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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable George C. James, Circuit Court Judge

ROBERT MATTHEW FULMER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001437

APPENDIX

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STATE OF SOUTH CAROLINA COUNTY OF PICKENS STATE OF SOUTH CAROLINA, vs. ROBERT MATTHEW FULMER, DEFENDANT.	COURT OF GENERAL SESSIONS 2013-GS-39-00716 2013-GS-39-00717 2013-GS-39-00718 2013-GS-39-00719 TRANSCRIPT OF RECORD ORIGINAL

August 25 and 26, 2014
Pickens, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE; and a jury.

A P P E A R A N C E S:

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Assistant Solicitor

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Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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PROCEEDINGS

THE COURT: It looks like the next case up is the State of South Carolina v. Robert Fulmer.

And that is a case for burglary first, attempted murder, possession of a weapon during a violent crime, and petit larceny?

MR. RICHARDSON: That's correct, Your Honor.

THE COURT: Okay. I believe there may have been a motion, Mr. Robinson, you had to bring before the Court, sir.

MR. ROBINSON: Yes.

May it please the Court.

THE COURT: Yes, sir.

MOTIONS

MR. ROBINSON: Your Honor, I did check with my office -- because I advised the Court in the hallway -- to see if they -- if she had, actually, gotten it on the weekend. That's a negative.

Your Honor, the two people are Chad Hayes and Sarah Hamilton. They're the alibi witnesses in our case that place him in a different location when this happened. The Solicitor has had the opportunity to talk to them already, from what I understand.

And they're crucial to my case. Because I learned this morning from Mr. Richardson that the co-defendant,

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Mr. Burgess, is now going to testify against my client. He's not going to be on the trial docket on this case. I had heard last Thursday from Chase Harbin, who represents him -- which there had been some discussion that he had maybe gone to the jail, and so forth. But, Your Honor, those particular witnesses are crucial to me because that's my case.

Now, the Solicitor can make the -- can stand up and say, wait a second, you know, you should have gotten them sooner, of course. And -- but, normally, when you provide a process server the addresses, and so forth, they can go either to work or home. And both of those, they didn't get anybody.

THE COURT: Do you have those addresses, sir?

MR. ROBINSON: Yes, I do.

And that's the issue. We're not trying to delay anything. This is the first time it's been on the docket. But the wagons are kind of circling my client. And if I only have that to point to -- other than cross-examination, and so forth. But I would just request a continuance on that basis.

THE COURT: Is your client incarcerated?

MR. ROBINSON: He's here, Your Honor, yes.

THE COURT: Okay. Do you want to bring him out for your argument? You don't have to.

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MR. ROBINSON: I don't need to.

THE COURT: It's your preference.

MR. ROBINSON: I don't need to.

THE COURT: Okay. Good enough.

Thank you for your argument, Mr. Robinson.

Mr. Richardson.

MR. RICHARDSON: Your Honor, of course, we oppose the motion. I got back on May 29th an e-mail from Mr. Robinson. He told me he had two alibi witnesses, which he sent me written -- it appeared to be written statements by those two individuals. However, I did not have -- I was not provided -- it's required under the rule, but, regardless, the addresses or anything of that nature.

Well, as soon as I got those, I did obtain, on my own accord, the addresses. And, yes, sir, I did talk to both of those witnesses on two different occasions. Your Honor, I was able to do it. And I've been working on it.

He's been under notice that this thing was going on the trial docket for two months. And I was able to get them in without much problem at all. I don't -- it puts us in kind of a -- it's a hard posture to be in.

THE COURT: I understand.

MR. RICHARDSON: But we are prepared to go forward today. I have a witness from out of state. I've been

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preparing this case for several months. I've talked to not only the alibi witnesses, but the co-defendants, and things of that nature. And, Your Honor, just based upon that, it appears that the service wasn't started until late into the game. I'm not sure I understand why that -- the case would be on that.

So we would oppose the motion. We're ready to go forward, Your Honor. And we would ask that we be allowed to go forward at this time.

THE COURT: Let me ask you this, Mr. Richardson.

MR. RICHARDSON: Yes, sir.

THE COURT: Do -- does the Solicitor's Office or law enforcement have at their disposal the resources to try to find those alibi witnesses either today or tomorrow?

MR. RICHARDSON: Your Honor, I could, certainly, send out people to their address and do that.

THE COURT: This is what I'd like to do.

MR. RICHARDSON: Okay.

THE COURT: What I'd like to do is put out a -- issue a summons to them, and have it served by law enforcement, and have them directed to appear in court by order of the Court. They can be found, I suspect. This has been -- this is my experience with alibi witnesses and other witnesses who may be appearing on the part of either the State or the Defense, when they don't want to appear, they

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just kind of get gone.

And most of the time when an alibi witness, actually, is called to appear in court, his unavailability is a reflection of whether he is willing to testify or not. I'm not saying that that's the case in this particular case. I'm just telling you that my experience indicates that people find a way not to have to testify if they're either uncomfortable testifying, or they may not be saying something in keeping with prior statements.

So what I'm going to do --

I don't know how long your case is going to take, Mr. Richardson. We had a conversation that you had a witness list of about 30 something.

MR. RICHARDSON: That would be correct.

THE COURT: And you may call between 15 and 20.

MR. RICHARDSON: That would be correct.

THE COURT: And, Mr. Robinson, do you have any additional witnesses other than those two?

MR. ROBINSON: I do, Your Honor. And I would say this, Your Honor.

THE COURT: Yes, sir.

MR. ROBINSON: The Prosecution had the opportunity twice to talk to each of these people. I don't know what they said to these two particular alibi witnesses in this case. I don't know whether they're scared to come to

court, or whatever it is. I don't know.

THE COURT: Yes, sir.

MR. ROBINSON: And that's an issue that I have with bringing them in and sitting them down. Because I have no idea what they're talking about. And I'm not saying anything happened like that. But for some reason, they're scared.

THE COURT: I got you.

MR. ROBINSON: But I would point out, as far as witnesses go, Your Honor, I have two other witnesses I need to ask my client about. They're the people that were in the jail cell with their witness, the co-defendant, Mr. Burgess, and I would like to have him tell me who they are so I can put them on the list.

THE COURT: Okay. So what we'll do is I'm going to have the Solicitor's Office and law enforcement find them in the next two days, and have them available for testimony. It sounds to me like -- I recognize that things can go quicker than we anticipate. But it sounds to me like we're going into Wednesday on this case. So that's two days to find these people who, apparently, each of you have been able to find before easily.

And I don't -- I'll say, specifically, on the record that I don't think that the service of your subpoenas last week, Mr. Robinson, was dilatory. I think, you know,

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having practiced law that that wasn't waiting until the last minute. I mean, you look at what's on the docket and you file or serve your subpoenas, of course, with what's outstanding. And that's particularly true when you have had an ongoing discussion and dialogue with people and you think they're going to show up.

So we'll find them. Okay. And if we can't find them, then you can renew your motion. I'm not suggesting I'll grant your motion. But you can, certainly, renew it at that time and put it on the record.

All right. So are there any other pre-trial motions we need to take up before we pick the jury?

MR. RICHARDSON: The State has nothing.

THE COURT: Mr. Robinson.

MR. ROBINSON: We have, I believe, a Jackson v. Denno, possibly.

MR. RICHARDSON: I'm not putting in any statements of the Defendant.

MR. ROBINSON: Okay. Then I don't have a Jackson v. Denno.

THE COURT: Okay.

MR. ROBINSON: That's great.

I don't think there are any Bruton issues in this case. But there was a statement by the co-defendant that's not, actually, going to be tried right now.

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THE COURT: Yes, sir.

MR. ROBINSON: I don't believe he's -- I think he may do live testimony, so I can cross-examine him. But I would ask -- this is something before the jury. But I would ask for sequestration, if that's okay.

THE COURT: Any objection to sequestration?

MR. RICHARDSON: No objection.

THE COURT: Okay. Then the same is granted. Y'all will need to police it.

Okay. Gentlemen, it's my understanding that, Mr. Robinson, you have 10 strikes, the State has five.

Therefore, I'll ask to bring up a jury pool of 35.

MR. RICHARDSON: That sounds sufficient.

THE COURT: We'll strike from 35.

MR. RICHARDSON: Your Honor, just on the issue, you said court summons. Was that something you wanted to draw up? Do I need to -- how do I need to --

THE COURT: I know that, again, you have resources available to you.

MR. RICHARDSON: Yes, sir.

THE COURT: I want you to send somebody out.

MR. RICHARDSON: No. I'm going to send somebody. I'm saying, what kind of document?

THE COURT: I don't need to sign anything in particular. The summons can be signed by your office. I

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can do it, too. I just want it to be very clear that they're being ordered by the Court and not any particular party.

MR. RICHARDSON: Okay.

THE COURT: And I'll be happy to sign it, if you have a document you want me to sign.

MR. RICHARDSON: I'm not so sure I do. That's kind of a unique situation.

THE COURT: But an ordinary summons is just fine with me.

MR. RICHARDSON: Okay.

THE COURT: Gentlemen, we'll get a pool of 35. We're going to bring them up. And we'll strike that jury. Then probably after we've stricken that jury, we'll break for lunch, and then come back and start opening statements after lunch.

Do y'all have any voir dire or witness lists?

MR. RICHARDSON: The State doesn't -- I have the witness list.

MR. ROBINSON: Your Honor, I have advised Mr. Richardson that Juror #48, Mr. Garcia, is a client of mine -- or used to be a client of mine.

THE COURT: Yes, sir.

MR. ROBINSON: So I believe he, obviously, would strike him. I let him know that just so he's aware of

that.

THE COURT: Okay. Good enough.

We'll be in recess until we have our jury panel.

(WHEREUPON, a break was taken.)

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: Welcome upstairs.

Congratulations on having made the first cut on the first jury pool.

Ladies and gentlemen, you'll remember downstairs, I asked you questions bearing upon qualifications and exemptions. Now, I'm going to ask you questions relating to your suitability to serve as jurors on this specific case, as opposed to your general statutory qualifications.

Now, I remind you that you continue under the oath that you took downstairs to tell the truth. And I am going to ask you a series of questions. But before I ask you those questions, I'm going to announce the case. And I'm going to read to you the allegations that appear on the indictments.

Now, ladies and gentlemen, before we get started and before I read to you these allegations, I need to tell you something that's very important. And that is in the United States of America in the State of South Carolina in the County of Pickens, a criminal defendant is presumed innocent until he or she is proven guilty beyond a

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reasonable doubt. The State has the burden of proving each and every element of the offense beyond a reasonable doubt.

So if you will think for a second and imagine that the Defendant is wearing a cloak of innocence. Just like I'm wearing a robe, he's wearing a robe of innocence. And he maintains that innocence. He maintains that cloak of innocence until such time as 12 deliberating jurors determines that the State has met its burden of proving each and every element of the offense beyond a reasonable doubt.

Now, the reason I tell you that is because it is the cornerstone of our criminal justice system. It's not just a theory. It is, in fact, an element of our system. And, also, because I don't want you to get the impression that because I am reading to you the allegations on the indictments that I am telling you what the facts in the case are. I am, indeed, not telling you that. 12 deliberating jurors will determine what the facts are in this case. I read these allegations to you so that you can intelligently answer the questions that I pose to you regarding this case.

So, ladies and gentlemen, I'll go ahead and announce the case. The first indictment that we have before the Court is the State of South Carolina v. Robert Matthew

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Fulmer. That is indictment #2013-GS-39-716. And in that indictment, ladies and gentlemen, the State alleges that Mr. Fulmer did in Pickens County on or about the 17th day of December of 2012, unlawfully with malice aforethought and with the intent to kill attempt to kill Clarence Robinson. That is an indictment, ladies and gentlemen, for attempted murder.

In indictment #2013-GS-39-717, it is an indictment for burglary first degree. The State would allege that the Defendant, Mr. Fulmer, did in Pickens County on or about December 17, 2012, willfully and unlawfully enter the dwelling of Clarence Robinson located at [redacted] Lane in Easley.

Ladies and gentlemen, in indictment 2013-GS-39-718, that is an indictment for possession of a weapon during the commission of a crime. And the State would allege that Mr. Fulmer did in Pickens County on or about December 17th, 2012, possess or visibly display a firearm and/or knife during the commission or attempted commission of a violent crime, specifically, attempted murder and burglary first degree.

Ladies and gentlemen, the fourth indictment is indictment 2013-GS-39-719. And that is an indictment for petit larceny wherein the State alleges that Mr. Fulmer did in Pickens County on or about December 17, 2012, take

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and carry away the personal property of Clarence Robinson without permission and with the intent to permanently deprive the owner of the property.

Ladies and gentlemen, those are the allegations -- those are the charges. And those are the allegations from the State.

JURY QUALIFICATION

THE COURT: So I'll ask you, is there anyone among you who has any prior knowledge, any prior opinion, or any predisposition regarding the allegations in this case?

(WHEREUPON, there was no response.)

THE COURT: All right. Let the record reflect no affirmative response.

Ladies and gentlemen, the Defendant in this case is Mr. Robert Matthew Fulmer. I will ask you, is there anyone among you who has a personal, professional, or family relationship with Mr. Fulmer?

(WHEREUPON, there was no response.)

THE COURT: All right. Let the record reflect no affirmative response.

Ladies and gentlemen, Mr. Scott Robinson of the Pickens County Bar represents Mr. Fulmer in this matter. Is there anyone among you who has a personal, professional, or family relationship with Mr. Robinson.

(WHEREUPON, there was no response.)

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THE COURT: All right. Ladies and gentlemen, this case is being prosecuted by Mr. Doug Richardson of the Thirteenth Circuit Solicitor's Office. I'll ask you, is there anyone among you who has a personal, or professional, or family relationship with Mr. Richardson, or with any employee of the Thirteenth Circuit Solicitor's Office?

(WHEREUPON, there was no response.)

THE COURT: All right. Let the record reflect no affirmative response.

Ladies and gentlemen, I'm going to read for you a list of potential witnesses in this case. This is a long list of witnesses. I do not anticipate in this case that each and every one of them will be called. However, I'm going to read them for you so you'll know who may testify.

And after I've read them, I'm going to read -- I'm going to ask the same question, that is, if you have any personal, professional, or family relationship with any of these prospective witnesses. David McKenzie of the Pickens County Sheriff's Office; Chris Porter of the Pickens County Sheriff's Office; Clarence Robinson; Lieutenant Tom Williamson of the Pickens County Sheriff's Office; Detective Chuck James of the Pickens County Sheriff's Office; Jennifer Allred; Heather Posey; Linda Jones; Paul Turner; Linda McAtee; Linda Jones; Paul

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Turner; April McAtee; J.T. Albrecht of the Pickens County Sheriff's Department; Lieutenant Henry Campbell of the Pickens County Sheriff's Department; Agent Tommy Blankenship of the Pickens County Sheriff's Office; Jacob Fulmer; Lieutenant J.B. Kelley of the Pickens County Sheriff's Office; Charles Burgess; Danny Adams; Sergeant Brian Cowan of the Easley Police Department; Detective Marvin Nix of the Pickens County Sheriff's Department; Detective Brian Swafford of the Pickens County Sheriff's Office; Kevin Durham of the Pickens County Sheriff's Office; Raymond McAtee; Agent Andy Robinson of the Pickens County Sheriff's Department; Andrew Reese of the Easley Police Department; David Garrison of the Easley Police Department; John Norton of the Easley Police Department; Melissa Yates of the Easley Police Department; Sarah Hamilton; Chad Hayes; Tony Robinson of the Pickens County Sheriff's Office; and Dan Defreese of the State Law Enforcement Division. Also --

Now, Mr. Robinson, did you write this?

MR. ROBINSON: Guilty as charged, Your Honor.

THE COURT: We'll see if I can read this. Chad?

MR. ROBINSON: I think the first two -- Your Honor, I think the first two were already read, Chad Hayes and Sarah Hamilton.

THE COURT: Chad Hayes and Sarah Hamilton.

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And then Amy Johnson?

MR. ROBINSON: Yes.

THE COURT: And Wanda Harper?

MR. ROBINSON: Yes.

THE COURT: Okay. They didn't teach hieroglyphics at Eastside High School.

Ladies and gentlemen, is there anyone among you who has a personal, professional, or family relationship with any of those prospective witnesses?

Okay. If you'd stand up and state your name, and juror number, and then tell me with whom you have a relationship.

JUROR #59, PAULA GRANT: Paula Grant, #59.

Is it Reverend Paul Turner?

THE COURT: Is it? Do you know if it's Reverend Paul Turner?

MR. RICHARDSON: I do not believe he's a reverend.

THE COURT: Okay. Let me ask you this. If it is, is the fact that he would testify in this case, not as a party to the case, not as a victim or anything of that sort, but just as a witness, would that affect your ability to be a fair and impartial juror in the trial of this case?

JUROR #59, PAULA GRANT: No.

THE COURT: Okay. Thank you.

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I appreciate you telling me.

Yes, sir.

JUROR #151, JUSTIN WATSON: #151, Justin Watson.

THE COURT: Yes, sir.

JUROR #151, JUSTIN WATSON: I went to school with Detective Swafford.

THE COURT: Given that fact, do you think you could still be a fair and impartial juror in the trial of this case?

JUROR #151, JUSTIN WATSON: Yes, sir.

THE COURT: Okay. Thank you for telling me.

I appreciate it.

Yes, ma'am.

JUROR #160, TARRAH YATES: #160, Tarrah Yates Fisher.

THE COURT: Yes, ma'am.

JUROR #160, TARRAH YATES: When you said Linda Jones, I'm not really sure, but I believe that is a distant family member to my mother, whom I take care of in my home.

THE COURT: Do you think given that fact -- if it is the same person, do you think you could still be a fair and impartial juror in the trial of this case?

JUROR #160, TARRAH YATES: Oh, most definitely, yes, sir.

THE COURT: Thank you for telling me.

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I appreciate that.

Okay. Anyone else?

(WHEREUPON, there was no response.)

THE COURT: Okay. Ladies and gentlemen, is there anyone among you who has an immediate family member who is employed by law enforcement?

Yes, ma'am.

JUROR #125, PAMELA SHEPPARD: Pamela Sheppard, #125.

Joshua Harbin is my nephew. He's with the city.

THE COURT: Do you think given that fact that you could still be fair and impartial in this trial, ma'am?

JUROR #125, PAMELA SHEPPARD: Yes, sir.

THE COURT: Thank you for telling me.

I appreciate it.

Okay. Ladies and gentlemen, is there anyone among you who is a member of or contributor to an organization which advocates for victim's rights or criminal prosecution? When I say that, I mean organizations such as MADD, Mother's Against Drunk Driving, SADD, Students Against Drunk Driving, or any like organization that advocates for prosecution, or victim's rights.

(WHEREUPON, there was no response.)

THE COURT: All right. Let the record reflect no affirmative response.

Ladies and gentlemen, is there anyone among you who

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has been a victim of a violent crime?

(WHEREUPON, there was no response.)

THE COURT: All right. No affirmative response.

Ladies and gentlemen, is there anyone among you who believes that for whatever reason you could not be a fair and impartial juror in the trial of this case?

JUROR #42, JAMES FINLEY: Excuse me, sir.

THE COURT: Yes.

JUROR #42, JAMES FINLEY: James Finley, #42.

I am currently listed as a victim for burglary first degree in Greenville County on a case currently.

THE COURT: Okay. Do you think that given that fact you could be fair in this case?

JUROR #42, JAMES FINLEY: No, sir.

THE COURT: All right. Good enough. Then I'll allow strikes for cause with respect to Mr. Finley.

Yes, sir.

JUROR #12, MICHAEL BERRY: I was a victim of a prior attack on me here recently.

THE COURT: Okay. And your name and juror number, sir?

JUROR #12, MICHAEL BERRY: Michael Berry, #12.

THE COURT: And do you think given that fact that you could still be a fair and impartial juror in the trial of this case, sir?

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JUROR #12, MICHAEL BERRY: Yes.

THE COURT: Okay. Thank you for telling me.

I do appreciate it.

Okay. Ladies and gentlemen --

Any additional questions or voir dire?

MR. RICHARDSON: None from the State, Your Honor.

THE COURT: Mr. Robinson?

MR. ROBINSON: No, sir.

THE COURT: Okay. Good enough.

Ladies and gentlemen, what we're going to do now is we're going to proceed with jury selection. What is going to happen is the Clerk of Court is going to provide -- or is going to call out the names of the jurors in this pool in a random order.

When he calls those out, what I would like for you to do is stand up, just stand up right where you are, and the attorneys will make their strikes, pre-emptory challenges. Now, they can make those strikes based on just -- for just about any reason. They are given very wide latitude and discretion for making strikes.

Now, if you stand up and you hear from both attorneys either, please, seat the juror, or, please, swear the juror, or seat the juror, then what I'll ask you to do is take all of your belongings and come over and have a seat in the jury box. If you hear from either one of the

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attorneys, please, strike the juror, or, please, excuse the juror from the trial of this case, then you will have been stricken from the trial of this case, and you can just sit down where you are.

Please don't try -- don't take any offense from whether you are either stricken or accepted. Don't try to get in the head of the lawyer and define why it may have happened, because then you may be as crazy as we are. And I wouldn't suggest that you try that.

So having said that, Mr. Wellborn, I'll defer to you.

(Pause.)

THE COURT: Counsel, what we are discussing is Mr. Finley was #2 on that list. And what I've done is I've just stricken him. And we'll just roll to #3.

MR. RICHARDSON: Yes, sir.

JURY SELECTION

THE CLERK: Juror #125, Pamela Sheppard.

(WHEREUPON, Pamela Sheppard, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please excuse Ms. Sheppard from the trial of this case.

THE CLERK: Okay. If you would, have a seat, please, ma'am.

Juror #83, Thea Legare.

(WHEREUPON, Thea Legare, a white female, stood.)

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THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Legare.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat the juror.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #2, Eryn N. Alewine.

(WHEREUPON, Eryn N. Alewine, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Alewine.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Alewine.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #137, Gerald S. Starliper.

(WHEREUPON, Gerald S. Starliper, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please dismiss Mr. Starliper from the trial of this case.

THE CLERK: If you'll return to your seat, please, sir.

Juror #87, Susan Looper.

(WHEREUPON, Susan Looper, a white female, stood.)

THE CLERK: What says the State?

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MR. RICHARDSON: Please present Ms. Looper.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Looper.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #33, Jo Ann Crowe.

(WHEREUPON, Jo Ann Crowe, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Crowe.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Crowe.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #74, Kathy F. Johnson.

(WHEREUPON, Kathy F. Johnson, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Johnson.

THE CLERK: And the Defense?

MR. ROBINSON: Please excuse Ms. Johnson.

THE CLERK: If you would, have a seat right there.

Juror #12, Michael Berry.

(WHEREUPON, Michael Berry, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Berry.

THE CLERK: And the Defense?

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MR. ROBINSON: Please excuse Mr. Berry.

THE CLERK: If you would, return to your seat, please, sir.

Juror #35, Carla T. Csernak.

(WHEREUPON, Carla T. Csernak, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Csernak.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Csernak.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

THE COURT: Mrs. Csernak, how badly did all these people mispronounce your name?

JUROR #35, CARLA CSERNAK: Csernak is good.

THE COURT: Csernak. Okay. Good.

THE CLERK: I tried.

THE COURT: Everybody followed your lead after that.

THE CLERK: Juror #129, Susan E. Skelton.

(WHEREUPON, Susan E. Skelton, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Skelton.

THE CLERK: And the Defense?

MR. ROBINSON: Please excuse Ms. Skelton.

THE CLERK: If you would, return to your seat, please, ma'am.

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Juror #14, Beverly A. Betsko.

(WHEREUPON, Beverly A. Betsko, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Betsko.

THE CLERK: And the Defense?

MR. ROBINSON: Please excuse Ms. Betsko.

THE CLERK: If you will, return to your seat, please, ma'am.

Juror #110, Christopher A. Phillips.

(WHEREUPON, Christopher A. Phillips, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Phillips.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Mr. Phillips.

THE CLERK: If you would, come forward, please, sir, and have a seat in the jury box.

Juror #98, Corwin P. Mount.

(WHEREUPON, Corwin P. Mount, a white male, stood.)

THE COURT: Now, gentlemen, before you strike Mr. Mount --

Mr. Mount, you're HAC; right?

JUROR #98, CORWIN P. MOUNT: Yes, sir.

THE COURT: Understand that Mr. Mount is one of the

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soldiers in my battalion. It doesn't make any difference to me whatsoever. I'm just letting y'all know.

MR. RICHARDSON: Please present Mr. Mount.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Mr. Mount.

THE CLERK: Okay. If you would, come forward, please, sir, and have a seat in the jury box.

Juror #73, Michael V. Hummel, Jr.

(WHEREUPON, Michael V. Hummel, Jr., a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Hummel.

THE COURT: And the Defense?

MR. ROBINSON: Please seat Mr. Hummel.

THE CLERK: If you would, come forward, please, sir, and have a seat in the jury box.

Juror #8, Jerry C. Ball.

(WHEREUPON, Jerry C. Ball, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Ball.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Mr. Ball.

THE CLERK: If you would, come forward, please, sir, and have a seat in the jury box.

Juror #160, Tarrah Yates.

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(WHEREUPON, Tarrah Yates, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Yates.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Yates.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #156, Kimberly M. Williams.

(WHEREUPON, Kimberly M. Williams, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please excuse Ms. Williams from the trial of this case.

THE CLERK: If you would, return to your seat, please, ma'am.

Juror #52, Bradley T. Garrick.

(WHEREUPON, Bradley T. Garrick, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Garrick.

THE CLERK: And the Defense?

MR. ROBINSON: Excuse Mr. Garrick, please.

THE CLERK: If you would, return to your seat, please, sir.

Juror #148, Toni Vitanza.

(WHEREUPON, Toni Vitanza, a white female, stood.)

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THE CLERK: What says the State?

MR. RICHARDSON: Please excuse Ms. Vitanza from the trial of this case.

THE CLERK: Please return to your seat, please, ma'am.

Juror #112, Mary L. Pierce.

(WHEREUPON, Mary L. Pierce, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Pierce.

THE CLERK: And the Defense?

MR. ROBINSON: Please excuse Ms. Pierce.

THE CLERK: If you would, return to your seat, please ma'am.

Juror #151, Justin F. Watson.

(WHEREUPON, Justin F. Watson, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please excuse Mr. Watson from the trial of this case.

THE CLERK: Please return to your seat, please, sir.

THE COURT: I believe that's five for the State.

Am I correct, Mr. Richardson?

THE CLERK: That is correct.

MR. RICHARDSON: That's five?

THE CLERK: That's five by my count.

Juror #47, Angie S. Violett.

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(WHEREUPON, Angie S. Violett, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Violett.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Violett.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

Juror #84, Shannon D. Lentz.

(WHEREUPON, Shannon D. Lentz, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Lentz.

THE CLERK: And the Defense?

MR. ROBINSON: Please excuse Mr. Lentz.

THE CLERK: Okay. If you'd return to your seat, please, sir.

Juror #104, Connie L. Oliver.

(WHEREUPON, Connie L. Oliver, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Oliver.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Oliver.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

THE COURT: Is that 12?

THE CLERK: That is 12.

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THE COURT: Gentlemen, pick two alternates. Two for the Defense, and one for the State.

Ladies and gentlemen, it's important we have alternate jurors in the case because, oftentimes, it does come to pass that one of the 12 originally seated jurors is not able to proceed in the case for any number of reasons, either because of health issues, or family issues, or because someone may recognize a party that they didn't understand or didn't recognize that they knew when I read out the list.

The alternates role in the jury is just as important as the main jurors. Because it may be that you find yourself in very short order during the proceedings one of the main jurors.

So we'll go ahead and get two.

THE CLERK: Thank you.

Juror #20, Paula A. Brownell.

(WHEREUPON, Paula A. Brownell, a white female, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Ms. Brownell.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Ms. Brownell.

THE CLERK: If you would, come forward, please, ma'am, and have a seat in the jury box.

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Juror #118, Ben A. Roberson.

(WHEREUPON, Ben A. Roberson, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Roberson.

THE COURT: And the Defense?

MR. ROBINSON: Please excuse Mr. Roberson.

THE CLERK: Okay. If you would, return to your seat, please, sir.

Juror #43, Gregory N. Ford.

(WHEREUPON, Gregory N. Ford, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please excuse Mr. Ford from the trial of this case.

THE CLERK: Juror #133, Eric H. Snider.

(WHEREUPON, Erick H. Snider, a white male, stood.)

THE CLERK: What says the State?

MR. RICHARDSON: Please present Mr. Snider.

THE CLERK: And the Defense?

MR. ROBINSON: Please seat Mr. Snider.

THE CLERK: If you would, come forward and have a seat in the jury box.

THE COURT: Counsel, any matters of law or motions to be made with respect to the qualification or selection of this jury?

MR. RICHARDSON: None from the State, Your Honor.

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MR. ROBINSON: None from the Defense, Your Honor.

THE COURT: All right. Ladies and gentlemen, for the rest of you, I don't anticipate we will be picking another jury today. It may be -- it may come to pass that we pick another jury tomorrow. However, I will tell you, based on the witness list, I suspect we will go through the day tomorrow. And I don't anticipate picking another jury Tuesday either. So I'm just giving you some idea of where we stand and where I think we'll stand tomorrow as well.

But I would like for you to, please, call back after 6:00 this evening on that juror hot line. And you will get instructions as to whether you should be back tomorrow morning or not.

If, in fact, you don't have to be back tomorrow morning, then you will call back the next evening, or when you're instructed to do so. Sometimes, the clerk will have you call in at 12:00 or 1:00, depending on the state of the trial that's being tried at the time, and then follow the directions from the Clerk of Court's message.

And I'm sorry you didn't get chosen for this jury. Perhaps, you will for another one.

But I thank you, nonetheless.

And I hope you have a great day. And I look forward to seeing you later in the week. But you're excused for the day.

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(WHEREUPON, the remaining jury panel members exited the courtroom.)

THE COURT: Y'all come up real quick.

(WHEREUPON, a bench conference was held.)

INTRODUCTORY REMARKS

THE COURT: All right. Ladies and gentlemen, congratulations. You made the cut.

As I told you earlier, I hope that you find this to be rewarding and educational. Before we get started, it's important for me to give you some indication of the process that we will follow, the procedure, and then, also, to give you an idea of what your role is as jurors in the case. So let me start with that first.

Your role as jurors in this case is to be the finders of the facts, the judges of facts. You will determine, based on the evidence that is presented in this case, what the facts are. You have the sole and exclusive responsibility to determine the facts in this case. You will determine that based on witnesses who take the stand and testify under oath.

You will, also, determine what the facts are based on other evidence that may be presented. Evidence can take many forms, not just the witness testimony, but, also, it can be physical objects that are presented into evidence. It could be documents. It could be videotapes,

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audiotapes. It can take many different forms. And that evidence will be presented in court under the rules of procedure and under the rules of evidence. You will look at that. 12 deliberating jurors will look at that, and you will determine what the facts are.

Once you have determined what the facts are in your sole and exclusive determination, you will then determine whether the State has met its burden of proof of proving the Defendant guilty beyond a reasonable doubt. I've told you already when we began this entire process that the Defendant is presumed innocent until 12 deliberating jurors determine that the State has met its burden of proving him guilty beyond a reasonable doubt. The State must prove each and every element of the offense beyond a reasonable doubt.

Now, the way you will make the determination as to whether the State has met its burden of proof is by determining, first of all, what the facts are in your role as the finders of the facts. Then second, in applying the law to those facts as I give it to you.

Now, as distinguished from you, I'm the judge of the law. That means I will tell you what the law is as it relates to the evidence that's presented in this trial. Now, you can think of me as an impartial and objective referee, an umpire, calling balls and strikes. And my job

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is to make sure we follow the rules, the rules of procedure, the rules of court. And that due process is afforded to all parties before the Court. I'm just making sure that everything is done in accordance with the law.

Now, if at any time during this trial I say anything that gives you the suggestion that I have an opinion about what the facts are, or that gives you the impression that I have any stake in what your decision may be, disregard that entirely. Because I truly have no stake in the outcome of this case.

The only thing I'm tasked with doing is making sure it's fair not only to the Defense, but the State and to y'all as well. Because you're going to invest some time in this case. And it's incumbent on me to make sure it's fair to y'all as well, and that you haven't wasted your time by me having performed an imperfect job.

So during the course of this trial, what I will do is I will rule on motions and objections that may come before the Court from the attorneys. Now, when I rule on those objections and on those motions, in most cases, I'm either going to sustain or I'm going to overrule. That is, I'm going to rule for or against one side or the other. I have to -- there are two sides and I have to pick a side.

I don't want you to think that because I have ruled in favor of one party that I have a bias or a preference

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towards that party. I truly don't. All I'm doing is making a very objective and sterile decision, based on my understanding of the rules of the Court.

Also, don't hold it against the attorneys when they make objections, or when they make motions. That is their job, that is, to advocate the interests of their respective clients.

Now, ladies and gentlemen, the way we'll start this case is I will give you a -- I will give you this opening charge on the law just to give you an idea of how we're going to proceed. Then after that, we're going to take a lunch break. And I'm going to send y'all to lunch. We're going to come back. When we come back, the attorneys will begin their opening statements.

Now, opening statements are statements from the attorneys, essentially, introducing themselves and introducing their theory of the case to you. That is not evidence. Attorney's statements both in opening and closing are not evidence to be considered by you. And attorney's questions are not evidence to be considered by you. The evidence that is presented on the stand, the statements from the witnesses, and any other evidence that's introduced into the record is the evidence you must consider.

So understand when the attorneys are arguing to you,

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they are advocating for their particular side. They're advancing their argument to you. They're trying to persuade you. You consider it in that light. It's not evidence. After each attorney has had the opportunity to give a brief opening statement, then the State will have the opportunity to present its case. The State goes first because the State has the burden of proof.

So what will happen is the State will call its witnesses to the stand. The Solicitor will have the opportunity to examine that witness, that is, ask that witness questions. After the State has asked questions, then the Defense will have the opportunity to cross-examine that very same witness. After all the questions of that witness has been asked, then that witness will be excused and another witness will come up.

The State will call all the witnesses that it may have and introduce all of the other evidence that it may have through those witnesses. And then when the State has called all of its witnesses, the State will rest.

After the State rests, then the Defense will have the opportunity in his discretion to put up evidence into the record as well. And if the Defense elects to do that, then, again, they'll call witnesses. The Defense will examine and then the State will cross-examine those witnesses.

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After you've heard all the evidence that the Defense intends to present, then, under certain limited circumstances, the State has the opportunity to put up evidence in reply. It doesn't happen all time, but sometimes it happens. If that's going to happen in this case, I'll let you know. And, ordinarily, it's very short and doesn't take a whole lot of time. But there's a possibility that that can happen in each and every case.

After you've heard all of the evidence, both in -- both from the State and the Defense, and potentially in reply, then the attorneys will have the opportunity to make closing arguments to you. Closing arguments, again, is not evidence. What it is is the attorneys arguing based on the evidence that has been presented in the trial trying to convince you and persuade you to their side. After you've heard the closing arguments from counsel, then I'll give you a closing charge on the law.

Now, the reason I give you a closing charge on the law at the very end of the case is because I don't know what law is applicable to the evidence that is to be presented in this case as I sit here. I will see all of this evidence for the first time just like y'all will. I'm going to be in the exact same boat y'all are, which means that I don't know what law will be applicable until

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I see the evidence that the parties intend to present.

After I've given you a closing charge on the law, then I'll let you return to your jury room. And then you can begin your deliberations when I give you very specific instructions to do so. During the course of this trial, don't begin your deliberations until the very end when I tell you to do so. If you have to ask yourself, did the Judge tell us to deliberate, then the answer is no because it's going to be much, much clearer than that. You will know. You can't begin your deliberations until such time as you have seen all of the evidence.

You know in your own personal experience that you may have had friends or family members, kids that have come up to you and said mom and daddy, brother or sister, you're not going to believe what so and so did. And you might think, based on that statement, that you know what happened. And then you hear the other side of the story. So it's important that you -- and court is the exact same way. It's important that you listen to everything before you start deliberating about the case.

Also, when we take breaks, which we're about to do, don't go out and perform any self-help. That means I know y'all have these powerful implements that will reach around the world, and you can research anything on Google. Please don't go out and look for any information related

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to this case. I don't think you could find it, but I don't know. So don't do it. Don't go to the Clerk of Court's Office and see if you can pull up indictments, or anything of that sort.

The only thing that's appropriate for you to consider is that which is presented in court under the rules of evidence. If you consider anything else, then it taints your deliberation.

Also, I know you'll be tempted to talk to your significant others, your friends about what you're doing. It's fine to tell them that you're on jury duty. It's fine to tell them that you're on jury duty and it's a certain type of case. But don't discuss it with them anymore than that.

The reason that is is because when you start discussing the case with someone, that inevitably leads to a question. And they'll start drilling you. If they're like my wife, they'll start drilling you. Well, every time you have to respond to a question, you have to make a qualitative determination of what did the evidence show me. And that's a deliberation.

So you just tell them, honey, just keep the powder dry. And after this is over, we'll sit down and we'll discuss it all weekend, if you want to. But don't discuss it with them until after we've finished the trial, you've

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returned a verdict, and I've dismissed you as jurors in this case. Okay.

So, ladies and gentlemen, also, know that during the course of the trial, we'll be taking regular breaks. I like to break anywhere from each -- from once an hour to once every hour and a half. It depends on witnesses. You know, some witnesses are longer than others. So I like to break at a convenient and logical stopping point. But know that, at least, every hour and a half that I'm going to be looking to take a break.

Now, understand that if at any point in time otherwise y'all need to take a break that you just need to let me know. Y'all are the 14 most important people in this courtroom. And it's important that you're listening to the evidence that's being presented.

So if you are distracted for whatever reason, then just get my attention, get the first sergeant's attention, and let us know. Because I would much rather you take that break as opposed to sit there and think, boy, I wish he would be quiet because I really need to take a break. So just let me know. Even if it's five minutes after we come back into court, just let me know, and we'll take a break.

So, at this point in time, I'm going to let you go for lunch. It is about 10 after the hour right now. So

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I'm going to ask you to be back here at 1:30, at 1:30. And when we come back at 1:30, I'm going to ask the Clerk to swear you in, take an oath specific to this case. And then I'm going to let the attorneys begin their closing -- opening statements to you.

So y'all have a good lunch. Please don't discuss the case.

(WHEREUPON, the jury was excused from open court at approximately 12:10 p.m.)

THE COURT: Okay. Gentlemen, any issues to take up before we adjourn for lunch?

MR. RICHARDSON: Your Honor, just briefly.

THE COURT: Yes, sir.

MR. RICHARDSON: At some point in this case, I'm going to be introducing a firearm with ammunition and, also, a magazine. Generally, I go by Judge Kittredge's form -- or I don't know if it's an order or just a suggestion.

THE COURT: Yes, sir.

MR. RICHARDSON: But the firearm is going to be secured and unable to fire. I needed to bring that to your attention if you had particular ways you wanted to deal with that.

THE COURT: No. I know that ordinarily when you bring them in they have some sort of trigger lock

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mechanism on.

MR. RICHARDSON: It's going to have a -- what do you call it, the soft handcuffs like a -- there's a zip tie thing coming through it --

THE COURT: I got you. And that's, essentially, What I'm talking about. So I'm comfortable with it. I just ask you to look at it again and make sure it's clear.

MR. RICHARDSON: Yes, sir.

And I'll have the officer testify to that, also, and examine it when I give it to him.

THE COURT: Okay. Good enough.

MR. RICHARDSON: I just wanted to make sure. I've introduced them many times in my life, but I don't think I have in front of you.

THE COURT: My representation to you is I will not give them the firearm with the ammunition while you are making arguments.

MR. RICHARDSON: And we do appreciate that.

THE COURT: Okay. Mr. Robinson, anything else?

MR. ROBINSON: No, Your Honor.

THE COURT: Gentlemen, I'll see y'all back at 1:30. I'll be around. So if you need me before then, let me know.

(WHEREUPON, a lunch break was taken.)

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(WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 were marked for identification only.)

THE COURT: I have just been advised that we have all of our jurors.

Is counsel ready to proceed?

MR. RICHARDSON: The State is ready, Your Honor.

MR. ROBINSON: The Defense is ready, Your Honor.

THE COURT: All right. You can bring the jury in.

(WHEREUPON, the jury came into open court at approximately 1:44 p.m.)

THE COURT: Ladies and gentlemen, welcome back.

Now, listen, if during the course of this week, the sergeant makes you start doing push-ups back there, I want y'all to let me know. Because that is not appropriate and is not in accordance with the law. Don't let him haze you like that.

Before we get started with opening statements, the Clerk of Court is going to swear you in. This is an oath to try this case in accordance with the law.

So, Mr. Welborn, I'll turn it over to you.

THE CLERK: If you would, please, stand.

Again, after the oath is administered, answer by saying "I will." Raise your right hand.

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(WHEREUPON, the jury was sworn at approximately 1:45 p.m.)

THE CLERK: Thank you.

You may be seated.

THE COURT: Mr. Richardson.

OPENING STATEMENTS

MR. RICHARDSON: Thank you, Your Honor.

May it please the Court.

Mr. Robinson.

Good afternoon, ladies and gentlemen.

To reintroduce myself, I am Doug Richardson. I am an assistant solicitor here in Pickens County. Pickens County is part of a circuit which is developed between Greenville County and Pickens County. It's called the Thirteenth Judicial Circuit. I happen to work over the Saluda River, as we say, kind of on this side of the river.

Now, ladies and gentlemen, my job is to prosecute the various cases that come from the various law enforcement agencies within Pickens County. This particular case came from the Pickens County Sheriff's Office. This is Detective Chuck Jones. He is our lead detective in this case. You'll be hearing from him a little later in this trial.

Now, ladies and gentlemen, the Judge has done a fine

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job of kind of giving you a road map of how the trial is going to go, and things of that nature. So I'm not going to reiterate that. I will speak just briefly on the charges.

The Defendant has been charged, first, with attempted murder; second, with burglary in the first degree; third, with possession of a weapon during the commission of a violent crime; and, fourth, larceny. In this case, it's petit larceny.

Attempted murder is, basically, the killing of another human being with malice aforethought. In this particular case, I'm going to prove to you that -- or, excuse me, it's the attempted killing of a human being. In this case, I'm going to prove to you that the intent was through a gunshot.

Burglary first degree. What makes it first degree is several different factors that could be. One would be going into the house of another without their consent during the nighttime. Or another possibility is going into a house with a weapon, while armed with a deadly weapon, or if you go into a house and you steal a deadly weapon. Any of those factors make it burglary first degree.

Possession of a weapon during the commission of a violent crime. Well, if you were committing a violent

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crime, which -- and the Judge is going to tell you the law at the end of this case. But he will tell you that attempted murder and burglary first degree are violent crimes.

Then we, also, have larceny, it's petit larceny. Larceny is the taking of somebody else's property without their consent and with the intent to permanently deprive them of that property.

Now, ladies and gentlemen, this case is going to go several days. And I'm going to put up quite a few witnesses. And that's where I'm going to build a puzzle. I'm going to put the pieces of the puzzle in, and the case is going to develop. And, eventually, it's going to come to a picture. And that picture is going to be what you are here today to decide.

There are two judges in this courtroom. Judge Stilwell, he's the judge of the law. He tells us what the law is. And, as he stated, also, he's kind of the referee of the case.

What's your job as a judge? You, also, are judges. Y'all are judges and triers of the fact. So y'all are going to determine the facts of this case. And you'll determine that through the testimony and the evidence that's presented to you.

Ladies and gentlemen, the evidence is going to show

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you that back on December the 17th of 2012, five people got together. And these five people went to the home of the victim, Clarence Robinson, who's sitting right there, with the intent to rob him of some money and goods and, also, some drugs.

Now, ladies and gentlemen, these five people all did this together. As they do that together, it is the law in the State of South Carolina -- and the Judge will tell you the law at the end. I'll give you a pretense of it. It's what we call the hand of one is the hand of all.

So if you're involved with a crime and you know that crime is happening, then you're just as guilty as all the other people in that crime, no matter what happens. You go down to -- if you drive somebody to a bank and you know they're going to rob that bank and you stay in the car and they go rob that bank and they come back in and get in your car and you drive off, you're guilty. The hand of one is the hand of all. And that's what this case is going to amount to.

I'm not going to get into the facts. You're going to hear from several people. And you're going to hear from people who were involved in the crime. And at the end of this trial, ladies and gentlemen, I'm going to ask you to come back with a verdict of guilty.

It's been mentioned that I have the burden of proof,

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which I gladly accept. Solicitors all over the state accept it every day. I accept it in this courtroom every day. And we must prove to you beyond a reasonable doubt that the Defendant is guilty. And I will do that.

I ask that you simply use your common sense throughout this case. You will hear people testify. You will see evidence put in. At the end of the day, what it is we're asking you to do is come in here, use your common sense just like everybody has from their everyday walks of life. And everybody here has a different walk of life. Use your common sense. And if you do that, ladies and gentlemen, you will come back with a verdict of guilty in this case.

Thank you.

I'll be back up to speak to you in closing arguments. But until then, I appreciate your time and assistance.

Thank you.

THE COURT: Yes, sir.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

MR. ROBINSON: Mr. Richardson.

Hello. Again, my name is Scott Robinson. I represent Robert Fulmer, who is seated to my right.

I'm asking you to use your common sense as well. Because you don't just check your common sense at the door

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when you come to court in this case.

All right. But my client is innocent. He's innocent.

Now, let me tell you a little bit about Robert Fulmer. Robert does tattoos. He does those tattoos in a parlor, and so forth. That's why you notice there are tattoos on his neck, and so forth. He charges money for tattoos, $75 for a smaller tattoo.

And, in this case, he wasn't anywhere near this incident site or anywhere near where this allegedly took place. In fact, at the time this all happened, you're going to hear he was some place else. He was doing his tattoos. You're going to hear from witnesses that are going to put him completely different than this where they're saying he was at the time.

Now, Mr. Richardson says he wants you to use your common sense. If you use your common sense, you'll find that my client, Mr. Fulmer, is innocent. He wasn't even there when this happened.

But here's the thing, the State is going to present a large group of witnesses in this case. But a lot of their witnesses are going to be people that have got odd circumstances, or bad backgrounds, or whatever. But they all have -- and use your common sense. They all have reasons to be less than truthful. Think about that.

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Think about the witnesses, what they have to gain, what they're gaining, and so forth, when you look at this.

Now, that's where y'all come in. You are, as the judge of the facts, to look at everything in this case, everybody. Look at the witnesses, the evidence, both physical, and so forth. Look at it carefully and with common sense. Who has an interest? Who doesn't have an interest in this case? If you do that, you're going to come to one conclusion. And that is that Robert Fulmer, in this case, who's seated to my right, is innocent of these charges.

Thank you.

THE COURT: All right. Mr. Richardson, you can call your first witness.

MR. RICHARDSON: Thank you, Your Honor.

The State calls Clarence Robinson to the stand.

THE CLERK: Let me swear you in before you sit down.

Raise your right hand.

WHEREUPON,

CLARENCE ROBINSON,

after first having been duly sworn, testified as follows:

THE COURT: Thank you, sir.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: Clarence Robinson.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Robinson, do you reside in Pickens County?

A Yes, sir.

Q Okay. And where do you reside?

A [redacted] Lane.

Q Okay. And is that where this incident took place that we're here about today?

A Yes, sir.

Q Okay. And how old are you?

A I'm 50 years old.

Q Okay, sir. Are you presently employed?

A No, sir.

Q Okay. Why not?

A Due to injuries.

Q Okay. And is that injuries that was caused to you during this incident?

A Yes, sir.

Q Okay. Now, sir, let me take your memory back to December the 17th of 2012. You were -- you testified you were living at [redacted] Lane at that time?

A Yes, sir.

Q Okay. What did you do that day?

A I had been out scrapping, trying to make some extra money. Not too much of anything because I couldn't cut

grass at that time, because it was in December. It was just a day of trying to make some extra money out scrapping.

Q Okay, sir. And, at some point, did you -- well, let me ask you this. Do you know the Defendant?

A Yes, sir.

Q How do you know him?

A I've been friends with his family for -- I don't know -- maybe 15 years.

Q Okay. And had you ever had any previous dealings with him?

A You know, I knew his family. I knew of him. I -- not that day, not that particular day, I hadn't seen him.

Q Okay. But had you sold some marijuana to him before?

A Yes, sir.

MR. ROBINSON: Objection, Your Honor, relevance.

THE COURT: Okay. Overruled.

You may proceed.

BY MR. RICHARDSON:

Q Had you sold marijuana to him before?

A Yes, sir.

Q Okay. Now, when you did that, had he come to your house?

A Yes, sir.

Q All right. And that's the house at [redacted] Lane?

A Yes, sir.
Q Now, at some point that day, did you come back home?
A Yes, sir.
Q All right. Do you recall what time you got back home?
A I probably got home sometime around 3:00 or 4:00 that afternoon.
Q Okay. And what did you do when you were back home?
A I sat around the house, probably listening to my stereo, and was selling a little marijuana.
Q Okay. And then what did you do later that day?
A I had left the house to go get something to eat. And I swung by a friend's house just to get out of the house for a little while. I stopped by their house. And I stopped and got something to eat on my way home.
Q Okay, sir. And where did you eat? Do you remember?
A I had stopped by Hardee's on the way home in Liberty. And I picked something up at the drive-thru there.
Q After you did that, where did you go?
A Home.
Q And is it light or dark outside?
A It's dark.
Q All right. When you get home, what -- first of all, this [redacted] Lane, is this in Pickens County?
A Yes, sir.

Q Okay. When you arrive back home, do you notice anything?
A When I pulled in my driveway, I noticed all my lights in my house were on. And, you know, it wasn't like me to leave every light on in the house. I live by myself.
Q Okay.
A And every light in the house was on. I was just -- you know, it was kind of -- I didn't remember leaving every light on in the house.
Q Okay, sir. And so when you pulled in, were you in the front of your house or the back of your house?
A Well, the trailer kind of sits a long way -- the road comes this way and it goes like this. So I would say to the side of the trailer, what's considered the front.
Q Okay. Well, let me show you what's been previously marked as State's Exhibit No. 1. Do you recognize that?
A Yes, sir.
Q And what is that?
A That's where I live.
Q Is that an overview of where you live?
A Yes, sir.
MR. RICHARDSON: Your Honor, at this time, the State would offer State's Exhibit No. 1 into evidence.
THE COURT: Any objection, sir?
MR. ROBINSON: No objection.

THE COURT: All right. Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 1 was admitted into evidence.)

BY MR. RICHARDSON:

Q All right, sir. Now, there's a laser pointer right there. And the red button will hit that laser.

Can you show the jury where your trailer is on this map?

A My trailer is --

Q Can you see it?

A There's the road you come down. And you come down right there, right around there. And I'm right there.

Q And you're [redacted]?

A Yes, sir.

Q Okay, sir. Now, does -- [redacted] Lane, does it -- is it -- does it go straight through, or does it dead end?

A It dead ends.

Q Can you show the dead end?

A (Witness complied.)

Q Okay, sir. Let me hand you what's been marked as State's Exhibit No. 2. Do you recognize this?

A Yes, sir.

Q And what is that?

A That is the front of my trailer.

Q Does that accurately depict your trailer on the evening of December 17th, 2012?

A Yes, sir.

MR. RICHARDSON: Your Honor, at this time, the State would offer State's Exhibit No. 2 into evidence.

THE COURT: Any objection, sir?

MR. ROBINSON: No objection.

THE COURT: All right. Without objection, the same will be moved into evidence.

(WHEREUPON, State's Exhibit No. 2 was admitted into evidence.)

BY MR. RICHARDSON:

Q So where on that photo did you pull in?

A Where my car is, right there to the left, right there. I got out on the driver's side, which you really can't see in the picture.

Q And where did you see the lights?

A Every window in the trailer. Every light was on in the house.

Q Okay. And you may have testified to this. Had you left those lights on?

A No, sir.

Q All right. And did you notice anything in particular at the window?

A Yes, sir. Somebody was -- at that window right there

had opened and pulled the curtains back and looked at me as I was getting out of my car.

Q And when you saw that, what did you do?

A I ran around this side of the trailer.

Q Okay. Well, let me hand you what's been previously marked as State's Exhibit No. 3. Do you recognize that?

A Yes, sir.

Q And what is that?

A That is the end of my trailer, the front end of my trailer.

Q And does that accurately depict your trailer on December the 12th of -- excuse me, December 17th of 2012?

A Yes, sir.

MR. RICHARDSON: Your Honor, at this time, we would move State's Exhibit No. 3 into evidence.

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: All right. Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 3 was admitted into evidence.)

BY MR. RICHARDSON:

Q Sir, can you show the jury after you saw the lights on where you went with your pointer?

A When I seen the person looking out the window at me,

I came around this side of the trailer and stopped right in here. Because I seen two subjects sitting down, one in front of that building right there and one where you can't see the back door, but the back door was open.

Q Okay. And had you left the back door open?

A No, sir.

Q Okay. What were these people -- could you tell what they were dressed in?

A All I seen was two dark figures. At the time, I couldn't see what they were dressed in or anything, but it looked like hoodies. And I couldn't see their faces. It was fairly dark. There was no lighting back there on the backside of my trailer.

Q And had you given anybody permission to be in your trailer that night?

A No, sir.

Q Okay. When you came around that corner, what happened at that time?

A We kind of -- I was trying to see who it was and what was going on. And they were spread out, I guess, about 20 feet. Like I said, one was at my back door and one was standing in front of that shed. And I was trying to get a good look at them. And the next thing I know, I was shot.

Q Okay. Let me show you what's been marked as State's Exhibit No. 5. Do you recognize that?

A Yes, sir. That's the other side of the trailer. And there's my back door.

Q And is that accurately depicted as it was that evening?

A Yes, sir.

MR. RICHARDSON: Your Honor, at this time, the State would offer State's Exhibit No. 5 into evidence.

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 5 was admitted into evidence.)

BY MR. RICHARDSON:

Q Sir, when you came around, did you see somebody on that porch?

A Yes, sir.

Q Is that the back door you testified was open?

A Yes, sir.

Q Okay. What happened at that point in time?

A The figure that was at the back door, they seemed like half and the other half was behind the door.

Q Okay.

A Like I said, I was trying to keep my eye on both subjects. And all I seen was a flash. I went down.

Q Okay. And before that, could you hear anything going on inside your --

A Well, I mean, I had heard some noises. That's what made me look up to the trailer to begin with was I heard some noises. And that's when I seen one of the subjects looking out my window at me.

Q Okay. And you said you saw a flash. Okay. When you saw that flash, what happened?

A I was laying on my backside the next thing I remember.

Q Okay. Well, were you shot?

A Yes, sir.

Q Okay. Where?

A In the shoulder.

Q All right. Now, do you know how many times the gun was fired when you were shot?

A Not at that -- it only sounded like one shot at that time.

Q Okay. After you went to the ground, what did you do?

A I immediately went looking at where I had been hit trying to assess how bad it was. And then I looked up and seen both the subjects coming towards me.

Q Okay. And let me just go back to State's Exhibit No. 3. Can you show the jury where you were when you were shot the first time?

A I'm going to say I was standing right in this area, probably about 10 feet from the edge of the trailer.
Q Okay, sir. When you went to the ground, were you on your back, or your stomach, or what position?
A My back.
Q Okay. Now, this picture looks lit up. But can you describe how it was out there that evening?
A It was dark. You couldn't -- I mean, I was having a hard time seeing even the short distance it is. You couldn't make out a whole lot, other than just a figure of somebody.
Q Okay. Were any exterior lights on?
A No, sir.
Q Any street lights, or anything of that nature?
A I think there was a street lamp in the neighborhood that's like two trailers this way. But it wasn't like nothing down there where I was at.
Q Okay. After you were shot and you went to the ground, what did you do?
A Well, like I said, I was assessing to see how bad it was. I realized it was a through-and-through shot. And I wasn't bleeding that bad. I thought I might be okay. But when I looked back towards the door where the flash came from, I seen the two subjects coming towards me.
Q And what happened then?

A They continued to approach me. I started trying to stumble backwards. And I was yelling for help. And one of the subjects told me to shut my "fucking mouth," and shot me again.

Q Where did they shoot you this time?

A In the leg.

Q And what happened then?

A They went on past me out to the road.

Q Okay. And did you see where they went from that point in time?

A Well, they stood out in the road for a few seconds. I'm going to believe they took a couple more shots at me at that point.

Q Okay.

A And I was still yelling for help. I heard one of my neighbors yell my name. I seen the two subjects turn their heads and look in the direction that the people yelling back at me came from. And they took off running up the roadway.

The road -- about where that picture is, there's a road where it was taken. One, it looked like cut kind of off in front of my place. And the other one continued up the road until I just couldn't see them no more.

Q Okay. What happened next?

A My neighbor got to me.

Q Do you remember your neighbor's name, the first name?
A It was Rocky is all I know him by.
Q All right. Go ahead.
A Well, he got to me. Him and his girlfriend got to me. It was obvious that they knew what had happened. I had been screaming, I guess, for a couple minutes. It seemed like longer, but it wasn't.

When they got to me, they assessed I was pretty hurt. Rocky proceeded to go back to his house and get some towels. He came back and put a tourniquet on me to stop the bleeding.

Q Can you describe the bleeding to the jury?
A When I realized that I -- when they shot me, I tried to get up and run. And I fell back down. And when I rolled over, the blood had pumped out -- I don't know -- a couple feet from me.
Q Okay. Was the blood pumping out?
A Yeah, in a big stream.
Q Okay. Did somebody attempt to put a -- put anything on your leg?
A Yeah, Rocky did.
Q And what was it?
A It looked like a towel or tourniquet that he had twisted around. I really, at that point, was going into shock, I think, you know. I remember a bunch of people

being around me about that time. And everybody was saying, you know, we need to --

MR. ROBINSON: Objection, Your Honor, hearsay.

THE COURT: Okay. Well, I haven't heard what the response was yet.

But what I'll tell you, Mr. Richardson, is I don't know if it's offered for the truth of the matter asserted. And I don't know if it's under res gestae --

MR. RICHARDSON: I would argue res gestae part of the case.

THE COURT: All right. I haven't heard it yet, but if it's an excited utterance, which it sounds like what it is --

MR. ROBINSON: Yes, sir.

THE COURT: -- then I'm going to respectfully overrule.

MR. ROBINSON: Yes, sir.

BY MR. RICHARDSON:

Q Okay, sir. So people were trying to help you?

A Yes, sir.

Q Then what happened?

A I remembered that law enforcement had arrived. And I remember them telling them we need to get the ambulance down here, that it hit a main artery in my leg and that I was bleeding out. And the officer, if I remember

correctly, said we have to secure the neighborhood first before we let the rescue personnel get down here.

Q Okay. Now, eventually, did EMS come and assist you?

A Yes, sir.

Q Okay. And did they take you anywhere?

A They took me to Greenville Memorial.

Q Okay. Now, before we get to that, let me ask you, was anything stolen out of your house?

A I never made it inside the house.

Q But, subsequently, you went to the hospital and you came home?

A Yeah, a month later.

Q Did you find anything missing?

A It was hard to tell, because the house was such a mess.

Q Well, did you have a gun?

A Yes, sir, I did.

Q Okay. What kind of gun was it?

A I had a Colt 38.

Q Okay.

A And a revolver. And I had a .22 rifle.

Q Okay. Now -- and were those items gone?

A Yes, sir.

Q Okay. Now, how long were you in the hospital?

A For 28 days.

Q Okay. Did you undergo any type of surgeries?
A I went through two surgeries.
Q Okay. And were those two surgeries all within that 28-day period of time?
A Yes, sir.
Q Okay. When you left your residence that night, did you leave any windows open or closed? How were the windows?
A They -- everything should have been locked up tight just like it was when I left the house earlier.
Q Okay. Let me show you what's been marked as State's Exhibit No. 7. Do you recognize that?
A Yes, sir.
Q And what is that?
A I believe that is my screen to my window.
Q Okay. And does that accurately depict your screen?
A Yes, sir.
Q That you saw when you got home from the hospital?
A Yes, sir.
MR. ROBINSON: Your Honor, the only objection I have is foundation.
THE COURT: Okay. Are you moving to admit it, Mr. Richardson.
MR. RICHARDSON: Yes.
The State would move State's Exhibit No. 7 --

THE COURT: Okay. I'm satisfied with what he described what the document is, where it is, the time and place in which it was taken. Therefore, I find the foundation has been sufficiently proffered. And I'll respectfully overrule the objection.

You may move it into evidence, sir.

MR. RICHARDSON: Thank you.

(WHEREUPON, State's Exhibit No. 7 was admitted into evidence.)

BY MR. RICHARDSON:

Q I'm referring to State's Exhibit No. 7. What is that?

A That's the screen to my window, kitchen window.

Q And prior to you leaving this night of the incident, was it ripped like that?

A No, sir. It was up in the window where it belongs.

Q Let me show you what's been marked State's Exhibit No. 6. Do you recognize this?

A Yes, sir.

Q And what is that?

A That's my window.

Q And is that your --

A It goes right into the kitchen.

Q And that accurately depicts your window on that evening?

A Yes, sir.

MR. ROBINSON: No objection, Judge.

MR. RICHARDSON: The State would offer State's Exhibit No. 6 into evidence.

THE COURT: Without objection, the same is admitted into evidence.

(WHEREUPON, State's Exhibit No. 6 was admitted into evidence.)

BY MR. RICHARDSON:

Q And is this the window?

A Yes, sir.

Q Where that number five is?

A Yes, sir.

Q Okay. Now, you're here today. You're here on crutches. Is that from this incident?

A Yes, sir.

Q Okay. Do you have any further complications from the shooting?

A Yes. I'm probably going to have, at least, one more surgery.

Q I need you to speak up a little bit.

A Yes, sir. I'm going to have to have one more surgery.

Q Is that surgery going to be on your leg or shoulder?

A Yes, sir, on my leg.

Q And are you having any effects with your shoulder from the shooting?

A At this present time, no.

Q And that evening, were you able to identify anybody?

A No, sir.

MR. RICHARDSON: I beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

MR. RICHARDSON: That's all the questions I have.

Please answer any questions Defense counsel may have for you.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Mr. Robinson, you had told us earlier that you had sold marijuana to Mr. Fulmer; is that right?

A Yes, sir.

Q Now, you, also, sold marijuana to numerous other people as well, haven't you?

A Yes, sir.

Q And that would be -- and you kept a lot of marijuana in your house, didn't you, at your home?

A I kept a little bit, yes, sir.

Q A little bit. How many ounces do you think you kept

at your house?
A At least six or seven, maybe a little bit more.
Q Did you keep it hidden some place?
A I had a middle bedroom closet that I kept it in.
Q And you said you had two guns; right?
A Yes, sir.
Q Is that for protection for people --
A Not necessarily. I've never had to use a gun in my life.
Q Is the gun registered?
A No, sir.
Q They're unregistered guns?
A Yes, sir.
Q And you had how many ounces of marijuana?
A I'm going to say seven to 10 ounces.
Q Now, this place that you stopped at on the way back to your home, that was to sell marijuana, wasn't it?
A No, sir.
Q It wasn't?
A No.
Q Did you have marijuana on you when you came back to the house?
A No, sir.
Q So the marijuana was in the house at that time; correct?

A Yes, sir.
Q After this occurred, did you find out whether or not the marijuana was taken or not?
A I was told it wasn't there.
Q The question is, when you went back after the 28 days you spent at the jail -- at the hospital, you weren't able to find this marijuana that you had put in your bedroom, were you?
A No, sir.
Q Now, you said it was dark outside; right?
A Yes, sir.
Q You said, at one point, you saw a person in the window; right?
A Yes, sir.
Q Now, didn't you, also, say that the lights were all on when you came back?
A Uh-huh.
Q And you didn't recognize that person who was in the window?
A No, sir.
Q Okay. Now, you, also, said that -- now, let me go back a little bit. You said all the lights were on in your house and so forth; right? So that would have given some light outside, wouldn't it?
A Not with all the curtains drawed [sic] like they are.

Q Okay. Were these really dark curtains? How did you see --

A They're blinds. As you can see, they're blinds.

Q Okay. Now, you, also, said that there were two subjects that were coming towards you; is that right?

A It was two subjects when I came around the trailer, one standing at the back door. The silhouette is all I could see of either one of them.

Q And you didn't recognize either one of them?

A Neither one of them, I didn't recognize.

MR. ROBINSON: The Court's indulgence.

THE COURT: Sure.

(Pause.)

MR. ROBINSON: Thank you.

No more questions.

THE COURT: Any redirect, sir?

MR. RICHARDSON: No redirect, Your Honor.

THE COURT: Thank you.

Mr. Robinson, you may step down. I appreciate you being here, sir.

THE WITNESS: Thank you, sir.

THE COURT: Yes, sir.

MR. RICHARDSON: Your Honor, the State calls Paul Turner to the stand.

THE CLERK: If you would, place your left hand on the

Bible and raise your right.

WHEREUPON,

PAUL TURNER,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: I'm Paul Turner.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Turner, are you employed?

A Yes, sir.

Q And how so?

A I'm a machinist.

Q Okay. And where do you work?

A Advance Machine Works.

Q Okay. How long have you been there?

A A couple of years.

Q Okay, sir. Do you know the victim, Clarence Robinson?

A Yes, sir. He was my neighbor.

Q Okay. And he -- was he your neighbor on [redacted] Lane?

A Yes, sir.

Q Okay, sir. And how long did you live next door to him?

A About two years.
Q Okay. And, at this point in time, you no longer live on [redacted] Lane; is that right?
A No, I don't.
Q Okay, sir. And approximately how far from his trailer was your residence?
A I mean, about a little more than the length of this courtroom, maybe twice that, at the most.
Q Okay, sir. And did y'all share a driveway?
A Yes, sir.
Q Okay, sir. Now, I want to take your memory back to December the 17th of 2012. Do you remember that night?
A Yes, sir, I do.
Q Okay. Can you tell the jury what you saw and heard?
A I woke up. I heard one gun shot go off. And it kind of started to wake me up, but I didn't wake up all the way. And then I heard a couple more, maybe just a minute or couple seconds later, it seemed like. And that really woke me up.

And I got up and I grabbed my gun I sleep by. And I ran to the front door and screamed, What's going on out there?

And Rob yelled, I'm shot, I'm dying, something like that.

It was about two years ago, so my memory is not the

greatest on it. But --

Q Sure. I understand.

A -- I can tell you most things about what happened. So I turned around and I asked my girlfriend, Tracy, to call the cops. I said, Rob is shot. I'm going to go out there. And I went out there with a gun.

And when I was out there, I noticed there was some -- there were some people moving off into the woods I noticed, you know. It was -- I mean, it was kind of dark. And they were already getting off into the shadows.

Q And how many people did you see?

A I know, at least, two. There might have been more, but it was pretty dark. I had just woke up. And it's been two years ago. It's hard for me now when I remember the night to really give a real accurate account. I've tried thinking about it a lot of times to try to see if I could remember better. But, really, I just noticed some figures in hoodies. And they were just getting off into the shadows, into the woods.

Q Well, that's what I was going to ask you. They ran where? Into the woods?

A Yes, sir.

Q At that point in time, did you lose sight of them?

A Yeah. I lost sight of them when they got into the woods.

Q Now, at this point in time, what did you do?
A I ran over to Rob. And I kept my eye on the woods. And I ran over there to see what was wrong with him. And he was spraying blood out of his leg. It was bright red blood. So it was from his artery and he was pumping out.
Q Well, let me ask you this. Are you in the reserves -- or were you in the reserves?
A I was in the reserves when I was younger. I joined the Army reserves when I was 17 year old.
Q And what did you do in the reserves?
A I was a medic.
Q Okay. Can you describe the type of bleeding that you saw on Clarence Robinson?
A It was arterial bleeding.
Q What do you mean by "arterial"?
A From the femoral artery where he was shot in the top of the leg.
Q And so what, if anything, did you do for him?
A Well, by then, my girlfriend ran out. And I told her to run and go get some towels. And I put one on his shoulder where he was shot through the shoulder. And I put one on the wound. And then I took one and put one up above the wound. And I wrenched it off really hard.
Q And what's the purpose of doing that?
A To keep the blood from pumping to the wound from the

heart. You want to pinch it off between the heart and the wound.

Q And if you don't do that, what happens?

A They bleed to death pretty -- very, very fast.

Q Now, who was in your home with you?

A My girlfriend and her two kids.

Q Okay. And how old were those two children?

A The children were about six and eight years old.

Q Okay. And were they there and asleep at this time?

A Yeah. They were asleep.

Q Okay. Now, at some point in time while -- were other people helping Clarence, also?

A Yeah. Some people -- there was -- April's husband came out there and the boy -- we all call him Fat Mack. His name is Mack. I don't know much about him. They all came out there. We all kind of showed up at the same time. And then I was sitting there and I was just holding the tourniquet down.

Q Did you stay with him like that until EMS arrived?

A Yes, sir, I did.

Q Did you notice any vehicles in the area?

A Yeah. When I was sitting there holding the tourniquet, a gray vehicle pulled up really slow. It was a gray Buick. I do know it was a Buick. I was a little confused about the color. But I do know -- I knew for

sure it was a Buick. And I know I wrote that down that night.

Q When you say you wrote that down --

A I'm pretty sure I wrote down Buick in my statement, about it being a Buick that night. And it slowed down.

And then the window started to roll down. And when I seen that, I jumped up with my gun. And I pointed it into the car. Because I thought somebody was about to start shooting out of that car at us. I just was nervous.

And the kids were all there, like I said. And I was just trying to help the guy. And I seen -- I looked into the car and I seen it was just two females. And I looked all in the car. And there was no one else in the car but those two females.

Q Okay. Did you have a conversation with those two females?

A No, sir, I didn't. They sped -- I said, What are you doing in this neighborhood? And I pointed the gun at them. I already had the gun pointed before I could even see who it was. And they just sped off.

Q Okay. Had you ever seen that vehicle in your neighborhood before?

A No, sir. I've never noticed it around before.

Q Okay. And did you give that information to the police when they arrived?

A Yes, sir, I did.

MR. RICHARDSON: Thank you, sir.

Please answer any questions Defense counsel has for you.

THE WITNESS: All right.

MR. ROBINSON: I have no questions, Your Honor.

THE COURT: All right. Mr. Turner, I appreciate you being here, sir.

You may step down.

THE WITNESS: All right.

MR. RICHARDSON: Your Honor, may this witness be excused?

THE COURT: Any objection?

MR. ROBINSON: No, sir.

THE COURT: Okay. Have a great day, Mr. Turner.

MR. RICHARDSON: The State calls April McAtee.

THE CLERK: If you would, place your left hand on the Bible and raise your right.

WHEREUPON,

APRIL MCATEE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: April Jones.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q I'm sorry. I called you McAtee.

A It's McAtee. I'm sorry. I'm used to saying Jones.

Q Ms. McAtee, are you employed?

A Yes, sir.

Q Where do you work?

A The Pickens County School District.

Q What do you do for the Pickens County School District?

A I'm a bus companion.

Q And where do you live right now?

A [redacted] Lane in Easley.

Q Is that where you were when you -- back on December the 12th -- or excuse me, 17th of 2012?

A I was at [redacted] Lane.

Q Okay. So you were in a neighboring residence?

A I was right there. I was in the same trailer park in a different house.

Q I see. Now, are you married?

A Yes, sir.

Q And do you have any children?

A Yes, sir.

Q How many?

A Three.

Q Okay. Now, let me take your memory back to December the 17th of 2012. Do you remember that night?

A Some of it.

Q Okay. Well, can you tell the jury what you saw or heard that night?

A Well, I just heard -- I heard gun shots. So I come outside to see what was going on. And I seen two guys running through the woods. And then I heard somebody laying on the ground hollering "help," which was Rob.

And then we go up there. And I seen a car come down the road. And it was two girls in the car. And they turned around and circled. And I had asked them what they were doing. And they said they had took a wrong turn.

So then I hollered and said they needed to get their tag number, because they were suspicious. Because it just happened right when -- the shooting had just happened right when they come down and circled.

So they went to drive off, and I had got just a little bit of their tag number.

Q How many letters of the tag number did you get?

A I had got four numbers out of the six.

Q And do you remember what kind of car it was?

A It was a Buick LeSabre.

Q Let me show you what's been marked as State's Exhibit No. 17. Do you recognize that?

A Uh-huh.
Q What is that?
A It was -- I think that's the Buick, yeah.
Q Do you recognize that as being the Buick?
A That's the car. Because it looked just like my brother-in-law's car.
Q Okay. Is that the way it looked on December the 17th?
A Yes, sir. I, actually, thought it was my brother-in-law's car. So that's why I walked up to the car to see if it was my brother-in-law the night that it happened.

MR. ROBINSON: I'm going to object to foundation again, Your Honor.

THE COURT: Okay. I believe her testimony was that it looks like the car she saw that evening.

Is that correct?

THE WITNESS: It was the car. It looked just like my brother-in-law's car.

THE COURT: I'm going to respectfully overrule the objection.

You may move it into evidence.

MR. RICHARDSON: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 17 was admitted into evidence.)

BY MR. RICHARDSON:

Q Is this -- State's Exhibit No. 17 that I'm referring to, ma'am, is this the vehicle that you saw the night of December the 17th, 2012?

A Yes, sir.

Q And let me show you what's been marked as State's Exhibit No. 13. Do you recognize that?

A I do not recognize the stickers on the back of that car.

Q Do you recognize anything else about it?

A I mean, I don't remember the tag number. I mean, I had wrote it in my statement. But, other than that, that's all.

Q All right. Now, after you heard the -- that evening, did you speak to the police?

A Yes, sir. That night, I had wrote a statement.

Q You gave them a statement?

A Uh-huh.

Q And if I was to show you that statement, would it help you remember what numbers you gave the police?

A Yes, sir.

Q Okay. Now, I want you to just read this.

A Okay. Read the whole thing?

Q Read it to yourself.

A Okay.

Q And tell me if that helps your memory some.
A Do you want me to tell you the tag number?
Q Does that help you remember what numbers you gave and letters you gave to the police?
A Yeah. Because it's the same tag on -- the three numbers are the same as the one on the back of the tag.
Q Okay. So what numbers and letters did you give the police?
A CA 775.
Q Okay. Thank you.
A The light was out on one side, so I couldn't see -- I couldn't get the other two tag numbers.
Q But you gave them five numbers?
A Uh-huh.
Q And letters?
A Uh-huh.
Q Now, did you help Clarence Robinson at all?
A Yes, sir.
Q What did you do for him?
A Well, I had ran down to my house and got the towels for us to help wrap his leg up. My husband was wrapping it up with the towels.
Q Okay. After you gave your statement to the police, did you do anything else?
A No, sir.

MR. RICHARDSON: That's all the questions I have.

Please answer any questions Defense counsel has.

THE COURT: Mr. Robinson.

MR. ROBINSON: No questions, Your Honor.

THE COURT: Thank you, Ms. McAtee.

I appreciate you being here. You may step down.

MR. RICHARDSON: Your Honor, the State would call Linda Jones to the stand.

And, Your Honor, may this witness be excused, if she wishes?

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: You may be excused, Ms. McAtee. You can stay or go.

THE WITNESS: I was going to wait on my mother. She's coming in.

THE COURT: Okay.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

LINDA JONES,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, ma'am.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: Linda Jones.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Ms. Jones, back on December 17th, 2012, where were you living?

A [redacted] Lane.

Q Okay. And is -- how are you related to April?

A Her mother.

Q Okay. That evening, what were you doing?

A I was laying on the bed in the bedroom watching something on TV. I can't remember what it was.

Q Okay. And what, if anything, did you hear or see?

A I heard, I guess, shots, pow, pow, pow, three times, and then a spot and two more.

Q Okay. And what --

A I thought it was firecrackers, or something.

Q At that point in time, what did you do?

A I ran out the front door.

Q What, if anything, did you see?

A I looked to my left and I seen two guys running up the street.

Q Okay. And did you see anybody else running?

A Yeah. Right after that, I looked over to the right there behind Rob's mobile home and there was a guy in a lighter-colored shirt running across the backyard and

headed to the street.

Q All right. And were they -- were these three guys running together, or separate, or how was that?

A There was two, and then the single one.

Q Okay. And do you know where they were?

A No. Once they hit the road, going up the road, I didn't see no more.

Q Okay. And, at that point in time, did you go up to the victim's residence?

A No, not right then.

Q Okay. At some point in time, did you speak to the police?

A Yes.

Q And did you give them this information at that time?

A Yes. Well, actually, right then, I ran in and grabbed my phone and called 911.

Q Okay. And maybe -- let me make sure I'm clear on this. The third guy went off in a different direction. Is that what you said?

A No. He came on around the home in the same direction up the street, but behind the other two.

Q Okay. Did you recognize anybody?

A No.

MR. RICHARDSON: That's all the questions I have. Please answer any questions Defense counsel may have.

MR. ROBINSON: No questions, Your Honor.

THE COURT: Thank you, Ms. Jones.

I appreciate you being here.

MR. RICHARDSON: Your Honor, may this witness be excused?

MR. ROBINSON: No objection, Judge.

THE COURT: Yes, she may.

MR. RICHARDSON: The State calls David McKenzie to the stand.

THE COURT: Ladies and gentlemen, does anybody need to take a break, or are y'all comfortable?

(WHEREUPON, there was no response.)

THE COURT: Okay. Good. We'll keep going for a little bit.

THE CLERK: Raise your right hand and place your left hand on the Bible.

WHEREUPON,

DAVID MCKENZIE,

after first having been duly sworn, testified as follows:

THE CLERK: Sir, if you would, have a seat.

And state your name for the record.

THE WITNESS: David McKenzie.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Sir, where are you employed?

A The Pickens County Sheriff's Office.
Q And in what capacity are you employed with the Pickens County Sheriff's Office?
A Detective in CI division.
Q Okay, sir. And back -- well, how long have you been in law enforcement?
A 13 years.
Q Have you spent your entire time with the Pickens County Sheriff's Office?
A I have not.
Q Okay. Where else were you?
A Greenville County detention.
Q Okay. Now, back on December the 12th -- excuse me, December 17th of 2012, how -- in what capacity were you working for the Pickens County Sheriff's Office?
A Pickens County road patrol.
Q Okay. And on that evening, were you, actually, out on the road?
A I was.
Q Okay. And were you called to [redacted] Lane?
A I was.
Q Okay. And what was that in reference to?
A In reference to a shooting that had just occurred.
Q Okay, sir. Now, tell the jury what happened when you -- upon dispatch, how long did it take you to get there?

Do you recall?

A I believe it was two minutes.

Q And when you got there, tell the jury what happened.

A Initially, we got the call, responded. I stopped at the intersection of Angie and Adger Road in Pickens County to retrieve my patrol rifle from the vehicle. Because we were going on a scene where suspects may still be on the scene.

As I done that, I observed headlights coming -- there was another deputy with me. I observed headlights coming up the road we were watching. Deputy Porter was with me. I provided cover for him. He talked to the suspects inside of that vehicle. At which time, he determined there were no threats. So he allowed them to leave.

So we continued down to the incident location. I heard glass break. As soon as I got out of my patrol vehicle -- let me back up a little bit. At Adger Road at the intersection, I had heard glass break. I had raised up, and that's when I seen the headlights and the vehicle coming toward me.

Q Well, sir, let me do this. Let me show you State's Exhibit No. 1. Okay. Do you recognize on there --

A I do.

Q And there's a laser pointer right there. If you hit the red button -- can you make it kind of easy for the

jury. Where you were initially?
A Right here at this intersection, Angie and Adger.
Q And, at that intersection, you encountered a vehicle?
A Yes, I did.
Q And do you know what kind of vehicle it was?
A It was a brown -- possibly a Buick LeSabre-looking vehicle. It was a sedan.
Q And when you encountered that vehicle, was there another police officer with you?
A There was.
Q Was he in the same patrol car as you?
A No. He was not.
Q What did y'all do when you first encountered that vehicle?
A When we first encountered the vehicle, like I said, I covered for the other deputy, which was Deputy Porter. He, actually, spoke to them and determined that we were okay to proceed on down to the incident location.
Q Okay, sir. And did you do anything -- well, did you -- who was in that vehicle? Do you know?
A At the time, I noticed there was two white females, younger white females that I could observe from my position, which was behind my patrol vehicle looking at the other vehicle. I later identified them as someone else.

Q Okay. And, at that time, did you allow them to go on their way, or what did you do?

A Yes, we did, given the need to get on scene. Because the suspect was still on scene -- or the victim was still on scene.

Q Okay. So where did you go at that point?

A At that time, we proceeded down to the address, [redacted] Lane.

Q And what did you see at [redacted] Lane?

A I observed a large crowd and the subject laying on the ground. Deputy Porter responded to him to render aid.

At that time, I covered Deputy Porter and started speaking with witnesses on scene to try to locate a suspect, or what we were looking for.

Q Did you speak to several people down in that area?

A I did.

Q Did you, also, secure the scene?

A Yes, I did.

Q And by securing the scene, what do you do?

A We rope off the incident location and don't allow anyone else in.

Q Okay. And did you, also -- do you have to clear the scene before EMS can come?

A Yes, we do. You have to make sure everyone is safe. And, at that time, we didn't know where any suspects were.

Q Okay, sir. Now, after you interviewed people and talked to people and secured the scene, as road patrol, do you have any active participation subsequent to that?
A Yes. Once you make sure the area is clear and there's no threat, you provide aid for the victim, or whoever is on scene assisting with EMS. You rope off the scene. You take statements.
Q And did you do that?
A Yes, I did.
Q Okay. And, at some point in time, did you -- will you turn the case over?
A Yes, I will.
Q Okay. And when I say "turn the case over," who do you turn it over to?
A Our criminal investigations division. Once we determine there's an incident significant enough to contact CID and it's going to need further investigation, we do that.
Q And that would be your detectives?
A It would be.
Q And, also, your ID unit and your evidence unit?
A Yes.
Q Did you or anybody that evening put out any type of BOLO?
A I placed a BOLO for that vehicle. We didn't know at

that time whether it was involved. In talking to some of the witnesses, they had pointed that -- shortly after the shooting had occurred, of course, myself and Deputy Porter seen the vehicle leaving the road. If you notice, it's a dead-end road. There shouldn't be a lot of traffic on that road.

Q When you say "that vehicle," which vehicle?

A The brown possible Buick LeSabre.

Q What is a BOLO?

A That's putting out information to surrounding agencies to look out for a vehicle. The witnesses on scene had given a partial tag number, and I had given that out.

Q And, specifically, it stands for be on the lookout?

A Correct.

MR. RICHARDSON: I think that's all the questions I have.

Please answer any questions Defense counsel may have.

MR. ROBINSON: I have no questions, Your Honor.

Thank you.

THE COURT: Thank you, sir.

I appreciate you being here.

THE WITNESS: Thank you.

MR. RICHARDSON: Your Honor, may this witness be excused?

THE COURT: Yes, sir.

Any objection?

MR. ROBINSON: No objection.

THE COURT: Good enough.

MR. RICHARDSON: The State calls Andrew Reese to the stand.

THE CLERK: If you would, place your left hand on the Bible and raise your right.

WHEREUPON,

ANDREW HUNT REESE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, sir.

If you would have a seat.

And state your name for the record, please.

THE WITNESS: My name is Andrew Hunt Reese.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Sir, where are you employed?

A The Greenville County Sheriff's Office.

Q And how long have you been in law enforcement?

A Four years.

Q Okay, sir. And back in December of 2012, where were you employed at that time?

A City of Easley Police Department.

Q Okay, sir. And in what capacity were you employed?

A I was an officer for uniform patrol.
Q Let me take your memory back to December the 18th of 2012. Were you working that night?
A Yes, sir.
Q And what were you doing? What were your duties that evening?
A I was on the road that night on patrol.
Q Okay, sir. And did you respond to a call at the Hot Spot in Easley?
A I did.
Q Okay, sir. And where were you when you got that call?
A I was, actually, at the police department in roll call.
Q Okay. And did you head immediately to the Hot Spot?
A I did.
Q And what did you see at that time?
A I responded to a suspicious vehicle. I gave the vehicle description, which was a four-door Buick, I believe. And I pulled up and saw a vehicle matching that description occupied with two females and two males, and had a third female standing by the driver's door parked in front of the building.
Q Okay, sir. And let me show you what's been marked as State's Exhibit No. 13. Do you recognize that?

A I do.
Q And what is that?
A The vehicle I was out with that night.
Q Does that accurately depict that vehicle on that evening?
A It does.
MR. RICHARDSON: Your Honor, at this time, the State would offer State's Exhibit No. 13.
THE COURT: Any objection, sir?
MR. ROBINSON: No.
THE COURT: All right. Without objection, the same is moved into evidence.
(WHEREUPON, State's Exhibit No. 13 was admitted into evidence.)
BY MR. RICHARDSON:
Q Did you take that picture?
A I did not.
Q Do you recognize it from that evening?
A That's correct.
Q And was that the vehicle you approached?
A That's correct.
Q Okay. And how many people were in that vehicle?
A There was two -- there was a person sitting in the driver's seat, and a person sitting in the passenger seat, and two male subjects sitting in the rear seat.

Q What did you do at this point in time?
A I got out with them, identified myself, told them I was there investigating an incident that, actually, happened the night before. I asked if I could speak with all of them, if they would step out of the car, and carried on and identified everyone.
Q And why did you go to the scene? What was the reason?
A A female had called and said a vehicle matching the one used in the shooting the night before was there at that location.
Q Okay, sir. And, at that point in time, what happened?
A Once I arrived on scene and started speaking to everyone, I asked them to step out of the vehicle. And I tried to figure out who was there and get information, more or less, to relay to the Sheriff's Office. We didn't have any description other than the vehicle matching that description.

I started identifying everyone. I realized there was a male subject in the backseat that's -- he's got his ID out, but is not stepping out of the vehicle, not talking to me, not making eye contact, or anything like that.
Q Do you recall his name?
A Charles Burgess.

Q And do you recall the two females names?
A I do not.
Q Go ahead.
A It kind of diverted my attention away from the females. I went to him and tried to figure out what was going on with him. And after --
Q At some point in time, did you see a gun in the vehicle?
A I did. It was, actually, underneath Mr. Burgess's -- more or less between his legs. He was sitting on it.
Q Do you recall what kind of gun it was?
A I do not recall the exact --
Q Okay. Well, let me show you -- you're trained in firearms; is that correct?
A That's correct.
(WHEREUPON, State's Exhibit No. 26 was marked for identification only.)
BY MR. RICHARDSON:
Q And in your training of firearms, you, certainly, know how to secure a weapon?
A That's correct.
Q Make it safe?
A Yes, sir.
Q Let me hand you what's marked as State's Exhibit No. 26. Is that gun safe?

A It is.
Q Okay, sir. And it cannot be fired?
A Not in the way it sits now.
Q Do you recognize that gun?
A Yes, sir.
Q And how -- where do you recognize that gun from?
A This gun was sitting under Mr. Burgess, between his legs, under his buttocks. Basically, what I had him do when I realized he kept trying to reach for something was turn outside the vehicle, keeping his hands up, at which time, he placed his legs out and I was able to see, basically, the handle of the weapon.

At that point in time, I drew my duty weapon and pointed it at him, and gave him commands not to touch the weapon, not to grab the weapon, to come out of the vehicle and go straight to the ground.

Mr. Burgess didn't comply for a period of time. He, actually, reached down, grabbed the weapon, stood up, and exited the vehicle. I had a brief stand off in front of the Hot Spot before he did comply with our commands. He placed the weapon on the ground after dropping the magazine out of it. I approached him. We detained him. I then made this weapon safe by discharging the round that was in the chamber.

MR. ROBINSON: I've got no objection, Your Honor.

MR. RICHARDSON: The State would move State's Exhibit No. 26 into evidence.

THE COURT: Okay. Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 26 was admitted into evidence.)

BY MR. RICHARDSON:

Q You testified that when you arrested Mr. Burgess, the gun -- was it loaded?

A It was.

Q And you testified you made it safe at that time?

A That's correct. He dropped the magazine out before throwing the gun to the ground. But it still had one round in the chamber.

MR. RICHARDSON: I'd like to have these marked.

(WHEREUPON, State's Exhibit Nos. 27, 28, and 29 were marked for identification only.)

BY MR. RICHARDSON:

Q Okay, sir. Let me show you what's been marked as State's Exhibit No. 27. Do you recognize that?

A Yes, sir. This is the magazine that was thrown down.

Q Okay, sir. Let me show you what's been marked as State's Exhibit No. 28. Do you recognize that?

A The one round that was discharged from the chamber.

Q Okay, sir. And State's Exhibit No. 29?
A Those are the rounds that occupied the magazine.
MR. RICHARDSON: Your Honor, the State would offer State's Exhibit Nos. 27, 28, and 29 into evidence.
THE COURT: Any objection?
MR. ROBINSON: No objection.
THE COURT: Without objection, the same is moved into evidence.
(WHEREUPON, State's Exhibit Nos. 27, 28, and 29 were admitted into evidence.)
BY MR. RICHARDSON:
Q Did you take custody of this weapon, these bullets, and magazine?
A I did.
Q And was Charles Burgess put under arrest?
A He was.
Q Were the two females, also, put under arrest?
A They were.
Q Now, when you take evidence into custody like this, what do you do with it?
A I maintain possession of it from the incident location to the police department, all the way up until I've completed the proper paperwork, which is an evidence form in this situation, or anything else that needs to be completed. And I place it securely into a locker that's

accessible by our forensic technician.
Q And do you fill out a property report?
A Yeah, I do.
Q Let me hand you what's been marked as State's Exhibit No. 14. Do you recognize that?
A Yes, sir.
Q What is that?
A This is the property sheet that I completed for the firearm and items to go along with it.
MR. ROBINSON: No objection.
MR. RICHARDSON: Your Honor, the State would offer State's Exhibit No. 14 into evidence.
THE COURT: All right. Without objection, the same is moved into evidence.
(WHEREUPON, State's Exhibit No. 14 was admitted into evidence.)
BY MR. RICHARDSON:
Q I'm referring to State's Exhibit No. 14. That's the form you filled out?
A Yes, sir.
Q Okay. And each item on that is what's been placed into evidence?
A Yes, sir.
Q Okay, sir. Now, at the scene, did you, also, take any photographs, or did your ID people take

photographs?
A ID took photographs. I did not, actually, photograph anything on the scene.
Q Okay, sir. And was a photograph taken of the gun -- or have you seen a photograph of the gun?
A I have not seen a photo.
Q Let me show you State's Exhibit No. 15. Do you recognize that?
A Yes, sir.
Q What is that?
A The firearm on the hood of my patrol car.
Q And does that accurately depict how the firearm was on the night of the -- of December 18th, 2012?
A After I made it safe, correct.
Q Okay. And you, actually, made that gun safe?
A I did.
MR. ROBINSON: No objection.
THE COURT: All right. Without objection.
MR. RICHARDSON: We move State's Exhibit No. 15 --
THE COURT: Without objection, the same is entered into evidence.
(WHEREUPON, State's Exhibit No. 15 was admitted into evidence.)
BY MR. RICHARDSON:
Q That's the gun on the night of December the 18th?

A That's correct.
Q Which is the same gun we've placed into evidence here; is that correct?
A That's correct.
Q What kind of gun is that?
A A Taurus.
Q Do you know what caliber it is?
A I don't know the exact caliber.
Q If I showed it to you, would you be able to ascertain the caliber?
A Yes, sir. It's a nine-millimeter.
MR. RICHARDSON: Thank you.
That's all the questions I have.
Please answer any questions Defense counsel may have for you.
MR. ROBINSON: May it please the Court.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:
Q Officer, you ascertained that that vehicle was the vehicle used at the shooting; correct? The Buick LeSabre, the vehicle that you discovered at the Hot Spot, that was the vehicle that was used at the shooting that took place with Mr. Robinson; correct?
A Are you asking if that's why I got out with the

vehicle or --

Q It was your understanding that the vehicle that was at that scene --

A Right. I responded to the Hot Spot on West Main in reference to a vehicle that matched the description of the one used in the shooting.

Q And when you got there, you said there were four people, two males and two females, or two females and -- which --

A There was two females in the front two seats, two males in the rear seats, and one female standing by the driver's door. There was five people total, four in the vehicle, and one standing next to it.

Q So you had Mr. Burgess as one of them?

A That's correct.

Q And he had the gun that you're talking about, the nine-millimeter underneath the seat; correct?

A It was underneath him on the seat, correct.

Q The other male, did you get a good look at him?

A Gary Lee King, yes, sir.

Q Okay. Mr. Fulmer, who is right here seated to my right, you didn't see him there that day, did you?

A No, sir.

Q He wasn't in the car?

A No, sir.

Q He wasn't in the area of the Hot Spot?

A He wasn't in the car. That's where my focus was.

MR. ROBINSON: That's all I have.

Thank you.

MR. RICHARDSON: Nothing further, Judge.

THE COURT: Thank you, sir.

You may step down.

THE COURT: Yes, sir. You may call your next witness.

MR. RICHARDSON: Thank you.

The State calls Detective Chuck James.

Your Honor, I apologize. That last witness, can he be excused?

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: Okay. Without objection.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

CHUCK JAMES,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, sir.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: Chuck James.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Detective, you're employed with the Pickens County Sheriff's Office; is that correct?

A That is correct.

Q How long have you been in law enforcement?

A Nine years.

Q How long have you been in law enforcement in Pickens County?

A Seven years.

Q And where were you before that?

A The Charleston Police Department.

Q Okay. And what was your position at the Charleston Police Department?

A Police officer.

Q Okay, sir. Now, did you investigate a case -- a shooting that took place on [redacted] Lane back on December 17th of 2012?

A I did.

Q Okay, sir. When -- how did you become involved in that as far as working is concerned?

A Well, on the evening of December 17th, 2012, around 11:15 p.m., I was notified by Pickens County dispatch of a shooting incident that had occurred on [redacted] Lane. I was informed that, at the time, there was limited details.

However, that the victim had been transported to the hospital.

Q Okay, sir. And what did you do at that point?

A Given the fact that they were unable to give me an exact status of the victim, I proceeded to the hospital, which was Greenville Memorial Hospital, to locate the victim in hopes of speaking with him before going to the incident location.

Q Okay. And did you have a conversation with the victim at the hospital?

A Yes. It was relatively brief. When I arrived, I first observed the victim to have injuries to his right shoulder and his right thigh area. The wounds were consistent with a gunshot wound, and they were through and through.

However, the victim was in immense pain. And they were having difficulty stabilizing his blood pressure. But I was able to speak with him briefly. I would say for about two minutes.

Q Okay, sir. And once you spoke with him, what did you do?

A After I spoke with him, I returned -- actually, the first time, I went to the incident location where I met with ID Officer Albrecht and Deputy McKenzie, who briefed me on the situation.

Q Okay. And did you go through the residence at that time?
A Yes, we did.
Q And what was the condition of the residence?
A It appeared to have been rummaged through. Couch cushions were tossed, drawers were pulled out.
Q Let me show you what's been marked as State's Exhibit No. 9. Do you recognize that?
A Yes, sir.
Q And what is that?
A That is the living room of the residence.
Q And does that accurately depict how it was that evening?
A That is how I found it.
MR. ROBINSON: No objection.
THE COURT: All right. I presume your motion is to move it into evidence.
MR. RICHARDSON: Thank you, Your Honor.
THE COURT: I'll do so without objection.
MR. RICHARDSON: Thank you, Your Honor.
(WHEREUPON, State's Exhibit No. 9 was admitted into evidence.)
BY MR. RICHARDSON:
Q Now, referring to State's Exhibit No. 9, is that how you found the residence?

A It is.
Q Okay. And, actually, you don't -- do you take photos of the residence?
A No, sir, I don't. That was left to ID Officer Albrecht.
Q Okay. And is that the job of the ID officer to take photographs?
A Correct. Collect forensic evidence, take photographs, things of that nature.
Q Once you found the residence in this condition, what did you do?
A I -- well, we proceeded to search through the residence in hopes of finding anything that might assist us with our investigation. And ID proceeded to dust for prints, and things of that nature.
Q Okay. And then what do you do -- what did you do at this point?
A Well, after having searched through the residence, it was about 2:00 in the morning by the time we were done. Give the time of day, I went home.
Q Okay. So the next day, did you become -- did you go back to investigate this particular case?
A I did. First thing in the morning, I responded back out to Greenville Memorial Hospital where I was able to further speak with the victim.

Q Okay. And after that conversation, what did you do?
A Well, after that conversation, I immediately returned to the incident location with Detective Swafford. And we proceeded to come to the outside of the victim's residence just to see if we could find any further evidence that might assist us.
Q Okay. And, at that point in time, did you view a window?
A Yes, sir, I did. I had, actually, viewed that the evening before as well.
Q Okay, sir. And let me show you what's been -- what is State's Exhibit No. 6. Is that the window?
A Yes, sir, that is.
Q Okay. And let me show you what's been marked as State's Exhibit No. 7. What is that?
A That is the screen from the window.
Q Okay. And from your investigation, were you able to ascertain a method of entrance?
A It appeared to -- the method of entry appeared to have been through the window near the door.
Q And did you find that window to be -- let me ask you this. Where is that screen in relation to that window?
A It's directly below.
Q Okay. And how did you find the window, and what position was the window?

A I believe it was partially ajar.
Q Okay, sir. Now, after that, what did you do -- excuse me. After talking to the victim, what did you do?
A Well, having returned to the residence, we walked around the residence. We had kind of walked around the area of the neighborhood. And given the statement that had been given by April McAtee in which she had identified five of the six digits, I proceeded to go on the South Carolina Department of Motor Vehicles. And being aware of the fact we only needed one more digit, I began searching for vehicles starting with "A," and, eventually, made my way to, I believe it was, "H." And I located a Buick Century 2002 that was registered locally.
Q All right. And when you're talking about digits and things of that nature, are you referring to the license tag?
A Yes. Obviously, license tags in the State of South Carolina, if it's a normal tag, it would be six digits. Three which would, actually, be digits. The other three would be numbers alphanumeric.
Q Okay, sir. And after ascertaining the vehicle, what did you do?
A Well, the vehicle came back to a residence on Georgetown Road in Easley. So myself and Detective Swafford for the remainor of that evening -- or that

afternoon went to the house several times and sat up on the house. And when I say "sat up," we watched it from a distance in hopes that the vehicle would return.

Q Okay. Did you, likewise, put out any type of BOLO?

A I did not, but it's my understanding they had the evening before.

Q So you never put out a BOLO when you were looking for that vehicle?

A I had not.

Q Okay. Then what did you do?

A Well, by the time of day came about, I returned home.

Q Okay. And then what?

A As I was sitting at home that evening about -- I want to say it was 6:45 on the evening of the 18th, I received a phone call from Lieutenant Jane Kelley informing me of an incident that had occurred at the Hot Spot. And that the suspect vehicle I was searching for was possibly involved.

Q And the incident we're talking about, is that the one that Officer Reese just testified to?

A That is correct.

Q So what did you do at this point?

A I responded to the Hot Spot where I met with Lieutenant Kelley.

Q And, at that point in time, what did you do?

A I was briefed on the situation. I was informed of the individuals who had been placed under arrest. I introduced myself to Charles Burgess, Jennifer Allred, and another female by the name of Heather Posey. After having introduced myself to them --

Q Let me ask you this before you go there. The three individuals that you just named, were they in that vehicle?

A It's my understanding that they were.

Q Go ahead.

A After having introduced myself to them, I proceeded to go and conduct a preliminary interview with Heather Posey. Prior to which, she was advised of her Miranda rights. Because she was under arrest with the Easley Police Department.

Q Now, was she under arrest for the incident that we're here today about?

A No.

Q Okay. Do you recall what she was under arrest for?

A I believe it was an open container.

Q An open container meaning an open container of alcohol?

A Correct.

Q So did you speak to Heather Posey?

A I did.

Q And did she give you a statement?
A She did.
Q Okay. After she gave you that statement, what did you do?
A The first statement -- well, she gave me a statement on the evening of the 18th. I, actually, returned on the 19th and collected another statement from her as well.
Q Okay. From -- well, let's talk about the first statement.
A Okay.
Q Once you talked to her about that first statement, did you do anything else as far as an investigation is concerned?
A I did. Oh, I went and spoke with Charles Burgess.
Q And did you Mirandize Charles Burgess?
A Detective Swafford had.
Q Okay. Now, just to let the jury know what we're talking about, everybody hears it all the time, but just so we know, Miranda is what?
A Miranda is advising them of their rights to remain silent and have an attorney present.
Q Now, did Heather waive her --
A She did. She signed a waiver of rights.
Q Okay. And she spoke to you willingly?
A Correct.

Q Did Charles Burgess?
A He did.
Q After talking to Charles Burgess, what did you do?
A After I spoke to Charles Burgess that evening, once again, I returned home and returned to the incident -- I returned to the Easley Police Department on the morning of the 20th -- or, I'm sorry, the 19th of December and, once again, spoke with Heather Posey further about the incident, which she was, also, placed under Miranda at that point and signed a waiver of rights.
Q Now, I failed to ask you. Charles Burgess, now, he -- what was he under arrest for?
A He was under arrest for the incident that Mr. -- or Deputy Reese had just described pertaining to the gun.
Q The gun?
A Correct.
Q Now, so you spoke to Heather Posey a second time?
A Correct.
Q After you spoke to her a second time, what did you do?
A I immediately sought out the Defendant, Robert Fulmer.
Q Okay. And by "sought out the Defendant, Robert Fulmer," what did you do?
A I went to a residence --

MR. ROBINSON: Your Honor, I'm going to object to hearsay in this case as far as any statements he may have taken from her. I think it's hearsay.

THE COURT: Okay. I don't think he's -- he said that as a consequence of the statement, he went to get Mr. Fulmer. So I don't think he's making -- he's addressing a statement she made. He's addressing his conduct subsequent to having heard her statement.

So I respectfully deny the motion. Having said that, you're right, he can't testify to any of her statements.

BY MR. RICHARDSON:

Q And that's right, don't tell me anything Ms. Posey said. Okay.

A Uh-huh.

Q But subsequent to talking to her, you went -- what did you do to seek out Robert Fulmer?

A Well, I went to find him at a residence in Pickens Gardens Apartments here in Pickens.

Q Okay. And did you find him?

A I did.

Q Okay. Now, at that point in time, did you place him under arrest?

A I did not.

Q Okay. What did you do?

A I spoke with him.

Q Okay. And after speaking with him, what did you do?
A After speaking with him, I, also, went to interview Gary Lee King, who was in our jail at the time. He had been the other individual in the vehicle.
Q Okay. And then what did you do?
A Well, the following day, I went to a residence at [redacted] Jones Avenue where I spoke with two individuals.
Q And after speaking with them, what did you do?
A I went to the Easley Police Department where I collected the gun, the Taurus nine-millimeter right there.
Q And is this the weapon that you collected?
A It is.
Q And did you, also, collect State's Exhibit No. 27?
A I did.
Q State's Exhibit No. 29?
A Correct.
Q And State's Exhibit No. 28?
A I did.
Q Okay. And when you collected that from Easley, do you denote that on any type of form?
A I did. I denoted that on -- well, it was denoted on two forms. One was the Easley Police Department's property form, which I signed it out from them.
Q And I'm showing you State's Exhibit No. 14. Is that what you're referring to?

A Yes. And there's my signature at the bottom, items one through three.

Q And then what did you do with the weapons and those bullets?

A I brought it to the Pickens County Sheriff's Office where I turned it over to Lieutenant Tony Robinson.

Q And who is Lieutenant Tony Robinson?

A He's is the supervisor of the ID division.

Q And what does ID do as far as evidence is concerned?

A Basically, all forensic evidence. Like I said before, obtaining fingerprints, photographs, DNA swabs, things of that nature.

Q Okay, sir. And --

MR. RICHARDSON: I beg the Court's indulgence.

(Pause.)

BY MR. RICHARDSON:

Q Let me show you what's been marked State's Exhibit No. 24. Do you recognize that?

A Yes. That is the evidence form that I filled out turning the items over to Lieutenant Robinson.

MR. RICHARDSON: The State would offer State's Exhibit No. 24 into evidence.

THE COURT: Any objection, sir?

MR. ROBINSON: No objection.

THE COURT: All right. Without objection, the same

is admitted into evidence.

(WHEREUPON, State's Exhibit No. 24 was admitted into evidence.)

BY MR. RICHARDSON:

Q And referring to State's Exhibit No. 24, is that the form?

A It is.

Q And if you could, just show me where -- is this your -- do you fill out that form?

A Yes. I fill out the top portion. I fill out this portion and then, subsequently, turn it over to Lieutenant Robinson. And he signs that portion.

Q Now, after placing those items into the Pickens County evidence, what did you do?

A I proceeded with a second interview of Charles Burgess.

Q Okay. And where did that interview take place?

A That interview took place at the Pickens County Sheriff's Office. He was an inmate there at the time.

Q Okay, sir. And, subsequent to that interview, what did you do?

A After having had that interview -- that went into the evening. The following day, I went to Judge Michael Baker where I presented this case, and obtained warrants on the Defendant and the co-defendants.

Q Okay. So the warrants that you obtained for the Defendant were for what we are here today about?
A Correct.
Q Okay. And did you, also, likewise, obtain warrants for Jennifer Allred?
A I did.
Q Charles Burgess?
A I did.
Q And Heather Posey?
A I did.
Q Danny Adams?
A I did.
Q Was there any further -- did you do any further investigation after that?
A I, subsequently, on December 26, conducted an interview with Danny Adams.
Q And, in that interview, did you Mirandize him?
A I did.
Q And did he talk to you?
A He did not.
Q Okay. And anything further that you did?
A No, sir.

MR. RICHARDSON: Okay. That's all the questions I have.

Please answer any questions that Defense counsel has.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Officer, let me ask something. The gun, the nine-millimeter, and all the shells, you would agree that those were found under the seat -- or under Charles Burgess; is that correct?

A That's my understanding. I did not find them.

Q Also, too, the people that were in the car at the Hot Spot, they weren't Mr. Fulmer, were they?

A Mr. Fulmer was not present when I was there, no.

Q And as far as the Buick LeSabre -- I don't know if Mr. Richardson asked you this. That particular Buick LeSabre is not registered to Mr. Fulmer, is it?

A No. And, actually, it's a Buick Century.

Q A Buick Century?

A Yes.

Q In terms of Mr. Fulmer's house, when you went to his house, you never found any items at his house -- or did you search for anything at his house, for any items, or anything that may have belonged to the alleged victim in this case?

A No, sir. I merely asked him to step outside. I did not conduct a search.

Q Okay. Now, in terms of the -- your investigation out at the house, the residence of the victim in this case, you said they were dusting for fingerprints; right?

A That would have been done by ID Officer Albrecht, correct.

Q But -- excuse me. You're the lead investigator in this case; correct?

A I am.

Q And, as lead investigator, you are responsible for checking everything in this case from fingerprints to anything. You're in charge of that, aren't you?

A I am.

Q So, in terms of your knowledge, if you know, there were no fingerprints in this case of Mr. Fulmer in this matter, were there?

A That's correct.

Q Okay. In fact, there were no items that were on the ground around the property that were linked to Mr. Fulmer; isn't that correct?

A That would be correct.

Q Okay. Now, did you ever go back to Mr. Fulmer's house to see if there were any items that would link him to this incident?

A Well, where I located Mr. Fulmer was not his home. It was the home of Brooklyn Smith, a woman he was, I

guess, seeing at the time.

Q Okay. Did you ever go to his home, or where he was, or check her home out to see if there were any items that were allegedly taken from this --

A No. Because -- well, no.

Q Now, you said in the beginning that when you went back to the house, it was rummaged; is that correct?

A Yes, sir.

Q And would you agree with me that that appeared that someone was searching for something? Would you agree with that?

A Yeah. It looked consistent with that.

Q It looked like they were trying to find something; is that right?

A Yes.

Q Now, in terms of this particular house that we're talking about, you heard Mr. Robinson in the beginning testify that he sold drugs?

A I did hear that.

Q Do you know if he sold drugs out of this particular house?

A I guess he did, based on his statement and -- I mean, that's consistent with things that I heard, yes.

Q So you -- it is consistent from what you understand that he was selling drugs out of that house?

A Correct.

MR. ROBINSON: That's all I have.

Thank you, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. RICHARDSON:

Q Detective, as far as fingerprints are concerned, are there ways to avoid leaving fingerprints?

A Absolutely.

Q How?

A You could wear gloves.

Q Okay. Were any fingerprints found in the home?

A To my knowledge, there were not.

MR. RICHARDSON: Thank you.

That's all the questions I have.

THE COURT: Recross?

MR. ROBINSON: I have no recross, Your Honor.

THE COURT: Okay. Thank you, sir.

I appreciate it.

Okay. Let's take a short break.

Ladies and gentlemen, we'll take a break. Please don't discuss the case. We'll come back in 10 or 15 minutes, whenever y'all are ready.

(WHEREUPON, the jury was excused from open court at approximately 3:20 p.m.)

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THE COURT: Counsel, we'll be in recess for about 10 minutes.

(WHEREUPON, a break was taken.)

THE COURT: Counsel, are you ready for the jury?

MR. RICHARDSON: The State is ready.

(WHEREUPON, the jury came into open court at approximately 3:39 p.m.)

THE COURT: Ladies and gentlemen, we're going to start back with testimony.

I do just want to let you know that I anticipate that we'll end today around 5:00. I usually try to keep a 9:00 to 5:00 schedule, unless I tell you beforehand that we're going to deviate from that. Because I realize that y'all have families and other commitments. So I try to keep it to a regular business day. I have not advised you up to now that we're going to go past 5:00.

So we'll stop 10 minutes either before or after 5:00. Usually, I'll go after 5:00 if we're really running short on time and it looks like we're not going to get through with the case by the end of the week. But, in this case, it looks like we're clipping along at a pretty good pace.

If that changes, I'll let you know sometime during the morning so you can make arrangements. But I anticipate that tomorrow, we should start at probably 9:30 and conclude at or around 5:00.

Okay. Mr. Richardson, your case, sir.

MR. RICHARDSON: Thank you, Your Honor.

We would call J.T. Albrecht to the stand.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

J.T. ALBRECHT,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, sir.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: It's J.T. Albrecht.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Officer, where are you employed?

A The Pickens County Sheriff's Office.

Q And in what capacity?

A I work in forensics, crime scene.

Q How long have you been in law enforcement?

A Since 1993.

Q Okay, sir. And what -- in what role do you work for the Pickens County Sheriff's Office?

A Right now, I'm in forensics.

Q Okay, sir. And I'm sorry. I asked that question twice.

So can you explain that to the jury?

A Correct. The -- just crime scene -- respond to crime scenes, identify items of evidence, what could be evidence if it's not known to be evidence, but presumed to be or could possibly be, identify it, photograph it, collect it, secure it.

Q Okay, sir. And, as part of your duties, were you working back on December the 17th of 2012?

A Yes, sir.

Q And were you called to the scene of a shooting on [redacted] Lane?

A I was.

Q Okay. And did you go there that night, the night of the shooting?

A Yes.

Q Okay. Do you recall when you got there?

A Off the top of my head, no, I don't.

Q Okay. Was it the same evening?

A Yes.

Q Okay. And when you got there, what did you do?

A First off, I met with the responding deputies, the ones that had called, to find out what they knew and what they could tell me, which wasn't much. But I found out somebody had been shot.

And I went down to where the person that had been

shot was. He was no longer there. He had already been removed by EMS by the time I got there. I went down to where he had been shot and started looking at the scene trying to determine what had happened.

Q Okay, sir. In looking at the scene, did you mark any evidence while you were out there?

A I did.

Q And then when you marked it, did you, also, photograph evidence while you were out there?

A I did.

Q Okay, sir. Let me hand you what's been marked as State's Exhibit No. 18. Do you recognize that?

A Yes, sir.

Q And what is that?

A This is the side yard of the victim's residence. Item number three --

Q Well, let me ask you that -- before you -- did you take that picture?

A I did.

Q Does it accurately depict what is shown there on that night?

A It does.

MR. RICHARDSON: Your Honor, at this time, we would move State's Exhibit No. 18 into evidence.

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 18 was admitted into evidence.)

BY MR. RICHARDSON:

Q What are these -- and there's a laser pointer there, if you want to point. Explain to the jury what these items are.

A These two black placards numbered three and four -- item number three is a nine-millimeter shell casing. Number four is an area of blood. These items were left, I presume, by EMS, first responders.

Q Okay. And regarding item number three, which you testified is a shell casing, how did you attempt to locate that? How did you come to find that?

A Well, I had been told that the victim had been shot and that he was in the -- found in the yard, and that the medical personnel were -- prior to my arrival were treating the injury there. So I went to this area first and then found this area. You can just kind of see it. I think I've got other pictures where it's clear, but there's an area of blood right here.

So starting at that point, I did a radial search around this bird feeder. Basically, I started off at a

known point, which would be the area of blood. And I started walking in circles. And as I completed the circle, I extended out and did another circle. And I extended out and did another circle. I did a radial search just looking for projectile shell casings, any items of evidence.

At that point, I located number three, what is marked as number three, which is a nine-millimeter shell casing. So that was the only shell casing I found. I marked it. And then I continued on out another 20 feet from three. And I didn't find any more.

So I went back and marked four for my reference point from where I started, and three for where the shell casing was located, photographed it, and collected it.

Q And you said you photographed it. So let me hand you what's been marked as State's Exhibit No. 19. Do you recognize that?

A Yeah.

Q And does that accurately depict that as it was the evening of December 12th?

A That's correct.

Q Excuse me. December 17th.

MR. RICHARDSON: Your Honor, at this time, we would move State's Exhibit No. 19 into evidence.

THE COURT: Okay. Without objection, the same is

moved into evidence.

(WHEREUPON, State's Exhibit No. 19 was admitted into evidence.)

BY MR. RICHARDSON:

Q What is that, sir?

A A spent nine-millimeter shell casing.

Q And you, also, testified you collected that?

A That's correct.

Q And when you collected it, what did you do with it?

A I put it in an envelope, separated it, put it in and secured it with my...

MR. RICHARDSON: Okay, sir.

Can you mark that.

(WHEREUPON, State's Exhibit No. 30 was marked for identification only.)

BY MR. RICHARDSON:

Q Let me hand you what's been marked as State's Exhibit No. 30. What is that? If you could look inside, please.

A It's a nine-millimeter shell casing.

Q Is there a case number assigned to that?

A There is. It's right here.

Q And is that the shell casing you collected that evening?

A It is. And this is where I marked it number three, and the time I collected it.

MR. RICHARDSON: Your Honor, at this time, we would move State's Exhibit No. 30 into evidence.

MR. ROBINSON: No objection.

THE COURT: Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 30 was admitted into evidence.)

BY MR. RICHARDSON:

Q After you collect that, is that kept in a secure place?

A It is. It's kept in the evidence room in the Sheriff's Office.

Q Was that, eventually, transported to the State Law Enforcement Division, South Carolina State Law Enforcement Division?

A Yes, sir, it was.

Q Did you do that?

A No, sir. I did not.

Q Okay. Now, did you take the other photographs while you were out there?

A I did.

Q Okay. And what did you take photographs of?

A The overall scene.

Q Okay. And did you, also, take photographs of items away from the scene?

A Yes.
Q Okay. Let me show you what's been marked as State's Exhibit No. 21. Did you take that photograph?
A I did.
Q Does that accurately depict that evening?
A It does.
Q Let me show you what's been marked as State's Exhibit No. 20. Did you take that photograph?
A I did.
Q And does that accurately depict as it was on December the 17th?
A Yes, sir.
MR. RICHARDSON: Your Honor, at this time, the State would move State's Exhibit Nos. 20 and 21 into evidence.
MR. ROBINSON: No objection.
THE COURT: All right. Without objection, the same is moved into evidence.
(WHEREUPON, State's Exhibit Nos. 20 and 21 were admitted into evidence.)
BY MR. RICHARDSON:
Q Sir, I'm referring to State's Exhibit No. 21. Is that your -- that yellow marker, is that your marker?
A Yes, sir. That's my placard.
Q Why do you do that?
A That's a bunch of change that was found in the road.

One of the things I was told when I first arrived by the initial responding deputies, when they pulled up, the nature of the call, they stopped. They didn't go directly in. They stopped.

And I believe they were getting some gear together to go down to deal with the potential shooting situation. And they heard what they, initially, thought was a gunshot, or something that sounded like a gunshot just ahead of them in the roadway.

And when they moved in that direction, they found a large -- or what was a large glass jar, apparently, that had been full of coins that was broken in the road.

Q And is that what is reflected in State's Exhibit No. 21?

A That's correct. That photograph does...

Q And was that on [redacted] Lane?

A Yes.

Q Okay. Let me show you what's been marked as State's Exhibit No. 20. What is that?

A That is a bag. It's a material -- a textile material bag. I don't know if it's cotton canvas, but it's a cloth bag full of bundled-up wire, copper wire. It's pretty heavy-gauge copper wire. And the yellow item that's directly next to the number two placard, I believe, is a poncho, like a plastic poncho.

In that picture, if you were to see just to the right, which I didn't photograph it, but just to the right of that where you see the leaves is a ditch. In relation to the broken jar of coins, about 10 or 15 feet away from that jar of coins is where I found that bag of copper.

The reason that was significant to me is, as you can see in the picture, everything is wet. It had rained. And that's a cloth bag, and the bag is dry.

The poncho that's on top -- I took the poncho off the top of the copper wire so you could see what was in it. But the poncho was, also, dry. So that had just been put there.

Q And when you testified "heavy gauge," what do you mean?

A The wire is pretty thick.

Q Okay. Did you, also -- as part of your investigation, did you attempt to lift fingerprints?

A I did.

Q Okay. And were you able to lift any fingerprints?

A I was not.

Q Okay. Is that common? Uncommon?

A It does happen.

Q Okay. And are there ways that you can prevent your fingerprints from being laid down?

A Yeah. I mean, there are several different ways you

can do it, I mean, socks, gloves. You can wrap rags around your hands, you know. There's several different ways to prevent your skin from transferring oils. And then some people just don't transfer oils.

Q Okay. That's interesting.

After you had taken the photographs and obtained them in evidence, did you do anything else in regard to this case?

A The -- like I said, we took photographs of the -- or I took photographs of the surrounding area around the house and, also, on the inside of the house. And I think that's pretty much it.

Q And then once you do that, do you turn that over to the detectives?

A (There was no response.)

Q Any evidence that you got, pictures, photographs, do you turn it over to the detectives?

A Yeah. Sometimes, if they ask, I make a copy of all the photographs and put it on a disk for them.

Q And did you do that in this case?

A I believe so.

MR. RICHARDSON: Thank you.

That's all the questions I have.

Please answer any questions Defense counsel has.

MR. ROBINSON: I have no questions.

THE COURT: Okay. Thank you, sir.

I appreciate you being here.

MR. RICHARDSON: Your Honor, the State would call Tony Robinson to the stand.

WHEREUPON,

TONY ROBINSON,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, sir.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: Tony Robinson.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Sir, you're employed with the Pickens County Sheriff's Office; is that correct?

A I am.

Q And are you in the ID division?

A Yes, sir. Forensics and evidence.

Q Okay. And how long have you been in law enforcement?

A 25 years.

Q Okay, sir. And, regarding this case, did you have -- did you take any evidence from Pickens County down to the state law enforcement agency?

A I did.

Q Okay. And what was the purpose of taking that

evidence down there?
A I took it down to be compared, forensic examination on it.
Q Okay. And do you recall what you took down there?
A I took a pistol and a spent shell casing from the crime scene.
Q Okay. And did you, also, take some rounds with it?
A Yes.
Q Okay. So let me show you what's been placed into evidence as State's Exhibit No. 24. What is that?
A That's a Pickens County evidence form.
Q Okay, sir. And is that one with your initials -- or signature on it?
A It is.
Q There's a laser pointer there. If you could just show the jury where it is.
A Right here.
Q And what are you signifying here?
A I received the evidence listed on that sheet from Detective Chuck James. And I received it on 12/20 of 2012 at 11:55 hours.
Q And what items does that indicate?
A A Taurus nine-millimeter pistol, a magazine with 10 nine-millimeter rounds, and one single nine-millimeter round by itself.

Q And did you, also, likewise, take -- I believe you testified a spent nine-millimeter shell casing down there?
A There was a spent shell casing collected by Deputy Albrecht at the crime scene, I believe.
Q And let me show you what's marked as State's Exhibit No. 25. Do you recognize that?
A Yeah. This is Deputy Albrecht's form that he listed his evidence on.
Q And do you have any marks on there from you?
A I do. I have where I signed the evidence that I carried to SLED out on January 8th of 2013.

MR. RICHARDSON: Your Honor, we would offer State's Exhibit No. 25.

MR. ROBINSON: No objection, Your Honor.

THE COURT: All right. Without objection, the same is moved into evidence.

(WHEREUPON, State's Exhibit No. 25 was admitted into evidence.)

BY MR. RICHARDSON:
Q And, sir, can you show the jury where it's denoted that you took the spent nine-millimeter casing down?
A Yeah. The spent casing is item three on the sheet. And I signed out item three on January 8th of 2013, and took it to SLED.
Q Okay, sir. And let me hand you what's been placed

into evidence as State's Exhibit No. 30. Do you recognize that?

A Yes. This is the cartridge case from that case. It's got our case number and the item number listed on the package.

Q And does that correspond with item three on the evidence page?

A It does.

Q Okay. Now, in addition to that, did you -- the weapon that you took to SLED, did you run a trace report?

A I did. It's routine. Whenever we receive a weapon into evidence, a firearm, we do an ATF trace on it.

Q Okay, sir. And exactly -- if you could, explain to the jury what we mean by a "trace."

A It's a trace to determine ownership. What it's going to tell you is who bought it, usually, from a firearms dealer. In South Carolina, you don't have to -- if you buy one from a dealer and then turn around and sell it to someone else, you don't have to do any paperwork on that. So it would always be in your name on the ATF trace if you do that.

Q And let me show you what's been marked as State's Exhibit No. 23. What is that?

A This is the trace report that I received from the ATF of that pistol.

MR. RICHARDSON: Your Honor, we would offer State's Exhibit No. 23 into evidence.

MR. ROBINSON: No objection.

THE COURT: All right. Without objection, the same is admitted into evidence.

(WHEREUPON, State's Exhibit No. 23 was admitted into evidence.)

BY MR. RICHARDSON:

Q And so this is -- who does it indicate this pistol -- who bought that pistol?

A The pistol was purchased in 2003 by Anthony James Finley. And he purchased it from Fast Cash Pawn in Greenville, South Carolina.

Q Okay. And that's not anybody involved in this case?

A Not that I'm aware of, no, sir.

Q And when people sell guns through individuals or things of that nature, does trace support pick up on that type of thing?

A No. Because there's no requirement to change it. And, usually, when we see one -- the purchase date on that one, like I said, it was 2003. That gun could have changed hands several times during that time frame.

MR. RICHARDSON: Thank you.

That's all the questions I have.

Please answer any questions Mr. Robinson may have.

MR. ROBINSON: I don't have any questions, Judge.

THE COURT: Thank you, sir.

I appreciate you being here.

MR. RICHARDSON: Your Honor, the State calls Danny Adams to the stand.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

DANNY ADAMS,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Have a seat.

And state your name for the record, please.

THE WITNESS: Danny Adams.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Adams, how old are you?

A 25.

Q Are you presently employed?

A No, sir. I'm on disability.

Q And are you married?

A No, sir. I'm single.

Q Do you have any children?

A I have four.

Q Okay. Now, you have been charged in this case, have

you not?
A Yes, sir.
Q You've been charged with attempted murder, and burglary in the first degree, and possession of a weapon during the commission of a violent crime, and larceny; is that correct?
A Yes, sir.
Q Okay. Now, I want you -- we're going to take your memory back to December 17th of last year [sic]. Do you remember that?
A Yes, sir.
Q That day, what were you -- who were you with that day?
A I don't remember to start with. But, later on, I was with Robert Fulmer and Charles Burgess.
Q And how did you come to be with --
A I'm not really sure.
Q And where were you when you were with them?
A At the tattoo house.
Q Now, this tattoo house, where is that?
A In Easley.
Q You can't remember the road?
A No, sir.
Q Now, was -- at the tattoo house, was Jennifer Allred and Heather Posey with you?

A I think they were there, but I'm not positive.
Q Okay. Now, while you were at that house -- let me ask you this. Were there a lot of people at that house?
A Yes, sir.
Q What was everybody doing?
A Smoking, drinking, getting tattoos, just having a good time.
Q When you say smoking, smoking marijuana?
A Yes, sir.
Q And, at some point in time, did you and the Defendant have a conversation about Clarence Robinson?
A Yes, sir.
Q Okay. What was that conversation?
A We went on the porch and was talking about going to get some kush [phonetic].
Q What is kush?
A Marijuana.
Q And was anybody else on the porch with you?
A No, sir.
Q All right. And what happened then?
A We just talked about it. And then we went back inside.
Q Okay. At some point in time, did you, also, have a conversation with Mr. Fulmer and Charles Burgess?
A That's who I was with, sir.

Q Okay. And did y'all discuss -- well, at this point in time, did you know if anybody had any guns?
A No, sir, not at that point.
Q Okay. What did you discuss with Mr. Fulmer about going over to the victim's house?
A That nobody got hurt.
Q Okay. Well, what were y'all going to do?
A Just going to get some drugs.
Q What else were y'all going to do?
A That was it.
Q So who got together to go over to his house?
A Me, and Charles Burgess, and Robert Fulmer.
Q Okay. And how about -- were any girls in the car?
A Yes, sir. Jennifer Allred and Heather Posey.
Q Okay. And going over there, what did y'all discuss? Did y'all discuss robbing Clarence Robinson?
MR. ROBINSON: Your Honor, I -- leading. And I think it's going to hearsay as well, Your Honor.
THE COURT: Okay. I'll sustain on leading.
BY MR. RICHARDSON:
Q What, if anything, did y'all discuss about robbing him?
A We just talked about going in and getting the drugs and leaving.
Q Okay. And how were you going to do that?

A I'm not really sure, sir.
Q All right. Where were you sitting in the car?
A In the middle.
Q All right. And where were the other two?
A On the sides of me.
Q Okay. And when you got to the house -- was the house on [redacted] Lane? Do you remember that?
A Yes, sir. I just remember because I've heard the name. I don't know -- I don't remember the residence.
Q All right. When you got there, where did y'all go?
A We got out of the car and noticed there was nobody home.
Q And what happened then?
A We went around to the back. And, you know, I was scared the whole time. We went around to the back and Rob seen -- he told Tony [sic] to pick him up. And he busted the window out.
Q Okay. And when you say -- when you're talking about Rob, you're talking about the Defendant?
A Yes, sir.
Q Was the window in the front or the back?
A The back.
Q All right. And who picked who up?
A Charles picked up Rob.
Q Okay. And where did Rob go?

A To the back door and unlocked it.
Q Well, did he go in the house?
A Yes, sir.
Q How did he get in the house?
A He pushed him through the window.
Q Okay. When he opened the back door, what did y'all do then?
A We went in.
Q And did everybody go in?
A Yes, sir.
Q And then what happened?
A We went in and was looking around. I remember finding drugs, getting weed. And the change thing -- I got scared. And I was just --
Q Wait a second. When you said "change thing" --
A Yeah. I got a change jar.
Q A jar of change?
A Yes, sir.
Q All right. And then what?
A I was ready to go. I was scared.
Q Where were you in the house?
A I don't remember exactly where at.
Q Was this -- this was during the nighttime; right?
A Yes, sir.
Q Did y'all -- did anybody turn on any lights?

A Yes, sir.
Q Who turned on the lights?
A Probably me. I don't remember, but probably me.
Q All right. Where was the Defendant while you were in the house?
A They were in the house.
Q Okay. And where was he? Was he --
A We wasn't right beside each other, so I'm not sure.
Q What happened then?
A I was going. I was getting out of the house. So I went ahead to go out of the house --
Q Okay. As you're going out of the house, what have you got in your arms?
A I've got the change jar and -- I got the change jar. And I had a gun in my hand.
Q Where did you get the gun from?
A I found it on the wall.
Q Was it a long gun, or a shotgun?
A Yes, sir, a long gun, a shotgun.
Q After you got that, did you say -- at that point in time, did you leave the residence?
A Yes, sir. I took off out the door. I was scared.
Q What happened when you took off out the door?
A I went out the door. And when I walked off the step, I seen a figure. And he said, Hey. And it scared me.

And I kind of made a noise. When I did -- like I moved around. And when I did, I heard somebody coming through the house. I didn't look. And I heard, pow, pow. I took off running. It scared me to death. I heard him, "ah." And I ran. And I dropped the change thing. As soon as I got to the road, I dropped the change.

Q Did you -- now, where did these shots come from?

A Behind me, like off the porch.

Q Were you on the porch, also?

A Yes, sir.

Q Where did you go?

A Up the road.

Q Did you hear any more shots?

A Yes, sir.

Q How many?

A I want to say like five, but I'm not positive.

Q Where did you go?

A To the woods on the right side of the road before you got to the main road.

Q Okay. Did anybody lay down with you?

A Yes, sir. Mr. Fulmer had caught me before I got to the top of the road.

Q He had done what?

A He had caught up with me before I got to the top of the road.

Q At this point in time, did you -- did he go in the woods with you?
A Yes, sir. But Charles Burgess had, also, caught us before we got there and was talking about us leaving him. So I don't really know.
Q All right. Now, where was your ride?
A Gone. They was riding around. I really am not sure. I just know that Charles Burgess had made a phone call, I found out later, I guess, to them. And we was laying in the woods.

And they was telling me that everything was going to be okay. Because I was scared. I was jerking. And I'm not sure exactly which one, but they was telling me everything was going to be okay, just to calm down, breathe, everything was going to be okay.

Q And so in the woods, it's you, Charles Burgess?
A And Robert Fulmer.
Q And the Defendant?
A Yes, sir.
Q At some point, did you see the police?
A Yes, sir. On the left side of the road, they was putting vests on and getting guns. And I was shaking. I felt like I was about to have a seizure. I was jerking.
Q And, at some point in time, did you -- did the girls ever come back to pick you up?

A Yes, sir.
Q Who was driving?
A Jennifer Allred.
Q Okay.
A I think.
Q Well, who was --
A Jennifer Allred and Heather Posey was in the car, but I'm not positive who was driving.
Q Did y'all get back into that vehicle?
A Yes, sir.
Q When you got back into the vehicle, what did the Defendant say about shooting somebody?
A I got in. I was jerking. And I was crying. And they was like, Danny, calm down, it's all right. I still never seen guns. I seen them on the way in the car. They was messing with them. But they said they wasn't -- the guns wasn't getting out of the car. Nobody was getting hurt.
Q I'm talking about when you got back in the car, what was discussed about shooting him -- the victim?
A All they kept -- I was tripping out. So they just kept telling me, Everything is going to be okay. Everything is going to be okay. Calm down. Everything is going to be okay.
Q Did somebody talk about shooting him?

A Not that I remember, not right off. It was just everything was going on so fast. And I was tripping out that -- to keep me calm.

Q Okay. So y'all -- when you left the scene, where did you go?

A I don't remember. In my mind, I went home. Because I remember crying telling them I wanted to go home. But that's all I remember.

Q But before that, do you recall going to China's house?

A No, sir.

Q And did you have any discussions with the Defendant about the shooting that night afterwards when you were in the car?

A I didn't catch that.

Q Did you have any discussions with the Defendant about the shooting after that?

A Not in-depth discussions. I didn't see them -- when I went home, I didn't see neither one of them for days. And the next time I seen them, I had went with my co-defendant -- I had went to his house and played basketball.

Q So when you were in the car, were you upset?

A Oh, I was.

Q Were you crying?

A Yeah. I have a lot of mental issues. And I was -- I lost it. I was jerking bad.
Q And were you like that --
A Before I wasn't as bad. But I was scared before, jerking.
Q Okay. When was the first time you saw guns?
A In the car on the way.
Q Okay. And who had the guns?
A Charles Burgess and Robert Fulmer.
Q Okay. And were they switching them back and forth?
A Yeah, just playing with them.
Q Okay. Were they loading and unloading them?
A Yes, sir.
Q I'm sorry?
A Yes, sir.
Q Okay. And that was on the way over to Rob's house -- I mean, to the victim's house?
A Yes, sir. They told me the guns wasn't going to be out of the car.
Q Okay. And --
A So I don't know who had a gun out of the car or what, because I was scared to ask.
Q Okay. Well, my question was, who had the guns, the two guns in the car?
A Robbie Fulmer and Charles Burgess.

Q Okay. And is Robbie Fulmer in the courtroom?
A Yes, sir.
Q What's he wearing?
A A white shirt.
MR. RICHARDSON: Please let the record reflect he's identified the Defendant.
BY MR. RICHARDSON:
Q And you were, subsequently, arrested for this; right?
A Yes, sir.
Q You are presently represented by an attorney?
A Yes, sir.
Q Is that attorney here in the courtroom?
A Yes, sir.
MR. RICHARDSON: Thank you.
That's all the questions I have.
Please answer any questions Defense counsel may have.
MR. ROBINSON: May it please the Court.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:
Q Sir, did you go to the Hot Spot at some point?
A No, sir.
Q You never went to the Hot Spot?
A No, sir.
Q Now, did anybody wear gloves that night?

A Yes, sir.
Q I'm going to ask you something as far as the time that you've met with the Prosecutor in this case. This is Mr. Richardson. How many times have you met with him?
A Twice.
Q Twice. And you're charged in this case with the identical charges as Mr. Fulmer, aren't you?
A Yes, sir.
Q And in your meetings with Mr. Richardson, and your attorney -- or excuse me, Mr. Richardson, you know that your testimony today against Mr. Fulmer will help you, don't you?
A I was told by my lawyer that it would only -- as long as I told the truth, it could help me in the long run.
Q Now, do you know what perjury is?
A No, sir.
Q Do you know that perjury is when you don't tell the truth in court?
A Yes, sir.
Q And that you could be sentenced to a jail term for that. Do you understand that?
A Yes, sir.
Q Do you understand if you lie today and it's found out later that you're lying that you could be sentenced to jail for that?

A Yes, sir.
Q Now, in terms of the meetings that you had with Mr. Richardson and your attorney -- now, if you didn't testify today, what do you think would have happened?
MR. RICHARDSON: Your Honor, I'm going to object to that. That's speculation.
THE COURT: Okay. With respect to that specific question, speculation, I'm going to sustain. I think you might be able to arrive at it with another means.
BY MR. ROBINSON:
Q Do you think that you're going to get nothing out of this --
A No, sir.
Q -- by testifying?
A No, sir.
Q What did you think you were getting out of this?
A I don't know. I'm just trying to be honest, sir.
Q You're trying to be honest?
A Yes, sir.
Q Okay. How many times -- you said you met with Mr. Richardson, twice; is that right?
A Yes, sir.
Q And how many times have you met with people in his office?
A I've only met with him twice.

Q Anybody else?
A No, sir.
Q Okay. Did you ever give a written statement?
A No, sir.
Q All right. And you have an attorney; is that right?
A Yes, sir.
Q He's sitting in the courtroom today?
A I have somebody sitting in for my attorney.
Q Now, that night that you're talking about, you said Mr. Fulmer was with you that night; is that correct?
A Yes, sir.
Q So in the car, there were how many people?
A Five.
Q Five people?
A Yes, sir.
Q Now, did Mr. Fulmer have anything on his arms?
A Yes, sir. He had a hoodie on.
Q A hoodie on?
A Because he had a broke hand.
Q A broke hand. Anything else? What do you mean? Did he have anything on his arms like a cast or --
A He had a cast on his arm.
Q A cast on his arm?
A Yes, sir.
MR. ROBINSON: That's all I have.

Thank you.

THE COURT: Redirect?

MR. RICHARDSON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. RICHARDSON:

Q Just so we're clear. Have I made any promises to you for your testimony today?

A No, sir. My lawyer told me that -- the only thing he said was if I testify and I'm truthful that it might help me in the long run.

Q But I have made no promises for your testimony today?

A No, sir.

Q In fact, I told you that there were no promises?

A No, sir -- yes, sir.

MR. RICHARDSON: Thank you.

That's all the questions I have.

THE COURT: Recross?

MR. ROBINSON: No recross, Your Honor.

THE COURT: Thank you, sir.

You may step down. I appreciate you being here.

MR. RICHARDSON: Your Honor, may this witness be excused?

THE COURT: Any objection?

MR. ROBINSON: No objection.

THE COURT: Okay. No worries.

MR. RICHARDSON: The State calls Heather Posey to the stand.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

HEATHER POSEY,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

If you would, have a seat.

And state your name for the record. Speak up.

THE WITNESS: My name is Heather Posey.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Ms. Posey, how old are you?

A 21.

Q Okay. And are you employed?

A Yes, sir.

Q And what do you do?

A I work two jobs, for Coconuts Car Wash and for the bowling alley.

Q Okay. Do you know the Defendant, Robert Fulmer?

A Yes, sir.

Q How do you know him?

A Mutual friends.

Q Did you know him back on December 17th of 2012?

A Yes, sir.
Q Okay. Now, you have been charged with accessory after the fact in this case, have you not?
A Yes, sir.
Q Okay. And you have a lawyer; is that right?
A Yes, sir.
Q Okay. Now, let me take your memory back to December 17th. Did you ever meet up with the Defendant?
A Yes, sir.
Q Okay. Where was that?
A At Brooke Smith's house.
Q Okay. And who is Brooke Smith?
A A friend of ours.
Q All right. And were you driving a vehicle?
A Yes, sir.
Q Okay. Do you remember what kind of vehicle it was?
A It was a gray Buick.
Q Okay. And what did y'all do at Brooke's?
A We were just hanging out.
Q Okay. And, at some point in time, did you leave Brooke's?
A Yes, sir.
Q And where did you go?
A To pick up Charles Burgess and Jennifer Allred.
Q Okay. And let me go back. And I'm going to refer to

State's Exhibit No. 17. Is this the vehicle you were driving?

A Yes, sir.

Q Okay. Now, when you went to get Charles Burgess and Jennifer Allred, where was that?

A Up past Masters Grocery at Charles mom's house.

Q Okay. Were you alone when you went?

A Yes, sir.

Q Okay. And so did you, in fact, pick them up?

A Yes, sir.

Q All right. And was this night or day? Do you remember about what time it was?

A 7:00.

Q And once you picked them up, where did y'all go?

A To a house that Rob was tattooing at.

Q Okay. And when you refer to "Rob," do you mean the Defendant?

A Yes, sir.

Q Okay. And was that house in Easley?

A Yes, sir.

Q All right. When you went to that house, what did y'all do?

A We were just hanging out. He was tattooing. Rob was tattooing.

Q And were there a lot of people at this house?

A Yes, sir.
Q And were people -- was it a party?
A No, sir.
Q Were people drinking?
A Yes.
Q Smoking marijuana?
A Yes, sir.
Q All right. And was Chad Hayes there?
A Yes, sir.
Q All right. And Jennifer -- excuse me, Sarah Hamilton?
A Yes, sir.
Q And were they drinking and smoking marijuana?
A Possibly.
Q Okay. Now, at some point in time, did y'all leave that house?
A Yes, sir.
Q Okay. And who left the house?
A Myself, Jennifer Allred, Charles Burgess, Danny Adams, and Robert Fulmer.
Q And did you know where you were going?
A At the time, no.
Q Okay. Did the Defendant talk to you about where you were going?
A Not until we were in the car.

Q Okay. And when you were in the car, what did he say?
A That we were going to rob somebody.
Q Okay. Going to rob somebody?
A Yes, sir.
Q All right. And who was driving?
A Jennifer was driving.
Q And do you know -- why weren't you driving?
A I'm not sure.
Q Okay. Were you a passenger?
A Yes, sir.
Q In the front seat?
A Yes, sir.
Q And who were -- the three guys, Charles Burgess, the Defendant, and Danny Adams, were they in the backseat?
A Yes, sir.
Q Now, when he said he was going to rob somebody, who told you how to get to the house?
A Rob did.
Q Okay. And that's the Defendant?
A Yes, sir.
Q All right. Did anybody else talk about how to get to the house?
A No, sir.
Q All right. He gave directions?
A Yes, sir.

Q All right. Now, at this point in time, do you know about any guns?
A No, sir.
Q At this point in time, have you seen any guns?
A No, sir.
Q All right. How long did it take you to get from that tattooing house to the place on [redacted] Lane?
A Five, seven minutes.
Q Okay. When you got there, what was the plan?
A We dropped them out at the end of the road. And then Charles took Jennifer's phone. And they told us they would call us when they were ready to get picked back up.
Q Okay. So did you drop off all three of those guys?
A Yes, sir.
Q Okay. Now, after you dropped them off, do you remember where y'all went?
A We went up the road and parked. I'm not sure where.
Q All right. Eventually, did you get a phone call?
A Yes, sir.
Q And what happened after you got the phone call?
A We went back to pick them up where we dropped them off. And there were cops and a lot of commotion happening.
Q Did y'all -- at this time, is Jennifer driving, or are you driving?

A Jennifer's driving.
Q Did y'all, actually, come -- you and Jennifer come in contact with the police?
A Yes, sir.
Q When you came in contact with the police, had you picked up the Defendant yet?
A No, sir.
Q Had you picked up Danny Adams or Charles Burgess?
A No, sir.
Q And what happened when you were confronted by the police?
A They had asked us what we were doing there. Jennifer stated that we were lost. They asked us to wait a minute. And he went to the rear of the vehicle. And she took off.
Q Okay. After you left, where did y'all go?
A We called them back, or they called us. I'm not quite sure.
Q Okay.
A And we went right up the road a little bit to pick them up. And they all came walking out of the woods.
Q And what were they wearing?
A Black hoodies.
Q And did they get -- were all three of them together?
A Yes, sir.
Q Did they get in the backseat?

A Yes, sir.
Q All right. Now, when they got in the backseat, how is Danny Adams acting?
A Nervous.
Q Okay. Do you recall, was he crying, or anything of that nature?
A No, sir.
Q You don't recall?
A I don't recall.
Q Okay. What, if anything, did the Defendant say about the shooting when he got in the vehicle?
MR. ROBINSON: Objection, Your Honor, leading.
THE COURT: Okay. I'll overrule that.
You may ask it.
BY MR. RICHARDSON:
Q Let me repeat it. What, if anything, did the Defendant say about a shooting when he got in the vehicle?
A Just that things went wrong. He didn't expect the man to be there that owned the house, and that he had shot the victim.
Q Okay. Now, is that on the way back to wherever you're going?
A Yes, sir.
Q And where did you go to?
A To Chad Hayes' house.

Q Chad Hayes' house. Now, is this the tattooing house that you've talked about?
A It's right up the road from the tattooing house.
Q And on the way back to the tattooing house, did you see any guns at that point in time?
A No, sir.
Q Do you know who had guns and who didn't?
A No, sir.
Q Okay. Now, after the Defendant told you that he had shot someone -- shot the victim, who told you -- did he tell you how to get where to go after that?
A I think it was just mutually decided to go back to Chad Hayes' house.
Q Is Chad Hayes, also, known as China?
A Yes, sir.
Q When you got back to his house, what did you do?
A We went inside to his room. And they started disbursing everything they had got from the house.
Q Was Chad Hayes there?
A Yes, sir.
Q Did you see some of the items?
A Yes, sir.
Q Did you get anything out of it?
A I got pills and a knife.
Q All right. And did you see any guns at that time?

A No, sir.
Q Okay. Now, how long were you at China's house -- or Chad Hayes house?
A Maybe 10 minutes.
Q And I may have asked you this. Was he there?
A Yes, sir.
Q Okay. Did he let you in?
A Yes, sir.
Q And when I'm saying "he," I'm talking about Chad Hayes.
A Yes, sir.
Q You say about 10 minutes?
A Yeah.
Q Where did y'all go then?
A After there?
Q After China's, yes.
A I took Danny Adams home. And Charles, and Jennifer, and I went to Wal-Mart in Central.
Q And did the Defendant go back to the tattooing house?
A Yes, sir.
Q And how far is the tattooing house from China's house?
A Like China's house is kind of on the edge of the street. If you go down the street and down another street, maybe three houses down. So it's not far.

Q How long would it take you to get there?
A Two minutes walking.
Q Two minutes walking?
A Yes, sir.
Q Now, after you dropped everybody off, where did you go?
A To Brooke Smith's house.
Q And is this the house that you started at that day?
A Yes, sir.
Q All right. Were you living with Brooke Smith?
A Yes, sir.
Q Okay. And when you went back to Brooke Smith's house, what did you do?
A I went to sleep.
Q Okay. The next day -- what happened the next day?
A We were all hanging out -- well, Rob was there at the house.
Q Rob, the Defendant?
A Yes, sir.
Q Okay.
A Then, at some point during the day, I went and picked up Charles and Jennifer again, and brought them back to Brooke's house. At that point, we were just hanging out most of the day. Then, at one point, we went to the Hot Spot in Easley. And that's when I was arrested.

Q Who's "we"?
A Jennifer, Charles, and I.
Q And the Defendant, where was he?
A I guess he stayed at Brooke's house.
Q Okay. And why did you go to the Hot Spot?
A To get beer.
Q At the Hot Spot, were you arrested?
A Yes, sir.
Q As was Jennifer Allred and Charles --
A Charles Burgess.
Q Do you recall what you were arrested for that day?
A I think open container as a minor.
Q And where did they take you?
A To the Easley Police Department.
Q All right. And, at the Easley Police Department, were you interviewed?
A Yes, sir.
Q Were you interviewed about the incident we're here today about?
A Yes, sir.
Q Okay. The detectives read you your Miranda rights, and you waived them, and gave a statement?
A Yes, sir.
Q In your first statement, you said that there were two other people?

MR. ROBINSON: Your Honor, objection. Leading.

MR. RICHARDSON: Scratch that.

THE COURT: Okay.

BY MR. RICHARDSON:

Q That night, did you stay overnight in jail?

A Yes, sir.

Q Okay. The next day, were you interviewed again?

A Yes, sir.

Q Okay. And were you interviewed by -- do you remember the detective that interviewed you?

A Yes, sir.

Q Do you remember his name?

A Detective James.

Q Is this him sitting right here?

A Yes, sir.

Q After that interview, where did you go?

A Back to Brooke Smith's house.

Q Okay. Now, when you go back to Brooke Smith's house, at some point in time, is the Defendant there?

A Yes, sir.

Q Okay. Does he talk to you about what y'all are going to say to the police?

A Yes, sir.

Q What did he tell you?

A Pretty much just to stick with he was tattooing all

night, that he never left the tattooing house.

Q Is that the truth?

A Yes, sir.

Q Did you -- as stated, you're represented by counsel; is that right?

A Yes, sir.

Q And he's here today; is that right?

A Yes, sir.

Q Is -- the person who told you he shot the victim and was in that car that night, along with Danny Adams and along with Charles Burgess, is he in the courtroom today?

A Yes, sir.

Q Can you point him out?

A (Witness complied.)

Q What does he have on?

A A white shirt with a plaid tie.

MR. RICHARDSON: Please let the record reflect she's identified the Defendant.

Thank you.

That's all the questions I have.

Please answer any questions Defense counsel may have.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Ms. Posey, you're charged along with Mr. Burgess, Mr. Fulmer, and Ms. Allred; is that correct? And

Mr. Adams; is that right?

A Yes, sir.

Q So if you don't testify the way the Prosecution wants you to testify, you're not going to get the benefits of it, are you?

MR. RICHARDSON: Your Honor, I object to that question. First of all, it's argumentative. And, second of all, it's calling for speculation.

THE COURT: I'll allow the question. I respectfully overrule your objection.

You may proceed.

THE WITNESS: I haven't been offered any benefits.

BY MR. ROBINSON:

Q So you're telling this jury, under oath, that you're coming to court today with these charges hanging over your head just because you want to come to court and get this off your chest. That's what you're trying to say?

A Yes, sir.

Q All right. Now, how many times have you met with the Prosecution in this case?

A Once.

Q Once with Mr. Richardson?

A Yes.

Q And in Mr. Richardson's conversation with you, that interview you had with him, how long did that last?

A 30 or 45 minutes.
Q And was this conversation -- did you write anything down, or anything like that about the statement, what you said, and so forth?
A No, sir.
Q So you're not going to get anything for this testimony you're giving today. But you said a minute ago that y'all went some place, and you got some pills, and you got a knife; is that right?
A Yes, sir.
Q A knife; is that right?
A Yes, sir.
Q You got that for yourself?
A Yes, sir.
Q So you participated in this whole thing; correct?
A Yes, sir.
Q So you could -- if the -- you could wind up with a great sentence if you don't testify to that, couldn't you?
MR. RICHARDSON: Your Honor, I object to that question.
MR. ROBINSON: I'll move on.
THE COURT: All right. Sustained.
BY MR. ROBINSON:
Q What do you think is going to happen if you don't help the Prosecution?

A I'm doing this because it's the right thing to do, not because it will benefit the Prosecution.

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

Thank you.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. RICHARDSON:

Q Have I made any promises for your testimony?

A No, sir.

Q What did I ask you to come in here and do?

A Tell the truth.

MR. RICHARDSON: Thank you.

That's all the questions I have.

THE COURT: Any recross?

MR. ROBINSON: No, sir.

THE COURT: Thank you, ma'am.

I appreciate you being here. You may step down.

MR. RICHARDSON: Thank you, Your Honor.

The State would call Charles Burgess to the stand.

THE CLERK: If you would, place your left hand on the Bible here and raise your right hand, as best you can.

WHEREUPON,

CHARLES ANTOINE BURGESS,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, sir.

If you would, have a seat right here.

And state your name for the record, please.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q State your name.

A Charles Antoine Burgess.

Q Mr. Burgess, you are presently incarcerated at the Pickens County Law Enforcement Center; is that correct?

A Yes, sir.

Q And is that for the charges we're here on today, attempted murder, burglary first, and, also, possession of a weapon during a violent crime, and larceny?

A Yes, sir.

Q Okay. And you've been in trouble before, haven't you?

A Yes, sir.

Q Okay. And you have on your record -- you have a common law robbery and a forgery, don't you?

A Yes, sir.

Q Okay. And you, also, have assault and battery of a high and aggravated nature; is that right?

A Yes, sir.

Q Okay. And a failure to stop; is that right?

A Yes, sir.

Q Did you go to trial on those, or did you plead guilty

to those?
A I pled guilty.
Q Okay. Now, I'm going to take your memory back to December the 17th, 2012. You remember that day; right?
A Yes, sir.
Q Okay. Did you, at some point in time, get together with the Defendant, and Danny Adams, and Jennifer Allred, and Heather Posey?
A Yes, sir.
Q And where was that?
A At somebody's house behind Don's place.
Q Was there some tattooing going on there?
A Yes, sir.
Q And, at that place, did y'all have a conversation about going to [redacted] Lane?
A Not exactly a conversation of going to [redacted] Lane, but something like that.
Q Okay. Well, what did -- did you talk to the Defendant about it?
A Yes, sir.
Q What did y'all talk about?
A He just asked me if I would ride over there with him to get -- make sure this guy paid him.
Q Okay. Now, at the tattooing house, did you have some guns?

A Yes, sir.
Q Okay. And did you have a Taurus nine-millimeter?
A Yeah. We had -- yeah.
Q Okay. Did the Defendant have a gun?
A Yes, sir.
Q Okay. What gun did he have?
A The Taurus nine-millimeter.
Q Okay. Do you recognize this weapon here? This is State's Exhibit No. 26.
A Yes, sir.
Q Is that the gun the Defendant had?
A Yes, sir.
Q And you, also, were armed; is that correct?
A Yes, sir.
Q What did y'all discuss doing with those guns?
A We didn't discuss doing nothing with the guns. It was just making sure the man got his money.
Q Okay. So where was he going to get his money?
A On [redacted] Lane.
Q All right.
A That's where we went.
Q And who went?
A Me, Danny, Jenny, Heather, and Rob.
Q Okay. And who was driving?
A Jenny.

Q All right. How did you know how to get there?
A I didn't.
Q All right. Well, how did you get there?
A He told us how to get there.
Q Who did?
A Rob.
Q Okay. Now, what -- on the way over there, what are you doing with the guns?
A Nothing.
Q Did you have them out?
A Not at the time.
Q Okay. Which gun did you have in the car?
A I had a Hi Point nine-millimeter.
Q Okay. When you got to [redacted] Lane, what did y'all do?
A We got out of the car and went to the back of the house.
Q Okay. And what did you do at the back of the house?
A Popped the window and went in.
Q Who went in the window?
A Rob.
Q The Defendant?
A Yes, sir.
Q Okay. Did you help him get in the window?
A Yes, sir.
Q All right. And when he went in, what did he do at

that point in time?
A Opened the back door.
Q Okay. And did y'all go inside the trailer?
A Yes, sir.
Q All right. What did y'all -- what was taken out of the trailer?
A Once we got back in the car, it was a pistol, a rifle, and some pills, and some weed.
Q Okay. And so what -- when y'all were -- when that's going on, does the victim come home at some point in time?
A Yes, sir.
Q What happens?
A The man got shot.
Q Who shot him?
A I was at the back of the -- when you come out of the back of the trailer -- and we stepped off the back porch and the shooting started happening. I went one way and they went the other way.
Q So did you go down the far side of the trailer?
A I went to the left side of the trailer.
Q And Danny and the Defendant go the other way?
A Yes, sir.
Q All right. And, at some point in time, did y'all met back up?
A Yes, sir.

Q Where did you meet back up?
A Back down the road.
Q Where did you go from the road?
A We went back to that same house.
Q Okay. Well, did you go in the woods?
A Yeah. We met up in the woods and waited on Jenny to pick us up.
Q And did she, eventually, pick you up?
A Yes, sir.
Q Do you remember seeing the police come?
A Yes, sir.
Q All right. After she picks you up, where do you go?
A Back to the house.
Q Did you go to China's house, or the tattooing house?
A We went to -- yeah. We met up at this trailer right across the street from the house.
Q Was that Chad Hayes' house, or do you know?
A I guess.
Q Do you know Chad Hayes?
A I met him twice.
Q Was he there?
A Yeah.
Q Okay. At some point in time, did y'all split up the items that you had gotten?
A Yeah.

Q Okay. And before that -- in the car -- when y'all got back in the car, did you have a discussion about the shooting?

A (Witness nodded.)

Q What, if anything, did the Defendant say about the shooting?

A What do you mean?

Q What, if anything, did he say about shooting somebody?

A During the -- what -- I mean --

Q After he got back in the car --

A Danny was all upset and stuff saying -- crying about him being shot. He was just all about talking about the shooting.

Q Okay. Well, did the Defendant admit to shooting the victim in the car?

A Yes, sir.

Q Now, when you get back to -- does he go back to the tattooing house, the Defendant?

A Yes, sir.

Q Okay. Where do you go?

A I left and went to Central and dropped Danny off at home. And I went to the Central Wal-Mart.

Q Okay. And after you dropped Danny off, you went to Central. Who was with you at the Central Wal-Mart?

A Heather and Jenny.
Q Okay. And did y'all buy something there?
A I bought a baby doll for my daughter for Christmas.
Q Okay. And let me go back. Did y'all -- who got the pistol that was stolen?
A We did -- well, I had that one. And it was already there and we got that -- picked up that gun.
Q Okay. After Wal-Mart, where did you go after that?
A I went home.
Q And were you living with Jennifer at the time?
A Jennifer was living with me and my mother.
Q Okay. And, at some point in time, did you meet back up with the Defendant?
A Yes, sir. I met up with him the next day and gave him something to eat.
Q Okay. And where was that?
A Where was what?
Q Where did you meet up with him and gave him something to eat?
A The apartments behind the LEC.
Q Okay. And did y'all -- at any point in time, did y'all exchange guns, or do anything like that?
A I took that Taurus nine-millimeter to get rid of the gun. That's why I had it on me was to get rid of it.
Q And that's when you were arrested in Easley with that

gun; is that right?
A Yes, sir.
Q Okay. What happened to the Hi Point?
A I don't know.
Q Did you give it to somebody?
A No. I made sure he was -- he still had a gun at the time in case the victim came after him.
Q And "him" being the Defendant?
A Yes, sir.
Q And you are represented by counsel; is that right?
A Yes, sir.
Q Do you have an attorney?
A Yes, sir.
Q Okay. Is -- the man that was with you, and Danny Adams, and the two females, is he in the courtroom today?
A The who?
Q Is the man that was with you, and Danny Adams, and the two females on the night of December the 17th in the courtroom today?
A The man that was with me, Danny Adams --
Q Yes.
A I don't understand what you're saying.
Q I'm sorry. Who went to [redacted] Lane and committed this burglary and shooting?
A Who was with me?

Q Yes.
A Rob.
Q Okay. Is he in the courtroom today?
A Yes.
Q Can you point him out?
A (Witness complied.)
Q What's he got on?
A The white shirt and tie.

MR. RICHARDSON: Please let the record he's identified the Defendant.

That's all the questions I have. Please answer any questions Mr. Robinson has.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q You met with Mr. Richardson on Thursday or Friday of last week, didn't you?
A Yes, sir.
Q And you -- Mr. Richardson promised you that if you testified for him in this case that he would dismiss your charges, didn't he?
A No, sir. We never talked about nothing but 15 years.
Q 15 years?
A Yes, sir.
Q So it's your testimony you're coming to court today

for no other reason than that?
A Yes, sir. That's what I'm getting -- and then I'm getting -- I never was promised anything about getting any of my time reduced, or nothing.
Q What do you think you're going to get by coming today?
A I figured me and Rob both was going to get 12 to 15 years.
Q So you did think you were getting a benefit out of this?
A Sir?
Q You did think you were getting a benefit out of this, didn't you?
A Did I think I was getting one?
Q Yes.
A No, sir.
Q How many times did you meet Mr. Richardson?
A Once.
Q One time, and that's it?
A Yes.
Q Okay. Now, do you remember a conversation you had with an inmate down at the jail here where you said certain things about this case?
A I've talked to plenty of inmates.
Q Do you recall an interview -- or a conversation you

had with an inmate where you said that you were the person that did the shooting?

A No, sir.

Q And that Rob had nothing -- Mr. Fulmer had nothing to do with this?

A No.

Q You don't recall that conversation?

A No, sir.

Q But you're, also, a co-defendant in this case, aren't you?

A Yes, sir.

Q In that car at the Hot Spot, you were the one with the gun?

A Yes, sir.

Q And the persons who were in that car with you were Jennifer Allred; is that right?

A Yes, sir.

Q Heather Posey and a Mr. King; is that right?

A Yes, sir.

Q And you were the one that stepped out of the car and was playing with the gun for a little while; is that correct?

A Yes, sir. I wouldn't call it playing.

Q I'm sorry?

A I wouldn't call it playing.

Q You were kind of taunting the police a little bit, weren't you?
A Yeah. I was trying to -- I guess suicide by cop.
Q Suicide by cop?
A I guess.
Q Meaning have them shoot you?
A He put his pistol in my face, so I told him to kill me.
Q All right. Let's talk about Ms. Allred. She was your girlfriend at the time, wasn't she?
A Yes, sir.
Q Now, you gave her the bullets from that gun to keep, didn't you?
A Yeah. I had -- there was two bags of shells.
Q Two bags of shells?
A Yeah.
Q And you gave those to her to keep; is that right?
A Yeah. They was in her pocketbook.
Q Now, in terms of -- at some point, I think Mr. Richardson asked you about splitting up whatever you got from this place, and so forth. Who was -- who got -- besides Ms. Posey, who got stuff out of this? Who got merchandise from the victim's house?
A We all did.
Q What did you get?

A I got some Lortabs and some weed.
Q Lortabs and some weed. What did your girlfriend, Ms. Allred, get?
A I think a knife.
Q A knife. And what did -- if you can recall, what did Ms. Posey get?
A A knife.
Q And where did y'all do this breaking up of this money -- or this stuff?
A At some trailer across the street.
Q Some trailer across the street?
A Yeah. The same place I just told you.
Q Mr. Fulmer wasn't there, was he?
A Yeah.
Q Yes? What did he get?
A We all split the weed and the pills separately three ways.
Q Three ways?
A Yeah. And he gave -- I think we gave China something, too.
Q Who? I'm sorry?
A I think we gave China a little bit of something, too.
Q China something, too?
A I think so. I'm not sure.
Q Who's China?

A Chad whatever.

MR. ROBINSON: That's all I have.

Thank you.

THE COURT: Any redirect?

MR. RICHARDSON: Nothing further, Your Honor.

THE COURT: All right. Thank you, sir.

I appreciate you being here.

It's almost five till. Let's go ahead and end for the day, and come back tomorrow morning at 9:30.

MR. RICHARDSON: Yes, sir.

THE COURT: Ladies and gentlemen, we're going to take a break this afternoon. Come back tomorrow at 9:30. Please be on time. Not out of respect or consideration for me, but out of consideration for your fellow jurors. Because, as you know, we can't start until everybody is here.

Please, also, I remind you again, please, don't discuss the case. You'll be invited to discuss the case. Somebody is going to want to talk to you about it. Just tell them to be patient, and you'll get the opportunity to discuss it later in the week after you're dismissed.

So I hope you have a good evening. And I will see you tomorrow morning at 9:30.

(WHEREUPON, the jury was excused from open court at approximately 4:54 p.m.)

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THE COURT: Counsel, is there anything to put on the record before we adjourn for the evening?

MR. RICHARDSON: Nothing from the State, Your Honor.

THE COURT: Mr. Robinson?

MR. ROBINSON: No, Your Honor.

THE COURT: All right. We'll begin with the jury at 9:30. If y'all need me for any reason tomorrow morning, I'll be here before then, closer to 9:00, so let me know. Because I'd like to go ahead and start with some testimony promptly at 9:30.

MR. PERRY DELOACH: If I may interrupt.

May Ms. Posey be released?

MR. RICHARDSON: Yes. I'm sorry. I forgot.

THE COURT: Oh, yes, without objection.

MR. ROBINSON: Without objection.

THE COURT: Okay. Without objection.

Thank you.

(WHEREUPON, the proceedings were concluded at approximately 4:55 p.m., to be reconvened on Tuesday, August 26, 2014.)

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TUESDAY AUGUST 26, 2014

THE COURT: Good morning. I hope everybody's doing well.

I've been advised we have all of our jurors this morning.

Okay. Are we ready for the jury this morning, Counsel?

MR. RICHARDSON: Yes, Your Honor. We're ready.

THE COURT: And I'll query them regarding the subject that we had discussed in chambers.

MR. RICHARDSON: Thank you.

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 9:37 a.m.)

THE COURT: Good morning, ladies and gentlemen.

I hope all of you are doing well. I hope you had a good evening.

I have a question to ask you before we get started. It's come to my attention that one or, perhaps, more of you may have been either in the courthouse last night or in the elevator last night when someone openly questioned the credibility of witnesses that took the stand last night, someone who may have been in the courtroom during that time.

So I'm going to ask you, is there anyone among you

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who heard in the courthouse after we recessed somebody openly commenting on testimony and questioning the credibility of witnesses?

(WHEREUPON, there was no response.)

THE COURT: None of y'all are in trouble for that. I just need to make sure that that didn't happen. If it did, it will be rectified.

(WHEREUPON, there was no response.)

THE COURT: All right. And I have a clear representation from everyone on the jury that they did not hear that.

Okay. Good enough.

Are we ready to proceed?

MR. RICHARDSON: Yes, Your Honor.

The State would call Dan Defreese to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

FRANK DAN DEFREESE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: My name is Frank Dan Defreese, D-E-F-R-E-E-S-E.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Defreese, where are you employed?

A I work for the South Carolina Law Enforcement Division in the forensic services laboratory in Columbia.

Q Okay. And how long have you worked in the forensic laboratory sector?

A Since 1967.

Q Okay. And, as part of those duties, what is it that you do?

A I'm assigned to the firearm and tool mark department. And I analyze evidence that's submitted in firearm and tool mark cases, principally, guns, bullets, and cartridge cases, and compromised physical security devices, you know, locks, and that sort of thing.

Q Okay. And, sir, do you have any type of specialized education and/or training in that regards?

A I do.

Q And what is that?

A My principle training, actually, occurred at SLED. I'm a graduate of the University of South Carolina in Columbia. And after my employment with SLED, I was first assigned to the firearms laboratory where we do the analysis of firearms evidence and tool mark evidence.

And I undertook a course of instruction that lasted

about two and a half years where I studied the techniques of both identifications under Lieutenant Miller Kate and Lieutenant Karl Stokes. Now, Lieutenant Kate established the SLED laboratory when SLED itself was established in 1947.

After that period of time, I began accepting cases for analysis on my own and testifying as to my results, which I've been doing since 1969.

Q Okay, sir. And so have you testified in the courts of the State of South Carolina before?

A Yes.

Q And have you been qualified in the state courts as an expert in firearm and tool mark ID?

A Yes.

Q And do you know how many times that you've undertook that?

A Not exactly. Because for the greater part of my career, I really just didn't keep track of it. But I estimate 600, 700 times.

MR. RICHARDSON: Your Honor, at this time, we would offer Mr. Defreese as an expert in firearm and tool mark identification.

THE COURT: Any exceptions or voir dire?

MR. ROBINSON: No exceptions or voir dire.

THE COURT: Okay. Ladies and gentlemen, the State

has offered this gentleman as an expert witness. Now, a party to a lawsuit may want to qualify someone and offer them as an expert witness because an expert can testify to matters of opinion that a lay witness may not be able to testify to. An expert witness's testimony is offered to assist the jury in its analysis of the evidence that's presented at trial.

Now, understand that an expert is presented and is qualified due to his experience, expertise, and education. But understand and realize that just because someone is qualified as an expert witness does not mean that their testimony has some preferred value or preferred status.

You consider the testimony of an expert witness just like any other piece of evidence that you receive in the case. That is, you decide whether it has merit, whether it has value, and whether it's credible just like any other witnesses testimony that you may receive. And you put whatever weight on it that you think is appropriate in your analysis of the evidence.

Mr. Richardson.

MR. RICHARDSON: Thank you, Your Honor.

THE COURT: Your witness.

I do accept him as an expert witness in the field that you have described, sir.

MR. RICHARDSON: Thank you, sir

BY MR. RICHARDSON:

Q Now, sir, as far as firearm identification, is part of your duties to identify and match up -- if I'm not using the right word, please, correct me -- spent shell casings with firearms?

A Yes, it is.

Q And, in doing so, can you just briefly explain to the jury what you do in doing something of that nature?

A Well, backing up just a little bit. When a cartridge is fired in a modern firearm, during the firing sequence, there's a very high pressure that's built up within the cartridge case portion of the cartridge. That high pressure is what's used to drive the bullet down the barrel and out of the gun. That high pressure that exists in the cartridge case just momentarily causes surfaces of the cartridge case to be very strongly pressed against the inside surfaces of the gun. One of those surfaces being the breach face.

The breach face is that portion of the gun that tends to hold the cartridge into the back of the barrel, into the chamber portion of the barrel. Any imperfections that are on the breach face are transferred to the cartridge case during this period of time.

It's an impression that's, actually, done much in the same way as an impression like a stamp pad, you know, that

you're, actually, putting pressure down against something and transferring the marks. And where those marks are sufficient and where they're repeatable, we can identify, for instance, breach face impressions to a cartridge case fired in a particular gun.

And there are other impressions, like the firing pin pressure. When the firing pin strikes the primer of a cartridge or strikes the rear of a cartridge on a rim fire cartridge, any imperfections that might be on the firing pin are transferred to the cartridge case. And where they are sufficient and where they are repeatable, it's possible to identify a particular cartridge case back to the gun that fired it, based on firing pin impressions.

There are other marks that are left on cartridges when they're fired from a particular gun as well, like an extractor and ejector mark, which could indicate that they had been loaded into a cartridge, but not necessarily fired. But that's just a recap of some of the marks that we would be looking for.

And in a given case where we have a questioned or a suspected cartridge case and we have a firearm, once we collect certain information about the evidence that's submitted, we would test fire the firearm to get cartridge cases that we knew it had fired. And then using a comparison microscope, we would compare one of our test

cartridge cases with an evidence cartridge case to see if the same markings were present on both.

And if the markings were there and they were sufficient, we could conclude that a particular cartridge case was fired in a particular firearm. Or we could conclude that they weren't, you know, if the wrong gun were submitted.

Q Okay, sir. Now, in the case that we're here today about, did you receive any evidence from the Pickens County Sheriff's Office to analyze?

A I did.

Q Okay, sir. Let me hand you what's been marked as State's Exhibit No. 26. And this is in evidence. Is that gun -- first of all, is that secure?

A It is.

Q Okay, sir. And you're familiar with firearms, obviously?

A Yes, sir.

Q Did you receive that gun and analyze it?

A I did.

Q And how do you know that?

A Well, I know it, first, by its make, model, and serial number. And, secondly, I know it by markings that I placed on the gun at the time that I received it.

Q Okay, sir. And what caliber gun is that weapon?

A This is a -- it's in the caliber most popularly known as a nine-millimeter Luger. It's, also, called nine-millimeter Parabellum or nine by 19 millimeter. But most people call it nine-millimeter Luger. The gun itself is marked nine-millimeter PARA, P-A-R-A. But nine-millimeter Parabellum and nine-millimeter Luger are the same thing.

Q All right, sir. And, along with that, did you, also, receive a clip that went to that gun?

A I did.

Q Let me hand you what's been marked as State's Exhibit No. 27. Do you recognize that?

A I do. This is the magazine that was submitted with this pistol.

Q Okay, sir. And how do you know that?

A I know that by the engraving that I put on the magazine. Prior to the test firing after we receive the evidence, we will engrave the case number, the item number, and our initials on the particular evidence specimen so that we'll know them when we see them again.

Q Okay. And, in addition, did you receive a spent cartridge from the Pickens County Sheriff's Office?

A I did.

Q Okay, sir. Let me hand you what's been marked and placed in evidence as State's Exhibit No. 30. Do you

recognize that, sir?

A Yes, sir, I do.

Q Okay. And is that, in fact, the spent shell that you received from the Pickens County Sheriff's Office?

A It is.

Q And how do you know that?

A I know it because I similarly marked the cartridge case with my case number, my item number, and my initials.

Q Okay, sir. And that's, actually, marked on the shell casing?

A Right. It's engraved on the cartridge case -- on the exterior wall of the cartridge case just forward of the extraction groove.

Q Okay, sir. Now, on these items, did you complete an analysis, as you've described to the jury that you would do?

A I did.

Q Okay, sir. Thank you.

And in completing that analysis, did you form an opinion as to whether that spent shell casing was fired from that nine-millimeter weapon?

A I did.

Q And what was your -- what is your opinion on that?

A My opinion is that I found matching breach face impressions on this cartridge case and on cartridge cases

that I test fired in this pistol, this State's Exhibit No. 26 pistol and State's Exhibit cartridge case. And it's my opinion that this cartridge case was fired by this pistol. State's Exhibit No. 30 was fired by State's Exhibit No. 26.

MR. RICHARDSON: Thank you, sir.

Please answer any questions Defense counsel may have for you.

MR. ROBINSON: May it please the Court?

THE COURT: Yes, sir, absolutely.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Mr. Defreese, but you don't know when that particular gun was fired, do you?

A No.

Q It could have been fired last week, three years ago. You just don't know when it was fired?

A That's correct. I can't tell when the cartridge case was fired. I can't tell by whom it was fired. I can only tell you that the cartridge case was fired by that gun.

MR. ROBINSON: Okay. Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. RICHARDSON: Nothing further.

THE COURT: Thank you, Mr. Defreese.

I appreciate you being here.

THE WITNESS: Thank you.

Good to see you.

MR. RICHARDSON: Your Honor, may Mr. Defreese be excused?

MR. ROBINSON: No objection.

THE COURT: Okay. Thank you.

Have a safe trip back to Columbia.

You may call your next witness.

MR. RICHARDSON: Thank you, Your Honor.

The State calls Jennifer Allred to the stand.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

JENNIFER LYNN ALLRED,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you, ma'am.

If you would, have a seat.

And state your name for the record, please.

THE WITNESS: Jennifer Lynn Allred.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Ms. Allred, how old are you?

A 27.

Q And are you presently married?

A Yes, separated.
Q And are you employed?
A Yes, sir.
Q Okay. And where are you employed?
A The Huddle House.
Q All right. And do you have any children?
A Yes, sir.
Q And how many do you have?
A Two and one on the way.
Q Okay. And let me just ask you. You've been charged in this case with accessory after the fact; is that correct?
A Yes, sir.
Q Okay. And you have an attorney; is that correct?
A Yes, sir.
Q Okay. And is that attorney in the courtroom today?
A He's right there.
Q Okay. So he is in the courtroom?
A Yes, sir.
Q Do you know the Defendant, Robert Fulmer?
A Yes, sir.
Q How do you know him?
A We met prior to the -- this whole incident.
Q Okay. Let me ask you to do this. If you'll scoot up just a little bit. This courtroom is real hard to hear in

here. We need to be able to hear so these jurors back here can hear.

A Yes, sir.

Q All right. Now, you said you had met him when?

A We met before this whole incident.

Q Okay. Well, let me ask you this. Do you, also, know Charles Burgess?

A Yes, sir.

Q And how long have you known him?

A About 2006, 2007.

Q Okay. And do you know Danny Adams?

A A little.

Q Okay. And how about Heather Posey?

A I just met her a few times around this incident.

Q Okay. Well, let me take your memory back to December 17th, 2012.

A Yes, sir.

Q Do you remember what you were doing that day?

A On which day?

Q December 17th of 2012. Who were you with?

A Charles Burgess.

Q Okay. And where were you with Charles Burgess?

A Was it the date of the incident?

Q Yes.

A We woke up at his mother's house.

Q Okay. Now, at some point in time, did you and Charles Burgess leave your -- his mother's house?
A Yes, sir.
Q Okay. Who -- how did you leave?
A Heather Posey.
Q Okay. And do you recall what kind of car she was driving?
A A gray Buick.
Q Was anybody else in the car?
A Not at the time she picked us up.
Q Okay. And do you recall about what time it was she picked you up?
A I don't recall the time.
Q Okay. Let me ask you this. Was it --
A It was later in that day.
Q Was it still daylight outside?
A I believe so.
Q Okay. Why was she picking you up?
A She was going to take us to see Robert Fulmer and to go to Wal-Mart to buy Tommy -- or Charles' daughter a present for Christmas.
Q Okay. So when you left the house, where did you go?
A We went to a house where Robert was doing tattoos.
Q Okay. And was that house in Easley?
A Yes, sir.

Q Now, were there other people in the house?
A Yes, sir.
Q Okay. Do you recall how many?
A No, sir. There was several people there.
Q Okay. And were people drinking?
A Yes, sir.
Q Okay. And were they smoking marijuana?
A Probably so.
Q Okay. How about you, were you drinking?
A I don't believe I was at that time.
Q Okay. Now, while you were there -- do you know about how long you were there before you left?
A Not exactly. I'd say 20, 30 minutes or so, give or take.
Q All right. And how did it come to be that you left that residence?
A Well, we had to go back to get Charles' money from his mother's house. And then we came back to the house.
Q I see. And when you came back to the house, did you go back in?
A I'm not a hundred percent. But I believe we walked in for just a moment and then come back out.
Q And you're fading out on me a little bit again.
A I'm sorry.
Q Try to speak up.

Thank you.

So when you came back, you -- did you come in contact with Charles Fulmer -- excuse me, Charles Burgess and Robert Fulmer?

A Charles was with me.

Q I see.

A And we come back to see Robert Fulmer.

Q Okay. Now, was there ever a conversation or anything at the house about leaving that house and going somewhere?

MR. ROBINSON: Your Honor, objection. Leading.

THE COURT: Okay. I sustain.

MR. RICHARDSON: Okay.

BY MR. RICHARDSON:

Q What, if anything, happened at the house before you left?

A Sir?

Q What, if anything, happened at the house before you left?

A I don't understand.

Q When you went back to the house -- okay -- did you, and Robert Fulmer, and Charles Burgess leave the house --

MR. ROBINSON: Objection, again, Your Honor. It's leading.

THE COURT: Okay. With respect to that question, I'll overrule.

You can answer that question.

THE WITNESS: Yes, sir.

BY MR. RICHARDSON:

Q Okay. And who left?

A Me, Charles Burgess, Danny Adams, Robert Fulmer, and Heather Posey.

Q Okay. Now, where were you going?

A We were going to [redacted] Lane.

Q Okay. And why were you going to [redacted] Lane?

A I was asked to drive them over there and drop them off.

Q Okay. And what was going to happen at [redacted] Lane?

A They were going to --

MR. ROBINSON: Your Honor, objection. It calls for speculation.

THE COURT: Okay. Well, I think that she can answer that without speculating. So I'll allow the question. I'll overrule.

BY MR. RICHARDSON:

Q Do you know what was going to happen at [redacted] Lane?

A They were to enter the home to get some money out of a safe. And I was to pick them back up.

Q And when you say "they," who are you talking about?

A Robert Fulmer, Charles Burgess, and Danny Adams.

Q And on the way over there -- well, let me ask you

this. How did you know how to get to the house?
A They told me how to get there.
Q Who told you?
A I believe Robert Fulmer.
Q Okay. And did you see any weapons in the car?
A Yes, sir.
Q Okay. And what weapons did you see?
A There was two pistols.
Q And who had the pistols?
A Robert Fulmer and Charles Burgess.
Q Okay. And was Robert Fulmer discussing what he was going to do when he got to the house?
A Yes, sir.
Q And what was he saying?
A They were going to go in. And if he was there, they were going to make him sit there while they got what they wanted and leave. And if he wasn't there, they were just going to go inside.
Q And when you say "he," who are you talking about?
A Robert Fulmer.
Q Now, when you say they were going to make him wait while they went and got something, who are you talking about?
A The victim, Rob [sic].
Q Now, about -- when you got to [redacted] Lane, was it dark

outside?
A Yes, sir.
Q How long did it take you to get from the house where the tattooing and party was going on to [redacted] Lane?
A Not long at all.
Q Okay. And what was the plan as far as after they left the car? How were they going to get picked back up?
MR. ROBINSON: Objection, Your Honor. Leading.
THE COURT: Okay. I'll sustain that objection.
BY MR. RICHARDSON:
Q Did y'all have -- did you have a discussion with Robert Fulmer about what was going to happen when they left for you to pick them back up?
A They were supposed to call.
Q Okay. And who had a cell phone?
A Charles Burgess had the cell phone.
Q Okay. And who had it in your car?
A Heather Posey.
Q Okay. And were you driving the entire time?
A Yes, sir.
Q All right. Now, when you got to [redacted] Lane, what happened?
A We pulled up. They noticed that the victim was not home. They jumped out and said, We will call you in a minute. And they told us to go park somewhere.

Q And when you say "they," who are we talking about?
A Charles Burgess, Robert Fulmer, and Danny Adams.
Q Okay. Now, where did you go?
A I pulled up to the stop sign and made a left. And I parked at a small car lot.
Q Okay. And, at some point in time, did you receive a phone call?
A Yes, sir.
Q Okay. What did you do at that time?
A I asked Heather what they had said. And she said --
MR. ROBINSON: Objection, Your Honor. Hearsay.
THE COURT: Okay. I think, in this instance, that's not characterized as hearsay.
What's your position on that, Mr. Richardson?
MR. RICHARDSON: The -- I'm sorry. I didn't hear the answer.
THE COURT: Would you restate the question, please?
BY MR. RICHARDSON:
Q When you -- once you -- who received a phone call?
A Heather Posey.
Q And, at that point in time, what did you do?
A I asked her what they had said. She told me that I was to pick them up. So I proceeded back to where I had dropped them off.
Q Okay. Now, from the time that you dropped them off

until the time you got that phone call, how long of a period of time was that?

A Just only a few minutes.

Q Okay. Where did you go?

A Once I -- after the phone call?

Q Yes.

A I went back to [redacted] Lane.

Q Okay. And what happened at [redacted] Lane?

A I turned onto the street. And I was asking her where they were. And she told me she didn't know. And I went to the end of the cul-de-sac to turn around.

And I noticed the victim in the yard. And people were running around everywhere. And as I was leaving to go to the stop sign, the police blocked me in and asked me to stop.

Q Okay. And, at this point in time, who's in the car?

A Only me and Heather Posey.

Q All right. After -- did you speak to the police?

A Yes, sir.

Q Okay. After speaking to the police, what did you do?

A I waited for the police to get back in the vehicles and proceed on towards the victim. And as soon as they were out of my way, I took off.

Q Okay. And where did you go?

A I went to the stop sign and took a right and picked

up the -- those three in the curve.
Q Okay. Who would that be?
A Robert Fulmer, Charles Burgess, and Danny Adams.
Q Okay. And where were they?
A They were in the ditch, kind of in the woods.
Q Okay. And what -- do you remember what they were wearing?
A Dark clothes.
Q Okay. When you picked them up, did they get in the backseat of the car?
A Yes, sir.
Q At that point in time, did you see the guns?
A Yes, sir.
Q Okay. Do you recall a silver gun?
A Yes, sir.
Q Okay. Who had the silver gun?
A Robert Fulmer.
Q And would you recognize that gun today?
A Yes, sir.
Q I'll show you what's been marked as State's Exhibit No. 26. Is that the gun?
A Yes, sir.
Q Is that the gun Robert Fulmer had?
A Yes, sir.
Q When you left from the wooded area, did the Defendant

say anything about shooting anybody?

A Yes, sir.

Q What did he say?

A He said that Danny had heard someone pull up and started hollering. And when he started hollering, Danny -- Robert come towards Danny and looked out the door and seen the victim. And he shot four times. And he shot him.

And, at that point in time, he hollered for Danny and Charles to come on. And they went to leave. And then Charles said that after he come out of the trailer --

MR. ROBINSON: Objection, Your Honor. Hearsay.

BY MR. RICHARDSON:

Q Don't tell me anything Charles said.

A Yes, sir.

Q After the Defendant made this comment about shooting him, did he tell you where to go?

A Yes, sir.

Q Where did he tell you to go?

A We went back to China -- or Chad Hayes'.

Q And Chad Hayes is, also, known as China?

A Yes, sir.

Q Approximately how long did it take you to get back to China's house?

A Just a few minutes.

Q Okay. And how far is China's house from the tattooing place that you had left initially?
A Approximately like a block, just walking distance.
Q Okay. Do you know why he was going back to China's house?
A So that they could see what all they had gotten out of the house, and plan what was going to happen after that.
Q Okay. And had he had a conversation with China?
A He had called him on the cell phone on the way and asked him to meet him at the house.
Q Okay. So when you get to China's house, is China there?
A Yes, sir.
Q Okay. And what happens there?
A We walk inside and go to his bedroom. And they pull everything out that they got and split it up equally between them.
Q And when you say "they," who are you talking about?
A Charles Burgess, Danny Adams, and Robert Fulmer.
Q And did you see any guns?
A Yes, sir.
Q Okay. Did you see any guns different from the one I just showed you and the one that Charles Burgess had?
A Yes, sir.

Q Okay. Do you remember what kind of gun it was?
A It was like a shotgun-type gun and another handgun. I believe a revolver.
Q Okay. Do you know who got those guns?
A No, sir.
Q Okay. Did you get anything out of it?
A No, sir.
Q Okay. After you -- and when you were doing all of this, was Chad Hayes there?
A Yes, sir.
Q Did he get anything out of it?
A I don't recall.
Q Okay. After -- how long was it that you were at Chad Hayes -- China's house?
A How long was I there?
Q Yes, ma'am.
A Just long enough for them to separate everything and we left, so just a few minutes.
Q And where did you go from that point?
A We went back to the tattooing house to decide where -- how everybody was going to get back to where they had to go.
Q Okay. Did the Defendant go back to the tattooing house?
A Yes, sir.

Q How long was it from the time -- I know it's going to be just approximate. But approximately how long was it from the time you left the tattooing house until you returned to the tattooing house?
A I want to say 30, 45 minutes. No more than an hour.
Q Okay. Now, once you got back there, did you leave?
A Yes, sir.
Q Okay. Who left?
A Me, Charles Burgess, Danny Adams, and Heather Posey.
Q Okay. And where was the Defendant?
A Robert?
Q Yes.
A He stayed.
Q And where did you four go?
A We took Danny Adams home.
Q Okay.
A And then after we left his house, me, Heather, and Charles went to Wal-Mart.
Q And what did you do at Wal-Mart?
A We bought Charles' daughter a baby doll for Christmas.
Q Okay. Now, at that point in time, where did you go?
A After Wal-Mart?
Q Yes.
A Heather Posey took me and Charles back to Charles'

mother's house.

Q And what did you do the rest of that night?

A We just went home and went to bed.

Q Did Heather Posey go in with you or --

A No, sir. She said that she had to go back to pick up Robert Fulmer to take him to wherever he needed to go.

Q Okay. Now, after you went to sleep, the next day --

A Yes, sir.

Q -- did you and Charles meet up with anybody?

A We woke up. We got a phone call that the detectives were looking for Robert. So we went to talk to him.

MR. ROBINSON: Objection, Your Honor. Irrelevant. And I ask that it be stricken.

THE COURT: Okay. I'll overrule.

You may proceed.

BY MR. RICHARDSON:

Q Go ahead. You got a phone call?

A We got a phone call that the police were looking for Robert Fulmer to question him about what had happened. So we went to find him to let him know that they were looking for him.

Q Did you find him?

A Yes, sir.

Q Where did you find him?

A At his girlfriend's, Brooke. It's the apartments

behind the LEC.

Q Okay. And did y'all discuss the situation then?

A We just told him what was going on, and that he needed to call the police. And he called and talked to a detective.

Q All right. And was it -- at some point in time, is he discussing with you an alibi?

A He said that he was going to tell them that he was tattooing all night.

Q Okay. Did he ever -- did you ever hear him have that conversation with China -- or Chad Hayes?

A Yes, sir.

Q Was that later?

A Yes, sir.

Q Okay. Now, at some point in time, do -- Charles and the Defendant, did they have a conversation about the guns?

A That conversation happened at Danny Adams'.

Q Okay. And what was that about?

A They had that --

MR. ROBINSON: Your Honor, objection. Foundation.

THE COURT: Okay. I overrule.

You may proceed.

THE WITNESS: They were asking who was going to keep which pistol.

BY MR. RICHARDSON:

Q Okay. And what was decided between them?

A That Charles would end up with this pistol here, and that Robert would get the black pistol.

Q And Charles -- did, ultimately, they switch pistols?

A Yes, sir.

Q Okay. And when was this?

A It was after the shooting -- after the man got shot, later on.

Q Now, at some point in time, did you, and Charles, and Heather go some place?

A Me, Charles, and Heather?

Q Yes.

A Yes, sir.

Q Where did you go?

A After the next day?

Q Yes.

A She took us to ride around to do some errands, and stuff.

Q Okay. And did you end up at the Hot Spot in Easley?

A Yes, sir.

Q Okay. Now, at the Hot Spot -- who was in the vehicle when you got to the Hot Spot?

A Me, Heather Posey, and Charles Burgess.

Q Okay. And this was the night after --

A Yes, sir.
Q -- the incident?
A Yes, sir.
Q Where was the Defendant?
A I believe with Brooke still.
Q Okay. And was anybody else in the car?
A No, sir.
Q Okay. At the Hot Spot, did Charles see somebody he knew?
A Yes, sir.
Q Who was that?
A Lee King.
Q Okay. And did he and Lee have a conversation?
A Yes, sir.
Q Okay. And Lee King -- did you know Lee King before this?
A No, sir.
Q All right. Well, does Lee King have only one leg?
A Yes, sir.
Q And you saw that he had only one leg?
A Yes, sir.
Q Did you know what their conversation -- don't tell me what they said. But did you hear their conversation?
A Yes, sir.
Q Now, once you're at the Hot Spot, what do you do?

A I was sitting in the car. We were -- Heather and Charles went inside. They come back out. And that's when Lee King and Charles seen each other. They sat in the back talking. We was waiting on Heather to come back out when a police officer pulled up behind us.

Q And did Lee King get there by driving?

A He was walking.

Q He was walking. Okay. And what happens when the police arrive?

A They ask us all to get out of the vehicle, and want to search us, and ask us for our ID's.

Q Okay.

A And I don't know exactly what happened. But I know while they were pulling Charles out, he somehow, eventually, pulled a pistol on the police officers.

Q And that would be the pistol that --

A Yes, sir.

Q -- he got from Rob Fulmer?

A Yes, sir.

Q Okay. Now, were you arrested?

A Yes, sir.

Q Okay. Do you recall what you were arrested for that night?

A Open container and public disorderly -- I'm not sure exactly how it is. But, basically, I was under the

influence of alcohol.

Q Okay. And -- but you -- at that point in time, you were not arrested for what we're here about today?

A No, sir.

Q After you were arrested, where did they take you?

A To the Easley Police Department.

Q Okay. And how long did you stay at the Easley Police Department?

A Overnight. I was released the next morning.

Q Okay. And did you, eventually, make bond and get out of jail?

A Yes, sir.

Q Okay. And where did you go after you did that?

A I went first to China's and asked him to give me a ride to where Robert was.

Q Robert, the Defendant?

A Yes, sir, Robert Fulmer.

Q And where is Charles Burgess at this time?

A Incarcerated in Easley.

Q Okay. Did you go to China's house?

A Yes, sir.

Q Okay. And did he take you to see the Defendant?

A Yes, sir.

Q Okay. And where was that?

A At Brooke's apartment.

Q All right. And what happened there?
A I walked in. I told him what happened at the Hot Spot, and that I was scared, and I didn't know what to do, and I didn't know where to go, could I stay with him.
Q And did you stay with him?
A Yes, sir.
Q Okay. And where did y'all stay?
A We stayed at Brooke's for a while. And then we went to his mother's. And then, eventually, we went to his grandmother's.
Q Okay. You went to the Defendant's mother's?
A Yes, sir, Amy's.
Q Is it Amy Fulmer?
A Amy Fulmer Johnson.
Q And what's his grandmother's name?
A I'm not sure. We called her Nana.
Q Now, at this point in time when y'all are -- do you know -- at some point in time, do you know there's warrants for your arrest?
A Yes, sir.
Q And did the Defendant know there were warrants for his arrest?
A Yes, sir.
MR. ROBINSON: Objection, Your Honor. It calls for speculation.

THE COURT: Sustained.

BY MR. RICHARDSON:

Q You were with the Defendant?

A Yes, sir.

Q Were you aware that the Defendant had a warrant for his arrest?

A Yes, sir.

Q And after y'all became aware of that, where did y'all go?

A To his grandmother's.

Q And why did you go to his grandmother's?

A To hide from the police.

Q Okay. How long did you stay at his grandmother's?

A A week or so.

Q All right. And, at some point in time, did the police come there?

A Yes, sir.

Q Okay. And what happened with that?

A They entered the home. We were hiding. And they found us and took us to Pickens County.

Q Okay. And you were arrested on these charges?

A Yes, sir.

Q And the Defendant was, also, arrested on these charges?

A Yes, sir.

Q Now, the person who went there to [redacted] Lane and admitted to shooting the victim that night, and who you were on the run with, is he in the courtroom today?

A Yes, sir.

Q Can you point him out?

A (Witness complied.)

Q What's he got on?

A A blue shirt and tie with khaki pants.

MR. RICHARDSON: Please let the record reflect she's identified the Defendant.

That's all the questions I have.

Please answer any questions Defense counsel may have for you.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q You're a co-defendant with Mr. Fulmer in this case, aren't you?

A Yes, sir.

Q And, actually, you, Ms. Posey, Mr. Burgess, and Mr. Allen [sic] are all co-defendants with him; is that correct?

A Adams.

Q Adams.

A Yes, sir.

Q And your attorney is in the courtroom on the second row; is that correct?
A Yes, sir.
Q And he's here to represent you in court today, isn't he?
A Yes, sir.
Q Now, you have met with your attorney and the Solicitor a number of times. How many times have you met with them?
A Two.
Q Two times at the solicitor's office?
A Yes, sir.
Q And you, at that point, went over the case with him. And he went over with you what you could do to help yourself in this case with Mr. Fulmer; is that correct?
A No, sir. He just asked me if I would give him information.
Q And this conversation that you had with the Solicitor, that wasn't taped, was it?
A No, sir.
Q That, actually, wasn't -- no one videotaped your conversation so anyone can see what you talked about with the prosecutor?
A No, sir.
Q Correct. So the jury doesn't know what the

Prosecutor promised you at that meeting with your attorney, do they? They don't know that because it wasn't recorded; correct?

A Correct.

Q So you're coming before the Court today in front of this jury telling this jury that you're testifying because you're just trying to tell the truth out of the goodness of your heart; is that correct?

A Yes, sir.

Q You're not getting -- you're telling this jury, under oath, that you're not being promised anything in this case?

A Correct.

Q Now, after this -- after you testify today in this matter, you know what's going to happen in a couple of days after this case is over with, don't you?

A No, sir.

Q You don't think you're going to get a better deal or get better treatment by the Prosecutor in this case?

A I would hope so. But --

Q You would hope so. You would hope so because you're coming here today as a co-defendant to lie against Robert Fulmer, aren't you?

A No, sir.

Q Now, what's interesting to me -- what's interesting

in this case is you tell the Prosecutor under direct examination about the -- about this case as far as the Hot Spot. You were at the Hot Spot with Mr. Burgess; correct?

A Yes, sir.

Q With Ms. Posey; correct?

A Yes, sir.

Q And Mr. King was, also, there as well; is that correct?

A Yes, sir.

Q And you had dropped off Mr. Allen [sic]; right?

A Adams.

Q Adams.

A The night before.

Q And when the police searched the vehicle, they found the nine-millimeter shells in your purse, didn't they?

A Yes, sir.

Q And those nine-millimeter shells belonged to Charles Burgess, didn't they?

A Yes, sir.

Q You don't find it odd that those bullets were in your purse?

A No, sir.

Q You just keep bullets in your purse?

A I was asked to hold them.

Q All right. Now, as far as the distance between the

tattoo place -- is it Sarah Hamilton and Chad? Is that right?

A Yes, sir.

Q And this place on [redacted] Lane, how -- it's probably around, you said, 30 to 45 minutes, not more than an hour; is that right?

A Yes, sir.

Q Did you time that?

A No, sir. It's a guess.

Q Now, you went back to divide the merchandise, and so forth, that was taken from this home. You talked about them getting stuff?

A Yes, sir.

Q You didn't get anything, did you?

A No, sir.

Q You participated in this incident, but you're telling this jury you didn't get anything. You just got nothing out of it?

A I was Charles's girlfriend. So I assumed I would get something, I believe.

MR. ROBINSON: I beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

BY MR. ROBINSON:

Q And I think you testified a few moments ago about the

police looking for Mr. Fulmer. Do you recall that?
A Yes, sir.
Q Now, they only started looking for Mr. Fulmer when you, and Mr. Burgess, and Ms. Posey, and Mr. Adams went to the police and had to get some way to get out of this crime, didn't they?
A No, sir.
Q No. Would it surprise you that only after you and these other folks, these co-defendants, wanted somebody to pick on for this, that only after that that the police did this --
A No, sir.
Q -- went after Mr. Fulmer?
A No. We were all served warrants at the same time.
Q Okay. So you know -- you were there at the exact same time that Mr. Fulmer -- you're all in a group at the exact same time -- everyone is served at the same time in the same way?
A Well, I would assume.
Q You would know. No assumption here. Were you there in a room with all four of these people and got served at the same time with a warrant? Did the police all come in at the same time --
A No, sir.
Q -- and say, here you go --

A No, sir. They put out warrants for our arrest.
Q So you don't know when Mr. Fulmer was served with a warrant, do you?
A Not the exact moment.
MR. ROBINSON: Okay. That's all I have.
Thank you.
THE COURT: Redirect?
MR. RICHARDSON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. RICHARDSON:
Q You and Charles Burgess were dating at the time?
A Yes, sir.
Q Okay. Are y'all in a relationship any longer?
A No, sir.
Q Okay. And did you have a relationship with the Defendant?
A Yes, sir.
Q And when did that relationship take place?
A After Charles was incarcerated.
Q Okay. And he's asked you about you coming -- you've come and spoken to me twice; is that correct?
A Yes, sir.
Q Was your attorney there both times?
A Yes, sir.
Q Did I promise you anything?

A No, sir.
Q Did I ever say that I was going to help you out in any way?
A No, sir, you did not.
Q What did I ask you to tell this jury?
A The truth.
MR. RICHARDSON: Thank you.

RECROSS-EXAMINATION

BY MR. ROBINSON:
Q But, ma'am, you, also, said on cross-examination that you are assuming you're going to get some help by testifying?
A Well, I would hope so.
MR. ROBINSON: You would hope so.
Thank you.
THE COURT: Thank you.
You may step down.
I appreciate it.
THE WITNESS: Thank you.
Yes, sir.
MR. RICHARDSON: Your Honor, that is the case for the State.
THE COURT: All right. Ladies and gentlemen, at this point, the State rests, which means the State has introduced all the evidence and all the witnesses they

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intend to introduce in the State's case in chief. At this point in the trial, I have to take up matters of law with the attorneys. Also, it may or may not be that when we come back the Defense puts evidence in the record.

The Defendant, as I've indicated to you, has a presumption of innocence. And the State has the burden of proof, which means the Defendant does not have to put any evidence into the record. He's not required to do so. It's entirely in the Defense's discretion.

So I will give the Defense some time to make a determination as to whether they will -- whether they choose to do that or not. The reason I tell you that is because it may be more than 10 or 15 minutes. It may be as much as a half hour. But I'm going to try to quickly go to the next phase of this proceeding. But I have to allow for some time. And I have to hear some motions and legal matters from the attorneys. So if you will be patient with me.

And if anybody needs to go out and smoke, or make a phone call, or anything like that, then, certainly, I give you the liberty of doing that while we're recessed. Please don't discuss the case yet. And I'll see you back in a little bit.

(WHEREUPON, the jury was excused from open court at approximately 10:26 a.m.)

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MOTIONS

THE COURT: All right. Gentlemen, motions.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, at this time, we'd make a motion for a directed verdict of acquittal on all the charges. I don't think that the State has produced any evidence that these charges occurred, specifically -- the problem with the State's case on the attempted murder is that there's been no testimony of the bullet that, actually, injured this fellow. There's no testimony.

They've got this great nine-millimeter, and so forth. But there's been no testimony from any sort of forensic person, or medical person, or anybody that can say the bullet that shot this guy -- that's in the guy's -- that was in this guy's body was from a nine-millimeter pistol. No one has said that.

There's been no -- that's what I was kind of waiting for in this case. I thought Mr. Defreese would maybe talk about that, or there would be a medical person or someone that had recovered the slugs or something and say, okay, this is what was taken from this guy at the hospital or the scene. And there's been nothing like that. Nothing like that as far as the source of the injuries. We know that he was shot. We don't know the type of bullet that,

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actually, shot him in this case, whether it was -- we just don't know.

As far as on the petit larceny, you know, I'm not sure that there's been any testimony of anything other than some drugs being taken from the house and a knife. They talked about a knife, a knife and drugs and not really very much of anything from the house, I don't think. There was a possibility of a gun, potentially. I'm not sure.

But, Your Honor, I don't believe -- I would submit to the Court that they've not established -- and I know the burden is on me, obviously. And it's the most favorable to the State, obviously. But that bullet thing is bothersome to me. Because there's no -- all this great nine-millimeter, but no one has said that that's the bullet that shot this guy. And that's what's problematic for the State.

On that basis, I would ask for a directed verdict of acquittal on these charges.

THE COURT: Okay. Mr. Richardson, would you like to respond?

MR. RICHARDSON: Your Honor, just in the light most favorable to the State, obviously, the victim was shot. He testified he was shot by three individuals that were there. Three individuals have come in -- or two -- two of

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the guys have come in and testified that the victim was shot. It doesn't matter really who shot him. The hand of one is the hand of all. But, in this particular case, we, also, have the Defendant admitting it.

So with that evidence, I, certainly, think that there's enough to take it to the jury.

THE COURT: All right. The Court, obviously, under the law, is charged with reviewing a motion for directed verdict in the light most favorable to the non-moving party. The Court does not weigh evidence or review its sufficiency. The Court simply determines whether there is evidence in the record.

In this instance, the State has presented evidence, both direct and circumstantial, of the shooting and the circumstances surrounding the same. Again, I make no comment on the sufficiency or the weight of that evidence. I only observe that there is evidence. Therefore, on that basis, I respectfully deny the motion.

All right. Mr. Robinson, you -- I know that there are two witnesses to whom you would like to speak to before you begin; is that correct, sir?

MR. ROBINSON: Yes, Your Honor.

I'd, also, like to find out -- because I know my client has a record.

THE COURT: Yes, sir.

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MR. ROBINSON: I don't know what's impeachable for him.

THE COURT: Okay.

MR. ROBINSON: I'd like to know that so I can advise him of the consequences.

THE COURT: Okay. At this point, would you like me to advise your client of his right to remain silent and/or his corresponding right to testify at this point?

MR. ROBINSON: Yes, if the Court would.

THE COURT: Mr. Fulmer, would you stand up, please, and raise your right hand.

WHEREUPON,

ROBERT MATTHEW FULMER,

after first having been duly sworn, testified as follows:

THE COURT: Okay. You can keep your seat.

Mr. Fulmer, you, under the Constitution, have a right to remain silent, a right against self-incrimination. And what that means is you don't have to say, do, or prove anything in this proceeding. The State has the burden of proving each and every element of all the offenses beyond a reasonable doubt.

Now, understand that you won't have to take the stand. And if you elect not to take the stand, then I'll charge the jury -- I'll tell them, specifically, that they can't hold that against you, that you cannot hold it

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against someone when they choose to exercise a Constitutional right. Not only can they not hold it against you, they're not even allowed to discuss it in their jury room during deliberations.

However, do understand that you have a right to testify as well, if you want to, which means you can take the stand and tell the jury your side of the story. Now, understand that if you do that, then you would be subject to cross-examination. And the State could ask you questions in an attempt to impeach your credibility. That is, they could ask you questions not only about the facts and circumstances of this alleged event, but they could, also, potentially ask you questions regarding any prior record that you have in an attempt to have the jury question your credibility.

Now, understand that you assume risks if you testify, and you assume risks if you don't testify. You are the only person who can make that decision. You can consult with your attorney and you can listen to his advice. However, ultimately, it is your decision whether you want to testify or not.

Do you understand that, Mr. Fulmer?

DEFENDANT FULMER: Yes, sir.

THE COURT: Do you have any questions you want to ask me regarding that right to either remain silent or

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testify?

DEFENDANT FULMER: No, sir, I don't.

THE COURT: Okay. When we come back on the record, I'll ask Mr. Robinson what your choice is.

DEFENDANT FULMER: Yes, sir.

THE COURT: Good enough.

MR. RICHARDSON: Your Honor.

THE COURT: Yes, sir.

MR. RICHARDSON: I'm sorry to interrupt.

THE COURT: That's all right.

MR. RICHARDSON: Did you want me to go ahead and advise the Court of any impeachable record?

THE COURT: Yes. If you've got it ready, let's hear it.

MR. RICHARDSON: 2007, possession with intent to distribute methamphetamine; 2008, petit larceny, a burglary second, unlawful possession of prescription drugs, forgery, failure to stop for a blue light, a grand larceny; 2000 -- or excuse me -- yeah, 2010, forgery; 2011, a strong armed robbery and an assault and battery of a high and aggravated nature; 2014, car jacking, shoplifting third or more, another burglary second, a larceny, and a failure to stop for a blue light.

THE COURT: Okay. Mr. Robinson, you've heard that on the record. I don't -- I mean, some of it -- a good

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portion of it, I would possibly allow in. I won't go through the process right now of discussing it.

MR. ROBINSON: Yes, sir.

THE COURT: But you get a flavor of what they're going to put into the record. With that, after you discuss it with your client, if we need to go item by item, then we can. But, in the meantime, you'll have the general discussion with your client about the perils of testifying --

MR. ROBINSON: Yes, sir.

THE COURT: -- or the perils of not testifying.

Okay. So what I'll do, Mr. Robinson, I'm going to -- let's come back on the record at 11:00.

Is that sufficient time for you?

MR. ROBINSON: Yes. That will give me time to talk to the persons out there.

THE COURT: Okay. So if this goes, basically, like the way I'm looking at it right now, then you can put up your case, Mr. Robinson. And then what we'll do is we'll adjourn for lunch. We'll have a charge conference in chambers, and come back and argue and charge this afternoon after lunch.

MR. ROBINSON: Yes, sir.

THE COURT: Good enough.

(WHEREUPON, a break was taken.)

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THE COURT: Based on the conversations I've had with the attorneys in chambers, it's my understanding, Mr. Robinson, that Mr. Fulmer wishes to waive his right to testify and invoke his right to remain silent.

MR. ROBINSON: That is correct, Your Honor.

We met in the room back there privately. And I went through with him all the issues, and so forth. I, also, went through the dangers and positives, and so forth.

THE COURT: Yes, sir.

MR. ROBINSON: And he's reached a conclusion. And I would like for him to say that on the record.

THE COURT: Okay. Good enough.

And, Mr. Fulmer, I remind you that you continue under your oath that I administered to your earlier.

Keep your seat. You're fine.

You have decided, elected not to testify in this trial, sir?

DEFENDANT FULMER: Yes, sir.

THE COURT: And is that your decision, sir?

DEFENDANT FULMER: Yes, sir.

THE COURT: And you have not been coerced or forced to make that decision, sir?

DEFENDANT FULMER: No, sir, I haven't.

THE COURT: You're making it of your own free will with your eyes wide open?

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DEFENDANT FULMER: Yes, sir.

THE COURT: Okay. Good enough.

And, Mr. Robinson, do you intend to put any evidence into the record, sir?

MR. ROBINSON: Your Honor, I do not. As I stated in chambers, I am going to rest.

THE COURT: So it's my understanding, at this point, that you have not introduced any evidence into the record.

MR. ROBINSON: That's correct.

THE COURT: All right. Are we ready for the jury?

MR. RICHARDSON: The State is ready.

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 11:16 a.m.)

THE COURT: Mr. Robinson, your case, sir.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, the Defense rests.

THE COURT: All right. Ladies and gentlemen, what that means is the Defense has elected not to introduce any evidence into the record. It is, certainly, the right of the Defendant to not put any evidence into the record and to elect not to testify.

Under the Constitution, we all, everyone in the United States of America enjoys the right to remain

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silent, which means that the Defendant, Mr. Fulmer, does not have the obligation or requirement to do, or say, or prove anything. The burden of proof rests entirely and exclusively with the State. The State must prove its charges. The Defense must not prove anything.

Understand that the Defendant because he has failed -- or excuse me, because he has elected and fail not -- or failed to testify and elected not to testify, that cannot be held against him. Because he is exercising a Constitutional right. And we hold those rights to be sacred.

So not only can you not hold it against him, but when you are in your deliberations, you can't even discuss it because it is not relevant and it's not material to anything you will be determining in your deliberations. What you will be determining is whether the State has met its burden of proving each and every element beyond a reasonable doubt.

Now, ladies and gentlemen, we have heard all the testimony and received all the evidence that we'll receive in this case. What we'll move to next is closing arguments from Counsel. And then I'll give you a closing charge on the law. So the attorneys need some time to get ready for closing arguments to you.

So this is a little bit early, but it's a convenient

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opportunity for us to go ahead and take a lunch break, and then come back. When we come back from lunch, what we'll do is we'll begin those closing arguments. And we will then go to a closing charge on the law. After that, I'll give you the case and I'll let you begin deliberating. Please don't discuss it or deliberate yet.

Now, before y'all leave for lunch -- I want you to be back at 12:45. That gives you a little bit of time. But I'm going to give you a little bit of homework before you leave. I know that ordinarily I appoint a Foreperson of the jury, but I think I have a volunteer, if I'm not mistaken. But I want y'all to talk about it and decide who you would like to act as the Foreperson of the jury. When we come back in, I want y'all to tell me who that person is. Okay. It might take you a second. It might take you three hours. I don't know. It's up to y'all. But y'all can discuss who's going to be your Foreperson and let me know.

Now, understand that the roles, and responsibilities, and duties of a Foreperson are not very well defined. But I can say that a Foreperson is charged with the responsibility of making sure that everyone in the court -- in the jury room has a voice, that everyone has the ability to express themselves and to express their opinion. Otherwise, you will conduct deliberations however you feel

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it is appropriate to conduct deliberations.

I've never been in a jury room during deliberations because it's unlawful for me to come into a jury room. I can't. It would be a mistrial immediately if I did. So I can't tell you how to conduct your deliberations. But I can tell you that the Foreperson needs to make sure that everybody has the opportunity to be heard.

Also, if there are any questions after I have given the closing charge on the law -- if there are any questions, and I hope there's not. But if there are, the Foreperson can simply write those down and deliver them to me. And I may be able to answer them. A lot of times, I can't answer the questions posed by the jury during deliberations. But if you have one, then I'll try to answer it if I can, if I'm allowed to under the law.

So, ladies and gentlemen, please, don't discuss the case. And I'll see you back here at 12:45.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 11:21 a.m.)

THE COURT: Counsel, anything to put on the record before we adjourn for lunch?

MR. RICHARDSON: Nothing from the State, Your Honor.

MR. ROBINSON: Nothing.

THE COURT: All right. Good enough.

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(WHEREUPON, a lunch break was taken.)

THE COURT: Ladies and gentlemen, it's my understanding that we have all of the jurors. So I presume when they come back in, we'll begin closing arguments beginning with the State and then the Defense will close.

Am I correct on that?

MR. RICHARDSON: That's correct, Your Honor.

THE COURT: Okay. Good enough.

Let's -- are you ready for the jury?

MR. RICHARDSON: The State is ready.

MR. ROBINSON: The Defense is ready.

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 12:50 p.m.)

THE COURT: I received your note.

And, Ms. Crowe, congratulations. You are the Foreperson of the jury.

We are going to begin with closing arguments of counsel. As I told you at the very beginning of the trial, closing arguments are not evidence. You've already heard all the evidence that will be presented in this case. The lawyers are now arguing based on the evidence that has been presented in this trial, and attempting to persuade you to their respective positions.

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Having said that, I'll turn it over to Mr. Richardson for arguments.

MR. RICHARDSON: Thank you, Your Honor.

May it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENTS

MR. RICHARDSON: Mr. Robinson.

Ladies and gentlemen, at the beginning of this trial, I informed y'all that there were two judges in this courtroom. One is y'all. Y'all are the judges of the facts. Judge Stilwell is the judge of the law. At the end of this case, he is going to tell you what the law is. I am going to briefly go over that law as it pertains to the testimony and facts that came out during this trial. However, he is the one that is charged with giving you the exact law.

The first thing that the Defendant is charged with is attempted murder. Now, attempted murder is the attempted killing of another human being with malice aforethought. And that malice aforethought can be implied or expressed. And malice aforethought is a depraved heart. I submit to you, ladies and gentlemen, that when you take a gun out, a pistol of this nature and you point it at a person, and you shoot that gun, and that gun enters -- a shell enters the body of a person, that is malice aforethought.

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The second thing that he is charged with is burglary in the first degree. Now, burglary in the first degree is the entering of somebody's house, a residence with the intent to commit a crime and in -- because it's first degree -- what makes it first degree is that you have either nighttime, or that you went in with a weapon, or that you stole a weapon. In this case, the testimony showed that it was all three, that they all went in during the nighttime, that a pistol and a long gun was stolen, and, also, that two of them were armed.

The third charge is possession of a weapon during the commission of a violent crime. Ladies and gentlemen, attempted murder and burglary in the first degree are violent crimes. And His Honor will charge you as to that. You heard the testimony about the people in possession of weapons.

The fourth is larceny. And, ladies and gentlemen, larceny is simply taking the goods of another without that person's consent with the intent to permanently deprive. You've heard the testimony that guns were taken, and coins were taken, and a long gun was taken.

Now, ladies and gentlemen, he's, also, going to tell you about another part of our law, and that is the hand of one is the hand of all. So when we have an attempted murder and someone shoots the gun, it's a group crime,

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everybody involved in that crime is as guilty as the person who shot the gun.

It's the same thing with burglary. You're involved with the crime. You may not even go into the house, but you're involved with the crime. The hand of one is the hand of all. But that is -- the purpose of that law is that we take care of group crimes. And that's what this is, ladies and gentlemen. This was a group crime committed by five individuals.

Now, you've heard testimony from four of the individuals. And, ladies and gentlemen, the -- I will tell you right now as I sit here that nobody is getting away with anything. They have all been charged with crimes. They are all going to have to deal with those crimes. They're going to have to deal with those crimes in a court of law before a judge.

They got up and told their story to y'all, all four of them. They put their hand on that Bible and gave testimony. That testimony was taken down by this court reporter. That testimony is mine now. They have admitted to the crime. They've implicated themselves to the crime. And, in addition, who else did they implicate? The Defendant.

Ladies and gentlemen, you've heard the old adage that -- excuse me. I just lost my train of thought. That

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birds of a feather flock together. Well, that's what happened in this case. We had five people who flocked together. Sometimes, ladies and gentlemen, those birds chirp. And two of those birds chirped from the very beginning.

This thing did not just start this week in this courtroom. That's not where it started. It started way back. It came to fruition way back when Heather Posey and Charles Burgess were arrested at the Hot Spot. When they were arrested, they were taken back to the Easley Police Department.

You heard Chuck James get up and testify that they interviewed those two individuals. They interviewed -- and this is the night after this incident that we're here about today. They interviewed them separately and distinctly. And those two gave statements. And when they gave statements, they implicated the Defendant -- not only the Defendant and themselves, but, also, the Defendant and, also, Danny Adams, none of which were in -- at the Hot Spot at the time.

Now, ladies and gentlemen, I submit to you that they have implicated these two people. Where did they get them from? Did they just pull them out of the air? They were in separate rooms and both of them pull Danny Adams out of the air and pull the Defendant out of the air and tell the

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police, yes, we did this and these two individuals were with us. And, yet, they're separate and distinct. And they both gave statements that night to the police.

After Detective James interviews them, they begin looking for the Defendant. And, ladies and gentlemen, at some point in time, the Defendant himself finds out that they're looking for him. And what does he do? He and Jennifer Allred get together and they run. And you heard Jennifer testify to that. She admitted to that. She said, We were on the run. We knew warrants were out for us and we were on the run. Ladies and gentlemen, I submit to you that a man who is on the run from the police is guilty. He is fleeing.

Now, when this crime started, it started in a tattooing house. And you heard all the stories and commentary regarding that tattooing house. There were a lot of people in that tattooing house. And that they all left together.

Now, if you recall, the way it went is that the Defendant was the one that got together, got everybody together and said we need to go over here and do this thing at [redacted] Lane.

Now, keep in mind, Charles Burgess, who's just as guilty as he is, admits, ladies and gentlemen, that he had a gun. And he admits that he gave the Defendant a gun.

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Now, he could have easily just came in and said, no, the Defendant is the only one that had a gun. But he admitted he had a gun.

They get together at this -- and I called it a tattooing house throughout the trial -- at this tattooing house and have this discussion. And there's a unique thing about the Defendant and the victim. And that unique thing that the other co-defendants don't have in common is that the Defendant was the only one known by the victim. The victim did not know Charles Burgess. The victim did not know Jennifer Allred. The victim did not know Heather Posey. The victim did not know Danny Adams. He knew one of the four co-defendants. That's how the Defendant knew to go there.

And he said, he told you the way he knew him is he had dealt marijuana. I, certainly, don't advocate that. But he does not deserve to almost lose his life over selling a little bit of pot. And, ladies and gentlemen, I can tell you this, he sits here right now and he is paying dearly for that, and will pay for that for the rest of his life.

They leave the house and who -- remember who everybody testified knew how to get to [redacted] Lane? Do you remember? The Defendant. Every single person, the Defendant gave us directions on how to get there. Once

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again, four people don't even know where they're going. Now, I'm not making excuses for them. They all knew what was going on. And they're all going to have to deal with that and pay for it.

But the Defendant is leading this charge. And he gives them directions. And it does not take long. I think most of them said it was a very quick trip. And they drop them off. And they go to the house -- to the victim's house. And, as you heard, the Defendant was the first one in the house. They pushed him up in the window.

Once again, I go back to the hand of one is the hand of all. Everybody that went up to that house, it doesn't matter if you went in or not, you're involved with the crime. You're as guilty as the person that went in the house.

They go in the house and they start rummaging through, turn on the lights. The victim said, I didn't have any lights on. They turned on the lights. Who did everybody say turned on the lights? The Defendant. He turns on the lights and they start rummaging through. And, of course, this is when the victim comes home. And this is when we have the most unfortunate event. They come out when he gets home and they shoot him.

Now, how horrible is this, all -- we wouldn't be here today if they had just run. That's all they had to do.

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But what do they do? They decide to take it upon themselves to shoot the victim twice.

And you heard the testimony of the medic that lived next door, Paul Turner. Paul Turner, who used -- I think he was a medic in the reserves. He said he had to pull the tourniquet to keep him from bleeding to death. They had hit his artery. Something else that Paul Turner said that concerned me greatly is he had two sleeping children in his trailer, which was about as long as this courtroom away from the incident, two children. There always could be other victims out there. Did these people think of that? No. They leave the scene.

Now, they get into the woods. And they're hiding in the woods when the police come. I think you heard the testimony of that. They said that when they came out of the woods and got into the car, who was the one that said he shot him? It was the Defendant, Robert Fulmer. He admitted that he shot him. At that point in time, they leave and they go back to Chad Hayes' house where they're splitting the goods up.

Now, ladies and gentlemen, this thing, everybody testified, was a very short period of time. And he, ultimately, goes back to the tattooing house. And I guess he starts -- goes back to partying, certainly, not concerned with somebody he just shot. He goes back to the

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tattooing house. And everybody kind of goes their separate ways.

Now, ladies and gentlemen, when -- if you were in a situation where you know warrants are out for your arrest, and you're running, and you're running with Jennifer Allred -- and she admitted it, too. She said, I was running, too. And I think I just said this and I apologize for repeating. But, ladies and gentlemen, that shows guilt. That shows guilt.

And, ladies and gentlemen, lastly, I will say that it's a scenario where we have five bad apples. And that four of the bad apples have testified today and told what happened. And they've all implicated themselves and they've all implicated the Defendant.

There's been some testimony -- or the Defense attorney has tried to establish that I've made promises. You've heard them all say I haven't made one promise to any one of those people. Of course, I talked to them before the trial. Of course, I talked to them, just like he talked to his client before the trial. Their attorneys were there. And no promises were made. And I will be dealing with them later -- at a later date. Today, we're dealing with the Defendant, Robert Fulmer.

And, ladies and gentlemen, I would ask that you come back with a guilty verdict on all counts.

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Thank you.

THE COURT: Mr. Robinson.

MR. ROBINSON: Thank you, Judge.

THE COURT: Yes, sir.

MR. ROBINSON: Mr. Richardson.

I want to start, first of all, and thank you for listening to the testimony for the past couple of days. Thank you on behalf of my client and his family, who's sitting here with him.

Now, I want to clear some things up. My summation is going to be in a couple of different parts. But let me tell you at the outset -- because I want to respond a little bit to what Mr. Richardson just talked about just for a second.

First of all, he talks about this flight, that he knew about -- that Mr. Fulmer knew about a warrant and he took off and hid with his grandmother. Well, the only person that ever said that was a co-defendant in this case, Ms. Allred. And she wasn't sure -- you know, if they're going to make that accusation against Mr. Fulmer, they should probably go through the detective that can say, well, we were looking for him and he just took off and left. That would be the more credible way to go about doing it, instead of taking a witness that is, obviously, biassed and saying he must -- he was -- we hung out at his

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grandmother's house, and so forth, and hid from the police. That is totally erroneous. It comes from someone who, obviously, has a self-interest in this.

And, you know, it's interesting, and what's refreshing to me and it surprised me that Mr. Richardson in his summation said this. But, you know, I asked her twice on cross-examination about what are you going to do. Do you think you'll get anything, and so forth. But what did she say? The words -- and I wrote these words down. She said, I hope so. And that's pretty much what every single one of these co-defendant criminals are looking at.

Because here's the State's case. The State's case is to present a picture of the scene, a nine-millimeter gun with bullets, with cartridges, and so forth. A lot of little physical things, and so forth. But there's not one thing that links Robert Fulmer to this crime, nothing.

A lot of you may watch different TV shows, and so forth, that are on TV. And you may read a lot. But they go to the house -- or this home. They dust it for prints on the windows. They go outside, and so forth. Nothing in there was linked to Robert Fulmer.

Now, they had an opportunity to go to his house -- or the place where he was staying at. Nothing is linked to this crime to Robert Fulmer, not clothes, not coins, nothing is linked to him. There's no physical evidence or

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no third party that's going to come in here and say we had stuff sold to us by Robert Fulmer. Robert Fulmer did this. He told us this. He told us he did it. He told us he didn't. There's no one. There's not one third party not connected with this case that doesn't have a self-interest that has testified.

Now, let's think about -- let's go back to the beginning of this case. And I want to digress a little bit. The victim in this case, the gentleman back here, now, he has testified that he knew Robert Fulmer. He knew his family, and so forth.

Did you hear anything in this case that would indicate that there was any sort of animosity, or anything like that between them? In fact, if you think about it, all the lights are on in this trailer at that time of night. He sees different people, and so forth. You don't think that someone -- just think about your own experiences. You don't think that someone that you've known for a while that you couldn't recognize them or see how they carried themselves, their demeanor, their height, and so forth. Do you mean to say you could not recognize that person?

But what we do have is this, we do have the different witnesses they brought in. They brought in Paul Turner, April McAtee, and Linda Jones, who were neighbors. And

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they said they never saw Mr. Fulmer.

Now, they did see those two females, the ones sitting back there who testified, and the one that testified yesterday, Ms. Posey. They did see the two of them in a car. We figured it was either -- it was a Buick, obviously. But -- I know my dad had a Buick. But I'm not sure -- I think it was a Braun, or whatever this kind of Buick is called. But they did see the two of them.

Who else did they see? They, also, a while later -- not the same day, but later, they saw her, that -- the co-defendant in the car with co-defendant Charles Burgess. She had bullets in her purse that belonged to Charles Burgess. Those are the only people that anyone saw. And those are the co-defendants in this case. So you've got no physical evidence that links anything to Mr. Fulmer.

But I want to talk about one little point that's very interesting that Mr. Richardson talks about a lot. And he's talked about this a couple of times. He is trying to say that Mr. Fulmer is the only person that knew where this guy lived. And since Mr. Fulmer knew where this guy lived -- and let's get every one of these co-defendants say we didn't know where this guy lived. We just followed Mr. Fulmer out there. We're just these little people in the car with him. And he showed us out there. Well, come on, the guy is a drug dealer. He's selling marijuana.

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These folks all knew where this guy lived. They all knew that he told sold marijuana. They could get marijuana there.

And what's interesting in this matter is that the house was rummaged through, and drugs were taken. And the only person who ever had a gun on them wasn't Mr. Fulmer. They've got nothing that ever shows that he had a gun on him. What they do have is a gun, the nine-millimeter, this gun that was found on Mr. Burgess, a co-defendant.

So here's what we have, no physical evidence, four co-defendants that say this. Who are you going to believe? Who are you going -- who has the self-interest to lie?

In your own experiences -- the reason that you were chosen for this jury is that you bring to this place your collective experiences. And Mr. Richardson spoke about common sense in the beginning. And common sense would tell you that people lie for a reason. They lie for benefits. In the words of Ms. Allred back there, I hope so.

You don't think -- and Mr. Richardson can talk until doomsday about not promising them anything, and so forth. But do you really think that these folks got up on that stand and did so because they were either made promises, or thought that they would get a benefit from testifying

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in this case? And they did -- they are going to get a benefit. They are going to get a benefit. You can be assured of that.

Well, ladies and gentlemen of the jury, the State must prove their case to you, all of you. They must prove their case beyond a reasonable doubt.

Now, if any of you read history, back in 1770, John Adams, our second president, he defended a group of British soldiers in a case involving the Boston Massacre. And what he said was this, he said it is better to let a guilty person go free as opposed to convicting an innocent one. The reason is this, because you, as the jury, must look at this case with the presumption of innocence. And the State must prove their case beyond a reasonable doubt.

The Judge is going to instruct you in a few moments about the standards, the law, and so forth. But I ask you to use your common sense, all the collective common sense that y'all have in your lives. And if you do so, you'll find Mr. Fulmer not guilty. You may not like Mr. Fulmer. You may not like that he's a tattoo artist, or his lifestyle. He has some different tattoos. But it doesn't make him guilty. I ask you to return a verdict that's just, and that is not guilty.

Thank you very much.

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CHARGE ON THE LAW

THE COURT: Ladies and gentlemen, when we began this case, I described to you what your duties are as jurors that's distinguished from my duty as the Judge in the case. And what I've told you, of course, is that you are the judges of the facts. You'll determine, based on the evidence, what the facts are. And you take those facts and you apply it to the law as I give it to you.

Now, under your oath, you swore to accept the law as I give it to you. Therefore, you must do that. If you come into this courtroom with any previous position, any prior opinion or belief about what the law is or what you think the law should be, you need to disregard that and accept the law as I give it to you in this case.

Now, ladies and gentlemen, I'm going to read some of this. I'm going to try not to read much, but there is some precise definitions that I should get precisely correct. I'm sorry I have to read to you a little bit. I know that that's dry and boring sometimes. And it suggests to you that maybe I'm not smart enough or I'm too lazy to, actually, know it or to learn it.

But the fact is because this is an important case to the parties, it's an important case to y'all, I need to get some definitions precisely right. You'll know when I begin to read. It'll be clear when I begin to define

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things very precisely.

Now, ladies and gentlemen, I told you when we first began that the Defendant has the presumption of innocence. That's not mere legal theory. That's the cornerstone of our judicial system. The Defendant is presumed innocent. He's presumed innocent right now. He's presumed innocent until such time as 12 deliberating jurors determine that the State has met its burden of proof, its burden of proving each and every element of the offense beyond a reasonable doubt.

Now, ladies and gentlemen, there are four indictments outstanding, four charges that you must consider in this case. And you must consider them all separately and independent of each other. You have burglary in the first degree, attempted murder, possession of a weapon during the commission of a violent crime, and you have petit larceny. You'll look at all of those charges independent of one another, and you will determine whether in each instance the State has met its burden of proof.

You're going to have four separate verdict forms, which I'm going to give to you and show to you before I finish my charge. You look at all of them and you determine in each instance if the State has met its burden of proof. Understand, if you find just, for example, the Defendant not guilty of one of the offenses, that does not

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mean that you need to find him not guilty of all of the offenses. If you find him guilty of one of the offenses, it doesn't mean you have to find him guilty of the remainor of the offenses. What it means is that you look at them all independently from one another.

Now, as you know, the Defendant elected not to testify. I'm just going to remind you that that's his Constitutional right. We can't hold that against him. We all enjoy the Constitutional right to remain silent. You can't hold it against him that he has merely chosen to exercise a Constitutional right. As a matter of fact, that's so sacred a right not only can you not consider it, you can't discuss it in your jury room. It's not material, it's not relevant to anything you have to decide in this case.

Now, we've batted about this term reasonable doubt. The attorneys have discussed it. I've discussed it. So it does bear defining what a reasonable doubt is. Now, some of you may have served in civil court or some other courts in the United States. And you know that there are different burdens of proof. There's a preponderance of the evidence, which is greater than 50 percent that you have ordinarily in civil court. You've got a greater burden of clear and convincing proof, which is usually what is required for punitive damages or some other causes

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of action that come before the Court.

But, in this case, you have proof beyond a reasonable doubt. That's the highest proof that there is in court. And proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

Now, understand there's very little in this world that you can know with absolute certainty. And the law doesn't require proof beyond any possible doubt. But understand that after your review of the evidence, if you are firmly convinced of the Defendant's guilt, then, under your oath, you must find him guilty of the offense. On the other hand, if you believe that there is a real possibility of the Defendant's innocence, then you must, under your oath, find him not guilty of the offense. It's entirely up to you based on your review of the evidence.

You'll look at the evidence and determine what has weight and what has value. You're going to analyze that evidence. One thing that you will do is you'll look at the credibility of the witnesses and you'll determine who was believable and who wasn't believable.

You look at somebody's testimony and just with your own common sense, you can get some suggestion of whether you believe somebody is believable or not. You look at them, you can look at their body language, you can look at their facial expressions, you can hear what they had to

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say, and the manner in which they expressed themselves. You can determine whether they had something to gain or something to lose as a consequence of their testimony. And you'll decide whether they're credible or not.

Also, know that you don't have to accept all -- accept or reject all of a witness's testimony. You can take part of it and accept it as credible and valuable, and then take the remainder of it and decide its not credible and not valuable. Again, that's all your role in determining what the facts are in the case.

You've heard evidence from expert witnesses. As I told you, an expert witness is qualified because of his education, his experience, his expertise. But you don't have to put any exaggerated -- and you don't put any exaggerated or preferred weight on it. You decide just like any other piece of evidence whether it's valuable and what weight it may have.

You, also, heard testimony from witnesses who may have had a prior record. Now, just because a witness has a prior record doesn't mean that they're disqualified from testifying. They're, certainly, a qualified witness.

You look at the prior record to determine whether that witness was believable or not. It goes entirely to credibility. And the only thing you consider a prior witness -- a prior record of a witness for is whether it

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bears -- whether or not it bears upon that witness's credibility.

Now, ladies and gentlemen, you receive evidence in two different ways in court. You can receive direct evidence and you can receive circumstantial evidence. Now, the law doesn't prefer one over the other.

Direct evidence is evidence which immediately establishes a fact to be proven. Circumstantial evidence is proof of a chain of facts, a proof of collateral facts that when taken together prove the main fact to be asserted.

Now, that's a very simple definition, but I find that it's easier for people to conceptualize if I give you an example. So let me give you that example. Let's say it's a January evening at your house and you're going to bed. And when you go to bed, you look past your front window and your front door and you look out on your front lawn or parking lot and you see there's a blanket -- that there's no precipitation outside, none. And so you go to bed.

And that next morning, you pass that very same window or door and you look out and there's a blanket of snow on the ground. And you notice that in that blanket of snow, there are footsteps that come to the door and then footsteps that lead away.

Well, in that scenario, you've got direct evidence

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that it snowed last night. Because the snow is there, you can pick it up, you can feel it, you can smell it. You can throw a snowball at your friends. You've got it. It's right there. It's immediately established.

But you, also, have circumstantial evidence that sometime late that night or early that morning somebody came to your door and then walked away. Now, you don't see that person. You can't smell them, you can't touch them. They're not there. However, as a consequence of the timing of that -- of the snow and the footprints in that snow, you know that someone came to your door, and that they left during the night or early morning.

Now, ladies and gentlemen, as I told you, direct and circumstantial evidence are not preferred over one or the other. That is, they have whatever weight you determine that it has.

Understand, though, if the State relies upon circumstantial evidence to prove its case, then all of the circumstances which when taken together must conclusively point to the guilt of the accused. If the circumstances merely portray the Defendant's behavior as suspicious, that proof has failed. The State, of course, you understand retains the burden to prove the Defendant guilty beyond a reasonable doubt, regardless of whether the State relies on direct, circumstantial, or other

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evidence.

Now, ladies and gentlemen, you've heard the theory of the hand of one advanced in the courtroom. So I'm going to read for you the definition of the hand of one. If a crime is committed by two or more people who are acting together and committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

If two or more people are together acting together, assisting each other in committing the offense, the act of one is the act of all. Or as it is sometimes said, the hand of one is the hand of all.

All right. Ladies and gentlemen, now, I'm going to get to the actual offenses, and I'm going to sit down on the witness stand and I'm going to talk to you about it. It's not going to take me long, but I'm going to read it for you. Because, again, as I told you, some of this I need to define very precisely. So I'm going to read it for you so that I don't give you an imprecise definition.

The first charge that you will consider in this case is attempted murder. The Defendant is charged with attempted murder. In order to prove this crime, the State

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must prove the Defendant attempted to kill another person with malice aforethought either expressed or implied.

Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury, or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exist for any particular time before the act is committed. The malice must exist in the mind of the Defendant just before and at the time of the act as committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. The terms expressed and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved.

Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or other acts of preparation going to show that the deed was within the Defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total

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disregard for human life. Inferred malice may, also, arise when the deed is done with a deadly weapon.

A deadly weapon is an article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons: Pistol, shotgun, rifle, dagger, knife, brass knuckles.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with other evidence in the case. And you may give it the weight you decide it should receive.

A specific intent to kill is not an element of attempted murder. But there must be a general intent to commit serious bodily injury. Intent means intending the result which, actually, occurred, not accidentally or involuntarily. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be

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considered in determining the intent with which the act was committed. Intent may, also, be inferred when it is demonstrated that the Defendant voluntarily and willfully commits an act the natural tendency of which is to destroy another's life.

All right. Ladies and gentlemen, the next offense or indictment which you will consider is first degree burglary. The Defendant is charged with first degree burglary. The State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent.

A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary. But a building is a dwelling, even if the residents are temporarily absent from the building.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary.

On the other hand, if the Defendant intended to commit a crime at the time of the entry, it is a burglary, even if the intent was abandoned after the entry. Again, intent may be shown by acts and conduct of the Defendant

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and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt that, one, when entering, while in the dwelling, or when fleeing, the Defendant acted or an accomplice was armed with a deadly weapon or explosive. Or when entering in the day -- or while in the dwelling or when fleeing, the Defendant or an accomplice caused physical injury to anyone not participating in the crime. Or, three, when entering while in the dwelling or when fleeing, the Defendant or an accomplice used or threatened the use of a deadly object. Or when entering, while in the dwelling or when fleeing, the Defendant or an accomplice displayed what appeared to be a knife or firearm.

The Defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face, except by artificial light or moonlight.

Now, let me read that last portion for you, because I wasn't commenting on the facts in any way, shape, or form. I just simply said the Defendant. That was the sixth element of burglary in the first degree. And I want to make sure and I want to make very clear that I wasn't making a statement of facts.

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Now, understand, ladies and gentlemen, what I'm saying is the State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. I read for you all of the elements for that. The last portion I intended to read for you that I may have not misstated, but read out of context is if they prove there was an entry without consent of the dwelling, then in order for it to be burglary in the first degree, those elements that I just read must be present, or it must be that he entered during the period of nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face, except by artificial light or moonlight.

Ladies and gentlemen, the next offense that you're going to consider is possession of a weapon during the commission of a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displaying what appeared to be a firearm. A firearm means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, is designed to, or may be readily converted to expel a projectile.

In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the Defendant guilty of either committing

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a violent crime or attempting to commit a violent crime. I charge you that attempted murder and burglary are classified as violent crimes under the law in the State of South Carolina. The State must prove beyond a reasonable doubt that the weapon further advanced or helped in the commission of the crime.

Ladies and gentlemen, the last indictment that you will consider is an indictment for petit larceny. The State must prove beyond a reasonable doubt that the Defendant took and carried away the property of another against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant is enough to show a taking and carrying away of the property. The State must, also, prove beyond a reasonable doubt that the Defendant intended to permanently deprive the owner of the property.

Now, ladies and gentlemen, that is the law as it relates to the charges which are before you. I have four verdict forms here. Okay. And I'm just going to go over the first one. And I'm going to show you what it says. And I'm going to explain it a little bit to you so there won't be any questions when you get in the jury room.

You'll see that each of them has the caption on it. It's "verdict form." You will then see it says, To the

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charge of, in this instance, I'm looking at the one that says first degree burglary, we, the jury, unanimously find the Defendant, Robert Matthew Fulmer, and then you have two options.

Let me first say, you see that it says -- note that it says unanimously. Your verdict must be unanimous. You must all agree on the verdict. It can't be any combination of numbers that add up to 12, other than 12 plus zero. So your verdict cannot be based on anything outside of the evidence and the law that you have received in this courtroom during the last two days. You can't -- it can't be based on sympathy or prejudice, or caprice, or any other factor other than what you've seen in the courtroom.

Now, ladies and gentlemen, you will decide whether the Defendant is not guilty or guilty.

When you have come to a unanimous verdict, then Ms. Crowe, you will either initial or check beside not guilty or guilty indicating that you have reached a unanimous verdict, and you will sign and date. And you will do the same for each and every indictment that's before the Court. That is why -- that is, specifically, why I have four separate indictments.

I, also, want you to know that the order in which I listed these potential verdicts not guilty and guilty is

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no indication or secret signal to you in any way, shape, or form. When there are only two choices, I have to put it somewhere. So understand that it means nothing and, please, derive nothing from the order in which I placed it.

Now, ladies and gentlemen, I'm going to ask you to return to your jury room. I'm going to instruct you not to begin your deliberations quite yet, because the attorneys are going to have the opportunity to take exception to the law as I've charged it to you, or point out some point of law that I did not or I failed to advise you of. After I've heard from them, then I'll either bring you back in, or I'll send you back these verdict forms with the exhibits and instruct you to begin your deliberations.

So, please, don't discuss the case yet. You'll receive instructions fairly shortly. So you can retire now.

(WHEREUPON, the jury was excused from open court at approximately 1:37 p.m.)

THE COURT: Counsel, exceptions to the charge?

MR. RICHARDSON: No exceptions from the State, Your Honor.

MR. ROBINSON: No, Your Honor.

THE COURT: All right. If y'all will do an inventory

of the exhibits, I'm going to go ahead and give to the bailiffs the verdict forms and advise them to begin their deliberations. And y'all can pass those back once you're satisfied they're all there.

The two alternates, I'll excuse them from chambers.

Good luck, gentlemen. You each tried an excellent case.

And I commend everyone in the courtroom for having been civil and well behaved. I do appreciate it. Good luck to y'all.

(WHEREUPON, the proceedings were recessed at approximately 1:39 p.m.)

(WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked for identification and admitted into evidence.)

THE COURT: Counsel, it's my understanding that the jury has reached a verdict.

Are we prepared to receive the verdict?

MR. RICHARDSON: The State is prepared.

MR. ROBINSON: The Defense is ready, Your Honor.

THE COURT: Bring them in, please.

(WHEREUPON, the jury came into open court at approximately 3:45 p.m.)

THE COURT: Ms. Crowe, has the jury reached a unanimous verdict?

JUROR #33, JO ANN CROWE: Yes, sir.

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THE COURT: Would you, please, hand the verdict forms to the bailiff?

Mr. Welborn, you may publish the verdict, sir.

VERDICT

THE CLERK: This is case #2013-GS-39-716, the State v. Robert Matthew Fulmer. As to the charge of attempted murder, we, the jury, unanimously find the Defendant, Robert Matthew Fulmer, guilty.

This is case #2013-GS-39-718, as to the possession of a weapon during the commission of a violent crime, we, the jury, unanimously find the Defendant, Robert Matthew Fulmer, guilty.

Case #2013-GS-39-719, as to the charge of petit larceny, we, the jury, unanimously find the Defendant, Robert Matthew Fulmer, guilty.

Case #2013-GS-39-717, as to the charge of first degree burglary, we, the jury, unanimously find the Defendant, Robert Matthew Fulmer, guilty.

Is this your verdict and still your verdict? So say you all by raising your right hand.

(WHEREUPON, all the jurors raised their right hands.)

THE CLERK: Thank you very much.

THE COURT: All right. Counsel, anything further for the jury?

MR. RICHARDSON: Nothing from the State, Your Honor.

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MR. ROBINSON: Nothing, Your Honor.

THE COURT: Ladies and gentlemen, thank you very much for your service on this jury.

What I'm going to do is I'm going to discharge you from your jury service in this case. We are going to start another case tomorrow and, perhaps, Thursday as well.

So I'll ask you to call back after 6:00 tonight and see if it's necessary that you be here in the morning. You may find that you get instructions to be back at 10:00.

You -- and I've told you a number of times on this particular case not to discuss the case, but you're welcome to at this point. You can discuss it with anyone you like and in whatever particulars you like. Understand, though, that you are welcome to tell people you don't want to discuss the case. And if anyone prevails upon you to discuss the case and they insist, then you may simply get his or her name, and you can let me know or you can let the Clerk of Court know, and we'll take care of that for you.

I am going to come back to -- I'm going to dismiss you and let you go back to your jury room. I'm going to come back there just to give you the opportunity to ask me any questions that you may have about this trial or jury

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service. Or -- and I can give you any explanations of anything in particular that you may be curious about, about the conduct of this trial, or jury service, in general. I don't intend to keep you any longer than you absolutely have to.

I will tell you, after I've had the opportunity to have a talk with y'all informally, I'll come back into the courtroom and I'm going to conduct the sentencing hearing. And we'll go directly to sentencing. After I've spoken to you, if any of you would like to come back into the courtroom and observe post-trial motions and the sentencing, you are, certainly, welcome to do so. However, you are, certainly, not required to do that.

So, at this time, I'll ask you to adjourn to your jury room. And I'll be in there probably by the time all of y'all collect in there.

(WHEREUPON, the jury was excused from open court at approximately 3:49 p.m.)

THE COURT: Counsel, I'm going to dismiss the jury. And then I'll come back in for the sentencing hearing. I don't anticipate it will take more than five or 10 minutes.

(WHEREUPON, a break was taken.)

THE COURT: Any post-trial motions?

MR. RICHARDSON: None from the State, Your Honor.

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MR. ROBINSON: None from the Defense, Your Honor.

THE COURT: You may approach for sentencing.

Mr. Richardson, does the State have sentencing sheets for the Court?

MR. RICHARDSON: I do, Your Honor.

THE COURT: All right. Certainly, I've heard the facts in the case, and the jury has come to its deliberation.

Mr. Richardson, is there anything additional that you would like to put on the record on behalf of the State pertaining to sentencing?

MR. RICHARDSON: Your Honor, the victim does not wish to address the Court.

However, regarding sentencing, I had previously read out a -- his prior record. He's got several burglary seconds violent on his record.

THE COURT: Could you tell me the prior record again, please?

MR. RICHARDSON: Yes.

THE COURT: I'm sorry. I know we went through it very --

MR. RICHARDSON: Do you want each and every item?

THE COURT: Well, how long is it?

MR. RICHARDSON: Namely, Your Honor, he has -- back in 2008 --

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THE COURT: Yes, sir.

MR. RICHARDSON: -- he has two burglary second degrees and a grand larceny. He, also, has forgeries. He has a failure to stop for a blue light. He has a possession with intent to distribute methamphetamine.

THE COURT: All right.

MR. RICHARDSON: And grand larceny, if I didn't mention that, Your Honor.

THE COURT: Okay. Good enough.

Mr. Robinson, I'll be happy to hear from you.

MR. ROBINSON: May it please the Court.

We respect the jury's verdict in this case. Obviously, it was a hard fought case. I thought the Prosecution did an excellent job, obviously, in this matter. It is what it is.

Your Honor, I've had a chance to meet and talk to Robert and his family. It's a good family he comes from. I think the lesson here is not to -- you need to pick your friends wisely, I think. And he, obviously, did not do that in this case. He does wish to ask the Court for mercy in this case. I think he'd like to say something to the Court in a second.

THE COURT: Sure.

MR. ROBINSON: But I've got his family here as well, Your Honor. His family, and his fiancée, and his

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daughter, they're all here. We'd ask the Court for a split sentence, possibly that would allow him to get an education, do something with himself, learn some skills when he gets out.

Again, thank you.

THE COURT: All right. Mr. Fulmer, I'll be happy to hear from you, sir.

DEFENDANT FULMER: Sir, I've heard like everybody saying, you know, thank y'all. Thank you, Judge. I thank everybody for coming.

And I just want to let everybody know, Your Honor, I'm not that person, you know. And the person I used to be, I'm not that person any more. And that I just -- like my lawyer said, I just ask for mercy, you know. I'm willing to change. I want to be a better person. I would appreciate whatever, you know, is done today.

THE COURT: Mr. Fulmer, you're 25 years old; is that right?

DEFENDANT FULMER: Yes, sir.

THE COURT: It looks to me like you've lived a hard life and you've learned some hard lessons in life. I recognize that you may not be the person that that record suggests that you are.

DEFENDANT FULMER: Yes, sir.

THE COURT: I recognize there's good in everybody,

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and there's bad in everybody as well. The problem that you've had up to now is that you've let the bad in you override the good. That's, clearly, demonstrated through the record that you have and through the facts of this case as well.

Now, Mr. Fulmer, I hope that you're not the person that you have been. There is hope for redemption. And I hope and pray that you do find peace, and that you recognize that preying upon society is not only not good for the greater society, but it's not good for you either.

I do wish you luck going forward, Mr. Fulmer. And I'm sorry that the lessons that you are having to learn are visiting upon you so hard. I truly wish from a personal level that they didn't.

But I'm charged with the responsibility of addressing conduct, and sentencing people in accordance with the law as the legislature dictates. It's always regrettable when I have to sentence somebody to a period of incarceration, particularly when it's a significant period of incarceration. But, sadly, that's my job. And the circumstances often call for it as well.

SENTENCE

THE COURT: On your petit larceny, the sentence of the Court is you be committed to the Department of Corrections for a period of 30 days. Credit for all your

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time served, concurrent.

On your possession of a weapon during the commission of a violent crime, five years, which is required under the law under that offense, concurrent. Credit for any time you may have served.

On your burglary first degree, understand that there's a mandatory minimum of 15 years. It carries up to life in prison.

DEFENDANT FULMER: Yes, sir.

THE COURT: I elect not to sentence you to incarceration for the remainder of your natural life. I sentence you to 30 years in the Department of Corrections, concurrent. Credit for time served.

With the attempted murder, the sentence is 30 years in the Department of Corrections, concurrent. Credit for time served.

I wish you luck, sir.

**********END OF TRANSCRIPT OF RECORD**********

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 25th and 26th days of August, 20014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 16, 2015

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

Charles James

Pickens County Sheriff's Office

1/8/2013

ARREST WARRANT NUMBER

2012A3910500200

ACTION OF GRAND JURY

TRUE BILL

Dated

Steven Richardson

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39-0716

WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 12 2013 **TERM 2013**

THE STATE

vs.

ROBERT MATTHEW FULMER

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAR 1 2 2013 the Grand Jurors of Pickens County present upon their oath:

That ROBERT MATTHEW FULMER did in Pickens County on or about the 17th day of December 2012, unlawfully with malice aforethought and with the intent to kill, attempt to kill Clarence Robinson. This is in violation of § 16-03-0029 of the South Carolina 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.

SOLICITOR

WITNESSES

Charles James

Pickens County Sheriff's Office

1/8/2013

ARREST WARRANT NUMBER
2012A3910500203

ACTION OF GRAND JURY

TRUE BILL
DATE

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39- 0717
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 12 2013 **TERM 2013**

THE STATE

vs.

ROBERT MATTHEW FULMER

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

300

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on MAR 1 2 2013 the Grand Jurors of Pickens County present upon their oath:

That ROBERT MATTHEW FULMER did in Pickens County, on or about the 17th day of December, 2012, willfully and unlawfully enter the dwelling of CLARENCE ROBINSON located at [redacted] Lane, Easley, South Carolina without consent and with the intent to commit a crime therein and the crime did occur during the nighttime and the defendant armed himself with weapons. This is in violation of §16-11-311 of the South Carolina 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.

SOLICITOR

WITNESSES

Charles James

Pickens County Sheriff's Office

1/8/2013

ARREST WARRANT NUMBER

2012A3910500206

ACTION OF GRAND JURY

TRUE BILL
Date MAR 12 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39- WDR 0118

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 12 2013 **TERM 2013**

THE STATE

vs.

ROBERT MATTHEW FULMER

Indictment for

0549

POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME

VIOLATION § 16-23-0490

302

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	**POSSESSION OF A WEAPON DURING THE COMMISSION OF A**
COUNTY OF PICKENS	)	**CRIME**

At a Court of General Sessions, convened on MAR 1 2 2013 the Grand Jurors of Pickens County present upon their oath:

That ROBERT MATTHEW FULMER did in Pickens County, on or about the 17th day of December, 2012, possess or visibly display a a firearm and/or a knife during the commission or attempted commission of a violent crime, to wit: Attempted Murder and Burglary First Degree. This is in violation of §16-23-490 of the South Carolina 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.

SOLICITOR

WITNESSES

Charles James

Pickens County Sheriff's Office

1/8/2013

ARREST WARRANT NUMBER

2012A3910500207

ACTION OF GRAND JURY

TRUE BILL
Date: MAR 12 2013

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-39- 0719
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 12 2013 **TERM 2013**

THE STATE

vs.

ROBERT MATTHEW FULMER

Indictment for

3419

PETIT LARCENY

VIOLATION § 16-13-0030(A)

304

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
PETIT LARCENY

At a Court of General Sessions, convened on MAR 1 2 2013 the Grand Jurors of Pickens County present upon their oath:

That ROBERT MATTHEW FULMER did in Pickens County, on or about the 17th day of December, 2012, feloniously take and carry away the personal property of CLARENCE ROBINSON, to wit: illicit narcotics, prescription pills, a pair of brass knuckles, a pocket knife a rifle and/or a revolver with a total value of less than Two Thousand Dollars ($2,000.00) with intent to deprive the owner permanently of such property. This is in violation of §16-13-0030 of the South Carolina 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.

SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
STATE VS.)
Robert Matthew Fulmer)
AKA:)
Race: WHITE Sex: M Age: 25)
DOB: [redacted]1989 SS#: [redacted])
Address: [redacted])
City,State,Zip: Liberty, SC 29657)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900716
A/W#: 2012A3910500200
Date of Offense: 12/17/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

30 yrs. (no susp./no prob.)

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Murder / Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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.

ATTEST: Richardson, Doug | 66112 SC Bar# | Defendant | Attorney for Defendant F. Robinson | 65331 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 days/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: _____
☒ 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
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ 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 Harold P. Welborn
Court Reporter: Hollie Jenkins
Presiding Judge
Judge Code: 2558
Sentence Date: 26 April 2014

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
STATE VS.)
Robert Matthew Fulmer)
AKA:)
Race: WHITE Sex: M Age: 25)
DOB: [redacted]1989 SS#: [redacted])
Address: [redacted])
City,State,Zip: Liberty, SC 29657)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900717
A/W#: 2012A3910500203
Date of Offense: 12/17/2012
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

15 - life

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ 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.

ATTEST:
Richardson, Doug 66112 SC Bar# Defendant Attorney for Defendant S. Robinson 6535 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/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: _____
☒ 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: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*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
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Harold P. Williams
Court Reporter: Hollie Jenkins
Presiding Judge
Judge Code:
Sentence Date: 26 Aug 2014

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
STATE VS.)
Robert Matthew Fulmer)
AKA:)
Race: WHITE Sex: M Age: 25)
DOB: [redacted]1989 SS#: [redacted])
Address: [redacted])
City,State,Zip: Liberty, SC 29657)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900718
A/W#: 2012A3910500206
Date of Offense: 12/17/2012
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

0-5

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒PLEADS
TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ 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.

ATTEST:
Richardson, Doug — 66112 SC Bar# — Defendant — Attorney for Defendant S. Robinson — 6535 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/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: _____
☒ 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
3% to County (if paid in installments)		$ 3.99
TOTAL		$ 133.99

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ 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 Harold P. Watkins
Court Reporter: Hollie Jenkins
Presiding Judge
Judge Code: 258
Sentence Date: 26 Aug 2014

SCCA/217 (03/2011)

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STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
STATE VS.)
Robert Matthew Fulmer)
AKA:)
Race: WHITE Sex: M Age: 25)
DOB: [redacted]1989 SS#: [redacted])
Address: [redacted])
City,State,Zip: Liberty, SC 29657)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900719
A/W#: 2012A3910500207
Date of Offense: 12/17/2012
S.C. Code § : 16-13-0030(A)
CDR Code #: 3419

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Larceny / Petit or Simple Larceny - $2,000 or less

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3419
☒ 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.

ATTEST: Richardson, Doug | 66112 SC Bar# | Defendant | Attorney for Defendant S. Robinson | 6535 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 days/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: _____
☒ 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: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*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
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Harold P Weller
Court Reporter: Hollie Jenkins
Presiding Judge
Judge Code: 280
Sentence Date: 26 Feb 2019

SCCA/217 (03/2011)

FORM 5
2014 DEC 29 PM 2 32

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF)

Robert Matthew Fulmer #317783
Full name and prison number (if any) of Applicant

2014-CP-39- 1550

v.) APPLICATION FOR

State of South Carolina) 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 the 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 Broad River Correctional Institution

2. Name and location of Court which imposed sentence Pickens County General Sessions Court - 214 East Main St. Pickens, SC 29671

3. Name(s) of co-defendant(s) (if any) Charles Burgess, Danny Adams, Jennifer Allred, Heather Posey

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2012A3910500200 Attempted Murder (d) 2012A3910500207 Petit larceny

   (b) 2012A3910500203 Burglary 1st Degree

   (c) 2012A3910500206 Possession of a weapon during violate crime

5. The date upon which sentence was imposed and the terms of the sentence:

   (a) August 26, 2014

   (b) (30) Thirty Years

Revised 3/2003

(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere ____

7 Did you appeal from the judgment of conviction or the imposition of sentence?
No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(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) Applicant was not aware of any potential appealable issues during the time to appeal.

(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) ____

(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Attorney's performance was deficient and unreasonable under professional norms.

(b) Attorney failed to call witnesses who would have testified favorably on behalf of applicant.

(c) Attorney was ineffective for using invalid strategic reasoning.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

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) A claim of ineffective assistance of counsel is usually raised in an

(b) Application for Post Conviction Relief.

(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? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Scott D. Robinson 9 East Avenue, Greenville, SC 29601

ii. ____

iii. ____

(b) the proceedings at which each such attorney represented you:

i. Not Guilty Plea

ii. Trial

iii. Sentencing

19. State clearly the relief you seek in filing this application:

The Applicant seeks to have his conviction vacated, or set aside

20. Are you now under sentence from any other court that you have not challenged?

No

2014-CP-39-1550

STATE OF SOUTH CAROLINA

2014 DEC 29 PM 2 32

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

VERIFICATION

County of

I, Robert Fulmer, 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.

Robert Fulmer

SWORN to and subscribed before me this 22nd day of December, 2014.

(L.S.)
Notary Public

My Commission Expires: Nov 24 2024

Revised 3/2003

2014 DEC 29 PM 2 32

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Robert Fulmer, 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.

Robert Fulmer
Applicant

SWORN or affirmed to and subscribed before me this 22nd day of December, 2014.

Notary Public

My Commission Expires: 1/01/24 2024

Revised 3/2003

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2014-CP-39-1550
COUNTY OF PICKENS)	
)	
Robert Matthew Fulmer,)	
S.C.D.C. No. 317783,)	
)	
Applicant,)	
)	**RETURN**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed December 29, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the March 2013 term of General Sessions for attempted murder (2013-GS-39-0716), first-degree burglary (2013-GS-39-0717), possession of a weapon during commission of a violent crime (2013-GS-39-0718), and petit larceny (2013-GS-39-0719). Scott D. Robinson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On August 26, 2014, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 30 years for attempted murder, 30 years for first-degree burglary, 5 years for possession of a weapon during commission of a violent crime, and 30 days for petit larceny. The Applicant did not file an appeal.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The trial transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
   a. Attorney's performance was deficient and unreasonable under professional norms.
   b. Attorney failed to call witnesses who would have testified favorably on behalf on Applicant.
   c. Attorney was ineffective for using invalid strategic reasoning.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: _____
Attorneys for Respondent

May 29, 2015

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS
	2014-CP-39-1550
ROBERT MATTHEW FULMER, 317783 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

4. I am an employee of the Respondent in the above-captioned action.

5. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

6. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert Matthew Fulmer, 317783
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29212

DATED this 29th day of May, 2015.

Judy A. C. Carey, Legal Assistant
For Respondent

State of South Carolina

County of Greenville

Court of Common Pleas

Robert M. Fulmer,	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2014-CP-39-1550
	)	
South Carolina	)	
Defendant.	)	

June 13, 2016
Greenville, South Carolina

B E F O R E:

The Honorable George James, Judge.

A P P E A R A N C E S:

R. Mills Ariail, Jr., Esquire
Attorney for the Applicant

Patrick Schmeckpeper, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

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E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
1	Defendant's Exhibit		X

- - -

PROCEEDINGS

- - -

THE COURT: The next one I have is Fulmer.

MR. SCHMECKPEPER: Yes, Your Honor.

THE COURT: Are y'all ready to go on that?

MR. SCHMECKPEPER: I believe so, Your Honor.

MR. ARIAIL: Yes, Your Honor.

THE COURT: Okay.

MR. ARIAIL: He's right -- he headed out here.

THE COURT: Let me hand these packets back to you since -- so you can use them the next time.

MR. SCHMECKPEPER: Yes, Your Honor. I appreciate it.

(The Applicant was personally present, together with counsel.)

THE COURT: All right. So this is 2014-CP-39-1550. Mr. Ariail for the Applicant and Mr. Schmeckpeper for the State.

Anything y'all want to say before we begin?

MR. ARIAIL: No, Your Honor. We're ready to proceed.

MR. SCHMECKPEPER: Ready to proceed, Your Honor.

THE COURT: All right.

MR. ARIAIL: I can call my client to the stand.

Do you want a brief recitation to kind of ---

THE COURT: Just give me a little -- a little bit of a snapshot of it.

MR. ARIAIL: --- go through the turn if you want me to in regard to -- basically, he was -- went to trial. Was represented by Mr. Robinson in regards to attempted murder, first degree burglary, possession of a weapon during the commission of a violent crime, petit larceny. He was represented by Mr. Robinson on all those charges.

He was indicted during the March of 2013 term of General Sessions on August 26, 2014.

He was sentenced by Judge Stilwell to the current terms of 30 years for attempted murder, 30 years for first degree burglary, 5 years for possession of a weapon during a violent crime, and 30 days for petit larceny.

He did not file an appeal in this matter. And he filed his PCR application which you're here in regard to today.

THE COURT: Okay. The grounds as stated, at least in the return, is that the trial counsel failed to call certain witnesses and for using invalid strategic reasoning. Any additional grounds?

MR. ARIAIL: Your Honor, that is pretty much my understanding of his grounds at this time. If there are additional things that come up during his testimony, I'd ask that the record, I guess, conform to his testimony at that time.

THE COURT: And, Mr. Schmeckpeper, any -- y'all customary notified the victim?

MR. SCHMECKPEPER: Yes, Your Honor. The victims have been notified in this case. They are usually notified by our Victim's Services Office. I don't believe the victims are here today.

THE COURT: Okay. Ready to go?

MR. ARIAIL: Yes, Your Honor. We ready to proceed. I call Mr. Fulmer to the stand.

(Applicant approached.)

THE CLERK: Place your left hand on the bible and raise your right hand, please.

THE APPLICANT: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE APPLICANT: Yes, ma'am.

THE CLERK: State your full name for the record.

THE APPLICANT: Robert Matthew Fulmer.

THE CLERK: Please be seated.

THE APPLICANT: (Complying.)

ROBERT FULMER,

having been produced and first duly sworn as a witness on behalf of the Applicant, testified as follows:

DIRECT EXAMINATION

BY MR. ARIAIL:

Q. Mr. Fulmer, how are you doing today?

A. I'm doing fine. How are you doing?

Q. Good. Good. You -- you filed this PCR application alleging ineffective assistance of counsel by Mr. Robinson.

A. Yes, sir.

Q. Okay. Now, I'm going to go back through a little bit of the facts of the case. You heard me recite what charges you were found guilty of, correct?

A. Yes, sir.

Q. Okay. Did he represent you on all those charges?

A. Yes, sir, he did.

Q. Okay. Let's go back through a little bit about how, I guess, he began to represent you. Was he

appointed as your counsel?
A. No, sir, he wasn't.
Q. You hired him?
A. Yes, sir.
Q. Okay. And when -- I guess, you were arrested on these charges, and how long after your arrest did you hire Mr. Robinson?
A. I believe a little over a year.
Q. Okay. So were you incarcerated at that time?
A. Yes, sir, I was.
Q. Did you get out on bail at any time?
A. No, sir.
Q. Okay. So from the date you were arrested of these charges until the trial in this matter, you hadn't been out on bail?
A. No, sir, I haven't.
Q. Okay. Let's go back a little bit about your conversations with him. So you hired him or your family hired him?
A. Yes, sir. My fiancée did.
Q. Okay. Your fiancée. And what's her name?
A. Melissa Morris.
Q. Okay. Melissa Morris?
A. Yes, sir.
Q. Okay. And she hired him and he began to

represent you on these charges?
A. Yes, sir.
Q. Did he come -- you were at the LEC; is that correct?
A. Yes, sir, I was.
Q. Okay. Did he come down and meet with you to discuss the evidence, you know, elements of the crime, any of those different things?
A. He came and spoke to me one time at the county for probably 10 minutes, and it was -- it had nothing to do with my case.
Q. Okay. Well, tell me what it had to do with.
A. Just pretty much initially, you know, letting me know that he was now representing me and that my family had been in contact with him and that he would get with me at a later date, you know, to speak -- speak to me about the evidence in my case and, you know, things of that nature.
Q. Okay. So, basically, he was going to -- he gave you understanding he was representing you?
A. Yes, sir.
Q. He didn't bring any discovery down to show you or anything like that?
A. No, sir, he didn't.
Q. Did he bring any statements or anything about

the evidence of the case?
A. No, sir.
Q. Okay. After -- do you remember when that date was?
A. I believe it was in April, April of 2014.
Q. Okay. April 2014. So at any time after April 2014 until you went and, I guess, were on trial some time August of 2014, did he come back and meet with you?
A. No, sir, he didn't.
Q. Did he talk to you before trial?
A. No, sir.
Q. Okay. Now, one of the things that you have alleged and what I want to understand is, there were certain witnesses that you had that you wanted him to call as part of your case?
A. Yes, sir.
Q. Okay. Now, tell me who were those witnesses.
A. Chad Hayes and Sarah Hamilton.
Q. Okay. And ---
THE COURT: Sarah Hamilton?
THE APPLICANT: Yes, sir.
BY MR. ARIAIL:
Q. Okay. Did you tell him about those individuals?

A. Yes, sir, I did over the phone. I spoke to him and I told him. My mother also spoke to him. My fiancée spoke to him. And there was also statements that was written by those two individuals that was took to his office.

Q. Okay. And I got -- maybe I should've gone into this. I know he didn't come and meet with you except one time. How many times did you talk to him over the telephone?

A. Maybe five times at the most.

Q. Okay. Five times at the most. Did you discuss the facts of the case?

A. No, sir. No, sir. The only -- only time I spoke to him over the phone was to speak to him about a bond reduction or to -- one time because he told me that they had offered a plea of 15 years.

Q. Okay. But you also said you talked to him about Sarah Hamilton and Chad Hayes?

A. Yes, sir. That was about five times at most I spoke to him, sir.

Q. Okay. So you're talking about a bond?

A. Yes, sir.

Q. About?

A. About me a plea.

Q. Plea?

A. Whenever I spoke to him about Chad and Sarah and whenever he told me about me going to trial.
Q. Okay. So at no time during this, you're saying that he talked to about the elements of the case?
A. Not one time.
Q. About the facts of the case?
A. No, sir.
Q. About discovery in your case?
A. No, sir.
Q. Did he ever give you a copy of the discovery?
A. No, sir.
Q. Okay. Now, about these witnesses. You say they're written statements that have been -- that you were provided in regards to Chad Hayes and Sarah Hamilton?
A. Yes, sir.
Q. Okay. Do you remember what those statements basically said?
A. Yes, sir.
Q. Okay. What did they say?
A. Pretty much that I was with them that whole night.
MR. SCHMECKPEPER: Your Honor, I'd object to hearsay -- hearsay at this point.
THE COURT: Mr. Ariail, do you have any of the

witnesses here?

MR. ARIAIL: No, Your Honor. I have their statements and I'm going to have to get that through -- I'll talk to Mr. Robinson in regards to that and see if I can ---

THE COURT: Okay. Objection is sustained right now.

BY MR. ARIAIL:

Q. Okay. So there're -- there're wit -- there're statements that are a part of the file that you had, correct?

A. Yes, sir.

Q. Okay. Don't testify to what they are, but were -- did you and Mr. Robinson discuss them?

A. No, sir. We never did.

Q. Well, how did you find out they were part of the file?

A. Well, because I knew my mother had took the statements up there to him, and I knew that he had them in his possession.

Q. Okay. So your mother took them to him?

A. Yes, sir.

Q. Okay. Are Chad and Sarah here today to testify on your behalf?

A. No, sir, they're not.

Q. Do you know -- do you know why they're not?

THE COURT: Is it Tad or Chad?

THE APPLICANT: Chad.

THE COURT: Chad?

THE APPLICANT: Yes, sir.

BY MR. ARIAIL:

Q. Chad Hayes and Sarah Hamilton, correct?

A. Yes, sir.

Q. Do you know why they're not here?

A. I have no way to get in contact with them. I don't -- I've been in prison now since 2014, so I have no communication with them whatsoever.

Q. Did they come to your trial?

A. Yes, sir. They was there.

Q. Okay. Did you have a discussion with Mr. Robinson as to why he was not calling them as witnesses?

A. The only thing that he told me was that he was not going to call them because they -- nothing they could say would help me.

Q. Okay. Did he tell you why he made that decision?

A. No, sir.

Q. Okay. Have you talked to Chad or Sarah since that day?

A. I spoke with Chad on the phone right after I got my time, yes, sir.

Q. Right after you got your ---

A. Right after I got my time.

Q. Time?

A. Yes, sir.

Q. Okay. Now, other witnesses that you wanted to be called, did you tell him about any additional witnesses to call on your behalf during your trial?

A. Yes, sir, I did.

Q. Who did you tell him to call?

A. Wanda Harper, and my mother, Amy Johnson, Trenton Black, and Steven Pepper.

THE COURT: Say those names again.

THE APPLICANT: Trent -- Trenton Black, Steven Pepper, Wanda Harper, and Amy Johnson.

BY MR. ARIAIL:

Q. What about -- did you talk to him about Ms. Burkhart?

A. No, sir. At -- at that time, no one really knew who was all at the house that night because they was a very bunch of individuals at the house that night.

And in my motion, the detective stated they went out there and spoke to the individuals, and

they were most of the people at the house that night, you know, that had spoke to the detectives. And all of them, you know, was saying the same thing, but no one knew who was all that there at that night.

Q. Did you talk to Mr. Robinson about him going and talking to these individuals or getting a better understanding of what they were going to testify to?

A. No, sir. I -- no, sir. Because every time I spoke to Mr. Robinson -- the few times that I did speak to Mr. Robinson, like I said, it was about a bond reduction or it was about, you know, the plea offer that they offered me or, you know, it was him letting me know that I was about to go to trial.

Q. Okay. And what I want to make sure of is, you told him about these witnesses -- Trent Black, Steven Pepper, Wanda Harper, and there was one other.

A. Amy Johnson.

Q. Amy Johnson. Did you tell him specifically about those individuals?

A. Yes, sir, I did.

Q. Did you tell him what you believed they would testify to?

A. Yes, I did.

Q. And what did you tell them that they would testify to?

A. I told him that same morning of trial right before we picked the jury that Trenton Black and Steven Pepper was Charles Burgess. They was in the same cell block as Charles Burgess, and both of them was going to testify to the fact that Charles Burgess told them about the case and told them that I had nothing to do with that.

Q. Okay. So that would be used as impeachment testimony to Mr. Burgess, I guess?

A. Yes, sir.

Q. Okay. And you told that to Mr. Robinson?

A. Yes, sir, I did.

Q. Did you -- what did you tell him that Ms. Johnson and Ms. Harper would testify to?

A. That my mother and my grandmother, Wanda Harper and Amy Johnson, would testify to the fact that Jennifer Alred, that me and Jennifer Alred, that was one of my codefendants.

THE COURT: You got to slow down. I can't follow you.

The question was, "What did you tell him that Amy Johnson and Wanda Harper would testify to?"

THE APPLICANT: They would testify to the fact

that Jennifer Alred was staying at my house, and that I kicked her out of the house. And she made a comment to my mother and my grandmother that she was going to get me about back about this whole case.

BY MR. ARIAIL:

Q. Okay. Just to go back. Jennifer Alred was one of the individuals that was arrested in this case also?

A. Yes, sir.

Q. So she was a codefendant along with you, correct?

A. Yes, sir.

Q. Okay. Now, I -- I've tried to go over as much as I can, and I want to make sure we've talked about this. I know we've got additional witnesses to call, but do you have anything else you want to raise in regards to Mr. Robinson's representation of you and how he was -- how you believe he was ineffective?

A. I mean, yes, sir. I mean, I believe he was ineffective based off the issues that in my trial transcript Charles Burgess admitted that he was suicidal, and I don't feel like he should've been testifying. I feel like Mr. Robinson should've said something about that.

Also, I believe that Mr. Robinson should have done some kind of investigation of his own and spoke to individuals at the house that night.

And I also believe that he should've spoke to the alibi witnesses.

And I believe that he should've spoke to the -- the individuals that was on the State witness list.

Q. Okay. Who were those individuals on the State witness list that you think he should've spoken to?

A. At least the victims and the -- and the witnesses that was around that area at that night, you know, the night.

Q. So the people that testified during the trial?

A. Yes, sir.

THE COURT: What was Charles' last name?

THE APPLICANT: Charles Burgess.

THE COURT: And what -- what did you say that Mr. Robinson didn't do about him?

THE APPLICANT: Charles Burgess admitted on the stand that he was trying to commit suicide by cop that night when he pulled -- when he pulled the gun on the police. And I believe that Mr. Robinson should've, you know, said something about that.

BY MR. ARIAIL:

Q. Okay. Let's -- let me draw a little bit out of

that. Mr. Burgess was arrested in a car with Ms. Posey and Mr. Alred, correct ---

A. Yes, sir.

Q. --- at the Hot Spot? And what you're saying is that he got out and made a comment about ---

A. No, sir. He got out the car and pulled the gun on the police.

Q. Correct. But later at trial he said, "I was thinking it was suicide by cop"?

A. Yes, sir. Mr. Robinson asked him why he was toying with the police. And he said, "I wouldn't call that toying. I was -- I was trying to commit suicide by cop."

Q. Okay. But where I'm trying to go with this is, what do you think Mr. Robinson did that was ineffective in ---

A. I believe for someone to say that, you know, on the stand, I believe, you know, for him to admit that he's suicidal, then he's incompetent. I don't feel like that that person should be testifying against anybody. I believe that an evaluation should've been done or something should've been done.

Q. Do you think that he asked him sufficient questions during the trial to, I guess, impeach him

or, you know, attack his credibility about that?

A. No, sir, I don't.

Q. Okay.

A. And Mr. Robinson asked me during trial was any of their testimony different from their statements, and Mr. Robinson had the statements that they wrote right in front and him, and he never questioned them about the -- the multiple different statements that they wrote before trial.

THE COURT: Are those statements in the record -- in my record, Mr. Schmeckpeper?

MR. SCHMECKPEPER: Your Honor, I'm not sure I follow as far as statements.

THE COURT: Say again?

MR. SCHMECKPEPER: I mean, they may be -- they very well may be Court's exhibits, Your Honor.

THE COURT: Well, I'm talking about what I have.

MR. SCHMECKPEPER: I don't believe so, Your Honor.

THE COURT: Somebody needs to give me copies so I can compare what's in the transcript.

MR. SCHMECKPEPER: Yes, Your Honor.

THE COURT: We'll get to that in a minute.

BY MR. ARIAIL:

Q. Are there any other items that you want to raise based off of things we discussed or things that you saw during trial?
A. I'd also like to, you know, raise the issue that I told Mr. Robinson that I would like testify for myself, and Mr. Robinson advised against that.
Q. Okay. And did you put on the rec -- did you discuss with him what it means to testify?
A. Yes, sir, I did.
Q. Did -- did you waive that on the record?
A. Yes, sir, I did.
Q. Okay. And so how are you saying he was ineffective in regards to ---
A. Because during trial, it was only testimony the evidence they had against me, and I felt that it was their word against mine. And I felt like the jury needed to hear me -- hear me say that I was innocent. And I told Mr. Robinson that ---
Q. Okay.
A. --- and he didn't tell me -- he told me he didn't think that was a very good idea.
Q. Did -- did he explain to you what happens when you put up evidence during a case?
A. No, sir.
Q. Did he tell you that he would not be able to, I

guess, close last or make the last ---
A. Yes, sir. That -- that -- that's what he said, he wouldn't be able to close last.
Q. Okay. Did he explain to you the benefits to that and did y'all discuss, you know, issues that could come up with your trial testimony versus him having the ability to close last?
A. I mean, we did. We didn't really go into detail about it, but, you know, he -- he -- he spoke to me a little about that.
Q. Here's another question I have, do you have a previous record?
A. Yes, sir, I do. And I would also like to say something about that. During my trial, the Solicitor -- it's in my trial transcript. The Solicitor told the judge that I had av charge, a carjacking from 2014. I was in the county the whole time.
Q. Okay. That was not said in front of the jury, correct?
A. Not in front of the jury, no.
Q. Okay. And as part of that, did he explain to you what could happen if you testify and how your record could be used against you?
A. Not in detail.

Q. I mean, but did he go and say that you could be impeached on your previous record and all this could come out?

A. Yes, sir.

Q. Okay. Did y'all -- did you discuss the ramifications with that or any, you know, difficulties he would have with that in front of the ---

A. No, sir.

MR. ARIAIL: Okay.

THE COURT: If you would, since it's got to be in the record, ask him what he would've testified to at trial.

MR. ARIAIL: Correct.

THE COURT: Got to go through that.

BY MR. ARIAIL:

Q. Tell me -- based on you wanted to testify, what would you have testified at trial and said if you were allowed to?

A. I would start off by saying, you know, that I -- I was picked up at 6:30 the night before that on December 17, 2012, at Pickens Gardens, the apartment behind Pickens County LEC, and I was took to my mother's house to get my tattoo gun.

And I was took to [redacted] Jones Avenue in Easley.

THE COURT: He's got to slow down.

MR. ARIAIL: Yeah, you've got ---

THE COURT: I don't have any context of what he's talking about.

BY MR. ARIAIL:

Q. Okay. Let's -- let's slow down. Go back and say a little bit slower where you went and how this all began. So ---

A. When he picked me up?

Q. Yeah. Tell me the people.

A. December 17, 2012, at 6:30, I was at Brook Smith's apartment in Pickens Gardens.

Cynthia Burkhart came and picked me up. She took me to my mother's house in Liberty. And ---

Q. Your mother is?

A. Amy Johnson.

Q. Amy Johnson. Okay.

A. Yes, sir. And she took me to my mother's house to get my tattoo gun. We sat over there for about 30 minutes. We left from there, and she took me to [redacted] Jones Avenue.

Q. Let me just stop you real quick. What time was this?

A. She come pick me up about 6:30, so we probably got over there to my mother's house around 7:00,

7 -- 7:15, somewhere around there.

Q. Okay. So at 7:15 you leave and go to [redacted] Jones Avenue?

A. Yes, sir.

Q. Okay. And who lives at Jones Avenue?

A. It was two girls, Thelma and Jen. That's all -- that's all I knew them by.

Q. Whose house was it? Do you know?

A. Thelma and Jen, that's it.

Q. Okay. So you get there what time?

A. Around 8:00 at the latest.

Q. Okay. So eight o'clock you're there?

A. Yes, sir. And I go in there. I get in the kitchen. I set up, you know, all my tattoo equipment.

Chad -- Chad Hayes was there. Sarah Hamilton was there. Jen and Thelma, the owners of the house was there. Cynthia was there. And there was a bunch of other people there that I'm not really aware of who was all there.

After I got there, maybe 30 minutes to an hour after I got there, Charles Burgess, Danny Adams, Jennifer Alred, and Heather Posey, they all pulled up together at the house.

And Charles Burgess had just got released from

prison maybe two weeks before that, and that was first time I had seen him. And whenever they got there, we all went outside. Everybody that was in the house went outside on the front porch, and we was all sitting on the front porch smoking weed and talking, you know, catching up on old times.

Charles Burgess, Danny Adams, Sarah Hamilton, Jennifer Alred, they all probably stayed there for 30 to 45 minutes. And they all left together.

Q. What time?

A. 9:30, ten o'clock at the latest.

Q. Charles; Heather; Jennifer. Who else?

A. And Danny Adams.

Q. Danny Adams. They left by themselves?

A. Yes, sir.

Q. I mean, all four of them. You stayed?

A. Yes, sir, I did.

Q. Okay. What happened after that?

A. I proceeded to draw up tattoos for Chad Hayes and Sarah Hamilton. I did a tattoo on both of those individuals that night. And I sat there, did tattoos, you know, cutting up until 4:30 that next morning. I never left until that next morning. Cynthia took me back to the apartments I was at, Brook Smith's house.

Q. Okay. Were you at the location where the attempt -- attempted murder and robbery took place?
A. No, sir, I wasn't.
Q. Okay. So you weren't a part of this group and didn't have anything to do with them when they were robbing ---
A. No, sir.
Q. Okay. Didn't have any knowledge of it?
A. No, sir.
MR. ARIAIL: Okay. Your Honor, I have no further questions.
THE COURT: All right. Cross-examination?
MR. SCHMECKPEPER: Your Honor, may it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:
Q. Good afternoon, Mr. Fulmer.
A. Good afternoon, sir.
Q. Please let me know if you can't hear me. I've had -- I've been kind of sick, so my voice is leaving me.
A. Yes, sir.
Q. And you're saying your attorney advised you not to testify; is that correct?

A. Yes, sir.
Q. Do you remember the judge, during the trial after the State rested, asking you some questions about your right to testify?
A. Yes, sir.
Q. And what did he ask you?
A. I just remember the judge asking me, you know, if it was my decision if I wanted to testify on my own behalf.
Q. He said it was your decision?
A. Yes, sir.
Q. And, in fact, he asked you, "You've decided you'd like to not testify in this trial, sir; is that correct?"
A. Yes, sir.
Q. And what did you -- what did you respond with?
A. I told him, "No, sir, I wouldn't."
Q. And that is your decision, sir, you said, yes, sir; is that correct?
A. Yes, sir.
Q. And then he asked you whether you've been coerced or forced to make that decision, and what did you say?
A. I told him, "No, sir."
Q. And then he said, "You're making it of you're

own freewill with your eyes wide open"; is that correct?

A. Yes, sir.

Q. Previously he had explained to you your right to testify and your right to remain silent; is that correct?

A. Yes, sir.

Q. And you had a break and went out and talked to Mr. Robinson; is that correct?

A. Yes, sir.

Q. What did y'all talk about?

A. He pretty much told me -- I told Mr. Robinson that I felt like I would like to testify on my own behalf. Like I said before, that I felt like the jury needed to hear me say that I didn't have anything to do with that.

Q. Well, it was your decision so why didn't you?

A. Because Mr. Robinson told me that he didn't feel like that was a very good idea.

Q. Why not?

A. Because of my record -- my previous record.

Q. Let's go over your record for a moment. You did just testify as to what you've testified in trial, so is it correct that you have a 2007 possession with intent to distribute

methamphetamines conviction?
A. Yes, sir.
Q. Is it also true that in 2008 you were convicted of petit larceny, burglary second, an unlawful possession of prescription drugs, forgery, failure to stop for a blue light, and grand larceny?
A. Yes, sir.
Q. 2010; were you convicted of forgery?
THE COURT: I can't follow you. Is that in the record?
MR. SCHMECKPEPER: Yes, Your Honor. This is page 248.
THE COURT: Okay. All right. Go ahead.
BY MR. SCHMECKPEPER:
Q. Is it true in 2010 you were convicted of forgery?
A. Yes, sir.
Q. 2011; strong armed robbery and assault and battery of a high and aggravated nature?
A. No, sir. I've never been convicted of nothing like that.
MR. SCHMECKPEPER: And just for the Court's information, this is the first time I've heard any of these allegations, so I don't have an actual rap sheet on the Applicant. I'm just going by what the

Solicitor read into the record.

THE COURT: All right.

BY MR. SCHMECKPEPER:

Q. Is it true that in 2014 you were convicted of carjacking, shoplifting third or more, another burglary second, larceny, and failure to stop for blue lights?

A. No, sir. I was in Pickens County LEC the whole year in 2014.

Q. So the Solicitor lied on the record about these offenses?

A. Yes, sir, he did. And I brought that to Mr. Robinson's attention.

Q. But he didn't make any objections?

A. No, sir, he didn't.

Q. But the other stuff's true, right?

A. Yes, sir, it is.

THE COURT: How old are you?

THE APPLICANT: Twenty-seven.

THE COURT: Okay.

MR. SCHMECKPEPER: Beg the Court's indulgence.

BY MR. SCHMECKPEPER:

Q. And you said Mr. Robinson was hired about a year after you were arrested?

A. Yes, sir.

Q. Did you ever have another lawyer before that?
A. Yes, sir, I did.
Q. Who was it?
A. I had a couple of lawyers as a matter of fact. I had Richard Waters and I had Steven Alexander and John DeJong.
Q. What happened to them?
A. Richard Waters got off my case because there was a conflict of interest, and the same thing with -- with Steven Alexander. And John DeJong got off my case because Mr. Robinson was hired.
Q. How many times did you meet with them altogether? Those three attorneys, how many times did you meet with them?
A. I met with Mr. -- Mr. Waters one time. I met with -- I met with Mr. Alexander two or three times. And John DeJong, I met with him, at the most, probably three or four times.
Q. Three or four times. And did they go over your discovery with you?
A. The only lawyer that ever went over my discovery in any fashion at all was Mr. John DeJong.
Q. John DeJong?
A. Yes, sir.
Q. And what did he talk to you about?

A. He pretty much sit there and read my whole motion with me.
Q. Your whole motion?
A. Yes, sir.
Q. What do you mean your motion?
A. Rule 5.
Q. Your Rule 5 discovery motion?
A. Yes, sir.
Q. Did he fill that out, or did you fill that out?
A. He did.
Q. He did -- he did a Rule 5 discovery motion?
A. I got my -- I got my Rule 5 from Richard Waters.
Q. So Mr. Richard Waters did the Rule 5 discovery motion?
A. Yes, sir.
Q. And then Mr. DeJong went over that you?
A. Yes, sir.
Q. What else did Mr. -- what else did these attorneys go over with you?
A. That was it. I mean, during that time it was early -- you know, early in my -- my case, and the only thing that me and my lawyer was discussing was bond reduction, sir.
Q. Did you ever ask them any questions about your

case?

A. Mr. DeJong I did. Yes, sir.

Q. And what did he say? What questions did you ask?

A. I asked him about the -- my codefendants. I asked him about my alibi witnesses. I gave him the addresses and the phone number of my alibi witnesses. And he told me that right then it was too early in my case to really discuss anything with me until he could further speak with my alibi witnesses.

Q. Did you give all of your alibi witnesses to him, not just the two that were at trial?

A. Just the two that was at trial. That was the only two, you know, at the time that was aware of anything that was going on.

THE COURT: You're talking about giving them to him. When you say "him," you're talking about ---

MR. SCHMECKPEPER: To his attorney, Your Honor.

THE COURT: Which one, Mr. Robinson or Mr. DeJong?

MR. SCHMECKPEPER: I'm talking about the original three, Your Honor.

THE COURT: Okay.

THE APPLICANT: The original three -- none

of the original three had the statements. Mr. Robinson was the only one that had got the statements.

BY MR. SCHMECKPEPER:

Q. So you met with Mr. DeJong three to four times and talked about discovery and discussed codefendants alibis, but you met with Mr. Robinson five times and didn't talk about any ---

A. I met with Mr. Robinson one time, sir.

Q. Oh, I apologize. You talked to Mr. Robinson on the phone five times and met with him one time ---

A. Right.

Q. --- and didn't discuss any of this?

A. No, sir.

Q. Did you ever ask him any questions about this stuff?

A. Yes, sir, I did. And it's very hard to speak to a lawyer on the phone, sir. They are very busy. Every time I spoke to Mr. Robinson, he had -- he was doing something, he was working on another case, he didn't have time to speak with me.

Q. How long were these phone conversations?

A. I mean, at the very most, 15 minutes. That's all we get on it. That's the amount on the phone at the county, but I know it wasn't that long.

MR. SCHMECKPEPER: Beg the Court's indulgence?

THE COURT: Okay.

BY MR. SCHMECKPEPER:

Q. You talked about the statements of your codefendants. Do you have those statements with you?

A. No, sir. I was never provided with those statements.

Q. I thought you said one of your attorneys went over discovery with you?

A. Yes, sir. And the statements of my codefendants was not in my Rule 5. My lawyer told me -- DeJong told me there was things in the motion that could not be released to me.

MR. SCHMECKPEPER: Your Honor, I have no further questions.

THE COURT: Redirect?

MR. ARIAIL: No, Your Honor.

THE COURT: What I'm going to allow you to do, just to make sure you can in the form of a proffer, the two witnesses.

MR. ARIAIL: Chad Hayes and Sarah Hamilton.

THE COURT: Yeah, I'm going to let you go ahead and -- go ahead and put that in the record so at least the record will be clear, even though I

sustained your hearsay objection.

MR. ARIAIL: Your Honor, if I can, there are two statements that I probably will put in too, but I can probably get him to testify to them also.

THE COURT: All right. However, you'd like to do it.

MR. ARIAIL: And I'll probably get those from Mr. Robinson after I do this.

PROFFER EXAMINATION

BY MR. ARIAIL:

Q. In regards to Chad Hamilton, you said he -- excuse me -- Chad Hayes. All right.

A. Yes, sir.

Q. He was -- he gave a statement?

A. Yes, sir.

Q. Do you know what that statement said?

A. I never seen the statement myself, sir.

Q. Okay. But do you know what it says?

A. Yes, sir.

Q. Okay. What does it say?

A. Pretty much that he was with me that whole night, you know, that I came over to that house at [redacted] Jones Avenue, and that I was there doing tattoos that whole night.

Q. Okay. What about the one in regards to Sarah

Hamilton?

A. The same thing.

Q. It said the same -- virtually the same thing?

A. Yes, sir.

Q. Okay. Do you know why at trial he didn't call them as witnesses?

A. I have no idea, sir.

MR. ARIAIL: Okay. Your honor, if I can, I'll probably put those in now and just proffer them into evidence, the two statements.

THE COURT: All right.

MR. ARIAIL: Your Honor, I have them here. That is only -- might have to make a copy afterwards. If I can mark them as Defendant's 1.

(Defendant's Exhibit No. 1 was marked for evidence.)

MR. ARIAIL: Your Honor, I think that handles it right there. Then I'm -- might make a copy after we're finished to be able to give everybody that back.

I have no further questions.

THE COURT: Anything else from the State of this witness?

BY MR. SCHMECKPEPER:

Q. Just regarding the statements. What kind of

tattoos did you give them?
A. On Chad Hayes, I tattooed "family first" across his forearm. And Sarah Hamilton, a rosary bead with a cross on the end of it on her arm.
Q. And they're not here today to confirm that; is that correct?
A. No, sir.
MR. SCHMECKPEPER: I have no further questions.
THE COURT: Anything else?
MR. ARIAIL: Nothing further, Your Honor.
THE COURT: Thank you, sir. You can step down.
(Applicant excused.)
THE COURT: All right. Next witness.
MR. ARIAIL: Your Honor, I'm going to call Cynthia Burkhart, Your Honor.
(Witness approached.)
THE CLERK: Place your left hand on the bible and raise your right hand, please.
THE WITNESS: (Complying.)
THE CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?
THE WITNESS: Yes, ma'am.
THE CLERK: State your full name and spell it,

please.

THE WITNESS: Cynthia Denise Burkhart. C-y-n-t-h-i-a, Denise, D-e-n-i-s-e B-u-r-k-h-a-r-t.

THE COURT: All right. Thank you.

CYNTHIA BURKHART,

having been produced and first duly sworn as a witness on behalf of the Applicant, testified as follows:

DIRECT EXAMINATION

BY MR. ARIAIL:

Q. Cynthia, state your name one more time.

A. Cynthia Denise Burkhart.

Q. How do you know Mr. Fulmer?

A. Through friends and family.

Q. How long have you known him?

A. For a while.

Q. Okay. Now, I want to take you -- you back to I guess the date and what he testified to -- I think it was December 2012 -- in regards to an incident where I think you -- did you pick him up?

A. Yes, sir.

Q. Okay. Tell me if you -- what you recall about that day and your involvement with Mr. Fulmer that day.

A. I went to pick him up at the apartments behind

LEC at 6:30.
Q. Tell me what apartments those were.
A. The apartments behind the LEC. I don't know what kind of -- I mean, the name.
Q. Pickens Gardens?
A. Yes.
Q. Okay. So you went and picked him up?
THE COURT: LEC is the Law Enforcement Center?
MR. ARIAIL: Law Enforcement Center. Yes, Your Honor.
BY MR. ARIAIL:
Q. So you went down there to pick him up in your car?
A. Yes.
Q. Okay. And what time was that?
A. 6:30.
Q. Okay. So when you went to pick him up, was he residing at the Pickens Gardens apartments?
A. I don't know. All I know is that I was just there to pick him up.
Q. Okay. So you picked him up?
A. Yes.
Q. Just him by himself?
A. Yep.
Q. Okay. It's 6:30. Where'd y'all go?

A. We went to his mother's.
Q. Okay. And where does his mother live?
A. On Watts Road.
Q. Okay. And do you know his mother?
A. Yes. Amy Johnson.
Q. Okay. Amy Johnson. Okay. And what did y'all do when you got to his mother's house?
A. He went to get his to tattoo stuff.
Q. Okay. How long ---
A. Pack it up. That took maybe 20, 25 minutes to get all that done. And then we went from there to Easley.
Q. Okay. And how long did that take you?
A. I don't know. Maybe 30, 45 minutes to get from Pickens to Liberty to Easley.
Q. Okay. Where were you going in Easley?
A. To a house -- umm -- some house. I'm not good with directions or addresses.
Q. Okay. And you got -- you took him there?
A. Uh-huh.
Q. What time do you think you arrived at this house in Easley?
A. 7:30.
Q. 7:30. Who was there at the house when you arrived?

A. A whole bunch of people. A lot of people I don't know.
Q. Well, who'd you know there?
A. Just Rob.
Q. Rob?
A. Uh-huh.
Q. Okay. So you were at this house in Easley, and what is Rob doing at this house?
A. Setting up his tattoo stuff and drawing out pictures to put on these two people.
Q. Okay. And did you witness him doing, I guess, these tattoos?
A. Yes, sir.
Q. Okay. And so tell me what he was doing during the day when he was doing these tattoos?
A. Talking, doing the tattoo, taking breaks, you know, just hanging out and doing work.
Q. Okay. And -- so how long did you guys stay there?
A. Until about 4:30.
Q. 4:30?
A. Yeah.
Q. Okay. So from 4:30 -- you're saying that was 7:30 at night, p.m., to 4:30 a.m. the next morning?
A. Yeah.

Q. Did y'all leave that residence at any time?
A. No.
Q. Stayed there the entire time?
A. Yes, sir.
Q. Was a group of people -- did you meet anybody by the name of Jennifer Alred; Heather Posey; Charles Burgess; Danny Adams?
A. I think I did, but I'm -- I'm not good with names. I'm good with faces.
Q. Okay. So tell me -- what I'm trying to figure out is, people were coming in and leaving?
A. Coming in and leaving.
Q. Were there people that came in together and left together?
A. Right.
Q. Okay. Do you remember any of those individuals I just gave you the name of?
A. If I see their face, I could probably tell you, but by name, I really can't. I'm sorry.
Q. Okay. The key is, you didn't see Mr. Fulmer leave with anybody during that period of time?
A. No. He stayed right there with me.
Q. Okay. Did you speak with anybody about the facts of this case prior to today?
A. No, sir.

Q. Any attorney?
A. No, sir.
Q. And I hear we've got it sounds like four attorneys that represented Mr. Fulmer at some point in time. Were you ever contacted by any of them?
A. No, sir.
Q. Ever contacted by any investigators about this?
A. No, sir.
Q. Okay. Why are you just coming in today and ---
A. Because I moved to Georgia like not long after that. I went to Georgia because my granny was real sick, and I stayed there almost a year and a half.
Q. Okay. Did anybody during your time at this house while you were there mention anything about an armed robbery or going to rob somebody?
A. No.
Q. So you never heard anything about that?
A. No.
Q. Did you ever see any weapons?
A. No, sir.
Q. Did you ever see any drugs?
A. No.
Q. Did you ever see any illegal activity that night you were there?
A. Just the tattoos and that's it.

MR. ARIAIL: Okay. Your Honor, I have no further questions.

THE COURT: Redirect -- excuse me. Cross-examination?

MR. SCHMECKPEPER: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q. So you were there the entire time sitting next Mr. Fulmer the entire time?

A. Yes.

Q. Only saw him tattooing. Didn't see him smoking pot?

A. He went on the porch, but I could still see him.

Q. So you never saw him smoke pot?

A. To me, it was cigarettes, I mean....

Q. And you never got in touch with anybody about this before today?

A. No. I didn't know all of this was going on.

MR. SCHMECKPEPER: No further questions.

THE COURT: Redirect?

MR. ARIAIL: No further questions, Your Honor.

THE COURT: Does the transcript reveal where the shooting was?

MR. SCHMECKPEPER: Yes, Your Honor. And it was

that actual victim's house I believe.

THE COURT: What was that address? Was it in Easley, I assume?

MR. SCHMECKPEPER: I believe so, Your Honor. I can try and find out real quick.

THE COURT: Just trying to find out from somebody how close these places may have been from one another or to each other.

MR. SCHMECKPEPER: And, Your Honor, I believe these transcripts may be redacted.

THE COURT: The address?

MR. SCHMECKPEPER: Yes, Your Honor. I can get that information for you.

THE COURT: Well, if it makes a difference, I mean, I don't -- I'm just trying to sort through this best I can.

MR. SCHMECKPEPER: Yes, sir.

THE COURT: Next witness.

MR. ARIAIL: Yes, Your Honor. Call Wanda Harper.

THE COURT: Wanda Harper?

MR. ARIAIL: Wanda Harper. Yes, sir.

(Witness approached.)

THE CLERK: Place your left hand on the bible and raise your right hand, please.

THE WITNESS: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: State your full name for the record.

THE WITNESS: Wanda Elaine Harper.

THE CLERK: Please be seated.

THE WITNESS: (Complying.) Thank you so much.

WANDA HARPER,

having been produced and first duly sworn as a witness on behalf of the Applicant testified as follows:

DIRECT EXAMINATION

BY MR. ARIAIL:

Q. Hi, Ms. Harper. How are you doing?

A. I'm doing good. Thank you.

Q. Good. Good. Tell me, how are you related to Mr. Fulmer?

A. He's my grandson -- my first grandson.

Q. Okay.

A. My first grandbaby, period.

Q. Got it. Okay. And I want to take your

attention back to this December 2012. And there was a time where, I guess, he came to your house. Do remember at some point in time he came to your house and picked up a tattoo gun?

A. Yes, sir, I do.

Q. Okay. Tell me a little about that.

A. Well, he came in and, you know, he does tattoos and he got all his tattoo stuff together, and I chatted with him for a few minutes. You know, these young people don't want to spend much time with older folks, but that's all right. We talked for a few minutes, and then him and Cynthia was there and they left.

Q. Okay. Tell me who he was with that day.

A. Cynthia Burkhart.

Q. Okay. And how long did they stay at your house?

A. They got there probably about 6:30. They probably stayed till about 7:10 maybe.

Q. Okay. And then ---

A. I'm really not sure about the time though.

Q. Okay. Now, you also know a Jennifer Alred, correct?

A. Yes, sir.

Q. Okay. Tell me, have you heard any -- have you

talked with her?
A. Yes, sir. She moved into the house with us. It was a big house. And -- and Robby wanted her to leave. Well, she got mad and she said she would get even with him.
MR. SCHMECKPEPER: Your Honor, I object to hearsay.
THE COURT: Mr. Ariail, any response to that, his objection?
MR. ARIAIL: Your Honor, I have no -- it's hearsay.
THE COURT: All right. Sustained.
BY MR. ARIAIL:
Q. Okay. Have -- have you ---
MR. ARIAIL: I think that's all I have, Your Honor.
THE COURT: Well, let me -- did you know why he wanted the lady to leave?
THE WITNESS: Yes, sir. Because she had done got on drugs and drugs was not allowed there.
THE COURT: She was living at your house?
THE WITNESS: She was living at my daughter's house. I stayed there with her because I took care of my grandson which was a paraplegic.
THE COURT: Because early, he said he stopped

by his mother's house. But if this was his mother's house with his grandmother, this witness was also staying there?

THE WITNESS: Yes, sir.

MR. ARIAIL: Correct.

THE COURT: All right.

BY MR. ARIAIL:

Q. Now, my other -- one last one. Was Ms. Alred upset with Mr. Fulmer?

A. She was very upset, sir.

MR. ARIAIL: Okay. Your Honor, I have no further questions.

THE COURT: All right. Cross-examination?

MR. SCHMECKPEPER: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q. Did you ever tell any of this to Mr. Robinson? Did you ever tell any of this to Mr. Fulmer's counsel?

A. Mr. Robinson never really -- I never even really talked to him until the day of court, and he made me stay outside the courtroom because he was going to use me as a witness, but he never called me in.

Q. So did he talk to you about your testimony

before that?
A. He never gave me the time, sir.
Q. He was going to call you as a witness, correct?
A. He said he was, but he never did.
Q. Did he ever talk to you before that about maybe what you were going to say?
A. No, sir, not really.
Q. Did you ever talk to Mr. Robinson before the day of the trial?
A. I think I may have tried, sir, yes, sir, because it was very important.
Q. When did he ask you to step out -- when did he -- when did you know you were going to be a witness or when did he say you were going to be a witness?
A. He told me I was going to be a witness, that I had to stay outside the courtroom because I wasn't allowed in there because he was going to use me as a witness. And if I went inside, then that would eliminate me from being a witness because I'd be hearing everything, sir.
Q. And that was the first time he told you that was at trial?
A. Yes, sir.
MR. SCHMECKPEPER: Your Honor, I have no

further questions.

THE COURT: Redirect?

MR. ARIAIL: No, Your Honor.

THE COURT: Thank you, ma'am. You can step down.

THE WITNESS: Yes, sir. God bless you.

(Witness excused.)

MR. ARIAIL: Your Honor, I have one further witness, Melissa Fulmer or Ms. Morris.

(Witness approached.)

THE CLERK: Place your left hand on the bible and raise your right hand, please.

THE WITNESS: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: State your full name for the record.

THE WITNESS: Melissa Ann Morris.

THE CLERK: Please be seated.

THE WITNESS: (Complying.)

MELISSA MORRIS,

having been produced and first duly sworn as a

witness on behalf of the Applicant, testified as follows:

DIRECT EXAMINATION

BY MR. ARIAIL:

Q. Ms. Morris, how are you doing today?

A. I'm good. How are you?

Q. Good. And I want to talk to you a little bit about, are you married to Mr. Fulmer?

A. No.

Q. Okay. How are you related to Mr. Fulmer?

A. He's just my fiancé.

Q. Okay. Fiancé. Now, during his representation, did you hire Mr. Robinson on his behalf?

A. Yes, sir.

Q. Okay. What conversations did you have with Mr. Robinson?

A. I just went over, you know, what had happened and the charges and that we had witnesses, that he was not there, I mean, that he never left that home that night, and about Jennifer. I knew about her.

Q. Okay. Did you tell him about any of the alibi witnesses?

A. Yes.

Q. Who did you tell him about?

A. Chad Hayes and Sarah Hamilton because I

actually took the paper to the lady to subpoena them. I took it -- went and paid her to go subpoena them for court.

Q. Okay. What you're saying is you took a subpoena to the process server to get them to come to court?

A. Yes, sir.

Q. Okay. That was way after you hired him, correct?

A. Yes, sir.

THE COURT: Who prepared the subpoena? Who gave it to you?

THE WITNESS: I went and picked it up at his office.

THE COURT: Okay.

BY MR. ARIAIL:

Q. Okay. And ---

A. They were having trouble, I guess, catching them at home is the reason he asked me because I lived closer, so...

Q. Okay. Were you a part of any conversations that Mr. Robinson had with Mr. Fulmer about his testifying?

A. Yes. I was sitting behind them during trial and I heard Rob say he wanted to testify on his

behalf, that he thought the jury needed to hear that. And Mr. Robinson said he didn't think that would be a good idea.

Q. Okay. Did he -- did he tell him why he didn't think it was going to be a good idea?

A. I didn't hear that. I just heard him say he didn't think that would be a good idea.

Q. Okay. Now, at some point in time after trial, did you contact Mr. Robinson about filing an appeal?

A. Yes. I talked to him the day after, and he told me that they were going to do that. It had to be done within ten days, and that his paralegal would be preparing that.

Q. Okay. Do you know if that was done or not?

A. Not that I'm aware of.

MR. ARIAIL: Okay.

MR. SCHMECKPEPER: Your Honor, I'd just like to object at this point to the extent that they're raising a new allegation.

I think the application has one allegation in it. This is probably the fourth or fifth new allegation. So at the very least, I'd like the opportunity to keep the record open in case I need to submit any other affidavits.

THE COURT: Well, I'm going to allow it, but

Mr. -- what did she say that Mr. Robinson told her to do with the subpoena? What did she do with the subpoenas?

MR. ARIAIL: Actually, she was the one that went to serve them if I wasn't mistaken.

THE WITNESS: I went and took them to the person who was supposed to serve them.

MR. ARIAIL: Excuse me. Went to take them to the process server. Do you remember who that person was?

THE WITNESS: I do not.

THE COURT: Who -- who was it that the witness said she was -- he was trying to have -- he was having a hard time trying to find at home?

THE WITNESS: Chad Hayes and Sarah Hamilton. They were both -- they both worked and we couldn't catch them at home.

MR. ARIAIL: Okay. The two individuals that were alibi witnesses?

THE WITNESS: Yes, sir.

MR. ARIAIL: Your Honor, I have no further questions.

THE COURT: All right. Cross-examination?

MR. SCHMECKPEPER: Your Honor, I beg the Court's indulgence.

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q. Just to clarify, you said you were sitting behind the Applicant and counsel during trial?

A. Yes.

Q. The Applicant said, "I want to testify. My story should be told"?

A. He said, "I want to testify on my behalf. I think the jury should hear my side."

Q. Counsel said, "I don't think that would be a good idea"?

A. He said, "We'll talk about it later." They didn't talk about it later.

Q. Were you there later when they talked about it?

A. No.

Q. So that's all you heard?

A. Uh-huh.

Q. You didn't hear counsel try to coerce him or talk him out of it? He just said, "I don't think it would be a good idea"?

A. Yes, sir.

Q. Did you ever tell counsel about Ms. Burkhart?

A. No. I didn't -- I didn't know about her at the time. Nobody knew where she was at. Couldn't find her.

MR. SCHMECKPEPER: I don't have any further questions.

THE COURT: Redirect?

MR. ARIAIL: No, Your Honor.

THE COURT: Okay. You may step down.

(Witness excused.)

THE COURT: Any additional witnesses?

MR. ARIAIL: Yes, Your Honor. We'll call Mr. Robinson to the stand.

THE COURT: Okay.

(Witness approached.)

THE CLERK: Place your left hand on the bible and raise your right hand.

THE WITNESS: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: State your full name for the record.

THE WITNESS: Scott Robinson.

SCOTT ROBINSON,

having been produced and first duly sworn as a witness on behalf of the Applicant, testified as

follows:

DIRECT EXAMINATION

BY MR. ARIAIL:

Q. Scott, how are you doing today?

A. Doing well. Thank you.

Q. Good. Your representation of Mr. Fulmer, do you know when you were retained on his case?

A. Would've been some time -- he's probably right. Probably a little over a year since he switched counsel. I'm not sure exactly of the time, but I represented him a decent period of time.

Q. Okay. So in my -- he says April of 2014. It looks like he was tried in August. Does that sound right?

A. Sounds about right.

Q. August 2014. Okay. So you were probably on the case five -- five, six months, somewhere around in there?

A. If you do the math, that's probably about right.

Q. Okay. And tell me, he's testified that you talked to him once at LEC and five times on the phone.

A. I can't give an independent recollection of every time I talked to him at LEC. I know I talked

to him a decent amount of times.

THE COURT: Can you move that microphone, please?

THE WITNESS: (Complying.)

BY MR. ARIAIL:

Q. So you don't know if he's correct or incorrect?

A. I don't know. I don't have an independent recollection of that.

Q. Okay. Now, tell me do you remember discussing and going over with him the evidence in the case, discovery, the elements, and offenses?

A. My normal practice back then and now would be to do that, alright, but I'm not sure exactly as far as when I went over this with him.

Q. Okay.

A. Whether it was a phone conversation or something, I'm not really sure.

Q. Do you specifically remember going over it with him?

A. I have no specific knowledge of it. I know I would've done at some point.

Q. Okay. Do you normally give him a copy of his discovery, or how do you do it?

A. If he's got it already, I normally don't, but usually I do.

Q. Okay. In this case, do you know if he had it or not?
A. I don't know that.
Q. Okay. Now, in this case, we've got -- this was a trial that was pretty much based off of what codefendants were saying happened during an alleged armed robbery?
A. Yes.
Q. So one of the key things that we've kind of -- he's brought up to me is that there were witnesses that said he was not at the scene or alibi witnesses. Do you remember having a discussion with him about those alibi witnesses?
A. There were two, yes, two.
Q. Okay.
A. And I think I gave you the statements.
Q. Sarah Hamilton and Chad Hayes?
A. Yes.
Q. Okay. In those statements, you want to look at them again, Defendant's 1. Do you recall talking with him about those statements?
A. Yes. Because I think his -- I think the girl that just testified may have brought them by to me.
Q. Okay. So let's go through that. So you get the statements from the individuals -- or excuse

me -- from Ms. Morris?
A. Someone brought them to my office, yes.
Q. Okay. At that point in time, did you contact him, have a discussion with him?
A. I'm not sure -- I would've talked to him about them, but I don't know if I went and where I did that. Whether it was on the phone or something, I'm not sure.
Q. Okay. What I'm saying is, did you go and talk to those individuals about their statements?
A. I did not. I don't know if I knew where they were at that point.
Q. Okay. And -- and correct me if -- is there any phone numbers or any identifying information on those?
A. No.
Q. There's no phone numbers?
A. No.
Q. Did anybody tell you a phone number or contact information for those individuals?
A. No. This is it.
Q. Okay. Did you hire anybody to go find them to figure out like an investigator to see -- get more information from them?
A. I did not.

Q. Okay. Now tell me, the key to this case it sound to me was whether or not he was at the scene during this; is that correct?

A. Well, that's -- if he says he's not there, an alibi witness could potentially say he wasn't there at that time.

Q. Okay.

A. That's why they were subpoenaed to come to court that day.

Q. Okay. And let me go back and make sure I got an understanding of this case. There were four individuals -- a Charles Burgess, Danny Adams, Heather Posey, and Jennifer Alred -- who implicated him in the armed robbery.

Now, if I'm not mistaken, they were all arrested together at a Hot Spot where I think it was Mr. Burgess pulled the gun on the officer at that time?

A. Right. There were four of them ---

Q. Okay.

A. --- in the car at the Hot Spot, and they arrested them at that time.

Q. Okay. So he was not with them at the Hot Spot?

A. He wasn't.

Q. Okay. Now, reviewing the case and looking at

it, how important do you believe looking into these witnesses and making a determination if they could provide an alibi was to this trial or case?

A. I think it's -- I think an alibi witness that's reliable, that you can get in touch with, that will come to court is extremely important.

And I think an alibi witness in this case was very important, but these two people -- these two were not very reliable and they didn't really have a lot of good testimony, because I believe that night at this place, there was a lot of drug activity going on -- smoking pot, alcohol, things like that.

Q. Okay. So you at some point in time talked to them?

A. I did.

Q. Okay. Did they tell you the same thing that was placed in their statement?

A. They were very -- this is what I'm recalling from two years ago. I wasn't very impressed with their testimony as far as the strength of their testimony in terms of they were very wishy-washy a little bit on this as far as what they were going to say, because I think -- I don't know exactly why, but two reasons I didn't use them is, one, their testimony didn't -- it wasn't -- it was a short bit

of testimony and they -- they were really reluctant to come in and on the record give the information that the Applicant states. They were kind of reluctant about that.

The second reason is, if I -- if I would've put up the wishy-washy alibi witnesses that weren't really sure of themselves that night because both of them, I believe, were also doing marijuana with him that night. And they were not really the strongest alibi witnesses, but the second reason, it also provided me the opportunity to have the last argument in this case, which I thought was important.

Q. Okay. So what I'm trying to understand is, you made a strategic decision to not call them because you wanted the last argument and you believed their testimony was, I guess, going to be wishy-washy?

A. They weren't -- they weren't strong, true. Not strong -- they weren't strong alibi witnesses, and I wanted the last argument, correct.

Q. Okay. But, you know, looking at it -- I mean, now you've heard Cynthia Burkhart. Were you aware of her as a witness?

A. No. Only person -- the only person I knew about were these guys, Chad Hayes and Sarah

Hamilton, and they were difficult to even get ahold of.

Q. But you would agree that this case falls apart if he can prove that he is at a different location and was not with the four individuals?

A. Oh, I think it's important, sure.

Q. Okay. So if it's -- I'm just trying to figure why you believed not attempting or trying to put in that evidence, I guess, outweighs trying to get the closing argument. How'd you come up with that?

A. If they -- well, in talking with them, and this is what I recall about this, they weren't -- they gave that statement. They wrote these statements, but as far as what they were going to testify to, they weren't -- I think they were very scared, not really all that pleased to be in court.

And as you know, Mr. Ariail, when you -- when you have a case like this and you put up witnesses that you're kind of concerned about what they're going to say and how they're going to say it, it can backfire on you very quickly. And that was my strategic reason for that. That was one of the -- one of the reasons for that.

Q. So -- and your strategy in this case was to say he was not with them at the time this was committed;

is that correct?

A. There were -- well, if you read the transcript, there was no physical evidence in this case -- fingerprints, whatever. The -- no witness could identify, other than these codefendants who had a lot of self-interest in this case as far as getting better sentences and so forth, there was really no one else.

The -- the -- the victim, Charles Robinson, couldn't identify him. No one could identify him. He wasn't in the car. All those things were part of this. That was my strategy in this case.

Q. Okay. And you didn't feel that it was going to help you to put in the additional piece of evidence that he wasn't at that scene or he was at a different location?

A. If there was strong alibi witness that would've provided that, it was -- it was not -- it was wanting to -- wanting to say exactly what that statement said, do everything right. But when they're -- you're talking to them and they -- they're not really willing to go into that that much, it makes it difficult.

Q. Okay. Did you discuss with him his ability to testify?

A. Yes.
Q. Do you think he understood -- I know I've told him a little bit about what it means if he doesn't testify or what could happen when he testifies?
A. Well, I think, you know, I -- I would've talked to him, but I think the judge did -- Judge Stilwell, in his colloquy, went over with him everything as far as dangers, going over his record as far as what could be used against him, as far as impeachment goes. He went over that whole part of it. I think he did a great job. I went over it with him, but the judge also on the record made sure that this is what he wanted to do.
Q. Okay. Now, he had one additional item I believe was direct appeal. Did you discuss with him his appellate rights and whether he's going to appeal and all that?
A. No. I don't have any independent recollection of that. If he had ask for it, I would've probably done that, but the witness -- the witness here a second ago said she had talked to me or whatever, I don't have any independent recollection of that so I can't tell you unequivocally that I did.
Q. Okay. What type of investigation did you do to go out and talk to these people or to have a

discussion about what they would testify to?
A. Well, I can't talk to victims in this case.
Q. Right.
A. I can't talk to the codefendants in this case. The only people I could've talked to would be the alleged alibis in this case, and these folks were not wanting to be found in this matter.
Q. And they showed -- they did show up to trial, correct?
A. They did because the judge actually had someone -- signed an order to make them come to court.
THE COURT: Which witnesses were those, sir?
THE WITNESS: Your Honor, that would be Chad Hayes and Sarah Hamilton, which are the ones that we listed as the alibi witnesses that were on the witness list.
BY MR. ARIAIL:
Q. Were you ever provided information that Charles Burgess had said that he was the one that shot the victim?
A. You have to go by the transcript in this one. I know from one of the witnesses, the -- one of the witnesses stated that Mr. Fulmer said something about that or something.

Q. Right.
A. It was either Jennifer Alred or Heather Posey. I'm not sure exactly which one is was.
Oh, yeah, it was Heather Posey. She said -- she testified that Fulmer admitted to her that he shot the victim, didn't expect the victim to be there when it happened.
Q. Okay. Now ---
A. But the whole thing came down to, I think, based on the testimony was, this was a drug house that Mr. Robinson had, and I think they were going to go over there when he wasn't there to get the drugs. That's what the plan was that night.
Q. Okay. My -- my question was, at some point in time there was a sale made or somebody had said that Mr. Burgess was the one that shot him. Either Steven Pepper or Trent Black provided that, but were you ever -- were you aware of that or ever made ---
A. If I was, I would be a little suspicious of it if I get that information because you have a -- you have a criminal testifying for a -- for a person.
And that, again, two reasons. One, you don't know how credible they're going come across to the jury.
Q. Right.

A. Two, lose the last argument.
Q. Okay. Did you ever hear that Jennifer Alred was upset with or going to seek retribution against Mr. Fulmer?
A. I have no independent recollection of that.
MR. ARIAIL: Okay. Your Honor, I have no further questions.
THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:
Q. Afternoon, Mr. Robinson.
A. Hi.
Q. Let's start with when you initially took over this case. I think you've heard testimony today that the Applicant had three previous attorneys before you; is that correct?
A. That's what -- that's what he testified to.
Q. And did you get notes from any of those attorneys? Did you get the file from any of those attorneys?
A. I am not sure. I'm really not sure. I got the file. I got the discovery in the case. I also got -- everything to do with it, I would've received.
Q. And you reviewed ---

A. I received the whole file.
Q. I apologize. And you -- did you review discovery?
A. Yes.
Q. Did you go over it with the Applicant or is this -- is your general practice to go over it with your client?
A. That's my general -- that's my general practice. I can't tell you the exact time I would've gone over it with him, but that -- that's ---
Q. This is roughly two years ago, correct?
A. It's about that long ago, yeah.
Q. Talking about these alibi witnesses. Now, you testified earlier that you did talk to them?
A. They were in court. The judge was nice enough to get them to court for me to talk to them and I would've talked to them.
Q. So you talked to them before the trial, right? I mean, you had the entire trial?
A. Well, we made a motion for a continuance at some point in the beginning because we couldn't get those people to court. They were listed in our witness list, but the judge held -- didn't continue it.

Q. But you were able to talk to them?
A. He got them in -- he got them into court for me to talk to them.
Q. When did you talk to them? Was it before or after trial?
A. Oh, before the trial. It was actually during the trial. They finally came to court at some time.
Q. At the beginning of the trial, you had them there ready to testify?
A. I think. And that's what I -- they weren't there when they first -- when we first started the trial because they didn't -- I don't know why they weren't there, but I asked the judge to continue the case because I couldn't get the witnesses to court. I couldn't find them or whatever, and he did an order and asked the deputies to go out and get these people. They had -- they did. They brought them to court.
Q. All right. If you could please turn your attention -- I beg the Court's indulgence -- page 245, line 19.

After reading that, would you agree with me that the judge gave the opportunity following the close of the State's case to decide whether or not you wanted to call those alibi witnesses?

A. He did. Yeah, he did. That is true.
Q. And looking at page 249, right around line 15 -- I guess 12 through 16. You agree with the judge that you had sufficient time to talk to them?
A. He did.
Q. Look at page 251, right around page 3. The judge asks you, "Mr. Robinson, do you intend to put any evidence into the record, sir?"
And you said, "Your Honor, I do not."
So it's fair to say you had time to talk to these witnesses after the close of the State's case and evaluate whether or not they would help your case or not?
A. I did. Yes.
Q. Have you ever put up an alibi witness before?
A. I put them up before if it -- if -- but, again, as I -- as I stated before with counsel for Mr. Fulmer, you got to be careful with alibi witnesses because unless they give you -- unless they're credible, potentially a lot of them can actually -- and they want to be there, you know, you could wind up really hurting yourself. I have to evaluate -- I have to evaluate everything for a client.
Q. Now, let's talk about that. You've talked

about the difference between strong and weak alibi witnesses. I believe these were, in your opinion -- and I apologize for my voice. These were, in your opinion, weak alibi witnesses?

A. Yes.

Q. Is there any risk that a weak alibi witness could actually hurt your case?

A. Oh, a big risk.

Q. What happens if you put up an alibi witness that you don't think is credible and the jury agrees and find them not credible?

A. Well, you sunk -- you've sunk your case at that point, and they get the last opportunity. They could point to that.

Q. In a case like this, you went over earlier the actual evidence. How much physical evidence was there in this case?

A. None.

Q. But there were four codefendants testifying against the Applicant?

A. I tried my best to discredit them, impeach them, and all that. We tried our best to do that.

Q. So -- so how important is it in your -- in your opinion and your experience as a trial practitioner to have the last argument in a case like this one?

A. It's extremely important because you can point out the problems with the State's -- you can basically take apart their whole case.
Q. And how long have you been practicing law?
A. At this time or then?
Q. I say at this time -- at the time of the trial.
A. It would be about 19 years.
Q. When were you -- when did you initially get your law license?
A. November '92.
Q. And what percentage of your practice is dedicated to criminal law?
A. Now, it's -- now, it's pretty much 100 percent.
Q. And are these -- the vast majority of these are misdemeanors or felonies?
A. Almost -- almost all are felonies, either murder, attempted murder, all sorts of cases.
Q. And you've also had the opportunity to talk to your -- talk to your clients before about the right to testify; is that correct?
A. Yes.
Q. And do you make it clear that it's their -- their right and their decision?
A. Absolutely.
Q. Do you ever exert pressure or coerce them to

testify or not?
A. No.
Q. In this case, do you remember exerting any pressure?
A. Not on this individual. Not Mr. Fulmer. I mean, he's a pretty strong-willed guy. He's not going to -- you know, he's going to think about it himself and I think he did that.

I think -- but I think after the judge spoke to him and told him, you know, based on the whole thing, I think he decided to do it.
Q. I mean, you heard him testify -- testify here today as to what he would've said. You also heard some of his criminal background; is that correct?
A. Yes.
Q. And would you have relayed to him -- relayed to him that the Solicitor would've been able to cross-examine him on some of his actual convictions?
A. Yes. And I think the judge, when he was -- in the colloquy, he was -- he got the record from the Solicitor. And the judge said these are -- there are certain charges that can be used against him in this matter.

MR. SCHMECKPEPER: I beg the Court's indulgence?

THE COURT: Okay.
BY MR. SCHMECKPEPER:
Q. You ever heard of Ms. Burkhart before?
A. Not before -- not before today.
THE COURT: Not before when?
THE WITNESS: Today. Not before today.
BY MR. SCHMECKPEPER:
Q. Not from the Applicant's mother or grandmother, fiancée?
A. No. The only persons I knew about was Mr. Hayes and Ms. Hamilton.
Q. And who told you about Mr. Hayes and Ms. Hamilton?
A. I think he may've told me about them.
Q. So you're telling me that he told you about Mr. Hayes and Ms. Hamilton, but he didn't tell you throughout the course of your entire representation about this third witness who was sitting with him the entire time?
A. The only person he had ever talked about with me would be these two people. That's it. Because if they were alibi witnesses, they would've been on the -- they would've been on the list of witnesses.
Q. And, in fact, you subpoenaed those witnesses, correct?

A. We did.
Q. Did he ever tell you about any cellmates -- any cellmate witnesses who could testify to anything?
A. Not that I recall.
MR. SCHMECKPEPER: Your Honor, I have no further questions.
THE COURT: Redirect?
MR. ARIAIL: Yes, Your Honor.
THE COURT: I'm going to allow -- and I know it's going to be over the State's objection. I would like for this witness to tell me why he thought the witnesses -- the two witnesses who would've hurt. I know he said they were wishy-washy and reluctant, but I need some details.
MR. ARIAIL: I was trying to get back in little bit with that.

REDIRECT EXAMINATION

BY MR. ARIAIL:
Q. Mr. Robinson, if you can, I mean, I know we're trying to dig down and to figure out why you believe they shouldn't have been called and if there's anything you recollect about that, the specific reasons as to why you didn't want to call them.
A. Let me -- let me tell you how they acted. They acted as though they -- they -- either they were --

they acted like they were under the influence or kind of high -- high on drugs when they came.

I think that's one of the reasons why they didn't to come to court. I don't know. But when I spoke to them, they -- although they agreed they wrote the statement, they were not really sure if he was there with them. That's what the problem was, because they didn't -- they didn't actually -- they -- although they wrote these statements and I had these statements to show them, they couldn't say that he was there with them the entire time. That's why.

When I say "wishy-washy," what I'm saying is that they did not say -- they were not going to testify exactly like this. And if the State had had the opportunity to talk to them or they had testified and they said, "We're really not sure that he was there or not," that's what wishy-washy means.

Q. Okay. So my understanding is, they came to court and my first thing is, you tried to subpoena them, but you couldn't get them under subpoena?

A. They didn't willingly come to court. They had to have the judge issue an order from the bench to get them there.

Q. Okay. So when they showed up, you talked to

them in the hallway or somewhere out here, correct?
A. Right.
Q. Okay. Did you show them the statements?
A. I believe I did.
Q. All right. And you're -- you're saying they said they can't recollect if he was there from 8:30 to ---
A. They -- they weren't exactly sure. They weren't -- and they were also -- at that time at the time this all occurred, they were all kind of doing some marijuana and there was some drinking going on, as well.
Q. Okay. So there's two different things. When they showed up at court, are you saying they were under the influence here?
A. They seemed a little bit -- they didn't seem very -- what's the word? Normal I guess is the word I'd use. They just were kind of -- you could tell they were "partiers." You could tell that at the time.
Q. Do they remember him being there at some point in time?
A. At some point in time, but they couldn't say when.
Q. Okay. Because here -- here are the facts. I

want to make sure we're going through it. At some point in time during this party, there is a plan to go out and to rob the victim?

A. According to the codefendants. That's what they said.

Q. Okay. Did you discuss with them any type of, you know, things they would've witnessed in regards to planning, brandishing of weapons, any type of activity which would've shown they were going out to do this robbery?

A. I was more concerned about where he was and a time he was there, because we had when -- when this incident occurred, and I was interested to find out where he was at the time according to them.

THE COURT: What time did the incident occur?

THE WITNESS: May I look at the transcript?

THE COURT: Yes, sir. And, Mr. Ariail, when you said there was talk at the party, you're talking about the house in Easley where he was doing the tattoos?

MR. ARIAIL: Yes, Your Honor. The tattoo house.

THE WITNESS: Your Honor, it appears from the testimony that it would've been dark outside, so it would've been evening some time. And when he came

home, he said that the lights were on in the house.

THE COURT: All right.

BY MR. ARIAIL:

Q. And I guess what I'm -- do you remember the testimony where -- I'm trying to see how this plays in your evaluation. They're -- they're plotting this at some point in time, and I think there was some discussion as they're all leaving together to be able to go over and to rob this victim?

A. These two folks didn't hear anything.

Q. Okay.

A. My recollection of that conversation was that they didn't hear anything.

Q. Okay. My -- and the reason I'm asking that is, do you think that plays into your evaluation of putting them up as witnesses and saying, "Well, that's different than what all these four codefendants are saying and they didn't hear anything about this preplanning, the brandishing of weapons, or anything like that"?

A. Well, I didn't know -- I don't know where these two folks were in relation to them. At some point, Mr. Fulmer on the porch with some people according to them. I don't know exactly where they were in this house, whether they could've heard any sort of

planning by anyone.
Q. Okay. Did you ask them whether or not Mr. Fulmer left with these other four individuals to go someplace?
A. I would've just gone from the statements and seen what they -- where he was at the time and all that, so that's what I'm recalling.
Q. And the reason I'm asking, I mean, is their own test -- clearly they testified to this common plan scheme, they're doing it all together. Do you believe for impeachment purposes, even though they might not have been able to provide an alibi, do you think for impeachment purposes that these witnesses would've been beneficial to prove that these four witnesses that got up here were not providing truthful information?
A. Well, if you look at their statements, all they test -- all they say in their statements is, "He was with me at the tattoo parlor from 8:30 a.m. -- p.m. to 4:00 a.m." They don't mention anything about any discussions that took place with the other people.
Q. And I understand they don't mention it in that statement. What I'm saying is, when you discussed it with them outside, did you go in with them and discuss, "Here's some other things that might be

beneficial to me during trial to be able to rebut this string of codefendants that are going come in and say Mr. Fulmer was the one that was shooting and robbing and doing all this"?

A. I think I -- I don't -- I have no independent recollection if I did or didn't. What I do is, I was most concerned about where he was. If they could say conclusively, here's where he was, they saw him the entire time, and he was doing tattoos on somebody, that's what I was looking for in this case.

Q. And we've all tried these cases. You've tried quite a numerous of these ones too. And this -- codefendants, when they come in and they get on the same page, and they've got the same statement ---

A. Right.

Q. --- you've either got to rebut it some way and show that they are not being truthful because in this case if they -- if the jury goes with what they're saying, he's convicted.

If the jury doesn't believe what they're saying, the likelihood is he's got a good chance of being not guilty if they don't believe the codefendants. Would you agree with that?

A. I agree.

Q. Okay. So in this case if they had said during these conversations, "Well, I didn't hear anything about this planning and this scheming and this weapons that were being discussed" ---

A. Right.

Q. --- do you believe that would've been beneficial to bring up on impeachment for them to be able to say, "Hey, this is -- they're just making this up," and then you could've put that up in your -- your closing?

A. But that assumes -- that assumes they're going to say exactly what you just told me. That assumes that they're going to say, "Oh, yeah, we overheard them doing this or we didn't hear them doing this." That's what you're assuming in this case.

Q. No. What -- what I'm ask -- I'm not assuming anything. What I'm saying is, you spoke with them. And what I'm asking is, did you inquire about that to make a determination if that would be useful at trial?

A. I don't know if I did or not. I don't know. I know I was most -- as I said before, I was most concerned with if they could show or establish that he was there or not there. That was my -- that was what I was trying to figure out.

Q. Okay. And I'm not trying to beat this dead horse here. I just want to know if they had said those type of statements that, "We didn't hear this, We didn't know this, He didn't leave with them," or something along those lines, would you have used that at trial or do you think that would've been something you considered?

A. I think I would've considered it, sure.

MR. ARIAIL: Okay. Your Honor, I have no further questions.

MR. SCHMECKPEPER: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q. You testified earlier, not very much physical evidence and the key to the State's case was the testimony of codefendants; is that correct?

A. Yes.

Q. So there are two ways you could've really attacked the State's case. You could cross-examine the codefendants and you could also present your own witnesses; is that correct?

A. Right.

Q. You cross-examined -- cross-examined the codefendants; is that correct?

A. Yes.

Q. You attacked their credibility?
A. Yes.
Q. Pointed out they might have something to gain from this testimony?
A. Yes.
Q. And as far as whether or not to call alibis, did you not testify that you had reason to believe these alibi witnesses could likely hurt your case?
A. Yes. That's what I felt at that time when you spoke with them, yes.
Q. And there -- and there's -- there's also a possibility they could've helped your case; is that correct?
A. It could always -- you -- you always, as a defense attorney, make a determination based on the witnesses as far as how they're going to be, how they act, all that kind of stuff.

These guys did not -- they did not want to cooperate very much. That's why the judge had to issue an order from the bench.

Q. And you made that determination at the end of the State's case?
A. Yes.
Q. After having a chance to hear all the evidence put up by the State?

A. I did.
Q. And after getting the opportunity to step outside and talk to these witnesses?
A. Yes.
Q. And based on that, you decided not to call them as witnesses?
A. Yes.
MR. SCHMECKPEPER: I have no further questions.
THE COURT: Anything else?
MR. ARIAIL: Nothing further, Your Honor.
THE COURT: Thank you, sir. You can step down.
THE WITNESS: Thank you, Judge.
(Witness excused.)
THE COURT: Any additional witnesses for the Applicant?
MR. ARIAIL: Your Honor, that is our case. Thank you.
THE COURT: State?
MR. SCHMECKPEPER: State has no witnesses, Your Honor.
THE COURT: Any argument, Mr. Ariail?
MR. ARIAIL: No, Your Honor. We're just going with the record.
THE COURT: All right. Anything from the State?

MR. SCHMECKPEPER: Your Honor, I wouldn't mind presenting argument; although, I certainly have to submit ---

THE COURT: No. You can -- either way you want to do it. How would you like to do it?

MR. SCHMECKPEPER: I'll defer to Mr. Ariail if he has no preference.

THE COURT: I don't need a proposed order. I just want to -- it seems like to me that the issue in the case is the fact that the two, at least preliminarily, according to the Applicant, these two witnesses were not called, even though they were here.

Mr. Ariail maintains that if they had testified, there's reasonable probability the outcome would've been different. And what's your position on that?

MR. SCHMECKPEPER: Your Honor, first off, we don't have their testimony. We just have one-sentence statements.

Second off ---

THE COURT: But we do get into -- we have to get into what they told Mr. Robinson to get into the issue of his trial strategy.

MR. SCHMECKPEPER: And, Your Honor, I think at

that point the issue -- at this point -- at that point Strickland requires great deference to counsel when it comes to matters of strategy.

Counsel testified quite clearly and I think quite credibly that he looked at the testimony, looked at these witnesses, and also looked at the State's case after having the benefit of seeing the State's entire case before making this decision and decided it would be better -- or decided -- decided it was more likely to benefit that with him if he didn't call them.

Now in retrospect, in hindsight, very easy to double check against that. Strickland and the relevant case law certainly prohibits that kind of hindsight and second guessing.

THE COURT: Mr. Ariail?

MR. ARIAIL: Your Honor, if I can just address that. The way I look at the two alibi witnesses, first, you know, they're either going to come in -- and I know he's -- he's concerned they're wishy-washy about what they're even going to say in regards to the time they were there.

My issue with that is -- and I evaluate this because I've had alibi witnesses before that I've called in trial. This case was solely based on

codefendant testimony. And I understand -- the issue I have when they were looking at is if he calls them and they don't testify as to the time frame, I still think looking at it for the purposes of what these witnesses said on the stand of this common scheme plan, brandishing a weapon, my client is, you know, in the lead of this, there were certain things that could be elicited from the testimony which would I think destroy, if not substantially hurt the credibility of the witnesses, which would then likely be -- which I think was the focal point of the -- of the case was to show that these witnesses were not being truthful, I think that helps him.

And I don't think that, you know, based upon what -- either he didn't go into it or didn't ask those questions, I think we needed to to be able to see if that would be elicited on the stand which would help my client. And I think it's -- it was prejudicial to him because he didn't have the ability to evaluate them.

THE COURT: Okay. How about -- is it Trent or Trenton?

MR. ARIAIL: Trenton.

THE COURT: How about Trenton and Steve? We

didn't talk much about them.

MR. ARIAIL: Those were the two, Your Honor, if I'm not mistaken ---

THE COURT: He said they would testify he had nothing to do with it.

MR. ARIAIL: I think that everyone testified that they heard Charles Burgess overhear -- overheard Charles Burgess at the LEC that he was the one that did the shooting instead of Mr. Fulmer.

THE COURT: Okay. And how about Ms. Burkhart? Ms. Burkhart said she was with him the whole time, but didn't speak to any attorneys before today because she moved to Georgia and didn't know what was going on.

MR. ARIAIL: And that's get into whether or not there was an investigation into whether or not he had a probative conversation with my client to find out the witnesses.

Now, I understand he had two alibi witnesses, another one. I mean, she -- she specifically testified and is consistent with the testimony of Chad Hayes and Sarah Hamilton in regards to what she said, and clearly I think would've been a very helpful alibi witness based on the testimony today if she's allowed to testify.

THE COURT: How about Ms. Burkhart's testimony?

MR. SCHMECKPEPER: Your Honor, specifically with Ms. Burkhart's testimony, counsel can't be ineffective for failing to interview somebody if he has no idea that they exist. There's been no testimony from Applicant -- from Applicant or anybody that he ever told counsel that Ms. Burkhart was there the entire night. And he would know, he was there.

For him to say, you know, he has these other two witnesses who -- or these other two alibis who were with him the entire night and somehow forgot about the third one up until today, I don't think that's credible, Your Honor.

THE COURT: Up to today, what?

MR. SCHMECKPEPER: Up until today, this is the first time anybody's ever heard from Ms. Burkhart. The Applicant had the opportunity if he felt she could help him or had the obligation to tell counsel, "This is an extra -- extra witness. She was with me the entire time. She can corroborate these other two alibi witnesses." We know counsel spoke to alibi witnesses because he brought two of them.

I don't think you can show from the testimony

presented here today that counsel was ineffective for failing to call Ms. Burkhart.

THE COURT: All right. Anything else from the Applicant?

MR. ARIAIL: No, Your Honor.

THE COURT: All right. Mr. Fulmer, what I'm going to do is review the transcript in its entirety. I'll read the whole thing. I'll probably read it -- I will probably read it more than once. I will make one of two decisions.

One will be that your application is granted and it will be remanded for a new trial.

THE APPLICANT: Yes, sir.

THE COURT: Of course, there may be appeals filed by the State in the event that I do that, so that wouldn't be the "be-all end-all."

The other alternative I will have is to deny your application. And in that instance -- or in either instance, an order will be issued. If you do not like the content of the order, you have the right to appeal my decision within 30 days. Do you understand that?

THE APPLICANT: Yes, sir, I do.

THE COURT: All right. Do have any questions?

THE APPLICANT: No, sir, I don't.

THE COURT: Anything before we close the record?

MR. ARIAIL: No, Your Honor.

MR. SCHMECKPEPER: Nothing, Your Honor.

THE COURT: Thank you, gentlemen.

MR. ARIAIL: Thank you.

(The proceedings concluded at 3:48 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Greenville County, South Carolina, on the 13th day of June, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 29, 2017

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF PICKENS Robert Matthew Fulmer, S.C.D.C. No. 317783, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS OF THE THIRTEENTH JUDICIAL CIRCUIT 2014-CP-39-1550 **ORDER DISMISSING PCR APPLICATION AND GRANTING APPEAL PURSUANT TO WHITE V. STATE**

2017 JAN 1 AM 10 25
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 29, 2014. Respondent made its Return on or about May 29, 2015. An evidentiary hearing into the matter was convened on June 13, 2016, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present at the hearing and represented by R. Mills Ariail, Jr. Esquire. Patrick Schmeckpeper Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Scott Robinson, Esquire, also testified. Cynthia Burkhart, Wanda Harper, and Melissa Morris testified also testified at the PCR hearing. This Court had before it a copy of Applicant's records from the Greenville County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the March 2013 term of General Sessions for attempted

murder (2013-GS-39-0716), first-degree burglary (2013-GS-39-0717), possession of a weapon during commission of a violent crime (2013-GS-39-0718), and petit larceny (2013-GS-39-0719). Scott D. Robinson, Esq. (Counsel or trial counsel), represented Applicant at trial.

After the State called the case to trial, Applicant was found guilty. On August 26, 2014, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 30 years for attempted murder, 30 years for first-degree burglary, 5 years for possession of a weapon during commission of a violent crime, and 30 days for petit larceny. Applicant did not file an appeal.

PCR Application

On December 29, 2014 Applicant filed an application for post-conviction relief alleging he was being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
   a. Attorney's performance was deficient and unreasonable under professional norms.
   b. Attorney failed to call witnesses who would have testified favorably on behalf on Applicant.
   c. Attorney was ineffective for using invalid strategic reasoning.

II. APPLICABLE LAW

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has considered the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed their testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to argue that Charles Burgess was incompetent to testify

Applicant testified that Charles Burgess, Heather Posey, and Jennifer Allred were arrested at the Hot Spot the day or night after the shooting/burglary. He further testified that Burgess brandished his pistol at the arresting Easley police officer, and at trial, Burgess testified that he was trying to commit "suicide by cop". The Applicant claims trial counsel should have argued that Burgess was therefore incompetent to testify at trial. Rule 601, SCRE, governs the trial court's assessment of the competency of a witness to testify. This Court find that there is no legal or factual basis to support the conclusion that Burgess was incompetent to testify, so trial counsel was not deficient in failing to raise this issue and there is therefore no proof of the first Strickland prong.

Failure to interview scene witnesses before trial

The Applicant claims trial counsel was ineffective for not speaking (before trial) to the witnesses at the scene of the shooting. These witnesses were Paul Turner, April McAtee, and Linda Jones, all of whom lived next to or nearby the victim's residence, the scene of the crime. This Court concludes the applicant has not proven deficient performance. The three witnesses testified only as to their observations after the incident, as they resided next to or near the victim, Clarence Robinson. Even if counsel was deficient in questioning them pre-trial, the record does not reflect what such pre-trial questioning would have accomplished, and therefore there is no proof of prejudice. None of them identified Applicant as one of the perpetrators and none testified to anything that incriminated Applicant.

Failure to allow the applicant to testify at trial

Applicant testified at the PCR hearing that he wanted to testify at trial, but that trial counsel advised against it. Applicant testified at the PCR hearing that he would have told the jury that he was at an apartment at about 6:30 the evening of the incident and that someone

picked him up, took him to get his tattoo gun, and then took him to a house in Easley at 8:00 p.m. at the latest. He testified at the PCR hearing that he stayed there doing tattoos until 4:30 a.m. and was not at the scene of the crime at all. He does not allege and did not testify that he demanded to testify and that trial counsel refused to let him; rather, he claims trial counsel was deficient in advising him not to testify. The Court concludes trial counsel was deficient in advising Applicant to testify. First, the record is clear that the trial judge advised Applicant of his 5th amendment right to remain silent but that he could testify if he wanted to testify, and the trial judge clearly advised the applicant that "ultimately, it is your decision whether you want to testify or not." (Tr., p. 247). Applicant voiced his understanding of the trial judge's comments.

Trial counsel testified that Applicant's criminal record was problematic as far as impeachable convictions were concerned, and he wanted to preserve the last argument, which he would lose if the applicant testified. Applicant's record included convictions for PWID methamphetamines, petty larceny, burglary 2nd degree, unlawful possession of prescription drugs, forgery, failure to stop for blue light, grand larceny, strong arm robbery, ABHAN, carjacking, another burglary 2nd, shoplifting, another failure to stop for blue light, and another larceny. As the trial judge indicated, a "good portion" of that record was probably admissible for impeachment purposes. Our Supreme Court has held that burglary and larceny are not crimes of dishonesty; therefore, the burglary and larceny convictions may have been ruled inadmissible based on their similarity to the charged crimes. However, the admissibility of the remaining convictions would have been considered using the five-factor test articulated in State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). This Court concludes that more than likely, the trial judge would have allowed Applicant to be impeached with his convictions for strong arm robbery, carjacking, shoplifting, ABHAN, forgery, and failure to stop for a blue light. Even if not all of

these convictions had been admitted, enough would have been such that trial counsel's advice was not deficient.

Melissa Morris testified at the PCR hearing that she is the applicant's fiancée and that she hired trial counsel for the applicant. She testified that she sat behind the defense table at trial and that she heard Applicant tell trial counsel he wanted to testify and that trial counsel told him that would not be a good idea. This is evidence that trial counsel simply gave Applicant advice and did not refuse to let him testify.

Trial counsel was correct to be very concerned about the impact of these convictions on Applicant's credibility and provided sound advice to the applicant that he not testify. When the State rested, the only evidence adverse to Applicant was the testimony of the four co-defendants, all of whom were subject to impeachment based on their admitted roles in the incident and their resulting biases. If Applicant had testified, his credibility would have been substantially called into question. This Court concludes counsel was not deficient in advising Applicant not to testify.

Trial counsel's failure to question the trial witnesses about the inconsistencies between their trial testimony and their pre-trial statements

No pre-trial statements were made part of the record during the PCR hearing. Therefore, the court cannot assess how any failure to cross-examine the witnesses about their statements prejudiced Applicant. The Court finds this allegation is without merit.

Failure to call alibi witnesses at trial

Chad Hayes and Sarah Hamilton were present at trial and had been listed as alibi witnesses. Applicant testified that he told trial counsel about these two witnesses during a phone conversation. When the case was called and before jury selection, trial counsel advised the trial

judge that these two witnesses were important and that he might not be able to secure their presence on such short notice. Their trial appearance was evidently procured through subpoena.

Applicant testified that trial counsel told him that nothing these two witnesses could say would help him. Applicant claims that both witnesses would have testified that they were with Applicant the entire night and that Applicant never left the home where he was doing tattoos. Trial counsel testified that he talked to both witnesses and that he determined their testimony would have been very "wishy-washy". He testified that the witnesses appeared to be under the influence of some substance when he spoke to them during the trial and that neither witness could state with any certainty that Applicant was indeed with them the entire night. He said they were reluctant and afraid to testify. They admitted writing statements but told him they could not say that the applicant was at the tattoo house the entire night. Trial counsel testified that alibi witnesses are very important if they are credible but that these two witnesses would not have been credible, and he was afraid their testimony would backfire. He said the risks outweighed the benefits and that he, again, wanted to preserve the last argument. This Court finds trial counsel's testimony on his reasons for not calling these witnesses to be credible and conclude trial counsel's decision to not call these witnesses was appropriate under the circumstances; therefore, trial counsel was not deficient.

Failure to call Trenton Black, Steven Pepper, Wanda Harper, Cynthia Burkhard, Melissa Morris, and Amy Johnson to testify at trial

Applicant testified that he told trial counsel about Black, Pepper, Harper, and Johnson during jury selection. There is nothing in the record to explain why he could not have told trial counsel about these witnesses prior to then, as he had done with witnesses Chad Hayes and Sarah Hamilton. Applicant claims Black and Pepper would have testified that he had nothing to do with the burglary and attempted murder. He claims Johnson and Harper would have testified

that Jennifer Allred had motive to implicate him in the incident because Allred was angry with him for kicking her out of his house.

Neither Black, Pepper, nor Johnson testified at the PCR hearing, so the court will not consider their purported testimony. As for Wanda Harper, she testified at the PCR hearing that she is Applicant's grandmother and that at around 6:30 p.m. on the evening of the incident, Applicant came by her home with Crystal Burkhard to pick up his tattooing equipment. She testified that they stayed until about 7:10. She testified that Jennifer Allred was living with her and the applicant at the time and that Allred was upset with Applicant because he wanted Allred to move out because of her drug use. Ms. Harper testified that she was sequestered with other witnesses at trial, that trial counsel told her he was going to call her as a witness, but that he never did. This Court concludes that Ms. Harper's testimony would not have assisted Applicant insofar as an alibi was concerned; the only thing she could have added was that Applicant came by to pick up his equipment and that Jennifer Allred was upset with the applicant for asking her to move out. Even if trial counsel was deficient in not calling Ms. Harper to testify, the Court concludes Applicant has not established there is a reasonable probability that the outcome of the trial would have been different if the jury had heard testimony that Allred was upset with Applicant.

As noted above, Melissa Morris is Applicant's fiancée. She testified at the PCR hearing that she told trial counsel that Applicant never left the house where he was tattooing so he could not have been present at the scene of the crime. She stated she picked up trial subpoenas for Chad Hayes and Sarah Hamilton from trial counsel's office and took them to a process server. She also claims that the day after the verdict, trial counsel said he planned to appeal and that they only had ten days to do so. Applicant claims trial counsel was deficient in not calling Ms. Morris

to testify at trial. It appears that the Applicant only gave trial counsel the names of Chad Hayes and Sarah Campbell as alibi witnesses; the record is not clear when Morris told trial counsel that Applicant had never left the tattooing house, but presumably, this communication would have taken place before trial, as Morris is the person who hired trial counsel for the applicant. The record is also not clear as to why trial counsel did not list Ms. Morris as an alibi witness, while he did list Chad Hayes and Sarah Hamilton. Trial counsel offered no testimony as to why he did not list Melissa Morris as an alibi witness or call her to testify. This Court concludes that even if trial counsel was ineffective for not listing her as a witness and for not calling her to testify, her testimony on the alibi issue was not credible. The Court concludes Applicant has not established that had Ms. Morris testified at trial, there is a reasonable probability that the outcome of the trial would have been different.

Crystal Burkhard testified at the PCR hearing that on the evening of the incident Applicant picked her up at an apartment in Pickens around 6:30 p.m. and that they went to his mother's residence on Watts Road. She stated he spent about 25 minutes packing up his tattooing equipment and they then drove to Easley and arrived at a home where the applicant started doing tattoos. She stated there were a lot of people there. She claims they were there until 4:30 a.m. Ms. Burkhard testified that never spoke with trial counsel before the day of the PCR hearing and that she had moved to Georgia not long after the incident and stayed there for about a year and a half. There is no evidence that trial counsel had any knowledge of this witness at the time of trial. Trial counsel testified that he first learned of this witness' name at the PCR hearing. The Court finds trial counsel's testimony to be credible and the Court therefore concludes that trial counsel was not ineffective for failing to call a witness he knew nothing about.

Trial counsel did not file an appeal

Melissa Morris testified that the day after the verdict, trial counsel told her he was going to appeal but he only had ten days to do so. Trial counsel testified that he does not recall this conversation and does not recall whether Applicant asked him to appeal. The Court concludes the applicant has established he would have filed an appeal and that trial counsel committed to filing an appeal but failed to do so; therefore, Applicant is granted leave to file a belated appeal.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

The Court affirmatively finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that Applicant is entitled to a belated review of his convictions.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. That Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.

3. That Applicant be remanded to the custody of Respondent.

2017 JUN 1 AM 10 25
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

May 19, 2017
Sumter, SC

GEORGE C. JAMES, JR.
Presiding Judge