STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Sep 25 2020

S.C. SUPREME COURT

Certiorari to Charleston County

J. Mark Hayes, II, Circuit Court Judge

JAMES ALBERT GILES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2020-000333

APPENDIX

JAMES K FALK
Falk Law Firm
PO BOX 1058
CHARLESTON, SC 29402

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General
BRIANNA LYNN SCHILL
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR PETITIONER

INDEX

INDEX……i

SEPTEMBER 11, 12, 2007 TRIAL TRANSCRIPT……...…1

ORIGINAL APPLICATION FOR POST-CONVICTION RELIEF……...……243

AMENDED AND SUPPLEMENTAL PCR APPLICATION……266

RETURN……..……271

JANUARY 30, 2018 PCR HEARING TRANSCRIPT……...……281

APRIL 20, 2018 ORDER OF DISMISSAL……387

APPLICANT'S MOTION PURSUANT TO RULE 59(e) SCRCP……416

STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT OF UNION
)	
)	
)	CASE NO.: 2006-GS-46-1207, 1208, 1209
)	
COUNTY OF UNION)	
STATE OF SOUTH CAROLINA)	
)	
PLAINTIFF,)	
)	
-VS-)	TRANSCRIPT OF RECORD VOLUME I
)	
JAMES ALBERT GILES)	
)	
DEFENDANT.)	
)	

SEPTEMBER 11, 12, 2007
UNION, SOUTH CAROLINA

B E F O R E:

HONORABLE JOHN C. HAYES, III, and a jury.

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

MR. JOHN ANTHONY
ASSISTANT SOLICITOR,
SIXTEENTH JUDICIAL CIRCUIT
YORK, SOUTH CAROLINA
FOR THE PLAINTIFF

MS. VANESSA CASON
ATTORNEY AT LAW
GREENVILLE, SOUTH CAROLINA
FOR THE DEFENDANT

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE

ORIGINAL

I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
OPENING STATEMENTS				
MR. JOHN ANTHONY:		56-58		
MS. VANESSA CASON:		59		
DONALD NIX				
MR. ANTHONY:	59-88		104-108	
			206-208	
MS. CASON:		89-104		109-111
MR. GILES:		191-206		
		209		
BARBARA WILBURN				
MR. ANTHONY:	112-120			
MS. CASON:		120-123		
JEFFREY CROOKS				
MR. ANTHONY:	123-140			
JUDY MATHIS				
MR. ANTHONY:	155-158			
MR. GILES:		158-161		
RHONDA FIELDS				
MR. ANTHONY:	161-180		183	
MR. GILES:		180-183		183-185
CLOSING ARGUMENTS:				
MR. ANTHONY:				218-224
MR. GILES:				216-217

I-N-D-E-X, con't.

CHARGE ON THE LAW: 225-235

VERDICT: 237

SENTENCING: 238-239

CERTIFICATE PAGE: 240

* * * * * * * * * * * * * * * * * * * *

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	ID.	EVD.
S-1	CRIME SCENE PHOTO	59	63
S-2	CRIME SCENE PHOTO	59	63
S-3	CRIME SCENE PHOTO	59	63
S-4	CRIME SCENE PHOTO	59	63
S-5	CRIME SCENE PHOTO	59	63
S-6	CRIME SCENE PHOTO	59	63
S-7	CRIME SCENE PHOTO	59	63
S-8	CRIME SCENE PHOTO	59	63
S-9	CRIME SCENE PHOTO	59	63
S-10	CRIME SCENE PHOTO	59	63
S-11	CRIME SCENE PHOTO	59	63
S-12	CRIME SCENE PHOTO	59	63
S-13	CRIME SCENE PHOTO	59	63
S-14	DIAGRAM/CRIME SCENE	59	63
S-15	PHONE RECEIVER	123	129
S-16	POCKETBOOK	72	129

4

S-17	PLASTIC WINDOW TINT	123		129
S-18	SLED/COTTON SWAB	78		166
S-19	PHOTO/COIN WRAPPERS	74		129
S-20	BLOOD SAMPLE/WTH	86		177
S-21	DNA/SCRAPE	80		177
S-22	DNA/SWAB	80		
S-23	DNA/NEVER OPENED	80		177
S-24	DNA/HEAD SET	131		167
S-25	DNA/POCKETBOOK	131		168
S-26	DNA ID/TINT	131		168
S-27	DNA ID/COIN WRAPPER	131		168
S-28	DNA/BLOOD ID			
S-29	ADDRESS VERIFICATION	144		
S-30	CHAIN OF CUSTODY (WTH)	144		
D-1	SLED LETTER-3/23/06			100

REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE UNION COUNTY CLERK OF COURT'S OFFICE

THE COURT: Thank you. I am now going to ask you to give me your attention as I go over those qualifications and exemptions and disqualifications I mentioned earlier. I am not going to ask you to respond if you need to to any of the matters that I go over. What I will do is after I go over the entire list of qualifications and disqualifications and exemptions I will invite anyone who, excuse me, who needs to talk about any of those to come forward and you can come forward and one of the bailiffs or the clerk will be there at the gate and you can come up one at a time and I will step down by the court reporter. The attorney's who have cases this week will have a right to hear what we say but you won't have to stand up in front of everyone and tell me why you fall into one of these categories. So if you need to talk to me about any of these wait until we get to the end.

First, in order to serve as a juror in this particular type court you must fall into one of the following categories. You don't need to fall into all three but you must fall into one. You must be either a qualified elector; that is a registered voter, or you must hold a valid South Carolina driver's license or you must hold a South Carolina Department of Public Safety Identification card. If you do not fall into one of those categories then please come forward when I offer that invitation.

If you reside in a county other than Union County, South Carolina or if you are not a United States citizen please come forward in just a moment. If any of you work in this court house or if you hold any elected office in Union County please come forward in just a moment. If any of you hold a constable license either with or without fees please come forward in just a moment. If any of you have either pled guilty or been found guilty, that is convicted, in a state or federal court for a crime in which you could have received punishment that would have exceeded one year in jail and if your civil rights have not been restored by pardon or amnesty please come forward in just a moment. I call your attention in that that has to do with offenses for which one could have received a sentence that exceeded one year is not tied to any sentence one may have received. If any of you have less than a sixth grade education or its equivalent or if you cannot read, write, speak, or understand the English language please come forward in just a moment. If any of you have any mental or physical disability that would prevent you from serving with us as a juror this week please come forward in just a moment. If any of you are a teacher or a student and service as a juror would interfere with that occupation or endeavor please come forward in just a moment. If any of you are sixty-five or older you have an exemption. If you are

sixty-five or older and wish to serve keep your seat. If you are sixty-five or older and wish to be excused please come forward in just a moment. If any of you are the primary care giver for a child under the age of seven and if you do not work outside the home or if - please come forward in just a moment. Or if any of you are a care giver for anyone of any age, that is if you take care of basically around the clock or what you do on a day to day basis is take care of someone no matter what age who cannot take care of themselves please come forward in just a moment. If any of you have served on a circuit court jury such as this or within the last three calendar years or if any of you have served on a circuit court or state wide grand jury within the last five calendar years please come forward in just a moment. Finally if any of you have any reason why you cannot serve with us as a juror this particular week please come forward. Now if any of you need to discuss any of those matters with me I am going to step down and I will invite you to come forward and we will discuss it. I am going to ask you to remain quiet because I am going to be talking to these individuals. We are still working.

All right.

MR. MORRIS: Number 309, Ralph Woodard.

THE COURT: Good morning.

8

A. I came to - -

MADAME COURT REPORTER: Judge, I can't hear him.

THE COURT: You've got to speak up.

A. I came to ask to be excused on behalf of my employer. They sent a note to you.

THE COURT: All right we will transfer you to another time. If you will just step over here the clerk will tell you and we will transfer you. Just step right over there.

MR. CLERK: 265, Julie Suggs.

THE COURT: Good morning. Your name.

A. Good morning. My name is Julie Suggs. I have a five year old daughter who I have to pick up from school every day. I do not have anyone who lives around here to help me. I'm from Florida. My husband's family lives in the mountains. He works out of town. They have like early release day tomorrow and I just don't have anybody to get her from school.

THE COURT: Where do you work?

MS. SUGGS: I work during the school hours and during some mornings she's not in school I take her to work with me. She attends school - -

THE COURT: All right I'll excuse you.

She'll be excused.

Step over there. You're excused.

MR. CLERK: 200.

9

THE COURT: Good morning. And you are?

A. Lisa Mullins. I'm a full time nursing student.

THE COURT: All right we'll transfer you to another time. If you will step over there they will talk to you about that.

MS. MULLINS: I have two small children and my husband is employed to.

THE COURT: But you do go to school? And how old are your children?

MS. MULLINS: Six months and eight.

THE COURT: Who takes care of them while you are in school?

MS. MULLINS: My mother does most of the time.

THE COURT: You are a nursing student where?

MS. MULLINS: At USC Upstate.

THE COURT: I'll just excuse you.

She'll be excused.

Thank you.

MR. CLERK: 144.

THE COURT: Good morning.

A. I'm ninety-nine percent deaf in one ear and it's just hard for me to understand what people are saying. I can read lips pretty good if I can see their lips. I can't hear what they say.

THE COURT: Do you think it is such - -

A. I don't think I would be too good.

THE COURT: I'll excuse you.

She'll be excused.

Thank you.

MR. CLERK: 107.

THE COURT: Good morning. Your name?

A. Shannon Gregory. I have a one year old daughter at home and I have a four year old that gets off the school bus because she's in 4K at eleven o'clock and I don't have nobody - -

THE COURT: You don't work?

MS. GREGORY: No, sir.

THE COURT: She will be excused.

MR. CLERK: 4.

THE COURT: Good morning. And your name?

A. Good morning. My name - -

MADAME COURT REPORTER: Judge, I can't hear her.

A. Tamekia Allen.

THE COURT: You've got to speak up.

MS. ALLEN: My child she's with her father and I have to be at work early today. There is no way I can have somebody else to keep her.

THE COURT: Do you work?

MS. ALLEN: Yes, sir.

THE COURT: How old is your child?

11

MS. ALLEN: She's one.

THE COURT: Okay. Do you usually keep the child?

MS. ALLEN: Yes, sir.

THE COURT: You can be excused. Thank you.

She's excused.

MR. CLERK: 135.

THE COURT: Good morning and your name.

A. Paula Nabors. I have to pick up my husband every day. He has no license and the only way he can get back and forth to work - -

THE COURT: I can't excuse you for that. Where does he work?

MS. NABORS: Sailors Asphalt.

THE COURT: Where?

MS. NABORS: Sailors Asphalt and Company.

THE COURT: You will have to make some other arrangements this week. You will have to serve or I can transfer you to another time.

MS. NABORS: Could you transfer me because by then he will have his license back.

THE COURT: We will transfer you. Step right over there.

MR. CLERK: 132.

THE COURT: Yes, ma'am, your name.

A. Jennifer Inman. I have three small kids and I don't

work no where else.

THE COURT: You don't work, you stay home? How old are the three small kids?

MS. INMAN: Six months, one and two.

THE COURT: I'll excuse you.

She'll be excused.

MADAME COURT REPORTER: Judge, what number was she?

THE COURT: 132.

MR. CLERK: 213.

THE COURT: Yes, ma'am, your name and number.

A. Two Thirteen, my name is Sarah Palmer. I work - -

MADAME COURT REPORTER: Judge, I cannot hear her.

THE COURT: You've got to speak up. You work third shift?

MS. PALMER: I work third shift. No because I am tired. I didn't let my boss man know nothing. I am just too tired.

THE COURT: All right. I can't excuse you for that. I can switch you to another time.

MS. PALMER: I don't want to be on no jury no way. I don't want to be on no jury, I just don't.

THE COURT: I understand that but you've got to serve your civic duty.

MS. PALMER: I work third shift at night every night. I go in at ten.

13

THE COURT: I understand that but you will have to make arrangements. Everybody else has jobs but they don't work at night but they have to make arrangements for their work and you will have to make arrangements or if you want to do that this week or do it at a later time?

MS. PALMER: I am telling you I just have so much to do on my job. I rather just be at rest.

THE COURT: I can't. If I could I would but I can't do it. You either got to serve this week or some other time.

MS. PALMER: I'll go on and serve then.

THE COURT: She will stay with us.

MR. CLERK: 262.

THE COURT: Your name.

A. Larett Stevens.

THE COURT: You're speaking - you're got to speak up.

MS. STEVENS: I won't mind staying. You said it was going to be like a week process and I'm trying to figure out do I have to come in the morning or anything like that because I have a doctor's appointment tomorrow.

THE COURT: It will be four days. It will be through Friday.

MS. STEVENS: I have to work Friday. I work on weekends.

THE COURT: If you are here you won't be able to work.

Do you want to switch to another time?

MS. STEVENS: Yea.

THE COURT: She'll be transferred.

Step over there; they'll transfer you to another time.

MR. CLERK: 285.

THE COURT: Your name and number.

A. Alberta Walton, 285.

THE COURT: What is your number?

MS. WALTON: 285.

THE COURT: Where do you work?

MS. WALTON: Omar Nursing Home.

THE COURT: I can transfer you to another time. Will that help?

MS. WALTON: Yes.

THE COURT: All right just step over there.

She will be transferred? Do you need some time to draw the jury?

MR. CLERK: Only to give them their stuff yea other than that.

MR. ANTHONY: Judge, if I can have one minute.

(SHORT PAUSE.)

MR. CLERK: Number 33.

THE COURT: Branson?

MR. ANTHONY: Terry Branson.

MR. CLERK: Terry Branson.

THE COURT: Terry Branson would you please come forward.

A. Yes, sir.

THE COURT: Have you been convicted of second degree burglary?

MR. BRANSON: Yea. But the sentence carries - -

THE COURT: It carries more than one year. You will be excused.

He will be excused.

MR. CLERK: Melvin Stone, 264.

THE COURT: Melvin Stone.

MR. ANTHONY: We have he's convicted of murder in '79.

THE COURT: Do you have a criminal record?

MR. STONE: Yes, sir.

THE COURT: For murder?

MR. STONE: Yes, sir.

THE COURT: You're excused.

He's excused.

MR. ANTHONY: Sulier - she wasn't here. Okay.

MR. CLERK: The last one we have is Ms. Thomas, 272. She had an ABHAN. Nathaline - -

THE COURT: Nathaline Thomas. What's the record?

MR. ANTHONY: ABHAN.

THE COURT: Do you have a record of assault and battery from '75?

MS. THOMAS: That was dismissed.

THE COURT: Did you serve or were you on probation? Are you on probation? That doesn't mean it was dismissed.

She will be excused.

She will be excused.

Members of the jury panel, the jury is qualified and what we are going to do is we are going to take a break while the clerk prepares the capsules that we use to draw our juries. I have got about five till eleven. I can't see that clock so I don't know what time it says. I am going to ask you to be back by that clock at eleven fifteen and we will draw our first jurors. Don't get away too far. We're not breaking for lunch or anything like that. It's a short break be back at fifteen after.

(SHORT RECESS AT 10:55 A. M.)

(BACK ON THE RECORD AT 11:20 A. M.)

THE COURT: Thank you, take your seats. All right let's come to order. Let's be quite. We are going to start our first trial for the week. I am going to ask the solicitor to tell us what that's going to be.

MR. ANTHONY: Your Honor, the first case will be State versus James Albert Giles. This is Indictment 2006-GS-44-1207 for first degree burglary; 1208 for kidnapping and 1209 for strong armed robbery. These have been true billed by the grand jury. I am handing them up to the court at

17

this time if I may approach.

THE COURT: Yes, sir.

Members of the jury panel, these are cases against James Albert Giles G-i-l-e-s for kidnapping, burglary and armed robbery, strong armed robbery. He is represented by Ms. Vanessa Cason, the State is represented by Mr. John Anthony. I am going to ask Mr. Giles to please stand so the jury can see who Mr. Giles is and this is his attorney Vanessa Cason.

(MR. GILES AND MS. CASON STOOD.)

THE COURT: You may be seated. The allegations are that these events occurred here in Union County on or about December 5th 2003. It's alleged that at that time Mr. Giles committed strong armed robbery by taking from Barbara Wilburn thirty-three dollars. The next indictment alleges that on that same day he committed kidnapping regarding Barbara L. Wilburn W-i-l-b-u-r-n in that he seized or held her or abducted her at a residence at 221 Harwood Heights that it was against her will. And it is finally alleged in the last indictment that on that same day December 5th 2003 Mr. Giles committed burglary in that he entered that Harwood Heights residence dwelling of Barbara Wilburn without consent to commit a crime therein in violation of laws in this state. To these charges Mr. Giles has entered pleas of not guilty.

18

First I ask are any of you related by blood or marriage or are you a close personal acquaintance of Mr. Giles or of Barbara Wilburn if so please stand? Know them, work with them, go to church with them, see them socially, anything like that.

All right what I'm going to do is I am going to start over here and then we are going to go to the right and I will ask each of you first to just tell me your name and your number and why you are standing. That is I know Barbara Wilburn or I know Mr. Giles, I am cousins to them or whatever the situation is that would cause you - whatever the situation is that causes you to stand.

Your name.

A. Drucilla Peake.

THE COURT: All right. Why are you standing?

MS. PEAKE: I know Mr. Giles.

THE COURT: Okay.

DRUCILLA PEAKE: I go to church with him.

THE COURT: All right. Just remain standing.

I beg your pardon.

A. He use to go to church with me.

THE COURT: All right. Remain standing.

Yes, ma'am, in the gold and red looks to me.

A. I know Mr. Giles and his father is a trustee at my church. I know the family.

19

THE COURT: All right and your name.
A. Lillie Mae Davis.
THE COURT: All right. Next.
A. I know Mr. Giles. I also know a friend of his.
THE COURT: Your name and number.
A. Quandra Kelly.
THE COURT: You've got to give me your names because I don't know you and also we've got to make a record.
Yes, ma'am. Yes, ma'am.
A. I know Mr. Giles. My name is Candace I'm a friend of his.
THE COURT: All right. The lady in the dark blue in the back. Man, I'm sorry. Mr. Gonzales I believe.
A. I know Mr. Giles. I stayed next door to him for several years - -
THE COURT: Can you understand them?
MADAME COURT REPORTER: No, sir.
THE COURT: What did you say? I'm having trouble understanding you.
A. I stayed next door with him.
THE COURT: You stayed next door to each other. All right and your full name and number.
MADAME COURT REPORTER: Judge, get their number please.
A. Means, 191.

20

THE COURT: All right. Finally the lady standing back there. Your name and number.

A. My number is 213 and I know Mr. Giles. We went to school together. He was a nice person in school.

THE COURT: The ones of you that are standing and the fact that you know Mr. Giles - -

Remain standing, please ma'am.

A. Oh, I'm sorry.

THE COURT: All right. If that would affect your ability to be fair and impartial please raise your right hand. All right none of them raised their right hand so you may be seated. Thank you.

Stand back up. I'm not sure everybody understood. Let me start over. Everybody keep quite. If you cannot be fair to the state and to Mr. Giles because you know Mr. Giles or have known him and have went to school with him or whatever if you cannot be fair and impartial because of this raise your right hand. All right we have three and I am going to ask you to keep them up.

Keep them up please, ma'am. You look like you're trying to raise yours. You've get it up and then you take it back down.

A. I'm not sure.

THE COURT: All right raise it then. That's close enough. All right let's go and have you tell me each of

21

you your name and number again.

I know we just did that but I don't know you and we've got to make a record of this. Just your name and number.

A. My name is Lillie Davis. I'm juror Number 65.

A. Kendra Scott, Number 244.

A. Gonzales Means, 191.

THE COURT: I got 191.

A. Sarah Palmer, my number is 213.

THE COURT: All right. You four don't leave but I'm going to excuse you from serving on this particular jury.

Now you've raised yours now that you know you're going to be excused, is that right?

A. I'm Kelly.

THE COURT: All right. What's your name and number?

A. Quandra Kelly, 156.

THE COURT: All right the five of you don't leave.

Stand back up. I'm sorry; the acoustics in here are a little awkward. The clerk wants you to go back, go back through; all of you are going to be excused. After you give us this information you can sit down but don't leave. We still need your number. Let's start here and go back. Just as loud as you can without shouting tell us your name.

A. 65.

A. 156.

A. 244.

22

A. 191.

A. 213.

THE COURT: Got em?

MR. CLERK: Yes, sir.

THE COURT: Now you can sit down. Yes, ma'am.

A. I want to be excused. Mr. Giles is a trustee at my church.

THE COURT: Would that affect you?

A. I'm not sure to be honest.

THE COURT: Your name and number again.

A. 219, Drucilla Peake.

THE COURT: We'll excuse you also but just have a seat and don't leave. Now I also ask that question about Ms. Wilburn and nobody stood so I'm assuming nobody knows, goes to church with, or has any kind of relationship or is related to Ms. Wilburn the victim in this case. Now I've introduced the attorneys. Have any of you been represented by Mr. Anthony or Ms. Cason at any time or by the solicitors office here in Union, if so please stand?

Okay. No one stands. Have any of you heard about this case, have any of you except those that have already been excused, have any of you heard about this case from any source whatsoever or have any of you formed or expressed any opinion about any matter if you are involved in this case if so please stand.

23

All right don't tell me what you heard or anything about that just your name and number.

A. Angela Seay, 245.

THE COURT: Would the fact that you heard something about this case affect your ability to be fair and impartial?

MS. SEAY: I think I can be fair about it.

THE COURT: I can't hear you.

MS. SEAY: I wouldn't have any problem with it.

THE COURT: All right you remain with us. Thank you. Let me let you stand one more time. Could you base your verdict on the law and evidence developed in the trial? That is you could forget what you heard before about the case and only base a verdict if you were on the jury on what you hear during the trial?

MS. SEAY: Yes, sir.

THE COURT: Okay. Thank you. Are any of you aware of any bias or prejudice that you would have toward the state or toward Mr. Giles or the attorneys, toward these charges any bias or prejudice that would prevent you from being fair and impartial in this trial? If so please stand.

No one stands. Are any of you or a member of your family involved in the prosecution of criminal cases at any level; that is a solicitor or DA or judge advocate, or are any of you or a member of your family involved in law

24

enforcement at any level, sheriff, deputy, city policeman, MD, please stand. And also if any of you are contributors to or members of organizations such as Students Against Drunk Drivers, Mother's Against Drunk Drivers, Citizens Against Violence, Troopers Association, Sheriff's Association or Fraternal Order of Police please stand? Then what I would do is ask that each of you give me and we will work our way back and then come over to the other side give me your name and number and why you are standing. That is my uncle is a policeman or.

A. I'm Thomas Bailey, Number 16. I've been a chaplain in the Spartanburg County Sheriff's Office for almost six years.

THE COURT: From Union County?

MR. BAILEY: Spartanburg.

THE COURT: Spartanburg, okay. All right.

Yes, ma'am.

A. My name is Megan Lee, my number is 161. My brother in law is a city officer.

THE COURT: In Union?

MS. LEE: Yes, sir.

THE COURT: All right.

A. I'm Crystal Fowler. I'm Number 83.

THE COURT: I couldn't hear you, I'm sorry. I'm not fussing at you but it's very hard to hear in here. Say it

25

again.

A. Crystal Fowler, Number 83. My dad was a state constable.

THE COURT: Okay. All right the lady in the light blue.

A. My name is Carrie Shetley and my father is a reserve city policeman.

THE COURT: All right.

A. Casey Davis, Number 64 - detective . . .

THE COURT: I got the detective part. Detective for who?

A. Gary Humphries.

MR. CLERK: Sheriff's office.

THE COURT: The sheriff's office okay.

Did you all get her name and number?

THE COURT: We did not get your name and number.

A. Casey Davis.

THE COURT: Okay. You've already been excused. You can set back down lady in the white.

Yes, ma'am.

A. My name is Pamela Sloss and my number is 253 and my father has been in law enforcement for about thirty years. My husband was a South Carolina state trooper.

THE COURT: Is this a city case?

MR. ANTHONY: Yes, sir, this is a City of Union case.

26

THE COURT: All right the one whose brother in law was was a member - was it your brother in law a member of the force?

MS. SLOSS: Yes, sir.

THE COURT: I'm going to excuse you from serving on this. Just have a seat.

All right, you've got to give your name and number.

A. Two - -

MADAME COURT REPORTER: 245?

Sorry, Judge.

THE COURT: That's okay. Which one had a reserve officer? Was that you?

A. A state constable.

THE COURT: Okay. You just remain standing.

The lady in the light blue.

A. Yes.

THE COURT: Who?

A. Larry Yarborough.

THE COURT: Again?

A. Reserve for the city.

THE COURT: I know but what is he to you?

A. What is he to me? My father, my father.

THE COURT: Okay. Everybody is having trouble hearing. All right I'll excuse you.

THE CLERK: I need their number.

27

THE COURT: Your number?

A. 246.

THE COURT: All right. I think in the future we will give everybody a little sign that's got their number and hold it up. Somebody with my vision I might not be able to see. All right.

Yes, ma'am.

A. I'm Kimberly Anderson; I'm Number 95. I have a child on probation.

THE COURT: Okay. All right.

Did you tell us already?

A. Yes, sir. I'm Pamela Sloss, 253. My father was in law enforcement for thirty years. He's a reserve officer for the city.

THE COURT: For the City of Union?

MS. SLOSS: Yes, sir.

THE COURT: I'm going to excuse you also. Thank you.

The four of you who remain because of your standing would the reason that you're standing prevent you from being fair and impartial? That is could you base your verdict on the law and the evidence in this case or would you in some how be influenced on the fact that you have someone involved in law enforcement or a child on probation? If so raise your right hand. No one does. Remain with us. Thank you, have a seat.

28

Do any of you have any moral or theological or sociological concerns that would prevent you from being a fair and impartial juror in the trial of Mr. Giles on these particular charges? If so please stand. No one stands.

Any thing further?

(NO RESPONSE.)

THE COURT: Would you tell us Mr. Anthony, who the potential witnesses are or do I have that? I've got it, I'm sorry. The possible witnesses other than the names you've already heard are with the Union Public Safety Office, Lieutenant's Brian Bailey and Charles Henderson. Also Captain Freddie Gault then with the State Law Enforcement Division sometimes called SLED, Jeff Crooks, Rhonda Fields and in addition to them a Donald Nix N-i-x and Judy Mathis. Are any of you related by blood or marriage or are you a close personal friend or acquaintance of any of those individuals? If so please stand.

All right. Yes, sir, your name and number.

A. Charles Owens, 211. I work with Donald.

THE COURT: With Donald Nix?

MR. OWENS: Donald Ray Nix, is this right?

THE COURT: I guess so. Yes, sir. Do you all work together?

MR. OWENS: We work in different departments. He works - -

29

THE COURT: Would that affect your ability to be fair and impartial?

MR. OWENS: Absolutely not.

THE COURT: Okay you remain with us then.

All right anything further from the state?

MR. ANTHONY: No, sir.

THE COURT: Ms. Cason, anything further?

MS. CASON: Nothing, your Honor.

THE COURT: All right do any of you know any reason whatsoever why you could not or should not serve as a fair and impartial juror on the trial of this particular case and if so please stand? No one stands. Now the way we draw juries in this type court is as follows. First the strikes are ten and five, five and ten.

MR. ANTHONY: Yes, sir.

THE COURT: And both sides can attend to the clerk drawing the jury?

MR. ANTHONY: The state does.

MS. CASON: Yes, your Honor.

THE COURT: If you hear your name called and your number please come forward and come through the gate and stand in front of where the clerk is seated and turn around and face back to where you had just come from. Face first the table where the solicitor is seated and he will say either present the juror or excuse the juror. If he says

30

excuse the juror please return to your seat. If he says present the juror then you turn and face the table where Mr. Giles and Ms. Cason is seated and she will say either excuse the juror which again means you may return to your seat or she will say swear the juror. If you hear the words swear the juror please step over to the jury box and the bailiff will tell you where to be seated. All right please come up and when you come bring with you your pocketbook if you have a book or anything, any personal items so that you don't have to go back and get them.

MR. CLERK: Number 307, Gary Winzenried.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What says the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 269, Rachael Teague.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Please swear the juror.

MR. CLERK: Number 151, Robert Jones.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Excuse the juror.

31

MR. CLERK: Number 25, Larry Black.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What says the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Also as a matter of record I drew Juror Number 246 who was excused by the court therefore I am setting that name aside. Number 16, Thomas Bailey.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 156, Quandra Kelly.

I'm sorry. Ms. Kelly, you've been excused by the court. We'll set your name aside. Number 122, Laura Henderson.

What say the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Swear the juror.

MR. CLERK: Number 261, Russell Steen.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Swear the juror.

32

MR. CLERK: Number 18 has been excused by the court. Number 66, Veleka Dawkins.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Swear the juror.

MR. CLERK: Number 196, Mark Mitchell.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 245, Dwight Simms.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Sir, you can go have a seat. Number 277, Sandra Tucker.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Swear this juror.

MR. CLERK: Ma'am, you can have a seat in the jury pool. Number 281, Eugene Wade.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

33

MS. CASON: Swear this juror.

MR. CLERK: Number 147, Valerie Johnson.

What says the state?

MR. ANTHONY: May we approach, your Honor?

THE COURT: Yes, sir.

THE COURT: Why don't you just come up here in the front?

(BENCH CONFERENCE OFF THE RECORD AT 11:50 A. M.)

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Swear the juror.

MR. CLERK: Number 229, Brandy Renwick.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 176, Adam Maness.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Swear this juror.

MR. CLERK: Number 216, James Parris.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 191 has drawn and excused by the

34

court. Number 213 was drawn and they've been excused by the court. Number 244 was drawn and excused by the court. Number 219 was drawn and excused by the court. Number 115, Kathy Harkins.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 108, Vicki Gregory.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Swear this juror.

MR. CLERK: Number 51, Robert Cimbollek.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Please excuse this juror.

MR. CLERK: Number 293, Jacob West.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 256, Kwane Smith.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

35

MS. CASON: Swear this juror.

THE CLERK: Number 253 was drawn but has been excused by the court. Number 85, Frances Fowler.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What says the defense?

MS. CASON: Excuse this juror.

THE CLERK: Number 83, Crystal Fowler.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you. What say the defense?

MS. CASON: Excuse this juror.

MR. CLERK: Number 297, Gloria Whitener.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 288, Ricky Ward.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Excuse this juror.

THE COURT: You've used your strikes.

Come on back up and have a seat, you will be seated on the jury.

MR. CLERK: Number 65 has been drawn but has been excused by the court. Number 91, Amanda Gibson.

36

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Defense?

MS. CASON: Present the juror.

THE COURT: All right we will draw one alternate and the strikes will be one for the state and two for the defendant.

MR. CLERK: Number 10, Brittany Arrington.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What says the defense?

MS. CASON: Swear this juror.

THE COURT: All right anything from the state involving the striking of the panel?

MR. ANTHONY: If we could have one moment.

(SHORT PAUSE.)

MR. ANTHONY: Yes, sir, we have a matter.

THE COURT: All right. Anything from the defense?

MS. CASON: Nothing, your Honor.

THE COURT: All right, members of the jury panel, I am not going to swear you in at this time. I am going to ask you to go into the jury room for just a few minutes while we take up a matter of law. I have been informed that the air conditioner unfortunately has frozen. We are working on it right now so the windows are open and I hope it won't

37

be too warm but that is the reason the window is open and the air conditioner is not working. We hope to have that corrected. Don't start discussing this case. You haven't heard enough about it to discuss it so don't be trying to make up your mind and discuss the case. At this point I simply have to ask you to go into the jury room for a minute while we take up matters outside of your presence.

(JURY PANEL LEAVING THE COURTROOM AT 12:05 P.M.)

THE COURT: For those of you who are not chosen I am going to have to ask you to go into the grand jury room. The bailiff will show you where that is. It'll be a little cozy in there but I hope it's not too hot in there. We have to take up some matters outside your presence also and I don't want to loose any of you so please just go into the grand jury room or if there is not enough room there you can be out in the hall but don't go outside where the jury - beyond where the security gate is so that we can keep you in one place. We will be happy to bring you back in in just a few minutes so please at this time go outside the courtroom.

(REMAINING JURY MEMBERS LEAVING COURTROOM AT 12:06 P.M. .)

THE COURT: All right, Mr. Anthony.

MR. ANTHONY: Your Honor, during the course of the jury strike the defense used all ten strikes. There were

38

eight strikes used for white males; two strikes used for white females. The state would not ask for an explanation as to Number Sixteen which was the Fourth strike or Number Ten. I'm sorry, Number Eighty-Three which is the ten - the fifth strike from my notes. It's pretty clear what the justification to those would be given the fact that all ten strikes were used on Caucasian jurors the state believes it would be appropriate to conduct an inquiry as to a race neutral reason as to why defense struck the other eight jurors.

THE COURT: All right. Which of the two are you excluding? Numbers what?

MR. ANTHONY: Number Sixteen and Number Eighty-Three.

THE COURT: I guess - my problem is I don't see Number Sixteen having been drawn. Eighty-Three was Fowler - -

MR. ANTHONY: Sixteen was Mr. Bailey. He's the chaplain from the sheriff's office.

THE COURT: Okay. I made it look like Forty-Six. Okay. All right as to the others Ms. Cason, if you can give us a race neutral let us start at the top with Mr. Winzenried.

MS. CASON: Your Honor, the defendant believes that the strike was not racially motivated but that he did not feel that Mr. Winzenried was right for the jury.

39

THE COURT: Not right for the jury?

MS. CANON: Right. I actually believe it's probably going to be the explanation for all the strikes with the exceptions of the ones that were excused which were Sixteen and Eighty-Three I believe.

THE COURT: So basically you're telling me as to Mr. Winzenried, Mr. Jones - Ms. Jones, who are white - I'm sorry let me start over. 307, Mr. Winzenried; 151, Mr. Jones; 25, Mr. Black; 196, Mr. Mitchell; 216, Mr. - Ms. Parris; 115, Ms. Harkin; 51, Mr. Cimbollek and 85, Mr. Fowler. The only reason they were struck was because you did not feel that they were right for the jury?

MS. CASON: Right. I think Ms. Harkin is Number 115. Just a moment. Yes that's correct, your Honor.

THE COURT: Mr. Anthony, what do you have to say about that?

MR. ANTHONY: Your Honor, the state doesn't believe that under the law an explanation of that highly race based would be sufficient to the facts in this case.

THE COURT: Well I agree. Obviously that is a racially neutral reason but it gives the court no - nothing on which to grasp; nothing on which to determine whether or not it was protectoral because if that were the standard then the Batson would be out the window which may actually be good. I don't know. The United States Supreme Court

40

did it it's not mine but there's got to be some racially neutral reason other than that they were not right for the jury because that gives unfettered strikes to either party for no reason other than they don't want to put them on the jury. But that does not help the court to have any guidance. Admittedly it's racially neutral but I find it is not a sufficient reason to allow the strikes to stand against a Batson motion because the record is - indicates that all the strikes were against white jurors. I will point out for the record that Mr. Steen, Number 261, appears to be the only white male that was not stricken although Ms. Henderson, Ms. Tucker, Ms. Johnson, Ms. Gregory, they're all white females and not stricken. So what's the motion, to re-strike the panel?

MR. ANTHONY: Yes, sir, that would be the state's motion.

THE COURT: All right. Well let me hedge a minute here.

(NOTE: SHORT PAUSE.)

THE COURT: I am going to quash the panel. I've just reread a portion of State versus Easley which I don't recall but was a case of mine from Cherokee County; the particular language would give me some concern. The court says the party that exercised the neutral challenge would be that of the defendant and was given that it was racially

41

neutral. Well obviously I didn't strike. I struck because I wanted race neutral. But then it must be clear and reasonably specific and if that can be satisfied by simply saying the jury wasn't right and like I observed earlier Batson no meaning whatsoever. I grant the state's motion to quash the - the striking of the panel to redraw the jury. Let's bring this jury back in and let's bring the jury panel back in.

(JURY ENTERING COURTROOM AT 12:24 P.M.)

(JURY PANEL BACK ENTERING COURTROOM AT 12:25 P.M.)

THE COURT: You all can just go back with the regular panel. Just have a seat back out there we are going to redraw. All right we'll redraw the jury.

MR. CLERK: Number 293, Jacob West.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 110, Kimberly Hagen.

What says the state?

MR. ANTHONY: Please present this juror.

MR. CLERK: Thank you.

What say the defense?

MS. CASON: Please seat the juror.

MR. CLERK: Number 176, Adam Maness.

What says the state?

MR. ANTHONY: Please present the juror.

42

MR. CLERK: What say the defense?

MS. CASON: Please excuse the juror.

MR. CLERK: Number 50, Angela Childers.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Please swear the juror.

MR. CLERK: Number 180, Denise McAbee.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please swear this juror.

MR. CLERK: Number 115, Kathy Harkins.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please excuse this juror.

MR. CLERK: Number 307, Gary Winzenried.

MR. ANTHONY: May we approach?

THE COURT: Yes, sir.

(BENCH CONFERENCE AT 12:30 P.M. OFF THE RECORD.)

THE COURT: Ms. Hawkins, I'm going to ask you to come back forward and take a seat in the jury box. Ms. Harkins,

43

I'm sorry.

You may proceed.

MR. ANTHONY: If the court is ready to proceed we will present Number 307. Thank you.

MR. CLERK: What says the defense?

MS. CASON: Present this juror.

THE COURT: You just have a seat in the jury box please.

MR. CLERK: Number 21, Ashley Beheler.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Please swear the juror.

MR. CLERK: Number 309, Ralph Woodard. 309 was transferred.

THE COURT: That person was transferred.

MR. CLERK: Number 46, Wanda Carter.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please swear the juror.

MR. CLERK: Number 210, Rhonda Ocheltree.

What says the state?

MR. ANTHONY: Please present the juror.

44

MR. CLERK: Thank you.

What say the defense?

MS. CASON: Please swear this juror.

MR. CLERK: Number 286, Algernaun Walton.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please swear this juror.

MR. CLERK: Number 91, Amanda Gibson.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Swear this juror.

MR. CLERK: Number 67, Jeffrey Dean.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Please strike this juror or excuse this juror.

MR. CLERK: Number 216, James Parris.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

45

MS. CASON: Please seat this juror.

MR. CLERK: Number 16, Thomas Bailey.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please excuse this juror.

MR. CLERK: Number 227, Pamela Puckett.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 228, Ruth Ann Ramsey.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What says the defense?

MS. CASON: Please excuse this juror.

MR. CLERK: Number 167, Florinda Lett.

What says the state?

MR. ANTHONY: Please excuse the juror.

MR. CLERK: Number 151, Robert Jones.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

What say the defense?

MS. CASON: Please seat the juror.

46

THE COURT: Striking for the alternate will be one and two.

MR. CLERK: Number 215, Kelly J. Parker.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: Thank you.

MS. CASON: Excuse me, what number is this?

MR. CLERK: Number 215.

MS. CASON: Please excuse this juror.

MR. CLERK: Number 245, Angela Seay.

What says the state?

MR. ANTHONY: Please present the juror.

MR. CLERK: What say the defense?

MS. CASON: Please excuse this juror.

MR. CLERK: Number 197, Melissa Mitchell.

What says the state?

MR. ANTHONY: Please present the juror.

MS. CASON: Please seat this juror.

THE COURT: Anything from the state involving the striking of the panel?

MR. ANTHONY: No, your Honor.

THE COURT: Anything from the defense?

MS. CASON: Nothing, your Honor.

THE COURT: All right those of you who were not chosen I am going to allow you to leave for the day and ask you to

47

call back.

They've been given the number, is that correct?

MR. CLERK: Yes, sir.

THE COURT: Call back at - please call back tonight after seven o'clock and you will receive instructions about what next to do; you will either be called back or return at a certain time. If you are told to return at a certain time please be here at that time. If you are not I have to ask the sheriff to find out why you are not here and I don't say that as a threat; that's just the way our system works. And if you have a legitimate problem and I hope you don't, car trouble or illness, some legitimate reason that you are unable to be here when you are supposed to call the clerk's office and tell them that. We can deal with what we know. We can't deal with what we don't know. So please follow the instructions and please leave quietly so I can start talking with this panel. And we'll see you - call tonight after seven.

(REMAINING JURY MEMBERS DISMISSED AT 12:47 P.M.)

THE COURT: Those of you who are chosen if you will stand and raise your right hand the clerk will swear you.

THE CLERK: If we can have order please.

(WHEREUPON: THE JURY PANEL DULY SWORN AT 12:50 P.M.)

THE CLERK: All affirmed, your Honor.

THE COURT: You can be seated.

48

You're Mr. Parris, right? Go ahead and sit down and I am going to ask you to be the foreman of this jury and you will sit in this seat throughout the trial. There are no other assigned seating except for the alternate.

You will set there and the foreman will sit there and everybody else will sit just where ever they happen to come in. I will have some remarks to make to you but we are going to stop now and break for lunch until two o'clock. Don't start trying to make up your mind yet. Don't discuss the case among yourselves. Don't let anyone discuss the case with you during the lunch or if the case goes into tomorrow. Tomorrow - you've got a racial verdict in this case solely on the law and the evidence as it's developed in the trial so don't let anyone discuss the case with you. If anyone tries to discuss this case with you tell them you're not you're serving as a juror and report back to me if anyone does try to discuss the case with you because I would have to take action against an individual who is trying to talk with a seated juror. I don't know if that this case will receive any news coverage but if it does do not let yourself be exposed to it. Don't read about it or watch anything about or listen to anything about it. If anything catches your eye or ear that remotely deals with this trial don't let yourself be exposed to it and when you report you will report back to this jury room at two

49

o'clock. Actually let's make that two fifteen because it's almost ten till one. There are so many places near here but just about everybody is going to have to get in their car and drive somewhere to eat so this will give you more time so let's start back at two fifteen. Please be in the jury room here and the bailiff will tell you how best to get in and out while you are serving as a juror and we will see you back in the jury room and try to start promptly at two fifteen if we can. Have a pleasant lunch.

(JURY PANEL LEAVING THE COURTROOM FOR LUNCH AT 12:50 P. M.)

THE COURT: All right going back to the Batson matter. I myself probably articulate - I use the language of Easler that actually was set aside in that case. That is the requirement of the information to be clear and reasonably specific and legitimate. That is not the law anymore and I referenced that. That was an effort by me to find some language on which to hang my hat to the ruling I was making because I can't find any case on point. My ruling is and still stands and was at that time although unless articulated is that striking a juror because they are not right for the jury is no reason. It's not a racial, neutral reason. While it may be technically, semantically, intellectually racially neutral for purpose or articulating a reason for striking a juror it is not a racial neutral

50

reason because if it is and this case goes upon appeal and our appellant courts will say that is a sufficient reason to shift and go to the second. And of course number one is the recognition of a cognizable racial group or gender and the defender for the record is African American. The explanation of a strike which is step two was where we were and I found that the explanation was not right for the jury. It does not suffice and I find it does not suffice to switch it to stage three because there the burden would be on the state to show that that was a mere pretext and that would be an impossibility. That is if the defense or one side or the other argues that someone is quote not right for the jury it would be impossible for the other side to say that they did not strike someone else who was quote not right for the jury. If that's where the court takes us that's fine but at this stage I find and I want to make it clear for the record because Mr. Giles is facing a lot of time if he's found guilty. I'm quite sure this case will be reviewed on appeal. I may be wrong in my ruling but I believe that while it was not filed the Easley case set aside the clear specific. I still think there must be some reason and I think that someone is not right for the jury is no reason. The Batson person in real life it is a reason - for the Batson purpose I find that that is no reason for it. I want to make the record clear on that.

51

All right we'll be back at two fifteen.

(COURT RECESSED FOR LUNCH AT 1:55 P. M. .)

(COURT RECONVENED AT 2:24 P. M. .)

(ON THE RECORD AT 2:25 P.M. .)

THE COURT: Thank you, take your seats.

Is the state ready?

MR. ANTHONY: Yes, sir, your Honor, we are ready.

THE COURT: Is the defense ready?

MS. CASON: Yes, your Honor.

THE COURT: All right, bring in the jury. Wait, wait.

MR. ANTHONY: I'm sorry. I think Ms. Cason said she had a motion and we have a motion.

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

MS. CASON: Thank you, your Honor. Mr. Giles - in representing Mr. Giles I am making a motion to dismiss the charges against Mr. Giles based on the fact that he was not afforded a speedy trial in this case.

THE COURT: When did he make a motion for a speedy trial?

MS. CASON: He made his motion through his attorney December 2006.

THE COURT: All right. May I see a copy of the motion?

MS. CASON: Your Honor, it was just a motion made by and through his attorney.

52

THE COURT: You mean on the record?

MS. CASON: He indicated through his attorney that he wanted a speedy trial.

THE COURT: Well that's not a motion. Who was his attorney, Ross Burton?

MS. CASON: His attorney was Mr. Burton.

THE COURT: Do you know whether or not Mr. Burton was present? But he's not participating in this; do you know whether or not he made any such motion?

MS. CASON: I do not, your Honor. Not to my knowledge.

THE COURT: Do you want to turn around and ask him?

MS. CASON: No, your Honor, he did not.

THE COURT: Well no motion has been before the court and the court had no opportunity to rule so I deny motion to dismiss based on his failure to get a speedy but no motion was made.

MS. CASON: Thank you, your Honor.

THE COURT: All right. Mr. Giles - I mean Mr. Anthony, you were posed to say something.

MR. ANTHONY: Yes, sir, the state has a motion as well. Our first witness is going to be Mr. Nix and Mr. Nix at the time of this incident was employed with the City of Union Police Department. In the early part of this year Mr. Nix left the Union Police Department and he faced a

53

criminal charge of assault and battery and injury to property and that charge has gone through PTI or is in the process of going through PTI and the state will make a motion - I don't know if there is any attempt to do this or any attempt to cross examine him about this. We would make a motion to exclude any reference to those charges. We don't think there is any real legal theory that would make them admissible and relevant to the jury here.

THE COURT: Ms. Cason.

MS. CASON: Well, your Honor, I think that the fact that he was charged with a crime and that he has gone through PTI and is going through the process is still relevant and I think it would go to his credibility and even bias and I think bias is always relevant.

THE COURT: Known for there to be an impeachment there has to a defense. A conviction - there is no conviction at this point.

MS. CASON: Thank you, your Honor.

THE COURT: Anything else?

MR. ANTHONY: No, sir. That's all from the state go ahead.

THE COURT: Anything Ms. Cason?

MS. CASON: Nothing else, your Honor.

THE COURT: While we're talking about convictions so I can have a little heads up as to the impeachment for Mr.

54

Giles who has some impeachable offenses.

MR. ANTHONY: Yes, sir, he does.

THE COURT: Let's go ahead and get the jury in. It's hot back there. We'll talk about that when I talk to him about his right to remain silent.

MR. ANTHONY: Thank you, your Honor.

THE COURT: Share those with Ms. Cason at the earliest means if you haven't already.

MR. ANTHONY: Yes, sir.

(JURY PANEL ENTERING COURTROOM AT 2:28 P. M. .)

THE COURT: Watch those chairs. I don't think they've ever actually thrown anybody completely but they will come close. Be very very careful. I know it's hot in that jury room; it's hot in my office and they're working diligently to try to take care of that. Ms. Mitchell has the right idea when I tell people when you come to at least to these public buildings is wear short sleeves and wear a sweater. Hot in there but it may be cool out here. When we reconvene tomorrow you can take that for what it's worth. I have told you briefly what the charges against Mr. Giles are or of what they consist. In just a moment the attorneys have a right to come and make an opening statement. At that time they will outline more for you the issues in this case. They will not be arguing the case and they have the right to do that at a later time and they are

55

not witnesses. They are simply giving you an over view or some people call it a preview of coming events type of statement. I am the sole judge of the law; you must take and accept and apply the law as I charge it. You are the sole judges of the facts; you must determine the true facts and apply the law and return a verdict that speaks the truth. As judges of the facts you have to determine who to believe. That is judge the credibility of the witnesses who testify. Please don't - let me say it stronger than that - Do not infer from anything that I say or do during the trial as being an opinion about the facts because I am not allowed as the trial judge to formulate or express to you an opinion on the facts; that's solely your job in determining the true facts and apply the law and return a verdict that speaks the truth. Mr. Giles has entered pleas of not guilty to these three charges. Those pleas of not guilty place upon the state the burden of proof of proving his guilt beyond a reasonable doubt. You must be convinced beyond a reasonable doubt his guilt as to one or more or all the charges before you can convict him as to any or all. If you can't see, you can't hear, let me know. If you can't hear raise your voice or gesture or something in the way of a nudging and we will correct it. We take breaks about every hour and a half but if you need a break at any time let me know. Raise your right hand and with no

questions ask we will take a break. It is hard to pay attention if you are not comfortable. If you get tired in the afternoon and you have other reasons you need a break if you need one raise your right hand we will take a break with no questions asked and I extend that to counsel and to Mr. Giles also. We want to move the case along but if we do need to take a break we will do it. Now you don't need to take notes.

Mr. Foreman, you will preside over the jury's deliberations. You will be the liaison between myself and the jury and sign the jury's unanimous verdict.

Mr. Anthony.

MR. ANTHONY: Thank you, your Honor.

Good afternoon. My name is John Anthony. I am the Deputy Solicitor here in Union County. I represent the state in the trial of this case. A few years ago the singer Johnny Cash died and after his death his daughter who is a singer too, Rose Ann, she wrote this song about loosing her father; about what it was like to be without her father. And in the song she had addressed her father and talked about what it was like for him not to be in the world anymore. And there is a line from that song that goes it's a lonely world and I guess it always was but minus you I'm minus my blood.

We've got this code and it comes from our parents.

Half of it comes from our mother and half of it comes from our father and this code determines at least to some degree how - what we become. And when our parents are gone we loose the two people that we share this blood with. We are minus blood. But the thing about this code is we carry it around with us. It's on our skin, it's in our hair, it's in our saliva and it's in our blood. And the other thing about it is when somebody leaves something that contains this code you can retrieve the things they leave and you find out where they been.

On December the 5th of 2003 an older woman named Barbara Wilburn was at her house in Union and when very early in the morning she was up reading a book and a man broke in her porch window. Came on her porch and then broke through into her interior door. Broke the window out of that door and came into her living room. And Ms. Wilburn ran to her phone and this man followed her to the phone and tore the phone cord out of the wall and he threatened to kill her and he demanded her money. He took her money. He wouldn't let her leave - and then he ran off from her house. The thing was though when this man was breaking into her house he cut himself. He cut himself on the porch window and he bleed all over her house. Now there was never a suspect for this crime until last year and there never would have been a suspect for this crime

had that man not cut himself and not left his blood all over Ms. Wilburn's house. With the evidence in this case it's going to show that the man who broke in on Ms. Wilburn and who burglarized her house and robbed her and kidnapped her is the defendant James Giles. And all we're going to do in this case is we are going to put up the witnesses that we need to put up to prove that to you. We are going to have Ms. Wilburn testify, we are going to have the officer from the Union Public Safety Department testify who went to that crime scene and took pictures of it and collected evidence. We are going to have a witness testify who went to the hospital who collected Mr. Giles blood; the victim's hair with evidence that was taken at the crime scene. And we are going to have two witnesses who were agents with the South Carolina Law Enforcement Division in Columbia. One of them is a fingerprint examiner and then the other one is a DNA examiner who matched up Mr. Giles' blood to the blood that was left all over Ms. Wilburn's house. And that is what we are going to do in this case and those are the witnesses we are going to present to you. And we believe that once you've heard the evidence in this case that you will find Mr. Giles is guilty. He is guilty of first degree burglary, he's guilty of kidnapping and he's guilty of robbery. Thank you very much.

THE COURT: Ms. Cason.

MS. CASON: Thank you, your Honor.

Good afternoon, ladies and gentlemen of the jury. James Giles is wrongly accused of kidnapping, strong armed robbery and burglary in the first degree. The defense will attempt to show that the state's evidence is questionable at best and that many of the items that the state is going to put up have been tampered with and thereby showing that James Giles is again wrongly accused of the crimes that he is charged with. Thank you.

THE COURT: All right call your first witness.

MR. ANTHONY: We call Mr. Nix.

(WHEREUPON: STATE'S EXHIBITS NUMBER ONE THROUGH FOURTEEN PREMARKED FOR IDENTIFICATION.)

(WHEREUPON: DONALD RAY NIX, BEING FIRST CALLED AND DULY SWORN, TESTIFED AS FOLLOWS:)

DONALD NIX BY MR. ANTHONY:

Q. Would you state your name please?

A. My name is Donald Ray Nix.

Q. And Mr. Nix, how are you employed?

A. Right now I'm currently employed with Food Lion Corporation.

Q. All right. And before you worked at Food Lion where did you work?

A. I worked for the Union Public Safety Department.

Q. And when did you stop working for Union Public Safety?

A. Around January of this year.
Q. And how long did you work for Union Public Safety?
A. Roughly a little over nine years.
Q. And when you left there what was your position with them?
A. I was a criminal investigator.
Q. And how long did you have that position?
A. Roughly around four years.
Q. And were you working as an investigator with Public Safety on December the 5th 2003?
A. That's correct I was.
Q. And did you come to see Ms. Barbara Wilburn that morning of December 5th 2003?
A. I did.
Q. And approximately what time did you see her?
A. It was that morning. I'm not exactly sure about the time. It was roughly around I guess ten that morning.
Q. And where did you see her initially?
A. Ms. Wilburn was in the lobby of our public safety department.
Q. And what was it that brought you to come to talk to Ms. Wilburn?
A. Our receptionist at the front desk said there was a subject that needed to speak with a detective. I was one of the investigators in the back so I walked out and talked

to her.
Q. And when you first met with her that morning at Public Safety what was her demeanor?
A. Ms. Wilburn was very upset. She you know like she had had a bad night.
Q. Okay. And did you take a report from her as to what had happened that night?
A. Yea I took a report from her that morning, the general information and stuff like that.
Q. Okay. Did you advise anybody of what she had reported to you?
A. I did. Captain Gault was my supervisor. He came to the back and we let him know what we had going on and I advised him at that time.
Q. Okay. And what did you do then after talking to Captain Gault?
A. I advised Captain Gault of what we had and then we proceeded to leave the police department and go to Ms. Wilburn's residence.
Q. And where is that residence?
A. I'm not sure of the physical address. It's on Harwood Heights. I'm not sure of the house number.
Q. All right. Is it in the City of Union?
A. That's correct it is.
Q. And is it in Union County?

A. Yes, sir.
Q. And what was your purpose in going to Ms. Wilburn's home?
A. By the complaint she had filed with our department my purpose of going there to conduct a crime scene investigation.
Q. And when you say conduct a crime scene investigation what specifically were you intending to do?
A. My intentions were to go into her residence to verify what she was telling us to be that happened.
Q. What training and experience have you had in the processing of a crime scene?
A. I've had some advanced training through the South Carolina Justice Academy and crime scene investigations.
Q. And upon arriving there did you observe the layout of Ms. Wilburn's house?
A. I did.
Q. I'm showing you what's been marked for identification as State's Exhibit Number Fourteen. I would ask if you could take a look at that and see if you can recognize what that is.
A. This is a - it's not the scale but it's a drawing of Ms. Wilburn's house and how it's laid out on the inside and the structure on it.
Q. And is that diagram does it fairly and accurately

reflect the general layout of the house and the locations of the rooms in the home?

A. Yes, sir.

Q. We move Number Fourteen into evidence at this time.

MS. CASON: No objections.

THE COURT: Entered without objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER FOURTEEN PREMARKED FOR IDENTIFICATION, ENTERED INTO EVIDENCE.)

Q. I'm going to show you now State's Exhibits One through - One through Thirteen. I would ask that you just take a look at those photographs please.

(WITNESS REVIEWING PHOTOS.)

Q. And what are those pictures of?

A. That's the pictures of the crime scene that was taken on the date Ms. Wilburn came down to the police department.

Q. All right. And do those photos of the crime scene do they fairly and accurately represent what you saw when you went to her house on December the 5th that morning?

A. Yes, sir, that's correct.

Q. All right. We would move into evidence One through Thirteen.

MS. CASON: No objection.

THE COURT: Received without objection.

(WHERUPON: STATE'S EXHIBITS ONE THROUGH THIRTEEN PREVOUSLY MARKED FOR IDENTIFICATION, MOVED INTO EVIDENCE.)

Q. And Mr. Nix, what I'm going to do now I'm just going to take you through these photos.

If I may, your Honor, publish them to the jury.

THE COURT: Yes, sir. Yes, sir.

Q. Thank you.

I'm showing you first of all a picture, State's Exhibit Number Thirteen and I would ask if you can tell the jury what that is?

A. That right there's a view beside of Ms. Wilburn's house as you come up in the driveway from the side porch area.

Q. As far as this window in this house what determination were you able to make about that window?

A. We pulled upon Ms. Wilburn's residence. The window was very noticeable it was knocked out.

Q. All right. And I'm going to show you now Exhibit Number Fourteen and if you would I think you have a pointer up there with you take that pointer and show the jury where - where that window is on that diagram.

A. The pointer's right there.

Q. I'm sorry I thought you had it. Here it is.

A. Mash the button.

Q. Yea. Just mash the red button.

A. All right. The photos you just showed me reflects to this area right here of her house the side porch area.

(NOTE: WITNESS INDICATING TO DIAGRAM.)
Q. I'm going to show you now Exhibit Number Twelve and I would ask you if you can identify what that is a photograph of?
A. That is a photograph of the inside of the window you just recently showed me. It's on the porch area.
Q. Okay. That's basically this same window from a different place?
A. That's a view from the inside looking out.
Q. All right. Then I show you - going back to Exhibit Number Fourteen - if you would point out on the diagram where you would be to see this view.
A. Okay. If you in looking at that view you're standing right here in this porch area shooting the photo back outside toward the outside.
Q. And I'm going to show you now Exhibit Number Eleven and I would ask if you can tell the jury what that is a picture of?
A. That's basically the same view that you just showed me except that's the picture reflecting that the glass was knocked from the outside in on the floor.
Q. And I'm going to show you now Exhibit Number Ten and ask if you can tell the jury what that is.
A. That's basically the same angle except this time Captain Gault done the pictures of the crime scene. That's

standing in her living room area shooting back out toward the porch area out on the outside.

Q. And what if any kind of damage had been done to the interior door?

A. We determined that entry was made from the outside on the porch area, came inside the porch area and that is the interior door that was knocked out coming into her living room.

Q. So to shoot this picture, the Exhibit Number Ten, where would you be on the diagram as Exhibit Number Fourteen?

A. The photo you showed me you would be standing approximately right here looking out that way.

(NOTE: WITNESS INDICATED STATE'S EXHIBIT FOURTEEN.)

Q. And I'm going to show you now Exhibit Number Nine. Okay if you would tell the jury what that's a photograph of.

A. That's a photograph of - we determined that the inside door had a pane glass in it probably anywhere from six glasses. That's the broken spindles that were broke out from the outside is laying in her living room floor.

Q. I'm going to zoom in on that. If you would take that pointer and show the jury what - -

A. These right here are the spindles that holds the pane glasses that held the pane glass in the door at that time.

Q. All right. It's kind of hard of see but is there glass in that photo as well?
A. There is glass all over the carpet area right there.
Q. And where is the door? Just show the jury where the door is.
A. The door is right here and the top part of the door is where the spindles should be and was not. That was completely knocked out.
Q. So if you were standing taking pictures on this diagram where would you be?
A. Where I would be standing at?
Q. Yes, sir.
A. Approximately right in this area right here.
(NOTE: WITNESS INDICATING LIVING ROOM IN STATE'S EXHIBIT FOURTEEN.)
Q. And one other thing. Going back to Exhibit Nine was there an air conditioner unit that you could reference from that picture?
A. The air conditioner unit as you come in that door right here there is a window. You see the drapes right there. There is a window right there and there is a window unit air conditioner in that window.
Q. I'm going to show you now what's been marked for identification State's Exhibit Number Three and I'm going to hand that up to you. I would ask you to take a look at

that and see if you recognize that item.
A. Yes, sir, I do recognize this item. This is the window tint that she had on the outside window in the porch area.
Q. And I want to go back and show you Number Thirteen and can you point out to the jury where that - -
A. This complete window right here was tinted and the tint - when they broke the window to go into the house the tint broke away from the glass and this is the tint area. It's like a - I guess something like a little setting room she had and she had the windows tinted to keep the sunlight out.
Q. And Number Three, the tint that you recovered, can you point out what location in relation to that window that was recovered from?
A. The tint was recovered from - there was a good portion of the tint that was knocked out on the inside and that tint right there was taken out and taken in as evidence.
Q. And was there any particular reason that you thought that tint might have value as evidence?
A. We looked at the tint before we removed it. What you are trained to do is look at something before you touch it and we looked at the window tint on what appeared to be some blood and possibly some prints on it.
Q. Now the tint that is up there, that physical item of

evidence that you have, what did you do with it once you got it out from her window?

A. What procedure we do when we take something into evidence we remove it. We put on our rubber gloves, we remove it and we place it in these types of evidence bags and seal them.

Q. And is that what you did in this case?

A. Yes, sir.

Q. All right. And did you make any kind of markings on the bag?

A. On the front of the bag we had a reference to what area it was taken from, our case numbers, and what address it was taken from. We fill all of that out - the stuff out before we send it to SLED.

Q. All right. And then did you take that item to SLED?

A. Yes, sir, I did.

Q. Okay. And what was the purpose of taking that item to SLED?

A. The purpose of taking these items to SLED was to establish if fingerprints could be identified and also for them to process it for blood, check the blood on it.

Q. Okay. And when you took that bag to SLED did you do anything to secure it?

A. Yea. The bag was - it was put in the bag and it was closed up and sealed with tape. And when it's taken to

SLED it's also resealed again by their department you know it's never opened.

Q. Okay. Moving along I'm going to show you Exhibit Number Eight and I would ask you if you can tell the jury what that is a photograph of.

A. Okay. The photograph that's indicating there is that this is her phone and that's the phone line and receiver. You can't really see it that good but the tail end of the phone cord was broken. Right here it's real light. There's the phone and the end of the phone cord is broken and it was jerked away from the wall and there was blood droplets all over the floor area.

Q. As far as the location of that phone in the house - I'm going to go back to Exhibit Fourteen - and if you would point out to the jury where that phone was located in the residence.

A. All right. Ms. Wilburn has a - she has a - right in here she has a sitting room, sewing room and there is a table right in this area and that phone was laying right beside that table.

(NOTE: WITNESS POINTING TO EXHIBIT FOURTEEN.)

Q. I'm going to show you now what's been marked for identification State's Exhibit Number Fifteen and I would ask you if you would take a look at that item and see if you can identify it.

A. I need to put some gloves on. This is the head receiver we recovered off the phone at her residence.
Q. And is that the same head set that you were just shown a picture of?
A. Yes, sir, it's the same head set.
Q. All right. And what was the purpose of collecting that item?
A. The purpose of collecting that item was for fingerprint identification and also there was blood on it too as well so that's why we recovered it.
Q. And when you recovered that phone what was done with the phone head set when it was recovered?
A. The phone was recovered and it was put in a - the evidence box and it was sent back to South Carolina Law Enforcement Division - SLED.
Q. And what was done to secure the box when it was submitted to SLED?
A. The box was secured by us with the red evidence tape - we put packing information on the front, we tape it to that sealed it with the red evidence tape and it was sent to SLED and also it was sealed with our tape - the yellow tape.
Q. And were you the person who transported it and submitted it to SLED?
A. I was.

Q. I am now showing you Exhibit Number Seven.
A. That is a photograph of Ms. Wilburn's pocketbook that was located in her sewing sitting room in a chair.
Q. And if you would I am going to show you now - well is there any identifiable evidence on that purse that you can point out to the jury?
A. Yes, sir. It's hard to tell in the photographs but right in this area right here on the bottom side of her pocketbook there is blood. There's blood there.
Q. And I'll show you now Exhibit Fourteen and I would ask once again if you can show the jury exactly where it was in the residence that you found that pocketbook?
A. Right in this area here.
(WITNESS INDICATED TO STATE EXHIBIT FOURTEEN-DIAGRAM.)
A. Like I said this is a sitting sewing room of Ms. Wilburn. There was a table in that room and the pocketbook was sitting in a chair at the end of one of those - at the end of the table.
(WHEREUPON: STATE'S EXHIBIT NUMBER SIXTEEN PREMARKED FOR IDENTIFICATION.)
Q. Okay. I'm showing you now what's been marked for identification as Exhibit Number Sixteen. I would ask that you just take a look at that and see if you recognize that item.
A. This is the pocketbook that was recovered from the

crime scene.
Q. And what was the significance of that item that caused you to take it into evidence?
A. Well apparently a good bit of blood on the front of the purse. We took the purse into evidence to be sent down to SLED for analysis on the blood.
Q. And how did you go about packaging that item and securing it?
A. The pocketbook was placed in the evidence bag - this evidence bag. Information was filled out on the front. It was folded and sealed by our department and transported to SLED.
Q. And did you personally take that to SLED?
A. Yes, sir, I did.
Q. It was submitted to SLED sealed?
A. It sealed when I take it and when we get down there SLED seals it as well.
Q. I'm going to show you now what's been marked or what is State's Exhibit Number Six and ask if you can identify that photograph.
A. These are packages of old coins Ms. Wilburn had in a dresser drawer or a chest of drawers in her bedroom and the coins were removed and the wrappers were taken in as evidence. It appeared to be fingerprints on the wrappers and we sent the wrappers to SLED to see if they could be

identified.
Q. Would you make sure you speak into the microphone. I've got you talking in another direction so make sure you speak where the jury can hear you all right. And if you would I am going to show you Exhibit Number Fourteen and I would ask you again to point out where in the house you found those coin wrappers.
A. This is Ms. Wilburn's sitting room if you walk down to the back area into a hall way there and turn and you go to this back bedroom to over here in the rear of the residence.
(WITNESS POINTING TO STATE'S EXHIBIT NUMBER FOURTEEN.)
(WHEREUPON: STATE'S EXHIBIT NUMBER NINETEEN PREMARKED FOR IDENTIFICATION.)
Q. I'm going to show you now what's been marked for identification as Exhibit Number Nineteen. I would ask that you to look at that bag and its contents and see if you can identify it.
A. These are the two coin wrappers as you seen in the photos. Like I said we removed the coins from the coin wrappers and submitted the coin wrappers to SLED for fingerprint identification and blood identification.
Q. How did you go about securing and transporting those items once you collected them?
A. We took the coin wrappers and placed them in our

departmental evidence bag and then we filled the information out and sealed the bag and then it was placed into evidence and sent to SLED.

Q. All right. And did you submit it to SLED?

A. I did.

Q. And was it in the sealed condition when you submitted it to SLED?

A. Yes it was.

Q. And what did you request SLED to do in regards to Exhibit Nineteen?

A. I requested through my forensic sheet that SLED do an identifiable fingerprint and blood identification - run an identification on it.

Q. Now in addition to the items that you collected were you able to observe blood droppings in the home?

A. Yes, sir, I was.

Q. All right. And I'm going to show you now some pictures of the house, of the house itself. I'm showing you first of all Exhibit Number Five. I would ask you if you can just point out to the jury - -

A. That is a different angle. There is the phone receiver. Not receiver but the phone laying in the floor and the receiver on the upper end. There is a piece of paper laying beside it with the blood droppings all through the floor even on the paper right there.

(WITNESS INDICATING TO EXHIBIT FIVE.)
Q. And going back to Exhibit Fourteen where - where would you be standing to get that view that morning?
A. You would be in this area of the house right here.
(WITNESS INDICATING TO EXHIBIT FOURTEEN, DIAGRAM.)
A. Right beside the table.
Q. And I'm going to show you Exhibit Number Four and ask if there is any identifiable evidence on this picture.
A. From what I can tell there is blood droppings in the floor right here. This is the hall way area that I was telling you about. There is blood droppings all in the floor there.
Q. And on this diagram that hall way we just showed the jury a picture of on Exhibit Fourteen where would it be?
A. The hall way is right here.
(WITNESS POINTING INDICATING ON EXHIBIT FOURTEEN)
Q. Is there a back door there?
A. There is a back door. It's basically two hall ways. This hall way leads to the bedroom and this is a hall way that if you take a left there you go into a kitchen that led to a back door right there.
Q. And that blood that you just pointed out on that picture that's that hall way?
A. It's a hall way right in here.
(WITNESS INDICATING ON EXHIBIT NINE.)

Q. All right. And I am going to show you now Exhibit Number Three and ask if you can identify any evidence from that photo.

A. This is a picture leading out to Ms. Wilburn's front porch. There is blood droppings on the wall there right in that area right there.

Q. Now where would you be - going back to Exhibit Fourteen - where would you be on this diagram to see that blood that you just showed the jury on that last picture?

A. You would be standing approximately right here.

(NOTE: WITNESS INDICATING EXHIBIT FOURTEEN, DIAGRAM.)

Q. The blood dropping was on the wall right there and that's the front door right there.

Q. And I am going to show you now Exhibit Number Two and ask if there is any identifiable evidence on this photograph.

A. This is the photograph of Ms. Wilburn's front door and there is a blood dropping right there as - on the door way.

Q. Well going back to Fourteen where would that be exactly?

A. Right there.

(NOTE: WITNESS INDICATING EXHIBIT FOURTEEN, DIAGRAM.)

Q. Okay. And I'm showing you now Exhibit Number One and I would ask you if there any identifiable evidence on that photo?

A. There is some blood dropping right there. That's the walk way to Ms. Wilburn's residence.

Q. We don't have the walk way drawn out but if you could just show the jury where in relation - -

A. The walk way goes down and turns up right here on her porch area.

(NOTE: WITNESS INDICATING TO EXHIBIT NINE.)

(WHEREUPON: STATE'S EXHIBIT NUMBER EIGHTEEN, PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you now what's been marked for identification State's Exhibit Number Eighteen and I would ask that you look at this bag and the bag inside and see if you recognize it.

A. This is a cotton swab that we use to swab blood in the house and be placed back in its packet that it originally come out of and it's placed into one of our departmental evidence bags and folded up and sealed and sent to SLED.

Q. Okay. And when you take it to SLED it's in a paper bag originally.

A. Right.

Q. And what kind of bag does it go into when you take it to SLED?

A. When you take it to SLED SLED places it in their evidence bag and seals it. Its heat sealed and then you fill the information out on the front and you initial over

where its heat sealed at.
Q. And is that what happened with this swab?
A. That's what happened with this swab.
Q. All right. And is that a swab you took from Ms. Wilburn's house?
A. That's correct.
Q. Okay. And what was it a swabbing of?
A. It was a swabbing of blood. We got to take sterile water with our swab and then take the sterile - take the swab and do like a little twist to the blood to get the blood evidence onto the swab and it's placed back into the bag.
Q. And I am going to now - well let me just ask you, did you in addition to the items that you collected there at the scene on December the 5th did you later on collect any other evidence from that residence?
A. I did.
Q. All right. What prompted you to do that?
A. I was requested to do that from the solicitor since the solicitor was Mr. Hall at that time.
Q. Were you able to go and still locate the same blood on Ms. Wilburn's wall that was there?
A. I went back to the residence and there was still blood droppings on the front doorway. Well not the front doorway but the front wall beside the front door.

(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE, TWENTY-TWO, TWENTY-THREE PREMARKED FOR IDENTIFICATION.)

Q. And I'm going to show you now a bag that contains exhibits - well I'm sorry. Let me show you this to the defense attorney first.

(NOTE: DEFENSE ATTORNEY REVIEWING DOCUMENT.)

Q. I'm showing you now a bag containing Items Twenty-One, Twenty-Two and Twenty-Three and I would ask you to look at those bags their in and see if you recognize them.

A. This is the bag - this is the bag I filled out and this is the evidence container cartridge where we scraped dried blood off the wall. It was sealed and placed back into the evidence bag, the information was filed out and it was sealed by our evidence tape and sent back to SLED. And this is a cotton swab same procedure that was done the last time, sterile water, swabbed the area, placed back into the packet and placed into one of our evidence bags and sealed up and sent back to SLED. And this right here has never been opened.

Q. All right.

A. It's another blood swabbing from the wall, same area. But I guess they didn't need it. I'm sorry, when I transported these to SLED it was placed in a SLED evidence bag heat sealed at the top and initialed and dated.

Q. And I'm going to show you Exhibit Number Three again

and ask if you can show on that photo where that swab and that scraping were taken?

A. It was taken right here.

(NOTE: WITNESS INDICATED ON WALL ON EXHIBIT THREE.)

A. That was approximately around close to two years later after the incident happened. That's why we - the blood was still there on the wall.

Q. And what is the difference just in processing and collecting the blood? What is the difference between taking a swab and doing a scraping?

A. The procedure is you work with the swab and with sterile water and you swab the area to get some of the evidence onto the swab and that's the procedure there. The other procedure with the scraping is you actually take one of the small vial tubes open the top and scrape a little bit off the wall into the tube and seal it.

Q. Now do you - can you tell from that exhibit what day you collected that for evidence and when you submitted it to SLED?

A. I collected it on 10/30/06.

Q. All right. Other than this evidence in this bag the other evidence we talked about and you looked at that you submitted it to SLED when was that submitted?

A. That was submitted - the incident happened on the 3rd. Excuse me, the 5th of December. I would have to look at my

box. The box when I submitted it. I think it was the next following day.

Q. I'm going to hand up - hand up a memorandum or a evidence inventory sheet from SLED and would that refresh your memory as to what you submitted?

A. Yes, sir, I submitted it on the 8th. This is a forensic form we have to fill out when e collect evidence and we submit it to SLED and what analysis we want done to the evidence. We have to fill this information out on this sheet for them to do it. And the evidence was collected on the 5th and it was submitted on the 8th of December of 2003.

Q. So you took everything except those last couple of swabs that you looked at?

A. Right.

Q. Out of that you took everything but that to SLED on December the 8th of 2003?

A. That's correct.

Q. And after you submitted that to SLED were there any suspects in this burglary?

A. After I submitted it?

Q. After you submitted the items on December the 8th.

A. No, sir, there was no suspects at that time.

Q. And when - when was Mr. Giles developed as a suspect?

A. I received a phone call - -

Q. Well what day?

A. It was - I think it was April 2006.
Q. Okay.
A. I'm not sure on exactly what day. I would have to look at my reports.
Q. Well would looking at your report refresh your memory on that?
A. Yes, sir, it would.
Q. I would ask that you review the document that I am handed up and see if that refreshes your recollection just on the sole date that Mr. Giles become a suspect.
MS. CASON: I object. What exactly was that?
THE COURT: Show her.
(NOTE: DEFENSE ATTORNEY REVIEWING DOCUMENT.)
THE COURT: Do you have anything, Ms. Cason?
MS. CASON: Yes, your Honor.
THE COURT: All right. Well - -
MS. CASON: I'm sorry.
THE COURT: Do you have it?
MS. CASON: I have the report.
THE COURT: You have the report?
MS. CASON: Yes.
THE COURT: So you're not objecting?
MS. CASON: I'm not objecting. I'm taking a look at it.
THE COURT: All right.

A. Its April 3rd of 2006.
Q. Okay. And without going into what anyone told you did you speak to someone after which Mr. Giles was a suspect?
A. Yes, sir, I did.
Q. And who was that person?
A. David McClure.
Q. And what does David McClure do?
A. He's in the DNA Division with SLED.
Q. And after you had a conversation with Mr. McClure on April the 3rd of 2006 did you do anything in regard to charging Mr. Giles with any crime?
A. Yes, sir. I went to the municipal judge and got three warrants on Mr. Giles.
Q. All right and for what crime?
A. Kidnapping, first degree burglary and strong arm robbery.
Q. Now before you went to the magistrate and asked for the warrant on Mr. Giles did you do anything in regards to talking to Ms. Wilburn?
A. Yes, sir, I did. On this same date that I received this information from Mr. McClure I brought Ms. Wilburn back into the police department.
Q. I'm sorry.
A. I brought her back. I asked her to come back to the police department to talk with me.

Q. And at that time what was your purpose in talking to her?
A. My purpose in talking with Ms. Wilburn was to see if she could possibly approximately three years later identify Mr. Giles.
Q. And did you also discuss the incident with her?
A. Yea we went back through the incident once again and she did a fairly good job recalling the incident. And I also showed her a line up.
Q. And when you say you showed her a lineup would you just tell the jury exactly what it was you presented Ms. Wilburn.
A. Yes, sir. A lineup is a photograph of six individuals with the same features with Mr. Giles's photo in there to see if she can identify him.
Q. And was Ms. Wilburn able to pick Mr. Giles' photo out of the lineup?
A. No, sir, she wasn't.
Q. After Mr. Giles was charged did you have any contact with him in regard to securing any evidence from him?
A. Yes, sir. I requested some - a blood sample from Mr. Giles.
Q. Okay. And where did you go to obtain that blood sample?
A. Mr. Giles was transported to Wallace Thompson Hospital

in the lab area of the hospital.
Q. I'm sorry.
A. He was transferred to the Wallace Thompson Hospital to the lab department.
MS. CASON: I object. I think we're kind of off the time line here. He's referring to April 3rd of 2006.
MR. ANTHONY: No that's not what the question was.
THE COURT: All right. Rephrase the question. Let's see exactly where we are.
MS. CASON: He was referring to the events of April 3rd of 2006 and thereafter when he actually spoke with Mr. Giles.
THE COURT: Let me go back. Re-ask the question, let's start there and see where we are.
MR. ANTHONY: The question is in the weeks or months after you secured the warrants for Mr. Giles charging him with the crimes that you testified about did you have any contact with him in regards to securing any evidence from him?
A. Yes, sir, I did.
Q. And when was that?
A. I'm not sure what date it was.
Q. Okay. If I could have one moment.
(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY PREMARKED FOR IDENTIFICATION.)

Q. I'm going to hand you now what's been marked for identification State's Exhibit Number Twenty. I would ask if you could identify that item please.
A. This is a biohazard bag that I had vials of blood in that was taken from Mr. Giles from the hospital. They were placed in biohazard bags and given to me. This is just something from SLED. I'm not sure exactly what their lab does but it appears to be blood on it is what it appears to be to me. This was taken to SLED on 9/13/2006.
Q. 9/13?
A. 2006.
Q. Okay. And as far as when you secured Mr. Giles' blood that would have been - would that have been within a day or so of taking it to SLED?
A. Yes, sir.
Q. Okay. And where did you go with Mr. Giles to take him and have his blood drawn?
A. He was taken to Wallace Thompson Hospital where a licensed lab technician took and drew the blood from Mr. Giles.
Q. All right. And did you witness that?
A. Yes, sir, I did.
Q. And what - after witnessing that what did the lab tech do as far as giving you?
A. She gave me the blood and signed a piece of paper

saying she withdrew the blood and give it to me.
Q. All right. And then once you took the blood what did you do with it?
A. Once I took the blood the blood was you know put in as evidence and it was taken to SLED South Carolina Law Enforcement Division for analysis.
Q. All right. And when it was taken to SLED what kind of condition was the bag submitted to SLED in?
A. The bag was submitted to SLED and then it was sealed - heat sealed, initialed and dated.
Q. And were you the one who submitted it to SLED?
A. Yes, sir, I did.
Q. Okay. If I can have one moment. And Mr. Nix, is the defendant James Giles here in the courtroom?
A. Yes, sir, he is.
Q. And could you point him out please?
A. He's sitting right here.
Q. I would ask the record to reflect he's identified the defendant and that would be all of my questions.
THE COURT: Before we do cross examination we will take a short break.
(JURY PANEL LEAVING COURTROOM AT 3:30 P. M.)
THE COURT: During the break I'm going to let the witness step down and get some water or go to the restroom. He is instructed not to discuss the case with anybody

involved.

Mr. Anthony, anybody subject to cross examination. All right we will take about a ten minute break, ten or fifteen minute.

(NOTE: SHORT RECESS AT 3:31. P. M.)

(NOTE: BACK ON THE RECORD AT 3:47 P. M.)

THE COURT: Bring in the jury.

(JURY PANEL ENTERING COURTROOM AT 3:48 P. M.)

THE COURT: All right, Ms. Cason.

MS. CASON: Thank you, your Honor.

DONALD NIX BY MS. CASON:

Q. Mr. Nix, what is the procedure whenever a crime is reported or an alleged crime is reported?

A. What's the procedure?

Q. Yes.

A. I don't know if there is a certain standard procedure but we talk to the victim and get as much information as we can in obtaining what we need to do from there.

THE COURT: I'm going to ask you to speak a little louder. You have a soft voice, speak up a little bit.

Q. Okay. So there is no specific procedure other than talking with the victim. Is that what you're saying?

A. On this case she came to the police department and I went out there and spoke with her and took general information from her at that time.

Q. Okay. Do you normally take a written statement from the alleged victim?
A. It all depends. It all depends if we need to take it from her or not. On this particular day she came before the crime, we went to the crime scene and saw what she reported. At that time I didn't think there was any need to take a statement from her.
Q. Okay. Did you write down what she reported to you?
A. No I didn't. I just took notes in my head and what she reported to me and all this happened within probably fifteen to twenty minutes and then we went to the crime scene.
Q. Okay. Now the incident report that Mr. Anthony showed you earlier to refresh your memory, is that pretty accurate? Was that pretty accurate?
A. That's pretty accurate to what she had told me yes, ma'am.
Q. Okay. All right. Once you get to the scene what's the procedure?
A. Well I didn't go to the scene by myself but the procedure is before we enter a crime scene we observed the area of the house, what kind of condition it's in and then we gradually work ourself onto the inside.
Q. Okay. And when you gradually work yourself on the inside what is the procedure?

A. Looking for any kind of identifiable evidence that we can obtain to verify what the victim is telling us.
Q. Okay. Do you move items?
A. If we collect it.
Q. What about when you first enter?
A. What about when we first enter?
Q. Do you move items? Is that the procedure do you move items?
A. I'm not sure what you're asking, ma'am.
Q. I'm asking you when you walk into - -
A. Do we open the door? Yes we open the door to enter yes, ma'am, we do that.
Q. Okay. And do you take pictures of the scene?
A. Yes, ma'am, we do.
Q. Did you take pictures of this scene?
A. No, ma'am, I did not.
Q. So you entered you saw the condition of the house but you didn't take pictures?
A. I didn't take pictures of the scene. Captain Gault did.
Q. Okay. And do you have those pictures?
A. The pictures you have into evidence.
Q. Okay. And these pictures accurately reflect the condition of the home when you entered it?
A. The conditions of the outside that was taken that was

the condition of the house and on the inside and so forth.
Q. Okay. So Items One through Fourteen accurately reflect the condition of the home when you found it?
A. Yea if you would like to go through them, yes, ma'am.
Q. Okay. All right were there any items that were moved?
A. There were items removed like the phone head set. They removed it for evidence. The coins were removed from the wrappers and so forth like that.
Q. Okay. All right. This is State's Exhibit Eight and what is this a picture of?
A. That's the picture of the phone in the sewing and sitting room.
Q. Okay. And this is State's Exhibit Five.
A. Right.
Q. And what is this a picture of?
A. That's a picture of the phone and the face plate and the pictures showing the droplets of the blood.
Q. Okay. Now going back to State's Eight. You collected blood from all of the items that were listed?
A. I collected the phone receiver and SLED collected the blood from the phone. I think.
Q. I'm sorry.
A. I collected the receiver - the phone receiver and sent it to SLED for fingerprint identification and blood identification.

Q. Okay. Earlier you testified that there was some indication that there was blood on the receiver.
A. Yes, ma'am.
Q. Is this what you're talking about?
A. Yes. There was blood on the phone receiver and the cord there and also the cord that plugs into the wall.
Q. On the phone cord?
A. Yes, ma'am.
Q. And you say the phone that was plugged into the wall?
A. It appeared to be jerked from the wall to me.
Q. Okay. So there was blood here on the receiver?
A. Yes, ma'am. And on the cord there too looks like.
Q. And on the cord?
A. Yes, ma'am.
Q. Okay. And what color is this telephone or what color does it appear to be?
A. It appears to be white. White to me.
Q. All right. Let me show you - well you also testified that State's Exhibit Seven which was a swab sample - - -
A. Right.
Q. - - - of blood in the house?
A. Yea.
Q. Where did that blood come from?
A. I don't recall where I actually took a swab of the blood at in the house but it was taken from inside the

house.
Q. Okay. Do you normally indicate where the blood is taken from?
A. Normally we would photograph where we had taken it from but at that time it was not photographed.
Q. All right. And again what is the procedure for taking the swab?
A. We have a sterile swabs; we use sterile water. We take a swab and wet the tip of the applicator and wherever we take the swab from we take a swabbing of the blood sample. By using rubber gloves we take swab tips and put them into the blood and like in a circle motion we take it. Once we do that we put it back in a pack, the package it comes out of and we put it in their evidence bags.
Q. Now you testified that the statement that you wrote or the incident report you wrote came - it was a result of the events that were accounted to you by the victim, is that correct?
A. That's correct.
Q. Do you remember exactly what she said?
A. I do remember what she said and I indicated it in my incident report that you know Ms. Wilburn had come to the police department the next morning.
Q. Say that again.
A. I said I do recall what she told me because when I

done - when the incident report was done I noted in my incident report what she told me that morning.

Q. And how long after this alleged incident took place did she report it?

A. She reported to me that the incident occurred around two o'clock that morning.

Q. Okay.

A. And she reported to me around ten thirty the next morning.

Q. Okay. Did she indicate to you that the telephone cord was broken?

A. Yes because she said she couldn't call 911.

Q. Okay. Would this be the same telephone cord here?

A. To my knowledge that's what we found at the crime scene.

Q. Okay. Did you indicate that you collected the phone cord as evidence?

A. I didn't collect the phone cord as evidence. I just collected the receiver.

Q. Okay. I don't know if I can get this. Is there blood on the telephone cord or does it appear to be?

A. It appears to be blood on the telephone cord.

Q. Okay.

A. And the cord to a receiver - and the receiver.

Q. And the receiver?

A. Yes, ma'am.
Q. But you didn't collect the cord as evidence?
A. No, ma'am, I did not.
Q. All right. Now you testified that you later went back to the residence and collected blood from the wall - scrapings from the wall.
A. In 2006 that's correct.
Q. Okay. When in 2006 did you do that?
A. I'm not exactly sure on the date that I collected it. It should be on the evidence bags that were presented into evidence.
Q. Okay.
A. Around 9 - in September. Whatever is indicated on the bag.
Q. Okay. And you collected this evidence at the behest of?
A. Then the assistant solicitor, Mr. Bill Hall.
Q. Okay. And this is State's Exhibit Fourteen. And where again did you collect this evidence from?
A. The blood was still on the wall right beside the front door on the interior wall right there.
(WITNESS INDICATING ON STATE'S EXHIBIT FOURTEEN.)
Q. Had the other blood droppings been cleaned?
A. To my knowledge they had.
Q. They had?

A. To my knowledge - I don't know, I can't tell you that.
Q. All right. Is this an accurate - -
A. That's an accurate photo at the crime scene in 2003.
Q. Okay. And is this an accurate description or picture of where you collected the scraping?
A. In 2006 that's where I retrieved the blood scraping from the wall in 2006.
Q. Okay. Was there blood still there?
A. That blood was still there yes, ma'am.
Q. In 2006 when you collected the blood?
A. Yes, ma'am.
Q. Okay. And these are small areas of blood stains?
A. The blood it had dried you know but you could see the stains on the wall.
Q. And these are large areas of blood stains?
A. No, no. What you're pointing at there is the hatch to the door. I'm talking about right here.
Q. These are blood stains, these are not blood stains?
A. Them's where the door connects to the framing. The dead bolt and your locks go.
Q. Okay. All right. Did you submit this to SLED?
A. I submitted them to SLED, yes, ma'am.
Q. All right. You referenced a phone call that you received in April of 2006?
A. That's correct.

Q. And who did you receive this call from?
A. Actually I got a voice mail by David McClure from SLED.
Q. Okay. And what did he indicate to you in the call?
A. He indicated on my voice mail that the State Law Enforcement Division stated they had received - hang on just a second. According to him - according to Mr. McClure - this is Mr. McClure leaving the voice mail stated - -
THE COURT: Would you get that juror some water.
We are going to get you some water.
Go ahead.
A. According to his terms they did a short tandem repeat of the combined DNA index system which is known to us as CODUS and said they had matched a profile, the DNA profile that they had obtained to Mr. James Giles, James Albert Giles.
Q. Okay. And did a letter follow that voice mail?
A. Ma'am?
Q. Did a letter follow from Mr. McClure?
A. I also received a copy of the letter in the mail from Mr. McClure.
Q. Okay. I'm going to show you this. Can you tell me what that is?
A. This is a letter that we received from South Carolina Law Enforcement Division stating that they done the match

and it matched the DNA profile of Mr. James Albert Giles.
Q. Okay. Could you read the top line?
A. Yes, ma'am. It says Dear Mr. Nix, the short term tandem repeat STR PCR DNA profile developed from Item One Point One was complete compared to the combined DNA Index System - that's CODUS. The profile matches the STR PCR DNA profile developed from James Albert Giles, South Carolina Number SC 002628 - -
Q. I'm just looking for the first line of the letter.
A. Okay. You talking about - well I read it to you.
Q. Yes. Just the first line.
A. I'm sorry. It says to - -
Q. No. After Dear Investigator Nix.
A. Okay. Short tandem repeat STR PCR DNA profile developed from Item One Point One compared to the combined DNA Index system CODUS.
Q. Okay. Thank you. So you received a voice message and then a letter from Dave McClure saying that short tandem repeat was a profile developed from an Item One Point One, is that correct?
A. Yes, ma'am.
Q. And this Item One Point One would have been an item that you submitted?
A. Submitted back in 2003.
Q. Okay. All right. I would like to move this into

evidence as Defendant's One.

THE COURT: Let Mr. Anthony see what you're talking about.

MR. ANTHONY: No objection.

THE COURT: Be received without objection.

(WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE MARKED AND ENTERED INTO EVIDENCE.)

BY MS. CASON:

Q. Okay. Let's go back to the scrapings that were submitted to SLED for analysis. You submitted scrapings from the wall and what else did you submit?

A. A swab of blood.

Q. A swab?

A. Yes, ma'am.

Q. And where were those swabs taken? When was the swab and the scraping taken?

A. According to the evidence bag that I processed in September 2006.

Q. October 2006?

A. Whatever the bag has on it that's the date I retrieved them.

Q. All right. The bag indicates November the 28th from SLED.

A. I'm talking about my bag. That's SLED bag there.

Q. Okay your bag indicates - -

A. My bag indicates - I'm sorry. October the 30th 2006 when I tagged them.
Q. Okay. So you submitted this October - -
A. What I done is I'm brought this back to my department and dropped it into evidence. On 11/28/2006 they were taken to SLED to be dropped off for analysis.
Q. All right. So you took them or you collected them the sample on October the 30th 2006?
A. Yes, ma'am.
Q. And you submitted it to SLED on - -
A. December - excuse me. November 28th.
Q. November 28th a month after you collected the sample?
A. They were in our evidence room, yes, ma'am.
Q. And what is the procedure then for submitting evidence to SLED for analysis?
A. I don't understand your question. There is no certain time frame that we have that we take them. Our department is small. We had to take it down when we have other evidence to take down as well.
Q. Okay. All right. You testified that you took a blood sample or that you I guess transported a victim - blood sample for Mr. Giles at some point?
A. Yes, ma'am.
Q. And when was this?
A. Whatever the paper has indicated on it. I'm not sure

of the particular date. The hospital gave me a paper as to the day I took him in on.

Q. And did you - did you actually witness the drawing of Mr. Giles' blood?

A. Yes, ma'am, I did.

Q. And who was in the room when the blood was taken?

A. I'm not sure of the lady's name. She's a lab technician at Wallace Thompson Hospital.

Q. And normally does the person who is having the blood drawn only do a signed form indicating that the blood was drawn?

A. I'm not sure if Mr. Giles signed that form or not but I don't think he did.

Q. But normally procedurally there is a form?

A. I'm not sure about the procedures over there. I'm not sure.

Q. Have you ever known of a form to be signed by a person who is having their blood taken?

A. Not to my knowledge.

Q. So as far as you know this blood was drawn in your presence but is there any indication this was Mr. Giles' blood?

A. The information that was filled out by the technician.

Q. Information that was filled out by the technician. What about anything signed by Mr. Giles?

A. No I don't think Mr. Giles signed anything.
Q. So he didn't sign anything?
A. Not to my knowledge.
Q. And again you don't know if that is procedure?
A. I don't know if it is their procedure or not.
Q. Well what is Union County's procedure or Union County Public Safety what's their procedure?
A. About drawing blood?
Q. Sure.
A. I don't think we have a certain set procedure.
Q. You don't have a procedure?
A. To my knowledge we don't.
Q. All right. Now after this blood was drawn what happened?
A. The blood was taken and put in a biohazard bag and was taken - it was returned over to me and it was taken to SLED for analysis.
Q. And you signed for it on the 11th September, 2006, is that correct?
A. If that's the form from the hospital yes, ma'am, that's what I signed.
Q. And when was it taken to SLED?
A. Whatever the SLED bag has on it I'm not sure.
Q. Okay. All right. You say that you testified that you brought the victim back to the station in 2006, is that

correct?
A. That's correct.
Q. All right. And you did this to determine if she still remembered the events of 2003?
A. Yes, ma'am. We found out Mr. Giles was a suspect. We obtained a photo line up of Mr. Giles and brought Ms. Wilburn in. I set with Lieutenant Henderson.
Q. Okay. Now in your incident report you say that and according to your testimony that she was very familiar with the events of December 2003, is that correct?
A. Yes, ma'am.
Q. Okay. She was able to describe the incident; she was able to recall the events of that evening, is that correct?
A. That's correct.
Q. Okay. Yet she wasn't able to pick Mr. Giles out from a photo line up?
A. Not a hundred percent no, ma'am.
Q. No further questions.
THE COURT: Redirect?
DONALD NIX BY MR. ANTHONY:
Q. Mr. Nix, just to clear up a couple of things, as far as talking to Ms. Wilburn you did not take a statement from her or have her write out what happened in summary, is that correct?
A. Yes, sir, I did not take a statement.

Q. But you did document what she told you?
A. Yes, sir, I did document what she told me.
Q. That was put in your incident report?
A. Yes, sir.
Q. Okay. There was blood all over Ms. Wilburn's house, is that a fair assessment?
A. Yes that's a fair assessment.
Q. Okay. And in processing the house is it standard for investigators to try to collect all the blood in the house or is there a certain amount of judgment that's used in making that decision?
A. There is a certain amount of judgment used in making that decision. There is no way you can process all of the blood in the house.
Q. So that phone, was there any reason based on your training as an investigator to think that the blood that was on the cord would be from a different person than the blood that was on the actual handset?
A. No, sir.
Q. So you just took the hand set?
A. I took the hand set for two reasons.
Q. Why was that?
A. The two reasons I took the hand set was for two forms of identification for fingerprints and blood analysis.
Q. Now as to the swabs that were taken. Well as to the

blood that was taken from Mr. Giles. I'm going to show you - I'm going to show you this document and ask if you know what that is?

A. This is a chain of custody form from the laboratory Wallace Thompson Hospital.

Q. And does that form does it document the blood being drawn from any particular person?

A. On this particular date 9/11/2006 it's documented its state of origin the patients name James Albert Giles and the blood was drawn from Mr. Giles by Judy Martin.

Q. I'm sorry, sir, I need you to speak a little louder.

A. I'm sorry. I said this form indicates to me the chain of custody from Wallace Thompson Laboratory and the patients name is James Albert Giles; the blood was drawn from James Albert Giles; appears to me the right forearm by Judy Martin and there's the signature where she signed it over to me.

Q. Okay. And she gave you this form when she gave you the blood, is that correct?

A. That's correct.

Q. And did you personally see this Wallace Thompson Hospital person - this lady that worked there draw the blood from Mr. Giles?

A. Yes, sir, I did.

Q. And did she give you that blood?

A. She gave me a vial containing Mr. Giles' blood.
Q. And what did you do with that blood?
A. The vial was put in a biohazard bag and transported to SLED.
Q. All right. Now as far as this letter that you received from Mr. McClure. The letter notified you of what's called a CODUS System, is that right?
A. That's correct.
Q. And if you would - well the CODUS system is a system that SLED maintains and has profiles of people in it, is that correct?
A. DNA profiles that's correct.
Q. It's basically a data base of DNA profiles?
A. Yes, sir, that's correct.
Q. And what Mr. McClure was telling you in that phone call and that letter is that this data base had run across a match between Mr. Giles' DNA and the DNA from Ms. Wilburn's house?
MS. CASON: Objection, leading.
THE COURT: That is a leading question I sustain the objection.
BY MR. ANTHONY:
Q. What was basically the essence of what Mr. McClure was telling you when he called you?
A. Basically when Mr. McClure called me he said that they

had a short tandem search and the DNA profile matched a DNA in their data base.

Q. Okay. The DNA profile from Ms. Wilburn's home?

A. When I done my investigation everything was submitted to SLED and a DNA profile was established and it was established by SLED and when he called me he told me that when they did the short tandem search that DNA profile I submitted to SLED matched in their system.

Q. And then after that is there some procedure that SLED request law enforcement agencies to follow once they have a CODUS hit as far as making a verification of it's accuracy?

A. Right. They request for blood to be drawn and be resubmitted you know just to verify it.

Q. Okay. Blood from the person that they had made a match with?

A. Made a match on.

Q. All right. And in this case was that the purpose of you taking him to the hospital on September the 11th 2006?

A. That's correct.

Q. All right. If I could just have one moment. All right, thank you.

That's all on redirect.

THE COURT: Recross?

MS. CASON: Yes, thank you, your Honor.

DONALD NIX BY MS. CASON:

Q. Investigator Nix, or Mr. Nix, did you receive a report from SLED about the items that you submitted?
A. There should have been one in the file, yes, ma'am.
Q. And was there an Item One One that was submitted?
A. I'd have to look at my file. I'm not sure.
Q. Can you tell us what that is? Tell the jury what that is.
A. What One Point One is?
Q. What the form is.
A. This is a form where certain chronological elements was done on each item I submitted to SLED as to the breakdown of each item and what they found - their results of what they found.
Q. Okay. Is that addressed to you?
A. Investigator Donald Ray Nix, yes, ma'am.
Q. Okay. And what is Item One One?
A. A swab of the back side of the cable cord.
Q. Okay. What is the cable cord?
A. I'm not sure. I'm not sure what it was. It had to be - I'm not sure.
Q. Okay. Are the other items fairly representative of the items that you would have sent to SLED?
A. One to Ten - Swab, yes, ma'am.
Q. So would you say that Item One One then would be the telephone cord?

A. Possibly it could have be.
Q. Okay. Is that the item that was matched by CODUS according to David McClure?
A. According to what his sheet would have been - where is his sheet?
Q. The letter.
A. That I read to you.
Q. Defense One.
A. That's what he's got on his paper, yes, ma'am.
Q. Okay. So now - or according to his letter he matched the DNA from Mr. Giles to the back side of a cable cord?
A. That's what he said yes, ma'am.
Q. Okay. But you have no knowledge of a cable cord?
A. I didn't analysis the cable cord. I didn't.
Q. Okay. Did you send it to SLED?
A. Well apparently I had to.
Q. Okay. Have you seen that in any of the evidence?
A. No, ma'am. Sometimes we don't get stuff back.
Q. Okay. Now what is a Short Tandem Repeat? Does that identify a person?
A. That's not my field. I'm not sure what that would be.
Q. Okay. Did you testify - did you testify just now that according to Mr. McClure the Short Tandem Repeat identified or matched a profile from Mr. Giles?
A. Yes, ma'am, you got the same thing I got.

Q. All right. And does that actually identify Mr. Giles?
A. According to the Tandem Searches it tells me it does.
Q. Okay. Now does it ask for anything else in the letter?
A. No, ma'am.
Q. Okay. All right take a look at this line here. Can you read it to the jury please?
A. It says the information is provided for the investigative purposes only. If the suspect is charged and a DNA comparison is desired in this case be submitted a non-blood standard in a lavender tube top.
Q. Okay. So does that indicate to you or doesn't that indicate to you that something further is needed, something other than a Short Tandem Repeat?
A. According to that it is.
Q. Thank you. No further questions.
THE COURT: You can step down. Thank you.
MR. ANTHONY: If I may. Okay, Okay.
THE COURT: You can step down. I appreciate your time. Thank you.
Call your next witness.
MR. ANTHONY: We call Ms. Wilburn.
THE COURT: Place your hand on the bible, left hand on the bible and raise your right hand. Thank you.
(WHEREUPON: BARBARA LEE

WILBURN, BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

BARBARA WILBURN BY MR. ANTHONY:

MR. CLERK: All right.

BARBARA WILBURN BY MR. ANTHONY:

Q. Would you state your name please? Would you state your name please?

A. I'm Barbara Lee Wilburn.

Q. And Ms. Wilburn, where do you live?

A. 221 Harwood Heights, Union, South Carolina.

Q. Okay. And how long has that been your address?

A. Let's see, how long have I lived there?

Q. Yes, ma'am.

A. Since I was six years old. We moved in in 1942.

Q. And were you living there in December 2003?

A. Yes I was in 2003.

Q. All right. And did anybody live with you at that time?

A. No, no.

Q. I want to take you now to the early morning of December 5th of 2003. Where were you in the early morning of December 5th 2003?

A. I was sitting in the living room by the window reading a book.

Q. And when you were doing this did you hear anything?

A. Well all of a sudden I heard somebody running. Seems

like they were running from the lot beside me on the pavement. They were running fast. And then they came over to my side. I was very sleepy; I didn't pay too much attention until they came to my side. They threw something at the small air conditioner that was still in the window.

Q. All right. When you heard something hit your air conditioner what did you do?

A. Well I stood up. They had knocked a hole in the glass too but I didn't realize that at the time. They kept running around to the side of the building - the porch - and they slung a rock or something through the window - broke it. This person - I got up and I checked the door right behind me there that led from the porch to the living room and to turn the key to make sure it was locked and as I did that I saw the man coming in through the outside window and it was all broken and his hands were bleeding. And then he came to the inside glass there and broke that. He opened the door and I ran - -

Q. All right. Let me stop you just a second. After this man comes in your house through your living room door - -

A. Say that again please.

Q. The man who came through your living room door did you recognize him?

A. No. I did not know this gentleman.

Q. All right. What race was this man?

A. What race? Well he was a black man but he was very light skinned.
Q. And how was he dressed?
A. I'm sorry.
Q. What was he wearing?
A. He was wearing a cap over his head with you know I came over like this and kind of shielded his eyes. Khaki colored clothing.
Q. And did you notice any injuries to this man?
A. Well his hands were bleeding. He cut them on the glass.
Q. Okay. After the man came in your house Ms. Wilburn, what did you do?
A. He ran behind me - I ran to the telephone and before - I was trying to dial 911 but I couldn't get it through. He yanked the cord off the wall - the telephone cord.
Q. Now where was the phone?
A. The phone was at the end of the dining room table.
Q. All right. And when the man ripped the phone cord off the wall what did he do or what did he say?
A. What did he say? He said give me your money or I'm going to kill you.
Q. And did he do anything with the cord as he said this?
A. Say that again.
Q. What did he do with the cord?

A. The cord?
Q. Yes, ma'am.
A. Well see this pocketbook - see this cord on this pocketbook - like that - he said I'm going to kill you. He said it the second time and he came toward me and I saw my scissors that I had been mending a dress with on the table there and I picked it up. I just did like this.

(NOTE: WITNESS MADE A JABBING MOTION.)

A. I believe it caught on his belt buckle.
Q. And once you did that once you tried to - -
A. What did he do?
Q. Yea what did he do?
A. Yea he grabbed my hand and twisted it around like this.

(NOTE: WITNESS USING RIGHT HAND.)

A. He scratched the inside of my hand with the scissors so that I had to drop it. I said I did not mean to - I don't want to kill you. I said I just want you out of my house. And I said you can have my car keys. I said - let's see - I had about thirty-five dollars I believe in the pocketbook. I believe the pocketbook was on the - the end of the bed there. I said let me get my pocketbook and I said - -
Q. So, Ms. Wilburn, after he got the scissors away from you where did you go and where did he go?

A. Well certainly I tried to run out the back door but it was locked and he prevented me from doing that because he had the scissors see. And I think he had his left hand on the back of my sweater there holding on to me. He had the scissors. I said I have some silver coins. It's just junk silver that we had used at the drive-in to you know to make change. I didn't even know I had any of this. My mother was there and I had found it shortly before that. And I said here take this.

Q. Now where were those coins?

A. I'm sorry.

Q. Where were the coins?

A. The coins were in the bureau dresser and I opened the drawer and pulled that out. It was in you know like you take to the bank in a bag to be counted. So I dumped that out on the bed and I tore open those little papers you know that they put them in to show him the silver. He looked at it a minute and then he said no I don't want that. He said I want real money.

I said well that's all I have. But I said you take this and you take my car keys. And I handed him my car keys but he handed that back. He didn't want my car keys. So anyway I ran out into the living room there - -

Q. Let me just stop you a moment.

A. I'm sorry.

Q. While you were in the bedroom - - -
A. Huh-huh.
Q. - - - - did he take any money from your pocketbook?
A. Yea he took the money. I believe it was thirty-five dollars that was in the pocketbook and there was an eel skinned billfold he took that. He ran out with at least a couple of pocketbooks. And I know the papers to the sale of my car was in it and different driver's license. Let's see what else. I believe my birth certificate was in it. Anyway my papers were taken with the pocketbook.
Q. Well when you tried to go to the back of the house and get out your back door - - -
A. Huh-huh.
Q. - - - what did he do when you tried to get to the back door?
A. Well I couldn't get out the back and so he came behind me. Like I said he held onto the back of my sweater - he had the scissors - so that's when I came back. I can't remember the exact moment when I went back there but I did. I tried to get him to go ahead and take my car. I said you know - I think he said again that I'm going to kill you.

And I said you don't need to kill me. Take the car. I said you've already pulled the telephone out of the wall and I don't have no other telephone so there's no way that I can report you this evening. Just take the car keys and

go and take the silver.
Q. Did he let you leave your house?
A. Did he do what?
Q. Did he let you leave when you tried to get out?
A. Did he do what?
Q. Did he let you leave your house when you tried to get out the back door?
A. No. He didn't go out.
Q. Okay.
A. He didn't go. The door was locked. The key was not in the door. I had already locked that and this was at two o'clock at night.
Q. All right. And then Ms. Wilburn, how did he leave the house? What happened?
A. Well he was looking through the pocketbooks, I don't know if he went into the closet but he was looking through a bunch of pocketbooks. I don't know. See I ran out to save my life. I was still in the living room I believe when I saw him. He just rushed by. He didn't pay no more attention to me and he went to the porch and jumped over the railing and ran off real fast. And I slammed the door and I stayed there all evening. And when nine o'clock came in the morning I ran to the police and they came over right away.
Q. All right. And did you have another phone beside the

one the cord had been pulled out?
A. No I did not have another phone.
Q. Okay. At what time - at what time in the morning did this occur approximately?
A. What time of morning?
Q. Approximately what time was it?
A. That he came over?
Q. Yes, ma'am.
A. That was at two o'clock in the morning.
Q. All right. And was it dark outside?
A. Yes it was.
Q. All right. And you went to the police department that morning after it happened, is that correct?
A. Well I didn't know - I did not leave the house. I stayed inside until the police opened up at nine o'clock and I ran over there and told them what had happened and then they came over to the house.
Q. All right. When the officers came to the house did you show where he had bled and the things he had touched?
A. Yes, as he went out the door, as he slung his hands out it slung blood on the furniture and on the wall and it's still there as evidence.
Q. All right. And then after this happened in 2006 last year were you asked to look at any photographs?
A. Mr. Nix - this was a couple of years later, they had

gotten some pictures there of possibilities. I said - I believe I asked Mr. Nix does it have to be one of these and he said not necessarily. But I noticed that there were three gentlemen that had the same shaped face and so I just wasn't sure at all. This was not right away see. It was two or three years later. I did not want to you know make a mistake about something like that.

Q. Yes, ma'am. Thank you. If I could have one moment.

A. Is he finished?

THE COURT: Just a minute.

MR. ANTHONY: Thank you. That's everything on the direct.

Thank you, Ms. Wilburn.

A. Thank you.

THE COURT: This lady is going to ask you some questions.

BARABARA WILBURN BY MS. CASON:

Q. How are you doing, Ms. Wilburn?

A. How are you?

Q. Just a couple of questions for you.

A. I'm sorry.

Q. I have just a couple of questions for you.

A. Yes. As you can see I'm hard of hearing.

Q. Okay. You went to the police station the next day?

A. To the police station?

Q. The next morning?
A. At nine o'clock when they opened as soon as they opened. I was scared to go outside.
Q. Okay. And you were - you were very well versed on the events that took place over in the morning?
A. I'm sorry.
Q. You understood what took place and you remember what took place over in the morning at your residence. Do you remember what happened at home?
A. Do I remember what happened?
Q. Yes.
A. Well I told you what I remember.
Q. Okay. And did you accurately state those facts to the officer, to Officer Nix when you went to the police station?
A. Yes.
Q. And do you believe that he accurately took notes?
A. Did he take notes? They came over and they saw the silver that Mr. Giles had left behind.
Q. Okay.
A. But they saw the blood stains.
Q. Okay but what about when you were at the police station. Did you tell Officer Nix what happened?
A. Yes I told all of them. It was not just Mr. Nix it was several officers - - -

Q. Okay.
A. - - - over there.
Q. Okay. And you believe that based on what you told them they made a record of it?
A. Well I mean I did not read their record but I'm sure they did.
Q. Okay. Do you remember telling Officer Nix that the black man was very light skinned?
A. That what?
Q. Do you remember telling Officer Nix that the black male was very light skinned?
A. Tell Mr. Nix? I'm sorry.
Q. Did you tell Mr. Nix that the black male was very light skinned?
A. Yes I said he was very light skinned.
Q. Okay. And if I told you that Officer Nix never indicated that in his statement would that mean that you didn't actually tell him that?
MR. ANTHONY: I object.
THE COURT: I sustain that objection. She can't - that's pitting witnesses against each other. I sustain the objection.
She's going to ask you another question.
BY MS. CASON:
Q. Okay. Ms. Wilburn, you said that when you went to go

out the back door you were prohibited from going out the back door because it was locked, is that correct? You couldn't get out the back door because it was locked.
A. Well I had locked it earlier. See that was two o'clock in the morning and the doors were locked so I couldn't get out. But of course you know when somebody's frightened you like that you are going to run and try to get out but I could not get out.
Q. Okay. All right no further questions.
THE COURT: Mr. Anthony.
MR. ANTHONY: No. No redirect.
MS. WILBURN: Is that all?
THE COURT: You can step down. Yes, ma'am, that is and we appreciate your time. Thank you.
All right you can call your next witness.
MR. ANTHONY: Thank you, your Honor, we call Jeff Crooks.
MR. CLERK: Raise your right hand.
(WHEREUPON: JEFFREY CROOKS BEING FIRST CALLED, DULY SWORN, TESTIFIED AS FOLLOWS:)
MR. CLERK: All right, thank you, sir, come on around.
JEFFREY CROOKS BY MR. ANTHONY:
(WHEREUPON: STATE'S EXHIBIT NUMBER FIFTEEN, SEVENTEEN PREMARKED FOR IDENTIFICATION.)
Q. Would you state your name please?

A. My name is Jeffrey Crooks.
Q. And Mr. Crooks, how are you employed?
A. I'm a Senior Agent with the South Carolina State Law Enforcement Division commonly referred to as SLED.
Q. And what do you do for SLED right now?
A. Currently assigned to the Investigative Services Unit and SLED. Assigned to the Piedmont or Upstate Region, South Carolina.
Q. And how long have you worked for SLED?
A. Approximately ten years.
Q. And do you have any prior experience in law enforcement other than your working for SLED?
A. Yes, sir, I do.
Q. And where was that?
A. Prior to working for SLED I was a deputy sheriff in the Lexington County Sheriff's Department.
Q. And how long was that?
A. Approximately three and a half years.
Q. And back in December of 2003 - well let me just back up. What do you do for SLED now? What's your current job at SLED?
A. Basically I'm an investigator.
Q. And back in December 2003 what was your job?
A. I was assigned to the SLED Latent Print Crime Scene Unit.

Q. And how long had you been with the Latent Print Crime Scene Unit or when did you first get assigned to the Latent Print Crime Scene Unit?
A. In 1997.
Q. And in that unit at SLED what did you do?
A. Some of my responsibilities including responding when request from local agents to assist in crime scene investigation as well as processing evidence in the laboratory for fingerprints. I was also a fingerprint examiner as well as a shoe and tire tread examiner; blood stain pattern; expert crime scene reconstructions.
Q. And would you tell the jury what your experience and training is in the field of evidence processing and fingerprint examination.
A. Yes, sir. I have a Bachelor of Science Degree from the Citadel. I'm a Certified Police Officer in the State of South Carolina. Successfully completed courses at the South Carolina Criminal Justice Academy and Crime Scene Investigation in Fingerprint Development Techniques and Fingerprint Comparison. I've also successfully completed courses sponsored by the International Association for Identification and Crime Scene Investigation, Palm Print Identification, Blood Stain Pattern Analysis, Advanced Blood Stain Pattern Analysis. I've also successfully completed the Federal Bureau of Investigations Fingerprint

Comparison Course. I've testified in state courts of South Carolina and North Carolina as an expert in fingerprints as well as federal court.

Q. And how many times have you been qualified as an expert in the field?

A. Approximately fourteen or fifteen times.

Q. Your Honor, at this time we submit Agent Crooks to the court as an expert in the field of fingerprint analysis and evidence processor.

THE COURT: Any voir dire?

MS. CASON: No, your Honor.

THE COURT: I find he is so qualified in those areas.

MR. ANTHONY: Thank you, your Honor.

Agent Crooks, I'm going to hand up some exhibits for you now. This is what's been marked for identification as State's Exhibit Number One. I hand you this box and ask you if you will look at the contents and see if you've ever seen it before?

A. Yes, sir, I have.

Q. I think - I think I misidentified that. It's actually - it is Exhibit Number Fifteen. I apologize. All right. When that item came to you when did it come to you and what condition was it in when it came to you?

A. This item of evidence was submitted by Donald Nix on December 8th 2003.

Q. And how did it come to you?
A. I received it in a box, a large cardboard box that was sealed. This box was inside the cardboard box along with other items of evidence. This box was sealed and the phone handset was actually cable tied to the bottom of the box inside this box.
Q. All right. And I'm going to show you now what's been marked for identification as State's Exhibit Number Sixteen and ask that you take a look at that item and see if you've ever seen it before.
A. Yes, sir, I have.
Q. And what is it?
A. It's a pocketbook.
Q. And when did you receive this item and what condition was it in when it came to you?
A. I received this item along with the first item we discussed. It was packaged together in a large box. Further contained in this paper bag and it had tape on it. It was sealed.
Q. Okay. I'm going to show you now State's Exhibit Number Seventeen for identification.
A. Yes, sir, I recognize it.
Q. What is that? What's in that bag?
A. This is some sort of - looks like window tint. Some sort of plastic that was submitted in this bag further

contained in a larger cardboard box along with these other items of evidence.

Q. And what kind of condition was that bag in when it came to you?

A. It was the same except for the powder.

Q. All right.

A. The way I processed it and things I did to it.

Q. And as far as how it was packaged how was it packaged?

A. It was inside this paper box which was sealed. I'm sorry, this paper bag which was sealed.

Q. And I'm going to show you what's been marked as Number Nineteen for identification and ask if you can identify that item, those items?

A. Yes, sir, I can.

Q. What are those items?

A. These are coin wrappers.

Q. And how did those coin wrappers come to you?

A. They were inside this paper bag further contained along with these other items of evidence in a larger cardboard box.

Q. And how was the paper bag secured?

A. With staples.

Q. All right. What day did you see all these items I've just shown you?

A. It was December 8th. I can give you the exact time I

received it if you want. I received these items December the 8th at 1:57 P.M..

Q. And are these items in the same condition they were in when you received them at SLED back on December 8th 2003?

A. They are minus the processes that I did to them in trying to locate evidence.

Q. Your Honor, at this time the state would move into evidence Items Fifteen, Sixteen, Seventeen and Nineteen.

THE COURT: Any objection?

MS. CASON: Yes, your Honor, I do object because pursuant to Mr. Crooks' report, evaluation, those items - all those items had no value for identification. Additionally there were two coin wrappers pursuant to the photos I believe was State's Exhibit Eight and Number Five and in this package there are three coin wrappers.

THE COURT: I'll over rule the objection. I'll allow them in. They've been identified properly.

(WHEREUPON: STATE'S EXHIBIT NUMBERS FIFTEEN, SIXTEEN, SEVENTEEN AND NINETEEN PREMARKED FOR IDENTIFICATION, ENTERED INTO EVIDENCE.)

BY MR. ANTHONY:

Q. The items that you have there we just presented to you, Agent Crooks, what was the first thing you did with them when you began your analysis of them when you began to work with them?

A. The reason why they were submitted to me was because there was a request to try to locate fingerprints on these items. The first thing I do is - the first thing I did was do a visual examination of the items of evidence looking for anything that might be of evidentiary value. In this particular situation I was looking for blood as well as fingerprints.

Q. All right. So before you checked for prints you checked for blood?

A. I check for anything that was on it. On some of these items of evidence I observed blood and actually I believe I swabbed blood on just about all of them I believe.

Q. Well in regard - when you began your analysis of the items that you thought you saw blood on what did you do in regard to those items?

A. The first thing I would do is collect the blood. I do what we call a presumptive test to determine whether the substance was in fact blood. We use a chemical that reacts with elements in the blood that will tell us for sure whether or not it is blood. At that point we will collect that blood with a swab. The way we do that is we'll put a saline solution on a swab that resembles a Q Tip. We will wrap the item of evidence until we see transfer onto that swab and then I place that swab into a small brown paper envelop that we call a Swabology Envelops, I will seal it,

I will document it on that envelop what it is and where it was taken and then at a later time submit it to the DNA Department for a further analysis.

(WHEREUPON: STATE'S EXHIBIT'S TWENTY-FOUR; TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN, PREMARKED FOR IDENTIFICATION.)

Q. All right. Agent Crooks I'm handing you four items that have been marked for identification as Exhibits Twenty-four, Twenty-five, Twenty-six and Twenty-seven. I'm also handing you an accompanying SLED bag. I ask first of all that you look at Item Number Twenty-four and see if you can identify Number Twenty-Four?

A. Yes, sir, I can.

Q. All right. And what is that?

A. This is the envelope that I used to put the swab that I took from the hand set of the telephone which is this item right here.

Q. That's Exhibit Number Fifteen?

A. Yes, sir.

Q. Okay. All right. When you took the swab from the phone what did you do?

A. Once I took the swab I put it in this envelop, I sealed it, I put a description on the outside of this envelop. In this particular incident I wrote Item One Point One. When we take an item of evidence off an

original item of evidence and in this case we swab blood off of the hand set that becomes in our terminology a sub item of the original item. In other words it comes from the original item so we label that using the original item number which was one and we give it a sub number which would be point one. So this item is One Point One which is a sub item of the original item which is a hand set which in the lab we label as Item One.

Q. And for SLED purposes that swab from that hand set would forever be referred to how?

A. As Item One Point One.

Q. And on that envelop when you wrote your description of Item One Point One or the swab you took how did you describe it?

A. The description I put on this envelop was mainly for my benefit or if you are referring to in the future. For example in testimony it helps me remember where I swabbed the item. On this I wrote back side on cable end. Also in SLED's computer tracking system I entered the sub item into the computer and I described it as swab from Item One which anyone in the lab can refer to that computer to that case number and look it up and it will say Swab Item One Point One as a Sub Item of the handset. I also wrote on here that I did a presumptive test with a chemical called sienalthaline which I described earlier just tells me that

this is in fact blood indicated that it was positive. I also did a very crude hand drawing of the hand set and indicated on the drawing where on the phone hand set that I removed the swab. And in this particular incident the swab was taken on the top surface to be - some people might call it the back scrape but this surface on the end where the phone cord goes into the hand set for the hole where the cord is. So on this swab envelop I wrote back side on cable end referring to the end of the hand set where the cable - the phone cord would go into the hand set.

Q. And if the report - if another SLED agent did a report and wrote - characterized One Point One as back slide on a cable cord what would be the conclusion you would draw as to how that came to be?

A. The only way I could think they would have done that was when they received this envelop in the DNA lab or in any other department and in this case it would have been going only to the DNA lab - when they read the notes that I put on this envelop from my reference they assumed that it was on the actual cord that goes into the phone as opposed to where I actually took it. When I entered the item into our computer system I entered it in as One Point One was a swab from Item One.

Q. Do you think it's possible that someone may have read the word - your word in and thought you had written cord?

A. Right. If they read this without knowing why I put it on there I can only assume that they would interpret that to mean it came from a cord. However if you look at the items of evidence that were submitted by the police department the cord was never submitted. My description of Item One is One white and colored telephone hand set and Item One Point One was one swab from Item One. Now another agent could go in if they wanted to change the description to be more descriptive. I left it basic on purpose because that's the way I include these swabs. I just say it's a swab. I don't get into any more detail on the actual explanation in the computer system but I provide all the detail I need for testimony in my report or in my case file.

Q. There was ever a cord submitted to you with that hand set?

A. I never received a phone cord from anyone.

Q. The only thing that you tested was the hand set itself?

A. That's right.

Q. And One Point One came from when you wrote up your description One Point One you wrote back side of cable cord end?

A. That's correct. And I also initialed the actual hand set with my initials with Item One and also the case number

assigned to this case by SLED and you can still even see where the swab was actually taken on the phone itself.

Q. And all of this happened in regards to the SLED report someway or another One Point One is being transposed from the back side of the cable end, the back side on the cable cord?

A. That's correct. I did not do that. I can tell you for a fact this swab came from right here.

Q. All right. Well once you've taken a swab and put it in the envelope what did you do with it?

A. I put it in this envelop and then I take all of the other swabs that I collect. Once I document it in our system then I will put it - I will take it down stairs to our evidence log in technicians. I'll put the actual evidence in a sealed - in a plastic bag just like this that will be heat sealed with a heat sealer. I will sign my name as being the person providing the evidence as well as the date that it was provided. And I will also initial and date the actual seal - the heat seal that they heat seal for me with these in there so its heat sealed. The only way it can be opened is if somebody tears it opened. After all that's done we have a box and the evidence log in room we call the DNA box. It's actually a refrigerator with controlled access. Once it's entered into this plastic bag I then put the plastic bag into that box and at some future

date someone from the DNA lab can come down stairs and get it themselves and take it up and do their analysis. So I don't actually hand it straight to a DNA analyst. I put it in the box and they come to the box and take it out.

Q. All right. And I just want to take you through some of these other envelops we have here that have State's Exhibit Number Twenty-Five. I show you that and ask if you can tell the jury where that came from.

A. Yes, sir. This is a swab I took from the front of the pocketbook. Again I labeled it from the same way. This is a sub Item of Item Two. We refer to it as Two Point One. Again I drew a picture in my notes of the pocketbook, a very crude picture, and indicated exactly where approximately on that pocketbook that I took that swab from.

Q. And then I'm going to show you Exhibit Number - Exhibit Number Twenty-Six and ask you if you recognize that item?

A. Yes, sir, I do. This is the swab I took of the largest piece of the plastic that was submitted to me. There were several pieces in here and this is the swab from the largest of the piece in here. I did the same exact - I documented the same exact way and indicated which piece of plastic it was from and submitted it along with the other swabs.

Q. All right. Now I'm finally going to show you Exhibit Twenty-Seven and ask if you can identify that also.
A. Yes I can. This is the envelope where I put a cutting from the coin wrappers which in my case file it is actually referred to as Item Eight. This was made into a sub item which would be Eight Point One. I sealed it and documented it the same exact way as I did the first one.
Q. Okay. And then once you've taken these swabs and sealed them up how did you use that bag there? What did you do with those swabs in relation to the larger plastic bag?
A. All these are sealed individually. They are put in this plastic bag and taken down stairs to our evidence log that are evidence control technicians they log in evidence when the locals bring in evidence that they want analyzed they are the ones who help with the process. We have to take - when we find additional evidence we have to take it down stairs and go through them just like - just like people from the outside they bring evidence in they put it in this envelop and they heat seal it, signed it, initialed the heat seal and put it in the DNA refrigerator box.
Q. So the idea was to put all four in the same bag - - -
A. That's correct.
Q. - - - and seal it up and send it to the DNA?
A. That's correct. Each of these are sealed individually

and then they are placed together in this bag and this bag is sealed and placed into the DNA box.

Q. Okay. Well moving on to the actual fingerprint part of this.

A. Yes, sir.

Q. Did you make an examination of the items that I just handed to you that we just moved into evidence, the purse, the phone, and the plastic, and the coin wrappers? Did you make an examination of those items for fingerprints?

A. Yes, sir, I did.

Q. How did that analysis turn out? What were the results?

A. I examined all the items of the evidence that were submitted to me for fingerprints and I did not find any fingerprints of a value that was good enough to conduct any type of comparison to any individual.

Q. And what would be the reasons that you would be unable to find fingerprints on evidence like what was submitted to you in this case?

A. Well on the surface of your fingers, your palms and your feet are raised lines of skin called ridges. These ridges contain tiny little holed called pores that exude sweat. This sweat along with oils and other residues from your face collected along these ridges throughout the normal course of your day. When you touch an item it is

possible to leave an outline of those ridges much like a rubber stamp would do with ink when you touch that item. When you touch that item if you leave that outline its ninety-nine percent moisture and about one percent amino acids, salts or the oily residues that collect from your face. Fingerprints are very fragile and don't always leave fingerprints when you touch an item. Several reasons for that could include if you don't have any residue on your fingers on those ridges you're not going to transfer that residue onto that surface. Kind of like when you have a dry ink pad and you try to leave an impression with an ink stamper if it's dry you're not going to leave that stamp. Other factors include the condition of the surface you are attaching. Rougher surfaces don't hold prints very well like smooth surfaces would. If your hands are real sweaty you might leave a lot of the sweat but if it's too much sweat you might leave a smudge as opposed to an actual print. If your hands are very rough, very callused, it is still possible to leave a print. However it doesn't happen as often when your hands are real rough so all these factors can play a part. If it's real dry you're not going to sweat. If it's real cold or real dry you're probably not going to sweat as much therefore your skin could be dry and you won't leave any residue when you touch something. So all of these are just some examples of why you may not

leave a fingerprint.

Q. And even if you have a situation where - where there is a fingerprint or part of a fingerprint left is there also some obstacles in getting a print that you would deem a usable print?

A. Yes, sir. As a fingerprint examiner we look for certain things when we conduct a comparison. One issue that we deal with a lot is we get what we call a partial print which is you get a little bit of the fingerprint but it's not enough to compare; it's not enough to look at an unknown individuals prints and say this is his or her fingerprint. We don't distinguish between a print that is too small versus no print at all in our report. We just say that there is no value for comparison or that we either didn't find anything or we didn't find enough.

Q. All right. If I can have just one moment. Thank you. That's all on direct.

MS. CASON: No questions.

THE COURT: All right you can step down and be excused. Appreciate your time, thank you, sir.

Mr. Anthony, is that it for the day?

MR. ANTHONY: I'm sorry, your Honor.

THE COURT: Is that it for the day?

MR. ANTHONY: Yes, sir.

THE COURT: All right, members of the jury panel, we

141

are going to stop for the day. It's a little after five. We're going to start back at ten thirty in the morning because of some scheduling matters that won't let us start any earlier than that so please be back at ten thirty here in the jury room and we will start promptly at ten thirty or ten. Keep in mind not to let yourselves be exposed to any news coverage if there is any and don't let anyone discuss the case with you. Don't have any conversation with anyone and don't let anyone start one with you. Don't start to try to make up your mind and don't discuss the case among yourselves so have a pleasant evening and we'll see you back at ten thirty in the morning.

(JURY PANEL LEAVING THE COURTROOM AT 5:10 P. M.)

THE COURT: Anything before we adjourn or recess?

MR. ANTHONY: Not from the state, your Honor.

MS. CASON: Nothing from the defense, your Honor.

THE COURT: All right. Do either of you have any request to charge. If you will hand them up to us first thing in the morning so we can be looking at them. When I say first thing I mean when we start around ten thirty.

Mr. Solicitor, do we have anything earlier than that? Can we do something from nine thirty to ten thirty?

MR. ANTHONY: No, sir, I don't think we do. I'm not aware of anything we can bring to the court as far as business before ten thirty.

142

THE COURT: All right ten thirty. All right we'll see you all at ten thirty in the morning.

(COURT ADJOURNED - TIME IS 5:12 P. M. .)

STATE OF SOUTH CAROLINA)
)
)
)
)
COUNTY OF UNION)

IN THE GENERAL SESSIONS
COURT OF UNION

CASE NO.: 2006-GS-46-1207,
1208, 1209

STATE OF SOUTH CAROLINA)
)
PLAINTIFF,)
)
-VS-)
)
JAMES ALBERT GILES)
)
DEFENDANT.)
)

TRANSCRIPT OF RECORD
VOLUME II

SEPTEMBER 12, 2007
UNION, SOUTH CAROLINA

B E F O R E:

HONORABLE JOHN C. HAYES, III, and a jury.

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

MR. JOHN ANTHONY
ASSISTANT SOLICITOR
SIXTEENTH JUDICIAL CIRCUIT
YORK, SOUTH CAROLINA
FOR THE PLAINTIFF

MS. VANESSA CASON
ATTORNEY AT LAW
GREENVILLE, SOUTH CAROLINA
FOR THE DEFENDANT

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE

ORIGINAL

144

(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-EIGHT, TWENTY-NINE AND THIRTY PREMARKED FOR IDENTIFICATION.)

(NOTE: ON THE RECORD AT 10:45 A. M. .)

THE COURT: All right you may be seated. Let's get Mr. Giles in here. Take your seats.

(NOTE: DEFENDANT ENTERING COURTROOM.)

THE COURT: Mr. Giles, do you need to talk to somebody? Mr. Giles is present, Counsel is present - -

MR. GILES: Just give me a second.

THE COURT: I understand from Ms. Cason that Mr. Giles is going to ask - ask that the court relieve Ms. Cason - I'll hear all of that in a moment - and I may be wrong but that's what I've been told. But the two, the man and the woman sitting behind you did you indicate you want to speak to?

MR. GILES: Yes, sir.

THE COURT: Okay.

(NOTE: DEFENDANT IN CONFERENCE WITH TWO PEOPLE SITTNG DIRECTLY BEHIND DEFENSE TABLE.)

THE COURT: All right. Ms. Cason, are you ready to proceed?

MS. CASON: Yes, your Honor. Mr. Giles - I'm making a motion to be relieved as counsel for Mr. Giles. He is dissatisfied with my representation and would like to proceed representing himself.

145

THE COURT: Mr. Giles, tell me about it.

MR. GILES: Your Honor, I mean - I just don't have the representation that I should be having on this case. I mean my first lawyer never did come to see me at all.

THE COURT: That was Mr. Burton?

MR. GILES: Yes, sir. I wrote Mr. Burton letters. I got all my letters. He never would answer none of them. Ms. Cason she become my lawyer, she came to see me about five times which I wrote letters to her she but never came. Also I've got my - my family to get things on what my lawyer was supposed to do. A lawyer is supposed to - a lawyer is supposed to advise you what is going to happen and to protect you. Your constitutional rights is been violated so - hold up. I'll find it in my papers. Let me find this.

THE COURT: Take your time.

MR. GILES: Your Honor, things are not adding up. I mean how my blood got took from me nobody raised the issue of what is the proper procedure, nobody don't know. They tell me they take my blood and that was it. I filed for a fair and speedy trial in December. My lawyer wouldn't do nothing. I've got that proving that I did. He didn't respond back so I find six months later I'm still sitting in jail. March or February I got released I got her. I brought it to her attention in March I wanted my fair and

146

speedy trial. Nobody answered. Yesterday I brought it to your attention. Mr. Burton says he don't remember it but I've got the letters and the letter I wrote every one of them. I've got it to prove what I'm saying is true. As a matter of fact I'd like to read one but I've tried to get that paper on what a lawyer is to do for you.

Judge Hayes, it's just hadn't been fair to me what these people had did to me - I do not see it. I do not have that paper work with me but it says - I'm sure I put it in here but - and then another thing exculpatory - I've been asking for this information ever since June the 27th so I would know what I was facing at my jury trial. Like I said when I get the letter you'll see what I'm talking about. All this stuff has been denied to me till Monday. Monday you pushed the paperwork on me. You ask Mr. Jeff I write him all the time, I got papers like this to my lawyer but none of them respond back to me. I mean every day I get calls all through trying to fight for my life but my lawyers not given me the representation.

THE COURT: Let me interrupt you there. Has the state complied with Rule Five in Brady and Kyles and all those cases?

MR. GILES: But they - -

THE COURT: Wait just a minute. Let me hear from - Yes, sir.

147

MR. ANTHONY: Yes, sir, we have. We provided discovery to Ms. Cason.

THE COURT: All right. They say they've given you anything that's discoverable or given it to your attorney.

MR. GILES: That's right. I don't know. Judge Hayes, I asked you the June 27th and I can show you a letter what I've constantly been sending everything the solicitor is going to be using against me to let me have it so I will know. Monday I got a chain - a chain of custody from SLED what the items that we were talking about I got that Monday. But this paper tells me this stuff was supposed to have come at my request within thirty days - no later than thirty days. I'm supposed to receive this information - it says - exactly what it says you shall respond to the defendant's request for a disclose no later than thirty days after the request is made or until such other time that may be ordered by the court.

THE COURT: Well that is true and that has to do with your right to receive that through your attorney unless you are representing yourself so your attorney - -

MR. GILES: I didn't get it, your Honor.

THE COURT: I know but it was supposed to be sent to your attorney and now your attorney knew. That's the difference between you and the state. The states complied.

MR. GILES: I'm not really saying the state. I can

148

deal with the state. The state wouldn't talk to me because I got a lawyer.

THE COURT: Right.

MR. GILES: They can't correspond with me. Also this right here tells me a attorney is supposed to assist the defendant and is to advise you - advise the defendant of his rights or explain what to expect in the jury stages of the crime and also they put the showing that the defendant's constitutional rights are not violated through the law enforcement conduct under the law procedures. Mr. Burton, Mr. Ross brought it to - he violated my Amendment Six by not giving me a right to a fair and speedy trial.

THE COURT: Okay. I'm going be glad to hear you but you are wanting a trial and well we're in the middle of one now.

MR. GILES: Yes, sir, but I'm saying I didn't get the right before. I wanted a speedy trial before the ninety days was up.

THE COURT: That came before me on - -

MR. GILES: Well I would like to go through the trial but, your Honor, but I'm asking for a continuance. I need more time to represent myself - -

THE COURT: Let's take it one step at a time. You want to relieve Ms. Cason as your attorney?

MR. GILES: Yes, sir. And - -

149

THE COURT: Let me finish. Do you understand - as I understand it you're not an attorney, correct?

MR. GILES: Sir?

THE COURT: You haven't been to law school have you?

MR. GILES: No, sir.

THE COURT: And do you understand that an attorney is a beneficial asset to you. That is you have a right to an attorney and you have one and an attorney even though you read those things that you tell me an attorney has the experience of law school and has been out practicing and knows the practical aspects. Sometimes when you read something it doesn't tell you everything. You've got to know the practical aspects and the legal rulings on it. So an attorney is - it would be beneficial for you to keep an attorney and also it's dangerous for you to represent yourself. We are half way through trial and you know some smatherings, just bits and pieces of the law, but you can't know and I'm not faulting you its not - don't take this personally but you can't by not being a lawyer know how everything dove tails, how everything works together and what's important and what's trivial and what is of some importance to the jury and to the court and what's not. So I warn you that representing yourself - I can tell you I'm not going to grant a continuance but representing yourself is rather dangerous and not the smartest thing to do. I'm

150

just being as open and honest as I can.

MR. GILES: I understand.

THE COURT: Do you still want to relieve her of representing you and continue on your own?

MR. GILES: I got to continue the case today?

THE COURT: Yes, sir.

MR. GILES: I'm not prepared.

THE COURT: That's why you have an attorney and she is prepared. You might not be satisfied with the way she is prepared but if she has not represented you efficiently that's a matter that can be taken up at a later time. I know that sounds stupid to say well if she isn't representing you right let's don't worry about it now let's worry about it later. Our system does have a safety net so that if you believe - if you are found guilty and sentenced and believe you have not been properly represented there is a way to bring that before the court and have that fully tried. That is a different issue. The issue right now is whether or not the state can prove beyond a reasonable doubt that you committed these offenses. So do you want Ms. Cason to continue to represent you? I'll give you a minute to talk to her. Listen to me right now, Mr. Giles. I'm going to give you a chance to talk with those people in just a minute. In fact we'll take a little break and I'll step out of the room and they can talk with you right there

and then I'll come back and we can make a determination. If you want to release her from representing you I'll do it. I don't think it's the smartest thing to do as I've told you. But I will require her to stay as what we call standby counsel to be available to advise you if you have any questions. If you proceed on your own then she will still be available. She won't be able to ask witnesses these questions or argue to the jury or make objections or speak to the court but you can turn to her for advice as the case progresses if you continue to want to relieve her of counsel but I'm not going to continue the case. I'm going to give you a few minutes to chat with whomever that is.

By the way for the record so we'll know if this ever does comes back who are these two individuals?

MS. CASON: His father and his sister.

THE COURT: All right. And names. Father's name.

MS. CASON: Edmond Giles and Belinda Lott.

THE COURT: And you're Linda Lott?

A. Belinda.

THE COURT: Belinda, we're glad to have you here and you can certainly talk to your brother and your son and say as much as you want. In the event this does come back through the court system at a later time I want the record to show who he was talking with.

152

MS. CASON: Yes, sir.

THE COURT: That's just for his protection and for everybody's protection. I'm not trying to single you out or anything like that. You all go ahead and have a chat.

(NOTE: SHORT RECESS AT 11:02 A. M..)

(NOTE: BACK ON THE RECORD AT 11:25 A. M..)

THE COURT: Ms. Cason, where are we?

MS. CASON: Mr. Giles is going to continue with the motion. He does want to represent himself.

THE COURT: I'll grant that motion.

Is that correct, Mr. Giles?

MR. GILES: Yes, sir.

THE COURT: I'll grant the motion and have Ms. Cason remain as standby counsel. You all just swap seats. I will assume that your motion to continue the case continues?

MR. GILES: Thank you, Judge.

THE COURT: I deny that motion. All right anything else before the jury comes in?

MR. ANTHONY: Just advise the court before we - since I won't have an opportunity to show this to the defense before I move it into evidence I marked or had the court reporter mark State's Exhibit Number Twenty-Nine for identification a certified copy of Mr. Giles' driving record. I've had that copy redacted as to everything

153

except his address and the dates that his license was renewed. There is nothing on here that would indicate he has a suspended license or any kind of traffic history. It is just solely being introduced by the state to show he that has a Union address and I would intend to move that in. That would be what I would intend to do at the close of our case after we call the last witness.

THE COURT: What's that relevant to?

MR. ANTHONY: Its relative showing that he lived at least in the proximity of the crime scene.

MR. GILES: I object.

THE COURT: I sustain the objection.

MR. ANTHONY: Yes, sir.

THE COURT: If that somehow becomes an issue if there is some issue that arises that - -

MR. ANTHONY: If I can just be heard a little further, your Honor.

THE COURT: Yes, sir.

MR. ANTHONY: It would be the state's position it would be relevant for the jury to know if they haven't heard anything about where Mr. Giles is from or where he lives and nothing to show that he's somebody from Union and we think it would just be relevant for the jury to know that this is a man from Union who's on trial for breaking into a home in Union and it has some probative value just

154

for that degree because otherwise the jury doesn't know where we got Mr. Giles from to put him on trial for this and we do think it has that probative value.

THE COURT: Well it does matter where he's from if he committed the crime so I find - I've been doing this sixteen years and to be quite frankly Mr. Anthony, you're a good attorney, been doing this a while and it's the first time I've ever had anybody take that tact as far as what they needed to prove. I don't think it's relevant as to where he lives. It could in some circumstances become relative but at this stage the fact that he lives in Union or in Sheboygan, Wisconsin if he had an alibi it might be an - being an alibi defense that might be an issue but I sustain Mr. Giles' objection.

MR. ANTHONY: Yes, sir, thank you.

THE COURT: Anything else before we get the jury in?

MR. GILES: No, sir.

THE COURT: All right bring the jury - bring in the jury.

(JURY ENTERING COURTROOM AT 11:29 A. M. .)

THE COURT: Good morning members of the jury. I know in looking at the clock you probably think I missed that class in kindergarten on how to tell time but I really didn't. We had some matters to take up outside of your presence. Before I get to that I hope it's a little cooler

in there. It's cooler in my office but I know the sun has gotten up and I know we got that somewhat corrected. Mr. Giles has exercised his constitutional right to represent himself so Ms. Cason is not representing him any more but she is going to be there sitting beside him to assist him. She will not be asking questions, she will not be appearing before you, she will not be making any objections. Mr. Giles has chosen to exercise his right to do that on his own. He has that right. With that posture the case has changed but that's the only thing that's changed. He is representing himself with the assistance of Ms. Cason and we'll go forward with that said.

Mr. Anthony.

MR. ANTHONY: Thank you, your Honor. We call Ms. Mathis.

MR. CLERK: Ma'am, we'll swear you in first. Place your left hand on the bible and raise your right hand.

(WHEREUPON: JUDY MATHIS, BEING FIRST CALLED, DULY SWORN, TESTIFIED AS FOLLOWS:)

THE COURT: All right. Thank you and come on around and we'll get you seated.

JUDY MATHIS BY MR. ANTHONY:

Q. Would you state your name please?

A. My name is Judy Mathis.

Q. And Ms. Mathis, how are you employed?

A. I'm a lab technician at the hospital at Wallace Thompson Hospital.
Q. And as a lab technician what do you do?
A. As a lab technician I draw blood, perform laboratory test. We have lots of things that we do. We have out patient emergency room, the hospital patient as well as sometimes having to do legal drug screens for people's employment and for law officers when they bring in people to do various test on them.
Q. And were you employed as a lab technician at Wallace Thompson on September the 11th of last year?
A. Yes, sir, I was.
Q. And do you have any independent recollections of dealing with Mr. Giles on that day?
A. No I don't.
Q. I'm going to hand up - I'm going to hand up what's been marked as State's Exhibit Number Thirty and I would ask if you recognize just what type of form that is?
A. This is the chain of custody form that we use whenever law officers bring in patients or rather clients or whatever you want to call them for legal blood draws or whatever they want drawn. Usually it's blood alcohol. And what we do is we draw the blood and fill out the various things on here. We sign it and we hand it over to them.
Q. And do you fill out that form at the same time as when

the person is brought in?
A. Yes, sir, we do.
Q. Do you draw the blood?
A. Yes, sir, we do.
Q. Okay. And the records that you have in front of you what does it indicate about your dealings with Mr. Giles on September 11th 2006?
A. It indicates that Mr. Giles came in and had a specimen drawn and that I drew this specimen and handed it over to the law enforcement agency.
Q. And is that record signed by you?
A. Pardon? It is signed by me yes, sir.
Q. And did Mr. Giles give you any information when you took the specimen from him?
A. It looks like he gave me his address at [redacted] Street and his age of forty-three.
Q. And that's [redacted] in Union?
A. It should be. I didn't put anything up on here.
Q. And what procedure would you follow in taking a specimen?
A. I drew blood from the right forearm. I used beta diantrep because we could not use alcohol for alcohol draws. I use betadian to wipe off the arm and I drew one tube of EDTA blood which would be in a little purple top tube.

Q. And then what do you do with the tube?
A. We would label it and hand it to the officer.
Q. If I can have one moment. Thank you.
That's all on direct.
THE COURT: Mr. Giles, cross examination.
JUDY MATHIS BY MR. GILES:
Q. Ms. Mathis, on September the 29th you said you drew a drop of blood from Mr. Giles?
A. On September what?
Q. September 11, '06.
A. What was the question?
Q. September 11 '06 you drew blood from Mr. Giles, right?
A. According to that paper I did yes, sir.
Q. You also you said you drew it up, you labeled it?
A. Yes, sir, it was labeled.
Q. Okay.
A. We wouldn't be able to do anything - you can't do anything with any specimen unless it is labeled.
Q. Well did Mr. Giles sign the label?
A. No, sir. Mr. Giles is not required to sign labels.
Q. Is that proper department procedure?
A. Yes, sir that is proper procedure.
Q. Mr. Giles did not sign the paper?
A. No, sir, nobody has to sign a label except us. The Lab technician labeling it has to sign the label.

Q. Well if Mr. Giles doesn't have to sign the label could it be anybody's blood? How do you say it's Mr. Giles' blood if you don't have to sign a label?
A. Are you talking about the label or are you talking about the chain of custody form?
Q. The label - not the chain of custody. The label on the vile of blood did he initial it?
A. No, sir. That's not necessary. That's not procedure.
Q. Okay.
A. The lab technician drawing blood from patients or anybody else draws the blood and labels it.
Q. But didn't Mr. Giles sign anything saying the blood was his before he signed it?
A. Not according to that. Not according to that paper but that's not the procedure.
Q. Okay. But that's the proper procedure you don't have to sign your name?
A. For legal blood alcohol yes, sir, that's proper procedure.
Q. You don't have to sign it?
A. No you did not have to sign it. A patient does not have to sign it. On the other hand if someone comes in for say Dollar General for legal testing for their facility then they have to sign. That's not actually legal, that is for employment. They have to sign it if you are being

employed for someone they have to sign it. But a legal blood alcohol brought in by SLED or city or whatever for those purposes does not - the person does not have to sign it.

Q. So in other words you say that you can take the blood but they don't have to sign it so therefore somebody can possibly tamper with that blood. You don't put no seal on it, you don't sign for it. Is that possible?

A. I don't understand the question, sir.

Q. I said you're saying the proper procedure the suspect did not have to sign the label - the seal - the seal that you put on top of the blood when you seal it.

A. The blood is drawn in a EDHD tube and labeled. The vile of blood is drawn into EDHD tube and labeled and then handed to the law officer.

Q. But you don't put no seal on top of it? A seal that goes across the top so nobody can tamper with it.

A. I'm not sure if it had no seal on it or not. I'm not sure.

Q. So in other words somebody could have tampered with the blood if you don't know, right?

MR. ANTHONY: Objection, he's asking for speculation.

THE COURT: Mr. Giles, ask it like this. Well let me say, she can only testify as to what happened while it was in her presence. She can't speculate as to what may or may

not have happen.

A. Thank you. I think that's correct. I can tell you what I did. I can't tell you what happened after I gave it to the law officer.

Q. So while the blood was in your - you don't remember putting a seal on it, right?

A. No, sir, I don't remember putting a seal on it. Uh-huh. No we drew it and we would hand it to the office.

Q. Mr. Giles didn't sign no paper work whatsoever, right?

A. Mr. Giles does not have to sign any kind of paperwork for blood alcohol.

Q. No further questions, your Honor.

THE COURT: All right. Any redirect?

MR. ANTHONY: No, your Honor.

THE COURT: You can step down and be excused and we appreciate your time, Ms. Mathis.

A. Thank you.

Call your next witness.

MR. ANTHONY: We call Agent Fields.

(WHEREUPON: RHONDA FIELDS, BEING FIRST CALLED, DULY SWORN, TESTIFED AS FOLLOWS:)

RHONDA FIELDS BY MR. ANTHONY:

Q. Would you state your name please?

A. Rhonda Fields.

Q. And Ms. Fields, how are you employed?

A. I'm a DNA analyst for the South Carolina Law Enforcement Division commonly known as SLED.
Q. And how long have you worked for SLED?
A. About eight and a half years.
Q. And how long have you been a DNA Analyst at SLED?
A. About five years.
Q. And can you tell the jury your education and your training in the field of DNA identification?
A. I received my Bachelor of Science Degree in Biochemistry from Clemson University. I've completed extensive in house training at the South Carolina Law Enforcement Division in the area of forensic DNA analysis and forensology. I also attend annual work shops at conferences to keep up to date on current DNA technology. And I've received graduate credit in the area of population significance from the University of South Carolina.
Q. And have you been qualified to testify as an expert witness before in the field of DNA identification?
A. I have.
Q. And approximately how many times?
A. About eight.
Q. At this time we submit Agent Fields to the court as an expert in the field of DNA analyst.
THE COURT: Mr. Giles, do you have any questions you want to ask her about her qualifications? Not about her

results but her qualifications.

MR. GILES: No, sir.

THE COURT: I find she is qualified as a DNA analyst.

BY MR. ANTHONY:

Q. Agent Fields, just to sort of introduce the jury to the subject can you tell the jury what DNA is and how it's used in your field?

A. Sure. DNA is an accurate detoxified - it's a chemical found in every cell of your body with the exception of red blood cells. You can have half your DNA from your mother and half from your father and also about ninety-nine point five percent of our DNA is what makes us human and differentiates us from animals. The remaining point five percent of our DNA is different and that is the area we test in forensic DNA testing because it separates an individual from another. We use it as - it's sort of like a genetic blue print and so we use it for comparison. Basically DNA is not at all biological fluid. It's found in the blood, in the semen, saliva; even skin cells will produce a DNA profile so therefore usually when a crime is committed some body fluids, skin cells or something is usually transferred to the crime scene. The crime scene investigators they usually collect this evidence at the crime scene - -

THE COURT: I'm going to ask you to slow down just a

little bit.
A. Okay. I'm sorry. Submit it to the laboratory and we develop a unit profile from any item of evidence left at the crime scene in that we are able to develop a profile from. Usually in most cases there is also a standard submitted to try to identify the source of that DNA profile left at the crime scene and that is basically what we do. We use the known standards from either the victim or the suspect in the case that is submitted and compare it against the crime scene evidence and determine whether or not there is a match.
Q. And I'm going to show you now some items of evidence. I'm handing up the exhibits for identification Number - the first number I show you is Number Twenty-Four and I'll ask if you have seen that item before?
A. I have.
Q. And what is that?
A. It is a swab from the back side of a cord and the telephone.
Q. And how did that come to you? That swab how did it come to you?
A. It came in a heat sealed pouch. This is what we typically package our evidence in. The reason being these heat sealed pouches you can tell whether or not they've been opened or tampered with by anyone else. Basically the

person who deposits the evidence in the bag can seal it with a heat sealer. They initial and date it and if there are any openings that haven't been initialed or dated you know that it's been opened. That's why we use them. We label these heat seal pouches with an identification number. We refer them to E numbers because they only have this system the numbers that start with an E. This is how the chain of custody is maintained in our internal system so this arrived in this particular heat sealed pouch.

Q. Okay. What does the envelope that you have with that item how is it identified the item inside?

A. Are you asking about Item 1.1?

Q. Uh-huh.

A. This is a swipping from latent prints in our latent prints department and he received the initial item. In this case it was a telephone head set and he noticed that there was some sort of biological fluid or something that he would assume it had some sort of DNA on it, he swabbed it and submitted it to me so all I get is this envelope with a swab in it. It was in this heat sealed pouch he puts the description on there and the item number and the case number and he also seals it with evidence tape to show that it hasn't been tampered with.

Q. And what was the SLED Item Number?

A. The SLED Item Number 1.1.

Q. It was 1.1. What does the back of the envelop say as far as the description of the item?
A. The back of the envelope?
Q. Yes how was it described by Agent Crooks?
A. He initials and dates it whenever he puts the evidence tape on it that way it insures that it hasn't been opened prior to me receiving it.
Q. Okay. But what did he write on that as far as a description of the item he was sending to you?
A. On the back there is no - -
THE COURT: I think the problem is it's not on the back.
Q. I'm sorry. I mean on the front. I apologize. On the front what did he write as far as the description of the item?
A. The identification of Item 1.1, L0312868 which is our lab number. It says description swab from Item One. The back side of the cable cord and it says phenol saline test positive.
Q. So when you did your report that last word he wrote the back side of cable and then there's another word and you translated that on your report cable cord?
A. Right. That's what it looks like to me.
Q. Looks like cable cord to you?
A. Right.

Q. So that's what you put on your report?
A. It is.
Q. Okay. All right. And then just moving on I'll show you Exhibit - Exhibit Number Twenty-Five which is your Number 2.1 if you can identify that please?
A. This is a swab from the front of a pocketbook.
Q. Okay. And how did that come to you?
A. In the same heat sealed pouch as Item 1.1.
Q. And then I'm going to show you Exhibit Number Twenty-Six and ask if you've seen that before?
A. I have. It is a swab from our large piece of Item Three, Item 3.1.
Q. What is that identified as? As Item Three what was that?
A. Can I refer to my notes?
Q. Sure.
A. It's a large piece of window tint.
Q. And then I'm showing you Exhibit Number Twenty-Seven and then I ask if you've seen that envelop before?
A. I had.
Q. And what is it labeled as?
A. It's a cutting from Item Eight which is - our report says a coin wrapper Item Eight is.
Q. Okay. And also those envelops came to you in a sealed condition, is that correct?

A. It did.
Q. Okay. And then aside from the envelops themselves being sealed they were all in that bag - the plastic bag there in front of you that was sealed and labeled, is that correct?
A. That's correct.
Q. All right. And what date did you receive those?
A. I received them on December 16th 2003.
Q. Your Honor, we would move at this time Exhibit's Twenty-Four, Twenty-Five, Twenty-Six and Twenty-Seven into evidence.
THE COURT: Any objections?
MR. GILES: No, sir.
THE COURT: All right. It will be received without objections.
(WHEREUPON: STATE'S EXHIBITS NUMBER TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN, MARKED FOR IDENTIFICATION, ENTERED INTO EVIDENCE.)
THE BAILIFF: Your Honor, a juror.
THE COURT: Okay. We'll take a break.
MR. FOREMAN: I don't need a break. This projector is obstructing my view of the defendant's table.
THE COURT: All right, he can't see the defendant.
(NOTE: PROJECTOR ADJUSTED ON EVIDENCE TABLE.)
THE COURT: Thank you. Is that better?

MR. FOREMAN: Yes, sir.

THE COURT: Okay. Thank you. I appreciate you calling that to our attention.

BY MR. ANTHONY:

Q. I'm showing you now what's been marked for identification as State's Exhibit Number Eighteen and I hand that up to you and ask you to review it and see if you've seen it before?

A. I have.

Q. And what is that?

A. It's a cotton swabs.

Q. And when did you see those swabs?

A. I received them as well on December 16th 2003.

Q. And what condition did they come to you in?

A. They were also in a heat sealed pouch labeled with a different E number than the previous one and sealed at the top and initialed and dated.

Q. We move Exhibit Number Eighteen into evidence at this time.

THE COURT: Any objection?

MR. GILES: No.

THE COURT: Be received without objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER EIGHTEEN MARKED FOR IDENTIFICATION, ENTERED INTO EVIDENCE.)

Q. Now, Agent Fields, in regard to those items that you

have in front of you - swabs from the phone and pocketbook, the window tint, the coin wrapper, then a separate swab with blood from the hall, what procedure did you follow in regard to testing those items?

A. What we do when we receive evidence like this is, there is an obvious biological - blood, blood is pretty obvious to the human eye, we do a test to insure that it truly is blood before we proceed with DNA testing so first I did a presumptive test for blood. It's a chemical reaction that the swab turns pink when blood is present when certain chemicals are applied, it doesn't change color at all if it's negative. So at first I did a presumptive test for blood on these items. Since they were positive I proceeded with the DNA testing and I developed a DNA profile from the evidence.

Q. And could you tell the jury - briefly tell the jury what you do to develop a DNA profile from a swab once you determine it has some kind of biological material on it.

A. The initial step is to isolate the DNA from other cellular components so there is a procedure for that it's just a series of chemical washes basically. And then at that point we want to authenticate it to make sure - we have to have a certain amount of DNA present in order to obtain a DNA profile so I wanted to see if there was enough DNA to proceed and there was. So then we amplified the DNA

which is pretty much like a genetic coping machine it takes a small amount of DNA and makes copies of it, millions of copies of it. That way it can be detected on our instruments and this instrument develops a DNA profile and that's what we do.

Q. And were you able to develop a DNA profile for each one of those five items that you have?

A. I was.

Q. And what was the relationship of the profiles from the separate items to each of them?

A. They all matched each other as the same profile for all five items.

Q. All right. So the blood on each one of those swabs was the same person's blood or the same DNA profile?

A. It was yes.

Q. Okay. Now once you - well when you talk about having a comparison when you do these tests at the time that this evidence was sent to you did you have anything to compare it to? Any suspect sample to compare it to?

A. There was no sample to compare it to.

Q. Okay. So what was the next step that you took as far as trying to locate a suspect to actually compare these - this DNA profile that you developed from these swabs to?

A. We have a data base that we maintain in our DNA lab called CODUS. What we do is we - on any profiles developed

from unsolved cases with hopes of potentially matching it to other people's profiles that also located within the data bases.

Q. I'm sorry. What was the last thing you said?

A. I said we put it in the data base and search it against other people's profiles that are in the data base in hopes of making a match so that it will be a solved case.

Q. All right. And how did you handle this case in regards to putting any of those profiles in CODUS?

A. Since the profile developed from all five items was the same profile we are only regard to put one profile in CODUS because if you put all of them in there you get all of these hits that are not necessary. You can address that later in the report but these are from the same person so I just selected the two. Usually the first item gives me a complete profile. I picked the first item in the case to complete the profile and put it in CODUS.

Q. Which item was that in this case?

A. It was Item 1.1.

Q. It was your Item 1.1 which is Exhibit Number - Exhibit Number Twenty-Four, is that correct?

A. That's correct.

Q. And that's the item that is marked back side on cable cord, or on your report on back side of cable cord, is that

correct?
A. That's correct.
Q. And that was the profile that you entered into CODUS?
A. That's correct.
Q. When you entered it into CODUS what was your hope in doing that? What was the purpose in doing that?
A. That it would match up with someone in the data base; someone else's profile in the data base.
Q. And at some point was there a CODUS hit on Profile 1.1 that you put in?
A. There was.
Q. Now after - after you get a hit on the CODUS Data Base what is SLED's procedure in regards to following up on those hits? How does that all work?
A. Our standard procedure once we receive a CODUS hit is to first confirm the profile to make sure that during the time processing there was not a switch up in the samples so we can rerun the sample and make sure the DNA profile is still the same. And we also compared the fingerprints. Whenever the people who in our data base - -
THE COURT: Slow down.
A. I'm sorry. Whenever there are people in our data base that have their blood collected there is also a card that is filled out at that time in which it ask for someone - that person's fingerprint - these individuals. Whenever we

get a hit on that person we submit the card to our latent print examiners and they confirm that the fingerprint is the person whose name - whose DNA profile is in CODUS.

Q. And then after you made that computation what do you do then?

A. We - the CODUS hit report determines, then issues, it gives person's information that we got a hit on it.

Q. Okay. And who is that report sent to?

A. We sent two reports. Actually it's sent to the investigator just the investigator on the case.

Q. The investigator from the agency that has the case?

A. Right.

Q. Okay. I'm showing you Defense Exhibit Number One. Is that a CODUS Hit Report?

A. It is.

Q. So that's what your agency would send out to an investigator to tell them that this profile we entered at SLED has matched up somebody in our data base?

A. That's right.

Q. And it's basically telling the investigator that we got this match and you might want to do something about it, is that correct?

A. That's right.

Q. Because all you do at SLED is process evidence. You are not - or at least the DNA Unit doesn't go out and

actively investigate cases and do follow up. Is that accurate?

A. That's correct.

Q. Okay. So what do you advise - what does SLED normally advise the investigating agency to do once a hit is obtained in a case?

A. There is a statement in the hit report that says upon apprehension of this person listed the police submit a Lavendar Top Tube of blood for comparison in the case from that person.

Q. And what is the point of doing that?

A. Whenever we receive the blood samples from these people in the data base it doesn't go in the chain of custody so therefore you cannot use it for court purposes. You can't really use it to data match in an official legal report either. It's a two fold advantage to getting the blood pre-draw. Number One it doubly insures that we didn't get that sample mixed up and it comes in into chain of custody at that point so therefore someone is with that blood from the moment it is collected until the moment it's analyzed.

Q. I'm handing up to you now what's been marked for identification State's Exhibit Number Twenty. I would ask if you can identify that item.

A. Item Twelve it's a tube of - well it was a tube of

blood from James Giles.
Q. And when did that come into your possession?
A. September 21st 2006.
Q. And where did you examine it?
A. I'm sorry.
Q. Where did you examine it?
A. At SLED.
Q. Okay. And how did it come to you and what condition was the tube in, how was it packaged when it came to you?
A. The tube would have been packaged in this biohazard bag and then put into one of our heat sealed bags in our log in department and then it would be sealed by the person submitting it and date it as to the date whenever it was sealed.
Q. And was it in a sealed condition when it came to you?
A. It was.
Q. All right. We move Exhibit Number Twenty into evidence.
THE COURT: Any objection?
MR. GILES: No, your Honor.
THE COURT: Be received without objection.
(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)
BY MR. ANTHONY:
Q. I'm handing up to you now what's been marked for

identification as State's Exhibit Number Twenty-One and Twenty-Three. I'd ask you to take a look at those items and see - tell the jury if you've seen them before?

A. I have.

Q. Okay. And when did you see those items?

A. I received them on February the 12th 2007.

Q. And how did those items come to you then?

A. In another heat sealed pouch. They were initialed and dated with the submitting officers initials.

Q. And where they sealed when they came into your possession at that time?

A. They were yes.

Q. All right. We move Exhibit's Twenty-One, Twenty-Three into evidence.

MR. GILES: No, your Honor.

THE COURT: Be received without objection both of them.

(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE AND TWENTY-THREE IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

Q. And were those items, those two bags, was there also another bag in with them?

A. There was.

Q. And did you ever test the contents of the other bag?

A. I did not.

Q. What did you do - first of all in regard to Item

Number Twenty the blood from Mr. Giles which is your Item Number Twelve what did you do in regard to them?

A. I developed a DNA profile from this item as well.

Q. From Mr. Giles' blood?

A. From Mr. Giles' blood, yes.

Q. And then as far as Items Twenty-One and Twenty-Three what did you do in regards to them?

A. I also screened them for blood. They were positive so therefore I did - -

Q. If you would just speak up a little bit.

A. Okay. . I screened them for blood as well. They were positive so I proceeded with a DNA analysis.

Q. All right. Of the two items you are submitting you said there was one additional item you didn't test. Was there a reason for testing just the two and not all three of them?

A. Yes, sir. Of the three bags two of them had the same description on them and whenever they were logged in at SLED they were logged in as two items so the description was the same on the one that I didn't test and the one I did test. I just assumed they were meant to be considered as one item and they just did multiple swabbing of the same item so I just tested one and not the other. I also tested the other item in there.

Q. I'm sorry.

A. I also tested the other item in there.
Q. The two items that you tested that were submitted to you in February, the two swabs from the wall, were you able to develop a DNA profile from them?
A. I was yes.
Q. And what were you able to conclude about the two swabs that was submitted to you in February of '07 and also the evidence that was submitted to you in December of '03 in regards to - in regards to their relationship to Mr. Giles' blood?
A. They matched his DNA profile. The DNA profile from the evidence - all the evidence that I tested matched the DNA profile of James Giles.
Q. So every item that was submitted to you with blood on it whether a swab from the bigger piece of evidence or a swab from a wall all of that was a match from the blood that was submitted to you from Mr. Giles?
A. It was yes.
Q. Okay. Did you do anything in an attempt to qualify the likelihood of somebody else having that same profile that Mr. Giles had - that same DNA profile?
A. Unless the probability of an unrelated individual having a DNA profile matching these items is one in a hundred quad trillion.
Q. And what - could you give the jury some context as far

as how much a hundred quad trillion is in relation to the number of people that are on this planet?

A. The world population is approximately six billion this should be sixty million times the world population.

Q. And just so we're clear on this the match that you derived from the evidence in the house to Mr. Giles' blood - the sample of his blood that you used that was the sample that came to you in that bag, in that SLED bag, is that correct?

A. It is.

Q. And it wasn't something that was just placed into the CODUS Data Base?

A. That's correct.

Q. All right. If I can have just one moment.

All right, thank you. That's everything on direct.

THE COURT: All right. Mr. Giles, cross examination.

RHONDA FIELDS BY MR. GILES:

Q. Ms. Fields, you said you matched the development from what now?

A. I'm sorry.

Q. You matched a development - -

THE COURT: Okay, so you don't get too close and people can't see I'm going to ask the bailiff to bring that podium.

See the podium back there. If you will bring it out

and bring it down here so he can put his notes on it and that way the jury - -

Mr. Giles, lawyers and people back there won't block the view and help you get that perspective.

That's fine right there.

BY MR. GILES:

Q. Ms. Fields, you said you matched the development profile to what?

A. I developed profiles from all the items in - previously it was Items 1.1; 2.1; 3.1; 7, 8.1 and 14 and 14 and 13.

Q. Okay. How could you possibly match Item 1.1 with Mr. Giles blood when 1.1 is a cable cord but in the evidence box you have no cable cord?

A. I didn't see the actual evidence that was submitted. All I received was a swab from that item. When I read it it looks like to me the back side of a cable cord and that's what I based this description in my report on is this envelope.

Q. Who really indicates what Item 1.1 is?

A. This came from our latent prints department and whoever collected the swab would have labeled the description on this envelope here, put it on this envelope. But we have also an evidence tracking system, an internal tracking evidence system but our evidence tracking system

just describing it as a swab from Item 1 so I didn't have anything else to go on but Item 1 is for this envelope with the latent fingerprints listed on the envelope.

Q. According to the SLED report Item 1. was a cable cord.

A. Right.

Q. But when I looked through my SLED drug sheet I never see where a cable cord was ever submitted to SLED.

A. I just stated before it may have just been I probably just misread this because I never saw the evidence so I don't know exactly what was submitted. All I received was the swabs.

Q. So we need to find out who we need to talk to if you never had the cable cord then you couldn't find Mr. Giles on this cable cord.

MR. ANTHONY: That's not a question. I object.

THE COURT: I'll allow the question. He's asking you if you didn't have a cable cord then you couldn't find anybody's blood let alone Mr. Giles on the cable cord if you didn't have it.

A. Right. There was no cable cord there to - -

Q. There was no cable cord?

A. Right. I couldn't develop a profile from something that was nonexistent.

Q. If there's not a positive match wouldn't it if you don't have the cord you can't match it. You may have the

item but on development 1 1 if nobody never submitted that item they couldn't attest to that item.

A. That's correct, right.

Q. No further questions.

THE COURT: Any redirect?

RHONDA FIELDS BY MR. ANTHONY:

Q. There was an Item One submitted, correct?

A. There was an Item One submitted yes.

Q. And then the Item 1.1 was submitted to you as a swab from Item One?

A. That's correct.

Q. That's all. Thank you.

THE COURT: Any recross?

MR. GILES: Yes, sir.

RHONDA FIELDS BY MR. GILES:

Q. Item 1 1 also from the SLED report the telephone head set with a blood stains and fingerprints on the ear piece so no way possible that you can match the cable cord with the blood and then you say - he said that you did have another 1.1 which I agree but it's telephone headset so you could not get a telephone headset out of a cable cord.

A. That's correct.

Q. That's correct. Okay. Now I'm looking at the evidence. I'm going by the paperwork, I'm going by the facts and what I can see okay.

A. Okay.
Q. I see on the items submitted to SLED on 12, April '03 on the inventory sheet you got eight items submitted to SLED. What - if you look at the bottom of the page it says Item that was submitted. They got 1 6 - -
MR. ANTHONY: I'm going to object to him reading an inventory sheet.
THE COURT: Well first let's ask - you ask questions as to whether or not they had eight items listed. Let's answer that first.
A. On the initial inventory sheet?
Q. Yes, ma'am.
A. This? Is this the page you're referring to?
MR. ANTHONY: Your Honor, - -
A. Oh yea. I have - -
THE COURT: Wait just a minute, he's got them.
MR. ANTHONY: I object. All this is beyond the scope of redirect.
THE COURT: I'm going to allow him to ask it.
Go ahead.
A. The one I have has eleven items listed.
Q. I might be - I'm just saying the only thing that was submitted to SLED when they received it initially when they received it on 12, April '03 was Item Number One a telephone head set. Item Six a piece of lead with blood

stains. Item Eight coin wrappers and Item Ten cigar butt. But you've got five more items submitted that nobody received.

A. Can I see the inventory sheet he's referring to?

THE COURT: Yes, ma'am.

A. I know the jury can't see this but Item's One, Two, Three, Four, Five, Six, Seven, Eight through Ten is kind of listed on one line and then Eleven.

Q. Right here. See what I'm saying it said you received it. See where they signed for it said the evidence was received and that's the only evidence that was received.

A. Seven and Eleven - -

THE COURT: Let's don't have a conversation. Let's have a question and answer so the rest of us know what's going on.

Q. All right. To your knowledge Item 1 1 was the cable cord?

A. Item 1 1?

Q. 1.1 was the cable cord?

A. According to my notes yes.

Q. But I've got Item 1.1 on the inventory sheet is telephone headset. You've got two different items on 1.1. Item 1.1 back side of cable cord was not in the evidence box. I see the head set - -

MR. ANTHONY: Your Honor, once again he's not asking a

186

question, he's just making an argument.

THE COURT: Make it a question.

MR. GILES: Okay, sir, all right.

I do not see a cable cord in the evidence box whatsoever.

MR. ANTHONY: That's not a question.

MR. GILES: No further questions.

THE COURT: All right. You can step down and be excused. We appreciate your time, Ms. Fields, thank you.

All right call your next witness.

MR. ANTHONY: Your Honor, that's our evidence.

THE COURT: Don't leave yet. Go ahead and have a seat out there.

All right members of the jury panel, you now have received the state's evidence. The state under certain circumstances would have a right to present reply testimony but we have to take up some legal matters before we move forward and also it's probably a good time to break for lunch. So 12:15 we'll break till 1:30. We're not through. You haven't heard all - possibly haven't heard all the evidence. You haven't heard the attorney and Mr. Giles make closing arguments. You haven't heard my charge on the law so don't discuss the case among yourselves. Don't try to make up your mind. You still don't have those tools I mentioned earlier and don't let anyone discuss the case

187

with you outside the courtroom. Please be back - I promise to try to start a little more prompt. We had some matters to take up that just prevented us from starting promptly this morning. We will try to start back promptly at 1:30 if we can. Have a pleasant lunch.

(NOTE: JURY LEAVING COURTROOM FOR LUNCH AT 12:20 P.M.)

THE COURT: Ms. Fields, the only reason I wanted you to stay before you leave its happened before that sometimes witnesses end up with some evidence and leave and I don't think you had any but I'm going to ask Mr. Anthony to make sure that all the evidence is here.

MS. FIELDS: I don't have any.

THE COURT: You never done it before but we've had - we've had it to happen so I would just like to make sure.

All right, anything from the state?

MR. ANTHONY: No, sir.

THE COURT: Anything, Mr. Giles?

(PAUSE.)

THE COURT: I'll tell you, Mr. Giles, we're going to break for lunch. I'll give you over lunch to talk to Ms. Cason and determine any motions you want to make but I will tell you at this time we've reached a point in the trial where you have a right to present evidence. You don't have to. You may recall that I told the jury when we first

188

started you're presumed innocent the state must prove your guilt beyond a reasonable doubt. You do not have to prove your innocence. You have a right to present witnesses if you wish and you have a right to testify if you wish. You also have a right to remain silent. If you testified the state will be able to cross examine you, ask you questions concerning this alleged crime or this crime that is allegedly committed by you, they will have a right to question you about it. You will be under oath and you will be required to answer those questions. They also can ask you questions about certain prior records and I am going to ask Mr. Anthony to tell me what that is.

Go ahead.

MR. ANTHONY: He has petit larceny conviction 2003; shop lifting 2002. From 2000 he has three counts of financial transaction; car theft; petit larceny and two counts of forgery. He has a 1997 conviction for breaking into a motor vehicle. I'm pretty - I need to check the indictment but I'm pretty sure we would argue it all involves a ten year period and in 1996 he had a nine forgery convictions. And he was actually revoked, he received probation on that. He was revoked in 2000 and again in 2004. Our position would be that under the rule he would have been in confinement on that within the ten year period so we think all of those would be eligible for

189

impeachment defenses.

THE COURT: I'm going to ask Ms. Cason to explain that to you better over lunch. But they can ask you questions about your prior record and involves what we call moral perpatude, that is moral, that is offenses which violates society's norm. People for lack of a better way of saying it somebody that's cheating something or depriving somebody unfairly out of something. Those questions can be asked concerning not whether you committed this offense but so the jury can judge your credibility, your believability and I will tell the jury that. If you testify and that record comes out or part of it - at least part of it will. It sounds like all of it will. I will ask Ms. Cason to look at that over lunch. I will tell the jury that that evidence is allowed not as any indication of your guilt in this case but solely to be considered by them on the issue of your believability that is whether to believe you or not based on your past conduct. If you exercise your constitutional right to remain silent I will tell the jury you've done that. I will tell the jury that you do have a constitutional right to remain silent. I will tell them they cannot use against you in any fashion whatsoever the fact that you have exercised your constitutional right to remain silent. I will remind them that you are presumed innocent; that you need not prove your innocence, the state

190

must prove your guilt beyond a reasonable doubt. I will tell them they cannot discuss in the jury room your exercise of your right to remain silent. I will tell them they cannot factor it into their own deliberation regarding their verdict in this case. Do you understand all of that?

MR. GILES: Yes, sir.

THE COURT: Do you have any questions about any of that?

MR. GILES: No, sir.

THE COURT: All right after we get back from lunch I will ask if you have any motions. I will ask you whether you intend to testify or not. And also I will ask whether or not you have any witnesses and we will proceed from there. Also I am going to ask you to confer with your attorney about the charges in this case. That is not the legal charges but the charges that I will give to the jury, the charge on the law. It appears to me that outside the usual charges and that has to do with if you remain silent, your right to remain silent, it's the state's obligation to prove your guilt beyond a reasonable doubt, the presumption of innocence. The jury's function is to determine the facts; my function is to charge the law, the fact that the verdict must be unanimous. In addition to that I will charge them the first degree burglary which is what you are charged with, kidnapping and strong arm robbery. At this

191

point and I have to talk about it and talk about it with my law clerk I don't see what we call lesser included offenses but any of those three offenses but I am going to ask Ms. Cason to talk to you about that also.

Does the state have any additional request to charge?

MR. ANTHONY: No, sir, we don't.

THE COURT: You don't have any now I know. Let me ask you this also. I don't see this as a case involving any circumstantial evidence but if either the state or Mr. Giles believes that we ought to charge circumstantial evidence I have that out to charge but I don't see that in this case but I will certainly defer to what you all may call to my attention. All right, we'll break till 1:30.

(RECESS FOR LUNCH AT 12:26 P. M.)

(BACK ON THE RECORD AT 1:30 P. M.)

THE COURT: All right. Is the state ready?

MR. ANTHONY: Yes, sir.

THE COURT: Any motions, Mr. Giles?

MR. GILES: Yes, your Honor.

THE COURT: Okay. You may proceed.

MR. GILES: Can I request - my motion to request Donald Ray Nix?

THE COURT: Well he's not here. If you had told me that before lunch maybe we could have rounded him up. You want to recall him is that what you're telling me?

192

MR. GILES: Yes, sir, I want to cross examine him.

THE COURT: Well he's been cross examined by your attorney when she was still representing you.

MR. GILES: I feel like some issues weren't brought out that need to be addressed to the jury.

THE COURT: Well Mr. Nix doesn't work for the Department of Public Safety any more.

What's the state's position?

MR. ANTHONY: He testified and he was excused. If the court wants us to try to locate him we can try. I do not know if we will be able to or not.

THE COURT: Let's first see if we can find him and get him up here.

MR. GILES: Thank you, your Honor.

THE COURT: I'm not ruling one way or the other. If he's quickly available we'll see.

(PAUSE.)

THE COURT: What is the situation with Mr. - -

MR. ANTHONY: We would locate him if the court would like. We would ask him to come - we have located him and if the court would like we can ask him to come to court.

THE COURT: Where is he?

MR. ANTHONY: He's at work at Food Lion.

THE COURT: See if we can get him in and we'll let Mr. Giles put him up. We will be at ease until he gets here.

I'll ask you this, do you have any other witnesses so we can go ahead and get started?

MR. GILES: No, sir.

MS. CASON: No, your Honor.

THE COURT: All right. Are you going to exercise your right to remain silent and not testify?

MR. GILES: Yes, your Honor.

THE COURT: We'll wait until Mr. Nix gets here and have him to be recalled. We'll take a break until then.

(SHORT BREAK AT 1:47 P.M.)

(BACK ON THE RECORD AT 2:06 P.M.)

MR. ANTHONY: The state is ready, your Honor.

THE COURT: Are you ready, Mr. Giles, we have Mr. Nix here?

MR. GILES: Yes, sir, your Honor.

THE COURT: Bring in the jury.

(JURY PANEL ENTERING COURTROOM AT 2:07 P.M.)

THE COURT: Mr. Giles, I understand you want to call Mr. Nix.

Mr. Nix, if you will please come forward and take the stand, you're still under oath. You're still under oath for purposes of this case.

DONALD NIX BY MR. GILES:

Q. Mr. Nix, I see where you stated in the incident report that on December the 28th '05 the statement the victim gave

you you mentioned that a black male jerked the phone away from her breaking the phone cord. Are you aware of that?

A. On December the 28th?

Q. December the 5th '03 when the incident took place upon your investigation according to the statement you see the victim tried to call 911 the fact the black man jerked the phone from her and broke the phone cord.

A. That's correct.

Q. Could you give me a reason why you did not take a picture of a broken phone cord?

A. There are pictures of a broken phone cord.

Q. I didn't see it.

A. It's in the evidence.

Q. All right. On September the 11th when Mr. Giles give his blood sample did Mr. Giles sign anything?

A. To my knowledge he didn't sign anything no, sir.

Q. Is it usual procedure - -

A. There is no set procedure.

Q. No procedures?

A. No set procedures on any kind of thing like that.

Q. Okay. So Mr. Giles blood was released from you but he didn't sign anything like he released it to you or nothing?

A. No it was released to me by the hospital.

Q. Also in this picture I think it's Item Nineteen you took a picture at the victim's house two rolls of coins.

Was them coins at the table when you arrived there when you come to the crime scene or you moved up there?
A. I don't know. Ms. Wilburn may have done that but when we got there but that's where they were sitting when I got there and I didn't take any photos but Mr. Gault did.
Q. You didn't take the photos?
A. I didn't take any photos of the crime scene. Mr. Gault took the photos of the crime scene.
Q. Who?
A. Mr. Gault, Freddie Gault.
Q. I might need to question Mr. Gault too. What I'm saying is there's two pictures here, two rolls of coins setting on the paper but when you submitted it to SLED Item Nineteen - so you say Mr. Freddie Gault took the pictures, right?
A. The photographs of the crime scene yes.
Q. You got a picture of two rolls of coins here.
A. Right.
Q. In the picture right. How many rolls of coins are in there?
A. There were three. When we were at the crime scene before the coins was ever removed or touched or anything they were photographed.
Q. Right. Could you tell me how you come up with three?
A. I don't know. Must have been another one laying

around somewhere.
Q. There's two pictures.
A. There's a picture of two - I don't know what you're talking about.
Q. They were rolled up coins. There's two takings you ended up with three, right?
A. There's three wrappers.
Q. There's three?
A. Right.
Q. All righty. Also - also it's in the picture you got a pocketbook and a little white box sitting on the table. Was that there when you arrived?
A. Could you show me the photograph just to make sure I know what you're talking about? Are you talking about the box behind the pocketbook?
Q. Yes, sir.
A. We collected the pocketbook when we collected the other evidence.
Q. The little white box has got blood on it; that would have been good evidence. Was the pocketbook sitting here on the table?
A. The pocketbook was sitting in a chair by the table.
Q. Who moved the pocketbook?
A. I have no idea. I didn't move it.
Q. So in other words somebody - -

A. You've got to understand this wasn't reported until ten thirty the next morning. I don't know what Ms. Wilburn had.

Q. Why did it take so long for the victim to report the incident anyway? So in other words somebody been tampering with evidence.

A. I don't know what was done before we ever got there.

Q. Okay, Mr. Nix. In the SLED report I see where you submitted a sweater - a picture of a sweater that was supposed to have blood on it.

A. A picture of what?

Q. A sweater.

A. A sweater, oh okay. I did submit a sweater to SLED.

Q. But as I look through my pictures you say the sweater is - in the SLED report you submitted Item Five which is - you listed clothing black sweater from the victim with blood stain on the sleeves. Is that a true statement?

A. That's what I submitted, that's correct. Number Five Clothing, black sweater of the victim with blood stains on sleeve.

Q. Okay. Now if I go back to SLED - the item that was analyzed I look at Item Five 15253 cutting to sweater no analyzed performed.

A. I'm not being smart or anything but you have to talk to SLED about that why they didn't perform an analysis on

it.

Q. I mean - -

A. I don't have any control over that.

Q. But again there was no blood on the sweater?

A. I submitted it that's right. It appeared - it appeared to have blood to me that's why I submitted it.

Q. So there is no blood on the sleeve okay. The coin wrappers the same coin wrappers you got.

A. Uh-huh.

Q. Large piece of window tint. I see a large piece of window tint submitted to SLED but no large window tint you did not take no picture of.

A. There is a picture of the window tint also.

Q. I see - I seen a window tint that you showed us yesterday in the evidence box but I don't see no picture.

THE COURT: Let me stop you just a minute here. What you seen and heard that's not a question. Just ask him a question.

Q. Okay. Well did you take a picture of it?

A. Yes, I did. Well I didn't Mr. Gault did.

Q. Well so we don't know who moved the evidence. Did the victim ever describe the black male to you?

A. She described him as a light skinned black male.

Q. Do you really consider me as a light skinned?

A. You're not real light skinned.

Q. Okay. Thank you. The item that you submitted to SLED the majority of it why you did not take a picture or indicate in the SLED report that you had sent these, in your statement you never indicated what you sent to SLED.

A. I never indicated what I sent to SLED?

Q. Not in this report. I will bring it to your attention.

A. The forensic file copy is what I sent to SLED. This is what I have and submitted to SLED right here. You have a copy of that.

Q. On December the 12th - December the 5th '03 you said a black male left blood trails all through the house including on the telephone and on the roll of coins.

A. Repeat that for me one more time.

Q. On 12/4/03 you said the black male left a blood trail all through the house including on the phone but I didn't see where you submitted the phone to SLED. I see it not in the incident report with the things that you sent. I don't see it.

A. I submitted - you want me to read what I submitted to SLED to you?

Q. Please, sir.

A. All right Item One was a telephone head set with bloody fingerprints on ear piece from subject, a brown pocketbook with blood; window tint with broken glass porch

window, window tint from broken porch window with blood stains with possible fingerprint. Clothing, a black sweater of the victim with blood stains on the sleeve, one piece of glass with blood stain, cotton swabs with blood stain, coin wrappers with blood stains and wrappers and one cigarette butt, that's what was submitted to SLED.

Q. Could you please tell me why you didn't indicate this in your incident report - your statement?

A. I didn't indicate everything in my incident report but I have a forensic SLED file that you can refer to.

Q. The only thing I see you presented it said was a roll of coin and the phone but you submitted thirteen different more items.

A. Right.

Q. Then on September the 11th when you took Mr. Giles blood I see where in the incident report you never did go back and did an update saying that you took blood from Mr. Giles.

A. No I did not.

Q. Is there a reason for that?

A. No reason.

Q. What is it?

A. No reason.

Q. Also you went back to the house three and a half years later looking for more evidence. And also you did not do

an update in your report that you went back to the house.
A. I was requested to go back to the house. I didn't go up on by my own. I was requested to go back to the house and to retrieve what Ms. Wilburn told me was to be blood on the wall where she still had it there.
Q. Who requested you to go back?
A. Assistant Solicitor, Bill Hall at that time.
Q. You went there by yourself, right?
A. No, sir, I had another investigator - another investigator with me.
Q. Okay. Let me see. I have a question about that. The items submitted to SLED when they come up with the coins from Mr. Giles - in that letter it said that on March the 23rd - I hope I brought it with me - yes, sir, right here. I've got - going by the piece of paper here it says that - that they found Item point one - in the incident report it tells you that Mr. McClure contacted you by phone. But also Mr. McClure after they did the SLED report he contacted you on the phone on 4/3/06 to tell you that they had found a match in the index system for the incident that had occurred and your response - you left your voice mail - you turned right around and called him back. But as I look at the SLED report that was on 3/4/06 - but if I look over on the SLED report March 23, 06 McClure was supposed to have by my knowledge to send you a copy.

A. Can I look at that please, sir?
Q. So by that paper right there - I'm going by facts and I have to look at the paper - you were sent that paper work on March the 23rd.
A. I have no idea why I was sent this paper.
Q. What does your paper say?
A. That's what the date is on the paper but this is not mine. This is SLED's form not mine.
Q. I understand.
A. Okay. I was notified in April about that.
Q. Okay. Where does that say he signed off on that paper work?
A. It said he signed off on it on March 30th '06. That's what he said, sir.
Q. Can you possibly - if he sent it to you March 23rd he signed off March 30th?
A. You can look at it. That's not my handwriting.
Q. I'm pretty aware - - -
A. You will have to talk - - -
Q. - - - its Mr. McClure - - -
A. - - - to him about that.
Q. Right.
THE COURT: You all need to talk one at a time so the court reporter can keep up with what you're saying.
Q. Okay I wonder why this paper was sent to you like

that. It seems like the paperwork been tampered with to me.

A. You'll have to talk to Mr. McClure about that.

Q. Okay. You took Mr. Giles to the hospital. You never did update on what day Mr. Giles blood was took from him.

A. It's on the forensic form from the hospital the day your blood was taken from you.

Q. But you never went back and did an update?

A. Never did indicate it in my report no.

Q. When you took Mr. Giles blood or - -

A. The report is not - -

Q. There's got to be something okay. Let's go back to the SLED paper. This place being part - let me get one more thing about the scissors. Let's go to the scissors. The scissors it says the blood found - was found on the stomach. That's your report what the victim gave you?

A. That's what she told me that's correct.

Q. Did the black male did he start bleeding at the stomach?

A. I have no idea.

Q. The black male had no stab marks in his stomach. You also put in your incident report that the black male when breaking out the window the black male cut himself and was bleeding badly. So if the black male cut himself from bleeding badly when the black male picked them scissors up

the blood should have been on them scissors too shouldn't it?

A. I don't know. I was not there.

Q. Okay. Let' go back to this one here. Okay this One One. In my incident report, my SLED report, Mr. Giles blood matched the Item One One which if I look at the items that you submitted to SLED Item One One is a telephone headset?

A. That's correct.

Q. Now if you look at the SLED report - if you look at the SLED report - if you look at the SLED report Item One One a telephone headset was never submitted to SLED.

A. That's what I submitted. Now what SLED done from that point forward I cannot answer that for them.

Q. Okay. Well as I look at my SLED report Item One One telephone headset it was never analyzed because I don't have no record on Item One One which is a telephone. I'm going to have my SLED report here I don't have no phone okay.

A. Mr. Giles, I only remember what I submitted to SLED. I can't help what SLED put in their report. This is two different agencies.

Q. I was going to ask you which - okay a headset and according to the SLED report is according to Table One or Table Two of the SLED report a telephone set was never

analyzed at all. You go back and look at Item One One again and come out to a cable cord but you never did submit a cable cord did you?

A. No, sir, I submitted a head set like what I indicated to you a while ago.

Q. How is the SLED- I'm asking you how can SLED match a blood with something that you never sent?

A. You're asking - talk to SLED about that. I'll tell you what I submitted.

Q. Now I didn't bring the pictures with me but I got a very important picture. Every item that you submitted to SLED - by my paperwork every item you submitted to SLED - because every item - because every item in the incident report that Mr. Nix had sent to SLED some blood on it. But when you swabbed it it didn't have - let me see. You recall every item in the incident report that Mr. Nix said had some blood on it. Mr. Nix did not swab the item or any blood was on the item when they sent it to SLED.

A. I don't understand what you're asking me.

Q. I'm asking that the items that you sent to SLED and according to the incident report it did not match it.

A. The items I sent to SLED I did not swab. That's the purpose of sending them to SLED to get them swabbed.

Q. If you look at the incident report the item you sent to SLED - I mean every last one of them was swabbed.

A. Not by me.
Q. It wasn't?
A. No, sir. The head set and everything was submitted to SLED and the purpose of that for them to do a swab and a DNA profile on it with blood on it.
Q. I'm going to ask you one more question. In your investigation from Ms. Wilburn house you got according to my discovery you got seven pictures there with blood everywhere. But you did not submit narry one of them pictures of the incidents of the black male is there or incident was there.
A. I don't understand what you're asking me.
Q. I'm saying that you got seven pictures you took blood here, blood there, blood here, blood there in the pictures.
A. Right.
Q. But if you go back and look at the SLED report you didn't submit none of that blood to SLED. Can it possibly been somebody else?
A. There was a swab sent to SLED containing blood on it.
Q. Yea I understand that.
A. Item Number Seven.
Q. Excuse me for a minute. Do you see those pictures there? This is the reason why you didn't send none of that blood to SLED?
A. Is there a reason?

Q. Yes, sir.
A. Well in a crime scene you cannot send everything to SLED. We took the valuable parts of the crime scene that we thought would be more valuable to us and that's what we submitted.
Q. But as I look at this paper you got a white piece of paper with like eight blood stains on it. Could anybody without a reasonable doubt - -
A. If you notice the white piece of paper is laying beside the phone stand too.
Q. This white piece of paper I mean.
A. It's laying right beside the phone headset that we sent.
Q. All right I don't see on the picture on the home phone set. I see the phone on the floor but what my question is - -
A. If you look at Number Eight that's where you'll see it.
Q. But my question is out of all these pictures with this blood laying everywhere you did not send any of that blood to SLED with what you accurately can see what the blood was on.
A. The blood was on the headset; that's what we submitted to SLED.
Q. The picture for this is the cable cord.

A. The paper?
Q. The cable cord - let me go back.
A. Okay.
Q. I got it wrote down here now. I've got five pieces of evidence that you sent to SLED okay. Item Number One One swab from back side of cable cord cannot be used against me in court because Mr. Nix never did take - -
THE COURT: You're not asking a question. You can certainly have a right to make a statement to the jury at the end. You can go over that but it's not a question.
Q. Okay. Can I say it like this, your Honor?
Mr. Nix, you never did take a picture of a cable cord?
A. I took a picture of the whole phone right here, Mr. Giles. It's State's Exhibit Number Eight if you will look at that.
Q. Okay. The pocketbook - the pocketbook was not indicated in the incident report and the pocketbook also had been tampered with by somebody moving it on the table, is that true?
A. I have no idea what happened before we got there.
Q. But it did not indicate in the incident report that you took this item to SLED.
A. None of this indicated - unless it's on the forensic form.
Q. The large piece of window tint you never did take a

picture of it or you didn't mention anything about it in your SLED report.

A. I did not take a picture. Mr. Gault did and it did indicate it in my forensic report where I submitted to SLED.

Q. Not the forensic report, the statement.

A. The incident report is not into evidence.

Q. The red stains, did you take a picture of that?

A. The red stains?

Q. Yes, sir, the red stain in the picture was took but in those specific place where you got the red - -

A. Mr. Giles, you keep asking me about pictures. I didn't take the photographs.

Q. You didn't photograph this?

A. No, sir, I did not.

Q. Okay. No further questions then.

THE COURT: Mr. Anthony, do you have anything?

MR. ANTHONY: Just briefly, your Honor.

DONALD NIX BY MR. ANTHONY:

Q. Mr. Nix.

A. Yes, sir.

Q. Mr. Nix, there was blood all over Ms. Wilburn's house, is that correct?

A. That's correct.

Q. And part of your job in processing the crime scene is

figuring out as much relevant places to swab the blood.
A. The most valuable evidence would be to the crime scene yes, sir.
Q. And did you take that evidence?
A. I take that evidence that's correct.
Q. And that's what you did in this case?
A. Yes, sir, I did.
Q. So obviously it can be impossible for you to do a swab or collect every single drop of blood in that house?
A. The most valuable evidence to us we sent it to SLED and let them swab it because their qualified.
Q. And would you also have an expectation to SLED in their processing the evidence that's sort of the same process they would take the most valuable things and submit it to them and test enough of it to get a sufficient result that would be already tested?
A. That's correct.
Q. So it is not so far as there is some items like maybe a sweater or some other things you sent down there that we don't have a result on?
A. That's correct.
Q. And the items you seized those are documented on the Evidence Inventory Form, is that correct?
A. That's correct.
Q. And they're not listed in your incident report because

you put them on the evidence report?
A. The evidence report is recorded.
Q. And just so we're absolutely clear on this there was never a cord phone sent to SLED.
A. The only thing I submitted to SLED was a telephone headset.
Q. And the only person who submitted any evidence on this case to SLED was you?
A. That's correct.
Q. And you received notification from Mr. McClure that there was a CODUS match between Mr. Giles and the profile you sent down there in 2003?
A. That's correct.
Q. And once you received that you went and took Mr. Giles to the hospital and you got a blood sample of his blood, is that correct?
A. That's right.
Q. And you sent that to SLED, is that correct?
A. That's correct.
Q. And that came back to be a match for Mr. Giles as well between the items that was seized from Ms. Wilburn's house and Mr. Giles blood?
A. His DNA profile matched.
Q. All right. Thank you.
That's all I have on cross.

THE COURT: Any redirect, Mr. Giles.

MR. GILES: Yes, sir.

DONALD NIX BY MR. GILES:

Q. Mr. Nix, why didn't you get a written statement from the victim or statement from the victim? Why didn't you get a written statement or a statement from the victim?

MR. ANTHONY: Your Honor, I object. That's beyond the scope of cross examination.

THE COURT: I'll allow it.

A. What are you asking me?

THE COURT: He's asking why did you not get a video or audio statement from the victim.

A. At that time I didn't see there was any point. Like I said we talked to her that morning and then we went to the crime scene.

Q. So you actually got no statement from the victim.

No further questions.

THE COURT: You can step down at this time and be excused again. Thank you, sir.

MR. NIX: Yes, sir.

THE COURT: Mr. Giles, call your next witness. Do you have any other witnesses?

MR.GILES: The defense rest.

THE COURT: All right defense rest. Any reply?

MR. ANTHONY: If I could have one moment.

213

THE COURT: Yes, sir.

MR. ANTHONY: We don't any further testimony.

THE COURT: Members of the jury panel you have now received all the evidence and testimony and the exhibits. We have to take up a matter of law before we go forward and when you come back you will hear the state's arguments, Mr. Giles' argument and my charge on the law and then we will have the case to submit to you for our consideration. But don't yet try to make up your mind and don't yet discuss the case because we haven't quite gotten there yet. Go to your jury room and be refreshed and we will send for you in just a little bit.

(NOTE: JURY LEAVNG COURTROOM AT 2:40 P.M.)

THE COURT: Anything from the state?

MR. ANTHONY: No, sir.

THE COURT: Mr. Giles, anything at this point?

MR. GILES: No, your Honor.

THE COURT: All right. Over lunch you had an opportunity to discuss with Ms. Cason any request to charge.

First let me ask the state, do you have any request to the charge?

MR. ANTHONY: No, sir, we don't have anything beyond the usual charge the court would give in a case like this.

THE COURT: Yes, sir.

214

MR. GILES: Can I charge - -

THE COURT: Charge what now?

MR. GILES: Can I get a list of charges to submit?

THE COURT: No. If you will specify what you think a lesser charge is I'll be glad to consider it but my analysis is that there isn't any lesser because you're charged with burglary first. All the evidence indicates it took place at 2:00 A. M. which would fall up in the nighttime. The allegation is that you entered without consent of the victim in a crime the residence of Ms. Wilburn and you did it in the night time so there is no lesser included to that. As to kidnapping there is no lesser included over the facts that I can conceive of you either did it or you didn't. And also as far as strong arm robbery there is evidence - the only evidence but the jury doesn't have to believe it of course is that whoever did this used intimidation and force - grabbing the sweater and taking those scissors away and anyway I don't see whether there's any lesser included. Of course you are not charged with larceny so there is no grand larceny, petit larceny so I don't see any lesser includes.

MR. GILES: Yes, your Honor.

THE COURT: All right we'll take a short break and then when we come back the state is going to open.

MR. ANTHONY: We'll waive.

215

THE COURT: You'll go first, Mr. Giles and then the state will have the right to make the last argument. Do you understand that?

MR. ANTHONY: Your Honor, one thing that I will mention to the court is I know Mr. Giles is representing himself but I would ask the court to consider making him aware of the fact that when you are giving closing arguments you are not testifying about the facts.

THE COURT: MR. Giles, you are confined to the facts as they've been presented and you can argue from the facts just like you been doing very well. How can there be a test on this cord when there wasn't any cordt. You can argue that, that's a fact into evidence that there was no cord in the box and that this lady said there was a cord. There might by an explanation of that but you can argue that.

MR. GILES: Can't ask questions?

THE COURT: You can't ask questions of course and you can't interject facts that were not presented through testimony so you're confined to the exhibits and you can certainly take an exhibit and hold it up and say this shows X, Y, Z but you're confined to the evidence and the facts in the record. He's indicating he understands. Is that correct?

MR. GILES: Yes, your Honor.

THE COURT: All right. We'll take a short break.

(NOTE: SHORT RECESS AT 2:45 P.M.)

(NOTE: BACK ON THE RECORD AT 3:02 P.M.)

THE COURT: Is the state ready?

MR. ANTHONY: Yes, sir.

THE COURT: Mr. Giles, you ready?

MR. GILES: Yes, your Honor.

THE COURT: All right bring in the jury.

(JURY PANEL ENTERING COURTROOM AT 3:03 P.M.)

THE COURT: All right Mr. Giles, you may proceed.

MR. GILES: Thank you, your Honor.

THE COURT: Yes, sir.

MR. GILES: Jury, my name is James Lee Giles. I've been accused of a crime I did not do. That's why I did my trial because I wanted you all to hear what I had to say. They say my blood was found at the residence. If they did I don't know how it got there.

MR. ANTHONY: Your Honor, I object. This is just testimony.

THE COURT: Just go over what the facts are. I know that you're not an attorney. It's a little difficult but you just need to stick to what the evidence it is in the record.

MR. GILES: I got you, your Honor.

I've been accused of something I did not do. It's

been a proven fact that evidence has been tampered with in this case and I just want you all to judge me fairly. In the incident report everything they say does not match the statement of the incident report and they did not have no picture. Also about the cable cord, how can you convict a person and say they matched your blood on the cable cord something that was never presented to SLED. In other words they cannot send you to a Cadillac dealer to buy a Volkswagen. So it's impossible you can match my blood with something that was never submitted. Also my blood was took from me - I feel like that I've been accused of something I didn't do and I know I didn't do it that's why I'm taking a jury trial.

MR. ANTHONY: Objection.

THE COURT: I over rule your objection.

Go ahead. He pled, he pled not guilty so we all know he claims he didn't do it so he can tell them that again.

MR. GILES: You got evidence tampered with and you got pictures of things that you did not mention about. But you don't have pictures of things you did submit to so that I call that lack of evidence. I don't know what to say. I don't want to get nobody mad at me but I'm just saying I'm being accused of something I did not do. They said the black male cut himself and got stabbed and I have no cut marks or no stabs. I just - I don't know. I guess I'm

through.

THE COURT: Thank you, Mr. Giles.

MR. GILES: Just judge me fairly please.

THE COURT: Thank you.

Mr. Anthony.

MR. ANTHONY: Back in the middle ages there was this philosopher and this philosopher wasn't quite as good a philosopher as Johnny Cash but he was a very smart fellow and he had this principle of logic that he came up with the principal of how you think about things. And what that principle was it said that in trying to explain and infer in all likelihood the simplest answer is going to be the right answer. And this case is probably as good an illustration to that principle as anything you will find because in this case the simple answers are the right answers. The simple answers are the answers that are supported by the evidence and they are the answers that don't require you to guess and to speculate about what happened. First off it is just simply true that the blood on the evidence from Ms. Wilburn's home belongs to Mr. Giles. Ms. Wilburn told you how this robbery occurred yesterday afternoon and from what she said happened there are certain places that you would expect to find blood. And in each one of those places the police found blood and you can see it. It's on the pictures we showed you

yesterday that were made when the police came to her house. So the police took those items. They took the window tint, they took the phone handle, they took the coin wrapper, they took the pocketbook and they sent those items to SLED along with a swab taken from the blood there in the house. And Agent Crooks, the fingerprint agent who testified yesterday afternoon, he looked at those items, the physical items, the tint - -

MR. GILES: Object, your Honor. I object.

THE COURT: He's just going over what his view of the evidence - -

MR. GILES: He sounds like he's presenting the case over.

THE COURT: He's just going over the evidence. He's got a right to do that. I'll over rule the objection.

MR. ANTHONY: Agent Crooks looked at those items. He looked at the tint, he looked at the phone, he looked at the pocketbook and he looked at the coin wrapper. And he swabbed blood off of those items and he sent them to the DNA Unit. Now there has been a lot made about the discrepancy between what's written on the DNA Report and what is written on the envelope from the swab that was taken from the telephone. But you can look on that envelope. This is into evidence. You will have this back in the jury room. We don't have anything to hide. We put

this envelope into evidence so you can see it. When you look at the description part of this envelope you are going to be able to see how Agent Fields could very easily have read this - read this description and then written back of cable cord. When the envelope and what Agent Crooks meant to write was back side on cable end. It's not hard to understand that at all. But what Agent Crooks actually did and he showed you exactly what he did he had a picture of where he swabbed and what he swabbed. He swabbed the hand set from this phone. That's what he did. And he swabbed the back side of the hand set on the part that attaches to the telephone cable. There was never a cord submitted to SLED. The only person who submitted evidence to SLED was Office Nix and Office Nix came back in here this afternoon and he said again I never sent a cord to SLED. The only part of that phone that was ever sent to SLED was that hand set and that's where the blood came from. So Agent Fields when she got this evidence from Agent Crooks she developed DNA profiles from the swabs from all of the items that Agent Crooks examined. Every one of them she developed a profile from them and they were all the same person. Every swab of blood, the blood from the pocketbook, the blood from the phone, the blood from the window tint, the blood from the coin wrapper are all the same person. And so the profile from one of the items 1.1 which was the swab from

the phone hand set that was put into the CODUS Data Base and nothing happened for over two years. There was never a suspect for over two years until March of 2006. There was a hit in the data base and the profile that Agent Fields had put in matched up to Mr. Giles. But you heard Agent Fields talk about all the things they do to make sure the hit is accurate. They went and verified the fingerprint which was James Giles fingerprint and then they got in touch with Office Nix and they said we got a CODUS hit but that's not enough. We ought to go to court on the CODUS hit - -

MR. GILES: Your Honor.

THE COURT: Wait, Mr. Anthony.

Yes, sir.

MR. GILES: I object about the fingerprint part.

THE COURT: About the what?

MR. GILES: The fingerprints. They never said my fingerprint matched. He made a statement my fingerprint matched. I object.

MR. ANTHONY: That was her testimony was that it verified the CODUS hit.

THE COURT: Not the fingerprint but the DNA print.

MR. GILES: Right. He just said that Ms. Fields seen my fingerprints matched I object. My fingerprint don't match.

THE COURT: Just rephrase it.

MR. AHTHONY: Just to be clear we're not saying Mr. Giles fingerprints at the crime scene was what Ms. Fields testified to was where they find the Codus hit. They're verifying the fingerprint from the person who submitted the profile is indeed the fingerprint was indeed Mr. Giles fingerprint before they ever notified the Public Safety Department that they matched perfectly. But then what SLED does is they say well we got this hit. Now that's not enough because we're not going to go to court just on the hit in a data base. So that is when Mr. Nix went and brought Mr. Giles to the hospital took him to Ms. Mathis who testified this morning and Ms. Mathis did and took another blood sample from Mr. Giles. And Mr. Nix took that blood sample to SLED in August of 2006 and Agent Fields took that blood taken from Mr. Giles and developed a DNA profile from that blood sample too and it matched the blood from the phone and it matched the blood from the pocketbook and it matched the blood from the coin wrappers and it matched the blood from the tint on the window and it matched the blood from the swab that was taken the morning of the burglary. Then Mr. Nix he went back to Ms. Wilburn's house where the blood was still on the wall and he took another swab and he took a scraping from the blood that was on that wall and it was submitted to SLED and

Agent Fields developed a profile from that blood and it was Mr. Giles blood. So all together you have four pieces of evidence from Ms. Wilburn's house with blood and you have three swabs or scrapings of blood that were taken from Ms. Wilburn's house and the blood on all seven - all seven pieces of evidence belongs to James Giles - all of that blood is his. None of it connected with any other person. All of it is his. So once you answer the question of whose blood is in Ms. Wilburn's house then you just have to answer the question of how did it get there. And once again the simple answer is the answer that doesn't require a lot of guessing and a lot of speculation and the only answer that makes any sense is that Mr. Giles blood was in Ms. Wilburn's house on places like her phone and the window tint and the coin wrappers and the pocketbook. It was in all those places where you would expect the burglar's blood to be because Mr. Giles was the burglar. Mr. Giles broke into Ms. Wilburn's house with the intent to rob her; to commit a crime in her house. And he broke in during the night time and that makes you guilty of first degree burglary. Breaking into the home with the intent to commit a crime in the night time is first degree burglary. When he was in her house he took her property by force and intimidation and that makes him guilty of strong armed robbery. And then when he was in her house he wouldn't let

her leave. He confined her in her own home and that makes Mr. Giles guilty of kidnapping.

There are a lot of things in life that are past down from our ancestors. There are a lot of things that for better or worse come in our blood. But some things are passed down. Some things can be taken for granted. There are some things that are just left up to us to provide or we are just not going to have that and one of those things is justice. Justice doesn't get passed down through our blood. Nothing that is passed down to us is going to give Ms. Wilburn justice for being broken into in the middle of the night and robbed and confined in her own house. The only thing that is going to give Ms. Wilburn justice is for twelve people in the here and now to have the courage to hear the evidence to follow the law and to do the right thing. All twelve of you all know what the right thing is to do in this case. All twelve of you do and I just ask you to do it. Go back there and do the right thing. Find Mr. Giles guilty of first degree burglary; strong armed robbery and kidnapping. Thank you.

THE COURT: Members of the jury, I appreciate the attention you've given to me and the attorney and Ms. Cason when she was involved with Mr. Giles himself. I charge you now the law that you are to apply to the facts as you determine the facts to be in this case. Mr. Giles has

entered pleas of not guilty to these charges. He's charged with kidnapping, burglary in the first degree and strong armed robbery. It's alleged that here in Union County on or about December 5th 2003 he burglarized the home of Barbara Wilburn on [redacted] here in Union. He did enter without consent and with intent to commit a crime therein. It's alleged that he entered in the night time the dwelling of Ms. Wilburn. It's alleged that on that same time he committed strong armed robbery by taking from her by means of force or intimidation US currency with the intent to deprive her of that currency and that on that occasion he kidnapped her. That is he seized, confined or kidnapped her without the authority of the law.

Now to these charges Mr. Giles has entered pleas of guilty. First let me tell you that in the jury room you will have with you these three indictments. They are not evidence; they are the charging papers by way of which the charges are brought into court. They are the paperwork by way in which this case has been processed. And they will be ultimately -

Mr. Foreman, where you enroll the unanimous verdict and the jury and I will tell you more about that at the end of the trial. They are not evidence they are just formal documents. Now Mr. Giles as I said has pled not guilty to these charges. His plea of not guilty places on the state

the burden of proving his guilt beyond a reasonable doubt. The fact that he has been charged and the fact that there are indictments in this case is not evidence. That's just the way our system works. People who are suspects and charged and arrested indictments issued but that does not make them guilty and it is not to be considered by you as evidence. The evidence is what's been testified to and the exhibits. This presumption of innocence to Mr. Giles' favor is a substantial right. Anybody charged with any offense however substantial or however insubstantial in our system is presumed innocent of the charge against him unless and until the state can prove that person's guilt beyond a reasonable doubt. This is a substantial right it's not a mere theory and not a mere pros. The presumption of innocence is a substantial legal right. It attaches to an individual at the time they are arrested and it remains with them as their case is processed and it remains with them through their trial. Mr. Giles favor he is still presumed innocent of the charge at this very moment. The presumption of innocence is removed from Mr. Giles if and when if you do find that the state has proven his guilt beyond a reasonable doubt. Now the state is not required to prove his guilt beyond all but not every doubt but beyond a reasonable doubt. Our courts have described a reasonable doubt as a kind of doubt that would cause a

reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of someone's guilt. There are very few things that we in our world know with absolute certainty. An absolute certainty is not required by law. If based on your consideration the evidence you are firmly convinced that Mr. Giles is guilty of one or more of these charges you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty to one or more of the charges you must give him the benefit of that doubt and find him not guilty. The fact that there are more than one charge, two or three is not evidence. That is you don't look at this as a cumulative matter. You look at each charge simply and individually. He is entitled to that. You make a determination as to whether or not the state has proven his guilt beyond a reasonable doubt or fail to do so as to each indictment based on the elements of that particular offense. The fact that he has multiple charges is not to be weighed against him in any way whatsoever. As I told you from the start of this trial I am the sole judge of the law and you must take and accept and apply the law as I charge. Even if you think I charge the law in error or even if you may think the law should be different your oath requires you take and accept and apply the law as I charge it. You are not to infer from anything

I have said or done or anything I now say or do as indicating an opinion of the matter on the facts. Nor am I allowed as a trial judge to formulate or express to a jury any opinion on the facts. It is solely up to you to examine the evidence, give to the evidence the effective value and the weight and truth you believe the evidence should have. In doing this you may believe one witness as opposed to several or several witnesses as opposed to one. You may believe all or part or none of a witnesses testimony. Use your common sense, your sense of logic, your sense of reason. Use your experiences in life in analyzing evidence. As judges of the facts you necessarily must judge the credibility, the believability of the witnesses who have testified and accessing believability and credibility you use the things I've already talked about. Use those things that you in your day to day life find as indicating the truthfulness and you can use certain evaluators, a witnesses demeanor, how they act on the stand, are they hesitant or straight forward. Is their testimony consistent or inconsistent within itself compared to the testimony of others? Or is it consistent or inconsistent with earlier statements. You may also consider any bias or prejudice a witness would have. That is whether a witness is to help or hurt one side or the other and you can consider the opportunity a witness had to

know those things about which the witness testified. All of these things you consider to determine the true facts apply the law and you will be able to return a verdict that speaks the truth.

In this case we've had two witnesses that I qualified as experts. That is someone who can give an opinion. Generally one can only testify as to something they've observed with one of their five senses. Usually it's something they've seen or heard but it could be taste, touch or smell. But someone who has certain knowledge and experience, training or expertise in a certain area may be qualified to give an opinion. That is to take facts and from those facts render an opinion. These opinions of experts are not binding on you. They are given to you only to help you reach your conclusions because you are the finders of the facts. You look at the experts' testimony just as you analyze any witness. They are witnesses, they are also experts but they are witnesses who should be analyzed just as any other witness. In addition when you look at and determine what degree if any you are going to consider in an experts testimony look at that witnesses qualifications, the experts' qualifications. That is the ability to render the opinion they reached and also look at the reasons they gave for the opinion they reached. Again their testimony is allowed into evidence to assist you and

is not binding on you.

The fact Mr. Giles chose to exercise his constitutional right to remain silent cannot and must not and is not to be used by you in any fashion against him in this case. He has an absolute right to remain silent. The fact that he exercises that constitutional right cannot be used against him and it cannot be considered by you in your own mind and it cannot be discussed in the jury room. He is presumed innocent as I told you at the first of my charge. By law the state must prove his guilt beyond a reasonable doubt. He does not have to prove his innocence so the fact that he chose to exercise his constitutional right to remain silent cannot be used against him in any way whatsoever.

I'll go through the three charges now. Mr. Giles is charged with first degree burglary. As to this charge the state must prove beyond a reasonable doubt that Mr. Giles entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. Next the state must prove beyond a reasonable doubt that Mr. Giles or the defendant entered the dwelling to commit a crime therein either a felony or a misdemeanor and you must have had that intent at the time of entry. Mere entry into a dwelling without consent is not in and of itself burglary. If the intent to commit a

crime is formed after the entry it is not burglary. On the other hand if one intends to commit a crime at the time of entry it is burglary even if that intent is ultimately abandoned by them. It does not matter that the intended crime was or was not completed. Intent may be shown by acts in conduct of the defendant and the other circumstances which you may naturally and reasonably infer intent. The state must also prove that the entering took place in the night time. The night time is that time between dawn and dusk when one is not able to see beyond a few feet in front of them. Now the state must prove all of those elements of burglary for you to be convinced to convict Mr. Giles. You must prove he entered the dwelling and that he did so in the night time and he did so with the intent to commit a crime therein.

He is also charged with strong arm robbery. Strong arm robber is the taking of something of value from a person or in the immediate presence of a person by violence or intimidation. When determining whether a robbery was committed with intimidation the trial court should determine whether an ordinary reasonable person in the victim's position and that would be Ms. Wilburn would have felt that the threat of bodily harm from the perpetrator. The property is in one's presence if it is within their reach, inspection, observation and control so that the

person to whom it belongs could if not over come the violence or prevented by fear retain or keep the possession of that property. The state must prove beyond a reasonable doubt that the defendant carried the property away intending to deprive Ms. Wilburn the owner of that property and keep it permanently for their own use. The state must prove the elements of that offense strong arm robbery beyond a reasonable doubt.

The final charge third is that of kidnapping. Mr. Giles is charged with kidnapping Ms. Wilburn. The state must prove beyond a reasonable doubt that the defendant knowingly and unlawfully seized, confined, and kidnap or kidnapped, I'm sorry, kidnapped another person without authority of law. To do a thing unlawfully is to do it willfully and against the law. To do something knowingly means knowledge, consciously and not accidentally. Seize means to take hold of suddenly or forcibly. Confined means to restrict or enclosed in bounds, in prison, shut in, or keeping. Kidnap is to remove a person against their will by unlawful force or by fraud. The state does not have to prove the defendant did all of these things. Instead if you find beyond a reasonable doubt that he did any of these things as to Ms. Wilburn you could find him guilty of kidnapping. Kidnapping does not have to be for any personal or voluntary gain or for any illegal purpose. It

may be for any reason whatsoever. I said that it had to be done without authority of law and that means it has to be something in which the law has not sanction, permit, allow, condone, or provide justification for.

Now in this case your verdict must be unanimous. All twelve jurors must agree. Once all twelve of you have agreed you are authorized to write the verdict.

Mr. Foreman, I will show you how to do that in just a moment. Again it must be unanimous. You are not to base your verdict on passion, prejudice, public opinion or sympathy or matters outside the record. If you have any questions whatsoever while you are deliberating please write them down and send them out to me and I will respond. I will go over any questions that you have with the attorneys. I'm sorry, with Mr. Anthony and Mr. Giles the defendant. It may be that I can write an answer to the question on the note itself and return it. It may be that I will have to bring you back in and charge you here in the courtroom. Now if you have any desire to hear any evidence replayed please let me know that and I will bring you back here in the courtroom and we will do that in the open courtroom. If you wish to take a break while you are deliberating you can do that but all of you need to be on break and all of you need to be at work. When you reach a verdict knock on the door and tell the bailiff and the

bailiff will come and get us and we will send for you as promptly as possible. Excuse me one minute. I've got one thing I want to have my law clerk find because I need to verify something.

Now, Ms. Mitchell, you will not participate in the deliberations. You will remain in here. When you go into the jury room as you are the alternate we will not need you to further participate.

Now as to each charge and as I have told you Mr. Foreman, as to each charge you look at each independently and decide whether or not the state has as to a charge proven Mr. Giles guilty beyond a reasonable doubt. On the back or front - the back of the indictment you will see - I don't know whether it's the front or the back - on the back you will see a word down in the bottom left corner that says verdict. The bottom line is where you will sign and you will date it and the date is September the 12th. On one of the other lines you will write the verdict that has been unanimously agreed upon by the jury. If the state has as to a particular indictment and keep in mind that your indictment you don't have to find the same verdict on all. Each has to stand on its own. If the state has as to a certain indictment and charge fail to carry it's burden of proof or failed to prove Mr. Giles guilty as to a particular charge beyond a reasonable doubt there will be

two words not guilty and you will simply write down there not guilty and sign it and that will be the verdict if that is what you unanimously find. If however the state has to the jury's satisfaction unanimously proven Mr. Giles guilty to one or more of the indictments beyond a reasonable doubt your verdict would be one word guilty and you would simply write that there and of course sign it.

Now let me check on one thing before I send you back to deliberate. I told you when I charged you about the fact it had to be in the night time I quite frankly could not find my note on that. The law says that night time is the period between sun rise and sun set or between sun set because that happens first and sunrise during which there is not enough daylight to recognize a persons face except by artificial light or moon light. That's the definition I gave you, it's sort of an articulate definition of night time earlier but that is the legal definition. Now I will allow you to go into the jury room but do not start deliberating at this time. I must go over my charge with the attorney Mr. Anthony and with the defendant Mr. Giles. If I have made an error I will bring you back in and correct it. If not I will send it to you the exhibits and the indictments and the bailiff's will tell you to start deliberating. And everybody -

Ms. Mitchell.

236

Everybody if you will please to go to the jury room at this time.

I will be with you in just a minute. The alternate is going to get her personal belongings and be right back out.

(JURY LEAVING COURTROOM TO DELIBERATE AT 3:38 P.M.)

THE COURT: You have a seat right back there.

Anything from the state?

MR. ANTHONY: No, sir.

THE COURT: Mr. Giles, any objections to or exceptions to or additions to or amendments to the charge?

MR. GILES: No, your Honor.

THE COURT: He said no. All right thank you both. We will send in then the- Mr. Giles, you - and I suggest Ms. Cason will help you, you have a right to look and make sure that those are the right exhibits and everything is in order before we send them back to the jury.

We will send the exhibits along with the indictments and the best time you can instruct the jury to start deliberation, Mr. Morris.

(ALTERNATE DISMISSED AT 3:40 P. M. .)

THE COURT: All right we will be at ease for at least a few minutes.

(SHORT RECESS AT 3:40 P.M.)

(ON THE RECORD AT 4:09 P.M..)

THE COURT: All right, take your seat. I understand we have a verdict.

MR. CLERK: Yes, your Honor.

THE COURT: All right bring in the jury.

(JURY ENTERING COURTROOM AT 4:09 P.M..)

THE COURT: Mr. Foreman, I understand the jury has reached a verdict.

MR. FOREMAN: Yes, sir, we have.

THE COURT: Hand it to the bailiff and he will hand them up to me.

(NOTE: VERDICT FORM HANDED UP TO THE COURT.)

THE COURT: Mr. Clerk.

MR. CLERK: State of South Carolina versus James Albert Giles indictment for strong armed robbery we the jury find the defendant guilty.

State of South Carolina versus James Albert Giles indictment for burglary in the first degree we the jury finds the defendant guilty.

The State of South Carolina versus James Albert Giles indictment for kidnapping we the jury find the defendant guilty.

Mr. Foreman, ladies and gentlemen, if this is your verdict please raise your right hand. All raised in affirmative.

THE COURT: All right anything from the state before

the jury is dismissed.

MR. ANTHONY: No, sir.

THE COURT: Mr. Giles anything before the jury is dismissed?

MR. GILES: No, sir.

THE COURT: All right members of the jury panel, I appreciate your help on this. Please call back tonight after seven to receive your next instructions. You are free to go out this way and we appreciate your help.

(NOTE: JURY PANEL DISMISSED AND LEAVING COURTROOM AT 4:11 P.M..)

THE COURT: Ms. Cason, you want to confer with Mr. Giles for just a moment to see if he wants to make any post trial motions.

MR. GILES: No, your Honor.

THE COURT: All right I'm going to ask you to come forward and Ms. Cason will come forward with you and the state - I am going to ask the state - just a minute.

Mr. Anthony, any presentation on behalf of the state? You went over his record earlier if I remember there was no real acts of violence over all. Not called petit thefts but thievery kind of stuff.

MR. ANTHONY: There were, your Honor, there were a number of financial type crimes. 2003 petit larceny conviction; 2002 shopping lifting conviction; 2000 breaking

into a motor vehicle, three counts of financial transaction, card theft, petit larceny and three counts of forgery in 2000 and then nine counts of forgery in 1996. And, your Honor, just for the record we did advise Ms. Wilburn of her right to address the court in regards to the sentencing. She is present in the courtroom and has advised me that she does not wish to speak.

THE COURT: All right. Any other presentation by the state?

MR. ANTHONY: No, sir, that's everything on behalf of the state.

THE COURT: All right. Mr. Giles, I'll be glad to hear anything you have to say prior to my imposing sentence.

MR. GILES: Just please be as lenient on me as you can, your Honor. They found me guilty.

THE COURT: You got a pretty good record.

MR. GILES: It's just - I don't know. I don't try to get into no trouble it's just - be as lenient on me as you can. I'll try to fight it and come back.

THE COURT: All right these are all to run concurrent. In burglary first degree sentence is thirty years; on the kidnapping thirty years and on the strong armed robbery fifteen years. They're all to run concurrent. Thank you.

Solicitor, you have anything else for today?

240

MR. ANTHONY: Yes, sir, if Mr. Burton can have a word with you back in chambers I would appreciate it.

THE COURT: All right.

- END OF TRANSCRIPT -

- TIME IS 4:16 P.M. -

I, the undersigned Wanda S. Nelson, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial at the captioned case, relative to appeal, in the Circuit Court for Union County, South Carolina, on the 24th day of January 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

WANDA NELSON
OFFICIAL COURT REPORTER
CERTIFIED VERBATIM REPORTER
AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA.
MY COMMISSION EXPIRES:
12/06/2010

County: Union
Date: September 11, 2007

Quashed

VOIR DIRE

Case No.: 2006-GS-44-1207-1209

Judge: John C. Hayes, III

Pl./State: State of South Carolina

Pl.State Atty:s. Assistant Solicitor John Anthony

Assistant Solicitor Jennifer Colton

Defendant: James Albert Giles

Defense Atty: Ms. Vanessa Cason

Court Reporter: Wanda Nelson, CVR

Juror No.	Name	Sex	Race	STRIKES			
				*Court	Plaintiff	Defense	Accept
307	Gary Winzenried	M			Present	Excuse	
269	Rachael Teague	F					X
151	Robert Jones	M			Present	Excuse	
25	Larry Black	M			Present	Excuse	
16	Thomas Bailey	M			Present	Excuse	
122	Laura Henderson	F			Present	Present	X
261	Russell Steen	M			Present	Present	X
66	Veleka Dawkins	F			Present	Present	X
196	Mark Mitchell	M			Present	Excuse	
249	Dwight Simms	M			Excuse		
277	Sandra Tucker	F			Present	Present	X
281	Eugene Woods	M			Present	Present	X
147	Valerie Johnson	F			Present	Present	X
229	Brandy Renwick	F			Excuse		
176	Adam Maness	M			Present	Present	X
216	James Parris	M			Present	Excuse	
115	Kathy Harkins	F			Present	Excuse	
108	Valerie Gregory	F			Present	Present	X
51	Robert Cimbollek	M			Present	Excuse	
293	Jacob West	M			Excuse		
256	Kwane Smith	M			Present	Present	X
85	Frances Fowler	M			Present	Excuse	
88	Crystal Fowler	F			Present	Excuse	
297	Gloria Whitener	F			Excuse		
288	Ricky Ward	M			Present	Present	X
91	Amanda Gibson	F			Present	Present	X
10 (Alt.)	Brittany Arrington	F			Present	Present	X

*For the Court column, indicate who made the motion to strike the jurors for cause.
C-Court, P-Plaintiff, D-Defense
* Foreperson

County: Union
Date: September 11, 12, 2007

VOIR DIRE

Case No.: 2006-GS-44-1207-1209

Judge: John C. Hayes, III

Pl./State: State of South Carolina

Pl/State Atty:s. Assistant Solicitor John Anthony

Assistant Solicitor Jennifer Colton

Defendant: James Albert Giles

Defense Atty: Ms. Vanessa Cason

Court Reporter: Wanda Nelson, CVR

Juror No.	Name	Sex	Race	STRIKES			
				*Court	Plaintiff	Defense	Accept
293	Jacob West	M	W		Strike		
110	Kimberly Hagen	F	W				X
176	Adam Maness	M	W			Strike	
50	Angela Childers	F	W				X
180	Denise McAbee	F	W				X
115	Kathy Harkins	F	W				X
307	Gary Winzenried	M	W				X
21	Ashley Beheler	F	W				X
46	Wanda Carter	F	W				X
210	Rhonda Ochiltree	F	W				X
286	Angernaun Walton	F	B				X
91	Amanda Gibson	F	W				X
67	Jeffrey Dean	M	W			Strike	
216*	James Parris	M	W				X
11	Thomas Bailey	M	W			Strike	
227	Pamela Puckett	F	W		Strike		
228	Ruth Ann Ramsey	F	W			Strike	
167	Florinda Lett	F	W		Strike		
151	Robert Jones	M	W				X
215	Kelly Parker	F	W			Strike	
245	Angela Seay	F	W			Strike	
197 (Alt.)	Melissa Mitchell	F	W				X

*For the Court column, indicate who made the motion to strike the jurors for cause.
C-Court, P-Plaintiff, D-Defense
* Foreperson

FORM 5

2014 -CP-44-295

STATE OF SOUTH CAROLINA)
)
County of UNION)
)
James Albert Giles #264478)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR POST-CONVICTION RELIEF

FILED FOR RECORD
2014 JUL 22 AM 10 26
WILLIAM F. GAULT
CLERK OF COURT
UNION, 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 Allendale Correctional Institution 1057 Revolutionary Trail Fairfax, S.C. 29827

2. Name and location of Court which imposed sentence UNION County 16th Circuit, General Sessions Court, UNION, S.C. 29379

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2006-GS-44-1207 First degree Burglary

(b) 2006-GS-44-1208 Kidnapping

A TRUE COPY
JUL 22 2014
CLERK OF COURT

(c) 2006-GS-44-1209

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 12, 2007 30 Years But My Sentence Was Reduce

(b) September 12, 2007 30 Years Per Judge Hayes to 20 Years

(c) September 12, 2007 15 Years on September 14, 2007 for some reason

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. Direct Appeal Appellate Court

ii. Petition for Writ of Certiorari South Carolina Supreme Court

iii. Petition for Writ of Certiorari U.S. Supreme Court

(b) the result in each such Court to which you appealed:

i. denied

ii. granted, then denied

iii. denied

(c) the date of each such result:

i. February 23, 2010

ii. January 15, 2014

iii. June 30, 2014

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No: 2010-UP-154

ii. Opinion No: 27353

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) "Please see Attach Copies"

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) "Please see Attach Copies"

(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? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

CONTINUATION FROM PAGE 3

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistant of Counsel

Mr. Ross A. Burton, Ms. Vaness Cason, Ms. LaNelle C. Durant.

(b) The trial Judge error in deny a request for a continuance.

(c) The trial Judge error by granting a Mid-trial Motion to relive Counsel

(d) Subject Matter Jurisdiction & invalid Indictments

(e) After discover evidence, Gross Prosecutor Misconduct & Perjury

(f) After discover evidence, Criminal Conspiracy

11. State Concisely and in the Same order the facts Which Support each of the grounds set out in (10):

(A). My First Counsel Mr. Ross A. Burton Was ineffective so therefore I am raising a federal Claim that My Sixth and Fourteenth Amendmend of the United States Constitution Was Violated as follower:

Mr. Ross A. Burton Was ineffective for Coercing Me into Signing a Court order, to Provide a blood Sample. because the Court order Was based on a incorrect authority, Specifically Schmerber V. California, 384 U.S. 75 (1966). and also the Court order Violated the Constitutional and Statutory requirements, because the Court order Was Not issued Pursuant to § 17-13-140. Which Stands in Place of a Search Warrant, So My Fourth Amendment of the United States Constitution Was Violated, Under Search and Seizures.

My trial Counsel MS. Vaness Cason Was ineffective, SO therefore I am raising a federal Claim that My Sixth and Fourteenth Amendment of the United States Constitution Was Violated as follower:

MS. Vaness Cason Was ineffective for Not Moving to Suppress Certain evidence, and by failing to Conduct an adequate investigation before the trial. because in her opening statement MS. Vaness Cason Stated:

"The defense will attempt to show that the state's evidence is questionable at best and that many of the items that the State is going to put up have been tampered with and thereby showing that James Giles is again wrongly accused of the crimes that he is charged with. but Ms. Vaness Cason did not put up any defense concerning that the State's evidence had been tampered with, when there was grounds to argue that issue.

Ms. Vaness Cason was ineffective for failing to conduct an adequate investigation, because if Ms. Vaness Cason had done an adequate investigation, Ms. Vaness Cason would have came aware, that Ms. Barbara Wilburn was founded incompetent to testify against Mr. J. C. Rice at Mr. J. C. Rice Jury trial, back in the Year of 2000 or 2001. So therefore Ms. Barbara Wilburn, still [redacted] Should have been incompetent to testify at my Jury trial, Without another evaluation.

Ms. Vaness Cason was inffective for failing to conduct an adequate investigation, because if Ms. Vaness Cason had done an adequate investigation, Then Ms. Vaness Cason Would have came aware, that the Court order for me to Provide a blood Sample, Was based on an incorrect authority of law, Specifically Schmerber V. California When there Was no exigent Circumstances Surrounding my Case,

also MS. VaNess CasoN Would have Came aWare, that the Court order CompelliNg a blood Sample Violated, the CoNStitutioNal aNd Statutory requireMeNts, because the Court order Was Not issued PursuaNt to § 17-13-140, Which StaNds iN Place of a Search WarraNt. Neither Was a Search WarraNt issue. SO therefore My Fourth AMeNdMeNt of the UNited States CoNStitutioN Was Violated.

MS. VaNess CasoN Was iNffective for failiNg to CoNduct aN adequate iNvestigatioN, because if MS. VaNess CasoN had doNe aN adequate iNvestigatioN, TheN MS. VaNess CasoN Would have Came aWare, that a BreaK Was iN My chaiN of Custody, because the leadiNg iNvestigator DoNald NiX Never did fill out, or Caused to be fill out, a Rule (6) ChaiN of Custody forMS A, B, or C. also MS. VaNess CasoN Would have Came aWare, that the State did Not SubMit the testiMoNy of each iNdividual Who haNdled the eVideNce to establish a Complete ChaiN of Custody. Nor did the State Comply With the Rule, Which allows for the adMissioN of SWorN StateMeNts lieu of the appearaNce of the ChaiN of Custody WitNesses. SO therefore My FourteeNth AMeNdMeNts of the UNited States CoNStitutioN Was Violated.

MS. VaNess CasoN, Was iNeffective for failiNg to MaKe aN objectioN to the trial Judge erroNeous BatsoN RuliNg. WheN the trial Judge based his RuliNg oN aN error of laW, because the trial Judge based his RuliNg oN the State V. Easley Case, Which Was Not the laW aNyMore, for a outliNed BatsoN hearing. INStead of basing his rulingoN the existing laW for a BatsoN hearing Which is outliNed iN PurKett V. ElcM. aNd the trial Judge did acKNoWledge that he Made his ruliNg oN aN error of laW.

MS. VaNess CasoN, Was iNeffective for failiNg to Properly Select a UNbiased Jury, after the trial Judge Made a erroNeous BatsoN RuliNg, because four (4) CoNtests Jurors Were thereafter Seated oN My SecoNd Jury, after they had beeN PreVious StruCK FroM My first Jury selectioN, therefore the erroNeous BatsoN RuliNg has taiNted the Jury, aNd Prejudice is PresuMed iN Such Cases. aNd also My SecoNd Jury Was Selected iN a raCially discriMiNatory Matter, aNd I requested for MS. VaNess CasoN to MaKe aN objectioN to the Way My SecoNd Jury Was beiNg Selected, but MS. VaNess CasoN Would Not MaKe aN objectioN, So therefore I did Not get a fair trial by the Jury of My Peers. so My Sixth AMeNdMeNt of the UNited States CoNstitutioN Was Violated.

MS. VaNess CasoN Was iNeffective for Not Cross EXaMiNatioN the State Key WitNess CoNCerNiNg the items that Was ANalyed at Sled because there Was SoMe CoNtradiNg test results CoNCerNiNg item oNe PoiNt oNe, aNd this Piece of eVideNce Should have beeN excluded from the eVideNce, PreseNted againSt Me at trial, But MS. VaNess CasoN, failure to Cross-EXaMiNatioN Mr. Jeffrey Crooks about item oNe PoiNt oNe, or MaKe aNy objectioN CoNCerNiNg that Piece of eVideNce. because MS. CasoN Was Not Properly Prepared to argue My Case, So My Sixth AMeNdMeNt of the UNited States CoNStitutioN Was Violated,

MS. VaNess CasoN Was iNeffective for Not Putting iN a MotioN to disMiss My KidNappiNg Charge, because there Was NothiNg iN the iNCideNt report iNdicatiNg that MS. Barbara WilburN eVer Stated that She Was Seized, CoNfiNed or KidNapped againS her Will, also the State NeVer did PreseNted aNy SubstaNtial eVideNce that the appellaNt Seized, CoNfiNed or KidNapped MS. Barbara Wiburn againSt her Will, So therefore the State failure to Prove beyoNd a reaSoNable doubt, that MS. Barbara WilburN Was ever KidNapped, because the State failure to argue this issue at trial, aNd MS. VaNess CasoN failure Cross-ExaMiNatioN MS. Barbara WilburN about the allege KidNapp.

Ms. Vaness Cason Was inffective for Not Cross-Examination Mr. William F. Gault about the Photographing of the Crime scene because Mr. Nix stated at trial, that Mr. Gault did the Photographing of the Crime scene, But there Was Nothing in the incident report stating that Mr. Gault had done the Photographing of the Crime Scene, and Mr. Gault Never testify at trial, that he took the Photographs of the Crime Scene, so therefore a Proper Foundation Was Not laid out for the introduction of them Photographs, also Mr. William F. Gault Name appears to be on the Chain of Possession evidence sheet, from the Union Public Safety Department, because the Chain of Possession evidence sheet, is indicating that a Piece of Plastic With Blood + Prints Was submitted into the Drop Box by W. F. Gault on 12/5/03. at 11:48 AM. But MS. Vaness Cason failure to Cross Examination Mr. Gault at trial, because MS. Vaness Cason Was Not Properly Prepared for My Jury trial, because MS. Vaness Cason did Not do an adequate investigation on My Case, to find out this Very important information, So therefore my Sixth Amendment of the United States Constitution Was Violated. because I did Not enjoy by rights to Confront My Witness, because I Was Never aware that Mr. Gault Was a Witness for the State, because MS. Vaness Cason Never inform Whatsoever, Nor Was I ever given a Witness list at anytime, Concerning Who Would be testifying against me at trial.

MS. VaNess CasoN Was iNffective, for failing to Comply With aNy of the requireMeNts, that I Was requestiNg from her, because MS. VaNess CasoN failure to turN over Material eviDeNce, or eviDeNce that Was goiNg to be favorable to Me at My Jury trial, SO therefore MS. VaNess CasoN Violated My Fifth, Sixth aNd FourteeNth AmeNdMeNt of the Federal CoNstitutioN of the UNited States, because MS. VaNess With held SoMe Very iMportaNt iNformatioN from Me, So therefore I Was Not Properly Prepared for My Jury trial.

MS. VaNess CasoN Was INeffective, becaus e oN Sept 12, 2007. the SecoNd day of trial. MS. VaNess CasoN aSH Me to Plead to a 20 Years SeNteNce, because MS. VaNess CasoN Stated to Me _____ You KNoW that Judge Hayes Was the toughest Judge that Come to UNioN, aNd if I doN't Plead guilty to a 20 Years SeNteNce, TheN Judge Hayes Will Probably SeNteNce Me to life iN PrisoN, at that MoMeNt I Came to the CoNClusioN, that MS. VaNess CasoN Was Not Properly Prepared for trial, aNd had Not for Mulated aNy reasoNable defeNse theory, aNd fully expected for Me to eNter a guilty Plea, aNd MS. VaNess CasoN NeVer expected to get to the SecoNd Stage of the trial. SO MS. VaNess CasoN Violated My Sixth AMeNdMeNt of the UNited States CoNstitutioN.

MS. VaNess CasoN Was a iNeffective StaNd by CouNSel, because MS. VaNess CasoN, Never did advise Me at anytime Whatsoever, the rule of the Court, Nor did MS. VaNess CasoN, Suggested that I MaKe CertaiN MotioN, aNd askK Particular questioNS, CoNCerNiNg My Case, because WheN MS. VaNess CasoN, became My StaNd by CouNSel, MS. VaNess CasoN, did Not say oNe Word to Me at all, because MS. VaNess CasoN, Was acting like She Was Mad at Me, SO basically I Was left Without aNy legal represeNtatioN at all, SO therefore I Was deNied My right to a fair trial, because My Sixth AMeNdMeNt of the UNited States Was Violated.

MS. LA Nelle C. DuRaNt Was iNeffective Assistance of CouNSel for My Direct Appeal, SO therefore I aM raisiNg a federal ClaiM that Sixth aNd FourteeNth AMeNdMeNt of the UNited States Was Violated as follower :

MS. LA Nelle C. DuRaNt Was iNeffective for failiNg to raise iNffective ASSistaNce of CouNSel oN My trial lawyer MS. VaNess CasoN, oN My Direct Appeal, because MS. VaNess CasoN failure to MaKe aNy objectioN Whatsoever, to Preserve My issues for Appellate reViewW, because Several of My CoNStitutioN right Violated, aNd iNeffective Assistance of CouNSel, Suppose to be raise for the first time oN Your Direct Appeal.

MS. LA Nelle C. DuRant Was ineffective for failing to raise on My Direct Appeal that I had four (4) Contests Jurors seated back on My second Jury, after them four (4) Contests Jurors had been Previous struck from My first Jury, after the trial Judge had Made an erroneous Batson Ruling, because the trial Judge had based his ruling on an error of law.

MS. LA Nelle C. DuRant Was ineffective for failing to raise Subject Matter Jurisdiction on My Direct Appeal, because Subject Matter Jurisdiction Can be raise at any time, I Wanted MS. DuRant to raise this issue, because My indictment Was Not True-Billed before a legally Constituted Grand Jury, because State UNlawfully impaneled it's Grand Jury outside the Jurisdiction of General Sessions, So therefore I Was Not indicted in Compliance With Section: 14-9-210.

(b) this issue Will Not be raised under ineffective Assistance of Counsle, so therefore I am requesting for a 59(e) Ruling on this issue.-------

the trial Judge error in denying Applicant [redacted] request for a Continuance, because the Applicant [redacted] Could Not have Know of any New Points or any additional evidence until he had reviewed all of the Paperwork, Which he had received the day before his trial,

but Now Since Applicant [redacted] have reviewed the Paper Work, there is evidence showing that Applicant [redacted] Could have Produced, Some New evidence if the trial Judge had granted Some More time to review his Paper Work that he had only received the day before his Jury trial, So My Sixth Amendment of the United States Constitution Was Violated, because I Was force to Continue My trial, When I told the trial Judge, that I Was Not Properly Prepare to Continue My trial.

(C) this issue Will Not be raised Under ineffective Assistance of Counsel, So therefore I am requesting for a 59(e) Ruling on this issue, also I am raising a federal Claim that My Sixth Amendment of the United States Constitution Was Violated.....
the trial Judge error, by granting Me the Motion at Mid-trial to Waive My right to Counsel, Without thoroughly Warning Me of the dangers and disadvantages of Self-representation,

(1). the trial Judge Never ask Me Was I ever involved in any Criminal Crime, and Whether I understand the Court Rules.

(2). the trial Judge Never ask me did I Know of the Nature of the Charges and of the Possible Penalties.

(3). the trial Judge Never ask me Whether I understand that I Would be required to Comply With the rules of Procedure at trial

(4). the trial Judge Never ask me Whether I KNeW of the legal Challenges that I Could raise iN defense to the Charges againSt Me
(5). the trial Judge Never ask me Whether I Was WaiVing My right to CounSel, because I Was beeN Mistreated by MS. VaNess CasoN representatioN.
(6). the trial Judge Never ask me Was I taKing aNy Psychiatric MedicatioN at the time I Waive d My right to CounSel.
So therefore the trial Judge did Not thoroughly WarN Me of the dangers aNd disadVantages of Self-representatioN. SO I did Not KNoWingly aNd intelligeNtly Waived My right to CouNSel.

(d) Subject Matter Jurisdiction, because My iNdictMeNts is iNValid, this issue Will Not be raise UNder iNeffective ASSistance of CounSel SO therefore I aM requesting for a 59(e) Ruling oN this issue, also I aM raising a federal Claim that My FourteeNth AmendMeNt of the UNited States CoNstitutioN Was Violated.-------
My INdictMeNts is iNValid, aNd they don't bind No legal effect. because My iNdictMeNts Was issue through a illegal CoNstituted Grand Jury, because the State UNlaWfully impaNeled it's Grand Jury outside the Jurisdiction of the Court of General SessioNS, aNd theN Willfully Caused false aNd Misleading iNformatioN to be PrINted iN it's iNdictMeNts, iN order to deep Keep Secret the illegal Grand Jury Process, the State KNoWingly Violated the

Provisions of S.C. Code Ann § 14-9-210. by ------
(1) Unlawfully impaneling its Grand Jury outside the Jurisdiction of the Court of General Sessions, (2). Utilizing an Unlawful Process for the return of true Bill. and (3) Causing false information to be Printed and Applicant indictments.

(E) Gross Prosecutor Misconduct + Pejury, this issue will not be raise under ineffective Assistance of Counsel, but it will be raise under After discover evidence, so therefore I am requesting for a 59(e) Ruling on this issue. and I will be raising a federal Claim that My Fourteeth Amendment of the United States Constitution was Violated,

John Anthony the Union County Solicitor Committed the act of Pejury and Prosecutor Misconduct While Under oaths Violating Section 16-9-10. by Willfully Causing false Misleading information to be Printed and Published in the state indictments issue against Applicant, because evidence will Clearly show that "NO General Session Court Was lawfully Convened in Union County on September 6, 2007. as Printed on the indictments in Question ------ also by Preparing and Processing Some illegal documents (indictments), returned "True-Bill and Forcing Applicant to Stand trial on some indictments returned by an illegal Constituted Grand Jury of the laws of this State, John Anthony the Union County Solicitor

committed an offense of Perjury in order to deep keep secret the unlawful Grand Jury Process, so John Anthony Violated My fourteenth Amendment of the United States Constitution.

(F) Criminal Conspiracy: this issue will not be raise under ineffive Assistance of Counsel, but this issue will be raise under After discover evidence, so therefore I am requesting for a 59(e) Ruling on this issue.

Conspirators and Blame, for Violating S.C. Code Ann § 16-17-410.
First, the Court Court Administrative Judge
second, the Solicitor / Assistant Solicitor
Third, the Grand Jury foreman
Fourth, the Clerk of Court
Fifth, the Presiding Judge

Here the facts and evidence will establish that all the above listed Judicial officals Conspired in Criminal Conspiracy Violating S.C. Code Ann § 16-17-410. in order to impanel a Grand Jury outside the authority of the Court of General Sessions. to Complete a return of an illegal True-Bill indictment, and to Print and Publish false indictment information in [redacted] Applicant indictments, unless the Solicitor / Assistant Solicitor is willing to admit that acting

LEGAL MAIL

alone, that he KNOWINGLY and Completely forged Applicant [redacted] indictments, the existence of a Criminal Conspiracy act is established, because barring the existence of an outright forged, it Would have taken the combined effort of the above listed Judicial officials all Working in Concert to establish the scheduling, to order and impanel the Grand Jury during a time When no Court of General Sessions Was lawfully convened, to Meet and execute the return of the illegal True-Bill indictments, and to report and Publish the Applicant [redacted] illegal indictments into the Court records. Applicant [redacted] Was indicted by way of an illegal Grand Jury Process that the Court of General Sessions had no lawfully authority to adopt, the Solicitor/Assistant Solicitor Willfully Printed false information in Applicant [redacted] indictments, in order to deep Heep Secret the fact of the illegal Grand Jury Process, and then Jointed into a Criminal Conspiracy With the above listed Judicial officials to Make a effective Null indictment Valid. So therefore the listed above Judicial officials Violated S.C. Code Ann § 16-17-410. alone With the fourteeth Amendment of the United States Constitution. ------

(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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. the trial Judge error denying the continuance

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Direct Appeal

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) Please See Attach Copy
(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? _____

(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. MS. Vaness Cason Greenville, S.C.

ii. MS. LaNelle DuRant, Columbia S.C.

iii. _____

(b) the proceedings at which each such attorney represented you:

i. MS. Vaness Cason
trial Counsel

ii. MS. LaNelle DuRant
Direct Appeal Counsel

iii. _____

CONTINUATION FROM PAGE 5

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 reason why such ground has not previously been presented:

(a) Ineffective Assistant of Counsel, My Direct Appeal lawyer failure to raise this issue.

(b) The trial Judge error in granting a Mid-trial Motion to relieve Counsel My Direct Appeal Lawyer failure to raise this issue.

(c) Subject Matter Jurisdiction, & invalid Indictments My Direct Appeal lawyer failure to raise this issue.

(d) Gross Prosecutor Misconduct & Perjury After discoverevidence

(e) Criminal Conspiracy

(f) After discover evidence

19. State clearly the relief you seek in filing this application:

Have Sentence and Conviction set Aside
AN Evidentiary Hearing.
Applicant Ask leave To Amend This Application

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Allendale)

I, James A. Giles, 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.

James A. Giles

SWORN to and subscribed before me this 16 day of July, 2014.

Virginia Grubbs (L.S.)
Notary Public

My Commission Expires: 12-12-22

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, James A. Miles, 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.

James A. Miles
Applicant

SWORN or affirmed to and subscribed before me this 16 day of July, 2014.

Virginia Shubb
Notary Public

My Commission Expires: 12-12-22

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION)	
)	Case No.: 2014-CP-44-0295
James A. Giles,)	
)	AMENDED AND SUPPLEMENTAL PCR
Applicant,)	PETITION
)	
vs.)	
)	
State of South Carolina,)	
)	
Defendant.)	
)	

NOW COMES the applicant, by and through his undersigned attorney, and files this amended and supplemental petition to his PCR Application to supplement applicant's original Application for PCR filed July 22, 2014 and to more concisely state the specific issues to be raised in his PCR hearing.

INEFFECTIVE ASSISTANCE OF COUNSEL OF ROSS BURTON

Applicant alleges that Ross Burton's performance was ineffective during representation of Applicant because Applicant was coerced into signing a court order to provide a blood sample. Furthermore, the court order was based on *Schmerber v. California*, 384 U.S. 75 (1966), and this order was a *Schmerber* violation. Furthermore, this signing of the order was a violation of Applicant's constitutional rights related to search and seizures.

INEFFECTIVE ASSISTANCE OF COUNSEL OF VANESSA CASON

Applicant alleges that Vanessa Cason's performance was ineffective during representation of Applicant and at trial based on a number of reasons, including but not limited to the following:

FILED FOR RECORD
2018 JUN 25 AM 9 22
CLERK OF COURT
UNION, SC

1. Vanessa Cason failed to move to suppress any blood and DNA evidence and any testimony or expert opinions stemming from the unlawful collection of the blood sample from Applicant, as set forth above.
2. Vanessa Cason failed to object to the procedure used to strike and choose the jury. The state made a *Batson* motion after the selection of the first jury, and defense was asked to give race neutral reasons for striking all but two jurors struck by counsel for Applicant. Judge Hayes ruled that the reason provided by Applicant was insufficient, relying on *State v. Easley*, and he granted the state's motion and a new jury was selected. Judge Hayes later put on the record that the law he previously cited in *State v. Easley* was in error but did not change his ruling. Ms. Cason failed to object to any of the procedure in selection of the jury, which resulted in the seating of four jurors that had previously been struck the first time by Applicant, one of which was selected to be the foreman of the jury. The result was a tainted jury, that ultimately convicted Applicant in less than 30 minutes of deliberation.
3. Vanessa Cason's opening statement to the jury was a mere three sentences. She failed to adequately explain Applicant's defense to the jury or to make any appeal to the jury on Applicant's behalf. Furthermore, in one of her three sentences, she indicated "the defense will attempt to show that the state's evidence is questionable at best and that many of the items, that the state is going to put up have been tampered with...". However, she never attempted to show throughout the trial that any of the evidence had been tampered with.
4. Vanessa Cason failed to investigate the state's witnesses, including the alleged victim, Barbara Wilburn. Upon information and belief of Applicant, Barbara Wilburn was found incompetent to testify in the trial of James Carson Rice in the year 2000 or 2001. Had Ms.

Wilburn been investigated, Ms. Cason should have found out about the incompetence ruling, which likely would have impacted the testimony of Barbara Wilburn in Applicant's trial.

5. Vanessa Cason failed to make a motion to dismiss the kidnapping charge. There was nothing in the incident report that ever stated that Ms. Wilburn alleged she was seized, confined or kidnapped against her will. No substantial evidence was presented at trial that Appellant seized, confined or held Ms. Wilburn against her will.
6. Vanessa Cason failed to cross-examine Ms. Wilburn on the kidnapping allegations and elements.
7. Vanessa Cason failed to file a Rule 5 and/or *Brady* motion requesting the state's evidence against Applicant. This includes requesting any information known by the state about its potential witnesses, including the victim, Barbara Wilburn. Accordingly, evidence that was turned over to Ms. Cason was not turned over in time for her to adequately prepare for trial. This is evidenced by the Chain of Custody from the Union Public Safety Department, which was printed on August 31, 2007, as printed on the document, and Applicant's trial started on September 11, 2007. This failure to obtain evidence in a timely manner denied Ms. Cason the time she needed to properly file and serve any necessary motions, including any motions to suppress. Furthermore, Ms. Cason failed to turn over evidence to Applicant she received from the state.
8. Vanessa Cason failed to file a motion to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of chain of custody. Furthermore, the state failed to establish a chain of custody and there were in fact, breaks in the chain of custody in the evidence collected from the crime scene and the blood sample collected from Applicant.

FILED IN RECORD
2018 JAN 5 PM 9 22
LEA COUNTY
DISTRICT COURT

9. Vanessa Cason failed to cross-examine Jeffrey Crooks from SLED, one of the state's main witnesses. Furthermore, the SLED records show evidence 1.1 as being the "back side of a cable cord" and the cable cord from the telephone was never submitted to SLED, and Ms. Cason did not cross-examine any witness regarding this.
10. Vanessa Cason failed to object to the admission of photographs from the crime scene, when they were admittedly, according to witness Donald Nix, taken by William F. Gault, who never testified. This failure to request a proper foundation denied Applicant the right to ever cross-examine the person actually taking the photographs.
11. Vanessa Cason gave erroneous advice about sentencing to Applicant. Applicant alleges that Ms. Cason urged Applicant to accept a 20 year plea deal and insisted that if he did not, he would likely be sentenced to life without parole. However, no notice had been provided by the state to seek life without parole. This, along with the other instances of ineffective assistance alleged herein and in Applicant's original Application for PCR, lead applicant to seek to have Ms. Cason relieved as counsel.

Accordingly, based on and/or all of the above-referenced reasons, Vanessa Cason's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984). Based on Ms. Cason's failure(s), there is a reasonable probability that, but for counsel's unprofessional errors, the result of the [trial]would have been different. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

FILED FOR RECORD
2009 JAN 25 AM 9 22
CLERK OF COURT
UNION, SC

INEFFECTIVE ASSISTANCE OF COUNSEL OF LANELLE C. DURANT

Applicant alleges that LaNelle C. Durant's performance was ineffective during representation of Applicant in his appeal of his conviction because Ms. Durant failed to raise the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial. Applicant alleges that Judge Hayes' ruling on the state's motion after the selection of the first jury was erroneous and was based on errors of law and should have been appealed by Ms. Durant. Those errors by the trial court resulted in Applicant's trial by a tainted jury, as set forth more fully above.

The above alleged deficiencies of counsel are violations of Applicant's Sixth Amendment right to effective assistance during the criminal prosecution process.

Respectfully Submitted,

York, South Carolina
January 24, 2018

Beth Ramsey Faulkner
Attorney for Applicant James Albert Giles
Faulkner Law Firm, LLC
P.O. Box 1030
616 E. Liberty Street
York, South Carolina 29745
(803) 818-5700

FILED FOR RECORD
2018 JAN 25 AM 9 22
CLERK OF COURT
UNION, SC

STATE OF SOUTH CAROLINA COUNTY OF UNION James A. Giles #264478 Plaintiff, vs. State of South Carolina Defendant.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-44-0295 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Leah B. Moody, Bar No. _____ Address: 235 East Main St; Ste 115 Rock Hill, SC 29730 Phone: _____Fax _____ E-mail: _____Other: _____	J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 Phone: 803-734-3737 Fax803-734-4113 E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ December 10, 2014
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT $ _____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COUNTY OF UNION	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
James Albert Giles, #264478, Applicant, v. State of South Carolina, Respondent.	)	2014-CP-44-295 **RETURN**

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 22, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. The Applicant was indicted at the September 2007 term of the Union County Grand Jury for Burglary, First Degree (2006-GS-44-1207), Kidnapping (2006-GS-44-1208), Strong Arm Robbery (2006-GS-44-1209). The Applicant was represented by Vanessa Cason, Esquire. On September 12, 2007, the Applicant underwent trial by jury and was convicted of the charges as indicted. The Honorable John C. Hayes, III, sentenced the Applicant to concurrent terms of thirty (30) years for Burglary, First Degree, thirty (30) years for Kidnapping, and fifteen (15) years for Strong Arm Robbery.

A Notice of Appeal was timely filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals by written order affirmed the Applicant's conviction and sentence. State v. Giles, 2010-UP-154 (Ct. App. filed on February 23, 2010). On May 24, 2010, the Applicant submitted a Petition for Writ of Certiorari, seeking review of the

Court of Appeals decision. The Supreme Court of South Carolina granted certiorari and affirmed the decision of the Court of Appeals. State v. Giles, Op. No. 27353 (filed on January 15, 2014). The Remittitur was sent on February 21, 2014.

Attached herewith and incorporated herein are the records of the Union County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Mr. Ross A. Burton was ineffective for coercing me into signing a court order, to provide a blood sample, because the Court order was based on incorrect authority"
   b. "Ms. Vaness Cason [sic] was ineffective for not moving to suppress certain evidence, and by failing to conduct an adequate investigation before trial"
   c. "Ms. Vaness Cason [sic] was ineffective for failing to conduct an adequate investigation because if [she] had done an adequate investigation [she] would have came [sic] aware that Ms. Barbara Willburn was founded [sic] incompetent to testify against Mr. J.C. Rice"
   d. "failing to conduct an adequate investigation because . . . [she was not] aware that the Court order for me to provide a blood sample was based on incorrect authority"
   e. "failing to conduct an adequate investigation because . . . [she was not] aware that a break was in my chain of custody"
   f. "failing to make an objection to the trial judge erroneous Batson ruling"
   g. "failing to properly select a unbiased jury"

h. "Ms. Vaness Cason was ineffective for not cross examination the state key witness [sic], concerning the items that was analyed [sic] at trial"

i. "Ms. Vaness Cason was ineffective for not putting in a motion to dismiss my kidnapping charge, because there was nothing in the incident report indicating that Ms. Barbara Willburn ever stated that she was seized, confined or kidnapped"

j. "Ms. Vaness Cason was inffective [sic] for not cross-examination Mr. William F. Gault about the photographing of the crime scene, because Mr. Nix stated at trial, that Mr. Gault did the photographing . . . but there was nothing in the incident report stating that Mr. Gault had done the photographing"

k. "failing . . . to turn over material evidence, or evidence that was going to be favorable to me at my jury trial"

l. "Ms. Vaness Cason ask me to plead to a 20 year sentence because . . . Judge Hayes was the toughest Judge that come to Union . . . [Also, counsel] was not properly prepared for trial, and had not formulated any reasonable defense theory, and fully expected for me to enter a guilty plea."

m. 'Ms. Vaness Cason was a ineffective stand by counsel, because . . . [she] did not say one word to me at all . . . so basically I was left without any legal representation at all"

2. Ineffective Assistance of Appellate Counsel

a. "Ms. Lanelle C. Durant was ineffective for failing to raise inffective [sic] assistance of counsel on my trial lawyer . . . on direct appeal . . . [for] failure to make any objection whatsoever, to preserve my issues for appellate review"

b. "failing to raise on my direct appeal that I had four (4) contests jurors seated back on my second jury after . . . [they] had been provious [sic] struck from my first jury after the trial judge had made an erroneous Batson ruling"

c. "failing to raise subject matter jurisdiction on my direct appeal . . . I wanted Ms. Durant to raise this issue because my indictment was not

true-billed before a legally constituted Grand Jury"

3. "trial judge error [sic] in denying Applicant request for a continuance because Applicant could not have know [sic] of any . . . . additional evidence until he had reviewed all of the paperwork, which he had received the day before his trial"
4. "trial judge error [sic] by granting me the motion at mid-trial to waive my right to counsel, without thoroughly warning me of the dangers and disadvantages of self-representation"
5. "Subject Matter Jurisdiction, because my indictments is invalid [sic] . . . and they don't bind no legal effect [sic]"
6. "Gross Prosecutor Misconduct and perjury"
7. "Criminal conspiracy . . . Conspirators and blame for violating S.C. Code Ann. § 16-17-410" include the "Court Court [sic] Administrative Judge," the solicitor, the Grand Jury foreman, the Clerk of Court, and the trial judge.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure

of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is

constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. *See See* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, *supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

The remainder of Applicant's allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. Her failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 10, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	
	)	
	)	2014-CP-44-0295
	)	
JAMES A. GILES, #264478	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody
235 East Main Street; Suite 100
Rock Hill, SC 29731

DATED this 10th day of December, 2014.

Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION	)	CASE NO.: 2014-CP-44-0295
JAMES A. GILES	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	

JANUARY 30, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE J. MARK HAYES, II

APPEARANCES:

N. BETH RAMSEY FAULKNER, ESQUIRE
YORK, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
ROSS BURTON				
By Mrs. Faulkner	5			
By Mr. Hunter		8		
By Mrs. Faulkner			9	
LANELLE DURANT				
By Mrs. Faulkner	11			
By Mr. Hunter		17		
By Mrs. Faulkner			20	
VANESSA CASON				
By Mrs. Faulkner	22			
By Mr. Hunter		48		
By Mrs. Faulkner			52	
JAMES A. GILES				
By Mrs. Faulkner	53			
By The Court		104		
By Mrs. Faulkner			105	

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	ID.	EVD.
A-1	Amended Application		5
A-2	Consent Order		7
A-3	August 20, '07 letter		29
A-4	SLED chain of custody		32
A-5	March 1, '10 letter		47
A-6	Chain of evidence report		87
A-7	Chain of evidence		88
A-8	Chain of custody documents		91
A-9	Brief		102

MR. HUNTER - May it please the Court, Your Honor.

The first case today is James Giles vs. The State of South Carolina, 2014-CP-44-295. Your Honor, he was indicted in September, 2007 in Union County for first degree burglary, kidnapping and strong-armed robbery. He was represented initially by Mr. Ross Burton and then at trial by Ms. Vanessa Cason. On September 12th, 2007 he proceeded to a jury trial before Judge Hayes, before Judge John C. Hayes and was found guilty as indicted. He was sentenced initially to thirty years for kidnapping and burglary and fifteen for strong-armed robbery. The burglary and kidnapping charges were later changed to twenty years. He did file a notice of appeal and was represented on an appeal by Public Defender, LaNelle DuRant. The court of appeals affirmed his convictions by written Order filed February 23rd, 2010. He then petitioned to the Supreme Court. The Supreme Court granted the petition on one issue and, ultimately, affirmed the decision of the Court of Appeals that was filed January 15th, 2014. The remittitur was sent February 21st, 2014. He filed this current action on July 22nd, 2014. He's present today represented by Ms. Beth Faulkner.

THE COURT - Yes, ma'am.

MS. FAULKNER - May it please the Court, Your Honor. Your Honor, as I previously informed the Court and

I have discussed with Mr. Hunter, I filed on behalf of my client, Mr. Giles, a second amended and supplemental PCR petition. I submitted a copy for the Court's use and I would like to have this copy marked as Applicant's Exhibit Number 1.

(WHEREUPON, DOCUMENT MARKED AS APPLICANT'S EXHIBIT NUMBER 1.)

MRS. FAULKNER - And, Your Honor, otherwise, applicant is ready to proceed.

THE COURT - Yes, ma'am.

MRS. FAULKNER - I call Ross Burton to the stand.

THE COURT - Let's let the clerk swear you in, sir.

ROSS BURTON, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

THE COURT - Be careful when you're stepping up.

MR. BURTON - Thank you, Your Honor.

DIRECT EXAMINATION

BY MRS. FAULKNER -

Q Please state your full name for the record.

A Ross Alan Burton.

Q Okay. And, Mr. Burton, were you previously representing or appointed to represent my client, James Giles, at some point?

A Yes, ma'am.

Q And do you remember when you were appointed to represent him?
A Not really, it was ten years ago. I think it was around the 2007 time-frame.
Q Okay. Do you recall Mr. Giles?
A I do.
Q Okay. Do you recall, approximately, how long you represented him?
A I really can't. It was -- it was a few months. It wasn't much longer than that.
Q Okay. During that time that you represented Mr. Giles, did you have any conversation -- was he -- well, let me strike that. Was he, actually, incarcerated during the time you represented him?
A I can't really remember.
Q Okay. Did you ever have a conversation with him about signing a Consent Order to have his blood taken, blood sample for Mr. Giles?
A I refreshed my memory with the -- his application. I really can't remember any specific conversation. What I do remember is that Mr. Giles claimed that he was innocent. He claimed that he'd never been in Ms. Wilburn's house where the blood was found, and if he wasn't there, a blood sample would do nothing but exonerate him, so why wouldn't I advise him to give the blood sample?

MRS. FAULKNER - May I approach the witness, Your Honor.

THE COURT - Yes, ma'am.

Q Do you recognize this document that I'm showing you, Mr. Burton?

A It appears to be a Consent Order for a blood sample.

Q Okay. And was this for the Consent -- a Consent Order for a blood sample from my client, Mr. Giles?

A Yes, ma'am.

Q Okay. And was it signed by Mr. Giles?

A It is signed by Mr. Giles, myself and the Solicitor, Bill All.

Q Okay. What was the date of this Order?

A 11, September of 2006.

Q Okay. Do you -- it's your testimony that you don't remember the details under which this was signed?

A I don't, no.

MRS. FAULKER - Your Honor, I seek to introduce this into evidence as Applicant's Number 2.

MR. HUNTER - No objection.

THE COURT - Without objection.

(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 2.)

Q Mr. Burton, do you recall why you were relieved from representing Mr. Giles?

A Really all I can remember is Mr. Giles was unhappy because he wanted me to investigate how the blood got in -- how his blood got into Ms. Wilburn's house.
Q Okay.
A If you can explain to me how I could possibly do that, I -- I would've done it, but he was unhappy about that, and he asked me to -- excuse me -- to be relieved.
Q Okay. Do you recall having any conversations with him about the chain of custody of any evidence or anything?
A I don't know.
Q Okay, you just down recall? Is that your testimony?
A I don't recall a thing about chain of custody.

MRS. FAULKNER - I beg the Court's indulgence for one moment. (Pause) I don't have any further questions for this witness, Your Honor.

THE COURT - Yes, sir.

MR. HUNTER - Just a few things.

CROSS EXAMINATION

BY MR. HUNTER -

Q I'm sorry if this is redundant. But you testified you couldn't really recall the circumstances around this blood Order. Is that correct?
A That's right.
Q And so you may not be able to answer this, but do you recall, I guess, -- and maybe the Order might refresh your

recollection of how -- how SLED ended up having his blood on their database?

A I remember something about -- something about when the crime occurred, nobody really knew who it was that committed the crime. Mr. Giles wasn't a suspect, nor was anybody else, and it seems to me some time later, possibly years later, Mr. Giles' blood was taken for some reason or another, and when it was, it hit the CODIS database which -- - into which his -- the sample from the crime scene was entered contemporaneously.

Q So are you saying the sample from the crime scene matched the database?

A That's -- that's my recollection and kind of a vague recollection.

Q Okay.

MR. HUNTER - That's all I have. Thank you.

MRS. FAULKNER - Briefly, Your Honor.

RE-DIRECT EXAMINATION

BY MRS. FAULKNER -

Q Mr. Burton, was any -- to your recollection was any motion ever filed to have Mr. Giles' blood taken or a sample of this blood taken?

A I -- I really have no idea.

MRS. FAULKNER - Okay. I have no further questions.

THE COURT - Thank you, sir. You may step down. Watch your step.

MR. BURTON - Thank you, Your Honor. Yes, sir, I will.

THE COURT - Any reason why the witness cannot be excused?

MRS. FAULKNER - No objection, Your Honor.

MR. HUNTER - No objection.

THE COURT - Sir, you may be excused as well.

MRS. FAULKNER - Your Honor, we are -- Mr. Hunter and I had discussed taking testimony of LaNelle DuRant, my client's appellate counsel, her testimony by telephone if -- this is -- I would like to call her next if we could do that at this time.

MR. HUNTER - Yes, Your Honor. I have her phone number. She's expecting us. I've talked to madam court reporter who suggested we work over here this time by the microphone if that's okay. We still couldn't get the speakerphone --

THE COURT - Hope your phone's charged.

(WHEREUPON, MR. HUNTER CALLS MS. DURANT ON HIS CELL PHONE AND THE FOLLOWING TESTIMONY IS TAKEN VIA TELEPHONE OVER SPEAKERPHONE.)

MR. HUNTER - Hey, LaNelle, this is Justin Hunter. I'm putting you on speakerphone. We're in the courtroom.

COURT REPORTER - Could you spell her name?

MRS. FAULKNER - LaNelle DuRant, L-a-N-e-l-l-e, DuRant, D-u-R-a-n-t.

THE COURT - Ms. DuRant, can you hear us?

MS. DURANT - Yes. Thank you. And let me thank the Court and all of the attorneys for allowing me to testify by telephone. I do appreciate that.

THE COURT - All right, if you would just raise your right hand and let the clerk of court swear you in.

MS. DURANT - Okay.

LANELLE DURANT, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

DEPUTY CLERK - Thank you.

DIRECT EXAMINATION

BY MRS. FAULKNER -

Q Ms. DuRant, this is Beth Faulkner. I'm here on behalf of Mr. Giles and you and I previously talked.

A Yes.

Q Can you hear me?

A Yes. Can you hear me okay?

Q I can.

A Okay.

Q Ms. DuRant, when did you start representing Mr. Giles and in what capacity?

A I was appointed by the appellate court to represent him on a direct appeal. I don't have the exact date. I think it was 2008, I believe.
Q Okay. And then -- and what issues did you appeal on behalf of Mr. Giles?
A I raised two issues. One was the Batson violation. I felt the Court -- hold on just a moment and I can read the issue to you -- that did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discretion. That would be in step three of the Batson process. And the second issue was not granting the appellate's request for a continuance after the Court granted his motion to relieve his trial counsel and proceed pro se, and some of the discovery he had just received the day before trial, so I felt the Court erred in not allowing him more time to review the discovery.
Q Okay. And I want to take you back for a minute on the issue as it related to the selection of the jury. What was the ultimate decision about that issue regarding that issue?
A Well, the State had said the trial counsel was wrong and she had racially discriminated in some of the jurors she challenged, and the Court required purposeful racial discrimination but the trial court said that it was not

error because defense counsel had not been specific enough in stating what the racial discrimination was. I think Mr. Giles and the attorney felt that none of them were suited for the jury, and that was the problem. The trial court said that was in error, and unfortunately, we took it to the Supreme Court and they agreed with the trial court, they affirmed that.

Q Okay. Now, what -- and the other issue, what was the result of that issue? Did that ever go up to the Supreme Court?

A No, I did a COA Cert on that but the Supreme Court only chose to hear the Batson, the first issue.

Q Okay.

A They chose not to hear the second issue.

Q Okay. And in reviewing the transcript, did you believe that there were any other issues regarding the selection of the jury that were not properly before you to appeal to the Court of Appeals?

A Well, I looked at Mr. Giles' PCR application and I didn't find any other issues that I felt were significantly legally merit, had legal merit to raise on direct appeal. I thought the Batson issue was very strong, but he says -- I think one of his issues in his PCR application is that I didn't raise the issue that four jurors that were placed on the first jury, which were placed on the second jury as

well, and I cited a case, State vs. Edwards, that said if the trial court was in error, then those jurors should not have been placed on the second jury. So I think I should've raised that issue, but the Supreme Court said the trial court was not in error, so I don't know where that would've gone.

Q Okay. So do you believe that is an issue that you should have raised, though, regarding the four jurors that were struck from the first jury then subsequently being seated on the second jury? You think that's an issue that you should have raised?

A I think if -- yes. I think if I had raised that and argued it, maybe the Supreme Court would have looked at it more carefully as far as the decision of the trial court.

Q Okay. And again, can you tell me the case that you're relying on regarding that?

A Well, it's in my brief of petitioner. It was State v. Edwards. If you hold on just a moment, I will find it for you. It was State v. Edwards. It's -- do you need the cite?

Q Yes. Yes, ma'am, please.

A It's 384 South Carolina 504, 682 Southeast 2d. 820. It was a 2009 case by the Supreme Court where they reversed the Court of Appeals.

Q Okay. And did you review the record for any issues regarding the chain of custody of any -- of the evidence that was submitted at trial? Do you recall doing that?
A I did look at that. I did look at the chain of custody, but my experience has shown that the chain of custody issues are not really very strong for appellate review. The Court has said you do not have to call all of the parties to testify as long as they can prove something, I mean that it is related. So I did not -- I felt like these -- I did not want to distract from the Batson issue, so I did not raise any issue about the chain of custody.
Q Okay.
A I don't remember if there was a problem. I think they did not call all of the parties, but I don't remember specifically.
Q Okay. Did you review the record regarding Mr. Giles seeking to relieve Ms. Cason as his trial attorney on the beginning of day two of the trial?
A I did not review it, but I do remember something about it. Was -- did you have a question about that?
Q Yes, well, did you believe that he was properly advised and that that was a willing and voluntary basic waiver of his right to representation in the trial?
A Well, I don't know that the Court really questioned him thoroughly about his ability to represent himself.

Q You do not think ---
A I don't -- I don't know that they did that thoroughly, so there was some concern about that.
Q Was that an issue ---
A I think ---
Q I'm sorry. I didn't mean to interrupt you. Was that an issue that you raised on appeal?
A No, I did not.
Q I think you said ---
A I did not raise that issue.
Q Okay. Did you think that ---
A And that may have been -- go ahead.
Q I'm sorry.
A I'm sorry.
Q Go ahead and finish your statement. I didn't mean to cut you off.
A Well, I have concerns where clients represent themselves, especially when they're looking at a long sentence as Mr. Giles received, I do think they should be -- I think they need an attorney, but I had some concerns about her being relieved, but I did not raise that issue, and that may have been something I should've done.
Q Okay. And if it had been raised, you don't know what the outcome would've been. Is that a correct statement?
A That is a correct statement, yes.

Q Okay. And who -- who was the trial judge. Do you recall who the trial judge was in this case?
A Hold on just a moment. John Hayes.
MRS. FAULKNER - Okay. I don't -- I don't have any further questions from this witness at this time, Your Honor.
CROSS EXAMINATION
BY MR. HUNTER -
Q Good morning, Ms. DuRant. This is Justin Hunter.
A Good morning.
Q Can you just explain, when you first receive a case, what do you do, what's your process once you receive -- once you're appointed to a case?
A Well, the first thing we do is send the client a letter explaining -- introducing myself and explaining -- and sending a copy of the transcript. On direct appeal we send them the full transcript. Then the next step is to read the full transcript and look for objections that an attorney made and how the judge ruled and if the -- within a legal merit based on the law, and, of course, we have to research that, research the law to determine if that issue did have legal merit. Then we proceed to brief the issues and write the brief. Hopefully, you know, we did find legal merit if them.
Q Okay, and when ---

A Do you want me to go further?
Q Certainly. Certainly you can go further.
A Well, and then we file that with -- the first place of a direct appeal is the Court of Appeals, so we filed that with the Court of Appeals, and, of course, send the client a copy, and then the attorney general's office, the State files a brief in response to that and they file that with the Court of Appeals and we send that to the client and then we wait for the Court of Appeals to rule, and if they rule in our favor, that's great, but if the State files an appeal to the Supreme Court, then we go further with that if the Supreme Court agrees to hear it, and if we lose, we file -- if we feel like there was a really good issue, we ask the South Carolina Supreme Court if they will review the decision by the Court of Appeals, and the Supreme Court in this case did do that, and they chose to hear Mr. Giles' Batson issue, and once they rule, if we feel like it's a constitutional issue, we can file a U.S. Cert Petition, which I did in Mr. Giles' case. I felt very strongly about it, and I did file a U.S. Cert Petition, but it was denied.
Q Okay, and in the South Carolina Appellate Courts, did you have oral argument in both Courts?
A I don't think we had one in the Court of Appeals, but we did in the Supreme Court.

Q Okay. And when you're reviewing these issues, are you doing it by yourself or with a team?
A By myself.
Q Okay.
A Now, we can certainly consult with our chief appellate defender and other attorneys if we choose, but we -- the decision's left up to us individually.
Q Do you recall what you did in this, if you worked by yourself?
A Basically by myself, yes.
Q Okay. And, again, when you're picking out issues to raise, at the time you're -- is it correct to say you're choosing the issues you think would be most meritorious?
A Absolutely, yes.
Q And in this case did you find any preservation issues?
A Well, it was difficult with Mr. Giles representing himself, because I don't know that he always knew when to object and raise that issue, so I didn't really -- I don't remember any preservation issues, not off the top of my head. I just don't remember that.
Q Okay. And going back to the Edwards issue, I believe you said that Edwards held that the trial court would be -- can you just explain, I guess, what Edwards says?
A Well, basically it said that if the trial court improperly granted the State's Batson motion, the State had

accused the defendant of striking white jurors totally, and the State said that was pretextual and they quashed the first jury, but it said -- the Supreme Court said the State had to demonstrate that those explanations were pretextual and they did not do that, so they said if the trial court improperly granted the State's Batson motion, then if one of the disputed jurors was seated on the second jury, then the jury was tainted, the erroneous Batson ruling had tainted the jury and prejudice was presumed.

Q Okay. And in this case I believe you said the Supreme Court ultimately ruled that the trial court was proper in --

A Yes.

Q --- denying the -- okay, and denied the defendant's Batson motion?

A Yes.

MR. HUNTER - Okay. That's all I have.

MRS. FAULKNER - I beg the Court's indulgence for one moment. (Pause) Ms. DuRant, I have just one further question. This is Beth Faulkner.

RE-DIRECT EXAMINATION

BY MRS. FAULKNER -

Q At the conclusion of the ruling on the Batson motion and once the second jury was drawn, Judge Hayes came back out and clarified that he had erroneously referred to a

case or erroneously referred to the holding of a case. Can you tell the Court about that, and did you raise that -- was that part of the issue that you raised on appeal?

A I am sorry, but I just do not remember that particular part of the transcript. I did not raise it obviously, so I don't know that my Batson motion covered it, but I just don't remember exactly what case he was referring to.

Q Okay. So you don't recall Judge Hayes referring to the Easley case and he said that that was not the law anymore? You don't recall that on the record?

A Um, let me look at my -- if you'll give me one moment. Let me see if I mentioned that. I did cite it in the brief somewhere. I don't remember the judge saying that. I do know the judge said that the reason was racially neutral, but he felt like it wasn't sufficient for Batson. I just don't remember his saying that about Easley. I'm not saying it didn't happen. I just do not remember.

MRS. FAULKNER - Okay. I don't have any further questions.

MR. HUNTER - Nothing else.

THE COURT - Thank you, ma'am.

MRS. FAULKNER - Thank you, Ms. DuRant.

MS. DURANT - Well, thank you.

MR. HUNTER - Yes, ma'am. Thank you.

MRS. FAULKNER - I call Vanessa Cason to the stand.

THE COURT - Just come right up here and let the clerk swear you in.

VANESSA CASON, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

THE COURT - Just watch your step.

DIRECT EXAMINATION

BY MRS. FAULKNER -

Q Will you please state your full name for the record?

A Vanessa Cason.

Q Okay. And, Ms. Cason, did you have the opportunity to represent Mr. Giles at some point during the trial of his criminal proceedings?

A I did.

Q Okay. And do you remember when you were appointed to represent him?

A I don't remember the exact date, no.

Q Do you remember the approximate time or the year?

A Somewhere in the neighborhood of 2006 or '07.

Q Okay. Do you recall how long you represented him?

A Until the trial, which I believe was in 2007.

Q Okay. And when you were first appointed to represent Mr. Giles, what did you do in his case? Did you have the opportunity to meet with him or what did you do?

A Well, I reviewed the file that I received. I did meet with him, I believe, on the day that I was appointed, because I believe I was appointed at Court. I met with him some time after that as well.
Q Do you recall why you first appointed to represent him, why you were appointed after Mr. Burton?
A As far as I remember, I believe we were in Court that day and Mr. Giles wanted Mr. Burton to be relieved as his counsel and the judge appointed me as his counsel.
Q Okay. And so -- and jumping back forward, when you first met with Mr. Giles, do you remember having any conversations with him about how the case would proceed or what you were going to do at that point?
A I don't recall, but I -- I'm sure I would have.
Q Do you recall how many times you met with Mr. Giles?
A Not off the top of my head, but I probably met with him once a month.
Q Okay. Do you recall what you did in preparation for his trial?
A I reviewed the discovery. I spoke with him. I attempted to speak with any witnesses that he had given me. I believe at some point, and I'm not sure, there was an investigator, and I don't -- I don't recall, but I think there was. I did go to the -- to the hospital there in Union and spoke with someone.

Q Okay. Let's go back to the discovery for just a minute. You said that you went over the discovery with Mr. Giles. What -- did you ever file a Rule 5 or a Brady motion in this case?
A Not to my knowledge.
Q Okay, so you never did that. Did you ever formally get evidence from the State?
A Yes. I received the file from Mr. Burton and I received the file, the discovery, from the solicitor's office I think twice, once just prior to trial and once just after I was appointed.
Q Okay. How were you ever -- were you ever sure that you received all the information that the State had against Mr. Giles?
A I believe so.
Q How were you sure about that?
A All of the files were practically the same.
Q Okay. Did you have -- what was your defense strategy with Mr. Giles?
A Well, the defense as far as I recall was he didn't do it, he wasn't there, he couldn't have been there, which is what Mr. Giles gave me.
Q Okay. Do you remember when the alleged crime occurred?
A No, I don't.

Q So you don't remember the approximate year?
A No, I don't.
Q Was it possible that it would've been in 2003?
A It's possible.
Q And you said that you started representing him in 2000 -- when did you say?
A 2006 or 2007, I believe.
Q Okay. So he wasn't charged until shortly before you started representing him. Correct?
A Yes, that's correct.
Q Okay. And so what did you do as it relates to your defense of Mr. Giles? What did you do in sort of preparation or trying to determine whether or not it was, in fact, his blood that was at the scene of the crime?
A Reviewed the discovery, spoke with Mr. Giles, attempted to interview any witnesses that he would've given me. I ---
Q Okay, well, let's jump forward for a minute and -- you already talked about that, but how about the evidence? Did you ever obtain the chain of custody on any of the pieces of evidence that was ultimately submitted at trial?
A I did.
Q Okay, and tell me about that. Do you remember what the different pieces of evidence were?
A Not off the top of my head.

Q Okay. Do you remember who the investigator was in the case?
A I -- I recall Investigator Nix, but I'm sure there were other investigators, so I don't recall.
Q Okay. Did you ever talk with Investigator Nix?
A I did.
Q Okay. You said -- I think you went down to the hospital?
A To the hospital, yes.
Q Okay, what'd you go down to the hospital for?
A Well, I went over to the hospital. I thought that -- apparently, blood was drawn at the hospital or -- to find out what their procedure was. I don't really recall, but I do recall going to the hospital, talking with staff there.
Q Okay. Did you ever talk to Mr. Giles about what your findings were from the hospital or anything that you found as it related to the evidence or chain of custody?
A Yes, I'm sure I would have.
Q You're sure you did or you -- you don't recall?
A I don't recall the actual conversation, but I'm sure I would have.
Q Okay. Where would you have -- where would you have expected the chain of custody or chains of custody to be in Mr. Giles' case?
A It would've been included in the discovery.

Q I know, but from what agencies?
A From Union County Public Safety, from SLED.
Q Okay, did you ever get the chain of custody from Union Public Safety Department?
A I don't recall.
Q Okay. Would that have been something that you normally would have done in the case of your representation of a client with the charges and allegations against Mr. Giles?
A Yes.
Q Okay. And you would've gotten the chain of custody from SLED, also?
A I did.
Q Okay. When did you get the SLED chain of custody? Do you know?
A I believe that would've been in the discovery that I received.
Q Okay.
MRS. FAULKNER - May I approach the witness, Your Honor.
THE COURT - Yes, ma'am.
Q Do you recognize this document that I'm showing you, Ms. Cason?
A Yes.
Q And what is that document?

A It is a letter from the solicitor and it's a discovery -- a list of discovery items would be the second page.
Q Okay. And can you read to the Court what that list -- well, basically is a letter from who?
A The solicitor.
Q Okay, and it was who? John Anthony?
A John Anthony.
Q Okay, and he was the solicitor on the case that tried this case?
A Yes.
Q Okay. And what was the letter in reference to?
A In reference to the discovery items.
Q Okay, and what was the date of the letter?
A August 20th, 2007.
Q Okay. And when did Mr. Giles' trial -- or case go to trial? Do you recall?
A I don't. It would've been somewhere around ---
Q Early September?
A It would've been in 2007.
Q Okay. And that list -- accompanying that letter is a list of documents that you should've received from the solicitor's office. Is that correct?
A Yes.
Q Okay. And can you tell the Court what that list encompassed?

A SLED inventory sheets, NCIC report, booking forms, SLED DNA reports, SLED evidence processing reports, SLED DNA report, Consent Order for blood sample, SLED latent prints report, line-up, Union Police Department incident report, warrants, SLED inventory sheet and copies of photographs.

MRS. FAULKNER - Okay. Your Honor, I seek to introduce this into evidence as Applicant's Number 3.

MR. HUNTER - No objection.

THE COURT - Without objection.

(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 3.)

Q Ms. Cason, anywhere on that document did it refer to the chain of custody from the Union Public Safety Department?

A No.

Q And that's originally where Mr. Nix supposedly took the evidence once it was collected. Is that correct?

A I don't know.

Q But you testified earlier that you thought that would've been important to get that chain of custody given this case. Correct?

A Yes.

Q So you, obviously, never had a chance to go over that with Mr. Giles, did you?

A Go over what?
Q The chain of custody from Union Public Safety Department.
A If it's not in there, then I did not go over it with him, but what would've been in there would've been the SLED -- SLED documents, and I did go over that with him.
Q Okay, but you never obtained the Union County Public Safety Department chain of custody, did you?
A I don't know.
Q Okay. Was it -- you sent me a copy of your file. Is that correct?
A Yes.
Q Okay, and if it was not in that file, you wouldn't have gotten it. Correct?
A I don't know.
Q Do you have any evidence that suggest that you did have it or go over it or send it to my client?
A I don't know if you're talking -- are you talking about from Union County?
Q Yes, ma'am.
A Okay. I -- I don't have any record of it if it -- if it wasn't in the file.
MRS. FAULKNER - May I approach the witness, Your Honor?
THE COURT - Yes, ma'am.

Q Ms. Cason, do you recognize this document that I'm showing you?
A Yes.
Q And what is this document?
A This is the SLED chain of custody?
Q Okay. Do you recall when you got the SLED chain of custody?
A I believe it would've been in the information that I received from the solicitor's office both times.
Q Okay. So you originally got this in the file.
A In the ---
Q Like when you first started representing Mr. Giles.
A Right.
Q Okay. And what's the -- what's the date that's printed on the bottom of this document?
A Says 8/31/07.
Q Okay. That would've been shortly before the trial of Mr. Giles. Is that correct?
A Possibly.
Q Okay. Did you ever have this document prior to August 31st, 2007?
A I believe I did.
Q Are you sure you did or you just believe you maybe did?

A I believe I did, because I reviewed the evidence over at -- at the police department, so I had a chain of custody document. I don't know if it was this one or another one.

MRS. FAULKNER - Your Honor, I seek to introduce this into evidence as Applicant's Number 4, I believe.

MR. HUNTER - No objection.

THE COURT - Without objection.

(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 4.)

Q Ms. Cason, do you know when you would've provided this document to Mr. Giles?

A It would've been when I visited him at the jail.

Q Is it possible that you presented it to him the day before trial?

A It's possible, if I visited him at the jail that day.

Q Okay. Ms. Cason, in preparation for the trial, what did you review with Mr. Giles as it related to trial procedure or jury selection?

A (No response)

Q Let me -- let me back up for a minute. What do you normally go through with your clients in -- at the start of a case as it relates to trial procedure or jury selection?

A Well, we first talk about whether or not there's going to be a trial, and I think that's what we discussed first. We went over all of the evidence, and at some point I think

he was -- we were -- or he was entertaining an offer, and after that, when the offer was not accepted, then we would've gone over how a jury is selected and what kinds of things to look for and what we would receive on the day of trial in preparing to select a jury.

Q Okay. So did you go over how the selection of the jury occurs with Mr. Giles?

A I can't say for sure, but I believe I would have.

Q Okay. And do you recall the Batson motion in this trial?

A I do recall some aspects.

Q Okay. And what was the reason for the Batson motion?

A It was -- this trial was -- the solicitor believed that Mr. Giles did not want, I believe, a couple of the jurors on the jury because it was racially motivated.

Q Okay. And what was the reasoning -- do you recall the reasoning that you provided the Court why y'all have struck those jurors?

A I believe it was Mr. Giles just didn't believe that they should be on the jury.

Q Okay. And he said something to the effect that he didn't feel right about them, something to that effect?

A I don't recall that.

Q Okay. Did you ever have a discussion with Mr. Giles about proper reasons to strike a juror?

A Yes.
Q And do you -- well, what -- what would you have told him in a normal case? What would you have told a client?
A I would've told him that he needed a valid reason and it can't be because of their race.
Q Okay. And you're sure that you had that conversation with Mr. Giles?
A I'm positive I had that conversation with him.
Q And after -- a new jury was, actually, selected. Correct? The first jury was basically thrown out, and a second jury was selected. Correct?
A I don't recall without looking at the transcript.
Q So you don't recall four jurors that were struck the first time being seated on the second jury? You don't recall that?
A Not without looking at the transcript, no.
Q Okay. Did you ever discuss -- well, let me -- let me jump forward for a minute. Did you ever have a conversation with Mr. Giles about representing himself at some point? Did he ever ask you or tell you that he wanted to have you relieved as his counsel?
A I do not recall -- I do not recall that, but according to the transcript then, yes, but I don't recall that.
Q You don't recall that, but it did happen. Correct?
A Yes.

Q Okay. So do you recall any conversation you would've had with Mr. Giles about the ramifications of self-representation or the dangers?
A I don't recall having that conversation.
Q Okay. So is it possible that you didn't have that conversation with him?
A It's possible.
Q I want to go back for a few minutes. Do you recall what happened at the start of the trial?
A (No response)
Q You gave an opening statement -- is that correct? -- at the start of the trial after the jury was selected.
A No, I don't recall.
Q You don't recall that?
A No.
Q That's normally how the trial proceeds, though. Correct?
A Normally.
MRS. FAULKNER - May I approach the witness?
THE COURT - You may.
Q Ms. Cason, I'm showing to you the transcript from this trial. Can you turn to the transcript where you gave the opening statement?
A (No response)
Q I'll direct you to page 59 of volume I.

A (Witness complies)
Q Can you read your opening statement to the Court?
A Good morning, ladies and gentlemen of the jury. James Giles is wrongly accused of kidnapping, strong-armed robbery and burglary in the first degree. The defense will attempt to show that the State's evidence is questionable at best, and that many of the items that the State is going to put up have been tampered with and thereby showing that James Giles is again wrongly accused of the crimes that he is charged with. Thank you.
Q And that was your entire opening statement. Correct?
A From this transcript, yes.
Q And the transcript you do believe is an accurate representation of what happened at the trial. Correct?
A I do.
Q How many statements -- how many sentences was that opening statement?
A Three.
Q Is that normal for your opening statements when you try a case with a jury?
A I don't know if it's normal.
Q But is that all that you believe to be necessary for the opening statement of Mr. Giles?
A If that was the opening statement, then, yes, I believed it to be appropriate.

Q Can you turn on in the transcript to the testimony of Mr. Gault? I'm sorry, Mr. Crooks who was from SLED? That would be on page 123-140.
A (Witness complies)
Q And who was Mr. Crooks? Do you recall?
A No.
Q Who was he? Do you recall? I'm sorry. Maybe you answered that.
A I don't recall who he was.
Q Was he from SLED?
A I don't know.
Q So you don't know what testimony he presented?
A Yeah, he was from SLED.
Q Okay. If you don't mind, take a minute -- and what -- what did he actually -- what did the State call him for? Page 126, line 7.
A An expert in the field of fingerprint analysis and evidence processor.
Q Okay. Did you ask -- and were there any other witnesses called from SLED in the trial of this case?
A I don't know.
Q Okay. Did you cross examine Mr. Crooks at all? Looking at page 140, maybe, of his testimony, 140, line 18.
A No.

Q Do you not think it might be important to ask him any questions?
A If I didn't, then no.
Q Okay. And was it during his testimony that there was a discrepancy in the chain of custody regarding evidence that was on the back side of a cable cord? Do you recall that?
A I recall some testimony about that, but I don't know if it was his testimony.
Q Okay. Do you think that would've been important to cross examine somebody on that issue?
A If I didn't have the answer, yes.
Q Well, let me ask you, what was the issue with the back side of the cable cord? Do you recall that?
A As I recall, it was the wording that was used about a cable cord.
Q Was there ever a cable cord -- and we're talking about the telephone cable cord. Is that correct?
A I believe so.
Q So you don't recall.
A (No response)
Q You don't recall anything about a reference to the back side of a cable cord being a telephone cable cord?
A I vaguely remember something about the -- the terminology that was used in reference to a cord.

Q Okay. But you don't recall cross examining him or thinking that that's important to cross examine him on that issue.
A I did not cross examine him on that issue.
MRS. FAULKNER - I beg the Court's indulgence.
Q Regarding the kidnapping charge, do you recall why Mr. Giles was charged with kidnapping?
A As I recall, the victim was -- he held the victim and didn't allow her to leave the residence.
Q That was what you call (sic) regarding the allegations? That's what you call (sic) that the allegations were?
A That's what I recall.
Q Okay. Did you believe that the testimony presented, actually, sufficed to prove -- allowed the State to prove beyond a reasonable doubt that Mr. Giles was, in fact, guilty of kidnapping?
A I don't -- I don't recall the testimony.
Q Did Ms. Wilburn testify?
A She did.
Q Who was Ms. Wilburn?
A She was the victim.
Q Okay. I direct your testimony to page 120 of the transcript. Did Ms. Wilburn ever testify that Mr. Giles

held her against her will at any time? Do you recall what her testimony was?
A (No response)
Q Going back to page -- sorry -- 118 at lines 10 through 12. Can you tell what Ms. -- read to the Court what Ms. Wilburn testifies regarding her trying to get away from Mr. Giles?
A He didn't go, the door was locked, the key was not in the door. I had already locked that, and this was at 2:00 o'clock at night.
Q Did he ever present any testimony -- or did she ever present any testimony that Mr. Giles held her against her will, that you recall?
A I believe she did.
Q And if you'll just take a minute and look at that transcript.
A Page 117?
Q Do you see anywhere in there her testimony that she said that Mr. Giles wouldn't let her go?
A Yeah, page 117, line 16. Well, I couldn't get out the back and so he came behind me, like I said, he held on to the back of my sweater. He had the scissors, so that's when I -- I came back.
Q Keep reading.

A I can't remember the exact moment when I went back there, but I did, I tried to get him to go ahead and take my car. I said, you know, I think he said again that I'm going to kill you, and I said, you don't need to kill me, take the car. I said you've already pulled the telephone out of the wall, and I don't have no other telephone, so there's no way that I can report you this evening, just take the car keys and go and take the silver. Did he let you leave your house? Did he do what? Did he let you leave when you tried to get out? Did he do what? Did he let you leave your house when you tried to get out the back door? No. He didn't go out. Okay. He didn't go. The door was locked, the key was not in the door. I had already locked that, and this was at 2:00 o'clock at night. All right, and then, Ms. Wilburn, how did -- how did he leave the house, what happened? Well, he was looking through the pocket books. I don't know if he went into the closet, but he was looking through a bunch of pocket books. I don't know. See I ran out to save my life. I was still in the living room I believe when I saw him. He just rushed by. He didn't pay no more attention to me, and he went to the porch and jumped over the railing and ran off real fast, and I slammed the door, and I stayed there all evening, and when 9:00 o'clock came in the morning, I ran

to the police and they came over right away. Do you want me to keep reading?
Q Okay, and what you're just reading is a direct examination of her by Mr. Anthony representing the State. Correct?
A Yes.
Q Okay. And then did you -- did you believe that there was any discrepancy in her testimony as to whether or not Mr. Giles had, in fact, restrained her?
A I don't know.
Q Did you cross examine her about that?
A Yes, I believe so.
Q And I direct you to page 122 where you were examining her on line 25. If you could read that for the Court.
A Okay, Ms. Wilburn, you said that when you went to go out the back door, you were prohibited from going out the back door, because it was locked. Is that correct? You didn't get out the back door because it was locked? Well, I had locked it earlier. See, that was 2:00 o'clock in the morning. My doors were locked, so I couldn't get out, but, of course, you know, when somebody's frightening you like that, you are going to run and try to get out, but I could not get out.
Q Okay. And that's all you asked her about her trying to get away from Mr. Giles. Is that correct?

A I -- I'm not sure without looking at the rest of the transcript.
Q At any point did you file any motion to dismiss the kidnapping charge?
A No.
Q Okay. Prior to the start of the case, did you have any evidence that there was any statement about -- from Ms. Wilburn that Mr. Giles held her against her will?
A Prior to that did I have a statement?
Q Prior to the start of the trial.
A I believe there would've been a witness statement.
Q You think there was a witness statement of Ms. Wilburn?
A I believe. I don't know.
Q Okay, so if the transcript reflects that there was never a witness statement from Ms. Wilburn, that would be correct. Right?
A Correct.
Q Did you ever file any motions to suppress any evidence based on lack of chain of custody or any other motions in this case?
A Not to my knowledge.
Q There were some photographs taken from the crime scene when the crime originally occurred, and they were testified

to by Detective -- or Investigator Nix. Do you recall that?
A No, I don't.
Q Okay. Do you know who the pictures were, actually, taken by?
A No, I don't.
Q If the transcript reflects that they were, actually, taken by Mr. Gault, would you disagree with that?
A No.
Q By William F. Gault?
A I wouldn't.
Q And did you have any information about who, actually, took those pictures before they were admitted to trial?
A I don't -- I don't recall.
Q Do you recall ever requiring the proper foundation to be laid for those pictures at all?
A Not without looking at the transcript.
Q Do you recall having any conversations with Mr. Giles about a potential plea that he was offered by the State?
A Yes.
Q Tell the court about that.
A Well, when I first got the case, I talked with him about the plea offer, and then when I got the ---
Q What was the plea offer?
A I believe it was ten years.

Q Did you ever submit that to Mr. Giles, discuss that with him, send it to him in writing, anything?
A I would've gone over it with him in person.
Q Okay, do you know when that was?
A When I met with him on the day that I was appointed.
MRS. FAULKNER - Beg the Court's indulgence for one moment. (Pause) May I approach the witness, Your Honor?
THE COURT - Yes, ma'am.
Q Ms. Cason, do you recognize this document that I'm showing you?
A Yes.
Q Okay, and what is that document?
A It's a letter to Mr. Giles.
Q Okay, what's the date of that document?
A March 1st, 2010.
Q Okay, which would've been after his trial. Correct?
A Yes.
Q Okay. And can you read that -- the letter to the Court?
A Dear Mr. Giles, this letter is in response to your recent letters in which you continue to ask for items from your file and threaten to report me to the Office of Disciplinary Counsel. I must tell you that I am tired of responding to the same request for information every two or

three months. First, you have requested certain forms, A, B, C from your file. As I told you repeatedly, I do not have those items. The forms that you are requesting were never completed by the Union Public Safety or the detective in this case. You would like me to tell you why the forms were not completed, however, I do not know the answer as I do not work for the Union Public Safety. You will recall that you were given two opportunities at trial to question the legitimacy of any and all evidence offered with regard to your blood sample and any forms that were or were not completed in this case. Second, you were requested -- you have requested 82 pages of the SLED forms, however, you have all of those forms in your possession. Those 82 pages consists of supplemental reports, serology analysis and DNA analysis of individual items collected at the scene of the crime and forwarded to SLED. The other 18 pages are the actual chain of custody of those items. Again, you are requesting information that was given to you at trial and also forwarded to you post-trial. I'm not at liberty to continue to make copies and forward them to you without payment for those copies. Finally, your letter indicates that you plan to report me to the Office of Disciplinary Counsel. Your threats are, actually, unnecessary. It is your choice whether you -- whether or not you want to indicate a second report for the same complaint.

MRS. FAULKER - I seek to introduce this into evidence as Applicant's Number 5.

MR. HUNTER - No objection.

THE COURT - In without objection.

(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 5.)

Q Ms. Cason, it referred to documents that Mr. Giles requested containing certain forms A, B and C, and you said that you -- those documents were never completed by the Union Public Safety Department or the detective. What was Mr. Giles referring to?

A I don't know.

Q You don't know what he was referring to?

A No.

Q Did you -- is it fair to say that that might be referring to or he maybe was referring to the chain of custody documents from the Union Public Safety Department?

A I don't know.

MRS. FAULKNER - I have no further questions for this witness, Your Honor.

THE COURT - All right, let's take a little short recess and we'll come right back. Ma'am, you may step down, but again, remind you, you're in the process of testifying, so don't discuss your substance of your testimony with anyone.

MS. CASON - Okay.

(WHEREUPON, RECESS TAKEN)

THE COURT - You may be seated.

MR. HUNTER - May it please the Court, Your Honor.

CROSS EXAMINATION

BY MR. HUNTER -

Q So, Ms. Cason, can you just go over the State's evidence against Mr. Giles, what they were producing at trial, if you recall?

A (No response)

Q Just what they used to prove their case.

A The blood evidence, the fact that the blood taken at the scene matched what was in the database for Mr. Giles' DNA.

Q Now, when you say matched database, which database are you referring to? Do you recall? Was that through SLED?

A Yes.

Q Okay. And so there's blood evidence at the scene. Do you recall what other evidence they presented at trial?

A The photograph line-up from the -- the victim where she identified Mr. Giles, I believe.

MRS. FAULKNER - Your Honor, I -- I object. That's not in evidence.

THE COURT - All right, you can cross examine her on her credibility.

Q And if you recall, I guess, through the discovery and the statements or investigative reports, can you just go over what your interpretation of what the victim said occurred that night?
A As I recall, someone broke into her home. They broke a window, I believe, and entered her home. I'm not sure -- I don't recall whether they climbed through the window or broke the window on the door, and she said that, as I recall, that she was held against her will, that she was not allowed to leave the home or couldn't leave the home. I want to say either her purse was taken or items out of her purse were taken. That's what I recall.
Q Okay. And while we're talking about the kidnapping, I know you testified earlier as to certain things the victim may have said -- do you still have the transcript up there with you?
A Yes.
Q Can you turn to page 116, please?
A (Witness complies)
Q Actually, if we can look at page 115, line 24. Can you read from 115, line 24 to 116, line 4?
A So, Ms. Wilburn, after he got the scissors away from you, where did you go and where did he go? Well, certainly I tried to run out the back door, but it was locked, and he prevented me from doing that because he had the scissors,

see, and I think he had his left hand on the back of my sweater there holding onto me.
Q Okay, now, given that testimony and your knowledge of the law, do you believe that supports a kidnapping charge?
A Yes.
Q Okay. And I'm just going to run through a couple things in no particular order. The jury strikes that you made, do you recall if that was your decision to strike the jurors or Mr. Giles' decision to strike the jurors?
A It was Mr. Giles' decision.
Q Okay. And, again, another point in no particular order, the letter that you sent to him that was just entered into evidence, do you recall the date of that letter?
A I believe the year was 2010. That's all I recall.
Q Okay, 2010. That's not -- that was a couple years after the trial ended.
A Like three years after.
Q Okay. And the plea offers that you relayed to him, did he reject these plea offers?
A Yes.
Q Did he ever want to plead guilty to these charges?
A I -- I don't know.
Q Okay. And at trial -- well, there's been a lot of discussion so far about chain of custody. From what you

recall at trial, do you recall any issues regarding the evidence or the chain of custody to the particular pieces of evidence that you should've challenged, just from what you recall?

A What I recall is there was some issue about the terminology used to identify a telephone cord.

Q Okay, and while we're talking about that, can you go to your transcript to page 133?

A (Witness complies)

Q And this is the testimony of Jeffrey Crooks from SLED. Page 133, can you just read lines 8 through 10?

A So on this swab envelope I wrote back side on cable end referring to the end of the handset where the cable, the phone cord, would go into the handset.

Q Okay, and then can you then go to 133, line 24 over to 134, line 3?

A Do you think it's possible that someone may have read the word, your word end and thought you had written cord? Right. If they read this without knowing why I put it on there, I can only assume that they would interpret that to mean it came from a cord.

Q Okay, so as far as this piece of evidence is concerned, I guess there's a discrepancy on whether it says -- whether that, I guess, his terminology whether he used

the word end or cord? Is that how this issue could be characterized?
A I guess.
Q Okay. But regardless of whether it said end or cord -- if you recall -- regardless of whether it said end or cord, it was still referring to the same piece of evidence. Correct?
A That's my recollection.
MR. HUNTER - Okay. That's all I have.
THE COURT - Any re-direct?
MRS. FAULKNER - Briefly, Your Honor.
RE-DIRECT EXAMINATION
BY MRS. FAULKNER -
Q Ms. Cason, what you just read was testimony from Mr. Crooks from SLED. Is that correct?
A (No response)
Q Where he said he wrote back side of the cable end. That was -- that was Mr. Crooks' testimony. Correct?
A Yes.
Q Okay. That was also the same witness that you didn't provide any cross examination on. Correct?
A Yes, that's correct.
Q And to your recollection, was there a cable cord ever introduced or collected as evidence?

A I -- I don't recall that. The confusion was what this cord -- the proper name for this cord. That's my recollection.

Q Okay, so Mr. Crooks said he wrote back side of cable end and somehow that got translated to cable cord somewhere in the chain of custody. Is that correct?

A Uh, yes.

MRS. FAULKNER - I have no further questions for this witness, Your Honor.

THE COURT - Thank you, ma'am. You may step down. Any reason why the witness cannot be excused?

MRS. FAULKNER - Your Honor, I reserve the right to recall her ---

THE COURT - All right.

MRS. FAULKNER - --- if I need to. I don't anticipate Mr. Giles' testimony taking that long, and he's the only other witness I have.

THE COURT - All right. Ma'am, if you would, just stay with us. You ready to call your next witness?

MRS. FAULKNER - I call James Giles to the stand.

JAMES GILES, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MRS. FAULKNER -

Q Will, you please state your name for the record?

A James Albert Giles.
Q Okay. Mr. Giles, you're here on an application for post-conviction relief that filed. Is that correct?
A Yes. Yes, ma'am.
Q Okay. And can you tell the Court what you're currently incarcerated regarding what charges you're on?
A Strong-armed robbery, kidnapping, first degree burglary.
Q Okay. And what's your sentence under those charges?
A Well, I was sentenced to thirty years, but the judge for some reason reduced them to twenty years.
Q Okay, after -- now, let me back up for a minute. Did you go to a trial or did you plead guilty?
A I went to a trial.
Q Okay. And how many days was your trial?
A Two days.
Q And it was before The Honorable John Hayes. Right?
A Yes, ma'am.
Q Okay. And you said that you were convicted of all those charges?
A Yes, ma'am.
Q And your sentence was reduced to twenty -- well, you originally received a thirty year sentence and it was reduced to twenty years. When was that? When did that happen?

A Well, it happened on the 12th, but I didn't find out -- I was down at Kirkland getting -- getting intaked (sic) in and a fax come across the system and the lady was doing my fingerprints, and she yeah, Mr. James Giles in there, and she say, yeah, she said, well, hold, wait a minute, his sentence being reduced from thirty years to twenty years, so come to find out, that Judge Hayes had -- the day after he -- he called the clerk of court the next morning and tell the clerk of court due to our problem he wasn't going to have Court for the rest of the week, but he intend to bring me back to Court and reduce my sentence from thirty years to twenty years on his own motion and did it in my absence. And I tried to get a copy of that but nobody never would give me none.

Q Okay. But at the conclusion of your trial during the sentencing portion, you were, in fact, sentenced to thirty years. Correct?

A Yes, ma'am.

Q But you're serving the twenty sentence right now.

A Yes, ma'am.

Q When did your sentence start?

A It started June the 27th -- July the 18th. I got transferred from Buffalo, New York to the county jail.

Q Okay. And it started in July of 2007?

A '06.

Q '06.
A Yes, ma'am.
Q Okay. So you were charged back in July, 2006.
A Yes, ma'am.
Q Okay. Now, when were the alleged crimes, actually, committed?
A December the 5th, 2003.
Q Okay. About three years before you were ever charged. Correct?
A Yes, ma'am.
Q Okay. And when did you end up going to trial on these charges?
A September the 11th, 2007.
Q Okay, and it was a two day trial September 11th and 12th?
A Yes, ma'am.
Q Okay. Who represented you during your trial?
A Mr. Burton Ross (sic) and Ms. Vanessa Cason.
Q Okay, now you said Mr. Ross (sic) represented you. He didn't, actually, represent you during the trial, did he?
A What -- no, not during the trial.
Q Okay, how ---
A Ms. ---
Q And I'm not trying to interrupt you, but the court reporter's got to take down everything ---

A Okay.
Q --- you say and I say. So, but how long did Mr. Burton represent you?
A He -- I got Mr. Burton round about in September. I went -- I was in jail about fifty-nine -- yeah, I got him July, August, round about August or September of 2006 ---
Q Okay.
A --- til I think around about February, 2007.
Q Okay. How long did he represent you?
A Who?
Q Mr. Burton. How long did he represent you?
A That's what I said. From like August til February.
Q Oh, until February. Okay. Why did he stop representing you?
A Because I had a issue with him, because when I got -- well, when they transported me to Union County Jail on September 11th, 2006, I was going down there for a bond hearing, and when I got down there to the county jail in the back of the courtroom, he asked me to sign a Consent Order, and he told me if I signed the Consent Order that if I cooperate -- I had told him, I said I been -- I'm down here for a bond hearing. I said I been in jail for fifty-nine days and nobody ain't gave me no bond. And he told me, well, you here for a bond. He said if you cooperate with the judge, he probably set you a bond today. So he --

he put a Consent Order to me and I -- and I signed the Consent Order and they took me down there and had my blood transferred, I mean took from the hospital. So after they took my blood, the SLED -- the investigator left the hospital with my blood unsealed.

Q Okay. The -- you at that -- at some point after you signed that Order and your blood was taken, you sought to have Mr. Burton relieved. Is that correct?

A Yes, ma'am.

Q Okay. And now you're asserting on your post-conviction relief application that Mr. Burton provided in assistance (sic) ---

A Ineffective assistance of counsel.

Q --- ineffective assistance of counsel -- thank you ---

A Yes, ma'am.

Q --- during representation of you. Is that correct?

A Yes, ma'am.

Q And why is that? What's your claim ---

A Well, I'm claiming ineffective assistance of counsel on Mr. Ross Burton.

Q But -- but what did he do? What is your allegation that he was ineffective or his representation was ineffective about the Order, Consent Oorder?

A In reference of the State Consent Order, the suspect sample to be taken violate the constitution and statutory

guidelines in Schmerber vs. California. In light of the South Carolina Constitution offered 110, 112 and South Carolina statute 1714 (sic) supported by the Fourth, Fifth and Fourteenth Amendment of the United States.

Q Okay. So you, basically, alleging that it's a Schmerber violation. Is that correct?

A Yes, ma'am.

Q Okay. Is there any other claim you have against Mr. Burton?

A No, ma'am.

Q Okay. All right, and then you were appointed another attorney after Mr. Burton was relieved?

A Yes, ma'am.

Q Okay. And who was that attorney?

A Vanessa Cason. Ms. Vanessa Cason.

Q Okay, and she was appointed almost immediately after Mr. Burton was relieved?

A The same -- the same day. We was in Court and judge appointed her to her (sic), appointed her to me.

Q Okay. And you are today alleging that she provided ineffective assistance of counsel during her representation of you. Is that correct?

A Yes, ma'am.

Q And you're asserting that based on a number of grounds against her. Correct?

A Yes, ma'am.
Q Okay. Did you ever have any discussion with Ms. Cason about -- about Schmerber Order?
A Yeah, I told her I was unhappy with how they took my blood and the Consent Order and stuff.
Q Okay. And that's one of the reasons ---
A Why I ---
Q Well, let me ask you this. Did she ever do anything as a follow-up to that conversation you had with her?
A No, ma'am.
Q Okay. Did she file any motions to suppress that evidence that resulted from the collection of your blood?
A No, ma'am.
Q Okay, and is that one of the reasons that you're asserting that she was ineffective in her representation of you?
A Yeah and several more reasons.
Q Okay, and I know you have several more reasons, but that's one of the reasons. Correct?
A Yes, ma'am, yes, ma'am, that's the issue I'm raising, too.
Q Okay. Now, did Ms. Cason at any time -- let me -- let me go back for just a minute. When Ms. Cason was first appointed to represent you, what did she do? What did she do at the start of her representation of you?

A She -- she came to Union County jail and talked to me.
Q Okay. Was that immediately after she was appointed?
A Probably about a month or so after she appointed (sic) she came.
Q How many times did you meet with Ms. Cason of your recollection?
A I think possibly about four, four.
Q About four times?
A About four times.
Q Okay. And she started representing you in February --
-
A Yes, ---
Q --- in 2007?
A Yes, ma'am.
Q Okay. And the case went to trial in September of 2007.
A Yes, ma'am.
Q Okay. Did you ever -- were you ever presented with any plea offers from ---
A Not ---
Q --- Ms. Cason?
A Not with Ms. -- not from Ms. Cason.
Q Okay.
A No. I was -- I was offered a plea offer with Mr. Burton.

Q Okay.
A He offered me -- he told me that they dropped the charge of second degree burglary to -- first degree burglary to second degree burglary. If I plead to kidnapping and strong-armed robbery, then I would serve eight and a half years, but that's a violent sentence. That wasn't a true plea offer.
Q Okay.
A I would've served more than eight and a half years.
Q Okay. So after that initial plea offer, you don't recall having any plea offers presented to you from Ms. Cason -- from the State through Ms. Cason.
A No, ma'am. The only time Ms. Cason brought a plea offer to my attention, when we was back there in the -- in the back room -- which is that's one of my issues I'm raising -- at recess, my jury trial, she come and tell me that the judge -- I mean, uh, the solicitor had a twenty year plea offer if I would stop the trial and plead guilty, and she told me that -- that I know that Judge Hayes is the worst judge to come -- to come to town, and if I don't take the plea offer, I probably get sentenced to life in jail. At that moment I feel Ms. Cason misled me, because I never been served a written notice on that. I got the argument once we get to it though, because I want to put all this on

record if Your Honor would let me. All my -- all my issues I want to put on record.

Q But you're talking about you were never served with notice that the State was intending to seek life without parole against you. Is that correct?

A Right.

Q Okay. Now, did Ms. Cason ever discuss how -- when you got to the -- strike that. When you got to the stage at which time you were going to go trial, did you ever have any conservations with Ms. Cason regarding the discovery of your case?

A No, ma'am.

Q Okay.

A Ms. -- Ms. Cason never did give me no discovery to my case whatsoever. Only discovery I had, I got from Mr. Burton when he was my lawyer, and it's a whole lot of stuff was missing out of it, and we'll get to that, I guess.

Q Okay. Did you ever -- when it came time to try the case, did Ms. Cason ever discuss with you trial procedure or how the jury was going to be selected in this case?

A No, ma'am. Ms. Cason put -- just got me out there and they started picking the jury, and once I picked the jury and they struck the jury, then she said that -- I figured this was going happen -- and then she wouldn't let me

participate in picking my second jury. She told me I couldn't participate no more.
Q Okay. You were participating in the selection of the first jury though. Correct?
A Yes, ma'am.
Q And then a Batson motion was made, ---
A Yes, ma'am.
Q --- and then a second jury was selected. Correct?
A Yes, ma'am.
Q Okay. During the selection of the first jury, what was the process? How were you involved in that? Tell us about the communication you had with Vanessa during that time.
A Well, she never told me nothing, just -- I never been on no jury trial. I didn't know, so when the juror walk up there and they say present them or -- how do they say it? -- present them or ---
Q Or strike the juror.
A --- or strike them -- I say present them and then if I didn't like -- if I didn't feel like they're right for my jury, I told her no and she'd say strike them, but I didn't -- I didn't really know what was going on.
Q So that's the only communication you had with her about that.

A Yes, ma'am. I had no knowledge about no jury selection. She didn't -- I didn't even have a jury list. I got my jury list -- I wrote her later on after I got to my destination and asked her for a jury list, and I finally got one, but I was never presented a jury list before my jury was picked.

Q Okay. So did Ms. Cason ever have a discussion with you regarding a strike having to be race neutral?

A I never heard that word. That's why I didn't know how to answer when the judge ask me give a racial neutral reason for striking the jurors. I told him, I said, I feel like they weren't right for my jury, and she -- she took it upon herself and told the judge that he say he feel like they ain't right for the jury, and I believe that would be the answer for all the jurors they use the strikes on, but by her being a professional lawyer, I feel like she would've gave a racial neutral reason, but I didn't know what they were talking about, so I couldn't have gave none. Now I understand what's going on, but back then I didn't -- I didn't know nothing about that.

Q Okay. So how many jurors were, actually, challenged?

A It was eight white jurors.

Q Okay. That were challenged.

A Right.

Q Okay. And then the second jury was chosen, and what happened when that second jury was chosen?
A Well, they, uh, -- they -- the State -- hollered for -- they put in for a Batson motion -- right? -- so when the State put in for a Batson motion, they told me to give a racial neutral reason, I gave racial neutral reason, Judge Hayes granted the State's Batson motion on the authority of a case called Easley, and he -- and, um, he said that the reason had to be clear and said my reason was racial neutral, but didn't give the Court nothing to grips on, so he granted -- he granted the State a Batson motion -- he granted the State the Batson motion, they selected a whole new jury. During that jury selection, four jurors that I had said I didn't want on my first jury were back on my -- were put back on my second jury, and Judge Hayes appointed one of them to be the foreman of the jury. My thing is -- and after they selected the second jury and swore them in, Judge Hayes dismissed the jury and then Judge Hayes goes back on record and said that he based his ruling on a error of law, which was the Easley case that's not law no more.
Q Okay. At any point during that time, did Ms. Cason object to those four jurors being put back on the second jury?
A No, ma'am.

Q Okay. And you had -- and that was not an issue -- Ms. DuRant testified earlier -- that was not an issue she raised on appeal either. Is that correct?
A Well, Ms. DuRants, she did a good job on my direct appeal, and she really fought it for me, but she told me, she said, I didn't raise that issue because I looked over that issue, and she didn't raise the issue about the Judge Hayes made -- based his ruling on a error of law. My thing is if Judge Hayes based the ruling on the error of law, he made an erroneous Batson ruling, and by them four jurors was set back on my jury and participated and in -- my sentence -- it tainted my jury, because he made erroneous Batson ruling and they're the one -- is stated after -- (sic) they tainted the jury, and he admitted on record that he made a ruling based on a error of law, so I told Ms. DuRant that, and she said, yeah, if she had a (sic) raised that issue, that I would have probably better chance to get my case overturned, because it's indicated in the record that Judge Hayes made a erroneous Batson ruling, and by them four jurors being set on there without Ms. Cason objecting to them and participate in picking them after they had been squashed (sic) -- struck from my first jury, I got convicted with a tainted jury.
Q Okay. Now, I want to skip forward and just go through your issues. Ms. Cason -- and she testified about this

earlier -- but her opening statement was only three sentences -- I mean three sentences to the jury. Correct?
A Yeah. Right.
Q Okay.
A Me -- well, on that issue -- on that issue right there, me and Ms. Cason had been talking -- let me see if I can find that issue -- me and Ms. Cason had been talking all the time about that -- about them evidence being tampered with me, because certain evidence were moved before they were photographed and all -- all that, so she agreed that, you know, that it had been tampered with, but after she made her opening statement, she didn't put no defense up -- no defense up to support her opening statement, because she never did bring up to the jury attention about the evidence was tampered with or nothing. She just -- she just made the statement and that's what the statement. (sic) I really like to put ---
Q So on -- on page 59 that she read earlier, one of her statements was that she said the defense will attempt to show that the State's evidence is questionable at best and many of the items the State's going to put up have been tampered with. That's what you're referring to. Correct?
A Yeah.
Q About the statement she ---

A Yeah, about the statement she made to the jury. This what I say right here, if I can put it on the record, I said, Ms. Cason was ineffective for refusing to make any objection to tampering -- to the tampering piece of evidence being introduced in evidence after making her opening statement about the State had tampered with many pieces of evidence, because in Ms. Cason's opening statement to the jury, Ms. Cason stated: Good Afternoon, ladies and gentlemen of the Jury. James Giles is really accused of kidnapping, strong-armed robbery, first degree burglary. The defense will attempt to show that the State's evidence is questionable at best and that many of the evidence that the State is going to put up has been tampered with and hereby show that James Giles, again, wrongly accused of the crime that he is charged with. But Ms. Cason never did put up any defense whatsoever -- whatsoever to defend her opening statement, because Ms. Cason let the State introduce all them tampered piece of evidence into evidence without making any objection whatsoever when Ms. Cason had several grounds to challenge the tampered piece of evidence being introduced into evidence because ---

Q Okay, and Mr. Giles, I'm not trying to stop you, but that is -- that's the point, she didn't put up a defense. Correct?

A Right.
Q That's what you're saying.
A She didn't put up no defense.
Q Okay. And how about her investigation of the State's witnesses? What can you tell me about that? Did she ever do anything? Did you ever have a conversation with her about the State's witnesses?
A I -- I didn't even know who the State's witnesses was until I got on the trial, and on -- and in the transcript you can see, when I start representing myself, I called -- I called Mr. Nix back to trial, and I was asking him about the photographing of the crime scene, and he said that Freddie Gault did it, and I said, who did it? He said Freddie Gault did the photographing of the crime scene.
Q Okay. Well, how about the victim, Barbara Wilburn? Did you have a communication or a conversation with Vanessa about any information she may -- maybe found out from her?
A No, she never told me -- Ms. -- Ms. Cason always would tell me that she was doing a independent investigation, but she never would bring me no results back, and come to find out, I found out ten years later that she had put a motion in for a private investigator, but she never told me she had no private investigator investigating my case, and I -- and to this day, I still don't believe she had no private investigator bringing (sic) my case. I don't know what she

did with the money that -- they gave it to her or what, but it ain't no result showing that she ever had a private investigator.

Q Okay, so you never knew anything about her hiring a private investigator ---

A No, ma'am, she never -- I -- I found that out back in 2000 and probably '15 when Mr. Nathan Sheldon was my lawyer and we had to come here about four or five times and get the judge involved, because she wouldn't turn my file over to Mr. Nathan. Once I got my file, I seen where she had put a motion into the Court for a private attorney -- I mean private investigator, but, no, she never told me about that, and like I said, we had to come to Court about three or four times, because she wouldn't turn the file in. The judge -- ask him could -- ask Mr. Nathan could he get involved with her, and then after the judge got involved with her, she finally turned the file over.

Q And how about Ms. Wilburn? Is there anything that you wanted to allege about her testimony? Could you ---

A Well, Ms. -- Ms. Wilburn testimony, it was inconsistent. It was contradicting. About the kidnapping charge and about the -- what happened at the crime scene.

Q How about her competency to testify? Was that an issue that you raised?

A Yeah, there was a issue about her being competent to testify, because when I was -- back in 2001, it's a guy was named Mr. J. C. Rice, he was sentenced to like forty-five years, because he was like embezzlement. They had him conning Ms. Wilburn out of like a hundred thousand dollars, but the State -- Ms. Wilburn liked Mr. J.C., because she used to work for him, and so the State wouldn't let Ms. Wilburn testify against Mr. J.C., so they had him -- had her as incompetent to testify as a State witness, but when it came to my case, they didn't have no compre -- a hearing or nothing and they let her testify on -- on me, without having a competency hearing.

Q Okay, so to your knowledge, Ms. Cason never received any information from the State about that ---

A No, the State withheld that from Ms. Cason. She never -- she never knew about it. She never knew about it.

Q Okay.

A She never knew the State withhold -- I call that Brady violation, because they withhold that information. That's impeachment information.

Q Okay. And Ms. Cason, you're alleging that she failed to make a motion to dismiss the kidnapping charge. Is that correct?

A Yeah, she didn't even make no -- she really didn't even cross -- cross examine Ms. -- Ms. Cason, I mean, um, -

- Ms. Cason did a very poor job representing me. She didn't -- she didn't put no pressure -- she didn't even really ask no question about the case. Whatever the State did, she let them did (sic) what they do. She uh -- she didn't put no motion in, no kind of motion whatsoever. She saying that the stuff was tampered with, but she never did put no kind of motion in whatsoever in about that, about nothing. She didn't put -- she didn't object to nothing and it's several issues -- I don't know how I'm going to put these issues on record, but I need to really go through the issues that we got so the judge can know and weigh my case out with the issues that I got. Like Burt Ross (sic) and I ain't -- we ain't really -- we speaking on it, but he not really hearing my issues fully, I don't think so.

Q Well, I asked you was there anything else about Mr. Burton that you wanted to allege was ineffective regarding his representation of you?

A Well, I -- I was -- was saying that I got to argument about he -- the Consent Order, the Consent Order, the Order ---

Q And we went over that, and that's part of the brief that I submitted to the Court. Correct?

A Yeah, you submit a brief to them, so, I mean, but they going to read it -- they going to look into the -- the

brief or I supposed to put it on the record. That's what I'm trying to find out.
Q As I told you, I already gave and submitted the brief to the Court which goes over all of your issues and the Court is familiar and has that document.
A Yeah.
Q Okay. So I'm just taking you through your testimony like we discussed -- all right? -- so -- and your issues. So you're alleging that Ms. Cason did not file any motion to dismiss the kidnapping charge. Is that correct?
A That's correct.
Q And there was no evidence which you have received from Ms. Cason that Ms. Wilburn had alleged that she was held against her will.
A That's right.
Q Was there ever a witness statement that was taken from Ms. Wilburn?
A Well, that -- that's my thing about this kidnapping charge. Like I said, it happened in 2003 and 2006 when they put the indictment on it, but during -- they -- time -- Investigator Nix got the report from Mr. -- Ms. Wilburn, she never indicated nothing in the incident report about a kidnapping charge, so I don't know how they come up with that kidnapping charge, because she never said nothing about it whatsoever in the incident report. They did a

supplemental report and a incident report once they got me -- found me and, um, they never said nothing about no kidnapping charge. I don't know where they come up with that kidnapping charge.

Q Okay. I want to go forward, and we talked a little bit -- you said -- you talked a little bit about a Brady violation, but -- and you heard Ms. Cason's testimony, she never filed a Brady motion, a Rule 5 motion requiring the State to turn over evidence. Is that one of the reasons that you're alleging she was ineffective in this case?

A Yes, ma'am.

Q And you have reason to believe that at least the chain of custody from the Union Public Safety Department was left out and never ---

Q Well, what ---

A --- provided ---

Q Well, what my thing is about the Brady violation, Ms. Cason, when you asked her a question on the stand just now about what forms I was talking about with the change (sic) of custody, she know exactly what forms I talked to her about, because I done wrote her a thousand letters and asked her, where's the chain of custody form A, B and C, which is the secret (sic) -- the initial change (sic) of custody and the secret (sic) change (sic) of custody, them forms are mandatory to be filled out by the Supreme Court

Rule 36, they start the chain of custody. She tells me them forms were not completed by the lead investigator of the Union Public Safety Department and if I want to know why -- if I want to know why how she don't have the answer, because she don't work for the Union Public Safety Department, but my thing is, that's her job. She supposed to find out why them forms was not filled out, and they wasn't filled out to start the change (sic) of custody, that means that's a break in my change (sic) of custody, so that therefore, she should've challenged it, because in the change (sic) of custody when we get on down through it, I'm going to show you, we going to establish where a break in the change (sic) of custody because the evidence where about is unaccounted for for several months.

Q Okay. So that's your issue, she never filed the Brady or Rule 5 motion and a lot of the evidence regarding the chain of custody was never provided to you. Correct?

A Well, no, Ms. Cason never had the Union Public Safety change (sic) of custody in her hand.

Q Right. That's correct. She never got it.

A She never got it. Ain't no way that she got it, because she never -- she never brought nothing to my attention about the change (sic) of custody, and when you did the disposition (sic) on Ms. Cason back here the other day, every time you were ask in the disposition (sic) about

the change (sic) of custody from the Union Public Safety Department, she come -- you look -- she'd go back -- I'm looking at the change (sic) of custody from SLED. We not talking about the change (sic) of custody -- and she didn't get the change (sic) of custody from SLED to the thing (sic) when -- (sic) -- uh, uh, uh, she said in her statement that she got the change (sic) of custody on two different occasions, when she first took my case and on August the 20th when they sent it to her. There's no way she could've got that change (sic) of custody from SLED from when she did my case, because that change (sic) of custody wasn't completed til -- I mean it wasn't printed til -- it wasn't printed til August the 31st, 2007, so how she got it August the 20th. And also, the items that were analyzed it, they still was -- hold up one minute -- I don't want to put nothing on the record that ain't true -- they still was -- I got to find page 18. Give me a minute, Judge, Your Honor. I can't find -- you got that -- you got that change (sic) of custody with you? I had it just now.

Q You talking about the SLED chain of custody?

A Yeah, the page 17 and 18.

MRS. FAULKNER - May I approach the witness, Your Honor.

THE COURT - Yes, ma'am.

A Let me see yours. I don't misplaced -- I done put paperwork different -- some kind of reason.
Q You're referring to the SLED chain of custody ---
A Yeah, change (sic) -- yeah, I'm referring to the SLED change (sic) of custody. They didn't even -- the forensic signed them (sic) -- they still was analyzing the evidence on 7/17/07.
Q So on July 17th of '07, which is only a couple months before your trial ---
A Yeah, so how, how, how is she going to get it -- my -- this change (sic) of custody from SLED in February, and they hadn't even completed it yet. Impossible.
Q Okay. So that document, actually, reflects -- that you're referring to, which was -- a copy of which was submitted in evidence reflects ---
A Yeah, ---
Q --- that they -- it was still at SLED, according to that report, in July.
A It still ---
Q Correct?
A Yes, ma'am, and it wasn't printed until August the 31st, and my thing is, she didn't give me the change (sic) of custody til the a -- a day before my trial, and then when I -- uh, uh, -- I went to represent myself, I asked the judge, I told him I wasn't prepared to go forward,

because I just had got the change (sic) of custody the day before trial, he made me go on and represent myself. He wouldn't, uh, uh ---

Q And we'll get there.

A Okay.

Q Okay? But ---

A Okay.

Q --- but you're argument is that she didn't even give that or provide that information to you until the day before trial ---

A Right.

Q --- and she probably didn't get it until shortly before that.

A She couldn't have got it no earlier than that, because it wasn't printed out til August the 31st and it's indicated on the bottom of the change (sic) of custody.

Q Okay, according to the document she couldn't have gotten it before July. Correct?

A Huh?

Q She couldn't have gotten it before July because ---

A No, ain't no way she ---

Q --- reflect the date from July ---

A No, she couldn't ---

COURT REPORTER - I'm sorry, they're talking at the same time.

A Oh.
Q You can't -- Mr. Giles, you can't talk when I'm talking ---
A Okay, go ahead.
Q --- because the court reporter ---
A Okay.
Q And listen to me. The court reporter has to take down what you say and what I say, and she can't record two conversations at one time.
A Okay.
Q So after she received that chain of custody from SLED, did she file any motions to suppress any evidence?
A No, ma'am. And -- and looking at this change (sic) of custody then, they still had August the 28th, 2007 still on there, so it was in August it still was at SLED, they still analyzing evidence.
Q Okay. And did you have any communication regarding the chain of custody with Vanessa at any time?
A No, because I never had none.
Q Okay, and ---
A I never seen it. I never seen that myself.
Q And your defense was that the evidence had been tampered with. Is that correct?
A My defense is -- yeah. That was the defense she had, that we was going to put up the evidence that it had been

tampered with, but now since we -- I got the change (sic) of custody and being in prison and me being incarcerated and going over and having time to review my paperwork, they come to find out that the blood sample they took from me is uncounted (sic) for from 9/21 to 11/1, and if you look at -- and, Your Honor, if you can look at page 115 or 18 of the change (sic) of custody, it's not even showing that -- who even received the evidence at SLED and who -- where each custodian got it from. It don't -- it don't indicate nothing. I don't know where it was and what -- who did with it (sic), who had it or where they got it from or nothing, and -- and the custodian from change (sic) of custody didn't come and testify to establish the complete change (sic) in custody.

Q Okay, and then ---

A They didn't produce no -- oh, excuse me, -- they didn't produce no certified sworn testimony in they place (sic) of, you know, of being present there.

Q Okay. And you're alleging that she -- there were some other gaps in the chain of custody resulted there from that ---

A Uh, ---

Q --- were never addressed at your trial or objected to by Ms. Cason. Is that correct?

A Yeah. Yes, ma'am. Also on page 17, 18, the evidence is uncounted (sic) for from, uh, 9/29/06 to February 12th, 2007. Also they uncounted (sic) for between February 12th, 2007 to July, 2007. That's over five months they -- they unaccounted for and on page 17 of page 18 (sic) they not showing who received the evidence at SLED or what it was put -- I mean how each custodian come in contact with them.

Q Okay. Now, let's go to your blood sample that was drawn at the hospital for a minute. What's your issue with the chain of custody regarding that blood sample?

A Well, my blood sample, uh, uh, uh, issue is that I was -- like I was saying, I come down there for a bond hearing and they wanted a blood sample, and they coerced me to signing it. So when I get down there and sign it, they took blood out my arm and put it in a vial. Investigator got the vial from the nurse, got in his car and left without putting my initial on it, without me signing it, without sealing it or nothing, and then what make my issue so bad, what I think, then -- that was in September, 11th, 2006, and then October 30th he go back to the resident. (sic) He didn't take the blood to SLED. He still got the blood somewhere. He go back to the resident (sic) and say he got blood, scraped some blood off the wall that been over there three years ago and sent it ---

Q So three ---
A --- and it made a match.
Q I don't mean to interrupt you, but three years later the investigator went back and scraped blood off of the wall at ---
A Off the wall. After he had got my blood he say he went back and scraped some blood off the wall and matched -- it still match -- they blood should've been contaminated by then.
Q Did you ever get any of the chain of custody from your sample of blood or the scraping from the wall at that time?
A No, ma'am, I got -- I got -- no, ma'am. I got two more issue on that, too. They never did a change (sic) of custody on that and also -- also the evidence that they called -- that they say they matched my blood with -- they say that matched my blood with -- when you get time, I want you to go on that subject, too, about the Jeffrey Cook (sic) -- but right now, they say they matched my blood with -- and the database come from a telephone headset with blood on end piece. That what they matched in the head (sic) -- in the database to put a hit on me. But according to Mr. Freddie Gault right here, this letter right here saying that -- it say, I received your letter dated August the 21st, I am resending you the information that I mailed to you on June (sic), which he talking about the change

(sic) of custody that I been trying to get, because I never had none. I wrote the chief in the Union County Clerk of Court, and I finally got a change (sic) of custody from the Union Public Safety Department and you going -- we going to go over it you said.

Q And when -- but when is that? We'll go over that now. When did you get that chain of custody from them?

A Me? This -- August the 25th, 2014.

Q Okay, so August 2014 is when you finally were able to obtain chain of custody from Union County Public Safety Department.

A Yes, ma'am, and he -- he told me, he said that -- I asked him -- and then once I got the change (sic) of custody, I wrote him and told him that the SLED evidence sheet 004 that indicate the item collected from the crime scene, I didn't see no change (sic) in custody on some of the items, so I wrote him and asked him where the change (sic) of custody on these items, and he told me right here, he said, he said, I -- well, he said, here, there isn't -- I asked him about a telephone headset, the receiver, what they supposed to match my blood and DNA with. He said here is a telephone -- a phone receiver headset that is part of the evidence, however, I do not have the change (sic) of custody on it. I wrote Union Public Safety Department. They couldn't give me no change (sic) of custody on that

piece of evidence neither. Also, that vial of the blood from the hospital, didn't nobody never fill out a change (sic) of custody on that -- on that piece of evidence neither.

Q So no evidence was ever presented regarding a chain of custody on the blood ---

A No, ma'am.

Q --- that was collected from you ---

A No, ma'am.

Q --- before it got to SLED?

A No, ma'am.

Q How about the piece of evidence regarding the brown -- that pocketbook with blood and the window tint from the broken porch window?

A That piece of evidence -- it -- it -- that's what I got when I wrote -- wrote them, but I have a issue about the change (sic) of custody from the Union Public Safety Department, too, because it's not indicating on the change (sic) of custody who put it into evidence box or when it was took out of the evidence box to be took to SLED. It's none of that on that -- on there -- on the change (sic) of custody. It just -- I mean -- the change (sic) of custody -- it not a complete -- the State did not maintain a complete change (sic) of custody in my case, and it's evident (sic) to show it because the paperwork is --

approve (sic) it, but nobody never challenged that, and I -- I didn't -- couldn't challenge it because I never seen it.

MRS. FAULKNER - May I approach the witness, Your Honor.

THE COURT - Yes, ma'am.

Q Do you recognize these documents that I'm showing you, Mr. Giles?

A Yes, ma'am.

Q And what are those documents?

A The -- the change (sic) -- these are the change (sic) of custody from the Union Public Safety Department. You got the SLED inventory sheet at 440 (sic) what I told you, and you got the analysm (sic) sergolo (sic) analysm (sic) report from SLED.

Q And that first document that was on the top, what is that -- what is that?

A That's a -- this right here is a -- the change (sic) of evidence.

Q Okay. And that's from the Union Public Safety Department. Is that correct?

A Yes, ma'am.

Q Okay. And is that the evidence that you, actually, ended up getting from ---

A This is what I got from that. Yes, ma'am. This is what I got right here.
Q In 2014. You got it 2014.
A Yeah, I got this in 2014.
Q Okay.
MRS. FAULKNER - Your Honor, I seek to introduce this document into evidence as Applicant's Number 6.
MR. HUNTER - No objection.
THE COURT - Without objection, be Applicant's 6.
(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 6.)
A But if -- if ---
Q And I don't mean to stop you, Mr. Giles.
A Go ahead.
Q But that was the first page. I'm going to -- the rest of these documents -- what are the rest of these documents, ---
A This ---
Q --- collectively?
A Two is -- the next page is a poc -- a pocketbook with blood. That's what you talking about?
Q The first page you're looking at. What's that?
A Right here?
Q (Indicating yes)

A This a Union Public Safety Department change (sic) of evidence, change (sic) of custody, evidence and change (sic) of custody.
Q Okay. And you got that from the Union County Public Safety Department, also. Correct?
A Yes, ma'am.
MRS. FAULKNER - And I'd like to have this admitted as Applicant's Number 7.
MR. HUNTER - No objection.
THE COURT - Without objection.
(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 7.)
Q And these next -- the next documents, what are those?
A This is uh, uh, change (sic) -- change (sic) of possession. I guess call it change (sic) of custody, too -- from Union Public Safety Department. It's a -- about the -- for the pocketbook, but ---
Q Okay. So the next page you're looking at is for the pocketbook.
A Yeah.
Q Then the next page is what?
A Is, uh, broken window on porch change (sic) of custody with -- yeah. Plastic with blood and prints.
Q Okay. And then the next page that you're looking at, what is that?

A Next page is, uh -- I don't know what that is. I can't -- I can't really see it. They crumbled this one up. But it's -- it's a change (sic) of custody from -- from Union Public Safety Department. I can't tell what piece of evidence it is, though.
Q From the sweater maybe?
A No, it say -- yeah, probably is. Yeah, that what got on it, sweater -- sweater with blood on it.
Q Okay. What's the next page?
A Change (sic) of custody from the Union Public Safety Department.
Q For the what? Do you know which piece of evidence that one was for?
A It just has got change (sic) of evidence. Ain't got nothing on it. Evidence room from SLED. I think this where they picked it up from SLED at.
Q Okay. The next document, what is that one? It says item number 9 at the top.
A Item number 9, cigarette butts.
Q Okay, that was the evidence ---
A It posed (sic) to be evidence, but it -- that they had no value for identification.
Q Okay, and the next page is what?
A Posed (sic) to be -- uh, container, transfer custody receipt. I guess when they transfer it. But -- a change

(sic) of custody from -- but all that stuff down there, that ain't none of the stuff that was on -- in my case. Blue cotton fabric and blue sweater, a pullover shirt, a blue cotton jacket, a vehicle air bag, a Glock 7 9 (sic) millimeters. That ain't -- that don't contain (sic) to my case. I don't know why it's on there.

Q Okay.

A But that don't contain (sic) to my case right here.

Q And I understand -- but these are documents that you -- you received in 2014.

A Yeah, all these documents is what I received. I never seen them before trial.

Q Okay. And the rest of these documents that you're looking at are also documents from the chain of custody that was presented to you from the Union Public Safety Department ---

A Yes, ma'am, and ---

Q --- after your trial. Correct?

A Yes, ma'am.

Q Okay.

MRS. FAULKNER - Collectively, Your Honor, I'd like to submit these into evidence as Applicant's Number 8.

MR. HUNTER - No objection.

THE COURT - Without objection.

(WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 8.)

Q Now, you were going to say something regarding one of those documents. Which -- where was it in the -- which document are you referring to?

A I was talking about this analysm (sic) sheet, item analyzed.

Q Okay. And that was in with those documents that we just submitted?

A Yes, ma'am.

Q What does it say at the top?

A Item analyzed it. (sic)

Q Okay, what are you ---

A Item submitted.

Q What were you going to say about that?

A I was going to tell him, Your Honor, ---

MRS. FAULKNER - And just for the Court's information -- I'm not sure which page that was, Your Honor. It's the one that says the lab number, item submitted and the results of examinations.

THE COURT - I have it.

A I want to talk -- talk about, uh, -- about when you asked Ms. Cason about cross examining Mr. Jeffrey Crooks from SLED and she said she figure like she didn't have no reason to cross examine him, but it was a contradiction

report in SLED about item 1.1 which was a telephone headset with blood on (sic) fingerprint, and um, the items -- the SLED evidence inventory sheet, a telephone headset was submitted with blood and fingerprints on ear piece, a brown pocketbook, a window tint, window tint (sic), clothes, a piece of glass with bloodstain, a cotton swab and whatcha call it (sic), but when it got down the SLED, they analyzed it. Item 1.1 come back swab from a back side of cable cord. My thing is, Ms. Cason should've had cross examined Jeffrey Cook (sic) about this back side of cable cord, because according to the -- according to the SLED evidence sheet, a cable cord was never submitted to SLED to be analyzed it. (sic) And according to the item submitted to be analyzed at SLED, Item 1.1 come back as a back side of cable cord. A telephone headset wasn't never analyzed according to the result sheets from SLED. You see what ---

Q So a cable cord from a telephone was never even taken into evidence.

A No, ma'am.

Q So when it refers to the SLED -- report refers to the back side of a cable cord, there was no cable cord.

A Right. And this telephone headset, that's what they matched in the database to put a hit out on me, but according to SLED analysm (sic) report right here, they never analyzed that item, and according to the SLED

inventory sheet, a back side cable cord was never submitted, so that's a contradict report, so she should've cross examined Mr. Crooks about that, but when it come to that, she said no questions.

Q Okay. How about cross examination of Investigator Nix regarding those photographs that were submitted into evidence?

A Well, when -- when I -- Ms. Cason never did cross examine Mr. Nix about the photograph nor the crime scene. And like I said, she should've let they had their way in Court really, but when I got -- when I had her relieved, I called Mr. Nix back, because this is my concern, and I was telling him about the items what were tampered with, and I asked him, I said, who took the picture. He said Mr. Gault took it, so I said, Mr. Gault took it? She said, yeah, but Ms. Cason had let Investigator Nix lay the foundation out for all 14 photographs without even making an objection. He ain't the one that took him, so -- how could he make the -- lay the foundation out for them?

Q Okay. So Mr. Gault never even testified. Is that correct?

A No, I didn't even know he was a witness, because I never had a witness list. I -- it was surprise (sic) me when I -- when he said Mr. Gault and then I seen back on this change (sic) of custody right here, Mr. Gault put a

piece of evidence in the drop box at SLED, but I never knowed he was a -- he was a witness. I -- really, I didn't know of my witness. (sic) The only witness that I figure that I know was two -- going to be two witness. (sic) There was Mr. Nix and the victim, Ms. Barbara Williams (sic). That's the only -- and I figured that out. I -- because he investigate the case and Ms. Williams (sic) was the victim, so I figured them two were going to be at the trial, but they had another lady from SLED and she was -- she and Mr. Crooks from SLED. I never knowed about them. I never knowed anything about them, as ---

Q Okay, can you just ---

A --- far as being a witness.

Q And you didn't, actually, get that information about Investigator Nix or Barbara Wilburn testifying from Ms. Cason. You just assumed it from your own knowledge. Is that correct?

A Right, because I figured that they -- that they were -- Ms. Cason -- when Ms. Cason come to the Court at the Union County Jail to see me, we would talk and I would tell as -- they set me a bond for a hundred thousand dollars, because they caught me going to -- caught me over in Niagara Falls, New York going to Canada, but I'm a truck driver, and like I say, I got out of jail 2005 and the next day I moved to Brooklyn. I moved to New York, and I was on

my job. I was going to pick up a truck for my boss man, and I tried to go down over in Canada, and they told me I couldn't go over there because I had a -- a felony, so when they run my license in, come to find out they say I had an outstanding warrant in South Carolina.

Q I want to move forward for a minute. You on the beginning of day two moved to relieve Ms. Cason as your attorney, day two of your trial. Is that correct?

A Yes, ma'am.

Q Okay. Why'd you do that?

A Well, I did it because Ms. Cason, she -- she didn't make no kind of objection. She didn't cross examine Mr. Crooks about the contradicting, uh, uh, uh, a contradicting piece of evidence. She didn't make no objection to none of the evidence really, and then she didn't put no defense up to her opening statement. She really wasn't representing me properly, and then when -- at the second day of trial while I was back there, instead of her talking about my case, she was on the telephone talking to somebody else, and then she comes to tell me, she say, the solicitor say he got a twenty year plea on the table for you if you stopped your case go to -- stopped the trial and plead guilty. I say a twenty year plea! I said no. And she say, well, you know Judge Hayes is the roughest judge that come to Union County and first degree burglary carry a life

sentence, if you keep on to trial, you going to get a life sentence.

Q And that was the beginning of day two.

A That was at lunch time. That was at recess at -- at recess, at 12:00 o'clock, round about 12:00 o'clock.

Q Okay. That was after she -- that was after she was relieved. Correct?

A Huh?

Q That was after Ms. Cason was relieved. Correct?

A No, that was during the time I was fixing to release her.

Q Well, you moved to relieve her at the beginning of day two, according to the transcript. Is that correct?

A No, it was at recess. I think it was -- it was at recess. That at recess when I removed her. It was at -- yeah, it was at recess, because we talked, because I told if she felt that a way about my case, go out there and put a motion in to relieve yourself as my counselor.

Q Well, regardless, you remember having that conversation with her before you moved to have her relieved as your attorney. Is that correct?

A Yes, ma'am.

Q Okay. And when you sought to be relieved, what did the -- what did the Court do?

A What did the judge do when I sought to relieve her? He asked me why I wanted to relieve her, and I told him and um -- and basically I told him that I wasn't prepared to go forward, because I needed more time to look at my paperwork, because I got my discovery, the change (sic) of custody stuff the day before trial, and I needed more time to go over it, and he -- he wouldn't grant me -- so he asked the State, have y'all complied with Brady vs. Maryland. State said yeah, but he didn't ask Ms. Cason had she -- had they replied, had she had (sic) got all my material. He didn't ask her that.

Q Okay. And so you moved to have her relieved.

A Yes, ma'am.

Q And was that because you wanted to represent yourself or was it because you thought Ms. Cason wasn't doing a good job representing you?

A It wasn't because I wanted to represent myself, because I didn't know nothing about no Court proceeding. I did it because I figured that she was harming me more than she was helping me.

Q Okay. And did you believe that you understood what you should do in representing yourself with regarding making objections or anything else?

A Not -- no, ma'am, I didn't know nothing about making no objections. And as a -- and as a standby counselor, Ms.

Cason didn't say one word to me when she -- when they said on the stay (sic) to be my standby counselor, she didn't say nothing. She didn't tell me nothing to do or explain nothing to me or give me no way to go at it or question or nothing. She just -- she just sat there.

Q So she didn't have any communication or give you any advice about ---

A No, no communication. She didn't even tell me when -- when the judge sentenced me, she didn't even go back there with me when I went back. She didn't even tell me I had a right to appeal my case really. I found out that when I got to Kirkland, then I had filed -- I guy told me, he said, you better appeal -- you better put a motion for appeal, and I did it, and then come to find out, she did it like two days late. I think you had ten days did it. (sic) She did it like two days late, because I guess she found out that I did it, so she decided to do it, too, but I did it first, but she didn't even really tell me I had a right to appeal my case.

Q Okay. Do you believe that you understand the dangers of representing yourself?

A No, ma'am. If I did, I'd never did it. (Witness laughing). No, ma'am, I didn't -- I didn't know that ---

Q Do you think that was properly explained to you by Judge Hayes, the trial judge, at that time?

A He -- he -- he didn't tell me all the disadvantages, that I had to know all the Court procedures and when to make objection and stuff like that. No, he didn't explain that to me neither. He told me that it dangerous for me to represent myself, but he didn't go into all the details.
Q Okay. And did you believe that Ms. Cason would help you and advise you if you had to make objections and things like that?
A Ma'am?
Q Being your standby counsel, did you think that that was the purpose of having Ms. Cason?
A Yes, ma'am, I thought -- I thought -- I think he said she can't answer no -- ask the jury no questions, but I thought that she would lead me through the trial, because I was -- what I was doing, I was trying to put stuff on record that she didn't put on record. The little things I know, that's -- that's all I thought I was doing, was putting stuff on record that she never did put on -- wasn't putting on record.
Q Okay. And that issue and your unknowing a release of her, that issue was not raised by LaNelle DuRant during your appeal, was it?
A No, ma'am.
Q Okay. And did you ever have any communication with her regarding that?

A Who, Ms. DuRant? About what?
Q About your lack of knowledge about representing yourself when you relieved Ms. Cason.
A No, ma'am.
Q Do you have any other thing that you want to tell the Court with regard to any other specific issues at this time regarding your application for post-conviction relief?
A I mean I -- I think we went pretty much all (sic) -- all of it. I think -- I had -- you know, I had the issue about Ms. DuRant, about the uh, -- I had the issue about Ms. DuRant, the two issues about Ms. DuRant, and we -- we talked about them. Right? One of them.
Q What other issue did you want to talk about regarding her?
A I was talking about when she -- about -- she was ineffective for not pointing out to the Court in her initial brief that any of the evidence on behalf of the defendant could have been produced or that any other point could have been raised it had (sic) more time been granted to the applicant for the purpose of preparing a case. What I'm saying is, when she raised the issue about that the trial court err in not granting the applicant request for a continuance after the trial court granted the applicant motion to release his counselor and proceed pro se where he had only been supplied his discovery information the day

before trial. She argued that issue, but she didn't -- she didn't point out to the Court that -- I -- Ms. -- Ms. LaNelle DuRant representation fell below the objective standards unreasonably because as a professionally (sic) appellant attorney, Ms. Cason required to know the trial court refuse of a motion for a continuance in a criminal case would not be disputed as in the clear abuse of discretion reserving the prejudice to the appellant when there is no showing that any other evidence on behalf of the defendant could have been produced or that any other point could have been raised it (sic) had more time been granted for the purpose of preparing the case for trial. So by Ms. Cason not pointing out to the Court in her initial brief that any evidence could've been raised on behalf of the defendant or any other point could have been raised had the trial court grant more time for the first of the trial when the applicant had only presented the core (sic), and I got a -- how it prejudiced me, because she didn't point that out to the Court. If she had of pointed out that to the Court, it's a possibility the outcome of my appeal would've had been different if she'd told the Court that -- if I'd a been -- if she had a pointed out to the Court about this with -- all this withheld information was held from me, if I had more time to look at my paperwork

and went over my paperwork, I could've produced some more additional issues.

MRS. FAULKNER - I don't have any other questions for this witness, Your Honor.

MR. HUNTER - Your Honor, I don't have any questions for this witness.

THE COURT - Thank you, sir. You may step down.

MRS. FAULKNER - Your Honor, I had submitted to the Court prior to this proceeding a brief. Do you think it's necessary for me to have that marked?

THE COURT - I thought you had it marked. You may want to since we're -- it's a Union County case and we're in York.

MRS. FAULKNER - Okay. Yeah, I think that's a good idea.

(WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 9.)

THE COURT - Applicant ready to call the next witness?

MRS. FAULKNER - Your Honor, we have no further witnesses.

MR. HUNTER - Your Honor, the State doesn't have any witnesses, and I would just have, you know, do the -- several legal arguments that are made, I would ask that we

be able to submit proposed orders or make argument now or whatever Your Honor would like.

THE COURT - Lawyers approach a moment.

MR. HUNTER - Sir?

THE COURT - Approach a moment.

(WHEREUPON, BENCH CONFERENCE BETWEEN THE COURT AND COUNSEL OUT OF THE HEARING OF EVERYONE WHICH WAS NOT REPORTED.)

THE COURT - All right, we will -- the Court will receive briefs from the Attorney General in response to applicant's brief that's already been filed within a week and then if need be applicant has a week to do any reply after that.

MR. HUNTER - Thank you.

THE COURT - Thank you very much.

(END OF TRANSCRIPT)

(WHEREUPON, BACK ON THE RECORD)

THE COURT - We'll go back on the record in record of Giles vs. State.

Mr. Giles, I -- we concluded the hearing. I just need to ask you a couple of questions. Okay? If you can't hear me, just let me know and I'll speak up.

EXAMINATION

BY THE COURT -

Q Mr. Giles, you understand that if in the event that you are successful with your PCR, that that does not bring to a conclusion these charges?
A (No response)
Q Do you understand that if you are successful with your PCR, that you go back and you start over?
A Yes, sir.
Q All right. And you understand that -- that whatever happens, in the event that it didn't turn out well for you, you could be found guilty of these charges and you could receive a more substantial sentence than what you have now.
A Yes, sir.
Q And you still wish to proceed with your PCR?
A Yes, can I -- can I say one thing though?
Q No, sir. You want to speak with your lawyer?
A No, I'm ---
Q No, sir. You want to speak with your lawyer?
A Oh, no, sir.
Q I just need you to answer my question.
A Okay, okay. Yes, sir.
Q Okay.
A Yes, sir.
THE COURT - Okay. All right. Okay. I just wanted to put that on the record.
MR. GILES - Okay.

MRS. FAULKNER - And, Your Honor, if I may just follow-up, can I ask him a question about that?

RE-DIRECT EXAMINATION

BY MRS. FAULKNER -

Q And, Mr. Giles, you and I have discussed that extensively. Correct?

A Yes, ma'am.

Q Regarding your potential to receive the maximum sentence and have another jury trial.

A Yes, ma'am.

Q Correct? And you understand that.

A Yes, ma'am.

Q You fully still want to proceed with asking the Court to grant your post-conviction relief application.

A Yes, ma'am.

MRS. FAULKNER - I have no further questions, Your Honor.

THE COURT - All right.

MR. GILES - Thank you, Your Honor.

THE COURT - Yes, sir.

(END OF TRANSCRIPT)

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 105 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of James A. Giles vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on January 30, 2018, and provided by me this the 16th day of July, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

/S/ SHIRLEY BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

received 5-7-18

STATE OF SOUTH CAROLINA COUNTY OF UNION	IN THE COURT OF COMMON PLEAS OF THE SIXTEENTH JUDICIAL CIRCUIT
James Giles, S.C.D.C. No. 264478, Applicant, v. State of South Carolina, Respondent.	2014-CP-44-295 **ORDER OF DISMISSAL**

FILED FOR RECORD
2018 MAY 2 PM 11:3
CLERK OF COURT
UNION, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 22, 2014. Respondent made its Return on December 15, 2014. With the consent of the Respondent, Applicant filed an amended PCR application on January 25, 2018. Additionally, Applicant filed an amended PCR application January 30, 2018. An evidentiary hearing into the matter was convened on Tuesday, January 30, 2018, at the Moss Justice Center in York County, South Carolina. Applicant was present at the hearing and represented by Beth Faulkner, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Vanessa Cason, Esquire, testified. Applicant's former counsel Ross Burton, Esquire, testified. Appellate Defender LaNelle DuRant, Esquire, also testified. This Court had before it a copy of Applicant's records from the Union County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the transcript of Vanessa Cason's deposition, Applicant's PCR Application, the exhibits introduced at the PCR hearing, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

to orders of commitment of the Union County Clerk of Court. Applicant was indicted at the September 2007 term of the Union County Grand Jury for Burglary, First Degree (2006-GS-44-1207), Kidnapping (2006-GS-44-1208), Strong Arm Robbery (2006-GS-44-1209). Applicant was represented by Vanessa Cason, Esquire. On September 12, 2007, Applicant underwent a jury trial. Halfway through the trial, Ms. Cason was relieved as counsel and Applicant proceeded pro se with Ms. Cason as standby counsel. Applicant was subsequently convicted of the charges as indicted and sentenced by the Honorable John C. Hayes, III, to concurrent terms of thirty years for burglary (first degree), thirty years for kidnapping, and fifteen years for strong arm robbery.

A Notice of Appeal was timely filed on Applicant behalf and an appeal was perfected by Appellate Defender LaNelle DuRant. Ms. DuRant raised the following issues on appeal:

1. Did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?

2. Did the trial court err in not granting Appellant's request for a continuance after the trial court granted Appellant's motion to relieve his trial counsel and proceed pro se where he had only been supplied his discovery information the day before trial?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by an unpublished opinion. State v. Giles, 2010-UP-154 (Ct. App. filed on February 23, 2010).

On May 24, 2010, Applicant submitted a Petition for Writ of Certiorari, seeking review of the Court of Appeals decision. The Supreme Court of South Carolina granted certiorari and affirmed the decision of the Court of Appeals. State v. Giles, Op. No. 27353 (filed on January 15, 2014). Applicant submitted a petition for rehearing, which was denied by the Supreme Court on February 21, 2014. The Remittitur was sent on February 21, 2014.

PCR Application

In his application for post-conviction relief, Applicant alleged grounds of ineffective assistance of counsel and ineffective assistance of appellate counsel. On January 25, 2018, Applicant filed an Amended and Supplemental PCR Petition, alleging the following grounds of relief:

1. Ineffective Assistance of Counsel of Ross Burton

    a. "Applicant was coerced into signing a court order to provide a blood sample. Furthermore, the court order was based on Schmerber v. California, 384 U.S. 75 (1966), and this order was a Schmerber violation. Furthermore, this signing of the order was a violation of Applicant's constitutional rights related to search and seizures."

2. Ineffective Assistance of Counsel of Vanessa Cason

    a. "Failed to move to suppress any blood and DNA evidence and any testimony or expert opinions stemming from the unlawful collection of the blood sample from Applicant, as set forth above."

    b. "Failed to object to the procedure used to strike and choose the jury..."

    c. Vanessa Cason's opening statement to the jury was a mere three sentences. She failed to adequately explain Applicant's defense to the jury or to make any appeal to the jury on Applicant's behalf. Furthermore, in one of her three sentences, she indicated 'the defense will attempt to show that the state's evidence is questionable at best and that many of the items, that the state is going to put up have been tampered with...' However, she never attempted to make show throughout the trial that any of the evidence had been tampered with."

    d. "Failed to investigate the State's witnesses, including the alleged victim, Barbara Wilburn."

    e. "Failed to make a motion to dismiss the kidnapping charge."

    f. "Failed to cross-examine Ms. Wilburn on the kidnapping allegations and elements."

    g. "Failed to file a Rule 5 and/or Brady motion requesting the state's evidence against Applicant."

    h. "Failed to file a motion to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected

from Applicant based on a lack of establishment of chain of custody."

i. "Failed to cross-examine Jeffrey Crooks from SLED, one of the State's main witnesses."

j. "Failed to object to the admission of photographs from the crime scene, when they were admittedly, according to witness Donald Nix, taken by William F. Gault, who never testified."

k. "Vanessa Cason gave erroneous advice about sentencing to Applicant"

3. Ineffective Assistance of Counsel of LaNelle DuRant

a. "Failed to raise the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial"

At the PCR hearing, Applicant additionally alleged the trial judge gave insufficient Faretta[1] warnings when Applicant wished to relieve Ms. Cason and proceed pro se.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of

[1] Faretta v. California, 422 U.S. 806 (1975)

counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has 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 Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel as to Ross Burton

Applicant alleged Mr. Burton was ineffective because Applicant was coerced into signing a court order to provide a blood sample. He alleges the court order was based on Schmerber v. California, 384 U.S. 75 (1966), and this order was a Schmerber violation.

Mr. Burton testified at the PCR hearing he was appointed to represent Applicant but only represented him for a few months. He testified Applicant claimed he was not at the scene of the crime and did not commit the crime, so a blood sample order would support this defense and exonerate Applicant. Mr. Burton testified he was relieved as counsel because Applicant was unhappy and wanted him to investigate how his blood got in the victim's house. Mr. Burton

explained that blood of unknown origin was found in the victim's house after the incident and the case was unsolved for years. Meanwhile, Applicant's blood was taken by SLED for an unrelated incident. Applicant's blood sample in the SLED's database indicated a possible match to the victim's house, and the State requested Applicant's blood sample to confirm the match.

This Court finds Applicant has failed to meet his burden of proving Mr. Burton was ineffective in this regard as there is no evidence of coercion and there was no Schmerber violation. This Court had before it a copy of a Consent Order For Suspect Samples To Be Taken From Defendant For Testing, filed September 11, 2006, and signed by the State, Mr. Burton, Applicant, and the Honorable Thomas W. Cooper. The consent order appears valid on its face. This Court finds it was not error for Mr. Burton to consent to the blood draw as a successful test would have helped Applicant's defense that he was not present at the crime scene location.

Furthermore, Applicant has failed to meet his burden of proving he was prejudiced by Mr. Burton's actions as he has failed to show evidence of a Schmerber violation. Applicant alleged the blood draw violated Schmerber. To obtain a search warrant, Schmerber requires a showing that (1) probable cause to believe the suspect has committed the crime, (2) a clear indication that relevant material evidence will be found, and (3) the method used to secure it is safe and reliable. State v. Baccus, 367 S.C. 41, 54, 625 S.E.2d 216, 223 (2006). Here, there is no prejudice to Applicant's allegation because it is likely police could have obtained a warrant to obtain Applicant's blood as there was probable cause to believe Applicant committed the crime as his DNA (submitted from an unrelated incident) matched the blood DNA found at the victim's house. There is an indication that relevant material evidence would be found because a blood draw will either reveal a match or no match. Lastly, the method is safe and secure because the method of drawing blood was done by health care professionals at a hospital. Thus, even if Mr.

Burton had objected, it is unlikely a Schmerber violation would have been found. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Counsel – Vanessa Cason

Failure to move to suppress any blood and DNA evidence

Applicant alleged Ms. Cason was ineffective for failing to move to suppress any blood and DNA evidence and any testimony or expert opinions stemming from the unlawful collection of the blood sample from Applicant, as set forth in the preceding section.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective in this regard. First, this Court finds there is no evidence a Schmerber violation occurred. Whether or not a Schmerber violation existed is not a question for this Court, but rather a direct appeal issue. Regardless, the evidence appears the blood draw was done pursuant to a signed consent order from which there is no evidence of unlawful coercion. This Court finds Ms. Cason was not deficient for failing to move to suppress, as there do not appear to be any grounds by which a motion could have been successfully argued. Furthermore, this Court finds Applicant has failed to prove he was prejudiced as a result of Ms. Cason's actions as Applicant has failed to meet his burden of showing this motion would have been successful. As Applicant has failed to prove Ms. Cason was deficient in this regard, or that the motion would have been successful, this allegation must be dismissed.

Failure to object to the procedure used to strike and choose the jury

Applicant alleged Ms. Cason was ineffective for failing to object to the procedure used to strike and choose the jury. During jury selection, Applicant used his peremptory challenges to strike eight white males and two white females from the jury. The State requested, pursuant to Batson v. Kentucky, that the trial judge conduct an inquiry as to whether Applicant had a race

neutral reason for striking the ten white jurors. Applicant responded that the jurors were "not right" for the jury. The trial judge ruled that the reason was racially neutral on its face, but gave the court nothing by determine whether the reason was pretextual and was not sufficient under Batson. The trial court quashed the jury panel. Following the selection of a new jury panel, the trial judge further expounded on his ruling, reiterating that striking a juror because the juror is not right for the jury is no reason. He again noted that while it may be "technically, semantically, intellectually racially neutral," for purposes of articulating a reason for striking a juror, it was not race neutral. On direct appeal, the Supreme Court found the trial court was correct in holding Applicant's reason that the jurors were "not right" for the jury was not race neutral for Batson purposes as it was not a clear and reasonably specific explanation for exercising the challenge. State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).

At the PCR hearing, Ms. Cason testified she explained to Applicant that he needed to provide actual reasons for striking the jurors instead of basing the strikes on race. Applicant testified he told Ms. Cason which strikes to make during jury selection.

First, since the Supreme Court has already upheld the legality of Applicant's jury selection procedure pursuant to Batson, this Court cannot overrule the Supreme Court on this issue and the lawfulness of the jury selection procedure remains the law of the case.

Next, Applicant mentions the trial judge relied on a case, State v. Easley, that he later clarified on the record was in error, but did not change his ruling. The record shows the trial judge did not say he made his Batson ruling based on State v. Easley[2] and he did not later say relying on this case was in error. The relevant portion of the record indicates the trial judge stated after clarifying his ruling: "I may be wrong in my ruling but I believe that while it was not filed

[2] The context makes it clear trial judge was referring to State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996) over which he presided at the trial level and which discusses the steps a trial court must take in a Batson analysis.

the Easley case set aside the clear specific. I still think there must be some reason and I think that someone is not right for the jury is no reason." Tr. 50, ll. 19-23. Nowhere does the trial judge admit that he relied on bad law in making his Batson ruling. State v. Easley was not overruled or modified in regard to its Batson analysis and this case remains upheld law. Furthermore, the trial judge's Batson ruling was upheld on appeal by the Court of Appeals and Supreme Court. Thus, Ms. Cason was not ineffective for failing to object to Judge Hayes' ruling in regard to these remarks.

Applicant further alleges Ms. Cason was ineffective for failing to object to the fact that four jurors that Applicant had previously struck were seated on the second jury. This Court would again reiterate Ms. Cason was not ineffective as the Batson procedure was upheld on appeal. This Court further finds any objection would be without merit because the jurors were properly seated. Applicant asserts that jurors he previously struck, prior to the Batson ruling, cannot later serve on the jury. The case of State v. Franklin, 318 S.C. 47, 456 S.E.2d 357 (1995) is directly on point and holds that such jurors cannot be later excluded. "When a Batson violation is found to have occurred, members of the tainted jury and all persons who were struck may be placed back in the jury venire." Franklin, 318 S.C. at 51, 456 S.E.2d at 359 (citing State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987)). Our Supreme Court held that a juror who was improperly excluded by a Batson violation may be seated because "to hold otherwise would inadvisably reward a party for his own improper conduct." Id. The Court held that excluding a juror who was improperly excluded by a party's Batson violation would "reward him for the very discrimination Batson was designed to prevent" by allowing the discriminatory strike to remain. Ultimately, the Court held that when a Batson violation was found to have occurred, the jury

selection process begins *de novo* with every juror placed back in the jury panel with the possibility of being seated on the subsequent jury.[3]

This Court finds Ms. Cason was not ineffective in this regard, as no violation occurred. After Applicant's Batson violation, the jury panel started anew with all jurors placed back in the venire. Applicant's previous strikes, which were found to be improper, do not continue on through the second proper jury selection. The procedure was lawful and appropriate pursuant to Batson and Franklin. Applicant cannot be rewarded for his improper conduct by having his discriminatory strike remain throughout the subsequent jury selection. As no violation occurred, this Court finds Ms. Cason was not ineffective for failing to object to this procedure.

Failure to give an adequate opening statement

Applicant alleged Ms. Cason was ineffective for giving an opening statement that was only three sentences long and did not explain Applicant's defense or appeal to the jury. He alleged Ms. Cason did not make an attempt to show that the evidence had been tampered with, despite telling the jury "the defense will attempt to show that the state's evidence is questionable at best and that many of the items, that the state is going to put up have been tampered with...". Tr. p. 59. This Court finds that although Ms. Cason's opening was brief and, arguably, weak, Applicant has failed to meet his burden of proving Ms. Cason was ineffective. This Court finds Ms. Cason's opening that the evidence was tampered with was not deficient as it was simply her opinion of what the State's evidence would show. This Court finds Applicant has failed to meet his burden of proving he was prejudiced by Ms. Cason's actions. This Court finds Applicant's guilt was clearly established, especially considering the positive DNA match of Applicant's

[3] During the PCR hearing, Applicant and his appellate counsel used State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009) to support Applicant's position. This Court finds Edwards is misapplied here because it held that previously struck jurors may not be excluded *when the trial court errs* in granting the State's Batson motion. In Applicant's case, the trial court did not err in granting the State's Batson motion (and was upheld by the Supreme Court) so Edwards would not apply to his situation.

blood in Ms. Wilburn's house, and any conclusion that Ms. Cason's opening statement was prejudicial would be speculative. As Applicant has failed to meet his burden of proving Ms. Cason was ineffective in this regard, this allegation must be dismissed.

Failure to investigate the State's witnesses

Applicant alleged Ms. Cason was ineffective for failing to investigate the State's witnesses including the victim. Applicant alleged the victim, Barbara Wilburn, was found incompetent to testify in the trial of J.C. Rice in the year 2000 or 2001 and Ms. Cason should have investigated this for Applicant's trial to impact Ms. Wilburn's testimony during the trial. Applicant alleged Ms. Wilburn's testimony was inconsistent and contradictory and the trial court should have held a competency hearing based on her incompetency at a 2001 trial. Applicant testified Ms. Cason said she did an independent investigation of the State's witnesses but never shared the information with Applicant. Ms. Cason testified she reviewed all discovery with Applicant and attempted to speak with the witnesses he gave her by using an investigator.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds Applicant has failed to meet his burden of proving Ms. Cason's investigation was deficient. This Court finds Ms. Cason obtained discovery and used an investigator. Regarding the victim, Ms. Wilburn, this Court finds Applicant has failed to prove

Ms. Cason was ineffective for failing to call her competency into question. This Court finds Ms. Wilburn's competency at a prior trial had no relevance to Applicant's case. This Court finds if Ms. Cason challenged Ms. Wilburn's competency at trial based on a trial many years before, it is likely such testimony would be kept out as irrelevant. Further, this Court finds Applicant has failed to meet his burden of proving he was prejudiced as his allegation is completely speculative and not supported by any evidence. Applicant has failed to specify at what trial Ms. Wilburn testified, the date of the trial, the particular subject matter, how Ms. Wilburn was involved, and how her competency was challenged at that point. This Court will not speculate as to Ms. Wilburn's competency and how Ms. Cason's investigation could have been more effective. As Applicant has failed to meet his burden of proving Ms. Cason's actions were deficient in this regard and that the outcome of his trial would have been different, this allegation must be dismissed.

Failure to make a motion to dismiss the kidnapping charge

Applicant alleged Ms. Cason was ineffective for failing to dismiss the kidnapping charge. Applicant alleged there was nothing in the incident report that ever stated that Ms. Wilburn alleged she was seized, confined or kidnapped against her will. He further alleged there was no substantial evidence was presented at trial that Applicant seized, confined or held Ms. Wilburn against her will.

This Court finds although the evidence of kidnapping was arguably weak, it was still sufficient for the jury to decide. S.C. Code § 16-3-910 states someone commits kidnapping if they "unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law." S.C. Code Ann. § 16-3-910. This Court finds the record reflects evidence existed to send the case to the jury. Evidence was presented

from Ms. Wilburn herself when she testified, "Well certainly I tried to run out the back door but it was locked and he prevented me from doing that because he had the scissors see. And I think he had his left hand on the back of my sweater there holding on to me. He had the scissors. I said I have some silver coins." Tr. p. 116, ll. 1-5. She also testified, "Well I couldn't get out the back and so he came behind me. Like I said he held onto the back of my sweater – he had the scissors - so that's when I came back. I can't remember the exact moment when I went back there but I did. I tried to get him to go ahead and take my car. I said you know - I think he said again that I'm going to kill you." Transcript p. 117, ll. 16-21. This testimony would support the State's allegation that Applicant unlawfully seized, confined, or kidnapped Ms. Wilburn. Any conflicting testimony would be a factual question for the jury, however because there is evidence that could support this allegation, it is unlikely a motion to dismiss the indictment would have been unsuccessful. Accordingly, this Court finds Applicant has failed to meet his burden of proving Ms. Cason was ineffective for failing to move to dismiss the kidnapping indictment and this allegation must be dismissed.

Failure to cross-examine Ms. Wilburn on the kidnapping allegations and elements

Applicant alleged Ms. Cason was ineffective for failing to properly cross-examine Ms. Wilburn concerning the kidnapping allegations.

Ms. Wilburn testified on direct examination that she could not get out of her house because the door was locked and because Applicant held on to her sweater while holding scissors. On cross examination, Ms. Cason asked Ms. Wilburn the following:

> Q: Okay. Ms. Wilburn, you said that when you went to go out the back door you were prohibited from going out the back door because it was locked, is that correct? You couldn't get out the back door because it was locked.
>
> A: Well I had locked it earlier. See that was two o'clock in the morning and the doors were locked so I couldn't get out. But of course you know when

somebody's frightened you like that you are going to run and try to get out but I could not get out.

Transcript p. 122, l. 25 – 123, l. 8. This Court finds Ms. Cason did question Ms. Wilburn on the kidnapping allegations and whether or not she was confined in her house due to Applicant or because her doors were locked. This questioning challenges the elements of kidnapping as it suggests Ms. Wilburn could not leave her house because the doors were locked. Although it may be weak, this Court finds Ms. Cason did cross-examine Ms. Wilburn in this regard. Furthermore, this Court finds Counsel's cross-examination was not deficient and this Court will not speculate whether a "better" cross-examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Accordingly, this allegation must be dismissed.

Failure to file Rule 5 and/or *Brady* motion

Applicant alleged Ms. Cason was ineffective for failing to file a Rule 5 or Brady motion requesting the State's evidence. He also alleged the evidence turned over to Ms. Cason was not turned over in time for her to properly prepare for trial. He alleged the Chain of Custody from the Union Public Safety Department was printed on August 31, 2007, and Applicant's trial started on September 11, 2007. Applicant alleged this failure to obtain evidence in a timely manner denied Ms. Cason the time she needed to properly file and serve any necessary motions, including any motions to suppress. Furthermore, Applicant alleged Ms. Cason failed to turn over evidence to Applicant she received from the State.

Ms. Cason testified she reviewed the discovery with Applicant and attempted to speak with the witnesses Applicant provided her. She testified she had a private investigator help her contact these witnesses and she went to the hospital in Union to inquire about the blood draw. She testified that she did not file the discovery motions but received the full file from the Solicitor's Office on two occasions and received Mr. Burton's full file. Ms. Cason testified she

received full discovery and Mr. Burton's file was identical to the one provided to her by the Solicitor's Office. She testified she could not recall when she received the chain of custody but she would normally receive it as part of the general discovery and believed she had seen it before the printed date of August 31, 2007. Ms. Cason further testified she reviewed all of the evidence against Applicant at the police department. Ms. Cason testified she had received the chain of custody in discovery and believed she had seen this chain of custody before August 31, 2007.

This Court finds Ms. Cason was not ineffective for failing to file a Rule 5 or *Brady* motion. This Court finds Ms. Cason was not deficient for failing to make the motions as she was provided all discovery from the State and received Mr. Burton's full case file. This Court finds Ms. Cason shared and discussed the discovery with Applicant prior to trial. This Court would also point out at trial, Applicant complained he did not receive the chain of custody in time and the trial judge found the State had complied. Tr. 147. This Court finds Applicant has failed to meet his burden of proving Ms. Cason was missing documents or that additional documents would have turned up had she filed the discovery motions. This Court further finds Applicant has failed to prove Ms. Cason did not receive the discovery in a timely manner that prevented her from fully preparing for trial. This Court will not speculate as to how Ms. Cason could have differently prepared for the trial.

Furthermore, this Court finds Applicant has failed to prove Ms. Cason did not have the Chain of Custody form in time to prepare for trial or make evidentiary motions. Ms. Cason testified she had already received the Chain of Custody sheet and this Court will not speculate as to whether she had enough time to prepare for trial. Applicant has failed to show which evidentiary motions were necessary and how exactly the trial court would have ruled on these

motions. Despite his testimony, Applicant has failed to show exactly what issues existed with the chain of custody that would call for Ms. Cason to make a motion to suppress.

This Court finds Ms. Cason did turn over the State's evidence to Applicant as she testified she discussed the evidence with him and provided him a copy in jail. Ms. Cason testified she met with Applicant once a month prior to trial. Applicant has failed to show that Ms. Cason's actions were deficient or that the outcome of his trial would have been different had she provided him physical copies of the discovery at an earlier date and Applicant has failed to show that he was prejudiced even assuming Ms. Cason did not timely share discovery with Applicant.

As Applicant has failed to meet his burden of proving Ms. Cason was deficient regarding the discovery material, and that he was prejudiced as a result of her actions, this allegation must be dismissed.

Failure to file a motion to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of chain of custody

Applicant alleged Ms. Cason was deficient for failing to file a motion to suppress or object to the testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of the chain of custody. Applicant alleged the State failed to establish a chain of custody and there were in fact, breaks in the chain of custody in the evidence collected from the crime scene and the blood sample collected from Applicant.

Applicant has failed to show that Ms. Cason's performance was deficient in this regard, and has failed to show that the outcome of his trial would have been different had Ms. Cason moved to suppress the evidence. This Court has reviewed the Chain of Evidence Report, Evidence Chain of Custody sheet, Transfer of Custody Receipt form, and Chain of Evidence and Applicant has failed to show these reports contain errors. All of these forms show who possessed what certain pieces of evidence. "Proof of chain of custody need not negate all possibility of

tampering so long as the chain of possession is complete." State v. Hatcher, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (2011). This Court finds that these forms appear to show a proper chain of possession even if additional, cumulative forms were not contemporaneously filled out. Furthermore, the testimony at trial from the State's witnesses appears to show a complete chain of possession for the evidence taken from the victim's home. Applicant has not provided credible evidence that there are issues with the chains of custody that would require the reversal of Applicant's convictions and this Court will not speculate. See Hatcher, 392 S.C. at 95 ("The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be.") As Applicant has failed to meet his burden of proving Ms. Cason was deficient regarding the chain of custody forms, and that he was prejudiced as a result of her actions, this allegation must be dismissed.

Additionally, Applicant alleged Ms. Cason was ineffective for failing to object to the blood sample for lack of chain of custody. This Court finds this allegation is without merit for the following reasons. The record reflects the "chain of custody form from the laboratory William Thompson Hospital" was used at trial for identification purposes as State's Trial Exhibit 30. See Tr. 106, 156. Officer Nix identified this form, testifying:

> [T]his form indicates to me the chain of custody from Wallace Thompson Laboratory and the patients name is James Albert Giles; the blood was drawn from James Albert Giles; appears to me the right forearm by Judy Martin and there's the signature where she signed it over to me.
>
> Q: Okay. And she gave you this form when she gave you the blood, is that correct?
>
> A: That's correct.

Tr. 106, ll. 12-20. The chain of custody was also identified by the lab technician Judy Mathis where she testified:

> This is the chain of custody form that we use whenever law officers bring in patients or rather clients or whatever you want to call them for legal blood draws or whatever they want drawn. Usually it's blood alcohol. And what we do is we draw the blood and fill out the various things on here. We sign it and we hand it over to them.

Tr. 156, ll. 19-24. This testimony shows that that Ms. Mathis drew blood from Applicant's forearm, put it in a tube, labeled the tube, and gave the tube to Officer Nix. Tr. 157-158. Officer Nix testified he received the tube of blood from the hospital. Tr. 194. Applicant challenged the hospital's procedure during trial, however Ms. Mathis testified the proper procedure was followed. Tr. 159-160. Officer Nix testified he witnessed the blood draw, received the blood and a signed piece of paper from the Ms. Mathis stating she was turning over the blood to Officer Nix. Tr. 87-88. He further testified that he submitted the blood to SLED in a heat sealed bag that was initialed and dated. Tr. 88. Thus, this Court finds the chain of possession of Applicant's blood was well-established at trial.

Applicant further alleged that the blood vial was defective because it did not have Applicant's initials or name on it. The record reflects Applicant challenged this at trial when he cross-examined Ms. Mathis and Officer Nix on the issue. Both witnesses testified it is not their standard procedure to have the blood-drawee sign the vial because their procedure only requires the lab tech to sign. Applicant has failed to show that this item is not what the State purports it to be, or that it was tainted in any way. This Court will not speculate that this item was not Applicant's blood, especially when no evidence would support that conclusion. Applicant has failed to show any alleged errors with the blood draw or the handling of his blood that would require an objection from Ms. Cason. Furthermore, this Court finds Applicant has failed to show that the outcome of his trial would have been different had Ms. Cason objected to the blood draw or the chain of custody. Accordingly, this allegation must be dismissed.

Failure to cross examine SLED Investigator Jeffrey Crooks

Applicant alleged Ms. Cason was ineffective for failing to cross-examine SLED investigator Jeffrey Crooks. He alleged the SLED records show Item 1.1 as being the "back side of a cable cord" and the cable cord from the telephone was never submitted to SLED, and Ms. Cason didn't cross-examine any witness regarding this. This Court finds this allegation is without merit and the issue was well-fleshed out at trial.

The record reflects the "cable cord"/ "cable end" issue was clarified several times during the trial. When Mr. Crooks took a blood swab from the phone (Item 1.1) he wrote "back side of cable end" to identify it and entered it into the SLED database. Transcript 132. He testified when his writing on Item 1.1 was documented by another tech, it was mistakenly transcribed as "back side of cable *cord*." Transcript 133. Ms. Cason did not cross-examine Mr. Crooks on this issue however this Court finds such cross-examination was not necessary and any testimony would have been cumulative to that already elicited. The record reflects Mr. Crooks explained what evidence he found, where he found it, and how he documented it. He testified where exactly Item 1.1 was found and testified that someone must have mistakenly written "cord" instead of "end." Applicant has not shown what Ms. Cason should have asked from Mr. Crooks and what additional information about this issue would have revealed. This Court will not speculate as to what questions Ms. Cason should have asked. Most importantly, this Court finds that the outcome of Applicant's trial would not have been different by speculating what questions she could have asked on cross-examination and what information would have been elicited. Furthermore, regarding the admission of the item itself, this Court finds the contents of Item 1.1 from trial remain the same regardless of what words were used to describe it. Mr. Crooks testified where he swabbed for this item, and the words he used to describe its location on paper

do not change this item's composition or change the fact that Applicant's blood was found on Item 1.1 inside the victim's home. As Applicant has failed to meet his burden of proving Ms. Cason was deficient, or that he was prejudiced as a result of her actions in this regard, this allegation must be dismissed.

Failure to object to admission of crime scene photographs

Applicant alleged Ms. Cason was ineffective for failing to object to the admission of photographs from the victim's house when they were photographed by William Gault who did not testify. He alleged this denied him the right to cross-examine the photographer. This Court finds this allegation is without merit. The record reflects Officer Nix testified regarding what was depicted in photographs from the crime scene taken by Mr. Gault. Tr. 65, 91, 195, 209. After identifying and reviewing the photographs, Officer Nix testified that the photos fairly and accurately represented what he saw when he went to the victim's house on December 5, 2003. Tr. 91. This Court finds such testimony laid the proper foundation necessary for Officer Nix to testify to what is depicted in the photos. Officer Nix identified what was in the photos and asserted that the photos fairly and accurately represented what he saw that day, thus the foundation was laid and he could testify about the photos and they can be entered into evidence. The photographer of a particular photograph is not required for someone's testimony as long as the foundation is laid. In this case, the record reflects the proper foundation was laid, Officer Nix properly testified, and Ms. Cason was not deficient for failing to object. This Court finds Applicant has failed to show the photographs do not depict what Officer Nix testified they depict, and he has failed to show that an objection would have been sustained. Furthermore, he has failed to show that outcome of his trial would have been different had Ms. Cason objected to Officer Nix's testimony. Accordingly, this allegation must be dismissed.

Sentencing advice

Applicant alleged Ms. Cason gave erroneous advice about sentencing to Applicant. He alleged that Ms. Cason urged Applicant to accept a twenty year plea deal and insisted that if he did not, he would likely be sentenced to life without parole, however no notice had been provided by the State to seek life without parole.

Ms. Cason testified she received a plea offer of ten years and would have gone over this offer on the day she was appointed to represent Applicant. Ms. Cason testified Applicant rejected all plea offers. Applicant testified he did not receive plea offers from Ms. Cason but did receive them from Mr. Burton. He testified Ms. Cason brought a plea offer to his attention during the recess of his trial, stating the State would allow him to plead to a twenty year sentence if he dropped the trial and pled guilty.

This Court finds Applicant rejected all plea offers. This Court finds Applicant's complaint that Ms. Cason told him he would receive life without parole is unfounded and unsupported by credible evidence. The record reflects Applicant did face a possible maximum of a life sentence if found guilty. Regarding the plea offer during trial, Applicant was in the middle of a trial at the time and has not provided any testimony that he would have accepted this plea deal but for Ms. Cason's assertion that he would receive life without parole at trial. Applicant has failed to provide any testimony or evidence to show that he was prejudiced by this advice. Accordingly, this allegation must be dismissed.

The trial judge gave improper Faretta warnings

Applicant alleged that the trial judge gave improper Faretta warnings when Applicant desired to relieve Ms. Cason and proceed pro se. At the beginning of the second day of Applicant's trial Ms. Cason moved to be relieved on behalf of Applicant. Applicant asserted he

was unhappy, just as he was unhappy with Mr. Burton when Applicant relieved him. Tr. 145. After Applicant aired his grievances, Judge Hayes asked if Applicant wanted to relieve Ms. Cason. Applicant replied affirmatively. Tr. 145- 148.

According to the United States Supreme Court, in order to waive the right to counsel, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Gardner v. State, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. Id. If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of Faretta, the appellate courts will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. Id. There is no scripted Faretta hearing a judge must undertake and "if the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Gardner, 351 S.C. at 411-412, 570 S.E.2d at 186 (2002) (internal citations omitted).

This Court finds Judge Hayes made a thorough record and conducted a proper Faretta hearing. Judge Hayes also advised Applicant of his right to counsel, stating "and do you understand that an attorney is a beneficial asset to you. That is you have a right to an attorney and you have one...." Tr. 149, ll. 6-8. Applicant replied that he understood this right. Tr. 149.

Judge Hayes adequately warned Applicant of the dangers of self-representation. Tr. 149-150. Judge Hayes informed Applicant an attorney would be beneficial because an attorney had been through law school and has practiced law. Tr. 149. He advised Applicant that Applicant's reading of the law would not tell him everything, because he has to know the practical aspects and legal rulings. Tr. 149. Judge Hayes advised Applicant it is dangerous to represent yourself

and even though Applicant knows some bits and pieces about the law, by not being a lawyer Applicant does not know how everything works together, what is trivial and what is important to the jury. Tr. 149. Judge Hayes further advised Applicant it is dangerous to represent yourself. Tr. 149. He explained that Ms. Cason was prepared and any issues Applicant had with her could be brought up after trial. Tr. 150. Applicant replied that he understood all of Judge Hayes' advice. Judge Hayes further told Applicant that if he relieves Ms. Cason then she will still operate as standby counsel. Judge Hayes allowed Applicant time to talk to Ms. Cason and his family about the issue before making a decision. After twenty minutes of private discussion, Ms. Cason relayed that Applicant wanted to represent himself and Judge Hayes granted the motion. Applicant represented himself for the remainder of the case.

This Court finds Judge Hayes properly went over the risks of self-representation and the benefits of counsel, and Applicant responded that he understood these risks. Since the trial judge did undertake the specific inquiry into the hazards of proceeding pro se, he is not required to examine Applicant's background. Applicant complains that Judge Hayes did not tell him which specific objections he would have to make, however the trial judge is not required go over every specific detail of representing yourself as long as he goes over the dangers of proceeding pro se. Here, Judge Hayes went over the dangers and warned Applicant that he does not know practical aspects and legal rulings, the details of how the law works as a whole, and what would be relevant to the jury. This Court finds Applicant had some knowledge of the legal process and had researched and filed several motions with the trial court. Even after advising the continuance would be granted, Judge Hayes allowed Applicant time to discuss the issue with his family and counsel. This Court would point out immediately after the motion was granted to allow him to act pro se, Applicant successfully objected to the admission of his prior record.

This Court finds Judge Hayes followed the law and Applicant received his desire to proceed pro se. Furthermore, the record shows no indication that Applicant did not understand his rights or the dangers of self-representation. Because Applicant made an informed decision to proceed pro se, the trial judge's ruling that Applicant shall represent himself was proper. As the trial judge conducted a proper Faretta hearing, this allegation must be dismissed.

Ineffective Assistance of Appellate Counsel

Failure to raise on appeal the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial

Applicant alleged Ms. DuRant was ineffective for failing to raise on appeal the issue of whether or not there was any error by the trial court in the selection of the jury during Applicant's trial. Applicant alleged that Judge Hayes' ruling on the State's Batson motion after the selection of the first jury was erroneous and was based on errors of law and should have been appealed by Ms. DuRant.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error). "To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's

unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

This Court finds Ms. DuRant was not deficient as she did challenge the trial court's ruling and procedure on the State's Batson motion to the Court of Appeals and Supreme Court. In the Court of Appeals she raised: "Did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?" In the Supreme Court she raised: "Whether the Court of Appeals erred by finding that the trial court correctly quashed the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?" The record reflects Ms. DuRant filed a Petition for Rehearing in the Supreme Court but was ultimately unsuccessful. Because she did raise this issue, she cannot be ineffective for failing to do so.

Furthermore, as stated above, the legality of the Batson procedure was upheld by the Court of Appeals and by the Supreme Court and this Court cannot overrule those rulings as they remain the law of the case.

To the extent Applicant alleged Ms. DuRant was ineffective for failing to raise the issue of whether the trial court erred in allowing jurors to be seated on the second jury who had previously been struck during the first jury selection, this Court finds the allegation is without merit. To reiterate this issue as explained above, the four jurors at issue were properly seated because when a Batson violation is found to have occurred, members of the tainted jury *and all persons who were struck* may be placed back in the jury venire. Franklin, 318 S.C. at 51, 456 S.E.2d at 359 (citing State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987)) (emphasis added). The Supreme Court held that a juror who was improperly excluded by a Batson violation may be

seated because "to hold otherwise would inadvisably reward a party for his own improper conduct." Id. Ms. DuRant testified when the trial court is found to have erred in its Batson ruling, the jurors cannot be placed back on the second jury; but as in Applicant's case, when the trial court properly found a Batson violation, the previously struck jurors can be seated on the subsequent jury. This Court finds Ms. DuRant was not deficient as Applicant's argument that an error occurred would likely not have been successful on appeal as it is contrary to decided case law. Applicant has failed to meet his burden of proving Ms. DuRant was deficient for excluding this issue, and has failed to prove this issue would have prevailed on appeal. Accordingly this allegation must be dismissed.

Failure to raise on appeal the issue of the trial judge's *Faretta* warnings

Applicant also asserts Ms. DuRant was ineffective for failing to raise on appeal the issue concerning the legality of the trial judge's Faretta warnings. First, for the reasons outlined above, this Court would again find the trial judge did not violate Faretta violation. As no violation occurred, this Court finds Ms. DuRant was not deficient for failing to raise the issue on appeal.

This Court finds Applicant has failed to meet his burden of showing that issue would have been successful on appeal. While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to

their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985). Ms. DuRant testified as to how she approaches every case and how she picked out which issues to raise on appeal in Applicant's case. She testified that she had some concerns about the Faretta issue but did not raise it as she picked out the most meritorious issues to raise on appeal.

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764). Applicant has failed to provide proof that the issue concerning his Faretta warnings would have been successful on appeal, and this Court finds Ms. DuRant was not ineffective. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24th day of April, 2018.

J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

Union, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION)	
)	CASE NO.: 2014-CP-44-295
)	
JAMES GILES, #264478)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
STATE OF SOUTH CAROLINA)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
N. Beth Ramsey Faulkner, Bar No. _____	Justin J. Hunter, Bar No. _____
Address:	Address:
Post Office Box 1030	Post Office Box 11549
York, South Carolina 29745	Columbia, South Carolina 29211
Phone: _____ Fax _____	Phone: _____ Fax_____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — April 18, 2018 Date submitted

FILED FOR RECORD
2018 APR 12 AM 11 29
CLERK OF COURT
UNION, SC

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF UNION) SIXTEENTH JUDICIAL CIRCUIT
)
) CASE NO.: 2014-CP-44-295
James Albert Giles,)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
State of South Carolina,)
)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Beth Ramsey Faulkner, Bar No. 77370 Address: PO Box 1030, York, SC 29745 Phone: 803-818-5700Fax 803-818-5701 E-mail: beth@faulknerlawfirm.comOther: _____	Megan Harrigan Jameson, Bar No. _____ Address: PO Box 11549, Columbia, SC 29211 Phone: 803-734-4124 Fax_____ E-mail: mjameson@scag.govOther: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ May 17, 2018
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☒ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☒ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

FILED FOR RECORD
2018 MAY 22 PM 3 12
CLERK OF COURT
UNION, SC

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION	)	
	)	Case No.: 2014-CP-44-0295
James A. Giles,	)	
	)	**MOTION TO RECONSIDER, ALTER,**
Applicant,	)	**AMEND AND/OR SET ASIDE ORDER**
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the Applicant James A. Giles, through his undersigned counsel, will move before the Court of Common Pleas in Union County for the Sixteenth Judicial Circuit on the tenth (10th) day after service hereof for an Order altering, amending and/or granting relief from the Order of Dismissal executed by the Honorable J. Mark Hayes, II on April 20, 2018 and filed in the Office of the Clerk of Court on May 2, 2018. Counsel for Applicant received said Order of Dismissal on May 7, 2018. Such Motion shall be based upon South Carolina Rules of Civil Procedure 59 and 60, the case law of this state, and such other matters as may be presented at the hearing on this motion.

FILED FOR RECORD
Clerk of Court
Union Co., S.C.
2018 MAY 22 PM 12:

The basis for such motion is as follows:

Applicant filed an Application for Post-Conviction Relief on July 22, 2014. With the consent of the Respondent, Applicant filed an amended PCR application on January 25, 2018 and a subsequent amended PCR application on January 30, 2018. Applicant also filed a Brief in Support of Applicant's PCR Petition on January 30, 2018. Based upon the foregoing petitions and brief, along with the testimony and evidence presented at the evidentiary hearing on

January 30, 2018, Applicant submits that he met his burden of proving that his attorneys Vanessa Cason and Lanelle Durant provided ineffective assistance of counsel.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

In the instructions to counsel with a ruling in this matter, the Honorable J. Mark Hayes, II instructed, via email to counsel:

> "While the record indicates that second counsel may have not have been as aggressive and thorough in her representation of applicant (and arguably deficient), the guilt of the applicant was clearly established and thus, the conclusion that error by counsel was prejudicial would be speculative.

This finding is not set forth in the court's Order of Dismissal in this matter. If the Court is not inclined to set aside its Order of Dismissal, Applicant seeks for this finding to be included in the Order of Dismissal.

First and foremost, however, Applicant seeks to have the Order of Dismissal set aside. Attorney Vanessa Cason was deficient in her representation of Applicant, which was proven by Applicant when viewing the totality of her representation of Applicant.

The Court found that any conclusion that Vanessa Cason's shortcomings would have been prejudicial to Applicant's outcome would only be speculative. This determination is absurd and contrary to justice, when considering the evidence presented of Vanessa Cason's cumulative deficient representation, coupled with a guilty verdict in Applicant's trial.

WHEREFORE, the Applicant seeks an Order of this Court altering, amending and/or granting relief from the Order of Dismissal issued by this Court, and granting such other and further relief as the court deems just and proper.

Respectfully Submitted,

York, South Carolina
May 17, 2018

Beth Ramsey Faulkner
Attorney for Applicant James Albert Giles
Faulkner Law Firm, LLC
P.O. Box 1030
616 E. Liberty Street
York, South Carolina 29745
(803) 818-5700

Telephone
(803) 818-5700

Facsimile
(803) 818-5701

Faulkner Law Firm LLC

616 E. Liberty Street
P.O. Box 1030
York, SC 29745

May 17, 2018

The Honorable William F. Gault
Union County Family Court
Post Office Box 703
Union, SC 29379

RE: *James A. Giles v. State of South Carolina*
Case No.: 2014-CP-44-0295

Dear Mr. Gault:

Please find enclosed the original and one copy of the Motion to Reconsider, Alter, Amend and/or Set Aside Order along with a Motion Coversheet and Certificate of Service concerning the above matter. Please file the same with your office and return the copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter I am forwarding a copy of the Motion and Certificate to counsel and parties listed below to effect service of same.

With kind regards, I am

Yours very truly,

Beth Ramsey Faulkner
Attorney

Enclosure(s) as noted

cc: The Honorable J. Mark Hayes, II
Megan Harrigan Jameson, Esq.
James Giles