

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

LADORREAN C. COLLINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001413

APPENDIX

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GREGORY FLOYD - CROSS BY McCOLLUM

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1 the street like a bunch of gangsters, or something out of a
2 Western, to go rob somebody, and you are just walking with
3 them hands free, right?

4 A. Yes sir.

5 Q. And you -- that's the truth?

6 A. Yes sir.

7 Q. You swear to God that's true.

8 A. Yes sir.

9 Q. You go into a robbery/gunfight, but you are not taking
10 a gun.

11 A. Yes sir.

12 Q. You swear that's true.

13 A. Yes sir.

14 MS. von HERRMANN: Objection. Asked and answered.

15 Q. And that's as ---

16 THE COURT: Are you going to move along, Mr. McCollum?

17 MR. McCOLLUM: Yes sir.

18 Q. And that's just as true as everything else you've said,
19 right?

20 A. Yes sir.

21 Q. Yes sir. And where do you think you are going -- where
22 do you think you are going to be when this thing is over; what
23 do you think you are going to get?

24 A. I don't know. I know I'm going to get some time.

25 Q. You are going to catch some time.

1 A. Yes sir.

2 Q. Catch some time for shooting the dude.

3 A. If that's what you want to call it.

4 Q. What do you call it?

5 A. Well, I'm answered the questions and you are asking the
6 questions.

7 THE COURT: All right. Let's go back. The attorney
8 asks the question, the witness answers the questions to the
9 best of his ability, yes, no, explain the answer. You may not
10 ask questions.

11 Proceed, Mr. McCollum.

12 Q. So I ask you, what do you call it?

13 A. Well, like I say, I know I'm going to get some time.

14 Q. Well, you certainly are concerned about yourself,
15 right?

16 A. Yes sir.

17 Q. I mean, if anybody in the world you are concerned about
18 you are most concerned about yourself, right?

19 A. Yes sir.

20 Q. And if somebody else has to go down to help you that's
21 just the way it's got to be, right?

22 A. Well, sir, like I said, I'm here to tell the truth.

23 Q. And that's the truth, right?

24 A. Yes sir.

25 Q. So help you God.

GREGORY FLOYD - CROSS BY McCOLLUM

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1 A. Yes sir.

2 Q. And one last thing, when you came in here to testify
3 did you remember the Clerk administering an oath to you?

4 A. A what?

5 Q. Oath.

6 MS. von HERRMANN: Objection, Your Honor. He just
7 asked him if he testified under oath. This ---

8 THE COURT: Sustained.

9 MR. McCOLLUM: I just want to ask him what the oath is.

10 THE COURT: You may do so.

11 Q. What is the oath?

12 A. I don't know. Rephrase that too. I mean, what is ---

13 Q. I'm sorry.

14 A. Rephrase that. What is it?

15 Q. What is the oath?

16 THE COURT: Are you asking him to repeat it, or are you
17 asking him what he believes it is?

18 Q. What do you believe an oath to be?

19 A. That's what I'm asking you, what is a oath.

20 Q. All right, the oath is when you came in here ---

21 MR. McCOLLUM: Your Honor, I'm answering his question.

22 THE COURT: That's fine. You may.

23 Q. The oath is when you come in here and you put your hand
24 on the Bible, and you raise your hand and swear to God, or
25 affirm that everything you say will be the truth. Do you .

1 remember doing that?

2 A. Yes sir.

3 Q. What does that mean to you?

4 A. I -- tell the truth. I'm telling the truth.

5 MR. McCOLLUM: Thank you, sir.

6 Thank you, Your Honor.

7 THE COURT: All right. Mr. Hazzard.

8 MR. HAZZARD: Thank you, Your Honor.

9 THE COURT: Yes sir.

10 MR. HAZZARD: Your Honor, may we approach?

11 THE COURT: Absolutely.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 CROSS-EXAMINATION BY MR. HAZZARD:

14 Q. Mr. Floyd, you spoke with officers of the Horry County
15 Police Department on April 16th of 2008; is that correct, sir?

16 A. Yes sir.

17 Q. And when you spoke with them, eleven times during that
18 interview, you swore that you had absolutely nothing to do
19 with this home invasion; isn't that right?

20 A. Yes sir.

21 Q. Swore.

22 A. Yes sir. I was scared at that time.

23 Q. You were scared.

24 A. Yes sir.

25 Q. You said, it's the God's truth that I had nothing to do

GREGORY FLOYD - CROSS BY HAZZARD

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1 with this, didn't you?

2 A. Yes sir. I mean that's -- anybody -- when you first --
3 first time turning yourself in everybody gone lie to try to
4 cover theyselves, but I realized I had to come out and do the
5 right thing, and tell the truth.

6 Q. Your position is that anyone would use God's name in
7 vane and swear a lie.

8 A. I'm not going to say anyone.

9 MS. von HERRMANN: Objection. I don't think there's
10 any testimony he used God's name in vane.

11 THE COURT: Rephrase your question.

12 Q. You said, sir, this is the God's honest truth, I had
13 nothing to do with this, didn't you?

14 A. I -- I maybe did, couple of times.

15 Q. Yes sir. And you also promised several times, I
16 promise, sir, I promise I had nothing to do with this, didn't
17 you?

18 A. Yes. That's when I turned myself in. Like I said, I
19 was scared.

20 Q. Yes sir. So when you swear to God that doesn't mean
21 anything to you, right?

22 A. I mean, yes. Yes. Yes, it does -- it does.

23 Q. But not enough for you to actually tell the truth when
24 it's not in your best interest.

25 A. Well, I mean, like as -- as of now, as of now, today,

1 yes, today it means something to me.

2 Q. Okay. Now, when you lie to the police repeatedly
3 during the two hours they interviewed you on April 16th, you
4 lied because you felt that was in your best interest; isn't
5 that right, sir?

6 A. I mean, I lied. Like I said, I lied, because I didn't
7 know how my parents, they was going to think of me, but
8 eventually I came out and told the truth.

9 Q. So you wanted your parents and your friends and
10 everybody to think that you are a good guy, right?

11 A. No, not really. I'm just -- they was going to be
12 shocked to believe what I got myself into.

13 Q. Yes sir. And so you felt like it was in your best
14 interest to lie, right?

15 A. If that's what you call it, yes sir.

16 Q. Well, you didn't do it because you felt it was going to
17 harm you, did you?

18 A. I mean, no sir. I was just scared, I guess so.

19 Q. Yes. You were scared. And so you wanted to get
20 yourself out of this trouble; isn't that correct?

21 A. Yes sir.

22 Q. Yes. Right. And today you would like to get yourself
23 out of as much of this trouble as possible; isn't that right?

24 A. Well, I just come to tell the truth.

25 Q. Yes sir. Now Donell was related to -- Donell James is

GREGORY FLOYD - CROSS BY HAZZARD

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1 related to the young lady you were dating at the time, right?

2 Erika, do you remember her?

3 A. My baby mother.

4 Q. Yes sir.

5 Q. And that's a yes or a no.

6 A. Yes sir.

7 Q. Yes sir. Donell is related to her, right?

8 A. Yes sir.

9 Q. Okay. And when you talked to the police on April 16th
10 of 2008, you repeatedly told them that the Greg that Tiffany
11 James had mentioned when she talked to them, that that Greg
12 was Greg Hemmingway, right?

13 A. Yes sir.

14 Q. I'm sorry.

15 A. Yes sir.

16 Q. Yes. Greg Hemmingway. And that's somebody ain't got
17 nothing to do with this, right?

18 A. Yes sir.

19 Q. Now let me get this straight. This is a situation that
20 involves a home invasion, it involves a death, a burglary, and
21 a robbery, life plus sixty years ---

22 A. Yes sir.

23 Q. ---And you willing to allow someone that you knew had
24 absolutely nothing to do with this take the fall for you,
25 weren't you?

1 A. No sir. Because at the same time I knew they wasn't
2 going to buy it because everybody else was telling the truth,
3 so eventually I had to come out and tell the truth too.

4 Q. When they talked to you on April 16th all you knew was
5 that they had talked to Tiffany, correct?

6 A. Yes sir.

7 Q. Okay. So you didn't know what everybody else was
8 saying, did you?

9 A. Oh yeah, I knowed everybody else was going to tell --
10 tell.

11 Q. Uh huh (indicating positive) Okay. So your lying
12 about Greg Hemmingway wasn't going to affect anything, at
13 least that's what you thought, right?

14 A. Uh huh (indicating positive) At that time, yes.

15 Q. Cause it was just you, right?

16 A. Yes sir.

17 Q. Well, wait a minute now, didn't you tell the police,
18 well that's what Tiffany said too, that Tiffany said it was
19 another Greg in the car, that it was Greg Hemmingway, and
20 that's where you got the information from?

21 A. Yes sir.

22 Q. Okay. So now that's two of you, because what you were
23 telling the police was, it wasn't me at all, right?

24 A. Yes sir.

25 Q. It was Tiffany -- what I heard from Tiffany was that

GREGORY FLOYD - CROSS BY HAZZARD

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1 this other guy named Greg, and Quentin Gause, they are the
2 ones had to be involved, right?

3 A. Yes sir.

4 Q. And some other dude, right?

5 A. Yes sir.

6 Q. That's right. Because you need three guys in the car,
7 right?

8 A. Yes sir.

9 Q. And it ain't going to be you, right?

10 A. Yes sir.

11 Q. So we need some place holders, we need some folks to
12 fill in those seats, right? Right?

13 A. Yes sir.

14 Q. So we get Quentin Gause, we've got Greg Hemmingway, and
15 then some other dude, right?

16 A. Yes sir.

17 Q. So you couldn't think of a third person to lie on.

18 A. I said Quentin Gause, Donell James, and then I had said
19 Gregory Hemmingway.

20 Q. No, you originally said Quentin Gause, Gregory
21 Hemmingway, and some other guy, right?

22 A. No.

23 Q. No.

24 A. No sir.

25 Q. You deny that.

- 1 A. I said Quentin Gause, Donell James, as J.B., and Greg
2 Hemmingway.
- 3 Q. So it's your testimony here today that when you talked
4 to the police on April 16th of 2008, that you initially told
5 them that Donell James was involved; is that your testimony
6 you are going with today?
- 7 A. I believe I said Bait -- I meant -- J.B. was in the
8 car too.
- 9 Q. You believe you said that.
- 10 A. Yes sir.
- 11 Q. Okay. Now, how far did you go in school, sir?
- 12 A. Eleventh.
- 13 Q. Eleventh grade. How come you didn't graduate?
- 14 A. Got kicked out.
- 15 Q. What did you get kicked out for?
- 16 A. Talking back smart, or smart -- smart talk.
- 17 Q. And they wouldn't ever let you come back.
- 18 A. They tried to send me to alternative school. I didn't
19 want to go to alternative school.
- 20 Q. Okay. And where were you working in April of 2008,
21 sir?
- 22 A. Where was I working?
- 23 Q. Yes sir.
- 24 A. I wasn't working.
- 25 Q. You weren't working. No job.

GREGORY FLOYD - CROSS BY HAZZARD

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- 1 A. Not in 2008.
- 2 Q. How you make ends meet?
- 3 A. Sir.
- 4 Q. How do you make ends meet when you are not working?
- 5 A. I worked -- I was working in '07, but I wasn't working
- 6 in '08.
- 7 Q. Okay. I mean, had you saved up a ton or money in your
- 8 job in '07 so that you were just taking '08 off?
- 9 A. No sir.
- 10 Q. Okay. So I'm getting back to my original question
- 11 How do you make ends meet when you are not working?
- 12 A. Just like any other body that ain't working, just ---
- 13 Q. How?
- 14 A. ---Be to the house, just be to the house.
- 15 Q. Just be to the house.
- 16 A. Yes.
- 17 Q. So you don't ever have -- you don't need no food,
- 18 A. I mean, food be to the house, I mean, what does that
- 19 got to do with this right here? I'm here today to tell the
- 20 truth, you know what I'm saying. That's just like anybody
- 21 else that ain't working, they -- they's to the house.
- 22 Q. Uh huh (indicating positive)
- 23 A. To the house.
- 24 Q. Well, I mean, at some point don't you end up like
- 25 Andrew James, and they take the house away? I mean, you've

1 got to pay for it, don't you?

2 A. Yes.

3 Q. Okay. Well, how did you pay for what you got?

4 A. Okay. I does have a mother.

5 Q. Uh huh (*indicating positive*) So your mom has been
6 supporting; is that what you are telling me?

7 A. Yes, basically.

8 Q. Basically.

9 A. Yeah.

10 Q. Okay. She wasn't -- you weren't rolling large though,
11 were you?

12 A. No. No sir.

13 Q. Because Mom's got to work hard for her money just like
14 all honest people, doesn't she?

15 A. Yes sir.

16 Q. And like a whole lot of honest people she didn't have a
17 whole lot to spend on you, did she?

18 A. If that's who you want to call it.

19 Q. Well, I mean, she's got to support herself, right?

20 A. Yes sir.

21 Q. Who else does she have to support besides you?

22 A. That's it.

23 Q. That's it. Just you and her. Okay. Were you living
24 with her, or were you living with your baby mama?

25 A. Off and on.

GREGORY FLOYD - CROSS BY HAZZARD

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1 Q. Off and on. And where does your mother live?

2 A. In Bucksport.

3 Q. Okay. So she lives in Bucksport, but even though you
4 don't have a job you are rolling in Conway, you -- you stay
5 your time in Conway, Bucksport is too small a town for you,
6 right?

7 A. I be back and forth.

8 Q. You be back and forth. Well, who pays for the gas?

9 A. What that got to do with it? I rides with people.

10 Q. You get it how you live, don't you?

11 A. Yep. Just like everybody else.

12 Q. That's right. That's right. You rob, and you take,
13 and you do whatever it takes; isn't that right? Isn't that
14 right? You get it how you live, right?

15 A. No sir.

16 Q. Oh no.

17 A. No.

18 Q. Okay. Well, so what -- what was so appetizing -- take
19 me through your thought process. When -- I think your
20 testimony today is that Donell -- I'm sorry -- I can't even
21 keep it straight. Who contacted you about this? Tiffany.
22 That's right. Tiffany called you and asked you about this
23 business opportunity, right?

24 A. Yes. Her and Dorrea.

25 Q. Yes, and Dorrea. Because, of course, Dorrea's name has

1 got to be in there too, right?

2 A. Yes.

3 Q. Because you ain't going to get nothing from the State
4 unless you tell them something about Dorrea and something
5 about Quentin, right?

6 A. I'm telling the truth.

7 Q. Of course you are, just like you swore to the police on
8 April 16th, 2008, you swore to them you were telling the
9 truth, right?

10 A. Yes, at that time, but now I'm here to tell the truth.

11 Q. Yes sir. Because this -- the truth is whatever you need
12 it to be on any given day, right?

13 A. If that's what you want to call it.

14 Q. Yes sir. So Tiffany James calls you and say, there's a
15 business opportunity, right?

16 A. Yes sir.

17 Q. And in order for you to take advantage of this business
18 opportunity you've got to be involved with her cousin, her
19 first cousin, Donell James, right?

20 A. Excuse -- say it again.

21 Q. In order for you to take advantage of this business
22 opportunity that Tiffany James presents you with, you have to
23 be involved with Donell James, cause Donell James is going
24 along, right, he's -- he's in on it, right?

25 A. Yes sir.

GREGORY FLOYD - CROSS BY HAZZARD

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1 Q. Okay. So that's Tiffany James and Donell James. Now,
2 when it comes time -- both of the -- both the first and second
3 time that it's time to engage in this business opportunity
4 suddenly here come Andrew James, right? Right?

5 A. I mean, the first time.

6 Q. First time and -- he was there the second time too,
7 wasn't he?

8 A. Yeah, but he left.

9 Q. I mean, yes, all right, of course he did, of course he
10 did, this black and yellow shoes, he walked right out of the
11 door, didn't he?

12 MS. von HERRMANN: Objection, Your Honor. If he wants
13 to ask a question that's fine, but he's making statements and
14 arguing.

15 THE COURT: Thank you.

16 Just ask questions.

17 MR. HAZZARD: Yes sir.

18 THE COURT: Thank you.

19 Q. So Donell -- so there's no question Andrew James was
20 there the second time as well, right?

21 A. Yes sir, but he left.

22 Q. That's right. Of course he did, he had to leave,
23 right, because the vehicle leaves, and that leaves you,
24 Donell, and Andrew. That means you can't get nothing to
25 testify against him, right?

1 A. If that's what you say.

2 Q. Yes sir. So, the first time y'all are suppose to do
3 this it's you, right; you are there, right?

4 A. Yes sir.

5 Q. Despite swearing however many time you weren't, and now
6 you are saying you were there, right?

7 A. Yes sir.

8 Q. Okay. Donell was there, right?

9 A. Yes sir.

10 Q. Andrew is there, right?

11 A. Yes sir. The first time.

12 Q. So we can -- yes sir, so we've got -- and we are going
13 to get to the second time in a second. So we've got all the
14 James Gang there. We've got Tiffany, we've got Donell, we've
15 got Andrew, right, all involved, no question about that, is
16 there?

17 A. No sir.

18 Q. No -- no question about that. And y'all go over there,
19 do whatever you do, rattle on the doorknob or whatever -- and
20 are you the one that rattled on the doorknob the first time?

21 A. I believe -- I believe so, yes sir.

22 Q. You believe so.

23 A. Yes sir.

24 Q. Okay. Cause you didn't -- you didn't think to, you
25 know, just go ahead and kick it in like you did the second

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
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) Conway, South Carolina
)
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DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

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16	COURT'S RULING			401
17	JURY IN			402
18	Ms. von Herrmann	402		504
19	PUBLISHED S-72, DVD, TO JURY			442
20	Mr. McCollum		442	509
21	Mr. Hazzard		470	
22	JURY OUT/ON RECORD/JURY IN			471/480
23	Mr. Hazzard		480	
24	JURY OUT/ON RECORD/JURY IN			499/500
25	END DAY			

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
June 8, 2011				
JURY OUT/ON RECORD/JURY IN				511/525
FRANKIE YVONNIE DAVIS				
Ms. von Herrmann	525			
Mr. McCollum		547		
Mr. Hazzard		560		
JURY OUT/BREAK/JURY IN				563/564
PETER CESTARE				
Ms. von Herrmann	564			
Mr. McCollum		(NONE)		
Mr. Hazzard		570		
ANDREW JAMES				
Ms. von Herrmann	573		646	
Mr. McCollum		607		655
Mr. Hazzard		630		658
JURY OUT/ON RECORD/JURY IN				601/604

1

I N D E X

2

WITNESSESDIRECTCROSSRDRC

3

IRA BYRD PARNELL, JR.

4

Ms. von Herrmann

662

5

Mr. McCollum

677

6

Mr. Hazzard

(NONE)

7

JURY OUT/LUNCH

682

8

JURY OUT/ON RECORD

9

(As to Juror # 205)/Juror Out

10

ON RECORD/JURY IN

694

11

DONELL LAMONT DEWAN JAMES

12

Ms. von Herrmann

694

812/824

13

Mr. McCollum

740

813/821

14

Mr. Hazzard

773

15

JURY OUT/ON RECORD/JURY IN

804/806/814

16

JURY OUT/ON RECORD

825

17

END DAY

18

19

June 9, 2011

20

JURY OUT/ON RECORD/JURY IN

826

21

GREGORY FLOYD

22

Ms. von Herrmann

827

23

Mr. McCollum

868

24

Mr. Hazzard

888

25

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2					
3	JURY OUT/ON RECORD				907
4	JURY IN/COURT TO JURY/JURY OUT/ON RECORD				927
5	TIFFANY QUINASIA JAMES				
6	Ms. von Herrmann	929		1021	
7	Mr. McCollum		963		1028
8	Mr. Hazzard		1006		1029
9	JURY OUT/BREAK/JURY OUT/ON RECORD/JURY IN				1030/1035
10	SOLOMON K. JONES				
11	Ms. von Herrmann	1035		1038	
12	Mr. McCollum		1037		
13	Mr. Hazzard		(NONE)		
14	JURY OUT/ON RECORD				1039/1045
15	CECILY NICOLE HILLARD				
16	Ms. von Herrmann	1040			
17	Mr. McCollum	1042			
18	Mr. Hazzard	1043			
19	COURT'S RULING	1044			
20	JURY IN	1045			
21	CECILY NICOLE HILLARD				
22	Ms. von Herrmann	1045			
23	Mr. McCollum		1050		
24	Mr. Hazzard		1057		
25					

	<u>I N D E X</u>	
	<u>WITNESSES</u>	<u>DIRECT</u> <u>CROSS</u> <u>RD</u> <u>RC</u>
1	DANIEL CRADIC	
2	Mr. Spratlin	1065
3	Mr. McCollum	1071
4	Mr. Hazzard	(NONE)
5	JURY OUT/MOTIONS	1077
6	COURT'S RULING	
7	LADORREAN CHUKELL COLLINGTON	
8	COURT	1086
9	QUENTIN LAVANT GAUSE	
10	COURT	1091
11	JURY OUT/ON RECORD	1096
12	END DAY	
13	June 10, 2011	
14	JURY OUT/MOTIONS	1124
15	JURY IN/ON RECORD	1126
16	STATE'S SUMMATION (von Herrmann)	1126
17	Objection	1136
18	DEFENDANT (Collington) SUMMATION (McCollum)	1149
19	Objection	1160
20	DEFENDANT (Gause) SUMMATION (Hazzard)	1163
21	Objections	1187/1190
22	BREAK	

I N D E X

1				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
3	JURY IN			
4	CHARGE BY COURT			1193
5	JURY OUT AT 12:10 P.M.			1207
6	ADDITIONS, EXCEPTIONS, OBJECTIONS TO CHARGE			
7	JURY DELIBERATING AT 12:30 P.M.			1209
8	JURY IN/COURT TO JURY			
9	JURY OUT AT 1:00 P.M./JURY CONTINUES DELIBERATION			1214
10	JURY OUT/ON RECORD			
11	JURY IN AT 9:25 P.M.			1215
12	VERDICT			1216
13	MOTIONS			1220
14	SENTENCING			1222
15	END DAY			
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
May 13, 2011			
S-1	Consent to Search		127
S-2	Search Warrant (3555 Highway 544 [REDACTED])		140
S-3	Search Warrant (Coastal Villas ([REDACTED]))		157
D-1 (Collington)	Search Warrant ([REDACTED] Palmetto)		61
D-2 (Collington)	Search Warrant [REDACTED] Grainger [REDACTED]-5)		64
D-3 (Collington)	Search Warrant [REDACTED] Grainger [REDACTED]-8)		97
D-4 (Collington)	Search Warrant ([REDACTED] Barberry Ct.)		116
June 6, 7, 8, 9, 10, 2011			
C-1	Note from Juror #43 (Misplaced)		209
C-2	Note from Jury (Misplaced)		266
C-3	Stipulation by Counsel (Misplaced)		345
C-4	Note from Jury		1210
C-5	Note from Jury		1215

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
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
19	S-16	Photo		48
20	S-17	Photo		48
21	S-18	Photo		48
22	S-19	Photo		48
23	S-20	Photo		48
24				
25				

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-21	Photo		48
4	S-22	Photo		48
5	S-23	Photo		48
6	S-24	Photo		48
7	S-25	Photo		48
8	S-26	Photo		48
9	S-27	Photo		48
10	S-28	Photo		48
11	S-29	Photo		48
12	S-30	Photo		48
13	S-31	Photo		48
14	S-32	Photo		48
15	S-33	Photo		48
16	S-34	Photo		48
17	S-35	Photo		48
18	S-36	Photo		48
19	S-37	Photo		48
20	S-38	Photo		48
21	S-39	Photo		48
22	S-40	Large Map		48
23				
24				
25				

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-41	Photo		48
4	S-42	Photo		48
5	S-43	Photo		48
6	S-44	Photo		48
7	S-45	Photo		48
8	S-46	Photo		48
9	S-47	Photo		48
10	S-48	Photo		48
11	S-49	Photo	191	295
12	S-50	Photo	191	
13	S-51	Photo	191	
14	S-52 (A)	Sheetrock		324
15	S-52 (B)	Sheetrock		324
16	S-53	Spent Shell Casing		319
17	S-54	Spent Shell Casing		320
18	S-55	12 Gauge Shotgun Shell		321
19	S-56	Spring		325
20	S-57	Shot Shell Component		322
21	S-58	Shot Shell Component		316
22	S-59	Shot Shell Component		323
23	S-60	Pillow		306
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-61	12 Gauge Slug	652	308
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
S-67	.22 Caliber Bullets	652	341
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
S-72	Voice Mail Message DVD	652	442/1118
S-73	Letter (Grievance) Hearing	652	653
S-74	Photo		666
S-75 (ID ONLY)	Handwritten Notarized Note		
S-76	Calendar (April, 2008)	1031	

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
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	
12			
13			
14			
15			
16			
17			
18			
19			
20			
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22			
23			
24			
25			

GREGORY FLOYD - CROSS BY HAZZARD

901

1 time, did you?

2 A. No sir.

3 Q. Okay. So then y'all come on back, you walked the path
4 to get there, then you walked the path coming back, right?

5 A. Yes sir.

6 Q. All right. Now then the second time there's you,
7 right?

8 A. Yes sir.

9 Q. There's Tiffany, right?

10 A. Yes sir.

11 Q. Donell.

12 A. Yes sir.

13 Q. And then low and behold, here comes Andrew, bringing a
14 big suitcase, with weapons and bullets, right?

15 A. Yes sir.

16 Q. All right. So we've got the James Gang back together
17 again. Tiffany is down there with Andrew, right?

18 A. Yes sir.

19 Q. All right. Now, on the 14th, when y'all went over
20 there and actually committed this crime, wasn't there a
21 situation where you started to go, but had to stop and come
22 back?

23 A. The first time. The second time.

24 Q. Let's back up. And I -- there's so many times, and so
25 many stories, I'm confused. Is there a time, at any point in

GREGORY FLOYD - CROSS BY HAZZARD

902

1 this whole arrangement, where all of y'all loaded up in the
2 car but then received a phone call from Tiffany saying police
3 were at Mr. Smith's house so you had to come back?

4 A. No sir.

5 Q. So you don't recall that?

6 A. No sir.

7 Q. Okay. Sir, what exactly are you guilty of?

8 MS. von HERRMANN: I'm going to object. That's a legal
9 question.

10 THE COURT: I don't believe it to be a leading question
11 but I ---

12 MS. von HERRMANN: Legal.

13 THE COURT: I'm sorry. Legal.

14 MS. von HERRMANN: Legal question.

15 THE COURT: Sustained.

16 Q. I'll rephrase it. What have you done wrong in this
17 incident?

18 A. I -- by going, committed a crime.

19 Q. Well, what crime do you feel you've committed?

20 A. I don't know till me and my lawyer and Solicitor get
21 together.

22 Q. You don't know. You busted up in a person's home, held
23 people at gunpoint, and shot a man, in the back, and you don't
24 know what you did wrong, do you, do you, sir?

25 A. Like I said, I won't know till me and my lawyer and the

GREGORY FLOYD - CROSS BY HAZZARD

903

1 Solicitor get together.

2 Q. Yes. Because you and your lawyer and the Solicitor are
3 going to get together because you are performing here today,
4 and you expect a payoff at the end; isn't that right?

5 A. No sir.

6 Q. No. Then why you and the lawyer and the Solicitor got
7 to get together then?

8 A. Because they the one discuss what I -- what is what.

9 Q. Uh huh. Well, it's been three years, there ain't been
10 no discussions.

11 A. I don't know. You have to talk to them, not me.

12 Q. Okay. And when you talked to the police on April 16th
13 of 2008 you told a different story, didn't you?

14 A. 2000 what?

15 Q. 2008, April 16th of 2008.

16 A. Yes sir.

17 Q. Two days after you killed Mr. Smith.

18 A. I mean, I ain't killed -- if that's what you want to
19 say.

20 MS. von HERRMANN: Objection to characterization.

21 THE COURT: Rephrase your question.

22 Q. Two days after you say now that you shot Mr. Smith.

23 A. That's what you say.

24 Q. Okay. So your story started out then with, I wasn't
25 there, right?

GREGORY FLOYD - CROSS BY HAZZARD

904

- 1 A. Yes sir.
- 2 Q. Anything I know came from Tiffany, right?
- 3 A. Tiffany and Dorrea.
- 4 Q. Of course. But you weren't there. Then it switched
- 5 to, okay, I was there, but I never had a gun, right?
- 6 A. That was the first time.
- 7 Q. That was the first time.
- 8 Q. And then your story switched to, I was there but I
- 9 didn't have the .22, Bait had the .22.
- 10 A. Yes sir.
- 11 Q. Yes sir. That's was right, because you didn't want
- 12 anybody -- any gun that had anything to do with any bullet in
- 13 your hands, right?
- 14 A. Yes sir.
- 15 Q. So now you've put it on this man twice, because you say
- 16 whatever -- you say this man provided the car, right? He had
- 17 the shotgun, right?
- 18 A. Yes sir.
- 19 Q. And then you told the police, and yeah, he got a -- he
- 20 got a .22 in him too. Oh, well, Bait did that too, right?
- 21 A. Yes sir.
- 22 Q. Yes. So now, because of other testimony then you got
- 23 to meet with the Solicitor. When did you meet with the
- 24 Solicitor, sir?
- 25 A. I don't remember what date.

GREGORY FLOYD - CROSS BY HAZZARD

905

1 Q. How long ago was it?

2 A. 2010.

3 Q. 2010. So from that time when you gave your proffered
4 statement, when you said that this man shot Mr. James with a
5 .22 you have not talked to the Prosecutor since that day. Is
6 that your testimony?

7 A. After -- after -- in 2010 I met up with the Solicitor -

8 --

9 Q. Uh huh (indicating positive).

10 A. ---Last month, couple of weeks ago.

11 Q. Uh huh (indicating positive) Yes.

12 A. I came out and told the truth.

13 Q. Came out and told them the truth. Because that story
14 about him being two-gun Yosemite Sam, with a shotgun, the .22
15 and everything else, that wasn't going to fly, was it?

16 A. I know it wasn't going to fly, that's why I came out
17 and told the truth.

18 Q. But you can start out with a lie, see how far you can
19 drive it, right?

20 A. Everybody -- most people does that.

21 Q. Most people do. Most people do. Okay. Now, let's
22 talk about this -- I think -- I think you said that Mr. Gause
23 had -- of course he's got the shotgun, right?

24 A. Yes sir.

25 Q. Of course, he's got to have the shotgun. And low and

GREGORY FLOYD - CROSS BY HAZZARD

906

1 behold, now we are hearing, he's got a ski mask, and he's got
2 gloves, so of course, he can't leave no fingerprints, right?

3 A. Yes sir.

4 Q. And he's got duct tape. He's got a whole kit, right?
5 He's got a home invasion kit. All right. Please, please tell
6 this jury, when is the very first time you mentioned these
7 gloves and this duct tape.

8 A. I -- I been -- I been saying he came there had ski
9 mask, all black on, with black gloves, and duct tape.

10 MS. von HERRMANN: Your Honor, I think we've got a
11 matter that we can probably address up here.

12 THE COURT: All right. Thank you. Y'all come over
13 here.

14 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

15 Q. All right, Mr. Floyd, with regard to this ski mask, is
16 it your testimony that Mr. Gause took this ski mask, put it
17 on, put the gloves on, put the duct tape around his wrists and
18 went in and engaged in this home invasion; is that correct?

19 A. Yes sir.

20 Q. I'm sorry.

21 A. Yes sir.

22 Q. And that is as true as everything else you've told
23 these people right here, isn't it?

24 A. Yes sir.

25 MR. HAZZARD: No further questions.

JURY OUT/ON RECORD

907

1 THE COURT: All right. Redirect, please Ma'am.

2 MS. von HERRMANN: I don't believe I have any further
3 questions.

4 THE COURT: You may step down, sir. You may step down.

5 All right, ladies and gentlemen, we are going to take a
6 break for five minutes, and we'll come back after that.

7 Leave your pads and pens.

8 Everyone else remain seated, please.

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

11 THE COURT: All right. And what might that be?

12 MS. von HERRMANN: Mr. McCollum says that he may have a
13 letter that he hasn't turned over to me that he wants to use,
14 and I need to ---

15 THE COURT: All right. All right, what document might
16 that be, Mr. McCollum?

17 MR. MCCOLLUM: Your Honor, I just had my assistant go
18 make copies of it. It's just a statement Notarized by the
19 witness, saying that her statement incriminating Ms.
20 Collington is false.

21 THE COURT: All right. And when did this come about?

22 MR. MCCOLLUM: I think it's Notarized in 2010.

23 THE COURT: All right. And why did you not turn it
24 over to the State at that point in time?

25 MR. MCCOLLUM: I'm not sure that I didn't, but if I

JURY OUT/ON RECORD

908

1 didn't it's -- it's just because it was inadvertence. We have
2 a lot of things that we were trying to get back and forth and
3 send to them. It was prob ---

4 THE COURT: That's obviously an extremely important
5 document. That's not just something that could have slipped
6 your mind. Okay. That's just not something that you could
7 have done by neglect.

8 MS. von HERRMANN: Your Honor, I don't have any
9 notarized document.

10 THE COURT: All right. Let's just wait and let me see
11 the document.

12 (MS. von HERRMANN RECEIVES COPY OF DOCUMENT AND THE
13 FOLLOWING TAKES PLACE.)

14 MS. von HERRMANN: Your Honor, these documents are not
15 written by my cooperating co-defendant. I don't think he can
16 question ---

17 THE COURT: Well, let me -- can I see the document,
18 please ---

19 MS. von HERRMANN: Yes.

20 THE COURT: ---So I know what we are talking about.
21 Thank you, Ma'am.

22 (COURT VIEWS DOCUMENT.)

23 THE COURT: All right, Mr. McCollum, if you could,
24 identify for me -- and we'll just put them in order that
25 you've got them marked here, so that I understand who is the

JURY OUT/ON RECORD

909

1 author on all these documents, if you could. Do you have --
2 do you have copies of them in front of you?

3 MR. McCOLLUM: Not that are marked like that, Your
4 Honor.

5 THE COURT: All right. Well, then let me give them to
6 you.

7 Have you gotten copies back for the State?

8 MR. McCOLLUM: We sent those more than once, Your
9 Honor.

10 MS. von HERRMANN: I think I have copies of those.

11 THE COURT: All right. If you would, just go through --
12 -- just go through them all. Just stand in front of a
13 microphone and just tell me who authored the -- who authored
14 the document, please.

15 MS. von HERRMANN: Do you mind if I look at the
16 document with him while he's ---

17 THE COURT: No Ma'am.

18 MR. McCOLLUM: Your Honor, as I understand it, I
19 believe that Defendant's Exhibit Number 1 was authored by ---

20 THE COURT: It says Defendant 1, Collington, for ID,
21 correct?

22 MR. McCOLLUM: Yes sir, Your Honor.

23 THE COURT: For ID. Okay. And that was -- that was
24 written or authored by whom?

25 MR. McCOLLUM: I believe this was to be authored by

JURY OUT/ON RECORD

910

1 Tiffany James.

2 THE COURT: All right.

3 MR. McCOLLUM: The Exhibit Number -- Defendant's Number
4 2, Collington, for identification, is -- I believe was
5 authored by two people. I think that this is a letter that's
6 passed back and forth in the jail, and I believe that the
7 first part of the letter was authored by Ms. Collington, and
8 then the response was authored by Tiffany James.

9 THE COURT: Hold on a second. All right. And three.

10 MR. McCOLLUM: And Number 3, Your Honor, is the same
11 thing. I believe the first part of it was authored -- excuse
12 me -- Defendant's, Collington, 3, for identification. I
13 believe the first part of it to be authored by Ladorrean
14 Collington, and then the response to be authored by Tiffany
15 James.

16 THE COURT: Okay. All right, the next one.

17 MR. McCOLLUM: Defendant, Collington, Number 4, for
18 identification. It's the same thing, Your Honor. I believe
19 that the beginning of it is authored by Ladorrean Collington,
20 and then the response to be authored by Tiffany James.

21 THE COURT: Okay. All right.

22 MR. McCOLLUM: Defendant, Collington, Exhibit Number 5
23 for identification, is a letter to Ms. Collington that we
24 believe to be authored by Ti, or Tanheshia, or Tanheshia
25 Smith, Your Honor.

JURY OUT/ON RECORD

911

1 THE COURT: Okay. By Tanheshia Smith.

2 MR. McCOLLUM: Yes sir, Your Honor.

3 THE COURT: All right.

4 MR. McCOLLUM: The Defendant's Exhibit, Collington, for
5 identification, Number 6 -- it's been marked for ID, and this
6 is apparently a letter written by Ms. Collington.

7 THE COURT: All right.

8 MR. McCOLLUM: And then finally, Your Honor,
9 Defendant's 7, Defendant, Collington, 7 for identification, is
10 -- consists of three pages. The first part is a letter we
11 believe to be authored by Tiffany James, and then it refers to
12 a song, which is attached to it, which is -- we believe to be
13 authored by Tiffany James.

14 THE COURT: All right. And who is the letter to, do
15 you we know who the letter is to? Does it say it's to
16 anybody?

17 MS. von HERRMANN: It says Dub, D-u-b. The letter is
18 addressed to Dub.

19 THE COURT: Okay. All right.

20 MR. McCOLLUM: We believe that to be Ms. Collington,
21 Your Honor..

22 THE COURT: All right. All right, now, it's going to
23 get clear. These seven exhibits, you've turned those over to
24 the State, correct? That's what you've told me.

25 MR. McCOLLUM: Yes sir.

JURY OUT/ON RECORD

912

1 THE COURT: All right. And Solicitor, you've received
2 one through seven; is that correct?

3 MS. von HERRMANN: I have received -- yes.

4 THE COURT: All right. Very good.

5 MR. McCOLLUM: Your Honor, may I make a statement
6 there? These -- these documents Ms. -- if I have this
7 correct. Ms. Collington had these documents in the J. Reuben
8 Long Detention Center. She actually contacted the County
9 Police, and wanted to turn them over and make the police aware
10 of it, because she thought they benefitted her. The police
11 took the letters and put them into evidence. We then started
12 requesting the letters, and eventually got these letters from
13 the State. There were some problems copying them, and we kept
14 getting copies that were hard to read, but essentially what we
15 were looking for is the originals, which, other than possibly
16 this -- this last exhibit, or this Exhibit Number 7, they all
17 appear to be originals, so these were actually given to me by
18 the State.

19 THE COURT: Okay. Great. Now, the -- the purpose of
20 them -- and I'm assuming the next witness that's going to
21 testify is Tiffany James, correct?

22 MS. von HERRMANN: That's correct.

23 THE COURT: All right. Is -- you are expecting to use
24 them on cross-examination, correct?

25 MR. McCOLLUM: Yes sir.

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1 **THE COURT:** All right. The letters, or parts of the
2 letters that she has authored, I'll hear you on that,
3 Solicitor. Why is it that Mr. McCollum should not be use --
4 be able to use the letters and/or parts of the letters that
5 she authored?

6 **MS. von HERRMANN:** Well, let me -- let me just address
7 first, number five, which is a letter to Ladorrean ---

8 **THE COURT:** We'll deal with them.

9 **MS. von HERRMANN:** Okay.

10 **THE COURT:** What I'm asking for is, your next witness
11 is Tiffany James?

12 **MS. von HERRMANN:** Yes.

13 **THE COURT:** If, indeed, she authored a letter, or parts
14 of letters, why is it that Mr. McCollum should not be allowed
15 to cross-examine her about, either the letters or the parts of
16 the letters she authored or she wrote?

17 **MS. von HERRMANN:** I think he can ask her about the
18 parts of the letters that she wrote.

19 **THE COURT:** Very good. All right. Very good.

20 Now, Mr. McCollum, you tell me Defendant's -- let's see,
21 Two, Three, Four -- I believe those are -- are the three, Two,
22 Three and Four, were first initiated by your client, Ms
23 Collington, and then there is some response by Ms. Tiffany
24 James, correct?

25 **MR. MCCOLLUM:** I'm just trying to see if I've got the

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1 numbers right, Your Honor.

2 THE COURT: All right.

3 MR. McCOLLUM: Three -- Three, Four, yes sir. Two, yes
4 sir. Was there another one?

5 THE COURT: I wrote down Two, Three and Four, but look
6 and see if you think there's another one. When you were
7 explaining it to me that's what I wrote down, Two, Three and
8 Four.

9 MR. McCOLLUM: Yes. Ms. Collington wrote the first
10 part and then the response.

11 THE COURT: And Ms. James -- a response by Ms. James.

12 MR. McCOLLUM: Yes sir, Your Honor.

13 THE COURT: All right. Now, why should the Court allow
14 to be read to the jury, or for the jury to know the contents
15 of the part of the letter authored by your client? Is that
16 not her testifying without -- not being under oath?

17 MR. McCOLLUM: I wasn't planning to introduce the part
18 that was authored by -- well, actually I was just planning to
19 ask the witness about it, but I wasn't going to read, or have
20 published to the jury the part that Ms. Collington wrote.

21 THE COURT: All right. So, okay, good.

22 MR. McCOLLUM: It just happens to be on there.

23 THE COURT: All right. But your intention is not to
24 exhibit that, or show that, or tell that to the jury in any
25 way.

1 MR. McCOLLUM: No. No sir.

2 THE COURT: All right. Very good. Now, Number Five,
3 it's from your client to Tanheshia Smith. I mean, that has
4 nothing to do with this particular witness that's going to
5 testify, correct.

6 MR. McCOLLUM: Correct.

7 THE COURT: All right. And you told me Six was a
8 letter by Ms. Collington; is that right?

9 MR. McCOLLUM: Yes. And that just -- that was in the
10 stack, and it -- when we premarked I just went ahead and
11 marked it, but that's not something I'm looking to use or
12 introduce.

13 THE COURT: All right. Very good. And then, on Number
14 Seven, I assume we need to -- you would need to clarify what
15 the witness -- to whom the letter was sent or addressed,
16 correct?

17 MR. McCOLLUM: On Number Seven, Your Honor.

18 THE COURT: Yes sir. Since it's not clear from the
19 face of it who it's going to. Well, am I incorrect with that?

20 MR. McCOLLUM: It says Dub, D-u-b.

21 THE COURT: Which is not a name that has come up in
22 this trial at all.

23 MR. McCOLLUM: Right. But now something like that I
24 would just want -- just want to ask her who is it to.

25 THE COURT: Right. That's what I'm saying. I mean,

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1 that would be the first -- first part of that one, correct?

2 MR. McCOLLUM: Yes sir.

3 THE COURT: All right. Very good. Then -- assuming
4 then that's a letter she authored to your client, then I would
5 not have any problems with. Obviously if it's to somebody
6 else, who is not your client, then I would need that matter
7 addressed to me before you talk to her about it any further.

8 MR. McCOLLUM: I'm sorry. Ms. von Herrmann was
9 speaking to me.

10 THE COURT: Well, that's all right. I'm just saying, I
11 don't know what her answer is going to be when you ask who is
12 the letter to. If it's to your client then I'm -- obviously
13 she has communicated with your client and you can ask her
14 about that, but if it's to somebody else, who is not your
15 client, before you ask her any questions, or if you then
16 intend to go into it, that's a matter we need to address
17 before you start asking any questions to her.

18 MR. McCOLLUM: And the main thing, Your Honor, is the
19 letter -- the main thing I'm concern -- was interested in is
20 this song she wrote about this crime spree.

21 THE COURT: All right.

22 MS. von HERRMANN: My other problem with these letters
23 would be -- and I guess it would depend on what -- which
24 portion of those letters Mr. McCollum intended to read, but
25 some of this stuff is hearsay, and I don't believe that he can

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1 use the hearsay that's contained in the letters.

2 THE COURT: Well, it depends on what she testifies to,
3 what's contained in the letter. I've -- you know, if she says
4 something on direct-examination that is directly contradicted,
5 or in some way contradictory to something she wrote, then he's
6 allowed to bring that up, so if there's a particular -- you
7 know, part of this is -- again, we are talking here in
8 general, and I don't know what the specific -- what her
9 testimony is going to be, nor what the specific question is
10 going to be, so if there appears to be some particular problem
11 you have at that point in time, Solicitor, you'll just have to
12 raise it.

13 MS. von HERRMANN: Yes sir.

14 THE COURT: But in general, if she authored them, and
15 they are to Mr. McCollum's client, then you've got a right to
16 talk -- to ask her about these -- about these letters, and
17 what the intent was, or what she was meaning when she said
18 whatever it is that she said.

19 MS. von HERRMANN: If she identifies them as hers I
20 agree with you completely.

21 THE COURT: All right. Very good. All right, so --
22 anything else?

23 MS. von HERRMANN: I was just handed this letter that
24 apparently was notarized, and I can tell you right -- I've
25 never seen this letter before.

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1 THE COURT: All right. Could I -- could I see it,
2 please?

3 MR. McCOLLUM: Your Honor, may I have the original
4 marked?

5 THE COURT: You -- yes, as Defendant, Collington's,
6 whatever it is, for identification, certainly.

7 (LETTER MARKED DEFENDANT, COLLINGTON, EXHIBIT NUMBER 8,
8 FOR IDENTIFICATION ONLY.)

9 THE COURT: All right. It's been marked for
10 identification as what number now?

11 COURT REPORTER: Defendant, Collington, Number 8.

12 THE COURT: Number 8. All right. You tell me,
13 Solicitor, you -- until Mr. McCollum gave it to you right now
14 you've never seen nor known about this particular document; is
15 that correct?

16 MS. von HERRMANN: That's correct.

17 THE COURT: All right. And when did you come into
18 possession of this, Mr. McCollum?

19 MR. McCOLLUM: Sometime the signature on it, May, 2010,
20 I think, and February of 2011.

21 THE COURT: All right. February of -- so between May
22 of 2010, and February of 2011. All right.

23 All right. Mr. McCollum indicates, Solicitor, that he
24 forwarded it to you on February 4, 2011. Have you seen this
25 letter from ---

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1 MS. von HERRMANN: He showed that to me, and Your
2 Honor, I think what he forwarded to me are these -- is a copy
3 of these two originals that he has in here. These were in his
4 possession. They were written -- you can see that these are
5 yellow-lined legal pad. These are originals that were in his
6 possession. He forwarded those two letters to me. His client
7 was in possession of those.

8 THE COURT: All right.

9 MS. von HERRMANN: These are not -- these are not -- I
10 mean, obviously evidence wouldn't turn over the originals to
11 him. So these were originals he had in his possession, and he
12 forwarded those two letters to me.

13 But as to this notarized statement, I have never seen it
14 before.

15 THE COURT: All right. Very good.

16 Is that jury standing in the hallway? Okay. Take them
17 back to the jury room, please.

18 All right. What we are going to do then is, we'll take
19 a recess, and the State is allowed to talk to Ms. Tiffany
20 James about this, and when you get done talking to her about
21 it, Ma'am, you can then present the matter to me as why you
22 intend to do, then I'll make a decision.

23 All right. Thank you very much.

24 MS. von HERRMANN: Can they tell me who the Notary is
25 alleged to be on that document?

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1 **THE COURT:** It's illegible. Do you have any idea, Mr.
2 McCollum?

3 **MR. MCCOLLUM:** Yes, Your Honor. Corporal Jones.
4 Corporal Jones is employed, I guess by the Sheriff's
5 Department, and works at J. Reuben Long.

6 **THE COURT:** All right. Very good. All right.
7 And Mr. McCollum, here's your letter.

8 So, we'll take a recess for whatever time, Solicitor,
9 you need to talk to your client, communicate with the Notary
10 as to the circumstances of it, and we'll just be at recess.

11 Thank you very much.

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

14 **THE COURT:** Thank you very much. You may be seated.
15 Thank you all.

16 All right. Dixie, could I have that Number 7,
17 Collington 7, please Ma'am?

18 **(COURT REPORTER AND COURT CONVERSE.)**

19 **THE COURT:** Yes Ma'am. Yes, the very -- oh, it was 8.
20 I'm sorry, the very -- very last one.

21 All right. Regarding Defendant's, Collington, 8 for
22 identification, I gave you an opportunity, Solicitor, to
23 communicate with the potential next witness, Ms. James, about
24 this. Are there any matters that you would like to present to
25 the Court at this time?

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1 MS. von HERRMANN: Yes sir, Your Honor. I have -- I
2 have read the letter, obviously. She had read the letter as
3 well. And as I stated to the Court earlier, this is something
4 that I have not seen prior to today.

5 I appreciate the Court giving me the opportunity to take
6 the time to go over this with her, however, this is the kind
7 of -- this is the kind of document that cannot be adequately
8 dealt with in ten or fifteen minutes. If the Defense wanted
9 to use this type of document they should have provided this to
10 me in time for me to go and interview the Notary, to talk to
11 him, to see whether -- to investigate all the circumstances
12 surrounding this particular document. I received it about
13 thirty seconds before I got ready to put the witness up on the
14 stand, and I think it should be excluded for that reason.

15 THE COURT: All right. Thank you very much.

16 All right, Mr. McCollum, let me hear from you, sir.

17 MR. MCCOLLUM: Your Honor -- and Kathy Ferrari from my
18 office is the one that sent the letter, and she's the one that
19 pointed out that she had sent the letter to the Solicitor's
20 Office.

21 THE COURT: If you want to make a copy of that
22 transmittal letter part of the evidence in this case as -- for
23 identification.

24 MR. MCCOLLUM: I can, Your Honor.

25 THE COURT: Okay.

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1 MR. McCOLLUM: And -- do I need to do that now?

2 THE COURT: Well, before we get done, yes, I think we
3 need to. I mean, do you not -- you don't still have it?

4 MR. McCOLLUM: I have. I put it back in the
5 correspondence file. I sent her on an errand.

6 THE COURT: All right. Go ahead. That's fine. Well,
7 that would be Defendant's Exhibit 9. It's the transmittal
8 letter from, I believe in February of 2011; is that correct?
9 Is that right? Is the transmittal letter from February of
10 2011?

11 MR. McCOLLUM: I thought it was on the 4th, Your Honor.

12 THE COURT: But -- I know. I didn't say a date. I did
13 not know -- I did not remember what the date was, but it was
14 in February of 2011, some date.

15 MR. McCOLLUM: Oh, I'm sorry. Yes sir, Your Honor.

16 THE COURT: All right. Very good. And that is the
17 letter that you showed the Court, and indicated that you
18 believe you transmitted Defendant's Exhibit 8, Collington's 8
19 for identification, to the Solicitor's Office; is that
20 correct?

21 MR. McCOLLUM: Yes sir.

22 THE COURT: All right. What I'll have you do is, when
23 you can find that letter and take it out of your
24 correspondence file, mark that as Defendant's Exhibit 9, for
25 identification, for Defendant, Collington. All right.

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1 MR. McCOLLUM: Yes sir.

2 THE COURT: All right. Now -- and I know I interrupted
3 you. Your position on this is what?

4 MR. McCOLLUM: And I don't -- I don't want to get into
5 some argument with the Solicitor about whether we sent it or
6 not, but I do take some affront from those comments. The --
7 we believe that it's an authentic document written by Tiffany
8 James, of her own freewill, it's notarized by the -- what's
9 his first name -- Solomon Jones at J. Reuben Long Detention
10 Center. It's my understanding that he saw her sign it, and
11 then put his notary mark on there.

12 I've sent my assistant to get a blank subpoena so that
13 we can subpoena Mr. Jones. We also called him and asked him
14 to come over here. I understand that may be out of order in
15 terms of, if we are going to be required to call him.

16 But that's our position on it, Your Honor, and I regret
17 any confusion. This has been -- this has been a voluminous
18 materials in this case. There have been seven or eight co-
19 defendants. There have been documents that we've referenced
20 in this case that I have not received copies of. I've gotten
21 copies from the State. I try not to complain about that sort
22 of thing. Having been in this situation on both sides I
23 understand that these things happen, and I'm comfortable
24 trying to deal with that without complaining about it, and all
25 I'm trying to do is present the best defense possible for Ms.

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1 Collington, be respectful to the Court, and to the Solicitor,
2 and if I've made mistakes I apologize for that.

3 THE COURT: All right. Well, I appreciate that. I
4 don't know that there is any apology needed, Mr. McCollum.
5 I -- in this particular matter I'm certainly taking you at
6 your word that you transmitted it to the Solicitor's Office in
7 February of 2011, and I'm taking her at her word that she's
8 never seen the document, did not receive it. That indicates
9 there was some problem in the transmittal to me, because I
10 know both of you, and I take both of you at your word that
11 that's what occurred, so obviously something happened from the
12 time it was transmitted by Mr. McCollum to when it was suppose
13 to have been received by the Solicitor's Office, that there
14 was some issue there.

15 Obviously, from reading what is contained in Defendant,
16 Collington's, Exhibit Number 8 for identification, it's
17 important information, and calls into question what testimony
18 Ms. James might offer, at least -- in the very least it's
19 material information that a jury would need to hear to judge
20 the credibility and believability of the witness, the veracity
21 of the witness.

22 Mr. Hazzard, I'm sorry, I did not -- you didn't seem to
23 have a part in this, but do you have a position on this?

24 MR. HAZZARD: No sir.

25 THE COURT: All right. Very good. I just wanted to

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1 give you an opportunity, but you didn't seem to have a part in
2 this, so I didn't mean to neglect you.

3 Therefore, I'm not going to exclude Defendant's 8. Now,
4 what I will -- again, taking Mr. McCollum at his word, and the
5 Solicitor at her word, what I will offer, Madame Solicitor, to
6 you is a -- a recess.

7 Yes sir.

8 MR. HAZZARD: I'm sorry, Your Honor. At this point I
9 believe the Court has definitely been couching this as, for
10 identification, and the way I'm thinking is that we are
11 talking about possibly Mr. McCollum using it for impeachment
12 purposes. We are not talking about it being entered into
13 evidence yet, are we, or ---

14 THE COURT: No. It's not in evidence.

15 MR. HAZZARD: Okay. All right.

16 THE COURT: It's been marked for identification.

17 MR. HAZZARD: Okay.

18 THE COURT: Now, whether or not it comes into evidence
19 at some point in time, that's a later decision, but it is not
20 in evidence in this case, nor any other -- One through Nine
21 that he has so marked. None of those are in evidence. They
22 are all -- One through Nine, Defendant, Collington's, are all
23 for identification. None of that is in evidence. That's for
24 a later time, if it's presented to the Court.

25 But again, going back to that, Solicitor, again as I

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1 indicated, taking you both at your word, I'm going to offer to
2 you a recess at this point in time to allow you to do whatever
3 further investigation you need. Obviously I would like that
4 recess to be as short as possible to -- so as not to
5 inconvenience the jury, but I do not intend by that statement
6 to make you do something that you do not think you can
7 accomplish within a reasonable period of time. I would hope
8 if I gave you a recess we could resume this afternoon,
9 hopefully at two o'clock. Would that give you sufficient
10 time, do you believe, to conduct some investigation in this
11 matter, and communicate with the necessary party, obviously
12 the Notary, and try to find out some information about that?

13 MS. von HERRMANN: Yes sir.

14 THE COURT: All right. Very good. All right, what I'm
15 going to do is, I'm going to call the jury in, I'm going to
16 tell them that there is some issue that has come up causing
17 some delay, that I'm going to send them to lunch early, and
18 for them to come back at two o'clock.

19 Did you get that other -- that transmittal letter, Mr.
20 McCollum?

21 MR. McCOLLUM: Yes sir, Your Honor.

22 THE COURT: All right. Very good. While the Court
23 Reporter is marking that, bring the jury in, please.

24 All right. And the transmittal letter is dated February
25 4th.

JURY IN/COURT TO JURY
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1 (LETTER DATED FEBRUARY 4, 2011, McCOLLUM TO SOLICITOR,
2 MARKED DEFENDANT, COLLINGTON, EXHIBIT NUMBER 9, FOR
3 IDENTIFICATION ONLY.)

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

6 THE COURT: All right, ladies and gentlemen of the
7 jury, an issue has come up that I've taken up outside your
8 presence. It was not something that -- and I have tried to
9 address it as expeditiously and quickly as possible. I find
10 that there is more time that is needed to address this
11 particular issue. Things happen in trials, and I appreciate
12 that, and I apologize for the delay, but rather than keeping
13 you there and having you sit there, I'm going to at least let
14 you go early to -- early to lunch, so that we can try and
15 resolve this matter and get it handled in a proper way, rather
16 than y'all just sit there and wait for us to get that done
17 here in the courtroom, so send you to lunch early. Be back in
18 your jury room at two o'clock, be back at two o'clock. You
19 will have more than enough time to go anywhere, I think, that
20 you want to go for lunch, and I'll see you back in your jury
21 room at two o'clock, please.

22 Remember, don't talk about the case. Don't allow
23 anybody to talk to you.

24 Just leave your pads and pens. Thank you very much.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JURY IN/COURT TO JURY
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1 JURY.)

2 THE COURT: All right. We will be at recess until two
3 o'clock, and we will resume at that point in time, and if
4 there's anything further that you need to present to me,
5 Solicitor, I'll hear you at that time, all right.

6 All right. Thank y'all very much.

7 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
8 OUTSIDE THE PRESENCE OF THE JURY.)

9 THE COURT: All right. Do we need to address any
10 issues before we ask the jury to come in, Solicitor?

11 MS. von HERRMANN: Your Honor, I have talked with
12 Officer Jones. I do have him here present. I have another
13 witness who I intend to call next. She is, I think coming up
14 in the elevator right now, if you could just let me step to
15 the door.

16 THE COURT: All right. Very good.

17 (SOLICITOR STEPS TO THE DOOR.)

18 THE COURT: All right. Is the State ready?

19 MS. von HERRMANN: Yes sir.

20 THE COURT: All right, Mr. McCollum.

21 MR. MCCOLLUM: I'm ready, Your Honor.

22 THE COURT: All right. And Mr. Hazzard.

23 MR. HAZZARD: The Defense is ready, Your Honor.

24 THE COURT: Very good.

25 Ask the jury to come in, please.

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right, Solicitor, your next witness,
4 please Ma'am.

5 MS. von HERRMANN: Thank you, Your Honor. The State
6 calls Tiffany James.

7 THE COURT: All right. Please come around to be sworn.

8 TIFFANY QUINASIA JAMES, being first
9 duly sworn, testifies as follows:

10 DIRECT-EXAMINATION BY MS. von HERRMANN:

11 Q. How old are you?

12 A. Twenty-one.

13 Q. And so how old were you back when this incident took
14 place in 2008?

15 A. Just turned eighteen.

16 Q. Just turned eighteen. And do you have any children?

17 A. One.

18 Q. What -- is it a boy or a girl?

19 A. A little girl.

20 Q. What's her name?

21 A. Brianna.

22 Q. And how old is she now?

23 A. She's four.

24 Q. And how old was she back then?

25 A. Just about to turn one.

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

- 1 Q. Do you have a brother?
- 2 A. Yes Ma'am.
- 3 Q. What's your brother's name?
- 4 A. Andrew James.
- 5 Q. And how about Donell James; who is he?
- 6 A. That's my cousin.
- 7 Q. He's your cousin. Do you know Ladorrean Collington?
- 8 A. Yes.
- 9 Q. How do you know Ladorrean Collington?
- 10 A. Through my sister.
- 11 Q. And how long have you known Ladorrean Collington?
- 12 A. Since I was like fourteen or fifteen.
- 13 Q. All right. And how about Greg Floyd; how do you know
- 14 Greg Floyd?
- 15 A. That's my baby father's brother.
- 16 Q. So your daughter, Brianna, Greg Floyd is her uncle; is
- 17 that right?
- 18 A. Yes Ma'am.
- 19 Q. And how about the victim in this case, Allen Smith; did
- 20 you know him?
- 21 A. No Ma'am.
- 22 Q. All right. And where did you live at the time that
- 23 Allen Smith was killed; where were you living?
- 24 A. In Crane Creek.
- 25 Q. And is that in the same apartment complex as Ladorrean

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 Collington?

2 A. No Ma'am.

3 Q. Is it in the same apartment complex where Greg Floyd
4 was living?

5 A. Yes Ma'am.

6 Q. And do you know where Ladorrean Collington was living
7 at the time?

8 A. Yes Ma'am.

9 Q. Where was she living?

10 A. On 544.

11 Q. Did you know anybody else that lived in that apartment
12 complex?

13 A. Tanheshia and Donell.

14 Q. And where did they live?

15 A. In the other apartment complex over.

16 Q. All right. Is Ladorrean Collington older than you are?

17 A. Yes.

18 Q. How much older?

19 A. I think she's like twenty-three, twenty-four.

20 Q. All right. And during the time that you've known her
21 was she kind of like a big sister to you?

22 A. Yes.

23 Q. And did you kind of -- did you look up to her?

24 A. Yes.

25 Q. And if she asked you to do things for her, not even

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

1 relating to this case, if she asked you to run to t
2 for her, would you do that?

3 A. I would do it with no problem.

4 Q. You would do it with no problem; is that what you said?

5 A. Yes Ma'am.

6 Q. All right. And do you recall -- I'm going to direct
7 your attention to Tuesday, April the 8th of 2008. Do you
8 recall seeing Ms. Collington and the victim in this case;
9 Allen Smith, get into an argument?

10 A. Yes Ma'am.

11 Q. Now, a minute ago when I asked you if you knew Allen
12 Smith -- let's clarify this, because you met Allen that day,
13 right?

14 A. Yes Ma'am.

15 Q. Or you had met him, but not -- not prior to all this;
16 is that correct?

17 A. Yes Ma'am.

18 Q. Okay. So that day did you see her get into an argument.
19 with him?

20 A. Yes Ma'am.

21 Q. And who was present at the time that that argument took
22 place?

23 A. I think his name Loc.

24 Q. Loc. And who else?

25 A. Me.

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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- 1 Q. And of course ---
- 2 A. Ladorrean.
- 3 Q. ---Ladorrean and Allen. Was anyone else there?
- 4 A. I think I had my daughter. I'm not sure.
- 5 Q. What was that -- and I'm sorry. Who was -- who was
- 6 present? You said your daughter also was present.
- 7 A. I believe she was.
- 8 Q. What was that argument about?
- 9 A. I can't quite remember.
- 10 Q. Did Allen and Ladorrean have a relationship?
- 11 A. I guess.
- 12 Q. Were they boyfriend and girlfriend, or were they --
- 13 were they messing around?
- 14 A. Yes Ma'am.
- 15 Q. And did she claim to be pregnant with his child?
- 16 A. Yes Ma'am.
- 17 Q. All right. And he was living with another woman,
- 18 right?
- 19 A. Yes Ma'am.
- 20 Q. And was she angry about that?
- 21 A. Yes Ma'am.
- 22 Q. And so is that what the argument was about on that day?
- 23 A. I believe so.
- 24 Q. And do you remember if that was a verbal argument, or a
- 25 physical argument, or both?

JURY IN
TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

1 A. I think both, cause she said that he puts his hands
2 her, but I wasn't in the room when it happened.

3 Q. All right. Did you -- did you hear her say anything to
4 him?

5 A. No Ma'am.

6 Q. Did you hear him say anything to her?

7 A. No Ma'am.

8 Q. And were they in a different -- were they in a
9 different location than you were?

10 A. Yes Ma'am.

11 Q. All right. Now, what kind of vehicle does Ms.
12 Collington drive?

13 A. Now.

14 Q. Back then.

15 A. Oh, she had a Honda, and a Explorer, I think,
16 Expedition.

17 Q. Was it a green Honda?

18 A. And a white truck.

19 Q. And a white Ford Expedition or Explorer, one of those
20 SUV type?

21 A. Yes Ma'am.

22 Q. And on that day, after Ms. Collington and Mr. Smith got
23 into the argument, did Mr. Smith and Loc leave?

24 A. Yes Ma'am.

25 Q. And do you know where they went, or did you happen to

ASIA JAMES - DIRECT BY von HERRMANN

way they went?

believe they went straight to Allen's house.

All right. And what did Ms. Collington do at that

4

5 A. She told me to come on, and we got in the truck and
6 went over there, and she went over there and bust out his
7 window.

8 Q. All right. She went over to Allen's house?

9 A. Yes Ma'am.

10 Q. And who was driving that vehicle? Well, which vehicle
11 were you in?

12 A. The truck.

13 Q. And who was driving?

14 A. Ladorrean.

15 Q. And what did she bust that window out with?

16 MR. McCOLLUM: I'm sorry, Your Honor. I just would
17 like to interpose an objection for the record, on the previous
18 difficulties not be relevant.

19 THE COURT: All right. It's overruled.

20 You may continue.

21 MS. von HERRMANN: Thank you.

22 Q. So you -- let me show you a map. All right. Let's
23 take a look at this map here. This is State's Exhibit 40, and
24 Ms. Collington's apartment is located here. I know it's a
25 little small. Can you see that?

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- 1 A. Yes Ma'am.
- 2 Q. And can you see Mr. Smith's residence here?
- 3 A. Yes Ma'am.
- 4 Q. Can you tell me where you all drove to get to his house
- 5 when she broke out the window?
- 6 A. We took around this way ---
- 7 THE COURT: Speak up.
- 8 A. I believe we had went out and made a right, and made
- 9 another right, and went in somewhere in between there,
- 10 somewhere.
- 11 Q. All right. And then would you have come down this road
- 12 ---
- 13 A. Yes Ma'am.
- 14 Q. ---To get to Allen's road?
- 15 A. Yes Ma'am.
- 16 Q. All right. Did you turn around, or did y'all just stop
- 17 there in the road; do you recall?
- 18 A. I don't remember.
- 19 Q. Okay. And so once you got there she got out of the
- 20 vehicle.
- 21 A. Yes Ma'am.
- 22 Q. Did you get out of the vehicle as well?
- 23 A. No Ma'am.
- 24 Q. Did she have anything with her when she got out of the
- 25 vehicle?

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- 1 A. Yes Ma'am.
- 2 Q. What was that that she had?
- 3 A. The handle to a hammer.
- 4 Q. All right. So not an entire hammer, but the handle.
- 5 A. Just the handle.
- 6 Q. And is that what she used to break out that window?
- 7 A. Yes Ma'am.
- 8 Q. And did you see her -- then did she come back to the
- 9 car?
- 10 A. Yes Ma'am.
- 11 Q. Did you see her get anything else out of the car?
- 12 A. She got a pen and paper and wrote some note, and left
- 13 it.
- 14 Q. All right. Do you know what she wrote the note on?
- 15 A. No Ma'am.
- 16 Q. All right. You couldn't see the contents of that note.
- 17 A. No Ma'am.
- 18 Q. Where did she leave the note?
- 19 A. I believe in the door, or on the window. I'm not sure.
- 20 Q. When you -- when she got back into the car did you all
- 21 then leave?
- 22 A. No Ma'am.
- 23 Q. What did you do next?
- 24 A. She parked in front of the mailbox and said that she
- 25 was going to sit and wait for the police to come.

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- 1 Q. Okay. And did you wait for the poli
2 A. No Ma'am.
3 Q. All right. So then where did you go
4 A. I don't quite remember.
5 Q. What was her mood like at that point?
6 A. She was mad.
7 Q. Do you know if she tried to call Allen, or text him?
8 A. Yes Ma'am. She kept calling him.
9 Q. And was he answering the phone; do you know?
10 A. I don't think so.
11 Q. Do you remember her leaving any messages for him ---
12 A. No Ma'am.
13 Q. ---Or any text messages or voice message, either one.
14 A. (NODS HEAD NEGATIVE)
15 COURT REPORTER: What was your answer, please?
16 A. No Ma'am.
17 Q. All right. After that incident took place was there
18 some suggestion made by someone that Allen Smith -- that
19 someone should break into his house and rob him?
20 A. No. Like a couple of days after that she was talking
21 about.
22 Q. But when you say she, who was talking about it?
23 A. Ladorrean.
24 Q. What did she say about it?
25 A. She said that she was going to get somebody to rob him.

1 Q. All right. And did she get somebody to rob him?

2 A. Yes Ma'am.

3 Q. All right. Who did she -- if you know, who did she
4 talk to first about that?

5 A. My brother, my cousin, and Gregory.

6 Q. All right. And so that would be Andrew, right ---

7 A. Yes Ma'am.

8 Q. ---And Donell ---

9 A. Yes Ma'am.

10 Q. ---And Greg Floyd?

11 A. Yes Ma'am.

12 Q. And were you there when that conversation was taking
13 place?

14 A. Yes Ma'am.

15 Q. What did Ladorrean tell them about robbing this
16 particular location?

17 A. She said that he doesn't keep a weapon on him, so they
18 don't have to use bullets, but she was like, they got to do
19 what they got to do, then they going to have to do what they
20 got to do.

21 Q. All right. And did -- did she ever mention that she
22 was going to go with them, or was this something that she
23 wanted them to go and do?

24 A. She wanted them to go and do it.

25 Q. All right. How about the time of day; was there any

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1 discussion about what time of day this should take place?

2 A. No Ma'am.

3 Q. All right. And did she say -- if you heard, did she
4 give them any instructions about where that house would be
5 located? How would they know where the house would be
6 located?

7 A. She told me to show them.

8 Q. All right. You were going to show them?

9 A. Yes Ma'am.

10 Q. And how were you going to show them?

11 A. Drive them.

12 Q. All right. So, on April 10th -- well, let me ask you
13 this. Do you know if she had -- if she had been having any
14 conversations with Anthony Graham around this time as well, if
15 you know?

16 A. I'm not sure.

17 Q. So the day that you are talking about, which I believe
18 was April the 10th, did you drive them around to Mr. Smith's
19 house?

20 A. Yes Ma'am. That day.

21 Q. All right. And that would have been Andrew and Donell
22 and Greg, right?

23 A. Yes Ma'am.

24 Q. And did you stay there, or did you drop them off and
25 leave?

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- 1 A. Dropped them off and left.
- 2 Q. And where did you go after you dropped them off?
- 3 A. Back to Ladorrean's house.
- 4 Q. And when you got back to Ladorrean's house who was at
- 5 Ladorrean's?
- 6 A. Donell, Gregory, Andrew, and Dorrea -- Ladorrean.
- 7 Q. They had already made -- they made it back to
- 8 Ladorrean's house before you did.
- 9 A. Yes Ma'am.
- 10 Q. And why had they made it back to Ladorrean's so
- 11 quickly?
- 12 A. I guess because they walked through the path.
- 13 Q. All right. What did they say about -- did they say
- 14 they went into Mr. Smith's house?
- 15 A. I'm not quite sure.
- 16 Q. Did they -- did they say that they didn't go in?
- 17 A. They didn't go in.
- 18 Q. They -- you heard them say they did not go in.
- 19 A. Yes Ma'am.
- 20 Q. And what did Ms. Collington say with regard to that?
- 21 A. (She was still talking about robbing them still.
- 22 Q. She said she wanted somebody to go back and try again.
- 23 A. Yes Ma'am.
- 24 Q. Do you know what guns, if any, they had when they made
- 25 that attempt there to go to his house and rob it?

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- 1 A. No Ma'am.
- 2 Q. You didn't see what particular guns people had.
- 3 A. No Ma'am.
- 4 Q. And so, between that time and let's say, Sunday, April
- 5 the 13th of 2008, did you and Ms. Collington have any further
- 6 discussion about that robbery?
- 7 A. Yes Ma'am.
- 8 Q. And was she still planning to have someone rob him?
- 9 A. Yes Ma'am.
- 10 Q. And she still wanted that to happen; is that what she
- 11 told you?
- 12 A. Yes Ma'am.
- 13 Q. And was she calling your cousin, Donell, about it?
- 14 A. Yes Ma'am. She was telling me to call him.
- 15 Q. She was telling you to call him. And did you call him?
- 16 A. Yes Ma'am.
- 17 Q. And do you recall having a conversation with him about
- 18 the robbery, where Ms. Collington was in the background with
- 19 you while you were having that conversation?
- 20 A. Yes Ma'am.
- 21 Q. And was she telling you what you ought to say to
- 22 Donell?
- 23 A. No Ma'am. I had gave her the phone.
- 24 Q. You gave her the phone.
- 25 A. Yes Ma'am.

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1 Q. And how about Greg Floyd; was she having conversations
2 with Greg Floyd in your presence?

3 A. Yes Ma'am.

4 Q. And what was she saying with regard to those
5 conversations?

6 A. Well, while I was listening, telling him to come over
7 there, or whatever.

8 Q. All right. So during this interim period between the
9 10th and the 14th, is it safe to say that every day she is
10 still talking about it?

11 A. Yes Ma'am.

12 Q. All right. Let's talk about Sunday, April the 13th.
13 What -- do you recall what you were doing that evening?

14 A. No Ma'am.

15 Q. All right. You don't know -- all right, let's -- let's
16 just do this. Let's go to the morning of Monday, the 14th,
17 which is the day the incident took place. What were you doing
18 on that morning?

19 A. That morning I had got up and fixed my baby a bottle,
20 and Dorrea was talking about robbing him again. She was like,
21 it would be a good time to do it now, while he's sleep, and
22 she told me to walk over to Donell's house and go get him, and
23 that's what I did.

24 Q. Okay. So that morning you were going back and forth
25 between Ladorrean's apartment and ---

- 1 A. And Donell's.
- 2 Q. ---Donell's apartment?
- 3 A. Yes Ma'am.
- 4 Q. All right. And while you were at Ladorrean's apartment
- 5 she said go back and tell Donell that today would be a good
- 6 day to do it.
- 7 A. Yes Ma'am.
- 8 Q. All right. And did you do that?
- 9 A. Yes Ma'am.
- 10 Q. And what did Donell say?
- 11 A. He had came over there and talked to her.
- 12 Q. All right. So Donell came over and talked with
- 13 Ladorrean as well that day.
- 14 A. Yes Ma'am.
- 15 Q. Where was your little girl that morning?
- 16 A. Which morning? Monday morning.
- 17 Q. The morning that all of this happened?
- 18 A. She was at Ladorrean's house, and then I had took her
- 19 over to Tanheshia's house.
- 20 Q. All right. So she was at one of those two apartments.
- 21 A. Yes Ma'am.
- 22 Q. And at some time during that day did somebody else come
- 23 over to Donell's house; do you remember?
- 24 A. Earlier that day?
- 25 Q. Well, let me ask you this, did your brother, Andrew,

1 come over at some point?

2 A. Yes, I think -- yes.

3 Q. And when he came over he brought a -- were you there
4 when he brought in the suitcase?

5 A. Yea -- I don't remember.

6 Q. Okay. You know that he brought some weapons over
7 there.

8 A. Yes Ma'am.

9 Q. All right. And do you know which weapons he brought
10 over there?

11 A. I just know he brought a shotgun over there.

12 Q. All right. And that's the only weapon that you are
13 aware of.

14 A. Yes Ma'am.

15 Q. And again, are you sort of coming in and out of there?

16 A. Yes Ma'am.

17 Q. And do you know long Andrew stayed there?

18 A. Not long, because he was in the process of moving.

19 Q. He was in -- all right. And where was he moving?

20 A. From Crane Creek to Socastee.

21 Q. All right. Was he -- who did he live with?

22 A. He lived with his baby mama.

23 Q. What's his baby mama's name?

24 A. Cecily.

25 Q. Cecily Hillard.

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- 1 A. Yes Ma'am.
- 2 Q. All right. And they were getting evicted, right?
- 3 A. Yes Ma'am.
- 4 Q. And so how -- you said he didn't stay there very long,
5 but how long do you think it was? I mean, are we talking
6 about five minutes, or thirty minutes, or an hour?
- 7 A. Probably five minutes, if that.
- 8 Q. And did you see him leave?
- 9 A. Yes Ma'am.
- 10 Q. And was anybody with him when he left?
- 11 A. His baby mama.
- 12 Q. Cecily was with him.
- 13 A. Yes Ma'am.
- 14 Q. All right. And at some point then did Greg Floyd show
15 up at Donell's place?
- 16 A. After that him and Bait showed up.
- 17 Q. All right. Who is Bait?
- 18 A. Quentin Gause.
- 19 Q. All right. Is that -- that's Quentin Gause over there?
- 20 A. Yes Ma'am.
- 21 Q. People call him Bait?
- 22 A. Yes Ma'am.
- 23 Q. He didn't look like that back then, did he?
- 24 A. No Ma'am.
- 25 Q. All right. What did he look like back then, dreads?

1 A. Dreads.

2 Q. When he and Greg got over to Donell's house -- did you
3 see what they arrived in, what kind of vehicle?

4 A. A red vehicle.

5 Q. Was it a two-door vehicle or a four-door vehicle?

6 A. Four-door.

7 Q. All right. And did -- do you know if Bait, or Quentin
8 Gause, had a weapon with him?

9 A. Yes.

10 Q. All right. Did you see that weapon?

11 A. Yes.

12 Q. And what type weapon was that?

13 A. It was like a camouflage sawed-off.

14 Q. Shotgun.

15 A. Yes Ma'am.

16 Q. Long gun, or a hand gun?

17 A. A long gun.

18 Q. Where did you see that?

19 A. On the counter.

20 Q. So he brought -- you saw him bring it in?

21 A. Uh.

22 THE COURT: You need to say yes or no, Ma'am.

23 A. Yes Ma'am.

24 Q. All right. Did he make -- did he make any comment
25 about the gun? Was there any ---

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1 A. I'm not sure.

2 Q. All right. So once he gets there, is everyone talking
3 about this robbery?

4 A. Yes Ma'am.

5 Q. And had -- had Ladorrean's given you all some
6 instructions about where they might be able to find drugs, or
7 money, or whatever it was they were looking for?

8 A. Not while I was in there.

9 Q. You weren't present when that took place?

10 A. No Ma'am.

11 Q. And so then at some point did you all decide that it
12 was time to go?

13 A. Yes Ma'am.

14 Q. All right. And do you know if Ladorrean had made a
15 call to someone just before y'all went?

16 A. I'm not sure who, but I think one of them was on the
17 phone with her, because I was standing outside.

18 Q. All right. So the four of you all get in the car; is
19 that correct?

20 A. Yes Ma'am.

21 Q. Who is in the vehicle?

22 A. Me, Gregory, Donell and Quentin.

23 Q. All right. Where -- who is driving?

24 A. I was.

25 Q. Who is in the passenger side?

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1 A. Gregory.

2 Q. Who is in the back?

3 A. Quentin and Donell.

4 Q. All right. And where do you -- let me show you the --
5 this photo again, State's 40, this map I should say. Show the
6 jury, if you will, which way you came in.

7 A. Which way I came in to Allen's house?

8 Q. Which way you came in to Allen's.

9 A. I drove out this way and made a right, made another
10 right, and -- the same way that Dorrea had went in.

11 Q. All right. And when you get to this road did you stop
12 in front of his house; did you turn around?

13 A. Turn around.

14 Q. So you went to the end of the cul-de-sac and then
15 turned back around.

16 A. Yes Ma'am.

17 Q. So that your car was facing going out.

18 A. Yes Ma'am.

19 Q. And did you pull in the driveway, or did you just pull
20 out there in the road?

21 A. In the road.

22 Q. You stopped out there in the road, and who got out of
23 the vehicle once you were stopped there in the road?

24 A. Donell, Gregory and Quentin.

25 Q. And what did you see them do?

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- 1 A. Seen Gregory kick the door in. They went in.
- 2 Q. They went -- you saw them go into the house?
- 3 A. Yes Ma'am.
- 4 Q. And so you were there in the car alone for a little bit
- 5 -- period of time, right?
- 6 A. Yes Ma'am.
- 7 Q. And did you hear anything?
- 8 A. I heard some gunshots.
- 9 Q. Let's talk about this. Do you remember what they
- 10 were -- what color clothing they were wearing?
- 11 A. No Ma'am.
- 12 Q. All right. Do you remember who was -- do you remember
- 13 who was carrying what weapons when they went in?
- 14 A. I know Quentin had that camouflage shotgun, and Gregory
- 15 had the .22, and Donell had the broke shotgun.
- 16 Q. All right. Were you going to wait for them outside, or
- 17 were you going to leave and let them run back down the path
- 18 like they had gone before?
- 19 A. They said for me to wait for them.
- 20 Q. All right. So once you are there, what did you hear?
- 21 A. Some gunshots.
- 22 Q. Do you know how many gunshots you heard?
- 23 A. Like up to three.
- 24 Q. All right. Were they pretty quick, or was there a big
- 25 period of time between them?

- 1 A. Pretty quick.
- 2 Q. And then after you heard those gunshots what did you
3 see next?
- 4 A. Them running out the house.
- 5 Q. Do you remember who ran out first?
- 6 A. No Ma'am.
- 7 Q. Did they get back into the vehicle with you?
- 8 A. Yes Ma'am.
- 9 Q. And where was everyone seated when they got back into
10 the vehicle?
- 11 A. I think Quentin was behind me, and Donell was beside
12 him, and Gregory was back beside me, but I'm not sure.
- 13 Q. All right. Did Donell come out of the house with
14 something that he didn't go in the house with?
- 15 A. A bag.
- 16 Q. A bag. What kind of bag was it?
- 17 A. Looked like a golf -- like a golf club bag.
- 18 Q. All right. So it was a long type bag.
- 19 A. A long black bag.
- 20 Q. Did he tell you later on what was in that bag?
- 21 A. Yes.
- 22 Q. What was it?
- 23 A. A gun.
- 24 Q. So once the three of you all get into the car were
25 people a little bit panicky when they got in there?

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1 A. Yes Ma'am.

2 Q. And tell the jury, if you will, what Donell and Quentin
3 and Greg were saying once they got into that car.

4 A. I remember Bait saying -- Quentin saying that he moved,
5 he moved, and I don't remember Gregory and Donell saying
6 anything.

7 Q. And at some point did you all receive a call from
8 Ladorrean Collington while you were in the car?

9 A. Yes Ma'am.

10 Q. All right. Was that right after this had happened?

11 A. Yes Ma'am.

12 Q. And who took that phone call initially?

13 A. I believe Gregory handed me the phone, said she wanted
14 to talk to me.

15 Q. All right. And what did she say to you?

16 A. (She kept asking what did they get.

17 Q. (She said what did they get.

18 A. Yes Ma'am.

19 Q. And what did you say to that?

20 A. I told her I don't know, I'll call her when I get to
21 the house.

22 Q. All right. Were you nervous?

23 A. Yes Ma'am.

24 Q. And did anybody -- if you know, did anybody say, Bait
25 shot the man ---

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1 A. No Ma'am.

2 Q. All right. ...To her? You don't know who may have
3 said that to her?

4 A. No Ma'am.

5 Q. All right. And did somebody tell you then where to
6 drive that car?

7 A. Yes Ma'am.

8 Q. Who told you where to drive the car?

9 A. Quentin said drive it to his sister's house.

10 Q. Who is his sister?

11 A. TaTa.

12 Q. Where does she live?

13 A. Whittemore Street.

14 Q. All right. Is that in Conway?

15 A. Yes Ma'am..

16 Q. So did you drive to Tata's house?

17 A. Yes Ma'am.

18 Q. And once you got to Tata's house what happened then?

19 A. I got out the car and walked home.

20 Q. All right. You got out of the car. Did anybody else
21 get out of the car?

22 A. Everybody got out.

23 Q. Everybody got out.

24 A. Yes Ma'am.

25 Q. And you headed toward your house. And where did Donell

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1 go?

2 A. He was headed in the same direction, but I don't where
3 he went at, but. ---

4 Q. All right. And how about Greg?

5 A. Me and him went to the same place.

6 Q. All right. And how about Bait; where did he go?

7 A. I don't know.

8 Q. All right. He didn't go walking off with the three of
9 y'all, right?

10 A. No Ma'am.

11 Q. So at some point did the three of you all walk to
12 Huckabee Heights?

13 A. Yes Ma'am.

14 Q. And when you got to Huckabee Heights what -- what did
15 you do at Huckabee Heights?

16 A. Donell had stopped, and he had threw the broke gun in
17 the woods, and me and Gregory kept walking home.

18 Q. All right. Did Donell go his own separate way?

19 A. Yes Ma'am.

20 Q. And when you say you and Gregory went walking home,
21 y'all went -- that would be to Crane Creek Apartments.

22 A. To Crane Creek.

23 Q. Did you get that .22 back from Greg?

24 A. Yes Ma'am.

25 Q. Let me show you State's Exhibit 69. Is this the sawed-

1 off shotgun that you were referring to earlier, that you said
2 Donell had?

3 A. Yes Ma'am.

4 Q. And I'm also going to show you State's Exhibit 70. Is
5 that that .22?

6 A. Yes Ma'am.

7 Q. You want to take a closer look.

8 A. Yes Ma'am.

9 Q. Does that look like the one. All right. And so
10 Gregory Floyd gave this back to you.

11 A. Yes Ma'am.

12 Q. And you took it back to your apartment.

13 A. Yes Ma'am.

14 Q. All right. At some point during this whole time did
15 either you or Donell, or somebody in the car, need to call
16 Andrew about your little girl?

17 A. Oh, Yes Ma'am, I called him.

18 Q. You called him, and what -- did you ask him to do you a
19 favor?

20 A. Uh huh (indicating positive)

21 Q. What was the favor you asked him to do?

22 A. I told him to go pick up my daughter from Tanheshia's
23 house and bring her home.

24 Q. Did he do that?

25 A. No Ma'am.

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1 Q. He didn't do it. All right. Well, he wasn't a very
2 good brother that day, was he? And then at some point
3 obviously you were picked up and questioned by the police; is
4 that true?

5 A. On where?

6 Q. You were -- you were talked to by the police, you went
7 down to the Police Department and talked to them; is that
8 correct?

9 A. No, not that day.

10 Q. Okay. Not that day, but at some point ---

11 A. Yes Ma'am.

12 Q. ---In the future. How -- when was it? Do you remember
13 what the day was?

14 A. On the 16th.

15 Q. All right. Did they come and say they wanted to talk
16 to you, or did you drive down there?

17 A. I had heard that they had kicked in my apartment door,
18 so I had called up there and they said to come in for
19 questioning.

20 Q. All right. And did you go in for questioning?

21 A. Yes Ma'am.

22 Q. And when you first talked to them did you initially
23 tell them -- were you less than honest with them when you
24 first talked to them?

25 A. Yes Ma'am.

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- 1 Q. You didn't tell them the whole story.
- 2 A. No Ma'am.
- 3 Q. And you -- you tried to minimize your role?
- 4 A. Yes Ma'am.
- 5 Q. And basically you tried to minimize everybody's role,
- 6 didn't you?
- 7 A. Yes Ma'am.
- 8 Q. But eventually, during the course of that conversation,
- 9 you started coming around a little bit.
- 10 A. Yes Ma'am.
- 11 Q. And you ultimately took the police and showed them
- 12 where the shotgun was located that Donell had thrown away,
- 13 right?
- 14 A. Yes Ma'am.
- 15 Q. And I'm going to show you State's 38. Do you recognize
- 16 that?
- 17 A. Yes Ma'am.
- 18 Q. Is that the location that you took the police to, and
- 19 told them that that shotgun would be located there?
- 20 A. Yes Ma'am.
- 21 Q. And did you originally tell the police that Ms.
- 22 Collington didn't have anything to do with it?
- 23 A. Yes Ma'am.
- 24 Q. And why did you do that?
- 25 A. Because she asked me to.

TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 Q. And she was your friend.

2 A. Yes Ma'am.

3 Q. And you were trying to cover for your friend.

4 A. Yes Ma'am.

5 Q. Did she specifically give you any instructions about
6 what you ought to say to the police?

7 A. Yes. She told me -- she had called me while I was at
8 my house, and she asked me what I was about to do. I told her
9 I was about to go turn myself in. And she told me to meet
10 with her, and we met at Food Lion, and she told me -- asked me
11 what I was going to say when I go in there, and I told her
12 nothing, and she was like, well, just go -- when you go in
13 there just tell the truth, but leave my name out of it because
14 they want me, they don't want none of y'all, they just want
15 me.

16 Q. Okay. So she said -- her advice to you was, you should
17 go into the Police Department and implicate yourself, and tell
18 the police all about your involvement in this home invasion,
19 but you just leave me out, right?

20 A. Yes Ma'am.

21 Q. And did you do that?

22 A. Yes Ma'am.

23 Q. Because she was your friend, right?

24 A. Yes Ma'am.

25 Q. All right. And did she also ask you -- she -- y'all

TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 were both in jail together, right?

2 A. Yes Ma'am.

3 Q. Were y'all in the same pod?

4 A. Yes Ma'am.

5 Q. What's a pod? Tell the jury what a pod -- what a pod
6 is.

7 A. It's like where all the females are housed.

8 Q. Okay. I'm going to show you what's been marked as
9 State's 75, and ask you just to take a look at that and tell
10 me if you recognize that.

11 A. Yes Ma'am.

12 Q. All right. And is that your handwriting up here on the
13 top?

14 A. Yes Ma'am.

15 Q. And is that your signature on it?

16 A. Yes Ma'am.

17 Q. And so let's talk about this a little bit. How -- what
18 is your educational level?

19 A. Like ninth, tenth grade.

20 Q. You were -- you a good student, or not such a good
21 student.

22 A. Not so good.

23 Q. All right. I've got a letter here that -- that you --
24 you wrote, you wrote this, in other words you, physically,
25 with a pencil, wrote this, correct?

TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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- 1 A. Yes Ma'am.
- 2 Q. All right. Did somebody ask you to write this?
- 3 A. Yes Ma'am.
- 4 Q. And who was the person who asked you to write this?
- 5 A. Ladorrean Collington.
- 6 Q. And did she just say, I want you to write a letter
- 7 saying a certain something, or did she actually write the
- 8 verbiage that -- did she write the words down for you?
- 9 A. She wrote them word for word.
- 10 Q. She wrote the words down for you.
- 11 A. Yes Ma'am.
- 12 Q. And then did she give that to you on a piece of paper?
- 13 A. Yes Ma'am.
- 14 Q. And what did she ask you to do with it?
- 15 A. She told me to copy it.
- 16 Q. And did you copy it?
- 17 A. Yes Ma'am.
- 18 Q. And let's talk about this letter. It says, "To whom it
- 19 may concern: I, Tiffany Quinasia James, am writing this
- 20 statement of my own freewill, with no promises or intents
- 21 afterward." Is that the kind of language that you typically
- 22 use?
- 23 A. No Ma'am.
- 24 Q. "On April 17th, 2008, I wrote a statement involving one
- 25 said, Ladorrean Chukell Collington, in homicide slash robbery,

TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 that took place on April the 14th, 2008, at [REDACTED] Barberry
2 Drive," right?

3 A. Yes Ma'am.

4 Q. "One Ladorrean Collington had no knowledge of said
5 incident." Is that how you talk?

6 A. No Ma'am.

7 Q. Do you said, "said incident"?

8 A. No Ma'am.

9 Q. "She did not participate in the planning of said
10 incident, nor did she participate in the said incident
11 mentioned above on the 14th of April, in 2008. I take full
12 responsibility for falsely accusing Ms. Ladorrean Chukell
13 Collington. I hereby swear that this statement is true and
14 accurate, and finally, I am available for further inquiry
15 regarding this matter." Is that something that you would say?

16 A. No Ma'am.

17 Q. Have you ever, in your entire lifetime, said, I am
18 available for further inquiry regarding this matter?

19 A. No Ma'am.

20 Q. That's not how you talk, is it?

21 A. No Ma'am.

22 Q. And that's not how you write?

23 A. No Ma'am.

24 Q. Where was Ms. Collington when you wrote these words
25 down?

TIFFANY QUINASIA JAMES - DIRECT BY von HERRMANN

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1 A. We were sitting on the floor by -- in front of the
2 cells.

3 Q. All right. So she was sitting right there with you.

4 A. Yes Ma'am.

5 Q. And did she watch you copy these down word for word?

6 A. Yes Ma'am.

7 Q. And then what did she tell you to do with it?

8 A. She said that we needed to get it notarized, and after
9 that she told me to give her the paper, and I gave it to her.

10 Q. She told you to give her the paper after you had it
11 notarized.

12 A. Yes Ma'am.

13 Q. All right. And so you wrote this down, and then did
14 you -- then did you go to somebody there at the jail and have
15 them notarize it?

16 A. Yes Ma'am.

17 Q. All right. But the person who notarized it didn't see
18 you writing it; that person just saw your signature; is that
19 correct?

20 A. Yes Ma'am.

21 Q. All right. Is this a true statement?

22 A. No Ma'am.

23 Q. Why did you copy that statement?

24 A. Because she asked me to.

25 Q. Ms. James, are you afraid of Ms. Collington?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. Yes Ma'am.

2 MR. McCOLLUM: Objection, Your Honor.

3 THE COURT: I'm going to allow it.

4 Q. Were you afraid that if you didn't follow her
5 instructions something would happen to you?

6 A. Yes Ma'am.

7 Q. Are you aware -- have you been around her long enough
8 to know that she had the potential to harm you?

9 A. Yes Ma'am.

10 Q. And is that why you wrote this letter?

11 A. Yes Ma'am.

12 MS. von HERRMANN: I don't have any further questions
13 for this witness.

14 THE COURT: All right. Cross-examination, Mr.
15 McCollum.

16 CROSS-EXAMINATION BY MR. McCOLLUM:

17 Q. How are you doing, Ms. James?

18 A. Fine.

19 Q. My name is Greg McCollum. I represent Ms. Collington,
20 okay.

21 A. Yes sir.

22 Q. I'm going to ask you some questions. This statement
23 that the Solicitor asked you about today, as late as -- as
24 late as today she asked you if you wrote this statement and --
25 and you said you didn't write it, didn't you?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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- 1 A. I said what?
- 2 Q. Didn't you say you didn't write it?
- 3 A. I told her I did write it.
- 4 Q. All right. And then you knew that Officer Jones,
- 5 Solomon Jones, who notarized it -- your signature, was going
- 6 to be here today, right, to confirm that you wrote it?
- 7 A. No, I didn't.
- 8 Q. You didn't know that?
- 9 A. No.
- 10 Q. All right. So, when the -- so now you say -- when the
- 11 Solicitor asked you if you wrote the statement you said you
- 12 did write it, right?
- 13 A. As in ---
- 14 Q. I'm just asking you, did you write the statement?
- 15 A. Yes. I copied it.
- 16 Q. And did you sign it?
- 17 A. Yes, I did.
- 18 Q. And earlier -- and I'll go through this in a minute --
- 19 but earlier you had -- you had -- in the past three years
- 20 you've made statements that Ladorrean Collington set up this
- 21 burglary and robbery that she's charged with, and then the
- 22 other offenses, right? You said that she did it, right?
- 23 A. I said that she did what?
- 24 Q. That she set it up, and set the whole thing up, right?
- 25 A. Yes.

1 Q. And then earlier too, you went, I think on April the
2 16th, 15th, 16th, something like that, you, yourself, you went
3 down to the Police Department in your street clothes, right,
4 and you gave a statement to the police, right?

5 A. Yes.

6 Q. And in that statement you told the police that you,
7 yourself, drove a red car, and drove this gang of people down
8 there to do the lick, right?

9 A. Excuse me.

10 Q. You drove the car to the house so that Mr. Smith could
11 be robbed, where -- and then he was ultimately shot to death.
12 You drove the car, right?

13 A. So they can do that?

14 Q. Let me back up. Let's go back -- and when you first
15 went down to the Police Department in your street clothes, you
16 just walked in there and told the police that you wanted to
17 make a statement, right?

18 A. No, I didn't.

19 Q. Then how did -- you were at the police station, right?

20 A. Yes, I was.

21 Q. How did you come to be there?

22 A. How did I come to be there?

23 Q. Yes Ma'am.

24 A. I had my cousin drive me down there, and when I went in
25 I gave -- I gave them my name, and let them know that I was

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

966

1 here.

2 Q. Right. Okay. So you went to the police station,
3 right?

4 A. Uh huh (indicating positive)

5 Q. And you went in there ---

6 THE COURT: Answer yes or no, please Ma'am.

7 A. Okay.

8 Yes sir.

9 Q. You went in the police station and you talked to a
10 detective, and you told the detective that you drove the car
11 over to Allen Smith's house the day he was killed.

12 A. Yes sir.

13 Q. You told them that, right?

14 A. Yes sir.

15 Q. And you went through the details of it, right?

16 A. Yes sir.

17 Q. And then after you did that the police arrested you and
18 charged you with murder, right?

19 A. Murder, kidnapping, armed robbery, and burglary.

20 Q. So then after they've charged you with murder,
21 kidnapping, armed robbery, and burglary, you were in jail,
22 right?

23 A. Yes.

24 Q. You are in jail now, based on the evidence in your
25 statement, right?

TIFFANY QUINASIA JAMES - CROSS BY MCCOLLUM

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1 A. Yes.

2 Q. So then you told the police that you wanted to make
3 another statement, right?

4 A. Yes.

5 Q. And then at some point they came and got you, and they
6 actually put you in front of a camera, so you can see you, and
7 you are sitting there in a jail suit, right? The second
8 statement you gave you were in jail wearing a jail jumpsuit,
9 right?

10 A. Uh huh (indicating positive)

11 Q. Right. You remember that.

12 THE COURT: Again, Ma'am ---

13 A. Yes sir.

14 Q. Okay. And in that statement, among other things,
15 without going through all of it, you said you wanted to
16 correct some discrepancies in your statement, right?

17 A. Excuse me.

18 Q. You wanted to set the record straight, you wanted to
19 make another statement. Let me ask you one question at a
20 time. You told the police -- after the first statement you
21 told the police, when you were in jail, that you wanted to
22 make another statement, correct?

23 A. Yes.

24 Q. Okay. And you sat down with a video camera, or a tape
25 recorder or whatever, and you made another statement to the

1 police, right?

2 A. Yes.

3 Q. And in that statement you said you wanted to tell the
4 truth, and tell them what really happened, right?

5 A. Yes.

6 Q. And in that statement, after you were in jail, you told
7 the police that Ms. Dorrea Collington was driving the car,
8 right?

9 A. Yes.

10 Q. And you went on and talked about other things that she
11 did, right?

12 A. Yes.

13 Q. And then later you went back and wrote this letter
14 apologizing and saying that she didn't have anything to do
15 with it, right?

16 A. No.

17 Q. Which goes back to the original statement, right?

18 A. No.

19 Q. No, you didn't do that.

20 A. No.

21 Q. Okay. Now, you are charged -- you are charged with
22 murder, right?

23 A. Yes.

24 Q. And you are looking at thirty years to life for murder;
25 you know that?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. No.

2 Q. You are charged with burglary in the first degree, and
3 looking at fifteen years to life in prison; do you know that?

4 A. No.

5 Q. You are charged with armed robbery, so you are looking
6 at ten years to thirty years in prison; do you know that?

7 A. No.

8 Q. And you are charged with kidnapping, so you are looking
9 at up to thirty years in prison for kidnapping; do you know
10 that?

11 A. No.

12 Q. Okay. You know that you are charged with a crime.

13 A. Yes.

14 Q. Do you know what crime you are charged with?

15 A. Murder, burglary, kidnapping and armed robbery.

16 Q. Okay. So you know what you are charged with. And you
17 are coming in here today, and you are testifying, right and
18 you expect to get some help or consideration out of this
19 testimony, right?

20 A. No.

21 Q. You don't. You don't expect anybody to help you.

22 A. No sir.

23 Q. Okay. Then why are you testifying?

24 A. Because I want to get everything from off of my chest.

25 Q. You just want to get it off your chest; is that right?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. Yes sir.

2 Q. Okay. The case has been pending for three years. You
3 haven't -- you haven't gone to court and said you want to
4 plead guilty, have you?

5 A. No.

6 Q. But you want to get it off your chest, correct?

7 A. Yes.

8 Q. Now, you have a lawyer, right?

9 A. Yes.

10 Q. Russell Mace is your lawyer.

11 A. Yes.

12 Q. And did Mr. Mace and you, and the Solicitor meet and
13 sign some kind of a -- make some kind of agreement where you
14 would testify?

15 A. No sir.

16 Q. Did -- well, just let me ask you this way. At any time
17 did you and your lawyer meet with Ms. von Herrmann?

18 A. Yes sir.

19 Q. That happened.

20 A. Yes sir.

21 Q. And did that happen one time or more than one time?

22 A. More than once.

23 Q. Okay. And in that situation then, did you give another
24 statement, and clarify what you would testify to at trial?

25 A. Repeat that.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 Q. Did you give them another -- at some point did you give
2 what they call a proffer statement, or another statement?

3 A. Yes.

4 Q. Okay. Now, you also -- you also go by Sticks, right?

5 A. No sir.

6 Q. You don't go by Sticks?

7 A. No sir.

8 Q. Nobody calls you Sticks?

9 A. No sir.

10 Q. Do you have any nicknames?

11 A. No sir.

12 Q. You don't have any nicknames?

13 A. Well, Tip.

14 Q. Tip. And you actually -- I'm going to mark what --
15 show you what's been marked as Defendant's Exhibit 7,
16 Collington, for identification.

17 You actually wrote a song, right?

18 MS. von HERRMANN: I'm going to object. That's --
19 objection. The appropriate question is to ask her if she --
20 if it's her handwriting and if she recognizes it.

21 THE COURT: Well, let's find out if she authored that
22 first, if you would, please.

23 Q. Just take a look at that.

24 A. No. No sir.

25 Q. Okay. So do you know what your handwriting looks like?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. Yes sir.

2 Q. Okay. And there are three pages there.

3 MR. McCOLLUM: Your Honor, I would ask her that she
4 look at all of them.

5 THE COURT: Look through the entirety of the thing,
6 Ma'am, please.

7 MR. McCOLLUM: Just requesting that she look at it.

8 THE COURT: Yes sir. I understand that.

9 A. No sir.

10 Q. All right. And this other statement that you made,
11 Defendant's Exhibit Number 8 ---

12 MS. von HERRMANN: Objection. Same objection.

13 THE COURT: All right. I'm sorry. Let me see 8,
14 please.

15 All right. And show it to her.

16 Q. All right. Just looking at that right there.

17 A. Uh huh (indicating positive)

18 Q. Now you said you wrote Number 8, which is the statement
19 saying that Ms. Collington was not involved. You wrote that
20 with no question, right?

21 A. Yes.

22 Q. And look at the lettering. Do the letters not look the
23 same to you?

24 A. I know my handwriting. I didn't write that.

25 Q. You didn't write that. Let me show you some other

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 stuff.

2 THE COURT: Please, if you would, make sure we know
3 which document she is referring to when she says she didn't
4 write that.

5 A. I didn't write this right here.

6 MR. McCOLLUM: Your Honor, she is referring to
7 Defendant, Collington, Number 7, for identification.

8 THE COURT: All right. Thank you.

9 Q. The State's 75 for iden -- State's 75, and Defendant,
10 Collington's, 8, are one and the same document.

11 THE COURT: Rather than you say that, Mr. McCollum, why
12 don't you show them both to the witness and she if she will
13 say that, please.

14 Q. I'm going to hand you now 8, Collington, for
15 identification, and State's 75, for ID, and just ask you to
16 look at those and tell us, is that the same thing?

17 A. Yes.

18 Q. Okay. May I have this back, please Ma'am.

19 And just so we are clear, there's no question but that
20 to State's Exhibit 75 -- which is also this other copy,
21 Defendant's Number 8 -- there's no question but that you wrote
22 this, right?

23 A. I wrote it.

24 Q. Because it's notarized and signed by you, right?

25 A. Uh huh (indicating positive) Yes sir.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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- 1 Q. However, this other song, it's not -- it's not signed
2 and notarized by you, right?
- 3 A. No.
- 4 Q. Right. It doesn't have a notary on it saying ---
5 MS. von HERRMANN: I'm going to object.
- 6 Q. ---You signed it, right?
- 7 A. No.
- 8 MS. von HERRMANN: She said that that's not her
9 handwriting. I don't think he ---
- 10 THE COURT: I appreciate that. I'm going to allow that
11 question.
- 12 Q. Just -- just -- and I don't mean to just go on and on,
13 but the song is not signed and notar -- with a notary stamp on
14 it, right?
- 15 A. All right.
- 16 Q. I'm asking a question.
- 17 A. No, it's not.
- 18 MR. McCOLLUM: Your Honor, I'm sorry.
- 19 THE COURT: That's all right. Go ahead. She answered
20 it.
- 21 MR. McCOLLUM: What's the answer, Your Honor?
- 22 A. I said no.
- 23 MR. McCOLLUM: Thank you. I'm sorry.
- 24 Q. Now I'm going to show you Defendant, Collington's,
25 Number 2, for identification, and ask you if you recognize

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 that, specifically the second paragraph on the bottom.

2 A. No.

3 Q. Is that your handwriting?

4 A. No.

5 Q. Is that signed by you, and notarized by you?

6 A. No.

7 Q. If you will -- and that's just Defendant's 2,
8 Collington, for identification, Defendant's 3, Collington, for
9 identification. I want you to look at this and, if you would,
10 I'm going to just hand you that and ask you -- before I ask
11 you if you wrote it, I'm going to ask you, on the top does it
12 say "Tip"?

13 A. Yes sir.

14 Q. So does it look like a letter to you?

15 A. No sir.

16 Q. But it has your name on it and a comma?

17 A. It got "Tip" on there.

18 Q. Okay. And then -- and below that writing there's a
19 writing at the bottom here, and that's what I'm asking you
20 about, this part here that starts with Dorrea, and then a
21 comma; is that your handwriting?

22 A. No sir, it isn't.

23 Q. And you didn't get this -- this one wasn't notarized,
24 right?

25 A. No sir.

1 Q. Okay. So that's Defendant's, Collington, 3, for
2 identification.

3 So you deny that one too, right? Correct?

4 A. Correct.

5 Q. And this -- Defendant's Exhibit 4, Collington, for
6 identification, I want you to look at this, and look at the
7 bottom of it. You know, there's the top part -- there's like,
8 to someone, and then the bottom part which is a response. Do
9 you recognize your handwriting, or remember writing that one,
10 and I mean the part on the bottom half.

11 A. I've never seen that.

12 Q. Never seen it before in your life.

13 A. No sir.

14 Q. Didn't write it?

15 A. No sir.

16 Q. Not your handwriting?

17 A. No sir.

18 Q. And it's not signed by you?

19 A. No sir.

20 Q. And it's not notarized?

21 A. No sir.

22 MS. von HERRMANN: Your Honor, he's publishing -- I
23 mean, he's showing the jury that letter. That's
24 inappropriate.

25 THE COURT: Mr. McCollum, it is not in evidence. You

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 are not offering it in evidence. You may not show it to the
2 jury. Thank you.

3 MR. McCOLLUM: I -- Your Honor, I was not trying to
4 publish it to the jury. I mean, it's ---

5 THE COURT: Well, you are waving it in front of them.

6 MR. McCOLLUM: I don't -- I understand.

7 Q. Now, let me show you just -- just one more, Defendant,
8 Collington's, 1 for identification, and ask you the same
9 thing. Do you recognize that?

10 A. No sir.

11 Q. Is that -- does it have your signature on it?

12 A. No sir.

13 Q. So it's not signed and notarized, right?

14 A. No sir.

15 Q. And you are saying you never wrote it, right?

16 A. No sir.

17 Q. Now, how long were you in jail?

18 A. I believe thirty-three months.

19 Q. And when somebody is in jail sometimes you have to get
20 scraps of paper or something to write on, right?

21 A. Yes.

22 Q. And you get -- can you get a pen or a pencil from the
23 jail staff?

24 A. No. A pencil, but not no pen.

25 Q. So you can get a pencil.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. Yes.

2 Q. And can you get paper from the jail staff?

3 A. Yes.

4 Q. And do -- do you or have you ever seen an inmate write
5 another inmate a letter?

6 A. Yes.

7 Q. And while you were in jail you received letters, right?

8 A. Yes.

9 Q. And you received letters from inside the pod, inside
10 the jail, right?

11 A. Yes.

12 Q. And you wrote letters inside the jail, and inside the
13 pod, right?

14 A. Yes.

15 Q. And since paper is short, it's a practice that you
16 engaged in, and others, where one person would write a letter
17 to somebody on the top, and then the response would be on the
18 bottom, right?

19 A. I guess.

20 Q. Right. Well, you've done that before, right?

21 A. No, didn't.

22 Q. Okay. Well, you've seen it done, right?

23 A. Yes.

24 Q. And then that same piece of paper would get passed
25 back, right?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 A. I guess.

2 Q. And can you always just walk down to somebody's cell
3 and give it to them?

4 A. No.

5 Q. Are you allowed to write letters back and forth?

6 A. Yes.

7 Q. And so how do you get -- how do you get your letter to
8 somebody in another cell?

9 A. Either you sneak it to them or you wait until everybody
10 come out for rec.

11 Q. You either sneak it to them, or you wait for what?

12 A. Everybody to come out for rec.

13 Q. Come out for rec.

14 A. Yes.

15 Q. Which means recreation time.

16 A. Yes.

17 Q. Okay. Because when you are locked in your cell you are
18 in your cell, right?

19 A. Yes.

20 Q. And when you come out from rec you have contact with
21 some people, but not all the same people, right?

22 A. Yes.

23 Q. And when you are in jail you've got a lot of time to
24 think about things, right?

25 A. Yes.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

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1 Q. So you've, quote, got a lot of time on your hands,
2 right?

3 A. Yes.

4 Q. So people, yourself and other people, are trying to
5 devise methods, and do things in order to communicate, right?

6 A. Rephrase that, please.

7 Q. Well, you want to -- you want to -- if you want to
8 contact somebody and you are not allowed to you have to figure
9 out a way to pass a note, right?

10 A. Right.

11 Q. So, if somebody who is in jail, being held in jail --
12 some people have more privileges than others, right?

13 A. Right.

14 Q. So some people -- like you have any trustees in there?

15 A. Yes.

16 Q. You have somebody that's over the pod. In other words,
17 you've got somebody that's in jail charged with a crime, but
18 they have some privileges where they are out more, they have
19 more freedom inside the pod.

20 A. Yes.

21 Q. Okay. And so based on certain circumstances you are
22 able to, sometimes, get those people, or whoever, deliver
23 messages for you, right?

24 A. Right.

25 Q. And you did that, didn't you?

1 A. No.

2 Q. Okay. So you were in jail for, I think, how many days?

3 A. I don't exactly remember how many days.

4 Q. How many months?

5 A. Like thirty-three.

6 Q. Thirty-three months.

7 A. Yes.

8 Q. So you were in jail for thirty-three months, which is
9 over three hundred and sixty days, right? Trying to do it.
10 Can't do it. Three hundred sixty, four hundred days you were
11 in jail, right?

12 A. I guess.

13 Q. Okay. And when you are in there, I mean, you don't
14 have T.V., right?

15 A. Yes.

16 Q. You do.

17 A. Yes.

18 Q. In your pod, or in the -- in your cell.

19 A. In the pod.

20 Q. So there's one T.V., or two T.V.s out in the pod,
21 right?

22 A. Right.

23 Q. And how much time do you get to go out there and watch
24 T.V.?

25 A. It depends.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

982

- 1 Q. Sometimes a lot, sometimes not so much, right?
- 2 A. Yes.
- 3 Q. Depends on what's going on, right?
- 4 A. Yes.
- 5 Q. And you don't have a telephone in there, do you?
- 6 A. Yes.
- 7 Q. You do.
- 8 Q. Yes.
- 9 Q. I don't mean a pay phone in the pod. I mean a phone in
10 your cell.
- 11 A. No.
- 12 Q. No phone in your cell, right?
- 13 A. No.
- 14 Q. No T.V. in your cell, right?
- 15 A. No.
- 16 Q. You've got a sink and a bed, and not much else, right?
- 17 A. Right.
- 18 Q. And it's pretty hard living in there, right?
- 19 A. Right.
- 20 Q. And it's hard not having contact with people that you
21 care about, or people that you are friends with, right?
- 22 A. Right.
- 23 Q. And so during that time you wrote letters to other
24 people, didn't you?
- 25 A. Uh huh (indicating positive) Yes.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

983

1 Q. So you wrote some letters, and had them passed around
2 the pod, right?

3 A. No.

4 Q. Okay. But you wrote some -- I'm just trying to
5 understand you here. I'm -- you -- I said you wrote some
6 letters like that, right?

7 A. Like -- can you be specific?

8 Q. Did you -- when you were in the jail, sitting in the
9 jail for three hundred, four hundred days, did you write, with
10 a pencil, on a piece of paper, one letter?

11 A. Yes.

12 Q. Okay. And who did you send that to?

13 A. My daughter.

14 Q. So you had somebody mail it for you?

15 A. I mailed it myself.

16 Q. And I won't even go into that. Did you write one
17 letter, in four hundred days, to pass to somebody in another
18 cell?

19 A. Yes.

20 Q. You did.

21 A. Yes.

22 Q. And how many of those do you think you wrote?

23 A. I'm not sure.

24 Q. Was it two, ten, a hundred?

25 A. Maybe ten, ten or more.

1 Q. All right. And those ten letters, who did you write
2 those to?a

3 A. Different people.

4 Q. Different people. How many different people?

5 A. I can't remember.

6 Q. Can you remember any of them?

7 A. Yes.

8 Q. Just give me -- I'm just asking for some names.

9 A. Kelly, Heather.

10 Q. Heather in jail ---

11 A. Uh huh (indicating positive) Yes.

12 Q. ---And Kelly. And did you talk to them about their
13 case?

14 A. No.

15 Q. You just wrote them letters about things that were
16 personal to you and them.

17 A. Yes.

18 Q. Okay. But you -- and I will try to get off this. But
19 you deny, you completely deny sending any letters to Dorrea,
20 Dorrea, or Ladorrean Collington? You deny that, right?

21 A. Yes.

22 Q. Never happened?

23 A. No.

24 Q. You swear.

25 A. I swear.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

985

1 Q. You swear.

2 A. I swear.

3 Q. Now, back -- back on April 17th, do you remember
4 talking with the police? This would have been the second
5 statement you made after you had been charged a crime.

6 A. Yes.

7 Q. And do you remember telling the police, when they were
8 asking who was driving the day that the crime occurred, do you
9 remember saying, I swear to God, in response to the question
10 that Dorrea was driving, I swear to God?

11 A. No, I don't remember it.

12 Q. You don't remember that.

13 A. No.

14 Q. Does that mean you didn't say it, or you don't remember
15 saying it?

16 A. I don't remember saying it.

17 Q. So, you remember saying, on your second statement,
18 after you were charged with murder, that Dorrea was driving
19 the car, right?

20 A. Do I remember on the second statement saying that she
21 was driving?

22 Q. Yes Ma'am.

23 A. Yes.

24 Q. There's no question about that, when you talked with
25 the police you told them the second time that she was actually

1 driving the car to take these fellows over there to do the --
2 do the crime, right?

3 A. Yes.

4 Q. You just say you don't remember saying you swear to
5 God.

6 A. Yes.

7 Q. So is it possible you said, I swear to God?

8 A. It's possible I said it, but I don't remember saying
9 it.

10 Q. So -- so you don't deny saying that you swear to God
11 that Dorrea was driving the car?

12 A. No.

13 Q. You don't deny that, do you?

14 A. I don't deny saying it.

15 Q. You don't deny it. Okay. And just like you just said
16 it just a minute ago, all right, just -- when we were just
17 talking, you said I swear, you didn't send any letters to her,
18 right?

19 A. Right.

20 Q. And when you told the police that you swear to God that
21 Dorrea was driving, clearly you were lying, right?

22 A. Yes.

23 Q. And when you -- with the exception of some of the
24 things that you told the police the first time you talked to
25 them, you've been lying a lot about this case, right?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

987

1 A. Yes.

2 Q. Okay. I respect that. I mean, you are in a tight
3 spot, right?

4 A. Yes.

5 Q. And you've got a -- you've got a little baby, right?

6 A. Yes.

7 Q. You've got one child.

8 A. Yes.

9 Q. And are you -- you are out on bond now?

10 A. Yes.

11 Q. And so you are home with your baby?

12 A. Yes.

13 Q. And you don't want to go to prison, right?

14 A. No.

15 Q. And you would like to stay home, right?

16 A. Right.

17 Q. And you know you've got to come here and do what you've
18 got to do, right?

19 A. Yes.

20 Q. And that's what you are doing, right?

21 A. As in -- be specific.

22 Q. Just as -- you have looked -- let me back up a little
23 bit. It wasn't your idea to come in here and testify, was it?

24 A. What do you mean?

25 Q. Well, I mean, if you had a -- if you could be anywhere

1 in the world, other than sitting right here with me asking
2 these questions, this is probably the least favorite place to
3 be, right?

4 A. Right.

5 Q. So you would really rather be -- anybody would -- you
6 included, would rather be somewhere else, right?

7 A. No.

8 Q. You would want to be here?

9 A. Yes.

10 Q. Okay. So you enjoy answering questions, and admitting
11 that you are a liar?

12 A. Excuse me.

13 Q. I'm sorry. I was walking away from you. Do you enjoy
14 answering questions, with a room full of people, and admitting
15 that you are a liar? Do you like that?

16 A. No.

17 Q. Okay. So, but you are doing what you've got to do,
18 right?

19 A. Right.

20 Q. Now, I want to go through just some specific things.
21 Do you remember -- and your grandmother -- your grandmother is
22 deceased, right?

23 A. Yes, one of them.

24 Q. And you remember talking to Donell -- and what's Donell
25 to you in terms of his relation?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

989

1 A. My first cousin.

2 Q. So Donell James is your first cousin, right?

3 A. Yes.

4 Q. Do you remember telling Donell that they needed to go
5 on the robbery at that time because you had seen the Forty
6 Thousand Dollars yourself, plus the work, in the house?

7 A. No sir.

8 Q. And do you remember talking to your cousin, Donell, and
9 telling Donell, at his request, that you had to swear on your
10 Grandmama's grave that that was true?

11 A. No sir.

12 Q. Am I saying it wrong? Did you have to swear on
13 grandma?

14 A. I ain't said none of that to him.

15 Q. Have you ever, talking to your brother, Donell, used
16 the term, or has he ever used the term, swear on grandma?

17 A. I don't swear on my Grandmama grave.

18 Q. Ever.

19 A. Ever.

20 Q. Under any circumstances.

21 A. Under any circumstances.

22 Q. Okay. Now, you say that you -- I think you testified
23 that Dorrea was talking to Donell to give him the details on
24 how to do the robbery, right?

25 A. Right.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

990

1 Q. And that was not her in the background, that was -- you
2 gave her the phone and she laid it out; she told them what to
3 do.

4 A. Yes.

5 Q. Okay. And that's your -- that's your testimony.

6 A. Yes.

7 Q. Okay. And is that as true as the other stuff that you
8 said?

9 A. Yes.

10 Q. Okay. Now, you went over -- you went with Dorrea, I
11 think on April the 10th, four days before the murder, you
12 drove with Dorrea -- and Dorrea drove her SUV over to Allen
13 Smith's house, right?

14 A. When?

15 Q. Well, forget the date. She drove the -- you rode with
16 her in the vehicle, and she got out and smashed the window
17 with a little hammer handle, right?

18 A. Right.

19 Q. And -- and she was mad, right?

20 A. Right.

21 Q. She was pregnant, right?

22 A. I guess -- yes. Yes.

23 Q. And she was pregnant with Big A's baby, right?

24 A. Right.

25 Q. And then after smashing the window with a hammer

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

991

1 handle, she went and wrote a note, and put her name on it, and
2 put it up on the house, right?

3 A. I don't know what she put on the note.

4 Q. Did -- I appreciate that. She -- she wrote a note,
5 right?

6 A. Right.

7 Q. Sitting in the SUV she wrote the note, right?

8 A. Right.

9 Q. Got out and went and put it on the house, right?

10 A. Right.

11 Q. Then she said she was going to wait till the police
12 came, right?

13 A. Right.

14 Q. But then she left, right?

15 A. Right.

16 Q. All right. And to your knowledge the police came
17 right?

18 A. I don't remember.

19 Q. And around that same time your crowd, your family, your
20 relatives, went over there to pull the robbery and couldn't do
21 it because the police were everywhere, because Dorrea had
22 knocked out the window, right?

23 A. Excuse me.

24 Q. Donell, Drew, and Greg had gone over to the house to
25 rob Mr. Smith but they couldn't carry it out because the

1 police were swarming all over the place because Dorrea had
2 broken the window, right?

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

4 Q. Okay. But you don't deny that it happened, right?

5 A. Don't deny what happened?

6 Q. That's fine. If you don't remember you don't remember.

7 Now, your testimony is that you drove Donell, your
8 cousin, Andrew your cousin, and Greg Floyd, and dropped them
9 off over at Allen Smith's house, right?

10 A. Right.

11 Q. And you left them there, and then they came back on --
12 on the path, right?

13 A. Right.

14 Q. And you drove them over there to commit a break-in and
15 a robbery, right?

16 A. Right.

17 Q. Right.

18 A. Right.

19 Q. And they had guns, right?

20 A. I don't remember.

21 Q. They had -- they had stuff they could put over their
22 face, right?

23 A. I don't remember.

24 Q. Well -- you don't remember. Did they put anything in
25 the trunk?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

993

1 A. No.

2 Q. Did they get in the car with you?

3 A. Yes.

4 Q. And you had your eyes open, right?

5 A. Right.

6 Q. And somebody -- you say somebody was sitting in the
7 seat next to you, right?

8 A. Right.

9 Q. And that person -- who was sitting in the seat next to
10 you?

11 A. Which time?

12 Q. Let's talk about the first time, the first time, when
13 you went over there and dropped them off, and then they --
14 they didn't do the robbery and walked home that time. Who was
15 sitting in the seat next to you that time?

16 A. I don't remember.

17 Q. Well, without remembering who was sitting there, do you
18 remember -- did you happen to notice the person sitting next
19 to you putting a mask on their face, and having a gun? Did
20 you notice anything like that?

21 A. No sir.

22 Q. Do you think that if three people got in your car, with
23 shotguns and pistols and masks, that you would notice?

24 A. Yes.

25 Q. But you didn't notice that day?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

994

1 A. Maybe cause they didn't have it on.

2 Q. Maybe because they didn't have guns; that's your
3 answer.

4 A. Yes.

5 Q. Okay. There's no question they went over there to do
6 the robbery, right?

7 A. Did they go over there to do it?

8 Q. Yes Ma'am.

9 A. Yes.

10 Q. Huh.

11 A. Yes.

12 Q. No, I mean the day you drove them, and they walked
13 back.

14 A. I guess they was going to do it.

15 Q. What you mean you guess? You knew they were going to
16 do it, didn't you?

17 A. No.

18 Q. You deny that.

19 A. My instructions was to drop them off and come back.

20 Q. Did you think they were just going over there for -- to
21 buy them dope or something?

22 A. Maybe.

23 Q. And that's -- is that as true as everything else you've
24 testified to?

25 A. Is what true?

1 Q. What you just said.

2 A. What I just said?

3 MR. McCOLLUM: Your Honor ---

4 THE COURT: Ma'am, if you will please listen to the
5 question asked by the attorney, and directly answer the
6 question. You can answer it yes, no, I don't know, or explain
7 your answer, but listen to the question, respond to it
8 correctly. Thank you, Ma'am.

9 Continue on, Mr. McCollum.

10 MR. McCOLLUM: Thank you. Thank you, Your Honor

11 Q. So ---

12 THE COURT: Again -- I'm sorry, sir.

13 Move behind the microphone, please Ma'am.

14 Go ahead.

15 MR. McCOLLUM: May it please the Court.

16 THE COURT: Go ahead.

17 MR. McCOLLUM: Thank you, sir.

18 Q. So, I don't want to just beat this to death either, but
19 just to go clear on this, the first time you drove them over
20 there, at the time that you dropped them off and they walked
21 home, your testimony, unless you want to change it, is that
22 you didn't know what they were going to do.

23 A. Yes. I knew what they were going to do.

24 Q. You knew they were going to go in there and bust in the
25 door and rob Allen Smith?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM .

996

1 A. No.

2 Q. What is your understanding that you knew what they were
3 going to do? What did you think they were going to do?

4 A. Just go see where he stay at.

5 Q. Okay. All right. So as far as you knew you were just
6 showing them where he lived.

7 A. Yes.

8 Q. And it was you driving, and these guys in the car,
9 right?

10 A. Right.

11 Q. And there wasn't any Dorrea there, was there?

12 A. No.

13 Q. Ladorrean wasn't showing them where they lived, was
14 she?

15 A. No.

16 Q. And you didn't know, for sure, how many people lived in
17 the house, did you?

18 A. Lived in what house?

19 Q. In Allen Smith's house.

20 A. No.

21 Q. You didn't know. But you had somehow sworn -- or you
22 deny this, but you had somehow said what was in the house, and
23 what could be gotten, being Forty Thousand and maybe half a
24 brick, right?

25 A. When did I say that?

TIFFANY QUINASIA JAMES - CROSS BY MCCOLLUM

997.

- 1 A. You said it to -- to your cousin, Donell, right?
- 2 A. No. Don't remember saying nothing like that to Donell.
- 3 Q. So you don't remember saying it.
- 4 A. I know I didn't say it.
- 5 Q. So -- so you deny that, right?
- 6 A. Right.
- 7 Q. Deny saying that, right?
- 8 A. Right.
- 9 Q. And -- and you swear that your denial is true, right?
- 10 A. Yes, it's true.
- 11 Q. And that's as true as everything else you've testified
- 12 to, right?
- 13 A. As in what you mean, everything else I testified to?
- 14 Q. Just the other things that you've been saying here
- 15 today under oath. It's as true as the other things you've
- 16 said here under oath today, right?
- 17 A. It's the truth. I didn't say nothing like that to
- 18 Donell.
- 19 Q. Okay. Now, you testified here today, when Ms. von
- 20 Herrmann was asking you some questions, you said that Donell's
- 21 shotgun was broke, right?
- 22 A. Right.
- 23 Q. How did you know his shotgun was broke?
- 24 A. Because that was my brother's gun.
- 25 Q. Who is your brother?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

998

1 A. Andrew James.

2 Q. Andrew, is your brother.

3 A. Right.

4 Q. And so -- so you say you knew the gun was broke because
5 it belonged to Andrew.

6 A. Right.

7 Q. But the gun would fire, wouldn't it?

8 A. I'm not sure. I just know it was broke.

9 Q. Well, did you ever see the other shotgun that was
10 stolen out of the house?

11 A. I don't quite remember.

12 Q. So you might have seen the shotgun that was stolen out
13 of the house, or you might not have.

14 A. Uh huh (indicating positive)

15 THE COURT: Is that a yes or a no, Ma'am?

16 A. Yes.

17 Q. Now earlier today, I believe, you testified, in
18 response to Ms. von Herrmann's question, that -- I think you
19 said it was Donell, came back to the car with the long bag,
20 right?

21 A. Right.

22 Q. And so you never saw the shotgun in that bag.

23 A. No. I'm not sure if I saw it or not.

24 Q. Okay. Well, think hard. You are not sure, or did you
25 see it?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

999

1 A. I'm not sure if I saw it or not, because I remember him
2 opening the bag to take out the broke gun and throw it, so I
3 don't know -- I don't remember if seen it or not.

4 Q. The broke gun wasn't in the bag, was it?

5 A. Yes.

6 Q. All right. So he had two bags or one bag?

7 A. One bag.

8 Q. So when the shotgun that he stole out of the house --
9 he ran out to the car with it, it wasn't in the bag then,
10 right?

11 A. I'm not sure.

12 Q. But you say you saw him take the broken shotgun out of
13 the bag and throw it at -- throw it in the woods, basically.

14 A. Exactly.

15 Q. And did he do that from the car, or while he was
16 walking?

17 A. While he was walking.

18 Q. And while you were walking with him?

19 A. Uh huh (indicating positive) Yes.

20 Q. Okay. And then he -- did you ever find out what he did
21 with the gun that he had taken?

22 A. No.

23 Q. Did you tell the police about that?

24 A. No. I don't think I did.

25 Q. In terms of -- and any statements you made to the

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

1000

1 police originally saying you didn't know what was going to
2 happen, or what was going to go down, or however you say it,
3 that's clearly not true, right, because you knew exactly what
4 was going to happen, right, in terms of the robbery?

5 A. As in ---

6 Q. You knew your cousins, your family, was going to go in
7 there and rob somebody, and try to get Forty Thousand Dollars
8 and maybe some -- some cocaine, right?

9 A. No.

10 Q. But you knew they were going to do something wrong,
11 right?

12 A. Right.

13 Q. Because when you went over there you turned the car
14 around and had it facing away from the crime scene, right?

15 A. Right.

16 Q. And you -- you had it turned around so that when they
17 came running out they could just jump in the car and you could
18 take off, right?

19 A. No. I turned around like that because I didn't know
20 whether they wanted me to drop them off or not.

21 Q. And when you sat there in the car with it running,
22 pointed in the direction of the getaway, you kept it running,
23 didn't you?

24 A. Yes.

25 Q. You just kept it running, right?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

1001

- 1 A. Right.
- 2 Q. And did you roll the window down so you could hear what
3 was going on?
- 4 A. No.
- 5 Q. You didn't. Did you have the radio on?
- 6 A. I don't remember.
- 7 Q. Did you have any music on, and some headphones or
8 anything?
- 9 A. I ain't have no headphones on.
- 10 Q. And after you heard the shots you waited for them to
11 come running out of the house with their guns, and whatever
12 they stole, and jump in the car, right?
- 13 A. Right.
- 14 Q. And they told you to take off, right?
- 15 A. Right.
- 16 Q. And you drove to -- you say to TaTa's house, right?
- 17 A. Right.
- 18 Q. And you never once -- you didn't leave them there,
19 right?
- 20 A. I ain't leave them there.
- 21 Q. You didn't call the police, right?
- 22 A. Uh uh (NODS NEGATIVE)
- 23 Q. You didn't call 911 because you heard gunshots, did
24 you?
- 25 A. No.

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

1002

1 Q. You went, and then tried to figure out how you are
2 going to get out of this, right?

3 A. No.

4 Q. And you were actually present when your cousin threw
5 the gun, the shotgun, the weapon, the evidence, you were with
6 him when he threw it away, right?

7 A. Right.

8 Q. You said that. So you were just -- you were with them
9 all the way, right?

10 A. No.

11 Q. You deny that. You deny that you were in it with them.

12 A. What you mean all the way?

13 Q. I mean all the way. You were in it from beginning to
14 end, right?

15 A. I don't understand your question.

16 Q. Okay. You ever heard the term, thick as thieves?

17 A. No.

18 Q. These are your people, aren't they?

19 A. What you mean, my people?

20 Q. They are your relatives. It's the James -- I mean I --
21 it's Tiffany James, Donell James, Drew James, right?

22 A. You mean Andrew.

23 Q. I mean Andrew.

24 A. Yes.

25 Q. That's your own brother, isn't it?

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM :

1003

1 A. Yes.

2 Q. Those are your people, right?

3 A. That's my family.

4 Q. And all this got laid off on you, right, and them,
5 right?

6 A. What you mean, laid off on me and them?

7 Q. Y'all are the ones got charged with murder, y'all are
8 the ones got charged with robbery, y'all are the ones got
9 charged with kidnapping, burglary in the first degree, all of
10 you, right?

11 A. Right.

12 Q. For what you did, right?

13 A. (NO ANSWER)

14 Q. And during all this Dorrea was pregnant, right?

15 A. Right.

16 Q. That day she was pregnant, right?

17 A. Right.

18 Q. That day she was sick, not feeling well, right?

19 A. I don't know.

20 Q. Nauseated.

21 A. I don't know.

22 Q. And she went that day to get some diapers, or some
23 pampers for -- for her little child, right?

24 A. I don't know.

25 Q. You don't know. But you had your little baby then,

TIFFANY QUINASIA JAMES - CROSS BY McCOLLUM

1004

1 right?

2 A. Right.

3 Q. You left your little baby and went out ---

4 MS. von HERRMANN: I'm going to object to relevance.

5 THE COURT: At this point in time I'm going to allow
6 you to proceed, Mr. McCollum, but move along.

7 Q. But you went -- left your little baby and went out to
8 do a home invasion, burglary, robbery, which ultimately ended
9 up in a murder, right?

10 A. Wrong.

11 Q. I'm wrong. You can ans ---

12 MR. McCOLLUM: I'm sorry, Judge.

13 Q. Tell me how I'm wrong.

14 A. How you mean by I left my baby?

15 Q. I don't mean you abandoned her, but ---

16 MR. McCOLLUM: I'm sorry, Your Honor. She's asking me
17 a question.

18 THE COURT: I appreciate that. Just rephrase your
19 question.

20 Q. I'm just saying that that's -- that's fine. That's not
21 -- neither here nor there.

22 Now, there's -- there's just -- there's just no --
23 there's no question but that you showed them the house, right?

24 A. Right.

25 Q. And you didn't know how many people would be in the

1 house, right?

2 A. No, I didn't know.

3 Q. You told them it would be an easy lick, right?

4 A. No, I didn't.

5 Q. But it wasn't that easy, because there -- you didn't --
6 you didn't know who all was in the house, right?

7 A. What are you trying to say?

8 MR. McCOLLUM: Your Honor, I ---

9 THE COURT: Just ask your question again, please sir.

10 Q. The lick, the robbery, the theft, got messed up because
11 there were two people in the house that you didn't know about,
12 right?

13 A. I don't know how it got messed up.

14 Q. I'm sorry.

15 A. I don't know how it got messed up.

16 Q. But it turned out it wasn't -- it wasn't necessarily
17 that easy, right?

18 A. Right.

19 Q. And now it's bad, right?

20 A. Right.

21 Q. And it's been bad since April the 14th of 2008, right?

22 A. Right.

23 Q. It's bad for you, right?

24 A. Right.

25 Q. And it's bad for Donell, right?

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

1006

1 A. I don't know.

2 Q. And it's bad for Greg, right?

3 A. I don't know.

4 Q. But it ain't too bad for Andrew, right?

5 A. I don't know.

6 MR. McCOLLUM: Okay. Thank you, Your Honor.

7 Thank you, Ma'am. That's all the questions I have.

8 THE COURT: All right, Mr. Hazzard, cross-examination.

9 MR. McCOLLUM: Your Honor, may I approach for a minute?

10 THE COURT: Yes sir.

11 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

12 CROSS-EXAMINATION BY MR. HAZZARD:

13 Q. Ma'am, you told Ms. von Herrmann that you made it
14 through the ninth or tenth grade; is that correct?

15 A. That's correct.

16 Q. Okay. And where were you employed in April of 2008?

17 A. At Zaxby's.

18 Q. At Zaxby's. You were working there full time?

19 A. Yes.

20 Q. And that was sufficient to take care of you and your
21 child, right?

22 A. Right.

23 Q. Okay. Then why would you feel the need to engage in
24 this home invasion?

25 A. I just took them there.

1 Q. I'm sorry.

2 A. I said, I just took them there.

3 Q. You just took them there. Okay. Because really, in
4 your mind, you really haven't done anything wrong, have you?

5 A. Yes, I have.

6 Q. What have you done that's wrong?

7 A. By taking them there, and lying.

8 Q. Okay. And you talked to the police, the first time I
9 believe was April 16th of 2008; is that correct?

10 A. Yes.

11 Q. And when you first talked to the police they were
12 asking you about this home invasion, right?

13 A. Right.

14 Q. And they told you they knew that you had driven over
15 there, right?

16 A. Right.

17 Q. And at that point you were figuring, because you didn't
18 go in the house, you weren't really going to get in a whole
19 lot of trouble, right?

20 A. I don't know what I was thinking at the time.

21 Q. Okay. But I mean, that's initially. That's when they
22 first started talking to you, right?

23 A. Excuse me.

24 Q. Okay. When they first started talking to you on April
25 16th of 2008, they didn't tell you you were under arrest or

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 anything like that, right?

2 A. Right.

3 Q. They just told you they needed your help to clear some
4 things up; they wanted you to fill in some blanks for them,
5 right?

6 A. Right.

7 Q. Okay. And you knew that you had not gone in the house,
8 correct?

9 A. Correct.

10 Q. And you hadn't shot anybody, right?

11 A. Right.

12 Q. You hadn't robbed anybody, right?

13 A. Right.

14 Q. Okay. All you did was drive the car over there, right?

15 A. Right.

16 Q. So in the grand scheme of things you didn't figure that
17 you were that responsible at that point, right?

18 A. As in.

19 Q. As in looking at murder, armed robbery, kidnapping and
20 burglary first.

21 A. No.

22 Q. No. So, when they asked you, knowing that you are in -
23 - that you drove a car over there, and they asked you who was
24 in the car, the very first thing you tell them is that it's
25 some guy named Greg, but not Gregory Floyd, and you tell them

1 that Donell James didn't even go, that he was still back at
2 Tanheshia's apartment, right?

3 A. I probably could have said that.

4 Q. I'm sorry, Ma'am.

5 A. I say, I probably could have said that.

6 Q. Okay. So you do not deny saying that?

7 A. No. I don't remember saying it.

8 Q. Okay. But you don't deny saying that?

9 A. No.

10 Q. Okay. So at this point you are definitely -- as Ms.
11 von Herrmann said, you are trying to minimize supposedly
12 everyone's role, right?

13 A. As in.

14 Q. Well, as in, you don't want to be responsible and in
15 any trouble, you are obviously trying to keep Donell's name
16 out of it, since you've told the police he wasn't even there,
17 and that the other person was Greg -- someone other than your
18 baby daddy brother, Greg Floyd, right?

19 A. Right.

20 Q. Okay. But yet, when they are talking to you, you tell
21 them that Quentin Gause, not only was there, but supposedly
22 that Quentin Gause showed you where the house was, right?

23 A. No.

24 Q. You don't remember telling the police that ---

25 A. No.

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 Q. ---On April 16th, 2008. I'm sorry, Ma'am.

2 A. No, I don't remember.

3 Q. Do you deny saying that?

4 A. No, I don't deny, because I know I lied in my
5 statement, so I don't know what I said.

6 Q. Okay. So then, even though supposedly you are going to
7 minimize everyone's involvement, according to Ms. von
8 Herrmann, the one person that's got to -- one name you can
9 give to the police is this guy right here, he -- he did it, he
10 was there, he drove -- he showed me where the house was.

11 A. Say what?

12 Q. That you told the police, you know, what truly is a
13 ball-face lie, that this man showed you where the house was.

14 A. Yes, that's a lie.

15 Q. Yes. Because he's got to be responsible for
16 everything, because Donell can't be responsible for anything,
17 can he? You are trying to keep his name out of it, right?
18 Right?

19 A. I don't know.

20 Q. You don't know.

21 A. No.

22 Q. Well, when the police asked you straightforward, where
23 was Donell James, and you said he was back at Tanheshia's
24 house, and you know that's a lie, you are trying to keep his
25 name out of it, right?

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 A. I guess.

2 Q. You guess. And you obviously didn't tell them
3 initially, before they told you all they knew, when you just
4 through they were asking questions and they didn't know the
5 answers, you obviously told them that the Greg was someone
6 other than Greg Floyd, right?

7 A. Right.

8 Q. And then that's where the whole Greg Hemmingway thing
9 got started, right?

10 A. I guess. I don't remember what I told them.

11 Q. You guess so. You -- you even gave them a description
12 of the guy. You said he was a light-skin fellow, right?
13 Right?

14 A. I don't remember what I told them.

15 Q. Okay. But you do not deny it.

16 A. No.

17 Q. Okay. And after this crime occurred, between the time
18 that the crime occurred and the time that you spoke with the
19 police, you spoke with Donell James, correct?

20 A. When?

21 Q. Okay. The crime occurs sometime on the afternoon of
22 April 14th. You talked to the police for the first time on
23 April 16th. I believe it was in the morning if I remember
24 correctly. Between the time occurred and the time you spoke
25 with the police you spoke with Donell James, correct.

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1 A. Correct.

2 Q. Yes. And in fact, you were over there braiding his
3 brother's hair and he walks in and y'all have a long
4 discussion, right?

5 A. Not, not really.

6 Q. The discussion wasn't long, or it didn't happen.

7 A. The discussion wasn't long.

8 Q. Okay. All right. And you talked to him more than one
9 time between the time the crime occurred and the time you
10 spoke to the police, right?

11 A. Right.

12 Q. Right, cause he's your first cousin, right?

13 A. Right.

14 Q. Okay. And you talked to Gregory Floyd between the time
15 the crime occurred and the time you talked to the police,
16 right?

17 A. Right.

18 Q. And you talked to your brother, Andrew, between the
19 time the crime occurred and the time you talked to the police,
20 right?

21 A. Right.

22 Q. Okay. So the whole gang we've got here. We've got the
23 James Gang plus, if you were married, your child's uncle, all
24 y'all talking about April 14th, but before any of y'all talk
25 to the police, right?

1 A. You forgot Ladorrean. She ain't in no James.

2 Q. Yes Ma'am. Because obviously for you to get the help
3 you need from the State Ladorrean and Quentin gotta be in
4 there somewhere, don't they?

5 A. I guess.

6 Q. You guess. No, you know it, don't you?

7 A. They is in there.

8 MS. von HERRMANN: Object to that.

9 THE COURT: I'm going to allow it. Thank you very
10 much. You may continue.

11 Q. Now you told the Prosecutor -- let's walk through this.
12 Your brother, Andrew, brings over -- well, let me ask you
13 this, first of all. How long had you known Andrew to have
14 that shotgun, Ma'am?

15 A. I'm not sure how long he had it.

16 Q. Are we talking weeks, months, years?

17 A. Probably weeks. I don't remember.

18 Q. Okay. And when did he first disclose to you that this
19 shotgun was broke, as you say?

20 A. I want to say New Years -- I want to say New Years, but
21 I don't know.

22 Q. New Years Eve of 2008?

23 A. Uh uh (NODS NEGATIVE) No. I think it was sometime
24 around my birthday.

25 Q. When is your birthday again, Ma'am?

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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- 1 A. [REDACTED].
- 2 Q. [REDACTED].
- 3 A. Yeah.
- 4 Q. Okay.
- 5 A. I don't remember when he told me it was broke.
- 6 Q. Okay. All right. That's fine. That's fine. I know
- 7 it's been three years ago. But at some point before this home
- 8 invasion you and your brother discuss, or end up discussing
- 9 the fact that this shotgun is broken, correct, or in the
- 10 condition that it is in, correct?
- 11 A. Correct.
- 12 Q. Okay. And is that something that you and he, as
- 13 brother and sister, would normally discuss?
- 14 A. No.
- 15 Q. I mean, is this a shotgun that he owned legally?
- 16 A. No.
- 17 Q. So why is it that he felt the need, or how did it come
- 18 about that he's discussing with you State's Exhibit -- I guess
- 19 that's 69, what everyone is referring to, and I guess it is --
- 20 I don't know -- it's referred to as a sawed-off shotgun.
- 21 THE COURT: I think the sticker might be on the box.
- 22 MR. HAZZARD: It's -- there's one right here, Your
- 23 Honor.
- 24 THE COURT: All right. Very good.
- 25 MR. HAZZARD: So we looked at it correctly. It's 69.

1 THE COURT: All right. Very good.

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

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

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

8 A. What you mean by put in a job?

9 Q. Go home invade someone else, ---

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

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

12 THE COURT: I'm going to allow it.

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

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

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

16 Q. So what did he use it for?

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

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

22 A. Correct.

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

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 A. Can you repeat that?

2 Q. Okay. On the day in question, the day of the incident,
3 the day that Mr. Smith's home was invaded and he ended up
4 dead, your brother brought over that shotgun to Donell and
5 Tanheshia's apartment, correct?

6 A. Correct.

7 Q. Okay. And you testified that he also brought over and
8 left his .22, right?

9 A. I'm not sure.

10 Q. Not sure. Not sure if he left a .22. All right. Now,
11 Ma'am, you indicated that you were incarcerated for about
12 thirty-three months, right?

13 A. Right.

14 Q. And Mr. McCollum, apparently, did not major in Math at
15 Clemson in undergrad, so that is approximately a thousand
16 days, right? Thirty days a month times thirty, that's nine
17 hundred, and then you add some more on top of that, right?

18 A. I guess. You did the math.

19 Q. Okay. And when did you get out on bond?

20 A. February the 9th.

21 Q. February the 9th of which year?

22 A. 2011.

23 Q. February the 9th of this year, that's when you got out
24 on bond.

25 A. Correct.

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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

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

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

9 A. Correct.

10 Q. Okay. And you talked with -- you and your attorney,
11 and Ms. von Herrmann sat down and talked on January 5th of
12 2011; is that correct?

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

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

16 A. Right.

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

21 A. No.

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

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

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 Q. You gave them a statement on January 5th of 2011,
2 right, Ma'am?

3 A. Right.

4 Q. And less than thirty -- or thirty-three days, or
5 thereabouts after that, all of a sudden you are back on the
6 streets after being in jail for almost a thousand days; isn't
7 that right?

8 A. Correct.

9 Q. Couldn't get no bond set.

10 A. Nope.

11 Q. So once you, like you say, you got it off your chest,
12 all of a sudden you are back walking the street, back to your
13 old ways, right?

14 A. What you mean, back to my old ways?

15 Q. Whatever your old ways are, Ma'am, driving people
16 around, apparently, and setting up home invasions.

17 A. Excuse me.

18 Q. Driving people around and setting up home invasions.

19 A. Who I drove around when I got out and set up a home
20 invasion?

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

25 Continue, Mr. Hazzard.

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 MR. HAZZARD: Thank you, Your Honor.

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

7 A. Is that what I said?

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

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

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

12 A. No.

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

15 A. Correct.

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

19 A. Correct.

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

23 A. Did I just up and tell them that?

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

TIFFANY QUINASIA JAMES - CROSS BY HAZZARD

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1 A. We ain't have no kind of negotiation.

2 Q. No negotiation. So there were no document that said
3 proffer on it and all like that.

4 A. No.

5 Q. Okay. All right. But your attorney is there, the
6 Prosecutor is there, because the information you've got, or
7 whatever you want to sell, you've got to sell it to the
8 Prosecutor, right?

9 A. I got to sell it to her?

10 Q. Yes. Because you want some help on this, right? You
11 don't want to go away for two life terms plus sixty years, do
12 you?

13 A. No, I don't.

14 Q. Of course not. So you are hoping this woman here will
15 give you some help, right?

16 A. No.

17 Q. No. So you are just ready to stand up, stand trial,
18 and just belly on up to the bar and see what happens, right?

19 A. Right.

20 Q. So at any point in the last three years and two months
21 did you ever bother to say, let's get me -- get me into court;
22 I'm ready to go; I'm ready to face justice; I'm ready to see
23 twelve, pick twelve and say I didn't nothing. Did you ever do
24 that?

25 A. No, I didn't.

TIFFANY QUINASIA JAMES - REDIRECT BY von HERRMANN

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1 Q. So after -- but after talking with the Prosecutor
2 approximately a month later you are out on the street, and you
3 are back in street clothes living your life, right?

4 A. Right.

5 Q. And you don't want to go back to jail, do you, Ma'am?

6 A. No.

7 Q. All right.

8 MR. HAZZARD: Thank you. No further questions.

9 THE COURT: Redirect.

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

11 REDIRECT-EXAMINATION BY MS. von HERRMANN:

12 Q. Mr. Hazzard just asked you about why you didn't -- why
13 you hadn't pled guilty, and did you want to -- why weren't you
14 here on trial. That's what he said, wasn't it? Why aren't
15 you in here on trial today?

16 MR. HAZZARD: Objection. That's actually a
17 mischaracterization of what asked.

18 THE COURT: Just ask a question. The witness can
19 answer, Ma'am.

20 Q. Are you sitting there, instead of there, because you
21 are willing to accept responsibility for what you did?

22 A. Yes Ma'am.

23 Q. You are willing to accept responsibility for your part
24 in this bad business that resulted in Allen Smith's death?

25 A. Yes Ma'am.

1 Q. And Mr. McCollum asked you some questions earlier about
2 whether you knew what was going to happen when you drove them
3 over to that house. Do you remember that?

4 A. Yes Ma'am.

5 Q. You didn't know what was going to happen when they went
6 in that house, did you?

7 A. No Ma'am.

8 Q. You knew what the plan was, correct?

9 A. I knew what they was coming to do, but I ain't know
10 what was going to happen when they went in the house.

11 Q. All right. You had discussed that with Greg, right?

12 A. Did I?

13 Q. Did you?

14 A. Discuss the ---

15 Q. Let's talk -- let me make sure I'm clear about this.
16 The first time, the first time that they went over, Andrew,
17 Donell and Greg, right?

18 A. Right.

19 Q. You had testified before that you had been at
20 Ladorrean's house ---

21 A. Yes Ma'am.

22 Q. ---And that she said that she had a lick for them.

23 A. Yes Ma'am.

24 Q. And you knew what a lick meant, right?

25 A. Yes Ma'am.

1 Q. And you weren't going to participate in the lick,
2 right?

3 A. Right.

4 Q. You were going to participate in driving them over
5 there, correct?

6 A. Correct.

7 Q. So your part in this was never to go inside that house,
8 right?

9 A. Right.

10 Q. And are you taking responsibility for what you did in
11 driving them over there?

12 A. Yes Ma'am.

13 Q. And have you told the police from the beginning, and
14 from the time that we took that proffer agreement, that you
15 drove them over there?

16 A. From when?

17 Q. That you drove them over to Allen Smith's house.

18 A. Yes Ma'am.

19 Q. And ever since you and your lawyer contacted the police
20 and talked to them you have been consistent about the fact
21 that you drove Bait's four-door red car over there, right?

22 A. Right.

23 Q. And you have been consistent about the fact that Greg
24 was in the car.

25 A. Correct.

TIFFANY QUINASIA JAMES - REDIRECT BY von HERRMANN

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- 1 Q. You've been consistent about the fact that he had .22.
- 2 A. Yes Ma'am.
- 3 Q. You have been consistent about the fact that Donell was
- 4 in the car.
- 5 A. Yes Ma'am.
- 6 Q. And that he had a shotgun.
- 7 A. Yes Ma'am.
- 8 Q. You've been consistent about the fact that Bait was in
- 9 the car with a camo shotgun.
- 10 A. Yes Ma'am.
- 11 Q. You were consistent about the fact that Greg kicked in
- 12 the door.
- 13 A. Yes Ma'am.
- 14 Q. You were consistent about the fact that you heard
- 15 gunshots.
- 16 A. Yes Ma'am.
- 17 Q. You were consistent about the fact that you drove to
- 18 TaTa's residence.
- 19 A. Yes.
- 20 Q. You were consistent about the fact that you and Bait
- 21 and Donell and Greg went your separate ways at TaTa's,
- 22 correct?
- 23 A. Yes.
- 24 Q. You showed the gun in the woods to the police, correct?
- 25 A. Correct.

1 Q. And you have told them about how Ladorrean busted out
2 Allen's window.

3 A. Yes Ma'am.

4 Q. So in the important matters you have been consistent in
5 this case; is that correct?

6 A. Yes Ma'am.

7 Q. All right. Mr. McCollum seemed to want to make some
8 big deal about you leaving your child with somebody while you
9 rode them over there, I mean, did you want to drive your child
10 over there while somebody is going to rob somebody?

11 A. No Ma'am.

12 Q. Who said this was going to be an easy lick anyway; who
13 said that?

14 A. Ladorrean.

15 Q. And how long had it been since you had seen this
16 Defendant, Quentin Gause, before all this happened?

17 A. I really don't be seeing him.

18 Q. All right. So -- but they would have you -- they would
19 have this jury believe that you just ---

20 MR. HAZZARD: Objection.

21 Q. ---Out of thin air ---

22 THE COURT: Solicitor, rephrase your question.

23 MS. von HERRMANN: Thank you.

24 Q. You just came up with Quentin Gause; is that -- is that
25 right; you just came up with it?

TIFFANY QUINASIA JAMES - REDIRECT BY von HERRMANN

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- 1 A. No, I didn't come up with him.
- 2 Q. Why did you give them his name?
- 3 A. When I got questioned by the police?
- 4 Q. Yes. Why did you -- why did you tell them Bait was
- 5 there?
- 6 A. Cause Ladorrean told me to tell the truth.
- 7 Q. All right. And the truth is that he was there.
- 8 A. Right.
- 9 Q. How many times have you talked to Quentin after this
- 10 happened?
- 11 A. None.
- 12 Q. Do you know -- did he try to contact you?
- 13 A. No.
- 14 Q. Did you try to contact him?
- 15 A. No.
- 16 Q. Did you know where he was?
- 17 A. When?
- 18 Q. After ---
- 19 A. After it happened? No.
- 20 Q. When did you get arrested?
- 21 A. When I had went to go turn myself in, on April 16th.
- 22 Q. Do you know when he got arrested?
- 23 A. No.
- 24 Q. Let's talk a little bit about the agreement that you
- 25 and your lawyer made with the State. The agreement, which is

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

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

5 THE COURT: Ask a question, Solicitor, please.

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

8 A. I forgot what that said.

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

10 A. Yes.

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

13 A. No Ma'am.

14 Q. No promise was ever made.

15 A. No promises.

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

18 A. Right.

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

20 A. No Ma'am.

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

24 A. Correct.

25 Q. You have no other promise.

TIFFANY QUINASIA JAMES - RECROSS BY McCOLLUM

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1 A. No Ma'am.

2 Q. When you and I discussed this, did I give you any
3 instructions about how to answer questions, or what you should
4 say to questions?

5 A. No Ma'am.

6 Q. What did I tell you that you should do here today?

7 A. You said that I should just tell the truth.

8 Q. And have you done that here today?

9 A. Yes Ma'am.

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

12 THE COURT: Mr. McCollum.

13 MR. McCOLLUM: May it please the Court.

14 THE COURT: Yes sir.

15 RECROSS-EXAMINATION BY MR. McCOLLUM:

16 Q. Ms. James, you understand me when I talk, right?

17 A. Yes sir.

18 Q. And you understand the Prosecutor when she talks,
19 right?

20 A. Yes.

21 Q. And we are speaking the same language, and that's your
22 language too, right?

23 A. Correct.

24 Q. Why is it so much easier to answer her questions than
25 mine?

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

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

4 THE COURT: Mr. Hazzard.

5 MR. HAZZARD: Very briefly, Your Honor.

6 RECROSS-EXAMINATION BY MR. HAZZARD:

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

12 A. Excuse me.

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

20 A. No.

21 Q. You couldn't do that.

22 A. No.

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

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

JURY OUT/BREAK/ON RECORD

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1 Q. So you are not guilty of anything?

2 A. I ain't say I'm not guilty of anything. I say I'm not
3 guilty with the charges they charged me with, as in murder,
4 kidnapping, burglary first and armed robbery.

5 Q. You are not guilty. Okay. Because I was going to say,
6 they -- you could -- they could just drive you back from the
7 Department of Corrections to testify. You didn't have to wait
8 on that, did you?

9 A. Excuse me.

10 Q. You could go ahead and enter your guilty plea and
11 accept your responsibility ---

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

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

15 MR. HAZZARD: All right. Thank you, Your Honor.
16 That's all I've got. I'm not going to belabor the
17 point.

18 THE COURT: Thank you, sir. You may step down, Ma'am.
19 All right, ladies and gentlemen, we are going to take a
20 break, about ten minutes. Go to your jury room, and we will
21 resume after that.

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

23 Everyone else remain seated.

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

JURY OUT/BREAK/ON RECORD

1031

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

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

5 MS. von HERRMANN: Mr. McCollum and Mr. Hazzard, while
6 we were taking the break, and we talked about the -- about the
7 -- excuse me -- the calendar here, with the month of April,
8 2008, and I was -- I was just going to have it marked as a
9 State's exhibit, and ask Your Honor to take judicial notice of
10 that. I don't believe they have any objection to it.

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

14 MS. von HERRMANN: Okay.

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

17 THE COURT: What's the number, Solicitor?

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

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

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

JURY OUT/BREAK/ON RECORD

1032

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

4 THE COURT: All right. Mr. Hazzard.

5 MR. HAZZARD: No objection.

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

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

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

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

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

JURY OUT/BREAK/ON RECORD

1033

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

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

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

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

JURY OUT/BREAK/ON RECORD

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

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

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

18 MR. McCOLLUM: Understood.

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

22 MR. McCOLLUM: Thank you, Judge.

23 MR. SPRATLIN: Thank you, Your Honor.

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

JURY IN
SOLOMON K. JONES - DIRECT BY von HERRMANN

1035

1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right, Solicitor, your next witness,
4 please Ma'am.

5 MS. von HERRMANN: Thank you, Your Honor. The State
6 calls correction officer Jones.

7 THE COURT: All right. Please come around and be
8 sworn, sir.

9 SOLOMON K. JONES, being first duly
10 sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MS. von HERRMANN:

12 Q. Where are you employed, Officer Jones?

13 A. J. Reuben Long Detention Center.

14 Q. And what are your duties out there at the Detention
15 Center?

16 A. Property Officer, and while there, you do whatever --
17 whatever needs to be done.

18 Q. And from time to time do you notarize documents for
19 individuals?

20 A. Yes Ma'am.

21 Q. All right. I'm going to show you what's been marked as
22 State's Exhibit 75, and ask you to take a look at that.

23 A. Yes Ma'am. That's my signature.

24 Q. Typically, how many -- how many times a week do you
25 think you notarize things?

JURY IN
SOLOMON K. JONES - DIRECT BY von HERRMANN

1036

- 1 A. Four to seven times a week, sometimes more.
- 2 Q. All right. And do you have a way that you require a
- 3 person's signature on a letter that's notarized before you?
- 4 A. I just have them write in ink pen and date it that day.
- 5 Q. All right. And do they have access to ink pens?
- 6 A. No Ma'am.
- 7 Q. They have access to pencil, right?
- 8 A. Yes Ma'am.
- 9 Q. And does it appear that that is written in pencil, that
- 10 the body of it is written in pencil?
- 11 A. Yes Ma'am.
- 12 Q. Do you recall -- do you recall specifically notarizing
- 13 this signature?
- 14 A. In remembering that signature, yes Ma'am.
- 15 Q. Okay. And when that would be -- when that was
- 16 presented to you, or the contents, or the body of the letter,
- 17 is that already prewritten, and then the individual just
- 18 simply signed it in front of you, or did she actually write
- 19 all that in front of you?
- 20 A. She just signs in front of me. I don't sit there and
- 21 watch them write it, No Ma'am.
- 22 Q. So it was presented to you already written ---
- 23 A. Yes Ma'am.
- 24 Q. ---She put her signature and you notarized it.
- 25 A. Yes Ma'am. I just notarize the signature, not -- all I

1 know is just the signature.

2 MS. von HERRMANN: Thank you. I don't have any further
3 questions. Please answer any questions Defense may have.

4 THE COURT: All right. Mr. McCollum.

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

6 THE COURT: Yes sir.

7 CROSS-EXAMINATION BY MR. McCOLLUM:

8 Q. Officer Jones, you got called by my assistant to come
9 down here today?

10 A. Yes Ma'am. Yes sir.

11 Q. And the -- your understanding was that we needed for
12 you to verify that you had notarized Tiffany James' signature,
13 right?

14 A. Yes sir.

15 Q. And no question about it, but that she signed that in
16 your presence, right?

17 A. Yes sir.

18 Q. And that's what a Notary does, it vouches for the
19 signature on the page, right?

20 A. Yes sir.

21 Q. And that's why people get things notarized, right?

22 A. Yes sir.

23 Q. So that if somebody denies signing something a Notary,
24 such as yourself, can come into court and say, no, they signed
25 it, right?

SOLOMON K. JONES - REDIRECT BY von HERRMANN

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1 A. Yes sir.

2 Q. And that's what happened, right?

3 A. Yes sir. She signed in front of me. Yes sir.

4 MR. McCOLLUM: Thank you, Officer Jones. Thank you,
5 sir.

6 A. Yes sir.

7 THE COURT: Mr. Hazzard.

8 MR. HAZZARD: No questions.

9 THE COURT: Any redirect, Solicitor?

10 REDIRECT-EXAMINATION BY MS. von HERRMANN:

11 Q. So you are not vouching for the body of it, you are
12 just vouching for the signature, correct?

13 A. Correct. Yes Ma'am.

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

16 THE COURT: Mr. McCollum.

17 MR. McCOLLUM: Nothing further, Your Honor.

18 THE COURT: All right. Very good. You may step down.
19 Do you wish the witness to be excused?

20 MS. von HERRMANN: Please.

21 THE COURT: Any objection?

22 MR. McCOLLUM: May it please the Court, Your Honor,
23 he's here on my Subpoena.

24 THE COURT: All right. I'm sorry. Do you wish to
25 release him from the Subpoena, Mr. McCollum?

1 MR. McCOLLUM: Yes sir, Your Honor.

2 THE COURT: All right. Is there any objection, Mr.
3 Hazzard?

4 MR. HAZZARD: No objection.

5 THE COURT: And Solicitor, is there any objection?

6 MS. von HERRMANN: No sir.

7 THE COURT: All right, sir. You are released from your
8 subpoena. You may go back to your regular activities, sir.

9 Next witness, Solicitor.

10 MS. von HERRMANN: Thank you. The State calls Cecily
11 Hillard.

12 MR. McCOLLUM: Your Honor ---

13 THE COURT: Yes sir.

14 MR. McCOLLUM: ---May we approach?

15 THE COURT: Absolutely.

16 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

17 THE COURT: All right. Ladies and gentlemen, of the
18 jury, if you would go to your jury room for about two or three
19 minutes, please. Thank you.

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

22 MS. von HERRMANN: Your Honor, just for the record, Ms.
23 Hillard is the -- was the girlfriend of Andrew James. She had
24 given a voluntary statement to the Police Department, stating
25 that Mr. James was with her during the entire day, the day

JURY OUT

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CECILY NICOLE HILLARD - BY von HERRMANN/BY THE COURT

1 that this incident took place, and that's my intention for
2 putting her up.

3 THE COURT: All right. I appreciate that.
4 Place her under oath first.

5 CECILY NICOLE HILLARD, being first
6 duly sworn, testifies as follows:

7 MR. MCCOLLUM: Your Honor ---

8 THE COURT: Yes sir.

9 MR. McCOLLUM: ---Before you examine her, I would just
10 like to point out that I've looked at my witness list ---

11 THE COURT: She's not on your witness list. She's on
12 Mr. Hazzard's witness list.

13 MR. McCOLLUM: Okay. I didn't -- I wasn't aware of
14 that. Thank you, Your Honor.

15 THE COURT: All right, sir. Good. No, she's not on
16 your witness list. She is a witness named by Mr. Hazzard.

17 MR. McCOLLUM: Okay.

18 BY THE COURT:

19 THE COURT: All right, Ms. Hillard, if you would,
20 Ma'am, if you can tell me, have you seen any of the portions
21 of this trial? Have you been seated in the courtroom and
22 watching any portions of this trial?

23 A. Yes.

24 THE COURT: Okay. How much of it? The whole thing, or
25 when have you been in the courtroom?

JURY OUT
CECILY NICOLE HILLARD - BY von HERRMANN/BY THE COURT

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1 A. When Andrew James came up to testify.

2 THE COURT: Okay. When Andrew James testified. Now,
3 you were in there during the entirety of his testimony?

4 A. Uh huh (indicating positive)

5 THE COURT: Ma'am?

6 A. Yes.

7 THE COURT: All right. And then did you -- have you
8 stayed thereafter, or did you leave with him, or what
9 happened?

10 A. I left with him.

11 THE COURT: All right. And did you come back until you
12 were called right now?

13 A. I was here earlier today, before y'all went to recess.

14 THE COURT: Okay. Do you remember who was on the stand
15 testifying when you were in here earlier?

16 A. Gregory.

17 THE COURT: Gregory Floyd?

18 A. Yes sir.

19 THE COURT: All right. Did you hear the whole
20 testimony of Mr. Floyd, or parts of it?

21 A. I heard parts of it.

22 THE COURT: Parts of it. All right. Do you ---

23 All right. That's fine. Now, you were -- and I don't
24 know if you even know. You were named as a possible witness
25 by Mr. Hazzard, the fellow sitting over there ---

JURY OUT

1042

CECILY NICOLE HILLARD - BY von HERRMANN/BY THE COURT

1 Could you stand up, Mr. Hazzard, just in case she
2 doesn't know who you are ---

3 ---By Mr. Hazzard ---

4 Thank you, sir. I appreciate it.

5 ---Who is Mr. Gause's attorney. All right. You were
6 named as a possible witness. Did you know that?

7 A. No.

8 THE COURT: Okay. So did anybody tell you, or did you
9 hear the Court say anybody who is a possible witness is
10 sequestered. I don't think I said leave the courtroom. I
11 said sequestered. Do you remember hearing about that, or
12 anybody telling you?

13 A. No sir.

14 THE COURT: All right. Mr. McCollum, let me hear from
15 you.

16 MR. MCCOLLUM: Just -- you know, just what I stated
17 earlier, Your Honor. We got the Order in place. She's been
18 in the courtroom, and that's the only position on it, is that
19 she hasn't been sequestered, however that happened ---

20 THE COURT: And I appreciate that, but it was not a
21 witness the State had listed originally. It was not a witness
22 you had listed. It was a witness Mr. Hazzard had listed.

23 Mr. Hazzard, are you objecting to Ms. Hillard testifying
24 in any way?

25 MR. HAZZARD: Yes sir.

JURY OUT
CECILY NICOLE HILLARD - BY von HERRMANN/BY THE COURT

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1 THE COURT: Okay. And what's your objection?

2 MR. HAZZARD: My objection is that -- and with regard
3 to listing witnesses, Your Honor, I try to list anyone that
4 might be possible that there might -- their testimony may be
5 needed. Now, our investigator has tried to speak with
6 everyone, but in fact, we had not put out a specific subpoena
7 for Ms. Hillard. We had not asked her to come here. She is
8 not ---

9 THE COURT: Why did you tell me that she was one of
10 your possible witnesses then?

11 MR. HAZZARD: Because she is a possible witness.

12 THE COURT: All right. Then she's your possible
13 witness.

14 MR. HAZZARD: Yes sir.

15 THE COURT: All right. And you had the responsibility
16 of telling her that she was sequestered. Since she's on your
17 list it's your responsibility.

18 MR. HAZZARD: Yes sir.

19 THE COURT: That didn't take place, correct?

20 MR. HAZZARD: Your Honor, I've been sitting up here.
21 Apparently it did not take place. We tried to have protocol
22 in place to make sure that does not happen. Apparently Ms.
23 Hillard slipped through somehow, but obviously the ultimate
24 responsibility lies with me, and I take that responsibility.

25 I do think that it would be improper, and against the

COURT'S RULING

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1 sequestration order at this point for her to give bolstering
2 testimony regarding the prior testimony given by Andrew James,
3 who is a co-defendant and State witness.

4 THE COURT: I'm going to overrule your objection. I
5 will allow you to examine her, in your cross-examination,
6 whether or not she was in the courtroom, she heard the
7 testimony of Mr. James, to bring that point out to the jury so
8 they understand she heard his testimony in full, and any
9 portion of Mr. Floyd's testimony that she heard, whatever that
10 might have to do with this particular matter, but it is not
11 the State's fault nor responsibility that this witness be
12 sequestered, therefore, I do not believe I should punish the
13 State for actions that were the responsibility of the Defense,
14 when -- in this particular matter, so I'm going to allow it,
15 but I will allow you, if you want to, to bring out when she
16 was in the courtroom, and who was testifying, and what she
17 heard at that point in time so the jury understands that, that
18 she had the benefit of that when she came in here to testify.

19 All right. Anything further as to this witness,
20 Solicitor?

21 MS. von HERRMANN: No sir.

22 THE COURT: Mr. McCollum.

23 MR. MCCOLLUM: Your Honor, I would ask that we have the
24 benefit of her NCIC information.

25 THE COURT: Certainly. Has anybody run that? Has

JURY IN
CÉCILY NICOLE HILLARD - DIRECT BY von HERRMANN

1345

1 anybody done that?

2 MS. von HERRMANN: No sir. But I can go do it very --
3 I can do it immediately.

4 THE COURT: All right. Very good. Why don't we have
5 that done.

6 Before you leave, Solicitor, just one second.

7 Mr. Hazzard, anything else as to -- any other objections
8 as to this witness?

9 MR. HAZZARD: No sir.

10 THE COURT: All right. Very good. All right, let's --
11 all right. We'll just wait -- how long you think that will
12 take, Solicitor?

13 MS. von HERRMANN: He said about five minutes.

14 THE COURT: All right. Do you mind, Mr. McCollum, that
15 the State starts their examination while that's going on?

16 MR. MCCOLLUM: No, Your Honor, I don't mind.

17 THE COURT: Just that you get it before you cross-
18 examination.

19 MR. MCCOLLUM: Yes sir.

20 THE COURT: All right. Very good.

21 All right, ask the jury to come in, please.

22 You will need to swear her in front of the jury.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right, Madame Clerk, if you will

JURY IN
CECILY NICOLE HILLARD - DIRECT BY von HERRMANN

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1 administer the oath, please Ma'am.

2 CECILY NICOLE HILLARD, being first
3 duly sworn, testifies as follows:

4 DIRECT-EXAMINATION BY MS. von HERRMANN:

5 Q. Ms. Hillard, how old are you?

6 A. Twenty-two.

7 Q. And do you know Andrew James?

8 A. Yes.

9 Q. How do you know Andrew?

10 A. That's my baby's father.

11 Q. And did you know him back on April 14th of 2008?

12 A. Yes.

13 Q. And do you recall -- do you have any recollection of
14 what you all were doing that day, April the 14th of 2008?

15 A. We were moving our stuff from out of Crane Creek to my
16 mother's house in Socastee.

17 Q. Were you all being evicted from you -- from your home
18 there in Crane Creek?

19 A. Yes.

20 Q. All right. I'm going to show you what's been marked as
21 State's Exhibit 73, and ask you to take a quick look at that
22 for me. Do you recognize that?

23 A. Yes.

24 Q. Is that your signature there on the bottom?

25 A. Yes.

JURY IN
CECILY NICOLE HILLARD - DIRECT BY von HERRMANN

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1 Q. And is it notarized on the 14th day of April, 2008?

2 A. Yes.

3 Q. And does that have to do with your eviction?

4 A. Yes.

5 Q. And were you and Mr. James trying to do something about
6 that eviction? Were you trying to ---

7 A. I had to get to the Legal Aid Service to sign the
8 grievance hearing so that we can go to court for my eviction.

9 Q. And were you all in the process of moving your things
10 out of your apartment that day?

11 A. Yes Ma'am.

12 Q. Did you have your car loaded up?

13 A. Yes Ma'am.

14 Q. And where were you taking those things?

15 A. To my mother's house in Socastee.

16 Q. Were there -- did you all make a stop anywhere on the
17 way to your mother's house in Socastee at some point?

18 A. Yes.

19 Q. And where did you stop?

20 A. At Donell's house.

21 Q. And where is Donell's house located?

22 A. On 544.

23 Q. Is it in those apartments there on 544?

24 A. Yes.

25 Q. And do you know what Donell's girlfriend's name is?

JURY IN
CECILY NICOLE HILLARD - DIRECT BY von HERRMANN

- 1 A. Tanheshia.
- 2 Q. Was it Tanheshia's apartment?
- 3 A. Uh huh (indicating positive)
- 4 THE COURT: You need to say yes or no, please.
- 5 A. Yes.
- 6 Q. When you pulled up there in those apartments who was in
- 7 the car?
- 8 A. Me, Andrew, and my son.
- 9 Q. And did Andrew take something into the apartment?
- 10 A. Yes.
- 11 Q. All right. I'm going to show you State's Exhibit 41,
- 12 ask you to take a look at that. Do you recognize that?
- 13 A. Yes.
- 14 Q. Is that your suitcase?
- 15 A. Yes.
- 16 Q. And is that the item that he took into the house that
- 17 day?
- 18 A. Yes.
- 19 Q. And what were you while he was doing that, again?
- 20 A. I was sitting in the car with my son.
- 21 Q. All right. And do you remember how long he was in
- 22 there?
- 23 A. About five minutes at the most.
- 24 Q. And when he came back out did you -- did you see Donell
- 25 there that day?

JURY IN
CECILY NICOLE HILLARD - DIRECT BY von HERRMANN

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1 A. I think he had came to the door but he never came
2 outside to the car.

3 Q. All right. Did you see anybody else walking around
4 that day, around the door?

5 A. When Andrew had got in the car, and we was about to
6 back out, Gregory and another dude had pulled up.

7 Q. Okay. Do you know what kind of car they were driving?

8 A. No Ma'am.

9 Q. All right. Do you know who that other dude was?

10 A. Quentin Gause.

11 Q. Quentin Gause. Okay. Thank you.

12 MS. von HERRMANN: I don't have -- let me ask you one
13 more question.

14 Q. Did the police talk to you ---

15 A. Yes.

16 Q. ---The following day, which would have been April the
17 15th of 2008?

18 A. Yes Ma'am.

19 Q. All right. And I believe that would have been
20 Detective Spencer; is that ---

21 A. Yes.

22 Q. ---Is that correct? And you gave a statement on that
23 day.

24 A. Yes Ma'am.

25 Q. And you told them essentially the same things that you

CECILY NICOLE HILLARD - CROSS BY McCOLLUM

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1 have said today, which was that Andrew James was with you that
2 -- that entire day; is that correct?

3 A. Yes Ma'am.

4 MS. von HERRMANN: Okay. Thank you. Please answer any
5 questions they may have.

6 THE COURT: Mr. McCollum.

7 MR. McCOLLUM: May it please the Court.

8 THE COURT: Yes sir.

9 CROSS-EXAMINATION BY MR. McCOLLUM:

10 Q. It's Cecily?

11 A. Yes.

12 Q. And how do you spell that?

13 A. C-e-c-i-l-y.

14 Q. Okay. And we are talking about Andrew James.

15 A. Yes.

16 Q. That's your -- your boyfriend, or the father of your
17 children?

18 A. My fiance.

19 Q. Your fiance. That's how you refer to him?

20 A. Yes.

21 Q. Did -- so -- so you were with him when he took this
22 over to the apartment on 544.

23 A. I didn't see it. Only thing that I knew that was in
24 the luggage was some of his clothes.

25 Q. So you've seen it before, haven't you?

- 1 A. Yes.
- 2 Q. You knew he had it, right?
- 3 A. Yes.
- 4 Q. And he had ammunition too, right?
- 5 A. I don't -- I don't know ---
- 6 Q. Do you know what I mean by ammunition?
- 7 A. Yes.
- 8 Q. Bullets, right?
- 9 A. Yes.
- 10 Q. Have you ever seen him shoot it?
- 11 A. No.
- 12 Q. You ever seen him load it?
- 13 A. No.
- 14 Q. You ever seen him pick it up?
- 15 A. Yes.
- 16 Q. You ever seen him leave with it?
- 17 A. No.
- 18 Q. All right. And you've got a child, a little baby in
- 19 the house, right?
- 20 A. Yes.
- 21 Q. Where did he keep it in the house?
- 22 A. Up under the mattress.
- 23 Q. Kept it under the mattress. In the bed that he sleeps
- 24 in.
- 25 A. Yes.

CECILY NICOLE HILLARD - CROSS BY MCCOLLUM

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1 Q. All right. And how about this? You've seen this
2 before too, haven't you?

3 A. It's not familiar to me.

4 Q. You are not familiar with this?

5 A. Uh uh (NODS NEGATIVE)

6 Q. But you are familiar with the shotgun, right?

7 A. Yes.

8 Q. Okay. And it's your testimony that he took -- and you
9 say you were moving to your mother's house, right?

10 A. Yes.

11 Q. Who is moving, you or him?

12 A. We are both moving, because we were both staying in the
13 apartment.

14 Q. And did he move in with your mom?

15 A. No. That's the whole reason why we stopped at Donell's
16 house, because my mother wouldn't let him stay.

17 Q. Your mother wouldn't let him stay in her house, right?

18 A. Right.

19 Q. Because your mother didn't trust him.

20 A. Not that she didn't trust him.

21 Q. Well, regardless, she wouldn't let him stay there, but
22 you and your baby could stay there, right?

23 A. Yes.

24 Q. All right. Did he take anything besides a suitcase
25 full of guns over there?

1 A. I don't know nothing about that.

2 Q. And you say he was with you, right?

3 A. Yes.

4 Q. And you care about him, right?

5 A. Yes.

6 Q. He's out of jail now, right?

7 A. Yes.

8 Q. Did you -- did he tell you, or did you find out that he
9 went over to rob these people on another day?

10 A. I found that out after he was locked up.

11 Q. So you learned about that later on, right?

12 A. Yes.

13 Q. At the time that y'all were getting evicted was he
14 working?

15 A. No.

16 Q. After you moved into your mother's house did he stay in
17 your mother's -- did you stay at -- keep living at your
18 mother's house?

19 A. Yes.

20 Q. Okay. And then where did he live?

21 A. He was locked up.

22 Q. He was locked up. Well, where was he going to live?

23 A. When he -- I didn't -- he didn't know if he was going
24 to be staying there at Donell's house or his sister house.

25 Q. He needed money, right?

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- 1 A. For ---
- 2 Q. Yes Ma'am.
- 3 A. For ---
- 4 Q. To live. He needed money to live, right?
- 5 A. Yes.
- 6 Q. And it's about as bad as it can get when you and your
- 7 baby and he are getting thrown out of the apartment, right?
- 8 A. Yes.
- 9 Q. Now, there are different ways that that happens, right?
- 10 A. What do you mean?
- 11 Q. You get an eviction notice, and some people get a
- 12 letter saying you've got to move out and people move out,
- 13 right?
- 14 A. Right.
- 15 Q. Sometimes people get -- go to court and the judge
- 16 orders them to move out, right?
- 17 A. Right.
- 18 Q. And sometimes you go to court and the judge orders them
- 19 to move out and people don't move out, unfortunately, and then
- 20 the Sheriff -- they send the Sheriff and County Police out and
- 21 they actually get people and take stuff out and put it on the
- 22 street, right?
- 23 A. Right.
- 24 Q. What stage were you at?
- 25 A. I -- we were just -- we just got the eviction letter.

1 We -- thirty days wasn't even up yet.

2 Q. And he wasn't working, right?

3 A. No.

4 Q. And you -- you and he, and your baby; y'all needed
5 money, right?

6 A.. I was working.

7 Q. I'm sorry.

8 A. I was working.

9 Q. You were working.

10 A. Yes.

11 Q. Was he working?

12 A. No.

13 Q. But you didn't make enough money for y'all to be able
14 to pay the rent?

15 A. The eviction wasn't about money.

16 Q. It wasn't.

17 A. No.

18 Q. It was about something else?

19 A. Yes.

20 Q. But it wasn't anything you had done, right?

21 A. No.

22 Q. It wasn't anything your baby had done, right?

23 A. No.

24 Q. Was something he had done?

25 A. No.

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1 Q. Didn't have anything to do with him?

2 A. Uh uh (NODS NEGATIVE)

3 Q. All right. So why were you being evicted?

4 A. Because someone had came shooting round our house at
5 his sister's boyfriend, and someone said it was him, but ---

6 Q. All right. I think I've -- okay. So your house got
7 shot up, and your landlord said you've got to move.

8 A. Yes.

9 Q. Okay. So -- but there's no question but that he -- he
10 needed to make some money, right?

11 A. I mean, if that's what you want to say.

12 Q. Okay.

13 MR. MCCOLLUM: Thank you.

14 Your Honor, other than that one matter we talked about -
15 - Your Honor, may I approach?

16 THE COURT: Yes sir. Please. Mr. Hazzard.

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 MR. MCCOLLUM: May it please the Court, Your Honor.

19 THE COURT: Yes sir.

20 MR. MCCOLLUM: Your Honor, I don't have any more
21 questions for this witness.

22 THE COURT: All right. Mr. Hazzard.

23 MR. HAZZARD: I'm sorry, Your Honor.

24 THE COURT: Mr. Hazzard, you can cross-examine.

25 MR. HAZZARD: Okay. Thank you, sir.

1 CROSS-EXAMINATION BY MR. HAZZARD:

2 Q. Ma'am, how old did you say you were now?

3 A. Twenty-two.

4 Q. I'm sorry.

5 A. Twenty-two.

6 Q. Okay. So back in 2008 you would have been around
7 nineteen.

8 A. Yes.

9 Q. And how many children do you and Andrew have together?

10 A. Three

11 Q. Three children. And how many did you have together
12 back in 2000 -- April of 2008?

13 A. One.

14 Q. One, and there was one on the way, I believe.

15 A. Yes.

16 Q. Okay. And you came here to support your man. In fact,
17 you sat back there in the courtroom and listened to him
18 testify, right?

19 A. Right.

20 Q. And so basically you are supporting him with your
21 testimony, right?

22 A. What you mean?

23 Q. You are saying what he said, right?

24 A. No, I'm saying what happened.

25 Q. Yes Ma'am. Of course. So you talked to somebody in

1 Legal Aid, you say, on April 14th of 2008, right?

2 A. Yes.

3 Q. Okay. And who was that, Ma'am?

4 A. I can't remember her name off the top, because she no
5 longer -- she don't really work down here no more.

6 Q. Uh huh (indicating positive) Okay. Ma'am, you were
7 convicted of shoplifting in November of 2000 -- or you are
8 charged with shoplifting in November of 2009, and convicted of
9 shoplifting in December of 2009, right?

10 A. Correct.

11 Q. I'm sorry.

12 A. Yes.

13 Q. Okay. And you were saying that the reason y'all had to
14 move out of the apartment that you were in didn't have
15 anything to do with you or the baby, or even Andrew,
16 supposedly, but some people said that he did some shooting
17 around the apartment complex.

18 A. Yes.

19 Q. Okay. And as a result of that you had to leave.

20 A. Yes.

21 Q. But it wasn't about money though, right?

22 A. No.

23 Q. So let me get this right. Your lights had been turned
24 off, right?

25 A. Right.

1 Q. Okay. That got anything to do with any shooting around
2 the complex?

3 A. No.

4 Q. That's got to do with money, doesn't it?

5 A. Yes.

6 Q. Okay. And you and Andrew are still together now,
7 right?

8 A. Right.

9 Q. Okay. And that -- that's a beautiful thing. Y'all are
10 together. Are you married yet?

11 A. Not yet.

12 Q. Okay. But you are engaged.

13 A. Yes.

14 Q. Okay. And you don't want to see anything bad happen to
15 him.

16 A. I mean, no, not really.

17 Q. Yes. I mean, you -- in a perfect world you would want
18 him to be home to help take care of you and your three
19 children, right?

20 A. Yes, but I can take care of my kids by myself.

21 Q. Yes Ma'am. I'm sure you can. Where are you employed
22 now?

23 A. I'm not employed right now.

24 Q. When was the last time you were employed?

25 A. Two weeks ago.

1 Q. Okay. And where were you employed then?

2 A. At the Bermuda Sands.

3 Q. Okay. And what did you do at the Bermuda Sands, Ma'am?

4 A. Housekeeping.

5 Q. Okay. Now, do you have job prospects coming up? I
6 mean, it is the season, so you think you will be able to get a
7 job in fairly short order, right?

8 A. Yes.

9 Q. Okay. But it would be a lot easier for three children
10 if Andrew was around, right?

11 A. Yes.

12 Q. Making money and helping to support the household,
13 right?

14 A. Yes.

15 Q. Okay. And you said this woman that supposedly y'all
16 went and talked to on April 14th of 2008, she -- she ain't
17 around no more; is that it?

18 A. Correct.

19 Q. Okay. And you said -- well, you were in the courtroom
20 when Andrew said he really didn't know Quentin Gause, right?

21 A. Right.

22 Q. Okay. So how do you know Quentin Gause, just by being
23 in the courtroom, right?

24 A. No. I don't know him. I mean, I've seen his face a
25 couple of times when I went to visit Andrew at J. Reuben, but

1 besides seeing his face I don't know him.

2 Q. Okay. So basically you saw him when he was in -- when
3 he was locked up, had been charged with this, right?

4 A. Yes.

5 Q. Okay. So it's not like on April 14, 2008, you pulled
6 up there and you are like, hey, there's Quentin Gause, right?

7 A. No, I didn't know.

8 Q. Okay. All right. So the reason you are telling this
9 jury you saw Quentin Gause is because he is charged with this
10 offense, right?

11 A. No. No.

12 Q. All right. Now, you indicated to Mr. McCollum that you
13 are not familiar with this .22 caliber pistol that -- I mean,
14 you were in the courtroom when Andrew said he has this gun,
15 right?

16 A. Yes.

17 Q. But you are not familiar with this gun?

18 A. No.

19 Q. And you were in the courtroom when Andrew testified
20 that, when he's got his gun he's always got it right there in
21 his waste band, right?

22 A. Right.

23 Q. Well, if he's always got his gun, and y'all are living
24 together, how can you not be familiar with this gun?

25 A. Because I don't remember that gun. I don't -- that gun

1 doesn't recall my recollection.

2 Q. You remember other guns.

3 A. I remember the shotgun.

4 Q. Uh huh (indicating positive)

5 A. But that's it.

6 Q. So you don't remember this gun?

7 A. No sir.

8 Q. Even though he said he has it with him every day.

9 A. I don't remember that gun.

10 Q. Okay. Why would you -- why would you feel -- or do you
11 know why Andrew needed to have this shotgun under his bed?

12 MS. von HERRMANN: Objection. Calls for speculation.

13 MR. HAZZARD: No. I asked her, does she know why.

14 I apologize, Your Honor.

15 THE COURT: I'm going to allow you to ask the question.
16 Go ahead.

17 Q. Do you know why Andrew needed to have a sawed-off
18 shotgun under his bed?

19 A. Only thing that I can know of, when he got it it's
20 because of the shooting that came around, that had been --
21 that came around our house, that happened around the house.

22 Q. Violence around your house, right?

23 A. (NODS HEAD AFFIRMATIVE)

24 Q. Now how many apartments are out there, roughly?

25 A. There's six buildings with eight apartments in them.

1 Q. Six buildings with eight apartments in them.

2 A. Yes.

3 Q. So approximately forty-eight?

4 A. Yes.

5 Q. Okay. And ain't nobody shooting around anybody else's
6 buildings, are they, or anybody else's apartments, are they?

7 A. Hey ---

8 Q. I'm sorry.

9 THE COURT: You need to speak up.

10 A. I mean, I don't know. I mean, it's been shooting out
11 there before, yes.

12 Q. In April of 2008 people were shooting up other
13 apartments.

14 A. Yes.

15 Q. Okay. Where were y'all living?

16 A. We was staying in [REDACTED] apartment.

17 Q. [REDACTED] apartment.

18 A. [REDACTED].

19 Q. Of what?

20 A. Crane Creek.

21 Q. Of Crane Creek. Awh. There would be shootings out at
22 Crane Creek. You and Andrew lived in Crane Creek, right?

23 A. Yes.

24 Q. Gregory Floyd lived in Crane Creek?

25 A. He -- he would be out there. He was out there

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1 sometimes.

2 Q. He would be out there. Tiffany James lived in Crane
3 Creek.

4 A. Yes.

5 Q. You know her, right?

6 A. Yes.

7 Q. Donell James, does he live in Crane Creek? He don't
8 live in Crane Creek, does he?

9 A. No.

10 Q. But you know Donell James, right?

11 A. Yes.

12 Q. Okay. And you know Tiffany James.

13 A. Yes.

14 Q. And you know Tanheshia Smith, right?

15 A. Yes.

16 Q. You know all the James Gang. You know all them, right?

17 A. Yes.

18 Q. All right.

19 MR. HAZZARD: Thank you. No further questions.

20 THE COURT: Redirect, Solicitor.

21 MS. von HERRMANN: None, Your Honor.

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

23 Can the witness be excused?

24 MS. von HERRMANN: Please, Your Honor.

25 THE COURT: Mr. McCollum.

1 MR. McCOLLUM: No objection.

2 THE COURT: Mr. Hazzard.

3 MR. HAZZARD: No objection.

4 THE COURT: All right, Ma'am, you are released from
5 your Subpoena. You may go back to your regular activities.
6 Next witness, Solicitor.

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

9 THE COURT: All right.

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

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

14 DIRECT-EXAMINATION BY MR. SPRATLIN:

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

16 A. Currently employed with Corner Cars Towing Service.

17 Q. And what kind of work is that?

18 A. Wrecker service, towing vehicles.

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

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

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

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

25 MS. von HERRMANN: Excuse me, Your Honor.

DANIEL CRADIC - DIRECT BY SPRATLIN

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

2 MR. McCOLLUM: And slow down.

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

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

6 Q. So you just left law enforcement.

7 A. Yes sir.

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

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

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

13 A. That -- that's correct.

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

16 A. Yes, I was.

17 Q. And what were you doing on that day?

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

19 Q. All right. Did you have a chance to respond to [REDACTED]
20 Barberry Lane, here in Conway?

21 A. Yes, I did.

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

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

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

1 to?

2 A. [We received a call for a malicious damage. Somebody
3 had broke a window at a residence.

4 Q. What, if anything, did you notice when you pulled up to
5 the residence?

6 A. When I pulled up the homeowner was there, the front
7 window was broken, and there were several of the neighbors
8 hanging around outside.

9 Q. Do you remember who the homeowner was?

10 A. I believe the last name was Smith.

11 Q. Do you remember the first name?

12 A. No, I do not.

13 Q. Is there anything that would refresh your recollection?

14 A. A copy of the report. Mr. Cradic, what am I showing
15 you?

16 A. A copy of the written -- or a copy of the handwritten
17 Incident Report.

18 Q. Okay. Does that refresh your recollection as to who
19 Mr. Smith -- what Mr. Smith's first name was?

20 A. Yes, it does.

21 Q. What was that first name?

22 A. Allen.

23 Q. Okay. When you were at the scene did you develop a
24 suspect, or have a person of interest as to who broke the
25 window?

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

2 --

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

4 Q. Without going into what Mr. Smith stated.

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

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

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

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

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

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

19 A. One of the suspects, yes.

20 Q. Who was that?

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

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

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

1 A. There was a note found on the scene.

2 Q. Okay. And did you personally see that note?

3 A. Yes, I did.

4 Q. Did you personally look at the contents of that note?

5 A. Yes, I did.

6 Q. All right. What, if anything, did you do with that
7 note?

8 A. I copied down what was said on the note in my report,
9 and then I took the note back to evidence, and placed into
10 evidence.

11 Q. Okay. And did you copy that note down verbatim, or
12 exactly as it was written?

13 A. Yes, I did.

14 Q. All right. Now you say you took it into evidence.
15 Is -- to your knowledge is that note still in evidence?

16 A. As far as I know.

17 Q. Is it common for evidence to be destroyed if no arrest
18 is made in the case?

19 A. To my knowledge, yes. After a certain amount of time
20 they will purge evidence.

21 Q. Okay. And purging evidence, what is purging evidence?

22 A. If there's no more use for it -- they believe there's
23 no more use for the evidence, or there's no evidentiary value
24 to the evidence they will get rid of it to make space for new
25 evidence.

DANIEL CRADIC - DIRECT BY SPRATLIN

1 Q. Okay. And Mr. Cradic, did you ever make
2 this case?

3 A. No, I did not.

4 Q. Okay. So, in your opinion, as a law enforcement
5 officer at the time, would there have been any evidentiary
6 value to that note since no arrest was made?

7 A. Yes, there would.

8 Q. Was it pretty standard practice when an arrest was not
9 made a case to purge that evidence?

10 A. For -- for a case like this.

11 Q. So that evidence would have been purged?

12 A. To my knowledge.

13 Q. Okay. So that note would not still be in evidence.

14 A. To my knowledge, it would not be.

15 Q. Okay. And would that have been done in the intent to
16 avoid it being brought into court in any way?

17 A. No, it wouldn't.

18 Q. Okay. What did the note say that you saw that day?

19 A. I can't remember exactly, so I'm going to have to look
20 back to the Report.

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

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

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

1 A. Briefly looking at the Report that I had written.

2 Q. If you would, please look at the report, and then place
3 it down and state exactly what the note said.

4 A. According to my report, bitch, I will be back, nigger,
5 fuck you. F.Y. bitch ass, AIDS-infected bitch. Yeah, we all
6 got it. D-baby.

7 Q. And that's exactly what the note said.

8 A. Yes, it was.

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

12 THE COURT: Mr. McCollum, cross-examination.

13 MR. McCOLLUM: Just briefly, Your Honor.

14 CROSS-EXAMINATION BY MR. McCOLLUM:

15 Q. Mr. Cradic, you left the Department in 2011?

16 A. Yes, I did.

17 Q. And where are you employed now?

18 A. Corner Cars Towing Service.

19 Q. And had you been a police before 2006?

20 A. Yes, I did.

21 Q. Okay. So how long have you been a police officer?

22 A. Civilian, six years -- I'm sorry -- military, six
23 years, and civilian, approximately five.

24 Q. So eleven years. And was there any particular reason
25 why you left law enforcement?

1 A. Yes. Personal reasons.

2 Q. Personal reasons.

3 A. Uh huh (indicating positive)

4 Q. Was that related ---

5 A. Financial reasons.

6 Q. All right. And so you resigned and went and got -- and
7 started driving a tow truck?

8 A. Yes sir.

9 Q. Okay. And that's more lucrative than being a police
10 officer?

11 A. I had to get some more money for the family.

12 Q. You got called to a broken window, right?

13 A. Yes, I did.

14 Q. Yes. That's what you refer to as a malicious damage,
15 or malicious injury to property, right?

16 A. Yes.

17 Q. And that's an offense that's punishable in Magistrate's
18 Court, thirty days in jail, Two Hundred Dollar fine, that sort
19 of thing, right?

20 A. Yes, it is.

21 Q. And if a person is charged with that usually they can
22 pay the fine without going to court, right?

23 A. Yes.

24 Q. Unless the damage is greater than, at that time
25 probably a Thousand Dollars, right?

1 A. Correct.

2 Q. And there wasn't a Thousand Dollars worth of damage
3 done from your assessment, right?

4 A. To -- from my assessment and my knowledge, no, it
5 wasn't.

6 Q. Somebody got mad and broke out a window, right?

7 A. Yes.

8 Q. And as far as you know, and maybe you don't know, the
9 note itself has been destroyed, right?

10 A. I have been informed.

11 Q. And you've been informed the note is destroyed, so we
12 don't have the benefit of the note, right? Yes.

13 A. Yes.

14 Q. And did you make an arrest on that case?

15 A. No, I did not.

16 Q. Did you further investigate that case?

17 A. No, I didn't.

18 Q. At the time were you concerned that anything would
19 happen as a result of somebody breaking out a window and
20 leaving a note?

21 A. At the time I was concerned, but that was it.

22 Q. So -- and you see this kind of stuff, right?

23 A. Yes sir.

24 Q. Where unfortunately people get mad, right?

25 A. Yes.

1 Q. And people break windows, right?

2 A. Yes, they do.

3 Q. And people, unfortunately, write each other, sometimes,
4 nasty notes, right?

5 A. Yes.

6 Q. And many times that happens, and it's not something
7 that even -- you even have to really go pursue as a police
8 officer, right?

9 A. We will pursue it if the victim thinks that there's an
10 actual threat.

11 Q. Oh, I guess what I'm trying to say is, when you -- when
12 you evaluated that situation, and looked at it, it was
13 something that was -- it was a -- I mean, it's -- I know it's
14 serious, but the police have to deal with a lot of serious
15 stuff, right?

16 A. Yes.

17 Q. So -- and I know you don't want to prioritize stuff,
18 necessarily, but that's a fairly unofficially low priority
19 thing, a window being broke, right?

20 A. It can be.

21 Q. But you are not -- you don't want to prioritize crimes
22 and what the police are working on, right?

23 A. That's correct.

24 Q. And that's policy, right?

25 A. Yes, it is.

1 Q. You don't -- you are not suppose to be out there saying
2 that this isn't high priority, right?

3 A. Correct.

4 Q. And they tell you -- that's pretty clear when you work
5 for the police department, right?

6 A. That is correct.

7 Q. But the reality of it is, is if it's a broken window,
8 and an angry note, it's not something that everybody has to go
9 jump on, right?

10 A. It can be taken -- it needs to be taken seriously.

11 Q. And -- but in this situation it wasn't even followed up
12 with an arrest, right?

13 A. That's correct.

14 Q. Okay. Because you didn't think that much of it at the
15 time, right?

16 A. No sir. It wasn't my opinion.

17 Q. Okay.

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

20 THE COURT: All right, Mr. Hazzard.

21 MR. HAZZARD: No questions, Your Honor.

22 THE COURT: All right. Any redirect, Solicitor?

23 MR. SPRATLIN: No further questions, Your Honor.

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

1 MR. SPRATLIN: I would ask that the witness be released
2 from his Subpoena.

3 THE COURT: Any objection, Mr. McCollum?

4 MR. McCOLLUM: No, Your Honor.

5 THE COURT: Mr. Hazzard.

6 MR. HAZZARD: No objection.

7 THE COURT: All right, sir. You are released from your
8 Subpoena. You may go back to your regular activities, sir.

9 All right, Solicitor, further witnesses by the State.

10 MS. von HERRMANN: Your Honor, at this time the State
11 rests.

12 THE COURT: All right. Thank you, Ma'am.

13 All right, Mr. McCollum, and Mr. Hazzard, are there
14 matters for the Court at this point in time?

15 MR. McCOLLUM: Yes, Your Honor.

16 THE COURT: All right. Very good.

17 All right, ladies and gentlemen of the jury, there are
18 matters of law that the Court has to take up. At this point
19 in time I am uncertain as to how long those will last,
20 therefore, I'm going to excuse you for the evening. I will
21 need for you to be back tomorrow morning at nine o'clock in
22 your jury room, at which time we will resume the trial.

23 Please remember, don't talk about the case. Don't allow
24 anybody to talk to you about it. Don't look up anything on
25 the internet. Don't read anything about this particular case.

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

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

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

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

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

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

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

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

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

3 **THE COURT:** Solicitor.

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

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

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

25 In this particular matter I do find there is more than

1 sufficient evidence, that that evidence exists in the record
2 which would substantiate the charges, if so believed by the
3 jury, again, that being their job and responsibility, but if
4 that evidence is so believed that would be sufficient evidence
5 to convict the Defendant, beyond a reasonable doubt, of the
6 crimes of accessory before the fact of a felony, that being
7 the crime of burglary in the first degree, and accessory
8 before the fact of a felony, that being armed robbery,
9 Understanding that the standard would be reasonably tending to
10 prove the guilt of the accused the Court is saying that, in my
11 opinion, there is more than sufficient evidence, if that
12 evidence is so believed by the jury, which would prove the
13 Defendant guilty of those crimes beyond a reasonable doubt,
14 there being more than reasonably tending to prove the
15 Defendant's guilt, therefore, I respectfully decline to grant
16 your motions for a directed verdict on the two charges levied
17 against Ladorrean Chukell Collington by the State in (10-GS-
18 26-01626), and (10-GS-26-01627).

19 Further motions by the Defense.

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

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

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

8 Anything else, Mr. McCollum?

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

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

13 MR. McCOLLUM: Yes sir, Your Honor.

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

18 Any other motions?

19 MR. McCOLLUM: No, Your Honor.

20 THE COURT: All right. Very good.

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

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

1 murder and burglary in the first degree we move for a directed
2 verdict individually on each of those four indictments, Your
3 Honor, and the basis of that motion is an insufficiency of
4 evidence with regard to allowing the jury to make a
5 determination of guilt.

6 THE COURT: All right. Before we go any further, you
7 mentioned kidnapping.

8 It's my understanding, Solicitor, that you have not
9 presented before this jury the offense of kidnapping; is that
10 correct?

11 MS. von HERRMANN: That's correct. I believe we -- at
12 the very beginning I said I do not wish to go forward on the
13 kidnapping charge.

14 THE COURT: Right. So the offenses that you have gone
15 forward in this case are -- let's -- and let's just -- we will
16 go to the docket numbers here. (08-GS-26-03133) for the
17 offense of murder, (11-GS-26-01274) for the offense of armed
18 robbery, and (08-GS-26-03135) for the offense of burglary
19 first degree; is that correct?

20 MR. HAZZARD: Yes sir.

21 THE COURT: Those are the three indictments, correct,
22 Solicitor.

23 MS. von HERRMANN: Yes sir.

24 THE COURT: All right. Very good. All right. I just
25 want to be clear. You had said kidnapping, and I had

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1 understood the State was not proceeding with that, and I
2 wanted to be clear about that.

3 MR. HAZZARD: Yes sir, and I apologize. During the
4 motion hearing a couple of weeks ago it was made clear that
5 the State was not proceeding on the kidnapping. I misspoke
6 because I was looking through the indictments I've got in
7 front of me.

8 THE COURT: All right.

9 MR. HAZZARD: But with regard to armed robbery, murder,
10 and burglary in the first degree, Defendant, Quentin Gause,
11 feels that there is a paucity of evidence, not evidence
12 sufficient to allow the jury to consider any, or all of those
13 indicted offense, and we therefore respectfully request a
14 directed verdict of not guilty on each of them.

15 THE COURT: All right. I'm not going to repeat the
16 directed verdict standard that I just read into the record
17 regarding the motion for a directed verdict made by the
18 Defendant, Ladorrean Collington, but that -- I'm using that
19 same specific standard that I set forth in the record to rule
20 on your particular motion for a directed verdict.

21 MR. HAZZARD: Understood, Your Honor.

22 THE COURT: The Court finds in this particular matter
23 that the evidence as produced by the State -- and again, I am
24 not judging the credibility or the believability of that
25 particular evidence. I am stating that the evidence does

1 exist in the record, if that evidence is so believed by the
2 jury, would be more than sufficient to find the Defendant
3 guilty of the crimes of murder, armed robbery, and burglary in
4 the first degree by the standard of beyond a reasonable doubt,
5 understanding, all I have to find is there is evidence that
6 reasonably tends to prove the guilt of the accused, but I
7 find, based upon my examination of the record, if the evidence
8 is so believed by the jury, there is more than sufficient
9 evidence to find the Defendant guilty of the three crimes
10 charged beyond a reasonable doubt, therefore I respectfully
11 decline to grant your motions for -- or motion for a directed
12 verdict on the three charges levied against Mr. Quentin Lavant
13 Gause by the State of South Carolina.

14 Further motions by the Defense?

15 **MR. HAZZARD:** Yes sir, Your Honor. At this time
16 Defendant, Gause, would renew all motions made -- and I
17 believe all motions that were made were made and handled by
18 the Court in a pretrial fashion -- we renew those motions and
19 respectfully request a reconsideration of them.

20 We also renew all objections made during the course of
21 the trial, and respectfully request a reconsideration of those
22 as well.

23 **THE COURT:** All right, sir. Deal first with the
24 motions that were made by the Defendant, Gause, before the
25 start of the trial. The Court would reaffirm it's previous

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1 rulings. I find that there has been nothing presented in the
2 evidence of this case which would cause the Court any pause or
3 concern as to those rulings. I find that -- and would affirm
4 the Court's previous rulings regarding the pretrial motions.

5 As to any objections that you made during the course of
6 the trial, again, based upon my examination of the evidence
7 presented in this matter, I would reaffirm those rulings and
8 respectfully decline to grant your motions in that regard.

9 Further motions on behalf of the Defendant, Gause?

10 MR. HAZZARD: No further motions, Your Honor.

11 THE COURT: All right. For the Court's information, so
12 I have some idea where we might be at this point in time,
13 understanding that I have not asked you to, and I am not
14 asking you, either Mr. McCollum nor Mr. Hazzard, to state
15 specifically what it is that you intend to do as a result of
16 the defense, but Mr. McCollum, at this point in time, when we
17 resume tomorrow morning, is it your intention to call
18 witnesses on behalf of the Defendant, Collington?

19 MR. MCCOLLUM: No, Your Honor.

20 THE COURT: Mr. Hazzard, as it stands now, when we
21 resume tomorrow morning, is it now your intention to call
22 witnesses on behalf of the Defendant, Gause?

23 MR. HAZZARD: No, Your Honor.

24 THE COURT: All right. I don't mind waiting until
25 tomorrow morning to examine each of your clients as to their

1 Constitutional Rights regarding testifying or not testifying
2 in this particular case. I'll be glad to do it now, but if
3 you would like for me to wait till tomorrow morning to do that
4 I will be glad to do so.

5 What is your choice, Mr. McCollum?

6 MR. MCCOLLUM: Your Honor, I have explained to Ms.
7 Collington, and I would ask Your Honor to go through that with
8 her at -- as soon as possible here this evening.

9 THE COURT: All right. And your position, Mr. Hazzard.

10 MR. HAZZARD: Court's indulgence, Your Honor.

11 THE COURT: Yes sir.

12 MR. HAZZARD: Your Honor, I have conferred with Mr.
13 Gause, and to put it on the record, we have been discussing
14 this eventuality, the possibility of putting up evidence, him
15 possibly testifying, since before the trial began, and once
16 the trial began we've been talking about it since as early as
17 Tuesday, so our discussion here today is not something new or
18 rapid. After speaking with him briefly here, he reaffirms his
19 decision that he does not wish to put up any evidence, and we
20 stand ready for the Court to have a colloquy with him in that
21 regard.

22 THE COURT: All right. Very good. Why I'm gonna --
23 well, what I'm going to do -- you can have a seat, Mr. Gause.

24 What I'm going to do is, these are two separate cases,
25 two separate matters. The jury has to make separate

1 decisions, so I'm going to question each Defendant separately
2 in this regard, and recognition of that.

3 So, since we have proceeded in this order ever since the
4 beginning I'm going to continue to do it in this way. So if
5 you would, Ms. Collington, would you please stand at this
6 time, Ma'am.

7 A. Yes sir.

8 THE COURT: All right. Madame Clerk, if you would
9 place Ms. Collington under oath, please.

10 LADORREAN CHUKELL COLLINGTON, being
11 first duly sworn, testifies as follows:

12 BY THE COURT:

13 THE COURT: All right, Ms. Collington, at this point in
14 time I'm going to explain to you certain of your
15 Constitutional Rights. If, at any point in time when we are
16 talking you don't understand anything I'm talking about, or
17 you've got a question about it, or you want to stop for some
18 reason, I need for you to indicate that to me. You can raise
19 your hand, you can tell your attorney, Mr. McCollum, but are
20 we in agreement that, if you've got a question, or you don't
21 understand, or you want to stop, you are going to indicate
22 that to me in some way, all right.

23 A. Yes sir.

24 THE COURT: All right. Very good. We've reached the
25 stage of the trial where you can present a defense if you so

1 choose to do so. As you have heard earlier, it's your right
2 to do so. You are not obligated to do so. You don't have to
3 prove or show anything to the jury, and I will so inform them
4 again, as I did earlier, I'll inform them again later on about
5 that, but you certainly have the rights, and the right to
6 claim the protections given to you by the Fifth Amendment to
7 the Constitution of the United States of America. Now that
8 Amendment states in part that no person shall be compelled in
9 any criminal case to be a witness against themselves. That
10 means nobody can make you testify in this case. If you want
11 to you can testify, but it's your choice, nobody can make you
12 do that; do you understand that?

13 A. Yes sir, I do.

14 THE COURT: All right, now, regarding this particular
15 right that you have to testify or not testify, you understand
16 that's your decision.

17 A. Yes sir.

18 THE COURT: All right. If you decide to testify you
19 would be subject to the same rules as all the other witnesses
20 that have testify in this case. You would be asked questions
21 by your attorney, and then you would be cross-examined or
22 asked questions by Mr. Hazzard and by the Solicitor; you
23 understand that.

24 A. Yes sir.

25 THE COURT: And that would be as to any matters the

1 Court would deem to be proper or relevant; you understand
2 that?

3 A. Yes sir.

4 THE COURT: In addition, if you had any convictions in
5 your past -- and I don't know if you do or not, but I'm just
6 saying -- if you had any convictions in your past that involve
7 dishonesty or false statements, then the Court would allow the
8 State to inquire about that, if you had been convicted of that
9 crime.

10 Also, if you had been convicted of a crime punishable by
11 imprisonment for more than one year, and the Court found that
12 these crimes, all these crimes we've talked about, that the
13 value of asking you those questions outweighs any harm or
14 prejudice to you, then the State would be able to ask you
15 about that; do you understand that?

16 A. Yes sir, I do.

17 THE COURT: Solicitor, are there any crimes that you
18 are aware of that you would want to ask Ms. Collington about
19 on cross-examination?

20 MS. von HERRMANN: Your Honor, I do not have her
21 criminal record up here at this time, but not that I --
22 specifically that I am aware of.

23 THE COURT: All right. Very good.

24 MR. HAZZARD: Court's indulgence, Your Honor. I might
25 have it in all of this stuff.

1 **THE COURT:** All right.

2 **MR. HAZZARD:** I'm going to hand it to -- I'll hand it
3 to Mr. McCollum. You can look at it or you can hand it to the
4 Prosecutor.

5 And what I'm handing is the NCIC that the State provided
6 to me.

7 **THE COURT:** All right. Very good. Thank you, Mr.
8 Hazzard.

9 **MR. HAZZARD:** You are welcome.

10 **MS. von HERRMANN:** Your Honor, she has a criminal
11 domestic violence, first offense. She also has on this record
12 as assault and battery of a high and aggravated nature. I do
13 not know what the disposition on that is. I would have to
14 check into that. Another criminal domestic violence, criminal
15 domestic violence of a high and aggravated nature, possession
16 of a pistol, discharging a firearm into a wea -- discharging
17 firearms into a dwelling, assault and battery with intent to
18 kill, possession of a weapon during a violent crime, those, at
19 the very least, are pending. There is a drug charge,
20 trafficking in cocaine, and that's all that I see at this
21 point.

22 **THE COURT:** All right. So the -- you don't -- you
23 don't know what convictions there might be at this point in
24 time by looking at the record.

25 **MS. von HERRMANN:** The only conviction that I can see

1 at this time is a criminal domestic violence.

2 THE COURT: A CDV. All right. Then I would not allow
3 you to ask about that particular matter. Now obviously there
4 are some crimes that you went through that if the Defendant
5 had been so convicted of those -- and again, I'm not going to
6 talk about the time issue -- we would have to deal with it --
7 but could qualify with that.

8 All right. Again, Ms. Collington, just in general, if
9 you have a conviction that involves dishonesty or false
10 statement, or you've got a conviction for -- that would call
11 for imprisonment for more than one year, and the Court would
12 look at it and find that the value of that outweighs any harm
13 or prejudice to you, I'm going to allow the State to ask you
14 about that; you understand that.

15 A. I understand that, sir.

16 THE COURT: All right. Very good. You understand if
17 you -- whatever your decision is it's got to be your decision,
18 freely made, knowing you have these rights; do you understand
19 that?

20 A. Yes sir, I do.

21 THE COURT: All right. Now, if you decide not to
22 testify I will instruct the jury that they can't give that
23 fact any consideration whatsoever; they can't talk about it in
24 the jury room; it's not part of this case; you understand
25 that.

1 A. I understand that. Thank you too, sir.

2 THE COURT: Yes Ma'am. Now, understanding it's your
3 decision to make, before you make the decision, do you have
4 any other questions that you want to ask, or talk to your
5 attorney about before I ask you if you want to testify?

6 A. No sir.

7 THE COURT: All right. Very good. Do you understand
8 everything we've talked about?

9 A. Yes sir.

10 THE COURT: All right. Very good. Do you wish to
11 testify in this particular case?

12 A. No sir, I don't.

13 THE COURT: Thank you very much, Ma'am. You may have a
14 seat.

15 A. Thank you.

16 THE COURT: Thank you.

17 All right, Mr. Gause, would you please stand at this
18 time, sir.

19 And Madame Clerk, if you would place him under oath.

20 QUENTIN LAVANT GAUSE, being first
21 duly sworn, testifies as follows:

22 BY THE COURT:

23 THE COURT: All right, Mr. Gause, I know you've been
24 sitting here and you've heard everything that I talked about
25 with Ms. Collington, but I'm going to go over the exact same

1 thing with you. I'm going to talk to you about certain rights
2 that you have regarding testifying or not testifying in this
3 particular case. If there's anything you don't understand, if
4 I need to explain something to you, or you want to talk to
5 your attorney in some way you need to indicate that to me.
6 You can raise your hand or just, in some way, indicate to me
7 that you don't understand, or there's some issue that we need
8 to go over. Are we in agreement there?

9 A. Yes sir.

10 THE COURT: All right. Very good. We've reached the
11 stage of the trial where you can present a defense, and you
12 are entitled to claim the protection given to you by the Fifth
13 Amendment to the Constitution of the United States of America.
14 Now that Constitution states in part, no person shall be
15 compelled, in any criminal case, to be a witness against
16 themselves. That means nobody can make you testify in this
17 case. You can testify if you want to; it's your choice, but
18 nobody can make you do it; do you understand that?

19 A. Yes sir.

20 THE COURT: All right. If you decide to testify you
21 are going to be subject to the same rules that have governed
22 all the other witnesses that have testified in this case. You
23 will be asked questions by your attorney, Mr. Hazzard. You
24 will be cross-examined, or asked questions by Mr. McCollum and
25 the State of South Carolina; do you understand that?

1 A. Yes sir.

2 THE COURT: And that would be as to any issues the
3 Court would find to be proper or relevant to be asked in this
4 case; do you understand that?

5 A. Yes sir.

6 THE COURT: All right. Also, if you have any
7 convictions in your past -- and I don't know what your record
8 is, if it -- anything at all.

9 Do you have that, Solicitor?

10 MS. von HERRMANN: I do, Your Honor. I do have Mr.
11 Gause's. He has a resisting arrest, he has a burglary third,
12 a possession with intent to distribute -- I can't tell if it's
13 cocaine or marijuana -- a sale or possession of a pistol. He
14 has another burglary third -- or maybe that's the same one --
15 excuse me -- possession of marijuana. I believe that's it.

16 THE COURT: All right. So the burglary third was when,
17 please Ma'am?

18 MS. von HERRMANN: Pardon.

19 THE COURT: The burglary third was when?

20 MR. HAZZARD: Conviction date is February 15th of 2002.

21 THE COURT: 2002. So that would fall within, then, the
22 ten year limitation. I would find certainly the State would
23 be allowed to examine him about that.

24 Any others in there besides the burglary third that fall
25 within the ten years that you would like to ask him about?

1 MS. von HERRMANN: Yes sir. That may -- it would be a
2 possession with intent to distribute that drug, what -- either
3 cocaine or marijuana -- I can't tell from that -- and sale or
4 possession of a stolen pistol.

5 THE COURT: All right. And those fall within the ten
6 years.

7 MS. von HERRMANN: Yes sir.

8 THE COURT: All right. Do you have any questions or
9 objections, Mr. Hazzard, that you would raise as to those
10 three charges?

11 MR. HAZZARD: No sir.

12 THE COURT: All right. Very good.

13 All right, Mr. Gause, I will tell you that, based on my
14 conversations with the State and your attorney I would allow
15 the State to ask you if you have been convicted of those
16 particular crimes in the past. If you admitted them that
17 would be the end of it. The State can't go any further, ask
18 you what happened or anything else about that. It would just
19 be, were you convicted of those, and that would be the end of
20 it. Now obviously, if you denied it, then I might -- I might
21 allow the State to pursue it further, to bring some records in
22 to validate that you actually were convicted of those. Do you
23 understand that?

24 A. Yes sir.

25 THE COURT: All right. If you decide to testify, or --

1 your decision whether or not to testify or not, either way,
2 it's your decision; you understand that. You are making the
3 decision, correct?

4 A. Yes sir.

5 THE COURT: All right. And you would be making that
6 decision freely, voluntarily, and knowing about the
7 protections given to you by the Fifth Amendment to the
8 Constitution of the United States of America, and what would
9 result therefrom. Do you understand that?

10 A. Yes sir.

11 THE COURT: All right. If you decide not to testify I
12 will tell the jury, as I told Ms. Collington, they can't give
13 that fact any consideration whatsoever. They can't talk about
14 it in the jury room; it is not part of this case. That's what
15 I'll tell them. Do you understand that?

16 A. Yes sir.

17 THE COURT: Now, it's entirely left up to you to decide
18 if you want to testify or not. Before I ask you that
19 question, do you have any questions, or do you want to ask Mr.
20 Hazzard anything at this point in time?

21 A. No sir.

22 THE COURT: All right, sir. Do you understand what we
23 have talked about?

24 A. Yes sir.

25 THE COURT: All right. Do you wish to testify in this

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1 particular case?

2 A. No sir.

3 THE COURT: Very good. Thank you very much. You may
4 sit down. Thank you.

5 All right. As far as a potential verdict form to
6 present to the jury, would there be anything -- and let's just
7 deal with the Defendant, Collington, first. Would there be
8 anything, other than the two verdict forms, where the jury
9 would be faced with the choice of not guilty or guilty of, on
10 one verdict form, accessory before the fact of the felony of
11 armed robbery, and the other one, accessory before the fact of
12 the felony of burglary in the first degree? Is there anything
13 else as to that from the State?

14 MS. von HERRMANN: No sir.

15 THE COURT: From the Defendant, Collington?

16 MR. McCOLLUM: I don't think so, Your Honor.

17 THE COURT: All right. Would you like -- I mean, here,
18 I've got -- why don't y'all come up and look at these.

19 MR. McCOLLUM: I was just thinking -- I've thought some
20 about a possible request for lesser included. I can't think
21 of any. Solicitation, I understand, is not ---

22 THE COURT: Not that I'm aware of. No sir.

23 MR. McCOLLUM: There's a case that says it isn't.

24 THE COURT: All right. Well, I was going to say, I
25 don't -- I was not aware that it would be.

1 THE COURT: All right. So any issues as to the verdict
2 forms from the State?

3 MS. von HERRMANN: No sir, Your Honor.

4 THE COURT: From the Defendant, Collington?

5 MR. McCOLLUM: No, Your Honor.

6 THE COURT: All right. Very good.

7 Why don't we -- I'll get back to requests to charge in
8 just a minute.

9 Mr. Hazzard, as to the Defendant, Gause, and the three
10 charges that are levied against him by the State, murder,
11 armed robbery, and burglary in the first degree, is there
12 anything else that you would want the Court to submit to the
13 jury in regards to any of those three charges?

14 MR. HAZZARD: One second, Your Honor.

15 THE COURT: Yes sir.

16 MR. HAZZARD: No, Your Honor. We do not request any
17 lesser included offenses.

18 THE COURT: All right. And the -- you would agree, and
19 the record would reflect, that you, in the interim, discussed
20 this with your client as to his choice and his decision,
21 correct?

22 MR. HAZZARD: Yes sir, Your Honor.

23 THE COURT: Very good. All right, then, if you would,
24 Mr. Hazzard and Solicitor, if y'all would come up and look at
25 these three verdict forms then, please, and see if you have

1 any questions about the three verdict forms then.

2 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

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

4 MR. HAZZARD: No objection, Your Honor.

5 THE COURT: Thank you very much.

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

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

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

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

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

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

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

25 I will talk to them about the presumption of innocence,

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

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

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

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

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

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

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1 that malice exist for any particular time before the act is
2 committed, but malice must exist in the mind of the defendant
3 just before, and at the time the act is committed; it has to
4 be that combination of the previous evil intent and the act,
5 and

6 go on to talk about the -- as far as malice, could be express
7 or inferred, and go ahead and talk to jury about that. When
8 we get to the -- I will tell them that inferred malice can
9 arise when the deed is done with a deadly weapon, a deadly
10 weapon is an article, instrument or substance which is likely
11 to cause death or great bodily harm, whether an instrument has
12 been used as a deadly weapon depends on the facts and
13 circumstances of each case. I will not give examples, because
14 I don't want to go into the area of commenting on the facts,
15 so I'm not going to give examples of what might be a deadly
16 weapon. I'll just leave it at definition.

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

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

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

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

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

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

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1 this point in time is there anything else, Solicitor?

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

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

7 MS. von HERRMANN: All right.

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

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

15 THE COURT: All right. And Mr. Hazzard.

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

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

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

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

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

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

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

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

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

12 MS. von HERRMANN: Yes sir.

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

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

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

22 MR. HAZZARD: Okay.

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

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

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

6 THE COURT: On hand of one.

7 MR. HAZZARD: Yes sir.

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

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

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

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

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

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

23 THE COURT: All right. Very good.

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

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robbery and burglary in the first degree, and before I
about hand of one, hand of all I'm going to say, you

3 Know, the following theory applies to murder, armed robbery,
4 and accessory -- I'm sorry -- murder, armed robbery, and
5 burglary in the first degree, and then I'll read what I just
6 read.

7 Do you have a problem with that?

8 MR. McCOLLUM: No, Your Honor.

9 THE COURT: All right. Just one second.

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

14 THE COURT: All right.

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

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

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

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

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

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

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

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

19 **MS. von HERRMANN:** That's fine.

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

21 **MS. von HERRMANN:** I think you do.

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

1 **MS. von HERRMANN:** I agree with you. I think it's
2 covered.

3 **THE COURT:** I -- I think we'll just stick with the
4 murder charge that I have and not include that.

5 What else did you want?

6 **MS. von HERRMANN:** The only other matter that I was
7 going to bring to the Court's attention is, Your Honor stated
8 that you were going to charge the prior -- give the prior
9 record charge. That charge, typically when it is given,
10 refers to a prior record, to one's prior convictions. In this
11 case the Court has allowed in some testimony and some
12 questioning about cases not -- that have been convictions, but
13 rather that are pending, and so I would ask the Court to
14 instruct the jury that, as to those cases that were referred
15 to that were pending, that those are non-convictions, and that
16 the person is presumed to be innocent on those charges until
17 they receive their day in court.

18 **THE COURT:** I don't know that I'm going to go that far,
19 but I will make it clear to the jury that what I'm talking
20 about is an actual conviction, when a person has been
21 convicted of a crime, not pending. I don't know that I'm
22 going to go any further, but I will say, there must have been
23 an actual conviction, not a pending. Now, that does not
24 prevent the -- and I don't believe ---

25 And let me hear from you, Mr. McCollum.

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1 MR. McCOLLUM: I don't have anything to add to that,
2 Your Honor.

3 THE COURT: Mr. Hazzard.

4 MR. HAZZARD: Nothing, Your Honor.

5 THE COURT: All right. Very good. Obviously -- well,
6 it -- I don't even need to make that comment. So, that's what
7 I'm going to do, that -- that it's been shown that the witness
8 has been convicted of a crime, it must be a conviction, not
9 something pending, for which they could have been imprisoned,
10 and that is offered as the issues of credibility. All right.

11 MS. von HERRMANN: Thank you. I don't have anything
12 further.

13 THE COURT: Anything else, Solicitor?

14 MS. von HERRMANN: No sir.

15 THE COURT: All right. Mr. McCollum, anything that you
16 know of at this point in time you would like me to add?

17 MR. McCOLLUM: Just very briefly, Your Honor. When you
18 talk about a witness's credibility do you go into believe some
19 of what they said, or all, and you can discredit ---

20 THE COURT: Oh, that's at the very beginning when I'm
21 talking about credibility and believability. Yes sir. Yes
22 sir, at the very beginning, not on this 609 issue, but at the
23 very beginning, you know, that they -- you know, you can be,
24 you know, one witness against several, several against one;
25 you can believe a portion of what a witness says, disregard

1 the remaining portion of it; if they've got a good and sound
2 reason for doing so they can disregard in it's entirety the
3 testimony of a particular witness. I will certainly tell them
4 that, tell them -- the jury that every -- every single time.

5 MR. McCOLLUM: The only other thing, Your Honor, is,
6 prior to me making a closing argument I would just like to
7 have an idea of the definition the Court would give on
8 accessory before the fact.

9 THE COURT: All right. Well, if you will give me one
10 second I'll go directly to it, and I will read to you exactly
11 what I intend to tell them.

12 All right. The Defendant, Ladorrean Chukell Collington,
13 is charged with being an accessory before the fact of armed
14 robbery, and accessory before the fact of burglary first
15 degree, and I'll go on and explain to them these are two
16 separate times, and they must make two separate decisions. In
17 order to prove each crime the State must prove, beyond a
18 reasonable doubt, that the Defendant, Collington, either
19 advised, agreed, urged, counseled, hired, or in some way aided
20 or abetted another person to commit the particular crime, and
21 that the Defendant, Collington, was not present when the crime
22 was committed. Hold on one second, please.

23 Aid means to help, to promote the course or
24 accomplishment of, to give support to, or to give assistance
25 to. Abet means to encourage or appear to favor or support.

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1 That's what I'm going to tell them.

2 Anything as to that particular charge, Mr. McCollum?

3 MR. MCCOLLUM: Your Honor, not right now. I may ask
4 for something in the morning.

5 THE COURT: All right. Very good.

6 MR. MCCOLLUM: But the terms are advised, agreed,
7 counseled or hired. Did I get that right?

8 THE COURT: Right. That the Defendant, Collington,
9 either advised, agreed, urged, counseled, hired, or in some
10 way, aided or abetted another person to commit the particular
11 crime, and that the Defendant, Collington, was not present
12 when the crime was committed.

13 That's what the State has to prove, beyond a reasonable
14 doubt, as to each charge.

15 MR. MCCOLLUM: All right.

16 THE COURT: All right.

17 MR. MCCOLLUM: Thank you, Your Honor.

18 THE COURT: Anything else at this point in time?

19 MR. MCCOLLUM: Not at this -- not this evening, Your
20 Honor.

21 THE COURT: All right. Mr. Hazzard.

22 MR. HAZZARD: Nothing further, Your Honor.

23 THE COURT: All right. Very good.

24 We've asked the jury to come back in at nine o'clock.

25 Please have the Defendants present at 8:30. I would like

1 y'all here sometime reasonably close to 8:30, so if you've got
2 any issues, you've got any additional requests to charge,
3 something, please bring it to my attention so hopefully we
4 could deal with it before nine o'clock. I think we all
5 understand this jury -- we've asked them to do a difficult
6 thing, no question about it, but they are -- I think they are
7 ready to receive the case and decide it, so if you've got any
8 issues please let me know.

9 As far as the closing arguments in this, unless you
10 disagree, Solicitor, I don't see that either Defendant has
11 introduced any evidence in this particular case. Do you
12 disagree?

13 MS. von HERRMANN: No, I do not disagree.

14 THE COURT: And so you would be required then to give
15 your full and complete argument first.

16 MS. von HERRMANN: Yes sir.

17 THE COURT: And then I would turn to you, Mr.
18 McCollum -- we are just going to continue the same order we
19 continued on. I'll turn to you to give your argument on
20 behalf of your client, and then, Mr. Hazzard, I'll turn to you
21 to give your argument on behalf of your client.

22 I expect probably at that point in time we'll probably
23 take a short break, about five minutes, before I charge them
24 on the law. I don't intend to be like Judge Floyd and start
25 knocking on the -- knocking on the bench if y'all had -- y'all

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1 had -- take up too much time, but I would ask you to respect
2 we have been here the entirety of the week. This jury --
3 y'all do what you need to do to protect the interests of your
4 client, and tell the jury what you need to tell them, but
5 understand, they've been sitting here all week, and I believe
6 that they are ready to have the matter in their hands to
7 decide it, so please keep that in mind when you are giving
8 your closing arguments, please. All right.

9 MR. McCOLLUM: Yes sir.

10 MR. HAZZARD: Yes sir.

11 THE COURT: Thank you very much.

12 MR. McCOLLUM: Thank you, Your Honor.

13 THE COURT: I'll see y'all back tomorrow morning then.
14 Thank you.

15 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, JUNE 10,
16 2011, OUTSIDE THE PRESENCE OF THE JURY.)

17 THE COURT: All right, Solicitor, I understand there's
18 a matter y'all need to put on the record.

19 MS. von HERRMANN: Yes sir, Your Honor. There is a --
20 I believe it's State's Exhibit 72, which was a -- it was a
21 disk containing a call from the Defendant, Collington, that
22 went to Mr. Anthony Graham's telephone. That is a -- that
23 particular disk can only be played in the computer. It's not
24 just an audio file. By mutual agreement we have taken that
25 disk, and we have put it onto an audio file disk, and we have

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1 a -- we have a disk player that can be sent back with the
2 jury.

3 We all had some concerns about a computer being sent
4 back there, so what I guess I would like to do is just to --
5 we can either do it one of two ways. We can substitute it
6 out, or we could make that audio file State's Exhibit 72(A),
7 and maybe you could give the jury some instruction about that
8 being the particular one that they would need to play. How --
9 whatever suits Your Honor.

10 THE COURT: All right. Mr. McCollum, do you have any
11 problem just substituting the two disks, or do you want both
12 of them in evidence?

13 MR. MCCOLLUM: Your Honor, whatever the Court thinks is
14 appropriate.

15 THE COURT: Mr. Hazzard.

16 MR. HAZZARD: It's not a mutual agreement. The
17 Prosecution did it and asked if I had an objection. So long
18 as there is a certification from Ms. von Herrmann, as an
19 officer of the Court, and I take her at her word, that there
20 is nothing else on the audio disk, I do not have an objection,
21 and I would suggest just substituting it as opposed to marking
22 it separately.

23 MS. von HERRMANN: And I -- Mr. McCollum has listened -
24 - we both listened to it, and there's nothing else on the
25 disk. I'll be happy to just substitute it. That may cause

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1 less confusion.

2 THE COURT: All right. All right, let's go ahead and
3 do that.

4 (AUDIO/VIDEO DISK REMOVED FROM EVIDENCE AND AUDIO DISK
5 SUBSTITUTED THEREFOR, AND ADMITTED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBER 72.)

7 MS. von HERRMANN: Thank you, Judge.

8 THE COURT: All right, now, where we left things the
9 State had rested, and I heard motions by the Defense, and then
10 we had discussed different things as far as the verdict form
11 and the charges, but obviously I had not asked, and did not
12 intend to ask until this morning whether the Defense had
13 officially rested it's cases, and what I would like for you to
14 do is to do that at this point in time. Certainly we will go
15 over that again when the jury comes back in, but I don't want
16 to have you stand up and say the Defense rests and then I have
17 to send them back out and then you renew your motions, and
18 then we bring them back in, so if we could do that and then,
19 in front of the jury you can say that the Defense rests, and
20 then we will continue on to the closing arguments and the
21 charge, so at this point in time what is -- for the Defendant,
22 Ladorrean Chukell Collington, what is the position of the
23 Defense?

24 MR. McCOLLUM: May it please the Court, Your Honor, I
25 would like to tell the Court that the middle name is

1 pronounced Chukell.

2 THE COURT: All right. Chukell.

3 MR. McCOLLUM: You had no way of knowing that.

4 THE COURT: I appreciate that. I'm sorry. Chukell
5 Collington.

6 All right. And what is the position of the Defense?

7 MR. McCOLLUM: At this time, Your Honor, on behalf of
8 the Defendant, Ladorrean Collington, the Defense rests.

9 THE COURT: All right. Very good.

10 All right, Mr. Hazzard, on the behalf of the Defendant,
11 Quentin Lavant Gause, what is the position of the Defense?

12 MR. HAZZARD: The Defense rests, Your Honor.

13 THE COURT: All right. Very good.

14 All right. Mr. McCollum, any motions that you would
15 like to renew or make at this time?

16 MR. McCOLLUM: Yes, Your Honor, and this is obviously
17 something we have to do, but we just -- Your Honor just ruled
18 on every one of these again, you know, yesterday at five, so
19 at this time I would renew the motion for a directed verdict
20 of not guilty as to the two charges against Ms. Collington.

21 THE COURT: All right. The -- without reviewing again
22 the directed verdict standard, and the review that the Court
23 made at that point in time, I'm going to respectfully decline
24 to grant your motion for a directed verdict on both of the
25 charges that have been levied against the Defendant by the

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

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

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

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

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

1 MR. McCOLLUM: Your Honor, the only other thing
2 that's -- I just had one question about the instruction on the
3 accessory before the fact, and I don't know if you ---

4 THE COURT: Yes sir.

5 MR. McCOLLUM: I was going to bring that up after you
6 finished with both Defendants.

7 THE COURT: All right. Very good. Okay. All right.
8 Thank you.

9 Mr. Hazzard, motions.

10 MR. HAZZARD: Your Honor, at this time, on behalf of
11 the Defendant, Quentin Lavant Gause, we renew the motions
12 for -- or make a motion for a directed verdict on the charge
13 of murder, burglary in the first degree and armed robbery, and
14 that motion is based on the insufficiency of evidence
15 presented by the State at trial.

16 THE COURT: All right. Again, without reiterating the
17 directed verdict standard that I placed on the record before,
18 the Court would reaffirm that I do find that there is more
19 than sufficient evidence present in the record, if that
20 evidence is so believed by the jury, that would sustain
21 verdicts of guilty against the Defendant, beyond a reasonable
22 doubt, by -- or on the charges of murder, armed robbery, and
23 the burglary in the first degree, understanding that all I
24 really need to find is there is enough evidence reasonably
25 tending to prove the guilt of the accused, but I find there's

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1 more than sufficient evidence in that regard.

2 All right. Further motions.

3 MR. HAZZARD: At this time, Your Honor, we would renew
4 the motions made, that being the pretrial motions that were
5 heard in this case. Also renew any and all motions made,
6 either in writing or orally, during the course of the trial,
7 and we also renew and request reconsideration of all
8 objections made during the course of the trial.

9 THE COURT: All right, sir. Regarding the pretrial
10 motions, the Court reaffirms it's prior rulings that I made in
11 this matter, and again, would state that I find that nothing
12 that has transpired during the course of the trial has caused
13 me to reconsider those previous decisions.

14 As to all motions made during the course of the trial,
15 the Court would reaffirm those rulings at this time, and
16 again, would respectfully decline to reconsider those at this
17 point in time, and reaffirm the prior rulings, therefore, your
18 motions are respectfully denied.

19 Any further motions on behalf of the Defendant, Gause?

20 MR. HAZZARD: No, Your Honor.

21 THE COURT: Thank you very much.

22 All right, Mr. Hazzard, you -- I'm sorry -- Mr.
23 McCollum, you mentioned something about the charge to the jury
24 on accessory before the fact.

25 MR. MCCOLLUM: Yes, just very briefly, Your Honor.

1 It's my understanding of the statute itself, says that an
2 accessory before the fact in the commission of a felony, by
3 counseling, hiring, or otherwise procuring the felony to be
4 committed, and then it goes on to say, shall be punished as a
5 principal. And Your Honor, when I asked Your Honor yesterday
6 about the instructions, I think, Your Honor, the language
7 was -- didn't follow the statute exactly, and you -- some of
8 it -- it seemed to be maybe, from the Defense's perspective, a
9 very low standard in terms of -- I think it had the language
10 agreed, or something of that nature, and then the aiding and
11 abetting said to -- see if I can find it exactly. It was -- I
12 was just concerned that perhaps some of that language -- aid
13 is help, give assistance to, abet -- I think it was --
14 specifically abet said -- the definition of abet was, appeared
15 to favor, so, you know, from the Defense's perspective, just
16 to say that, if she appeared to favor the burglary or the
17 robbery that would make her guilty beyond a reasonable doubt.
18 I just had some concerns there, Your Honor.

19 **THE COURT:** All right.

20 **MR. McCOLLUM:** I mean, I don't like the statute itself.
21 I think it's -- you know, I think the statute itself, the
22 elements aren't very difficult to meet, and -- for such a
23 serious offense, and then, as I understand Your Honor's
24 charge, if I understood it correctly, then if she -- I just --
25 and that's -- I have those concerns, Your Honor, that's all --

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1 that's all I'm saying.

2 THE COURT: Thank you. Appreciate it.

3 All right. Anything further from the State?

4 MS. von HERRMANN: No sir, Your Honor.

5 THE COURT: Anything further from the Defense, Mr.
6 McCollum?

7 MR. McCOLLUM: Not from the Defendant, Collington, Your
8 Honor.

9 THE COURT: All right, Mr. Hazzard.

10 MR. HAZZARD: Nothing further, Your Honor.

11 THE COURT: All right. Very good.

12 Bring the jury in, please.

13 And when we have the jury back in, Mr. McCollum, I'll
14 ask about the position of the Defendant, Collington. You can
15 tell me the Defense rests, and then I'll turn to you, Mr.
16 Hazzard, you can tell me the same thing, then I'll tell the
17 jury that we will -- we are going to go on to the closing
18 arguments of the counsel at that point in time, all right.

19 MR. McCOLLUM: Yes sir.

20 THE COURT: Thank you very much, gentlemen.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right. Good morning, ladies and
24 gentlemen.

25 (JURY RESPONDS.)

JURY IN/DEFENDANT, COLLINGTON, RESTS
JURY IN/DEFENDANT, GAUSE, RESTS

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1 All right, Mr. McCollum, on behalf of the Defendant,
2 Ladorrean Chukell Collington, what's the Defendant's position?

3 MR. MCCOLLUM: Your Honor, at this time, I -- on behalf
4 of Ms. Collington, the Defense rests.

5 THE COURT: Thank you very much.

6 Mr. Hazzard, on behalf of the Defendant, Quentin Lavant
7 Gause, what is the Defendant's position?

8 MR. HAZZARD: Your Honor, on behalf of Quentin Lavant
9 Gause, the Defense rests.

10 THE COURT: Thank you very much, sir.

11 All right, ladies and gentlemen, that is the evidence
12 that is, and has been presented in this case. That is the
13 evidentiary portion of this case. That, obviously, does not
14 conclude this matter. What remains are the closing arguments
15 of the attorneys, and the charge on the law.

16 I will remind you that the closing arguments of counsel
17 are not evidence, they cannot be considered by you as evidence
18 in this case. You have heard all the evidence in this case,
19 however, the final arguments of the attorneys are important.
20 They are each side's summation to you of what they believe the
21 evidence has shown to you during the course of the trial,
22 remembering, of course, that you, collectively, are the judges
23 of the facts of this particular case.

24 I anticipate, probably after the three closing
25 arguments, we will take a very short break, about five

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

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

8 Solicitor.

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

11 THE COURT: Yes Ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 designated as the lead detective in that case.

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

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

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1 didn't testify in this matter. Okay.

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

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

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

16 You may continue, Ma'am.

17 MS. von HERRMANN: Thank you.

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

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

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

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

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

2 Greg -- Greg Floyd -- excuse me -- admits to this .22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Thank you.

21 Thank you, Your Honor.

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

23 MR. McCOLLUM: May it please the Court.

24 THE COURT: Yes sir.

25 MR. McCOLLUM: Ladies and gentlemen, good morning.

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

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

1 else.

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

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

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

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

1 I used to work for Ralph Wilson, who was the Solicitor when I
2 worked for him, and I learned from him, learned a lot from
3 him. He used to tell a story. We called it the snake story,
4 and the story was about a little old lady that lived alone,
5 that found a snake, a viper, that was injured and dying, and
6 she took the snake and she took it in, she put it in a blanket
7 and she warmed it up, she put a lamp next to it, she got a
8 little food and put it in it's mouth, she wrapped it's wound,
9 and the snake warmed up, and over the days and weeks the snake
10 got strong again. The snake healed. The snake was saved.
11 And as she was picking it up in her house alone, and she was
12 going to take it and let it go, and put it somewhere safely,
13 the snake bit her, and she's alone, and the venom is coursing
14 through her veins, and she's dying, and she said, my goodness,
15 what did you do that for; I saved your life, I nursed you back
16 to health, I helped you, and the snake said, you knew I was a
17 snake; you shouldn't have done anything; what did you expect.
18 The James Gang, Donell James, Andrew James, Greg Floyd,
19 Tiffany James, they are the snake.

20 If one of us was driving our car, saw some people on the
21 side of the road, straining it out there, maybe even have a
22 child in the car, look like they need help, we would be well-
23 advised, despite the fact that we may have the milk of human
24 kindness in us, don't ever stop to help them, don't ever.
25 They are as bad as it gets. Seen thousands of cases, met

1 thousands of people, seen cases tried, tried cases, been
2 involved in cases. Most people in criminal cases, they've
3 done something stupid, they've done something bad, I mean,
4 even cases where somebody has been shot, they did it, it
5 happened, they weep about it, they are sorry about it, there's
6 none of that with the James Gang. These are some of the
7 coldest people you will ever see, and they've come in here.
8 We are in close proximity to them, and that's something that
9 you had to deal with. Is it easier to kill somebody or to
10 lie? Is it easier to shoot somebody or to lie? Lying is
11 easy. Lying comes easy. Lying is a way of life. We are
12 lying for a living, to come and save ourselves, to do
13 anything. Those witnesses would do anything to save their
14 skin, anything, and I think that that's clear. Telling the
15 truth, being a truthful and honest person, is a cornerstone of
16 life. We do -- everything we do we base our decisions on what
17 we are being told being true.

18 The Judge said -- the Judge will tell you -- and I'll
19 talk about these for about -- a little bit. But a reasonable
20 doubt is the kind of doubt that would make a reasonable person
21 hesitate to act. Now, to convict Ms. Collington for accessory
22 before the fact of burglary, or accessory before the fact of
23 armed robbery, you've got to be convinced beyond a reasonable
24 doubt. Now, what would make a reasonable person hesitate to
25 act? If one of us were going to have something done, like a

1 medical procedure for a loved one, and they were going to
2 have, say brain surgery, and you heard from these witnesses,
3 and you had to rely on that to make that kind of decision
4 there's nobody that would not hesitate to act listening to
5 these people. That is as clear as never. That could not be
6 any clearer. They are most unreliable witnesses, and people,
7 you are going to probably ever meet, all of them.

8 They say that Ms. Collington, over here, set it up, over
9 and over and over, she set it up, she set it up. She wasn't
10 setting it up. She was messing it up. She was messing it up,
11 because she's fighting with the father of her child, she's
12 going over there beating out the window, leaving a note, I
13 don't ever want to see you again, I'll get you, leaving a
14 message, I'm sick of you, don't want you. She might as well
15 just shoot up a flare, or a flag, to say, hey, look at me,
16 these guys are over there trying to hit a lick.

17 Tiffany. And one of them even slipped and Tiffany; and
18 said, I mean Dorrea, said something. Okay. Tiffany claims
19 she swore on her Grandmama, on her grandmother's grave, it's
20 going to be good; it's going to be easy. It wasn't Dorrea.
21 They say it's Dorrea, and that's all they've got. She wasn't
22 doing anything except acting like a fool and drawing attention
23 to herself. If she's some smart mastermind, some kind of
24 person that's going to do something like this, lay home, stay
25 out of it. Who in the world would go get Ms. Tiffany to go

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1 set it up so I'm not involved, and then go over there and
2 knock his window out. What kind of mastermind is that? The
3 other thing is, in terms of the State's case, or lack of the
4 case, Ms. von Herrmann, beginning of the case -- again, I --
5 look, I respect her -- but she comes in and she says, three
6 motives for murder, love and hate, and money. Well, a couple
7 of things, Ms. Collington, she's not charged with murder.
8 She's not charged with accessory to murder. She's charged
9 with accessory to burglary, and armed robbery. Yet the
10 State's own witnesses, okay, are acting like she's going to
11 get paid. I don't know. But if her motive is to hurt him
12 because she's in love/hate, then shouldn't she be paying them.
13 I mean, it doesn't make sense, okay, it just doesn't make
14 sense.

15 Now, when His Honor talks to you about reasonable doubt
16 he will say it's the kind of doubt that to overcome it you
17 must be strongly convinced. Nothing in this case can leave
18 you firmly convinced of Ladorrean Collington's guilt.

19 Now, if you want to talk about -- if you happen to
20 believe on Andrew James, if you can believe what he's selling,
21 you know, he says that he took the guns and the ammo, and some
22 disguises so they can go do the crime, now that would be
23 accessory before the fact, not to scream about somebody
24 because they are living with another woman. Okay. You've got
25 to do something to be guilty of accessory before the fact of

1 two felonies. The crime is just as serious. The only thing
2 is, it's not -- it's just not present. You are just as
3 guilty, and just as serious of an offense as if he had done
4 it. You are not -- you are treated as a principal even though
5 you just weren't there. That's the mastermind that's setting
6 it up. Like, for example, if your neighbor, or somebody's
7 neighbor, is just bad and acting up or something, or you don't
8 think much of them and you say, well, somebody ought to go
9 over there and pick his -- he's having a card game, and you
10 tell them, that guy is just obnoxious and somebody ought to,
11 you know, go over there and shut him up or do something, but
12 then later somebody does it, that doesn't mean you were an
13 accessory. Just like, when I grew up my father ran a
14 Firestone store in Greenville, South Carolina. I remember
15 being in there. You meet all kind of people, and one time
16 this armored car was in there, and getting the car or the
17 tires fixed or something, the guys, the guards were sitting
18 there, and I assume there's no money in it, but they were
19 talking about how, you know, you would be -- people are crazy
20 to rob banks when they've got these cars riding up and down
21 the road with a lots of money in them. Well, if I like, told
22 somebody, like well those people said, it would be crazy to
23 rob banks, and then somebody went and robbed the armored car
24 because I suggested it, that is not enough, okay. That's just
25 talk. But they don't even have that. They claim they've got

1 the phone message. You've got the one screaming, and then
2 you've got the supposed note that the police destroyed. But
3 all this calling. What calling? You didn't have phone
4 records in here. Nobody brought anything in here. You send
5 out a text to somebody, when you call somebody there are
6 records everywhere. You can get those records. Come in here
7 and say, made this call, made this call, made this call,
8 nobody did it. They just came in here and made it up. Oh,
9 yeah, she's got it. Call it all crazy. That's not evidence..

10 The crime of accessory before the fact is, someone
11 hires, counsels, meaning have some special knowledge, or
12 otherwise procures the felony to be committed. It's the doing
13 of something significant to cause that to happen.

14 This is -- let me talk to you about Tiffany James.
15 She -- I asked her about letter, after letter, after letter,
16 didn't write it, didn't write it, didn't write it, not my
17 handwriting. But one letter, one Affidavit, written in some
18 legal kind of language, she can't deny it, okay, because she
19 wrote it, and she signed. She said she didn't write it. She
20 says she wrote it out. Did somebody help her write it? Of
21 course. Somebody just -- she couldn't read it. She's afraid
22 of Dorrea. There are in jail. Now come on. When Tiffany
23 first went to the police she went in and she told them
24 everything; she drove the car, what happened; she heard the
25 gunshots; she drove them out to the house, at TaTa's house, or

1 whatever, in Conway. Then they locked her up. So then she
2 came back and she swore to God Dorrea drove them, okay, but
3 then she changed her mind and said she didn't, and then in the
4 Affidavit she says, hey, you know, I made that up -- and it's
5 notarized. If it hadn't been notarized she could just say, I
6 didn't sign -- I didn't -- that's not even my signature; I
7 didn't -- I didn't -- you are crazy. I mean, come on, who --
8 when would you ever have that in a case?

9 And the Solicitor says that she doesn't talk like that,
10 and she doesn't write like that. Probably not. I don't know.
11 It's hard to get stuff out of her. She says she's not that
12 smart. I don't know. They are all street smart. I know
13 that. They know what they are doing. Okay. They are very
14 calculating. She signed a statement saying, well, I made it
15 up on Dorrea. But when you really get down to it, other than
16 the nasty messages, and the breaking the window, that's really
17 it. Besides saying Dorrea did it, Dorrea did it, I mean, they
18 are not even really saying anything. Okay.

19 Dorrea didn't do anything. Tiffany went over to that
20 house with her that day. I mean, if you think the people on
21 the street, the people out there, as Mr. Hazzard said, getting
22 it how they live, don't know who is dealing, they don't know
23 what's going on, they do. They don't need Ladorrean
24 Collington to tell them what's what. And if Ladorrean
25 Collington told them what's what, they would have known there

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1 were people in the house. They didn't know that, because she
2 didn't tell them that. And Ladorrean didn't go over there and
3 see any drugs or money because Mr. Smith, Allen Smith, Big A,
4 wouldn't let her in the house. He wouldn't even call her
5 back. That's why she's so mad. He wouldn't even call her
6 back. You are not going to let her in the house, not going to
7 let her see any of that. She wasn't a friend of theirs
8 anymore, okay. She's just a scape goat, convenient, there,
9 hang it on Dorrea, hang it on Dorrea, let's see what happens.

10 As a defense lawyer I cannot pay a witness, okay, and
11 you know that. If I said, look, we'll give you -- we'll give
12 you Five Thousand Dollars to testify, we'll give you Three
13 Thousand, and you are a good one, we'll give you even more,
14 and then we'll throw in a cruise. I can't do that. That's
15 illegal. The State can buy testimony by cutting time.

16 MS. von HERRMANN: objection.

17 MR. McCOLLUM: Okay.

18 THE COURT: Sustained.

19 MR. McCOLLUM: The State has the ability to reduce
20 someone's sentence. The State has a ability to grant freedom,
21 or give somebody a lesser punishment. It's called a plea
22 bargain, more valuable than money. It's life itself. And
23 regardless of the Defendants saying they are just doing the
24 right thing, they are just coming clean, that's what they are
25 banking on, that's what they are hoping for. Whether they

1 know it or not, whether Ms. Tolar has told them that -- I
2 mean, excuse me -- Ms. von Herrmann has told them that or not,
3 that's what they are banking on because it's all they've got.
4 Put it on Dorrea.

5 Ladies and gentlemen, thank you. In terms of the burden
6 of proof, the State has the burden of proving this crime
7 beyond a reasonable doubt, probable cause to go search
8 somebody's house, or stop somebody's car and seize them, is
9 that it's probable or likely that somebody did something
10 wrong, and it's enough to check them out. Beyond that, like
11 in a civil case if you are suing somebody over something,
12 because they cheated you, or owed you some money, you've got
13 to prove it beyond a preponderance of evidence, which means if
14 you take the scales, and somebody puts a little evidence on a
15 scale and it moves -- they call it fifty percent, plus one, or
16 one -- fifty-one percent, it's really fifty percent plus
17 something, you do that in a civil case, that's a preponderance
18 of the evidence and you won. There's other standards like,
19 clear and convincing, the evidence is clear and convincing,
20 and then there's the reasonable doubt standard. The only
21 reason it's not beyond all doubt is because we are human, but
22 it's as close to that as possible. It's beyond a reasonable
23 doubt, which would cause a reasonable person to hesitate to
24 act, and leave one firmly convinced of someone's guilt. Any
25 way you resolve that, any questions you have about that, His

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1 Honor will tell you that you have to resolve that doubt in
2 favor of the Defendant, Ladorrean Collington.

3 Thank you. I mean that sincerely. Thank you for being
4 here. I know you didn't volunteer. Thank you for hearing the
5 case. I trust that when you deliberate each of you will give
6 it thoughtful deliberations, you will hold the State to these
7 legal burdens.

8 Your verdict must be unanimous. Not one of you is more
9 important than the other. All of you are completely equal,
10 have the right to be heard completely, and only after all of
11 you agree, one way or the other, can you reach a verdict, and
12 I submit to you, once you do those deliberations and look at
13 this case, and the lack of evidence, and the preposterous
14 stuff that's been said in here by people that you could not
15 believe for anything, that you will follow your oath, and find
16 Ms. Collington not guilty of accessory before fact of armed
17 robbery, and not guilty of accessory before the fact of
18 burglary in the first degree.

19 Again, thank you for your time and attention. I
20 appreciate you hearing the case.

21 Thank you, Your Honor.

22 THE COURT: Yes sir.

23 Mr. Hazzard, your closing argument.

24 MR. HAZZARD: May it please the Court, Your Honor.

25 THE COURT: Yes sir.

1 MR. HAZZARD: Good morning.

2 (RESPONSE FROM THE JURY.)

3 MR. HAZZARD: Man, this has been a week. This has been
4 a week. When we started Ms. von Herrmann, who is a friend of
5 mine, and you've probably seen us share a smile here and
6 there, or whatever, she said it's about love, hate and money,
7 and besides her being my friend, there are a lot of things
8 that we don't agree on, and this is one that we do, as far as
9 the money aspect is concerned, because this case is definitely
10 about money. It's all about money, all about money, because
11 the James Gang ain't got no money. Donell James, unemployed,
12 Andrew James, at the time, unemployed. He's getting evicted
13 and the light is getting cut off. Tiffany James, well bless
14 her heart, to her credit, she's got a little job at Zaxby's to
15 support her and her child. And Greg Floyd, unemployed. And
16 you might ask, well, why do you refer to them -- you know,
17 Tiffany, and her brother, Andrew, and their first cousin,
18 Donell, and Tiffany, if she was married, her brother-in-law,
19 and the uncle of her child, Gregory Floyd, why do you refer to
20 them as the James Gang. Well, it is the dynamic in which they
21 work, the dynamic in which they work. What did Tiffany tell
22 you? She said, we were talking about that shotgun -- and we
23 will talk about that shotgun a little bit more later on -- but
24 we were talking about that shotgun, the shotgun which is
25 evidence, the shotgun that everybody says was broke, the

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1 shotgun that said -- you know, couldn't have, in any way,
2 shape or form, have possibly fired the fatal shot, and maybe
3 it could and maybe it couldn't have, I don't know, but what I
4 know is this, the -- she said, yeah, I know it was broke
5 because my brother, Andrew, told me. And I said, now, you and
6 your brother we talking about this illegal sawed-off shotgun,
7 and she said, yeah, it was around my birthday, which would
8 have been, I think she said, [REDACTED] which would have been
9 about two weeks before this incident, because you've got to
10 get the time frame right for why it can't work, and I don't
11 know, folks, I know a lot of people, and I've been around a
12 lot of families, and I'm sure, like all of us have, I can't
13 remember a single family reunion, birthday, holiday, Bar
14 Mitzvah, where the conversation from one person to the other,
15 was ever, you know, I've got the illegal sawed-off shotgun and
16 it seems to be malfunctioning on me. Exactly what type of
17 conversation does that come up in? Exactly what type of
18 conversation does that come up in, unless you are engaged in
19 the business of using it, unless you are engaged in the
20 business of using it.

21 So now, there's no question these folks -- oh, and one
22 of the things also, I don't know much about weaponry, by any
23 stretch of the imagination. The gentleman from S.L.E.D. came
24 and testified, and he said that it could be operational, could
25 be made to operate, no question, because remember, half of the

1 shotgun, it seemed like, was left at the crime scene. You
2 know, you had the spring, and then the tube that the spring
3 was in was missing, but obviously the tube had been there at
4 some point because the spring they found goes in there too,
5 you know, and the little parts apparently were missing here or
6 there, but he said, yes, you can make it work. Okay. And he
7 said though, that he didn't think this gun was the gun that
8 fired the fatal shot because the tool marks did not match.
9 Now, my understanding of the tool marks is, remember, when you
10 are firing a weapon -- I do know this -- it is a violent
11 action. It's an explosion, literally. There's an explosion
12 in the chamber that forces the projectile out, and that's what
13 causes the shot. Now, when you put that bullet in there or,
14 you know, whatever you call it in there, and that explosion
15 occurs, the interaction between the pieces inside the chamber
16 and that bullet leave marks, and that's what you call your
17 rifling or your tool marks, actually the tool marks, and he
18 said that the tool marks didn't match. Well, like I said, I'm
19 not -- not any expert by any stretch of the imagination on
20 weaponry, but it seems to me that, if you had to put it back
21 together, you know, and obviously you don't have the same
22 spring because that spring is in evidence, you know, and
23 obviously you don't have the same tube because the same tube
24 wasn't there, then you are using different components, and if
25 that's the case wouldn't those different components leave

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1 different tool marks?

2 But, if you have any question as to whether this gun was
3 operational on April 14th of 2008, one of the things you can
4 look at is what Cecily Hillard said. And remember, Cecily
5 Hillard is Andrew James baby mama, girlfriend -- I take that
6 back, she is now his fiance, and good for them. What did she
7 say, when I asked her, well, where did he keep his illegal
8 sawed-off shotgun, and she says, he keeps it under the
9 mattress, keeps it under the mattress. I don't think he keeps
10 it there for added lumbar support, so obviously it was
11 operational.

12 Now, I don't know what happened at [REDACTED] Barberry Drive
13 on April 14th, 2008, what type of struggle went on, or what of
14 ruckus occurred that caused the springs to come shooting out
15 of the gun and get left at the scene, and things of that
16 nature. I don't know it cause I wasn't there, Quentin Gause
17 doesn't know it cause he wasn't there, so we can't help you
18 with that, but every indication we have is that this gun would
19 do some damage, because quite frankly, ladies and gentlemen,
20 if the gun didn't work, and Andrew James knew the gun didn't
21 work, what is he keeping it around as, a Civil War relic, a
22 door prize? No. No. So all that talk about the gun was
23 broke and all like that, now even the S.L.E.D. guy told you,
24 yes, you can make that thing fire.

25 And Mr. McCollum said to you that these folks, Tiffany

1 and Andrew, and Donell, and Greg Floyd, are about as bad as it
2 gets, and I agree, because I've been doing this as long as Mr.
3 McCollum has, and we've been doing it a little bit longer than
4 Ms. von Herrmann has, and the thing that strikes me about
5 these folks, when you think back to their testimony, is, they
6 could always parrot out Dorrea, Dorrea, Quentin, Quentin,
7 Bait, Bait. You can teach a parrot to say a word. You can
8 teach a parrot to say a name. But let's look at what they
9 couldn't answer. What really struck me about them is that
10 certain questions they couldn't answer were, what am I guilty
11 of, what did I do wrong, and the one that really struck me,
12 how do I live without working and making money. Think back to
13 Tiffany James, and she says she had her job at Zaxby's, but
14 then I asked her, okay, Ma'am, you've got a job, you have a
15 job, you are going to work like everybody else, why are you
16 driving these people around, not once but twice, looking to
17 break into somebody's house. Could she give you an answer?
18 No, she couldn't give you an answer. And what's frightening
19 is, it was almost as if her thought process was, well, why
20 would anybody ask me that. It was almost like it was self-
21 evident that this is how we live, this is how we flicker, you
22 know. Donell, Greg Floyd -- Greg pulls a little -- well, mama
23 helps me out a little bit. You know, Andrew James, none of
24 them could tell you what they had done wrong, none of them
25 could tell you how it is they survive without going to work

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1 every day like everybody else, because what they didn't want
2 to tell you is, what the James Gang does is, they do home
3 invasions, they rob people, they do whatever it takes, they
4 prey on society, they prey on society. Ms. Davis, Frankie
5 Davis, was on the stand. I did not mean to denigrate the
6 memory of Mr. Smith in any way. I didn't know Mr. Smith. I
7 don't try to make many judgments on what people do. You know,
8 judge not least you be judged. But I asked her, I said, well,
9 he was a drug dealer, right, and she said yes, and I said, you
10 know, did he do anything else for a living, you know, did he
11 have a regular nine to five job, or whatever, and maybe, you
12 know, sold a little weed on the side or whatever, and she
13 said, no, that's what he did, he was a professional drug deal,
14 that's how he made his money, that's how he earns his living,
15 and I said, how long had he been doing that, and she said,
16 well, to my knowledge he had been doing that since I came down
17 here in 2004, okay. So you have someone that, this is what
18 they do for a living for four years, at least, and the
19 significance of that, again, not to denigrate him or his
20 memory, it's just that, in any business to be successful and
21 stay in business you have to have clientele, you've got to
22 have customers, and the more customers you have the more
23 people who know about what you do. Okay. And with the James
24 Gang, literally, that little halfway away -- because remember,
25 the whole thing was, when Andrew James and Greg Floyd and

1 Donell James went over there the first time they just walked
2 the path, walked the path there, walked the path back. Okay.
3 With them in that kind of close proximity I find it kind of
4 hard to believe that they had no knowledge that Mr. Smith was
5 a drug dealer. Okay. I mean this, again, is what the James
6 Gang does, and this guy was right there.

7 Now, again there's all this talk about, you know, what
8 Dorrea allegedly did, and the reason that Dorrea has some
9 significance to me, simply because they are saying that he
10 connected Quentin Gause in some fashion to this with Greg
11 Floyd. Okay. And again, it would have been so very simple,
12 you know, because there's all this talk again about well, you
13 know, Dorrea called this person, and Greg -- Dorrea called
14 Greg Floyd, and then Greg Floyd called Quentin Gause. Okay,
15 bring me some phone records, show it, and these guys here, you
16 know, Detective Townsend, I told you in the opening that it
17 was all hands on deck, that he was one of the, I think like
18 eleven or twelve detectives who were on it, and I mean, these
19 guys are good. They are the best of the best, no doubt about
20 it, no doubt about it, because remember, what happens is,
21 Detective Townsend gets to [REDACTED] Barberry Drive, the first guy
22 there, the first officer there, said he arrived, I think it
23 was at 3:57 P.M., I believe, and Detective Townsend got there
24 maybe forty-five minutes later, and that's when the detecting
25 part of the investigation began. Okay. One A.M., about nine

1 hours later, Donell James is investigated. He's in the box.
2 They are talking to him. Now, he doesn't admit anything.
3 They talked to him for two hours, he doesn't admit anything.
4 He says, I don't know nothing about nothing. But that's how
5 these guys are, what they do. And within forty-eight hours
6 they've got Andrew James in custody, they've got Tiffany James
7 in custody, and they've got Greg Floyd in custody. The James
8 Gang is in custody within forty-eight hours of coming to a
9 crime scene where all you've got is, unfortunately a dead man,
10 and some shotgun shells on the floor, and a couple of springs
11 and a Phillie Blunt that turned out to be Mr. Graham's, and
12 that's pretty much it, but they go out and they talk to folks,
13 and that gives them the leads they need.

14 Now, like Mr. McCollum said, once you are caught though,
15 you can't tell them, you know, well, I can testify against
16 Donell; well, we don't need your testimony, we've got Donell.
17 Well, I can testify against Tiffany; I -- we've got Tiffany,
18 we know she was there, you know. So you've got to have
19 someone else to be it. You've got to have someone else to
20 pass it along to, you know. But Ms. von Herrmann downplayed
21 the involvement of the detectives. What did she tell you?
22 She said, there are two parts, there's the gathering part at
23 the crime scene, and then you have the detecting part, where
24 they go out and they follow up on leads. All right.
25 Excellent. Let's follow up on some leads. What we got.

1 Quentin Gause received a phone call from Greg Floyd that told
2 him, you want to get in on this lick. Guarantee you they
3 followed up on it, and I guarantee you that, if there was any,
4 any actual documentation of any phone call I guarantee you you
5 would have had somebody from AT&T, Sprint, Verizon, whoever,
6 up here testifying about the phone records. I guarantee you
7 you would. But they can't because they don't exist, and the
8 reason they don't exist is because it didn't happen.

9 What's the next thing? Oh yeah, Bait -- Bait came over
10 in a red car, and now I'm not sure what car they -- and you
11 notice they never talk about what car, if so I might not have
12 heard it, and you remember better than I do. I don't remember
13 them saying what car they -- that Tiffany dropped them off in
14 the first time. Remember the first time they went over there
15 and they walked back on the path, but supposedly Tiffany
16 dropped them off. I don't remember anybody saying anything
17 about what car that was. But the second time now it's got to
18 be -- it's got to be Bait's car, got to be -- got to be Bait's
19 car, so this -- and everybody says it's this red car. Okay.
20 We got any information from this investigation that's taken,
21 you know, three years, of Quentin Gause owning the red car,
22 anybody in Quentin Gause's family owning a red car, anybody
23 Quentin Gause knows owning a red car? No. And why not?
24 Because it doesn't exist. That's why she wants to downplay
25 the investigation, because it doesn't exist.

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1 The Judge is going to tell you, don't leave your common
2 sense at home. If they had evidence that supported these wild
3 accusations, trust and believe, it would have been on this
4 witness stand under oath.

5 Now, let's break it down a little bit, because one of
6 the questions one of you may have, or some of you may have, is
7 you may say, well, if Quentin didn't have anything to do with
8 it how is it everybody has come up with his name? Isn't it
9 strikingly strange that they come up with Bait. Well, first
10 of all, let me tell you this. I don't know him as Bait; I
11 know him as Quentin Gause. I've never heard anybody -- before
12 we come in this courtroom today I've never heard anybody call
13 him Bait. Okay. So not really sure where that comes from,
14 but that's what the State says. So we will go with that.

15 Now, remember the first person the police, to my
16 knowledge -- and I believe the testimony reflects it -- the
17 first person the police talked to -- they get them in the
18 box -- they call it the interview room -- is Donell James, now
19 Donell James is hardcore. He ain't no joke. He ain't no
20 joke. Remember, I asked that guy, how far did you go in
21 school -- and the reason I asked all of them this is because
22 education level is important as to their -- how quickly they
23 could think, and well as their standing as far as jobs and
24 all, to determine whether they actually needed the money or
25 not, so that's why I asked that, not just embarrass anyone. I

1 wanted to know, how far did you go in school. And what was
2 his answer? It actually surprised me. He said, you know, I
3 didn't get through school.. And I asked him like I ask all of
4 my clients, because when they come and sit down I always ask
5 them, how far did you go in school, and if they say they
6 didn't finish I ask them, well, why not, why not; we all need
7 to finish school, why not. Well, his answer was a surprise.
8 He said, cause I got locked up. Okay. This guy, he couldn't
9 even finish high school cause he was already committing
10 crimes, so he's a hard core case, so they sweat him for two
11 hours and they can't get nothing out of him. Now, remember
12 with regard to Tiffany and Greg Floyd. They are a little bit
13 different. Ain't nobody snatched them up. Ain't nobody
14 kicked in their door and grabbed them out of the house. They
15 received phone calls, or might have received word through the
16 grapevine, but what I know is that there were some phone calls
17 back and forth between them and the police regarding, yeah, we
18 need you to come down and talk with us about some things.
19 Okay. And both of them arranged to come down on the 16th.
20 They arranged to. They set the dates and the times when they
21 were going to come in and talk to the police. Why is that
22 significant? Remember, Tiffany -- if I'm not mistaken,
23 Tiffany and Greg live out in Crane Creek. They live across
24 from each other. They live out there in the Wild Wild West as
25 Cecily Hillard kind of described it, because apparently people

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1 are shooting up the place all the time, you know. And so this
2 occurs on the 14th, in the afternoon. No late than nine hours
3 later Donell James is in the box. He's sweating, but he won't
4 say anything, but they go ahead and lock him up, because they
5 know they've got the right guy, you know, based on, you know,
6 other investigation. They know they've got the right guy on
7 him. So, you know that Greg Floyd, Tiffany and Andrew, at
8 this point they all know, oh my God, they done locked Donell
9 up. So, you've got your neighbors, Tiffany and Greg, well, my
10 gosh, what are we going to do, what are we going to say, you
11 know, because they've received phone calls. Either they have
12 called the police because the word has gotten to them that the
13 police are looking for them, or the police called and asked
14 them to come in, and that's one thing that's pretty great
15 about these guys. They are kind of crafty, but they are nice
16 guys. They will -- they are not -- they are not looking to --
17 you know, this ain't a T.V. show. They ain't looking to chase
18 you through the woods, and you know, turn over trash cans and
19 run down alleys, you know, they know you are a local person,
20 and you've been here all your life, and you really don't know
21 anywhere else to go. They will ask you, they will give you
22 that courtesy, for the most part, they will ask you, come on
23 down and talk to us about some things. Now, the tricky part
24 is, they don't say, come on down because you are most likely
25 going to get arrested. What they say is, come on down and

1 help us fill in the blanks. So they did it like that, and
2 these guys said we'll come in on the 16th. So now they've got
3 all day the 15th, into the 16th, to get their story somewhat
4 straight as to, well, what are we going to say, what are we
5 going to do. Now, this is where we get back to education,
6 because Tiffany ain't all that bright. She's street smart,
7 but she's not all that bright, because her thought process is,
8 well, I never went in the house, I never held a gun, I never
9 shot anybody, I never robbed anybody, all I did was drive the
10 car, so, when I go down there I'm going to just tell them, all
11 I did was drive the car, and they'll let me go home. See,
12 Tiffany don't know nothing about the hand of one is the hand
13 of all, she don't know nothing about conspiracy, so that's why
14 she goes in and talks to them. But yet, she's still trying to
15 protect the rest of the James Gang, because what did she tell
16 from this witness stand when I asked her, well Ma'am, when you
17 talked to the police on the 16th, and they -- and you told
18 them you drove the car, and we know, Ma'am, we know there are
19 three guys in there. Because remember, at this point Townsend
20 and them, they've talked to, specifically, Mr. Graham, who
21 told them at the scene, there are three guys. And Mr. Graham
22 is very important. We'll get back to him in a minute. So
23 they know there's three guys in the car. So she's saying,
24 we -- I just -- I just drove the car, can I -- can I go home
25 now. They are like, naw, we need to talk to you about a

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1 little bit more than that. Now, who are these three guys?
2 And what did she testify that she said? Well, there's one guy
3 I didn't know, and it was some other dude named Greg, and
4 yeah, some guy -- some guy named Bait, some guy named Bait.
5 Well, Ma'am, what's his name? I don't know. That's -- that's
6 all -- I know his name is Bait, you know, because you need
7 three place holders in the car, because remember, she said, he
8 asked -- he asked her specifically, is Donell James there?
9 No, I think Donell James was back at Tanheshia's house. See,
10 she's covered her boy, Greg Floyd, you know, cause it was
11 another Greg, she's covered her boy, Donell, so she's gotten
12 him out of the car by substituting Quentin Gause, and then she
13 can't think of a third name so it's like, ahh, and this other
14 dude, I ain't know him, you know, because remember, in her
15 mind, I didn't do anything wrong, I'm going to get to go home,
16 and I'm just going to feed them a line of bull about three
17 other guys in the car. Okay. Well, much to her surprise,
18 shock and chagrin, the police actually do know about
19 conspiracy, and the hand of one is the hand of all, because
20 they lock her up.

21 Well, the next person in is Greg Floyd, who has had now,
22 at this point, two days to talk with his neighbor, Tiffany,
23 figure out what they are going to say if things go sideways,
24 and they start talking to him, and they ask him, well, what
25 happened, what went on, and he says, naw, I mean, you know,

1 Atlanta, which brings us to the next point, because you have
2 heard Ms. von Herrmann ask Greg, well you know where he was
3 arrested, right; he was arrested in Atlanta. Of course he was
4 arrested in Atlanta. That's where he was living.

5 Now, if you've got any doubt about that -- that gets us
6 back to this whole police investigation thing that Ms. von
7 Herrmann just kind of sweeps it up under the rug. I guarantee
8 you some police officers went looking for Quentin Gause. Now,
9 don't you think that if there was any evidence that, yeah, we
10 went by the residence that we -- we thought this is, and yes,
11 sure enough, Quentin Gause's name is on the lease, or
12 whatever, but oddly enough, all -- you know, mail is piled up
13 in the box, and you know, looks like somebody might have took
14 off and gone on a little run. I guarantee you if that existed
15 that's what you would hear. Did you hear anybody testify to
16 that, about him breaking out of town and running away and, you
17 know, leaving -- leaving, you know, like I said, mail strewn
18 up, stacked up on the step, newspapers stacking up on the
19 doorway? No. Why can't they? Because it didn't happen.

20 Now, with regard to Greg Floyd's motivation, and his
21 thought process, what better possible person, when you have to
22 give a name, because initially all of them said Bait, Bait,
23 Bait, but then finally the police are like, look, man, we need
24 -- we need the name, and then it's like, well, Quentin Gause.
25 Who better? He ain't even here. He can't say anything, we'll

1 put his name in it, because that's just how cavalier they are
2 with regard to right and wrong in human life, so that -- and
3 then -- and as a result of that, as a result of that kind of
4 twisted thinking, that's why this man has been living with
5 this for the last three years.

6 Now, the Judge is going to talk to you about the
7 credibility and believability of the witnesses. You done
8 heard all the James Gang. I think that takes care of that. I
9 don't think there's anyone in this courtroom who, if those
10 people were their neighbor and you said, you know, I'm getting
11 ready to go on a vacation and I need somebody to house sit,
12 I'm really not thinking anybody in this courtroom is going to
13 have a member of the James Gang house sit for them. Okay.

14 But let's talk about the folks who aren't members of the
15 James Gang, who aren't looking at double life plus sixty,
16 okay. Well, who do you have? The first person you have is
17 the first officer at the scene, and actually, technically, he
18 was the second one on the scene. No particular big deal
19 though. Santiago was the first one, but he's retired and gone
20 on, and God bless him in doing whatever he does. The second
21 officer got there virtually the same time, maybe a minute
22 after, and what did he say? His job was to basically get up
23 the crime scene tape, make nobody contaminated the crime
24 scene, walked through it, and do crowd control, and that's
25 what was significant to me, was the issue of the crowd

1 control, because I said, wow, were there a lot of neighbors
2 out there? He said, yeah, people always like to come out and
3 look at the blue lights, and I asked him specifically, were
4 these people who were driving into the neighborhood or people
5 who were already there on the street at their house. And he
6 said, well most of them are already there, on the street, at
7 their house, coming out of their house, but, of course, some
8 people were trying to get in, and they weren't happy that they
9 couldn't, you know, get in, because at this point it's at the
10 end of the day. It's going on five o'clock. And that -- what
11 struck me about that is, you have all this testimony about
12 this red car, and I'm assuming that they go squealing away in
13 this red car, or maybe they pull away at a leisurely pace, I
14 don't know, but isn't it odd, and doesn't it strike you as
15 strange that there's not a single one of these neighbors,
16 whose all around, that see, again, this red car that
17 supposedly is his, you know, nobody sees it. You don't hear
18 any testimony about anybody saying, yeah, I heard loud noises,
19 I looked out my window, there were guys running to a car, they
20 hopped in and this girl drove them away. None of that, you
21 know. The whole thing strikes me as strange because, again,
22 when you go and you walk the path to commit the crime the
23 first time, why you got to ride there the second time? Not
24 really sure. So, that struck me.

25 The second person then to testify is Mr. Graham. And

1 what got me about Mr. Graham's testimony -- and we discussed
2 it a little bit. First of all, Mr. Graham truly cared, truly
3 cared for Mr. Smith, and I think that that is incredibly
4 commendable, because what did I ask him, sir, when -- when
5 this happened, and police got there, you are literally sitting
6 in the parking lot crying, crying, and that's caring for
7 somebody. And he wants the perpetrators to be brought to
8 justice. I think in his heart and soul he hopes -- he hopes
9 the police have arrested the right people, and he hopes that
10 Ladorrean had something to do with it, he hopes that Quentin
11 had something to do with it, and so he wants to help the
12 Prosecution any way he can. But what did I ask him, I said,
13 sir, when you talked to the police on April 14th, right after
14 it happened, what description did you give of the
15 perpetrators, and he said, they were all three darker than me,
16 and they were all three big, about my height, and he told you
17 that when he talked to the police on April 14th he
18 consistently referred to them as kids, kids. Now on the stand
19 he said, I don't remember saying that, but he never denied it,
20 and y'all are sitting here long enough to know, if somebody
21 denied something we would play it for you. He said he didn't
22 deny it, but he said he didn't remember. He said, what I
23 remember is, I said that one of them was shorter and lighter
24 skinned. Well, ladies and gentlemen, had he said that I
25 guarantee you the Prosecutor would have played it for you, but

1 he didn't. He was hoping, wishing, because he's hoping that
2 they've got the right guy, because his friend, someone he
3 cared about, someone that, you know, he had known since he was
4 small, is dead. But what he told you, all three my height,
5 all three darker than me, young.

6 Now, you then had Ms. Davis's very moving testimony, and
7 what struck me -- and again, the twelve of you have collective
8 memory and wisdom. I don't recall Andrew James actually
9 having the black and gold, or black and yellow shoes -- not a
10 big distinction there to me -- on at the police station. I
11 remember the police officer asking him, what shoes were you
12 wearing this day, and as you will recall, his response was
13 not, these I've got on right now. What his response was, I
14 had on some black and yellow, or black and gold shoes. Okay.
15 And I'm sorry, ladies and gentlemen, it is just strikingly
16 strange to me that, as a member of the James Gang, this
17 fellow, Ms. Davis sees black and gold, or black and yellow
18 shoes under the bed. Andrew James who is the one who, without
19 a doubt, has the weaponry, Andrew James who, without a
20 question, went and attempted the crime the first time, Andrew
21 James who, when they asked him, if we do a gunpowder test on
22 you right now what are we going to find, and then you get this
23 whole story of, oh, I just so happened to have had a .22 fire
24 off earlier today. But see, the problem is now then, it can't
25 be his .22, it's got to be somebody else's. So now I just

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1 happen to be holding somebody else's .22, you know, the day of
2 the incident. Okay. Because we know Donell James was there,
3 we know Greg Floyd was there, okay, no question about that.
4 That is what told you from the very beginning. The issue is,
5 who is the third man. Ladies and gentlemen, there's your
6 third man right there, always has been, always will be, no
7 question about that. And you want to talk about the devil
8 being in the details. As I said, we can put people on the
9 stand and a parrot -- you can teach him to say something, but
10 you can't get him to get all the details right, which is why
11 Ms. von Herrmann said, don't worry about the details, just
12 look at the big story, that's what we want you to look at, big
13 story, don't worry about the details.

14 Remember, the story supposedly is -- because remember,
15 the James Gang has tried to keep everybody out, but they
16 couldn't keep everybody out of it, but the one person who
17 managed to kind of stay out of it, being present, is Andrew,
18 at that point. What's the narrative that they are giving you
19 from the stand, is that supposedly, remember, Andrew comes
20 over for five minutes or less, drops off the suitcase. It's
21 got the shotgun and it's got the .22. Well, surprise,
22 surprise, surprise. When Tiffany gets on the stand and either
23 I, or Mr. McCollum asked her, so, Andrew came over and he
24 dropped off the shotgun, right. Yeah, he dropped off the
25 shotgun. Well, he left a .22, didn't he? Long hesitation,

1 then she said, no, he didn't leave a .22, and see, that's
2 where it gets you back to the point of education and thought,
3 because if he didn't leave the .22 how did she ever get it
4 back. Of course he didn't leave the .22. He was there and he
5 had the .22. Now, but it's hard, it's hard when you are
6 trying to cobble together a bunch of lies. Everybody knows
7 the truth is easy; the lying, that's the hard part, you know.

8 Now, I said something in opening statement -- and I want
9 you to think back to the opening statement, because I don't --
10 I don't take that lightly, you know, I don't take that lightly
11 at all. I tell you what I know, I tell you what you are going
12 to hear, and there isn't a single thing I said in opening
13 statement that hasn't come to pass, and what is one of the
14 things I told you? I made probably the boldest statement any
15 defense attorney can make in a multiple co-defendant case. I
16 said, we don't know them, with the exception of Greg Floyd, we
17 don't know these people. And surely you had to be sitting
18 there thinking, well, my gosh, he's charged with all these
19 other people, surely somebody is going to come up here and say
20 they know him. What did they get up here and say? Well, I
21 mean, you know, I don't really know him, I hadn't ever really
22 met him, I mean, I might have seen him around once or twice,
23 but I don't really know him. (A), it's true, but (B), why are
24 they telling you the truth on that point? Because if they do
25 say they know him then you might get into the whole digging

1 of, okay, how, and they you get into the details, and all the
2 little minutiae that Ms. von Herrmann wants -- that -- all the
3 little minutiae that helps you decide whether a big statement
4 is actually truth. That's when you get into all of that. So
5 they avoid that. They just -- they tell the truth on that
6 one. They are like, no, well, I really don't know, and that's
7 when you get to the whole thing about Donell, because
8 remember, there's a connection here, there has to be, between
9 these two, because I told you, we don't even know her, we
10 don't even know her. But what's the connection? What does
11 Donell get on the stand and say? I asked him, I said, well,
12 when you talked to the police -- let me back up one second.
13 We now have Greg in jail, we now have Tiffany in jail, Andrew
14 is in jail, and obviously Donell has been in jail for some
15 time, but remember, Donell has never said anything about
16 anybody named Bait, or Quentin, or anything like that, until
17 after he's been in jail eighteen months. Okay. Now, I've got
18 to get me some help now, I mean this thing, this ain't no joke
19 anymore, I've got to get some help. So, that's when you
20 definitely get on the band wagon, and that's when you first
21 hear Quentin Gause's name come out of Donell James' mouth,
22 eighteen months after the fact. But what he then says is --
23 he's got to try to tie it together somehow, because remember,
24 you know, there's no question, Quentin wasn't there the first
25 time they went over there, you know, because Tiffany done --

1 you know, she done dropped the ball on that, because remember,
2 her thing is, well, I was just driving, so the police know
3 that you went twice. So what does he say as to how this
4 gentleman here gets involved? He says -- he tells the police,
5 oh, they are cousins. And so I asked him, I said, what in the
6 world do you mean they are cousins. And he said, I don't know
7 that, I mean, I just -- that's just what I heard. Okay.
8 Again, that's how a man ends up standing trial for his life
9 because of random words ---

10 MS. von HERRMANN: I'm going to object to that
11 statement.

12 MR. HAZZARD: ---That somebody throws out.

13 THE COURT: Sustained.

14 Mr. Hazzard.

15 MR. HAZZARD: Yes sir, Your Honor.

16 And again, we've talked about the fact that, if there
17 was a connection that man there, and the guys he works with,
18 these guys don't play. They would have it for you, if it
19 existed, you know, but it doesn't..

20 Also, with technology, the thing that gets me is, now
21 they've got this thing called, you know, triangulation, you
22 know, cause everybody has got a cell phone, cell phones bounce
23 off the towers, so you can triangulate among the towers, just
24 to get you an idea as to where somebody is at any given time
25 on any given day.

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1 MS. von HERRMANN: Your Honor, I'm going to object to
2 that as well.

3 THE COURT: Sustained. That's nothing that's in
4 evidence. You may only comment on what is in evidence, Mr.
5 Hazzard.

6 Thank you very much.

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

8 Now, Ms. von Herrmann wants to tell you that this is
9 about money, but yeah, it is about money, again, for the James
10 Gang. Any testimony that Quentin was getting evicted, any
11 testimony that Quentin was getting, you know, run out of his
12 house, and his lights were getting turned off, and he didn't
13 have a job? No. No. Can't tell you that because it isn't
14 true.

15 Now, before I leave this issue entirely, if you have any
16 doubt in your mind that this man's status is as a place holder
17 -- and when I say place holder, we've got -- the police know
18 there are multiple Defendants involved, and you don't want to
19 give up your home boys. As I said, you've got to give them
20 some names. If you had any doubt that he's a place holder,
21 remember what Greg Floyd and Tiffany told the police on April
22 16th. Tiffany said, well, I drove the car, but Bait gave me
23 the directions; he had to tell me where to go. I mean, they
24 are going to put everything off on anyone who is not a member
25 of the James Gang if they can possibly do it. And what did

1 Greg Floyd say before they locked him up, when they were
2 talking to him? Oh, actually, oh my goodness, sorry. Greg
3 Floyd actually said this, and I asked him about it during his
4 proffer agreement, you know, the whole agreement where you are
5 suppose to be telling the truth, to tell the Prosecutor what
6 you can testify to truthfully, he said, at that time, and I
7 asked him, he admitted it, he said, yeah, I told the police
8 that Quentin shot the victim with the shotgun and the .22.
9 See, they are trying to get every -- every -- nothing can be
10 in my hands, you know, I've got the minimize my involvement as
11 much as humanly possible, I've got me a place holder, and I'm
12 going to ride that horse until -- I'm going to ride it until
13 the wheels fall off. So is there anything there to be
14 believed?

15 Another thing that actually struck me as far as folks in
16 this case -- well, I'm going to let that go. I did think it
17 was strange that -- well, no. Oh, with regard to Mr. Graham -
18 - I did not want to let this point pass, because remember, Mr.
19 Floyd and all the -- in his testimony he now -- he's got to
20 explain why it is that nobody can point this gentleman out,
21 why nobody has been able to view, just put him in a photo
22 line-up and pick out his picture, while there's no
23 fingerprints of his at the scene, why he manages to come in
24 and leave without leaving any evidence whatsoever, so what
25 does he tell you? He says, oh yeah, Quentin had a ski mask,

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1 and he had gloves, and he had them duct tape on his hands.
2 And I asked him, when -- when did that story come up, you
3 know. But again, let's look at somebody who is not a member
4 of the James Gang. Remember me talking to Mr. Graham when he
5 testified, and you may remember I asked him, did you see
6 anybody with a ski mask on, and remember his response was, no,
7 didn't nobody have on no ski mask, nobody had on any ski mask.

8 Also, when it comes down to Andrew -- and this is in
9 evidence. This question was asked and answered. Donell James
10 was on the stand, and I asked him about, okay, you gave your
11 proffer statement in October of 2009. While you were talking
12 to the police you told them that, you know, you had another
13 concern of yours, and that your concern was that Allen Smith's
14 brother, Tom Smith, was in the jail at J. Reuben Long
15 Detention Center, and he put out a hit ---

16 MS. von HERRMANN: Objection.

17 MR. HAZZARD: ---On Andrew ---

18 MS. von HERRMANN: It was objected to, and -- at the
19 time.

20 THE COURT: It was sustained at that time.

21 MR. HAZZARD: No, it wasn't, Your Honor. You said move
22 on. It was asked and answered.

23 THE COURT: There was no response, as I recall.

24 MR. HAZZARD: He did respond.

25 THE COURT: Mr. Hazzard ---

1 MR. HAZZARD: ---Yes sir.

2 THE COURT: ---There was no response, as I recall.
3 Please move along.

4 MR. HAZZARD: As Mr. McCollum mentioned, the streets
5 know what's going on. There ain't nobody trying to beat up
6 Quentin Gause out at J. Reuben Long Detention Center.

7 MS. von HERRMANN: Objection again. Assumes facts that
8 are not in ---

9 THE COURT: Sustained.

10 MR. HAZZARD: As this case has been going on over the
11 last five days a name that is stayed in my mind a lot is a guy
12 by the name of Antron McCray, and Antron McCray has absolutely
13 nothing to do with this case, but in 1989 Antron McCray was
14 about fifteen years old. He lived in New York City, and as
15 you might recall, those of you who are old enough, that there
16 was the case of the Central Park jogger, a young woman who was
17 an investment banker in New York, who was jogging in Central
18 Park, she was sexually attacked and brutally beaten, I mean,
19 beaten to the point of almost death, as close to death as you
20 can get without dying..

21 MS. von HERRMANN: Your Honor, I just -- I'm going to -
22 --

23 THE COURT: Y'all come over here and talk to me for a
24 minute, please.

25 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

1 **MR. HAZZARD:** I want you to think about what
2 circumstances, if any, tie Quentin Gause to this case, and
3 there are none, there are none, you know, because all this
4 evidence of the red car, and then you have this thing about,
5 he supposedly had this camouflage shotgun. Well, I guess it's
6 pretty well camouflaged, because can't nobody find it, nobody
7 has seen it. Isn't it strikingly strange that every single
8 thing that you could hang your hat on in saying, okay, maybe I
9 can believe Donell, and Tiffany, and Greg and Andrew. Isn't
10 it strikingly strange that every independent piece of possible
11 physical evidence doesn't exist? No phone records exist, no
12 shotgun, no car, no ski mask, no duct tape, no gloves, nothing
13 that you, as a juror seeking the truth, could look at and hold
14 and say, okay, well, this causes me to think there is some
15 credibility to what those people said. And the reason it
16 doesn't exist is because it's all made up.

17 Quentin Gause has lived with this for well over a
18 thousand days, and he now finally has the chance for honest
19 people to make a judgment and a decision. There is no more
20 that I can do for him. I leave him in your hands, and ask
21 that you return a true and truthful verdict of not guilty.

22 Thank you.

23 **THE COURT:** All right, ladies and gentlemen, go to your
24 jury room, please, for about five minutes.

25 Leave your pads and pens, please. Thank you very much.

1 Everyone else remain seated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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le doubt. It's the kind of doubt that causes an onable person to hesitate to act. Proof beyond oubt is proof that leaves you firmly convinced nt's guilt. There are very few things that we

can know with absolute certainty, and the law doesn't require the State of South Carolina to give you that kind of proof. What is required, if based upon your consideration of the evidence, evidence you find to be true, you are firmly convinced the Defendant is guilty of the crime charged, you must find the Defendant guilty. On the other hand, if you are not firmly convinced that the Defendant is guilty of the crime charged, then you must give the Defendant the benefit of the doubt and find him not guilty.

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

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1 for both of those accessory before the fact charges.

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

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

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

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

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

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

CHARGE BY THE COURT

1202

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

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

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

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

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

CHARGE BY THE COURT

1203

1 which you could infer intent.

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

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

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

CHARGE BY THE COURT

1204

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

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

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

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

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

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

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

CHARGE BY THE COURT

1 separate Defendants, separate charges, sep
2 all these matters. Your decision on one d
3 decision on another. They are all separat
4 matters.

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

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

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

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

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

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

10 MS. von HERRMANN: No objection from the State.

11 THE COURT: Mr. McCollum.

12 MR. MCCOLLUM: No, Your Honor.

13 THE COURT: And Mr. Hazzard.

14 MR. HAZZARD: No objection.

15 THE COURT: Very good.

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

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

JURY OUT/ON RECORD

1208

1 I want to thank you. I appreciate it. You did an
2 excellent job in this matter, and than you for your service.

3 You are now excused. Thank you.

4 All right. As to the charge on the law, any exceptions,
5 deletions, additions to it from the State of South Carolina?

6 MS. von HERRMANN: No sir, Your Honor.

7 THE COURT: From the Defendant -- and I'm -- is it
8 Chukell? Chukell Collington. All right, from the Defendant,
9 Chukell Collington.

10 MR. McCOLLUM: Yes. Ladorrean Collington, Your Honor.
11 It's her middle name.

12 THE COURT: What did I say?

13 MR. McCOLLUM: You said it right. It's just the first
14 name is Ladorrean.

15 THE COURT: Ladorrean. Good Lord, I'm concentrating on
16 trying to get the middle one wrong ---

17 MR. McCOLLUM: Yes. I've just been leaving the middle
18 one out.

19 THE COURT: ---Or right, and -- but anyway, I'm sorry.
20 I'm sorry. I -- well, I did better with that anyway. I'm
21 sorry.

22 Anyway -- I'm sorry, Mr. McCollum.

23 What would you like to say about the charge, please sir?

24 MR. McCOLLUM: I have nothing to add, Your Honor.

25 THE COURT: All right. Thank you very much.

JURY OUT/DELIBERATING
JURY IN/COURT TO JURY

1213

1 must prove, beyond a reasonable doubt, that the Defendant
2 entered a dwelling without consent. And a dwelling is any
3 building, or portion of a building in which a person
4 ordinarily sleeps. In order to prove the Defendant entered
5 the dwelling the State doesn't even have to prove that the
6 entire body entered the dwelling, the smallest entry is
7 sufficient. In addition, the State doesn't have to prove
8 force was used to gain entry; you could have gotten entry by
9 deception or some kind of misrepresentation.

10 Then the State has to prove, beyond a reasonable doubt,
11 the Defendant intended to commit a crime, either a felony or a
12 misdemeanor, at the time they entered the dwelling. The mere
13 entry into a dwelling without consent, with nothing else,
14 that's not burglary. If the intent to commit a crime is
15 formed after somebody goes into the dwelling -- they are
16 already in there, and then they decide to commit a crime,
17 that's not burglary. On the other hand, if the defendant
18 intended to commit a crime at the time they entered the
19 dwelling, and they abandoned it later on, it's still burglary.
20 An intent can be shown by any acts or conduct of the
21 defendant. And finally -- the State has to prove to you this
22 final element, that the -- when they were entering the
23 dwelling, or immediately exiting the dwelling after being in
24 it, he -- or the Defendant, Gause, or another participant, was
25 armed with a deadly weapon, or caused physical injury to a

JURY OUT/DELIBERATING
JURY OUT/ON RECORD

1214

1 person who is not participating in the crime, or uses, or
2 threatens to use the dangerous instrument, or displays what
3 appears to be a deadly weapon, again, deadly weapon, anything
4 that would cause, or put somebody in fear of violence. Now,
5 the final part of that -- of this is, as to those three
6 things, we've got murder, armed robbery and burglary in the
7 first degree, is that theory of the hand of one is the hand of
8 all, remembering, when y'all -- are you done ---

9 FOREMAN: I think we are done, Your Honor. Thank you
10 very much.

11 THE COURT: All right. Very good. All right. Take
12 your jury back to the jury room and continue your
13 deliberation.

14 Thank you very much.

15 (THE JURY RETIRES TO THE JURY ROOM TO CONTINUE
16 DELIBERATION AT 1:00 P.M.)

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

19 THE COURT: Exceptions, deletions, additions to the
20 charge from the State of South Carolina?

21 MS. von HERRMANN: No sir.

22 THE COURT: From the Defendant, Collington?

23 MR. McCOLLUM: No, Your Honor.

24 THE COURT: From the Defendant, Gause?

25 MR. HAZZARD: No sir.

JURY OUT/DELIBERATING
JURY OUT/ON RECORD

1215

1 THE COURT: Thank you very much.

2 All right. We will be at ease till the jury needs us.
3 Thank you very much.

4 (THE JURY CONTINUES TO DELIBERATE AND THE FOLLOWING
5 TAKES PLACE AT 9:25 P.M., OUTSIDE THE PRESENCE OF THE JURY.)

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 (A NOTE FROM THE JURY WAS MARKED OFF THE RECORD AS
8 COURT'S EXHIBIT NUMBER 5.)

9 THE COURT: All right, ladies and gentlemen, let me
10 address everyone in the courtroom at this time. The jury has
11 returned a verdict in the cases against Ms. Collington and Mr.
12 Gause. I do not know what those verdicts are. We will all
13 learn the results of the jury's decision at the same time.

14 We have asked this jury to do a very difficult thing.
15 This verdict, whatever it is, regarding Ms. Collington and Mr.
16 Gause, the verdicts will be received with respect, and will be
17 received with silence. I will not tolerate any kind of
18 showing of emotion, outburst, comment, any reaction whatsoever
19 to the verdicts. I am directing this, and I am giving you a
20 direct order about this, I will not tolerate it. If it
21 happens you will be detained by one of the deputies of the
22 Horry County Sheriff's Office. After this occurs, if it
23 occurs, when the proceedings are over I will hold a contempt
24 of court hearing tonight regarding the matter. It is within
25 my prerogative to send you to the Department of Corrections

JURY IN/VERDICT

1216

1 for a period of one year for contempt of court. Please do not
2 think I will not do that. I take this very seriously. I am
3 now giving you the opportunity to leave the courtroom. If you
4 do not leave the courtroom you are subject to my order. There
5 will be no disrespect of this jury in any way.

6 If you want to leave, please leave now.

7 Anything further from the State?

8 MS. von HERRMANN: Nothing from the State.

9 THE COURT: Anything further from the Defendant,
10 Collington?

11 MR. McCOLLUM: No, Your Honor.

12 THE COURT: Anything further from the Defendant, Gause?

13 MR. HAZZARD: No, Your Honor.

14 THE COURT: Thank you very much. Ask the jury to come
15 in, please.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right, Mr. Foreman, as to the
19 Defendants, Collington and Gause, has the jury rendered their
20 verdicts on all the matters?

21 FOREMAN: Yes sir, we have.

22 THE COURT: All right. Very good. Could you please
23 hand the verdict forms to the Clerk of Court, sir?

24 Thank you.

25 Madame Clerk, you may publish the verdicts.

1 DEPUTY CLERK OF COURT: Indictment Number (2010-GS-26-
2 01627) State of South Carolina, County of Horry, versus
3 Ladorrean Collington, on the charge of accessory before the
4 fact of the felony of armed robbery we, the jury, by unanimous
5 consent, find the Defendant, Ladorrean Collington, guilty.

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

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

13 (2011-GS-26-01274), The State of South Carolina versus
14 Quentin Lavant Gause, on the charge of armed robbery we, the
15 jury, by unanimous consent, find the Defendant, Quentin Lavant
16 Gause, guilty.

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

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

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

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

JURY IN/JURY POLLED

1218

1 DEPUTY CLERK OF COURT: Thank you.

2 THE COURT: Does the State wish the jury polled at this
3 time?

4 MS. von HERRMANN: No sir, Your Honor.

5 THE COURT: Does the Defendant, Collington, wish the
6 jury polled at this time?

7 MR. McCOLLUM: No, Your Honor.

8 THE COURT: Does the Defendant, Gause, wish the jury
9 polled at this time?

10 MR. HAZZARD: Yes, Your Honor.

11 THE COURT: All right. Madame Clerk, using the juror
12 numbers you will poll the jury at this point in time, please
13 Ma'am.

14 (AT THIS TIME THE JURY WAS POLLED BY NUMBER AS TO THE
15 VERDICT AS PUBLISHED AND ALL JURORS AFFIRMED THE VERDICT AS
16 PUBLISHED.)

17 MR. MCCOLLUM: Your Honor, may it please the Court.

18 THE COURT: Yes sir.

19 MR. McCOLLUM: I believe that we are going to re -- if
20 I may, request the polling. I think that Defendant,
21 Collington, has asked me to request the jury be polled.

22 THE COURT: All right. I -- the polling that we just
23 did, the Clerk inquired of them if it was their verdict. She
24 did not specify as to each Defendant. I will be glad to do
25 so, but I really do not think it is necessary nor warranted.

1 MR. McCOLLUM: No sir. I'm ---

2 THE COURT: The Clerk asked, is this your verdict, and
3 every juror indicated yes, but I will be glad to do so. If
4 you think it is necessary I will be glad to do so.

5 MR. McCOLLUM: I'm just trying to follow my client's
6 wishes, Your Honor.

7 THE COURT: Very good.

8 MR. McCOLLUM: The jury ---

9 THE COURT: All right. All right, Madame Clerk, you
10 will poll the jurors by number again as to the Defendant,
11 Collington.

12 (AT THIS TIME THE DEPUTY CLERK OF COURT BEGINS TO POLL
13 THE JURY, AT WHICH TIME THE FOLLOWING OCCURS.)

14 THE COURT: Before we go any further. Mr. Hazzard ---

15 MR. HAZZARD: Yes sir.

16 THE COURT: ---Since I have called the Defendant,
17 Collington, or had the Defendant, Collington's, named called,
18 do you wish, at the same time, the Clerk to specify the name
19 of the Defendant, Gause, to -- so there will be no question?

20 MR. HAZZARD: No sir, Your Honor. The jury has been in
21 this case for five days. The Court has made it very clear who
22 I represent. I requested the polling, and they know I
23 represent Quentin Gause, Your Honor.

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

JURY OUT/MOTIONS

1220

1 You may continue, Madame Clerk.

2 (AT THIS TIME THE DEPUTY CLERK OF COURT POLLED THE JURY
3 BY NUMBER AS TO THE DEFENDANT, COLLINGTON, AND ALL JURORS
4 AFFIRMED THE VERDICT AS PUBLISHED.)

5 THE COURT: Thank you, Ma'am.

6 The jury having their verdict by polling, is there
7 anything further from the State of South Carolina?

8 MS. von HERRMANN: No sir, Your Honor.

9 THE COURT: From the Defendant, Collington?

10 MR. McCOLLUM: No, Your Honor.

11 THE COURT: From the Defendant, Gause?

12 MR. HAZZARD: I'm sorry, Your Honor. I was conferring
13 with my client ---

14 THE COURT: I'm sorry. As the jury having been polled
15 and affirmed their verdict, as to the jury is there anything
16 further from the Defendant, Gause, as to the jury?

17 MR. HAZZARD: No sir.

18 THE COURT: All right. Thank you very much.

19 (AT THIS TIME THE JURY WAS THANKED FOR THEIR SERVICE AND
20 DISMISSED FROM FURTHER PARTICIPATION IN THE TRIAL OF THIS
21 CASE.)

22 THE COURT: All right, Mr. McCollum, on behalf of the
23 Defendant, Gause, any motions, I mean, Defendant -- Defendant,
24 Collington. I'm sorry, Mr. McCollum. On behalf of the
25 Defendant, Collington, are there any motions?

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

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

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

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

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

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

SENTENCING

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

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

20 Thank you very much, sir.

21 Solicitor, is the State ready to proceed with
22 sentencing?

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

SENTENCING

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1 address the Court.

2 THE COURT: All right. I'll be glad to hear from her.
3 And Solicitor, do you have any sentence -- sentencing
4 sheets?

5 MS. YVONNE SMITH: My name is Yvonne Smith.

6 THE COURT: Yes Ma'am. I'll be glad to hear from you.

7 MS. YVONNE SMITH: My name is Yvonne Smith. I am Allen
8 Smith's mother. Allen was my oldest son. I have two children
9 that God had blessed me with. He was the family comedian. He
10 made everybody laugh. We enjoyed Allen. He was a very free-
11 hearted and a loved person. I think about my son every day.
12 Our family misses him.

13 Allen has two daughters that he will never see walk down
14 the aisle. He won't be able to walk them down the aisle. He
15 has two sons. Allen loved sports, and he loved watching his
16 sons play sports, and he won't be able to watch them anymore.

17 My health has declined. I was a nurse, and I was
18 working full-time until Allen's death. A year after Allen's
19 death I became disabled. I just thank God for giving me the
20 strength to sit here and reliving all this ordeals, and I
21 thank the jury, and I thank you.

22 Thank you.

23 THE COURT: Thank you, Ma'am.

24 Anything further, Solicitor?

25 MS. von HERRMANN: No sir, Your Honor.

SENTENCING

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1 **THE COURT:** All right. Thank you.

2 All right, Mr. McCollum, on behalf of your client,
3 Ladorrean Chukell Collington, I'll be glad to hear from you,
4 sir.

5 **MR. MCCOLLUM:** Your Honor, may it please the Court.
6 Ms. Collington grew up in the Conway Bucksport area. She has
7 lived here her whole life. She has three children. She was
8 pregnant at the time she was arrested, and actually her child
9 was born while she was in custody.

10 Her mother, Ms. Rhue, is here, Carolyn Rhue. She has
11 some other family members here.

12 Your Honor -- you've been through the course of events,
13 Your Honor, and we just ask Your Honor to show whatever
14 leniency you might be able to show toward her.

15 **THE COURT:** Thank you, sir.

16 All right, if you don't mind, if y'all would sit down
17 and let me hear from Mr. Hazzard on behalf of the Defendant,
18 Gause. I'll be glad to hear from you, sir.

19 **MR. HAZZARD:** Thank you, sir.

20 Quentin is thirty years old, having been born on [REDACTED]
21 [REDACTED] 1980, and he was born in Horry County, South Carolina.
22 He attended Conway High School and completed the eleventh
23 grade, and they kicked him out because of truancy, and he then
24 attended the adult education center.

25 He was employed with Bellamy Roofing.

SENTENCING

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1 His mother, Mary Weaver, unfortunately is deceased, and
2 she worked most of her life with Krogers, and she lived in the
3 Bucksport area.

4 He indicates that he doesn't really have a relationship
5 with his birth father, but that his step-father, Alonzell, and
6 that's A-l-o-n-z-e-l-l, Alonzell Weaver, works in asphalt
7 paving, and he has been working in Georgia, but Quentin says
8 he is currently apparently moving back to the Conway area to
9 continue working.

10 Quentin has two children whom he loves, Tray Quan,
11 that's T-r-a-y Q-u-a-n, Tray Quan C. , who is an eight year
12 old son who lives in Kansas with his birth mother, and Zymeir,
13 Z-y-m-e-i-r A. , who is three years old, who lives right
14 here in Conway, South Carolina.

15 Quentin has never been in the military. He has never
16 had nor needed a mental health evaluation.

17 I can tell the Court that from the time I began working
18 with Quentin in the end of January of this year he has never
19 given me a moment of problem, the demeanor that he has
20 displayed before this Court of quietude and respect is the
21 same demeanor that he has always displayed in dealing with me.

22 As the Court knows, in my job I have to deal with a lot
23 of different attitudes, a lot of different individuals, and
24 some of them are difficult. Quentin is not in the least bit
25 difficult. He, again, very thoughtful young man, very helpful

SENTENCING

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

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

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

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

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

18 You may be seated.

19 Will the Defendant, Gause, please stand.

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

SENTENCING

1227

1 Regarding (2008-GS-26-03135) for burglary in the first
2 degree, and (2011-GS-26-01274) for armed robbery, the
3 Defendant is committed to the South Carolina Department of
4 Corrections for a determinate term of thirty years, concurrent
5 with (2008-GS-26-03133).

6 Thank you very much.

7 MR. HAZZARD: Okay. So, Your Honor, on (03135) and
8 (01274) they are thirty years each, and those are concurrent
9 with (03133).

10 THE COURT: That is correct.

11 MR. HAZZARD: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 These proceedings are now at an end.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE OF COURT REPORTER

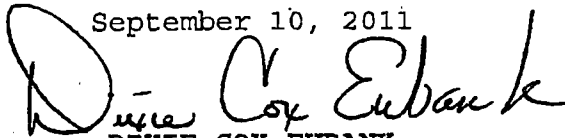
1228

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 13th day of May, 2011, and on June 6, 7, 8, 9, and 10, 2011.

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

September 10, 2011



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2010-GS-26-01626

WITNESSES

John Townsend Horry County Police Department

C

The State of South Carolina

County of Horry

Heather von Herrmann
08H01475

COURT OF GENERAL SESSIONS

MARCH, 2010 TERM

ARREST WARRANT NUMBER

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

ACTION OF GRAND JURY

TRUE BILL

Martha H. Horry
Foreperson of Grand Jury
Date: **MAR 25 2010**

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Ladorrean Chukell Collington
B/E



ATTORNEY: McCollum, M. Gregory

Indictment for

**ACCESSORY BEFORE THE FACT OF A
FELONY**

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

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

ACCESSORY BEFORE THE FACT OF A FELONY

CDR: 0002 16-01-0040, 0050

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

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2010-GS-26- 011627

WITNESSES

John Townsend Horry County Police Department

C
H

The State of South Carolina

County of Horry

Heather von Herrmann
08H01475

COURT OF GENERAL SESSIONS

MARCH, 2010 TERM

ARREST WARRANT NUMBER

2010GS2601627

CDR: 0002 16-01-0040, 0050

DOA: 4/18/2008

THE STATE

vs.

Ladorrean Chukell Collington
B/ F



ACTION OF GRAND JURY

TRUE BILL

Martha Henson

Foreperson of Grand Jury

Date:

MAR 25 2010

ATTORNEY: McCollum, M. Gregory

VERDICT

Indictment for

**ACCESSORY BEFORE THE FACT OF A
FELONY**

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

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

ACCESSORY BEFORE THE FACT OF A FELONY

CDR: 0002 16-01-0040, 0050

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

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

TA 1066 SOUTH CAROLINA

COUNTY OF
STATE

Horry
VS.

Ladorrean Chukell Collington

KA:

Age: BLACK Sex: F Age: 24

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2601626

A/W#: 2010GS2601626

Date of Offense: 4/14/2008

S.C. Code § 16-01-0040, 0050

CDR Code #: 0002

SENTENCE SHEET

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

Disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

O: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

A violation of § 16-01-0040, 0050 of the S.C. Code of Laws, bearing CDR Code # 0002

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TTEST:

von Herrmann, Heather

SCB06947

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 22 years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

\$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☒ Set by SCDPPPS

Recipient:

Fine:

14-1-206 (Assessments 107.5 %)		\$
14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
14-1-211(A)(2) (DUI Surcharge)	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
14-1-213 (Drug Court Surcharge)	\$150	\$
50-21-114(BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
4 to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly payments of \$ 25.00 beginning 07/10/2008

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:

Melanie Huggins-Ward
Dixie Eubank

Presiding Judge

Judge Code:

Sentence Date:

6/10/11

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

1361

COUNTY OF

Horry

STATE

VS.

Ladorrean Chukell Collington

KA:

Race: BLACK Sex: F Age: 24

INDICTMENT/CASE#: 2010GS2601627

A/W#: 2010GS2601627

Date of Offense: 4/14/2008

S.C. Code § 16-01-0040, 0050

CDR Code #: 0002

SENTENCE SHEET

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

Disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

O: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

In violation of § 16-01-0040, 0050 of the S.C. Code of Laws, bearing CDR Code # 0002

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TTEST

von Herrmann, Heather

SCB06947

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

/HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-65-26-1626☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

Fine:

14-1-206 (Assessments 107.5 %) \$ _____

14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

14-1-213 (Drug Court Surcharge) \$150 \$ _____

50-21-114 (BUI Breath Test Fee) \$50 \$ _____

56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00% to County (if paid in installments) \$ 3.00TOTAL \$ 133.00

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 5/10/2008

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

6/10/11

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LADORREAN COLLINGTON,

APPELLANT

Appellate Case No. 2011-194088

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err in admitting evidence of alleged prior bad acts by Appellant, including a twice broken window, a verbal confrontation between Appellant and the victim's girlfriend, a threatening note, a threatening text message, and a physical altercation between Appellant and the victim, where none of the exceptions for introduction of such evidence applied and the prosecution did not prove the prior bad acts by clear and convincing evidence?
- II. Did the trial judge err in admitting evidence of threats allegedly made to the victim through Anthony Graham, a witness for the prosecution, where none of the exceptions for introduction of such evidence applied and the prosecution failed to prove the conduct by clear and convincing evidence?
- III. Did the trial judge err in denying Appellant's motion to sever her trial from that of her co-defendant where the joint trial prevented the jury from making a reliable judgment in light of the different crimes charged, which necessitated the introduction of different evidence?

STATEMENT OF THE CASE

In 2008, the Horry County Grand Jury indicted Appellant as a principal in the murder and home invasion of Allen Smith. R. 2 lines 21-22. In 2010, the Horry County Grand Jury indicted Appellant for accessory before the fact of murder, accessory before the fact of kidnapping, accessory before the fact of burglary in the first degree, and accessory before the fact of armed robbery. R. 2 lines 10-24. During a pretrial hearing on May 13, 2011, the prosecutor informed the judge and Appellant that the prosecutor intended to go forward on the 2010 indictments. R. 2 lines 23-24. Nevertheless, on June 6, 2011, the prosecutor called only the indictments for accessory before the fact of burglary in the first degree and accessory before the fact of armed robbery. R. 19 lines 23-25; R. 620. Appellant was tried jointly with Quentin Gause, who was charged with murder, armed robbery, and burglary in the first degree. R. 20 lines 1-3. Heather Tolar von Hermann and Martin D. Spratlin prosecuted the case. R. 1. H. Gregory McCollum represented Appellant, and Ronald Hazzard represented Gause. R. 1. The Honorable Steven H. John presided over the case. R. 1.

Ultimately, the jury convicted Appellant as charged. R. 597 lines 1-9. Judge John sentenced Appellant to twenty-two years on each charge to run concurrently. R. 600 lines 7-17.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

During a pretrial hearing held on May 13, 2011, Appellant moved to exclude evidence of prior threats or difficulties between Appellant and the alleged victim. R. 5 lines 8-11. Appellant also moved to exclude evidence of any threats allegedly made to the victim through Anthony Graham. R. 5 lines 12-15. However, the prosecution was not prepared to argue the motions during the pretrial hearing. R. 7 lines 6-13. During a subsequent pretrial hearing on June 2, 2011, Appellant again moved to exclude evidence of prior difficulties between Appellant and the victim, R. 603 lines 1-3,¹ and to exclude evidence of threats allegedly made through Graham, R. 605 lines 8-10. The state summarized the evidence it proposed to submit as follows: "There are a number of threats made by [Appellant] directly to the victim, to the victim through a third party, an Anthony Gra[ham], and by a note that was left at the victim's residence." R. 604 lines 11-15. In addition, the prosecution alleged Appellant broke out a window at the victim's residence. R. 604 lines 16-18.

The prosecutor argued the incidents were admissible because they "happened within a very short time, a couple of days, prior to the time the victim was killed." R. 604 at lines 19-20. The prosecutor cited Rules 404(b), 401, and 403 of the South Carolina Rules of Evidence to support her position. In the alternative, the prosecutor argued the incidents were admissible "pursuant to a res gestae theory." R. 604 line 23. Appellant argued the prosecution wanted to introduce evidence of the character of the accused and could not

¹ The pretrial hearing held on May 13, 2011 was transcribed at the same time the trial transcript was transcribed; therefore, the May 13, 2011 pretrial hearing is paginated consecutively with the trial. However, the pretrial hearing held on June 2, 2011 was transcribed at a later date and is paginated separately. In her initial brief, Appellant denotes the transcripts of the pretrial hearing held on May 13, 2011 and the trial transcript as Tr. and the transcript of the pretrial hearing held on June 2, 2011 as Tr. II.

introduce such evidence unless Appellant first presented evidence of good character. R. 608 lines 14-19. Turning to the prosecutor's *res gestae* argument, Appellant explained that *res gestae* requires the acts to be interwoven with the alleged crime in such a way as to make separating the two nonsensical. R. 608 line 24 – R. 609 line 2.

At Appellant's request, the court reserved ruling upon the motion until the testimony was presented. R. 605 line 11 – R. 606 line 7. Although the trial judge refused to rule until the presentation of evidence, he explained "that in general prior difficulties, prior threats, prior actions, are certainly - - is certainly evidence that could be relevant and admissible in the trial of a person charged with a crime such as [Appellant] is charged." R. 607 lines 15-24.

Testimony of Anthony Graham

The prosecutor called Anthony Graham as a witness. Graham was staying with the victim during the week of his death. R. 31 lines 10-11. According to Graham, the victim was romantically involved with Appellant and another woman. R. 37 lines 9-23. Graham testified that on the Tuesday before the victim's death, the victim and Appellant argued about the love triangle. R. 39 lines 3-6; R. 39 lines 17-23. The verbal argument escalated into a physical confrontation. R. 40 lines 1-7. Shortly after this argument, Graham saw Appellant near the victim's house in her vehicle. R. 42 lines 10-20. Graham and the victim ran. R. 43 lines 2-5. Graham heard a window bust, and then saw Appellant's vehicle driving away. R. 44 line 25 – R. 45 line 2. The police arrived shortly thereafter. R. 45 lines 23-24. Graham testified that the officer joked with the victim that this was the second time Appellant had busted his window. R. 46 lines 1-12.

In addition, the prosecutor elicited from Graham the content of a text message allegedly sent from Appellant to the victim several days before the victim's death. Graham testified that he saw the message, which said "something about you and your mama could get it." R. 52 line 16 – R. 53 line 7. During the testimony of Graham, Appellant asked for the record to reflect the earlier objection in pretrial motions and asked for the objection to be ongoing. R. 68 line 23 – R. 69 line 1. The trial judge ruled as follows: "You raised other issues and I've ruled on them. I can't tell you how you need to operate to protect the interest of your client." R. 69 lines 2-4.

Graham also testified that he received a voicemail message from Appellant several days prior to the victim's death. R. 67 line 14 – R. 68 line 9. When the prosecution moved to admit a recording of the voicemail message, Appellant objected based upon the prior motion to exclude evidence of threats made to the victim through Graham. R. 68 lines 10-14. Judge John overruled the objection. R. 68 lines 15-16. The prosecutor then played the voicemail message for the jury. R. 69 lines 7-8.

Request for Curative Instruction and Mistrial

Shortly thereafter, Appellant requested a curative instruction and a mistrial concerning the introduction of evidence of prior difficulties between Appellant and the victim. R. 131 line 23 – R. 132 line 4. Appellant argued that the initial understanding of the court and the parties was Appellant would stand trial for accessory before the fact of murder in addition to the accessory charges for armed robbery and burglary. R. 130 line – R. 131 line 6. The prosecutor countered that although the indictment for accessory before the fact of murder was not before the jury, the facts and circumstances presented remained the same. R. 132 lines 7-12. Additionally, the prosecutor argued the threats formed "a part of the res

gestae" and were admissible under Rule 404(b) of the South Carolina Rules of Evidence. R.

132 lines 12-13. The prosecutor argued the prior bad acts showed "a pattern of behavior, escalating behavior, where she [became] angrier and angrier and ultimately elicit[ed] these other people to go in and commit what ultimately turns out to be a murder." R. 132 lines 14-17. According to the prosecutor the evidence was admissible to prove "that pattern of behavior, that motive of her sending those other individuals in there, so it goes to her motive, it goes to her intent, it goes to her planning, and it's part of the res gestae." R. 132 lines 18-22. The prosecutor opposed Appellant's request for a curative instruction and a mistrial. R. 132 lines 23-25.

The trial judge ruled Appellant waived her objections to Graham's testimony by failing to object during the testimony. According to the judge:

We had the entirety of the testimony of one of the victims in this matter, and that was Mr. Anthony Graham. At no time during his testimony did you raise the issue before the Court. All of his testimony as to prior difficulties is in evidence. It's in evidence without objection. It's in evidence without [[Appellant] raising an issue to it. The Court's first position is you've waived it. It's over. The evidence is in the record. It is too late to object to the problem, if there was one, now.

R. 133 lines 12-20. In addition, the judge ruled the evidence was admissible under Rules 401, 403, and 404 of the Rules of Evidence and pursuant to the doctrine of res gestae. R. 133 lines 21-25.

When Appellant moved to limit the introduction of additional evidence of this nature, the trial judge refused based upon the same reasoning. R. 134 line 21 – R. 135 line 12.

Testimony of Frankie Davis

Frankie Davis, the victim's live-in girlfriend, testified on behalf of the prosecution as well. Davis testified that Appellant had broken her living room window out twice. R. 150 lines 7-13. Additionally, Davis testified that she had a "run-in" with Appellant on the Friday before the victim's death. R. 150 lines 14-19. Appellant objected, but the judge overruled the objection. R. 150 lines 20-23. Davis testified that she saw Appellant at a store and confronted her about the broken windows. R. 151 lines 5-10. According to Davis, Appellant was "irate." R. 151 line 13. When the prosecutor asked Davis what Appellant said, Davis testified that she called her names and acting crazy. R. 151 line 25 – R. 152 line 16. This evidence was allowed over Appellant's objection. R. 152 lines 4-5.

Testimony of Tiffany James

The prosecutor also introduced evidence of Appellant and the victim allegedly having a physical altercation and Appellant allegedly breaking the victim's window through witness Tiffany James. James testified she "believe[d]" the victim and Appellant argued about the victim living with another woman while Appellant was pregnant with the victim's child. R. 423 lines 10-23. James responded that she thought the verbal argument escalated to a physical confrontation even though she was not in the room at the time. R. 423 line 24 – R. 424 line 2. James testified that after the argument, she and Appellant drove to Appellant's house where Appellant "bust out his window." R. 425 lines 3-7. Appellant objected to this testimony. R. 425 lines 16-18. However, the trial judge overruled the objection. R. 425 line 19.

Testimony of Officer Daniel Cradic

Towards the end of its case-in-chief, the prosecution informed the judge of its intent to call Officer Daniel Cradic to the stand. Officer Cradic responded to the victim's home on April 8, 2008 concerning a broken window. The prosecution explained its intent to elicit from the witness that the window was broken, a note was left at the scene, the note had been destroyed by the police department pursuant to its internal procedures, and the contents of the note based upon the officer's incident report. R. 522 lines 12 – 24. Appellant objected based upon the fact that the note had been destroyed and that the report indicates the officer's knowledge of the note came from the victim. R. 523 lines 7-13; R. 524 lines 3-8. The trial judge ruled the officer could testify as to the contents of the note as long as he testified he read the note, then the officer could testify. R. 523 line 14 – R. 524 line 2; R. 524 lines 9-16.

On direct examination, Officer Cradic testified there was a note found at the scene and he read the note. He copied the contents down on the note in his report. R. 529 lines 1-10. When Officer Cradic testified he could not remember the contents and would have to use his report, Appellant objected. R. 530 lines 19-22. Officer Cradic then read the contents of the note: "bitch, I will be back, nigger, fuck you. F.Y. bitch ass, AIDS-infected bitch. Yeah, we all got it. D-baby." R. 531 lines 4-6.

ARGUMENT

I. The trial judge erred in admitting evidence of alleged prior bad acts by Appellant, including a twice broken window, a verbal confrontation between Appellant and the victim's girlfriend, a threatening note, a threatening text message, and a physical altercation between Appellant and the victim, where the prosecution did not prove the prior bad acts by clear and convincing evidence and none of the exceptions for introduction of such evidence applied.

Relevant for this issue, the prosecutor introduced the following prior bad acts allegedly committed by Appellant: the breaking of the victim's window twice, a threatening note, a threatening text message, a confrontation with the victim's live-in girlfriend, and a verbal and physical altercation with the victim.

As a threshold matter, Appellant recognizes the general rule that a motion in limine is not a final determination, and, therefore, a contemporaneous objection must be made when the evidence is introduced. State v. Wiles, 383 S.C. 151, 156, 679 S.E.2d 172, 175 (2009)(citing State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001)). However, there are exceptions to the rule. One such exception is when the ruling on the motion in limine is made immediately prior to the introduction of the challenged evidence. Id. Our Supreme Court held this exception applied even when the challenged evidence was not introduced immediately after the motion in limine, but where the trial judge commented to the jury about the challenged evidence and the state mentioned the challenged evidence in an opening statement. Id. at 157, 679 S.E.2d at 175. Thus, the Court reasoned the ruling on the admission of evidence was a final ruling and preserved for appellate review. Id. Here, the prosecutor mentioned the prior bad acts during its opening statement. R. 26 lines 10-12

(detailing the alleged verbal and physical altercation between the victim and Appellant); R. 26 lines 12-18 (describing Appellant allegedly breaking the victim's window and leaving a threatening note). Thus, the trial court's general ruling that evidence of prior difficulties would be admissible became a final ruling based upon the prosecutor's incorporation of this evidence in its opening statement.

Another exception to the general rule is the doctrine of futility. Our Court does not require a party to engage in futile actions to preserve an error for review. Staubes v. City of Folly Beach, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000)(citing State v. Bryant, 316 S.C. 216, 222, 447 S.E.2d 852, 855 (1994) and State v. Ross, 272 S.C. 56, 60-61, 249 S.E.2d 159, 162 (1978)). Based upon the trial judge's general ruling on the admissibility of evidence and the prosecutor informing the jury of the evidence during its opening, it would have been futile for Appellant to continue to object to the evidence.

Evidence of other bad acts is not admissible to prove a person's guilt; however, such evidence may be admissible to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In addition, evidence of prior bad acts not subject to a conviction must be proven by clear and convincing evidence. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). As explained by the Supreme Court, the process of analyzing bad act evidence starts with Rule 401, SCRE. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). Thus, the first step is determining whether the evidence is relevant. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. The prior bad act evidence submitted by

the prosecution fails this basic test as it does not make it more or less probable that Appellant orchestrated the armed robbery and burglary of the victim. The only purpose served by the evidence was to convince the jury Appellant was a bad person.

If the evidence is relevant, the next step is determining whether the evidence fits within one of the exceptions of Rule 404(b). Wallace, 384 S.C. at 433, 683 S.E.2d at 277. "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." State v. Gaines, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008). In addition, if the defendant were not convicted of the prior bad act, evidence of the conduct must be clear and convincing. Id. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

One of the exceptions relied upon by the prosecutor was common scheme or plan. As explained by the Court, to determine whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine if there is a close degree of similarity. Id. at 433 at 277-278 (citing State v. Parker, 315 S.C. 230, 433 S.E.2d 831(1993)). If the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b). Id. at 433 at 278.

None of the prior bad acts introduced by the prosecutor were similar to the charged crime. Under the state's theory, Appellant encouraged and assisted others in committing a home invasion robbery, which resulted in the victim's death. None of the prior bad acts

involved Appellant acting through intermediaries. None of the prior bad acts involved robbing the victim. None of the prior bad acts involved causing harm to the victim. None of the prior bad acts involved Appellant orchestrating a great plan. In fact, the alleged prior bad acts involved Appellant acting alone to express her displeasure with the victim for continuing to live with another woman while Appellant carried his child. Therefore, the prior bad act evidence was not admissible pursuant to the common plan or scheme exception.

The next exception relied upon by the prosecution was motive and intent. In order for prior bad act evidence to be admissible to show motive and intent, the record must support a relationship between the crime and the prior bad act. State v. Smith, 309 S.C. 442, 446, 424 S.E.2d 496, 498 (1992)(holding evidence of prior drug use was not admissible pursuant to the motive exception as the record contained no evidence to support any relationship between the crime of murder and the drug use); State v. Bolden, 303 S.C. 41, 43, 398 S.E.2d 494, 494-495 (1990)(holding the defendant's use of crack cocaine the night before he committed an armed robbery did not show motive where there was no logical relevance between use of the crack cocaine the night before the robbery and the robbery the next day); State v. Coleman, 301 S.C. 57, 60, 389 S.E.2d 659, 660-661 (1990)(finding the introduction of evidence that the defendant was a social user of cocaine was not admissible to show motive because there was no evidence to show the defendant was using cocaine at the time of the murder or that the defendant and the victim were involved in a drug transaction at the time of the murder). The prosecution presented evidence that the motive for the home invasion was money and drugs. According to a key prosecution witness, Donell James, the robbers expected to find \$40,000 and half a brick of cocaine. R. 217 lines

8-15. Donell testified that Appellant's cut of the robbery's proceeds would be having her car note paid. R. 219 lines 11-17. Therefore, the prior bad acts did not supply the motive – obtaining money – that the prosecution claimed existed.

The state also claimed the evidence of alleged prior bad acts by Appellant was admissible as part of the *res gestae* of the crimes charged. Evidence is admissible as part of the *res gestae* of the charged offenses when it provides part of the context of the crime or is necessary to the full presentation of the case or is “intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context.” State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996)(quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980)(internal citations omitted)). A prior bad act is admissible under the theory of *res gestae* when it is “so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other.” Id. The prior bad acts introduced by the prosecution were not part of the alleged crimes - accessory before the fact of armed robbery and accessory before the fact of burglary in the first degree.

The prosecution presented no evidence showing the alleged prior bad acts were logically connected to the charged crime. In fact, the state could not articulate the logical connection between the alleged prior bad acts and one of the five exceptions because none existed. See State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). The evidence of the alleged prior bad acts – a twice broken window, a threatening note, a threatening text message, a verbal altercation with the victim's girlfriend, and a physical confrontation between Appellant and the victim – did not assist the jury in understanding a material issue

in the case related to one of the five exceptions. See State v. Smith, 391 S.C. 353, 361, 705 S.E.2d 491, 495 (Ct. App. 2011).

Additionally, there was no clear and convincing evidence that Appellant engaged in the prior bad acts, and the trial court failed to engage in an analysis to determine whether the prosecution proved the bad acts by such evidence. Turning first to the alleged threat made by Appellant to the victim via text message and the alleged verbal and physical confrontation between Appellant and the victim, the only evidence presented by the prosecution was that of Graham. Although the trial court made no finding at all in this regard, the record is clear that Graham's testimony was not credible. Turning next to the confrontation between Appellant and Davis, the only evidence presented was that of Davis. Davis' testimony was not credible in this regard. Finally, turning to the twice broken window and threatening note, the prosecution presented no eyewitness testimony regarding the perpetrator except that of Tiffany James. The other witnesses, Graham, Davis, and the police officer, could only testify that they suspected Appellant. Obviously, this did not rise to the level of clear and convincing. James lacked all credibility based upon the criminal charges she was facing. Thus, the trial court should not have permitted the evidence of prior bad acts as the prosecutor did not prove the acts by clear and convincing evidence.

Finally, even if the evidence fit within one of the enumerated exceptions and was proven by clear and convincing evidence, the trial court erred in admitting it as its probative value was substantially outweighed by the danger of unfair prejudice." See Rule 403, SCRE.

II. The trial judge erred in admitting evidence of threats allegedly made to the victim through Anthony Graham, a witness for the prosecution where none of the exceptions for introduction of such evidence applied and the prosecution failed to prove the conduct by clear and convincing evidence.

Relevant to this issue the prosecutor introduced testimony of Graham regarding a voicemail message he received from Appellant and an audio recording of the voicemail message.

The trial judge erred in admitting this evidence because none of the exceptions for the introduction of the evidence applied and the prosecution failed to prove the conduct by clear and convincing evidence. The prosecution relied upon the same arguments concerning this evidence as it did the evidence discussed in issue one. Nevertheless, those arguments fail as this evidence as well.

As explained, evidence of other bad acts is not admissible to prove a person's guilt, but may be admissible to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, supra. In addition, evidence of prior bad acts not subject to a conviction must be proven by clear and convincing evidence. Wilson, supra. The bad act must logically relate to the crime with which the defendant has been charged. Gaines, supra.

Turning to the prosecutor's argument that this evidence was admissible because it established Appellant's common scheme or plan, the prosecutor failed to show how the voicemail was logically related to one of the enumerated exceptions or how the voicemail showed similarities between the charged offenses. The voicemail did not show Appellant enlisting the assistance of others to harm the victim or cause him distress. The voicemail did

not evidence any plan by Appellant to rob or harm the victim. The evidence was inadmissible under this exception.

Motive and intent, the next exception relied upon the prosecution, is not applicable to the voicemail introduced into evidence. The voicemail did not show an intent on the part of Appellant to recruit others to rob the victim or burglarize his home. All the voicemail showed was that someone was unhappy with the victim.

The state also claimed the evidence of the voicemail was admissible as part of the res gestae of the crimes charged. The voicemail was not part of the context of the crime or necessary to the full presentation of the case. In fact, the voicemail had nothing to do with the robbery, burglary and eventual murder of the victim. There was no connection between the voicemail and the charges of accessory before the fact of burglary and armed robbery; therefore, the voicemail certainly was not "intimately connected" with the crime charged.

Additionally, no clear and convincing evidence established that Appellant was the voice on the recorded message, and the trial court failed to engage in an analysis to determine whether the prosecution proved the bad act by such evidence. Graham did not testify as to his certainty that Appellant's voice was on the recording. In fact, Graham had only recently met Appellant and spoken with her on the phone only once. His ability to determine whether Appellant's voice appeared on the recording was nil. The prosecution did not introduce any expert testimony regarding the voice either. Therefore, the trial court should not have permitted the introduction of the voicemail as the prosecutor did not prove Appellant was the one who made the recording by clear and convincing evidence.

Finally, even if the evidence fit within one of the enumerated exceptions and was proven by clear and convincing evidence, the trial court erred in admitting it as its probative value was substantially outweighed by the danger of unfair prejudice. See Rule 403, SCRE.

III. The trial judge erred in denying Appellant's motion to sever her trial from that of her co-defendant where the joint trial prevented the jury from making a reliable judgment in light of the different crimes charged, which necessitated the introduction of different evidence.

During a pretrial hearing on May 13, 2011, Appellant filed a motion to sever the trial of the defendants. R. 4 line 23 – R. 5 line 4. Appellant conceded the case was the same in terms of the same victim, but argued the evidence against Appellant and Gause was different due to the nature of the charges. R. 15 lines 16-23. Appellant noted that she had been charged as an accessory to the crimes, whereas Gause had been charged with actually entering the residence, participating in the robbery, kidnapping, and shooting. R. 15 lines 6-15. The prosecutor argued the defendants should be tried together because the same witnesses and evidence would be presented against each of them. R. 16 lines 16-22.

After examining the indictments, Judge John concluded there were common areas of evidence and fact against the defendants. R. 17 line 24- R. 18 line 3. Judge John explained that Appellant's concerns could be cured with a proper limiting instruction and through the potential resolution of issues raised at trial. R. 18 lines 3-7. Thus, the judge denied the motion. R. 18 lines 17-19.

In a pretrial hearing held on June 2, 2011, Gause moved to sever the trials. R. 610 lines 22-23. Appellant joined in the motion. R. 611 lines 3-4. The prosecution countered that the "testimony of the individuals with the exception of two would be from the exact same witnesses." R. 611 lines 7-9. Judge John found there was no risk that a joint trial would compromise a specific right of Appellant or Gause or prevent a jury from making a

reliable judgment about guilt. R. 611 lines 18-23. Thus, the judge denied the motion. R. 612 line 11.

At the close of the state's case, Appellant renewed all motions previously made. R. 536 lines 16-21; R. 538 lines 20-24. The judge denied the request. R. 538 line 25 – R. 539 line 7. After Appellant rested, Appellant renewed all motions previously made. R. 553 lines 7-15. The judge denied the request again. R. 553 lines 16-23.

“A motion for severance is addressed to the sound discretion of the trial court.” State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002). “The trial court’s ruling will not be disturbed on appeal absent an abuse of that discretion.” State v. Rice, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id. At 613, 629 S.E.2d at 395. “A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant’s guilt.” State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005). “A defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction.” State v. Halcomb, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009).

The trial judge erred in failing to sever Appellant’s trial from Gause because the joint trial prevented the jury from making a reliable judgment about Appellant’s guilt. The evidence presented by the prosecution’s witnesses was that Appellant and two others entered the victim’s home and shot him. R. 233 lines 14-22; R. 236 line 6 – R. 236 line 15; R. 238 lines 2-13; R. 365 lines 21-25; R. 367 line 25 – R. 368 line 2; R. 368, lines 11-16; R. 369 lines 6-18; R. 370 lines 3-23. The prosecution claimed Appellant encouraged the others

to rob the victim. R. 216 lines 14-24; R. 217 lines 3-7; R. 345 lines 3-7. Therefore, the evidence against Appellant differed substantially from the evidence offered against Gause. As a result, the differing evidence combined with the required different jury charges, including the hand of one is the hand of all as to Gause only, prevented the jury from making a reliable verdict as to Appellant's guilt.

CONCLUSION

Appellant respectfully requests this Court to reverse her convictions and sentences and remand her case to the circuit court for a new trial.

Respectfully submitted,

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

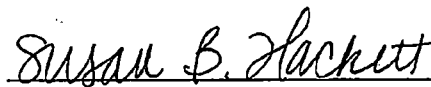
V.

LADORREAN COLLINGTON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

THE UNITED STATES OF AMERICA

DEPARTMENT OF THE ARMY

OFFICE OF THE ADJUTANT GENERAL

WASHINGTON, D. C.

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in admitting evidence of prior difficulties between Appellant and the victim because the evidence formed the res gestae of the crime and defined the motive of Appellant in organizing the crime. Further, the issue is not preserved as it relates to the bulk of the evidence and is entirely harmless as it relates to the remainder.
- II. The trial court did not err in admitting the content of the voicemail. The voicemail helped establish the motive of Appellant in organizing the crime and was part of the res gestae of the crime committed.
- III. The trial court did not err in denying the motion to sever Appellant's case from that of his codefendant.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. The trial court did not err in admitting evidence of prior difficulties between Appellant and the victim because the evidence formed the res gestae of the crime and defined the motive of Appellant in organizing the crime. Further, the issue is not preserved as it relates to the bulk of the evidence and is entirely harmless as it relates to the remainder.**

Appellant contends the trial court erred in allowing evidence of prior difficulties between Appellant and the victim before the jury. The issue is not preserved as it relates to the bulk of the evidence because Appellant failed to offer a contemporaneous objection. Further, because much of the evidence was admitted without objection, any error is entirely harmless. Finally, the trial court properly allowed the evidence because it formed part of the res gestae of the crimes for which Appellant was charged and also demonstrated her motive in arranging the crimes to be committed.

Factual Background

The evidence Appellant contends was improperly admitted includes: the breaking of the victim's window, a threatening note left at the scene of a window breaking, a threatening text message, a verbal and physical altercation between victim and Appellant, and the confrontation between Appellant and the victim's girlfriend. (See App.Br. 9). Most of the evidence was presented through the testimony of Anthony Graham, a friend of the victim who was staying with the victim and the victim's girlfriend at the time of the burglary and murder. The note was admitted through the testimony of a responding officer. Finally, the victim's girlfriend testified to the confrontation between herself and Appellant.

Graham testified the victim lived with his girlfriend, but Appellant believed he should be with her. Graham testified victim and Appellant got into a verbal altercation which turned into a physical one when Appellant ripped the chain off of the victim's neck. (T.412-413; R. 39-40). Graham testified Appellant threatened to go get her gun and so Graham and the victim headed back to the victim's home watching over their shoulder for Appellant. (T.413-415; R. 40-42).

Graham then testified after they arrived back at the victim's home, they heard a window break. Graham testified he saw Appellant leaving the scene. (T.417-418; R. 44-45). Graham testified the individual who made the report of the broken window was joking with the victim about the fact Appellant had previously broken his window. (T.419; R. 46).

Graham testified he and the victim received calls and messages on their phones from an upset Appellant. He also testified the victim's girlfriend called the victim to tell him she was in a confrontation with Appellant. (T.424; R. 51). Graham then testified the victim showed him a text message the victim received from Appellant which read "something about you and your mama could get it." (T.426; R.53).

After detailing the events of the break-in and murder, including the fact he believed Appellant sent the men to the house to commit the crimes (T.434; R. 61), Graham then testified about a voicemail left on his phone by Appellant. (T.426-440; R. 53-67). The voicemail made it clear Appellant was upset with the victim. The voicemail detailed the confrontation between Appellant and the victim's girlfriend, and then included threats to the victim indicating he better watch his back because he made her mad and that he was going to get it. (State's Exhibit 72).

After testifying without objection about Appellant breaking her windows on two occasions, the victim's girlfriend testified to a confrontation between herself and Appellant. (T.536-537; R. 150-151). She testified she confronted Appellant about the broken windows and Appellant was "crazy" and calling her names. She testified she just wanted to "get away from her as fast as she could." (T.538; R. 152).

Officer Cradic testified he responded to the victim's home after the report of a broken window. (T.1067-1068; R.527-528). He testified a note was found at the scene, he read the note, and copied the note's contents. (T.1069-1071; R.529-531). He testified the note read: b***h, I will be back, n****r, f**k you. F.Y. b***h a**, AIDS infected b***h. Yeah, we all got it. D-baby.

Preservation

Appellant moved pre-trial to exclude evidence of prior difficulties between Appellant and the victim. The trial court specifically ruled: "I appreciate that, but I cannot rule on that Motion at this point in time. I appreciate your bringing it to my attention but when I hear the questions and answers you can make a proper objection." (June 2 T.76; R. 607). After even more discussion on the issue, the court again stated: "I will reserve ruling on this particular matter." (June 2T.78; R. 609).

Normally, a motion *in limine* to exclude evidence made at the beginning of trial does not preserve the issue for appellate review because a motion *in limine* is not a final determination. State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). "A ruling on the motion is not the ultimate disposition on the admissibility of evidence. It remains subject to change based upon developments during trial." State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988). Additionally, a trial judge does not abuse his

discretion when he refuses to rule on the admissibility of evidence until offered in the regular course of trial. See State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); see also, State v. Silver, 307 S.C. 326, 329, 414 S.E.2d 813, 815 (Ct. App. 1992) (finding no prejudice due to the trial judge's refusal to rule until the evidence was offered at trial). Clearly, the trial court's pretrial *in limine* ruling is not sufficient to preserve the issue for review on appeal.

"Making a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." See State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). The Appellate Courts have crafted an exception to this rule:

[W]here a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection. The issue is preserved: Because no evidence was presented between the ruling and [the] testimony, there was no basis for the trial court to change its ruling. Thus, ... [the] motion was not a motion in limine. The trial court's ruling in this instance was in no way preliminary, but to the contrary, was a final ruling. Accordingly, [the defendant] was not required to renew her objection to the admission of the testimony in order to preserve the issue for appeal. State v. Mueller, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995).

State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001).

At trial, the solicitor made reference to the prior difficulties during her opening statement. (T.230; R. 26). Appellant failed to object to any reference to the prior difficulties. At no time did Appellant renew his objection as is required to preserve it for review on appeal. See Simpson, 325 S.C. at 42, 479 S.E.2d at 60.

Further, counsel's mention of the prior difficulties during opening statement does not constitute admission of the evidence such that Appellant can rely on the rule enunciated in Forrester. The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented. State v. Brown, 277 S.C. 203, 284 S.E.2d 777 (1981). The solicitor is permitted in opening statement to outline the facts the State intends to prove. Highfield v. State, 246 Ga. 478, 272 S.E.2d 62 (1980).

While a creative argument, the statements of counsel are not considered evidence and cannot be relied on under the Forrester rule for preservation. See Ex parte Morris, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."); McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (appellate courts repeatedly have held "that statements of fact appearing only in arguments of counsel will not be considered"); S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("[a]rguments made by counsel are not evidence"). Specifically, the trial court specifically instructed the jury that the opening statements were not evidence and could not be considered by the jury as evidence. (T.225; R. 22). As a result, Appellant cannot rely on the State's opening statement to create preservation and to turn the trial court's *in limine* ruling into a final ruling.

Finally, counsel for Appellant failed to object to the majority of the evidence presented by the State through Anthony Graham. (T.412-426; R. 39-53). Counsel did not raise an issue with regard to any of the testimony by Graham until after his testimony

was complete and he made a motion for a mistrial. As a result, he did not contemporaneously object as is required to preserve the issue for appeal.

In order to preserve an evidentiary issue for review on appeal, a contemporaneous objection must be made when the testimony is offered. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court). If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. *Id.* Therefore, the issue regarding admission of all of the prior difficulties which came in through Graham is not preserved for review on appeal.

As it relates to the note found at the scene of the window breaking, Appellant never objected at trial to the admission of the note based on its presenting the prior difficulties to the jury. Instead, his objection centered solely on whether the officer would be reciting hearsay because he did not read the note or whether he was properly refreshing his memory with the incident report the officer wrote. (T.1032-1034; 1070; R.522-524; 530).

Appellant cannot raise one issue at trial and argue a different issue on appeal. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at trial on the grounds raised on appeal, that it was improper character evidence, but objected only on the basis of relevancy). Therefore, the issue as it relates to the note found at the victim's house is not properly before the Court. As a result, the only possible issue preserved for review on

appeal relates to the confrontation between Appellant and the victim's girlfriend as testified to by Appellant's girlfriend.

Merits

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000) (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993) (appellate courts are bound by the trial court's fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law)). This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Appellant was charged as an accessory before the fact of burglary and armed robbery. In order to convict Appellant, the State was required to show: "(1) that the defendant advised and agreed, or urged the parties or in some way aided them, to commit the offense; (2) that the defendant was not present when the offense was committed; and

(3) that the principal committed the crime.” State v. Bixby, 373 S.C. 74, 75 n.2, 644 S.E.2d 54, 55 n.2 (2007).

The State asserted the evidence was admissible as part of the *res gestae* of the crime and because it met several exceptions delineated in Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (evidence of other crimes may be admissible when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime).

Res Gestae

Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Fletcher, 363 S.C. 221, 246, 609 S.E.2d 572, 585 (Ct. App. 2005). “The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred.” Fletcher, 363 S.C. at 246, 609 S.E.2d at 585 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’ ” or the “uncharged offense is ‘so linked together in

point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... '[and is thus] part of the *res gestae* of the crime charged.' And where evidence is admissible to provide this 'full presentation' of the offense," [t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "*res gestae*."

State v. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001).

The evidence presented all occurred in the week leading up to the home invasion, burglary, and murder. The testimony and other evidence such as the messages indicated Appellant intended to "get back" at the victim for living with the other woman. Further, Graham testified his initial reaction was Appellant "sent them boys over here because - - because of so much stuff was going on." (T.434; R. 61). Additionally, the prior difficulties were clearly intertwined with the actual planning and arranging of the crimes by Appellant and the commission of the crimes by her co-defendants. A complete story could not have been presented to the jury without establishing a background for the actual home invasion, burglary, armed robbery, and murder. As a result, the trial court properly concluded the testimony was admissible as part of the *res gestae* of the case.

Lyle or Rule 404(b)

Additionally, the evidence clearly satisfied the requirements of Lyle and Rule 404(b).¹ Evidence of a prior bad act is admissible if it tends to demonstrate the motive of

¹ To the extent Appellant attempts to argue the prior bad act evidence was not established by clear and convincing evidence, this issue was clearly never raised to the trial court. Further, multiple individuals testified to the bad blood between the Appellant and the victim and so the prior bad acts were established by clear and convincing evidence.

the individual or establish a common scheme or plan. A common scheme or plan can be shown through “a pattern of continuous misconduct.” State v. Tutton, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) Appellant only argues regarding the similarities test as enunciated in State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277–78 (2009). However, the Court also upheld the continuous conduct basis for finding a common scheme or plan in State v. Clasby, 385 S.C. 148, 159, 682 S.E.2d 892, 898 (2009) (concluding evidence of the defendant's continued illicit sexual abuse “prior to the indicted offenses constitutes the archetypal ‘common scheme or plan’ evidence”).

The evidence clearly shows an escalating pattern of continuous misconduct by Appellant. She breaks the windows of the home where the victim is residing, leaves threatening messages in which she threatens the victim, and ultimately sends individuals to get even with the victim by breaking into his home and robbing him. As a result, the trial court properly concluded the evidence established a common scheme or plan whereby Appellant was upset with the victim and planned to get even.

Additionally, the evidence clearly establishes Appellant's motive for arranging, planning, and encouraging her co-defendants to commit the home invasion. Appellant was upset with the victim for leaving her and moving in with his girlfriend. She made numerous threats to the victim and subsequently carried out the threats by arranging and encouraging the home invasion.

The State had to demonstrate Appellant orchestrated the home invasion even though she did not participate. “Accessory before the fact . . . requires a showing that the accused: (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that

some principal committed the crime. The State need only prove that some principal committed the crime at the behest of the accessory.” State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993)(citations omitted). The State had to demonstrate Appellant had some motive to solicit the home invasion, especially in light of Appellant’s argument she received nothing by having the burglary and armed robbery committed.

This case is very similar to the case of State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), in which the State sought to admit a prior domestic violence against the appellant to demonstrate his motive for breaking into the home where his former live in girlfriend now resided. This Court found the incident of domestic violence demonstrated Sweat’s motive because it showed the break-in was “driven by anger over [the former girlfriend] causing him to go to jail and terminating their relationship, and that he intended to “get his property.” Id. at 126, 606 S.E.2d at 513. As the Court explained: “Evidence of previous difficulties or ill feelings between the accused and the victim and of facts showing the cause of such difficulties or ill will is admissible on the question of motives where there is some connection of cause and effect between the evidence and the crime.” Id. (Citing State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); 40 C.J.S., *Homicide*, Section 228).

Here the prior difficulties clearly establish the motive for Appellant to plan, arrange, and encourage the home invasion which lead to her being charged with accessory before the fact of burglary and armed robbery. She clearly intended to get even with the victim because he had broken off any relationship with her and was living with his new girlfriend. The prior difficulties, as was established in Sweat, indicate she arranged the home invasion out of jealousy and anger.

Further, during the cross-examination of one of the co-defendants, Appellant's counsel directly asserted she had no motive to arrange the home invasion:

Q. She set it up, did the whole thing. What was she going to get out of it?

A. I don't know. I didn't talk to her. She talked to [another co-defendant].

Q. What was she going to get out of it? Nothing.

(T.877; R. 389). The State answered this question by presenting the evidence of the prior difficulties and the threats by Appellant against the victim. The answer presented was her motivation for setting it up was revenge.

Harmless Error

Additionally, the admission of the evidence was entirely harmless in light of the overwhelming evidence of Appellant's guilt and the fact its admission was cumulative to other evidence including evidence solicited by Appellant's counsel. "The key factor for determining whether a trial error constitutes reversible error is 'whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (citations omitted). "An error is harmless if the defendant's guilt has been conclusively proven by competent evidence, such that no other result could have been reached." State v. Johnson, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). Further, the admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003); see also, State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other unobjected-to evidence is harmless).

In the instant case, Appellant failed to object to Graham's testimony so it was all properly admitted and most of the other evidence alleged to be improper by Appellant was merely cumulative to this testimony. It was also cumulative to testimony by Tiffany James, a friend of Appellant. (T.931; 935; R. 421; 425). Further, several co-defendant's testified regarding their roles in the home invasion. They each testified Appellant planned and urged them to commit the burglary and robbery. (T.579-580; 702-704; 729-730; 832-833; 839; 877-878; 938-941; 952; R. 184-185; 216-218; 243-244; 344-345; 351; 389-390; 428-431; 442). As a result of the significant other evidence in the record, any error is entirely harmless.

Accordingly, the trial court properly found the testimony and evidence admissible under Rule 404(b), Lyle, and as part of the *res gestae* of the case. Further, the probative value of the evidence clearly outweighed the prejudicial nature of the testimony and evidence and so was admissible under Rule 403, SCRE. Therefore, this Court should affirm the trial court's decision to admit the testimony.

II. The trial court did not err in admitting the content of the voicemail. The voicemail helped establish the motive of Appellant in organizing the crime and was part of the *res gestae* of the crime committed.

Appellant maintains the trial court erred in admitting the contents of a voicemail message left on the phone of the victim's friend. The voicemail provided background or the *res gestae* of the crime and also established Appellant's motive in arranging the crimes to be committed.

Appellant left a heated and threatening voicemail for the victim on Graham's phone. In the voicemail, she recounts the confrontation with the victim's girlfriend. She then threatens that the victim better watch his back. She indicates the victim "done made me mad" and that he was "gonna get it." (State's Exhibit 72). The State admitted this evidence, just like the evidence discussed in Issue I, to demonstrate Appellant's motive for arranging the home invasion and as part of the *res gestae* of the crimes actually committed. The same arguments apply as applied in Issue I.

The *res gestae* was established because the threats occurred a relatively short time before the incident, established the background for the incident, and explained other testimony such as Graham's testimony that he immediately believed Appellant sent the men to the house because of all the problems occurring before. Further, the evidence fits as part of the escalating misconduct committed by Appellant towards the victim so it, like the other evidence, establishes a common scheme or plan. Finally, the evidence clearly indicates Appellant's motive in arranging and urging the home invasion because she threatened the victim, indicating he was "gonna get it." As a result, the trial court properly admitted the voicemail for the same reasons it correctly admitted the other evidence of prior bad acts by Appellant.

Further, Appellant seems to challenge whether the evidence of the prior bad act was established by clear and convincing evidence and whether the tape was properly authenticated. Neither issue was raised to the trial court, and therefore, neither is preserved for review on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court). Additionally, Graham testified at trial the DVD played contained the message left on his phone by Appellant. He testified it "fairly and accurately represent[ed] the message . . . that she sent to you on your telephone." (T.441; R. 68). As a result, the message was properly authenticated and supported by clear and convincing evidence.

III. The trial court did not err in denying the motion to sever Appellant's case from that of his codefendant.

Appellant contends the trial court erred in denying her motion to sever her case from her co-defendant. The trial court properly denied the motion because the same witnesses and the same evidence would be presented to establish Appellant's guilt as well as her co-defendant's guilt. Further, Appellant has failed to argue or establish how she was prejudiced by the court's ruling.

"A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown." State v. Harris, 351 S.C. 643, 652, 572 S.E.2d 267, 272 (2002). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 129 (Ct. App. 2005). The South Carolina Supreme Court has noted "a severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt. . . . An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial." Hughes v. State, 346 S.C. 554, 558–59, 552 S.E.2d 315, 317 (2001).

"The trial judge must act cautiously in allowing a joint trial." Walker, 366 S.C. at 657, 623 S.E.2d at 129 (citation omitted). "A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial." Id. at 657–658, 623 S.E.2d at 129 (citing Hughes, 346 S.C. at 559, 552 S.E.2d at 317; State v. Stuckey, 347 S.C. 484, 556 S.E.2d 403 (Ct.App.2001); State v. Holland,

261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973) (finding trial court's cautionary instructions to the jury in a joint trial "protected the rights of each individual appellant")).

In the instant case, the trial court properly considered the charges and the evidence to be presented. As discussed above, to prove Appellant guilty of accessory before the fact, the State had to demonstrate (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that some principal committed the crime. State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). As a result, the evidence against both Appellant and her co-defendant would come in through the same witnesses and the same evidence would need to be presented. The State had to demonstrate Appellant advised urged or aided in the commission of the crimes of burglary and armed robbery. Then had to prove she was not present, but that the burglary and armed robbery actually were carried out by the individuals that she commissioned to commit the offenses. As a result, no evidence unduly prejudicial to Appellant was admitted in this joint trial that would not have been admitted in Appellant's trial if conducted separately.

Further, Appellant has not and cannot demonstrate that a joint trial would compromise a specific trial right of hers or prevent the jury from making a reliable judgment about her guilt. She was able to effectively and fully cross-examine each witness. Neither defendant testified at trial, nor did the State admit any statements of Appellant's co-defendant implicating Appellant.

Finally, the trial court ensured the jury understood the trial and charges were separate and protected the rights of each defendant, including Appellant. (T.181; R. 18). Prior to trial, the court instructed the jury:

Just because the defendants are being tried together does not link them in any way as to a verdict that you would render in this particular matter or any other respect. These are two separate cases. Separate decisions must be made on each defendant in each distinct charge.

A unanimous verdict will be required on each defendant and each specific charge against each defendant, as indicated, separate decisions.

(T.223; R. 20). The trial court also protected Appellant's right to a fair trial during his charging instruction to the jury. He stated:

The case of each defendant, and the evidence and the law concerning that defendant must be considered by you separately and individually. There are two cases. Each defendant has separate charges. You consider them separately and individually. Your verdict does not have to be the same for both defendants. It doesn't have to be the same on the charges that are levied against them by the State of South Carolina. You might find one defendant guilty of a particular crime, or not guilty of a particular crime, and that doesn't impact your decision, or make your decision as to the remaining charges against that defendant, or the charges against the other defendant.

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

(T. 1196; R. 584). The trial court then explained each defendant's charges separately and distinct from the other defendant. (T. 1199; R. 587). In explaining the verdicts to the jury, the court then stated:

You can see, and I'll remind you again, these are 2 separate defendants, separate charges, separate decisions on all these matters. Your decision on one does not govern your decision on another. They are all separate, independent matters.

(T.1205-1206; R. 593-594). The trial court clearly and effectively protected Appellant's rights in this joint trial through the instructions he gave the jury.

Appellant seems to contend the charge given regarding Appellant's co-defendant in which the court charged hand of one is the hand of all was prejudicial. This argument is belied by the comments by Appellant's counsel at trial. In discussing the hand of one charge, counsel indicated he had no problem with the charge, which the court specifically tailored to restrict it only to the charges faced by the co-defendant. Counsel went so far as to state: "And Judge, if you are going to charge it, I don't object to it. There's so much language in there explaining it that, in some ways, I think it maybe even would benefit [Appellant]." (T.1109; R. 551). Appellant never objected to the charge, which clearly separated Appellant's charges from those of the co-defendant. As a result, prejudice has definitely not been shown.

The trial court correctly allowed the co-defendants to be tried jointly, and through his instructions to the jury, effectively ensured Appellant's rights were not violated by the joint trial and the jury's verdict as to Appellant was not influenced by its verdict as to her co-defendant. Accordingly, this Court should find the trial court did not abuse his discretion in denying the motion to sever.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case Tracking No. 2011-194088

The State,

Respondent,

vs.

Ladorrean Collington,

Appellant.

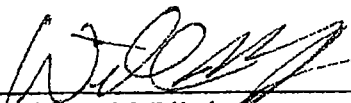
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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December 7, 2012

STATE OF SOUTH CAROLINA

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Honorable Steven H. John, Circuit Court Judge
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The State,

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 7th day of December, 2012.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ladorrean Collington, Appellant.

Appellate Case No. 2011-194088

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2013-UP-225
Heard April 10, 2013 – Filed May 22, 2013

AFFIRMED

Appellate Defender Susan B. Hackett, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Ladorrean Collington appeals her convictions of accessory before the fact of burglary in the first degree and accessory before the fact of armed robbery. Collington argues the trial court erred in: (1) admitting evidence of

prior difficulties between her and the victim; (2) admitting evidence of threats she allegedly made to the victim in a voicemail message; and (3) denying her motion for severance. We affirm.

1. As to whether the trial court erred in admitting evidence of prior difficulties between Collington and the victim, we affirm. To the extent Collington challenges Anthony Graham's and Officer Daniel Cradic's testimony concerning Collington's prior difficulties with the victim, we find these arguments are not preserved for appellate review. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (stating that to preserve an issue for appellate review there must be a contemporaneous objection that is ruled upon by the trial court); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (holding that in order to preserve an issue for appellate review, it must have been raised to and ruled upon by the trial court); *id.* at 142, 587 S.E.2d at 694 (stating a party may not argue one ground at trial and an alternate ground on appeal). As to the testimony of victim's live-in girlfriend, Frankie Davis, regarding a confrontation she had with Collington in the days preceding the home invasion, we find the evidence was admissible under Rule 404(b), SCRE and the *res gestae* theory. Here, the evidence of Collington's anger and jealousy over the victim's relationship with Davis was probative of Collington's motive and provided the jury with a context for the home invasion. *See* Rule 404(b), SCRE (stating that evidence of other crimes, wrongs, or acts is generally inadmissible to prove the defendant's guilt for the crime charged, but recognizing an exception to this rule when such evidence shows "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent"); *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (holding evidence of prior bad acts may be admissible under the *res gestae* theory when it "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case). Accordingly, we find the trial judge did not abuse his discretion in admitting Davis's testimony. *See State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the [trial] court's decision will not be reversed absent an abuse of discretion." (citation omitted)).

2. As to whether the trial court erred in admitting the contents of a voicemail message Collington left on the phone of the victim's friend during the week of the home invasion, we affirm. In the voicemail message, Collington indicated the victim "done made [her] mad" by living with another woman and that victim was "bouts to get it" and "better watch his . . . back." We find this evidence was logically relevant to show Collington's motive and intent to plan the home

invasion. See Rule 404(b), SCRE; *State v. Gaines*, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008) (holding "[t]o be admissible, the bad act must logically relate to the crime with which the defendant has been charged"). Additionally, we find the voicemail message was admissible under the *res gestae* theory. See *Adams*, 322 S.C. at 122, 470 S.E.2d at 370-71 (holding evidence of prior bad acts may be admissible under the *res gestae* theory when it "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case). Accordingly, we find the trial judge did not abuse his discretion in admitting this evidence. See *Morris*, 376 S.C. at 205-06, 656 S.E.2d at 368 (holding the admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion).

3. As to whether the trial court erred in denying Collington's motion to sever her trial from that of her co-defendant, we find the trial judge did not abuse his discretion in denying Collington's motion to sever the joint trial. See *State v. Simmons*, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) (holding a motion for severance is addressed to the sound discretion of the trial court and such determination will not be disturbed on appeal absent an abuse of discretion). In this instance, Collington failed to show that she was prejudiced by the joint trial. See *State v. Halcomb*, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009) (holding a "defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction" (citations omitted)). Furthermore, the trial court's curative instruction helped to protect Collington's rights and ensure that no prejudice resulted from the joint trial with her co-defendant. See *id.* (stating a "proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial").

AFFIRMED.

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

1418
★

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Horry

LaDorreon Chukell Collington #334220

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

14

563

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention J. Reuben Long Detention Center - 4150 J. Reuben Long Ave. Conway SC 29210
2. Name and location of Court which imposed sentence See Attached Columbia SC 29210
3. Name(s) of co-defendant(s) (if any) See Attached
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2610GS2601627 - Accessory before the fact to a felony
 - (b) 2610GS2601626 - Accessory before the fact to a felony
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 10, 2011 — 22 years
 - (b) June 10, 2011 — 22 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- ☒ (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 10, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ~~_____~~
- (b) ~~_____~~
- (c) ~~_____~~
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Conflict of Interest
 (c) Prosecutorial Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10): - See Attached -

- (a) - See Attached -
 (b) - See Attached -
 (c) - See Attached -

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Appellate
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ND
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ND
 (d) any other petitions, motions or applications in this or any other Court? ND

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. SC Court of Appeals
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Affirmed
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. April 10, 2013

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. N/A

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Gregory McCullum - 5116 29th Ave. North Myrtle Beach SC 29577
- ii. Susan B Hackett - P.O. Box 11589 Columbia SC 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Trial, + Sentencing + preparation
- ii. Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

New Trial, Reconsideration, Vacation of Sentence, Resentence

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Horry

VERIFICATION

563

I, DC, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ladarran Collington

SWORN to and subscribed before me this 22nd
day of January, 2014.

Vivian R. Padgett (L.S.)
Notary Public

My Commission Expires: August 25, 2015

HORRY COUNTY
14 JAN 27 PM 3:06
MELANIE JOHNSON-WARD
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

14

563

I, Jo, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ladream Collings
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of January, 2014.

Vieha R. Padgett
Notary Public

My Commission Expires: August 25, 2015

DOCKY COURT
14 JAN 27 PM 3:06
MELANIE JUDICIAL-WARD
CLERK OF COURT

Plea - Conviction Relief

Camille Griffin Graham Correctional Institution
 Horry County Court of General Sessions.
 1301 2nd Ave.
 Conway, SC 29526

14

563

1. Tiffany A James
2. Taniesha Smith
3. Andrew James
4. Donell James
5. Gregory Floyd
6. Quentin L. Gause

- A) 2010 GS 26D1627 - Accessory before the fact to A felony
- B) 2010 GS 26D1626 - Accessory before the fact to A felony

- A) June 10, 2011 - 22 years
- B) June 10 2011 - 22 years

After a plea of not guilty (B)

Yes

- A) SC Court of Appeals
- B) Affirmed
- C) April 10, 2013
- D) - - - -

N/A

- A) Ineffective Assistance of Counsel
- B) Conflict of Interest
- C) Prosecutorial Misconduct
- D) New Evidence

- A) Counsel failed to object to trial court error. He also failed to call expert witnesses.
- B) Conflict of interest becomes a factor due to the prior bad blood between the prosecuting attorney and defendant, back in 2006.

HORRY COUNTY
 14 JAN 27 PM 3:06
 MELANIE ROSSING WARD
 CLERK OF COURT

-) There was a personal vendetta steaming from 2006. This same prosecutor tried defendants brother on a murder charge in August 2000. Messages had been related back + forth thru a mutual acquaintance.
- 1) Letters from co-defendant stating facts.

Also for 11(C)

Prosecutor made it a point to have my charge information corrected with SCOC but allowed my co-defendant Tiffany James to leave on 65%.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
LaDorreean C. Collington, #334220,	)	Case No. 2014-CP-26-563
Applicant,	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed January 27, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2010 and March 2011, the Horry County Grand Jury indicted Applicant for four counts of accessory before the fact of a felony (2010-GS-26-1225, -1626, -1627, and 2011-GS-26-1276) for her role in an kidnapping, first degree burglary, armed robbery, and murder. Gregory M. McCollum, Esquire, represented Applicant. On June 6, 2011, Applicant proceeded to trial before the Honorable Steven H. John and a jury on only the charges related to the first degree burglary and armed robbery (2010-GS-26-1626 and -1627). On June 10, 2011, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to twenty-two (22) years imprisonment, concurrent for each charge.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's

conviction on May 22, 2013. State v. Collington, Op. No. 2011-UP-225 (S.C. Ct. App. filed May 22, 2013). The remittitur was returned to the circuit court on June 14, 2013.

II.

In her Application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to object to trial court error. He also failed to call expert witnesses."
2. "Conflict of Interest"
 - a. "Conflict of interest becomes a factor due to the prior bad blood between the prosecuting attorney and defendant, back in 2006."
3. "Prosecutorial Misconduct"
 - a. "There was a personal vendetta steaming from 2006. This same prosecutor tried defendants brother on a murder charge in August 2006. Messages had been related back and forth thru a mutual acquaintance.
 - b. "Prosecutor made it a point to have my charge information corrected with SCDC but allowed my codefendant Tiffany James to leave on 65%."
4. "New Evidence"
 - a. "Letters from co-defendant stating facts."

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent contends Applicant's allegation of a conflict of interest is wholly without merit and should be dismissed. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Prior interactions between Applicant and the solicitor handling her case do not rise to the level of a conflict of interest. Therefore, Respondent moves for dismissal of this allegation pursuant to Rule 12(b)(6), SCRPC.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

V.

Respondent submits Applicant's allegation regarding new evidence should be dismissed. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegation regarding new evidence is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 ("[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.'" (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). Therefore, Respondent request this allegation be dismissed pursuant to Rule 12(b)(6), SCRCR.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

LADORREAN C. COLLINGTON, #334220))

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

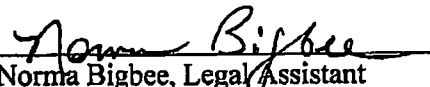
2014-CP-26-563

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 12TH day of June, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2014-CP-26-00563

4

5

6 Ladorrean C. Collington)

7 vs.)

8 State of South Carolina) Transcript of Record

9

10

11

12

February 7, 2017
Conway, South Carolina

13

14

15 BEFORE:

16 Honorable Michael G. Nettles, Judge.

17

18 APPEARANCES:

19

Jeremy A. Thompson, Esq.
Attorney for the Applicant

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Valerie Giovanoli, Esq.
Attorney for the State

21

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23

24

Teresa J. F. Bautz, RPR
Official Court Reporter

25

26

27

1	I N D E X				
2	WITNESS	DIRECT CROSS REDIRECT RECROSS			
3	Ladorrean C. Collington				
4	Mr. Thompson	7	--	--	--
5	Ms. Giovanoli	--	18	--	--
6	M. Greg McCollum				
7	Ms. Giovanoli	20	--	43	--
8	Mr. Thompson	--	38	--	--

9

10

11

12

13

E X H I B I T S

14	NO.	DESCRIPTION	ID	EV
15	Plaintiff's-1	Plea Offer	7	xx

16

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21 Exhibits retained by Clerk of Court.

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1 (The hearing commenced at approximately 9:34 a.m.)

2 THE COURT: Good morning, everybody, please be
3 seated. I recognize the Attorney General. I think the
4 first case is the Collington case. I recognize you if
5 you could, please, ma'am.

6 MS. GIOVANOLI: Yes, Your Honor. Good morning.
7 My name is Valerie Giovanoli on behalf of the State.
8 We're going to take the matter of Ladorrean Collington
9 versus the State of South Carolina first. I have
10 provided the judge's packets on the bench right there
11 for Your Honor.

12 THE COURT: Okay, good.

13 MS. GIOVANOLI: Ladorrean Collington. And, Your
14 Honor, I apologize, Ladorrean Collington's file is the
15 white box. It's the biggest one, I put it on the
16 bottom.

17 THE COURT: Okay. Mr. Thompson, how are you doing
18 this morning?

19 MR. THOMPSON: Doing good, judge, how are you?

20 THE COURT: Good. I'm going to recognize you and
21 ask you if you could sort of set out in summary form
22 the grounds for the post conviction relief.

23 MR. THOMPSON: Yes, Your Honor. May it please the
24 Court, for the record, my name is Jeremy Thompson. I
25 am here representing Ladorrean Collington. She alleges

1 generally that she received ineffective assistance of
2 counsel in violation of her Sixth and Fourteenth
3 Amendment rights under the United States Constitution
4 as well as the corresponding provisions of the South
5 Carolina Constitution. Generally, Your Honor, we just
6 have two -- we have two issues, specific issues, that
7 we're going to present here today.

8 The first has to do with a plea offer. So just by
9 way of brief factual background, this is a case that is
10 a joint trial. My client was originally charged with
11 murder. It was a home invasion where my client's
12 former boyfriend was killed. The State's case was
13 essentially that she had planned the incident and that
14 she had encouraged the folks who went in and killed him
15 to go in and rob him essentially.

16 So she was -- she was originally charged with
17 murder. She went to trial with Quinton Goss, I believe
18 I'm pronouncing that correctly, who was the -- who was
19 the alleged shooter. She was tried for accessory, he
20 was charged as a principal. And they were both
21 convicted at the conclusion of the trial.

22 And basically, Your Honor, the two allegations,
23 one pertains to a plea offer that was made prior to the
24 trial about three, three, four months prior to the
25 trial, a plea offer, with a recommended sentence of 12

1 years for accessory before the fact to armed robbery
2 was made by the State. My client alleges that she had
3 not -- she did not know of that offer, she did not see
4 that offer, she was not advised of it and that had she
5 known of it, she would have taken the offer.

6 And so with that issue, Your Honor, we're
7 requesting relief under the United States Supreme Court
8 decision of Lafler versus Cooper, which is -- which
9 basically, Your Honor, says that -- the remedy is you
10 require the State to reopen the plea offer and that the
11 presiding judge gets to decide whether she would, you
12 know, get the reduced sentence under the plea offer or
13 to reimpose the original sentence.

14 And then, the second issue, Your Honor, has to do
15 with the direct appeal in this case. There were some
16 prior bad acts that were alleged between -- prior
17 difficulties between my client and the victim. And
18 when the trial began and prior to the trial, defense
19 counsel filed a motion to exclude those prior bad acts.

20 And there were three witnesses in particular who
21 testified about those prior bad acts. Defense counsel
22 only renewed his objection to the testimony during one
23 of those witness' testimony. The other two he did not
24 raise an objection when the witness was testifying
25 about the prior bad acts. And we would allege that the

1 Defense counsel was ineffective for failing to renew
2 his objection.

3 The Court of Appeals found that the issues were
4 unpreserved. I do believe the opinion, I'm sure, is in
5 the packet. The Court of Appeals, it's issue number
6 one in the opinion that found that they were
7 unpreserved with regard for full disclosure, with
8 regard to the one that was preserved, the Court of
9 Appeals affirmed and said that the prior difficulties
10 were properly admitted.

11 But it's our allegation based on the arguments
12 that were presented in the brief of Appellant that had
13 defense counsel renewed his objection to the other two
14 that based on those arguments that the result of the
15 appeal essentially would have been different, that she
16 would have won on appeal.

17 So that's essentially our case in a nutshell, Your
18 Honor. And with that background in mind, I would like
19 to call Ladorrean Collington as our first witness.

20 THE COURT: Yes. Ms. Collington, please come
21 forward. And I'm going to ask if you could to place
22 your left hand on the Bible and raise your right hand
23 as the clerk administers the oath. I'm going to ask
24 you to watch your step as well.

25 LADORREAN C. COLLINGTON, after being duly sworn,

LADORREAN C. COLLINGTON-DIRECT BY MR. THOMPSON

7

1 testified as follows:

2 THE CLERK: You may be seated.

3 THE COURT: I'm going to ask, if you could, to
4 have a seat in the witness chair. Pull up real close
5 to that microphone, speak loudly, clearly and slowly in
6 order that we can hear everything that you have to say.
7 And let's start with your full name, please, ma'am.

8 THE WITNESS: Ladorrean Chukell Collington.

9 THE COURT: Okay, very good. Yes, sir.

10 MR. THOMPSON: All right, Your Honor, we have an
11 exhibit that both parties have stipulated come in. So
12 mark it as Applicant's-1.

13 THE COURT: Very good.

14 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
15 for identification only.)

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q Ladorrean, how are you this morning?

19 A I'm fine, how about you?

20 Q You can be very soft spoken in my experience. So
21 I would just like to remind you that the lady sitting
22 next to you has to take down everything that you say,
23 so speak up and speak clearly; okay?

24 A Yes, sir.

25 Q All right. I want to start by just getting some

1 background information from you regarding the case. Do
2 you recall about when you were arrested in this case?

3 A Yes, sir. 2008, April.

4 Q April of 2008?

5 A Yes, sir.

6 Q And who represented you at your trial?

7 A At the trial it was Mr. McCollum.

8 Q And how long did he represent you?

9 A For about, I would say, like two years.

10 Q And he was --

11 A A year.

12 Q -- appointed to represent you or was he retained?

13 A Appointed.

14 Q And were you in jail or on bond during this case?

15 A During the trial process?

16 Q Before. Let me just strike that. How long were
17 you in jail on this charge?

18 A For almost three years.

19 Q And did you eventually get out on bond?

20 A Yes, sir.

21 Q Do you remember when you got out on bond?

22 A I got out on bond February the 18th, 14th or 18th.

23 Q Of what year?

24 A 2011.

25 Q So you were in jail almost three years?

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9

1 A Yes, sir.

2 Q Now, while you were at the jail, how many times
3 would you say that Mr. McCollum came to meet with you?

4 A Numerous times. I can't recall how many, but...

5 Q And --

6 A Corresponded a lot through mail, but he came out a
7 lot.

8 Q And your trial was in June of 2011. How many
9 times between when you got out on bond in February and
10 the trial would you say you met with him at his office?

11 A I think twice.

12 Q So y'all -- and you said you wrote him letters.
13 Would he write you back generally?

14 A Yes. If he didn't write back, Ms. Kathy would.

15 Q And who is Ms. Kathy?

16 A I think secretary, like, I think --

17 Q Paralegal or something along those lines?

18 A Yes, sir.

19 Q Now, when you went to trial, what were you tried
20 for, what charges were you tried for?

21 A Originally when I went to trial, my charges
22 didn't -- from my understanding, my charges didn't
23 change until -- when we got to trial that day, they
24 said they was going to try me on -- I had all the
25 original charges. Then they said he was going -- he

1 told me they was going to try me on the accessory
2 charges.

3 Q Right. That's what I'm trying to get at. What
4 were the original?

5 A Murder, kidnapping, burglary first and strong arm
6 robbery.

7 Q And those were just straight up charges, those
8 weren't accessory-before-the-fact charges; were they?

9 A No, sir.

10 Q And so you went to trial on
11 accessory-before-the-fact charges?

12 A Yes, sir.

13 Q But prior to trial you were charged with murder?

14 A Yes, sir.

15 Q And did -- who was your prosecutor in your case?

16 A Ms. Von Herrmann.

17 Q Heather von Herrmann?

18 A Yes, sir.

19 Q Did you have any dealings with her, did you know
20 her before your trial?

21 A Yes, sir.

22 Q And just generally, what were your dealings with
23 Ms. Von Herrmann?

24 A Back in, I think it was 2006, my brother had an
25 open case. And during the time Ms. Von Herrmann was

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1 engaged to -- she was Heather Toller then. She was
2 engaged to Mr. Bert von Herrmann. And both of them was
3 there for my -- they was working in the public -- the
4 solicitor's office, I believe. They was working in the
5 solicitor's office, and both of them was there to try
6 my brother.

7 And during the middle of the trial, Ms. Toller,
8 she sent me a message through a public defender, Mr.
9 James Galmore. He gave me the message, and the message
10 was --

11 MS. GIOVANOLI: I'm going to object to hearsay at
12 this point.

13 THE COURT: Sustained.

14 MR. THOMPSON: What I'm trying to get at, Your
15 Honor, I'll just ask a follow-up question.

16 Q Did you have reason to believe in your mind that
17 Ms. Von Herrmann had a personal issue with you?

18 A Yes, sir.

19 Q And did you receive any plea offers in this case
20 to the best of your knowledge?

21 A No, sir.

22 Q And why did you think that was?

23 A Okay. That, from the beginning, I was -- I kept
24 saying that they was offering my codefendants pleas,
25 but nobody never came to me. And even since I been

1 incarcerated, that was my biggest thing. And from
2 looking at this paper that I'm looking at now, during
3 the time that I got a bond it was February. The only
4 reason my mother came and bonded me out is because from
5 what they told the judge at the bond hearing, the trial
6 wouldn't be for another over a year. And from what
7 Mr. McCollum told me from talking to them, it was not
8 going to be no time soon for the trial.

9 Nobody never -- he never said nothing about a
10 plea. I never heard -- the trial, from my
11 understanding, would be way over a year. So my mom
12 came and got me out.

13 Then a month after I got out, I got a phone call
14 from Mr. McCollum, and he said he had some bad news,
15 that the trial was set for June. And I said, that
16 defeated the purpose, I could have stayed in jail.

17 Q And did you -- so your codefendants were receiving
18 plea offers?

19 A Yes, sir.

20 Q Did you -- did you understand why you were not
21 receiving a plea offer? What was your belief as to why
22 you did not receive a plea offer?

23 A Well, in my mind I really -- I felt like it was
24 just she was giving them pleas, of course, to help the
25 State. And she wasn't offering me one because she was

LADORREAN C. COLLINGTON-DIRECT BY MR. THOMPSON

1 just out to get me.

2 Q And that's all I was trying to get to. Now, you
3 have what's in front of you as Applicant's Exhibit
4 No. 1. Have you had a chance to review that document?

5 A Yes, sir.

6 MR. THOMPSON: Judge, as you can see, there are
7 many different letters in here.

8 Q I'm going to ask you to flip to the very back
9 page. This is a written plea offer from the State to
10 your attorney. And it's dated February 3rd, 2011. In
11 February of 2011, did you see this document?

12 A No, sir.

13 Q When was the first time you saw this document?

14 A When you brought it to me at Camille (phonetic).

15 Q And it says, the Defendant will plead guilty to
16 accessory before the fact, armed robbery, the State
17 offers 12 years. Were you -- and so you just testified
18 that you had never received a plea offer. So you
19 didn't know of the existence of this plea offer; did
20 you?

21 A No, sir.

22 Q And if you flip back -- I'll flip it for you.

23 MR. THOMPSON: This is two more pages back, Your
24 Honor.

25 Q This is a letter dated February 16th, 2011 from

1 your attorney to Judge John. And the second paragraph
2 says, the next day, February 4th, 2011, I met with
3 Ms. Collington at J. Reuben Long and explained the plea
4 offer. Understanding that no other plea offers will be
5 extended, the trial is set for the term of court of May
6 16, 2011. Ms. Collington has rejected the plea offer
7 and will be ready for trial as scheduled.

8 To the best of your recollection, did that meeting
9 ever occur?

10 A We talked about -- I know Mr. McCollum came out to
11 the jail house, and it was due to the bond hearing. He
12 came out and said they had agreed, I guess, to -- I
13 don't know who, but they had agreed on a bond for, I
14 think, 150,000 or something like that. But a plea was
15 never discussed.

16 And there's a spot on here for signature, whether
17 you want to go to trial or plea. I've never seen this
18 paper.

19 Q And if you flip to the next page, says there's --
20 says, courtesy copy, Ladorrean Collington. Did you
21 ever receive a copy of this letter?

22 A No, sir. And I have a folder, I had a folder that
23 I brought to the trial with me that had everything in
24 it from A to Z. Because it was times at the trial
25 where they needed papers, and I flipped through my

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15

1 folder and found the papers. And I've never had
2 received this at all.

3 Q Now, if you flip back two more, this is a letter
4 dated February 16th to the prosecutor, again, informing
5 that the prosecutor that you have rejected the plea
6 offer. And there is a courtesy copy, again, to you at
7 the bottom. Did you ever call receiving this letter?

8 A No, sir.

9 Q Now, again, you were charged with murder at the
10 time; correct?

11 A Yes, sir.

12 Q And so at that point in time did you believe you
13 were going to go to trial on murder charges?

14 A No, sir.

15 Q Did you think you were going to trial on accessory
16 before the fact charges?

17 A No, sir. I don't think the charges got changed
18 until after I made bond. Because when I went to the
19 bond hearing, they brought up the four original
20 charges. I don't think that the accessory -- and even
21 if it was accessory, the original charges were still on
22 the table with the accessory charges with everything.

23 Q And so you were aware that, for example, burglary
24 first carried 15 to life?

25 A Yes, sir.

1 Q And that murder carried 30 to life?

2 A Yes, sir.

3 Q If you had been told that you would get a sentence
4 of 12 years if you took that plea, would you have taken
5 that plea instead of going to trial?

6 A Yes, sir.

7 Q And is that what you want, is that what you want
8 today; do you want the opportunity to go back and get
9 that plea offer?

10 A Yes, sir. I would like to.

11 Q Now, I talked about it a little bit in my opening
12 presentation. Who is the victim in this case?

13 A Allen Smith.

14 Q And how did you know Mr. Smith?

15 A I was pregnant from him.

16 Q And did the -- in kind of the State's presentation
17 of its case, the State alleges you had had prior
18 difficulties with Mr. Smith?

19 A Yes, sir.

20 Q That you had had arguments with him?

21 A Yes, sir.

22 Q Did you discuss with Mr. McCollum trying to keep
23 those arguments out of evidence to keep the jury from
24 hearing them?

25 A Yes, sir.

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17

1 Q And did Mr. McCollum actually file a motion to
2 keep those out; do you remember that?

3 A I don't know if he filed a motion.

4 Q But that was part of your strategy was to try and
5 keep those out?

6 A Yes, sir.

7 Q And you're aware that that evidence came in?

8 A Yes, sir.

9 Q And that the judge ruled against you on those
10 issues?

11 A Yes, sir.

12 Q And would you have wanted defense counsel to renew
13 his objections to keep those issues preserved for
14 appeal?

15 A Yes, sir.

16 Q And are you aware that the Court of Appeals found
17 that those issues weren't preserved because your
18 attorney did not renew his objection?

19 A Yes, sir.

20 Q And do you believe that he was ineffective for
21 failing to make that objection at your trial?

22 A Yes, sir.

23 Q All right. I think I've covered most of our
24 issues here today. If given the choice, which would
25 you rather have; would you rather have a new trial, or

1 would you rather get that plea of 12 years?

2 A 12 years.

3 Q And you understand that if the judge gives you a
4 new trial, if he grants you a new trial, that you are
5 again -- you know, your charges come back and then
6 you -- you know, you did not get the maximum sentence,
7 you did not get a life sentence; do you understand
8 that?

9 A Yes, sir.

10 Q And then you would be facing life again if for
11 nothing else, then the accessory before the fact, first
12 degree burglary; do you understand that?

13 A Yes, sir.

14 Q Knowing that, do you still want to go forward here
15 today?

16 A Yes, sir.

17 MR. THOMPSON: Your Honor, I think that's all I
18 have.

19 THE COURT: Okay. Cross-examination.

20 MS. GIOVANOLI: Thank you, Your Honor. Just
21 briefly to clarify some things.

22 CROSS-EXAMINATION

23 BY MS. GIOVANOLI:

24 Q You said that you got out on bond in February of
25 2011?

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1 A Yes, ma'am.

2 Q Okay. Do you recall the specific date?

3 A I want to -- my mom would know better, I think it
4 was February the 14th or 18th.

5 Q Okay. So and when you got out, where were you
6 residing?

7 A At my mom's address.

8 Q And what was that address?

9 A [REDACTED] Sherman Place.

10 Q Is that in Conway?

11 A Yes, ma'am.

12 MS. GIOVANOLI: Okay. Nothing further.

13 THE COURT: Any redirect?

14 MR. THOMPSON: No, Your Honor.

15 THE COURT: You may step down. Thank you, ma'am.

16 THE WITNESS: You're welcome.

17 (Witness excused.)

18 MR. THOMPSON: I don't believe the Applicant has
19 any more witnesses, Your Honor.

20 THE COURT: The State, you're recognized.

21 MS. GIOVANOLI: Yes, Your Honor. The State would
22 call Greg McCollum to the stand.

23 THE COURT: Mr. McCollum, please come forward.

24 Once again, I'm going to ask if you could place your
25 left hand on the Bible and raise your right hand as the

1 clerk administers the oath.

2 GREG McCOLLUM, after being duly sworn, testified
3 as follows:

4 THE CLERK: You may be seated.

5 THE COURT: Pull up real close to that microphone,
6 speak loudly, clearly and slowly in order that we may
7 hear everything that you have to say. And your full
8 name, Mr. McCollum.

9 THE WITNESS: Greg McCollum, M-C-C-O-L-L-U-M.

10 THE COURT: Thank you. Yes, ma'am.

11 MS. GIOVANOLI: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. GIOVANOLI:

14 Q Good morning. Thank you for being here, Mr.
15 McCollum.

16 A Good morning.

17 Q How long have you been practicing law?

18 A Since 1988.

19 Q Okay. And of that time, how much of that has been
20 criminal law?

21 A 95, 98 percent of it.

22 Q Okay. And do you recall how you came to be a part
23 of this case?

24 A I was appointed to represent Dora. And I probably
25 was asked to do it by the public defender's office and

GREG McCOLLUM-DIRECT BY MS. GIOVANOLI

21

1 agreed to do it.

2 Q All right. Do you recall when that was?

3 A I don't recall that exactly, no.

4 Q And what were the charges in this case when you
5 were appointed?

6 A It was a murder case with some other charges, I
7 think armed robbery. There was a burglary first
8 degree, home invasion, murder. There might have been
9 some other charges in there as well.

10 Q Could you briefly describe the facts and the
11 State's evidence in this case.

12 A Essentially what happened is that Dora lived, you
13 know, within probably walking distance to the victim.
14 And the essential case was that -- allegation was that
15 the perpetrators had met at her house where they had,
16 you know, suited up, got -- you know, had the guns or
17 their plan or whatever. And they were going to go over
18 to the victim's house and break in. Because they
19 somehow got it in his head that they had 40 stacks,
20 which would have been a stack is a thousand dollars, so
21 \$40,000 in the house, I think, as a result from some
22 alleged drug sales.

23 So the State's case was that they met up at Dora's
24 and, I think, walked through, there was a path from one
25 apartment complex to where these, I think, duplexes or

1 quads were, broke in and ended up shooting the victim
2 to death while there were some other people in the
3 household that were -- one was hiding and not everyone
4 was killed.

5 And then they left with something, not what
6 they -- you know, what was originally said. And then
7 at that point they just fled. So I recall they didn't
8 go to Dora's house, they went to some other places and
9 left a trail of evidence that was eventually found.

10 Q Okay. Do you recall the State's witnesses in this
11 case?

12 A I recall some of them. Essentially the whole case
13 was that they had had this meeting, and so the State's
14 theory was that she had master minded this or come up
15 with this plan. And that's what people testified to, I
16 think, people given different deals to testify to that.

17 Q Do you recall how many witnesses the State had?

18 A I don't remember that exactly.

19 Q Do you recall that the witnesses, the majority of
20 them were codefendants?

21 A Yeah. I remember they were -- you know, they were
22 involved in the case, from our perspective, you know,
23 much more so than Dora. I mean, Dora, from what I
24 remember, she didn't kill anybody. She didn't shoot
25 anybody, she didn't break in any house. I don't think

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23

1 there was ever any evidence that she had any of the --
2 you know, the stuff that came from the crime.

3 So and when she was testifying, I was remembering
4 a little bit about that, it seemed like she was
5 probably the least culpable person in it, but certainly
6 seemed, as I recall, that's the focus of the
7 prosecution.

8 Q You said some of the codefendants were involved.
9 To what extent were they involved?

10 A You know, breaking in the -- literally kicking the
11 door in, entering the house with guns drawn, screaming,
12 you know, where's the -- can't remember when it was,
13 but basically the money, you know, and going through
14 the house terrorizing everybody and then shooting the
15 victim to death.

16 Q So they actually participated in the robbery?

17 A Yeah, they -- well, they did the robbery. Dora
18 didn't do the robbery. She was at her house.

19 Q And she was charged with accessory before the fact
20 of armed robbery and burglary; correct?

21 A Yeah. At some point she was.

22 Q And that's what she went to trial on?

23 A Yeah.

24 Q But she wasn't charged with actual armed robbery,
25 burglary, murder or kidnapping? Excuse me, let me

1 rephrase. She didn't proceed to trial on actual
2 charges of armed robbery, burglary, kidnapping and
3 murder?

4 A I don't think that she did. And because I -- but
5 I don't think we knew that until the trial started.
6 Because I remember thinking, you know, an element of
7 accessory before the fact is that you can't be present.
8 So I was curious as to how they were going to prove the
9 murder, argue the murder, and the accessory at the same
10 time. But I think what they did is they elected not to
11 go forward on those substantive charges and try her as
12 an accessory before.

13 Q Do you recall any pretrial motions in this trial?

14 A I remember some of it, more from the testimony
15 here that -- most of the case against her were, you
16 know, arguments, prior bad acts, you know, threats or
17 something, which I thought really shouldn't have been
18 admitted. But I think everything came in.

19 Q And did you, in fact, argue that they shouldn't
20 come in?

21 A Yes.

22 Q Those prior difficulties?

23 A Yes. As I remember that, yes. We argued that it
24 shouldn't come in. And if they did come in, then the
25 case against her was a lot weaker.

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25

1 Q Right. And just for the record, how did the Court
2 rule on those issues?

3 A I don't remember exactly, but I think the Court
4 allowed every bit of it to come in.

5 Q Do you know on what basis? It's okay if you
6 don't. The transcript will speak for itself. Okay.
7 So moving on to the actual when the evidence came in
8 and the witnesses were testifying as to the prior
9 difficulties between the Defendant at the time and the
10 victim, did you make any objections at that point?

11 A It's -- I haven't looked at the transcript lately,
12 but yes, that would be -- what I would do, typically,
13 and it's all in the record, so I would argue the motion
14 to exclude it. And then when it's actually admitted
15 make a contemporaneous objection at that point, which
16 is always a little bit awkward, you know, when it's
17 coming in.

18 And then at the close of the State's case and at
19 the close of the defense case, I would typically renew
20 all the motions and all the objections that had been
21 made.

22 Q Okay. Now, going to the during the pendency of
23 this trial, do you recall how many times you met with
24 your client at the time, the Applicant?

25 A No, I don't remember. She was incarcerated for a

1 long period of time. And that's always an issue, you
2 know, to spend a lot of time at the jail. But those
3 visits really do more to, you know, lift the morale of
4 the person being represented, the client. They're not
5 as -- really they're not that helpful in terms of
6 strategy because it's only really necessary if you have
7 questions and things you need to present and ask. But
8 clients obviously are sitting in jail, they want their
9 lawyer to come and visit with them.

10 Q Did you meet her at J. Reuben Long?

11 A Yeah, I think so.

12 Q Do you recall how many times?

13 A I don't, no.

14 Q Okay. Did you communicate via letters?

15 A Yeah. That's just standard procedure. We try to
16 send a copy of all correspondence to the client whether
17 they are incarcerated or not.

18 Q After she was released on bond, did you have an
19 opportunity to meet with her in person before the
20 trial?

21 A Yeah, I think. I don't know how many times, but
22 certainly we met with her. And then what I remember is
23 that she was able to come into the office, so it was a
24 lot easier.

25 Q Now, during those meetings did you discuss the

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1 Applicant's constitutional rights, her right to a jury
2 trial?

3 A Yeah. I mean, we would explain to them, try to
4 explain to them what would take place and what the
5 consequences may be.

6 Q Did you discuss with her her right to remain
7 silent?

8 A Yeah, we would do that. I don't remember
9 specifically, but I would --

10 Q But in your general practice?

11 A Yeah.

12 Q And in your general practice, do you discuss with
13 your clients their right to confront witnesses,
14 accusers?

15 A Yeah, we explain that to people. Because a lot of
16 people think that police reports and those kind of
17 things are coming into evidence. They don't understand
18 that most of the file really is not -- it's just there
19 for informational purposes, it's not evidence.

20 Q Okay. Did you make a motion for discovery in this
21 case?

22 A Yes.

23 Q And did you receive that discovery?

24 A Yes.

25 Q Did you review the discovery?

1 A Yes.

2 Q Did you review it with the Applicant?

3 A We would go over things that we thought were
4 important.

5 Q Did you ever provide the Applicant with her own
6 copy of discovery?

7 A I would think so. We would normally do that.

8 Q Okay. Did you discuss with -- in your general
9 practice, do you discuss with your clients the State's
10 burden of proof?

11 A Yes. Yeah, we would talk about that.

12 Q Did you discuss with the Applicant her version of
13 the facts?

14 A Oh, yes.

15 Q And what were those?

16 A That I think she had a -- she was feeling ill and
17 she may have had a child that was sick. And so the --
18 from our perspective and from talking to her was that,
19 you know, she was busy, she had things going on in her
20 life. This was the father of her child. Maybe they
21 had some disagreements or arguments.

22 But she had really no motive to harm him and that
23 these other people maybe based on something she said or
24 they somehow got the idea that that would be a good
25 idea. More of just -- it was more of just

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29

1 happenstance, they just happened to be at her house
2 that they could have gone somewhere else prior to the
3 home invasion.

4 Q So while we're on this topic of the prior
5 difficulties, do you recall the specific difficulties
6 that came into evidence during the trial?

7 A I think that she -- someone testified that she had
8 gone over and like thrown a rock at the window or
9 screamed at him or something. And there were a couple
10 of incidents like that.

11 Q Was there a note on the rock?

12 A Maybe so, yeah.

13 Q And do you recall any other incidents?

14 A Not specifically. But I remember there were
15 things that didn't -- you know, that came in, just bad
16 conduct on her part basically just being rude and nasty
17 to somebody. But I didn't really think they were
18 evidence.

19 Q Were there voicemail messages that came in at
20 trial?

21 A I think so. I can't remember specifically.

22 Q That were made by the Applicant and left on the
23 victim's phone?

24 A Yeah, I think so.

25 Q Was there evidence of prior difficulties between

1 the Applicant and the victim's then girlfriend?

2 A I don't remember specifically. But that sounds
3 right.

4 Q Okay. I'm going to move forward to the allegation
5 that you didn't inform your client of the plea offer.

6 MS. GIOVANOLI: May I approach, Your Honor.

7 THE COURT: Yes.

8 Q I'm going to show you what's previously marked as
9 Applicant's Exhibit 1, it's a composite exhibit. And
10 if you'll please turn to page five, this was a letter
11 written by you to Judge John and signed on page six. I
12 apologize, I'm referring to page numbers, but there are
13 none. Sixth page has your signature. Do you recall
14 writing this letter?

15 A No, I don't specifically recall it, no. But
16 obviously it's from my office.

17 Q Is that your signature?

18 A It's my name signed by my legal assistant at the
19 time, Kathy.

20 Q Okay. And she had authority to sign for you?

21 A Yeah, on these letters, yes.

22 Q Okay. And then on the fourth page, that's also a
23 letter to the solicitor, Heather von Herrmann?

24 A Yes.

25 Q Is that also an authorized signature?

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1 A Yes.

2 Q And on page one, that is a letter to the
3 Applicant, Ladorrean Collington; is that also an
4 authorized signature of yours?

5 A Yes.

6 Q And the content of these letters states that you
7 have met with Mrs. Collington regarding the plea offer
8 from the State and that she had refused that plea
9 offer. Is that your recollection of events?

10 A It is. And it -- you know, I don't remember where
11 we were when we talked about it, but if my memory is
12 correct, it was -- she really wasn't, you know, going
13 to hear about that. It was -- she strongly believed in
14 her innocence and that she would be acquitted at trial.
15 I thought that based on the evidence that that could
16 very well be the case.

17 And so, you know, I told her there was a plea
18 offer. And lots of times in these kind of situations,
19 the clients just don't want to hear it, you know, they
20 don't -- and I don't think I really, you know, pressed
21 her and pushed on her, you know, and spent 30 minutes
22 of really intensely telling her all the horrible things
23 that could happen to her. But I do have a recollection
24 of talking to her about it and it just being off the
25 table that she was not pleading.

1 Q Well, understanding that you didn't press her to
2 accept the plea offer, but did you inform her of the
3 plea offer?

4 A Yeah. I mean, and we would never have written a
5 letter saying that we met with her and then informed
6 the Court and prosecutor that we had done that if we
7 had not, in fact, done it.

8 Q On the last page of that composite exhibit there's
9 an actual written offer with a space for your signature
10 and the Applicant's signature. And this document is
11 not signed by anyone. Is there any reason why you
12 didn't have the Defendant sign that document?

13 A Not particularly. But many times when we have a
14 plea offer like this, the client may not be with us, or
15 they may, some of them -- may not be in the same town.
16 So we would -- if it is signed, many times we just sign
17 it. And then in this case all of these letters would
18 serve as confirmation of it, and we would just be -- I
19 mean, we could have turned down the plea offer without
20 even sending this document, you know.

21 The question is was the plea offer correct, and
22 did we inform the State and the Court that she was
23 going to decline it, because that was the issue for
24 setting the trial.

25 Q Okay. And is that what happened here, that you

GREG MCCOLLUM-DIRECT BY MS. GIOVANOLI

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1 informed the solicitor early that you were declining
2 the offer?

3 A I can't remember specifically but, I mean, it
4 looks likes we had in writing that she had turned it
5 down. We told Ms. Von Herrmann that she had been
6 advised of it, she wasn't going to do it, and that the
7 case would be set for trial and that we had told her,
8 told Dora, that there wouldn't be any more plea offers.

9 And that was the stopping point. It was either
10 accept it now, or go to trial. And we had clearly made
11 a decision that we were going to trial.

12 Q Okay. And she was adamant about going to trial?

13 A Yeah. I think she was just -- you know, I mean, I
14 think she was looking forward to the trial, because I
15 think she firmly believed that she would be acquitted.

16 Q This letter, the letter that went to
17 Mrs. Collington with the enclosures, I'm assuming that
18 the enclosures were the letter to Judge John and the
19 letter to the prosecutor; is that correct?

20 A Yes.

21 Q Okay. And was it ever returned to your office as
22 undeliverable?

23 A I don't remember it being returned, you know. And
24 look, I mean, I can't say with absolute certainty, you
25 know, that my legal assistant did what I trusted her to

1 do. But I didn't have issues with her not doing
2 things.

3 Q Does that legal assistant still work in your
4 office today?

5 A No.

6 Q Was she fired?

7 A No. And it wasn't, you know -- we parted ways,
8 she resigned.

9 Q Did you have any other instances of her not doing
10 what you told her to do?

11 A No. She cared about people. That was one of the
12 best qualities that she had is that she really cared
13 about the people that we were representing and helping.
14 And, I mean, she was the kind of person that would try
15 to do everything she could to make sure that we did
16 what we were supposed to do to help them as much as
17 possible.

18 Q And in this case did you have an opportunity to go
19 through your file, your old file, regarding this case?

20 A To testify here today?

21 Q Yes.

22 A No. And you could probably tell by my answers
23 that I haven't studied it.

24 Q Okay. Did you provide this letter to PCR counsel,
25 Mr. Thompson?

GREG MCCOLLUM-DIRECT BY MS. GIOVANOLI

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1 A Yeah. He had contacted my office and said he
2 wanted to look at the file. And so, not me but my
3 staff had told him that it was here and we had a space
4 for him where he could come and review it. I think he
5 did that twice. I only met him on one occasion.

6 Q Are you aware of anyone finding anything in the
7 file when they were looking for this letter, an
8 undelivered letter, a returned letter?

9 A No one said anything to me about that.

10 Q Okay. Were you aware of any bad blood between the
11 solicitor and the Applicant in this case?

12 A Dora kept talking about there was something that
13 she felt the von Herrmanns didn't like her brother and
14 they had -- she was at the trial and, yeah, she brought
15 that up repeatedly.

16 Q And did you notice any type of animosity between
17 the solicitor and your client?

18 A You know, not -- I don't think necessarily
19 anything out of the ordinary. I mean, there's always,
20 especially certain prosecutors are always take a very
21 dim view of a lot of the people that we're
22 representing. And they are, you know, so-called, you
23 know, out to get them, and that's the way people feel.
24 But that's the system, that's the process.

25 In terms of the plea offers, though, it always

1 seems strange to me if you are offering plea deals to
2 people who kick down doors, arm themselves, shoot
3 people to death, you know, because you're saying
4 somebody else master minded it. You know, we run into
5 that sometimes. And there are different theories that
6 somebody could have on that. But to me the person that
7 goes in the house and does those brazen acts would be
8 my choice of the person to prosecute if I were the
9 prosecutor.

10 Q And wasn't Quinton Gause the one who actually went
11 into the house and shot the victim?

12 A I can't remember his name, but I -- yeah, there
13 was -- it was a pretty ugly scene.

14 Q It was your client's codefendant; do you recall?

15 A Yeah. That was -- so he was represented by Ron
16 Hazzard.

17 Q And with regard to the plea offers, those were
18 extended to codefendants that were cooperating with the
19 State --

20 A Yes.

21 Q -- correct?

22 THE COURT: What did the shooter -- what sentence
23 did the shooter receive?

24 MS. GIOVANOLI: Let me check the transcript for
25 that real quick. I apologize, Your Honor.

GREG MCCOLLUM-DIRECT BY MS. GIOVANOLI

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1 THE COURT: Do you recall, Mr. McCollum?

2 THE WITNESS: No, I don't. But it was probably
3 pretty lengthy.

4 MS. GIOVANOLI: 42 years.

5 THE COURT: Okay. And Ms. Collington got 22; is
6 that correct?

7 THE WITNESS: It was either 22 or 23.

8 THE COURT: Very good.

9 MS. GIOVANOLI: It was 22. Okay, nothing further
10 for this witness. Thank you. Answer any questions
11 Mr. Thompson has.

12 THE COURT: Cross-examination, Mr. Thompson.

13 MR. THOMPSON: Just briefly, Your Honor.

14 THE COURT: While he's getting that together, the
15 prior bad acts, were they issues that were elicited to
16 show motive and bad blood?

17 THE WITNESS: Yeah, I think so.

18 THE COURT: All of them are very similar like
19 voice messages that were left and a rock that was
20 thrown and those type things?

21 THE WITNESS: Yeah. It was her expressing her
22 displeasure with him, okay. So she's -- I mean, Dora's
23 a, you know, a fairly unrestrained person in terms of
24 expressing her emotions, okay. So that's -- I saw that
25 more as her personality as opposed to her having, you

1 know, malice to go and kill him.

2 THE COURT: Okay, very good.

3 CROSS-EXAMINATION

4 BY MR. THOMPSON:

5 Q Mr. McCollum, I just have a few questions for you.

6 Are you aware of there being any other plea offers; I
7 mean, was this the only one you ever got, to the best
8 of your knowledge?

9 A I don't remember any others. And this one, I
10 mean, the way the case was prosecuted, I mean, for a
11 couple of years, I think I was a little surprised, you
12 know, that we got this plea offer. You know, because
13 if she was guilty and if she were going to consider a
14 plea, other than it being, you know, I think it was
15 within the 85 percent range, but, you know, it's not --
16 it's not terrible.

17 Q The 12 years was not a terrible result. I mean,
18 especially in comparison to a murder charge?

19 A Yeah, yeah. And especially in light of what
20 actually occurred, you know, it's half of the sentence
21 that she received.

22 Q When you had this discussion, I know you said you
23 don't have much specific recollection of any
24 discussion, but did you think -- did you think the case
25 was going to proceed to trial on the murder charge?

GREG MCCOLLUM-CROSS BY MR. THOMPSON

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1 A I -- you know, I think so. I mean, at some point
2 obviously the prosecutor had to prepare some more
3 indictments, and they had to tell us about them. And I
4 don't remember if they re-served her with those. I
5 don't know if we accepted service of those at trial, I
6 can't remember that part of it. It's in the
7 transcript.

8 But yeah, it -- you know, the main thing I
9 remember is I thought we were going to trial on
10 everything. In other words, all of the substantive
11 charges, then accessory before the substantive charges,
12 which I thought there was a strategic issue that would
13 create some problems for the State. I think I said
14 that earlier.

15 Q And just to clear this up, you did not physically
16 prepare this letter or these letters, you didn't sit at
17 your computer and type them up?

18 A No.

19 Q Your secretary or paralegal typed them up?

20 A Yes.

21 Q And one letter says that you met with Ladorrean on
22 Friday, February 7th, the next one says that you met
23 her on Friday, February 4th. If that was just -- I
24 mean, you remember the meeting occurred. Would those
25 discrepancies just be a typo by your secretary or

1 whoever prepared the letter?

2 A I would think so. I didn't pick up on that. And
3 look, you know, I didn't type the letter, I didn't sign
4 the letter. I didn't lick the stamp, I didn't address
5 the envelope, okay, I didn't do any of that. And
6 obviously I always put Friday -- I always put the day
7 and the date, okay, to try to clarify that. So
8 obviously we can't be right. We could go look at when
9 was Friday and what's the right date, and a mistake and
10 we try not to make mistakes.

11 Q Now, during the trial...

12 MR. THOMPSON: Your Honor, on pages 271 to 275 of
13 the trial transcript, Mr. Hazzard puts on the record a
14 plea offer. And specifically on page 272, Mr. Hazzard
15 says that Mr. Gauze received a plea offer to enter a
16 plea of guilty to voluntary manslaughter with a
17 recommendation by the State of a 25-year sentence. And
18 they put on the record that Mr. Gauze had rejected that
19 offer.

20 Is there any reason why you didn't do a similar
21 on-the-record rejection of the plea offer for
22 Ladorrean?

23 A I can't think of anything. I wouldn't really
24 think to do that in most instances. The reason you do
25 that is so that, you know, it can't be challenged in

GREG MCCOLLUM-CROSS BY MR. THOMPSON

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1 PCR. And so that's -- I'm not that -- I'm just not
2 that defensive. I tried the case, it was my intention
3 to win the case and there never be an appeal.

4 Q Now, I'm just going to mention a couple of things
5 in the transcript. On page 241, there was a pretrial
6 hearing, I believe, on May 13th of 2011. And Your
7 Honor, just on page 24, lines 20 through 25, Ms. von
8 Herrmann, the prosecutor, just mentioned that you had
9 filed a pretrial motion regarding -- with regard to
10 threats between the Defendant and the victim.

11 So you did file a physical motion to exclude those
12 threats; right?

13 A Yes.

14 MR. THOMPSON: And, Your Honor, there was a --
15 there should be a second transcript that's -- I think
16 it's separate from the trial transcript. I don't know,
17 maybe the copy you have has them together. But there
18 was another hearing that was largely on a suppression
19 motion that was held on June 2nd, 2011.

20 But you also address the motion there. And Your
21 Honor, looking at page 75, and this is the June 2nd,
22 2011 transcript, the judge says, whether or not -- and
23 this is lines five through seven, it's talking about
24 your motion to suppress or exclude the statements --
25 whether or not any particular statements are improper,

1 I don't know. If you object to them, I would make a
2 ruling at that point in time.

3 So he's telling you to make objections when the
4 statements come in, when the testimony comes in; right?

5 A Yes.

6 Q And then he does it again on page 78, lines 12
7 through 13. It says, I will hear the testimony, the
8 questions and the answers and rule upon any objections.
9 He's telling you, you've got an objection you need to
10 make the motion at the time, right, when the testimony
11 comes in; right?

12 A Yeah. And even if he doesn't say that, that's
13 still the requirement.

14 Q And you're familiar with that requirement?

15 A Yes.

16 Q That in order to preserve something for appeal,
17 you have to make an objection when it comes in and
18 not --

19 A Yeah. Contemporaneous.

20 Q Right. So if the record reflects that you did not
21 make any objection during the testimony of Anthony
22 Graham or the testimony of Officer Daniel, I think it's
23 Cradic, C-R-A-D-I-C, you don't have any strategic
24 reason why you let that testimony come in; do you?

25 A No. It's just inadvertence. It's just --

GREG MCCOLLUM-REDIRECT BY MS. GIOVANOLI

1 ineffective is failing to do what I have to do to
2 preserve it, under the rules of evidence.

3 MR. THOMPSON: Beg the Court's indulgence one
4 moment, please. No further questions, Your Honor.

5 THE COURT: Any redirect?

6 MS. GIOVANOLI: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. GIOVANOLI:

9 Q You discussed the plea offer with the Applicant;
10 correct?

11 A Yes.

12 Q Did you also discuss the possible penalty she was
13 facing if she proceeded to trial?

14 A Yes.

15 Q Okay. And on the letter that was typed with the
16 typo of February 4th versus February 7, in your
17 practice, do those types of mistakes occur?

18 A Yeah, unfortunately, yes.

19 Q So in your practice, mistakes are committed?

20 A Yeah, we make mistakes.

21 Q Are any of those mistakes relaying plea offers to
22 clients?

23 A In terms of not doing it?

24 Q Right.

25 A I wouldn't think so. I mean, it's -- you know, if

1 you have the plea offer, and the client wants to take
2 it, then obviously then you don't have a trial. So
3 it's a pretty significant event of making a decision of
4 whether you're going to plead, which takes, you know,
5 half an hour versus a trial which takes in this case
6 probably a week.

7 Q And you were appointed to this case; right?

8 A Yes.

9 Q You were not privately retained?

10 A Correct.

11 Q And there's a difference on how much you're paid
12 on those cases?

13 A Yes.

14 Q Have you ever had a post conviction relief
15 application filed against you?

16 A Yes.

17 Q How many; do you recall?

18 A You know, surprisingly, really not that many.

19 Probably I would say under six.

20 Q Okay. Have you ever been found to be ineffective?

21 A No. I said I was ineffective a couple times, but
22 I was found effective.

23 Q And with regard to the issue that was not
24 preserved for appeal, do you remember -- did you read
25 the appeal in this case?

GREG MCCOLLUM-REDIRECT BY MS. GIOVANOLI

1 A No. I think it was unpublished. I wasn't -- no,
2 I have not read it.

3 Q Okay.

4 MS. GIOVANOLI: Nothing further, Your Honor.

5 THE COURT: Very good. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused.)

8 THE COURT: Anything further?

9 MS. GIOVANOLI: Nothing further from the State.

10 THE COURT: Very good. What is the State's
11 position with regard to the failure to object to the
12 prior bad acts?

13 MS. GIOVANOLI: Your Honor, the State's position
14 would be that there were parts, and it's illustrated in
15 the Court of Appeals opinion, where Mr. McCollum did
16 not make a contemporaneous objection. It occurred with
17 two witnesses. And it was regarding prior difficulties
18 between Collington and the victim.

19 Now, he did contemporaneously object to other
20 people's testimony regarding those difficulties. There
21 were numerous witnesses testifying to numerous
22 different difficulties that the victim and the
23 Defendant had in this case. One was that there was a
24 physical altercation between the victim and the
25 Defendant.

1 Another one was that she chased him to his house
2 and threw a rock through his window, and that that
3 incident was actually the second time she had thrown a
4 rock through the window. There was a note on the rock
5 that went through the window, a threatening note that
6 used vulgarities. There was also voice messages left
7 on the victim's cell phone that were also using
8 vulgarities and threatening him.

9 And lastly, the victim had a live-in girlfriend
10 who she also tried to initiate a physical altercation
11 with her as well. All of that came in through multiple
12 witnesses. And there were two instances where
13 Mr. McCollum failed to make a contemporaneous
14 objection, despite his pretrial motion to suppress that
15 evidence.

16 Now, if you read the opinion issued by the Court
17 of Appeals, they say that those issues were not
18 preserved for appellate review. But they move on and
19 they talk about the testimony of the victim's live-in
20 girlfriend, Frankie Davis, regarding the confrontation
21 that she had with Collington. And they said that they
22 would affirm that that evidence was admissible, and the
23 trial Court ruled correctly so based on Rule 404(b) and
24 res gestae theory.

25 There was also a voice mail message left by

1 Collington on the victim's friend's phone. And they
2 also affirmed that that evidence was admissible based
3 on motive intent pursuant to Rule 404(b) of the South
4 Carolina Rules of Evidence as well as the res gestae
5 theory.

6 So the State's position is that had he made a
7 contemporaneous objection, the Court of Appeals would
8 have simply affirmed that admissibility of that
9 evidence too because it was part and parcel of the
10 entire case, the res gestae and pursuant to Rule 404(b)
11 of the South Carolina Rules of Evidence. So there is
12 no prejudice in this case to meet the second prong of
13 Strickland.

14 THE COURT: All right. Anything from the
15 Applicant with regard to those issues?

16 MR. THOMPSON: Just briefly, Your Honor, I would
17 note that the Court of Appeals -- and, you know,
18 obviously this is not dispositive -- but the Court of
19 Appeals would have had the opportunity to say in their
20 opinion that the testimony that was introduced
21 regarding Anthony Graham and Officer Cradic would have
22 been admissible anyway. They had the opportunity to do
23 that, they could have done that, they could have said
24 it's unpreserved but it should have come in anyway, and
25 they didn't do that.

1 And then we would know -- but that's at least an
2 indication that there is some merit to those
3 objections. Because, again, they could have taken the
4 opportunity to say, even if, even if -- and they do
5 this on occasion -- even if this evidence -- even if
6 the objection had been made, it would have come in
7 anyway.

8 And so, you know, again, I don't want to, you
9 know, kind of belabor the arguments because they are in
10 the brief of Appellant. The argument is essentially
11 that the Court of Appeals would have agreed with the
12 arguments presented in the brief of Appellant. And so
13 we just -- you know, we'd adopt --

14 THE COURT: Is it your opinion that you think that
15 these prior bad acts were inadmissible?

16 MR. THOMPSON: Yes. Yes. And for the reasons
17 espoused by defense counsel. He testified he didn't
18 think they were relevant, he didn't think they were --
19 he thought they were unduly prejudicial, that was the
20 argument that was advanced on appeal. And we would be,
21 you know, basically renewing that contention here
22 today, basically trying to, for lack of a better term,
23 right the wrong that was committed at trial and
24 reinstate what would have been the proper position on
25 appeal regarding those issues.

1 And so we do believe that they were inadmissible,
2 again, for the same reasons that were argued on appeal.
3 And clearly, Your Honor, that's with regard to the
4 prejudice prong.

5 With the performance prong, I think, defense
6 counsel is quite candid, he just forgot to make the
7 objection. And that he understood the concept, he was
8 sworn by the judge, and it was just inadvertent on his
9 part. That's clearly meeting the deficiency prong of
10 Strickland.

11 With regard to the plea offer, you know, I
12 recognize that there's a discrepancy between my
13 client's account of the discussion and Mr. McCollum's
14 account of the discussion. That's why we have
15 hearings, Your Honor. We would just urge Your Honor to
16 believe that -- Ms. Collington's testimony that she did
17 not receive that plea offer, that she would have
18 accepted that plea offer and to -- again, to order the
19 remedy outlined in Lafler versus Cooper, Your Honor,
20 which I do have a copy to hand up.

21 Which does deal with kind of this factual scenario
22 of a Defendant who went to trial, did not know about a
23 plea offer or was wrongly advised to reject a plea
24 offer, and would have taken it had they been given the
25 proper advice. That's essentially our case, Your

1 Honor.

2 THE COURT: All right. Mr. Thompson, what is a
3 number where you can be reached?

4 MR. THOMPSON: (803) 779-2555.

5 THE COURT: And would I be able to reach you after
6 hours at that?

7 MR. THOMPSON: Yes.

8 THE COURT: Okay.

9 MR. THOMPSON: That is my office number, Your
10 Honor, but it rolls over onto my cell phone so I can
11 answer it at any time.

12 THE COURT: Very good. What's the best number
13 where I can reach you, Ms. Giovanoli? How do you say
14 your name?

15 MS. GIOVANOLI: Giovanoli.

16 THE COURT: Giovanoli.

17 MS. GIOVANOLI: And I would be more than happy to
18 provide you with my cell phone number but maybe not on
19 the record.

20 THE COURT: Okay. Well, you can come up here.

21 MS. GIOVANOLI: Okay.

22 (Discussion off the record.)

23 THE COURT: We're going to take about a
24 five-minute recess. Anything further from anybody?

25 MS. GIOVANOLI: Not on this case, Your Honor.

1 THE COURT: Good luck to you. We'll stand at ease
2 for five minutes.

3 (WHEREUPON, a brief recess was taken at
4 10:35 a.m.)

5 (End of Transcript of Record)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 6th day of December,
14 2017.

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

18
19
20 S/Teresa J. F. Bautz

21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

M. GREGORY McCOLLUM

ATTORNEY AT LAW

**518 28TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 628-5480**

February 16, 2011

1485

State
admitted as
App's ex 1

Mrs. Ladorrean Chuckell Collington
[REDACTED] Sherman Place
Conway, South Carolina 29527

Re: **State vs. Ladorrean Chuckell Collington**
Murder - Warrant #: J-319683
Armed Robbery - Warrant #: J-319684
Kidnapping - Warrant #: J-319681
Burglary 1st - First degree - Warrant #: J-319682
Incident Date: April 14, 2008
Arrest Date: April 18, 2008

Dear Ladorrean;

Please find enclosed a copy of my recent correspondence to the Honorable Steven H. John and Heather Von Herrmann, Assistant Solicitor, which I am providing for your records.

If you have any questions, please do not hesitate to contact my office.

With warm regards, I remain,

Yours Truly,

Greg. McCollum
M. Gregory McCollum

MGM/klf

Enclosure

(17)

M. GREGORY McCOLLUM**ATTORNEY AT LAW****518 29TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 626-5480**

February 16, 2011

Heather Von Herrmann, Assistant Solicitor
Post Office Box 1276
Conway, South Carolina 29528

Re: **State vs. Ladorrean Chuckell Collington**
Murder - Warrant #: J-319683
Armed Robbery - Warrant #: J-319684
Kidnapping - Warrant #: J-319681
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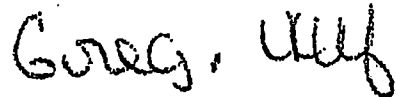
Dear Heather;

Please find enclosed a copy of my recent correspondence to the Honorable Steven H. John, which I am providing for your records.

If you have any questions, please do not hesitate to contact my office.

With warm regards, I remain,

Yours Truly,



M. Gregory McCollum

MGM/kif

Enclosure

M. GREGORY McCOLLUM**ATTORNEY AT LAW**

518 29TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 628-5480

February 16, 2011

Ronald Hazzard, Public Defender
203 Laurel Street
Conway, South Carolina 29528

Re: State vs. Ladorrean Chuckell Collington
Murder - Warrant #: J-319683
Armed Robbery - Warrant #: J-319684
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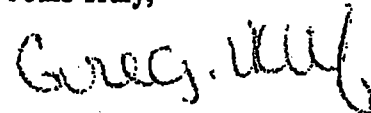
Dear Ron;

Please find enclosed a copy of my recent correspondence to the Honorable Steven H. John and Heather Von Herrmann, Assistant Solicitor, which I am providing for your records.

If you have any questions, please do not hesitate to contact my office.

With warm regards, I remain,

Yours Truly,



M. Gregory McCollum

MGM/klf

Enclosure

M. GREGORY McCOLLUM**ATTORNEY AT LAW****518 29TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 626-5480**

February 16, 2011

Heather Von Herrmann, Assistant Solicitor
Post Office Box 1276
Conway, South Carolina 29528

Re: **State vs. Ladorrean Chuckell Collington**
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Dear Heather;

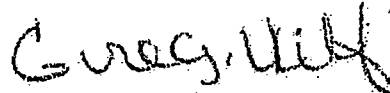
Please note that I met with Ladorrean Collington on Friday, February 7, 2011 regarding the guilty plea offer. I advised Ms. Collington that she could plead guilty to Accessory Before the fact of Armed Robbery and the State would recommend a sentence of twelve (12) years.

Please note that Ms. Collington does not wish to plead guilty and she wishes to go to trial. I have advised Ms. Collington that no other guilty plea offer will be extended by the State and that we will begin the trial the week of May 16, 2011.

Thank you for extending the plea offer in a timely fashion. I look forward to trying the case in May. If you would like to go over evidence and exhibits before the week of trial please let me know.

With warm regards, I remain,

Yours Truly,



M. Gregory McCollum

MGM/klf

cc: Ladorrean Collington
Ronald Hazzard, Attorney for Quentin Gause
Honorable Steven H. John, Judge Fifteenth Circuit

(4)

M. GREGORY McCOLLUM**ATTORNEY AT LAW**

516 29TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 626-5480

February 16, 2011

The Circuit Court of South Carolina
Horry County Judicial Center
Honorable Steven H. John
1301 Second Avenue/Suite 3A30
Conway, South Carolina 29526

Re: **State vs. Ladorrean Chuckell Collington**
Murder - Warrant #: J-319683
Armed Robbery - Warrant #: J-319684
Kidnapping - Warrant #: J-319681
Burglary 1st - First degree - Warrant #: J-319682
Incident Date: April 14, 2008
Arrest Date: April 18, 2008

Dear Judge John;

Please find enclosed a copy of my correspondence to Heather VonHerrmann, in response to the plea offer extended to Ladorrean Collington immediately after the arraignment held before the Court on Thursday, February 3, 2011. The state offered to allow Ms. Collington to plead guilty to accessory before the fact of armed robbery and the state would recommend a sentence of twelve (12) years.

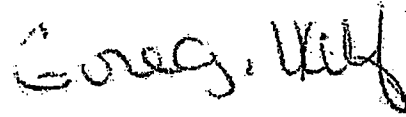
The next day, Friday, February 4, 2011, I met with Ms. Collington at J. Reuben Long and explained the plea offer. Understanding that no other plea offers will be extended and that the trial is set for the term of court of May 16, 2011 Ms. Collington has rejected the plea offer and will be ready for trial as scheduled. Additionally, as you can see from my correspondence I have advised the Solicitor's Office and Ms. VonHerrmann.

(5)

Please let me know if you need anything further.

With warm regards, I remain,

Yours Truly,



M. Gregory McCollum

MGM/kdf

cc: Ladorrean C. Collington
Heather Von Herrmann, Assistant Solicitor
Ronald Hazard, Attorney for Quentin Gause

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



Jeremy A. Richardson, II
Deputy Solicitor

REPLY TO ☒

P.O. BOX 1276
CONWAY, SC 29528
843-915-3460
FAX: 843-915-6461

Scott R. Hixson
Deputy Solicitor

REPLY TO ☐

P.O. BOX 1688
GEORGETOWN, SC 29442
843-543-3169
FAX: 843-543-3268

J. GREGORY HEMBREE
Solicitor

DATE: February 3, 2011
TO: M. Gregory McCollum, Esquire
FROM: Heather von Herrmann, Assistant Solicitor
RE: State vs. Ladorrean Chukell Collington

Case # 08H01475

Pending Charge(s) Murder

Warrant J319683

Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

If the Defendant will plead guilty to: Accessory before the Fact to Armed Robbery.

The State offers the following: 12 years.

The Defendant must accept the offer by February 15, 2011 or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the March 2011 term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than February 15, 2011. Please call me at 915-8628 if I may be of service.

DEFENDANT'S RESPONSE

TRIAL _____ **GUILTY PLEA** _____

Attorney's Signature _____

Date: _____

Defendant's Signature _____

Date: _____

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the
public's trust in the pursuit of justice and enforcement of the law.

7

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

LaDorreean C. Collington, #334220,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-563

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
HORRY COUNTY
2017 MAY 17 PM 1:51
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by LaDorreean Chukell Collington (Applicant) on January 27, 2014. The State (Respondent) made its return on or about June 9, 2014, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. Applicant was present and represented by Jeremy Thompson, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on her own behalf. M. Greg McCollum, Esquire (Counsel), testified for the State. This Court had before it a copy of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, the trial transcript, and Applicant's direct appeal records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2010 and March 2011, the

Horry County Grand Jury indicted Applicant for four counts of accessory before the fact of a felony (2010-GS-26-1225, -1626, -1627, and 2011-GS-26-1276) for her role in an kidnapping, first degree burglary, armed robbery, and murder. M. Greg McCollum, Esquire, represented Applicant. On June 6, 2011, Applicant proceeded to trial before the Honorable Steven H. John and a jury on only the accessory charges related to the first degree burglary and armed robbery (2010-GS-26-1626 and -1627). Applicant was tried jointly with Quentin Gause, who was charged with murder, armed robbery, and first degree burglary. Ronald Hazzard, Esquire, represented Gause. On June 10, 2011, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to twenty-two (22) years' imprisonment, concurrent for each charge.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. On appeal, Applicant argued that the The South Carolina Court of Appeals affirmed Applicant's conviction on May 22, 2013. State v. Collington, Op. No. 2011-UP-225 (S.C. Ct. App. filed May 22, 2013). The remittitur was returned to the circuit court on June 14, 2013.

In her application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to object to trial court error. He also failed to call expert witnesses."
2. "Conflict of Interest"
 - a. "Conflict of interest becomes a factor due to the prior bad blood between the prosecuting attorney and defendant, back in 2006."
3. "Prosecutorial Misconduct"
 - a. "There was a personal vendetta steaming from 2006. This same prosecutor tried defendant's brother on a murder

charge in August 2006. Messages had been related back and forth thru a mutual acquaintance."

- b. "Prosecutor made it a point to have my charge information corrected with SCDC but allowed my codefendant Tiffany James to leave on 65%."

4. "New Evidence"

- a. "Letters from co-defendant stating facts."

At the evidentiary hearing, Applicant proceeded on her claims of ineffective assistance of counsel, in that Counsel failed to relay a plea offer of twelve years and failed to preserve an issue for appeal, and prosecutorial misconduct, in that Assistant Solicitor von Herrmann, had a personal vendetta or conflict of interest because she had prosecuted Applicant's brother in an unrelated case.

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant was arrested in April of 2008. Counsel was appointed to represent her approximately two years before trial. Applicant was in jail about three years from the date of her arrest until she received bond in 2011. Applicant met with Counsel multiple times. Applicant also wrote letters back and forth with Counsel or his paralegal. Applicant was originally charged with murder, but only went to trial on accessory before the fact charges.

The Assistant Solicitor who prosecuted Applicant's case was Heather von Herrmann (von Herrmann). Von Herrmann prosecuted Applicant's brother in 2006. Von Herrmann's fiancé had also prosecuted Applicant's brother. Applicant believes von Herrmann had a vendetta against her. Applicant never received a plea offer. All of Applicant's co-defendant's were receiving plea offers, but not Applicant, because von Herrmann was out to get her.

Applicant introduced a composite exhibit of letters from Counsel's file into evidence as Applicant's Exhibit 1. Among the letters was one dated February 3, 2011 from Assistant Solicitor Herrmann to Counsel extending Applicant a plea offer of twelve (12) years. The offer had a deadline of February 15, 2011 and a reminder that the offer would not be made again if not accepted by that date. Applicant testified that she had never seen this document until PCR counsel provided it to her in prison. Applicant did not know of the existence of the offer and the offer was never discussed with Counsel. Also among the letters in Applicant's Exhibit 1, was a letter to Assistant Solicitor von Herrmann from Counsel, informing her that Applicant did not wish to accept the State's offer and instead wished to proceed to trial and a letter to the Honorable Steven H. John from Counsel, in which he informed Judge John that the State had extended an offer February 3, 2011, Counsel met with Applicant February 4, 2011 at J. Reuben Long to explain the plea offer, and that Applicant rejected the plea offer and would be ready for trial as scheduled. Although courtesy copied on these letters, Applicant claimed she never received the letters or enclosures. The address for Applicant on the letter was an address in Conway. Applicant admitted she was living with her mother in Conway when she was released on bond. Because Applicant knew she was facing fifteen to life for burglary and thirty to life for murder, had she known of the plea offer, she would have accepted it.

The victim was the father of one of Applicant's children. There was evidence of prior difficulties between Applicant and the victim that Counsel argued should be kept out. However, on direct appeal, the Court of Appeals could not review the issue because a contemporaneous objection had not been made at the time the evidence was actually introduced.

II. Counsel testified to the following:

Counsel has been practicing law since 1988. 98% of his practice has been criminal law. He was appointed to represent Applicant. Counsel recalled meeting with Applicant numerous times, but did not remember exactly how many. Counsel met Applicant at J. Rueben Long Detention Center and discussed Applicant's constitutional rights. Counsel received, reviewed, and discussed all the discovery with Applicant. He also provided Applicant with her own copy. Counsel recalled that Applicant lived close to the victim and the State alleged that the perpetrators of the home invasion and murder met at her house to prepare. The victim was alleged to have forty thousand dollars in his house that Applicant and the perpetrators were planning to steal. The perpetrators, without Applicant, invaded the victim's home and the victim was shot and killed. Thereafter, the perpetrators fled to Applicant's house. Counsel discussed Applicant's version of the facts. Applicant had no motive to rob or kill the victim.

Because Applicant was not present during the home invasion and murder, Counsel's primary focus of his investigation was on the co-defendants and establishing the fact that Applicant was not present and did not participate in the home invasion. At trial, the State only proceeded on the accessory before the fact charges. Counsel made various pre-trial motions including a motion to exclude prior bad acts and a motion to sever the trial from co-defendant, Gause. The court reserved ruling on the motion to exclude, but denied Counsel's motion to sever. Counsel did not make contemporaneous objections to every bad act that came in, but he did make many objections and renewed his objection to the bad acts at the end of trial. Counsel believed the State's case would have been much weaker without the prior bad acts evidence.

Counsel did not write or sign the letters in Applicant's Exhibit 1, but would find it reasonable to conclude that someone in his office did. Counsel agreed with the content of the letters and recalled that Applicant did not want to hear about offers because she was not interested in pleading guilty. Applicant believed she would be acquitted. Counsel did relay the offer to Applicant, but did not press her to accept it because she was adamant about going to trial. Counsel testified that it is not unusual for a client not to sign the formal offer letter and it is not required. Sometimes, the offer is relayed by phone and the client is not present to sign. Although he could not remember specifically, Counsel imagined he authorized the drafting and signing of the letters and that he would have instructed the letters to be mailed. Counsel did not believe his legal assistant would not have mailed them. Counsel does not recall the letter to Applicant being returned to him. Counsel did not put the offer on the record and testified that the only purpose of doing so is for post-conviction relief. Counsel also testified that sometimes he and his office make mistakes, but failing to relay plea offers from the State is not one of those mistakes.

Counsel did not notice anything out of the ordinary with regard to any alleged animosity between the Assistant Solicitor and Applicant. It was simply the Assistant Solicitor's job to prosecute defendants and Applicant's brother had been a defendant. Counsel believed the offer extended by the Assistant Solicitor was a pretty good offer and was surprised by it.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly.

Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel McCollum to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

I. Failure to relay plea offer

Applicant alleges she never received a plea offer and had she received the twelve year offer made by the State, she would have pled guilty instead of going to trial. This Court finds Applicant has failed to meet her burden to establish that she was not informed of the State's offer in this case. This Court finds Applicant's testimony that she did not receive the letters included in Applicant's Exhibit 1 is not credible. In this case, Counsel did not recall drafting or signing the letters from his file, but it is common practice for an attorney to delegate the drafting and signing of standard letters to office personnel. Counsel testified that his legal assistant would have prepared the letters and mailed them. Furthermore, Counsel did recall the offer presented by the State, discussing it with Applicant, and Applicant's rejection and adamant insistence on a jury trial. Counsel's testimony on this issue is credible.

Applicant has failed to meet her burden of proving Counsel was ineffective for failing to relay a plea offer and therefore, the allegation is denied and dismissed with prejudice.

II. Failure to preserve issue for appeal

Applicant alleges that Counsel was ineffective for failing to make a contemporaneous objection to evidence of prior bad acts, thus leaving the issue unpreserved for appeal. This Court finds Applicant's allegation meritless.

During a pretrial hearing held on May 13, 2011, Applicant, through counsel, moved to exclude evidence of prior threats or difficulties between Applicant and the alleged victim, which included the breaking of the victim's window, a threatening note left at the scene of the window breaking, a

threatening text message, a verbal and physical altercation between the victim and Applicant, and the confrontation between Applicant and the victim's girlfriend. However, the prosecution was not prepared to argue the motions during the pretrial hearing. During a subsequent pretrial hearing on June 2, 2011, Applicant again moved to exclude evidence of prior difficulties between Applicant and the victim and to exclude evidence of threats allegedly made through Graham. The State asserted the evidence was admissible as part of the *res gestae* of the crime and because it met several exceptions delineated in Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (evidence of other crimes may be admissible when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime). The trial court reserved ruling until the testimony was presented.

Anthony Graham, the victim's friend who was also living with the victim at the time of the burglary and murder, testified that the victim lived with his girlfriend, but that Applicant believed the victim should be with her. Graham testified the victim and Applicant got into a verbal altercation which turned into a physical one when Applicant ripped the chain off of the victim's neck. Trial Tr. 412-413. Graham testified Applicant threatened to go get her gun and so Graham and the victim headed back to the victim's home watching over their shoulder for Applicant. Trial Tr. 413-415.

Graham then testified after they arrived back at the victim's home, they heard a window break. Graham testified he saw Applicant leaving the scene. Trial Tr. 417-418. Graham testified the individual who made the report of the broken window was joking with the victim about the fact

Applicant had previously broken his window. Trial Tr. 419. Graham testified he and the victim received calls and messages on their phones from an upset Applicant. He also testified the victim's girlfriend called the victim to tell him she was in a confrontation with Applicant. Trial Tr. 424. Graham then testified the victim showed him a text message the victim received from Applicant which read "something about you and your mama could get it." Trial Tr. 426.

After detailing the events of the break-in and murder, including the fact he believed Applicant sent the men to the house to commit the crimes (Trial Tr. 434), Graham then testified about a voicemail left on his phone by Applicant. Trial Tr. 426-440. The voicemail made it clear Applicant was upset with the victim. The voicemail detailed the confrontation between Applicant and the victim's girlfriend, and then included threats to the victim indicating he better watch his back because he made her mad and that he was going to get it. At this point, Counsel noted his objection for the record and requested that objection be ongoing. Trial Tr. 441. The court overruled the objection and the voicemail was played for the jury (State's Exhibit 72). Trial Tr. 442.

Frankie Davis, the victim's live-in girlfriend, testified without objection about Applicant breaking her windows on two occasions. Davis then testified to a confrontation between herself and Applicant, to which Counsel objected. Trial Tr. 536. The court overruled the objection and Davis testified she confronted Applicant about the broken windows and Applicant was "crazy" and calling her names. Counsel again objected. Trial Tr. 538. Davis continued to testify that she was aware of the voicemail left on the victim's phone, at which point Counsel objected again. Trial Tr. 538. Again, the court overruled Counsel's objection.

Officer Cradic testified he responded to the victim's home after the report of a broken window. Trial Tr. 1067-1068. He testified a note was found at the scene, he read the note, and copied the note's contents. Trial Tr. 1069-1071. When Cradic could not recall the contents of the note, Counsel objected. Trial Tr. 1070. Despite Counsel's objection, Cradic was allowed to read the note into the record. The note read, "b***h, I will be back, n****r, f**k you. F.Y. b***h a**, AIDS infected b***h. Yeah, we all got it, D-baby." Trial Tr. 1071.

This Court finds Counsel was not deficient when he did not object to evidence properly admitted. The evidence of prior bad acts, as testified to by Graham and Cradic, was properly admitted based on Rule 404(b), SCRE and the *res gestae* theory. While this Court is aware of rule requiring contemporaneous objections in order to preserve an issue for appeal, the rule does not require objections be made to properly admitted evidence. Because the issue would have been upheld on appeal, Counsel was not deficient in withholding his objection. This Court finds Applicant has failed to prove Counsel's omission was deficient.

Assuming *arguendo* Counsel's omission was deficient, Applicant cannot prove prejudice. On appeal, Applicant argued that the trial court improperly allowed evidence of bad acts to be admitted. Although the Court of Appeals found the issue of Graham and Cradic concerning Applicant's prior difficulties with the victim was not properly preserved, they found the testimony from Davis concerning the confrontation with Applicant days before the home invasion was properly admitted under Rule 404(b), SCRE and the *res gestae* theory. The Court of Appeals also found the contents of the threatening voicemail left on Graham's phone was properly admitted under Rule 404(b), SCRE and the *res gestae* theory. Similar to those prior bad acts, the testimony of prior bad acts not

preserved for review was also properly admitted under Rule 404(b), SCRE and the *res gestae* theory.

Had the issue been preserved for review, the Court of Appeals would not have found any differently.

Because Applicant has failed to prove Counsel was ineffective for failing to preserve an issue for appeal, this allegation is denied and dismissed with prejudice.

Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

At the evidentiary hearing, Applicant claimed that Assistant Solicitor von Herrmann had a personal vendetta against Applicant. Applicant claimed the Assistant Solicitor also had a conflict of interest in prosecuting Applicant, because the Assistant Solicitor had prosecuted Applicant's brother in the past. This Court finds Applicant failed to meet her burden of proving either claim.

Applicant's assertion that von Herrmann had a personal vendetta against Applicant is merely speculative. Applicant has offered no evidence other than her own testimony that von Herrmann was "out to get her." This Court does not find Applicant's testimony on this issue credible. Furthermore,

Counsel testified that he was not aware of any animosity between von Herrmann and Applicant. In fact, Counsel was surprised at the twelve year offer extended by von Herrmann to Applicant.

Applicant's allegation of a conflict of interest is equally not compelling. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Prior interactions between Applicant and the Assistant Solicitor in the prosecution of her or her brother do not rise to the level of a conflict of interest. Applicant fails to provide any evidence other than her less than credible testimony of an actual conflict of interest or other form of prosecutorial misconduct. Therefore, the allegations are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

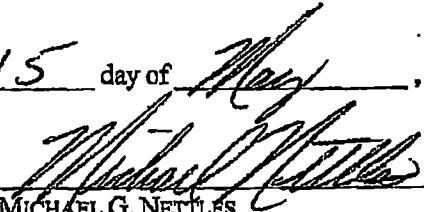
This Court notifies Applicant that she must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal

on the Applicant's behalf. See Rule 71.1 (g), SCRCF. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of her sentence.

AND IT IS SO ORDERED this 15 day of May, 2017.


MICHAEL G. NETTLES
Presiding Judge
Fifteenth Judicial Circuit

, South Carolina