

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

ANDRE GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000002

APPENDIX

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO'S. 2011-GS-07-02109, 2011-GS-07-02110,
2011-GS-07-02111, & 2011-GS-07-02112

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

ORIGINAL

APRIL 23, 24, & 25, 2012

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

ANDRE GREEN

DEFENDANT

B E F O R E:

HON. J. DERHAM COLE, JUDGE; AND A JURY.

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

ON BEHALF OF THE STATE:

HON. PATRICK A. HALL
HON. JEFFREY STEPHENS

Present: Sergeant Andre Massey

ON BEHALF OF DEFENDANT:

HON. DONALD C. COLONGELI, LLC

Present: Defendant Andre Green

WANDA H. ROWE, CVR-MASTER
OFFICIAL COURT REPORTER

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1 BEGIN DAY ONE, APRIL 23, 2012,

2 11:18 A.M.

3 VOIR DIRE, BY THE COURT:

4 THE COURT: Thank you. Be seated. Good morning,
5 ladies and gentlemen of the jury panel. As the bailiff
6 just told you, my name is Derham Cole. I'm a resident
7 circuit judge from Spartanburg County, but I've been
8 assigned this week to preside over a term of General
9 Sessions Court here in Beaufort County. And that, of is
10 the term of court for which you have been selected to
11 potentially serve as jurors in.

12 I've got some questions that I'm going to ask you
13 in order to determine your qualifications to serve as a
14 juror. And when these questions apply to you, you are
15 required to respond to them. Sometimes a juror thinks a
16 question is asking you to provide some type of personal
17 information, and you might not want to provide it in
18 front of the audience. And if that's the case, then you
19 can wait until the end of this process and provide me
20 with that information. But you must respond to a
21 question where it applies to you, because I have to have
22 that information in order to determine your
23 qualifications to serve as a juror.

24 The first question is simply, were each of you
25 summoned by your correct and proper name? Or has your

1 name been changed by reason of a marriage or divorce or
2 otherwise, and it was not correctly reflected on the
3 juror summons? If that's the case, I'll ask that you
4 please provide us with that information.

5 Is any juror not now a citizen and resident of the
6 United States, as well as a citizen and resident of
7 Beaufort County, South Carolina? If you are not now
8 each of those, I will ask that you please stand.

9 Is any member of the jury panel not now at least 18
10 years of age?

11 Is any juror not a registered voter and not
12 qualified to register as a voter? You don't have to be
13 registered if you're qualified to register, but if
14 you're not registered and you're not qualified to
15 register as a voter, then that would disqualify you.
16 Does that apply to any juror?

17 JUROR: I'm not registered to vote, so, but I'm
18 here.

19 THE COURT: Okay. But you're qualified to register
20 if you wanted to?

21 JUROR: Only if I want to.

22 THE COURT: Okay. Thank you. Be seated. Does any
23 juror not have a driver's license or an identification
24 card issued by the Department of Public Safety?

25 Is any member of the jury panel unable to read,

1 write, understand or speak the English language? If you
2 are unable to do any one or more of those things, I
3 would ask that you provide me with that information.

4 JUROR: Sir?

5 THE COURT: Yes, ma'am.

6 JUROR: I speak some English, as you know, but I
7 don't have -- my number is 108.

8 THE COURT: 108? Okay.

9 JUROR: Yeah. My English is not very well, so I
10 don't know.

11 THE COURT: Well, you're understanding all my
12 questions right now?

13 JUROR: Yeah, I understand you.

14 THE COURT: And you're going to be able to answer
15 my questions if you need to?

16 JUROR: I think so.

17 THE COURT: Okay. Well, I think that's good
18 enough. If we have a problem later on, you let me know.
19 We'll address it. Okay?

20 JUROR: Okay. All right, sir.

21 THE COURT: Does any member of the jury panel have
22 less than a sixth grade education or its equivalent.
23 Less than a sixth grade education or its equivalent. If
24 so, I need you to provide me with that information.

25 Does any juror suffer from any type of mental

1 and/or physical infirmity which would render you unable
2 to provide efficient jury service? In other words, do
3 you suffer from any type of mental and/or physical
4 disability which would prevent you from being able to
5 carry out your duties as a juror? If so, I need you to
6 provide me with that information.

7 Has any member of the jury panel been convicted of
8 a crime for which you could have received more than one
9 year, and your civil rights have not been restored by
10 way of amnesty or pardon or otherwise? And what that
11 means is, if you were --

12 JUROR: Do pending charges fall within that same
13 category?

14 THE COURT: Well, are you going to let me finish
15 the question before you answer it? See, that's one
16 thing you got to do, you got to hear the question before
17 you can provide the answer, because if you don't know --
18 even though you think you're anticipating, oftentimes,
19 you don't get it right. So, this is a deliberate
20 process. So just listen to my question. And then, if
21 you need to respond to it, you can stand. And if you
22 need to ask me a question, you can do that, too.

23 If you've been found guilty of any type of crime,
24 whether you had a jury trial or whether you plead guilty
25 of a crime for which you could have received more than a

1 year, it disqualifies you from serving as a juror. It
2 doesn't matter that you did not actually go to jail. In
3 other words, you might have come to court and pled
4 guilty or had a jury trial and been found guilty of a
5 crime, and you might have been placed on probation. Or
6 perhaps only a monetary fine was imposed. But if you
7 are convicted of a crime for which you could have
8 received more than one year in jail, then that would
9 disqualify you from serving as a jury? So, does that
10 question apply to anyone? Did that answer your
11 question?

12 JUROR: (Indicated affirmative by nodding head.)

13 THE COURT: Okay. Is any member of the jury panel
14 a clerk, or deputy clerk of court, or state constable,
15 sheriff, or deputy sheriff, or the functional equivalent
16 of those, or a probate judge or county commissioner, a
17 magistrate, or any other county official? Or are you
18 employed within the walls of the courthouse? If you fit
19 into any of those categories, that would disqualify you
20 from serving. So, if that applies to you, I would ask
21 that you please stand.

22 Prior jury service also serves as both a
23 disqualification, as well as an exemption, depending
24 upon when that service was provided. If you have
25 already served as a circuit court juror during some

1 other term of court this year, 2012, that disqualifies
2 you from serving this week. You're only permitted to
3 serve once during the course of a calendar year. So,
4 has anyone already served this year in the circuit
5 court? If so, please stand.

6 Has any member of the jury panel served on the
7 Beaufort County grand jury this year or last year? If
8 so, please stand.

9 If you have provided jury service in the Court of
10 Common Pleas or the Court of General Sessions, each of
11 those are the circuit court. If you have provided jury
12 service during one of the previous two years, 2011,
13 2010, that would serve as an exemption, should you
14 choose to exercise it.

15 An exemption just means that you can't be required
16 to serve if you don't want to. So, if you served as a
17 circuit court juror during one of the previous two years
18 and you do not wish to serve this week, I can't make
19 you. So, does that apply to -- but if you want to stay,
20 you're welcome to. Does that apply to any juror? If
21 so, please stand.

22 If you're 65 years of age or older, you cannot be
23 required to served as a juror. Many do, but nobody can
24 make you. So, if you're 65 or older, and you do not
25 wish to serve, I would ask that you please stand.

1 If you are employed as a -- yes, ma'am.

2 JUROR: I'm over the age, and I have one problem
3 with on Friday I have surgery. Would that disqualify
4 me?

5 THE COURT: On Friday?

6 JUROR: Friday.

7 THE COURT: You just want to be excused on Friday?

8 JUROR: Yes.

9 THE COURT: All right. We'll excuse you for
10 Friday. You stay with us, now, if you want to.

11 JUROR: Thank you.

12 THE COURT: All right. Tell me what your number
13 is, please, ma'am. What's your number?

14 JUROR: 88.

15 THE COURT: Carol Garapolo?

16 JUROR: Yes.

17 THE COURT: All right. Excused on Friday. The
18 General Assembly has also provided for, has provided by
19 statute, for certain excuses based upon what's called
20 good and sufficient cause that permits a juror to be
21 excused from jury service, or to have your jury service
22 postponed for a later date, if that is satisfactory.

23 If you have legal custody of a child or children
24 who are less than seven years of age, and you have the
25 duty of care for that child or those children, and you

1 don't have anybody else to provide that care and
2 supervision if you're down here serving as a juror,
3 then, under those circumstances, you may be exempt from
4 serving. But they must be your children. You have to
5 have legal custody of them. And they must be less than
6 seven years of age, and be such that you don't have
7 anybody else to provide that care while you're here.

8 Does that apply to any juror? If so, please stand.

9 Okay. Let me start with, first, you're on the
10 front row. If you'll give me your number and your name,
11 please.

12 JUROR: Amanda Dubose, Number 72. I have a four-
13 year-old and a six-month-old. They currently go to
14 preschool and daycare. However, I need to be available
15 to pick them up by 5:30 each day, as my husband is not
16 available to do so. And my six-month-old had a doctor's
17 appointment today. He is sick. I do not know if he is
18 going to be able to go to daycare tomorrow. If he's
19 contagious, he can't go.

20 THE COURT: All right. So, you're children are
21 taken care of while you're here, except that you need to
22 be with them by 5:30.

23 JUROR: I need to pick them up.

24 THE COURT: And your youngest child has a sickness
25 and may not be able to go back to daycare tomorrow.

1 JUROR: Correct.

2 THE COURT: Well, we'll let you stay now, and then
3 you let me know about your six-month-old's condition.

4 JUROR: I should be able to -- if I could make a
5 phone call to my husband, in about 30 minutes, I might
6 be able to find out what the doctor says, so.

7 THE COURT: All right. Well, as soon as we get
8 through here, we'll let you make that phone call.

9 JUROR: Okay. Thank you.

10 THE COURT: It might be a nice vacation for you.

11 Yes, ma'am.

12 JUROR: Amy Hooks, Juror 117. I also have a child,
13 a five-year-old, that is in a daycare situation on
14 Hilton Head I have to be able to drop off by 8:00
15 o'clock in the morning, and I have to be able to pick up
16 by 5:00.

17 THE COURT: All right. So you've got to get there
18 by 5:00 o'clock, so you've got to leave here by 4:00?

19 JUROR: Um-hmm.

20 THE COURT: We'll see if we can work that out for
21 you. Okay?

22 JUROR: Thank you.

23 THE COURT: Yes, ma'am.

24 JUROR: My name is Achsah Watkis, Juror 238. I'm
25 fine with being here. I just have to -- I'm the only

1 one can pick up my four-year-old daughter from daycare.
2 She has to be picked up by 5:30. So, if I'm leaving
3 here at 5:00, I'm good.

4 THE COURT: That should not be a problem. Okay?

5 JUROR: My name is Danell Aiken. I'm Juror Number
6 3. I have a two-year-old son, and I have to pick him up
7 at 5:00 o'clock.

8 THE COURT: I'm sorry. You have to do what at 5:00
9 o'clock?

10 JUROR: I have to pick my son up at 5:00 o'clock.

11 THE COURT: And where is your son?

12 JUROR: My sister watch him, and she have to be to
13 work, so I have to be there to pick him up so she can
14 go.

15 THE COURT: Well, how far is that from here?

16 JUROR: I work on Hilton Head, but she works at --
17 in Beaufort at the Walmart in Beaufort. I live on Saint
18 Helena, so I have to come from work to get here, and
19 then she goes off to work to get him. And then she goes
20 off to work.

21 THE COURT: Well, what I'm saying is, if you were
22 here at the courthouse, how long would it take you to
23 get to your sister's house to pick up the child?

24 JUROR: Probably about 15 to 20 minutes.

25 THE COURT: We'll try to work that out for you.

1 Okay?

2 JUROR: My name's Karen Hammill, Juror Number 105.
3 I have a five-year-old son in daycare. He finishes at
4 3:00. But I also have a just-turned, seven-year-old
5 daughter who is in school. However, she has major
6 health considerations that can cause her to be
7 hospitalized at any time. So, currently, she is fine.
8 But I need to be able to, if God forbid, something
9 happen, to be able to go with her to Atlanta where her
10 hospital is.

11 THE COURT: Now, who looks out for her up until
12 3:00?

13 JUROR: My daughter's in school currently. She's
14 at Coosaw Elementary.

15 THE COURT: Okay. And after 3:00, she's with you?

16 JUROR: I pick her up.

17 THE COURT: She's with you after 3:00?

18 JUROR: Yes.

19 THE COURT: And how old is your daughter?

20 JUROR: Seven?

21 THE COURT: She's seven. And you don't have
22 anybody to look out for her?

23 JUROR: My husband can do it, but he does work full
24 time. He runs a company. And for him to take off that
25 amount of time is very difficult.

1 THE COURT: And you don't work outside of the home
2 yourself?

3 JUROR: I work part time so that I'm home when they
4 are done school. And I work for my husband, so that if
5 she has to go, I can go.

6 THE COURT: Okay. We'll excuse you, based upon
7 hardship. Okay?

8 JUROR: Thank you.

9 THE COURT: You won't need to come back. See that
10 bailiff right there. All right. Next?

11 JUROR: Yes, sir. Chris Donelson, Number 70. I'm
12 the sole provider for a three-and-a-half-year-old who is
13 in Lowcountry Daycare in Bluffton. And I have an
14 eleven-year-old who went out to California on Thursday
15 that lives with me full time. I can't afford to take
16 any time off work to -- my bills are pretty stiff.

17 THE COURT: Well, let me ask you to step up here
18 just a minute, please, sir.

19 OFF-THE-RECORD BENCH CONFERENCE,
20 THE COURT, MR. HALL, MR. STEPHENS,
21 MR. COLONGELI, JUROR DONELSON.

22 BACK ON THE RECORD.

23 BY THE COURT:

24 THE COURT: Juror Number 70 is transferred. He'll
25 come back to the September term.

1 All right. Any juror who is the primary caretaker
2 of a person 65 years of age or older or of any person of
3 any age who is severely disabled and unable to care for
4 himself or herself and can't be left alone without there
5 being some significant risk arising from failure to have
6 someone there that they can provide care? Under those
7 circumstances, where you're the primary caretaker, your
8 service may be excused, based upon your need to deal
9 with that person. Does that apply to any juror?

10 Primary caretaker? If so, please stand.

11 State law also provides that a juror service may be
12 postponed to a later date if it interferes with the
13 school year. So, if you are a full-time student or a
14 school teacher or other certified personnel at the
15 building level, and that includes school bus drivers,
16 where your jury service falls during the school year and
17 it interferes with those positions, then we can transfer
18 your service or postpone it to a later date that does
19 not interfere with the school year.

20 Does that apply to any juror? If so, please stand.

21 JUROR: Juror 148.

22 THE COURT: Okay. Tell me how that question
23 applies to you.

24 JUROR: I'm the cafeteria manager at Robert Smalls
25 Middle.

1 THE COURT: Is a cafeteria manager a certified
2 personnel?

3 JUROR: For my position, yes.

4 THE COURT: You have to be certified to hold your
5 position?

6 JUROR: Yes, in food service, yes.

7 THE COURT: Certified by the school district.

8 JUROR: Um-hmm.

9 THE COURT: All right. Let the clerk know when
10 you're going to be out. We'll postpone your service to
11 a later date. 28 [sic] is transferred.

12 State law also provides that any juror service may
13 be postponed to a later date or excused entirely based
14 upon what's referred to as good and sufficient cause.
15 Now, good and sufficient cause is not just any reason
16 that you can think of, if I give you enough time to mull
17 it over. But we recognize that there may be some
18 circumstances that apply to you or you may have some
19 reason that affects you, and requiring you to serve as a
20 juror would result in an unreasonable hardship being
21 imposed on you. And if that's true, and if it's only
22 temporary in nature, we can postpone your service to a
23 later day. And if those circumstances are not going to
24 change in the foreseeable future, then perhaps we can
25 excuse your service entirely. But it has to be a

1 circumstances or reason that results in an unreasonable
2 hardship being imposed upon you if you're required to
3 stay this week.

4 So, if any juror has such a reason.

5 JUROR: Juror Number 64, Catherine Daugherty. I'm
6 supposed to be closing on my property anywhere between
7 Wednesday and Friday. We don't have the date and time
8 set yet. If -- if I stayed, and let you know what the
9 time is, would I be able to be excused on that
10 particular day?

11 THE COURT: Well, you would, but that would be
12 difficult if you are, in fact, actually serving in the
13 trial of a case. I mean, I can arrange that now, but if
14 you don't know when it's going to be, that's a little
15 hard.

16 JUROR: Yeah, I know. I don't have the date or
17 time yet.

18 THE COURT: Well, when do you expect to know?

19 JUROR: Hopefully, at some time today they're --
20 should close -- should have been closed on Wednesday,
21 but they're lagging a little bit behind. So it could be
22 any time Wednesday through Friday.

23 THE COURT: All right. Well, let's just have you
24 stay, then. You try to find out the day and let me
25 know, and we can try to work around it. Okay?

1 JUROR: Okay.

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

3 JUROR: Juror Number 61. I have a, on Thursday
4 morning, a flight scheduled to Los Angeles. I'll be
5 there Thursday and Friday. I'd be happy to serve Monday
6 through Wednesday or reschedule for a later date.

7 THE COURT: All right. So you just need to be off
8 Thursday and Friday?

9 JUROR: Yes.

10 THE COURT: All right. We'll work around that.
11 Okay? Yes, ma'am.

12 JUROR: I have to babysit for my grandchildren. I
13 have to be in Bluffton by 4:00 o'clock.

14 THE COURT: All right. And your name is what,
15 ma'am?

16 JUROR: It's Juror 107, Marianne Haran.

17 THE COURT: All right. And you have to babysit?
18 Do you do that every day?

19 JUROR: I do that about four to five times a week,
20 yes, sir.

21 THE COURT: Okay. And is there some other
22 arrangement that can be made for some future week? Not
23 necessarily this week, but.

24 JUROR: If given enough notice, I can try to have
25 them re-arrange their schedules. But her husband works,

1 also. So, when their nights overlap, that's when I come
2 in.

3 THE COURT: Okay.

4 JUROR: Or if he's working till -- sometimes he'll
5 go in -- he'll have to go in at 6:00, and he gets out at
6 7:00. So I'm kind of -- I'm in the middle of the week.

7 THE COURT: Okay. And you didn't have enough
8 notice this time for them to work all that out?

9 JUROR: No, because she -- I had no idea what time
10 this was going to end.

11 THE COURT: Okay. All right. Well, what I'll do
12 is, I'll transfer you to another term of court. And
13 what you need to do is work that out with them so that
14 somebody can provide care for those children so that you
15 can stay down here. You can pick another week during
16 the year. I'll let you pick the week.

17 JUROR: Okay.

18 THE COURT: So you just be sure you give us a week
19 where you can be here and the children are taken care
20 of.

21 JUROR: Okay.

22 THE COURT: Okay?

23 JUROR: Okay.

24 THE COURT: See the clerk. All right. Yes, sir.

25 JUROR: My number is 145.

1 THE COURT: Okay.

2 JUROR: I believe in the court system, but I don't
3 believe in persecution of anybody.

4 THE COURT: Are you Mr. Lewis?

5 JUROR: Yes, I am.

6 THE COURT: Mr. Lewis, let me ask you just step
7 down here. We're not going to be persecuting anybody
8 this week, but let me talk to you about it.

9 OFF-THE-RECORD BENCH CONFERENCE,

10 THE COURT, MR. HALL, MR. STEPHENS,

11 MR. COLONGELI, SEVERAL JURORS.

12 BACK ON THE RECORD.

13 CONTINUE VOIR DIRE

14 BY THE COURT:

15 THE COURT: Juror Number 91 is transferred.

16 All right. Those are all the questions I have for
17 you. So, if anybody needs to respond to a question that
18 was asked but you didn't want to respond to it at the
19 time it was asked, now's the time to come forward to
20 provide me with that information in order to determine
21 your qualifications. Anyone else need to come forward?

22 BAILIFF: Ready, your Honor? Mr. Martin, Juror
23 Number 153.

24 OFF-THE-RECORD BENCH CONFERENCE,

25 THE COURT, MR. HALL, MR. STEPHENS,

1 MR. COLONGELI, AND SEVERAL JURORS.

2 BACK ON THE RECORD.

3 THE COURT: Juror 221 is transferred.

4 BAILIFF: Mr. Franklin, Number 18, your Honor.

5 OFF-THE-RECORD BENCH CONFERENCE,

6 THE COURT, MR. HALL, MR. STEPHENS,

7 MR. COLONGELI, SEVERAL JURORS:

8 BACK ON THE RECORD.

9 THE COURT: Juror 82 is transferred.

10 BAILIFF: Mr. Szady, Number 225, your Honor.

11 OFF-THE-RECORD BENCH CONFERENCE,

12 THE COURT, MR. HALL, MR. STEPHENS,

13 MR. COLONGELI, MR. SZADY.

14 BACK ON THE RECORD.

15 BAILIFF: Mr. Johnson, Number 126, your Honor.

16 OFF-THE-RECORD BENCH CONFERENCE,

17 THE COURT, MR. HALL, MR. STEPHENS,

18 MR. COLONGELI, MR. JOHNSON.

19 BACK ON THE RECORD.

20 THE COURT: 125 is disqualified.

21 BAILIFF: Ms. Reilly, Number 183, your Honor.

22 OFF-THE-RECORD BENCH CONFERENCE,

23 THE COURT, MR. HALL, MR. STEPHENS,

24 MR. COLONGELI, MS. REILLY.

25 BACK ON THE RECORD.

1 THE COURT: 183 is transferred.

2 BAILIFF: Ms. Campbell, Number 43, your Honor.

3 OFF-THE-RECORD BENCH CONFERENCE,
4 THE COURT, MR. HALL, MR. STEPHENS,
5 MR. COLONGELI, MS. CAMPBELL.
6 BACK ON THE RECORD.

7 BAILIFF: Ms. Lee, Number 143, your Honor.

8 OFF-THE-RECORD BENCH CONFERENCE,
9 THE COURT, MR. HALL, MR. STEPHENS,
10 MR. COLONGELI, MS. LEE.
11 BACK ON THE RECORD.

12 BAILIFF: Ms. Lee, Daugherty, Number 64, your
13 Honor.

14 OFF-THE-RECORD BENCH CONFERENCE,
15 THE COURT, MR. HALL, MR. STEPHENS,
16 MR. COLONGEI, MS. LEE.
17 BACK ON THE RECORD.

18 BAILIFF: Mr. Branham, Number 30, your Honor.

19 OFF-THE-RECORD BENCH CONFERENCE,
20 THE COURT, MR. HALL, MR. STEPHENS,
21 MR. COLONGELI, MR. BRANHAM.
22 BACK ON THE RECORD.

23 BY THE COURT:

24 THE COURT: All right. Anybody else?

25 All right. It appears that the panel is qualified.

1 As I told you, this is a term of General Sessions Court.
2 That's the crime side of the circuit court. The circuit
3 court in South Carolina is the general trial court. It
4 hears both crime and civil cases. When the Court is
5 sitting and disposing of civil cases, it's referred to
6 as the Court of Common Pleas. When the Court is sitting
7 and disposing of criminal cases, it's referred to as the
8 Court of General Sessions. So this is the Court of
9 General Sessions.

10 All cases to be brought before the Court this week
11 will be of a criminal nature. That is, someone will be
12 accused of having committed some type of criminal
13 offense. And where they enter a plea of not guilty, a
14 jury is selected for the purpose of considering the
15 evidence in the case and deciding the facts and applying
16 the law and determining whether or not that person has
17 been proven guilty or not.

18 Your service will be required potentially today
19 through Friday. That doesn't mean that you'll be here
20 all week. Once we pick a jury, I don't know how long
21 the case might last. If it lasts a couple days, then
22 you jurors, the ones that are not selected, won't have
23 to come back until we need you for a potential jury
24 selection. So hopefully, in that way, that'll minimize
25 the inconvenience imposed upon you by virtue of your

1 jury service.

2 The general hours of the court are from 9:30 in the
3 morning until one o'clock in the afternoon. We recess
4 at that time for lunch. We'll resume sometime between
5 2:00 o'clock and 2:30. We try to complete our day by
6 5:00 o'clock, because we recognize that we're imposing
7 upon your daytime hours, we'll try not to impose upon
8 your evening hours, if that can be avoided. And more
9 often than not that it can. More often than not it can
10 be avoided.

11 But, what you'll need to do, except for those that
12 I've already made a note of, you'll need to make
13 arrangements to ensure that you can be present from 9:30
14 in the morning until 5:30 in the afternoon. And that
15 should accommodate any necessity of your presence here
16 by virtue of your jury service.

17 If you have an issue during the course of the week,
18 you can speak to one of the bailiffs or the clerk of
19 court or some member of her staff. If you have a
20 question that needs to be addressed to me, let them
21 know. They'll make arrangements for you to see me, and
22 I'll address those issues or answer those questions.

23 The bailiff and the court personnel is not here to
24 talk to you about cases that you might be involved in or
25 be called upon to decide. So don't talk to anybody

1 about the cases that are being called or cases that you
2 might be involved with. You're not to discuss those
3 cases with anybody. But if you have an issue or
4 question outside of the case, you can talk to the
5 bailiffs or the clerk's staff to help you resolve those.

6 If you have an issue that comes up regarding a
7 case, you just let the bailiff or the clerk's staff know
8 that you need to talk to me about something, and they'll
9 make those arrangements, and I'll address that with you.

10 All right. As I say, you're not going to be here
11 from 9:30 until 5:30 each day, but you're subject to
12 being called during the course of the week. So that's
13 why we need for you to let us know. If you have some
14 issue, we try to work around it if we can. Otherwise,
15 we will expect that you will be prompt when you've been
16 asked to report, and that you'll dedicate your time and
17 talents to the -- any case that needs your assistance in
18 having it resolved.

19 When you are asked to report, please report
20 promptly. If you don't report promptly, then we'll all
21 be sitting here, just as we are now, waiting for you to
22 report. And I'm going to be here all week anyway, but
23 your fellow jurors, as I told you, won't need to be here
24 unless they're involved in jury selection or they're
25 participating in the trial of a case. And if you don't

1 show up promptly when you're asked to report, all of
2 your fellow jurors are going to be sitting here just as
3 you are now, waiting for you to show up. So please be
4 mindful that we can't conduct our business without your
5 assistance. But more importantly, please do not allow
6 your tardiness to be an imposition upon your fellow
7 jurors and their time.

8 You all given the juror information out?

9 MADAM CLERK: No, sir, we haven't.

10 THE COURT: You haven't. Everybody get a pamphlet
11 this morning? Read the pamphlet. Not right this
12 minute, but if you didn't receive one, raise your hand
13 and we'll get you one.

14 MADAM CLERK: It was in the jury summons.

15 THE COURT: It's in the summons. You got it with
16 your juror summons. Some people give it out with the
17 summons.

18 BAILIFF: At ease, please.

19 THE COURT: It got mailed to you with the juror
20 summons. Anybody not remember that? Anyway, you got a
21 pamphlet in the mail. So, when you get a chance, read
22 that pamphlet so that you can benefit from that
23 information. What about call-back numbers? Did you
24 give them those?

25 MADAM CLERK: Yes, sir.

1 BAILIFF: Yes, sir, your Honor.

2 THE COURT: All right. You've got your call-back
3 number. So, if you don't get selected, I'll ask you to
4 call back to receive reporting information, if I don't
5 tell you when I come back first. So just follow all
6 instructions, and everything will operate smoothly.

7 All right. Now, I think we've got some matters to
8 occupy the Court's time for the balance of this morning.
9 I'm going to find that out in just a minute. So I'm
10 going to ask you to go with the bailiff to the jury
11 assembly room. And once I resolve those matters or
12 determine how many we have, I'll let you know if you can
13 be excused and when you need to come back. But likely,
14 you're going to be coming back this afternoon, if not
15 before. So just be prepared for that. Okay?

16 Please go with the bailiff to the jury assembly
17 room right now, and I'll send you that word shortly.

18 Thank you for your participation.

19 JURY LEAVES COURTROOM 12:14 P.M.

20 THE COURT: We're going to take ten minutes.

21 BACK ON THE RECORD.

22 CALLING THE CASE AND

23 PRETRIAL MOTIONS:

24 MR. HALL: The State calls Case Number 2011-GS-07-
25 2109, 2110, 2111, and 2112. It's State versus Andre

1 Green, charging kidnaping, armed robbery, car jacking,
2 and possession of a weapon by a convicted felon.

3 To the Court, my name is Patrick Hall. Good
4 afternoon. I'm with the Solicitor's Office. Don
5 Colongeli is representing Mr. Green. He's -- and Mr.
6 Green should be out shortly.

7 THE COURT: All right. Do we have any pretrial
8 matters?

9 MR. COLONGELI: I'm sorry, your Honor.

10 THE COURT: Do you have any pretrial matters we
11 need to address prior to selection, jury selection?

12 MR. COLONGELI: Your Honor, there are matters,
13 obviously, I would like to address. I don't know if the
14 State has any to go first, but I'd be happy to let you
15 know what I've got.

16 THE COURT: All right. I'll hear from you.

17 MR. COLONGELI: At this point, your Honor, we would
18 move to renew the *Rule 5*, which was submitted on this
19 case initially. Friday of this past -- this past
20 Friday, I submitted a specific *Rule 5*, which pretty much
21 covered everything the initial *Rule 5* did. And for
22 purposes of preserving the record, we would renew that
23 *Rule 5* at this point in time and ask the State if they
24 have complied with such rule in giving the Defense
25 everything that I have in my file.

1 MR. HALL: Your Honor, everything that I have, Mr.
2 Colongeli has.

3 THE COURT: Okay.

4 MR. COLONGELI: We'd also move at this time that
5 the witnesses be sequestered. I am under the impression
6 the case officer in this particular case is a Sergeant
7 Detective Massey from Port Royal Police Department.
8 Obviously, as the case officer, I believe he would be
9 allowed to stay.

10 There is a victim witness by the name of Dennis
11 Boskey, I believe, who is subpoenaed to be here. There
12 is another individual, a 911 caller, who I believe the
13 State has called as a witness.

14 Any other additional law enforcement officers, I
15 would move at this point that they be sequestered, other
16 than the case officer. There is an identification issue
17 at hand here. So I would ask that the victim, if he
18 shows, be sequestered until he, in fact testifies, if he
19 does show or testify.

20 MR. HALL: I have no objection to that, your Honor.

21 THE COURT: Well, the *Constitution* might -- I don't
22 think you can sequester the victim. They have a right
23 to be present at all stages.

24 MR. COLONGELI: I understand that, your Honor. And
25 I don't disagree with you. The only exception I make

1 for the record is the fact that there is a *Neil v.*
2 *Biggers* issue here as far as the identification. And
3 I'm not sure how to handle that. If it would be
4 appropriate to have a hearing as to that issue prior to
5 the case commencing or not. Obviously, procedurally, I
6 don't believe I have that option, but that's the issue
7 I'm concerned about.

8 THE COURT: Well, are we going to have an
9 identification hearing? Is the victim going to be the
10 first person to testify?

11 MR. HALL: No, your Honor.

12 THE COURT: Well, is he in agreement not to be
13 present and be sequestered during other witness
14 testimony?

15 MR. COLONGELI: I'll actually need to speak to the
16 victim.

17 THE COURT: Okay. You speak to him about that, and
18 we'll address it.

19 MR. COLONGELI: All right.

20 THE COURT: As far as the other witnesses, what's
21 your position?

22 MR. HALL: As far as the other witnesses go, I'd
23 state no objection.

24 THE COURT: Okay.

25 MR. HALL: Your Honor, there are a number of video

1 and audio tapes in this case. All of which contain
2 discussions relating to my client's prior criminal
3 history. Those would require a great deal of
4 redactions. I would move at this point that, obviously,
5 there would be a motion by me that those be suppressed,
6 or that you allow us time or the State time to redact
7 all -- any -- all references or any sort of reference
8 pertaining to my client's criminal history. There's a
9 great deal of them throughout all of the interviews.

10 And I don't know if the State intends on using
11 those audio and/or videos before the jury, or if they
12 just plan on garnering testimony from the officers, but,
13 obviously, there's a lot of issues that would have to be
14 -- remarks that would have to be redacted. That's
15 something I need to address now, depending on what the
16 State decides and how they are going to proceed.

17 MR. HALL: Your Honor, there's one video in
18 particular that I have painstakingly gone through
19 numerous times to pinpoint, even down to the half
20 second, where things should stop and then start again,
21 where places should be cut out where Mr. Green
22 references his prior armed robbery conviction. And it's
23 where I think there were conversations -- we're talking
24 about a conversation that took place between Sergeant
25 Massey and Andre Green at the Beaufort County Detention

1 Center, which was audio and video recorded.

2 There are sections of that video that they go off
3 on a tangent where, if so, you know, blocked those
4 sections off. The only issue that I'm having at this
5 point is I have absolutely no experience in video
6 editing whatsoever. I'm going to have someone help me
7 out with that this afternoon. And like I said, I have
8 it pinpointed down to where the spots are that need to
9 be taken out for the references that Mr. Colongeli's
10 speaking of.

11 THE COURT: All right. So you're in agreement with
12 the redaction.

13 MR. HALL: I intend to use the -- Mr. Green's --
14 assuming that everything else passes muster, I intend to
15 use Mr. Green's conversation with Sergeant Massey, and I
16 agree that, in order to do so, they would have to be
17 redacted. I would not be able to play it in its
18 entirety.

19 THE COURT: Well, it'll have to be redacted,
20 because if it's going to be an exhibit that's going to
21 be introduced, then you can't just start and stop it,
22 and it won't be able to go back to the jury room. Once
23 it's introduced, it does go back to the jury room. So,
24 if it's going to be introduced, it's going to have to be
25 redacted. Otherwise, it can't be shown.

1 MR. HALL: I understand.

2 THE COURT: Okay. All right. What's next?

3 MR. COLONGELI: Your Honor, out of an abundance of
4 caution, I would like to inform the Court that there is
5 a co-defendant in this matter by the name of Brandon
6 Parker. Brandon Parker was immediately identified by
7 the alleged victim in this case upon the incident
8 occurring. He was the known defendant to the victim.

9 He was arrested shortly after this incident
10 occurred. My knowledge, my investigation into this case
11 is that he had gotten a bond reduction, bonded out.
12 Information as of Friday of this last week was that he
13 was re-incarcerated. I spoke to the chief public
14 defender here in Beaufort County, Ms. Trasi Campbell.
15 She was going to look into that for me.

16 I, in talking with the Solicitor today, have been
17 told by him that he -- his impression is that he's no
18 longer incarcerated. And what I'm getting at, your
19 Honor, is, I don't see any reason why, as far as I
20 believe *Bruton* issues may apply here, the State does not
21 intend on trying these fellows together. I believe they
22 have Brandon Parker as a defendant available to them,
23 and I think out of judicial economy, the Court should be
24 aware that there is a co-defendant here also. So we've
25 got issues with the co-defendant, and I'd like to bring

1 that to the Court's attention also.

2 The State has not provided me with any sort of
3 deals or agreement that this co-defendant is going to
4 testify, so I'm under the impression, obviously, they
5 don't intend to prosecute or notice that fellow for
6 trial. But I know in the past judges have been -- I
7 just want to make you aware, you know, that there is a
8 co-defendant here that also, my understanding in
9 watching and investigating this case, denies these
10 allegations, along with my client. And I think that
11 needs to be addressed.

12 MR. HALL: What he's saying is accurate. There is
13 a co-defendant by the name of Brandon Parker. He was
14 incarcerated for a period of time, bonded out. And the
15 last that I had checked on Mr. Parker, he was not
16 noticed for trial today. I had had some difficulty
17 actually securing his appearance from prior court dates.
18 In fact, he was supposed to appear this morning for
19 court, and did not appear at all. So I -- I did not
20 notice him, and intended to go forward on Mr. Green,
21 because Mr. Green's been in custody for a substantial
22 period of time at this point.

23 THE COURT: Okay.

24 MR. COLONGELI: Your Honor, I've just been notified
25 that Mr. Parker is incarcerated in the detention center

1 next door.

2 THE COURT: Are you suggesting that I require him
3 to try them together? I'm not sure what --

4 MR. COLONGELI: Well, typically, -- well, your
5 Honor, with all due respect, I only bring it up out of
6 the interests in judicial economy, and also the fact
7 that, obviously, I guess I would assume that he's -- if
8 the State is not going to try Mr. Parker, that there can
9 be no reference to any sort of testimony or statements
10 he made, also.

11 THE COURT: Well, I don't think there's any
12 question about that.

13 MR. COLONGELI: That's what I'm concerned about,
14 your Honor. And that's why I'm a little --

15 THE COURT: You're concerned they're going to
16 introduce Mr. Parker's statements in the trial of your
17 client?

18 MR. COLONGELI: Any reference to Mr. Parker or his
19 statements, that's correct.

20 THE COURT: Well, if they're acting together, I
21 assume that a victim, that they would testify that there
22 were two people there. But as far as Mr. Parker's
23 statements, unless they come in under some exception, I
24 don't know how they'd be permitted.

25 Are you intending to offer anything Mr. Parker

1 said?

2 MR. HALL: No. I -- Mr. -- Mr. Parker was
3 interviewed, caught on video, lasted approximately 20
4 minutes long. And his essentially mirrors what Mr.
5 Green has said. The only difference is Mr. Green says a
6 few different things, and his lasts an hour and 45
7 minutes.

8 THE COURT: Well, in any event, you don't intend to
9 introduce any statements by Mr. Parker.

10 MR. HALL: Nothing other than what the victim could
11 testify to what he observed during the --

12 THE COURT: All right.

13 MR. COLONGELI: That's fine, your Honor. And out
14 of an abundance of caution, I wanted to let the Court
15 know. In the past, I think -- I've been in situations
16 where judges are very hesitant to severe cases when the
17 State has co-defendants. And this issue, it's never
18 really come up that the State's ever intended to want to
19 try the co-defendant, who was arrested shortly after
20 this incident and the one who was identified, as opposed
21 to Mr. Green, who was incarcerated October of last year.

22 I was appointed in December, and notice of trial in
23 February. Was unable to try the case in February. And
24 here we are in April to go again, which I'm ready to go,
25 but that's the only reason I brought that up is in the

1 past, judges are very hesitant why both co-defendants --
2 or whether there's more than two defendants aren't tried
3 together, so.

4 THE COURT: Okay. Well, I'm not hesitant about
5 this. Doesn't make any difference to me.

6 MR. COLONGELI: All right. Thank you, Judge. I
7 believe I've addressed everything. The only other thing
8 I think the Court should be aware of at this point, and
9 obviously, I guess this will play out at trial, I did
10 hand over to Mr. Hall this morning a document I received
11 at my office this weekend.

12 It is a statement from the victim, the alleged
13 victim/witness, who has recanted his statements, prior
14 statements, to police officers in the State. He is in
15 possession of that document. I intend to introduce that
16 as an exhibit. And I just thought the Court should be
17 aware of that now before we take up any more of your
18 time.

19 Not only did I give him that document, I gave him
20 another document, a witness I intend to probably produce
21 at the trial of this case who has been contacted by this
22 victim since its inception, indicating to her that he's
23 made attempts to dismiss the charge against Mr. Green at
24 the Solicitor's Office, which they deny. And that he
25 did finally get a notarized statement this weekend

1 indicating that he has no desire to be here and that
2 he's never met this man in his life.

3 THE COURT: Okay.

4 MR. HALL: I'll acknowledge for the record that
5 I've received that.

6 MR. COLONGELI: He also goes so far to say, your
7 Honor, in the notarized statement, that he is aware that
8 he's made statements to law enforcement prior to this,
9 and that those statements were untrue. And he put that
10 in writing. It's notarized. I just wanted to make the
11 Court aware that that would be an exhibit.

12 THE COURT: Okay. Well, if he testifies, you can
13 ask him about it. Mr. Hall says it doesn't serve as a
14 significant impediment to his prosecution, so.

15 MR. COLONGELI: Understood. Thank you.

16 THE COURT: Okay.

17 MR. COLONGELI: That's all I have at this time,
18 your Honor.

19 THE COURT: All right. Anything else?

20 MR. COLONGELI: I don't believe I have anything
21 else.

22 MR. HALL: No, your Honor.

23 THE COURT: All right. Jury's coming back at 2:30?

24 BAILIFF: Yes, sir.

25 THE COURT: All right. Court's in recess until

1 2:15.

2 MR. HALL: Thank you.

3 MR. COLONGELI: Thank you, Judge.

4 OFF THE RECORD

5 BACK ON THE RECORD 2:37 P.M.

6 BY THE COURT:

7 THE COURT: You all have voir dire requests?

8 MR. HALL: None specific, your Honor.

9 MR. COLONGELI: Your Honor, on the standards, ones
10 that are generally given by the Court, I trust that you
11 have -- the ones that you already have -- I have none to
12 provide you, other than victims of crime related to law
13 enforcement or anyone involved with the Solicitor's
14 Office or my office or Mr. Green.

15 THE COURT: Have you got an indictment?

16 MR. HALL: Yes, your Honor.

17 THE COURT, MR. HALL, MR. COLONGELI,

18 MR. STEPHENS.

19 BACK ON THE RECORD.

20 JURY RETURNS TO COURTROOM 3:00 P.M.

21 READING INDICTMENT, INTRODUCTIONS,

22 CONTINUE VOIR DIRE, BY THE COURT:

23 BAILIFF: All present, your Honor.

24 THE COURT: All right. Thank you. Good afternoon,
25 ladies and gentlemen. We are ready to begin with jury

1 selection. And the first case is going to require some
2 of your participation.

3 The title of the case is the State versus Andre
4 Green. Mr. Green is the defendant. He is the person
5 accused of these particular crimes. He is alleged to
6 have committed four separate and distinct offenses,
7 although they are alleged to have arisen out of one
8 particular event or a course of events, which the State
9 alleged occurred back on December the 5th -- excuse me
10 -- on about September the 6th. What is that date, by
11 the way?

12 MR. HALL: June 9th, your Honor.

13 THE COURT: June 9th. 2011, 6-9. All right. June
14 9, 2011, the defendant is alleged to have committed the
15 crimes of car jacking, kidnaping, armed robbery, and
16 possession of a pistol unlawfully.

17 The state alleges that Mr. Green did, here in
18 Beaufort County, take or attempt to take a motor vehicle
19 that belonged to Dennis Boskey, by the use of force,
20 violence, or intimidation, while Mr. Boskey was
21 operating that vehicle or while he was inside the
22 vehicle.

23 The State also alleges that Mr. Green did seize,
24 confine, kidnap, abduct, or carry away Dennis Boskey
25 without authority of law.

1 The state also alleges that Mr. Green did commit
2 the crime of armed robbery; and that he did, through the
3 use of force, threats, intimidation, and while armed
4 with a deadly weapon, did take, steal, and carry away
5 goods and/or money from the person of Dennis Boskey,
6 with the intention of depriving him of use and
7 possession of that property.

8 And also, that he unlawfully possessed a handgun.
9 He not being authorized under the law to possess a
10 handgun under the circumstances as set forth.

11 Now, as to those allegations and as to each of
12 those charges, the defendant, Mr. Green, has entered a
13 plea of not guilty. That plea of not guilty has,
14 therefore, placed upon the State the burden of proving
15 the allegations that they had set forth in each of these
16 indictments; the burden of proving each of the essential
17 elements that make up the crimes that are alleged
18 against the defendant. And therefore, the burden is
19 upon the State to establish the defendant's guilt to the
20 satisfaction of twelve jurors beyond a reasonable doubt
21 before any verdict of guilty could be returned as to any
22 of the separate charges.

23 And so, we're going to be selecting actually
24 thirteen of you, twelve primary jurors and one
25 additional juror, to serve as an alternate in the event

1 the primary twelve are unable to serve during the course
2 of the trial.

3 And by waiver of selection, you're simply going to
4 be called upon to consider all of the evidence received
5 during the trial of the case. Upon consideration of
6 that evidence, you'll decide what you believe to be the
7 facts as they relate to these particular allegations.
8 Once you decide the facts, you'll apply the law that I
9 will have provided you, and you will determine whether
10 or not the defendant has been proven guilty of any
11 criminal alleged against him.

12 If he has, then your verdict is guilty. If he has
13 not, then your verdict is not guilty as to that
14 particular charge.

15 Now, before we begin with jury selection, I've got
16 some questions that I'm going to ask you. And the
17 purpose of the questions is to determine whether or not
18 there is any reason why any one of you jurors should not
19 be selected to participate in the trial of this
20 particular case.

21 And so, as these questions are asked, should you
22 need to respond to them, I'm going to ask that you
23 please stand, and I'll address those matters with you
24 individually, in the event that should become necessary.

25 But we're not going to be able to let anybody else

1 go in or out of this courtroom while I'm talking to this
2 jury.

3 BAILIFF: Yes, sir, your Honor.

4 THE COURT: The first thing I'll do is introduce
5 some people to you. And these are folks that are
6 involved in the trial of this case. That includes the
7 defendant. That includes the person alleged to be the
8 victim. That includes the lawyers involved in the case.
9 And that also includes any potential witnesses that
10 might be called during the course of the trial.

11 And the reason I'm identifying these people for you
12 is because I need to find out if you have any connection
13 with them. Are you related by blood or marriage to
14 them. Do you go to church with them. Do you work with
15 them. Do you socialize with them. Do you attend school
16 with them, or do you know them in any way. Have you met
17 them somewhere. Do you have any connection whatsoever.

18 And if you do, as that person's name is announced,
19 I'll ask that you please stand so that we can determine
20 what that connection is and whether or not it'll affect
21 your ability to be fair in this case. And I'll have
22 some additional other questions I ask you as they relate
23 to the case itself or similar cases to find out your
24 ability to be fair and impartial.

25 Now, as I told you, the defendant in this case is

1 Andre Green. Mr. Green, if you'll stand and face the
2 jury panel so that they may see who you are.

3 (DEFENDANT ANDRE GREEN COMPLIES.)

4 Mr. Green is the gentleman in the blue shirt.
5 Standing with Mr. Green is Mr. Colongeli. That's his
6 lawyer. He'll be assisting Mr. Green in the trial of
7 this case.

8 The victim in this case is not, at this moment,
9 present, but his name is Dennis Boskey. And he is the
10 person who is alleged to have been the victim of the
11 armed robbery, the kidnaping, and the car jacking.

12 Presenting the case on behalf of the State is
13 Patrick Hall, who is an assistant circuit solicitor for
14 the 14th Judicial Circuit, which includes Beaufort
15 County.

16 Now, potential witnesses to be called during the
17 trial include Andre Massey with the Port Royal Police
18 Department. He's a sergeant with that agency. Dennis
19 Boskey, who I've already mentioned. Melanie Smith with
20 the Beaufort County Sheriff's Department. Monica Wiser,
21 Kia Parker, and Larry Batson.

22 Now, does any juror know any person who has just
23 been identified for your benefit, as well as do you know
24 anybody else who is employed in the circuit solicitor's
25 office. If so, please stand.

1 All right. I'm going to start on the first row on
2 my right. I'll work my way back, and I'll jump the
3 isle.

4 If you'll give me your name and your juror number,
5 please, ma'am.

6 JUROR: My name McKimmie Smith, and my number is
7 213.

8 THE COURT: And who is it that you know?

9 JUROR: I know Ms. Kia Parker. We went to school
10 together.

11 THE COURT: And would the fact that you went to
12 school with Ms. Parker have any bearing upon your
13 decision in this case if she was to be called as a
14 witness?

15 JUROR: No, sir.

16 THE COURT: All right. Thank you. You may be
17 seated. Yes, ma'am.

18 JUROR: Number 72, Amanda Debose. I know Dawn
19 Burke at the Solicitor's Office.

20 THE COURT: Okay. And would that have any bearing
21 upon your decision in this case if you were called upon
22 to serve?

23 JUROR: No, sir.

24 THE COURT: Thank you. Be seated. Yes, ma'am.

25 JUROR: My name is Danell Aiken, Juror Number 3. I

1 know Kia Parker, I know Andre Green, and I also know the
2 victim, Dennis.

3 THE COURT: All right. And would any of those
4 facts have any bearing upon your decision in the case?

5 JUROR: Yes.

6 THE COURT: Okay. We'll excuse Juror Number 3 from
7 service in the case. Don't talk about anything you
8 might know about the case. Don't leave yet, though.
9 You can have a seat on that back row, if you don't mind,
10 though.

11 All right. Next juror.

12 JUROR: My name is Achsah Watkis, and I'm Juror
13 238. I think I know Kia Parker. I don't know if
14 there's more than one, but I went to school with Kia
15 Parker.

16 THE COURT: Okay. Well, I don't know which one
17 this is either. Mr. Colongeli, can you narrow it down
18 for her.

19 MR. COLONGELI: I'm sorry, your Honor.

20 THE COURT: Is this not one of your witnesses?

21 MR. COLONGELI: No. No, sir.

22 MR. HALL: Kia Parker?

23 MR. COLONGELI: Oh, Kia Parker is, yes, your Honor.
24 I'm sorry.

25 THE COURT: Can you narrow her identification for

1 her? Oh, there she is.

2 JUROR: Oh. No, I don't know her.

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

4 JUROR: My name's Lashawnia Knuckles, and I am
5 Juror Number 137. And I do recognize the defendant from
6 high school, and I also know the -- Mr. Boskey.

7 THE COURT: Okay. And would either of those
8 connections have any bearing upon your decision in this
9 case if you were selected?

10 JUROR: Yes.

11 THE COURT: All right. Juror 137 is excused from
12 serving. Yes, ma'am.

13 JUROR: I'm Number 52. I'm familiar with the case.

14 THE COURT: All right. And is there anything that
15 you know or that you've heard, seen, read, or whatever,
16 information you have about this case, which may or may
17 not be accurate. By the way, you never know about that.
18 But whatever you know, do you think it would affect your
19 ability to be fair and impartial if you were selected?
20 Could you put aside anything that you might have heard
21 or seen about the case and not allow it to influence
22 your judgment if you were selected, and base your
23 decision solely upon what you see and hear during the
24 trial?

25 JUROR: Probably no.

1 THE COURT: Probably not? Okay. We'll excuse you
2 from service.. That's Juror 52.

3 MR. COLONGELI: Your Honor, Number 52?

4 THE COURT: She said 52.

5 MR. COLONGELI: Yes.

6 THE COURT: Anybody else know somebody in the case?
7 Yes, sir?

8 JUROR: 149. I don't -- I don't think I -- they
9 family, so.

10 THE COURT: You think what?

11 JUROR: They family, so it'd be kind of hard for me
12 to --

13 THE COURT: Ms. Parker's family?

14 JUROR: No.

15 THE COURT: Whose family?

16 JUROR: The man from -- sitting back here.

17 THE COURT: Well, see, I don't know who's sitting
18 back there, so.

19 JUROR: Do you want to sit down?

20 BAILIFF: No, they don't want to stand up. Sit
21 down.

22 THE COURT: Who do you know? Whose family is this?

23 JUROR: Right here. That's the defendant.

24 THE COURT: Oh, it's Mr. Green's family.

25 JUROR: Yes, sir.

1 THE COURT: Oh, so you know some of Mr. Green's
2 family.

3 JUROR: Yeah.

4 THE COURT: Would that have any bearing upon your
5 decision in the case?

6 JUROR: Yeah, they --

7 THE COURT: Well, yes or no.

8 JUROR: Yeah. Yeah.

9 THE COURT: It would? All right. We'll excuse you
10 from service in the case. Just have a seat. All right.

11 Does anybody else know anybody involved in the case
12 or any members of their respective families? If so,
13 please stand. Okay.

14 Does anything, besides Juror Number 52, does
15 anybody believe that you have heard, seen, or read
16 something that might relate to this particular case? In
17 other words, have you been exposed to any type of
18 information that relates to this particular case from
19 any source? If so, please stand.

20 Is there anything about the -- yes, sir.

21 JUROR: I just remember that it was on the news
22 last summer.

23 THE COURT: All right. Tell me your name and
24 number, please, sir.

25 JUROR: Frank Kollar, 138.

1 THE COURT: 138. And you saw something on the
2 news?

3 JUROR: Yeah.

4 THE COURT: How recent?

5 JUROR: It was like last -- middle of June, I
6 believe.

7 THE COURT: Okay. Middle of June last year?

8 JUROR: It was on the news. It was on the early
9 evening news, and it was on the eleven news.

10 THE COURT: I understand. Okay. I understand.
11 You watch the news.

12 JUROR: I didn't see it in the paper.

13 THE COURT: Okay. Is there anything that you've
14 heard on the news that was on the news that would affect
15 your judgment in the case?

16 JUROR: I don't think so. I mean, I barely
17 remember. It's just when you said I knew something, I
18 just remembered vaguely that --

19 THE COURT: Well, would you be able to put that
20 aside and not allow it to influence your judgment if you
21 were selected?

22 JUROR: Yeah.

23 THE COURT: Okay. Thank you. You may be seated.
24 That's Juror 138.

25 Anyone else been exposed to any type of information

1 about the case?

2 All right. Is there anything about the nature of
3 the charges themselves, what is alleged against the
4 defendant that would cause any juror to be unable to be
5 fair and impartial if you were selected to participate.
6 If so, please stand.

7 Has any member of the jury panel or any members of
8 your immediate family -- and I'm going to define family
9 member as a parent, a spouse, a child, or a sibling.
10 Have you or any members of your immediate family ever
11 been the victim of any type of crime that might be
12 characterized as a violent offense? And that would
13 include the crimes of murder, manslaughter, kidnaping,
14 armed robbery, criminal sexual conduct, criminal
15 domestic violence of a high and aggravated nature,
16 burglary, or any similar type of offense. Have you or a
17 family member ever been the victim of such, but also
18 have you or a family member ever been accused of having
19 committed such a criminal offense? If so, please stand.

20 I got two. I'll start with you. Sir, if you'll
21 give me your name and your number.

22 JUROR: Anthony Szady, 225.

23 THE COURT: 225?

24 JUROR: Yes, sir.

25 THE COURT: And was it you or a family member?

1 JUROR: It was me that was accused.

2 THE COURT: And you were accused of what type of
3 crime?

4 JUROR: Burglary, assault and battery, and robbery.

5 THE COURT: All right. Is there anything about
6 that fact that would effect your judgment in this case
7 if you were selected?

8 JUROR: No.

9 THE COURT: Okay. Thank you. Be seated. Yes,
10 ma'am.

11 JUROR: Jolyne Anderson, Number 8.

12 THE COURT: 8? Would that be you or a family
13 member?

14 JUROR: Myself.

15 THE COURT: Was it a victim or accused?

16 JUROR: Victim.

17 THE COURT: And what type of crime was it?

18 JUROR: Kidnaping and rape.

19 THE COURT: All right. And would that fact have
20 any bearing upon your decision in this case?

21 JUROR: No, I think I'd be -- I think I'd be able
22 to be impartial.

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

25 JUROR: I was a victim in an aggravated assault

1 with a deadly weapon.

2 THE COURT: All right. Tell me your name and
3 number please.

4 JUROR: Oh, I'm sorry. Juror 64, Catherine
5 Daugherty.

6 THE COURT: And is there anything about that
7 experience that would affect your judgment in this case?

8 JUROR: I don't think so.

9 THE COURT: All right. Thank you. You may be
10 seated. Anybody else?

11 Has any member of the jury panel or any members of
12 your immediate family ever been employed as a law
13 enforcement officer of any kind, whether it be a deputy
14 sheriff for a city, town, municipal law enforcement
15 officer; somebody who's worked in the detention
16 facility, the Department of Corrections, State Law
17 Enforcement Division, the FBI, civilian or military
18 police officer? Anyone, you or family member, ever been
19 employed as any type of law enforcement officer? If so,
20 please stand.

21 All right. Your name and number, please, sir.

22 JUROR: Frank Robbins. My number is 188.

23 THE COURT: And how does that question relate to
24 you?

25 JUROR: Well, my brother, my nephew, and my god son

1 are all police officers up in Massachusetts.

2 THE COURT: Okay. Would it affect your judgment in
3 this case?

4 JUROR: No.

5 THE COURT: Thank you. Be seated. Yes, sir.

6 JUROR: My son was a police officer, and then a
7 police officer in California. He's now retired.

8 THE COURT: And your name and number, please.

9 JUROR: Oh, I'm sorry. My name is Paul Henry,
10 Juror Number 114.

11 THE COURT: Would that have any bearing upon your
12 decision?

13 JUROR: No, sir.

14 THE COURT: Thank you. Be seated. Yes, sir.

15 JUROR: Bradley Ruppel, 197. My mother was a
16 police officer in New York.

17 THE COURT: Would that have any bearing upon your
18 decision?

19 JUROR: No.

20 THE COURT: Thank you. Be seated. Yes, sir?

21 JUROR: Yes, sir. My name is Richard Pearson. My
22 Juror Number is 173. My father was controller for the
23 state maximum security prison in Georgia. And my mother
24 was a -- worked in the state probation office for 25
25 years.

1 THE COURT: All right. And would those facts have
2 any bearing upon your decision?

3 JUROR: No, sir.

4 THE COURT: Thank you. Be seated. All right. Has
5 any member of the jury panel already formed an opinion
6 as to how you think the case ought to be decided based
7 upon what you've seen up to this point or based upon any
8 other consideration? Have you formed an opinion about
9 the case? If so, please stand.

10 Does any juror know any reason whatsoever why you
11 believe you could not be fair and impartial if you were
12 called upon to serve as a juror in this particular case?
13 If so, please stand.

14 None responding.

15 Any other questions requested by the State?

16 MR. HALL: Your Honor, if we may approach briefly.

17 THE COURT: Okay.

18 OFF-THE-RECORD BENCH CONFERENCE,

19 THE COURT, MR. HALL, MR. STEPHENS,

20 MR. COLONGELI.

21 THE COURT: All right. Any other questions
22 requested by the State?

23 MR. HALL: No, thank you, your Honor.

24 THE COURT: The Defendant?

25 MR. COLONGELI: No, thank you, your Honor.

1 THE COURT: All right. Call us a jury, please.

2 MADAM CLERK: Yes, Judge. Just a moment.

3 23rd end M7, begin M8

4 CALLING JURY, MADAM CLERK:

5 THE COURT: All right. The clerk is going to call
6 your name. So, if your name is called, please come
7 forward, and you'll be instructed if you're to be seated
8 for service or excused from service in the case. If
9 both agree to have you seated, you'll be having a seat
10 in that jury box to your right. If either asked that
11 you be excused, just go back and have a seat where you
12 are now.

13 MADAM CLERK: Juror Number 188, Frank Robbins.
14 What says the State?

15 MR. HALL: Please seat the juror.

16 MADAM CLERK: What says the Defense?

17 MR. COLONGELI: Excuse for cause, your Honor.

18 THE COURT: Declined.

19 MR. COLONGELI: I believe Mr. Robbins indicated he
20 is a security officer.

21 THE COURT: He did. Or he's related to someone.

22 MR. COLONGELI: Please strike the juror.

23 THE COURT: All right. You can have a seat, Mr.
24 Robbins.

25 MADAM CLERK: Juror Number 140, Marianna Lacerda.

1 What says the state.

2 MR. HALL: Please seat the juror.

3 MADAM CLERK: What says the Defense?

4 MR. COLONGELI: Please seat the juror.

5 MADAM CLERK: Juror Number 227, Ellen Szatkowski.

6 Juror Number 227. What says the State?

7 MR. HALL: Please seat the juror.

8 MADAM CLERK: What says the Defense?

9 MR. COLONGELI: Beg the Court's indulgence, your
10 Honor. Please seat the juror.

11 MADAM CLERK: Juror Number 100, George Grimes.

12 What says the State?

13 MR. HALL: Please seat the juror.

14 MADAM CLERK: What says the Defense?

15 MR. COLONGELI: Please excuse Mr. Grimes.

16 MADAM CLERK: Juror Number 185, Susan Reynolds.

17 What says the State?

18 MR. HALL: Please seat the juror.

19 MADAM CLERK: What says the Defense?

20 MR. COLONGELI: Please excuse Ms. Reynolds from the
21 trial of this case.

22 MADAM CLERK: Juror Number 152, Maria Martin. What
23 says the State?

24 MR. HALL: Please seat the juror.

25 MADAM CLERK: What says the Defense?

1 MR. COLONGELI: Please seat the juror.

2 MADAM CLERK: Juror Number 180, Ann Rafferty. What
3 says the State?

4 MR. HALL: Please seat the juror.

5 MADAM CLERK: What says the Defense?

6 MR. COLONGELI: Please excuse Ms. Rafferty from the
7 trial of this case.

8 BAILIFF: We need order in the courtroom, please.

9 MADAM CLERK: Juror Number 122, Vanessa Jackson.
10 What says the State?

11 MR. HALL: Please seat the juror.

12 MADAM CLERK: What says the Defense?

13 MR. COLONGELI: Please seat Ms. Jackson.

14 MADAM CLERK: Juror Number 173, Richard Pearson.

15 MR. COLONGELI: May I have that number again.

16 MADAM CLERK: 173.

17 MR. COLONGELI: Thank you.

18 MADAM CLERK: What says the State?

19 MR. HALL: Please seat the juror.

20 MADAM CLERK: What says the Defense?

21 MR. COLONGELI: Please excuse Mr. Pearson from the
22 trial of this case.

23 MADAM CLERK: Juror Number 33, James Branton. What
24 says the State?

25 MR. HALL: Please seat the juror.

1 MADAM CLERK: What says the Defense?

2 MR. COLONGELI: Please seat Mr. Branton.

3 MADAM CLERK: Juror Number 56, Donald Coombs. What
4 says the State?

5 MR. HALL: Please seat the juror.

6 MADAM CLERK: What says the Defense?

7 MR. COLONGELI: Please excuse Mr. Coombs from the
8 trial of this case.

9 MADAM CLERK: Juror Number 8, Jolyne Anderson.
10 What says the State?

11 MR. HALL: Please seat the juror.

12 MADAM CLERK: What says the Defense?

13 MR. COLONGELI: Please excuse Ms. Anderson for
14 cause, your Honor.

15 THE COURT: Declined.

16 BAILIFF: Ms. Anderson, hold just a second.

17 THE COURT: I'm declining your challenge for cause.
18 Do you want to exercise a challenge?

19 MR. COLONGELI: Yes, your Honor.

20 THE COURT: Okay. Not for cause.

21 MR. COLONGELI: Understood.

22 MADAM CLERK: Juror Number 108, Arcelia Harmison.
23 What says the State?

24 MR. HALL: Please seat the juror.

25 MADAM CLERK: What says the Defense?

1 MR. COLONGELI: Please seat the juror.

2 MADAM CLERK: Juror Number 247, Michael Williamson.

3 What says the State?

4 MR. HALL: Please seat the juror.

5 MADAM CLERK: What says the Defense?

6 MR. COLONGELI: Please seat Mr. Williamson.

7 MADAM CLERK: Juror Number 131, Travis Kelly. What

8 says the State?

9 MR. HALL: Please seat the juror.

10 MADAM CLERK: What says the Defense?

11 MR. COLONGELI: His number one more time.

12 MADAM CLERK: 131.

13 MR. COLONGELI: Please seat the juror.

14 MADAM CLERK: Juror Number 61, Anne Cyran. What

15 says the State?

16 MR. HALL: Please seat the juror.

17 MADAM CLERK: What says the Defense?

18 MR. COLONGELI: Please seat the juror.

19 MADAM CLERK: Juror Number 245, Brenda Williams.

20 What says the State?

21 MR. HALL: Please seat the juror.

22 MADAM CLERK: What says the Defense?

23 MR. COLONGELI: It's 245, correct?

24 MADAM CLERK: 245.

25 MR. COLONGELI: Please excuse Ms. Williams from the

1 trial of this case.

2 MADAM CLERK: Juror Number 195, Geraldine Rousseau.

3 What says the State?

4 MR. HALL: Please seat the juror.

5 MADAM CLERK: What says the Defense?

6 MR. COLONGELI: Please seat Ms. Rousseau.

7 MADAM CLERK: Juror Number 80, Mark Florence. What
8 says the State?

9 MR. HALL: Please seat the juror.

10 MADAM CLERK: What says the Defense?

11 MR. COLONGELI: Please seat the juror.

12 MADAM CLERK: Juror Number 213, McKimmie Smith.

13 What says the State?

14 MR. HALL: Please seat the juror.

15 MADAM CLERK: And what says the Defense?

16 MR. COLONGELI: Please seat Ms. Smith from the
17 trial of this case.

18 MADAM CLERK: Now we'll be going for the
19 alternates. Juror Number 206, Diane Scholp. What says
20 the State?

21 MR. HALL: Please seat the juror.

22 MADAM CLERK: What says the Defense?

23 MR. COLONGELI: Please excuse the juror.

24 MADAM CLERK: Juror Number 226, Stephen Szalai.

25 What says the State?

1 MR. HALL: Please seat the juror.

2 MADAM CLERK: What says the Defense?

3 MR. COLONGELI: His number again?

4 MADAM CLERK: I'm sorry. 226.

5 MR. COLONGELI: Please seat the juror.

6 THE COURT: All right. Those that have been
7 selected, I'll ask you please go with the bailiff to the
8 jury room, and I'll bring you back shortly.

9 BAILIFF: Jury's clerk, door's closed, your Honor.

10 JURORS LEAVE COURTROOM 3:37 P.M.

11 THE COURT: Are there any matters to address
12 regarding jury selection by the State?

13 MR. HALL: No, thank you, your Honor.

14 THE COURT: By the Defendant?

15 MR. COLONGELI: None, your Honor.

16 THE COURT: All right. Those who are not selected,
17 you are excused for the balance of the afternoon. I do
18 ask that you call back to the number that you have.
19 Have they got the number?

20 MADAM CLERK: Yes, sir.

21 THE COURT: Call that number for jury reporting
22 information.

23 BAILIFF: Yes, sir, your Honor.

24 THE COURT: Call that number after 6:00 o'clock
25 this evening. After 6:00 o'clock this evening. You may

1 be asked to report in the morning. You may be asked to
2 call back at another time tomorrow to receive that
3 information. So just be sure you call back tonight
4 after 6:00. Be sure you follow the instructions on the
5 recorded message.

6 Thank you again for your participation. Have a
7 good afternoon.

8 No one else is to leave the courtroom while the
9 jury is exiting, please.

10 BAILIFF: Jury pool's clear, your Honor. Except
11 for the lady here speaking with me.

12 BALANCE OF JURORS LEAVE COURTROOM.

13 BAILIFF: Last juror's clear, your Honor.

14 THE COURT: All right. We're going to excuse this
15 jury, and then we'll take up probation matters.

16 BAILIFF: You want me to bring them in, Judge.

17 BAILIFF: Courtroom still closed, your Honor?

18 THE COURT: Yes, sir.

19 BAILIFF: Can I let anyone exit, your Honor?

20 THE COURT: No.

21 BAILIFF: All right, sir.

22 THE COURT: Just be patient and we'll be with you
23 in a minute.

24 BAILIFF: No problem, your Honor.

25 BAILIFF: The jury is entering, your Honor.

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JURY ENTERS COURTROOM 3:42 P.M.

THE COURT: Ladies and gentlemen, I've got some other matters that are scheduled for this afternoon, but I wanted to go ahead and get this jury selected so that it wouldn't interfere with those who are not selected. But you are going to be excused for the balance of today. I'm going to ask that you report back to your jury room at 9:30 in the morning. 9:30 in the morning.

So you've been to your jury room, but you probably don't know how to get there, but if you'll talk to the bailiff, he'll provide you with those instructions and directions.

Please understand, however, that during the trial of this case, so that begins right now until the end, you're not permitted to discuss this case with any person whatsoever in any fashion whatsoever. You're also not permitted to conduct any research or do your own investigation into any issue that might arise in the case. You also cannot conduct any research to find out what the case is about through the Internet or newspapers or television or radio.

Your decision in any case always must be based solely upon the testimony and the evidence received during the course of the trial. You're never permitted to supplement your knowledge about the case by

1 conducting outside research or discussing it with
2 others, because you might be exposed to information that
3 would influence your judgment, but it not even be
4 accurate or truthful information.

5 So, no discussions, no research, no investigation.
6 Do have a good evening, and please report to your jury
7 room at 9:30 in the morning. 9:30 in the morning. Have
8 a good afternoon.

9 JURY LEAVES COURTROOM 3:45 P.M.

10 BAILIFF: Jury's clear, door's closed, your Honor.

11 THE COURT: All right. Thank you. State versus
12 Green is in recess until 9:30 in the morning.

13 MR. HALL: Thank you, Judge.

14 MR. COLONGELI: Thank you, your Honor.

15 END DAY ONE, APRIL 23, 2012, 3:45 P.M.

16 BEGIN DAY TWO, APRIL 24, 2012, 10:30 A.M.

17 BY THE COURT:

18 THE COURT: Thank you. Be seated. All right. Any
19 matters that need to be addressed before the jury's
20 brought in?

21 MR. HALL: Not from the State, your Honor.

22 MR. COLONGELI: None from the Defense, your Honor,
23 other than what we've discussed in chambers, I think
24 everything has been addressed fully.

25 THE COURT: Well, if there's anything we discussed

1 in chambers that you need to put on the record, we'll do
2 that, if it needs to be done now.

3 MR. COLONGELI: Yes, sir. I guess for purposes of
4 preserving the record, the only thing I would like to
5 mention, I did renew my *Rule 5* yesterday as a motion.
6 That was granted. Mr. Hall has indicated to me that I
7 have everything that he has, so I'm going under that
8 assumption.

9 The only new additional information that has come
10 to me this morning is a discussion either Mr. Hall or
11 law enforcement may or may not have had with the alleged
12 victim and/or witness, Mr. Boskey, as far as discussion
13 about the possibility of him not testifying or not
14 sticking to his original statement in conjunction with
15 some possibility of an arrest based on false
16 information.

17 That's something that was brought to my attention
18 this morning. That's something that was outside the
19 scope of my discovery, and I did want to. at least, put
20 that on the record here this morning.

21 I'm going to let the State proceed, obviously, with
22 their case, but I did want to bring that to the Court's
23 attention. It has been discussed fully, and I just want
24 to make sure I have the correct information going
25 forward. And I believe I understand what's been said.

1 THE COURT: Okay. Anything else?

2 MR. COLONGELI: Nothing further from the Defense,
3 your Honor.

4 MR. HALL: Nothing from the State, your Honor.

5 THE COURT: All right. Bring the jury in. And ask
6 Ms. Martin, Ms. Martin, to take the foreperson's seat.

7 BAILIFF: Yes, your Honor.

8 THE COURT: Juror 152.

9 MR. HALL: Your Honor, if I may just, we have the
10 victim across the hall. I just want to double check
11 with him whether or not he wants to be actually present
12 in the courtroom.

13 THE COURT: Okay.

14 MR. HALL: If I could have a moment.

15 MR. HALL LEFT THE COURTROOM,
16 RETURNING SHORTLY.

17 MR. HALL: Your Honor, for the record, the victim,
18 Mr. Boskey, has declined to sit in the courtroom during
19 the pendency of the proceedings, absent when he will
20 testify.

21 THE COURT: Okay.

22 BAILIFF: Jurors are entering, your Honor.

23 JURY ENTERS COURTROOM 10:35 A.M.

24 BAILIFF: The jury is seated, your Honor.

25 THE COURT: Thank you. Good morning, ladies and

1 gentlemen. I apologize for the delay in having you
2 brought in, but I had some other matters I needed to
3 address, and they took a little bit longer than I had
4 anticipated. But we are now ready to begin with the
5 trial of the case for which each of you have been
6 selected.

7 And Ms. Martin, I'm going to ask you to serve as
8 the foreperson of the jury. And as a foreperson, you're
9 going to have three specific duties that none of the
10 other jurors will have. Number one, you'll be asked to
11 serve as a spokesperson for the jury.

12 And so, if, during the trial, something arises that
13 needs to be brought to my attention, you or a fellow
14 juror has some difficulty, problem, or question, it'll
15 be you who will let me know, either directly or through
16 the bailiff.

17 Secondly, you're going to be asked to preside over
18 the jury deliberations when that time comes. That, of
19 course, won't be until the end of the trial, after all
20 the evidence has been received and you've been
21 instructed on the law that's applicable in the case.

22 But when the time does come for jury deliberations,
23 you will preside over that process in the jury room,
24 simply to ensure that those deliberations are carried
25 out in some orderly fashion.

1 And thirdly, you're going to be asked to actually
2 write the decision of the jury on the verdict forms that
3 I'll provide you at the trial's conclusion, on which you
4 will indicate the jury's unanimous decision as to each
5 of the separate charges that have been brought against
6 the defendant.

7 Now, the foreperson has those duties that I've just
8 indicated. That does not, however, mean that she is
9 anymore important than any of you other jurors. And
10 that's because any decision that a jury reaches must be
11 unanimous. All twelve of you must be in agreement. And
12 so, each of you will have an equal say and an equal vote
13 in what the ultimate decisions in this case will be.
14 Someone simply has to be delegated those
15 responsibilities that I have just indicated, and I have
16 delegated those to Ms. Martin in appointing her as the
17 foreperson.

18 But each of you jurors are equally important so far
19 as the ultimate decisions in the case are concerned,
20 because, as I've stated, the verdicts have to be
21 unanimous. All of you must be in agreement.

22 Mr. Szalai, Szalai? How do you pronounce that?

23 JUROR SZALAI: Szalai.

24 THE COURT: Szalai. Okay. You've been selected as
25 an alternate juror. And the purpose of an alternate is

1 to take the place of one of the original twelve, if,
2 during the trial, one of these twelve can't continue to
3 serve for some reason. And so, if one of the original
4 jurors is called away because of an emergency or an
5 illness or some other circumstance that prevents them
6 from continuing to serve as a juror in the case, you
7 would then take that person's place.

8 In that event, you'll become the twelfth juror.
9 And if that were to occur, then you would also
10 participate in the jury deliberations at the trial's
11 conclusion.

12 If, however, when the time does come for jury
13 deliberations, the original twelve are able to
14 participate, your service ends, and you don't
15 participate any further. And that's because the
16 decision of the jury is that of twelve, no more than
17 twelve are permitted to engage in that deliberation
18 process. But it is important that you pay just as
19 careful attention as we ask of all of the jurors in this
20 case, because it does occur from time to time for one
21 reason or another. One of these twelve may be called
22 away. In that event, you become the twelfth.

23 So, we do appreciate your participation as an
24 alternate juror, just as we appreciate the participation
25 of each of you jurors who have been selected for the

1 purpose of deciding the verdict in these particular
2 cases.

3 You may swear the panel.

4 JURORS SWORN, MADAM CLERK.

5 THE COURT: Ladies and gentlemen, as you are well
6 aware, you have been selected to decide the verdict in
7 the case of the State versus Andre Green. As I told
8 you, prior to your selection, Mr. Green has been accused
9 by the State through the Solicitor of having committed
10 four separate and distinct criminal offenses, although
11 they are alleged to have arisen out of one particular
12 event or a course of events, which the State alleges
13 occurred back on June the 9th of 2011.

14 And the charges that have been brought against the
15 defendant are set forth in four separate indictments,
16 the indictments I explained to you prior to your
17 selection. The indictments aren't evidence of anything.
18 They're not proof of anything. They don't establish
19 anything. They're simply the means by which any person
20 who is accused of a crime where the jurisdiction lies in
21 this court is brought into this court in order to
22 respond to that charge and have a trial.

23 The indictments will be in the jury room at the
24 trial's conclusion, because it's on the back of each
25 indictment, Madam Forelady, that you're going to be

1 asked to indicate the jury's unanimous decision as to
2 that particular charge. But other than serving as a
3 verdict form, the indictments serve no purpose so far as
4 you jurors are concerned.

5 The defendant is charged with the crimes of car
6 jacking, kidnaping, armed robbery, and unlawful
7 possession of a pistol.

8 The State alleges on or about June the 9th of 2011
9 that Andre Green did take or attempt to take a motor
10 vehicle from Dennis Boskey by the use of force,
11 violence, or intimidation, while Mr. Boskey was
12 operating that vehicle or was an occupant of that
13 vehicle.

14 Mr. Green is also charged with the crime of
15 kidnaping. The State again alleging on June 9, 2011,
16 that Mr. Green did unlawfully seize, confine, kidnap, or
17 abduct Dennis Boskey without any authority of law.

18 The defendant, Andre Green, is also charged with
19 the crime of armed robbery; and that he did, on or about
20 June the 9th of 2011, at Casablanca Circle, in Port
21 Royal, by the use of force, threats, or intimidation,
22 and while armed with a deadly weapon, or while alleging,
23 either by actions or words, that he was, in fact, armed,
24 while using the representation of a deadly weapon, or
25 some other object which a person present would

1 reasonably believe to be a deadly weapon, and that he
2 did take, steal, and carry away certain personal
3 property that belonged to Mr. Boskey with the intention
4 of depriving Mr. Boskey of use and possession of the
5 property.

6 And the remaining indictment charges Mr. Green with
7 the unlawful possession of a handgun, he not being
8 authorized, under the circumstance, to possess that
9 handgun at that time.

10 Now, as to those allegations and as to each of
11 those charges, the defendant has entered a plea of not
12 guilty. A plea of not guilty places upon the State the
13 burden of proving the allegations that they have set
14 forth in each of those indictments; the burden of
15 proving each of the essential elements that constitute
16 the crimes the State has alleged against the defendant.

17 And therefore, the burden is upon the State to
18 establish the defendant's guilty to the satisfaction of
19 each of you twelve jurors, beyond a reasonable doubt,
20 before a verdict of guilty could be returned as to any
21 of the separate offenses.

22 Any person accused of a crime, and it does not
23 matter how serious the offense might be, for which that
24 person stands charged, every person accused of a crime
25 is, under the law, presumed to be innocent of that

1 charge. That presumption of innocence remains with any
2 defendant as it does with this defendant from the time
3 that he is place under arrest, and throughout the course
4 of the criminal process, and even throughout the course
5 of the actual trial in the case.

6 That presumption of innocence will be with Mr.
7 Green even at the time that you go back at this trial's
8 conclusion to begin with your deliberations in the case.
9 That presumption of innocence will be with you in that
10 jury room, and it'll be with him forever, unless you
11 twelve jurors determine that he's no longer entitled to
12 the presumption of innocence.

13 In other words, after you have carefully considered
14 all the evidence in the case, and from that evidence,
15 you have decided what you believe to be the true facts
16 as they relate to these allegations, and after deciding
17 those facts, you apply the law that I have provided you
18 as relates to each of the separate charges, if you
19 twelve jurors unanimously determine that his guilt has
20 been proven as to a particular charge beyond a
21 reasonable doubt, then he's no longer entitled to the
22 presumption of innocence as it relates to that charge.

23 But it's only if, unless, and until you are
24 satisfied of his guilt beyond a reasonable doubt that he
25 would no longer be entitled to the presumption of

1 innocence as it relates to that charge.

2 Now, the way the trial will proceed is, in a
3 moment, the lawyers are going to address you in what are
4 called opening statements. After all the evidence is
5 received, the lawyers will again address you in closing
6 statements.

7 Please understand, however, that the lawyer's
8 statements are not to be considered by you as evidence.
9 The lawyers aren't witnesses to anything. They don't
10 know anything about this case of their own personal
11 knowledge or perception, like witnesses will be
12 testifying who testify from the witness stand. The
13 lawyers aren't going to take the witness stand and
14 they're not going to be placed under oath.

15 They're not going to be subjected to direct and
16 cross-examination like each of the witnesses will be.
17 And so, what they tell you is not to be considered by
18 you as any evidence upon which you will base your
19 decision. But you should listen to what the lawyers
20 have to say, because those statements do serve a
21 purpose.

22 The opening statements serve to provide you with a
23 basic understanding as to what this case is about from
24 both the perspective of the State and the Defendant, so
25 that you'll have some context in which to place the

1 evidence that we're going to be receiving shortly
2 thereafter.

3 The closing statements, as I've said, occur after
4 all of the evidence has been received. And again, while
5 those statements are not evidence, it does afford the
6 lawyers an opportunity to discuss with you the evidence
7 that you have seen and heard during the course of the
8 trial. And through that discussion, each will have an
9 opportunity to try to persuade you or to convince you
10 that the evidence in the case does or does not support a
11 particular decision.

12 And it's in between the opening and closing
13 statements that we actually receive the evidence upon
14 which you will base your decision. The State, as you
15 know, has the burden of proof. The State has to prove
16 the Defendant guilty beyond a reasonable doubt before he
17 can be found guilty of any crime. And so, the State has
18 an obligation to present evidence. And so, they'll go
19 forward first in their presentation of evidence.

20 Once the State has concluded with its presentation
21 of evidence, the Defense has the right to testify or
22 call a witness or present other evidence. But a
23 defendant is in no way required to do so or obligated to
24 do so. And that's because the defendant doesn't have
25 any burden to prove anything. A defendant is not

1 obligated to prove that he is not guilty or prove that
2 he is innocent, because, in some cases, that might not
3 even be possible.

4 The burden is on the State because they've made the
5 accusation. They brought the charge. So the burden is
6 upon the State to prove a defendant's guilt beyond a
7 reasonable doubt. But there is no burden upon a
8 defendant to establish anything.

9 And in some cases, a defendant doesn't testify and
10 doesn't call any witness and doesn't produce any
11 evidence. And if that occurs, that's not something that
12 you jurors may consider in any way whatsoever in your
13 deliberations or in your determination as to whether or
14 not his guilt has been proven.

15 But a defendant is afforded an opportunity to
16 present evidence if he or she wished to do so.

17 So, after all the evidence has been received and
18 after you hear the final summations of the lawyers, I
19 will then instruct you fully on the law as it relates to
20 the criminal law generally and as it relates to these
21 four specific crimes particularly.

22 After I instruct you on that law, you'll then be
23 asked to go back and begin with your deliberations.
24 Through that process, you're simply going to be asked
25 through the exercise of good judgment and common sense

1 to carefully consider all the evidence, to evaluate the
2 credibility of witness testimony, to decide the facts,
3 to apply the law, and to arrive at a fair and just
4 decision in this case, whatever that decision might be.

5 Now, it's also important that you give every
6 witness the same degree of attention as they testify.
7 And that's because there might be a conflict in the
8 testimony between witnesses. And if that conflict in
9 testimony relates to some material fact that you need to
10 resolve, in order to arrive at your decision, you're the
11 one that resolves that material fact.

12 In other words, you decide what is the most
13 credible and believable testimony. And that's the
14 testimony you accept. And you reject any testimony or
15 other evidence that you find not to be credible or
16 believable in the exercise of good judgment and common
17 sense.

18 And so, you can believe everything that the witness
19 testified to. You may choose to believe none of it.
20 You may believe some portion of a witness's testimony,
21 and reject some other portion of that same witness's
22 testimony. You can believe one witness as opposed to
23 several, or several as opposed to one.

24 But in order for you to be able to fairly and
25 properly evaluate a witness's credibility, you need to

1 pay attention when the witness testifies so that you can
2 judge that witness's credibility in light of not just
3 that witness's testimony, but in light of all of the
4 testimony and all of the evidence received during the
5 trial.

6 And of course, it's important that you keep an open
7 mind throughout the course of the trial. And that just
8 means that you are not to begin making up your minds or
9 formulating your opinions as to what you think the
10 ultimate decision in this case ought to be until all of
11 the evidence has been received, until I have instructed
12 you on the law that's applicable in this case, and until
13 you've been asked to go back and begin with your
14 deliberations in the case.

15 That is the process that is designed for you twelve
16 jurors to arrive at a fair and just decision in the
17 case.

18 So, I do want to thank you in advance for your
19 participation, as well as for your careful attention.
20 I'll ask that you please give the lawyers your attention
21 now as they give you their opening statements.

22 Mr. Hall.

23 MR. HALL: Thank you, your Honor. May it please
24 the Court.

25 OPENING STATEMENT

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ON BEHALF OF THE STATE

MR. HALL:

MR. HALL: Good morning, ladies and gentlemen. My name's Patrick Hall. I'm here on behalf of the County. I'm here to prosecute this man with the tie, no coat, at the table, Andre Green.

As the Court's pointed out, he's charged with armed robbery, kidnaping, car jacking, and unlawful possession of a weapon. And it's my job to prove that to you beyond a reasonable doubt.

Now, I'm certain that most of you, if not all of you, during the course of your day, someone will ask you at the end of your day, how was your day. And you always hope to be able to tell them, I had a good day or my day was okay.

Well, on June 9th of last year, here in Beaufort County, specifically in Port Royal, if you were to ask Dennis Boskey what kind of day he had, he'd say it's probably one of the worst of his life. On that day, he started out going to Spanish Trace Apartments. He was going to meet a friend there to collect \$20.00 that he was owed for some gas money.

When he pulled into Spanish Trace, he saw a friend of his. A gentleman by the name of Brandon Parker. Mr. Parker asked Mr. Boskey, the victim, for a ride, and Mr.

1 Boskey agreed.

2 When Mr. Boskey went to leave Spanish Trace, Mr.
3 Boskey got in the car -- pardon me. When Mr. Boskey
4 went to leave Spanish Trace, Mr. Parker got into the
5 car, and also, unexpectedly, Mr. Green got into the car.

6 Now, Mr. Parker was seated in the front passenger
7 seat, and Mr. Green was seated behind the driver, the
8 victim, Dennis Boskey. They were asking for a ride over
9 to Casablanca Park. Mr. Boskey agreed to take them
10 there. It was a short distance. It was a hot day, but
11 they wanted a ride over. So Mr. Boskey gave them a ride
12 to the apartment -- a ride to the park.

13 They arrived at the park, and Mr. Boskey said,
14 *Okay, we're here. Well, Mr. Boskey was then told, No,*
15 *we don't want to be dropped off here; there's some*
16 *trouble here with some of these kids; why don't you take*
17 *us up a little bit and drop us off further up. So Mr.*
18 *Boskey did that.*

19 And once he pulled up a little bit further, out of
20 sight of other people, it's the State's contention, at
21 that point, Mr. Green pulled out a gun and placed it to
22 the back of Mr. Boskey's head, asked him to empty his
23 pockets.

24 Mr. Boskey had \$30.00 in cash on him. That was
25 taken from him. Mr. Boskey was then asked to exit the

1 car, still at gunpoint. At that point, the State would
2 contend that Mr. Green rifled through Mr. Boskey's car
3 looking for anything else that he could find. He didn't
4 find anything else. Obviously, he was, the State would
5 contend, frustrated with the situation.

6 At that point, while Mr. Parker was still present,
7 they came up with the idea of putting Mr. Boskey in the
8 trunk. And they did so at gunpoint. There was a brief
9 struggle. Mr. Boskey didn't want to get in the trunk of
10 his own car, but having a gun held on him, that
11 convinced him he had to get into the trunk of his car.

12 They closed the trunk on him. He heard two car
13 doors close, and the car began to drive off while Mr.
14 Boskey was still inside.

15 Mr. Boskey was trying to figure, just generally
16 from knowing the area, I think, if they turned left,
17 turned right. He was looking for the latch inside the
18 trunk.

19 Now, as the car, I believe, turns the corner, he
20 finds the latch, pops it open, and rolls out of the
21 moving car, into traffic that was heading up towards the
22 McTeer Bridge. Now, Mr. Boskey's laying there in the
23 road. He looks up. He sees cars coming at him. One
24 goes by him this way. One goes by the other way. Third
25 car stops. And it's at that point that Mr. Boskey

1 approaches this woman and a 911 call is made. And
2 you'll hear the testimony of that 911 caller this
3 morning, as well as the 911 calls themselves. There
4 were two placed that day. One from Ms. Monica Wiser,
5 who you're going to hear from, and also, from Mr. Boskey
6 himself that was placed a little bit later.

7 Mr. Boskey was interviewed. He gave a statement
8 that was consistent with everything that's been told to
9 you this morning.

10 Two days later he was shown a photo line-up, and I
11 would say, I would characterize it, as instantaneously
12 picked Andre Green out as the man who was seated behind
13 him in his car that pulled a gun on him, that forced him
14 into his trunk at gunpoint, and drove off in his car
15 while Mr. Boskey was still in the trunk.

16 Now, to me, that sounds like a great case, you
17 know, but every case seems to have its own little *Law-*
18 *and-Order* moments. And as opposed to, you know, waiting
19 for the trial to unfold and have the *Law-and-Order*
20 moment happen, I'm going to give you heads up in
21 advance.

22 Mr. Boskey has been cooperative with us, but Mr.
23 Boskey has also signed statements saying that he doesn't
24 wish to prosecute this case, and that he's not sure that
25 he can now identify Mr. Green. I want to be up front

1 with you about that. You're going to hear about that.
2 And I think there's a reason that Mr. Boskey is in this
3 posture at this point.

4 Mr. Green was arrested several months later for
5 reasons that are unimportant. This happened in June.
6 Mr. Green was arrested in October.

7 Mr. Green, at his own insistence, sat down with
8 Sergeant Andre Massey from the Port Royal Police
9 Department, who's seated next to me, and gave a
10 statement. In that statement, Mr. Green admits to
11 accepting the ride from Dennis Boskey, but says nothing
12 happened after that. He has no idea of anything that
13 happened after that.

14 You'll also hear in this interview that in between
15 the time of the incident that happened and when Mr.
16 Green was arrested, Mr. Green sought out Dennis Boskey,
17 the victim; somehow got his cell phone number; called
18 him up and went to his apartment to have a chat with him
19 about the case.

20 I would submit to you that, that, along with other
21 things, are the reason that there might be some
22 hesitance now in Mr. Boskey's testimony, which you'll
23 hear today.

24 So I'm going to ask you to listen very carefully to
25 what's being said today. You're going to hear live

1 testimony. You're going to hear testimony that's being
2 played off of a compact disc from interviews from Mr.
3 Green.

4 From the 911 call, I'm confident that, if you
5 listen carefully to what's going on here, that the
6 conclusion that you'll come to is that Mr. Green will be
7 found guilty of these charges.

8 Thank you very much for listening to me. And
9 please listen to anything Mr. Colongeli has to say.

10 THE COURT: Mr. Colongeli.

11 MR. COLONGELI: May it please the Court, your
12 Honor.

13 OPENING STATEMENT ON

14 BEHALF OF DEFENDANT

15 MR. COLONGELI:

16 MR. COLONGELI: Good morning, ladies and gentlemen
17 of the jury. My name is Don Colongeli, you got that
18 during the jury selection process. And as you know, I
19 represent Mr. Andre Green. We had him stand up at the
20 beginning of this whole process. And Andre, if you
21 could stand up again.

22 This is Andre Green. Twenty-eight years old. You
23 can be seated. And he hails from Beaufort County. Born
24 and raised. Kia Parker is the mother of his four-month-
25 old son. And as I said, they do reside here in Beaufort

1 County. Actually, they reside very close, if not next
2 to, the Port Royal Police Station.

3 You heard Mr. Hall tell you in his opening, as he
4 started out, that it is his duty, as this Court has
5 indicated to you, also, that he has the duty to prove
6 Mr. Green guilty beyond a reasonable doubt.

7 And wouldn't it be so nice if everything he just
8 had to tell you could come out perfectly, clearly, and
9 to the point where all twelve of you, at the end of this
10 case, can easily determine, beyond a reasonable doubt,
11 that Mr. Green is, in fact, guilty.

12 That's what this table here wants to convince you
13 of. That's what Mr. Hall he's told you he is going to
14 convince you of. And I'm asking you all, as a
15 representative of Mr. Green and his best interests, that
16 you take him to task in proving what he just told you
17 happened beyond a reasonable doubt.

18 I'm going to try to keep this brief and not tell
19 you a lot of the things you're about to hear. But I can
20 tell you this. By the time this testimony is over and
21 the State presents his case, everything that Mr. Hall
22 just told you, you're going to have questions about from
23 the very beginning to the very end.

24 Mr. Hall already indicated to you that he had
25 problems with this case. Well, I don't know if he's

1 indicated that strong enough, and I'll leave it at that.
2 He has indicated he has problems. And those problems
3 involve the alleged victim, who is not here in the
4 courtroom presently, who alleges all these things, in
5 fact, happened.

6 The State contends that they're going to try to
7 explain why Mr. Boskey never was able to initially
8 identify Andre Green as the person who the State claims
9 did these things to you [sic]. And arguably, you very
10 well may hear during the course of this trial that, in
11 fact, Mr. Boskey not only didn't indicate who the other
12 person was in the vehicle with him that day, but to this
13 day, has some question, if not an outright denial, that
14 Mr. Green ever did the things the State is trying to
15 tell you beyond a reasonable doubt that he did.

16 There is no issue as to what Mr. Hall said. And
17 Mr. Green's testimony you'll hear, possibly from the
18 State, that he did catch a ride.

19 One of the things I hope you're missing -- I don't
20 hope you're missing, but I hope that you caught was the
21 fact that the definite in this situation was a fellow by
22 the name of Brandon Parker. Brandon Parker is close, if
23 not kin, to the victim, Dennis Boskey. He is located
24 next door in the detention center. The State has chosen
25 not to prosecute his case at this time, and that's their

1 discretion. But that is a definite. There's never been
2 any question in Mr. Boskey's mind from day one that
3 Brandon Parker did all the things that the State is
4 alleging that Andre Green did.

5 There's no question in Dennis Boskey's mind. As a
6 matter of fact, throughout his testimony, he
7 unequivocally always states to Detective Massey that
8 Brandon Parker did a terrible thing to him that day.

9 The Judge did an excellent job in going over a lot
10 of things that I'm not going to consume your time here
11 with this morning. Things that we see on T.V., things
12 that we hear about, but things that are the bedrock of
13 our criminal justice system. Things that I still, after
14 18 years of practicing law, firmly believe in. I love
15 the job that I do.

16 And to tell you a little bit about myself, I've
17 been a defense counsel in this area for almost 18 years.
18 I started with Gene Hood, who is the chief resident
19 public defender of the 14th Circuit. And did that for
20 about five years. And then continued my practice with a
21 firm on Hilton Head. And then started up my own
22 practice with my wife, and raised my family since, and
23 enjoy what I do. But I'm still very idealistic in the
24 principles of justice.

25 And it's very hard sometimes being a defense

1 counsel that people look at defense counsels and ask how
2 can you represent people that are alleged to have done
3 the kind of crimes that Mr. Green has alleged to have
4 done.

5 These three charges are about the most serious you
6 can get in any state, let alone South Carolina. But
7 please, as the Judge so eloquently told you, there's
8 this thing called presumption of innocence that has to,
9 has to, apply. And I beg you -- and it's amazing,
10 jurors and the duty that you're serving here, they say,
11 is one of the highest duties you can serve short of war
12 time. And I think when you're done with this
13 experience, hopefully, hopefully, you'll walk away from
14 it -- and I'm sure I can tell you now it's something
15 you'll probably never forget, whether for good or for
16 bad.

17 It's amazing how well twelve people can come
18 together and actually deliberate and do this job. And
19 you're integral to our system of justice.

20 But this presumption of innocence is what's so
21 important. And Andre Green is presumed innocent. He's
22 been presumed innocent before he was charged, as he was
23 charged, and as he sits here before you today. And he
24 remains so, as the Judge said, up and until all twelve
25 of you decide that Mr. Hall, with Detective Massey, have

1 proved to you beyond a reasonable doubt that he's, in
2 fact, guilty of each and every element of the offenses
3 charged.

4 This whole system of ours called justice, in Latin,
5 ver dictum is to seek the truth. You'll hear remarks
6 from Detective Massey in his interviews with these, so
7 to speak, players in what transpired on June 9th of last
8 year. His job is to seek the truth.

9 Unfortunately, what I've learned over 18 years is,
10 we only can hope that, at the end of the day, the truth
11 is what we arrive at. But here, we're dealing with
12 evidence. And what law enforcement has and what the
13 State has, all they have is evidence. And I will
14 contend to you here, and remember me and what I said to
15 you here as this progresses, and what Mr. Hall said he
16 is going to prove to you beyond a reasonable doubt is,
17 all going to boil down to what comes from this witness
18 stand. There will not be one piece of forensic evidence
19 in this case.

20 You may hear some discussion about fingerprints,
21 but there are no fingerprints. You may hear some
22 discussion about phone records. There are no phone
23 records, let alone any other thing even remotely
24 scientific, as far as forensic evidence. Everything
25 will boil down to the credibility and the believability

1 of what you hear from that stand.

2 And the Judge will instruct you, once this is over,
3 as to how important credibility is or how that weighs
4 and how you're supposed to take that into consideration.

5 In closing, ladies and gentlemen, after 18 years of
6 doing this, I tell you, it never gets easier. And I
7 often go over and above what I think I have to do to the
8 point sometimes I confuse myself. And that's why one of
9 the last things I want to ask you to do is, if there is
10 anything about me personally -- we're all humans and my
11 mannerisms or how I look or how I talk that you may not
12 like, do not hold that against Andre. Please do not
13 hold that against Andre. And I wouldn't suggest that
14 you would, but I feel it's important to relay that to
15 you.

16 There's a great deal at stake here today and over
17 the next few days. And I trust that you will take into
18 consideration the things that I've asked you to pay
19 attention to over the course of the testimony here.
20 Hopefully, -- or not over the next couple days, but
21 hopefully today. And pay careful attention to the gaps
22 and the problems that Patrick Hall only briefly eluded
23 to that he has with this case.

24 And that's all I want to tell you for now. I trust
25 that you can do the rest. And I can only ask that you

1 use your common sense, your sense of fairness, mercy,
2 and judgment, that in the end, that judgment will be not
3 guilty.

4 Thank you.

5 THE COURT: Mr. Hall.

6 MR. HALL: Thank you, your Honor. The State calls
7 Monica Wiser.

8 WITNESS SWORN.

9 MONICA WISER

10 DIRECT EXAMINATION

11 MR. HALL:

12 Q State your name for the record, please, and spell
13 your last name.

14 A Monica Wiser, W/i/s/e/r.

15 Q Ms. Wiser, you've been subpoenaed here by the State
16 to testify here this morning. Is that correct?

17 A That's correct.

18 Q Did you make a 911 call last summer?

19 A I did.

20 Q And can you explain to the jury the circumstances
21 surrounding that all.

22 A We were driving home towards Lady's Island.

23 Q When you say we, who was in the car?

24 A Myself and my son.

25 Q And your son's how old?

1 A He's ten.

2 Q Okay. So you were driving.

3 A And we -- we were driving, and we were heading
4 towards the bridge. And a car, the trunk came open and
5 a man came rolling out of the car, the trunk.

6 Q How far -- how far in front of you was this car?

7 A Well, he -- there were a couple of vehicles in
8 front of me, but he was kind of to the right of those
9 vehicles. Kind of near the entrance of the assisted
10 living facility.

11 Q Okay. And you saw someone roll out of the trunk.

12 A I did.

13 Q All right. And did you stop to render any type of
14 assistance?

15 A I just stopped the car to call 911. He, the man
16 that came out of the car, was trying to get people to
17 stop, you know, trying to get cars to stop, and
18 everybody kept passing him. So I stopped and called
19 911.

20 Q And you conveyed this information during the course
21 of the 911 call.

22 A Yes.

23 Q And did this person end up sticking around with you
24 during the call or?

25 A Yes, he -- he stood next to the vehicle on the

1 passenger side. Basically, answered questions while we
2 were on the phone call.

3 Q Okay. Do you recall -- do you recall who he said
4 or who he identified himself as?

5 A Not exactly, no. It's been a while.

6 MR. HALL: That's fine. I actually have no other
7 questions for this witness, your Honor.

8 MR. COLONGELI: May it please the Court, your
9 Honor.

10 THE COURT: Yes.

11 MONICA WISER

12 CROSS-EXAMINATION

13 MR. COLONGELI:

14 Q It's Ms. Monica Wiser, correct?

15 A That's correct.

16 Q Very briefly, Ms. Wise, I understand -- I've
17 listened to your 911 call, and can appreciate and
18 sympathize with how traumatic an experience it was for
19 you. I kind of sensed that in your call. But all
20 you're here to tell us today is that you, in fact, saw
21 an individual come out of the trunk of a moving vehicle.

22 A Um-hmm.

23 Q Is that correct?

24 A Yes. He came out of the trunk and came rolling out
25 of it.

1 Q Okay. And would you be able to recollect, by any
2 chance, if that car -- what the speed that car was going
3 when he got out?

4 A No. No, I can't. All I know is that, after he
5 came out of the car, the car did a u-turn and back
6 towards Ribaut Road.

7 Q Would it be safe to say, obviously, this
8 individual, who you don't quite recall, and that's fine,
9 it's been a year, whoever this individual was, was able
10 to walk and talk and requested some sort of assistance,
11 correct?

12 A That's correct.

13 Q Which means, I'm sure the car wasn't traveling at a
14 great rate of speed. Otherwise, he probably would have
15 been seriously injured.

16 A Right. He --

17 MR. HALL: Objection, your Honor. That calls for
18 speculation. She's already answered she wasn't aware of
19 how fast the car was going.

20 THE COURT: That sounds more like a statement,
21 anyway, so I sustain the objection.

22 MR. COLONGELI: I'll move on.

23 BY MR. COLONGELI:

24 A He did have cuts on his hands.

25 Q I'm sorry?

1 A He did have open wounds on his hands.

2 Q Yes, I'm aware of that. You don't -- would you be
3 able to identify him today? Would you remember what he
4 looked like if he was in the courtroom?

5 A Possibly.

6 Q Possibly. You don't remember what his name was?

7 A No, not really.

8 Q Okay. And you didn't see the occupants or occupant
9 of the vehicle, did you?

10 A No.

11 Q Do you know whether there was one or more people in
12 the car?

13 A No.

14 Q You have no recollection. You can't testify as to
15 who was in the vehicle, correct?

16 A No, I can't. It happened too fast.

17 MR. COLONGELI: It happened very fast. Thank you.
18 I appreciate your being here. Thank you. No further
19 questions.

20 MR. HALL: No other questions for this witness,
21 your Honor.

22 THE COURT: You may step down.

23 MR. COLONGELI: I have no objection to her being
24 excused, your Honor.

25 THE COURT: You may be excused, also.

1 A Am I free to go?

2 THE COURT: You are.

3 MR. HALL: The State calls Melanie Smith.

4 WITNESS SWORN

5 MELANIE SMITH

6 DIRECT EXAMINATION

7 MR. HALL:

8 A Okay. My name is Melanie Smith. You need me to
9 spell that? It's M/e/l/a/n/i/e, and last name Smith,
10 S/m/i/t/h.

11 Q How are you employed?

12 A With Beaufort County 911.

13 Q And what is your rank?

14 A I'm a Master Sergeant Communications Coordinator.

15 Q And what are your duties with the Beaufort County
16 Sheriff's Department?

17 A I make the tapes for investigations for court. I'm
18 the liaison for other departments. And I'm in charge of
19 NCIC, National Crime Information Center.

20 Q Can you describe to the jury, I guess, the standard
21 business practice employed by the Sheriff's Department
22 in maintaining 911 calls.

23 A Its done on a digital recording system. They're
24 held for a minimum of 60 days. And I just make the
25 recordings on the system when -- when requested. And

1 then they're held. Those recordings are held
2 indefinitely.

3 Q Were you asked to make a recording with respect to
4 a case involving Andre Green?

5 A Yes.

6 Q And would that be -- you classify them by event
7 numbers. Is that correct?

8 A Correct. Whatever agency event number.

9 MR. HALL: Your Honor, may I approach the witness?

10 THE COURT: You may.

11 BY MR. HALL:

12 Q Let me show you what's been marked as State's
13 Exhibit Number 3, and ask if -- take it out of the
14 envelope, and ask if you can identify that.

15 A Yeah, that's a copy of the 911 calls for Port Royal
16 Event Number.

17 Q All right. And there appear to be some markings on
18 there?

19 A Yeah, that's my initial and today's date.

20 Q That that was reviewed and these are accurate --
21 accurate duplications of the 911 calls?

22 A Correct.

23 MR. HALL: Your Honor, I'd ask at this time to be
24 allowed to play the 911 call for the jury.

25 MR. COLONGELI: Without objection, your Honor.

1 THE COURT: You may.

2 MR. HALL: Thank you.

3 BY MR. HALL:

4 Q For the record, before I play this, is there more
5 than one 911 call on this recording?

6 A Yeah, there are two calls.

7 MR. HALL: And I apologize to the Court here for
8 the delay.

9 MR. COLONGELI: Your Honor, may we approach very
10 briefly.

11 THE COURT: Yes.

12 OFF-THE-RECORD BENCH CONFERENCE,

13 THE COURT, MR. HALL, MR. STEPHENS,

14 MR. COLONGELI.

15 BACK ON THE RECORD.

16 PLAYING COMPACT DISC OF 911 CALL.

17 BY MR. HALL:

18 Q Was that a fair and accurate representation of the
19 recording that was -- that --

20 A Yes.

21 Q -- that was produced as a result of this incident?

22 A Yes.

23 MR. HALL: Your Honor, I don't have any other
24 questions for this witness. I'd ask that State's
25 Exhibit 3 be admitted into evidence.

1 THE COURT: It's admitted.

2 MR. COLONGELI: Without objection.

3 COMPACT DISC OF 911 CALLS

4 MARKED STATE'S EXHIBIT 3,

5 AND ADMITTED AS EVIDENCE.

6 MR. HALL: I don't have any other questions for Ms.
7 Smith.

8 MR. COLONGELI: May it please the Court.

9 MELANIE SMITH

10 CROSS-EXAMINATION

11 MR. COLONGELI:

12 Q Good morning.

13 A Good morning.

14 Q I'm sorry. Melanie Smith, correct?

15 A Correct.

16 Q Melanie, I know you're somewhat limited. You're
17 here -- and I would have stipulated to those recordings.
18 You are a dispatcher, correct? A 911 dispatcher?

19 A Um-hmm.

20 Q With Beaufort County.

21 A Correct.

22 Q So that's a county employee. You're not with the
23 Sheriff's Department.

24 A No. No.

25 Q It's a county position. And you were working on

1 the day of June 9th.

2 A No. I make the recordings.

3 Q Oh. I'm sorry.

4 A I'm not actually in the dispatch center.

5 Q Okay.

6 A Sorry. I'm not actually in the dispatch center.

7 Q Okay. So you're --

8 A I'm the one that makes the recordings.

9 THE COURT: Hold on. She can't take it down if
10 she's up and you're talking. All right. Let's start
11 over.

12 BY MR. COLONGELI:

13 A Yes. I'm not actually in the dispatch center. I
14 make the recordings.

15 Q I'm sorry.

16 A That's okay.

17 Q That makes sense now.

18 A Um-hmm.

19 Q I apologize. So you produce these recordings and
20 put them on discs.

21 A Correct.

22 Q For the Solicitor's Office or for other agencies.

23 A Correct.

24 Q Correct?

25 A Um-hmm.

1 Q Okay. And what we just heard was a lady who
2 testified prior to you, Monica Wiser, correct?

3 A Correct.

4 Q And if I'm not mistaken, she indicated, during that
5 call, that she could not recall, but she saw someone
6 fall out of their trunk.

7 A Correct.

8 Q Correct? And maybe it's not even proper to be
9 asking you this. The extent of what you did, did you
10 even -- do you just copy this stuff and that's it? Do
11 you pay attention to what was said?

12 A I usually listen to a call as I'm recording.

13 Q You do? Okay.

14 A Um-hmm.

15 Q Well, then, that's important. So, Monica Wiser
16 basically stated that an individual fell out of his car,
17 the trunk.

18 A Um-hmm.

19 Q And she also stated --

20 A Yes.

21 Q She also stated that she was not real comfortable
22 with the situation.

23 A Correct.

24 Q Correct? All right. Okay. And then, we go on to
25 hear who I can only assume is the alleged victim, a

1 .fellow by the name of Dennis Boskey.

2 A I don't recall the name, but I'm assuming it's the
3 victim.

4 Q Okay. And this is the fellow who indicates in that
5 call that he fell out of the trunk of a moving car going
6 30 to 45 miles per hour.

7 MR. HALL: Your Honor, I'm going to object that
8 he's essentially eliciting testimony from a records
9 custodian who is here simply to bring the 911 call
10 and --

11 THE COURT: Well, she prepared it, and she said she
12 listened to it, so I'll overrule the objection.

13 MR. COLONGELI: Thank you.

14 BY MR. COLONGELI:

15 Q And obviously, you listened to it, so I want to ask
16 you your impression of what you heard. Did I not hear
17 the dispatcher ask Mr. Boskey who was it?

18 A Yeah, he -- he did ask in the tape who -- who put
19 him in the trunk.

20 Q And I just heard, correct me if I'm wrong, but what
21 I heard was I really don't want to get into it. Is that
22 what I heard? Is that what you heard?

23 A That's what I heard.

24 Q And also, he did indicate, correct me if I'm wrong,
25 what he stated on this tape was the car was going, in

1 his estimation, 45 miles per hour. I'm only asking
2 what's occurred.

3 A Right.

4 Q But I may --

5 A If I recall, it was 35 to 45.

6 Q Thirty to 45 miles per hour.

7 A Um-hmm.

8 Q Okay. And the last thing I heard the dispatcher --
9 the last thing I heard on the tape was did the
10 dispatcher ask him what is your name?

11 A I don't recall.

12 Q You don't recall.

13 A No.

14 Q Okay. That was the end of the tape.

15 A Um-hmm.

16 Q Very short.

17 A Very short.

18 MR. COLONGELI: Thank you. I have nothing further,
19 and no objection to her being excused, your Honor.

20 MR. HALL: No other questions, your Honor.

21 THE COURT: You may step down.

22 A Thank you.

23 THE COURT: And you may also be excused.

24 A Thank you.

25 MR. HALL: The State calls Dennis Boskey.

1 WITNESS SWORN.

2 DENNIS BOSKEY

3 DIRECT EXAMINATION.

4 MR. HALL:

5 A My name's Dennis Boskey, D/e/n/n/i/s, B/o/s/k/e/y.

6 Q Good morning, Mr. Boskey.

7 A Good morning.

8 Q Do you recall the incidents that took place on June
9 9th of 2011?

10 A Yes, sir.

11 Q Can you explain to the jury, step by step, what
12 happened that day.

13 A All right. I left the house. Proceeded to go
14 get a hair cut and pay for daycare. Paid for the
15 daycare. Went and got a hair cut. I left getting a
16 hair cut. Went to Spanish Trace Apartments. I went and
17 picked up --

18 Q What was your purpose in going to Spanish Trace?

19 A Well, two purposes. I picked up \$20.00 someone
20 owed me. And then I went to see my kid's mother --
21 grandmother.

22 Q And when you were in Spanish Trace, did you come
23 across anyone that you knew?

24 A Yes. When I reached at Spanish Trace, I saw Brad
25 Parker, who asked me for a ride. At that particular

1 moment, I told him, *Give me a second, I'll give you a*
2 *ride when I get finished seeing my kid's grandmother.*

3 I went and saw her. The guy owed me \$20.00. When
4 I came back out, Brad Parker rushed me to give him a
5 ride. And I was like, well, why right now. He rushed
6 me, so I go on and said, okay, I can do real quick and
7 I'll come back.

8 We proceeded to get in the car. When we got in the
9 car, he said someone else was coming. We waited, um, we
10 waited a little while. Finally, someone else got in the
11 back seat of the car. Black male. And we proceeded off
12 out of Spanish Trace apartments. We made a left onto
13 Southside Boulevard. We made a left onto Talbird. And
14 we made another left onto Waddell.

15 When we got on Waddell, we made a right, I believe,
16 into Casablanca Circle, which arise all the way down to
17 the park. When we proceeded up at the park, it was a
18 bunch of guys on the left side playing basketball. I
19 stopped the car. I was like, you get out right here.

20 At that particular moment, Brad said, *No. You know*
21 *the police be out here, you know. I'm in trouble. Do a*
22 *lot of stuff. Can you just pull up right there to the*
23 *left.*

24 At that proceeding point, I was skeptical --

25 Q Let me stop you here. You pull into Casablanca

1 Park. And at this point, are there still two other
2 people in the car with you?

3 A Yes, sir.

4 Q All right. And so, Mr. Parker's in the front seat
5 with you

6 A Yes, sir.

7 Q And this other -- this other gentleman's in the
8 seat directly behind you?

9 A Yes, sir.

10 Q All right. So, you pull in, and they ask you to
11 move to a different location.

12 A Yeah, Brad -- Brad asked me to move to a different
13 location.

14 Q All right. And when you got to this different
15 location, what happened?

16 A Well, I pulled up to the left. As soon as I pulled
17 up past some shrubs, the gentleman that was behind me --
18 well, when I pulled into the shrubs, I went to put my
19 car in reverse. The gentleman behind me pulled out a
20 gun and put in the back of my head. At that particular
21 moment, he said, *Run through your pockets.*

22 Q All right. Let me ask you this. How did you know
23 it was a gun that was being placed to your head?

24 A I mean, --

25 Q At that time.

1 A I mean, I felt of a gun. I'm not that -- I'm
2 pretty smart to know what a gun is.

3 Q Okay. So you could feel that it was a gun.

4 A Yes.

5 Q Okay. So, the gun is placed to the back of your
6 head. What happens next?

7 A At that particular point, he said, *Run through your*
8 *pockets.* I get out my pockets. I only had \$30.00 on
9 me. And he -- he proceeds to -- the guy that was behind
10 me proceeds to get out of the car. And he says, *Stand*
11 *in front of your car.*

12 At that particular moment, he went through the car,
13 and I went to walk to the left side of my car to find a
14 place to go. Me and Brad had a brief struggle. I guess
15 he was trying to overpower me. He didn't get to
16 overpower me.

17 At that particular moment, the other gentleman ran
18 over. He had the gun again, and pointed at it me [sic].
19 And he asked me, *Do you really want to die.* At that
20 particular point, he went back to the other side. Brad
21 asked him to pop the trunk. Couldn't get the trunk
22 open, but finally figured out how to get the trunk open.
23 And then he said, *Get in the back of your trunk.*

24 At that particular point, I looked at both parties
25 and said, *I'm not about to get in my trunk.*

1 He's like, *Well, you're going to get in your trunk.*

2 And then my mind went to racing. I remembered that
3 my car has a release latch on it. So I looked at my
4 trunk. And there wasn't enough space for me to get in
5 my trunk. I moved the tire over to get room for me to
6 get in my trunk.

7 I got in the trunk. And then they closed the
8 trunk. And I had my bearings wrong, because I just did.
9 When we pulled out, they backed up, I thought we made a
10 left and a right, then another left. But I thought we
11 were headed the opposite direction, but obviously, we
12 were going over McTeer Bridge.

13 At that particular, I didn't know we were going
14 over McTeer Bridge, but I was doing some fumbling in the
15 car. The music was up. I heard -- I don't know who it
16 was, but -- but I can't mistake it if was Brad Parker's
17 voice or not. But someone said, *Stop moving around the*
18 *car before I shoot through the car.*

19 And I thought by now if they didn't shoot me now,
20 they probably -- when they're going to stop or wherever
21 we're going, shoot me.

22 So there was a little space. I panicked for a
23 quick second. Got my bearings back together. There was
24 a yellow release latch on the car. I pulled it. I saw
25 that I was on pavement. Car probably, I estimate, was

1 going 45 miles per hour. I jumped out the car. There
2 was three other cars behind me. The two cars split the
3 road. The last car, which was a van, a Caucasian
4 female, she stopped. And she pretty -- she seemed
5 pretty upset that I stopped her, I recall.

6 My Buick made a u-turn and proceeded to go -- I
7 don't know where it went, but I know it made a u-turn at
8 I believe that's the -- it's a gas station across from
9 Hardee's.

10 Q When you saw the car do the u-turn, were you able
11 to see who was in the car?

12 A I mean, pretty much. I know -- I know for a fact
13 Brad was in the car. Brad Parker was in the car.

14 Q And how about the gentleman that pointed the gun at
15 you?

16 A Yes, there was two parties still in the car.

17 Q Now, you said you estimated the speed. Did you
18 have any basis at all to estimate the speed, since you
19 were in the trunk of the car?

20 A I mean, I know that speed limit is 45 miles per
21 hour. And based -- based on the impact of me hitting
22 the ground, I know it was going pretty fast. I scuffed
23 up my -- my leg pretty badly. Scuffed up my elbow.

24 Q That was going to be my next question. Did you
25 sustain any injuries?

1 A Yes, sir.

2 Q And where were you injured?

3 A My leg, my knee, my hand, my elbow, and I broke my
4 glasses.

5 Q Did it require medical attention?

6 A They asked if I wanted medical attention. They
7 said I should get it, but I still declined it.

8 Q Now, when you approached this 911 caller, you
9 attempted to give her her name -- give her your name?

10 A That, I do not remember. I -- I just said -- I
11 know I said I been -- I just was robbed, can I use your
12 phone, or can you give me a ride. The lady said, I
13 won't let -- give you a ride, but I'll let you use my
14 phone.

15 Q All right. So the 911 call was made. Did you make
16 your own separate 911 call?

17 A Yes, sir.

18 Q And where did you place that call from?

19 A Advanced Auto.

20 Q And is that somewhere that you went to after your
21 encounter with Ms. Wiser, the 911 -- the original 911
22 caller?

23 A Yes. I walked from where -- where -- from McTeer
24 Bridge, and walked down to the Advanced Auto.

25 Q And at that point, deputies arrived.

1 A Yes, sir.

2 Q Or officers arrived.

3 A Yes, sir.

4 Q Okay. Were photographs taken of your injuries?

5 A Yes, sir.

6 Q Who were those photographs taken by?

7 A Detective --

8 Q It's okay if you don't recall.

9 A Okay.

10 Q But photographs were taken.

11 A Yes, sir.

12 Q Okay. Did you give statements -- any other
13 statements at that time?

14 A Yes, sir. And not directly at that particular
15 moment. No, sir.

16 Q All right. Subsequent to the incident -- so this
17 occurred on what day, if you remember?

18 A It was in June. Roughly, I believe June 6th, 7th.
19 I can't remember the exact date. It's been about ten
20 months ago, I do know that.

21 Q That's fine. Were you asked to come in to the Port
22 Royal Police Department in order to look at a series of
23 pictures?

24 A Yes, sir.

25 Q Okay. Before I asked you the next question, do you

1 see a gentleman by the name of Andre Green in the
2 courtroom today?

3 A No, sir.

4 Q Okay.

5 MR. HALL: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 MR. HALL: Thank you.

8 BY MR. HALL:

9 Q Mr. Boskey, I'm going to show you what's been
10 marked as State's Exhibit 1-A and 1-B and ask if you can
11 identify those?

12 A Yes, sir. I see my signature. And I see six
13 people in the lineup.

14 DOCUMENTS IDENTIFIED AS PHOTO

15 LINEUPS MARKED STATE'S EXHIBITS 1-A

16 AND 1-B FOR PURPOSES OF IDENTIFICATION.

17 Q All right. And you put your initials under --

18 MR. COLONGELI: Objection. Leading, your Honor.

19 Q All right. Where did you place your initials?

20 A Under Number 2.

21 Q Okay. And that's the person who is what to this
22 case?

23 A To the case he is, I believe the -- what you call
24 it? Um, pros -- you all prosecuting him, I believe, in
25 the case.

1 Q Did you identify the man in Picture Number 2 as the
2 person holding the gun during this incident, the one
3 that robbed you?

4 A Yes, I did, sir.

5 Q And were you then told at that point or did you
6 come to understand who this person was?

7 A Asked -- can you asked that question again, please?

8 Q You picked Number 2 out of the photo lineup,
9 correct?

10 A Correct.

11 Q Were you then told who Number 2 was?

12 A I was told before that, sir.

13 Q Okay. Now, when the lineup was done, were you
14 given any indications as far as who might be in the
15 lineup, who might not be in the lineup?

16 MR. COLONGELI: Asked and answered, your Honor. I
17 believe he just stated he was told prior to that who
18 that individual was.

19 THE COURT: Overrule the objection.

20 MR. HALL: That's -- that's a different question.

21 BY MR. HALL:

22 Q Were you told what the format of the lineup was
23 going to be?

24 A I was told, as you said, if the person was or may
25 not be -- the person may or may not be in the lineup.

1 Q All right. And when you picked out this picture
2 and put your initials next to it, was there any
3 hesitation whatsoever?

4 A At that time, no, sir.

5 Q So you immediately picked this person out.

6 A I believe so.

7 Q All right. And you'll see by looking at State's
8 Exhibit 1-B, who is that person listed as?

9 A Andre Green.

10 Q And does that picture resemble the gentleman
11 sitting at the table next to Mr. Colongeli?

12 A At this particular time, it looks like -- it could
13 be, very well.

14 Q Now, subsequent to this lineup, had you had any
15 contact -- after this lineup took place, did you have
16 any contact with Andre Green?

17 A Ask the question again, please, sir.

18 Q You have your incident date.

19 A Um-hmm.

20 Q Right? You have the date where you went in and
21 picked Mr. Green out of a lineup.

22 A Yes, sir.

23 Q After that date, did you have any contact with
24 Andre Green?

25 A Yes, your Honor. Yes, sir.

1 Q And when did that happen?

2 A Um, I don't recall the date.

3 Q Okay. But it was after you picked him up out of
4 the lineup.

5 A Before. I -- I really can't recall. I honestly
6 cannot, when -- when the time frame was.

7 Q All right. Was there an occasion -- can you
8 explain to the jury the circumstances surrounding your
9 contact with Mr. Green.

10 A Yes. We had a conversation. Mr. Green came and
11 saw me, had a conversation. Um --

12 Q Came and saw you where?

13 A At Shell Point Apartments.

14 Q And is that where you live?

15 A That's where -- that's where my fiancée stays.
16 That's her permanent residence.

17 Q Okay. Did you receive any telephone calls at that
18 time?

19 A At that particular time, a couple.

20 Q Okay. And then you had this conversation with
21 Andre Green that took place at this apartment.

22 A Yes, sir.

23 Q And what happened during the course of this
24 conversation?

25 A Um, just to discuss that the wrong gentleman it

1 could be; that we -- that was basically the gist of the
2 discussion.

3 Q Who was doing the discussing, I guess?

4 A Me and Mr. Green.

5 Q Okay. And who's contention was it that you had the
6 wrong person?

7 MR. COLONGELI: Leading, your Honor.

8 THE COURT: Overruled.

9 BY MR. HALL:

10 A Well, after -- after that discussion -- after that
11 discussion, and after looking at him, --

12 Q No, I want to stop you there. Not after the
13 discussion, --

14 A Well, during the discussion. During the
15 discussion, and while talking to him, couple of things
16 went in my head. Number one, it very well likely be
17 that this is not the individual. Number two, after
18 going through an incident like this, and being, as you
19 would call me, the victim, I would not want to proceed
20 with it, you know. So a lot of thoughts ran through my
21 head at that particular time.

22 Q But this is the same individual that you identified
23 out of the photo lineup as being involved, the one that
24 held the gun, correct?

25 A Correct.

1 Q Now, what was it that changed your mind in the
2 interim?

3 A I just explained it.

4 Q Were there any other outside forces at play here?

5 A No, sir.

6 Q Did you receive any telephone calls from anyone
7 else?

8 A Yes, sir.

9 Q And these telephone calls had to do with what?

10 A Just clarifying -- just -- it wasn't -- just
11 clarifying the fact of if the right individual -- I had
12 the right individual; how would I know that it was Mr.
13 Green, because I got Mr. Green's name based off of phone
14 calls or -- what's the word I'm looking for? I can't
15 say the correct word, but off of what you would call
16 street detail.

17 Q Did any of those phone calls ask you or instruct
18 you to drop charges against Mr. Green?

19 A Not that I recollect.

20 THE COURT: Excuse me. Let me ask you to sit back
21 a little bit from that microphone. You're going to
22 distort it. Speak up and use the microphone, but don't
23 get it right on your mouth.

24 A All right.

25 BY MR. HALL:

1 Q Do you recall giving an interview to Sergeant
2 Massey in October of last year after Mr. Green was
3 arrested?

4 A I believe so.

5 Q And do you recall in that interview making
6 statements to Sergeant Massey that you had received
7 threatening phone calls from Atlanta area codes?

8 A I quite -- not remember the whole -- the whole
9 detail of the conversation that we had, but you could be
10 correct.

11 Q I could be correct.

12 A Yes, sir.

13 Q So, if I were to play that for you now, --

14 A Obviously, it's my voice, so it would be me.

15 MR. HALL: Your Honor, this is State's Exhibit 5,
16 marked simply for identification. It's the audio of Mr.
17 Boskey's interview with Sergeant Massey.

18 MR. COLONGELI: For clarification, your Honor, I'd
19 like to know, is that the -- the date of that interview.

20 MR. HALL: It is October 18th -- yes, October 18,
21 2011, but I want to clarify that. Beg the Court's
22 indulgence, your Honor. I apologize. October 18th.

23 MR. COLONGELI: October 18th?

24 MR. HALL: Yes.

25 MR. COLONGELI: Is that indicated in the report?

1 Do you know?

2 DISCUSSION BETWEEN MR. HALL AND
3 DETECTIVE MASSEY.

4 MR. COLONGELI: Your Honor, I've got -- I'm just
5 concerned. I've always had a question as to the date of
6 this particular interview, and I've never been able to
7 determine a date on that. I'm trying to determine the
8 date.

9 THE COURT: All right. Let me ask the jurors if
10 you'll please go to your jury room. Don't talk about
11 the case. You can't talk about it till deliberation
12 time. But I'll bring you back in a few minutes.

13 JURY LEFT COURTROOM 11:50 A.M.

14 BAILIFF: Jury's clear. The door is closed, your
15 Honor.

16 THE COURT: Thank you. Is it not stated on the
17 tape?

18 MR. HALL: It's not. It does not start with an
19 introductory today is.

20 THE COURT: Okay. And there's no recordation of it
21 ever having been made?

22 MR. HALL: Well, and that's what Sergeant Massey's
23 looking for right now.

24 THE COURT: All right. Let's take -- we'll take
25 ten minutes. You all try to sort it out. Mr. Boskey,

1 you can step down. Just have a seat over here on that
2 front row in the pew.

3 Don't talk about your testimony during this break
4 with anyone.

5 Ten minutes.

6 MR. COLONGELI: How long do we have, your Honor?
7 Ten minutes?

8 THE COURT: Ten.

9 MR. COLONGELI: Thank you, sir.

10 OFF THE RECORD 11:46 A.M.

11 BACK ON THE RECORD 12:00 P.M.

12 BY THE COURT:

13 THE COURT: Did you get it figured out?

14 MR. HALL: We have an established date. October
15 19th by the mark on when it was recorded from the
16 evidence.

17 MR. COLONGELI: Your Honor, my concern has always
18 been, since my *Rule 5* went out at its inception on this
19 case, I received the disc, my disc. The disc is
20 identical to what the State has, and I'd venture to
21 guess that, on the computer, it shows dates that
22 administratively are more than likely incorrect. I have
23 dates of 2008. I had dates with incorrect years. I've
24 never been provided anything officially with any sort of
25 official day, other than what they've just told me. I

1 believe that -- that is an issue.

2 Detective Massey had some question here as to what
3 the date is. I don't know how they arrived at the date,
4 other than you're telling me through --

5 MR. HALL: It's from the original disc that I got
6 from the Port Royal Police Department that include all
7 the incident reports, all the videos. The date that
8 that video was produced was October 19th.

9 MR. COLONGELI: And that's written on the disc?

10 MR. HALL: Well, no, it's not written on the disc.
11 It's on the -- it's on the watermap -- watermark. It's
12 on the when you look at the information for the disc,
13 it's when it was produced.

14 MR. COLONGELI: I've got an issue with that.
15 I've got some question as to when, in fact, that -- fact
16 -- when, in fact, that was actually done. And in
17 addition, --

18 THE COURT: Well, is that a disc that's just been
19 provided to you? Or is that disc that you just held up,
20 was that given --

21 MR. COLONGELI: Oh, yeah, absolutely.

22 THE COURT: -- to the Defense?

23 MR. COLONGELI: Yes.

24 THE COURT: Okay. So you've had it.

25 MR. COLONGELI: I did have the disc, your Honor.

1 THE COURT: Okay.

2 MR. COLONGELI: But I've never known what the date
3 was.

4 THE COURT: Well, Mr. Hall doesn't know anymore
5 than what's on that disc.

6 MOTION FOR DIRECTED VERDICT,

7 MR. COLONGELI:

8 MR. COLONGELI: Understood. Understood. And --
9 understood. I would have -- and it may be premature at
10 this point, you know, but I do have a motion.

11 THE COURT: Okay. Let's hear it.

12 MR. COLONGELI: Your Honor, out of an abundance of
13 caution and in the interest of justice, I stand to be
14 corrected, but I believe Mr. Hall asked Mr. Boskey the
15 question whether or not the individual, Andre Green, was
16 in the courtroom today. He stated no.

17 THE COURT: Well, I think that's a fair assessment..
18 Said he didn't see him.

19 MR. COLONGELI: And -- I'm sorry.

20 THE COURT: Said he didn't see him.

21 MR. COLONGELI: That's correct. Based on that
22 alone, your Honor, based on what you know of this case
23 through both Mr. Hall, the State, and myself, I would
24 respectfully move at this point for a directed verdict.

25 THE COURT: Well, they haven't finished presenting

1 their case yet. Would that be fair?

2 MR. COLONGELI: I believe it would be fair. Maybe
3 not -- but I --

4 THE COURT: I don't know what other evidence they
5 have.

6 MR. COLONGELI: Well, for purposes of preserving
7 the record at this point, I understand. And as I said,
8 it may be premature, but --

9 THE COURT: I think it is.

10 MR. COLONGELI: All right.

11 THE COURT: You're going to be able to make a
12 motion for a directed verdict, but now is not the time
13 during the midst of their presentation.

14 THE COURT: Understood. Understood.

15 THE COURT: That'd be like granting a directed
16 verdict in their favor.

17 MR. COLONGELI: Understood.

18 THE COURT: Although, you can't do that under any
19 circumstances. I'm well aware of that.

20 MR. COLONGELI: Understood.

21 THE COURT: I mean, that -- it'd be like directing
22 a verdict in a civil case after the plaintiff has made
23 its case, but the defense is presented no evidence. The
24 plaintiff would win every time. Wouldn't they?

25 MR. COLONGELI: That's correct, your Honor. But I

1 ..guess --

2 THE COURT: But here, you're asking me to direct a
3 verdict in favor of the Defendant before the State has
4 concluded their presentation of evidence.

5 MR. COLONGELI: With the exception, your Honor,
6 that the alleged -- victim, prosecuting witness in this
7 case, indicated to the Court that he could not identify
8 Mr. Green, my client, as being in court here today.

9 THE COURT: Well, that doesn't mean that they may
10 present other evidence that Mr. Green was, in fact, the
11 other person in the vehicle.

12 MR. COLONGELI: And I understand that. So, just
13 for the record, your Honor, I would like to state that I
14 realize it's premature, but --

15 THE COURT: Okay.

16 MR. COLONGELI: And as far as the date goes, it is,
17 in fact, --

18 MR. HALL: October 19th.

19 MR. COLONGELI: -- October 19th. Thank you, your
20 Honor.

21 THE COURT: All right. Anything else?

22 MR. HALL: No, your Honor.

23 THE COURT: Okay. Bring the jury in, please. Mr.
24 Boskey, you can come back and take your place on the
25 witness stand, please, sir.

1 BAILIFF: The jury is entering, your Honor.

2 JURY RETURNS TO COURTROOM 12:08 P.M.

3 BAILIFF: All right, your Honor.

4 THE COURT: All right. Jury's present. You may
5 proceed.

6 MR. HALL: Thank you, your Honor.

7 DENNIS BOSKEY

8 CONTINUE DIRECT EXAMINATION

9 MR. HALL:

10 Q Mr. Boskey, we were discussing an interview that
11 you had given to Sergeant Massey some time after the
12 incident date. But before we get into that, I just
13 wanted to backtrack just a little bit to see if we can
14 get some timing issues down.

15 A Um-hmm.

16 Q From the time that you arrived at Casablanca Park,
17 until you exited the trunk of your own car, how much
18 time would you think elapsed in that period of time?

19 A From the time I arrived at Casablanca Park, not
20 from the time I got in my trunk. But you're saying the
21 time --

22 Q Right. Right. From the time you got to Casablanca
23 Park.

24 A Till the time I jumped out of my trunk?

25 Q Let's narrow it down even further. How long did

1 the incident at Casablanca Park take?

2 A Couple minutes.

3 Q A couple minutes. So, during this couple of
4 minutes you observed Brandon Parker.

5 A Yes, sir.

6 Q And you observed another individual.

7 A Yes, sir.

8 Q The individual that you picked out of the lineup,
9 correct?

10 MR. COLONGELI: Objection, your Honor. He's
11 already answered that question.

12 THE COURT: Overruled.

13 BY MR. HALL:

14 A Correct.

15 Q But the person that you now somehow can't identify
16 in court.

17 A Exactly.

18 Q How long did you have of an opportunity to take a
19 look at this person that was in the car with you?

20 A Seconds.

21 Q Did you look in your rearview mirror while you were
22 driving?

23 A No.

24 Q When the gun was being held on you, were you
25 looking at the person?

1 A I couldn't have if they were in the back of me.

2 Q When you were out of the car. You stated you were
3 out of the car at one point, correct?

4 A Which I said I was tussling with Brandon Parker, so
5 I really didn't get a good, strong look.

6 Q So you're saying that the person with the gun, you
7 never got a good look at him.

8 A Couple of seconds, I said.

9 Q Okay. Do you recall having a conversation with
10 Sergeant Massey after Andre Green was arrested?

11 A I believe so.

12 Q Okay. And do you recall, during that interview,
13 making statements regarding threats that you had
14 received?

15 A I don't remember our whole conversation, but I do
16 recall that was mentioned about some phone calls.

17 Q And were those phone calls of a threatening nature?

18 A I can't recall if I said it or not.

19 Q Okay.

20 MR. HALL: Your Honor, again, this is State's
21 Exhibit 5. At this time, I'd like to play this for the
22 jury.

23 THE COURT: No objection?

24 MR. COLONGELI: No objection, your Honor.

25 MR. HALL: Oh, and your Honor, for the record, this

1 is a -- this is a redacted version.

2 THE COURT: Okay. Let me say this for the benefit
3 of the jury. It's a redacted version. And what that
4 means is, there's just other things on the tape that
5 aren't relevant to this case, and that's why it's been
6 redacted.

7 PLAYING COMPACT DISC OF REDACTED
8 INTERVIEW, DETECTIVE SERGEANT
9 ANDRE MASSEY OF DENNIS BOSKEY.

10 MR. HALL: Your Honor, I'm just going to pause it
11 for a second. I just want to check and see if this is
12 actually -- the jury can -- I'm not sure the volume is
13 actually very good.

14 COMPACT DISC PLAYING PAUSED.

15 THE COURT: Well, if they can hear that, they're
16 doing a lot better than I am. Can you all hear it?

17 BAILIFF: It needs to be placed with the
18 microphone.

19 THE COURT: Do what with it?

20 JUROR: He's using a microphone to pick up the
21 sound, and it should be placed with a speaker instead of
22 the microphone on a laptop.

23 THE COURT: Well, that's a good suggestion. It
24 most definitely ought to be a perspective.

25 MR. HALL: Let's see if the speaker's here.

1 BAILIFF: That was the speaker.

2 MR. HALL: Huh?

3 BAILIFF: That was the speaker.

4 MR. HALL: Yeah. Right. It should be right here.

5 BAILIFF: Yeah.

6 MR. HALL: All right.

7 BAILIFF: We have a set of speakers that you can
8 plug into, if you want to.

9 MR. HALL: That might work, too.

10 BAILIFF: We can do that. We can get one out of
11 the closet.

12 MR. HALL: Let's try that. Your Honor, I think
13 we're going to try and grab a set of external speakers
14 and do it. I apologize for the inconvenience.

15 THE COURT: Well, let's do this. Let me ask the
16 jury to please go back to your jury room. Don't talk
17 about the case. I'll bring you back in just a few
18 minutes.

19 JURY LEAVES COURTROOM 12:15 P.M.

20 THE COURT: Let me see you all just a minute.

21 BAILIFF: Jury's clear. Door's closed, your Honor.

22 OFF-THE-RECORD BENCH CONFERENCE,

23 THE COURT, MR. HALL, MR. STEPHENS,

24 MR. COLONGELI.

25 BACK ON THE RECORD.

1 THE COURT: We'll take ten more minutes.

2 OFF THE RECORD 12:16 P.M.

3 BACK ON THE RECORD 12:20.

4 BY THE COURT:

5 THE COURT: Thank you. Be seated.

6 MR. HALL: We solved the audio issue, your Honor.

7 THE COURT: Okay. Are we ready for the jury?

8 MR. HALL: Yes.

9 BAILIFF: Yes, sir.

10 BAILIFF: The jury is entering, your Honor.

11 JURY ENTERS COURTROOM 12:22 P.M.

12 THE COURT: All right. We think we've resolved the
13 problem, but if we haven't, you let us know if you're
14 having difficulty hearing.

15 MR. HALL: Thank you, your Honor.

16 DENNIS BOSKEY

17 CONTINUE DIRECT EXAMINATION

18 MR. HALL:

19 Q Mr. Boskey, I'm going to ask you to listen to this
20 audio recording. I'm going to play this for the jury,
21 as well. After we've had a chance to listen to this,
22 we'll see if this refreshes your recollection at all.

23 Can you hear that?

24 CONTINUE PLAYING COMPACT DISC.

25 PLAYING COMPACT DISC PAUSED.

1 BY MR. HALL:

2 Q Now, before we go any further, Mr. Boskey, this
3 interview's taking place; it's you in the room and who
4 else?

5 A You just said it was Sergeant Massey, right?

6 Q Okay. Sergeant Massey. And you see Sergeant
7 Massey in the courtroom today, right?

8 A Um-hmm.

9 Q You recognize him.

10 A Yes.

11 Q Okay. I just wanted to make sure.

12 CONTINUE PLAYING COMPACT DISC.

13 PAUSE PLAYING COMPACT DISC.

14 MR. COLONGELI: I'm trusting -- I mean, we're
15 getting very close to some things that would not be
16 proper. I don't -- I don't know.

17 THE COURT: Well.

18 MR. COLONGELI: I mean.

19 THE COURT: Just a minute.

20 OFF-THE-RECORD BENCH CONFERENCE,

21 THE COURT, MR. HALL, MR. STEPHENS,

22 MR. COLONGELI.

23 BACK ON THE RECORD.

24 MR. COLONGELI: Thank you, your Honor.

25 MR. HALL: Your Honor, may I continue?

1 THE COURT: You may continue.

2 MR. HALL: Thank you.

3 CONTINUE PLAYING COMPACT DISC.

4 PAUSE PLAYING COMPACT DISC.

5 BY MR. HALL:

6 Q Mr. Boskey, the reference in that audio recording
7 there when you see this here, who were you referring to?

8 A My daughter.

9 Q And your daughter was present with you while this
10 interview was taking place.

11 A Exactly.

12 Q How old is she?

13 A Four.

14 Q And do you have other children?

15 A Two.

16 Q And how old are they?

17 A My son is eight, and my -- my other daughter is
18 five.

19 Q And do they spend a significant amount of time with
20 you?

21 A Pretty much.

22 CONTINUE PLAYING COMPACT DISC.

23 END PLAYING COMPACT DISC.

24 BY MR. HALL:

25 Q Mr. Boskey, do you recall having that conversation

1 with Sergeant Massey, now that you've heard it?

2 A Believe so.

3 Q And the things that were said in that statement
4 that you gave to Sergeant Massey about Andre Green
5 coming to your house with two people, true or false?

6 A True statement.

7 Q The rest of the contents about you being worried
8 about protection of your family and the safety of your
9 family, true or false?

10 A True statement.

11 Q The phone calls that you received, threatening you,
12 asking you to drop the charges, true or false?

13 A True statement.

14 Q And yet, you're unable to identify Andre Green in
15 court today. Is that still correct?

16 A Correct.

17 Q Beg the Court's indulgence for a moment.

18 Now, subsequent to even Andre Green's arrest in
19 this case, you have written out a couple of different
20 statements indicating that you didn't want to pursue
21 this. Is that correct?

22 A That's correct.

23 Q And in these statements, at least one of which you
24 indicate you can't recognize Andre Green; that you've
25 never met him in your life. Is that correct?

1 A More or less.

2 Q More or less. Can you define the more or less for
3 me.

4 A From the point of him coming to my house.

5 Q Okay. But not about the incident date where this
6 happened to you.

7 A Exactly.

8 Q Okay. The last one of these was, if memory serves,
9 was dated April 22nd. Is that correct?

10 A Yes, sir.

11 Q And that's actually this past Sunday.

12 A Yes, sir.

13 Q And how was it that it came to be that you wrote
14 this statement? I want you to explain to the jury the
15 circumstances under which you wrote that statement out
16 and the reasons for it.

17 A My circumstances for it?

18 Q Yes.

19 A Well, number one, since I already told you all that
20 I didn't want to pursue this and I felt like I'm getting
21 pressured to do something as a victim, if I'm the
22 victim, and I really don't want to go through something,
23 I should have the right to say I don't want to do this
24 any further.

25 THE COURT: I need you to back away from that

1 microphone a little bit, please, as I've asked before.

2 A I should have the right to say, as a victim, that I
3 don't want to pursue something. As a -- you've -- if I
4 felt like you're taking my right from me, then I must do
5 something to protect my right, which I followed suit
6 with. And if I don't want to go through something no
7 more, my next available thing to do is let a sworn
8 statement be known that I did not want to pursue this
9 any further.

10 Q And who was that statement sent to?

11 A I do not know who the statement was sent to, but I
12 know who it was given to and who was there when I did
13 the statement.

14 Q And who was present?

15 A The bail bondsman.

16 Q Okay. And what happened to your statement after
17 that, you have no idea?

18 A I proceeded to ask him if he can get it into the
19 hands of the lawyer.

20 Q Of what lawyer?

21 A The -- Mr. Green's lawyer.

22 Q So you asked the person that notarized the
23 statement to send that statement to Mr. Green's lawyer.

24 A Exactly.

25 Q Not to the State.

1 A I'm sorry? To the State?

2 Q Not to the State.

3 A The lawyer is the State, right?

4 Q You didn't ask to have it sent to me.

5 A No.

6 MR. HALL: I don't have any other questions, your
7 Honor.

8 THE COURT: Mr. Colongeli.

9 MR. COLONGELI: May it please the Court, your
10 Honor.

11 DENNIS BOSKEY

12 CROSS-EXAMINATION

13 MR. COLONGELI:

14 Q Mr. Boskey, I can only appreciate, tend to
15 appreciate, and understand what you've been through
16 since the inception of whatever transpired back on June
17 9th of last year. But to cut to the chase, is it not
18 true that you are present here today under threat of
19 arrest? Is that not true?

20 A Indirectly, yes.

21 Q Indirectly, you have been told by the people sitting
22 at this table that if you didn't show up, that there's a
23 chance you could be arrested?

24 A No.

25 MR. HALL: Objection, your Honor.

1 MR. COLONGELI: Okay. Let him answer.

2 THE COURT: Well, he said no.

3 BY MR. COLONGELI:

4 Q Can you explain that?

5 A In the case of a subpoena, it's my understanding
6 that once you get subpoenaed, and which I did my own
7 research on this, --

8 THE COURT: Careful with the microphone.

9 A Once you get subpoenaed, and I did my own research
10 on this, if you do not appear before a court, you can be
11 held in contempt or charged with failure to comply with
12 the orders of the court.

13 Q That's correct. That's the only -- was that what
14 they informed you, or is that your own research?

15 A It was more or less both.

16 Q Well, let's -- that's why I'm saying, I'm not
17 trying to put words --

18 A No one directly. You asked me a specific question
19 if anyone asked me that I would be arrested, and I
20 answered your question, sir. Which I told you no.

21 Q More or less.

22 A More or less. Not directly they asked me -- not
23 directly did they tell me this, but under a letter
24 stating the facts of what can happen against me not
25 following the letter, yes, if you want to ask me

1 differently.

2 Q I'm confused now, Mr. Boskey. I asked you were you
3 not told, more or less from people sitting at this
4 table, whether it was one or all or someone else with
5 law enforcement, someone else with the Solicitor's
6 Office, that there was a possibility you'd be arrested
7 if you didn't show up and testify today. You said yes, I
8 thought.

9 A I said more or less, yes.

10 Q More or less, yes. Thank you. Okay. So we've got
11 that clear. You have also adamantly gone out of your
12 way to indicate to Detective Sergeant Massey on more
13 than one occasion your lack of desire in pursuing charges
14 altogether, correct? Is that safe to say?

15 A Yes, safe to say.

16 Q I'm sorry.

17 A Yes.

18 Q Yes. From day one, you, is it not true, you were
19 somewhere offended in how the investigation was being
20 done, because you were more or less being asked or
21 implied as to whether or not you were a drug dealer
22 collecting a drug debt in the beginning?

23 A Yes.

24 Q Okay. And you're supposed to be the victim in the
25 case. Correct?

1 A Correct.

2 Q All right. And to start from today and back up, if
3 I have to, let's go to these statements that Mr. Hall
4 seems to want to think that -- I don't know if he
5 implied it or not, but they did end up in my hands. And
6 this is a notarized statement and -- if I may approach,
7 your Honor.

8 If you could take a look at that and say -- I
9 actually have the original.

10 A Um-hmm.

11 Q If you could say if this is familiar to you.

12 A That's my signature. That's my handwriting.

13 Q All right.

14 MR. COLONGELI: And if I may, your Honor, may he
15 publish this? Could he read this so the jury could hear
16 it?

17 THE COURT: Is it going to be introduced?

18 MR. COLONGELI: No, sir.

19 THE COURT: Well, then, he can't read it. It's not
20 in evidence.

21 BY MR. COLONGELI:

22 Q This statement more or less indicates this is what
23 you swore before a bail bondsman over the weekend,
24 correct?

25 A Correct.

1 Q It, more or less, tell me if I'm wrong, indicates
2 that you have been subpoenaed to Court and --

3 MR. HALL: Your Honor, he's --

4 THE COURT: Let me see it, then.

5 OFF-THE-RECORD BENCH CONFERENCE,

6 THE COURT, MR. HALL, MR. STEPHENS,

7 MR. COLONGELI.

8 BACK ON THE RECORD.

9 MR. COLONGELI: My apologies, ladies and gentlemen.

10 BY MR. COLONGELI:

11 Q Mr. Boskey, without making it too complicated, the
12 State already indicated that, over the weekend, you
13 signed a notarized statement in front of a bail bondsman
14 indicating your desire not to proceed with this case,
15 correct?

16 A Correct.

17 Q And you also indicated that you could not identify
18 Andre Green, correct?

19 A Correct.

20 Q There was an additional statement that was
21 unnotarized, which came to my attention only days ago,
22 that purports to have been dated actually March 29th.
23 Let me ask you, was there an additional statement --

24 THE COURT: Excuse me. Mr. Colongeli, are you
25 going to introduce that document?

1 MR. COLONGELI: I'm sorry?

2 THE COURT: Are you planning on introducing that
3 document?

4 MR. COLONGELI: No, sir, I'm not.

5 THE COURT: Put that back over there.

6 MR. COLONGELI: All right. I apologize.

7 BY MR. COLONGELI:

8 Q It came to my attention there was an additional
9 document. Are you aware of any additional document you
10 attempted to sign that was not able to be notarized?

11 A Yes, sir.

12 Q Okay. And did they more or less say the same thing
13 as the statement that you gave that the State has
14 alluded to we just spoke of before?

15 A I believe so.

16 Q Can you identify Andre Green?

17 A No, sir.

18 Q Have you told Detective Sergeant Massey on more
19 than one occasion that you weren't sure Andre Green was
20 the man who committed these offenses, or, in fact, you
21 did know he did not commit those offense?

22 A Can you ask that whole question again, please.

23 Q Did you not indicate to Detective Sergeant Massey
24 that you could not identify Andre Green?

25 A Correct.

1 Q And that was misinterpreted because you, in fact,
2 did meet Andre according to the situation where you're
3 discussion with Andre Green about the charges, correct?

4 MR. HALL: Objection, your Honor. There was some
5 really long sentence altogether there that I didn't
6 catch all of, but it seemed like he was asking -- seemed
7 like he was asking the witness to speculate on something
8 that he couldn't speculate on.

9 THE COURT: Well, this witness can't testify as to
10 what somebody else interpreted a statement to mean.

11 MR. COLONGELI: Yes, sir.

12 THE COURT: But he can testify as to what he said.

13 MR. COLONGELI: Yes, sir. All right.

14 BY MR. COLONGELI:

15 Q Without belaboring the issue -- and forgive me if
16 this is what you just said, your Honor -- but you
17 expressed to law enforcement and the State this issue
18 you've had not only with proceeding with this case, but
19 your ability to identify Andre Green as the person who
20 committed these crimes, correct?

21 A Correct.

22 Q Thank you. The interviews -- let me start with
23 this. You wrote a written statement -- let me start --
24 you wrote a written statement in this case. You
25 actually wrote out a statement when this happened,

1 correct?

2 A Yes, sir.

3 Q And within the four corners of that statement, the
4 only person you could one hundred percent positively
5 identify was Brandon Parker, correct?

6 A Correct.

7 Q And to this day, there's no question Brandon Parker
8 was the one who did these things to you.

9 A I'm a hundred percent sure of it.

10 Q All right. In that written statement, you mention
11 another subject, but you're unable to identify that
12 subject, correct?

13 A Correct.

14 Q Okay. To the best of your recollection, you never
15 indicated the name Andre Green in a written statement to
16 law enforcement.

17 A No, sir.

18 Q All right. And when you picked out, when they say
19 you immediately simultaneously pointed to Andre Green in
20 that photo lineup, you had already seen Andre Green,
21 correct?

22 A The dates I'm not --

23 Q Based on your testimony.

24 A I said I wasn't sure of the dates. By the dates, I
25 am not sure, sir.

1 Q Okay. You're not sure, but there's a chance you
2 had already seen him, correct?

3 A There possibly could be.

4 Q All right. If I can spend a little time with you,
5 and I'll try to be as brief as I can, but obviously,
6 this is extremely important. And I know it's important
7 to you, and it's important to Mr. Green. It's important
8 to the State.

9 This second interview we'll start with, with
10 Detective Massey, and there's a few things I'm concerned
11 about and I want to ask you.

12 You went in there that day to reiterate, once
13 again, your concerns about your ability to identify Mr.
14 Green. Correct?

15 A And my daughter's safety.

16 Q And your daughter's safety. Throughout all this
17 allegations -- or let's not say allegations -- this
18 discussion about witness tampering, intimidation,
19 threats, I appreciate that I understand what you said,
20 but you made it a point to tell Detective Sergeant
21 Massey that not only once, twice, three times, never did
22 Andre Green make those threats to you, correct?

23 A Correct.

24 Q Matter of fact, has this guy called you? No. I
25 can find that out fast, according to Detective Sergeant

1 Massey. Has the guy called you? Has he threatened you?

2 No. Has he called you at all? No. Correct?

3 A Correct.

4 Q All right. You go on, and I think you mentioned it
5 during your direct examination by Mr. Hall, at three
6 minutes, six seconds into this interview with Detective
7 Sergeant Massey, more or less it says:

8 *OTHER PERSON: I'm going by what I recall. It's*
9 *not a definite.*

10 A Correct.

11 Q Then Sergeant Massey goes on to indicate to you:
12 *I'm very personal about my job.*

13 Do you recall that? Matter of fact, we just heard
14 that on the tape.

15 A Correct.

16 Q And you went on to say: *I told you that looks like*
17 *the guy. I know what my statement said. I know that*
18 *without a doubt, and I don't personally know that guy.*

19 A Correct.

20 Q All right. Detective Sergeant Massey says: *You*
21 *know him well enough to identify him.*

22 You said: *No. That's a lie.*

23 A Correct.

24 Q Matter of fact, you went down and repeat yourself:
25 *That's a lie. I guarantee that's a lie.*

1 A Off the -- off the preceding statement that he
2 said.

3 Q Yes, sir. Detective Sergeant Massey, and correct
4 me if I'm wrong, what we just heard, said: *Is it not*
5 *one or both of the two people that did it?*

6 And you said: *Correct. One or both, but all I*
7 *know for sure is that Brad -- Brandon Parker was the*
8 *one.*

9 A Yes, sir.

10 Q All right. This discussion that you had with Mr.
11 Green, you didn't feel intimidated; you didn't indicate
12 you felt intimidated during that discussion.

13 A If you recall my statement, I said -- I was talking
14 about my kids. I was more concerned about my kids if
15 anything else, sir.

16 Q Absolutely. And that discussion, the extent of,
17 that discussion from Andre was, listen, man, I heard
18 there might be charges; are you sure; you sure it was
19 me. Correct?

20 A I believe so, that's the extent of it.

21 Q All right. I want to get on to these phone calls
22 from Atlanta that you say you made.

23 A I didn't say I made any phone calls.

24 Q I'm sorry. I'm sorry. The phone calls you
25 received from Atlanta, correct? There was some mention

1 about these phone calls from Atlanta.

2 A I said -- I said phone calls and other phone calls.

3 Q Atlanta area code.

4 A Yes.

5 Q Now, Dennis, my job, I take no pleasure, and my job
6 is not to make you out to be anything other than who you
7 are, and ready to hopefully get to the truth. Okay? So
8 bear with me on this. But isn't it true that all of
9 these purported calls from third parties in reference to
10 Andre Green, even Detective Sergeant Massey said
11 specifically what phone did you get them on. What phone
12 did you receive these calls from. And in the video, it
13 shows in the audio, you immediately pointed to your cell
14 phone that was with you.

15 MR. HALL: Your Honor, is there a question coming?

16 THE COURT: Well, how am I supposed to know the
17 answer to your question? Are you objecting?

18 MR. HALL: I'm objecting.

19 THE COURT: All right. State that in the form of a
20 question such that we can all understand the question.

21 MR. COLONGELI: Yes, sir. I apologize.

22 BY MR. COLONGELI:

23 Q Did Sergeant Massey know what phone you received
24 these purported calls from an Atlanta exchange on?

25 A Yes.

1 Q And was it not, in fact, the phone that's sitting
2 right next to you there at the table?

3 A Yes.

4 Q Thank you. He proceeded to ask you what number
5 they called. *What's the number it came from.*

6 Is that true?

7 A Correct.

8 Q And you stated, and I think we heard this, *I erased*
9 *-- I erased them.*

10 More or less, you said, I erased them.

11 A I said I erased them and they just bumped out my
12 phone. I believe that's what my exact words were.

13 Q Okay. And you did state this on more than one
14 occasion that I don't save calls like that.

15 A Correct.

16 Q Do you often receive calls like that?

17 A I mean, I'm -- I'm -- when you say I don't -- when
18 I would say I don't receive that -- calls like that,
19 meaning, I don't receive calls like that period. I
20 mean, I get a lot of phone calls because I'm at school
21 and I work as a chef, but me to save a phone call with a
22 -- with the purpose of that, me saying that, do I
23 actually save phone calls that I get? No, I don't.

24 Q Okay. Well, the fact remains this -- what the
25 State's trying to allege were these threatening,

1 intimidating phone calls, obviously, you didn't take
2 them that much of a threat; you got rid of the numbers,
3 correct?

4 A Correct.

5 Q Absolutely. He asked you who your service was
6 with. You said Verizon. Right?

7 A Correct.

8 Q Prepaid. Correct?

9 A Correct.

10 Q And then he asked you can you get a printout of
11 numbers that called you at 12 minutes and 58 seconds
12 into the interview. Can you get a printout of those
13 numbers if you go to your service provider.

14 A Yes, sir.

15 Q Okay. You told him that you could. And didn't he
16 specifically request at 13 minutes, 20 seconds into that
17 interview, that: *I want that, I want that by the end of*
18 *the week.*

19 A Correct.

20 Q All right. He then asked you again, *Did Andre*
21 *Green call you at all yesterday?*

22 And what did you say?

23 A No.

24 Q One of the interesting parts that gets skipped
25 forward to in this tape, do you recall him telling you,

1 Detective Sergeant Massey, that he would do his
2 background check or search himself and say that for
3 every phone call you get, I'm going to drop more
4 charges. For each call you get, that's tampering with a
5 victim, tampering with a witness.

6 A I don't recall. I didn't hear that in the part of
7 the -- the tape.

8 Q All right. What you do recall, though, is what he
9 said right after that with point-blank accuracy: *I am*
10 *not dropping any charges. We are going forward with*
11 *this case.*

12 A Correct.

13 Q It then goes into a fine line between murder and
14 protection.

15 A Correct.

16 Q *Don't cross the line with Massey, because once you*
17 *cross it, there ain't no coming back.*

18 Did I hear that?

19 A If you listened to the same tape, I believe you
20 did.

21 Q I think I did. At 17 minutes into this interview,
22 he also stated, and correct me if I'm wrong: *You can't*
23 *drop charges, even if you wanted to.*

24 Is that correct?

25 A I can't remember that, sir,

1 Q. And in closing, as far as this interview goes,
2 Sergeant Massey had a discussion with you about how he
3 handles threats. Do you recall that? Seventeen
4 minutes, 19 seconds into the interview: *Threaten me. I*
5 *live for it.*

6 Do you recall that?

7 A I wouldn't call that how he handles it.

8 Q Okay. Let's move on. Eighteen minutes, 18 seconds
9 into the interview, once again he tells you: *Give me*
10 *the phone records. I want them by Friday. If I don't*
11 *see them by Friday, I'll be very mad.*

12 Do you recall that?

13 A Yes, sir.

14 Q All right. That's when you got into this whole
15 where I'm three steps ahead.

16 A Correct.

17 Q All right. You never got him those phone records,
18 did you?

19 A No, sir.

20 Q Is it safe to assume -- and I'm going out on a limb
21 here, Mr. Boskey. Is it safe to assume that if you had
22 provided the State with those phone records, that they
23 would have also seen calls that you were making to Kia
24 Parker --

25 MR. HALL: Objection, your Honor. Relevance.

1 Sidebar break, please.

2 THE COURT: Okay.

3 OFF-THE-RECORD BENCH CONFERENCE,

4 THE COURT, MR. HALL, MR. STEPHENS,

5 MR. COLONGELI.

6 BACK ON THE RECORD.

7 BY MR. COLONGELI:

8 Q Mr. Boskey, I guess I'll leave it at the fact that
9 you did not -- you did not give those records as
10 requested, correct?

11 A Correct.

12 Q Okay. And as far as you know, I mean, the State
13 could have -- the great town of Port Royal or South
14 Carolina probably could have gotten those records if
15 they wanted to. I guess that calls for speculation,
16 your Honor.

17 In closing, as far as how this interview ended, was
18 there some discussion about Detective Sergeant Massey's
19 military career? The fact he was in the Army?

20 A I mean, he didn't bring that up. I brought that
21 up.

22 Q You did. You asked him about it.

23 A I knew about it.

24 Q You knew.

25 A I mean, -- yeah, pretty much.

1 Q And this was in relation to all this discussion
2 about threats and intimidation from third parties,
3 correct? How he would handle it.

4 MR. HALL: Your Honor, I'd object to the relevance
5 of this line of questioning. I don't really think it's
6 any concern how Sergeant Massey would handle this.
7 We're talking about the victim here.

8 MR. COLONGELI: It's very relevant, your Honor.
9 The State's alleging threats and --

10 THE COURT: I sustain the objection.

11 MR. COLONGELI: Objection sustained?

12 THE COURT: Yes.

13 MR. COLONGELI: All right.

14 BY COLONGELI:

15 Q The very end of the interview, there's some
16 discussion about your daughter, correct?

17 A Correct.

18 Q And he goes on to say, make it a point to tell you,
19 that children are innocent in his eyes, correct? Do you
20 remember that?

21 A I -- I do believe so.

22 Q And that they will always remain so in his eyes,
23 correct?

24 A Correct.

25 Q That was during this entire preceding discussion

1 while your how-old-daughter was sitting there?

2 A She's four.

3 Q All right. That was the second interview you had
4 with Detective Sergeant Massey, correct?

5 A To back track, she wasn't -- she wasn't in there
6 the whole time, sir. You asked me if while the entire
7 -- during the entire interview.

8 Q I watched the video. I saw your daughter in there
9 with you.

10 A She wasn't in there the whole time.

11 Q Okay. Well. Maybe that was a different video.
12 You met Mr. Detective Sergeant Massey back -- do you
13 recall the time prior to that that you met him? The
14 first interview?

15 A I believe it was a Monday or Tuesday.

16 Q Okay. And more or less, I'm trying not to belabor
17 this issue, during this interview, you went on to state
18 to him, even though you, as the State said, pointed to a
19 picture that turned out to be Andre Green, that you had
20 concerns about being able to identify him as the
21 perpetrator of the crimes alleged, correct?

22 MR. HALL: Your Honor, I'm going to object to that.
23 He's testifying for Mr. Boskey. I think he can answer
24 the question and have Mr. Boskey answer it, instead of
25 putting it in his mouth.

1 THE COURT: Overruled. Go ahead.

2 BY MR. COLONGELI:

3 Q Did you not also air your concerns, not only --

4 A Correct.

5 Q Correct.

6 A Yeah, correct.

7 Q Not only about him being the one that perpetrated

8 the crimes, but the fact that you did not want to

9 prosecute.

10 A Correct.

11 Q All right. You stated in that first interview:

12 *I've never seen him before.*

13 A Correct.

14 Q Correct? There was also something interesting to

15 me, and I don't mean any disrespect by this, but

16 Detective Massey asked you about the gun. And

17 obviously, I guess you didn't have a good chance to see

18 the gun, correct? You weren't able to describe it.

19 A I know it was a old gun.

20 Q I'm sorry?

21 A I know it was an old gun.

22 Q You know it was an old gun, but he asked you some

23 questions as far as revolver or automatic, and you were

24 unsure of the difference.

25 A I know what the difference is.

1 Q All right. At 12 minutes, so many seconds into the
2 interview, do you recall him asking you who had the gun?

3 A I -- I can't recall, sir.

4 Q Okay. Well, then I won't ask you that. What you
5 did testify as to having happened outside of that car
6 was a great deal of tussling with Brandon Parker.

7 A Correct.

8 Q You all were, I guess, fighting, for lack of a
9 better term?

10 A More or less.

11 Q All right. All the while that this second
12 unidentified subject had a gun.

13 A Correct.

14 Q You then proceed to the fact that there is
15 discussion of you getting in the trunk of the car,
16 correct?

17 A Correct.

18 Q And I want to ask you this, because I think
19 Detective Sergeant Massey had some questions for you,
20 too, as to trying to figure this out. You voluntarily
21 got in the trunk of that car?

22 MR. HALL: Objection, your Honor. He's speculating
23 as to what Sergeant Massey would have been asking him
24 about.

25 THE COURT: Well, if it's just a preface about

1 something that's already been testified to, it's not
2 objectionable.

3 MR. COLONGELI: I can lead him out of it, your
4 Honor.

5 THE COURT: Okay. Thank you.

6 MR. COLONGELI: Thank you.

7 BY MR. COLONGELI:

8 Q Were you questioned, didn't you get specifically
9 questioned as to how this whole thing went down with you
10 getting into the trunk of this vehicle?

11 A Yes, sir.

12 Q And let me ask you this. You more or less made the
13 decision, based on this other unidentified subject
14 having a gun, that you just voluntarily got in the
15 trunk.

16 A What I -- that's a crazy question. Would I
17 voluntarily get in the trunk of my car? No, sir.

18 Q Well, I guess you didn't voluntarily get in the
19 trunk, but it appears you did get in the trunk. You
20 weren't forced into the trunk.

21 A Obviously --

22 Q I guess you were forced. You were held at
23 gunpoint. But you did get in the trunk. They didn't
24 physically, bodily put you in the trunk.

25 A You answered your question, sir.

1 Q Thank you. And then, you had the foresight, I
2 guess, to realize that there was some sort of emergency
3 latch in the trunk of your car?

4 A Yes, sir.

5 Q And you had to kind of get yourself together, calm
6 yourself down, because you couldn't operate it, and you
7 actually were able to read the instructions to get out.

8 A Yes.

9 Q And Detective Sergeant Massey asked you where did
10 the light source come from for you to be able to read
11 the instructions.

12 A Well, I mean, it's a little light in the back of --
13 I mean, a piece -- a piece of a light that I saw.

14 Q I understand. I'm only asking did he ask you that,
15 how'd you see it.

16 A Yes, sir.

17 Q You even went so far as to state to Sergeant Massey
18 that you opened it up real slowly, because you knew that
19 a light would come on in the dash that the trunk was
20 ajar.

21 A Correct.

22 Q All right. At 23 minutes, 29 seconds into that
23 first interview, would it be incorrect for me to state
24 your statement to Detective Sergeant Massey in reference
25 to Andre Green: *This is the first time I ever saw him*

1 in my life?

2 A Correct.

3 MR. HALL: Your Honor, I'm sorry. Could I get some
4 clarification as to when specifically we're discussing,
5 like date-wise?

6 MR. COLONGELI: Your Honor, this is their
7 interview. The first interview. *Boskey Interview with*
8 *Massey, Audio-Video, Date question mark.* You know, the
9 other day it was October 18th, which I just learned
10 today. I'm assuming, based on their own report, that
11 the first interview with Boskey would have been -- it's
12 their case, your Honor. I don't know when the first
13 interview was. It was the one before the second.

14 THE COURT: I think he understands.

15 MR. COLONGELI: All right.

16 BY MR. COLONGELI:

17 Q This first interview was where you told the members
18 of the jury is where you immediately pointed to the
19 picture that turned out to be Andre Green.

20 A Correct.

21 Q We've already discussed that. But 30 minutes, 54
22 seconds into this, do you recall Sergeant Massey
23 saying: *This other person I pointed out, once we*
24 *identify him, --*

25 I thought he'd already been identified.

1 A I don't understand your question, sir.

2 Q Do you remember discussing whether or not
3 fingerprints would be taken from the car? Matter of
4 fact you told them, there should be prints all over the
5 car.

6 A When the first -- correct.

7 Q Okay. Do you know whether they ever followed up
8 with fingerprints?

9 A I believe they couldn't get any fingerprints.

10 Q Are you just -- are you guessing that? Or did they
11 tell you?

12 A When the first -- when I had the first -- my first
13 initial report of when the incident happened, there was
14 no fingerprints, if I'm mistakenly correct.

15 Q Okay. I've never received any fingerprints. So,
16 you're assuming, as do I, that there are no
17 fingerprints, right?

18 A You asked me that to --

19 MR. HALL: Well, your Honor, objection.

20 A All right.

21 MR. HALL: They're assuming lack of facts in
22 evidence, I guess, at this point.

23 THE COURT: Sustained.

24 BY MR. COLONGELI:

25 Q I'm almost done, Mr. Boskey. You're aware that

1 Brandon Parker, the one that you had no doubt whatsoever
2 was the perpetrator of an armed robbery, car jacking,
3 and kidnaping, was arrested within days after this
4 incident.

5 A Correct.

6 Q Matter of fact, Brandon Parker, warrants were sworn
7 out for him on June 9th, that same day. Did you know
8 that?

9 A Correct.

10 Q And he was arrested on June 15.

11 A I don't know the exact date, sir.

12 Q All right. That's fine. Are you aware that
13 warrants for Andre Green were also sworn out on June --
14 I'm sorry -- were sworn out on June 14th?

15 A I don't know the date, sir.

16 Q Okay. But that Andre Green did not get arrested
17 till this past October. Are you aware of that? As the
18 victim, you should be.

19 A I believe so.

20 Q All right. So, for some reason, four months
21 transpired between Brandon's arrest and Andre's.

22 A I mean, you got the dates.

23 Q All right.

24 MR. HALL: your Honor, I guess I'll object to any
25 further line of questioning, if there is a further line,

1 as to relevance as to when these people were arrested.

2 There's no relevance to it.

3 THE COURT: Sustained.

4 BY MR. COLONGELI:

5 Q Beg the Court's indulgence, your Honor. Out of an
6 abundance of caution, if I could just take one second to
7 review my notes, I think I'm close to being done.

8 When you spoke to the 911 operator -- we had a
9 witness earlier, I'm not sure if you were present, that
10 makes the discs from which the recordings were taken
11 where you were on the phone.

12 A Yes, sir.

13 Q Do you recall stating to this 911 dispatcher: *I*
14 *really don't want to get into it*, as far as what
15 happened?

16 A Correct.

17 Q Okay. You also -- I don't know if the phone just
18 cut off or you didn't answer or hang up, but they asked
19 you what your name was, and then that's the last we
20 heard.

21 In closing, Mr. Boskey, in your direct examination
22 by Mr. Hall, if I could make sure I've got this correct,
23 and you became quite adamant towards the end of his
24 questioning. You stated in response to a question of
25 his that it is very likely this is not the individual.

1 Meaning Andre Green.

2 MR. HALL: Objection, your Honor. Asked and
3 answered here. I think he's already given his response
4 on that.

5 THE COURT: Fine. Overruled. Go ahead.

6 BY MR. COLONGELI:

7 A Correct.

8 Q Is that true? Is that true?

9 A Correct.

10 Q So you did not want to proceed with this.

11 A Correct.

12 Q You cannot identify Andre Green outside of the fact
13 of what he's admitted to as far as your knowledge of
14 him.

15 A Of what who admitted to?

16 Q Of your knowledge -- let me rephrase that. You
17 cannot identify Andre Green short of the knowledge you
18 have of him from the visit he paid you at the house that
19 day.

20 A Can you re-ask your question. To answer your
21 question correct.

22 Q When's the first time you saw Andre Green?

23 A The first time I actually saw Andre Green would be
24 when he -- at my house.

25 Q At your house. That's what I was wondering. And

1 your testimony here today is that you cannot identify
2 him as the other individual that was in the car with you
3 and Brandon Parker, correct?

4 A I been asked that a thousand times, and I believe I
5 gave my answer already.

6 Q And I am sorry to have to ask you that again. But
7 that's your answer, correct?

8 A Correct.

9 MR. COLONGELI: Thank you. Nothing further, your
10 Honor. And I've got a motion.

11 THE COURT: Mr. Hall.

12 MR. HALL: Your Honor, if Mr. Colongeli has a
13 motion before I begin my --

14 THE COURT: We're not through this examination yet.

15 MR. COLONGELI: I apologize, your Honor.

16 MR. HALL: Your Honor, before I forget, just as a
17 housekeeping matter, I'm going to ask that State's
18 Exhibit 5 be moved into evidence.

19 THE COURT: It's been admitted without objection.

20 MR. HALL: Thank you.

21 COMPACT DISC OF REDACTED INTERVIEW,
22 DETECTIVE SERGEANT ANDRE MASSEY OF
23 DENNIS BOSKEY, MARKED STATE'S
24 EXHIBIT 5, AND ENTERED AS EVIDENCE.
25 DENNIS BOSKEY

1 RE-DIRECT EXAMINATION

2 MR. HALL:

3 Q Mr. Boskey, I know it's not fun for you to continue
4 to have to harp on this day where, obviously, it's being
5 made clear to everyone. Did you give a ride to anyone
6 else that day in June? The day that you've alleged that
7 you were robbed, kidnaped, car jacked, where you climbed
8 out of your trunk of your own moving car, on that day,
9 did you give anybody else a ride?

10 A Anybody else meaning who was the other -- I mean,
11 you asking me anybody else. Who was the other people?

12 Q Sure. Did you give --

13 A I mean, did I give anybody a ride that day?

14 Q Yes.

15 A Yes.

16 Q Who?

17 A Two people.

18 Q Who?

19 A Brandon Parker and another individual.

20 Q And so, it was Brandon Parker and this other
21 individual who Mr. Green admits was him.

22 A I don't know what he admitted to correctly. I
23 mean, by prior statements, I mean, I read statements of
24 what he admitted to, but I personally wasn't there what
25 he admitted to.

1 Q Okay. But you're aware of Mr. Green's statement
2 that he accepted a ride with you in your car.

3 A Correct.

4 Q So, I'm trying to follow your logic. The two
5 people that were in the car were the two people that
6 robbed you. Yes or no?

7 A Correct.

8 Q And so, the two people in the car were Brandon
9 Parker, yes?

10 A Which I know.

11 Q And Andre Green.

12 A Incorrect. I don't know --

13 Q You chose --

14 A Directly, I know Brandon Parker, and I said that a
15 thousand times over.

16 Q All right. All right. We're not talking about
17 whether you know this person. I just asked you a
18 question about --

19 A No, sir.

20 Q All right. Please let me finish. I just asked you
21 a question whether you were aware that Andre Green said
22 he was in your car.

23 A Yes, sir.

24 Q And he was, correct?

25 MR. COLONGELI: Your Honor, I'm going to object. I

1 mean, it is -- with all due respect to this Court, it is
2 what it is. Mr. Boskey's been put in a position. I
3 think any further questioning -- what he's trying to
4 elicit has been answered more than enough times by me.

5 THE COURT: Sustained.

6 BY MR. HALL:

7 Q Do you know Brandon Parker?

8 A Correct.

9 Q How long have you known Brandon Parker?

10 A For a while.

11 Q And what is the nature of the --

12 A Well, my fiancée used to live exactly in the area
13 where he used to be.

14 Q And how long have you known him?

15 A Six -- five -- six years.

16 Q And I guess, again, finally, with respect to
17 everything that's been alleged to have happened to you,
18 you've been able to give the jury some very minute
19 details.

20 A What you mean by minute?

21 Q Very exacting details.

22 A Correct.

23 Q You've been given -- you've given the jury details
24 about a trunk latch that you found, correct?

25 A Correct.

1 Q You know, you've given a general description of the
2 gun. You've described the people that were there,
3 correct?

4 A Correct.

5 Q But yet, you still, despite all that, maintain that
6 you cannot identify Andre Green.

7 A Correct.

8 MR. HALL: No other questions, your Honor.

9 THE COURT: All right. You may step down. We're
10 going to recess for lunch. Remember the caution I've
11 given you previously. Don't talk about the case among
12 yourselves or with anybody else. Don't conduct any
13 research. Don't do your own investigation.

14 Have a good lunch. And please report to the jury
15 room at 2:45. 2:45 this afternoon.

16 MR. COLONGELI: Your Honor, I would ask that Mr.
17 Boskey be released at this point in time.

18 THE COURT: We'll address that in just a minute.

19 JURY LEAVES COURTROOM 1:25 P.M.

20 BAILIFF: Jury's clear. Door is closed, your
21 Honor.

22 THE COURT: Okay. What's your request, Mr.
23 Colongeli?

24 MR. COLONGELI: There was some question about
25 bailiffs, whether or not Mr. Boskey was excused. In an

1 abundance of caution, I'll leave that up to your Honor.

2 THE COURT: Okay.

3 MR. COLONGELI: I'll leave that up to you.

4 THE COURT: Well, do either of you need him?

5 MR. COLONGELI: He's under my subpoena. I'm
6 finished with him, so.

7 THE COURT: Okay.

8 MR. COLONGELI: As far as I'm concerned, he's
9 released.

10 THE COURT: Neither of you need him. All right.
11 He's released.

12 All right. You got a motion, Mr. Colongeli?

13 MR. COLONGELI: I do, your Honor. Your Honor,
14 we're all very familiar for the past two days as to what
15 we thought we might hear today, and I think we finally
16 heard it.

17 THE COURT: Well, you realize the State has not
18 rested.

19 MR. COLONGELI: I'm sorry?

20 THE COURT: The State has not rested in their
21 presentation. You do know that.

22 MR. COLONGELI: I do know that.

23 THE COURT: Okay. So, what is your motion? How
24 would you describe it?

25 MR. COLONGELI: In the interest of justice, your

1 Honor, I'm trying to think of procedurally what the
2 correct motion would be at this point in time.

3 THE COURT: Do you want to think about it during
4 lunch?

5 MR. COLONGELI: Yes, sir. Thank you.

6 THE COURT: Okay. Recess for lunch. We'll be back
7 at 2:45.

8 MR. COLONGELI: Thank you, your Honor.

9 OFF THE RECORD 1:27 P.M.

10 BACK ON THE RECORD 3:03 P.M.

11 BY THE COURT:

12 THE COURT: Thank you. Be seated. Ready for the
13 jury.

14 MR. HALL: Your Honor, I have some matters that I'd
15 like to raise before the jury comes.

16 THE COURT:

17 MR. HALL: The first one is just kind of noting for
18 the record, it came to my attention via email that I
19 received while we were in the course of trial, before we
20 broke, that the first witness who testified for the
21 State, Monica Wiser, upon her leaving was approached by
22 someone on the entourage that's seated here in the
23 courtroom, and was asked a question about how her child
24 was doing. The victim felt, obviously, very intimidated
25 by that, was very upset by that. Conveyed that to my

1 victim advocate, which then, obviously, was conveyed to
2 me. I was not able to, obviously, be checking my emails
3 during the course of the trial, so it only came to my
4 attention after we broke.

5 Simply wanted it noted for the record that that
6 took place.

7 THE COURT: Well, I'd recommend that that be
8 disclosed to the sheriff, and then the sheriff can try
9 to determine who's making those comments. And if any
10 other witness has any comment directed to them by
11 anybody, without my knowledge and consent, you will be
12 going to the Beaufort County Jailhouse. So, hopefully,
13 that's understood. That will not be tolerated for
14 certain.

15 MR. HALL: That's the first matter. The second
16 matter is Attorney Colongeli had made a motion to
17 sequester witnesses. I, obviously, in the course of
18 putting my case up failed to realize, and I'm going to
19 guess that maybe perhaps Attorney Colongeli failed to
20 realize, that one of the witnesses on his list has been
21 sitting here in court all morning during the
22 proceedings.

23 THE COURT: And who is that?

24 MR. HALL: Kia Parker.

25 THE COURT: Okay.

1 MR. HALL: And because of that, and because she was
2 not sequestered, I'm going to ask that any potential
3 testimony from Kia Parker be excluded.

4 THE COURT: Okay. Mr. Colongeli.

5 MR. COLONGELI: Without objection, your Honor.

6 THE COURT: Okay. She's not testifying,
7 apparently.

8 MR. HALL: And finally, it's my intent to introduce
9 Mr. Green's statement through Detective Massey, and we
10 had not done any type of *Jackson v. Denno* hearing to
11 assess his, you know, his willingness to give a
12 statement under *Miranda*. I just wanted to bring that up
13 for the record that, usually, that would be something
14 done pretrial, but we had not done it. But it'd be my
15 intent to introduce that statement through Detective
16 Massey.

17 THE COURT: All right. Mr. Colongeli, you're aware
18 of what statement Mr. Hall was referring to?

19 MR. COLONGELI: Yes, your Honor.

20 THE COURT: Have you discussed with your client the
21 right to have a hearing to determine the voluntariness
22 of it?

23 MR. COLONGELI: I have not, your Honor. I can do
24 that briefly. I apologize. I did not.

25 THE COURT: Well, let's make that determination,

1 then. It might be that it was just voluntarily made and
2 we can forego having a hearing about it.

3 MR. COLONGELI: Having said that, your Honor, let
4 me take that back one notch. Yes, that was addressed,
5 but I may have misinterpreted what you just asked me.
6 And if you just give me a couple seconds, that can be
7 addressed.

8 THE COURT: Okay.

9 MR. COLONGELI CONFERRING WITH CLIENT.

10 MR. COLONGELI: There's no issues, your Honor. I
11 apologize.

12 THE COURT: All right. So your client's position
13 is that any statements made to Sergeant Massey were
14 freely and voluntarily made?

15 MR. COLONGELI: That's correct, your Honor.

16 THE COURT: No coercion, no threats, no rewards, no
17 promises?

18 MR. COLONGELI: Yes, that's correct.

19 THE COURT: Is that true, Mr. Green?

20 DEFENDANT GREEN: Yes, sir.

21 THE COURT: Okay. All right. Anything else?

22 MR. COLONGELI: With that, I have nothing else,
23 your Honor.

24 THE COURT: All right. Bring the jury in, please.

25 BAILIFF: Yes, your Honor.

1 BAILIFF: The jury is entering, your Honor.

2 JURY ENTERS COURTROOM 3:09 P.M.

3 THE COURT: Good afternoon, ladies and gentlemen.
4 We're going to continue with the State's presentation of
5 evidence.

6 MR. HALL: Thank you, your Honor. The State calls
7 Sergeant Andre Massey to the stand.

8 WITNESS SWORN.

9 DETECTIVE SERGEANT ANDRE MASSEY

10 DIRECT EXAMINATION

11 MR. HALL.

12 A My name is Andre Massey. It's A/n/d/r/e
13 M/a/s/s/e/y.

14 Q And Sergeant Massey, how are you employed?

15 A With the Port Royal Police Department as an
16 investigator.

17 Q And how long have you been employed with the Port
18 Royal Police Department?

19 A Approximately 17 years.

20 Q And can you briefly describe to the jury what your
21 duties are as investigator for the Port Royal Police
22 Department?

23 A Easily put, I'm the finder of facts. I go out,
24 investigate crimes, relieving the road officers from
25 their job as far as trying to figure out if a crime

1 really took place. Is there any truth behind it, is
2 there false anything behind it. I collect evidence,
3 process the evidence, and store the evidence, which is
4 in our evidence locker.

5 Q Now, are you familiar with a case involving Andre
6 Green?

7 A I am.

8 Q And do you recall when that incident occurred?

9 A June the 9th, 2011.

10 Q And at that time, did you have the occasion to meet
11 with the victim in this case, Dennis Boskey?

12 A I did.

13 Q And where did this meeting take place?

14 A At the Port Royal Police Department.

15 Q And during the course of your conversation with Mr.
16 Boskey did you take photographs of injuries sustained by
17 Mr. Boskey?

18 A I did.

19 MR. HALL: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MR. HALL: Thank you.

22 BY MR. HALL:

23 Q Sergeant Massey, I'm showing you what's been marked
24 as State's Exhibits 2-A through 2-E. Ask you to -- ask
25 if you can identify each of those pictures.

1 A Yes, sir.

2 Q And what do they depict?

3 A These are photographs that I took of the victim the
4 night of the incident, also of the car, where it was
5 located.

6 Q So let's discuss that car. Where was the car that
7 Mr. Boskey was driving located?

8 A The lower part of Mossey Oaks Village Apartments.

9 Q And where is that in relation to the McTeer Bridge
10 on Ribaut Road?

11 A If you come off the McTeer Bridge, you can turn
12 right onto Professional Boulevard, or you can come to
13 the light and make a right, make an immediate right.
14 You'll be on Johnny Morrall Circle. You follow Johnny
15 Morrall Circle all the way around, you'll come to a set
16 of apartments over near the Piggly Wiggley. Those
17 apartments are Mossey Oak Village Apartments.

18 Q And that's where the car was located?

19 A Yes, sir.

20 Q And anybody associated with that car located at the
21 scene at that time?

22 A No, sir.

23 Q And who's the car registered to?

24 A It's -- I believe it's registered to a Mr. Boskey's
25 girlfriend. I don't know her name off top of my head.

1 Q But in Mr. Boskey's statement, that was the car he
2 was driving.

3 A Yes, sir.

4 MR. HALL: Your Honor, I would ask that State's
5 Exhibits 2-A through 2-E be admitted into evidence and
6 that I publish them to the jury.

7 MR. COLONGELI: Without objection, your Honor.
8 They're admitted.

9 MR. HALL: Thank you.

10 PHOTOGRAPHS MARKED STATE'S
11 EXHIBITS 2-A THROUGH 2-E, AND
12 ADMITTED AS EVIDENCE.
13 PHOTOGRAPHS PUBLISHED TO JURY.

14 BY MR. HALL:

15 Q Sergeant Massey, when you arrived at the scene
16 where the car was located, did you do anything in the
17 way of processing the scene or checking the car out?

18 A Yes, sir, I did.

19 Q Were you able to lift fingerprints from areas of
20 the car?

21 A I was able to lift some partials and some partial
22 palm prints.

23 Q And did you ever submit those to be examined to be
24 referenced against any other samples?

25 A No, sir.

1 Q What was the reason for you not doing that?

2 A Because after interviewing both suspects involved
3 in the case, neither one of them denied being in the
4 vehicle or having been anywhere around the vehicle.

5 Which, in that case, what -- they'd legally had their
6 prints on that vehicle or around that vehicle, because
7 they were legally in the vehicle.

8 Q Now, how was Andre Green developed as a suspect in
9 this case?

10 A Well, later during the -- after the investigation,
11 at first, they didn't know -- he did not know who Andre
12 Green was. All he knew is --

13 Q Now, when you say *he*, you're referring to whom?

14 A Mr. Boskey.

15 Q Thank you.

16 A I'm sorry. Mr. Boskey didn't know who Andre Green
17 was as far as the second person in the vehicle. All he
18 knew him as is Arnie. And we asked around, couple
19 people in some of the offices knew a guy by the name of
20 Arnie and had dealings with him before, which was later
21 known to be Andre Green. Those pictures -- also, Mr.
22 Boskey did call and let us know that there was a guy
23 named Arnie that he knew of named Arnie, but he didn't
24 know his real name.

25 Well, we put Andre Green in the photograph lineup,

1 along with five other individuals, and which he
2 immediately identified Mr. Andre Green as the second
3 person in the vehicle.

4 Q Let's back up here for a little bit. I'm going to
5 show you what's already been marked as State's Exhibit 1
6 and A -- 1-A and 1-B, for purposes of identification.
7 And I'm going to ask you to take a look at these. Do
8 you recognize both of those documents?

9 A I do, sir.

10 Q Okay. Can you tell the jury what they are?

11 A This is known as a photograph lineup, and this is
12 what we get off our data base as far as Law Track.

13 Q And how are those complied?

14 A Law Track is the data base which we use for our
15 reports. And also, it has --

16 THE COURT: Excuse me just a minute, please. Let
17 me see you all just a minute.

18 MR. HALL: You know what, your Honor, I'll withdraw
19 that line of questioning.

20 THE COURT: All right. Go ahead.

21 MR. HALL: I'm going to ask that State's Exhibits
22 1-A and 1-B be admitted into evidence and that I be able
23 to publish these to the jury.

24 MR. COLONGELI: I'm sorry. Which ones?

25 MR. HALL: The lineup.

1 MR. COLONGELI: I have an objection to that.

2 THE COURT: You do?

3 MR. COLONGELI: Yes.

4 THE COURT: Let me ask the jury to please go to
5 your jury room, and I'll bring you back in just a few
6 minutes once I address this issue.

7 BAILIFF: The jury is clear, your Honor.

8 JURY LEAVES COURTROOM 3:22 P.M.

9 ON-THE-RECORD BENCH CONFERENCE,

10 OBJECTION, MR. COLONGELI:

11 THE COURT: Okay. What's your objection?

12 MR. COLONGELI: I think, your Honor, I didn't mean
13 to have to break Court, so to speak, and have the jury
14 go out. But if so, first of all, he didn't show me what
15 those were, so I'd like to see them.

16 THE COURT: The lineup photos.

17 MR. COLONGELI: I understand that, but those appear
18 different than what I have.

19 THE COURT: Okay. Well, look at them.

20 MR. HALL: They're the originals.

21 MR. COLONGELI: Exactly. I've not had an
22 opportunity to see the originals.

23 THE COURT: Okay. Do they appear to be the same as
24 the copies that you were provided?

25 MR. COLONGELI: Short of some sort of evidence

1 sticker that was on both of them, which isn't on both
2 the copies that I have.

3 MR. HALL: Correct. Correct, because they --

4 MR. COLONGELI: Which was placed on them here
5 today.

6 THE COURT: Well, we're not introducing the copies.
7 We're introducing the originals.

8 MR. COLONGELI: Exactly. They do -- they do appear
9 to be what I have copies of. Your Honor, for purposes
10 of preserving the record, we discussed this earlier in
11 chambers, I have no information within the four corners
12 of this report or investigation as to the protocol that
13 was used. Obviously, this is discoverable information
14 that I'm just learning of now. I think he refrained
15 from going into that just a second ago as far as the
16 procedure which was used. And we discussed that
17 earlier.

18 I'd like to make note of -- on the record that,
19 obviously, there was nothing in the report that
20 indicated the procedure that was used, and that my
21 position has been and always was that this lineup was
22 unduly suggestive, based on the picture itself. But we
23 had discussed this earlier. And I just think for
24 preserving the record, I need to make note of that at
25 this point in time. That would be the objection that I

1 have.

2 MR. HALL: Your Honor, the reason that I abandoned
3 my line of questioning was because I wanted to avoid
4 having Sergeant Massey potentially answering a question
5 where the photos that were put into the lineup were
6 called from jail photo -- jail photos themselves. I
7 didn't want to end up doing something that was going to
8 prejudice the defendant by giving the jury the
9 impression that because he's in this lineup, obviously,
10 he's been in jail before.

11 MR. COLONGELI: Well, that would be a correct
12 impression. But that's what we're trying to avoid, of
13 course.

14 MR. HALL: Right. And that's why I stopped my line
15 of questioning.

16 THE COURT: Okay.

17 MR. COLONGELI: That, in addition, would be,
18 obviously, part of my motion. The fact that that does
19 seem to indicate --

20 THE COURT: That's not obviously part of the
21 motion. You'll have to include it if you want to
22 include it.

23 MR. COLONGELI: I'd like to include it, your Honor.

24 THE COURT: All right. Tell me what you want to
25 include.

1 MR. COLONGELI: It seems clear to me that it would
2 indicate, if the jury were to see this lineup, that it
3 would indicate that Mr. Green has been incarcerated.

4 THE COURT: How does it indicate that?

5 MR. COLONGELI: Well, there is a -- there's
6 something called *Mug Faces* here in Beaufort County.
7 There is also a periodical that is in every gas station
8 in Beaufort County where it shows people that have been
9 arrested during the proceeding week, month. Every
10 individual obviously appears in these black and white
11 photos. It appears that you can tell that they are in a
12 jail uniform. And obviously, --

13 THE COURT: Well, let me have a look at it.
14 Nobody's explained that to me before right now.

15 MR. HALL: I'll let you have the originals, Judge,
16 if you want them.

17 THE COURT: Well, we did have this discussion, but
18 the last discussion we had was that there was not going
19 to be an objection to the lineup.

20 MR. HALL: That was my --

21 MR. COLONGELI: I understand that. And I didn't
22 think he was going to admit the photos, your Honor. I
23 didn't think he was actually going to publish the
24 photos.

25 MR. HALL: They'd already been introduced, at least

1 for identification purposes, but.

2 THE COURT: All right. What else, Mr. Colongeli?
3 You do know these photographs are derived from a jail
4 computer program that selects photographs from the
5 pictures taken when defendants are arrested.

6 MR. COLONGELI: I do understand that. And I think
7 my motion generally would be, under 402, that -- I don't
8 see -- I only see prejudice coming from that. I don't
9 see anything probative coming from that. We've already
10 discussed this lineup at length. I just don't
11 understand why we have to go further with the actual
12 lineup now. I just think it's unduly prejudicial to my
13 client at this point. Particularly in light of the fact
14 that I think it does suggest that he has a criminal
15 history. So, in doing so, that would be against the
16 interests of my client and prejudicial. That would be
17 the basis of my motion and objection, your Honor.

18 THE COURT: When was the lineup conducted?

19 MR. HALL: The lineup was prepared on June 10th,
20 and Mr. Boskey viewed it on June 13th.

21 MR. COLONGELI: And there's some question, your
22 Honor, whether or not that was a mug shot from a prior
23 arrest. That's my concern. I mean, I'm not sure how we
24 get around it, other than me noting it for the record,
25 but --

1 THE COURT: Well, I don't mind excluding it
2 altogether if you're not going to challenge Mr. Boskey's
3 identification of the defendant from that lineup. But
4 if you are, then they've got a right to introduce
5 evidence that he --

6 MR. COLONGELI: Understood.

7 THE COURT: -- identified the defendant shortly
8 after this event occurred.

9 MR. COLONGELI: Understood, your Honor. And I
10 think -- that's what I'm saying. That has already been
11 addressed. I didn't challenge that. As a matter of
12 fact, I discussed that with the witness, with the
13 alleged victim. We discussed his purported
14 identification from this lineup. It's been discussed at
15 length. And that's why I think anything further and the
16 Solicitor being able to go forward and actually
17 introducing it is prejudicial at this point. We've
18 discussed it at length with the victim.

19 THE COURT: Well, I realize it's prejudicial, but
20 everything -- most everything they've introduced has
21 been prejudicial. That's the point of it. The question
22 is whether or not it's unduly prejudicial.

23 THE COURT: Do you need to go into that line of
24 questioning, Mr. Hall, or would you be satisfied with
25 just asking Mr. Massey if you prepare a photographic

1 lineup which contained the picture of the defendant and
2 then Mr. Boskey selected Mr. Green's picture from that
3 lineup as being the person who was with Mr. Parker that
4 day?

5 MR. HALL: That's fine. I'd be fine with that.

6 THE COURT: Okay. And then, if you're going to
7 challenge the lineup and how the selection was obtained
8 and that sort of thing, then they got a right to
9 introduce the lineup.

10 MR. COLONGELI: I understand. I withdraw that
11 objection.

12 THE COURT: Okay.

13 MR. COLONGELI: And I'm fine with what you've
14 decided -- with what the State's decided.

15 THE COURT: Okay. All right. That satisfactory?

16 MR. COLONGELI: Absolutely.

17 THE COURT: Okay. Bring the jury in.

18 BAILIFF: Yes, your Honor.

19 THE COURT: In other words, you can ask him about
20 what he did that resulted in identification, but the
21 photographs won't come in.

22 MR. HALL: Excellent. Okay.

23 BAILIFF: The jury is entering, your Honor.

24 THE COURT: You may proceed.

25 MR. HALL: I am, your Honor. Thank you.

1

JURY ENTERS COURTROOM 3:30 P.M.

2

BY MR. HALL:

3

Q Detective Boskey [sic], back to the photo lineup, when was that conducted?

4

5

A Sir, I prepared the lineup in June. I'm sorry.

6

June 10th, 2011, and Mr. Boskey was given the photo

7

lineup to identify on the 13th of June.

8

Q All right. And when you showed him the lineup, was he able to select anyone out of the lineup?

9

10

A Yes, sir.

11

Q And who did he select? May I approach the witness again, your Honor?

12

13

Q There are obviously six pictures on here. Which number did he select?

14

15

A Number 2.

16

Q All right. And below Picture Number 2 are a set of initials.

17

18

A Yes, sir.

19

Q And what do those say?

20

A D.R.B. the III.

21

Q All right. And did you witness Mr. Boskey place those initials --

22

23

A I did.

24

Q -- under that picture? How quickly did he make that selection?

25

1 A Immediately.

2 Q So there was no hesitation whatsoever.

3 A No, sir.

4 Q No hemming and hawing. No 30-second, pregnant
5 pause.

6 A No, sir.

7 MR. COLONGELI: Asked and answered, your Honor.

8 Q Okay. Now, Mr. Green wasn't immediately located.
9 Is that correct?

10 A Excuse me?

11 Q Mr. Green was not immediately located.

12 A No, sir, he was not.

13 Q And in the interim, did you become aware of any
14 issues involving Dennis Boskey and people contacting
15 him?

16 A Yes, sir.

17 Q In fact, you've heard that testimony here today
18 while you've been sitting here.

19 A Yes, sir.

20 Q What I want to attempt to clear up with you,
21 Sergeant Massey, is, did you yourself ever pressure
22 Dennis Boskey into making the identification?

23 A No, sir, I did not.

24 Q Did you ever try to convince him that he had the
25 right man?

1 A No, sir, I did not.

2 Q And that's throughout the pendency of these
3 proceedings?

4 A That's affirmative.

5 Q Now, Andre Green was ultimately arrested.

6 A Yes, sir.

7 Q And did you get a request from Mr. Green to have a
8 chat?

9 A He asked me at one of the bond hearings, he said he
10 needed to talk to me.

11 Q Okay. And did you have that conversation with him?

12 A I did have a conversation with him. I did, yes,
13 sir.

14 Q Okay. And was that conversation recorded?

15 A It was audioed, and I believe, video-recorded, yes.

16 MR. HALL: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. HALL:

19 Q I'm going to show you what's been marked as State's
20 Exhibit Number 4 and ask you to identify that.

21 A Yes, sir. This is a copy of the -- looks -- says
22 *Redacted Copy* of my actual interview.

23 Q And on that disc, there appear to be a set of
24 initials?

25 A Yes, sir.

1 Q Are those your initials?

2 A They are.

3 Q And the date?

4 A Yes, sir.

5 Q And that is what?

6 A 4-24-2012.

7 Q So you've reviewed this. And the redacted version
8 is a -- it's the same as the original version,
9 obviously, with some of the parts taken out.

10 A Yes, sir.

11 Q How long did your interview with Mr. Green last?

12 A Approximately a hour and a half, total time.

13 MR. HALL: Your Honor, at this time, I would ask
14 that State's Exhibit 4 be moved into evidence, and I'd
15 like to play it for the jury.

16 MR. COLONGELI: Your Honor, only with the exception
17 if we -- if stipulated prior to this that what the
18 Solicitor's told me is, in fact, true. We discussed
19 this at lunch. This is what I was going to possibly
20 have a Big Mac and go over with my client. We did not
21 have that opportunity, I did not, to listen to this.
22 So, to that extend, I don't have a problem with it, to
23 that extent.

24 THE COURT: Let me see you all just a minute.

25 OFF-THE-RECORD BENCH CONFERENCE,

1 THE COURT, MR. HALL, MR. STEPHENS,
2 MR. COLONGELI.

3 THE COURT: It's admitted.

4 MR. HALL: Thank you, your Honor. Play it for the
5 jury?

6 THE COURT: You may.

7 MR. HALL: Thank you.

8 COMPACT, REDACTED INTERVIEW,
9 DETECTIVE SERGEANT ANDRE MASSEY
10 OF ANDRE GREEN, MARKED STATE'S
11 EXHIBIT NUMBER 4, AND ADMITTED
12 AS EVIDENCE.

13 COMPUTER MADE SOUND.

14 MR. HALL: Wow. Very sorry about that. I
15 apologize, your Honor. It appears my computer is in the
16 process of shutting down.

17 Wish it would start up faster. It just doesn't.

18 COMPACT DISC PLAYING.

19 MR. COLONGELI: Sorry. I have an objection, your
20 Honor.

21 THE COURT: All right. Let me ask the jury to
22 please go to your jury room. And don't talk about the
23 case. I'll bring you back in just a moment.

24 JURY LEAVES COURTROOM 3:47 P.M.

25 BAILIFF: Jury's clear. The door is closed, your

1 Honor.

2 BY THE COURT:

3 THE COURT: All right. Your objection.

4 MR. COLONGELI: Your Honor, I know -- obviously, I
5 think you heard the same thing I did.

6 THE COURT: Well, I didn't. I'm having a hard time
7 hearing any of it. So you'll have to tell me what you
8 heard.

9 MR. COLONGELI: Well, I just heard my client
10 indicate something in reference to his background. It
11 was clear to me, and I'm having a difficult time hearing
12 it, too. But he said something to the effect that there
13 was, in his mind, based on what Sergeant Massey was
14 telling him, that, in his mind, it must have been
15 something between Brandon and Boskey trying to get him
16 because of his background. Because of his background.

17 THE COURT: All right. Well, I don't perceive an
18 issue there.

19 MR. COLONGELI: You don't. Okay. If I could just
20 make the objection, your Honor.

21 THE COURT: You did.

22 MR. COLONGELI: Yes. Thank you.

23 THE COURT: All right. Any other?

24 MR. COLONGELI: Only that, you know, as I stated
25 earlier, obviously, I did not get to hear the earlier

1 tapes that were admitted. And Mr. Hall had stated that
2 the redactions were made. I'm taking his word that the
3 redactions were made on this tape also, notwithstanding
4 the fact that I was instructed to listen to it at lunch.

5 THE COURT: And did you?

6 MR. COLONGELI: I did not.

7 THE COURT: Yeah.

8 MR. COLONGELI: But once again, I'll take
9 responsibility for that, but I've, once again, relied on
10 Mr. Hall here that he gave me his word this morning that
11 the redactions were made.

12 MR. HALL: And they have been.

13 THE COURT: Okay. Well, I'm going to let you
14 defend your position in just a moment.

15 MR. COLONGELI: Okay. I apologize.

16 THE COURT: I don't see how that -- the discussion
17 was, is they weren't supposed to be talking about his
18 criminal history. I don't think that does, but you
19 apparently think it does.

20 MR. COLONGELI: Just -- yes. Background, I do. I
21 imply that as -- his background could be that he's
22 Haitian. That's --

23 THE COURT: He probably wasn't talking to Mr.
24 Parker and Mr. Boskey about his background in the
25 context of his criminal history. I would guess.

1 MR. COLONGELI: I understand, your Honor.

2 THE COURT: Anyway. What else would you like to
3 say, Mr. Hall? Do you have anything you'd like to say
4 in response to Mr. --

5 MR. HALL: I don't, your Honor. Well, I'll just
6 reiterate for the record that I have taken great pains
7 to redact this audio. And if Mr. Colongeli's relying on
8 me, obviously, that I've done my job, and as I stand
9 here, I believe I have.

10 THE COURT: Okay. Anything else?

11 MR. COLONGELI: No, your Honor.

12 THE COURT: All right. Bring the jury back.

13 MR. HALL: I was going to ask before they come back
14 in that I rewind a little bit.

15 THE COURT: Okay.

16 MR. HALL: Because I think there was some time
17 lapse by the time I made it here.

18 THE COURT: Well, just be sure that it's after that
19 part that they've already heard that Mr. Colongeli is
20 objecting to.

21 MR. HALL: I will.

22 MR. COLONGELI: Thank you, your Honor.

23 MR. HALL WORKING WITH COMPUTER.

24 MR. HALL: I don't know exactly where that comment
25 is.

1 DETECTIVE SERGEANT MASSEY: You've got to go back
2 some.

3 MR. HALL: There it is.

4 THE COURT: Okay. Bring the jury in, please. How
5 much longer is this tape?

6 MR. HALL: Seventeen minutes.

7 THE COURT: Okay.

8 THE COURT: Mr. Hall, you're going to need to stand
9 near that thing, so in case Mr. Colongeli has another
10 objection since he hadn't reviewed that tape. You might
11 need to stop it.

12 MR. HALL: I will do that, your Honor.

13 MR. COLONGELI: Thank you, Judge.

14 BAILIFF: The jury is entering, your Honor.

15 JURY ENTERS COURTROOM 3:48 P.M.

16 THE COURT: All right. You may continue.

17 MR. HALL: Thank you, your Honor.

18 CONTINUE PLAYING COMPACT DISC.

19 BY MR. HALL:

20 Q Sergeant Massey, as part of the -- as part of that
21 process, when you were interviewing Andre Green, you had
22 made reference to a statement that had been written out
23 by Dennis Boskey, correct?

24 A Yes, sir.

25 Q Do you remember when Mr. Boskey wrote that

1 statement out?

2 A I believe it was on the 9th of June.

3 Q So, the incident date.

4 A Yes, sir.

5 Q So, at that time, he was only able to identify
6 Brandon Parker.

7 A Yes, sir.

8 Q He didn't know who the other person was.

9 A No, sir.

10 Q But yet, he identified him later as part of the
11 photo lineup.

12 A Yes, sir.

13 Q So it wouldn't be unusual, obviously, to have
14 something in a report where you have an unidentified
15 subject if you don't know who they are.

16 A Correct, sir.

17 MR. HALL: I don't have any other questions, your
18 Honor.

19 MR. COLONGELI: May it please the Court, your
20 Honor.

21 DETECTIVE SERGEANT ANDRE MASSEY

22 CROSS-EXAMINATION

23 MR. COLONGELI:

24 Q Detective Massey, correct? Good afternoon.

25 A Good afternoon, sir. How you doing?

1 Q All right. That interview, according to Mr. Hall,
2 was originally an hour and a half. Is that not correct?

3 A Approximately. Yes, sir.

4 Q And I've got a lot of respect for you. You've been
5 in law enforcement 17 years, and you've got a hard job
6 to do. But you are trained -- you've been asked this
7 question before. You're trained originally in criminal
8 justice academy that what you do has to all be put in
9 writing in what's called an incident report, correct?

10 A That's correct.

11 Q Okay. And you did prepare an incident report in
12 this case.

13 A I did.

14 Q Okay. And that one-and-a-half inter -- one-and-a-
15 half-hour interview basically is three paragraphs at the
16 end of that report. Would you agree?

17 A I agree. That's because it's a synopsis of the
18 interview.

19 Q A synopsis of the -- correct. And correct me if
20 I'm wrong, but what I get out of this incident report
21 that you wrote was that -- and what we heard Mr. Green
22 say was that he did catch a ride with Brandon Parker and
23 Dennis Boskey; that he got out at the basketball court,
24 and Boskey and Parker continued to the house down the
25 dirt road from the basketball court.

- 1 A That's -- that's correct, sir.
- 2 Q And that's what he told you.
- 3 A Yes, sir.
- 4 Q Okay. You didn't believe him.
- 5 A No, sir.
- 6 Q You still don't believe him.
- 7 A No, sir.
- 8 Q You weren't there, though, were you?
- 9 A No, sir.
- 10 Q So you're relying on information, just like
11 everyone else is, to make up your mind as to what
12 happened.
- 13 A I'm relying on the actual victim's testimony.
- 14 Q And this actual victim, as you heard before, was
15 quite adamant that he did not want to be here, correct?
- 16 A Somewhat, sir, yes, sir.
- 17 Q And that he also could not identify who that other
18 black male subject was today here in court, and the
19 perpetrator of the armed robbery, car jacking, and
20 kidnaping, correct?
- 21 A He did say that here in court, yes, he did.
- 22 Q All right. Now, I want to reiterate that you
23 stated in your own report that Green maintained that he
24 had nothing to do with the situation.
- 25 A That's correct, sir.

1 Q And that he stated he would take his chances in
2 court.

3 A That's correct, sir.

4 Q As serious as these charges are, that he would take
5 his chances in court, after listening to all that we
6 just heard. And I know you got a tough job to do, and
7 you do get at it, but after everything we just heard,
8 him saying I did not do this, I'll take my chances in
9 court.

10 A Yes, sir.

11 Q Now, there's been a lot of discussion of threats
12 and intimidation in this case, or alleged threats or
13 intimidation. And you went so far as to indicate to
14 this alleged victim, Mr. Boskey, and it was a correct
15 allegation by you that that's a federal offense.

16 A Yes, sir. It's a felony. Yes, sir.

17 Q Tampering with a witness, it's a felony. And
18 actually, the federal government could get involved with
19 that, particularly with out-of-state people calling
20 local people, correct?

21 A To my understanding, yes, sir.

22 Q No charges have been filed, though, correct?

23 A No, sir.

24 Q Not even an investigation has been conducted.

25 A No, sir.

1 Q No supplemental report as to intimidation or
2 tampering with witnesses.

3 A No, sir.

4 Q These phone calls that Mr. Boskey went in length
5 about during that second interview, the ones that he
6 erased, the ones that he couldn't bring you the records
7 for, did you ever, in your investigation, look into
8 whether or not those possibly were in reference to
9 Brandon Parker or coming from Brandon Parker?

10 A No, sir. He never gave me the numbers.

11 Q Brandon Parker never gave you the numbers.

12 A No. Mr. Boskey never gave me the --

13 Q Okay. I'm sorry. I didn't ask you the question
14 correctly. Did it come up, did you ever think, as part
15 of your investigation into this case, there is Brandon
16 Parker who is a definite?

17 A Yes, sir.

18 Q Did you ever think that these threats, alleged
19 threats or purported threats and intimidation -- alleged
20 intimidation, from these phone calls were in relation to
21 Brandon Parker and may be friends of his or a third
22 party?

23 MR. HALL: Objection. That would call for
24 speculation.

25 THE COURT: Overruled.

1 BY MR. COLONGELI:

2 Q I mean, Brandon Parker is a co-defendant, correct?

3 A Yes, sir.

4 Q And he has not been tried yet.

5 A No, sir.

6 Q Correct.

7 Q Obviously, he's not here to testify against Mr.
8 Green that he had anything to do with it today, is he?

9 A No, sir.

10 Q I'm saying -- I don't think it calls for
11 speculation. You, as a 17-year veteran with a reputable
12 law enforcement agency, did it ever enter your mind, and
13 I'm saying, if it didn't, it's okay, but did it ever
14 enter your mind that this may have been in relation to
15 Brandon Parker? These phone calls that were coming in.

16 A Those phone calls could have been from anybody.

17 Q Anybody.

18 A They could have been from anybody.

19 MR. COLONGELI: Thank you. And -- that's it.
20 That's it. Thank you very much.

21 MR. HALL: Just a brief follow-up, your Honor.

22 DETECTIVE SERGEANT ANDRE MASSEY

23 RE-DIRECT EXAMINATION

24 MR. HALL:

25 Q Mr. Colongeli referenced something from the audio

1 that we all listened to about how Mr. Green would take
2 his chances in court. Is that correct?

3 A Yes, sir.

4 Q Now, he told you that when, exactly?

5 A It was at the end of the interview.

6 Q Okay. But date-wise. In relation to the event.

7 A Approximately around the 18th or 19th when I
8 actually spoke to him at the detention center.

9 Q What month?

10 A June. June 2011.

11 Q When you spoke to Mr. Green?

12 A I'm sorry. Not June. October 2011. I'm sorry.

13 Q In the sense that it happened in June of 2011,
14 correct?

15 A Yes, sir.

16 Q And we've heard testimony that Mr. Green visited
17 Mr. Boskey in the interim.

18 A Yes, sir.

19 Q So Andre Green taking his chances in court, that
20 statement is made after he's gone to see Dennis Boskey.

21 A Yes.

22 MR. COLONGELI: I'm going to object, your Honor.
23 I'm not sure what the relevance is of that.

24 THE COURT: Overruled.

25 MR. HALL: That's all I have. Thank you.

1 MR. COLONGELI: Re-cross?

2 THE COURT: Okay.

3 DETECTIVE SERGEANT ANDRE MASSEY

4 RE-CROSS-EXAMINATION

5 MR. COLONGELI:

6 Q And if I'm out of bounds, Judge, please tell me.
7 Detective Massey, the incident report, your incident
8 report, --

9 A Um-hmm.

10 Q -- says that Mr. Boskey identified the second guy
11 as a black male only, correct?

12 A Initially, yes.

13 Q Okay. Two days later, is it not true that people
14 on the street, according to a supplemental report,
15 informed Mr. Boskey that sounds like a guy named Arnie.

16 MR. HALL: Your Honor, I'll object to that. He's
17 testifying as to what Mr. Boskey told him.

18 THE COURT: Well, let me see you all just a minute.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 THE COURT, MR. HALL, MR. STEPHENS,

21 MR. COLONGELI.

22 BACK ON THE RECORD.

23 THE COURT: All right. Objection sustained.

24 MR. COLONGELI: That's withdrawn, your Honor. I
25 have nothing further. Thank you, Detective.

1 MR. HALL: I have nothing more for this witness,
2 your Honor.

3 THE COURT: You may step down.

4 A Thank you, your Honor.

5 STATE RESTS, MR. HALL:

6 MR. HALL: At this time, your Honor, the State
7 rests.

8 THE COURT: Ladies and gentlemen, that is all of
9 the testimony and evidence to be offered by the State,
10 at least in their case in chief. Before we go further,
11 I've got some matters to address with the lawyers.
12 Should take only a few minutes. So, please go to your
13 jury room, but do not yet discuss the case. I'll bring
14 you back shortly.

15 JURY LEAVES COURTROOM 4:20 P.M.

16 BAILIFF: Jury's clear. Door's closed, your Honor.

17 MOTION FOR DIRECTED VERDICT,

18 MR. COLONGELI:

19 THE COURT: All right. Motions? Do you have any
20 motions you'd like heard?

21 MR. COLONGELI: Yes, I do, your Honor. May it
22 please the Court. Your Honor, prior to our break --- and
23 that's one of the things that threw me off, your Honor,
24 as far as not paying attention and having listened to
25 one of the tapes that I should have listened to. I was

1 thinking of procedurally what kind of motion I could
2 make prior to the State's resting its case. And the
3 only thing I could come up with before coming back from
4 lunch, and I don't mean to belabor this, is possibly
5 assistance from the Court in requesting that the State
6 do what, in the interest of justice, would be at that
7 time to cease its prosecution. Based on what we had
8 heard up until that time.

9 Having said that, your Honor, in the interest of
10 justice, I would respectfully move for a directed
11 verdict.

12 The evidence, even in a light most favorable to the
13 State, has failed irrefutably to establish the
14 identification of Andre Green as the perpetrator of the
15 offenses alleged.

16 We know in Criminal Law 101, and I will be the
17 first to admit, I'm not the brightest attorney around
18 with my years of experience, but Criminal Law 101,
19 identification and jurisdiction. And I would say to
20 this Court that I'm not so sure even jurisdiction was
21 established. There was never a point in the testimony
22 where -- I think everything got derailed once the victim
23 said that he could not identify Mr. Green. But it went
24 kind of off track at that point. I don't recall, and I
25 stand to be corrected, whether or not there was any

1 point in this testimony where the State elicited
2 testimony that would have established that this alleged
3 -- these alleged offenses occurred in Port Royal, South
4 Carolina on such and such dates.

5 THE COURT: What about Beaufort County?

6 MR. COLONGELI: I didn't hear Beaufort County,
7 either, your Honor.

8 THE COURT: Okay.

9 MR. COLONGELI: And I stand to be corrected. If
10 you did and I didn't, that's --

11 THE COURT: I'm not saying I did. I'm just saying
12 it's not limited to Port Royal.

13 MR. COLONGELI: Understood. And that would be part
14 of my motion. Not only did I not hear Port Royal
15 itself, I did not hear Beaufort County. We would argue
16 that, based on the lack of identification, and in the
17 interest of justice, that you prevent this from going to
18 the jury.

19 I think this is a very difficult decision if I were
20 a judge to make. Because it's one of those situations
21 where I guess you could say because of this purported
22 intimidation tactics or whatever, the stuff that never
23 was within the four corners of what I had discoverable
24 to me, that possibly, that's a question for the jury to
25 determine. But I believe, based on the State's chief

1 lead witness, the person, the victim, who adamantly
2 expressed to this Court his bewilderment why he, as
3 victim, had to continue to waste the State of South
4 Carolina's time in the prosecution of a case he wanted
5 nothing to do with.

6 And in addition to that, repeatedly said, at my
7 questioning, and even at the State's direct -- during
8 the State's direct examination, whether, one, he could
9 identify this man, or two, specifically as to my
10 questions, whether or not only could he identify him,
11 but was this the man who perpetrated these offenses
12 alleged by you on June 6 -- June 6 or 9th of 2011. No,
13 I can't. I've been telling you all that from day one.
14 I can't.

15 So, I don't know what more I can say, your Honor.
16 And that's why Detective Massey, I've got a great deal
17 of respect for law enforcement and for him. It is what
18 it is, what we've heard up till now. But I'm not sure
19 why the State wanted to continue with his testimony and
20 with that tape. It summed up, and Detective Massey
21 agreed with me, in Andre Green's statement, he admitted,
22 and there was no question as to that as far as him being
23 in the vehicle for a ride, but he agreed that, number
24 one, he was not guilty; he did not participate in an of
25 these offenses; and that he was dropped off at the

1 basketball court.

2 Which makes perfect sense if you put everything
3 together with what confusion we may draw or speculate as
4 to what Dennis Boskey was really saying that whatever
5 happened, happened after he got out of the car. The
6 only person Dennis Boskey has identified throughout this
7 case is Brandon Parker. Why the State has chosen to go
8 proceed with this action against Andre Green, I think I
9 know why, but I still think the interest of justice
10 dictate at this point that this matter must cease. And
11 I would respectfully ask and urge that you agree.

12 THE COURT: Mr. Hall.

13 MR. HALL: Thank you, your Honor. Well, obviously,
14 there were some issues with the victim identifying Mr.
15 Green in court. But there was testimony that Mr. Boskey
16 identified Mr. Green in the lineup. There was also
17 testimony in the form of Mr. Boskey's statement that was
18 played in front of the jury that he received phone
19 calls, he received threats. And I think that the jury
20 should be able to infer from that, if they choose, that
21 he was threatened into testifying the way that he
22 testified today.

23 There was an identification made. There was also
24 no doubt that Andre Green was in Mr. Boskey's car; and
25 Mr. Boskey testified that he had given a ride to two

1 people; that those two people robbed him, and Mr. Green
2 has admitted that he was one of the people in the car.
3 So I think there's more than sufficient evidence to go
4 to the jury. And I'd ask that the directed verdict
5 motion be denied.

6 THE COURT: What about the jurisdiction?

7 MR. HALL: Jurisdiction was brought up even at an
8 early stage with the 911 caller, also with the 911
9 dispatch that the incidents occurred in Port Royal here
10 in Beaufort County.

11 THE COURT: Didn't she testify it was on the
12 bridge? She testified as to the name of the road.

13 MR. HALL: The McTeer Bridge.

14 THE COURT: McTeer Bridge?

15 MR. HALL: Yes.

16 THE COURT: Can we take judicial notice that McTeer
17 Bridge is in Beaufort County, Mr. Colongeli?

18 MR. COLONGELI: I don't think that's sufficient,
19 your Honor. I would tell you that I know the McTeer
20 Bridge she was referring to was, but I don't think that
21 establishes jurisdiction.

22 MR. HALL: Well, in the alternative, I guess if
23 there's some doubt, I would move to briefly re-open and
24 put Detective Massey on the stand to establish whatever
25 Mr. Colongeli thinks I haven't. Although, I believe

1 that I have.

2 MR. COLONGELI: If I could rebut just some of his
3 statements. If not, I'll be glad to stand down.

4 THE COURT: Okay.

5 MR. COLONGELI: I am somewhat, if not for the great
6 part, bewildered by the State's continued position,
7 adavance, in wanting to continue with the prosecution in
8 this case. I understand the big picture, your Honor,
9 but I find it hard to believe --

10 THE COURT: Well, let me ask you this. Are you
11 trying to add to your motion, or are you trying to
12 convince Mr. Hall that he shouldn't be prosecuting the
13 case? Because I don't think you're going to be able to
14 convince him of that, whether it's through me or
15 directly.

16 MR. COLONGELI: I apologize. You're right. I
17 apologize. You're right. That's not germane.

18 THE COURT: Okay. Anything else?

19 MR. COLONGELI: Only what I stated prior, your
20 Honor, as far as my grounds for the directed verdict.

21 THE COURT: All right. Motion for directed verdict
22 is denied.

23 What about the Defense? Are you going to offer any
24 testimony or evidence?

25 MR. COLONGELI: If I could just have a minute to

1 discuss that with my client.

2 THE COURT: Okay.

3 MR. COLONGELI CONFERRING WITH CLIENT.

4 DEFENSE RESTS, OUT OF PRESENCE OF

5 JURY, MR. COLONGELI:

6 MR. COLONGELI: Thank you, your Honor. There will
7 be no testimony from the Defense. We hereby rest.

8 THE COURT: All right. Mr. Green, you heard your
9 lawyer tell me that he's not going to call you or any
10 other witness or present any other evidence. Have you
11 discussed with your lawyer your right to testify, as
12 well as not testify?

13 DEFENDANT GREEN: Yes, sir.

14 THE COURT: Do you understand that when you're
15 charged with a crime, as you are now, that you have an
16 absolute right to remain silent, which just means nobody
17 can make you take the witness stand and testify during
18 the case or answer any questions or make any statements
19 that relate to the charges. So it's your choice as to
20 whether or not you'll testify.

21 But if you do testify, you've got to answer not
22 just your lawyer's questions, but you've got to answer
23 any questions that are asked of you that are relevant to
24 the case, even if the responses to those questions might
25 tend to prove you guilty of some crime the State claims

1 you committed.

2 If you don't take the witness stand, I'm going to
3 instruct the jury they can't hold that against you. As
4 I've already said before, they can't consider the fact
5 that a defendant doesn't testify in any way in their
6 deliberations or their determination as to your guilt.

7 But you understand it's your choice, and you can
8 make that decision based upon whatever facts that you
9 feel are appropriate, but only you can make that
10 decision. Mr. Colongeli can't make that decision for
11 you.

12 You know, if you ask him what he thinks, he can
13 tell you what he thinks. It doesn't matter what he
14 thinks, so far as the ultimate decision is concerned,
15 because you're the only one that can make the decision,
16 because you're the only one that's going to suffer any
17 consequence from that decision.

18 Now, have you had plenty of time to think about
19 your decision about whether or not you will take the
20 witness stand and testify?

21 DEFENDANT GREEN: Yeah.

22 THE COURT: And have you and Mr. Colongeli
23 discussed the advantages and the disadvantages of
24 testifying, as well as not testify?

25 DEFENDANT GREEN: Yes, sir.

1 THE COURT: And do you appreciate what those
2 advantages and disadvantages are?

3 DEFENDANT GREEN: Yes, sir.

4 THE COURT: And have you had plenty of time to
5 reflect upon your decision about whether or not you'll
6 testify?

7 DEFENDANT GREEN: Yes, sir.

8 THE COURT: What is it?

9 DEFENDANT GREEN: That I'm not.

10 THE COURT: And is that a decision that you reached
11 of your own free will and accord?

12 DEFENDANT GREEN: Yes, sir.

13 THE COURT: Has anybody forced you into it?

14 DEFENDANT GREEN: No, sir.

15 THE COURT: Anybody pressured you into it?

16 DEFENDANT GREEN: No, sir.

17 THE COURT: Anybody even suggested that that's what
18 you ought to do?

19 DEFENDANT GREEN: No, sir.

20 THE COURT: It's your decision?

21 DEFENDANT GREEN: Yeah.

22 THE COURT: And you're satisfied with it?

23 DEFENDANT GREEN: Yes, sir.

24 THE COURT: Do you have any other witness you want
25 Mr. Colongeli to call?

1 DEFENDANT GREEN: Naw. No, sir.

2 THE COURT: You don't have any other witnesses?

3 DEFENDANT GREEN: (Shook head, indicating
4 negative.)

5 THE COURT: Got any other evidence you want
6 introduced?

7 DEFENDANT GREEN: No, sir.

8 THE COURT: All right. Thank you. You can have a
9 seat. All right. All right. I'll bring the jury back.
10 We'll recess for the day. We'll conclude with arguments
11 and jury instructions in the morning. I'll need you all
12 to give me any suggestions that you have, if you have
13 any, before we leave.

14 All right. Bring the jury in, please. You'll need
15 to rest in front of the jury, too.

16 MR. COLONGELI: Yes, sir. And go directly into
17 closing, sir?

18 THE COURT: No, no. In the morning.

19 MR. COLONGELI: Oh, in the morning.

20 THE COURT: I haven't got your suggestions about
21 the instructions yet.

22 BAILIFF: The jury is entering, your Honor.

23 JURY ENTERS COURTROOM 4:33 P.M.

24 DEFENSE RESTS IN PRESENCE OF JURY,

25 MR. COLONGELI:

1 THE COURT: All right. Ladies and gentlemen, as
2 you know, the State has concluded in their presentation.
3 So we'll now proceed with any additional to be offered
4 by the Defense.

5 Mr. Colongeli, does the Defendant wish to present
6 any additional evidence?

7 MR. COLONGELI: He does not, your Honor. At this
8 point, the Defense also rests.

9 THE COURT: All right. That's all of the testimony
10 and the evidence to be offered in the trial of this
11 case. Therefore, what remains to be done are the
12 lawyers final summations, after which I'm going to
13 instruct you on the law that you are to apply. And then
14 you can begin with your deliberations in the case. And
15 I expect that's going to take a good bit longer than 25
16 minutes.

17 So, we're going to recess for the afternoon. We'll
18 conclude in the morning with the final summations, my
19 instruction, and your deliberations. We'll do that
20 beginning at 9:30 in the morning.

21 So keep in mind the caution I've already provided
22 you. No discussions about the case with anyone in any
23 fashion whatsoever. No investigation, no research into
24 any issue. No exposure to any type of information,
25 media coverage or otherwise. Okay?

1 Have a good evening. Please report to your jury
2 room at 9:30 in the morning.

3 JURY LEAVES COURTROOM 4:35 P.M.

4 BAILIFF: Jury's clear. Door is closed, your
5 Honor.

6 THE COURT: All right. Court is in recess till
7 9:30 in the morning. And I need to see the lawyers in
8 chambers for a charge conference, please.

9 MR. HALL: Yes, your Honor.

10 OFF THE RECORD 4:36 P.M.

11 END DAY TWO, APRIL 24, 2012.

12 BEGIN DAY THREE, APRIL 25, 2012,

13 10:05 A.M.

14 BY THE COURT:

15 THE COURT: Thank you. Be seated. All right. Any
16 matters we need to address before the jury is brought
17 in?

18 MR. HALL: None from the State, your Honor.

19 MR. COLONGELI: Nothing from the Defense, your
20 Honor.

21 THE COURT: Okay. Bring them in, please.

22 BAILIFF: Yes, your Honor.

23 BAILIFF: The jury is entering, your Honor.

24 JURY ENTERS COURTROOM 10:07 A.M.

25 THE COURT: Good morning, ladies and gentlemen. As

1 you know, when we recessed yesterday, all the evidence
2 had been received, and therefore, what remains to be
3 done are the lawyers' final summations, after which,
4 I'll instruct you on the law. And then you can begin
5 with your deliberations. So please give the lawyers
6 your attention now, as they give you their final
7 summations.

8 Mr. Hall.

9 MR. HALL: Thank you, your Honor. May it please
10 the Court.

11 THE COURT: Yes, sir.

12 CLOSING STATEMENTS

13 ON BEHALF OF THE STATE

14 MR. HALL:

15 MR. HALL: Ladies and gentlemen of the jury, first
16 of all, I want to start by thanking you for paying close
17 attention over the last day, listening to the testimony.
18 Some of the testimony, obviously, came in through audio
19 recordings. Some of you may have struggled to hear
20 everything, but those things are in evidence, and you'll
21 have the opportunity to listen again to those again,
22 back in the jury room.

23 When I first talked to you, I told you that June
24 9th of 2011 was a bad day for Dennis Boskey. And you
25 saw Mr. Boskey testify yesterday. It wasn't the --

1 wasn't the first bad day he had had. He had had a few
2 more bad days after that, but we'll get to that in a
3 little bit.

4 What I'd like to do is go through with you what
5 occurred yesterday. You heard from the 911 caller who
6 observed someone come out of the trunk. You also heard
7 the actual 911 call describing the same incidents.

8 You heard from Mr. Boskey who was able to detail
9 anything that happened. He said that he had picked up
10 Brandon Parker and another individual at Spanish Trace,
11 offered them a ride to Casablanca Park. And at that
12 point, was robbed at gunpoint of \$30.00. Was forced
13 into his trunk. And after the car had driven away from
14 the location, that's when he bailed out. And that's
15 when the 911 call was placed.

16 Things get, obviously, a bit curiouser. No
17 prosecutor likes to be blind sided on the morning of
18 trial, but in this instance, that's what happened to me.
19 I received this notarized letter from the victim saying
20 that he no longer wished to participate in prosecuting
21 this and that he'd never seen Andre Green before in his
22 life.

23 Well, you heard evidence yesterday that that's
24 simply not true. This happened on June 9th. On June
25 13th he took part in a photo lineup. And you heard

1 testimony from Sergeant Massey that he instantaneously
2 picked out Andre Green as the person that was involved.
3 He was the person that was in the car with Brandon
4 Parker that held the gun, that robbed him at gunpoint,
5 that forced him into the trunk at gunpoint, and took his
6 car in the process.

7 Now, what happens after that, I guess, is kind of
8 the meat of the case. Usually, when you think about
9 what's happened in the case, it's the facts of the case
10 that establish what actually happened here, but I think
11 we need to dig a little deeper. And I think, based on
12 what you heard yesterday, you'll be able to do that.

13 Now, what I'd like to do is, again, I noted that he
14 positively identified Andre Green as the person with the
15 gun four days after the incident. When the recollection
16 was fresh in his mind, he had no doubt about it.

17 A little bit later, we get a visit from Andre Green
18 to Dennis Boskey at Dennis Boskey's apartment. Mr.
19 Green's -- you've heard Mr. Green's statement. He says
20 several times in that recording that he went to see
21 Dennis Boskey at his apartment. He knew where he lived.

22 When Mr. Boskey was on the stand yesterday, and he
23 could not identify Mr. Green in court, I would submit to
24 you that it's really not a matter of he couldn't
25 identify Andre Green. It's that he wouldn't identify

1 Andre Green.

2 You heard the audio recording of Dennis Boskey's
3 interview with Sergeant Massey where he came in and
4 expressed some concerns. Now, I'd like to kind of go
5 through that bit by bit, because there's some very
6 important information in here.

7 Dennis Boskey told Sergeant Massey that Andre Green
8 came to get him -- or came to see him. That he arrived
9 with two other people. That, while Dennis Boskey spoke
10 with Andre Green, these people were circling around him,
11 while his children were playing nearby.

12 That Andre Green asked Dennis Boskey, and I quote:
13 *Are you sure it was me?*

14 Boskey replies: *Are you serious? You did the*
15 *wrong and you come asking me. It's like, are you*
16 *serious? I don't believe it. You think you're going to*
17 *get away with something you did?*

18 Boskey also told Green, *Whatever happens to you is*
19 *between you and the police.*

20 Andre Green then tells Dennis Boskey -- again, this
21 is all in the recording that you'll have that you'll be
22 able to listen to back in the jury room -- *Brad put me*
23 *up to this situation. Brad told me you were a drug*
24 *dealer. I didn't know you was just a regular dude that*
25 *goes to school and everything. My boys told me you was*

1 a good dude, and I'm sorry I did this.

2 Andre Green's admitting to the victim, when he
3 comes to see him, I'm sorry I did this to you.

4 Couple weeks after this happens, the phone calls
5 start. Person says on the phone: We need you to drop
6 these charges. Are you going to do it or not?

7 Then, we get to the day that Andre Green was
8 arrested. About two hours after Dennis Boskey finds out
9 that Andre Green's been arrested, he gets a phone call.
10 And in that phone call, he's told, and I quote:

11 You know they've picked that boy -- they've picked
12 that boy up for what you did. Man, you better go down
13 and drop those charges, or you going to have some
14 serious problems with you and your family.

15 That was on the audio that you heard yesterday.
16 But yet, we had somebody here in court, Mr. Boskey, in
17 court yesterday, who would not identify Andre Green as
18 the person that did this to him. Obviously, he was
19 being threatened.

20 Now, let's talk about what Dennis Boskey actually
21 testified to yesterday and how that connects with Andre
22 Green.

23 Dennis Boskey told you that the two people that
24 rode with him from Spanish Trace to Casablanca Park were
25 the people that robbed him. He testified to that

1 yesterday. Couldn't identify Andre Green, but he did
2 say the two people that rode in the car with him were
3 the people that were involved with this that did this to
4 him.

5 Andre Green, in his audio, admits to being in the
6 car. This is a simple matter of connecting the dots.
7 You've got both people in the car. Dennis Boskey says
8 these are the people that robbed me. And Andre Green
9 admits to being there.

10 So, I would ask that you look deeper into what
11 you've heard here and discern what's really going on
12 here. That Dennis Boskey -- it wasn't a matter of
13 Dennis Boskey not being able to identify Andre Green as
14 the person that did this, but it's simply that he
15 wouldn't, because he's afraid to.

16 I'm confident, after you consider everything that's
17 been presented to you here this morning, that you'll
18 come back with findings of guilt on all charges against
19 this defendant.

20 Thank you very much for your attention. And please
21 listen to anything that Attorney Colongeli has to say to
22 you.

23 MR. COLONGELI: May it please the Court, your
24 Honor.

25 THE COURT: Mr. Colongeli.

1 CLOSING STATEMENTS

2 ON BEHALF OF DEFENSE

3 MR. COLONGELI:

4 MR. COLONGELI: Good morning, ladies and gentleman
5 of the jury. Mr. Hall just got done very briefly,
6 succinctly, telling you what his theory of this case is.
7 In the beginning, he told you that he would be able to
8 prove to you beyond a reasonable doubt each and every
9 element of each offense alleged against my client, Andre
10 Green, beyond a reasonable doubt.

11 He told you there were problems that he had. And
12 yet, this morning, he tells you that he was blind sided
13 by a notarized statement he received over the weekend
14 indicating from Mr. Boskey not only does he not want to
15 participate in the prosecution of this case, but he had
16 never met Andre Green in his life before this incident
17 had taken place.

18 So, I take contention with the State's version of
19 telling you that they were blind sided. And I would
20 assert, as Mr. Green's lawyer, and in his best
21 interests, that the State was well aware from the
22 beginning of this case, as Mr. Boskey adamantly told you
23 that from day one, from date one, he had concerns and
24 issues with his identification of the person who turned
25 out to be Andre Green.

1 I've been a lawyer a long time, not as long as most
2 or some, and this is a very troubling case for me. It's
3 very troubling. It's been very difficult for me to
4 participate in. Because my idea of justice, and I think
5 I'm not wrong when I tell you this, is that the
6 prosecutor's function is not only to convict the guilty,
7 but to protect the accused. To protect the innocent.

8 Prosecution, a program or campaign to exterminate,
9 drive away, or subjugate -- I'm sorry -- prosecution is
10 a duty to represent the interests of all the people,
11 which includes those accused of a crime, as well as the
12 victims.

13 Prosecution, the duty to represent the interest of
14 all the people, which includes all those accused of a
15 crime, as well as the victims.

16 Mr. Boskey showed up in court yesterday and
17 immediately admitted to me and to you that the only
18 reason he was here was under threat of arrest if he did
19 not show up and testify to you all. He went out of his
20 way, and I thought it was very interesting, to say, why
21 is it that I, as a victim, have been put through what
22 you've heard throughout the course of this trial, put
23 through what I've been put through, up until this day,
24 to have to be here and do something that I had told you
25 from day one not only that I was uncertain of, but that

1 I didn't want anything to do with.

2 And it goes further than that. He came into court
3 and put his hand on a *Bible* and swore to tell you all
4 the truth. He swore to tell you all the truth. Who are
5 we, who are we, as people, to sit here and, what I
6 allege, persecute the victim into saying he was a liar?
7 That he's lying. That he was under intimidation and
8 threats.

9 Now, I concede that he is not lying when he told
10 you all and told Detective Massey that he had received
11 phone calls. But I think as reasonable people, we all
12 have to ask ourselves, who are these phone calls from?
13 Who are they in relation to, and what did they really
14 say?

15 I'm not in any way trying to attempt to negate or
16 help someone who may or may not be guilty of a crime to
17 walk free. I've taken an oath to uphold the
18 *Constitution* of this county, of this state, of this
19 country. And it's extremely troubling to me that the
20 State of South Carolina and Beaufort County and this
21 particular Solicitor and his office alone have decided
22 to make this case about a victim who they are going to
23 sugarcoat it as who has been intimidated to come into
24 court, take the stand, and tell you adamantly, I've been
25 telling you all from day one, I don't know, I can't tell

1 you that's Andre Green, other than the fact that he did
2 show up at my house one day. Other than the fact that
3 he was with Brandon Parker and got a ride from me. But
4 I let him out at the ball court.

5 Then Brandon Parker said, *This ain't right. Let's*
6 *go up here a little further to the brick house.*

7 He unequivocally, without a doubt, told you over
8 and over that Brandon Parker definitely is guilty of car
9 jacking, armed robbery, kidnaping, and possession of an
10 unlawful gun. Possession of a gun.

11 My question is, and I'm sure Mr. Boskey's question
12 is, where's Brandon Parker? Well, we know Brandon
13 Parker is next door at the detention center. And
14 obviously, it's the State's choice as to whether they
15 choose to prosecute him. And I'm sure at some point I
16 would hope they do.

17 But obviously, I think, as common sense would
18 dictate, and as reasonable people, you are able to bring
19 common sense into this, to a certain extent, and ask
20 yourselves that, obviously, we would hope that the State
21 would use everything they have, everything they have,
22 the great power of the State.

23 And one of the things that's difficult as a defense
24 lawyer is it's a -- it's a fairly lonely job. It's me
25 and Mr. Green. Mr. Hall has an office with a staff of I

1 don't know how many. A great deal. He has a great deal
2 of resources.

3 Detective Sergeant Massey comes from a very
4 reputable law enforcement agency that I have a great
5 deal of respect for. Chief Katy (phonetic spell), God
6 rest his soul, recently passed away. I knew him for
7 years. Very close to the now acting chief, Lieutenant
8 Beach. I've known him for years. Very good friends. I
9 love the department. Know a lot of those guys, and they
10 do a good job. They've got a difficult job.

11 But they have resources that I don't. And you
12 would hope that they would bring everything in their
13 power to you to help you make your decision easier. To
14 let you go back in the jury room and not just jump to
15 the conclusion that, yeah, you know, something's wrong
16 here. Mr. Boskey, there's something -- there's just
17 something not right. There's something not right.
18 There's something not right. Something happened.
19 Something happened. And we have a witness that came in
20 and did say that he -- she saw him fall or get out of
21 his trunk. There's injuries we saw to his knees.

22 I'm not saying -- Mr. Boskey never said those
23 things didn't happen to him. But what he said over and
24 over again is, I don't know who this man is. I've never
25 met him before in my life. And specifically, as to my

1 questions as to did he perpetrate these three or four
2 offenses, that I told you in my opening were the most
3 serious, short of murder, kind of charges in the state
4 of South Carolina and most states, that you can be
5 charged with, did he perpetrate those offenses against
6 you. You all heard him say no.

7 Now, if you believe he's lying, I assert to you, I
8 would argue to you, that what you're doing is, if you
9 believe he's lying about that, and you go ahead and find
10 Mr. Green guilty, what you've done is basically what's
11 called nullification, in my sense, where you've
12 basically said, the oath I've taken, I'm not going to
13 consider; my common sense dictates that he's lying about
14 something. Andre Green was there. He had to have done
15 it. He had to have been involved. He must have been
16 involved. So, you know what, let's just -- let's just
17 get this over with. He's guilty and we'll go home.

18 But he didn't do that. He didn't do that. He took
19 an oath. He swore on the *Bible*, and he testified
20 adamantly that that's not what happened.

21 He didn't want to break the law. He went out of
22 his way to tell you he was -- he educated -- he educated
23 himself as to what a subpoena was. He didn't want to
24 get in trouble.

25 And I hope you all have come to the conclusion that

1 the only witness tampering and the only intimidation
2 that went on in this case came from this table.

3 I made a mistake yesterday. I made a mistake.
4 When Detective Sergeant Andre Massey took the stand, I
5 went out of my way to tell him how much I respected him.
6 I don't withdraw the fact that I respect him as a man.
7 What I do withdraw is that I respect the tactics he used
8 in dealing with Mr. Boskey.

9 He's a 17-, 18-year veteran of law enforcement.
10 And why I respect him as a man is he has defended this
11 country. He's served in the armed services of this
12 country. He's done things that most of us never dream,
13 nor want, nor could do. The other only thing I take
14 offense with is the fact that he said that I take my job
15 personally.

16 Let me tell you all that, in the 18 years of
17 practice I've done, if I took my job personally, not
18 only would I not do it well, I would have flamed out
19 nine years ago. We all have a very difficult job to do
20 here, and when you take it to the level of becoming
21 personal, it's an extremely dangerous proposition.

22 So I would ask you to consider the witness
23 tampering and the intimidation that the State wants you
24 to believe led Mr. Boskey to come in here and tell you
25 what he did, did not come from these phone calls, which,

1 by the way, he was not only requested, but directed by
2 Mr. Massey to produce by the end of that week. And we
3 all know that he didn't do that.

4 And you, as jurors, can go back there and ask
5 yourselves, why didn't he. If he was so scared, if he
6 was so afraid about his well being or his family's, why
7 didn't he keep those numbers? Why didn't he immediately
8 contact law enforcement and say, look, I've got some
9 scary people coming around? I need your all's help.
10 I'm worried about my safety. I'm worried about my
11 family's safety.

12 He went so far to say he wasn't so much worried
13 about him, he was worried about his kids, which that's
14 fine. But any reasonable person, including me, if I was
15 receiving those threats, would -- you're darn right I'd
16 call the police. And I would keep those numbers. I
17 would bring them to someone, particularly like Sergeant
18 Massey, and say, go get them.

19 We have heard that witness tampering and anything
20 that goes along with it, particularly from out-of-state
21 numbers, is a federal offense. Anyone in this courtroom
22 who is in this business will concede that witness
23 tampering is a dangerous thing and something no one
24 likes. It's the worst thing, one of the worst things
25 that can happen in our system, because it does bring our

1 system to a halt. And I think what's gotten distorted
2 here is the State trying to attempt to make Andre Green
3 an example of not allowing that to happen.

4 But guess what we're forgetting in that process?
5 We're forgetting the oaths that we took and the burden
6 the State has, the presumption of innocence my client
7 continues to have of him being not guilty until proven
8 otherwise beyond a reasonable doubt.

9 Criminal Law 101 will tell you that identification
10 and jurisdiction are crucial in any criminal
11 prosecution. I contend to you that neither of those
12 happened in this case. We definitely didn't have an
13 identification. And as I recall, --

14 MR. HALL: Your Honor.

15 MR. COLONGELI: -- there's no clear establishment
16 --

17 MR. HALL: I've got an objection, if we can be
18 heard. I --

19 THE COURT: Okay.

20 OFF-THE-RECORD BENCH CONFERENCE,
21 THE COURT, MR. HALL, MR. STEPHENS,
22 MR. COLONGELI:
23 CONTINUE CLOSING STATEMENTS
24 ON BEHALF OF DEFENSE
25 MR. COLONGELI:

1 MR. COLONGELI: It's kind of tough to start when
2 you get on a roll there, but I'll try to pick up where I
3 left off.

4 Identification's crucial. Whether or not you
5 believe there was some sort or form of witness tampering
6 or intimidation, whether or not you believe Mr. Boskey
7 was lying, even if he was, I think that, in and of
8 itself, causes one to pause, causes one to hesitate. To
9 say, what really happened. What really happened?

10 As I said before, it'd be so easy to go back there
11 and jump to the conclusion that Andre Green did it based
12 on him admitting that he was in the car; saying that he
13 got out at the ball court, which all, all, fits what Mr.
14 Boskey said, but then say, ah, no, that had to be him.

15 We know it was Brandon Parker. Andre was in the
16 car. He'd been threatened. He came in here under force
17 of duress, whether it be by the State or anyone else,
18 that's the only reason.

19 I'm almost done.

20 I'd like to cover a few things. And you have to
21 understand, there's a great deal at stake here, not only
22 for the State, but I would concede much more for Mr.
23 Green, that I want to make sure I cover everything.

24 The more things we know is the initial
25 identification of Mr. Boskey. Let's take away from what

1 he said here on the stand, which is very important. As
2 I told you in opening, and the Judge will instruct you,
3 what comes from here, is what's most important. That's
4 what you have the power to go back and deliberate upon.

5 But we know from the beginning that the written
6 statement of Mr. Boskey could not identify the other
7 subject other than a black male. Okay?

8 We keep hearing from Mr. Hall, and they want to
9 make this and grandstand the fact that he
10 instantaneously picked Andre Green in this lineup. We
11 already know, based on what Mr. Boskey said, the reason
12 that happened was, he had seen him at his house. He had
13 seen him at his house.

14 And I think if Mr. Boskey had more time, and
15 obviously, this is argument. Anything I say you can all
16 sit there and say, boy, that defense lawyer, boy, boy,
17 he's trying to pull the wool over our eyes. Maybe not.
18 Maybe not. But obviously, you're left to believe
19 whatever you want to believe. I'm not trying to tell
20 you what I'm saying is true. It's argument here.

21 But he stated, *I met Mr. Green for the first and*
22 *only time when he came to my house.*

23 Prior to that, the fact that he did -- obviously, I
24 guess he was the one that got the ride and was dropped
25 off at the ball court.

1 He didn't have any time to see who that person was
2 in the back of his car. We know that he said that. It
3 happened so quick, he didn't have any time. But he does
4 say someone was dropped off at the ball court.

5 So he was trying to tell you, look, short of my --
6 the fact that he may or may not have been the one in the
7 back seat of my car for that short period of time, he
8 was not the one who perpetrated these offenses against
9 me. And I can't identify him here in court, because I
10 don't want to see someone convicted of something they
11 didn't do.

12 He goes on, as we had already mentioned, to submit
13 not one, but two statements over the course of the
14 duration of this case. And you have to understand, it
15 came into evidence that, for some reason, the warrants
16 on Mr. Green went out within days of the warrants on Mr.
17 Parker. But for whatever reason, which we never figured
18 out, Mr. Green wasn't arrested until last October.

19 And there was testimony that came in where,
20 arguably, he lives close to some police station. For
21 whatever reason, I don't know, four months went by
22 before his arrest.

23 Throughout that period of time, he repeatedly told
24 the State, I'm not sure; I'm getting these phone calls;
25 I don't feel good about this; I don't want to come to

1 court; don't I have rights. Don't I have rights?

2 And if the victim doesn't care about something as
3 serious as this, that, let's say arguably, in fact, did
4 happen, why should we? Why have we been here using up
5 this court's time, everybody's time, if the victim
6 himself doesn't want it to happen?

7 I think that's a good question he raised. I really
8 do.

9 As far as the dispatcher or the person who prepared
10 these tapes, she didn't have much to say. She only
11 could testify as to what she heard. And one of the
12 interesting things to me about that was that it came up
13 where, in Mr. Boskey's phone call, he stated as to
14 questions from the 911 caller, what happened? I don't
15 really want to get into that.

16 Well, it's kind of strange to me. Those are things
17 you can think about.

18 Ms. Wiser, the poor lady that was driving with her
19 young child, stated she saw this man come out of the
20 trunk. She tried to assist. She felt uncomfortable.
21 And I don't blame her. She did what she could do here
22 today. But does that -- does that lend credence to
23 saying that Mr. Green had anything to do with this?

24 The only people that know what really happened are
25 Mr. Boskey, and I'll leave it at that. Mr. Boskey knows

1 what happened. And he's told you the extent of what he
2 wanted to tell you on that stand yesterday. Under sworn
3 oath to the *Bible*, he told you.

4 Lastly, we have something that I think is
5 important. And a few closing remarks to let you know.
6 And I apologize for taking up too much of your time.
7 That I want you to take into account when you go into
8 deliberations that, with the vast resources the State
9 has, it would have been extremely easy to them to find
10 out whether, in fact, there was intimidation or threats
11 coming to Mr. Boskey.

12 There was not one piece of paper in the discovery I
13 received to defend this case that told me anything about
14 a supplemental report or investigation into witness
15 tampering. Even though Mr. Boskey himself did not
16 comply with this sergeant's request to turn over phone
17 records, they are the ones that chose to prosecute this
18 case. They are the ones that chose to more or less
19 force Mr. Boskey to come up here and testify.

20 Why didn't they get these phone records and come to
21 you and make it much easier to say, look, here are these
22 calls, we know for a fact that there's no question in
23 our minds these calls happened. Mr. Boskey, in fact,
24 was telling the truth.

25 Or if those phone records revealed there were phone

1 calls going out, we would just know a whole heck of a
2 lot more if we'd had those phone records. But we don't.

3 Fingerprints. No forensic evidence whatsoever.
4 All you have to go on, unfortunately, is what has come
5 from the stand here in the past day.

6 I would have to imagine -- there was some remark,
7 and I take his word that, obviously, there wasn't enough
8 to even submit to SLED. But there were prints that got
9 lifted off that car. In Sergeant Massey's opinion, they
10 weren't good enough to submit to experts in Columbia,
11 who could have very well made a determination whether or
12 not there was enough to come up with a solid print to
13 match against either Mr. Green or Mr. Parker or someone
14 else.

15 No one arrested for any of this witness tampering
16 and intimidation. And as I said before, Detective
17 Sergeant Massey was at least kind enough and
18 professional enough to tell me on the stand he doesn't
19 know what happened that day. He's got to do the best he
20 can with what his victim is telling him. And the
21 evidence that comes to his table.

22 But what I'm concerned about here is that through
23 those recordings, that you can go back in your jury room
24 and listen closely to, I was horrified. I was horrified
25 at the line -- some of the things he was saying. And

1 I'll be honest with you, when I took back what I said
2 before as far as respect, understand I have to drive
3 through Port Royal to get to Hilton Head. And I say
4 that jokingly, but trust me, in the back of my head, I
5 have to live here also. I have to make a living.

6 He stated he takes his job personally. And I only
7 hope he's professional enough when this is over he's not
8 mad at me, because I am only trying to do my job. I am
9 not trying to have someone who is guilty of an offense
10 go free. I am trying to uphold the *Constitution* of this
11 great country of ours, of the state, and this county.
12 I'm trying to make the State accountable to come into
13 this court and give you ladies and gentlemen of the jury
14 enough to work with.

15 And I concede to you, that this, flat out, after
16 the victim got off the stand, in my opinion, was done.

17 Please remember when listening to these tapes where
18 Detective Sergeant Massey goes out of his way to
19 indicate you're not dropping these charges. Even in
20 light of Andre -- or of Dennis trying to go out of his
21 way and say, look, don't you get it, I'm not sure.
22 Regardless of all these phone calls, regardless of what
23 I'm telling you about these phone calls that I won't
24 produce the phone records for, I -- I'm telling you,
25 I've been uncertain from day one. I really have. I

1 know I instantaneously picked that picture. I know I
2 did that, but guess what? I have a right to change my
3 mind. I'm not sure.

4 Ladies and gentlemen, I hope I have not offended
5 any of you in any way. I hope I've not taken up too
6 much of your time. I hope I've done a good enough job
7 for Mr. Green and his family. I hope I've done enough
8 good for the Bar the Bench, this Court, society. I hope
9 I've given you enough to go back in that deliberation
10 room and be strong enough, and not be intimidated, not
11 feel tampered with, and not jump to the conclusion the
12 State wants you to.

13 That even though the victim came into this court
14 and said he could not identify Mr. Green, even though he
15 specifically said this man did not commit those offenses
16 against him, that you don't jump to the conclusion and
17 come back with a finding of guilt on all three counts.

18 The Judge will charge you. And fine judge. I'm
19 not saying that to make him feel good or butter him up.
20 It's the first time I've been before him. It's been a
21 pleasure to work with him. He will thoroughly charge
22 you on the law. And I would submit to you, after you
23 hear that, the State has failed to meet its burden to
24 prove beyond a reasonable doubt each and every element
25 of these offenses.

1 You have to ask yourself and go through that. I
2 know you all will do a good job. And I can only hope
3 and pray that at the end of the day, whatever day that
4 might be, that you come back with a verdict of not
5 guilty. Not guilty as to armed robbery. Not guilty as
6 to car jacking. Not guilty as to kidnaping. And not
7 guilty as to unlawful possession of a handgun.

8 Thank you.

9 JURY CHARGE

10 BY THE COURT:

11 THE COURT: Madam Forelady, ladies and gentlemen of
12 the jury, you, of course, have heard and seen all the
13 evidence. And now, you've heard the final summations of
14 the lawyers. And therefore, it now becomes my
15 obligation and duty to instruct you on the law that's
16 applicable in this case. And then you'll be asked to go
17 back and begin your deliberations. And through that
18 process, you'll be called upon to examine all the
19 evidence, to decide the facts, apply the law, and arrive
20 at a fair and just decision in this case, whatever that
21 decision may be.

22 It is your exclusive duty to determine what the
23 facts are. You do that through your own common sense,
24 examination, and evaluation of all the testimony and
25 other evidence received during the trial of this case.

1 You twelve jurors alone will decide what weight,
2 value, and effect to give any particular witness's
3 testimony or other evidence in the case. Your sole
4 objective is to simply reach the truth in the matter.
5 And by doing that, you will have fulfilled your
6 obligations as jurors. And that is to simply give both
7 the State and this defendant a fair and impartial trial.

8 Now, as you know, the State has accused the
9 defendant with having committed four separate and
10 distinct offenses, although, they are alleged to have
11 arisen out of one particular event, or a course of
12 events, which the State alleges occurred back on June
13 the 9th of 2011.

14 The four charges are set forth in four separate
15 indictments, and those are the documents that I referred
16 to prior to and after your selection as jurors. Those
17 four indictments charge the defendant with the crimes of
18 car jacking, armed robbery, kidnaping, and unlawful
19 possession of a pistol.

20 As to those charges, he's entered a plea of not
21 guilty. And as I also told you, while those indictments
22 will be in the jury room when you go back to begin your
23 jury deliberations, the indictments are not evidence of
24 anything. They are not proof of anything. They do not
25 establish any fact. The indictments are the means by

1 which any person is brought into this court and put to
2 trial on a charge.

3 The indictments are in the jury room because they
4 serve as the verdict forms. So, it is on the back of
5 each of the separate indictments, Madam Forelady, that
6 you're going to be asked to indicate the jury's
7 unanimous decision as it relates to that particular
8 charge, whatever that decision may be.

9 But other than serving as the verdict forms, the
10 indictments serve no purpose so far as you jurors are
11 concerned.

12 The defendant has entered a plea of not guilty as
13 to each of the charges. That plea of not guilty has
14 placed upon the State the burden of proving the
15 allegations that are set forth in each of those
16 indictments, the burden of proving each of the essential
17 elements that make up the crimes the State has alleged
18 against the defendant. And therefore, the burden is
19 upon the State to establish the defendant's guilt as to
20 a crime to your satisfaction beyond a reasonable doubt
21 before any verdict of guilty could be returned as to
22 that particular charge.

23 A defendant is never required to prove that he is
24 not guilty or to prove that he is innocent, because, in
25 many cases, that might not even be possible. The burden

1 is always upon the State, because they've brought the
2 charge against the defendant to establish his guilt to
3 your satisfaction beyond a reasonable doubt.

4 It is a vital important and cardinal rule of law
5 that every defendant in a criminal trial, no matter how
6 serious the offense might be for which that person
7 stands charged, that defendant shall always be presumed
8 innocent of the charge, and that presumption of
9 innocence remains with any defendant as it does with
10 this defendant, from the time that he is placed under
11 arrest and throughout the course of the criminal
12 process, and even throughout the course of the actual
13 trial in the case.

14 And as I think I told you, that presumption of
15 innocence will be with Mr. Green even as you go back
16 into your jury room to begin with your deliberations in
17 this case. That presumption of innocence will be with
18 him in that jury room, and it'll be with him forever,
19 unless you twelve jurors determine that he is no longer
20 entitled to that presumption of innocence.

21 In other words, after you carefully consider all
22 the testimony and evidence in the case, and from that
23 evidence, you decided the facts, and upon deciding those
24 facts, you apply the law that I will have provided you
25 as it relates to a particular charge, if you twelve

1 jurors unanimously determine that his guilt as to that
2 charge has been proven beyond a reasonable doubt, then
3 he's no longer entitled to that presumption of
4 innocence.

5 But it's only if, unless, and until you are
6 satisfied of his guilt as to that charge beyond a
7 reasonable doubt that the presumption of innocence would
8 no longer be applicable.

9 Now, while the State does have the burden of
10 proving the defendant's guilt beyond a reasonable doubt,
11 that doesn't mean that the State has to prove his guilt
12 beyond all doubt or beyond any possible doubt. But it
13 does require the State to prove his guilt to your
14 satisfaction beyond a reasonable doubt.

15 And the term *reasonable doubt* should be given its
16 plain or ordinary meaning. A reasonable doubt is the
17 kind of doubt that would cause a reasonable person to
18 hesitate to act upon the information provided. And a
19 defendant in a criminal trial is entitled to any
20 reasonable doubt that arises from the evidence or lack
21 of evidence in a case.

22 And if, upon any factual issue essential to a
23 finding of a verdict of guilty, you have some reasonable
24 doubt as to how that issue should be resolved, it would
25 be your duty to resolve that reasonable doubt in favor

1 of the defendant. And therefore, if, upon your
2 consideration of the whole case, you have a reasonable
3 doubt as to his guilt as it relates to a particular
4 charge, you must resolve that reasonable doubt in his
5 favor and return a verdict of not guilty as to that
6 charge.

7 And at the same time, after you've considered all
8 the evidence in the case and decided the facts and
9 applied the law, if you find the defendant's guilt has
10 been proven beyond a reasonable doubt as to a particular
11 charge, then it would be your corresponding duty to find
12 him guilty. And that is, to find him guilty of any
13 charge that has been prove to your satisfaction beyond a
14 reasonable doubt.

15 Now, the same law that provides that you are the
16 judges of the facts also provides that I'm the judge of
17 the law. And that simply means that nobody's going to
18 tell you how to arrive at your determination of a fact
19 in this case. You do that, as I've already stated, by
20 the exercise of good judgment and common sense
21 conscientiously applied to the testimony and the
22 evidence received during the course of this trial.

23 You must, however, under your oath as a juror,
24 accept the law as I provide it to you as being the law
25 that you are to apply in the case. In other words,

1 you're not to concern yourself with what you thought the
2 law was before you came to serve as a juror this week or
3 what you think the law ought to be. Under your oath as
4 a juror, you must accept the law as I provide it to you
5 as being the law that you are to apply in the case. And
6 then you simply take that law and you apply it to the
7 facts as you twelve jurors determine those facts to be,
8 based upon your common sense examination of the
9 evidence.

10 Now, because you are the sole judges of the facts
11 in this case, you are, therefore, necessarily the sole
12 judges of the credibility and the believability of each
13 witness that has testified during the course of this
14 trial. You twelve jurors alone will decide the weight,
15 value, and effect to give to any particular witness'
16 testimony or even a portion of that testimony.

17 But there are a number of factors which you should
18 take into account in arriving at your determination as
19 to the credibility and believability of a witness. And
20 I'm going to list those factors for you.

21 You should consider the demeanor of the witness.
22 That is how the witness appeared to you as the witness
23 testified from this witness stand. Was the witness
24 straight-forward in responding to questions? Or was the
25 witness hesitant or evasive in responding to questions

1 that were asked of that witness?

2 Simply put, did the witness appear to you to be
3 telling the truth, and to have knowledge of the facts to
4 which that witness has testified.

5 You should also consider whether or not the
6 testimony of a witness is consistent, or is it
7 inconsistent with that witness's testimony here in
8 court, as well as consistent or inconsistent with other
9 statements made outside of court.

10 And you may consider whether or not the testimony
11 of a witness is consistent or inconsistent with other
12 witness's testimony or other evidence received during
13 the course of the trial.

14 You should also consider how the witness came to
15 know the facts to which a witness has testified to. In
16 other words, what was that particular witness's
17 opportunity and ability to perceive the existence of
18 those facts which that witness has testified by having
19 previously used his or her senses, and then what is that
20 witness's ability to be able to come into court and to
21 accurately recollect to you as to what they have
22 previously perceived.

23 You should also consider any bias or prejudice or
24 interest that a witness might have with regard to a
25 case. In other words; do you find some reason that a

1 particular witness would come into court and would
2 testify one way or another to help or to hurt one side
3 or the other. And you may consider any interest that a
4 witness might have in the outcome of the case, if you
5 that a witness does have such an interest, and you find
6 that that interest would bear upon that particular
7 witness's credibility.

8 And you should also consider whether or not the
9 testimony of a witness is strengthened or is it weakened
10 by other testimony or other evidence received during the
11 course of the trial.

12 Now, because you are the sole judges of the facts
13 in this case, and therefore, the sole judges of the
14 credibility of each witness, you are permitted to
15 believe as much or as little of what a witness has
16 testified to as you deem is appropriate. And therefore,
17 you may believe everything that a witness testified to.
18 You may choose to believe none of it. You may believe
19 some portion of a witness's testimony and reject some
20 other portion of that same witness's testimony.

21 But whatever your good judgment and common sense
22 tells you is the most believable and credible testimony
23 is the testimony you should accept. And you should
24 reject any testimony or other evidence that you find not
25 to be credible or believable.

1 Again, your sole objective is to simply reach the
2 truth in this matter, and by doing that, you will have
3 fulfilled your obligations under your oath as a juror.

4 Now, in this case, as you know, the defendant has
5 been charged with four separate and distinct offenses.
6 Those offenses are car jacking, armed robbery,
7 kidnaping, and unlawful possession of a pistol. So I'm
8 going to instruct you on the law specifically as it
9 relates to those separate and distinct criminal
10 offenses.

11 Because you determine the fact and because you
12 apply the law, you're going to be reaching four separate
13 and distinct decisions as it relates to these charges.
14 And those decisions may be the same, or they may be
15 different. That, obviously, will depend upon your
16 determination of fact as it relates to the charge, and
17 then your application of the law to the facts as you
18 determine those facts to be.

19 The crime of car jacking is set fort in *Section*
20 *16-3-1075* of the *South Carolina Code of Laws*. The
21 legislature meets every year from January until June.
22 And during the course of those sessions, they pass a
23 number of laws and rules and regulations that govern our
24 conduct in a variety of ways. Some of those statutes
25 are criminal penalty statutes. And it just means that

1 the legislature has prohibited us from engaging in
2 particular types of conduct. And where we are found to
3 have engaged in that conduct, in violation of a
4 particular statute, then it subjects that person to some
5 form of punishment or penalty.

6 But understand that you are never to be concerned
7 with punishment or penalty. You don't decide any
8 penalty that might be imposed where a person is found
9 guilty of a crime. You are to make your decision as to
10 whether a person has been proven guilty or not based
11 upon your consideration of all the evidence, and then
12 your application of the law to the facts as you
13 determine them to be. But you determine your verdict
14 without any consideration being given to any punishment
15 or penalty that might be imposed as a result of any
16 decision that you make.

17 But *Section 16-3-1075* of the *Code of Laws* relates
18 to the crime of car jacking. And that section provides
19 that a person is guilty of the crime of car jacking if
20 he takes, or attempts to take, a motor vehicle from
21 another person by force and violence or by intimidation,
22 while the person is operating that vehicle or while the
23 person is in the vehicle.

24 Therefore, in order for the defendant to be found
25 guilty of a violation of this particular section of law,

1 it would be necessary that the State has proven to your
2 satisfaction, beyond a reasonable doubt, three essential
3 elements that make up the crime of car jacking.

4 Number one, the evidence must establish that the
5 defendant, Andre Green, did take or attempt to take a
6 motor vehicle from Dennis Boskey.

7 Secondly, the State must prove that the taking was
8 accomplished by the use of force and violence or by way
9 of intimidation.

10 And the State must prove that the taking occurred
11 while Dennis Boskey was operating the vehicle or while
12 he was occupying the vehicle.

13 A second indictment charges Andre Green with the
14 crime of armed robbery. Armed robbery is also a
15 statutory offense. And that crime is set forth in
16 16-11-330 of the *Code of Laws*. And that section
17 provides that a person commits the crime of robbery --
18 excuse me -- a person commits the crime of armed robbery
19 if a person commits the crime of robbery while armed
20 with a pistol, dirk, slingshot, metal knuckles, razor,
21 or any other deadly weapon, or while alleging, either by
22 actions or words, that he is armed while using a
23 representation of a deadly weapon or any object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon.

1 Now, the crime of robbery is, obviously, a lesser-
2 included offense, and therefore, is included in the
3 crime of armed robbery, there being one element that
4 distinguishes the two. But robbery is commonly referred
5 to as a larceny by force. Robbery is defined in the law
6 as the taking and the stealing of another person's
7 property from the person or from the presence of that
8 person by the use of force or violence or by the threat
9 of the use of force or violence.

10 The crime of robbery is the forcing of a person to
11 surrender property with the intent to steal it by the
12 use of force or violence or by threatening a person with
13 the use of force of violence in order to accomplish the
14 theft.

15 Taking property of another with an intent to steal
16 it by forcing a person to surrender possession of that
17 property or by causing a person to surrender possession
18 of the property by putting them in fear by way of an
19 intimidation, is a robbery under the law.

20 And armed robbery requires the robbery be committed
21 with the use of a deadly weapon. And deadly weapon is
22 defined as any device or instrument, which, in the
23 manner it is intended to be used or in the manner that
24 it is actually used, is known to be capable of producing
25 death or serious bodily injury. And that would include

1 firearms and edged weapons.

2 The defendant is also charged with the crime of
3 kidnaping. Kidnaping is also a statutory criminal
4 offence. And that's set forth in 16-3-910 of the Code
5 of Law. And that particular code section provides that
6 whosoever shall unlawfully seize, confine, inveigle,
7 decoy, abduct, or carry away any other person by any
8 means whatsoever, without authority of law, is guilty of
9 the crime of kidnaping. And therefore, in order for the
10 defendant to be found guilty of the crime of kidnaping,
11 it would be necessary that the State has proven to your
12 satisfaction, beyond a reasonable doubt, the essential
13 elements of that crime.

14 The essential elements of the crime of kidnaping
15 are that, one, the defendant did seize or confine or
16 kidnap or abduct or carry away another person by some
17 means or method. And secondly, that one or more of the
18 above acts was done without the authority of law.

19 Within the meaning of the statute, the term *seize*
20 means to take hold of suddenly and forcibly. The term
21 *confine* means to imprison or to restrain or to restrict
22 a person's freedom in some significant way. The term
23 *abduct* means to take a person away against his will and
24 without his consent. And the term *carry away* means to
25 remove from one place to another without legal authority

1 and without consent of the person.

2 The term *kidnap* means to carry a person away
3 through the use of force and against his will and
4 without authority of law. And the term *without*
5 *authority of law* simply means that the conduct engaged
6 in was not committed, sanctioned, condoned, allowed, or
7 justified under the law.

8 Now, in order for the defendant to be found guilty
9 of a violation of this particular section, the State
10 need not prove each of the terms, seize, confine,
11 kidnap, abduct, or carry away. Proof of any one or more
12 or those prohibited acts is sufficient, so long as it
13 was done without authority of law and without the
14 consent of the person who is alleged to have been
15 kidnaped.

16 And the remaining indictment charges the defendant
17 with unlawfully carrying a pistol. *Section 16-23-20* of
18 the *Code of Laws of South Carolina* provides that it is
19 unlawful for any person to carry about his person any
20 pistol, whether concealed or not.

21 And there are sixteen separate exceptions to that
22 statute. None of those exceptions apply in this
23 particular case. So, in order for the defendant to be
24 found guilty, the State does, however, have to prove
25 that the defendant did, in fact, possess a pistol.

1 Now, not only must the State prove beyond a
2 reasonable doubt each of the essential elements of each
3 of those crimes that I have provided you before the
4 defendant can be found guilty of those crimes, but the
5 State must also prove beyond a reasonable doubt that it
6 was, in fact, the defendant, Andre Green, who committed
7 any crime that has been proven to have been committed.

8 If, after a careful consideration of all the
9 evidence in this case relating to the issue of the
10 identification of the defendant as the perpetrator of
11 any crime proven to have been committed by someone, if
12 you have a reasonable doubt as to the accuracy of the
13 identification of the defendant as the perpetrator of
14 that crime, then you must resolve that doubt in favor of
15 the defendant, and return a verdict of not guilty.

16 I instruct you further, and I emphasize to you that
17 the fact that a defendant does not take the stand and
18 testify during the trial of a criminal case is not a
19 fact or circumstance that may be considered by you
20 jurors in any way whatsoever in your deliberations or in
21 your determination as to whether or not his guilt has
22 been prove beyond a reasonable doubt.

23 As I've stated, the burden is always upon the
24 State, because they brought the charge against the
25 defendant, to establish his guilt beyond a reasonable

1 doubt. The burden is never upon the defendant to prove
2 he is not guilty or to prove he is innocent, because, in
3 some cases, that might not be possible. And therefore,
4 you pay not permit such a fact to weigh in the slightest
5 degree against a defendant.

6 You are not to reach any conclusion nor draw any
7 inference from the fact that a defendant does not
8 testify during the trial of the case, nor may that fact
9 even be discussed by you during your deliberations and
10 in your ultimate decisions.

11 Now, Madam Forelady, ladies and gentlemen of the
12 jury, I am not in any way concerned with what your
13 decisions are, but I do tell you that your decisions
14 must be unanimous. Any decision that a jury reaches
15 must be made by all twelve jurors, all twelve must be in
16 agreement.

17 Now, with regard to each of the separate
18 indictments, you'll have two potential verdict forms.
19 Those verdict forms are guilty and not guilty. So
20 whatever that decision is as it relates to a particular
21 indictment, Madam Forelady, you'll see on the back of
22 each indictment, in the lower left-hand corner is the
23 word *verdict*. I know you can't see it from there, but
24 it's in the lower left-hand corner. You'll see the word
25 *verdict*. It's beneath that word that you're going to

1 indicate the jury's unanimous decision as it relates to
2 that particular charge in that particular indictment.

3 You will also be required to sign your name as the
4 foreperson and date the appropriate day. You're the
5 only juror that needs to sign the verdict form. But you
6 will need to sign it once you've reached a unanimous
7 decision as to that charge and have inserted the verdict
8 form.

9 I don't know if we have smokers on the jury, but
10 smoking is permitted during deliberations, but you
11 cannot smoke in the jury room. You have to go outside
12 for that purpose. So, if anybody wants to smoke during
13 deliberations, you let the bailiff know. He'll take
14 those outside to accomplish that purpose. But you are
15 instructed that deliberations must stop if any juror is
16 absent for any authorized purpose. So, should any juror
17 be absent for any reason, the deliberations must stop.
18 They may only resume with all twelve are present so that
19 all may participate.

20 I don't have any way of knowing, nor do you, as to
21 how long your deliberations will take. That will depend
22 upon how long it takes you to carefully examine the
23 evidence, decide the facts, and apply the law. But I do
24 tell you that if you get to a point in your
25 deliberations where you think it's appropriate to have

1 lunch, you let me know about that. We'll make those
2 arrangements for lunch to be prepared and brought to the
3 jury room for your benefit.

4 It usually takes a little over an hour for that to
5 be accomplished, so just keep that in mind as you go
6 back to deliberate so that you can make that
7 determination, if need be.

8 When you go back, all the exhibits will go back
9 with you. I've got to make arrangements to have
10 something that you can play the discs on in the event
11 you want to re-hear that evidence. So, it should take
12 only a few minutes to have that done. But what I'm
13 trying to tell you is, those won't be coming directly
14 with you right this minute as you go back, but they'll
15 be there shortly, just as soon as I make arrangements to
16 have a player available for your benefit.

17 During the course of your deliberations, there may
18 come a time where you have a question about evidence or
19 about facts in the case. I am never permitted to answer
20 those types of questions. I am never permitted to
21 comment upon the facts of the matter. I'm never
22 permitted to comment upon the evidence.

23 If you think that there's something else out there
24 that you think might assist you in resolving the case
25 and you wonder if it's available, it does not matter if

1 it's available or not. You can't have it, because all
2 of the evidence which is going to be introduced in this
3 case has already been introduced.

4 Now that you're going back to begin your
5 deliberations, no additional evidence may be received.
6 So do not inquire about any other potential evidence.

7 If you have a question about a witness's testimony,
8 and you think that question can be answer by having that
9 witness's testimony re-played in whole or in part, I can
10 bring you back into the courtroom to have a witness's
11 testimony re-played in its entirety or in some portion,
12 if that's all you need.

13 I don't have transcripts to send back, so I can't
14 do that. But I can bring you back to have that
15 testimony re-played.

16 If, at any time, you have a question about the law
17 that you are to apply, I am permitted to answer those
18 questions. So, if I need to give you a re-instruction
19 or you need a clarification or an addition explanation
20 of the law that is applicable in a particular -- with
21 regard to a particular indictment, if you'll let me know
22 of that fact, I can bring you back to provide you that
23 addition instruction on the law.

24 So, Madam Forelady, if, at any time, you need to
25 direct some information to me or inquire about

1 something, if you'll write it on a piece of paper, give
2 it to the bailiff. He'll give that to me, and I'll
3 respond accordingly.

4 If you don't need to talk to me about anything, and
5 you and your fellow jurors come to a conclusion, and you
6 decide each case, as I say, indicate the verdict in the
7 space provided, sign your name, and date it.

8 Let the bailiff know you've reached your decision.
9 We'll bring you back to the courtroom to receive those
10 decisions.

11 You will hold onto the verdict forms. Do not give
12 them to the bailiff. You keep them in your possession,
13 Madam Forelady. And I'll receive those after your back
14 in the courtroom and seated where you are now.

15 Now, I'm going to ask you to go back, but I'm going
16 to ask you not to being deliberations. I've got some
17 matters to address with the lawyers. If I don't need to
18 bring you back for any reason, I'll send word by way of
19 the bailiff that you can being your deliberations.

20 In that event, he'll bring to the jury room all of
21 the exhibits which have been introduce. And to you,
22 Madam Forelady, he'll also bring the indictments which
23 serve as the verdict forms.

24 So please retire to your jury room, but don't begin
25 deliberations until I send you word to do so.

1 And Mr. Szalai, you can stay with me right now.

2 Yes, sir. Just stay with me.

3 BAILIFF: Jury's clear. Door is closed, your
4 Honor.

5 JURY RETIRES TO JURY ROOM

6 AWAITING PERMISSION TO

7 BEGIN DELIBERATIONS, 11:15 A.M.

8 THE COURT: All right. Mr. Szalai, as you know,
9 you can't participate in the deliberations, because the
10 original twelve are able to perform that function. So
11 that's going to conclude your service in the trial of
12 this case. But we do sincerely appreciate your
13 participation and the time and attention that you've
14 devoted to it.

15 I think the balance of the jury panel is calling
16 back between 12:00 and 1:00 to receive further reporting
17 information. So you can be excused right now and do
18 whatever you like.

19 Please do call back between 12:00 and 1:00 to see
20 if you need to report any further this afternoon or late
21 in the week. Okay? Thank you again for your
22 participation.

23 JUROR SZALAI: Thank you, sir. I'd asked one of
24 the other jurors --

25 BAILIFF: You come with us. We'll get you.

1 JUROR SZALAI: Okay. Car keys.

2 THE COURT: Sure. You just go with the bailiff.
3 He'll help you.

4 JUROR SZALAI: Thank you, your Honor.

5 THE COURT: Thank you.

6 INQUIRY REGARDING EXCEPTIONS

7 TO INSTRUCTIONS, BY THE COURT:

8 THE COURT: Are there any exceptions taken to the
9 instruction or request for additions to instructions by
10 the State?

11 MR. HALL: No, your Honor.

12 THE COURT: By the defendant?

13 MR. COLONGELI: With all due respect, your Honor,
14 and out of an abundance of caution, which I've said
15 quite a few times over the last few days, and I've been
16 intensely trying to listen to your charge on
17 credibility, and I stand to be corrected, I would
18 respectfully just want to ask you -- I'm concerned that
19 the charge on credibility may have focused the jurors
20 inquiry on which witness to believe could have
21 improperly shifted the burden. And I may be wrong,
22 but --

23 THE COURT: Tell me how that -- I've only done this
24 20 years now.

25 MR. COLONGELI: I respectfully only -- I don't mean

1 to disrespect you in any way. I'm -- I'm --

2 THE COURT: I know you don't. Well, tell me where
3 it is that you believe that that does that.

4 MR. COLONGELI: It seemed that, from what I was
5 trying to listen to in your charge on credibility or
6 believability, --

7 THE COURT: All right.

8 MR. COLONGELI: -- of the witness that, obviously,
9 there was testimony that had been brought up throughout
10 this case as to the existence of a co-defendant, the
11 existence of the possibility of third-party guilt. And
12 I think it's crucial in that situation to define the
13 relationship between the presumption of innocence and
14 the Defense's theory, which came and was elicited from
15 the State and the testimony from the Bench -- from the
16 witness box that it's crucial in that point to have to
17 define that relationship. And I don't know, and that's
18 why I stand to be corrected, if, in addition to your
19 charge on credibility, whether or not a third-party
20 guilt charge, which I have prepared, would apply.

21 And/or --

22 THE COURT: Well, I haven't been -- I haven't been
23 requested to charge any -- to define this charge on
24 third-party guilt. But it's very clear, from my
25 instruction, that the State has to prove that Mr. Green

1 was the perpetrator of any crime the State has proven to
2 have been committed by someone.

3 MR. COLONGELI: Yes, sir.

4 THE COURT: They have to be clear on that, because
5 I did instruct them on that.

6 MR. COLONGELI: Yes, sir. And I --

7 THE COURT: I also instructed that with regard to
8 identification.

9 MR. COLONGELI: Yes, sir. Understood. And if I
10 may, and I don't know if this is proper at this point.
11 I have an additional charge I would ask you to consider.

12 THE COURT: Is it in writing?

13 MR. COLONGELI: It is in writing.

14 THE COURT: All right. Hand it up and I'll look at
15 it. Show it to Mr. Hall first.

16 MR. COLONGELI: I don't have a copy for Mr. Hall.

17 THE COURT: Well, just show him that one. Let him
18 read it, and then hand me the copy.

19 MR. COLONGELI: Let me just make sure here. And
20 I've got a feeling you probably aren't -- you probably
21 aren't -- I don't know. I could be wrong. I like it.
22 I'm not sure -- I know Mr. Hall won't like it, and I'm
23 not sure whether you'll like it.

24 MR. HALL: I can't read it.

25 DISCUSSION BETWEEN MR. HALL

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AND MR. COLONGELI.

MR. COLONGELI: He's laughing, so I -- as I assumed.

THE COURT: Okay. I'll note your request. I decline to provide it. I think it's been adequately covered in my instructions. But the court reporter will mark it as a Court's exhibit.

MR. COLONGELI: Thank you, your Honor.

THE COURT: In the event I've erred.

MR. COLONGELI: Thank you, your Honor. I have one other one in writing, unless you've already addressed this, if you could quickly look at it. It's a little longer, but.

THE COURT: What is it?

MR. COLONGELI: I think this is more as to third party.

THE COURT: Okay.

MR. COLONGELI: Have you already ruled on that?

MR. COLONGELI: Well, I haven't seen it yet.

MR. COLONGELI: Okay.

DISCUSSION BETWEEN MR. HALL

AND MR. COLONGELI.

MR. COLONGELI: If you need any help reading that, Judge.

THE COURT: Okay. I think that's also covered in

1 my instructions.

2 MR. COLONGELI: I'm sorry?

3 THE COURT: I think that's also already been
4 covered in my instructions, so.

5 MR. COLONGELI: All right. Thank you. Thank you,
6 Judge.

7 MR. COLONGELI: So, I'll decline to do any
8 additional, but I'll have the court reporter mark that
9 one, too.

10 MR. COLONGELI: Thank you, Judge. That's all I
11 have.

12 JURY LIST MARKED COURT'S EXHIBIT
13 NUMBER 1.

14 PROPOSED JURY INSTRUCTION TENDERED
15 BY MR. COLONGELI MARKED COURT'S
16 EXHIBIT NUMBER 2.

17 PROPOSED JURY INSTRUCTION TENDERED
18 BY MR. COLONGELI MARKED COURT'S
19 EXHIBIT NUMBER 3.

20 NOTE FROM JURY MARKED COURT'S
21 EXHIBIT NUMBER 4.

22 THE COURT: All right. Let me ask you all to
23 verify the exhibits before they go back, please.

24 MR. HALL: And your Honor, I guess one other
25 housekeeping. I understand -- I just want to make sure

1 that the record's clear on it. The indictment as you
2 have it that you'll be sending back, --

3 THE COURT: Yes.

4 MR. HALL: -- mentions a prior conviction in that
5 unlawful --

6 THE COURT: I need you to --

7 MR. HALL: I drafted an unlawful carrying
8 indictment.

9 THE COURT: That's what I need.

10 MR. HALL: It's downstairs on the printer.

11 THE COURT: All right.

12 MR. HALL: It just needs to be --

13 THE COURT: Get that for me.

14 MR. HALL: All right. Will do.

15 COURT REPORTER, MR. HALL, MR.

16 COLONGELI, REVIEWING EXHIBITS

17 TO BE SENT TO JURORS FOR USE

18 IN DELIBERATIONS.

19 MR. HALL: Your Honor, I guess I have a question
20 about this. Obviously, this is not marked *True Bills*.
21 It's -- so, it's --

22 THE COURT: Let him have it and look at it.

23 MR. HALL: But it is the correct CDR code and the
24 correct statute. Oh, sorry, Don. I didn't --

25 MR. COLONGELI: This is the one you re-did, right?

1 MR. HALL: Yes. That took out the -- instead of
2 felony possession where it specifically listed that he'd
3 been convicted of a crime. Which I would assume you
4 wouldn't want to go back to the jury.

5 MR. COLONGELI: Thank you. I apologize for making
6 you bring that out. I didn't use it.

7 BAILIFF: Don't worry about it, Don.

8 MR. COLONGELI: All right.

9 BAILIFF: That's fine.

10 MR. HALL: If that's sufficient, Judge, for the
11 jury, the one I printed out?

12 THE COURT: Yes. Take the exhibits back and the
13 verdict form and tell the jury to begin deliberations.
14 Notify us when they reach a verdict.

15 BAILIFF: Yes, your Honor.

16 BAILIFF TO NOTIFY JURY TO

17 BEGIN DELIBERATIONS 11:27 A.M.

18 MR. COLONGELI: Judge, would it be --

19 THE COURT: I need you all to look at the disc.

20 MR. HALL: We did.

21 THE COURT: What are they playing it on?

22 MR. HALL: Oh, what are they playing it on.

23 THE COURT: Well, they can't read it off the disc.

24 MR. HALL: Right. I need to go back and check with
25 the bailiffs. They were supposed to be making

1 arrangements while we were doing closings.

2 THE COURT: All right. We're going to be at ease
3 for 15 minutes.

4 RENEWING MOTIONS, MR. COLONGELI:

5 THE COURT: Wanda, make a note that Mr. Colongeli
6 renewed his motions for a directed verdict and they were
7 denied.

8 MR. COLONGELI: And note any objections -- to renew
9 any and all objections for the record and the basis of
10 such and ruling of the Court. Is that a problem?

11 THE COURT: That's already on the record.

12 MR. HALL: Your Honor, someone from the clerk's
13 office is actually going to be present in the room with
14 one of their laptops from the clerk's office to be
15 present whenever the audio is played.

16 MR. COLONGELI: I don't know if I like that.

17 THE COURT: Nobody can be in the jury room. Nobody
18 can be in the jury room except the jurors.

19 MR. HALL: Okay.

20 THE COURT: Surely that's never been done before.

21 MR. COLONGELI: I'll go out and buy one from K-Mart
22 if I have to, Judge.

23 COURT REPORTER: Wait, wait, wait.

24 MR. COLONGELI: Just a plain old disc player. Even
25 an old-fashioned disc player.

1 COURT REPORTER: They can use mine.

2 THE COURT: Okay.

3 COURT REPORTER: Let me get out of my stuff.

4 THE COURT: What have you got on it?

5 THE COURT: Everything. I have everything we've
6 taken.

7 THE COURT: Yeah. We can't do that.

8 COURT REPORTER: We can't use it.

9 MR. COLONGELI: Yeah. I'd be happy to run to
10 K-Mart real quick. I'll buy one, just a plain --

11 COURT REPORTER: What's on yours?

12 MR. COLONGELI: Yeah, I can't use mine.

13 THE COURT: A lot of forms and stuff?

14 MR. COLONGELI: Maybe.

15 THE COURT: Whose is that one there? Do we have
16 one -- what's on yours?

17 MR. HALL: There's -- there's --

18 MR. COLONGELI: Let me ask the public defender.

19 MR. HALL: Well, I have a folder full of documents
20 that from the trial notice and this and that for this
21 and a bunch of other cases, but. Let me check real
22 quick. Somebody was supposed to look for a CD player.

23 OFF THE RECORD 11:30 A.M.

24 BACK ON THE RECORD 3:17 P.M.

25 JURY REQUESTS RE-INSTRUCTION,

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BY THE COURT:

THE COURT: Thank you. Be seated. All right. The jury has asked for a re-instruction on the crime of armed robbery and unlawful possession of a firearm. So I'm going to bring them back in order to provide that additional instruction.

All right. Bring them in, please.

BAILIFF: Yes, your Honor.

BAILIFF: The jury is entering, your Honor.

The jury is seated, your Honor.

JURY ENTERS COURTROOM 3:20 P.M.

THE COURT: All right. Thank you. Madam Forelady, I understand from your note that the jury wishes for me to re-define the term armed robbery, as well as unlawful possession of a pistol.

MADAM FORELADY: Yes, sir.

THE COURT: All right. With regard to the crime of armed robbery, a robbery is defined as the forcing of a person to surrender property with the intent to steal it by the use of force or violence or by threatening a person with the use of force of violence in order to accomplish the theft.

Taking property of another with an intent to steal it by forcing a person to surrender possession of the property, or by causing a person to surrender possession

1 of their property by putting them in fear by way of
2 intimidation is a robbery under the law.

3 A robbery becomes an armed robbery when the robbery
4 is accomplished through the use of a firearm or any
5 other deadly weapon.

6 With regard to the unlawful possession of a pistol,
7 it is unlawful for any person to possess a pistol unless
8 you have a permit to possess a pistol or under certain
9 circumstances that are defined by statute. And there
10 are 16 exceptions to the prohibition against possessing
11 a pistol. In this case, none of those exceptions are
12 applicable.

13 So what the State has to prove beyond a reasonable
14 doubt before the defendant can be found guilty of
15 unlawful possession of a pistol is that he did, on the
16 date in question, have, in his actual possession, a
17 pistol.

18 Okay? All right. Please return to your jury room.
19 Continue with your deliberations. If you have
20 additional questions, do not hesitate to let me know.

21 JURY LEAVES COURTROOM 3:22 P.M.

22 BAILIFF: Jury's clear. Door's closed, your Honor.

23 INQUIRY REGARDING EXCEPTIONS

24 TO RE-INSTRUCTION TO THE JURY,

25 BY THE COURT:

1 THE COURT: Are there any exceptions taken to that
2 additional instruction by the State?

3 MR. HALL: No, your Honor.

4 MR. COLONGELI: By the defendant?

5 MR. COLONGELI: None from the defendant.

6 THE COURT: Okay. We'll continue to be at ease
7 with regard to Mr. Green's case.

8 OFF THE RECORD 3:23 P.M.

9 BACK ON THE RECORD 3:46 P.M.

10 BY THE COURT:

11 THE COURT: Bring them in.

12 BAILIFF: Yes, sir, Judge.

13 BAILIFF: The jury is entering, your Honor.

14 JURY ENTERS COURTROOM 3:46 P.M.

15 BAILIFF: The jury is seated, your Honor.

16 THE COURT: Madam Forelady, have you and your
17 fellow jurors reached a unanimous decision as it relates
18 to each of the separate indictments?

19 MADAM FORELADY: Yes, your Honor.

20 THE COURT: And have you indicated those decisions
21 on the back of the indictment as requested?

22 MADAM FORELADY: Yes, your Honor.

23 THE COURT: Did you sign your name and date it?

24 MADAM FORELADY: Yes, your Honor.

25 THE COURT: If you'll please hand those forms up by

1 way of the bailiff.

2 BAILIFF: Your Honor.

3 THE COURT: All right. You may publish the
4 verdict.

5 VERDICT, MADAM CLERK:

6 MADAM CLERK: 2011-GS-7-2111, the State of South
7 Carolina versus Andre Green, indictment for car jacking:
8 *We, the jury, find the defendant guilty.*

9 2011-GS-7-2109, the State of South Carolina versus
10 Andre Green, for indictment for kidnaping: *We, the*
11 *jury, find the defendant guilty.*

12 2011-GS-7-2110, the State of South Carolina versus
13 Andre Green, for indictment for armed robbery: *We, the*
14 *jury, find the defendant not guilty.*

15 2011-GS-7-2112, the State of South Carolina versus
16 Andre Green, indictment for unlawful carrying of a
17 pistol: *We, the jury, find the defendant not guilty.*

18 Signed by Forelady Maria Martin.

19 Madam Forelady and the jury, was this your verdict?

20 RESPONSES OF YES FROM THE JURY.

21 MADAM CLERK: Thank you.

22 THE COURT: Let me ask, if it is your verdict and
23 still your verdict, if you'll please indicate so by
24 raising your right hands.

25 All have responded in the affirmative.

1 Are there any other matters that need to be
2 addressed with the jury present?

3 MR. HALL: None from the State, your Honor.

4 THE COURT: Do you wish to have the jury polled?

5 MR. COLONGELI: No, sir.

6 THE COURT: Okay. All right. Thank you, ladies
7 and gentlemen. That's going to conclude your service
8 for the case and for the afternoon. As far as tomorrow
9 goes, I'm not yet certain, but I'll know that by the end
10 of the day.

11 So I'm going to ask that you please call back after
12 6:00 o'clock this evening to receive further reporting
13 information. Okay?

14 Thank you again for your participation in this
15 case.

16 JURY LEAVES COURTROOM 3:50 P.M.

17 BAILIFF: Jury's clear. Door's closed, your Honor.

18 IMPOSITION OF SENTENCE,

19 BY THE COURT:

20 THE COURT: All right. Any other matters to
21 address prior to the imposition of sentence?

22 MR. HALL: None from the State, your Honor.

23 MR. COLONGELI: None from the Defense, your Honor.

24 THE COURT: Have we got the sentencing sheet?

25 MR. HALL: Yes. Actually, I need --

1 MR. COLONGELI: Your Honor, my client is asking me
2 -- I'll be honest with you, in a conviction situation,
3 the client is still required to sign the sentencing
4 sheet? In the past, I don't recall having had to do
5 that.

6 THE COURT: Oh, he doesn't want to sign?

7 MR. COLONGELI: Oh, I'm sure he will if he's
8 required to.

9 THE COURT: Well, if he doesn't want to, he doesn't
10 have to, but I'd recommend it.

11 MR. COLONGELI: All right.

12 THE COURT: I mean, it's not going to prevent me
13 from being able to impose a sentence.

14 MR. COLONGELI: Understood, your Honor.

15 THE COURT: But if he doesn't want to, that's fine.
16 All right. What else does the State represent
17 that's relative to the sentencing?

18 MR. HALL: Well, your Honor, you obviously heard
19 the facts. I'm not going to belabor those. Mr. Green
20 does have a prior conviction for armed robbery from 2009
21 for which he received a ten-year sentence. It's my
22 understanding he did a substantial portion of that
23 sentence.

24 That appears to be the only thing on his record.
25 The State is willing, at this point, to leave a

1 recommendation as far as what the ultimate sentence
2 should be up to the Court.

3 THE COURT: All right. Mr. Colongeli.

4 MR. COLONGELI: May it please the Court, your
5 Honor. I believe you've heard a great deal from me over
6 the last couple days. We've had a great deal of
7 discussion in chambers about this case from beginning
8 Monday.

9 As you know, I was court-appointed on this case in
10 December. I've put a great deal of work into it.
11 Strange -- strange outcome. However, it is what it is.
12 And I would only respectfully ask -- it appears that the
13 jury had somewhat of a compromise verdict. And I would
14 respectfully ask you to consider the totality of the
15 situation and have mercy on Mr. Green in light of
16 anything you heard throughout the last two days. And
17 that's all I can say at this point.

18 I would respectfully ask you to give him the
19 minimum. Obviously, I know he has a prior armed
20 robbery. He just completed that sentence. Did eight-
21 and-a-half years for that. And got out within six
22 months and got into this situation. And I know that
23 doesn't help matters. However, I am asking for your
24 mercy for Mr. Green on behalf of him and his family.
25 And ask that you give him the minimum that you can on

1 this. And ask that it be concurrent.

2 THE COURT: Let me get you all to -- Mr. Colongeli,
3 the information at the top is also required. And so, I
4 need you to fill those out.

5 MR. COLONGELI: I'm sorry, your Honor.

6 THE COURT: Biographical information.

7 MR. COLONGELI COMPLIES.

8 MR. COLONGELI: I believe I have everything filled
9 out, your Honor.

10 THE COURT: On Indictment 2011-2109, that's the
11 indictment for kidnaping, where you have been found
12 guilty by the jury on that indictment, the sentence of
13 the Court is, you, Andre Green, be confined to the South
14 Carolina Department of Corrections for a period of 30
15 years.

16 That sentence is suspended upon the service of 12.
17 Placed on probation for five.

18 Conditions of probation: no contact directly nor
19 indirectly with Dennis Boskey or any family member.
20 Also, you're to have no firearms in your possession.
21 And you're to pay \$500.00 for your appointed lawyer.

22 Indictment 2011-2111, indictment for car jacking
23 where you have been found guilty by the jury of that
24 offense, the sentence of the Court is you be confined to
25 the South Carolina Department of Corrections for a

1 period of 12 years.

2 And the defendant is to be given credit for any
3 time he's entitled to pursuant to 24-13-40.

4 Now, Mr. Green, you have a right to appeal the
5 verdict of the jury and the sentence of the Court. You
6 must file any notice of your intention to appeal those
7 decisions within ten days of today's date.

8 MR. COLONGELI: Your Honor, with all due respect,
9 I'm not sure I overheard you mention whether that's
10 concurrent or consecutive.

11 THE COURT: Well, if it's not stated, then, it's
12 always concurrent.

13 MR. COLONGELI: Thank you, Judge. Thank you for
14 clarifying that.

15 THE COURT: Okay.

16 MR. COLONGELI: Thank you, your Honor.

17 OFF THE RECORD 4:02 P.M.

CERTIFICATE OF REPORTER

APRIL 23, 24, 25, 2012 TRANSCRIPT OF TRIAL

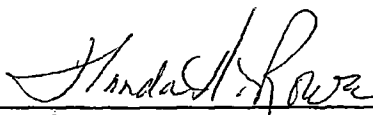
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M and Official Court Reporter, State of South Carolina, do hereby certify that the foregoing April 23, 24, 25, 2012 Transcript of Trial is a true, accurate, and complete record of the proceedings had and evidence introduced in said Trial, in the case of State of South Carolina versus Andre Green, 2011-GS-07-02109, 2011-GS-07-02110, 2011-GS-07-02111 and 2011-GS-07-02112, Beaufort, South Carolina.

I further certify that I am of neither kin, counsel, or interest to any party hereto; that the original of this transcript is not certified to be, nor authorized for use as, the true, accurate, and complete original without my original signature and stamp affixed hereto; that any copy of this transcript is not certified to be, nor authorized for use as, a true, accurate, and complete copy without my original signature and stamp affixed hereto.

Witness my signature June 20, 2012.


Wanda H. Rowe, CVR-Mast
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO'S. 2007-GS-07-02109, 2007-GS-07-02110,
2007-GS-07-02111, 2007-GS-07-02112

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 26, 2012

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

ANDRE GREEN

DEFENDANT

B E F O R E:

HON. J. DURHAM COLE, JUDGE.

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

ON BEHALF OF THE STATE:

HON. PATRICK HALL

ON BEHALF OF DEFENDANT:

HON. DON COLONGELI

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were presented, either for marking for identification, or entering as evidence.

1 BEGIN 4:00 P.M.

2 BY THE COURT:

3 MR. HALL: The State recalls Andre Green. For the
4 record, these are case numbers 2011-GS-07-2109, 2110,
5 2111, and 2112, I believe.

6 MR. COLONGELI: Beg the Court's indulgence just one
7 moment so I can get to what I wanted to see. All right,
8 Judge. Thank you. May it please the Court. Your
9 Honor, respectfully, at this point in time, I want to
10 thank you. We discussed briefly yesterday my ability to
11 come back today and go on the record for purposes of
12 preserving the record. And at this time, the Defense
13 would renew any and all motions and objections which
14 were made all throughout Mr. Andre Green's trial and the
15 basis for such. And would ask that that be noted for
16 the record.

17 THE COURT: It is.

18 MR. COLONGELI: Thank you, your Honor. In addition
19 the that, and obviously, with all due respect to you,
20 your Honor, and Mr. Hall, the state of South Carolina,
21 at this point, I do have a couple post-trial motions I
22 would like to respectfully address with the Court. One
23 being a post-trial motion regarding the fact that I had,
24 at the outset of this case, in pretrial matters, renewed
25 my *Rule 5*, at which point, Mr. Hall had indicated that I

1 had everything that he had as far as discovery goes for
2 the trial of this case.

3 There were also some discussions involving the co-
4 defendant, Brandon Parker, the fact that the State chose
5 not to prosecute him, which is their discretion, and the
6 fact that there would be no mention of testimony
7 involving Brandon Parker throughout the trial of this
8 case, which was addressed by the Court at pretrial.

9 I believe, if my recollection serves me correctly,
10 that, that was agreed upon by both the State and the
11 Defense. And I understand that the Court may call into
12 question the fact that I believe I may have personally
13 brought up Brandon Parker, not only in my opening, but
14 at some point during the cross-examination in the
15 State's case, some reference to Mr. Parker, that went
16 without any objection from the State.

17 And when the State ended its case with its last
18 witness, I believe it was Exhibit 4, and I stand to be
19 corrected on that, but the last disk redacted that
20 involved Detective Sergeant Andre Massey's interview
21 with Mr. Green, I, unfortunately, failed to address or
22 object spontaneously with some discussion Sergeant
23 Massey had with Andre Green dealing with statements
24 purportedly made by Brandon Parker. I was not
25 admonished by the Court, but I had been informed by the

1 Court earlier that day, based on these redactions that
2 Mr. Hall went out of his way to make the night before,
3 that I should take time at lunch to sit down and address
4 that particular tape, and I fully admitted to the Court
5 after I failed to do so.

6 If the Court recalls prior to us leaving on lunch
7 break, I attempted to make a motion, and the Court
8 kindly informed me, or informed me that, Mr. Colongeli,
9 you're aware that the State hasn't rested yet; and I
10 said, *Yes, your Honor, you're right.* And you suggested
11 that I think about what, procedurally, I would have as a
12 motion at this time, prior to the State resting. And
13 unfortunately, that's what sank into my brain, and I
14 went to lunch and was preoccupied trying to think about
15 that instead of doing what I should have done in
16 listening to this tape.

17 However, notwithstanding that, your Honor, I had
18 taken Mr. Hall's word and we had went through two other
19 tapes that morning, which I had had no opportunity to
20 listen to, and trusted that there would be no
21 prejudicial material that would come out. And
22 thankfully, there was not.

23 So, in the morning, I did not have the opportunity
24 to do that. As far as listening to those beforehand, I
25 had reviewed them completely, the unredacted versions,

1 before, in prepping for the case. So, although
2 instructed by the Court, the wise thing to do would have
3 been to listen to those. I did not. I made a motion
4 for a mistrial, based on a comment that was made
5 involving Mr. Green's background that I thought was
6 prejudicial enough for a mistrial. You ruled on that,
7 and I respect that ruling, and we moved on. It was
8 right after that objection and motion for a mistrial
9 that a snippet, which even Mr. Hall would agreed to was
10 maybe 1.5 seconds of a comment made by Detective
11 Sergeant Massey about this Brandon Parker comment where
12 it, specifically, if we hear or (later read the
13 transcript, said or question Mr. Green saying why would
14 Brandon Parker, who was charged with the exact same
15 charges, say that you were the one with him and did
16 these things to, what would his motive be to lie. I
17 failed to jump up and object to that.

18 I think the Court would agree that was an error on
19 my part. And if I had objected, I can only venture to
20 guess that, possibly, this Court would have taken that
21 into serious consideration and possibly, possibly, may
22 have ruled on that motion, other than the one I did
23 about the background.

24 I'm bringing this up for purposes of judicial
25 economy and judicial fairness in that I believe my

1 motion, which is for a new trial at this point, based on
2 those factors, should be taken into consideration by
3 this Court. And I'd be happy to move on, because I have
4 more to kind of go around that, but I feel that it's
5 important to address that.

6 I hope I haven't disrespected the Court in any way
7 as far as bringing that up. I think I owe it to my
8 client at this point to do that. And I think it's
9 proper.

10 The bottom line is that, in pretrial motions, you
11 had warned or put the State on notice that he had gone
12 out of his way to do these redactions, and you had told
13 him, I hope you done a good job more or less, because,
14 obviously, if something comes out in those tapes, it's
15 prejudicial, there would potentially be a problem. But
16 for my failure to spontaneously object to the testimony
17 of Mr. Massey regarding the co-defendant, I believed
18 that what has transpired in the last 24 hours very well
19 could have been different. So that's part of my motion
20 for a new trial. If you'd like me to continue, and you
21 could rule on everything at once, I'll leave it up to
22 you.

23 THE COURT: No. I'll be glad to hear from Mr. Hall.
24 That's your first motion -- that's your first ground for
25 a motion?

1 MR. COLONGELI: Yes, sir.

2 THE COURT: Okay. What's your second one?

3 MR. COLONGELI: The second one, your Honor, would
4 be, and this is something we briefly discussed
5 afterwards that I've informed Mr. Hall about, it is the
6 Defense's contention that the verdict the jury reached
7 yesterday was not only what is considered an
8 inconsistent verdict, but was a compromise verdict. The
9 State of South Carolina and other states in this
10 country, have addressed this issue specifically as to
11 inconsistent and what's known as compromised verdicts.

12 I will concede that, pursuant to *State v. Alexander*,
13 the State of South Carolina does not recognize
14 inconsistent verdicts in this state. However, for the
15 record, I would take contention with that, respectfully,
16 and still make my motion, based upon the fact that I do
17 believe it was inconsistent.

18 And the reason I believe that it was inconsistent,
19 is exactly this. Based on the testimony that we heard,
20 based on the testimony that the State elicited from its
21 witnesses, it could only logically be deduced --
22 logically be implied from that testimony that, in my
23 mind, in order to get to car jacking or kidnaping, the
24 armed robbery would have had to occurred prior to that.
25 I know that's my interpretation, and that may not --

1 that's subjective on my part. And I believe, obviously,
2 the Court or an appellate court or lay people, may
3 interpret that differently, as did this jury. But that
4 would be another basis for my motion; that it was
5 inconsistent; that there is no real way that they could
6 have come up with that, and therefore, it was
7 inconsistent, based on those facts that I brought before
8 you. So that's another ground for my motion.

9 THE COURT: All right. You got any more?

10 MR. COLONGELI: Couple more, your Honor. And I'll
11 try to be brief. The other part is that the fact that
12 it was compromised. Now, interestingly enough, --

13 THE COURT: That was your last ground.

14 MR. COLONGELI: I'm sorry?

15 THE COURT: That was your last ground. You said
16 inconsistent and compromised.

17 MR. COLONGELI: I said inconsistent and compromised.
18 I haven't discussed the compromised one yet.

19 THE COURT: Oh.

20 MR. COLONGELI: Compromised is something in my
21 research I found extremely interesting. And as a matter
22 of fact, I argued to the jury yesterday. It was
23 something when I was arguing to the jury as far as what
24 the State's asking you to do here is what's called jury
25 nullification. And when my research was done, what I

1 learned is, actually, the courts do allow for juries to
2 be lenient in situations where we have the scenario that
3 panned out as it did yesterday. And I did a great deal
4 of research on that, and I was quite shocked to have
5 finally learn that. Maybe that's something I should
6 have already known, but the courts do allow juries to be
7 lenient when it comes to what the courts have defined as
8 a compromised verdict. More or less, let's split the
9 baby. Let's find him guilty of the car jacking,
10 kidnaping, dismiss -- find him not guilty of the armed
11 robbery and handgun charge, which, by the way, the
12 papers today all are inaccurate in what they say as far
13 as him being guilty of the gun charge, but that's
14 another matter. However, --

15 THE COURT: You can take that up with the paper.

16 MR. COLONGELI: Yes, sir, I will take that up with
17 the paper. But that would be the other grounds as far
18 as I believe that I would assert, even though the courts
19 have ruled on this before, that compromise verdicts are
20 allowed; that I, as a defense lawyer, and as in the
21 defense of Andre Green, would be part of my motion that
22 it was compromised, and therefore, fundamentally unfair.

23 Moving on to my last grounds for my motion for a new
24 trial. And I would ask the court -- I would be happy to
25 stand down on this if it doesn't apply. In my research

1 last night, there's something known for a motion to set
2 aside a verdict, which, basically, is the same as
3 requesting a new trial, based on what's known as the
4 13th juror doctrine. And --

5 THE COURT: Where were you researching that
6 doctrine?

7 MR. COLONGELI: I'm sorry?

8 THE COURT: Where were you researching that
9 doctrine? Did you look at the *Rules of Civil Procedure*?

10 MR. COLONGELI: Well, and that's why I do stand to
11 be corrected. I don't know maybe if that only applies
12 in civil matters, because it does bring up, obviously,
13 it was a civil case. It was Judge Baxley where I found
14 it. And I'll be happy not to go there if you're telling
15 me that's inaccurate.

16 THE COURT: Well, you're the lawyer. I'll leave
17 that up 2240? but

18 MR. COLONGELI: All right. I would argue that it
19 does apply, your Honor, and this is why. Based on what
20 my research shows, new trials should be granted when the
21 verdict is not supported by a preponderance of the
22 evidence.

23 The evidence presented at this trial was
24 overwhelmingly in favor of the defendant. The victim's
25 failure to identify the defendant in court and

1 repeatedly, upon cross-examination by me as to not only
2 the fact that he could not identify Mr. Green, but did
3 this man commit the offenses alleged against you -- the
4 ultimate question most lawyers would never ask the
5 victim or witness on the stand or ask of this
6 victim/witness, who he said, *No, no, no, no*, to all four
7 charges. So you have overwhelming evidence in favor of
8 the defendant.

9 The victim's statements that the defendant was not
10 the suspect. The sworn affidavits presented by the
11 victim to the defense, and also, by me, to the State
12 prior to the case beginning. I, as an officer of the
13 Court, shared those as quickly as I could with Mr. Hall.

14 And also, the law enforcement's tactics in
15 interviewing the victim and the way he obtained the
16 identification, that, if the State failed to prove to
17 the jury that the defendant committed armed robbery and
18 possession of a weapon, then the jury made a mistake in
19 finding him guilty of car jacking and kidnaping, as
20 those crimes for the evidence occurred after the armed
21 robbery, arguable, by the defense.

22 And that the jury verdict was inadequate, and based,
23 instead, on considerations not part of the evidence.
24 That actually goes kind of partly to what I discussed
25 before as a compromised verdict. That, in that event,

1 the only remedy after a verdict is rendered by a jury is
2 either an appeal or motion for the new trial. An appeal
3 upon the refusal of such motion, would be my motion for
4 a new trial is that you step in as this 13th juror and,
5 I think, probably, under due process and fundamental
6 notions of fairness, set aside the verdict and grant a
7 new trial.

8 Lastly, and I stand to be corrected here, but I
9 think that new trials and amendments of judgments are
10 controlled in the civil world under *Rule 59*. However,
11 as far as criminal matters go, I think they're similar
12 to the extent that, where the jury verdict is so
13 confused that it is not absolutely clear what was
14 intended, where the jury disregarded the charges of the
15 judge, where a variance between the proof at trial and
16 the allegations in the pleading is material to the
17 extent that a party is misled through his prejudice,
18 where the verdict is contrary to fair preponderance of
19 the evidence, where excessive -- well, this one doesn't
20 apply. I apologize. Where there was an error in the
21 amount of the verdict, that doesn't apply either. I
22 withdraw those last two.

23 I know I've said a lot. I know you've clearly
24 followed me. I hope. I think you follow me. But those
25 would be the grounds that I want preserved for the

1 record. That would be my argument, and respectfully ask
2 and urge you that you do grant a new trial.

3 I understand the last thing any court or state wants
4 is to have to re-try a case. I go out of my way in
5 trying cases to try to do everything to the best of my
6 ability and to do them ethically and right. I believe,
7 short of saying that I did anything completely wrong, I
8 can say to this Court, cautiously, that I know that I
9 should have objected to a part of the testimony that I
10 failed to do, and I'll have to address that at PCR, if
11 we get there.

12 That's why I'm urging this Court possibly to save
13 the State's money and time in what we know will
14 eventually happen, and let's start over. Because I
15 venture to guess, based on some of the things that have
16 happened here, there is a good chance, and this is only
17 my opinion, that this case very well could come back at
18 no fault of your own, possibly no fault of Mr. Hall's
19 and maybe everything to do with me. And I'm willing to
20 take that -- I'm willing to accept that. I'm willing to
21 accept that I'm willing to admit to any errors I've
22 made. I always have been. And that'll remain the case.
23 If I'm wrong, then I'll have judges like you or people
24 much more intelligent than I telling me that I'm not
25 wrong.

1 But I think fundamental fairness, your Honor, and
2 principles of due process, other than what I've already
3 told you, might save everyone a great deal of time and
4 agony in starting over now as opposed to later. And
5 that's only a consideration I bring before you.

6 Unfortunately, your sentence was extremely fair. I
7 know Mr. Green is very appreciative of it, as am I. In
8 reality, maybe we should leave it at that. And I
9 believe I've covered everything that I have to address
10 today. I appreciate you letting me come back today and
11 argue these things. I hope I've not belabored the
12 issue. And that's all I have.

13 THE COURT: All right. Mr. Hall.

14 MR. HALL: Well, your Honor, other than Mr.
15 Colongeli's mea culpa regarding what took place during
16 the trial, I don't see that there's anything there that
17 would require this Court to grant a new trial. I just
18 don't think there are grounds based on anything that Mr.
19 Colongeli said to grant a new trial, and I'd ask that
20 you rule that way.

21 THE COURT: All right. Motions for a new trial on
22 all four grounds are denied.

23 MR. COLONGELI: Thank you, your Honor.

 ENDING 4:10 P.M.

CERTIFICATE OF REPORTER

APRIL 26, 2012 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

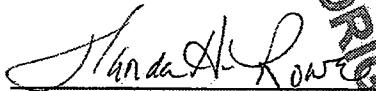
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 26, 2012 Transcript of Hearing is a true, accurate, and complete record of the proceedings had and evidence introduced and/or admitted at said proceeding in the case of State of South Carolina versus Andre Green, Beaufort County, Court of General Sessions, Case Numbers 2007-GS-07-02109, 2007-GS-07-02110, 2007-GS-07-2111, and 2007-GS-07-02112.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature March 17, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

AW
14

2014-CP-07-359

STATE OF SOUTH CAROLINA)

County of Beaufort)

14 FEB 17 PM 1:54

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
BEAUFORT COUNTY, S.C.

Andre Green # 283773
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst. P.O. Box 205 Ridgerville, SC
29472
2. Name and location of Court which imposed sentence Beaufort County Court
House Beaufort South Carolina 29902
3. Name(s) of co-defendant(s) (if any) Brandon Parker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011G50702111 Car Jacking

(b) 2011G50702109 Kidnapping
(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 25, 2012 30 yrs suspended upon the service of 12 yrs
(b) 5 years probation
(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?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:
i. South Carolina Court of Appeals
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(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) See Attachments _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attachments _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No _____

(d) any other petitions, motions or applications in this or any other Court? No _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Initial opportunity for collateral attack
- (b) _____
- (c) _____

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. Don Colonyali 112 Arrow Road, po Box 6658
Hilton Head Isd, SC 29935
 - ii. Carmen V. Ganjehsoni SCJD Division of Appellate Defense
Po Box 11589 Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial/Sentencing
 - ii. Direct Appeal
 - iii. _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Andre Green, 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.

Andre Green

Applicant

SWORN or affirmed to and subscribed before me this
6th day of February, 2014.

Ludlow Bryant
Notary Public

My Commission Expires: May 26, 2020

19. State clearly the relief you seek in filing this application:

Sentence set aside

New trial

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Beaufort)

VERIFICATION

I, Andre Green, 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.

Andre Green

SWORN to and subscribed before me this 6th day of February, 2014.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

311

PETITIONER'S 6TH AMENDMENT RIGHT TO "EFFECTIVE ASSISTANCE OF COUNSEL"
AT TRIAL WAS VIOLATED BY TRIAL COUNSEL ON THE FOLLOWING GROUNDS

Ground One: Trial counsel was ineffective by not previously reviewing State's exhibit 4, a recorded interview of Petitioner and Sgt. Massey. In the CD the statement was made that the reason Boskey and Parker was trying to put this on him was because of his "Background" and therefore inferring to "Prior bad acts". The solicitor had had the CD redacted and all referring parts to Petitioner's background was to be edited out. The solicitor offered trial counsel the opportunity to review it before it's being played before the jury. Trial counsel neglected to review the CD and it's contents and by doing so allowed this prejudicial remark to be heard by the jury.

Ground two: Trial counsel was ineffective for allowing the solicitor to admit alleged phone calls to the victim into trial as evidence. These alleged phone calls were made to the victim from Atlanta and supposedly the victim was intimidated against identifying the Petitioner in court. In the calls the victim and his family were threatened. These supposed phone calls were never linked to the Petitioner. The authorities for that matter never even attempted to authenticate or link the purported calls to the Petitioner. These and all other allegations involving witness intimidation were never established and were unfounded. Therefore any testimony involving these allegations should not have been admitted at trial.

Case Law: *Mincey v. State* 314 S.C. 335, 444 S.E. 2d 510 (1994), *State v. Barroso*, 320 S.C. 1, 462 S.E. 2d 862 (Ct. App. 1995), *State v. Edwards* 383 S.C. 66, 678 S.E. 2d 405 (2009)

Ground Three: Trial counsel was ineffective for not objecting to the State playing the CD of the interview of Sgt. Massey. In the interview Sgt. Massey made the statement "Why would Brandon Parker say he (the Petitioner) was the one with him and the one who done these things, if he hadn't done it? What would be his motive to lie?" Brandon Parker did not testify at trial. Therefore any statements he made was not admissible, because trial counsel wouldn't be afforded the opportunity to cross examine these statements. This would cause a direct violation of Petitioner's 14th amendment right to due process.

Case Law: *State v. Holmes* 342 S.C. 113, 118, 536 S.E. 2d 671, 673 (2000). *Pointer v. Tex.*, 380 U.S. 400, 403 (1965), *Md. v. Criag* 497 U.S. 836, 846 (1990) and *Coy v. Iowa*, 487 U.S. 1012, 1019 (1988)

Ground Four: Trial counsel was ineffective for failing to properly investigate and prepare an adequate defense. The sole basis for the alleged witness intimidation was phone calls supposedly made to the victim to threaten him out of identifying the Petitioner in court. These purported calls were made from Atlanta to the victim. The State never produced any phone records indicating these call were actually made. Trial counsel could have easily subpoenaed the victims phone records to these calls were never made to the victim.

Case Law: *Cobbs v. State* 403 S.E. 2d 113 (S.C. 1991) *Nance v. Ozmint*, 626 S.E. 2d 878 (S.C. 2006) and *Pavel v. Hollins*, 261 F3d 210, 228 (2d. Cir. 2001)

Ground Five: Trial counsel was ineffective for failing to object to improper statement made by solicitor in his closing argument. the solicitor made the following statement: "When Mr. Boskey was on the stand yesterday, and he could not identify Mr. Green in court I would submit to you that it's really not a matter of he couldn't identify Andre Green. It's that he wouldn't identify Andre Green. This accusation could not be construed by the evidence or testimony given during trial. Solicitors may not express personal opinions or vouch for the credibility of a witness's testimony.

Case Law: *Matthews v. State* 565 S.E. 2d 766 (SC 2002) *Gilchrist v. State* 565 S.E. 2d 281 (SC 2002) and *U.S. v. Loauya*, 107 F.3d 257, 261 (4th Cir. 1997).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
)
)
 Andre Green, #283773,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-07-0359

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 17, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the December 2011 term of the Charleston County Grand Jury for carjacking (2011-GS-07-2111) and kidnapping (2011-GS-07-2109). The Applicant was represented by Don Colongeli, Esquire.

On April 25, 2012, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of twelve (12) years for carjacking and thirty (30) years, provided upon the service of twelve (12) years, the balance is suspended to five (5) years probation for kidnapping. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Carmen Ganjehsani, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Green, No. 2014-UP-152 (S.C. Ct. App. April 4, 2014). The Remittitur was issued on April 18, 2014.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's appellate records, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. Counsel was ineffective for not previously reviewing State Exhibit 1, a recorded interview of Petitioner and Sgt. Massey.
- b. Counsel was ineffective for allowing the solicitor to admit alleged phone called to victim into trial as evidence.
- c. Counsel was ineffective for not objecting to the State playing the CD of the interview of Sgt. Massey.
- d. Counsel was ineffective for failing to properly investigate and prepare an adequate defense.
- e. Counsel was ineffective for failing to object to improper statements made by solicitor in his closing argument.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Alan Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

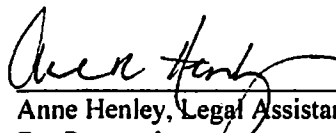
Sept 8, 2014.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	
)	
)	2014-CP-07-0359
)	
ANDRE GREEN, #283773)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
<hr/>		

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
 Axelrod & Associates, P.A.
 4701 Oleander Drive
 Myrtle Beach, SC 29577

DATED this 8th day of September, 2014



 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	2014-CP-07-0359

ANDRE GREEN,)
Applicant,) TRANSCRIPT OF RECORD
-vs-) June 5, 2017
STATE OF SOUTH CAROLINA,) Beaufort, South Carolina
Respondent.)

B E F O R E:

The Honorable Diane S. Goodstein, Judge.

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

Tristan M. Shaffer, Esquire
Attorney for the Applicant

Ruston W. Neely, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Donald Colongeli	5 --	15 --	17 25	-- 29

E X H I B I T S

APPLICANT'S	DESCRIPTION	MARKED	RECEIVED
1	CD of Andre Green Interview	22	22
STATE'S	DESCRIPTION	MARKED	RECEIVED
1	CD of Boskey Interview	24	24

1 (June 5, 2017.)

2 MR. NEELY: The first case the State would
3 call is the case of Andre Green versus State of South
4 Carolina case number 2014-CP-07-0359. Applicant is
5 presently confined to South Carolina Department of
6 Corrections pursuant to orders of commitment of the
7 Beaufort County Clerk of Court. He was indicted for the
8 December 2011 term for carjacking, kidnapping, armed
9 robbery, and possession of weapon during the commission
10 of a violent crime.

11 On April 25, 2012, he proceeded to trial, and
12 he was found guilty of the carjacking and kidnapping
13 charges and not guilty on the armed robbery and
14 possession of weapon during the commission of a violent
15 crime. He was sentenced by Judge Cole to confinement for
16 a period of 12 years for carjacking and 30 years upon the
17 service of 12 years, balance suspended to 5 years'
18 probation for kidnapping. He did appeal his sentence.
19 It was an Anders brief. The Court of Appeals denied his
20 appeal and remitter was issued on April 15 of 2014.

21 THE COURT: All right. Very well. And
22 you're Mr. Green?

23 THE DEFENDANT: Yeah.

24 THE COURT: Good morning. Now, Mr. Green is
25 over here, is he cool? How are you going to speak to

1 him? I think he's got to come on, don't you, Mr. Green?
2 How are you going to talk to your lawyer if you're that
3 far away, right?

4 MR. SHAFFER: Your Honor, actually, all of
5 our issues are very concisely based, typed in the pro se
6 original application, there is a supplement to it that
7 they filed, last three pages, and there are five grounds,
8 Your Honor, that are very coherently placed in there and
9 typed, Your Honor, so those are the grounds we're
10 proceeding forward on today.

11 THE COURT: Very well. All right. And are
12 there any preliminary matters before you call your first
13 witness?

14 MR. SHAFFER: There may be. I may need to
15 check with the clerk's office. I believe they have the
16 exhibit that they were going to try to get in. Did they
17 bring that out here yet?

18 THE CLERK: No. Jerry is doing jury
19 selection, so when she's done, she'll open the vault and
20 bring that to you. All right. So it's where they keep
21 exhibits. I get it. If we need to take a break, not a
22 problem.

23 All right. Then call your first witness,
24 please.

25 MR. SHAFFER: Applicant would call

1 Mr. Colongeli.

2 DONALD CHRISTOPHER COLONGELI,
3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SHAFFER:

7 Q. And, Mr. Colongeli, you represented Andre Green in
8 this case, correct?

9 A. I did, Your Honor -- I did, sir.

10 Q. Okay. If you can, tell us a little bit about the
11 allegations that were against him, just for the
12 Court's --

13 A. As mentioned earlier, Mr. Green was charged with
14 initially four indictments: Kidnapping, armed robbery
15 with a deadly weapon, carjacking, and unlawful possession
16 of a handgun.

17 Q. And, if you recall, can you give the Court a
18 summary of the evidence against him? Was it physical
19 evidence or was it just the statement of the victim?

20 A. As I recall, there was more than just -- there was
21 some physical evidence. In all honesty, I can't tell
22 you -- my memory doesn't serve me to tell you what that
23 physical evidence was, but there was more than just
24 circumstantial evidence in this case.

25 Q. And my client gave a statement, correct?

DONALD COLONGELI - DIRECT EXAMINATION

1 A. Correct.

2 Q. Now, do you recall whether a codefendant gave a
3 statement in this case as well?

4 A. To the best of my knowledge, I believe he did.

5 Q. Okay. Would it be fair to say the codefendant did
6 not testify at trial?

7 A. Correct.

8 Q. Now, as a result of the codefendant not testifying
9 at trial, his statement obviously wasn't admissible,
10 correct?

11 A. Correct.

12 Q. Now, certain parts in the -- now, my client was
13 questioned, correct?

14 A. Correct.

15 Q. And it was recorded?

16 A. Correct.

17 Q. Now, the recording of my client's statement, do
18 you recall reviewing that at trial?

19 A. I do.

20 Q. Do you recall whether any redactions were
21 necessary?

22 A. I do.

23 Q. Could you recall what those redactions were? And
24 I know I'm putting you on the spot because it's been --

25 A. A while.

1 Q. -- a while.

2 A. I couldn't tell you exactly what the redactions
3 were right now without given some time to specifically
4 review the file as to that.

5 Q. All right. Would it be fair to say that some
6 redactions were made on the date before it was submitted?

7 A. Yes, sir.

8 Q. Do you recall the redacted copy indicating that a
9 question being asked of my client of whether or not --
10 why the codefendant would be lying?

11 A. I do.

12 Q. Do you recall objecting to that?

13 A. Based on my review of the transcript, it appears
14 that I did not.

15 Q. Okay. Specifically, to say something to the
16 effect of why would Brandon Parker say these things if
17 you didn't do it, right?

18 A. Yes.

19 THE COURT: Where are you referring to in the
20 transcript, please?

21 MR. SHAFFER: I'm referring to what is on the
22 CD we'll be submitting.

23 THE COURT: Got you. Okay.

24 BY MR. SHAFFER:

25 Q. Now, do you recall the victim's testimony in this

1 case?

2 A. Vaguely.

3 Q. Okay. And, specifically, do you recall anything
4 unusual happening in the victim's testimony?

5 A. I do not.

6 Q. Do you remember if the victim identified Mr. Green
7 as being the person that did this?

8 A. Yes.

9 Q. Do you have a copy of your transcript?

10 A. I do not. I can grab it. Thank you.

11 THE COURT: Oh, you've got one for him.

12 BY MR. SHAFFER:

13 Q. If you wouldn't mind reviewing pages -- starting
14 on page 118, I want you to look through -- I guess it's
15 through the next three or four pages, but 118 or 119 --

16 A. Yes, sir. Through what page again?

17 Q. 118 --

18 A. 118 through --

19 Q. About 123.

20 A. All right.

21 Q. And I apologize. Do you mind if I look at that?
22 Because I may be giving you the record on appeal page
23 numbers.

24 THE COURT: They're the same. I don't know
25 that I've ever seen that, but they're the same.

DONALD COLONGELI - DIRECT EXAMINATION

1 THE WITNESS: They are.

2 BY MR. SHAFFER:

3 Q. My record of appeal may be different.

4 Specifically, I want you to look at the top of page 119.

5 A. Yes, sir.

6 Q. And, if you would, tell us what's going on there.

7 A. This is where the prosecutor approached the
8 witness regarding the State's photo lineup, if I'm not
9 mistaken. It appears that's the case.

10 Q. Okay. My question is, do you recall whether the
11 witness identified Mr. Green as being the person, your
12 client?

13 A. Yes.

14 Q. And you're saying he did identify Mr. Green as
15 being your client?

16 A. He did. It appears that there was some confusion
17 initially in the question that was asked, but the
18 solicitor went out of his way to correct that, but the
19 witness ultimately did identify Mr. Green through the
20 photo lineup.

21 Q. Do you recall anything about witness intimidation
22 or evidence of witness intimidation in this case?

23 A. I do, and this morning I was looking over the file
24 and specifically saw some handwritten notes as to that
25 issue specifically and discussing the same with my

1 client.

2 Q. Who was supposedly intimidated?

3 A. I believe it was this witness, the victim.

4 Q. And do you recall how he was intimidated?

5 A. To the best of my recollection, it was an
6 accidental occurrence in which there was no intent
7 involved on the part of my client. He happened to run
8 into the victim in public by accident, and at that point
9 was not positive that there were charges against him and
10 basically simply asked him if that was, in fact, true but
11 that there was no other sort of threats involved. He
12 simply ran into him in public and said, Have you made
13 these allegations against me?

14 Q. Okay. Do you recall anything about a phone call
15 that was made, alleged phone call?

16 A. Unfortunately, I do not. If you could point that
17 out, I may --

18 Q. I am referring you to 128 -- correction, 124.

19 A. I'm not sure that's the same page.

20 Q. It should be page 124. If you don't mind
21 reviewing it, it should be starting on line --

22 A. 12?

23 Q. Yes.

24 A. I'm sorry.

25 Q. Line six, starting there.

1 A. Okay.

2 Q. And just read through to the end of page 125, and
3 you can actually stop at 125, line 12.

4 A. Okay.

5 Q. Have you had a chance to review that?

6 A. Yes, sir.

7 Q. Does that refresh your recollection at all?

8 A. It does, it does. I remember now that there were
9 allegations of phone calls from Atlanta from unknown
10 individuals, allegedly.

11 Q. Now, was there any evidence at all to show that my
12 client was the one making those phone calls?

13 A. None.

14 Q. Okay. Do you recall objecting to any testimony
15 concerning the phone calls being made?

16 A. Specifically, no, but I would guess that I would
17 have, but I don't specifically remember if I did or not.

18 Q. The transcript would indicate whether you did,
19 correct?

20 A. It should, and it appears here that -- at this
21 point, as far as this page goes, no, that I didn't.

22 Q. Okay.

23 A. It does appear -- I guess when you move on to page
24 126 that I indicated to the Court I had some concerns as
25 to -- maybe that's different, as to the particular

1 interview, but I think that was involving the phone
2 calls, and then the judge cleared the courtroom and it
3 appears we had a discussion about that.

4 Q. Okay. And if you wouldn't mind, look forward and
5 see if that discussion deals with a statement rather than
6 the phone calls.

7 A. It appears it was a statement as opposed to a
8 phone call.

9 Q. All right. Now, what I'm going to do is I'm going
10 to refer you to page 226, and I'm going to ask you about
11 the closing argument that was made. I'm referring you to
12 the State's closing argument, page 226.

13 Now, specifically -- I just lost my spot. Court's
14 indulgence. I apologize. Now, I want you to review line
15 13 all the way till 227, line 1.

16 A. Yes, sir.

17 Q. Okay. What is this argument in reference to, do
18 you recall?

19 A. It appears as to the ability of the victim --
20 victim's confusion initially as to the identification of
21 Mr. Green.

22 Q. Okay. And, if you would, would you read lines
23 23 -- or, excuse me, 22 all the way until line 1 on the
24 next page.

25 A. Lines 22?

1 Q. Yes.

2 A. Through --

3 Q. Line 1 on 227.

4 A. Thank you. Okay. Yes, sir.

5 Q. Would you read that out loud for the Court?

6 A. From line 22 to the following page?

7 Q. Yes.

8 A. Andre Green then tells Dennis Bosky, again --

9 Q. I apologize, on 226, line 22.

10 A. Oh, I'm sorry. When Mr. Bosky was on the stand
11 yesterday and he could not identify Mr. Green in Court, I
12 would submit to you that it's really not a matter of he
13 couldn't identify Andre Green, it's that he wouldn't
14 identify Andre Green.

15 Q. Okay. Is this referring once again to the witness
16 intimidation and the failure of the victim to identify?

17 A. I believe it does.

18 Q. Okay. Do you recall making an objection to that
19 at any point?

20 A. Specifically, I don't recall if I did or not.

21 Q. Okay.

22 MR. SHAFFER: Court's indulgence.

23 BY MR. SHAFFER:

24 Q. Do you recall ever doing any investigation about
25 the phone calls from Atlanta? Do you recall any

1 specifics about this phone call that allegedly
2 intimidated the victim from Atlanta?

3 A. Specifically as to what I may have done, I don't
4 recall, but I do remember that we deemed them to be
5 insignificant. It was not Andre Green that made the
6 calls, it was, you know, pure speculation that someone
7 that may have known him would have made the calls but
8 that there was no way to prove that Andre would have had
9 any idea about those calls.

10 Q. Okay. And the -- you said that the communication
11 between Andre Green when he ran into the victim, that --
12 would you characterize that as evidence of witness
13 intimidation?

14 A. No.

15 Q. It was an innocent meeting, correct?

16 A. Yes. My understanding was that it was.

17 Q. Okay.

18 MR. SHAFFER: Your Honor, I believe that we
19 probably need --

20 BY MR. SHAFFER:

21 Q. Well, do you recall reviewing the CD, the redacted
22 copy of the CD, prior to it being played in front of the
23 jury?

24 A. Right at this moment, I specifically don't recall
25 sitting down and reviewing it, but I'm sure that I must

1 have at some point gone over the redactions with the
2 State.

3 Q. Okay.

4 A. Now, there's a possibility that I trusted the
5 State had made those redactions. Now, whether or not I
6 sat down and made sure those were made, I don't recall.

7 Q. Okay.

8 MR. SHAFFER: Your Honor, no further
9 questions at this time. I will, once we get the CD in
10 here --

11 THE COURT: You want to talk to him about
12 that?

13 MR. SHAFFER: Yes, ma'am.

14 THE COURT: All right. Cross-examination,
15 Mr. Neely?

16 MR. NEELY: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. NEELY:

19 Q. I just want to correct things you said that were
20 incorrect based on your memory. If you would, look at
21 page 122, lines 10 through 16.

22 A. Page 122?

23 Q. Line 10 through 16.

24 A. 10 through 16. Yes, yes, sir.

25 Q. And then once you're done reviewing that, look at

1 page 140, line 3 through 16.

2 A. Line what through --

3 Q. Line three.

4 A. Three through sixteen? Yes, sir.

5 Q. Isn't this true this was not some innocent meeting
6 in public. Green and two of his friends went to the
7 house of the victim?

8 A. That's correct. What I was referring to before, I
9 think there were separate instances, and I apologize. If
10 I recall now, there were probably three different
11 instances where the State had evidence of some sort of
12 interaction by Mr. Green with the victim.

13 The first one I was referring to was where he
14 innocently ran into him in public, but then there was an
15 incident in which he went to this victim's actual
16 residence.

17 Q. And if you don't remember, that's fine, but the
18 testimony in the transcript, the solicitor in the closing
19 argument says that the victim described Green's friends
20 as circling around him as Green asked him if he was sure
21 of his identification? Do you recall that?

22 A. Vaguely.

23 Q. Okay. And the CDs will reflect that, and I think
24 you mentioned this earlier, but the phone calls
25 themselves didn't come into evidence; is that correct?

DONALD COLONGELI - REDIRECT EXAMINATION

1 A. Correct.

2 Q. So it was the victim's statements about the phone
3 calls.

4 A. Correct.

5 Q. And then on page 199, this is the playing of the
6 redacted tape. You actually did object to the statement
7 referring to Green's background; isn't that correct?

8 A. Correct.

9 Q. And the judge noted your objection and said, I
10 don't perceive an issue there; is that correct?

11 A. It appears that way. I asked that he preserve it
12 for the record.

13 MR. NEELY: That's all the questions I have,
14 Your Honor.

15 THE COURT: All right. Yes, redirect?

16 REDIRECT EXAMINATION

17 BY MR. SHAFFER:

18 Q. Related to 199, you said that you objected to
19 information about the background; is that correct?

20 A. Correct.

21 Q. Okay. Now, did you make a Fifth Amendment
22 objection as well based off of the -- based off of the
23 him -- why would Brandon Parker lie? Did you make any
24 objection, constitutional objection, based off of that?

25 A. I'm sorry, as to what?

1 Q. There appears to be a statement --

2 MR. SHAFFER: Your Honor, perhaps we should
3 review the audio recording. It would probably give more
4 context to the next question I ask.

5 THE COURT: Okay. Okay.

6 MR. SHAFFER: Your Honor, I'll rest --

7 THE COURT: I got you, but let me ask you
8 this question: There's been a bit about the phone calls,
9 whether they came from Atlanta, whether there was an
10 objection in who he was speaking with, and it's my
11 understanding it's the position of Mr. Green that the
12 victim could not identify Mr. Green; is that correct?

13 MR. SHAFFER: As the phone caller, yes, Your
14 Honor.

15 THE COURT: But -- so look at page 122, line
16 17. Do you see what I'm talking about?

17 MR. SHAFFER: Yes, Your Honor, I believe --
18 and I was looking at that, and I believe that what he's
19 referring to, that he had a conversation that took place
20 with Mr. Green, that took place at the apartment. I
21 think they were talking about when he actually came to
22 the apartment asking questions.

23 I don't think that that refers to the phone
24 call, Your Honor. I may be incorrect about that, but --

25 THE COURT: Well, but it looks like it's two

1 different events, because at line seven, it says:

2 Was there an occasion? Can you explain to
3 the jury the circumstances surrounding contact with
4 Mr. Green?

5 Yes. We had a conversation. Mr. Green came
6 and saw me, had a conversation.

7 Came and saw you where?

8 At Shell Point Apartments.

9 Is that where you live?

10 That's where my fiancee stays. There's her
11 permanent residence.

12 Okay. They're done. Okay. Did you receive
13 any telephone calls at that time?

14 At that particular time, a couple.

15 Okay. And then you had this conversation
16 with Andre Green that took place at this apartment?

17 Yes, sir.

18 So what you're saying is that there's a
19 reference to phone calls, and you think that he's talking
20 only about having seen Mr. Green there, but there's no
21 inference at that point that the phone calls were from
22 Mr. Green?

23 MR. SHAFFER: That is correct, Your Honor. I
24 believe that --

25 THE COURT: Okay. All right.

1 MR. SHAFFER: I would probably refer to --
2 I'm referring specifically to 124, and it goes more in
3 detail about that, about the phone calls.

4 THE COURT: Okay.

5 MR. SHAFFER: And, Your Honor, at this point,
6 what I'll do is wait until we get the recording probably
7 to go any further.

8 THE COURT: And, Mr. Neely, do you have any
9 witnesses other than Mr. Colongeli?

10 MR. NEELY: I don't believe so, Your Honor.
11 I think most of the evidence is regarding the transcript.

12 THE COURT: Okay. Well, you can sit while we
13 see what's going on, either there or back at the table,
14 whichever place you would prefer.

15 (Whereupon, the CD was played.)

16 MR. SHAFFER: Your Honor, I could replay --
17 I'm not sure if you heard everything clearly or not.
18 There were some parts I would like to highlight, and
19 I won't go through them if you don't need me to, but from
20 about 5:20 to about nine minutes the officer was saying
21 that the victim and the codefendant's statements are
22 consistent with each other during that time period.

23 At about 1545, somewhere in that range, the
24 officer said something to the effect that, Why would
25 Brandon, the codefendant, lie? That came back up around

1 2230, Your Honor, and I guess that's in Applicant's
2 Exhibit 1.

3 I'm happy to replay sections if the Court
4 needs me to, but, obviously, it's a long audio, so I'm
5 not sure if you actually need me to do that or not.

6 THE COURT: I heard what you were talking
7 about very clearly, and I heard the depiction by the
8 officer of the statements, particularly the statement by
9 whoever Brandon is, I gather the codefendant.

10 MR. SHAFFER: That's correct, Your Honor.

11 THE COURT: And I did hear what you have
12 described.

13 MR. SHAFFER: Okay.

14 THE COURT: What I did not hear, and I want
15 to be clear, is that at no point did I hear Mr. Green
16 agree with what the officers were saying, at any point.

17 MR. SHAFFER: That's correct, Your Honor. He
18 did not -- at no point was there a confession where he
19 actually said he did it.

20 THE COURT: Yeah, he did not.

21 MR. SHAFFER: Other than him saying he had
22 gotten a ride from these people, placing him at the
23 scene, but other than that --

24 THE COURT: But then he puts himself at the
25 basketball court, getting out of the vehicle.

1 MR. SHAFFER: Yes, Your Honor. He's said he
2 was with them beforehand and then left.

3 THE COURT: And then got out at the
4 basketball court, as I recall, or what I could hear.

5 MR. NEELY: And just for the record, Your
6 Honor, State is stipulating to that coming in. Any
7 exhibit at trial the State is fine with coming in.

8 THE COURT: Okay. All right.

9 MR. SHAFFER: And, Your Honor, that would
10 have been Plaintiff's Exhibit 4 at the trial. That's how
11 it's marked, as State's Exhibit 4 at the trial. I'd like
12 this to be Applicant's Exhibit 1, if possible, and I'm
13 not sure how you want to handle that logistically.

14 Do you want to take it from the original file
15 or do you want to actually mark it again? I've had
16 judges do it different ways. I've had them mark the
17 exhibit from the first trial and then transfer it over to
18 the clerk's office.

19 THE COURT: Yeah. It needs an additional
20 sticker, and just mark it as a part of this file.

21 MR. SHAFFER: Thank you, Your Honor.

22 THE COURT: I don't want to obliterate the
23 trial sticker, just put an additional one on there.

24 (Applicant's Exhibit 1 marked for
25 identification and admitted into evidence.)

1 MR. SHAFFER: Yes, Your Honor, and I believe
2 the State also wanted these other two in, which we would
3 stipulate to. This would have been State's Exhibit 3 at
4 trial and State's Exhibit 5 at trial. It's a 911 call,
5 and then I believe the victim's statement.

6 MR. NEELY: That's correct, Your Honor, and I
7 believe the victim came in after the alleged incident
8 between himself and Green and made a statement to law
9 enforcement.

10 THE COURT: You want me to listen to that?

11 MR. NEELY: I think you can listen to it on
12 your own.

13 THE COURT: I would rather do it now. I
14 don't want to take it with me, and the clerk said it's
15 very difficult for -- they don't have the equipment to
16 reproduce it, so I think I could go ahead and listen to
17 it now. And how long is the statement, do y'all have any
18 idea?

19 MR. NEELY: I have no idea, Your Honor. It
20 just says statement plays, and I have no idea.

21 THE COURT: You want me to hear both of them?

22 MR. NEELY: I think just the victim's
23 statement.

24 THE COURT: You want me to listen to just the
25 victim's statement?

DONALD COLONGELI - CONTINUED CROSS-EXAMINATION

1 MR. NEELY: I don't think the 911 has
2 anything particularly probative.

3 THE COURT: Okay. And, just for the record,
4 this would be the State's Exhibit, I guess, 1, and the
5 it's also trial Exhibit No. 5 -- thank you -- for the
6 State.

7 That was the end of it?

8 MR. NEELY: I think after that it was just
9 them talking together. There was three phone calls in
10 the meeting.

11 MR. SHAFFER: This would be trial Exhibit 5.
12 I think the State is moving it in as State's Exhibit 1
13 for this hearing.

14 (State's Exhibit 1 was marked for
15 identification and admitted into evidence.)

16 THE COURT: Okay. Do you want Mr. Colongeli
17 to come back around so you can ask him about parts of the
18 tape?

19 MR. SHAFFER: Yes, ma'am.

20 THE COURT: All right. Come on back, Mr.
21 Colongeli.

22 BY MR. SHAFFER:

23 Q. Mr. Colongeli, you were in court whenever you
24 heard -- when we played Applicant's Exhibit 2, correct?

25 A. Yes, sir.

~~DONALD COLONGELI - REDIRECT EXAMINATION~~

1 Q. Do you recall whether you listened to that before
2 it was played to the jury?

3 A. I've had a moment to look at the transcript, and
4 it appears that I did not.

5 Q. Okay. After having another chance to review this,
6 did you see any Bruton objections or Sixth Amendment
7 confrontation clause objections?

8 A. It appears there may have been, and, as I said
9 previously, I counted on Mr. Hall, who was the solicitor
10 trying the case at the time, to honor the redactions that
11 we had specifically addressed, and it appears that that
12 was not the case.

13 Q. Okay.

14 MR. SHAFFER: No further questions.

15 THE COURT: All right. Yes, sir?

16 REDIRECT EXAMINATION

17 BY MR. NEELY:

18 Q. Just to reiterate, you did actually object to the
19 portion of the tape that you found objectionable?

20 A. I did.

21 Q. And just as way of background, was there a plea
22 deal offered in this case?

23 A. There was.

24 Q. What was the plea deal?

25 A. Twelve years.

1 Q. And what did -- I believe it's 14 years, the
2 active time that Mr. Green got at trial?

3 A. I believe it was 12 years, concurrent, 30
4 suspended on 12 for the kidnapping, and 12 on the other.
5 I remember there was a great deal of discussion and
6 actually a post-trial motion, what I consider to be a
7 compromised verdict, because they obviously found him not
8 guilty on the most serious offense of armed robbery, but
9 that was argued and ruled upon in a post-trial motion,
10 but he was very fortunate. He ended up with the same
11 sentence that was the recommendation prior to going to
12 trial.

13 Q. And did you have any conversations with Mr. Green
14 about that plea deal?

15 A. Extensively.

16 Q. And what were those conversations?

17 A. As I recall, this was a very troubling case to me.
18 I had spent a great deal of time on it. I was Court
19 appointed. I felt a great deal of sympathy for Mr. Green
20 to the extent I had my own feelings as to what actually
21 occurred. It was not a legal defense that I could bring
22 as far as trial went, but I had my own ideas of what
23 really happened, and I do recall that Mr. Green's issue
24 with not considering any sort of plea was that he had
25 just finished an incarceration on the armed robbery that

1 was mentioned that was prior to this, and there was no
2 way he could fathom the idea of going back.

3 So we discussed that at length, based on what I
4 thought to be the substantial possibility of a guilty
5 verdict on at least one of these offenses, but we did
6 speak about it a great deal.

7 Q. And you said that was -- just to clarify, you said
8 the armed robbery that was mentioned. The armed robbery
9 was never mentioned. The only word that was mentioned
10 was background.

11 A. That's right, that's what I meant.

12 Q. Would you say the strongest piece of evidence that
13 linked Mr. Green to the crime was him placing himself in
14 the vehicle and the victim's consistent story that there
15 was two people in the vehicle, one of who he consistently
16 identified as Brandon, his codefendant, and the other
17 person had the gun?

18 A. Correct, correct.

19 MR. NEELY: All right. That's all the
20 questions I had, Your Honor.

21 THE COURT: Yes?

22 MR. SHAFFER: Nothing further, Your Honor.

23 THE COURT: Okay. Just so I'm clear, I
24 don't -- I'm not clear about which question you have
25 answered, because there's two: Number one, did you

1 listen to the audio statement of your client?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And did you listen to the audio
4 statement of your client as it was to be redacted? In
5 other words, I thought that the question that Mr. Shaffer
6 just asked you was did you listen to the statement.

7 THE WITNESS: I did listen to the statement,
8 yes.

9 THE COURT: So you listened to it originally?

10 THE WITNESS: Yes.

11 THE COURT: And so your answer was that you
12 had not listened to it redacted?

13 THE WITNESS: Correct.

14 THE COURT: Got you.

15 THE WITNESS: And that's actually on page --
16 it's discussed on page 326 where there was some
17 discussion where it happened at the last minute. It was
18 suggested by the Court to me that I listen to that during
19 lunch, and I did admit to the Court and gave reasons why
20 I had not done that.

21 THE COURT: Okay. Got it.

22 THE WITNESS: But as Mr. Neely has stated,
23 the objection was made, and that's clear by the
24 transcript.

25 THE COURT: Okay. Does that prompt questions

—DONALD COLONGELI - RE-CROSS-EXAMINATION—

1 from either of you?

2 MR. SHAFFER: One or two.

3 THE COURT: Okay.

4 RE-CROSS-EXAMINATION

5 BY MR. SHAFFER:

6 Q. You said the objection was made. You made an
7 objection -- you didn't make a constitutional objection
8 on the Sixth Amendment, correct? You didn't make a
9 Bruton objection?

10 A. Specifically, no.

11 Q. Okay.

12 MR. NEELY: Nothing from the State, Your
13 Honor.

14 THE COURT: Thank you. Thank you very much.
15 And is this witness free to leave?

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: Any objection?

18 MR. SHAFFER: No objection.

19 THE COURT: Thank you, Mr. Colongeli.

20 THE WITNESS: Thank you very much. Good
21 seeing you. Have a good day.

22 THE COURT: All right. Anything further?

23 MR. SHAFFER: Applicant rests, Your Honor.

24 We would have a brief argument.

25 THE COURT: Sure.

1 MR. SHAFFER: Your Honor, I believe that what
2 you heard was a Bruton violation, Your Honor. Clearly,
3 parts of that should have been redacted but weren't. I
4 think, based off of the statement as it was played, a
5 jury reasonably could have inferred that the codefendant
6 was identifying him and telling a consistent story with
7 the victim, which is clearly what the officer said on the
8 tape is that, you know, the codefendant is telling a
9 consistent story. I think clearly that falls under the
10 realm of the Bruton violation.

11 It should have been objected to. Perhaps,
12 you know, trial counsel intended to object to it, but --
13 you know, he may have intended to object to it or
14 depended on the State to actually redact that portion
15 out, but it was not redacted out, clearly. There is a --
16 you know, there is information in there, so I think that
17 is deficient performance not to -- first of all, not to
18 actually, you know, review the statement before it was
19 played to the jury, and then, under ground three, not to
20 make the objection to it, Your Honor.

21 I think it's a violation of his right to
22 confront the witness, and, you know, obviously he said he
23 made an objection, but he made an objection that didn't
24 relate to Bruton or the Sixth Amendment, Your Honor. I
25 think his objection probably wouldn't have been -- that

1 issue wouldn't have been preserved for an appeal based
2 off the objection he did make saying that, you know, he
3 was talking about his background.

4 Well, his background is a separate ground
5 that would probably be a 404(b) violation, not a Sixth
6 Amendment violation, Your Honor.

7 THE COURT: Yes, sir?

8 MR. NEELY: Specifically, on what Mr. Shaffer
9 has categorized a Bruton issue, law enforcement never
10 said what the codefendant's story was, and my
11 recollection is that the only part of the victim's story
12 the officer testified to was he got road rash and was put
13 in the trunk, and there wasn't any specifics.

14 He was asking Mr. Green for a response to
15 what he did, and Mr. Green placed himself in the vehicle.
16 I believe the evidence is fairly, to me, damning in that
17 you have a victim who identified Mr. Green shortly after
18 at the scene and, from the audio that you heard, said he
19 was absolutely sure it was him, no doubt about it.

20 And then you have these interactions,
21 consistent interactions, that are absolutely witness
22 tampering and attempting to get the victim to withdraw
23 his story, which he attempted to do and at trial refused
24 to identify Mr. Green; however, as the solicitor pointed
25 out in his closing argument, even though the victim

1 refused to identify Mr. Green at trial, his story stayed
2 mostly consistent in that there was two people in the
3 vehicle, one of whom was Mr. Green's codefendant, and he
4 wouldn't identify the second person, even though he
5 identified that person as Mr. Green from the photo
6 lineup.

7 His story was that the second person had the
8 gun, the second person initiated the robbery, and
9 Mr. Green placed himself in the vehicle, and there was
10 only ever three people in the vehicle: Mr. Green, the
11 codefendant, and the victim. Mr. Green was, in fact,
12 identified not only through the photo lineup, but also
13 through the testimony at trial, and, in fact, we have the
14 confession from Mr. Green to the victim whenever he came
15 to his house. I believe the victim's words from
16 Mr. Green were -- beg the Court's indulgence.

17 THE COURT: Okay.

18 MR. NEELY: The victim said that Mr. Green
19 said, I just want to clear this problem. Brad put me up
20 to this. Brad said you were a drug dealer. I didn't
21 know you were just a regular dude. I'm sorry I did this,
22 and, to me it's very clear what happened, and that
23 statement completely goes against Mr. Green's statement
24 he gave that he had been dropped off at the basketball
25 court.

1 THE COURT: Yes, sir?

2 MR. SHAFFER: Your Honor, the only thing I
3 would do is cite to State v. Henson, which is a fairly
4 recent Bruton case from the Supreme Court. It's 407 S.C.
5 154. I would just ask that the Court review that.

6 THE COURT: All right. Tell me why.

7 MR. SHAFFER: Your Honor, basically, in that
8 case it's more or less related to whether or not what
9 constitutes a Bruton issue. It's not just -- it doesn't
10 have to be that he has to say, well, Andre Green did it.
11 It can be averred based off the context of the statement
12 as to who the codefendant is talking about, and in this
13 case, I think that when you're saying, Well, Brandon told
14 a consistent statement. The defendant told a consistent
15 statement to the victim, and they, you know, put you,
16 here and why would he lie about it?

17 I think based off of that, even whenever they
18 start going into the victim's statement in there as to
19 what happened, it constitutes a Bruton violation at the
20 point that he said, hey, the codefendant's telling a
21 consistent statement.

22 He also said specifically, I think, that the
23 codefendant -- you know, when the victim was in the trunk
24 of the car, the codefendant says, You're driving. That
25 came out during the statement as well. I mean, clearly,

1 at that point, the kidnapping -- the codefendant is
2 saying, through the cop, he's saying my client was
3 actually the one driving and participating in the
4 kidnapping, Your Honor.

5 THE COURT: So -- all right. So assume for
6 the moment, for purposes of argument, deficient
7 representation on that issue, prejudice.

8 MR. SHAFFER: And, Your Honor, I think you
9 would have to look at prejudice under the beyond a
10 reasonable doubt standard, and, you know, I don't think
11 you can say, whenever you have a victim who doesn't
12 necessarily identify my client in the courtroom, that
13 having this codefendant, who testifies through the cop,
14 this Bruton violation is harmless beyond a reasonable
15 doubt.

16 I don't think you can say that. I mean, you
17 know, the State's then going to present arguments other
18 than that, but, really, this boils down to a credibility
19 statement that, you know, the victim saying, Hey, I
20 talked to the defendant, but, really, it sort of comes
21 down to the victim's credibility as to whether or not
22 Mr. Green was involved in this case or not, and, you
23 know, if it's down to the victim's credibility and he's
24 telling two different versions, or not really two
25 different versions, but failed to identify my client in

1 court, I think at that point, certainly, you know, that
2 statement from the codefendant would be -- would
3 potentially prejudice my client.

4 MR. NEELY: Just two points, Your Honor.

5 THE COURT: Okay.

6 MR. NEELY: First, that case is 2014, and
7 this trial occurred in 2012, so you can't -- trial
8 counsel is not expected to be clairvoyant and anticipate
9 future decisions that come down and object on bases that
10 aren't legally standing, and, second, I disagree with the
11 assertion --

12 THE COURT: So the 2014 case, did it clarify
13 the law or did it establish the law?

14 MR. NEELY: I think it's clarifying Bruton.

15 THE COURT: Okay.

16 MR. NEELY: But it is changing what Bruton
17 covers.

18 THE COURT: Okay.

19 MR. NEELY: But that aside, I don't think
20 this is a Bruton issue. I think everything the officer
21 testified to was the victim's story. So this is not the
22 codefendant's story coming in through the officer, this
23 is the victim's story the officer has used. The victim
24 places the second person behind him. He places Brad in
25 the passenger seat, and the second person behind the

1 driver's seat, so this is not the codefendant's statement
2 coming in, this is the victim's statement coming in, and
3 the victim was there to be cross-examined, and he was
4 fairly cross-examined, so this is not a Bruton issue.

5 THE COURT: Yes, sir?

6 MR. SHAFFER: Around 1530 of the
7 transcript -- and these are pretty much what the officer
8 said. You were in the trunk of the car -- I mean, the
9 victim was in the trunk of the car, and Brandon -- and he
10 was trying to figure out which way you were going, based
11 off the turns you were making. And the cop says, Brandon
12 says you were driving, and that's almost directly what
13 the cop said. I mean, clearly, the cop's bringing in
14 statements from the codefendant for that purpose, Your
15 Honor.

16 Your Honor, I don't think -- I cited Henson.
17 Obviously, Bruton is much older than that, all the way
18 back to '68. I don't think it substantially changed
19 anything. I just cited it as probably the most recent
20 case I can think of.

21 THE COURT: Okay..

22 MR. SHAFFER: Your Honor, my client has
23 indicated he has been needing to go to the bathroom for a
24 couple of minutes.

25 THE COURT: I'm so sorry. We'll take a break

1 so he can continue that, absolutely.

2 (Recess taken.)

3 THE COURT: All right. Let's talk about this
4 case, State versus Henson, 754 S.E.2d 508, 407 SC 154,
5 it's a 2014 case. I want to talk about it with you all.

6 Clearly, there is concern addressed by the
7 Court in the Henson case that a confession, even though
8 redacted, that, through inference incriminates a
9 codefendant violated the confrontation clause. That's
10 not what we have here.

11 What we have here is we have a law
12 enforcement officer who is articulating what the law
13 enforcement officer maintains is a confession of the
14 codefendant's because what he says is, I know what
15 happened. I know these facts. I know what's going on.
16 I'm not going to BS you. I know what happened. Here's
17 what happened, and then he proceeds to give a scenario,
18 and he then goes in and certainly minimally, through
19 inference, if not directly, attributes the scenario that
20 he has just been over with the applicant is that he
21 attributes that to his codefendant.

22 So at trial, I don't know what got redacted,
23 but it doesn't appear that much, if anything, got
24 redacted, because the scenario as articulated by the law
25 enforcement officer is articulated by the defendant, so

1 even if you assume for purposes of argument that the
2 first prong is met, then the second prong you have to
3 deal with then, the second prong is, was it prejudicial,
4 and was it prejudicial in light of the evidence of
5 threats against the alleged victim?

6 I note that codefendant, neither
7 codefendant -- and I gather there were two codefendants,
8 one codefendant?

9 MR. SHAFFER: One codefendant, Your Honor.

10 THE COURT: Only one. I thought when y'all
11 initially began, there were two, but there was one
12 codefendant. That codefendant did not testify, so the
13 question is, is what is the effect of law enforcement's
14 articulation of the statement given by the codefendant?
15 What is the effect of that on the confrontation clause?

16 Mr. Neely?

17 MR. NEELY: Your Honor, my understanding, the
18 law enforcement can lie and do whatever they want in an
19 attempt to get a confession from a defendant.

20 THE COURT: I thought about that, and you are
21 correct, they can, and while the language basically says
22 while we think it's less than wonderful, we're not going
23 to disturb that as being a tactic that law enforcement
24 can use to obtain a confession, right?

25 We know that's true; however, that doesn't

1 mean that the statement that was given by law enforcement
2 is necessarily admissible.

3 MR. NEELY: That's correct, and I'm arguing
4 from a prejudicial side here, and I don't think that --
5 we don't have a confession of a codefendant that has been
6 put into evidence that -- it's being used against
7 Mr. Green.

8 What we have is a law enforcement officer
9 attempting to get a confession from Mr. Green, which he
10 consistently denies, although he does place himself in
11 the vehicle, so you're one step removed from a
12 confession, and the facts he uses are not a confession of
13 the crime itself.

14 The only thing that I think -- and I think
15 Mr. Shaffer mentioned this. The only part of the story
16 that can be attributed only to the codefendant and not to
17 the victim is placing Mr. Green in the driver's seat, or
18 saying you are the driver after the vehicle was
19 carjacked, saying, I know you were driving the vehicle,
20 and, again, that is a statement by law enforcement, not a
21 confession by law enforcement.

22 THE COURT: I know, so here 's the problem:
23 The problem is that's not a lesser deal in my mind. Why
24 isn't that a bigger deal? Because not only is it Bruton,
25 but it's hearsay. I mean, why isn't the confrontation

1 clause more offended rather than less offended?

2 MR. NEELY: Because he doesn't say --

3 THE COURT: Because even with the law
4 enforcement officer -- even if he was allowed to
5 cross-examine the law enforcement officer about a
6 statement, that's still violative of the confrontation
7 clause because the law enforcement officer is saying
8 that, This is what -- or inferring, This is what the
9 codefendant said, so even cross-examining the law
10 enforcement officer doesn't get to the codefendant.

11 MR. NEELY: Well, I really don't think it's
12 offered for the truth of the matter asserted. He's
13 trying to get the codefendant to say, Yes, I did it.
14 Yes, I was the driver, and all these statements that he's
15 making, he's attempting to elicit a response from
16 Mr. Green.

17 THE COURT: Oh, I know, and if he had
18 confessed, if Mr. Green had confessed, then none of that
19 other stuff would have been needed. Take it out. You
20 just have the confession, and you don't get to all the
21 other stuff, if you will, the other Bruton, if you will,
22 for lack of a better term at this moment. You don't get
23 to that because you just then have the confession. You
24 see what I'm saying?

25 Then you just get him talking, and you have

1 the confession, and all that, if you will, work that's
2 been done by law enforcement really isn't admissible at
3 that point because that was just used to get him to
4 confess, so that comes in, but the rest of it doesn't
5 come in, or what law enforcement says then is adopted by
6 the defendant, and then it's no longer hearsay. It comes
7 in as non-hearsay by the rules.

8 So my concern is that in this instance, why
9 then isn't -- the articulation by law enforcement of the,
10 quote, unquote, confession by the codefendant, why is
11 that not more of a problem rather than less than a
12 problem? Because we don't even know that -- there wasn't
13 even evidence before the jury that the codefendant even
14 said that, those things.

15 MR. NEELY: Right.

16 THE COURT: Right?

17 MR. NEELY: And I think part of it is you
18 can't have the codefendant's response to law enforcement
19 without law enforcement's question, because --

20 THE COURT: But we don't have that, because
21 the codefendant didn't testify.

22 MR. NEELY: No, sorry. Mr. Green's response,
23 because law enforcement is consistently asking Mr. Green
24 questions, and he's consistently getting pieces of the
25 story:

1 (Yes, I was there.

2 First, he said, No, I wasn't there. I didn't
3 have anything to do with it. Then he said, I was there
4 at the apartment complex, and then we were driving along,
5 carjacking -- he didn't have anything to do with that,
6 didn't have anything to do with that. I got dropped off
7 at the basketball court.

8 But before he says basketball court, he says,
9 I think two or three times, carjacking, kidnapping, armed
10 robbery, I didn't have anything to do with that. I
11 didn't have anything to do with that, and you can't have
12 those answers from Mr. Green without law enforcement's
13 assertion of this is what happened.

14 What did you do?

15 And he's, like, Well, this is my story. This
16 is my story, and so they put Mr. Green's story together.

17 You have to have law enforcement's questions
18 and assertions.

19 THE COURT: But he never confesses. All he
20 says is -- the closest he gets is, I was dropped off at
21 the basketball court. I didn't participate in the rest
22 of that. None of that involves me. None of that
23 involves me.

24 So here's where I am: I think that all of
25 that was objectionable. I think that -- and I'm not

1 absolutely clear, but I think perhaps Mr. Colongeli
2 thought that that was the portion that was being
3 redacted, but he didn't object, and he didn't object on
4 the confrontational clause, so assume for the moment that
5 it was deficient performance. Is it prejudicial?

6 MR. NEELY: I would argue it's not
7 prejudicial for a few separate reasons.

8 I think that the biggest reason that it's not
9 prejudicial is even though we don't have a confession,
10 per se, by Mr. Green to law enforcement, we do have a
11 confession of him placing himself in the vehicle, in the
12 ride with Brad. I know who Brad is. I've seen the
13 victim around. I know who he is, and so you have that to
14 law enforcement. And then, later on, you actually have a
15 confession of Mr. Green, and Mr. Green confesses to the
16 victim, whenever he goes to the victim's house.

17 THE COURT: Okay.

18 MR. NEELY: And he says, I'm sorry I did it.
19 I thought you were in the streets. I didn't realize you
20 were a stand-up guy. I thought you would be cool with,
21 you know, getting robbed at gunpoint and carjacked.

22 And so he says, I'm sorry, and he kind of
23 pushes on him, Hey, man, you need to drop these charges.
24 It's no big deal. Drop these charges, and he has two
25 friends circling around the victim while this

1 conversation is taking place.

2 I don't think it was unclear to the victim at
3 all what was taking place and that he was trying to
4 strong arm the victim into trying to drop the case, and I
5 think that came off very clear in the audio and came off
6 very clear to the jury, and I think it absolutely
7 explained why the victim refused to identify Mr. Green in
8 the court and point him out and saying, This is who did
9 it; however, the victim's story was consistent in that
10 there was two people, one of whom was definitely Brad,
11 and Brad was actually in the county detention center for
12 the entirety -- since the arrest, whereas Mr. Green was
13 out and about and harassing the victim.

14 So you can easily deduce why the victim said,
15 Brad was definitely there, but the guy that he ID'd at
16 the photo lineup, I don't know about that guy, and even
17 whenever he's backing off that story, or trying to back
18 off that story, when he's talking to law enforcement, he
19 says, I absolutely set up -- I knew it was that guy
20 without a shadow of a doubt. It was that guy, but now
21 I'm doubting my story, and it's very clear why he's
22 doubting his story.

23 He's receiving threatening phone calls, and
24 he's getting visited by Mr. Green who says, I know where
25 you live and where his family lives, and he even

1 references that.

2 He says, I'm not concerned for myself, but
3 I've got a family, and law enforcement tells him to man
4 up, but that's difficult to do. He didn't sign up for
5 this. He wasn't a law enforcement officer that knew what
6 he was getting into.

7 THE COURT: We got to vote.

8 MR. NEELY: Right.

9 THE COURT: Right.

10 MR. NEELY: And so you've got obvious victim
11 harassment, which the jury is allowed to use to infer a
12 guilty conscience.

13 THE COURT: I agree with all that. That, I
14 agree with, and that is -- I agree with that. I don't
15 have any problem with any part of that part of the trial,
16 I really don't, and I think that that part of the trial
17 certainly proves guilt. I do.

18 The question that I have is when you look at
19 the Henson case and you look at the evidence before the
20 Henson case, then I am concerned about the failure to --
21 the failure to object on the -- and the preservation of
22 the argument regarding the confrontation clause because
23 in the Henson case, the evidence is quite strong outside
24 of the Bruton --

25 MR. NEELY: I would point out, Your Honor, I

1 think one thing that distinguishes the State v. Henson
2 case is notably when it's talking about the prejudicial
3 prong in the Henson case, it notes other than the
4 co-conspirators, no witness was able to identify the
5 shooter, and so other than co-supporter's statements, no
6 one else was able to identify Henson, and that is near
7 the bottom -- using Westlaw, it's note six.

8 THE COURT: Okay.

9 MR. NEELY: In that paragraph.

10 THE COURT: Okay. Okay.

11 MR. NEELY: So in this case, we don't have --
12 the co-conspirator's identification is incredibly minor.
13 It's not saying he did it. He held the gun. I held the
14 gun. He was with me. We were doing it together.

15 The only -- it's a tertiary statement saying
16 he was driving the vehicle after it happened, whereas we
17 have a victim with an identification. You have
18 overwhelming evidence of guilt, I guess, is the second
19 prong, so I would argue, first, you have overwhelming
20 evidence of guilt with the victim identification, with
21 the witness tampering, with the confession of Mr. Green
22 to the victim, and his overall attempts to get him to
23 back off, and then you also have -- I think it's a minor
24 note. I don't think the jury would go back and say --
25 and use that as a key crux. To me, it boils down to did

1 the victim know who robbed him, and was his
2 identification and testimony true or not? And, if it is,
3 then I think that's the case, and if Mr. Green's tactic
4 of intimidating the witness and getting him not to point
5 out from the stand was correct, then I think that's the
6 defense's case, and the defense relied really heavily on
7 the fact he refused to point him out on the stand. In
8 fact, he asked for a directed verdict as soon as he
9 refused to identify Mr. Green from the stand.

10 THE COURT: All right. Thank you. Hold on
11 one second. We'll take a very short break. I'll be back
12 in ten minutes. Think about that, all right?

13 (Recess taken.)

14 THE COURT: All right. Now, yes, sir?

15 MR. SHAFFER: Your Honor, the only point I
16 was planning on making is that essentially the State
17 didn't have any evidence other than the victim's
18 testimony in this case to place my client as the one who
19 was actually involved in this -- well, at least none was
20 admitted at trial, except for the victim's testimony and
21 the statement saying that -- basically, the codefendant
22 said the exact same thing as the victim, and the
23 codefendant saw him driving the car, so I think, based
24 off of that, I don't think you can say that there's
25 overwhelming evidence of guilt. It's not like there was

1 DNA or a third party witness or any other evidence other
2 than, basically, the victim's statement.

3 You know, the State wants to use this
4 intimidation as consciousness of guilt, but the problem
5 is, all of that also depends on the victim's credibility
6 to the jury in this case. It's all related to the
7 victim's statement and what the victim is saying other
8 than the codefendant saying they got in through the
9 officer.

10 So I don't think there's overwhelming
11 evidence of guilt here, certainly not enough to get at
12 the heightened burden of a constitutional violation. I
13 don't think you can say that it's harmless beyond a
14 reasonable doubt in this situation because of that, so --

15 THE COURT: Well, that would be the appellate
16 standard. That's not the PCR standard.

17 MR. SHAFFER: I actually believe it is, Your
18 Honor. Whenever there's a constitutional violation, the
19 Sixth Amendment violation, there is a heightened standard
20 to what the prejudice problem is. It's not just that
21 there's no prejudice, it's was it harmless beyond a
22 reasonable doubt? The standard is heightened, Your
23 Honor, and I would refer the Court, I guess, to Henson.
24 They discuss that, I believe.

25 THE COURT: Hold on. I want to be clear. In

1 other words, this is PCR. You have to have, number one,
2 deficient; number two, prejudice. The burden is
3 different. No question if the error had been preserved
4 and appealed, then the Supreme Court could have found
5 beyond a reasonable doubt it was harmless error, right?

6 MR. SHAFFER: Yes.

7 THE COURT: The question for me, isn't it,
8 two-prong: Was it deficient? Was it prejudicial? In
9 other words, was it prejudicial -- in other words, ought
10 the Court be concerned that it wasn't raised and that it
11 interfered with the jury's determination? Do you think
12 it's different?

13 MR. SHAFFER: Your Honor, I believe that it
14 is. I believe there was a state rule related to, you
15 know, hearsay, for example. I think that the Court will
16 look at a normal, harmless -- that you would be
17 determining whether or not it was prejudicial, based off
18 of a normal, harmless error analysis. If it's a
19 constitutional violation, I think you have to make the
20 heightened standard that -- you know, it is the same
21 standard that appellate Courts would find under direct
22 appeal as well.

23 THE COURT: Okay.

24 MR. NEELY: I would disagree with that. I
25 think that the standard is very clear on a PCR. It's

1 outlined in Strickland, outlined in Cherry that there's a
2 reasonable probability that but for the error the result
3 of the proceeding would have been different.

4 THE COURT: That's what I think it is.

5 MR. SHAFFER: But, Your Honor --

6 THE COURT: That's easier for you. You're
7 making it harder for you. Why would you be doing that?

8 MR. SHAFFER: And, Your Honor, what I'm
9 saying is that it actually -- I'm saying that the
10 standard that you would have to look at -- well, I guess
11 is there a reasonable probability it would have been
12 different is correct, but in order to interpret that, I
13 guess I'm looking at it in the sense of if it would have
14 been preserved properly, then we wouldn't even have PCR.

15 THE COURT: Right.

16 MR. SHAFFER: It would have gone up to the
17 Court, presumably. There was an Anders brief filed in
18 the case, so the court of appeals would have looked at
19 it, and they would have said is this harmless beyond a
20 reasonable doubt, so they would have to say --

21 THE COURT: I understand what you're saying.
22 You jumped to it being an appellate issue.

23 MR. SHAFFER: Yes, ma'am.

24 THE COURT: I understand where you're coming
25 from, but, Mr. Shaffer, I'm going to ask for proposed

1 orders because I think it's two prongs. I think you deal
2 with two things. If you deal with this only as an
3 appellate issue, the preservation of the appeal, okay,
4 you are correct, you would have to prove that it would
5 make a difference on appeal, okay? Yes? We're together.

6 But there's another -- then there's also an
7 issue should the Court be concerned that it could have
8 made the outcome different at trial, different. That's
9 different. In other words, you have two things going:
10 One is on the appeal, and the other one is would the
11 trial have been any different, the result of the trial?
12 Should the Court be concerned that it had an effect on
13 the jury's determination as opposed to what would have
14 happened on appeal?

15 I agree with you, and I see where you're
16 coming from, but I see while you're correct -- I think
17 you're both correct, because I think it also impacts on
18 whether or not the Court ought be concerned that the
19 admission of the statement, if you will recall, the
20 Bruton statement, but is Bruton plus hearsay statement?

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: Whether or not it had an effect
23 on the outcome, and with that in mind, proposed orders.

24 MR. SHAFFER: Thank you, Your Honor.

25 MR. NEELY: Thank you.

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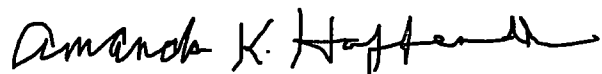
(Whereupon, the proceedings were concluded.)

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 5th of June 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 27, 2018



Circuit Court Reporter

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT

Andre Green, #283773,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

2014-CP-07-0359

ORDER OF DISMISSAL

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The above-captioned matter is before the court pursuant to a PCR application filed February 17, 2014. This Court convened an evidentiary hearing into this matter on June 5, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Tristan Shafer, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Donald Colongeli ("Counsel"), Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted at the December 2011 term of the Beaufort County Grand Jury for carjacking (2011-GS-07-2111) and kidnapping (2011-GS-07-2109). On April 25, 2012, Applicant proceeded to trial and was found guilty on the carjacking and kidnapping charges and found not guilty on the charges of armed robbery and unlawful carrying of a pistol. Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of twelve years for

carjacking and thirty years, provided upon the service of twelve years, the balance is suspended to five years' probation for kidnapping. The sentences are to be served concurrently.

Applicant filed a timely notice of appeal. His appeal was perfected by Carmen Ganjehsan (Appellate Counsel), Esquire, of the Office of Appellate Defense. Appellate Counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Green, No. 2014-UP-152 (S.C. Ct. App. April 4, 2014). The remittitur was issued on April 18, 2014.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Ineffective assistance of counsel.
 - a. Counsel was ineffective for not previously reviewing State Exhibit 4, a recorded interview of Petitioner and Sgt. Massey, and allowed a statement concerning Applicant's 'background' to be played.
 - b. Counsel was ineffective for allowing the solicitor to admit alleged hearsay phone calls to the victim without objection.
 - c. Counsel was ineffective for not objecting to the State playing the CD of the interview of Sgt. Massey.
 - d. Counsel was ineffective for failing to properly investigate and prepare an adequate defense.
 - e. Counsel was ineffective for failing to object to improper statements made by solicitor in his closing argument.

III. SUMMARY OF FACTS

On June 9, 2011, Dennis Boskey ("the victim") was robbed at gunpoint and forced into the trunk of his own car by two individuals. While the car was stopped, the victim managed to escape from the trunk of the vehicle and run away. Monica Wiser witnessed the victim getting out of trunk of a car and called 911. The victim contacted law enforcement and identified Brandon Parker as one of the assailants. Four days after the incident, the victim picked Applicant out of a photo line-up as the second of his two assailants. The victim told law enforcement

Applicant came to his house with two of his friends. They circled him while his children were playing nearby. And continued asking him questions threatened him and attempted to get him to recant his story. There were also phone calls to the victim saying he needs to drop the charges while threatening his family. At trial, the victim disclaimed the ability to identify Applicant as one of the perpetrators. However, the victim identified Applicant's codefendant and stated there was someone else in the car with the codefendant when he was robbed and kidnapped. Applicant gave a statement to law enforcement admitting he was in the car with Applicant and the codefendant. The victim said there were two people in the car and they robbed him, but would not testify Green was one of the people.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant's testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court further finds This Court dismisses Applicant's application for the reasons set forth below:

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668

(1984). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). An applicant must overcome this presumption to receive relief. State v. Cherry, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made." Id. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Counsel was ineffective for not previously reviewing State Exhibit 4, a recorded interview of Petitioner and Sgt. Massey, and allowed a statement concerning Applicant's 'background' to be played.

Applicant did not prove he was prejudiced by Counsel's failure to review the redacted recorded interview. Applicant alleges he was prejudiced by Counsel's failure to review the interview because the interviewing officer, Detective Massey (Massey), stated people might be trying to get him because of his background. Tr. 199. Counsel objected and was overruled by the trial judge. Tr. 199-200. The trial judge overruled Counsel's objection and stated he did not believe the statement was related to Applicant's criminal history. Tr. 200. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 670. In regards to Massey's statement about Applicant's 'background,' Applicant was not prejudiced by Counsel's failure to review the tape because Counsel objected to the statement and it was found admissible by the trial court. Applicant presented no evidence the trial court's decision would have been different if Counsel made his objection after reviewing the tape. Under Strickland, prejudice requires a reasonable probability the result of the proceeding would be different. Applicant failed to prove how the result of the proceeding would be different if Counsel reviewed the tape before objecting to Massey's statement. Therefore, Applicant's assertion he was prejudiced by Counsel's failure to review the tape is pure speculation. Mere speculation on potential prejudice does not satisfy the applicant's burden of showing prejudice. See State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. Therefore, Applicant has failed to prove he was prejudiced by Counsel's failure to exclude an admissible statement.

Further, this issue is not appropriate for PCR because Counsel appropriately objected and was overruled. "Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). Therefore, this issue was preserved for appeal and is not appropriate for PCR.

Accordingly, this Court finds this issue was preserved for direct appeal and, therefore, is inappropriate for PCR. This Court also finds Applicant failed to prove he was prejudiced by an admissible statement under Strickland. Accordingly, this Court denies and dismisses this allegation.

2. Counsel was ineffective for allowing the solicitor to admit alleged hearsay phone calls to the victim without objection.

Counsel was not deficient for not objecting to the alleged hearsay testimony, the threatening phone calls, because the testimony was not hearsay. Applicant alleges Counsel was deficient because he failed to object to the victim's testimony concerning threatening phone calls he received. Tr. 137-139; 151-154. The victim testified to phone calls he received threatening himself and his family if he testified against Applicant. Tr. 137-139; 151-154. The victim was then approached by Applicant who pressured the victim to drop the charges because Applicant thought the victim was a drug dealer. Tr. 122-123. After receiving those phone calls, the victim went to law enforcement to recant his statement and his identification of Applicant. State Ex. 4. The resulting meeting between the victim and law enforcement was recorded and, subsequently, played for the jury at trial. State Ex. 4. Despite his identification of Applicant via a photo-lineup after the incident, the victim denied being able to identify Applicant at trial as one of the two perpetrators. Tr. 119. The threats were not offered by the State to prove the truth of the matter asserted. The State did not attempt to prove the threats against the victim were real or would be

carried out. The State used the threats against the victim to show the victim's fearful mindset at trial. The State argued this fear was the reason for the victim's partial recantation and refusal to identify Applicant at trial. Tr. 228. Therefore, the victim's testimony was not hearsay because it was not offered to prove the truth of the matter asserted. Accordingly, Counsel was not deficient for failing to object.

This Court finds Applicant failed to prove Counsel was deficient for failing to exclude an admissible statement. This Court also finds Applicant failed to prove the alleged hearsay's exclusion would have created a reasonable probability of changing the outcome of the trial. Accordingly, this Court denies and dismisses this allegation.

3. Counsel was ineffective for not objecting to Investigator Massey's question to Applicant concerning his codefendant's confession.

Applicant failed to prove he was prejudiced by Massey's statement because the statement had miniscule prejudicial value when viewed against the entirety of the evidence against Applicant. Applicant alleges Counsel was ineffective for failing to object to Massey's questioning of Applicant concerning his codefendant. During a bond hearing, Applicant approached Massey and requested to speak with them. Tr. 196. During the following interview, Applicant admitted he was in the car with the victim and his codefendant, Brandon Parker ("Parker"). Tr. 204. However, Applicant claimed he left the vehicle before the robbery took place. Tr. 204. In response to Applicant's claim, Massey asked, "Why would Brandon Parker say [Applicant] was the one with him and the one who done these things, if he hadn't done it? What would be his motive to lie?" Counsel did not object to the question when it was played for the jury. Massey's question was not argued or mentioned by the State while questioning the witness or during the State's closing argument.

In Counsel's post-trial motion for a new trial, Counsel admitted he erred in failing to object to Massey's question. Tr. 334-336. This Court agrees and finds Counsel was deficient in failing to object to Massey's question. Therefore, this Court must examine whether Applicant was prejudiced by Counsel's deficiency to determine whether Counsel's error influenced the trial such that it created a reasonable probability the result of the trial would have been different had the question been cured or excluded.

This Court finds Applicant failed to prove Massey's question was so prejudicial that its exclusion or admission would create a reasonable probability the result of the trial would be different. Applicant confessed to the crime and identified his codefendant during a conversation with the victim. "I just want to clear this problem. Brad put me up to this situation. Brad said you were a drug dealer, I didn't know you were just a regular dude that goes to school and everything. My boys told me you was a good dude, and I'm sorry I did this." State Ex. 5. Applicant's confession and statement inculcating Parker as his codefendant severely minimizes the prejudicial significance of Massey's question. "[T]he admission of improper evidence is harmless where it is merely cumulative to other evidence." State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). In PCR, the burden is placed on the applicant to prove there is a reasonable probability, but for Counsel's unprofessional errors, the result of the proceeding would have been different. Butler, 286 S.C. at 334 S.E.2d at 818. Here, Applicant has failed to prove Massey's single question, which was cumulative to Applicant's confession, would have created a reasonable probability the result of the proceeding would have changed.

In State v. Brewer, 411 S.C. 407, 768 S.E.2d 659 (2015), reh'g denied (Mar. 5, 2015), the Court expressed concern with questions posed by law enforcement that contain hearsay. "[W]e would like to remind trial courts that the questions police pose during suspect interviews may

contain false accusations, inherently unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court." Id., at 408, 768 S.E.2d at 659. In Brewer, the interviewing officer frequently referenced and quoted witnesses and also insisted the defendant prove his innocence. Id., at 401, 406, 768 S.E.2d at 659. Here, the officer asked only one question, which implied hearsay, and the question was not referenced by the State again.

Applicant has failed to prove a reasonable probability that without Massey's mention of Parker's confession the jury would have found Applicant not guilty. Applicant apologized and confessed to the victim after Applicant was charged. He apologized for robbing the victim with Parker. Applicant's confession to the victim was corroborated by the victim's earlier photo line-up identification of Applicant. Applicant also gave a partial corroborating confession to law enforcement. He admitted he was the third person in the car with Parker and the victim the day of the robbery. The victim testified there were two men in the car other than himself. At trial, the victim identified Parker and claimed he could not identify the other man. However, the victim testified both of the other men in the car robbed him at gun point and forced him into the trunk of his own car. This Court finds Applicant failed to prove there is a reasonable probability the jury's decision would have changed if Counsel suppressed Massey's question regarding Parker's alleged confession. Excluding Massey's question, this Court finds the jury had overwhelming evidence, including Applicant's own confessions, admissions, and apology, from which it reasonably found Applicant guilty beyond a reasonable doubt.

This Court also finds the State's evidence against Applicant was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). As elucidated above, the State had the victim's

eye witness account of the incident, the photo line-up identification of Applicant, and Applicant's apology and confession to the victim. Further, the State had Applicant's recorded admission he was in the car around the time of the robbery.

Therefore, this Court also finds Applicant failed to prove Massey's mention of Parker's confession prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had it been suppressed. Further, the State had overwhelming evidence of Applicant's guilt. Accordingly, this Court denies and dismisses this allegation.

4. Counsel was ineffective for failing to properly investigate and prepare an adequate defense.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant did not prove anything of evidentiary value would have been found if Counsel had investigated further. Applicant alleged Counsel could have subpoenaed phone records to prove the threatening calls did not come from Applicant. The State never asserted the phone calls came from Applicant, but instead asserted they came from a number with an Atlanta, Georgia area code. The phone records would not have disproved the State's evidence or exonerated Applicant. Therefore, Applicant's assertion Counsel should have subpoenaed the phone records is without merit because they contained no evidentiary value. Mere speculation as to what would have been discovered during further investigation cannot, by itself, satisfy the applicant's burden of showing prejudice. See State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Applicant also failed to prove Counsel was deficient in his investigation and preparation for Applicant's trial. "To state the obvious: the trial lawyers, in every case, could have done

something more or something different. So, omissions are inevitable. But, the issue is not what is possible or what is prudent or appropriate, but only what is constitutionally compelled.” Chandler v. United States, 218 F.3d 1305, 1313 (11th Cir. 2000). Applicant has failed to prove Counsel’s preparation and investigation fell below the professional norms constitutionally required of Counsel.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate or prepare defense. This Court also finds Applicant failed to prove he was prejudiced by Counsel’s lack of investigation such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

5. Counsel was ineffective for failing to object to the solicitor’s statement regarding the victim’s failure to identify Applicant at trial.

This Court finds the solicitor’s statement did not vouch for the victim’s testimony because the solicitor did not vouch for the victim’s veracity. Applicant asserts Counsel was deficient for failing to object to the solicitor’s statement which vouched for the victim’s veracity. The solicitor argued: “It wasn’t a matter of Dennis Boskey not being able to identify Andre Green as the person that did this, but it’s simply that he wouldn’t, because he’s afraid to.” Tr. 229, ll. 12-15. “Improper vouching occurs when the prosecution places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity, or where a prosecutor implicitly vouches for a witness’ veracity by indicating information not presented to the jury supports the testimony.” Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 285 (2002).

Here, the solicitor’s statement did not vouch for the victim and was reasonably drawn from the facts in the record. After positively identifying Applicant’s codefendant, the victim identified Applicant from a photo line-up several days later. In an interview with law

enforcement, Applicant identified himself as the other man in the vehicle. Victim's failure to identify Applicant in court was after he received a threatening visit from Applicant and threatening phone calls from Atlanta. The solicitor argued the threats against Applicant should be taken into account when the jury decided which version of the victim's story to believe. Therefore, this Court finds Counsel was not deficient for failing to object where the objection would have been overruled.

Applicant has also failed to prove a reasonable probability that the solicitor's statement affected the outcome of his trial. The solicitor's statement merely argued the victim's first version of events was the accurate one. The jury heard the evidence of the threats against the victim. The jury heard the victim's first statement and identification of Applicant. They also heard the victim's interview with law enforcement. The jury was given the facts and had the sole responsibility to determine Applicant's guilt or innocence beyond a reasonable doubt. "The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror." Parrish v. Allison, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). Nothing in the solicitor's statement vouched for the victim's credibility. Therefore, this Court finds Applicant failed to prove the solicitor's statement was prejudicial under Strickland.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not objecting. This Court also finds Applicant failed to prove there is a reasonable probability that but for the solicitor's closing argument; the outcome of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION


Based on the foregoing, this Court finds and concludes Applicant, Andre Green, has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

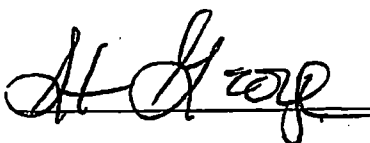
This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13 day of November, 2017.


 DIANE S. GOODSTEIN
 Presiding Judge
 14th Judicial Circuit

 , South Carolina

WITNESSES

A. Massey, Port Royal PD

ARREST WARRANT NUMBER

1261082

ACTION OF GRAND JURY

Burt Wolfe
Foreperson of Grand Jury
Date:

DEC 15 2011

VERDICT

Guilty

Manale Martin
Foreperson of Petit Jury
Date: 25 April 2012
INDICT

DOCKET NO. 2011GS0702109

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2011

THE STATE

vs.

Andre Green

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

A. Massey, Port Royal PD

DOCKET NO. 2011GS0702110

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2011

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

1261089

THE STATE

vs.

ACTION OF GRAND JURY

Andre Green

Eric Wolf
Foreperson of Grand Jury
Date: DEC 15 2011

Defendant

VERDICT

Not Guilty

Indictment for

Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Witness:

Marlene Martin
Foreperson of Petit Jury
Date: 25 April 2012
INDICT

SC Code: 16-11-0930(A)
CDR Code: 0139

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2011GS0702110

At a Court of General Sessions, convened on December 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

That on or about June 9, 2011, in Beaufort County, South Carolina, the Defendant, Andre Green, at Casablanca Circle, Port Royal, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Dennis Boskey with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WITNESSES

A. Massey, Port Royal PD

ARREST WARRANT NUMBER

1261084

ACTION OF GRAND JURY

Brett Welf
Foreperson of Grand Jury
Date: DEC 15 2011

VERDICT

Guilty

Maia Martin
Foreperson of Petit Jury
Date: 25 April 2012
INDICT

DOCKET NO. 2011GS0702111

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2011

THE STATE

vs.

Andre Green

Indictment for

Carjacking

SC Code: 16-03-1075(B)(1)
CDR Code:2599

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)


INDICTMENT
2011GS0702111

At a Court of General Sessions, convened on December 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Carjacking

That in Beaufort County, South Carolina, on or about 2011-06-09, the Defendant, did take or attempt to take a motor vehicle from [REDACTED] by force, violence or intimidation while [REDACTED] was operating the vehicle or inside of the vehicle; in violation of Section 16-3-1075(B)(1), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

A. Massey, Port Royal PD

ARREST WARRANT NUMBER

1261095

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Not Guilty

Lanika Workman
Foreperson of Petit Jury
Date: *20 April 2012*
INDICT

DOCKET NO. 2011GS0702112

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2011

THE STATE

vs.

Andre Green

Indictment for

Unlawful Carrying of a Pistol

SC Code: 16-23-0020; 16-23-0050(A)(2)
CDR Code: 44

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0702112

At a Court of General Sessions, convened on December 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Unlawful Carrying of a Pistol

That in Beaufort County, South Carolina, on or about June 9, 2011, the Defendant, Andre Green, unlawfully did carry about his person a handgun, described as follows: black handgun, in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor