And how about Donell, did he have a girlfriend?
- 21 A. Yes.
- 22 Q. What was her name?
- 23 A. Tanheshia.
- 24 Q. Where did she live?
- 25 A. Well, she just moved over there about -- on 544 in a

ANDREW JAMES - DIRECT BY von HERRMANN

- 1 complex.
- 2 Q. All right. Do you know what the name of the complex
- 3 was?
- 4 A. No Ma'am.
- 5 Q. And do you know Ladorrean Collington?
- 6 A. Yes Ma'am.
- 7 Q. And is she here in the courtroom today?
- 8 A. Yes Ma'am.
- 9 Q. And do you know where she lived?
- 10 A. She also stayed in the complex.
- 11 Q. So she, and Tanheshia, or Tanheshia, lived in the same
- 12 complex?
- 13 A. Yes Ma'am.
- 14 Q. And you and Tiffany lived in the same complex?
- 15 A. Yes Ma'am.
- 16 Q. Those are two totally different places?
- 17 A. Yes Ma'am.
- 18 Q. All right. Did Donell, did he spend time over at his
- 19 girlfriend's house?
- 20 A. Yes Ma'am.
- 21 Q. All right. How about Quentin Gause, do you know him?
- 22 A. Yes Ma'am.
- 23 Q. How do you know him?
- 24 A. I been -- I see him every now and then, you know what
- 25 I'm saying, but I ain't never talked to him, like that,

ANDREW JAMES - DIRECT BY von HERRMANN

- 1 or ---
- 2 Q. All right, so he's -- he's not a good friend of yours?
- 3 A. No.
- 4 Q. He's an acquaintance? Would you say he's an
- 5 acquaintance?
- 6 A. Yeah.
- 7 Q. All right, and let's go to Ladorrean Collington. Now,
- 8 how do you know her?
- 9 A. She was my cousin's baby mother, and I been knowing
- 10 her since -- since, I say, for about four or five years.
- 11 Q. Who is your cousin?
- 12 A. Michael Beatty.
- 13 Q. Where is he now?
- 14 A. He's locked up.
- 15 Q. He's locked up?
- 16 A. Yes Ma'am.
- 17 Q. Do you know where he's locked up?
- 18 A. No Ma'am.
- 19 Q. Do you know what he's locked up for?
- 20 A. Not right offhand.
- 21 Q. And you -- you knew him?
- 22 A. Yes Ma'am.
- 23 Q. And you knew her through him?
- 24 A. Yes Ma'am.
- 25 Q. All right, and did you know the victim in this case,

ANDREW JAMES - DIRECT BY von HERRMANN

1 Allen Smith?

2 A. Yes Ma'am.

3 Q. How did you know him?

4 A. From Dory telling me that it was he
5 mean baby father.

6 Q. All right. Had you actually met him or you just ---

7 A. No. I never met him or seen him.

8 Q. You never met him or seen him?

9 A. Uh uh (indicating negative).

10 Q. You just knew the name?

11 A. Yeah, uh huh (indicating positive).

12 Q. All right, and you knew that there was a relationship
13 between the two of them, though?

14 A. Yes Ma'am, at one point in time.

15 Q. And at some point, was there a plan between you and
16 Iadorrean Collington, and anyone else with regard to Allen
17 Smith?

18 A. Yes Ma'am. It was we was supposed to go and rob him,
19 whatever, and she had told us that it was going to be some
20 money and drugs involved and it was going to be ---

21 THE COURT: I'm going to allow it.

22 You may continue.

23 Q. Go ahead. You can continue.

24 A. She said, well, it was going to be some money and
25 drugs involved and that there was a easy lick for us all, you

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1 know what I'm saying, just to go over there, kick the door
2 in, take the money and drugs.

3 Q. All right. When you say it was going to be an easy
4 lick, what's a lick?

5 A. A robbery.

6 Q. A robbery?

7 A. Yes.

8 Q. All right, and when she -- when somebody says it's
9 going to be an easy lick, or a sweet lick, what does that
10 mean?

11 A. Basically they know more than what we know, you know
12 what I'm saying, so, I mean, it wasn't going to be no problem
13 or no trouble, you know what I'm saying.

14 Q. All right, so she told you it was going to be easy?

15 A. Yes.

16 Q. And what instructions -- do you remember what date
17 this was?

18 A. I think it was a week prior from this accident or
19 something like that.

20 Q. So it was before the day that he was -- that Allen
21 Smith was actually killed?

22 A. Yes Ma'am.

23 Q. All right, and tell me what -- where were -- where
24 were you all when she was providing you with this
25 information?

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1 A. We was at her house that night. I mean, the next day
2 we was supposed to do it, but that night we was at her house.

3 Q. Okay, and so that night when you're at her house, what
4 specifics did she give you about that -- about that rob- --
5 about that armed robbery and burglary?

6 A. I mean, she was just been like, well, I got a lick for
7 y'all. It's right there by my house, sitting right behind my
8 house, you know what I'm saying. It's going to be easy, you
9 know what I'm saying. I know he going to have some money and
10 probably some drugs in there, like that.

11 Q. All right. Who was present when that conversation
12 took place?

13 A. It was me, Donell, Tiffany, and Ladorrean.

14 Q. All right, and did y'all -- were you concerned that he
15 might have some weapons in the house?

16 A. I mean, yeah, that was mentioned, you know what I'm
17 saying, but she stated that he ain't got no gun. I mean, you
18 ain't got to worry about that.

19 Q. All right. What -- did she tell you where the house
20 was?

21 A. Yes. It was located behind her house. That was about
22 it.

23 Q. All right. Did she say anything to you about why she
24 wanted you to do this?

25 A. No Ma'am.

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1 Q. All right. Did you find it unusual that she would
2 have this lick for you?

3 A. No. I mean, to the time -- I mean, after the fact I
4 found out they was going through some stuff, but at that
5 point in time I didn't understand why.

6 Q. All right. Was that -- so that was -- that was kind
7 of a common thing for y'all to discuss robbing somebody?

8 A. I mean, no, not really, no Ma'am.

9 Q. Did she tell you how much money?

10 A. I mean, she -- she gave me an estimate, but I'm not
11 sure what it was or how much she had said, ---

12 Q. All right.

13 A. --- but I know it was a good bit.

14 Q. Was she supposed to get anything out of it? Did y'all
15 discuss that?

16 A. No Ma'am.

17 Q. And so after you discussed it, you said that was the
18 night before, I guess?

19 A. Yes Ma'am.

20 Q. What did y'all do?

21 A. Well, the next day we had went to go do it, but ---

22 Q. You went over to Allen's house?

23 A. Yes Ma'am.

24 Q. How did you get over there?

25 A. We had got dropped off.

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- 1 Q. Who dropped you off?
- 2 A. Tiffany.
- 3 Q. Okay, and so had they told you where to go look for
- 4 this money or drugs that were going to be in the house?
- 5 A. No, she didn't say.
- 6 Q. She didn't tell you?
- 7 A. Uh uh (indicating negative).
- 8 Q. So Tiff- -- so does Tiffany take you over there?
- 9 A. Yes Ma'am.
- 10 Q. Whose car did she drive that day?
- 11 A. I can't remember.
- 12 Q. And who was in the car?
- 13 A. Me, Gregory, and Donell.
- 14 Q. You, Greg Floyd, and Donell James?
- 15 A. And Donell James, yes Ma'am.
- 16 Q. All right, so when you go over there, what happened?
- 17 Wait. Let me ask -- let me back up. Did you have any guns
- 18 with you?
- 19 A. Yes Ma'am.
- 20 Q. And what kind of gun did you have?
- 21 A. I had a sawed-off.
- 22 Q. A sawed-off shotgun?
- 23 A. Yes Ma'am.
- 24 Q. I'm going to show you what's been marked as State's
- 25 69. Does that look familiar to you?

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1 A. Yes Ma'am.

2 Q. All right. Is that a gun that you had?

3 A. Yes Ma'am.

4 Q. All right. Is that your -- that was your gun? You

5 brought that one, right?

6 A. Yes Ma'am.

7 Q. All right. Did anybody else have a gun?

8 A. Yeah. Donell had a gun.

9 Q. What kind of gun did he have?

10 A. I can't remember.

11 Q. All right, and how about Greg, did he have a gun?

12 A. No Ma'am.

13 Q. So he was going over there with no gun?

14 A. Yes Ma'am.

15 Q. Did he say anything about the fact that he didn't have

16 a gun?

17 A. No Ma'am.

18 Q. All right. All right, so Tiffany drives you over

19 there. Was she going to wait for you?

20 A. She -- she just dropped us off.

21 Q. She dropped you off?

22 A. Uh huh (indicating positive).

23 Q. And what was the plan about what you were going to do

24 after you break into his house and rob him?

25 A. Well, it was a path that lead to Dory's house, so it

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1 was just, you know what I'm saying, just after we hit the
2 lick, we would just run to her house through the path.

3 Q. All right. I'm going to show you State's 47 and
4 State's 48 and ask you to take a look at those two
5 photographs. Do you see that?

6 A. Yes Ma'am.

7 Q. Does that look familiar to you?

8 A. Yes Ma'am.

9 Q. All right. 47, what is that a picture of?

10 A. Look like a picture to the path.

11 **THE COURT:** You need to speak up, sir, please.

12 A. The picture to the path.

13 Q. All right. That's a picture from Allen's house
14 towards the path?

15 A. Yes Ma'am.

16 Q. All right, and then what about 48?

17 A. That look like -- like the path.

18 Q. Is that the path?

19 A. Yes Ma'am.

20 Q. And when you go through that path, how close to the
21 path is Ladorrean Collington's apartment?

22 A. I want to say about -- about -- about fifteen feet,
23 ten or fifteen feet, from it.

24 Q. All right, so very close?

25 A. Yes.

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1 Q. All right, so Tiffany has dropped you off and you are
2 going up to Allen's house, you, Donell, Greg Floyd, right?

3 A. Yes Ma'am.

4 Q. All right. What -- what happens next?

5 A. I can't remember who it was that had knocked on the
6 door, but they knocked on the door and nobody came to the
7 door, and we just got that person just to go ahead and leave,
8 so we started walking off.

9 Q. All right, so you got up there and, I mean, when you
10 -- why didn't -- why didn't you go through with it?

11 A. Because something didn't seem right to me, I mean, to
12 my actuality. I didn't -- I didn't see it right, you know
13 what I'm saying, so I had -- I had started walking off, and
14 we both start walking off. Ain't nobody wanting to kick the
15 door, so we all walked off.

16 Q. All right. Did -- what -- what was Donell saying at
17 that time?

18 A. He was saying -- he was telling one of us to kick the
19 door, you know what I'm saying.

20 Q. And what did you say?

21 A. I say I wasn't kicking it.

22 Q. And what did Greg say?

23 A. He wasn't about to kick it either.

24 Q. All right, so nobody did -- nobody would agree to kick
25 the door?

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- 1 A. No Ma'am; no, Ma'am.
- 2 Q. And so because of that, y'all decided ---
- 3 A. To go on.
- 4 Q. --- it was a bad idea and you were going to leave?
- 5 A. Yes Ma'am.
- 6 Q. All right, and is -- is that what happened, you left?
- 7 A. Yes Ma'am. We walked off.
- 8 Q. When you left, where did you go?
- 9 A. Walked -- we walked back to Dory house.
- 10 Q. All right, through the path?
- 11 A. Yes Ma'am.
- 12 Q. And what time of day was that?
- 13 A. It was going -- I want to say the middle of the day,
- 14 in the afternoon.
- 15 Q. So it was daylight out?
- 16 A. Yes Ma'am.
- 17 Q. Did you have a discussion with Ladorrean about doing
- 18 this during the daytime instead of at night? Did y'all talk
- 19 about that at all?
- 20 A. I think we had mentioned about it before we went to go
- 21 do it at her house, but I can't remember what was said.
- 22 Q. All right, so when you left -- when you left Allen's
- 23 and you go back to her house, what was the conversation when
- 24 you got back there?
- 25 A. It wasn't that -- well, it wasn't much said, but I

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1 can't remember what was said. I know that everybody had went
2 their separate ways, ---

3 Q. And was anybody ---

4 A. --- you know what I'm saying, said it was some bull,
5 said it was some bull, so we had went our separate ways and
6 went on about our business.

7 Q. When you arrived back there at her house, who was
8 there?

9 A. Just her and my -- her and my sister.

10 Q. Her and Tiffany?

11 A. Yes Ma'am.

12 Q. And when you say everybody went their separate ways,
13 where did you go?

14 A. I went back home.

15 Q. Where -- how did you get back there?

16 A. I drove my car.

17 Q. Did you take your shotgun with you?

18 A. Yes Ma'am.

19 Q. What kind of car do you -- were you driving?

20 A. I want to say a Delta, a Delta 88, something like
21 that.

22 Q. A Diplomat?

23 A. A Diplomat, yeah; yes Ma'am.

24 Q. All right, and at some point within the next day or
25 two, or maybe -- maybe you even knew then, did you become

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1 aware that you were being evicted from your apartment?

2 A. Yes Ma'am.

3 Q. All right. Who did you live in that apartment with?

4 A. Cecily, Cecily Hilliard.

5 Q. Cecily. What's her last name?

6 A. Hilliard.

7 Q. All right. That's your girlfriend?

8 A. Yes Ma'am.

9 Q. And you -- did you -- you knew this before y'all went
10 over there that day, right?

11 A. Yes Ma'am.

12 Q. Did you have an appointment scheduled about that whole
13 eviction process?

14 A. Yes Ma'am. Well, it wasn't no schedule, but we had
15 made the appointment to meet with -- with the Social Service
16 people about taking the people to court about putting us out
17 about something that we didn't do.

18 Q. All right, and because you were being evicted, did you
19 have to get all your stuff out of your apartment?

20 A. Yes Ma'am.

21 Q. What did you do with the things that you had in your
22 apartment?

23 A. Well, I took all my stuff to my girl mama house and I
24 dropped some of my luggage off at my cousin house.

25 Q. All right, and let me show -- what did you drop off at

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1 your cousin's house?

2 A. My sawed-off pump and my .22.

3 Q. All right. Let me show you what's been marked as
4 State's Exhibit 41 and see if you can tell me what that is.

5 A. It's a suitcase.

6 Q. That's the suitcase you took over when you ---

7 A. Yes Ma'am.

8 Q. You say you took it your cousin's? Did you take it
9 over to Tanheshia's house ---

10 A. Yes Ma'am.

11 Q. --- where Donell was staying? All right, and how
12 about State's Exhibit 42?

13 A. That's the other suitcase.

14 Q. And we can see some -- it looks like some ammunition
15 there in that outside zipper pocket. What kind of ammunition
16 was that?

17 A. It's .22 bullets.

18 Q. And what was inside the suitcase?

19 A. I had a sawed-off in there. One had a .22 in it.

20 Q. I'm going to show you what's been marked State's
21 Exhibit 70(A) and ask you to take a look at that.

22 A. Yes Ma'am.

23 Q. Do you recognize that?

24 A. Yes Ma'am.

25 Q. Is that that .22 that you had?

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- 1 A. Yes Ma'am.
- 2 Q. All right, so you brought the shotgun that we got out
3 earlier ---
- 4 A. Yes Ma'am.
- 5 Q. --- and this weapon over to Tanheshia Smith's
6 house ---
- 7 A. Yes Ma'am.
- 8 Q. --- in that suitcase?
- 9 A. Yes Ma'am.
- 10 Q. What day did you do that?
- 11 A. It was the -- I think the 14th.
- 12 Q. Now, was it the same day that Mr. Smith was killed?
- 13 A. Yes Ma'am.
- 14 Q. And where is -- where again is that apartment?
- 15 A. Well, it's like -- well, I want to say Dory -- it's a
16 section over here and there's another section over here. It
17 would be located in the other section ---
- 18 Q. All right, so ---
- 19 A. --- on the right.
- 20 Q. --- Ladorrean lived in one section ---
- 21 A. And she lived in another section.
- 22 Q. Lived in another section?
- 23 A. Yes Ma'am.
- 24 Q. Are they fairly close together?
- 25 A. Yes Ma'am.

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1 Q. You could walk back and forth from one to the other?

2 A. You could, yes Ma'am.

3 Q. All right. Who -- who drove over to Donell's or
4 Tanheshia's that day?

5 A. Me and my girl.

6 Q. All right, and when you got there, who was at
7 Tanheshia's?

8 A. It was just Donell and Tanheshia at the time.

9 Q. All right. Did y'all take that shotgun out at all?

10 A. No. I showed them -- I showed them what was in it and
11 then he started playing with it or what not.

12 Q. Y'all were messing with it?

13 A. Yes Ma'am.

14 Q. Is there anything wrong with that shotgun?

15 A. It was not when I got over there, but when -- when I
16 got over there he started messing with it, and a big piece of
17 metal dropped out it and I guess it was the -- holding the
18 chamber up and getting it to release and cock, you know what
19 I'm saying, but after it fell out, it wouldn't cock or hold
20 no ammunition in it.

21 Q. Were y'all able to get that piece back in there?

22 A. No Ma'am. I told him just to leave it alone, you know
23 what I'm saying, I'll deal with it later.

24 Q. Okay, so in other words, once that piece was out, that
25 gun was not functioning?

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- 1 A. No Ma'am.
- 2 Q. Do you know if it had a spring in it and a -- and a
3 piece, the red piece, that holds it in there or not?
- 4 A. I mean, it -- it more likely had a spring in it if it
5 had to go up and down, but I guess the metal piece was just
6 holding it, holding it to make it do that.
- 7 Q. The metal piece that held it together ---
- 8 A. Yes Ma'am.
- 9 Q. --- was missing?
- 10 A. Yes Ma'am.
- 11 Q. So it was not functioning?
- 12 A. No Ma'am.
- 13 Q. All right. Did you bring any ammunition over there
14 for that shotgun?
- 15 A. No Ma'am.
- 16 Q. Do you know if Donell had any ammunition for that
17 shotgun?
- 18 A. No Ma'am.
- 19 Q. You don't know or he didn't?
- 20 A. I -- I don't think so he did. I'm not sure.
- 21 Q. And did anybody else come over to Tanheshia's house
22 while you were there?
- 23 A. Yes Ma'am.
- 24 Q. Who came over there?
- 25 A. Gregory and Quentin came over.

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1 Q. All right. Who -- that's Greg Floyd?
2 A. Yes Ma'am.
3 Q. And is that Quentin Gause over there?
4 A. Yes Ma'am.
5 Q. Okay. Let me ask you this about Quentin Gause. Take
6 a look at him. Is that -- did he look like that when he came
7 over there that day?
8 A. No Ma'am.
9 Q. He had some dreads back then, didn't he?
10 A. Yes Ma'am.
11 Q. Did he have those cute little glasses? Was he wearing
12 those back then?
13 A. No Ma'am.
14 Q. And he looks a lot different today than he did back
15 then, right?
16 A. Yes Ma'am.
17 Q. All right, and does he have a nickname?
18 A. Bait.
19 Q. Spell that for me.
20 A. B-A-I-T.
21 Q. Bait?
22 A. Yeah.
23 Q. Kind of like you go fishing with some bait?
24 A. Yes.
25 Q. All right, and how do you know him, again?

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- 1 A. I mean, I just been seeing him around. I don't
2 personally know him like that.
- 3 Q. Did you know his brother?
- 4 A. Yes Ma'am.
- 5 Q. Who is his brother?
- 6 A. They call him Pookie.
- 7 Q. Pookie?
- 8 A. Yes Ma'am.
- 9 Q. So you were kind -- were you friends with Pookie?
- 10 A. Yes Ma'am.
- 11 Q. And maybe knew him through Pookie?
- 12 A. I mean, kinda, sorta.
- 13 Q. All right. When Greg and Quentin Gause get there,
14 what -- what do they arrive in? Do they come in a vehicle?
- 15 A. Yes Ma'am.
- 16 Q. What type of vehicle did they come in?
- 17 A. I'm not sure what -- I'm not sure what type it was.
- 18 Q. Okay. Do you know what color it was?
- 19 A. I want to say red, if I ain't mistaken.
- 20 Q. Do you know if it was a two-door or a four-door?
- 21 A. No Ma'am. I'm not sure.
- 22 Q. You don't recall about that?
- 23 A. Uh uh **(indicating negative)**.
- 24 Q. Do you remember who was driving the vehicle?
- 25 A. No Ma'am.

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- 1 Q. All right, and so when you see them, did you see any
2 -- that Gregory Floyd had anything with him?
- 3 A. No Ma'am.
- 4 Q. Do you know what he was wearing? Do you remember any
5 of that?
- 6 A. No Ma'am.
- 7 Q. How about Quentin, did he have a gun with him?
- 8 A. Yes Ma'am.
- 9 Q. What type of gun did he have with him?
- 10 A. It was one similar to mine, sawed-off, you know what
11 I'm saying, but it was camouflaged and had the pistol-grip.
- 12 Q. All right, so it's a sawed-off, camouflaged, pistol-
13 grip gun?
- 14 A. Yes Ma'am.
- 15 Q. All right. What's -- what's a pistol-grip? Is
16 that ---
- 17 A. That's like, I mean, instead of the whole full
18 shotgun, it's a -- it's pistol-grip.
- 19 Q. Okay.
- 20 A. It's got a grip like a pistol.
- 21 Q. Like sometimes a shotgun, like you put it on your
22 shoulder ---
- 23 A. Yes Ma'am.
- 24 Q. --- like when you're hunting and stuff, ---
- 25 A. Yes Ma'am.

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1 Q. --- and this one that you're describing actually had a
2 grip kind of like a handgun would have?

3 A. Yes Ma'am.

4 Q. And did you talk with him about that gun?

5 A. No Ma'am. I mean, I said it was a nice gun. That was
6 about it.

7 Q. Was it a pretty nice gun?

8 A. Yes Ma'am.

9 Q. All right, and did he tell -- did he tell you anything
10 about that gun, where he'd gotten it, or if it was special to
11 him or anything like that?

12 A. No Ma'am.

13 Q. All right. At some point did you leave Donell's
14 house?

15 A. Yes Ma'am.

16 Q. All right, and why did you leave there?

17 A. I was going -- I had to go meet my girl mama at her
18 house and we had a appointment to make it to with the Social
19 Service.

20 Q. All right, so you had an appointment that day with the
21 Social Services people?

22 A. Yes Ma'am.

23 Q. Do you recall what time that meeting was?

24 A. I think we had to be there before five.

25 Q. All right, before -- before the close of business that

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- 1 day, you had to be there?
- 2 A. Yes Ma'am.
- 3 Q. All right. Later on that day, did you get a phone
4 call from Donell?
- 5 A. Yes Ma'am.
- 6 Q. Do you remember what he was calling you about?
- 7 A. I can't remember right offhand.
- 8 Q. When you were over at Donell's, was Tiffany over
9 there?
- 10 A. No Ma'am; no Ma'am.
- 11 Q. How about Tiffany, does Tiffany have a baby?
- 12 A. Yes Ma'am.
- 13 Q. What is the baby's name?
- 14 A. Breanna.
- 15 Q. That's your niece?
- 16 A. Yes Ma'am.
- 17 Q. Was Breanna over there?
- 18 A. No Ma'am.
- 19 Q. Do you know -- did you ever receive any calls about
20 Breanna that day?
- 21 A. Yes Ma'am.
- 22 Q. What calls did you receive about Breanna?
- 23 A. I'm not sure if they was calling to tell me to go get
24 her from Dory house, ---
- 25 Q. Okay.

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- 1 A. --- you know what I'm saying, that she had needed to
2 get her, ---
- 3 Q. Okay.
- 4 A. --- and she called me a lot to go get her.
- 5 Q. Do you remember what time that was?
- 6 A. No. I'm not sure.
- 7 Q. All right. Did anybody else call you about going --
8 did Ladorrean call you about coming to pick Breanna up, too?
- 9 A. No Ma'am.
- 10 Q. Do you remember having a conversation with her where
11 she said there were a bunch of police around?
- 12 A. Yes Ma'am; yes Ma'am.
- 13 Q. And so either you called her or she called you, right,
14 in order for you to have that conversation?
- 15 A. Yes Ma'am. She had called me and told me about it,
16 just to be careful, you know what I'm saying, that she knew
17 that I had been on 544.
- 18 Q. All right. Did you catch up with Tiffany later on?
- 19 A. Yes Ma'am.
- 20 Q. Where did you catch up with her?
- 21 A. It was at her house, at her apartment.
- 22 Q. Was that back at [REDACTED]?
- 23 A. Yes Ma'am, on Grainger Road.
- 24 Q. And did you -- how about that .22, did you ever get
25 that .22 back?

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- 1 A. Yes Ma'am. Actually when I got back up with her at
2 her apartment, she had it and I was wondering why she had it.
- 3 Q. Okay. I'm going to show you these pictures, State's
4 Exhibit 43 and 44.
- 5 A. All right.
- 6 Q. That's where the police found that gun the next day,
7 right?
- 8 A. Yes Ma'am.
- 9 Q. But when you got back there, did you -- she told you
10 that she had your .22?
- 11 A. Yes Ma'am.
- 12 Q. And then did you take your .22 back?
- 13 A. Yes Ma'am. I took it back from her.
- 14 Q. You did, all right, and what did you do with it?
- 15 A. Well, I stuck it in the side of my pants, and I had
16 left.
- 17 Q. You did?
- 18 A. Yeah, well, after I had questioned her about how did
19 she get it, and -- but she didn't get into detail.
- 20 Q. She didn't tell you anything about how she ended up
21 with it?
- 22 A. Uh uh (indicating negative).
- 23 Q. All right. Do you recall talking with her about Allen
24 Smith being shot?
- 25 A. Yes Ma'am, later on that night.

1. STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2. COUNTY OF HORRY) (10-GS-26-01626) (Collington)
3.) (10-GS-26-01627) (Collington)
4. STATE) (08-GS-26-03135) (Gause)
5.) (08-GS-26-03133) (Gause)
6.) (11-GS-26-01274) (Gause)
7. VERSUS) TRANSCRIPT OF RECORD
8.)
9.)
10.)
11. LADORREAN CHUKELL) May 13, 2011
12. COLLINGTON and QUENTIN) June 6, 7, 8, 9, 10, 2011
13. LAVANT GAUSE)
14.) Conway, South Carolina
15.)
16.)
17.)
18.)
19.)
20.)
21.)
22.)
23.)
24.)
25.)

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

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ATTORNEY FOR DEFENDANT, GAUSE

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

VOLUME 3 OF 4

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	May 13, 2011				
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17	Mr. McCollum		149		
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2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
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Ms. von Herrmann

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Mr. Hazzard

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563/564

PETER CESTARE

Ms. von Herrmann

564

Mr. McCollum

(NONE)

Mr. Hazzard

570

ANDREW JAMES

Ms. von Herrmann

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Mr. McCollum

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655

Mr. Hazzard

630

658

JURY OUT/ON RECORD/JURY IN

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10	SOLOMON K. JONES				
11	Ms. von Herrmann	1035		1038	
12	Mr. McCollum		1037		
13	Mr. Hazzard		(NONE)		
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15	CECILY NICOLE HILLARD				
16	Ms. von Herrmann	1040			
17	Mr. McCollum	1042			
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19	COURT'S RULING	1044			
20	JURY IN	1045			
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4	Mr. Spratlin	1065			
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7	JURY OUT AT 1:00 P.M./JURY CONTINUES DELIBERATION				1214
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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S-1	Consent to Search		127
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S-3	Search Warrant (Coastal Villas ())		157
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C-2	Note from Jury (Misplaced)		266
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C-5	Note from Jury		1215

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1 (A)	Large Chart		48
4	S-1 (B)	Large Chart		48
5	S-2	Photo		48
6	S-3	Photo		48
7	S-4	Photo		48
8	S-5	Photo		48
9	S-6	Photo		48
10	S-7	Photo		48
11	S-8	Photo		48
12	S-9	Photo		48
13	S-10	Photo		48
14	S-11	Photo		48
15	S-12	Photo		48
16	S-13	Photo		48
17	S-14	Photo		48
18	S-15	Photo		48
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21	S-18	Photo		48
22	S-19	Photo		48
23	S-20	Photo		48
24				
25				

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-21	Photo		48
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6	S-24	Photo		48
7	S-25	Photo		48
8	S-26	Photo		48
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14	S-32	Photo		48
15	S-33	Photo		48
16	S-34	Photo		48
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18	S-36	Photo		48
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25				

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2				
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8	S-46	Photo		48
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10	S-48	Photo		48
11	S-49	Photo	191	295
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23	S-60	Pillow		306
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S-62	Shot Shell Component	652	317
S-63	Shot Shell Component	652	317
S-64	Shot Shell Component	652	318
S-65	Shot Shell Component	652	318
S-66	Shot Shell Component (from Autopsy)	652	334
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S-68	.357 Caliber Bullets	652	342
S-69	Shotgun (Serial # C884049)	652	331
S-70(A)	.22 Ruger Pistol (Serial # 229873)	652	567
S-70(B)	Magazine	652	568
S-70(C)	Bullets	652	569
S-71	PowerPoint Booklet	652	287
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-1 (Collington) (ID ONLY) Handwritten Note		
4	D-2 (Collington) (ID ONLY) Handwritten Note		
5	D-3 (Collington) (ID ONLY) Handwritten Note		
6	D-4 (Collington) (ID ONLY) Handwritten Note		
7	D-5 (Collington) (ID ONLY) Handwritten Note		
8	D-6 (Collington) (ID ONLY) Handwritten Note		
9	D-7 (Collington) (ID ONLY) Handwritten Note		
10	D-8 (Collington) (ID ONLY) Handwritten Note	918	
11	D-9 (Collington) (ID ONLY) Handwritten Note	927	

ANDREW JAMES - DIRECT BY von HERRMANN
JURY OUT/ON RECORD

1 Q. All right, and what did she tell you about Allen Smith
2 being shot?

3 MR. McCOLLUM: Objection, Your Honor.

4 THE COURT: Counsel, y'all come and talk to me for a
5 second.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 Q. Okay, so ---

8 THE COURT: Just a second; just a second.

9 Ladies and gentlemen, go to your jury room, please.

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

12 THE COURT: All right, since the jury is out, let's get
13 the question and the answer out first, and then I'll hear
14 from Counsel.

15 MS. von HERRMANN: Okay.

16 Q. Mr. James, did you have a conversation with Tiffany
17 about what had taken place at Allen Smith's?

18 A. Yes Ma'am.

19 Q. And what did she tell you about that?

20 A. She had been like, man, he dead, man, he dead, man,
21 you know what I'm saying.

22 Q. And did she tell you who had shot him?

23 A. Yeah. She had said Bait had shot him.

24 MS. von HERRMANN: Do you want me to continue or ---

25 THE COURT: Is that the essence of what you wanted to

JURY OUT/ON RECORD

1 get in that particular ---

2 MS. von HERRMANN: Yes.

3 THE COURT: --- questioning as to what Ms. Tiffany
4 James said?

5 MS. von HERRMANN: Yes sir.

6 THE COURT: All right, very good.

7 All right, Mr. McCollum, let me hear from you.

8 MR. MCCOLLUM: Well, I had made the objection
9 initially. Your Honor, I would submit that at that point
10 that's after the fact of the crime. Even if they were co-
11 conspirators, that's not part of the conspiracy. It could
12 possibly, I guess, be if it were accessory after the fact, or
13 misprision of a felon, or something like that maybe.

14 The other thing, too, I'd just like to point out while
15 the jury is out of the room, Your Honor, is that the State is
16 going on this conspiracy theory, but it's to my understanding
17 nobody is charged with conspiracy. Now, that may not make
18 any difference, but I'm raising that as part of the
19 objection, that they're not charged with conspiracy.

20 THE COURT: All right, very good.

21 All right, Mr. Hazzard, let me hear from you, sir.

22 MR. HAZZARD: My position would be the same. My
23 question and my concern was with regard to the basis for
24 which the Prosecutor thought the hearsay was admissible. If
25 it is supposed to be in furtherance of the conspiracy, again

JURY OUT/ON RECORD

1 I would say, like Mr. McCollum said, that this statement
2 would have been after the actions of the conspiracy and
3 outside that exception.

4 **THE COURT:** All right, Solicitor, what -- as to that
5 effect, it's obviously after the -- after the fact. It's not
6 the plan or something to keep the plan in existence or during
7 the course of the -- the course of the plan. What --

8 **MS. von HERRMANN:** That's true, Your Honor, it is after
9 the actual act, but the act is not the end of the conspiracy.
10 The conspiracy continues while they try to get together and
11 make up stories about what takes place in this -- during that
12 activity, and so my position would be that it doesn't end
13 with the act, that it continues on until -- basically until
14 the time that they are arrested and separated.

15 **THE COURT:** Well, at this point in time, I'm not going
16 to -- I'm not going to allow her -- allow this witness to
17 state what Ms. Tiffany James said as to this particular
18 issue.

19 Now, if there might be some issues about a -- further
20 questions about what they got together to do after the act
21 and they agreed to do certain things in conjunction with now
22 the act is completed and we will continue to do these things,
23 I'm not prohibiting you from going into those, but I don't
24 believe that this particular statement goes to that.

25 It's not as to the plan as to what was occurring or

JURY OUT/ON RECORD/JURY IN
ANDREW JAMES - DIRECT BY von HERRMANN

1 while it was going on, or trying to come up with some scheme
2 to hide it in any way, so I'm not going to allow this
3 particular questions and answers at this point in time, but
4 in general.

5 MS. von HERRMANN: Could I ask him if he had a
6 conversation with her and just leave it at that?

7 THE COURT: Well, certainly. You can ask if you had a
8 conversation with her and what did you do as a result of the
9 conversation, those type -- certainly you can. It's just
10 what he -- I mean what she actually told him, he cannot
11 say, ---

12 MS. von HERRMANN: Yes sir.

13 THE COURT: --- regarding this.

14 All right, ask the jury to come back in.

15 Thank you, Counsel.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

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

19 MS. von HERRMANN: Thank you.

20 CONTINUING DIRECT-EXAMINATION BY MS. von HERRMANN:

21 Q. So when you get back over there to the apartment where
22 you live and where Tiffany lives, you did have a conversation
23 with her, ---

24 A. Yes Ma'am.

25 Q. --- correct?

ANDREW JAMES - DIRECT BY von HERRMANN

- 1 A. Yes Ma'am.
- 2 Q. All right, and that .22, did you get that -- you got
3 that back from her?
- 4 A. Yes Ma'am.
- 5 Q. And I believe that you testified that you put it in
6 your pocket?
- 7 A. Yes Ma'am. I put it in my side right here where it
8 would be facing out my front pocket.
- 9 Q. All right. Did something happen with that gun later
10 on that night?
- 11 A. Yes Ma'am. I had -- it had discharged. I had it
12 cocked and holding on my side right here, and it had
13 discharged and went through my pants pocket.
- 14 Q. All right, and did you have a hole in your pants
15 pocket as a result of that?
- 16 A. Yes Ma'am.
- 17 Q. Did you show that to the detectives where you had shot
18 that hole through your pants?
- 19 A. Yes Ma'am.
- 20 Q. You are pretty lucky you didn't shoot your leg, aren't
21 you?
- 22 A. Yes Ma'am.
- 23 Q. All right. That was -- that was a completely
24 accidental firing ---
- 25 A. Yes Ma'am.

ANDREW JAMES - DIRECT BY von HERRMANN

- 1 Q. --- of that weapon, correct?
- 2 A. Yes Ma'am.
- 3 MR. McCOLLUM: Objection; leading.
- 4 THE COURT: Solicitor, please don't lead your witness.
- 5 Thank you.
- 6 MR. McCOLLUM: Yes sir.
- 7 Q. [REDACTED]-2790, whose telephone number was that?
- 8 A. That was mine.
- 9 Q. That was your telephone number back then?
- 10 A. Yes Ma'am.
- 11 Q. All right, and [REDACTED]-2623, is that J.B.?
- 12 A. I'm not sure. I'm not sure.
- 13 Q. How about Ms. Collington, do you remember her
- 14 telephone number back then?
- 15 A. No Ma'am.
- 16 Q. And do you remember any telephone number that Tiffany
- 17 James may have had?
- 18 A. Not right offhand, no Ma'am.
- 19 Q. Okay, thank you, and again, when you and I talked, no
- 20 promise was made to you about any of your pending charges?
- 21 A. No Ma'am.
- 22 MS. von HERRMANN: Thank you. Please answer any
- 23 questions Mr. McCollum or Mr. Hazzard may have.
- 24 THE COURT: All right, Mr. McCollum, cross-examination.
- 25 MR. McCOLLUM: May it please the Court.

ANDREW JAMES - CROSS BY McCOLLUM

1 **THE COURT:** Yes sir.

2 **MR. McCOLLUM:** Thank you, Your Honor.

3 **CROSS-EXAMINATION BY MR. McCOLLUM:**

4 Q. Mr. James, you go by -- your name is Andrew?

5 A. Yes Ma'am (sic).

6 Q. And what do you go by, Drew?

7 A. Andrew, Drew, yes sir.

8 Q. Drew, people call you Drew?

9 A. (No response.)

10 Q. You are related to Donell, right?

11 A. Yes sir.

12 Q. How are you related to him?

13 A. His mama is my aunt, and makes -- my daddy is him --
14 his uncle.

15 Q. All right. Are y'all pretty tight?

16 A. Yes sir.

17 Q. How are things going for you now? Are things going
18 pretty good?

19 A. Yes sir.

20 Q. You're out of jail, right?

21 A. Yes sir.

22 Q. All right. Now, you've got some charges pending right
23 now, right?

24 A. Yes sir.

25 Q. In fact, you've got quite a few charges pending,

ANDREW JAMES - CROSS BY McCOLLUM

- 1 right?
- 2 A. Yes sir.
- 3 Q. You got arrested and charged in this case to accessory
- 4 before the fact of murder; you're charged with that?
- 5 A. Yes sir.
- 6 Q. And you understand that you're facing up to thirty
- 7 years, thirty to life with that?
- 8 A. Yes sir.
- 9 Q. That you could get thirty years to life in prison for
- 10 that one charge, right?
- 11 A. Yes sir.
- 12 Q. You are also charged with some drug charges, right?
- 13 A. Yes sir.
- 14 Q. And that's selling drugs?
- 15 A. Yes sir.
- 16 Q. Okay.
- 17 A. Distribution.
- 18 Q. So you're charged with selling drugs, selling what,
- 19 cocaine?
- 20 A. Yes sir.
- 21 Q. Selling work? You call it work?
- 22 A. Yes sir.
- 23 Q. Okay, and you're charged with assault and battery in
- 24 the first degree, right?
- 25 A. Yes sir.

ANDREW JAMES - CROSS BY McCOLLUM

1 Q. And you could get, what did they tell you, up to ten
2 years for that?

3 A. I don't know.

4 Q. And you're charged with attempted murder, right?

5 A. Yes sir.

6 Q. And you could get -- did anybody tell you you could
7 get up to thirty years for that?

8 A. No.

9 Q. And you've got a lawyer, right?

10 A. Yes sir.

11 Q. Who is your lawyer?

12 A. Eric Fox.

13 Q. Eric Fox. Now, when you -- and just so we get this
14 straight, you've committed some crimes before, right?

15 MS. von HERRMANN: Objection.

16 THE COURT: Sustained.

17 Q. You've done things that you wouldn't admit or tell
18 anybody, right?

19 A. Yes sir.

20 Q. Yes sir, right?

21 A. Yeah.

22 Q. No question about that, is there, right?

23 A. (No response.)

24 COURT REPORTER: Answer aloud, please.

25 THE COURT: I'm sorry, sir. When you're asked a

ANDREW JAMES - CROSS BY McCOLLUM

1 question, you need to answer yes, no, or I don't know. Also,
2 if you need to explain your answer, you may do so if you want
3 to.

4 A. All right.

5 THE COURT: Go ahead.

6 MR. McCOLLUM: Thank you, Your Honor.

7 Q. So you've done things that you couldn't tell the truth
8 about, right?

9 A. I mean -- I mean, I could tell the truth, but I choose
10 not to or it depends on what the situation is.

11 Q. Right, so if somebody came up to you and asked if you
12 were selling drugs, you would lie and say no, right?

13 A. It depends on who it is.

14 Q. Say the police?

15 A. Yeah.

16 Q. Huh?

17 A. Yes sir.

18 Q. Say it's your mama?

19 A. Yes sir.

20 Q. You would lie to your mother, right?

21 A. Yes sir.

22 Q. And you've done that, haven't you?

23 A. I mean, yeah.

24 Q. You've lied to your mother, right?

25 A. Yeah.

ANDREW JAMES - CROSS BY McCOLLUM

1 Q. And you've done things you are ashamed of, right?

2 A. I mean, not ashamed of. It's just some things I
3 didn't want her to know at that point in time.

4 Q. And besides -- and you've lied to the police before,
5 too, right?

6 A. Yes, I guess, if that what you want to call it.

7 Q. Yeah, and there ain't nothing wrong with lying to the
8 police, is there?

9 A. I mean, they got their side of the story and then you
10 got my side of the story.

11 Q. Right; right, that's right. They got their job to do
12 and you got your job to do, right?

13 A. Yeah, if you want to call it a job.

14 Q. It's survival, right?

15 A. Yes.

16 Q. You want to survive, right?

17 A. Yeah. Ain't that what you call it? I mean, survive
18 what?

19 Q. Survive. You want to -- you want to live outside of
20 jail, right?

21 A. I mean, it would be nice.

22 Q. It would be nice, wouldn't it, and you can't go around
23 admitting crimes and stay outside of jail, right?

24 A. I don't know. I don't know.

25 Q. You're testifying under oath, right?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. I don't understand when you say under oath. What that
2 mean?
- 3 Q. What does that mean?
- 4 A. (No response.)
- 5 Q. When you went up there to testify, did you put your
6 hand on the Bible?
- 7 A. Yes sir.
- 8 Q. Did you swear or affirm that what you said would be
9 true?
- 10 A. Yes sir.
- 11 Q. Did you think about that?
- 12 A. What is there to think about?
- 13 Q. What is there to think about. You just got to do what
14 you got to do, right?
- 15 A. What do you mean, do what I do?
- 16 Q. I mean that it doesn't bother you to put your hand on
17 the Bible and say you're going to tell the truth. That
18 doesn't bother you, does it?
- 19 A. Yes, it bother me. I mean, that's something I'm
20 putting up on my behalf. I mean, I say I swear to tell the
21 truth. That's what I plan to do.
- 22 Q. But you're not -- you're not doing it, are you?
- 23 A. I mean, what makes you think that?
- 24 Q. Because you're lying.
- 25 A. Okay.

ANDREW JAMES - CROSS BY McCOLLUM

- 1 Q. You lied -- how old are you?
- 2 A. Twenty-two.
- 3 Q. Twenty-two years old, and how old were you when you
- 4 first started lying?
- 5 A. I -- I don't know.
- 6 Q. Is it funny?
- 7 A. Nah. I'm just saying ---
- 8 Q. Do you think I'm being funny?
- 9 A. Nah.
- 10 Q. How old were you when you first started lying?
- 11 A. I can't remember.
- 12 Q. How old are you now?
- 13 A. I said twenty-two.
- 14 Q. So you've been lying so long you can't even remember,
- 15 right?
- 16 A. If that what you want to say.
- 17 Q. That's what I want to say. I want to know --, I want
- 18 you to tell me.
- 19 A. I mean I'm saying that I can't remember when I started
- 20 lying. I mean, I would be lying if I told you, oh, I started
- 21 lying at five, or I started lying at six.
- 22 Q. And you'd be lying if you told me when you started
- 23 lying?
- 24 A. Yeah, I would be lying if I told you when I started
- 25 lying if I don't know when I started lying.

ANDREW JAMES - CROSS BY McCOLLUM

- 1 Q. But on the side that you live on, lying is just a part
2 of surviving, isn't it?
- 3 A. What side -- what you mean, what side I live on?
- 4 Q. Well, breaking the law.
- 5 A. Breaking the law. Is that what side I live on,
6 breaking the law side?
- 7 Q. I'm asking you that.
- 8 A. No, no, I don't live on that side.
- 9 Q. You don't?
- 10 A. No.
- 11 Q. You're a pretty good fellow?
- 12 A. Yes sir.
- 13 Q. Honest?
- 14 A. Yes sir.
- 15 Q. Truthful?
- 16 A. Uh huh (indicating positive).
- 17 Q. Don't lie to your mother?
- 18 A. I never said that.
- 19 Q. Okay. Now, you -- well, let me just skip ahead.
20 You're saying that this -- I'm showing him State's Exhibit 78
21 -- this is yours?
- 22 A. Yes sir.
- 23 Q. Do you know Allen Smith was shot with this weapon?
- 24 A. (No response.)
- 25 Q. Do you know that?

ANDREW JAMES - CROSS BY MCCOLLUM

- 1 A. Yeah, after the fact, yes sir.
- 2 Q. And isn't it true that you were holding it when he was
3 shot?
- 4 A. No, I don't know. That's not true.
- 5 Q. Tiffany is your cousin, is that right?
- 6 A. No.
- 7 Q. She's related to you?
- 8 A. Yes. She my sister.
- 9 Q. Drove to the house and took three people to the house
10 the day that Mr. Smith was shot to death, right?
- 11 A. Yes sir.
- 12 Q. And then she had the gun after that, right?
- 13 A. Yes sir.
- 14 Q. And then after that, you say you had the gun?
- 15 A. Yeah. I got it from her.
- 16 Q. And when the police asked you, they told you you could
17 -- they could give you a test to see if you shot a gun,
18 right?
- 19 A. Yes, I believe they did.
- 20 Q. And you shot a gun; you shot this gun, right?
- 21 A. It ain't that I shot it.
- 22 Q. You said you shot the gun the same day that Mr. Smith
23 was murdered?
- 24 A. I didn't say that.
- 25 Q. Well, what did you say?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. I said the gun discharged on the side when I put it on
2 the side of my hip.
- 3 Q. What day was that?
- 4 A. That was that night.
- 5 Q. What night?
- 6 A. The night of the dude that got murdered.
- 7 Q. That's what you call him, the dude?
- 8 A. I mean, well, his name Allen.
- 9 Q. The same day he got murdered, you shot this gun,
10 right?
- 11 A. No. I didn't shoot the gun. It discharged when I put
12 it on the side of my waist.
- 13 Q. Well, you got it back from -- all right, and that's
14 the truth?
- 15 A. Yes sir.
- 16 Q. Yes sir. Do you swear?
- 17 A. Yes sir.
- 18 Q. You swear it's true?
- 19 A. Yes sir.
- 20 Q. So if the police did an atomic absorption test or did
21 a gunpowder residue on your test -- on your hand -- are you
22 right-handed or left-handed?
- 23 A. Right-handed.
- 24 Q. If they did a test, and you told the police that if
25 they did a test on you to see if you had blow-back gun powder

ANDREW JAMES - CROSS BY McCOLLUM

1 on your hand to see if you had fired the murder weapon, you
2 said, well, I've got some gun powder because I shot myself in
3 through the pants?

4 A. Yes.

5 Q. But you didn't -- did you shoot yourself in the leg?

6 A. No sir.

7 Q. You shot yourself through the pants?

8 A. Uh huh (indicating positive).

9 Q. So you didn't get hurt, right?

10 A. No sir.

11 Q. You just got gun powder on your hand, right?

12 A. Yes sir.

13 Q. That's all that happened, and you didn't shoot nobody?

14 A. No sir.

15 Q. Now, you, one day, prior to April the 14th, you went
16 over to Barberry Court, you went over there with some others
17 to rob Allen Smith, didn't you?

18 A. Yes sir. I don't think it was the day before, the day
19 after.

20 Q. And another day, you went over there to rob Allen
21 Smith, but couldn't because the police were everywhere,
22 right?

23 A. No sir.

24 Q. You deny that?

25 A. No sir.

ANDREW JAMES - CROSS BY McCOLLUM

1 Q. You didn't go that time?

2 A. No sir.

3 Q. All right, and you were wearing -- what is it, black
4 and yellow shoes?

5 A. I believe so. I'm not -- I'm not sure.

6 Q. Well, you told the police they were black and yellow
7 or black and gold. You remember saying that, don't you?

8 A. Black and yellow, black and gold.

9 THE COURT: Sir, ---

10 A. I didn't have ---

11 THE COURT: --- you need to speak up.

12 A. I didn't have -- I didn't have on my shoes when they
13 arrested me.

14 Q. But you told the police that you had black and yellow
15 shoes, right?

16 MS. von HERRMANN: I'm going to object, Your Honor.
17 Can we approach?

18 THE COURT: Yes Ma'am.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 Q. On the day that you -- and you testified here today
21 that you went down the path to go over to Allen Smith's house
22 to hit a lick, right?

23 A. Can you rephrase the question?

24 Q. You went over to Allen Smith's house. You walked down
25 the path; you went over there to commit a home invasion

ANDREW JAMES - CROSS BY McCOLLUM

- 1 robbery?
- 2 A. I didn't say that.
- 3 Q. All right. What did you say?
- 4 A. I got dropped off over there. We came back walking
5 through the path.
- 6 Q. I'm sorry, so somebody dropped you off at the house so
7 you could go in and rob him, right?
- 8 A. Yes; yes sir.
- 9 Q. I apologize, and you backed out, right?
- 10 A. Yes sir.
- 11 Q. Did you have this with you?
- 12 A. No sir.
- 13 Q. You didn't?
- 14 A. No sir.
- 15 Q. Did you just forget and leave it at home?
- 16 A. No sir.
- 17 Q. Did you have a gun?
- 18 A. Yes sir.
- 19 Q. What were you -- what were you holding that day?
- 20 A. That sawed-off.
- 21 Q. That broke one?
- 22 A. Yes.
- 23 Q. So you had both the weapons that were used in the
24 murder? You had them both?
- 25 A. I ain't going to say I had ---

ANDREW JAMES - CROSS BY McCOLLUM

- 1 Q. But ---
- 2 A. --- them both. I said I had the sawed-off.
- 3 Q. I'm sorry. I didn't mean to interrupt you.
- 4 A. I said I didn't have both of them. I said I had the
- 5 sawed-off.
- 6 Q. So one day you took one gun to rob him; another day
- 7 you took another gun to rob him, right?
- 8 A. There ain't no other day. What you mean?
- 9 Q. Ain't no other day? That's your story and you're
- 10 sticking to it, right?
- 11 A. (No response.)
- 12 Q. Huh?
- 13 A. (No response.)
- 14 **THE COURT:** Sir, you need to answer the question how
- 15 ever you would like.
- 16 A. What -- what do you mean? What do you mean? What
- 17 story? What are you talking about?
- 18 Q. I'm talking about lying. Now, the day that somebody
- 19 dropped you off, you went over there ---
- 20 A. I had the sawed-off pump. That's the -- the day I
- 21 went over there I had a sawed-off pump, that one right there
- 22 in that box.
- 23 Q. A sawed-off pump, and what were you wearing that day?
- 24 A. I can't remember.
- 25 Q. Were you wearing a suit?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. No.
- 2 Q. Were you wearing a hoodie?
- 3 A. No.
- 4 Q. Did you have something over your head?
- 5 A. I can't remember.
- 6 Q. Can't remember or don't want to remember?
- 7 A. No, I can't remember.
- 8 Q. Well, so you think -- isn't that a pretty significant
- 9 event in your life, the one time you go over there and you --
- 10 and then you back out? I mean, you can't even remember what
- 11 you were wearing?
- 12 A. No, I can't. It was three years ago.
- 13 Q. So it wasn't that big a deal?
- 14 A. No. Ain't nothing happened.
- 15 Q. And nothing happened, right?
- 16 A. Yeah.
- 17 Q. All right, and then what did you do after that? What
- 18 did you do with the sawed-off?
- 19 A. And then I took it back to my house.
- 20 Q. You took it back to your house, ---
- 21 A. Yeah.
- 22 Q. --- took it in your house, and then what did you do?
- 23 A. I can't remember all the activities I did. I know I
- 24 went back to my house, put it back up.
- 25 Q. You just went and chilled?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. If that what you want to call it.
- 2 Q. What do you call it?
- 3 A. I don't call it nothing. I mean, I can't remember
4 what I did, so I can't call it nothing if I can't remember
5 what I did in specific.
- 6 Q. So that was a day just like any other day for you,
7 just another day in the life of Andrew James, right?
- 8 A. If that what you want to call it.
- 9 Q. That's what I want to call it. When the police first
10 started talking to you, okay, at that moment you start
11 thinking, right?
- 12 A. Yes.
- 13 Q. That's the way it works, right?
- 14 A. Yes sir.
- 15 Q. What do these police want with me, right?
- 16 A. Yes sir.
- 17 Q. And you start thinking, what have I done, right?
- 18 A. Yes sir.
- 19 Q. What I done done now, right? What have I done, you're
20 thinking that, right?
- 21 A. Yes sir.
- 22 Q. And you're thinking what do they know, right?
- 23 A. No sir.
- 24 Q. You're not thinking what they know?
- 25 A. No sir.

ANDREW JAMES - CROSS BY McCOLLUM

1 Q. You're wondering what they know, right?

2 A. No sir. I'm wondering what they got me for, what --
3 what is -- what's going on, I mean, what they want with me.

4 Q. What do they want with me, and you don't want to tell
5 them anything that will hurt you, right?

6 A. (No response.)

7 Q. Right?

8 A. No.

9 Q. No, no. We don't do anything that's going to hurt
10 Andrew James, right? Right?

11 A. I guess not.

12 Q. We talked about this, because they're on one side;
13 you're on the other, right?

14 A. If that what you want to call it. What side -- what
15 side? What you mean?

16 Q. They've got their job to do, right?

17 A. Yes sir.

18 Q. You've got your job to do, right?

19 A. Yes sir.

20 Q. And part of your job is to stay out of prison, right?

21 A. I mean, that's not a job.

22 Q. What is it?

23 A. I don't know. What do you -- what do you want it to
24 be?

25 Q. Is it important?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. I mean, yeah, it's a important thing not to go to
2 jail. I mean, that's like anybody. You don't want to just
3 go to jail. I mean, you want to go to jail?
- 4 Q. Of course not, absolutely not. I don't want to go to
5 jail. You don't want to go to jail either, do you?
- 6 A. I mean, it's not nice. I mean, it wouldn't be fun.
- 7 Q. No. Now, you got -- you got some kids, don't you?
- 8 A. Yes.
- 9 Q. How many kids you got?
- 10 A. Three, three kids, and you've got their -- their
11 mother to care for, right?
- 12 A. Yes.
- 13 Q. And at the time, April 2008, you had just got kicked
14 out of your apartment, right?
- 15 A. Yes sir.
- 16 Q. And you needed some money bad, right?
- 17 A. Yes sir.
- 18 Q. You didn't want your children in the street, right?
- 19 A. No sir.
- 20 Q. You wanted to take care of them, right?
- 21 A. Yes sir.
- 22 Q. So you had to man up and go stick somebody up to do
23 whatever you had to do, right?
- 24 A. Yeah, but if -- if that's what I had to do, then that
25 was what I was going to do. That's what I was intending to

ANDREW JAMES - CROSS BY McCOLLUM

1 do, but that's -- it didn't go through, so, I mean, ...

2 Q. I think you testified that when you got dropped by
3 Tiffany, this is the day you admit that you went to do the
4 robbery?

5 A. Yes sir.

6 Q. You got dropped by Tiffany, right?

7 A. Yes sir.

8 Q. And me, Greg Floyd, Donell James went over there?

9 A. Yes sir.

10 Q. Those are your people, right?

11 A. My people? What you mean?

12 Q. I mean your people, your peeps, your friends, your
13 relatives, people you hang with. Those are your people,
14 right?

15 A. Yeah, if that what you want to call it.

16 Q. That's what I want to call it. You lost the house and
17 you needed money, right?

18 A. Yes sir.

19 Q. Now, really not for anything, but the Solicitor asked
20 you about Mr. Gause's hairstyle. Has your hairstyle
21 changed?

22 A. Yes sir.

23 Q. And how did your hair look back in April of 2008?

24 A. Probably in braids.

25 Q. You had some braids or dreads, or whatever?

ANDREW JAMES - CROSS BY MCCOLLUM

- 1 A. Not dreads, in braids, yeah; yeah.
- 2 Q. And do you take your braids out before you go rob
3 somebody?
- 4 A. No; no sir.
- 5 Q. You just take them out when you get home?
- 6 A. No sir.
- 7 Q. And there's no question about it but that there were
8 -- there were three licks, right?
- 9 A. Excuse me. What are you saying?
- 10 Q. There were three licks, right?
- 11 A. Three licks?
- 12 Q. Yes.
- 13 A. Where you get that from?
- 14 Q. Robbery, ---
- 15 A. I mean, where you come up with three licks? What do
16 you mean?
- 17 Q. You went, you got -- you got dropped off to go over
18 there and do the robbery, but it didn't feel right, so you
19 walked off down the path, right?
- 20 A. Yes sir.
- 21 Q. And then you went again ---
- 22 A. Excuse me. I didn't ever say I went again. Where you
23 get that from?
- 24 Q. You -- I was asking you to admit that you went again
25 with Donell and those guys, but you couldn't do anything

ANDREW JAMES - CROSS BY McCOLLUM

- 1 because there were too many police around because Dory had
2 done knocked the window out?
- 3 A. No.
- 4 Q. You deny that?
- 5 A. I never went again. What you mean?
- 6 Q. You deny that, right?
- 7 A. Yes, if that what you want to ---
- 8 Q. Then the third time, ---
- 9 A. What third time?
- 10 Q. --- you kicked the door in and killed Mr. ---
- 11 A. I never killed nobody. I never kicked no door, and I
12 never went over there again.
- 13 Q. And your guns were there, right?
- 14 A. What?
- 15 Q. Your guns were there, right?
- 16 A. My guns were there, yes sir, yes sir.
- 17 Q. They were used, right?
- 18 A. Yes sir.
- 19 Q. They're your guns?
- 20 A. Yes sir.
- 21 Q. No question about that, right?
- 22 A. Yes sir.
- 23 Q. But you deny being part of it?
- 24 A. (No response.)
- 25 Q. Now, you're pretty upset with Ms. Collington here?

ANDREW JAMES - CROSS BY McCOLLUM

- 1 A. No sir.
- 2 Q. No?
- 3 A. For what?
- 4 Q. I'm just saying, you know. You say that she set this
- 5 thing up. Are you upset with her?
- 6 A. I mean, no, I'm not upset with her. Why you say that?
- 7 Q. Well, I mean, what about these guys that went and
- 8 committed the murder, are you upset with them?
- 9 A. I mean, it's messed up, what they did, but ---
- 10 Q. You're not mad at them either?
- 11 A. What do you want me to do?
- 12 Q. I don't want you to do anything. I'm just asking you
- 13 some questions.
- 14 A. All right.
- 15 Q. I mean, are you cool with what they did?
- 16 A. I mean, no. That's not cool, to go kill somebody.
- 17 Nah, that ain't cool.
- 18 Q. But is it cool enough to go rob them?
- 19 A. I mean, no, it's not -- that's not cool either. I
- 20 mean, that's a decision people make, though, I mean.
- 21 Q. That's a decision you made, too, right?
- 22 A. What, to go rob somebody?
- 23 Q. Yes.
- 24 A. Yeah, I made the decision to do it, but it didn't --
- 25 it didn't happen, so, I mean ...

ANDREW JAMES - CROSS BY McCOLLUM

1 Q. And that's -- that's what you -- that's your
2 testimony, that it didn't happen, right?

3 A. It didn't happen.

4 Q. All right, and how long have you been out on bond?

5 A. Let's see, about a year, I think, a year or something
6 like -- yeah, something like that.

7 MR. McCOLLUM: The Court's indulgence for a minute,
8 Your Honor.

9 THE COURT: Yes sir.

10 MR. McCOLLUM: Just one thing, Your Honor.

11 Q. Mr. James, since you've been out of -- out of jail,
12 you've been working, right?

13 A. Yes sir.

14 Q. You've been working for a temporary agency, right, ---

15 A. Yes sir.

16 Q. --- called -- I think it's called TPS?

17 A. Yes sir.

18 Q. Yes?

19 A. (No response.)

20 Q. And another one called ---

21 THE COURT: You need to speak up, please.

22 Q. And another one called IHD?

23 A. Yes sir.

24 Q. And you've been driving to work? You work at Ocean
25 Creek some, right?

ANDREW JAMES - CROSS BY McCOLLUM
CROSS BY HAZZARD

1 A. Yes sir.

2 Q. You worked at The Beach Cove some, right?

3 A. Yes sir.

4 Q. And I think you work at -- work at Wal-Mart maybe even
5 now, right?

6 A. Yes sir.

7 Q. And when you go to work, Ms. Collington, since she got
8 out of jail, she's been working, too, right?

9 A. Yes sir.

10 Q. And you've been going to her house and picking her up
11 and driving her to work, right?

12 A. Yes sir, at times, yes sir.

13 Q. All right. All right.

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

15 Thank you, sir.

16 THE COURT: Cross-examination, Mr. Hazzard.

17 MR. HAZZARD: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. HAZZARD:

19 Q. Mr. James, how many .22 caliber pistols did you own in
20 April of 2008?

21 A. I only had that one as I know of.

22 Q. You only had that one that you know of?

23 A. Yes sir.

24 Q. Okay, because let's be clear. You spoke to the police
25 on April 15th of 2008 at the M. L. Brown Building here in

ANDREW JAMES - CROSS BY HAZZARD

1 Conway, correct?

2 A. Yes sir.

3 Q. Okay, and at that time you -- when you were talking to
4 the police, they were asking you about that -- that shotgun,
5 weren't they?

6 A. Yes sir.

7 Q. And you were telling them, I didn't have the shotgun
8 because I dropped that off with John Boy, meaning Donell
9 James, correct?

10 A. Yes; yes sir.

11 Q. Okay, and they asked you, well, that doesn't make a
12 whole lot of sense to drop off the shotgun and keep the .22,
13 and you told them you kept the .22, didn't you?

14 A. No.

15 Q. Okay. During that interview, you were not asked --
16 I'm going to give you the questions and your responses and
17 then you tell me whether this is what you were asked and what
18 you responded, okay?

19 A. Yes sir.

20 Q. Detective Troxell: But you ---

21 MS. von HERRMANN: Object; objection.

22 THE COURT: I'm going to allow it.

23 You may continue, Mr. Hazzard.

24 MR. HAZZARD: Thank you, Your Honor.

25 Q. But you got a .22 that you're going to ride around

ANDREW JAMES - CROSS BY HAZZARD

1 with? Response: I didn't have the .22. I didn't have the
2 .22. Detective Troxell: You still have it in your sister's
3 house, right? Andrew James: Yeah; yeah. Detective Troxell:
4 Okay. You didn't take that to them and drop that off? You
5 kept that? Andrew James: Yeah.

6 Were you asked those questions and did you give those
7 responses on April 15th of 2008?

8 A. I don't remember that.

9 Q. Do you deny it?

10 A. Yes sir.

11 Q. You deny that?

12 A. Yes sir.

13 MS. von HERRMANN: I'm going to object. He said he
14 didn't remember.

15 THE COURT: I appreciate that, and he also responded
16 that he denied it. I'm allowing it. You may continue, Mr.
17 Hazzard.

18 MR. HAZZARD: Your Honor, if you'll give us a second, I
19 will impeach with that portion of his interview ---

20 THE COURT: All right, very good.

21 MR. HAZZARD: --- on April 15th of 2008.

22 (AUDIO PORTION OF INTERVIEW WITH ANDREW JAMES ON APRIL
23 15, 2008, PLAYED IN OPEN COURT.)

24 Q. Now, do you deny that that was your voice and your
25 interview?

ANDREW JAMES - CROSS BY HAZZARD

1 A. Yes sir, that was me.

2 Q. All right, so when they asked you, you have the .22,
3 you kept it, you said yes, didn't you?

4 A. Yes sir, I said yes, that night. That's when I had
5 it. That's the only time I had it.

6 Q. Okay, so when they asked you, you didn't take that to
7 them and drop that off, you kept that, you had a different
8 understanding as to what that meant?

9 A. Say it again.

10 Q. When they asked you, you didn't take that, meaning the
11 .22, to them and drop it off, you kept that, and you
12 responded yes, what did you think they were asking you, sir?

13 A. I was thinking they was talking about when I had it,
14 the time -- the time that they had it.

15 Q. Uh huh (indicating positive), so ---

16 A. When I got -- when I got it from my sister, I kept it.

17 Q. Uh huh (indicating positive). Now, getting it from
18 your sister, if you never dropped it off, how would you ever
19 get it back?

20 A. I did drop it off.

21 Q. All right, sir, and that's your testimony here today?

22 A. Yes sir.

23 Q. Okay. Now, you were born on [REDACTED] of
24 1988, is that correct?

25 A. Yes sir.

ANDREW JAMES - CROSS BY HAZZARD

1 Q. So when this occurred in April of 2008, you were what,
2 nineteen years old?

3 A. Yes sir.

4 Q. Okay, and at the age of nineteen, sir, how many
5 children did you have?

6 A. I had two ---

7 Q. Okay, and currently ---

8 A. --- and one on the way.

9 Q. I'm sorry, two and one on the way, that's right?

10 A. Yes sir.

11 Q. So you had a lot of responsibility, right?

12 A. Yes sir.

13 Q. Okay, and were you working anywhere at that point?

14 A. Yes sir.

15 Q. Where were you working?

16 A. My dad has his own business. I was working with my
17 daddy. He has his own business.

18 Q. Doing what, sir?

19 A. Landscaping and irrigation.

20 Q. Okay, but obviously you weren't making too much money
21 doing that, were you?

22 A. I mean, it's seasonal. It's only certain times we can
23 have work and sometimes we don't.

24 Q. And at this point in time, y'all obviously didn't have
25 a whole lot of work, did you?

ANDREW JAMES - CROSS BY HAZZARD

1 A. At this point in time as in now?

2 Q. At this point in time as in April 14th of 2008?

3 A. Yes sir.

4 Q. You did or did not have work?

5 A. We had work. I mean, we had work, a couple of jobs we
6 had to do, not much, though.

7 Q. In fact, you had so little work and so little money,
8 there's no question you were getting evicted, right?

9 A. Yes sir.

10 Q. No question the lights had been turned out where you
11 and your baby mama and your kids lived, right?

12 A. Yes sir.

13 Q. Okay, so now you've got no home, you've got no lights,
14 you got to get out of there, right?

15 A. Yes sir.

16 Q. So when this opportunity presents itself, you jumped
17 on it, didn't you, this opportunity to go rob someone else
18 and obtain money to further your -- your lifestyle and your
19 family life, correct?

20 A. Yes sir.

21 Q. Okay, and so that's why it wasn't a problem to pick up
22 the sawed-off and say, yeah, I'm going to go over there,
23 right?

24 A. Yes sir.

25 Q. Okay, and when you went over there, I mean, I guess --

ANDREW JAMES - CROSS BY HAZZARD

1 how do you schedule this around work?

2 A. I mean, how I schedule, there wasn't no work. I ain't
3 had to go to work.

4 Q. You didn't have to go?

5 A. No.

6 Q. That's right, okay, because you don't file no W-2 form
7 or nothing like that, do you?

8 A. No.

9 Q. No, that's right, okay. Now, there's no question that
10 you took the suitcase that had the shotgun in it, and we're
11 back to talking about April 14th now, 2008. There's no
12 question you took the suitcase with the shotgun in it over to
13 Donell and Tanheshia's house, correct?

14 A. Yes.

15 Q. There's no question about that?

16 A. No question.

17 Q. Because it was your shotgun?

18 A. Yes; yes sir.

19 Q. How long had you had the shotgun?

20 A. I'm not sure.

21 Q. Are we talking months, years, days, weeks?

22 A. I'll say years.

23 Q. Years?

24 A. I ain't going to say years. I'll say months.

25 Q. You'll say months?

ANDREW JAMES - CROSS BY HAZZARD

- 1 A. Yeah.
- 2 Q. Okay. Nineteen years old, you've got a shotgun?
- 3 A. Yeah.
- 4 Q. And a .22?
- 5 A. Yes sir.
- 6 Q. Okay. Why do you -- why do you need weapons, sir?
- 7 A. I mean, ain't no telling what might happen, I mean ...
- 8 Q. No telling what might happen?
- 9 A. Yes.
- 10 Q. Does it further your career in landscaping and
- 11 irrigation?
- 12 A. No.
- 13 Q. No. Then what career does it further?
- 14 A. I mean, well, I want to say it like this. A couple of
- 15 months before this happened, somebody came and shot up my
- 16 house, you know what I'm saying, so ever since then I just
- 17 been well-prepared for anything, you know what I'm saying,
- 18 nobody -- ain't no telling what might happen.
- 19 Q. A couple of months before April of 2008, someone shot
- 20 up your home?
- 21 A. Yes.
- 22 Q. Do you have any idea why someone would want to shoot
- 23 up your home, sir?
- 24 A. Actually -- well, after the fact, I mean, it was
- 25 something to do with my sister boyfriend or something like

ANDREW JAMES - CROSS BY HAZZARD

1 that, and they seen him out there by my house, and so it went
2 from there, and actually him and my sister was on the way to
3 my house and they seen them in the parking lot and it went
4 from there.

5 Q. Who is they, sir?

6 A. I mean, the people that did it.

7 Q. So it had something to do with your sister's
8 boyfriend?

9 A. Yes.

10 Q. And because your sister's boyfriend happened to be
11 somewhere near your house?

12 A. It was -- it was at my house. They was coming to my
13 house, right there in the parking lot, ---

14 Q. Uh huh (indicating positive).

15 A. --- right there.

16 Q. Okay, and so someone decided to settle a score with
17 your sister's boyfriend by shooting up the house?

18 A. Uh huh (indicating positive).

19 Q. Okay. Was your sister dating Gregory Floyd's brother
20 at that time?

21 A. No, not that sister. I got a older sister.

22 Q. Oh, there's another sister?

23 A. Yes.

24 Q. Okay.

25 A. It's my older sister.

ANDREW JAMES - CROSS BY HAZZARD

1 Q. All right. Okay, so because this occurred, you felt
2 the need to arm yourself with some protection?

3 A. Yes sir.

4 Q. All right, so now you've got the shotgun; you've got
5 the .22, right?

6 A. Yes sir.

7 Q. Okay, and you say -- you told Ms. von Herrmann that
8 on April 14th or April 15th when you talked to the police
9 and they asked you about would you pass a gunshot residue
10 test and you said, well, no, I wouldn't pass, because
11 wouldn't you -- wouldn't you know it, as luck would have it,
12 on that very day, just a couple of hours ago, I had my .22
13 and I was putting it in -- you know, putting it on my
14 waist ---

15 A. Uh huh (indicating positive).

16 Q. --- and it discharged?

17 A. Yes sir.

18 Q. That's what you said, you never fired it?

19 A. Yes sir.

20 Q. Okay. Do you have a holster?

21 A. No sir.

22 Q. So how are you putting it on your ---

23 A. My -- it was -- it was on my belt, my belt, like --
24 like my belt is right here, ---

25 Q. On your ---

ANDREW JAMES - CROSS BY HAZZARD

- 1 A. --- I stuck it -- I stuck it in the side of my belt
2 right here.
- 3 Q. That's where you normally carry it?
- 4 A. Yes sir, and where -- where it be sticking in my front
5 pocket. The point of it would be in my front pocket, so
6 ain't like it would go nowhere, like that.
- 7 Q. Okay. Now, when you took the suitcase with the --
8 with your shotgun in it over to Donell's house, that wasn't
9 the first time you carried that suitcase and that shotgun
10 over there, is it?
- 11 A. Yes sir. Yes sir.
- 12 Q. That's what you want to go with, that that's the one
13 and only time?
- 14 A. Yes sir.
- 15 Q. So that suitcase ain't never been in that house any
16 other time?
- 17 A. No sir.
- 18 Q. No sir. All right, sir, how far did you go in school?
- 19 A. Until eleventh grade.
- 20 Q. Okay. Why didn't you graduate?
- 21 A. I started doing other things.
- 22 Q. What other things, sir?
- 23 A. Other things, I mean, anything, I mean, like selling
24 weed and stuff, you know what I'm saying, and so ---
- 25 Q. You got into the light?

ANDREW JAMES - CROSS BY HAZZARD

1 A. Yes sir.

2 Q. You got into the drug habit?

3 A. (No response.)

4 Q. I mean, that's what selling weed would be, right?

5 A. Yes sir.

6 Q. Okay, so, I mean, you didn't have any need for school?

7 A. Uh uh (indicating negative), not at that time, no. I
8 didn't say I like it.

9 Q. Okay. Now, when you gave a statement to the police on
10 April 15th of 2008, would it be fair to say that you lied to
11 them for about an hour?

12 A. I lied to them for about a hour?

13 Q. Yes sir, because ---

14 A. Why do you say that?

15 Q. --- your thing was you didn't know nothing about
16 nothing for about an hour, right?

17 A. Yes sir.

18 Q. I'm sorry?

19 A. What do you mean, I lied to them about a hour? I said
20 I ain't know nothing about nothing, and how is that lying?

21 Q. When they were asking you about the shotgun, and about
22 John Boy, Donell, all of that, ---

23 A. After they -- after they asked me about the shotgun
24 and everything, I told them what -- what was happening, what
25 had happened.

1 Q. And now you come in here and you say that you know
2 Quentin Gause, right?

3 A. Yes sir.

4 Q. But you told the police you have no idea who that was,
5 back in April of 2008, didn't you?

6 A. Yes sir.

7 Q. Yes sir. That's right. You said -- they asked you
8 about Quentin Gause, they asked you about Bait, and you said I
9 don't -- I don't know that guy, right?

10 A. I ain't said Bait. I ain't know his real name was
11 Quentin Gause, but I knew Bait.

12 Q. You knew Bait.

13 A. Yeah.

14 Q. That's what you are thinking. Okay. And you told the
15 police -- or is it your testimony -- I think you told Ms. von
16 Herrmann that, when you brought the murder weapon over to the
17 house that ---

18 MS. von HERRMANN: Objection.

19 THE COURT: Rephrase your question.

20 MR. HAZZARD: Yes sir, Your Honor.

21 Q. When you brought the 12 gauge sawed-off shotgun, or
22 modified shotgun of yours to the house, that being Donell and
23 Tanheshia's house ---

24 A. Yes sir.

25 Q. ---You told the police, I believe, that -- or you told

ANDREW JAMES - CROSS BY HAZZARD

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1 Ms. von Herrmann today, you told her that Quentin Gause was
2 just sitting there waiting to go on this -- on this robbery.

3 A. I didn't say that.

4 Q. You did not say that.

5 A. I didn't say that. I said they pulled up -- when they
6 walked in -- I seen them when they walked in.

7 Q. So Quentin was there, according to you, at some point
8 while you were there.

9 A. Yes sir.

10 Q. How long were you there?

11 A. I want to say about, oh, fifteen, twenty minutes, at
12 the most.

13 Q. Uh huh (indicating positive) And where was Cecily at
14 that time?

15 A. She was in the car.

16 Q. So she's sitting in the car ---

17 A. Yes sir.

18 Q. ---For fifteen or twenty minutes.

19 A. Yes sir.

20 Q. Sir, in fact, you go over there, you engage in this
21 robbery, you shoot Mr. Smith with your gun, which is why you
22 have ---

23 MS. von HERRMANN: Objection.

24 THE COURT: I'm going to allow him to ask the question.

25 Q. ---Which is why you have gunpowder residue on your

1 hands, or believe you would have had that night, and then you
2 go your way. Cecily wasn't sitting in no car for no twenty
3 some minutes, was she?

4 A. Yes, she was.

5 Q. Yes, she was. Okay. Because you had to -- you had an
6 appointment to keep, you had to go talk to the woman at -- or
7 someone at Human Services, or what -- exactly who did you have
8 to talk to, sir?

9 A. I had a meeting with the lady at the Social Services
10 Department.

11 Q. And what's this lady's name, sir?

12 A. I forgot her name.

13 Q. You forgot her name.

14 A. Yes.

15 Q. Okay. Did you have -- when you go there do you have to
16 sign in ---

17 A. Well, I got the paper -- she got the paperwork. My
18 Solicitor got the paperwork on it. You can get with her and
19 get that.

20 Q. Do you have to sign in?

21 A. Sign in?

22 Q. Yes sir, when you go to these appointments, do you have
23 to sign in?

24 A. Yes. Yes. It was a paper to sign, yes sir.

25 Q. Okay. And so this is with regard to you, this isn't

ANDREW JAMES - CROSS BY HAZZARD

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1 with regard to Cecily?

2 A. Yes sir. It's regarding her.

3 Q. So it's with regard to her.

4 A. Yes sir.

5 Q. It says her appointment.

6 A. Yes sir.

7 Q. Okay. And you are just saying you went.

8 A. I'm not just saying I went.

9 Q. Okay. So you are saying that Ms. von Herrmann has some
10 documentation that indicates that you signed in at this
11 office.

12 A. No. No sir, I never said that. I said she's got the
13 documents with the lady's name on it that we went to go see.

14 Q. Okay. And I'm going to rephrase my question, and
15 hopefully we can both understand where we are going. My
16 question is, have you provided Ms. von Herrmann or anyone else
17 with documentation that indicates that you were at that
18 appointment on April 14?

19 A. I mean, my name ain't on it, no sir, if that's what you
20 asking.

21 Q. Yes sir, that's what I'm asking.

22 A. Yes. No, my name is not on it.

23 Q. Not on anything?

24 A. No.

25 Q. So what we've got is your word that that's where you

1 were.

2 A. Yes sir. I've got witnesses too.

3 Q. Oh really.

4 A. Yes.

5 Q. And who might these be, other than this ---

6 A. Well, my girl mama and her. I mean, she was there.

7 Q. Your girl's mother went with you?

8 A. No. She the one that we went to go see, and heard
9 about the appointment, because the lady called her first, and
10 told her that we needed to be there by a certain time, by a
11 certain amount of time.

12 Q. But your girl's mama wasn't in the car?

13 A. No. She wasn't in the car. We went to her.

14 Q. And she wasn't in the office.

15 A. No.

16 Q. Okay.

17 MR. HAZZARD: Court's indulgence, Your Honor.

18 THE COURT: Yes sir.

19 Q. Okay, now, you told this jury, you told Ms. von
20 Herrmann, you told Mr. McCollum that you knew Quentin Gause,
21 you didn't know him by his Christian given name, right ---

22 A. Yes.

23 Q. ---But you knew his nickname.

24 A. Yes sir.

25 Q. And you knew him when you saw him, right?

ANDREW JAMES - REDIRECT BY von HERRMANN

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1 A. Yes sir.

2 Q. Okay. On April 15th of 2008, in an interview at the
3 M.L. Brown Building did you make the following statement:

4 ANDREW JAMES: It was about -- it was about like three-thirty.

5 DETECTIVE LIVINGSTON: Okay. ANDREW JAMES: No, it had to
6 have been earlier. It was about three-thirty. Yeah, it was
7 about three-thirty because we had to get to the place at five.

8 DETECTIVE LIVINGSTON: Greg -- Grey and who -- or Greg, Grey
9 who? ANDREW JAMES: Greg Floyd. DETECTIVE LIVINGSTON: Who
10 else? ANDREW JAMES: John Boy been there, but I seen him and
11 another dude coming. DETECTIVE LIVINGSTON: Who's the other
12 dude? ANDREW JAMES: I don't know.

13 Were you asked those questions, and did you give those
14 responses on April 15th of 2008?

15 A. Yes. Yes sir.

16 Q. And you were telling the truth when you gave those
17 responses, correct?

18 A. Yes sir.

19 Q. Yes sir. I'm sorry.

20 A. Yes sir.

21 Q. All right.

22 MR. HAZZARD: Nothing further, Your Honor.

23 THE COURT: Redirect.

24 MS. von HERRMANN: Yes sir, Your Honor.

25 REDIRECT-EXAMINATION BY MS. von HERRMANN:

1 Q. During the interview that you had with the police you
2 first told them that there was some other dude that was there,
3 correct?

4 A. Yes Ma'am.

5 Q. And then you went back, that same day, during the
6 course of that same interview ---

7 A. Yes Ma'am.

8 Q. ---And told them that it was Bait?

9 A. Yes Ma'am.

10 Q. So the first time that they asked you you said, I don't
11 know who -- I don't know who these people were.

12 A. Yes Ma'am.

13 Q. And then when they continued to interview them you gave
14 them more information.

15 A. Yes Ma'am.

16 Q. Because initially you said, I don't know anything.

17 A. Yes Ma'am.

18 Q. And then the more information that they told you that
19 they had you ended up coming off the story.

20 A. Yes Ma'am.

21 Q. And by the end of it had you told them the whole story?

22 A. Yes Ma'am.

23 Q. And have you told this jury the whole story here today?

24 A. Yes Ma'am.

25 Q. All right. Mr. McCollum was talking about three

ANDREW JAMES - REDIRECT BY von HERRMANN

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1 separate incidents, and I'm confused about that. How many
2 times did you go over to Allen Smith's house?

3 A. I went one time.

4 Q. All right. How many -- that -- was there any other
5 plan, as far as you are concerned, to go to Allen Smith's
6 after that?

7 A. No Ma'am.

8 Q. All right. The only plan there was was that one day.

9 A. Yes Ma'am.

10 Q. And I believe that he asked you about the fact that you
11 are the type of person that would go and rob somebody; is that
12 correct?

13 A. Yes Ma'am.

14 Q. But in fact you made the decision -- excuse me -- you
15 made the decision not to rob somebody ---

16 A. Yes Ma'am.

17 Q. ---Didn't you ---

18 A. Yes Ma'am.

19 Q. ---Because when you got there to that door ---

20 MR. McCOLLUM: Your Honor, I'm going to object to the
21 leading, again.

22 THE COURT: At this point in time I'm going to allow
23 it.

24 You may continue, Ma'am.

25 Q. When you got there to that door you could have kicked

1 that door in, couldn't you?

2 A. Yes Ma'am.

3 Q. And you had a gun?

4 A. Yes Ma'am.

5 Q. And it would have been easy to go in?

6 A. Yes Ma'am.

7 Q. But you made the decision not to do that?

8 A. Yes Ma'am.

9 Q. All right. When you talked to the police you told them

10 you had on a black and yellow shirt; is that correct?

11 A. I'm not sure. I'm not sure.

12 MS. von HERRMANN: Your Honor, I've got one matter that

13 I think we need to approach about with you.

14 THE COURT: Yes Ma'am. Y'all come on over here,

15 please.

16 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

17 THE COURT: You may continue, Solicitor.

18 Q. All right. And Mr. McCollum also asked you about a

19 conversation that you had with Tiffany James, your sister,

20 after Mr. Smith was killed, correct?

21 A. Yes Ma'am.

22 Q. And did she tell you what had happened when they went

23 over there?

24 A. She -- yes, she went into detail -- she didn't go all

25 the way into details, but she just been like, that he was shot

ANDREW JAMES - REDIRECT BY von HERRMANN

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1 and killed.

2 Q. All right. And did she say who shot him?

3 A. Yes Ma'am.

4 Q. What did she say?

5 A. She said Bait had shot him.

6 Q. She said Bait had shot him.

7 A. Yes Ma'am.

8 Q. Did she say who was over there with them?

9 A. I mean, yeah -- Yes Ma'am. She said that it was him,
10 Greg and Donell James.

11 Q. All right. And what else did she tell you happened?

12 A. I can't remember. I can't remember. I just remember
13 when she was -- she just kept saying it like she was shocked.

14 Q. All right. And when she said that, any question in
15 your mind about who Bait was?

16 A. I mean, I knew -- I knew who he was, I mean, when she
17 said it I knew ---

18 Q. Did you know that it was that guy right there who had
19 been over at Tanheshia's house?

20 A. Yes Ma'am.

21 Q. All right. Would you describe yourself as being fairly
22 dark-skinned?

23 A. Yes Ma'am.

24 Q. How about Mr. Gause, would you describe him as being
25 light-skinned?

1 A. Yes Ma'am.

2 MS. von HERRMANN: Court's indulgence.

3 THE COURT: Yes Ma'am.

4 Q. Mr. James ---

5 MS. von HERRMANN: I'm going to have this marked first.

6 MS. von HERRMANN: I'm going to have this marked as
7 State's Exhibit 73.

8 (LETTER FROM D.S.S. MARKED STATE'S EXHIBIT NUMBER 73,
9 FOR IDENTIFICATION ONLY.)

10 Q. Let me show you what's been marked as State's Exhibit
11 73. Is that something that you brought with you here to court
12 today?

13 A. Yes Ma'am.

14 Q. And what is that?

15 A. It's a letter from the Social Service people.

16 Q. Okay. Does that letter say -- does that letter have a
17 Notary's signature there on the bottom of it?

18 A. Yes Ma'am.

19 Q. All right. Is that your girlfriend's signature there
20 too?

21 A. Yes Ma'am.

22 Q. What's her name?

23 A. Cecily.

24 Q. And is there a Notary's signature there, giving the
25 date on which she was there?

ANDREW JAMES - REDIRECT BY von HERRMANN

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1 MR. McCOLLUM: Your Honor ---

2 A. Yes. Yes Ma'am.

3 MR. McCOLLUM: ---I'm going to interpose an objection,
4 just a hearsay objection.

5 THE COURT: Let me see the document, please.

6 All right. I'm going to allow it. First, it's a matter
7 that was raised by you on cross-examination, and if we waived
8 any objection to it, and secondly, I do find it to fall within
9 an exception to the hearsay rule.

10 You may proceed.

11 MS. von HERRMANN: Thank you.

12 Q. And so this document here is addressed ---

13 MS. von HERRMANN: And I would move this in, obviously.

14 THE COURT: What's the number again, please?

15 MS. von HERRMANN: State's Exhibit 73.

16 THE COURT: It's in evidence without objection -- I'm
17 sorry -- over the objection of the Defense.

18 (LETTER FROM D.S.S. ADMITTED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 73.)

20 Q. This is regarding an eviction notice.

21 A. Yes Ma'am.

22 Q. All right. And this is the date -- this was a letter
23 that was given to -- to your girlfriend, at [REDACTED] Grainger
24 Road, Apartment [REDACTED]; is that correct?

25 A. Yes Ma'am.

1 Q. That's where you all live. And it says, "Grievance
2 Hearing Request" on it.

3 A. Yes Ma'am.

4 Q. So you all -- is that where you had mentioned that
5 y'all had requested a hearing?

6 A. Yes sir. Yes Ma'am.

7 Q. All right. And is it signed by your girlfriend, Cecily
8 Hillard?

9 A. Yes Ma'am.

10 Q. And so that was notarized there on the 14th day of
11 April, 2008; is that correct?

12 A. Yes Ma'am.

13 MS. von HERRMANN: Thank you.

14 Q. Now one last question that I've got for you. I believe
15 Mr. McCollum asked you about whether you had been giving Ms.
16 Collington a ride to work ---

17 A. Yes.

18 Q. ---And stuff like that ---

19 A. Yes.

20 Q. ---And you said that you had ---

21 A. Yes Ma'am.

22 Q. ---And you said, you don't have anything against her.

23 A. No Ma'am. No Ma'am.

24 Q. And maybe y'all are even still friends,

25 A. Yes Ma'am.

ANDREW JAMES - RECROSS BY McCOLLUM

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1 Q. And so today you are just coming here to tell the
2 truth; you are not trying to hurt her..

3 A. No Ma'am.

4 Q. You are just telling what you need to be telling.

5 A. Yes Ma'am.

6 Q. In fact, you -- you want to help her if you can.

7 A. Yes Ma'am, anybody, I mean ---

8 Q. I mean, she's your friend, and you are trying to help
9 her if you can.

10 A. Yes Ma'am.

11 Q. But at the same time you've got to tell the truth.

12 A. Yes Ma'am.

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

15 THE COURT: All right, Mr. McCollum.

16 RECROSS-EXAMINATION BY MR. McCOLLUM:

17 MR. McCOLLUM: Earlier I have asked Mr. James, on
18 cross-examination, about the color of shoes he was wearing. I
19 believe that we have just that small portion of his statement,
20 which I would like to play, with the Court's permission.

21 THE COURT: I'll allow it.

22 MR. McCOLLUM: Thank you, Your Honor.

23 THE COURT: You may proceed.

24 MS. von HERRMANN: And Your Honor, if they could just
25 give me a reference, so that I can find that as well.

1 THE COURT: Could you point that out?

2 MR. HAZZARD: In the Transcript it's page thirty-seven,
3 about halfway down the page.

4 MS. von HERRMANN: Thank you.

5 (PUBLISHED SHORT PORTION OF STATEMENT OF ANDREW JAMES.)

6 THE COURT: I can't hear that, and I'm sure the jury
7 can't either.

8 MR. MCCOLLUM: Okay. Your Honor, before she tries that
9 -- or maybe you could turn it down a little bit. Is it okay -
10 - I'm going to try to position this -- is this microphone for
11 the sound system?

12 THE COURT: Why don't you put that one next to the
13 other microphones.

14 MR. MCCOLLUM: Okay. I'll try this, Your Honor.

15 THE COURT: Go ahead.

16 (PUBLISHED SHORT PORTION OF STATEMENT OF ANDREW JAMES.)

17 MR. MCCOLLUM: Your Honor ---

18 THE COURT: All right. Very good.

19 MR. MCCOLLUM: Can you inquire if the jury was able to
20 hear it.

21 THE COURT: I think they could hear it. Continue on.

22 MR. MCCOLLUM: Thank you, Your Honor. And then there's
23 one other section I would like to play.

24 Q. Mr. James, you remember when I asked you earlier about
25 discharging the .22, right?

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1 A. Yes sir.

2 THE COURT: You need to speak up.

3 A. Yes sir.

4 Q. And you said it was this .22 that you discharged in
5 your pocket.

6 A. Yes sir.

7 MR. McCOLLUM: Okay. Thank you, sir.

8 (PUBLISHED A SHORT PORTION OF STATEMENT OF ANDREW
9 JAMES.)

10 MR. McCOLLUM: May it please the Court, Your Honor?

11 THE COURT: Yes sir.

12 Q. Mr. James, you heard your statement, right?

13 A. Yes sir.

14 Q. And you told Detective Troxell, when he interviewed you
15 on April 15th, that you had shot a different gun through your
16 pants, right?

17 A. Yes sir.

18 Q. And you said you shot a guy named Chris's gun, right?

19 A. Yes sir.

20 Q. And you said you shot Chris's gun so you would have
21 gunpowder residue on your hand, right?

22 A. Yes sir.

23 Q. And you told the police that. That was a lie, right?

24 A. Yes sir.

25 Q. No question about it?

1 A. No question.

2 Q. And right now you are caught in a lie, right?

3 A. No sir.

4 Q. You are not?

5 A. Uh uh (NODS NEGATIVE)

6 Q. Okay.

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

8 THE COURT: Mr. Hazzard.

9 MR. HAZZARD: Thank you, Your Honor.

10 RECROSS-EXAMINATION BY MR. HAZZARD:

11 Q. So you say you talked to your sister, Tiffany, sometime
12 on the night of the 14th of April, 2008, and that she's the
13 who told you that Quentin, or Bait, or Bait, or whatever you
14 folks call him, that he had been the one to kill somebody,
15 right, that he had shot somebody.

16 A. Yes.

17 Q. I'm sorry.

18 A. Yes sir.

19 Q. Okay. And Tiffany is your sister, right?

20 A. Yes sir.

21 Q. Okay. And did she say that anybody else was involved
22 in this?

23 A. I mean, she didn't -- I mean, she was shocked. She was
24 -- I mean, she just kept saying that over and over, I mean ---

25 Q. So that's the only thing she kept saying over and

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1 over ---

2 A. Yes.

3 Q. ---Is that Bait had done it.

4 A. Yes sir.

5 Q. Nothing else. Doesn't mention anybody else.

6 A. No sir.

7 Q. Doesn't mention Gregory Floyd?

8 A. No sir.

9 Q. And that's her baby daddy's brother, right?

10 A. Yes sir.

11 Q. Doesn't mention Donell James, who is her first cousin,
12 right?

13 A. Yes sir.

14 Q. Doesn't mention anyone, doesn't mention Tanheshia, who
15 is her home girl, right?

16 A. No sir.

17 Q. So all she knows to say is, Bait did it, Bait did it,
18 Bait did it.

19 A. Yes sir.

20 Q. And that's all you knew to say, right?

21 A. I mean, I ain't say, I mean, that what she told me.
22 You asked me what she told me. I told you.

23 Q. Yes sir. Yes sir. Now, you handed Ms. von Herrmann a
24 piece of paperwork here, and what this document says -- it's
25 dated April 14th, 2008. It's addressed to your girlfriend at

1 the time, Cecily Hillard, right?

2 A. Yes sir.

3 Q. Okay. And it says, via hand delivery, and it says that
4 -- to Crane Creek Apartments. So basically this is a piece of
5 paper that she sent to the -- I don't get it. It says it's
6 via -- it says it's a hand-delivered document that she
7 delivered to Crane Creek Apartments. That's what it says,
8 right? So via hand-delivery, and it says it's delivered to
9 Crane Creek Apartments, right?

10 A. Yes sir.

11 Q. Okay. So basically she's saying she wants to fight the
12 eviction.

13 A. Yes sir.

14 Q. That she was notified of an eviction notice on April
15 2nd; and that as of the 14th of April she wants to fight that.
16 That's what it says, right?

17 A. Let me see it.

18 Q. Yes sir. Take your time.

19 A. I think it says, Personally appeared before me on this
20 14th day of April, 2008.

21 Q. Yes sir. It has a Notary Public stamp on that. No
22 question about that, right?

23 A. Right. I was just make sure you -- you understand
24 that.

25 Q. A lot of people are Notary Publics, right?

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1 A. Huh?

2 Q. A lot of people are Notary Public's, right?

3 A. What do you mean by that?

4 Q. Do you know anything about being a Notary Public, sir?

5 A. What do you mean? I mean, you can't break it down. A
6 Notary Public.

7 Q. Okay. I'll break it down for you. Basically as long
8 as, I think you don't have a criminal record, and you've got
9 some money and you register with the Clerk of Court, you can
10 be a Notary Public.

11 A. I -- I know that now.

12 Q. You know that now. Okay. So, the fact that this has
13 got somebody's signature on it as a Notary Public, that ---

14 THE COURT: Are you testifying, Mr. ---

15 MR. HAZZARD: No sir. No sir. Asking ---

16 THE COURT: Then ask the question.

17 MR. HAZZARD: Yes. Yes sir.

18 Q. Okay. All right..

19 MR. HAZZARD: Court's indulgence, Your Honor.

20 THE COURT: Yes sir.

21 Q. So, sir, now do you remember having on those black and
22 yellow shoes you told the police about?

23 A. I still don't remember telling them that, I mean, but
24 yes, I do got some black and yellow shoes, I mean, Jordans.

25 Q. Yes. That's what I thought you said.

1 MR. HAZZARD: No further questions.

2 THE COURT: All right, sir, you may step down. Thank
3 you.

4 Solicitor, Mr. McCollum, Mr. Hazzard, y'all come up for
5 just one second, please.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 THE COURT: All right, ladies and gentlemen, if you
8 would go to your jury room for a few moments, and we will come
9 back out and take one more witness.

10 Thank you.

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

13 THE COURT: All right. Ask the jury to come in,
14 please.

15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, Solicitor, your next witness,
18 please Ma'am.

19 MS. von HERRMANN: Thank you, Your Honor. The State
20 calls Ira Parnell.

21 THE COURT: All right. Please come around to be sworn,
22 sir.

23 IRA BYRD PARNELL, JR., being first
24 duly sworn, testifies as follows:

25 DIRECT-EXAMINATION BY MS. von HERRMANN:

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1 Q. Agent Parnell, by whom are you employed?

2 A. I'm employed by the State Law Enforcement Division,
3 also known as S.L.E.D..

4 Q. And in what capacity are you employed?

5 A. I am a Forensic Firearm and Tool Mark Examiner.

6 Q. And give the jury, if you will, the benefit of your
7 educational background.

8 A. I came to work at S.L.E.D. in 1972. I attended college
9 at the University of South Carolina, got a degree in the area
10 of Criminal Justice. During the last two years of my
11 schooling I was undergoing an intensive internship program
12 under three court-qualified firearm and tool mark examiners at
13 S.L.E.D..

14 At the completion of that I attended the South Carolina
15 Criminal Justice Academy. I have graduated from the F.B.I.
16 National Academy in specialized courses at the F.B.I. National
17 Academy in firearm and tool mark identified.

18 I'm a member of the Association of Firearm and Tool Mark
19 Examiners, which is an international organization of firearm
20 and tool mark examiners who meet yearly for a week long
21 seminar to discuss the latest developments in firearm and tool
22 mark identification as a continuing education type program.
23 Where budget will allow we attend each one. If not, then we
24 get the CDs and look at those at our leisure.

25 I've testified approximately six hundred times as a

1 Firearm and tool Mark Examiner in the State of South Carolina
2 Courts, every County, I believe, Federal District Court in
3 Virginia, and North Carolina State Court.

4 Q. And, again, you have been qualified as an expert how
5 many times?

6 A. Approximately six hundred.

7 MS. von HERRMANN: Thank you.

8 I would tender Agent Parnell as an expert in the field
9 of Firearms.

10 THE COURT: All right, Mr. McCollum, do you wish to
11 voir dire the witness as to his qualifications?

12 MR. MCCOLLUM: No, Your Honor.

13 THE COURT: Mr. Hazzard.

14 MR. HAZZARD: No, Your Honor. No objection.

15 THE COURT: All right. He is qualified to give his
16 opinion.

17 You may proceed, Ma'am.

18 MS. von HERRMANN: Thank you.

19 Q. Did you have an opportunity to review and look at some
20 evidence that was submitted to you in this particular case,
21 State of South Carolina versus Quentin Gause, and State of
22 South Carolina versus Ladorrean Collington?

23 A. Yes Ma'am, I did.

24 Q. And these item -- there were a number of items that
25 were submitted to you from the Horry County Police Department,

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1 correct?

2 A. Correct.

3 Q. And do you have those items in front of you there, or
4 the majority of those items in front of you there?

5 A. I do.

6 Q. And could you tell the jury, please, just from the
7 beginning, what you do when you get these items in, how you
8 prepare them for your examination?

9 A. Such as in the case before the Court today, there are a
10 number of individual small components. Our typical process is
11 to, first inventory all the items, to be sure that we have
12 what we are suppose to have, photograph them in detail, and
13 then lay them out and conduct examinations to try to answer
14 the questions that the submitter has asked. That's what I did
15 in this case. The most of the components that were submitted
16 here were fired shotgun components, and except for the fired
17 shot shell itself, most of these components are not
18 identifiable to a particular gun. I can, however, look at
19 these components and make a good educated guess as to what
20 type of shell they were fired from, and etcetera.

21 Q. I'm going to show you what's been marked as State's
22 Exhibit 74, and ask if you can take a look at that photograph
23 for me.

24 A. Yes Ma'am. This is an enlargement of one of the
25 photographs that I took in regard to this case.

1 Q. Is that something that you feel like would benefit you
2 in explaining to the jury your testimony, and what you did
3 with these items?

4 A. Yes Ma'am. It will give the ladies and gentlemen of
5 the jury a better idea of how the components are arranged in
6 an unfired shell, and how they come out of the barrel as a
7 fired component.

8 MS. von HERRMANN: Thank you. Let me show these to the
9 Defense attorneys.

10 I would move this in, Your Honor.

11 THE COURT: Any objection, Mr. McCollum?

12 MR. MCCOLLUM: No, Your Honor.

13 THE COURT: Mr. Hazzard.

14 MR. HAZZARD: No objection, Your Honor.

15 THE COURT: It's in evidence without objection.

16 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
17 74.)

18 MS. von HERRMANN: And I would ask that he be allowed
19 to stand down in front of the jury with this photograph.

20 THE COURT: That's fine. Just make sure you stand next
21 to the microphone box on the jury box.

22 A. May it please the Court, Your Honor.

23 THE COURT: Yes sir.

24 A. Ladies and gentlemen, as I explained a little earlier,
25 the components which we are looking at in this case are

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1 shotgun components, specifically shotgun slug components. A
2 shotgun slug, in an unfired condition, which State's Exhibit
3 74 is, or represents, rather, is one which I cut the side out
4 of so that we could view the way the components are stacked in
5 an unfired shell as they come new from the factory. It's
6 basically a slug, a one ounce slug of led, which sits atop the
7 stack. Below that we have a black disc of plastic which
8 supports the back of the slug which is actually hollow. Below
9 that we have a grey-colored cushioning wad which, at ignition,
10 when the shell is fired, it's a great force pushing this one
11 ounce of led out of the barrel. So in order to protect the
12 back of that slug, and keep it from getting deformed, they put
13 a cushioning wad in there. It's a pretty substantial
14 cushioning wad. And below that is a green plastic, what we
15 call an overpowder was, which sits atop the powder, and
16 basically holds the pressure back until the proper moment, and
17 then it pushes all these other things out of the end of the
18 barrel.

19 So you've basically got four components being pushed out
20 of the mussel, the slug, plastic disc below the slug, the
21 cushioning wad, and the overpowder wad which sits atop of the
22 powder. All these go out of the mussel as projectiles.

23 The lighter weight ones, the one, two, three plastic
24 disc, cushion wad, and the overpowder wad, lose velocity very
25 quickly, because they don't weigh much. They are very light.

1 the led slug is the only thing that really goes very far down
2 range, so these plastic discs are flat, and they can go off
3 and deviate from the path of the slug itself, but they still
4 maintain a good bit of velocity within probably ten or
5 fifteen, twenty feet, maybe.

6 Q. Thank you. And let's take a look in these boxes, and
7 it may be easier if you just come back down, actually, to show
8 the jury these portions that we have.

9 A. If it please the Court again, Your Honor.

10 THE COURT: Yes sir.

11 A. Number one is a fired twelve gauge two and three-
12 quarter inch shotgun shell casing, what we typically call an
13 empty hull.

14 Number two is the exact same thing. My Item One is
15 going to be State's Exhibit 53. Item Two is going to be
16 State's Exhibit 55, which is also a fired shotgun shell
17 casing.

18 Referring now to State's Exhibit 57, is going to be my
19 Item Four. It's a part of the grey cardboard cushioning or
20 filler-type wad.

21 My Item Five is State's Exhibit 58. That's what I was
22 telling you about the green plastic overpowder wad. It's just
23 a plastic disc, seals the gases behind the pay load, keeps it
24 from escaping around and maintains velocity.

25 State's Exhibit 59, my Item Six, is a follower out of a

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1 shotgun magazine. It's quite common. There's really no way
2 to identify it to any particular gun. It's a -- it's just
3 standard magazine tubing. When the magazine tube is empty,
4 whoever observes can see that red plastic and know that
5 there's nothing in the magazine.

6 Q. So that is part of a -- that is a component of a
7 shotgun, as opposed to a component of one of these shells; is
8 that correct?

9 A. It is.

10 Q. Okay.

11 A. My Item Seven is going to be State's Exhibit 61. It is
12 most of a fired lead slug, shotgun slug, weighs approximately
13 an ounce. It's a pretty substantial piece of led.

14 My Item Eight is going to be State's Exhibit 62. This
15 is a black plastic support disc that fits right behind the
16 slug in the shell photograph in -- that I showed you earlier.

17 My Item Nine is State's Exhibit 63. It's a second
18 overpowder plastic disc wad, which indicates that there were
19 two -- two shots fired. The shell only has one of these per
20 shell, but we have two, so we know that there were two fired
21 where they were recovered.

22 My Item Ten is State's Exhibit 64. It's another piece
23 of the cushioning, the grey cardboard cushioning wad.

24 My Item Eleven, State's Exhibit 65, is the second disc
25 from behind a second shotgun slug.

1 My Item Thirteen is State's Exhibit 54. It's a fired
2 .22 long -- or long rifle caliber cartridge case.

3 My Item Fourteen, State's Exhibit 66, is a fired .22
4 caliber long rifle bullet. It is fired and mushroomed, or
5 expanded, after having been fired and striking something.

6 Q. And so let's talk a minute about -- I'm just -- I'm
7 going to move this component of the shotgun out of the way,
8 and I'm going to move these two components from the -- with
9 regard to the .22 items away. Can you take these pieces and
10 place them so that they would fit into these two particular
11 items? I'm not asking you to actually put them in there, but
12 do we have all of the components for both of those, or are we
13 missing something?

14 A. We are missing parts of the fiber wad, cushioning wad,
15 and we are missing one slug, one projectile, the main led
16 projectile from one of these, or one like it.

17 Q. But in terms of the four pieces, is it fair to say that
18 we have -- we'll just take this one because I don't know which
19 one it may be. We have the piece of the green ---

20 A. Got the fired component here, we've got the overpowder
21 wad, got a section of cushioning wad, which there would be
22 more of that, you have the base wad, or the slug, and we have
23 the slug itself.

24 Q. And so that's one complete shotgun shell as you would
25 purchase it.

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1 A. Yes Ma'am. Like the photograph indicated, this is how
2 they are stacked in, but these have been fired, so they are
3 going to be damaged, and be compressed, but these is how they
4 stack in an unfired shell.

5 Q. And with regard to the other shotgun shell, we have the
6 three components minus this one.

7 A. Right. Yes Ma'am.

8 Q. All right. Let me ask you also about the -- I believe
9 there was another portion of a gun that you examined. Maybe
10 it's up here. This is -- will you tell the jury what --
11 this -- this is State's Number 56, what that is.

12 A. State's Number 56 is going to be my Item Three, and
13 it's a magazine spring. It, in conjunction with State's
14 Exhibit 59, this follower -- the follower fits on the end of
15 the spring, and the whole assembly fits into the magazine tube
16 of a shotgun.

17 The purpose of the spring is the compress as shells are
18 loaded into the magazine until it reaches capacity. Once it
19 reaches capacity and you -- in the case of a firearm in this
20 case, with a slide action or a pump -- when you activate the
21 pump the spring pushes an unfired shell down into the action
22 of the gun, the lifter picks it up. When you pull the fore-
23 end forward it loads that unfired shell into the chamber in
24 preparation for firing. This magazine spring keeps the other
25 shells under tension, pushing on this follower, and each time

1 the action is worked, as the pump action handle is pulled
2 back, the magazine spring pushes the new shell out, the action
3 pumping forward pulls that new shell up and into the chamber
4 in preparation for firing.

5 Q. I'm going to ask you to stand just a little bit closer
6 to the microphone here, and I'm going to show you State's
7 Exhibit 69, ask you if you had an opportunity to examine that.

8 A. I did.

9 Q. And can you tell me what the serial number is on that?

10 A. If my arm is shortened some. Serial number is (C) as
11 in Charlie, 884049.

12 Q. And is that one of the ways that you are able to
13 identify that this -- this belongs to a particular case? Do
14 you all identify it sometimes by serial number when it comes
15 from the police?

16 A. Occasionally. But what I do is, I scribe my initials,
17 case number and specimen number actually on the item, so that
18 if any writing is erased, or anything else goes away, then I
19 still have my initials and identifiers on the gun, and this is
20 the gun that I examined in this case.

21 Q. Okay. Thank you.

22 Now, if you will, if you could show the members of the
23 jury about that spring and that follower with regard to that
24 particular gun.

25 A. Well, we are missing a whole lot. The follower would

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1 be sitting in a position so that it could be seen from the
2 bottom of the gun by somebody who was looking. Don't know
3 whether y'all can even see that or not, but it sits down in
4 this depression right here. This firearm is missing the
5 magazine tube and other parts that secure that, but the
6 follower sits right in this hole here. The gun is loaded into
7 the ejection -- I mean, the loading port here, and this
8 actually pushes up into the magazine tube, which is this round
9 tube that sits underneath the barrel, with the spring inside
10 the cap -- magazine cap, and each time an unfired shell is
11 pushed into the magazine the follower goes up the length of
12 that shell until it reaches capacity. This gun here will
13 probably be a five round capacity for the magazine.

14 Q. Okay. And so the -- I believe you had an opportunity
15 to take this firearm and determine -- you added some
16 components to it to determine whether it would be operable if
17 it had all of it's components, correct?

18 A. Yes Ma'am.

19 Q. And did you find that it would be operable if it had
20 all of it's components?

21 A. I did. I test fired it.

22 Q. You test fired it.

23 A. Uh huh (indicating positive)

24 Q. But if it did not have all of it's components, and in
25 fact, only had these components that we see here, would one be

1 able to fire that?

2 A. I think you could probably fire one at the time in it.

3 Q. How would you do that?

4 A. You could manually pull up on the action part, and
5 physically put an unfired shell into the chamber, manually
6 pull it forward, push the safety off and squeeze the trigger.

7 Q. But the would be fairly difficult.

8 A. It would be kind of tedious.

9 Q. Now, did you also have an opportunity to take these two
10 shotgun shells and compare them when you fired this one to
11 this particular gun?

12 A. I did.

13 Q. All right. And did you find that these two shotgun
14 shells had been fired from this gun?

15 A. I did not. By microscopically comparing the test
16 shells that I fired in State's Exhibit 69, and comparing those
17 with the markings left by the firing pin and breach base on
18 the ends of these two fired shell casings, State's Exhibits 53
19 and 55, I was able to say that these two items, State's
20 Exhibit 53 and 55, were fired in one particular gun, but not
21 State's Exhibit 69, this firearm.

22 Q. Okay. So these two items are both fired from the same
23 gun, but not that gun?

24 A. That's correct.

25 Q. All right. And I'm going to go ahead and hand you now

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1 what's been marked as State's Exhibit 70(A), (B), and (C), and
2 let you take a look at those items, see if you had an
3 opportunity to examine those as well.

4 A. Yes Ma'am. As I described earlier, my case number,
5 specimen number, and initials are on each component in State's
6 Exhibits 70(A), (B) and (C).

7 State's Exhibit (A) is a Ruger Semi-automatic pistol,
8 .22 caliber, State's Exhibit (B) is the magazine which is
9 loaded into State's Exhibit 70(A), and the items in State's
10 Exhibit 70(C) are four unfired .22 long rifle caliber
11 cartridges which are compatible with State's Exhibit 70(A) and
12 State's Exhibit 70(B).

13 Q. Okay. And did you have an opportunity then to examine
14 those in conjunction with State's Exhibit 54 and State's
15 Exhibit 66?

16 A. I did. I examined State's Exhibit 70(A), (B) and (C),
17 mainly State's Exhibits 70(A) and (B), the firearm and the
18 magazine. I test fired State's Exhibit 70(A) using State's
19 Exhibit 70(B) as my magazine, and I microscopically compared
20 my tests, which I know came from this firearm because I shot
21 them myself -- I microscopically compared those, noted what
22 individual markings were present, and after doing the
23 comparisons of my tests with other, to be sure that State's
24 Exhibit 70(A) was consistently marking each specimen, I then
25 compared the fired cartridge case, which will be State's

1 Exhibit 54, and determined from the firing pin impression that
2 State's Exhibit 54 was, in fact, fired in State's Exhibit 78,
3 the firearm that was submitted.

4 Q. Okay. So that shell casing came from that particular
5 gun.

6 A. Was fired in that firearm, yes Ma'am.

7 Q. All right.

8 A. State's Exhibit 66, we discussed earlier, is a fired
9 .22 long rifle caliber bullet, or what's left of one, I can
10 tell it's -- it's what we called mushroomed, or opened up,
11 expanded it's nose. I could not tell conclusively whether or
12 not State's Exhibit 66, this bullet, was fired in State's
13 Exhibit 70 or not, simply because of the damage. It's too
14 badly damaged on the exterior surface, which holds all the
15 microscopic markings which I use to make my conclusion. It
16 could have been, but I could not say beyond any reasonable
17 doubt that it was.

18 Q. Okay, so it's possible that that was fired, it's
19 possible that this projectile was fired from this casing.

20 A. Possible.

21 Q. And we know that this casing came from that gun.

22 A. Yes Ma'am.

23 Q. All right.

24 MS. von HERRMANN: One moment, please.

25 THE COURT: All right.

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1 MS. von HERRMANN: I just need to check on a piece of
2 evidence, Your Honor.

3 Your Honor, I don't have any further questions for this
4 witness.

5 Please answer any questions Mr. McCollum and Mr. Hazzard
6 may have.

7 THE COURT: Why don't you resume the witness chair, if
8 you would, please sir. Thank you.

9 MS. von HERRMANN: Your Honor, would you like me to
10 collect these or ---

11 THE COURT: Why don't we just leave them there for
12 right now, and then we will see if the Defense attorneys need
13 them.

14 All right, Mr. McCollum.

15 MR. McCOLLUM: May it please the Court.

16 THE COURT: Yes sir.

17 CROSS-EXAMINATION BY MR. McCOLLUM:

18 Q. Agent Parnell, how are you?

19 A. Fine, sir.

20 Q. I'm Greg McCollum. We've met before.

21 A. We have.

22 Q. Yes sir. So the casing that was found in the house was
23 fired out of State's 70(A), right?

24 A. Yes sir.

25 Q. And so you fired this gun, and you also chambered the

1 round -- a round in there to see that it matched the casing
2 that was found at the crime scene.

3 A. Yes sir, that's correct.

4 Q. And the two shotgun shells were fired from another
5 shotgun, I think is your testimony.

6 A. Yes sir. From a gun that was not presented for
7 examination.

8 Q. And then the shotgun, which I guess she put back in
9 here, to test this gun to see if it matched those shells, you
10 fired this weapon.

11 A. I did, yes sir.

12 Q. You chambered a twelve gauge round.

13 A. Yes sir.

14 Q. And that was shot or was it ---

15 A. Probably bird shot.

16 Q. Bird shot.

17 A. Was the least -- least amount of recoil that I could
18 get by with.

19 Q. Okay. And you fired this gun, and the shell, whatever
20 it was, the pellets, came out the end of the barrel.

21 A. Yes sir.

22 Q. And so in that way this gun was operational and it
23 worked.

24 A. It -- in my opinion it will function just like it sits,
25 but I had to put a fore-end on it to make it a little safer to

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1 shoot, from my reference collection.

2 Q. And what do you make of this tape right here?

3 A. If I had to hazard a guess I would think it was
4 probably there to secure the magazine tube and the magazine
5 spring and follower, and the other parts that go in there at
6 some point in time.

7 Q. When the -- and I'm not -- were you able to determine
8 if this spring goes to this gun?

9 A. It could have. I can't state conclusively because it's
10 a common part.

11 Q. Is this the kind of spring that would go in this gun?

12 A. Yes sir.

13 Q. That's the size and everything?

14 A. Yes sir.

15 Q. For this spring to pop out of this gun -- what do you
16 call this part, the magazine?

17 A. The magazine tube, yes sir.

18 Q. ---Would the magazine tube have to come off the gun for
19 this to pop out?

20 A. Either that or the magazine cap to come off the end,
21 and allow it to spring forward.

22 Q. So we don't know whether the -- well, I guess we do.
23 So, if somebody -- could this spring go on this weapon without
24 the magazine cap?

25 A. No sir. Without the tube, no sir.

1 Q. So then if the police officers find the spring at the
2 crime scene, right; are you with me ---

3 A. Yes sir.

4 Q. ---You would conclude that, if it came from this
5 weapon, right, that the magazine tube was on this weapon at
6 the time that the spring came out.

7 A. That's a logical conclusion, yes sir.

8 Q. And somebody could have missed it or picked it up and
9 taken it with them.

10 A. Correct.

11 Q. So from that it would be safe to conclude that this gun
12 was -- did have the magazine tube on it, and a spring, and it
13 broke at the crime scene during the incident.

14 A. That's a likely scenario, yes sir.

15 Q. Because that spring wouldn't be in there otherwise,
16 would it?

17 A. It would not stay in place without something to hold
18 it.

19 Q. So whoever carried this weapon in that house had it put
20 together and probably taped up, right?

21 A. Would be my opinion, yes sir.

22 Q. And if it had shotgun shells in it it would fire,
23 right?

24 A. Yes sir.

25 Q. Do you know if this weapon was fired inside the

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1 residence or not?

2 A. The two fired shell casings that I have examined were
3 not fired in that gun, so it -- and the other components I
4 could not determine what firearm fired those, so it didn't
5 fire the two fired shotgun shell casings.

6 Q. If it fired the shotgun shell casing -- if it did fire,
7 say -- let's say one shotgun shell, would this weapon expel
8 the shell after it was fired?

9 A. No sir. It's manually operated, so you would have to
10 activate either that action rod or the fore-end if it was on
11 it at the time.

12 Q. So if somebody had that weapon and they shot it the
13 shell would stay in it unless they operated or jacked the --
14 the -- what's it called, the magazine?

15 A. The fore-end. If it activated the action, using the
16 action bar, that's correct.

17 Q. And then if somebody fired that shotgun and operated
18 the magazine, and that spring flew out, and the handle or the
19 magazine came off, would the shell expel?

20 A. It should have been, yes sir.

21 Q. Maybe, maybe not?

22 A. Probably. It was functioning, and it will extract and
23 eject, so if those conditions that you described earlier
24 happened, then it would be my opinion that a fired shell
25 casing would have been expelled if it was activated.

1 MR. McCOLLUM: All right. Thank you, sir.

2 That's all I have, Your Honor.

3 THE COURT: Mr. Hazzard.

4 MR. HAZZARD: No questions.

5 THE COURT: Any redirect, Ma'am?

6 MS. von HERRMANN: No sir, Your Honor, and I would ask
7 that he be released from his Subpoena.

8 THE COURT: Is there any objection, Mr. McCollum?

9 MR. McCOLLUM: No, Your Honor.

10 THE COURT: Mr. Hazzard.

11 MR. HAZZARD: No objection.

12 THE COURT: All right, sir, you are released from your
13 Subpoena. You may go back to your regular duties, sir.

14 A. Thank you, Your Honor.

15 THE COURT: Yes sir.

16 All right, ladies and gentlemen of the jury, I'm going
17 to let y'all go to lunch. I would ask that you be back in
18 your jury room, if you can, let's say at 2:20, please. Be
19 back in your jury room at 2:20. Thank you very much.

20 Everyone else remain seated.

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

23 THE COURT: All right, Solicitor, with the Court
24 Reporter you will need to make sure those items get back to
25 where they belong, please.

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1 MS. von HERRMANN: Yes sir.

2 THE COURT: Anything else before we break for lunch?

3 MS. von HERRMANN: Nothing from the State.

4 THE COURT: Mr. McCollum.

5 MR. MCCOLLUM: Nothing from Defendant, Collington, Your
6 Honor.

7 THE COURT: And Mr. Hazzard.

8 MR. HAZZARD: Nothing, Your Honor.

9 THE COURT: All right. I'll see y'all back at 2:20
10 then. Thank you very much.

11 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND
12 OUTSIDE THE PRESENCE OF THE JURY.)

13 THE COURT: All right, Solicitor, is there some matter
14 you need to bring to the Court's attention?

15 MS. von HERRMANN: There is, Your Honor. I would --
16 Ms. Fox from our office just came up here to me and informed
17 me that there is -- she has a juvenile proceeding against an
18 individual child who is on the jury. That jury member
19 apparently came up to her and told her that he was not going
20 to be able to attend his child's truancy hearing because he
21 was on a jury. Ms. Fox obviously said, I can't talk to you,
22 I'll give him a date to come back, and then she came up here
23 and informed me about this.

24 THE COURT: All right.

25 MS. von HERRMANN: My concern ---

1 THE COURT: Ms. Fox, is that what happened?

2 MS. FOX: Absolutely, Your Honor. It's his minor child,
3 and it was in ---

4 THE COURT: And you didn't communicate with him any
5 further?

6 MS. FOX: No. No. I told him specifically I could not
7 and would sign him up for another date.

8 THE COURT: All right. Very good. All right.

9 MS. von HERRMANN: I guess my concern -- sorry.

10 THE COURT: Madame Court -- just one second. Madame
11 Court Reporter, do we know the juror's number, not the name,
12 so we can put the number on ---

13 COURT REPORTER: Number 205.

14 THE COURT: Number 205. All right, so it's Juror
15 Number 205, for the attorneys' information.

16 So you've brought that to the Court's attention, and to
17 the attention of the attorneys for the Defendant.

18 Mr. McCollum, is there anything on behalf of the
19 Defendant, Collington?

20 MR. MCCOLLUM: No, Your Honor.

21 THE COURT: Mr. Hazzard, on behalf of the Defendant,
22 Gause?

23 MR. HAZZARD: No, nothing, Your Honor.

24 THE COURT: All right. Thank you. I appreciate y'all
25 bringing it to my attention. Thank you very much.

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1 MS. von HERRMANN: Okay. Thank you.

2 THE COURT: Anything else, Solicitor?

3 MS. von HERRMANN: No sir, Your Honor. Before we
4 bring the jury out though, the next witness is a co-defendant.
5 He does have a criminal record, which I think we need to go
6 ahead and clear up.

7 THE COURT: All right. And who is the person?

8 MS. von HERRMANN: Donell James.

9 THE COURT: Donell James. All right, very good.

10 MS. von HERRMANN: He has, from 2002, an assault and
11 battery of a high and aggravated nature. I don't see any
12 problem with that. He also has a 2005 possession of stolen
13 vehicle, more than Five Thousand. He was convicted of that.
14 That obviously is, you know, something that I think that they
15 can use to impeach him with. He has some pending drug
16 charges. He has a pending burglary, armed robbery,
17 kidnapping, and then a few ---

18 THE COURT: Is that from this case?

19 MS. von HERRMANN: No. This is a separate case.

20 THE COURT: Separate case. Okay.

21 MS. von HERRMANN: And then there are a couple of
22 charges that are misdemeanor charges, simple assault and
23 battery, malicious injury to the courthouse, assault on a
24 correctional employee. That would be -- that would not be a
25 misdemeanor.

1 THE COURT: All right. So those are all pending
2 charges that he has. What about this -- is that correct?

3 MS. von HERRMANN: That is correct.

4 THE COURT: And what about this particular case?

5 MS. von HERRMANN: And in this particular case he has a
6 pending murder, armed robbery, burglary and kidnapping.

7 THE COURT: All right. Very good.

8 All right. So, Mr. McCollum, you are aware of that
9 then, now?

10 MR. MCCOLLUM: I am, Your Honor. The other unrelated
11 burglary, is that a burglary first, second or third, or do --
12 are you ---

13 MS. von HERRMANN: It's a first.

14 MR. MCCOLLUM: Thank you.

15 MR. HAZZARD: Did you say first? I'm sorry.

16 MS. von HERRMANN: First.

17 MR. HAZZARD: Okay. Thank you.

18 THE COURT: All right. And Mr. Hazzard, you are now
19 aware of that also.

20 MR. HAZZARD: I am, Your Honor.

21 THE COURT: All right. Very good. All right. As we
22 did with Mr. James, I believe it's -- even though they are not
23 convictions, since the Defendant is testifying on behalf of
24 the State I believe it is proper for the jury to be made aware
25 of all of his pending charges, so that they have that

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1 information to judge his veracity or credibility and
2 believability in this case. All right.

3 MS. von HERRMANN: All right. Thank you, Your Honor.

4 THE COURT: All right. Anything further, Mr. McCollum?

5 MR. McCOLLUM: The only other thing, Your Honor, is
6 that we've got two statements from this Defendant. I would
7 ask for some assistance here for Ms. Ditto. There seems to be
8 some problem loading the two discs back and forth, so what I
9 may ask the Court's permission to do is to bring that up,
10 either on the recross, like I did last time, or later in the
11 trial, if that's okay.

12 THE COURT: All right, sir. I'm sorry, you are ---

13 MR. McCOLLUM: Just the technical problem of going from
14 one disc to the other.

15 THE COURT: You can't bring them up at all, or you
16 can't ---

17 MR. McCOLLUM: It takes us -- it puts -- the system has
18 to reboot or something, and it takes some time.

19 THE COURT: All right.

20 MR. McCOLLUM: That's all I ---

21 THE COURT: So you have to pick one or the other, and
22 then you may not be able to get to the second one, is what you
23 are saying.

24 MR. McCOLLUM: Yes sir.

25 THE COURT: All right. So ---

1 MR. McCOLLUM: Just asking for some consideration on
2 that.

3 THE COURT: All right.
4 Yes, Solicitor.

5 MS. von HERRMANN: I'm thinking about this juror, Your
6 Honor, and here it -- I have some concerns about him.

7 THE COURT: Yes Ma'am.

8 MS. von HERRMANN: My concern about him is this.
9 During the questioning of the panel Your Honor asked if
10 anyone, or their family member, that sort of thing, had any
11 contact with the Solicitor's Office, or the Public Defender's
12 Office. He did not respond to that in the affirmative.

13 THE COURT: I'm sorry. What are we talking about? I'm
14 -- we've jumped from -- are we talking about the same thing
15 Mr. ---

16 MS. von HERRMANN: No. I'm talking about the juror
17 with Ms. Fox.

18 THE COURT: Oh. Okay. Well, let's not go to a
19 different thing. Let's -- are we done with -- do you have any
20 issues about the matter that Mr. McCollum raised?

21 MS. von HERRMANN: What was that? I'm sorry. I
22 apologize.

23 MR. McCOLLUM: Just having some technical issues about
24 playing the statements.

25 THE COURT: Apparently there -- the laptop they have --

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1 apparently this witness had -- gave two recorded statements,
2 or there's two statements that are recorded.

3 MS. von HERRMANN: Right.

4 THE COURT: Apparently they can play one, but if they
5 want to switch to the other there's going to be some delay, or
6 they are experiencing problems getting from one to the other,
7 so he just wanted some consideration in that.

8 MS. von HERRMANN: Sure. Absolutely.

9 THE COURT: All right. Very good. Mr. Hazzard -- and
10 let me just get over there. Mr. Hazzard, do you have any
11 issues you need to raise to the Court about anything, before
12 we bring the jury in?

13 MR. HAZZARD: If we are done addressing the juror.

14 THE COURT: No. We haven't gotten to that part yet.
15 I'm going -- we had the Solicitor, then I went to Mr.
16 McCollum. I'm going in the same order. So I'm just asking
17 you, do you have any issues that you need to raise before we
18 bring the jury in?

19 MR. HAZZARD: No sir.

20 THE COURT: All right. Very good.

21 All right. So, we are going back now, and you are
22 talking about Juror Number 205; is that right?

23 MS. von HERRMANN: And Your Honor, that juror came out
24 before, and you spoke with him, and he said that he knew -- he
25 now remembered that he knew the Defendant, Collington's

1 mother, and he now has gone downstairs and said -- told Ms.
2 Fox that he's not going to be able to be present for the
3 truancy hearing after he did not respond in the affirmative
4 when asked about contact with the Solicitor's Office.

5 I think -- we now have two separate occasions, instances
6 where he has been, at the very least, forgetful, and at best -
7 - or vice-versa, dishonest. I would ask that he be removed
8 from this jury panel.

9 THE COURT: All right. Well, I'm going to -- I need to
10 question the juror then.

11 Will you ask Juror Number 205 to come in, please sir.

12 (JUROR NUMBER 205 ENTERS THE COURTROOM.)

13 THE COURT: Right there is good, sir. All right.
14 That's very good. Thank you, sir.

15 And as I did yesterday, sir, I'm going to refer to you,
16 since we are in open court in this particular matter, as Juror
17 Number 205. Don't take any offense to that, but I'm just
18 going to refer to you by your number. You understand that?

19 A. Yes sir.

20 THE COURT: All right. Very good. I do need to ask
21 you a question about the matter that was raised yesterday, and
22 then I'll go into the matter that came up today.

23 You had brought to the Court's attention about you
24 believing that you knew, or had had some business dealings
25 with the Defendant, Collington's, mother because of your

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1 business, and it was in some time period eight to ten years
2 ago.

3 A. That's correct.

4 THE COURT: All right, sir. I was trying to remember,
5 and I don't remember, at any point in time where that
6 particular person could have been identified in front of the
7 jury as having any relationship with the Defendant,
8 Collington, was not identified as the Defendant, Collington's,
9 mother that I remember. How is it that you put two and two
10 together?

11 A. I saw her in the courtroom the first day, and then I
12 just kind of pieced it together that night.

13 THE COURT: All right. So just because of what you
14 observed in the courtroom you gathered that there was some
15 connection between the person you recognized and the
16 Defendant, Collington; is that right?

17 A. That's correct.

18 THE COURT: All right. Very good.

19 All right. Today I've had brought to my attention that
20 there was a -- you had a matter in -- not you, personally, but
21 a child of yours had a matter in Family Court that obviously
22 is being handled by the Solicitor's Office of the Fifteenth
23 Circuit. That's who obviously handles those particular
24 matters, and you had some contact with the Solicitor. Do you
25 remember when I questioned the jury panel as a whole -- and

1 this probably would have been like the second or third
2 question that I asked -- whether you, yourself, or a member of
3 your immediate family has ever had any matters, in any way,
4 handled by the Fifteenth Circuit Solicitor's Office, and
5 reminding the jury that that covers Horry and Georgetown
6 Counties, and you did not respond affirmatively to tell the
7 Court anything about this. Why was that?

8 A. Well sir, I didn't make the connection that it was the
9 Fifteenth Circuit. I -- you know, I didn't make that
10 connection. I'm sorry.

11 THE COURT: Okay. But you knew the matter was being
12 prosecuted by the State of South Carolina.

13 A. Well, from what I understood wasn't any kind of
14 prosecution anyway; it was just ---

15 THE COURT: Well, I -- but when it comes before the
16 Court, in Family Court, and it involves a matter involving a
17 minor it's brought by the State of South Carolina. You didn't
18 understand that?

19 A. I didn't understand that it was going to be brought by
20 a court at all. It was my understanding that it was a meeting
21 and then no, it wasn't going to be brought before the Court.

22 THE COURT: All right, sir. Well -- and I believe --
23 and I understand brought before the Court, but my question
24 was, have you, or any member of your immediate family ever had
25 any matters of any kind handled, in any way, by the Fifteenth

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1 Circuit Solicitor's Office. That doesn't mean come to Court,
2 it means handled in any way. You didn't understand that to be
3 all encompassing ---

4 A. No sir.

5 THE COURT: ---And handled in any way means handled in
6 any way, any way touched by the Fifteenth Circuit Solicitor's
7 Office. You didn't understand that?

8 A. No.

9 THE COURT: All right, sir. Despite all these things
10 that have happened, you understand your duty and
11 responsibility is to make your decision in this courtroom
12 based solely and completely on the matters you have heard in
13 this courtroom, and you may not let any outside influence of
14 any kind in any way influence your decision. Do you
15 understand that?

16 A. Yes sir.

17 THE COURT: Can you give to the State of South Carolina
18 and to both Defendants a fair and impartial trial; can you be,
19 without question, a fair and impartial juror in this case?

20 A. Yes sir.

21 THE COURT: Thank you very much. Return to the jury
22 room.

23 (THE FOLLOWING TAKES PLACE OUTSIDE ALL JURORS'
24 PRESENCE.)

25 THE COURT: Solicitor, I'll say on the record, I share

1 your concerns, but based upon my evaluation of the questions
2 and answers I have asked of this particular witness I believe
3 he appreciates his duties and responsibilities as a juror, is
4 prepared to carry them out. I respectfully decline to grant
5 your motion to remove him as a juror at this time.

6 Thank you very much.

7 Anything else from the State?

8 MS. von HERRMANN: Nothing from the State, Your Honor.

9 THE COURT: All right. Ask the jury to come in.

10 I'm sorry, Mr. McCollum. Anything.

11 MR. MCCOLLUM: I was just saying, nothing else from the
12 Defendant, Collington.

13 THE COURT: All right. And Mr. Hazzard.

14 MR. HAZZARD: Nothing further, Your Honor.

15 THE COURT: All right. Very good. Ask the jury to
16 come in, please.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, Solicitor, you may proceed with
20 your next witness, please Ma'am.

21 MS. von HERRMANN: Thank you, Your Honor. The State
22 calls Donell James.

23 THE COURT: All right.

24 All right, Mr. James, if you would come around right
25 over here, sir, please.

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1 DONELL LAMONT DEWAN JAMES, being
2 first duly sworn, testifies as follows:

3 MS. von HERRMANN: Your Honor, may we approach for one
4 moment?

5 THE COURT: Yes Ma'am.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 DIRECT-EXAMINATION BY MS. von HERRMANN:

8 Q. All right, Mr. James, obviously you are in custody,
9 correct?

10 A. Yes Ma'am.

11 Q. All right. And are you -- you are still in custody,
12 still in jail from the charges that you were arrested on that
13 you are here for today; is that correct?

14 A. Yes Ma'am.

15 Q. So you have been in jail continuously since this
16 incident in April of 2008, right?

17 A. Yes Ma'am.

18 Q. And you were not able to bond out. You had a bond but
19 you weren't able to make the bond; is that correct?

20 A. Yes Ma'am.

21 Q. All right. And before we get started on this, let's
22 just talk a little bit about you. You've been in some trouble
23 before.

24 A. Yes Ma'am.

25 Q. You had -- from 2005 you had a conviction for assault

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1 and battery of a high and aggravated nature, right?

2 A. I went to prison in 2002.

3 Q. Okay. And is that what that was for?

4 A. Yes Ma'am.

5 Q. All right. Thank you for letting me know about that.

6 And then, I think six years ago you were convicted of
7 possession of a stolen vehicle.

8 A. Yes Ma'am. 2005.

9 Q. All right. And you currently have some charges
10 pending, right?

11 A. Yes Ma'am.

12 Q. And those are some drug charges.

13 A. Yes Ma'am.

14 Q. And burglary first ---

15 THE COURT: You need to answer yes or no, sir.

16 A. Yes Ma'am.

17 Q. Burglary first, armed robbery ---

18 A. Yes Ma'am.

19 Q. ---Kidnapping, and I think you got -- you have an
20 assault on a correctional employee from being in jail, right?

21 A. Yes Ma'am.

22 Q. So is it safe to say that you are no -- you are no
23 angel, right?

24 A. No Ma'am.

25 Q. You've been in trouble before.

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1 A. Yes Ma'am.

2 Q. And you and I have talked about this case, and at some
3 point you agreed to come and talk to the police, and then to
4 talk with the police and me about the facts regarding this
5 case; is that correct?

6 A. Yes Ma'am.

7 Q. All right. And you and I entered into -- you and I, me
8 being the State, entered into something called a Proffer
9 Agreement, correct?

10 A. Yes Ma'am.

11 Q. All right. And under that Proffer Agreement you agreed
12 that you would give us all the information that you had
13 regarding this case, correct?

14 A. Yes Ma'am.

15 Q. And in turn I agreed that I would let the Judge know
16 about your level of cooperation; is that correct?

17 A. Yes Ma'am.

18 Q. And did I give you any instruction about your testimony
19 here today?

20 A. No Ma'am. I just told you that I was going to come in
21 here and tell y'all the truth about what happened.

22 Q. Okay. So I didn't tell you what to say.

23 A. No Ma'am.

24 Q. All right. And do you plan to tell the truth today?

25 A. Yes Ma'am.

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- 1 Q. All right. Let's talk about some of the people
2 involved in this. Who is Tanheshia, or Tanheshia Smith?
- 3 A. Tanheshia Smith is my baby mom.
- 4 Q. That's your baby's mom. Where did Tanheshia Smith live
5 back when all this stuff happened?
- 6 A. Over in -- in the apartments on 544. I forgot the
7 name, Coastal Apartments.
- 8 Q. Off of 544. Is that the apartments that are across the
9 street from the Scotchman?
- 10 A. Yes Ma'am.
- 11 Q. And did anybody else that you know live in those
12 apartments?
- 13 A. Yes Ma'am.
- 14 Q. Who?
- 15 A. Dorrea.
- 16 Q. Is that Ladorrean Collington?
- 17 A. Yes Ma'am.
- 18 Q. All right. How about Andrew James? Who is Andrew
19 James?
- 20 A. That's my little cousin.
- 21 Q. All right. Is that Tiffany's ---
- 22 A. Brother.
- 23 Q. ---Brother. And -- so Tiffany is your cousin as well?
- 24 A. Yes Ma'am.
- 25 Q. And Greg Floyd. Who is Greg Floyd?

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1 A. Greg Floyd -- Greg Floyd is my cousin, Tiffany's,
2 brother -- my cousin, Tiffany's, baby daddy brother.

3 Q. Okay. So Tiffany and Greg, the relationship between
4 them is Greg's brother ---

5 A. Yes Ma'am.

6 Q. ---Is that correct. And how about Quentin Gause; you
7 know him?

8 A. No Ma'am.

9 Q. You know him today?

10 A. I know him today, but ain't knew him from the first --
11 that was the first time we met.

12 Q. Okay. Well, we'll get to that in a little bit, so
13 prior to, let's say April the 14th, you did not know him.

14 A. No Ma'am.

15 Q. All right. Now, Ladorrean, how long have you known
16 her?

17 A. Knew Dorrea ever since we been little.

18 Q. How many years you think you -- how old are you?

19 A. Twenty-six.

20 Q. And so how long do you think you've known her?

21 A. Since middle school.

22 Q. Okay. And y'all are friends.

23 A. Yes.

24 Q. And let me now direct your attention -- do you know
25 what date Allen Smith was killed?

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- 1 A. April the 14th.
- 2 Q. Of what year?
- 3 A. 2008.
- 4 Q. So let me direct your attention to a couple of days
5 before that happened, all right.
- 6 A. Yes Ma'am.
- 7 Q. And did you have any contact with Ladorrean in those --
8 let's just say four days before that happened, did you have
9 some contact with her?
- 10 A. Yes Ma'am. I ran into her uncle at the Scotchman.
- 11 Q. You did. Okay. Tell the jury what happened after
12 that.
- 13 A. When I ran into her uncle at the Scotchman that's how I
14 knew she stayed over there.
- 15 Q. Okay. And so did you then go to her house, or did you
16 talk with her?
- 17 A. Yes Ma'am.
- 18 Q. Tell the jury how that happened.
- 19 A. When I went to her house, you know what I'm saying, I
20 asked her, you know what I'm saying, do she know where I could
21 get off a little bit of work that I had. She was like, you
22 know what I'm saying, naw, I mean, so after that I left, you
23 know what I'm saying, I left her my number though, so, you
24 know what I'm saying, she called me and told me, you know what
25 I'm saying ---

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1 Q. You left her your telephone number?

2 A. Yes, my cell phone.

3 Q. Okay. Do you remember what your cell phone number was?

4 A. No Ma'am. My cell phone gone now.

5 Q. All right. Okay. So you left her your cell phone
6 number, and then what happened?

7 A. And then, like a couple of hours later, you know, she
8 called my phone and told me, you know what I'm saying, she had
9 something for me, and I was like, what it is, she was like,
10 you know what I'm saying, come back to her house.

11 Q. All right. And did you do that? Did you come back to
12 her house?

13 A. Yes Ma'am. I caught a cab back to her house.

14 Q. All right. What -- you didn't have a vehicle?

15 A. No Ma'am.

16 Q. All right. So you catch a cab back to her house, and
17 you go to her house, and what happens next?

18 A. When I went into her house her -- police been around
19 her house ---

20 Q. Uh huh (indicating positive)

21 A. ---You know what I'm saying, and so I went to my house.
22 I told the cab to take me on to my house.

23 Q. Okay.

24 A. I stayed on the other side of her, you know what I'm
25 saying, she stayed on one side, I stayed on the other side.

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1 So when I seen the police at her house I just
2 house.

3 Q. Okay. And then did you ever go back to her house?

4 A. After my cousin, Tiffany, came and told me the police
5 was gone.

6 Q. Okay. So Tiffany comes over to Tanheshia's ---

7 A. Yes Ma'am.

8 Q. ---And says the police are gone?

9 A. Yes Ma'am.

10 Q. All right. And you go back over to Ladorrean's house.

11 A. Yes Ma'am.

12 Q. All right. What do y'all talk about when you get
13 there?

14 A. We talk about this dude, you know what I'm -- as I know
15 now it was Allen Smith, but it was her baby daddy at the time.
16 We was talking about her baby daddy. And ---

17 Q. Did you know him?

18 A. No. No Ma'am, I ain't know him.

19 Q. Had you ever met him before?

20 A. Never had no words with him or nothing.

21 Q. All right. So -- I'm sorry. I interrupted you. So
22 what were talking about about Allen Smith?

23 A. So she was like, you know what I'm saying, she got a
24 lick for me, you know what I'm saying.

25 Q. Let me stop you right there. She said she's got a lick

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1 for you.

2 A. Yes Ma'am.

3 Q. All right. What's a lick? What does that mean?

4 A. Some -- when you like go rob somebody, you know what
5 I'm saying, she had -- she had a little lick for me like.

6 Q. She had a robbery for you.

7 A. Yes.

8 Q. All right. What kind of lick did she say it was?

9 A. She told me it was like Forty Grand and a half a brick,
10 so I was like all right.

11 Q. All right. Forty -- Forty Grand ---

12 A. Forty Thousand Dollars.

13 Q. Forty Thousand Dollars, and she told you half a brick.
14 What does half a brick mean?

15 A. It's like a half a kilo.

16 Q. All right. That's worth a lot of money, isn't it?

17 A. (NODS HEAD AFFIRMATIVE)

18 Q. All right. ---

19 THE COURT: Was that ---

20 A. Yes Ma'am.

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

22 Q. So she told you that she knew that he had that in his
23 house.

24 A. She said she seen it, her and Tiffany.

25 Q. She said she had seen it. And she said that you could

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1 go and rob him and get that.

2 A. She told me I could go get it, you know what I'm
3 saying. She was like -- when she said it she said, you could
4 go and rob him and get it, but you know what I'm saying, you
5 ain't got to worry about nothing because he's going to give it
6 up.

7 Q. What does that -- when she said that to you, what did
8 that mean to you, he's going to give it up?

9 A. That means he was scared, you know what I'm saying, he
10 wasn't going to try to buck or nothing.

11 Q. She -- he wasn't going to try to put up a fight.

12 A. Yes Ma'am.

13 Q. All right. And when she said that did you believe her?

14 A. Yes Ma'am.

15 Q. All right. And did you tell her that you were
16 interested in doing that?

17 A. Yes Ma'am. I told her that -- I told her that I would
18 do it, you know what I'm saying, but I ain't going to do it by
19 myself.

20 Q. All right. So did you have to get some other people to
21 do it with you?

22 A. I went and got my cousin, Andrew, and Gregory Floyd.

23 Q. All right. Your cousin, Andrew ---

24 A. And Greg.

25 Q. ---And Gregory Floyd. All right. And did you all have

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1 any weapons?

2 A. When we first went there, you know what I'm saying, I
3 had a wea -- yeah, all three of us had weapons.

4 Q. You did. Okay. What kind of weapons did y'all have?

5 A. Andrew had the shotgun, Gregory Floyd had a .22, and I
6 had a .38 revolver.

7 Q. Okay. All right. Did you make any deal with Greg and
8 Andrew about what they would get if y'all found something in
9 there?

10 A. Yes Ma'am. We was going to split it, you know.

11 Q. And was -- how about Ladorrean; was she going to get a
12 cut?

13 A. She wanted -- only thing she asked is for her car note
14 to be paid.

15 Q. For her car note to be paid. Wanted to get her car
16 paid off.

17 A. Yes Ma'am.

18 Q. Okay. So once you -- once you get hold of Andrew and
19 Greg where do y'all go?

20 A. We went back to Dorrea's house.

21 Q. All right. And who was there at Ladorrean's house?

22 A. It was like just a -- like a quick little, you know
23 what I'm saying, a roundup, you know what I'm saying. We went
24 back to her house and then we left. We ain't stayed there and
25 talked about nothing. We already, you know what I'm saying,

JURY IN
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- 1 knew. Only thing we had to do was go throug
2 Q. How did you know where the -- how did
3 the house was located?
4 A. Dorrea showed me.
5 Q. She showed you. And was -- Tiffany was going to drive
6 you around there.
7 A. Tiffany -- Tiffany -- Tiffany said -- she was with
8 Dorrea at the time she seen the money and the work in the
9 house, you know, so I believed them, you know what I'm saying.
10 Tiffany is my first cousin.
11 Q. Right.
12 A. So when -- when they told me I was like, you know what
13 I'm saying, I'll do it. So when I went and got Greg and Drew
14 they came -- Andrew -- we went -- Tiffany -- I mean, Dorrea
15 had already showed us, through the window, where he stayed at,
16 cause you could have looked through her window and seen where
17 he stayed at, so we just went through the path in her back
18 yard and just went over there, but when we went over there --
19 when we went over there, you know what I'm saying, Gregory --
20 Gregory had tried the door, and I was like, man, you know what
21 I'm saying, lick gone bad, so we left.
22 Q. You said what? {You said lick gone bad?
23 A. Yes Ma'am.
24 Q. What does that mean?
25 A. That means that you don't do it.

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1 Q. All right. You just -- you -- something didn't feel
2 right.

3 A. You got a bad vibe, you know what I'm saying. So we
4 went back, and we went back, you know what I'm saying, told
5 Dorrea I was like, you know what I'm saying, nigger -- nigger
6 touched the door and stuff, so I ain't trying to do it, so,
7 you know what I'm saying, after that I went back to the house.

8 Q. You went back to ---

9 A. To Tanheshia -- me and Tanheshia was staying together.

10 Q. All right. And did -- Andrew and Greg, were they in
11 agreement too, that it was just a bad idea?

12 A. Yes Ma'am.

13 Q. All right. So you went back to Tanheshia's house. Did
14 you talk to Ladorrean after that?

15 A. Yes Ma'am. We talked, but it weren't really like about
16 the situation. It was about that -- I told her that I
17 couldn't do it with them.

18 Q. Okay. All right. It just wasn't going to work with
19 them, right?

20 A. Yes Ma'am.

21 Q. All right. And then let me direct your attention to
22 Monday, April the 14th. All right. That's the day that it
23 happened. Tell the jury where you were that morning.

24 A. I was in Tanheshia's house. We was in there. Me,
25 Tanheshia and Tiffany was in the house together. Tiffany

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1 stayed the night with -- the next morning we woke up, you know
2 what I'm saying, and she was like, the best time to do it is
3 right now, and I was like, I ain't got nobody to go with me,
4 so she left my house and went to Dorrea's house. When she
5 came back to my house she had -- she had Quentin and Gregory,
6 you know what I'm saying, so we went in the house and smoked
7 some weed.

8 Q. All right. Who went in the house and smoked some weed?

9 A. Me, Tiffany, Gregory and Quentin.

10 Q. Okay. Now, let me ask you about this. Your cousin,
11 Andrew, he had come over and he had brought a suitcase over
12 there, correct?

13 A. Yes Ma'am.

14 Q. And what was in that suitcase?

15 A. See, when Andrew -- when Andrew came over to my house -
16 - this was before. This was the time when Dorrea first told
17 me about -- about the robbery, you know what I'm saying. When
18 he came to my house the only thing he had was the shotgun and
19 the .22. He had already left that over there at my house.
20 Tiffany had her suitcase over there, so, you know what I'm
21 saying, we put it in the suitcase and just kept it in the
22 kids' room.

23 Q. Okay. So you -- do you remember Andrew being over
24 there that day?

25 A. Yes Ma'am. Not -- not -- not that day, not the day --

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1 not Monday, April 14th. He wasn't over there.

2 Q. Okay. You don't remember him being there that day.

3 A. He wasn't over there.

4 Q. All right. When Greg and -- when Greg and Quentin --
5 does Quentin have a nickname?

6 A. Yes Ma'am.

7 Q. What is it?

8 A. Call him Bait.

9 Q. All right. When -- when he came up -- let me ask you
10 this, did Ladorrean tell -- did she tell you where the money
11 and the drugs would be?

12 A. Yes Ma'am. She said it would be in the dresser.

13 Q. In the dresser in his room.

14 A. In Big A's room.

15 Q. All right. And did she mention anything to you -- what
16 time was day was this y'all were going to do it?

17 A. What you mean?

18 Q. What time -- was it like daytime or nighttime or ---

19 A. She said we had to do it in the daytime because in the
20 nighttime he would be up all night, so in the daytime he would
21 be asleep all day.

22 Q. She said he would be sleeping. Do you know -- did she
23 make any calls to check on that or anything or ---

24 A. Yes Ma'am. She made calls -- she just been -- on 14th
25 when she made the calls over there.

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1 Q. She called over to Allen's house?

2 A. Yes Ma'am. To see where he was at in the house, to

3 make sure he was sleep.

4 Q. All right. All right. You said you had gone to her

5 apartment. Did you go over to the Scotchman at some time

6 right in there?

7 A. Me and Dorrea went to the Scotchman like a couple of

8 days before. We wanted to get some gas.

9 Q. All right.

10 A. That was just me, her and Tiffany.

11 Q. All right. So when Quentin and Greg get there what

12 kind of vehicle are they driving?

13 A. I don't really know what type of vehicle it was, you

14 know what I'm saying, just been a little red -- little four-

15 door little truck.

16 Q. Small?

17 A. Yes.

18 Q. Small car.

19 A. Yes, little small car.

20 Q. Not a big SUV or something. And you said it was red..

21 A. Yes Ma'am.

22 Q. And four door. And did Quentin have anything with him

23 when he came over to Tanheshia's house?

24 A. See, when he first came in there he had it pulled up,

25 you know what I'm saying, but, you know what I'm saying, when

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1 we started talking about what was going down he pulled -- he
2 pulled out the shotgun, a camouflage shotgun.

3 Q. A camouflage shotgun. All right. And did y'all -- I
4 think you said that -- I mean, y'all talked about that
5 particular gun, right?

6 A. No Ma'am. We ain't talked about no gun. Only thing we
7 said is that, you know what I'm saying, when we go to this
8 house we ain't got to shoot nobody.

9 Q. Okay. Well, when he pulled out that gun did you say
10 anything to him, like ---

11 A. Oh yeah, I was like, you know what I'm saying, I was
12 damn, you know what I'm saying. I like -- I looked, you know
13 what I'm saying, so I was like, that's a nice gun, basically.

14 Q. So it was -- did it look ---

15 A. I can't remember word for word what I said, but, you
16 know what I'm saying, I was like, it looked better than mine,
17 you know.

18 Q. Right.

19 A. I'm like ---

20 Q. Let's talk about yours. Let's talk about the -- you
21 had a -- what kind of gun did you have you were going to take
22 over there?

23 A. The gun that I had was the gun that -- that Drew had
24 left at the house. I had a shotgun, a brown shotgun.

25 Q. All right. I'm going to show you what's State's

1 Exhibit 69. Is that it right there?

2 A. Yes Ma'am.

3 Q. That's the gun that you had. All right. And does that

4 look pretty much like it did back then?

5 A. It just had the brown handle on it.

6 Q. Something else going on down here?

7 A. Yes Ma'am.

8 Q. All right. We are going to talk about that again in a

9 few minutes, but just for right now, this would be the same

10 weapon; is that correct?

11 A. Yes Ma'am.

12 THE COURT: Could you identify the -- by number?

13 MS. von HERRMANN: 69.

14 THE COURT: 69. All right.

15 Q. And I'm going to show you also what's been marked as

16 State's Exhibit 70. Get you to take a look at that for me.

17 Do you recognize that?

18 A. Yes Ma'am.

19 Q. All right. What is that gun; do you know? You may not

20 know the specific type, but do you know what caliber?

21 A. It's a .22 Ruger.

22 Q. Okay. .22 Ruger. And did somebody have this gun?

23 A. It's the gun Gregory had.

24 Q. Gregory had this gun. All right. So when you get

25 ready to leave who's going to drive Quentin's red car?

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1 A. See, when we was in the house we was debating on going,
2 so I was like, you know what I'm saying, asking my cousin,
3 Tiffany, do she really think the money and stuff -- the money
4 and the dope in there, and Tiffany was like, she seen it with
5 her own eyes, and so I tell her I would like, put it on
6 Grandma you seen it, so she put it on Grandma, so I believed
7 her, so she was like, if you don't believe me, you know what
8 I'm saying, I'll drive the car, so I was like, shit, fuck, all
9 right.

10 Q. Okay. So she was the -- she drove the car.

11 A. Yes Ma'am.

12 Q. And did you change clothes before y'all got in that
13 car?

14 A. No Ma'am. I already had on clothes.

15 Q. What -- tell me what you were wearing.

16 A. I was wearing some short. I was wearing shorts and
17 black shirt, but my shorts had like Wii -- Wii signs in them,
18 all over them.

19 Q. What -- were you going to do something to conceal your
20 face when y'all went in?.

21 A. I had a black shirt all ready, so I just took my black
22 shirt off. I had two black shirts on.

23 Q. Okay. But like a ---

24 A. I had a black shirt round my face, and one on.

25 Q. All right. So you were going to put something around

1 your face to conceal it, right?

2 A. Yes Ma'am. Yes Ma'am.

3 Q. And what about Quentin, was he going to put something
4 around his face to conceal it?

5 A. Yes Ma'am. He put something around his face -- mad it
6 so bad, I put the black shirt round my face, and part of me,
7 you know what I'm saying, but I had put on my hoodie before I
8 left, you know what I'm saying, so I had my -- because I had
9 my hood over my head too.

10 Q. All right. So you had a black shirt and you had the
11 hoodie?

12 A. Yes Ma'am. I had my hoodie over my head.

13 Q. All right. And Quentin, do you remember what he had
14 on?

15 A. I can't remember everything that he had on. I just
16 know all of us been in black except Greg.

17 Q. Okay. What did Greg have?

18 A. A yellow shirt round his face and ---

19 Q. So he had a colored shirt around his face ---

20 A. Yes Ma'am.

21 Q. ---And the rest -- and you and Quentin were in black?

22 A. Yes Ma'am.

23 Q. All right. So you all go and you get in the car. Tell
24 me where everybody's sitting in the car. Who is in the front
25 of the car?

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1 A. In the front of the car, you had Tiffany driving, and
2 you had -- you had Gregory sitting on the passenger side.

3 Q. Okay.

4 A. You had me sitting behind Tiffany, and Bait sitting
5 next to me on the -- behind the passenger.

6 Q. Okay. Do you know whether that gun was working when
7 you left Tanheshia's house?

8 A. No Ma'am. That gun ain't never did work. That --
9 Andrew had been told me the gun ain't work. I ain't -- the
10 gun ain't even had no bullets in it.

11 Q. All right. Did you -- did you have any ammunition?

12 A. No Ma'am.

13 Q. All right. Did anybody bring any ammunition for you to
14 put in that gun?

15 A. Ammunition was -- ammunition was brought to my house,
16 but I never put none in the gun though.

17 Q. Okay. Who brought the ammunition to your house?

18 A. Bait.

19 Q. Okay. Shotgun shells, is that what you had ---

20 A. Yes Ma'am.

21 Q. ---In his weapon?

22 THE COURT: You need to answer out loud.

23 A. Yes Ma'am.

24 Q. All right. When y'all are in the car on the way over
25 there, are you talking about who is going to go to the door or

1 anything like that?

2 A. Before we left the house we said Gregory was going to
3 kick the door, so when we went -- when we went in the car we
4 all got in the car. Tiffany went to the house. When she --
5 when she went out the apartment building she made a right,
6 then, you know what I'm saying, made another little right --
7 then the right, then she went to the circle and turned around
8 and came back to the house.

9 Q. All right.

10 A. When she came to the house, you know what I'm saying,
11 me, Greg and Bait, we jumped out the car.

12 Q. Okay. Let me stop you right there for just a second,
13 because I'm going to show you a map here. I'm going to show
14 you what's been marked as State's Exhibit 40, and I'm going to
15 show you -- this has already been marked with the victim's
16 house on it. Do you see that here?

17 A. Yes Ma'am.

18 Q. And with Ladorrean Collington's apartment here. Do you
19 see that?

20 A. Yes Ma'am.

21 Q. All right. And you had talked earlier about the time
22 that y'all -- y'all were going to go over there and rob him,
23 but when you got there you had a bad feeling about it, and you
24 said you left and you went down a path. Where is that path?
25 I know it's hard for you.

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1 A. (INDICATING)

2 Okay. So it's at the end of that cul-de-sac right
3 there?

4 A. It's right there, right when you come through there,
5 you come through the little ditch right there on the circle.

6 Q. All right. So when you come through that path are you
7 real close to Ladorrean's apartment?

8 A. You are coming from her apartment -- she stays right
9 there.

10 Q. Oh, okay. So it's right there.

11 A. Yes Ma'am.

12 Q. All right. And when Tiffany drove you all over there
13 did you go to the path ---

14 A. No Ma'am.

15 Q. You can't get a car through there, can you?

16 A. We -- we came from right here.

17 Q. Okay. And show me -- this map probably isn't big
18 enough.

19 A. See, when they came to my house they was parked in the
20 wrong parking lot, so the lady came to my house and told them
21 they had to move the car, so I stayed like right up in here.
22 So when we left we came out this way, and came round this way.

23 Q. All right. That's 544 over there. Then you would have
24 to take some roads to get back around here, is that what you
25 are ---

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1 A. Yes Ma'am. You take the road and come back this way,
2 and then you come down this way, and that's the road right
3 there where your finger at.

4 Q. Okay. This is the road.

5 A. Yes Ma'am.

6 Q. And so Tiffany drove down there ---

7 A. And then she came out, went to the circle and turned
8 around and went back.

9 Q. All right. So that she's facing out.

10 A. Yes Ma'am.

11 Q. All right. Let me show you a picture of State's
12 Exhibit Number 3. Is that the victim's house that you all
13 went into?

14 A. Yes Ma'am.

15 Q. All right. And State's Exhibit 5, is that the doorway
16 that y'all went up to?

17 A. Yes Ma'am.

18 Q. All right. So you drive up, and you all get out of the
19 car.

20 A. Yes Ma'am. We -- just me -- just me, Greg and Bait got
21 out the car. Tiffany stayed in.

22 Q. Okay. Tiffany stays in. Now, of the three of you, who
23 is the tallest?

24 A. Greg.

25 Q. How tall are you?

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1 A. About six two.

2 Q. You think you are six two. All right. And you think -
3 --

4 A. I'm not even six two. I'm probably about -- I don't
5 know, probably about six feet.

6 Q. All right. And you think Greg is a little taller than
7 you are.

8 A. Yes, Greg is way taller than me.

9 Q. Okay. How about Bait; is he shorter, taller --

10 A. Shorter than me.

11 Q. Shorter. All right. So when you go -- y'all get out
12 of the car and you go up to the door. Tell the jury, please,
13 what happens next.

14 A. When we got out the car we went up to the door, and
15 Bait went on one side, I went on the other side, and Greg
16 kicked the door.

17 Q. All right. And what happens once he kicks the door
18 open?

19 A. When he kicked the door Bait went in first, I went in
20 after Bait, and Greg came in after me. Bait went straight
21 down -- straight down -- straight down to Big A's room, but
22 you know what I'm saying, there was another dude in the house.

23 Q. All right. Let me show you a picture real quick, and
24 maybe this will tell us a little bit. Can you see this from
25 where I'm holding it? It's a picture of the house. This is

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1 the living room, you see that, the kitchen and the front
2 bedroom. So ---

3 MS. von HERRMANN: I would ask -- can he step -- step
4 down for one moment?

5 THE COURT: Yes Ma'am.

6 MS. von HERRMANN: Come on and step down here.

7 Q. You've got to stand right by here so you can talk into
8 that microphone, all right. All right. Show me where you
9 came into the house. This is the front door right here.

10 A. We came in through here.

11 Q. All right.

12 A. And then, you know what I'm saying, we went up here.
13 Bait kept going, but I went in this room right here, because
14 there was a dude in there.

15 Q. All right. What was in that room? Do you remember
16 what kind of furniture or anything was in there?

17 A. A bed, T.V., closet.

18 Q. Okay. And you say there was a guy in there. Black
19 guy, white guy?

20 A. Yes, a black guy.

21 Q. All right. And so did you go in that room alone, or
22 did somebody else ---

23 A. At first -- at first I been in there alone, because I
24 told the dude to lay down on the floor, then Gregory came in
25 there behind me.

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1 Q. All right. So you and Greg are in that front room, and
2 I think you just said Bait went down the hall.

3 A. Bait had went straight up, you know what I'm saying.
4 When Greg came in here I was like -- I told Greg to hold the
5 dude right there, and I came out the room and went where Bait
6 was at.

7 Q. Okay. So you leave Greg in the room up here with this
8 guy, and now you and Bait are both down here, right?

9 A. Yes Ma'am.

10 Q. And tell me what happens when you walk into this room.

11 A. When I walked -- when I walked to the door Bait was at
12 the door and I -- Bait was like at the door with his gun in
13 his hand.

14 Q. Okay.

15 A. I had my gun in my hand, and I was like, that's the
16 dude right there, and I told him to be quiet, and I went to
17 the dresser.

18 Q. All right. When you say to be quiet, were the people
19 in here, were they asleep?

20 A. They were asleep.

21 Q. All right. They were asleep when you get into the
22 room.

23 A. Yes Ma'am.

24 Q. All right. And so then what happened?

25 A. As I'm in the room I'm right here.

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- 1 Q. You are going to the dresser; is that what you are
2 saying?
- 3 A. Yes Ma'am. Yes Ma'am.
- 4 Q. All right. And you get to the dresser, and what
5 happens next?
- 6 A. When I get to the dresser, you know, I had opened the
7 dresser drawer, and when I opened the dresser drawer I heard
8 like, like a phone ring or something, a girl jumped up. When
9 she jumped up she started screaming.
- 10 Q. Uh huh (indicating positive) And what happened to her?
11 Did you see ---
- 12 A. Gunshot. I heard a gunshot.
- 13 Q. All right. Where was -- where was Quentin, or Bait,
14 standing when you heard that gunshot?
- 15 A. He was still like right up in here, this area.
- 16 Q. Right up here. So you would mean like at the foot of
17 the bed. And where was -- where was Allen?
- 18 A. Allen been laying down. When he heard the gunshot he
19 jumped up and pushed the girl out the bed.
- 20 Q. Okay. When you say he pushed her out of the bed where
21 did he push her?
- 22 A. He pushed her on this side of the bed, right there, and
23 then he jumped up. When he jumped up he was running to get
24 out the room ---
- 25 Q. Uh huh (indicating positive)

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---And that's when Bait shot, boom.

Okay.

By then Greg been in the room too.

4 Q. All right. So let's talk about this for a minute.

5 When you all walk in here Bait shoots two times; is that

6 correct?

7 A. Yes Ma'am.

8 Q. And is that with that camouflage shotgun?

9 A. Yes Ma'am.

10 Q. All right. And when he shoots the second time, did you
11 see the victim fall down?

12 A. Yes Ma'am. I seen him -- naw, he -- he got shot like
13 right up in here, but he kept moving though, he kept walking
14 like he was -- you know what I'm saying, but you could tell,
15 you know what I mean, because he had a big hole in his chest.

16 Q. All right. You saw that wound in his chest?

17 A. Yes Ma'am.

18 Q. Were you standing close to him when he was shot?

19 A. He got shot like right there.

20 Q. From me to you.

21 A. Yes.

22 Q. And as a result of that did -- did ---

23 A. He walked past me. When he fell down, you know what
24 I'm saying, I was like, oh shit. That's when Greg came up and
25 shot him in the back.

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1 Q. Okay. So Greg comes out of his room, right?

2 A. By the time he shot -- by the time he shot Big A in the
3 room Greg was standing at the door.

4 Q. Okay. So Greg comes out of this room, and Big A has
5 fallen down, right?

6 A. He fell down, yes. When Greg -- Greg came to the door,
7 you know what I'm saying, when Bait -- when Bait shot him he
8 had kept walking. He kept walking out the room when he fell.

9 Q. All right. And then ---

10 A. He was already like in the doorway, like in the doorway
11 when he fell.

12 Q. All right. And Greg shot him with the .22.

13 A. That's when Greg shot him again.

14 Q. All right. And so then what happened after Greg shot
15 him?

16 A. I said, oh shit, jumped up out and -- jumped cross the
17 body and ran.

18 Q. Okay. Let me get you to stand back up here. You are
19 standing from me to you, like you just talked about, when he
20 was shot. Did you get any blood on you?

21 A. I was standing like -- right like this, you know what
22 I'm saying. Yes Ma'am, I had got blood on me, cause it came -
23 - when it came out, you know what I'm saying, I had blood like
24 in my hair.

25 Q. You got blood in your hair?

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1 A. Yes Ma'am.

2 Q. All right. Would -- is that a pretty big hole?

3 THE COURT: He needs to speak up.

4 MS. von HERRMANN: I'm sorry. I'm ---

5 THE COURT: That's fine.

6 Q. Did you know what kind of shotgun shells he was using
7 in his gun?

8 A. No Ma'am. I'm not -- I don't know shells by -- by
9 shells, you know what I'm saying, just had -- I just know
10 different colors, like green and red.

11 Q. All right. And you -- but you saw the wound, or at
12 least -- was he wearing any clothing?

13 A. No Ma'am. He was naked.

14 Q. He was naked. So you ---

15 A. He had a -- like a top -- he had like the cover, you
16 know what I'm saying, wrapped up, but, you know what I'm
17 saying, he was dragging the cover though.

18 Q. He -- so he had the cover over him ---

19 A. Yes Ma'am.

20 Q. ---And then when he got up he was dragging the cover?

21 A. Yes Ma'am. See, when he got shot, right, you know what
22 I'm saying, at the same time, like, you know what I'm saying,
23 everything was moving at a distance, you know what I mean,
24 everything was moving fast.

25 Q. I'm sure -- well, I'm sure it was. Let's look at

1 State's Exhibit 24, and is that the dresser that you went to?

2 A. Yes Ma'am. That's the dresser I went to first, and
3 then, you know what I'm saying, somebody else went to it after
4 I went to it.

5 Q. All right. Who went to it after you went to it?

6 A. Greg.

7 Q. Greg went to it after you did. All right. So, did you
8 take anything out of there?

9 A. No Ma'am. I ain't take nothing.

10 Q. All right. Now, there was a gun in that room also, was
11 there not?

12 A. Yes Ma'am.

13 Q. And did you take that gun when you left?

14 A. I took a ten gauge -- a ten gau -- no, it -- it was a
15 .410 shotgun.

16 Q. You took a .410 shotgun.

17 A. Yes Ma'am.

18 Q. All right. And where was that .410 shotgun located?

19 A. Beside the dresser.

20 Q. All right. Let me show you State's Exhibit 13. Show
21 that to you. Can you just point out to the jury where that
22 shotgun was that you took.

23 A. It's over here on the other side.

24 **THE COURT:** I'm sorry. Could you speak up? I'm sorry.

25 A. It was on the other side of the dresser like.

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1 Q. Sort of in that corner.

2 A. Yes Ma'am. It was like in the corner.

3 Q. All right.

4 A. See, when we went to the house, you know what I mean,
5 it wasn't nothing in the house that she told us was there, you
6 know what I'm saying, it wasn't nothing but like, couple guns
7 in the house, you know what I'm saying, and it wasn't nothing
8 there, you know what I'm saying.

9 Q. You were expecting to find a lot of money?

10 A. Yes, and it wasn't nothing.

11 Q. And some ---

12 A. The only thing -- the only thing that somebody took
13 from the house was like the shotgun and Thirty Dollars.

14 Q. Okay. And let me show you this picture here, which is
15 State's Exhibit 27. Is that the bed where he was laying?

16 A. Yes Ma'am.

17 Q. All right. And you said it had some covers on it at
18 the time ---

19 A. Yes Ma'am.

20 Q. ---That you went in there. All right. So, after Greg
21 comes out, he's got the .22 over here, and he shot Big A as
22 well, correct?

23 A. Yes Ma'am.

24 Q. And then what did y'all do after that?

25 A. We left. We left. The reason why we left, because the

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1 fire alarm kept ringing, you know what I'm saying. At the
2 time we ain't know it was the fire alarm. We thought it was
3 the police.

4 Q. All right. So something happened and made the fire
5 alarm go off.

6 A. Yes Ma'am.

7 Q. And are you -- what -- what did you say to Quentin, or
8 what did he say to you while you were in that room?a

9 A. Quentin ain't said nothing to me.

10 Q. Okay. Did you say anything, like, oh, we've got to get
11 out of here or ---

12 A. I was like, oh shit ---

13 Q. Okay.

14 A. ---And I jumped over the body. I had -- I had -- I
15 tell you, I had a gun in my hand, and like out the room, I
16 jumped in the car, I told Tiffany to go, but she didn't. She
17 had waiting till they came back.

18 Q. Okay. Did something happen to your gun? When I say
19 your gun I mean State's 69, down here? Did something happen
20 to that while you were in there?

21 A. Yes Ma'am. The gun that I had been broke, you know
22 what I'm saying, so when I went in the house the only thing I
23 could do was just keep cocking the gun, cocking the gun,
24 cocking the gun.

25 Q. Okay. Was this spring in there?

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1 A. Yes Ma'am.

2 Q. Was this one of those things that kept falling out of
3 it?

4 A. Yes Ma'am.

5 Q. All right. And do you know whether this fell out of
6 the han -- do you remember it?

7 A. I don't remember the spring falling out in the house.
8 I know the gun been broke.

9 Q. All right. Was that something you and Andrew had
10 talked about before?

11 A. Yes Ma'am.

12 Q. All right. And so once you leave -- y'all all get in
13 the car with Tiffany.

14 A. Yes Ma'am, me -- me, Greg and Bait, we jumped back in
15 the car, and Tiffany drove us -- she drove us to Conway.

16 Q. All right. So when you get back in the car does
17 somebody have a conversation with Ladorrean Collington?

18 A. Not as I know of.

19 Q. You don't remember her ---

20 A. I had a conversation with her. I called her.

21 Q. Okay. You called her.

22 A. Yep. And I told her her baby daddy had just been shot,
23 and I don't think he's going to live.

24 Q. You said you think he is, or you don't think he's ---

25 A. I don't think he's going to live, because like I say,

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1 you could have seen the -- the hole in his chest.

2 Q. All right. And had she told you to call after y'all
3 went in there?

4 A. That wasn't my phone so I can't never called -- I ain't
5 never called her. She had my phone when I left.

6 Q. Well, in other words, did she ask -- before y'all ever
7 went over there, did she ask you to give her an update once
8 y'all had gone in there?

9 A. Of course, like, you know what I'm saying, she had it -
10 - she -- she had -- we had to tell her when we had got the
11 stuff, the stuff that was suppose to have been in there, but
12 it ---

13 Q. Okay. Once you got it you were suppose to let her know
14 about it.

15 A. Yes Ma'am.

16 Q. All right. And what was the conversation in the car
17 between you and Quentin and Greg and Tiffany as y'all are
18 driving?

19 A. I told Dorrea that when we went in the house, you know
20 what I'm saying, and we went to get the stuff out the room
21 that Big A jumped out the bed and Bait shot him. Bait told me
22 not to say his name on the phone.

23 Q. Okay.

24 A. So I was like, shit, I'm going to holler at you. I
25 hung up.

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- 1 Q. All right. And when you -- when you left out of there
2 where did you go? You said you went to Conway.
- 3 A. We went to Conway. We went to Whittemore Street.
- 4 Q. Who lives on Whittemore Street?
- 5 A. At the time, you know what I'm saying, this lady named
6 TaTa stayed over there.
- 7 Q. All right. And who was that? Is she related to
8 Quentin?
- 9 A. I don't even know Quentin.
- 10 Q. Okay. All right. But that's his car, right?
- 11 A. Yes Ma'am.
- 12 Q. All right. So when y'all go over to her house did
13 everybody get out of the car, or what happened?
- 14 A. Me, Tiffany and Greg got out of the car and we hauled -
15 - and we -- we left and went to Huckabee Heights.
- 16 Q. All right. So you were going to Huckabee Heights. Do
17 you still have this shotgun?
- 18 A. Yes Ma'am.
- 19 Q. All right. And have you -- you've still got the
20 shotgun that you took out of the house.
- 21 A. Got two of them.
- 22 Q. And you've got ---
- 23 A. We went walking through the school yard. When we got
24 to the school yard I threw the shotgun in the woods, that one
25 right there, because it was broke.

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1 Q. Okay. And did you have -- did Greg still have the .22
2 also?

3 A. Yes Ma'am.

4 Q. All right. Did he give that back to Tiffany, if you
5 know?

6 A. I wasn't there.

7 Q. All right. And so when y'all are going back through
8 the school yard -- and you decided at some point that you
9 needed to get rid of this gun.

10 A. Yes Ma'am. When we walked through the school yard I
11 just threw the gun in the woods.

12 Q. All right. When you say you threw it in the woods, let
13 me show you a picture of State's Exhibit -- I'm going to show
14 you 37, 38, and 39. I want you to take a look at those. I'll
15 lay them out here for you. Does that look like the place
16 where you put that gun?

17 A. Yes Ma'am. I ain't really put it there, I just threw
18 it in there.

19 Q. Threw it back there. Did Quentin ever tell you what
20 happened to the gun that he had?

21 A. Me and Quentin ain't had no words after that. Only
22 time I seen him was when we -- we passed each other walking
23 through the projects, and after that I ain't seen him no more.

24 Q. So you didn't ever discuss -- have any more discussions
25 with him about that after that day, right?

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- 1 A. No Ma'am.
- 2 Q. All right. And after you all go through Huckabée
3 Heights and you throw the guns in the woods, where do you go
4 next?
- 5 A. I split up with Greg and Tiffany.
- 6 Q. All right. And Greg and Tiffany both lived ---
- 7 A. Crane Creek.
- 8 Q. Crane Creek Apartment. And when you say you split up
9 where did -- where did you go?
- 10 A. I went home. I went to ---
- 11 Q. To your mama's house?
- 12 A. I went to -- yeah.
- 13 Q. And your mama's house is pretty close to ---
- 14 A. My mom used to stay on [REDACTED] Palmetto Street. That's
15 where I went.
- 16 Q. All right. And is your mama's house and Crane Creek
17 fairly close to one another?
- 18 A. Right down the road. It's on Grainger, right off
19 Palmetto.
- 20 Q. All right. And close to Huckabée Heights too, right?
- 21 A. Huckabee in the middle.
- 22 Q. All right. So sort of like a triangle.
- 23 A. Yes. Not really. It's just a straight shot.
- 24 Q. All right: [REDACTED]-2623.
- 25 A. I don't know no phone numbers, you know what I mean. I

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1 just -- in my phone when I just have people in there as their
2 name.

3 Q. All right. So you don't know whether that was your
4 phone number or not.

5 A. No. I know it ain't my phone number though.

6 Q. All right. Now, Quentin Gause, back when y'all went in
7 there, did his hair look like it looks today?

8 A. No Ma'am.

9 Q. Did he have dreads back then?

10 A. Yes Ma'am.

11 Q. All right.

12 MS. von HERRMANN: Beg the Court's indulgence.

13 THE COURT: Yes Ma'am.

14 Q. Did you ever have any more conversations with Ladorrean
15 Collington after that?

16 A. I had talked to Dorrea on the phone, like I had left my
17 mama's house and went to Tiffany's house, and when I went to
18 Tiffany's house I stayed over there for a minute, cause
19 Tiffany was crying about the situation that happened, so I was
20 like, you know what I'm saying, I kept asking her was she
21 sick, you know what I'm saying, what you saw, you know what
22 I'm saying, did you see anything. She was like, no, I was
23 just -- that she seen it on the news. So I asked her where
24 Greg was at, and Greg's girlfriend at the time was over there,
25 his baby -- his baby ---

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1 Q. This is at Tiffany's?

2 A. Yeah. Greg stayed right across from Tiffany, at the
3 time, so I asked her, this Greg's baby mama, Erika, that was
4 over there. I asked Erika where Greg was at. She was like,
5 he at the house. So I went next door and I knock on the door,
6 and when I went in there I was like, damn, man, what's going
7 on, you know what I mean. He was like, Dorrea keep calling
8 his phone. I was like, shit, what's she calling your phone
9 for. He was like, man, she just keep calling my phone, she
10 just keep calling my phone asking for you. I was like, what
11 the fuck is she asking for me for.

12 MR. McCOLLUM: Your Honor, I object to this line of
13 questioning.

14 THE COURT: Why don't you rephrase your question,
15 Solicitor. Move along.

16 Q. Were you present when Greg had a phone call with her?

17 A. I was present at the last phone call, I believe.

18 Q. All right. And what was Greg's side of that
19 conversation? What did you glean from hearing his side of
20 that conversation?

21 MR. McCOLLUM: There again, Your Honor, another
22 objection.

23 THE COURT: I'm going to allow him to repeat what he
24 heard in his presence.

25 A. When -- when she called the phone -- when she called

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1 the phone -- when she called Gregory's phone Gregory had
2 handed me the phone and was like, Dorrea want to talk to you.
3 I got on the phone and I was like, what's up, and she was
4 like, is this J.B.. I was like, sure, what's up. She was
5 like, J.B., you know what I'm saying, don't call my phone
6 because the detectives have got my phone, they are trying to
7 lock me up for killing my baby daddy. So I told her, I was
8 like, you killed your baby daddy. She was like, yeah. I was
9 like, well, you need to go and call the police and tell the
10 police that you killed your baby daddy. She was like, she
11 ain't killed him. I was like, well then you ain't got nothing
12 to worry about. She was like -- she tell me my baby mama was
13 up there with her, so I was like, what the fuck my baby mama
14 doing up there with you. She was like, she had left her house
15 and went to my house after I had called her phone, and picked
16 my baby mama up. So I was like, all right then, I was like,
17 where you calling me from. She was like, I'm calling you from
18 the pay phone outside -- outside the police department. So I
19 was like, all right, when my baby mama gets -- finished
20 getting questioned I was like, bring Brie -- Brie -- Brie is
21 Tiffany's baby -- I was like, bring Brie to Tiffany's house,
22 you can, you know what I'm saying, tell -- Tiffany will tell
23 my baby mama what to do from there. She was like, all right.
24 So when I hung up, you know what I'm saying, I was asking
25 Greg, I was like, man, damn man, where's Dorrea calling you

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1 from, you know what I'm saying. He was like, man, I don't
2 know, she just kept calling my phone, calling my phone. I was
3 like, man, you know what I'm saying, something is suspicious
4 about that. I was like, why you ain't traced the call back,
5 like redialed the call. He was like he don't know, so I was
6 like -- he showed me how to do it in his phone, so when I
7 called it back she was at the M. L. Brown Building, so I hung
8 the phone up and told Greg that I was going to my little
9 brother's house, that my little brother just got killed about
10 a year ago.

11 Q. Okay. And eventually the police came and talked to you
12 about this case; is that correct?

13 A. I left -- I left from Gregory's house and went back to
14 Tiffany's house and told her to tell my baby mama when she
15 come over there to walk to my house, to my mom's house. I
16 left from Tiffany's house, and like I said, I told Greg that I
17 was going to my baby mama's house. So I left and -- I mean, I
18 told Greg I was going to my brother's house. I left -- I left
19 from upstairs and went downstairs, and that's when I seen
20 Andrew coming. I had spoke with Andrew and told Andrew I'd
21 meet him in the back, so instead of me going to my brother's
22 house I cut through the back and went straight to Andrew's
23 house.

24 Q. Okay. And like I said, at some point did the police
25 come and find you?

1 A. The police came and found me at my mama's house like a
2 couple of hours later.

3 Q. All right.. And when they found you did they take you
4 over to the M. L. Brown Building, and did they interview you
5 over there?

6 A. Yes Ma'am.

7 Q. All right. And the first time that they interviewed
8 you you didn't give them a whole lot of information, did you?

9 A. I didn't give them no information. I told them I don't
10 know nothing.

11 Q. Okay. And why did you tell them that?

12 A. Because at the time -- because at the time I felt like
13 if I didn't tell them I know nothing, you know what I'm
14 saying, my lawyer, who would have been my lawyer, I could have
15 told him what happened and I wouldn't have had to get
16 questioned by the police at the time. In order to say
17 something wrong to the police I just -- I told them I don't
18 know nothing about nothing, I ain't killed nobody, I don't
19 know nothing about nothing.

20 Q. And then -- so that was the first conversation that you
21 had with the police, right?

22 A. Yes Ma'am.

23 Q. And then you -- you got a lawyer, and I don't want you
24 to tell me anything about what conversation took place ---

25 A. Yes Ma'am.

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1 Q. ---Between you and your lawyer, because that's
2 privilege.

3 A. Yes Ma'am.

4 Q. But you got a lawyer ---

5 A. Yes Ma'am.

6 Q. ---Appointed to you, and after that happened at some
7 point you came forward and told the police that you wanted to
8 talk to them, correct?

9 A. Yes Ma'am. I came forward like, let's say about a year
10 and a half later.

11 Q. Okay. And at that time did the police come out and
12 reinterview you?

13 A. The police came out and reinterviewed me and put me
14 on -- put me on recording.

15 Q. Okay. They took a recorded statement.

16 A. Yes Ma'am.

17 Q. And you told them essentially what you've told us here
18 today ---

19 A. Yes Ma'am.

20 Q. ---At that particular time; is that correct?

21 A. Yes Ma'am.

22 Q. All right.

23 MS. von HERRMANN: Thank you. I don't have any further
24 questions, Mr. James. Please answer any questions Mr.
25 McCollum, Mr. Hazzard may have.

1 THE COURT: All right, Mr. McCollum, cross-examination,
2 please.

3 MR. McCOLLUM: May it please the Court, Your Honor.

4 THE COURT: Yes sir.

5 CROSS-EXAMINATION BY MR. McCOLLUM:

6 Q. How are you doing today, Mr. James?

7 A. Doing alright, sir.

8 Q. Doing good?

9 A. Yes sir.

10 Q. Now, the Solicitor asked you about the cases pending,
11 but in this case you are facing -- you are charged with
12 murder, right?

13 A. Yes sir. I'm charged with murder, kidnapping, burglary
14 and armed robbery.

15 Q. And on the murder you could get thirty years to life in
16 prison; you know that?

17 A. I don't know how much time. This is my first time.

18 Q. And on the armed robbery you could get ten years to
19 thirty years; do you know that?

20 A. No sir.

21 Q. On the burglary you can get fifteen years to life
22 imprisonment; did you know that?

23 A. No sir.

24 Q. And on the kidnapping you can get up to thirty years in
25 prison; do you know that?

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1 A. No sir.

2 Q. And you've got a conviction for assault and battery of
3 a high and aggravated nature, right?

4 A. Yes sir.

5 Q. That's where you assaulted somebody, you injured them,
6 right?

7 A. Yes sir.

8 Q. And then possession of stolen vehicle. That's not
9 much, is it?

10 A. No sir.

11 Q. Not much there. You've got some pending drug charges,
12 right?

13 A. Yes sir. Can I tell you when I caught my assault and
14 battery? I was a juvenile.

15 Q. All right.

16 A. It was just that they charged ---

17 THE COURT: I appreciate that, sir. It's -- that's ---
18 whatever the record is, it's whatever the record is.

19 A. Yes sir.

20 THE COURT: We are not going past that.

21 A. All right.

22 Q. But then besides the burglary and armed robbery and
23 kidnapping charges, on another case involving somebody else --
24 we don't know even know the -- you got a charge of burglary in
25 the first degree, right?

- 1 A. I don't know what you mean by that. I only got -- I
2 only got two burglaries first degree.
- 3 Q. Okay. Just two. Just two, right?
- 4 A. Yes sir.
- 5 Q. And you've got another armed robbery charge, right?
- 6 A. Yes sir.
- 7 Q. And another kidnapping charge, right?
- 8 A. Yes sir.
- 9 Q. Okay. And so you are facing fifteen to life on a
10 burglary there, right?
- 11 A. Yes, I guess.
- 12 Q. And you are facing ten to thirty on an armed robbery
13 there, right?
- 14 A. I don't know. I don't know. I ain't -- I don't -- I
15 ain't never had these charges before.
- 16 Q. And then you are facing up to thirty years on that
17 kidnapping charge, right?
- 18 A. I don't know.
- 19 Q. Now just curious. This really isn't that important.
20 You've got a malicious injury case to the courthouse.
- 21 A. No sir. No sir.
- 22 Q. All right. Now, let's just establish a couple of
23 things right off the bat if we can, okay. You understand I
24 represent Ms. Collington, right?
- 25 A. No sir. I don't know who her lawyer was.

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1 Q. All right. Well, that's Ms. Collington, Dorrea
2 Collington.

3 A. Yes sir.

4 Q. I'm her lawyer. Okay. Now, when the police questioned
5 you they asked you, they said, well your name is -- your name
6 is J.B., or John Boy, right?

7 A. When the police had questioned me they asked me what
8 did I know about a homicide. I told them I ain't know
9 nothing. They said, all right, and they locked me up.

10 Q. All right. Well, when the police questioned you and
11 you said, what do you know about a homicide, and you said you
12 didn't know nothing, right?

13 A. Yes sir.

14 Q. And that was a lie, right?

15 A. Yes sir. At the time when I told them I ain't knew
16 nothing it was a lie, because I did, I know about it, but the
17 reason -- the reason why I said it, because I ain't had no
18 attorney.

19 Q. So they asked you also if your name was John Boy,
20 right?

21 A. When they came the my house -- when they came to my
22 house they asked me was my name J.B..

23 Q. And it is, right, John Boy, J.B.?

24 A. My name John Boy, yes.

25 Q. Yes. And you told them it wasn't, right?

1 A. No sir. I never denied my name. I just told them that
2 I ain't know nothing about no homicide.

3 Q. So -- so then -- so if we played a statement with you
4 saying that John Boy is not you, you won't disagree with that,
5 will you?

6 A. If you've got a statement saying I said John Boy ain't
7 my name then.

8 Q. But you deny lying about that, right?

9 A. I don't never remember saying that John Boy is not my
10 name to the -- to the detectives.

11 Q. All right. Now, do you -- you consider yourself to be
12 a murderer?

13 A. No sir.

14 Q. Do you consider yourself to be a burglarer?

15 A. No sir.

16 Q. Do you consider yourself to be a robber?

17 A. Yes sir, cause I done -- I -- I done robbed people
18 before, you know what I'm saying, so if you want to consider
19 that, yeah, I consider that.

20 Q. And when you do something like -- and is that -- if you
21 rob somebody is that bad or good?

22 A. Depending how, you know what I'm saying, to me it's
23 bad, you know what I'm saying, but when I do it I feel I'm
24 getting something good out the deal.

25 Q. So you think it's wrong to rob somebody?

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1 A. Yeah, it's wrong to rob somebody.

2 Q. That's what you believe, or you think that's what
3 people have told you?

4 A. You know what I'm saying -- you know what I'm saying,
5 that's what I believe, it's wrong to rob somebody, but I do
6 believe that if you do rob somebody you could get something
7 good out of it.

8 Q. All right. Something good, like some money, right?
9 Right?

10 A. Yes sir.

11 Q. And you like money, don't you?

12 A. Man, we all like money.

13 Q. We all like money, right?

14 A. Yes sir.

15 Q. And you could get some drugs, or some work, right?

16 A. I'm not a drug addict.

17 Q. Not a drug head, but you ---

18 A. So don't ---

19 Q. ---You could sell some if you had it, right?

20 A. I'm saying, it depends. It depends on what you want to
21 do with your money. You can do anything with your money.

22 Q. Well ---

23 A. You've got it -- when it's in your possession you can
24 do what you want to do with your money.

25 Q. And when you went to break in Mr. Allen Smith's house

1 you went because you were going to get some money, right?

2 Right?

3 A. When you -- when you say that, when I went and break in
4 there, what you mean? I told you that three people went to
5 break in Mr. Allen Smith's house.

6 Q. You went with them, didn't you?

7 A. Yes sir.

8 Q. And you were in the room when he was shot, right?

9 A. Yes sir. Three people was in the room. Altogether
10 five people was in the room.

11 Q. And you told us the order of events, and what happened
12 in the room, right?

13 A. Say that again.

14 Q. I'll start over. I'll go back on that. But you had
15 the only gun that didn't work, right?

16 A. My gun wouldn't -- my gun wouldn't shoot no bullets. I
17 don't know if had the only gun that wouldn't work. I just
18 know my gun wouldn't shoot no bullets.

19 Q. Well, according to your testimony you saw -- when you
20 claim that Bait shoot a shotgun, and kill Allen Smith, right?

21 A. Yes sir.

22 Q. So that gun worked, didn't it?

23 A. That's one gun that worked.

24 Q. And then you claim that Greg Floyd, who initially
25 wasn't even in the room, came in and shot a .22, and that gun

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1 worked, right?

2 A. Yeah, but it -- it's depending on if the gun was a
3 revolver or a semi-automatic. The gun could be broke. If
4 it's a semi-automatic it can only shoot one time.

5 Q. You were in there, right?

6 A. Yeah, I was in the room, all three of us was..

7 Q. And you heard the gun fire, and you saw, you claim,
8 Greg Floyd shoot him with this -- this .22 Ruger, right?

9 A. Yes sir.

10 Q. This right here, right? Did you have this gun?

11 A. No sir.

12 Q. Did Andrew have this gun?

13 A. Them Andrew's guns.

14 Q. They are Andrew's guns, right?

15 A. Yes sir.

16 Q. Andrew, was he in there with you when y'all were
17 shooting them?

18 A. No sir.

19 Q. He's your cousin, or your brother?

20 A. He's my cousin.

21 Q. You care about him?

22 A. I'm saying, he's my cousin.

23 Q. And you don't want him to get in any trouble, right?

24 A. He's my cousin, and I ain't trying to save nobody, you
25 know what I'm saying. Only thing I'm telling y'all is what

1 happened.

2 Q. So now you go -- you are in the room, and did you go to
3 steal the shotgun by the dresser before or after Mr. Smith was
4 shot?

5 A. I grab -- I grab -- I went to the dresser drawer and
6 opened the dresser drawer. When Mr. Smith jumped out the bed
7 he had got shot, then I grabbed the gun.

8 Q. So you had one gun with you, and so -- this thing right
9 here, and it had the mussel, or the magazine, the wood
10 magazine on it, it had it on there when you took it in there,
11 right?

12 A. Yes sir. The only thing that gun could have did was
13 just cock like.

14 Q. All right. So you just holding it for show?

15 A. Basically that -- Ladorrean already told us we ain't
16 had to do nothing to the dude, so regardless -- to me the gun
17 was for show and not, you know what I'm saying, we ain't had
18 to shoot him.

19 Q. All right. And then the gun broke, according to your
20 testimony, right?

21 A. The gun was already broke.

22 Q. But it still worked for show, right?

23 A. The gun was already broke.

24 Q. But then you took another gun from the room when you --
25 you took that gun because that gun works, right?

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1 A. I took the other gun not knowing if the gun work or
2 not.

3 Q. It looked like a good gun? Did it look like a good
4 gun?

5 A. Yes sir. It looked good to me.

6 Q. All right. Looked good enough to go, right?

7 A. That don't mean it worked though.

8 Q. All right. And then, even though this is a good show
9 gun, after it broke during your robbery/homicide, you threw it
10 in the woods, right?

11 A. Yes sir, I threw it in the woods behind the projects.

12 Q. It's still good for show, but didn't work, you knew it
13 wasn't working, you say it wasn't working, so you got rid of
14 it because you had a good gun now, right?

15 A. If the gun been good, you know what I'm saying, that I
16 had got, then it been good.

17 Q. Where's that gun?

18 A. I don't know where it's at now.

19 Q. Well, you stole it.

20 A. But I ain't had it when they came and locked me up.

21 Q. Would you tell the police where it was?

22 A. Police ain't asked me did I have the gun. The only
23 thing ---

24 Q. I'm asking you now, where is it?

25 A. I don't know.

1 Q. Did you sell it?

2 A. I ain't sold no gun.

3 Q. Did you hide it?

4 A. I ain't hid it. I don't know where it's at. The last
5 time I had the gun it was at Tiffany's house.

6 Q. Did you shoot anybody? Did you shoot Allen Smith with
7 that gun?

8 A. No sir.

9 Q. Did your brother, Andrew, shoot that gun?

10 A. My brother, Andrew, wasn't at Allen Smith's house, and
11 Andrew ain't my brother, he's my cousin.

12 Q. But the police can't test that gun, because they never
13 found it, right?

14 A. The police could do ballistics on your hands though to
15 see if you had fired the gun.

16 Q. Did they?

17 A. They took -- what they took from me was like -- was
18 like swab -- they like swabbed me.

19 Q. All right. Now, how old are you?

20 A. I'm twenty-six. I was twenty-three when I came here.

21 Q. Now, no question but that you would lie to the police,
22 right?

23 A. I told the police that I ain't know about no murder
24 when they had asked me.

25 Q. And you've lied to other people, right?

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1 A. I told the police that I ain't know about no murder
2 when they asked me.

3 Q. But when you are out there robbing people you don't
4 tell the truth about that; you lie about that, right?

5 A. When the police asked me did I know about a homicide I
6 told them I ain't knowed about no homicide.

7 Q. But you don't have a problem lying, do you?

8 A. The only thing I know is, when the police asked me did
9 I know about a homicide I told them I ain't know about a
10 homicide.

11 Q. But -- and that -- is that the only lie you've told?

12 A. I told them that I ain't know about a homicide.

13 Q. Is that the only lie you've told?

14 A. I ain't really telling no lie. I just told them that
15 because I ain't have no lawyer present. I ain't really want
16 to say nothing to the police that could mess me up, so I just
17 told them I ain't know about no homicide, and they locked me
18 up.

19 Q. But you -- do you consider yourself messed up now?

20 A. What you mean messed up?

21 Q. Messed up. What do you mean? You said you don't --
22 you didn't want to tell the police anything without a lawyer
23 because you didn't want it to mess you up.

24 A. I don't consider myself messed up, because, you know
25 what I'm saying, me, personally, you know, I'm saying whatever

1 come to me, you know what I'm saying, I -- you know what I'm
2 saying, I'll take whatever come to me, but I know that I ain't
3 killed nobody, and that, you know what I'm saying, I was in
4 there -- in the house at the time.

5 Q. So you are comfortable with that?

6 A. What you mean, am I comfortable?

7 Q. You said you ain't killed nobody. Are you comfortable
8 with that?

9 A. I ain't killed -- I ain't killed nobody.

10 Q. Is it -- do you think it's good to go and stake out
11 somebody's house, to break in and rob them?

12 A. You know what I'm saying, ask your client, because your
13 client was staking out the house too.

14 Q. Okay. So is it okay for you to go stake out the house
15 to rob somebody?

16 A. You know what I'm saying, you don't really know what
17 I'm saying, I wouldn't say we stake out the house, you know
18 what I'm saying, she just told me where he stayed at.

19 Q. Let's talk about that a minute. You testified here,
20 when the Solicitor asked you a question, you said, Tiffany had
21 been in the house with Big A, Mr. Allen Smith, she had seen
22 the money, and she had seen the work, right?

23 A. Her and Dorrea, they -- see, Tiffany and Dorrea, they
24 friends, you know what I'm saying, they stayed together a
25 couple of times, you know what I mean, and Tiffany went over

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1 there with Dorrea, so you know what I'm saying, when she told
2 me she seen the shit in the house I was like, all right.

3 Q. Tiffany told you that Tiffany had been in the house and
4 she saw the money and the cocaine, right, half a brick, right?

5 A. Tiffany told me she had been in the house and seen the
6 money, and the work.

7 Q. She said she saw the money and the work, right? At --
8 right?

9 A. Yes sir.

10 Q. And the work is the coke, right?

11 A. Is the what?

12 Q. The coke.

13 A. The cocaine, yes sir.

14 Q. Cocaine, right. And that's what you call it, you call
15 it the work, right?

16 A. Yes sir.

17 Q. And Tiffany told you that, right?

18 A. Yes sir. Tiffany -- Tiffany told me that, and Dorrea
19 told me that.

20 Q. And you keep bringing up Dorrea, okay, and we'll get to
21 that. But I'm asking you -- Solicitor has asked you these
22 questions, and I'm asking you, Tiffany told you she had been
23 in the house and seen the money and the work, right?

24 A. Said she had been in there with Dorrea.

25 Q. Were you there?

- 1 A. I wasn't there.
- 2 Q. Did you see her go in there?
- 3 A. I ain't see her go to the house.
- 4 Q. Did you see Dorrea go in there?
- 5 A. I ain't seen her go in the house either.
- 6 Q. Did you see Dorrea trying to call Big A over and over
- 7 and over to talk to him?
- 8 A. See ---
- 9 Q. You didn't see that, did you?
- 10 A. See, it's like this, I was in the house when Dorrea
- 11 called over there one time, you know what I'm saying, and
- 12 asked where Big A was at in the house.
- 13 Q. Oh, you were in Big A's house?
- 14 A. No, I was at Dorrea's house.
- 15 Q. Well, she had a relationship with him, right?
- 16 A. You know what I'm saying, I don't know. I don't know
- 17 about their relationship problems at the time.
- 18 Q. You got any -- you got some kids?
- 19 A. Yeah, I got a little son.
- 20 Q. Do you call his mama?
- 21 A. Do I call her?
- 22 Q. Yes.
- 23 A. No, I don't even contact her.
- 24 Q. So you don't call your baby's mama?
- 25 A. Uh uh (NODS NEGATIVE)

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1 Q. Do you call your baby?

2 A. Uh uh (NODS NEGATIVE)

3 Q. All right. Well, most people do, right?

4 A. I don't call -- I don't get in contact with my baby
5 mother or my baby.

6 Q. But there's nothing unusual about Dorrea trying to get
7 up and talk with Big A or Mr. Smith, right, nothing unusual
8 about that, right?

9 A. See, I ain't say -- I ain't saying that Dorrea was
10 calling him to try to find out what was going on with him, you
11 know what I'm saying, at -- at the -- at the place in time
12 when she called there the reasons was for her to call there,
13 she had called there because she wanted to know where he was
14 at, so when we went over there he would have been asleep.

15 Q. Now, Tiffany -- you testified to Ms. von Herrmann here,
16 that Tiffany said -- let's see if I've got it here exactly.
17 Said you were at Tanheshia's house, that Tiffany was there,
18 that Tiffany said, the best time to do it is now, right?
19 That's what Tiffany said, right?

20 A. Yes sir, see, Tiffany stayed the night at my house that
21 night. When Tiffany -- the next morning when we woke up
22 Tiffany went to Dorrea's house, you know what I'm saying.
23 Before -- before she went there she told -- she already was
24 like, you know what I'm saying, is you going to still do it,
25 is you going to still do it. When she came back she was like,

1 the best time is right now. I was like, I ain't got nobody to
2 go with me. At the time that's when the other two guys came.

3 Q. And Tiffany said, the best time to do it is now,
4 correct?

5 A. In the morning.

6 Q. Tiffany said, the best time to do it is in the morning.

7 A. It was morning time when she was saying the best time
8 to do it is now.

9 Q. And you asked Tiffany if it was for real, that there's
10 money in there, and you said -- or she said, well, put it on
11 Grandma, right? Right?

12 A. I told her to put it on Grandma that she seen the money
13 and the work in there, and she did.

14 Q. And to put it on Grandma means to swear on your
15 Grandmother's life?

16 A. Yes sir. My Grandma's dead, so she ain't really got to
17 swear on her life.

18 Q. So you are going to swear over your Grandmother's
19 grave. Tiffany swears over your Grandmother's grave that now
20 is the time to do it, that Tiffany saw the stuff in there, and
21 go get it, right?

22 A. Yes sir.

23 Q. And you say that Dorrea was going to get her car paid
24 off?

25 A. What you say?

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1 Q. That Dorrea was going to get her car paid for.

2 A. I ain't say that.

3 Q. You didn't?

4 A. I ain't say Dorrea was going to get her car paid for.

5 She -- Dorrea said, after we robbed Big A that, you know what
6 I'm saying, she just wants some money to pay for her car, from
7 what we get from him.

8 Q. All right. And there's no question but that Tiffany
9 had been over there, and Tiffany set it up and told you about
10 it, right?

11 A. No. Tiffany -- see, Tiffany and Dorrea was staying
12 together, so basically, you know what I'm saying, I ain't
13 really saying that Tiffany set it up, you know what I'm
14 saying. The only thing I'm saying is that Dorrea put me on
15 it.

16 Q. So it's all about Dorrea. Now, who drove you over
17 there?

18 A. Tiffany drove us over there.

19 Q. Who dropped you off and waited for you?

20 A. Tiffany.

21 Q. Who drove you from there?

22 A. Tiffany.

23 Q. Who drove you to TaTa's house?

24 A. Tiffany drove us to TaTa.

25 Q. Okay. And you called Dorrea and told her that her

1 baby's father had been shot, right?

2 A. Yes sir.

3 Q. And then, after being told that her baby's father had
4 been shot she went to the police station?

5 A. No.

6 Q. Didn't you say that she was calling from the police
7 station?

8 A. That was later on, man.

9 Q. That was later on, man.

10 A. She went straight to my house after I called her up.

11 Q. All right. Now, when you went over there to do your
12 break-in you had on your black shirt, right?

13 A. See, when I went -- when I went to Big A's house I
14 had -- I had on my hoodie. I had a black shirt over my face,
15 and I had a t-shirt up under my black hoodie, a black t-shirt.

16 Q. And you had that on so you could hide your face, right?

17 A. You are saying I went to rob somebody.

18 Q. That's what you wear when you rob somebody, right?

19 A. You know what I'm saying, you wear what you want to
20 wear.

21 Q. You suited up for it, right?

22 A. I'm saying ---

23 Q. Or you were prepared, right?

24 A. It depends on what you means, depends on -- how you
25 saying I was prepared? I was going over there to rob the

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1 dude.

2 Q. And you had been over there before to rob the guy too,
3 right?

4 A. Yeah, I been over there a couple of days before, but we
5 -- ain't nobody -- we didn't do nothing. We had left.

6 Q. And finally here, let me talk about, just briefly --
7 you say that, even though you were in the room when Mr. Smith
8 jumped up, that you didn't shoot him, right?

9 A. No sir.

10 Q. You are saying somebody else -- I think you said Greg
11 Floyd -- came from another room, and he shot him.

12 A. When Mr. Smith jumped up out the bed, I'm saying he --
13 I'm right here, the bed right there. When he jumped out the
14 bed he's jumping like, almost behind me, so I'm turning around
15 like this. I'm saying, that's when Mr. Smith got shot, you
16 know what I'm saying, his chest.

17 Q. Well, are you saying you were trying to shoot him but
18 your gun broke?

19 A. I ain't saying I shot at him or nothing. I ain't even
20 never pointed my gun at him.

21 Q. You were just standing there reading the Bible?

22 A. If that's how you want to put it, but I wasn't reading
23 no Bible.

24 Q. No you weren't, were you?

25 A. Naw.

1 Q. And your testimony is that Greg Floyd, who had another
2 guy in the house at gunpoint, holding him at bay, holding him
3 there, right?

4 A. When I went in the house the first dude -- I was
5 holding that gun pointed at first, and ---

6 Q. So you put the gun on -- on Mr. Graham first.

7 A. I put the gun -- I don't know the dude, you know what
8 I'm saying, I don't know his name or nothing, you know what I
9 mean. I was the first one, you know what I'm saying, I told
10 him to get on the floor, and then when Greg came in the room I
11 had left out the room, and went in the room where Bait was at.

12 Q. And they just -- everybody just left him in there?

13 A. Yes.

14 Q. Well, did anybody look in the closer or the dresser, to
15 see if there was any gun in there? Huh?

16 A. I don't know.

17 Q. Huh. No.

18 A. Not in that room he was in.

19 Q. But we know there were three guns in the other bedroom,
20 right?

21 A. I don't -- the only thing I know, it was my gun -- it
22 was my gun, it was Bait's gun, it was Greg's gun, and there
23 was a gun in the corner, and that's four guns.

24 Q. You didn't know you missed the two guns in the closet.

25 A. I ain't searched no closet.

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1 Q. All right. And nobody searched the other bedroom where
2 Mr. Graham was being held, right?

3 A. I really don't know who -- you know what I'm saying, if
4 he searched the gun -- I mean, searched the room or not.

5 Q. So you are saying that Greg Floyd just left him in
6 there, not knowing if there was a gun in there or not, and
7 just went in there, and just happened to get in there in time
8 to shoot Mr. Smith, and you ain't shot nobody, right?

9 A. I ain't shoot nobody, and I ain't saying that Gregory
10 shot Mr. Smith first.

11 Q. This happened in April of 2008, April 14, 2008, right?

12 A. Yes sir.

13 Q. You've been sitting at J. Reuben Long, right?

14 A. Yes sir.

15 Q. You've been living there for three years, right?

16 A. And a couple of months.

17 Q. And you've had three years to think about this, right?

18 A. I'm saying -- you know what I'm saying, there's no
19 forgetting one that you see. The thing about it, you know
20 what I'm saying, the truth ain't going to change no matter how
21 long, you know what I'm saying, the truth going to stay the
22 same regardless, you know what I'm saying.

23 Q. Let's talk about the truth here. Your testimony is,
24 you went in the room, bedroom, where Mr. Frankie Davis was,
25 and Allen Smith were, right?

1 A. I don't know no Frankie Davis.

2 Q. All right. You went in the bedroom where Mr. Smith
3 eventually got shot, right?

4 A. I was in the bedroom where he did get shot at.

5 Q. And you went in there, and your testimony is, when you
6 went in there everything was cool, and everybody was sleeping,
7 right?

8 A. When I went in there -- when I went in there Bait was
9 standing at the door, and I told Bait, you know what I'm
10 saying, to be quiet, and I went to the dresser.

11 Q. You just quietly went over to the dresser, and you were
12 going through the dresser so you could find that money and
13 that work, right? Is that what you are saying?

14 A. Yes sir.

15 Q. Is that what you told the Solicitor?

16 A. That's what I'm telling you.

17 Q. And while you were in there was somebody sleeping in
18 the bed?

19 A. Yes sir, there was two people sleeping in the bed.

20 Q. All right. So you say that two people sleeping in the
21 bed, right?

22 A. Yes sir.

23 Q. Man and a woman, right?

24 A. Yes sir.

25 Q. And then you say you were in there going through their

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1. property, going through their dresser, looking for some money
2. and some drugs to steal, right?

3. A. It was a robbery.

4. Q. Right. And you were looking for the stuff to steal,
5. right?

6. A. I was looking for the stuff to take from the house.

7. Q. You were looking for the stuff to take from them,
8. right?

9. A. Steal it, however you want to put it. Steal, take,
10. it's the same thing.

11. Q. And they were sleeping?

12. A. They were sleeping at the time, you know what I mean,
13. until ---

14. Q. And how long were you in there going through the
15. dresser -- didn't you say that you had gone in the other room
16. and were holding Anthony Graham at gunpoint when -- when this
17. supposed Bait went in the other room?

18. A. I don't know how long I been in this -- in this thing,
19. Big A's room, but, you know what I'm saying, I did told you
20. when we first came in the house I went into the first room to
21. the left.

22. Q. And so after kicking down the door you -- your
23. testimony is that Bait went in the back bedroom, right?

24. A. I ain't kicked no door.

25. Q. Well, I -- just forget the door. You went in the door,

1 Bait went to the bedroom, right?

2 A. When I -- when we came in the house Bait went straight
3 down the hall, and I went in the first room. Then I laid the
4 dude down in the first room, told him to get on the floor,
5 Greg came in the room behind me.

6 Q. And you, or somebody, was yelling, either where he at,
7 or where it at, right?

8 A. Naw. When I told him to get on the floor -- I told him
9 to get on the floor, and yeah, we was saying, where it at.

10 Q. Where it at.

11 A. Where it's at.

12 Q. All right. And so your testimony here today is that
13 Bait was in the room with Mr. Allen Smith and the woman, he
14 was in the room with them, and they were sleep ---

15 A. He was right -- he was right there at the door where
16 like the threshold of the door at.

17 Q. And you were busy holding your gun, your broke gun that
18 won't work, on Anthony Graham.

19 A. Yeah, if that's what you want to say.

20 Q. All right. And then at some point you decided you
21 would go down to the back bedroom and start looking for the
22 money and the dope too, right?

23 A. See, Dorrea already told us where it was at. See, it's
24 just that when I came in the house I seen the dude step out
25 the room. He stepped out the first room to your left.

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1 Q. And your testimony is, even though ---

2 A. The only thing we had to do was just go in the house
3 and just get the money and the work.

4 Q. So Bait's been in the room there for a while, and they
5 are just sleeping peacefully, and then you take the time, and
6 you go in there and you are going to start searching the room
7 too, right?

8 A. I went in there and searched the drawer.

9 Q. How long had Bait been in that room before you went in
10 there?

11 A. I don't even know how long, like, I ain't had no watch
12 on. I ain't timing nothing.

13 Q. You weren't timing it?

14 A. Naw. I ain't had no watch on.

15 Q. Was it about a minute, was it ten seconds?

16 A. I don't know. I don't know.

17 Q. You don't know. All right. And then what was Greg
18 Floyd doing while you were holding Anthony Graham at gunpoint,
19 and Bait was in the bedroom where these people were killed,
20 where Mr. Smith was killed? What were you -- what was Greg
21 Floyd doing there?

22 A. When I came into the -- when I went into the first
23 room, and I told the dude to get down on the floor, I'm
24 saying, I was like, where it's at, where it's at, where it's
25 at, you know what I'm saying, he was laying there, you know

1 what I'm saying, he wasn't really saying nothing, he was just
2 laying down, so when I turned around Greg been right there
3 behind me, so I'm like, Greg, just hold him right here. I was
4 like, yo, hold him right here, and I left out the room.

5 Q. So you went in the room, and you had your gun on
6 Anthony Graham, and you said something like, where it's at,
7 where it's at, right?

8 A. Yes sir.

9 Q. And he was backing up. Did he have his hands up?

10 A. He was laying down.

11 Q. He was laying down. Did he look scared?

12 A. I don't know, man, you know what I'm saying. He was
13 laid down.

14 Q. And then what did you do? Did you get closer to him?

15 A. No, I'm saying, I left out the room. I turned around,
16 I seen Greg behind me. I told Greg to hold him right there.
17 I left out the room.

18 Q. Okay. All right. Okay. You told Greg Floyd what to
19 do, right?

20 A. I told Greg Floyd to hold him right there.

21 Q. You were telling people what to do, right?

22 A. In the process, right there, I told Greg Floyd to hold
23 him right there.

24 Q. You told him to hold him right there, and he did -- he
25 did what you said, right?

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1 A. Obviously he didn't.

2 Q. And you were kind of showing him -- you were in -- you
3 were in control of the situation, weren't you?

4 A. No.

5 Q. Huh?

6 A. Everybody was in control of their ownself.

7 Q. All right. And then this went on, and then you went in
8 the bedroom and you said you started searching, and the phone
9 rang.

10 A. Yes sir. At the time, you know what I'm saying, I --
11 when you hear something like a ringing noise, the first thing
12 you think of is a phone, so, you know what I'm saying, like I
13 told -- like I told the lady right there, I was like, the
14 phone rung.

15 Q. So you were in there calmly searching to see what you
16 could get. They were sleeping peacefully in the bed, right?

17 A. Yes sir.

18 Q. And then that went on for a while. You were open --
19 you were opening the drawers.

20 A. I don't know how long it went on, you know what I'm
21 saying, it's just that when the phone rung -- I'm still saying
22 it's the phone because it was a ringing noise. When it rung,
23 you know what I'm saying, the lady jumped up, you know what I
24 mean, and Bait shot.

25 Q. So your testimony is, the phone rang, and the woman --

1 the lady jumped up, right?

2 A. She like -- she was laying down. She got up like that.

3 Q. And you testified here under oath that -- that Mr.
4 Smith pushed her out of the bed, right?

5 A. Mr. Smith. Yes, Big A had pushed her out of the bed.
6 She fell to the floor on the other side of the bed, and he got
7 up and tried to run out the room.

8 Q. And then you went back to searching the dresser or the
9 chest again.

10 A. No. I seen -- you know what I'm saying, the bed was
11 like right behind. You've got to understand, you know what I
12 mean, this dude ain't no little dude, you know what I'm
13 saying, so when he jumped up -- when he jumped up, you know
14 what I'm saying, he was stunned, like that right there, so
15 when -- you know what I'm saying, when he's stunned he's like
16 from right here to where -- right there. Like he ain't that
17 from far me, you know what I mean, and got shot again.

18 Q. You are not -- you are not mixing this up with some
19 outstanding her robbery, are you?

20 A. No.

21 Q. Huh.

22 A. I ain't got no more robberies.

23 Q. But you having trouble keeping it straight now, aren't
24 you?

25 A. What you mean by that?

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1 Q. Well, what you are tell -- saying doesn't make any
2 sense, does it?

3 A. I'm saying, it make a lot of sense to me, you know what
4 I'm saying. What happened that day, it happened. I mean,
5 like I tell -- like I tell you, you know what I'm saying, the
6 only thing I'm going to tell you is what happened, you know
7 what I mean.

8 Q. How many times did you practice this in your jail cell?

9 A. I don't practice nothing, man.

10 Q. Huh.

11 A. I ain't practiced nothing, man. I'm just telling you
12 how it went.

13 Q. And the way it went is, you didn't do anything, really.

14 A. I ain't saying I didn't do nothing, because, you know
15 what I mean, I went there to rob.

16 Q. All you did, really -- all you did, really -- you
17 didn't even kick the door in, you didn't hurt nobody, you just
18 stole the shotgun, that's all you did, right?

19 A. I went there to rob him.

20 Q. All right. That's all you did, right? That ain't bad.
21 That's not too bad, right?

22 A. I don't know how it is, you know what I'm saying. I'm
23 just telling you, I went there to rob, same as everybody else
24 did, but you know what I mean, I don't know, the dude just
25 started shooting.

1 Q. And that wasn't your fault, right?

2 A. Naw, it ain't my fault. He's on his own.

3 Q. All right. He's on his own, right?

4 A. He started shooting on his own.

5 Q. Everybody is on their own, right?

6 A. If you went in there, you know what I'm saying,
7 everybody basically been on their own.

8 Q. Let me ask you this. Did somebody tell you that we
9 needed you to testify against Dorrea -- you call her Dorrea --
10 Ladorrean Collington?

11 A. I'm just sitting here telling y'all today that, you
12 know what I'm saying, what happened in the house whenever Mr.
13 Smith died.

14 Q. But every time I ask you a question you start talking
15 about her, right?

16 A. I'm just telling you what happened when he died.
17 Everything that you asked me is evolving back to her.

18 Q. Everything I ask you pertains to her.

19 A. Everything you asked me is evolving back to her. It's
20 not containing to her, it's just leading back to her. Every -
21 - so you asking me questions, and you are saying -- you are
22 trying to put people in their place, but I'm telling you that,
23 you know what I'm saying, she was there, you know what I'm
24 saying.

25 Q. You've been sitting in your jail cell for months and

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1 years thinking you've got to say that she set it up, right?

2 A. Naw.

3 Q. Huh.

4 A. Naw, I ain't trying to say nobody set nothing up, and I
5 ain't trying to say nobody did kill Mr. Smith by just straight
6 up killing. The only thing I'm saying is that he died when
7 the dude starting shooting, and he -- that's how he died, you
8 know what I'm saying, when they shot.

9 Q. So what do you hope to get out of this?

10 A. I ain't getting nothing. The only thing I'm getting is
11 the truth, letting the truth be known.

12 Q. Are you thinking that you are going to get a long
13 prison sentence?

14 A. To be real about the situation, you know what I'm
15 saying, I'm prepared for whatever come to me.

16 Q. But you are hoping for something lenient, right?

17 A. You know what I'm saying, like I said, I went there to
18 rob Mr. Allen Smith, so whatever come to me, you know what I
19 mean, I'm willing -- that's what I'm going to get.

20 Q. And so you did give a statement to the police. You
21 denied it. You lied through the whole statement, right?

22 A. I ain't give no statement to the police at first. I
23 gave a statement to the police a couple of months -- like a
24 year and something later.

25 Q. And you did that after you reached an agreement with

1 the Solicitor where whatever you said wouldn't be used against
2 you, right?

3 A. No sir. I never said nothing to the police. See, I
4 never reached no agreement with anybody. The only thing I
5 said is that, I told my lawyer I just want the truth to be
6 known about the situation that happened.

7 Q. So after living this life of crime you decided you just
8 want the truth to be know.

9 A. I ain't living no life of crime. I ain't got no
10 charges like this. I ain't -- I ain't never been convicted of
11 none of these charges that I've got. I don't live a life of
12 crime. I only got two charges on my NCIC, period.

13 Q. Well, without belaboring the point, what about those
14 robberies you told us you specialize in?

15 A. I told you -- you know what I'm saying, I told you what
16 -- I did rob people before, you know what I'm saying. You
17 asked me do I like robbing, I say, you know what I'm saying, I
18 like what I get out of it.

19 Q. And do you use guns in those?

20 A. You can use anything to rob a person. You can use a
21 stick, a weapon is a weapon.

22 Q. You can use a stick, gun, knife, whatever you've got.

23 A. A weapon is a weapon.

24 Q. But you don't ever use those weapons?

25 MS. von HERRMANN: Objection, Your Honor.

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1 THE COURT: Let's move along, Mr. McCollum, please.

2 MR. MCCOLLUM: Thank you, Judge.

3 Your Honor, that's all I have for Mr. Donell James,
4 unless -- may have some stuff based on what we discussed
5 earlier.

6 THE COURT: All right. Very good.

7 MR. MCCOLLUM: Thank you, Your Honor.

8 THE COURT: All right, Mr. Hazzard.

9 CROSS-EXAMINATION BY MR. HAZZARD:

10 Q. Okay. Mr. James, you testified under oath in this
11 court that you have had these charges pending for three years,
12 and as I calculate it, you have never talked to your attorney
13 about the fact that you are facing a possible consecutive
14 incarceration of three life sentences plus a hundred and
15 twenty years. That's -- that's your testimony. Never talked
16 to any attorney about that.

17 A. I talked to my attorney. I got an attorney now. When
18 I first got locked up I ain't have no attorney.

19 Q. Yes sir.

20 A. The State appointed me an attorney.

21 Q. Yes sir. So let's be quick. So at some point someone
22 told you you were facing at least three life sentences, right?

23 A. No sir.

24 Q. Never told you that?

25 A. No sir.

1 Q. Okay. But you understand that now, right?

2 A. Yes sir.

3 Q. Okay. And let's make sure we are clear, because you
4 are saying you just want the truth to be told. You talked
5 with the prosecutor and one of the detectives. I think it was
6 Detective Brad Townsend, and your attorney, Mr. Canty, was
7 present, out at the Detection Center on October 23rd of 2009;
8 does that ring a bell?

9 A. I can't remember the exact date, but yeah, I did talk
10 to my attorney and the Detective that day.

11 Q. And the Prosecutor, right?

12 A. Yes sir.

13 Q. She was present.

14 A. The Prosecutor was present.

15 Q. Okay. When you talked to Ms. von Herrmann and
16 Detective Brad Townsend ---

17 A. I wasn't talking to Ms. von Herrmann. I was talking to
18 my lawyer, and the Detective.

19 Q. Because this was what is called a proffer interview,
20 right. You were telling them kind of a hundred percent
21 truth ---

22 A. Yes sir.

23 Q. ---To negotiate some kind of agreement with the State,
24 right?

25 A. I ain't tell them to negotiate nothing with me. I

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1 ain't tell them -- I ain't asked them for nothing, and they
2 ain't offered me nothing, you know what I'm saying. The only
3 thing I said to my lawyer is that, you know what I'm saying,
4 if I do tell on somebody I'm going to tell the truth. I'm not
5 going to sit around and beat around the bush like, you know
6 what I'm saying, I'm innocent, or they innocent, you know what
7 I mean. All of us been in the wrong that day, you know what I
8 mean, and like I said, you know what I'm saying, when the dude
9 got killed that day, you know what I mean, he got -- when he
10 got killed that day I didn't kill him, or Greg didn't kill
11 him, but I seen when Bait shot him. That's what I'm telling
12 you. But I know that Greg did shoot him too.

13 Q. Everybody shot him but you, of course, right?

14 A. My gun ain't even worked, sir.

15 Q. Yes sir. We are pretty clear on that by now.

16 So when you met with your attorney at the Detention
17 Center, and a representative of Horry County Police
18 Department, and a representative of the Solicitor's Office,
19 the Prosecutor, showed up, you didn't think that that was
20 unusual? Why did you think they were there?

21 A. See, I told my -- I told my attorney to tell the
22 detectives that I want to put it on tape that, you know what
23 I'm saying, I saw what happened.

24 Q. So why did you think the Prosecutor was there?

25 A. I don't know why she was there. At the time I ain't

1 know why she was there, you know what I mean. She wouldn't
2 really talk to me. She ain't never had talked to me at the
3 time.

4 Q. And how many times has she talked to you since that
5 time?

6 A. She ain't never had talked to me. That's what I'm
7 telling you. She ain't never had talked to me, you know what
8 I'm saying, the pro offer came through my lawyer.

9 Q. Well, I thought she told you, or said to you, while she
10 was talking to you in here today, that you and she had spoken
11 before today.

12 A. She -- when -- just before -- just before I had came up
13 here to testify on the behalf she was asking me questions
14 about what had happened in the house that day, you know what
15 I'm saying, and I was telling her, and she had get mad at me
16 and stormed out the room, and I was like, you know what I'm
17 saying, regardless of what -- what goes on, the truth ain't
18 going to never change, regardless.

19 Q. Okay. Why would she need to come to talk to you today
20 about what happened when you gave her the full and complete
21 truth back in October of 2009?

22 A. I don't know, you know what I'm saying. I asked my
23 lawyer about the situation and he said, because she don't want
24 to sentence nobody to jail, you know what I'm saying, who was
25 an innocent man.

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1 Q. Okay. Fair enough. But that wouldn't be you. We are
2 not talking about you as an innocent man, are we?

3 A. You know what I'm saying -- naw, she wasn't talking
4 about me. She was talking about the person who is standing
5 trial today.

6 Q. Okay. Okay. Good. Now, how far did you go in school?

7 A. I went to the tenth grade.

8 Q. Okay. Why did you stop going to school?

9 A. I got locked up.

10 Q. Okay. I'm a little slow at this, and I will beg your
11 pardon. You indicated to us that you don't have any axe to
12 grind, you just want the truth to be known, you are not
13 expecting anything from the Prosecution; is that correct?

14 A. Yes sir.

15 Q. Okay. Well then, what in the world -- since you told
16 the Detectives, and you told the Prosecutor on October of
17 2009, that you committed a crime, at the very least burglary,
18 by going in that man's house, and at the very least, armed
19 robbery by stealing that gun.

20 A. Yes sir.

21 Q. What in the world stopped you, from then until now,
22 from going ahead and entering a guilty plea? You told them
23 you are guilty.

24 A. I ain't got no guilty plea. I ain't got no plea at
25 all.

- 1 Q. No, I'm saying, just plead straight up.
- 2 A. Naw. Naw.
- 3 Q. Why?
- 4 A. Because that ain't what I'm being charged for.
- 5 Q. Right. You are not being charged for ---
- 6 A. That ain't ---
- 7 Q. I'm sorry.
- 8 A. I'm being charged for murder, kidnapping, burglary and
- 9 armed robbery. I did not murder nobody.
- 10 Q. Uh huh (indicating positive) And you didn't burglarize
- 11 Mr. Smith's home?
- 12 A. I said I did not murder nobody.
- 13 Q. Okay. Okay. So you are saying you don't think that
- 14 you could enter a plea to the armed robbery and to the
- 15 burglary.
- 16 A. I'm not entering no plea on murder, kidnapping,
- 17 burglary and armed robbery, period. I'm not even -- I'm not
- 18 even going that far to just saying that I killed somebody when
- 19 I didn't.
- 20 Q. Okay. Well, if you are not pleading to any of these
- 21 charges why -- do you have any idea why you are not sitting
- 22 over here at this table, and not going to trial today?
- 23 A. Because I been in the house. I went there to rob Mr.
- 24 Allen.
- 25 Q. Okay. I understand that. So, plead to that charge.

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1 You can plead to one charge and not the others. You can stand
2 trial on any charge you want.

3 A. You know what I'm saying.

4 Q. Huh?

5 A. No.

6 MS. von HERRMANN: Your Honor, I'm going to object. I
7 think he's asking him a question that's a legal type question.

8 THE COURT: I do too. Sustained.

9 Move along, sir.

10 Q. But you want help from the Prosecutor. That's why
11 you ---

12 A. I don't want help from nobody. The only thing I'm
13 asking help from is my lawyer.

14 Q. Okay. So you are willing to plead straight up to what
15 you say you are guilty of.

16 A. I ain't willing to plead to nothing right now until I
17 talk to my lawyer.

18 Q. Well, you've had three years to talk to your lawyer,
19 haven't you?

20 A. Well, you know -- that's between me and my lawyer.

21 Q. Okay. So you want to tell this jury you are not
22 looking to sell your testimony to obtain some assistance from
23 the State ---

24 A. I ain't ready to sell nothing. I ain't here to sell
25 nothing. I'm just here to tell you what happened.

1 Q. Okay.

2 A. Even if you don't know the truth I'm here to tell you
3 what happened too.

4 Q. Yes sir. Now, after you broke into Mr. Smith's home
5 and -- well, let's go back to you being in Mr. Smith's home.
6 the way I understand it you are telling this jury that you and
7 this grown man here, Quentin Gause, and Gregory Floyd, entered
8 Mr. Smith's home, correct?

9 A. Yes sir.

10 Q. Who kicked in the door, sir?

11 A. Gregory Floyd kicked.

12 Q. Gregory Floyd kicked in the door. Okay. No question
13 about that. Okay. And when the door got kicked in and
14 supposedly all three of you entered the home, my understanding
15 is, this man here, according to you, has a fully operational
16 shotgun, correct?

17 A. Yes. He had a shotgun, and I had a shotgun, and Greg
18 had a .22.

19 Q. Yes, but according to you your shotgun didn't work,
20 right?

21 A. Yes.

22 Q. Okay. And so, according to your -- your truth, you and
23 Mr. Floyd brace up Mr. Graham in the other bedroom, right?

24 A. When we came in the house I seen -- I seen the dude
25 come out of the room, from the side room, the first side room,

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1 you know what I'm saying, so I put the gun on him and told him
2 to lay down, you know what I'm saying. I was in there, I was
3 telling him -- I was asking him, where it's at, where it's at,
4 you know what I'm saying. He was on the floor, like, you know
5 what I'm saying, he ain't doing nothing, you know what I'm
6 saying, he ain't -- he just was laying there. So, I'm saying,
7 when I turned around I seen Greg behind me, so I was like,
8 shit, I was like, hold him right there, I'll be back, and I
9 left, went in the other room.

10 Q. Well, where was Quentin when all this was going on?

11 A. Quentin been down the hall.

12 Q. Oh, so ---

13 A. When I got -- when I came out the room -- when I came
14 out the room and entered Big A's room Quentin was at the door,
15 Big A's door, right there in the threshold.

16 Q. Uh huh (indicating positive) So your truth is that
17 this man here never even stopped at Mr. Graham's door, or ever
18 entered his room, just went straight down the hall.

19 A. He kept straight.

20 Q. Kept straight. All right. And he's got the fully-
21 functioning shotgun, according to you, since, according to
22 you, he's the one who murdered Mr. -- Mr. Smith, right?

23 A. You know what I'm saying, he been shot twice, you know
24 what I'm saying. I don't know whose bullet killed him, you
25 know what I'm saying, I just know, you know what I'm saying,

1 when ---

2 Q. Now you are not saying Mr. ---

3 A. I don't know whose bullet killed him, you know what I'm
4 saying, the only thing I know is that, you know what I'm
5 saying, when he got hit with the shotgun his whole chest
6 opened up, you know what I'm saying, common sense will tell
7 you, you know what I'm saying, that's the bullet that killed
8 him, you know what I'm saying.

9 Q. Okay. Please listen to my questions, and I will try to
10 listen to your answers, and I'll try to let you fully complete
11 your answer. Please let me fully complete my question, okay,
12 sir.

13 All right.

14 THE COURT: Mr. Hazzard.

15 MR. HAZZARD: Yes sir.

16 THE COURT: I told Mr. McCollum, you know that too. If
17 you've got a problem with the answer address it with me, not
18 with the witness. It's not your job to instruct the witness
19 to do anything. Clear.

20 MR. HAZZARD: Very clear, Your Honor.

21 THE COURT: Thank you, sir.

22 MR. HAZZARD: Thank you.

23 THE COURT: Move along.

24 Q. Okay. So are you testifying to this jury that -- you
25 are saying this little guy -- this -- this man here killed

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1 Allen Smith?

2 A. I'm saying he shot him.

3 Q. You are saying he shot him.

4 A. He -- him and Greg shot him.

5 Q. Him and Greg shot him. Everybody shot him but you,
6 right?

7 A. Right. I ain't shoot him.

8 Q. Of course not. Now, he had -- so therefore, for him to
9 shoot him he had a functioning shotgun, right?

10 A. His gun had shot.

11 Q. Okay. And supposedly yours was broken, right?

12 A. Mine was broke.

13 Q. Okay. And according to you Gregory Floyd had your
14 cousin's .22, right?

15 A. Yes sir.

16 Q. Okay. So your testimony then is, Quentin Gause, the
17 guy with the most fire power in the house, who goes right past
18 Anthony Graham's room, goes right to where the money and the
19 work is suppose to be, he gets there for what they supposedly
20 came for, and then he just stands there and waits there by the
21 door like a sentry, while you then enter the room and you
22 search for the money and the drugs, you, the one guy who
23 doesn't have a deadly weapon. Is that your testimony to this
24 jury? Was there a yes or a no, sir? I'm sorry.

25 A. He was standing at the doorway when I came down the

1 hallway. He was already at the room.

2 Q. Already at the room, but didn't go in the room?

3 A. No. He was in the threshold of the door.

4 Q. He was waiting on you?

5 A. Naw. He wasn't waiting on me. He was just standing
6 there.

7 Q. Okay. Now, let's back up a little bit, because you
8 told the jury, you told Ms. von Herrmann, that you and Mr.
9 Floyd, and Mr. Andrew James had gone to the house, fully
10 armed, either the -- was it the day before, or two days
11 before?

12 A. We went to the house -- see, Andrew had the same
13 shotgun right there, you know what I'm saying. I had a .28
14 then.

15 Q. What happened to the .38 between the time you went the
16 first time and the time you went the second time?

17 A. I don't know.

18 Q. You don't know?

19 A. I don't know where it's at now.

20 Q. No. I'm asking you, what happened to it between the
21 time you took it over there the first time, and the time you
22 went the second time, the day Mr. Smith was killed?

23 A. Oh, you know what I'm saying, I got rid of it. It was
24 gone.

25 Q. It was gone.

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1 A. And regardless of what I did to it, I got rid of it,
2 you know what I mean.

3 Q. Okay. So as I was asking you, sir, you -- the three of
4 you went over there -- was it the day before or two days
5 prior?

6 A. I don't -- like I said, I just know within that week,
7 that week span, you know what I mean. I can't really say the
8 days, the exact days that, you know what I'm saying, it
9 happened. I just know that, you know what I'm saying, it was
10 April the 14th when Allen Smith died, you know what I'm
11 saying. I ain't going to say that it was one or two days
12 before, or three or four days before, I just know it was in
13 between that week.

14 Q. Okay. That you and Andrew and Greg went over there.

15 A. Yes sir.

16 Q. Okay. And you walked over there, right?

17 A. We went through the path.

18 Q. Yes sir. And when you got there Greg messed up because
19 Greg ---

20 A. Touched the door.

21 Q. ---Was jiggling with the door knob, as opposed to just
22 straight kicking it in, right?

23 A. I guess so. Yes sir. He had grabbed the door knob,
24 and I was like, man, I ain't going there, you know what I'm
25 saying, let's go, man, let's go, man, so we went back.

1 Q. Because you lost the element of surprise, right?

2 A. Regardless, you know what I'm saying, it's just that he
3 messed up when he tried to open the door.

4 Q. Yes. So now you told this jury and Ms. von Herrmann
5 that, once he messed up, causing the lick to go bad -- because
6 you know a bad lick when you see one, right?

7 A. Yes.

8 Q. Yes. Yes. You are very experienced.

9 A. I'm saying -- I ain't saying that I'm experienced with
10 bad licks, but I'm saying, if something don't look right you
11 don't go with it.

12 Q. Okay. So your testimony was then you had to abort the
13 plan, and that then you supposedly told Ms. Collington, I
14 can't work with these guys.

15 A. I told her -- I told her that, you know what I'm
16 saying, what happened when we went over there, you know what I
17 mean, I was like, man, I can't go on no lick with them dudes
18 right there.

19 Q. Okay. But yet, on April the 14th, 2008, there is no
20 question the guy that messed up, Gregory Floyd, was right back
21 there with you again, right?

22 A. He popped up at my door with Bait.

23 Q. He popped up with Bait. He didn't pop up there with
24 Andrew James.

25 A. Naw.

DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD

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1 Q. You know, Andrew James, the guy who had called you ---

2 A. He didn't pop up there with Andrew James.

3 Q. Of course not. But Andrew James was the guy who had
4 called you asking about what was going down with the lick,
5 right?

6 A. But he ain't popped up there with Andrew though.

7 Q. Okay. After things went -- after the lick got aborted
8 the first time, Andrew called you again and asked you, what --
9 what we going to do, when we going back?

10 A. Naw.

11 Q. He didn't?

12 A. Naw. Naw. Andrew ain't called me up after that.

13 Q. Didn't.

14 A. Naw.

15 Q. And you never told the police that?

16 A. Naw.

17 Q. You sure?

18 A. Naw. I ain't ever told the police that he called me
19 after -- after me and Bait -- me, Bait and Greg went on the
20 lick.

21 Q. No sir, please -- my question is, after you had to
22 abort the lick the first time because Greg Floyd messed up ---

23 A. Andrew ain't never come back after the first time.

24 He -- he -- he ain't never came back. He was steady trying to
25 find him some place to move.

1 Q. Well, that's a lie, isn't it, sir? When did he bring
2 the shotgun over?

3 A. Andrew -- Andrew was trying to find them some place to
4 move.

5 Q. So when did he bring the ---

6 A. That's why -- that's why he got involved with it the
7 first time anyway.

8 Q. He needed money.

9 A. He tried -- he had to find somewhere to move. He
10 needed money to move, you know what I mean, cause he got
11 kicked out his apartment.

12 Q. Yes sir. So he needed money, you know, and you weren't
13 working, were you?

14 A. Naw.

15 Q. No. Well, when was the last time you had a job?

16 A. The last time I had a job was like in 2000 -- in 2007,
17 like September.

18 Q. And where were you working then, sir?

19 A. I was working -- I was working on a construction job
20 toward -- going toward -- behind the mall, the new mall.

21 Q. And how long -- strike that. Okay. So, when did
22 Andrew bring over -- I mean, Andrew brought over the shotgun,
23 right?

24 A. Yes sir. Andrew had brung over the shotgun when we
25 went the first time, when we went on the lick the first time,

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1 you know what I'm saying, because he needed somewhere to stay,
2 you know what I mean, so when Andrew though -- when I told
3 Dorrea -- I told Dorrea that, you know what I'm saying, Andrew
4 going to need somewhere to stay too, you know what I'm saying,
5 so they came to the house, Greg and Andrew, at -- Greg --
6 Andrew gave Greg the .22 and Andrew had a shotgun, and I took
7 the .38, you know what I'm saying, and we went ---

8 Q. Okay. You had a .38, Andrew has a shotgun, Greg had
9 the .22. That's your testimony here today.

10 A. At that time, yes sir.

11 Q. At that time, the first time, bad lick, right? And
12 that was the first time that he brought the shotgun over to
13 the house.

14 A. That was the first time he brung it over there.

15 Q. Okay. Never brought it over there before?

16 A. No.

17 Q. Okay. All right.

18 A. No.

19 Q. And this is the home that -- this is actually
20 Tanheshia's apartment, right?

21 A. Yes sir.

22 Q. He never brought the shotgun in that flowered suitcase
23 over there before. That's your testimony to this jury.

24 A. I ain't saying that he ain't never brought it over
25 there before because, you know what I'm saying, he brought it

1 over there, but you know what I'm saying, that was the first
2 time though.

3 Q. So he had brought it over there after that?

4 A. Naw. That was the first time and the last time he
5 brought it over there. When he brought it over there he left
6 it.

7 Q. Uh huh (indicating positive) Now, I think you told Ms.
8 von Herrmann that you are sitting there in the apartment, in
9 Tanheshia's apartment -- where is Tanheshia while this is
10 going on, around three o'clock on April the 14th, 2008?

11 A. I don't know the exact time, you know what I'm saying,
12 but Tanheshia was in the bed.

13 Q. Okay. So she's in the home?

14 A. Yes, she was in the room.

15 Q. Okay. So you are sitting over there, and I think you
16 told Ms. von Herrmann that you are wondering, you know, that -
17 - supposedly you got a call from Ms. Collington, or something,
18 and you are wondering, oh my, I need to do this lick, but I
19 don't have any help, and then Tiffany, your cousin, like walks
20 off and comes back, supposedly, with this gentleman and Mr.
21 Floyd; is that your testimony?

22 A. Naw. My testimony is that, you know what I'm saying,
23 Ladorrean had called me and told me about the lick, you know
24 what I'm saying, so you know what I'm saying, Andrew and those
25 needed a place to stay so that's -- that's why, you know what

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1 I'm saying, he was on the lick with me, you know what I mean,
2 and Gregory came through because I -- that's Tiffany's baby
3 daddy's brother, you know what I mean. You've got to
4 understand ---

5 Q. And you were related to his girlfriend, Erika, right?

6 A. I guess, by marriage. I'm related to her brother, you
7 know what I'm saying.

8 Q. Okay. All right.

9 A. I'm related to her brother. Her brother is my uncle's
10 son, you know what I'm saying, but that ain't how I know Greg
11 though.

12 Q. Okay.

13 A. I -- this is the time that I know Greg right here, you
14 know what I'm saying. I ain't had no dealings with him or
15 Bait before. I didn't had business with Drew. Drew my
16 cousin, you know what I'm saying.

17 Q. Yes. And you knew you could depend on Drew, right?

18 A. I'm saying, I could depend on myself, you know what I
19 mean.

20 Q. Well then, why not just do the lick by yourself, keep
21 all the money and the product for yourself.

22 A. Because she said that we -- we got to need three
23 people.

24 Q. You need three people. Okay. Like three men and a
25 gun.

1 A. The only thing -- the only thing -- the only thing
2 about the situation though, you know what I'm saying, she --
3 when I talked to her she told me straight up that, you know
4 what I'm saying, nobody ain't got to shoot the dude in the
5 house, you know what I mean. At the time I don't even know
6 this is her baby daddy, you know what I mean. Only thing I'm
7 doing is going on the lick.

8 Q. Uh huh (indicating positive) Because this is going to
9 be a sweet lick, don't have to shoot anybody, don't even need
10 a gun with bullets, and there's suppose to be what, forty
11 stacks in there, Forty Thousand Dollars?

12 A. Yes sir, and a half a kilo.

13 Q. Half a kilo. And that's a little over a pound of
14 cocaine, right?

15 A. Yes, I guess.

16 Q. Yes. And even though the lick is so sweet, I don't
17 even need a gun that works, I've still got to take two other
18 people with me; Bait has got to come with me so he can ---

19 A. I don't even know Bait.

20 Q. You don't even know him.

21 A. I don't even know Bait. He came with somebody else.

22 Q. Okay. Who did he come with, sir?

23 A. He came with his -- with Greg.

24 Q. He came with Greg. And Tiffany -- you said Tiffany
25 brought them back to the house from somewhere, right?

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1 A. Yeah. Tiffany left my house ---

2 Q. Okay. Now Tiffany ain't got no car, does she?

3 A. Tiffany left my house, told me she was going to
4 Dorrea's house.

5 Q. Uh huh (indicating positive) So Tiffany left your
6 house on foot, and somehow comes back with this man, right?
7 Is that it?

8 A. With him and Greg.

9 Q. Him and Greg. Okay. And you are going to cut all them
10 in on this profit, right?

11 A. I ain't cutting nobody in on nothing, you know what I'm
12 saying. When they came to the house, you know what I'm
13 saying, that already knew what time it was, you know what I
14 mean, so I'm like -- I'm asking Tiffany, you know what I'm
15 saying, really, you know what I'm saying, so you really seen
16 this in this house, you know what I'm saying, and she was
17 like, yeah. I'm like, put it on Grandma, and she put it on
18 Grandma ---

19 Q. Yes.

20 A. ---I'm saying, so that's what tuned me in like, it was
21 in there, you know what I mean.

22 Q. But you were willing -- according to you, your
23 testimony is, you were willing to undertake a potentially
24 deadly enterprise, with someone you didn't even know, had
25 never heard of before, right?

1 A. I'm saying, that was the risk.

2 Q. That was the risk. Okay. Now, after the incident you
3 spoke with Tiffany, right?

4 A. After the incident we all been -- when we been in the
5 car, you know what I'm saying, we went back to Conway. I went
6 to Tiffany's house later on that day.

7 MR. HAZZARD: Your Honor, if you would, please, if I
8 ask a yes or no question I would ask the Court to instruct him
9 to please answer yes or no.

10 THE COURT: If you ask a yes or a no question ---

11 MR. HAZZARD: Okay.

12 THE COURT: If you ask a yes or no question, if it is
13 asked, then you need to answer yes or no. You may then
14 explain your answer after you answer yes or no.

15 Go ahead, Mr. Hazzard.

16 Q. All right, sir, yes or no. After the incident you
17 spoke with Tiffany, correct?

18 A. Yes sir.

19 Q. And after the incident, yes or no, you spoke with
20 Tanheshia Smith, correct?

21 A. No ---

22 Q. Tanheshia Smith.

23 A. I ain't spoke to Tanheshia until she was -- came back
24 to my house later on that night.

25 Q. Yes sir. That's what I'm asking.

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1 A. Like early -- yeah, you know what I'm saying, not right
2 after the incident. I did not speak to them. I spoke to them
3 later on that night.

4 Q. Yes sir. Yes sir. And I apologize. I didn't clarify.
5 I'm talking about between the time of the incident and the
6 time you spoke with the police at one o'clock in the morning
7 on the 15th. So between that time period, the time of the
8 incident, and when you ended up at the Police Department, one
9 o'clock in the morning.

10 A. I don't know what time it was when I ended up at the
11 Police Department.

12 Q. Okay. But between those two times, yes or no, did
13 you -- you had a conversation and spoke about this with Ms.
14 Tiffany James, correct?

15 A. The only thing I tell her, I say -- when I went to her
16 house she was in there crying, and I was like, what did you
17 see; you ain't even seen nothing. She was like, naw, but I
18 seen it on the news.

19 Q. Okay. And you spoke with Ms. Tanheshia Smith about
20 this incident, correct?

21 A. I told her that -- you know what I'm saying, she asked
22 me what happened when she came back from the Police Department
23 and I told her that, you know what I'm saying, when we went in
24 the house, you know what I'm saying, and the dude jumped out
25 the bed they shot him.

1 Q. You told her that Bait -- that Bait did it, Bait killed
2 him, right?

3 A. Yeah. I told her that Bait shot him.

4 Q. Okay. And you told Tiffany that too, right?

5 A. Dorrea was at -- Dorrea was at my house when I told
6 Tanheshia that too.

7 Q. And you told Tiffany that too, right?

8 A. Naw.

9 Q. No. You didn't tell Tiffany that?

10 A. Naw. I ain't told Tiffany that.

11 Q. Okay. And you ---

12 A. I asked Tiffany what did she see. She said she ain't
13 saw nothing, and I was like, well, then, you know what I'm
14 saying, you ain't got nothing to worry about.

15 Q. And you talked with Gregory Floyd after the incident,
16 correct?

17 A. Talked to Gregory Floyd after I talked to Tiffany. I
18 had asked -- I asked Gregory Floyd's baby mama where Gregory
19 was at. She said he was in the house, so I went to the house,
20 and Greg was like, you know what I'm saying, he kept telling
21 me Dorrea was calling his phone.

22 Q. Y'all didn't sit down and drink some Paul Masson wine
23 together?

24 A. Naw.

25 Q. No. Okay. You didn't tell the police, or you didn't

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1 tell Ms. von Herrmann ---

2 A. I told the police -- I told the police that I ain't
3 know nothing about -- you know what I'm saying, about the
4 incident that happened, you know what I mean, because I
5 ain't -- I felt like, you know what I'm saying, that was the
6 best thing for me to say since I ain't had my lawyer present.
7 I ain't had no lawyer at the time.

8 Q. Okay. Well, let me ask you about the proffer interview
9 with the representative of the Police Department, the
10 representative of the Solicitor's Office and your attorney, on
11 October 23rd of 2009.

12 A. My lawyer -- my lawyer presented me the proffer, you
13 know what I mean. My lawyer told me if I tell -- if I tell
14 them exactly what happened, you know what I'm saying, he
15 entering the proffer, and the proffer was stately -- it
16 stately said that I would be a witness.

17 Q. Yes sir.

18 A. Nothing else, or nothing more.

19 Q. Be a witness instead of a defendant, right?

20 A. It just said that I be a witness -- I be a witness to
21 tell them what happened.

22 Q. Yes sir.

23 A. I'm saying -- not saying that I won't be a defendant,
24 because I've still got the charges too.

25 Q. Other ---

1 A. I still got the charges that they got.

2 Q. And other charges.

3 A. You know what I'm saying, my other charges that I got,
4 I ain't been found guilty or not guilty for them. They just
5 pending.

6 Q. Yes sir. So you are saying you did not tell Ms. von
7 Herrmann and Detective Townsend, on October 23rd of 2009, that
8 you met up with Gregory Floyd later that evening and shared a
9 little bit of Paul Masson wine over in the projects in
10 Huckabee Heights after this incident occurred?

11 A. So, I ain't never told her that me and Gregory Floyd
12 drank Paul Masson in Huckabee Heights.

13 Q. Okay. And at some point you talked with Andrew James
14 about this prior to him being arrested, correct?

15 A. Say that again.

16 Q. At some point after Mr. Smith was murdered you spoke
17 with Andrew James prior to him being arrested, correct?

18 A. No sir. I was the first one they locked up.

19 Q. Okay. You didn't get a chance to talk to him ---

20 A. I ain't talked to nobody.

21 Q. Okay. Except for Tiffany and Tanheshia and Greg.

22 A. Only thing -- only thing that I told them is that when
23 Bait got up -- see, Tanheshia came to my house right after she
24 came from the police station. I been in the house, you know
25 what I'm saying. I went -- when I went to Tiffany's house --

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1 I had walked to Tiffany's house. This before Tanheshia even
2 came to my house. I walked to Tiffany's house and then I went
3 to Greg's house, and went home. After Tanheshia came from the
4 Police Department she came to my house, you know what I'm
5 saying. Me and Greg, if you want to know, you know what I'm
6 saying, cause you saying me and Greg drunk Paul Masson in
7 Huckabee -- me and Greg drunk Paul Masson on Sugarhill, you
8 know what I'm saying.

9 Q. I apologize. Okay. And that was that night, the night
10 of the 14th.

11 A. It was in that -- that was -- that was right after it.
12 Yes.

13 Q. Right after -- right after. Yes sir. All right, now,
14 you and Tiffany, I believe, spent a lot of time walking back
15 and forth prior to the robbery, burglary and murder, correct?

16 A. No sir.

17 Q. No.

18 A. We stand -- we had walked -- the only way I walked is
19 from my house to Dorrea's house, you know what I'm saying ---

20 Q. Uh huh (indicating positive) And ---

21 A. ---You know what I'm saying ---

22 Q. ---You didn't walk to the store?

23 A. Naw. We -- we -- we rode to the store.

24 Q. All right. Okay. And Tiffany was wearing that gold
25 jacket with the hood.

1 A. You know what I'm saying. Yeah, I guess, I mean, I
2 guess, you know what I'm saying.

3 Q. How did -- how did the police end up talking to you
4 about this?

5 A. I'm saying ---

6 MS. von HERRMANN: I'm going to object. Calls for
7 speculation.

8 A. I don't really know -- I don't really know how the
9 police got to me on the situation that -- you know what I'm
10 saying ---

11 THE COURT: I'm going to allow it.

12 A. ---What happened, I mean, but like I said, Dorrea left
13 from her house and went straight to my baby mama's house. My
14 baby mom, you know what I'm saying, was in the Police
15 Department getting, you know what I'm saying, interrogated by
16 the police, being questioned.

17 Q. Now as part of your Proffer Agreement, where you talked
18 with the Detectives and you talked with Ms. von Herrmann, were
19 you asked the question, what did y'all take from the house, by
20 Detective Townsend, and I'm going to ask give the question and
21 the response. I'm going to ask you if you were asked these
22 questions and if you gave this response, okay. What did y'all
23 take from the house. Question. Answer: We didn't take shit.
24 We didn't have shit. Question: I mean, you took the
25 marijuana, didn't you? Answer: No, I didn't. I didn't want

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1 no damn weed, you know what I'm saying. I didn't go there for
2 no damn weed. We didn't take shit from the house. Well, I
3 ain't take shit. I ain't had nothing -- I ain't had nothing
4 out of the whole deal. I ---

5 MS. von HERRMANN: Your Honor, I'm going to object to
6 the continuing of the reading of this. I think ---

7 THE COURT: Well, number one, Mr. Hazzard ---

8 MR. HAZZARD: Yes sir.

9 THE COURT: ---The Rule requires that you ask a
10 question first ---

11 MR. HAZZARD: Yes sir.

12 THE COURT: ---And get a response. You haven't done
13 that.

14 MR. HAZZARD: Okay.

15 THE COURT: If you think there is some conflict, then
16 you may read the question and the answer after giving the
17 Defendant the time, the date, and all the information.

18 MR. HAZZARD: Okay.

19 THE COURT: Clearly you did not need to read all of
20 that, but please follow the correct Rule. Thank you.

21 MR. HAZZARD: I apologize, Your Honor.

22 Q. Did you tell the police, on October 23rd of 2009, at J.
23 Reuben Long Detention Center, in your interview with Detective
24 Brad Townsend, in the presence of attorney David Canty and
25 Assistant Solicitor Heather von Herrmann, that you did not

1 take anything out of the home of Mr. Smith?

2 A. The Detective asked me what did I take, like, you know
3 what I'm saying, like in drugs and money. I told him I ain't
4 took no drugs or no money.

5 Q. So when he asked you, what did y'all take from the
6 house, it was your thought process that he was just talking
7 about drugs and money.

8 A. Yes sir. Because that's what we went there for.

9 Q. Uh huh (indicating positive) Because up until your
10 testimony here today, you've never told anybody this story
11 about taking the shotgun, have you?

12 A. I took the gun.

13 Q. Have you, sir?

14 A. I thought it was irrelevant. Ain't nobody asked me.

15 Q. But if you don't tell them the story about taking the
16 shotgun, well then there is no armed robbery, now is there?

17 A. Naw. Asked me ---

18 MS. von HERRMANN: Objection. That's a legal question.

19 THE COURT: Sustained.

20 Q. Did you tell, on October 23rd of 2009, in your
21 conversation with Detective Townsend, in the presence of your
22 attorney, David Canty, and Assistant Solicitor Heather von
23 Herrmann, did you tell Detective Townsend that there were a
24 bunch of lies with regard to the case?

25 A. Yes sir. I told him there was a bunch of lies that was

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1 regard to the case.

2 Q. I'm sorry.

3 A. I did told him that.

4 Q. Yes sir. Yes sir. Now who -- to your prospective, who
5 was telling these lies, sir?

6 THE COURT: Mr. Hazzard, you may not ---

7 MR. HAZZARD: I apologize.

8 THE COURT: ---Do that. You know that's not allowed by
9 the Rule. You cannot ask that question.

10 MR. HAZZARD: Yes sir. I apologize.

11 Q. And when you talked to Mr. Town -- Detective Townsend
12 in the presence of Ms. von Herrmann, and your attorney, David
13 Canty, you told them that the connection between Quentin and
14 Ladorrean is that they were supposedly cousins of some kind,
15 right?

16 A. Yeah. To my knowledge I thought they was some kin, you
17 know what I mean. I thought her baby and Greg was some kin.

18 Q. Really.

19 A. I thought that.

20 Q. You thought that.

21 A. Uh huh (indicating positive)

22 Q. Okay. Got no proof of that, but you thought.

23 A. I ain't got no proof of it. That's what I told them,
24 what I thought.

25 Q. Okay. Sir, are you familiar with Andre Layman and

1 David Campbell?

2 A. Who?

3 Q. Andre Layman ---

4 MS. von HERRMANN: Objection.

5 A. Naw.

6 MS. von HERRMANN: I don't know what the relevance of
7 this is, and I think we need to take it up outside ---

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, please go to your jury room, please.

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

12 THE COURT: All right, Mr. Hazzard, can you explain to
13 me the relevance of asking who those individuals are?

14 MR. HAZZARD: Because Andre Layman -- and he is on my
15 witness list -- Andre Layman gave a written statement that
16 I've provided to the Prosecution, indicating that he has
17 spoken with this Defendant, or this witness, while
18 incarcerated at J. Reuben Long Detention Center, and that this
19 witness made statements inconsistent with his testimony here
20 today, and inconsistent with his prior recorded statement.

21 I was not going to ask him about the specifics of Mr.
22 Layman's written statement. I was simply asking him was he
23 familiar with Mr. Layman. If he says no, that's fine.

24 THE COURT: And who was the other individual?

25 MR. HAZZARD: David Campbell.

JURY OUT/ON RECORD

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1 THE COURT: And who might Mr. Campbell be?

2 MR. HAZZARD: Apparently David Campbell -- and this is
3 two individuals who came to -- who came to my knowledge, who
4 apparently appeared in court, who would be in the same
5 position as Mr. Layman, a prior inmate at J. Reuben Long
6 Detention Center who allegedly heard Mr. James, Mr. Donell
7 James, make statements inconsistent with his testimony here
8 today, and inconsistent with his prior recorded statement.

9 THE COURT: All right. That's not an individual that
10 was set forth on your witness list.

11 MR. HAZZARD: It is not, Your Honor, because my client
12 let me know about the fact that he saw Mr. Campbell in the
13 courtroom, I believe at the end of day one, or possibly
14 yesterday.

15 THE COURT: And what is his name again?

16 MR. HAZZARD: David -- the first one is Andre Layman,
17 who is on the witness list. The second one apparently -- and
18 I've not spoke to him, I don't know -- is an individual by the
19 name of David Campbell.

20 THE COURT: All right, sir. All right, I'll allow you
21 to ask who the individuals are, and then we will move along
22 after that.

23 MR. HAZZARD: Yes sir.

24 MS. von HERRMANN: And Your Honor, my understanding is
25 that the contents of any letter, or contents of Mr. -- whoever

1 his name is -- statement, will not be a part of the question
2 asked to Mr. James; is that correct?

3 THE COURT: What has been indicated by Mr. Hazzard is,
4 he's going to ask this witness whether or not he knows these
5 individuals, who might they be, and we will see what the
6 answer is, and then we will move along after that.

7 MR. HAZZARD: Yes sir.

8 THE COURT: All right. Since I sent the jury out I'm
9 sure they are not -- and it hasn't been even five minutes.
10 I'm sure they are not ready to come back in, so we will resume
11 in five minutes. Thank you very much.

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

14 THE COURT: All right, Mr. Hazzard, you may continue,
15 sir.

16 MR. HAZZARD: Thank you, Your Honor.

17 Q. Mr. James, are you familiar with Andre Layman?

18 A. No sir.

19 Q. I'm sorry.

20 A. I don't know no Andre Layman, not by that name. I
21 probably know him by another name, but not by Andre.

22 Q. Okay. And what about David Campbell? Do you recognize
23 that name?

24 A. Yes sir. I recognize David Campbell's name.

25 Q. Okay. Thank you, sir.

JURY IN
DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD CONTINUED

1 Now, you are saying -- and I'm not going to belabor the
2 point -- that you were sitting there in the apartment, in
3 Tanheshia's apartment, saying I've got to do this lick but I
4 don't have anybody to do it with, Tiffany goes off on foot and
5 somehow comes back with Quentin Gause and Gregory Floyd; is
6 that correct?

7 A. No sir.

8 Q. Okay. That's not what you told Ms. von Herrmann?

9 A. Told that I -- that Tiffany stayed over at my house
10 that night, and the next morning she asked me was I still
11 going to do the lick.

12 Q. Why was she worried about whether you were going to do
13 the lick? Do you know?

14 A. I don't even know, you know what I'm saying. I don't
15 know, you know what I'm saying, what's going on, you know what
16 I'm saying, with the simple fact, you know what I'm saying,
17 but, you know what I'm saying, but, you know what I'm saying,
18 you know, I mean, just like, you know what I'm saying, anybody
19 else that, you know what I'm saying, lawyers, they already
20 know we got motions, you know what I'm saying, and the motion
21 tell you what -- what was going on, the pieces that wasn't put
22 together, you know what I'm saying, so, I mean, but from my
23 understanding at that time, I ain't know what was going on,
24 you know what I'm saying, I was just there, you know what I'm
25 saying. She wanted me to rob the dude.

JURY IN
DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD CONTINUED

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1 Q. All right. And so all of y'all loaded up in the car
2 like Beverly Hillbillies and drove what, like a half a block?

3 A. Just been me, Tiffany, Greg and Bait.

4 Q. Uh huh (*indicating positive*) And according to you, you
5 don't know whose car it is, right?

6 A. No sir. I ain't know whose car it was at the time.

7 Q. And you don't know how Greg Floyd -- you don't know how
8 Quentin Gause even supposedly got to the apartment, right?

9 A. He came there with Greg.

10 Q. Came there with Greg.

11 A. They all both came behind Tiffany though, you know what
12 I'm saying.

13 Q. Came behind her?

14 A. Like, you know what I'm saying, Tiffany came to my
15 house first, you know what I mean.

16 Q. Okay. In a car or on foot?

17 A. On -- they walked in my apartment.

18 Q. Yes. But she was on -- she was on foot.

19 A. They walked in my apartment.

20 Q. I mean, she didn't drive to your apartment?

21 A. Naw. She walked over there -- she walked over there to
22 Dorrea's house once she left from my house, you know what I'm
23 saying, and when she came back she had these two dudes with
24 her.

25 Q. And they were on foot as well? They walked, or ---

JURY IN
DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD CONTINUED

1 A. I don't know. The car wasn't in my parking lot. My
2 next door neighbor came to my house and told them to move the
3 car out my parking lot, out her parking lot into my parking
4 lot.

5 Q. You mean the space, the parking space?

6 A. Yes sir.

7 Q. Okay. Okay.

8 A. So, you know what I'm saying, that's how they got
9 there. They had to move their car.

10 Q. Uh huh (indicating positive) Okay. And there had to
11 be a car, right, because if there's no car there's no Bait.

12 A. She wouldn't have never came -- if it wasn't no car she
13 wouldn't have never came to my house and tell them to move
14 their car out of her parking lot.

15 Q. Yes. Because if there's no car then there's no reason
16 for Bait to be involved, right?

17 A. Naw. If there ain't no car we wouldn't -- the only
18 thing we had to do was walk over there, if Bait was still
19 there.

20 Q. Like you did the first time, right?

21 A. Yes sir.

22 Q. And like you did the second time, right?

23 A. No sir, we didn't walk.

24 Q. Of course not. You told Ms. von Herrmann that Quentin
25 Gause brought ammunition for your gun.

JURY IN
DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD CONTINUED

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1 A. I ain't said he brought ammunition for my gun. I said
2 he had his own -- he came with his own bullets.

3 Q. Okay. Okay. Okay. Sir, have you ever heard the
4 phrase, get it how you live?

5 A. Man, you know what I mean, that's a slang, man.

6 Q. And you've heard that, right?

7 A. Yes. I heard that before.

8 Q. And that's how you live, right?

9 A. No, man. I live -- I live how I live, man, you know
10 what I'm saying. How I live, you know what I'm saying,
11 determines how the next man lives, you know what I mean, so --
12 -

13 Q. And getting it -- getting it like you live is ---

14 A. If I live -- if I live working, you know what I'm
15 saying, however I live that's just how -- that's between me
16 and the way I live.

17 Q. And if your way of living is to rob people ---

18 A. I mean, at this time that's really not, you know what
19 I'm saying, an issue at this time.

20 Q. Yes sir. But back in 2008, that was how you lived,
21 right, robbing people?

22 A. Naw. You know what I'm saying, I mean, I had a job,
23 man, you know I'm trying to tell you, I worked, you know what
24 I'm saying, it's just that, you know what I'm saying, at that
25 certain time, I mean, that's what happened.

JURY IN
DONELL LAMONT DEWAN JAMES - CROSS BY HAZZARD CONTINUED

1 Q. So you just happened to have that Monday off from your
2 job?

3 A. I'm saying, I ain't had no job. I had a job back in
4 September, '07. That was the last job I had.

5 Q. Yes sir. I have just one more question, sir. You have
6 told this jury, and you -- your position is that it was you,
7 Gregory Floyd, and this man here, who robbed and killed Allen
8 Smith, correct ---

9 A. No sir. I told them that we had went to his house to
10 rob.

11 Q. Yes sir.

12 A. I ain't never said all three of us killed him.

13 Q. Okay. But as a result of, according to you, your
14 actions, Greg Floyd's actions, and Quentin Gause's actions on
15 that day, Allen Smith ended up dead, right?

16 A. I can't really, you know what I'm saying, control the
17 next man's actions, you know what I mean, but, you know what
18 I'm saying, when we went in the house, you know what I'm
19 saying, Bait shot the man, Greg shot the man too.

20 Q. When you talked with Ms. von Herrmann and Detective
21 Townsend, with your attorney, David Canty, present, on October
22 23rd of 2009, did you tell him that Big A, Allen Smith's
23 brother, was incarcerated at J. Reuben Long Detention Center,
24 and that his brother was looking to beat up Andrew James?

25 A. No. He just had sent a hit out at Andrew, but it ain't

1 -- it ain't go through though.

2 Q. He sent a hit out on Andrew?

3 A. Yeah, but it didn't go through.

4 MS. von HERRMANN: I'm going to object, relevance.

5 Q. Not on Quentin Gause ---

6 THE COURT: Y'all come over here and ---

7 A. Quentin Gause wasn't in ---

8 THE COURT: Stop.

9 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

10 THE COURT: Continue on, Mr. Hazzard.

11 MR. HAZZARD: Nothing further, Your Honor.

12 THE COURT: Redirect.

13 MS. von HERRMANN: Thank you.

14 REDIRECT-EXAMINATION BY MS. von HERRMANN:

15 Q. The gun that you took out of the house here, that was a
16 .410, right ---

17 A. Yes Ma'am.

18 Q. ---That you said. All right, that's different than a
19 .12 gauge shotgun, right?

20 A. Yes Ma'am.

21 Q. All right. And I believe either Mr. McCollum or Mr.
22 Hazzard, I'm not sure, asked you about you and I talking. You
23 and I haven't talked today, have we?

24 A. Not today.

25 Q. Okay. And then we haven't talked ---

DONELL LAMONT DEWAN JAMES - RECROSS BY McCOLLUM

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1 A. We haven't talked for the ---

2 Q. ---This whole week, have we?

3 A. Naw. Not -- we haven't -- I haven't talked to you
4 until a while back. That's what I had tell them, the last
5 time I talked to you is before I ain't even know I was coming
6 to trial, you know what I'm saying.

7 Q. And again, and my instructions to you at that time were
8 that -- for you to do what?

9 A. Tell the truth.

10 Q. And I think I even said to you, it doesn't help me if
11 you lie, didn't I?

12 A. Yes Ma'am.

13 Q. All right. And I even told you if you lie it's
14 probably going to hurt me, right?

15 A. Yes Ma'am.

16 Q. All right. And have you told the truth here today?

17 A. Everything I said been the truth.

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

20 THE COURT: Mr. McCollum, on those questions just
21 asked.

22 MR. McCOLLUM: Your Honor, thank you.

23 RECROSS-EXAMINATION BY MR. McCOLLUM:

24 Q. So, you say you took a .410 shotgun.

25 A. Yes sir.

1 Q. And that's a shotgun that nobody has found since,
2 right?

3 A. No sir.

4 Q. And nobody can tell what kind of shotgun it is if we
5 can't look at it, right?

6 A. Yes sir.

7 Q. All right.

8 MR. McCOLLUM: Your Honor, based on the thing we had
9 said, I would like to just play three brief parts from his ---

10 THE COURT: I'm sorry. They relate to the Solicitor's
11 questions?

12 MR. McCOLLUM: Your Honor, they -- they relate to my
13 cross-examination because we were having the issue of
14 playing ---

15 THE COURT: Ladies and gentlemen, you go to the jury
16 room, please. Thank you.

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

19 THE COURT: Mr. McCollum, when you explained it to me
20 before you said you could pick one disc and have that played,
21 and you could get that -- if you had some questions you could
22 do that, you just couldn't do both of them, and I said, that's
23 fine, you could pick one or the other, and you didn't pick
24 any.

25 MR. HAZZARD: Your Honor, I'm sorry. What he was

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1 talking about is, I had, with Ms. Ditto's help, queued up the
2 things I wanted to address, or was looking forward to address
3 in cross-examination.

4 THE COURT: That's not how he explained it to me.
5 That's not how I understood it, and that's not how he
6 explained it to me.

7 What I need for you to do now is to play what it is that
8 you want to play. Let me hear it and I'll see if I'm going to
9 allow you to play it in front of the jury.

10 MR. McCOLLUM: Thank you, Your Honor.

11 MS. von HERRMANN: Mr. McCollum, would you mind telling
12 me what page I can find that on.

13 MR. McCOLLUM: On the audio proffer dated October 23rd,
14 2009, page nine.

15 THE COURT: Can we play it? Go ahead.

16 (PUBLISHED A SMALL PORTION OF STATEMENT OF DONELL LAMONT
17 DEWAN JAMES.)

18 THE COURT: All right, sir, how is that contradictory
19 to what his actual testimony was?

20 MR. McCOLLUM: About the money. He testified that they
21 were going to split the money up, and that Dorrea was going to
22 get money to pay off the vehicle. In his statement he said
23 that he was going to -- he approached his Andrew, they were
24 going to do the lick for Forty Thousand, and that he could --
25 he would split it with him, in other words, split it fifty

1 fifty.

2 MS. von HERRMANN: I don't think he said -- says split
3 it fifty fifty, and in fact, I think this is completely
4 consistent with his testimony.

5 THE COURT: I don't see that it's contradictory,
6 because that's not when he explained that she was going to do
7 that. But anyway, I don't see how it's contradictory. I ---

8 MR. McCOLLUM: He says -- Your Honor, may I ---

9 THE COURT: Yes sir.

10 MR. McCOLLUM: He says, I was like -- I'll give you
11 half of it, I need to get a place to stay, and so he says, you
12 know what I'm saying, so he was down with it.

13 THE COURT: Okay.

14 MR. McCOLLUM: So he's going to give him half of it.
15 They are going to split it fifty fifty.

16 THE COURT: That's not what he's saying. That does not
17 equate. That does not correlate. He may say, give you half
18 of it. Doesn't mean that it is split fifty fifty. That is
19 not what it said. So -- all right, let me hear the rest of
20 it. What are -- you said there were three things. That's
21 one.

22 (PUBLISHED SHORT PORTION OF STATEMENT OF DONELL LAMONT
23 DEWAN JAMES.)

24 THE COURT: All right. How is that inconsistent with
25 his testimony?

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1 MR. McCOLLUM: One, in this statement he says that
2 Dorrea told him to go over there, and in his testimony he said
3 that Tiffany did.

4 The other thing that I want to show Your Honor is that
5 they are saying that Dorrea, Ladorrean Collington, has set
6 this up, but when Tiffany told them to go over there Dorrea
7 had drawn the police over there, so they had to abort that
8 robbery attempt. I just want to show that. I'm asking to ---

9 THE COURT: I appreciate that. Number one, that is
10 consistent with his testimony. Secondly, you didn't ask him
11 these questions to set up doing this. You've waiting now
12 through your cross-examination, and not asked these questions.
13 Whether or not you had the tape at this point in time, you did
14 not ask any questions as to that particular point, but it --
15 still, what you are trying to play is absolutely consistent
16 with his testimony, so I'm not going to allow you to play that
17 one.

18 What's the third one?

19 MR. McCOLLUM: The other one, Your Honor, has to do
20 with the order of events, and that ---

21 THE COURT: All right. Let me go ahead and hear it
22 then.

23 MR. McCOLLUM: I may be able to save you the trouble,
24 Your Honor. On page -- that one is -- I've marked out a
25 fairly long version, but that is basically -- well, All right.

1 Will you play that, please Ma'am.

2 (PUBLISHED SHORT PORTION OF STATEMENT OF DONELL LAMONT
3 DEWAN JAMES.)

4 THE COURT: All right, Mr. McCollum, how is that
5 inconsistent with this testimony?

6 MR. MCCOLLUM: Your Honor, I may be mistaken, but I
7 think that -- that the witness testified that the phone rang,
8 or he does say that, but then he says that the decedent, the
9 victim in the case, jumped up after, who he says is Bait, shot
10 the gun. That is when he jumped up. But maybe I'm reading it
11 wrong, or maybe I remember his testimony wrong.

12 But that's what I'm asking for, Judge, is those ---

13 THE COURT: All right. I'm -- again, that seems to be
14 entirely consistent with the testimony he's given. I'm not
15 going to allow you to do that. Once again, you know, I
16 don't -- it was not presented to me, again, in this fashion.
17 I did not understand this is what you were intending to do.
18 My understanding of what you told me was, that you had the
19 ability to pick one disc, and that you could do it, if you
20 choose to do it, and then the second one, the second disc, you
21 would need to load at a later time, because you couldn't do
22 both of them at the same time. It was my understanding from
23 what you were telling me, that you would cross-examine the
24 witness, if you found some issues you would play one of those
25 discs then. That was -- was the basic of my ruling, now --

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1 but anyway, going beyond that, this third one is consistent
2 with his testimony. I don't find that it's proper recross.

3 Let's go back to the first one. Let me hear the first
4 one again.

5 (PUBLISHED SHORT PORTION OF STATEMENT OF DONELL LAMONT
6 DEWAN JAMES.)

7 THE COURT: All right, Solicitor, let me hear your
8 argument on that.

9 MS. von HERRMANN: Well, I think it's consistent with
10 his testimony, number one, and number two, I think played in
11 that fashion, out of context, is confusing to the jury. This
12 could -- it's going to be Forty Thousand Dollars, shit, I'll
13 give you half of it if you can get a place -- so you can get a
14 place to stay. Well, does half of it mean half of his half,
15 does it mean half of the portion that he splits with a -- to
16 me it's not inconsistent, and it's very confusing, and if it's
17 played out of context in that fashion it would just confuse
18 the jury.

19 THE COURT: Mr. McCollum, to do it anyway you would
20 need to phrase a question such that you ask the witness if he
21 had given such a statement before. So, ask him the question,
22 we'll see what his answer is, and then we will go from there.

23 MR. MCCOLLUM: I'm -- so I'm clear, Your Honor, ask him
24 about his ---

25 THE COURT: Ask him about whatever it is that you

1 wanted to ask him about that, and then we will see.

2 BY MR. McCOLLUM CONTINUED:

3 Q. All right, Mr. James, do you remember telling the
4 police earlier that you had stated to your cousin, Andrew,
5 that if he would go on the lick with you that you would give
6 him half of the Forty Thousand?

7 A. I told him I would give him half of what I get. See, I
8 had give -- I had to break bread with her and the next man
9 too.

10 MR. McCOLLUM: Thank you, Judge.

11 THE COURT: All right. Do you believe that answer to
12 be inconsistent with what's on the recording?

13 MR. McCOLLUM: Your Honor, I believe he's been coached
14 now, so -- unintentionally, but it is what it is. Your Honor,
15 I want to do it because I think it helps my defense. That's
16 what I've been ---

17 THE COURT: All right. Very good. I'm going to allow
18 you to do that after you ask the question. Then you can play
19 the tape as that -- that recording, that part of the
20 recording.

21 MR. McCOLLUM: Can I play the second part too?

22 THE COURT: No sir. The second and third, I find those
23 to be -- number one, it's coming up in a light that I don't
24 believe you properly presented it to me to begin with.

25 MR. McCOLLUM: I apologize for that.

JURY IN
DONELL LAMONT DEWAN JAMES - RECROSS BY McCOLLUM CONTINUED

1 **THE COURT:** So that's part of one of the reasons why
2 I'm not allowing it. The second one is that, I believe the
3 second and third parts that you are playing are entirely
4 consistent with his testimony, and it is not then proper under
5 613 to bring up that statement. All right.

6 Ask the jury to come back in, please.

7 **MR. McCOLLUM:** Judge, while they are coming in, I can I
8 ask him about them going over that day and having to call it
9 off because the police were there?

10 **MS. von HERRMANN:** Judge ---

11 **THE COURT:** Yes Ma'am.

12 **MS. von HERRMANN:** ---I don't think that is an
13 appropriate question in response to my redirect.

14 **MR. McCOLLUM:** I'm just asking to ---

15 **THE COURT:** I appreciate that. No sir, I don't believe
16 it's -- even if we take part of this confusion about the two
17 discs thing, I don't see how that was properly -- is proper
18 cross-examination so no, I'm not going to allow it. Thank
19 you.

20 Actually it's recross.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY.)

23 **THE COURT:** I'll just state for the record, I'm going
24 to add to my ruling Rule 611 as a reason, Mr. McCollum.

25 You may proceed.

1 MR. McCOLLUM: May it please the Court, Your Honor.

2 THE COURT: Yes sir.

3 RECROSS BY MR. McCOLLUM CONTINUED:

4 Q. Okay. Just one last thing, Mr. James. You remember
5 talking to the police back, let's say October, 2009, right.

6 A. I don't remember the exact date when I took that
7 recording.

8 Q. I understand you don't remember the date, but you
9 remember talking to the police again.

10 A. I remember telling -- giving them a statement.

11 Q. All right. And do you remember saying that you were
12 going to holler at your cousin, Drew, and that he could go on
13 this lick with you because it was going to be like Forty
14 Thousand Dollars, and you said you would give him half of it,
15 and then he could get a place to stay, and that then he was
16 down with it?

17 A. I said -- I said that, but what I meant by that is
18 that, you know what I'm saying, half of what I got, what I had
19 got off the lick, that's what I was going to give him half of.
20 I had to break bread with two more people.

21 Q. Now, you knew that -- you believed the lick to be Forty
22 Thousand, right?

23 A. Yes, man. That's what she told me.

24 Q. And so when you said though -- regardless of what you
25 are saying now, you said in the statement to the police that

JURY IN
DONELL LAMONT DEWAN JAMES - RECROSS BY McCOLLUM CONTINUED

1 the lick was Forty Thousand, and if your cousin, Drew, would
2 go with you you would give him half of it, right?

3 A. Half meaning what I had, what I was going to get.

4 Q. Okay. But you didn't say that, did you?

5 A. I told him I would give him half of -- naw, I ain't
6 said I would give him half of what I get, but I --- but that's
7 what I meant, that's what -- you knew what I meant, I would
8 give half of what I get. I had to break bread with two more
9 people.

10 Q. Okay.

11 MR. McCOLLUM: He's answered the question, Your Honor.

12 THE COURT: All right.

13 MR. McCOLLUM: I have asked to ---

14 THE COURT: All right. Anything else, Mr. McCollum?

15 MR. McCOLLUM: I have asked for permission to play the
16 statement ---

17 THE COURT: Yes sir. You may.

18 MR. McCOLLUM: ---At this time.

19 THE COURT: Yes sir.

20 MS. von HERRMANN: I think he's denied that he ---

21 THE COURT: I appreciate it. I indicated to Mr.
22 McCollum I was going to allow him to play this part of it and
23 I'm going to allow it. Thank you.

24 (PUBLISHED SHORT PORTION OF STATEMENT OF DONELL LAMONT
25 DEWAN JAMES.)

1 THE COURT: Anything else, Mr. McCollum?

2 MR. McCOLLUM: No, Your Honor.

3 THE COURT: Mr. Hazzard.

4 MR. HAZZARD: Nothing further.

5 THE COURT: All right, sir. You may step down.

6 MS. von HERRMANN: Your Honor, may I just ask one
7 follow-up, please.

8 THE COURT: One. Yes Ma'am.

9 RE-REDIRECT-EXAMINATION BY MS. von HERRMANN:

10 Q. When you say you were going to divide the money, how
11 many people did you have to divide the money with?

12 A. With three people, the two that went with me and
13 Dorrea.

14 Q. All right.

15 A. But it wasn't just money though.

16 Q. All right. But whatever it was you had to divide it
17 how many different ways?

18 A. I had to divide it with the two that went with me, and
19 with Dorrea, so therefore I'm dividing it four ways, cause I'm
20 getting me part of it too.

21 MS. von HERRMANN: Thank you.

22 THE COURT: You may step down, sir.

23 MR. McCOLLUM: Your Honor, may I ask a question? I
24 know everybody is tired but ---

25 THE COURT: No. Under 611 I'm -- I'm just saying no.

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1 Thank you.

2 No sir. Neither to you either, Mr. Hazzard. Under 611
3 I'm not allowing it any more.

4 THE COURT: All right, ladies and gentlemen, we are
5 going to stop for the evening. Again, as I always will, I'm
6 going to remind you, don't talk about the case, don't allow
7 anybody to talk to you. Don't do any research on your own.

8 I want you back tomorrow morning, nine o'clock. We will
9 resume tomorrow morning, nine o'clock.

10 Thank you very much.

11 Leave your pads and pens. Thank you.

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

14 THE COURT: Anything further at this point in time,
15 Solicitor?

16 MS. von HERRMANN: No sir.

17 THE COURT: Mr. McCollum.

18 MR. MCCOLLUM: No, Your Honor.

19 THE COURT: Mr. Hazzard.

20 MR. HAZZARD: Nothing further, Your Honor.

21 THE COURT: All right. Very good.

22 All right. I'll see y'all back tomorrow morning, 9:30.

23 Please have the Defendant here -- I mean, nine o'clock. I'm
24 sorry. Nine o'clock. Nine o'clock. Have the Defendants here
25 by 8:30, please, 8:30.

1 Thank you very much.

2 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, JUNE 9,
3 2011, OUTSIDE THE PRESENCE OF THE JURY.)

4 THE COURT: Are there any matters that we need to cover
5 before the jury comes in?

6 MS. von HERRMANN: Your Honor, I do have two co-
7 defendants that I intend to put up this morning. One of them
8 is Gregory Floyd. The other one is Tiffany James. I have
9 pulled their Rap sheets. I had provided those previously to
10 Defense Counsel, and after reviewing those it appears to me
11 that, other than the pending charges there would not be any
12 other convictions or pending charges that could be inquired
13 of.

14 THE COURT: All right. You agree or disagree with
15 that, Mr. McCollum?

16 MR. McCOLLUM: Your Honor, on -- is it Tiffany? I
17 think she's got two convictions -- or she's got two charges
18 for assault and battery, with no disposition.

19 MS. von HERRMANN: I think it's just simple assaults
20 though.

21 MR. McCOLLUM: Well, they are simple or thirds,
22 whatever it's called.

23 MS. von HERRMANN: Right. Assault and battery third,
24 the simple assault.

25 MR. McCOLLUM: Yes. Yes, I agree with that.

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1 THE COURT: Okay. All right. And do you agree or
2 disagree, Mr. Hazzard?

3 MR. HAZZARD: Based on the documentation provided I
4 agree.

5 THE COURT: All right. Very good. All right. Ask the
6 jury to come in, please.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Solicitor, your next witness,
10 please Ma'am.

11 MS. von HERRMANN: Thank you. The State calls Gregory
12 Floyd.

13 THE COURT: All right. Mr. Floyd, if you would come on
14 up here, all the way where the Clerk is, please sir. All the
15 way up, sir.

16 GREGORY FLOYD, being first duly
17 sworn, testifies as follows:

18 DIRECT-EXAMINATION BY MS. von HERRMANN:

19 Q. How are you?

20 A. Doing fine.

21 Q. You and I have met before; is that correct?

22 A. Yes Ma'am.

23 Q. And you were arrested in connection with this case,
24 correct?

25 A. Yes Ma'am.

1 Q. And you've been charged with murder, armed robbery,
2 kidnapping and burglary; is that correct?

3 A. Yes Ma'am.

4 Q. And you were arrested on those charges, obviously, and
5 taken down to the police station, booked in and that sort of
6 thing.

7 A. Yes Ma'am.

8 Q. We see that you are in street clothes today. Were you
9 able to make bond at some point in this case?

10 A. Yes Ma'am.

11 Q. Okay. How long have you been out on bond?

12 A. Almost three months.

13 Q. At some point prior to the time that you were out on
14 bond, I think in 2 -- back in 2009, did you contact, through
15 your lawyer, a member of the Police Department, and tell them
16 that you would like to give them a statement about the
17 incidents that took place on April the 14th of 2008?

18 A. Yes Ma'am.

19 Q. And at that time did a detective come and talk with you
20 about that?

21 A. Yes Ma'am.

22 Q. And I was present at that interview as well, was I not?

23 A. Yes Ma'am.

24 Q. And you and I entered into something called a Proffer
25 Agreement; is that correct?

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1 A. Yes Ma'am.

2 Q. And under the terms of the Proffer Agreement you agreed
3 to provide some testimony here today; is that correct?

4 A. Yes Ma'am.

5 Q. And you agreed that when you came here to court today
6 you were going to be truthful.

7 A. Yes Ma'am.

8 Q. And did I promise you anything in return for that?

9 A. No Ma'am.

10 Q. And in fact, under the terms of the Proffer Agreement,
11 whatever testimony that you give here today can actually be
12 used against you in prosecuting you; is that correct?

13 A. Yes Ma'am.

14 Q. So is it your intention today to tell the truth?

15 A. Yes Ma'am.

16 Q. Let's talk a little bit about some different people
17 that were involved in this incident. Who is Tiffany James?

18 A. My brother's baby mother.

19 Q. Okay. How long have you known her?

20 A. Probably about five or six years.

21 Q. So she has a child by your brother.

22 A. Yes Ma'am.

23 Q. Her child would be your nephew; is that correct?

24 A. My niece.

25 Q. Your niece. Excuse me.

1 How about Donell James, who is he?

2 A. I know it's Tiffany's cousin. I don't know him like
3 that.

4 Q. You don't know him real well.

5 A. No Ma'am.

6 Q. How about Andrew James; do you know him?

7 A. Yes Ma'am.

8 Q. How long have you known him?

9 A. Since middle school.

10 Q. Y'all about the same age?

11 A. I'm probably like a year older than him.

12 Q. And how about Tanheshia Smith? Do you know who she is?

13 A. No Ma'am.

14 Q. And Ladorrean Collington, do you know who she is?

15 A. Yes Ma'am.

16 Q. How do you know her?

17 A. She's from Bucksport, where I'm from.

18 Q. You are from Bucksport?

19 A. Yes Ma'am.

20 Q. So how long have you known Ladorrean?

21 A. Probably since middle school.

22 Q. How old are you now again?

23 A. Twenty-four.

24 Q. And how about Quentin Gause; do you know him?

25 A. Yes Ma'am.

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- 1 Q. How long have you known him?
- 2 A. About -- about fifteen, fourteen years.
- 3 Q. And how do you know him?
- 4 A. Stay across from my Grandma.
- 5 Q. All right. You lived with your Grandmama in Bucksport?
- 6 A. No, we -- my mama -- we used to stay in Bucksport. We
- 7 moved. I'm from Bucksport, but he stay across from my
- 8 Grandma's house.
- 9 Q. He stays across from your Grandma's house, and you met
- 10 him about fifteen years.
- 11 A. Yes Ma'am.
- 12 Q. And y'all are pretty good friends, right?
- 13 A. Yes Ma'am.
- 14 Q. Y'all have hung out for, you know, for fifteen years,
- 15 right?
- 16 A. Yes Ma'am.
- 17 Q. Do you know how familiar he is with these other people?
- 18 Do you know if he had ever met any of these other people
- 19 before?
- 20 A. No Ma'am.
- 21 Q. Not to your knowledge. All right. At some point in
- 22 April of 2008 did you get a call regarding a potential
- 23 burglary and robbery?
- 24 A. Yes Ma'am.
- 25 Q. Did somebody call you about that?

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1 A. Yes Ma'am.

2 Q. All right, who called you?

3 A. Tiffany.

4 Q. That's Tiffany James?

5 A. Tiffany James, yes Ma'am.

6 Q. All right. And let me ask you about this. Tiffany
7 James and Ladorrean Collington, are they pretty good friends?

8 A. Yes Ma'am.

9 Q. All right. And what -- what information did Tiffany
10 give you at that time?

11 A. She was like, Dorrea had a lick, and I heard her in the
12 background -- I heard Dorrea in the background was like ---

13 MR. McCOLLUM: Your Honor, I'm just going to renew my
14 objection to the ---

15 THE COURT: All right.

16 MR. McCOLLUM: ---We had gone through the ---

17 THE COURT: I appreciate that, but I'm going to allow
18 it as to the -- what he heard.

19 You said you heard the Defendant, Collington, in the
20 background; is that correct?

21 A. Yes sir.

22 THE COURT: All right. I'll allow him to testify as to
23 what he heard.

24 MR. McCOLLUM: Yes. I just think I have to make a
25 contemporaneous objection.

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THE COURT: All right. Go ahead.

And what did you hear Ms. Collington saying?

- 3 A. She's saying she had a lick, it was easy, a easy lick.
4 Q. All right. What's a lick?
5 A. To rob somebody.
6 Q. All right. You break in the house and rob them.
7 A. Yes Ma'am.
8 Q. And when you hear somebody say it's an easy lick, what
9 does that mean to you? Why is it easy?
10 A. I guess, go in there with no problem.
11 Q. All right. So it's shouldn't be difficult?
12 A. Yes Ma'am.
13 Q. And what did you do after you got that call from
14 Tiffany?
15 A. I kept hanging up, told them I wasn't going to mess
16 with it, did not answer.
17 Q. You told them you weren't interested in it?
18 A. Yes Ma'am.
19 Q. All right. But at some point you did become interested
20 in it, right?
21 A. Yes Ma'am.
22 Q. And what happened -- what caused you to become involved
23 in that?
24 A. I went riding through -- rode in through Huckabee
25 Heights, and I seen Donell James, and he -- and he stopped me.

1 Q. All right. So this would have been, like say around
2 the 10th of April; is that correct?

3 A. Yes Ma'am.

4 Q. Would have been a few days prior to the actual
5 incident, right?

6 A. Yes Ma'am.

7 Q. All right. So you ran into Donell, and what did Donell
8 say to you?

9 A. He was like, take him to his house. So we went to his
10 house, then went over to Dorrea's house.

11 Q. All right. When you got over the Dorrea's house what
12 happened there?

13 A. Me, then Drew came, and Dorrea was like, what's up, are
14 y'all -- is we going to do the -- y'all going to do the lick.

15 Q. All right. When you say Drew, who is that? Is that
16 Andrew?

17 A. Andrew James, yes.

18 Q. All right. And did -- when she asked you that did she
19 provide you with any additional information about -- about the
20 lick?

21 A. She was like, go ahead, he home by hisself, or
22 something.

23 Q. Did she tell you where the loc -- where it would be
24 located?

25 A. No Ma'am.

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1 Q. Who knew where it would be located?

2 A. She just said she been over there the other night,
3 and ---

4 Q. She told you she's been over there.

5 A. Yes Ma'am.

6 Q. And do you recall her telling you where to look, where
7 you needed to look when you got into the house?

8 A. I think she said the drawers, the drawers, the drawers.

9 Q. The drawers.

10 A. Yes Ma'am.

11 Q. All right. And so who was going to go over there?

12 A. Me, Donell James, and Drew James.

13 Q. Did -- did somebody drive y'all over there?

14 A. No Ma'am. We had walked the first time.

15 Q. You walked over there. All right, where did you walk?

16 A. Like on the side of the house, like a path.

17 Q. All right. There's a path that goes from Ladorrean's
18 apartment there to Barberry Drive?

19 A. Yes Ma'am.

20 Q. All right. Tell the jury, if you will, what happens
21 after y'all go walking through there.

22 A. We walked through there, got up to the house, me and
23 Drew James was like ---

24 THE COURT: You need to speak up, sir.

25 A. We walked over there, and when we got to the house me

1 and Drew James, we stepped on the porch. We was like -- we
2 wasn't really sure, so we turned around and told him to let's
3 go, so we turned around and headed back to Dorrea's house.

4 Q. All right. So when you got there to that doorway --
5 I'm going to -- let me show you a picture here. I'm going to
6 show you State's Exhibit 3. Do you recognize that?

7 A. Yes Ma'am.

8 Q. What's that?

9 A. The apartment.

10 Q. Is that the one that you went to ---

11 A. Yes Ma'am.

12 Q. ---Where the victim, Allen Smith, lived?

13 A. Yes Ma'am.

14 Q. And I'm going to also show you State's Exhibit Number

15 5.

16 A. Yes Ma'am.

17 Q. What is that?

18 A. The apartment.

19 Q. All right. Is that the door that y'all went up to?

20 A. Yes Ma'am.

21 Q. Is that in the front, located in the front?

22 A. Yes Ma'am.

23 Q. So when you got up there what do you -- what was it
24 that made you say, not a good idea?

25 A. I wasn't ready, because I'm not that type of person, so

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1 I just changed my mind.

2 Q. All right. You were -- were you nervous?

3 A. Yes Ma'am, I was nervous.

4 Q. All right. Did you have any weapons with you at that
5 time?

6 A. No Ma'am.

7 Q. How about Donell, did he have a weapon?

8 A. Yes Ma'am.

9 Q. What did he have?

10 A. He had a handgun.

11 Q. And what did -- what did Andrew have?

12 A. The shotgun.

13 Q. All right. And let me show you what's been marked as
14 State's Exhibit 69. Does that look like the shotgun that
15 Andrew had?

16 A. Yes Ma'am.

17 Q. Do you have any idea whether that shotgun was
18 functioning or not?

19 A. I think it was.

20 Q. How about the -- the weapon that Donell had at that
21 time? Do you know what -- you said it was a handgun, correct?

22 A. Yes Ma'am.

23 Q. Do you know what caliber handgun?

24 A. No Ma'am.

25 Q. When you went over there was there something that you

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1 were suppose to get out of the house?

2 A. They said -- Dorrea said it was money.

3 Q. That there was money over there?

4 A. Yes Ma'am.

5 Q. Did she give you any idea about how much money would be
6 over there?

7 A. Like Thirty, Forty Thousand Dollars.

8 Q. That's a lot of money. And I guess you guys were going
9 to divide that up; is that right?

10 A. Yes Ma'am.

11 Q. All right. So once -- did you notice anything -- when
12 you got up to that door did you notice anything about the
13 windows there in the front?

14 A. I think it was cracked.

15 Q. Okay. All right, so when you leave that residence,
16 which direction did you go when you went back to Ladorrean's
17 apartment?

18 A. Through the same path.

19 Q. Would you walk -- you would walk down Barberry Drive?

20 A. Yes Ma'am.

21 Q. At some point did someone come out of that residence
22 that you had gone to?

23 A. Yes Ma'am.

24 Q. And tell the jury, please, if you will, about that.

25 A. When we was walking down the street somebody came out

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of the house, came out there in the yard and looked, and we
2 looked back, but we kept walking, kept walking back to the
3 apartment.

4 Q. Was that a man or a woman that came out?

5 A. I think a woman.

6 Q. All right. And did she say something to y'all?

7 A. No Ma'am.

8 Q. You don't remember her saying anything. And once you
9 got back to Ladorrean's house did you all have any
10 conversation with her?

11 A. Yes Ma'am. We was like ---

12 Q. What did you, or what did anyone else say to her about
13 it?

14 A. We was like, I thought you said he was home by hisself,
15 and she -- she was like, she thought he was home by hisself.

16 Q. All right. And obviously he was not home by himself,
17 because somebody else came out, correct?

18 A. Yes Ma'am.

19 Q. And so at some point then did you leave her house?

20 A. Yes Ma'am.

21 Q. And where did you go?

22 A. Back to Crane Creek.

23 Q. Do you have a car? Did you have a vehicle at that
24 time?

25 A. I had my baby mama's car.

1 Q. What kind of car is that?

2 A. A Diamante.

3 Q. A Diamante. Okay. What color was it?

4 A. Gold.

5 Q. Gold Diamante. And you drove that back to Crane Creek.
6 Tiffany James was at Crane Creek too, right? Does your
7 girlfriend live right across from Tiffany?

8 A. Yes Ma'am.

9 Q. So then let's kind of fastforward to Monday, April the
10 14th. Between -- between this time -- which I think was
11 around the 10th -- and the 14th, did you have any more
12 discussions with Ladorrean Collington about -- about this
13 incident?

14 A. No Ma'am.

15 Q. All right. And at this point in time did Quentin Gause
16 know any -- did he know anything about any of this?

17 A. No Ma'am. Not at that time.

18 Q. So he didn't know anything at that time, right?

19 A. Yes Ma'am.

20 Q. All right. So on Monday, April the 14th, where did you
21 wake up that morning?

22 A. In Crane Creek.

23 Q. And tell me what you did when you -- after you got up.

24 A. Woke up, took a shower, went out there to Sugar Hill.

25 Q. What's Sugar Hill?

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1 A. Behind Cherry Hill. Like behind the apartments where
2 people just sit at, play cards.

3 Q. People hang out.

4 A. Yes Ma'am.

5 Q. Play some cards, maybe drink some liquor.

6 A. Yes Ma'am.

7 Q. Maybe smoke a little pot.

8 A. Yes Ma'am.

9 Q. All right. And did you hear from any of your co-
10 defendants while you were out there?

11 A. Donell James had called me.

12 Q. All right. What did he say?

13 A. He said, what's up, do you want to go back on that
14 lick, he had talked to Dörrea.

15 Q. And what did you say to him in response to that?

16 A. I said, I don't know, cause I was on the phone with
17 Bait, then he had beeped in, so ---

18 Q. Let me get you to back -- I'm having a hard time
19 hearing you. You are on the phone with Donell, and he said,
20 do you want to go back on that lick, right?

21 A. Yes Ma'am.

22 Q. And then you just said something about Bait, but I
23 couldn't understand.

24 A. I told him -- I told him I don't know about the lick,
25 so he hung up, and then I called Bait and was talking to Bait,

1 then Donell beeped back in, asked me what I was going to do,
2 so I told Bait about it, and then we rode over there.

3 Q. All right. So then you told Bait about it, and Bait is
4 Quentin Gause, right?

5 A. (NODS HEAD AFFIRMATIVE)

6 Q. And what did he say when you told him about it?

7 A. He was like, all right.

8 Q. He said he was in?

9 A. Yes Ma'am.

10 Q. Now, back then he had some dreads, didn't he?

11 A. Yes Ma'am.

12 Q. He didn't look like he does today, did he?

13 A. No Ma'am.

14 Q. Is he a -- kind of a short fellow?

15 A. Yes Ma'am.

16 Q. Shorter than you?

17 A. Yes Ma'am.

18 Q. How about Donell James; is he shorter than you, or
19 taller than you?

20 A. I'm a little taller than him.

21 Q. Okay. So it would be like you would be the tallest,
22 and then Donell, and then Quentin, right?

23 A. Yes Ma'am.

24 Q. All right. So did -- did Bait -- did he have a vehicle
25 that day?

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- 1 A. Yes Ma'am.
- 2 Q. What kind of vehicle did he have, or what color was it?
- 3 A. Red.
- 4 Q. Was it a two-door or a four-door?
- 5 A. Four-door.
- 6 Q. And big car, or small car?
- 7 A. A small car.
- 8 Q. And did you all drive that car?
- 9 A. Yes Ma'am.
- 10 Q. All right. Was he driving or you driving?
- 11 A. He was driving.
- 12 Q. Where did you all go?
- 13 A. Donell James' house.
- 14 Q. All right. Did he come pick you up ---
- 15 A. Yes Ma'am.
- 16 Q. ---In that car. And when you got to Donell James'
- 17 house did the two of y'all talk about it a little bit on the
- 18 way over there?
- 19 A. Yes Ma'am. We was like -- they say they had a lick, so
- 20 we was like, I guess we was going to go try to do it.
- 21 Q. Did you tell him about the fact that y'all had been
- 22 over there before, and it hadn't quite worked out?
- 23 A. No Ma'am.
- 24 Q. All right. Y'all didn't discuss that?
- 25 A. (NODS HEAD NEGATIVE)

1 Q. When he came and picked you up you drove straight to
2 Donell's -- and when you say Donell's, you mean over there
3 to -- to his girlfriend's apartment.

4 A. Baby mama's house.

5 Q. And his girlfriend lived in the same apartment complex
6 as Ladorrean Collington?

7 A. Yes Ma'am.

8 Q. So when you drive over there who's at the house? Who
9 is at Tanheshia's, or Donell's?

10 A. I didn't see nobody. Donell James said she was in the
11 room.

12 Q. All right. You saw Donell.

13 A. Yes Ma'am.

14 Q. Didn't see Tanheshia?

15 A. No Ma'am.

16 Q. Who else?

17 A. It was me, Bait, Donell, and Tiffany came walking over
18 there.

19 Q. All right. Tiffany comes walking over. Did you have
20 any weapons at that time?

21 A. No Ma'am.

22 Q. All right. How about Bait; did he have any weapons?

23 A. Yes Ma'am. He had a shotgun.

24 Q. What kind of shotgun was it?

25 A. It was a camouflage.

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1 Q. Camouflage. Did it have a pistol grip on it?

2 A. I can't -- I can't remember.

3 Q. All right. Do you know if it was one of those that
4 you, like, put up on your shoulder, or whether it's like one
5 that you can hold like this? You don't ---

6 A. One you put on your shoulders.

7 Q. All right. So you get up there. Is it fairly long, or
8 short, sawed off?

9 A. It's kind of -- kind of short.

10 Q. Kind of short.

11 A. Yes Ma'am.

12 Q. All right. Camouflage. And did you have a
13 conversation with him about that?

14 A. About the shotgun?

15 Q. Uh huh (indicating positive)

16 A. No Ma'am.

17 Q. All right. He didn't tell you where he had gotten
18 that, or give you any details about it.

19 A. (NODS HEAD NEGATIVE)

20 Q. Was it a pretty nice gun, nice looking gun?

21 A. Yes Ma'am.

22 Q. Did he have some ammunition with that gun, that went
23 with it?

24 A. Andrew had brought some.

25 Q. Okay. What else did Drew bring over there?

1 A. That sawed-off right there, and the .22, and some
2 bullets.

3 Q. All right. Let me show you -- I'm going to show you
4 this. It's been marked as State's Exhibit 70. Do you
5 recognize that?

6 A. Yes Ma'am.

7 Q. Is that the .22 that Andrew brought over there?

8 A. Yes Ma'am.

9 Q. And you said that it had some ammunition with it as
10 well. Do you remember him ---

11 I need you to answer verbally, instead of shaking your
12 head. All right.

13 I'm going to show you State's Exhibit 41. Do you
14 recognize that?

15 A. Yes Ma'am.

16 Q. What is that?

17 A. Like a suitcase.

18 Q. Did -- how -- what's the significance of that suitcase?

19 A. It came in with the shotgun and shells.

20 Q. All right. I'm going to show you State's Exhibit 42.
21 Are those the -- is that the ammunition that Andrew brought
22 over there with him?

23 A. Yes Ma'am.

24 Q. All right. Do you know what kind of bullets those are?

25 A. .22 bullets, look like.

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1 Q. .22. And again, the guns that Andrew brought would be
2 this one, State's 70, and this one, State's 69.

3 A. Yes Ma'am.

4 Q. All right. So, you've got three guns, you've got three
5 people that are going, right?

6 A. Yes Ma'am.

7 Q. Was there any discussion about -- ever about Andrew
8 going?

9 A. No Ma'am.

10 Q. All right. What -- do you have any idea what Andrew
11 was doing that day?

12 A. He just dropped -- dropped the suitcase off and he
13 left, because he was moving. Him and his girlfriend left.
14 They was moving their stuff to a new apartment.

15 Q. How long did he stay there, you figure?

16 A. Like one or two minutes.

17 Q. All right. What was Bait -- let me ask you this, where
18 did he have that weapon, that camouflage shotgun? Did he have
19 it in the car with him? Was it in the inside the vehicle, in
20 the trunk, in the front seat, back seat?

21 A. Inside the vehicle.

22 Q. Inside the vehicle. And that's -- he got it out of
23 there, and did he have any other items with him?

24 A. No. He had ski mask and duct tape.

25 Q. He had a ski mask and some duct tape.

- 1 A. Yes Ma'am.
- 2 Q. All right. What was he wearing? What kind of clothing
3 was he wearing?
- 4 A. All black.
- 5 Q. All black. Did he have anything on his hands?
- 6 A. Gloves.
- 7 Q. What color gloves were they?
- 8 A. Black.
- 9 Q. And did he put those gloves on? Did you see him put
10 the gloves on?
- 11 A. Yes Ma'am.
- 12 Q. And did he do anything with that duct tape?
- 13 A. He was putting it around his wrists.
- 14 Q. So he put the glove on, right; is that correct, and
15 then he put the duct tape around it?
- 16 A. No, he just -- the duct tape was already on the thing.
17 He just had to pull it off.
- 18 Q. All right. Why would you -- why would somebody do
19 that?
- 20 A. I mean it's ---
- 21 Q. Keep it on your hand?
- 22 A. I guess -- he was going to use it, I guess.
- 23 Q. All right. So he's got black clothing on, you said.
- 24 A. Yes Ma'am.
- 25 Q. Gloves.

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1 A. Yes Ma'am.

2 Q. Duct tape, shotgun.

3 A. Yes Ma'am.

4 Q. Did he bring anything else with him that you recall?

5 A. That's it.

6 Q. All right. What about you; what were you wearing?

7 A. I had on some shorts, I had on a white T, and some

8 black shoes, and Donell James gave me a green shirt.

9 Q. What did you do with that green shirt?

10 A. Put it on, over my face.

11 Q. Put it over your face. All right. Did you have

12 something to kind of hold it in place, or did you tie it

13 around your face, or ---

14 A. Tied it.

15 Q. Tied it around your face. All right. Now when y'all

16 are over there did somebody ever bring -- I mean, did y'all

17 discuss, you know, what if he had a gun, or that there might

18 be guns in there. Was that ever a concern of yours?

19 A. Donell James had talked to Tiffany -- I meant, talked

20 to Dorrea.

21 Q. And what did Donell James say about it?

22 A. He was like, you ain't got to shoot him because it's a

23 easy lick.

24 Q. All right. And does that mean that he would just give

25 up the money basically?

- 1 A. Yes Ma'am.
- 2 Q. All right. Did anybody give you any idea about where
3 Mr. Smith would be located when y'all went into the house?
- 4 A. Yes. I think Donell said he would have been in the
5 back, the back room.
- 6 Q. And you testified earlier that the money that y'all
7 would be looking for would be in the drawer, right?
- 8 A. Yes Ma'am.
- 9 Q. All right. So did you leave Donell's apartment at some
10 point?
- 11 A. No Ma'am. We left -- when we -- the first time we left
12 we left and went to the apartment.
- 13 Q. Okay. So you left -- left the apartment. How did --
14 whose car were you in when y'all went over to do this burglary
15 and robbery?
- 16 A. The same red car Bait used.
- 17 Q. All right. Who was driving that vehicle?
- 18 A. Tiffany James.
- 19 Q. And who was seated in the front?
- 20 A. I was.
- 21 Q. You were in the front passenger side. Who was seated
22 in the rear?
- 23 A. Bait.
- 24 Q. All right, and who else?
- 25 A. Donell James.

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1 Q. All right. Were there ever any more than four people
2 in that car?

3 A. No Ma'am.

4 Q. All right. Now, when you talked to the police way back
5 when I think you told them there was some other dude that was
6 in there, and that you stayed in the car with Tiffany, and
7 that those -- these other -- that these other three dudes went
8 in there; is that right?

9 A. Yes Ma'am.

10 Q. All right. Was that the truth?

11 A. No Ma'am.

12 Q. The testimony that you are giving to the jury here
13 today, are you being truthful about that?

14 A. Yes Ma'am.

15 Q. All right. So when -- I'm going to show you a map
16 here, which is State's Exhibit 40, and I'm going to point out
17 to you two locations. This is the victim's house here, on
18 Barberry Drive, and this is Ms. Collington's apartment here,
19 at the apartment complex. Show the jury, if you will, on here
20 where that little path is that you had discussed previously,
21 where that would be located.

22 A. Right there. (indicating)

23 THE COURT: You need to speak up, sir.

24 A. Right there, between those four houses, in the middle.

25 (Indicating)

1 Q. So when you all are in the red car on Monday, April the
2 14th, did Tiffany -- where did Tiffany drive in to get to Mr.
3 Smith's house?

4 A. We got back on 544.

5 Q. Probably outside of this map, isn't it?

6 A. Yes Ma'am.

7 Q. But you would come back around ---

8 A. Yes Ma'am.

9 Q. ---To Barberry Court from the other end.

10 A. Cut through this right here. (indicating)

11 Q. And so, are you driving down Barberry Drive?

12 A. Yes Ma'am.

13 Q. Did she go to the end or -- to turn arou -- and turn
14 around, or ---

15 A. Yes Ma'am.

16 Q. She drove all the way to the end of that cul-de-sac and
17 turned around so that the car was facing out.

18 A. Yes Ma'am.

19 Q. And did she park out there near the house?

20 A. Yes Ma'am.

21 Q. Did y'all have any discussion about whether she was
22 going to stay there and wait on y'all, or whether she was
23 going to leave?

24 A. They had told her to sit right there.

25 Q. Okay. So you are there in front of his house, and what

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1 happens next?

2 A. We got out the car.

3 Q. Let me actually ask you this. At that point what
4 weapon does Bait have?

5 A. The shotgun.

6 Q. Which -- was it the camouflage?

7 A. Camouflage.

8 Q. What gun does Donell James have?

9 A. The shotgun right there, --- (indicating)

10 Q. You are pointing ---

11 A. ---The sawed-off.

12 Q. ---To State's Exhibit 69. And what gun did you have?

13 A. .22.

14 Q. All right. You are pointing to State's Exhibit 7. And
15 so you go -- you all get out of the car altogether; is that
16 correct?

17 A. Yes Ma'am.

18 Q. Tiffany stay in the car, or did she get out?

19 A. She stayed in the car.

20 Q. When you get out, tell the jury what happened next.

21 A. We got out the car, went to the door. I don't -- I
22 think Donell put his ear to the door to see if somebody is
23 there. I kicked the door down and went in the -- went in the
24 room, all three of us, one of the -- somebody in there was --
25 had him under the bed. They was on the fl ---

1 Q. Let me just stop you real quick, because you are -- you
2 are moving real quickly, and I've got a couple of questions I
3 need to ask you. All right.

4 A. Okay.

5 Q. You said that -- you said you kicked the door in.

6 A. Yes Ma'am.

7 Q. And let me show you State's Exhibit 1(B). This is a
8 diagram of the house. Do you recognize these rooms?

9 A. Yes Ma'am.

10 Q. Just take a second to look at that, familiarize
11 yourself with it.

12 MS. von HERRMANN: I would ask him to be able to come
13 down for one moment if he could.

14 THE COURT: He may do so. Get there in front of the
15 jury box and stand right next to that microphone.

16 MS. von HERRMANN: All right. This is the microphone
17 right here, Mr. Floyd, so I'm going to need you to stand right
18 there so that they can hear you, and the Court Reporter can
19 hear you.

20 Q. All right. This being the front doorway here, tell me
21 what you all did after you kicked in that door.

22 A. Came inside, ran in the room right here, all three ---

23 THE COURT: You have to speak up, sir. Can't hear you.

24 Q. Talk real loud.

25 A. Came inside, all three of us came in the room right

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1 here.

2 Q. All right. That's going to be the front bedroom.

3 A. Yes Ma'am.

4 Q. And was there a person in that front bedroom?

5 A. Yes Ma'am.

6 Q. And did you -- did you know that person? Had you ever
7 met him before?

8 A. No Ma'am.

9 Q. And what kind of furniture was in there; do you recall?

10 A. Like a blow-up bed or something.

11 Q. Like an air mattress?

12 A. Yes Ma'am.

13 Q. Okay. So when you walk into that front room what
14 happens next?

15 A. All three of us was in here, and we seen he had the
16 guns, and he -- he jumped on the floor, trying to crawl under
17 the bed.

18 THE COURT: All right, Solicitor, I'm having a hard
19 time hearing him.

20 MS. von HERRMANN: Maybe if I moved this back and had
21 him up here ---

22 THE COURT: Then you are going to have to -- can you
23 pick that up, and just speak, as best you can, directly into
24 it. Okay.

25 A. All right. We was -- all three of us in the room. We

1 was pointing the guns, and I meant, he jumped off the bed, was
2 trying to crawl under the bed.

3 Q. All right. Did anybody say anything at that point?

4 A. Like, where it at.

5 Q. Where it at.

6 A. Yes Ma'am.

7 Q. And what did y'all mean by where it at?

8 A. Where the money was at.

9 Q. The money?

10 A. Yes Ma'am.

11 Q. Okay. So did you stay in this front bedroom?

12 A. Yes Ma'am.

13 Q. And did Donell stay in that front bedroom?

14 A. Him and Bait ran in the room.

15 Q. He and Bait ran in what room?

16 A. Big A's room.

17 Q. All right. Point that out, which room that would be.

18 A. Right here. Right here. (indicating)

19 Q. All right. And they -- did you keep a gun on this man
20 in the front room?

21 A. Yes Ma'am. When he was under the bed.

22 Q. All right. But you stay -- did you stay here? Where
23 were you standing?

24 A. Right here.

25 Q. So your job at that point was to make sure that he

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1 didn't -- didn't get out.

2 A. Yes Ma'am.

3 Q. All right. Donell and Bait go into this back room.

4 A. Yes Ma'am.

5 Q. And what is the next thing that happens?

6 A. I heard a shotgun.

7 Q. Did you hear one blast?

8 A. I heard two.

9 Q. And did you hear anybody saying anything?

10 A. No Ma'am.

11 Q. And what did -- were they in there for a few minutes?

12 Do you have any idea about the amount of time or ---

13 A. About one minute or two minutes.

14 Q. All right. And then what was the next thing that you
15 saw happen?

16 A. After I heard the shotgun I seen them come running out.

17 Q. You seen who come running out?

18 A. J.B. and Bait.

19 Q. All right. And are you -- where are you standing at
20 that point?

21 A. Still in the room.

22 Q. All right. How do you see them running out if you are
23 still in the room?

24 A. I see them on the side of my eyes, out of my -- of my
25 view.

1 Q. Okay. And then what do you do? Are they -- do they
2 run out the front door, can you tell?

3 A. Yes Ma'am. They was like, come on, let's go. So I ran
4 out, tripped, hit the wall, braced myself back up, seen
5 somebody laying in the middle of the floor.

6 Q. Okay. So you trip when you fall out of here -- when
7 you come out of here, right?

8 A. Yes Ma'am.

9 Q. And you hit what wall?

10 A. Right here. (indicating)

11 Q. All right. And did you see the victim, Mr. Smith, at
12 that point?

13 A. Yes Ma'am.

14 Q. All right. Where was he laying?

15 A. Right there, where he at now. (indicating)

16 Q. And he was -- he was laying on the ground. He wasn't
17 standing; is that correct?

18 A. Yes Ma'am.

19 Q. And tell the jury what happened next.

20 A. I braced myself off the wall. I looked down, seen
21 somebody standing and I panicked, and mis-pulled the trigger.

22 Q. All right. And you -- you shot him.

23 A. Yes Ma'am.

24 Q. No doubt about that.

25 A. Yes Ma'am.

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1 Q. All right. And then after you shot him -- and that
2 would have been with that .22, correct?

3 A. Yes Ma'am.

4 Q. And then what did you do after that?

5 A. We ran out the house. I ran out the house.

6 Q. All right. You ran out of the house. So, once you get
7 out of the -- did you ever go into this room?

8 A. No Ma'am.

9 Q. All right. Once you get out of the house ---

10 MS. von HERRMANN: You can go ahead and have a seat
11 back up here now.

12 Q. Once you get out of the house what happens next?

13 A. We ran toward the car. I jumped back in the passenger
14 side. Bait and J.B. jumped in the back seat, and we rode on
15 501, went back to Conway.

16 Q. Let me stop you real quick. When you say J.B., who is
17 J.B.?

18 A. Donell James.

19 Q. Donell James. That's just his nickname, right? He
20 goes by John Boy too, right?

21 A. Yes Ma'am.

22 Q. When he came out of the house did he have anything with
23 him?

24 A. Yes Ma'am. He had a -- some long gun. It was in a bag
25 though.

- 1 Q. It was in a bag?
- 2 A. Yes Ma'am.
- 3 Q. All right. Do you know what color the bag was?
- 4 A. Like grey.
- 5 Q. All right. And where -- when you all got back into the
6 vehicle, as you are getting ready to leave, where were you
7 seated at that point?
- 8 A. In the passenger's side.
- 9 Q. Same place you were before. And who was seated in the
10 back seat?
- 11 A. Donell James and Quentin Gause.
- 12 Q. All right. And where did Greg -- excuse me -- where
13 did Donell put that gun that he had -- or that bag -- excuse
14 me -- that he had taken out of the residence?
- 15 A. In the back seat.
- 16 Q. Did he tell you at some point that he had taken it out,
17 or did you just see it; did you ask about it?
- 18 A. Yes, I seen it.
- 19 Q. Did you ask him about it?
- 20 A. No, he told me.
- 21 Q. All right. He told you. All right. So you all get in
22 the car and are y'all -- then you -- are you pulling out of
23 there?
- 24 A. Yes Ma'am.
- 25 Q. All right. What is the conversation that's going on in

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1 the car as y'all are pulling away from the house? What are
2 you saying?

3 A. I was just looking straight. Paranoia.

4 Q. Paranoia.

5 A. Yes Ma'am.

6 Q. How about Donell; did you hear him say anything?

7 A. Yes Ma'am. He had got my phone and called Dorrea, and
8 told her Bait shot the dude.

9 Q. All right. He call -- he calls Ladorrean, and he said,
10 Bait shot the dude.

11 A. Yes Ma'am.

12 Q. All right. What's Bait doing?

13 A. He was like, don't say my name, don't tell her my name.

14 Q. All right. Did he say anything else?

15 A. No Ma'am.

16 Q. All right. Did he say, like, I'm sorry I shot that
17 gun?

18 A. No Ma'am.

19 Q. Like, I can't believe I shot that guy.

20 A. No Ma'am.

21 Q. I wish I hadn't shot that gun.

22 A. No Ma'am.

23 Q. He didn't say any of those things?

24 A. No Ma'am.

25 Q. All right. Where did you all drive to?

- 1 A. On Whittemore Street.
- 2 Q. Who lives on Whittemore Street?
- 3 A. TaTa.
- 4 Q. Who is TaTa?
- 5 A. I don't know. TaTa Sumter, one of Bait's sister.
- 6 Q. Just Bait's sister. Is it like maybe his half-sister,
- 7 or really his sister, or you ---
- 8 A. It's -- they so -- they grew up close, so he call her
- 9 sister.
- 10 Q. Okay. So it's somebody that Bait is friends with;
- 11 y'all drove to her house.
- 12 A. Yes Ma'am.
- 13 Q. And what happens once you get to her house?
- 14 A. Me, Donell James, and Tiffany James jumped out, jumped
- 15 out the car.
- 16 Q. All right. Did Donell still have that gun with him
- 17 that -- that he had taken out of the house?
- 18 A. Yes Ma'am.
- 19 Q. And did he also have the shotgun?
- 20 A. Yes Ma'am.
- 21 Q. And did you still have the .22?
- 22 A. Yes Ma'am.
- 23 Q. And what about Bait; what did he do?
- 24 A. He pulled off.
- 25 Q. He -- did he -- he got in the driver's portion of the

GREGORY FLOYD - DIRECT BY von HERRMANN

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1 car, of the red car.

2 A. Yes Ma'am.

3 Q. And he drove off.

4 A. Yes Ma'am.

5 Q. And did you see him again after that?

6 A. Later on that day.

7 Q. You saw him later that day. And when was that that you
8 saw him later that day?

9 A. Probably like a hour and a half ago, hour or two -- two
10 hours after that.

11 Q. All right. Where did you see him?

12 A. When I was -- when I went back to Sugarhill, he was
13 walking.

14 Q. All right. And did you talk to him?

15 A. Yes Ma'am.

16 Q. What did he say to you then?

17 A. He was like, the dude -- the dude dead, so don't say
18 nothing.

19 Q. And when he said the dude, I mean obviously you knew
20 that was Allen Smith, right?

21 A. Yes Ma'am.

22 Q. Did he say anything else to you?

23 A. No Ma'am. He just kept walking.

24 Q. All right. Let's go back to the time when y'all got to
25 TaTa's house, Bait's sister, and you -- you testified that you

1 and Donell and Tiffany, y'all leave, or y'all -- y'all are on
2 foot.

3 A. Yes Ma'am.

4 Q. And where are you going?

5 A. We walked through Huckabee Heights.

6 Q. What's -- what's Huckabee Heights?

7 A. Like the projects.

8 Q. Is that near Crane Creek?

9 A. Sort of, yes Ma'am.

10 Q. All right. And so is it close to where you were living
11 with your girlfriend?

12 A. Yes Ma'am.

13 Q. Where Tiffany was living. And what did y'all do once
14 you got over to Huckabee Heights?

15 A. Walked through on side of the woods, and J.B. threw the
16 shotgun in the woods.

17 Q. Let me show you State's Exhibit 38 -- excuse me -- 37,
18 38 and 39. Have you take a look at those particular items.
19 I'll give just a second to look through them.

20 What does that look like to you?

21 A. A shotgun.

22 Q. Okay. What about -- so you threw the shotgun away in
23 the woods.

24 A. Yes Ma'am.

25 Q. Donell threw the shotgun away in the woods.

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- 1 A. Yes Ma'am.
- 2 Q. You were there and you saw him do that?
- 3 A. Yes Ma'am.
- 4 Q. What about the .22; did you keep the .22?
- 5 A. I wrapped it up in the green shirt and gave it to
- 6 Tiffany.
- 7 Q. That would be the green shirt that you had over your
- 8 face earlier?
- 9 A. Yes Ma'am.
- 10 Q. And that was Donell's shirt, I think you testified,
- 11 right?
- 12 A. Yes Ma'am.
- 13 Q. All right. Where did you go after that?
- 14 A. Walked to Crane Creek, me and Tiffany. Donell -- I
- 15 mean, we -- he split up from us.
- 16 Q. He did.
- 17 A. Yes Ma'am.
- 18 Q. He went off on his own way, and you and Tiffany kept
- 19 walking ---
- 20 A. Yes Ma'am.
- 21 Q. ---Toward Crane Creek?
- 22 A. Yes Ma'am.
- 23 Q. And did y'all go to Crane Creek; is that where you
- 24 went?
- 25 A. Yes Ma'am.

- 1 Q. Where did you go?
- 2 A. I went to my baby mama house, and Tiffany went to her
- 3 house.
- 4 Q. Y'all both went to your respective apartments. Did you
- 5 -- did you stay in that apartment for a while?
- 6 A. No Ma'am. I stayed like about -- almost an hour.
- 7 Q. And then you left?
- 8 A. Yes Ma'am. I went back to Sugarhill.
- 9 Q. Did you run into anybody at Sugarhill?
- 10 A. Yes Ma'am. I ran into J.B..
- 11 Q. You ran into him back over there?
- 12 A. Yes Ma'am.
- 13 Q. All right. After the day of this incident, did you
- 14 have any more contact with Ladorrean Collington?
- 15 A. She kept calling my phone.
- 16 Q. And did she -- did she want to meet with you?
- 17 A. Not that day, not the first day, but the next day she
- 18 did.
- 19 Q. The following day she wanted to meet with you?
- 20 A. Yes Ma'am.
- 21 Q. And that was the telephone conversation, right?
- 22 A. Yes Ma'am.
- 23 Q. And what did she say to you in that telephone
- 24 conversation?
- 25 A. She was like -- she asked me what happened, then J.B.

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1 tell her what happened, and she came -- like, this is the same
2 day.

3 Q. Uh huh (indicating positive)

4 A. She came out there to Crane Creek, and her and Tiffany
5 and them start talking, and Donell James, he split up and went
6 somewhere else, and then I left and took Andrew James
7 somewhere, came back, and that was it for that night.

8 Q. Okay. So Ms. Collington, she knew immediately after
9 this happened that he had been shot ---

10 A. Yes Ma'am.

11 Q. ---Correct. Right -- I mean right after.

12 A. Yes Ma'am, cause Donell James had called her.

13 Q. All right. How about after you saw Quentin Gause,
14 Bait, that particular day; did you see him again?

15 A. No Ma'am.

16 Q. Why didn't you see him again?

17 A. Obviously cause he was gone.

18 Q. He was gone.

19 A. Yes Ma'am.

20 Q. Where did he go?

21 A. He went on the run.

22 Q. Where did -- he went on the run?

23 A. Yes Ma'am.

24 Q. And when you say he went on the run, do you know where
25 he took off to?

1 A. No Ma'am.

2 Q. All right. Do you know where they arrested him?

3 A. Yes Ma'am.

4 Q. Where did they arrest him?

5 A. In Georgia, I think. Georgia.

6 Q. They picked him up in Georgia.

7 A. Yes Ma'am.

8 Q. Do you have any idea what date they picked him up in
9 Georgia?

10 A. No Ma'am.

11 MS. von HERRMANN: Thank you, Mr. Floyd. Please answer
12 any questions that the Defense counsel may have.

13 THE COURT: All right. Mr. McCollum.

14 MR. McCOLLUM: May it please the Court.

15 THE COURT: Yes sir.

16 CROSS-EXAMINATION BY MR. McCOLLUM:

17 Q. Mr. Floyd, how are you doing?

18 A. Yes sir. All right.

19 Q. My name is Greg McCollum. I represent Ms. Collington,
20 okay.

21 A. Okay.

22 Q. Let me ask you this. Is it easier to kill somebody or
23 to lie?

24 A. Lie.

25 Q. Yes sir. Which is easier?

GREGORY FLOYD - CROSS BY McCOLLUM

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- 1 A. To lie.
- 2 Q. Easier to lie. There's no question but you killed
3 somebody, right?
- 4 A. I didn't kill nobody.
- 5 Q. You didn't kill nobody. You shot him dead, didn't you?
- 6 A. I didn't -- I didn't -- he was -- I did -- yes, I shot,
7 but he was already laying on the floor.
- 8 Q. So you think you shot a dead man.
- 9 THE COURT: Sir. Did you ---
- 10 A. Sir.
- 11 Q. Do you think you shot a dead man?
- 12 A. I assume, yes sir.
- 13 Q. You assumed he was dead.
- 14 A. Yes sir.
- 15 Q. Well, why would you do that?
- 16 A. Scared.
- 17 Q. Scared. Well, the truth is, this man, you didn't even
18 know him, did you?
- 19 A. No sir.
- 20 Q. He never did anything to you, right?
- 21 A. No sir.
- 22 Q. Never wronged you in any way, right?
- 23 A. No sir.
- 24 Q. Never made you mad, right?
- 25 A. No sir.

- 1 Q. Never stole from you, right?
- 2 A. No sir.
- 3 Q. Never hurt anybody that you cared about, right?
- 4 A. No sir.
- 5 Q. Never threatened you, right?
- 6 A. No sir.
- 7 Q. But even though you are not the kind of person to do
- 8 something like this, that day you had literally, hell in your
- 9 heart and a pistol in your hand, and you shot him dead for no
- 10 reason, right?
- 11 A. Yes sir.
- 12 Q. Have you thought about that? Have you?
- 13 A. Yes sir.
- 14 Q. What do you think about it?
- 15 A. I was wrong.
- 16 Q. I was just wrong.
- 17 A. Uh huh (indicating positive)
- 18 Q. All right. But having done that, the lying is a lot
- 19 easier than that, right?
- 20 A. I mean, I lied, yes sir. I was scared.
- 21 Q. You lie. You lie a lot, don't you?
- 22 A. I lied.
- 23 Q. You've been -- how many years you been lying?
- 24 A. Everybody lies.
- 25 Q. Everybody lies. And you've been lying since what, you

GREGORY FLOYD - CROSS BY McCOLLUM

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1 were seven years old?

2 A. If that's what you want to call it.

3 Q. Well, when you are out doing things that you know are
4 wrong, but you don't care, you have got to lie about it,
5 right?

6 A. No. No sir.

7 Q. No sir. When the police got you aside and questioned
8 you they asked you over, and over, and over, if you were
9 involved in it, and you lied, and lied and lied, and lied,
10 right?

11 A. I lied, but at the same time I was telling them the
12 truth too.

13 Q. Well, how can somebody tell when you are lying and when
14 you are telling the truth?

15 A. Because I was only giving them piece by piece.

16 Q. Is it -- do we rely on you, that if you say you are
17 telling the truth that's when you are telling the truth? Is
18 that how we know?

19 A. I mean, I was only giving them piece by piece because I
20 thought -- I didn't know what my family was going to think of
21 me.

22 Q. You -- you didn't know what your family was going to
23 think, right?

24 A. Yes sir.

25 Q. Right. And your family, you are talking about your

1 mother ---

2 A. Yes sir.

3 Q. ---Your aunts and uncles ---

4 A. --Yes sir.

5 Q. ---Your cousins ---

6 A. Yes sir.

7 Q. ---Brothers and sisters.

8 A. Yes sir.

9 Q. Right. So when you go out and do things that are

10 wrong, illegal, and immoral, you lie about it, don't you?

11 A. I mean, like I said, everybody lies.

12 Q: Everybody lies. And you've been lying -- and there's

13 really -- it's hard to tell, for us, when you are lying and

14 when you are telling the truth, right?

15 A. No sir.

16 Q. Cause you admit you are a liar, right?

17 A. Yes, I admit I lie.

18 Q. You admit that, don't you?

19 A. That's why I'm here today to tell the truth.

20 Q. You are going to straighten it out today. Now you are

21 looking at murder, right?

22 A. Yes sir.

23 Q. Which is thirty years to life, without parole, right?

24 A. Yes sir.

25 Q. You are looking at kidnapping, which is up to thirty

1 years without parole, right?

2 A. Yes sir.

3 Q. You are looking at burglary in the first degree, which
4 is kicking somebody's door down and going in there to rob them
5 with a gun, fifteen years to life, right?

6 A. Yes sir.

7 Q. And there are so many it's hard to remember them all.
8 Wait a minute, oh, and armed robbery, which is ten years to
9 thirty years without parole, right?

10 A. Yes sir.

11 Q. Do you like prison?

12 A. No sir.

13 Q. Do you like living in prison?

14 A. No sir.

15 Q. Did you like living in J. Reuben Long Detention Center?

16 A. No sir.

17 Q. Do you want to go back?

18 A. No sir.

19 Q. So, given that, you made a deal, right?

20 A. A deal.

21 Q. Yes sir.

22 A. I made no deal.

23 Q. You made a deal that you could come in here and
24 testify, and hopefully, somehow, save your skin, right?

25 A. No sir. There wasn't no deal.

1 Q. Wasn't no deal. You are just coming clean, right?

2 A. Yes sir.

3 Q. Did you have some recent religious conversion?

4 A. No. I just thought about it. Telling the truth is the
5 right thing.

6 Q. You just thought about it. Did you think about it
7 while you were still in jail, or did you start thinking about
8 it when you got back out on the streets?

9 A. When I was in jail.

10 Q. You thought about it before you even went to Mr.
11 Smith's house, didn't you?

12 A. No sir.

13 Q. You thought about it when you armed up, and suited up,
14 and put on a disguise to cover your face, you were already
15 thinking how you are going to get out of it and away with it,
16 weren't you?

17 A. Yes sir.

18 Q. Because you were doing something despicable, right?

19 A. Yes sir.

20 Q. But that's who you are, isn't it?

21 A. No sir.

22 Q. No sir. Well, who are you?

23 A. Gregory Floyd.

24 Q. Now you talked with Tiffany, and you and Tiffany -- she
25 even put it in a letter -- said, we are going to put it on

GREGORY FLOYD - CROSS BY MCCOLLUM

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1 Dorrea and Bait, right?

2 A. No sir.

3 Q. No. You deny that?

4 A. I ain't never said that.

5 Q. That's fine. And that's the truth, right?

6 A. No sir.

7 Q. Huh?

8 A. No, that's not the truth.

9 Q. No. You are saying -- you are denying it's the truth,
10 right?

11 A. No. I never said nothing like that.

12 Q. Now, right now I say -- I just asked you, you and
13 Tiffany said you are going to put it on Dorrea. That's my
14 question. You and Tiffany gonna put it on Dorrea, right?

15 A. That's what you say.

16 Q. That's my question. Y'all were going to put it on
17 Dorrea, right?

18 A. That's your question.

19 Q. Yes sir.

20 A. I -- I never said that.

21 Q. You are going to put it on Dorrea and then -- and also
22 I guess you are going to put it on Bait too; you never said
23 that either.

24 A. No sir. I just said I was going to tell the truth.

25 Q. Right now you are telling the truth, right?

GREGORY FLOYD - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. Well, how can we tell?

3 A. I'm here to tell it.

4 Q. You are here to tell it. All right. A few minutes ago
5 -- and now wait a minute, this is -- you've been thinking
6 about this day since, 200 -- April 14th, 2008, right?

7 A. Yes sir.

8 Q. You have been planning it, and going over in your head,
9 right? Right?

10 A. To tell the truth.

11 Q. You are figuring out what you are going to say, who
12 wants you to say what, and how it's going to play, right?

13 A. No sir.

14 Q. No. And that's the truth.

15 A. Like I said, I was just coming in to tell the truth.
16 We ain't planned out -- planned on tell -- put it on nobody
17 else.

18 Q. And if you heard yourself say something would you
19 believe it?

20 A. Yes.

21 Q. You would. Now, at one point -- and I just want to get
22 this in here, make sure I don't forget it -- when Ms. von
23 Herrmann asked you a question about going and doing the lick,
24 I think is what you call it -- you don't call it murder.

25 A. No sir.

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You don't call it robbing a person?

No sir.

3 Q. And a lick is something good, isn't it?

4 A. No sir.

5 Q. So in your world robbery/murder is a lick, and that's
6 good, right?

7 A. No sir.

8 Q. All right. But you didn't go on something bad for you,
9 did you?

10 A. The whole thing end up bad.

11 Q. Now, you told Ms. von Herrmann just a few minutes ago,
12 you said -- talking about going over there and setting it up,
13 and how it was going to be, how it was going to be easy, or
14 however it's going to go down, you said Donell talked to
15 Tiffany, and you caught yourself and then you said, I mean,
16 Dorrea. Do you remember that?

17 A. Yeah, I mean, he talked to Tiffany and Dorrea.

18 Q. Of course, right. Cause you are going to put it on
19 Dorrea, right?

20 A. Talked to both of them... She the one set it up.

21 Q. She set it up, did the whole thing. What was she going
22 to get out of it?

23 A. I don't know. I didn't talk to her. She talked to
24 Donell.

25 Q. What was she going to get out of it? Nothing.

1 A. I don't know.

2 Q. What were you going to get out of it?

3 A. Nothing. I just end up carting out -- being there at
4 the wrong time.

5 Q. Just there at the wrong time.

6 A. Yes sir.

7 Q. Now, you had said that you weren't up for it, and you
8 didn't want to do it, and then you say you ran into Donell at
9 Huckabee Heights, and he said get in the car, and then y'all
10 went and did it, right?

11 A. No. When he got in my car we went to Dorrea's house.
12 We didn't ever went in no house.

13 Q. And then your buddy, Andrew James, comes to the house.
14 He's got a suitcase full of guns, disguises, and ammo.

15 A. Yes sir.

16 Q. He brought a shotgun, right?

17 A. Yes sir.

18 Q. He brought a pistol that you used to kill a man with,
19 right?

20 A. Yes. He brought the pistol, yes.

21 Q. Right. And you killed him with it, right?

22 A. I didn't kill nobody.

23 Q. Didn't kill nobody.

24 A. Nope.

25 Q. That's true?

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- 1 A. That's true.
- 2 Q. Swear to God.
- 3 A. Swear to God.
- 4 Q. Didn't kill nobody?
- 5 A. No.
- 6 Q. Shot a dead man.
- 7 A. I shot -- I shot.
- 8 Q. It was an accident.
- 9 A. It was no accident. I don't call that being a
10 accident. I was just scared.
- 11 Q. So that's what you call it. So Donell, he brings
12 shotgun shells, right? Or excuse me, I'm sorry. I'm sorry.
13 Andrew, Drew, brings shotgun shells, right.
- 14 A. Yes sir.
- 15 Q. Brings .22 bullets, right?
- 16 A. Yes sir.
- 17 Q. Brings a .22, right?
- 18 A. Yes sir.
- 19 Q. Brings a sawed-off shotgun, right?
- 20 A. He only brought one, one shotgun. It was a sawed-off.
- 21 Q. Sawed-off shotgun, .22 ---
- 22 A. That was it.
- 23 Q. ---Shotgun shells, .22 bullets, and I think he -- he
24 brought some more stuff according to you, right?
- 25 A. Nope.

1 Q. Let's see here. Who brought the ski mask and the duct
2 tape?

3 A. That's what Bait had.

4 Q. Oh, you say Bait had that. But you didn't have any of
5 that stuff. You just had on some shorts and a white t-shirt,
6 and somebody had to give you a shirt to put over your face,
7 right?

8 A. Yes sir.

9 Q. That's because you really weren't planning on doing
10 anything, right?

11 A. Yes sir.

12 Q. Did somebody make you get in the car?

13 A. No, nobody make me get in the car.

14 Q. Somebody hold a gun to your head?

15 A. No sir.

16 Q. When you got the .22, tell me how you got it. Tell me
17 about that.

18 A. Well, he brought it in the house, in the suitcase.

19 Q. Did you say, yo man, I want that one?

20 A. No sir.

21 Q. Did you complaint, tell him it was little?

22 A. No sir.

23 Q. Did he hand it to you, or did he throw it to you?

24 A. No. He took it out, and then Bait loaded it up for me.

25 Q. So he gave you this gun, and did you check to see if it

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1 was loaded?

2 A. It wasn't loaded. He was already checking it.

3 Q. You didn't check it?

4 A. No sir.

5 Q. You didn't load it?

6 A. No sir.

7 Q. Did you hold it?

8 A. After -- after everything was already load -- after he
9 done load it.

10 Q. So they -- you didn't even load it; they loaded it for
11 you.

12 A. Yes sir.

13 Q. So you really didn't hardly do anything, right?

14 A. Yes, I went in the house.

15 Q. Did they make you go?

16 A. No, they didn't make me go.

17 Q. You believe -- and you want us to believe that?

18 A. No sir.

19 Q. (Now, you say Dorrea set it up, and Dorrea said the man,
20 Mr. Smith -- you didn't know him -- but Mr. Smith would be in
21 the house alone, right?

22 A. Yes sir.

23 Q. And that's wasn't true, was it?

24 A. Yes sir. I mean, no sir.

25 Q. That wasn't true. There were people in the house,

1 weren't there?

2 A. Yes sir.

3 Q. And you said it's going to -- Dorrea said it would be
4 easy, but I guess it wasn't that easy, right?

5 A. No sir.

6 Q. So what you say Dorrea said, everything about it was
7 wrong, right?

8 A. Yes sir.

9 Q. So if she knew so much to tell you -- did you know that
10 she had had a relationship with Mr. Smith; did you know that?

11 A. Yes sir.

12 Q. Did you know that she was having his baby?

13 A. She -- she told us.

14 Q. Did you know that she was sick that day, and pregnant?
15 Did you know that she went off to the store to get some
16 diapers for her children; did you know that?

17 A. No sir.

18 Q. Didn't know all that?

19 A. Nope.

20 Q. And what you say she said about what was going to
21 happen at the house was wrong, right?

22 A. Besides ---

23 Q. She didn't know so much about it, did she?

24 THE COURT: Mr. McCollum ---

25 MR. McCOLLUM: I'm sorry, Your Honor.

1 THE COURT: ---You are asking questions, allow him time
2 to answer. Thank you, sir.

3 Do you wish to answer the question?

4 A. Yes sir.

5 THE COURT: Go ahead.

6 A. Ask that.

7 THE COURT: Go ahead, Mr. McCollum.

8 Q. If Ms. Collington, Ladorrean Collington, knew these
9 people, don't you think she could accurately describe what you
10 are going to find in the house?

11 A. No sir.

12 Q. Huh.

13 A. She just -- she just planned it, that's all I know.

14 Q. And that -- you are here to testify that she planned
15 it, right?

16 A. Yes sir.

17 Q. That's what you are suppose to do. In your mind that's
18 what you understand, right?

19 A. I come here to tell -- tell everything, tell the truth.

20 Q. Tell the truth, right?

21 A. Yes sir.

22 Q. And if we -- if we just thing about -- how old are you,
23 Mr. Floyd?

24 A. Twenty-four.

25 Q. Twenty-four years old. And do you -- can you give me

1 some idea of how many lies you've told in your life?

2 A. I don't know.

3 Q. Can you tell me how many lies you tell, say in a week?

4 A. I don't know.

5 Q. Does it bother you when you lie?

6 A. I mean, it should bother everybody when everybody lies.

7 Q. It should, right?

8 A. Yes sir.

9 Q. But, you weren't reluctant at all to go on this thing,
10 were you? You weren't reluctant -- you weren't -- let me
11 rephrase it. You weren't hesitant or thinking about not going
12 on the lick, were you?

13 A. Yes sir.

14 Q. But you went twice, right?

15 A. Yes sir.

16 Q. And the first time you walked the path, right?

17 A. Yes sir.

18 Q. And that time you testified here under oath, swear to
19 God, you didn't even have a gun, right?

20 A. What, the first time?

21 Q. When you walked the path.

22 A. I didn't have one.

23 Q. Didn't even have a gun. And these other people are
24 slinging shotguns, walking down the path in the broad
25 daylight, with stuff to put over their face, just walking down