

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

ANTWAN JAMAL JETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000727

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW, II
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
14-GS-21-00525

v.)

ANIWAN J. JETT,)

DEFENDANT.)

April 20, 2015
Florence, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE;
AND JURY

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

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

W. VICKERY MEETZE, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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No.	Description

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1 MR. JEPERTINGER: Your Honor, the State
2 would call the State against Antwan Jamal Jett,
3 2014-525 charges him with burglary first degree,
4 possession of a weapon during the commission of a
5 violent crime, armed robbery, and criminal
6 conspiracy.

7 THE COURT: Ladies and gentlemen of the
8 jury, I previously read to you the indictment for
9 each of the charges Mr. Antwan Jamal Jett is before
10 the Court on. They are burglary first degree,
11 possession of a weapon during the commission of a
12 violent crime, armed robbery, and criminal
13 conspiracy. I read to you the indictment as
14 previously called as it applies to this particular
15 case that Mr. Jepertinger, or the State, has called
16 at this time. After I read that indictment in its
17 entirety to you, I told you then and I'm telling you
18 now, Mr. Antwan Jamal Jett has plead not guilty to
19 each of these charges; therefore, the State of South
20 Carolina bears the burden of proving his guilt as to
21 each of these charges to you, the jury. I had
22 called the attorneys up here at side bar. My court
23 reporter was coming back in. I explained to them
24 that I was not gonna read these indictments back in
25 their entirety. Any exception or objection to this

1 at this time, Mr. Jepertinger?

2 MR. JEPERTINGER: Not from the State.

3 THE COURT: Mr. Meetze?

4 MR. MEETZE: No, sir, Your Honor.

5 THE COURT: Now, let me start over with my
6 questioning, ladies and gentlemen. Any member of
7 the jury panel been related by blood, connected by
8 marriage, had a close, personal, business, or social
9 relationship with Mr. Antwan Jamal Jett or
10 Mr. Michael Barr, if so, please stand.

11 Ms. Eaddy, tell me your name and number
12 please for the record.

13 THE POTENTIAL JUROR: Carol Eaddy, number
14 31.

15 THE COURT: All right, could you approach
16 please, ma'am.

17 (Potential juror approached the Bench for an
18 on-the-record discussion.)

19 THE COURT: Ms. Eaddy, you said that you
20 taught, one of your students, which one?

21 THE POTENTIAL JUROR: North Vista. It
22 would be first grade.

23 THE COURT: Which student, which
24 individual?

25 THE POTENTIAL JUROR: Oh, Jamal.

1 THE COURT: He's seated right over there
2 at the table. You know him, recognize him?

3 THE POTENTIAL JUROR: He looks very
4 familiar.

5 THE COURT: Well, let me ask you this
6 question. If you were selected as a juror in this
7 case, could you be fair and impartial to both the
8 State and the Defense?

9 THE POTENTIAL JUROR: Yeah.

10 THE COURT: Okay. Any further
11 questioning?

12 MR. MEETZE: No.

13 MR. JEPERTINGER: Not from the State.

14 THE COURT: You said you taught first
15 grade; is that correct?

16 THE POTENTIAL JUROR: Well, I taught at
17 North Vista, and it would be -- he would have been a
18 first grade student.

19 THE COURT: Did you have any interaction
20 with him since?

21 THE POTENTIAL JUROR: No, but that name
22 just sounds real familiar.

23 THE COURT: All right. You can be fair
24 and impartial to both the State and the Defendant?

25 THE POTENTIAL JUROR: Yeah.

1 THE COURT: Okay, thank you, ma'am.

2 Yes, sir, your name and number please.

3 THE POTENTIAL JUROR: Corey Charles, 13.

4 THE COURT: Hold on just a minute please.

5 Yes, sir, Mr. Charles, whom do you know?

6 THE POTENTIAL JUROR: Jamal Antwan.

7 THE COURT: Could you approach please.

8 Come on up, Mr. Charles.

9 (Potential juror approached the Bench for an
10 on-the-record discussion.)

11 THE COURT: Juror number 13.

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: Who do you know, Mr. Charles?

14 THE POTENTIAL JUROR: Antwan Jett.

15 THE COURT: In what capacity do you know
16 him?

17 THE POTENTIAL JUROR: Real good friends.
18 We were, we went to the same school together.

19 THE COURT: Real good friend of yours?

20 THE POTENTIAL JUROR: Yes, sir, he -- we
21 went to South Florence.

22 THE COURT: So y'all graduated together?

23 THE POTENTIAL JUROR: No, sir, not same
24 class but we were in school together.

25 THE COURT: Y'all were engaged in social

1 activities together?

2 THE POTENTIAL JUROR: No, sir, not outside
3 of school.

4 THE COURT: When did you finish South
5 Florence?

6 THE POTENTIAL JUROR: Graduated in
7 December. I graduated early.

8 THE COURT: All right. How close of
9 friends? I mean, come to your house, y'all do
10 things together outside of school ---

11 THE POTENTIAL JUROR: ---but, so I mean,
12 hang out.

13 THE COURT: When is the last time that
14 took place?

15 THE POTENTIAL JUROR: Since I've seen him.

16 THE COURT: Let me ask you, if you were
17 selected as a juror in this case could you be fair
18 and impartial to both the State and the Defense?

19 THE POTENTIAL JUROR: You say like plead
20 against him, whatever?

21 THE COURT: Could you be fair and decide
22 this case based solely upon the evidence presented
23 in this courtroom?

24 THE POTENTIAL JUROR: Like, do I have a
25 choice?

1 THE COURT: That's what I'm asking you.

2 THE POTENTIAL JUROR: No, sir, I don't
3 want to.

4 THE COURT: I'm gonna set you aside for
5 the trial of this case. Thank you for letting me
6 know. Okay, thank you.

7 Come on up, ma'am, tell me your name and
8 number please.

9 THE POTENTIAL JUROR: Number 76, Your
10 Honor.

11 (Potential juror approached the Bench for an
12 on-the-record discussion.)

13 THE COURT: Yes, ma'am.

14 THE POTENTIAL JUROR: Sylvia Johnson.

15 THE COURT: Yes, ma'am, Ms. Johnson.

16 THE POTENTIAL JUROR: His mom cuts my
17 hair.

18 THE COURT: Whose mom?

19 THE POTENTIAL JUROR: Jamal Jett?

20 THE COURT: Does what?

21 THE POTENTIAL JUROR: Antwan and his mom,
22 and cuts ---

23 THE COURT: How close?

24 THE POTENTIAL JUROR: First cousin.

25 THE COURT: I'm gonna set you aside from

1 this case. Thank you, ma'am. Juror number 76.

2 All right, ladies and gentlemen, following
3 is a list of potential witnesses in this case. They
4 include Investigator Timothy Matthews, Florence
5 Police Department; Corporal Felicia Jones, Florence
6 Police Department; Officer Jamey McCall, Florence
7 Police Department; Corporal Legrande Gowdy, Florence
8 Police Department; Officer William Blackmon,
9 Florence Police Department; Officer Thomas Herman,
10 Florence Police Department; Sergeant Amelia Miles,
11 Florence Police Department; Sergeant Thomas Myers,
12 Florence Police Department; Special Agent Catherine
13 Leisy with SLED; Michael Barr; Lacey Allen of the
14 Florence Police Department.

15 All right, if you all will be seated
16 please.

17 In addition, Sergeant Teresa Hennegan,
18 Florence County Sheriff's Office, and Teresa Hines
19 SLED. Is there any member of the jury panel that
20 has ever been related by blood connected by
21 marriage, had a close personal, business, or social
22 relationship with any of the potential jurors in
23 this case, if so, please stand.

24 THE POTENTIAL JUROR: Phil Grimsley,
25 number 53.

1 THE COURT: Can the lawyers approach just
2 a minute.

3 Have a seat Mr. Grimsley.

4 (WHEREUPON, counsel approached the
5 Bench for an off-the-record discussion.)

6 THE COURT: Mr. Grimsley, could you
7 approach please.

8 (Potential juror approached the Bench for an
9 on-the-record discussion.)

10 THE COURT: Mr. Grimsley, I apologize, I
11 probably should have done this from the outset; that
12 is, transfer you to a civil term of court because
13 you are in some way, shape, or form probably going
14 to have some type of working relationship with
15 almost every criminal case in Florence County, not
16 only case with the officers in some capacity.

17 THE POTENTIAL JUROR: And now that I'm
18 retired start consulting investigation and I know a
19 lot of process servers for attorneys so I might know
20 some of them on some case.

21 THE COURT: The offense you having a
22 conflict are potential conflict. Civil case will be
23 a lot less so I'm gonna transfer you to a civil term
24 of court. I'm gonna let you go.

25 All right. If at this time the lawyers

1 would stand and introduce themselves,
2 Mr. Jepertinger first, and the attorneys in your
3 office who may be involved in this case, followed by
4 you Mr. Meetze.

5 MR. JEPERTINGER: Yes, sir. My name is
6 John Jepertinger. I'm deputy solicitor here in the
7 Twelfth Circuit. That's Florence and Marion County.
8 Sitting with me during the course of this trial will
9 be John Holt, also with the office. Seated at the
10 table is your Solicitor, Ed Clements.

11 THE COURT: Mr. Meetze.

12 MR. MEETZE: Thank you, Your Honor. My
13 name is Vick Meetze. I work with the Twelfth
14 Circuit Public Defender's Office in Florence and
15 Marion County. I have sitting with me is Emily
16 Creighton who is also in our office. I represent
17 Antwan Jett. I also have our investigator Thomas
18 McKenzie here as well. And again, we represent
19 Antwan Jett in this case.

20 THE COURT: Has any member of the jury
21 panel ever been related by blood, connected by
22 marriage, had a close personal, business, social
23 relationship or ever been represented by any of the
24 attorneys involved in this case, if so, please
25 stand.

1 Yes, ma'am, your name and number please.

2 THE POTENTIAL JUROR: Karen Worrell,
3 number 150. And ---

4 THE COURT: Hold on just a minute. Yes,
5 ma'am, Ms. Worrell.

6 THE POTENTIAL JUROR: I'm personal friends
7 with Mr. Clements and I played tennis with Emily.

8 THE COURT: Can you approach a minute
9 please.

10 (Potential juror approached the Bench for an
11 on-the-record discussion.)

12 THE COURT: And social activity outside
13 with each of them?

14 THE POTENTIAL JUROR: Just socially, still
15 play tennis with her, not this season but last
16 season.

17 THE COURT: What about Mr. Clements?

18 THE POTENTIAL JUROR: My husband
19 socializes with him occasionally.

20 THE COURT: Is he trying this case with
21 you?

22 MR. JEPERTINGER: No, I'm trying it with
23 John Holt sitting there.

24 THE COURT: How about you?

25 MR. MEETZE: She's only sitting with me

1 for jury selection.

2 THE COURT: If you were selected as a jury
3 juror in this case do you believe you could be fair
4 and impartial to both the State and the Defendant?

5 THE POTENTIAL JUROR: Absolutely.

6 THE COURT: All right, I'm gonna let you
7 stay with me.

8 Tell me your name and number back there
9 please, ma'am.

10 THE POTENTIAL JUROR: Yamika Robinson
11 McKenzie.

12 THE COURT: Yes, ma'am, come on up here
13 please.

14 (Potential juror approached the Bench for an
15 on-the-record discussion.)

16 THE COURT: Okay, Ms. McKenzie.

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: Who do you know?

19 THE POTENTIAL JUROR: My husband is
20 personal friends with Mr. McKenzie.

21 THE COURT: Personal friends?

22 THE POTENTIAL JUROR: Yeah.

23 THE COURT: Are you related or wore
24 different sets of McKenzies. My mother is McKenzie
25 and different sets of McKenzies on different. I'm

1 Brown different sets of Browns in Kingstree. Let me
2 ask you this, if you were selected as a juror in
3 this case could you be fair to both the State and
4 Defense?

5 THE POTENTIAL JUROR: Most definitely.

6 THE COURT: Ma'am?

7 THE POTENTIAL JUROR: I would be fair.

8 THE COURT: Thank you. I'm gonna let you
9 stay with me.

10 THE COURT: Thank you for letting me know.
11 Any member of the jury panel or their immediate
12 family, ever been employed by any city, county,
13 state, or federal law enforcement officer -- excuse
14 me, law enforcement agency, presently or in the
15 past, if so, please stand.

16 THE POTENTIAL JUROR: Carol Eaddy, 31, not
17 law enforcement but my father was the Florence
18 County coroner.

19 THE COURT: If you were selected as a
20 juror in this case would that in any way affect your
21 ability to be fair and impartial to both the State
22 and the Defense?

23 THE POTENTIAL JUROR: Yeah.

24 THE COURT: It would?

25 THE POTENTIAL JUROR: Oh, no. Yeah, I can

1 be fair.

2 THE COURT: That's what I needed to know.

3 Okay, thank you tell me your name and
4 number please, Ms. Finklea.

5 THE POTENTIAL JUROR: 38, Cynthia Finklea.
6 I don't know if it applies. My husband is employed
7 with the Department of Corrections. I don't know if
8 that applies.

9 THE COURT: Currently?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: If you were -- having stood in
12 response to that question, if you were selected as a
13 juror in this case, would that in any way affect
14 your ability to be fair and impartial to both the
15 State and the Defense?

16 THE POTENTIAL JUROR: No, sir, and I want
17 to remind the Court that from ---

18 THE COURT: Hold on a minute. Yes or no
19 question.

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: Do you need to come forward
22 and speak to me?

23 THE POTENTIAL JUROR: I'm sorry.

24 (Potential juror approached the Bench for an
25 on-the-record discussion.)

1 THE POTENTIAL JUROR: I just want to
2 remind the Court that I was an employee of the
3 Solicitor's office. I don't know if that matters.

4 THE COURT: The Solicitor's Office?

5 THE POTENTIAL JUROR: Dudley Saleeby, and
6 I worked family court and served under Dudley
7 Saleeby.

8 THE COURT: Would that in any way affect
9 your ability to be fair and impartial to both the
10 State and the Defense?

11 THE POTENTIAL JUROR: But I just want the
12 Court to be aware of that.

13 THE COURT: Okay, thank you.

14 All right, has any member of the jury
15 panel or their immediate family ever been employed
16 by any city, county, state, or federal prosecutor's,
17 office either at the present time or in the past if
18 so, please stand.

19 (There was no response.)

20 THE COURT: And I'll note that the side
21 bar here that was discussed with Ms. Finklea just
22 now, note that for the record please.

23 Is any member of the jury panel
24 represented by blood or marriage or have a close
25 personal friend employed by any city, county, state,

1 or federal prosecutor's office or Public Defender's
2 office either at the present time or in the past, if
3 so, please stand.

4 That's okay, you're supposed to stand, Ms.
5 Finklea. Tell me your name and number again for the
6 record.

7 THE POTENTIAL JUROR: 38, Cynthia Finklea.

8 THE COURT: All right. The fact that you
9 stood in response to that question, if you were
10 selected as a juror in this case would that in any
11 way affect your ability to be fair and impartial to
12 both the State and the Defense?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you, ma'am, you may be
15 seated.

16 Does any member of the jury panel or their
17 immediate family currently volunteer with any law
18 enforcement agency or prosecutor's office or Public
19 Defender's Office either at the present time or in
20 the past, if so, please stand.

21 (There was no response.)

22 THE COURT: Any member of the jury panel
23 or their immediate family ever been the victim of a
24 violent crime, if so, please stand.

25 Tell me your name and number please,

1 ma'am.

2 THE POTENTIAL JUROR: Mary Culleton, 23.

3 THE COURT: Tell me your name please.

4 THE POTENTIAL JUROR: Shirley Johnson,
5 number 75.

6 THE COURT: And tell me your name please.

7 THE POTENTIAL JUROR: Cindy Jeffords, 71.

8 THE COURT: The fact that each of your
9 stood in response to that question, if you were
10 selected as a juror in this case do you believe that
11 you can be fair and impartial to both the State and
12 the Defense, if so, please — or please tell me your
13 answer please, ma'am.

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: You could be fair and
16 impartial to both?

17 THE POTENTIAL JUROR: Yes, sir. Yes, I
18 think so.

19 THE COURT: I need a yes or no. You
20 believe you could be fair and impartial to both the
21 State and the Defense?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: Yes, ma'am. Could you be fair
24 and impartial to both the State and the Defense?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you. You may be seated.

2 Has any member of the jury panel formed or
3 expressed an opinion about any issue or matter
4 involved in this case, if so, please stand.

5 (There was no response.)

6 THE COURT: Is any member of the jury
7 panel aware of any bias or prejudice toward either
8 the State or the Defendant in this case, if so,
9 please stand.

10 (There was no response.)

11 THE COURT: Is there any member of the
12 jury panel who is a member of or contributor to any
13 group which has as its primary concern the promotion
14 of law enforcement or victims rights? These groups
15 might include, but certainly are not limited to,
16 MADD, SADD, or CAVE, Citizen's Against Violent
17 Crime, if so, please stand.

18 (There was no response.)

19 THE COURT: All right, does any member of
20 the jury panel know of any reason, any reason
21 whatsoever, why he or she should not serve as a
22 juror in this case, with particular emphasis being
23 placed upon your ability to be fair and impartial to
24 both the State and the Defense, if so, please stand.

25 (There was no response.)

1 THE COURT: Any further voir dire from the
2 State?

3 MR. JEPERTINGER: The other.

4 THE COURT: Hold on just a second. Any
5 member of the jury panel or their immediate family
6 been prosecuted by the Twelfth Circuit Solicitor's
7 Office, regardless of the outcome, if so, please
8 stand.

9 (There was no response.)

10 THE COURT: Has any member of the jury
11 panel or their immediate family ever been
12 represented by the Florence County Public Defender's
13 office, if so, please stand.

14 Yes, ma'am, your name and number please.

15 THE POTENTIAL JUROR: Cornelius Goston
16 juror number 50.

17 THE COURT: The fact that you had to
18 respond to this question, if you were selected as a
19 juror in this case do you believe that you could be
20 fair and impartial to both the State and the
21 Defense?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you, ma'am. You may be
24 seated.

25 If there any member of the jury panel that

1 cannot render judgment against a fellow human being
2 based upon religious or a strongly held
3 philosophical belief, if so, please stand.

4 (There was no response.)

5 THE COURT: Is any member of the jury
6 panel, is there any member of the jury panel that
7 believes themselves or any immediate family member
8 or close personal friend has ever been falsely
9 accused of a crime, if so, please stand.

10 (There was no response.)

11 THE POTENTIAL JUROR: Any further voir
12 dire from the State?

13 MR. JEPERTINGER: None from the State,
14 Your Honor.

15 THE COURT: Defense counsel?

16 MR. MEETZE: No, Your Honor.

17 THE COURT: One alternate or two.

18 MR. JEPERTINGER: One should be
19 sufficient, Your Honor.

20 THE COURT: One and two on the alternates,
21 Madam Clerk.

22 THE CLERK: When I call your name, if
23 you'll bring all your belongings and face the back
24 of the courtroom.

25 109, Brenda Newnham (white female). What

1 say the State?

2 MR. JEPERTINGER: Please present the
3 juror.

4 THE CLERK: What say the Defendant?

5 MR. MEETZE: Please excuse Ms. Newnham.

6 THE CLERK: You've been excused from this
7 trial. You may return to your seat.

8 83, Michael Lawson (white male). What say
9 the State?

10 MR. JEPERTINGER: Please present the
11 juror.

12 THE CLERK: What say the Defendant?

13 MR. MEETZE: Please seat Mr. Lawson.

14 THE CLERK: Please have a seat in the jury
15 box.

16 Number 114, Demetra Pearson (black
17 female). What say the State?

18 MR. JEPERTINGER: Please present the
19 juror.

20 THE CLERK: What say the Defendant?

21 MR. MEETZE: Please seat Ms. Pearson.

22 THE CLERK: Please have a seat in the jury
23 box, ma'am.

24 14, Richard Clowney (white male). What
25 say the State?

1 MR. JEPERTINGER: Please excuse this juror
2 for purposes of this trial only.

3 THE CLERK: You've been excused from this
4 trial only, sir. You may return to your seat.

5 108, Franklin Nesmith (black male). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK: What say the Defendant?

10 MR. MEETZE: Please swear Mr. Nesmith.

11 THE CLERK: Please have a seat in the jury
12 box, sir.

13 27, Rudolph Davis (black male). What say
14 the State?

15 MR. JEPERTINGER: Beg the Court's
16 indulgence. We'd excuse this juror for purposes of
17 this trial only.

18 THE CLERK: You've been excused for this
19 trial only, sir. You may return to your seat.

20 140, Sharon Thrasher (white female). What
21 say the State?

22 MR. JEPERTINGER: Please present the
23 juror.

24 THE CLERK: What say the Defendant?

25 MR. MEETZE: Please swear Ms. Thrasher.

1 THE CLERK: Please have a seat in the jury
2 box, ma'am.

3 143, Orien Turner (white male). What say
4 the State?

5 MR. JEPERTINGER: Please present the
6 juror.

7 THE CLERK: What say the Defendant?

8 MR. MEETZE: Please excuse Mr. Turner.

9 THE CLERK: You've been excused from this
10 trial only, sir. You may return to your seat.

11 132, Brandy Singletary (black female).
12 What say the State?

13 MR. JEPERTINGER: We'd excuse this juror
14 for purposes of this trial only.

15 THE CLERK: 85, Timothy Leland (white
16 male). What say the State?

17 MR. JEPERTINGER: Please present this
18 juror.

19 THE CLERK: What say the Defendant?

20 MR. MEETZE: Please swear Mr. Leland.

21 THE CLERK: Please have a seat in the jury
22 box, sir.

23 30, Rodney Driggers (white male). What
24 say the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK: What say the Defendant?

3 MR. MEETZE: Please swear Mr. Driggers.

4 THE CLERK: Please have a seat in the jury
5 box, sir.

6 50, Cornelius Goston (black female). What
7 say the State?

8 MR. JEPERTINGER: We'd excuse this juror
9 for purposes of this trial only.

10 THE CLERK: You may return to your seat.

11 25, Joseph Cusaac (white male). What say
12 the State?

13 MR. JEPERTINGER: We'd excuse this juror
14 for purposes of this trial only.

15 THE CLERK: You've been excused from this
16 trial. You may have a seat.

17 111, Janet Owens (white female). Does the
18 State wish to challenge this juror for cause?

19 MR. JEPERTINGER: No, please present the
20 juror.

21 THE CLERK: What say the Defendant?

22 MR. MEETZE: Please excuse Ms. Owens.

23 THE CLERK: You've been excused from this
24 trial only, ma'am. You may return to your seat.

25 123, Yamika McKenzie (black female). What

1 say the State?

2 THE CLERK: Does the State wish to
3 challenge this juror for cause?

4 MR. JEPERTINGER: No, please present this
5 juror.

6 THE CLERK: What say the Defendant?

7 MR. MEETZE: Please swear Ms. McKenzie.

8 THE CLERK: Please have a seat in the jury
9 box, ma'am.

10 31, Carol Eaddy (white female). What say
11 the State? Does the State wish to challenge this
12 juror for cause?

13 MR. JEPERTINGER: No, please present the
14 juror.

15 THE CLERK: What say the Defendant?

16 MR. MEETZE: Please excuse Ms. Eaddy.

17 THE CLERK: You've been excused from this
18 trial only. You may return to your seat.

19 133, Anja Singleton (black female). Does
20 the State wish to challenge this juror for cause?

21 MR. JEPERTINGER: Please present
22 this juror.

23 THE CLERK: What say the Defendant?

24 MR. MEETZE: Please swear Ms. Singleton.

25 THE CLERK: Please have a seat in the jury

1 box, ma'am.

2 141, Eli Timmons (black male). Does the
3 State wish to challenge this juror for cause?

4 MR. JEPERTINGER: No, please present this
5 juror.

6 THE CLERK: What say the Defendant?

7 MR. MEETZE: Please swear Mr. Timmons.

8 THE CLERK: Please have a seat in the jury
9 box.

10 125, Marlene Ryno (white female). Does
11 the State wish to challenge the juror for cause?

12 MR. JEPERTINGER: No, please present this
13 juror.

14 THE CLERK: What say the Defendant?

15 MR. MEETZE: Please excuse Ms. Ryno.

16 THE CLERK: You've been excused from this
17 trial only. You may return to your seat.

18 145, Ashley Sportiello (white female).
19 What -- do you wish to challenge this juror for
20 cause?

21 MR. JEPERTINGER: No, please present this
22 juror.

23 THE CLERK: What say the Defendant?

24 MR. MEETZE: Please swear Ms. Sportiello.

25 THE CLERK: Please have a seat in the jury

1 box.

2 66, Terrace Holmes (black female). Does
3 the State wish to challenge this juror for cause?

4 MR. JEPERTINGER: Please present this
5 juror.

6 THE CLERK: What say the Defendant?

7 MR. MEETZE: Please swear Ms. Holmes.

8 THE CLERK: Please have a seat in the jury
9 box, ma'am.

10 11, Ronnie Powell (white male). Does the
11 State wish to challenge this juror for cause?

12 MR. JEPERTINGER: No, please present this
13 juror.

14 THE CLERK: What say the Defendant?

15 MR. MEETZE: Please swear Mr. Powell.

16 THE CLERK: Please have a seat in the jury
17 box, sir.

18 142, Jean Tomlinson (white female). Does
19 the State wish to challenge this juror for cause?

20 MR. JEPERTINGER: I'm sorry, we're on the
21 alternate now?

22 THE COURT: Yes, correct.

23 THE CLERK: What say the State?

24 MR. JEPERTINGER: Please present the
25 juror.

1 THE CLERK: What say the Defendant?

2 MR. MEETZE: Please excuse Ms. Tomlinson.

3 THE CLERK: You've been excused from this
4 trial only, ma'am. You may return to your seat.

5 17, Stephanie Coker (white female). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK: What say the Defendant?

10 MR. MEETZE: Please swear Ms. Coker.

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

13 THE COURT: All right, are there any
14 matters of law that we need to take up with regards
15 to the jury selection from the State?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Defense counsel?

18 MR. MEETZE: No, Your Honor.

19 THE COURT: For planning purposes can the
20 lawyers approach for a minute please.

21 (WHEREUPON, counsel approached the
22 Bench for an off-the-record discussion.)

23 THE COURT: Ladies and gentlemen of the
24 jury, you all have been selected as fair and
25 impartial jurors for this particular case. What I

1 am going to do at this time is I am going to let you
2 all go to lunch, okay. I am going to ask you to be
3 back on the fifth floor, on the fifth floor at 2:00,
4 and we will at that time as close to 2:00 as we can
5 start the trial of this case. Now you will hear me
6 say throughout, do not, do not discuss this case
7 with anyone until you're instructed to do so. That
8 includes your family, friends, fellow jurors, etc.
9 You're to decide this case based solely, based
10 solely upon the evidence and testimony that's
11 presented in this courtroom and that will -- or in
12 your case, the fifth floor courtroom, okay, because
13 that's where we're going to be trying this case.

14 Also, you'll be instructed and I am
15 instructing you and you'll hear me say over and
16 over, do not do any independent investigation on
17 this case with regards to this case. Again, you're
18 to decide this case based solely upon the evidence
19 and testimony presented during the course of this
20 trial. I'm going to excuse you all. Please be back
21 on the fifth floor at 2:00 and we will start as
22 promptly at that time as possible. Everybody else
23 please remain seated while they exit the courtroom.

24 (Whereupon, a lunch break was taken.)

25 (State Exhibit Nos. 1 through 42-A and -B were

1 marked for identification only.)

2 THE COURT: We'll take these up in order.
3 Mr. Meetze, motion in limine, motion to determine if
4 the State complied with Rule 5 and Brady, first one,
5 Mr. Meetze?

6 MR. MEETZE: I think that's been
7 satisfied, Your Honor.

8 THE COURT: Okay.

9 MR. JEPERTINGER: Yes, we have the
10 physical items that we'll try to introduce during
11 the course of trial subject to Court's ruling.

12 THE COURT: All right. The next motion to
13 determine prior record of the defendant, the State
14 would intend to introduce should he choose to
15 testify?

16 MR. JEPERTINGER: Yes, Your Honor. And
17 while we are discussing this I have given Mr. Meetze
18 a copy of the only non-law enforcement individual,
19 it'd be the victim in this case, Your Honor. One
20 thing I am concerned about, Judge, is if any jurors
21 come in and out I think ---

22 THE COURT: I've already talked to
23 Mr. Propps, any further that jurors come off that
24 elevator to put them in that room next door.

25 MR. JEPERTINGER: Thank you so much,

1 Judge. Your Honor, Mr. Barr had a record for a
2 manslaughter conviction. I think the manslaughter
3 happened in 2001. He was -- it was completed or
4 convicted upon pleading guilty back on July 11th,
5 2002. Subsequently, I think the probation after, he
6 tells me he spent six years in prison, and then I
7 think parole was transferred here to the State of
8 South Carolina.

9 Your Honor, normally I would say that --
10 and Mr. Meetze knows this, that manslaughter
11 obviously carries more than a year in any way,
12 shape, or form, if it's involuntary or voluntary,
13 either scenario apply. I would say that it's not a
14 crime of moral turpitude. Your Honor, I would ask
15 if the Court would consider excluding that
16 conviction under South Carolina rule of evidence
17 403. Obviously evidence of a conviction must be
18 admitted if probative value of admitting the
19 evidence substantially outweighs the danger of
20 unfair prejudice, confusion of the issues or
21 misleading the jury. Your Honor, the State would
22 allege in this case that Mr. Barr was at his home
23 when three individuals who had their faces covered
24 by artifice got themselves into his house by saying
25 that they were individual by the name of BJ. He

1 opened the door about 3:30 in the morning. They
2 bolted in and started beating him, robbing him with
3 a gun, and stealing various things from him and then
4 exiting the house. His conviction would do nothing
5 other than to confuse this jury, to prejudice him.
6 He was a victim in a case -- I mean, he was a
7 defendant in a case; he's a victim in this case. I
8 don't see how that conviction would do anything but
9 prejudice him in this case.

10 THE COURT: Mr. Meetze.

11 MR. MEETZE: Your Honor, certainly I would
12 say that under the rule it's admissible. He was
13 sentenced to eight years in 2002 and there's a
14 release date on the wrap sheet of March 31st, 2008,
15 so I think the rule says anything that's happened
16 within the last ten years, or if they were released
17 from incarceration within the last ten years fits
18 the rule. Certainly if he was released within the
19 last ten years, I don't think that there's any
20 concern of prejudicial effect outweighing probative
21 value. It's there for impeachment purposes.
22 Credibility has a lot to do with any trial, and I
23 think that -- I don't think that the probative value
24 is outweighed by any potential prejudicial effect.
25 He's not on trial. He's a witness for the State in

1 this case and is the victim in the case; and I
2 think, just as any other witness, he's allowed to be
3 impeached by any prior criminal convictions that he
4 has that either happened within the last ten years
5 or if he was released from incarceration within the
6 last ten day years, and if that crime carries more
7 than one year -- and I think this one fits all
8 that -- and I don't think this one that would, if
9 the Court should rule it admissible, based on
10 prejudicial effect and outweighing probative value.

11 THE COURT: What is the probative value,
12 Mr. Meetze?

13 MR. MEETZE: Well, you know, I think there
14 will be some -- he gave a couple of different
15 statements. There's some, will be some issues with
16 regards to consistency on those statements so,
17 again, it's just, it goes to credibility.

18 THE COURT: Anything further, Mr.
19 Jepertinger?

20 MR. JEPERTINGER: No, sir.

21 THE COURT: I'll take it under
22 consideration, I'll let you know. In what order you
23 plan on putting him up?

24 MR. JEPERTINGER: Well, early on, Judge.

25 THE COURT: Okay. Well, I'll think about

1 it. Anything? All right, I'll let you know before
2 we ---

3 MR. JEPERTINGER: But that was the only
4 conviction I think that's useable.

5 MR. MEETZE: That's correct, Your Honor.
6 That's the only one that fits the rule. We wouldn't
7 seek to try to enter anything else.

8 THE COURT: Motion, excuse me, number
9 three, I think you all have complied with that.

10 MR. MEETZE: Yes, sir.

11 THE COURT: Anything with regards to
12 number three?

13 MR. MEETZE: No, sir, Your Honor, nor
14 four.

15 THE COURT: All right, four has been
16 complied with?

17 MR. MEETZE: Yes, sir.

18 THE COURT: Number five, Mr. Jepertinger?

19 MR. MEETZE: We just discussed that.

20 THE COURT: And I think you said that was
21 all that of it. Mr. Barr is the only one?

22 MR. JEPERTINGER: Yes, sir. The other
23 individuals are all law enforcement.

24 THE COURT: All right now, number six, the
25 motion before the Court finding this in-court

SW - L. GOWDY - DIRECT

1 identification Mr. Jett by the victim Mr. Barr based
2 on the fact of out-of-court conversation informed
3 Mr. Barr was unable to identify.

4 MR. JEPERTINGER: He could not identify.
5 The perpetrators were, at least when he was dealing
6 with the perps, they were all, had their faces
7 covered and there's not -- he can identify clothing
8 and that will become an issue in this case which we
9 think circumstantial evidence but ---

10 THE COURT: Okay.

11 MR. JEPERTINGER: ---in terms of saying
12 that -- and he can identify voices and tense,
13 whether it's a person that sounds young or old. I
14 think that's, that's all been delivered to the
15 defendant in terms of discovery. But no, he cannot
16 say Antwan Jett was one of the individuals that
17 robbed me.

18 MR. MEETZE: Right, and that motion was
19 strictly in regards to any question of Mr. Barr
20 regarding do you see the individual in the courtroom
21 who was in your house that night, that kind of
22 thing. And that's the kind of testimony that we
23 were asking to find inadmissible and it doesn't
24 sound like that's going to be testimony that's
25 elicited so.

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1 THE COURT: All right. And finally number
2 seven, motion to determine admissibility any
3 statements by Mr. Jett pursuant to Jackson v.
4 Denno. That's what brings us to the final motion.
5 Mr. Jepertinger, State ready to proceed?

6 MR. JEPERTINGER: Yes, sir. The State
7 would call Legrande Gowdy to the stand.

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

10 WHEREUPON,

11 **LEGRANDE GOWDY,**
12 having been duly sworn by the Clerk, testified
13 as follows:

14 THE CLERK: Please be seated and state
15 your full name for the record.

16 THE WITNESS: Otis Legrande Gowdy.

17 **DIRECT EXAMINATION**

18 BY MR. JEPERTINGER:

19 Q Okay. Mr. Gowdy, just tell -- we know you work
20 for the Florence Police Department?

21 A Yes, sir.

22 Q On December 31st, 2013, were you on patrol?

23 A Yes, sir.

24 Q Okay. And were you called out to a specific
25 location?

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1 A Yes, sir.

2 Q Okay. What were you called out to?

3 A To a possible home invasion at, on Pawley Street.

4 Q Okay. And did you go out with anyone
5 specifically there, or did you go in a separate
6 squad car or how did you go?

7 A I, we went, there was multiple officers in the
8 area. I did have a trainee with me, but he was
9 placed with another officer at that time.

10 Q All right, okay. And when you got -- did you get
11 to any specific location in regards to the Pawley
12 Street?

13 A We started -- there was a chase with one subject
14 and myself and officer, another officer, Officer
15 Adams who will be here in a little bit, we started
16 backtracking the area and looking for other
17 subjects.

18 Q Okay. And when you backtrack and searched
19 looking for other subjects, did you come across any
20 particular individual?

21 A Yes, sir, we located Mr. Jett.

22 Q Okay. And where did you find Mr. Jett?

23 A Up under a car in front of the apartments on the
24 Layton Street side of the apartments right there at
25 Oakland Avenue.

SW - L. GOWDY - DIRECT

1 Q Now was -- if I say Layton, about how far was
2 that from the alleged scene of the ---

3 A Pawley Street, it's straight through the
4 courtyard maybe two hundred, three hundred yards at
5 the farthest point.

6 Q Would it be a half a block down? Would that be
7 ---

8 A Yes, sir.

9 Q ---a half a block, back somewhere there? And
10 when you said you found Mr. Layton, excuse me, Mr.
11 Jett, you said you found him under a car?

12 A Yes, sir, under a car.

13 Q How did that, can you tell the Court how that
14 came to be.

15 A We were searching the area looking for -- we had
16 been given the description, a basic description of
17 what they were wearing, a possible a green coat or
18 green pullover, and the other object was wearing
19 dark clothing. We located a green hoodie along with
20 a gray shirt up underneath it in front of a
21 apartment on Pawley Street, on the Layton Street
22 side, excuse me.

23 Q On Layton Street?

24 A Yes, sir.

25 Q Okay. And at this point did you or Officer Allen

SW - L. GOWDY - DIRECT

1 notice anything unusual?

2 A I had her stand by with the clothing and; as I
3 started moving further around the corner, and
4 Officer Allen immediately alerted me that she saw
5 someone up under the car.

6 Q Okay. And that was a car parked by Layton
7 Street?

8 A Parked in front of the apartments, yes, sir.

9 Q And what did you do? If you have your report.

10 A Well, I can tell you. I don't have my report
11 with me. If you got it right there I can read it to
12 you. But I —

13 Q You don't need to read it to me, but go ahead,
14 what did he do?

15 A I immediately responded back to her location and
16 she was pointing at a vehicle parked in front of I
17 believe it was — I can't remember the exact
18 address, but pointed at a vehicle, stated he's under
19 this vehicle, he's under this vehicle. I went to
20 the passenger side first, done a quick peek up under
21 there and observed the suspect coming out of the
22 driver's side. I come around on the driver's side
23 of the vehicle where I observed the suspected. As I
24 was approaching he started backing up under the
25 vehicle again.

SW - L. GOWDY - DIRECT

1 Q So what did you do in regards to that?

2 A Knowing that there was a possible home invasion,
3 a home invasion had just occurred and maybe there
4 were weapons involved, I deployed my department
5 issued taser, ordered him to stop. He continued to
6 go and I deployed my taser and strike him in the
7 back.

8 Q Then once you tazed him what happened?

9 A I detained the subject using my department issued
10 handcuffs. As I was taking him out from up under
11 the car I started reading his Miranda rights to him.

12 Q Okay. And how did you read him his Miranda
13 warnings?

14 A I keep a card in my wallet.

15 Q Okay. And can you read what you read? Is that
16 the same card, excuse me, let me back up. Is that
17 the same card you would have had back in 2013?

18 A Yes, sir, it's a piece of paper I've had in here
19 for many years.

20 Q All right. And that would have been the card
21 that you would have read off to Mr. Jett on ---

22 A Yes, sir, I had.

23 Q ---December 31st, 2013?

24 A I've had the same piece of paper almost four
25 years now.

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1 Q Okay. Please read to the Court what you read to
2 Mr. Jett.

3 A "You have the right to remain silent. Anything
4 you say can and will be used against you in a court
5 of law. You have the right to talk to an attorney
6 or to have him or her present while you're being
7 questioned" -- oh, "with you while you're being
8 questioned. If you cannot afford to hire an
9 attorney one will be appointed to represent you
10 before any questioning if you want. You can decide
11 at any time to exercise these rights and not make,
12 answer any questions or make any statements. Do you
13 understand the rights I have read and explained to
14 you? Having these rights in mind do you wish to
15 talk to us now."

16 Q What was his response to you when you asked him
17 if he understood his rights?

18 A He told me that he didn't know anything about a
19 gun.

20 Q Was that the first statement he gave you?

21 A That's the first thing he said to me was I don't
22 know anything about a gun.

23 Q All right. Did he appear to be under the
24 influence of any substances, alcohol, or drugs or
25 anything of that nature?

SW - L. GOWDY - CROSS

1 A No, sir. In looking at my report I made no
2 mention of smelling any alcohol or anything on it,
3 and I would normally put that in my report.

4 Q Okay. After he made that statement as, I don't
5 know anything about a gun, what happened then?

6 A I immediately stopped questioning him about it,
7 told him to stand by right there and had another
8 officer stand by with him while we called for an
9 investigator to come out.

10 Q Okay. At that point did you record a statement
11 at all?

12 A No, sir, I didn't record a statement. I didn't
13 have time to activate my voice recorder.

14 Q Okay. Is there anything else you'd like to,
15 would like to add to the Court about any statement
16 that he made to you?

17 A I know I did ask him about his gloves, why he was
18 wearing gloves. He told me it was his walking
19 gloves. The subject was wearing a T-shirt at the
20 time. I have in my report here that the temperature
21 was cold outside; it was in the low 30s, which would
22 not make sense to have gloves on and no coat and no
23 nothing or anything. I asked him about the clothing
24 there; he said it didn't belong to him.

25 Q All right. That's all the statements you gave --

1 he gave you?

2 A I put Jett stated he had been out drinking and
3 was tired, he crawled up under the car to go to
4 sleep.

5 Q Okay. And once again you didn't smell anything
6 on him?

7 A No, sir.

8 Q Okay. Please answer any questions that
9 Mr. Meetze may have for you.

10 A Yes, sir.

11 THE COURT: Mr. Meetze.

12 MR. MEETZE: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. MEETZE:

15 Q All of the statements that you indicate he said
16 to you, were all of those after you had read him his
17 Miranda rights?

18 A Except for the, what he said about the gun. Like
19 I say, I was trying to get him up, and he said I
20 don't know anything about a gun.

21 Q But in your testimony you just said that he said
22 that after ---

23 A Right.

24 Q ---or you said you read his Miranda rights and
25 then Mr. Jepertinger ---

SW - F. JONES - DIRECT

1 A As he was getting up I was reading him his
2 Miranda rights, and he stated he didn't know
3 anything about a gun. I was still in the process of
4 reading the Miranda rights when he stated that.

5 Q I just wanted to get that clear.

6 A That's fine.

7 Q It's just the way it's testified to you said the
8 first thing you did was read him his Miranda rights,
9 and then Mr. Jepertinger asked a question, after you
10 did that what was the first thing he said to you and
11 you said then that he said the thing about the gun?

12 A Right. As I was pulling him out from the car, I
13 was reading his -- or standing him up, I was reading
14 his Miranda rights to him and he stated that.

15 Q Okay. So that was during reading Miranda?

16 A Yes, sir, I never asked him anything. He just
17 blurted that out as...

18 Q All right. And the rest of the statements that
19 you've testified to here today happened after ---

20 A Yes, sir.

21 Q ---he was read Miranda rights?

22 A Yes, sir.

23 MR. MEETZE: I don't have any further
24 questions, Your Honor.

25 MR. JEPERTINGER: That's all I have for

SW - F. JONES - DIRECT

1 this witness.

2 THE COURT: Sir, you may step down.

3 THE WITNESS: Thank you, sir.

4 MR. JEPERTINGER: I will call Investigator
5 Jones.

6 WHEREUPON,

7 **FELICIA JONES,**

8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE CLERK: Please be seated, state your
11 full name for the record.

12 THE WITNESS: Felicia Jones.

13 BY MR. JEPERTINGER:

14 Q Investigator Jones, I take you back to
15 December 31st, 2013. Were you called out to an
16 incident at Pawley Street, Layton Street ---

17 A Yes, sir.

18 Q ---intersection I guess?

19 A Yes, sir.

20 Q Okay. When you got to the scene what did you
21 find?

22 A When I first got to the scene I actually met with
23 Corporal Gowdy so he could tell me what had actually
24 transpired. We did a walk-thru of the evidence that
25 was dropped along the way, and I was advised that

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1 Mr. Jett was detained in the back of patrol vehicle.
2 Once I did the walk-thru I went to talk with
3 Mr. Jett, and I did not have my voice recorder and I
4 used Corporal Gowdy's voice recorder and spoke
5 with -- when I went to speak with Mr. Jett, the
6 first thing I did for him was read him his Miranda
7 warnings before I asked him any questions.

8 Q All right. And did he seem to -- did you notice
9 if he was under the influence or anything of that
10 nature or anything of that?

11 A I didn't smell any alcohol or anything like that
12 coming from him whenever I was speaking with him.

13 Q Okay. And you say that you recorded whatever he
14 said to you on Officer Gowdy's voice recorder?

15 A Yes, sir.

16 Q Okay. And have you had an opportunity to listen
17 to what, something I'm gonna mark here?

18 A Yes, sir.

19 MR. JEPERTINGER: Can we do this as a
20 Court's exhibit right now, Judge?

21 THE COURT: Yes.

22 (Court's Exhibit Number 1, disk, was
23 marked and made a part of the record.)

24 BY MR. JEPERTINGER:

25 Q I'm going to show you Court Exhibit 1. It's a

1 compact disk; is it not?

2 A Yes, sir.

3 Q Have you listened to what's on that disk in terms
4 of the matters you just testified to?

5 A Yes, sir.

6 Q Okay.

7 MR. JEPERTINGER: At this time I would
8 like to play that, Your Honor.

9 THE COURT: All right.

10 (Court Exhibit 1 was played for the Court.)

11 MR. JEPERTINGER: That's it. Thank you.
12 That's all I have in regards to that issue. Okay,
13 please answer any questions Mr. Meetze might have
14 for you.

15 THE COURT: Mr. Meetze.

16 MR. MEETZE: Your Honor, I don't have any
17 questions, just would have a motion.

18 THE COURT: All right, you may step down.
19 Thank you.

20 MR. JEPERTINGER: Your Honor, that's the
21 last witness I have in regards to the two
22 statements. Let me go over Officer Gowdy's
23 testimony first before Mr. Meetze makes his motion.
24 I would say the first statement comes in completely,
25 Judge. I think he gave him his Miranda warnings;

1 and whatever he stated while those Miranda warnings
2 were going on, I think is admissible as a voluntary
3 statement. I don't think at that point he has to be
4 represented by counsel, which kind of blends over
5 into the second issue with Detective Jones. I think
6 what he said on that statement is, where's my
7 lawyer, somewhere at the incept of the statement.

8 The only thing that I can bring out,
9 Judge, and I think there's been a plethora of case
10 law in regards to Miranda, is that there has to be
11 an unambiguous request for an attorney. Judge, I
12 would tend to think the statement, where's my
13 lawyer, is an ambiguous indication right to an
14 attorney. In Davis versus United States which is
15 cited at 114 Supreme Court, it's a 1994 case, the
16 indication of an attorney which I think was
17 ambiguous, maybe I should talk to a lawyer. Now
18 obviously and I know and in this case of Davis --
19 and I love this language -- it says although a
20 suspect not speak with discrimination of an Oxford
21 don, he must articulate his desire to have counsel
22 present sufficiently, clearly, and that a reasonable
23 police officer under circumstances would understand
24 the statement to be a request for an attorney. Your
25 Honor, I don't know if his initial statement,

1 where's my lawyer, would qualify as that, Judge; but
2 I present that case to you for your consideration
3 and that's all I have on that matter.

4 THE COURT: All right.

5 MR. JEPERTINGER: Thank you.

6 THE COURT: Mr. Meetze.

7 MR. MEETZE: Thank you, Your Honor. Your
8 Honor, I would submit that the statement played in
9 the recording I would say that Mr. Jett did indeed
10 affirmatively and unambiguously assert his right to
11 an attorney prior to any questioning in that regard
12 and would ask that any statement made after that be
13 found inadmissible. He said, where's my lawyer at.
14 I don't think that's ambiguous at all. The case
15 that Mr. Jepertinger cited, he indicates that the
16 statement in question there says maybe I should
17 speak to a lawyer. That's even formed in the form
18 of a question. Mr. Jett didn't question anything.
19 He said, where's my lawyer at, and I don't think
20 that's ambiguous at all. He's saying I want an
21 attorney. And I would say that pursuant to his
22 statement there the questioning should have stopped,
23 and you know, I don't think that's ambiguous. I do
24 think there's also law out there that says when you
25 do bark in front of a, with ambiguous issues that

1 ambiguities are to be ruled in favor of the
2 defendant in circumstances so I don't submit that
3 that's ambiguous at all. I think he asserted his
4 right to an attorney before any questions. He'd
5 already had his Miranda rights read; nobody is
6 disputing that. He -- they indicate that he said he
7 understood them. And when Investigator Jones began
8 questioning him, that's the first thing that he
9 said. And we would submit that pursuant to that,
10 that all of the statements that he made after that,
11 which would pretty much be the entire CD we just
12 listened to, should be found inadmissible.

13 THE COURT: I'm gonna stand down for just
14 a minute. I want to look at something.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: We're back on the record with
18 State versus Antwan Jett. With regards to
19 questioning of Mr. Barr, I believe, as relates to
20 his prior manslaughter conviction, under Rule
21 609(a)(1) states evidence that a witness other than
22 accused been had convicted of a crime to be admitted
23 subject to Rule 403. If the crime was punishable by
24 death or imprisonment in excess of one year under
25 the law under which the witness was convicted, and

1 evidence that an accused has been convicted of such
2 a crime shall be admitted if the Court determines
3 that the probative value admitting this evidence
4 outweighs it's prejudicial effect. While the
5 defendant asserts that such conviction is
6 probative -- and correct me if I'm wrong, Mr.
7 Meetze -- asserts such probative value does go to
8 credibility. Is that what you argue there?

9 MR. MEETZE: Yes, sir, it's -- I think the
10 rule is based on impeachment of witnesses and
11 certainly we feel like he should be able to be
12 impeached with that conviction.

13 THE COURT: All right. Pursuant to State
14 v. Black, 400 SC 10, 732 S.E. 2(b) (a) (a) which is a
15 2012 case, State v. Black says that manslaughter
16 conviction, while -- excuse me, the manslaughter
17 conviction, while crimes of violence, are not
18 particularly probative of a specific trait of
19 truthfulness. Consequently, their impeachment value
20 is limited. It goes on to cite United States v.
21 Johnson which is a 1999 case holding attempted
22 manslaughter as a crime of violence, not a crime of
23 dishonesty or false statement so it does not
24 directly involve veracity and has only limited
25 amount of probativeness as to honesty. Based upon

1 State v. Black as previously cited by the Court, I
2 do not believe that such should be admitted. I do
3 believe the probative value is outweighed by
4 prejudicial effect; therefore, pursuant to Rule 403
5 I am not gonna allow you to go into that.

6 MR. MEETZE: I would just renew my
7 objection at this time ---

8 THE COURT: All right.

9 MR. MEETZE: ---as we move forward.

10 THE COURT: All right. With regards to
11 the defendant's statement to law enforcement,
12 particularly to Officer Gowdy, I do not find -- or I
13 do find that such statement by the defendant was
14 freely and voluntarily given, knowingly and
15 intelligently done so without force, pressure, or
16 intimidation. Such statement by the defendant to
17 Officer Gowdy was given while he was being taken
18 under, from under the car, while such Miranda
19 warnings were being read to him. Without anything
20 further, as it relates to the testimony of officer
21 Gowdy I will allow such statement by the defendant
22 to come in.

23 With regards to defendant's statement to
24 Officer Jones, the statement being where is my
25 lawyer, the Court does find that the defendant had

1 been given his Miranda rights by, not only by
2 Officer Gowdy but also by Officer Jones. The Court
3 in prior case law has stated ambiguous invocation of
4 right to an attorney would allow such statements to
5 be admitted. Under State v. Wannaker, 346 S.C. 495,
6 552 S.C. 2(d) 284, police do not have to stop
7 questioning a suspect who makes an ambiguous request
8 for counsel, nor do they have to ask questions to
9 clarify if he really wants counsel present. Citing,
10 that is citing Davis v. U.S. which is a 114, Supreme
11 Court 23-50, which is a 1994 case. While Wannaker
12 says it's good practice to do so to further clarify
13 that request the law does not require that law
14 enforcement do inquire further. It's not required
15 law enforcement inquire further as to the defendant
16 requesting the defendant clarify. In this
17 particular case not only were the rights read to the
18 defendant, he continued, continued to talk and
19 throughout, I guess, until he was placed in the
20 police car. Anything further at this time,
21 Mr. Jepertinger?

22 MR. JEPERTINGER: No, sir, not in regards
23 to that. I, for another matter I believe Mr. Meetze
24 has agreed that State's Exhibit 1, the aerial
25 photograph, is allowed to come in to evidence.

1 MR. MEETZE: I mean, I'm not gonna have
2 any objection when he admits it. You know, I mean,
3 I don't know that it's, I mean, whether it's
4 admitted now or not. I mean, does it have to be
5 admitted for him to use it in opening statement, I'm
6 not aware of that. I mean, it's not, anything you
7 say is not ---

8 THE COURT: It's not evidence.

9 MR. MEETZE: It's not evidence. I don't
10 see whether there's any objection ---

11 THE COURT: You have any problem with
12 that?

13 MR. MEETZE: ---for him to you use it, no.
14 Judge, just for clarification, your ruling with the
15 Jackson versus Denno as pertains to the recording
16 that was heard in court, the statement that Mr. Jett
17 made was an ambiguous ---

18 THE COURT: It is, yes, sir. I do find it
19 is ambiguous, it is not inambiguous as required by
20 case law and pursuant to the law the law enforcement
21 is not required to further inquire as to his
22 clarification of such.

23 MR. MEETZE: That's what I thought, just
24 wanted to make sure.

25 THE COURT: All right. Anything further

1 before I bring the jury out?

2 MR. JEPERTINGER: No, sir.

3 THE COURT: Mr. Meetze?

4 MR. MEETZE: No, sir, Your Honor.

5 THE COURT: All right, if you'll bring me
6 the jury please.

7 THE BAILIFF: Yes, sir.

8 (Whereupon, the jury was returned to the courtroom
9 at 2:24 p.m.)

10 THE COURT: Madam Clerk, would you swear
11 the jury please.

12 THE CLERK: Members of the jury, if you
13 will stand and raise your right hand to be sworn.

14 (Whereupon, the jury was sworn.)

15 THE COURT: Ladies and gentlemen of the
16 jury, we are about to try the case of State of South
17 Carolina versus Antwan Jamal Jett. Before we begin
18 this trial though, I want to tell you that this
19 trial probably will be different from what you might
20 expect. Many people do not have the chance to
21 attend actual court sessions as you're doing now and
22 may think from watching television or movies or
23 reading books that trials are always full of high
24 drama, intense action, and rivetting circumstances.
25 Now while all of these things may be true at times

1 this trial, ladies and gentlemen, is not for
2 entertainment. It is a fundamental part of our
3 democracy, a search for the truth in an effort to
4 make sure that justice is done between the parties
5 before the court. Searching for the truth in making
6 sure that justice is done is often slow, deliberate,
7 and repetitive, the opposite of what you may have
8 seen on television or in movies or read in books.
9 This courtroom is a place of honor dedicated to the
10 protection and preservation of citizens' rights
11 through what many have called the greatest justice
12 system ever created.

13 The attorneys appearing before you, ladies
14 and gentlemen, are advocates for the parties that
15 they represent; but first and foremost they are
16 officers of the court sworn to uphold the integrity
17 and fairness of our judicial system and to help you
18 in the search for the truth. You should expect them
19 to be professional, competent, and ethical in the
20 representation of their client's interest.

21 What I will now say to you, ladies and
22 gentlemen, is intended to serve as an introduction
23 to the trial of this case. These remarks are not a
24 charge on the law in this case. I will instruct you
25 on the law applicable to this case at the end of the

1 trial before you retire to consider your verdict.
2 This is merely an explanation of the procedure that
3 we will follow in the trial of this case so that you
4 may better understand what may be happening.

5 Now the defendant in this case, ladies and
6 gentlemen, is charged with the crimes of burglary
7 first degree, possession of a weapon during the
8 commission of a violent crime, armed robbery, and
9 criminal conspiracy, the elements of which will be
10 explained to you later. The indictment, as I told
11 you earlier, ladies and gentlemen, is simply the
12 charging document by which this case is brought into
13 this court, and it is not in any sense evidence of
14 any of the allegations that it contains.

15 The defendant, ladies and gentlemen, has
16 pled not guilty to each of these charges; therefore,
17 the State of South Carolina has the burden of
18 proving each of the elements of each of the charges
19 in the indictment beyond a reasonable doubt, and it
20 will be your duty, ladies and gentlemen, to decide
21 whether the State has met that burden. Your purpose
22 as jurors is to find and determine the facts. You
23 are the sole judge of the facts. If at any time I
24 make any comment regarding the facts you must
25 disregard it. You are to determine the facts from

1 the testimony you hear and the other evidence
2 introduced in court. It is up to you to determine
3 the inferences which you feel may properly be drawn
4 from the evidence. It is especially important,
5 ladies and gentlemen, that you perform your duty of
6 determining the facts diligently and conscientiously
7 because ordinarily there is no way to correct an
8 erroneous determination of the facts by a jury. On
9 the other hand and with equal emphasis, the same law
10 that makes you the judge of the facts makes me the
11 judge of the law. The law as given by the Court is
12 the only law that you may consider. You must accept
13 and follow it even though you may disagree with it.
14 I cannot tell you all what the facts are and you all
15 cannot disagree with me about what the law is or
16 should be. Your job is to take the law as I give it
17 to you and apply it to the facts as you find them
18 from the testimony of the witnesses and any other
19 evidence that is introduced. After doing that, you
20 will render your verdict a true and just verdict
21 under the solemn oath that you just took as jurors.

22 Now until I tell you to begin your
23 deliberations, ladies and gentlemen, you must not
24 discuss this case with anyone including your fellow
25 jurors, friends, family members, and anyone involved

1 in this case. The attorneys and parties in this
2 case have been advised that they are not to talk to
3 you at all so if you see anyone involved in this
4 case and they do not speak to you, they are not
5 being unfriendly, they are simply following this
6 Court's instructions.

7 Now during your deliberations you may only
8 discuss the case in the jury room with your fellow
9 jurors because they have seen and heard the same
10 evidence that you have. You must not discuss this
11 case with anyone other than your fellow jurors until
12 you have returned a verdict and the case is at an
13 end. I remind you that you must decide this case
14 based solely on the evidence presented here in this
15 courtroom. This means that during the trial you
16 must not conduct any independent research about the
17 case, the facts of the case, the evidence presented
18 in the case, or the people or organizations involved
19 in any way in the case. Please do not try to find
20 out information from any source outside of this
21 courtroom. In other words, you must not look at
22 dictionaries or other reference materials, search
23 the internet, websites, or blogs, or use any other
24 electronic tools to get information about this case
25 to help you decide the case. You may not use

1 computers, telephones, cell phones, smart phones,
2 tablets, the internet, or other tools of technology
3 with communication capabilities, at any time while
4 you are in the courtroom or during your
5 deliberations. Now during your breaks for meals or
6 overnight, if necessary, you may use these devices;
7 however, you must not use those devices to
8 communicate with anyone about the case until the
9 case is over. This means you must not use phone
10 calls, emails, text messages, instant messages,
11 Twitter, or any blog, chat room, or website,
12 including Facebook, Google Plus, My Space, Linked,
13 YouTube, or any social media websites to send or
14 receive information about this case. This includes
15 information about a party, a witness, an attorney,
16 or a court officer, news accounts about the case,
17 research on topics raised, any topics you may think
18 would be helpful in deciding the case or any
19 testimony presented by any witness. During the
20 trial I don't think there's gonna be any, but you're
21 instructed not to read, listen to, or watch any news
22 reports about the case. This includes anything that
23 may be in the newspapers or on the internet, radio,
24 or television. You must not, ladies and gentlemen,
25 consider anything that you may have read or heard

1 about the case outside of this courtroom whether
2 before or during the trial. Information on
3 television, radio, the internet, or from other
4 sources might be wrong or incomplete.

5 In our judicial system it is important
6 that you are not influenced by anything or anyone
7 outside of this courtroom. If you become aware of
8 another juror's violation of these instructions,
9 please inform the Court immediately. It is
10 important, ladies and gentlemen, that you keep an
11 open mind and not decide any issue in the case until
12 all of the evidence has been presented, the parties
13 have made their closing arguments, and I have
14 instructed you on the law in this case. It is your
15 solemn responsibility to determine the guilt or
16 innocence of the defendant, and your verdict must be
17 based solely on the evidence as it is presented to
18 you in this trial and on the law as I instruct you
19 during and at the close of the trial.

20 Now in just a moment the Solicitor will
21 make what is called an opening statement in which
22 the Solicitor will explain to you the issues in this
23 case, or at least what he thinks the issues are in
24 this case. The attorney for the defendant may also
25 make an opening statement, although he is not

1 required to do so. What the attorneys tell you,
2 ladies and gentlemen, during their opening
3 statements is not evidence in this case; it is only
4 their contention as to what the issues are. The
5 evidence in this case will be presented to you by
6 the testimony of sworn witnesses from this witness
7 stand together with any exhibits that may be
8 introduced during the course of the trial.

9 Now from time to time during the trial you
10 may hear one of the attorneys say something like,
11 Your Honor, I believe that we have a question of law
12 or a matter of law to discuss with you, or Your
13 Honor, may we approach the Bench. Or sometimes I
14 myself might find it necessary to excuse you from
15 the courtroom for a short while so the attorneys and
16 I can discuss a matter of law. The reason for this
17 is because you are the judge of the facts in this
18 case; and sometimes when I am discussing matters of
19 law with the attorneys, it may be necessary for me
20 to make some comment as to the facts in connection
21 with ruling whether or not a particular law applies.
22 I am not supposed to tell you what I think the facts
23 are so I will excuse you from the courtroom while
24 these discussions take place so that in no way will
25 you be influenced by anything that I might say or do

1 in connection with the facts.

2 Now in determining what the true facts are
3 in this case you must decide whether or not the
4 testimony of the witnesses is believable. It will
5 be my responsibility to rule as a matter of law as
6 to whether certain testimony is admissible or not;
7 but once the testimony is admitted, whether or not
8 you believe it, is solely for you to determine. Now
9 in deciding whether to believe a witness you have
10 the right to consider the interest of any witness,
11 the bias of any witness, the prejudice of any
12 witness, the opportunity for the witness to have
13 seen the matters and things about which the witness
14 may testify, and the way the witness acts on the
15 witness stand. You have the right to consider
16 anything that is in the record that will help you
17 evaluate the testimony of the witnesses. That
18 means, ladies and gentlemen, that it is your duty to
19 pay close attention to these witnesses, to observe
20 the witnesses, to listen to the witnesses, and to
21 pay close attention to the attorneys and to the
22 Court. Please don't let your thoughts wander, but
23 give strict attention to the testimony in this case
24 so that at the end of all the testimony, after the
25 arguments of counsel and the charge on the law by

1 the Court, you will then be in a position to
2 determine what the true facts are and to apply the
3 law to those facts and thus render a true and just
4 verdict.

5 Now later in this case, ladies and
6 gentlemen, a foreperson will be selected to preside
7 over the deliberations in the jury room. It will be
8 the foreperson's responsibility to preside in the
9 jury room and be the jury spokesperson here in
10 court. It will also be the foreperson's duty to
11 write the verdict, but I will give the foreperson
12 further instructions about that at the conclusion of
13 the case. Now in order to preserve everyone's
14 rights I will give the parties an opportunity to
15 object to anything that I have said to the jury.

16 Any exception or objection to anything
17 that I have said to the jury by the State?

18 MR. JEPERTINGER: No, sir.

19 THE COURT: Defense counsel?

20 MR. MEETZE: No, sir, Your Honor.

21 THE COURT: All right, ladies and
22 gentlemen, we will now begin the trial of this case.

23 Mr. Jepertinger, you're so recognized.

24 MR. JEPERTINGER: Thank you. If it please
25 the Court, counsel. One of the sacred type sayings

1 that we have, if you think about it, is there's no
2 place like home. I know it's a very simplistic
3 statement but so very true. Now folks, it doesn't
4 matter if you live in Taj Mahal or some shack across
5 the tracks; when it's your home, it's your home.
6 And a couple of things about home are very special.
7 It's the one place where you should feel most safe
8 and secure where you can kick back and enjoy your
9 family, eat what you want to eat, watch what you
10 want to watch, and enjoy the quiet of the day and be
11 sound when you are asleep. On New Years Eve 2013,
12 the early morning hours, not towards New Year but
13 right after the 30th, at about 3:30 in the morning
14 Michael Barr, that gentleman with the gray suit and
15 white shirt, was at his house over at 702 Pawley
16 Street, and I want to show you that here in a
17 second. He had gone to bed watching television like
18 a lot of us do, probably 10:00 on the 30th, and he
19 had fallen asleep in front of the TV. At about
20 3:30, 3:30 in the morning, about 3:30 in the morning
21 he gets a knock at the front door of 702 Pawley
22 Street here in Florence and the voice says, it's BJ.
23 Well, he happens to know a BJ in the community.
24 He's not related to BJ, but BJ is a friend. In
25 fact, this BJ guy calls Mr. Barr up so he gets up

1 out of the dead sleep, gets to the front door, and
2 when he opens the door he gets bull rushed by three
3 individuals. Now one of them is about my size,
4 about 5'9", 5'10", and he's wearing a green hoodie
5 and the thing is arranged so his face is covered.
6 One thing that Mr. Barr will tell you is that that
7 individual, in his mind, was a medium complected
8 African American male and had what he perceived a
9 younger voice. The next individual is wearing a
10 brown either hoodie or jacket and he's taller, about
11 6'2", 6'3", taller than the first individual with
12 the green hoodie. And that individual had small
13 dreadlocks or dreadlocks of some sort, but his face
14 is covered as well but he's darker complected than
15 the individual with the green hoodie. The third
16 individual is wearing dark clothes, and he's between
17 the person in terms of the green hoodie and the guy
18 with the dreads, in between them at height wise.
19 And he's in darker clothes. They bull rush Mr. Barr
20 into his home, and they begin beating him. And one
21 of them -- and it's really an academic point -- but
22 one of them is armed with what Mr. Barr said was a
23 Derringer pistol, a small pistol, a Derringer, small
24 Derringer. They begin to hit him with their fists.
25 They kick him. They knocked him to the ground.

1 They keep saying, where is it, where, give it up,
2 give it up, where are your bills, where are your
3 bills. Now at first the guy with the green hoodie
4 is standing with the gun in the living room where
5 Mr. Barr is sprawled out. The tall guy with the
6 dreads and the third fella go into his room and take
7 bottles of medicine prescribed to Mr. Barr. After
8 they had beat him they reached into his pocket and
9 took the money he was carrying on him. Mr. Barr
10 also had a knife, hunting knife sheathed up, a
11 sheath, sitting next to the chair that he had been
12 sitting in. And when they saw that knife one of the
13 individuals asked him, are you gonna stick me with
14 it, and they grabbed that knife. At that point —
15 Mr. Barr has a roommate at that time. Mr. Barr will
16 tell you that he doesn't know where she is now. But
17 she's in a closed room. The guy with the green
18 hoodie has the guy with the dreads watch over him,
19 watch over Mr. Barr; and he, the guy with the green
20 hoodie and a third guy, knock open the door where
21 the young lady was. Mr. Barr hears some screaming,
22 hears some talking, and then they get out of there
23 and they leave, one, two, and three.

24 By this time someone had notified the
25 police about this burglary, and the police officers

1 who respond on scene happen to catch sight of two of
2 the three come out of this back door. They didn't
3 see all three but they caught sight of two of them.
4 The two of them began running across Rose street
5 with Officer Blackmon in pursuit, of the Florence
6 Police Department. He introduced himself to you
7 earlier today; you'll hear from him this afternoon.
8 Officer Blackmon begins chasing them. Officer
9 Herman is also there. He shoots down Rose street in
10 his patrol vehicle, turns right on Layton Street.
11 And what happens? He sees the two come up this way,
12 he turns, then at a point he sees only one
13 individual come out. And Herman chases that
14 individual that way and Blackmon loses sight of the
15 other individual.

16 Shortly thereafter, because at this point
17 as you see all these officers out here, they're out
18 like fire ants and they're combing the area, combing
19 this area knowing one had gone that way and got
20 away, and got away, outran the police. They come
21 back to this apartment complex, this duplex right
22 here; and in front of 611 Layton Street, low and
23 behold, what do they find. Right on the stoop of
24 611 Layton they find a green hoodie, a gray
25 sweatshirt, and two types of caps. And directly in

1 front of that apartment is parked a Cadillac. And
2 the officers will tell you it's December 31st
3 between 3:30 and 4:00 in the morning, and it is
4 cold. And what do they find under that Cadillac?
5 They find Antwan Jett, the defendant in this case,
6 not more than 10 to 15 feet in front of the strewn
7 green hoodie and the other clothes. Now the
8 significance of the other clothes, when you see the
9 photographs of how those clothes are strewn, on one
10 of those items you will -- we will have someone from
11 SLED come in and tell you, we found Mr. Antwan
12 Jett's DNA on a gray sweatshirt that was lying on
13 top of the green hoodie. In a T-shirt on a very
14 cold, cold morning between 3:30 and 4, and what are
15 we gonna hear and see? A young man with gloves on,
16 a T-shirt, and when Officer Gowdy, the gentleman in
17 the back, all the way in the back, gets him out from
18 under the car, his first words to Officer Gowdy as
19 he begins reading his Miranda warnings to him, his
20 rights -- you have a right to remain silent and all
21 that good stuff -- is, I don't know nothing about a
22 gun. The officers who are out there in mass begin
23 looking, including Investigator Jones who you'll
24 hear from and some of the other officers, and they
25 begin walking the trail and it's almost like Hansel

1 and Gretel of the fairy tales from years ago 'cause
2 they find a string of things. They find the gun,
3 the Derringer that was used in that home invasion,
4 Mr. Barr's house at 702 Pawley, which is right here.
5 They find his hunting knife strewn there. They find
6 an orange -- and I call a Clemson toboggan, but they
7 find a Clemson toboggan there. And I don't know
8 whose that was, whether it was, whether he was
9 wearing it or whether it was guy number two. I
10 think it might have been guy number two who headed
11 that way. And they found, they found the pill
12 bottles from the pills taken from Mr. Barr.

13 And all of that, ladies and gentlemen, all
14 of it, not just one fact but all of them, point to
15 one inevitable conclusion that this defendant along
16 with two other individuals, decided to go into
17 Mr. Barr's home in the early morning hours of
18 December 31st, 2013. And the evidence will show
19 that he committed a burglary, a burglary as his
20 Court has told you is what he's charged with, and
21 that is the entry into the dwelling of another
22 without consent with the intent to commit a crime
23 therein. He's charged with armed robbery for the
24 very reason that one of them was armed with a
25 Derringer, and they took money, they took a hunting

1 knife, they took pills, they took cell phones from
2 this individual, Mr. Barr. You're gonna hear that
3 they're also charged with conspiracy. And a
4 conspiracy is an agreement between two or more
5 people to commit a criminal act. And no, we don't
6 have any words that they would have spoken before
7 they went into the house; we weren't there. But you
8 can tell their agreement by their actions, as you
9 can tell what type of fruit tree it is by the type
10 of fruit it bears.

11 There's also another charge of possession
12 of a weapon during the commission of a violent
13 crime, and His Honor will tell you what that
14 involves too at the end of all the proceedings.

15 Did we catch all three? No. But in this
16 case we caught Antwan Jett, and it's his day in
17 court; and it's Michael Barr's day in court, and we
18 ask that you listen to this evidence to render a
19 fair and just verdict which we believe will be
20 guilty in this case. Thank you.

21 THE COURT: Mr. Meetze.

22 MR. MEETZE: Thank you, Your Honor, may it
23 please the Court. Ladies and gentlemen, as I said
24 to you earlier, my name is Vick Meetze. I work in
25 the Public Defender's Office here in Florence County

1 and I represent Antwan Jett in this case. And I'm
2 probably gonna rehash some things that you've
3 already heard here today, but I do that primarily
4 because it's just, it's that important that you hear
5 these things and that you hear it over and over
6 again 'cause when you hear things over and over
7 again, it sort of does trigger off flags in your
8 head to say, you know, I heard that before, that
9 might be important. And that's the case here.

10 As you've heard we're in the court of
11 general sessions. In South Carolina that's what we
12 call our criminal court, okay. And in criminal
13 court the State has to prove somebody guilty beyond
14 a reasonable doubt. That's a principle of law that
15 you've heard before and you'll hear again. There's
16 another principle of law that you've heard and will
17 hear again, and that is the presumption of
18 innocence. Now what that means is that as he sits
19 here today he's as innocent as anybody in this
20 courtroom. The presumption of innocence is not a
21 fiction; it's a real thing. It's a, it's an ideal
22 of our law in this country that runs as deep as any
23 other rule of law that we have, and it's very, very
24 important because in criminal court nobody has to
25 come into court and prove their innocence, nobody

1 has to do that. And that's the same with Mr. Jett.
2 So as he sits here right now he's as innocent as you
3 or I or anybody else in this courtroom, and he's
4 gonna remain that way. He's gonna remain that way
5 until such time as the State can convince you all
6 beyond a reasonable doubt. And Mr. Jepertinger
7 stood up here and he sort of gave you what he
8 intends the evidence to show and his opinion on that
9 evidence, and that's his job. He's a prosecutor and
10 he's been doing that a long time and does it very
11 well. And he started out his opening statement with
12 a little catch phrase so-to-speak saying there's no
13 place like home and that's in attempt to sort of put
14 some emotion into this thing. And again, that's a
15 prosecutor's job. But I remind you that anything
16 that's said or shown to you to this point is not
17 evidence in this case. At this point in time
18 nothing that I have said and nothing that's been
19 said to any of y'all is considered evidence because
20 the only evidence you're gonna hear is testimony
21 from this witness stand, evidence, pictures, and
22 other exhibits that may be introduced and none of
23 that is before you yet. So nothing that you've
24 heard is evidence. And of course, it's hard to
25 detach our emotions from things. But I submit to

1 you, that in order to effectively do your job that's
2 what you need to do in this case because in any
3 criminal case because we can't let our emotions
4 rule. You have to let the evidence, you have to let
5 the evidence be the determining factor in this case;
6 and I submit to you, that the State in this case
7 will not be able to sufficiently present evidence to
8 convince you beyond a reasonable doubt that Mr. Jett
9 is guilty of anything. And that's a very high
10 burden, beyond a reasonable doubt.

11 As you've already heard there's two
12 different types of court. In circuit court there's
13 common pleas or civil court where you have things
14 like car wrecks where somebody may be injured and
15 they sue for damages for whatever, if they may be
16 out-of-pocket financially or whatever. And those,
17 this court hears those kind of cases too along with
18 criminal cases. In a civil case the burden is
19 different; it's not as high. It's called by a
20 preponderance of the evidence, or a more reasonable
21 than not standard, and it's just sort of 51 percent,
22 49 percent. If in that case both sides present
23 their evidence, if a jury believes that after that
24 evidence is presented they find just ever so
25 slightly that that evidence tilts those scales of

1 justice ever so slightly in one party's favor, then
2 that's the party that they rule on. That's the
3 difference. That's all it is. Just by the slimmest
4 of margins.

5 In criminal court it's different, the
6 standard is different, beyond a reasonable doubt.
7 And that's because in this court you're not dealing
8 with just money and money is not important to
9 everybody, okay. Money makes the world go around,
10 all that kind of stuff. There's no question nobody
11 wants to be forced to have to give up any kind of
12 financial money involuntarily, but it's not as
13 important as your very liberty. And that's what
14 you're dealing with in criminal court. You're
15 dealing with people's lives. You're dealing with
16 their very liberty, it doesn't get anymore important
17 than that. The stakes don't get any higher than
18 that, and that's why in this court the burden is so
19 high, proof beyond any reasonable doubt. If you
20 think those same scales of justice the State has to
21 present evidence that tips those scales extremely in
22 their direction in order to meet that burden. And
23 again, that's because in criminal court, in general
24 sessions court, what we deal with is the most
25 important thing you can deal with. You're dealing

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1 with people's very lives and people's very liberties
2 so that's why the burden is so high. And again, you
3 haven't heard anything yet. You haven't heard
4 anything. You got nothing before you to even form
5 an opinion on this case. That's to come after I sit
6 down. We would ask you to listen closely, look
7 closely at the evidence from all angles. I submit
8 to you, if you do that, if you do that, you'll come
9 to the only conclusion that is just, the only
10 conclusion that speaks the truth, and we would ask
11 you that that conclusion in this case be not guilty.
12 Thank you.

13 THE COURT: Mr. Jupertinger.

14 MR. JEPERTINGER: Yes, sir. The State
15 would call Michael Barr to the stand.

16 THE CLERK: If you would, sir, place your
17 left hand on the Bible.

18 WHEREUPON,

19 **MICHAEL BARR,**
20 having been duly sworn by the Clerk, testified
21 as follows:

22 THE CLERK: Please be seated. State your
23 full name for the record.

24 **DIRECT EXAMINATION**

25 BY MR. JEPERTINGER:

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1 Q Please state your full name for the record.

2 A Michael Barr.

3 Q Mr. Barr, how old are you?

4 A I'm 56 years old.

5 Q Okay. Back in 2013 how old were you? Let me do
6 the mathematics.

7 A I was 55. My birthday was in January of next
8 month.

9 Q Okay. So you're 54 going on 55?

10 A I was 55. Now I'm 56 in January this past year.

11 Q Okay, very good. Do you live here in Florence?

12 A Yes, I do.

13 Q And who do you live with?

14 A I live by myself.

15 Q All right. And back on December 31st, 2013,
16 where did you live?

17 A 702 Pawley Street.

18 Q Okay. And which county is that in?

19 A Florence.

20 Q All right. I'm gonna show you State's Exhibit 1
21 for identification. Can you identify State's
22 Exhibit 1 for identification.

23 A Yeah.

24 Q What is that?

25 A That's -- it look like a diagram of the

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1 neighborhood where I lived at on Pawley Street.

2 Q All right. And does it include other streets in
3 that area?

4 A Yes.

5 Q All right. Is this a photograph, I guess, an
6 accurate description of what your neighborhood looks
7 like or looked like in 2013?

8 A Yes.

9 MR. JEPERTINGER: At this time I would
10 move State's Exhibit 1 into evidence.

11 THE COURT: Any objection?

12 MR. MEETZE: No, Your Honor.

13 THE COURT: Let me see the lawyers at side
14 bar just a minute.

15 (WHEREUPON, State Exhibit No. 1
16 was admitted into evidence.)

17 (WHEREUPON, counsel approached the
18 Bench for an off-the-record discussion.)

19 BY MR. JEPERTINGER:

20 Q All right. Now back on December 31st, 2013, did
21 anything unusual happen in the early morning hours?

22 A On December 31st I was at home, I was watching
23 television. And I had my recliner by my front door
24 and I fell asleep in my living room, and I heard a
25 knock on the door about 3:30 in the morning. I say

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1 who is it knocking on the door this time of night,
2 and the person said, BJ.

3 MR. MEETZE: Objection.

4 THE COURT: Hold on a minute. What's your
5 objection?

6 MR. MEETZE: Hearsay.

7 MR. JEPERTINGER: I would say I'm not
8 offering it for the truth of the matter asserted.

9 THE COURT: Restate your question again.

10 BY MR. JEPERTINGER:

11 Q Did anything unusual happen, and what happened?

12 You heard a knock at the door and ---

13 A I heard a knock at the door. I said who's
14 knocking on the door this time of night, and the
15 person said, BJ.

16 THE COURT: Overruled, go ahead.

17 BY MR. JEPERTINGER:

18 Q All right. Do you know a BJ in the community?

19 A Yes, I do.

20 Q Okay. Is it a -- how do you know BJ in the
21 community?

22 A I know him 'cause he's like a friend of mine's
23 that I talk to in the street and sometimes, you
24 know, I talk to him and sometimes I call him my
25 nephew sometimes. He calls me Uncle Mike 'cause he

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1 has a lot of respect for me so that's how I know
2 him.

3 Q All right. And at 3:30 in the morning were you
4 awake or asleep, or were you ---

5 A Asleep.

6 Q You were asleep, okay. Had you been watching
7 television for a long while?

8 A Yes, I was.

9 Q All right. Did you start on December 30th
10 watching TV, the night before?

11 A I watched -- yes.

12 Q Okay. What time do you think you dozed off?

13 A Probably about 11:00.

14 Q All right.

15 A 11:00.

16 Q And when you dozed off which room were you in?

17 A My living room.

18 Q All right. So you get the knock at the door.

19 Tell the ladies and gentlemen of the jury what
20 happens once you hear it's BJ.

21 A I went to the door. I opened the door. Three
22 people with hoodies on tied across their face came
23 in and started punching me in my face, kicking me to
24 the ground, and kicking me -- kicking me and beating
25 me up. I tried to resist but I couldn't. They

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1 overpowering me and I fell on the floor. I was
2 crying and saying why you doing this to me, what's
3 going on, and they said give me your money.

4 MR. MEETZE: Objection.

5 MR. JEPERTINGER: Your Honor, I would say
6 that anything that is said is -- remember the charge
7 with conspiracy, and I would say these are all
8 statements in furtherance of conspiracy.

9 MR. MEETZE: May we approach, Your Honor.

10 THE COURT: Yes.

11 (WHEREUPON, counsel approached the
12 Bench for an off-the-record discussion.)

13 MR. JEPERTINGER: Objection is overruled?

14 THE COURT: Yes.

15 BY MR. JEPERTINGER:

16 Q So continue on where you were at. So they
17 knocked you to the ground. Then you said what
18 happened?

19 A One of the, one of the men told me to shut up and
20 put the gun in my face.

21 Q What type of gun was it that you could see?

22 A Small gun.

23 Q All right. And do you know the type of gun that,
24 what they call those type small guns?

25 A It looked like a small Derringer, a two shot

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1 Derringer.

2 Q All right. And what did you do in response to
3 what they were doing to you at that time?

4 A I did nothing. I just was, I just was saying, I
5 did nothing, I just shut up. I wasn't...

6 Q All right, I understand. And at that point what
7 did they do?

8 A They said -- they reached in my pockets and said
9 where's the money, where's the money, where's the
10 money? I said I don't have any.

11 MR. MEETZE: Objection.

12 THE COURT: So noted for the record.

13 Overruled pursuant to Rule 801(b)(2)(e). Go ahead,
14 Mr. Jepertinger.

15 BY MR. JEPERTINGER:

16 Q And what did they say?

17 A Where's the money, where's the money, where's the
18 bills. I said I don't have any money. I said I
19 don't have any bills. Then they punched me again,
20 started kicking me again, and I just looked at them.
21 And then I was, I was like, I was like, I was like
22 starting to cry a little bit. I, you know, like I
23 don't have anything, get away from me. Then they --
24 the guy with the gun told the other guy that was
25 with him, he said, watch him. Then the guy with the

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1 gun and the other guy went in my bedroom, and they
2 started searching my bedroom. And the other guy,
3 the big tall guy was in the room watching over me.
4 He went in my bedroom tossing and turning out of it,
5 and then I heard one of the -- I didn't hear
6 anything. And one, the guy with the gun said who is
7 in this room. I heard a voice say, who is in this
8 room 'cause my roommate had the door closed. And I
9 said, I didn't say anything. And then he kicked the
10 door open and she started screaming. I heard her
11 screaming and yelling.

12 MR. MEETZE: Objection. Just, I mean, I
13 understand, I guess my objection is not to what he
14 said to this point, but if it goes any further than
15 that with regards to the roommate.

16 THE COURT: Objection overruled at this
17 point.

18 BY MR. JEPERTINGER:

19 Q Okay, you heard her screaming and yelling. Then
20 what happened?

21 A I heard her screaming and yelling and then they
22 came out of her room and one of these guys said, we
23 don't got time for this, we don't got time for this,
24 and then they ran out through my back door.

25 Q All right. Now let me ask you a couple of things

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1 and we're -- that's kind of generally what happened.
2 Now let me ask you, when they first came in to your
3 house you said three of them had, the three had
4 hoodies on, correct?

5 A Yes.

6 Q Now the first guy that came into the, into the,
7 your living room, was he a big fella, small fella,
8 or was he about my size or what?

9 A He's about your size.

10 Q All right.

11 A About 5'10", something like that, about my height
12 5'10".

13 Q All right. And could you tell if he was a white
14 man like me, black man, Hispanic, or whatever?

15 A I could tell it was all African American.

16 Q All three of them?

17 A Yes.

18 Q All right. Now the first guy that came in that
19 was about 5'10" you say, was he dark complected,
20 light complected, medium complected?

21 A Like brown skin complected.

22 Q How was -- in the scale, I mean, is that light,
23 is that dark, or how would you ---

24 A It's not dark but it's not light.

25 Q So medium?

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1 A Yeah, probably my complexion.

2 Q Okay. Did he say anything while he was in your
3 house?

4 A Told me to shut up. That's the one that was
5 punching me. That's the one that had the gun with
6 the, he had the green hoodie on.

7 Q He had the green hoodie on, okay. Did he have
8 what I call a man's voice, deep voice, or was it a
9 old voice like an older gentleman, or what type of
10 voice did he have?

11 A It was, it was like a young man voice. It wasn't
12 an older person voice. It was like a young man's
13 voice.

14 Q All right. Now, the -- so the first one was you
15 say was, had the green hoodie?

16 A Yes, sir.

17 Q Okay, all right. Now the second guy, was he my
18 size, shorter than me, or taller than me?

19 A Taller.

20 Q About to estimate, how tall would you say this
21 fella was?

22 A He was tall, about maybe about 6'3", 6'2", 6'3".

23 Q All right. Did you -- in terms of skin
24 complexion, light, medium, dark, or how did he fall?

25 A He was darker with dreads.

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1 Q He was darker?

2 A He had dreads in his hair.

3 Q He had dreads in his hair?

4 A Yes.

5 Q And was he dark, he was darker than the first
6 individual, correct?

7 A Correct.

8 Q All right. And how was he dressed?

9 A He had like a hoodie on, but he had like a hat
10 like one of those Russian hats that come down with
11 the flaps. And he was taller, and he had on like a
12 darker -- I was -- he had on like a darker color
13 like a, I could say like a dark brown, dark brown,
14 or black color hoodie with a darker color hoodie. I
15 can't exactly tell what color it was. It was
16 darker, a darker hoodie though.

17 Q Can I ask you, how do you know he had dreads?

18 A 'Cause I could see them sticking out from the
19 sides of the hat, whatever he had on, the dreads.

20 Q Okay.

21 A Longer hair. It wasn't a short hair cut like I
22 had.

23 Q Okay, it was longer hair?

24 A Right.

25 Q And were they -- I guess, was it long flowing

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1 like what I call guys that look like the predator,
2 or was it shorter perhaps?

3 A Short, about below the ear.

4 Q Okay, all right. And the color of his hoodie
5 again?

6 A He had -- it was dark, maybe brown or black, but
7 he had a hat on also.

8 Q Okay. How about the third individual?

9 A He had on about the same color hoodie. He had
10 like a wrapped tight around his head, and I
11 couldn't, I couldn't, I don't want to talk, I
12 couldn't really see any faces 'cause it was pulled
13 tight.

14 Q All right.

15 A And I was, I got hit in my eye, I couldn't really
16 focus too good.

17 Q All right. Now was he taller than 6'2" or 6'3"
18 or shorter or ---

19 A No, he was, he was about, I say he was about 6
20 feet, 6 feet, something like that, taller than me.

21 Q So he would be in between the first guy with the
22 green hoodie and the guy with the dreads?

23 A Yes.

24 Q All right. Now did you see any more than one
25 gun?

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1 A No.

2 Q All right. And of the three, who do you recall
3 having the gun?

4 A It's the one with the green hoodie.

5 Q Okay. Now, I think you said that two of them
6 went into a room with, I guess, your room?

7 A Yes.

8 Q Which two would have gone into your room?

9 A The two that went in my room was, what you call
10 it, the one with the gun and the taller one.

11 Q All right. So the third guy was doing what?

12 A Watching, standing over me.

13 Q All right. Now, after -- and I'm just gonna
14 scoot way ahead here but I'm gonna come back, okay.
15 After they left your residence did you have an
16 opportunity to go into your room?

17 A Yes.

18 Q All right.

19 MR. JEPERTINGER: Beg the Court's
20 indulgence one second as I...

21 THE COURT: Yes, sir.

22 BY MR. JEPERTINGER:

23 Q I'm going to show you State's Exhibit 23-A for
24 identification and State's Exhibit 23-B for
25 identification. Can you identify those photographs.

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1 A That's my bedroom, a picture of my bedroom and
2 the drawers open, all the drawers look like they're
3 opened up.

4 Q Do both these photographs fairly and accurately
5 represent how your bedroom looked after the robbery?

6 A Yes.

7 MR. JEPERTINGER: At this time I would
8 move State's 23-A and -B into evidence.

9 MR. MEETZE: No objection, Your Honor.

10 THE COURT: Without objection so admitted.

11 (WHEREUPON, State Exhibit Nos. 23-A and
12 23-B were admitted into evidence.)

13 BY MR. JEPERTINGER:

14 Q All right. I'm gonna show you State's Exhibit 5.
15 Can you tell me what that is.

16 A That's a picture of my face swollen upside of my
17 head swollen up, and it looks like a couple of knots
18 upside my head.

19 Q Is this after the robbery?

20 A Yes.

21 Q Does this picture in State's Exhibit 5 fairly and
22 accurately portray how you looked like after the
23 robbery?

24 A Yes.

25 MR. JEPERTINGER: At this time I move

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1 State's Exhibit 5 into evidence.

2 MR. MEETZE: No objection, Your Honor.

3 THE COURT: State's 5 admitted without
4 objection.

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

7 BY MR. JEPERTINGER:

8 Q I'm gonna show you State's Exhibit 24-A and -B.
9 Can you tell us what that is please.

10 A That's a picture of my living room and recliner
11 that I was sleeping in and two chairs against my
12 wall. And the picture on the bottom is also a
13 picture of my front door of my living room with my
14 color TV in front.

15 Q And does this photograph fairly and accurately
16 portray your living room ---

17 A Yes.

18 Q ---at the scene of the crime?

19 A Yes.

20 MR. JEPERTINGER: At this time I would
21 move State's 24-A and -B into evidence.

22 MR. MEETZE: No objection, Your Honor.

23 THE COURT: Without objection so admitted.

24 (WHEREUPON, State Exhibit Nos. 24-A and
25 24-B admitted into evidence.)

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1 BY MR. JEPERTINGER:

2 Q State's 25-A and -B?

3 A That's a picture of my front door and another
4 picture of my living room.

5 MR. JEPERTINGER: I would move at this
6 time State's 25-A and -B into evidence at this time.

7 MR. MEETZE: No objection.

8 THE COURT: Without objection so admitted.

9 (WHEREUPON, State Exhibit Nos. 25-A and
10 25-B were admitted into evidence.)

11 BY MR. JEPERTINGER:

12 Q Now I'm gonna pause here for a second. You say
13 that the guy with the green hoodie who had the gun
14 and the tall guy went into your room, all right.
15 What did they come out of the room with, that you
16 found missing?

17 A I couldn't see what they came out room with, but
18 my pill bottles was missing. I think I had a
19 hydrocodone bottle in there and some, a Motrin
20 bottle. I'm not sure of the specific description.
21 My medication bottle was missing.

22 Q All right. Now when they got back to the living
23 room did you have an object on the floor that
24 belonged to you?

25 A Yeah, I had a hunting knife. I had a hunting

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1 knife with a case in it.

2 Q I'm gonna show you State's 27-A and 27-B, if you
3 can identify those please.

4 A That's my living room, and that's the case that I
5 had bought the knife in.

6 Q Would that be -- well, another word for that a
7 sheath that you keep a knife in?

8 A Yeah, a sheath. Uh-huh, you call it a sheath.

9 MR. JEPERTINGER: Okay. I'm gonna move
10 State's 27-A and -B in.

11 MR. MEETZE: No objection, Your Honor.

12 THE COURT: Without objection so admitted.

13 (WHEREUPON, State Exhibit Nos. 27-A and
14 27-B were admitted into evidence.)

15 BY MR. JEPERTINGER:

16 Q All right. Now in 27-A and -B I just see a
17 sheath. What happened to the knife and where was
18 the knife?

19 A The guy that they had watching me in the living
20 room, the medium sized guy, thought I was going to
21 pick the knife up because it was right by -- it was
22 on the floor next to me. He hit me again. He said
23 are you trying to stick me, are you trying to strick
24 me. I said, no, I'm not trying to stick you. He
25 took the knife off the floor.

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1 Q All right. Did he keep it or did he give it to
2 someone?

3 A I don't remember.

4 Q All right.

5 A I don't remember.

6 Q Now the tall guy and the guy in the green hoodie,
7 did they remain in the living room or did they go to
8 another room of the house?

9 A They went inside my bedroom.

10 Q Okay. Did they go to another room of the house?

11 A They went inside my roommate's room.

12 Q Okay. And who went into that room?

13 A The guy with the green hoodie and the gun, and
14 the tall guy.

15 Q All right. And I'm gonna show you State's 21-A
16 and 21-B. Can you identify that picture please.

17 A That's a picture of my roommate's room. The door
18 look like it's broken off the hinges or something,
19 not broke, but broke off the hinges but broke into
20 the lock.

21 MR. JEPERTINGER: All right. And I move
22 State's 21-A and 21-B into evidence.

23 MR. MEETZE: No objection, Your Honor.

24 THE COURT: Without objection, so
25 admitted.

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1 (WHEREUPON, State Exhibit Nos. 21-A and
2 21-B were admitted into evidence.)

3 BY MR. JEPERTINGER:

4 Q Now once they came out, the two came out -- one
5 with the green hoodie and you say the tall guy ---

6 A Yes.

7 Q ---came out the door, did they go back and
8 congregate in the living room again where you were
9 at?

10 A No.

11 Q What did they do?

12 A I heard a voice inside my roommate room say, we
13 don't have time for this. And then the guy watching
14 me and them two ran out my back door.

15 Q Okay. And I'm gonna show you State's 20-A and-B.
16 Can you identify 20-A and -B.

17 A That's a picture of my back door and my kitchen,
18 but my kitchen was lead to my back door.

19 MR. JEPERTINGER: All right. I'm gonna
20 move 20-A and -B into evidence at this time.

21 MR. MEETZE: No objection.

22 THE COURT: Without objection, so
23 admitted.

24 (WHEREUPON, State Exhibit No. 20-A and
25 20-B were admitted into evidence.)

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1 BY MR. JEPERTINGER:

2 Q And can you tell us what 19-A and 19-B is?

3 A The top picture is a picture of my back door and
4 the bottom picture is a picture of my hallway
5 leading to my back door.

6 MR. JEPERTINGER: All right. I move 19-A
7 and 19-B into evidence at this time.

8 THE COURT: Any objection?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: Without objection, so
11 admitted.

12 (WHEREUPON, State Exhibit Nos. 19-A and
13 19-B were admitted into evidence.)

14 BY MR. JEPERTINGER:

15 Q You say they left the back door and can you tell
16 us what 29-A and 29-B is.

17 A That's a picture of my backyard and a picture of
18 adjoining lot next to my house, and a picture of my
19 house.

20 Q Okay. And is that a fair and accurate portrayal
21 of the back side of your house?

22 A Yes, it was.

23 MR. JEPERTINGER: Okay. I move 29-A and
24 -B into evidence at this time.

25 MR. MEETZE: No objection.

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1 THE COURT: No objection, so admitted.

2 (WHEREUPON, State Exhibit Nos. 29-A and
3 29-B were admitted into evidence.)

4 BY MR. JEPERTINGER:

5 Q How long did you have to wait before the police
6 got there?

7 A The police was already there when they ran out
8 the back door. I didn't have to wait.

9 Q All right. And did a police officer come to talk
10 to you about this case?

11 A Yes.

12 Q All right. Now can you tell us if you remember
13 whether the individuals, if you can, were wearing
14 anything on their hands?

15 A It happened so fast I don't -- I seen gloves on
16 some. I don't know if all of them had gloves on.
17 It just happened so fast. I really, I wasn't paying
18 attention to it. I don't know who had gloves on or
19 who didn't have gloves on, but I know I seen gloves.

20 Q All right. When they initially had you in the
21 living room, you already told this jury that they
22 got some money out of your pocket; is that correct?

23 A Yes.

24 Q Do you know how much money you had in your
25 pocket?

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1 A I had about twenty dollars. I had a ten. I had
2 a two dollar bill I always keep for luck in my
3 wallet and had a couple of ones and a five. It
4 wasn't much.

5 Q Okay. So a ten, a five, a couple of ones, and a
6 two dollar bill?

7 A Yeah.

8 Q All right. And let me ask you this, in all your
9 talking to the police about this case did they ever
10 ask you about the denomination of the money, how you
11 had it broken up, or did they just ask you if money
12 was taken?

13 A No, they never asked me anything about money or
14 nothing like that. They just asked me about how
15 much money I had.

16 Q Okay, all right.

17 MR. JEPERTINGER: Beg the Court's
18 indulgence one second.

19 THE COURT: Ladies and gentlemen, I'm
20 gonna have to ask you to step to the jury room just
21 a minute. Do not discuss the case. I'll get you
22 back out here in just a minute.

23 (WHEREUPON, the jury was removed from the
24 courtroom and the following proceedings
25 took place.)

SW - M. BARR - DIRECT

1 THE COURT: I've been looking at what I
2 cited previously and I know that this is what Mr. --
3 and I don't want to assume, Mr. Jepertinger.

4 MR. JEPERTINGER: I was circling there,
5 Judge, I was circling there.

6 THE COURT: I know. That's why I went
7 ahead and sent them out before you finished there.
8 In this State v. Black, in that particular case that
9 I had previously cited, 400 SC 10, in this
10 particular case it was a defense witness' prior
11 conviction for manslaughter that was approximately
12 20 years old. It says it was inadmissible to
13 impeach the witness's credibility. The trial courts
14 erred in admitting remote manslaughter conviction
15 defense witness to impeach his credibility was
16 harmless. This is, again, a 2012 case. And looking
17 back at Rule 609(a)(1), it says evidence that a
18 witness other than accused had been convicted of a
19 crime shall be admitted subject to Rule 403 which
20 the probative value versus prejudicial effect if the
21 crime was punishable by death or imprisonment in
22 excess of one year under the law under which the
23 witness was convicted. And then it goes on talking
24 about evidence about the accused.

25 The parties have stipulated pursuant to

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1 Rule 609(b) that it certainly falls within a ten
2 year time period, which automatically kicks it over
3 to a Rule 403 analysis. Although relevant, and I
4 stopped there to go back over Rule 401 which defines
5 relevant evidence. It means evidence having any
6 tendency to make the existence of any fact that is
7 of consequence to the determination of the action
8 more probable or less probable than it would be
9 without the evidence.

10 First of all, my question to you, Mr.
11 Meetze, the witness or the victim, the alleged
12 victim in this case, has a prior conviction of
13 manslaughter, voluntary or involuntary?

14 MR. JEPERTINGER: It's hard to tell. It's
15 up in New York, Judge.

16 THE COURT: Okay.

17 MR. JEPERTINGER: Let me see if they name
18 it there.

19 THE COURT: As he's looking, what
20 relevance, Mr. Meetze, and I want you to put it, be
21 clear on the record, on what relevance you assert
22 that's admissible.

23 MR. MEETZE: I assert that it is relevant
24 on the basis of it's relevant impeachment evidence
25 of this witness. It's a prior conviction that's ---

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1 THE COURT: It's simply a prior
2 conviction.

3 MR. MEETZE: Right.

4 THE COURT: It's certainly within -- go
5 ahead, Mr. ---

6 MR. JEPERTINGER: I'm sorry. They call
7 it, up in New York they call it manslaughter first
8 with intent to cause serious physical injury. That
9 was the name of it.

10 THE COURT: Well, although relevant
11 evidence may be excluded if its probative value is
12 substantially outweighed by the danger of unfair
13 prejudice. Now Mr. Jepertinger, what's the unfair
14 prejudice to the State if I simply under ordinary
15 rules allow him to ask him about the conviction and
16 that's it?

17 MR. JEPERTINGER: Well, Judge, sometimes
18 it comes across like this. All right, you know, we
19 got a killer here, you know, he -- so whatever
20 happens to him, it doesn't matter if he's paid a
21 debt to society, you know, we're gonna get, we're
22 gonna get him, I don't care what happens, he can get
23 robbed, he can get burglarized, he can get raped, he
24 can do -- anything can happen to a killer because he
25 deserves to get what he had coming to him. It's the

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1 law of, I guess, lex talionis I guess, you know.

2 THE COURT: Let me ask this, is that
3 assuming that that by assumption only, that that's
4 where they go if it's brought out, how is that, if
5 they jump to that conclusion not cured by my
6 instruction to them that it's only for credibility
7 issues.

8 MR. JEPERTINGER: I'm just -- you asked me
9 how ---

10 THE COURT: I know.

11 MR. JEPERTINGER: ---I can be prejudiced
12 and I'm telling you. I think something like this, I
13 mean, if he was out on the street doing something, a
14 man is in his home and allegedly this all happens to
15 him, I think it's just extremely prejudicial to say,
16 naw, you're a killer, whatever happens to you is
17 good, your word is no good. And that's where,
18 that's where I think it is prejudicial, Judge.

19 THE COURT: Let me ask you this, Mr.
20 Meetze, have you read State v. Black?

21 MR. MEETZE: I have not.

22 THE COURT: Do you have any case law ---

23 MR. MEETZE: I don't.

24 THE COURT: ---that you want me to look
25 at?

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1 MR. MEETZE: I don't at this time.

2 THE COURT: Let me ask you this,
3 Mr. Meetze, and maybe I'm kind of jumping ahead
4 here, is this not character evidence pursuant to
5 Rule 404(a) (2) which says evidence of a pertinent
6 trait of character victim of the crime offered by an
7 accused ---

8 MR. MEETZE: Which rule is that, Your
9 Honor?

10 THE COURT: 404(a) (2). Evidence of a
11 person's character or trait of character is not
12 admissible for the purpose of proving action,
13 conformity therewith, on a particular occasion
14 except evidence of a pertinent trait or character of
15 a victim crime offered by an accused. Does that in
16 any way play in here?

17 MR. MEETZE: Your Honor, I think it's the
18 609 evidence, prior conviction by a witness. I
19 mean, that's...

20 THE COURT: Well, and I don't disagree
21 with you, but my question to you is, does that any
22 way play into -- does 404(a) (2) in any way play into
23 that?

24 MR. MEETZE: Beg the Court's indulgence.

25 MR. JEPERTINGER: I have it here if you

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1 want to see it, Vick.

2 MR. MEETZE: I've got it right here.

3 THE COURT: Here's what I'm gonna do. I
4 am gonna allow the State to ask him about that for
5 the limited purpose of the conviction. It's within
6 the ten years. But I'm not gonna allow you to go
7 any further than that. Any potential prejudice that
8 we're talking about here is to an alleged victim,
9 not a defendant who is looking at life in the
10 penitentiary, all right. So I'm gonna allow it for
11 that limited purpose. If you all want to look back
12 at Black, State v. Black, and argue it any other way
13 I'll let you do so. I think it's certainly a
14 discretionary call here, but I'm gonna change my
15 ruling on that.

16 MR. JEPERTINGER: All right, just note my
17 objection.

18 THE COURT: Well, and if you want to stand
19 down and look at State v. Black. Under ordinary
20 circumstances it's always just about a situation
21 where it's either a defendant's record or a defense
22 witness and their record, while I understand your
23 objection.

24 MR. JEPERTINGER: Okay.

25 THE COURT: All right, anything else

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1 before I bring the jury back out?

2 MR. JEPERTINGER: I would ask if, in that
3 regard, Your Honor, I would ask for limiting
4 instruction that they would only consider it for the
5 purposes for which it is being allowed.

6 MR. MEETZE: Sure, I mean, that's part of
7 a jury charge at the end.

8 THE COURT: Well, I'm gonna give them that
9 part in my jury charge. It only, if at all, may be
10 considered by them only for purposes of credibility.

11 MR. MEETZE: I would think that your
12 charge is sufficient on that issue, Your Honor.

13 THE COURT: All right.

14 MR. JEPERTINGER: All right.

15 THE COURT: Anything else before I bring
16 the jury back out, Mr. Jepertinger?

17 MR. JEPERTINGER: No, sir.

18 MR. MEETZE: Can we approach just for a
19 second, Your Honor.

20 (WHEREUPON, counsel approached the
21 Bench for an off-the-record discussion.)

22 THE COURT: If you will bring me the jury
23 back please, ma'am.

24 (WHEREUPON, the jury was returned to the
25 courtroom at 3:42 p.m.)

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1 THE COURT: Mr. Jepertinger.

2 BY MR. JEPERTINGER:

3 Q Just a few more questions. I want to ask you
4 this, have you ever been in trouble with the law
5 yourself?

6 A Yes, when I was younger.

7 Q Okay. But not much younger, correct?

8 A No, not much. 2001 I got arrested.

9 Q Okay. Up in New York?

10 A Yes.

11 Q Okay. In fact, and let's be honest here, in 2002
12 you got a conviction; did you not?

13 A Yes.

14 Q Okay. And the crime was very, pretty serious;
15 wasn't it?

16 A Yeah, it was a ---

17 Q Just say it.

18 A Yeah, serious, uh-huh.

19 Q What was the crime?

20 A It was manslaughter.

21 Q Okay. Did you know the victim of the crime?

22 A Yes, it was a domestic, domestic. It was my son.
23 My son attacked me and I attacked him back and
24 unfortunately he died, and I had to do six years in
25 prison for it.

1 Q Okay. Did you get parole? You got paroled out?

2 A Yeah, the judge granted me parole down here. I
3 lived with my parents and I finished it without
4 getting in trouble again.

5 Q Okay. On the night in question when this
6 happened to you, did you threaten anybody?

7 A No.

8 Q Okay. Did you expect this to happen to you?

9 A No, I don't plan to kill my children. I had five
10 children. I wasn't planning to kill my child or
11 something that necessary ---

12 Q No, but I'm asking about this robbery.

13 A Oh, the robbery?

14 Q Did you expect any of this happen to you?

15 A No, no, I didn't expect this to happen to me.

16 Q Okay, all right. I think that's all the
17 questions I have for Mr. Barr. Please answer any
18 questions Mr. Meetze has for you, okay?

19 THE COURT: Mr. Meetze.

20 MR. MEETZE: Thank you, Your Honor, may it
21 please the Court.

22 **CROSS-EXAMINATION**

23 BY MR. MEETZE:

24 Q Good afternoon, Mr. Barr.

25 A How are you?

SW - M. BARR - CROSS

1 Q I'm okay, thank you. Just a few questions for
2 you. This happened -- well, prior to midnight you
3 say you went to bed around between nine and ten; is
4 that right?

5 A I was sitting in my living room in my recliner
6 about 10, about 10.

7 Q And you fell asleep?

8 A Yes, sir.

9 Q And that would have been on December 30th?

10 A I'm not sure. I think the 31st, 30th or 31st or
11 the morning after.

12 Q Well, when the morning you say the people came
13 into your house 3:30 or so, that would have been the
14 31st; am I correct?

15 A Um---

16 Q So before midnight would have been the 30th?

17 A Okay.

18 Q Is that right? I'm asking; is that correct?

19 A Yeah.

20 Q Okay. And before you fell asleep you had been
21 drinking?

22 A Earlier that day.

23 Q Okay. And you had had a lot to drink?

24 A No.

25 Q Okay. Did you -- had you given any statements in

SW - M. BARR - CROSS

1 this case prior to your testimony today?

2 A Yes.

3 Q Do you recall giving a couple of different
4 statements to Corporal Jones with the Florence
5 Police Department?

6 A Yes.

7 Q Do you recall in any of those statements telling
8 her that you were an alcoholic and you had been
9 drinking that night?

10 A Yes.

11 Q Okay. The -- you also indicate that around 3:30
12 you heard a knock on the door and a voice on the
13 other side of the door said it was BJ, correct?

14 A Yes.

15 Q And you told -- you testified here today that you
16 know a BJ; ---

17 A Yes.

18 Q ---correct? And in fact, you characterize BJ as
19 a friend of yours?

20 A Yes.

21 Q Is that correct? And you also indicated that BJ
22 is younger than you, correct?

23 A Yes.

24 Q You sort of refer to him as your nephew, correct?

25 A Yes.

1 Q And he referred to you as an uncle, correct?

2 A Yes.

3 Q And that was the way it was back when this
4 happened, correct?

5 A Yes.

6 Q Okay. Now, but when this happened you didn't --
7 all you know this individual of is BJ, correct?

8 A Yes.

9 Q You don't know where he lived?

10 A No.

11 Q Okay. But you y'all were friends and had a
12 relationship almost like family is what you
13 testified here?

14 A Yes, I knew he lived in north Florence. I didn't
15 know exactly his apartment number, what house he
16 lived in.

17 Q Or what his last name was?

18 A No.

19 Q Okay. Or what BJ stood for, correct?

20 A No.

21 Q Or if even that was his real name?

22 A May be BJ.

23 Q Correct, as far as knew?

24 A Right.

25 Q But that's all you know, correct?

SW - M. BARR - CROSS

1 A Right.

2 Q All right. Now you also indicated in your
3 testimony here today, testified that three people
4 entered your house, correct?

5 A Yes.

6 Q That they all were three different heights,
7 correct?

8 A Yes.

9 Q That the tallest guy was about 6'3"?

10 A Yes.

11 Q Correct? And the shortest guy was in the
12 neighborhood of 5'10" to the best of your
13 recollection, correct?

14 A Yes.

15 Q And that the third person would have been in the
16 middle of those two, correct? That's what you
17 testified to?

18 A Yes, yes.

19 Q And you testified that two of the three went to
20 your bedroom at one time, correct?

21 A Yes.

22 Q And you indicated that the two that went -- in
23 your testimony today you indicated that the two that
24 went to your bedroom was the shortest of the three,
25 correct, and the tallest, is what you testified to

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1 here correct?

2 A Yes.

3 Q Now do you recall giving a prior statement where
4 -- and then -- excuse me, let me back up. Your
5 testimony here today is that the shortest of the
6 three and the tallest of the three are the ones that
7 went into your bedroom, correct? That's what you
8 testified to here today.

9 A I testified that today, but I'm not really -- at
10 the time I wasn't measuring their heights. I just
11 know one was taller than the other.

12 Q I understand, but your testimony here today was
13 that the tallest of the three and the shortest of
14 the three went into your bedroom and left the middle
15 one with you. Is that what you testified today here
16 today?

17 A Yeah, yeah.

18 Q Okay. And as we -- as you testified to a little
19 bit ago you gave statements to Corporal Jones in
20 this case back around the time this happened,
21 correct? Is that right?

22 A That was about a year-and-a-half ago.

23 Q Yes, sir. But it was closer in time but -- in
24 any event it was, you gave statements about a
25 year-and-a-half ago on, one was on January the 6th

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1 of 2014; is that right?

2 A Yes. I'm not sure of the date, yes.

3 Q But if I told you it was January 6th you wouldn't
4 disagree with that? You don't remember the exact
5 date, but it could have been then?

6 A Could have been, yeah.

7 Q And another one was on January 17th, about 11
8 days later; is that right?

9 A Yeah.

10 Q And do you recall in those statements, or in the
11 first one on January 6th, you told Corporal Jones
12 that the tallest guy is the one that stayed with you
13 when the other two went into the bedroom?

14 A You take time to answer because you're asking me
15 all these dates, and I don't remember exactly all
16 the dates that it happened like that so I don't know
17 exactly what dates you're talking about. I know I
18 seen the officer during that time period.

19 Q Okay.

20 A I'm not sure what date it was, but I seen him
21 twice for statements.

22 Q And I don't mean to confuse you with dates. The
23 dates aren't as important.

24 A Right.

25 Q Just what you told that officer is what I'm

SW - M. BARR - CROSS

1 trying to ask you so do you recall when you gave a
2 statement to ---

3 A I don't recall ---

4 THE COURT: Hold on a minute, Mr. Barr.
5 Let him finish his question please, sir, before you
6 answer, okay.

7 THE WITNESS: Yes, sir.

8 THE COURT: Same with you, Mr. Meetze, let
9 him finish his answer.

10 MR. MEETZE: Thank you, Your Honor.

11 BY MR. MEETZE:

12 Q Do you remember -- well, first of all, let me
13 just ask this question, do you recall giving a
14 statement, at least one statement, to Corporal Jones
15 after this happened?

16 A Yes, I do.

17 Q Okay. And she asked you questions a lot like
18 what you've been asked here today, correct?

19 A Correct.

20 Q And including she asked you what the three guys
21 all did when they were in your house?

22 A Correct.

23 Q Is that right? Including testimony and in your
24 statement to her you discussed two folks, two of the
25 three going into your bedroom?

SW - M. BARR - CROSS

1 A Correct.

2 Q And one of them staying with you that didn't go
3 into your bedroom?

4 A Correct.

5 Q And you told her that the individual that stayed
6 with you that didn't go into your bedroom, was the
7 tallest guy that you say had the dreadlocks you
8 could see; is that correct?

9 A I don't remember.

10 Q You don't remember? But it's possible?

11 A I don't remember.

12 Q So you don't know if it's even possible.

13 A I remember telling — I don't remember exactly a
14 year-and-a-half ago what I told her; but as far as
15 my recollection goes, it's what I said today is what
16 I remember but I don't remember what I told her back
17 then.

18 Q Okay. Now do you also recall telling her that
19 the tall person is the one that got the knife, not
20 the person with the gun?

21 A I don't remember.

22 Q You don't remember, okay. Now you testified
23 today that it was the person with the gun that got
24 the knife; is that correct?

25 A No, I did not. I don't ---

SW - M. BARR - REDIRECT

1 Q You don't recall ---

2 A I didn't say that.

3 Q ---who had the knife?

4 A I didn't say that the guy with the gun had got
5 the knife.

6 Q Okay.

7 A I said the guy that was standing -- I don't want
8 to talk over ---

9 Q Go ahead, I'm sorry.

10 THE COURT: Go ahead, answer the question
11 please, Mr. Barr. You may finish your answer.

12 THE WITNESS: I recall stating that the
13 guy with the gun didn't pick up the knife. The
14 other guy that was watching over me picked up the
15 knife.

16 BY MR. MEETZE:

17 Q Okay. So do you recall telling Corporal Jones in
18 a statement that the person with the gun is actually
19 the one that picked up the knife?

20 A I don't remember.

21 Q You don't remember, okay. You also testified
22 here today that you were asked about gloves, if any
23 of them had on gloves, is that correct, here today?

24 A Yes.

25 Q And you said you don't remember if all of them

SW - M. BARR - REDIRECT

1 had gloves, but you remember seeing somebody had on
2 gloves, correct?

3 A Correct.

4 Q You've don't know which one had gloves, but you
5 remember seeing gloves. Is that what you ---

6 A I don't know if all of them had on gloves. I
7 wasn't looking at their hands. I was trying to
8 protect myself. All of them could have had gloves
9 or one of them could have had gloves. I know I seen
10 gloves.

11 Q Okay. Do you recall telling Corporal Jones when
12 she asked you that question that you don't recall
13 seeing any gloves?

14 A I told her I seen gloves. I remember telling her
15 that.

16 Q All right. I don't have any further questions.

17 THE COURT: Any further redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. JEPERTINGER:

20 Q Let me ask you this, in terms of just the knife
21 itself did the police get that knife?

22 A Yes, they did found the knife. They found the
23 gun also, I think so.

24 Q All right.

25 A Yeah.

SW - T. HERMAN - DIRECT

1 Q And any of the other objects taken from you?

2 A I think they found my money. I think they found
3 my roommate's money. They found my cell phone and
4 some empty pill bottles, pill bottles they found.

5 Q You think that, okay. All right. That's all I
6 have. Thank you so much.

7 MR. JEPERTINGER: I have nothing further
8 for this witness.

9 THE COURT: Anything?

10 MR. MEETZE: Sir?

11 THE COURT: Anything further?

12 MR. MEETZE: I do not have anything
13 further at this time.

14 THE COURT: Mr. Barr, you may step down.
15 Thank you.

16 MR. JEPERTINGER: Okay. Your Honor, the
17 State would call Officer Thomas Herman to the stand.

18 THE CLERK: If you will, sir, place your
19 left hand on the Bible, raise your right hand.

20 WHEREUPON,

21 **THOMAS HERMAN, JR.,**

22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE CLERK: Please be seated and state
25 your full name for the record.

SW - T. HERMAN - DIRECT

1 THE WITNESS: Thomas Bernard Herman, Jr.

2 **DIRECT EXAMINATION**

3 BY MR. JEPERTINGER:

4 Q Officer Herman, how long have you worked for the
5 city police?

6 A Just about three years now.

7 Q Okay. And what are your responsibilities with
8 the city police?

9 A I patrol in north side and east side.

10 Q Okay. Would the area around Pawley, Layton, and
11 Rose Street be on the north side or the east side?

12 A Yes, sir, it would. It was district ---

13 Q Which side?

14 A It would be the north side.

15 Q Is that your district?

16 A Yes, sir.

17 Q All right. Did you respond to 702 Pawley Street
18 on the early morning hours of December 31st, 2013?

19 A Yes, sir.

20 Q Okay. Why were you sent out to that area?

21 A We had dispatch come in for a possible home
22 invasion at 702 Pawley Street.

23 Q Okay. Now I'm gonna ask you to get off the stand
24 and I'm gonna show you State's Exhibit 1, which is
25 evidence which is the aerial photograph. If you can

SW - T. HERMAN - DIRECT

1 come off the stand please, and I'm gonna ask you to
2 stand on this side and speak as loudly as possible
3 so the court reporter can hear you. Stand over
4 there on the other side of that please.

5 A (Complies.)

6 Q If you have any notes with you can refresh your
7 recollection. All right, now can you tell the
8 ladies and gentlemen of the jury what you observed,
9 where you went first, and what you saw when you got
10 there, how you got there, okay?

11 A Yeah.

12 Q This is Pawley Street up here. This is Rose
13 Street. That's Layton Street, okay.

14 A My response I had come down Maxwell Street which
15 is not on here. It's up on this side north of
16 Pawley. I made a right hand turn on to Rose Street
17 and I responded by parking my patrol car right here
18 at this corner, the intersection of Pawley Street
19 and Rose Street, with the front of my vehicle facing
20 directly towards the house.

21 Q All right. And were there any other officers
22 present that you saw at that time?

23 A Another officer did respond and pulled up
24 directly beside me.

25 Q And who was that Officer?

SW - T. HERMAN - DIRECT

1 A Officer Blackmon.

2 Q All right. And did anything catch your attention
3 when you got up to that area?

4 A Yes, sir. As I was exiting my patrol car I heard
5 Officer Blackmon as he got out of his patrol car
6 yell for somebody to stop. At that time I directed
7 my eyes to where he was looking which would have
8 been actually towards the rear of the home right
9 about up in here (indicating) as I seen two subjects
10 running. I guess it would be southwest out of the
11 house.

12 Q Okay. And which way did they run?

13 A Towards Rose street at an angle towards Layton.
14 Actually come out of the back of the house
15 approximately right here where I seen them and they
16 had come right up this way. I guess it was actually
17 right around this parking lot behind, this is 707
18 Rose Street, which is an apartment complex. That's
19 where I lost sight of them from here.

20 Q Okay. And did you see how either one of these
21 two parties were dressed?

22 A Yes. I saw one was wearing either a green or
23 gray hoodie, it was dark. And the other one was in
24 dark, and I would say that color dark blue, black,
25 possibly hooded sweatshirt.

SW - T. HERMAN - DIRECT

1 Q Okay. Do you know -- it's early morning hours,
2 correct?

3 A Yes, sir.

4 Q It wasn't Miami Beach. What was it, cold, warm,
5 what was it?

6 A It was very cold. I say I believe the
7 temperature that night was in the mid to low 30s.
8 No rain, it was fairly -- I don't know if it was
9 clear or cloudy but I know it was dry. I know that,
10 like I said, when I exited my patrol car I saw him
11 look at him. I watched him immediately go in a foot
12 chase.

13 Q At that point what did you see Officer Blackmon
14 do when you saw, or when I guess when he observed
15 the two suspects run?

16 A He immediately got into a foot chase with him.

17 Q What did you do?

18 A I realized I didn't have a chance to catch up
19 with him. They were already a good ways ahead of me
20 so I got back in my patrol car and proceeded to go
21 down Rose Street to assist with Blackmon and try and
22 cut him off on to Layton Street.

23 Q Okay. So did you cut the corner on Layton Street
24 here?

25 A Yeah, I made a right-hand turn on to Layton.

SW - T. HERMAN - DIRECT

1 Q Okay. And what did you observe?

2 A I observed two people running down Layton Street.
3 I guess it would be midways between Rose and Oakland
4 Avenue. At first I thought it was both suspects;
5 but you know, the more I thought about it it was
6 actually one suspect along with Officer Blackmon
7 behind him.

8 Q Okay. So Officer Blackmon was chasing one
9 subject at that point?

10 A Yes, sir.

11 Q What -- did you observe what that individual had
12 on?

13 A It was a dark clothing, real dark clothing.

14 Q How about the individual that you described
15 wearing the green gray outfit?

16 A I had no idea where he went. I had lost sight of
17 him.

18 Q All right. And did you pursue that individual?

19 A Yes, sir.

20 Q Okay. And what happened? Tell the ladies and
21 gentlemen of the jury what happened once you started
22 pursuing that individual.

23 A As I was pursuing him towards Oakland Avenue and
24 Layton, the subject had crossed over Oakland Avenue.
25 I parked my patrol car in the middle of Oakland

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1 Avenue, exited my patrol car, and proceeded in a
2 foot chase. We ended up going through a yard. I
3 watched him climb over one of the chain link fence
4 approximately 6, 7 feet high. I was probably in the
5 area of, you know 40, 50 yards behind him. He had a
6 good lead on me. I climbed over the fence as well.
7 And then there was another privacy fence, a wooden
8 privacy fence you couldn't see through the back of
9 that property, which by the time I got over the
10 chain link fence he was already climbing over the
11 privacy fence. As I got to that fence I had lost
12 him by the time I got over the top of it and had no
13 idea where he went.

14 Q You weren't fast enough?

15 A Nope.

16 Q All right. So at that point did you -- and
17 Blackmon was still on foot?

18 A Yes, he was -- I really don't know exactly where
19 he was at. I mean, I don't know if he was behind me
20 or not. I had got ahead of him with the car.

21 Q Obviously. And so I guess you got on your radio
22 to say I've lost the guy I'm chasing, correct?

23 A Yes.

24 Q At this point what do you do? I mean, you just
25 ----

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1 A Well, at that moment we had, I just stayed in the
2 area looking behind houses and the backyards to make
3 sure I, you know, you -- or at least if I could find
4 him. I was continuing to search for him.

5 Q So you took a period of time to look for him?

6 A Yes, sir.

7 Q Okay. After that period of time passed did you
8 find the guy you've been chasing, the one in the
9 dark clothing?

10 A No, we did not find him.

11 Q All right. Did you come back to this area?

12 A Yes, sir, I did. I did come back.

13 Q Now I'm gonna talk about that. Initially when
14 you saw the two individuals run out the house did
15 you see any third individual?

16 A No, sir.

17 Q What is the condition of behind that, those
18 houses? I see, I guess those will be trees here in
19 State's Exhibit 1.

20 A Yes, it's very dark back there. There's a light
21 pole here at the corner of Pawley. There's a light
22 pole in front of 706 Rose Street which is basically
23 covered by these trees and directly across the
24 street is a light pole. This area was fairly lit.
25 They're not the brightest lights; but with the trees

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1 it just, it blocked out a lot of light so it was
2 very dark in that area.

3 Q So you never saw a third individual, correct?

4 A No, sir.

5 Q Okay. Now, do you come back to this, what I call
6 the general area as shown in State's Exhibit 1?

7 A Yes, sir.

8 Q What do you do when you get back to this area?

9 A Well, I began searching for anything, any items,
10 any, anything found in their path seeing, just
11 backtracking.

12 Q And can you show the ladies and gentlemen of the
13 jury where you would have backtracked to?

14 A Yes. I had walked in between the apartments in
15 this area and kind of circumferenced this area right
16 here in between these apartments and all in this
17 back field. I didn't know exactly where so we just
18 started making large circles and cutting out small
19 circles getting larger to make sure no evidence was
20 left behind.

21 Q All right. And did you find anything?

22 A Yes, sir. I happened to find a small caliber
23 handgun, a small revolver style Derringer, a silver
24 and black if I'm not mistaken.

25 Q Okay. And at that point did you pick that

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1 Derringer up, or did you leave it where it was and
2 just notify someone?

3 A I left it, notified by radio we had found a gun,
4 and just stood by it to preserve the evidence.

5 Q Okay. I'm gonna show you State's Exhibit 12-A
6 and 12-B. Can you identify these objects.

7 A Yes. That's the gun, looks like the gun that I
8 found that night.

9 Q Okay.

10 MR. JEPERTINGER: I would move State's
11 Exhibit 12-A and 12-B into evidence.

12 THE COURT: Any objection?

13 MR. MEETZE: No, Your Honor.

14 (WHEREUPON, State Exhibits Nos. 12-A and
15 12-B were admitted into evidence and
16 State's Exhibit No. 43 was marked for
17 identification.)

18 BY MR. JEPERTINGER:

19 Q I'm gonna show you what's marked as State's
20 Exhibit 43, State's Exhibit 43 for identification.
21 Can you tell me what's in this box please.

22 A Yes, sir, it's a small caliber handgun with the
23 cylinder taken out and it looks like five bullets
24 that were inside possibly, 22 caliber.

25 Q All right. Is this the hand gun that you showed

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1 us in State's Exhibit 12-A and -B?

2 A Yes.

3 Q And is this the one that you found along this
4 path?

5 A Yes, sir.

6 Q Okay.

7 MR. JEPERTINGER: Your Honor, I would move
8 State's Exhibit 43 into evidence at this time.

9 MR. MEETZE: No objection.

10 MR. JEPERTINGER: That's subject to law
11 enforcement getting me a gun lock please.

12 THE COURT: I have one in my chambers.
13 It's just going to be over here, I'll put a lock on
14 it.

15 MR. JEPERTINGER: All right.

16 THE COURT: If, and for later purposes, if
17 the gun goes back it will not go back with the
18 ammunition.

19 MR. JEPERTINGER: That's correct.

20 THE COURT: Won't send the ammunition --
21 the gun back out, send the ammunition in.

22 MR. JEPERTINGER: Okay.

23 THE COURT: Any objection to it coming in,
24 Mr. Meetze?

25 MR. MEETZE: No, Your Honor.

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1 THE COURT: Without objection, so
2 admitted.

3 (WHEREUPON, State Exhibit No. 43 was
4 admitted into evidence.)

5 BY MR. JEPERTINGER:

6 Q Okay. Now you -- once you found that gun you
7 pointed it out to other officers, correct?

8 A Yes, sir.

9 Q Did you show it to Investigator Jones at the
10 time?

11 A Yes, sir.

12 Q All right, did you search for anything else?

13 A It was basically prior to that we were searching
14 for whatever we could find.

15 Q And other officers found other things?

16 A Yes, sir.

17 Q All right. Did you have the opportunity to go to
18 702 Pawley Street?

19 A Not inside the residence, no, sir.

20 Q All right. Now I'm gonna show you what's already
21 in evidence, State's 24-A -- excuse me, 29-A and
22 29-B. Can you tell the ladies and gentlemen of the
23 jury where you first saw the perpetrators.

24 A Yes. It would have been right here out the back
25 of the house just down inside of it. They were

1 running from this area of the home. This is a
2 little hard to tell because it's the actual back of
3 the house which I could not see from my point of
4 view.

5 Q Okay, very good. Thank you. That's all the
6 questions I have. Please answer any questions that
7 Mr. Meetze may have for you.

8 THE COURT: Sir, you can have a seat back
9 here.

10 Cross-examination.

11 **CROSS-EXAMINATION**

12 BY MR. MEETZE:

13 Q Officer, you testified that you showed up at
14 Pawley's Street at that morning on the 31st.

15 A Yes, sir.

16 Q And saw two people exiting the back of the house?

17 A Yes, sir.

18 Q And from there you saw them run in a particular
19 direction which you describe during your testimony;
20 is that right?

21 A Yes, sir.

22 Q And then lost them at that point?

23 A Yes, sir.

24 Q Correct?

25 A Yes, sir.

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1 Q And then got in your patrol car and drove for a
2 piece till you saw what at first you thought were
3 the two suspects running, was it down Layton towards
4 Oakland you said?

5 A Yes, sir.

6 Q Okay. And you testified that rethinking it you
7 think it was one suspect and Officer Blackmon?

8 A Yes, sir.

9 Q But, and that's -- you're certain that's what you
10 saw?

11 A Yes, sir.

12 Q The -- so from there you joined the foot chase at
13 that point or did --

14 A Just after.

15 Q Just after?

16 A Yes, sir.

17 Q And eventually lost that suspect?

18 A Yes, sir.

19 Q And then went back, searched, found the gun that
20 you just identified during a search of the
21 surrounding area; is that right?

22 A Yes, sir.

23 Q You weren't -- and that was -- and you didn't
24 touch the gun, handle the gun, do anything like
25 that, correct?

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1 A No, sir.

2 Q You notified whoever you needed to notify,
3 correct?

4 A Yes, sir.

5 Q And that was pretty much the extent of your
6 involvement?

7 A Yes, sir.

8 Q Once you did that, okay. You were no longer were
9 involved in any kind of investigation in regards to
10 this case?

11 A No.

12 Q Okay.

13 MR. MEETZE: I don't have any further
14 questions, Your Honor.

15 MR. JEPERTINGER: Thank you. That would
16 be it, Judge, and I ask that Officer Herman be
17 allowed to go back to work.

18 THE COURT: Any objection?

19 MR. MEETZE: No, Your Honor.

20 THE COURT: Sir, you're excused. You're
21 free to go. You have no further responsibility
22 under your subpoena. Thank you for being here, have
23 a nice day.

24 Call your next witness please.

25 MR. JEPERTINGER: The State would call

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1 Officer William Blackmon.

2 THE CLERK: If you will, sir, place your
3 left hand on the Bible, raise your right hand.

4 WHEREUPON,

5 **WILLIAM BLACKMON,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Please be seated, state your
9 full name for the record.

10 THE WITNESS: Officer William Timmy
11 Blackmon.

12 **DIRECT EXAMINATION**

13 BY MR. JEPERTINGER:

14 Q Officer Blackmon, how long have you worked for
15 the city police?

16 A September of this year will be my three year
17 mark.

18 Q All right. And have you always been on patrol?

19 A Yes, sir. I've been on patrol ever since I
20 started. I actually at that time when this incident
21 took place I was patrolling west Florence area, but
22 I was over more towards the northeaster side over
23 this way — the norther side, excuse me.

24 Q All right. And did you get a dispatch to respond
25 to 702 Pawley Street?

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1 A Yes, sir, I did.

2 Q Okay. And once again, I'm gonna ask you to step
3 off the stand 'cause I think this will help explain
4 your testimony perhaps a little bit better and stand
5 where Officer Herman stood. Please keep your voice
6 up. All right, tell the ladies and gentlemen of the
7 jury, this is Pawley Street, this is Rose Street,
8 this is Layton Street. Here is 702 Pawley Street as
9 identified by the V. Okay. I got you up here.
10 Keep your voice up. When you got to the scene where
11 did you wind up?

12 A As Officer Herman said we had come up Maxwell
13 this way right here, made a right on to Rose Street,
14 and actually pulled in right here just on the edge
15 of the roadway right here, right here where this is
16 702. Pulled in right here and stopped the vehicle
17 right there.

18 Q And what did you see when you got to that
19 location?

20 A Okay. Like I said, as I had stopped right here
21 as soon as I exited my vehicle I immediately seen
22 two subjects running from that corner of the house,
23 running -- would have been running this way across
24 the yard right here.

25 Q And where were they headed, which direction?

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1 A Coming this way (indicating). End up crossing
2 Rose Street through the apartments over here.

3 Q All right. Now the two individuals that you
4 observed, did you observe what they were wearing?

5 A Yes, sir, I did.

6 Q Can you tell the ladies and gentlemen of the jury
7 what they were wearing.

8 A One of them was wearing a green in color hoodie
9 and the other one was wearing like a dark blue or
10 black hoodie. I really couldn't make that out, but
11 that was the two colors they had on.

12 Q Okay. What did you do when you saw them cut
13 across the street?

14 A I immediately yelled to them, you know, please
15 stop. They didn't pay me no mind. So I immediately
16 began running on foot straight across here. They
17 already had a very good lead on me 'cause, like, I
18 was back here, you know, exiting out my car. They
19 were already over here running so I had to run
20 around the car and run this way. We ran all the way
21 across here, all the way through the apartments this
22 way, and I had lost sight of them. As soon as we
23 come through this corner right here they already had
24 such a good gain on me as soon as we cut that
25 building I couldn't see anyone.

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1 Q When they cut through the building on you where
2 were you?

3 A Sorry, I would have been like right in here as
4 they come around the corner here. I would have been
5 right back in here.

6 Q All right. And then when was the next time that
7 you saw an individual that you perceived coming from
8 the back of that house?

9 A As they come across here, by the time I made it
10 to the corner here I didn't see them nowhere in
11 between here. I completely kept running this way
12 right here. As I got right in here I could see, I
13 could see one running over on this way. There was
14 only one left. On that side of the road right there
15 I couldn't tell the color of the hoodie because all
16 this is dark on this side right here.

17 Q Okay. Did you see that individual go that way or
18 go that way?

19 A He was going this way.

20 Q Towards Oakland Avenue?

21 A Uh-huh. As soon as I came through here I was
22 like right in here, and he was going this way
23 towards Oakland. There was patrol cars coming this
24 way up the street. I was about winded at that time
25 so I started slowing down right there. The other

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1 fella actually ended up going across Oakland as
2 Herman said. I kind of made my way across Oakland;
3 but by the time I got across Oakland, you know, they
4 had already been over the fence and just gone.

5 Q Okay. So did you run all the way to Oakland?

6 A At a slow pace after I got over here; but as I
7 got across the street, you know, over there I could
8 see Herman distance back there. And by the time I
9 got over that way he was, the other guy, the guy he
10 was chasing was gone.

11 Q And you took his word for it at that point,
12 correct?

13 A Well, at that time I keep going over that way and
14 I end up going to Brunson Street and we walked, just
15 like he said.

16 Q Okay.

17 A Looking to see if we could find somebody but we
18 never could at that time.

19 Q So after Herman got there and I guess he lost the
20 fella that he outran and you were winded by the time
21 you got up there, you walked -- did you walk back or
22 come back with Herman?

23 A We were actually over this way and we end up, you
24 know, eventually making our way back this way with
25 several other officers in the area just walking

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1 through.

2 Q Safe to say that your whole probably unit or
3 division, or whatever you call it, was out there?

4 A Yes, sir. Yes, sir, pretty much everybody
5 working on the street was over that way.

6 Q Okay. At that point did you come back to what's
7 shown here in State Exhibit 1, that area?

8 A When we were still over this way actually still
9 kind of the Brunson Street area, we had heard on the
10 radio Corporal Gowdy said they had had somebody over
11 this way up underneath a car so we immediately come
12 back that way to see if there's any way we could
13 assist them.

14 Q And when you got back to the area what did you
15 do?

16 A Once they already had him detained and everything
17 we immediately just started walking, you know, back
18 the path where I had ran, you know, chasing them
19 from the beginning from up there to here.

20 Q Okay.

21 A And discovered, you know, several items on the
22 ground as we back, walked back through there.

23 Q What items, several items, on the ground did you
24 find that are pertinent to this case?

25 A I located a hunting knife, appeared to be a

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1 hunting knife lying in the grass there.

2 Q Okay. And did you know any significance of that
3 knife?

4 A At that time, no.

5 Q All right. And I'm gonna show you State's
6 Exhibit 10-A and 10-B for identification. Can you
7 tell us what that is.

8 A That's the knife that was laying there.

9 MR. JEPERTINGER: I would move 10-A and
10 10-B into evidence at this time.

11 MR. MEETZE: No objection.

12 THE COURT: Without objection 10-A and
13 10-B is admitted in evidence.

14 (WHEREUPON, State Exhibits Nos. 10-A and
15 10-B were admitted into evidence.)

16 MR. JEPERTINGER: Let the record reflect
17 I'm left handed, and these look like the same ones
18 they gave me in the first grade, Judge.

19 BY MR. JEPERTINGER:

20 Q I'm gonna show you State's Exhibit 44. Can you
21 identify that.

22 A Yes, sir.

23 Q And what is that?

24 A That is the knife that was laid on that grass we
25 located that morning.

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1 Q All right.

2 MR. JEPERTINGER: At this time I move
3 State's Exhibit 44 into evidence.

4 MR. MEETZE: No objection.

5 THE COURT: Without objection 44 is
6 admitted into evidence.

7 (WHEREUPON, State Exhibit No. 44 was
8 admitted into evidence.)

9 BY MR. JEPERTINGER:

10 Q Did you pick it up or wait to point that out to
11 someone?

12 A Just stood there, had to stand there so nobody
13 wouldn't bother it.

14 Q Were there any other items that you saw or found?

15 A I didn't find the gun, but I had seen it after
16 they had said something about it and the pill
17 bottles they had found also.

18 Q Pill bottles?

19 A Yes, sir.

20 Q And where, do you know where they found the pill
21 bottles?

22 A No, sir.

23 Q All right. I'll have to ask someone else,
24 correct?

25 A Yes, sir.

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1 Q Thank you so much. Please answer any questions
2 Mr. Meetze may have for you.

3 **CROSS-EXAMINATION**

4 BY MR. MEETZE:

5 Q Officer Blackmon, the testimony that you just
6 gave that, for the most part ended your involvement
7 in this matter?

8 A Yes, sir.

9 Q Okay. After this evening you weren't involved in
10 any further investigation in regards to this case?

11 A No, sir.

12 Q You didn't take any statements from any witnesses
13 or anything like that?

14 A No, sir.

15 Q You didn't -- well, like I said, you -- your
16 portion of this case ended standing there that night
17 once it was collected and all that pretty much?

18 A Yes, sir.

19 Q Okay. I don't have any further questions.

20 THE COURT: Mr. Jepertinger.

21 MR. JEPERTINGER: No further questions
22 and we'd ask Officer Blackmon to be excused.

23 THE COURT: Thank you. You may step down.
24 Any objection to him being excused?

25 MR. MEETZE: I do not have any.

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1 THE COURT: Without objection you're
2 excused. You have no further responsibility under
3 your subpoena. You're free to go.

4 Can the lawyers approach a minute please.
5 (WHEREUPON, counsel approached the
6 Bench for an off-the-record discussion.)

7 THE COURT: Call your next witness please.

8 MR. JEPERTINGER: We call Officer Lacey
9 Allen to the stand.

10 THE CLERK: Come around, place your left
11 hand on the Bible, raise your right hand.

12 WHEREUPON,

13 **LACEY ALLEN,**
14 having been duly sworn by the Clerk, testified
15 as follows:

16 THE CLERK: Please be seated and state
17 your full name for the record.

18 THE WITNESS: My name is Officer Lacey
19 Allen.

20 **DIRECT EXAMINATION**

21 BY MR. JEPERTINGER:

22 Q Officer Allen, are you a patrol officer?

23 A I am.

24 Q And were you so employed back on December 31st,
25 2013?

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1 A Yes, sir.

2 Q All right. What was your involvement in this
3 particular case, what did you do?

4 A When dispatch gave call out, my supervisor
5 Corporal Gowdy requested all patrol officers start
6 heading that way so we could set up a perimeter in
7 order to maybe catch the perpetrators or find
8 evidence, whatever needed to be done once we got
9 over there.

10 Q Okay. And once you got over to that area that
11 we've seen on the aerial map, which is State's
12 Exhibit 1, can you tell us what did you do and where
13 did you go and what happened.

14 A Corporal Gowdy requested that I assist him in
15 attempting to locate some evidence because at that
16 time Herman and Blackmon already chased the suspects
17 and they got away so we were looking for any
18 evidence that might lead us to the suspects or, and
19 we were looking at the 600, around the 600 block of
20 Layton Street.

21 Q Okay. And I'm gonna show you just without
22 getting the tripod out, the 600 block of Layton
23 Street would be in this area, ma'am, that I'm
24 showing you?

25 A Yes, sir.

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1 Q Okay. And did you walk that area?

2 A Yes, sir.

3 Q Okay. What did you observe?

4 A Well, it was me and Corporal Gowdy, like I said,
5 and we were just using our flashlights looking. And
6 I observed a green hoodie laying on the, I guess the
7 front porch of an apartment, and also had I believe
8 it was a mask, a hat, was laying right there in
9 front of a flower pot and it matched the description
10 of the one that the suspect was wearing.

11 Q Okay. And can you just, I guess I'm gonna ask
12 you to step down just one second because it's kind
13 of awkward here. Can you point to where you saw
14 that stuff that you just said.

15 A It was this way, right there.

16 Q Okay.

17 A It was B.

18 Q That one there?

19 A Uh-huh.

20 Q Okay. And you can take a seat again. I'm gonna
21 show you what's been marked for identification as
22 State's 2-A and 2-B. Do you recognize that?

23 A Yes, sir.

24 Q And what is that?

25 A That's the hoodie and the hat that I found.

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1 Q Okay. And ---

2 A At the apartment.

3 Q And the bottom photo?

4 A And that's 611 Layton Street.

5 Q All right. And I'm gonna show you 8-A and 8-B.

6 What is that?

7 A That's the apartment where I found the evidence,
8 the hoodie, and the knit hat.

9 Q Okay. And on 8-B what, can you see the objects?

10 A I can see the hoodie and hat from that picture,
11 yes, sir.

12 Q Okay. And I'll show you 7-A and 7-B, what is
13 that?

14 A That's the hoodie and the knit hat at the
15 apartment.

16 Q Keep your voice up.

17 A I'm sorry, that's the apartment where I found the
18 hoodie and knit hat.

19 Q And 6-A and 6-B?

20 A That's the hoodie and the knit hat that we found
21 at the front of the building.

22 Q Is that a -- are those closer up photographs?

23 A Yes, sir.

24 Q And 3-A and 3-B?

25 A And that is the Cadillac in which I found suspect

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1 underneath it.

2 MR. JEPERTINGER: Okay. I'm gonna ask
3 that 3-A, 3-B, 6-A, 6-B, 7-A 7-B, 8-A, 8-B, 2-A, and
4 2-B all admitted into evidence.

5 THE COURT: Any objection?

6 MR. MEETZE: No, Your Honor.

7 THE COURT: Without objection, so
8 admitted.

9 (WHEREUPON, State Exhibits Nos. 2-A, 2-B,
10 3-A, 3-B, 6-A, 6-B, 7-A, 7-B, 8-A, 8-B
11 were admitted into evidence.)

12 BY MR. JEPERTINGER:

13 Q Now you saw those items on the stoop in front of
14 the apartment at 611. What did you, what did you do
15 then when you saw that stuff?

16 A At that point Corporal Gowdy was like 15 feet
17 away from me. I said, I think I found the hoodie
18 and hat that the suspect had on, and he came over
19 there to take a look at it.

20 Q All right. And then what did you do?

21 A And at that point I started looking to see if I
22 could find anything else being in the area. And
23 when I did, I did like that with, you know, I shown
24 my flashlight around, and when I did I observed
25 someone laying underneath the car.

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1 Q Orange. I'm gonna ask you to get off the stand
2 one more time.

3 A Okay.

4 Q And I'm gonna ask you to show the jury what we've
5 been talking about here on these photographs. I'm
6 gonna ask you, show you 6-A and 6-B. Now what is
7 that stuff again?

8 A That's the hoodie and the hat that I found on the
9 porch.

10 Q And other clothing?

11 A And other clothing, yes.

12 Q All right. And on 3-A and 3-B I see a Cadillac
13 and it looks like a Chevy Lumina right behind there;
14 is that correct?

15 A Yes, sir.

16 Q What, what did you see in relation to that
17 Cadillac and this defendant?

18 A He was underneath the Cadillac.

19 Q He was underneath the Cadillac. And in relation
20 to where that Cadillac is parked, where would this
21 clothing be?

22 A It was like right there (indicating). I can't
23 see. It's been a while so. When I was standing it
24 would have been to my left so it would have been
25 right there.

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1 Q Approximately how far was it from the Cadillac
2 where, I guess he was under that Cadillac ---

3 A Yes.

4 Q ---how far was it from that clothing?

5 A Maybe 10 feet, 15 feet at the very most. It was
6 right there.

7 Q Tell me when to stop.

8 A It was about like this.

9 Q All right. When you were aware of the individual
10 being under the Cadillac in front of 611-B Layton
11 Street, what did you do?

12 A I drew my weapon because at that point we weren't
13 sure where the gun was or anything like that so I
14 drew my weapon and started telling him to get out
15 from underneath the car.

16 Q Did that individual get out from underneath the
17 car?

18 A At first he started to comply and was coming, in
19 the process of coming out; but when Corporal Gowdy
20 came around he started hesitating, didn't want to
21 come out right when we were trying to go get him to
22 come out.

23 Q How did you let Corporal Gowdy know that there
24 was an individual under the car?

25 A I screamed, he's under the car, he's under the

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1 car.

2 Q All right, okay. At that point did you see
3 Corporal Gowdy get this individual out from under
4 the car?

5 A At that point, like I said, I had my weapon
6 drawn; and due to me having my gun drawn already,
7 Corporal Gowdy told him to come out. He wasn't
8 coming out so he deployed his taser in order to get
9 him to come out from the car and comply.

10 Q Okay. He tazed the individual?

11 A Yes, sir.

12 Q Okay. At that point did the individual come out
13 or did Corporal Gowdy have to drag him out a little
14 bit?

15 A Kind of had to scuffle with him. He did comply
16 after that.

17 Q And when he got out from underneath that Cadillac
18 how was this individual dressed?

19 A He had on short sleeve shirt and gloves.

20 Q A short sleeve shirt and gloves. A T-shirt?

21 A A T-shirt, yes, sir.

22 Q All right. Did y'all cuff him?

23 A Yes, sir.

24 Q I'm gonna show you State's 41-A and 41-B, 42-A
25 and 42-B. Is this -- can you identify these

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1 photographs.

2 A Yes, sir.

3 Q Can you tell the jury what these photographs are?

4 A These are photographs of the individual right
5 after we handcuffed him after we had detained him
6 and had him detained so we could figure out what was
7 going on with him.

8 MR. JEPERTINGER: At this time I would
9 move State's 41-A and 41-B and 42-A and 42-B into
10 evidence.

11 THE COURT: Any objection?

12 MR. MEETZE: No objection.

13 THE COURT: Without objection, so
14 admitted.

15 (WHEREUPON, State Exhibit Nos. 41-A, 41-B,
16 42-A, and 42-B were admitted into
17 evidence.)

18 BY MR. JEPERTINGER:

19 Q Now on 41-A I -- what is he wearing again?

20 A A T-shirt.

21 Q What was the approximate temperature of that
22 morning? Was it cold or was it warm, was it like
23 Miami Beach, tell the ladies and gentlemen of the
24 jury.

25 A It was very cold that night.

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1 Q All right. Did you have an opportunity to get
2 near him?

3 A Yes, sir.

4 Q Did you notice any scent of alcoholic beverage on
5 his person?

6 A No, sir, I did not.

7 Q All right. Thank you. At that point once he was
8 cuffed did you have any further involvement in this
9 case?

10 A Other than standing with evidence so that nobody
11 would tamper with it, no, sir.

12 Q What evidence would that have been, ma'am?

13 A I stood with the pill bottles. I kind of was --
14 they were strung out. I just kind of stood there
15 and kept an eye on them.

16 Q Do you remember where you found the pill bottles,
17 ma'am?

18 A I do not to be honest with you. I'm really not
19 familiar with this side of town. I work over by the
20 mall.

21 Q Okay, very good. Thank you so much. Please
22 answer any questions Mr. Meetze may have for you.

23 THE COURT: Mr. Meetze, cross-examination.

24 **CROSS-EXAMINATION**

25

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1 BY MR. MEETZE:

2 Q Officer Allen, you testified once Mr. Jett was
3 taken into custody that pretty much other than going
4 standing with pill bottles, that ended your
5 involvement in this case?

6 A Yes, sir.

7 Q You didn't have any other, anything else to do
8 with any other part of the investigation in regards
9 to this case?

10 A No, sir.

11 Q You wrote a little report of what you did,
12 correct?

13 A Just a supplemental, yes, sir.

14 Q Just a supplemental. And that's procedure,
15 correct?

16 A Yes, sir.

17 Q And you turned that in to, I guess, to the lead
18 investigator in the case?

19 A Yes, sir.

20 Q And they make it a part of the overall case file?

21 A Right.

22 Q Okay, and you did that. But other than that,
23 that was the end of your involvement in this case?

24 A Yes, sir.

25 Q Okay. I don't have anything further.

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1 THE COURT: Mr. Jepertinger, anything
2 further?

3 MR. JEPERTINGER: That will be it for
4 Officer Allen, and I ask if she can be excused as
5 well.

6 THE COURT: Any objection?

7 MR. MEETZE: No, sir.

8 THE COURT: Ma'am, you may be step down.
9 You're excused. You have no further
10 responsibilities under your subpoena. You're free
11 to go. Have a good afternoon.

12 Ladies and gentlemen, what we're going to
13 do at this point is we're going to stop for the
14 balance of the day. I am going to ask that you be
15 back in your jury room tomorrow morning at 9:30. Be
16 back up here at 9:30, or -- well, Mr. Propps will be
17 outside of the elevator outside the door. He will
18 direct you where you need to go. He may bring you
19 on in here or he may put you in that room that some
20 of you went into before we started the trial of this
21 case. Please be back at 9:30 and we will resume the
22 trial of this case as promptly as possible.

23 As I told you from the outset, do not, do
24 not discuss the case with anyone. Do not do any
25 independent research on your own. You're to decide

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1 this case based solely upon the testimony and
2 evidence that's presented in this courtroom and
3 nowhere else. I hope you all have a good, restful
4 evening, I will see you tomorrow morning. Everybody
5 else remain seated while the jury exits the
6 courtroom.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 4:39 p.m. and the following proceedings
9 took place.)

10 THE COURT: Anything from the State at
11 this time?

12 MR. JEPERTINGER: No, sir.

13 THE COURT: Defense counsel?

14 MR. MEETZE: No, sir, Your Honor.

15 THE COURT: All right, 9:30.

16 (Whereupon, proceedings concluded and
17 resumed on April 21, 2015.)

18 (WHEREUPON, State's Exhibits Nos. 45 and
19 46 were marked for identification only.)

20 THE COURT: Mr. Jepertinger, State ready
21 to proceed?

22 MR. JEPERTINGER: Yes, sir.

23 THE COURT: Mr. Meetze, anything before I
24 bring the jury in?

25 MR. MEETZE: No, sir, Your Honor.

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1 (WHEREUPON, the jury was returned to the courtroom
2 at 9:37 a.m. and the following proceedings took
3 place.)

4 THE COURT: Good morning, ladies and
5 gentlemen. I hope you all had a restful evening
6 yesterday and are ready to proceed here today. You
7 will notice we have a class visiting from a school
8 sitting in here today observing the trial of this
9 case. We are at this time going to continue the
10 trial.

11 Mr. Jepertinger, I am going to recognize
12 you, sir.

13 MR. JEPERTINGER: Thank you, Your Honor.

14 MR. MEETZE: Your Honor, may we approach
15 just briefly. I thought of one quick thing, I
16 apologize.

17 (WHEREUPON, counsel approached the
18 Bench for an off-the-record discussion.)

19 MR. JEPERTINGER: Your Honor, we're gonna
20 have to call some witnesses out of order due to
21 scheduling if that is okay with the Court. I've
22 informed the defense attorney in regards to that
23 matter.

24 THE COURT: All right.

25 MR. JEPERTINGER: Okay. The State would

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1 call Amelia Miles to the stand.

2 THE CLERK: If you will, ma'am, place your
3 left hand on the Bible, raise your right hand.

4 WHEREUPON,

5 **AMELIA MILES,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Please be seated, state your
9 full name for the record.

10 THE WITNESS: Amelia Ann Miles.

11 **DIRECT EXAMINATION**

12 BY MR. JEPERTINGER:

13 Q Ms. Miles, what are your responsibilities and for
14 whom do you work?

15 A I work for the City of Florence for over 30
16 years. I am currently the property supply clerk and
17 evidence custodian.

18 Q All right. As evidence custodian what do you do?

19 A I take in all the evidence that's logged in as
20 well as I transport evidence to and from SLED for
21 analysis.

22 Q All right. I'm going to show you what's been
23 marked as State's Exhibit 45 and State's Exhibit 46.

24 Do you recognize any of those items?

25 A Yes. I transported these to SLED on February

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1 19th, 2014, both of them.

2 Q All right. And when you transport -- I believe
3 these are, what are they listed as?

4 A A buccal swab from Antwan Jett and three sets of
5 swabs reference to a B&E.

6 Q Correct. When you transport swabs of that
7 nature, how are these things packaged when you take
8 them?

9 A They are packaged in the brown envelope, both of
10 them. When I take it to SLED, SLED puts them the
11 information in their computer and it gives them a
12 bar code, and then they package the same envelope --
13 they do not open it -- inside of the plastic bags.
14 And then that's where I sign it here and date it and
15 I initial it and date it on the seals.

16 Q And why do you do that?

17 A It's part of the chain of custody to show that I
18 was witness to it being sealed.

19 Q All right. And when you go up to SLED do you
20 meet with the scientist or the intake person?

21 A No, the intake. It's four. Right now there's
22 four intake people; it varies. Sometimes there's
23 two, sometimes there's three. They have to go to
24 court too.

25 Q All right. And let me ask you to, do they seal

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1 it in your presence?

2 A Yes, they do. I'm sitting right in front of
3 them.

4 Q And would that have been done in this particular
5 case.?

6 A Yes, it was done in my presence always.

7 Q All right. Now tell us here locally when you get
8 these items do you put them in manila envelopes or
9 does one of the officers do that?

10 A No. In this case I believe they were both logged
11 by crime scene. Let me see if I can find a name. I
12 don't see a name, but they're logged by crime scene
13 and logged in.

14 Q Well, let me ask you, does Tim Matthews work for
15 ---

16 A Oh, yeah, he's crime scene.

17 Q --crime scene?

18 A Yeah. He's probably was the one, but I can't see
19 his name through the packaging.

20 Q All right. And are they secured in a facility
21 here?

22 A With us?

23 Q Yes.

24 A Oh, we're very secure, yes.

25 Q Right.

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1 A No one has access.

2 Q Okay, that's what I was going to ask you. All
3 right, that's all the questions I have for this
4 individual at this time.

5 THE COURT: Okay. Cross-examination.

6 MR. MEETZE: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. MEETZE:

9 Q Ms. Miles, you took these items to SLED and when
10 you took them they were just the two brown
11 envelopes, correct?

12 A Uh-huh.

13 THE COURT: Is that a yes or no? I need a
14 yes or no.

15 THE WITNESS: Yes, I'm sorry.

16 BY MR. MEETZE:

17 Q And you indicated when you got them, when you
18 took custody of those, they were just as they are
19 now without the plastic?

20 A They were in the brown, the brown envelopes that
21 are inside here sealed that, the things were inside
22 of them and they were inside another plastic bag
23 with the paperwork for me to take to SLED.

24 Q And that's how you got them?

25 A That's how I get them. I don't ---

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1 Q You didn't do any of that?

2 A Oh, no.

3 Q And then you transported them?

4 A And then I transported them to SLED and then they
5 put it in their computer, gave it a bar code, and
6 resealed it in the separate plastic bags, in these.

7 Q And that was ---

8 A That's the extent of me.

9 Q ---the extent of your?

10 A Yeah.

11 MR. MEETZE: I don't have any further
12 questions, Your Honor.

13 MR. JEPERTINGER: I ask she be released.

14 THE COURT: Ma'am, you may step down. You
15 are free to go. You have no further
16 responsibilities under your subpoena. Have a good
17 day.

18 Call your next witness please, sir.

19 MR. JEPERTINGER: Yes, sir, I call Special
20 Agent Catherine Leisy to the stand.

21 THE CLERK: If you will, ma'am, place
22 your left hand on the Bible, raise your right hand.
23 WHEREUPON,

24 **CATHERINE LEISY,**
25 having been duly sworn by the Clerk, testified

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1 as follows:

2 THE CLERK: Please have a seat, state your
3 full name for the record.

4 THE WITNESS: Catherine Leisy.

5 **DIRECT EXAMINATION**

6 BY MR. JEPERTINGER:

7 Q Special Agent Leisy, where do you work?

8 A I work with the South Carolina Law Enforcement
9 Division, more commonly known as SLED.

10 Q And how long have you worked for them?

11 A Nine years.

12 Q And what are your responsibilities at SLED?

13 A I am a forensic scientist assigned to the DNA
14 department. My responsibilities include processing
15 forensic cases, generating reports based on the
16 results and conclusions drawn on those cases, and
17 testifying to those reports if necessary. I also
18 assist in quality control testing within the
19 laboratory, as well as in the training of newly
20 hired personnel.

21 Q Do you have any special education to analyze DNA?

22 A I have a bachelor of science degree in genetic
23 engineering from Cedar Crest College in Allentown,
24 Pennsylvania. I have received in-house training by
25 other court qualified analysts in all the different

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1 types of testing and analyses that I run. I'm
2 required to pass a competency test showing that I am
3 capable of running a test correctly before I can
4 work on an actual forensic casework. I'm also
5 required to participate in continuing education
6 which consists of seminars and training classes that
7 are specific to different types of testing analyses
8 we may use in the future.

9 Q In your nine years in that type of work that you
10 do, how many cases approximately would you say you
11 have analyzed in terms of DNA?

12 A In my time at SLED I would say probably
13 approximately one thousand cases. In terms of
14 individual items of evidence, well into the
15 thousands.

16 Q All right. And have you ever testified in court
17 as an expert in the field of DNA analysis?

18 A Yes, sir.

19 Q Okay. Have you been qualified as an expert every
20 single time you have testified in court as a DNA
21 analysis?

22 A Yes, sir.

23 Q All right.

24 MR. JEPERTINGER: At this time, Your
25 Honor, the State would move to have Special Agent

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1 Leisy qualified as an expert in the field of DNA
2 analysis.

3 THE COURT: Mr. Meetze?

4 MR. MEETZE: No objection.

5 THE COURT: Ladies and gentlemen, let me
6 give you this short instruction before we go any
7 further. Normally a person cannot give opinion
8 testimony. Normally when a person testifies they
9 must testify as to what they either saw, heard, or
10 sense by smell, or something of that nature.
11 However, there is an exception when someone is
12 qualified because of education or experience. They
13 are permitted to give their opinion in certain areas
14 if the court qualifies them that way. This witness
15 will be qualified in the area of DNA analysis to
16 give opinion testimony in that area. It does not
17 mean, it does not mean that you must accept the
18 opinion, but it is evidences for you to use in any
19 way that you see fit and give it the weight and
20 credibility that you believe is appropriate.

21 Mr. Jepertinger.

22 MR. JEPERTINGER: Yes, sir. Thank you.

23 BY MR. JEPERTINGER:

24 Q Agent Leisy, could you tell the ladies and
25 gentlemen of the jury how you come to receive -- and

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1 I will show you State's Exhibit 45 and 46 for
2 identification.

3 A Once items of evidence have been submitted to the
4 laboratory and have been assigned a case number,
5 when it's time for me to begin processing I will
6 alert members of our evidence control team that I
7 need certain items of evidence. I'll send them an
8 email with a list of all the items that I need as
9 well as their location within our controlled storage
10 facility. The evidence control technician will then
11 gather that evidence for me, take it into their
12 custody, and then transfer it to my custody so that
13 I can begin work on it.

14 Q Does your department normally prepare what they
15 call a chain of custody in terms of who would have
16 received this at SLED initially?

17 A We do.

18 Q And who would have been that individual in this
19 particular case?

20 A The chain of custody indicates that Doris
21 Yarborough was the evidence control technician which
22 logged in this particular set of evidence.

23 Q And when it got to your specific laboratory how
24 was it sealed or packaged?

25 A Once the heat sealed pouches are sealed along the

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1 type they're initialed and dated by the individuals
2 submitting in the evidence. When it comes to me, in
3 this particular case no one else would have accessed
4 the evidence prior to it coming into my possession.
5 I can check to make sure that that's the piece by
6 making sure there aren't any other cuts in the
7 packaging. The fact that the pouch is still intact
8 indicates that no one else entered the pouch or
9 accessed the evidence indicating it could not have
10 been tampered with or changed in any way.

11 Q Okay. Now the objects on State's Exhibit 45 and
12 46, I think indicate that they are swabs. Can you
13 tell us the significance of a swab.

14 A When we talk about a swab in terms of forensic
15 testing, this can be several different types of
16 materials that are collected. What we use as known
17 standards for an individual is typically what we
18 call a buccal swab. Simply a sterile cotton,
19 basically a Q-tip, that is rubbed along inside an
20 individual's cheek to collect buccal cells or skin
21 cells from the inside of their mouth. We can then
22 use that DNA or those cellular materials to develop
23 a DNA profile for that individual. In terms of
24 evidence a swab can be used to collect many things.
25 It can be used to collect a blood sample, a saliva

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1 sample. We can also use it to collect what we call
2 touch DNA, DNA that may have been left just by an
3 individual coming in contact with an item. We also
4 routinely swab items of clothing to try and
5 determine who may have been in contact with that
6 item of clothing at some point.

7 Q All right. Now State's Exhibit 46 -- excuse me,
8 State's Exhibit 45 would be what in this particular
9 case?

10 A State's Exhibit 45 is the buccal swab from Antwan
11 Jett.

12 Q Okay. And once again, a buccal swap is a Q-tip
13 inside the mouth?

14 A Correct.

15 Q All right. And State's Exhibit 46?

16 A State's Exhibit 46 is a set -- well, five sets of
17 swabs that were collected from various items and
18 submitted as evidence to be compared to the profile
19 of Antwan Jett.

20 Q Okay. Now if you could give the ladies and
21 gentlemen of the jury just a quick primer where you
22 would find DNA. And I think you kind of mentioned
23 it a little bit, but let me just ask you
24 specifically. If it were talking about hair, would
25 it be in the, just outer part or the stem of the

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1 hair?

2 A The type of DNA that we're looking for is not
3 found in the shaft of the hair. If we're able to
4 develop DNA profile from a hair it's because there
5 is root material still intact, meaning there are
6 skin cells attached to the end of the hair, and
7 that's what we need to be able to develop a profile.

8 Q Skin? Would it be in skin cells? I think you
9 mentioned that, correct?

10 A Yes, sir.

11 Q How about sweat?

12 A Sweat, it would be included in sweat and the
13 process of sweating also helps in the transfer of
14 skin cells from an individual's body to whatever
15 object they're in contact with.

16 Q All right. Blood obviously?

17 A Yes, sir.

18 Q And so any bodily fluid could potentially have
19 DNA?

20 A That's correct.

21 Q And just quickly, DNA, is that what makes us who
22 we are or?

23 A It is. DNA stands for deoxyribonucleic acid.
24 It's a genetic material found in all of our body's
25 cells. It's packaged in the structure called

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1 chromosomes, which contains our genes. And genes
2 are simply strands of DNA that go to our physical
3 characteristics such as height or eye color. We
4 receive one copy of DNA from our mother and one from
5 our father. We, therefore, have two copies of every
6 gene. And it's approximately 99.9 percent of an
7 individual's DNA is identical to that of everyone
8 else's, and it's that remaining one percent that
9 allows us to tell different people apart.

10 Q Okay.

11 MR. JEPERTINGER: I'd like to have this
12 marked for identification.

13 (WHEREUPON, State Exhibit No. 47 was
14 marked for identification only.)

15 MR. JEPERTINGER: Your Honor, at this time
16 I'm going to move to have it in as identification.
17 I understand based on bench conference that the
18 defendant has no problem moving State's Exhibit 47
19 in evidence at this point.

20 THE COURT: Any objection, Mr. Meetze?

21 MR. MEETZE: Not at all.

22 (WHEREUPON, State Exhibit No. 47 was
23 admitted into evidence.)

24 BY MR. JEPERTINGER:

25 Q In this particular case you got a set of five

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1 swabs submitted to you by the police of various
2 items per your report, correct?

3 A That's correct.

4 Q And I'm gonna just switch my report for your
5 report that I saw that you brought for note's day
6 cause this is in evidence. All right.

7 A Okay.

8 Q And you compared them with State's Exhibit 45 of
9 the buccal swab or mouth swabs of Antwan Jett, the
10 accused in this case, correct?

11 A That's correct.

12 Q Now what was submitted to you in terms of the
13 swabs independent of the buccal swab, what was
14 submitted to you?

15 A There were five sets of swabs submitted that was
16 itemized as SLED item one was a set of swabs from an
17 orange purple toboggan SLED item two is a set of
18 swabs from a blue toboggan. SLED item three were
19 swabs from a blue hat. SLED item four was swabs
20 from a green jacket and SLED item 5 were swabs from
21 a gray sweatshirt jacket.

22 Q Okay. And you ran your DNA test in the magic
23 DNA, machine, correct?

24 A Not necessarily magic, but yes, sir, I did run
25 profiles on all those items of evidence to compare

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1 to the standard.

2 Q All right. And once that was done d do you have
3 a conclusion as to -- and we'll go down through each
4 of the items, but a conclusion within a reasonable
5 degree of analytical certainty in your field of
6 expertise of what the results show?

7 A I do.

8 Q Okay. Let's go over -- and we'll do a little bit
9 different here. First one, the swabs from the
10 orange and blue toboggan that was submitted.

11 A That would be SLED item 1, again, a description
12 that I received was swabbed from an orange and
13 purple toboggan. A DNA profile developed from this
14 item is a mixture of at least two individuals. A
15 DNA profile developed from a major contributor to
16 this mixture is from an unidentified male
17 individual. And the partial DNA from file developed
18 from the minor contributor to this is insufficient
19 for reliable interpretation.

20 Q All right. And when you have two individuals, I
21 mean, logically does that mean that maybe two
22 individuals came in contact with this and left DNA
23 on the object?

24 A It does. Having a mixture indicates that it at
25 least two different individuals have at some point

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1 left their DNA on this particular object.

2 Q May I ask you this question, would that include
3 someone, say a third individual, from having worn
4 that item?

5 A Not necessarily. The fact an individual DNA is
6 not detected doesn't necessarily mean they weren't
7 in contact. It could be that not enough DNA
8 material was left that another individual left so
9 much more DNA that the minor contributor couldn't be
10 detected or just that the portion of material they
11 were in contact with was not the portion that was
12 detected.

13 Q All right. Now we'll go to item number 2, what
14 was that?

15 A SLED item 2 was identified as swabs from a blue
16 toboggan.

17 Q And what was, what were your results in regard to
18 item number 2?

19 A DNA profile developed from swabs from blue
20 toboggan is a mixture of at least four individuals
21 and due to the number of contributors to this
22 mixture it is not suitable for inclusionary purposes
23 but may be suitable for exclusionary purposes, and
24 Antwan Jett is excluded as a possible contributor in
25 this mixture.

1 Q All right. So at least four individuals and
2 Mr. Jett, the accused, in this case was excluded?

3 A Based on my comparison, yes, sir.

4 Q All right. And once again, if just, if Mr. Jett
5 did not leave any skin cells or sweat or any of that
6 other business, you couldn't tell. He's excluded
7 based on what you found?

8 A Correct. Based on the profile I was able to
9 develop Mr. Jett is excluded as a possible
10 contributor.

11 Q All right. Now let's go to item number 3.

12 A SLED item number 3 was identified as swabs from a
13 blue hat. The DNA profile developed from this set
14 of swabs is a mixture of at least three individuals.
15 Antwan Jett is excluded as a possible contributor to
16 this mixture.

17 Q Now later there was what they referred to -- are
18 you familiar with the term a CODIS hit?

19 A Yes, sir.

20 MR. JEPERTINGER: I'm gonna have this
21 marked as well. This would be State's 48 into
22 evidence, Your Honor.

23 THE COURT: Without objection?

24 MR. MEETZE: Without objection.

25 (WHEREUPON, State Exhibit No. 48 was

1 marked for identification and admitted
2 into evidence.)

3 BY MR. JEPERTINGER:

4 Q In terms of item 3 can you tell what your
5 conclusions were in regards to that again?

6 A Yeah, the swabs from the blue hat I developed a
7 mixture of at least three individuals with Antwan
8 Jett being excluded as a possible contributor.

9 Q Okay. And in State's Exhibit 4 I see a date on
10 this report in terms of CODIS. Can you tell the
11 ladies and gentlemen of the jury what a CODIS is
12 again.

13 A A CODIS stands for Combined DNA Index System.
14 It's an electronic database maintained by the FBI
15 that contains DNA from files both found at crime
16 scenes as well as DNA from files of known citizens.
17 We can use this database to compare it to
18 unidentified profiles that we may develop to try
19 either do you have contributor or even potentially
20 that case to another case.

21 Q Okay. And there's a report generated from SLED,
22 correct?

23 A Yes, sir.

24 Q By whom?

25 A It was generated by DNA database unit and Miss

1 Teresa Hines.

2 Q What the date of that hit?

3 A The letter was sent on February 4th of this year.

4 Q All right. And what did it say in regards to
5 item 3?

6 A The CODIS hit letter indicates that there is a
7 preliminary association made between the DNA from
8 file that I entered into the data base from item 3
9 with a known individual. I'm looking for the name.

10 Q Sure, go ahead.

11 A It indicates that a possible Matthew Thomas as a
12 possible contributor to the mixture.

13 Q Okay, Matthew Thomas, I'm gonna write that down.

14 (Writes on chalk board.)

15 BY MR. JEPERTINGER:

16 Q All right. Why don't we go to item number 4.

17 A SLED item number four was identified as swab from
18 a green jacket. And the DNA profile developed from
19 this item is a mixture of at least two individuals.
20 And due to the complexity of this mixture, the DNA
21 profile developed is not suitable for inclusionary
22 purposes but may be suitable exclusionary purposes
23 and Antwan Jett is excluded as a possible
24 contributor.

25 Q In terms of green jacket?

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1 A Yes, sir.

2 Q Okay, let us go to item number 5.

3 A SLED item number 5 is swabs from a gray
4 sweatshirt jacket. A DNA profile developed from
5 this item matches DNA pro file of Antwan Jett, and
6 the probability of randomly selecting an unrelated
7 individual having a DNA profile matching this item
8 is approximately one in 590 million.

9 Q Are you generally familiar with the population of
10 planet Earth?

11 A It's currently approximately 7 billion.

12 Q All right. And the figure here is one in -- what
13 is it?

14 A It's one in 590 million.

15 Q Okay. And based on that finding do you make
16 those numbers up, or how do you come to a conclusion
17 of one in 590 million?

18 A When we have a DNA profile from an item of
19 evidence that matches the profile of a known
20 individual, we enter any of the DNA types present in
21 that profile that meet our criteria into a data
22 base. The data base generates the frequency that we
23 would expect to find that particular profile in the
24 general population. And that is the one in 590
25 number. The database generates that that's how rare

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1 this particular profile would be in the population,
2 that if you were to randomly select an individual,
3 the probability that they would have this profile is
4 approximately one in 590 million.

5 Q Right. Now I asked you about the population of
6 the Earth. Do you know the approximate population
7 of the United States of America is?

8 A I believe between 300 and 400,000,000.

9 Q All right. Please answer any questions that the
10 defense attorney may have for you.

11 A Yes, sir.

12 THE COURT: Cross-examination.

13 MR. MEETZE: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. MEETZE:

16 Q Special Agent Leisy, you testified that -- you
17 testified to a number of things. First off, you
18 testified that basically -- and if I say something
19 wrong please correct me. Obviously that's why we're
20 here, and a lot of these things are learning
21 experiences for me when it comes to DNA especially.
22 But you testified that all of us, our DNA is what
23 makes us up, makes us who we are; and us as
24 individuals, our DNA is almost the same with the
25 exception of a small, small, I think you said one

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1 tenth of a percent maybe?

2 A That's correct.

3 Q Okay. And it's that one tenth of a percent that
4 makes us different?

5 A Correct.

6 Q Okay. And that's why, I guess, we all have two
7 arms and two legs and just a general makeup of
8 humans are largely the same; but I guess our
9 specific characteristics are in that one little tiny
10 percent?

11 A That's correct.

12 Q And Mr. Jepertinger referred to you putting all
13 the information that you collected into the magic
14 DNA machine. And it is done, this is done, through
15 a computer though; is it not?

16 A We do use several different types of instruments
17 as well as several different computer programs to
18 help us generate the data and to interpret.

19 Q And you enter the data, the computer gives you
20 the results?

21 A Correct.

22 Q Okay. The -- and as you said with regards to DNA
23 and how DNA is left, it's left through our skin
24 cells or cells? That's where you find DNA to test?

25 A That is one possible source. Anything that would

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1 come in contact with your skin would see some level
2 of transfer. It becomes a matter of whether or not
3 there's enough transfer for us to detect.

4 Q And you testified there is, nowadays, what you
5 call touch DNA?

6 A Yes, sir.

7 Q And is that just what it sounds like it is? DNA
8 that can be gleaned off of an item simply from
9 someone touching it?

10 A It is. Most of the touch DNA samples that we see
11 are from things like a door handle or any particular
12 item that someone may handle and where they would be
13 transfer of their skin cells to that particular
14 item.

15 Q And I know you've been through this, but it can
16 be transferred through SLED?

17 A Yes, sir.

18 Q DNA, blood, saliva, all those kinds of things?

19 A Right. The transfer of any type of bodily fluid
20 could be to transfer DNA from an individual to an
21 object.

22 Q And in the items here you tested the gray
23 sweatshirt, I believe, it was item 5 that you
24 tested?

25 A Correct.

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1 Q You indicated that that tested positive for
2 Antwan Jett's DNA?

3 A The profile developed from that item did match
4 the profile of Mr. Jett, yes.

5 Q And I appreciate that. I don't know if I say
6 everything exactly right with regards to the
7 scientific community, but I appreciate that. Now
8 what that means to you is that at some point in time
9 Mr. Jett had an opportunity for his DNA to be
10 transferred on to that item?

11 A That's correct.

12 Q Doesn't tell you when?

13 A It does not.

14 Q Doesn't tell you whether it was five minutes ago
15 or five days ago or five months ago?

16 A That's correct. It just indicates that some
17 point there was transfer of DNA to the object.

18 Q Okay. And as you said on other items, item
19 number three was a blue hat?

20 A Yes, sir.

21 Q And that's the item that when you initially
22 tested it you did not, I guess the major contributor
23 you did not have -- you did not have enough
24 information to determine who that was from, but you
25 were able to exclude Antwan Jett as a contributor in

1 that item.

2 A Correct. With the swabs from the blue hat I
3 didn't necessarily have a major contributor. I
4 detected DNA from at least three individuals, but
5 based on what I was able to develop, I was able to
6 exclude Mr. Jett as a possible contributor.

7 Q And subsequently that item was matched through
8 CODIS to another individual?

9 A CODIS indicated that it is possible based on DNA
10 profile present for Mr. Thomas, he may be a
11 contributor. It's not necessarily a match in the
12 way that we use the word, but he is a possible
13 contributor based on all the DNA types present.

14 Q And CODIS is a data base of known DNA samples?

15 A That's part of it. Part of it is DNA samples
16 from known individuals and part is DNA samples, any
17 profiles from items of evidence collected from other
18 forensic cases.

19 Q And with this one being a CODIS hit from Matthew
20 Thomas, that would have been a known sample in
21 CODIS?

22 A That's correct.

23 Q Okay. Also, there was the orange and purple hat
24 that DNA was present but no one was able to be
25 identified as a contributor?

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1 A That's right. The DNA profile developed from
2 that hat is a mixture of at least two individuals?
3 There is a major contributor. It is from an
4 unidentified individual.

5 Q Unidentified, but you know it's not Mr. Jett?

6 A That's correct.

7 Q Okay. And let me make sure, item number 2, blue
8 toboggan, similar to number 3 -- well, not similar
9 to number 3 in that it -- there was DNA present?

10 A Correct.

11 Q You couldn't tell whose it was?

12 A Correct.

13 Q But you could tell whose it wasn't?

14 A I was able to exclude Mr. Jett as a contributor
15 to the DNA profile I developed.

16 Q Okay. And as you testified earlier to a degree
17 of scientific certainty you stand by the results?

18 A Yes, sir.

19 Q Okay. I don't have any further questions.

20 MR. JEPERTINGER: Thank you. I have
21 nothing in terms of redirect for this witness. I
22 ask if she can be excused.

23 THE COURT: Any objection?

24 MR. MEETZE: No, I have no objection.

25 Your Honor. May I have just a quick short recess.

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1 Can I approach real quick?

2 (WHEREUPON, counsel approached the
3 Bench for an off-the-record discussion.)

4 THE COURT: You are excused. You have no
5 further responsibility under your subpoena. You're
6 free to go.

7 THE WITNESS: Thank you, Your Honor.

8 (Pause.)

9 THE COURT: Mr. Jepertinger, you may call
10 your next witness please, sir.

11 MR. JEPERTINGER: Yes, sir. The State
12 would call Legrande Gowdy to the stand.

13 THE CLERK: If you will, sir, place your
14 left hand on the Bible, raise your right hand.

15 WHEREUPON,

16 **LEGRANDE GOWDY,**
17 having been duly sworn by the Clerk, testified
18 as follows:

19 THE CLERK: State your full name please.

20 THE WITNESS: Otis Legrande Gowdy.

21 **DIRECT EXAMINATION**

22 BY MR. JEPERTINGER:

23 Q Okay. Office Gowdy, how long have you worked
24 with the police department?

25 A October will be 15 years.

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1 Q And what are your responsibilities with the
2 police department?

3 A I am currently a corporal in the patrol division
4 which I'm a supervisor for the, half of the city
5 most of the time, which will be the north side, west
6 side, and east side of the city.

7 Q So the gentleman and lady we saw yesterday would
8 be people you supervise?

9 A Yes, sir, Officer Allen, Officer Blackmon, and
10 Officer Herman.

11 Q Okay. Can you tell the ladies and gentlemen of
12 the jury on this particular evening of
13 December 31st, 2013, did you receive a call or
14 dispatcher how that worked for you?

15 A Yes. We were dispatched to, I believe it was
16 seven -- I got it right here. 702 Pawley Street in
17 reference to a possible home invasion. Usually when
18 we have a dispatch like that I have multiple units
19 respond to that location, not just one or two.

20 Q Okay. And you drove over there yourself?

21 A Yes, I drove over there in my department issued
22 squad car.

23 Q Okay. And when you got on scene what did you do?

24 A As I arrived on scene, while I was in route
25 Officer Blackmon and Officer Herman arrived prior to

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1 my arrival. I heard Officer Blackmon transmission,
2 also Officer Herman transmission of the chase that
3 was in progress. I parked my car in Oakland Avenue.
4 I had a trainee with me at that time. They had
5 already crossed Oakland Avenue so I sent him with
6 them to search the immediate area there while I
7 worked my way back and called other units to secure
8 the crime scene.

9 Q Okay. After you called the other units to secure
10 the crime scene what did you do?

11 A I started searching immediate area. We had
12 multiple units talking, I believe. We were given
13 description by Officer McCall who was already on
14 scene at the house of what he had there, the
15 suspects' identification -- or not identification,
16 but what they were wearing. I also listened, I also
17 reaffirmed the suspects that officer Blackmon and
18 Officer Herman had given out and started searching
19 the area for possible suspects or any kind of
20 evidence that may be related to the crime scene or
21 the home.

22 Q All right. I'm gonna ask you to step off of the
23 stand and go back to our State's Exhibit 1, which is
24 in evidence at this point. Stand over on the other
25 side, Officer Gowdy, so your voice will carry over

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1 to the court reporter. We're gonna move this so
2 hopefully everybody can see it. All right, you get
3 back on scene. What -- you said you started looking
4 for suspects or evidence. What is the first things
5 you do when you get there?

6 A I didn't actually go to the house. I actually
7 parked out on Oakland Avenue here which would have
8 been right at Layton so ---

9 Q Layton is not here.

10 A Layton is not here, I apologize. I was -- parked
11 out on Oakland Avenue. And according to Officer
12 Blackmon and Officer Herman's description they ran
13 through the courtyard here off the apartments off of
14 Rose Street so I parked right here, and I called
15 other officers. I waited till I could get another
16 officer on scene because of the situation, again
17 being a home invasion with weapons would be
18 involved, have them come over, have officer come and
19 walk with me. We started walking back through the
20 area here.

21 Q Did you find anything that piqued your interest?

22 A Yes, sir. As we were walking back through, like
23 I say, they sat in there and ran between the
24 apartments. We started walking back and we found --
25 or myself and Officer Allen located a green in color

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1 I reckon you call it pullover. Also, a gray
2 pullover on the front porch of one of the
3 apartments.

4 Q All right. And I'm gonna show you State's
5 Exhibit 6-A and 6-B, a photograph. Are these the
6 items that you saw that piqued your interest?

7 A Yes, sir. That would be the green toboggan and
8 gray toboggan. There was also a hat that was
9 included with it, yes, sir.

10 Q Okay, and another smaller hat?

11 A Yes, sir.

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

13 A I instructed Officer Allen to stay with that,
14 kind of check right around the area, stay close to
15 that so nobody can tamper that evidence as I started
16 moving forward to look for more evidence.

17 Q Okay. Did you find anymore evidence at that
18 point?

19 A At that point I did not. I was walking away and
20 I heard Officer Allen yell, he's under the car. I
21 immediately come back and started going back to -- I
22 believe I was at the corner of the apartments. I
23 started coming back till I observed that she drew a
24 weapon and was pointing under a blue Cadillac that
25 was parked in front of the location.

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1 Q All right. And what did you find when you saw --
2 you can take a seat again.

3 A Okay.

4 Q And what did you find when you got over to that
5 blue Cadillac?

6 A I approached from the passenger side to start
7 with, and she was already on the driver's side. I
8 observed she had a weapon out. I didn't want to go
9 cross fire so I wouldn't get between her and the
10 gun, you know, in front of her gun. I approached on
11 the passenger side and I kind of quick peeked under
12 and I observed a black male head facing towards the
13 apartment up under the vehicle.

14 Q So if this is the front of the apartment ---

15 A He would have been facing this way, laying this
16 way.

17 Q All right. And was under the Cadillac?

18 A Yes, sir was under the Cadillac.

19 Q All right. And do you see the person in the
20 courtroom that you found under the Cadillac?

21 A Yes, that would be the defendant here, Mr. Jett.

22 Q All right. And what did you do when you saw Mr.
23 Jett under this Cadillac?

24 A I heard Officer Allen give him commands, come out
25 from under the car, come out. I seen him moving

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1 towards that side of the vehicle so I went around
2 the back side of the vehicle to come up from behind
3 him which would be a safer approach than coming up
4 in front of someone. As I was approaching him,
5 Mr. Jett looked back and observed me coming. At
6 first he had his hands coming out from up under the
7 vehicle. When he saw me coming he started reaching
8 back like he was going back under the vehicle.

9 Knowing that we had a possible, you know, this is a
10 home invasion, there was possibly weapons involved,
11 or it was told weapons were involved, I pulled out
12 my taser. All our tasers have a red dot on them. I
13 put the red dot on his back. I yelled at him, you
14 know, come out, come out. He started backing up so
15 I deployed my taser to strike him in the back to
16 keep from any officers getting hurt or him getting
17 hurt.

18 Q At that point of after you tazed him what
19 happened?

20 A There was a brief struggle on the ground. It
21 runs a five second burst. I let it run through a
22 five second burst. After the five second burst I
23 moved in. Officer Allen still had her gun on him
24 giving commands. I moved in, attempted to detain
25 him, place him in cuffs.

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1 Q Okay. And did you?

2 A Yes, I did place him in handcuffs.

3 Q Okay. And I think State's Exhibit 42-A and 42-B
4 would be about the time after you put him in
5 handcuffs; is that correct?

6 A Yes, sir. Yes, sir.

7 Q All right. Now after you placed him in handcuffs
8 and he's detained, what is the next things that you
9 did with him?

10 A I was attempting to get him out from under the
11 car, and he kept saying, why are you locking me up,
12 why are you detaining me. Before I do, make any
13 statements to anyone pertaining the case, I go ahead
14 and read their Miranda rights.

15 Q Okay, let's stop there. We hear Miranda rights
16 all the time. Do you have a copy of the Miranda
17 rights that you would have read to him?

18 A Yes, sir, I keep a copy in my wallet at all
19 times. That way, whenever I read it to anybody
20 there's no mistakes in it. It's read the same way
21 every time.

22 Q Did you, did you pull them out of your wallet on
23 December 31st, 2013?

24 A Yes, I do. I keep a little paper right here
25 where I can see through, but I always keep the paper

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1 right here.

2 Q Okay. And just tell the jury what you read
3 Mr. Jett.

4 A It says, "Suspect rights, Miranda warning." I
5 would have read him the following: "You have the
6 right to remain silent. Anything you say can and
7 will be used against you in a court of law. You
8 have the right to talk to an attorney or have him or
9 her present while you're being questioned. If you
10 cannot afford to hire an attorney one will be
11 appointed to represent you before any questioning if
12 you want. You can decide any time to exercise these
13 rights and not answer any questions or make any
14 statements. Do you understand the rights as I
15 explained to you? Having these rights in mind do
16 you wish to talk with us now?"

17 Q Did anything unusual happen while you began
18 reading him his rights?

19 A Yes, sir. I had not completed reading him his
20 rights. I was just starting giving Miranda rights
21 the was as I was reading them, and Mr. Antwan
22 stated, or Mr. Jett stated, I don't know anything
23 about that gun.

24 Q Had you mentioned anything to him about a gun at
25 that point?

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1 A At that point, no. Like I said, as I stated
2 before, at that point we were just trying to make
3 contact with him trying to get him detained, trying
4 to do our job at that point and get it under and
5 control the situation before we started any
6 questioning or talked to him about it.

7 Q All right. Now part of the arrest process, when
8 you arrest someone and you put cuffs on him like
9 we've seen in 42-A and 42-B, what do you do? Do you
10 stick him in a squad car, or do you do something
11 prior to confining him in a patrol vehicle?

12 A Prior to placing anyone in the back of our patrol
13 vehicle, by our city policy we check the back seat
14 of the vehicle to make sure there's no contraband
15 items in the vehicle. Then before you place anyone
16 in the vehicle you pat them down and you search
17 them. You remove any items in their pocket and
18 place it in a secure location and put them in the
19 vehicle.

20 MR. JEPERTINGER: I'm going to have this
21 marked.

22 (WHEREUPON, State Exhibit No. 49 was
23 marked for identification only.)

24 BY MR. JEPERTINGER:

25 Q Can you identify what's been marked as State's

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1 Exhibit 49.

2 A Can I open it up?

3 Q Yes.

4 THE COURT: Any objection to those items,
5 Mr. Meetze?

6 MR. MEETZE: Let me see what they are.

7 THE COURT: If you will approach please.

8 (WHEREUPON, counsel approached the
9 Bench for an off-the-record discussion.)

10 MR. JEPERTINGER: Your Honor, at this time
11 the State would move item 49 into evidence.

12 THE COURT: Okay. Without objection so
13 admitted.

14 (WHEREUPON, State Exhibit No. 49
15 was admitted into evidence.)

16 THE WITNESS: Now I can remove them.

17 BY MR. JEPERTINGER:

18 Q You can remove them, yes, sir.

19 A That's looks like a wrapper from some kind of
20 burger or something.

21 Q All right.

22 A This is a digital scale which we normally would
23 see with any kind of -- that's just a digital scale.

24 Q Okay.

25 A Two condoms. We have cash. I'll count it out if

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1 that's okay.

2 Q Yeah, let's see what you got here. You -- count
3 it with me. If you'd come off the stand.

4 A (Complies.)

5 Q You got a 20, another 20 --

6 MR. MEETZE: I would object, Your Honor.

7 BY MR. JEPERTINGER:

8 Q What do you have there?

9 THE COURT: What's the grounds for your
10 objection?

11 MR. MEETZE: He's testifying.

12 MR. JEPERTINGER: I am leading.

13 THE COURT: Restate your question.

14 MR. JEPERTINGER: I am leading.

15 THE COURT: Thank you.

16 BY MR. JEPERTINGER:

17 Q What is that denomination?

18 A I have one 20 and another 20, one 10, one 5, a 1,
19 1, another 1, a 1, a 1, a 1, 1, a 1, and a 2 dollar
20 bill.

21 Q All right. What else did you find on him?

22 A May I have a seat again, sir?

23 Q Yes, sir.

24 A Two hair combs.

25 Q All right.

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1 A Two more condoms.

2 Q All right.

3 A And a receipt from Kelly's on Irby Street.

4 Q All right. And that was it?

5 A Yes, sir. Those items were in his pocket. Those
6 items were all removed from his person.

7 Q All right. We're just gonna put everything back
8 if we can. All right. After you searched him what
9 did you do then?

10 A He was placed in the back of a marked patrol car,
11 and I had an officer stand by with him while we
12 called investigation. They continued the search of
13 the area.

14 Q And the investigator that came out that evening
15 would be?

16 A Ms. Felicia Jones.

17 Q Felicia Jones, the lady dressed in blue, correct?

18 A Yes.

19 Q At that point what did you do?

20 A We continued the search of the area with other
21 officer to see if we could locate, like I said
22 earlier, any evidence pertaining to the crime and
23 any items that may have been taken from the crime or
24 any further suspects.

25 Q Did you find anything?

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1 A Yes, sir. Officer Blackmon located a knife.
2 Officer Herman located a gun and I believe I also
3 located several pill bottles and the items taken
4 from the home.

5 Q Okay. Do you remember where you located the pill
6 bottles?

7 A Yes, sir, they were in the courtyard of the
8 apartments.

9 Q Okay. We're just gonna put this up real quickly
10 and ask you to step off the stand to show the ladies
11 and gentlemen of the jury.

12 A (Complies.)

13 Q All right.

14 A We were here when we located him. After we
15 detained him and had everything secured at that
16 location we started going back through the area. We
17 located several items. This is where I located the
18 pill bottles and several items, pill bottles and
19 other items.

20 Q Thank you. You can have a seat again.

21 A (Complies.)

22 Q Okay. I'm gonna show you what's been marked as
23 State's Exhibit 15-A, 15-B, 17-A, 17-B, 18-A and
24 18-B. Can you identify those pictures please?

25 A This is the apartment complex here across the

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1 road from the ---

2 Q Don't show them yet, but can you identify them?

3 A Oh, yes I can.

4 Q Okay. And what do they depict?

5 A This depicts the apartment complex across the
6 road from the -- here, I'll show you. Across the
7 road from the victim's home. It also depicts the
8 courtyard. These are the pill bottles that were
9 located just outside the parking area of the
10 apartment complex.

11 Q Yes, sir.

12 A And this shows from a different angle of right
13 beside the same area. That's a telephone pole right
14 there as you can see the patrol car. That's where
15 we secured some items over there.

16 Q All right. And do these pictures fairly and
17 accurately portray the scene as you found them the
18 early morning hours of December 31st, 2013, over in
19 that area?

20 A Yes, they do.

21 Q Okay.

22 MR. JEPERTINGER: I would move at this
23 time items 15-A, 15-B, 17-A, 17-B and 18-A and 18-B
24 into evidence.

25 MR. MEETZE: No objection.

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1 THE COURT: Without objection, so
2 admitted.

3 (WHEREUPON, State Exhibits Nos. 15-A,
4 15-B, 17-A, 17-B, 18-A, 18-B
5 were admitted into evidence.)

6 BY MR. JEPERTINGER:

7 Q Now can you just explain it to the jury, I think,
8 where the telephone pole was and I think you got t o
9 ---

10 A I'll start from far back and kind of show ---

11 Q You can stand up if you want to.

12 A Okay. This area right here will be the apartment
13 complex across the road from the victim's home as
14 you can see the light pole in the parking area. As
15 you get a little bit closer you can still see the
16 light pole here, the same area just moving in a
17 little bit closer. You can see the light pole again
18 from the same light pole we show here. And you
19 start seeing the pill bottle right here where you
20 start breaking out one of them laying there.

21 THE COURT: Mr. Jepertinger, have him step
22 down in front of the jury box please.

23 MR. JEPERTINGER: Yes, sir.

24 THE WITNESS: I'm sorry, I apologize.
25 I'll start over again. This here is the victim's

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1 home. Back over here is leading into the complex
2 and you can see the light pole here and all this
3 would be a little bit closer here. As you're moving
4 in closer you can still see the same light pole
5 picture that will show in that picture. At the
6 basic light pole you can see a little object. As
7 you move in closer you can see it a little bit
8 better. And as we move it closer to it you see
9 there's a pill bottle laying there. I'll sit back
10 down.

11 BY MR. JEPERTINGER:

12 Q All right.

13 A Once we located the pill bottles I did contact
14 the officer that was on scene, Officer McCall, via
15 radio, asked the name of the victim and the name
16 identified was the same as the pill bottle.

17 MR. JEPERTINGER: And I'm gonna have these
18 two items marked.

19 (WHEREUPON, State Exhibits Nos. 50-A and
20 50-B were marked for identification
21 only.)

22 BY MR. JEPERTINGER:

23 Q Okay, I'm going to see if you can identify,
24 that's 50-B.

25 A It says prescription bottle from the south side

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1 of telephone pole collected at 0617 hours. That
2 would be where we were at. It's also a pill bottle
3 from the ground north side of the telephone pole
4 collected 615 hours, yes.

5 Q Okay.

6 A Those would be the pill bottles we located on the
7 ground.

8 MR. MEETZE: No objection.

9 THE COURT: Without objection, so
10 admitted.

11 (WHEREUPON, State Exhibits Nos. 50-A and
12 50-B were admitted into evidence.)

13 BY MR. JEPERTINGER:

14 Q I'm gonna ask you to open these up without
15 tearing the ---

16 A Without ---

17 Q ---the number, the exhibit numbers. I have
18 something today just in case.

19 A Let's see if we can use it just in case.

20 Q You got it?

21 A Yes, sir. (Witness opens exhibit.) This would
22 be a Rite Aid prescription pill bottle. It's issued
23 to Mr. Michael Barr. It's for -- I can't pronounce
24 the name of that. I don't even want to try to be a
25 doctor, I apologize. It also contains four pills.

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1 Q Okay. And that was found where again?

2 A This was on the south side of the telephone pole,
3 as I showed you in the picture where the bottle was
4 laying.

5 Q All right. Here, I got the knife.

6 A And this is a Rite Aid prescription bottle issued
7 to Mr. Michael Barr and it contains three tablets.

8 Q All right.

9 A It says it was located on the north side of the
10 pole, telephone pole, I showed you in the picture.

11 Q Now these items that we've heard about -- the
12 knife, the gun, the pills -- did you grab them up or
13 did you wait till the crime scene technician?

14 A No, sir, we secured them until we had, they
15 were -- called crime scene, we called investigations
16 per protocol. We call investigations first; they
17 call crime scene up. We just monitor them till
18 crime scene got there, photographed them, and
19 collected them.

20 Q All right. And crime scene would have physically
21 retrieved those items?

22 A Yes, sir.

23 Q And that would be inclusive of an orange
24 toboggan, correct?

25 A Yes, sir.

SW - L. GOWDY - DIRECT

1 Q A type, two blue types of caps, correct?

2 A Yes, yes.

3 Q A green sweatshirt?

4 A Yes, sir.

5 Q And a gray sweatshirt?

6 A Yes, sir.

7 Q And all those items -- and those items that you
8 would have found in the area?

9 A Yes, sir.

10 Q Okay. Now did you recover any cell phones from
11 either the area or that you're aware of?

12 A I'm not aware. We recovered property. When we
13 were recovering it our manpower is limited so once
14 we find property we just can't leave it. If I don't
15 have another officer I'll stand by with it myself
16 so. But other items were located, they were
17 collected and photographed.

18 Q Okay, you didn't -- you didn't see any cell
19 phones?

20 A No, I didn't do any cell phones, no, sir.

21 Q Okay. After you found those pill bottles ---

22 A Yes, sir.

23 Q ---and how you pointed it out to whoever, the
24 investigator or the crime scene guy ---

25 A Yes.

SW - L. GOWDY - CROSS

1 Q ---what did you do?

2 A At that time we just waited. We, I believe I
3 walked -- we had somebody stand by with that a few
4 minutes 'cause I walked back with the investigator
5 over to my vehicle with the subject detained, and I
6 gave her my voice recorder and I went and stood by
7 with the other, the medication bottles, until they
8 were collected.

9 Q All right. I'm gonna take you back a little bit
10 prior to that when you first met the defendant ---

11 A Okay.

12 Q ---and you arrested him. How was he -- well,
13 better that, I'm gonna show you State's Exhibit, I'm
14 gonna show you State's Exhibit 41-A and 41-B.

15 A Okay.

16 Q And 42-A and 42-B. And you're familiar with
17 those, correct?

18 A Yes, sir.

19 Q Now, how is he dressed in those photographs?

20 A T-shirt, blue jeans, and gloves.

21 Q Okay. When you were out there did he say
22 anything about those gloves?

23 A He stated those were his walking gloves.

24 Q Did -- how did you take that?

25 A I kind of didn't know how to take that. I asked

SW - L. GOWDY - CROSS

1 him I said, you know, you don't have a coat or
2 anything else. He said it was not cold outside.
3 When he leaves his house he wears his walking
4 gloves.

5 Q All right. Now he said it wasn't cold outside.
6 How -- what was the temperature that you recall?

7 A It was in the low 30s that night.

8 Q Were you cold?

9 A Yes, sir, I had to put a coat on.

10 Q All right. Thank you. That's all the questions
11 that I have. Please answer any questions that the
12 defense attorney may have for you.

13 THE COURT: Cross-examination.

14 MR. MEETZE: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. MEETZE:

17 Q Corporal Gowdy, you arrived in your patrol car
18 and you say you went up towards Oakland?

19 A I was on Oakland Avenue when I arrived in my
20 patrol car.

21 Q You were on Oakland. And when showing it on that
22 it was sort of -- you arrived on a area that was
23 sort of off of this aerial photo or just on the edge
24 of it?

25 A Just on the edge of it, sir.

SW - L. GOWDY - CROSS

1 Q And you didn't actually -- at that time you did
2 not see anybody, you had heard the radio chatter in
3 regards to what was going on, correct?

4 A I observed Officer Herman going over the fence on
5 the other side of Oakland, and I had a trainee and I
6 sit here with him.

7 Q Right. But you, as far as seeing either one of
8 the suspects on foot, at that time you didn't see
9 anybody?

10 A No, sir.

11 Q Okay. You started canvassing the area you said.

12 A Yes, sir, I started calling in additional units
13 so we could canvass the area.

14 Q And that was -- you were doing that on foot?

15 A Yes, sir.

16 Q And you and Officer Allen wound up in the same
17 location -- you didn't ride together but you wound
18 up in the same location?

19 A I called her because of the situation and the
20 incident that occurred was a violent crime. Per
21 protocol you do not want go in one person at a time.
22 That's the reason I sent my trainee with Officer
23 Herman. You have two officers going on any kind of
24 outing.

25 Q Sure. And you located the clothing items that

SW - L. GOWDY - CROSS

1 you indicated that you testified in regards to,
2 correct?

3 A Yes, sir.

4 Q And then shortly after that Officer Allen alerted
5 you to somebody being under the car?

6 A Yes, sir, within two minutes.

7 Q And you -- she was on one side of the car and at
8 first you were on the other side of the car?

9 A Yes, sir, I had made my way on the front side of
10 the car.

11 Q And you were giving commands to the -- and you
12 knew that, you verified there was somebody under the
13 car?

14 A Yes, sir.

15 Q You were giving commands to that individual?

16 A She was giving commands as I come around to the
17 other side of the vehicle.

18 Q And the command was, get out from under the car
19 ---

20 A Yes, sir.

21 Q ---essentially?

22 A Yes, sir.

23 Q And you indicated in your testimony that he was
24 complying with that to begin with?

25 A Yes, sir.

SW - L. GOWDY - CROSS

1 Q And but you say in your mind you saw him sort of
2 reach back underneath the?

3 A That wasn't in my mind. He went under the car.

4 Q Right, I understand. But, and you were concerned
5 he may be reaching for a weapon is what you ---

6 A I was unsure what he was ---

7 Q You got ---

8 A I was unsure what was reaching for. Due to the
9 nature of the crime I wanted to make sure for his
10 safety and our safety.

11 Q You thought that was a possibility?

12 A Yes, sir.

13 Q Okay. And certainly that entered your mind?

14 A Yes, sir.

15 Q Okay. And you testified to that a little bit
16 ago?

17 A Yes, sir.

18 Q That you'd been informed that there was
19 investigation of an incident that involved a weapon?

20 A Yes, sir.

21 Q And so that's a natural thing for an officer to
22 assume in the circumstances you found yourself in a
23 little bit later?

24 A Yes. When he started going back under the car
25 yes, sir.

SW - L. GOWDY - REDIRECT

1 Q Right. Now once he started going back under the
2 car, at that point in time and now you're concerned
3 about a weapon, but you're testifying you didn't say
4 anything to him about then, ---

5 A No, sir.

6 Q ---about a weapon?

7 A No, sir, I did not say anything about a weapon.

8 Q You just started firing off a taser without
9 giving any other commands?

10 A No, sir, I advised her -- as I stated earlier, I
11 told him to come out from under the car. He
12 continued to go back under it and I deployed my
13 taser.

14 Q And you testified a little bit ago about the
15 temperature that night or that morning?

16 A Yes, sir.

17 Q Now you did a report in this case, right?

18 A I did an incident, supplemental report.

19 Q Supplemental report?

20 A Yes, sir.

21 Q And add it to the file and all that?

22 A Yes, sir.

23 Q You didn't note in that incident report what the
24 temperature was or anything like that?

25 A I put it was in the low 30s.

SW - L. GOWDY - REDIRECT

1 Q Okay, all right.

2 MR. MEETZE: I don't have any further
3 questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. JEPERTINGER: Yes.

6 **REDIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q When you were dealing with him and you finally
9 got him out after you tazed him, did you smell any
10 alcohol on him?

11 A Not at all.

12 Q All right.

13 A I would have indicated that in my report. As a
14 matter of fact, I believe in my he stated he had
15 been drinking but there was no smell of alcohol.

16 Q All right, thank you. I appreciate it.

17 MR. JEPERTINGER: That's all I have.

18 THE COURT: Mr. Meetze?

19 MR. MEETZE: Nothing further.

20 THE COURT: Sir, you may step down. Thank
21 you.

22 MR. JEPERTINGER: I'd ask if Officer Gowdy
23 could be excused.

24 MR. MEETZE: No objection.

25 THE COURT: Without objection, sir, you

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1 are excused. You're free to go. You have no
2 further responsibilities under your subpoena.

3 MR. JEPERTINGER: Your Honor, could we
4 take a short break please.

5 THE COURT: Ladies and gentlemen, I'm
6 gonna ask you to step to the jury room at this time.
7 Do not discuss the case. Do not discuss the case.
8 I'll get you back out here in just a minute, we'll
9 resume the trial.

10 MR. JEPERTINGER: Your Honor, I think
11 they're -- Judge, we may have -- may I approach.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 MR. JEPERTINGER: Your Honor, if it please
17 the Court, we would call Officer Jamey McCall to the
18 stand.

19 THE COURT: Mr. Jepertinger, you're
20 recognized.

21 MR. JEPERTINGER: The State would call
22 Officer Jamey McCall.

23 THE CLERK: If you will, sir, place your
24 left hand on the Bible, raise your right hand.

25 WHEREUPON,

SW - J. MCCALL - DIRECT

1 **JAMEY MCCALL,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE CLERK: Please be seated, state your
5 full name for the record.

6 THE WITNESS: Officer Jamey McCall.

7 **DIRECT EXAMINATION**

8 BY MR. JEPERTINGER:

9 Q Officer McCall, how long have you worked for the
10 city police?

11 A Eight years.

12 Q Okay. And what are your responsibilities for the
13 city police?

14 A Patrol, with patrol.

15 Q Okay. And who is your immediate corporal?

16 A Immediate corporal is Officer Gowdy, Corporal
17 Gowdy.

18 Q Okay. And we'll take you back to December 31st,
19 2013, early morning hours of about 3:30 I guess or
20 somewhere along that time.

21 A Yes.

22 Q Do you recall where you were sent to?

23 A Yes.

24 Q Okay, tell the ladies and gentlemen of the jury.

25 A At about three in the morning I was sent to

SW - J. MCCALL - DIRECT

1 Pawley Street, 701 Pawley Street. It was in
2 reference to a burglary in process.

3 Q 702 or 701?

4 A It was 702, okay.

5 Q Okay. And when you got there who did you see?

6 A When I got there I spoke with the victims. I
7 didn't see any subjects running. I just spoke to
8 the victims.

9 Q All right. And did you have an occasion to see
10 Michael Barr, the alleged victim in this case?

11 A I did.

12 Q Okay, I'm gonna show you State's Exhibit 40-A and
13 40-B. Do you recognize that?

14 A I do.

15 Q Does that fairly and accurately portray how Mr.
16 Barr looked that evening?

17 A He did, yes.

18 MR. JEPERTINGER: At this time I move 40-A
19 and 40-B in evidence.

20 THE COURT: Any objection?

21 MR. MEETZE: No, Your Honor.

22 THE COURT: Without objection it is so
23 admitted.

24 (WHEREUPON, State Exhibits Nos. 40-A and
25 40-B were admitted into evidence.)

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1 BY MR. JEPERTINGER:

2 Q Okay. The base -- and you can come around. When
3 you first walked to that house what did Mr. Barr
4 look like, Mr. Barr?

5 A He was beat up in the mouth and he was, looked
6 like he'd been in a fight.

7 Q How about the property around his house?

8 A It was disheveled. The chair was turned over,
9 the couch was turned over. It was like a scuffle
10 had taken place in the living room.

11 Q Did you have an opportunity to go into any
12 particular bedroom?

13 A Yes, I went to one of the bedrooms. It was
14 occupied by Ms. Foxworth.

15 Q Okay. How was ---

16 MR. MEETZE: Objection, Your Honor.

17 THE COURT: What's the objection?

18 MR. MEETZE: I withdraw it, Your Honor.

19 THE COURT: All right, you may continue.

20 BY MR. JEPERTINGER:

21 Q What did the actual room look like, if you
22 noticed the door casing or anything like that?

23 A The door was like, it was kicked in. It was
24 damaged. And the drawers were pulled out in the
25 bedroom.

SW - J. MCCALL - CROSS

1 Q Okay. How about Mr. Foxworth, did you go into
2 his bedroom?

3 A Yes.

4 Q And how -- same deal?

5 A Yeah, the same deal. Mattress was pushed over,
6 things were knocked over. It was like somebody went
7 through his belongings.

8 Q All right. Did you have an opportunity to speak
9 with Mr. Barr?

10 A I did.

11 Q Okay. Based on your conversation with Mr. Barr
12 did you send out a description of the individuals to
13 the other police officers on the outside to look for
14 suspects?

15 A Yes. Can I read my notes exactly what it was.
16 He said a black male wearing a green hoodie.

17 Q All right. And that's what you recall?

18 A Yes.

19 Q And that's what you wrote down?

20 A Yes.

21 Q Okay. And at that point did you aid and assist
22 any, Officer Gowdy or anybody else, in your
23 responsibilities on this job?

24 A Yes, I went and I also searched the area to help
25 them try to locate the suspect.

1 Q Okay. Thank you so much. Please answer any
2 questions that Mr. Meetze may have.

3 THE COURT: Cross-examination.

4 MR. MEETZE: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. MEETZE:

7 Q You say you walked around and helped officers
8 locate any other suspect and that was the last you
9 had to do with this case?

10 A Yes.

11 Q All right. So you were -- primarily you were at
12 the residence?

13 A Yes.

14 Q And performed your duties there?

15 A Yes.

16 Q And that was the main function you had in this
17 case?

18 A Yes, sir.

19 Q And that all happened that morning?

20 A Yes, sir.

21 Q Okay. After that you didn't have anything else
22 to do with this case?

23 A No, sir.

24 Q You wrote a small supplemental report to be
25 included in the file?

SW - J. MCCALL - REDIRECT

1 A No, I wrote the main report.

2 Q You wrote the main report, I'm sorry, the main
3 report that -- and that was turned over to lead
4 investigator?

5 A Yes, it was.

6 Q Okay, I don't have any further questions.

7 THE COURT: Any redirect?

8 MR. JEPERTINGER: Beg the Court's
9 indulgence one second. Just real quickly.

10 **REDIRECT EXAMINATION**

11 BY MR. JEPERTINGER:

12 Q Were you lead to believe that there was more than
13 one individual, talking to Mr. Barr, that committed
14 this crime?

15 A Yes.

16 Q How many individuals?

17 A Three total.

18 Q Okay. And did he give you a description of the
19 other two?

20 A Yes, he did. I'm reading from my notes. He says
21 suspect one is wearing green with black scarf, black
22 gloves. Suspect two is a black male, short
23 dreadlocks, black jacket, dark gloves, black scarf
24 around his face. Subject three was wearing a brown
25 jacket and dark gloves.

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1 Q All right. Thank you so much. That's all the
2 questions I have.

3 THE COURT: Mr. Meetze, anything further?

4 MR. MEETZE: No, Your Honor.

5 THE COURT: Sir, you may step down. Thank
6 you.

7 Call your next witness please.

8 MR. JEPERTINGER: I will call, Your Honor,
9 Investigator Timothy Matthews. And we ask if
10 Officer McCall can be released from his subpoena in
11 this case.

12 THE COURT: Any objection, Mr. Meetze?

13 MR. MEETZE: No, Your Honor.

14 THE COURT: Sir, you're free to go. Have
15 a nice day.

16 WHEREUPON,

17 **TIMOTHY MATTHEWS,**

18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Have a seat and state your
21 full name.

22 THE WITNESS: Timothy Matthews.

23 **DIRECT EXAMINATION**

24 BY MR. JEPERTINGER:

25 Q Officer Matthews, you work for the police

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1 department?

2 A Yes, I do.

3 Q How have you worked for the police department?

4 A Seven years.

5 Q And what are your responsibilities at the
6 Florence Police Department?

7 A I'm with the crime scene unit. My job mainly
8 consists of collecting and processing evidence
9 either at the scene or in our lab. We also collect
10 audio and digital audio and video evidence that need
11 to be collected.

12 Q For lack of a better term I guess you're our
13 local CSI?

14 A Well, I, yeah.

15 Q Okay, just a little humor, very little humor.
16 Did you respond out to the Layton, Pawley Street
17 area back on December 31st, 2013?

18 A Yes, I did.

19 Q Okay. Can you walk the jury through what you did
20 in regards to the crime scenes involved in this
21 particular case?

22 A That morning I was called by telephone from
23 investigator Corporal Jones to respond to the
24 locations. I did respond to the location. When I
25 get there, when I got there I met with Corporal

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1 Gowdy. He walked me through the scene, explained to
2 the me what had happened. After he walked me
3 through the scene the first thing I did was I
4 photographed the scene. And then after I did, done
5 with my photographs, then I collect the evidence
6 that need to be collected. That's -- and that
7 morning that's what I did. I photographed the
8 house, then I photographed the evidence that was
9 left in the apartment complex that was dropped by
10 the suspects and then the clothing that was left on
11 the porch from the apartment on Layton Street.

12 Q Okay. Now I'm gonna show you, I'm gonna ask you
13 if you can get off the stand. Again, I hate to keep
14 doing this to witnesses; but if you could get off
15 the stand, keep your voice up, and we're gonna ask
16 you about specific items that you may have found and
17 I'm gonna ask you to stand on the other side so your
18 voice carries to the court reporter. Okay?

19 THE COURT: For the record that's exhibit
20 what?

21 MR. JEPERTINGER: That is State's Exhibit
22 1, Your Honor.

23 THE COURT: Thank you.

24 BY MR. JEPERTINGER:

25 Q Now looking at State's Exhibit 1 I want you to

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1 basically point through, and if you know where you
2 found specific items that you may have tested later,
3 show the jury and tell us what you collected and
4 from whom.

5 A There was -- when I first got on scene by the
6 front door there there was a black sheath for the
7 knife that was used; I collected that. Then as I
8 was explained by Corporal Gowdy and shown, there was
9 a pill bottle over here by the parking lot and then
10 another pill bottle. I collected both of those.

11 Then there was the purple and orange toboggan that I
12 collected from here. Then as I went around ---

13 Q Put an X where you say by here. You can put an
14 X. So show us on this thing and just mark it with a
15 pen.

16 A Okay. The black sheath was inside the house by
17 the front door.

18 Q Okay, inside the house?

19 A Inside the house by the front door.

20 Q Okay, all right. Second?

21 A The pill bottle, one was located I believe
22 there's a telephone pole in the corner of the
23 parking lot. And one of them was on one side of the
24 telephone pole. The other one was on the other side
25 of the telephone pole. The purple and orange

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1 toboggan were, it was laying on the ground in front
2 of the apartment building here. You can see that X.
3 Then the pistol was on the side of the apartment
4 complex here. The knife, more towards the back of
5 the side of the apartment complex here. And then
6 the clothing, we came around this side of this side
7 of the apartment building and the clothing was
8 laying on the front porch at this apartment complex.

9 Q All right, that's it. You can have a seat.

10 A (Complies.)

11 (WHEREUPON, State Exhibits Nos. 51 and 52
12 were marked for identification only.)

13 BY MR. JEPERTINGER:

14 Q I'm gonna show you what's been marked items 51
15 and 52 for identification. Can you tell us what
16 those items would be.

17 A This is the black sheath of the knife that was by
18 the front door.

19 Q And that was item 52. Now item 51?

20 A Item 51 is the orange and purple toboggan that
21 was laying in the front of the apartment complex.

22 Q All right.

23 MR. JEPERTINGER: At this time I would
24 move both these items into evidence.

25 MR. MEETZE: No objection.

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1 THE COURT: Without objection, so
2 admitted.

3 (WHEREUPON, State Exhibit Nos. 51 and 52
4 were admitted into evidence.)

5 BY MR. JEPERTINGER:

6 Q And let's see if we can open up items 52. Is
7 that the sheath that you recovered from the inside
8 of the house?

9 A Yes. Yes, it is.

10 Q All right. And item 51, is this the hat that you
11 recovered, the toboggan you recovered where you
12 marked on State's Exhibit 1?

13 A Yes, it is.

14 Q All right. Now, that's State's Exhibit 51. You
15 say you recovered items from the 611 Layton Street,
16 the apartment?

17 A Yes, I did.

18 Q Okay.

19 (WHEREUPON, State Exhibit No. 53 was
20 marked for identification only.)

21 BY MR. JEPERTINGER:

22 Q Can you tell us what State Exhibit 53 for
23 identification purposes is?

24 A This is going to be the green sweatshirt or green
25 jacket, the gray sweatshirt, the blue hat and blue

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1 toboggan.

2 Q All right.

3 MR. MEETZE: No objection, Your Honor.

4 MR. JEPERTINGER: We move State's Exhibit
5 No. 53 into evidence.

6 THE COURT: Without objection, so
7 admitted.

8 (WHEREUPON, State Exhibit No. 53 was
9 admitted into evidence.)

10 BY MR. JEPERTINGER:

11 Q Now State's Exhibit 51, is what I call the
12 Clemson toboggan, Clemson colors, correct?

13 A Yes.

14 Q Now when you got back to your laboratories after
15 you collected all this stuff, the knife, the pill
16 bottles, the gun, these clothes, what did you do in
17 terms of any analysis on what was in State's Exhibit
18 53 and State's Exhibit 51?

19 A When I take things we -- I took this back to our
20 laboratory and I photographed everything that I
21 collected. And from the three hats or toboggans and
22 the two sweatshirts I took DNA swabs for DNA.

23 Q Now what do those swabs look like?

24 A It's just basically a big Q-tip. It's cotton tip
25 on the end of it.

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1 Q All right. And once you Q-tipped these items,
2 we're gonna talk about that here in a second, what
3 did you do with the swabs or Q-tips after you've
4 done swabbing these?

5 A After I swab them I log them into our evidence
6 and I pre-log them into SLED through their website
7 for it to be taken to SLED for analysis.

8 Q Okay. Do you put the swabs in any special
9 packaging?

10 A I put it in a envelope, and then it goes to SLED
11 and SLED then packages it in their own package once
12 it gets there.

13 Q I'm going to show you what's State's Exhibit 45
14 and 46 for identification purposes at this point.

15 A Okay.

16 Q Can you recognize at least the Manila packaging?

17 A I do. These are the packages that I put the
18 buccal swab and the five sets of swabs in and sent
19 to SLED.

20 Q And once again, and I'll skip over to that, in
21 terms of the buccal swab did you at a later date get
22 a buccal swab from the inside mouth of Antwan Jett?

23 A Yes, I did.

24 Q All right. And that was included in State's
25 Exhibit 45, correct?

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1 A Yes.

2 Q Okay. And in 46 would be the swabs from these
3 five particular items?

4 A Yes.

5 Q All right.

6 MR. JEPERTINGER: At this time I would
7 move State's Exhibit 45 and 46 into evidence.

8 THE COURT: Any objection?

9 MR. MEETZE: No, Your Honor.

10 (WHEREUPON, State Exhibit Nos. 45 and 46
11 were admitted into evidence.)

12 BY MR. JEPERTINGER:

13 Q Now look, when you swab something, this is --
14 when you say, would you agree with me that this
15 green hoodie is a pretty big garment?

16 A Yes, I would.

17 Q And as well as the gray sweatshirt, it's a pretty
18 big garment?

19 A Yes, I would.

20 Q Okay. Do you, and I'm just asking you, do you
21 take a swab and do this number if -- do you lay it
22 out on a table somewhere?

23 A I do lay it out.

24 Q Okay. And do you photograph it at that point?

25 A Yes, I do.

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1 Q So you lay it out. Do you take the swab
2 (indicating) and swab every portion of this jacket?

3 A No, I don't. When I take a swab I generally take
4 from an area that would have contact with the
5 person. For instance, on that it would have been
6 around the neck area. That would have been the most
7 point of contact for the person for DNA to transfer
8 to.

9 Q So -- if you could get off the stand. Just show
10 us where you would have swabbed on this then.

11 A I would have swabbed around in here along this
12 neckline due to the fact that the suspect is wearing
13 it or subject is wearing it, and that's where they
14 would have transferred their DNA to.

15 Q Did you swab it up here in the hoodie itself?

16 A No. Because of the fact that if they don't wear
17 the hood, then that's not gonna transfer any DNA.

18 Q All right. In terms of this gray sweatshirt, the
19 same, the same question. What did you swab in terms
20 of this?

21 A Again, on this one here I swabbed the neckline
22 due to the fact they would have been wearing the
23 sweatshirt and that's where the DNA would have
24 transferred to.

25 Q Did you -- how about the hoodie aspect of it?

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1 A No, again, because of the fact if they weren't
2 wearing the hood then the DNA would not have
3 transferred on the hood.

4 Q You are making an assumption that they're not
5 wearing the hoods at the time of the, whatever
6 they're doing, correct?

7 A I was not -- I did not know if they were wearing
8 the hood. When I take a swab I'm trying to take it
9 from a place where it would have come into contact
10 with the person where they were, you know, they were
11 wearing the item.

12 Q In terms of this blue hat?

13 A That I would have taken off of the swab from the
14 inside, around the inside ring because of the fact
15 that that's where they would be wearing the hat,
16 that would have touched their head.

17 Q And the blue hat I'm referring to has a little
18 bill and it's a knit cap for the record. Now I
19 guess this is some sort of balaclava hat. Where
20 would you swab in terms of this?

21 A Same thing. On the inside around the inside ring
22 because that's where it's gonna be where it touches
23 the person's head.

24 Q You did not swab down here where the crown of the
25 head would be?

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1 A No, because if they weren't wearing the hat that
2 may not have touched basically.

3 Q Okay, all right. And in terms of the Clemson hat
4 here ---

5 A Uh-huh.

6 Q ---which would be State's Exhibit 51, where would
7 you swab in terms of that?

8 A That would have been, again, on the inside around
9 the inside ring because that would have been the
10 place where it would touch their head.

11 Q Okay, thank you very much. Have a seat again
12 please.

13 A (Complies.)

14 Q Okay. Let the record reflect I'm trying to put
15 item 51 back into the bag that says item 51.

16 THE COURT: So noted.

17 BY MR. JEPERTINGER:

18 Q Now I'm going to show you State's Exhibit 43.

19 MR. JEPERTINGER: And Your Honor, there is
20 a type of trigger lock through the barrel, okay, and
21 the cylinder is out. All right?

22 THE COURT: All right.

23 BY MR. JEPERTINGER:

24 Q Can -- if you'd show the ladies and gentlemen of
25 the jury that pistol, all right. And I guess the

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1 barrel sets in there, correct?

2 A Yes.

3 Q And there's a pin that connects the cylinder to
4 the gun itself, correct?

5 A Yes.

6 Q All right. Now in terms of that gun when you
7 found it, where you say you found it, you collected
8 it, correct?

9 A Yes.

10 Q Took it back to your laboratory, correct?

11 A Yes.

12 Q Did you fingerprint this or try to fingerprint
13 this gun?

14 A No. Due to the fact that I was advised when I
15 was on scene that night that they were wearing
16 gloves, I did not dust this for any type of prints
17 because if they were wearing gloves their prints
18 would not transfer on to the gun.

19 Q All right. And I don't have this whole thing
20 open but you can see this. What is this on State's
21 Exhibit 44?

22 A That would be the silver knife.

23 Q Same question.

24 A Same answer. I did not take any type of
25 fingerprints from that or try to dust it for

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1 fingerprints due to the fact that they were wearing
2 gloves and their fingerprints would not have
3 transferred over.

4 Q And did you recover anything from either
5 Investigator Jones or Investigator -- excuse me,
6 Corporal Gowdy, in regards to what the defendant was
7 wearing?

8 A No, I did not recover -- those gloves were
9 actually logged in by Officer Blackmon.

10 Q All right. Were you aware of gloves being on the
11 accused?

12 A Yes, I was advised by officer Blackmon he had
13 located the gloves on the person, and I advised him
14 to just log those into evidence.

15 Q All right, okay. Beg the Court's indulgence one
16 second. That's all the questions I have. Please
17 answer any questions that the defendant attorney may
18 have for you.

19 THE COURT: Cross-examination.

20 MR. MEETZE: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. MEETZE:

23 Q Investigator Matthews, Mr. Jepertinger asked you
24 if you were Florence city police's CSI and you sort
25 of chuckled a little bit; but that is your job,

1 you're in the forensic department?

2 A Yes. That is -- yeah, that is my job. I am with
3 the crime scene unit.

4 Q Crime scene. And but your job is a lot different
5 than what you see on television?

6 A Yes, Hollywood makes it look a lot better.

7 Q Well, better worse, not here to judge that, but
8 certainly different?

9 A Yes.

10 Q Real life, a lot different than TV in all aspects
11 ---

12 A Yes, it is.

13 Q ---of a lot of things portrayed on TV. In any
14 event, your function with regards to this case as
15 you testified to is collecting evidence that was
16 located in and around the crime scene; is that
17 right?

18 A Yes.

19 Q And you did that?

20 A Yes, I did.

21 Q And you package it the way it was brought in
22 court today?

23 A Yes, I did.

24 Q And you prepared it to be sent to SLED. You did,
25 you took swabs where you needed to take swabs and

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1 things like that, correct?

2 A Yes, I did.

3 Q You weren't involved in any testing of anything?

4 A No, we send everything off to SLED and they
5 actually do the testing and analysis on everything.

6 Q And outside of the collecting and the things that
7 you did that you testified to, you weren't involved
8 in any other part of the investigation?

9 A No, I'm not.

10 Q You weren't involved in identifying any suspects
11 or testifying or viewing anything else that went on
12 ---

13 A No.

14 Q ---in regards to the crime scene? So you're
15 strictly collecting the evidence, did your job as a
16 crime scene investigator?

17 A Yes, I did.

18 MR. MEETZE: I don't have any further
19 questions, Your Honor.

20 MR. JEPERTINGER: That would be it, Your
21 Honor. Thank you. And I ask if Investigator
22 Matthews can be excused.

23 THE COURT: Sir, you may step down. You
24 are free to go, have no further responsibilities
25 under your subpoena, have a nice day.

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1 MR. JEPERTINGER: Your Honor, that moment
2 has arisen that we talked about.

3 THE COURT: Okay. Ladies and gentlemen of
4 the jury, I'm gonna have to ask you to step to the
5 jury room just a minute. Do not discuss the case.
6 I'll get you back out here as quickly as possible.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 11:27 a.m.)

9 (WHEREUPON, counsel approached the
10 Bench for an off-the-record discussion.)

11 THE COURT: Anything from the State before
12 I bring the jury back in?

13 MR. JEPERTINGER: No, sir.

14 THE COURT: Defense counsel?

15 MR. MEETZE: No, Your Honor.

16 THE COURT: If you will bring me the jury
17 please, ma'am.

18 (WHEREUPON, the jury was returned to the courtroom
19 at 11:38 a.m.)

20 THE COURT: Mr. Jepertinger, you're
21 recognized. You may continue, sir.

22 MR. JEPERTINGER: We call Felicia Jones to
23 the stand.

24 THE CLERK: If you will, ma'am, place your
25 left hand on the Bible, raise your right hand.

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1 WHEREUPON,

2 **FELICIA JONES,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 THE CLERK: Please be seated, state your
6 full name for the record.

7 THE WITNESS: Felicia Jones.

8 **DIRECT EXAMINATION**

9 BY MR. JEPERTINGER:

10 Q Officer Jones, you're not in uniform. For whom
11 do you work?

12 A At this point in time I am back in patrol. I'm
13 corporal in the patrol division.

14 Q Back in 2013, December of 31st, 2013, what was
15 your position with the Florence Police Department?

16 A I worked for criminal investigations division for
17 property crime.

18 Q Okay. How long had you worked as a investigator?

19 A For three years.

20 Q All right. How long in total have you been with
21 the Florence Police Department?

22 A Almost 19 years.

23 Q All right. Did you have an occasion to be called
24 out to Pawley Street, Layton Street area here in
25 Florence?

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1 A I did.

2 Q Can you tell the ladies and gentlemen of the jury
3 what did you do and when you got on scene?

4 A Yes. As investigator there were ten of us and we
5 pull nights on call; and that particular night I was
6 on call, so when a major crime like that happens our
7 patrol division is going to call investigations.

8 And I was called a little after four that morning,
9 and I was advised about the home invasion. At that
10 point in time they didn't have anyone detained.

11 They did, however, have some items of evidence that
12 they had found at the scene. So of course, they
13 told me at that point there was a dog that was gonna
14 respond because of the hat and that kind of stuff
15 they might be able to track. Once I got in my car
16 to go I heard that there was someone that was
17 detained. Once I arrived on scene I found out later
18 it was Mr. Jett. When I first got to the scene I
19 met with Corporal Gowdy. He advised me of the
20 situation, the information that was given to him.
21 We did a walk-thru of where all the evidence was
22 found, and then I went to meet with Mr. Jett. He
23 was detained in the back of a patrol vehicle, and
24 than I had my voice recorder with me. I think I
25 left it in the car. Corporal Gowdy gave me his

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1 voice recorder; and whenever I went to talk with him
2 before I did anything else, I read him Miranda
3 warnings to try to question him about the incident.

4 Q Did you -- was your interaction with Antwan Jett
5 recorded?

6 A It was.

7 Q Okay. And I'm going to show you what has been
8 marked as Court's Exhibit 1. Have you had a chance
9 to review what's on Court's Exhibit 1?

10 A I have.

11 Q And what is on Court Exhibit 1?

12 A This is the brief encounter I had with Mr. Jett
13 before he, before we told him he was under arrest.

14 Q All right.

15 MR. JEPERTINGER: At this time I would
16 move to have Court's Exhibit 1 moved into evidence
17 as State's Exhibit 54.

18 THE COURT: Subject to defense counsel's
19 previous objection, so admitted.

20 (Court's Exhibit No. 1 was re-marked as State's
21 Exhibit No. 54 and admitted into evidence.)

22 MR. JEPERTINGER: And at this time I would
23 ask to publish that recording to the jury in this
24 case.

25 THE COURT: Go ahead.

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1 (State's Exhibit No. 54 was published for the jury.)

2 BY MR. JEPERTINGER:

3 Q Corporal Jones, when you were interacting with
4 Mr. Jett did you note any odor of alcohol about his
5 person?

6 A I did not.

7 Q All right. And what was the temperature like out
8 there?

9 A It was very cold. The jacket that I wore in here
10 today was the jacket I had to wear that night it was
11 so cold.

12 Q All right. Okay. After you interacted with him
13 and you — what happened then?

14 A Once Mr. Jett didn't want to speak with me, then
15 I went over to the house at 702 Pawley Street to
16 meet with the victims.

17 Q Okay. And I think the other officers have
18 testified to what was told, correct?

19 A Yes, sir.

20 Q Okay. At that point what did you do? Did you
21 ever call crime scene?

22 A I called crime scene before I ever met with Mr.
23 Jett. I mean, once I had a trail of evidence
24 because it went across the street and around the
25 apartment building, I had to get him out there to

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1 get the evidence collected.

2 Q Okay. Now I know you're a corporal, but you were
3 the investigator on this case?

4 A Yes.

5 Q You've alleged that Antwan Jett was involved with
6 this crime; did you not?

7 A Yes.

8 Q Okay. You were made aware of there being another
9 individual with dreadlocks that was tall?

10 A Yes.

11 Q And another individual that was, I guess for lack
12 of better term, more medium height?

13 A Yes.

14 Q Is your investigation ongoing in terms of trying
15 to figure out who those other two individuals are?

16 A Any time we have a case like this it is always an
17 active case. We investigate all the leads that we
18 have until it goes cold; and if anything new comes
19 up, then we would follow through with that.

20 Q Okay. As an example, I'm gonna show you what's
21 marked as State's Exhibit 48. Are you familiar with
22 State's Exhibit 48?

23 A I am.

24 Q And once again, can you tell the ladies and
25 gentlemen of the jury what State's Exhibit 48 was?

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1 A This was the CODIS hit notification that was
2 mailed from SLED on February 4th, 2015.

3 Q Now it was sent to Thomas Myers.

4 A That is the crime scene unit sergeant. He
5 actually had -- his log-in number was used so this
6 CODIS hit came back to him instead of to Matthews.

7 Q Okay. And that CODIS hit said on item number
8 three that Special Agent Leisy testified to here
9 earlier this morning, that there was a CODIS hit on,
10 I guess, a blue hat, that the CODIS hit came back to
11 a Matthew Thomas; isn't that correct?

12 A Yes.

13 Q All right. Did I ask you when you made me aware
14 of this to check out the whereabouts of one Matthew
15 Thomas during the time of this crime, December 31st,
16 2013?

17 A Yes.

18 Q Could you include Matthew Thomas as being
19 available to commit this crime on December 31st,
20 2013?

21 A I could not.

22 Q And why is that?

23 A He was arrested on December 22nd, 2013. He was
24 not released until March of 2014. I actually called
25 the Florence County Jail to confirm that he was

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1 incarcerated the whole time so he was in jail when
2 the crime happened.

3 Q Here at our local jail?

4 A Here, yes.

5 Q All right. Thank you. Any other leads that have
6 you, have you established, or are you still trying
7 to work on them?

8 A Early on in the investigation certainly my victim
9 was concerned with people that were in the area.
10 The unfortunate thing of this particular case is he
11 cannot identify anyone because their faces were
12 covered. We looked at a lot of people in the area
13 fitting the description. I went through tons of
14 mugshots, researched all kinds of different
15 individuals, but we never had any leads that came
16 back to identifying anyone else.

17 Q When Jett told you in the statement that he was
18 just walking from a friend's house, had been
19 drinking so tried to find a place to sleep under I
20 guess that Cadillac there, did you find that to be a
21 plausible and viable ---

22 MR. MEETZE: Objection.

23 THE COURT: Let him finish his question.

24 BY MR. JEPERTINGER:

25 Q Viable reason to not arrest him?

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1 THE COURT: Any objection?

2 MR. MEETZE: I object to that. It's --
3 well.

4 THE COURT: What's the grounds for your
5 objection?

6 MR. MEETZE: I just think it's a matter
7 for the jury.

8 THE COURT: Objection overruled.

9 Ma'am, you may answer the question.

10 THE WITNESS: A reason to arrest him? Is
11 that -- I'm sorry.

12 BY MR. JEPERTINGER:

13 Q Did you view his statement to you that he was
14 looking for a place to sleep and he, I guess,
15 sleeping it off for lack of better term, under a
16 car, did you find that to be a plausible and viable
17 reason?

18 A Yes, it was all the circumstance that led up to
19 that point.

20 Q No, did you view his, what he told you to be a
21 plausible or believable ---

22 A Not believable with the concrete on car 'cause he
23 originally said I just fell asleep and didn't even
24 realize he was up underneath the car.

25 Q You didn't buy that?

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1 A I didn't buy any of that, no, sir.

2 Q Okay. And is that the reason you had him, I
3 guess, arrested for these crimes that he's charged
4 with?

5 A Yes. He was only detained up until that point.

6 Q Okay, very good. Please answer any questions
7 that the defense attorney may have for you.

8 THE COURT: Cross-examination.

9 **CROSS-EXAMINATION**

10 BY MR. MEETZE:

11 Q Corporal Jones, you did more during your
12 investigation than what you testified to here today
13 as far as -- I mean, you indicated you talked to the
14 victim in the case, but you didn't talk about what
15 he told you, did you, --

16 A No, sir.

17 Q --in your testimony? So in regards to talking
18 to him you talked to him at the scene that night?

19 A I did.

20 Q And then you also did two different interviews
21 with him later on; is that right?

22 A I did.

23 Q One was on January 6th I believe?

24 A I don't actually have that particular date
25 documented; but that's, if that's what it's logged

1 in as, yes.

2 Q But it was two different times?

3 A Yes.

4 Q And those were recorded?

5 A Yes.

6 Q Now do you recall in those recordings him telling
7 you that he did not recall them having gloves on?

8 A At this point I don't remember exactly what was
9 said in those taped statements. I do remember that
10 there was a discrepancy; that's the reason why I did
11 the second one. Unless I heard them at this point I
12 wouldn't, I don't exactly remember, no.

13 Q Okay. You can't sit here and say he specifically
14 told you that he saw gloves on folks either?

15 A According to my notes and from what I remember,
16 no. The original incident, they all three suspects
17 were wearing gloves. That is the reason why no
18 fingerprint. They didn't dust for fingerprints and
19 things like that, I mean, because we were given that
20 information.

21 Q Do you have a copy -- you did a supplemental
22 report on this case?

23 A Yes.

24 Q And I think the third paragraph of the first page
25 highlights your conversation with Mr. Barr?

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1 A Yes.

2 Q Does it indicate in there that he indicated that
3 he saw gloves?

4 (Pause while witness reads report.)

5 THE WITNESS: You document it, okay.

6 BY MR. MEETZE:

7 Q Sure. And the -- you've also documented in there
8 with regard to Mr. Barr testifying, or telling you
9 in the interview, that he had money taken from him
10 on this night, correct?

11 A Yes.

12 Q And it indicated 19-dollars, correct?

13 A Yes.

14 Q So there's nothing that he told you that you
15 documented there that indicates denominations?

16 A I didn't ask him that question. I did not.

17 Q And you did two different taped statements,
18 recorded statements. In neither one of those
19 statements did he indicate to you that the two
20 dollar bill was taken from him?

21 A I didn't ask him so he didn't say that, no, sir.

22 Q He didn't say that, correct? He was asked about
23 money?

24 A He was just asked how much money.

25 MR. MEETZE: I don't have anything

1 further, Your Honor.

2 THE COURT: Mr. Jepertinger.

3 MR. JEPERTINGER: Nothing further from
4 Ms. Jones and that will be it, Judge.

5 THE COURT: You may step down.

6 MR. JEPERTINGER: That will be the State's
7 case, Your Honor.

8 THE COURT: Can the lawyers approach a
9 minute please.

10 (WHEREUPON, counsel approached the
11 Bench for an off-the-record discussion.)

12 THE COURT: Ladies and gentlemen, the
13 State has rested, therefore, at this stage there are
14 some matters of law that I need to take up. Rather
15 than keep you here, it is now like close to noon, I
16 am going to let you go to lunch at this time, okay.
17 I am going to ask that you be back here 2:00, at
18 2:00 and we will resume the trial at that time. As
19 I told you from out, do not discuss the case. Do
20 not discuss the case at all till you're instructed
21 to do so. I hope you all have a nice lunch and
22 enjoy some of that outside nice, spring weather
23 today. I'll see you back at 2:00.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 11:59 a.m.)

1 THE COURT: Anything further from the
2 State at this time?

3 MR. JEPERTINGER: Not in terms of any
4 motions that the State would have.

5 THE COURT: Mr. Meetze?

6 MR. MEETZE: I don't have anything, Your
7 Honor.

8 THE COURT: Let's do this before lunch,
9 I'm gonna advise him of his client's, advise him of
10 his rights.

11 Sir, if you will raise your right hand to
12 be sworn.

13 WHEREUPON,

14 **ANTWAN JETT,**
15 having duly sworn by the Clerk, testified as
16 follows:

17 THE COURT: You are Antwan Jett?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now at this time I'm going to
20 explain to you certain of your rights. If you do
21 not understand anything I say, please let me know.
22 If you want me explain anything in more detail
23 please let me know. Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: We have now reached the stage

1 of the trial where you may present your defense.
2 You have the right to claim the protections given to
3 you by the Fifth Amendment of the Constitution of
4 the United States. And this amendment states in
5 part that no person, no person, shall be compelled
6 in any criminal case to be a witness against
7 himself. This means that you cannot be required to
8 testify in this case. You have the right to testify
9 on your own behalf; however, no one can make you
10 testify. This is a personal right and no one can
11 waive this right except you. Now if you decide to
12 testify you will be subject to the same rules that
13 govern other witnesses, and you may be examined and
14 cross-examined on any relevant issue in this case.
15 In addition, if you have any convictions involving
16 dishonesty or false statement or for crimes
17 punishable by imprisonment for more than one year
18 and the Court determines that the probative value of
19 admitting this evidences outweighs its prejudicial
20 effect to you, the prosecutor or the solicitor will
21 be able to introduce your records to attack your
22 credibility.

23 Now if you decide to testify this decision
24 on your part must be freely, voluntarily, and
25 intelligently made with knowledge of the protections

1 given to you by the Fifth Amendment and the
2 consequences of your decision to testify. If you
3 decide not to testify, I will instruct the jurors
4 that they cannot give the fact that you did not
5 testify any consideration whatsoever, and that there
6 is to be absolutely no prejudice to you because you
7 did not testify. It is left entirely up to you
8 whether or not you testify. You may talk with your
9 attorney, your family, friends, or anyone else; but
10 the final decision as to whether or not you testify
11 is left entirely up to you. Now do you understand
12 what I've explained to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions
15 about what I've explained to you?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you discussed with your
18 attorney whether or not you should testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to talk to your
21 lawyer anymore at this time?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you to wish to testify in
24 the trial of your case?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Anything further
2 at this time, Mr. Meetze?

3 MR. MEETZE: No, sir, Your Honor.

4 THE COURT: Mr. Jepertinger?

5 MR. JEPERTINGER: Your Honor, I just, for
6 the record I'm just wondering if the defendant is
7 waiving their right to make a directed verdict
8 motion at the close of the State's case.

9 MR. MEETZE: I'm not waiving that right,
10 Your Honor.

11 THE COURT: That's why I asked you
12 anything from you before we went into that.

13 MR. MEETZE: I wasn't thinking that, Your
14 Honor, I apologize. I would like to make a directed
15 verdict motion. Your Honor, we would make a motion
16 for a directed verdict at this point in time and
17 base that on the evidence presented not being
18 sufficient to sustain a guilty verdict in this case.

19 THE COURT: Mr. Jepertinger.

20 MR. JEPERTINGER: Your Honor, I think
21 under case law that there's substantial
22 circumstantial evidence at least and somewhat direct
23 evidence in terms of Michael Barr testifying how the
24 perpetrators were dressed that robbed him, that he
25 was in fact robbed, armed robbed. And the

1 perpetrator leaving the scene of the crime, I think
2 Officer Herman said in a gray and green hoodie, or
3 one of them at least, and shortly thereafter when
4 circumstantial evidence comes in was the clothes
5 being found close to him within a matter of 10 feet,
6 Judge, so I think there is substantial
7 circumstantial evidence in this case.

8 THE COURT: Anything further?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: All right. Trial court must
11 view the, in viewing the evidence in a light most
12 favorable to the State which the trial court is
13 required to do, the law requires the case should be,
14 or requires the case be submitted to the jury if
15 there's any direct or substantial circumstantial
16 evidence reasonably tending to prove the guilt of
17 the accused. This Court does find that there is
18 substantial circumstantial evidence for which a jury
19 could reach a verdict of guilt in this case, and
20 therefore, the Court respectfully denies defendant's
21 motion. Anything further at this time?

22 MR. MEETZE: No, sir, Your Honor.

23 THE COURT: While the defendant has
24 indicated, Mr. Meetze, he does not intend to
25 testify, does the Defense intend to put up any

1 evidence ---

2 MR. MEETZE: No, Your Honor.

3 THE COURT: ---Or testimony?

4 MR. MEETZE: I do not.

5 THE COURT: Okay. What I would ask you
6 all to do, my law clerk I'm sure, has been working
7 on the charge. If you lawyers could be in my office
8 at 1:30 so we can review the charge, I'd like to
9 have charging conference prior to. I'd like to have
10 it prior to the jury coming back so when they get
11 here at two we can go directly into arguments and
12 charge, all right.

13 MR. MEETZE: Thank you, Your Honor.

14 THE COURT: Thank you. Mr. Meetze and Mr.
15 Jepertinger, why don't we just be in here at 1:30 so
16 we can just go ahead and do, go through on the
17 record the proposed charge. That will be the
18 easiest what to do it.

19 MR. JEPERTINGER: Yes, sir.

20 THE COURT: And I'll have a copy for both
21 of you all at that time as well so you can follow
22 through.

23 (Whereupon, a lunch break was taken.)

24 THE COURT: The first page is pretty
25 standard, I mean, the first part of it is pretty

1 standard. Charge, arrest, and indictment, second
2 page, not evidence, multiple charges, presumption of
3 innocence, reasonable doubt. If you'll look at that
4 Mr. Meetze, Mr. Jupertinger, standard reasonable
5 doubt charge. Duties of judge and jury, 4; Number
6 5, 6, and 7, duties of judge and jury; direct and
7 circumstantial evidence on page 7; page 8, prior
8 record, expert witness; statement of the defendant
9 on page 9 and 10; identification, 11; defendant's
10 decision not to testify; intent, first degree
11 burglary on page 13 and 14. In addition, with
12 regards to burglary first -- and you all speak up as
13 we go through this if you have any question or
14 anything.

15 MR. JEPERTINGER: I have a couple of
16 issues when we get through unless you want to hear
17 them now.

18 THE COURT: Well now, have you looked
19 through the entire?

20 MR. JEPERTINGER: Yes, sir.

21 THE COURT: How about you, Mr. Meetze?

22 MR. MEETZE: I have.

23 THE COURT: All right. Any exceptions or
24 objections on, Mr. Meetze?

25 MR. MEETZE: With regards to burglary

1 first I would add that the Court only charge as the
2 indictment alleges which is just the nighttime
3 allegation.

4 THE COURT: Mr. Jepertinger?

5 MR. JEPERTINGER: That's correct.

6 THE COURT: All right. So the bottom of
7 page 14, beyond a reasonable doubt, then jump over
8 to page 16, which is number 5, correct?

9 MR. MEETZE: Yes, sir, Your Honor.

10 THE COURT: Mr. Meetze, Mr. Jepertinger,
11 is that right?

12 MR. JEPERTINGER: That's correct.

13 THE COURT: All right, take out page 15.
14 Anything else, Mr. Meetze?

15 MR. MEETZE: Not at this point.

16 THE COURT: Mr. Jepertinger?

17 MR. JEPERTINGER: Your Honor, at the
18 bottom of page 10, beginning of page 11 when we talk
19 about identification it says: An issue in this case
20 is that identification of the defendant as the
21 person who committed the crime charged. The State
22 has the burden of proving beyond a reasonable doubt.
23 You must be satisfied beyond a reasonable doubt the
24 accuracy of the identification of defendant before
25 you may convict the defendant." Well, in this

1 particular case based on the circumstances and
2 evidences in this case there was no identification
3 procedure by the victim of the accused.

4 THE COURT: Mr. Meetze, I don't disagree
5 with that.

6 MR. MEETZE: I mean, I don't disagree with
7 that. There was identification by the officers as
8 Mr. Jett being the individual under the car, but
9 nobody identified him as being ---

10 THE COURT: Perpetrator.

11 THE DEFENSE: ---The perpetrator.

12 THE COURT: I mean, identification by the
13 officer was post --

14 MR. MEETZE: Post.

15 THE COURT: ---the alleged incident.

16 MR. MEETZE: Right.

17 THE COURT: So I think that does come out.
18 All right.

19 MR. JEPERTINGER: The other one I would
20 ask for the Court to look at since there were three
21 individuals in the house, and I don't know how the
22 Court feels about the hand of one versus hand of all
23 jury charge in this matter.

24 THE COURT: Mr. Meetze?

25 MR. MEETZE: Well, I mean, the allegations

1 are that these people went into the house. I think
2 that, you know, a decision on charging a request to
3 charge isn't any evidence standards I believe; and
4 so from that standpoint, if the Court is gonna
5 charge that I would ask the Court to also consider a
6 mere presence charge and ---

7 THE COURT: Well, it is incapsulated
8 within that.

9 MR. MEETZE: Within that.

10 THE COURT: It's included within the hand
11 of one hand of all. It says, however, mere presence
12 at the scene of crime is not sufficient to convict
13 one as a principal in the theory of aiding and
14 abetting. Intent is also necessary element. There
15 must have been common design or intent to commit a
16 crime. The crime must have been committed pursuant
17 thereto with the person aiding, abetting some overt
18 act. And it goes on a little bit more, it talks
19 about intent.

20 MR. MEETZE: I mean, I think that the
21 State's theory is, as put forth, is that Mr. Jett
22 had agreed to, he had agreed he had the gun and all
23 of that. So I think that their theory would more
24 apply to one of the other two was here as far as the
25 allegations go, I'll leave that to the Court.

1 THE COURT: I'm going to put hand of
2 one/hand of all. I think it is appropriate based
3 upon the evidence that's been presented during the
4 course of the trial. If there's any evidence the
5 law requires that I certainly charge it. Anything
6 else, Mr. Jepertinger, Mr. Meetze?

7 MR. MEETZE: I don't have anything else,
8 Your Honor.

9 THE COURT: I'll certainly give you all, I
10 mean, I put you on the spot so to speak here as we
11 talk now, but certainly give you the right at the
12 conclusion of my charge. You may think of
13 something, you know, as I go through this charge
14 that none of us thought of prior to the charge and
15 certainly will give you an opportunity to address
16 any objection, objections or exceptions, at the
17 conclusion of my charge, okay.

18 MR. MEETZE: If I could be excused before
19 we bring the jury back out?

20 THE COURT: Certainly. Here's the verdict
21 form. You all come up here and look at the verdict
22 form.

23 (WHEREUPON, counsel approached the
24 Bench for an off-the-record discussion.)

25 THE COURT: We'll stand down for a few

1 minutes.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 THE COURT: Mr. Meetze, Mr. Jepertinger,
5 either one of you all, I think we're missing two
6 jurors right now. When they get up here, we have
7 all the jurors, either one of you all have any
8 objection to the bailiff instructing them to go
9 ahead and select their foreperson?

10 MR. JEPERTINGER: No, sir.

11 THE COURT: Mr. Meetze?

12 MR. MEETZE: No, sir.

13 THE COURT: Just let -- and I'll tell them
14 to let them know the foreperson cannot be, certainly
15 the alternate, okay. Thank you.

16 MR. JEPERTINGER: Judge, if it takes them
17 45 minutes for them to decide then you might want to
18 have an alternative plan.

19 THE COURT: Okay.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Anything from the State before
23 I bring the jury out?

24 MR. JEPERTINGER: No, sir.

25 THE COURT: Defense counsel?

1 MR. MEETZE: Your Honor, just once they're
2 out I'll rest on the record but I would, without
3 having to send the jury back out say, that I would
4 like to renew all previous motions and all at the
5 close of all of the evidence. I think once I've
6 rested that would be the time to do that.

7 THE COURT: Yes, sir.

8 MR. MEETZE: In lieu of sending the jury
9 back out, if doing that now can suffice, then that
10 will be fine.

11 THE COURT: And I've done this in the
12 past, you can simply stand up and say, Judge, I just
13 renew all my prior objections as well as my prior
14 motions for the record. And I'll tell you that my
15 rulings remain the same, and I'll tell them we'll
16 move into closing arguments first by the State
17 followed by Defense, all right?

18 MR. MEETZE: That will be fine.

19 THE COURT: Bring me the jury please,
20 ma'am.

21 THE BAILIFF: Yes, sir.

22 THE COURT: I've been advised that Terrace
23 Holmes, who is juror number 66, has been selected as
24 the foreperson.

25 (Court's Exhibit Number 1 was marked

24 THE COURT: So noted. The Court's rulings
25 remain the same as it pertains to each of those

1 motions as well as objections. Ladies and
2 gentlemen, you have heard, you all have heard all of
3 the testimony that you're going to hear in this
4 case. At this time, that which remains is closing
5 arguments by the attorneys and my charge on the law
6 to you, and then the case will be given to you for
7 you to decide. I will remind you, ladies and
8 gentlemen, what the attorneys tell you during their
9 closing arguments is not evidence in this case.
10 It's not evidence in this case. The manner and
11 method in which closing arguments will take place is
12 the State will go first, then Mr. Meetze will close,
13 and then I will give you the charge on the law.

14 Mr. Jepertinger, you're so recognized.

15 MR. JEPERTINGER: Thank you, Your Honor,
16 Mr. Meetze. I want to thank you first for your
17 careful attention. I've been able to look over here
18 during the course of this trial, and you've been
19 paying attention. And that's all we can ask both as
20 the Defense and for the State, pay careful
21 attention. And ultimately this case is gonna rest
22 in your hands, I guess, in a little bit, but I do
23 want to thank you on behalf of myself and Mr. Barr
24 and everybody involved with the State and with the
25 system as a whole.

1 I think my pastor is a very wise man, and
2 he has a little phrase that he says that it just
3 resonates with me. And it's talking about common
4 sense because more so than anything else in this
5 case in looking at all this evidence, I'm gonna ask
6 you fine jurors to use your God given common sense
7 to reach a decision that speaks the truth.

8 Now I am fully aware and cognizant that
9 the State — that will be me, I guess, in this case
10 —bears a responsibility to prove guilt beyond a
11 reasonable doubt. And I'm not shirking that
12 responsibility, but it's so very important that you
13 listen to His Honor because it is not proof beyond
14 all shadow of a doubt. A lot of times people say
15 that it's got to be all shadow of a doubt. That
16 would be an impossible stand to reach because people
17 have doubts about everything and everything. It's
18 proof beyond a reasonable doubt, and he'll explain
19 to you what that, what the legal standard for that
20 is. But in reaching that decision, when you ask
21 yourselves has the State proven Antwan Jett guilty
22 of burglary in the first degree, armed robbery,
23 criminal conspiracy, possession of a weapon during
24 the commission of a crime of violence, you're gonna
25 need to ask this question, does it comport with

1 common sense? Now, here's the saying, when common
2 sense makes good sense you need find no other sense
3 or you'll wind up with nonsense. In this particular
4 case, if you look at the evidence as we see it not
5 at one part and parse it out and say, well, you
6 know, I'm not sure about that, or look at this, oh,
7 I'm not sure about that, I look another this, I'm
8 not sure about that, I'm not sure about that. The
9 bottom line, I'm not asking to look at each
10 individual part, I want you to look as a whole.
11 Just like when you look at making a cake or baking a
12 cake, I should say, you don't look at baking soda or
13 baking powder and say we got a cake. Or the flour
14 or the eggs or the milk or what else you add to it,
15 you don't have a cake; but when you put all that
16 stuff together and you add it together and mix it
17 and you bake it, obviously you come up with a
18 desired result. You come out with something that
19 makes sense when you look at the hole instead of the
20 individual parts.

21 In this particular case, think about it,
22 Mr. Barr is at home. Now I know I have introduced a
23 gazillion photos, some that you have seen, some you
24 have not seen; but at 3:30 in the morning while he's
25 asleep in his living room in an easy chair, he gets

1 that infamous knock at the door, who is it? BJ. He
2 knows a BJ. Apparently one of the three knew that
3 he knew a BJ and they used that artifice or trick,
4 or however you want to call it -- a ruse? -- to get
5 in. Because common sense would dictate if someone
6 said it's three guys you don't know, we're wearing
7 hoodies and one of us has a gun, he ain't turning
8 the dead bolt which you'll see on a picture of --
9 and it's in here somewhere -- of the apartment. You
10 won't turn that thing to let someone in. But he
11 opens the door and they rushed in. And when they
12 rushed in, one person was wearing a green hoodie,
13 someone that was about 5'9", 5'10", about my size,
14 medium complexion -- I think he called it brown.
15 And what we know about this guy, if nothing else, is
16 the guy with the groan hoodies did not have
17 dreadlocks. The taller guy had dreadlocks. You'd
18 say, well, Mr. Jepertinger, there was a third guy.
19 Truth be known, I can't tell you what his hair
20 looked like, never got a description except that he
21 was about 6 feet. The tall guy had a brown hoodie;
22 he's not on trial. Pray to God that they find him.
23 It wasn't Matthew Thomas; we knew he was locked up.
24 Pray to God we find him. Pray to God we find the
25 third guy. This guy shouldn't -- Antwan Jett

1 shouldn't ride the rail alone, but we don't know who
2 it is. I'll still be here, Lord willing, if they
3 catch the other two.

4 But it wasn't, it wasn't this guy with the
5 dreadlocks, was it? A young guy with a young voice.
6 Remember, that's what Michael Barr said, he had a
7 young voice. And you got to hear his young voice on
8 the tape and it sounded like a young guy's voice.
9 It wasn't a deep baritone, very light type voice.
10 It wasn't — no offense to Mr. Propps — but it was
11 not an elderly citizen. It wasn't a man; it was a
12 young person's voice.

13 As a result of what happened to Mr. Barr,
14 was they whipped him, they bait him. Now I
15 understand Mr. Barr's got a record. He paid his
16 debt to society. He was at his house at 3:30 in the
17 morning. No, he's not perfect; who is? But he got
18 whipped. And it was just not his words saying he
19 got whipped; but you remember Jamey McCall, the
20 African American police officer, when he got in
21 there his mouth was bleeding. He didn't do that to
22 himself, folks. He didn't do it to himself.

23 They go into his room to look for pills.
24 And they open the dresser drawers and look for what
25 they want because someone has got a Derringer on

1 him. You've seen the gun, a small Derringer type,
2 holds five in the cylinder and had bullets in the
3 cylinder. And you know what, that thing can take a
4 life just as if it were a huge, huge gun. They go
5 into, back into the living room. Well, they ain't
6 happy with that. They see a locked door, no one is
7 watching him, and they bust into Brittany Foxworth's
8 room. And what did Mr. Barr say? I heard a yell
9 and scream. Then I heard one of them say, we ain't
10 got time for that, and they left.

11 Now my dear friend Mr. Meetze is gonna say
12 where is Brittany Foxworth. He's not gonna say it
13 like that — excuse me, Vick, I'm not trying to make
14 fun of you. We put up the witnesses that were
15 willing to testify and offered you the best case
16 that we could. I think Mr. Barr said she moved.
17 They come out. Before they come out remember, and I
18 don't, I can't exactly remember which one, do you
19 remember there was that sheath on the ground that's
20 in evidence that held that hunting knife. Oh,
21 you're gonna stick me with a knife, one of them
22 said, and they grab a hold of that. And then they
23 decide to go out the back door. Remember, it's 3:30
24 in the morning. You remember how Officer Herman, I
25 think he was the first police officer testified,

1 saying you know, I checked it, you only got light
2 here, there was light there and light at the other
3 place and he showed you on this big aerial
4 photograph it's dark. We -- and it's woods back
5 there, I don't know where the third individual, I
6 don't know where he went, could have gone, who
7 knows. But what did I see? And this is critical.
8 Officer Herman said, I saw one of the guys run
9 across. What did he have on? Remember the term?
10 He didn't just say green hoodie. He didn't say gray
11 hoodie. What'd he say? The green, gray hoodie.
12 Green and gray (holds up evidence). The other one
13 dressed in dark, lost track of him. And you heard
14 both Officers Herman and Blackmon testify how they
15 chased him, how some, one got away, don't know what
16 happened to the other one. Well, I got a feeling
17 that the evidence shows we know what happened to the
18 other one. It's quite, it's really quite simple
19 when you think about it because it's all -- the
20 evidence is there if you choose to consider it. He
21 comes around the corner and he knows he's been
22 spotted by cops, two of them. One is in the car;
23 one's on his heels. The other guy is apparently
24 faster than he is. No question, I ain't gonna be
25 able to outrun Herman in the squad car, gonna make a

1 quick decision, gonna ditch the clothes and I'm
2 gonna get under a vehicle. If they find the clothes
3 I'm gonna be quiet. And when all those cops, with
4 all the officers running around, running around,
5 when they leave I'm gonna get out of there.

6 Now I'm gonna show you something and it's
7 right, it's right here in State's Exhibit 6-A and
8 6-B. You look at State's Exhibit 6-A and 6-B real
9 good. Beg the Court's indulgence one second.

10 (Takes his jacket off and puts on both gray and
11 green hoodie that's in evidence). And I'm gonna
12 take it — I can't zip it, I need my mother. But
13 you take it, this is zipped up. You got this on,
14 now you got to get it off. If you're wearing the
15 green hoodie on the outside because remember, that's
16 what Barr said, that's what Mr. Barr said. What
17 comes off first when you try to get your clothes
18 off? (Takes green hoodie off.) The green hoodie.
19 What comes off second when you're trying to get what
20 you got on off? The gray one. (Takes gray hoodie
21 off.) And when you're moving trying to get away
22 from the cops quickly and you drop it, what lands on
23 top? The gray would land on the green. The gray
24 lands on the green because you got to get it off
25 quickly.

1 Now, think about this in light of the DNA
2 evidence. We'll talk about the DNA here in a little
3 bit as well. Think about this (puts gray hoodie
4 on). You got that Clemson T-shirt that he still has
5 on, which I've shown you ten million times in which
6 I can't find right now, but I will show you this and
7 you're aware of it. You know, he's got that T-shirt
8 on obviously, okay. There he's got gloves on; I'm
9 gonna talk about that. However, you remember, if
10 you got this up and you got this one (indicating)
11 right on top of it. Let me put it on just the way I
12 had it. I had it on backwards but you got the idea,
13 right? There is a good chance that this is
14 protected from your skin by this. And what did
15 Miss DNA expert say? What'd she say? Where did she
16 find his DNA? On the gray hoodie. And how did she
17 say it? She said it like this, item 5 swabs from
18 the gray sweatshirt jacket, the DNA profile
19 developed from item 5 matches the DNA profile of
20 Antwan Jett and has been entered into the State DNA
21 index system and the probability of randomly
22 selecting an unrelated individual having a DNA
23 profile matching this then is approximately what?
24 One in 590 million. I asked her, what's the current
25 population. First I asked her what's the population

1 of the world. Then I asked her what is the
2 population of the United States of America in which
3 we live. She said it's somewhere between 300 to
4 400 million people.

5 Antwan Jett was wearing that gray
6 sweatshirt. Another thing about this photograph,
7 and it is something that you can draw whatever
8 conclusion you want to draw from this, but it is in
9 evidence, is 6-A and 6-B. I notice there was a leaf
10 on top of the green jacket. It's the end of
11 December, leaves fall in the fall. That's why they
12 call it Fall, right? And I know they had a few
13 leaves in the back there, but someone rushing to get
14 those clothes off to get under a car that's about
15 10-feet away from these clothes, is that gingerly
16 gonna put that jacket down and walk off? He's gonna
17 be in a hurry, and I'm telling you, folks, he kicked
18 a leaf up to get under that Cadillac that was parked
19 right in front of location. And you see that was
20 3-A and 3-B. When they pulled him out from under
21 the car.

22 Now look, you know, we don't live in a
23 vacuum. It's unfortunate, there's a couple of
24 unfortunate things here; I'm gonna bring them out in
25 the open. It's unfortunate they had to taze him.

1 But at that stage of the game, one, he's not dead;
2 two, it doesn't look like he's got any long lasting
3 injuries from that; but three, on the other side,
4 let's look at it from the policeman's perspective.
5 You got a home invasion where weapons have been
6 used. You got two officers whose lives have as much
7 merit as Antwan Jett's. No greater merit, no less
8 merit, equal merit. You had a loaded gun that was
9 dropped, but they hadn't found it at that point.
10 Another thing, and I'm aware of this, he's a young
11 guy. He's a young guy; but then again, if we just
12 look based on things on age, Mr. Barr is a middle
13 aged guy. I don't want sympathy in terms of age to
14 play any significance, and the Court will tell you
15 this, the bottom line is we're not trying him
16 because he's a young guy or Mr. Barr is not way a
17 guy or he's a black guy or Mr. Barr is a black guy
18 I'm a white prosecutor, none of that applies. The
19 question that you have to answer is if he committed
20 the crime because, folks, your greater obligation is
21 not to the State of South Carolina, not to Judge
22 Brown, not to this defendant. Your greater
23 obligation is to the truth of what happened on
24 December 31st, 2013 at 3:30 in the morning and
25 thereafter when they pull him out from under the

1 vehicle with the clothes 10-feet away. It's cold.
2 You got that -- it's almost just a constant thing.
3 It was cold, it was cold, it was cold. In fact, two
4 officers, Gowdy and Jones said, I had to wear a
5 jacket, it was cold. Now here you have an
6 individual said in his statement to Investigator
7 Jones at the time, oh, I just had a little too much
8 to drink, I decided to sleep under the vehicle. Go
9 back to common sense. Makes no sense. Why does it
10 make any sense? How in the world, how in the world,
11 when he crawls under the vehicle if he's gonna sleep
12 one off doesn't he know that whoever owns this Chevy
13 Lumina and whoever owns this Cadillac isn't gonna
14 get into those vehicles while he's sleeping off,
15 crank him up and pull off and crush him to death.
16 It makes no sense. I was drinking. Well, it's
17 almost like cigarettes; isn't it? You know when a
18 heavy smoker comes up and he, my God, he needs to
19 get one of them patches or something, I can't stand
20 being in the room with him. We've had that. How
21 many times have we walked up to people in our lives
22 and said, my God, he smells like a distillery.
23 These officers, three of them, three of them, Lacey
24 Allen who was right there, the female officer;
25 Legrande Gowdy, the guy that got help out from under

1 the car, and Detective Jones, did you smell any
2 alcohol on him? No. No. Why would he say that?
3 Why would he say that? Because he had to distance
4 himself from those clothes. He had to have a reason
5 why he's hiding under the car. And you know what
6 that all is, folks, it's consciousness of guilt of
7 saying lord, they caught me, I thought I was free
8 and clear but that police officer saw me running
9 across Rose Street and they're gonna try to link me
10 with these clothes and I'm gonna have to come up
11 with some excuse of why I am under a car when it's
12 in the low 30s and I got a T-shirt on. And this
13 business of saying I got walking gloves on, who in
14 the world in Florence South Carolina wears walking
15 gloves? I have never heard of such a thing. Gowdy
16 pulls him out, struggles a little bit to get the
17 handcuffs on him, goes into the wall, pulls it out,
18 starts reading the rights to him just like he did to
19 you this morning; and before he can get finished
20 with those rights, what does Antwan Jett tell him, I
21 don't know anything about that gun. But he hadn't
22 even mentioned a gun to him yet. I don't know
23 anything about that gun. That is someone that is
24 trying to distance himself from the scene of the
25 crime. Oh, it wasn't me. Now because at that

1 point, at that point as he being pulled out from
2 under the car he doesn't know if Herman or Blackmon
3 or Gowdy's trainee who is dropped off, he doesn't
4 know if they caught that other fella, does he? He
5 doesn't know if they caught person number three and
6 maybe person number and person number two are faking
7 him out to the police. So he comes up with, I
8 didn't know anything about that gun. At that
9 moment, at that point in time he was trying to give
10 a story that would put him in a better light. They
11 search him and what, what do they find on him?
12 Well, they find a scale, they find condoms, they
13 find like a hamburger thing; that's stuff's neither
14 here nor there. Combs. But they do find it looks
15 like 65-dollars in cash on him. And of that 65, now
16 remember, Mr. Barr testified that he had about 20
17 bucks and included among one of those denominations
18 and he never told the police, he just told them I
19 got money was taken. They never asked him about
20 denominations of the money. But included, if you
21 recall, he said he had his what? His lucky two
22 dollar bill. And folks, in the pocket of Antwan
23 Jett is a two dollar bill. It doesn't take a rocket
24 scientist to figure out that those things are rare.
25 You hardly see them anymore in today's society. You

1 can get them, but is it just a mere coincidence
2 based on all the other factors? And that's another
3 little ingredient in making this cake, right, just
4 another little factor that you have to consider. In
5 and of itself it would mean nothing. But
6 considering what that man said about his lucky two
7 dollar bill and that man within about, I don't know,
8 10, 15 minutes being found with a two dollar bill,
9 when common sense makes good sense you need no other
10 sense.

11 Now I know what the DNA expert testified
12 to. We've gone over item 5. Item 1 was swabs from
13 that Clemson toboggan and it's a mixture of at least
14 two individuals. Item 3 was a blue, a blue hat, and
15 I think maybe it's that balaclava hat. It's a
16 mixture of at least three individuals. It's been
17 entered into CODIS, and that's one that came back to
18 Matthew Thomas when we realized Matthews Thomas was
19 in jail so he's out of the picture. And then item
20 2, swabs from a blue toboggan, I guess it was that
21 knit cap with the bill. That was a mixture of at
22 least four individuals and Antwan Jett was excluded
23 as a possible contributor to the mixture. Depending
24 on what Matthew, Tim Matthews' swab, and that's what
25 he swabbed. And then the green jacket is a mixture

1 of at least two individuals. And Antwan Jett was
2 excluded as a contributor to this mixture on terms
3 of that green jacket. All of that is what it is.
4 However, what it does tell me that Antwan Jett and
5 cohorts if they're dropping clothes, share clothes.
6 That all, that's all that tells me. When you have
7 more than one person have clothes and their DNA show
8 up on it, more than one person is wearing it. It
9 would be literally as if this happened -- Johnny,
10 can you help me with this. Yeah, let's switch
11 jackets. (Mr. Jeperfinger and John Holt exchange
12 jackets.) There. Now potentially Holt's DNA and my
13 DNA are gonna be on this jacket. He's got my cell
14 phone now, he's happy. But the fact of the matter
15 is, that is a possibility not based on what I'm
16 telling you, but based on the results of the DNA
17 analysis and that's unfortunately what it shows, or
18 fortunately. But on that gray sweatshirt he had to
19 have it on, he had to have it on. And don't you
20 think when Felicia Jones gave him his Miranda
21 warnings that if anybody else had come running by
22 while he was under that vehicle -- and remember, she
23 asked him, aren't you cold? He goes, oh, I don't
24 have a coat. Well, we know that's not true because
25 he wore a gray shirt, sweatshirt, no question about

1 that. But don't you think that would have been a
2 reasonable possibility and probability that he would
3 say, look, I was under this car and this guy comes
4 flying by, African American male about my size,
5 about my skin color, having my same type voice, and
6 I mean, he took off this green jacket and picked up
7 my gray sweatshirt and put it under there. He would
8 have sung like a canary at that point. Why did he
9 do it? I have no idea. You found and you saw the
10 pill bottles strewn across Rose Street found in the
11 yard where they were found across Rose Street, had
12 Michael Barr's name on it. They're in evidence.
13 Why did they do it? Maybe they wanted pills. They
14 got so very little money out of this, why do it.
15 It's unfortunate. It's so unfortunate. Two lives
16 and two families are affected by this without
17 question. A man that has to live with the thought
18 of someone breaking in, a young man accused of these
19 very serious crimes. I understand that; but once
20 again, I bring up to you, ladies and gentlemen, you
21 have an obligation to the truth and you swore that
22 you would truly try this case based on the facts and
23 the evidence in this particular case, not what's
24 happening outside in some other area, not what you
25 read in the newspaper, not what your philosophical

1 viewpoint be about life; but you are going to try as
2 you swore to God, you were going to try this case on
3 the facts and evidence presented to you in this
4 case. And they lead to one conclusion, based on
5 this circumstantial evidence and certainly direct
6 evidence that someone with a green hoodie with a gun
7 came into the house and robbed him, you have sworn
8 this oath that you would base it on those facts and
9 those facts alone. And I thank you because I'm
10 confident that you're going to do that, not with
11 anyone to punish nor with anyone to reward; but as
12 you go to sleep tonight, you'll be able to say that
13 justice was done, and for that, you should be proud
14 of yourselves. Thank you.

15 THE COURT: Mr. Meetze.

16 MR. MEETZE: Thank you, Your Honor, may it
17 please the Court. Ladies and gentlemen, first off I
18 will echo Mr. Jepertinger's thanking y'all for your
19 attendance for your attention in the case and
20 listening to all of the evidence. We can't help
21 when we're speaking either in opening statement or
22 closing arguments you end up catching eyes here and
23 there and viewing during the course of trial. It's
24 not always the case that you always see everybody
25 attentive and, but in this case I certainly believe

1 that it was and I think everybody paid wonderful
2 attention to the case and the evidence and I
3 appreciate your patience while I talk to you a
4 little bit about all of that.

5 First off let me say a few things about
6 some of the things you just heard. First off, one
7 of the demonstrations that Mr. Jepertinger made was
8 with regards to if -- and again, you're gonna hear a
9 lot of, a lot of the State's case is about
10 assumptions as opposed to facts, what we assume as
11 opposed to what we know from the evidence. I submit
12 to you certainly trust more what you know from the
13 evidence more so than assumptions. But one of the
14 assumptions that he demonstrated to you was that
15 whoever was wearing -- well, that in his view of the
16 evidence Mr. Jett had on this gray hoodie and on top
17 of the gray hoodie was the green hoodie, and that in
18 trying to take those items off that with the natural
19 order of things that he removed the green hoodie
20 quickly and also then the gray hoodie. If the gray
21 hoodie was on underneath it would be on top of the
22 green hoodie and showed you a picture that he
23 indicated demonstrates that. And I would say that
24 this picture demonstrates the exact opposite. That
25 certainly appears to be a green hoodie on top of the

1 other items of clothing so there's assumptions and
2 there's facts. First off, it's purely an assumption
3 that the person that was described as wearing the
4 green hoodie had a gray hoodie on under it.
5 Mr. Barr didn't give that description. There was
6 only one person that gave that description. That
7 was Officer Herman, said green, gray hoodie. It's a
8 little vague. He also said that when he had time to
9 view that individual it was dark. He told you, it
10 was obviously nighttime, early in the morning, but
11 certainly before the sun is up so it's dark outside
12 and there aren't very many lights. They pointed out
13 to you a few times. I think a few of the officers
14 pointed out on this board that there's a street
15 light here, there's a street light, but they're far
16 apart and they're far away from where they saw these
17 folks running. Mr. Barr saw the individuals in his
18 house where there is light and made no description
19 of seeing a gray hoodie. And you can have two
20 hoodies on; but even if you do, you'll be able to
21 see that there's a hoodie on underneath the other
22 hoodie but he made no description of that. There
23 was no testimony from Mr. Barr with regards to
24 seeing anybody wearing a gray hoodie. Green, dark,
25 either blue or black and brown are the only

1 descriptions he made. Officer Herman says he saw a
2 green, gray hoodie running in the dark by him, they
3 he got in his patrol car and drove off. And of
4 course, that's testimony being given. He's an
5 officer, he's involved in this case, he knows the
6 evidence coming in and what is in evidence so I
7 submit to you that nobody saw a gray hoodie.
8 Everybody's testimony was that saw was green hoodie.

9 Second of all, like I said, you know,
10 there's more than one way a to skin a cat. There's
11 more than one way to view a picture. But certainly
12 I'll submit to you that this picture shows green
13 hoodie on top of gray hoodie and that is how — and
14 who knows when these were taken. Maybe one was
15 taken when they first got located and another one
16 was taken after they sort of were able to spread
17 them out a little bit. If that's the order of
18 things, this is how they were first found. And if
19 this is how they were first found, they're found in
20 exact possession that was demonstrated to you
21 earlier. Like I said, this case is about assumption
22 versus facts.

23 The State has built a case based on a
24 whole lot of assumptions and I submit to you that
25 assumptions create reasonable doubt. If you've got

1 assumptions versus facts, you don't have proof
2 beyond a reasonable doubt, you have not met your
3 burden. And so let's talk about -- those are the
4 facts, and let's talk about the assumptions that the
5 State is asking you to rely on to make your
6 decision.

7 First off, here's a fact. Nobody can I.D.
8 Antwan Jett as having been in that residence,
9 nobody, okay. They located Antwan Jett a few blocks
10 away and want you to assume based on that that he
11 was in there but nobody saw him there, nobody can
12 put him in that house, all right. You had a
13 description from Mr. Barr of the individual in the
14 green hoodie, and let's make no mistake about it,
15 the States theory of this case is that Antwan Jett
16 is individual who was in the green hoodie. He gave
17 a description of the person of the green hoodie that
18 said, had a hoodie, on had something over his face.
19 At one time he said he could see parts of his head
20 between the mask and the hoodie. At another time he
21 said all of them had the hoodies cinched tight. Of
22 course, common sense will tell you when you cinch
23 you put it very tight, it covers almost all of your
24 face as it is. So there was conflicting testimony
25 in that regard, but says that he could see the

1 complexion of his skin and that it was medium
2 complexion, or brown. And he also said, like mine.
3 And I will submit to you that Mr. Jett's complexion,
4 Mr. Barr's complexion different. Mr. Barr's
5 complexion, darker complexion. So there's
6 reasonable doubt right there. If Mr. Barr's
7 description is that his, that this assailant had the
8 same complexion as him, I would submit to you that
9 that does not fit Mr. Jett and that's reasonable
10 doubt.

11 The second thing is, says that individual
12 had a young voice so the assumption on the young
13 voice is was a young person, okay. That's another
14 assumption, okay. Young voice doesn't necessarily
15 mean young person. Mike Tyson's voice has been
16 described as being a young voice many times.
17 There's other examples. It doesn't mean that the
18 individual is young. It's just a descriptive term;
19 but to take a leap to say he was a young man or a,
20 you know, young adult or however you want to phrase
21 it, that's an assumption, we don't know that. We've
22 got a description that is very, very vague. That is
23 the fact. They want you to assume this based on
24 medium complexion and young voice. But the fact is
25 that is an extremely vague description that does not

1 narrow the pool of potential suspects down very much
2 at all. That is a fact. Follow the facts, not the
3 assumptions.

4 Secondly, you've got the two dollar bill,
5 all right. Now Mr. Barr talked to a number of
6 officers at this time, didn't tell any of them about
7 a two dollar bill, okay. Told them he had some
8 money missing that was taken, didn't tell anybody
9 what denominations they were, said nothing about a
10 two dollar bill, comes in here today and all of a
11 sudden one of the items that was stolen was his
12 lucky two dollar bill. Well, if it's your lucky two
13 dollar bill, then that's a two dollar bill that you
14 carry around with you a while, you don't want to
15 spend it, you had it, all right. You keep it for
16 luck. It'd be one he had for a while, it'd be one
17 he could notice, he could look at, he could tell,
18 that's my two dollar bill. But nobody showed him
19 that two dollar bill. Do you recognize this, is
20 this your two dollar bill? It's your lucky two
21 dollar bill, you've had it for a long time, it would
22 have markings, it would have things on there that
23 you would recognize and be able to pick that two
24 dollar bill out over just any other two dollar bill.
25 But didn't do that. That evidence isn't before you.

1 And remember, as I speak with you -- and the judge
2 will talk to you later, proof beyond a reasonable
3 doubt means as Mr. Jupertinger says, it doesn't mean
4 proof beyond any and all doubt. It doesn't mean
5 proof beyond a shadow of a doubt. Nobody is going
6 to stand up here and try to tell you that it is, but
7 it is a very high burden, prove beyond a reasonable
8 doubt and you can find reasonable doubt based on not
9 only the evidence that you hear, but also the
10 evidences that you don't hear. And one thing that
11 you don't hear is, could any of these items found on
12 Mr. Jett when he was located, could any of them be
13 determined to have come from that location? The
14 answer is no. They found two dollar bill so the
15 assumption is that it came out of that house that
16 was Mr. Barr's. But they didn't show that two
17 dollar bill to Mr. Barr to see if he could identify
18 it. If it's his lucky two dollar bill he'd be able
19 to identify it like that, didn't have that
20 opportunity. They didn't show it to them. That
21 evidence that you have, that's reasonable doubt.
22 It'd be good to have it if it existed, don't know,
23 don't have a chance. Evidence that you're not
24 getting to hear, that can create reasonable doubt as
25 well. So Mr. Barr comes in first time in court and

1 says a two dollar bill was missing, Mr. Jett had a
2 two dollar bill and the assumption is it came from
3 the house. That's not evidence; that's an
4 assumption. And there is no evidence or testimony
5 in this record that any item found in Antwan Jett's
6 possession came from that house, none. That is a
7 fact; that's not an assumption. That's a fact.
8 Mr. Jett, as you heard, he gave a statement that he
9 was drinking, had been drinking, and he laid down to
10 fall asleep. All of the officers that were asked
11 this question said they did not smell any alcohol so
12 the assumption, Mr Jett is lying about that, lying
13 about drinking 'cause we don't smell alcohol. Well,
14 there's an easy way to tell whether or not he's
15 telling the truth or he's not. Every law
16 enforcement complex or building in this state has
17 data master machine. They can have him blow and it
18 can easily be done. It will be easy evidence to
19 have and bring for you here. Not everybody who
20 drinks is gonna smell of alcohol. Nobody is
21 presenting that as evidence. They want you to think
22 that. They want you to assume that 'cause that's
23 not the case. They want you to think he's not
24 telling the truth because nobody smelled alcohol.
25 Easy way to tell; it didn't happen. You didn't get

1 to determine whether or not he's telling the truth
2 because they didn't take the steps in their
3 investigation to make that determination. It
4 wouldn't have been hard; it would have been quite
5 easy. Not evidence before you to consider. That
6 creates reasonable doubt 'cause they're asking you
7 to make all the these assumptions. And assumptions
8 are not what takes people's liberties from them. It
9 should be based on the facts and what we know.

10 The green hoodie, make no mistake about it,
11 the State's theory in this case is that the
12 individual that was wearing the green hoodie is
13 Antwan Jett. The testimony from Mr. Barr was that
14 three folks were in that house that committed this
15 crime and that they all three ran out of the back of
16 the house. Police were arriving at about that same
17 time. Officers that arrived around that time
18 parked, they said, right next to one another.
19 Officer Herman, I believe, and Officer Blackmon,
20 they both saw two running in the same direction.
21 Neither one of them saw the third guy, okay. It's
22 an assumption to say he ran off in a different
23 direction. Well, it's not assumption to say he
24 wasn't running with those guys. To say what
25 direction he was running in, that's an assumption

1 but not assumption to say he didn't run with the
2 other two guys. So Officer Herman gets in his car,
3 he's not going on the foot chase. He's gonna get in
4 his car. Officer Blackmon, he starts running after
5 him. He chases them. And he loses one and picks
6 the other one. The other one he picks up is the one
7 that was described as wearing the blue, navy blue,
8 dark blue, or black hoodie; but he ends up losing
9 him. And then, of course, as you heard, you know,
10 the other guy who would have been the one wearing
11 the brown hoodie, I would assume. Here I go, you
12 know, it can be contagious. He was never seen
13 outside the house, never got a whiff of him or a
14 scent or anything like that but. So they located
15 the green hoodie and the other items in this
16 apartment complex. The first assumption is with
17 regards to that is, that that's the green hoodie
18 that the person who committed this crime was
19 wearing. All right, that's an assumption, but
20 that's all that is, all right. They're telling you
21 Antwan Jett was wearing this hoodie. It's got a
22 symbol, a crest of some kind, a Nautica crest on it.
23 It's got other descriptive things. It's got a blue
24 hood there. It's got a number of different things.
25 Green is all that we have. Nothing else besides

1 that. But that hoodie was tested. They're telling
2 you that that's the hoodie that the individual
3 committed that crime was wearing. That hoodie was
4 tested for DNA and it had DNA in it, but it wasn't
5 Antwan Jett. Now that is a fact. If that's the
6 hoodie that the person was wearing that committed
7 this crime. Then Antwan Jett did not commit this
8 crime. That is what the DNA evidence tells you.
9 That is a fact. There's DNA in here; it excludes
10 Antwan Jett as a contributor. All right, that is a
11 fact. That's not assumption. And the facts are
12 what lead you to a just decision in this case.

13 You've got — three hats were found: The
14 one described as the Clemson hat, and then two other
15 hats, a toboggan type hat that had a bill, and the
16 hat with the fur and all in it. Three hats, three
17 alleged individuals that committed this offense,
18 three hats tested for DNA, none of them tested to be
19 the DNA of Antwan Jett. They all contained DNA, two
20 of them completely excluded Antwan Jett. The other
21 one, the Clemson hat, had a mixture of two, the
22 majority contributor not Antwan Jett, okay. So the
23 DNA in all of them, three hats, none of them Antwan
24 Jett; that's reasonable doubt. That is a fact;
25 that's not an assumption. Those are facts and those

1 are facts that point to the innocence of Antwan
2 Jett.

3 Then you got the gray hoodie, and it did
4 test positive for Antwan Jett's DNA. And as Special
5 Agent Leisy told you. All that means is that he's
6 come in contact with that hoodie and his DNA was in
7 it; can't say when that happened, could have been
8 five minutes, five days, five months earlier, but
9 his DNA is located and the one piece of, one piece
10 of article of clothing that Mr. Barr never described
11 as anybody in that house having worn. That is a
12 fact. The assumption is, well, his DNA is in this
13 gray hoodie he must have had the gray hoodie on
14 under the green hoodie; that's an assumption. The
15 fact is, Mr. Barr never described anybody that was
16 in that house as having been wearing a gray hoodie
17 and whether you got it on, over it, or under it or
18 however, if you got on two you can see there's two.
19 But there's no testimony or no evidences from
20 Mr. Barr that would indicate that anybody was
21 wearing a gray hoodie and that creates reasonable
22 doubt.

23 You know, the one item I think item three,
24 one of the hats that they got the CODIS hit that
25 turned out to be a match for Matthew Thomas' DNA;

1 and of course, that's evidence before you. And I
2 think that's a really good example of how things can
3 be misleading sometimes — not misleading, I guess
4 that's a bad choice of words, but we're conditioned
5 sort of through TV. There's countless kinds of
6 crime, TV shows, dramas, you know, and then the real
7 life shows like Dateline NBC and 48 Hours, and
8 there's a whole channel called the ID channel that
9 focuses on, you know, real criminal investigations,
10 this kind of thing. And we're conditioned and been
11 conditioned and been conditioned that DNA evidence
12 is the ultimate. And it's — this is an example of
13 where, you know, they say it's better than
14 fingerprints, it's the ultimate evidence. But this
15 is evidence to where what DNA is telling you is at
16 some point in time somebody has come in contact with
17 something and been able transfer the DNA. Matthew
18 Thomas' DNA are on these articles; but as they told
19 you, it couldn't be him, he was locked up.
20 Everybody knows where he was so he's not a subject
21 of this investigation. I guess he's kind of lucky;
22 otherwise, he probably would be charged. Now that's
23 an assumption. But with that as it may, it's just
24 an example that everything is not as we're always
25 told and taught and sort of conditioned to think

1 based on what we see and hear and all on television.

2 Now a few other things that I do want to
3 bring up. One is, you've seen this, this is in
4 evidence and you'll be able to take this back into
5 the jury room with you and view it and look at it
6 all you want. And officers -- the house is up here
7 and where the folks ran is down here and all of
8 that. It's a good block or more and all that from
9 there. And there's testimony that it was cold out
10 and things like that. Well, let me submit this to
11 you, you've been asked to use your common sense and
12 absolutely I believe that that's the biggest
13 characteristic that a juror can have is common
14 sense. Using your God given common sense is always,
15 I believe, in your best, your best way to go about
16 but whether it's cold or whether it's hot or whether
17 it's in between, nothing about being cold outside
18 that's gonna keep somebody from perspiring if they
19 have to do any kind of vigorous exercise, okay. You
20 heard testimony it was cold and this and that, but
21 the testimony is that these folks ran from his house
22 all the way in some cases way up over here and
23 Mr. Jett was found over here where this X is running
24 from here to there at break neck speed, officers
25 chasing. And common sense will tell you that when

1 you go through vigorous exercise, regardless of
2 whether it's warm, cold, or in between, you're gonna
3 break a sweat and you sweat the most once you finish
4 with the vigorous exercise so it all pours out of
5 you, all right. And the testimony is that Mr. Jett
6 was located very quickly when all this was going on.
7 I think Officer Blackmon's testimony was he was
8 running and chasing the one suspect that got away,
9 and right at that time he was hearing over the radio
10 they got another suspect, so this is bang, bang,
11 happened very quickly.

12 And you've got all these pictures are in
13 evidence. I submit to you if Antwan Jett had been
14 running at full speed from that house to that car,
15 he wouldn't be as dry as a bone without any kind of
16 perspiration or whatever; but there's certainly no
17 testimony and no evidence presented to you that his
18 appearance was anything other than completely devoid
19 of any kind of perspiration. And another thing,
20 Officer Blackmon, he's the one that ran and Officer
21 Herman, he left in his car but Officer Blackmon, he
22 ran. He was on the foot chase and he ran that
23 distance himself, and he told you that he was a fit
24 guy. You could tell in looking at him and he keeps
25 himself in good shape. And when he got around to

1 the Layton Street he was out of breath, he was done.
2 He had to pull back the reigns. And again, no
3 testimony or no evidence at all that when they
4 located Antwan Jett that he was in any way out of
5 breath, huffing, puffing, nothing. And again, the
6 testimony is that about the same time Officer
7 Blackmon is saying he was struggling to catch his
8 breath in the chase is when he's hearing they have
9 located a potential suspect. So we're talking about
10 the same basic time. It's not a length of time to
11 where somebody is gonna be able to catch their
12 breath and have no signs of having just run a great
13 distance. And keep in mind, It may not seem like —
14 it's not a long distance like a mile run or anything
15 like that, but it's a good distance to run at a
16 sprint. And I submit to you, even watching
17 television and watching world class trained athletes
18 running a hundred meter dash, when they get finished
19 they're out of breath. It might not be the longest
20 distance run but when you run it full speed you're
21 gonna be out of breath, and Officer Blackmon was and
22 he testified he was. But there's nothing in the
23 record or in the evidence or anything at all to
24 indicate that Antwan Jett was out of breath. I
25 submit to you had he been the person they were

1 chasing, he would have been. The fact that he
2 wasn't creates a reasonable doubt.

3 Now when Mr. Jepertinger got up and he
4 talked to you in opening statement, one of the first
5 things he said, may have before the first thing, but
6 if it's one of the first things is that there's no
7 place like home. And he said that to kind of
8 illustrate that you should feel protected in your
9 own house, you know, and I think that's something
10 that everybody can agree with. And it's terrible
11 when you lose that confidence that your home is a
12 safe, and nobody would dispute that. And what
13 happened on this evening is a terrible thing, and
14 nobody would dispute that. But I submit to you that
15 it is equally, equally as terrible to be falsely
16 accused of this kind of thing. Two wrongs don't
17 make a right. You have the ability to keep that
18 from happening. You have the ability to make sure
19 that Antwan Jett gets justice, and I submit to you
20 that justice in this case is to bring back a verdict
21 that speaks the truth, and that is a verdict of not
22 guilty. Thank you.

23 THE COURT: Ladies and gentlemen of the
24 jury, it is now my duty as trial judge under the
25 Constitution of this State to charge and instruct

1 you on the law applicable to this case. It is your
2 duty as jurors to accept and apply the law as I will
3 now state it to you. Furthermore, it is your
4 exclusive duty to decide all the issues of fact in
5 this case and to determine the effect, value,
6 weight, and truth of the evidence. Both the State
7 and the Defendant have a right to expect that you
8 will carefully consider and evaluate the evidence
9 and apply the law of this case to it so that in the
10 end both the State of South Carolina and the
11 Defendant will receive a fair and impartial trial.
12 I want you to understand that when I use the words
13 defendant I refer to Mr. Antwan Jamal Jett.

14 The charges alleged in the indictment are
15 burglary first degree, armed robbery, possession of
16 a weapon during a violent crime, and criminal
17 conspiracy. To these charges the defendant has
18 entered a plea of not guilty. This plea of not
19 guilty places the burden of proof on the State to
20 prove the guilt of the defendant to you, the jury,
21 beyond a reasonable doubt. Now I remind you, ladies
22 and gentlemen, that the fact that the defendant was
23 arrested, charged, and indicted in this case is not
24 evidence in this case and cannot be considered by
25 you as evidence of guilt in this case, nor does it

1 create any presumption or inference of guilt. The
2 indictment is simply the formal written instrument
3 which contains the charges made against the
4 defendant. It is the formal document by which this
5 case is brought into this court.

6 Now as I mentioned above, the indictment
7 in this case alleges four separate and distinct
8 offenses against the defendant. You must decide
9 each charge separately on the evidence and the law
10 applicable to it uninfluenced by your decision as to
11 any other charge. The defendant may be convicted or
12 acquitted on any or all of the offenses charged. As
13 stated previously, you will be asked to write a
14 separate verdict of guilty or not guilty for each
15 charge alleged in the indictment. Now it is vital
16 to understand, ladies and gentlemen, that the
17 defendant is presumed under the law to be innocent
18 of these charges. The defendant has no obligation
19 to prove his innocence. It is a fundamental rule of
20 our law that a defendant irrespective of the
21 seriousness of the charges against him is always
22 presumed innocent of the crimes for which he is
23 charged unless and until his guilt has been proven
24 by evidence that satisfies you, the jury, beyond a
25 reasonable doubt.

1 The presumption of innocence is not a mere
2 legal theory or a legal phrase. The presumption of
3 innocence is very important and you need to
4 understand that this presumption accompanies the
5 defendant from the time of his arrest and appearance
6 in this court and continues with a defendant even
7 after you retire to the jury room to deliberate. In
8 other words, the defendant receives the benefit of
9 the presumption of innocence until the very end of
10 this trial when you, the jury, will deliberate upon
11 the evidence and decide whether the State has proven
12 his guilt beyond a reasonable doubt.

13 Now what is a reasonable doubt in the law?
14 A reasonable doubt is the kind of doubt that would
15 cause a reasonable person to hesitate to act. Proof
16 beyond a reasonable doubt is proof that leaves you
17 firmly convinced of the defendant's guilt. There
18 are very few things in this world that we know with
19 absolute certainty, so even in criminal cases the
20 law does not require proof that overcomes every
21 possible doubt. However, if based on your
22 consideration of the evidence you are firmly
23 convinced that the defendant is guilty of the crime
24 charged, you must find him guilty. If on the other
25 hand you think there is a real possibility that he

1 is not guilty, you must give him the benefit of the
2 doubt and find him not guilty.

3 Jurors, please understand that reasonable
4 doubt may arise from evidence which has been
5 presented in the case or from the lack of evidence
6 in the case. It is your responsibility to determine
7 whether or not reasonable doubt exists as to the
8 guilt of this defendant. I charge you that the
9 defendant is entitled to every reasonable doubt
10 arising in the whole case. Now if upon any issues
11 of fact essential to conviction and a verdict of
12 guilty you have a reasonable doubt as to how that
13 issue should be resolved, it would be your duty to
14 resolve that reasonable doubt in favor of the
15 defendant.

16 Now during this trial you and I had
17 separate duties to perform. As the trial judge it
18 is my responsibility to preside over this trial, and
19 I also have the duty to rule upon the admissibility
20 of the evidence offered during the process of this
21 trial. In that regard, ladies and gentlemen, you
22 are to consider only the competent evidence before
23 you and you are to disregard from your mind any
24 testimony ordered stricken from the record of this
25 case during the progress of the trial, if there was

1 any. And you are to consider only the testimony
2 which has been presented from this witness stand
3 together with the exhibits admitted into the record
4 of this case and any stipulations of counsel made
5 into the record, if any.

6 Furthermore, I have the additional duty to
7 charge you on the applicable law of this case; and
8 in that regard, I am the sole judge of the law of
9 this case. It is your duty, ladies and gentlemen,
10 to accept and apply the law as I state it to you.
11 If you have any preconceived ideas as to what the
12 law is or what the law ought to be and it does not
13 agree with what I tell you the law is, you are
14 obligated under your oath to abandon these
15 preconceptions because you are sworn to accept the
16 law precisely as I state it to you.

17 Now in this trial, ladies and gentlemen,
18 you are the sole and exclusive judge of the facts
19 and I am the judge of the law. Do not infer that I
20 have any opinion about the facts in this case from
21 anything that I have said during the course of this
22 trial in ruling upon the admissibility of evidence
23 or otherwise or from anything that I say during the
24 course of this charge to you. In this regard, the
25 law simply does not permit me to have an opinion

1 about the facts. As jurors it is your duty alone to
2 determine the effect, value, weight, and truth of
3 the evidence presented during the course of the
4 trial.

5 Now in determining what the facts in this
6 case are you must judge the credibility which simply
7 means the believability of the witnesses and the
8 value of weight to be given to their testimony. You
9 alone must decide the force, effect, and truth of
10 the testimony. In making this decision there are
11 many things you may and should take into
12 consideration, such as the appearance and manner of
13 the witness on the stand, a characteristic often
14 referred to as the demeanor of the witness. Was the
15 witness forthright or hesitant? What was the
16 witness's testimony? Was the witness's testimony
17 consistent or did it contain discrepancies? What
18 was the ability of the witness to know the facts
19 about which he or she testified? Did the witness
20 have a cause or reason to be biased and prejudiced
21 in favor of the testimony that he or she gave? Was
22 the testimony of the witness corroborated or made
23 stronger by other testimony and evidence, or was it
24 made weaker or impeached by such other testimony and
25 evidence. As jurors please understand you have the

1 right to believe a small portion of a witness'
2 testimony and disregard the larger portion or vice
3 versa. You may believe all of a witness' testimony
4 or none. You may believe the testimony of a single
5 witness against that of many witnesses or the other
6 way around. In exercising your mental processes and
7 attempting to decide the truth, the law simply
8 requires that you exercise your good judgment, your
9 common sense, your sense of logic and reason, and
10 your experiences in life. You then apply these
11 attributes to the evidence and apply the law as I
12 state it to you, and thus, arrive at a verdict.

13 Ladies and gentlemen, there are two types
14 of evidence that are generally presented during a
15 trial, direct evidence and circumstantial evidence.
16 Direct evidence directly proves the existence of a
17 fact and does not require deduction. Circumstantial
18 evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact.
20 Crimes may be proven by circumstantial evidence.
21 The law makes no distinction between the weight or
22 value to be given to either direct or circumstantial
23 evidence. However, to the extent the State relies
24 on circumstantial evidence, all of the circumstances
25 must be consistent with each other and when taken

1 together point conclusively to the guilt of the
2 accused beyond a reasonable doubt. If these
3 circumstances merely portray the defendant's
4 behavior as suspicious, the proof has failed. The
5 State has the burden of proving the defendant guilty
6 beyond a reasonable doubt. This burden rests with
7 the State regardless of whether the State relies on
8 direct evidence, circumstantial evidence, or some
9 combination of the two.

10 Now I'll tell you, ladies and gentlemen,
11 that a person who has a prior or a past criminal
12 record is competent to testify during a trial. A
13 past record does not effect the ability of that
14 witness to testify. The past record may only be
15 considered by you, if at all, in determining the
16 witness' believability. Remember, you are the sole
17 judge of the facts in this case and of the
18 believability of any and all of the witnesses.

19 Now you also heard the testimony of
20 someone who was qualified as an expert witness. At
21 that time I gave you a charge on that and I will
22 give it to you again. The rules of evidence, ladies
23 and gentlemen, ordinarily do not permit witnesses to
24 testify to opinions or conclusions. An exception to
25 this rule exist for witnesses we call expert

1 witnesses, a witness who by education and experience
2 has become expert in some art, science, profession,
3 or calling may state an opinion as to relevant and
4 material matter in which the witness claims to be an
5 expert and may also state the reasons or reasons for
6 the opinion. You should consider any expert opinion
7 received in evidence in this case, and like any
8 other evidence give it the weight that you think it
9 deserves. If you decide that the opinion of an
10 expert witness is not based on sufficient education
11 and experience, or if you conclude that the reasons
12 given in support of the opinion are not sound or
13 that the opinion is outweighed by other evidence,
14 you may disregard the opinion entirely. An expert
15 witness' testimony is to be given no greater weight
16 than that of other witnesses simply because the
17 witness is an expert. Further, you are not required
18 to accept an expert's opinion even though it is not
19 contradicted.

20 Now ladies and gentlemen, a statement was
21 alleged to have been made by the defendant and has
22 been admitted into evidence in this case. While the
23 Court has determined that the statement is
24 admissible, I instruct you that you make the
25 ultimate decision of whether or not the defendant

1 made the statement. If the defendant did make the
2 statement you must determine whether the statement
3 we made by the defendant voluntarily and of his own
4 free will. This means that the statement was not
5 caused by pressure, force, fear, threats, coercion,
6 or intimidation, or by hope or a promise of leniency
7 or a reward of any kind. In determining whether the
8 statement was voluntary, you should consider both
9 the characteristics of the defendant and the details
10 of the questioning. Some of the factors that you
11 must consider are the age of the defendant, the
12 defendant's education or lack of education, the
13 defendant's mental ability or capacity, the
14 defendant's IQ or intelligence, the defendant's
15 background and environment, the place and length of
16 the detention, the nature of the questioning, and
17 the advice or lack thereof, to the defendant of his
18 constitutional rights, including but not limited to
19 the right to remain silent, that any statement could
20 be used against him in a court of law, the right to
21 have a lawyer present, that if he could not afford a
22 lawyer a lawyer would be appointed to represent him
23 without any cost, and that he could stop making a
24 statement at any time. You must carefully consider
25 all of the surrounding circumstances before you give

1 any weight to an alleged statement. The State has
2 the burden of proving beyond a reasonable doubt that
3 the alleged statement was voluntary. If you
4 determine it was, you may give the statement any
5 further consideration that you deem proper. You
6 must decide what weight, if any, should be given to
7 the alleged statement. If you determine the alleged
8 statement was not the free and voluntary statement
9 of the defendant, you should not consider the
10 statement at all.

11 I instruct you, ladies and gentlemen, and
12 I emphasize, that the fact that the defendant in
13 this case did not testify is not a factor to be
14 considered by you in any way in your deliberation
15 and in your consideration on the question of the
16 guilt or innocence of the defendant. It must not be
17 considered by you in any manner whatsoever. A
18 defendant has the constitutional right to remain
19 silent and the assertion of this right must not be
20 considered by you in your deliberations. I repeat,
21 under your oath you are to draw no conclusion
22 whatsoever from the fact that the defendant in this
23 case did not testify. The fact that this defendant
24 did not testify should not even be discussed in the
25 jury room. The burden of proof, as I have stated to

1 you, is on the State. The defendant is not required
2 to prove his innocence. The burden of proof remains
3 on the State to prove guilt beyond a reasonable
4 doubt.

5 Ladies and gentlemen, if a crime is
6 committed by two or more people acting together in
7 committing a crime, the act of one is the act of
8 all. A person who joins with another to commit an
9 unlawful act is criminally responsible for
10 everything done by the other person which happens as
11 a probable or natural consequence of the acts done
12 in carrying out the common plan and purpose. For
13 example, two people can be guilty of killing another
14 person when only one of the two had a gun, there was
15 only one bullet and only one of the two fired the
16 shot that caused the death. If two or more people
17 are together acting together, assisting each other
18 and committing the offense, the act of one is the
19 act of all, or as it is sometimes said, the hand of
20 one is the hand of all.

21 Prior knowledge that a crime is going to be
22 committed without more is not sufficient to make a
23 person guilty of that crime. Mere knowledge that
24 another person is going to commit a crime, even if
25 the defendant is present when the crime is

1 committed, is not sufficient to convict the
2 defendant as a principal. Guilt as a principal is
3 shown by action or constructive presence at the
4 scene as a result of prior arrangement. Therefore,
5 a finding of a prior arranged plan or common scheme
6 is necessary for a finding of guilt as a principal.
7 The State must prove beyond a reasonable doubt by
8 competent evidence the theory of the hand of one is
9 the hand of all. A principal in a crime is one who
10 either actually commits the crime or who is present
11 aiding, abetting, or assisting in committing the
12 crime. When a person does an act in the presence of
13 and with the assistance of another, the act is done
14 by both. Where two or more acting with a common
15 plan or intent are present at the commission of a
16 crime, it does not matter who actually commits the
17 crime, all are guilty. The hand of one is the hand
18 of all. Present at the commission of crime means to
19 be sufficiently near to aid and abet and assist in
20 the commission of the crime. However, mere presence
21 at the scene of a crime is not sufficient to convict
22 one as a principal on the theory of aiding and
23 abetting.

24 Intent is also necessary or also a
25 necessary element for there must have been a common

1 design or intent to commit the crime and the crime
2 must have been committed pursuant, thereto, with a
3 person aiding and abetting by some overt act.

4 Intent means intending the result which actually
5 occurs, not accidentally or involuntary. Intent may
6 be shown by acts and conduct of the defendant and
7 other circumstances from which you may naturally and
8 reasonably infer intent. The State must prove these
9 elements beyond a reasonable doubt.

10 Now ladies and gentlemen, in order to
11 establish criminal liability criminal intent is
12 required. For example, the mental state required to
13 be proven by the State for a particular crime might
14 be purpose intent, knowledge, recklessness, or
15 criminal negligence. Criminal intent must be proven
16 by the State beyond a reasonable doubt. Criminal
17 intent is always a matter that must be determined by
18 the jury from the circumstances surrounding the
19 situation. There is no way, ladies and gentlemen,
20 to prove intent to a mathematical certainty. There
21 is no way that medical science can dissect a
22 person's brain and determine what the person had in
23 mind so the law says that criminal intent may be
24 inferred from the circumstances shown to have
25 existed. This is how you make a determination of

1 whether or not the element requiring intent was
2 present. It is not necessary to establish intent by
3 direct and positive evidence, but intent may be
4 established by inference in the same way as any
5 other fact by taking into consideration the acts of
6 the parties and all the facts and circumstances of
7 the case.

8 Criminal intent is a mental state, a
9 conscious wrongdoing. It is up to you to determine
10 what the defendant intended to do based on the
11 circumstances shown to have existed. Criminal
12 intent can arise from action or a failure to act.
13 It may arise from negligence, recklessness, or an
14 indifference to duty or to consequences. It is
15 considered by the law to be the equivalent of
16 criminal intent.

17 Now ladies and gentlemen, the defendant is
18 charged with first degree burglary. The State must
19 prove beyond a reasonable doubt that the defendant
20 entered a dwelling without consent. A dwelling is
21 any building or portion of a building in which a
22 person ordinarily sleeps. A building constructed as
23 a dwelling that has never been occupied cannot be
24 considered a dwelling for purposes of burglary; but
25 a building is a dwelling even if the residents are

1 temporarily absent from the building. Now in order
2 to prove the defendant entered the dwelling the
3 State does not have to show that the defendant's
4 entire body entered the dwelling. The smallest
5 entry is sufficient. It may be any part of the body
6 such as a hand or foot, or even an instrument such
7 as a hook or other instrument. In addition, the
8 State does not have to prove that force was used to
9 gain entry. If a person enters a building by using
10 deception, artifice, trick, or misrepresentation to
11 get consent to enter, this is an entry without
12 consent. Next, the State must prove beyond a
13 reasonable doubt that the defendant intended to
14 commit a crime, either a felony or a misdemeanor at
15 the time of the entry. The mere entry into a
16 dwelling without consent is not burglary. If the
17 intent to commit a crime is formed after the entry,
18 it is not a burglary. On the other hand, if the
19 defendant intended to commit a crime at the time of
20 the entry, it is a burglary even if the intent was
21 abandoned after the entry. It does not matter that
22 the intended crime was not completed. Intent may be
23 shown by acts and conduct of the defendant and other
24 circumstances from which you may naturally and
25 reasonably infer intent.

1 Finally, the State must prove beyond a
2 reasonable doubt that the defendant entered or
3 remained in the dwelling in the nighttime.
4 Nighttime is the period between sunset and sunrise
5 during which there is not enough daylight to
6 recognize a person's face to accept by artificial
7 light or moonlight.

8 Now the defendant is also charged with
9 armed robbery. In order to prove this offense the
10 State must prove beyond a reasonable doubt that the
11 defendant took personal property from the person or
12 presence of Mr. Michael Barr. Properties in the
13 presence of a person if it is within the person's
14 reach, inspection, observation, or control so that
15 the person could, if not overcome with violence or
16 prevented by fear, keep possession of the property.
17 The State must also prove beyond a reasonable doubt
18 that the defendant carried the property away
19 intending to permanently deprive the owner of the
20 property and to keep the property for the
21 defendant's own use. The slightest removal of the
22 property or the complete possession of the property
23 even for an instant by the defendant is sufficient
24 to show a taking and carrying away of the property.
25 The taking and carrying away of the property must

1 have been done with violence or by putting the owner
2 of the property in fear of violence.

3 Finally the State must prove beyond a
4 reasonable doubt that the defendant was armed with a
5 deadly weapon during the robbery. A deadly weapon
6 is any article, instrument, or substance which is
7 likely to cause death or great bodily harm. Whether
8 an instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each case.
10 The following are examples of instruments which may
11 be deadly weapons: A pistol, a shotgun, a rifle, a
12 dirk, a dagger, a knife, a slingshot, metal
13 knuckles, a razor, gasoline, a fire bomb or Molotov
14 cocktail and lighter fluid. A gun may be a deadly
15 weapon even if it is not operating.

16 Now the defendant is also charged with
17 possession of a weapon during the commission of or
18 attempt to commit a violent crime. The State must
19 prove beyond a reasonable doubt that the defendant
20 was in possession of a firearm or visibly displayed
21 what appeared to be a firearm during the commission
22 of a violent crime. A firearm means any machine
23 gun, automatic rifle, revolver, pistol, or any
24 weapon which will, is designed to, or may be readily
25 converted to expel a projectile. In order to find

1 the defendant guilty of possession of a weapon
2 during the commission of a violent crime you must
3 first find the defendant guilty of either committing
4 a violent crime or attempting to commit a violent
5 crime. Armed robbery, an attempt -- armed robbery
6 is a violent crime. The State must prove beyond a
7 reasonable doubt that the weapon further advanced or
8 helped in the commission of the crime.

9 Now the defendant is also charged with
10 conspiracy. The State must prove beyond a
11 reasonable doubt that the defendant combined with
12 one or more persons for the purpose of committing an
13 unlawful act or of committing a lawful act by
14 unlawful means. There must be a mutual
15 understanding, agreement, or common intention and
16 plan. Mere passive knowledge of or consent to the
17 criminal conduct of another is not enough to make a
18 person a conspirator. There must be guilty
19 knowledge and participation. Similarly, the mere
20 fact that the defendant may have associated with
21 another person or met with another person and
22 discussed common aims and interests does not
23 necessarily establish proof of the existence of a
24 conspiracy or that the defendant was involved in a
25 conspiracy. On the other hand, it is not necessary

1 that the agreement be a formal one, that it be in
2 writing, that the persons hold a meeting and
3 expressly state the terms of the common plan, or
4 that the agreement be stated in words between them.
5 The agreement of a criminal conspiracy may come into
6 being through an implied mutual understanding. The
7 willful, intentional, and knowing adoption by two or
8 more persons of a common plan is sufficient. No
9 overt acts is needed to be shown to establish a
10 conspiracy. A conspiracy may be shown by
11 circumstantial evidence and the conduct of the
12 parties. In order to convict the defendant of
13 conspiracy the State must prove beyond a reasonable
14 doubt not only that the defendant knew of the
15 unlawful conduct, but that the defendant agreed to
16 combining with the other person or persons for the
17 purpose of accomplishing the unlawful conduct.

18 Now ladies and gentlemen, I am now drawing
19 near the end of my charge. I want you to clearly
20 understand that you are not partisans or advocates
21 for the State of South Carolina or the Defendant.
22 It is your duty by your joint deliberation to
23 determine the truth in this case giving to the
24 defendant the benefit of every reasonable doubt on
25 each and every issue. Then, to the facts which you

1 determine to be true, you should take and apply the
2 law which has been given to you by this Court and
3 thus, arrive at a verdict which speaks the truth in
4 this case. And in fact, the word verdict which has
5 a Latin derivative, means a true saying. Thus, when
6 you have accomplished these responsibilities you
7 will have satisfied your oath as jurors and you will
8 have discharged your duty to this Court. Once you
9 retire to the jury room the bailiff will give the
10 verdict form to Madam Forelady. When you, the jury,
11 arrive at a verdict as to the offenses charged in
12 the indictment, the forelady will select the verdict
13 as to each charge on the verdict form. If the State
14 has failed to prove the guilt of the defendant
15 beyond a reasonable doubt, your verdict will be not
16 guilty. Likewise, if the State has proven the guilt
17 of a defendant beyond a reasonable doubt your
18 verdict will be guilty.

19 Once a decision has been made, Madam
20 Forelady, you will check whichever choice is the
21 verdict of the jury as to each charge. The verdict,
22 ladies and gentlemen, that you render in this case
23 must be the verdict of each and every juror. It
24 must be your unanimous verdict. All twelve jurors
25 must agree on the verdict which you authorize, Madam

1 Forelady, to write to the jury. Ladies and
2 gentlemen, I want you to further understand that the
3 order in which the choices of verdict appear on the
4 verdict form are not suggestive of any verdict on
5 the part of this Court. The verdict in this case is
6 to be determined by you, the jury, not the Court.
7 Furthermore, ladies and gentlemen, please understand
8 that even though I will give the verdict form to the
9 Forelady, it is not her verdict alone it is the
10 verdict of all twelve of you. And I emphasize
11 again, that it must be unanimous.

12 I'm also going to give you a copy of these
13 instructions in written form. During your
14 deliberations you may return to the instructions to
15 guide your decision making. You must consider the
16 instructions as a whole and not follow some and
17 ignore others. Please return these instructions,
18 Madam Forelady, to the Court at the time that your
19 verdict is rendered. I am now going to ask you to
20 retire to the jury room, but do not, do not begin
21 your deliberations until you're instructed to do so.
22 The law requires that I now consult with the
23 attorneys to make sure that I have not left anything
24 out of these instructions. Now after I have checked
25 with the attorneys the bailiff will bring in a copy

1 of these instructions and the verdict form and
2 instruct you to begin your deliberations. Also,
3 should you have any questions during your
4 deliberations you must put them in writing. Pen and
5 paper will be provided, Madam Forelady. If you all
6 as a jury have any questions, that will be your
7 added responsibility to reduce such questions to
8 writing, knock on the door, let the bailiff know
9 that you have a question. She will get it to me and
10 I will answer it however the Court deems
11 appropriate, okay.

12 Once you all have reached a verdict in
13 this case and you have filled out the verdict form,
14 Madam Forelady, again, I emphasize whatever verdict
15 you all render it must be a unanimous verdict. But
16 once a verdict is rendered you will fill out the
17 verdict form, sign and date the verdict, Madam
18 Forelady after it has been filled out, knock on the
19 door, let the bailiff know that you have reached a
20 verdict. We will get you back into the courtroom as
21 promptly as quickly as possible. Now before I ask
22 you all to retire to the jury room, everybody on the
23 jury feeling okay?

24 (There was no response.)

25 THE COURT: All right, if you all will

1 please step to the jury room but do not begin your
2 deliberations until you're instructed to do so.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 3:52 p.m.)

5 THE COURT: Any exceptions or objections
6 to the charge by the State?

7 MR. JEPERTINGER: Yes, Your Honor, and I'm
8 sorry to do this, but there was one section when you
9 were going over possession of a weapon during the
10 commission of a violent crime, and I noticed that on
11 the form that you'd given us earlier in the day
12 there was attempted armed robbery. You didn't say
13 it. You said armed robbery is a violent crime.
14 He's also charged with burglary first which also
15 happen to be a statutorily violent crime under
16 16-1---

17 THE COURT: Correct.

18 MR. JEPERTINGER: ---60. I think they
19 need to be informed that because I don't know what
20 they're gonna decide in this case. And the other
21 matter that I would bring up too, and I guess it
22 would be to your verdict form, if he is found not
23 guilty of the burglary first and not guilty of the
24 armed robbery, the possession of a weapon during the
25 commission of violent crime becomes a nullity, Your

1 Honor, so I think they can only go to possession of
2 a weapon during commission of a violent crime should
3 they find him guilty of either the armed robbery,
4 burglary, or both of them.

5 THE COURT: Mr. Meetze?

6 MR. MEETZE: I agree with all that. I
7 don't have any other objections but ---

8 THE COURT: If you'll correct that on the
9 verdict form.

10 MR. JEPERTINGER: The other thing,
11 obviously you expressed some concern about sending a
12 gun back to the jury and we also have a hunting
13 knife as well, Your Honor.

14 THE COURT: We can maintain both of them ,
15 both of those out here, and I will tell the jury if
16 they want to view it, then we can bring them back
17 out here in the courtroom to look at it. What I am
18 going to put on the verdict form on question number
19 three ---

20 MR. JEPERTINGER: Yes, sir.

21 THE COURT: On possession of a weapon
22 during a violent crime, we, the jury, unanimously
23 find the defendant Antwan Jamal Jett. Then I put in
24 parentheses, you may only find the defendant guilty
25 of this offense if you find him guilty of burglary

1 first degree and/or armed robbery, closed paren. Is
2 that correct, sound right?

3 MR. MEETZE: It does.

4 MR. JEPERTINGER: Yes, sir.

5 THE COURT: All right. We'll make that
6 change and I will bring them back out here. On page
7 17, says possession of a firearm armed or visibly
8 display or appear -- you see that? Fifth line down
9 under possession of a weapon? Excuse me, fourth
10 line down.

11 MR. JEPERTINGER: It says firearm, arm?

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: Just extract the word
14 arm.

15 THE COURT: Done so. And on top of page
16 16 defendant's charged with armed robbery.

17 MR. JEPERTINGER: And ---

18 MR. MEETZE: Are you going to send the
19 clean copy back there?

20 THE COURT: Yes.

21 (Attorneys review exhibits.)

22 (WHEREUPON, counsel approached the
23 Bench for an off-the-record discussion.)

24 MR. MEETZE: We're in agreement.

25 MR. JEPERTINGER: Your Honor, the State

1 has reviewed all the evidence and all the items that
2 are gonna be sent to the jury are in evidence.

3 THE COURT: All right. Defense is in
4 agreement with that?

5 MR. MEETZE: Yes, Your Honor.

6 THE COURT: If you'd bring me the jury
7 back out just a second please.

8 (WHEREUPON, the jury was returned to the courtroom
9 at 4:03 p.m.)

10 THE COURT: Real quick, ladies and
11 gentlemen, when I charged you on possession of a
12 weapon during a violent crime I told you that armed
13 robbery is a violent crime. I will also instruct
14 you that burglary first, burglary first is also a
15 violent crime. Now Madam Forelady, ladies and
16 gentlemen of the jury, on your verdict form after
17 question number three it says, if you find the
18 defendant guilty of burglary first degree or armed
19 robbery please answer question four. If you find
20 defendant not guilty of burglary first and not
21 guilty of armed robbery, please sign and date the
22 verdict form. Question number four is possession --
23 excuse me, as to the charge of possession of a
24 weapon during the commission of a violent crime, we,
25 the jury, unanimously find the defendant Antwan

1 Jamal Jett either guilty or not guilty. To find the
2 defendant Antwan Jamal Jett guilty of possession of
3 a weapon during a violent crime you must find him
4 guilty of burglary first and/or armed robbery, okay.

5 Any exception or objection to what I've
6 instructed the jury from the State?

7 MR. JEPERTINGER: Nothing.

8 THE COURT: Defense counsel?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: All right. At this time I am
11 going to ask you to step back to the jury room.
12 Don't start your deliberations until everything is
13 brought in to you, items of evidence, my charge. A
14 few things are going to remain here in the
15 courtroom: The CD which was alleged statement by
16 the defendant at the time of his arrest, the knife
17 that was admitted into evidence, as well as the
18 firearm. Those will be, will remain in the
19 courtroom.

20 Madam Forelady, if you all as a jury want
21 to see those items or hear the CD, let the bailiff
22 know and we will bring you back in here, all of you,
23 back in here to view those items or listen to that
24 CD, okay. If you'll step to the jury room please.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 4:06 p.m. to begin their
2 deliberations.)

3 THE COURT: If you will get Ms. Coker out
4 of there please.

5 (Alternate juror Ms. Coker approached the Bench for
6 an off-the-record discussion and the alternate was
7 excused.)

8 THE COURT: Can the lawyers approach.

9 (WHEREUPON, counsel approached the
10 Bench for an off-the-record discussion.)

11 THE COURT: Anything before I bring the
12 jury back out, Mr. Jepertinger?

13 MR. JEPERTINGER: I think we can play it
14 here.

15 THE COURT: I'm going to make this a Court
16 exhibit, the question that was sent out, first
17 question, the question being: May we see
18 Officer McCall's report?

19 MR. JEPERTINGER: Yes, James McCall.

20 THE COURT: The answer is no. Can we
21 listen to the recording of defendant Investigator
22 Jones. We can do that. Judge, may we see the
23 officer's supplemental report is no. Bring me the
24 jury please, ma'am.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, the jury was returned to the courtroom
2 at 5:03 p.m.)

3 (Court's Exhibit Number 2 was marked
4 and made a part of the record.)

5 THE COURT: I have all the jurors present.
6 Madam Forelady, I have seen, read, reviewed the
7 questions that you all sent out, along with the
8 attorneys. Question number one, may we see Officer
9 McCall's report. I'm gonna respond to number one
10 and number three together, okay. About Officer
11 McCall's report and officer's supplemental reports,
12 those items are not in evidence. Under our rules
13 they're not admissible in evidence; therefore, you
14 cannot see those reports, all right. With regards
15 to question number two, may we listen to recording
16 of defendant, Investigator Jones, yes, you may. And
17 we have that, the State has that ready for you to
18 play. Now what I will tell you with regards to any
19 testimony, if you all wish to re-hear testimony, my
20 court reporter can play back whatever testimony you
21 all feel that you may need to hear, okay.

22 Mr. Jepertinger, any exception or
23 objection to anything I said to the jury by the
24 State?

25 MR. JEPERTINGER: No, sir, not from the

1 State.

2 THE COURT: Defense counsel?

3 MR. MEETZE: No, sir, Your Honor.

4 THE COURT: If you will play that recorded
5 statement.

6 (State's Exhibit No. 54 was played for the jury.)

7 THE COURT: All right, Madam Forelady,
8 ladies and gentlemen of the jury, I'm gonna ask you
9 to return to your jury room and continue your
10 deliberations please.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 5:09 p.m.)

13 THE COURT: Anything from the State at
14 this time?

15 MR. JEPERTINGER: No, sir.

16 THE COURT: Defense counsel?

17 MR. MEETZE: No, Your Honor.

18 THE COURT: All right. I'm gonna stand
19 down.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: I'm going to bring the jury
23 out and send them home for the balance of the
24 evening, request they return tomorrow morning at
25 9:30 to continue their deliberations. Any objection

1 by the State?

2 MR. JEPERTINGER: No, sir.

3 THE COURT: Defense counsel?

4 MR. MEETZE: No, Your Honor.

5 THE COURT: If you will bring me the jury
6 please, ma'am.

7 (WHEREUPON, the jury was returned to the courtroom
8 at 5:32 p.m.)

9 THE COURT: They say they're close ---

10 THE BAILIFF: They're close.

11 THE COURT: ---to a verdict? We'll wait,
12 give them a few more minutes. I don't want them to
13 feel like they're being rushed at all, but if
14 they're asking for a few more minutes to reach a
15 verdict, they've been in there for going about an
16 hour-and-a-half. So I'll stand down for a few more
17 minutes and give them a few more minutes.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 THE COURT: Now I've been advised that
21 from -- bring me the jury please.

22 (WHEREUPON, the jury was returned to the courtroom
23 at 5:35 p.m.)

24 THE COURT: Madam Forelady, and ladies and
25 gentlemen of the jury, you all have been

1 deliberating about an hour-and-a-half. I am going
2 to at this time send you home for the balance of the
3 evening. I'm going to ask that you return tomorrow
4 morning at 9:30. When you return to the jury room
5 in the morning you are not to begin deliberations
6 until you're instructed to do so, okay. During your
7 overnighted break do not, do not discuss the case
8 with anyone. Do not discuss the case with anyone.
9 Do not do any independent investigation. You're to
10 decide, as I told you from the outset, you're to
11 decide this case based upon the testimony and
12 evidence presented in this courtroom and nowhere
13 else.

14 Anything from the State before I release
15 the jury for the balance of the day?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Defense counsel?

18 MR. MEETZE: No, sir.

19 THE COURT: Madam Forelady, and ladies and
20 gentlemen of the jury, you all are free to go. Have
21 a good evening and I will see you back tomorrow
22 morning at 9:30, okay.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 5:37 p.m.)

25 THE COURT: Anything from the State at

1 this time?

2 MR. JEPERTINGER: No, sir, have a good
3 evening.

4 THE COURT: Defense counsel?

5 MR. MEETZE: No, Your Honor.

6 THE COURT: 9:30 in the morning.

7 (Court was adjourned at resumed on April 22, 2015.)

8 THE COURT: Okay, bring me the jury
9 please, ma'am.

10 Anything before I bring the jury out?

11 MR. JEPERTINGER: No, sir.

12 MR. MEETZE: No, sir.

13 WHEREUPON, the jury was returned to the courtroom at
14 9:39 a.m.)

15 THE COURT: Good morning. I appreciate
16 you all being back here this morning when I asked
17 you to be here. You're probably going to wonder why
18 I brought you out here to tell you what I'm gonna
19 tell you and in short fashion, but I'm gonna
20 instruct you to go back to the jury room and
21 continue your deliberations. Now you probably
22 wonder, well, why'd you have to bring you us out
23 here to do that. It's got to be on the record,
24 okay. It's got to be on the record and that's why I
25 bring you out here to tell you that. So at this

1 time I'm gonna ask you to step back to the jury room
2 and continue your deliberations, okay. Thank you.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 9:39 a.m.)

5 THE COURT: Anything else? We'll stand
6 down while they continue to deliberate.

7 (WHEREUPON, court was in recess.)

8 THE COURT: It's my understanding the jury
9 has reached a verdict. Anything from the State
10 before I bring the jury?

11 MR. JEPERTINGER: No, sir.

12 THE COURT: Defense counsel?

13 MR. MEETZE: No, Your Honor.

14 THE COURT: I will remind everyone in the
15 courtroom, regardless of what the verdict is to keep
16 your emotions in check. Failure to do so could
17 result in you being held in contempt of Court,
18 resulting in a fine and/or imprisonment. If you do
19 not believe that you can keep your emotions in check
20 regardless of the verdict, now is your time to leave
21 this courtroom.

22 All right, bring me the jury please,
23 ma'am.

24 (WHEREUPON, the jury was returned to the courtroom
25 at 10:12 a.m.)

1 THE CLERK: Members of the jury, have you
2 agreed upon a verdict?

3 THE FORELADY: Yes.

4 (Verdict form was tendered to the Court.)

5 THE COURT: All right, the verdict appears
6 to be in order. You may publish the verdict.

7 THE CLERK: State of South Carolina versus
8 Antwan Jamal Jett, indictment 2014-GS-21-0525. As
9 to the charge of burglary first degree: We, the
10 jury, unanimously find the defendant Antwan Jamal
11 Jett guilty. As to the charge of armed robbery:
12 We, the jury, unanimously find the defendant Antwan
13 Jamal Jett guilty. As to the charge of criminal
14 conspiracy: We, the jury, unanimously find the
15 defendant Antwan Jamal Jett guilty. As to the
16 charge of possession of a possession of a weapon
17 during a violent crime: We, the jury, unanimously
18 find the defendant Antwan Jamal Jett guilty.
19 Signed, foreperson Terrance Holmes, dated
20 April 22nd, 2015.

21 Members of the jury, if this is your
22 verdict please raise your right hand.

23 (All jurors complied.)

24 THE CLERK: That is everyone.

25 THE COURT: Anything from the State?

1 MR. JEPERTINGER: No, sir.

2 THE COURT: Defense counsel before I
3 release the jury?

4 MR. MEETZE: No, Your Honor.

5 THE COURT: Madam Forelady, ladies and
6 gentlemen of the jury, I want to thank you for your
7 service this week. It's my understanding that they
8 can be released for the week. Is that right,
9 Mr. Jepertinger?

10 MR. JEPERTINGER: Yes, sir.

11 THE COURT: I want to thank you for your
12 service this week. I appreciate your attentiveness
13 throughout the trial of the case; I know the lawyers
14 do as well. At this time I am going to give
15 you all an opportunity to leave if you so desire;
16 however, you may stay for sentencing if you want to
17 as well. I'll leave that to you. But now is your
18 time to leave if you so desire.

19 THE COURT: Mr. Jepertinger.

20 MR. JEPERTINGER: Yes, sir. Your Honor, I
21 prepared four sheets for you. Obviously you know
22 the burglary, Your Honor, the burglary first degree
23 carries anywhere from 15 years to natural life. The
24 armed robbery carries 10 to 30. The criminal
25 conspiracy carries 0 to five, and the possession of

1 a weapon during a violent crime carries 0 to 5
2 except if subsumed, if he's given a life sentence,
3 Your Honor, obviously. These burglaries, this
4 burglary and this armed robbery are both most
5 serious and violent offenses. Your Honor, he was on
6 YOA probation when this crime happened for
7 possession of burglary tools. I talked to Robbie
8 Owens with probation this morning, and he told me
9 that that probation was revoked in January of 2014.
10 I think he may be on YOA parole right now. That's
11 the record I see on him, Judge. The State's
12 perspective on this — and Mr. Barr can address you
13 on this — is just that it is a shame to me that a
14 young person has made these decisions in his life
15 and we find him here. I think I was a prosecutor
16 for the possession of burglary tools. He got a
17 probationary sentence. I think it was a
18 recommendation, Judge, at the time. And it's just,
19 I mean, he's throwing his life away and it's just a
20 horrible, horrible thing. But like so many other
21 young people that I encounter in this court they're
22 growing up mean, violent without any guidance, and
23 it is just, I mean, this is a situation that America
24 and Florence County and everybody is gonna have to
25 deal with it. It's just very sad and I'm sorry that

1 he's here. I'm sorry Mr. Barr had to be here and it
2 is what it is, Judge, to coin a phrase. I'll allow
3 Mr. Barr to say anything he wants to say about his
4 situation.

5 Please address your comments to the Court
6 please.

7 THE COURT: Mr. Barr, happy to hear from
8 you, sir.

9 THE VICTIM: Good morning, everyone. Your
10 Honor, I want to thank you for letting me speak. I
11 want to thank the jury for listening to this case.
12 I don't hate Mr. Jett. I don't like what he did do
13 me, and I never thought it would happen to me
14 because it's now got me kind of nervous to open my
15 door late at night to anybody. I just hope if he
16 were in my shoes that I would tell on the other two
17 guys that did this to see if he could get his time
18 reduced or something. I wouldn't just go to jail by
19 myself and let the other two people run free while
20 he suffers for their crime. It's no excuse for not
21 telling on nobody 'cause life is not like that, you
22 know. And I just hope they catch the other two dice
23 guys and hope he have it in his heart for me to turn
24 in the other two guys.

25 And with that I just want to say thank you

1 everyone. On his family, I don't want them to have
2 animosity towards me because I'm not to blame for
3 this, and I pray for y'all and I pray for my mother
4 and my family 'cause if I would have had a gun when
5 they came in the house, he could have been the one
6 that got shot. You know, I got to look at all the
7 circumstances of this case. And I have three sons
8 myself and three daughters, and my life could have
9 been taken from them with my nine grandkids. And I
10 just hope his family won't have any animosity
11 towards me. And that's all I have to say.

12 MR. JEPERTINGER: Thank you. Thank you,
13 Michael.

14 That's all we would have, Judge.

15 THE COURT: Mr. Meetze, happy to hear from
16 you.

17 MR. MEETZE: Thank you, Your Honor, may it
18 please the Court. Your Honor, Mr. Jett is 19 years
19 old. He's been in jail since he was arrested. He's
20 been there for 478 days as of today. As you know,
21 he's a young man who's now been convicted of some
22 very serious crimes. As the Court is aware the
23 absolute bare bones minimum he can receive here
24 today is 15 years, and that's pretty much a day for
25 day 15 years and that's a big sentence for somebody

1 his age. I know from the time I was 18 or 19 years
2 old, if you add 15 years to when I was in my early
3 30s, I certainly, there was a lot of changes in my
4 life and certainly I think that there'll be a lot of
5 changes in his life and I certainly hope it's for
6 the positive. I think that there's certainly a
7 chance for that. His mother and father have been
8 here, and certainly there's nothing that I've been
9 able to tell from them that would have been any
10 indication that this would have been a situation
11 that their child found themselves in. I think
12 they're supportive parents. I think they're very
13 loving parents. Certainly I think they taught him
14 and other children of theirs right from wrong and to
15 do right. I know they're not proud to have to stand
16 here, but certainly they love their son and are here
17 for him in that regard.

18 Your Honor, he is young. Certainly the
19 Court has in its discretion almost can sentence him
20 to pretty much anything the Court wants to except
21 for under 15 years or and up to life, but I will
22 just submit to the Court that I don't feel like that
23 this is a young man who certainly needs to have the
24 rest of his life taken from him. We would ask the
25 Court to show the mercy that would allow him to

1 serve time, but also to hopefully be rehabilitated
2 through the Department of Corrections or whatever
3 else and to where he will one day have a life to
4 live and all that. But you know, if his parents
5 wish to be heard we would ask the Court to hear from
6 them as well, but we would just ask for mercy on
7 Mr. Jett's behalf.

8 THE COURT: Mr. Jett, you're not required
9 to say anything and I certainly don't want you to
10 say anything to affect your appellate rights, but I
11 will give you an opportunity to speak if you so
12 desire.

13 THE DEFENDANT: Have mercy on me. Have
14 mercy on me, y'all.

15 THE COURT: Sir, anything you wish to tell
16 me? Please tell your name for the record.

17 THE FATHER OF DEFENDANT: Archie Jett.

18 THE COURT: Yes, sir, Mr. Jett.

19 THE FATHER OF DEFENDANT: I'm just sorry
20 for the victim. We don't have any remorse, no
21 regrets for anything that went on here. We just
22 sorry that it happened.

23 MR. MEETZE: One thing, Your Honor, before
24 you sentence -- did you have anything else you wish
25 to say?

1 THE FATHER OF DEFENDANT: No.

2 MR. MEETZE: I don't know if this is the
3 right order of things, and I would say at this time
4 for the record make a motion for a new trial in this
5 matter based on the verdict not being consistent
6 with the evidence presented for the record. I'll
7 make that motion. But otherwise, Your Honor, would
8 again, we're just asking for whatever mercy the
9 Court believes will be appropriate on Mr. Jett's
10 behalf.

11 THE COURT: With regards to your motion
12 for new trial, based upon that which was stated on
13 the record the Court respectfully denies that. As
14 previously stated the Court believes that there was
15 sufficient evidence for this case to go to the jury;
16 therefore, to render a verdict in this case based
17 upon the evidence that was presented.

18 State have any position on sentencing,
19 Mr. Jepertinger?

20 MR. JEPERTINGER: No, sir.

21 THE COURT: You know, when I was elected
22 to this position they make us judges sit with other
23 judges for a couple of weeks in criminal court and
24 in state court, I mean in criminal court and civil
25 court two weeks and then they kind of put us out on

1 our own so to speak with one of the judges. One of
2 my mentors said, sentencing is the hardest part of
3 this job. In the five years I've been on the Bench
4 I've come to realize he was exactly right. I sit in
5 this courtroom, sat in this courtroom for the last
6 few days and listened two days and listened to
7 evidence in this case as the lawyers from the
8 solicitor's office and lawyers, defense lawyers are
9 in here weekend and week out listening to cases,
10 criminal cases that come before this court. It is
11 tragic the decisions that young people make that
12 absolutely destroyed their lives. Some of the most
13 important decisions that you make as a kid, as a
14 young man, young woman, is who you hang out with,
15 who you hang out with.

16 Anything further from the State?

17 MR. JEPERTINGER: No, sir.

18 THE COURT: All right, on indictment
19 2014-GS-21-525, which is the possession of a weapon,
20 the defendant is hereby committed to the State
21 Department of Corrections for a period of 478 days
22 on that particular offense, given credit for 478
23 days that he's done. On indictment, with regards to
24 criminal conspiracy, the defendant is hereby
25 committed to the State Department of Corrections for

1 a period of five years. On the armed robbery, the
2 defendant is hereby committed to the State
3 Department of Corrections for a period of 25 years.
4 On the burglary first, the defendant is hereby
5 committed to the State Department of Corrections for
6 a period of 30 years. Give him credit for 478 days
7 as to each count, and they're to run concurrent.

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10 * * * END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South
Carolina, this 11th day of September, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

WITNESSES

Felicia Cox Jones Florence Police Department

DOCKET NO. 2014-GS-21-00525

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE

vs.

ANTWAN JAMAL JETT

Indictment for

BURGLARY FIRST DEGREE,
ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT
FIRST DEGREE,
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME,
ARMED ROBBERY
(TWO COUNTS)
AND
CRIMINAL CONSPIRACY

John C Jeperfinger

ARREST WARRANT NUMBER

2013A2120202100 (0253) 2014GS2100525A

2013A2120202105 2013A2120202107

2013A2120202108 2013A2120202109

ACTION OF GRAND JURY

TRUE BILL

Wendy Sanders
Foreperson of Grand Jury
Date: 4/3/2014

VERDICT

Foreperson of Petit Jury

Date:

FILED
2014 APR -3 PM 1:11
CORRIG REEL-SHEARIN
CJCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 BURGLARY FIRST DEGREE,
 ASSAULT WITH INTENT TO COMMIT CRIMINAL
 SEXUAL CONDUCT FIRST DEGREE,
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME,
 ARMED ROBBERY
 (TWO COUNTS)
 AND
 CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on APRIL 3, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That ANTWAN JAMAL JETT did in Florence County, on or about December 31, 2013, enter the dwelling of Michael Barr and Britney Foxworth, located at 702 Pawley Street, Florence, SC, without consent and with the intent to commit a crime therein; and said defendant entered the dwelling in the nighttime; in violation of Section 16-11-0311, S.C. Code of Laws, 1976, as amended.

**COUNT TWO- ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT
 FIRST DEGREE**

That ANTWAN JAMAL JETT did in Florence County on or about December 31, 2013, assault with intent to commit Criminal Sexual Conduct one Britney Foxworth, by committing, or attempting to commit, a sexual battery in and upon the said Britney Foxworth, by using aggravated force and aggravated coercion upon her during the commission of a burglary; in violation of Section 16-03-0656, S.C. Code of Laws, 1976, as amended

**COUNT THREE - POSSESSION OF A WEAPON DURING THE COMMISSION
 OF A VIOLENT CRIME**

That ANTWAN JAMAL JETT did in Florence County, on or about December 31, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime to wit: burglary first degree, assault with intent to commit criminal sexual conduct first degree and armed robbery, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR BURGLARY FIRST DEGREE, ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT FIRST DEGREE, POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, ARMED ROBBERY (TWO COUNTS) AND CRIMINAL CONSPIRACY, WITH THE AFORESAID NAME(S) OF ANTWAN JAMAL JETT SHOWN THEREON:

COUNT FOUR- ARMED ROBBERY

That ANTWAN JAMAL JETT did in Florence County on or about December 31, 2013, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Michael Barr from or in the immediate presence of Michael Barr with intent to deprive Michael Barr of possession of a hunting knife, cell phones and cash by use of force, threats or intimidation, in violation of Section 16-11-0330, S. C. Code of Laws, 1976, as amended.

COUNT FIVE- ARMED ROBBERY

That ANTWAN JAMAL JETT did in Florence County on or about December 31, 2013, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Britney Foxworth from or in the immediate presence of Britney Foxworth with intent to deprive Britney Foxworth of possession of cash by use of force, threats or intimidation, in violation of Section 16-11-0330, S. C. Code of Laws, 1976, as amended.

COUNT SIX- CRIMINAL CONSPIRACY

That ANTWAN JAMAL JETT did in Florence County on or about December 31, 2013 combine with two other unknown co-defendants for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: burglary and larceny, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

347

COUNTY OF Florence
 STATE VS.
Antwan Jamal Jett

AKA:

Race: Black Sex: M Age: 19DOB: SS#: 4 ;Address: etery RdCity, State, Zip: Florence, SC 29505DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degreeINDICTMENT/CASE#: 2014-GS-21-00525A/W#: 2013A212020100Date of Offense: 12/31/2013S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

in violation of § 16-11-0311of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

John C. Depertinger
Depertinger, John C

9826

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*: the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation. Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All convictions 7-22-15☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 478 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments (07.5 %))	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL		\$ <u>1051.00</u>

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge D. C. C. C.Judge Code: 280Sentence Date: 7-22-15Clerk of Court/ Deputy Clerk 4113Court Reporter: FRANK

SCCA:217 (03/2011)

348 E OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE VS.
Antwan Jamal Jett

AKA:

Race: Black Sex: M Age: 19DOB: 08 SS#: 2

Address:

City, State, Zip: Florence, SC 29505DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Repertinger
Repertinger John C

9826

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 478 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All convictions of 4-22-15☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 478 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 108.75
TOTAL		\$ 105.00

Clerk of Court/ Deputy Clerk

Court Reporter: FRANKIE KEY

SCCA:217 (03/2011)

INDICTMENT CASE#: 2014-GS-21-00525A/W#: 2013A2120202105Date of Offense: 12/31/2013S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS(0-5)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2180Sentence Date: 4-22-15

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

349

COUNTY OF Florence
STATE VS.
Antwan Jamal Jett

AKA:

Race: Black Sex: M Age: 19DOB: SS#:Address: 65 E RdCity, State, Zip: Florence, SC 29505DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy definedINDICTMENT/CASE#: 2014-GS-21-00525A/W#: 2013A2120202109Date of Offense: 12/31/2013S.C. Code §: 16-17-0410CDR Code #: 0049

SENTENCE SHEET

in violation of § 16-17-0410of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Jopertinger
John C9820

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 478 days All convictions of 4-22-15.☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$10500

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.
Clerk of Court/ Deputy Clerk MR. B. B. B.Court Reporter: FR. B. B. B.

SCCA/217 (03/2011)

Presiding Judge 2180Judge Code: 2180Sentence Date: 9-22-15

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWAN J. JETT

APPELLANT

APPELLATE CASE NO. 2015-001042

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting the recorded statement by Appellant Jett to Investigator Felicia Jones in the back of the patrol car which was a violation of Miranda v. Arizona, 384 U.S. 436 (1966) because Appellant Jett unambiguously asked for his lawyer initially when he said: "Where is my lawyer?" and Investigator Jones continued to question him and he again said later that Investigator Jones would have to ask his attorney any further questions, and the investigator continued to ask a question?

STATEMENT OF THE CASE

On April 3, 2014, the Florence County Grand Jury indicted Antwan Jett on the charges of burglary first degree, armed robbery (AR), criminal conspiracy, and possession of a weapon during the commission of a violent crime. On April 20, 2015, Appellant Jett proceeded to trial before the Honorable D. Craig Brown and a jury. Jett was represented by W. Vickery Meetze, and the state was represented by John C. Jepertinger. R. 1. The jury found Jett guilty as indicted of burglary first degree, armed robbery, criminal conspiracy, and the possession of a weapon during a crime of violence. R. 188, ll. 1 – 24. Judge Brown sentenced Jett to thirty years on the burglary first degree; twenty-five years on the armed robbery; five years on the criminal conspiracy; and 478 days on the possession of a weapon. All sentences were to run concurrent. R. 193, ll. 18 – R. 194, ll. 7. This appeal follows.

STATEMENT OF FACTS

On December 31, 2013, Michael Barr had fallen asleep in his chair where he had been watching television. About 3:30 that morning, he heard a knock on his front door. The person said it was BJ who was a friend of Barr's. When Barr opened the door, three men, with their faces covered, rushed in and began beating him. They kept asking him for his money. One of them had a small gun like a Derringer which he stuck in Barr's face. They took money from his pocket and bottles of pills from his medicine cabinet. Barr's female roommate was in the bedroom. One man, who was wearing a green hoodie, and a second man entered the bedroom. Barr heard screaming, and then the three left. Some of them wore gloves but Barr not sure which ones. R. 34, ll. 24 – R. 37, ll. 23; R. 47, ll. 20 – R. 52, ll. 24; R. 61, ll. 5 – 19.

Barr described the men and their clothing to the police. The three men were African American. The first man was about 5'10" tall and wore a green hoodie. He had the gun. The second man was taller and had dreadlocks. He wore a dark blue or brown or black hoodie. He also wore a hat with flaps. The third man wore a dark hoodie also with it pulled tight around his head. Barr could not see any of their faces so he could not identify any of the three. R. 53, ll. 1 – R. 57, ll. 12; R. 125, ll. 5 – 16.

The police arrived as the men were running out of the back door. R. 61, ll. 5 – 8. Officer Thomas Herman saw two of the subjects running from the back of Barr's house. One was wearing a green hoodie, and the second one wore a dark blue or black shirt which may have been a hooded sweatshirt. A second officer, Officer William Blackmon, had arrived and was in pursuit, on foot, of the two subjects running away. Officer Herman

pursued in his patrol car but did not find the subjects. He did find a small Derringer type gun. R. 62, ll. 21 – R. 63, ll. 22; R. 65, ll. 1 – R. 70, ll. 24.

Officer William Blackmon testified that he saw two men running from Barr's house when he arrived on the scene. One of the men was wearing a green hoodie, and the other one wore a dark blue or black hoodie. He yelled to the men to stop but they continued to run. He chased them on foot but lost them. R. 73, ll. 5 - R. 77, ll. 25.

Officer Legrande Gowdy was the supervisor of the investigation. When he arrived on scene, he and Officer Lacey Allen started walking back through the area where the subjects ran between the apartments. They found a green pullover and a gray pullover on the front porch of one of the apartments. Two toboggan type hats were found with the pullovers. As Officer Gowdy was walking away, Officer Allen yelled that a subject was under a Cadillac parked in front of the apartment. R. 101, ll. 16 – R. 105, ll. 25; R. 80, ll. 13 – R. 86, ll. 15.

Officer Allen had her weapon pointed under the Cadillac because she knew a weapon had been involved in the home invasion and did not know where that gun was. R. 86, ll. 9 – 25. Officer Gowdy looked under the car and saw a black male who appeared to be coming out. Then he withdrew back under the car and refused to come out. Officer Gowdy knew a weapon had been involved in the home invasion so he used his taser on the subject to strike him in the back. A brief struggle ensued but the subject was detained and handcuffed. R. 105, ll. 19 – R. 108, ll. 2.

As Officer Gowdy was pulling him out from under the car, the man kept asking why he was detaining him. Officer Gowdy then began reading Miranda rights to the man. Before Officer Gowdy finished the reading, the man said: "I don't know anything about that gun."

Officer Gowdy said that he had not mentioned anything about a gun. Officer Gowdy then placed the man in the back of the patrol car. His officers had found in the area a gun, knife, and several pill bottles. Officer Gowdy called Investigator Felicia Jones to come to the scene. R. 108, ll. 7 - R. 114, ll. 20. Officer Gowdy noted that the man was dressed in a T-shirt, jeans and gloves. The man told him those were his "walking gloves." Officer Gowdy said it was cold that night as the temperature was in the low 30's. R. 115, ll. 9 - R. 116, ll. 9.

Investigator Felicia Jones arrived and talked with the man in the patrol car who identified himself as Antwan Jett. Investigator Jones recorded this interview which was marked as State's Exhibit 54. She asked Jett his name and age which he provided. Jett immediately said to her: **"Where's my lawyer at?"** [Emphasis added.] Investigator Jones then read Jett his Miranda rights and continued to question him. Jett was upset at having been tazed, and wanted to know why they were questioning him. When asked about his statement to Officer Gowdy about the gun, Jett responded that Officer Gowdy asked him where the gun was as he pulled him from under the car. According to Investigator Jones, Jett said he had been at a friend's house and had been drinking. He just wanted a place to sleep so he got under the car. When Investigator Jones asked his address, Jett told her and then said: **"If you want to know anything else, you will have to talk to my lawyer."** [Emphasis added.] Investigator Jones continued to ask him questions for a few minutes, and then ended the interview. She testified that after Jett did not want to talk to her, she went and talked with the victim. State's Exhibit 54 (Recording of police interview with Appellant Jett); R. 119, ll. 2 - R. 127, ll. 5.

Catherine Leisy was the forensic scientist with the South Carolina Law Enforcement Division (SLED) who was assigned to the DNA department. She was qualified as an expert in DNA analysis by the trial court. She analyzed five pieces of evidence from the investigation for a possible DNA match to Jett's DNA. She tested a purple toboggan, a blue toboggan, a blue hat, a green jacket, and a gray sweatshirt jacket. The only item that matched Jett's DNA was the gray sweatshirt jacket. Jett's DNA was not found on the green hoodie jacket. R. 90, ll. 4 – R. 92, ll. 2; R. 93, ll. 25 – R. 100, ll. 8.

In a pretrial motion following a Jackson v. Denno¹ hearing, defense counsel made a motion for Jett's statement, as found in the recording made to Investigator Jones, be found inadmissible because Jett "did indeed affirmatively and unambiguously assert his right to an attorney prior to any questioning in that regard." Counsel argued that Jett clearly said: "Where's my lawyer at?" which was not ambiguous. Counsel argued that Jett's statement was quite different from the statement in the case cited by the solicitor that "maybe I should speak to a lawyer" which was a question. Counsel said that the questioning of Jett should have stopped then. R. 27, ll. 7 – R. 28, ll. 12.

The solicitor had argued before defense counsel's motion that Jett's first statement should be admitted because it was admissible as a voluntary statement. The solicitor also argued that Jett's second statement to Investigator Jones which was recorded was admissible because it was ambiguous, and the case law provided that there had to be an unambiguous request for an attorney. The solicitor cited Davis v. United States, 512 U.S. 452 (1994) where the request for an attorney: "Maybe I should talk to a lawyer" was found to be ambiguous. R. 25, ll. 7 – R. 27, ll. 3.

¹ Jackson v. Denno, 378 U.S. 368 (1964).

The judge ruled that the first statement to Officer Gowdy was freely and voluntarily given and so was admissible. The second statement to Investigator Jones was ambiguous. Therefore, the police did not have to stop questioning Jett according to the case law. The judge relied on the cases of State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001) and Davis v. U.S., *supra*. The judge did note that Wannamaker stated that it was good practice for the police to clarify the defendant's request, but the law did not require they do so. R. 30, ll. 10 – R. 32, ll. 24.

When the recording of Jett's statement to Investigator Jones was admitted into evidence, the judge stated: "Subject to defense counsel's previous objection, so admitted." The statement was then published to the jury. R. 119, ll. 2 – R. 121, ll. 25.

ARGUMENT

The trial court erred in admitting the recorded statement by Appellant Jett to Investigator Felicia Jones in the back of the patrol car which was a violation of Miranda v. Arizona, 384 U.S. 436 (1966) because Appellant Jett unambiguously asked for his lawyer initially when he said: "Where is my lawyer?" and Investigator Jones continued to question him, and he again said later that Investigator Jones would have to ask his attorney any further questions.

In Miranda v. Arizona, 384 U.S. 436 (1966), the United States Supreme Court ruled that although a suspect in a criminal investigation has no constitutional right to the assistance of counsel, a suspect subject to custodial interrogation has the right to consult with an attorney and to have counsel present during questioning, and that the police must explain this right to him before questioning begins.

In State v. Johnson, 413 S.C. 458, 776 SE.2d 367 (2015), the South Carolina supreme Court ruled that if an accused invokes her right to counsel, she may only be questioned thereafter in the presence of counsel, and her responses to further questioning outside the presence of counsel are admissible only if she initiates further questioning and then knowingly and intelligently waives her previously invoked right to counsel.

If the suspect waives his right to counsel after receiving the Miranda warnings, law enforcement officers are free to question him. North Carolina v. Butler, 441 U.S. 369 (1979). But if the suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation. Edwards v. Arizona, 451 U.S. 477 (1981).

However, the United States Supreme Court ruled in Davis v. U.S., 512 U.S. 452 (1994), that if a suspect makes an ambiguous or equivocal reference to an attorney, cessation of questioning is not required but, rather, the suspect must unambiguously request counsel.

In Davis, the suspect who was a member of the United States Navy, was being questioned about the murder of a sailor. Initially, Davis waived his right to counsel. However, about an hour and half into the interview, Davis said to the investigator: "Maybe I should talk to a lawyer." When the investigator asked if he were asking for a lawyer, Davis said he was not. Following a break, the investigator reminded Davis of his rights again. Later, Davis asked to have a lawyer present. The Supreme Court found that Davis' remark: "Maybe I should talk to a lawyer" was not a request for counsel; therefore, the investigator was not required to stop questioning him. The Supreme Court also held that when a suspect makes an ambiguous or equivocal statement as to counsel, it would be good police practice for the interviewer to clarify whether the suspect actually wants an attorney but is not required.

In State v. Wannamaker, 346 S.C. 495 (2001), the South Carolina Supreme Court held that the defendant's request for her mother or a lawyer was not an "unambiguous invocation of her Fifth Amendment right to counsel," but was completely ambiguous. When the investigating officer asked for clarification, the defendant then asked for her mother. The defendant was advised of her rights again, and then gave a statement. The Court ruled that her statement was not improperly obtained. A request for someone other than an attorney did not invoke a Fifth Amendment right to counsel. State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996).

Jett's case is distinguished from both Davis and Wannamaker. Jett's statement was not ambiguous in that he did not say he may need to talk to an attorney. He clearly asked for his attorney when he said: "Where is my lawyer at?" Any reasonable law enforcement officer would have seen that as a request for an attorney. At the least, the request was sufficient enough for the officer to ask for clarification. That did not happen. Instead, Investigator Jones continued to talk to him and ask question which Jett did not initiate. Later, it was very clear when Jett told Investigator Jones that she would have to talk to his attorney if she wanted any more information. That second request made it more likely that the first request was an unambiguous request for an attorney.

Jett's case is distinguished from Wannamaker in that Wannamaker asked for her mother who was someone other than an attorney. That made her request ambiguous when she was willing to have someone other than her attorney. This was not the case with Jett who clearly asked for his attorney when he asked where his attorney was.

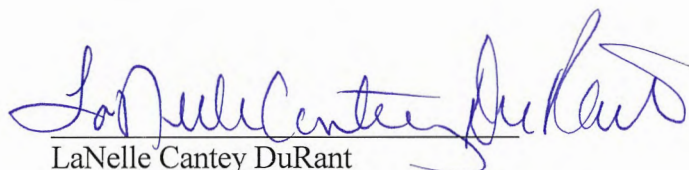
This recorded interview of Jett was prejudicial because it made him appear guilty although it was not a confession. He was angry and belligerent because he had been tazed. His statement about his reason for being under the car could have been considered unreasonable by the jury. The state did not need this recorded statement because it was not a confession as Jett did not say anything incriminating about the burglary. The state had his first statement that he knew nothing about the gun.

The recorded statement should have been suppressed.

CONCLUSION

Based on the above, Appellant Jett's convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of August, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

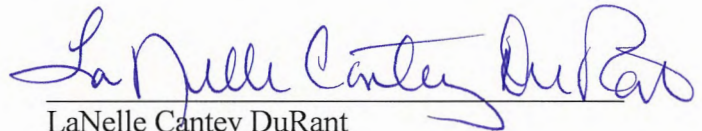
ANTWAN J. JETT

APPELLANT

APPELLATE CASE NO. 2015-001042

CERTIFICATE OF SERVICE

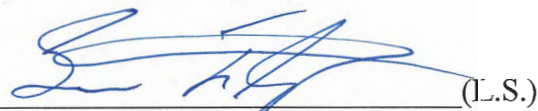
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of August, 2016.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of August, 2016.



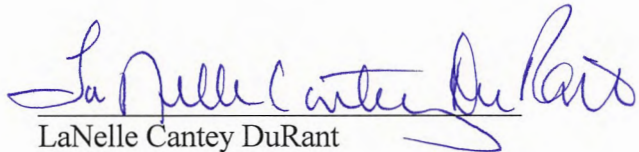
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 16, 2016



LaNelle Cantey DuRant
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

ORIGINAL 367

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2015-001042

RECEIVED
AUG 18 2016
SC Court of Appeals

The State, ...Respondent,

v.

ANTWAN JAMAL JETT,

.....Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Attorney General
S.C. Bar # 68331

Post Office Box 11549
Columbia, S.C. 29211
803-734-3737

EDGAR LEWIS CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. The trial judge did not err in admitting Appellant's recorded statement to Investigator Jones.

STATEMENT OF THE CASE

Appellant was indicted at the April 2014 term of the Florence County Grand Jury for first-degree burglary (2014-GS-21-0525, count 1), assault with intent to commit first-degree criminal sexual conduct (2014-GS-21-0525, count 2), possession of a weapon during the commission of a violent crime (2014-GS-21-0525, count 3), two counts of armed robbery (2014-GS-21-0525, counts 4 and 5), and criminal conspiracy (2014-GS-21-0525, count 6). (R.pp.195-97). Deputy Solicitor John C. Jeperfinger, Esquire represented the State and Assistant Public Defender W. Vickery Meetze, Esquire represented Appellant.

The State called the case to trial on the following charges: first-degree burglary, possession of a weapon during commission of a violent crime, one count of armed robbery, and criminal conspiracy. (R.p.7). The jury found Appellant guilty. (R.p.188). On April 20, 2015, the Honorable D. Craig Brown sentenced Appellant to concurrent terms of thirty (30) years for first-degree burglary, time-served for possession of a weapon during commission of a violent crime, twenty-five (25) years for armed robbery, and five (5) years for criminal conspiracy. (R.pp.193-94; pp.198-201).

STATEMENT OF FACTS

Pre-trial hearing

At a pre-trial Jackson v. Denno¹ hearing, Corporal Legrande Gowdy of the Florence Police Department testified he responded to “a possible home invasion” on December 31, 2013. (R.pp.14-15). Gowdy found Appellant one-half block away from the scene “[u]p under a car.” (R.pp.15-17). When Appellant refused Gowdy’s order to stop backing up under the car, Gowdy tased Appellant and then read his Miranda² rights. (R.pp.17-19). While he was being Mirandized, Appellant stated he “didn’t know anything about a gun” and Gowdy stopped questioning him while an investigator was called to the scene. (R.pp.19-20; pp.21-22). Gowdy said that, after Appellant was Mirandized, he made two more statements: (1) about the clothes he was wearing that night and (2) that “he had been out drinking and was tired, he crawled up under the car to go to sleep.” (R.pp.20-22).

Investigator Felicia Jones responded to the intersection and spoke with Gowdy about “the evidence that was dropped along the way.” (R.pp.23-24). Jones used Gowdy’s voice recorder for her meeting and interview with Appellant. (R.p.24). Jones read Appellant his Miranda rights and recorded their subsequent conversation – which was played for the trial judge.³ (R.pp.24-25).

The trial judge found Appellant’s statements were admissible. The trial judge concluded Appellant’s statement to Gowdy was “freely and voluntarily given, knowingly and intelligently

¹ Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774 (1964).

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

³ Though the court reporter did not transcribe the content of this audiotaped interview in the trial transcript, it appears from the attorneys’ arguments that Appellant said “where’s my lawyer.” (R.pp.25-28).

done so without force, pressure, or intimidation” while his Miranda warnings were being read. (R.p.30). Regarding Appellant’s statement to Jones, the trial judge noted Appellant had been read Miranda warnings twice. The trial judge also noted “prior case law has stated ambiguous invocation of right to an attorney would allow such statements to be admitted.” (R.p.31). The trial judge found it is not required for law enforcement to “inquire further as to the defendant requesting the defendant clarify” and concluded Appellant’s rights were read to him but he continued to talk. (R.pp.30-31).

Trial

Michael Barr was woken by a knock at his door at approximately 3:30 a.m. on December 31, 2013. (R.pp.47-49). When he opened the door “[t]hree people with hoodies on tied across their face came in,” assaulted him, and demanded money. (R.pp.49-50). Barr stated the three men were African American and gave general descriptions of their height, weight, skin color, and clothing. (R.pp.51-57). Barr said the man wearing the green hoodie put “a small Derringer” in his face. (R.pp.50-51; p.57). Barr said one of the men picked up his hunting knife. (R.pp.58-59). Barr said the three men eventually ran out the back door. (R.p.52; p.60). Barr said pill bottles were missing from his room. (R.p.58).

Officer William Blackmon responded to the scene and saw two suspects running away, one of whom was wearing a green hoodie. (R.pp.74-75). Though Blackmon gave chase, he did not apprehend anyone. (R.pp.75-77). Blackmon retraced the path he had taken and found a hunting knife on the ground. (R.pp.78-79).

Officer Thomas Herman, Jr. responded to the scene for “a possible home invasion.” (R.pp.63-64). As he arrived, he saw “two subjects running” (one of whom was wearing a “green

or gray” hoodie) and Officer Blackmon in a foot chase with them. (R.pp.65-66; pp.71-72). Herman did not apprehend anyone but walked along their probable path and found “a small caliber handgun, a small revolver style Derringer.” (R.pp.66-70; p.72).

Officer Lacey Allen and Corporal Legrande Gowdy also responded to the scene (after Herman and Blackmon chased the potential suspects). (R.pp.80-82; pp.102-03). Allen and Gowdy found pill bottles, a green hoodie, a gray pullover,⁴ mask, and hat that “matched the description of the one that the suspect was wearing.” (R.pp.82-85; p.89; pp.104-05; p.114). Allen then noticed someone was lying underneath a car. (R.pp.84-85). Allen drew her weapon and ordered the individual to get out from under the car. Though the individual began to move from under the car, he hesitated when Gowdy appeared. (R.p.86; pp.106-07; pp.117-18). Gowdy told the individual – whom he identified in court as Appellant – to get out from under the car. When Appellant did not do so, Gowdy tased him and Appellant was handcuffed.⁵ (R.p.87; pp.107-08). While Gowdy was reading Appellant his Miranda rights, Appellant said “I don’t know anything about that gun.” (R.pp.108-09).

Corporal Felicia Jones – who was an investigator at the time – met with Appellant while he was detained in the back of a patrol vehicle. (R.pp.119-20). Jones borrowed Gowdy’s voice recorder for this conversation then read Appellant his Miranda warnings and questioned him about the incident. (R.pp.120-21). The recording was published to the jury. (R.pp.121-22). Jones stated Appellant was arrested after he had given his statement because his story (that he simply fell asleep under that car) was implausible. (R.pp.126-27).

⁴ A SLED forensic scientist identified Appellant’s DNA on the gray sweatshirt. (R.p.94; p.100).

⁵ Appellant was wearing a t-shirt and gloves when he was arrested, though it was December 31st and very cold that night. (R.pp.87-88; pp.115-16).

ARGUMENT

The trial judge did not err in admitting Appellant's recorded statement to Investigator Jones.

Appellant argues the trial judge erred in admitting his recorded statement to Investigator Jones because he “unambiguously asked for his lawyer initially when he said: ‘Where is my lawyer?’ and Investigator Jones continued to question him.” (Final Brief of Appellant, p. 10). Appellant argues this was a violation of Miranda v. Arizona. (Final Brief of Appellant, pp. 10-12).⁶ Appellant's argument is without merit.

In criminal cases, the appellate court reviews errors of law only and is bound by the trial judge's factual findings unless they are clearly erroneous. See State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). The appellate court is limited to determining whether the trial judge abused its discretion. See id.; see also State v. Johnson, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015) (“The admission or exclusion of evidence rests in the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion.”) (citation omitted). An abuse of discretion occurs when the trial judge's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). “This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence.” State v. Edwards, 384 S.C. at 508, 682 S.E.2d at 822 (citing State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001)).

⁶ Respondent notes Appellant's sole issue on appeal challenges his recorded statement to Investigator Jones. As such, Appellant's statements to Corporal Gowdy are uncontroverted and law of the case. Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case and requires affirmance.”).

The South Carolina Supreme Court has found that, when analyzing a criminal defendant's invocation of their right to counsel, the trial judge makes two separate inquiries. State v. Johnson, 413 S.C. at 466-67, 776 S.E.2d at 371. First, the trial judge must determine whether the accused invoked their right to counsel. See Smith v. Illinois, 469 U.S. 91, 95, 105 S. Ct. 490, 492-93 (1984) (quoting Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1884-85 (1994) (whether accused "expressed his desire" for, or "clearly asserted" his right to, the assistance of counsel); Miranda, 384 U.S. at 444-45, 86 S. Ct. at 1612 (whether accused "indicate[d] in any manner and at any stage of the process that he wish[ed] to consult with an attorney before speaking")). Second, if the accused did invoke their right to counsel, the trial judge may admit their responses to further questioning only after finding both that he initiated further discussions with law enforcement and knowingly and intelligently waived the right they previously invoked. See Edwards v. Arizona, 451 U.S. at 485-86 n.9, 101 S. Ct. at 1885 n.9.

The trial judge did not err in admitting Appellant's recorded statement to Investigator Jones into evidence. With regard to the first consideration in Johnson, the trial judge properly concluded Appellant did not invoke his right to counsel. The South Carolina Supreme Court's analysis in State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001) is instructive on this issue. In Wannamaker, the defendant was advised of her rights and then "requested to speak to either a lawyer or her mother." Id. at 498, 552 S.E.2d at 286. The defendant eventually spoke with her mother, was re-advised of her rights, and then gave a statement. Id. at 498-99, 552 S.E.2d at 286. The Supreme Court held the defendant's statement "was not an unambiguous invocation of her Fifth Amendment right to have counsel present during interrogation" and concluded the request was ambiguous. Id. at 499-500, 552 S.E.2d at 286-87.

Similarly, Appellant's statement "where's my lawyer" was ambiguous. Police officers are not required to cease questioning a suspect unless a request for counsel is unambiguous. Davis v. United States, 512 U.S. 452, 461-62, 114 S. Ct. 2350, 2356 (1994); cf. State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998) ("If the desire for counsel is presented sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney, no ambiguity or equivocation exists, and all questioning must cease until the person can consult counsel or the accused voluntarily reinitiates conversation.") (quotation omitted). Appellant was twice given Miranda warnings (by both Corporal Gowdy and Investigator Jones) and continued to speak to police without invocation of his right to counsel. Appellant did not ask to speak to an attorney. Appellant did not state he would not speak to police without an attorney present. Appellant did not state he wished for an attorney to be present before the matter proceeded any further. Appellant merely made the vague statement "where's my lawyer" and did not expand upon this any further before continuing to talk to police. It was unnecessary for Investigator Jones to make further inquiries and ask Appellant to clarify his ambiguous statement. As such, the trial judge did not abuse his discretion in determining Appellant's comment was an ambiguous invocation of the right to counsel and, therefore, that his statements to Jones were admissible at trial.⁷

Accordingly, Appellant's statement "where's my lawyer" was not an unambiguous invocation of counsel or request for an attorney that would have mandated the cessation of all questioning by law enforcement in this case. As a result, the trial judge did not abuse his

⁷ As the trial judge properly found Appellant did not invoke his right to counsel, the second consideration in Johnson is not relevant.

discretion in admitting Appellant's recorded statement to Investigator Jones into evidence at trial and this Court must affirm.

CONCLUSION

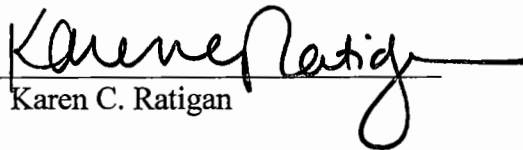
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Attorney General
S.C. Bar # 68331

EDGAR LEWIS CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

By: 
Karen C. Ratigan

Post Office Box 11549
Columbia, S.C. 29211
803-734-3737

ATTORNEYS FOR RESPONDENT

August 18, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2015-001042

RECEIVED

AUG 18 2016

SC Court of Appeals

The State, ...Respondent,

v.

Antwan J. Jett, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 18th day of August, 2016.


KAREN C. RATIGAN, S.C. Bar # 68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2015-001042

RECEIVED

AUG 18 2016

SC Court of Appeals

The State, ...Respondent,

v.

Antwan J. Jett, ...Appellant.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Final Brief of Respondent upon Appellant by depositing a copy of the same into inter-agency mail and addressed to:

LaNelle Cantey DuRant, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 18th day of August, 2016.


KAREN C. RATIGAN, S.C. Bar # 68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antwan Jamal Jett, Appellant.

Appellate Case No. 2015-001042

Appeal From Florence County
D. Craig Brown, Circuit Court Judge

Opinion No. Op. 5554
Heard November 7, 2017 – Filed April 25, 2018

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, and Solicitor Edgar Lewis Clements, III, of
Florence, all for Respondent.

SHORT, J.: Antwan Jett appeals his convictions and sentences for burglary first degree, armed robbery, criminal conspiracy, and possession of a weapon during a crime of violence, arguing the trial court erred in admitting his recorded statement because it was obtained in violation of his *Miranda*¹ rights. We affirm.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

FACTS

At approximately 3:30 a.m. on December 31, 2013, Michael Barr was awoken by a knock at his door. When he asked who was there, a person replied saying it was BJ, who was a friend of Barr's. When Barr opened the door, three males with their faces covered entered through the door and began assaulting him while demanding money. One male in a green hoodie had "a small Derringer," which he pointed at Barr. Another male grabbed Barr's hunting knife from the floor. The male in a green hoodie and a third male went upstairs and entered Barr's bedroom, as well as Barr's female roommate's bedroom. Barr's roommate began screaming, and the three males ran out the back door.

Officer William Blackmon responded to the scene and saw two males running away from Barr's house, one of whom was wearing a green hoodie. Officer Blackmon chased the suspects, but he was unable to apprehend them. While retracing the path of the chase, he found a hunting knife on the ground.

Officer Thomas Herman arrived at the scene and observed two males running from Barr's house with Officer Blackmon in pursuit. He testified one of the males was wearing "a green or a gray hoodie." Officer Herman followed the path of the chase and found "a small caliber handgun, a small revolver style Derringer."

Corporal Legrande Gowdy and Officer Lacey Allen both responded to the scene and began walking through the area. Officers Gowdy and Allen found a green hoodie, a gray pullover, pill bottles, and two masks that "matched the description of the one the suspect was wearing." While searching with her flashlight, Officer Allen observed someone lying underneath a vehicle that was about half a block from Barr's house. Officer Allen shouted "he's under the car, he's under the car" and drew her weapon while ordering the individual to get out from underneath the vehicle. The individual began to move from under the car but hesitated after Corporal Gowdy appeared. Corporal Gowdy instructed the individual to get out from under the car, and when the individual instead began backing up, Corporal Gowdy tased, detained, and handcuffed him. Corporal Gowdy testified the individual was wearing gloves and a t-shirt, and the temperature was in the low 30s, "which would not make sense to have gloves on and no coat and no nothing or anything." Corporal Gowdy asked him about the clothing they found, and the individual said it did not belong to him. The individual told Corporal Gowdy he

had been out drinking and was tired, so he crawled up under the car to go to sleep.² As Corporal Gowdy read the individual his *Miranda* rights, the individual said "I don't know anything about a gun." Gowdy then placed the individual into a patrol vehicle and called an investigator to question him. The individual was later identified as Jett.

Detective Felicia Jones met with Jett while he was detained in the patrol vehicle. Upon introducing herself as a police officer, Jett immediately said, "Where my lawyer at?" Detective Jones said, "I'm going to read you your rights, okay." Jett continued, "I already read my rights three times. I don't know why they reading me rights for." Detective Jones then read Jett his *Miranda* rights and asked Jett if he wanted to talk to her. Jett responded, "About what? About me being intoxicated? Finding me under a car? Man tase me, put a knee back of my head. What did I do? What did I do?" When Detective Jones asked Jett why he told the officer he did not have anything to do with a gun, Jett responded, "What gun?" She asked him why he was under the car, and Jett said he had been drinking and wanted to go to sleep, so he laid down. He said he did not know he was under a car. When Detective Jones asked Jett where he lived, he recited his address and said, "Anything else, ask my lawyer." Detective Jones then asked Jett if he did not want to talk to her anymore. Jett responded, "What happened?" and continued to say he did not know why he was tased. Detective Jones did not ask Jett any more questions.

In a pretrial motion following a *Jackson v. Denno*³ hearing, Jett made a motion to suppress his statement to Detective Jones as the statement was taken in violation of his *Miranda* rights. Jett argued his statement — Where my lawyer at? — was unambiguous, and he affirmatively asserted his right to an attorney. The State contended Jett's statement to Detective Jones was admissible because it was ambiguous. The trial court denied the motion, finding the statement to Detective Jones was ambiguous and thus, the questioning was not in violation of Jett's *Miranda* rights. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). Thus, "an appellate court is

² Corporal Gowdy noted in his report that he did not smell any alcohol on the individual.

³ 378 U.S. 368 (1964).

bound by the trial court's factual findings unless they are clearly erroneous." *Id.* "The same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases." *Id.* "The appellate courts are 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.'" *State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007) (quoting *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)).

LAW/ANALYSIS

Jett maintains the trial court erred in admitting the recorded statement to Detective Jones. He asserts the questioning was in violation of his *Miranda* rights because he unambiguously asked for his lawyer twice during the interview and Detective Jones continued to question him. We disagree.

"When analyzing a criminal defendant's invocation of his or her right to counsel, a trial court must make two separate inquiries." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "First, courts must determine whether the accused actually invoked his right to counsel." *Id.* "Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked." *Id.* "If the suspect effectively waives his right to counsel after receiving the *Miranda* warnings, law enforcement officers are free to question him." *Davis v. United States*, 512 U.S. 452, 458 (1994). "But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation." *Id.* "Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Id.* at 459.

In *Davis*, the United States Supreme Court held a suspect must unambiguously request counsel. "[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning." *Id.* "[A] statement either is such an assertion of the right to counsel or it is not." *Id.* (quoting *Smith v. Illinois*, 469 U.S. 91, 97-98 (1984) (brackets omitted)). The *Davis* court found Davis' statement to the investigator, "Maybe I should talk to a lawyer," was not a

request for counsel and the investigator was not required to stop questioning Davis. *Id.* at 462.

Here, Jett merely made the vague statement — Where my lawyer at? — and did not expand upon the statement before continuing to talk to the police. We find Jett's statement to Detective Jones, prior to her reading Jett his *Miranda* rights, was ambiguous and equivocal enough so that a reasonable officer could have decided it was not an invocation of counsel.⁴ It was not necessary for Detective Jones to make any further inquiries and ask Jett to clarify his statement. Therefore, because Jett's *Miranda* rights were not violated, the trial court did not err in admitting Jett's statement to Detective Jones.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

GEATHERS, J., concurs.

KONDUROS, J., dissenting: I respectfully dissent from the majority opinion and would hold Jett's statement to be an unequivocal and unambiguous invocation of his right to counsel.

The present case is distinguishable from *Davis v. United States*, 512 U.S. 452 (1994). In this case, Jett asked "[w]here my lawyer at?" after being read his *Miranda* rights. Jett was not questioning whether he needed a lawyer as in *Davis*. The only two conclusions to be drawn from his utterance are that he is either (1) stating he already has a lawyer and seeks his or her presence or (2) asking for the lawyer referenced in his *Miranda* rights, as opposed to Davis's pondering whether he needed a lawyer.

In *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in part and dissenting in part), then Chief Justice Toal advised against playing a "gotcha" game with attorneys over procedural matters at the expense of their clients. She surmised that "[t]his practice ignores the fact that behind every party name on a caption is a life-blood

⁴ After reviewing the audiotape, we find it is hard to understand Jett's comments to the officer, and at the least, they were ambiguous and equivocal.

litigant or criminal defendant that depends on the court system to protect their . . . liberty interests." *Id.* at 333, 730 S.E.2d at 287.

However inarticulate, after being pulled from underneath a car in the early morning hours, Jett declared "[w]here my lawyer at?" To my reading, Jett has made a request for a lawyer, and I would reverse the trial court's denial of his motion to suppress his statement.

FORM 5

20 18 CP 21 3142

STATE OF SOUTH CAROLINA)

County of Florence)Antwan Jamal Jett 350650)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION REVIEW

DORIS POLLOS-OKARA
CCCP 3255
FLORENCE COUNTY, SC

2018 DEC 10 AM 10:53

FILED

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 McLormick
2. Name and location of Court which imposed sentence Florence County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) unknown
 - (b) unknown

SCANNED

- (c) Unknown
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April-15-2015 30 years concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, Judgment of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Ct App
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ∅
- ii. ∅
- iii. The Appeal was Affirmed
- (c) the date of each such result:
- i. ∅
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ∅
- ii. _____
- 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) ineffective assistance counsel
- (b) ineffective assistance trial counsel
- (c) ineffective appellate counsel miranda v. Arizona
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) trial attorney failed to act as my diligent advocate
- (b) Appellate counsel failed to act as my diligent advocate
- (c) I was denied my constitutional rights fifth, sixth and fourteenth amendment violations
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A
- (b) the name and location of the Court in which each was filed:
- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A

(c) the disposition thereof:

- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A

(d) the date of each such disposition:

- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Miranda v. Arizona 384 U.S. 436 (1966)
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. At my trial, and on direct Appeal which led to a oral argemo
- 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) N-A
 (b) N-A
 (c) N-A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N-A
 (b) your trial, if any? ✓ Yes
 (c) your sentencing? ✓ Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓ Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N-A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Victor meetz Florence County 180 N. Hwy 31 29501
 ii. LANELLE Durant Columbia SC 29211
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Victor meetz represented me at my trial
 ii. Lanelle Durant represented me at my direct appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Antwan Jamal Jett, 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.

Antwan Jamal Jett

SWORN to and subscribed before me this 5
day of December.

G. D. Williams (L.S.)
Notary Public

My Commission Expires: 9-30-26

2018 DEC 10 AM 10:53
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Antuan Jamal Jett, 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.

Antuan Jamal Jett
Applicant

SWORN or affirmed to and subscribed before me this

3 day of December, 2018.

Adrian J. Williams
Notary Public

My Commission Expires: 9-30-26

FILED
2018 DEC 10 AM 10:53
DORIS PERLOS CHARRA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Antwan Jamal Jett, # 358650

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2018-CP-21-3142

RETURN & MOTION FOR A
MORE DEFINITE STATEMENT

2019 MAR 13 AM 11:04
DORIS POWERS
CCCP & CCJ
FLORENCE COUNTY

FILED

In response to the action for post-conviction relief (PCR) commenced by Antwan Jett (Applicant) on December 10, 2018, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the April 2014 term of the Florence County Grand Jury for: first-degree burglary; assault with intent to commit first-degree criminal sexual conduct; possession of a weapon during the commission of a violent crime; two counts of armed robbery; and criminal conspiracy. (2014-GS-21-0525).

The case proceeded to a jury trial on April 20, 2015, before the Honorable D. Craig Brown on the following charges: first-degree burglary; possession of a weapon during commission of a violent crime; one count of armed robbery; and criminal conspiracy. Applicant was represented by Assistant Public Defender W. Vickery Meetze. Deputy Solicitor John C. Jeperfinger prosecuted the case. The jury convicted Applicant on all charges as indicted. Judge Brown sentenced Applicant to concurrent terms of imprisonment of thirty years for first-degree burglary, time-

served for the weapons charge, twenty-five years for armed robbery, and five years for criminal conspiracy. Applicant appealed.

On appeal, Applicant was represented by Appellate Defender LaNelle Cantey Durant. The court of appeals affirmed Applicant's convictions and sentences. *State v. Jett*, 423 S.C. 415, 814 S.E.2d 635 (Ct. App. 2018). Thereafter, Applicant petitioned our supreme court for a writ of certiorari to review the court of appeals' decision; however, our supreme court denied certiorari October 18, 2018. *State v. Jett*, S.C. Sup. Ct. Order dated October 18, 2018. The case was remitted to the circuit court November 20, 2018. Applicant commenced this PCR action December 10, 2018.

II. Facts

Michael Barr was awoken by a knock at his door at approximately 3:30 a.m. on December 31, 2013. (ROA 47–49). When he opened the door “[t]hree people with hoodies on tied across their face came in,” assaulted him, and demanded money. (ROA 49–50). Barr stated the three men were African American and gave general descriptions of their height, weight, skin color, and clothing. (ROA 51–57). Barr said the man wearing the green hoodie put “a small Derringer” in his face. (ROA 50–51, 57). Barr said one of the men picked up his hunting knife. (ROA 58–59). Barr said the three men eventually ran out the back door. (ROA 52, 60). Barr stated pill bottles were missing from his room. (ROA 58).

Officer William Blackmon responded to the scene and saw two suspects running away, one of whom was wearing a green hoodie. (ROA 74–75). Though Blackmon gave chase, he did not apprehend anyone. (ROA 75–77). Blackmon retraced the path he had taken and found a hunting knife on the ground. (ROA 78–79).

Officer Thomas Herman, Jr., responded to the scene for “a possible home invasion.” (ROA

63–64). As he arrived, he saw “two subjects running” (one of whom was wearing a “green or gray” hoodie) and Officer Blackmon in a foot chase with them. (ROA 65–66, 71–72). Herman did not apprehend anyone but walked along their probable path and found “a small caliber handgun, a small revolver style Derringer.” (ROA 66–70, 72).

Officer Lacey Allen and Corporal Legrande Gowdy also responded to the scene—after Herman and Blackmon chased the potential suspects. (ROA 80–82, 102–03). Allen and Gowdy found pill bottles, a green hoodie, a gray pullover,¹ mask, and hat that “matched the description of the one that the suspect was wearing.” (ROA 82–85, 89, 104–05, 114). Allen then noticed someone was lying underneath a car. (ROA 84–85). Allen drew her weapon and ordered the individual to get out from under the car. Though the individual began to move from under the car, he hesitated when Gowdy appeared. (ROA 86, 106–07, 117–18). Gowdy told the individual—whom he identified in court as Applicant—to get out from under the car. When Applicant did not do so, Gowdy tased him and Applicant was handcuffed.² (ROA 87, 107–08). While Gowdy was reading Applicant his *Miranda* rights, Applicant said “I don’t know anything about that gun.” (ROA 108–09).

Corporal Felicia Jones—who was an investigator at the time—met with Applicant while he was detained in the back of a patrol vehicle. (ROA 119–20). Jones borrowed Gowdy’s voice recorder for this conversation then read Applicant his *Miranda* warnings and questioned him about the incident. (ROA 120–21). The recording was published to the jury. (ROA 121–22). Jones

¹ A SLED forensic scientist identified Applicant’s DNA on the gray sweatshirt. (ROA 94, 100).

² Applicant was wearing a t-shirt and gloves when he was arrested, though it was December 31st and very cold that night. (ROA 87–88, 115–16).

stated Applicant was arrested after he had given his statement because his story—he simply fell asleep under that car—was implausible. (ROA 126–27).

The State called the case to trial April 20, 2015, on the following charges: first-degree burglary, possession of a weapon during commission of a violent crime, one count of armed robbery, and criminal conspiracy. The jury convicted Applicant on all charges. The trial court sentenced Applicant to concurrent terms of thirty years for first-degree burglary, time-served for possession of a weapon during commission of a violent crime, twenty-five years for armed robbery, and five years for criminal conspiracy.

Applicant timely appealed his sentences and convictions. The court of appeals affirmed. *State v. Jett*, 423 S.C. 415, 814 S.E.2d 635 (Ct. App. 2018). Applicant petitioned our supreme court for a writ of certiorari to review the court of appeals' decision; however, our supreme court denied certiorari October 18, 2018. *State v. Jett*, S.C. Sup. Ct. Order dated October 18, 2018. The case was remitted to the circuit court November 20, 2018. Applicant commenced this PCR action December 10, 2018.

III. Current Application

Applicant alleges he is being held in custody unlawfully due to ineffective assistance of trial and appellate counsel. Specifically, Applicant alleges trial and appellate counsel failed to act as his diligent advocate because he was denied his constitutional rights.

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Jackson's records from the South Carolina Department of Corrections, the trial transcript, Applicant's direct appeal records, and the records of this PCR action.

IV. Motion for a More Definite Statement

The State hereby moves for a more definite statement. Applicant has failed to set forth facts to “support each ground” or to explain with specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50. It is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so the State may adequately prepare for an evidentiary hearing. Therefore, the State requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of trial and appellate counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted

and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although 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) (emphasis added). “For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy” *Jones v. Barnes*, 463 U.S. 745, 754 (1983).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. Thus, the question becomes (1) whether appellate counsel's performance was deficient, and (2) whether the applicant was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not directly dispute Applicant's allegations of ineffective assistance of trial or appellate counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues once, as requested above, Applicant provides a more definite statement. See *Sharper v. State*, 279 S.C. 264, 265, 305

S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act³ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

VII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Request for an Evidentiary Hearing

WHEREFORE, the State requests an evidentiary hearing be held once Applicant provides a more definite statement.

³ S.C. Code Ann. §§ 17-27-10 to -160.

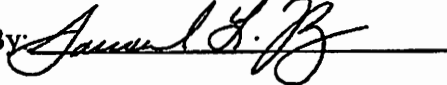
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 12, 2019

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2018-CP-21-3142

ANTWAN JAMAL JETT, #358650

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

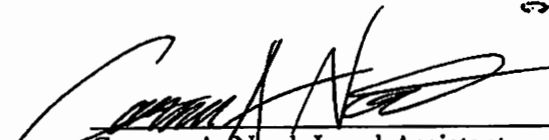
STATE OF SOUTH CAROLINA,

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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this the 12th day of March, 2019.


Carmen A. Nord, Legal Assistant
For Respondent

2019 MAR 13 AM 11:04
DOERIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2018-CP-21-03142
	)	
	)	
	)	
	)	
Antwan Jamal Jett	)	TRANSCRIPT OF RECORD
vs.	)	
State Of South Carolina	)	
	)	September 6, 2019
<u>DEFENDANT</u>	)	Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

SAMUEL L. KEY, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Antwan Jett				
4	Mr. Waller	5			
5	Mr. Key		14		
6					
7	LaNelle C. DuRant				
8	Mr. Waller	17			
9	Mr. Key		22		
10					
11	Vick Meetze				
12	Mr. Key	26			
13	Mr. Waller		39		
14					
15	Certificate of Reporter	45			
16					
17					
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25					

1 THE COURT: Yes, sir.

2 MR. KEY: May it please the Court. This is
3 Antwan Jamal Jett vs. State of South Carolina case number
4 2018-CP-21-3142. Mr. Jett commence this PCR action on
5 December 10th 2018. He's currently confined in the South
6 Carolina Department of Corrections pursuant to orders of
7 commitment of the Florence County clerk of court. He was
8 indicted at the April 2014 term of the Florence County
9 grand jury for first degree burglary, assault with intent
10 to commit first degree criminal sexual conduct, possession
11 of a weapon during the commission of a violent crime, two
12 counts of arm robbery and criminal conspiracy.

13 His case proceeded to a jury trial on April 20th
14 of 2015 before the Honorable D. Craig Brown. He was
15 represented by Assistant Public Defender Vick Meetze and
16 Deputy Solicitor John Jepertinger prosecuted the case.
17 The jury convicted the applicant of first degree burglary,
18 possession of a weapon during the commission of a violent
19 crime, criminal conspiracy and armed robbery. Judge Brown
20 sentenced him to concurrent terms of imprisonment of 30
21 years for first degree burglary, time serve for the
22 weapons charge, 25 years for armed robbery and five years
23 for criminal conspiracy. And he did file a notice of
24 appeal.

25 On appeal, he was represented by Appellate

1 Defender LaNelle Durant. The Court of Appeals affirmed
2 applicant's convictions and sentences. Applicant
3 petitioned our Supreme Court for a writ of certiorari.
4 However, the Supreme Court denied cert October 18th of
5 2018 and the case was remitted back to the circuit court
6 on November 20th 2018. He timely commenced this PCR
7 action December 10th 2018. He is represented by
8 Mr. Jonathan Waller. He and Mr. Waller are present in the
9 courtroom today. He has alleged ineffective assistance of
10 trial and appellate counsel. The State did a return and
11 motion for definite statement -- more definite statement.
12 At this time we have not received a more definite
13 statement, so we just ask Mr. Waller to put on the record
14 what allegations he's going forward on.

15 THE COURT: All right. Mr. Waller.

16 MR. WALLER: Thank you, your Honor. May it
17 please the Court.

18 THE COURT: Yes, sir.

19 MR. WALLER: Judge, I've spoken with Mr. Key
20 about the allegations in the case. Judge, I think in
21 looking at the application the allegations regarding
22 ineffective assistance of appellate counsel, I think those
23 were clear. I don't think there's any issue. There was a
24 statement given by Mr. Jett that there was some question
25 as to whether he invoked his right to counsel, that was

1 the issue on appeal. So, Judge, you know, that's what
2 we're proceeding forward as far as it relates to appellate
3 counsel.

4 Judge, as it relates to trial counsel, it's an
5 investigation. The allegations regarding the
6 investigation and preparation not necessarily what took
7 place at trial, but what Mr. Meetze did or did not do
8 leading up to the case to prepare himself to properly
9 defend Mr. Jett. Your Honor, at this time I will call
10 Antwan Jett.

11 THE COURT: All right.

12 THE CLERK: Face this way, put your left hand on
13 the Bible and raise your right hand as much as you can
14 switch hands. There you go. Do you swear to tell the
15 truth, the whole truth, and nothing but the truth so help
16 you God?

17 MR. JETT: Yes, ma'am.

18 WHEREUPON,

19 Antwan J. Jett,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WALLER:

23 Q Good morning, Mr. Jett. How are you?

24 A Okay.

25 Q All right. Mr. Jett, when you -- I want to take you

1 back to when you were first arrested on these charges. Do
2 you remember?

3 A Yes, sir.

4 Q Okay. You were arrested that same night, is that
5 right?

6 A Yes, sir.

7 Q December 31st, is that right?

8 A Yes, sir, in the morning time.

9 Q Okay. But it was the morning from what December 30th
10 it wasn't New Years Eve, right, December 30th?

11 A It was the morning of December 30th right.

12 Q Okay. When you were arrested, did you make bond,
13 were you given a bond at all?

14 A No, sir, bond was denied.

15 Q Okay. Did you get a lawyer?

16 A No, sir. I was appointed by Mr. Vick Meetze.

17 Q Okay. When did you recall Mr. Meetze was appointed
18 to represent you?

19 A As soon as I had probation violation and then now I
20 remember him representing me then when I was up the road.

21 Q Okay. You were on parole at the time, right, YOA
22 parole, is that right?

23 A Yes, sir.

24 Q Okay. So your parole was revoked. They were trying
25 to revoke your parole because of the new arrest, is that

1 right?

2 A Yes, sir.

3 Q Okay. When Mr. Meetze was appointed to represent
4 you, you were in Turbeville or you were in Florence?

5 A I was in Florence.

6 Q Okay. So did he come to see you in Florence?

7 A No, sir.

8 Q Okay. When did Mr. Meetze come first see you?

9 A After I did my time at Turbeville.

10 Q Okay. How long were you down in Turbeville?

11 A Seven or eight months.

12 Q Seven or eight months, okay. How long after your
13 arrest did you go to Turbeville?

14 A Three months.

15 Q Okay. So you were in Florence for three months, then
16 you went to Turbeville for seven or eight months?

17 A Yes, sir.

18 Q Okay. So it was ten or 11 months before Mr. Meetze
19 came to see you?

20 A Yeah, like near that time right there.

21 Q When he came to see you, what did you all talk about?

22 A Well, we was speaking about a plea bargain. He said
23 the plea bargain was 25 years and that's all at that time
24 he first see me.

25 Q Okay. Let me ask you this, you were charged with

1 burglary, first degree burglary?

2 A Yes, sir.

3 Q And armed robbery?

4 A Yes, sir.

5 Q And a couple other charges too?

6 A Yes, sir.

7 Q Did you all talk about each one of those charges?

8 A No, sir.

9 Q Okay. Did you all talk about the potential penalties
10 of each of those charges?

11 A No, sir.

12 Q Did you all talk about what the State would have to
13 prove for you to be found guilty of those charges?

14 A No, sir.

15 Q Okay. Did you all talk about any potential defenses
16 that you might have?

17 A No, sir.

18 Q Okay. In your case, there was some DNA testing done,
19 do you remember that?

20 A Yeah, I remember.

21 Q Okay. Did you and Mr. Meetze ever talk about the
22 DNA?

23 A No.

24 Q Okay. There were -- the allegations were that there
25 three people that committed this robbery, is that right?

1 A Yes, sir.

2 Q You were the only one ever arrested. You were the
3 only one ever tried, is that right?

4 A Right.

5 Q Okay. There were three hats found. Is that what you
6 recall?

7 A That's what I recall at the trial, yes, sir.

8 Q And two jackets or sweat shirt type pieces of
9 clothing?

10 A Yes.

11 Q All those were tested for DNA, do you remember that?

12 A Yes, sir.

13 Q Did you and Mr. Meetze talk about the five articles
14 of clothing?

15 A Not to the trial.

16 Q Okay. Not until the trial. During the trial or like
17 you all were getting ready for the trial?

18 A During the trial.

19 Q Okay. What did you all talk about?

20 A During the trial, he tell me don't get on the stand
21 because my previous arrests before I had got locked up for
22 the burglary first and armed robbery.

23 Q Okay. What did you all talk about the DNA testing at
24 all?

25 A Not at all.

1 Q Okay. All right. When you -- you gave what law
2 enforcement or the State characterizes as two different
3 statements?

4 A Yes, sir.

5 Q You remember those, right?

6 A I remember seeing -- I mean, hearing it at trial, but
7 I don't remember saying none of that.

8 Q Did you and Mr. Meetze talk about each one of those
9 two different statements?

10 A No, sir.

11 Q Okay. One of those was right there during your
12 arrest, right?

13 A Yes, sir.

14 Q Okay. One of them was a couple hours later, is that
15 what you remember?

16 A I remember seeing the investigator.

17 Q Okay. Your testimony is that you and Mr. Meetze
18 never talk about those statements?

19 A No, sir.

20 Q Okay. Did you give Mr. Meetze any people you wanted
21 him to talk to or any information you wanted him to
22 investigate?

23 A He didn't never discuss any of that with me.

24 Q Okay. How did you ultimately -- I mean, how did you
25 end up going to trial? What did you all talk about?

1 A The pleas he's been throwing at me, I refuse to take
2 it because I feel like I shouldn't have never been
3 arrested.

4 Q Okay. Why do you feel like you should have never
5 been arrested?

6 A Because I feel like the place and time I been at, I
7 just feel like it wasn't a proper arrest because I ain't
8 never was in that situation before. So I couldn't never
9 secure or represent myself at that point in time. And I
10 barely didn't know what I was speaking about because I was
11 intoxicated and drunk, that's when I was telling the
12 investigator. And I was trying to plead the Fifth as much
13 as possible, you know what I'm saying, but I still end up
14 getting locked up behind them saying a statement that I
15 made.

16 Q Okay. Did you tell Mr. Meetze all of what you just
17 told the Court?

18 A Every time I talk to Mr. Meetze he acting like he had
19 an attitude problem.

20 Q Okay. As you all were getting ready to go to trial,
21 did you all talk about any of the evidence against you or
22 anything like that?

23 A No, sir, the only thing he tell me been at the trial.
24 He tell me do not get on the stand and testify because
25 they will bring my previous record up.

1 Q Okay. How many times did you think you met with Mr.
2 Meetze?

3 A Three.

4 Q You met with him three times. All right. That first
5 meeting what did you all talk about?

6 A The plea for 25 year.

7 Q Okay. That's the only thing you all talked about?

8 A Yes, sir.

9 Q Okay. The second meeting what did you all talk
10 about?

11 A It was a plea for 15 years.

12 Q Okay. Is that the only thing you all talked about
13 then?

14 A Yes, sir.

15 Q Okay. How about the third meeting?

16 A He seen me tell me I had grand jury indictment for
17 charges.

18 Q Okay. When was that third meeting?

19 A Right like a couple months before my trial like two
20 or three months before my trial.

21 Q Okay. And that's the last time you met with him
22 before the trial started?

23 A Yes, sir.

24 Q Okay. All you all talked about was the fact that the
25 grand jury had indicted you, that was it?

1 A Basically.

2 Q Okay. Well, is it basically it or is that it?

3 A That was partially it because he couldn't never hold
4 a conversation with me because of his attitude problem.

5 Q Okay. All right. Did you ask Mr. Meetze to do
6 anything for you ask him to contact anybody, investigate
7 anybody?

8 A I sure did. I ask Mr. Meetze to contact my family.
9 He never contact my family.

10 Q Okay. What was the reason you wanted him to contact
11 your family as a defense?

12 A For a defense.

13 Q Okay. What type of defense that have ---

14 A Like testimony.

15 Q Okay. Do you -- did you give him contact information
16 names and telephone numbers?

17 A He didn't never partake in any of that because of his
18 attitude problem.

19 Q Okay. All right. Mr. Jett, I think I've asked you
20 all the questions that I have. Is there anything else
21 that Judge Seals needs to be aware of Mr. Meetze's
22 representation of you?

23 A Well, another thing Mr. Meetze he didn't never tell
24 me about anything about my case at all. He didn't never
25 let me know anything before trial that I suppose know. He

1 didn't never have -- showed me anything or went over
2 anything with me before the trial.

3 MR. WALLER: Thank you, Mr. Jett. Please any
4 questions Mr. Key has.

5 CROSS-EXAMINATION

6 BY MR. KEY:

7 Q Mr. Jett, you stated on direct that you recall being
8 arrested for -- do you recall being arrested for this
9 crime?

10 A Yes, sir.

11 Q Okay. But you stated that you don't remember making
12 any statements because you were intoxicated?

13 A Right.

14 Q Do you remember that coming up at trial?

15 A Right, yes, sir.

16 Q That did come up at trial?

17 A It came up at trial, yes, sir.

18 Q Okay. Do you recall how that came up?

19 A I remember Mr. Meetze was whispering something in my
20 ear about it.

21 Q Okay. So he told you during trial that something
22 about you being intoxicated?

23 A No, he told me about a statement.

24 Q Okay. He told you about the statement?

25 A Yes, sir.

1 Q Did you know about the statement to the police before
2 that?

3 A No.

4 Q So you don't recall making a statement to the police
5 at all?

6 A No, sir.

7 Q But you do recall being arrested?

8 A Right.

9 Q Okay. And the State offered you a 25-year offer and
10 you rejected that, correct?

11 A Yes, sir.

12 Q And they offered you a 15-year offer and you rejected
13 that?

14 A Yes, sir.

15 Q Were there any other offers?

16 A Not to my knowledge. Not as I can think of.

17 Q Okay. Did you want to go to trial?

18 A I didn't. I had wanted to get a better plea bargain,
19 but he didn't never inform me about the charges that was
20 in front of me, so I didn't know about my charges.

21 Q Okay. Did you ever receive any discovery in this
22 case?

23 A Yes, sir.

24 Q Okay. You did. Was that before trial?

25 A I can't remember. Like, it had to be around the time

1 or -- what is the discovery?

2 Q The State's evidence that they would ---

3 A Is that the grand jury indictment?

4 Q That would be part of the discovery.

5 A That's all I receive from Mr. Meetze was the grand
6 jury indictment about the charges.

7 Q Okay. So he did show you some things about your
8 case?

9 A I mean, some charges.

10 Q Okay. Do you recall where you were when you were
11 arrested?

12 A I was in the park projects. I was in the projects
13 because I remember the demo they showed at the trial. It
14 was in the projects.

15 Q Okay. So you recall where you were when you were
16 arrested?

17 A Yes, sir.

18 Q And you recall being arrested?

19 A Right.

20 Q But you don't recall making a statement?

21 A No, sir.

22 Q Okay. And you testified you asked Mr. Meetze to talk
23 to your family?

24 A Yes, sir.

25 Q Okay. Did you give Mr. Meetze any of their names or

1 phone numbers?

2 A Yes, sir, I gave him the name, but he act like -- he
3 brushed away when I was trying to get in detail about any
4 addresses or any phone numbers.

5 MR. KEY: No further questions, your Honor.

6 THE COURT: All right, Mr. Waller.

7 MR. WALLER: I have nothing further, your Honor.

8 THE COURT: You may step down.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Call your next witness.

12 MR. WALLER: Thank you, your Honor. The
13 applicant will call LaNelle DuRant.

14 THE CLERK: Face this way. Place your left hand
15 on the Bible and raise your right hand. Do you swear to
16 tell the truth, the whole truth, and nothing but the truth
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you.

20 WHEREUPON,

21 LaNelle DuRant,

22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Good morning, Ms. DuRant. How are you today?

1 A I'm fine. Thank you. How are you?

2 Q I'm doing well. Thank you for asking. Ms. DuRant,
3 how did you come to represent Mr. Jett?

4 A While I was working with the Office of Appellate
5 Defense Commission of Indigent Defense and we are
6 appointed cases by the Court of Appeals when they come in.
7 So I was assign to Mr. Jett's case as his appellate
8 attorney.

9 Q Okay. Was it came directly to you or was anybody
10 else have it first, were you working with anybody else or
11 was it all you all the time?

12 A No, it was just me.

13 Q Okay. What were -- what goes into your decision on
14 what issues to raise?

15 A Well, the process is most of you probably know, we
16 get the transcript. We review the transcript for any
17 objections a trial attorney has to make an objection under
18 the appellate court rules. Then we look to see if the
19 judge made an error of law in his ruling on admitting
20 evidence or not admitting evidence. And then we have to
21 look at the case law, the statute to see if we think the
22 judge was correct in his ruling, so we review the
23 transcript and any exhibits. So in doing that, I think
24 there was an excellent issue because I think Mr. Jett was
25 requesting an attorney under the case law and the

1 statutes. And we had the tape that was admitted as an
2 exhibit. And I think it was very clear on the tape where
3 he was saying where's my attorney, where's my attorney at.
4 So I felt like that was a really strong issue.

5 Q So the brief you filed had one issue that was
6 regarding whether Mr. Jett had invoked his right to
7 counsel?

8 A Correct, yes.

9 Q Were there any issues that had not been preserved
10 that you were not able to raise because of that.

11 A I don't remember that. Usually, my feeling was and I
12 think most of the appellate attorneys did, but I can't
13 speak for them. Once you have a really strong issue,
14 sometimes you don't want that to be weakened by any
15 secondary issues. Now, there may have been some that
16 could have been raised, but once I had a strong issue, I
17 wanted the Court to focus on that issue and I really
18 thought this was a winning issue.

19 Q Okay. Maybe, I asked that poorly. Were there any
20 issues that you saw that would have been strong issues,
21 but that you were unable to raise because they hadn't been
22 preserved by the trial counsel?

23 A I honestly do not remember.

24 Q Okay. When you -- what goes in -- what's your
25 process as far as briefing an issue? How do you -- how do

1 you go about doing that?

2 A Well, first we look at the law to make sure we had
3 the issue preserved, that's the first issue because there
4 are steps to preserving the issue and the trial counsel
5 did make excellent preservation of this issue. And then
6 we look to the law to see if we thought the judge was
7 right. We read case law related to the Miranda issue,
8 interrogation, the Davis case, Wannamaker. Those cases
9 that I raised and any other cases that might have been
10 secondary to that. You also want to shepardize to see if
11 there were any new issues. We look at the U.S. Supreme
12 Court issues, and, of course, the South Carolina Supreme
13 Court. And in reviewing the case law and the issues and
14 any statutes, you come up with the issue and make sure I
15 worded it carefully and then the brief history and then
16 the arguments.

17 Q Okay. In this case, I think the testimony was that
18 you had one which you felt was a really strong issue?

19 A Correct, yes.

20 Q And it was actually a two-one opinion its upholding
21 the trial judge's ruling, so you did have a dissent that
22 went in your favor, is that right?

23 A Yes, we had oral argument in the Court of Appeals and
24 Judge Konduros to stay. And usually when there's a
25 dissent, the South Carolina Supreme Court will review the

1 case. So I filed a cert petition to the Supreme Court
2 asking them to review the Court of Appeals, but
3 unfortunately they denied that.

4 Q Okay. Is there any other steps that you can take
5 after the Supreme Court denies your petition for cert?

6 A There is one. If there's a constitutional issue, we
7 can file a separate petition to the United States Supreme
8 Court and I think probably could have done that in
9 Mr. Jett's case. I have done it in other cases not all of
10 them, but some of that I felt very strongly about. I
11 never -- the Supreme Court has never accepted one of my
12 cases unfortunately, but I could have done that in
13 Mr. Jett's case, but for some reason, I did not follow
14 through with that.

15 Q Okay. I think you testified it was a strong issue
16 when you say strong issue -- when you say strong issue, do
17 you mean it was a -- you think it was a winning issue or
18 do you think it was a strong issue that deserves an
19 appellate review? How do you characterize strong issue?

20 A I think it was a winning issue. And in appeals,
21 sometimes it's very difficult to find what you think is a
22 really strong issue, a real winning issue. You find
23 strong issues, but sometimes they are little convoluted
24 and maybe not quite clearly preserved. And it may not be
25 a clear violation of the law, but I think in this case it

1 was. I think he very clearly was asking for an attorney
2 twice.

3 Q Okay. In your research and you mentioned
4 shepardizing the issue to see if there were United States
5 Supreme Court cases or cases outside of South Carolina.
6 Did you -- in doing that, did you find other cases in
7 other jurisdictions that might have supported your
8 position had you gone to the United States Supreme Court
9 or petition that the United States Supreme Court?

10 A If I'd gone to the United States Supreme Court, I
11 would have researched other jurisdictions, but in this
12 case, once I found Davis and Wannamaker and Miranda, of
13 course, I felt that those cases were strong enough to
14 support the issue. So I really did not clearly check
15 other jurisdictions at that point.

16 MR. WALLER: Thank you, Ms. DuRant. I have no
17 further questions.

18 CROSS-EXAMINATION

19 BY MR. KEY:

20 Q Good morning, Ms. DuRant.

21 A Good morning.

22 Q Thank you for being here this morning. The Miranda
23 issue you felt that was a stronger issue to brief to the
24 Court of Appeals?

25 A Yes, I did.

1 Q Okay. And that issue was preserved?

2 A Yes.

3 Q And the Court of Appeals found the issue was
4 preserved?

5 A Correct.

6 Q That was never really in question?

7 A No.

8 Q Okay. What is the standard for invoking your Fifth
9 Amendment requesting a lawyer? What is the legal standard
10 have to be?

11 A Well, they have to clearly according to the law and
12 unambiguously request an attorney. If it is ambiguous as
13 the Court of Appeals did in this case, then they say the
14 officers need to -- should ask for clarification, but
15 basically a Miranda of someone asking for an attorney,
16 there's no questioning. The officer have to stop
17 questioning because the person at that point. Is that the
18 standard you're asking for?

19 Q Yes, yes. Okay. And Judge Brown found that was an
20 ambiguous request for an attorney at trial?

21 A Yes.

22 Q Okay. And the majority at the Supreme Court found
23 that was an ambiguous request?

24 A At the Court of Appeals, yes, two judges.

25 Q I'm sorry, at the Court of Appeals. But Judge

1 Konduros dissented and said that invoked his right?

2 A Yes, she said it was clearly unambiguous that he
3 clearly asked for an attorney twice.

4 Q Okay. And there was a recording of his statement?

5 A Yes, there's a tape recording clearly showing that he
6 asked for an attorney twice.

7 Q And that was made part of the record to the Court of
8 Appeals?

9 A Yes.

10 Q Okay. And you petition for a rehearing to the Court
11 of Appeals?

12 A Correct.

13 Q That was denied and then you petitioned for cert?

14 A Yes.

15 Q Okay. Cert was denied correct?

16 A Yes.

17 Q Okay. Can you petition for a rehearing from a denial
18 of cert?

19 A You can petition for a rehearing in the Supreme
20 Court, but there has to be more than just an order. It
21 has to be -- have an opinion written with it some
22 reasoning.

23 Q Right. And in this case there was just an order?

24 A Just the order, yes.

25 Q So it was nothing on the state level you could have

1 done?

2 A No. I think I did all I could possibly do at that
3 point.

4 MR. KEY: No further questions.

5 THE COURT: All right, anything further?

6 MR. WALLER: Nothing further, your Honor.

7 THE COURT: All right. Thank you have a good
8 day, drive careful.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Any other witnesses?

12 MR. WALLER: Nothing further from the applicant.

13 THE COURT: Anything further from the State or
14 anything from the State?

15 MR. KEY: Your Honor, the State would just ask
16 for Ms. DuRant to be released from her subpoena?

17 MR. WALLER: No objection.

18 THE COURT: All right, have a good day.

19 MS. DURANT: Thank you, your Honor.

20 THE COURT: Thank you.

21 MR. KEY: The State would call Vick Meetze.

22 THE CLERK: Place your left hand on the Bible
23 and raise your right hand. Do you swear to tell the
24 truth, the whole truth, and nothing but the truth so help
25 you God?

1 MR. MEETZE: I do.

2 WHEREUPON,

3 Vick Meetze,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KEY:

7 Q Good morning, Mr. Meetze.

8 A Good morning.

9 Q Were you appointed to represent Mr. Jett?

10 A I was.

11 Q Okay. It was at through your position at the public
12 defender's office?

13 A Right. He was approved for a public defender. I
14 would imagine when he went for his initial bond hearing
15 and all when he was first arrested was approved. And then
16 our office has a process of which gets appointed. And I
17 was appointed to Mr. Jett by the public defender in charge
18 of our office.

19 Q Do you recall how soon after Mr. Jett's arrest you
20 were appointed to represent him?

21 A It looks like we open the file -- he was arrested
22 like the end of December. We open a file looks like on
23 the 13th of January of 2014. So it would have been a few
24 weeks that we go over the file. I wouldn't have gotten
25 that file right at that point in time because we wouldn't

1 have had discovery in it. We wouldn't have had any of
2 that, so I can't tell you exactly when I got my hands on
3 it, but he was appointed right away and we opened a file
4 within a couple of weeks.

5 Q Okay. Do you recall Mr. Jett having a YOA parole
6 charge, I guess?

7 A I don't recall that. I mean, that's not that all to
8 say that that didn't happen, but I don't recall.

9 Q Okay. How many times did you meet with Mr. Jett?

10 A I don't know the act number, but we meet a number of
11 times. Certainly plenty of times down at the jail. I can
12 remember times when he was actually brought to court for
13 me to talk to him there. He was brought to court I know
14 one time. We did have a bond hearing in November of 2013,
15 so I know he was brought to court and we met then as well.
16 So I don't have any exact number, but we certainly talked
17 a number of times about his case and all aspects of his
18 case.

19 Q Okay. Did you receive the discovery in this case?

20 A I did.

21 Q Okay. And did you review the discovery yourself?

22 A Yes.

23 Q Did you review the discovery with Mr. Jett?

24 A I did.

25 Q Okay. Could you briefly summarize what the discovery

1 showed in this case?

2 A This was a home invasion with, I think, three folks
3 going into in a home. There were two people, I think, in
4 the home a male and a female. A female ran into a bedroom
5 I believe. And at that time was calling, I think, calling
6 9-1-1. You could hear some things, I think, on a
7 recording from them I believe. There was other charges
8 involved in the case that did not go to trial because that
9 witness did not make herself available for trial, but
10 there were also charges separately from the burglary and
11 armed robbery and all that he went to trial on that could
12 have gone to trial, but the State wasn't able to go
13 forward on those because she wasn't there. But it was an
14 armed home invasion at night with a few -- three people I
15 believe that police got relatively quickly, were able to
16 follow a trail of evidence different things away from the
17 home, that led them to a -- not a housing development, but
18 I think Mr. Jett characterized it as the projects, so I'll
19 go with his characterizations and say some homes that
20 would be considered in the projects in Florence. They
21 found some clothes that was discarded there. I think on
22 the way they found the gun. They might have found a
23 toboggan on the way there on a -- sort of just cement
24 porch, I guess, what you would call it outside of a house.
25 They found discarded clothes like a hoodie and a sweat

1 shirt like layers of clothes somebody would wear in the
2 wintertime. And then not far from that location they
3 found Mr. Jett underneath a car. He had on jeans and a
4 T-shirt and, of course, it was like December 31st. It was
5 like -- I want to say it was New Year's Eve without
6 looking and cold outside and they found him there. And
7 then arrested him at that point in time. And some of the
8 clothes that were found there was -- an item that they
9 found on the way along the path that they followed looking
10 for Mr. Jett, there was items that had his DNA on it or at
11 least an item.

12 Q Okay. So Mr. Jett was found at the apartment complex
13 underneath a car?

14 A Correct.

15 Q How far away were the items of clothes from the car?

16 A Not very far, I mean, certainly -- I don't want to
17 necessarily just characterize it, but it could have been
18 as close as from me to you certainly not further away from
19 where I am to the back of the courtroom or anything like
20 that. I mean, it was certainly visible from where they
21 found him -- the clothes were visible from where they
22 found him.

23 Q Okay. And he was wearing jeans and a T-shirt?

24 A Right, and a short-sleeve T-shirt.

25 Q Do you recall if he was wearing gloves?

1 A I don't recall. I have pictures right here that may
2 show what he had on exactly. There are pictures
3 indicating he was wearing gloves.

4 Q Okay. Did you -- did Mr. Jett ever indicate to you
5 as to why he was wearing those gloves?

6 A I don't think specifically he indicated to me why he
7 was wearing the gloves. Anything he would have indicated
8 to me about why he would have been wearing the gloves
9 would have not involved -- he always denied any
10 involvement in this event.

11 Q Okay. Did you talk to Mr. Jett about his version of
12 events that happened that night?

13 A His version was he was drunk and needed a place to
14 sleep and chose underneath that car to do that.

15 Q Was he walking drunk or was he just...

16 A I don't recall the circumstances with why he had --
17 you know, what he said he had -- whether he had been to a
18 New Year's Eve party or what.

19 Q But he was drunk and decided to climb up underneath
20 the car to sleep it off?

21 A Right.

22 Q Okay. Now, his statement to the police do you recall
23 a pretrial hearing on the statement? It's a Jackson vs.
24 Denno hearing?

25 A Yeah, yes, sir.

1 Q Okay. And you argued that Mr. Jett invoked his right
2 to an attorney in his recorded statement where he says
3 where is my lawyer?

4 A Yes, I did.

5 Q Okay.

6 MR. WALLER: Judge, just for clarity sake,
7 Mr. Key keep referring to two statements given, he can
8 just refer to which one for the purposes of the record.

9 THE COURT: All right.

10 BY MR. KEY:

11 Q That would be the second statement he made. Do you
12 recall there being a first statement?

13 A I do.

14 Q And do you recall what the first statement was?

15 A Off the top of my head, I do not recall what the
16 first statement was.

17 Q Do you recall if there was a gun found nearby along
18 the path?

19 A Yes, there was a gun found nearby along -- it was
20 found along the path. I want to say that -- like I said,
21 I think law enforcement got to the scene pretty quickly
22 and folks ran out the back. And I think they must have
23 scattered in different directions, but anyway one person
24 they saw the direction that person went and that's the way
25 that law enforcement went and along that way they found

1 some things discarded. They found an ID I think of some
2 kind. They found a gun, a handgun. And there may have
3 been other things that they found on the way before it
4 finally led them to the location where they found Mr.
5 Jett.

6 Q Okay. But they did find a gun?

7 A Yes, sir.

8 MR. KEY: Your Honor, it's in the record. His
9 first statement was to the effect of I don't know anything
10 about a gun just for clarification.

11 THE COURT: Okay.

12 BY MR. KEY:

13 Q But your main focus at trial was to challenge the
14 Fifth Amendment where is my lawyer?

15 A Right, because I think the first statement was given
16 before he started saying where is my lawyer and that kind
17 of thing. I mean, I challenge the statement I felt like I
18 had grounds to challenge, so it wasn't like I want to keep
19 this one out, but not this one. I just challenge the one
20 that I felt like I had a challenge to.

21 Q Okay. Did you discuss with Mr. Jett any defenses in
22 his case?

23 A I mean, we discussed his case fully and discussed the
24 evidence against him and all of that. This was always a
25 he didn't do it defense, okay. It wasn't we were -- there

1 weren't any legal defenses to discuss with him as far as,
2 you know, self defense nothing like that in this kind of
3 case. There weren't legal defenses to discuss with him.
4 This was always defense of he didn't do this and we're
5 going to present a case to the jury that the jury would
6 find him not guilty based on the evidence not supporting
7 the charges and all that. They haven't proven beyond a
8 reasonable doubt that Mr. Jett was involved in this
9 matter.

10 Q Okay. Do you recall the receiving the DNA evidence?

11 A Yes, sir.

12 Q Okay. I believe that it was three types of hats and
13 two sweat shirts?

14 A I think so.

15 Q A green sweat shirt and gray sweat shirt?

16 A That's right.

17 Q Okay. Do you recall if Mr. Jett was excluded from
18 any of the -- as a contributor to any of those items?

19 A He was excluded on some of the items, yes.

20 Q Okay. But he did match the gray sweat shirt?

21 A Correct.

22 Q But his DNA was not on the green sweat shirt?

23 A That's right.

24 Q Okay. Do you recall how the State tried to argue
25 that he was wearing both of these sweat shirts?

1 A I remember not specifically, but I remember -- I
2 remember Mr. Jepertinger making a closing argument in
3 regards to that. I remember me as part of my closing
4 giving an indication as to how his characterization of
5 things would not have been supported by the evidence, but
6 I don't recall specifically what the State put forth in
7 that regard.

8 Q Okay. Did Mr. Jett ever give you any witnesses to
9 look into?

10 A No, sir, no one witnesses as far as like to help him
11 to call in his case. He always maintain he had no
12 involvement this case, so he didn't have any witnesses in
13 regards to all that. I think he did give me his parents'
14 information and I have their phone numbers in the file and
15 I pretty sure I called them. And I got messages where
16 they had called me and I can't be for sure, but it seems
17 like they were at the trial. So, I mean, I think his
18 parents were contacted.

19 Q Did you present any witnesses in this case?

20 A I don't believe so. I know I had two on the witness
21 list.

22 Q What would be your reason for not calling any
23 witnesses?

24 A My -- I don't -- I wouldn't have called any witnesses
25 if I didn't think that there were any witnesses that were

1 going to help him, I wouldn't have call any witnesses. If
2 I felt like I had witnesses that would have helped his
3 case, then I would have.

4 Q Okay. Do you recall going over Mr. Jett's right to
5 testify at trial?

6 A Yes.

7 Q Okay. Did you -- how did you go over those rights
8 with him?

9 A I went over with him and let him know he has a right
10 to testify, that that's his decision, that if he chose to
11 testify that the State could use any prior record he had
12 through impeachment purposes within the last ten years as
13 long as it carries more than a year in jail and all of
14 that and would tell him that he didn't have to testify if
15 he did not want to, but I made sure he understood the
16 decision to testify was his and his alone. And I'm
17 certain that my advice to him was to not testify. I
18 didn't think that -- I didn't think that him testifying
19 was going to help his case and so that would be why that
20 would be my advice to him. I felt like the Solicitor in
21 this case, I think, there was a number of things that he
22 could have been cross-examined about and I would have been
23 very concerned of how Mr. Jett would have been able to
24 handle that. I didn't think that was in his best
25 interest, so I did advise him not to, but I certainly let

1 him make that decision.

2 Q Okay. Do you recall the State making any plea offers
3 in this case?

4 A Yes, sir, Mr. Jett was right on all of that. I think
5 at first there wasn't any plea offer. At one point Mr.
6 Jepertinger offered him a 25-year plea offer. And then
7 sometime before trial, but, I think, it was pretty close
8 to the trial he offered him the 15 years, which Mr. Jett
9 also turned down. I know that it was turned down. The
10 trial started, I think, on the 20th of April 2015. And my
11 notes indicate that the 15-year offer had expired on that
12 previous Friday the 17th of April. So those the two
13 offers that were made.

14 Q And he refused those offers?

15 A That's correct.

16 Q Okay. Do you recall your relationship representing
17 Mr. Jett?

18 A I mean, I don't recall ever having any -- Mr. Jett
19 and I have any kind animosity or anything like that. You
20 know, he didn't like the offers that he had made, that's
21 not unusual. And there's plenty of times that clients
22 don't like offers and they express that, but not in a
23 necessarily in a mean or angry or anything way, very
24 calmly, that doesn't mean that they're disagreeable or
25 that they're difficult to get along with just because they

1 tell me that they don't want to accept an offer. I guess
2 the point I'm trying to make -- and I don't recall any
3 instances of Mr. Jett and I butting heads so to speak, you
4 know. I gave him the advice that I thought was good
5 advice and, you know, the decisions that he had in this
6 situation were whether to go to trial and once at trial
7 whether to testify. And, you know, I had advised him I
8 thought he should plea, you know, based on the evidence
9 and all that. But, again, that's just an area where
10 attorneys and clients can disagree, but they don't have to
11 be -- to do so, you know, angry at one another. And I
12 don't recall us ever having any kind of an issue in that
13 regard.

14 Q Did you discuss the DNA evidence with Mr. Jett?

15 A Yes.

16 Q Did you discuss Mr. Jett's two statements that he
17 made?

18 A Yes, sir.

19 Q Okay. So he was aware of the two statements?

20 A Yes.

21 Q And the DNA evidence?

22 A Yes.

23 Q Okay. And did you discuss the statements and the DNA
24 evidence was that before trial?

25 A Yes, sir.

1 Q Okay. And you don't specifically recall how many
2 meetings you had with Mr. Jett?

3 A I do not.

4 Q Okay. Three?

5 A Easily three, but I don't know the exact number, but
6 it was -- I would say it was more than three, but I don't
7 know -- but it is a situation where, you know, this case
8 -- Mr. Jett always denied any involvement, okay. And
9 there was a decent length of time between a 25-year offer
10 and the 15-year offer. I think the 15-year offer was
11 partly spurred by the State not being able to get in touch
12 with one of the victims that were there and not being able
13 to go forward on those charges. I don't know for sure,
14 but I think that is what sort of spurred on
15 Mr. Jepertinger deciding to make that reduced offer
16 because he had dug his heels in pretty good on 25 and no
17 less than that. So there may have been a fairly decent
18 gap of time between talking with him because his case was
19 pretty much in a trial posture from the start. You know,
20 and that is where we ended up going so.

21 Q Okay.

22 A So I don't remember exactly how many times we met.
23 There were probably gaps where we didn't meet maybe as
24 much as he would have like for me to have met with him,
25 but we certainly met enough times to properly prepare his

1 case for trial. And we met enough times for me to have
2 gone over the evidence with him.

3 MR. KEY: No further questions, your Honor.

4 THE COURT: All right.

5 CROSS-EXAMINATION

6 BY MR. WALLER:

7 Q Good morning, Mr. Meetze. How are you?

8 A I'm all right. How you doing?

9 Q I'm doing well. Thank you for asking. Mr. Meetze,
10 you just testified that you and Mr. Jett had a chance to
11 review the DNA evidence in this case?

12 A Yes, sir.

13 Q Okay. Do you recall I think it was five items were
14 actually recovered or approximately five items three hats
15 and two sweat shirts?

16 A I think that's right.

17 Q Okay. If you recall, how many of those items tested
18 that showed Mr. Jett's DNA?

19 A I think just the one.

20 Q Just the gray sweat shirt, is that right?

21 A I think so.

22 Q There were other DNA profiles developed on some other
23 items, do you recall that?

24 A I do. I remember him being excluded from several of
25 them.

1 Q Okay. The other ones did develop other profiles?

2 A Right. This was not a situation where it was a
3 mixture and they couldn't determine anything. There were
4 other profiles developed that Mr. Jett could be excluded
5 as a contributor.

6 Q Okay. There was actually a CODIS hit on one of the
7 items, do you recall that one of the hats I believe?

8 A I don't necessarily recall it, but I certainly have
9 no -- yeah, I see where there was a CODIS hit.

10 Q Matthew Thomas or Michael Thomas?

11 A Right.

12 Q Okay. And Mr. Thomas was actually in the detention
13 center or incarcerated at the time of this incident. Did
14 you have learn that?

15 A I think so now that you bring it up. I think, we
16 were aware of that.

17 Q Okay. So there were other people -- I guess, the
18 best way to put this, there was evidence that other people
19 had been wearing this clothing as well?

20 A Right.

21 Q And, I guess, back up Mr. Jett's story that he wasn't
22 involved?

23 A Yes, sir.

24 Q Okay. The victim in this case was never able to
25 identify anybody?

1 A Right, that's right.

2 Q Never saw anybody's face?

3 A No, I think he gave a general description of maybe
4 complexion and, I think, he gave sort of an age
5 description based on how the voice sounded I think.

6 Q He said young man's voice?

7 A Young man's voice or something along those lines, but
8 no other identification that I can recall.

9 Q Okay. What is your process when it's a case -- I
10 think, you described it as I didn't do it type case? What
11 is your process as far as preparing that if your client
12 maintains that they didn't have anything to do with the
13 situation and weren't involved at all?

14 A It's not a one size fits all thing. I mean, it's
15 often times that that's how you go at a case. There's
16 many times that you're trying a case your client says they
17 didn't do it and so that's your focus at trial is
18 convincing a jury either they didn't do it or whether the
19 State couldn't prove it, but there's not a one necessarily
20 cookie-cutter way to prepare those trials. It's all based
21 on the facts of each individual case and, you know, you
22 take what the facts give you and do your best to fashion
23 an argument that supports your position.

24 Q Okay. In this case, did you do any outside
25 independent investigation?

1 A I don't believe so.

2 Q Okay. And is that because Mr. Jett maintained it
3 wasn't him?

4 A Right, primarily.

5 Q Mr. Jett was the only one of the three individuals
6 that was ever arrested or ever tried?

7 A That's correct. At that point in time that's
8 certainly true and I'm not aware and don't believe anybody
9 has been arrested since that time, so I'm pretty sure that
10 as things stand today Mr. Jett is the only person was
11 ever arrested on any of this.

12 Q Okay. And in his two statements to law enforcement
13 and, you know, up through his trial, he never gave to law
14 enforcement or anybody else the names of anybody, you
15 know, any other people, is that right?

16 A That's right.

17 Q Okay. He went through the trial all by himself and
18 he's the one serving the sentence?

19 A That's correct.

20 Q Okay. In your mind is that go back to the same -- to
21 his defense I didn't do this?

22 A Sure. I mean, you can certainly say that.

23 Q In your experience if a person had given information
24 about some co-defendants, would that have helped his case?

25 A It certainly could have. You know, I can't say. You

1 know, there would have been, I think, something that could
2 corroborate their involvement, but if some of these other
3 DNA hits came back to the other folks that he would have
4 named or whatever, then certainly that's possible. And
5 certainly there's been plenty of times where I've had
6 clients that did offer cooperation that the State did
7 subsequently help. So if he gave good information, I
8 would have no reason to think that it would not have
9 helped Mr. Jett.

10 Q Okay. The fact that he didn't do that kind of goes
11 back again to his defense of I didn't do this?

12 A Yes, sir.

13 MR. WALLER: Beg the Court's indulgence please.

14 (WHEREUPON, a pause in the proceedings.)

15 MR. WALLER: Nothing further, Mr. Meetze. Thank
16 you.

17 THE COURT: All right. Any other witnesses or
18 any follow up?

19 MR. KEY: Nothing from the State, your Honor.

20 THE COURT: Thank you, Mr. Meetze. You have a
21 good day.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: All right. Anything you want to put
25 on the record?

1 MR. WALLER: Nothing by way of argument, your
2 Honor. I just ask that you consider the full record.

3 THE COURT: I will do that and I'll let you know
4 something soon. Thank you.

5 END OF REQUESTED TRANSCRIPT

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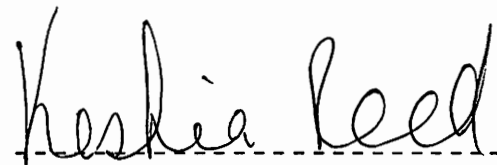
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 45, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 6th day of September, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 27th day of March 2022.



Keshia Reed, Court Reporter

FILEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCE) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

2022 MAY 18 PM 2:36

Antwan Jamal Jett, #358650

) CASE NO. 2018-CP-21-3142

DORIS POULOS O'HARA,

Applicant, CCCP & GS
FLORENCE COUNTY, SC

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RECEIVED
MAY 27 2022
S.C. SUPREME COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Antwan Jamal Jett, on December 10, 2018. Respondent made its Return and Motion for a More Definite Statement on March 13, 2019. An evidentiary hearing into the matter was convened on September 6, 2019, at the Florence County Courthouse before the Honorable William H. Seals, Jr. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Samuel L. Key, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Testimony was additionally provided by Lanelle C. Durant and Vick Meetze, Esquires. Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted during the April 2014 term of the Florence County Grand Jury for: first-degree burglary; assault with intent to commit first-

CERTIFIED: A TRUE COPY

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2018-CP-21-3142


 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

degree criminal sexual conduct; possession of a weapon during the commission of a violent crime; two counts of armed robbery; and criminal conspiracy. (2014-GS-21-0525). Applicant was represented by Assistant Public Defender Vick Meetze, and Deputy Solicitor John Jepertinger prosecuted the case. Applicant proceeded to a jury trial on April 20, 2015, before the Honorable D. Craig Brown. Applicant was convicted as indicted and Judge Brown sentenced Applicant to concurrent terms of imprisonment of thirty years for first-degree burglary, time served for the weapons charge, twenty-five years for armed robbery, and five years for criminal conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf, and the appeal was perfected by Appellate Defender LaNelle Cantey Durant of the South Carolina Office of Indigent Defense. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Jett, 423 S.C. 415, 814 S.E.2d 635 (Ct. App. 2018). Thereafter, Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari to review the Court of Appeals' decision; however, the Court denied certiorari on October 18, 2018. State v. Jett, S.C. Sup. Ct. Order dated October 18, 2018. The Remittitur was issued on November 20, 2018. Applicant commenced this PCR action December 10, 2018.

FACTS

Michael Barr was awoken by a knock at his door at approximately 3:30 a.m. on December 31, 2013. (Trial Tr. pp. 83-85). When he opened the door, "[t]hree people with hoodies on tied across their face came in," assaulted him, and demanded money. (Trial Tr. pp. 85-86). Barr stated the three men were African American and gave general descriptions of their height, weight, skin color, and clothing. (Trial Tr. pp. 87-93). Barr said the green hoodie man put "a small Derringer" in his face. (Trial Tr. pp. 86-87; p. 93). Barr said one of the men picked up his hunting knife. (Trial Tr. pp. 94-95). Barr testified the three men eventually ran out the back door. (Trial Tr. p.

88; p. 98). Barr stated pill bottles were missing from his room. (Trial Tr. p. 96). Barr's female roommate was in her bedroom when two of the men entered her room, and Barr heard her screaming. (Trial Tr. p. 88).

Officer William Blackmon responded to the scene and saw two suspects running away, one of whom was wearing a green hoodie. (Trial Tr. pp. 136–137). Though Blackmon gave chase, he did not apprehend anyone. (Trial Tr. pp. 139–141). Blackmon retraced the path he had taken and found a hunting knife on the ground. (Trial Tr. pp. 142–143).

Officer Thomas Herman, Jr., responded to the scene for "a possible home invasion." (Trial Tr. pp. 123–124). As he arrived, he saw "two subjects running" (one of whom was wearing a "green or gray" hoodie) and Officer Blackmon in a foot chase with them. (Trial Tr. pp. 125–126; pp. 134–135). Herman did not apprehend anyone but walked along their probable path and found "a small caliber handgun, a small revolver style Derringer." (Trial Tr. pp. 126–130; p. 135).

Officer Lacey Allen and Corporal Legrande Gowdy also responded to the scene—after Herman and Blackmon chased the potential suspects. (Trial Tr. pp. 144–146; pp. 178–188). Allen and Gowdy found pill bottles, a green hoodie, a gray pullover,¹ mask, and hat that "matched the description of the one that the suspect was wearing." (Trial Tr. pp. 148–151; p. 155; pp. 189–190; p. 199). Allen then noticed someone was lying underneath a car. (Trial Tr. pp. 150–151). Allen drew her weapon and ordered the individual to get out from under the car. Though the individual began to move from under the car, he hesitated when Gowdy appeared. (Trial Tr. p. 152; pp. 191–192; pp. 209–210). Gowdy told the individual he identified in court as Applicant to get out from under the car. When Applicant did not do so, Gowdy tased him, and Applicant was handcuffed.²

¹ A SLED forensic scientist identified Applicant's DNA on the gray sweatshirt. (Trial Tr. p. 173; p. 179).

(Trial Tr. p. 153; pp. 192–193). While Gowdy was reading Applicant his *Miranda* rights, Applicant said, "I don't know anything about that gun." (Trial Tr. pp. 193–194).

Corporal Felicia Jones—who was an investigator at the time—met with Applicant while he was detained in the back of a patrol vehicle. (Trial Tr. pp. 237–238). Jones borrowed Gowdy's voice recorder for this conversation, read Applicant his Miranda warnings, and questioned him about the incident. (Trial Tr. pp. 238–239). Jones stated Applicant was arrested after giving his statement because his story—he simply fell asleep under that car—was implausible. (Trial Tr. pp. 244–245).

As a result, Applicant was charged with first-degree burglary, assault with intent to commit criminal sexual conduct – first degree, possession of a weapon during the commission of a violent crime, one count of armed robbery, and criminal conspiracy.

ISSUES RAISED

Applicant *timely* commenced this post-conviction relief action on December 10, 2018. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance Co[u]nsel"
 - a. "Trial counsel failed to act as my diligent advocate"
2. "Ineffective Assistance Trial Counsel"
3. "Ineffective Appellate Counsel *Miranda v. Arizona*"
 - a. "Appellate counsel failed to act as my diligent advocate"
4. "I was denied my constitutional rights fif[t]h, sixth, and fourteenth amendment violations"

At the evidentiary hearing, PCR counsel for Applicant proceeded on the following allegations:

1. Ineffective Assistance of Appellate Counsel
 - a. Failure to petition for writ of certiorari to the Supreme Court of the United States.
2. Ineffective Assistance of Trial Counsel
 - a. Failure to properly investigate and prepare for trial.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY³

On direct examination, Applicant testified that his "YOA parole" was being revoked because of his arrest, and trial counsel was appointed to his case before the revocation. (PCR Tr. pp. 6, l. 19 – 7, l. 5). Applicant testified that while he was in the jail in Florence, trial counsel never came to see him. (PCR Tr. p. 7, ll. 3 – 7). Applicant testified that trial counsel came to see him when he was transferred to Turbeville about ten to eleven months after his arrest. (PCR Tr. p. 7, ll. 8 – 20). Applicant testified that when trial counsel finally went to see him, they only discussed a plea bargain of twenty-five years. (PCR Tr. p. 7, ll. 21 – 24). Applicant testified that trial counsel never discussed his charges with him and did not discuss the potential penalties of those charges. (PCR Tr. p. 8, ll. 7 – 11). Applicant testified that trial counsel did not discuss what the State would have to prove for him to be found guilty of the charges. (PCR Tr. p. 8, ll. 12 – 14).

Applicant further testified that trial counsel did not discuss the DNA evidence with him. (PCR Tr. p. 8, ll. 18 – 23). Applicant stated that trial counsel never discussed the articles of clothing that were tested for DNA until the trial. (PCR Tr. p. 9, ll. 5 – 15). Applicant provided that "during the trial, [trial counsel told him] don't get on the stand because [his] prior arrests before [he] got locked up for the burglary first and armed robbery. (PCR Tr. p. 9, ll. 13 – 22). Applicant then stated trial counsel never spoke to him about the DNA evidence. (PCR Tr. p. 9, ll. 23 – 25).

Applicant then testified that he gave two statements to the police, but he did not remember any of them, and trial counsel never discussed those statements with him. (PCR Tr. p. 10, ll. 1 – 19). Applicant further testified that he never gave trial counsel names of people he wanted him to talk to or any information to investigate because trial counsel never discussed any of that with him.

³ PCR Counsel did not ask Applicant questions regarding his Ineffective Assistance of Appellate Counsel allegation.

(PCR Tr. p. 10, ll. 17 – 23). Applicant stated the only thing trial counsel discussed with him was the plea deal of twenty-five years and not to take the stand at trial. (PCR Tr. pp. 10, l. 24 – 11, l. 3).

Applicant then testified to the following regarding why he felt like he should not have been arrested:

Because I feel like the place and time I been at, I just feel like it wasn't a proper arrest because I ain't never was in that situation before. So I couldn't never secure or represent myself at that point in time. And I barely didn't know what I was speaking about because I was intoxicated and drunk, that's when I was telling the investigator. And I was trying to plead the Fifth as much as possible, you know what I'm saying, but I still end up getting locked up behind them saying a statement that I made.

(PCR Tr. p. 11, ll. 6 – 15). Applicant then testified that trial counsel met with him three times.

(PCR Tr. p. 12, ll. 1 – 3). Applicant testified that on trial counsel's first meeting with him, they discussed a plea of twenty-five years; on his second meeting, a plea of fifteen years, and on the third meeting, he told him he had a grand jury indictment for charges. (PCR Tr. p. 12, ll. 4 – 20). Then, Applicant testified that trial counsel could not hold a conversation with him "because of his attitude problem." (PCR Tr. p. 13, ll. 2 – 4).

At the end of direct examination, PCR counsel asked Applicant if there was anything else he wanted the Court to know, and he responded:

Well, another thing Mr. Meetze he didn't never tell me about anything about my case at all. He didn't never let me know anything before trial that I suppose know. He didn't never have -- showed me anything or went over anything with me before the trial.

(PCR Tr. pp. 13, l. 19 – 14, l. 2).

On cross-examination, Applicant testified that he remembered being arrested for "this crime," but he did not remember making statements to the police because he was intoxicated. (PCR Tr. p. 14, ll. 7 – 13). Applicant testified that he found out about the statements in court when trial counsel "whisper[ed] something into his ear," but he did not recall the statement. (PCR Tr. pp. 14, l 11 – 15, l. 6). Applicant testified that trial counsel presented a twenty-five-year plea, a fifteen-year plea, and he rejected those because he wanted something better, but he did not know his charges. (PCR Tr. p. 15, ll. 9 – 20). Applicant then testified that he did receive discovery but could not remember when and that all he received from trial counsel was the grand jury indictment. (PCR Tr. pp. 15, l. 21 – 22, l. 6).

Applicant testified that he tried to give trial counsel names of family members and their numbers, but trial counsel "brushed away" when he tried to provide the information. (PCR Tr. pp. 16, l. 22 – 17, l. 4).

APPELLATE DEFENDER DuRANT'S TESTIMONY

On direct examination, LaNelle DuRant (DuRant) testified as to what decisions go into what issues to raise and provided the following:

Well, the process is most of you probably know, we get the transcript. We review the transcript for any objections a trial attorney has to make an objection under the appellate court rules. Then we look to see if the judge made an error of law in his ruling on admitting evidence or not admitting evidence. And then we have to look at the case law, the statute to see if we think the judge was correct in his ruling, so we review the transcript and any exhibits. So in doing that, I think there was an excellent issue because I think Mr. Jett was requesting an attorney under the case law and the statutes. And we had the tape that was admitted as an exhibit. And I think it was very clear on the tape where he was saying where's my attorney, where's my attorney at. So I felt like that was a really strong issue.

(PCR Tr. pp. 18, l. 15 – 19, l. 4). DuRant testified that she did not remember any issues that were not preserved and that once you have a strong issue, any secondary issue could weaken the strong issue. (PCR Tr. p. 19, ll. 9 – 18). DuRant was asked by PCR counsel whether there were strong issues present but that she could not raise because they were not preserved, to which she replied, "I honestly do not remember." (PCR Tr. p. 19, ll. 9 – 23).

DuRant then provided how she prepared for briefing and provided the following:

Well, first we look at the law to make sure we had the issue preserved, that's the first issue because there are steps to preserving the issue and the trial counsel did make excellent preservation of this issue. And then we look to the law to see if we thought the judge was right. We read case law related to the Miranda issue, interrogation, the Davis case, Wannamaker. Those cases that I raised and any other cases that might have been secondary to that. You also want to shepardize to see if there were any new issues. We look at the U.S. Supreme Court issues, and, of course, the South Carolina Supreme Court. And in reviewing the case law and the issues and any statutes, you come up with the issue and make sure I worded it carefully and then the brief history and then the arguments.

(PCR Tr. p. 20, ll. 2 – 16). DuRant then testified that after the South Carolina Supreme Court denied her petition for cert. (PCR Tr. p. 21, ll. 1 – 3). DuRant was then asked if there was anything else she could have done after the South Carolina Supreme Court denied certiorari to which she provided the following:

There is one. If there's a constitutional issue, we can file a separate petition to the United States Supreme Court and I think probably could have done that in Mr. Jett's case. I have done it in other cases not all of them, but some of that I felt very strongly about. I never -- the Supreme Court has never accepted one of my cases unfortunately, but I could have done that in Mr. Jett's case, but for some reason, I did not follow through with that.

(PCR Tr. p. 21, ll. 6 – 14). DuRant then testified that she thought Applicant clearly asked for an attorney twice, and that issue was winnable. (PCR Tr. pp. 21, l. 20 – 22, l. 2).

On cross-examination, DuRant testified to the standard of invoking the persons 5th Amendment right to counsel. (PCR Tr. p. 23, ll. 11 – 18). DuRant testified that Judge Brown found Applicant's request for counsel was ambiguous, and so did the Court of Appeals in a 2-1 vote. (PCR Tr. p. 23, ll. 11 – 24). DuRant testified that the Court of Appeals rehearing was denied. (PCR Tr. p. 24, ll. 10 – 14). DuRant further testified that the South Carolina Supreme Court denied a petition for rehearing because the Court of Appeals did not issue an opinion and just issued an order. (PCR Tr. p. 24, ll. 17 – 24).

ASSISTANT PUBLIC DEFENDER MEETZE'S TESTIMONY

On direct examination, Vick Meetze (Meetze) testified that he met with Applicant on a number of occasions to include at the jail and at court for his bond hearing. (PCR Tr. p. 27, ll. 10 – 18). Meetze testified that he received and reviewed discovery with Applicant. (PCR Tr. p. 27, ll. 19 – 24). Meetze then provided a brief recitation of the discovery as follows:

This was a home invasion with, I think, three folks going into in a home. There were two people, I think, in the home a male and a female. A female ran into a bedroom I believe. And at that time was calling, I think, calling 9-1-1. You could hear some things, I think, on a recording from them I believe. There was other charges involved in the case that did not go to trial because that witness did not make herself available for trial, but there were also charges separately from the burglary and armed robbery and all that he went to trial on that could have gone to trial, but the State wasn't able to go forward on those because she wasn't there. But it was an armed home invasion at night with a few -- three people I believe that police got relatively quickly, were able to follow a trail of evidence different things away from the home, that led them to a -- not a housing development, but I think Mr. Jett characterized it as the projects, so I'll go with his characterizations and say some homes that would be considered in the projects in Florence. They found some

clothes that was discarded there. I think on the way they found the gun. They might have found a toboggan on the way there on a sort of just cement porch, I guess, what you would call it outside of a house. They found discarded clothes like a hoodie and a sweatshirt like layers of clothes somebody would wear in the wintertime. And then not far from that location they found Mr. Jett underneath a car. He had on jeans and a T-shirt and, of course, it was like December 31st. It was like -- I want to say it was New Year's Eve without looking and cold outside and they found him there. And then arrested him at that point in time. And some of the clothes that were found there was -- an item that they found on the way along the path that they followed looking for Mr. Jett, there was items that had his DNA on it or at least an item.

(PCR Tr. pp. 28, l. 2 – 29, l. 11). Meetze testified that Applicant's version of the events of that night was that he was drunk and decided to sleep underneath a vehicle. (PCR Tr. p. 30, ll. 13 – 14).

Meetze then testified that during the Jackson v. Denno hearing, he argued that Applicant invoked his right to counsel and felt he had an argument about the second statement Applicant provided law enforcement. (PCR Tr. pp. 30, l. 22 – 31, l. 4; p. 32, ll. 13 – 20). Meetze then provided the following regarding discussions with Applicant about his defenses:

I mean, we discussed his case fully and discussed the evidence against him and all of that. This was always a he didn't do it defense, okay. It wasn't we were – there weren't any legal defenses to discuss with him as far as, you know, self defense nothing like that in this kind of case. There weren't legal defenses to discuss with him. This was always defense of he didn't do this and we're going to present a case to the jury that the jury would find him not guilty based on the evidence not supporting the charges and all that. They haven't proven beyond a reasonable doubt that Mr. Jett was involved in this matter.

(PCR Tr. pp. 32, l. 23 – 33, l. 9). Meetze testified to the DNA evidence on a sweatshirt matching Applicant's. (PCR Tr. o. 33, ll. 10 – 23).

Meetze testified that Applicant did not provide any witnesses, although he may have had two witnesses on the witness list, but did not call them for strategic reasons. (PCR Tr. pp. 34, l. 8 – 35, l. 3). Meetze testified that he went over Applicant's rights to testify and the pros and cons of that decision. (PCR Tr. pp. 35, l. 9 – 36, l. 1). Meetze testified that Applicant refused both plea offers the Solicitor made for twenty-five years and fifteen years. (PCR Tr. p. 36, ll. 4 – 13). Meetze testified that he easily met with Applicant three times or more because two of those meetings were to present the plea offers from the Solicitor, which Applicant rejected. (PCR Tr. p. 38, ll. 5 – 20).

On cross-examination, Meetze testified that there was a sweatshirt found at the scene that had a CODIS hit on a person that was presently in prison. (PCR Tr. pp. 39, l. 9 – 40, l. 20). Meetze testified to the process of preparing a case as follows:

It's not a one size fits all thing. I mean, it's often times that that's how you go at a case. There's many times that you're trying a case your client says they didn't do it and so that's your focus at trial is convincing a jury either they didn't do it or whether the State couldn't prove it, but there's not a one necessarily cookie-cutter way to prepare those trials. It's all based on the facts of each individual case and, you know, you take what the facts give you and do your best to fashion an argument that supports your position.

(PCR Tr. p. 41, ll. 14 – 23). Meetze testified that Applicant was never identified by the victims and never provided names of other people who may have been involved. (PCR Tr. pp. 42, l. 2 – 43, l. 9). Meetze testified that because Applicant did not provide other names that it went to his defense that he was not involved in the crime. (PCR Tr. p. 43, ll. 10 – 12).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony

accordingly in its discussion below. This Court finds the combined record of the trial transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

Ineffective Assistance of Trial Counsel

Applicant alleges that he received ineffective assistance of his trial counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler,

286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew

of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing

court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687. (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the

prejudice prong only. *Id.*

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claim is addressed below:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO INVESTIGATE AND PREPARE

Applicant alleges Trial Counsel was ineffective for failing to properly investigate and prepare to defend Applicant at trial. This Court finds Applicant has failed to meet his burden.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

In order to prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation

prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds Trial Counsel credibly testified that Applicant did not provide any witnesses that could support Applicant. Trial Counsel credibly testified that there were no defenses to prepare for because this was a case of Applicant did not do it. Trial Counsel credibly testified they presented to the jury that the evidence did not support the charges beyond a reasonable doubt. Furthermore, this Court finds Applicant has failed to present any additional information that could have been discerned through further investigation; additionally, Applicant's allegation that Trial Counsel failed to prepare is refuted by Trial Counsel's testimony. Applicant has failed to establish how Trial Counsel's performance was deficient or how Trial Counsel's performance prejudiced Applicant. Therefore, this allegation is **denied and dismissed with prejudice**.

Ineffective Assistance of Appellate Counsel

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO SEEK DISCRETIONARY REVIEW

Applicant alleges Appellate Counsel was ineffective for failing to petition for writ of certiorari to the Supreme Court of the United States in his direct appeal. However, Applicant had no right to seek discretionary review, and therefore, no right to effective representation when seeking discretionary review. *See Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 543-44 (2006) ("We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion.") *Cf. Jones v. Barnes*, 463 U.S. 745 (1983) (Appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on direct appeal).

This Court finds Appellate Counsel credibly testified that she perfected Applicant's direct appeal. Appellate Counsel credibly testified that the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences and denied her petition for rehearing. Appellate Counsel credibly testified that the South Carolina Supreme Court denied her petition for a writ of certiorari. Appellate Counsel credibly testified that she *could* have petitioned the United States Supreme Court but did not and does not always do it in every case that it is possible.

Furthermore, this Court finds Applicant has additionally failed in his burden to prove ineffective assistance of Appellate Counsel. Applicant had no right to seek discretionary review, and therefore, no right to effective representation when seeking discretionary review. Applicant has failed to prove deficiency on the part of Appellate Counsel and any prejudice therefrom. Therefore, for the reasons stated above, the Court **denies relief and dismisses the allegations with prejudice.**

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Trial Counsel and Appellate Counsel's representation was neither deficient nor prejudicial. 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 days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 10 day of May, 2022.


WILLIAM H. SEALS, JR.
Presiding Judge
Twelfth Judicial Circuit

FILED
2022 MAY 18 PM 2:36
DORIS POULOS O'HARA,
CCCP & GS
FLORENCE COUNTY, SC

RECEIVED

MAY 27 2022

S.C. SUPREME COURT