

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Bentley Price, Circuit Court Judge

ABDUL FURQUAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001173

APPENDIX

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S.C. SUPREME COURT

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2012-GS-26-02057, 02058, 02059

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

August 7, 2013

ABDUL FURQUAN,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Josh D. Holford, Esquire
Attorney for Plaintiff

Ryan Stampfle, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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(There were no exhibits marked during the hearing.)

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State v. Furquan - 2012-GS-26-02057, 02058, 02059
MOTIONS

3

1 (August 7, 2013)

2 MR. HOLFORD: Your Honor, this is State of South
3 Carolina, County of Horry versus Abdul Furquan. It's a
4 defense motion to be relieved as counsel. I'll leave it to
5 Mr. Stampfle ---

6 THE COURT: How far is this along? You know, we ---

7 MR. STAMPFLE: Your Honor, it's pretty far along. The
8 case is set for the second full week of September. It -- it's
9 pretty far along.

10 THE COURT: All right. Mr. Furquan, your attorney tells
11 me that you don't want him to represent you anymore.

12 MR. FURQUAN: Yes, sir.

13 THE COURT: Why?

14 MR. FURQUAN: I feel like he don't have my best interest
15 in mind.

16 THE COURT: Well, how are you -- who are you to judge
17 that?

18 MR. FURQUAN: Because it's my life, Your Honor.

19 THE COURT: Tell me what he's done.

20 MR. FURQUAN: For one, some things I ask, you know, what
21 I'm saying, we don't see eye to eye on.

22 THE COURT: Well, it might be that he's an attorney and
23 you're not; have you considered that?

24 MR. FURQUAN: Yes, sir, Your Honor.

25 THE COURT: What do you want him to do that he says he

State v. Furquan - 2012-GS-26-02057, 02058, 02059
MOTIONS

4

1 can't do or won't do?

2 MR. FURQUAN: Basically, Your Honor, I feel like my case
3 has not been properly investigated.

4 THE COURT: In what respect?

5 MR. FURQUAN: All of the -- from the evidence on down.

6 THE COURT: It sounds to me like you just want another
7 lawyer. I'm not gonna give you another lawyer at this late
8 point. This case is going to trial in September.

9 MR. HOLFORD: Your Honor ---

10 THE COURT: I'll let you go to trial without a lawyer if
11 you want to, if you want to represent yourself.

12 Yes, sir?

13 MR. HOLFORD: I was just gonna give you a little
14 procedural background. This offense occurred in October of
15 2011. In November of 2012, the Defendant made a motion to
16 relieve counsel. It was denied. He entered -- he was gonna
17 testify against his Codefendant. His Codefendant was tried in
18 May and found guilty. And then he was set for a trial this
19 September and now he's filed this motion.

20 THE COURT: Do you want to represent yourself? I'm not
21 gonna delay your trial by appointing another attorney on some
22 vague allegation you make that Mr. Stampfle is not doing what
23 he should in your case. I know Mr. Stampfle and I know he's
24 probably doing exactly what he should in your case.

25 Now, do you want to self-represent? Do you want to go to

State v. Furquan - 2012-GS-26-02057, 02058, 02059
ABDUL FURQUAN - BY THE COURT

5

1 trial without a lawyer?

2 MR. FURQUAN: Yes, sir.

3 THE COURT: Is that what you want to do?

4 MR. FURQUAN: (Indicates affirmatively.)

5 THE COURT: All right. Well, let me qualify you right
6 here and make sure that you understand what you're doing and
7 I'll relieve Mr. Stampfle and I'll let you go to trial by
8 yourself. All right, sir?

9 MR. HOLFORD: And the State has served notice of intent
10 to seek life without parole in this case.

11 THE COURT: Place him under oath.

12 ABDUL FURQUAN, HAVING BEEN DULY

13 SWORN, TESTIFIES AS FOLLOWS:

14 THE COURT: State your name for the record.

15 MR. FURQUAN: Abdul Furquan.

16 THE COURT: And how old are you?

17 MR. FURQUAN: Forty.

18 THE COURT: How far did you go in school?

19 MR. FURQUAN: Twelfth, finished.

20 THE COURT: What kind of work do you do?

21 MR. FURQUAN: Kitchen, cook.

22 THE COURT: And have you ever been treated for abuse of
23 alcohol or drugs or for mental illness?

24 MR. FURQUAN: Yes, sir.

25 THE COURT: What?

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ABDUL FURQUAN - BY THE COURT

6

1 MR. FURQUAN: Alcohol.

2 THE COURT: How long ago?

3 MR. FURQUAN: About three years ago.

4 THE COURT: And have you completed your treatment?

5 MR. FURQUAN: Yes, sir.

6 THE COURT: Are you having any problems with alcoholism
7 now?

8 MR. FURQUAN: No, sir.

9 THE COURT: Have you had any alcohol in the last twenty-
10 four hours?

11 MR. FURQUAN: No, sir.

12 THE COURT: Are you aware of any physical or emotional or
13 nervous problems you might have that might keep you from
14 understanding what you're doing?

15 MR. FURQUAN: No, sir.

16 THE COURT: Have you ever been examined by a doctor to
17 determine your mental competency to stand trial?

18 MR. FURQUAN: No, sir.

19 THE COURT: Have you ever studied the law?

20 MR. FURQUAN: No, sir.

21 THE COURT: Have you ever been in any criminal court
22 before?

23 MR. FURQUAN: No, sir.

24 THE COURT: Never been before the magistrate or any other
25 judge?

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ABDUL FURQUAN - BY THE COURT

7

1 MR. FURQUAN: Oh, yes, sir.
2 THE COURT: And when was that?
3 MR. FURQUAN: 2009.
4 THE COURT: What for?
5 MR. FURQUAN: CDV.
6 THE COURT: And were you convicted?
7 MR. FURQUAN: Yes, sir.
8 THE COURT: Did you have an attorney?
9 MR. FURQUAN: Yes, sir.
10 THE COURT: Do you understand that you are charged in
11 this particular matter with the offense -- what is his
12 offense?
13 MR. HOLFORD: Burglary first degree, attempted murder and
14 possession of firearm by a convicted felon.
15 THE COURT: You understand what you're charged with?
16 MR. FURQUAN: Yes, sir.
17 THE COURT: Do you know what the elements of those
18 charges are?
19 MR. FURQUAN: Somewhat.
20 THE COURT: Are you telling me you're ready to represent
21 yourself and you don't even know what constitutes the offense?
22 Is that what you're telling me? Do you understand that if
23 you're found guilty, they're gonna seek life without parole,
24 which means you go to prison for the rest of your life with no
25 possibility of parole?

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ABDUL FURQUAN - BY THE COURT

8

1 MR. FURQUAN: Yes, sir.

2 THE COURT: That's what's on the line; do you understand
3 that?

4 MR. FURQUAN: Yes, sir.

5 THE COURT: Do you understand that if you represent
6 yourself, you are on your own, neither I nor any other judge
7 is gonna tell you how to try your case or advise you as to how
8 to try to your case?

9 MR. FURQUAN: Yes, sir.

10 THE COURT: Are you familiar with the South Carolina
11 Rules of Evidence?

12 MR. FURQUAN: No, sir.

13 THE COURT: So, you don't even know how to go about
14 putting evidence in, do you?

15 MR. FURQUAN: No, sir.

16 THE COURT: So, you understand the rules of evidence that
17 govern what evidence may or may not be introduced in a trial
18 and that representing yourself, you're gonna have to follow
19 those rules, rules that you don't even know about?

20 MR. FURQUAN: Yes, sir.

21 THE COURT: Are you familiar with the South Carolina
22 Rules of Criminal Procedure?

23 MR. FURQUAN: No.

24 THE COURT: Do you understand that some of these rules
25 govern the way a criminal trial is conducted in this state?

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ABDUL FURQUAN - BY THE COURT

9

1 MR. FURQUAN: Yes, sir.
2 THE COURT: And you don't understand those rules?
3 MR. FURQUAN: No, sir, not to the fullest, no, sir.
4 THE COURT: Do you understand that under these rules,
5 certain motions can be made before, during and after a trial;
6 you understand that?
7 MR. FURQUAN: Yes, sir.
8 THE COURT: Name one motion you can make.
9 MR. FURQUAN: You can file for a appeal for the ---
10 THE COURT: That's after a trial.
11 MR. FURQUAN: Yes, sir, after a trial.
12 THE COURT: What about during a trial?
13 MR. FURQUAN: You can file a motion to suppress evidence.
14 THE COURT: All right. How would you suppress evidence?
15 Give me an example of some evidence you would suppress.
16 MR. FURQUAN: I really have the vaguest idea.
17 THE COURT: Do you understand that you have the right to
18 testify or not testify in the trial and if you decide to
19 testify, you may be asked about any convictions which involve
20 dishonesty or false statements or any convictions that carry a
21 sentence of imprisonment for more than a year and these
22 convictions may be used to attack your credibility or
23 believability in the trial.
24 MR. FURQUAN: Yes, sir.
25 THE COURT: If you decide not to testify, do you

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ABDUL FURQUAN - BY THE COURT

10

1 understand that I would instruct the jury that they couldn't
2 hold that fact against you. Do you know that?

3 MR. FURQUAN: Yes, sir.

4 THE COURT: Are you aware of any possible defenses that
5 you might have?

6 MR. FURQUAN: No, sir.

7 THE COURT: Do you understand that an attorney could help
8 you with many of the things I have discussed with you
9 including the Rules of Evidence and the Rules of Criminal
10 Procedure?

11 MR. FURQUAN: Yes, sir..

12 THE COURT: I want to advise you that in my opinion you
13 are not competent to represent yourself. And you'd be far
14 better defended by a trained lawyer than you can do by
15 yourself. And I think it is unwise of you to try to represent
16 yourself. You're not familiar with the law, you're not
17 familiar with court procedure and you are not familiar with
18 the Rules of Evidence. And I would strongly urge you not to
19 try to represent yourself. Do you understand that?

20 MR. FURQUAN: Yes, sir..

21 THE COURT: In light of the penalty that you might
22 suffer, if you're found guilty and in the light of all the
23 difficulties in representing yourself, is it still your desire
24 to represent yourself and give up your right to be represented
25 by a lawyer?

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11

1 MR. FURQUAN: Yes, sir.

2 THE COURT: Is this decision entirely voluntary on your
3 part?

4 MR. FURQUAN: Yes, sir.

5 RULING OF THE COURT:

6 THE COURT: Well, I find that the Defendant is knowingly
7 and voluntarily waived the right to counsel and the trial will
8 proceed with the Defendant representing himself.

9 Mr. Furquan, it's not my job to protect you from yourself
10 and making a foolish decision as I feel you are making right
11 now, it's only to make sure that you are aware of what you're
12 doing. This is a freely and voluntarily made decision.
13 You've made it. Okay? That's fine.

14 I'm gonna order Mr. Stampfle to be standby attorney. All
15 he's gonna do is sit behind you in this trial and when you get
16 in trouble, you're probably gonna turn around to him. But you
17 can't represent yourself and have him represent you; that's
18 hybrid representation. I hope that you will come to your
19 senses in this matter and come back before this Court to have
20 him substituted as counsel in this matter.

21 All right. Mr. Stampfle is relieved but I'm ordering
22 that he serve as standby counsel.

23 MR. HOLFORD: Thank you, Your Honor.

24 THE COURT: Thank you, sir.

25 MR. STAMPFLE: Your Honor?

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12

1 THE COURT: Might I inquire exactly what that entails?
2 I've never served as standby counsel.

3 THE COURT: What you do is you sit in the courtroom with
4 him and you let him do what he wants to do and if at some time
5 he decides that perhaps he's made the wrong mistake -- I mean,
6 wrong decision, you can take over.

7 MR. STAMPFLE: Okay. I'll prepare the case as if I'm
8 trying the case.

9 THE COURT: I would if I were you.

10 MR. STAMPFLE: Thank you, Your Honor. That's what I
11 needed to know.

12

13 (ADJOURNED - 10:24 A.M.)

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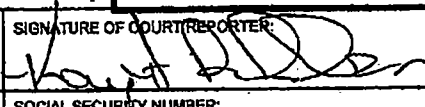
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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2013-GS-26-02057

2013-GS-26-02058

2013-GS-26-02059

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

September 18-19, 2013

ABDUL A-MUTAKABBIR)

FURQUAN,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Sr.
Horry County Courthouse
Conway, South Carolina

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

Joshua D. Holford, Esquire
Attorney for Plaintiff

Ryan Stampfle, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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State v. Furquan - 2012-GS-26-02057, 02058, 02059
BY THE COURT

7

1 (September 28, 2013 @ 9:45 A.M.)

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

4 THE COURT: Please be seated. Thank you very much.

5 All right. Mr. Holford.

6 MR. HOLFORD: Yes, Your Honor.

7 THE COURT: Call the case.

8 MR. HOLFORD: Your Honor, this is the State of South
9 Carolina, County of Horry versus Abdul, middle name A-M-U-T-A-
10 K-A-B-B-I-R, Furquan, F-U-R-Q-U-A-N. Three true-billed
11 indictments, the first one being 2012-GS-26-02057 for burglary
12 in the first degree; the second being 2012-GS-26-02058 for
13 attempted murder; and the third being 2012-GS-26-02059 for
14 unlawful possession of a firearm by a person convicted of a
15 violent offense.

16 THE COURT: All right. Mr. -- could you pronounce your
17 last name so I won't make a mistake?

18 MR. FURQUAN: Furquan.

19 THE COURT: Furquan. Furquan?

20 MR. FURQUAN: Yes, sir.

21 THE COURT: All right, sir. I do not see your attorney.
22 I discussed with you your right to proceed Pro Se earlier,
23 maybe last week or perhaps the week before, I do recall, and I
24 thought I ordered Mr. Stampfle to standby.

25 MR. HOLFORD: Yes, Your Honor, you did.

State v. Furquan - 2012-GS-26-02057, 02058, 02059
BY THE COURT

8

1 THE COURT: Where is he?

2 MR. HOLFORD: Your Honor, that's a good question. He was
3 here yesterday. He was present in court and knew that we were
4 starting at 9:30 this morning. I didn't bring my cell phone
5 upstairs.

6 THE COURT: Mr. Furquan?

7 MR. FURQUAN: Yes, sir.

8 THE COURT: Do you intend to proceed Pro Se?

9 MR. FURQUAN: No, I talked with Mr. Stampfle yesterday
10 and he say he was gonna be ready.

11 THE COURT: So he is going to represent you?

12 MR. FURQUAN: Yes, sir.

13 THE COURT: Well, do you know where he is?

14 MR. FURQUAN: No, sir.

15 THE COURT: Okay. Let's begin the search, okay?

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: We're at ease. Let's try to find Mr.
18 Stampfle and let's try to find out what's going on. Okay?

19 MR. HOLFORD: Apparently he's in the jury room, Your
20 Honor. I'll go get him.

21 THE COURT: Okay. Maybe he thought we were gonna select
22 the jury down there.

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: Mr. Holford?

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BY THE COURT

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Would you call the case again now that Mr.
3 Stampfle is here?

4 MR. HOLFORD: Yes, Your Honor, this is State of South
5 Carolina, County of Horry versus Abdul, A-B-D-U-L, middle
6 name, A-M-U-T-A-K-A-B-B-I-R, Furquan, F-U-R-Q-U-A-N. Three
7 true-billed indictments, the first being 2012-GS-26-02058 for
8 attempted murder; the second being 2012-GS-26-02057, burglary
9 in the first degree; and the third being 2012-GS-26-02059 for
10 unlawful possession of a firearm by a person convicted of a
11 violent offense.

12 THE COURT: All right. Are there any pre-trial matters
13 that we need to take up before we begin jury selection?

14 MR. HOLFORD: Your Honor, we've -- just the issue of Mr.
15 Stampfle being -- representing Mr. Furquan.

16 THE COURT: Well, it's my understanding from Mr. Furquan
17 that Mr. Stampfle will be representing him; is that right, Mr.
18 Stampfle?

19 MR. STAMPFLE: Yes, Your Honor, I was ordered to sit
20 standby on this. Mr. Furquan has requested that I represent
21 him. He requested this last Thursday evening and I believe it
22 was your instructions that as stand by, if he requested that
23 then I was to sit in as his attorney.

24 THE COURT: All right. Mr. Furquan, Mr. Stampfle will be
25 representing you; is that correct?

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1 MR. FURQUAN: Yes, sir.

2 THE COURT: All right. Very well. Anything further?

3 MR. HOLFORD: Yes, Your Honor. I have an Order releasing
4 State's Exhibits. We had exhibits from a prior trial with a
5 Codefendant. They're in possession of the Clerk of Court's
6 Office. I'm just wondering how you want me to handle that.
7 If I take this ---

8 THE COURT: You just hand it up over the bar here and
9 that should take care of it. Of course, you'll substitute
10 copies in that case and with a copy of this order ---

11 MR. HOLFORD: Yes, sir.

12 THE COURT: Place a copy of this order, once we're done,
13 in that file along with copies of any exhibits that you
14 removed. If they're physical exhibits, let's also try to get
15 a photograph of them or something of that nature. I want any
16 reviewing Court to understand where the exhibits are and why
17 they were removed. Okay?

18 MR. HOLFORD: Yes, Your Honor.

19 THE COURT: All right.

20 MR. HOLFORD: Can I have the physical evidence released
21 to Jill Domogauer?

22 THE COURT: Well, this Order has already been signed by
23 Judge Cottingham.

24 MR. HOLFORD: Yes, Your Honor, I had this done prior so
25 ---

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BY THE COURT

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1 THE COURT: Well, I don't need to address it then.

2 MR. HOLFORD: So I can take possession then?

3 THE COURT: Yes, certainly.

4 MR. HOLFORD: Nothing further.

5 THE COURT: All right. Anything further then from the
6 Defense?

7 MR. STAMPFLE: Not until the jury is sworn, Your Honor.

8 THE COURT: All right. Very well. Mr. Ropp, do you have
9 a jury?

10 MR. ROPP: Yes, sir, downstairs.

11 THE COURT: All right. Bailiff -- Sheriff's Deputy,
12 we're gonna have to condense this room and separate spectators
13 from jurors and put the spectators where they will not
14 interfere with the jury selection if that involves outside,
15 you know, use your discretion.

16 Spectators, we're gonna have to bring in forty jurors and
17 we have to make sure that we have room for all forty of them.

18 All right. Gentlemen, can we agree as to the number of
19 strikes; what's the State's position, is it five and ten?

20 MR. HOLFORD: Five and ten, Your Honor.

21 THE COURT: Is that right, Mr. Stampfle?

22 MR. STAMPFLE: Yes, Your Honor.

23 THE COURT: All right. The burglary enhances it, okay.
24 All right. As soon as we can get the jury in.

25 (REPORTER'S NOTE: Jury pool enters courtroom. 10:00 A.M.)

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BY THE COURT

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1 THE COURT: Is that everyone, Mr. Hemingway?

2 DEPUTY: No, sir.

3 THE COURT: All right. Do we have everyone?

4 DEPUTY: Yes, sir.

5 THE COURT: All right. Good morning again, ladies and
6 gentlemen of the jury. It's good to see you all back in here.
7 I did not qualify the jury this week, but I -- I recognize
8 some faces from the jury selection on Monday. It's good to
9 have you all back.

10 As I told those of you who were here Monday, this is the
11 second phase of jury qualification for this trial that we're
12 about to begin. We're about to start the trial in the State
13 of South Carolina versus Abdul Furquan. Mr. Furquan is seated
14 here with his attorney, Mr. Stampfle.

15 Mr. Furquan, stand if you would and turn and face the
16 jury. This is Mr. Furquan. Thank you, Mr. Furquan.

17 Mr. Furquan has been charged by indictment with three
18 offenses; burglary in the first degree, attempted murder and
19 unlawful possession of a firearm by a person convicted of a
20 violent offense. Mr. Furquan has been indicted, but I tell
21 you that these indictments are not evidence and you're to draw
22 no conclusions or inferences whatsoever as to Mr. Furquan's
23 guilt or innocence in this matter. These are simply documents
24 that put Mr. Furquan on notice as to what the charges are.
25 They are not evidence and should not be considered by you as

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1 evidence. And of course the fact that someone has been
2 charged with a crime raises no inference whatsoever for your
3 consideration. As I said, this is the second phase of jury
4 selection.

5 On Monday, you all met with Judge Hocker and Judge Hocker
6 inquired as to whether or not you were statutorily qualified
7 to serve as a juror in any case and that was the main purpose
8 of the qualification on Monday morning.

9 The second phase involves determining whether or not
10 there is any reason why you should not serve as a juror on
11 this particular case. The keystone of our jury process is the
12 selection of an unbiased, a fair and unbiased jury and that's
13 what we are here this morning to do and that's what I'm gonna
14 be doing for the next few minutes in this process.

15 When we select jurors in the Court of General Sessions or
16 Common Pleas, the selection process is determined by the type
17 of case that we have. If we had a civil case, you would be
18 brought up here and your names would be placed at random on a
19 -- a list very similar to this list that I have here and you
20 would be given a new number, a number that you would not know
21 about and the attorneys would begin the striking process by
22 striking jurors by number without calling them up to the front
23 of the Court and they would use those new numbers so you would
24 not know if you were even being considered. Isn't that a nice
25 pleasant way to do it?

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1 In the Court of General Sessions or the criminal court as
2 we call it, we follow a different process. That process
3 involves calling you by name and having you come right up here
4 to the front and turn around and face everyone and then the
5 State would have an opportunity to either say present this
6 juror or excuse this juror. If the State were to say excuse
7 this juror, then you would return to your seat and you would
8 have been stricken from this particular case. If the State
9 said present the juror, then it would -- the -- the obligation
10 would shift over to the defense counsel and defense counsel
11 would either then say swear or present the juror. In such
12 case, you would come around and sit in the jury box or they
13 may say excuse the juror and in that case you would be
14 stricken for the purposes of this trial and you would return
15 to your seat. Many people find that embarrassing or
16 uncomfortable or their feelings might be hurt because they
17 have been struck. Please don't feel that way. I can tell you
18 right now, I practiced law for -- before I went on the bench
19 for about thirty-some years. I tried a lot of cases and I
20 learned that these attorneys don't have a clue what they're
21 doing when it comes to striking jurors, no attorney does. You
22 just have to go with your gut instincts in many cases because
23 all they know about you, all they know about you is what you
24 put on that little jury information form that was -- was sent
25 in and many times they're doing nothing more than looking down

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1 the list and thinking well, this particular juror might have
2 some experience or work experience or life experience that
3 might make him more sympathetic or less sympathetic to my
4 particular position in this case and they're just trying to
5 reach that juror. So, don't have your feelings hurt if you
6 are struck. As I tell every juror, I go through this little
7 litany every time and I'm worried about hurting somebody's
8 feelings and y'all are probably out there saying please don't
9 get me on that jury; I want to get struck.

10 But let me say this, jury service is something that we
11 are not called upon very often to do. It -- it's very rare
12 that we are summonsed as -- as jurors and it's even more rare
13 that you actually end up on a jury panel. Jurors who have
14 done that often tell me that they found that the process is
15 enlightening at least and most people -- most cases they found
16 it very rewarding. I had a lady on a trial yesterday, I asked
17 them at the conclusion of the trial if they had any comments
18 about their service and a lady stood up and said, you know,
19 this was one of the most rewarding things I -- I've ever done
20 and I believe that if you are selected, you will find that to
21 be the case.

22 Now as I said, we are about to begin the selection
23 process for Mr. Furquan's case and it's appropriate that I
24 tell you a little bit about the charges against him because
25 I'm going to be asking you about this case and any interest or

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1 prejudice or knowledge that you may have about the case.

2 He is charged, first of all, with attempted murder and
3 the indictment, and again, the indictment is not evidence.
4 What I'm about to tell you is not evidence, it is simply the
5 State's allegations against Mr. Furquan. It is alleged in the
6 indictment that he did in Horry County, South Carolina on or
7 about October the 16th of 2011 with intent to kill one David
8 Moran with malice or did attempt to kill one David Moran with
9 malice aforethought.

10 The second indictment alleges burglary in the first
11 degree and it alleges that in Horry County, South Carolina on
12 or about August -- I mean October the 16th, 2011, same day, he
13 did enter the dwelling of David Moran without consent and with
14 the intent to commit a crime therein and while affecting entry
15 into the dwelling or while there or while in flight there
16 from, he was armed with a deadly weapon and did cause physical
17 injury to some person there and also that this burglary
18 occurred in the nighttime and that's significant as you will
19 be charged at the end of the trial.

20 He's also charged with the offense of unlawful possession
21 of a firearm by a person convicted of a violent crime. And
22 it's alleged that on -- on that date, same date, in Horry
23 County, he did knowingly possess or acquire a pistol after
24 having been convicted of a violent crime. These are the
25 offenses for which Mr. Furquan will be tried this -- this day.

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VOIR DIRE

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1 Can you give me the location, Mr. Holford, just
2 generally; the address perhaps of Mr. Moran's home?

3 MR. HOLFORD: Yes, Your Honor. This was on Ivystone --
4 Your Honor, it was at the Ivystone Apartments, [REDACTED] Ivystone
5 Drive in Myrtle Beach, South Carolina.

6 THE COURT: All right. Thank you. Again, the
7 information that -- that you will consider now is that this
8 occurred in the Ivystone Apartments in Myrtle Beach, South
9 Carolina on October the 16th of 2011. I give you that
10 information because I'm gonna ask you in a few moments if you
11 know anything at all about that.

12 But before we get to that, I want to place you under
13 oath. There's a lot of swearing that goes on in the jury
14 selection process. If you get on the jury you're gonna have
15 to take another oath, but I'm placing you under oath because
16 it's critically important that you are truthful in your
17 responses to me and I'm sure you will be, but the record needs
18 to reflect that you were under oath.

19 Madam Clerk?

20 CLERK: Stand and raise your right hand please.

21 (REPORTER'S NOTE: Jury duly and unanimously sworn.)

22 JURY VOIR DIRE:

23 THE COURT: You may be seated. Was there anyone on the
24 jury panel who did not or the Jury Venire who did not take
25 that oath; if you would, just raise your hand and let me know?

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1 And let the record reflect that there was no response to that.

2 Let me begin by asking you has anyone ever been related
3 by blood or marriage to either the Defendant, Mr. Furquan --
4 and he stood a moment ago and you had an opportunity to see
5 Mr. Furquan -- are you related by blood or marriage to Mr.
6 Furquan or to the alleged victim in this matter, who again,
7 was Mr. David Moran and you heard his address just a moment
8 ago? Anyone related by blood or marriage to either the
9 Defendant or the alleged victim?

10 And there is no response.

11 Have any of you ever had a close personal or social
12 relationship with either the Defendant or victim?

13 And there is no response.

14 Mr. Holford, do you have a list of the State's witnesses?

15 MR. HOLFORD: Yes, Your Honor. Let the record reflect
16 that I showed opposing counsel, the court and the court
17 reporter the list.

18 THE COURT: All right. Mr. Stampfle, do you have a
19 witness list?

20 MR. STAMPFLE: Your Honor, at this time, the only
21 potential witness I plan to call would be Mr. Furquan.

22 THE COURT: All right. Ladies and gentlemen, I am going
23 to read to you a list of possible witnesses in this case. I
24 asked the attorneys to give me the names of anyone who might
25 be testifying in the case. If you hear a name and during the

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VOIR DIRE

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1 trial if you're on the jury and that person doesn't testify,
2 you draw no conclusion from that whatsoever. As I said, I
3 simply paint with a broad brush when they are giving me the
4 names of witnesses.

5 I'm going to read to you the names of the possible
6 witnesses in this case and I need to know if any of you are
7 related by blood or marriage to any of these folks or do you
8 have a close personal or social relationship with any of these
9 folks. Is there any reason why you may be inclined to be --
10 believe this person over another witness because of your
11 relationship with that person? David Thomas Morgan, I mean
12 Moran; Detective Allen Large with the Horry County Police
13 Department; Detective Damon Vestocovi, Vestocovi, V-E-S-T-O-C-
14 O-V-I, he's also with the Horry County Police; Jill Domogauer
15 -- is that right? -- D-O-M-O-G-A-U-E-R, she's with the Horry
16 County Police Department; Eric Collins, Eric James Collins;
17 Kenny Delray, I mean LeRay, L-E-R-A-Y; Mary Linder, L-I-N-D-E-
18 R; Taylor Smith; Samantha Topelski, T-O-P-E-L-S-K-I; Tyler
19 Topelski; Jeremy Fleming; Sandy Lowe; and Heather Lewis; and
20 possibly of course, the Defendant, but we've already asked
21 these questions concerning him. Are any of you related by
22 blood or marriage or do you have any close social, personal or
23 business relationship with any of these potential witnesses?

24 Yes, ma'am?

25 JUROR 306: I'm a close friend of Detective Large.

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VOIR DIRE

20

1 THE COURT: Detective Large. All right. And your name?

2 JUROR 306: Samantha Saber.

3 THE COURT: Samantha?

4 JUROR 306: Saber. And your number?

5 JUROR 306: 306.

6 THE COURT: 306. Would your relationship with Detective
7 Large affect your ability to be fair and impartial in this
8 case?

9 JUROR 306: It would not affect my ability.

10 THE COURT: Could you set your relationship with him
11 aside and give both the State and the Defense a fair trial?

12 JUROR 306: Yes, sir.

13 THE COURT: All right. Thank you very much for that
14 information.

15 Anyone else?

16 And there's no further response to that query.

17 The attorneys in this case, Mr. Josh Holford -- Mr.
18 Holford stand up and face the jury. Mr. Holford is with the
19 Fifteenth Judicial Circuit Solicitor's Office, that would be
20 Horry and Georgetown Counties. Mr. Holford is an Assistant
21 Solicitor and he tries cases primarily for the State and here
22 in Horry County, Mr. Holford?

23 MR. HOLFORD: Yes.

24 THE COURT: Aren't you generally in Horry County; you
25 don't go over Georgetown?

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VOIR DIRE

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1 We also have Mr. Ryan Stampfle. Mr. Stampfle is a
2 private attorney here in Horry County. Mr. Stampfle, your
3 office is in Myrtle Beach?

4 MR. STAMPFLE: That's correct, Your Honor.

5 THE COURT: Myrtle Beach and who do you practice with?

6 MR. STAMPFLE: Myself, Your Honor.

7 THE COURT: Just himself. He's a sole practitioner and
8 he tries cases, I think, in both the civil and the criminal
9 arenas here in this State and he represents Mr. Furquan.

10 Thank you, Mr. Stampfle.

11 Is anyone related by blood or marriage; or have you been
12 represented by the attorneys in this case; do you have any
13 close personal or social relationship with either of the
14 attorneys in this case?

15 And there is no response.

16 Has any member of the jury panel formed an opinion or
17 expressed an opinion about any issue or matter involving this
18 case? That question is designed to illicit from you whether
19 or not you have talked to anyone about this case, do you
20 remember reading anything in the newspaper on the internet or
21 Facebook, anything about this case; do you happen to live out
22 at in Ivystone -- Ivystone Apartments; do you have any
23 connection whatsoever; do you have any information or have you
24 received any information about this case -- and I know that I
25 gave you very little information about the case; the attorneys

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VOIR DIRE

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1 are gonna give you a whole lot more when they do their
2 openings, but it involved a burglary of a -- allegedly of a
3 residence on October the 16th of 2011 and involved some sort
4 of assault on a David Moran, again allegedly; that's what the
5 indictments say. Does anyone have any information or know
6 anything about this case?

7 Yes, ma'am?

8 JUROR 39: I remember hearing it on the news or either
9 the internet; I remember reading about it.

10 THE COURT: You read about it and that was two years ago.
11 Have you -- would that affect your ability to -- to be fair
12 and impartial in this matter?

13 JUROR 39: No, it wouldn't affect by ability.

14 THE COURT: Would you -- could you put whatever -- can
15 you even remember what you might have read or heard about it,
16 the specifics of it?

17 JUROR 39: Not really, no.

18 THE COURT: Okay. And can you give both the State and
19 the Defendant a fair trial?

20 JUROR 39: Yes.

21 THE COURT: And your number?

22 JUROR 39: 39.

23 THE COURT: 39 and again you are?

24 JUROR 39: Robin Bowman.

25 THE COURT: Palmer?

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VOIR DIRE

23

1 JUROR 39: Robin Bowman.

2 THE COURT: Bowman. All right. Thank you, Ms. Bowman,
3 for that information.

4 Does any member of the jury panel a member of -- was any
5 member of the jury panel a member of the Grand Jury, which
6 issued the indictment in this case? You know, a lot of people
7 -- sometime a juror when I ask that question during
8 qualifications they say well what's the Grand Jury and my
9 response is, if you're on the Grand Jury, you certainly know
10 it. They have to meet once a month for like two years and if
11 you were on the Grand Jury in a time period in which this
12 would be indicted you were probably disqualified by Judge
13 Hocker, but I ask the question anyway. Has anyone been on the
14 Grand Jury in the last three years?

15 And there's no response.

16 Is there any member of the jury panel who is a member or
17 contributed to any group, which has as its primary concern and
18 function the promotion of law enforcement or victim's rights
19 and that would be groups like MADD or SADD or CAV, which is
20 Citizens Against Violent Crimes, groups of that nature?

21 And there is no response.

22 Now, this is the important question. Does any member of
23 this jury panel know of any reason whatsoever why he or she
24 should not serve as a juror in this case with particular
25 emphasis being placed on your ability to be fair and impartial

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VOIR DIRE

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1 to both the State and the Defense? If you've had an
2 experience in your life that you feel would prejudice you one
3 way or the other, anything of that nature, please let us know.
4 And there is no response.

5 Anything further from the State?

6 MR. HOLFORD: Nothing further from the State.

7 THE COURT: Anything further from the Defense?

8 MR. STAMPFLE: Your Honor, the Defense would respectfully
9 ask the Court to inquire whether any of the jurors have been
10 victims of violent crimes or burglary since this case does
11 concern those two ---

12 THE COURT: Okay. Is there any member of the jury panel
13 who has been a victim of a violent crime or burglary?

14 Yes, ma'am?

15 JUROR 369: It wasn't actually -- it doesn't meet the
16 elements of violent crime or burglary, but I was robbed at an
17 ATM.

18 THE COURT: Okay. And your name again?

19 JUROR 369: Mary Tovornik.

20 THE COURT: All right, Ms. Tovornik, could you set that
21 aside?

22 JUROR 369: Yes, sir.

23 THE COURT: Could you be fair to both the State and the
24 Defense?

25 JUROR 369: Yes, sir.

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25

1 THE COURT: All right. And your number?

2 JUROR 369: 369.

3 THE COURT: 369. Thank you very much. All right.

4 Anything further from the Defense?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: Oh, I have one more, one more.

7 JUROR 135: Can I approach you?

8 THE COURT: Yes, ma'am?

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

12 JUROR 135: How old was the person that he allegedly ---

13 THE COURT: How old is the victim? Twenty--

14 JUROR 135: Because I lost my son and I cannot be partial
15 of somebody -- that wants to take another person's child.

16 THE COURT: Do you feel that you would not be able to ---

17 JUROR 135: No, sir.

18 THE COURT: Your name and number?

19 JUROR 135: 135, Michelle Hall Gagnon.

20 THE COURT: Danion?

21 JUROR 135: Gagnon, G-A-G ---

22 THE COURT: Gagnon, okay. I'm gonna set you aside in
23 this case. Okay?

24 JUROR 135: Yeah, it'll be five years next week and I
25 don't think ---

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25

VOIR DIRE

1 THE COURT: All right. And your number?

2 JUROR 369: 369.

3 THE COURT: 369. Thank you very much. All right.

4 Anything further from the Defense?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: Oh, I have one more, one more.

7 JUROR 135: Can I approach you?

8 THE COURT: Yes, ma'am?

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

12 JUROR 135: How old was the person that he allegedly ---

13 THE COURT: How old is the victim? Twenty--

14 JUROR 135: Because I lost my son and I cannot be partial
15 of somebody -- that wants to take another person's child.

16 THE COURT: Do you feel that you would not be able to ---

17 JUROR 135: No, sir.

18 THE COURT: Your name and number?

19 JUROR 135: 135, Michelle Hall Gagnon.

20 THE COURT: Danion?

21 JUROR 135: Gagnon, G-A-G ---

22 THE COURT: Gagnon, okay. I'm gonna set you aside in
23 this case. Okay?

24 JUROR 135: Yeah, it'll be five years next week and I
25 don't think ---

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VOIR DIRE

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1 THE COURT: All right.

2 MR. STAMPFLE: Your Honor, for the record, may the Court
3 inquire whether any family members have been victims of
4 violent crimes or burglary?

5 THE COURT: All right. I will.

6 MR. STAMPFLE: Thank you.

7 (REPORTER'S NOTE: End of sidebar conference.)

8 THE COURT: Has -- do any of you have family members who
9 have been victims of violent crimes or burglaries?

10 Yes, ma'am, back in the corner?

11 JUROR 228: My husband was in Tennessee with his
12 grandmother and was high-jacked, a gun to his side.

13 THE COURT: All right. Could you set that aside and be a
14 fair and impartial juror?

15 JUROR 228: Yes.

16 THE COURT: Could you give both the State and the Defense
17 a fair trial?

18 JUROR 228: Yes, sir.

19 THE COURT: Okay. And your number?

20 JUROR 228: 228.

21 THE COURT: 228. All right. Anyone else?

22 Yes, ma'am?

23 JUROR 8: My father was robbed at gunpoint?

24 THE COURT: All right. And your name?

25 JUROR 8: Debra Auld.

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JURY SELECTION

27

1 THE COURT: Ms. Auld, could you set that aside and be a
2 fair and impartial juror?

3 JUROR 8: No, I can't.

4 THE COURT: You cannot. All right. I will excuse you on
5 this case.

6 JUROR 8: Thank you.

7 THE COURT: And your number?

8 JUROR 8: 8.

9 THE COURT: 8. Very well.
10 Anything else?

11 Just stay with us until we finish.

12 All right. Anything further?

13 MR. STAMPFLE: No, Your Honor.

14 THE COURT: All right.

15 Madam Clerk, let's have our first witness -- I mean our
16 first juror.

17 JURY SELECTION:

18 CLERK: When I call your name, gather your belongings and
19 stand in front of the courtroom and face the back please?

20 Christine Cervi, Number 69.

21 THE COURT: Come right up here Ms. Cervi and turn around
22 and let us see you all; come back towards me a little bit. If
23 you keep doing that, I'm gonna make you the forelady?

24 CLERK: What say the State?

25 MR. HOLFORD: Please present this juror.

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JURY SELECTION

28

1 CLERK: Defense?

2 MR. STAMPFLE: Please strike this juror, Your Honor.

3 THE COURT: All right. You're excused on this case.

4 CLERK: Lenore Grzymalski, Number 157.

5 JUROR 157: Good morning.

6 THE COURT: Good morning.

7 CLERK: What say the State?

8 MR. HOLFORD: Please present this juror.

9 CLERK: Defense?

10 MR. STAMPFLE: Please seat this juror.

11 CLERK: Please have a seat in the jury box.

12 Jeffrey Suggs, 352. What say the State?

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

14 THE COURT: Certainly.

15 JUROR 352: EMT.

16 MR. HOLFORD: Please present this juror.

17 CLERK: Defense?

18 MR. STAMPFLE: Please strike this juror.

19 CLERK: Linda Gengler, 139.

20 What say the State?

21 MR. HOLFORD: Please present this juror.

22 CLERK: Defense?

23 MR. STAMPFLE: Please strike this juror.

24 CLERK: Johnnie Blanton, Number 33. What say the State?

25 MR. HOLFORD: Please present this juror.

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JURY SELECTION

29

1 CLERK: Defense?
2 MR. STAMPFLE: Please strike this juror.
3 CLERK: Francis McNasby, 237.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MR. STAMPFLE: Please present the juror, Your Honor.
8 CLERK: Please have a seat.
9 Daniel Bull, 54.
10 What say the State?
11 MR. HOLFORD: Please present this juror.
12 CLERK: Defense?
13 MR. STAMPFLE: Please seat the juror.
14 CLERK: Aida Diaz, 102.
15 What say the State?
16 MR. HOLFORD: Please present this juror.
17 CLERK: Defense?
18 MR. STAMPFLE: Your Honor, I could not hear on Monday her
19 -- whether she's single or married and what does her husband
20 do for a living?
21 THE COURT: Could you give us that information?
22 JUROR 102: I'm single, retired, NYDP.
23 MR. STAMPFLE: Please strike the juror, Your Honor.
24 CLERK: James Coleman, Number 78.
25 What say the State?

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JURY SELECTION

30

1 MR. HOLFORD: Please present this juror.
2 CLERK: Defense?
3 MR. STAMPFLE: Seat the juror, Your Honor.
4 THE COURT: Mr. Coleman?
5 JUROR 78: Thank you, sir.
6 THE COURT: Guess what?
7 JUROR 78: Is that my chair?
8 THE COURT: You have experience in that chair.
9 CLERK: Tiffany Hunt, Number 189.
10 What say the State?
11 MR. HOLFORD: Please present this juror.
12 CLERK: Defense?
13 MR. STAMPFLE: Please seat the juror.
14 CLERK: Mary Tovornik, 369.
15 What say the State?
16 MR. HOLFORD: Please present this juror.
17 CLERK: Defense?
18 MR. STAMPFLE: Strike this juror.
19 CLERK: Arthur Haskins, 169.
20 What say the State?
21 MR. HOLFORD: Please present this juror.
22 CLERK: Defense?
23 MR. STAMPFLE: Please seat the juror, Your Honor.
24 CLERK: Samantha Saber, 306.
25 What say the State?

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JURY SELECTION

31

1 MR. HOLFORD: Please present this juror.

2 CLERK: Defense?

3 MR. STAMPFLE: Your Honor, we'd ask this juror be struck
4 for cause of her previous statement of a relationship with
5 Detective ---

6 THE COURT: She made it clear to the Court that she could
7 set that aside. She just, I believe, told me that she knew
8 Detective Large and could be fair and impartial and I have no
9 reason to doubt that.

10 MR. STAMPFLE: All right. Thank you, Your Honor. Please
11 strike this juror.

12 CLERK: Robbie Lucas, 216.

13 What say the State?

14 MR. HOLFORD: Please strike this juror.

15 CLERK: Julie Martin, 228.

16 What say the State?

17 MR. HOLFORD: Please present this juror.

18 CLERK: Defense?

19 MR. STAMPFLE: Please strike this juror.

20 CLERK: Mark Burroughs, Number 60.

21 What say the State?

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MR. STAMPFLE: Your Honor, I could not hear what Mr.
25 Burroughs or his spouse ---

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JURY SELECTION

32

1 THE COURT: Mr. Burroughs, tell us what you do for a
2 living?

3 JUROR: Work at the paper mill -- Florence.

4 MR. STAMPFLE: Please seat this juror, Your Honor.

5 CLERK: Deloris Bowens, 38.

6 What say the State?

7 MR. HOLFORD: Please present this juror.

8 CLERK: Defense?

9 MR. STAMPFLE: Please seat this juror.

10 CLERK: Ina Eells, 115.

11 What say the State?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. STAMPFLE: Please strike this juror, Your Honor.

15 CLERK: John Harris, 167.

16 What say the State?

17 MR. HOLFORD: Please present this juror.

18 CLERK: Defense?

19 MR. STAMPFLE: Please seat the juror, Your Honor.

20 CLERK: Samantha Rabon, 289.

21 What say the State?

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MR. STAMPFLE: Please seat this juror.

25 CLERK: Brenda Reid, 294.

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JURY SELECTION

33

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 CLERK: Defense?

4 MR. STAMPFLE: Please seat this juror.

5 CLERK: William Pugia, 287.

6 What say the State?

7 MR. HOLFORD: Please excuse this juror from this

8 particular case.

9 THE COURT: You may return to your seat.

10 CLERK: Amy Lopez, 215.

11 What say the State?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. STAMPFLE: Please seat the juror.

15 THE COURT: Two alternates. Strikes on the alternates

16 will be one for the State and two for the Defense as to each

17 alternate.

18 CLERK: Crystal Sands, 309.

19 What say the State?

20 MR. HOLFORD: Please present this juror.

21 CLERK: Defense?

22 MR. STAMPFLE: Please strike this juror.

23 CLERK: Melissa Strickland, 349.

24 What say the State?

25 MR. HOLFORD: Please present this juror.

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JURY SELECTION

34

1 CLERK: Defense?

2 MR. STAMPFLE: Please seat the juror.

3 THE COURT: And was it Ms. Strickland?

4 JUROR 349: Yes, sir.

5 THE COURT: Thank you.

6 CLERK: Lowell Thompson, 361.

7 What say the State?

8 MR. HOLFORD: Please present this juror.

9 CLERK: Defense?

10 MR. STAMPFLE: Please seat the juror.

11 THE COURT: All right. Mr. Ropp, would you take this
12 group of jurors into the jury room for a few moments. Ms.
13 Strickland, when you return, occupy that seat. Mr. Thomas,
14 please occupy that seat and you'll be our alternates. And,
15 Mr. Coleman, back where you were last week or earlier in the
16 week. Thank you.

17 (REPORTER'S NOTE: The jury retires to the jury room. 10:36
18 A.M. The following takes place outside the presence of the
19 jury.)

20 All right. Mr. Holford, Mr. Stampfle, it's my
21 understanding or let me put it on the record. Do you have any
22 challenge for -- to the panel, Mr. Stampfle?

23 MR. STAMPFLE: I have no challenge for the panel.

24 THE COURT: Mr. Holford?

25 MR. HOLFORD: None, Your Honor.

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BY THE COURT

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1 THE COURT: Very well. Ladies and gentlemen of the jury,
2 have a nice afternoon. Call back at 6, okay?

3 They don't need them downstairs, do they?

4 CLERK: No, sir.

5 THE COURT: Okay. All right.

6 (REPORTER'S NOTE: The remaining jury pool exits the
7 courtroom. 10:37 A.M.)

8 THE COURT: We're gonna take a quick break before we
9 bring the jury back in. We're at ease for just a few minutes.
10 (RECESS - 10:38 A.M.)

11 *****OFF THE RECORD*****

12 (On the record. 10:55 A.M.)

13 THE COURT: Anything we need to take up before we bring
14 the jury in?

15 MR. STAMPFLE: Your Honor, there is -- there is one issue
16 I want to take up before you swear the jury in.

17 CSI Jill Domogauer was a client of mine five or six years
18 ago on a Worker's Comp claim. I don't feel there's any
19 conflict representing her on that. I've had no conversations
20 or contact with her ---

21 THE COURT: I don't see that as a problem, do you, Mr.
22 Holford?

23 MR. HOLFORD: Not at all, Your Honor.

24 THE COURT: Okay. All right. Let's bring the jury in.

25 MR. HOLFORD: Your Honor, I believe there was one more

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BY THE COURT

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1 thing.

2 MR. STAMPFLE: We had -- we had a few things that that I
3 think we can agree to and there's one I want to make after the
4 jury gets sworn in, Your Honor.

5 THE COURT: Okay.

6 MR. STAMPFLE: I believe we agreed that -- to sequester
7 the witnesses, Your Honor.

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: Very well. We'll let the lead investigator
10 be in, the victim be in and -- I think we're required to do
11 that -- and of course the, the Defendant will be present.

12 MR. STAMPFLE: And, Your Honor, I think we've also agreed
13 prohibit, since it is, I believe, a sentencing matter, the
14 State agrees that any discussion of Section 17-25-45 be
15 mandatory life enhancement. We both agree that that would be
16 proper ---

17 THE COURT: I wouldn't -- that's sentencing. I wouldn't
18 advise the jury of that.

19 MR. STAMPFLE: I understand; we're just putting it on the
20 record, Your Honor.

21 MR. HOLFORD: Certainly, Your Honor, and we agree.

22 THE COURT: Okay. Bring the jury in.

23 (REPORTER'S NOTE: The jury returns to the courtroom. 10:58
24 A.M.)

25 THE COURT: All right. Ladies and gentlemen, we have all

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1 the jurors and our alternates back in the courtroom. Before
2 we begin this case, I want to make a few comments to you.
3 These comments are certainly instructions on the law. At the
4 end of the case, I will give you some instructions as to the
5 law you will use during your deliberation process. But before
6 we get started, let me tell you a little bit about a trial.

7 A trial is essentially a process by which evidence is
8 presented. The State has a burden of proving guilt beyond a
9 reasonable doubt and I'll talk to you more about that later,
10 but, as I said, it involves the presentation of evidence.
11 That's what the purpose of the trial is. And all that is done
12 for you, for your benefit. You the jury, must weigh the
13 evidence and make a determination of what the facts are in
14 this case. So it's important that you hear and see everything
15 that's going on in a courtroom. If at any time during the
16 trial of this case, one of the attorneys is inadvertently
17 blocking your view or you can't hear a witness or you can't
18 see an exhibit, what I ask you to do is just raise your hand
19 and that'll be my signal that you can't see or hear because
20 it's vitally important that you see and hear everything that's
21 going on. We present it for you, the jury. The rest of us
22 have probably seen all this, but it's presented for your
23 benefit.

24 Also, I don't want you to become distracted because you
25 are uncomfortable. I try not to go more than an hour and a

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BY THE COURT

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1 half. I figure if you can make it through preaching, you can
2 make it through an hour and a half of, of testimony. After
3 about an hour and a half, I take a break or I try to take
4 breaks that often, but if at any time, you become
5 uncomfortable, you need -- your back's hurting or you need to
6 refresh yourself, anything; you need a break, please, again,
7 just raise your hand and let me know that you need to take a
8 break and we'll certainly take that break and, and, and let
9 you tend to whatever you need.

10 If you go in your jury room and our Clerk of Court is
11 usually very good about out of her budget providing
12 refreshments, cokes, snacks and things of that nature. If
13 there's anything there that you don't have that you need,
14 please make Mr. Coleman, your foreman, know. Mr. Coleman will
15 advise Mr. Ropp, who's my bailiff, and he will let me know and
16 we will take care of that I can promise you.

17 As we try this case, you may find that it is
18 substantially different from what you may see on -- on T.V.
19 or, you know, we -- we see all sorts of trials and things on
20 T.V. and they're always action packed. That's not necessarily
21 how a trial normally goes. Usually the presentation of
22 evidence is slow and methodical and repetitive and that's
23 because the Rules of Evidence require that it be done in that
24 fashion. Please excuse that, but remember the trial is not
25 for your entertainment; it's for you to determine what the

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1 facts are.

2 Mr. Holford, Mr. Stampfle and I have all taken oaths to,
3 to conduct ourselves in a reasonable and professional and, and
4 ethical manner during the trial of this case and every case.
5 You as jurors in a moment are gonna take an oath that also
6 requires that of you. So it's very important that you follow
7 -- Mr. Bailiff, don't let another person come in this
8 courtroom, okay, not one more person while I'm speaking to the
9 jury. Excuse me. It's important that you also listen to what
10 I'm telling you and follow my instructions exactly.

11 Now in every trial, there's a procedure that we have to
12 follow and I want you to know how that procedure will be
13 before we begin. First of all, the State will open with a
14 opening remark, in which Mr. Holford will tell you much more
15 about this case than I have, have told you. He will tell you
16 what the State intends to prove. He may tell you how the
17 State intends to prove it. He may even comment on what the
18 law is. Remember that Mr. Holford's statements are not
19 evidence in this case. The only evidence that you will
20 consider will be the evidence that comes from the witness stand.
21 Following Mr. Holford's opening remarks, Mr. Stampfle will
22 have an opportunity if he chooses to also make an opening
23 remark and he will set forth his position in the trial. What
24 he may or may not choose to, to present during trial.
25 Remember the Defendant does not have to prove himself

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BY THE COURT

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1 innocent. The Defendant doesn't have to prove anything at all
2 and he may not put up any witnesses or, or testimony or
3 exhibits in this trial. And if he doesn't, you cannot
4 consider that in any form or fashion against him. As I said,
5 Mr. Stampfle has the opportunity to make an opening remark. I
6 suspect he will and he will tell you his position in this
7 case. That sort of sets the stage.

8 After that, Mr. Holford has to go forward with his
9 witnesses. His witnesses are presented Mr. Holford and Mr.
10 Stampfle has an opportunity to cross examine those witnesses.
11 At the end of the State's case, the Defense, as I said, has an
12 opportunity, not obligated in any form or fashion to put up
13 anybody or any evidence, but they may depending on, on what
14 they feel is their best position in the case. They may do it.

15 After that, again, Mr. Holford will offer what's called a
16 closing argument. He will tell you what he believes he has
17 proven or shown in the case and again may comment on the law.
18 But remember, what the lawyers say is not evidence. It's
19 merely a summation of the evidence from their point of view.
20 Then Mr. Stampfle will also have an opportunity to do the same
21 thing. And again, what he says is not evidence.

22 Following that, I will then instruct you on the law, tell
23 you what the law is and you must be guided by that. Because
24 remember, the jury is the sole and exclusive judge of the
25 facts in this case. That's why it's so important that y'all

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1 see and hear everything that goes on during the trial.

2 At the end of the trial, when you go into deliberate,
3 you're gonna weigh that evidence and you're gonna give it such
4 weight as you think it deserves. I'll tell you right now, you
5 can believe one witness over many or many over one; you can
6 believe part of what a witness says and reject the rest; you
7 can believe everything he said or nothing that that witness
8 has said depending on your view of -- of the evidence in this
9 case. As I said, you can -- you're gonna have to weigh the
10 evidence and in doing so, you can apply any method that you
11 believe within your common experience to lead you to the
12 truth. You can consider a witness' interest, prejudice or
13 bias in the case; whether the witness was really in a position
14 to hear or see what he says or what he or she saw. You can
15 consider a witnesses intelligence and ability to remember what
16 happened. You can consider all those things.

17 You, as a juror, as I said, will determine what the facts
18 are and what's important about that is this. Everything in
19 this courtroom, everything that's done here, is recorded.
20 There's a record made of it. Ms. Richardson records every
21 word. But you know when you go in that jury room nothing is
22 recorded. If I make a mistake ruling in, in this trial on the
23 evidence or other things of that nature, the Supreme Court or
24 the Court of Appeals can fix it. When you go in that jury
25 room, there's no record of what went on and unless you perform

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1 your, your duty reasonably and professionally and ethically,
2 there's no way to correct it; none at all, because there's no
3 record. That's why it's important that you consider the
4 evidence and reasonably and ethically weigh that evidence.

5 In reaching a verdict, you will apply the law as I give
6 it to you. Exactly as I give it to you. You may not agree
7 with it. You may think that the law is something else. You
8 think -- you may think it ought to be something else; you
9 still have to apply the law as I give it to you. And remember
10 the jury process or the deliberation process is sort of a two-
11 part thing. You find the facts and to those facts, you will
12 apply the law as I give it to you.

13 Now at times during this trial, you may hear an attorney
14 say something like, Your Honor, we need to take up a matter
15 outside the presence of the jury or, Your Honor, I've got an
16 objection that I need to make and if I hear that, I generally
17 will send you out the courtroom. It's not that we're trying
18 to keep anything from you; it's this, the law does not even
19 allow me to have an opinion about evidence. I'm not allowed
20 to, to do anything that may convey to you that I have an
21 opinion about the evidence. Usually when that happens, I'm
22 going to rule on the way evidence is presented or the
23 admissibility of, of the evidence. And in doing so, I often
24 have to express an opinion about the evidence and how the
25 evidence may be used. It would be improper for you to hear me

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1 say that and that's why we send you out while I am doing that.
2 Because again, I am -- I hope I will not do anything during
3 this trial, it would certainly be unintentional if I do, that
4 would suggest to you how you should view a, a piece of
5 evidence.

6 You know, in this, in this day of time, everybody has an
7 iPhone or a laptop and you can go on there and you can find
8 just about anything in the world. I remind you that you have
9 to try this case based on the evidence you hear from this
10 stand. Please do not try to look up anything about this case
11 or find old newspaper reports about it. I notice that we do
12 have the newspapers here. If this goes over into tomorrow or
13 the T.V. station is here, don't look at anything on T.V. about
14 it. Don't listen to anything about it, don't read anything
15 about it. You know we've had jurors that visited the scene of
16 an offense or looked up Google maps about it; don't do
17 anything like that. You've got to rely only on the evidence
18 that is presented to you from this witness stand.

19 I want to thank you for being here. You're performing a
20 very important function and I hope that at the end of this
21 trial, you will see how important and how awesome your
22 responsibilities are in this or any other trial.

23 Now, anything further, Mr. Holford?

24 MR. HOLFORD: Nothing further from the State.

25 THE COURT: Anything further, Mr. Stampfle?

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MOTIONS

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1 MR. STAMPFLE: I have a motion to take up.

2 THE COURT: Okay. Let me swear the jury.

3 MR. STAMPFLE: Okay.

4 THE COURT: Now I'm gonna place you under oath and I have
5 to send you out again just briefly and bring you right back
6 but -- if you would swear the jury?

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

8 THE COURT: Was there any juror who did not take that
9 oath; raise your hand? And there was not.

10 Please take them to the jury room just briefly.

11 (REPORTER'S NOTE: The jury exits the courtroom. 11:11 A.M.
12 The following takes place outside the presence of the jury.)

13 All right, Mr. Stampfle?

14 MOTIONS:

15 MR. STAMPFLE: Your Honor, I believe it may be premature,
16 but for the record, to protect the record, it's my
17 understanding the State intends to pursue a life sentence
18 under 17-25-45. We would ask the Court to, to dismiss that,
19 their attempt to do that, dismiss their motion that they've
20 already made to do that. We believe -- I believe for several
21 reasons, Your Honor.

22 THE COURT: All right. Let's hear them.

23 MR. STAMPFLE: Your Honor, the underlying -- first of
24 all, Your Honor, the law itself violates separation of powers.
25 It's the Solicitor's discretion whether he pursue that or not.

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1 It is our position that that violates both Article 3 of the
2 United States Constitution, Article V of the State
3 Constitution, Your Honor. It denies the judicial branch its,
4 its ability to render effective sentencing.

5 THE COURT: He's proceeding under the statute with
6 mandatory life without parole?

7 MR. STAMPFLE: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. STAMPFLE: In addition, Your Honor, the underlying
10 offense that they're pursuing this was from 1992, Your Honor;
11 it's twenty years old. We feel that it's outside of the range
12 of what would be fair and reasonable to consider to enhance
13 that penalty, Your Honor. It's more than two decades old.

14 Finally, Your Honor, I believe that this would be ---

15 THE COURT: Is that a cruel and unusual argument?

16 MR. STAMPFLE: I can make the argument that it would be
17 cruel and unusual to go after him for that being so long -- so
18 far back in the records, Your Honor. And those would be
19 motions.

20 THE COURT: All right. Mr. Holford?

21 MR. HOLFORD: Yes, Your Honor. 17-25-45 is a statute
22 written by the legislature. It clearly gives the State the
23 power to seek and to serve the Defendant notice with intent to
24 seek life without parole if convicted of either two serious
25 offenses and if convicted of a third. In this case, he has

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1 already been convicted of the most serious offense; that being
2 CSC with a minor, second degree, for which he was convicted
3 and given ten years. I have served notice of intent to seek
4 life on the Defendant.

5 THE COURT: What's his other offense?

6 MR. HOLFORD: Your Honor ---

7 THE COURT: You said he had the CSC?

8 MR. HOLFORD: Your Honor, the CSC second with a minor is
9 a most serious offense.

10 THE COURT: All right. Okay.

11 MR. HOLFORD: And if convicted today of either the
12 burglary or the attempted murder, that would be a second most
13 serious; and therefore, under the Statute ---

14 THE COURT: It'd be two strikes.

15 MR. HOLFORD: --- 17-25-45 would be two strikes and
16 therefore, he would have mandatory life without parole if we
17 seek to assert that. And I have served him notice of intent
18 to seek.

19 THE COURT: All right. Mr. Stampfle, do you have any
20 authority; has the constitutionality of the statute been
21 previously tested?

22 MR. STAMPFLE: It has been previously tested, Your Honor.

23 THE COURT: It has?

24 MR. STAMPFLE: It has been previously tested, the
25 constitutionality of it and I'm basically renewing the motion

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1 that's already been argued.

2 THE COURT: All right. And was it not upheld?

3 MR. STAMPFLE: It was upheld, Your Honor.

4 THE COURT: And I would deny your motion on the
5 constitutional issue ---

6 MR. STAMPFLE: And as for the ---

7 THE COURT: I'll hear you as to whether it is
8 constitutional or unconstitutional upon the theory of
9 separation of powers, I think it was addressed there, and as
10 to the -- was the issue of cruel and unusual punishment
11 raised?

12 MR. STAMPFLE: It has been raised in other cases, Your
13 Honor. I, I would argue that this case is based upon -- I
14 would ask the Court to take an interest or look into this
15 specifically because this matter is twenty years old. It is a
16 CSC. I'm not arguing that it does qualify; I have pulled the
17 record and have reviewed that and reviewed the sentencing
18 sheet to see if it qualifies under I believe Clause Thee of
19 the CSC second prior to 2009, Your Honor, which was -- was the
20 statute that that references. This is a twenty-year-old
21 conviction when my client was seventeen years old.

22 THE COURT: Okay. What I'm gonna do, Mr. Stampfle, is
23 I'm going to reserve ruling. We're gonna proceed with the
24 trial and I will address that before the end of the trial.

25 MR. STAMPFLE: Thank you, Your Honor.

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OPENING BY MR. HOLFORD

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1 MR. HOLFORD: Thank you, Your Honor. May I be heard
2 briefly on that?

3 THE COURT: Yes, you may.

4 MR. HOLFORD: Just for the record, Your Honor, the
5 statute makes no distinction as to how old the offense was.

6 THE COURT: I know that. I understand.

7 MR. HOLFORD: Thank you, Your Honor.

8 THE COURT: All right. Yes, ma'am?

9 Are we ready to proceed?

10 MR. HOLFORD: Yes, Your Honor.

11 THE COURT: Bring the jury in and I would suggest -- and
12 they really have me loaded during lunch -- we've got forty-
13 five minutes, gentlemen, let's try to do our openings in that
14 time if at all possible. I'd like for my -- my Court Reporter
15 to at least have a little bit of time for lunch.

16 MR. HOLFORD: Certainly, Your Honor.

17 THE COURT: What was that statute again? 17 ---

18 MR. STAMPFLE: --- 25-45.

19 (REPORTER'S NOTE: The jury returns to the courtroom. 11:18
20 A.M.)

21 THE COURT: Mr. Holford?

22 MR. HOLFORD: Thank you, Your Honor.

23 OPENING BY MR. HOLFORD:

24 MR. HOLFORD: Ladies and gentlemen of the jury, based on
25 some of your responses, I know some of you may have sat in on

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OPENING BY MR. HOLFORD

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1 the last trial. I apologize for inconveniencing you again,
2 but this case is very important. If you were on the last
3 trial, it's also very different. In this case what we have is
4 three things; miracle, money and malice. Now I don't use the
5 word miracle lightly. I'm a God-fearing man; I think miracle
6 is something that's extraordinary. But when I talked to David
7 Moran, the victim in this case, and when you see him sitting
8 here in the courtroom, when you hear him testify on that
9 stand, I submit to you that's a miracle, because on October
10 16th, 2011, this Defendant, Abdul Furquan, along with his
11 Codefendant, broke into Mr. Moran's apartment with a .38
12 pistol; shot him pointblank in the head and here he is. We
13 hear of people dying from shots to the shoulder, shots to the
14 chest, hitting an artery, bouncing around. Not many people
15 survive a shot to the head. What happened was, the .38
16 caliber bullet hit his skull right here, fractured the skull
17 and the bullet was at such an angle that the fragments wrapped
18 around the hard skull and ended up in the back of his head.
19 After a medical procedure, they were able to remove the
20 fragments. He can speak fine; he has no mental damage. I
21 submit that is a miracle. Had it been -- had it not been for
22 that miracle, this Defendant would be on trial for murder.
23 Instead, he's on trial for attempted murder.

24 Why? Because of money, the second thing. You'll hear
25 from three independent witnesses. They gave a ride to this

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1 Defendant, Mr. Furquan and his Codefendant. They went over to
2 ■ Ivystone, Apartment ■. Three younger people stayed in the
3 car, didn't know what was going on, thought that the Defendant
4 and his Codefendant were over there to get some money. What
5 had really happened was a mutual friend of Mr. Moran and of
6 the Defendant and Codefendant set him up. She said, I'm gonna
7 come over and see you tonight. So when he opened that door
8 and at a knock at 11:40 in the evening, he expected to find a
9 girl named Brie. Instead, what did he find; two men wearing
10 bandanas around their face, what will referred to as masks
11 sometimes, dark clothing, and gloves. These gloves had a
12 skeleton design; you'd be able to recognize them. So, when he
13 opened that door, he expected to find something else and they
14 were there for money and you'll hear that from those three
15 independent witness.

16 You'll also hear from his roommate, probably one of the
17 only reasons he's also alive, is his roommate came out of the
18 room, came around the corner holding a rifle with a dog. The
19 Defendant didn't know there was a roommate there. They were
20 there to rob Mr. Moran. When he came around with the rifle
21 and came around with the dog, the Defendant and Codefendant
22 fled. You'll hear from the roommate. Two people entered that
23 apartment, not one, but two. One person had a gun, one person
24 had already shot David Moran and one person was standing over
25 him when Eric Collins came out. When Eric Collins came out,

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1 both Defendants fled. Eric Collins, I believe, prevented a
2 murder.

3 Malice, when you take a .38 pistol, aim it at someone's
4 head to steal from them, shoot them in the forehead; that's
5 malice.

6 The Judge will give you legal definitions. He'll talk
7 about malice and aforethought and how it can be formed in an
8 instant. But, ladies and gentlemen, don't let your common
9 sense go to waste. Being shot in the forehead is pure
10 malice. That's why at the end of this trial, after you've
11 heard all the testimony, after you've heard from the lead
12 detective, after you've heard from CSI Jill Domogauer, after
13 you've heard from three independent witnesses that put both
14 this Defendant and his Codefendant and no one else at the
15 scene and the victim and his roommate say two people were
16 there, one had a gun. The police do a search warrant; they
17 find the .38 at the residence of the Defendant.

18 After all that testimony, I submit to you that you'll
19 have no choice but to come back with a guilty verdict.

20 THE COURT: Mr. Stampfle?

21 MR. STAMPFLE: Thank you, Your Honor.

22 OPENING BY MR. STAMPFLE:

23 MR. STAMPFLE: Ladies and gentlemen, I represent Mr.
24 Furquan. You are going to hear a lot of testimony today.
25 You're going to hear a lot of bad testimony in the next day or

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1 maybe two. I'm not going to dispute that with you. I'm not
2 gonna dispute the facts that the Solicitor has already stated,
3 much of them. There was a man who was shot. That victim is
4 here and he's lucky to be here; there's no question about
5 that. That some may call it a miracle that that bullet went
6 into his head and did not kill him. I'm definitely not going
7 to dispute that. That an individual went to that home with
8 the intent to rob these individuals; I'm not gonna dispute
9 that. What I will tell you is there is one individual who was
10 convicted of that, Jeremy Fleming. He's already been tried;
11 he's already been convicted of that crime. So, when the --
12 when the Solicitor says that we have three things here; one a
13 miracle, I'm not disputing that. Two, money, Mr. Fleming went
14 in to rob that house, intended to rob that victim. I do
15 believe that victim was set up; I will agree with that. So,
16 money is not something you're going to hear an argument from
17 from me. Malice, pointing a gun at another person's head and
18 pulling the trigger is without a question, malice. I would be
19 a fool to stand up here and argue malice is, is -- was not --
20 cannot be inferred in aiming a gun at an individual and
21 pulling the trigger and I'm not gonna do that. I'm not gonna
22 make a fool out of this system; I'm not gonna make a fool out
23 of my client.

24 But these crimes require intent. And what I hope to be
25 able to show you individuals today is that my client was as

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1 blind to this as many of the other people were, the
2 individuals that took him over there. He lacked the requisite
3 intent. He did not intend to take part in a robbery. You'll
4 hear from some of the State's witnesses as to why they went
5 there. And it's my position, ladies and gentlemen, that he
6 went with the same lack of intent as the other two or three
7 individuals in that car. The man with the intent was
8 convicted of this crime, Mr. Fleming. He was convicted of
9 shooting the victim in the head. He was convicted of having
10 malice aforethought. He was convicted of being in this for
11 money. And my position is Mr. Furquan did not have knowledge
12 of this. The State is not gonna be able to -- my position is
13 the State is not gonna be able to improve the reckless intent.

14 I'm asking you to keep an open mind. As I stated,
15 there's going to be a lot of bad evidence in this case.
16 You're gonna hear all of it. Keep an open mind and render a
17 verdict of not guilty. Thank you.

18 THE COURT: Thank you, sir.

19 MR. HOLFORD: Your Honor, the State calls Eric Collins to
20 the stand.

21 THE COURT: Okay. Yeah, we can do a witness or two
22 before lunch. Go ahead.

23 MR. HOLFORD: Your Honor, may we approach while he comes
24 up?

25 THE COURT: Yes.

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

3 ERIC JAMES COLLINS, HAVING BEEN SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: Please have a seat. State your full name and
6 spell your last name for the Court please?

7 MR. COLLINS: Yes, ma'am. It's Eric James Collins, C-O-
8 L-L-I-N-S.

9 DIRECT EXAMINATION OF ERIC JAMES COLLINS BY MR. HOLFORD:

10 Q: Mr. Collins, would you please tell the jury a little bit
11 about yourself, how old you are, where you live?

12 A: I'm twenty-seven. I come from a family of twelve. I've
13 been here for about seven years. I do body work and I set up
14 event tents for dealerships. I like bowling; I'm just another
15 guy.

16 Q: And let's jump back in time. October 16th, 2011, where
17 were you living?

18 A: I was in Ivystone. I was David's roommate at the time.

19 Q: And do you remember what apartment that was?

20 A: [REDACTED].

21 Q: And on that night -- let's just get right into it -- walk
22 me through that night.

23 A: I had actually come home from work probably about seven
24 o'clock. I was laying down for a nap that night. We had
25 actually went out and rented 007. I was supposed to have my

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1 little sisters come over; the game had just came out. We were
2 gonna invite a bunch of friends over so I was taking a power
3 nap. David had made it home; he was out in the living room
4 playing his games. While I was taking my nap, I remember it
5 was like the sound a light bulb makes when it pops but it was
6 only -- it was like four times louder. So, out of instinct, I
7 woke up and I had my .22 rifle next to my doorframe, so I
8 grabbed my rifle -- and my dog was sleeping with me at the
9 time too. She's an American Pit. She followed me out the
10 doorway. I turned the corner and I remember walking down the
11 hallway, the door was wide open with two guys standing in the
12 doorway. I still had my gun, it was vertical at my side. I
13 noticed one guy -- David with his on his back spread and there
14 was one guy standing over top of him, had one foot between his
15 legs, kind of arching over him, but the gun was forward. It
16 was not pointing at me but it was pointing more at David, but
17 not specifically at him at the time. I remember walking,
18 looking; they were in the full hoodies, they had masks on,
19 heads were covered. They were both blatantly inside the
20 doorway; the door was completely open at that time. I
21 remember one of them, the gunman looked at me and said, oh
22 shit, and they both ran. On my -- what I do remember is I
23 want to say the gunman was slightly taller than the guy that
24 was standing behind him. The guy that was with him was off of
25 his right shoulder. He was right next to the door frame. The

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1 other guy had made it probably about three feet into the
2 doorway and he was standing in the middle of our entryway.
3 Q: Now when you say they were both wearing masks; what do you
4 -- what do you mean?
5 A: There was a bandana covering their face and a hoodie
6 pulled over. You could see their eyes pretty much.
7 Q: Do you remember what color that bandana was?
8 A: I could not tell you. All the clothing I remember was
9 dark.
10 Q: Were they wearing anything on their hands?
11 A: They were wearing gloves. I do remember the revolver very
12 specifically. I remember that was the first thing I
13 acknowledged because my gun, I didn't have anything in the
14 chamber and I still had the safety on. So at that point, I
15 recognized they had the advantage over me. So, I was actually
16 going to yield my gun at that point.
17 Q: Now what -- what kind of gun did they have?
18 A: It was a revolver, a silver revolver; I can guarantee
19 that.
20 MR. HOLFORD: Your Honor, may I approach with a State's
21 Exhibit Thirty?
22 THE COURT: Yes, you may.
23 BY MR. HOLFORD:
24 Q: Without telling the -- the contents of this, can you
25 identify what this is?

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1 A: Yes, I can.

2 Q: And what is it?

3 A: It's the setup of our apartment.

4 Q: Is that a true and accurate copy?

5 A: Yes, sir.

6 Q: It may not be drawn to scale though.

7 A: Yes, sir.

8 MR. HOLFORD: Your Honor, at this time, State would enter
9 Exhibit Thirty into evidence?

10 THE COURT: Mr. Stampfle, have you had an opportunity to
11 review it?

12 MR. STAMPFLE: Without objection, Your Honor.

13 THE COURT: Without objection, it's admitted. Is that
14 State's One?

15 MR. HOLFORD: I've already had them pre-marked. This is
16 Thirty.

17 THE COURT: All right. State's Thirty then.

18 MR. HOLFORD: Thank you, Your Honor.

19 STATE'S EXHIBIT NUMBER THIRTY

20 ADMITTED INTO EVIDENCE

21 MR. HOLFORD: Can the witness step down?

22 THE COURT: Yes, the witness may.

23 MR. HOLFORD: Thank you, Your Honor.

24 BY MR. HOLFORD:

25 Q: So, what, what are we looking at here for the jury?

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- 1 A: This is the scale of our apartment, my bedroom. This is
2 where I came out of. I was standing pretty much approximately
3 in the middle of the hall there. They're both inside here.
4 We had a couch blocking off the living room, separating it.
5 They were standing probably right there.
- 6 Q: You say they; was it one person?
- 7 A: There was two, guaranteed.
- 8 Q: Inside your apartment?
- 9 A: Yes, sir.
- 10 Q: Not just one?
- 11 A: No, sir.
- 12 Q: And where did you come around?
- 13 A: I -- when I left my room, I turned the corner and I was
14 pretty much standing there when everything happened.
- 15 Q: And where was David at this point?
- 16 A: David was about the middle of the couch; he was sprawled
17 out right here. Well, it'd be this one I think.
- 18 (REPORTER'S NOTE: Witness returns to witness stand.)
- 19 Q: Now you've done -- you've testified before, right?
- 20 A: Yes, sir.
- 21 Q: We've been through this before, haven't we?
- 22 A: Yes, sir.
- 23 Q: And who, who was on trial at that time?
- 24 A: Jeremy Fleming.
- 25 Q: And how he is related to Mr. Furquan?

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1 A: He was the believed accomplice.

2 Q: And it's your -- what is your testimony about both?

3 A: I believe they were both inside my house that night.

4 Q: Could you identify him though?

5 A: I've never seen him a day in my life.

6 Q: And what were they wearing that night?

7 A: I was -- I remember the hoodies and the bandanas covering
8 the face.

9 Q: And do you know Mr. Furquan?

10 A: No, sir.

11 Q: And did you know Jeremy Fleming before his trial?

12 A: No, sir.

13 MR. HOLFORD: No further questions, Your Honor.

14 THE COURT: All right. Mr. Stampfle, you may cross
15 examine.

16 MR. STAMPFLE: I have a few questions, Your Honor.

17 CROSS EXAMINATION OF ERIC JAMES COLLINS BY MR. STAMPFLE:

18 Q: Mr. Collins, as you've already stated, you couldn't
19 identify who was in that home; is that correct?

20 A: No, sir; I could not.

21 Q: Okay. And according to your statements, both of the
22 individuals were wearing hoodies; is that correct?

23 A: Yes, sir.

24 Q: All right. So is it safe for me -- let me rephrase the
25 question. You couldn't see the top of any individual's head;

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ERIC JAMES COLLINS - CROSS BY MR. STAMPFLE

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1 is that correct?

2 A: No, sir.

3 Q: You couldn't tell who -- realistically it's not very easy
4 to tell whose taller or whose shorter when you've got a
5 pointed hoodie on top of your head; is that correct?

6 A: I will stand by my -- what I said, I believe the gunman
7 was taller than his accomplice.

8 Q: The top of his hoodie was taller than the top of the
9 hoodie of the other person?

10 A: They were both flat.

11 Q: They were both flat?

12 A: Yes, sir.

13 Q: And you testified previously; is that correct?

14 A: Yes, sir.

15 Q: And that was at the trial of Jeremy Fleming; is that
16 correct?

17 A: Yes, sir.

18 Q: And he was already convicted for this offense; is that
19 correct?

20 A: Yes, sir.

21 Q: And you left -- how much time elapsed before that pop you
22 described and you leaving the bedroom with your gun?

23 A: I -- it was maybe a ten-second window at best.

24 Q: You heard the pop and -- and ---

25 A: Immediately.

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TYLER TOPOLSKI - DIRECT BY MR. HOLFORD

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1 Q: --- got up immediately?

2 A: Yes, sir.

3 Q: All right. So, you don't know if both individuals were in
4 the house at the time that shot was fired; you can't say that;
5 is that correct?

6 A: As far as when the shot was fired, no, sir, I can't. But
7 I can verify that both of them were in my house.

8 Q: And that was after the shot was fired?

9 A: Yes, sir.

10 MR. STAMPFLE: That's all the questions I have of this
11 witness, Your Honor.

12 MR. HOLFORD: Nothing further, Your Honor.

13 THE COURT: You may step down. Thank you.

14 A: Thank you, sir.

15 MR. HOLFORD: Would you like me to call another witness?

16 THE COURT: Yes, yes.

17 MR. HOLFORD: Your Honor, the State calls Tyler Topolski
18 to the stand.

19 TYLER TOPOLSKI, HAVING BEEN SWORN

20 TESTIFIES AS FOLLOWS:

21 CLERK: Please have a seat. State your full name and
22 spell your last name for the Court, please?

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

24 DIRECT EXAMINATION OF TYLER TOPOLSKI BY MR. HOLFORD:

25 Q: Mr. Topolski, will you introduce yourself to the jury and

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1 tell them how old you are and tell them where you live?

2 A: I'm seventeen years old. I live in Myrtle Beach, South
3 Carolina.

4 Q: So, how old were you on October 16th, 2011?

5 A: Fifteen.

6 Q: Fifteen years old. On October 16th, 2011 -- well, let me
7 start this way. Do you know the man sitting right there at
8 the defense table?

9 A: Yes, sir.

10 Q: And who is he?

11 A: I know him by Freak, but Abdul.

12 Q: Okay. So, you know him by a street name?

13 A: Yes.

14 Q: His name is Abdul Furquan; did you know that previously?

15 A: No, sir.

16 Q: From here on out, let's just refer to him as either Mr.
17 Furquan or Abdul?

18 A: Yes, sir.

19 Q: On October 16th, 2011, did you have any time to be in
20 contact with Mr. Furquan?

21 A: Yes, sir.

22 Q: And why was that?

23 A: Jeremy Fleming asked me to get him a ride and he said he
24 would give me some money for gas.

25 Q: Now, will you explain that a little more. Jeremy Fleming

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- 1 asked for you to give who a ride?
- 2 A: Asked for me to get him a ride so he could go pick up
- 3 money; that's what he said to me.
- 4 Q: And who were you with in the car at the time?
- 5 A: Taylor Smith and my sister Samantha Topolski.
- 6 Q: And who else was in that car?
- 7 A: Jeremy and Abdul.
- 8 Q: Do you remember where you went?
- 9 A: Ivystone.
- 10 Q: And what happened when you got to Ivystone?
- 11 A: They got out of the car.
- 12 Q: Who -- I'm sorry -- Who is they?
- 13 A: Jeremy and Abdul got out of the car and they walked to a
- 14 apartment building hallway, which was completely dark.
- 15 Q: Did you ever get out of the car?
- 16 A: No, sir.
- 17 Q: Did Taylor get out of the car?
- 18 A: No.
- 19 Q: Samantha?
- 20 A: No.
- 21 Q: Did Jeremy?
- 22 A: Yes.
- 23 Q: And you -- we've been through this before, correct, you
- 24 were at the previous trial with Jeremy Fleming?
- 25 A: Yes, sir.

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1 Q: Did Abdul Furquan, this Defendant, get out of the car?

2 A: Yes, sir.

3 Q: Do you remember what they were wearing at the time; them
4 being Jeremy and Abdul?

5 A: Not clothing wise, but Jeremy had on gloves with skulls on
6 them and I did not get a look if Abdul was wearing gloves or
7 not.

8 Q: Did you notice when they got out of the car if they were
9 wearing anything covering their faces?

10 A: No, they were not when they got out of the car.

11 Q: So what happened when you were sitting in the car and they
12 left?

13 A: When I was sitting in the car, they walked into the
14 apartment building and I heard what I thought at the time was
15 a trashcan being kicked over and my sister said, no, that's a
16 gunshot. And as soon as we figured out that was a gunshot,
17 they started running from the building, got in the car and put
18 the gun to the back of the seat, the driver side seat with
19 Taylor Smith in it.

20 Q: And again, who is they that ran from the building?

21 A: Abdul and Jeremy.

22 Q: When they ran back, what were they wearing at that time?

23 A: I didn't even get a good look at them. I was more worried
24 about what just happened. My mind was racing. I didn't know
25 at the time. I didn't realize -- I didn't look at the time

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- 1 what they were wearing.
- 2 Q: And where were you sitting in the car?
- 3 A: I was in the passenger seat.
- 4 Q: In the front passenger?
- 5 A: Yes, sir.
- 6 Q: And you were fifteen at the time?
- 7 A: Yes, sir.
- 8 Q: Do you remember who, if anyone, was carrying a gun?
- 9 A: Abdul.
- 10 Q: This Defendant?
- 11 A: Yes, sir.
- 12 Q: Do you remember what kind of gun?
- 13 A: It looked to me to be like a .38 special. I know it was a
- 14 revolver.
- 15 Q: Do you remember the color?
- 16 A: Silver and it had a black handle.
- 17 Q: And what happened when this Defendant, Abdul, and his
- 18 Codefendant, Jeremy, got into the car?
- 19 A: Jeremy got in the middle seat and Abdul got in the back
- 20 driver's seat and he put the gun to Taylor Smith and he said
- 21 drive.
- 22 Q: Did he say anything else to her?
- 23 A: No, not until we got to the house and -- not until we got
- 24 to the trailer that they lived in and he made us get out of
- 25 the car and come inside and they told us that if we told

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1 anybody they were going to kill us.

2 Q: Who said that to you?

3 A: Jeremy.

4 Q: Did Jeremy hold the gun on you at that time?

5 A: No, sir, no gun was pointed at us at that point. They let
6 us leave and go home.

7 Q: How long did they keep you at that mobile home?

8 A: I'm not exactly sure because like I said, my mind was
9 racing; I was scared. I didn't know what was going on being
10 fifteen years old. Maybe five minutes.

11 Q: Would you recognize the mobile home if I showed you a
12 picture of it?

13 A: Yes, sir.

14 MR. HOLFORD: Your Honor, may I approach with State's
15 Exhibit Fourteen and Ten?

16 THE COURT: Yes, you may.

17 BY MR. HOLFORD:

18 Q: I'm handing you what's been marked as State's Exhibit
19 Fourteen for ID. Can you identify what we're looking at?

20 A: Yes, that's their trailer.

21 Q: Is that a true and accurate copy of it?

22 A: It looks like it.

23 Q: And would you remember the address of this trailer?

24 A: No, sir. I remember where it was but that's it.

25 MR. HOLFORD: Your Honor, at this point, I would enter

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1 State's Fourteen in evidence.

2 THE COURT: Mr. Stampfle?

3 MR. STAMPFLE: Without objection.

4 THE COURT: Without objection; it's admitted.

5 STATE'S EXHIBIT NUMBER FOURTEEN

6 ADMITTED INTO EVIDENCE

7 BY MR. HOLFORD:

8 Q: Now I'm handing you State's Exhibit Ten. Can you identify
9 what State's Ten is?

10 A: No, sir, I don't really recall this part of the house. I
11 was never really around it much.

12 Q: But do you know what it is?

13 A: Yeah, it's the trailer, I just don't remember the lot and
14 everything. I was only there a few times and it was mostly
15 dark when I was there. But I do know where the trailer was.

16 Q: So you're saying this is a picture of this trailer?

17 A: Yes that's the -- yes.

18 MR. HOLFORD: Your Honor, I would enter State's Ten into
19 evidence.

20 MR. STAMPFLE: Your Honor, I object. He said he didn't
21 -- couldn't state what the address was; that's just picture
22 with the address.

23 THE COURT: Well, I think that's all he's offering it for
24 is it's a picture of the trailer. I don't know if he's tried
25 to testify to where it was, just what it was.

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: I would admit it.

3 STATE'S EXHIBIT NUMBER TEN

4 ADMITTED INTO EVIDENCE

5 BY MR. HOLFORD:

6 Q: Now, can you read on the corner of that what it says?

7 A: The part ---

8 Q: Yeah, what are the numbers on the trailer?

9 A: Lot [REDACTED], [REDACTED].

10 Q: But you didn't know the address?

11 A: No.

12 Q: So if this says [REDACTED] [REDACTED]?

13 A: Yes, sir.

14 Q: And is this the same trailer that you were taken back to?

15 A: Yes, sir.

16 Q: Tell me once again, who came out of the Ivystone Apartment
17 carrying a gun?

18 A: Jeremy Fleming and Abdul.

19 Q: They were both carrying it?

20 A: No, Abdul had the gun, but Jeremy Fleming ran out with
21 him.

22 Q: And was anyone else there with them?

23 A: No, sir.

24 Q: Did anyone else go upstairs?

25 A: No, sir.

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TYLER TOPOLSKI - CROSS BY MR. STAMPFLE

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1 Q: And who got in the back seat and held the gun to the
2 driver?

3 A: Abdul held the gun to the -- Abdul was in the driver's
4 side back seat with the gun. Jeremy was in the middle.

5 Q: I just want to make it clear. You mentioned your sister;
6 who's your sister?

7 A: Samantha Topolski.

8 MR. HOLFORD: No further questions, Your Honor.

9 THE COURT: Mr. Stampfle?

10 CROSS EXAMINATION OF TYLER TOPOLSKI BY MR. STAMPFLE:

11 Q: Just a couple of questions for you, Tyler. According to
12 your testimony, you stated that, that you had no idea about
13 what was gonna happen that day; is that correct?

14 A: Yes, sir.

15 Q: And from where that car was parked to where you were
16 sitting, could you see the entrance to the apartment that they
17 allegedly went into?

18 A: No, the hallways were dark. All I could see was the
19 hallway that they walked through. I could not see anything
20 else.

21 Q: So you saw them basically enter a stairwell; is that
22 right?

23 A: Yes, sir.

24 Q: And that's the last you saw of them?

25 A: Yes, sir.

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- 1 Q: Okay. You didn't see anyone enter an apartment?
- 2 A: No, sir.
- 3 Q: Okay. And you definitely can't say who fired a weapon?
- 4 A: I know who had the weapon on the way out though.
- 5 Q: That wasn't what I asked. What I asked was you couldn't
- 6 say who fired that weapon in that apartment?
- 7 A: No, sir.
- 8 Q: Okay. You did not see that; is that correct?
- 9 A: Yes, sir.
- 10 Q: And according to your testimony, you recall Mr. Fleming
- 11 having on gloves; is that correct?
- 12 A: Yes, sir.
- 13 Q: Could you describe those gloves?
- 14 A: They had skeleton print on them.
- 15 Q: Skeleton print gloves, you don't see those every day do
- 16 you?
- 17 A: No, sir.
- 18 Q: Okay. Kind of stand out in your head; is that right?
- 19 A: Yes, sir.
- 20 Q: Okay. But you did not notice any gloves on Mr. Furquan's
- 21 hands?
- 22 A: No.
- 23 Q: Now, when Jeremy and Mr. Furquan returned to the vehicle,
- 24 did, did they -- you know, did they point the gun at your
- 25 sister or did they put the gun on the center console in the

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TYLER TOPOLSKI - CROSS BY MR. STAMPFLE

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- 1 middle?
- 2 A: It wasn't my sister; it was Taylor Smith that they pointed
- 3 the gun at.
- 4 Q: Okay. Ms. Smith?
- 5 A: Yes, sir.
- 6 Q: Okay.
- 7 A: They put it right to that -- right to the back where her
- 8 arm was at the end ---
- 9 Q: Okay. Behind her?
- 10 A: Yes.
- 11 Q: Okay. So she couldn't have seen that; is that correct?
- 12 A: Yes, sir.
- 13 Q: Directly behind her?
- 14 A: Yes, sir.
- 15 Q: Okay. And the individual that threatened to kill you all
- 16 was Jeremy Fleming; is that correct?
- 17 A: Yes, sir.
- 18 Q: Okay. Now, did you and your sister come back to that
- 19 residence the next day?
- 20 A: Yes, sir, because we were afraid that if they noticed that
- 21 we had turned them in that they were going to do something to
- 22 us. So in our minds, we thought that if we just kept
- 23 everything the way it was until they got arrested, we wouldn't
- 24 have any repercussions on us. They knew where we lived, they
- 25 knew our family. We were young and scared.

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

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1 Q: Did you see Mr. Furquan that day?

2 A: No, sir.

3 Q: Did anyone make any threats to you that day?

4 A: No, sir.

5 MR. STAMPFLE: That's all the questions of this witness,
6 Your Honor.

7 MR. HOLFORD: Nothing further from the State.

8 THE COURT: You may step down.

9 Let's call another; do you have another witness?

10 MR. HOLFORD: Yes, Your Honor. The State calls Samantha
11 Topolski to the stand.

12 SAMANTHA TOPOLSKI, HAVING BEEN SWORN
13 TESTIFIES AS FOLLOWS:

14 CLERK: State your full name and spell your last name for
15 the Court.

16 MS. TOPOLSKI: Samantha Ann Topolski, T-O-P-O-L-S-K-I.

17 DIRECT EXAMINATION OF SAMANTHA ANN TOPOLSKI BY MR. HOLFORD:

18 Q: Ms. Topolski, would you just introduce yourself briefly
19 and tell the jury how old you are?

20 A: I am twenty-four years old. I'm a mother of a two-year-
21 old and I am dealing with a lot of stress on this case to be
22 honest with you guys.

23 Q: You've already testified in a case dealing with this,
24 haven't you?

25 A: Yes.

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SAMANTHA TOPOLSKI - DIRECT BY MR. HOLFORD

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- 1 Q: And who was that case against?
- 2 A: Jeremy Fleming.
- 3 Q: Do you know the Defendant?
- 4 A: Yes.
- 5 Q: And who is he?
- 6 A: I knew him as Freak, but apparently his name is Abdul
- 7 Furquan.
- 8 Q: And from here on out let's refer to him as Abdul.
- 9 A: Okay.
- 10 Q: You would refer to him as his street name?
- 11 A: Yes.
- 12 Q: Did you know him by another name at that time?
- 13 A: No.
- 14 Q: But you did know him?
- 15 A: Yes.
- 16 Q: And you knew Jeremy as well?
- 17 A: Yes.
- 18 Q: How did you know Jeremy?
- 19 A: Jeremy and I had a personal relationship.
- 20 Q: Now back October 16th, 2011, how were you involved with
- 21 this case?
- 22 A: Jeremy Fleming had called or, well, he text messaged me on
- 23 my brother's phone. At the time, we were sharing a phone.
- 24 And he had requested that we took him to pick up some money
- 25 from some residence. At the time, he didn't tell us where we

1 were going or what, you know, who we were going to see or
2 anything. He just asked me, my brother and his friend at the
3 time because we didn't have a vehicle. She drove, Taylor
4 Smith. She drove and picked up Jeremy and Jeremy requested
5 that we pick up Abdul from work and that we brought them to go
6 pick up some money from, apparently, David.

7 Q: And so let's start with -- who was in the car first?

8 A: It was Taylor Smith and my brother, Tyler Topolski and I.

9 Q: And then who did you pick up after that?

10 A: Jeremy.

11 Q: And then who did you pick up after that?

12 A: Jeremy requested that we pick up Abdul.

13 Q: Anyone else?

14 A: No. Well, apparently there was another girl that was
15 attempting to get in the vehicle after we dropped off the food
16 that Mr. Abdul brought home to his girlfriend. I don't know
17 her name or anything. I don't really even know her.

18 Q: Did this girl get in the car?

19 A: She attempted to, but I refused her to get in the car.
20 There was enough of us in the vehicle.

21 Q: So there were five?

22 A: Yes.

23 Q: What happened after the five of you were in the vehicle?

24 A: He directed us to go to the apartment buildings that David
25 lived in, which is Ivystone, I think.

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1 Q: Who is he?

2 A: Jeremy Fleming. He was my -- one of my closest friends at
3 the time. Her -- it was her baby's father. Her name was
4 Olivia, but she didn't have anything to do with the case,
5 though.

6 Q: And what happened when you got to Ivystone Apartments?

7 A: We parked out front. It was on the other side of the
8 sidewalk so we couldn't see anything. We were all just
9 sitting in the vehicle; the doors were open. We all smoked a
10 cigarette. We heard a loud noise.

11 Q: Let me step back. When you say we were all sitting in the
12 vehicle; who do you mean?

13 A: It was Taylor Smith, who was driving the vehicle; my
14 brother Tyler and I. Jeremy and Abdul got out of the vehicle
15 and went to these apartment buildings. Well, we couldn't see
16 where they went or what they went -- what direction they went,
17 I mean, because we were on the opposite side, it would be the
18 left side of the parking space out front of the building.

19 Q: And why did they tell you they were going to this
20 apartment?

21 A: They said they were going to retrieve some money that they
22 were owed.

23 Q: Do you remember what Abdul and Jeremy were wearing when
24 they left the vehicle?

25 A: I think it was hoodies and there was gloves, but it was

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- 1 cold outside so I really didn't think anything of it and
2 neither did my brother or his friend, Taylor. For me it was
3 normal. I had gloves on at some point. During wintertime, I
4 mean, it does get a little chilly here.
- 5 Q: And you, you've already said you couldn't see where they
6 went?
- 7 A: Right.
- 8 Q: Was anyone else with Abdul or Jeremy?
- 9 A: No.
- 10 Q: No one else went upstairs?
- 11 A: No. We didn't even know that they went upstairs.
- 12 Q: You just knew they left the car and went?
- 13 A: Yeah, they just -- they proceeded forward in front of the
14 vehicle and to the side to go down the walkway.
- 15 Q: And did you follow them?
- 16 A: No.
- 17 Q: Did Tyler?
- 18 A: No.
- 19 Q: Did Taylor?
- 20 A: No.
- 21 Q: So then what happened next?
- 22 A: After we got to like you know, five or six minutes, we had
23 heard like this very loud noise. I've lived in some, you
24 know, difficult neighborhoods so I knew when I heard the noise
25 to me it sounded like a gunshot and I had even said that out

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1 loud to my brother and his friend, Taylor and they said that
2 it sounded like there was like a trashcan being knocked over.
3 So we really didn't think anything of it. When Mr. Abdul and
4 Jeremy came to the vehicle, it was Jeremy came first and he
5 proceeded to get in the vehicle after this all had transpired,
6 he comes and he gets in the vehicle ---

7 Q: Who's he? Who is he?

8 A: Abdul. He had the gun in his hand. When he got to the
9 vehicle, he put it right to the back of Taylor's shoulder
10 right here and he told her to drive. He was screaming on the
11 top of his lungs and he was using vulgar language and we all
12 felt very afraid. I mean ---

13 Q: How -- how old were you at the time?

14 A: I think I was twenty-two. I had just turned twenty-two
15 actually in September.

16 Q: And where were you sitting in the car?

17 A: I was on the -- I was in the back seat right behind the
18 passenger seat.

19 Q: And do you remember what Jeremy and Abdul were wearing
20 when they ran back to the car?

21 A: They still had the hoodies and the gloves.

22 Q: Did anyone else come back with them?

23 A: No. They, they -- were running. I mean they were running
24 and they just -- I mean they pulled the door open really hard
25 and like flung in the car and just put -- he -- Abdul just put

1 the gun right to her back and told her to drive and at that
2 point, we were all pretty frightened. So we just ---

3 Q: Do you know what kind of gun it was?

4 A: No. I mean ---

5 Q: You know what color it was?

6 A: I mean, I don't really -- I didn't really pay that much
7 attention in that kind of situation, I, I kind of just was
8 hoping to God that we weren't gonna be hurt.

9 Q: What happened after they got back in the car, Abdul and
10 Jeremy?

11 A: Abdul was screaming on top of his lungs to go, go, go, go
12 and they wanted us to take them to the apartment and they, you
13 know, when we got the apartment, they wouldn't let us leave.
14 They made us go inside the house, which was even more
15 frightening, to be honest with you. They proceeded to --
16 Jeremy and Abdul proceeded to tell us, threaten us basically
17 that we were not allowed to leave and if we attempted to leave
18 that they would shoot us. So we were stuck in the apartment
19 for a good maybe ten or fifteen minutes I think maybe. I
20 really don't know; it's been a while, but I just know it felt
21 like forever and I just wanted to go home to my son. And when
22 they heard the sirens and they heard those stop that's when
23 they let us leave.

24 Q: You say they took you to an apartment?

25 A: They took us to David's apartment.

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1 Q: And then after you got back in the car?

2 A: It was a trailer.

3 Q: It was a trailer?

4 A: Yeah, it was off of Terry Drive. I had actually lived
5 over there at one point, not in the house with Abdul and
6 Jeremy at all; it was with my family when I first moved here.

7 Q: Would you recognize that trailer if I showed it to you?

8 A: Oh yeah.

9 MR. HOLFORD: Your Honor, I'm approaching ---

10 THE COURT: You may.

11 MR. HOLFORD: May I approach with State's Fourteen; it's
12 been entered in evidence.

13 BY MR. HOLFORD:

14 Q: Can you identify State's Fourteen?

15 A: Yes, that's their -- their house; Jeremy and Abdul's.

16 Q: And what's been entered as State's Ten; can you -- can
17 read what that says?

18 A: This says [REDACTED] [REDACTED].

19 Q: Now, did you know the address before then?

20 A: No.

21 Q: You didn't really pay attention?

22 A: No.

23 Q: But is State's Ten the same trailer?

24 A: I don't -- I don't think -- I don't know. I don't think
25 so. I don't think that they had those -- yeah, maybe so.

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1 Q: If you don't know that's fine?

2 A: I -- honestly I don't know. I think that's a different
3 kind of trailer, I just don't feel like that's their trailer,
4 but it could be. Honestly, I don't -- I -- I'd been there a
5 couple of times, it was just a quick come and go kind of
6 thing.

7 MR. HOLFORD: Okay. May I approach with State's One?

8 THE COURT: Yes.

9 BY MR. HOLFORD:

10 Q: Samantha, I'm showing you a picture State's Exhibit One;
11 who is that in the picture?

12 A: That's me.

13 Q: And what are you doing?

14 A: I am writing a statement about the situation.

15 Q: Is that a true and accurate reflection of the picture that
16 day?

17 A: Yes.

18 MR. HOLFORD: Your Honor, the State would offer Exhibit
19 One in evidence?

20 THE COURT: Mr. Stampfle?

21 MR. STAMPFLE: No objection, Your Honor.

22 THE COURT: Without objection, it's admitted.

23 STATE'S EXHIBIT NUMBER ONE

24 ADMITTED INTO EVIDENCE

25 BY MR. HOLFORD:

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1 Q: Where were you when you were writing this?

2 A: I was in the Police Department off of Holmestown Road I
3 think.

4 Q: And when did you go to the Police Department?

5 A: I think it was either the next day or the day -- the
6 second day upon finding out that they had shot David. At the
7 time, we didn't know who David was, but when I seen the news
8 -- when I had seen the these reflections of these terrible
9 individuals, I felt like it was my right and my duty as a
10 citizen and as a normal person that I was gonna tell the truth
11 and they were gonna -- I was going to have them arrested
12 regardless. My testimony I know would make a very big impact
13 on that and my brother and me and Taylor all went and we gave
14 a -- gave statements without request, we came forward without
15 any request.

16 Q: And why would you do that?

17 A: Because I am not a bad person. I didn't do anything wrong
18 and I felt like I was just as much as wronged as David was and
19 feel like I am obligated to give him the justice that he
20 deserves.

21 MR. HOLFORD: Your Honor, may I approach with State's
22 Five and Nine?

23 THE COURT: Yes.

24 BY MR. HOLFORD:

25 Q: I'm gonna hand you State's Five; do you recognize who that

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1 is?

2 A: That's Jeremy Fleming.

3 Q: Is that a true and accurate picture of how he was that
4 day?

5 A: Yes.

6 MR. HOLFORD: Your Honor, State offers Five in evidence?

7 MR. STAMPFLE: Without objection.

8 THE COURT: Without objection. All right.

9 STATE'S EXHIBIT NUMBER FIVE AND NINE

10 ADMITTED INTO EVIDENCE

11 BY MR. HOLFORD:

12 Q: State's Nine, who is that?

13 A: That is Abdul Furquan.

14 Q: And is that a true and accurate reflection of how he
15 appeared that day?

16 A: Yes, sir.

17 Q: And what day was this; do you know?

18 A: I think it was the next morning.

19 Q: It wasn't on the 16th though?

20 A: No.

21 Q: What time did you go over to the apartment?

22 A: I think it was around like maybe 10:30 or 11 o'clock. I
23 don't really remember the time to be honest.

24 Q: And then these pictures were taken ---

25 A: When they were arrested, apparently.

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SAMANTHA TOPOLSKI - CROSS BY MR. STAMPFLE

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1 MR. HOLFORD: No further questions, Your Honor.

2 THE COURT: Mr. Stampfle.

3 CROSS EXAMINATION OF SAMANTHA TOPOLSKI BY MR. STAMPFLE:

4 Q: Ma'am, thinking back again to that night from where you
5 were sitting in that vehicle; what was your view of the
6 apartment complex?

7 A: I didn't have a really good view, I just seen the front of
8 the apartment -- like the apartment buildings itself. It was
9 the sidewalk basically that we could see in front of the
10 building.

11 Q: And were you able to see Jeremy and Mr. Furquan enter that
12 building?

13 A: Yeah, I would say yeah, we could see but it was just the
14 sidewalk -- I mean it was just -- we were on the left side so
15 if we turned to our right, we could see them on the sidewalk
16 walking towards the apartment.

17 Q: You were able to see them enter the apartment building
18 itself?

19 A: Just the stairway, yeah.

20 Q: Okay. You were not able to see what occurred once they
21 entered that stairwell?

22 A: No, not at all.

23 Q: Okay. So you weren't able to see who entered the actual
24 apartment -- Apartment ■ itself?

25 A: Right.

1 Q: And you certainly didn't see who fired the shot; is that
2 correct?

3 A: Right.

4 Q: Were you ever told who fired the shot?

5 A: No.

6 Q: No one ever told you that they were the person that fired
7 that shot?

8 A: No.

9 Q: So Mr. Fleming never told you that he fired that shot,
10 never shot -- never, quote, shot the dude in the head?

11 A: Oh no, he told us afterwards because they were gonna go
12 back and they were -- and their objection -- like their
13 obligation that they felt was the fact that if he survived
14 being shot that they were gonna go back and they were gonna
15 finish him off, him -- Mr. Abdul and Jeremy Fleming.

16 Q: My question to you is did you ever give a statement to the
17 police in which you said that Jeremy Fleming told you he shot
18 a dude in the head?

19 A: Yes, he did say that.

20 Q: Okay.

21 A: When they told us that they were going back to finish him
22 off because he didn't die.

23 Q: And -- and Jeremy told you this, correct?

24 A: Yes.

25 Q: Mr. Furquan never said that he was gonna go back and

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- 1 finish him off?
- 2 A: No, but it was kind of like insinuated.
- 3 Q: Okay. He insinuated for Mr. Furquan, right?
- 4 A: Right.
- 5 Q: Mr. Furquan never told you that he was gonna go back and
- 6 finish him off?
- 7 A: No, but in the situation, Jeremy was the leader and Abdul
- 8 was the follower and when Jeremy told him to do something that
- 9 is what he did and they both were -- they both decided they
- 10 were gonna do this. It wasn't one who decided over -- to go
- 11 over there and shoot this guy. No, it was both of them; they
- 12 acted together.
- 13 Q: How do you know that; you said that they told you you went
- 14 over there to get some money; is that right?
- 15 A: Right.
- 16 Q: You also went over there to get some weed; is that right?
- 17 A: That was the -- that was my indication. I thought that
- 18 they were gonna go get some weed with the money that they had
- 19 got or was receiving. They didn't end up getting any drugs;
- 20 there was no drugs in the house.
- 21 Q: You weren't privy to any conversations between Jeremy and
- 22 Mr. Furquan?
- 23 A: No.
- 24 Q: They never told you about any plan?
- 25 A: No.

1 Q: So your testimony here that there was some sort of greater
2 plan that you were aware of is you making an inference of
3 that; is that right?

4 A: After the fact, before they were arrested, Jeremy stated
5 that him and -- they were gonna finish David off so that there
6 was nothing left and he couldn't testify as to who shot him or
7 what happened whatever because he was still walking; he was
8 still coherent. They apparently had some kind of connection
9 to this ---

10 Q: I'm very aware of that. That wasn't the question that I
11 asked you. What I asked you was if Mr. Fleming told you this;
12 Mr. Furquan did not?

13 A: Right. Right. Yes.

14 Q: What kind of gloves was Mr. Fleming wearing that night?

15 A: I think they were skeleton gloves.

16 Q: All right. Do you recall if Mr. Furquan was wearing
17 gloves that night?

18 A: I'm not -- not to this day, I don't.

19 Q: Okay. So you know that Fleming was wearing skeleton
20 gloves on his hands; is that right?

21 A: Yes, I do.

22 Q: Were you aware that he owned a pair of those gloves?

23 A: He had them on previous times that we had spent time
24 together, yeah.

25 Q: Did Mr. Furquan ever have on his skeleton gloves?

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1 A: Honestly, I don't know because I didn't spend quality time
2 with this man.

3 Q: Okay. Court's indulgence, Your Honor, one moment.

4 Again, you and your brother, you came back to the home
5 the following day ---

6 A: Uh-huh (affirmative response).

7 Q: Is that correct?

8 A: Yep.

9 Q: Okay. And Mr. Furquan was not in the home at that time;
10 is that right?

11 A: No, I believe he was at work.

12 Q: Okay. Mr. Fleming was there; is that right?

13 A: Yes, I do believe so.

14 Q: Okay. And you had conversations with Mr. Fleming at that
15 time?

16 A: I believe so.

17 Q: And was that again when he told you that he shot the dude
18 in the head?

19 MR. HOLFORD: Your Honor, I would object to hearsay.

20 MR. STAMPFLE: It's already in, Your Honor.

21 THE COURT: She's already testified to that I believe.

22 MR. HOLFORD: I believe she testified that she heard a
23 statement to that effect.

24 THE COURT: All right. Well, I'm gonna let him ask the
25 question anyway.

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SAMANTHA TOPOLSKI - REDIRECT BY MR. HOLFORD

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1 BY MR. STAMPFLE:

2 Q: Is that what he told you that he shot the dude in the
3 head?

4 A: Yes.

5 MR. STAMPFLE: That's all the questions I have of this
6 witness, Your Honor.

7 THE COURT: Any follow up; redirect?

8 REDIRECT EXAMINATION OF SAMANTHA TOPOLSKI BY MR. HOLFORD:

9 Q: You may or may not know the answer to this question. Was
10 Jeremy Fleming charged with any other offenses other than just
11 this case?

12 A: I don't know. I really -- I don't know. I -- honestly,
13 I don't have any real idea of that. I haven't asked him about
14 his criminal history.

15 Q: So you didn't know if he had any other pending attempted
16 murders at the time?

17 A: Oh, no, no, no, no, no, no; uh-huh (affirmative response).

18 MR. HOLFORD: No further questions, Your Honor.

19 MR. STAMPFLE: Your Honor, I have a couple of follow-up
20 questions.

21 THE COURT: Certainly.

22 MR. STAMPFLE: Since you opened the door to this.

23 RE CROSS EXAMINATION OF SAMANTHA TOPOLSKI BY MR. STAMPFLE:

24 Q: But you were aware of his criminal history; is that
25 correct? Mr. Fleming's criminal history, you were aware of

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SAMANTHA TOPOLSKI - RECROSS BY MR. STAMPFLE

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1 that?

2 A: I was aware of one incident but he said that he -- I mean,
3 I don't -- I don't know.

4 MR. HOLFORD: Your Honor, I would object to hearsay.

5 A: Yeah, I ---

6 THE COURT: Well, I think you opened the door for it.
7 I'm gonna let her testify.

8 MR. HOLFORD: About what Mr. Fleming said?

9 THE COURT: Not what he said. I'd probably ask her about
10 whether he had crime record.

11 MR. STAMPFLE: A criminal history is what I asked.

12 A: Right, but he -- I ---

13 THE COURT: You breached it; I'm gonna let him ask if she
14 has -- I don't want to hear anything about his -- any
15 statements he made. She either knows of her own knowledge or
16 she doesn't know.

17 MR. HOLFORD: Thank you, Your Honor.

18 BY MR. STAMPFLE:

19 Q: You're aware that he had a prior criminal history?

20 A: Yes.

21 Q: And that he went to prison?

22 A: Yes.

23 Q: Okay. For a violent crime?

24 A: Yes.

25 MR. STAMPFLE: That's all the questions I have.

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

2 Okay. Ladies and gentlemen of the jury, it's about
3 12:15. I'm informed that they have some things for me
4 beginning at quarter of 12:00 through 1:30. So I'm gonna have
5 you come back at 1:30. Okay. Have a nice lunch.

6 Mr. Ropp, take them out. Okay?

7 Please don't discuss the case with anyone or seek any
8 outside information.

9 MR. ROPP: Your Honor, 1:30?

10 THE COURT: 1:30. I meant 1:30. Did I say 12:30? I
11 didn't mean to. 1:30.

12 (REPORTER'S NOTE: The jury exits the courtroom. 12:12 P.M.
13 The following takes place outside the presence of the jury.)

14 THE COURT: All right. Gentlemen, let's try to be back
15 promptly at one o'clock, okay?

16 MR. HOLFORD: Your Honor, I'd ask that ---

17 THE COURT: I want be ready to go at one o'clock. I've
18 got something that's gonna start then. I hope it doesn't take
19 five minutes, but it may take half an hour.

20 MR. HOLFORD: I'd ask that Eric, Tyler and Samantha be
21 released from their subpoena?

22 THE COURT: Any objection?

23 MR. STAMPFLE: With regard to Samantha, Your Honor, I'd
24 like for her remain.

25 THE COURT: Okay.

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1 MR. STAMPFLE: She might be recalled.

2 THE COURT: Very well. You have the right to call her in
3 rebuttal if you choose.

4 MR. STAMPFLE: Thank you, Your Honor.

5 (RECESS - 12:14 P.M.)

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

7 (On the Record. 2:21 P.M.)

8 ((REPORTER'S NOTE: The jury returns to the courtroom. 2:21
9 P.M.)

10 THE COURT: Ladies and gentlemen, I apologize for being
11 so late to bring you back in, but there was a matter that was
12 scheduled that involved two families that were brought here
13 from Russia and they -- and they had made the climb over and
14 we just to have interpreters and it took longer than we
15 thought. So I thank you for being patient and, again, we
16 apologize for the delay.

17 All right. Mr. Holford?

18 MR. HOLFORD: Thank you, Your Honor. The State calls
19 Taylor Smith.

20 LINDSAY TAYLOR SMITH, HAVING BEEN
21 SWORN TESTIFIES AS FOLLOWS:

22 CLERK: Please have a seat. State your full name and
23 spell your last name for the Court please?

24 MS. SMITH: Lindsay Taylor Smith, S-M-I-T-H.

25 DIRECT EXAMINATION OF LINDSAY TAYLOR SMITH BY MR. HOLFORD:

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1 Q: Ms. Smith, please tell the jury a little bit about
2 yourself, how old you are, where you live?

3 A: I'm twenty years old and I live in Myrtle Beach, South
4 Carolina.

5 Q: You're twenty years old now?

6 A: Yes.

7 Q: How were you old back on October 16, 2011?

8 A: Eighteen.

9 Q: Tell me a little bit about that day; how did that day go
10 for you?

11 A: It started off a normal day. I went to work; I got off
12 work about ten o'clock and I got a call from Tyler saying --
13 asking to go pick up the Defendant from work and he was gonna
14 give me gas money. So I thought okay. Got him and he's -- he
15 has to go back to the house to pick up his friend, being
16 Jeremy, and to go to Ivystone Apartments to a friend's house
17 to get money and they said they'd give me gas money for that
18 too.

19 Q: Do you know the Defendant?

20 A: Not personally, no.

21 Q: Had you seen him before?

22 A: Not before that. Well, just giving him rides from work
23 that ---

24 Q: Did you know who he was?

25 A: No.

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- 1 Q: You didn't know his name?
- 2 A: No. I only knew him by his street name
- 3 Q: What was that?
- 4 A: Freak.
- 5 Q: So you had seen him before?
- 6 A: Yeah, because I would give him rides from work. I think I
- 7 picked him up maybe twice from work before that and he gave me
- 8 gas money.
- 9 Q: But you weren't close friends?
- 10 A: No.
- 11 Q: Is he sitting in the courtroom here?
- 12 A: Yes.
- 13 Q: Where is he, the Defendant?
- 14 A: Yes.
- 15 Q: So what happened after you -- you said you were in the car
- 16 with whom?
- 17 A: With Tyler and Sam and Jeremy and him, the Defendant.
- 18 Q: And who are Tyler and Sam?
- 19 A: Tyler and Sam or the other two witnesses. They're my --
- 20 they are personal friends of mine and ---
- 21 Q: And how do you know Jeremy Fleming?
- 22 A: Through them, through Tyler and Sam.
- 23 Q: And how do you know Abdul Furquan?
- 24 A: Because he was one of Jeremy's friends and he just hung
- 25 around him; that was about it.

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1 Q: And so after you picked up Jeremy and Abdul, where were
2 you going?

3 A: To Ivystone Apartments.

4 Q: And why were you going there?

5 A: They said that they needed to go to a friend's house to
6 get money and that they -- he owed them.

7 Q: Did you know whose apartment they were going to?

8 A: No.

9 Q: What happened when you got to that apartment?

10 A: We got there, Jeremy and Abdul got out of the car and went
11 up. Me and Sam and Tyler stayed in the car. A couple of
12 minutes went by and we heard a noise and then Sam said it
13 sounded like a gunshot and I was thinking worst case scenario
14 I was trying to think positive or whatever, like no, it
15 wasn't. And then I look up and they were running out of the
16 apartment complex.

17 Q: Who is they?

18 A: Jeremy and Abdul. And Abdul had the gun in his hand. Got
19 back in my car, put the gun to my back and told me to drive.

20 Q: How sure are you that the Defendant had the gun in his
21 hand?

22 A: I am one hundred percent positive.

23 Q: Do you remember Jeremy and Abdul wearing anything when
24 they left the car?

25 A: They had their hoodies on and gloves, but it was a cool

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1 night so I didn't think anything of it. And when they ran
2 out, they had the hoods over and they had masks on.

3 Q: When you say masks, what do you mean?

4 A: Bandanas.

5 Q: Do you remember what color?

6 A: Not particularly, no, it was dark.

7 Q: Was it a light color?

8 A: Probably like a light bluish maybe; I don't know. I
9 couldn't really because it was dark.

10 Q: Okay. And how sure are you -- where did -- where did
11 Jeremy sit when he got in the car?

12 A: He got in the middle.

13 Q: In the middle where?

14 A: In the passenger side back, Sam was sitting there and he
15 got in and sat beside her and Abdul got behind me.

16 Q: And where were you at this point?

17 A: In the driver's seat.

18 Q: And where was Tyler?

19 A: The passenger seat.

20 Q: And how sure are you that this Defendant, Abdul, held the
21 gun to you?

22 A: I'm positive, a hundred percent because I felt the gun on
23 my back.

24 Q: And what did he say to you when he got in the car?

25 A: Drive, drive; different words of choice, I don't know; can

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- 1 I say them?
- 2 Q: No.
- 3 A: Okay. I don't know ---
- 4 Q: We don't -- we don't need to use that language.
- 5 A: Just drive, drive, drive.
- 6 Q: And I don't know if I covered this earlier. What
- 7 apartment complex were you at?
- 8 A: Ivystone.
- 9 Q: And could you see anyone go in?
- 10 A: Go in the apartment?
- 11 Q: Into the actual apartment?
- 12 A: No, because where we were parked, you just saw the
- 13 staircase and part of the walkway, the entrance to the
- 14 walkway.
- 15 Q: Okay. Did anyone other than Jeremy and Abdul go up?
- 16 A: No.
- 17 Q: Did anyone other than Jeremy and Abdul come down?
- 18 A: No.
- 19 Q: Did anyone other than Jeremy and Abdul get back in the car
- 20 that night?
- 21 A: No.
- 22 Q: After they got back in the car and after Abdul held the
- 23 gun to you and said drive, where did you go to?
- 24 A: Back to their house.
- 25 Q: Do you what the house looks like?

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- 1 A: It's a trailer.
- 2 Q: Would you recognize it I showed it to you?
- 3 A: Uh-huh (affirmative response).
- 4 MR. HOLFORD: May I approach the witness?
- 5 THE COURT: Yes.
- 6 BY MR. HOLFORD:
- 7 Q: I'm gonna show you what's been marked as -- entered as
- 8 State's Fourteen. Do you know what that is?
- 9 A: That's their house.
- 10 Q: This is their house; whose house?
- 11 A: Jeremy and Abdul.
- 12 Q: They lived there?
- 13 A: As far as I knew they lived there. They were always
- 14 there. I don't know if it was a permanent residence, but
- 15 that's where we would always see them.
- 16 Q: And that's where they made you drive?
- 17 A: Yes.
- 18 Q: What happened when you got there?
- 19 A: They told us to get out of the car and they took us inside
- 20 but told us if we told anybody that they would kill us and our
- 21 families.
- 22 Q: Who is they?
- 23 A: Jeremy and Abdul.
- 24 Q: I'm gonna show you what's been entered as State's Five;
- 25 who's that?

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1 A: That's Jeremy Fleming.

2 Q: This is Jeremy Fleming? Have we gone through this before?

3 A: Yes.

4 Q: Have you testified before?

5 A: Yes.

6 Q: And what trial was that?

7 A: The Jeremy Fleming trial.

8 Q: And he's this Defendant's Codefendant, right?

9 A: Codefendant, what does that mean?

10 Q: They were charged together with the same crime?

11 A: Oh, yeah. Yes, sir.

12 Q: State's Nine, who is that?

13 A: Abdul.

14 Q: This is Abdul and this is the Defendant? And on that
15 night, October 16th, 2011, at the Ivystone Apartments, who
16 were the only two people who went up to the apartment?

17 A: Yes.

18 Q: Who?

19 A: Abdul and Jeremy.

20 MR. HOLFORD: No further questions, Your Honor.

21 THE COURT: Mr. Stampfle.

22 MR. STAMPFLE: If it please the Court, Your Honor?

23 CROSS EXAMINATION OF LINDSAY TAYLOR SMITH BY MR. STAMPFLE:

24 Q: Taylor, on that night, the night of this incident, you
25 testified that you and everyone in the vehicle, it's your

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1 understanding that you were going there to get money?

2 A: Yes.

3 Q: Did you informed the police that you also were under the
4 impression that you were there to get marijuana; is that
5 right?

6 A: Yeah, well, they mainly told us money, but that was all
7 they told us to begin with; they were just going to get money
8 that was owed to them.

9 Q: Did you give a statement to the police?

10 A: Yes.

11 Q: Okay. Did you also have a statement recorded by the
12 police?

13 A: I'm sorry?

14 Q: Did you also have a statement recorded by the police; did
15 they record your conversation with the detective?

16 A: I believe so.

17 Q: Okay. It was Detective Williams; do you remember that?

18 A: Yes.

19 Q: Okay. And that was the day you came forward; is that
20 correct?

21 A: Yes.

22 Q: You and Samantha right?

23 A: Yes.

24 Q: Okay. When you gave that statement, do you remember
25 telling the police that it was your impression that Jeremy was

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1 the one who supposedly, quote, shot a guy?

2 A: I didn't hear anything about Jeremy shooting the guy,
3 personally.

4 Q: You didn't hear it?

5 A: No.

6 Q: You didn't hear it personally?

7 A: No.

8 Q: Who did you hear it from?

9 A: I didn't hear that at all. I just heard that somebody had
10 gotten shot.

11 Q: You never said that Jeremy was the one that supposedly
12 shot the guy?

13 A: I don't remember.

14 Q: You don't remember?

15 A: It's been two years; I'm sorry.

16 Q: From your position in the vehicle, you were driving,
17 correct?

18 A: Yes.

19 Q: You saw my client and Mr. Fleming enter the apartment
20 building; is that correct?

21 A: Not enter the actual apartment, but go in the walkway to
22 the apartment.

23 Q: Just the walkway to the apartment; that was all you could
24 see, correct?

25 A: Yes.

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LINDSAY TAYLOR SMITH - REDIRECT BY MR. HOLFORD

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1 Q: You couldn't see anything that -- that transpired after
2 that; is that correct?

3 A: Right.

4 Q: Not until they left -- the only thing you saw after that
5 was them running to your vehicle?

6 A: Yes.

7 Q: Okay. So you can't state with any certainty what
8 transpired in that apartment?

9 A: No, I cannot.

10 Q: You were in a car seat; is that correct?

11 A: Yes.

12 Q: Okay. And you testified that you felt a gun through the
13 car seat to your back?

14 A: No, not through the car seat; it was on me.

15 Q: It was on you; it was in your back?

16 A: Yes.

17 MR. STAMPFLE: That's all the questions I have.

18 THE COURT: Mr. Holford?

19 MR. HOLFORD: Briefly, Your Honor.

20 May I approach with State's Two?

21 THE COURT: Certainly.

22 REDIRECT EXAMINATION OF LINDSAY TAYLOR SMITH BY MR. HOLFORD:

23 Q: I'm gonna show you what's been marked as State's Exhibit
24 Two; do you recognize that photo?

25 A: Yeah.

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1 Q: And who's in that photo?

2 A: Me.

3 Q: Is that a true and accurate copy?

4 A: Yes, sir.

5 MR. HOLFORD: Your Honor, State would enter State's
6 Exhibit Two in evidence.

7 THE COURT: All right.

8 Any objection?

9 MR. STAMPFLE: No, sir.

10 STATE'S EXHIBIT NUMBER TWO

11 ADMITTED INTO EVIDENCE

12 BY MR. HOLFORD:

13 Q: And tell the jury what you were doing in this photo?

14 A: Giving my statement.

15 Q: Did the police come find you?

16 A: No.

17 Q: So how did they get your statement?

18 A: I went forward and we called the Horry County Police.

19 Q: Why would you do that?

20 A: Because originally we were afraid to go forward because
21 they said that they would kill us and our family and then we
22 found that they wanted to actually go back to the apartment to
23 finish what they had started and I told Sam that we have to
24 go. We can't do this; we've got to go and say what happened.

25 Q: So you voluntarily came forward?

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1 A: Yes.

2 STATE'S EXHIBIT NUMBER THIRTY-ONE

3 MARKED FOR IDENTIFICATION

4 Q: I'm gonna hand you a copy of State's Exhibit Thirty-one;
5 can you identify what this is?

6 A: That's my statement.

7 Q: Is that what you were writing in that picture?

8 A: Yes.

9 Q: Take a minute for me and just read back through there to
10 refresh your recollection. Mr. Stampfle asked you some
11 questions about Jeremy being the shooter. Do you find
12 anywhere in there where you say Jeremy said he shot someone or
13 that anyone told you Jeremy was the shooter?

14 A: No.

15 Q: No. (To the Court) No further questions, Your Honor.

16 THE COURT: Recross?

17 MR. STAMPFLE: Yes.

18 RECROSS EXAMINATION OF LINDSAY TAYLOR SMITH BY MR. STAMPFLE:

19 Q: You stated that they said they were gonna go back and
20 finish the job. Did you ever hear Mr. Furquan directly tell
21 you that?

22 A: It wasn't him that said it; it was Jeremy that said it.

23 Q: Jeremy said it?

24 A: Yes.

25 Q: So saying that they said it isn't correct; Jeremy said

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1 that?

2 A: Yes, Jeremy said it.

3 MR. STAMPFLE: No further questions at this time.

4 THE COURT: You may step down.

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

7 TROY ALLEN LARGE, HAVING BEEN SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Have a seat in the witness chair. State your full
10 name and spell your last name?

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

12 MR. HOLFORD: Your Honor, before I get into to this
13 witness, I'd ask that Ms. Smith be excused from her subpoena?

14 THE COURT: Do you have any objection, Mr. Stampfle?

15 MR. STAMPFLE: No, I have no objection.

16 MR. HOLFORD: Thank you, Your Honor.

17 DIRECT EXAMINATION OF TROY ALLEN LARGE BY MR. HOLFORD:

18 Q: Detective -- Detective Large, please introduce yourself to
19 the jury?

20 A: I'm Detective Troy Allen Large. I am currently employed
21 with the Horry County Police Department. I've been a police
22 officer for twenty-six years; twenty-two of those I have
23 served in the violent crime or major crime section of the
24 Horry County Police Department and I'm currently assigned to
25 the major crimes unit.

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1 Q: What kind of training do you go through to be involved in
2 major crimes?

3 A: Well, you start off and once you get promoted from a first
4 class officer to detective, they -- then to the Criminal
5 Justice Academy for Detective I and II level classes where
6 they teach you basic investigations. I've been to advanced
7 training over the years to homicide schools, pathologist,
8 forensic schools, interviewing, read -- interviewing schools
9 and we continue through each year going to training and being
10 recertified as a police officer in the State of South
11 Carolina.

12 Q: And have you testified in a trial similar to this before?

13 A: Yes, sir.

14 Q: And what trial was that?

15 A: Many trials and I've also testified in the Codefendant's
16 trial, Fleming's trial earlier in reference to this case.

17 Q: How did you become involved in this case?

18 A: What we do in the major crime unit and there are twelve of
19 us and we are assigned days that we are in charge or on call
20 and it happened to be on October 16th, 2011, I was the
21 detective on call. They called shortly either before or right
22 after midnight in reference to a shooting incident that had
23 occurred in the Myrtle Beach section of Horry County back off
24 Bypass 17 near what we call Market Commons, which used to --
25 near the airport. There was a shooting at the apartments

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1 there and I responded to the apartments to begin the
2 investigation. I also notified Crime Scene Specialist, Jill
3 Domogauer, that crime scene would be needed and waited on her
4 to respond there and started to initiate my investigation.

5 Q: Did you initially respond to Ivystone?

6 A: I went to Ivystone, learned that we had one, Mr. Collins,
7 who was the roommate of the victim and Mr. Moran had been
8 transported to Grand Strand Hospital. We had patrol officers
9 on scene, I believe Officer Anderson, so once the scene had
10 already been secured prior to me arriving, Mr. Collins had
11 given a statement to the reporting officer to make a police
12 report. I went to check on Mr. Moran at Grand Strand Regional
13 Hospital.

14 Q: Why was Mr. Moran at Grand Strand Regional Hospital?

15 A: Mr. Moran had received a gunshot wound to his head and was
16 being treated there for that wound.

17 Q: And what were you -- who were you looking for, if anyone,
18 at that time; did you know anyone?

19 A: No, initially the -- Mr. Collins provided to the officer
20 in the police report that it was two unknown subjects wearing
21 a hoodie, what we call either a scarf, bandana, over their
22 face and they were in dark clothing and they were unknown to
23 Mr. Collins.

24 Q: How many people?

25 A: Two.

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1 Q: You've heard the testimony from Taylor and Samantha that
2 they came forward and gave statements?

3 A: Right, yes, sir. That was -- we had no leads until they
4 came forward. Once they came forward, Detective Williams and
5 myself initiated or at least got a hot lead on the case and
6 met with them and started developing the two suspects, which
7 turned out to be Mr. Furquan and Mr. Fleming. We got
8 statements from the witnesses. Confirmed by going to Mr.
9 Furquan's employer at the Olive Garden in the North Myrtle
10 Beach Section of Horry County to positively identify him and
11 that he was at work the night of prior to the incident. And
12 based on that and the stuff that was described from the victim
13 and witness, who were roommates, and also the witnesses had
14 come forward, we believed that there would be a gun and
15 possible clothing or physical masks and gloves at the
16 residence that was pointed out to be where they were
17 cohabitating at. So I obtained a search warrant to -- along
18 with arrest warrants in reference to this case.

19 Q: Now why were you looking for two people instead of one?

20 A: Because there was two people that took part in the crime.
21 There were -- there were two people acting that had been
22 described both by the victim and you could actually call Mr.
23 Collins a victim because he lives -- that was his residence
24 and then also having Samantha and Taylor and Samantha's
25 younger brother, which I referred to as a juvenile at the

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1 time, coming forward providing that two people were acting
2 together in reference to what had occurred.

3 Q: And you said that you obtained a search warrant?

4 A: Yes, sir.

5 Q: What is that?

6 A: What we do is -- it's a reference to your constitutional
7 right, your Fourth Amendment. You have a right to be secure
8 in your person's house without a police coming and just
9 knocking on your door and coming through your residence. We
10 have to go to a Magistrate, a Judge, and provide them a
11 document that is a standardized form called a search warrant
12 for the County of Horry, State of South Carolina, which we go
13 for the Magistrate -- we type it up, give an affidavit, the
14 reason we believe that this person's residence contains
15 possible evidence that is pertaining to the particular case
16 that we're investigating and go to that Magistrate and get
17 them to agree by signing the search warrant, making it valid,
18 so we can go to that residence and enter the residence by
19 force if we have to.

20 Q: And do you remember the location you were going to search?

21 A: It was -- it was Woodlawn Mobile Home Park. Actually we
22 took one of the witnesses in an unmarked police car to go by
23 to make sure that there was no mistake, that we got the
24 description of the residence; it was a white in color trailer
25 on the corner in Woodlawn Mobile Home Park and got the exact

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1 numbers off the trailer and the description of anything in the
2 yard that we were seeking to search so --what we call the
3 curtilage.

4 Q: And would you recognize that residence if I showed it to
5 you?

6 A: Yes, sir.

7 MR. HOLFORD: May I approach the witness, Your Honor?

8 THE COURT: Certainly.

9 BY MR. HOLFORD:

10 Q: I'm showing you what's been entered as State's Fourteen.
11 Can you identify what that is?

12 A: Yes, sir. That is the residence that we obtained a search
13 warrant for.

14 Q: And who did you believe lived there?

15 A: We believed both Codefendants were residing there based on
16 information that we got from witnesses.

17 Q: Now what's the process you go through to get a search
18 warrant?

19 A: Basically, I presented to the Judge that we had a burglary
20 that occurred with a victim being shot, who was at Grand
21 Strand Hospital still under the care of medical staff; that
22 two persons had come to the residence, gained entrance to the
23 residence by force, had used a hand gun that was described to
24 us as being involved and had shot the victim. That we had two
25 witnesses that were adults along with a juvenile, that had

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1 come forward and provided information that only a person that
2 -- that knew of the crime could -- had knowledge of a crime
3 that was committed that was only introduced to the news media
4 as a shooting incident, but they had further information that
5 corroborated from the two victims at the residence. They also
6 provided a description of clothing and a handgun, which we
7 believe may still be at the -- in the custody of the two
8 suspects. So we wanted to hit the residence with warrants and
9 also a search warrant to look for that evidence that may help
10 indicate that they did commit the crime or that might clear
11 them of it, but to at least seek an opportunity to go in there
12 and search for it since we didn't know who exactly had care,
13 custody and control of the residence that we didn't know who
14 to go provide and get consent and also to err on the fact that
15 a search warrant would be more appropriate to have.

16 Q: And who did you present all this information to?

17 A: I would have to look at the search warrant itself. It was
18 either Judge Butler, Judge Arakis or Judge Mayer. I can't
19 remember because I get a lot of search warrants, but it was
20 one of the three Magistrates.

21 Q: Okay. A Magistrate. Is that normal?

22 A: Yes. Yes, sir.

23 Q: And why do you approach a neutral party?

24 A: We approach a neutral party because usually when we do
25 that, we're going to enter the residence quickly because

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1 usually it's involving -- there's a reason to believe that the
2 persons inside the residence may be a danger to the public and
3 also that the evidence may be there and that we want to gain,
4 secure the residence. So it's important when we're entering a
5 residence, going into your home, to have someone who has no
6 dog in the race; that they're gonna sit back and make sure
7 that we don't just kick in a door or knock on your door and go
8 in -- into your residence without probable cause.

9 MR. HOLFORD: Your Honor, may I approach the witness with
10 State's Twenty-nine?

11 THE COURT: Yes, sir.

12 BY MR. HOLFORD:

13 Q: Can you identify the State's Twenty-nine?

14 A: Yes, sir, this is what a standard search warrant that we
15 use in the State of South Carolina and in Horry County.

16 Q: And who -- who got that search warrant?

17 A: I obtained the search warrant myself and I see here that
18 Judge Mayers is the actual Judge that I went before.

19 Q: Is that a true and accurate copy?

20 A: Yes, sir, it is a true and accurate copy.

21 MR. HOLFORD: Your Honor, at this time, I'd enter State's
22 Twenty-nine into evidence?

23 MR. STAMPFLE: Without objection, Your Honor.

24 THE COURT: Without objection.

25 MR. HOLFORD: Thank you.

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STATE'S EXHIBIT NUMBER TWENTY-NINE

ADMITTED INTO EVIDENCE

BY MR. HOLFORD:

Q: Will you look through there and tell me the exact address; you said it was the Woodlawn Apartments, but in the circle?

A: Yeah, it -- it's the -- it's actually described. What we do is we go into detail. It says in part of the search warrant here, it says description of premises; the gray in color singlewide trailer with shutters, windows. The residence is located within the Woodlawn Mobile Home Park at Quinn Drive and Rocky Road. It has the residence marked as [REDACTED], Lot [REDACTED] and that's in the Myrtle Beach Section of Horry County.

Q: And did you take pictures when you arrived at that residence?

A: Yes, sir. Again, since I was -- I'm the lead case agent based on the call schedule so yeah, I was in charge and responded out, had the search warrant in hand. We did use the Special Response Team because of the nature of the violent crime. So they entered the house in -- in a stack and secured it.

Q: What is a Special Response Team?

A: A Special Response Team is more or less instead of us going knocking on the door -- unfortunately -- well, fortunately I guess, most of my days I'm dressed in a tie or a

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1 cotton shirt with a gun and a badge and a pair of handcuffs.
2 I do have a bullet proof vest, but it's in the trunk of my car
3 and only brought out -- I had it on that day, but what we did
4 is because of it being such a violent crime and the subjects
5 involved, we were concerned for safety and they -- more of our
6 geared up officers that are in uniform, tactical uniforms,
7 went in and secured the residence so no one would get hurt.

8 MR. HOLFORD: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. HOLFORD:

11 Q: I'm showing you what's been entered in evidence as the
12 State's Ten. Can you identify that picture?

13 A: Yeah, this is a -- right here is the corner of the
14 residence. It's got Lot [REDACTED], [REDACTED], used the numerical and lot
15 on the side that we identified when we drove by and did
16 surveillance on the residence.

17 Q: Now I'm just gonna show you what's been marked for ID
18 right now as State's Eleven, Fifteen, Sixteen and Seventeen.
19 Will you flip through those briefly and just ---

20 THE COURT: Mr. Stampfle, is there any objection to the
21 search warrant; have you challenged the search warrant?

22 MR. STAMPFLE: I have looked at the search warrant, Your
23 Honor, but there is no objection to the search warrant.

24 THE COURT: Then let's move along then. I think -- he's
25 not gonna or has no objection to the search warrant. Let's

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1 get to what happened when he executed it.

2 BY MR. HOLFORD:

3 Q: Okay. What are these pictures of?

4 A: These are pictures of the residence, the outside, mainly
5 the outside of the residence.

6 MR. HOLFORD: I'd ask that those be entered in evidence,
7 Your Honor?

8 THE COURT: Any objection?

9 MR. STAMPFLE: No, Your Honor.

10 THE COURT: All right.

11 STATE'S EXHIBIT NUMBER ELEVEN, FIFTEEN, SIXTEEN,

12 AND SEVENTEEN ADMITTED INTO EVIDENCE

13 BY MR. HOLFORD:

14 Q: I'm gonna show you what's been marked as State's Eight,
15 Twenty-six, Twenty-five, Twenty-three and Twenty-four. Did
16 you take those pictures?

17 A: Yes, sir.

18 Q: And where did you take them?

19 A: These were taken inside the residence.

20 MR. HOLFORD: Now let's -- Your Honor, I'd ask that they
21 be entered in evidence?

22 MR. STAMPFLE: No objection.

23 THE COURT: Without objection.

24 STATE'S EXHIBIT NUMBER EIGHT, TWENTY-THREE, TWENTY FOUR,

25 TWENTY-FIVE AND TWENTY-SIX ADMITTED INTO EVIDENCE

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1 BY MR. HOLFORD:

2 Q: All right. Let's start with Twenty-four; what do we see
3 there?

4 A: This right here is a -- is called a scarf, a bandana, a
5 handkerchief or a, a mask. Those are terms that I use.

6 Q: And why would you take a picture of it?

7 A: Basically because it matched the description that was
8 given of our two suspects for wearing what were supposedly
9 facial handkerchiefs covering from their eyes down.

10 Q: State's Twenty-three, Twenty-five and Twenty-six, what are
11 we looking at?

12 A: You're looking at money, cigarettes and another
13 handkerchief scarf that were located inside the residence.

14 Q: Is that the same scarf as the other picture you just
15 identified?

16 A: I believe so.

17 Q: You think that's the same one that's on the floor is -- is
18 on the bed?

19 A: I'd have to look at it again. I'm sorry. Can I see the
20 other one, just to make sure before I say something I'm not
21 sure of.

22 Q: All right. State's Twenty-four?

23 A: No, those -- those would be different.

24 Q: Okay. But they're both similar styles?

25 A: Yes, sir. And the reason I know that is what we do is

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1 when we do conduct a search, we go through and we identify
2 things that are of interest. And what we do is we go back and
3 we photograph where those items are at to document where they
4 were found.

5 Q: And then State's Eight?

6 A: That's a bed with the scarf at the top.

7 Q: And again, where did you find all this information or all
8 these objects?

9 A: Inside the residence.

10 Q: I'm gonna show you what's been marked as State's Twenty,
11 Twenty-one, Twenty-eight, Twenty-seven and Twenty-two; where
12 are those pictures taken?

13 A: These pictures are taken inside the residence. This would
14 be pictures that were taken in the living room area of a couch
15 that progressed into a set of gloves that were found hidden
16 behind the couch.

17 Q: Did you take those pictures?

18 A: Yes, sir.

19 Q: Are they true and accurate copies of what you found the
20 day you executed the search warrant?

21 A: Yes, sir.

22 MR. HOLFORD: The State would move to have those entered
23 in evidence?

24 MR. STAMPFLE: Without objection.

25 THE COURT: Without objection.

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1 STATE'S EXHIBIT NUMBER TWENTY, TWENTY-ONE,
2 TWENTY-TWO, TWENTY-SEVEN, TWENTY-EIGHT
3 ADMITTED INTO EVIDENCE

4 BY MR. HOLFORD:

5 Q: Let's start with State's Twenty-two; what are we seeing
6 right there?

7 A: We're seeing -- to them? We're seeing here this is the
8 living room area of the residence and this is a couch. The
9 reason we take a picture of the couch is there was something
10 of interest and we're gonna start focusing on that.

11 Q: And when we look at State's Twenty-eight and Twenty-seven,
12 what is that?

13 A: Well, it's -- basically it's the couch and a wall, but
14 then when you look at it closer, there's an object that --
15 that you can see that's in between the back of the couch and
16 the wall.

17 Q: And why would you take pictures of that?

18 A: Because that's before we reach down there and move it, we
19 wanted to document where it was at, how, how we found it.

20 Q: And State's Twenty and Twenty-one?

21 A: This is what we pulled out -- a set of skeletal gloves
22 that were pulled out behind the couch between the wall and the
23 back of the couch.

24 Q: And this was in the residence where you executed the
25 search warrant?

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1 A: Yes, sir.

2 Q: I'm gonna show you State's Eighteen, Nineteen, Twelve and
3 Thirteen; can you identify those pictures and who took them?

4 A: Yes, sir. I took these pictures. What they are is there
5 is a gun that's in the grass that's outside the residence.
6 The reason I know it's a gun is while I was standing back in
7 the perimeter, as other officers were executing the search
8 warrant to secure the residence, a gun came flying out, which
9 was -- which I immediately went to the document. One of the
10 officers hollered gun and that's from the distance where it
11 was located at in the yard. And again, what we try to do is
12 photograph from a distance and then work our way up to it.
13 The guns there in the grass and then there's a close-up of it;
14 a closer picture here.

15 Q: What kind of gun is that?

16 A: That's a revolver.

17 Q: What color is it?

18 A: Silver with a black handle.

19 MR. HOLFORD: The State moves to have these exhibits in
20 evidence?

21 THE COURT: Any objection?

22 MR. STAMPFLE: Without objection.

23 THE COURT: Without objection.

24 STATE'S EXHIBIT NUMBER TWELVE, THIRTEEN,
25 EIGHTEEN AND NINETEEN ADMITTED INTO EVIDENCE

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1 BY MR. HOLFORD:

2 Q: And what did you do when you found that gun?

3 A: Well, basically since it was of evidence value, I collected
4 it.

5 Q: You said it came flying out a window?

6 A: Right. There was an officer from SLED that was down here
7 training and he hollered gun. I saw it in the grass and then
8 I immediately walked up to it and that's one of the first
9 things I did was secure it once it was photographed.

10 Q: I'm gonna show you what's been entered already as State's
11 Five and Nine; can you identify whose in State's Five?

12 A: That's Mr. Fleming.

13 Q: And State's Nine?

14 A: Mr. Furquan.

15 Q: I'm gonna you State's Three, Four, Six and Seven. Did you
16 take these pictures?

17 A: Yes, I did. These ---

18 Q: Where did you take them?

19 A: Right there. What we did is once -- once we hit the house
20 with the search warrant, they -- they -- for our security,
21 they cuffed the people, brought them out. What we did is I
22 wanted to do a, again, documentation is taking photos of each
23 person that was in the residence at the time that we executed
24 the search warrant and then we separated them and did
25 interviews.

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1 Q: And do you know who those people are?

2 A: Not right -- right offhand, but they -- I've got them
3 documented as who they are.

4 MR. HOLFORD: The State offers Three, Four, Six and Seven
5 in evidence?

6 MR. STAMPFLE: Your Honor, I believe he hasn't identified
7 who they were.

8 THE COURT: Do they have any relevance?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: What's your relevance?

11 MR. HOLFORD: Well, when the next witness testifies, he'll
12 identify everyone who was in the residence at the time and who
13 lived there.

14 THE COURT: Okay.

15 MR. STAMPFLE: At this point, he hasn't identified them.

16 THE COURT: They're unidentified photographs, but he's
17 identified the photographs as those being which he took.

18 MR. HOLFORD: Thank you, Your Honor.

19 STATE'S EXHIBIT NUMBER THREE, FOUR

20 SIX AND SEVEN ADMITTED INTO EVIDENCE

21 BY MR. HOLFORD:

22 Q: So these are the people that were at the residence that
23 day?

24 A: Yes, sir. Those were the people on scene other than
25 members of the Horry County Police Department.

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1 Q: And you said you took a gun from that location; is that
2 correct?

3 A: Yes, sir.

4 Q: And what did you do with the gun?

5 A: I did an evidence form and dropped it into evidence at the
6 Horry County Police Department.

7 Q: I'm gonna show you what's been marked as State's Thirty-
8 two; can you identify this?

9 A: This is Horry County Police Department Evidence Record
10 Form; it's a standard form that our department uses when we
11 collect evidence and put it back for tracking purposes.
12 There's a place for the case number, there's a place for the
13 officer's name, there's a place for the items that you're
14 taking, and also who had it and released it and who it was
15 released to.

16 Q: And who signed that?

17 A: Myself and then like I said, the evidence -- chain of
18 custody was evidence.

19 Q: So you turned it in?

20 A: Yes, sir, I turned it in and I didn't give it to anybody
21 else.

22 MR. HOLFORD: State offers Thirty-two in evidence?

23 MR. STAMPFLE: No objection.

24 STATE'S EXHIBIT NUMBER THIRTY-TWO

25 ADMITTED INTO EVIDENCE

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1 BY MR. HOLFORD:

2 Q: Can you read item number one?

3 A: Item number one is Smith -- Smith and Wesson or S&W
4 Airweight silver revolver with black handle; serial number
5 looks like DAZ3828.

6 Q: And that's the identifying serial number?

7 A: Yes, sir, just each -- each gun has a serial number to it.
8 So if the property has the serial number or some kind of
9 identification marks, we usually put that with it so you --
10 you can identify which gun it was instead of having fifty
11 different guns with -- with no numbers.

12 Q: Do different guns have the same serial numbers?

13 A: No, they're supposed to all be separate serial numbers to
14 identify that particular weapon.

15 Q: And the last page of the search warrant, what is that?

16 A: Let's see. This is the return items.

17 Q: What's a return?

18 A: Well, again, what we have to do is once we obtain a search
19 warrant, we have ten days to execute it. Then when we execute
20 it, what they require is a return. On the return is you put
21 the date, the officer's that were involved down here at the
22 bottom and you list any items that were taken during the
23 search warrant. So that's what we call a return. Same thing
24 we usually duplicate it by putting it in -- in evidence, but
25 that's what a return is to go back and take it to the

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1 Magistrate, show the Magistrate what we took, have them sign
2 the search warrant and make a copy of it and put it in the
3 case file.

4 Q: And what was returned on that after the search warrant?

5 A: I see one pair of black in color gloves with white
6 skeletal design; two black in color bandanas; one silver in
7 color revolver pister -- pistol; one black in color Samsung
8 silver phone and one gray in color Motorola cellular phone.
9 Those were the items that we took from the residence as
10 evidence and -- and based on our search that we felt was
11 related to the incident.

12 THE COURT: Did you introduce that search warrant? Has
13 that search warrant been introduced?

14 MR. HOLFORD: Yes, Your Honor.

15 MR. STAMPFLE: Yes, Your Honor.

16 THE COURT: All right.

17 MR. HOLFORD: I believe without objection.

18 THE COURT: Okay.

19 BY MR. HOLFORD:

20 Q: And so after you collected the ---

21 THE COURT: Come here a minute. Collect that search
22 warrant please?

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

25 THE COURT: All right. Yes, Mr. Stampfle, I think that

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1 you now object to the search warrant; is that correct?

2 MR. STAMPFLE: Yes, I now object to the search warrant,
3 Your Honor. It contains an affidavit and that outlines a
4 great deal of information with regard to the residence, with
5 regard to the Defendants and many allegations that have yet to
6 be established or proven. The best evidence would be the
7 testimony.

8 THE COURT: Yes. And I'm gonna grant your Motion.

9 Ladies and gentlemen, we, a moment ago, inadvertently or
10 at least on my part admitted State's Exhibit Number Twenty-
11 nine, which is the search warrant. A search warrant naturally
12 contains affidavits of belief that are entered as the reason
13 for requesting the search warrant by police officers when they
14 request one. That's not evidence because it hasn't been
15 introduced or hasn't been testified to. It probably will be,
16 but as it appears in the search warrant, that is not evidence.
17 Officer Large may testify or may not testify to exactly the
18 same thing, but it would be improper and for that reason, I'm
19 gonna withdraw the search warrant from evidence. Okay. We
20 will not consider that as part of the evidence.

21 MR. HOLFORD: Thank you, Your Honor. I would ask that it
22 be marked as the Court's Exhibit.

23 THE COURT: And I will Number Twenty-nine is now Court's
24 Exhibit Two, I believe or is it One?

25 COURT REPORTER: One.

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1 STATE'S EXHIBIT NUMBER TWENTY-NINE
2 WITHDRAWN FROM EVIDENCE BY THE COURT AND
3 MARKED AS COURT'S EXHIBIT ONE FOR IDENTIFICATION
4 BY MR. HOLFORD:

5 Q: Did you follow proper procedure in obtaining the search
6 warrant and searching the house?

7 A: Yes, sir.

8 Q: You already stated you turned in the gun?

9 A: Yes, sir.

10 Q: I'm gonna show you what's been marked as State's Thirty-
11 three; can you tell me what this is?

12 A: Again this is Horry County Police's Department's standard
13 evidence record form.

14 Q: And who turned those items in to evidence?

15 A: Darrell Williams turned it in to evidence.

16 Q: What happens once something's turned in to evidence?

17 A: It's collected and saved for Court or to be tested, which
18 might be related to, to the case.

19 Q: And what items were turned in?

20 A: The items that were turned in was one black in color
21 Samsung cellular phone, one silver in color Motorola cellular
22 phone, one pair of black in color gloves with skeletal
23 designs, and two black in color bandanas.

24 Q: Who is Darrell Williams?

25 A: Darrell Williams is a detective with the major crimes

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TROY ALLEN LARGE - DIRECT BY MR. HOLFORD

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1 unit.

2 Q: Was he with you?

3 A: Yes, sir, we were together.

4 MR. HOLFORD: Your Honor, I'd ask that State's Thirty-
5 three be entered in evidence?

6 THE COURT: Mr. Stampfle?

7 MR. STAMPFLE: Your Honor, it's not his report?

8 THE COURT: I don't know if it is or not; is it?

9 MR. STAMPFLE: He stated it wasn't his report.

10 MR. HOLFORD: Your Honor, he stated that it was Detective
11 Williams that actually turned the items in.

12 THE COURT: Is it a report that's kept in the normal
13 course of business by the Horry County Police Department?

14 A: It, it's a standard evidence form, yes, sir.

15 THE COURT: All right. I'll admit it.

16 MR. HOLFORD: Thank you, Your Honor.

17 STATE'S EXHIBIT NUMBER THIRTY-THREE

18 ADMITTED INTO EVIDENCE

19 BY MR. HOLFORD:

20 Q: And these were also the items that were turned in to
21 evidence that you collected that day during the search?

22 A: Right, yes, sir. I photographed them and -- and Darrell
23 collected them.

24 MR. HOLFORD: I have no further questions, Your Honor.

25 THE COURT: Mr. Stampfle.

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TROY ALLEN LARGE - CROSS BY MR. STAMPFLE

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1 MR. STAMPFLE: Just a few questions, Your Honor.

2 CROSS EXAMINATION OF TROY ALLEN LARGE BY MR. STAMPFLE:

3 Q: Detective Large -- may I see these photographs, Your
4 Honor? Detective Large, did you interview any of the
5 individuals in the home after the arrest?

6 A: Yes, sir, I did.

7 Q: Okay. Did you interview Mr. Furquan after the arrest?

8 A: No, sir, Detective Vestocovi did.

9 Q: Okay. Which individuals did you interview after the
10 arrest?

11 A: I -- I'd have to look at the -- my case file.

12 Q: You don't even recall who they were?

13 A: Not right now, no, sir.

14 Q: Okay. With respect to the skeletal gloves, how many pairs
15 of skeletal gloves -- Your Honor, may I approach the witness?

16 THE COURT: Certainly.

17 Q: How many pairs of skeletal gloves were found in the home
18 or photographed?

19 A: One pair.

20 Q: One pair?

21 A: Right.

22 Q: And both of them were located behind the sofa?

23 A: Right.

24 Q: Okay. With respect to the bandanas, one was found on --
25 on the floor; is that what you stated ---

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TROY ALLEN LARGE - CROSS BY MR. STAMPFLE

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- 1 A: Yeah.
- 2 Q: --- one was located there on the floor? Okay. And the
3 other; is that the same bandana next to the same cell phone?
- 4 A: No.
- 5 Q: No. So they were photographed as they were found?
- 6 A: Yes, sir.
- 7 Q: Do you know whose room that was?
- 8 A: No.
- 9 Q: No, you have no idea whose room that was?
- 10 A: No, sir.
- 11 Q: Okay. Did you ask?
- 12 A: Yeah.
- 13 Q: Okay. And was anyone able to inform you as to whose room
14 that was?
- 15 A: No.
- 16 Q: No. If I'm correct, it was Detective Williams that
17 interviewed Ms. -- Ms. Smith and Ms. Topolski at the police
18 department; is that correct?
- 19 A: Yes, sir.
- 20 Q: That was not you?
- 21 A: Not me.
- 22 Q: Were you present at those interviews?
- 23 A: Not the first one. The second day I was present with Ms.
24 Taylor.
- 25 Q: With Ms. Taylor. Did you conduct any of the -- let me

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MARY LINDER - DIRECT BY MR. HOLFORD

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1 rephrase that -- You did not conduct any of the investigation
2 at the scene of the incident; is that correct?

3 A: No, Jill Domogauer processed the scene.

4 Q: And there was one gun that was tossed out of a window at
5 the residence; is that correct?

6 A: At the residence when we had the search warrant, yes, sir.

7 Q: And was the owner of that weapon ever identified to you?

8 A: No, sir.

9 Q: Okay. Did you ask the residents of the home for the
10 identification of that weapon?

11 A: Yeah, nobody claimed it.

12 Q: Nobody claimed that weapon?

13 A: No.

14 MR. STAMPFLE: No further questions of this witness.

15 MR. HOLFORD: Nothing further, Your Honor.

16 THE COURT: You may step down. Thank you.

17 A: Thank you, Your Honor.

18 MR. HOLFORD: The State calls Mary Linder.

19 MARY LINDER, HAVING BEEN SWORN

20 TESTIFIES AS FOLLOWS:

21 DIRECT EXAMINATION OF MARY LINDER BY MR. HOLFORD:

22 Q: Ms. Linder, will you please ---

23 CLERK: State your full name and spell your last name?

24 A: Mary Linder, L-I-N-D-E-R.

25 Q: Will you please identify yourself to the jury; tell them

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MARY LINDER - DIRECT BY MR. HOLFORD

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1 how old you are and where you're from.

2 A: I'm twenty-one and I'm from Spartanburg, South Carolina.

3 Q: And where were you living in October of 2011?

4 A: In Myrtle Beach.

5 Q: Where in Myrtle Beach?

6 A: It was a trailer out ---

7 Q: Do what?

8 A: I was living in a trailer with some other people; I don't
9 remember where exactly it was.

10 Q: Who were you living with?

11 A: Brent, Ariel, Jeremy and Devonte.

12 Q: Who is Devonte?

13 A: Abdul.

14 Q: Abdul?

15 A: Yes.

16 Q: Did anyone call him Devonte around you?

17 A: It was just me.

18 Q: Did he call himself Devonte?

19 A: That's what he introduced me to him as.

20 Q: What was your relationship with Abdul?

21 A: At that time, I was his girlfriend.

22 Q: I'm gonna show you what's been entered as State's Three,
23 Four, Six, Seven, Nine and Five; I just want you to identify
24 some people. Who is in State's Three?

25 A: Ariel.

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MARY LINDER - DIRECT BY MR. HOLFORD

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- 1 Q: Ariel? Whose Ariel?
- 2 A: She was Brent's girlfriend.
- 3 Q: State's Six?
- 4 A: Brent.
- 5 Q: Who is Brent?
- 6 A: Ariel's boyfriend.
- 7 Q: Were they both living at the mobile home at that time?
- 8 A: Yes.
- 9 Q: What about State's Four?
- 10 A: Kenny.
- 11 Q: Kenny who?
- 12 A: I don't know his last name.
- 13 Q: Was he living there?
- 14 A: No, he wasn't.
- 15 Q: But he was there on the day ---
- 16 A: Yes.
- 17 Q: What happened that day?
- 18 A: We just got raided by all these police.
- 19 Q: Who's in State's Seven?
- 20 A: Me.
- 21 Q: That's you?
- 22 A: Yes.
- 23 Q: And who is State's Five?
- 24 A: Jeremy.
- 25 Q: And State's Nine?

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MARY LINDER - CROSS BY MR. STAMPFLE

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1 A: Abdul.

2 Q: Are those the only people at the residence that day?

3 A: Yes.

4 Q: And you stated that Abdul lived at that residence?

5 A: Right.

6 Q: And you lived there with him?

7 A: Right.

8 Q: And those were the only people at the residence?

9 A: Correct.

10 Q: And who was the only one out of those six that didn't live
11 there?

12 A: Kenny.

13 MR. HOLFORD: No further questions, Your Honor.

14 CROSS EXAMINATION OF MARY LINDER BY MR. STAMPFLE:

15 Q: Mary, how long had you and Abdul lived in that residence?

16 A: Maybe a couple of months.

17 Q: Maybe a couple of months? And you were -- you were ill at
18 the time; is that correct?

19 A: No.

20 Q: No, you were not; you were healthy at the time?

21 A: Yes.

22 Q: Were you working at the time?

23 A: No, I wasn't.

24 Q: Okay. And who was paying your rent?

25 A: I guess it was Brent and Ariel. I wasn't paying anything

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MARY LINDER - CROSS BY MR. STAMPFLE

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- 1 Q: Was Mr. Furquan paying it?
- 2 A: I'm not sure if he was or not. He was supposed to have
- 3 paid up, but I don't know if it was actually made that way.
- 4 Q: Okay. And who were you -- you were his girlfriend and you
- 5 were staying in his room then; is that correct?
- 6 A: Right.
- 7 Q: How long did you know Mr. Fleming?
- 8 A: I didn't know him that good. Like I knew of him, but I
- 9 didn't actually talk to him that much.
- 10 Q: Did you see him around the house very often?
- 11 A: Yeah.
- 12 Q: Was he there a lot; did he work?
- 13 A: He didn't work.
- 14 Q: What did he do to make money?
- 15 A: I have no idea.
- 16 Q: No idea? Okay. Did you ever see a gun in the residence?
- 17 A: No.
- 18 Q: Never at any time?
- 19 A: No.
- 20 MR. STAMPFLE: No further questions of this witness.
- 21 MR. HOLFORD: Nothing further.
- 22 THE COURT: You may step down.
- 23 MR. HOLFORD: State calls Kenny LeRay.
- 24 Your Honor, may she be excused; she lives in Spartanburg.
- 25 THE COURT: Any objection, Mr. Stampfle?

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KENNY LERAY - DIRECT BY MR. HOLFORD

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1 MR. STAMPFLE: No objection, Your Honor.

2 THE COURT: You're excused.

3 KENNY LERAY, JR., HAVING BEEN SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: State your full name for the Court and spell your
6 last name.

7 MR. LERAY: Kenny LeRay, Jr., L-E-capital R-A-Y.

8 MR. HOLFORD: May I approach the witness?

9 THE COURT: Certainly.

10 DIRECT EXAMINATION OF KENNY LERAY, JR. BY MR. HOLFORD:

11 Q: Kenny, I'm gonna show you some photos. Who is State's
12 Number Four?

13 A: Me.

14 Q: That's you?

15 A: Yes.

16 Q: And do you know when that was taken?

17 A: October last year; I don't know the exact date.

18 Q: Why was it taken; what happened that day?

19 A: A raid or I call it a raid. I don't know what y'all call
20 it.

21 Q: The police came in?

22 A: Yes.

23 Q: And who's in State's Seven?

24 A: Mary.

25 Q: Mary who?

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KENNY LERAY - DIRECT BY MR. HOLFORD

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- 1 A: I don't know her last name.
- 2 Q: Were you living at the place they raided at the time?
- 3 A: No.
- 4 Q: Was Mary?
- 5 A: I believe, yes.
- 6 Q: Who's in State's Three?
- 7 A: Ariel.
- 8 Q: Was Ariel living there at the time?
- 9 A: Yes.
- 10 Q: State's Six?
- 11 A: Brent.
- 12 Q: Was Brent living there at the time?
- 13 A: Yes.
- 14 Q: State's Five?
- 15 A: Jeremy.
- 16 Q: Jeremy?
- 17 A: Fleming.
- 18 Q: And State's Nine?
- 19 A: Freak; that's what I know him by.
- 20 Q: Do you see him in the courtroom?
- 21 A: Yes.
- 22 Q: Where is he?
- 23 A: Right there.
- 24 MR. HOLFORD: Let the record reflect he's identified the
- 25 Defendant.

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KENNY LERAY - DIRECT BY MR. HOLFORD

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1 BY MR. HOLFORD:

2 Q: His name is actually Abdul Furquan, is what he goes by,
3 but you knew him by his street name?

4 A: Yes.

5 Q: How well did you know Jeremy and Abdul?

6 A: I just knew them through Brent.

7 Q: And this was their trailer?

8 A: Yes.

9 Q: And you were present on that day when the police came?

10 A: Yes.

11 Q: And what happened after that?

12 A: They came, arrested us, I guess. They set us to the side
13 and then searched the house.

14 Q: And where was that trailer located? What city?

15 A: Socastee.

16 Q: And do you know what county that's in?

17 A: Horry.

18 Q: Do you have any further connection with this case?

19 A: No.

20 Q: No further questions.

21 MR. STAMPFLE: No questions.

22 THE COURT: You may step down.

23 MR. HOLFORD: State calls Heather Lewis.

24 HEATHER DAWN LEWIS, HAVING BEEN SWORN

25 TESTIFIES AS FOLLOWS:

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HEATHER DAWN LEWIS - DIRECT BY MR. HOLFORD

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1 CLERK: Have a seat and state your name for the Court.

2 MS. LEWIS: Heather Dawn Lewis, L-E-W-I-S.

3 DIRECT EXAMINATION OF HEATHER DAWN LEWIS BY MR. HOLFORD:

4 Q: Ms. Lewis, what do you do?

5 A: I am an Administrative Assistant for the Horry County
6 Clerk of Court.

7 Q: And were you involved in another case like this?

8 A: Yes.

9 Q: And what happened in that case? Who was the Defendant?

10 A: It was Jeremy Fleming.

11 Q: And at that time, did you take custody of anything?

12 A: I did; the evidence where he was found guilty.

13 Q: And why would you do that?

14 A: That's part of our job. If a Defendant is found guilty,
15 then we are the keeper of the evidence.

16 Q: And at that time, had we gone through procedures to enter
17 it in evidence?

18 A: Yes.

19 Q: And then so this is all evidence that you kept?

20 A: It is.

21 Q: After what happened?

22 A: After the Defendant was found guilty, we take possession
23 of the evidence. It's signed over from the Court Reporter, I
24 take it, log it into our computer, and put it in our evidence
25 vault where access to that vault is restricted. I think

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HEATHER DAWN LEWIS - DIRECT BY MR. HOLFORD

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1 there's only five of us that have access to it.

2 Q: Can you identify this?

3 A: Yes, that's the box that the evidence is in from the trial
4 of Jeremy Fleming.

5 Q: And how can you tell that?

6 A: Well, one, it's my handwriting; it's got the indictments
7 where he was -- the charges he was convicted of and it also
8 has what we call an evidence number to help us identify it.

9 Q: And what did you do with this evidence?

10 A: I packaged it up, sealed it and put it into our evidence
11 room or vault.

12 Q: How long has it been with you?

13 A: Ever since the trial ended.

14 Q: Until?

15 A: Until today.

16 Q: And then who did you give it to?

17 A: I actually gave it to you and you turned it over to, I'm
18 not sure, your investigator I think.

19 Q: And why did you turn it over to me?

20 A: We had a signed order by a Judge -- before we can release
21 any evidence like that, we have them have an order signed by a
22 Judge to release that evidence. People are allowed copies,
23 but they're not actually allowed the original evidence without
24 an order.

25 MR. HOLFORD: No further questions, Your Honor.

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JILL DOMOGAUER - DIRECT BY MR. HOLFORD

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1 THE COURT: Mr. Stampfle.

2 MR. STAMPFLE: No questions for this witness.

3 THE COURT: You did have it marked for identification; is
4 that correct?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: How did you have it marked? I mean, the
7 record's not clear.

8 MR. HOLFORD: Your Honor, it is marked as Court's Exhibit
9 Two.

10 THE COURT: Okay.

11 MR. HOLFORD: For identification.

12 THE COURT: All right.

13 COURT'S EXHIBIT NUMBER TWO AND THREE

14 MARKED FOR IDENTIFICATION

15 MR. HOLFORD: State calls Jill Domogauer to the stand.

16 JILL DOMOGAUER, HAVING BEEN SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please state your full name and spell your last
19 name for the Court.

20 MS. DOMOGAUER: Jill Domogauer, D-O-M-O-G-A-U-E-R.

21 DIRECT EXAMINATION OF JILL DOMOGAUER BY MR. HOLFORD:

22 Q: Investigator Domogauer, where are you employed?

23 A: I'm employed with the Horry County Police Department.

24 Q: How long have you been employed there?

25 A: Almost five years now.

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JILL DOMOGAUER - DIRECT BY MR. HOLFORD

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- 1 Q: And what's your title?
- 2 A: I'm a Crime Scene Officer, Crime Scene Investigator.
- 3 Q: And what do you do in that position?
- 4 A: I do a lot. I investigate crime scenes, handle evidence,
5 process evidence, process crime scenes, I work in the lab.
- 6 Q: And what was your involvement with this case?
- 7 A: I was a Chief Crime Scene Officer.
- 8 Q: Do you remember where you reported to on October 16th,
9 2011?
- 10 A: I would have to look at notes and unfortunately I left my
11 file back there, but Ivystone Apartments. If you want more
12 than that, I'd have to get my notes. I apologize.
- 13 Q: What city is Ivystone Apartments located in?
- 14 A: I believe it's Myrtle Beach.
- 15 Q: And what county is that?
- 16 A: Horry County.
- 17 Q: And have you testified in a case like this before?
- 18 A: Yes, sir.
- 19 Q: And who was that case against?
- 20 A: You want the name?
- 21 Q: Uh-huh (affirmative response).
- 22 A: Jeremy Fleming.
- 23 Q: And how is Jeremy Fleming related to this Defendant?
- 24 A: I don't know their relation other than Codefendant.
- 25 Q: They're both arrested for the same crime?

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JILL DOMOGAUER - DIRECT BY MR. HOLFORD

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- 1 A: Yes, sir.
- 2 Q: And do you know who this Defendant is?
- 3 A: No, sir.
- 4 Q: You've never seen him before?
- 5 A: No, sir.
- 6 Q: You just process the crime scene?
- 7 A: Yes, sir.
- 8 Q: When you got to Ivystone, what did you find; did you
- 9 process that crime scene?
- 10 A: Yes, sir, I'm sorry.
- 11 Q: And what did you find there?
- 12 A: I was advised of an incident. I started processing by
- 13 photography and measurements. If found an apartment that
- 14 needed to be processed due to an incident. I processed the
- 15 apartment and -- blood and stuff like that.
- 16 Q: Did you go anywhere after you were at the apartment?
- 17 A: I would have to get my file, I'm sorry.
- 18 Q: Where is your file, ma'am?
- 19 A: Right there. It's in my bag. I apologize to the Court.
- 20 The big one.
- 21 MR. HOLFORD: May I approach the witness to refresh her
- 22 recollection?
- 23 THE COURT: Certainly.
- 24 A: Again, I do apologize.
- 25 BY MR. HOLFORD:

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1 Q: Did you go to the hospital?

2 A: Yes, sir.

3 Q: And what did you find at the hospital?

4 A: I responded to the hospital on the 17th to recover
5 evidence from a scrub nurse from a surgery, projectile
6 fragments.

7 Q: What did you recover?

8 A: Sealed sterile container from a scrub nurse who came out
9 of a surgical room with projectile fragments inside.

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

11 THE COURT: Yes.

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

14 STATE'S EXHIBIT NUMBER THIRTY-FOUR

15 MARKED FOR IDENTIFICATION

16 BY MR. HOLFORD:

17 Q: I'm gonna show you what's been marked as State's Exhibit
18 Thirty-four; can you identify what this is?

19 A: This is the sterile container that I received that day
20 from the scrub nurse.

21 Q: And can you tell what's in it?

22 MR. STAMPFLE: Your Honor, I'm gonna object to this
23 point. There's no chain of custody on that particular
24 projectile.

25 THE COURT: All right. Let's send the jury out. The

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1 jury needs a break any way.

2 (REPORTER'S NOTE: The jury exits the courtroom. 3:33 P.M.

3 The following takes place outside the presence of the jury.)

4 All right. Mr. Stampfle, you are complaining that
5 there's no -- essentially no foundation laid?

6 MR. STAMPFLE: Yes, Your Honor.

7 THE COURT: All right. Mr. Holford, how do you get
8 around the fact that there's no medical testimony as to who or
9 where or from whom, who removed it from whom or how it was
10 removed; I assume it was from the victim, but we have no
11 medical testimony as to where it came from.

12 MR. HOLFORD: Your Honor, Investigator Domogauer has
13 testified that she's the one who was present at the hospital.

14 THE COURT: I doubt she was in the surgery though were
15 you, Ms. Domogauer?

16 A: No, sir.

17 THE COURT: Okay. And someone came out of the surgical
18 suite or at some time and handed you that, right?

19 A: Yes, sir.

20 BY MR. HOLFORD:

21 Q: How do you know who it's from?

22 A: It's on the label.

23 THE COURT: Yeah, but you don't have the person who
24 removed it and you don't have the person who labeled it. I
25 know that Hatcher has lowered the bar as far as chain of

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1 custody, but you still have to have -- this is fungible if
2 it's subject to analysis and you -- you got to establish more
3 than that. I have no idea where it's from and neither does
4 Officer Domogauer. She can't testify where it came from, out
5 of whose body or whatever, can you, I mean ---

6 A: I was standing outside the surgical ---

7 THE COURT: Somebody told you where it came from, right,
8 outside the surgical room; you weren't there?

9 A: No, everything's labeled.

10 THE COURT: I understand it's labeled but that's hearsay
11 also. I mean it's -- I'm inclined to grant the motion unless
12 you can give me some authority for this?

13 MR. HOLFORD: Your Honor ---

14 THE COURT: Are you gonna produce the physician who --
15 who removed these or the nurse who was present while they were
16 being removed and observed them being removed and packaged
17 them and then gave them to Officer Domogauer?

18 MR. HOLFORD: Your Honor, she -- Investigator Domogauer
19 packaged them.

20 THE COURT: I understood that she was given them in a
21 sterile package, a cup, right, Officer Domogauer?

22 A: Yes, sir.

23 THE COURT: That's how you received them and she said
24 there was a name on it, but there's no one to say I labeled
25 it. There's no one to say I was present when it was removed.

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1 Office Domogauer can truthfully testify she was, by a scrub
2 nurse, given a cup like container with what appears to be
3 bullet fragments in it and it had a name on it; that's what
4 she can testify to. She cannot testify as to where it came
5 from, whether it's been altered, whether or how it was
6 packaged or when it was packaged. She can't testify to that;
7 she doesn't know.

8 BY MR. HOLFORD:

9 Q: Can you testify to where it was packaged?

10 THE COURT: Well, it's packaged there, but I'm talking
11 about the process that they went through in handling this.
12 She can't testify to that. She cannot testify as to where
13 this came from.

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: Okay. All right. Your motion is granted.

16 MR. STAMPFLE: Your Honor, I'd like to also take up the
17 matter of the pistol, which I understand is gonna be brought
18 and attempted to be brought into evidence.

19 THE COURT: What is that now?

20 MR. STAMPFLE: The firearm, the pistol.

21 THE COURT: What about it?

22 MR. STAMPFLE: Your Honor, I don't believe the State
23 plans on calling anyone to identify whether or not that --
24 that's just a weapon that was located at the home. No one has
25 been able to positively ID that weapon as to ---

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1 THE COURT: Well, I think what you're trying to make is a
2 Rule 403 argument?

3 MR. STAMPFLE: Yes, Your Honor.

4 THE COURT: The introduction of the weapon would be more
5 prejudicial, substantially more prejudicial than any probative
6 value. The probative value being that they have witnesses who
7 say these Defendants, who lived in that house, were the
8 perpetrators of this crime. They went to that house; they
9 found a weapon that was not only identified by the victim or,
10 not identified, described by the victim as being a black-
11 handled silver revolver. You also have one of the ladies or
12 two of the ladies, who had driven the car there, who likewise
13 testified that one of them at least had been threatened with,
14 guess what, a revolver, silver in color with a black handle.
15 I think that is highly probative. I understand that it has
16 prejudice to the Defendant, but the Rule is not whether or not
17 it's prejudicial; it's whether it's unfairly prejudicial and I
18 do not think it -- it is. I'm going -- I would allow it if it
19 is offered.

20 MR. HOLFORD: Thank you, Your Honor.

21 MR. STAMPFLE: Your Honor, if I may complete my objection
22 before the Court?

23 THE COURT: Certainly, if I cut you off; I'm sorry.

24 MR. STAMPFLE: The reason -- one of the things that it's
25 my understanding the State doesn't plan on calling anyone who

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1 forensically tested that weapon.

2 THE COURT: I understand that. And the only connection
3 is that it was there. I understand that.

4 MR. STAMPFLE: All right.

5 THE COURT: And I considered that in my 403 analysis. I
6 understand that or it's my understanding the bullet was
7 fragmented and there was no way to make a ballistic match; is
8 that right, Mr. Holford?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: Okay. I still think under the circumstances
11 considering the description of the weapon by the victim and
12 other witnesses and finding the witness, I mean the weapon --
13 a weapon matching that description pursuant to a search
14 warrant is highly probative and certainly outweighs any unfair
15 -- substantially outweighs any unfair prejudicial effect.
16 Okay.

17 MR. HOLFORD: I can certainly respond to the chain. It's
18 not fungible evidence. There is a serial number on it; it's
19 indicated on the box, indicated on the gun; also indicated on
20 the evidence sheet.

21 THE COURT: I agree one hundred percent that that gun is
22 not fungible; but those bullet fragments are fungible. They
23 require -- or they were given to a -- to be tested ---

24 MR. HOLFORD: Thank you, Your Honor.

25 THE COURT: --- in some fashion. They required analysis;

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1 that was the purpose of taking them. Otherwise, they have no
2 probative value.

3 MR. HOLFORD: But they were never tested.

4 THE COURT: I understand. You looked at them, they were
5 not tested, couldn't test them.

6 MR. HOLFORD: It's just that it came from the ---

7 THE COURT: And if you had a doctor here that said I took
8 them out, here it is, I probably would not be concerned since
9 they were not tested about a chain, but I think you -- you got
10 to lay a foundation.

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

12 THE COURT: All right, sir.

13 MR. STAMPFLE: Back to the weapon, Your Honor, the
14 roommate has testified at this point. You said the victim
15 has identified that weapon.

16 THE COURT: Well, the roommate, yes, the -- the gentleman
17 coming down the hall. I consider him one of the victims, but
18 he was there and he clearly described a silver-colored
19 revolver with a black handle and then the either -- two of the
20 ladies in the car and maybe -- maybe the -- the one that was a
21 juvenile. There was testimony from the people who were in the
22 car, whether it be one or two or three that that's the kind of
23 weapon they had and then it shows up at -- at the residence.
24 I think is highly probative and I will admit it.

25 MR. STAMPFLE: Thank you, Your Honor.

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JILL DOMOGAUER - DIRECT BY MR. HOLFORD

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1 MR. HOLFORD: Your Honor, can I get a preliminary ruling
2 on the clothing, the two black bandanas and the black gloves.
3 Again, we're not offering any DNA, any ---

4 THE COURT: You intend to object to them?

5 MR. STAMPFLE: No, actually, Your Honor, I would like the
6 gloves to come in.

7 THE COURT: Okay.

8 MR. HOLFORD: Thank you, Your Honor.

9 THE COURT: All right. I'm gonna take a break now.

10 MR. HOLFORD: Yes, Your Honor.

11 (RECESS - 3:43 P.M.)

12 *****OFF THE RECORD*****

13 (On the Record. 3:54 P.M.)

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

15 All right. You can bring my jury back in. We haven't
16 got the Defendant yet? All right.

17 Whenever they're ready.

18 (REPORTER'S NOTE: The jury returns to the courtroom. 3:58
19 P.M.)

20 THE COURT: All right. We have all our jurors and our
21 alternates back in the courtroom. We're ready to proceed.

22 You may continue, Mr. Holford.

23 MR. HOLFORD: Thank you, Your Honor.

24 BY MR. HOLFORD:

25 Q: Investigator Domogauer, were other items turned over to

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1 you in this case?

2 A: Yes, sir, they were.

3 Q: What items would those be?

4 A: Clothing items such as gloves and bandanas, a weapon.

5 Q: Would you recognize them if you saw them?

6 A: Yes, sir.

7 Q: How would you be able to recognize them?

8 A: Usually we assign a case number packaging labels and
9 things and also visually.

10 Q: State's Thirty-five, can you identify what that is?

11 A: A pair of gloves with skeletal designs.

12 Q: And how do you know that?

13 A: We have a description on the envelope of the item inside
14 the envelope; it's bar coded and there's also a case number
15 and my name and initials.

16 Q: Your name is on this?

17 A: Yes, sir.

18 Q: And how do you know it's related to this case?

19 A: The case number that's been assigned this case.

20 MR. HOLFORD: Your Honor, the State would enter Thirty-
21 five in evidence?

22 THE COURT: Why doesn't she look at what's in the package
23 and identify it?

24 (REPORTER'S NOTE: Witness removes packaging.)

25 A: Skeletal gloves.

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1 THE COURT: All right. And you are moving to introduce
2 the gloves; is that correct?

3 MR. HOLFORD: Yes, Your Honor.

4 THE COURT: Very well.

5 Mr. Stampfle?

6 MR. STAMPFLE: No objection to the gloves, Your Honor.

7 THE COURT: Without objection.

8 STATE'S EXHIBIT NUMBER THIRTY-FIVE

9 ADMITTED INTO EVIDENCE

10 BY MR. HOLFORD:

11 Q: Can you show the jury what they are?

12 A: A pair of gloves with skeletal designs on one side.

13 Q: And you said you also collected black bandanas?

14 A: Bandanas, yes, sir.

15 Q: Would you remember that if you -- would you be able to
16 tell what they were if I showed you?

17 A: Yes, sir.

18 THE COURT: For safekeeping, as soon as the jury's
19 through, Mr. Ropp, would you replace the gloves in the package
20 that the -- they were in and that the witness has identified
21 when they come back around to you? Okay. And we'll just have
22 them in the there for the purpose of safekeeping during the
23 trial. All right.

24 MR. HOLFORD: Thank you, Your Honor.

25 BY MR. HOLFORD:

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1 Q: And how would you be able to identify them?

2 A: Again, through your chain of custody with case numbers,
3 labels and visually.

4 Q: I'm handing you what's been marked as State's Thirty-six;
5 can you identify what's in that package just by the outside?

6 A: By the outside, yes.

7 Q: And what is it?

8 A: Two black bandanas.

9 Q: And how do you know that?

10 A: Because of the label and the barcodes and the case
11 numbers.

12 Q: And whose name is on that?

13 A: Mine.

14 Q: Okay. Can you see what's inside?

15 A: Not through this envelope, but if you want me to I can?

16 THE COURT: Yes.

17 (REPORTER'S NOTE: Witness opens package.)

18 BY MR. HOLFORD:

19 Q: And what are they?

20 A: Two black bandanas with my initials, dates and identifier.

21 Q: And how are they packaged?

22 A: These are heat-sealed envelopes.

23 Q: And has the heat seal been broken?

24 A: No, sir.

25 Q: State would move State's Thirty-six in evidence?

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1 MR. STAMPELE: Without objection.

2 THE COURT: All right. Without objection.

3 STATE'S EXHIBIT NUMBER THIRTY-SIX

4 ADMITTED INTO EVIDENCE

5 BY MR. HOLFORD:

6 Q: You said you collect -- you took a gun into evidence; is
7 that correct?

8 A: The gun was turned into evidence, yes, sir.

9 THE COURT: Is that a firearm?

10 MR. HOLFORD: Yes, Your Honor, but it is locked.

11 THE COURT: Hand it to me first.

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: Ladies and gentlemen, this is a firearm that
14 the witness may or may not be able to testify to. I have
15 examined it; it is unloaded and it has a lock on it.

16 MR. HOLFORD: And Mr. Hemingway with the Sheriff's
17 Department has the key.

18 THE COURT: All right.

19 BY MR. HOLFORD:

20 Q: Ms. Domogauer, I'm handing you what's been marked as
21 State's Thirty-seven; can you identify that box?

22 A: It's a gun box with the case number and labels on it as
23 well.

24 Q: And can you tell what item is in there?

25 A: Yes, sir, it's an Airweight Smith and Wesson. It has a

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1 serial number, black and silver in color.

2 Q: And who turned that in to you?

3 A: Detective Allen Large.

4 Q: How do you know that?

5 A: It's on the box.

6 MR. HOLFORD: Your Honor, I'd ask that State's Thirty-
7 seven be entered in evidence?

8 THE COURT: Mr. Stampfle?

9 MR. STAMPFLE: I renew my objection, Your Honor.

10 THE COURT: All right. Subject to your previous
11 objection, I will admit it.

12 MR. HOLFORD: Thank you.

13 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

14 ADMITTED INTO EVIDENCE

15 BY MR. HOLFORD:

16 Q: Can you read the serial number on the outside of the box?

17 A: There's some stickers on it, but yes, sir.

18 Q: And what is that serial number?

19 A: D as in delta, A as in alpha, Z as in zulu, 3828.

20 Q: I'm gonna hand you what's been already entered as State's
21 Thirty-two; can you identify what State's Thirty-two is?

22 A: This is the chain of custody paperwork in reference to
23 this weapon.

24 Q: And what's the serial number listed there?

25 A: D as in delta, A as in alpha, Z as in zulu, 3828.

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- 1 Q: Is that the same number?
- 2 A: Yes, sir.
- 3 Q: So would that be the same gun?
- 4 A: Yes, sir.
- 5 Q: Can you open the box for us? Now what are we looking at
- 6 right now?
- 7 A: This is a .38 Special Smith and Wesson Airweight revolver.
- 8 Q: And is there a serial number on the gun?
- 9 A: Yes, sir, on the bridge.
- 10 Q: And what is that serial number?
- 11 A: D, delta, A, alpha, Z, zulu, 3828.
- 12 Q: Is that the same serial number that's on the evidence
- 13 sheet that was turned in by Detective Large and the same one
- 14 that was placed in that box?
- 15 A: Yes, sir.
- 16 Q: And you had previously testified in another trial; have
- 17 you not?
- 18 A: Yes, I have.
- 19 Q: And at that point, you brought that gun to Court?
- 20 A: Yes, I have.
- 21 Q: Were you in custody of that gun at that point?
- 22 A: Yes, I was.
- 23 Q: And then who took custody after that?
- 24 A: Clerk of Court.
- 25 MR. HOLFORD: I have no further questions, Your Honor.

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1 THE COURT: Mr. Stampfle.

2 CROSS EXAMINATION OF JILL DOMOGAUER BY MR. STAMPFLE:

3 Q: Just briefly. With respect to the gloves, you
4 photographed those gloves?

5 A: Yes, I did.

6 Q: Would you take me through the process of your
7 photographing those gloves?

8 A: May I refer to my notes?

9 THE COURT: Certainly.

10 A: They were turned in -- turned in to me because this is my
11 case. I photographed them with an identifier, which is the
12 case number on a placard with the case number information on
13 it. I photographed both sides of the gloves and then I also
14 use alternate light source and re-photographed it looking for
15 certain items on the gloves.

16 Q: What certain items were you looking for on the gloves?

17 A: Presence of gunshot residue.

18 Q: What did you observe?

19 A: The florescent indicated that there was presence of
20 gunshot residue under the alternate light source.

21 Q: On those skeletal gloves?

22 A: Yes, sir.

23 Q: Thank you. No further questions.

24 MR. HOLFORD: Nothing further.

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

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JEREMY FLEMING - DIRECT BY MR. HOLFORD

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1 MR. HOLFORD: Your Honor, may the investigator be
2 excused?

3 THE COURT: Any objection?

4 MR. STAMPFLE: No, Your Honor.

5 THE COURT: She may.

6 MR. HOLFORD: State calls Jeremy Fleming to the stand.

7 THE COURT: Yes, please go ahead.

8 MR. HOLFORD: Your Honor, I believe they're ---

9 THE COURT: They don't have the witness down yet? Okay.

10 JEREMY FLEMING, HAVING BEEN SWORN

11 TESTIFIES AS FOLLOWS:

12 CLERK: State your full name and spell your last name for
13 the Court please?

14 MR. FLEMING: Jeremy Fleming, F-L-E-M-I-N-G.

15 DIRECT EXAMINATION OF JEREMY FLEMING BY MR. HOLFORD:

16 Q: Mr. Fleming, do you know the Defendant in this case?

17 A: Yeah.

18 Q: Who is he?

19 A: Abdul.

20 Q: What's his last name?

21 A: Furquan.

22 Q: And how do you know him?

23 A: From on the streets.

24 Q: Did y'all live together?

25 A: Nah.

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- 1 Q: You didn't?
- 2 A: No.
- 3 Q: Where were you living on -- in October of 2011?
- 4 A: [REDACTED] East Shenoa Drive, Murrells Inlet, South Carolina.
- 5 Q: You weren't living in a trailer?
- 6 A: Nah, I was fixing to move in there; I didn't never move
- 7 in.
- 8 Q: Were you over there on October 19th when a search warrant
- 9 was executed?
- 10 A: Yeah.
- 11 Q: And obviously you're in custody right now. Why is that?
- 12 A: Because I'm in prison.
- 13 Q: And what were you convicted of?
- 14 A: Burglary first and murder attempt.
- 15 Q: And was that because of this case?
- 16 A: Yeah.
- 17 Q: And who was your Codefendant in that case?
- 18 A: Abdul.
- 19 Q: And on October 16th, 2011, what happened?
- 20 A: Went to go buy weed, went to an apartment building, walked
- 21 up the stairs; couldn't see them because the light was off,
- 22 knocked on the door, the door cracked open and I ran.
- 23 Q: You ran?
- 24 A: Yeah.
- 25 Q: Did you have a gun?

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- 1 A: No.
- 2 Q: Did you see Abdul with a gun?
- 3 A: Yeah, he had a pistol with him.
- 4 Q: What kind of gun?
- 5 A: Handgun, revolver.
- 6 Q: And who went into that residence?
- 7 A: I couldn't tell you, I ran before I seen anything like
- 8 that happen. I seen him knock on the door, I seen him go
- 9 towards the door, but I ran.
- 10 Q: Was anyone else up there with you and Abdul?
- 11 A: No.
- 12 Q: Did anyone run back down the stairs with you and Abdul?
- 13 A: No.
- 14 Q: What were you wearing at the time?
- 15 A: I can't specifically remember right now.
- 16 Q: Okay. What was Abdul wearing at the time?
- 17 A: I can't remember that neither, except ---
- 18 Q: When was your trial?
- 19 A: May 16th this year.
- 20 Q: You remembered a little bit more then, right?
- 21 A: Kinda -- not really, a little bit more but the same thing.
- 22 Q: You remembered you were wearing gloves that night?
- 23 A: Yeah.
- 24 Q: You remembered you were wearing bandanas back then?
- 25 A: I wasn't wearing no bandana.

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JEREMY FLEMING - DIRECT BY MR. HOLFORD

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- 1 Q: And you testified at that trial you never had a gun?
- 2 A: Yeah, I never had a gun.
- 3 Q: After you left that apartment, where did you go?
- 4 A: Back to the trailer.
- 5 Q: And how did you get to the trailer?
- 6 A: Taylor took us.
- 7 Q: And who all was in that car?
- 8 A: Me, Taylor -- me and Taylor, Tyler, Sam and Abdul.
- 9 Q: That dude?
- 10 A: Abdul.
- 11 Q: Abdul?
- 12 A: Yeah.
- 13 Q: How long had you known Abdul?
- 14 A: Not long.
- 15 Q: Not long?
- 16 A: Yeah, prior to the incident, like a couple of weeks
- 17 before the incident. Seen him a couple of times before then,
- 18 but I didn't know him.
- 19 Q: And who asked to go to that apartment, that Ivystone
- 20 Apartment?
- 21 A: Who asked to go?
- 22 Q: Uh-huh (affirmative response).
- 23 A: Nobody. I got a text message, you know anybody want to
- 24 get some weed.
- 25 Q: Someone from that apartment texted you?

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- 1 A: No.
- 2 Q: No. Did you know who lived in that apartment?
- 3 A: No, I didn't know them.
- 4 Q: No?
- 5 A: No.
- 6 Q: Did you ever see the door open?
- 7 A: The door, yeah.
- 8 Q: And you remember testifying that Abdul actually pushed
- 9 into the apartment?
- 10 A: I can't remember anything specifically about ---
- 11 MR. STAMPFLE: Objection, Your Honor, he's leading the
- 12 witness.
- 13 THE COURT: You are leading the witness. Please rephrase
- 14 your question.
- 15 BY MR. HOLFORD:
- 16 Q: Did anyone push into the apartment?
- 17 A: Like I say, I can't specifically see if he pushed in the
- 18 apartment or the door open. He was going toward the
- 19 direction.
- 20 Q: And when you ran back down the stairs, who had a gun?
- 21 A: Abdul.
- 22 Q: And when you got in the car, who had a gun?
- 23 A: Abdul.
- 24 Q: And what happened when you got in the car with regards to
- 25 the gun?

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JEREMY FLEMING - CROSS BY MR. STAMPFLE

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1 A: We like drove off.

2 Q: And did you shoot the victim?

3 A: No, sir, but I was charged with it. I didn't shoot him.

4 Q: It was only the two of you; you and Abdul?

5 A: Yeah.

6 Q: No one else?

7 A: Everybody was in the car but me and him.

8 Q: But the people in the car didn't come upstairs with you,
9 did they?

10 A: Nobody came upstairs.

11 MR. HOLFORD: No further questions.

12 CROSS EXAMINATION OF JEREMY FLEMING BY MR. STAMPFLE:

13 Q: Mr. Fleming, according to your testimony here, this --
14 this was all Abdul, right?

15 A: Excuse me?

16 Q: According to your testimony, this was all Abdul?

17 A: What was all Abdul?

18 Q: This whole event was all Abdul; you just went up the
19 stairs, the door opened and you ran, right?

20 A: I never said it was all Abdul.

21 Q: You said you went upstairs to buy some weed, he opened the
22 door and you ran?

23 A: Yeah, that whole objective for the whole thing was we was
24 gonna buy weed.

25 Q: Okay. And when you go to someone's door, it's your

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- 1 regular pattern of practice when that door opens you just take
2 off down the hallway?
- 3 A: No, whenever that door opened and I see somebody with a
4 gun and mask, I take off down the hallway.
- 5 Q: So suddenly there appeared a gun and mask; you didn't
6 notice that prior to the door opening?
- 7 A: No, cause the light was off in the hallway.
- 8 Q: Okay.
- 9 A: I couldn't see anything when I was walking up the stairs.
10 I couldn't see anything until the door cracked open.
- 11 Q: You had on skeletal gloves that night, right?
- 12 A: Yeah.
- 13 Q: Yes; is that correct?
- 14 A: Yeah.
- 15 Q: All right. You didn't -- you're saying here you didn't
16 live in that trailer, right?
- 17 A: No.
- 18 Q: All right. Would it surprise you if Samantha Topolski
19 testified that -- that you lived at that trailer?
- 20 A: It wouldn't surprise me if she said that but I didn't stay
21 there. I didn't live in the trailer. I was planning on
22 moving in the trailer. Samantha was supposedly supposed to
23 move in with me with as well, but she said he had a child or
24 something like that. She was texting me prior the same day
25 matter of fact, the house got raided that she needed somewhere

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1 to move in.

2 Q: Would it surprise you that Taylor Smith said you lived in
3 that trailer?

4 A: It wouldn't surprise me.

5 Q: It wouldn't surprise you?

6 A: No.

7 Q: Okay.

8 A: They seen me over there so much that they would say that I
9 probably would live there because I'd be over there a lot.

10 Q: You had a relationship with Sam; is that correct?

11 A: Yeah, you could say that.

12 Q: So you had a personal relationship with her?

13 A: You could say that, yeah.

14 Q: Okay. And yet -- and yet, well what was your personal
15 relationship?

16 A: What does that have to do with the case?

17 Q: You're on the stand and I'm asking you a question. What
18 was your personal relationship with Sam?

19 A: I mean, we like ---

20 Q: What was your relationship with Sam?

21 A: She was a close friend.

22 Q: Were you intimate with her?

23 A: She was a close friend.

24 Q: Were you intimate with her?

25 A: As in?

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- 1 Q: Did you have an intimate relationship with Sam?
- 2 A: I just told you she was a close friend. So close friend
- 3 means ---
- 4 Q: I don't know; what does that mean?
- 5 A: She's a close friend.
- 6 Q: So your close friend says that you lived at that trailer?
- 7 A: Yeah.
- 8 Q: All right. Mary Linder, do you know who Mary Linder is?
- 9 A: Yeah.
- 10 Q: She testified at your last trial, right?
- 11 A: Yeah.
- 12 Q: She testified that you lived at that trailer; does that
- 13 surprise you?
- 14 A: It wouldn't surprise me.
- 15 Q: She also testified that she lived there. So one would
- 16 assume she would know who lived in that trailer?
- 17 A: She ---
- 18 Q: But you're still denying that you lived there?
- 19 A: I didn't live there.
- 20 Q: Okay. Would it surprise you that Samantha also testified
- 21 that you told her that you shot a dude in the head; would that
- 22 surprise you?
- 23 A: That would surprise me.
- 24 Q: Okay. How do you explain that that was her testimony
- 25 then?

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- 1 A: Because I never told Samantha I shot anybody in the head.
2 So that would really surprise me if she said I said that.
3 Q: Well, the State's brought her forward and said that she
4 voluntarily made a statement; you heard her testimony at your
5 trial, right?
6 A: Yeah, but she never said that.
7 Q: Okay. Well, she said here today that you told her you shot
8 a dude in the head; are you denying that?
9 A: Yeah, I'm denying that because I never shot anybody.
10 Q: You have a personal relationship with this person, right?
11 A: Yeah.
12 Q: Okay. And you're saying that -- that the person that --
13 and she's admitted she had a personal relationship with you;
14 would that surprise you?
15 A: That wouldn't surprise me.
16 Q: Okay. Who's Ariel Sanchez?
17 A: Ariel Sanchez is Boogie's girlfriend.
18 Q: Okay. Who's Brie?
19 A: Brie is a friend of mine?
20 Q: Yeah, is she the one that texted you that night?
21 A: What night?
22 Q: The night of the incident. Did she go over that
23 apartment?
24 A: She was texting me that night.
25 Q: Okay. Is she the one that texted you to go over there?

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JEREMY FLEMING - CROSS BY MR. STAMPFLE

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- 1 A: She's the one that texted a person to go over there?
- 2 Q: The person?
- 3 A: Yeah.
- 4 Q: Okay. She's your friend. What person did she text?
- 5 A: Mr. Moran.
- 6 Q: Okay. And she told you, correct; so she was texting you,
- 7 right?
- 8 A: No, she was texting him about something. She texted me
- 9 later on that night.
- 10 Q: And told you that she texted him?
- 11 A: No, she texted me that night to give me the address and
- 12 location.
- 13 Q: That's what I asked if she texted you about the address
- 14 and location of that residence, correct; is that right?
- 15 A: Yeah.
- 16 Q: Is that right?
- 17 A: Yeah.
- 18 Q: She's the one that knew where to go; is that right?
- 19 A: Yeah, this is her friend.
- 20 Q: She told you where to go; is that right?
- 21 A: Yeah.
- 22 Q: Okay. So she tells you where to go and yet she's your
- 23 friend; she's the contact with Mr. Moran, correct?
- 24 A: Yeah.
- 25 Q: But yet you're saying that you didn't go to the door; you

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1 sent someone with no contact with those people?

2 A: I never said I didn't go to the door. I told you I went
3 to the door with him.

4 Q: You took off running?

5 A: Yeah.

6 Q: That's right. Is that right?

7 A: You're trying to mix up words; I'm trying to tell you what
8 I did. I did not tell you that he went up there by himself; I
9 was up there with him. But since he knocked on the door, he
10 was in front of me.

11 Q: You sent someone with no contact with anything to the
12 door, to knock on the door?

13 A: Yeah. It was his idea to buy the weed.

14 Q: And someone's home, he has no idea who it is?

15 A: I don't know whose home it is neither.

16 Q: Well, you're the one with the contact; is that right?

17 A: I know the person that sent us over there to get the weed,
18 but I don't know whose house it is.

19 Q: And you were convicted of this, weren't you?

20 A: Yeah.

21 Q: Huh? You have a prior conviction?

22 A: Yeah.

23 Q: What is that for; what was your prior conviction?

24 A: Your Honor, can I have a brief second to talk to my
25 lawyer?

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JEREMY FLEMING - CROSS BY MR. STAMPFLE

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1 Q: You're on the stand. I'm asking what your prior
2 conviction is?

3 MR. HOLFORD: Your Honor, I believe he's asked to talk to
4 his lawyer.

5 THE COURT: Is your lawyer here?

6 A: Yes, sir.

7 THE COURT: You may step down and talk with your lawyer.
8 Take the jury to the jury room.

9 (REPORTER'S NOTE: The jury exits the courtroom. 4:25 P.M.
10 Witness exist courtroom to speak with attorney.)

11 *****OFF THE RECORD*****

12 (On the Record.)

13 THE COURT: All right. Let's bring the jury back in.

14 (REPORTER'S NOTE: The jury returns to the courtroom. 4:30
15 P.M.)

16 Sir, we need you to speak up and move as close as you can
17 to that microphone. The jury's having trouble hearing you.

18 All right. Mr. Stampfle.

19 BY MR. STAMPFLE:

20 Q: I believe I asked you, you have some prior offenses; it
21 correct?

22 A: Yes, I do.

23 Q: One is assault and battery of a high and aggravated
24 nature; is that correct?

25 A: Yeah.

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JEREMY FLEMING - CROSS BY MR. STAMPFLE

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- 1 Q: You pled guilty to that offense; is that right?
- 2 A: Yeah.
- 3 Q: Okay. That was a bit of a violent incident, wasn't it?
- 4 A: Yeah.
- 5 Q: Okay. It involved cutting off a man's hand, didn't it?
- 6 A: No.
- 7 Q: It did not?
- 8 A: No.
- 9 Q: No, that's what you told people; is that correct?
- 10 A: No.
- 11 Q: What did it involve?
- 12 A: It involved going to someone's house and not simply
- 13 chopping off his hand, but his fingers.
- 14 Q: His fingers? Okay, I'm sorry; I had that wrong. It
- 15 didn't involve chopping off his hand. Please forgive me. It
- 16 involved his fingers; am I correct?
- 17 A: Yeah.
- 18 Q: Am I correct?
- 19 A: Yeah.
- 20 Q: Okay. I don't want to get you wrong there. Why are you
- 21 testifying here today? Betterment of society; why are you
- 22 here?
- 23 A: I was called here.
- 24 Q: Called here?
- 25 A: Yeah.

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JEREMY FLEMING - CROSS BY MR. STAMPFLE

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- 1 Q: The gun that's in evidence here, this one; that's your
2 gun, isn't it?
- 3 A: No.
- 4 Q: That is your gun; it belongs to you, doesn't it?
- 5 A: No.
- 6 Q: Okay. The gloves that are in evidence here; these are
7 your gloves, aren't they?
- 8 A: No.
- 9 Q: No. Would it surprise you if your intimate friend,
10 personal friend, Sam, testified you were wearing skeletal
11 gloves that night?
- 12 A: No, because I was wearing skeletal gloves that night.
- 13 Q: Okay. You were wearing skeletal gloves that night?
- 14 A: Yeah.
- 15 Q: Would it also surprise you that CSI Detective Domogauer
16 came and testified here today just like she did at your trial.
17 She stated that she took photographs that showed gunshot
18 residue on those gloves?
- 19 A: Yeah.
- 20 Q: That would surprise you?
- 21 A: That wouldn't surprise me.
- 22 Q: That wouldn't surprise you?
- 23 A: No.
- 24 Q: All right. You weren't shooting a gun?
- 25 A: No.

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JEREMY FLEMING - REDIRECT BY MR. HOLFORD

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1 Q: No. It just got on there?

2 A: I don't know how they got on there.

3 Q: That's all the questions I have for this witness.

4 MR. HOLFORD: A few quick questions.

5 REDIRECT EXAMINATION OF JEREMY FLEMING BY MR. HOLFORD:

6 Q: Was your Codefendant, Abdul Furquan, the Defendant now,
7 was he wearing gloves that night?

8 A: Yeah.

9 Q: What kind of gloves?

10 A: I can't be specific. I don't remember like knits -- I
11 don't know; I can't remember.

12 Q: And you said he was wearing a mask?

13 A: Not no mask; I said a bandana.

14 Q: A bandana?

15 A: Yeah.

16 Q: You remember what color it was?

17 A: Yeah, black.

18 Q: And you were convicted of this exact same crime that you
19 and Codefendant were charged with?

20 A: Yeah.

21 Q: Under the theory of hand of one, hand of all?

22 A: Yeah.

23 Q: Because ---

24 MR. STAMPFLE: Your Honor, the theory of hand to one,
25 hand to all, that's not in evidence; there's no jury's

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JEREMY FLEMING - REDIRECT BY MR. HOLFORD

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1 determination.

2 THE COURT: Well, I don't know that this is proper
3 redirect. I don't know he's addressing anything that you
4 brought up during cross.

5 MR. STAMPFLE: I object to the whole line of questioning.

6 THE COURT: All right. Mr. Holford, let's just move on
7 to something else.

8 MR. HOLFORD: Yes, Your Honor. No further questions.

9 THE COURT: All right.

10 MR. STAMPFLE: Nothing else.

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

12 Will there be any need for this witness, Mr. Holford?

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

14 THE COURT: Mr. Stampfle?

15 MR. STAMPFLE: No, sir.

16 THE COURT: All right. He may be returned to SCDC.

17 All right. Mr. Holford?

18 MR. HOLFORD: Your Honor, the State calls David Moran to
19 the stand.

20 THE COURT: Come around, Mr. Moran.

21 DAVID MORAN, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Have a seat please. State your full name and
24 spell your last name for the Court, please?

25 MR. MORAN: David Thomas Moran, M-O-R-A-N.

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DAVID THOMAS MORAN - DIRECT BY MR. HOLFORD

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1 DIRECT EXAMINATION OF DAVID THOMAS MORAN BY MR. HOLFORD:

2 Q: Mr. Moran, please tell this jury a little bit about
3 yourself, how old are, where you're from, where you live?

4 A: I'm twenty-nine years old. I'm from Wilmington, North
5 Carolina. I currently reside in Rochester, New York. I'm
6 employed in two different places. A full-time job for the
7 City of Rochester and I also work part-time at Walmart.

8 Q: And where were you living on October 16th, 2011?

9 A: ■ Ivystone Drive, Apartment ■.

10 Q: Apartment?

11 A: ■.

12 Q: Do you sell drugs?

13 A: No, sir.

14 Q: Have you ever sold drugs?

15 A: No, sir.

16 Q: Were the police in your house?

17 A: Yes, sir.

18 Q: Did the police find anything?

19 A: Not to my knowledge.

20 Q: Why would you even open the door that night?

21 A: I was speaking to a girl that night. She had texted me
22 probably half an hour before I had gotten off work that night.
23 She said she was wanting to hang out. I wasn't thinking with
24 this head; let's just put it that way. I was looking for
25 something and I said if she wanted to hang out, I'm fine with

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1 that; come on by. And I got off of work about eleven o'clock
2 that night. So I was home no later than a quarter after
3 eleven. Shortly after that, she had texted me said it was
4 gonna be about a good hour before she was even gonna be able
5 to come by. So twenty minutes later goes by and I hear a
6 knock at my door. I didn't really think it was her, but I
7 really couldn't figure out who it was.

8 Q: Let me slow you down just for a second?

9 A: Okay.

10 Q: Did she ever come by that night?

11 A: No, sir.

12 Q: And you said you heard a knock at the door?

13 A: Yes, sir.

14 Q: And what did you do?

15 A: Well, I was paying with my computer, on my computer
16 playing a few games or whatever so I got up, walked to the
17 door and simply opened the door. I couldn't look out the peep
18 hole, the hallway lights have been out for at least six
19 months, if not for, you know, more. They've fixed them once
20 for like two weeks and then they went back out and they just
21 stayed out. So I couldn't use my peep hole to look out the
22 door, so I never really thought anybody was gonna come try to
23 shoot me at my house. So I opened the door and I saw two
24 gentlemen there, bandanas covering their faces here; all I
25 could see was pretty much their eyes. It was dark in the

1 hallway as it was, but all I could see was eyes. My instant
2 reaction was to try to get the door shut and shorter one,
3 there was like one on the right and one on the left,
4 significant difference in heights; the shorter one on the
5 right got his foot into the door while I was trying to shut it
6 and swiggled his way through enough to hit me with his left
7 hand and stumble me back. By that time, the other gentlemen
8 was standing there in the doorway when I regained myself, eyes
9 focused up and all I saw was a silver revolver and heard pop
10 and a couple of seconds go by I guess and I'm picking myself
11 up off the ground unsure of what just happened.

12 Q: You got shot in the head?

13 A: Yes, sir.

14 Q: How can you remember what happened that night?

15 A: It's pretty traumatic actually. Just I don't really know
16 how I remember how it happened. It just -- it happened. It's
17 kind of imprinted in my mind for pretty much the rest of my
18 life as far as I see it.

19 Q: And how many people were at your door that night?

20 A: There were two when I opened the door.

21 Q: And many people came into your apartment?

22 A: That's where I'm unsure because I know the one gentleman
23 was there that punched me and the other gentleman was
24 definitely the one holding the gun. So I'm assuming two of
25 them came in. Whether or not how far they got into the door,

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1 I was out cold right by after that.

2 Q: Did they have permission to come into your house?

3 A: No, sir, I was resisting at the door the entire time.

4 Q: Even though you opened the door, did you give them
5 permission to come in?

6 A: No, sir. I went to immediately shut the door when I saw
7 the two masked men at my door. I don't think anybody would be
8 like hey, come on in.

9 Q: After you were shot in the head, what happened?

10 A: I pretty much went out. From what we can gather from me
11 and Eric talking about this ---

12 Q: Just -- just what you know though.

13 A: From what I can guess is I say fifteen seconds. It
14 happened all quick. I mean it honestly seemed like it was
15 thirty minutes worth of time at the door, but it was more like
16 two minutes worth of time. So even though it seems like this
17 long, it was like this.

18 Q: And were you taken anywhere from that apartment?

19 A: I was taken to Grand Strand Hospital shortly afterwards.

20 Q: And what happened at the Grand Strand Hospital?

21 A: That's not really -- I know I sat in the ER for a little
22 while. They took some blood. Detective Large came in and
23 questioned me for a second; then they moved me into another
24 room and I think I eventually got an MRI and all that other
25 good stuff. But it's all -- that's kind of hazy as far as it

1 goes.

2 Q: What happened to your head?

3 A: It was -- I was impacted with a bullet here and about this
4 far away from a distance. It cracked my skull from like all
5 around here. I now have wire mesh and a small titanium plate
6 here. It didn't penetrate the membrane is the only reason I
7 don't have brain damage.

8 Q: And was anything pulled out of your head?

9 A: From what I was told by the doctors, three fragments.

10 Q: You can't talk about what the doctors said.

11 A: Okay.

12 Q: Just if you know?

13 A: I was only told.

14 Q: If you don't know -- okay. How certain are you that it
15 was two people and not just one?

16 A: A hundred percent. There is no doubt that I would see
17 double out of just the blue.

18 Q: And have you -- did you testify against Jeremy Fleming?

19 A: I did, sir.

20 Q: And was your testimony the same as it is today?

21 A: It was.

22 Q: There were two people?

23 A: Yes, sir.

24 Q: How were they acting? How were they acting?

25 A: Be more descriptive, I don't ---

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1 Q: Was only one doing something and another running?

2 A: No, they were both just standing there. And the one that
3 was on the right, which was the shorter one, was definitely
4 closer to get his foot in that door before I could, especially
5 the way he was angled.

6 Q: Now do you know the Defendant?

7 A: No, sir.

8 Q: You ever seen him before?

9 A: Only the website shortly after it happened and I heard
10 they were arrested.

11 Q: But you'd never seen him before October 16th?

12 A: No, sir.

13 Q: Did you know Jeremy Fleming?

14 A: No, sir.

15 Q: You'd never seen him before October 16th?

16 A: No, sir.

17 Q: And again, Mr. Fleming said he was going to buy drugs?

18 A: Correct.

19 Q: Any idea where that came from?

20 A: I am assuming it's just his way of defending himself.

21 Q: Why do you think they were there?

22 A: I can't really ---

23 MR. STAMPFLE: That calls for speculation.

24 THE COURT: That's not appropriate. It would call for
25 speculation on the part of this witness. He doesn't know.

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1 MR. HOLFORD: Yes, Your Honor.

2 BY MR. HOLFORD:

3 Q: What had you done recently right before this?

4 A: I was working. I mean that's pretty much all I did. I
5 worked a forty-hour job at Walmart. I was at work or I was at
6 home playing video games. There wasn't much variation in my
7 life.

8 Q: You say video games; do you have a lot of electronics?

9 A: Oh yeah, I have every console there is, plus I already
10 have my PS4 and Xbox pre-ordered.

11 Q: Your friend, Brie, who you were texting earlier, did she
12 know that?

13 A: I'm sure she did. She had been in the apartment a few
14 times. She had -- she was friends with friends of my previous
15 roommates before Mr. Collins had moved in. I had a few like
16 youngins, a couple -- a younger couple, eighteen years old
17 each and they were living with me temporarily while he had to
18 regret -- find another job. So I kicked them out.

19 Q: And you have no brain damage?

20 A: No, sir. I mean nothing that I didn't already actually
21 have.

22 MR. HOLFORD: Thank you, Your Honor. No further
23 questions.

24 THE COURT: Mr. Stampfle.

25 MR. STAMPFLE: I have a few questions, Your Honor.

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1 CROSS EXAMINATION OF DAVID THOMAS MORAN BY MR. STAMPFLE:

2 Q: So you were texting with a girl named Brie; is that
3 correct?

4 A: Yes, sir.

5 Q: And do you know her relationship to either Mr. Furquan or
6 Mr. Fleming?

7 A: I didn't know they -- she knew anybody other than a few of
8 my -- like I said, my previous roommates and a few other
9 friends.

10 Q: Do you recall, the individual who shot you, do you recall
11 what he was wearing?

12 A: They were both wearing the same thing from what I could
13 see. They were both had masks on; they both had a hoodie on.
14 All I could see was their eyes. The only thing that
15 distinguished the two of them from each other was the height.

16 Q: Do you recall gloves?

17 A: I don't really recall a lot other than their face. That's
18 what caught me off-guard more than anything else.

19 Q: I understand. I was just wondering if you recall whether
20 either of them were wearing gloves?

21 A: No, sir, I can't recall.

22 Q: Skeletal gloves in particular?

23 A: I can't recall. Actually I'll rephrase that. The person
24 who punched me did have gloves on because it was a padded --
25 it was a padded blow. I know it wasn't a straight knuckle

1 that did cock me in the face; it was a padded glove.

2 Q: But you don't know what type of glove it was?

3 A: No, I mean when they're fists flying at your face, you
4 don't really pay attention to that.

5 Q: And the person that punched you, is it the same person
6 that -- that fired the gun?

7 A: I have reason to believe, no, there's no way they could
8 move into the different position that the other guy was in.
9 They had to be two different people. I had the one gentleman
10 pinned against the door so he was out -- he was at least
11 leaned back. When he shot that punch at me, there was no time
12 for him to get repositioned to be pointing the gun at my head.

13 Q: Reasonably, but you're not sure?

14 A: If you want to say a hundred, no; I would say more like
15 eighty.

16 Q: And you were sure that one person came in the home, but
17 not sure of whether the second person actually entered the
18 dwelling; is that correct?

19 A: They both had to have at least a foot in the door, but no,
20 I don't know if they came into the apartment themselves. The
21 shorter one had his foot in because he had got his foot in the
22 door. The one that was pointing this gun had to at least have
23 a foot in pointing the gun at me.

24 Q: Anyone say anything to you?

25 A: The one who hit me, he had said chill out; the one who

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1 shot me said something briefly before he pulled the trigger.

2 I don't know what he said; I couldn't understand it. It was

3 -- it was really blah, blah, pop and out cold.

4 Q: Is that about all you remember after the shot?

5 A: I mean other than the hospital visit and everything else,
6 it was pretty much flashing by I guess.

7 MR. STAMPFLE: No further questions, Your Honor.

8 MR. HOLFORD: Nothing further.

9 THE COURT: You may step down. Thank you.

10 MR. HOLFORD: Your Honor, that issue we discussed
11 earlier, would you like to take it up now?

12 BY THE COURT:

13 THE COURT: Yes, we will. I tell you what, it's almost
14 five. I'm going to send the jury home, ask them to be back at
15 9:30 in the morning and we'll continue. All right. Thank
16 you, Mr. Ropp.

17 Mr. Ropp, you gonna have something for them in the
18 morning?

19 BAILIFF: Yes, sir.

20 THE COURT: Very well.

21 (REPORTER'S NOTE: The jury exits the courtroom and is excused
22 for the day. 4:48 P.M. The following takes place outside the
23 presence of the jury.)

24 THE COURT: Okay. What do we have to address?

25 MR. HOLFORD: Your Honor, what we spoke to you at the

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1 bench about of whether I need to enter of prior violent crime
2 as it is an element of the offense of possession of a weapon
3 by a person convicted of a violent crime or whether the
4 Defense is gonna stipulate to that fact and then we would
5 still have to tell the jury because that is an element of the
6 offense.

7 THE COURT: Well, my understanding of the law is that you
8 have to prove two things; that he was in possession of a
9 firearm and that he had previously been convicted of a violent
10 crime as described by the statute.

11 MR. HOLFORD: Okay.

12 THE COURT: There's two ways we can do that. Under the
13 statute, it's my understanding that I make a determination as
14 a matter of law whether the offense that you proceed on is a
15 violent crime and I would instruct the jury that it is a
16 violent crime if it falls within the statute. That did not or
17 does not relieve you of the duty of proving beyond a
18 reasonable doubt that he committed a violent crime.

19 Now, Mr. Stampfle has suggested a possibility of entering
20 into a stipulation without describing a crime, a stipulation
21 that in fact his client has been convicted or had been
22 convicted of a violent offense under the statute. In which
23 case, I would so instruct the jury that the parties have
24 stipulated, agreed, that the Defendant has a prior conviction
25 for a violent crime and their only issue would be to determine

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1 whether or not the State has proven beyond a reasonable doubt
2 that he possessed a firearm.

3 Now, in order to have the benefit of the stipulation,
4 it's my understanding the State would have to consent to that.
5 So, you tell me.

6 MR. HOLFORD: Your Honor, while it may be easier for me
7 to, you know, get up in front of the jury of what crime it
8 was, I am willing to stipulate to the fact if Mr. Stampfle
9 makes that argument, that Your Honor just instruct the jury
10 that he has been convicted of a violent crime.

11 THE COURT: All right. I would instruct them that the
12 parties have agreed and they need not have -- need not find
13 beyond a reasonable doubt because it's agreed between the
14 parties that he has been convicted of a crime, which has been
15 designated as a violent crime by the -- by the State.

16 Is that what you want, Mr. Stampfle or do you want to
17 talk about the offense?

18 MR. STAMPFLE: Your Honor, I've discussed it with -- I've
19 discussed it with my client and we would stipulate to that.

20 THE COURT: Okay.

21 MR. STAMPFLE: Rather than have testimony brought in.

22 THE COURT: All right. Then we will, we will stipulate
23 and put that on the record. Mr. Stampfle, are you going to
24 request -- I would assume the State's near done?

25 MR. HOLFORD: Your Honor, if I don't have to put Heather

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1 up to put that in since we're stipulating to it, that was my
2 last witness, Your Honor.

3 THE COURT: Okay. So the State is done. Mr. Stampfle, I
4 don't know if your client is gonna testify or you're gonna
5 call anybody or not, but I wanted to address the matter of
6 lesser included offenses as to the attempted murder.

7 Now I don't think that it would be appropriate to charge
8 a lesser included offense on the burglary. There's been
9 absolutely no testimony to suggest that any offense would be
10 possible other than a burglary or nothing. If they find that
11 he entered that building and there's no question, it's
12 undisputed that it was at night, that alone would be
13 sufficient. I'll hear you on it. Do you believe that there's
14 any justification for a lesser included, that being burglary
15 in the second degree?

16 MR. STAMPFLE: Based upon facts that everyone has
17 testified to it being at night.

18 THE COURT: I mean I don't think there's any testimony
19 that would suggest in any way that if your client was one of
20 the intruders that it was anything but burglary in the first
21 degree. The question is whether or not your client was one of
22 the intruders. I mean isn't that correct?

23 MR. STAMPFLE: That is correct.

24 THE COURT: Okay. But what about on the attempted
25 murder? I can see ABHAN as a possibility. I can also see

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1 assault and battery in the first degree as a -- as a
2 possibility. The attempted murder essentially carries --
3 involves the same elements as those two offenses. It all goes
4 to malice. Are you requesting lesser included?

5 MR. STAMPFLE: Yes, Your Honor, I am.

6 THE COURT: Okay. Which ones do you want?

7 MR. STAMPFLE: Both, Your Honor.

8 THE COURT: What does the State say about it?

9 MR. HOLFORD: Your Honor, the State's position would be
10 that there's been no testimony as to self-defense or defense
11 of others. Therefore, the use of a deadly weapon could be
12 inferred as malice.

13 THE COURT: And that is another issue as to whether or
14 not it can be inferred, but under hand of one, hand of all,
15 when you have an issue there as to whether or not it can be
16 inferred.

17 I think that you may be entitled to a charge since there
18 is no testimony to -- well, there is on the attempted murder.
19 On the malice there is testimony that would mitigate it or
20 make it a lesser included offense. I don't think it would be
21 appropriate to charge that the use of a weapon implies malice,
22 would it, under the recent case law?

23 MR. HOLFORD: Your Honor, I didn't hear any testimony as
24 to self-defense.

25 THE COURT: It's not necessarily self-defense. If

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1 anything, it would make it a lesser included offense, wouldn't
2 -- didn't it? Isn't that what the law says? I'll let you
3 look at that this evening and get back with me, but I think
4 the case is State versus -- I'm at a loss for it -- Blakely
5 or something of that nature.

6 I will charge assault and battery of a high and
7 aggravated nature and assault and battery in the first degree.
8 As a matter of fact, I'm informed that Judge Cottingham
9 actually did it in the Fleming trial and I think it's just as
10 appropriate here.

11 MR. HOLFORD: I'm sure. Yes, Your Honor.

12 THE COURT: Okay. But your position is you want a charge
13 or the traditional charge that says malice may be implied from
14 the use of a deadly weapon?

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: Okay. All right. I'll let you look at that
17 over the evening. I think the latest case, which is a 2011
18 case, says that if there is any evidence mitigating like self-
19 defense or suggesting a lesser included offense, that that
20 charge is not appropriate, but I'll look at the -- at the case
21 myself.

22 MR. HOLFORD: Thank you, Your Honor.

23 THE COURT: And determine whether that is. Any
24 particular charge you're gonna need, Mr., Mr. Stampfle?
25 I will charge the hand of one is the hand of all.

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Circumstantial and direct evidence of course
3 my usual, just general charges up front, presumption of
4 innocence obviously. What about the charge of the possession
5 of a firearm? Again, I intend, after we have reached the
6 stipulation, charge that the State must prove beyond a
7 reasonable doubt the possession of a firearm after having been
8 convicted of a violent crime; however, the parties have
9 stipulated or agreed that he has in fact been convicted of a
10 violent crime as defined by the statutes of this state. So
11 you need to only determine whether or not he was in possession
12 of a firearm. Okay?

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: A charge like that, I think that that would
15 be sufficient, wouldn't it, Mr. Stampfle?

16 MR. STAMPFLE: I think that ---

17 THE COURT: It all goes -- it goes to whether he had the
18 gun or not?

19 MR. STAMPFLE: Yes, sir.

20 MR. HOLFORD: And I don't need to bring that stipulation
21 up before I rest, do I?

22 THE COURT: No.

23 MR. HOLFORD: Thank you, Your Honor.

24 THE COURT: We'll -- you can rest and then we'll put it
25 on the record. Okay.

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Okay. And if you have any specific charges,
3 please let me know about them early in the morning. I've got
4 a new Clerk here and we're trying to get him broken in as to
5 the charge process. So and you know -- both know that I like
6 to give the jury written copies of my charge. So I want to
7 have that prepared by the end of this trial.

8 Okay. Very well. I'm gonna before we leave, since the
9 State is about to rest. I want to instruct your client as to
10 his rights concerning his right to -- specifically concerning
11 his right to testify so he can think about it over the
12 evening. Okay?

13 All right. Mr. Furquan.

14 ABDUL MUTAKKABBIR FURQUAN, HAVING
15 BEEN SWORN TESTIFIES AS FOLLOWS:

16 THE COURT: At this time, I'm going to explain to you
17 certain of your rights and if you do not understand anything I
18 say, please let me know and I'll be happy to repeat it or
19 explain it in another fashion; do you understand that?

20 MR. FURQUAN: Yes, sir.

21 THE COURT: Now we've reached the stage of the trial
22 where you may present your defense and you have the right to
23 claim the protections given to you by the Fifth Amendment to
24 the Constitution of the United States. And this amendment
25 says in part that no person shall be compelled in any criminal

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1 case to be a witness against himself. What that means is that
2 no one can make you testify in this case. You certainly have
3 the right to testify on your own behalf if you wish to do so.
4 However, no one can make you testify and this is a personal
5 right and no one can waive this right except you. If you
6 decide to testify, I want you to know that you will be subject
7 to the same rules that govern other witnesses and you may not
8 only be examined by your attorney, but you can be cross
9 examined or will be cross examined by Mr. Holford on any
10 relevant issue in the case. In addition, if you have any
11 convictions involving dishonesty or false statements or for
12 crimes punishable by imprisonment for more than one year, and
13 this Court determines that the probative value of admitting
14 this evidence outweighs it's prejudicial effect to you, the
15 Solicitor will be able to introduce your criminal record to
16 attack your credibility or your believability.

17 If you decide to testify this decision on your part must
18 be made freely and voluntarily and intelligently with the
19 knowledge of not only the protections given you by the Fifth
20 Amendment, but also the consequences of your decision to
21 testify. If you decide not to testify, I will tell the jurors
22 that they cannot use that against you in any form or fashion.
23 They cannot even discuss it. There is to be absolutely no
24 prejudice to you because you did not testify. It's left
25 entirely up to you whether you want to testify or not. Now

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1 you can over the evening discuss with your attorney, your
2 family, friends, anyone that you want to, but the final
3 decision is left entirely up to you. Do you understand what
4 I've told you?

5 MR. FURQUAN: Yes, sir.

6 THE COURT: Do you have any questions about what I just
7 told you?

8 MR. FURQUAN: No, sir.

9 THE COURT: All right. I'm not gonna ask you for an
10 answer right now. We're gonna let you wait until tomorrow
11 morning before you tell me. Okay. All right.

12 MR. HOLFORD: Your Honor, would you like to hear the
13 prior record that I would ---

14 THE COURT: Yes. Let's look at whatever you may be
15 using.

16 MR. HOLFORD: Your Honor, I have a conviction in 1992 for
17 CSC with a minor second, 1992 burglary second, 1999 burglary
18 third, '03 indecent exposure, '07 shoplifting, which is a
19 crime of dishonesty, '08 giving false information, which is a
20 crime of dishonesty and 2009 CDV third, which carries one to
21 five years.

22 THE COURT: Mr. Stampfle, do you object to the State's
23 use of any of those convictions in the event your client
24 testifies?

25 MR. STAMPFLE: Yes, Your Honor. The -- first of all, the

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1 1992 conviction is well outside of ten years; whether it goes
2 to honesty or not.

3 THE COURT: And it was for the CSC?

4 MR. STAMPFLE: Yes, Your Honor.

5 THE COURT: That doesn't go to honesty or truthfulness.
6 I don't think that that one would be one that we should use.

7 MR. HOLFORD: Yes, Your Honor.

8 MR. STAMPFLE: Your Honor, the CDV charge as well; I
9 don't see where that goes to a crime of honesty ---

10 THE COURT: How old is it?

11 MR. STAMPFLE: It is a fairly new offense. I believe the
12 probative value ---

13 THE COURT: There's two things operating here. First of
14 all, if it carries more than a year and it's within ten years,
15 it's admissible ---

16 MR. STAMPFLE: I understand.

17 THE COURT: --- for impeachment purposes. Then if you
18 have an offense involving dishonesty, you can go beyond the
19 ten years.

20 MR. STAMPFLE: I understand, but my position is that
21 would be over the overly prejudicial.

22 THE COURT: Well, anything that I decide to admit is
23 subject to a 403 analysis, that is whether or not its
24 probative value substantially outweighs its prejudicial value.
25 It's -- it's unfair prejudice.

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1 Now what about the CSC?

2 MR. HOLFORD: Your Honor, I believe you ruled on the CSC
3 already as it being outside the ten years.

4 THE COURT: Okay. All right. The CSC is -- I thought he
5 said there was a recent one?

6 MR. HOLFORD: There is a 2009 CDV third.

7 MR. STAMPFLE: CDV third.

8 THE COURT: CDV?

9 MR. HOLFORD: Yes, it carries one to five.

10 THE COURT: Okay. I think it's within the ten years and
11 it's -- you can use it.

12 MR. STAMPFLE: The burglary, Your Honor, in 1999?

13 THE COURT: What about that burglary?

14 MR. HOLFORD: That's a burglary third. I would have to
15 research it, Your Honor. My only question would be is that
16 ten-year period from the date of conviction or from date of
17 release?

18 THE COURT: Date of release. Date of release is when it
19 is calculated.

20 MR. HOLFORD: And, Your Honor, I would have to research
21 that.

22 THE COURT: All right. Research it then.

23 MR. HOLFORD: The others would be indecent exposure,
24 which is within the ---

25 THE COURT: Ten years?

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1 MR. HOLFORD: --- ten years. Shoplifting, dishonesty
2 within the ten years and '08, false information, dishonesty.

3 THE COURT: All right. Those would all be within the ten
4 years.

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Okay. Also, Mr. Stampfle, you made a
7 constitutional argument earlier concerning life without
8 parole. I've had an opportunity to research it and I call
9 your attention to the case of State v. Rogers, State v. Jones,
10 and State v. Johnson in which these same issues have been
11 taken up. I would particularly call your attention to State
12 v. Rogers where there was an offense that was nineteen years
13 old and the Court concluded that that was not too remote.
14 This offense I think is like twenty or twenty-one years old
15 ---

16 MR. STAMPFLE: Yes, Your Honor.

17 THE COURT: --- that you complained of. I don't think
18 it's outside the -- or too remote to be included considering
19 the legislative intent and I would allow them to use that to
20 enhance under the life without parole provisions. Again,
21 that's State v. Rogers and I would also call your attention to
22 State v. Johnson and Jones. I can give you those cites if you
23 like.

24 MR. STAMPFLE: I have those, Your Honor.

25 THE COURT: All right. You have those? Very well.

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1 Okay. So I will deny your motion as to the constitutionality
2 of the statute.

3 MR. HOLFORD: Just to be clear for the record, Your
4 Honor, he was given ten years on that offense. So even though
5 it was a conviction in '92, he didn't get out until probably
6 nine years.

7 THE COURT: That would still be more than ten years,
8 wouldn't it?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: That's correct. All right.
11 All right. Thank you, Gentlemen, I will see you in the
12 morning.

13 MR. HOLFORD: Thank you, Your Honor.

14 (RECESS - 5:09 P.M.)

15 *****OFF THE RECORD*****

16 (On the Record. September 19, 2013 - 10:15 P.M.)

17 THE COURT: All right. We're on the record.

18 I understand, Mr. Holford, it's your intent is to rest at
19 this time or the State has. Did you rest on the record?

20 MR. HOLFORD: I did not rest on the record.

21 THE COURT: But you intend to, based on the stipulation
22 that -- by counsel that the Defendant has in fact been
23 convicted of a prior violent crime as defined by the statute?

24 MR. HOLFORD: Yes, Your Honor.

25 THE COURT: And that would go as to his charge of

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1 possession of a firearm by a person convicted of a violent
2 offense.

3 MR. HOLFORD: Yes, Your Honor.

4 THE COURT: Is that right?

5 Now, Mr. Stampfle, I understand that as a strategic
6 matter, you had rather concede that and stipulate that fact
7 rather than have the act presented for the jury?

8 MR. STAMPFLE: Yes, Your Honor, rather than having
9 actually enumerated for the jury to hear, I'd rather consent.

10 THE COURT: And the State agrees with that stipulation?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: Okay. I have in my charge, I want to tell
13 you how I intend to deal with that. This is how I will charge
14 or I intend to charge possession of a firearm by a person
15 convicted of a violent offense.

16 The Defendant has been charged with the possession of a
17 firearm by a person convicted of a violent offense. The State
18 must prove beyond a reasonable doubt that the Defendant has
19 been convicted of a violent offense as defined by Section 16-
20 1-60 and was in possession of a firearm. A firearm means any
21 machine gun, automatic rifle, revolver, pistol, or any weapon,
22 which is designed to or made readily be converted to a expel a
23 projectile. In order to find the Defendant guilty of
24 possession of a firearm by a person convicted of a violent
25 offense, you must first find the Defendant guilty of

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1 committing a violent offense. The parties have agreed and
2 stipulated to the fact that the Defendant was found guilty of
3 a prior violent offense. Therefore, you must only determine
4 whether the Defendant was in possession of a firearm.

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Is that agreed? And of course, when the jury
7 comes out and you can put your stipulation on the record and I
8 will charge the jury at that time that that is an agreement
9 among counsel and it is to be considered a fact in their
10 deliberation. Okay?

11 MR. STAMPFLE: Yes, sir.

12 MR. HOLFORD: Thank you, Your Honor.

13 THE COURT: All right. Not the possession, merely the
14 fact that he had been convicted of a prior violent crime. All
15 right?

16 MR. STAMPFLE: Yes, sir.

17 MR. HOLFORD: Yes, sir. Thank you, Your Honor.

18 THE COURT: All right. What else -- I guess what we need
19 to do is bring the jury in and let's put that stipulation on
20 the record. Then you can rest, then I'll send them out and
21 Mr. Stampfle can make any motions that he may have at that
22 time. So at least we'll get that out of the way.

23 Bring in the jury.

24 (REPORTER'S NOTE: The jury returns to the courtroom. 10:20
25 A.M.)

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1 THE COURT: Ladies and gentlemen of the jury, thank you
2 for you all being back with us. I apologize for the delay.
3 We have been in here working and to that end, I think we have
4 taken up some matters that would substantially shorten the
5 trial and let us move on faster. So that time was well spent.
6 But we apologize for having you back in that room.

7 Did Bobby have something for you this morning?

8 (REPORTER'S NOTE: Jury indicates affirmatively.)

9 THE COURT: All right. So if you had some refreshments,
10 maybe it wasn't too bad.

11 Mr. Holford.

12 MR. HOLFORD: Yes, Your Honor. At this time, the State
13 has no further witnesses, but by agreement of Defense and the
14 State we'd like to put this stipulation on the record.

15 THE COURT: You may.

16 MR. HOLFORD: As to the possession of a firearm by a
17 convicted felon or someone convicted of a violent crime, the
18 parties have stipulated and agreed that the Defendant, Abdul
19 Furquan, has committed a violent crime in the past ---

20 THE COURT: Has been convicted?

21 MR. HOLFORD: --- and has been convicted of that violent
22 crime as per the statute.

23 THE COURT: All right. Is that correct, Mr. Stampfle?

24 MR. STAMPFLE: That is correct, Your Honor.

25 THE COURT: Ladies and gentlemen, a stipulation is an

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1 agreement as to a fact between the parties. At the end of
2 this case, I will charge you, among other things, as to the
3 law concerning the charge of possession of a firearm by a
4 person convicted of a violent act. Those violent acts are
5 described by statute in South Carolina. Rather than go
6 through the evidentiary process of proving that beyond a
7 reasonable doubt, the State and the Defense have agreed to
8 forego that and to stipulate or agree that as a fact in this
9 case. A fact in which is conclusive on you that when you get
10 to your consideration of that charge, that possession of a
11 firearm by a person convicted of a violent crime, there are
12 two elements. First you must find beyond a reasonable doubt
13 that the State has proved that he was in possession of a
14 firearm and then that he was convicted previously of what has
15 been defined as a violent offense. When you get to that
16 point, your only consideration will be whether he -- the State
17 has proven beyond a reasonable doubt that the Defendant was in
18 possession of a firearm because there is a stipulation or
19 agreement that he has previously been convicted of what is
20 statutorily designated as a violent crime. Is that clear; we
21 all understand it. Okay. Very well.

22 All right.

23 MR. HOLFORD: Your Honor, at this time the State would
24 rest.

25 THE COURT: Very well. Now the State has rested, which

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1 means I get to send you back into your jury room because we've
2 got some other things that we've got to do and I hope it won't
3 be very long. But we will bring you back out just as quick as
4 we can.

5 (REPORTER'S NOTE: The jury exits the courtroom. 10:23 A.M.
6 The following takes place outside the presence of the jury.)

7 THE COURT: I'll hear from the Defense.

8 MOTIONS:

9 MR. STAMPFLE: Your Honor, at this time, Defense moves
10 for a directed verdict, Your Honor, based upon the evidence
11 presented by the State there's no reason to believe that the
12 jury could return a verdict of guilty on the charges of
13 attempted murder, of murder in the first degree, and
14 possession of a firearm by a felon. Granted we did stipulate
15 to the -- to the felony portion of that statute, Your Honor,
16 but based upon the evidence presented, the witnesses, their
17 testimony, the testimony of the Codefendant in this matter, I
18 don't think there's any reasonable way in which the Defendant
19 could justly return a verdict against Mr. Furquan so at this
20 time we'd move for a directed verdict.

21 THE COURT: All right. I, of course, must consider three
22 charges here. And the evidence must be viewed in the light
23 most favorable to the non-moving party, that being the State.
24 In this case, as to the charge of burglary in the first
25 degree, the victim stated clearly that the -- the Defendants

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1 or persons who have been identified by other witnesses as
2 being certainly by inference Mr. Furquan and Mr. Fleming, did
3 enter his dwelling without consent and while therein did
4 commit a crime, that being shooting him, and there is no
5 question that this occurred in the nighttime, which is at
6 least one aggravated factor that would be -- could be
7 considered by the jury as making this a burglary in the first
8 degree.

9 Also there seems to be no doubt that whoever the
10 perpetrators were, were armed with a firearm and actually shot
11 the victim. So, I think there's ample evidence to suggest or
12 ample evidence produced by the State that would support a
13 verdict as to the burglary.

14 Also we have I think three or four witnesses who
15 testified they brought Mr. Furquan to the scene; they saw him
16 enter the building, generally the corridors, heard the shot,
17 saw him return, there was discussions about what occurred. I
18 think there's just ample evidence to go to the jury on the
19 issue of burglary in the first.

20 As to the charge of attempted murder, the fact that
21 someone is shot in the head I think certainly is proof of
22 inferred malice. It's an act, which has a natural tendency to
23 cause death. There's also the fact that it was committed -- I
24 mean a burglary was -- we had the burglary and, and the
25 assault associated with it, I'm sorry. A person was

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1 assaulted.

2 Then we have the charge of -- of possession of a firearm
3 by a felon. There's evidence to suggest certainly that Mr.
4 Furquan had the -- the pistol. As I recall the testimony, one
5 of the witnesses in the car said that Mr. Furquan had the
6 pistol. I think there's sufficient evidence, ample evidence,
7 on all charges to send this to the jury and I would
8 respectfully deny your motion.

9 Okay. What else do we have?

10 MR. STAMPFLE: Your Honor, I'd like to renew my motion

11 ---

12 THE COURT: Did you want to put anything on the record as
13 to that?

14 MR. HOLFORD: Your Honor, I would just agree that there
15 have been multiple witnesses that testified that Mr. Furquan
16 had the gun and both Eric Collins, the roommate, and Mr.
17 Moran, the victim, stated that two people entered there and
18 those -- the only two people -- the evidence in the record is
19 the only two people that went up there and the only two people
20 that came back were Mr. Furquan and Mr. Fleming.

21 THE COURT: Yes, sir. All right. Now, Mr. Stampfle,
22 what else do we have?

23 MR. STAMPFLE: Yes, Your Honor, I'd like to renew my
24 motions I made at the pretrial at the beginning of this trial
25 with respect to 17-25-45; those being that ---

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1 THE COURT: The life without parole?

2 MR. STAMPFLE: Yes, the life without parole statute, the
3 two-strike statute, specifically my argument with regard to
4 the separation of powers and making basically the judicial
5 discretion away from the judiciary and putting it in the hands
6 of the Solicitor. In addition, Your Honor, the argument that
7 the sentence or that the statute was construed could be
8 determined to be ---

9 THE COURT: Cruel and unusual.

10 MR. STAMPFLE: --- cruel and unusual. I believe I've
11 made those motions ---

12 THE COURT: All right. And I would again rule or deny
13 your motions. I think the Supreme Court and Court of Appeals
14 have addressed these issues in Rogers and Jones and in
15 Johnson, those specific issues.

16 As I recall you also made a motion to limit the
17 introduction or the use of a prior offense that occurred about
18 twenty years ago ---

19 MR. STAMPFLE: That was ---

20 THE COURT: In Rogers, that specific issue was addressed
21 by the Court. I think Judge Hearn wrote the opinion and there
22 was an offense that was nineteen years earlier and the Court
23 saw no problem with that. So I would again respectfully deny
24 your motions in that regard.

25 And I appreciate the fact that you're remaking them.

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1 Okay?

2 MR. HOLFORD: Thank you, Your Honor.

3 THE COURT: Now, Mr. Stampfle, on yesterday, I instructed
4 your jury -- I mean your client as to his rights to testify or
5 not testify. Mr. Furquan, would you stand please?

6 Mr. Furquan, do you recall my instruction to you
7 concerning your right to testify or not testify?

8 MR. FURQUAN: Yes, sir.

9 THE COURT: Have you had an ample opportunity to discuss
10 whether you should or you should not testify with your
11 attorney?

12 MR. FURQUAN: Yes, sir.

13 THE COURT: And would you tell me -- well, let me ask you
14 this again. Would you like for me to read you again my
15 instruction as to what your rights are; do you think you
16 clearly remember them?

17 MR. FURQUAN: Yes, sir.

18 THE COURT: You want me to read it again?

19 MR. FURQUAN: No, sir.

20 THE COURT: You don't need it again. Okay. Have you
21 made a decision as to whether you will testify or not?

22 MR. FURQUAN: Yes, I have made a decision.

23 THE COURT: All right. And what is your decision?

24 MR. FURQUAN: Not testify.

25 THE COURT: Okay. Let me tell you this. I don't know

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1 whether Mr. Stampfle's gonna put up any other witnesses or
2 not; I have no idea. But if he does, at any time before he
3 rests, before he says the Defense is done, you can certainly
4 change your mind. You understand that?

5 MR. FURQUAN: Yes, sir.

6 THE COURT: Okay. Thank you very much.

7 Now, Mr. Stampfle, for the edification of the Court, do
8 you intend to call any other witnesses?

9 MR. STAMPFLE: No, Your Honor.

10 THE COURT: Okay. So, when we bring the jury back, you
11 plan to rest; is that correct?

12 MR. STAMPFLE: I do, Your Honor.

13 THE COURT: Mr. Stampfle, have we tried a case together
14 yet? I know you appear before me regularly, but have we tried
15 a case?

16 MR. STAMPFLE: I have not tried anything in front of you.
17 I have actually witnessed and set in on a couple of your
18 trials.

19 THE COURT: Well, it's always my practice to give the
20 jury a transcript of my charge. In doing so, I've never had a
21 jury come back and ask to be recharged. What I have here is
22 what I think will be my final charge. While the jury's out, I
23 would like for you to have an opportunity to go over this
24 charge and tell me if you have any additions or deletions so
25 that we can have that added to the charge so that when I read

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1 it, I'll be able to hand it up to them, okay, as one document.
2 That would certainly be helpful. Here, I'm gonna hand it to
3 you and give you a few minutes.

4 MR. STAMPFLE: Yes, Your Honor.

5 THE COURT: I think we've got something else we're gonna
6 do right now.

7 MR. STAMPFLE: Yes, sir.

8 All right. If y'all would stand him aside there for a
9 moment and let Mr. Stampfle go over the charge with him.

10 (RECESS - 10:32 A.M.)

11 *****OFF THE RECORD*****

12 (On the Record. 10:52 A.M.)

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

15 THE COURT: Ms. Stampfle, did you have an opportunity to
16 look over the charge?

17 MR. STAMPFLE: Yes, Your Honor.

18 THE COURT: Do you have any additions or deletions to
19 that charge?

20 MR. STAMPFLE: No, I do not.

21 THE COURT: Okay. I didn't have a copy for Mr. Holford,
22 but I see he's flipping through it there.

23 MR. HOLFORD: Yes, Your Honor.

24 THE COURT: Mr. Holford will probably be very familiar
25 with the first two-thirds of it.

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1 MR. HOLFORD: No objections, Your Honor.

2 THE COURT: All right. Very well then, Gentlemen. I'll
3 have Drew run a good clean copy I can give to the jury. Thank
4 you for your attention to that.

5 Did you bring the jury in?

6 MR. HOLFORD: Your Honor, can we just put on the record
7 the discussion we had at the Bench earlier about the inferred
8 malice.

9 THE COURT: Let's go ahead and you can do that. The
10 inferred malice charge, I think that based on the way this
11 occurred, the victims says the door was like burst open, bang;
12 there may be some question of malice; I don't know. The
13 Defendant hadn't testified or will not testify, but based on
14 the victim's view of what occurred, I don't know whether there
15 was malice. Malice could certainly be inferred by the nature
16 of the injury and things of that nature. But I think out of
17 an abundance of precaution and keeping with Belcher, I will
18 not charge that it may be inferred merely from the use of a
19 firearm. Okay.

20 MR. HOLFORD: Yes, Your Honor. And certainly since you
21 included -- since you are including lesser included offenses.

22 THE COURT: Right. Anything you want to add to that --
23 did that pretty much describe our discussions about the
24 implied malice? From my understanding, you don't want it?

25 MR. STAMPFLE: That's correct, Your Honor.

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1 THE COURT: Okay. Very well. Anything else we need to
2 take up?

3 MR. STAMPFLE: No, Your Honor.

4 MR. HOLFORD: Nothing further.

5 THE COURT: Bring in the jury.

6 (REPORTER'S NOTE: The jury returns to the courtroom. 10:55
7 A.M.)

8 All right. As you heard before we -- I sent you out, the
9 State had rested.

10 Mr. Stampfle?

11 MR. STAMPFLE: Yes, Your Honor. The Defense will rest.

12 THE COURT: The Defense has also now rested. The Defense
13 will not call any witnesses as is their right. They're not
14 required to call anyone and the burden remains on the State to
15 prove to you beyond a reasonable doubt the Defendant is guilty
16 of any or all of these charges. Okay.

17 Mr. Holford, you will argue first and the Defense is not
18 calling any witnesses. Okay.

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Yes, sir. Are you ready?

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Go ahead.

23 MR. HOLFORD: May we approach?

24 THE COURT: Yes.

25 (REPORTER'S NOTE: A bench conference was held off the record

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1 in the presence of the jury but out of hearing of the jury.)

2 MR. STAMPFLE: Your Honor, for purposes of the record,
3 I'm gonna renew my objections that was previously made and ---

4 THE COURT: All right. And your motions. Okay?

5 MR. STAMPFLE: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 CLOSING BY MR. HOLFORD:

8 MR. HOLFORD: Ladies and gentlemen of the jury, when I
9 started off this trial yesterday morning, I told you three
10 words, miracle, money and malice. Now I'm gonna get into a
11 little bit more of the law, but those three words, miracle,
12 David Moran still sitting here after being shot about this far
13 away with a .38 caliber handgun described by the victim to be
14 a silver revolver; described by the victim's roommate to be a
15 silver revolver; described by three independent witnesses in
16 the car, who knew Jeremy Fleming, the Codefendant, and Abdul
17 Furquan, the Defendant, as a silver revolver.

18 Three days later the police executed a search warrant at
19 the address where they knew Abdul Furquan, the Defendant,
20 lived along with Jeremy Fleming. What did they find; this
21 gun, this silver revolver. All those facts lead together the
22 victim's testimony is credible. Eric Collins' testimony is
23 credible. Ladies and gentlemen, that is the gun that shot
24 this victim in the head.

25 Now for attempted murder, what I have to prove is that an

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1 act occurred that was likely to have caused death or great
2 bodily injury and it was done with malice aforethought. The
3 Judge is gonna talk to you about malice, what it means, can be
4 inferred, can be expressed. Expressed would be if I said, I
5 hate you, I'm going to kill you and shot at someone and they
6 still live. Inferred could be the fact that you point a gun
7 right at someone's head and shoot expecting them to die and
8 they don't. You can infer that there was malice when this
9 Defendant or his Codefendant, either one, shot that victim.
10 You see in the State of South Carolina, we have what we
11 call the hand of one is the hand of all. The victim was
12 honest. He doesn't know the Defendant; didn't know the
13 Codefendant. Eric Collins was honest. He doesn't know the
14 Defendant; he didn't know the Codefendant. He didn't get up
15 here and say yeah, I know it was him because he doesn't.
16 They're wearing masks, bandanas, wearing gloves, wearing dark
17 hoodies and they put them on going up the stairs. That shows
18 intent to commit a crime. When he got on the stand and Eric
19 Collins got on the stand and they told you two people broke
20 into their apartment that night. Eric says he saw two people
21 inside. The victim said two people went in, not one. Jeremy
22 Fleming took the stand; he doesn't like me, that's obvious. I
23 tried him back in May, same case. The hand of one is the hand
24 of all. I cannot tell you with absolute certainty who pulled
25 the trigger, I can't do it; I wish I could. I wish we had

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1 video surveillance that showed which one pulled the trigger,
2 but you know what; it's not necessary. It's not necessary
3 because there is ample evidence, ample testimony that this
4 victim was shot in the head. The only two people that went up
5 to that apartment that night on October 16th, 2011 are the
6 Defendant and Jeremy Fleming, who has already been tried and
7 is already serving time for this. They acted together. So it
8 doesn't matter if Jeremy Fleming was the one who actually
9 pulled the trigger. He says he didn't; he said Abdul did it.
10 I don't know if that's true or not. He claimed that at his
11 trial he didn't, said the same thing, but it doesn't matter.
12 One of them had a gun. One of them pulled the trigger.
13 Shooting someone point blank is malice and its attempted
14 murder. They tried to kill this victim.

15 Burglary in the first degree is a breaking and entering.
16 You don't have to have a crowbar, you don't have to have a
17 kicked in door; it's entering without permission. David told
18 you he was expecting another guest that night. He was
19 expecting a girl to come. Unfortunately, there wasn't a girl
20 at the door, there was two masked men, one with a gun. He
21 opened the door expecting to see a girl and, instead, he found
22 this Defendant and Jeremy Fleming pushing into his door. He
23 told you he didn't invite them in, they had no permission to
24 be there, he didn't know who they were; that is breaking and
25 entering. His roommate told you two people were inside, no

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1 doubt about that, two people. They both entered with the
2 intent to commit a crime. When you're wearing bandanas, when
3 you're wearing gloves, dark hoodies pulled over your head, I
4 submit that's intent because you're not there for any good
5 purpose. You know you heard some story from only the person
6 whose only been convicted about possible weed. I don't do
7 drugs myself. I prosecute a lot of people who do drugs. They
8 don't go up to buy drugs with bandanas, with hoodies and with
9 a gun. That's not how it works.

10 The way this Defendant and this Codefendant went to the
11 victim's apartment that night was with the intent to commit a
12 crime. And guess what they did? They committed a crime.
13 They shot a man in the head. So you have breaking and
14 entering, intent to commit a crime and then an aggravated for
15 burglary first. It either has be at the nighttime, that's
16 undisputed. This was 11:30 at night. No way you could argue
17 the sun might've have been up, whether it was daylight savings
18 or not; 11:30 was undisputed at night. The other one is armed
19 with a deadly weapon. So you have two choices. You can find
20 both. They were armed with a deadly weapon and it was at
21 nighttime. So we have a breaking and entering, intent to
22 commit a crime, a crime that was committed, they were armed
23 with a deadly weapon and it was at night. That's burglary in
24 the first degree. Again, hand of one, hand of all applies to
25 the burglary first charge. At least one of them went in

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1 there. The Codefendant told you it was this Defendant. It
2 doesn't matter. The victim and his roommate told you it was
3 two people. It could have only been one. I believe -- I
4 believe the testimony supports that both people went in. But
5 if you believe that only one went in, it doesn't matter; they
6 both committed the crime together. They were both wearing
7 bandanas. You saw two bandanas. They were confiscated from
8 their residence. They were wearing gloves. They have weapon,
9 hoodies pulled over their heads. They both committed that
10 crime together.

11 You heard from three independent witnesses in a car.
12 They didn't get out, but they knew. They said two people went
13 upstairs. This man right here, Abdul Furquan, and the one you
14 heard from, Jeremy Fleming. No one else went upstairs, no one
15 else came back. Only two people were involved. That's
16 corroborated by numerous witnesses. You heard from all three
17 of the witnesses. I don't believe actually two of them -- I
18 don't believe Tyler was able to say -- he was fifteen at the
19 time. He was in shock, didn't know who had the gun. Samantha
20 and Taylor both told you, when they ran back downstairs,
21 Jeremy was running first and Abdul Furquan came in, got behind
22 the driver's seat, had the silver revolver in his hand and
23 held it to the back of the driver. Not only is that
24 possession of a firearm, but that corroborates the story of
25 the victim and the roommate. Jeremy Fleming, the Codefendant,

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1 admitted no one else was up there; it was just myself and this
2 Defendant. Again, he didn't want to testify. He wasn't
3 happy, but it wasn't his choice. I called him in here so he
4 would tell the story. No one else was there. Two people
5 working together to commit these crimes and all the evidence
6 points to Abdul Furquan being the one who actually had the
7 gun.

8 But again, ladies and gentlemen, if you don't believe
9 that I've proven beyond a reasonable doubt that he was the
10 shooter, it does not matter. Because when two people act
11 together to commit a crime, whether it's the accomplice, the
12 Codefendant or it's the Defendant themselves, they're both
13 guilty of the same crime. He had the intent to commit the
14 crime. He had the gun. He had the bandana. This Defendant
15 intended to commit all those crimes and he worked with Jeremy
16 Fleming to commit those crimes.

17 Ladies and gentlemen, it's been two days. I know you're
18 tired. Some of you have already heard other cases. This is a
19 very hard case. Please when you go back to the jury room,
20 review the evidence. You'll see the pictures. The reason I
21 had to take all that time and go through all those pictures is
22 just that made a clear record where the trailer was, why we
23 did the search warrant, how it was done. I know that's
24 monotonous. I know it takes a lot but it's necessary to make
25 the record clear that the police did their job and what they

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1 retrieved was retrieved properly and it's the same evidence
2 that was retrieved from this Defendant's trailer that
3 corroborates the story of the three independent witnesses in
4 the car as well as the victim and his roommate. It all links
5 together. The picture of the people who were at the apartment
6 or at the trailer, that's just to give you some context of who
7 was there; who lived there. It's just a little back story.
8 That's why I had two people come up testify individually.
9 You'll notice everyone was sequestered, they were kept
10 outside. The reason they're sequestered is so they can't tell
11 each other -- they can't hear what one person says and say oh,
12 same thing, same thing. They came in and told their
13 independent stories. Each one testified who was there. They
14 all said they knew him as Freak, didn't know him by any other
15 name, but I said please call him Abdul Furquan because that's
16 the name he goes by.

17 Ladies and gentlemen, like I said at the beginning, after
18 all the evidence is viewed, after you look at everything here,
19 after all the testimony that's been presented, after
20 everything that's in the record, the facts, the witnesses
21 testimony, the only reasonable conclusion is if both -- we
22 already convicted Jeremy -- and this Defendant, Abdul Furquan,
23 are guilty, I ask you please find Abdul Furquan guilty of the
24 offenses he committed against this victim October 16th, 2011
25 in Horry County of burglary in the first degree, attempted

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1 murder with possession of a firearm by a person convicted of a
2 violent crime. Thank you.

3 THE COURT: Mr. Stampfle.

4 CLOSING BY MR. STAMPFLE:

5 MR. STAMPFLE: Thank you, Your Honor. Ladies and
6 gentlemen, I again thank you. It has been a day and a half
7 now. I appreciate you being here. At the start of this case
8 the State did say three things that they would prove, miracle,
9 money and malice. Miracles, I told you I would not dispute
10 that at the beginning of this trial. The victim is sitting
11 here; clearly that's a miracle. Money and malice, I have
12 contended from the beginning and I believe that the witnesses
13 have testified, the issue might've been money. All the other
14 witnesses testified to some of the issues were weed, too. I'm
15 not as concerned with that. Malice, shooting a man in the
16 head is malice. I will not argue with that. My issue is the
17 intent. Did my client, Mr. Furquan, intend for this to occur?
18 What I told you from the beginning is that I don't believe
19 that and I still don't believe the State has proved that to
20 their burden beyond a reasonable doubt. That is their charge
21 in this case to prove beyond a reasonable doubt that my client
22 intended this things to occur. They have not met that. Let
23 me tell you why. Let me tell you why based upon the witnesses
24 that the State has brought forward to testify before you.

25 First, three witnesses came forward. Three witnesses who

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1 were in that vehicle, Sam Topolski, Tyler Topolski and Taylor
2 Smith. They testified to many things, some of them
3 inconsistent; some of them very consistent. What was the one
4 thing they testified consistently about? Jeremy Fleming wore
5 skeletal gloves. They all testified to this. They testified
6 he wore them, he wore them that night, they were known to be
7 his. Mr. Fleming, as reluctant as he was to testify and as
8 unhappy as he was to sit in that chair testified he wore those
9 gloves, those skeletal gloves. CSI Domogauer came up and
10 testified those gloves were found in the home. She took those
11 gloves out, these very gloves here, she photographed these
12 gloves. She's trained using a special technique. The
13 photographs of those gloves showed, photographic evidence of
14 gunshot residue on those gloves, those gloves worn by Jeremy
15 Fleming. I don't believe that's in dispute at all. Samantha,
16 a personal friend of Jeremy Fleming, testified to her
17 knowledge of those gloves.

18 Who fired that gun? Mr. Fleming got up here and said it
19 wasn't me; clearly, it wasn't me. But those were his gloves
20 and the close personal friend of -- intimate friend of his,
21 Samantha, testified that he --- he told her, he shot a dude in
22 the head. That was what he said. That is what she said on
23 the record that he shot a dude in the head. Who -- who better
24 would have knowledge of that than a close personal friend.
25 She, by her own admission, had nothing to gain. She, of her

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1 own conscience, came forward and testified and testified that
2 her close personal friend admitted to being the gunman in this
3 case. I don't feel that that's in dispute as well. Who shot
4 -- the State said it was Abdul; if was Jeremy, I don't think,
5 there's ---

6 The day after the incident, three individuals testified
7 they came back to the home, said they came back to the home
8 out of fear. What their reasons for going back to the home, I
9 don't know what their reasons were; I certainly wouldn't have
10 gone back to the home if I was in fear but they said they went
11 back. Samantha testified she went back to the home. And who
12 was the individual making threats, making threats to the
13 victim, was it Mr. Furquan? No, it was Mr. Fleming, he had
14 the weapon.

15 This is a tragedy without question. It's a tragedy that
16 Mr. Moran was shot, but there are some gray areas that the
17 State has not pointed out. One, the victim was unable to say
18 for certain whether two individuals entered that -- that
19 dwelling. He did say two were at the door. There have been
20 -- there have been plenty of testimony that two men walked up
21 that stairway. The question is, What was the intent of the
22 parties once it went down? And what we do know is one
23 individual fired the shot. That shot was fired by Jeremy
24 Fleming and that is uncertain whether two individuals actually
25 walked into that house.

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1 Now several of the witnesses have testified that Mr.
2 Furquan had the gun afterwards and several of them testified
3 that he returned to the vehicle with it. I won't argue that
4 Mr. Furquan then took possession of that gun. He did not fire
5 and he was not -- and there was no testimony, nothing has been
6 proven that he was aware that this took place.

7 Now a great deal has been told you about hand of one,
8 hand of all. The charge will be read to you, but part of that
9 charge is that a finding of a prior arranged plan or common
10 scheme is necessary for a finding of guilt. There's been no
11 testimony of a prior arranged plan or scheme necessary for a
12 finding of guilt, not by the three individuals in the car, not
13 by Mr. Fleming and not by the victim and the roommate. There's
14 been no testimony as to a prior arranged plan or scheme.
15 There's been insufficient testimony to show that more than one
16 individual -- conflicting testimony as to whether more than
17 one individual entered that home. I don't believe that a
18 finding of burglary can be made against Mr. Furquan.

19 What occurred on that night, what occurred is not clear.
20 And that is not Mr. Furquan's burden, that is the State's
21 burden to prove that to you beyond a reasonable doubt. I
22 don't feel that they've met that proof.

23 The State has asked you to look at all the evidence
24 that's been entered. I'm not asking you to -- I'm gonna ask
25 you to not just look at it through the prism of, of what the

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1 Solicitor has argued in his closing. Just look at all the
2 facts and return a fair verdict and find that Mr. Furquan is
3 not guilty of attempted murder. There's been no showing of a
4 common plan or scheme to burglarize that home, no showing of a
5 common plan or scheme to enter that home by Mr. Furquan. He
6 is not guilty of attempted murder. There has been no showing
7 of prior -- or that he knew that that weapon was going to be
8 fired. The State's witnesses testified they were there to get
9 money and marijuana and there has been nothing to contradict
10 that Mr. Furquan knew anything any different. I ask you to
11 return a verdict of not guilty with regard to those charges.

12 Thank you again for your time.

13 CHARGE TO JURY:

14 THE COURT: Ladies and gentlemen of the jury, I -- some
15 of you know this because you served on a jury with me earlier
16 in the week. I have adopted a policy of always providing the
17 jury with a written transcript of my charge. I understand
18 that it's difficult for you to sit there as laypersons who are
19 not familiar with this process and absorb everything that I
20 charge you about a -- a particular case when I charge the law.
21 So the Supreme Court has approved my giving you, submitting to
22 you a copy or a transcript of my charge and in that regard, I
23 will be reading my charge from that transcript because that's
24 how I have to do it.

25 Let me say to you though, that you should not focus

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1 merely on any one part of the charge but you should take the
2 charge as a whole and consider all parts of the charge, not
3 just one part.

4 I remind you that during the trial of this case, you and
5 I have certain duties to perform and as Trial Judge, it is my
6 responsibility to preside over the trial of the case and I
7 also have the duty to rule on the admissibility of evidence
8 offered during the trial and you are to consider only the
9 competent evidence before you. If there was any testimony
10 ordered stricken from the record in this case during the
11 trial, you must disregard that testimony. You are to consider
12 only the testimony which has been presented from this witness
13 stand, any exhibits which may have been made a part of the
14 record in this case and any stipulations or agreements of
15 counsel.

16 I have the additional duty to charge you the law
17 applicable to the case. As Presiding Judge, I am the sole
18 judge of the law of the case and it's your duty as jurors to
19 accept and apply the law as I now state it to you. If you
20 already have an idea as to what the law is or what the law
21 ought to be and it doesn't agree with what I tell you now the
22 law is, you must abandon that idea because you are sworn to
23 accept the law and apply the law exactly as I state it to you.
24 In every case tried in this Court before a jury, the jury
25 becomes the sole and exclusive judge of the facts in the case.

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1 A Trial Judge cannot intimate, state, comment on or make any
2 statement to a trial jury about the facts in a case. Since
3 you, the jury, are the sole judge of the facts in the case,
4 you are not to infer from what I have said during the progress
5 of this trial in ruling on the admissibility of evidence or
6 otherwise or anything that I say now during the course of
7 these instructions to you, that I had any opinion about the
8 facts in the case. The law does not allow me to have an
9 opinion about the facts of the case. This is a matter solely
10 for you, the jury, to determine and, as jurors, it is your
11 duty to determine the effect, value, weight and truth of the
12 evidence presented during this trial.

13 Now the indictments charge the Defendant with attempted
14 murder, first degree burglary, unlawful possession of a
15 firearm by a person convicted of a violent offense. I remind
16 you that the fact that the Defendant was arrested, charged and
17 indicted in this case, is not evidence in the case and cannot
18 be considered by you as evidence of guilt in the case, nor
19 does it create any presumption or inference of guilt. These
20 documents are simply the formal written instrument, which
21 contains the charge made against the Defendant. They're the
22 document, the formal document, by which this case is brought
23 to the Court. The indictments in this case allege three
24 different offenses against the Defendant. The charges are
25 indictment number one, attempted murder; indictment number

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1 two, first degree burglary; indictment number three, unlawful
2 possession of a firearm by a person convicted of a violent
3 offense. Each indictment charges a separate and distinct
4 offense. You must decide each indictment separately on the
5 evidence and the law applicable to it uninfluenced by your
6 decision as to any other indictment. The Defendant may be
7 convicted or acquitted on any or all the offenses charged.
8 You will be asked to write a separate verdict of guilty or not
9 guilty on each of the -- for each of the indictments.

10 Now the Defendant has pled not guilty to all three
11 indictments and that plea puts the burden on the State to
12 prove that the Defendant is guilty. A person charged with
13 committing a criminal offense in South Carolina is never
14 required to prove himself innocent. I charge you that it is
15 an important rule of the law that a Defendant in a criminal
16 trial, no matter what the seriousness of the charge may be,
17 will always be presumed to be innocent of the crime for which
18 the indictment was issued unless guilt has been proven by
19 evidence satisfying you of that guilt beyond a reasonable
20 doubt. This presumption of innocence does not end when you
21 begin your deliberation, but it accompanies the Defendant
22 throughout the trial until you reach a verdict of guilt based
23 on evidence satisfying you of that guilt beyond a reasonable
24 doubt. The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the Defendant,

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1 which remains with the Defendant until it has been stripped
2 from the Defendant by evidence satisfying you of the
3 Defendant's guilt beyond a reasonable doubt. The presumption
4 of innocence is not mere legal theory. It's not just a legal
5 phrase. It's a substantial right to which every defendant is
6 entitled until you, the jury, are satisfied from the evidence
7 of the Defendant's guilt beyond a reasonable doubt.

8 The State has the burden of proving the Defendant is
9 guilty beyond a reasonable doubt. Some of you may have served
10 as jurors in civil cases where you were told it's only
11 necessary to prove that a fact is more likely true than not
12 true, such as by the greater preponderance or greater weight
13 or preponderance of the evidence. In criminal cases, the
14 State's proof must be more powerful than that. It must be
15 beyond a reasonable doubt. Now proof beyond a reasonable
16 doubt is proof that leaves you firmly convinced of the
17 Defendant's guilt. There are very few things in this world
18 that we know with absolute certainty and in criminal cases,
19 the law does not require proof that overcomes every possible
20 doubt. If based on your consideration of the evidence, you
21 are firmly convinced that the Defendant is guilty of the
22 crimes charged, you must find the Defendant guilty. A
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. It is a doubt for which
25 you could give a reason. If on the other hand, you think

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1 there is a real possibility that the Defendant is not guilty,
2 you must give the Defendant the benefit of the doubt and find
3 him not guilty.

4 Now there are two types of evidence which are generally
5 presented during a trial; direct evidence and circumstantial
6 evidence. Direct evidence directly proves the existence of a
7 fact and does not require deduction. Circumstantial evidence
8 is proof of a chain of facts and circumstances indicating the
9 existence of a fact. Crimes may be proved by circumstantial
10 evidence. The law makes no distinction between the weight or
11 value to be given either direct or circumstantial evidence.
12 However, to the extent that the State relies on circumstantial
13 evidence, all of the circumstances must be consistent with
14 each other and when taken together, must point conclusively to
15 the guilt of the accused beyond a reasonable doubt. If these
16 circumstances merely portray the Defendant's behavior as
17 suspicious, the proof has failed. The State has the burden of
18 proving the Defendant guilty beyond a reasonable doubt. The
19 burden rests with the State regardless of whether the State
20 relies on direct or circumstantial evidence or some
21 combination of the two.

22 Necessarily, you must determine the credibility of
23 witnesses who have testified in this case and credibility
24 simply means believability. It becomes your duty as jurors to
25 analyze and to evaluate the evidence and determine which

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1 evidence convinces you of its truth. And in determining the
2 believability of witnesses who have testified in this case,
3 you may believe one witness over several witnesses or several
4 witnesses over one; you may believe a part of the testimony of
5 a witness and reject the remaining part of the testimony of
6 that same witness. You may believe the testimony of a witness
7 in its entirety or reject the testimony of a witness in its
8 entirety. You may consider whether any witness exhibited to
9 you any interest, prejudice or bias or other motive in the
10 case and you can also consider the appearance and manner of a
11 witness while on the witness stand.

12 I instruct you and emphasize that the fact that the
13 Defendant did not testify is not a factor to be considered by
14 you in any way in your deliberations and in your consideration
15 on the question of guilt or innocence of the Defendant. It
16 must not be considered by you in any manner whatsoever. A
17 Defendant has a constitutional right to remain silent and the
18 assertion of this right must not be considered by you in your
19 deliberations. I repeat, under your oath, you are to draw no
20 conclusion whatsoever from the fact that the Defendant in this
21 case did not testify. The fact that the Defendant did not
22 testify should not even be discussed in the jury room. The
23 burden of proof, as I have stated to you, is on the State. The
24 Defendant is not required to prove his innocence. The burden
25 of proof remains on the State to prove guilt beyond a

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1 reasonable doubt.

2 If a crime is committed by two or more people who are
3 acting together in committing the crime, the act of one is the
4 act of all. A person who joins with another to commit an
5 unlawful act is criminally responsible for everything done by
6 the other person, which happens as a probable or natural
7 consequence of the acts done in carrying out the common plan
8 and purpose. If two or more people are together, acting
9 together, assisting each other in committing the offense, the
10 act of one is the act of all or it is sometimes said the hand
11 of one is the hand of all.

12 Prior knowledge that a crime is going to be committed
13 without more is not sufficient to make a person guilty of that
14 crime. Mere knowledge that another person is going to commit
15 a crime, even if the Defendant is present when the crime is
16 committed is not sufficient to convict the Defendant as a
17 principal. Guilt as a principal is shown by actual or
18 constructive presence at the scene as a result of prior
19 arrangement. Therefore, a finding of a prior arranged plan or
20 common scheme is necessary for a finding of guilt as a
21 principal. The State must prove beyond a reasonable doubt by
22 confident evidence the theory of a hand of one is the hand of
23 all. A principal in a crime is one who either actually
24 commits a crime or who is present, aiding, abetting, or
25 assisting in committing the crime. When a person does an act

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1 in the presence of and with the assistance of another, the act
2 is done by both. Where two or more acting with a common plan
3 or scheme are present at the commission of a crime, it does
4 not matter who actually commits the crime. All are guilty.
5 The hand of one is the hand of all.

6 The presence at the commission of a crime means to be --
7 present at the commission of a crime means to be sufficiently
8 near to to aid or abet and assist in the commission of a
9 crime. Again, however, mere presence at the scene of a crime
10 is not sufficient to convict one as the principal on the
11 theory of aiding or abetting.

12 Intent is also a necessary element. For there must have
13 been a common design or intent to commit the crime and the
14 crime must have been committed pursuant to that; thereto with
15 the person aiding and abetting by some overt act. Intent
16 means intending the result which actually occurs, not
17 accidentally or involuntarily. Intent must be shown by acts
18 and conduct of the Defendant and other circumstances from
19 which you may naturally and reasonably infer intent. The
20 State must prove these elements beyond a reasonable doubt.

21 The Defendant is charged with attempted murder. In order
22 to prove this crime, the State must prove that the Defendant
23 attempted to kill another person with malice aforethought.
24 Express -- either express or implied malice. Malice is hatred
25 or ill will or hostility towards another person. It is the

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1 intentional doing of a wrongful act without just cause or
2 excuse and with the intent to inflict an injury or under the
3 circumstances that the law will infer an evil intent. Malice
4 aforethought does not require that the malice existed for any
5 particular time before the act was committed. But malice must
6 exist in the mind of the Defendant just before and at the time
7 of the act being committed. Therefore, there must be a
8 combination of the previous ill intent and the act. Malice
9 aforethought may be expressed or inferred. These terms,
10 expressed and infer, do not mean different kinds of malice,
11 but merely mean the manner in which the malice is shown to
12 exist. That is whether by direct evidence or by inference
13 from the facts and circumstances which are proved. Express
14 malice is shown when a person speaks words, which express
15 hatred or ill will for another or when the person prepared
16 beforehand to do the act which was later accomplished. An
17 example would be lying in wait for a person or any other act
18 of preparation going to show that the deed was within the
19 Defendant's mind would be expressed malice. Malice may be
20 inferred from the conduct showing a total disregard for human
21 life. If facts are proved beyond a reasonable doubt
22 sufficient to raise an inference of malice to your
23 satisfaction, the inference would simply be an evidentiary
24 fact to be considered by you, the jury, along with the other
25 evidence in the case and you may give it the weight you decide

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1 it should receive.

2 A specific intent to kill is not an element of attempted
3 murder, but there must be a general intent to commit serious
4 bodily injury. Intent means intending the result, which
5 actually occurs, not accidentally or involuntarily. Intent
6 may be shown by acts and conduct of the Defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent. Evidence of the character of the act, the
9 character of the instrument used, the manner in which it was
10 used, the purpose to be accomplished and the resulting wound
11 or injuries may be considered in determining the intent with
12 which the acts were committed. Intent may also be inferred
13 when it is demonstrated that the Defendant voluntarily and
14 willfully commits an act, the natural tendency of which is to
15 destroy another's life. If the Defendant fails to prove the
16 Defendant guilty of attempted murder to your satisfaction, you
17 may consider two lesser included offenses; number one, assault
18 and battery of a high and aggravated nature. A person commits
19 the offense of assault and battery of a high and aggravated
20 nature of the person unlawfully injures another person and
21 great bodily injury to that person results or the act is
22 accomplished by means likely to produce death or great bodily
23 injury. Great bodily injury means bodily injury which causes
24 a substantial risk of death or which causes permanent
25 disfigurement or protracted loss or impairment of the function

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1 of a bodily member or organ.

2 Second, assault and battery in the first degree. A
3 person commits the offense of assault and battery in the first
4 degree if the person unlawfully injures another person and the
5 act occurred during the commission of a robbery, a burglary, a
6 kidnapping or a theft. A person may also commit an offense of
7 assault and battery in the first degree if the person offers
8 or attempts to injure another person with the present ability
9 to do so, and the act is either accomplished by means likely
10 to produce death or great bodily injury or occurred as I said,
11 during the commission of a robbery, burglary, kidnapping or
12 theft. Great bodily injury means bodily injury which causes a
13 substantial risk of death or which causes permanent serious
14 disfigurement or protracted loss or impairment of a bodily
15 member or organ.

16 The Defendant is also charged with first degree burglary.
17 The State must prove beyond a reasonable doubt that the
18 Defendant entered a dwelling without consent. The dwelling is
19 a building or a portion of building in which a person
20 ordinarily sleeps. A building constructed as a dwelling that
21 has never been occupied cannot be considered a dwelling for
22 purposes of burglary. But a building is a dwelling even if
23 the residents are temporarily absent from the building. In
24 order to prove that the Defendant entered the dwelling, the
25 State does not have to show that the Defendant's entire body

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1 entered the dwelling. The smallest entry is sufficient. It
2 may be any part of the body such as a hand or foot or even an
3 instrument such as a hook or other instrument. In addition,
4 the State does not have to prove that force was used to gain
5 entry. If a person enters a building by using a section,
6 artifice, trick or misrepresentation to get consent to enter,
7 this entry is without consent.

8 Next the State must prove beyond a reasonable doubt that
9 the Defendant intended to commit a crime, either a felony or a
10 misdemeanor, at the time of the entry. The mere entry into a
11 dwelling without consent is not burglary. If the intent to
12 commit a crime is formed after the entry, it's not a burglary.
13 On the other hand, if the Defendant intended to commit a crime
14 at the time of entry, it is a burglary even if the intent was
15 abandoned after the injury -- entry. It does not matter that
16 the intended crime was not committed. Intent may be shown by
17 acts and conduct of the Defendant and other circumstances from
18 you may naturally and reasonably infer intent.

19 Finally the State must prove beyond a reasonable doubt
20 that, number one, when entering, in the dwelling or when
21 fleeing, the Defendant or an accomplice was armed with a
22 deadly weapon or explosive. A deadly weapon is any article,
23 instrument or substance which is likely to cause death or
24 great bodily harm. Whether an instrument has been used as a
25 deadly weapon depends on the facts and circumstances of each

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1 case. The following are examples of instruments which may be
2 deadly weapons; a pistol, a shotgun, a rifle, a dirk, a
3 dagger, a knife, a slingshot, metal knuckles, a razor,
4 gasoline, a fire bomb, a Molotov cocktail and lighter fluid.
5 A gun may be a deadly weapon even if it's not operating. Or
6 number two, when entering, while in the dwelling or while
7 fleeing the Defendant or an accomplice causes a physical
8 injury to anyone not participating in the crime. Or number
9 three, when entering or while in the dwelling or when fleeing,
10 the Defendant or an accomplice used or threatened to use a
11 dangerous object. Or number four, when entering, while in the
12 dwelling or when fleeing, the Defendant or an accomplice
13 displayed what appeared to be a knife, pistol, revolver,
14 rifle, shotgun, machine gun or other firearm. Or number five,
15 the Defendant entered or remained in the dwelling in the
16 nighttime. Nighttime is the period between sunset and sunrise
17 during which there was not enough daylight to recognize a
18 person's face except by artificial light or moonlight.

19 The Defendant has also been charged with possession of a
20 firearm by a person convicted of a violent crime or violent
21 offense. The State must prove beyond a reasonable doubt that
22 the Defendant has been convicted of a violent offense as
23 defined by Section 16-1-60 -- that was a section of the South
24 Carolina Code of Laws -- and was in possession of a firearm.
25 A firearm means a machine -- any machine gun, automatic rifle,

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CHARGE TO JURY

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1 revolver, pistol or any weapon, which is designed to or may be
2 readily converted to expel a projectile. In order to find the
3 Defendant guilty of possession of a firearm by a person
4 convicted of a violent offense, you must first find the
5 Defendant guilty of committing a violent crime.

6 The parties have agreed, you will recall, and have
7 stipulated to the fact that the Defendant was found guilty of
8 a prior violent offense. Therefore, you must only determine
9 whether the Defendant was in possession of a firearm. I want
10 to make that clear. There are two elements. You must -- the
11 State must prove possession and conviction of prior violent
12 offense, but they have all agreed as to the prior conviction
13 for a violent offense. So your determination will be did he
14 possess a firearm. Okay.

15 There are two possible verdicts which you may find in
16 each indictment in this case, guilty or not guilty. And
17 there's no significance whatsoever in the order in which I
18 state these possible verdicts. It's simply that I've got to
19 state one first, one before the other. Ladies and gentlemen,
20 your verdict must be a unanimous verdict.

21 Mr. Foreperson, when your jury agrees on a verdict, you
22 will write the verdict on the -- on the verdict form and then
23 knock on the door and inform the Bailiff that you have reached
24 a verdict and at that time, we will receive you back in the
25 courtroom.

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CHARGE TO JURY

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1 I'm gonna send you back into your jury room. I'm going
2 to ask you not to begin your deliberations until the Clerk or
3 Bailiff tells you to do so. There may be some more matters
4 that I have to do, but let me say this to you, if I send in my
5 charge and I send in the exhibits in this case without
6 bringing you back, that means that there was nothing more in
7 the courtroom that I needed you for and that's your signal to
8 begin your deliberations. Okay.

9 I have prepared verdict forms and I'm going to send these
10 in to you. I want to take a moment to go over those verdict
11 forms because I want to make sure that you clearly understand.

12 The verdict form for the indictment charging first degree
13 burglary is very simple. It simply has a question or a
14 statement, As to the charge of first degree burglary, we, the
15 jury, unanimously find the Defendant and then it says circle
16 one. And under that we have guilty and not guilty and then in
17 the end it makes no difference which one we wrote first;
18 that's not to indicate anything to you. And you will simply
19 circle the verdict that you reach on that charge. Okay.

20 And likewise, as to the charge of unlawful possession of
21 a firearm of a person convicted of a violent offense, we, the
22 jury, unanimously find the Defendant circle one. Very simple
23 verdict forms.

24 But as to the attempted murder, the indictment charging
25 attempted murder, I have already charged you and you will

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1 remember that I charged you that if you did not find that the
2 State had proven all the elements of attempted murder, that
3 you could consider two lesser included offenses. Let me say
4 this, you may not convict the Defendant of more than one of
5 those offenses. You don't have to convict him of any of them.
6 But you do not -- you cannot convict him of more than one.
7 And this has how I've written out the verdict form. It says,
8 As to the charge of attempted murder, we, the jury,
9 unanimously find the Defendant, circle one, and we have guilty
10 or not guilty. But under that you will see I added a
11 paragraph that says if you have found the Defendant guilty of
12 attempted murder, stop here and sign the verdict form. If you
13 have -- were to find him -- were to find him guilty of that
14 offense you would not even consider the others. You would
15 stop and sign the, the verdict form. But if you have found
16 him not guilty, you may consider the lesser included offense
17 of assault and battery of a high and aggravated nature. And
18 under that I have, As to the charge of assault and battery of
19 a high and aggravated nature, we, the jury, unanimously find
20 the Defendant -- and there's a place for you to circle guilty
21 or not guilty. But remember, you only go to that if you have
22 found him not guilty. And likewise, I have added after that,
23 If you have found the Defendant guilty of assault and battery
24 of a high and aggravated nature stop here and sign the verdict
25 form. However, if you found him not guilty, you may consider

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1 the lesser included offense of assault and battery in the
2 first degree and there's a place for you to add that. Do you
3 understand? I think it's self-explanatory, but if you have
4 any problems with it, I'll be happy to bring you back and
5 we'll go over it. That was the only verdict form that I think
6 would give you any confusion, but I believe it's clear enough
7 that you can figure it out.

8 All right. Now, Mr. Ropp, would you segregate our, our
9 alternates and take the other jury into their jury room and
10 I'll determine whether there's anything else I need to do and,
11 if not, we'll send in the exhibits.

12 I have ordered lunch for you. Okay.

13 JUROR: Thank you.

14 (REPORTER'S NOTE: The jury exits the courtroom. 11:51 A.M.)

15 THE COURT: Anything from the State?

16 MR. HOLFORD: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. STAMPFLE: I renew my objection, Judge.

19 THE COURT: All right. I want to make sure that the
20 record is clear that after the Defense rested, Mr. Stampfle
21 did preserve all his motions, particularly his motions for
22 directed verdict and I would respectfully decline to grant
23 those motions for the reasons stated ten minutes before he
24 made them at the close of the State's case. All right.

25 I want to mark this, Kay, as Court's whatever, but it

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CHARGE TO JURY

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1 does go to the jury and here, gentlemen, here are the verdict
2 forms.

3 COURT'S EXHIBIT NUMBER FOUR

4 MARKED FOR IDENTIFICATION

5 THE COURT: I think you may have all understood what I
6 was saying, but there they are if you want to take a look at
7 them.

8 Any objections by anyone for the verdict form?

9 MR. HOLFORD: No, sir.

10 MR. STAMPFLE: No, Your Honor.

11 THE COURT: Hand to the Clerk. And let's, gentlemen,
12 look at your exhibits and make sure that the right exhibits
13 are going back to the jury.

14 How long ago did you order lunch?

15 CLERK: It should be here any minute, Judge. They said
16 they'd have it ready at a quarter till.

17 THE COURT: Okay. Well, what I'm gonna do is -- did you
18 order something for the alternates?

19 CLERK: Yes.

20 THE COURT: I'll offer them lunch.

21 MR. HOLFORD: Your Honor, for the record, the gun is
22 going back; there are no bullets that have been entered so
23 there will be no bullets.

24 THE COURT: Let me recheck it. They tell me I'm to do
25 that.

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CHARGE TO JURY

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Who has the lock?

3 MR. HOLFORD: It was Roy Hemingway.

4 THE COURT: I note that there is a -- a child safe lock
5 going through the cylinder making it impossible to engage the
6 cylinder and there are no bullets in it. So that's good.

7 MR. HOLFORD: Thank you, Your Honor.

8 (REPORTER'S NOTE: Counsel reviews exhibits.)

9 MR. HOLFORD: Your Honor, the State agrees that on what's
10 going back.

11 THE COURT: Everything's okay?

12 MR. STAMPFLE: We don't object to the charge, Your Honor.

13 THE COURT: Okay. Bring -- when you take that in, you
14 can tell them to begin deliberating and that lunch will be
15 here soon.

16 (REPORTER'S NOTE: Deliberations begin. 11:55 A.M.)

17 And bring me the alternates.

18 (REPORTER'S NOTE: Alternate Jurors return to courtroom.)

19 Mr. Thompson, Ms. Strickland, you were the alternates in
20 this case and once I begin deliberation, I don't interject a,
21 an alternate. If something happens and the parties can't
22 agree to try it with eleven or less, I just declare a mistrial
23 and we try it again. So you are free to leave. We appreciate
24 you being here and you don't have to call back. They're
25 telling me this is all we're gonna do this week, but I've

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VERDICT OF JURY

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1 ordered lunch. You can't go in with the other jurors, but if
2 -- if you wish to have a seat back there, I don't know what
3 they've got for lunch, but they've got ---

4 CLERK: Maryland Fried.

5 THE COURT: They got Maryland Fried Chicken for lunch and
6 they will have it here any minute now. So if you'd like to
7 stick around and have lunch on the county, we'd be glad to
8 have you.

9 JUROR 349: I appreciate it, but I've got to go to work.

10 THE COURT: Okay. Good for you.

11 JUROR 361: I'm with her.

12 THE COURT: All right. Thank you again. You're excused.

13 JUROR 349: Thank you.

14 (RECESS - 11:57 A.M.)

15 *****OFF THE RECORD*****

16 (On the Record. 12:45 P.M.)

17 THE COURT: All right. We have everyone here in the
18 courtroom. Let's bring in the jury.

19 (REPORTER'S NOTE: The jury returns to the courtroom. 12:46
20 P.M.)

21 VERDICT OF THE JURY:

22 All right. Mr. Foreman, have you reached a verdict?

23 JUROR 78: Yes, we have.

24 THE COURT: And was it a unanimous verdict?

25 JUROR 78: Yes, sir, it was.

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VERDICT OF JURY

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1 THE COURT: As to each indictment?

2 FOREMAN 78: Yes, sir.

3 THE COURT: All Right. Madam Clerk, would you receive
4 the verdict?

5 Bobby if you would, just bring it to me first.

6 Madam Clerk, if you would please publish the verdicts?

7 CLERK: Indictment 2012-GS-26-02058, the State versus

8 Abdul Furquan, charge of attempted murder, we, the jury,

9 unanimously find this Defendant guilty.

10 Indictment number 2012-GS-26-02057, the State versus

11 Abdul Furquan in the charge of first degree burglary, we, the

12 jury, find the Defendant unanimously guilty.

13 Indictment number 2012-GS-26-02059, the State of South

14 Carolina versus Abdul Furquan, the charge of unlawful

15 possession of a firearm by a person convicted of a violent

16 offense, we, the jury, find, unanimously find the Defendant

17 guilty.

18 Signed by foreperson James Coleman, number 78.

19 Ladies and gentlemen of the jury, if this is your verdict

20 so signify by raising your right hand.

21 THE COURT: Let the record reflect that each juror has
22 indicated that that is his verdict.

23 Mr. Stampfle, will you require individual polling of the
24 jury?

25 MR. STAMPFLE: No, Your Honor.

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SENTENCE OF THE COURT

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1 THE COURT: Okay. Very well. Thank you very much.

2 SENTENCE OF THE COURT:

3 All right. Mr. Holford, upon which offenses the
4 Defendant having been convicted of all offenses, does the
5 State take the position that he must be sentenced to life
6 without parole?

7 MR. HOLFORD: Your Honor, his prior record is a CSC with
8 a minor second, a burglary second, a burglary third, indecent
9 exposure, shoplifting, giving false information to police, CDV
10 first, simple possession of marijuana DUS second and CDV
11 third. The State would be relying on the conviction for CSC
12 with a minor second degree.

13 THE COURT: It's the most serious violent?

14 MR. HOLFORD: It is the most serious offense. It is a
15 violent offense. The Defendant was served notice of intent to
16 seek life under 17-25-45 on July 23rd, 2013.

17 THE COURT: All right. May I see the notice of intent to
18 seek life?

19 MR. HOLFORD: Yes, Your Honor. And this is for the
20 Clerk.

21 THE COURT: Okay. And you moved forward or served notice
22 with the attempted murder as well as the burglary in the first
23 degree?

24 MR. HOLFORD: Both of them. That way if either came back
25 guilty it would be the second most serious one.

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SENTENCE OF THE COURT

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1 THE COURT: The notice I see is dated 7/23/2013. When
2 was notice provided to counsel?

3 MR. HOLFORD: On that day in Court in front of Judge
4 John.

5 THE COURT: Mr. Stampfle, do you challenge that date?

6 MR. STAMPFLE: No, Your Honor, I do not challenge that
7 date. That was the date of arraignment.

8 THE COURT: All right. I will make the notice a record
9 -- part of the record in this case.

10 All right. Mr. Holford?

11 MR. HOLFORD: Yes, Your Honor.

12 COURT'S EXHIBIT NUMBER FIVE

13 MARKED FOR IDENTIFICATION

14 THE COURT: What evidence do you have of his prior
15 conviction for a most serious violent offense?

16 MR. HOLFORD: Your Honor, under -- under the Statute 17-
17 25-45, CSC second with a minor is a most serious offense. If
18 convicted of two most serious offenses, which this conviction
19 for burglary first or even the attempted murder is a second
20 most serious. The legislature has stated that if convicted of
21 two most serious offenses, the State can proceed and serve
22 notice of intent to seek life without parole.

23 THE COURT: All right. Mr. Stampfle, he has handed up
24 for my review a certified copy. Mr. Holford?

25 MR. HOLFORD: Yes, Your Honor.

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SENTENCE OF THE COURT

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1 THE COURT: This is for a Tyrone Jenkins.

2 MR. HOLFORD: Your Honor, I can address that issue.

3 THE COURT: Okay.

4 MR. HOLFORD: His birth name was Tyrone Jenkins and I
5 have prepared also for the Court other sentence sheets as well
6 as the indictments in this case. I'll start with the
7 indictments in this case. They named him Abdul Furquan, date
8 of birth is [REDACTED] 1973, Social Security Number [REDACTED].

9 THE COURT: Do you have anything that would show that he
10 has changed his name legally?

11 MR. HOLFORD: Your Honor, I have multiple sentence sheets
12 with the same date of birth, with that Tyrone Jenkins name and
13 the same social security number. I also have an NCIC record,
14 which shows the same FBI number for him and these being all
15 aliases Abdul Furquan.

16 THE COURT: Mr. Stampfle, is your client, was he formerly
17 known as Tyrone Jenkins?

18 MR. STAMPFLE: It's my understanding that he was, Your
19 Honor.

20 THE COURT: All right. Very well. Do you challenge the
21 State's position that on or about May the 12th of 2000 --
22 1992, that he was in fact convicted of criminal sexual conduct
23 with a minor in the second degree or is that second degree or
24 second offense?

25 MR. HOLFORD: It was second degree.

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SENTENCE OF THE COURT

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1 THE COURT: Okay. All right. Now I'll hear you further?

2 MR. HOLFORD: I just have one more thing. Under that
3 Statute 17-25-45, criminal sexual conduct with a minor in the
4 second degree ---

5 THE COURT: If it were consensual ---

6 THE COURT: --- if it were consensual and that was stated
7 on the record that it would not apply as a most serious. I
8 have the old file and what he pled to was the Defendant did
9 tear the clothes from Tasha Rochelle Little, a twelve-year-old
10 female and then did force said victim to have sexual
11 intercourse with him. The Defendant is seventeen years of
12 age. Said acts constitute criminal sexual conduct in the
13 second degree. The facts in this affidavit were given by the
14 affiant by said twelve-year-old victim. Those are the facts
15 to which he pled guilty and that is not consensual.

16 THE COURT: All right. Let me hear from Mr. Stampfle.

17 MR. STAMPFLE: Your Honor, it's my client's understanding
18 and he -- he is a registered sex offender. He does register;
19 he is registered as a non-risk offender. He's not -- it --
20 the indictment and I have read the statutes, Your Honor, the
21 sentencing sheet just states that it is a conviction for CSC
22 second with a minor. My client -- I have spoken with my
23 client with respect to this at great length. His, his
24 contention is that that is how he registers as a non-violent
25 offender and therefore, the Court should consider that.

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1 THE COURT: Well, you understand that the Court has no
2 discretion upon a showing that he has been convicted of among
3 other things, criminal sexual conduct in the second degree
4 with a -- a minor. Unless it can be shown that and I can make
5 a specific finding that it was consensual. Now the
6 allegations of the indictment certainly do not support that.
7 Do you have anything to offer that would indicate that was
8 consensual sex with a twelve-year-old minor?

9 MR. STAMPFLE: Your Honor, I've pulled the file as well.
10 I obtained it earlier this week. No, Your Honor, I do not.

11 THE COURT: All right. Anything further in regard to
12 whether or not this Court is required to enter a conviction on
13 the burglary in the first degree as well as the attempted
14 murder of life without the possibility of parole?

15 MR. STAMPFLE: I renew my objections I made earlier for
16 the record.

17 THE COURT: As to the constitutionality of the ---

18 MR. STAMPFLE: And for the record takes exception to the
19 Court's ruling.

20 THE COURT: And again I think that our Supreme Court has
21 addressed this in the Rogers case, the Jones case and Johnson
22 case and have found that to pass muster as being
23 constitutional. Furthermore, the consideration of twenty,
24 twenty-one-year-old conviction seems to be appropriate under
25 the Rogers decision. So again, I would deny those motions.

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SENTENCE OF THE COURT

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1 Anything further before I sentence.

2 MR. HOLFORD: Just one thing. On that CSC second, he was
3 convicted for ten years.

4 THE COURT: Okay.

5 MR. HOLFORD: I think that further shows that it was not
6 consensual.

7 THE COURT: He was sentenced.

8 MR. HOLFORD: He was sentenced.

9 THE COURT: All right. I'll here you and sentences are
10 mandatory. I find that he has been convicted on a prior date
11 of a most serious violent crime, a most serious offense
12 actually is all I have to determine and that that sentence or
13 that conviction does support the requirement that he be
14 sentenced to life without the possibility of parole.

15 Anything further?

16 MR. STAMPFLE: Not at this time.

17 THE COURT: All right. Please stand. Mr. Furquan.

18 MR. HOLFORD: Your Honor, may I approach?

19 THE COURT: Yes. Mr. Furquan do you have anything that
20 you want to tell me?

21 MR. FURQUAN: No, sir.

22 THE COURT: All right, sir. As to the offense of
23 possession of a firearm by a person convicted of a violent
24 felony, the sentence of the Court is five years.

25 As to the burglary in the first degree, the sentence of

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1 the Court is that you be confined to the State Department of
2 Corrections for the balance of your natural life without the
3 possibility of parole.

4 As to the offense of attempted murder, the sentence of
5 the Court is that you be confined to the State Department of
6 Corrections for the balance of your natural life without the
7 possibility of parole.

8 Thank you.

9 MR. HOLFORD: Thank you, Your Honor.

10 MR. STAMPFLE: Thank you, Your Honor.

11 COURT'S EXHIBIT NUMBER SIX

12 MARKED FOR IDENTIFICATION

13 (REPORTER'S NOTE: Defendant removed from courtroom)

14 THE COURT: Ladies and gentlemen of the jury, you
15 probably just saw how serious these cases are. It's never
16 easy to judge a fellow citizen, it's always difficult.
17 However, you can leave here knowing that you have participated
18 in one of the most important duties that -- that you can have
19 as a citizen. You all listened attentively. I think that you
20 were very much in tune of what was being offered into
21 evidence. You have deliberated and you have returned a
22 verdict that is consistent with the evidence and no one can
23 criticize you for that.

24 Again, I want to thank you so much for being willing to
25 come to this Court. Although you were subpoenaed to do so and

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BY THE COURT

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1 didn't have much choice, we still thank you for your
2 willingness to serve on this jury.

3 The Defendant, as I told you at the beginning of this
4 trial, had the right to have this case determined by a jury of
5 his peers and I think that he has had that.

6 I am from here in Horry County, grew up here in Horry
7 County and live in Horry County. I'm -- I might be found
8 anywhere in the county. I hope that you will remember me. I
9 may not remember you, but if you do see me out and about, I've
10 usually got blue jeans and a baseball cap on, but if you do
11 see me, please don't hesitate to -- to approach me and speak
12 to me. I love to hear from my jurors. I love to have them
13 share their experience on jury duty. Do any of you have any
14 questions or any of you have any, any comments you'd like to
15 make about your jury service? You may have a little bit of
16 confusion or -- or a question about what just transpired. Our
17 legislature years ago passed what's called a two and a three
18 strike rule. They selected a series -- certain offenses and
19 some they designated as serious. Some they designated as most
20 serious. A most serious offense would be something like
21 criminal sexual conduct with a minor, murder, burglary in the
22 first degree, things of those nature. Upon conviction of a
23 second most serious offense, and they're usually violent
24 offenses, a person, if the Solicitor decides to proceed on the
25 statute, can serve notice on the Defendant and the Judge then

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BY THE COURT

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1 has to impose a mandatory sentence of life without parole.
2 They get no parole, no credit for earned -- or earned work
3 credits, no good time, nothing. It is a natural life
4 sentence. If there are perhaps two serious, just serious
5 offenses, you get that third strike, but on the third strike,
6 the same thing can happen and that's what we had in this case.
7 Of course that was not something we needed to tell you before
8 you deliberated. That would have been inappropriate. You
9 didn't need to know that. But that's why he received the
10 sentence that he did.

11 Again, thank you for being here. I hope to see you
12 again. You are done for the week and you can use this week as
13 your jury service week for the next three years. Thank you
14 very much.

15 Mr. Ropp, would you help them out?

16 BAILIFF: Yes, sir.

17 THE COURT: All right. I want to make sure the record is
18 clear. Are there any other motions or anything else that we
19 need to address?

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

21 THE COURT: Mr. Stampfle?

22 MR. STAMPFLE: No, sir.

23 THE COURT: All right. Very well. We are sine die.

24 MR. HOLFORD: Thank you, Your Honor.

25 (ADJOURNED - 1:06 P.M.)

ORIGINAL

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Abdul Furquan, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 18-19, 2013.

I do hereby certify that I am neither of kin, counsel,
nor interest to any party hereto.

Ray L. Allen

Kay H. Richardson, CVR
Official Reporter

November 11, 2013.

blater Furquan 267
13-65-26-2057, 2058, 2059

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

CL ID : HYMAN 9-18

COURTROOM JAR

DESCRIPTION : HYMAN 9-18

Sorted by: Random Nbr

Trial

1	Cervi, Christine E	69	W	F	()	X	()	
✓ 2	Grzymalski, Lenore G	157	W	F	()	()	()	
3	Suggs, Jeffery A	352	W	M	()	X	()	favorable
4	Gengler, Linda I	139	W	F	()	X	()	
5	Blanton, Johnnie R	33	W	M	()	X	()	
✓ 6	Mcenasby, Francis	237	W	M	()	()	()	
✓ 7	Bull, Daniel C	54	W	M	()	()	()	
8	Diaz, Aida R	102	H	F	()	X	()	
✓ 9	Coleman, James A (foreman)	178	W	M	()	()	()	
10	Hunt, Tiffany D	189	B	F	()	()	()	
11	Tovornik, Mary W	369	W	F	()	X	()	vet
✓ 12	Auld, Debra A	8	W	F	()	()	X	Saturday
✓ 13	Haskins, Arthur W Jr.	169	W	M	()	()	()	
14	Saber, Samantha M	306	W	F	()	X	()	Friend of Large
15	Lucas, Robbie K	216	A	M	X	()	()	
16	Martin, Julie A	228	W	F	()	X	()	hit carjack
✓ 17	Burroughs, Mark P	60	W	M	()	()	()	
✓ 18	Bowens, Deloris W	38	B	F	()	()	()	
19	Eells, Ina R	115	W	F	()	X	()	
✓ 20	Harris, John E	167	W	M	()	()	()	
✓ 21	Rabon, Samentha S	289	W	F	()	()	()	
✓ 22	Reid, Brenda V	294	W	F	()	()	()	
23	Pugia, William F	287	W	M	X	()	()	
✓ 24	Lopez, Amy S	215	W	F	()	()	()	

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

EL ID : HYMAN 9-18

COURTROOM JAR

DESCRIPTION : HYMAN 9-18

Sorted by: Random Nbr

Trial

25	Sands, Crystal J	309	W	F	()	~~()~~	()	
26	Strickland, Melissa G	349	W	F	()	()	()	
27	Thompson, Lowell F Jr.	361	W	M	()	()	()	
28	Wilson, Chiquita B	392	B	F	()	()	()	
29	Waters, Theodore A	383	W	M	()	()	()	
30	Amaral, Deborah A	3	W	F	()	()	()	
31	Bowman, Robin D	39	W	F	()	()	()	~~*~~ heard on news
32	Myers, Mildred A	252	W	F	()	()	()	
33	Jones, Michael K	199	W	M	()	()	()	
34	Black, Angela L	29	W	F	()	()	()	
35	Dipalma, Bonnie A	104	W	F	()	()	()	
36	Smith, Teresa R	329	W	F	()	()	()	
37	Painer, Geraldine M	265	W	F	()	()	()	
38	Gagnon, Michelle F	135	W	F	()	()	~~()~~	son killed
39	Osbahr, Kendra L	260	W	F	()	()	()	
40	Griffin, Robert W	155	W	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ABDUL FURQUAN,

APPELLANT

APPELLATE CASE NO. 2013-002075

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge violate the Eighth Amendment's bar against cruel and unusual punishments by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime?

STATEMENT OF THE CASE

An Horry County grand jury indicted Appellant for burglary in the first degree (2012-GS-23-2057), attempted murder (2012-GS-26-2058), and unlawful possession of a firearm by a person convicted of a violent offense (2012-GS-26-2059) on May 24, 2012. R. 187-188; R. 190-191; R. 193-194. The state, represented by Joshua Holford, called the case for trial before the Honorable Larry B. Hyman, Jr. and a jury on September 18, 2013. R. 1. Ryan Stampfle represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 177, lines 7-17. Judge Hyman sentenced Appellant to life imprisonment for burglary in the first degree and attempted murder. He also sentenced Appellant to five years' imprisonment for the firearm. R. 183, line 9 – R. 184, line 7; R. 189; R. 192; R. 195.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

The trial judge violate the Eighth Amendment's bar against cruel and unusual punishments by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime.

Relevant facts

On October 16, 2011, Taylor Smith picked up Appellant, Jeremy Fleming, Tyler Topolski, and Samantha Topolski. R. 21, line 19 – R. 22, line 7; R. 32, line 20 – R. 33, line 14; R. 50, lines 7-18. The group drove to the Ivystone Apartments. R. 22, lines 8-10; R. 33, lines 23-25; R. 52, lines 1-3; R. 54, lines 6-8. Some testified the purpose of the trip was for Jeremy to get money that was owed to him while others testified the purpose of the trip was for the purchase of marijuana. R. 22, lines 2-3; R. 32, lines 24-25; R. 33, line 6; R. 34, lines 19-22; R. 44, lines 13-20; R. 52, lines 4-6; R. 56, line 24 – R. 57, line 8; R. 110, lines 19-22; R. 114, lines 23-24. Tyler, Samantha, and Taylor stayed in the car while Appellant and Jeremy went into the apartment complex. R. 22, lines 10-22; R. 34, lines 6-18; R. 35, lines 5-7; R. 42, lines 17-22; R. 52, lines 9-11; R. 54, lines 9-14; R. 58, lines 16-25. Jeremy was wearing gloves with skulls on them. R. 23, lines 3-7; R. 29, lines 10-22; R. 45, lines 14-21; R. 115, lines 11-14.

Eric Collins and David Moran shared an apartment at Ivystone. R. 126, lines 8-11; R. 13, lines 16-20. On the evening of October 16, 2011, Eric was in his room taking a nap. R. 13, line 21 – R. 14, lines 4. Moran heard a knock at his door. R. 127, lines 5-13. Unable to see through his peephole because the lights in the hallway were not functioning, Moran opened his door to determine who had knocked. R. 127, lines 14-23. He saw two men

wearing bandanas standing outside his door. R. 127, lines 23-25; R. 128, lines 19-20; R. 130, lines 14-17; R. 130, lines 22-23. He tried to shut the door, but one of the men got his foot inside the door and prevented the closure. While Moran tried to shut the door, one of the men punched him. R. 128, lines 1-7; R. 129, lines 6-7. Moran stumbled backward. R. 128, line 7. When Moran opened his eyes he saw a man standing over him with a silver revolver. He heard a pop. R. 128, lines 7-11. Moran's next memory was of sitting in the emergency room. R. 129, lines 9-22. Moran had been shot in the head. R. 128, lines 12-13; R. 130, lines 2-7.

Eric heard a "sound [like] a light bulb makes when it pops," only "four times louder." R. 14, lines 4-6. He woke up, grabbed his rifle, and walked toward the living room. R. 14, lines 6-11. Eric saw two males standing in the doorway. R. 14, lines 11-12. He saw one of the men had a gun pointing in the general direction of Moran. R. 14, lines 23-17. When the two males saw Eric, they ran. R. 14, lines 20-22. Eric was unable to identify the men because they wore hoodies and bandanas. R. 14, lines 18-19; R. 15, lines 3-6; R. 17, line 23 – R. 18, line 5; R. 18, lines 18-23. Because Eric arrived after the shot was fired, he could not say the individuals he saw in his home had fired the shot at Moran. R. 20, lines 3-9.

Appellant and Jeremy ran back to the car where Tyler, Samantha, and Taylor sat waiting.¹ R. 23, lines 17-21; R. 24, lines 17-21; R. 36, lines 3-6; R. 36, line 22 – R. 37, line

¹ Jeremy Fleming, who had been convicted of attempted murder and burglary arising out of this incident, testified at Appellant's trial. R. 110, lines 13-16. He claimed that when he and Appellant approached the apartment door, he, Jeremy, ran as soon as the door was opened. R. 110, line 22; R. 111, line 9; R. 115, lines 3-4. Jeremy had a prior conviction for assault and battery of a high and aggravated nature involving his entering a man's home and cutting off a man's fingers. R. 121, line 20 – R. 122, line 19.

2; R. 52, lines 15-16. The group then returned to the home shared² by Appellant and Jeremy where Jeremy threatened to kill anyone who spoke about the events of that evening. R. 24, line 22 – R. 25, line 3; R. 37, line 9 – R. 38, line 2; R. 54, lines 22-24; R. 55, lines 18-21; R. 112, lines 3-13. Jeremy also told Samantha, his girlfriend at the time, that he had “shot a dude in the head.” R. 43, lines 16-19. Several days later, Samantha and Taylor went to the police and gave statements incriminating Appellant and Jeremy in the shooting of Moran. R. 40, lines 4-20; R. 57, lines 19-23; R. 60, lines 15-24.

During the investigation, the police found a revolver at the home shared by Appellant and Jeremy. R. 76, lines 2-18; R. 77, lines 2-9. Additionally, the police found a pair of gloves with a skeleton design on them hidden behind the couch in the residence. R. 74, lines 10-16; R. 85, lines 17-23. Forensic testing on the gloves revealed the presence of gunshot residue. R. 108, lines 3-23

Sentencing

On July 23, 2013, the state served Appellant with notice of its intent to seek a sentence of life without parole if Appellant were convicted of burglary in the first degree and/or attempted murder. According to the state’s notice, Appellant had been convicted of criminal sexual conduct with a minor in the second degree, which would serve as a triggering offense of the recidivist statute. R. 178, line 3 – R. 179, line 7; R. 185.

Prior to the start of trial, Appellant moved to dismiss the state’s notice based on several theories, including separation of powers and the Eighth Amendment’s ban on cruel and unusual punishment in light of the remoteness of the prior offense. R. 3, line 15 – R. 4,

² Jeremy Fleming denied living in the residence. R. 109, line 24 – R. 110, line 2; R. 115, lines 15-17.

line 19. Specifically, Appellant objected to the prior conviction being used because “this matter is twenty years old” and occurred when Appellant was only seventeen-years old. R. 6, lines 20-21. The judge reserved ruling on the motion at that time. R. 6, lines 22-24.

At the conclusion of the presentation of evidence, the judge returned to Appellant’s argument regarding the constitutionality of the recidivist statute as applied in his case. The judge found the prior conviction was not “too remote to be included considering the legislative intent.” Thus, he permitted the state’s notice of intent to seek life imprisonment without the possibility of parole to stand. R. 137, line 6 – R. 138, line 2. Appellant renewed his motion after the state rested its case. R. 143, line 23 – R. 144, line 11. The judge again overruled the motion. R. 144, line 12 – Supp. R. 1, line 1.

During sentencing, Appellant again renewed his motion to prohibit the imposition of a sentence of life imprisonment without the possibility of parole; however, the judge overruled the motion again. R. 182, lines 15-25. The prosecutor provided the judge with a certified copy of a sentence sheet showing Appellant had been convicted on May 12, 1992 of criminal sexual conduct with a minor in the second degree. R. 179, lines 14-24; R. 186. Thereafter, the judge sentenced Appellant to life imprisonment for attempted murder and burglary in the first degree. R. 183, line 25 – R. 184, line 7; R. 189; R. 192; R. 195.

Discussion

The recidivist statute under which Appellant was sentenced requires a sentence of life imprisonment without the possibility of parole if the person has one or more prior convictions for a most serious offense. S.C. Code Ann. § 17-25-45(A)(1)(a). Attempted murder, burglary first degree, and criminal sexual conduct with a minor are “most serious

offenses” pursuant to S.C. Code Ann. § 17-25-45(C)(1). Further, the statutory scheme invests discretionary authority in invoking the recidivist statute solely in the solicitor. S.C. Code Ann. § 17-25-45(G). Finally, the statute defines “a prior or previous conviction” to mean “the defendant has been convicted of a most serious ... offense ... on a separate occasion, prior to the instant adjudication.” S.C. Code Ann. § 17-25-45(F).

In State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), this Court addressed a defendant’s allegation that permitting remote convictions to serve as triggering offenses violated the federal constitution’s ban against cruel and unusual punishment. Specifically, this Court held that Rogers’ conviction nineteen years before the case in which the state sought to impose a life sentence did not violate the Eighth Amendment. Id. at 188, 603 S.E.2d at 915. In arriving at this conclusion, this Court relied upon State v. Burdette, 335 S.C. 34, 515 S.E.2d (1999) in which the Supreme Court affirmed a defendant’s life without parole sentence. Rogers, 361 S.C. at 188, 603 S.E.2d at 915. Notably, this Court explained the Supreme Court affirmed the sentence where the prior offense occurred seventeen years before the triggering offense. Id. However, the Burdette Court did not address whether the sentence imposed violated the Eighth Amendment based on the remoteness of the prior conviction; rather, the Court addressed whether the defendant received adequate notice of the charges against him and whether the recidivist statute violated the separation of powers doctrine. Burdette, 335 S.C. 37-38, 515 S.E.2d at 527. Thus, the premise of Rogers is flawed, and it is necessary to analyze whether using a remote prior conviction to enhance a sentence violates the Eighth Amendment.

The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments

inflicted.” U.S. Const. amend. VIII. The Eighth Amendment is applicable to the states through the Fourteenth Amendment. Robinson v. United States, 370 U.S. 660 (1962).

“[W]hat constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by ‘evolving standards of decency that mark the progress of a maturing society.’” State v. Pittman, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007). Likewise, the “‘proportionality’ bedrock of the Eighth Amendment jurisprudence” is equally as important. Id. at 564-565, 647 S.E.2d at 163. “It is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” Atkins v. Virginia, 536 U.S. 304, 311 (2002). “The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” Miller v. Alabama, 132 S.Ct. 2455, 2463 (2012)(quoting Roper v. Simmons, 543 U.S. 551, 560 (2005)). The Miller Court emphasized that “proportionality is central to the Eighth Amendment.” Id. (quoting Graham v. Florida, 560 U.S. 48(2010)).

The United States Supreme Court has held a state may punish a recidivist more severely than it punishes a first offender. Witte v. United States, 515 U.S. 389, 400 (1995). However, in order to pass constitutional muster, “the enhanced punishment imposed for the [present] offense ‘is not to be viewed as ... [an] additional penalty for the earlier crimes,’ but instead as ‘a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.’” Id. (quoting Gryger v. Burke, 334 U.S. 728, 732 (1948)); see also Moore v. Missouri, 159 U.S. 673, 677 (1895)(explaining that under a recidivist statute, the punishment for the last offense is “‘rendered more severe in consequence of the situation into which the party had previously brought himself’”).

Legislation aimed at recidivism attempts to encourage offenders to stay out of trouble by punishing those who refuse to be deterred even after a conviction. Commonwealth v. Eyster, 585 A.2d 1027 (Pa. Super. Ct. 1991). A recidivist is a person who continues to commit criminal acts after incarceration for an earlier offense, and recidivist statutes punish those who show they are incorrigible. Shannon Thorne, One Strike and You're Out: Double Counting and Dual Use Undermines the Purpose of California's Three-Strikes Law, 34 U.S.F.L. Rev. 99 (1999).

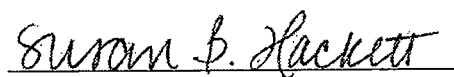
Using a conviction that is very old does nothing to fulfill the deterrent purpose of recidivist statutes. Here, the conviction used to enhance Appellant's sentence was two decades old and involved criminal conduct completely unlike the conduct for which he was being sentenced. If the legislature sought to deter continued criminal conduct through enactment of the recidivist statute, then the scenario presented in the instant matter could not have come within the realm of contemplation. Appellant was convicted of attempted murder and burglary, but his sentence for those offenses was enhanced by his conviction for criminal sexual conduct with a minor when he was only seventeen-years old. The alleged criminal conduct was quite dissimilar. Further, Appellant had been deterred from engaging in serious criminal activity for over twenty years. His subsequent conviction for attempted murder and burglary twenty years later could not be construed as the actions of a man who was incorrigible. Rather, Appellant had learned from his prior conduct as exemplified by his not engaging in serious criminal activity during that period. South Carolina imposes time restrictions when considering recidivism in other contexts and should do so in the two strikes and three strikes arena as well. See S.C. Code Ann. § 56-1-1020 (defining a habitual offender as one who has accumulated the enumerated convictions during a three-year

period); S.C. Code Ann. § 44-53-470 (imposing time limits for “second or subsequent” offenses for the drug laws); S.C. Code Ann. § 56-5-2930(E)(restricting enhanced sentences for driving under the influence to those convictions occurring within a period of ten years).

CONCLUSION

Appellant respectfully requests this Court vacate his sentences for attempted murder and burglary in the first degree and remand for a new sentencing proceeding on those convictions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
Appellate Defender

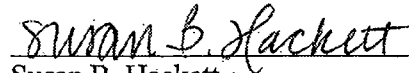
ATTORNEY FOR APPELLANT

This 25th day of April, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 25, 2016



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

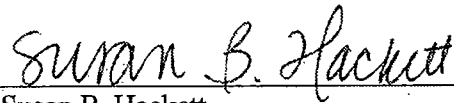
V.

ABDUL FURQUAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of April, 2016.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of April, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2013-002075

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly sentenced Appellant to a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant was convicted of a second "most serious" offense during his lifetime, and the enhancement of Appellant's sentence based on his prior 1992 conviction for a "most serious" offense did not render his life without parole sentence unconstitutional in any way.

STATEMENT OF THE CASE

In October of 2011, Appellant Abdul Furquan was arrested following an investigation into a home invasion and shooting that occurred in Myrtle Beach, South Carolina. In May of 2012, the Horry County Grand Jury indicted Appellant for first-degree burglary, attempted murder, and unlawful possession of a firearm by a person convicted of a violent offense. Prior to trial, the solicitor served timely notice on Appellant indicating the State would seek a sentence of life without parole upon conviction based on Appellant's prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor. On September 18, 2013, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable Larry B. Hyman, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45 for the first-degree burglary and attempted murder convictions and a five-year term of imprisonment for the unlawful possession of a firearm by a person convicted of a violent offense conviction. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of October 16, 2011, David Moran was playing games on his computer in the living room of his apartment when he heard a knock at the apartment door. (R. p. 14; pp. 126-127). Believing it to be a friend he was expecting to come over, Moran opened the door and encountered two men wearing bandanas over their faces. (R. pp. 126-127; p. 133). Surprised, Moran quickly tried to shut the door, but the men forced their way into the apartment. (R. pp. 127-129). One of the men then suddenly pulled out a silver revolver and shot Moran in the head. (R. p. 128).

Upon hearing the gunshot, Moran's roommate, Eric Collins, immediately grabbed his rifle, ran out of his bedroom, and went to investigate the loud popping noise he heard come from the living room area. (R. pp. 13-14; pp. 19-20). When he entered the living room, he saw the men with bandanas over their faces inside of the apartment, and one of the men was holding a silver revolver while standing over Moran, who was sprawled out on the floor. (R. pp. 14-15; p. 17). At that point, the armed man looked at him and exclaimed, "Oh, shit." (R. p. 14). The intruders then turned and rapidly fled from the apartment. (R. p. 14).

Shortly thereafter, law enforcement officers responded to the scene of the home invasion and shooting, and Moran was quickly transported to the hospital with a fractured skull. (R. pp. 62-63; pp. 129-130). Detective Allen Large of Horry County Police Department then began an investigation into the incident, but he was initially unable to develop any leads as to the identities of the perpetrators. (R. pp. 62-65). However, a few days after the shooting, two individuals, Samantha Topolski and Taylor Smith, voluntarily came forward to the authorities and provided information implicating

Appellant Abdul Furquan and his accomplice, Jeremy Fleming, in the crimes. (R. p. 40; p. 43; p. 57; pp. 60-61; p. 65).

In response, Detective Large obtained arrest warrants for Appellant and Fleming along with a search warrant for the trailer they shared. (R. p. 46; pp. 54-55; pp. 65-67; p. 88; p. 94). The Horry County Police Department's Special Response Team then executed the warrants at the trailer and arrested Appellant and Fleming inside. (R. p. 77). Thereafter, in the ensuing search on the premises, officers located and secured two bandanas, two sets of gloves, and a silver .38-caliber revolver that was thrown from the trailer during the execution of the warrants.¹ (R. pp. 73-74; p. 76; p. 83; p. 106-107). Appellant was subsequently indicted for a number of offenses, including the "most serious" offenses of first-degree burglary and attempted murder, and he proceeded to trial. (R. p. 2; pp. 187-195).

At the outset of trial, defense counsel moved for the trial judge to "dismiss" the State's "attempt" to seek a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45.² (R. p. 3). In support of that motion, defense counsel argued the recidivist offender statute violated the separation of powers doctrine by permitting the solicitor to make the decision as to whether to pursue a life sentence. (R. pp. 3-4). Furthermore, defense counsel asserted Appellant's prior conviction was too old to be fairly and reasonably used for enhancement purposes since it occurred in 1992 and, upon inquiry from the trial judge, indicated his argument could be based on the cruel and unusual

¹ Upon subsequent analysis, Investigator Jill Domogauer of the Horry County Police Department determined gunshot residue was present on the gloves. (R. pp. 97-98; p. 108).

² Based on Appellant's prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor, the solicitor served Appellant with timely notice prior to trial of the State's intention to seek sentences of life without parole pursuant to S.C. Code Ann. § 17-25-45 in the event the jury convicted Appellant of his most recent "most serious" crimes. (R. pp. 4-5; p. 178; pp. 185-186).

punishment clause. (R. p. 4). In response, the solicitor noted Appellant had previously been convicted of the "most serious" offense of second-degree criminal sexual conduct with a minor and, thus, was subject to a life sentence pursuant to the recidivist offender statute regardless of when his prior conviction occurred. (R. p. 4; p. 7). After considering the arguments of counsel, the trial judge took the matter under advisement. (R. p. 6).

Subsequently, during trial, Moran and Collins testified about their terrifying experiences on the night of the incident, and Detective Large recounted the details of his investigation that resulted in Appellant's arrest along with the discovery of incriminating evidence in Appellant's home. (R. pp. 13-20; pp. 62-83; p. 108; pp. 126-133). Additionally, Smith, Topolski, and Topolski's younger brother were all called as witnesses for the State. (R. pp. 21-22). During their testimony, they each confirmed they accompanied Appellant and Fleming to the victim's apartment building on the night of the incident, Appellant and Fleming left the vehicle they arrived in and went towards the building, they heard a gunshot shortly thereafter, and then Appellant and Fleming quickly ran back to the car.³ (R. pp. 22-24; pp. 29-30; pp. 32-36; p. 42; pp. 50-52). After that, they all indicated Appellant used a silver revolver he was carrying to force Smith to drive them back to his trailer, and they further stated Appellant and Fleming then threatened to kill them if they said anything about what had occurred. (R. pp. 24-25; p. 30; pp. 36-37; pp. 54-55). Furthermore, Appellant's accomplice, Fleming, testified for the State, acknowledged he went to the victim's apartment on the night of the incident, claimed he did so to purchase marijuana, and stated he saw Appellant, who was wearing a bandana

³ During her testimony, Smith also noted Appellant and Fleming were wearing bandanas over their faces when they returned to the car after the shooting. (R. p. 53).

and gloves at the time, go towards the victim's apartment with a gun and knock on the door before the shooting occurred. (R. pp. 110-115). After that, Fleming claimed he ran from the scene while also denying he shot the victim. (R. p. 110; pp. 114-115). Fleming further noted he had been convicted of first-degree burglary and attempted murder based on his involvement in the incident. (R. p. 110).

At the conclusion of the State's case, the trial judge addressed and denied Appellant's earlier motion challenging the potential enhancement of his sentence pursuant to S.C. Code Ann. § 17-25-45 based on his prior "most serious" conviction.⁴ (R. pp. 137-138). In denying that motion, the trial judge cited to several cases, including State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), which rejected a similar challenge to the enhancement of a sentence, and indicated he did not believe Appellant's prior "most serious" conviction was too remote to be used for enhancement purposes in light of the legislative intent behind the recidivist offender statute. (R. p. 137).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 177). Following the verdict, the trial judge conducted sentencing proceedings, and the solicitor recounted Appellant's prior record, which included a conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor along with convictions for second-degree burglary, third-degree burglary, indecent exposure, shoplifting, providing false information to a law enforcement officer, several counts of criminal domestic violence, possession of marijuana, and driving under suspension.⁵ (R.

⁴ Later, after the State rested its case, defense counsel renewed his earlier challenge to the application of S.C. Code Ann. § 17-25-45, and the trial judge again denied defense counsel's motion. (R. p. 144).

⁵ Earlier during trial, the solicitor noted Appellant's "most serious" conviction for second-degree criminal sexual conduct with a minor occurred in 1992, which was the same year Appellant was convicted for second-degree burglary, while Appellant's other convictions occurred continuously between 1999 and 2009. (R. p. 136).

p. 177). Defense counsel then renewed his objection to the application of S.C. Code Ann. § 17-25-45, and, once again, the trial judge denied the motion. (R. p. 182). The trial judge then sentenced Appellant to terms of imprisonment of life without parole for first-degree burglary and attempted murder and five years for unlawful possession of a firearm by a person convicted of a violent offense. (R. pp. 183-184).

ARGUMENT

The trial judge properly sentenced Appellant to a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant was convicted of a second “most serious” offense during his lifetime, and the enhancement of Appellant’s sentence based on his prior 1992 conviction for a “most serious” offense did not render his life without parole sentence unconstitutional in any way.

Appellant contends his sentence of life without parole imposed after he was convicted of a second “most serious” offense during his lifetime constitutes cruel and unusual punishment. In support of that contention, Appellant maintains the trial judge was constitutionally forbidden from sentencing him to a mandatory sentence of life without parole because his prior “most serious” conviction was “very old” and, for that reason, allegedly could not have properly been used to enhance his sentence for his most recent crimes. Contrary to Appellant’s contentions, there is no constitutional prohibition against using a remote prior conviction for a “most serious” offense to enhance the sentence of an offender who chose to continue engaging in criminal conduct and committed a second “most serious” offense during his lifetime. In fact, consideration of prior convictions for “most serious” offenses regardless of their age is fully consistent with the underlying purpose of South Carolina’s recidivist offender statute, which was enacted to deter repeat offenders and protect society by incapacitating offenders who engage in serious criminal behavior on more than one occasion during their lifetimes. Therefore, the trial judge properly and correctly sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant, who was a recidivist offender due to his prior conviction for the “most serious” offense of second-degree criminal sexual conduct with a minor, was subsequently convicted of the “most serious” offenses of first-degree burglary and attempted murder. As a result, the trial judge committed no error in sentencing Appellant to life without parole for the “most serious”

crimes he most recently committed, and Appellant's sentence did not violate the constitutional prohibition against cruel and unusual punishment in any way. Appellant's convictions and sentence should be affirmed.

In criminal cases, a trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974); see State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Notwithstanding a trial judge's authority to impose a sentence falling within the statutory limits, both the United States Constitution and the South Carolina Constitution preclude a criminal defendant from being subjected to cruel and unusual punishment. See U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); S.C. Const. art. I, § 15 ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained."). Pursuant to those constitutional provisions, punishments must not be "inherently barbaric" and must be graduated and proportioned to the offense.

Graham v. Florida, 560 U.S. 48, 59 (2011); see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing it is a precept of justice punishment for a crime should be graduated and proportioned to the offense). However, the prohibition against cruel and unusual punishment does not require strict proportionality between the offense and the sentence. Harmelin v. Michigan, 501 U.S. 957, 1001 (1991). Instead, “it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” Id. (citations omitted).

In general, there are two classifications of cases involving challenges raised pursuant to the prohibition against cruel and unusual punishment: (1) cases involving a case-specific challenge to a term-of-years sentence based on the circumstances of a particular case; and (2) cases involving a categorical challenge to a particular sentencing practice. Graham, 560 U.S. at 59. On one hand, the appropriate analysis in cases involving a case-specific challenge involves first comparing the gravity of the offense to the severity of the sentence imposed. Harmelin, 501 U.S. at 1004-1005. Then, if that comparison leads to an inference of “gross” disproportionality, the court should compare the defendant’s sentence to the sentences of offenders who committed the same offense in the defendant’s jurisdiction along with the sentences of offenders who committed the same offense in other jurisdictions to determine if the defendant’s sentence actually was grossly disproportionate to his crime. Id. at 1005. Importantly though, no single factor is dispositive in the proportionality analysis. See Solem v. Helm, 463 U.S. 277, 291, n. 17 (1983) (“[N]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.”). On the other hand, the appropriate analysis in cases involving a categorical challenge to a particular sentencing practice involves the court first considering objective indicia of society’s standards to determine whether a national consensus exists against the challenged sentencing practice. Graham, 560 U.S.

at 61; see also Trop v. Dulles, 356 U.S. 86, 101 (1958) (“The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”). In making that determination, the court should look to legislation enacted by the legislatures in the United States because the clearest and most reliable expression of society’s contemporary values can be derived from such legislation. State v. Pittman, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007). Furthermore, the court making such a determination should remember that “[i]t is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it.” State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2008); see Gregg v. Georgia, 428 U.S. 153, 175 (1976) (“[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.”). Next, after determining whether a national consensus exists against a particular sentencing practice, the court “must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” Graham, 560 U.S. at 61. Critically, that determination should be “guided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose[.]’ ” Id. (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

In the case sub judice, Appellant was convicted of the “most serious” offenses of first-degree burglary and attempted murder after he had previously been convicted of the

“most serious” offense of second-degree criminal sexual conduct with a minor on a separate occasion in 1992. See S.C. Code Ann. § 17-25-45(C)(1) (identifying first-degree burglary, attempted murder, and criminal sexual conduct with a minor as “most serious” offenses). Under those circumstances, Appellant qualified as a recidivist offender in South Carolina, and the trial judge was required to sentence Appellant to a term of life imprisonment without the possibility of parole pursuant to our recidivist offender statute. See S.C. Code Ann. § 17-25-45(A)(1) (mandating a person convicted of a “most serious” offense who has previously been convicted of a “most serious” offense on a separate earlier occasion at some point during that person’s lifetime must be sentenced to life imprisonment without the possibility of parole). Accordingly, the trial judge properly sentenced Appellant to a term of imprisonment consistent with the sentencing limits established by the legislature for his offenses under the circumstances of his case. See State v. Conally, 227 S.C. 507, 510, 88 S.E.2d 591, 593 (1955) (“This court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute, unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive.”).

Despite that fact, Appellant contends on appeal his sentence of life imprisonment without the possibility of parole was unconstitutional because it allegedly constitutes cruel and unusual punishment. In making that contention, it is unclear from Appellant’s appellate argument whether he is raising a challenge to his individual sentence based on the specific circumstances of his case or raising a categorical challenge to South Carolina’s recidivist offender statute based on the fact it does not restrict a sentencing judge from considering prior convictions that are “remote.” Regardless of the grounds

upon which Appellant is challenging his sentence on appeal, Appellant's sentence of life without parole did not constitute cruel and unusual punishment.

Initially, to the extent Appellant is raising a challenge to his individual sentence based on the specific circumstances of his case, Appellant's sentence of life without parole clearly did not violate the constitutional prohibition against cruel and unusual punishment. Critically, by carrying out his most recent crimes, Appellant committed a number of "grave" offenses that – irrespective of the fact they were committed by a recidivist offender – exposed him to a maximum potential term of imprisonment of life imprisonment plus thirty-five years even without the application of any statutory sentencing enhancement provisions. See S.C. Code Ann. § 16-3-29 (mandating a sentence of up to thirty years for attempted murder); S.C. Code Ann. § 16-11-311 (mandating a term of imprisonment of fifteen years to life for first-degree burglary); S.C. Code Ann. § 16-23-500 (mandating a sentence of up to five years for unlawful possession of a firearm by a person convicted of a violent offense). Considering those circumstances coupled with the fact Appellant was not a first-time offender and, instead, had previously committed a "most serious" offense along with numerous other offenses during his lifetime, his aggregate individual sentence of life without parole was in no way disproportionate – or grossly disproportionate – to the horrendous crimes he most recently committed and did not constitute cruel and unusual punishment despite the fact Appellant had not been convicted of any other "most serious" offenses since 1992. See State v. White, 349 S.C. 33, 37, 562 S.E.2d 305, 306-307 (2002) ("Given that a life sentence is possible for even first offense first-degree burglary convictions, a life sentence without parole for a recidivist with one or more previous convictions of most serious offenses does not constitute cruel and unusual punishment."); see also United

States v. Rodriguez, 553 U.S. 377, 385 (2008) (“[A]n offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation.”); Lockyer v. Andrade, 538 U.S. 63, 76 (2003) (“The gross disproportionality principle reserves a constitutional violation for only the extraordinary case.”); State v. Rogers, 361 S.C. 178, 188, 603 S.E.2d 910, 915 (Ct. App. 2004) (rejecting Rogers’s contention his life without parole sentence constituted cruel and unusual punishment due to the fact his earlier “most serious” conviction occurred nineteen years earlier); see generally Ewing v. California, 538 U.S. 11, 25 (2003) (“Recidivism has long been recognized as a legitimate basis for increased punishment.”); Solem, 463 U.S. at 296 (“[A] State is justified in punishing a recidivist more severely than it punishes a first offender.”).

Likewise, to the extent Appellant is raising a categorical challenge to S.C. Code Ann. § 17-25-45 based on the fact it permits consideration of a prior conviction for enhancement purposes regardless of the age of the prior conviction, South Carolina’s recidivist offender statute is not unconstitutional and was not applied in an unconstitutional manner in Appellant’s case. Significantly, South Carolina’s recidivist offender statute – like numerous other recidivist offender statutes enacted by legislatures throughout the history of the United States – was designed to deter and incapacitate recidivist offenders who demonstrate their danger to society by engaging in criminal behavior on multiple occasions throughout their lifetimes. See Rummel v. Estelle, 445 U.S. 263, 284 (1980) (“[The] primary goals of [a recidivist statute] are to deter repeat offenders and, at some point in the life of one who repeatedly commits criminal offenses

serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time.” (emphasis added)); see also Parke v. Raley, 506 U.S. 20, 26 (1992) (“Statutes that punish recidivists more severely than first offenders have a long tradition in this country that dates back to colonial times.”). Logically, the statute’s goals of deterrence and incapacitation are not served by ignoring a prior “most serious” offense of an offender such as Appellant, who earned a substantial prison as a result of his prior conviction, simply because of the age of that offense. See State v. Jones, 187 W. Va. 600, 604, 420 S.E.2d 736, 740 (W. Va. 1992) (“Common sense would dictate that the age of a prior conviction should have little bearing in a recidivist proceeding, when the underlying purpose of the statute is considered. . . . Obviously, when the life recidivist statute is invoked, the defendant will have at least two prior felony convictions. If they are serious felonies, the defendant will have served lengthy prison sentences. This means that at the time of the life recidivist trial, one or more of the earlier convictions may be rather old. Yet, the deterrent purpose of the recidivist statute would hardly be served if earlier felony convictions could be excluded because of their age.”). Critically, the fact Appellant failed to modify his criminal behavior following his earlier term of imprisonment, which was over a decade long, and continued to engage in repetitive criminal behavior before committing two more “most serious” offenses demonstrates exactly why a life without parole sentence was warranted in his case and why consideration of his full criminal history versus some smaller sample of it was necessary towards determining an appropriate punishment for him based on his increased level of personal culpability.⁶ For those reasons, neither Appellant’s sentence nor the

⁶ Significantly, Appellant’s prior sentence for his crimes in 1992 was a sixteen-year term of imprisonment. As reflected in the sentencing sheet from his conviction for second-degree criminal sexual conduct with a minor, Appellant received a ten-year sentence consecutive to another sentence. (R. p. 186). As reflected

provisions of S.C. Code Ann. § 17-25-45 permitting consideration of a prior conviction regardless of its age were unconstitutional, and Appellant wholly failed to establish a national consensus exists against the sentencing practices applied in his case. See Oyler v. Boles, 368 U.S. 448, 451 (1962) (“[T]he constitutionality of the practice of inflicting severer criminal penalties upon habitual offenders is no longer open to serious challenge[.]”); see also State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (“When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.”); cf. State v. Snyder, 426 N.W.2d 662, 663 (Iowa Ct. App. 1988) (affirming the enhancement of a criminal sentence pursuant to a recidivist offender statute based on the existence of nineteen-year-old and seventeen-year-old prior felony convictions and rejecting the contention “the absence of a time limit on the use of previous felony convictions in a habitual offender determination constitutes cruel and unusual punishment”); State v. Sullivan, 644 S.W.2d 429, 430 (Tenn. Crim. App. 1982) (“The State appeals from a ruling of the trial court dismissing a habitual criminal charge against the defendant on the ground that one of the convictions alleged in the recidivist count was, in effect, too remote to demonstrate ‘habituality.’ . . . The determination of who is to be punished as a habitual criminal is obviously a legislative prerogative. The Tennessee legislature has defined habitual criminality in terms of the number and type of prior convictions that a

in the records contained in the Horry County Public Index, the other sentence to which Appellant’s ten-year sentence was ordered to run consecutively was a six-year sentence for a burglary offense. Records for Tyrone Jenkins, Horry County Fifteenth Judicial Circuit Public Index, <http://publicindex.sccourts.org/Horry/PublicIndex>. Thus, although Appellant contends on appeal he learned from his prior conduct by going a substantial period of time without engaging in “serious criminal activity,” the fact Appellant did not engage in criminal activity for a portion of the time between his earlier “most serious” offense and his most recent “most serious” offenses was largely attributable to the fact Appellant was incarcerated for a substantial period of time during that span.

person has received. Nothing in the definitional section of the statute suggests that the legislature intended to apply a time limitation to the calculation of the qualifying convictions, and we know of no authority granted to the trial court by the legislature to make a ‘policy’ determination such as the one attempted here.” (citation omitted)).

In conclusion, the use of a prior “most serious” conviction for sentencing enhancement purposes – regardless of when during the offender’s lifetime that offense was committed – serves the legitimate penological goals of discouraging and preventing the commission of crimes by habitual offenders and is entirely proper under both the United States Constitution and the South Carolina Constitution. See Solem, 463 U.S. at 296 (recognizing recidivist offenders can be more severely punished than first-time offenders). Therefore, the statutory enhancement of Appellant’s sentence based on his prior “most serious” conviction from 1992 was not unconstitutional, and there was no legitimate reason for the trial judge to ignore Appellant’s prior conviction when considering Appellant’s sentence for his most recent crimes. See generally State v. Brannon, 341 S.C. 271, 280-281, 533 S.E.2d 345, 350 (Ct. App. 2000) (“[T]he severity of the crimes enumerated in § 17-25-45(C)(1) . . . brings a life sentence without possibility of parole within the constitutional bounds of the Eighth Amendment.”). Because Appellant’s sentence was not unconstitutional and was a statutorily proper sentence for his offenses, the trial judge committed no error in sentencing Appellant to life without parole. See S.C. Code Ann. § 17-25-45(A) (mandating a sentencing judge must sentence a defendant to life imprisonment without parole upon conviction for a “most serious” offense when that defendant has either one or more prior convictions for a “most serious” offense or two or more prior convictions for a “serious” offense). Appellant’s convictions and sentence should be affirmed.

CONCLUSION

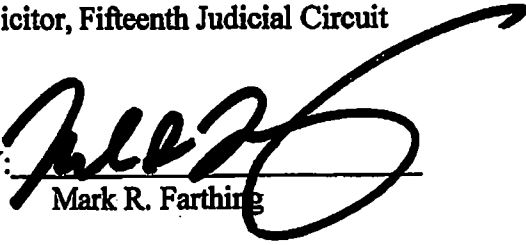
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 6, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2013-002075

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

Appellant.

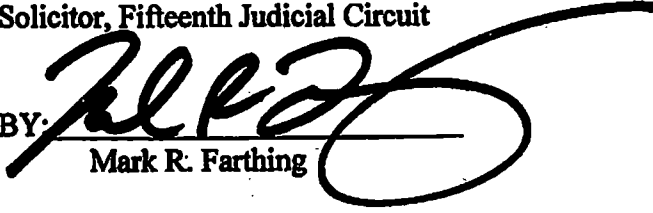
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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vs.

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by delivering two copies of the same to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 6th day of April, 2016.


ANNE A. MUELLER
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Abdul Furquan, Appellant.

Appellate Case No. 2013-002075

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-479
Submitted October 1, 2016 – Filed November 16, 2016

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

("When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning."); *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) ("Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation."); S.C. Code Ann. § 17-25-45(A) (2014) ("[U]pon a conviction for a most serious offense as defined by this section, a person *must* be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . (1) one or more prior convictions for: (a) a most serious offense" (emphasis added)); S.C. Code Ann. § 17-25-45(C) (Supp. 2015) (stating criminal sexual conduct with minors, first-degree burglary, and attempted murder are "[m]ost serious offense[s]"); *State v. Burdette*, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999) ("If a defendant is convicted of one of the [section 17-25-45(C)] triggering offenses, the matter of sentencing becomes the province of the legislature."); *State v. Johnson*, 347 S.C. 67, 69, 552 S.E.2d 339, 340 (Ct. App. 2001) ("The General Assembly has made the sentencing provisions of section 17-25-45(A) mandatory."), *overruled on other grounds by James v. State*, 372 S.C. 287, 641 S.E.2d 899 (2007); *State v. Jones*, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime."); *State v. Rogers*, 361 S.C. 178, 187-88, 603 S.E.2d 910, 915 (Ct. App. 2004) (holding the defendant's sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute was not cruel and unusual punishment when the defendant was convicted of a most serious offense nineteen years prior).

AFFIRMED.¹

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ABDUL FURQUAN,

APPELLANT

APPELLATE CASE NO. 2013-002075

Appeal from Horry County

Larry B. Hyman, Circuit Court Judge

Opinion No. 2016-UP-479

PETITION FOR REHEARING

On November 16, 2016, this Court affirmed Appellant's sentence of life imprisonment without the possibility of parole in an unpublished opinion. State v. Furquan, 2016-UP-479 (S.C. Ct. App. filed Nov. 16, 2016). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked or misapprehended by this Court in arriving at its conclusion, which are explained more fully below.

On May 24, 2012, an Horry County grand jury indicted Appellant for burglary in the first degree, attempted murder, and unlawful possession of a firearm by a person convicted of a

violent offense. On July 23, 2013, the state served Appellant with notice of its intent to seek a sentence of life without parole (LWOP) if Appellant were convicted of burglary in the first degree and/or attempted murder. According to the state's notice, Appellant had been convicted of criminal sexual conduct with a minor in the second degree, which would serve as a triggering offense of the recidivist statute.¹ After a short trial beginning on September 18, 2013, a jury found Appellant guilty of all charges. In light of the state's notice of intent to LWOP and over Appellant's objection, Judge Hyman sentenced Appellant to life imprisonment for burglary in the first degree and attempted murder.

On appeal, Appellant challenged the constitutionality of the recidivist statute to his case because the triggering offense occurred two decades before his sentencing in the instant matter. Appellant alleged invoking the recidivist statute in his case violated the Eighth Amendment's ban on cruel and unusual punishment. Citing this Court's opinion of State v. Rogers, 361 S.C. 178, 603 S.E. 910 (Ct. App. 2004) for the proposition that a "defendant's sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute was not cruel and unusual punishment when the defendant was convicted of a most serious offense nineteen years prior," this Court affirmed Appellant's sentence. Appellant respectfully requests this Court rehear the issue presented on appeal in his case to address the flawed premise upon which Rogers relied.

In State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), this Court addressed a defendant's allegation that permitting remote convictions to serve as triggering offenses violated the federal constitution's ban against cruel and unusual punishment. Specifically, this Court held that

¹ During the sentencing proceeding, the prosecutor provided the judge with a certified copy of a sentence sheet showing Appellant had been convicted on May 12, 1992 of criminal sexual conduct with a minor in the second degree.

Rogers' conviction nineteen years before the case in which the state sought to impose a life sentence did not violate the Eighth Amendment. *Id.* at 188, 603 S.E.2d at 915. In arriving at this conclusion, this Court relied upon *State v. Burdette*, 335 S.C. 34, 515 S.E.2d 525 (1999) in which the Supreme Court affirmed a defendant's life without parole sentence. *Rogers*, 361 S.C. at 188, 603 S.E.2d at 915. Notably, this Court explained the Supreme Court affirmed the sentence where the prior offense occurred seventeen years before the triggering offense. *Id.* However, the *Burdette* Court did **not** address whether the sentence imposed violated the Eighth Amendment based on the remoteness of the prior conviction; rather, the Court addressed whether the defendant received adequate notice of the charges against him and whether the recidivist statute violated the separation of powers doctrine. *Burdette*, 335 S.C. 37-38, 515 S.E.2d at 527. Thus, the premise of *Rogers* is flawed, and it is necessary to analyze whether using a remote prior conviction to enhance a sentence violates the Eighth Amendment.

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "[W]hat constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by 'evolving standards of decency that mark the progress of a maturing society.'" *State v. Pittman*, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007). Likewise, the "'proportionality' bedrock of the Eighth Amendment jurisprudence" is equally as important. *Id.* at 564-565, 647 S.E.2d at 163. "It is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). "The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" *Miller v. Alabama*, 132 S.Ct. 2455, 2463 (2012)(quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). The *Miller* Court emphasized that

“proportionality is central to the Eighth Amendment.” *Id.* (quoting *Graham v. Florida*, 560 U.S. 48(2010)).

The United States Supreme Court has held a state may punish a recidivist more severely than it punishes a first offender. *Witte v. United States*, 515 U.S. 389, 400 (1995). However, in order to pass constitutional muster, “the enhanced punishment imposed for the [present] offense ‘is not to be viewed as ... [an] additional penalty for the earlier crimes,’ but instead as ‘a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.’” *Id.* (quoting *Gryger v. Burke*, 334 U.S. 728, 732 (1948)); see also *Moore v. Missouri*, 159 U.S. 673, 677 (1895)(explaining that under a recidivist statute, the punishment for the last offense is “rendered more severe in consequence of the situation into which the party had previously brought himself”).

The recidivist statute under which Appellant was sentenced requires a sentence of life imprisonment without the possibility of parole if the person has one or more prior convictions for a most serious offense. S.C. Code Ann. § 17-25-45(A)(1)(a). Attempted murder, burglary first degree, and criminal sexual conduct with a minor are “most serious offenses” pursuant to S.C. Code Ann. § 17-25-45(C)(1). Further, the statutory scheme invests discretionary authority in invoking the recidivist statute solely in the solicitor. S.C. Code Ann. § 17-25-45(G). Likewise, the statute divests the sentencing judges of any discretion in sentencing – once the solicitor invokes the statute, the judge must impose a life sentence. Finally, the statute defines “a prior or previous conviction” to mean “the defendant has been convicted of a most serious ... offense ... on a separate occasion, prior to the instant adjudication.” S.C. Code Ann. § 17-25-45(F).

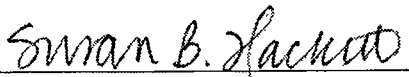
Legislation aimed at recidivism attempts to encourage offenders to stay out of trouble by punishing those who refuse to be deterred even after a conviction. *Commonwealth v. Eyster*, 585

A.2d 1027 (Pa. Super. Ct. 1991). A recidivist is a person who continues to commit criminal acts after incarceration for an earlier offense, and recidivist statutes punish those who show they are incorrigible. Shannon Thorne, One Strike and You're Out: Double Counting and Dual Use Undermines the Purpose of California's Three-Strikes Law, 34 U.S.F.L. Rev. 99 (1999).

Using a conviction that is very old does nothing to fulfill the deterrent purpose of recidivist statutes. Here, the conviction used to enhance Appellant's sentence was two decades old and involved criminal conduct completely unlike the conduct for which he was being sentenced. If the legislature sought to deter continued criminal conduct through enactment of the recidivist statute, then the scenario presented in the instant matter could not have come within the realm of contemplation. Appellant was convicted of attempted murder and burglary, but his sentence for those offenses was enhanced by his conviction for criminal sexual conduct with a minor when he was only seventeen-years old. The alleged criminal conduct was quite dissimilar. Further, Appellant had been deterred from engaging in serious criminal activity for over twenty years. His subsequent conviction for attempted murder and burglary twenty years later could not be construed as the actions of a man who was incorrigible. Rather, Appellant had learned from his prior conduct as exemplified by his not engaging in serious criminal activity during that period. South Carolina imposes time restrictions when considering recidivism in other contexts and should do so in the two strikes and three strikes arena as well. See S.C. Code Ann. § 56-1-1020 (defining a habitual offender as one who has accumulated the enumerated convictions during a three-year period); S.C. Code Ann. § 44-53-470 (imposing time limits for "second or subsequent" offenses for the drug laws); S.C. Code Ann. § 56-5-2930(E)(restricting enhanced sentences for driving under the influence to those convictions occurring within a period of ten years).

Appellant respectfully requests this Court rehear his case in order to address the flawed premise upon which Rogers relied, and to hold that using a remote conviction – particularly one that was two decades old – to trigger the recidivist statute violates the Eighth Amendment’s ban on cruel and unusual punishment.

Respectfully Submitted,



SUSAN B. HACKETT
Appellate Defender

This 1st day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Circuit Court Judge

THE STATE,

RESPONDENT,

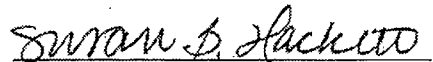
V.

Abdul Furquan,

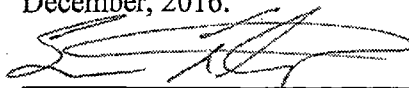
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Abdul Furquan, #260214, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 1st day of December, 2016.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day of
December, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Abdul Furquan, Appellant.

Appellate Case No. 2013-002075

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

fl B Da J.

Paul C. Thomas J.

John D. Bester J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
 Susan Barber Hackett, Esquire
 Mark Reynolds Farthing, Esquire
 Jimmy A. Richardson, II, Esquire
 The Honorable Larry B. Hyman, Jr.

FILED

January 20, 2017

RECEIVED

JAN 20 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Larry B. Hyman, Circuit Court Judge

Opinion No. 2016-UP-479 (S.C. Ct. App. filed Nov. 16, 2016)

Indictment Nos. 2012-GS-26-02057, -02058, -02059

THE STATE,

RESPONDENT,

V.

ABDUL FURQUAN,

PETITIONER

APPELLATE CASE NO. 2017-000469

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on January 20, 2017. App. 10.

QUESTION PRESENTED

Did the trial judge violate the Eighth Amendment's bar against cruel and unusual punishment by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime?

STATEMENT OF THE CASE

On October 16, 2011, Taylor Smith picked up Petitioner, Jeremy Fleming, Tyler Topolski, and Samantha Topolski. R. 21, line 19 – R. 22, line 7; R. 32, line 20 – R. 33, line 14; R. 50, lines 7-18. The group drove to the Ivystone Apartments. R. 22, lines 8-10; R. 33, lines 23-25; R. 52, lines 1-3; R. 54, lines 6-8. At Petitioner's trial, some testified the purpose of the trip was for Jeremy to get money that was owed to him while others testified the purpose of the trip was for the purchase of marijuana. R. 22, lines 2-3; R. 32, lines 24-25; R. 33, line 6; R. 34, lines 19-22; R. 44, lines 13-20; R. 52, lines 4-6; R. 56, line 24 – R. 57, line 8; R. 110, lines 19-22; R. 114, lines 23-24. Tyler, Samantha, and Taylor stayed in the car while Petitioner and Jeremy went into the apartment complex. R. 22, lines 10-22; R. 34, lines 6-18; R. 35, lines 5-7; R. 42, lines 17-22; R. 52, lines 9-11; R. 54, lines 9-14; R. 58, lines 16-25. Jeremy was wearing gloves with skulls on them. R. 23, lines 3-7; R. 29, lines 10-22; R. 45, lines 14-21; R. 115, lines 11-14.

Shots fired

Eric Collins and David Moran shared an apartment at Ivystone. R. 126, lines 8-11; R. 13, lines 16-20. On the evening of October 16, 2011, Eric was in his room taking a nap. R. 13, line 21 – R. 14, lines 4. David heard a knock at his door. R. 127, lines 5-13. Unable to see through his peephole because the lights in the hallway were not functioning, David opened his door to determine who had knocked. R. 127, lines 14-23. He saw two men wearing bandanas standing outside his door. R. 127, lines 23-25; R. 128, lines 19-20; R. 130, lines 14-17; R. 130, lines 22-23. He tried to shut the door, but one of the men got his foot inside the door and prevented the closure. While David tried to shut the door, one of the men punched him. R. 128, lines 1-7; R. 129, lines 6-7. David stumbled backward. R. 128, line 7. When David opened his eyes he saw a man standing over him with a silver revolver. He heard a pop. R. 128, lines 7-11. David's next memory was of

sitting in the emergency room. R. 129, lines 9-22. David had been shot in the head. R. 128, lines 12-13; R. 130, lines 2-7.

Eric heard a “sound [like] a light bulb makes when it pops,” only “four times louder.” R. 14, lines 4-6. He woke up, grabbed his rifle, and walked toward the living room. R. 14, lines 6-11. Eric saw two males standing in the doorway. R. 14, lines 11-12. He saw one of the men had a gun pointing in the general direction of David. R. 14, lines 23-17. When the two males saw Eric, they ran. R. 14, lines 20-22. Eric was unable to identify the men because they wore hoodies and bandanas. R. 14, lines 18-19; R. 15, lines 3-6; R. 17, line 23 – R. 18, line 5; R. 18, lines 18-23. Because Eric arrived after the shot was fired, he could not say the individuals he saw in his home had fired the shot at David. R. 20, lines 3-9.

Petitioner and Jeremy ran back to the car where Tyler, Samantha, and Taylor sat waiting.¹ R. 23, lines 17-21; R. 24, lines 17-21; R. 36, lines 3-6; R. 36, line 22 – R. 37, line 2; R. 52, lines 15-16. The group then returned to the home shared² by Petitioner and Jeremy where Jeremy threatened to kill anyone who spoke about the events of that evening. R. 24, line 22 – R. 25, line 3; R. 37, line 9 – R. 38, line 2; R. 54, lines 22-24; R. 55, lines 18-21; R. 112, lines 3-13. Jeremy also told Samantha, his girlfriend at the time, that he had “shot a dude in the head.” R. 43, lines 16-19.

¹ Jeremy Fleming, who had been convicted of attempted murder and burglary arising out of this incident, testified at Petitioner’s trial. R. 110, lines 13-16. He claimed that when he and Petitioner approached the apartment door, he, Jeremy, ran as soon as the door was opened. R. 110, line 22; R. 111, line 9; R. 115, lines 3-4. Jeremy had a prior conviction for assault and battery of a high and aggravated nature involving his entering a man’s home and cutting off a man’s fingers. R. 121, line 20 – R. 122, line 19.

² Jeremy Fleming denied living in the residence. R. 109, line 24 – R. 110, line 2; R. 115, lines 15-17.

Several days later, Samantha and Taylor went to the police and gave statements incriminating Petitioner and Jeremy in the shooting of David. R. 40, lines 4-20; R. 57, lines 19-23; R. 60, lines 15-24. During the investigation, the police found a revolver at the home shared by Petitioner and Jeremy. R. 76, lines 2-18; R. 77, lines 2-9. Additionally, the police found a pair of gloves with a skeleton design on them hidden behind the couch in the residence. R. 74, lines 10-16; R. 85, lines 17-23. Forensic testing on the gloves revealed the presence of gunshot residue. R. 108, lines 3-23.

The trial

An Horry County grand jury indicted Petitioner for burglary in the first degree (2012-GS-23-2057), attempted murder (2012-GS-26-2058), and unlawful possession of a firearm by a person convicted of a violent offense (2012-GS-26-2059) on May 24, 2012. R. 187-188; R. 190-191; R. 193-194. The state, represented by Joshua Holford, called the case for trial before the Honorable Larry B. Hyman, Jr., and a jury on September 18, 2013. R. 1. Ryan Stampfle represented Petitioner. R. 1. The jury found Petitioner guilty as charged. R. 177, lines 7-17. On September 19, 2013, Judge Hyman sentenced Petitioner to life imprisonment without the possibility for parole for burglary in the first degree and attempted murder. He also sentenced Petitioner to five years' imprisonment for the firearm. R. 183, line 9 – R. 184, line 7; R. 189; R. 192; R. 195.

The appeal

On September 25, 2013, Petitioner filed and served a timely notice of appeal. Undersigned counsel perfected his appeal. On November 16, 2016, a three-judge panel of the Court of Appeals, comprised of the Honorable H. Bruce Williams, the Honorable Paula T. Thomas, and the Honorable John D. Geathers, affirmed Petitioner's convictions and sentences in

an unpublished opinion. State v. Furquan, 2016-UP-479 (S.C. Ct. App. filed Nov. 16, 2016); App. 1-2. On December 1, 2016, Petitioner filed a petition for rehearing. App. 3-9. On January 20, 2017, the Court denied the petition in a written order. App. 10.

Petitioner now files this petition for writ of certiorari.

ARGUMENT

The trial judge violated the Eighth Amendment's bar against cruel and unusual punishment by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime.

Relevant facts

On July 23, 2013, the state served Petitioner with notice of its intent to seek a sentence of life imprisonment without the possibility of parole if Petitioner were convicted of burglary in the first degree and/or attempted murder. According to the state's notice, Petitioner had been convicted of criminal sexual conduct with a minor in the second degree, which would serve as a triggering offense of the recidivist statute. R. 178, line 3 – R. 179, line 7; R. 185. Prior to the start of trial, Petitioner moved to dismiss the state's notice based on several theories, including separation of powers and the Eighth Amendment's ban on cruel and unusual punishment in light of the remoteness of the prior offense. R. 3, line 15 – R. 4, line 19. Specifically, Petitioner objected to the prior conviction being used because "this matter is twenty years old" and occurred when Petitioner was only seventeen-years old. R. 6, lines 20-21. The judge reserved ruling on the motion at that time. R. 6, lines 22-24.

At the conclusion of the presentation of evidence, the judge returned to Petitioner's argument regarding the constitutionality of the recidivist statute as applied in his case. The judge found the prior conviction was not "too remote to be included considering the legislative intent." Thus, he permitted the state's notice of intent to seek life imprisonment without the possibility of parole to stand. R. 137, line 6 – R. 138, line 2. Petitioner renewed his motion after the state rested

its case. R. 143, line 23 – R. 144, line 11. The judge again overruled the motion. R. 144, lines 12-25; Supp. R. 1, line 1.

During sentencing, Petitioner again renewed his motion to prohibit the imposition of a sentence of life imprisonment without the possibility of parole; however, the judge overruled the motion again. R. 182, lines 15-25. The prosecutor provided the judge with a certified copy of a sentence sheet showing Petitioner had been convicted on May 12, 1992, of criminal sexual conduct with a minor in the second degree. R. 179, lines 14-24; R. 186. Thereafter, the judge sentenced Petitioner to life imprisonment without the possibility of parole for attempted murder and burglary in the first degree. R. 183, line 25 – R. 184, line 7; R. 189; R. 192; R. 195.

Discussion

The recidivist statute under which Petitioner was sentenced requires a sentence of life imprisonment without the possibility of parole if the person has one or more prior convictions for a most serious offense. S.C. Code Ann. § 17-25-45(A)(1)(a). Attempted murder, burglary first degree, and criminal sexual conduct with a minor are “most serious offenses” pursuant to S.C. Code Ann. § 17-25-45(C)(1). Further, the statutory scheme invests discretionary authority in invoking the recidivist statute *solely* in the solicitor. S.C. Code Ann. § 17-25-45(G). Finally, the statute defines “a prior or previous conviction” to mean “the defendant has been convicted of a most serious ... offense ... on a separate occasion, prior to the instant adjudication.” S.C. Code Ann. § 17-25-45(F).

The Court of Appeals affirmed Petitioner’s sentence in a one-paragraph *per curiam* opinion that consisted of a list of string citations. App. 1-2. After citing case law for the proposition that courts must give statutory language its plain and ordinary meaning and the recidivist statute, the Court recognized the governing Eighth Amendment jurisprudence. App. 1-2. However, in order to resolve the issue presented, the Court of Appeals could cite only to one of its own cases - State v.

Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). Specifically, the Court of Appeals cited to Rogers for the proposition that a “defendant’s sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute was not cruel and unusual punishment when the defendant was convicted of a most serious offense nineteen years prior.” App. 2. The Court relied solely upon its opinion in Rogers because this Court has failed to resolve the issue presented. Thus, Petitioner’s case presents a novel question of law, and this Court should grant certiorari to review the question presented and settle the matter. See Rule 242 (b)(1), SCACR. Additionally, the Court of Appeals’ opinion in Rogers rests upon flawed reasoning, which requires this Court’s attention and resolution.

In State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), the Court of Appeals addressed a defendant’s allegation that permitting remote convictions to serve as triggering offenses violated the federal constitution’s ban against cruel and unusual punishment. Specifically, the Court held that Rogers’ conviction nineteen years before the case in which the state sought to impose a life sentence did not violate the Eighth Amendment. Id. at 188, 603 S.E.2d at 915. In arriving at this conclusion, the Court relied upon State v. Burdette, 335 S.C. 34, 515 S.E.2d 525 (1999) in which this Court affirmed a defendant’s life without parole sentence. Rogers, 361 S.C. at 188, 603 S.E.2d at 915. Notably, the Court of Appeals explained this Court affirmed the sentence where the prior offense occurred seventeen years before the triggering offense. Id. However, this Court did *not* address whether the sentence imposed violated the Eighth Amendment based on the remoteness of the prior conviction; rather, this Court addressed whether the defendant received adequate notice of the charges against him and whether the recidivist statute violated the separation of powers doctrine. Burdette, 335 S.C. 37-38, 515 S.E.2d at 527. Thus, the premise of Rogers is flawed, and it is

necessary to analyze whether using a remote prior conviction to enhance a sentence violates the Eighth Amendment.

The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Eighth Amendment is applicable to the states through the Fourteenth Amendment. Robinson v. United States, 370 U.S. 660 (1962).

“[W]hat constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by ‘evolving standards of decency that mark the progress of a maturing society.’” State v. Pittman, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007). Likewise, the “‘proportionality’ bedrock of the Eighth Amendment jurisprudence” is equally as important. Id. at 564-565, 647 S.E.2d at 163. “It is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” Atkins v. Virginia, 536 U.S. 304, 311 (2002). “The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” Miller v. Alabama, 132 S.Ct. 2455, 2463 (2012)(quoting Roper v. Simmons, 543 U.S. 551, 560 (2005)). The Miller Court emphasized that “proportionality is central to the Eighth Amendment.” Id. (quoting Graham v. Florida, 560 U.S. 48(2010)).

The United States Supreme Court has held a state may punish a recidivist more severely than it punishes a first offender. Witte v. United States, 515 U.S. 389, 400 (1995). However, in order to pass constitutional muster, “the enhanced punishment imposed for the [present] offense ‘is not to be viewed as ... [an] additional penalty for the earlier crimes,’ but instead as ‘a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.’” Id. (quoting Gryger v. Burke, 334 U.S. 728, 732 (1948)); see also Moore v. Missouri, 159

U.S. 673, 677 (1895)(explaining that under a recidivist statute, the punishment for the last offense is “rendered more severe in consequence of the situation into which the party had previously brought himself”).

Legislation aimed at recidivism attempts to encourage offenders to stay out of trouble by punishing those who refuse to be deterred even after a conviction. Commonwealth v. Eyster, 585 A.2d 1027 (Pa. Super. Ct. 1991). A recidivist is a person who continues to commit criminal acts after incarceration for an earlier offense, and recidivist statutes punish those who show they are incorrigible. Shannon Thorne, One Strike and You’re Out: Double Counting and Dual Use Undermines the Purpose of California’s Three-Strikes Law, 34 U.S.F.L. Rev. 99 (1999).

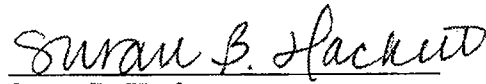
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offender as one who has accumulated the enumerated convictions during a three-year period); S.C. Code Ann. § 44-53-470 (imposing time limits for “second or subsequent” offenses for the drug laws); S.C. Code Ann. § 56-5-2930(E)(restricting enhanced sentences for driving under the influence to those convictions occurring within a period of ten years); cf. Rule 609(b), SCRE (imposing a time limit for the use of a prior conviction as evidence of impeachment).

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. In the event this Court grants the writ, but dispenses with further briefing, Petitioner respectfully requests this Court vacate his sentence and remand for a new sentencing proceeding.

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Larry B. Hyman, Circuit Court Judge

Opinion No. 2016-UP-479 (S.C. Ct. App. filed Nov. 16, 2016)
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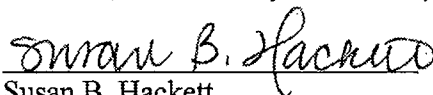
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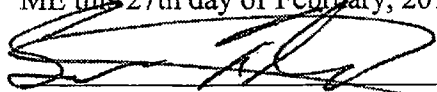
PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Abdul Furquan, #260214, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of February, 2017.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 27th day of February, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2017-000469

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007).	11
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<u>State v. Sidell</u> , 262 S.C. 397, 205 S.E.2d 2 (1974).	9
<u>State v. White</u> , 349 S.C. 33, 562 S.E.2d 305 (2002).	13
<u>State v. Williams</u> , 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008).	11

United States Supreme Court Cases:

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<u>Ewing v. California</u> , 538 U.S. 11 (2003).	14
<u>Graham v. Florida</u> , 560 U.S. 48 (2011).	9, 10, 11
<u>Gregg v. Georgia</u> , 428 U.S. 153 (1976).	11
<u>Harmelin v. Michigan</u> , 501 U.S. 957 (1991).	10
<u>Kennedy v. Louisiana</u> , 554 U.S. 407 (2008).	11
<u>Lockyer v. Andrade</u> , 538 U.S. 63 (2003).	13
<u>Oyler v. Boles</u> , 368 U.S. 448 (1962).	15
<u>Parke v. Raley</u> , 506 U.S. 20 (1992).	14

<u>Rummel v. Estelle</u> , 445 U.S. 263 (1980).	14
<u>Solem v. Helm</u> , 463 U.S. 277 (1983).	10, 14, 16
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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals correctly affirmed the trial judge's imposition of a mandatory sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 upon Furquan because Furquan was convicted of a second "most serious" offense during his lifetime, and the enhancement of Furquan's sentence based on his prior 1992 conviction for a "most serious" offense did not render his life without parole sentence unconstitutional in any way.

STATEMENT OF THE CASE

Procedural History

In October of 2011, Petitioner Abdul Furquan was arrested following an investigation into a home invasion and shooting that occurred in Myrtle Beach, South Carolina. In May of 2012, the Horry County Grand Jury indicted Furquan for first-degree burglary, attempted murder, and unlawful possession of a firearm by a person convicted of a violent offense. Prior to trial, the solicitor served timely notice on Furquan indicating the State would seek a sentence of life without parole upon conviction based on Furquan's prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor. On September 18, 2013, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable Larry B. Hyman, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Furquan as indicted. Following the verdict, the trial judge sentenced Furquan to life without parole pursuant to S.C. Code Ann. § 17-25-45 for the first-degree burglary and attempted murder convictions along with a five-year term of imprisonment for the unlawful possession of a firearm by a person convicted of a violent offense conviction. Furquan then timely filed and perfected an appeal.

Subsequently, on appeal, the Court of Appeals issued an unpublished opinion affirming Furquan's convictions. State v. Furquan, Op. No. 2016-UP-479 (S.C. Ct. App. filed Nov. 16, 2016). Thereafter, Furquan petitioned the Court of Appeals for rehearing, and the petition was denied. Furquan then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the night of October 16, 2011, David Moran was playing games on his computer in the living room of his apartment when he heard a knock at the apartment door. (R. p. 14; pp.

126-127). Believing it to be a friend he was expecting to come over, Moran opened the door and encountered two men wearing bandanas over their faces. (R. pp. 126-127; p. 133). Surprised, Moran quickly tried to shut the door, but the men forced their way into the apartment. (R. pp. 127-129). One of the men then suddenly pulled out a silver revolver and shot Moran in the head. (R. p. 128).

Upon hearing the gunshot, Moran's roommate, Eric Collins, immediately grabbed his rifle, ran out of his bedroom, and went to investigate the loud popping noise he heard come from the living room area. (R. pp. 13-14; pp. 19-20). When he entered the living room, he saw the men with bandanas over their faces inside of the apartment, and one of the men was holding a silver revolver while standing over Moran, who was sprawled out on the floor. (R. pp. 14-15; p. 17). At that point, the armed man looked at him and exclaimed, "Oh, shit." (R. p. 14). The intruders then turned and rapidly fled from the apartment. (R. p. 14).

Shortly thereafter, law enforcement officers responded to the scene of the home invasion and shooting, and Moran was quickly transported to the hospital with a fractured skull. (R. pp. 62-63; pp. 129-130). Detective Allen Large of Horry County Police Department then began an investigation into the incident, but he was initially unable to develop any leads as to the identities of the perpetrators. (R. pp. 62-65). However, a few days after the shooting, two individuals, Samantha Topolski and Taylor Smith, voluntarily came forward to the authorities and provided information implicating Furquan and his accomplice, Jeremy Fleming, in the crimes. (R. p. 40; p. 43; p. 57; pp. 60-61; p. 65).

In response, Detective Large obtained arrest warrants for Furquan and Fleming along with a search warrant for the trailer they shared. (R. p. 46; pp. 54-55; pp. 65-67; p. 88; p. 94). The Horry County Police Department's Special Response Team then executed the warrants at

the trailer and arrested Furquan and Fleming inside. (R. p. 77). Thereafter, in the ensuing search on the premises, officers located and secured two bandanas, two sets of gloves, and a silver .38-caliber revolver that was thrown from the trailer during the execution of the warrants.¹ (R. pp. 73-74; p. 76; p. 83; p. 106-107). Furquan was subsequently indicted for a number of offenses, including the “most serious” offenses of first-degree burglary and attempted murder, and he proceeded to trial. (R. p. 2; pp. 187-195).

At the outset of trial, defense counsel moved for the trial judge to “dismiss” the State’s “attempt” to seek a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45.² (R. p. 3). In support of that motion, defense counsel argued the recidivist offender statute violated the separation of powers doctrine by permitting the solicitor to make the decision as to whether to pursue a life sentence. (R. pp. 3-4). Furthermore, defense counsel asserted Furquan’s prior conviction was too old to be fairly and reasonably used for enhancement purposes since it occurred in 1992 and, upon inquiry from the trial judge, indicated his argument could be based on the cruel and unusual punishment clause. (R. p. 4). In response, the solicitor noted Furquan had previously been convicted of the “most serious” offense of second-degree criminal sexual conduct with a minor and, thus, was subject to a life sentence pursuant to the recidivist offender statute regardless of when his prior conviction occurred. (R. p. 4; p. 7). After considering the arguments of counsel, the trial judge took the matter under advisement. (R. p. 6).

Subsequently, during trial, Moran and Collins testified about their terrifying experiences on the night of the incident, and Detective Large recounted the details of his investigation that

¹ Upon subsequent analysis, Investigator Jill Domogauer of the Horry County Police Department determined gunshot residue was present on the gloves. (R. pp. 97-98; p. 108).

² Based on Furquan’s prior conviction for the “most serious” offense of second-degree criminal sexual conduct with a minor, the solicitor served Furquan with timely notice prior to trial of the State’s intention to seek sentences of life without parole pursuant to S.C. Code Ann. § 17-25-45 in the event the jury convicted Furquan of his most recent “most serious” crimes. (R. pp. 4-5; p. 178; pp. 185-186).

resulted in Furquan's arrest along with the discovery of incriminating evidence in Furquan's home. (R. pp. 13-20; pp. 62-83; p. 108; pp. 126-133). Additionally, Smith, Topolski, and Topolski's younger brother were all called as witnesses for the State. (R. pp. 21-22). During their testimony, they each confirmed they accompanied Furquan and Fleming to the victim's apartment building on the night of the incident, Furquan and Fleming left the vehicle they arrived in and went towards the building, they heard a gunshot shortly thereafter, and then Furquan and Fleming quickly ran back to the car.³ (R. pp. 22-24; pp. 29-30; pp. 32-36; p. 42; pp. 50-52). After that, they all indicated Furquan used a silver revolver he was carrying to force Smith to drive them back to his trailer, and they further stated Furquan and Fleming threatened to kill them if they said anything about what had occurred. (R. pp. 24-25; p. 30; pp. 36-37; pp. 54-55). Furthermore, Furquan's accomplice, Fleming, testified for the State, acknowledged he went to the victim's apartment on the night of the incident, claimed he did so to purchase marijuana, and stated he saw Furquan, who was wearing a bandana and gloves at the time, go towards the victim's apartment with a gun and knock on the door before the shooting occurred. (R. pp. 110-115). After that, Fleming claimed he ran from the scene while also denying he shot the victim. (R. p. 110; pp. 114-115). Fleming further noted he had been convicted of first-degree burglary and attempted murder based on his involvement in the incident. (R. p. 110).

At the conclusion of the State's case, the trial judge addressed and denied Furquan's earlier motion challenging the potential enhancement of his sentence pursuant to S.C. Code Ann. § 17-25-45 based on his prior "most serious" conviction.⁴ (R. pp. 137-138). In denying that motion, the trial judge cited to several cases, including State v. Rogers, 361 S.C. 178, 603 S.E.2d

³ During her testimony, Smith also noted Furquan and Fleming were wearing bandanas over their faces when they returned to the car after the shooting. (R. p. 53).

⁴ Later, after the State rested its case, defense counsel renewed his earlier challenge to the application of S.C. Code Ann. § 17-25-45, and the trial judge again denied defense counsel's motion. (R. p. 144).

910 (Ct. App. 2004), which rejected a similar challenge to the enhancement of a sentence, and indicated he did not believe Furquan's prior "most serious" conviction was too remote to be used for enhancement purposes in light of the legislative intent behind the recidivist offender statute. (R. p. 137).

Subsequently, at the conclusion of trial, the jury convicted Furquan as indicted. (R. p. 177). Following the verdict, the trial judge conducted sentencing proceedings, and the solicitor recounted Furquan's prior record, which included a conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor along with convictions for second-degree burglary, third-degree burglary, indecent exposure, shoplifting, providing false information to a law enforcement officer, several counts of criminal domestic violence, possession of marijuana, and driving under suspension.⁵ (R. p. 177). Defense counsel then renewed his objection to the application of S.C. Code Ann. § 17-25-45, and, once again, the trial judge denied the motion. (R. p. 182). The trial judge then sentenced Furquan to terms of imprisonment of life without parole for first-degree burglary and attempted murder and five years for unlawful possession of a firearm by a person convicted of a violent offense. (R. pp. 183-184). Furquan then timely appealed. (App'x pp. 1-2).

On appeal, the Court of Appeals unanimously affirmed Furquan's convictions and sentence. (App'x p. 1). In affirming, the Court of Appeals relied upon the following authorities:

State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning."); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) ("Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation."); S.C. Code Ann. § 17-25-45(A) (2014) ("[U]pon a conviction for a most serious offense as defined by this section, a person *must*

⁵ Earlier during trial, the solicitor noted Furquan's "most serious" conviction for second-degree criminal sexual conduct with a minor occurred in 1992, which was the same year Furquan was convicted for second-degree burglary, while Furquan's other convictions occurred continuously between 1999 and 2009. (R. p. 136).

be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . (1) one or more prior convictions for: (a) a most serious offense . . .” (emphasis added)); S.C. Code Ann. § 17-25-45(C) (Supp. 2015) (stating criminal sexual conduct with minors, first-degree burglary, and attempted murder are “[m]ost serious offense[s]”); State v. Burdette, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999) (“If a defendant is convicted of one of the [section 17-25-45(C)] triggering offenses, the matter of sentencing becomes the province of the legislature.”); State v. Johnson, 347 S.C. 67, 69, 552 S.E.2d 339, 340 (Ct. App. 2001) (“The General Assembly has made the sentencing provisions of section 17-25-45(A) mandatory.”), overruled on other grounds by James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007); State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) (“The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime.”); State v. Rogers, 361 S.C. 178, 187-88, 603 S.E.2d 910, 915 (Ct. App. 2004) (holding the defendant’s sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute was not cruel and unusual punishment when the defendant was convicted of a most serious offense nineteen years prior).

(App’x pp. 1-2).

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's imposition of a mandatory sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 upon Furquan because Furquan was convicted of a second "most serious" offense during his lifetime, and the enhancement of Furquan's sentence based on his prior 1992 conviction for a "most serious" offense did not render his life without parole sentence unconstitutional in any way.

Furquan contends his sentence of life without parole imposed after he was convicted of a second "most serious" offense during his lifetime constitutes cruel and unusual punishment and was improperly affirmed on appeal by the Court of Appeals based on "flawed reasoning." In support of that contention, Furquan appears to maintain he could not constitutionally be sentenced to a mandatory sentence of life without parole because his prior "most serious" conviction was "very old" and, for that reason, allegedly could not have properly been used to enhance his sentence for his most recent crimes. Contrary to Furquan's contentions, there is no constitutional prohibition against using a remote prior conviction for a "most serious" offense to enhance the sentence of an offender who chose to continue engaging in criminal conduct and committed a second "most serious" offense during his lifetime. In fact, consideration of prior convictions for "most serious" offenses regardless of their age is fully consistent with the underlying purpose of South Carolina's recidivist offender statute, which was enacted to deter repeat offenders and protect society by incapacitating offenders who engage in serious criminal behavior on more than one occasion during their lifetimes. Therefore, the trial judge properly and correctly sentenced Furquan to life without parole pursuant to S.C. Code Ann. § 17-25-45 after Furquan, who was a recidivist offender due to his prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor, was subsequently convicted of the "most serious" offenses of first-degree burglary and attempted murder, Furquan's sentence did not violate the constitutional prohibition against cruel and unusual punishment in any way,

and the Court of Appeals correctly affirmed Furquan's convictions and sentence on appeal. Furquan's petition for a writ of certiorari should be denied.

In criminal cases, a trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974); see State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Notwithstanding a trial judge's authority to impose a sentence falling within the statutory limits, both the United States Constitution and the South Carolina Constitution preclude a criminal defendant from being subjected to cruel and unusual punishment. See U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); S.C. Const. art. I, § 15 ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained."). Pursuant to those constitutional provisions, punishments must not be "inherently barbaric" and must be graduated and proportioned to the offense. Graham v. Florida, 560 U.S. 48, 59 (2011); see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing it is a precept of justice punishment for a crime should be

graduated and proportioned to the offense). However, the prohibition against cruel and unusual punishment does not require strict proportionality between the offense and the sentence.

Harmelin v. Michigan, 501 U.S. 957, 1001 (1991). Instead, “it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” Id. (citations omitted).

In general, there are two classifications of cases involving challenges raised pursuant to the prohibition against cruel and unusual punishment: (1) cases involving a case-specific challenge to a term-of-years sentence based on the circumstances of a particular case; and (2) cases involving a categorical challenge to a particular sentencing practice. Graham, 560 U.S. at 59. On one hand, the appropriate analysis in cases involving a case-specific challenge involves first comparing the gravity of the offense to the severity of the sentence imposed. Harmelin, 501 U.S. at 1004-1005. Then, if that comparison leads to an inference of “gross” disproportionality, the court should compare the defendant’s sentence to the sentences of offenders who committed the same offense in the defendant’s jurisdiction along with the sentences of offenders who committed the same offense in other jurisdictions to determine if the defendant’s sentence actually was grossly disproportionate to his crime. Id. at 1005. Importantly though, no single factor is dispositive in the proportionality analysis. See Solem v. Helm, 463 U.S. 277, 291, n. 17 (1983) (“[N]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.”). On the other hand, the appropriate analysis in cases involving a categorical challenge to a particular sentencing practice involves the court first considering objective indicia of society’s standards to determine whether a national consensus exists against the challenged sentencing practice. Graham, 560 U.S. at 61; see also Trop v. Dulles, 356 U.S. 86, 101 (1958) (“The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”). In making that

determination, the court should look to legislation enacted by the legislatures in the United States because the clearest and most reliable expression of society's contemporary values can be derived from such legislation. State v. Pittman, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007). Furthermore, the court making such a determination should remember that “[i]t is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it.” State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2008); see Gregg v. Georgia, 428 U.S. 153, 175 (1976) (“[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.”). Next, after determining whether a national consensus exists against a particular sentencing practice, the court “must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” Graham, 560 U.S. at 61. Critically, that determination should be “guided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose[.]’ ” Id. (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

In the case sub judice, Furquan was convicted of the “most serious” offenses of first-degree burglary and attempted murder after he had previously been convicted of the “most serious” offense of second-degree criminal sexual conduct with a minor on a separate occasion in 1992. See S.C. Code Ann. § 17-25-45(C)(1) (identifying first-degree burglary, attempted murder, and criminal sexual conduct with a minor as “most serious” offenses). Under those

circumstances, Furquan qualified as a recidivist offender in South Carolina, and the trial judge was required to sentence Furquan to a term of life imprisonment without the possibility of parole pursuant to our recidivist offender statute. See S.C. Code Ann. § 17-25-45(A)(1) (mandating a person convicted of a “most serious” offense who has previously been convicted of a “most serious” offense on a separate earlier occasion at some point during that person’s lifetime must be sentenced to life imprisonment without the possibility of parole). Accordingly, the trial judge properly sentenced Furquan to a term of imprisonment consistent with the sentencing limits established by the legislature for his offenses under the circumstances of his case. See State v. Conally, 227 S.C. 507, 510, 88 S.E.2d 591, 593 (1955) (“This court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute, unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive.”).

Despite that fact, Furquan contends on appeal his sentence of life imprisonment without the possibility of parole was unconstitutional because it allegedly constitutes cruel and unusual punishment. In making that contention, it is unclear from Furquan’s appellate argument whether he is raising a challenge to his individual sentence based on the specific circumstances of his case or raising a categorical challenge to South Carolina’s recidivist offender statute based on the fact it does not restrict a sentencing judge from considering prior convictions that are “remote.” Regardless of the grounds upon which Furquan is challenging his sentence on appeal, Furquan’s sentence of life without parole did not constitute cruel and unusual punishment.

Initially, to the extent Furquan is raising a challenge to his individual sentence based on the specific circumstances of his case, Furquan’s sentence of life without parole clearly did not

violate the constitutional prohibition against cruel and unusual punishment. Critically, by carrying out his most recent crimes, Furquan committed a number of “grave” offenses that – irrespective of the fact they were committed by a recidivist offender – exposed him to a maximum potential term of imprisonment of life imprisonment plus thirty-five years even without the application of any statutory sentencing enhancement provisions. See S.C. Code Ann. § 16-3-29 (mandating a sentence of up to thirty years for attempted murder); S.C. Code Ann. § 16-11-311 (mandating a term of imprisonment of fifteen years to life for first-degree burglary); S.C. Code Ann. § 16-23-500 (mandating a sentence of up to five years for unlawful possession of a firearm by a person convicted of a violent offense). Considering those circumstances coupled with the fact Furquan was not a first-time offender and, instead, had previously committed a “most serious” offense along with numerous other offenses during his lifetime, his aggregate individual sentence of life without parole was in no way disproportionate – or grossly disproportionate – to the horrendous crimes he most recently committed and did not constitute cruel and unusual punishment despite the fact Furquan had not been convicted of any other “most serious” offenses since 1992. See State v. White, 349 S.C. 33, 37, 562 S.E.2d 305, 306-307 (2002) (“Given that a life sentence is possible for even first offense first-degree burglary convictions, a life sentence without parole for a recidivist with one or more previous convictions of most serious offenses does not constitute cruel and unusual punishment.”); see also United States v. Rodriguez, 553 U.S. 377, 385 (2008) (“[A]n offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation.”); Lockyer v. Andrade, 538 U.S. 63, 76 (2003) (“The gross disproportionality

principle reserves a constitutional violation for only the extraordinary case.”); State v. Rogers, 361 S.C. 178, 188, 603 S.E.2d 910, 915 (Ct. App. 2004) (rejecting Rogers’s contention his life without parole sentence constituted cruel and unusual punishment due to the fact his earlier “most serious” conviction occurred nineteen years earlier); see generally Ewing v. California, 538 U.S. 11, 25 (2003) (“Recidivism has long been recognized as a legitimate basis for increased punishment.”); Solem, 463 U.S. at 296 (“[A] State is justified in punishing a recidivist more severely than it punishes a first offender.”).

Likewise, to the extent Furquan is raising a categorical challenge to S.C. Code Ann. § 17-25-45 based on the fact it permits consideration of a prior conviction for enhancement purposes regardless of the age of the prior conviction, South Carolina’s recidivist offender statute is not unconstitutional and was not applied in an unconstitutional manner in Furquan’s case. Significantly, South Carolina’s recidivist offender statute – like numerous other recidivist offender statutes enacted by legislatures throughout the history of the United States – was designed to deter and incapacitate recidivist offenders who demonstrate their danger to society by engaging in criminal behavior on multiple occasions throughout their lifetimes. See Rummel v. Estelle, 445 U.S. 263, 284 (1980) (“[The] primary goals of [a recidivist statute] are to deter repeat offenders and, at some point in the life of one who repeatedly commits criminal offenses serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time.” (emphasis added)); see also Parke v. Raley, 506 U.S. 20, 26 (1992) (“Statutes that punish recidivists more severely than first offenders have a long tradition in this country that dates back to colonial times.”). Logically, the statute’s goals of deterrence and incapacitation are not served by ignoring a prior “most serious” offense of an offender such as Furquan, who earned a substantial prison sentence as a result of his prior

conviction, simply because of the age of that offense. See State v. Jones, 187 W. Va. 600, 604, 420 S.E.2d 736, 740 (W. Va. 1992) (“Common sense would dictate that the age of a prior conviction should have little bearing in a recidivist proceeding, when the underlying purpose of the statute is considered. . . . Obviously, when the life recidivist statute is invoked, the defendant will have at least two prior felony convictions. If they are serious felonies, the defendant will have served lengthy prison sentences. This means that at the time of the life recidivist trial, one or more of the earlier convictions may be rather old. Yet, the deterrent purpose of the recidivist statute would hardly be served if earlier felony convictions could be excluded because of their age.”). Critically, the fact Furquan failed to modify his criminal behavior following his earlier term of imprisonment, which was over a decade long, and continued to engage in repetitive criminal behavior before committing two more “most serious” offenses demonstrates exactly why a life without parole sentence was warranted in his case and why consideration of his full criminal history versus some smaller sample of it was necessary towards determining an appropriate punishment for him based on his increased level of personal culpability.⁶ For those reasons, neither Furquan’s sentence nor the provisions of S.C. Code Ann. § 17-25-45 permitting consideration of a prior conviction regardless of its age were unconstitutional, and Furquan wholly failed to establish a national consensus exists against the sentencing practices applied in his case. See Oyler v. Boles, 368 U.S. 448, 451 (1962) (“[T]he constitutionality of the practice of inflicting severer criminal penalties upon habitual offenders is

⁶ Significantly, Furquan’s prior sentence for his crimes in 1992 was a sixteen-year term of imprisonment. As reflected in the sentencing sheet from his conviction for second-degree criminal sexual conduct with a minor, Furquan received a ten-year sentence consecutive to another sentence. (R. p. 186). As reflected in the records contained in the Horry County Public Index, the other sentence to which Furquan’s ten-year sentence was ordered to run consecutively was a six-year sentence for a burglary offense. Records for Tyrone Jenkins, Horry County Fifteenth Judicial Circuit Public Index, <http://publicindex.sccourts.org/Horry/PublicIndex>. Thus, although Furquan contends on appeal he learned from his prior conduct by going a substantial period of time without engaging in “serious criminal activity,” the fact Furquan did not engage in criminal activity for a portion of the time between his earlier “most serious” offense and his most recent “most serious” offenses was largely attributable to the fact Furquan was incarcerated for a substantial period of time during that span.

no longer open to serious challenge[.]”); see also State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (“When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.”); cf. State v. Snyder, 426 N.W.2d 662, 663 (Iowa Ct. App. 1988) (affirming the enhancement of a criminal sentence pursuant to a recidivist offender statute based on the existence of nineteen-year-old and seventeen-year-old prior felony convictions and rejecting the contention “the absence of a time limit on the use of previous felony convictions in a habitual offender determination constitutes cruel and unusual punishment”); State v. Sullivan, 644 S.W.2d 429, 430 (Tenn. Crim. App. 1982) (“The State appeals from a ruling of the trial court dismissing a habitual criminal charge against the defendant on the ground that one of the convictions alleged in the recidivist count was, in effect, too remote to demonstrate ‘habituality.’ . . . The determination of who is to be punished as a habitual criminal is obviously a legislative prerogative. The Tennessee legislature has defined habitual criminality in terms of the number and type of prior convictions that a person has received. Nothing in the definitional section of the statute suggests that the legislature intended to apply a time limitation to the calculation of the qualifying convictions, and we know of no authority granted to the trial court by the legislature to make a ‘policy’ determination such as the one attempted here.” (citation omitted)).

In conclusion, the use of a prior “most serious” conviction for sentencing enhancement purposes – regardless of when during the offender’s lifetime that offense was committed – serves the legitimate penological goals of discouraging and preventing the commission of crimes by habitual offenders and is entirely proper under both the United States Constitution and the South Carolina Constitution. See Solem, 463 U.S. at 296 (recognizing recidivist offenders can be more

severely punished than first-time offenders); see also United States v. Parker, 505 F.3d 323, 330-331 (5th Cir. 2007) (finding no support for the proposition the use of an older conviction for sentencing enhancement purposes violates the prohibition against cruel and unusual punishment). Therefore, the statutory enhancement of Furquan's sentence based on his prior "most serious" conviction from 1992 was not unconstitutional, and there was no legitimate reason for the trial judge to ignore Furquan's prior conviction when considering Furquan's sentence for his most recent crimes. See generally State v. Brannon, 341 S.C. 271, 280-281, 533 S.E.2d 345, 350 (Ct. App. 2000) ("[T]he severity of the crimes enumerated in § 17-25-45(C)(1) . . . brings a life sentence without possibility of parole within the constitutional bounds of the Eighth Amendment."). Because Furquan's sentence was not unconstitutional and was a statutorily proper sentence for his offenses, the trial judge committed no error in sentencing Furquan to life without parole, and the Court of Appeals committed no error in affirming Furquan's convictions and sentence on appeal. See S.C. Code Ann. § 17-25-45(A) (mandating a sentencing judge must sentence a defendant to life imprisonment without parole upon conviction for a "most serious" offense when that defendant has either one or more prior convictions for a "most serious" offense or two or more prior convictions for a "serious" offense). Furquan's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 

Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 28, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2017-000469

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

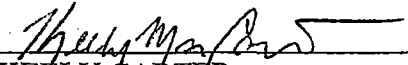
Petitioner.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by delivering two copies of the same to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of February, 2017.



KEELY CARTER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The Supreme Court of South Carolina

The State, Respondent,

v.

Abdul Furquan, Petitioner.

Appellate Case No. 2017-000469

Lower Court Case Nos. 2012-GS-26-02057, 2012-GS-
26-02058, 2012-GS-26-02059

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

September 29, 2017

cc:

Susan Barber Hackett, Esquire
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable Renee Elvis
The Honorable Jenny Abbott Kitchings

RECEIVED

SEP 29 2017

APPELLATE DEFENSE

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)ABDUL FURQUAN #260214)

Full name and prison number (if any) of Applicant)

(formerly TYRONE JENKINS))

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 17 CP26 773T

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
Horry County
2017 NOV 27 AM 5:31
CLERK OF COURT
HORRY COUNTY, SC

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 Lieber Correctional Institution
Ridgeville, South Carolina
2. Name and location of Court which imposed sentence The Court of
General Sessions, Horry County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-26-02057
 - (b) 2013-GS-26-02058

- (c) 2013-GJ-26-02059
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-19-2013 Life without Parole
- (b) 9-19-2013 Life without Parole
- (c) 9-19-2013 5 Years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA Court of Appeals
- ii. SOUTH CAROLINA SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. Writ of Certiorari denied
- iii. _____
- (c) the date of each such result:
- i. FILED NOVEMBER 16, 2016
- ii. Sept. 29, 2017
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2016-UP-479
- ii. Order for a writ of certiorari denied
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) _____
- (c) _____
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? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

10(a): Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt-or-innocence phase of his trial.

11(a): Supporting facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial.

See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

D Counsel failed to adequately investigate the facts and circumstances surrounding the DNA evidence. Counsel's failure to conduct such an investigation deprived the jury of critical exculpatory DNA evidence.

This information is relevant to an accurate assessment of applicants guilt-or-innocence.

2) Counsel failed to correct unsupported facts offered by the state in thier closing argument. The state informed the jury "Ladies and gentlemen, that is the gun that shot this victim in the head. The record does not support this allegation nor does the SLED report. The jury may have had doubt if this "fact" had been corrected.

3) Counsel failed to notify the Court that he in fact filed two separate motions to be relieved as counsel. The Applicant was not satisfied with counsel's representation and did not want to proceed to trial with him. The Applicant filed a complaint against counsel and requested he be relieved from representing the Applicant. In the best interest of the Applicant he should have been afforded a newly appointed counsel.

(4). Counsel failed to investigate and present the facts and circumstances surrounding the possession of the weapon during the attempted murder.

The fact that the Co-defendants admission to wearing the gloves with the skeletal designs and the firearms trace which revealed the Co-defendant as the owner of the gun along with GSR findings on the gloves. Counsels failure to present these facts on cross-examination deprived the jury critical information relevant to an accurate assessment of applicants innocence to attempted murder.

(5). Counsel failed to seek an instruction stating that a burglary charge must set forth one, specific crime intended upon entry and stating what the specific crime was in this case.

(6). Counsel failed to seek an instruction on "Hands of One - Hands of All" to explain that "intent" was an essential element to prove applicant guilty to knowingly participating in this case. Applicant was prejudiced due to the fact he had no intention to do bodily harm to victim.

(7). Counsel was ineffective for failing to file a notice of appeal when his client specifically requested him to do so. Another individual who had to take her time to go to the public defenders and did the appeal herself when trial counsel informed her "I would not do it."

Applicant respectfully requests this court to grant leave to amend P.C.R. application according to additional information which is revealed through discovery. ④

I ABDUL FURQUAN state pursuant to
28 U.S.C 1746 under penalty of perjury
that the foregoing is true and correct.

X ~~_____~~

DATE: 11-15-2017

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Ryan Stampfle

 ii. Susan B. Hackett - Division of Appellate
Defense, P.O. #11589, Columbia S.C. 29211
 iii. Susan B. Hackett - Division of Appellate
Defense, P.O. Box #11589, Columbia S.C. 29211

(b) the proceedings at which each such attorney represented you:

- i. Trial

 ii. Direct Appeal

 iii. Certiorari to the Court of Appeals

19. State clearly the relief you seek in filing this application:

Conviction Vacated & Remanded to
General Sessions Court

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of HORRY)

20 17 CP26 7737
 VERIFICATION

I, ABDUL A-MUTAKABBIR FORQUAN, 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.

Tyron E

SWORN to and subscribed before me this 15th
 day of November, 2017.

Ludhean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

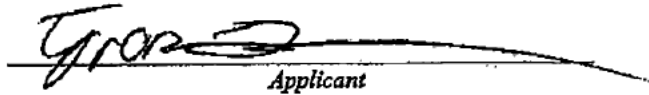
FILED
 HARRY COUNTY
 2017 NOV 27 AM 9:34
 ROBERT ELLIS
 CLERK OF COURT
 HARRY COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

20 12 CP26 7737

I, ABDUL A-MUTAKABBIR FURQUAN, 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.


Applicant

SWORN or affirmed to and subscribed before me this
15th day of November, 2017.


Notary Public

My Commission Expires: May 26, 2020

FILED
IN PROBATE
2017 NOV 27 AM 5:34
CLERK OF COURT
HORRY COUNTY, SC

RE: PCR Application

TO: Clerk of Court,

20 17 CP26 7737

Please find a PCR Application along with a 5-page attachment. I request a clock stamped copy to be sent to:

ABDUL A-MUTAKABBIR FURQUAN
formerly TYRONE JENKINS AT
LIEBER CORRECTIONAL INSTITUTION
P.O. Box # 205
Ridgeville, South Carolina

FILED
BY COUNTY
2017 NOV 27 AM 5:31
JAMES L. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

29472

Respectfully submitted,

X _____

DATE: _____



ALAN WILSON
ATTORNEY GENERAL

March 2, 2018

The Honorable Renee N. Elvis
Horry County Clerk of Court
PO Box 677
Conway, SC 29528-0677

2018 MAR -5 PM 1:19
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Re: Abdul Furquan, #260214 v. State of South Carolina
2017-CP-26-7737

Dear Ms. Elvis:

Enclosed please find the original **Return and Partial Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

Enclosures

cc: James K. Falk, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Abdul Furquan,	)	Case No.: 2017-CP-26-07737
S.C.D.C. No. 260214,	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
State of South Carolina,	)	
Respondent.	)	

2018 MAR -5 PM 1:19
 REBEH. ELYS
 CLERK OF COURT
 HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Abdul Furquan¹ (Applicant) on November 27, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2012 term of the Horry County Grand Jury for burglary, first degree (2012-GS-26-02057); attempted murder (2012-GS-26-02058); and unlawful possession of a firearm by a person convicted of a violent offense (2012-GS-26-02059).

On the night of October 16, 2011, David Moran was playing games on his computer in the living room of his apartment when he heard a knock at the apartment door. (Tr. 55; 174-75). Believing it to be a friend he was expecting to come over, Moran opened the door and encountered two men wearing bandanas over their faces. (Tr. 174-75; 181). Surprised, Moran quickly tried to shut the door, but the men forced their way into the apartment. (Tr. 175-77). One of the men then suddenly pulled out a silver revolver and shot Moran in the head. (Tr. 176).

¹ Listed in S.C.D.C. as Tyrone Jenkins

Upon hearing the gunshot, Moran's roommate, Eric Collins, immediately grabbed his rifle, ran out of his bedroom, and went to investigate the loud popping noise he heard come from the living room area. (Tr. 54-55; 60-61). When he entered the living room, he saw the men with bandanas over their faces inside of the apartment, and one of the men was holding a silver revolver while standing over Moran, who was sprawled out on the floor. (Tr. 55-56; 58). At that point, the armed man looked at him and exclaimed, "Oh, shit." (Tr. 55). The intruders then turned and rapidly fled from the apartment. (Tr. 55).

Shortly thereafter, law enforcement officers responded to the scene of the home invasion and shooting, and Moran was quickly transported to the hospital with a fractured skull. (Tr. 104-05; 177-78). Detective Allen Large of the Horry County Police Department then began an investigation into the incident, but he was initially unable to develop any leads as to the identities of the perpetrators. (Tr. 104-07). However, a few days after the shooting, two individuals, Samantha Topolski and Taylor Smith, voluntarily came forward to the authorities and provided information implicating Applicant and his accomplice, Jeremy Fleming, in the crimes. (Tr. 81; 84; 99; 102-03; 107).

In response, Detective Large obtained arrest warrants for Applicant and Fleming, along with a search warrant for the trailer they shared. (Tr. 87; 96-97; 107-09; 130; 136). The Horry County Police Department's Special Response Team then executed the warrants at the trailer and arrested Applicant and Fleming inside. (Tr. 119). Thereafter, in the ensuing search on the premises, officers located and secured two bandanas, two sets of gloves (later tested positive for gunshot residue), and a silver .38-caliber revolver that was thrown from the trailer during the execution of the warrants. (Tr. 115-16; 118; 125; 154-55).

Ryan Stampfle, Esq. represented Applicant, and Joshua D. Holford, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted on September 19, 2013. Pursuant to S.C. Code Ann. § 17-25-45, Judge Hyman sentenced Applicant to imprisonment for the duration of his life without the possibility of parole.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan B. Hackett, Esq., who raised the following issue on appeal:

Did the trial judge violate the Eighth Amendment's bar against cruel and unusual punishments by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime?

By unpublished opinion decided November 16, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Furquan, Op. No. 2016-UP-479 (Ct. App. 2016). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated September 29, 2017. The Remittitur was issued on October 10, 2017.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. "Counsel failed to adequately investigate the facts and circumstances surrounding the DNA evidence. Counsel's failure to conduct such an investigation deprived the jury of critical exculpatory DNA evidence. This information is relevant to an accurate assessment of applicant's guilty or innocence."
 - b. "Counsel failed to correct unsupported facts offered by the State in [their] closing argument. The State informed the jury 'Ladies and gentlemen, that is the gun that shot this victim in the head.' The record does not support this allegation nor does the SLED report. The jury may have had doubt if this 'fact' had been corrected."

- c. "Counsel failed to notify the Court that he in fact filed two separate motions to be relieved as counsel. The Applicant was not satisfied with counsel's representation and did not want to proceed to trial with him. The Applicant filed a complaint against counsel and requested he be relieved from representing the Applicant. In the best interest of the Applicant he should have been afforded a newly appointed counsel."
- d. "Counsel failed to investigate and present the facts and circumstances surrounding the possession of the weapon during the attempted murder. The fact that the co-defendant's admission to wearing the gloves with the skeletal designs and the firearms trace which revealed the co-defendant was the owner of the gun along with GSR findings on the gloves. Counsel's failure to present these facts on cross-examination deprived the jury critical information relevant to an accurate assessment of applicant's innocence to attempted murder."
- e. "Counsel failed to seek an instruction stating that a burglary charge must set forth one, specific crime intended upon entry and stating what the specific crime was in this case."
- f. "Counsel failed to seek an instruction on 'Hands of One - Hands of All' to explain that 'intent' was an essential element to prove applicant guilty to knowingly participating in this case. Applicant was prejudiced due to the fact he had no intention to do bodily harm to victim."
- g. "Counsel was ineffective for failing to file a notice of appeal when his client specifically requested him to do so. Another individual who had to take her time to go to the public defenders and did the appeal herself when trial counsel informed her 'I would not do it.'"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced 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.

As to Applicant’s specific allegations that trial counsel failed to investigate matters pertaining to his case, in order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant

must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegation that Counsel failed to file a notice of appeal is plainly without merit and should be summarily dismissed. As the record shows, Applicant enjoyed a full appeal to the South Carolina Court of Appeals, effectuated by appellate counsel Susan Hackett, Esq. Therefore, even assuming Applicant's facts to be true, there is no prejudice to him. As such, Applicant's allegation that Counsel was deficient for failing to file a notice of appeal should be summarily dismissed.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well

in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

VII.

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss as set forth in Section IV, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel.

Respectfully submitted,

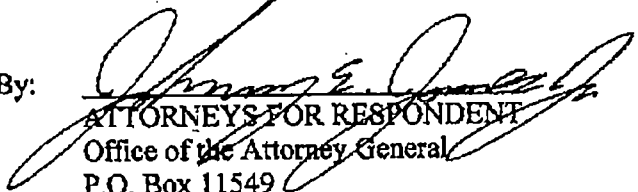
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


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Columbia, S.C. 29211

March 1, 2018

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ABDUL FURQUAN, #260214,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

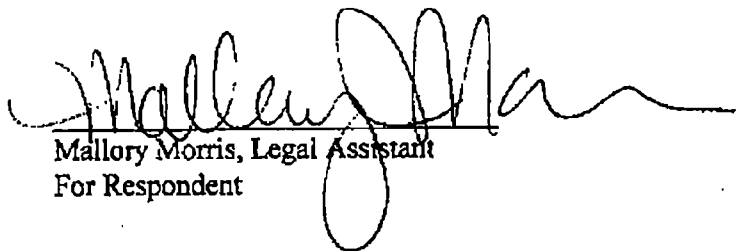
2017-CP-26-7737

AFFIDAVIT OF SERVICE BY MAIL

HORRY COUNTY
 2018 MAR -5 PM 1:19
 RECEIVED
 CLERK OF COURT
 HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 2nd day of March, 2018.


Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2017-CP-26-07737
ABDUL FURQUAN,	)	
	)	
Plaintiff,	)	
	)	
Vs	)	Transcript of Record
	)	
THE STATE,	)	MARCH 29, 2019
	)	
Defendant.	)	

B E F O R E:

The Honorable Bentley Price
Horry County Courthouse
Conway, South Carolina

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

James A. Falk, Esquire
Attorney for Plaintiff

Jacob Isenberg, Esquire
Attorney for State

Sallie Beth Todd
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	ABDUL FURQUAN				
4	By Mr. Falk	5		38, 61	
5	By Mr. Isenberg		22		
6					
7	RYAN STAMPFLE				
8	By Mr. Falk	39		59	
9	By Mr. Isenberg		49		
10					
11					
12	-----				
13	Certificate of Court Reporter				68
14	-----				
15					
16	<u>E X H I B I T S</u>				
17	<u>NO.</u>	<u>DESCRIPTION</u>	<u>EX</u>	<u>ID</u>	<u>PAGE</u>
18	P1	DNA Analysis	X		12
19	P2	SLED Report	X		17
20					
21					
22					
23					
24					
25					

1 **THE COURT:** Is the State ready to proceed?

2 **MR. ISENBERG:** Yes, Your Honor.

3 **THE COURT:** Okay.

4 **MR. ISENBERG:** The next case is Abdul Furquan versus
5 State of South Carolina. This is case number 2017-CP-26-
6 07737. Mr. Furquan was indicted at the May 2012 term of the
7 Horry County Grand Jury for burglary in the 1st degree,
8 attempted murder and unlawful possession by a person convicted
9 of a violent offense. Ryan Stampfle represented him and
10 Joshua D. Holford of the 15th Circuit Solicitor's Office
11 prosecuted the case. He proceeded to trial before the
12 Honorable Larry B. Hyman and a jury found applicant guilty as
13 indicted on September 19th, 2013. Pursuant to South Carolina
14 Code annotated 17-25-45, Judge Hyman sentenced the applicant
15 to imprisonment for the duration of his life without the
16 possibility of parole. He filed a timely notice of appeal
17 and a directed appeal was perfected by Susan B. Hackett, who
18 raised the following issue: did the trial judge violate the 8th
19 amendment bar against cruel and unusual punishment by imposing
20 a sentence of life imprisonment without the possibility of
21 parole pursuant to the recidivist statute for the offense used
22 to enhance the sentence occurred two decades before the crime.
23 And I apologize for the colloquy, I have to get all of this on
24 the record. By unpublished opinion decided November 16th,
25 2016, the South Carolina Court of Appeals affirmed the

1 conviction. He petitioned to the Supreme Court of South
2 Carolina for a writ of certiorari, which was denied on
3 September 29th, 2017. The remittitur was issued on October
4 10th, 2017. Now, he alleges Post Conviction Relief for
5 ineffective assistance of counsel, and I'll turn it over to
6 opposing counsel to proceed with his opening.

7 **THE COURT:** Alright. Mr. Falk.

8 **MR. FALK:** Your Honor, my client filed an application for
9 post conviction relief. He's claimed that his trial counsel
10 failed to adequately investigate the facts and circumstances
11 surrounding the DNA evidence of this case. Trial counsel
12 failed to object to a portion of the State's closing argument
13 regarding the identification of this is the gun that was used
14 to shoot the person where we believe that there was
15 insufficient evidence in the record that that gun actually
16 belonged to this person. Trial counsel failed to -- trial
17 counsel failed to notify the Court that he had filed two
18 separate motions to be relieved as counsel and that the
19 applicant was not satisfied with counsel's representation and
20 did not want to go forward to trial on this and was forced to
21 go forward with trial. Trial failed to investigate and
22 present facts and circumstances surrounding the possession of
23 the weapon during the attempted murder. Counsel failed to
24 seek an instruction saying that the burglary charge must be
25 set forth with specificity of the charge. Trial counsel

1 failed to seek an instruction on hand of one, hand of all to
2 explain the intent element. Applicant was prejudiced due to
3 the fact that he had no intentions to do bodily harm to the
4 victim. Counsel was ineffective and failed to file a notice
5 of appeal. But, I would assume that we are withdrawing that
6 motion because Notice of Appeal was filed because this case
7 went up on appeal. So, I would like to put my client on the
8 stand first.

9 **THE COURT:** Absolutely. Call your first witness.

10 **ABDUL FURQUAN, HAVING BEEN FIRST**
11 **DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **CLERK:** Have a seat. State your name for the Court and
13 spell your last name. Okay.

14 **MR. FURQUAN:** Abdul Furquan. F-U-R-Q-U-A-N

15 **DIRECT EXAMINATION OF MR. FURQUAN BY MR. FALK:**

16 **Q:** Did you also in the past gone by the name, or currently
17 gone by the name of Tyrone Jenkins?

18 **A:** Yes, sir.

19 **Q:** Alright. So, what do you want me to call you today?

20 **A:** Call me Tyrone Jenkins.

21 **Q:** Alright. Mr. Jenkins, explain to me who was
22 representing you on this case?

23 **A:** Ryan Stampfle.

24 **Q:** And was he appointed to represent you or did you retain
25 him?

1 A: He was appointed.

2 Q: Okay. And was he the only lawyer that represented you
3 in this case?

4 A: Yes, sir.

5 Q: Alright. Can you tell me something about sort of your
6 discussions about the case with him?

7 A: I would ask him ---

8 Q: Let me give you a better question. Were you out on
9 bond?

10 A: No, sir.

11 Q: Alright. So, how many times did he come to the jail to
12 speak with you?

13 A: I would say roughly about four or five times.

14 Q: Okay. And during those four or five times what did
15 y'all talk about?

16 A: I was asking about he investigation the case thoroughly
17 and look at other circumstances in the case surrounding the
18 DNA and he never gave me no proper response on none of it.

19 Q: Okay. Now, let me -- when did you get notice that this
20 was going to be a LWOP case?

21 A: Sir?

22 Q: When did you get notice that the State was going to seek
23 life without parole?

24 A: He came, and he informed me.

25 Q: At the very beginning?

1 A: No, at the last beginning of it.

2 Q: Sort of towards the end of these meetings?

3 A: Yes, sir.

4 Q: And were there any plea discussions going up to this?

5 A: The first plea agreement was 15 years, Nancy Coty (sic)
6 she was the very first solicitor on the case. I asked him to
7 let me speak to her in regards to the case so I could talk to
8 her better. Then I never heard nothing back from him until
9 about eight or nine months later. Then I found out that there
10 was a new solicitor on the case.

11 Q: When y'all were discussing whether or not you should
12 take this plea, did he advise you that you could potentially
13 be LWOP eligible?

14 A: On the initial plea of 15 years he said he was very
15 optimistic he could do better than 15, so I didn't take the
16 15.

17 Q: No, but I'm talking about when he first came to meet
18 with you.

19 A: No. He didn't never say nothing that it was gone go out
20 the door like that. He say he could beat the case but he
21 couldn't get around the statements.

22 Q: What was the first charge -- what was the charge that
23 you had 20 years prior to this?

24 A: Criminal sexual conduct with a minor 2nd degree.

25 Q: Okay. And that's a two-strike offense?

1 A: That very first charge I had ---

2 Q: No. I know. Did anybody explain to you about the
3 three-strike law?

4 A: No, sir.

5 Q: Okay. So, going forward there's discussions about plea
6 negotiations, correct?

7 A: Yes, sir.

8 Q: And he thought that he could beat the case?

9 A: Yes, sir.

10 Q: Alright. And what did he think -- so was he pointing
11 out what he thought were the vulnerabilities in the State's
12 case?

13 A: No. He didn't really discuss specifics of the case. He
14 just say -- he just made a general statement that he could
15 beat it.

16 Q: Was it he could get you a better deal or he could get
17 you acquitted at trial?

18 A: He never explained.

19 Q: Okay. Now, did you file a motion to have -- to relieve
20 your lawyer?

21 A: Yes, sir.

22 Q: And was it ever heard? Did y'all ever come to court on
23 that?

24 A: Yes, sir. The first time I filed it, it was denied. That
25 second time I filed the motion the State was in agreeance with

1 the defense to relieve my counsel.

2 Q: Okay.

3 A: And the Judge refused to remove him off the case.

4 Q: And if you recall, what was the date that that motion
5 was made, relative to your trial date? I mean, was it the day
6 or trial? Was it the day you were picking the jury?

7 A: No. It was a couple months after that.

8 Q: You mean the trial was a couple months after that?

9 A: Yes, sir.

10 Q: And what did you tell the Judge, why you wanted new
11 counsel?

12 A: Because I felt like he wasn't properly investigating the
13 case right, specifics behind it and the elements inside of it
14 and a lot of like closed doors and things that wasn't asked,
15 and police didn't even bring forth certain evidence and stuff.

16 Q: Can you explain on your PCR application you had said
17 that counsel failed to seek an instruction stating that a
18 burglary charge must be set forth one, specific time intended
19 upon entry and stating that the specific crime was in this
20 case. What did you mean by that?

21 A: When you deal with burglary, the DNA states that, you
22 know, that I wasn't there at all and that's what I was trying
23 to point out to him, but to no results. It never came up in
24 trial.

25 Q: And when you were talking about, what did you mean by

1 the hand of one, hand of all argument because usually criminal
2 defendants are always trying to run away from that
3 instruction. Why did you -- what was your concern about ---

4 A: There was no -- there was never -- it was a scheme or a
5 plot between two people or nobody ever testified that we
6 planned something out in this particular thing.

7 Q: And then you understand that an appeal did get filed in
8 this case, right?

9 A: Yes, sir.

10 Q: So, what, what did you mean in your original application
11 about it?

12 A: Well, my sister had asked him to file it. She say she
13 couldn't get him to file it. So, she had to go to the public
14 defender's office to get it filed.

15 Q: Okay. But, you acknowledge that an appeal was filed on
16 your case?

17 A: Yes, sir.

18 Q: And you don't have any concerns about your appellate
19 counsel?

20 A: No, sir.

21 Q: Okay. So, now what kind of discussions did you have
22 about the evidence in the case? What did he tell you that the
23 State was going to prove?

24 A: He really didn't explain too much to me about the case.
25 You know, we was having a differences in the case. I would

1 tell him one thing, he was telling me something another
2 different.

3 Q: Well, did he ever show you your Rule 5 material?

4 A: Yes, sir.

5 MR. FALK: May I approach him?

6 THE COURT: Absolutely.

7 MR. FALK: I've got to get copies made of this to mark as
8 an exhibit.

9 BY MR. FALK:

10 Q: Can I show you that document there?

11 A: Yes, sir.

12 Q: Do you recall seeing that before?

13 A: Yes, sir.

14 Q: What is it?

15 A: It's the DNA Analysis.

16 Q: Okay. And it was provided as part of your -- when did
17 you see it, before your trial or after your trial?

18 A: I seen it after my trial.

19 Q: Okay. So, did he ever -- did your counsel ever show you
20 DNA evidence before your trial?

21 A: No, sir.

22 Q: Now, did you ask him about that? Did you ---

23 A: I asked him why there wasn't no DNA presented. He say
24 they was gone seek the hand of one, hand of all, one of the
25 most serious violent charges giving a life sentence.

1 Q: Okay. And what do you think is important about that DNA
2 report?

3 A: It clearly excludes me of everything that was going forth
4 in front of the Court, the weapon, the bandana, and ---

5 Q: So, that's the SLED Report; is that correct?

6 A: Yes, sir.

7 MR. FALK: Your Honor, we would ask to mark this as
8 Petitioner's Exhibit One to this proceeding. I've got to get
9 copies made.

10 THE COURT: Not a problem. Any objection?

11 MR. ISENBERG: No objection, Your Honor.

12 THE COURT: Alright. It's into evidence without
13 objection.

14 (PLAINTIFF'S EXHIBIT ONE IS
15 ADMITTED INTO EVIDENCE.)

16 BY MR. FALK:

17 Q: Alright, let me just ask you to read the sixth paragraph
18 of that. Your

19 MR. FALK: Your Honor, I'll just bring this in at the
20 end.

21 THE COURT: Okay.

22 BY MR. FALK:

23 Q: For the record, can you just read what it says for the
24 DNA results. Read those paragraphs there. Start reading --
25 yeah.

1 **A:** The DNA profile developed on item three is mixture at
2 least two individual. No conclusion statement can be made
3 regarding the inclusion or exclusion of Jeremy Fleming as a
4 contributor to this mixture. Abdul Furquan is excluded as a
5 contributor to this mixture.

6 **Q:** Okay, so what was item three?

7 **A:** Item three was the swab from the trigger of the Smith and
8 Wesson.

9 **Q:** Okay. So, they seabed the gun and your DNA is not on
10 the gun?

11 **A:** No, sir.

12 **Q:** Who's -- what was the person's name who's ---

13 **A:** Jeremy Fleming.

14 **Q:** And what was his relation to this?

15 **A:** He was my co-defendant.

16 **Q:** Okay. And what's the next paragraph?

17 **A:** A DNA profile was developed from item four. Jeremy
18 Fleming cannot be excluded as a contributor to this item. The
19 probability of having selected an unrelated individual having
20 a DNA profile matching this item is approximately one in
21 14,000.

22 **Q:** Does it say anything about you in that?

23 **A:** No, sir.

24 **Q:** And what is item four?

25 **A:** Item four is the grip of the Smith and Wesson, the gun.

1 Q: Okay. So, another of the gun?

2 A: Yes, sir.

3 Q: What's the next paragraph?

4 A: The DNA profile developed on item five is a mixture of at
5 least three individuals. No conclusive statement can be made
6 regarding inclusion or exclusion of Jeremy Fleming as a
7 contributor to this mixture. Abdul Furquan is excluded as a
8 contributor to this mixture.

9 Q: And so what item is that?

10 A: Item five is the bandana.

11 Q: Okay.

12 A: DNA profile developed on item seven is a mixture of at
13 least two individuals. No conclusive statement can be made
14 regarding Jeremy Fleming as a contributor to this mixture.
15 Abdul Furquan is excluded as a contributor to this mixture.

16 Q: And what item is that?

17 A: Item seven is the right glove.

18 Q: Okay.

19 A: The DNA profile developed on item eight is a mixture of at
20 least two individuals. No conclusive statement can be made
21 regarding Jeremy Fleming as a contributor to this mixture.
22 Abdul Furquan is excluded as a contributor to this mixture.

23 Q: And what is item eight?

24 A: It's the right inside of the glove.

25 Q: Okay. Is that all of them?

1 A: The partial YSTR provided on item three and four and
2 insufficient for reliable interpretation.

3 Q: So, it looks as though there's DNA evidence that Jeremy
4 -- what's his last name?

5 A: Fleming.

6 Q: Jeremy Fleming was at the crime scene and there's
7 evidence that somebody else was at the crime scene. But, as
8 far as the DNA evidence goes, there was nothing about you at
9 the crime scene.

10 A: No, sir.

11 Q: And would you have wanted your lawyer to discuss that?

12 A: Yes, sir.

13 Q: As part of your defense?

14 A: Yes, sir.

15 Q: Did y'all -- and what was your discussion about the DNA
16 evidence?

17 A: I just ask him. He ain't never respond back to me.

18 Q: He never showed you the DNA results?

19 A: Uh-uh. (Negative response)

20 Q: And was there a concern that you had about the firing of
21 the gun?

22 A: Yes, sir.

23 Q: And what was that?

24 A: I asked him -- I told him I don't think that really was
25 the gun and he say, he say there was different independent

1 witness stating that that was the gun.

2 Q: Do you know if there was any firearms testing done?

3 A: No, sir. Until recent, I got the paperwork, when I got
4 the paperwork, I sent him a Rule 5 and it was sent to SLED.

5 MR. FALK: Approach, Your Honor?

6 THE COURT: Absolutely.

7 MR. FALK: This will be our exhibit two which is the SLED
8 Report of the shooting from the firearm.

9 BY MR. FALK:

10 Q: Now, tell me where did you first see that document?

11 A: When I got all my paperwork at Lieber Correctional
12 Institution.

13 Q: Okay. So, how did you get that?

14 A: Mr. Stampfle sent me the whole case file.

15 Q: So, he sent you the case file once you were convicted?

16 A: Yes, sir.

17 Q: And that applies also to the DNA Report?

18 A: Yes, sir.

19 Q: So, you got that once you were ---

20 A: In prison.

21 Q: At Kirkland or Lieber, wherever.

22 A: Yes, sir.

23 Q: And what is your concern about the SLED Report?

24 A: This SLED Report right here clearly states that the gun
25 that they have it's not the gun.

1 Q: And how do you find that? How do you draw that
2 conclusion?

3 A: Test bullet fired from item ten in this case with
4 microscopic compared to items one and two in SLED Laboratory
5 case number L11-14397 with inclusive results. Items one and
6 two could have been fired by item ten or by other similar
7 firearms.

8 Q: Alright. So, ---

9 THE COURT: Mr. Falk, do you want to enter that?

10 MR. FALK: Oh, I'm sorry. Yes, I'd like to. We like to
11 offer it as out exhibit number two.

12 THE COURT: Okay. Number two.

13 Do you have any objection as to that?

14 MR. ISENBERG: No, Your Honor.

15 THE COURT: Okay. Exhibit number two is in without
16 objection.

17 (PLAINTIFF'S EXHIBIT TWO IS
18 ADMITTED INTO EVIDENCE.)

19 MR. FALK: Thank you, Your Honor.

20 THE COURT: Absolutely.

21 BY MR. FALK:

22 Q: Alright. So, did you have any discussions with him
23 about the gun?

24 A: Like I say, he was up and down. He wanted off the case, I
25 wanted him off the case and he just didn't feel like, you

1 know, we just couldn't come to a common agreement.

2 Q: Okay. But, as far as the evidence, what you're saying
3 is there's evidence that would have excluded you from being
4 involved.

5 A: Yes, sir.

6 Q: And -- let me withdraw that question. So, as far as
7 whether or not they said that was the gun that was involved in
8 the shooting and that's the gun that we're talking about in
9 the closing argument, correct?

10 A: Yes, sir.

11 Q: And what's your recollection about what the State's
12 closing argument was?

13 A: State say that this was the gun that was fired to shoot
14 the individual.

15 Q: Did he pick it up? Did the solicitor hold it in front
16 of them?

17 A: Yes, sir.

18 Q: And did you ask your trial counsel to object to that?

19 A: At that point there, you know, it was already over, so I
20 didn't know what to do at the time, you know.

21 Q: What proof was there that that was the gun involved in
22 the shooting?

23 A: He say three independent witness. It wasn't no person
24 that was certified by law enforcement testified that that was
25 the gun or not.

1 Q: Okay. What other concerns did you have about your
2 representation?

3 A: I felt like if he would properly investigate the case and
4 look at all the evidence then I probably wouldn't been in
5 prison. I probably wouldn't have the life sentence that I
6 have.

7 Q: Well, are there -- other than possibly reviewing the
8 discovery with you, as far as the DNA and reviewing the SLED
9 Report on the gun, as far as that not conclusively being the
10 gun in question. What other things did you want him to
11 investigate?

12 A: The statement that was made by the officer. I asked him
13 to get some evidence showing that I was at work at the time
14 and he ain't never get no evidence or go by ---

15 Q: Where were you working at the time?

16 A: Olive Garden.

17 Q: Okay. Because there's a line in the transcript where
18 they talk about -- what page was it, 179?

19 A: 107.

20 Q: 107.

21 A: 9 through 11.

22 Q: So, I'm going to give you the transcript and this is the
23 -- this is the trial -- this is the transcript of record. So,
24 it's 107, starting midway through line 8. So, who is
25 testifying there?

1 **A:** Detective Allen Large.

2 **Q:** Okay. And what was he saying when he was testifying
3 there?

4 **A:** He say, confirmed by going to Mr. Furquan's employer at
5 Olive Garden in the North Myrtle Beach section of Horry County
6 positively identified him and that he was at work the night
7 prior to the incident.

8 **Q:** So, what is your concern about the officer's statement
9 there?

10 **A:** That I was at work the night that ---

11 **MR. ISENBERG:** Your Honor, I'm going to object to his
12 answer to this and I'm going to state that any allegations
13 about a failure to pursue an alibi are procedurally barred
14 because they're not in his application.

15 **MR. FALK:** We're not prepared with an alibi witness, but
16 this is regarding his investigation into the case.

17 **THE COURT:** So, your objection I assume is to speculation
18 as he's going to speculate as to what that officer was
19 investigating?

20 **MR. ISENBERG:** My objection would be relevance because
21 any alibi he may have had that night is irrelevant here
22 because he has not alleged failure to pursue and alibi by his
23 -- in his allegations of PCR against his lawyer. So, any
24 allegations he has about failure to pursue a defense of an
25 alibi is irrelevant testimony in this case.

1 **THE COURT:** I agree. I'll sustain the objection.

2 **MR. ISENBERG:** Thank you, Your Honor.

3 **BY MR. FALK:**

4 **Q:** So, are there other concerns that you had with your
5 lawyer?

6 **A:** No, sir, just that the case wasn't properly investigated.
7 That if he had properly investigated the case more and used
8 the DNA during trial, I probably had a better outcome than
9 what it was.

10 **Q:** Okay. Is there anything else you want to say?

11 **A:** No, sir.

12 **MR. FALK:** I have no further questions.

13 **THE COURT:** Thank you very much.

14 **MR. ISENBERG:** If you'll just give me a moment, Your
15 Honor.

16 **THE COURT:** Take your time. Let me ask the two questions
17 I have. When was the first time you filed a motion to have
18 your counsel relieved?

19 **MR. FURQUAN:** I can't remember a specific date.

20 **THE COURT:** It doesn't matter. Give me a time frame.

21 **MR. FURQUAN:** It was around ---

22 **THE COURT:** Prior to trial, a year?

23 **MR. FURQUAN:** A year.

24 **THE COURT:** Alright. And then you refiled that same
25 motion two months prior to your trial?

1 MR. FURQUAN: Yes, sir.

2 THE COURT: Both times it was denied?

3 MR. FURQUAN: Yes, sir.

4 THE COURT: Alright. Go ahead.

5 CROSS EXAMINATION OF MR. FURQUAN BY MR. ISENBERG:

6 Q: If you'll just give me a moment, Mr. Furquan, to set up
7 your ---

8 THE COURT: He wants to go by Mr. Jenkins, if that's
9 alright. Isn't that correct?

10 MR. FURQUAN: Yes, sir.

11 THE COURT: Okay. Is that alright if everybody calls him
12 Mr. Jenkins?

13 MR. ISENBERG: Yes, Your Honor.

14 THE COURT: Okay.

15 BY MR. ISENBERG:

16 Q: So, Mr. Jenkins, are you ready to proceed?

17 A: Yes, sir.

18 Q: It's your testimony here today that you did not want
19 your attorney to proceed to trial with you?

20 A: Yes, sir.

21 Q: What I'm handing you, after I show your lawyers, is the
22 transcript from the pretrial hearings and the actual trial
23 itself.

24 THE COURT: If you want to help out, he has his
25 transcript, you can just tell him page and line and y'all can

1 all kind of go together.

2 **MR. ISENBERG:** Oh, okay.

3 **BY MR. ISENBERG:**

4 **Q:** Can you please turn to page 8? Just look up whenever
5 you're ready. I'm going to read silently, and I want you to
6 look down -- I'm going to read aloud, and I want you to look
7 down and read silently. Sorry about that. On line 8:

8 The Court: Do you intend to proceed pro se?

9 You: No. I talked with Mr. Stampfle yesterday and he says he
10 was going to be ready.

11 The Court: So, he is going to represent you?

12 You: Yes, sir.

13 **A:** Alright.

14 **Q:** So, you didn't have any issues right then ---

15 **A:** I didn't have no choice. I didn't have no choice. I was
16 put in a predicament where I didn't have no choice. The trial
17 was already getting ready to be started and I didn't have
18 ample enough time to even prepare for the case, to investigate
19 the case further for myself, to represent myself. So, I was
20 put in a predicament where I didn't have no choice but to go
21 forth with him to trial.

22 **Q:** But, you would agree that proceeding pro se and
23 proceeding with Mr. Stampfle is a choice, correct?

24 **A:** No. It wasn't a choice. I was put in a predicament where
25 I didn't have no choice.

1 Q: Okay.

2 A: Because I didn't know the law better -- I didn't knew that
3 law. I didn't know how to ask the proper questions, object,
4 when to object because I didn't have enough time. He denied
5 my motion for a continuance for trial.

6 Q: Understood. But, in this case during trial you allege
7 that he failed to correct unsupported facts during close.

8 A: Yes, sir.

9 Q: Because you're saying the record didn't support an
10 allegation that the gun presented was used to shoot the victim
11 in the head?

12 A: Yes, sir.

13 Q: And you're aware that Eric Collins testified in this
14 case, correct?

15 A: Yes, sir.

16 Q: And you're aware that Eric Collins identified a silver
17 revolver in a vehicle during his testimony, correct?

18 A: Yes, sir.

19 Q: And you're aware that Eric Collins was in the house when
20 the crime took place?

21 A: Yes, sir.

22 Q: And you remember Tyler Tiblaski testifying?

23 A: Yes, sir.

24 Q: And you remember Tyler Tiblaski identifying a silver and
25 black revolver during his testimony?

1 A: Uh-huh. (Affirmative response)

2 Q: And Mr. Tiblaski actually testified that he was in the
3 vehicle when -- after the crime, correct?

4 A: Yes, I have known that.

5 Q: And he testified that he was in the vehicle before the
6 crime, correct?

7 A: Sir?

8 Q: He testified that he was in the vehicle before the
9 crime, correct?

10 A: Yes, sir.

11 Q: Okay. So, there's two witnesses, right?

12 A: But, they're not -- they not law enforcement. They not
13 certified.

14 Q: You understand that you can talk about facts that were
15 discussed by witnesses that weren't law enforcement during a
16 close, correct?

17 A: But, when it come to firearms they not specialized in
18 that.

19 Q: Okay. Well, do you remember Troy Large?

20 A: Yeah.

21 Q: Do you remember Troy Large testifying that he found a
22 silver and black revolver at the house?

23 A: Yeah, I remember that.

24 Q: Do you remember that was when he executed the search
25 warrant?

1 A: Yes, sir.

2 Q: Okay. So, that's law enforcement, right?

3 A: No, sir. That's law enforcement but it still wasn't sent
4 off to SLED and properly identified that was the weapon or
5 not.

6 Q: So, Troy Large isn't a part of law enforcement?

7 A: He's not SLED. He's law enforcement. He just deals with
8 violent crimes.

9 Q: Is Troy Large a police officer?

10 A: Sir?

11 Q: Was Troy Large a police officer at this time?

12 A: Yes, sir.

13 Q: Okay. So, Eric Collins testified to a revolver. Tyler
14 Tiblaski testified to a revolver and Troy Large testified to a
15 revolver, correct?

16 A: Yes, sir.

17 Q: Okay. And the solicitor identified a revolver during
18 his closing statement, correct?

19 A: Yes, sir.

20 Q: Okay. Let's move on. And now you've also alleged that
21 your counsel failed to investigate and present facts
22 surrounding possession of the weapon during the attempted
23 murder?

24 A: Yes, sir.

25 Q: Do you remember your lawyer cross examining witnesses

1 during the trial?

2 A: Yes, sir.

3 Q: Okay. Do you remember your lawyer crossing Tyler
4 Tiblaski on whether he could identify who fired the weapon in
5 the apartment?

6 A: Yes, sir. I remember that.

7 Q: Okay. So, you remember him crossing Tyler on whether or
8 not he could identify who fire that shot?

9 A: Yes, sir.

10 Q: And you're aware that Tyler said he couldn't identify
11 who fired that shot?

12 A: Yes, sir.

13 Q: Okay. You're aware that Samantha Tiblaski was cross
14 examined by her lawyer on whether she could possibly identify
15 who fired the weapon inside the apartment?

16 A: Yes, sir.

17 Q: Okay. And she said she couldn't, right?

18 A: Yes, sir.

19 Q: Okay. And she said that your co-defendant actually
20 claimed, "he shot a dude in the head", correct?

21 A: Yes, sir.

22 Q: Okay. So, I'm trying to figure out -- you're saying
23 that there's a failure to investigate and present facts
24 surrounding possession of the weapon during the attempted
25 murder. But, your lawyer effectively cross examined three key

1 State witnesses on whether you fired that shot, right?

2 A: Yes, sir.

3 Q: Okay. And you're also aware that Lindsey Smith said she
4 couldn't identify what happened?

5 A: Yes, sir.

6 Q: And that's actually four.

7 A: Yeah. I understand that.

8 Q: Okay.

9 A: A possession of a weapon means the individual got to have
10 the weapon in his hand to be in possession of it. (Inaudible)
11 possession of a firearm is Jeremy Fleming so I couldn't of
12 been in possession of the weapon.

13 Q: So, and this gets us to the next point. You're alleging
14 that your counsel didn't present a proper instruction for the
15 jury to consider on hand of one, hand of all?

16 A: Yes, sir.

17 Q: Okay. Do you remember the instruction given?

18 A: I remember some of it.

19 Q: Okay. So, I'm going to ask you to turn to page 228,
20 just look up whenever you're ready.

21 A: Alright.

22 Q: I'm going to read aloud. I just want you to read
23 silently.

24 A: If a crime is committed by two or more people who are
25 acting together in committing the crime, the act of one is the

1 act of all. A person who joins with another to commit an
2 unlawful act is criminally responsible for everything done by
3 the other person which happens as a probable or natural
4 consequence of the acts done in carrying out the common plan
5 and purpose. Now, you're alleging here today that there were
6 no facts to prove that there was a common plan between you and
7 Mr. Fleming?

8 A: Yes, sir.

9 Q: Okay. You understand that during your trial, witnesses
10 testified that you pointed the gun after the crime was
11 committed at the driver and told him to drive, right?

12 A: Yes. I remember that.

13 Q: You remember witnesses testifying to that fact?

14 A: Yes, sir.

15 Q: Okay. And you're saying now that because there was no
16 specific intent on your part that you're innocent of that
17 crime?

18 A: I'm innocent of that. Yes, sir.

19 Q: Okay. But, you understand that hand of one, hand of all
20 applies to this crime, correct?

21 A: I understand that.

22 Q: So, even if you didn't take that shot, if there was a
23 common plan or a scheme, you understand that you could be
24 convicted of attempted murder, correct?

25 A: Yes, sir.

1 Q: Okay. I just wanted to make sure we're on the same page
2 there. And now you allege that your counsel failed to
3 investigate DNA evidence, correct?

4 A: Yes, sir.

5 Q: And if you'll turn to page -- actually, you know what --
6 you're alleging that your counsel failed to investigate the
7 DNA evidence, right?

8 A: Yes, sir.

9 Q: And you're saying that the DNA evidence showed that you
10 weren't wearing the gloves or the bandana?

11 A: Or I had my hand on the gun.

12 Q: Okay. You understand that no one testified during the
13 trial that you had your hand on the gun, correct?

14 A: Ain't nobody was called to actual testify at all.

15 Q: Okay. So, you realize that whether or not you fired
16 that gun doesn't matter. Whether or not there was a common
17 plan or scheme between you and your co-defendant matters,
18 correct?

19 A: I understand but DNA clearly states otherwise that I
20 didn't have no bandana or gun or the gloves on.

21 Q: Okay. So, you're telling me if your co-defendant was
22 wearing the gloves, wearing the bandana and took a shot even
23 though you were right there it wouldn't matter?

24 A: I wasn't there.

25 Q: You weren't there?

1 A: Uh-uh. (Negative response)

2 Q: You weren't there? Okay. You realize that three
3 witnesses testified that you were there, correct?

4 A: Because if I was there, if DNA said I didn't have no
5 bandana and they couldn't positively identify me as being the
6 person that was inside.

7 Q: Okay. Well, I understand that. Now, you're saying that
8 your lawyer didn't file an appeal on your behalf, correct?

9 A: No. He didn't file it.

10 Q: Okay.

11 MR. ISENBERG: I'm going to approach opposing counsel.

12 Your Honor, may I approach?

13 THE COURT: Absolutely.

14 BY MR. ISENBERG:

15 Q: Do you want a chance to look at this? I'll give you a
16 chance to look at it before --- just look up at me whenever
17 you're ready.

18 A: Alright.

19 Q: Okay. Do you recognize the name right here?

20 A: I recognize the name.

21 Q: Is that the name of your lawyer?

22 A: Yes, sir.

23 Q: Okay. Do you recognize the court right here?

24 A: Yes, sir.

25 Q: Is that the South Carolina Supreme Court?

1 A: Yes, sir.

2 Q: Okay. Now, have you read this?

3 A: I ain't never. That's the first time I ever seen that.

4 Q: Okay. And you realize this is a response from the
5 Supreme Court from when your lawyer filed an appeal on your
6 behalf.

7 A: He didn't file it. My sister took it to the public
8 defender's office and filed it.

9 Q: So, you're saying the Supreme Court lied in this
10 response?

11 MR. FALK: Your Honor, I'm going object. He's pitting
12 the Supreme Court against ---

13 THE COURT: I don't understand what's in the document.

14 MR. FALK: Well, my client has never seen it.

15 THE COURT: What are you trying to illicit by that
16 document?

17 MR. ISENBERG: Your Honor, this is a response from the
18 Supreme Court from when his lawyer filed an appeal on his
19 behalf.

20 THE COURT: Okay.

21 MR. ISENBERG: He's testified previously that his lawyer
22 never filed an appeal.

23 THE COURT: Okay.

24 MR. ISENBERG: So, I'm just impeaching his testimony.

25 THE COURT: Okay.

1 **MR. FALK:** With a document he hasn't seen.

2 **THE COURT:** Yeah. Alright. So, you're trying to illicit
3 the fact that the attorney of record that tried the case also
4 filed the appeal?

5 **MR. ISENBERG:** Right.

6 **THE COURT:** Okay. And he says he's never seen that.

7 **MR. ISENBERG:** Right.

8 **THE COURT:** And he assumes that the public defender's
9 office did it? Is that ---

10 **MR. ISENBERG:** I'm not sure what he assumes.

11 **THE COURT:** Okay.

12 **MR. ISENBERG:** That's what I'm trying to figure out
13 because this is a document from the Supreme Court
14 acknowledging his attorney filed the appeal and he's sitting
15 here saying that his attorney never filed an appeal.

16 **THE COURT:** Alright and what's your objection?

17 **MR. FALK:** Well, one, we withdrew the argument -- I mean,
18 we conceded that the appeal was filed.

19 **THE COURT:** Okay.

20 **MR. ISENBERG:** Your Honor, I'm okay with that. I'm just
21 -- he had testified multiple times that his attorney never
22 filed an appeal.

23 **THE COURT:** Okay. That was one of the issues raised in
24 his application for PCR.

25 **MR. ISENBERG:** Right, but we've got a credibility problem

1 here if he's testifying that his attorney never filed an
2 appeal whether or not he raised the issue or not.

3 **THE COURT:** Okay. Well ---

4 **MR. FALK:** Your Honor, if I could add ---

5 **THE COURT:** Absolutely.

6 **MR. FALK:** The appeal was two steps, one is you send in
7 the two pieces of paper and put in notice.

8 **THE COURT:** Right, notice.

9 **MR. FALK:** And then there is the heavy step of preparing
10 the brief.

11 **THE COURT:** Right.

12 **MR. FALK:** So, I'm not sure if my client fully
13 understands the difference between those two. I mean, the
14 indigent defense clearly filed the brief in this case.

15 **THE COURT:** Oh ---

16 **MR. FALK:** I'm not sure, you know, I don't want to
17 challenge him on something that he really doesn't know the
18 particulars of.

19 **MR. ISENBERG:** I'll withdraw.

20 **MR. FALK:** We'll accept the document as being legitimate.
21 I mean, that's fine.

22 **MR. ISENBERG:** I'll withdraw it. I'll enter this in
23 through the lawyer.

24 **THE COURT:** Okay. Let's move on then. So, for the
25 purposes, I'll just sustain your objection and we'll just move

1 forward.

2 MR. FALK: Okay.

3 MR. ISENBERG: Do you mind if I approach and grab the
4 exhibits?

5 THE COURT: Sure.

6 BY MR. ISENBERG:

7 Q: Okay. Sorry about that, Mr. Furguan. Are you ready to
8 proceed?

9 A: Yes, sir.

10 Q: Okay. So, your allegations of DNA, I guess, failed
11 investigation are based upon what's in this document I'm
12 assuming?

13 A: Yes, sir.

14 Q: Okay. So, you're alleging that you failed to
15 investigate DNA on a Smith and Wesson, on a bandana, and
16 inside the right and left glove, correct?

17 A: Alleging that the DNA showed that none of them articles
18 belongs to them. None of my DNA was found on them.

19 Q: Okay. Can you point me in this 200 something page
20 transcript where anyone said you pulled the trigger, you were
21 wearing the gloves, or you were wearing the bandana?

22 A: Sir?

23 Q: Can you point to me in this transcript where anyone said
24 that you pulled the trigger?

25 A: No, sir.

1 Q: Okay. Can you point to me where someone said you were
2 wearing a bandana?

3 A: Yes, sir. They said it was two people with masks on.

4 Q: Who said?

5 A: The police testified to it, numbers of witnesses
6 testified, the roommate testified against it, said it was two
7 individuals has masks on standing at the door. They were
8 wearing both dark colored bandanas.

9 Q: Okay.

10 A: So, two people at the door with dark colored bandanas and
11 the police got that on the search warrant then DNA said I
12 didn't have the bandana on then he would already recognize who
13 the other person was.

14 Q: Who testified that you were wearing a bandana?

15 A: Numerous witnesses.

16 Q: Someone did?

17 A: Yeah, they say two individuals.

18 Q: Can you point to me where?

19 A: Might take me a while to find it. Page 175.

20 Q: Okay. Line 23.

21 A: Yes, sir.

22 Q: So, you're talking about the testimony of the victim
23 David Barran?

24 A: Uh-huh. (Affirmative response)

25 Q: And he saw two individuals wearing bandanas.

1 A: Yes, sir.

2 Q: Okay. Did David Barran identify you?

3 A: He said two individuals.

4 Q: Okay. Did he identify you?

5 A: No, sir.

6 Q: You were identified by Mr. Tiblaski, Ms. Tiblaski and
7 Ms. Smith, correct? You were identified by them, correct?

8 A: Yes, sir.

9 Q: Okay. Now, what about -- and with the gloves, who
10 alleged that you were wearing gloves?

11 A: Who alleged I was wearing gloves?

12 Q: Yes. I'm just trying to find it in the transcript so I
13 can be clear.

14 A: No one could remember that I had gloves on.

15 Q: Okay. So, DNA evidence exonerated you of gloves, there
16 was never any testimony that you had gloves on?

17 A: No, sir.

18 Q: Okay. So, the gloves didn't matter. So, your lawyer
19 actually did object to the gun coming in, right?

20 A: Yes, sir.

21 Q: Okay. And your lawyer objected to the LWOP being placed
22 upon you before sentencing, correct?

23 A: No, sir. I don't remember that.

24 Q: Your lawyer didn't object to ---

25 A: I don't remember. I just say I don't remember it.

1 Q: Okay.

2 MR. ISENBERG: If you will give me a moment, Your Honor.

3 THE COURT: Sure.

4 MR. ISENBERG: Your Honor, no further questions for this
5 witness.

6 THE COURT: Alright. Thank you so very much.

7 Mr. Falk, do you have anything?

8 REDIRECT EXAMINATION OF MR. FURQUAN BY MR. FALK:

9 Q: The attorney general, assistant attorney general asked
10 you about saying that somebody saw you pointing the gun and
11 told you to drive, is that right?

12 A: Yes, sir.

13 Q: Okay. But, the gun did not have your DNA on it?

14 A: No, sir.

15 Q: And there was no glove found that had your DNA is it, is
16 that correct?

17 A: Yes, sir.

18 Q: And so, somebody identified you as having your hand on
19 the gun, is that correct?

20 A: Yes, sir.

21 MR. FALK: No further questions.

22 THE COURT: Alright. Thank you so very much. You can
23 step down.

24 Alright. Mr. Falk, call your next witness.

25 MR. FALK: We'd call Mr. Stampfle.

1 **THE COURT:** Alright. Mr. Stampfle.

2 **RYAN STAMPFLE, HAVING BEEN FIRST**
3 **DULY SWORN, TESTIFIED AS FOLLOWS:**

4 **CLERK:** Please have a seat and spell your name for the
5 Court and spell your last name.

6 **MR. STAMPFLE:** Ryan Stampfle. S-T-A-M-P-F-L-E

7 **DIRECT EXAMINATION OF MR. STAMPFLE BY MR. FALK:**

8 **Q:** Mr. Stampfle, I apologize for mispronouncing your name.

9 **A:** That's okay. You're not the first person.

10 **Q:** So, how did you -- were you on a list? How did you --
11 we've never met before so what's your practice?

12 **A:** Now it's primarily family law, I do do some criminal law
13 and some injury law. At the time and before this I was on the
14 conflict list with the Horry County Public Defender's Office
15 through Orrie West and this had gotten assigned because the
16 public defender, I believe it was Ron Hazzard was representing
17 co-defendant Mr. Fleming.

18 **Q:** Okay. Okay. So, that's how you go drawn into this?

19 **A:** Yes, sir.

20 **Q:** And what is your recollection with how many times you
21 spoke with Mr. Jenkins?

22 **A:** Multiple times. I was out at the jailhouse on multiple
23 occasions, at least seven or eight times. I might need to
24 pull my computer up and pull up all of the dates, but we were
25 out there on multiple occasions and discussed State's

1 evidence, discussed, you know, the Rule 5 that I had, all of
2 the issues involving the case, potential sentencing, the fact
3 that he had the prior offenses that could be used for
4 enhancement, and on multiple occasions his desire to have me
5 relieved as counsel. Unlike what your client testified to, I
6 never told him I could beat the case or that I would beat the
7 case. I would think if I told him that he would not have
8 wanted me relieved as his attorney. My advise was to the
9 contrary, there were multiple witnesses that placed him in a
10 car driving from the scene with three other individuals in
11 addition to Mr. Fleming and then the shooting itself. The
12 fact that individual survived that shooting, two individuals
13 in the vehicle, the evidence obtained at the scene, the gun --
14 not at the scene, at the trailer. So, there was a lot of
15 evidence that just piled on top of Mr. Jenkins -- excuse me,
16 I'm not used to calling him that. And so, my -- there was a
17 lot of problems with trying that case and I had a lot of
18 concerns with the mountain of evidence against him.

19 Q: How did the LWOP -- you obviously had discussions with
20 the solicitor's office about this case; is that correct?

21 A: That's correct.

22 Q: And when did they start talking about the LWOP?

23 A: That started to come up towards -- that they were going to
24 pursue that as trial came closer. Solicitor had stated that
25 he was going to pursue that and I think that got amped up as

1 my client demanded -- wanted a polygraph test, demanded a
2 polygraph test and as that approached they indicated that they
3 were going to do that and then the filing came as it came
4 closer to trial.

5 Q: Did you have discussions with Mr. Jenkins about the
6 LWOP?

7 A: Yes, sir.

8 Q: Just sort of, what's the time frame of your
9 representation here? This went to trial in 2013?

10 A: Yeah. I believe I was initially given it some time very
11 early in 2012 but didn't receive anything on it for a while.
12 Then once I had received the discovery, that's when I started
13 having meetings with Mr. Jenkins because I didn't have any
14 evidence up until that point. So, I started meeting with him
15 early on in 2012 and throughout 2013 up until the trial date.

16 Q: Let me just clean this one thing up before I forget
17 about it.

18 A: Yes, sir.

19 Q: I've got to show you the transcript.

20 A: I have a copy.

21 Q: Well, if you've got page 7.

22 A: Yes, sir.

23 Q: I'm sure that this is a scrivener's error. My copy says
24 that this hearing starts September 28th, 2013. My hunch is it
25 should be September 18th, 2013.

1 A: I believe it was the 17th and the 18th were the trial
2 dates. The transcript says that, but I think that's ---

3 Q: Do you see that bold print on the top ---

4 A: Yes, sir.

5 Q: And it says, the following takes place outside of the
6 presence of the ---

7 A: Yes, sir.

8 Q: There's now way that took place afterwards, right?

9 A: No, sir. That went on, all of that went on before the
10 hearing date -- or before the hearing because prior to the
11 hearing we were brought in and Mr. Jenkins, Mr. Jenkins had
12 indicated to the Court that he was going to represent himself.

13 Q: Right.

14 A: So, I was left with the Judge wanting to know where
15 exactly does that put me as him appointed counsel and the
16 Judge told me, whereas he may represent himself I am not --
17 he's not going to relieve me as counsel and I understood that,
18 that I was on standby and then we would deal with, you know,
19 after we picked a jury and came up and that was what lead to
20 the portion of the transcript on page 7.

21 Q: And I'll come back around to that, I just wanted to make
22 the record clear that this happened before the trial started.

23 A: Absolutely.

24 Q: Okay. So, that date on the top is an error.

25 A: Yeah. It happened before.

1 Q: Okay. Well, let's talk about the DNA evidence.

2 A: Yes, sir.

3 Q: You've got the DNA Report.

4 A: Yes, sir.

5 Q: And did you consider trying to use that DNA evidence to

6 show that Mr. Jenkins was not at the crime scene?

7 A: Yes, I did.

8 Q: And what was your thinking?

9 A: I had sent out subpoenas to some of the folks at the crime

10 lab to address that issue. But, you know, my thinking was

11 twofold; one, Mr. Jenkins wasn't going to testify so I didn't

12 want to have the last bite of the apple in front of the jury

13 that was a consideration or a thought process but more

14 importantly it didn't exonerate him. The two individuals, I

15 believe, both Mr. and Ms. Tiblaski testified that it was

16 Jeremy Fleming that was wearing the gloves that are at issue

17 in this. I believe I may have grabbed the wrong copy. Yeah,

18 it was Tyler Tiblaski testified that he did not notice any

19 gloves on Mr. Farquan's hands. Let's see, on page 70, line

20 10: According to your testimony you recall Mr. Fleming has

21 gloves on, is that correct? Answer: Yes, sir. Could you

22 describe those gloves? They had a skeleton print on them.

23 Skeleton print gloves, you don't see those every day, do you?

24 No, sir. Okay, and you stand by that, is that right? Yes,

25 sir. Okay. Did you notice any gloves on Mr. Furquan's hands?

1 No. So, he wasn't wearing any gloves. I believe that was
2 also the same testimony as Samantha Tiplaski testified to the
3 same on Page 86. Okay, so do you know that Fleming was
4 wearing skeleton gloves on his hand, is that right? Yes, I
5 do. Were you aware that he owned a pair of those gloves? He
6 had them on at previous times we spent time together. Yeah.
7 Did Mr. Furquan ever have on his skeleton gloves? Honestly I
8 don't know because I didn't spend any quality time with the
9 man. So, you know, there was no -- two individuals testified
10 he didn't even have those gloves on.

11 Q: Okay. But, let me go sort of back around. DNA on the
12 bandana that was found, there was not Mr. Jenkin's DNA on the
13 bandana. And the victim said there were two people with masks
14 on at the front door.

15 A: Yes, sir.

16 Q: And I appreciate your strategy as far as not necessarily
17 wanting to call the SLED agents and then not being able to
18 have the last argument.

19 A: Well, there was that and I didn't necessarily want to call
20 the SLED agents and have them point out, which is what my
21 conversations with them indicated they would have pointed out,
22 which is that, you know, that none of the evidence -- there
23 wasn't some smoking bullet in the DNA evidence that said he
24 didn't do it. It wasn't like it was a paternity test and he's
25 either the father or not the father. Just that those

1 particular items, he hadn't worn them, or they had been
2 cleaned. So, it didn't exonerate him from anything. And the
3 gun was discovered thrown out of the home that was searched
4 days after the incident in question. So, there wasn't -- DNA
5 evidence on that was not surprising or shocking to anyone.

6 Q: Because you could have cross examined the case officer
7 about -- asking him whether or not there was any DNA evidence
8 placing your client at the scene.

9 A: There was no DNA evidence that, that placed him at the
10 scene. There's none that went into evidence. There was no
11 one said ---

12 Q: You didn't ask him during your investigation did y'all
13 develop any DNA evidence that placed Mr. Jenkins at the scene.
14 You couldn't have asked that question on cross examination?

15 A: I could have.

16 Q: Right. And the officer either says I don't remember, or
17 he says no, you know what I'm saying. And his testimony --
18 you could have then impeached his testimony with the DNA,
19 could you not? If he didn't ---

20 A: If he would have said there's DNA that put him there, then
21 yes, I could have. But, there was no DNA that put him there.
22 His DNA wasn't on that evidence.

23 Q: I'm just trying to make a point that you ---

24 A: I could have asked that question. You're right.

25 Q: That's my point.

1 A: Okay.

2 Q: I mean, you heard the attorney general's argument that
3 one of the things, because you asked for a mere presence
4 instruction, right, on the hand of one, hand of all? Then you
5 also asked -- because it was charged.

6 A: It was, yeah. The charges, I believe, were standard
7 charges that both the solicitor and I had sat down and
8 discussed.

9 Q: And y'all agreed to charge them on mere presence?

10 A: Yes.

11 Q: That you've got to be more than just there.

12 A: Yes.

13 Q: In order for the hand of one, hand of all.

14 A: It was a pattern instruction.

15 Q: But, you heard the State's argument that one of the
16 things that places, that puts him more than just an innocent
17 bystander in this was the fact that there was testimony that
18 he had his hand on the gun and was pointing it at somebody.;
19 is that correct?

20 A: In a vehicle.

21 Q: Yeah. And -- but there would have been no DNA evidence
22 about that.

23 A: There was multiple people in the vehicle that testified to
24 that. Those people were in the car, they testified to it.
25 They came forward. They weren't arrested and brought forward

1 to make statements.

2 Q: Uh-huh. (Affirmative response)

3 A: They voluntarily went to the police department and said
4 that we found out, you know, we knew something was up, but we
5 found out somebody got shot. We want to make a statement
6 because -- and I believe Mr. Tiblaski's testimony is more to
7 the point on that. You know, they came forward without -- you
8 know, they weren't arrested, they weren't charged. They came
9 forward on their own and brought this to the attention of the
10 police and then the police then executed the warrants and went
11 out on the home.

12 Q: Did you consider objecting to that portion of the
13 State's closing argument about saying this was the gun?

14 A: Did I consider it at the time?

15 Q: Yes.

16 A: There was five -- one, two, three, four, five people that
17 testified that either a revolver or a silver gun was the --
18 was used in -- and was there that night. There was an
19 individual that testified that was the gun that was fired at
20 him. An individual testified, yeah, it was the gun fired at
21 my roommate. So, there was multiple individuals. I did not
22 think that was clearly the State's argument.

23 Q: I think we sort of got off track when we're talking
24 about -- let me go back to what kind of plea negotiations were
25 there in this case?

1 A: My -- by the time I was engaged with it, as I recall the
2 only solicitor ---

3 Q: I don't mean to interrupt you, but you said by the time
4 you were engaged. Was somebody else in the case before you?

5 A: I don't know.

6 Q: Oh, okay.

7 A: The only solicitor that I recall, and as I went back
8 through my notes and looked at this, that I dealt with my
9 recollection is just Josh Holford. That is the only
10 individual that I dealt with. And Mr. Furquan was adamant
11 that he wasn't going to take a plea throughout this process.
12 There was never -- I wasn't aware there was a 15-year plea.
13 As I go through my notes, I don't see that. I certainly would
14 have recommended that Mr. Jenkins take a 15-year plea.

15 Q: Was there a 20-year plea?

16 A: All pleas came off of the table because he wasn't willing
17 to take a plea. So, I believe there was at one point maybe a
18 20-year plea. That was taken off and 30 was the last plea
19 offer that was put on there. We had an arraignment, what they
20 call an arraignment hearing where they came in and that was
21 offered and if it wasn't given it would be -- they would go
22 forward with the life sentence.

23 Q: And that was the 30-year plea?

24 A: Yeah.

25 Q: And ---

1 A: Yes.

2 Q: And at these times when the plea offers were made, he
3 was aware that he could get LWOP?

4 A: That was one that we discussed from the outset. That was
5 one of the -- when I first took on the case I talked with
6 Orrie West briefly and I talked with Ron Hazzard a little bit
7 on the case about, you know, what do you have? Do you have
8 the same things I have?

9 Q: Right.

10 A: You know, Ron is a pretty busy guy and that was, you know,
11 on of the things when we were going through backgrounds of our
12 defendant's, one of the things that jumped out to me and
13 jumped out to him. You know, it wasn't something that we
14 weren't aware of. It was clearly in his background.

15 Q: Yeah, okay, so you were always aware of the ---

16 A: Yeah. I mean, the State had never, did not formally say
17 they were going to go forward with that until -- that was when
18 the formal declaration came. I believe that was sent out, you
19 know, when they made that as soon as they formally declared
20 that, before that I let him know that was coming.

21 Q: Okay.

22 MR. FALK: One moment, Your Honor. No further questions.

23 THE COURT: Alright.

24 MR. ISENBERG: May it please the Court?

25 THE COURT: Alright. Absolutely.

1 **MR. ISENBERG:** If I could just have one moment.

2 **THE COURT:** Sure.

3 **CROSS EXAMINATION OF MR. STAMPFLE BY MR. ISENBERG:**

4 **Q:** Mr. Stampfle, how are you doing?

5 **A:** Not the most comfortable chair I've ever sat it.

6 **Q:** You're used to being on this side?

7 **A:** Yes, much more comfortable being on that side.

8 **Q:** You testified on direct that Mr. -- the applicant took
9 polygraphs throughout ---

10 **A:** No. He took a polygraph, not polygraphs.

11 **Q:** Took a polygraph.

12 **A:** Yes, sir.

13 **Q:** Did he fail?

14 **A:** Yes, sir.

15 **Q:** Okay. Did you ever believe that he was lying to you at
16 any point?

17 **A:** I mean, do I believe that he was lying to me at any point?
18 I had serious concerns that his story that he was telling me,
19 you know, that -- it's difficult answering that question as a
20 defense attorney. I think you understand. But, did I think
21 that he had involvement in this and that he was going to get
22 convicted? Yeah, I was extremely concerned about that. That
23 was one of the reasons why I think Mr. Jenkins wanted me off
24 of his case.

25 **Q:** And so, you're saying that he took a polygraph and he

1 failed and that you had serious concerns about his credibility
2 with his case?

3 **MR. FALK:** Your Honor, this has got to be pitting with
4 witness. He saying that, you know -- my client testified. He
5 can testify. He can't testify to whether or not he thinks my
6 client was lying.

7 **THE COURT:** I'm going to sustain the objection.

8 **MR. FALK:** Okay.

9 **MR. ISENBERG:** Thank you, Your Honor.

10 **THE COURT:** Yes, sir.

11 **BY MR. ISENBERG:**

12 **Q:** So, you said that after discovery that's when you came
13 into the case? After discovery ---

14 **A:** I mean, that when I -- I mean, when I get appointed a
15 case, you know, I like to make sure that my client's have
16 documents and have things that we can actually discuss. I
17 mean, having a conversation with a defendant that doesn't
18 necessarily know of the evidence against them, we could end up
19 having to go back and have a completely separate conversation
20 once they see the facts presented against them. It prevents,
21 I've found it prevents you from having to, you know, have your
22 client come back and tell you a different story than he told
23 you when you first sat down. So, it's good to -- I think that
24 everybody's on the same page when you do it.

25 **Q:** Right.

1 A: But, I mean, if I have something relative or germane sent
2 to me before I get discovery, I go over that with them, but
3 there was nothing like that in this case. I didn't get some
4 offer take it or leave it; we're not gone give you discovery.
5 I couldn't advise him if that were the case.

6 Q: And you said that you met with him about seven to ten
7 times?

8 A: I met with him a lot.

9 Q: What was the first meeting? What was the first meeting
10 about? What happened during the first meeting?

11 A: First meetings are always, you know, get to know the
12 client, get to know their story. What, what happened? Why
13 are they here? What do they want to tell me?

14 Q: And did you follow up on anything after the first
15 meeting?

16 A: There was not, I mean, I wasn't presented an alibi. I
17 wasn't there that night, that wasn't ever presented to me to
18 investigate. I wasn't presented a host of witnesses, that I
19 want you to go out -- that can verify, you know, on that night
20 I was over here, or I was over there, or I was doing this. I
21 didn't have those witnesses.

22 Q: So, you're saying he never presented you an alibi?

23 A: I was never, ever presented an alibi in that case.

24 Q: And he never presented you any witnesses to follow-up
25 for an alibi?

1 **A:** There was no witnesses to present to follow-up with an
2 alibi. No.

3 **Q:** He never presented -- he didn't give you any witnesses?

4 **A:** The only witness that was potential was the girlfriend who
5 testified. That was really the only person I think that he
6 really identified that had any real knowledge of him that
7 would be a friendly witness to him. But, she wasn't there,
8 she wasn't in the car that night. You know, there was nothing
9 that didn't put him in the place that three people that drove
10 him to the scene could positively identify the co-defendant,
11 those people were -- there were no people that could do that.

12 **Q:** When did you receive the two SLED Reports? Do you
13 remember about how far along you were in the process?

14 **A:** It wasn't last minute. I mean, it was well in advance of
15 trial.

16 **Q:** And after you receive them do you show them to your
17 client?

18 **A:** I gave him everything that I ever had.

19 **Q:** You reviewed the DNA evidence with your client?

20 **A:** Everything that I was presented as evidence in this case
21 or potential evidence from the State was brought over on
22 multiple occasions.

23 **Q:** And in regards to trial, what did you discuss with your
24 client in, you know, DNA presentation. What did you advise
25 him about?

1 A: That the DNA didn't exonerate him from anything. That, I
2 mean, it wasn't an exonerate. It wasn't a paternity test. It
3 was a gun days after the alleged incident took place that was
4 recovered after being thrown out of a trailer. The gloves
5 that, and I believe there were some statements to the effect,
6 that Mr. Fleming were wearing were in evidence. So, it's not
7 like these skeletal gloves were on his hands. So, ---

8 Q: And you said you followed up with SLED officers?

9 A: Jill Domegower is the one who took it. I made calls with
10 the folks at the lab. I subpoenaed those individuals at the
11 lab but that really, I didn't feel was an issue at trial. The
12 issue was the three individuals in the car and the co-
13 defendant that identified him as being there and present and
14 taking part.

15 Q: And you testified on direct that someone at SLED told
16 you that they would have testified that the gun may have been
17 cleaned?

18 A: Yeah. I mean, that was -- it was -- I spoke with an
19 officer. I don't remember who I spoke with. I don't remember
20 at this point, you know, this was almost five years ago,
21 exactly who I had that conversation with. But, there was not
22 DNA on the gun days after the incident, didn't surprise
23 anyone.

24 Q: Right. And so, what was your strategy going into trial?

25 A: Try to establish that he wasn't there, didn't have

1 knowledge of the crime that took place.

2 Q: And so ---

3 A: I mean, that he was not -- didn't have knowledge. That he
4 was there but the knowledge of that there was going to be a
5 robbery, that there was going to be a burglary, that there was
6 going to be a shooting, that it was a simple go buy a bag of
7 weed situation.

8 Q: And so, you utilized that strategy through cross
9 examination?

10 A: The best I could.

11 Q: And in that cross examination you asked each and every
12 witness whether they saw who took the shot, right?

13 A: Yes.

14 Q: And they all said no.

15 A: Right. The only person that said that he took the shot
16 was Mr. Fleming, the co-defendant.

17 Q: And Mr. -- the applicant didn't testify, correct?

18 A: No, sir.

19 Q: And that was his decision?

20 A: That was our decision.

21 Q: And ---

22 A: And it was his decision at the end of it. He was
23 questioned on that. The Judge went through questioning and
24 the right to testify, not testify, ramifications thereof.

25 Q: And in regards to the gun, you objected to the entering

1 of it into evidence, correct?

2 A: That's correct.

3 Q: And you cross examined each and every witness about the
4 gun, correct?

5 A: Yes, to my knowledge and just going back through, yes.

6 Q: And from your knowledge the officer didn't testify about
7 DNA evidence, correct?

8 A: No, sir.

9 Q: And so, you didn't cross examine him on DNA evidence,
10 did you?

11 A: No, sir.

12 Q: Alright. And you also said that you wanted to have the
13 chance to have last close.

14 A: Yes, sir.

15 Q: And you said that you didn't object in close because you
16 thought there was enough testimony about the gun.

17 A: I didn't want anyone thinking about the gun anymore than
18 they already been thinking about the gun. Everyone testified
19 that that silver revolver, black handle was used in that
20 crime.

21 Q: And for application sake, I'm not sure if y'all withdrew
22 this. Did you -- have you ever sought an instruction that a
23 burglary charge must set forth one specific crime intended
24 upon entry?

25 A: The burglary instruction was the burg one pattern

1 instruction, you know, at the time of the trial.

2 Q: Right. Did you have any issues with the hand of one,
3 hand of all instruction given?

4 A: I believe it was pretty much the Judge's pattern
5 instruction. No, I mean, I didn't have an objection to it.

6 Q: Right. And did you file an appeal for the applicant?

7 A: Yes. I sent off a Notice of Appeal. You know, if you'll
8 look at the date on it, it came back in October the 11th or
9 something. I don't know if the Supreme Court got my notice or
10 he went to the public defender, if they got his.

11 Q: Right.

12 A: The order from the Court I don't think had been in my
13 office you know to send off until a couple of weeks after we
14 had the trial.

15 Q: Right. So, it'd be wrong to say that you didn't file an
16 appeal.

17 A: Yeah. I mean, I wouldn't have not appealed.

18 Q: Okay. And we've already went over this, the applicant's
19 alleging that you failed to present fact and circumstances
20 surrounding the possession of a weapon. Let's go through this
21 one more time. You cross examined Mr. Tiplaski on who had
22 possession of the weapon during the crime, correct?

23 A: Yes.

24 Q: You cross examined Ms. Tiplaski on who had possession of
25 the weapon during the crime, correct?

1 A: That's right.

2 Q: You cross examined the drive, Ms. Smith, on who had
3 possession of the weapon during the crime, correct?

4 A: Yes, sir.

5 Q: And you cross examined the witness and the other victim
6 on the fact that they couldn't identify who had possession of
7 the gun?

8 A: Yes, sir.

9 Q: When the shot was taken, correct?

10 A: Yes.

11 Q: Okay. And in regards to his motion for you to be
12 relieved, both of those were presented in front of the Court
13 for a decision, correct?

14 A: Yeah. They were presented for a decision and his
15 continued desire to have me relieved was the reason for the
16 conversation on page six, seven and eight of the transcript.

17 Q: Right. I'm just -- you presented the Court his motion
18 for you to be relieved.

19 A: We came in front of a Judge, yeah.

20 Q: I just want to make sure that we've gone through
21 everything.

22 A: That's alright.

23 Q: And my last question would be in regards to the DNA
24 evidence. No one ever said that it was the applicant who had
25 the gun in the apartment, correct?

1 A: Just the co-defendant.

2 Q: So, the DNA evidence in regards to that, it would not
3 have exonerated the applicant?

4 A: I don't think so, yeah,

5 Q: Okay. So, your opinion at the time, trial strategy
6 wise, was to not utilize the DNA evidence.

7 A: My understanding and my thought process was in bringing
8 those people up to come testify, it didn't exonerate him. It
9 just hammered away the fact that we're exactly where we were
10 when the case was finished, multiple individuals saying that
11 they left, came down with a gun, a co-defendant that said that
12 he fired the gun, and two people that couldn't identify
13 exactly who it was one of which got shot in the head.

14 Q: Right.

15 A: Yeah.

16 Q: And so you're saying that the three witnesses that
17 testified that he was present before and after had a major
18 impact on his presence.

19 A: Yeah.

20 Q: Okay. If you could just give me one moment.

21 A: Sure.

22 MR. ISENBERG: No further questions.

23 THE COURT: Alright. Mr. Falk.

24 REDIRECT EXAMINATION OF MR. STAMPFLE BY MR. FALK:

25 Q: Regarding the DNA and the bandana, the testimony was

1 that two men were at the door with black bandanas on, is that
2 correct? That's what the victim said?

3 **A:** I believe it was masks or bandanas. I'd have to look and
4 review the exact testimony, but yes. If you say so, I'll
5 agree to that.

6 **Q:** And the DNA would be of a bandana that was found that
7 did have my client's DNA on it, is that correct?

8 **A:** That's -- I mean, there's nothing in evidence that those
9 were the particular bandanas worn. I mean, they were bandanas
10 recovered from a trailer.

11 **Q:** Gotcha. But that had Mr. Fleming's DNA on them?

12 **A:** Yes. He was convicted. He was there post trial.

13 **MR. FALK:** No further questions.

14 **THE COURT:** Alright. Any objection to excusing this
15 witness?

16 **MR. ISENBERG:** No, Your Honor.

17 **THE COURT:** Mr. Falk?

18 **MR. FALK:** Your Honor, I believe I'm going to have to
19 recall my client on one issue.

20 **THE COURT:** Alright. Any objection?

21 **MR. ISENBERG:** No, Your Honor.

22 **THE COURT:** Any objection to excusing this witness?

23 **MR. FALK:** No, Your Honor.

24 **THE COURT:** Alright. You're excused. Thank you so very
25 much.

1 **MR. STAMPFLE:** Thank you, Your Honor.

2 **THE COURT:** Alright. Call your next witness.

3 Mr. Furquan, you're still under oath. Okay.

4 **MR. FURQUAN:** Yes, sir.

5 **THE COURT:** Alright. Yes, sir.

6 **MR. FALK:** Before we start, I'm going to ask him about
7 conversation about alibi witness because although I stopped on
8 their objection, then the State started asking trial counsel
9 about discussions about alibi witnesses, so I think I'm
10 intitled to go back into that.

11 **THE COURT:** Sure. If they opened the door for it, you
12 want to be able to address it, I don't have a problem with it.

13 **REDIRECT EXAMINATION OF MR. FURQUAN BY MR. FALK:**

14 **Q:** Alright. When you were testifying earlier I was asking
15 you about what you wanted him to investigate as far as where
16 you were that night, is that correct?

17 **A:** Yes, sir.

18 **Q:** And what did you want, what did you want?

19 **A:** I want him to go talk to the lead investigator and ask him
20 what was his findings on it because he had came and spoke to
21 me and he said that he went by my job but he never told me
22 what was actually said when he went by and do the
23 investigation.

24 **Q:** So, when did you find out that the officer said that --
25 the officer's testimony at court, when did you find that out?

1 A: The day of court.

2 Q: Okay.

3 MR. FALK: No further questions.

4 THE COURT: Alright. State have any other questions
5 pertaining to that? I think you've addressed it and covered
6 it with the attorney.

7 MR. ISENBERG: I have no questions, Your Honor.

8 THE COURT: Alright. Do you have any objection to him
9 being excused?

10 MR. ISENBERG: No, Your Honor.

11 THE COURT: Alright. Mr. Falk, call your next witness.

12 MR. FALK: We have no further witnesses.

13 THE COURT: Alright. Does the State have any witnesses?

14 MR. ISENBERG: No, Your Honor.

15 THE COURT: Alright. Would y'all like the opportunity
16 for brief closings?

17 MR. FALK: Yes, Your Honor. As far as the testimony
18 regarding the polygraph test, I'm just hoping that the Court
19 is not going to put too much -- I'm not sure if it's
20 admissible, you know, you're the fact finder and the Judge of
21 the law in this case. I'm just hoping that the Court's not
22 going to put too much on that testimony. I didn't want to
23 cross examine him about it because I didn't want him to keep
24 talking about. I don't think any discussion about whether or
25 not my client took a polygraph test, whether he failed it or

1 whether it was inconclusive should be part of your decision-
2 making process.

3 **THE COURT:** I understand.

4 **MR. FALK:** Your Honor, it's our belief that, you know,
5 when you're trying to create reasonable doubt, which is what
6 the defense was in this case you sort of grab at all the
7 straws that you can. And we believe that there would have
8 been a way to bring in the lack of DNA evidence in this case
9 by cross examining the case officer, the officer who testified
10 about it, that you could have asked was there any DNA on that
11 bandana that belonged to my client? Was there any DNA on the
12 gun? And he could have asked and the officer either has to
13 say no, the officer would either have to testify in accordance
14 with the SLED Report or counsel could impeach him with it.
15 So, I mean, I think the jury could have heard the fact that
16 there was no DNA evidence in there without actually having to
17 bring SLED into call. I mean, the jury would have heard it
18 and you still would have kept your card in hand to make the
19 last argument. And I think it goes equally regarding the gun,
20 as far as whether or not that was the gun or that just was a
21 gun. The SLED Report just shows that it was a similar type.
22 It certainly couldn't tie the gun to the shooting.

23 **THE COURT:** I understand.

24 **MR. FALK:** And we believe that any time you can sort of
25 attack the forensic evidence, we think juries like forensic

1 evidence and we think it's always persuasive and he can stand
2 up there and say there's absolutely no forensic evidence to
3 tie my client, you know, so we believe that that is where it
4 was ineffective assistance.

5 **THE COURT:** Alright. Thank you very much.

6 **MR. ISENBERG:** May it please the Court?

7 **THE COURT:** Absolutely.

8 **MR. ISENBERG:** Your Honor, I think it's important to put
9 this DNA evidence issue into context. Opposing counsel is
10 saying that trial counsel should have used it to impeach one
11 witness, a police officer, on something that he didn't talk
12 about during direct examination. During his direct, trial
13 counsel testified he didn't speak about DNA evidence. There's
14 been no testimony that -- or anything from the record from
15 opposing counsel or the applicant about what the officer said
16 about the evidence. So, at this point we don't have anything
17 on the record to show that he discussed it. The fact is,
18 there were three witnesses who testified that the applicant
19 went into the apartment with a co-defendant someone was shot
20 and then they walked out. And you heard the applicant
21 acknowledge that those witnesses were thoroughly cross
22 examined on who took the shot. None of them could identify
23 the applicant. Now, the fact is that the issue in this case
24 for the applicant was the nature or probable consequences of,
25 you know, of accompanying someone in the commission of a

1 crime, hand of one, hand of all through attempted murder.
2 That's where it really got into an issue for him and what
3 basically happened in this trial was everyone testified that
4 they walked in together, someone was shot, and they walked out
5 together. And he acknowledged that a witness did testify
6 that he had the gun on the driver when they left the scene.
7 Counsel testified that he was going to call the SLED officers
8 that wrote this report, but they were going to testify that
9 it's no uncommon for DNA evidence to be clean a couple of days
10 after and they were going to testify that it may have been
11 cleaned. So, he had to weight those things, benefits and
12 detriments to his client and he went with the strategy that he
13 needed to figure out a way that he could just kind of prove
14 that his client was at the scene but didn't know what was
15 going on. And that's the strategy that he did go with and
16 that he presented adequately and after the case he didn't
17 object to the gun because as we've seen here today that many
18 people testified about the affects of it, that it was a
19 revolver and it was silver and black. So, the two key issues
20 here, I think, there was a reasonable strategy by counsel to
21 prove that, yes, the applicant may have been there but he
22 didn't know there was going to be a burglary or murder and
23 number two, that he failed to object during a closing. Well,
24 there was plenty of testimony beforehand and he also objected
25 to the gun being in evidence during the trial as he

1 acknowledged on the stand. So, for that reason the applicant
2 (sic) was affective and he was not deficient and on top of
3 that there would be no prejudice to the entering of DNA
4 evidence presented by the State proving that the applicant did
5 go in there with his co-defendant and someone was shot and
6 that they had a common scheme or plan which, you know, was
7 proven by that testimony from people that afterwards they
8 drove away from the scene and pulled a gun on them. So, I
9 think because of that there's no deficiency or prejudice in
10 this case. I'm sorry for rambling on. I won't take up any
11 more of your time. That's the State's closing argument.

12 **THE COURT:** Alright.

13 **MR. ISENBERG:** Thank you.

14 **MR. FALK:** Just one point, Your Honor.

15 **THE COURT:** Absolutely.

16 **MR. FALK:** It's not the fact that -- there was DNA, so
17 granted this thing was found --- there was DNA that they could
18 not exclude Jeremy Fleming from but there was none on my
19 client. So, it's a difference of something had been cleaned
20 off and washed away by the rain with DNA on it just wasn't my
21 clients.

22 **THE COURT:** Gotcha. I understand. Alright. Anything
23 further?

24 **MR. FALK:** No, Your Honor.

25 **THE COURT:** Alright. Thank you so very much. I'm going

1 to take it under advisement and rule as soon as possible.

2 Thank y'all so very much. Have a great weekend.

3 Mr. Furquan, good luck to you, sir.

4 **MR. FURQUAN:** Thank you.

5 (ADJOURNED)

6

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the interest of Abdul Furquan versus The State, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 29, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR

Official Reporter

October 15, 2019.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Jill Domogauer
Horry County Police Department
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DNA ANALYSIS
February 09, 2012
SLED LAB: L11-12263
Your Case No: 11102247
Incident Date: 10/16/2011
[V] David Moran
[S] Jeremy Fleming
[S] Abdul Furquan

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	Buccal swabs- Jeremy Fleming	1	See DNA analysis.
2	Buccal swabs- Abdul Hasan A-Mutakabbir Furquan	2	See DNA analysis.
3	Swabs from trigger of Smith and Wesson	3	No blood indicated. See DNA analysis.
4	Swabs from grip of Smith and Wesson	4	See DNA analysis.
5	Swabs from bandana marked "A"	5	See DNA analysis.
6	Swabs from bandana marked "B"	6	See DNA analysis.
7	Swabs from inside right glove	7	See DNA analysis.



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SLED LAB No. L11-12263
February 09, 2012

Page 2 of 5

Items Submitted:

8 Swabs from inside left glove

Results of Examinations:

8 See DNA analysis.

DNA ANALYSIS**ITEMS ANALYZED:**

- 1 Buccal swabs- Jeremy Fleming
- 2 Buccal swabs- Abdul Hasan A-Mutakabbir Furquan
- 3 Swabs from trigger of Smith and Wesson
- 4 Swabs from grip of Smith and Wesson
- 5 Swabs from bandana marked "A"
- 6 Swabs from bandana marked "B"
- 7 Swabs from inside right glove
- 8 Swabs from inside left glove

EXAMINATIONS

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Tables 1 and 2.

RESULTS

The DNA profile developed from item 3 is a mixture of at least two individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jeremy Fleming as a contributor to this mixture. Abdul Furquan is excluded as a contributor to this mixture.

A partial DNA profile was developed from item 4. Jeremy Fleming cannot be excluded as a contributor to this item. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 1400.

The DNA profile developed from item 5 is a mixture of at least three individuals. No conclusive statement can be made regarding the inclusion or exclusion of Jeremy Fleming as a contributor to this mixture. Abdul Furquan is excluded as a contributor to this mixture.

The DNA profile developed from item 7 is a mixture of at least two individuals. No conclusive statement can be made regarding Jeremy Fleming as a contributor to this mixture. Abdul Furquan is excluded as a contributor to this mixture.



SLED LAB No. L11-12263
February 09, 2012

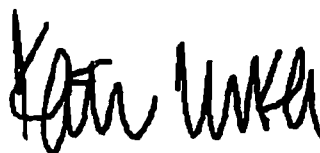
Page 3 of 5

The DNA profile developed from item 8 is a mixture of at least two individuals. No conclusive statement can be made regarding Jeremy Fleming as a contributor to this mixture. Abdul Furquan is excluded as a contributor to this mixture.

No human DNA was obtained from item 6.

The partial Y-STR profiles developed from items 3 and 4 are insufficient for reliable interpretation.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Katie Urka
Forensic Scientist



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Jill Domogauer
Horry County Police Department
2560 North Main St, Suite 7
Conway, SC 29526

FIREARMS DEPARTMENT

March 06, 2012
SLED LAB: L11-12263
Your Case No: 11102247
Incident Date: 10/16/2011
[V] David Moran
[S] Jeremy Fleming
[S] Abdul Furquan

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 10 One Smith & Wesson Model Airweight 637-2 revolver, 38 Special caliber, serial number DAZ3828.

RESULTS:

Item 10 was examined, test fired, and found to be in working order.

A test-fired bullet from Item 10 was entered into the Integrated Ballistics Identification System (IBIS). Should any "hits" be developed against this entry, you will be notified. Please retain Item 10 for a minimum of two years in order to maintain its availability for any future comparisons related to IBIS activity.

Comparison to SLED Laboratory Case Number L11-14397:

Horry County Police Department Case Number 11096340

Test bullets fired by Item 10 in this case were microscopically compared to Items 1 and 2 in SLED Laboratory Case Number L11-14397 with inconclusive results. Items 1 and 2 (L11-14397) could have been fired by Item 10 or by other similarly rifled firearms.



SLED LAB No. L11-12263
March 06, 2012

Page 2 of 2



Suzann F. Cromer
Forensic Scientist



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
Abdul Furquan,	)	Case No.: 2017-CP-26-07737
S.C.D.C. No. 260214,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
 2019 JUN 28 PM 1:22
 REMEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Abdul Furquan (Applicant) on November 27, 2017. The State of South Carolina (Respondent) filed a Return on March 1, 2018. The Court convened an evidentiary hearing into the matter on March 29, 2019, at the Horry County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Jacob Isenberg and Johnny James, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Ryan Stampfle, Esquire (Counsel) also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2012 term of the Horry County Grand Jury for first degree burglary (2012-GS-26-02057) and attempted murder (2012-GS-26-02058). Joshua D. Holford, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

Applicant proceeded to trial before the Honorable Larry B. Hyman and a jury. The jury found Applicant guilty as indicted on September 19, 2013. Pursuant to S.C. Code Ann. § 17-25-45, Judge Hyman sentenced Applicant to imprisonment for the duration of his life without the possibility of parole (LWOP).

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan B. Hackett, Esquire. She raised the following issue:

Did the trial court violate the Eighth Amendment's bar against cruel and unusual punishments by imposing a sentence of life imprisonment without the possibility of parole pursuant to the recidivist statute where the offense used to enhance the sentence occurred two decades before the instant crime?

By opinion decided November 16, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Furquan, Op. No. 2016-UP-479 (Ct. App. 2016). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated September 29, 2017. The Remittitur was issued on October 10, 2017.

II. PRESENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:

- a. "Counsel failed to adequately investigate the facts and circumstances surrounding the DNA evidence. Counsel's failure to conduct such an investigation deprived the jury of critical exculpatory DNA evidence. This information is relevant to an accurate assessment of applicant's guilty or innocence."
- b. "Counsel's failed to correct unsupported facts offered by the State in [their] closing argument. The State informed the jury 'Ladies and gentlemen, that is the gun that shot this victim in the head.' The record does not support this allegation nor does the SLED report. The jury may have had doubt if this 'fact' had been corrected."
- c. "Counsel failed to notify the Court that he in fact filed two separate motion to be relieved as counsel. The Applicant was not satisfied with counsel's representation and did not want to proceed to trial with him. The Applicant filed a complaint against counsel and requested he be relieved from representing the Applicant. In the best interest of the Applicant he should have been afforded a newly appointed counsel."
- d. "Counsel failed to investigate and present the facts and circumstances surrounding the possession of the weapon during the attempted murder. The fact that the co-defendant admission to wearing the gloves with the skeletal designs and the firearms trace which revealed the co-defendant was the owner of the gun along with GSR findings on the gloves. Counsel's failure to present these facts on cross-examination deprived the jury critical information relevant to an accurate assessment of applicant's innocence to attempted murder."
- e. "Counsel failed to seek an instruction stating that a burglary charge must set forth one, specific crime intended upon entry and stating what the specific crime was in this case."
- f. "Counsel failed to seek an instruction on 'Hands of One - Hands of All' to explain that 'intent' was an essential element to prove applicant guilty to knowingly participating in this case. Applicant was prejudiced due to the fact he had no intention to do bodily harm to victim."
- g. "Counsel was ineffective for failing to file a notice of appeal when his client specifically requested him to do so. Another individual who had to take her time to go to the public defenders and did the appeal herself when trial counsel informed her 'I would not do it.'"

Applicant stated he was seeking a new trial or lesser sentence. At the evidentiary hearing, Applicant additionally proceeded forward on ineffective assistance of counsel for the failure to investigate potential alibi witnesses and failure to present a valid trial strategy.

III. EVIDENTIARY HEARING TESTIMONY

Applicant

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified he met with Counsel about four or five times before trial. Applicant further testified he asked Counsel to investigate DNA evidence. Applicant also testified he received LWOP notice close to trial. Applicant testified Counsel told him he could get a better sentence than LWOP. Furthermore, Applicant testified Counsel guaranteed him they could beat the case. Applicant testified Counsel never advised him about the three-strike law.

Applicant testified he filed a motion to relieve that was denied. Applicant further testified he filed a second motion to relieve that Counsel delayed filing for a couple of months. Applicant testified he requested the second motion because he did not feel Counsel was investigating properly. Applicant testified the DNA evidence in his case reflected him not being present at the scene. Applicant also testified Counsel did not properly argue hand of one hand of all. According to Applicant, there is no proof of common scheme in his case. Ultimately, Applicant testified the judge gave him a choice between proceeding with Counsel or without representation at a motion to relieve hearing before trial.

Applicant testified Counsel did not show him DNA evidence until after the trial. Furthermore, Applicant testified he did not receive the SLED report until after incarceration. Applicant testified the report is exculpatory because of his exclusion from the trigger, bandana, and glove. However, Applicant acknowledged nobody testified to him firing the weapon at trial. Furthermore, Applicant acknowledged nobody testified to him wearing gloves at trial. Applicant did testify the victim's identification of two men with bandanas made it necessary to produce the DNA report.

Applicant testified the State should have not been allowed to say the weapon was the one used to shoot this victim. Applicant testified the State did not certify any experts to prove this was the weapon used to fire at the victim. Furthermore, Applicant testified he does not think the weapon presented at trial was the one used. Finally, Applicant testified the weapon fired could have been something similar to the one presented at trial. However, Applicant acknowledged multiple witnesses identified a black and silver revolver as the gun used.

Applicant testified Counsel failed to investigate an alibi that came up during conversations. Applicant testified he could not have been at the scene because he was working at the time. Applicant testified he told Counsel to go check with management at his job. Applicant further testified Counsel never followed up with management.

Finally, Applicant testified Counsel never filed an appeal on his behalf.

Counsel

Counsel testified he first met Applicant after the initiation of discovery. He further testified to meeting with Applicant about seven or eight times before trial. Counsel testified he never told Applicant they could beat the case. He also testified about notifying Applicant there was a great deal of evidence piled up that was beneficial to the prosecution. Counsel further testified about watching video of police interviewing multiple state witnesses. Counsel also testified he discussed LWOP with Applicant after it was served by the State.

Counsel testified Applicant was adamant about not wanting to take a plea deal. Thereafter, Counsel testified all pleas were taken off the table when Applicant relayed this message to the State.

Counsel testified to filing a motion to relieve on Applicant's behalf. He further testified Judge Hyman held a hearing on the matter the week before trial. Counsel testified to Judge

Hyman putting him on standby at the conclusion of the hearing. According to Counsel, Judge Hyman notified Applicant his choice was to proceed with the representation provided or pro se. Counsel testified Judge Hyman's basis for this was Applicant's pattern of filing this motion already caused previous lawyers to be relieved from his case and delay the trial.

Counsel testified Applicant presented him with an alibi about a month before trial. He recalled this was about six months after representation began. He further testified Applicant did not even present him with any witnesses to investigate. Counsel testified to investigating Applicant's employment and work schedule. During the investigation, Counsel recalled there being no smoking gun to indicate Applicant was working. Therefore, Counsel testified to concluding there was no evidence to indicate Applicant was anywhere but the apartment complex that night.

Counsel testified he did consider using DNA evidence at trial. Counsel further testified he sent out subpoenas to SLED agents with the intent for them to testify about the report. However, Counsel testified things changed when Applicant decided not to testify. First, Counsel testified putting up witnesses would prevent his ability to have last close. Second, Counsel testified he anticipated witness testimony for the State would not assert Applicant fired a weapon or wore gloves. Counsel testified Tyler did not notice gloves on Applicant's hands, and Sam claimed they were on his co-defendant's hands. Third, Counsel testified SLED agents notified him they intended to state the items tested may have been cleaned. Counsel further testified SLED agents claimed it is common for items to be cleaned when there are multiple days between incident and recovery. Fourth, Counsel testified he did not cross-examine the police officer about DNA because it was not raised on direct-examination. Counsel testified there just was not a smoking gun with the DNA evidence so he did not use it. Finally, Counsel testified he did not

think a jury would consider DNA evidence as exoneration when every witness testified Applicant was present. Specifically, Counsel testified he anticipated the jury would conclude he believed they were not intelligent if he used the DNA evidence to contradict four witnesses testifying Applicant was present. Thereafter, Counsel testified these concerns ultimately caused him to believe using DNA was a bad trial strategy.

Counsel testified his strategy ultimately came down to accomplice liability. Counsel testified his anticipation centered on nobody being able to identify the shooter. Counsel testified nobody had prior knowledge a gun was even going to be drawn. However, Counsel testified he anticipated witnesses to have secondhand knowledge about a Co-Defendant firing the weapon. Furthermore, Counsel testified nobody believed Applicant was wearing gloves. However, Counsel testified he anticipated witnesses to identify gloves on the shooter. On top of that, Counsel testified to his anticipation witnesses would identify a co-defendant having gloves on that night. Counsel further testified he anticipated three witnesses to state they went to the apartment complex to purchase marijuana. Ultimately, Counsel testified to anticipating witnesses would testify Applicant was only present at the scene to buy marijuana. Therefore, Counsel testified his ultimate trial strategy came down to proving there was no common plan or scheme.

Additionally, Counsel testified he did object to the gun being introduced at trial. According to Counsel, Judge Hyman overruled his objection based upon consistent witness testimony about the gun's description.

Finally, Counsel testified about filing an intent to appeal on Applicant's behalf. Furthermore, Counsel testified to getting a response from the Appellate Court acknowledging he filed an appeal on Applicant's behalf.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). 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 (citing Strickland, 466 U.S. at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Investigate DNA evidence

First, Applicant has alleged Counsel failed to investigate a report created by the South Carolina Law Enforcement Division (SLED). Applicant entered the SLED report (“report”) into evidence. The report reflects no traces of Applicant’s DNA on two bandanas, a weapon, or skeletal gloves.

a) Deficiency in Investigation

Applicant contends Counsel failed to investigate witnesses to introduce a SLED report. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). For purposes of a claim of ineffective assistance, while the scope of a reasonable investigation depends upon a number of issues including, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007). Finally, Counsel acts unreasonable when he or she fails to interview the expert witness who testifies about contents of an evidentiary analysis and report. Id., 372 S.C. at 333-4, 642 S.E.2d at 598. (finding counsel's investigation was unreasonable where he failed to interview expert witness who created gun-shot residue report).

Here, Applicant testified he told Counsel the report should be presented at trial as proof of his innocence. Applicant further testified Counsel never notified him the report was not being used at trial. Finally, Applicant testified he assumed the report would be introduced at trial. However, Counsel credibly testified he interviewed multiple SLED agents after reviewing the report with Applicant. Furthermore, Counsel credibly testified he subpoenaed those agents to testify at trial. Thereafter, Counsel credibly testified the agents notified him the lack of match was not uncommon. Counsel testified to being aware during the conversation items were not recovered until multiple days after the crime were committed. Counsel credibly explained agents told him they would testify this amount of time between crime and recovery allowed perpetrators

to wipe fingerprints. This Court finds Counsel independently interviewed material witnesses, discussed relevant information, and subpoenaed them for trial which resulted in a reasonable investigation. Therefore, Applicant has not sufficiently overcome the burden to prove Applicant was deficient in his investigation of witnesses relevant to the report.

b) Prejudice of alleged deficiency with DNA evidence

Applicant contends the jury would have believed he was not guilty if Counsel would have investigated the report to corroborate his alibi. Failure to proffer evidence is not prejudicial where it would not have exonerated the applicant if presented. Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) (finding the benefit of corroboration through witness testimony must be weighed against credibility concerns potentially brought out on cross examination as well as strong evidence of applicant's guilt). Furthermore, introducing cumulative evidence, or evidence that fails to aid anything introduced at trial, will not establish prejudice. Id. In South Carolina, if two or more combine together to commit an unlawful act and, in execution of such criminal act, another crime is committed by one of the actors, as a probable or natural consequence of the acts done in pursuance of common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972).

i) Credibility Concerns

Here, Applicant testified entering the report into evidence would have given the jury notice he was not present. Counsel credibly testified he could have put SLED agents on the stand to introduce and authenticate the report. As previously mentioned, Counsel credibly testified those witnesses were going to offer an explanation about why Applicant's DNA would not be on found on those items. Counsel credibly testified they would have explained the

commonality of removing DNA in situations where the items are not recovered for multiple days in a location away from the crime scene. Furthermore, Counsel credibly testified the Assistant Solicitor was prepared to bring out this testimony on cross examination. Finally, Counsel credibly testified the report would end up negatively impacting Applicant based upon evidence tampering allegations by the agents. Indeed, the record indicates the search warrant was executed three days after the shooting. (Tr. 210). Furthermore, the record indicates the items were recovered at a house where Applicant was living with Fleming. (Tr. 132-3). Therefore, this Court finds the agent would have raised credibility concerns about Applicant potentially tampered with evidence if Counsel entered the report through them.

ii) Overwhelming Evidence of Presence

Additionally, Counsel credibly testified the report would not have even remotely rebutted the consistent testimony from several witnesses identifying Applicant's presence at the scene. Tyler, Samantha, Smith, and Fleming testified Applicant went to the apartment with them to either get marijuana or money. (Tr. 63, 85, 99, 162). Tyler, Samantha, and Smith testified Applicant and Fleming went into the apartment complex unaccompanied by anyone else from the car. (Tr. 64, 75, 94). Tyler, Samantha, and Smith all testified to hearing a loud noise before seeing Applicant run back to the vehicle with Fleming. (Tr. 64, 77, 94). Samantha even identified that loud noise as a gunshot. (Tr. 76). Smith testified Applicant told her to leave the scene upon entering the vehicle. (Tr. 94). Samantha testified Applicant began screaming at the top of his lungs to the leave scene. (Tr. 78). The record reflects four witnesses in agreement Applicant was present without contradiction from any other witness who testified. Therefore, this Court finds there was overwhelming evidence Applicant was present.

iii) Corroboration

Applicant contends entering the report would have corroborated his alibi defense. Specifically, Applicant testified the report would have raised reasonable doubt as to whether he wore the bandanas introduced through Large's testimony at trial. Furthermore, Applicant testified it would have raised identification issues based upon Moran's testimony both individuals were wearing bandanas. Applicant testified these contradictions would have aided in showing he spent the night with his girlfriend after leaving work at Olive Garden. However, Counsel credibly testified there was nothing to connect the report to an alibi. Moran testified both individuals were wearing bandanas. (Tr. 175). Large did discuss collecting two bandanas from the residence searched. (Tr. 125). However, Large also testified to confirming with Olive Garden that Applicant got off work prior to the incident that night. (Tr. 107). Furthermore, Applicant's girlfriend testified at this trial without mentioning he potentially had an alibi. (Tr. 129-34). The report by itself would not show Applicant was working or with his girlfriend during the crime's commission. Therefore, this Court finds Applicant's alibi would not have been corroborated by introducing the report.

Accordingly, this Court finds the credibility concerns in entering the report through witnesses who would suggest evidence tampering and overwhelming evidence of presence at scene outweighs any corroboration it could have provided to Applicant's alibi. Therefore, this Court finds Applicant has not satisfied the burden of proving prejudice in any alleged failure to investigate the report.

2. Failure to Notify Court about Motions to Relieve

Applicant contends Counsel failed to properly put the court on notice of his motion to relieve. Applicant testified the court gave him no choice but to proceed with Counsel to trial. However, Counsel credibly testified to enduring multiple motions to relieve him by Applicant.

Counsel further credibly testified Applicant had already had previous lawyers relieved from this case. Counsel also credibly testified the last motion to relieve was heard by the Court within a week of the trial. Counsel credibly explained the court notified Applicant his options were either to proceed to trial with Counsel or pro se. Thereafter, Counsel testified Applicant contacted him to provide representation at trial. The trial record reflects Applicant's decision:

MR. HOLFORD: Your Honor, we've just -- just the issue of [Counsel] representing [Applicant].

THE COURT: Well, it's my understanding from [Applicant] that [Counsel] will be representing him; is that right [Counsel]?

MR. STAMPFLI: Yes, Your Honor, I was order to sit standby on this. [Applicant] has requested that I represent him. He requested this last Thursday evening and I believe it was your instructions that as standby, if he requested that then I was to sit in as his attorney.

THE COURT: All right. [Applicant], [Counsel] will be representing you; is that correct?

MR. FURQUAN: Yes, sir. (Tr. 9-10)

After recollection refreshment, Applicant testified the court actually gave him the choice between proceeding to trial with representation or pro-se. Therefore, this Court finds Applicant has failed to establish Counsel was deficient for not putting the Court on notice of his request to file motions to relieve.

3. Failure to investigate facts surrounding the weapon

a) Deficiency in Investigation

Applicant contends Counsel did not investigate whether he fired a weapon at the victim in preparation for trial. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." *Taylor v. State*, 404 S.C. at 364, 745 S.E.2d at 104. However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." *Edwards*, 392 S.C. at 457, 710 S.E.2d at 65.

Here, Counsel credibly testified to reviewing police interviews of Samantha and Smith to investigate their point of view. Counsel credibly recalled the interviews indicating Fleming fired the weapon. Thereafter, Counsel credibly testified to reviewing the report results which exhibited Fleming's DNA on the weapon and skeletal gloves. Furthermore, Counsel credibly recalled the report reflecting gunshot residue on the skeletal gloves. Finally, Counsel credibly testified he interviewed multiple SLED agents who made the report.

Accordingly, this Court finds Counsel conducted a reasonable investigation in reviewing police interviews with fact witnesses, reviewing the report, and interviewing witnesses about the report they created. Therefore, this Court finds Applicant has not sufficiently proven Counsel was deficient for failure to investigate facts surrounding possession of the weapon.

b) Prejudice in Investigation

Applicant contends his defense was weakened based upon Counsel not being adequately prepared to elicit certain facts about who fired the weapon at trial. To prove prejudice in an alleged failure to prepare the case, an applicant must show how additional preparation would have made a difference in the outcome. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (Finding no prejudice where applicant could not show how moving for a continuance would have been helpful to his case).

Here, Counsel credibly testified the central issue of the trial was accomplice liability. Counsel further credibly recalled the evidence overwhelmingly indicated Fleming fired the weapon at the victim in the presence of Applicant. Therefore, Counsel credibly assessed there was nothing more to elicit in showcasing Applicant did not fire the weapon. During closing statements, the Assistant Solicitor admitted he could not tell the jury with absolute certainty who pulled the trigger. (Tr. 211). He further assessed it was not necessary because Applicant and

Fleming acted together. (Tr. 212). Also, the record reflects nobody testifying Applicant fired the weapon. Therefore, this Court finds Applicant has not shown how additional preparation would have created a different outcome.

4. Failure to cross examine facts surrounding the weapon

a) Deficiency in cross examination

Applicant contends Counsel failed to elicit testimony about possession, ownership, and gunshot residue connected to firing the weapon. Counsel can be deficient in cross examination if they fail to elicit testimony key to an applicant's defense. Miller v. State, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (finding counsel was deficient in failing to elicit testimony about similarities between armed robberies from a witness who could corroborate where the applicant's key defense was third party guilt).

Here, Counsel credibly recalled using cross examination across multiple witnesses to highlight the likelihood Fleming fired the weapon. On cross examination, Tyler, Samantha, and Smith testified they did not know who fired the weapon. (Tr. 70, 84, 101). Samantha further testified to telling police during the interview that Fleming "shot the dude in the head." (Tr. 84). Smith testified to not remembering she told police Fleming shot a guy. (Tr. 99-100). Smith also testified Fleming said he wanted to go back and finish the job. (Tr. 103). Thereafter, Large testified nobody claimed ownership of the gun when it was recovered. (Tr. 129). Accordingly, this Court finds Counsel was not deficient in eliciting cross examination about facts surrounding the weapon.

Additionally, Counsel testified he highlighted the connection between the gloves and weapon to increase the likelihood Fleming fired. Tyler testified to seeing Fleming with skeletal

gloves on that night. (Tr. 64). Samantha testified to seeing Fleming with skeletal gloves on. (Tr. 84). The Crime Scene Investigator, Jill Domogauer, testified the skeletal gloves recovered had gunshot residue on them. (Tr. 156). Thereafter, Fleming testified he wore the skeletal gloves. (Tr. 163). Therefore, this Court finds Counsel was not deficient in eliciting cross examination about facts surrounding the gloves.

b) Prejudice in Cross Examination

Applicant contends failure to elicit testimony about possession of the weapon and who wore the gloves prejudiced his defense against the attempted murder charge. To prove prejudice in alleged deficient cross examination, an applicant must first provide evidence of what a more extensive cross examination would have revealed without merely speculating. Miller, 325 S.C. at 217, 481 S.E.2d at 133 (finding no prejudice where applicant did not present any evidence at the PCR hearing to exhibit additional information a trial witness should have been examined on).

Here, Applicant acknowledged Counsel elicited testimony on cross examination about Fleming firing the weapon. Applicant acknowledged Counsel eliciting testimony from Tyler, Samantha, and Smith that they did not know who fired the weapon. Applicant further acknowledged Counsel elicited testimony from Samantha and Smith about Fleming taking responsibility for firing the weapon. Thereafter, Applicant did not offer additional information these witnesses should have been cross examined on. Therefore, Applicant is purely speculating that he was prejudiced by Counsel's alleged failure to extend cross examination of Tyler, Smith, and Samantha.

Additionally, Applicant testified Large should have been cross examined to show Fleming had ownership of the weapon. However, Large testified to never finding out who owned the weapon. (Tr. 129). Furthermore, Large did not testify at this PCR hearing.

Therefore, Applicant is purely speculating Large could have provided additional information about ownership of the weapon.

Accordingly, this Court finds Applicant has failed to meet the burden to prove prejudice based upon any alleged deficiencies in cross examination.

5. Failure to Object during Closing Statements

a) Deficiency in Objections

Applicant contends Counsel ineffectively failed to object to closing statement remarks connecting the weapon in evidence to the one fired at the victim. Counsel is not deficient in failure to object if he or she can provide a strategic explanation about their decision. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel).

Here, Counsel made a Rule 403, SCRE, objection to the gun's admission into evidence. (Tr. 146). However, the court overruled Counsel's objection because witness descriptions matched the weapon recovered using a search warrant resulted in the probative value not being substantially outweighed by any unfair prejudice. (Tr. 147).

Here, Counsel gave a credible explanation about his custom not to object during closing statements unless opposing counsel goes beyond the scope of evidence admitted. Counsel credibly testified witness testimony connecting the weapon in evidence to the crime scene made this closing statement objection superfluous. Counsel further testified when you object to certain issues at close it creates the potential a jury will think you have something to hide before deliberation. According to Counsel, it is strategically unwise to bring unwanted attention to an issue during closing statements. In this situation, Counsel testified the weapon had been entered

into evidence despite an earlier objection. Indeed, Counsel made a Rule 403, SCRE, objection to the weapon's admission into evidence that was overruled. (Tr. 146). Counsel further testified witnesses from the vehicle, apartment, and recovery house positively identified a black and silver revolver. Collins identified a silver revolver in the apartment. (Tr. 56). Tyler identified a silver and black revolver in the vehicle. (Tr. 65). Large recovered a revolver with a silver and black handle upon executing a search warrant. (Tr. 118). Linder identified Applicant and Fleming lived at the residence where Large executed the search warrant. (Tr. 130, 132). Thereafter, Domogauer established chain of custody for the weapon. (Tr. 153-5).

Thus, this Court finds Counsel articulated a valid trial strategy in not objecting to the closing argument comments connecting the weapon to the crime. This Court finds Applicant has failed to satisfy the burden to show Counsel was deficient for failing to object during closing statements.

b) Prejudice based upon alleged failure to object

Applicant contends he was prejudiced by Counsel's failure to object during closing statements when the weapon entered was connected to the crime at issue. A solicitor's closing argument must not appeal to the personal biases of the jurors, nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences thereto. Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) (finding the solicitor's argument about applicant being a "dirty cockroach" was not so unfair as to make conviction a denial of due process). Furthermore, a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony. Id. The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166

(2002) (finding solicitor's comparison of defendant to victim was not prejudicial because it was based upon evidence already in the record).

Here, Applicant testified the jury would have doubted the connection between the weapon and the crime if Counsel objected during the Assistant's Solicitor's closing statements. Counsel testified the court would have overruled the objection based upon testimony linking the weapon, entered into evidence, to the crime. As previously mentioned, Collins identified a silver revolver being used by the individual who shot Moran. (Tr. 56). Tyler testified Applicant had a silver and black revolver after running from the apartment complex. (Tr. 65). Large recovered a silver and black revolver while executing a search warrant. (Tr. 118). Linder identified Applicant and Fleming lived at the residence where Large executed the search warrant. (Tr. 130, 132). Thereafter, Domogauer established chain of custody for the silver and black revolver recovered. (Tr. 153-5). During closing arguments, the Assistant Solicitor admitted to not knowing who fired the weapon. (Tr. 211).

Therefore, this Court finds a closing argument connecting the weapon to the crime was based upon reasonable inferences from evidence entered into the record. As a result, Applicant has failed establish prejudice based upon Counsel's alleged deficiency in not objecting during closing statements.

6. *Failure to seek Jury Instruction on Hand of One, Hand of All*

Applicant contends Counsel failed to seek a jury instruction for accomplice liability that intent is an essential element to prove he knowingly participated. In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in way that violates the Constitution. Battle v. State, 382 S.C. 197, 204, 675

S.E.2d 736, 740 (2009). A jury instruction violates due process if it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the State's burden of proof on an element of the offense. Lowry v. State, 376 S.C. 499, 505, 657 S.E.2d 760, 763 (2008). Substantively, if two or more combine together to commit an unlawful act and, in execution of such criminal act, another crime is committed by one of the actors, as a probable or natural consequence of the acts done in pursuance of common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972). Here, the court instructed the jury as follows:

If a crime is committed by two or more people who are acting together in committing the crime, the act of 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, act together, assisting each other in committing the offense, the act of one is the act of all or it is sometimes said the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, if the Defendant is present when the crime is committed is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by confident evidence the theory of a hand of one is the hand of all. A principal in a crime is one who either actually commits a crime or who is present, aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more people acting with a common plan or scheme are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. (Tr. 228-9)

The court correctly instructed the jury about knowledge requirements with accomplice liability. Therefore, this Court finds Applicant has failed to prove prejudice from any alleged deficiency in Counsel's failure to object this jury instruction.

7. Failure to seek Jury Instruction on First-Degree Burglary Intent

Applicant contends Counsel failed to seek a proper jury instruction for intent with first degree burglary. A jury instruction violates due process if it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the State's burden of proof on an element of the offense. Lowry, 376 S.C. at 505, 657 S.E.2d at 763. Generally, the trial court is simply required to charge only the current and correct law in South Carolina. Sheppard v. State, 357 S.C. 646, 663, 594 S.E.2d 462, 472 (2004). First-degree burglary requires that, at the time the offender entered the dwelling, he intended to commit a crime once inside. State v. Gilliland, 402 S.C. 389, 398, 741 S.E.2d 521, 526 (Ct. App. 2012). Here, the court instructed the jury as follows:

Next the State must prove beyond a reasonable doubt the Defendant intended to commit a crime, either a felony or misdemeanor, at the time of 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's not a burglary. On the other hand, if the Defendant intended to commit a crime at the time of entry, it is a burglary even if the intent was abandoned after the injury – entry. It does not matter that the intended crime was not committed. Intent may be shown by acts and conduct of the Defendant and other circumstances from you may naturally and reasonably infer intent. (Tr. 233)

The court correctly instructed the jury about intent requirements with first degree burglary. Therefore, this Court finds Applicant has failed to prove prejudice from any alleged deficiency in Counsel's failure to object this jury instruction.

8. *Failure to File Notice of Appeal*

Applicant contends Counsel failed to file a notice of appeal after his request. To show prejudice from counsel's deficient failure to consult with him about appeal, defendant must demonstrate that there is reasonable probability that, but for counsel's deficient performance, he would have timely appealed. Roe v. Flores-Ortega, 528 U.S. 470, 484 (2000). When counsel's constitutionally deficient performance deprives defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance of counsel claim entitling him to an appeal. Id. Here, Applicant did file an appeal which was perfected by appellate counsel. Therefore, this Court finds Applicant cannot show prejudice from any alleged failure to file notice of appeal by Counsel.

9. *Failure to Investigate Alibi Witnesses*

a) *Deficiencies Investigating Alibi*

Applicant contends Counsel failed to investigate witnesses after being put on notice of a potential alibi. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. at 364, 745 S.E.2d at 104. However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. at 457, 710 S.E.2d at 65. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014).

Here, Applicant testified he requested Counsel to investigate whether he was at work when the crime took place. However, Counsel credibly testified about issues he had with getting Applicant to communicate leads throughout the case. Specifically, Counsel credibly testified Applicant only showed interest in pursuing an alibi defense a month before trial. According to Counsel, this was about six months after he began representing Applicant. Thereafter, Counsel credibly testified about his concern with this being brought up several months into the case. Furthermore, Counsel credibly testified Applicant never even gave him a single name to use as a potential witness. Finally, Counsel credibly recalled he assessed and notified Applicant it was a bad defense based upon consistent stories given by witnesses during police interviews.

Therefore, this Court finds Counsel's decision not to investigate witnesses was reasonable where he reviewed witness interviews, believed the timing was suspicious, and never actually received names to corroborate an alibi. As a result, this Court finds Applicant has not overcome the burden to show Counsel was deficient for a failure to investigate a potential alibi defense.

b) Prejudice based upon deficient investigation

Applicant contends the jury would have found him not guilty if his girlfriend testified. To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Furthermore, an applicant's mere speculation as to what witness's testimony would have been, had she been called at trial cannot, by itself, satisfy applicant's burden of showing prejudice resulting from counsel's failure to call such witness at trial. Id.

Here, Applicant reasoned his girlfriend would have established an alibi defense. Specifically, Applicant testified his girlfriend, Mary Linder, would recall picking him up from work the night of this incident. Furthermore, Applicant testified Linder would recall going straight home together afterwards. Finally, Applicant testified Linder would recall hanging out with Applicant at their home the rest of that evening. However, Counsel testified Linder never indicated she could establish an alibi on Applicant's behalf. At trial, Linder testified without giving any indication Applicant had an alibi. (Tr. 129-33). Also, Linder did not testify at this PCR hearing. Therefore, this Court finds Applicant is merely speculating about her testimony which is insufficient to prove prejudice from any alleged failure to present an alibi defense.

10. Failure to present valid trial strategy

a) Trial Strategy Deficiency

Applicant contends Counsel was deficient for failing to introduce the report at trial. When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. Edwards v. State, 392 S.C. 449, 710 S.E.2d 60 (2011). The validity of counsel's strategy, in context of an ineffective assistance claim, is viewed under an objective standard of reasonableness. Id. In reviewing an ineffective assistance claim, the Court must be wary of second-guessing trial counsel's tactics. Id. Substantively, If two or more combine together to commit an unlawful act and, in execution of such criminal act, another crime is committed by one of the actors, as a probable or natural consequence of the acts done in pursuance of common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972).

i) Attempted murder

Here, Counsel credibly reasoned the evidence strongly indicated Fleming fired the weapon at the victim. Counsel further credibly testified his trial strategy for this offense was bringing out all the evidence Fleming was responsible. At trial, Counsel got Samantha to admit Fleming said he shot the victim in the head. (Tr. 84). Counsel then got her to admit Fleming expressed a desire to return to the crime scene to kill Moran. (Tr. 85). Counsel also got Samantha to admit Applicant never said he wanted to go back and kill Moran. (Tr. 85). Counsel also got Smith to admit Fleming said he wanted to go back and finish the job since the victim lived. (Tr. 103). Counsel also got Tyler to admit Fleming made all the death threats to him. (Tr. 71). Later on, Counsel got Fleming to admit he wore the skeletal gloves recovered.¹ (Tr. 163). Importantly, Counsel got Investigator Jill Domogauer to admit those skeletal gloves were positive for gunshot residue. (Tr. 156). Therefore, this Court finds Counsel had a valid trial strategy for the attempted murder charge.

ii) First degree burglary

Here, Counsel credibly recalled the lack of testimony or evidence clarifying who entered the dwelling. Counsel credibly testified his strategy with the burglary charge was to highlight a lack of evidence showing Applicant entered the home. Counsel further credibly testified his strategy was to highlight the likelihood only Fleming entered the home. On cross examination, Counsel got Tyler, Samantha, and Smith to admit they did not see Applicant enter the apartment. (Tr. 70, 83, 100). Counsel also got Collins to admit he could not identify who entered the home. (Tr. 59). Subsequently, Moran testified on direct examination of his uncertainty about two individuals entering the home. (176-7). On cross examination, Counsel got Moran to assess the individual who punched had gloves on based upon a padded blow. (Tr. 181-2). As previously

¹ Tyler also testified Fleming wore skeletal gloves. (Tr. 64).

mentioned, Fleming admitted to wearing the gloves which tested positive for gunshot residue. Moran further testified on cross the person who punched him, with gloves on, entered the apartment. (Tr. 181-2). Thereafter, Counsel got Moran to admit he did not know if both individuals entered the apartment. (Tr. 182). However, Collins testified to his certainty that both entering the apartment on cross examination (Tr. 61). Counsel properly highlighted this inconsistent testimony during closing statements. (Tr. 219). As previously mentioned, Fleming admitted to wearing the gloves which tested positive for gunshot residue. Therefore, this Court finds Counsel had a valid trial strategy for the first degree burglary charge.

iii) Accomplice liability

Here, Counsel credibly testified his trial strategy was highlighting Applicant did not intend to engage in a common plan or scheme with Fleming. At trial, Counsel's opening statement highlighted Applicant's lack of knowledge a robbery or shooting was going to occur. (Tr. 53). Tyler testified Fleming requested the ride so he could pick up money. (Tr. 63). Thereafter, Samantha testified her belief that Applicant and Fleming went to the apartment to buy marijuana. (Tr. 85). During cross examination, Smith testified Applicant and Fleming only intended to go to the apartment to pick up some money owed to them. (Tr. 99). During cross examination, Fleming testified Applicant came to the address with intent to buy marijuana. (Tr. 168). Fleming testified a girl named Brie provided Moran's address so they could buy marijuana. (Tr. 168). Moran testified he had been texting a girl name Brie that night. (Tr. 181). During closing statements, Counsel argued the collective testimony highlighted Applicant only being there for marijuana which was insufficient for a common plan or scheme to shoot anyone. (Tr. 221). Therefore, this Court finds Counsel had a valid trial strategy to combat accomplice liability for the above-mentioned charges.

III. CONCLUSION

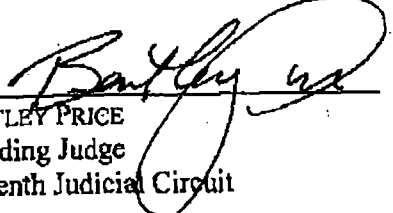
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

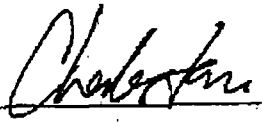
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16th day of June, 2019.


BENTLEY PRICE
Presiding Judge
Fifteenth Judicial Circuit


_____, South Carolina

WITNESSES

T.A. Large Horry County Police Department

ARREST WARRANT NUMBER

M841282

CDR: 0079 16-11-0311

DOA: 10/19/2011

ACTION OF GRAND JURY

TRUE BILL

Brandon Cannon
Foreperson of Grand Jury

Date:

MAY 24 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-26-02057

The State of South Carolina

County of Horry

Nancy G. Cola

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

THE STATE

vs.

Abdul A-Mutakabbir-Furquan B/M
Lot Rocky Road
Myrtle Beach, SC 29577

DOB: 1973-

SSN:

ATTORNEY: Stampfle, Ryan A.

Indictment for

BURGLARY FIRST DEGREE

J. Gregory Hembree, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2013 SEP 24 PM 1:18

CERTIFIED COPY

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MELANIE HIGGINS-WARD
CLERK OF COURT

HORRY COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY FIRST DEGREE

CDR: 0079 16-11-0311

That **Abdul A-Mutakabbir Furquan** did, in Horry County, State of South Carolina, on or about October 16, 2011 enter the dwelling of David Moran without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, and/or caused physical injury to a non-participant in the crime, and/or the entering or remaining occurred in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

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Melanie Hembree
CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Abdul A-Mutakabbir Furquan
 AKA:
 Race: BLACK Sex: M Age: 40
 DOB: -1973 SS#: [REDACTED]
 Address:
 City, State, Zip: Myrtle Beach, SC
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2012GS2602057
 A/W#: M841282
 Date of Offense: 10/16/2011
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree (15-LF)

☒ CONVICTED OF or ☐ PLEADS

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 ☐ §17-25-45
 w/minor 1st or Lowd Act)

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:

Holford, Joshua D.

SCB80071

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of LIFE WITHOUT PAROLE days/months/years or ☐ under the Youthful Offender Act not to exceed 10 years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment
 of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED]

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

PTUP

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED]

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 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
§ 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 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ <u>N/A</u>

[REDACTED] days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. [REDACTED]

May serve W/E beginning [REDACTED]

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ [REDACTED] beginning [REDACTED]

\$ [REDACTED] paid to Public Defender Fund

Other: [REDACTED]

☐ Appointed PD or appointed ethical counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Kay Richardson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2152

Sentence Date: 9/19/13

CERTIFIED COPY
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 CLERK OF COURT
 HORRY COUNTY

ARREST WARRANT

M-841282

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

against

Abdul A-Mutakabbir Furquan

Address: Lot Rocky Road

Myrtle Beach, SC -

Phone: SSN

Sex M Race: B Height 5 9 Weight 140

DL State: DL #:

DOB: /1973 Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Troy Large - 2906

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Hasan Abdul A. M. Furquan on 10/19/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Troy Large

being duly sworn deposes and says that defendant Abdul A-Mutakabbir Furquan

did within this county and state on or about 10/16/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On October 16th, 2011 around 11:40pm the defendant along with a co-defendant Abdul A-Mutakabbir Furquan did present handguns and threaten the victim while entering the residence at Ivy stone Drive, Unit Myrtle Beach, South Carolina by force. The defendant used a deadly weapon and shot the victim in the head which cause injuries that was life threatening. The victim was transported to the hospital. The defendant and co-defendant did without consent or permission entered a residence at night with the intent to commit a crime. Therefore Abdul A-Mutakabbir Furquan did commit the offense of Burglary 1st. CASE # 11102247

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/16/2011 defendant Abdul A-Mutakabbir Furquan

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 10/19/2011

Signature of Issuing Judge (L.S.)

Bradley Dwyer Mayers

Judge Code: 508

Judge's Address 1201 Third Avenue

Conway, SC 29526-5105

Judge's Telephone (843)915-5290

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
CCCA 518

488

WITNESSES

Heather Anderson Horry County Police
Department

DOCKET NO. 2012-GS-26-02058

The State of South Carolina

County of Horry

2013 SEP 24 PM 1:18

MELANIE W. COTE
CLERK OF COURT

11H04581

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Melanie Higgins-Ward
CLERK OF COURT
HORRY COUNTY

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

M841283

CDR: 3410 16-03-0029

DOA: 10/19/2011

ACTION OF GRAND JURY

TRUE BILL

Brandon Cannon
Foreperson of Grand Jury
Date:

MAY 24 2012

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

VS.

Abdul A-Mutakabbir Furquan B/M
Lot Rocky Road
Myrtle Beach, SC. 29577

DOB: 1973
SSN:

ATTORNEY: Stampfle, Ryan A.

Indictment for

ATTEMPTED MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

FILED
HORR
2013 SEP 24 PM 1:18
MELANIE H. HARRIS
CLERK OF COURT

That **Abdul A-Mutakabbir Furquan** did, in Horry County, State of South Carolina, on or about October 16, 2011 with intent to kill David Moran, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2013 SEP 24 PM 1:23
Melanie H. Harris
CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Abdul A-Mutakabbir Furquan

INDICTMENT/CASE#: 2012GS2602058A/W#: M841283Date of Offense: 10/16/2011S.C. Code § : 16-03-0029CDR Code #: 3410

AKA: _____
 Race: BLACK Sex: M Age: 40
 DOB: -1973 SS#: _____
 Address: Lot Rocky Road
 City, State, Zip: Myrtle Beach, SC
 DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Attempted Murder (0-30)

☒ CONVICTED OF or ☒ PLEADS

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 ☐ §17-25-45
 w/minor 1st or Lewd Act)

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:

SCB80071

Holford, Joshua D.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of LIFE WITHIN 10 YEARS 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

PTUP

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	\$
§ 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	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	N/A

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid in full
 during probation.

Presiding Judge:

Judge Code: 2152Sentence Date: 9/19/13

CERTIFIED COPY

2013 SEP 24 PM 4:23
 CLERK OF COURT
 HORRY COUNTY

ARREST WARRANT

M-841283

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

2013 SEP 24

PM 1:18

THE STATE

against

Abdul A-Mutakabbir Furquan

Address: Lot Rocky Road

Myrtle Beach, SC -

Phone:

SSN:

Sex: M

Race: B

Height: 5

9

Weight: 140

DL State:

DL #:

DOB: /1973

Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Troy Large - 2906

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Hasan Abdul A-M. Furquan

10/19/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

Personally appeared before me the affiant Troy Large

being duly sworn deposes and says that defendant Abdul A-Mutakabbir Furquan

has within this county and state on or about 10/16/2011

violated the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On October 16th, 2011 around 11:40pm the defendant along with a co-defendant Abdul A-Mutakabbir Furquan did present
handguns and threaten the victim while entering the residence at Ivy stone Drive, Unit Myrtle Beach, South Carolina by
force. The defendant used a deadly weapon and shot the victim in the head which cause injuries that was life threatening. The
victim was transported to the hospital. The defendant displayed malice when he shot the victim point blank in the head Therefore
Abdul A-Mutakabbir Furquan did commit the offense of attempted murder. CASE # 11102247

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/16/2011 defendant Abdul A-Mutakabbir Furquan

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 10/19/2011

(L.S.)

Signature of Issuing Judge

Bradley Dwyer Mayors

Judge Code: 5011

Judge's Address 1201 Third Avenue

Conway, SC 29526-5105

Judge's Telephone (843)915-5290

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

CERTIFIED COPY

2013 SEP 24 PM 1:22

Melanie Higgins-Ward
CLERK OF COURT
HORRY COUNTY2011 NOV -1 PM 1:54
HORRY COUNTY
CLERK OF COURT
MELANIE HIGGINS-WARD

WITNESSES

T. A. Large Horry County Police Department

DOCKET NO. 2012-GS-26-02059

FILED
HORRY COUNTY

The State of South Carolina
2013 SEP 24 PM 1:18 County of Horry

MELANIE H. NANCY G. COLE
CLERK OF COURT

11H04581

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

M841285

CDR: 3434 16-23-0500(A)

DOA: 10/19/2011

ACTION OF GRAND JURY

TRUE BILL

Brandon Lerner
Foreperson of Grand Jury
Date:

MAY 24 2012

VERDICT

Foreperson of Petit Jury
Date:

VS.

Abdul A-Mutakabbir Furquan B/M
Lot Rocky Road
Myrtle Beach, SC 29577

DOB: 1973-
SSN:

ATTORNEY: Stampfle, Ryan A.

Indictment for

UNLAWFUL POSSESSION OF
FIREARM BY PERSON
CONVICTED OF A VIOLENT
OFFENSE

J. Gregory Hembree, Solicitor

ORIGINAL

CERTIFIED COPY
2013 SEP 24 PM 1:23
Melanie Higgins-Ward
CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 24, 2012, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL POSSESSION OF FIREARM BY PERSON
CONVICTED OF A VIOLENT OFFENSE

CDR: 3434 16-23-0500

That **Abdul A-Mutakabbir Furquan** did, in Horry County, State of South Carolina, on or about October 16, 2011, knowingly possess or acquire a pistol after having been convicted of a violent crime defined in Section 16-1-60, S. C. Code of Laws, 1976, as amended, in violation of Section 16-23-0500, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
 2013 SEP 24 PM 1:23
 Melanie Herring
 CLERK OF COURT
 HORRY COUNTY

FILED
 HORRY COUNTY
 2013 SEP 24 PM 1:18
 MELANIE HERRING
 CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF Horry
 STATE VS.
Abdul A-Mutakabbir Furquan

AKA:

Race: BLACK Sex: M Age: 40DOB: -1973 SS# [REDACTED]Address: Rocky RoadCity, State, Zip: Myrtle Beach, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony (16-5)in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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:

Holford, Joshua D.

SCB80071

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed 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 24 years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment
 of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for 18

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 ☐ OrderedTotal: \$ [REDACTED] plus 20% fee: \$ [REDACTED]

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 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

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca

Proviso 90.5 (SCCJA Surcharge) \$5

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Kay Richardson

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012QS2602059A/W#: M841285Date of Offense: 10/16/2011S.C. Code § 16-23-0500(A)CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

2013 SEP 24 PM 1:18
 CLERK OF COURT
 HORRY COUNTY

CERTIFIED COPY
 2013 SEP 24 PM 1:23

PTUP

[REDACTED] days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. [REDACTED]May serve W/E beginning [REDACTED]Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ [REDACTED] beginning [REDACTED]\$ [REDACTED] paid to Public Defender FundOther: [REDACTED]

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to clerk
 during probation.

Presiding Judge [REDACTED]Judge Code: 2152Sentence Date: 9/19/13

ARREST WARRANT

M-841285

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Horry

2013 SEP 24 PM 1:18

THE STATE

against

Abdul A-Mutakabbir Furquan

MELANIE HUGGINS-WARD
CLERK OF COURT

Address: [redacted] Lo [redacted] Rocky Road

Myrtle Beach, SC -

Phone: [redacted] SSN: [redacted]
Sex: M Race: B Height: 5 9 Weight: 140

DL State: [redacted] DL #: [redacted]

DOB: [redacted]/1973 Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Troy Large - 2906

Offense: Weapons / Possession of Firearm or Ammunition
by person convicted of violent felony

Offense Code: 3434

Code/Ordinance Sec: 16-23-0500(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: [redacted]

RETURN

A copy of this arrest warrant was delivered to
defendant on Haseen Abdul A. M. Furquan
10/19/11

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Troy Large

being duly sworn deposes and says that defendant Abdul A-Mutakabbir Furquan

did within this county and state on or about 10/16/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On October 16th, 2011 around 11:40pm the defendant along with a co-defendant Abdul A-Mutakabbir Furquan did present
handguns and threaten the victim while entering the residence at [redacted] Ivy stone Drive, Unit [redacted] Myrtle Beach, South Carolina by
force. The defendant used a deadly weapon and shot the victim in the head which cause injuries that was life threatening. The
victim was transported to the hospital. The defendant is a convicted felon and prohibited to possess a gun. Therefore Abdul
A-Mutakabbir Furquan did commit the offense of felon in possession of a gun. CASE # 11102247

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street
Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/16/2011 defendant Abdul A-Mutakabbir Furquan

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry

) as set forth below;

DESCRIPTION OF OFFENSE: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

Having found probable cause and the above affiant having sworn before me; you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge (L.S.)

Bradley Dwyer Meyers

Judge Code: 5081

Judge's Address 1201 Third Avenue
Conway, SC 29526-5105

Judge's Telephone (843)915-5290

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

AFFIDAVIT

Form Approved by
U.S. Attorney General
April 21, 2003
80CA 51a

CERTIFIED COPY

2013 SEP 24 PM 1:22

MELANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

FILED
HORRY COUNTY
2011 NOV - 1 PM 1:54
MELANIE HUGGINS-WARD
CLERK OF COURT