

1 shall give to the Court and this jury in this case now
2 being tried shall be the truth, the whole truth, and
3 nothing but the truth, so help you, God?

4 MR. DUSTIN MANESS: Yes.

5 THE COURT: You may have a seat, sir. Ms.
6 Allen?

7 MS. ALLEN: Thank you, sir.

8 *****
9 *****

10 MR. DUSTIN MANESS, having been first duly sworn by the
11 Clerk, testified on **DIRECT EXAMINATION** by **MS. ALLEN**:

12 Q. (BY MS. ALLEN) Sir, would you state your full name for
13 the Court, please.

14 A. Dustin Gabrielle Maness.

15 Q. How old are you?

16 A. Twenty-two.

17 Q. And sir, would you tell us what you have been convicted
18 of in the last ten years which is a Class Two misdemeanor
19 or greater.

20 A. Obtaining property by false pretenses.

21 Q. And do you know the defendant Scott Allen?

22 A. Yes.

23 Q. How long have you known him?

24 A. Off and on for, I don't know, five or ten years maybe,
25 something like that. Not quite ten years.

1 Q. Okay. Do you know Christopher Gailey?

2 A. Yes.

3 Q. And how did you know Mr. Gailey?

4 A. He was a friend of my brothers, and we became friends
5 when I was about seventeen.

6 Q. Do you recall what name Scott Allen was using in 1999?

7 A. Byron Johnson.

8 Q. Do you know why?

9 A. I had an idea, yeah.

10 Q. What was your idea?

11 A. That he didn't want anyone to know who he was because he
12 was wanted by the law.

13 Q. And do you know where the defendant Scott was living in
14 1999?

15 A. He was -- Well, I don't know where he was living. I know
16 where I saw him once.

17 Q. Where did you see him once?

18 A. Whippoorwill Drive. Or not drive, it's like a
19 Whippoorwill, sort of a development.

20 Q. Whippoorwill Cove?

21 A. Yeah, Cove, at Badin Lake. Yes.

22 Q. You'd seen him over there on this occasion, is that
23 correct?

24 A. Yes.

25 Q. Okay. And did you ever got to a cabin in Montgomery

1 County with Scott?

2 A. Yes.

3 Q. And do you recall how you got there?

4 A. I drove my grandfather's car, and me and Scott and Chris
5 went.

6 Q. Okay. And where was the cabin located?

7 A. I can't remember the name of the road. It wasn't far
8 from Whippoorwill. It was maybe two miles maybe. It was
9 a long, long dirt road. It was nighttime when we went,
10 and I can't recall the name of the road.

11 Q. Okay. Do you remember the cabin itself?

12 A. Yes.

13 MS. ALLEN: If I may approach?

14 THE COURT: Yes, ma'am.

15 Q. (BY MS. ALLEN) Mr. Maness, I'm showing you what's
16 previously been marked as State's Exhibit Number Forty-
17 Two. Is that the cabin that you went to?

18 A. That's one of the cabins.

19 Q. Okay. Was there an additional cabin as well?

20 A. There was, yes.

21 MS. ALLEN: If I may have Exhibit Number Two.

22 Q. (BY MS. ALLEN) Mr. Maness, I'm showing you what I have
23 marked as State's Exhibit Number Two. Is that the other
24 cabin that you went to?

25 A. Yes, that's the other cabin. Yeah, that was the first

1 cabin we went to.

2 Q. Okay. This is the first cabin that you went to?

3 A. Yes.

4 Q. And subsequent to that you had been to this one?

5 A. Yes.

6 Q. With the defendant?

7 A. Yes.

8 Q. And the victim?

9 A. Yes.

10 Q. Okay.

11 MS. ALLEN: If I may just show these two to the

12 jury.

13 *(State's Exhibit Numbers Two and Forty-Two are*
14 *published to the jury by way of ELMO.)*

15 THE COURT: These are Exhibits Numbers Forty
16 Two and what?

17 MS. ALLEN: Forty-Two and Number Two.

18 THE COURT: All right.

19 Q. (BY MS. ALLEN) Do you know what kind of gun Chris owned?

20 A. He owned a .45 caliber pistol and a pistol-grip 12-gauge
21 shotgun.

22 Q. All right. Who is Joyce Allen?

23 A. Joyce Allen is Scott's ex-wife, it was at the time the
24 girl Chris was seeing.

25 Q. That was Chris' girlfriend at the time?

1 A. Yes. Pretty much kind of, yeah, something like that.

2 Q. Do you know what kind of relationship Scott and Joyce had
3 at the time?

4 A. Just you know, the average girlfriend/boyfriend scenario.

5 Q. No, not Christopher and Joyce, but the defendant Scott
6 and Joyce.

7 A. Oh, they got along. I would imagine. He stayed at
8 Joyce's a couple of nights. I'm sure.

9 Q. Okay. And have you ever been to Joyce Allen's house?

10 A. Yes, I stayed there for several months.

11 Q. All right. Do you recall an occasion when you were there
12 and some other people were there, Chris being one of
13 them?

14 A. What?

15 Q. At Joyce Allen's?

16 A. I mean yeah, a couple of occasions, but not -- Are you
17 referring to a certain case?

18 Q. Well, do you recall ever being there when Christopher
19 Gailey said something ugly to Joyce Allen?

20 A. Yeah, I remember that incident.

21 Q. Do you remember what he said?

22 A. Yeah, he called her a bitch.

23 Q. And what did Scott have to say about that?

24 A. Don't call her a bitch again, I'll beat your ass if you
25 do.

1 Q. Okay.

2 A. Something to that nature.

3 Q. Okay. No further questions.

4 THE COURT: Cross examine?

5 MR. OLDHAM: Thank you, Your Honor.

6 *****

7 *****

8 **CROSS EXAMINATION of MR. DUSTIN MANESS by MR. OLDHAM:**

9 Q. (BY MR. OLDHAM) Mr. Maness, you indicated to the
10 Assistant District Attorney that you have known Scott
11 Allen for about five or ten years, is that correct?

12 A. Something like that, yeah.

13 Q. Okay. And you had known Mr. Gailey prior to that time?

14 A. Yes.

15 Q. Through your brother?

16 A. Yes.

17 Q. And you and Mr. Gailey had become good friends, had you
18 not?

19 A. Yes, that's true.

20 Q. What did you call him?

21 A. I called him Chris.

22 Q. Chris. Okay. And you've indicated that you knew Joyce
23 Allen who was Scott Allen's wife, is that correct?

24 A. Yes, that's true.

25 Q. And they were not living together through the entire time

1 that you knew them, were they?

2 A. No, they were not.

3 Q. They had separated?

4 A. Yes.

5 Q. And you indicated Chris Gailey had stayed there some with
6 Joyce Allen in 1999, is that correct?

7 A. Yes, that's true.

8 Q. And you had visited there in the home, is that correct?

9 A. Yes.

10 Q. Now, is it not a fact also that Chris and Scott were good
11 friends?

12 A. Yes.

13 Q. And you actually would describe them as being tight,
14 would you not?

15 A. Yes.

16 Q. And there really were no secrets then between them, I
17 would assume, if they were tight as far as you knew it,
18 were there?

19 A. I would think not.

20 Q. Actually you saw -- Had you ever observed them together
21 during 1999?

22 A. Yes.

23 Q. Where was that, please?

24 A. Like I said, at Whippoorwill Cove.

25 Q. How many times did you go there?'

- 1 A. To Whippoorwill Cove?
- 2 Q. Yes, sir.
- 3 A. Numerous occasions, I can't count the times.
- 4 Q. Did you see other people there that you knew?
- 5 A. Oh, yeah.
- 6 Q. How many?
- 7 A. At any given time, from five other people to fifteen to
8 twenty other people.
- 9 Q. Would this be the type of place then where there were
10 frequently people in and out of the residence?
- 11 A. Yes.
- 12 Q. Most of these people seem to know each other?
- 13 A. Yes.
- 14 Q. And was there use of drugs going on there?
- 15 A. Yes, there was.
- 16 Q. And alcohol?
- 17 A. Yes.
- 18 Q. And you knew Vanessa Smith, did you not?
- 19 A. I -- Not really. I've met her a couple of times. I
20 didn't really know her.
- 21 Q. Okay. Where had you met her before?
- 22 A. Let's see. I'd met her at Joyce Allen's residence, and
23 it seems I'd met her at Craig Lang's residence one time,
24 a friend of mine in Silver Valley.
- 25 Q. And you said you had seen photographs of two exhibits of

1 two places in Montgomery County, is that correct?

2 A. Yes.

3 Q. I don't recall the numbers. Are those the ones that are
4 in front of you?

5 A. Yes, sir.

6 MR. OLDHAM: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 Q. (BY MR. OLDHAM) This one is identified as State's
9 Exhibit Number Forty-Two. Was that the first one that
10 you'd seen or had you seen State's Exhibit Two earlier?

11 A. I saw this one prior to seeing this one. This was the
12 first.

13 Q. This was the first one?

14 A. Yes, it was.

15 Q. How long ago was that?

16 A. Man, that was a long time ago.

17 Q. Years?

18 A. 1999, yes, years ago.

19 Q. It would have been years before then that you saw this
20 place?

21 A. No. It was that year.

22 Q. In '99?

23 A. Yes.

24 Q. What was the purpose that you saw this place in 1999?

25 A. At first I didn't really ask any questions, because you

1 know, me and Scott and Chris, they asked me to drive them
2 out there. I didn't -- I wasn't really into asking
3 questions, you know. I was along for the ride you know,
4 whatever. We got out there, I assumed that they were
5 looking for something, checking on something that may
6 have been hidden out there.

7 Q. It wasn't just Scott that was there with you on this
8 occasion then? I mean Chris was there also?

9 A. Yes, he was.

10 Q. The three of you?

11 A. Yes.

12 Q. Okay. And did Chris have a weapon or weapons with him on
13 that occasion?

14 A. Yes, we -- he carried a .45 pistol, and Scott carried the
15 122-gauge shotgun, and on the way back -- No, Scott never
16 touched the gun actually. I carried it. And on the way
17 back I carried the pistol, and Chris carried the shotgun.
18 He always carried guns. That was his nature.

19 Q. All right. Let me make sure I get this correct.

20 A. Go ahead.

21 Q. On the way into this particular residence --

22 A. Yes.

23 Q. -- Chris Gailey had a pistol that he was carrying?

24 A. Yes, he did.

25 Q. Do you know what caliber?

1 A. .45 caliber.

2 Q. Okay. And you carried a shotgun in there on that
3 occasion?

4 A. Yes.

5 Q. And that was Chris' weapon?

6 A. Yes.

7 Q. What type of shotgun was it?

8 A. Twelve-gauge shotgun.

9 Q. Was it sawed off?

10 A. Actually I think it was legal length, it was just built
11 with a pistol grip though.

12 Q. Pistol grip?

13 A. Yes.

14 Q. By pistol grip you mean it did not have --

15 A. It did not have a pump as a slide, you know.

16 Q. Okay.

17 A. It was like synthetic pistol grips.

18 Q. Okay. And Scott carried what when you went in there?

19 A. He had a satchel.

20 Q. Okay. And what did y'all do?

21 A. Went in, sat around, did some coke, smoked a joint,
22 smoked about a pack of cigarettes, and they were talking,
23 and one would go out, one would come back in, when the
24 other went out, the other came back in, and we left.

25 Q. Okay.

1 A. Just like that.

2 Q. Now, the other exhibit which was a photograph marked
3 State's Exhibit Forty-Two, you had been to this
4 residence?

5 A. Yes.

6 Q. When?

7 A. The same week, I think. I think it was the same week.

8 Q. Okay. For what purpose?

9 A. The same, I think.

10 Q. What did you do?

11 A. Same thing. The exact same thing.

12 Q. When you say the same thing, you mean you went there and
13 you carried a shotgun in and Chris carried a pistol?

14 A. No.

15 Q. What happened.

16 A. Not that time. There was no shotgun that time. Chris
17 carried his pistol.

18 Q. Okay.

19 A. I assume he had it on. He always carried it.

20 Q. He always carried a gun?

21 A. Yes.

22 Q. Okay.

23 A. He's the kind of guy that likes guns.

24 Q. Okay. And were you riding with him on that occasion?

25 A. Yes.

1 Q. Did you go there with him?

2 A. Yes.

3 Q. Okay. And anybody else with the two of you?

4 A. Yeah, Scott.

5 Q. Scott was with the two of you?

6 A. Yes.

7 Q. How did y'all get together?

8 A. From what I gathered, Chris went to pick Scott up from I
9 think Charlotte, so he went to Charlotte --

10 MR. YATES: Your Honor, is there any particular
11 reason that Mr. Oldham's standing up there? I would
12 object, Your Honor.

13 MR. OLDHAM: I can go back to my seat, Your
14 Honor.

15 THE COURT: All right. If you would, those are
16 Numbers Two and Forty-Two. Folks, I said 12:00, but can
17 we go -- I'm going to go a few more minutes.

18 Q. (BY MR. OLDHAM) Okay. You may continue, Mr. Maness.

19 THE COURT: You may want to renew your
20 question. I'm sorry.

21 A. Yes, please do. It was about the trip to Number Forty-
22 Two, yeah. The trip --

23 Q. (BY MR. OLDHAM) Let me get the exhibit and make sure I'm
24 looking at the right one.

25 A. Yes, this one.

1 Q. Yes, sir. And that's State's Exhibit Forty-Two. Yes,
2 sir.

3 THE COURT: I'll just tell you what. Take that
4 back out there to ELMO and turn it on and then we'll all
5 know what we're looking at. If you don't mind.

6 *(State's Exhibit Number Forty-Two is placed on*
7 *ELMO.)*

8 MR. OLDHAM: I'll need some help because I've
9 never operated this thing before.

10 MR. YATES: You turn it on back there.

11 MR. OLDHAM: Okay.

12 THE COURT: ELMO's got a brain.

13 Q. (BY MR. OLDHAM) Okay. You went there with Scott and
14 Christopher Gailey, is that correct?

15 A. Yes, that's correct.

16 Q. And you were in Chris Gailey's truck, right?

17 A. No, actually we took Danny Lanier's truck.

18 Q. You took Danny Lanier's truck?

19 A. Yeah.

20 Q. Okay. And did y'all drive into this residence?

21 A. No, we walked.

22 Q. You walked? Where did you leave the vehicle?

23 A. We left the vehicle at the dirt road.

24 Q. And how long were you there on that occasion?

25 A. Maybe an hour.

1 Q. Okay.

2 A. We were actually there maybe forty-five minutes to an
3 hour. It takes -- It took a good little walk to get
4 there.

5 Q. Okay. And you stayed there how long?

6 A. Forty-five minutes to an hour, maybe.

7 Q. And did y'all leave together at the end of that time?

8 A. Yes, we did. I can't be exact about times. I mean I was
9 pretty stoned most of the time, you know. So you know,
10 it's nothing to lie about.

11 Q. When you say stoned, you mean you were using drugs?

12 A. Yeah, high, intoxicated.

13 Q. What types of drugs?

14 A. Mainly marijuana and cocaine. Actually not mainly, that
15 was it. That was all, marijuana and cocaine, sometimes
16 alcohol.

17 Q. Okay. And did you have those drugs yourself?

18 A. Sometimes.

19 Q. Your own drugs, on that occasion?

20 A. No, I didn't have any at that time.

21 Q. Did you get them from Chris?

22 A. Yeah, Chris had some.

23 Q. Had you gotten drugs from Chris before?

24 A. Well, yeah, we had gotten drugs together and did drugs,
25 yeah.

1 Q. Now, when you were there on that occasion, there was no
2 disagreements between anybody, was there?

3 A. No. You know, just the average, getting high, whatever.
4 I don't really say much when I do coke, because you know,
5 I don't know if anyone in the courtroom's ever done it,
6 but you have it, it kind of numbs your esophagus, and I
7 don't say much.

8 Q. Now, you said you were at Joyce Allen's house one time,
9 is that correct?

10 A. Yeah.

11 Q. And that was up in a different part of Randolph County,
12 is that right?

13 A. Yes.

14 Q. And you saw Chris there?

15 A. Yes.

16 Q. Who else was there?

17 A. Scott and Vanessa, Lois Lawson, was Lois Spender, and
18 Joyce, six of us.

19 Q. Okay. Who is Lois Spender?

20 A. That is Joyce's twin sister.

21 Q. Okay. Did everybody know each other up there?

22 A. Oh, yeah.

23 Q. This was before you went to that location you've been
24 testifying about, the State's Exhibit Forty-Two that's on
25 the ELMO at this time, is that correct?

- 1 A. Yes, it is.
- 2 Q. This was several months earlier?
- 3 A. Yeah.
- 4 Q. Okay. Do you remember what time this was or when it was?
- 5 A. What time of day?
- 6 Q. What month it was?
- 7 A. I don't recall.
- 8 Q. Okay. And you said Chris said something to Joyce on that
9 occasion?
- 10 A. Yeah, they had a dispute. He called her a bitch or
11 something like that.
- 12 Q. Then what happened then?
- 13 A. Besides -- What, between those two?
- 14 Q. Yeah.
- 15 A. Nothing. Nothing escalated from that point on.
- 16 Q. You said Scott said something to Chris?
- 17 A. Yeah, between Scott and Chris, he said don't say that
18 again, you know, I'll beat your ass, or something like
19 that.
- 20 Q. Did you think anything about that?
- 21 A. No, not at all.
- 22 Q. Okay. Now that was way before you ever went down to this
23 location of State's Exhibit Forty-Two, was it not?
- 24 A. Yeah, that was way before that.
- 25 Q. They were still tight, weren't they?

- 1 A. Yes.
- 2 Q. That didn't break up any friendship or anything like
3 that?
- 4 A. I didn't take it that it did, no.
- 5 Q. As a matter of fact, Vanessa was there with Scott and
6 Joyce was there with Chris?
- 7 A. Yes. Just like that.
- 8 Q. And you didn't really think anything about that, did you?
- 9 A. No, I didn't.
- 10 Q. You even had an incident with Mr. Gailey, and you didn't
11 think anything about it?
- 12 A. No. After the incident we were friends again.
- 13 Q. Okay. This was down at Whippoorwill Cove?
- 14 A. Yes, it was.
- 15 Q. And he turned the shower on you and got you wet while you
16 were there in the bathroom?
- 17 A. Yeah, somehow I fell asleep in the bath tub, and I don't
18 know, he turned the shower on while I was asleep in the
19 bath tub, and then I got up, you know, raising hell at
20 him, and then he jumped at me, and we were both illed out
21 for days, you know. He kind of snapped on me a little
22 too far, and you know, like that.
- 23 Q. That didn't break up your friendship?
- 24 A. For a while it did, for about a week. Then I called him,
25 then he came over, you know. We talked about it, and it

1 was stupid, the whole thing was stupid.

2 Q. Okay. And you didn't think anything more about it?

3 A. No.

4 Q. Now when you went out the location with Chris and Scott
5 on that occasion, you said Mr. Gailey had a gun and you
6 carried a shotgun, is that correct?

7 A. Yes, that's correct.

8 Q. Okay.

9 MR. OLDHAM: That's all the questions I have,
10 Your Honor.

11 THE COURT: Any redirect?

12 MS. ALLEN: No further questions of this
13 witness, Your Honor.

14 THE COURT: Mr. Maness, if you can just stay
15 with us for a minute. I'm going to excuse the jury for
16 lunch now. Try to get back at 1:30 or thereabouts.
17 Thank you very much. Remember the rules.

18 *(Jury is excused from the courtroom for lunch*
19 *break.)*

20 TIME: 12:10 p.m.

21 *(The following proceedings were held in open court,*
22 *no jurors being present in the courtroom.)*

23 THE COURT: Mr. Maness?

24 MR. MANESS: Yes, sir.

25 THE COURT: I've seen you before, haven't I?