

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Newberry County

Honorable R. Scott Sprouse, Circuit Court Judge

ANTHONY M. WISE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000635

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

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

ATTORNEY FOR PETITIONER

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 15-18, 2017	1
APPLICATION FOR POST-CONVICTION RELIEF	734
RETURN AND MOTION FOR MORE DEFINITE STATEMENT AND PARTIAL MOTION TO DISMISS	740
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	748
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 28, 2022.....	750
ORDER OF DISMISSAL.....	798
INDICTMENTS	815
SENTENCING SHEETS.....	821

1 think you guys--

2 A -- it was a little later around noon maybe.

3 Q So noon on Thursday, he leaves to go to the probation
4 office?

5 A Right. It might have been later than that.

6 Q Okay. So you're still in the room and you hadn't
7 checked out?

8 A Right.

9 Q Okay. What happens the rest of Thursday?

10 A Basically, an officer had came by at some point and
11 they told me, because I was wondering like where he was
12 at, because it's taking longer than it normally would take
13 for him to visit a probation officer. So, I basically
14 waited for him to come back and that's why I ended up
15 staying in the room, because I didn't know what was going
16 on.

17 Q All right. Well, an officer came by the hotel room?

18 A Right.

19 Q And did he speak to you?

20 A Yes.

21 Q What was the nature of that conversation?

22 A Basically, they just told me that they had Anthony
23 there and they were, I guess, asking him questions and
24 they wanted to know if I knew anything about something
25 that had happened in the area. And they like, if Anthony

1 might have any involvement or something like that, but it
2 was very brief.

3 Q Was it one of the officers who testified in the trial
4 or do you remember who it was?

5 A No. It's nobody that I remember seeing here.

6 Q Okay. Did they ask you any details about the night
7 before?

8 A No. They didn't go into too much detail. They just
9 told, asked me if I knew anything. And if I did, to
10 contact them.

11 Q Okay. When did you see Anthony again on Thursday?

12 A He came by later. I'm not exactly sure what time,
13 but it was like, it was pretty late.

14 Q I understand it's a little bit back there in time,
15 but do you remember what Anthony was wearing when you saw
16 him the day, Wednesday?

17 A I don't.

18 Q Have you seen Anthony in a black pullover sweatshirt?

19 A No.

20 Q Or a jacket?

21 A No.

22 Q Have you ever seen him with gray gloves?

23 A No.

24 Q Okay. Did he have yellow highlights in his hair at
25 that time?

1 A No. He had, I mean, if you consider yellow blonde.

2 Q Well, yeah. I mean blonde/yellow?

3 A Yes.

4 Q Okay. Was that fairly, it wasn't subtle, was it?

5 You could identify it pretty easily?

6 A Yes. But I have seen plenty of other people, I mean,
7 I've seen other people with it. But yeah, it's pretty out
8 there.

9 Q Well, since he probably does have them, let me go
10 ahead and ask you that. I'm from a family where we don't
11 have dreadlocks. How common are dreadlocks among young
12 black men in this community?

13 A It's very common. Almost everybody I know has
14 dreads.

15 Q And that's kind of become the common hairstyle --

16 A Yes.

17 Q -- among young men?

18 A Yes.

19 Q And you hang, I assume, with a fairly representative,
20 you got plenty of young, black male friends?

21 A I mean, not really. I have brothers and cousins,
22 really, and I have friends from like all kinds of
23 backgrounds and so, yeah.

24 Q Well, among your brothers and cousins, does anybody
25 have dreadlocks?

1 A Yes.

2 Q Okay. Well, what about highlights in their hair?

3 A Yes.

4 Q And I don't want to ask you a dumb question, but just
5 me if I ask you, you know. Do you know any black male men
6 with dreadlocks and possibly highlighted that would be
7 several young men that you could identify in that group?

8 A I couldn't say several. I mean, it's not something
9 that everybody does but.

10 Q But it's not rare or unique, is it?

11 A It's not rare.

12 Q Okay. All right. Well, Thursday at some point when
13 do you see Anthony again?

14 A When he came back from appeals office.

15 Q Okay. And do you remember what y'all did for the
16 rest of the day?

17 A We basically just spent time together.

18 Q Okay. Well, how was Anthony acting? Was he jittery?

19 A Not too much. He did tell me that they asked him
20 some questions. And I told him, you know, there's nothing
21 to worry about so.

22 Q So he was shaken by the interview with the police a
23 little bit?

24 A Somewhat, because he was in there for a while.

25 Q Okay. Did he talk to you about leaving town or going

1 anywhere?

2 A No.

3 Q What about the day beforehand, what was his demeanor?

4 A That Wednesday?

5 Q Yes, ma'am.

6 A It was pretty normal.

7 Q Okay. Well, it, would you describe it as a fairly
8 typical day for Anthony?

9 A Yes.

10 Q Is he a fairly, by demeanor, is he a fairly low-key
11 kind of guy or is he kind of loud and active, or what
12 would describe his kind of general characteristic to be?

13 A I mean, I think like anybody can get kind of loud
14 when they're in a certain environment, but he's really
15 low-key, like pretty quiet.

16 Q Has he ever told you before he was abandoned by his
17 mother?

18 A No.

19 Q Okay. So that would be news to you?

20 A Yes.

21 Q All right. Did you spend that night, Thursday night
22 in the hotel?

23 A Yes.

24 Q All right. Well, tell me about what happened Friday?

25 A Friday, I had to get ready for work. I had pretty

1 recently started working at Kraft, and so we got ready and
2 went to the store, got breakfast, and then headed over
3 towards Grants, so I could change and get ready for work.

4 Q All right. Well, tell me, something apparently
5 happened that day. Tell me about the rest of the day.

6 A Oh. Well, later that day, I mean, he had told me
7 that he had to go back to probation. So, you know, I had
8 to go to work a little bit later. I told him I'd go ahead
9 and go with him, you know, just to kind of bridge the gap.
10 So I went with him a little later in the day, and we were
11 in the taxi together. And the taxi, you know, was about
12 to drop us off by the courthouse, and then that's when we
13 both got out and the cops like kind of I guess you can say
14 it's called an ambush or something.

15 Q Who had the phone, the 404 phone?

16 A The 404 phone was in my possession.

17 Q Okay.

18 A I had both of our phones.

19 Q Do you recall how the police got the phones from you?

20 A The one phone was in my pocketbook, in my bag, and
21 the other phone was on the seat. And I had gotten out,
22 like we both had gotten out and that's when the cops came
23 and they, you know, and then they, I guess, just took the
24 phone.

25 Q So you were arrested almost immediately walking out

1 of the taxi cab?

2 A Right. I had just stepped out to the side and
3 Anthony had just got out, too, and it's like as soon as he
4 got out, then that's when they came.

5 Q Had you even paid the taxi the fare at that point?

6 A No. I think Anthony was in the process of paying
7 them.

8 Q Okay. Is it possible, well, on Wednesday, the 21st
9 when you were, when Anthony was at his cousin's house and
10 you were running errands, are you familiar with the Helena
11 part of town?

12 A Huh?

13 Q Do you know where the old Food Lion is?

14 A The old Food Lion.

15 Q You've heard everybody, the police and everybody talk
16 about this ATM machine --

17 A Right.

18 Q -- that was used. Do you know where that is?

19 A I think so. I mean, isn't this Food Lion still
20 there?

21 Q The old, the closed-down Food Lion section?

22 A Yes.

23 Q Do you know where that is off of Kendall Road?

24 A Right.

25 Q Okay. And is it possible you could have been within

1 a mile or a mile and a half of that location that day?

2 A It's possible and, like I said, I was driving with a
3 friend and we headed over that day, like passed.

4 Q Who is your friend?

5 A His name?

6 Q Yes. Well, what's his first name?

7 A Ernie.

8 Q Okay.

9 A He's actually a friend of the family so.

10 Q Okay. What kind of errands were you, paying bills
11 and type?

12 A Right.

13 Q I'm not asking specifically, but is it possible you
14 were within a mile or mile and a half of the Helena
15 section of town that day?

16 A Yeah. I'm sure we passed it.

17 Q Okay. Do you recall whether the taxi cab, what parts
18 of Newberry when you were in the taxi cab going to the
19 hotel that you could have gone through?

20 A I know we took, I'm pretty sure we took a left when
21 we left my road, but I don't remember from there. Because
22 I was basically in conversation with Anthony.

23 Q Do you recall when you came to the C.R. Koon Highway
24 in Newberry or when you were coming up 395 South?

25 A No. We had went by a Fast Stop, and then we went

1 down the road like in a neighborhood. I forgot what it's
2 called, like Nance.

3 Q The Fast Stop was on what street?

4 A On C.R. Koon.

5 Q Okay. All right.

6 MR. VERNER: The prosecutor is going to ask you some
7 questions about that day.

8 THE COURT: All right. Solicitor, any cross.

9 MR. SCOTT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 By Mr. Scott:

12 Q Laswan, you have not met me, have you?

13 A (No audible response.)

14 Q Do you recognize behind the TV?

15 A Yes.

16 Q Do you recognize this other guy right here?

17 A Yes. I'm sorry. Y'all kind of looked alike.

18 Q Do what?

19 A Well, you guys kind of looked alike, but yes I know
20 these two somewhat.

21 Q All right. Okay.

22 MR. VERNER: I'll stipulate, Your Honor, to that.

23 Q Well, do you remember when they came to your house
24 last week?

25 A Yes.

1 Q Okay. Well, what was your reaction when they showed
2 up to your door and they wanted to kind of talk to you
3 about this case?

4 A Well, I had just gotten out of the shower, so I saw
5 them out there beforehand. And at first, they approached,
6 they seemed friendly. But my reaction to them was just
7 neutral.

8 Q It was getting hot and you didn't feel like talking?

9 A It was getting hot.

10 Q Did you invite them inside to speak with you so you
11 could explain some things?

12 A My mom invited them inside.

13 Q Did you sit and talk with them?

14 A Outside.

15 Q This Kyocera do you recognize that? It's State's 61.

16 A Not really.

17 Q You don't recognize it?

18 A I have gone through a lot of phones so.

19 Q I'll let you hold it for a minute.

20 A Yeah.

21 Q Is it yours?

22 A I really don't know. I thought I had a white one.

23 Q Can you unlock it for me?

24 A No.

25 Q You can't?

1 A I don't even remember that phone to be honest.

2 Q You don't?

3 A No.

4 Q Okay. You don't want to try to unlock it for me?

5 A Like I say, I don't remember that phone.

6 Q You can still try to unlock it?

7 A How?

8 Q Would it be a surprise if it's a [REDACTED] phone?

9 A Like I say, I've been through a lot of phones.

10 Q You can unlock if you want, I mean, you don't
11 recognize the phone number?

12 A I recognize the phone number.

13 Q You said they took this phone out of your purse. You
14 remember that?

15 A Right.

16 Q You remember where you were that morning?

17 A I didn't say it was that phone. Like I said, I've
18 gone through a lot of phones. So all I know is that the
19 purse that was in, the phone that was in my purse, they
20 asked me to take out. And I do not, I don't remember if
21 it was that one or if it was a smaller one.

22 Q Okay. But you remember that they pulled it out of
23 your purse?

24 A They didn't pull it out of my purse. They told me to
25 take it out and give it to them.

1 Q Okay. So you had it in your hand and you handed it
2 to them?

3 A No.

4 Q Tell me how it happened?

5 A How, can you say that again?

6 Q How did you transfer the phone that was in your purse
7 to the officers, the one that was a [REDACTED] number,
8 the one you testified a minute ago was an Atlanta area
9 code? How did you transfer that phone to law enforcement?

10 A The one that was 944 was the one in my purse. The
11 404 one that's mine was on the seat where I was sitting.
12 And I had, it slipped out of my pocket onto the seat, and
13 so I had it on the seat.

14 Q But you don't recognize it anymore?

15 A No.

16 Q What's happened between now and then where you don't
17 recognize your phone?

18 A I've gone through like four or five phones since
19 then.

20 Q Okay. But you don't deny that a phone, [REDACTED],
21 belonged to you?

22 A Right. That is my old number.

23 Q Okay. I'm telling you right now it was testified to
24 earlier that phone number is linked to this phone.

25 A Okay.

1 Q Will you unlock the phone for me?

2 A I don't have a code or anything.

3 Q It was your phone. How did you used to get into it?

4 Please unlock it for us. Please unlock it for the jury.

5 MR. VERNER: Your Honor, that's asked and answered.

6 THE COURT: It has been.

7 Q So you're unwilling to unlock it?

8 A I don't know how to.

9 Q Okay. Explain to me how you don't know how to unlock
10 your own phone?

11 MR. VERNER: Asked and answered.

12 MR. SCOTT: She hasn't answered it.

13 THE COURT: I don't think that specific question has
14 been asked. I'll allow the Solicitor to ask that one
15 time. And give a response, Ma'am.

16 Q My phone has a four-digit number. Every time I open
17 it, I have to type in a four-digit number. Very easy.
18 And then I can make phone calls. I can check my text
19 messages. I can look at pictures. There's a lot of stuff
20 in there. You understand the officers were unable to
21 unlock that phone, because you wouldn't give them the
22 password at the time. Are you willing to do that today?

23 A I don't remember it. It's been over eight months
24 now.

25 Q Did you remember it that day when you talked to law

1 enforcement?

2 A No.

3 Q You, how does anybody use the phone? If you can't
4 use the password, how does anybody get to use that phone
5 or you just carry it around for looks?

6 A Well, honestly, I have a lot of different passwords,
7 and I did not set the PIN up.

8 Q Who did?

9 A My boyfriend did.

10 Q Okay. Who is your boyfriend?

11 A Anthony Wise.

12 Q Okay. So as a matter of fact, that phone, he used it
13 a lot more than you were letting on earlier? He is the
14 one who had the PIN number to it and you don't even know
15 what the PIN number is.

16 A I had a PIN number to it, and but he had changed it.
17 It was a personal thing.

18 Q Okay. That's interesting, wouldn't you say? It's
19 registered to you, but he has a PIN number. But you don't
20 even know it.

21 A Right.

22 Q Isn't that interesting? No?

23 A Not really.

24 Q Okay. Do you know a lot of people that they own
25 phones that they claim to be theirs that they don't have a

1 the PIN number to but a third-party has a PIN number to
2 it?

3 MR. VERNER: Your Honor, is this a hypothetical or,
4 but, I mean, he's allowed to ask her questions that she
5 has personal knowledge of the answer.

6 THE COURT: Now, she can respond and however. It's
7 cross-examination and getting a little latitude to the
8 State.

9
10 Q Laswan, I just want you to help us understand this.
11 Do you know other people where this is the situation; for
12 instance, I have a phone, I pay the bill, it's registered
13 to me. I can't use it because I don't know the password.
14 Taylor does, I can't use my own phone. He's the only one
15 that can use it. Do you know any other situations like
16 that?

17 A I don't know a lot of people.

18 Q You know Ernie. What's Ernie's last name?

19 A I am not sure. I think it's--

20 Q Roby, do you know Robbie?

21 A Yes.

22 Q Who's Roby?

23 A That's Anthony Wise's mom.

24 Q Okay. Would it surprise you to know that's his
25 grandmother?

1 A I'm sorry.

2 Q Would it surprise you to know that's his grandmother?

3 A Yes.

4 Q Would it surprise you to know he was adopted?

5 A No.

6 Q Okay. People have been saying abandoned. I don't
7 want to say abandoned, but he was adopted. Do you
8 understand what adopted means?

9 A Yes. But it was within the family so.

10 Q Roby, you've met her, because she wouldn't allow you
11 at [REDACTED] Meadow, Meadow or, yeah, that's what it is called,
12 Green Meadows Drive, would she? She wouldn't allow you---

13 A Is that a question?

14 Q My question is how did she feel about you coming to
15 her home?

16 A Actually, his father invited me to come stay with
17 them.

18 Q And then what happened?

19 A And then what happened was, you know, there were some
20 issues as far as work was concerned. And so I ended up
21 going back to where I stay normally.

22 Q They kicked you out? They called the law to get you
23 out of there, didn't they?

24 A No.

25 Q Let me show you something. See if this, August 6th,

1 about a month, a month and a half before this stuff,
2 September 21st. Read this and tell me if it, this
3 pertains to you.

4 A So what's your question?

5 Q Is that --

6 A What's your question?

7 Q Do you remember that? Do you remember that?

8 A Yes.

9 Q Okay. You were listed as an, the unwanted guest,--

10 A Uh-huh.

11 Q -- are you not?

12 MR. VERNER: Your Honor, and I think he's talking
13 about, one, a document I've never seen. And it sounds
14 like a hearsay document.

15 MR. SCOTT: No. I just asked her if she remembers
16 the incident.

17 A Well, I actually wasn't in the home at the time.

18 THE COURT: And wait a minute. Are you objecting to
19 this line of questioning? I don't know if the Solicitor
20 intends to offer it into evidence, but are you objecting
21 to the line of questioning?

22 MR. VERNER: Well, he's pretty much offered something
23 that I haven't seen and it would be, if he's going on the
24 report that she's going off of, then it's hearsay, because
25 it's an out-of-court statement. Even if it's a report,

1 it's still an out-of-court statement, Your Honor. If he's
2 going to talk about a police report, I would prefer, let's
3 just get out there. He's saying specifically what she's,
4 what happened or something like that and not try to hide
5 behind this, what we got a report. And if he's going to
6 say she did something or something happened, say it and
7 not --

8 THE COURT: Well, certainly, you can, in redirect, if
9 you feel---

10 MR. VERNER: I don't know anything about it, Judge.

11 THE COURT: Well, what's your plans with that
12 document, Solicitor?

13 MR. SCOTT: She's not allowed at the residence in
14 Meadows, Green Meadows.

15 THE COURT: Did she admit that?

16 MR. SCOTT: I don't think so, and I think she's kind
17 of answering---

18 THE COURT: Ask her again. Ask her again if she's
19 allowed at the Meadows Road location.

20 Q With all due respect, I think we know what, were you
21 allowed there?

22 A I've been there since then, so I'm not sure where
23 you're going with it.

24 Q Okay. Do you recall police being involved --

25 A Yes.

1 Q -- with your presence there? You do? Okay. Is it
2 fair to say that Roby didn't care for you to be there?

3 A No, not really.

4 Q All right. And she's called the police just for have
5 extra--

6 A -- there were some other things going on, so it
7 didn't necessarily have to do with just me.

8 Q You're listed as the unwanted guest, though, or were
9 they kicking Anthony out, too?

10 A I'm just wondering what this has to do with the case.

11 THE COURT: Just answer the question.

12 MR. VERNER: I am too, Your Honor, I don't how this
13 is relevant to what happened on September 21st.

14 THE COURT: I think there's been prior testimony
15 about people not being allowed at certain places. I'll,
16 it's cross-examination. I'll allow it.

17 Q Okay. So you weren't necessarily welcome there?

18 A Right.

19 Q All right. Anthony over at your home, your mother is
20 old-fashioned. She didn't particularly care for him to
21 spend the night?

22 A Right.

23 Q Isn't that what you testified to? Where was Anthony
24 living at the time?

25 A He went back and forth between my house and his.

1 Q Was he sneaking, is that how he would go to your
2 house? How would that happen?

3 A What do you mean?

4 Q Well, you testified your mother didn't care for him
5 to spend the night there --

6 A But I'm an adult so.

7 Q -- and I understand he slept there sometimes and
8 slept at his house sometimes. So how would it occur that
9 he would sleep at your home, would he sneak in?

10 A Like I say, I'm an adult and even though my mom
11 didn't particularly care for it, once I spoke with her,
12 she allowed it at times so.

13 Q Okay. And I'm just trying to get clear on that.
14 About how often would he stay at the Fox Briar house?

15 A Pretty regularly but --

16 Q Okay. Was that 50 percent of the time/60 percent of
17 the time?

18 A Well, at that time, he was working a lot. So,
19 sometimes, he would stay with his grandmother and
20 sometimes with his mom --

21 Q If I --

22 A -- and sometimes with me.

23 Q I'm sorry. I thought you said he had stopped
24 working?

25 A I'm sorry?

1 Q I thought you said he had stopped working?

2 A I'm saying the time that he was working, we didn't
3 spend as much time together.

4 Q Okay. Do you know why he stopped working?

5 A Because, well, I'm really not sure.

6 Q Okay. How was he getting money?

7 A I mean, it wasn't that long that he had stopped
8 working.

9 Q How long was it?

10 A Like some days, like less than a week.

11 Q Okay. And how was he getting money?

12 A For what period of time?

13 Q When he's unemployed?

14 A There wasn't that long a period where he wasn't
15 unemployed.

16 Q Okay.

17 A Where he was unemployed.

18 Q How was he getting money?

19 A From money that he made and also, I guess, his mom --

20 Q Okay.

21 A -- or me.

22 Q Roby?

23 A Right.

24 Q But he didn't have a key to his own house over there
25 at Roby's house?

1 A I'm not sure.

2 Q Well, didn't you testify earlier that he told you,
3 you remember that, you don't remember what your phone
4 looks like, that he told you that he had gone to get
5 clothes, but he couldn't get inside his house?

6 A Right.

7 Q So he didn't have a key to his house?

8 A I guess not.

9 Q Okay. Did he keep his clothes at your house?

10 A I had some of his clothes.

11 Q Okay. Why didn't he wear those that day?

12 A I'm sorry?

13 Q Why didn't he wear those that day?

14 A Because --

15 Q Why did he walk all the way to his house a couple of
16 miles down the road to get clothes instead of using the
17 ones at your house?

18 A Because it's not like I had a dresser or anything
19 there. It might have been like a pair of jeans and like
20 dirty clothes.

21 Q 11 a.m.; well, you know you saw him at 11 a.m. --

22 A Yes.

23 Q -- and he had the phone that he is the only one who
24 knows the PIN number to, correct?

25 A At the time, no. We had a issue, like I said, it was

1 a personal issue involving something that I had going on
2 so.

3 Q Tell me about that.

4 A Well, that's personal so.

5 Q Would it help us understand this case?

6 A I'm not sure.

7 Q Because didn't you testified earlier that he had the
8 phone the first part of the day?

9 A Yes.

10 Q Okay. That was my question, right? At 11:00 o'clock
11 when he leaves, he has the phone. He is the one who's got
12 the PIN number to. Why would you need it, right?

13 A What do you mean?

14 Q Why would you need a phone you can't operate? You've
15 already told, he had the phone earlier that day, correct?

16 A Right.

17 Q And then he went to T.J.'s house, and then he came
18 back to where?

19 A He came back to my house.

20 Q And then what'd y'all do?

21 A We talked briefly, and then he went to go get
22 clothes.

23 Q He went where?

24 A He went to [REDACTED] to get clothes. [REDACTED] Green Meadow.

25 Q Okay. What happened then, is that when he couldn't

1 get in?

2 A Right.

3 Q Okay. And about what time was that?

4 A He left. He came for about 30 minutes, so he left
5 after that.

6 Q Okay. And then where did you go?

7 A I was at home.

8 Q Okay. 6:00 o'clock you saw him. Did you see him in
9 between 11:30 and 6:00?

10 A Yeah. When he had came back with his cousin.

11 Q Okay. Who's that?

12 A T.J.

13 Q What's T.J.'s last name?

14 A I don't know.

15 Q Okay. And then they, how'd they get back over there,
16 the cousin drove him?

17 A Yes.

18 Q And then what happened?

19 A I think he went back to his cousin's house, and then
20 he came back my way. But once he left and went there, I
21 basically took care of my own things at home and I --

22 Q What time, I'm sorry. Go ahead.

23 A -- and I saw him again later that day after I had
24 came back from the store.

25 Q Okay. Well, we got to get, times are important in

1 this case, so you got to tell me times.

2 A Okay.

3 Q He comes back with T.J. What time is that?

4 A About 11:30 and --

5 Q And how, and how long was he there?

6 A He was there for about ten minutes, maybe.

7 Q And then where did he go?

8 A And then he left. I think he walked --

9 Q Okay.

10 A -- to his house.

11 Q All right. And you stayed at Fox Briar?

12 A Yes.

13 Q And then when is the next time you saw him?

14 A I don't remember an exact time, because when he had
15 been there, like I said, I was busy with my kids. So he
16 had called me and he told me that he wasn't able to get
17 inside. And he had came back around that area on Fox
18 Briar, but he stayed around his Cousin T.J.'s house, I
19 think, to use the Wi-Fi or something, because I told him
20 that I needed my phone.

21 Q Okay. Why did you need the phone?

22 A Because it's my phone.

23 Q But you don't have a PIN number to it. What are you
24 going to do with it?

25 A That was until a little later.

1 Q What does that mean? What wasn't until a little
2 later?

3 A Excuse me?

4 Q What wasn't until a little later?

5 A The PIN.

6 Q That happened that day?

7 A Yes.

8 Q Okay. Now, we're getting somewhere. September 21st
9 when all this stuff goes down is when he takes the phone
10 and enters his own PIN number in it and you can't use it
11 anymore?

12 A No. I used the phone that day. Are you confused?

13 Q I'm very confused, so can you help me?

14 A Okay. So, basically, that morning when he had left
15 at 11:00, I let him use my phone. And once he went to go
16 get his clothes, you know, he had called me using my phone
17 and he came back my way and I let him, you know, he gave
18 me my phone. And I gave him his phone so that he could
19 just use the Wi-Fi, and I had my phone. I knew the PIN at
20 that time, and he did also, so.

21 Q Okay. And so at what point does he take the phone
22 from you and lock it where he's the only one that could
23 use it?

24 A When he had came back, we kind of got into an
25 argument, because it had to do with like other people, you

1 know, what might be going on or whatnot. So it's like you
2 shouldn't be, I guess, talking to other people. So that
3 was it.

4 Q That doesn't explain anything. What happens then?

5 A What do you mean?

6 Q How does the PIN number get changed? You get in an
7 argument. Then, what happens? You're not understanding
8 my question?

9 A Not really.

10 Q This jury, everybody in this courtroom --

11 MR. VERNER: Your Honor, that is an improper
12 question.

13 THE COURT: Wait a minute.

14 MR. VERNER: When it come up, this jury, it is the
15 start of an improper question. When he makes a direct
16 appeal or reference to the jury, Your Honor, that kind of
17 started off as improper.

18 THE COURT: Rephrase the, I agree. Rephrase the
19 question.

20 Q The Court wants to know how does the PIN number get
21 changed? You left it off at an argument, okay? Are you
22 having trouble understanding what I'm asking you?

23 A If you keep talking, I might understand.

24 Q Huh?

25 A You can keep talking.

1 Q You get in an argument over other people. I'm not
2 going to ask details about that, because that's
3 irrelevant.

4 A Right.

5 Q How does he get that phone that's in front of you
6 that I'm asking for the PIN number of, how does he get
7 that, take it and change the PIN number to one that only
8 he can access? How does that happen?

9 A He changed it.

10 Q Tell me --

11 A And I let him use my phone, right? We got into an
12 argument. He changed it and, you know, we talked or
13 whatever. And then, you know, I took my phone back and
14 there was nothing on it at that point. And so he went on
15 his way, I went to the store and that was that. We met up
16 later and, you know, there is, I guess, interpersonal
17 things that, I guess, you're going to have to be more
18 specific in your questioning.

19 Q Well, I think it's very simple. I want to know how
20 the PIN number get changed and how you can use a phone
21 that you don't have a PIN number to?

22 A I have a PIN number to clarify.

23 Q Oh, okay.

24 A I have a PIN, I had the PIN number to the phone --

25 Q Okay.

1 A -- that day. Okay?

2 Q Okay.

3 A On the 21st.

4 Q And then you don't anymore?

5 A No, I forgot it. Because it was just changed.

6 Q Okay. So he's got the PIN number is what your
7 testimony is?

8 A Right. I think he had the PIN numbers.

9 Q Okay. All right. 6:00 o'clock p.m., you see him
10 again, isn't that what you testified to a little while
11 ago?

12 A I saw him shortly after when I got back from the
13 store. It was around 6:00, and then a little after, I saw
14 him.

15 Q Where did you see him at 6:00?

16 A He came to the door.

17 Q He came where?

18 A To the door at ■ Fox Briar.

19 Q Okay. So you wouldn't be able to tell us why his
20 phone is pinging off a cellphone tower over here at 5:45
21 if he was at your house at Fox Briar at 6:00?

22 A I didn't say he was at my house at 6:00. I said I
23 got home around 6:00 and that he came to my house shortly
24 after.

25 Q So what's shortly after 6:00?

1 A Like I said, I'd been drinking, so the time isn't
2 exactly. But it was shortly after. It wasn't like hours
3 later.

4 Q I thought you said you had a drink earlier. Do you
5 usually kind of get foggy after one drink?

6 A I'm a lightweight.

7 Q Okay. But you got some wine to take to the hotel
8 later?

9 A Actually, I had left it at the house and he had to
10 come, go back and get it at some point. But I had a
11 couple of glasses when I got home, way small glasses.

12 Q All right. So you don't know what time it was he
13 came to your house?

14 A It was around, say I got around 6:15 or 6:20.

15 Q And then where did y'all go?

16 A And then he came around 30 minutes or so after I got
17 home.

18 Q 6:45.

19 A I can't say exactly, but it had to be around that
20 time. And he came to the door and we talked briefly, and
21 then he left and when he came back, we went and got a cab.

22 Q When was the next time, I'm sorry. When is the next
23 time you left your house?

24 A It was around, I'm not sure. Probably around like
25 7:30 or so.

1 Q Where did you go?

2 A I went up the, up the road to get in the cab.

3 Q All right. What time, and then, at the end of Fox
4 Briar?

5 A Right.

6 Q And where'd you go?

7 A We got in the cab, and we went to a couple of places
8 and we went to a room.

9 Q Who's we?

10 A Me and Anthony.

11 Q When were you riding around with Ernie? You talked
12 about riding around doing errands with Ernie?

13 A That was when I had went to the store. It was at
14 like, actually, I just think I got my time mixed up,
15 because it was either like at 6 o'clock when he told me he
16 was coming to pick me up. So to be honest, wait. I'm
17 not, I don't remember when it was 6 o'clock when he had
18 came to pick me up or if it was when I had gotten home.

19 Q Say that again. I didn't understand that.

20 A I said that I don't recall the exact time --

21 Q Of what?

22 A -- because when she say he was going to come pick me
23 up, Ernie, that he was going to come pick me up, I don't
24 remember if it was exactly at 6:00 or if it was when it
25 was when I got home. All I remember is I got a ride with

1 Ernie to the store and when I got back, it was just, it
2 was just now getting dark, whatever time that might be.
3 And that about 30 minutes or so after is when Anthony came
4 to my house.

5 Q Where all did you and Ernie go?

6 A We went to the Walmart. I had went by the bank to
7 see if I was able to deposit any money in, and he went to
8 Bi-lo.

9 Q But y'all took the same cab?

10 A No, it wasn't a cab. He, you're talking about Ernie?

11 Q Ernie.

12 A He didn't have, he doesn't drive a cab. He drives
13 his own car.

14 Q He drove his own car?

15 A Right.

16 Q Did he drop you off at Walmart or the bank?

17 A No. He waited outside.

18 Q Okay. So you were together the whole time, you and
19 Ernie?

20 A Right.

21 Q Okay. And you said weren't home until around 6:00 or
22 you think it's 6:00?

23 A What I'm saying is I don't remember if he had come to
24 pick me up at 6:00 or if I had gotten home around 6:00.
25 And I'm thinking that he came to pick me up around 6:00,

1 because when I got back home the sun was like just going,
2 it was still somewhat light, but it was getting dark.

3 Q So September 21st, that's after 8:00 it's getting
4 dark, right?

5 A What?

6 Q Were you gone two hours with Ernie?

7 A No. It wasn't two hours.

8 Q You went to Walmart. The one right here downtown.

9 A Uh-huh.

10 Q What bank did you go to?

11 A Over by AllSouth.

12 Q Where is that?

13 A On Wilson Road.

14 Q Okay. Over here near the Walmart?

15 A Yes. Well, it's somewhat near. Not like side by
16 side.

17 Q Okay. Walmart, All South, and Ernie went where?

18 A To Bi-Lo.

19 Q Okay. And you were with him?

20 A Right.

21 Q At the Bi-Lo. Okay. Anywhere else?

22 A Not that I can recall, no.

23 Q Okay. And do you know if you had the phone with you?

24 A I think I did, but I'm not sure.

25 Q Okay.

1 A I think I recall using it at Walmart, because
2 sometimes I like, try to go online, like use the Wi-Fi
3 there, but I don't remember if I had it.

4 Q Okay. How would you use it if he had changed the PIN
5 number on it?

6 A Because, like I said, we had talked it over and, you
7 know, like it's my phone, so I told, like it was just
8 open.

9 Q So he opened it back for you?

10 A Yes.

11 Q How did he do that if you're with Ernie and he wasn't
12 with you?

13 A At that time when he had came there, we talked for a
14 minute, you know.

15 Q Okay. So you do have the PIN number now?

16 A I did.

17 Q Oh, what now?

18 A I did.

19 Q Okay. Can you unlock it for me?

20 A I don't remember it.

21 Q Did you --

22 A At the time that it happened and, basically, what I
23 had told the officer was I couldn't open it, because I
24 didn't remember it. And the reason was because I was
25 honestly startled by what happened on the 23rd. When they

1 had arrested me, I didn't know what was going on. So, of
2 course, I'm just, okay, well, you know, I was really
3 flustered, honestly.

4 Q Okay. Are you aware if you don't give us the PIN
5 number, we can't open that phone? Are you aware of that?

6 A I'm not aware.

7 Q You're not. And do you remember telling officers
8 that you didn't have the PIN number the day they spoke
9 with you?

10 A I don't recall that. Like, it was a pretty emotional
11 time.

12 Q Have you listened to his audio interview?

13 A No.

14 Q Okay. Would it surprise you to know that he said he
15 had the phone during the day of September 21st?

16 MR. VERNER: Your Honor, he's asking one witness to
17 testify about what another witness, or actually a written
18 statement, so he's definitely pitting witnesses.

19 THE COURT: Sustained, can't pit one witness against
20 another.

21 Q Okay. Walmart, All South, Bi-Lo. Can you help us
22 understand why the phone, the 404 number was pinging up
23 here off of Kendall road at 6:57 p.m., 7:21 p.m., 7:32
24 p.m.?

25 A I'm not sure.

1 Q Can you help us understand why it was pinging within
2 400 meters of where this Cadillac was found?

3 A At what time was that?

4 Q 10:21 and 10:24 p.m.

5 A I'm not sure. As you know, we checked in at 9:00 so.

6 Q Well, that's funny you should say that. We know you
7 did.

8 A Right.

9 Q We've got your information on receipt. We've got a
10 tag number on a receipt and who's tag is that by the way?

11 A It has to be the cab's.

12 Q What now?

13 A It must be the cab's number, tag number.

14 Q Why would they have the cab's tag number, though?

15 A I don't know.

16 Q Okay. We've got your name on there at 9:05. We can
17 account for where you are at 9:05.

18 A Yes.

19 Q So we don't know why that phone, though, was pinging
20 at an abandoned wood yard between 10:21 and 10:24 p.m., do
21 we?

22 A I have no idea.

23 Q Okay. You've been through some good times and bad
24 times with him, have you not?

25 A Yes, but mostly good.

1 Q Right. Except for when you get kicked out of his
2 mother's home. That's not, that wasn't good, was it?

3 A Yeah. No.

4 Q Okay.

5 A But I wasn't inside. Actually, I was outside.

6 Q Okay. But, you know, you've been here every week,
7 every day this week, have you not?

8 A The last two days, yes.

9 Q All right. And you have not really indicated a
10 desire to speak with my office for any extended period of
11 time, have you?

12 A No. Whatever emotionally made me feel that way, if
13 it matters, is because of the way it was handled
14 initially. I didn't understand why I was being arrested.
15 I have never gotten in any trouble, ever, and for people
16 to come out of nowhere and just pretty much trash-talk me
17 and knowing like the position I was in at my job at the
18 time, you know, it just took me completely off-guard. So
19 I wasn't exactly trying to cooperate to the fullest
20 extent, but I did give, you know, my answers to the
21 questions that were asked of me.

22 Q Mostly, except for the PIN number, and you still
23 refuse to do that today, don't you?

24 A Because I don't remember it.

25 Q But you did at the time, did you not?

1 A At the time of what?

2 Q September 21st when you first talked to law
3 enforcement, on September 22nd when you first talked to
4 law enforcement.

5 A I didn't talk to them on the 22nd.

6 Q On September 23rd when you talked to law enforcement.
7 Had you already forgotten at that point?

8 A It was already changed.

9 Q Well, that's not exactly what you just testified
10 under oath to. Under oath, here's what you've said,
11 correct me if I'm wrong. You have the PIN number. He
12 gets angry. He changes it. You can't access it, but then
13 y'all work things out, and then he changes it back for you
14 where you know it. Wasn't that your testimony?

15 A Right.

16 Q Okay. So why didn't you give the PIN number to law
17 enforcement back at a time when you could remember it?

18 A Because I didn't remember it.

19 Q Okay.

20 A It had just been changed.

21 Q Okay.

22 MR. SCOTT: I think that's all I have for this
23 witness.

24 THE COURT: Okay. Any redirect, Mr. Verner.

25 MR. VERNER: A few, Your Honor.

REDIRECT EXAMINATION

By Mr. Verner:

Q Laswan, is it fair to say that the investigators or deputies in this case have threatened over the months to charge you?

MR. SCOTT: That is a leading question, Your Honor.

A Yes.

THE COURT: Okay. Wait a minute. But I didn't quite hear the whole question.

MR. SCOTT: It is leading.

THE COURT: Okay. Try not to lead. Repeat the question, how about that.

Q Have the investigators or police officers threatened to put charges on you?

MR. SCOTT: That is a leading question.

MR. VERNER: No. It's a yes or no question.

THE COURT: Right. She can answer yes or no, and then if she needs to explain, she can explain. I overrule the objection.

A Yes.

Q Okay. Would that be a factor knowing that they might be charging you about wanting to be overly helpful with the police?

A I'm sorry. Can you repeat that?

Q Who's had this phone for the last nine months?

1 A Leading up to the event was me. I had that phone.

2 Q Who's had this phone since September of 2016?

3 A Me.

4 Q You've had this phone in your custody?

5 A Yes.

6 Q It hadn't been with the police?

7 A Oh, I thought you meant prior to the incident.

8 Q Yeah. From September 21st until right now as I'm
9 speaking to you, where has this phone been?

10 A They've had it.

11 Q They by being the police?

12 A Yes.

13 Q Okay. Have they ever given you, served a search
14 warrant on you to take the phone from your custody?

15 A No, they did not.

16 Q Okay. Have you had any kind of warrant for them to
17 have possession of the phone?

18 A No.

19 Q Do you know of any reason why the phone couldn't have
20 been sent down to SLED --

21 A No. They told me that they wanted to use my phone to
22 investigate.

23 Q And it's been in their custody for the last nine
24 months?

25 A Yes.

1 Q Okay.

2 MR. VERNER: If I can, Your Honor, I'm going to mark
3 this as Defendant's 1, the report that the State brought
4 out just a few minutes ago.

5 MR. SCOTT: Your Honor, I'm fine, but when I'm trying
6 to use it in my cross, he won't let it in, then he
7 introduces it.

8 MR. VERNER: I've never seen it before, Judge.

9 THE COURT: All right.

10 MR. SCOTT: Yeah, I'm fine with it. Yeah, that's
11 fine.

12 THE COURT: You have no objections to it going into
13 evidence as Defense 1, Solicitor?

14 MR. SCOTT: That's fine. I want to ask for a chance
15 at re-cross, though. If I broke the new territory --

16 THE COURT: Sure.

17 MR. SCOTT: -- he's entitled to break it too.

18 THE COURT: Sure.

19 (Whereupon, Defendant's Exhibit 1 was admitted into
20 evidence.)

21 MR. VERNER: All right.

22 THE COURT: Let's do this. Let's go ahead and take a
23 short break. I'm not trying to interrupt your redirect,
24 Mr. Verner, and then we'll try and figure out, you know,
25 how we're going to go the remainder of the day. Mr.

1 Foreman and ladies and gentlemen of the jury, let's take
2 about a five to ten-minute break and give me an
3 opportunity to talk with the lawyers and just kind of see
4 how we're going to go through the remainder of the day,
5 and then we'll get you back out and we'll certainly finish
6 Ms. Anderson's testimony. And then I'll make a decision
7 as far as doing anything else for today. I do realize
8 it's a little after 5:00. So if you'll just go back to
9 the jury room. No discussion among yourselves, and we'll
10 get you back out shortly.

11 (Whereupon, the jury was excused from open court for
12 a break.)

13 THE COURT: You are free to get off the witness
14 stand, you just can't talk to anybody about your
15 testimony, but you are free to leave, use the restroom.

16 MS. ANDERSON: Okay.

17 THE COURT: whatever you need to do, okay?

18 MS. ANDERSON: All right.

19 MR. VERNER: Time wise, Judge, I don't anticipate,
20 time wise, with this particular witness--

21 THE COURT: Right. Let's just, y'all come on back.

22 (Whereupon, the attorneys and the Court have a
23 meeting in-chambers.)

24 (Whereupon, a short break was taken.)

25 MR. VERNER: Laswan, if you will go ahead and sit

1 back up at the stand.

2 THE COURT: Okay. Madam Bailiff, if you'll bring the
3 jury out, please, ma'am.

4 MR. VERNER: And these are for review tonight, Judge?

5 THE COURT: Yeah. I'd like to talk about them before
6 we leave if we can.

7 (Whereupon, the jury came into open court at
8 approximately 5:25 p.m.)

9 THE COURT: And let the record reflect the jury is
10 back in the courtroom. Ladies and gentlemen, what we're
11 going to do this afternoon, we're going to finish with Ms.
12 Anderson's testimony, and then we, the lawyers and I have
13 some work to do on some issues. But I'm going to go ahead
14 and excuse you for the remainder of the afternoon and
15 evening and start back in the morning. Okay. All right.
16 Mr. Verner, I think we're in the middle of your redirect.

17 MR. VERNER: Thank you, Your Honor.

18 CONTINUE REDIRECT EXAMINATION

19 By Mr. Verner:

20 Q Laswan, I'm going to ask you about this red herring
21 event. You remember some incident at [REDACTED] Green Meadows on
22 August 6th?

23 A Yes, sir.

24 Q Is it fair to say that Ms. Roby called the police and
25 said that you were an uninvited guest to spend the night?

1 A Yes.

2 Q Were you in the house at that time?

3 A No. I don't remember going inside.

4 Q Is it fair to say that you told the police if she
5 asks me to leave, I'll leave?

6 A Yes.

7 Q And did you leave?

8 A Yes.

9 Q Okay. And Anthony who lived there stayed the night?

10 A Yes. No. Well,--

11 Q Was there anything more to the event on August 6th --

12 A No.

13 Q -- that we need to know about that will help?

14 A No. There was no type of altercation, even though
15 she had called the police about letting me know,
16 basically, and they came out.

17 Q And this was about two months before Ms. Wicker was
18 robbed on September 21st?

19 A Yes.

20 Q Okay.

21 MR. VERNER: All right. Thank you. If there's any
22 more re-re-redirect from the prosecutor.

23 THE COURT: All right. Any other recross?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: Okay. All right. Thank you. You can

1 step down, ma'am. Okay. Mr. Foreman and ladies and
2 gentlemen of the jury, we're going to go ahead and excuse
3 you for the remainder of this day, and I'd like to start
4 back at 9 o'clock in the morning. So that's a little bit
5 earlier than we've been starting, and I'd like to start
6 back at 9:00, so if you'll promptly be here and allow
7 yourself enough time to get to the courthouse. Once
8 again, I'd remind you no discussion about this case among
9 yourselves or anybody you come into contact with, and
10 we'll see you bright and early at 9:00 o'clock in the
11 morning. Have a good evening.

12 (Whereupon, the jury was excused from open court for
13 the day.)

14 THE COURT: Okay. If y'all take some time to review
15 the draft of the jury charges, and then when you've looked
16 at it, just come back in the office and we can talk about
17 it.

18 (Whereupon, a short break was taken and the Court and
19 attorneys had a meeting in-chambers.)

20 THE COURT: All right. We're back on the record. I
21 had a charge conference with the lawyers in-chambers and,
22 Solicitor, the State is okay with the proposed charge?

23 MR. SCOTT: We are, Your Honor.

24 THE COURT: Okay. And, Mr. Verner, you had two
25 requested additions that I have denied, but if you want to

1 put those two requests on the record?

2 MR. VERNER: Yes, sir. I'll characterize it more as
3 not additions, but changes.

4 THE COURT: Okay. Changes.

5 MR. VERNER: On page 14 when the Court lists the
6 voluntariness, the jury consider the voluntariness of the
7 statement of the accused, the Court's going to list eight
8 factors under the totality of the circumstances.
9 Actually, more than eight, but they're kind of subgroups
10 in there. When it comes to the Miranda rights that the
11 Court puts in there, the way that I read the Court has it
12 and will charge it to the jury is that the rights under
13 Miranda are more of the totality of the circumstances and
14 considering the voluntariness of his statement. I take it
15 that Miranda is, when that language was written, that was
16 probably true that Miranda is a totality of the
17 circumstances approach. My understanding is the law as
18 Miranda is now a hard requirement, before you interrogate
19 a custodial suspect. And that the jury should be told
20 that you must find that he was provided his Miranda rights
21 before you can find that he gave a voluntary statement.
22 And I believe the Court indicated that the Court's
23 already, as the threshold of the matter, found the
24 statement voluntary and that implies that the Court found
25 that Miranda was --

1 THE COURT: No. No. Not implies. There's two
2 separate findings for the statement to be admissible into
3 evidence, was that it was voluntary and that Miranda was
4 complied with. So the two stand-alone even though if, if
5 either one is found in the negative, it is not coming in.
6 But there are two stand-alone principles. So if I find it
7 voluntary, then I go to the second part and make a
8 determination of whether Miranda was complied with and
9 I've already made the ruling that it has.

10 MR. VERNER: Okay. And I believe what the Court and
11 informed the lawyers was because the Court has found that
12 Miranda was applied, Miranda is really more of a rule of
13 admissibility and that the jury does not separately have
14 to find Miranda being given. And I will disagree with
15 that and find that the jury evaluates the law under the
16 same standard that the Court would. And that the Court,
17 the jury has the same right to find that Miranda was
18 factually given as the Court would.

19 THE COURT: Right. Now, what I would be willing to
20 do and is, and this not, may not be acceptable to you. I
21 still will not charge the jury that they must find whether
22 or not Miranda was given. But I will take out the
23 Subsection eight which states what the Miranda warnings
24 are. I will take that out.

25 MR. VERNER: I don't think that that would, to me,

1 Your Honor, I would see that as doing more damage.

2 THE COURT: Okay. That's fine. Then I'm going to
3 leave that in. And your second change, requested change,
4 Mr. Verner, was?

5 MR. VERNER: And just on, the cap on the last
6 argument, Your Honor.

7 THE COURT: Sure.

8 MR. VERNER: Just if the Court is not charging it by
9 legal argument, it would be that the Court is making a
10 finding of fact and prohibiting the jury from --

11 THE COURT: Okay.

12 MR. VERNER: -- making that same finding of fact.

13 THE COURT: Okay.

14 MR. VERNER: The second issue, Your Honor, I think
15 was on the armed robbery statute that, charge that the
16 Court's giving. As I read it, the Court, in my opinion,
17 is giving a summarized version of the statute, at least
18 the portion of it that involves being armed with a deadly
19 weapon. And I was asking the Court to actually charge the
20 statutory version of armed robbery as opposed to what I
21 perceive as a more summarized version.

22 THE COURT: Okay. All right. Very good. Certainly,
23 your two requests are noted for the record and are denied.
24 Okay. We will be in recess until about 9:00 in the
25 morning.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

MR. SCOTT: Yes.

(Whereupon, the jury came into open court at approximately 9:50 a.m.)

MR. VERNER: Yes, Your Honor. I'd briefly like to ask Anthony Wise to speak.

THE COURT: Okay. All right. Come around, Mr. Wise, to the witness stand to be sworn in, please, sir.

ANTHONY WISE, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

1 By Mr. Verner:

2 Q What's your full name, Anthony?

3 A Anthony Maurice Wise.

4 Q Where are you from? Where were you born?

5 A Washington, D.C.

6 Q Washington, D.C.?

7 A Yes, sir.

8 Q How long have you lived in Newberry. How long were
9 you in Newberry.

10 A Twenty-three years. I'm twenty-four.

11 Q Okay. So you've been in Newberry since you were one
12 year old?

13 A Yes, sir.

14 Q Okay. Where'd you go to high school?

15 A Newberry High School.

16 Q What neighborhood did you grow up in?

17 A Green Meadows Drive.

18 Q Okay. The Green Meadow that, where Ms. Wicker lives?

19 A Yes, sir.

20 Q Okay. Do you remember how old you were when you
21 moved to Green Meadows Drive?

22 A Four or five. Four or five.

23 Q Okay.

24 A That's when my mother moved down, mother and my
25 father.

1 Q So you would have lived there for about twenty years?

2 A Yes, or something, yeah, something in that range.

3 Q Okay. Who do you live with on Green Meadows?

4 A My mother, Roby Wise.

5 Q Anybody else?

6 A Well, my father. Also my mother and my father.

7 Q Okay. What's his name?

8 A Michael Wise.

9 Q Okay. Now, I suppose the prosecutor is going to ask
10 why you don't have dreadlocks today. Did you have
11 dreadlocks in September of last year?

12 A Yes. I used to have dreads.

13 Q And let me ask you, have you still got a clear memory
14 of September 21st?

15 A Yeah. It was just a real normal day kind of.

16 Q But you still remember it, and you certainly remember
17 being arrested, don't you?

18 A Yes. I remember being arrested; yes, sir.

19 Q Okay. Well, tell me again why you don't have dreads
20 today?

21 A I mean, when you in jail, it kind of hard to maintain
22 dreads, so I cut them and my girlfriend usually do them
23 for me.

24 Q Is that to try to change your appearance?

25 A No. That's just because you can't really maintenance

1 the dreads in jail when you there.

2 Q And, of course, there are plenty of photographs of
3 you from September 21st?

4 A Yes, sir.

5 Q Okay. Now, who is Laswan Anderson to you?

6 A That's my girlfriend. That's my fiancé.

7 Q Okay. In September were you working?

8 A Yes. I was working. Like I was too long, too long
9 working. I was working at Bojangles. I didn't had to go
10 in that day. I was in the, like looking for another job,
11 but I wasn't fired or anything. I just didn't go in that
12 day. I didn't have to work as far as Wednesday, that day,
13 September the 21st.

14 Q But you're not working now, right?

15 A Uh-uh. Nah-uh.

16 Q And is that reason, because you've been in jail since
17 then?

18 A Yeah. Because I been in jail.

19 Q Okay. And have you got any children?

20 A Yes.

21 Q How many children of yours do you have?

22 A I have two. I have a girl and a boy.

23 Q And call their names.

24 A [REDACTED]; my daughter [REDACTED]. She's two. My son,
25 he's three years old.

1 Q Okay. But you and Laswan don't have children
2 together?

3 A No. Those are my step kids, three additional.

4 Q All right.

5 MR. VERNER: If I can approach, Your Honor?

6 THE COURT: You can.

7 Q State's 5, do you recognize this photograph?

8 A Yes, sir.

9 Q Why do you recognize this photograph?

10 A That's my booking photo and all when I was arrested.
11 You know, that's the picture they took of me.

12 Q Have you had a chance to see that picture?

13 A Yes. I had a chance to see that picture. Also, been
14 on the phone talking to my family members and --

15 Q Okay. Well, this is my question. And after you were
16 arrested, are you aware of whether that picture was posted
17 throughout the community?

18 A Yes.

19 Q When you were arrested, did you get any kind of news
20 coverage?

21 A Yes.

22 Q And was your picture put in the State paper?

23 A Yes, that I remember.

24 Q Was it the same picture I just handed to the jury?

25 A Yes, sir.

1 Q What about the local Newberry Observer with your
2 picture?

3 A Yes, sir; it was.

4 Q The same one?

5 A Yes, sir.

6 Q What about the local television stations, were you in
7 the local news media?

8 A Yes, sir. I also informed I was on the news, too.
9 That picture there.

10 Q Okay.

11 MR. VERNER: Number 2 for the Defense, Your Honor.

12 THE COURT: Okay. Are you offering that into
13 evidence?

14 MR. VERNER: I am, Your Honor.

15 MR. SCOTT: It's a September 26th--

16 MR. VERNER: It is a September 26th, 2016, The State
17 paper article about his arrest. So it was published on
18 September 26th of 2016 in the State paper.

19 MR. SCOTT: I don't see the relevance, I don't
20 understand--

21 MR. VERNER: Well, Your Honor, the relevance is that
22 his picture with the yellow dreadlocks has been in several
23 newspapers and TV accounts since September 26th. And our
24 argument is that Ms. Wicker and anybody in the
25 neighborhood would have been familiar with that

1 photograph. It's been publically published in all of the
2 local papers and in all of the local TV stations since --

3 THE COURT: Let me see it.

4 MR. VERNER: I can redact the story. I'm not
5 interested really in the story portion of it that was
6 reprinted. I'm just interested in the fact that his
7 picture has been published publically for---

8 MR. SCOTT: That's fine. Your Honor, I can stipulate
9 to it and my concern is just we caution the jury, don't
10 read any articles about this case, don't look online, and
11 he's trying to introduce a newspaper account. We
12 stipulated that there was some media coverage of it in the
13 days after his arrest.

14 THE COURT: Okay. Are you satisfied with the
15 stipulation?

16 MR. VERNER: Well, I don't know that they have to
17 stipulate it so much as it's not contested that this
18 specific photograph was in several of the local TV
19 stations. And is that, I don't want to get y'all to
20 stipulate, but that would be uncontested.

21 THE COURT: Well, I think it requires a stipulation
22 and --

23 MR. VERNER: Okay.

24 THE COURT: -- and Mr. Scott indicates that he is
25 willing to stipulate that. So, ladies and gentlemen,

1 stipulation between attorneys is just another piece of
2 evidence that you can consider or not consider in your
3 deliberations and your consideration of the guilt or
4 innocence of Mr. Wise. This is something for you to
5 consider or not consider. It's solely up to you. Okay.

6 MR. VERNER: Thank you. So this will be just for
7 identification?

8 THE COURT: And yeah, but mark it for identification
9 only.

10 (Whereupon, Defendant's Exhibit number 2 was marked
11 for identification.)

12 Q And so I'm just going to, it would be fair to say
13 that since September of 2016 that your, this booking
14 photograph of you with the dreadlocks has been in the
15 local newspapers, State newspapers, and local television
16 shows?

17 A Yes, sir.

18 Q I would assume how much, how many times it's been
19 aired would probably be out of your knowledge since you've
20 been in jail?

21 A Yes, sir.

22 Q Okay. Tell me about September 21st, Wednesday,
23 September 21st of 2016, Anthony?

24 A Well, pretty much just a regular day. I woke up, and
25 I woke up at my girlfriend's house.

1 Q Where?

2 A On Fox Briar.

3 Q Okay. And again, your girlfriend is who?

4 A Laswan.

5 Q Okay. And she lives on what neighborhood?

6 A She stays on Fox Briar.

7 Q Okay. How far is Fox Briar from Green Meadows?

8 A The next neighborhood over.

9 Q Okay. If you were walking, how long would it take
10 you to walk from your house to Laswan's house?

11 A Twenty minutes, the most.

12 Q Okay. Did you have a car in September of last year?

13 A No, sir.

14 Q Okay. All right. I'm sorry. You said you and
15 Laswan were together at her house on Fox Briar?

16 A Yes, sir.

17 Q Okay.

18 A Earlier that morning. Later on during the day and
19 once I, well, not later on during the day. That morning
20 when I woke up, I went to my house to get clothes. My
21 mother wasn't there.

22 Q Do you remember what time you went home?

23 A It was around 11:00 or something. Around 11:00, a
24 little after 11:00.

25 Q Okay. Let me clarify this, because it's something

1 brought up that you weren't allowed to stay there or that
2 her mother --

3 A No.

4 Q -- didn't want you to stay there?

5 A I'm going to guess that her house is, at the end of
6 the day, it's her mom's house. I'm going to guess, I
7 mean, I'm going to guess---

8 Q Okay. Do you get along with her mother?

9 A Yeah, fairly. Her mother have moods changes and
10 stuff like that, but fairly, she's a okay lady. She fine.
11 She's just a regular elderly lady. Old folks.

12 Q But she wouldn't be the one, you weren't living
13 there?

14 A No, not far as living there. I'd spend the night
15 from, when I want to.

16 Q Well, did your mother get along with Laswan?

17 A Well, at first, and then, at first just about, my
18 mother is old-fashioned. She a Christian lady, so she
19 don't believe in like a woman staying in her house and
20 when you ain't married.

21 Q Have you ever testified in a courtroom before?

22 A No.

23 Q Do you need to, if you start getting kind of
24 quick-speaking, just take a sip of water and that will
25 slow you down so she can hear you clearly and we can.

1 A Yes, sir.

2 Q All right. Okay. So you went back to your mom's
3 house and your home about what time on Wednesday?

4 A That was around 11:00 or a little after 11:00.

5 Q Okay. And you weren't scheduled to work on
6 Wednesday?

7 A No.

8 Q What about Laswan?

9 A No.

10 Q Do you remember where she was working --

11 A Kraft.

12 Q -- at that time?

13 A Kraft, Louis Rich, Kraft.

14 Q Okay. All right. You got up. You went home. Tell
15 me about that.

16 A When I went home, and, like I say, my mother wasn't
17 there, so I went across the street. I went across the
18 street to David's. I got a neighbor named David Tracey.
19 After that, after my mom came, like I say, I got my
20 clothes, and I went back to Laswan's. I went back to
21 Laswan's over on Fox Briar. I went to T.J. house. My
22 cousin stays up the street. I chilled up there for a
23 little bit using the Wi-Fi. He wasn't home. He wasn't
24 home at the time.

25 Q What street is this on? You talking about the cousin

1 named T.J.?

2 A Yeah. T.J. Yeah.

3 Q Do you remember his last name?

4 A Yeah. Gallman.

5 Q Gallman?

6 A Uh-huh.

7 Q Okay. What street does he live on?

8 A Fox Briar.

9 Q Okay. So he lives closer towards Laswan?

10 A Yes. Right up the road from Laswan.

11 Q Okay. And what did you do at T.J. or what did you do
12 with T.J.?

13 A We basically just sat around. T.J., wasn't there at
14 the time and wasn't nobody, I always go up there. That's
15 my cousin, so it's no reason, like I can go in the yard
16 anytime. I just use the Wi-Fi mostly there, because I got
17 the Wi-Fi to use the Internet as his.

18 Q Okay. Does Laswan have Wi-Fi at her house?

19 A Okay.

20 Q Did you have Wi-Fi at your mom's house?

21 A Yes. Well, Wi-Fi is there. My mother does. Yeah,
22 she do. She does have Wi-Fi.

23 Q And does your mom work?

24 A Yes.

25 Q Okay. And since it's come out of other witnesses,

1 were you raised in the church, too?

2 A Yes.

3 Q What church are you a member of?

4 A Fairview Baptist Church.

5 Q Okay. All right. Tell me about what time do you
6 think you got to T.J.'s home?

7 A I was probably, it's not familiar. I mean, that's
8 been a long time ago, but as far as maybe 1:00. Maybe
9 like after 1:00 or something like that. It probably even
10 shorter than that, because it didn't take too long. It
11 didn't take too long, so I'll probably say around 12:30.

12 Q Okay. How long were you at T.J.'s home, do you
13 recall?

14 A I was up there for a minute, like just chilling up
15 there for a minute. But as far as like hours, it was like
16 a couple of hours. Like a hour, and then I went back down
17 to Laswan's --

18 Q Okay.

19 A -- for a brief second, like for a brief second, and
20 then I went back up there to T.J.'s house, to T.J.'s
21 house.

22 Q Were you checking to see if Laswan was home or what
23 was the purpose of going to her house?

24 A No. I was going to tell her that I been back, like I
25 done been to my house and that I'm back on the road.

1 Q Did you have plans for that what you were going to do
2 with Laswan or you were kind of playing it by ear?

3 A Playing it by ear. No certain plans.

4 Q All right. Then you check in with Laswan --

5 A Yes.

6 Q -- and you said I'm still in the neighborhood?

7 A Yes.

8 MR. SCOTT: Your Honor, just, and I hesitate to do it
9 but just since we are trying to, there are leading
10 questions. Let him explain where he was and don't lead
11 him.

12 THE COURT: Try to rephrase, Mr. Verner.

13 MR. VERNER: I'll try to do better.

14 Q Where did you go from Laswan's?

15 A I went back up to T.J.'s house.

16 Q Okay. And how long were you at T.J.'s, so you went
17 back to T.J.'s house?

18 A Yeah. I went back to T.J.'s house.

19 Q How long were you there?

20 A I was probably there till around 6:00, probably
21 around 6:00. I stayed up there a good majority of hours
22 just chilling, because Laswan had some things to do around
23 that time.

24 Q Until about 6:00 p.m. in the evening?

25 A Yes, sir.

1 Q Okay. Do you recall what you did from 6:00 o'clock?

2 A Oh, from 6:00? I want to say I went to the store. I
3 went to the store around, like I said, well, it wasn't
4 6:00. It was around more like around 7:00 when I left,
5 but I was just --

6 Q What store do you go to?

7 A Koon, like the store on Koon Highway, Fast Stop.

8 Q Okay. How long does it take you to get to Koon, I
9 assume you're walking?

10 A Yeah. I had walked to the store.

11 Q Okay. How long does that take you?

12 A Well, that takes a little bit more than twenty
13 minutes other than the short, it's a longer distance from
14 Green Meadows to Fox Briar. So it might take like briefly
15 another ten minutes or thirty minutes to get there.

16 Q Did you go by yourself or you went--

17 A I went by myself.

18 Q Okay. What would you get? What were some things
19 that you might get?

20 A I went to go get cigarettes.

21 Q Okay. All right. Tell me about the, what'd you do
22 next?

23 A Well, I came back. I went to go get my girl some
24 Chinese food. After that, I went to, back on Fox Briar.
25 After that, I had went to go get some food. Like I say, I

1 didn't go get any food. I had the wrong bankcard on me.

2 Like in the statement says, I didn't have any money. I
3 just had the wrong bankcard. I had my work card instead
4 of my NetSpend's so I didn't even get no Chinese food.

5 Q All right. You're speaking a little bit quick.

6 A Oh, my bad. Oh, my bad. I was just explaining, what
7 I was doing. Where you need me to go back to?

8 COURT REPORTER: Yeah. The words are running
9 together --

10 A Yes, ma'am.

11 COURT REPORTER: So go back to the bankcard. Start
12 with the bankcard.

13 A Yes. I had my bankcard as far as the one I got from
14 Bojangles. Like I said, that was at the time they have
15 like funds.

16 Q You're plenty loud. I'm just going to pull the
17 microphone a little bit away from him.

18 A Okay.

19 Q Just you're speaking quickly. All right. What do
20 you mean you didn't have the right bankcard?

21 A I had, can you hear me?

22 Q Yes, sir. Perfectly.

23 A But I had the wrong bankcard, so I ain't had my
24 NetSpend card. I had my card that Bojangles done gave me.
25 It didn't have no more money on it.

1 Q Well, I mean, I don't understand. What do you mean
2 by the wrong bankcard?

3 A The wrong card. Like it's different cards. Like
4 that's the card that they pay me on --

5 Q Okay.

6 A -- like far as like checks. The other card I had got
7 money on it that I can --

8 Q Okay. Is that, and where were you working at that
9 time again?

10 A Bojangles.

11 Q They don't pay you like a checking account?

12 A No.

13 Q They just give you like the debit card with the cash
14 on it?

15 A Yeah. Yeah.

16 Q Okay.

17 A It loads up when you get paid.

18 Q And can you use that like any other debit card?

19 A Kind of, yeah. You can use it like any. Like you
20 can't go past, like if you don't got enough money on
21 there, it not going to allow you to get anything.

22 Q Right. Like any other card?

23 A Yeah. Like other cards, but some cards, though, and
24 the other card, like you can use it if you don't got like,
25 not overdraft, but it's like if you don't got all the

1 money on there, it still allows you to pay for it.

2 Q It's got a credit limit on it?

3 A Yeah. A credit limit --

4 Q Okay.

5 A -- like the other card.

6 Q So which card did you have with you?

7 A I had the Bojangles card. That's the card that I had
8 when I went to Fox Briar, like I said, like I had the
9 wrong card. I had left the card, and both of them black
10 card. I got a black NetSpend card and also the Bojangle
11 card. It was a black card also. It was just I picked up
12 the wrong card. I got the wrong card.

13 Q Did you have a phone at this time?

14 A Yes.

15 Q Okay. What was your, what kind of phone did you
16 have?

17 A Like I said, I had the Wi-Fi phone. The 944 number,
18 the phone that I used for Wi-Fi at the time that I went to
19 go get the Chinese food and also I had Laswan's phone at
20 that time.

21 Q Okay. Now, we've heard about the 404 phone. That
22 was Laswan's phone?

23 A Yes, sir.

24 Q Is there a reason you didn't have a phone that was
25 working?

1 A Because it had fell in water. My phone had dropped
2 in water, the working phone. I just ain't had time to get
3 me another one yet.

4 Q Okay.

5 A It wasn't no big deal. I just used her phone.

6 Q But, ordinarily, you carried your own phone?

7 A Yes, sir.

8 Q Okay. Okay. Where would you go get Chinese food
9 from?

10 A The little Chinese restaurant by Helena.

11 Q Okay. And just, you've been living in Green Meadows
12 for about twenty years?

13 A Yes, around twenty years.

14 Q If I was coming from your house to this courthouse
15 today or anywhere downtown in Newberry --

16 A Yeah.

17 Q -- which road would you use to get from Green Meadows
18 to downtown Newberry?

19 A Nance Street.

20 Q Nance Street?

21 A Yeah.

22 Q And Nance Street becomes 395?

23 A Yeah. Yeah. It becomes 395, yes.

24 Q Okay.

25 A Correct.

1 Q Is that, why would you use Nance Street as opposed to
2 another road?

3 A Because, basically, it's just easier. It runs,
4 everybody uses that road. It runs all through Newberry.
5 Like it's the main, a main highway.

6 Q Is it the closest --

7 A The closest, yes.

8 Q -- main road to Green Meadows --

9 A Yes.

10 Q -- and coming toward Newberry?

11 A Yes.

12 Q All right. Now, how would you have gotten, did you
13 get all the way to Helena?

14 A Did I get all the way to, yes. I got all the way to
15 Helena, and that's when I realized I didn't have my card.
16 Like I was still in the car. Like T.J. had drove me
17 there, but I was still in the car. Then, I realized. I
18 was like, damn, I got to get the, excuse me, I was like, I
19 got the wrong card. But I had the wrong card, so that's,
20 I never went into the Chinese store.

21 Q Okay.

22 A I was in the car when I noticed when I pulled it from
23 my pocket and realized it was the wrong card.

24 Q About what time was it that you had gone to get
25 something to eat?

1 A If I remember correctly, I'll say it was around
2 7:00-something or 7:00.

3 Q Okay. Again, where would you have been around 5:30
4 that day?

5 A I was at T.J.'s. I was up the street. I was at
6 T.J.'s house.

7 Q What were you doing there?

8 A Mainly, just around, just chilling. Like, basically,
9 just chilling there using the Wi-Fi like any normal other
10 days.

11 Q And T.J.'s house is near Laswan's and near the Green
12 Meadows --

13 A Yes, sir.

14 Q -- and it's in that general part of town?

15 A Yes, sir. T.J. house is about four or five houses
16 up.

17 Q Okay.

18 A Also it's the next neighborhood over to Green Meadows
19 Drive.

20 Q So, okay, so you decide not to get Chinese. What do
21 you remember doing then?

22 A I came back to the road. Like I came back to the Fox
23 Briar. At that time, like I say, around that time, I
24 think she was almost back, and that's when I asked her
25 like what she want to do later on. Basically, she said

1 her mother was going to watch the kids. So I decided
2 like, I said, we can get a hotel room later or whatnot and
3 we can chill around and be with each and do what we want
4 to do.

5 Q How long were y'all going to stay in the hotel?

6 A Like, basically, just one night, but also we stayed
7 two additional. We stayed two nights, though.

8 Q Okay. The initial plan was just to spend the night
9 away --

10 A Yeah. Just to spend the --

11 Q -- from home?

12 A Yes.

13 Q And not a work night?

14 A No, not a work night.

15 Q Okay. Well, how did you get to the hotel?

16 A A cab.

17 Q Okay. Do you remember what the cab company you used?

18 A Yes. It was Trinity.

19 Q Okay. Do you remember what time they came? Did you
20 call them from Laswan's house or did she call them, or who
21 called them?

22 A No, I called them. I had, well, I called from that
23 Wi-Fi phone. Like I got Wi-Fi calling on my number. I
24 didn't call from Laswan's phone. I called from my phone.

25 Q So as long as you are connected to a Wi-Fi signal,

1 you can make Internet calls?

2 A Yeah. You can make calls, yes.

3 Q But when you don't have Wi-Fi, you have to use a
4 regular phone?

5 A Yes, sir.

6 Q Was anybody else with you? Were y'all going to like
7 meet up with any friends or anybody like that, or it's
8 just going to be you and Laswan?

9 A No. It was just me and Laswan.

10 Q Okay. What time did you get to the hotel?

11 A The hotel around 9:00, around 9:00.

12 Q Okay. Now, we've seen the hotel receipt --

13 A Yes.

14 Q -- showing us you checked in or at least she signed
15 in at 9:05?

16 A Yeah. She signed in.

17 Q Is that consistent?

18 A Yes.

19 Q What time would the taxi had come to pick you up in
20 the first place?

21 A And I'd say it probably was around maybe like 8:00,
22 maybe like 8:00. Like I said, they had other fares in the
23 car, so it took us a little bit more time. Like we been
24 had left out, but it took more time to get there.

25 Q Okay. And then how long were you in the, did you

1 stay in the hotel for the rest of the night or were you
2 back out?

3 A Like she was at the hotel. Like I said, when we got
4 there, I was there. Basically, she got the room and I
5 know what room it was, I know what room it was. Like
6 also, like I say, I had walked down, I had left, I had
7 left and walked down to the store right there. That's
8 what I had told like the first day, like I told them, like
9 that's what I had meant, but when I said that, I had met
10 Laswan there. Like we both got there at the same time,
11 but she told me what room that was, that what room that it
12 was. And, like I say, I had walked to the store or
13 whatnot, and then like I came back shortly after that
14 period of time.

15 Q All right. So she went in and checked in?

16 A Yeah. And then like I met up with her. I just went
17 with her when I know what's the, what the room number was.

18 Q Now, we saw the, but there was some license tag
19 number sign, attached to the check-in?

20 A Yes, sir.

21 Q Do you know what car that would be?

22 A And, I mean, and they got a tag number, you know,
23 ride in a taxi cab.

24 Q Okay.

25 A It had to be of the taxi.

1 Q And what, which hotel are we talking about or motel?

2 A The hotel right across the street from McDonald's,
3 the Economy Inn.

4 Q Okay.

5 A I think that's what it is called.

6 Q Down the street, it's not right next to McDonald's,
7 is it?

8 A Yes. It's right--

9 Q Okay. It's more across the street?

10 A Yeah, it's right across.

11 Q Okay. Okay. Where'd you go that night from the
12 motel room?

13 A McDonald's. I had went to McDonald's. Like I say --

14 Q What time did you go to McDonald's?

15 A It was like around 11:00, around 11:00 o'clock. It
16 was closed, but like, well, it wasn't closed. The inside
17 was closed. You know, there was only drive-thru --

18 Q Okay.

19 A -- as far as like prior that night, Walmart. I went
20 to Walmart and --

21 Q What time did you get to Walmart?

22 A It was after 12:00. I can't remember the exact time,
23 but I know it's sometime after 12:00. I know it was late.

24 Q Well, why are young people walking to Walmart after
25 midnight? What are you doing?

1 A Oh, I went to go get something to eat. Like,
2 basically, like I said some little things like snacks and
3 stuff.

4 Q All right.

5 A Also I had bought a shirt, I had bought a shirt.

6 Q Is that the shirt you bought?

7 A I had bought a red shirt.

8 Q Okay. All right. Well, tell me what happens when
9 you, what happens the rest of the evening?

10 A Well, it just me and she was together, like spending
11 time together doing, doing what they do. That's my
12 girlfriend.

13 Q Do you know Ms. Wicker, the lady here behind me?

14 A No, sir. Not far as just knowing that she stays in
15 my neighborhood.

16 Q But did you know her name prior to September 21st of
17 last year?

18 A No.

19 Q Did you know her name until the police had spoken to
20 you?

21 A No, sir.

22 Q Did the police tell you what her name was?

23 A They said her last name. The first day they
24 questioned me, they said her last name. They didn't say
25 her first name, though.

1 Q Is that the first time you ever heard her name?

2 A Yes, sir.

3 Q Are you familiar with her, though?

4 A I wouldn't say familiar other than just seeing her.
5 I'm not familiar.

6 Q Would you recognize her?

7 A Would I recognize her? I know the house that she
8 stay in and as far as like not recognize her. Like we
9 don't have no type of verbal communication on the regular
10 at all.

11 Q Well, I mean, how long have you known that she's
12 lived in that neighborhood?

13 A Probably since, like I say, I grew up in the
14 neighborhood. But far as like actually paying attention
15 to people and stuff, I might have been like twelve or
16 eleven, like, you know, and actually not knowing her.
17 Like really never had no verbal conversation with Ms.
18 Wicker.

19 Q I'm going to get into that. Have you ever spoken to
20 her or had any kind of meaningful conversation with her
21 before?

22 A No, sir.

23 Q Have you ever been invited over to that house before?

24 A No, sir.

25 Q Been inside of the home before?

1 A No, sir.

2 Q Did she have kids or, we heard about grandkids,
3 maybe, or anybody your age that you would have played with
4 in the neighborhood?

5 A No, sir. Never. No, sir.

6 Q Did you know her husband?

7 A Yes, I knew her husband.

8 Q Well, tell me about how you knew him?

9 A Not really knowing him far as like I was a child, as
10 me being a child, probably like thirteen years old. I
11 used to, they used to have this rose bush, the rose bush.
12 He had let me pick the roses off to give to my mother one
13 time and when I was a kid, I might speak to him, but,
14 other than that, like that's all, like.

15 Q Do you know his name?

16 A No, not that I can remember. No.

17 Q Okay. How old were you, do you remember an incident
18 when you went over there one time to pick some flowers for
19 your mama?

20 A Yes.

21 Q About how old were you, do you think, about that
22 time?

23 A I was a child. I was thirteen years old and no older
24 than thirteen, if I was thirteen, twelve or thirteen. I
25 was young.

1 Q Had you ever seen her visit your mama at your house
2 before?

3 A No, sir.

4 Q And had y'all ever had any kind of neighborhood
5 parties where sometimes you might meet some of your
6 neighbors?

7 A No, sir.

8 Q Did you know her from work or any other source?

9 A No, sir.

10 Q So you've never in your life spoken to Ms. Wicker?

11 A No, sir.

12 Q Did you know that she had a mother living with her?

13 A No, sir.

14 Q Could you see any signs from walking by that her
15 mother might be living with her?

16 A No, sir. I didn't know. When I walked by, like I
17 don't pay too much no attention to anybody else. I have
18 no knowledge, you know, that she'd be staying with her
19 mother or anything.

20 Q Okay. And that's not the only house in the
21 neighborhood, is it?

22 A No. It's not the only house in the neighborhood.
23 There's plenty of other houses in that neighborhood, in
24 Green Meadows.

25 Q Did you know Mr. Charlie Wicker who passed away in

1 2015?

2 A That's her husband, if that's what his name. Yes, I
3 knew of him.

4 Q Did you know her husband had passed away in 2015?

5 A No, not really knowing. I mean, far as like I seen a
6 wreath on the house at one time. So, I mean, I got common
7 sense. Usually, like when somebody got a wreath on the
8 house, somebody died and like far --

9 Q Did you know he had passed away?

10 A Yeah. Far as like the wreath I would --

11 Q Okay.

12 A -- you know, I've seen.

13 Q Okay. You hadn't seen him for the last, was he
14 regularly out, and was he kind of one of these men who
15 liked to work out in the yard a lot where you would kind
16 of see him?

17 A Yeah. I used to see Mr. Wicker like on the porch.
18 Like, I ain't even, I can't recall ever like seeing him in
19 the yard, but he'll be on the porch.

20 Q Okay. What about Ms. Wicker, was she the type of
21 lady that you would see working in the yard and see
22 outside on a regular basis?

23 A Not that I never seen.

24 Q Okay.

25 A Like every time I had any type of verbal

1 communication with her husband, like I never seen Ms.
2 Wicker.

3 Q Okay. Now, we've heard something about that you
4 might have, that she saw you may be walking by to your
5 house about a week before September 21st?

6 A Yes, sir.

7 Q Do you remember that incident?

8 A Like I don't recall calling seeing her. But as far
9 as like Friday week, like I had went to my mother's. Like
10 I ain't going to say they didn't see me, but I don't
11 recall seeing them.

12 Q But it wouldn't be unusual for you to be walking by?

13 A No, it wouldn't be unusual at all.

14 Q So if she saw you the week before and that's entirely
15 possible?

16 A Yeah, that's possible. Yeah.

17 Q Now, tell me what your hair was like in September of
18 last year?

19 A Well, I had dreads like --

20 Q How long were your dreads?

21 A My dreads was probably about to down here.

22 Q Now, you're pointing kind of to the second button,
23 kind of to the top of the stripes on your shirt?

24 A Yeah. Yeah. This length right here.

25 Q So they went down kind of to the top of your chest?

1 A Yes, sir.

2 Q The booking photograph we've seen is a fairly
3 accurate depiction of how long your dreadlocks were?

4 A Yes, sir.

5 Q What about in the back? How long were they in the
6 back?

7 A May I turn, may I show them? Like turn around and
8 show them.

9 THE COURT: Sure. Yeah. You can stand up. Do
10 whatever.

11 A Like, probably like my back probably like right here.

12 Q About the same length in the front and the back --

13 A Yes, sir. Yes, sir.

14 Q -- or longer?

15 A About the same length. They might have been like a
16 little longer. A couple of dreads might have been a
17 little longer than the other.

18 Q How long had you had them? They were highlighted?

19 A Yes, sir.

20 Q And what color?

21 A Blonde; they was bleached. They was bright blonde,
22 bleached.

23 Q Okay. Well, just out of curiosity, were they blonde
24 or do you actually just bleach them and they, down to the
25 color?

1 A I bleach them. I had bleached them and that's what
2 color they turn when you bleach them. It turned them
3 blonde.

4 Q And I think of something bleached, it being kind of
5 white. Were they white or can you bleach them --

6 A Like some of them was white, because I let the bleach
7 stay in longer than others, but most of them was like
8 blonde, like a bright, bright, bleach blonde.

9 Q Were there any other like orangey highlights or
10 colors in them, too?

11 A No, sir.

12 Q Okay. And how long had you had them?

13 A How long I had my dreads or how long I had that
14 color?

15 Q Well, I guess, how old were you when you grew your
16 dreads out?

17 A Oh, I had dreads ever since for eight years, for
18 eight years.

19 Q Okay. And how long have you had them frosted on the
20 tips like that?

21 A Probably about almost a year, maybe almost a year.
22 Probably not even a year and it might have been like ten
23 months, ten, eleven months.

24 Q Okay. Are there any other black men about your age
25 in the neighborhood?

1 A Yes. Yeah, there's other black people in the
2 neighborhood, yes.

3 Q Okay. Well, how about the, like I don't know Green
4 Meadows. Is that kind of a mixed neighborhood, some white
5 neighbors here or there --

6 A Yeah. Yeah.

7 Q -- is it primarily African-American?

8 A Oh, no. It's a mixed neighborhood. You have
9 Mexicans, Caucasian, black people. Yeah, it's a mixed
10 neighborhood.

11 Q So it's not necessarily one --

12 A No.

13 Q -- group of people who are predominately in that
14 neighborhood?

15 A Yeah. No. No, exact race.

16 Q Okay.

17 A It's mixed.

18 Q Are there other young black men about your age in the
19 neighborhood?

20 A Yes. Yeah.

21 Q A lot or just a few?

22 A Just a few of my knowledge that I know. As far as
23 like the only reason, only just ones that I can recall
24 that I know is the ones I used to go to school with from
25 there.

1 Q Anybody else in that neighborhood have dreadlocks,
2 any men?

3 A Not that I, not that I know of.

4 Q Okay. What about younger than you?

5 A Yeah. Some were younger.

6 Q Okay.

7 A There was some little kids down the road had had
8 dreads.

9 Q And is it fair to say that dreadlocks have become a
10 fairly common hairstyle now for young people?

11 A Yes, sir.

12 Q Okay. Any older men with dreadlocks?

13 A You'll have a few, but not too many --

14 Q Okay.

15 A -- older people have dreads.

16 Q But you would have been the guy in the neighborhood
17 known for having the dreadlocks?

18 A Yes. Yes, sir.

19 Q So if I went to like somebody's neighbor's house and
20 said, you know, I need to talk to the guy, the black guy
21 with the dreadlocks. Do you think your neighbors would
22 kind of say he lives down the street towards you?

23 A Yeah. Yeah. Most likely.

24 Q And you were in the neighborhood where everybody in
25 that neighborhood would recognize your face?

1 A Yes, sir.

2 Q Do you remember getting arrested by the police?

3 A Yeah. Yes, sir. I remember that day.

4 Q All right. Well, tell me what was your first
5 interaction with the police following September 21st that
6 you recall?

7 A My first interaction was when I was at the probation
8 place. That was the 22nd. That's when Robert Dennis and
9 Lominack --

10 Q And it's come out so often. You were on probation on
11 September 21st?

12 A Yes, sir; I was.

13 Q For distribution of marijuana?

14 A Yes, sir.

15 Q So you went to your probation agent?

16 A Yes, sir.

17 Q Do you remember what time you went to the probation
18 agent?

19 A Actually, I don't but remember that day, and I say it
20 was after around 4:00. It kind of like lingered on
21 because of the investigators having questions.

22 Q Okay. So the investigators would be the Sheriff's
23 Department investigators?

24 A Yeah, Robert Dennis.

25 Q Okay. So the investigators met you at the probation

1 department?

2 A Yes, sir.

3 Q Was it just coincidentally that they ran into you or
4 did they actually say, hey, we came here looking for you,
5 or do you know?

6 A Oh, no. It was a question. No, they had already
7 preplanned that.

8 Q Okay.

9 A You could tell.

10 Q Was it coordinated with the probation agent/officer?

11 A I'm pretty sure it was.

12 Q All right. And what kind of questions did the
13 investigators ask you?

14 A Basically, they asked me questions as far as like did
15 you know that Ms. Wicker that had been attacked, like it
16 been a incident that happened. Also, they asked me, it
17 came out, happened, did you know or did you do it? I'm
18 like no. From the day, I told them I didn't have anything
19 to do with it.

20 Q So they were asking you about the night that Mrs.
21 Wicker had been attacked in her home?

22 A Yeah. Yeah, fairly, yeah. Not too many questions.
23 But, basically it wasn't far as too many questions.

24 Robert Dennis, his demeanor was more some like, you know,
25 if you did it, if you did it, it's not looking too good,

1 like, already trying to say I'm guilty of something that I
2 didn't even do.

3 Q Now, this was a mandatory appearance where you had to
4 go to the probation office?

5 A Yes, sir.

6 Q Now, you weren't just hanging, going there to hang
7 out?

8 A No. I don't go to the probation place to hang out.

9 Q And when the police talked to you, it was in the
10 probation officer's, well, what part of the probation
11 department did you speak to them?

12 A It was in the probation office itself, as far as
13 where, I don't know if you familiar with Ms. Brown, where
14 the office located with Ms. Brown and Mr. Simmons located.
15 Jimmy and where their office is located.

16 Q And those are the names of three of the probation
17 agents?

18 A Yes, sir.

19 Q Okay. So it wasn't in the main room, but it was in
20 one of the little offices?

21 A Yeah. It was in the offices.

22 Q Okay. You weren't handcuffed when he --

23 A No, sir.

24 Q --they were speaking to you?

25 A No, sir.

1 Q Did you feel like you were free to just walk out and
2 leave, though?

3 A Yeah. I felt like I was free. It just like I was
4 kind of like startled by like, you know, they had also
5 told me like I was a suspect. So, I mean, I didn't know
6 why. I felt like I could leave. I mean, they told me to
7 leave. Actually, Mr. Simmons had gave me a ride back to
8 the hotel --

9 Q Okay.

10 A -- because it was raining. It was raining.

11 Q So if you had just stood up when Captain Dennis was
12 asking you questions and walked out, do you feel like he
13 would have just let you walk out?

14 MR. SCOTT: He answered that, Your Honor, and it's
15 asked and answered already, and it's another leading
16 questions. He didn't get the answer to one, so he's
17 asking it in a leading way. He said he felt he was free
18 to leave.

19 THE COURT: All right. Try and rephrase your
20 question, Mr. Verner.

21 Q When Mr. Dennis, Captain Dennis sat down and was
22 asking you questions, did you feel like you could just
23 stand up and walk out on him?

24 A No, not me. No. I ain't felt like it would be smart
25 like just to get up and walk away from them.

1 Q Why not?

2 A First of all, I felt like, you know, with, you know,
3 questioning me about something so serious and with me just
4 walking away. Actually, I don't even, like personally
5 with me, I just felt like that wouldn't have been a good
6 look for me just to walk away as far as with them. They
7 already, basically, like I said, if I can say, Robert
8 Dennis was already, basically, all up on me close and
9 brushing up against me talking about as far as like you
10 had anything to do with this or like I'm saying that,
11 like, I'm going to get you. Like, really, he like he
12 trying to say that I'm guilty before he even had any type
13 of anything on me, I mean, indicating it was me. Which I
14 told them that it wasn't me, that I'd never do anything
15 like that.

16 Q And no question in your mind, this wasn't a chance
17 encounter? They had intended to talk to you that day?

18 A Yes, sir.

19 Q Were they in the, you see the uniform, Investigator
20 Dickert has on right now?

21 A Yes, sir.

22 Q Kind of a knit shirt with a badge uniform?

23 A Yeah. That's exactly what they was in.

24 Q Okay. So that's the kind of uniform they were in on
25 that day?

1 A Yes, sir. Dennis and Lominack; yes, sir.

2 Q Were they armed?

3 A Yeah, they had their pistol.

4 Q Okay. Was it just Captain Dennis or was it several
5 officers?

6 A No. It was Captain Dennis and Lominack.

7 Q Did any of the probation agents participate in the
8 conversation or sit in for it?

9 A At a part in time as far as when they were
10 questioning me --

11 Q Yes.

12 A -- I was like in the, well, I guess, not in the exact
13 office. Like I say, the lobby of different spaces of
14 their offices. Far as like when I got to talking with Mr.
15 Simmons, they took pictures, they took pictures of me. It
16 wasn't around the probation officer. They was, they was
17 talking to me around Mr. Simmons.

18 Q They took pictures of you before the first time they
19 spoke to you or that was the second day when they arrested
20 you?

21 A No. They took pictures of me the first day.

22 Q All right. Well, we've seen photographs the State
23 put into evidence of you with handcuffs behind your back
24 and up against the wall.

25 A Yeah. That was the, that was the 23rd. They took

1 pictures of me the 22nd.

2 Q Okay. Just with their cellphones pictures or did
3 they line you up against the wall or how was that done?

4 A They told me to stand up against the wall and
5 basically it wasn't like of my whole body. They was
6 taking pictures of my arms.

7 Q Oh, okay. That's a good point. Do you have any
8 tattoos on your arm?

9 A Yes, sir. I got my name on my arm.

10 MR. VERNER: Can he step down, please, Your Honor?

11 THE COURT: Sure.

12 Q From this side of the rail, just let the jury see.

13 A I got my name on my arm. You can clearly see it's my
14 name, Anthony. I got it, tattoos on my hand.

15 Q Okay. You got tattoos on your hands and let's see
16 the arm one more time?

17 A There's one that says my name.

18 Q So you got your name written on your right arm --

19 A Yeah.

20 Q -- from your wrist to your elbow?

21 A Yes, sir.

22 Q Okay. You can sit down. And then after, how did the
23 conversation with the deputy then on the 22nd?

24 A Basically ended, the conversation with them ended in
25 Mr. Simmons' office. After that, at the time they was in

1 the office, it was less questioning really. Like they
2 really questioned me mostly when I was in the lobby when
3 they were just --

4 Q Okay.

5 A -- Lominack and Dennis. But as far as like how it
6 ended, if I can remember, it was just like they told me
7 like they, they left.

8 Q Did they make it clear to you they thought you might
9 have had a hand or something--

10 A -- oh, yeah. Robert Dennis was, he was very clear.
11 He was very clear. He was indicating that I did it the
12 whole time.

13 Q Okay. Now, how were you, how did that interaction
14 end? Did they just say now you can go or how did that
15 interaction with law enforcement end?

16 A If I can, if I recall correctly, basically, they also
17 after they asked about the phone, my phone and stuff,
18 after they basically asked the questions, they pretty much
19 left me alone. Like they said, you know, I can continue
20 to do whatever, I went to the probation for and the drug
21 test thing.

22 Q So you were allowed, and I think you've testified
23 that Mr. Simmons, the probation agent, drove you back to
24 your hotel?

25 A Yes, sir.

1 Q Okay. Well, how did it come about that you came back
2 to the probation department the following day?

3 A Far as like I had to finish the drug test, to take a
4 drug test.

5 Q Well, wouldn't you have done that the first day that
6 you went?

7 A Well, because the first day I didn't urinate. I
8 didn't piss like.

9 Q Is that because you were interviewed or what was the
10 reason?

11 A Yeah. Because I was interviewed. Like I told them I
12 couldn't piss, and like I told them like I had to pee,
13 urinate, whatever word you want to use. I had urinated
14 before I had came there. Like I told him, I didn't have
15 to use the bathroom then. After that, like I said, it
16 was, they coming at me with such, like, accusations of a
17 crime. Like, I couldn't use the bathroom. I told him I'd
18 come back the next day. Well, he told me to come back the
19 next day, not I told him.

20 Q The probation agent said, well, you need to come back
21 tomorrow and do --

22 A Yes, sir.

23 Q -- a urinalysis test?

24 A Yes, sir.

25 Q Okay. And so they were regularly screening you for

1 drugs or that was part of your probation?

2 A Yeah. Sometime. Like every time I report, they
3 don't always drug test me.

4 Q Okay. But I would think because if you're on
5 probation for a marijuana charge that a drug screen would
6 be part of --

7 A Yes, sir.

8 Q -- probation terms? All right. Well, tell me about
9 the 23rd, the following day?

10 A Oh, that day, me, my girlfriend, Laswan, we leave the
11 hotel room. As far as, like I said, she about to go, that
12 day she got to go to work. We go to Grant's. Go to
13 Grant's. She changed clothes. After that, like I say,
14 it's kind of like a little gap between the time she got to
15 go to work. So she was like, Baby, I'll go. She going to
16 come with me to the probation office. So we get a cab.
17 The cab comes. We come to report to the probation to take
18 the drug screen right here on Harrington Street. As soon
19 as I get out the car, as soon as I get out the car, like,
20 I got about like six or seven police officers with
21 automatic rifles in my face and guns pointed on me and my
22 fiancé, Laswan, telling us to get down, get down on the
23 ground and that was it.

24 Q Okay. And that happened outside the probation
25 department?

1 A Yes, sir.

2 Q Okay. And you had voluntarily come to the probation
3 department at that time?

4 A Yes, sir.

5 Q Now, the day before they had indicated to you, Robert
6 Dennis, I think you testified had made it clear to you
7 that he suspected you might have something to do with what
8 happened to Ms. Wicker?

9 A Yes, sir.

10 Q Do you have friends with cars?

11 A Yes, sir.

12 Q Did you leave Newberry County?

13 A No, sir.

14 Q Did you go anywhere outside the --

15 A No, sir.

16 Q And, in fact, Mr. Simmons took you back to the hotel
17 room where you told him you were staying?

18 A Yes, sir.

19 Q Okay. And he told you to come back to the office the
20 next day and you did?

21 A Yes, sir.

22 Q What happens after you are arrested by the police on
23 the 23rd? This will be Friday.

24 A After I'm arrested, after I'm arrested and the police
25 ride in the car with Robert Dennis and Epps, like I mean,

1 like I said, like, they, that's where they read me some
2 type of rights. But they hadn't read me no type of rights
3 in the, as far as like during the police ride, Robert
4 Dennis was basically just, you know, basically just, like
5 I said, talking trash as far as like, you know, like
6 saying I'm guilty of the crime. Saying you know you did
7 this. Also telling me things like, that pretty little
8 girlfriend of yours, that pretty little girlfriend of
9 yours, like, you know, she can get arrested, too. Like he
10 going to say that she had something to do with this.
11 These are his exact words far as like he said that he
12 going to make sure, these are the exact, I remember these
13 things coming out of his mouth. He also said, like, I'm
14 going to make sure you don't get no bun. I'm going to
15 make sure you spend the rest of your life in prison. I
16 know he said this. He said all that but, like I said, he
17 never read me no Miranda's or nothing. He was
18 trash-talking until I didn't have no more to say to him or
19 whatnot, basically.

20 Q But not reading you Miranda, you mean that he didn't
21 tell you that you could have a lawyer present?

22 A No, no, no. He was too busy wanting to talk trash.

23 Q Okay. So by talking, so he was fairly animated or?

24 A Very animated.

25 Q Okay. Was Laswan also arrested at the same time you

1 were?

2 A Yeah, my baby, yeah, that's my girlfriend. Well, she
3 was arrested at the time, too.

4 Q How long do you think that the police interviewed
5 you?

6 A I would say maybe close to an hour maybe.

7 Q Okay. You were in, you were under arrest at that
8 time, weren't you?

9 A Yeah, they had me locked up.

10 Q Okay. How did they bring you into the station?

11 A Handcuffed when they brought me to, I was handcuffed.

12 Q In the back of a police car?

13 A In the back of, in the back of the police car, the
14 SUV.

15 Q How did they bring you, were you handcuffed when they
16 brought you into the police station?

17 A Yes, sir.

18 Q What about during the interview?

19 A Well, actually I think they took, when they took the
20 handcuffs off, yeah, they took the handcuffs off.

21 Q Both of them?

22 A Yes. That was at the time I was talking to Ryan.

23 Q Okay. By Ryan, you mean Investigator Dickert?

24 A Investigator Dickert right there.

25 Q Did you have leg shackles on?

1 A No.

2 Q Okay. But you're in the belly of the Sheriff's
3 Department when you're talking to them?

4 A Oh, yeah. They got their boy, not boys. They got
5 their investigators like around me.

6 Q You're in the middle of the --

7 A Yeah. Officer Epps on the side, on the side of me.
8 I'm talking to Ryan Dickert, and there's somebody else
9 posted up behind me and another investigator, I think.

10 Q Did they go over with you the evidence that they said
11 that they had on you?

12 A Yeah. Robert Dennis was going over things.

13 Q Did they discuss the details of the case with you?

14 A Yeah. They said things. Like they said things far
15 as like, far as like Ms. Wicker being attacked.

16 Q Like I would think, would you have bothered to ask
17 them, well, what evidence do you have that I did
18 something?

19 A Yes.

20 Q And did you say anything like that?

21 A Yes.

22 Q Okay. Did they, and did they answer you, well, we've
23 got you, this is how we got you?

24 A No, not too much. They were, they were so busy
25 over-talking each other, like, you know, like I don't know

1 if they enjoyed it or whatnot, like, you know, enjoyed it.
2 But Robert talking, Ryan, I mean, Investigator Dickert, I
3 mean, he talking and, like, you know, basically, they just
4 missing what I'm saying. But, basically, like I'm over,
5 not over-talking to them. I'm talking at the same time
6 telling them, you know what I did? What evidence have you
7 got and, I mean, like why is I am such a, like why you
8 coming at me like this far as like indicating that I did
9 such a crime.

10 Q Were you calm and collected during that conversation
11 or were you kind of a little bit emotional, too?

12 A No. I was calm, cool, and collected. I not near
13 time like yell at them, cussed at them, none of that. I
14 answered their questions to the best of my knowledge.

15 Q It had to be somewhat intimidating?

16 A Yeah. It was intimidating. Because, like I say,
17 Robert Dennis, you know, he love to talk trash. That's
18 what he do.

19 Q Did you ever once tell them that you had anything to
20 do with Ms. Wicker being attacked?

21 A No, sir. I told them that I didn't do it ever since
22 the first day I had an encounter with Lominack,
23 Investigator, Captain Dennis. I told them I had nothing
24 to do with it. I told them I wouldn't do such a thing.

25 Q And you repeatedly made that clear to them?

1 A I repeatedly, repeatedly, repeatedly told that to
2 them I wouldn't do anything like that.

3 Q Were they going through your statements that you gave
4 at the time they're quibbling with you or arguing about,
5 well, this can't be true.

6 MR. SCOTT: These are all leading questions, Your
7 Honor.

8 THE COURT: Try to rephrase, Mr. Verner.

9 Q Were they challenging your statements, the truth of
10 your statements, or the credibility of your statements?

11 A Somewhat. Like, somewhat they was. They just, like
12 I said, they was talking at the same time. Like I say,
13 they really, they having a little field day investigating
14 me, I mean.

15 Q Did you tell them on September 23rd everywhere you
16 had been that day?

17 A Yes.

18 Q Okay. And did you tell them everything that you had
19 done and everyone you'd seen truthfully?

20 A Yes. Yes. I was honest and truthful with them.

21 Q Were they trying to pick holes in your story?

22 A Yes.

23 Q They were trying to get you to confess, weren't they?

24 A Yeah. They're trying to get me to confess.

25 MR. SCOTT: That's a leading question. He's leading

1 the whole time, Judge.

2 Q What did they say? Where did you go? Who did you
3 speak with?

4 THE COURT: Try not to lead, Mr. Verner.

5 Q Anthony, did you have anything to do with the
6 attacking of Ms. Wicker?

7 A No, sir. I never attacked, Mrs. Wicker. I never
8 would do anything like that. I have a grandmother of my
9 own. Like I said, the same background as she do. I go to
10 church. I'd never do anything as that, I never.

11 Q Well, why are you here standing with charges?

12 A Because they said that the person, like I say, they
13 indicated that the person had dreads and that the person
14 had dreads. And they also, they say about my phone being
15 in the proximity of an area that my mother stays in, that
16 I stays in, and my girlfriend stays in that area. Those
17 are the things that they indicated, you know, that's the
18 reason why they picked me as a suspect. But, like I say,
19 I'd never do a thing like that.

20 Q Do you believe it was a mistaken, a victim of a
21 mistaken identity?

22 MR. SCOTT: That's an improper question.

23 THE COURT: Sustained.

24 Q Were you, have you ever been in Ms. Wicker's house?

25 A No, sir. I never been in Ms. Wicker's house.

1 MR. SCOTT: These are asked and answered, too. We're
2 just doing the same questions over and over.

3 THE COURT: I don't recall that particular question
4 being asked, so I'll allow it, and he's already answered.
5 You may move on.

6 Q Did you go in Ms. Wicker's car, the pickup truck?

7 A No, sir.

8 Q Where were all of your clothes and personal effects
9 on September 21st of last year?

10 A Where, the clothes that I would have on? You repeat
11 the question, sir?

12 Q Where would you have kept most of your clothes and
13 belongings?

14 A Oh, most of my clothes would be at my mom's house.

15 Q Okay. Are you aware whether the house was searched
16 or anything was taken from you?

17 A Yesterday, yesterday, yesterday, I heard that they
18 didn't use any search warrant. They didn't go to my
19 mom's, also, or my fiancé, well, my girlfriend, Laswan,
20 like they never did that.

21 MR. VERNER: I beg the Court's indulgence.

22 THE COURT: Sure. Take your time.

23 Q Do you own a black hoodie, Anthony?

24 A No, sir.

25 MR. VERNER: And, Anthony, you're going to have to

1 answer the State's questions now.

2 THE COURT: Let's take a break before we start into
3 cross-examination. Mr. Foreman, ladies and gentlemen of
4 the jury, we going to take a morning break, and so I ask
5 that you go back to the jury room. Again, no discussion
6 about this case among yourselves, and we'll get you back
7 out shortly.

8 (Whereupon, the jury was excused from open court for
9 a break.)

10 THE COURT: All right. We'll be in recess a few
11 minutes.

12 (Whereupon, a short break was taken.)

13 THE COURT: Madam Bailiff, if you'll bring the jury
14 back out, please.

15 (Whereupon, the jury came into open court at
16 approximately 11:10 a.m.)

17 THE COURT: All right. Let the record reflect the
18 jury is back in the courtroom. Solicitor, are you ready
19 for your cross-examination?

20 MR. SCOTT: Yes sir, Your Honor.

21 THE COURT: Okay. You may proceed.

22 CROSS-EXAMINATION

23 By Mr. Scott:

24 Q Mr. Wise, you probably saw this coming. Will you
25 help me open this phone today, State's 61?

1 A It been a while. Like, I can't remember. It been a
2 while since.

3 Q You can't remember either?

4 A No, sir. I can't remember.

5 Q Well, give it a try.

6 A Yeah.

7 Q We'll never know what's on this phone, will we?

8 A I can't remember the PIN, because it's been a while.
9 I been locked up for nine, eight months.

10 Q September 21st, 2015, working for Bojangles, is that
11 correct?

12 A Yes.

13 Q Or had you stopped working there a week before like
14 we heard yesterday?

15 A No. I hadn't stopped working there. I wasn't never
16 fired. It just I ain't had went in. Like, Bojangles, as
17 you know, is not like as a lot of hours, jobs. Basically,
18 they only call me when they need me. It just I had missed
19 out on the day that they called me, but my manager
20 flexible. Like, I wasn't actually ever said I'm fired or
21 anything.

22 Q Well, I didn't ask you that. I'm saying were you
23 working there or --

24 A I said, yes sir. I was working there.

25 Q Okay. But on the 21st, you just didn't go in?

1 A No. I didn't have to work the 21st.

2 Q All right. But you were still employed there or were
3 you not employed there?

4 A I was employed there.

5 Q Okay. And you said Laswan was working at Kraft, is
6 that right?

7 A Correct.

8 Q And Laswan stayed with her mother on Fox Briar,
9 correct?

10 A Correct.

11 Q And she took care of her mother to some degree?

12 A Yes. Her mother is disabled.

13 Q She's disabled?

14 A Yes. She had strokes.

15 Q Okay. And so who watches your children?

16 A They be with their mother. They be with their mother
17 or sometimes, they be with my mom.

18 Q Okay.

19 A I have my kids sometimes, too.

20 Q Okay. Who was going to watch Laswan's two children
21 when you went to the hotel for two nights?

22 A Laswan have three kids.

23 Q Who was going to watch Laswan's three kids when y'all
24 were going to be in the hotel for two nights?

25 A Her mother.

1 Q Who?

2 A Her mother. And, basically, when they sleep, they
3 sleep. So they no problem to watch them when they asleep.
4 As far as like she puts them to sleep and, basically, they
5 don't wake up. Like, once you put them asleep, they
6 sleep.

7 Q Forty-eight hours.

8 A So they'll sleep all night. Not for forty-eight
9 hours.

10 Q You're going to stay at the hotel for two nights is
11 your testimony?

12 A We wasn't, we wasn't going to stay there. It wasn't
13 never planned to stay there two days. Like I told you,
14 like I told you when I was talking to Verner, like it was
15 only supposed to be one day. She had talked to her mother
16 about watching them, and we was going to come later on
17 that day. Her brother stays there, too. Like, so as far
18 as the time that she had to work that day. Like I said,
19 she had to work the day that I got arrested or whatnot.
20 The second day, she had to work that day, so her brother
21 was just going to watch the kids. They had talked.

22 Q Okay. So why were y'all staying at the hotel again?

23 A Because, like, you know, the things that I wanted to
24 do with Laswan, we can't do at her mother house.

25 Q You spend the night at her mother's house, though,

1 don't you?

2 A Yeah. But, I mean, I don't be having sex with her at
3 her mother's house.

4 Q Okay. All right. Let's go over the day of the 21st,
5 the day that you decided to go to the hotel that night.

6 You woke up at Fox Briar road, correct?

7 A Yes.

8 Q And you do sleep over there?

9 A Yes, sometimes.

10 Q Okay. And do you sleep in the bed with Laswan?

11 A Yes.

12 Q But you needed a hotel that night?

13 A Like I told you, like, that's her mother's house. I
14 don't go there. I spend time with her. I don't have to
15 go there. Her mother don't, I won't have to go there to
16 have sex with her. It be her and her kids there. I mean,
17 her kids sometimes be in the bed with us while we sleep.
18 I mean, like I told you, what I wanted to do, can't do it
19 at her mother's house.

20 Q Woke up at Fox Briar, and then you walked the twenty
21 minutes from Fox Briar to your house, correct?

22 A Correct.

23 Q And your house is Green Meadows?

24 A Yes.

25 Q [REDACTED]?

1 A [REDACTED].

2 Q [REDACTED]. Twenty-minute walk, and tell me why don't you
3 have a key to that house?

4 A Because like I never, I had lost the key before.
5 Like, I been lost the key. I just ain't never got one.
6 Far as like I say, I don't stay there like all the, all
7 the time, so I really don't need a key. Most of the time,
8 the majority of the times I go, my dad's, if this is
9 relevant to the case, my dad works. He usually be in
10 there in the mornings like around that time off from work,
11 so I always get in the house when I need to.

12 Q You don't have a key to your own house?

13 A No. That's not my house. That's my mother's house.

14 Q Well, it's your house?

15 A Like I stay there with my mother. It's not my house.
16 It's my mother's house.

17 Q Okay. Your residence; what do you call it?

18 A Yeah, my residence. Yeah, that's my residence.

19 Q You don't have a key to your residence?

20 A Yes, sir. I had before in the past.

21 Q All right. Went to get clothes at 11:00. That
22 didn't work, of course, because you don't have a key to
23 your own house, right?

24 A Yeah. Like I say, I, you keep saying my house.
25 That's my mother's house. That's my residence.

1 Q And you don't have a key to your own residence. So
2 you're unable to get to your own clothes, correct?

3 A Yes. At the time, yes.

4 Q All right. And that was about 11:00 a.m., correct?

5 A It was a little after if I remember correctly, I
6 mean.

7 Q Let me write it down. I want to get clear on it. So
8 what, what was it. So early was 11:00.

9 A I still say it was 11:00. It might have been a
10 little afterwards. Far as like I say, sir, that was like
11 nine months ago, so the timeframe might be a little off,
12 but I'm pretty correct in what I'm saying that it was
13 11:00 o'clock.

14 Q Some things you remember in great detail, other
15 things you don't, isn't that correct?

16 A Correct.

17 Q Okay. Do you need a break?

18 A No, I don't need no break. You continue with your --

19 Q All right.

20 A -- cross-examination.

21 Q A little bit after 11:00, you went to your residence
22 where you don't have a key and you go to get your clothes,
23 and then you went to David's, correct?

24 A Yes.

25 Q Who's David?

1 A David stays right across the street.

2 Q David who?

3 A David stays across the street.

4 Q And what's David's last name?

5 A David's last name is Counts.

6 Q Are we going to hear from David Counts today?

7 A No. David is not here.

8 Q Did you talk to David Counts on the 21st?

9 A Yes.

10 Q What was the, what was the substance of your
11 conversation with David Counts?

12 A Well, it wasn't no conversation. Like, I was over
13 there really just waiting till my mom got there. Waiting
14 till somebody got to my house. That's the only reason I
15 went over there.

16 Q So if we had David Counts here, he could
17 theoretically testify that you were over at his house that
18 day, couldn't he?

19 A Yes.

20 Q Okay. Have you spoken with him?

21 A No. I ain't had no communication with him since I
22 been locked out.

23 Q All right. So then after David Counts, you went back
24 the twenty minutes up to Laswan's house, correct?

25 A Correct. I went to the Fox Briar, yes.

1 Q Do you know how long you were at David Counts?

2 A It might have been thirty minutes or so.

3 Q Thirty minutes. So 11:30 a.m. --

4 A It might have been, it probably was a little longer
5 than that. Like I said, I was waiting on my mom. It
6 might have been a little bit more than thirty minutes. So
7 I would say it might have, it might have been more than
8 thirty minutes.

9 Q What are you, what are you going to say? I'm writing
10 it down.

11 A I don't really remember, sir.

12 Q Do you want me to write down thirty minutes?

13 A No. I'd rather for you to write down that I really
14 can't recall.

15 Q Okay. You can't recall that. But maybe thirty
16 minutes. All right. Then, you went twenty minutes back
17 to Laswan's house, correct?

18 A Yeah. Approximately, it's about a twenty-minute
19 walk.

20 Q So we're just shy of noon now and you don't have
21 clothes, because you don't have a key to your own
22 residence so you can get your clothes, correct?

23 A My mom and dad returned home. My father did return
24 home. Like I say, I actually seen my father. My father
25 seen me that day.

1 Q All right. Wait a minute. This is new. Did they
2 return home before you went back to Laswan's?

3 A Did they return home? My father did.

4 Q And did he let you in to get clothes?

5 A My father didn't, no, I never did, well, me and my
6 father like never really get along like that, as you can
7 ask. Like, we don't get along. I was waiting on my
8 mother. Like, me and my dad don't click too much at all.

9 Q So he didn't let you in your residence?

10 A Not that he didn't let me. Just I chose not to go
11 over there, because he was over there, you know.

12 Q All right.

13 A Differences.

14 Q Well, let's get back to, so you saw him coming home
15 while you're walking at Fox Briar to see Laswan?

16 A Yeah. He seen me, yes.

17 Q Okay. And is he here today?

18 A No. My father is at work.

19 Q Okay. And you go to Laswan's on Fox Briar and it's
20 just shy of noon at this point, if these times are right.
21 And what did you do at Laswan's house at this point?

22 A Like I say, I didn't really was at Laswan's. I told
23 you I went up the road to T.J.'s. Like I came back to
24 Laswan. I just let her know that, you know, I was back in
25 the neighborhood.

1 Q All right. So you went to Laswan's and said I'm back
2 in the neighborhood?

3 A No. I went to T.J.'s first. I told her that I was
4 back in the neighborhood like afterwards. Far as like I
5 say, the phone got Wi-Fi. Just to let her know.

6 Q Wait a minute. Now, I'm trying to, my notes must be
7 wrong, because after David Counts, I wrote down that you
8 went to Laswan's. That's not right?

9 A No. I went to Laswan road. I corrected you when you
10 said that. I said I actually went to T.J.'s.

11 Q Okay. I'm crossing that off.

12 A Yeah.

13 Q After David Counts, who we won't hear from, you --

14 A I mean, if you want to hear from him, I mean, you can
15 get in contact with him. But, I mean, he's not here right
16 now, but he can tell you that I was there.

17 Q You know David Counts?

18 A Yes.

19 Q I don't know David Counts.

20 A Yes, I know David Counts.

21 Q I just heard his name.

22 A But you keep on addressing that he's not here like
23 that's a problem, like he need to be here. That's why I
24 said like--

25 Q T.J. Gallman, is he going to be here?

1 A No. T.J.'s not here.

2 Q Do you have Wi-Fi at Roby's house, your mother,
3 grandmother's house? Do you have Wi-Fi there?

4 A My mother have Wi-Fi, yes.

5 Q She does. Now, why did you go to T.J.'s to use his
6 Wi-Fi if your mother had Wi-Fi?

7 A Because, like I ain't want to go to my mother house.
8 Like I say, the phone, like my mama got a pass code, but
9 like I don't really remember. Like some Internet
10 services, once you go in the area, it'll automatically
11 remember and connect. My mother's Wi-Fi is not like that.
12 Like I say, you, I forgot the code.

13 Q So your residence has a Wi-Fi signal, but you choose
14 not to use the Wi-Fi signal from your residence. Instead,
15 you sit in T.J. Gallman's yard?

16 A No. Instead, for me to use Wi-Fi, you got to have a
17 password. Like I'm pretty sure you know what Wi-Fi is. I
18 see it on your phone all the time. It's like Wi-Fi, you
19 got to have a password. You know, once you put in the
20 password, it access the phone. It shows that you can
21 connect. Far as like I didn't have the password to my
22 Mom's. Like my phone don't automatically reconnect. At
23 T.J.'s when I get in close to the area, when I get to the
24 area, it automatic connects to the Wi-Fi, because my phone
25 got where it remembers that pass code.

1 Q That's odd. I got Wi-Fi at my house and it's got a
2 password.

3 MR. VERNER: Your Honor, it's getting a little bit
4 argumentative and it's, and it's a little bit, quips on
5 the questions and not questions.

6 THE COURT: Okay. Just ask the question, Solicitor.

7 Q Is that strange to you that you don't know the
8 password; you don't use Wi-Fi in your residence?

9 A I never said, oh, continue. Go ahead.

10 Q Thank you. Appreciate that.

11 A You're welcome.

12 Q Is that strange to you that you don't use Wi-Fi in
13 your own home? You don't know the password to the Wi-Fi
14 in the residence, rather, but you use T.J's. You know his
15 password. You sit in his yard --

16 A Yes, sir.

17 Q -- instead of sitting in the comfort of your own
18 home. Isn't that odd?

19 A No, that's not odd. I don't be at my mother house
20 like that. Like I said, I be there, and most of the time
21 when I'm at my mother's house, I go to change clothes.

22 Q Okay.

23 A I go to change clothes like that. There's nothing
24 odd about that. But, like I say, I be at the residence.
25 I be at my mom's house. Far as like the reason why I be

1 at, my girlfriend stay right down the street, Laswan, so I
2 be on that road a lot. So my cousin stays right up the
3 street. Basically, the same. That's a family member by
4 the way and that's the same comforting that I have at my
5 mother residence. It's family. As far as if it's cousin,
6 brother, grandmamma, whatever.

7 Q You talking about T.J.?

8 A Yes, T.J.

9 Q All right. Where is he today?

10 A I have no idea. I been locked up. I ain't talked to
11 him.

12 Q All right. 12:30, though, you're at his home. He
13 was not home, though, is that right?

14 A Yeah. T.J. wasn't at home at that time.

15 Q So you sit out in his yard in the September sun and
16 play on Wi-Fi?

17 A No, not in the sun. Like there's trees.

18 Q Okay.

19 A It's not in no sun-beaming area. There's a picnic
20 table and all to sit at. Plus, T.J. got a porch, too, if
21 you want to know. You don't have to sit outside in no
22 beaming sun.

23 Q Okay. And you stayed there for a couple of hours was
24 your testimony. So that puts us around 2:30?

25 A Yeah.

1 Q You sat outside on T.J.'s porch in the September heat
2 playing on Wi-Fi and that's your testimony? He wasn't
3 home, right?

4 A T.J. wasn't home.

5 Q All right. For two hours you were there, correct?

6 A And maybe even more.

7 Q Well, two hours what you said earlier, so now you're
8 going to change it on me again.

9 A No, I didn't change it. I said maybe even more.
10 Like I tell you, this been like eight months ago. This
11 day right here was not different from any type, this day
12 right here was not, no type of irregular day for me. It
13 just a normal day, so I don't remember everything that
14 occurred that day, because nothing big happened that day.
15 It was just a regular day to me.

16 Q Well, it wasn't for Benzena Wicker, was it?

17 A No, ma'am. Ms. Benzena Wicker was attacked that day.
18 But, like I say I clearly had nothing to do with that.

19 MR. VERNER: Objection, that's not an actual question
20 about personal facts. It's just an argumentative question
21 for the jury.

22 MR. SCOTT: Your Honor, I'm cross-examining him. He
23 told me it was a normal day unlike any other day.

24 THE COURT: Right.

25 MR. SCOTT: That is untrue. We would not be here if

1 it was just like any other day.

2 MR. VERNER: Judge, how is that, this witness--

3 THE COURT: Just ask the questions, Solicitor. I
4 realize this is cross-examination.

5 Q Wise, Mr. Wise --

6 A Yes.

7 Q -- T.J. is not home. You sit out there for two hours
8 or maybe more. So between 2:30 and 3:00, is that fair to
9 say, when you leave there?

10 A Like I said, again, like it could have been more.

11 Q All right.

12 A I don't recall the timeframe right now.

13 Q Approximately, 2:30. Then you went back to Laswan's
14 again for a brief second. What does that mean?

15 A Well --

16 Q For a brief second at Laswan's? You walked twenty
17 minutes--

18 A Yes. If you asking what a brief second mean, that
19 mean like a brief second, a short period of time --

20 Q And what'd you do?

21 A -- to answer your question.

22 Q What'd you do?

23 A I briefly talked to my baby. I briefly talked to
24 Laswan and just told her that I was back in the area, like
25 I was up there at my cousin's house.

1 Q Why didn't you call her?

2 A Because I walked down there.

3 Q Twenty minutes?

4 A Twenty minutes, what?

5 Q Well, you said it's twenty minutes from Green Meadows
6 up to her house at Fox Briar.

7 A Yeah. It's not twenty minutes from when I'm at T.J.
8 house.

9 Q Okay.

10 A T.J. stays on that road, four houses up the street.

11 Q At Fox Briar?

12 A Correct.

13 Q Okay. Okay.

14 A Okay.

15 Q So you walked to her house to tell her you're back in
16 the neighborhood?

17 A Yes, sir.

18 Q And then you leave?

19 A I went back up. Yes. Like, I didn't have to stay,
20 like, to answer your question, yes, I left.

21 Q Okay. Then, you went back to T.J.'s and stayed there
22 till 6:00 o'clock?

23 A Yes. Around that, around that time, yes.

24 Q All right. And that --

25 A I mean, around that time.

1 Q -- puts you staying at T.J.'s for around three hours,
2 give or take, and you, you willing to put that down? Give
3 or take. I mean, I'm not exact --

4 A As far as like, like I said, and for me that was a
5 regular day if I can recall, it might have been. I can't
6 really remember the timeframe of the exact times that it
7 was but it could be somewhere around that timeframe, sir.

8 Q And you think you were at T.J.'s for about three
9 hours?

10 A Possibly.

11 Q Okay.

12 A Possibly.

13 Q Is he home at this point?

14 A Later on. Like, later on, he arrived. Yes, T.J.
15 arrived.

16 Q He wasn't here during this, you stayed until 6:00 is
17 what you testified. Was he ever home during that time?

18 A Yeah. He briefly, he briefly came back.

19 Q And what'd y'all do when he got home?

20 A He really didn't do anything. He had his own little
21 thing going on with whatever, whatever he handles.

22 Q All right. Now, this is where we start getting
23 somewhere. About 7:00 o'clock, you testified earlier you
24 went to the store, the Fast Stop store at 7:00 o'clock to
25 get cigarettes. You remember you said that?

1 A It probably wasn't around like 7:00. Like I say, it
2 was 7:00. Like, at that time, like it probably been
3 before a little 7:00, but I did go to the Fast Stop to get
4 cigarettes.

5 Q Well, you testified earlier it was 7:00. But just
6 sometime around there, that's fair to say, right?

7 A Yes, or maybe a little before.

8 Q All right.

9 A And that don't make it have to be after.

10 Q Okay. You went to get cigarettes, correct?

11 A Correct.

12 Q Do you remember when you told the officers that, when
13 you got that, you had that interview, you remember that?

14 A Yes. I had told them that I went to the store.

15 Q Yeah.

16 A Yeah.

17 Q And what else did you tell them about that?

18 A I can't recall. Even when that interview like I
19 said, far as like to answer your question, like I can't
20 recall as far as that interview. Like I said, but,
21 basically, like I say, I can't recall everything I was
22 saying.

23 Q Well, guess what? You don't have to, because we got
24 the recording, don't we?

25 A I mean, it's okay for you to have a recording --

1 Q Thank you.

2 A -- but I can't recall everything that was said or
3 even the timeframe. Like I said, it might have been a
4 little off as far as like at the time I got Robert Dennis
5 and like Mr. Dickert --

6 Q I know you want to talk about that.

7 A -- you know--

8 THE COURT: No, no. Don't talk over each other.
9 Solicitor, let Mr. Wise finish his answer before you ask
10 the next one.

11 Q Tell us how mean Mr. Dennis was to you again.

12 A No. It's not about how mean. You can say, we'll use
13 the word not mean. That's a kid word. We'll say
14 unprofessional. So, far as like, how professional he was,
15 like, basically, he was just trying to indicate something
16 that I didn't do. Trying to blame something on me and,
17 like I say, I never attacked Ms. Wicker. Never. Like,
18 basically, from the first encounter of Mr. Dennis, he
19 tried to say that I had committed such a crime that I'd
20 never do. Like I never attacked Ms. Wicker. Like I never
21 attacked Ms. Wicker.

22 Q Okay. Well, I'm asking you about cigarettes at the
23 Fast Stop.

24 A Yeah. We can get past cigarettes. But yes, I said I
25 went to go, went to go get cigarettes. Like I say, I

1 can't remember the right time. Even the day they was
2 harassing me about the time, like some of the times,
3 hearing may be off.

4 Q Okay. Now, at the time, would you agree that they
5 were talking to you about different places the phone was.
6 Do you remember that?

7 A Yeah.

8 Q And they would say why was the phone over here and
9 you'd say, well, possibly because of this. And at one
10 point, they asked you why it was in a certain area and you
11 said oh, oh, oh, I went to the Fast Stop. Okay. Yeah.
12 That's why my phone would be in that area. You remember
13 that?

14 A Yeah. That area right there is the same radius.
15 Like I say, as you had your expert here yesterday, like
16 that's the same radius that was covering that part of
17 Newberry, other as far as where my girlfriend stay. Even
18 where my residence. Like, what's your point?

19 Q Are you an expert? You sound like an expert?

20 A Nah, I ain't no expert. I just answering the
21 question.

22 Q Well, how do you know what tower covers what part of
23 Newberry?

24 A Sir, you was in trial yesterday. Didn't you hear
25 your expert get up here and explain the --

1 Q I did.

2 A Yeah. So we both have knowledge of that information.

3 Q Let's get back to the cigarettes. See if you can
4 answer yes or no. Do that, and we can move quicker. But
5 if you feel a need to explain, you have the right to do
6 that.

7 A Uh-huh.

8 Q But all I'm asking you right now is didn't they give
9 you locations of where the cellphone was picking up, yes
10 or no, if you can answer it that way?

11 A That day?

12 Q Yes.

13 A Not really. Not whether the phone was indicating
14 that. It was just saying like it was in the area. Like
15 your phone hit here and your phone hit there.

16 Q All right. And then you said, well, it could be in
17 this one area, because I went to the Fast Stop. You told
18 them that, remember? Do you remember?

19 A Yes. Yes, I remember.

20 Q Okay. And then you remember, Sergeant Dickert would
21 say, great. Thank you, Mr. Wise. You've given us a
22 location. Now, all we have to do is get surveillance from
23 the Fast Stop and that will show you in there getting
24 cigarettes.

25 A Yes.

1 Q Okay. And then when he mentioned that to you, what
2 did you say?

3 A I never, I never went in the store. The reason why?
4 I didn't have the ID. The woman that was working, like
5 she be, not, my bad. She be, like far as like she's, like
6 she ID me. As far as like when somebody is working at the
7 store, like they don't ID me. I just go in there. I get
8 the cigarettes. You know, once I seen it were here, like
9 she always talking about, you know, you need ID, so that's
10 why I didn't go in there myself to get the cigarettes.
11 There was somebody else at the store. I just didn't have
12 my ID.

13 Q All right. But earlier when your lawyer is
14 questioning, you didn't say, I was at the Fast Stop
15 getting cigarettes at 7:00 o'clock.

16 A He didn't ask me about that.

17 Q What?

18 A He didn't asked me about no cigarettes and the store.

19 Q Okay.

20 A And I did say something about a store. I did say I
21 had went to the store.

22 Q Okay.

23 A I wasn't paying attention.

24 Q Right. Well, you got to pay attention. If I ask you
25 something you don't understand, ask me to repeat it.

1 A Yeah.

2 Q You got to pay attention.

3 A Got to pay attention.

4 Q Now, after the failed attempt to get cigarettes
5 because, does this happen a lot when you go to a store and
6 you don't have your ID, or you don't have your bankcard,
7 you don't have any money, does that happen to you a lot?

8 A No. Far as me, like, you done with your question?

9 Q Yeah.

10 A Okay. Far as me, like, I don't, like I said, like, I
11 don't got nothing to do with it, but I don't need my ID
12 everywhere I got. People know me. They know how old I
13 am. They don't ID me everywhere. Far as like when
14 somebody on a different shift may be working as far as the
15 lady that was working there, she'll ID me. As far as like
16 with the wrong bankcard, like with the wrong card? No.
17 Both of the cards are black. I got a NetSpend card. It's
18 a NetSpend card and I also got the --

19 THE COURT: Slow down.

20 THE COURT REPORTER: You need to slow down.

21 A I'm sorry. Where you need to start off at?

22 THE COURT REPORTER: Right at you got the black card.

23 A Yes, sir. I have the, I have the black card which is
24 a NetSpend card, and I also have a card that is the card
25 that when I get paid from the restaurant, Bojangles, they

1 upload money. It was just far as like I had the wrong
2 card. Simple as that. It's no more and no less, you
3 know.

4 Q Okay. But that happened twice on the 21st when you
5 showed up somewhere to get something and you didn't have
6 an ID or you didn't have your Bojangles card?

7 A Like no. Like far as like you said it happened
8 twice. And no, those two different incidents. As far as
9 the Chinese place, like I said, I had the wrong bankcard.
10 Far as like that's why I say I didn't have money but when
11 I say I didn't have money, I just mean I just had the
12 wrong card. And far as that, and far as the other
13 incident, I just didn't simply have my ID.

14 Q All right. It happened twice in the same day that
15 you went somewhere to pick something up and you didn't
16 have with you what you needed to get those things? You
17 didn't have your ID for cigarettes, and you didn't have
18 your bankcard for Chinese food?

19 A Like, yes. You asking a question. Can I answer
20 them? Far as like I told you, I don't need my ID every
21 time I go to a store.

22 Q And you didn't have it?

23 A Correct. I didn't have the ID.

24 Q All right. Now, after the failed attempt to get the
25 cigarettes from the Fast Stop at 7:00 o'clock, you went

1 back to Fox Briar. This is going to be, I think, the
2 third time you've gone there, according to you, on the
3 21st, and you went back to Fox Briar after the cigarettes,
4 correct?

5 A (No audible response.)

6 Q I just, I tried to write down what you testified to
7 earlier. Is that correct or not?

8 A Yes, sir. I think that's correct.

9 Q All right.

10 A Far as like you say this is the third time that after
11 I got back to the store at around 7:00, like I said, I got
12 the cigarettes. It had to been before 7:00, because a
13 little bit after 7:00, I headed over to the Chinese place.

14 Q All right.

15 A I think that that's the right time, and I'm pretty
16 sure it is.

17 Q And, now, how did you get up to the Chinese store,
18 the Chinese restaurant?

19 A I got a ride.

20 Q With who?

21 A Well, it was the Mexican I know from school and
22 like--

23 Q What? I'm sorry?

24 A Mucherelli, (phonetic), he ain't no friend. He just
25 know me. He's somebody I went to school with. A guy

1 named Jose. He seen me when I went to the store. Outside
2 the store. That's the same person who had got the
3 cigarettes. Like I say, went in and got the cigarettes
4 for me.

5 Q All right. What's Jose's last name?

6 A I ain't have no idea.

7 Q Is he going to be here today?

8 A You can look around, you see Jose ain't here.

9 Q Well, I don't know him. I don't even know his last
10 name, because you can't tell me that?

11 A Uh-uh. Me either. If I could, I would. I ain't,
12 I'm completely truthful.

13 Q All right. Now, Jose must have said, Anthony, why in
14 the world are we going to go all the way up to Kendall
15 Road and we're going to pass three Chinese restaurants
16 between here and there.

17 A Man, everybody know the best Chinese food come from
18 Helena's Chinese place.

19 Q Oh, that's the best place?

20 A That's the best spot and the chicken bigger, the
21 spareribs gooder, all that.

22 Q All right.

23 A Everybody's knows that.

24 Q Let me --

25 A You can ask the jury and they'll say the same thing.

1 Q I don't know. Isn't there one at Walmart?

2 A No. The chicken wings was small.

3 Q What about Fusion?

4 A I don't eat at Fusion. Laswan like Fusion.

5 Q Well, I thought you were getting Chinese food for
6 Laswan?

7 A No. But Laswan wanted Chinese food, not Fusion, like
8 I said.

9 Q You just said her favorite was Fusion.

10 A Yes. Her favorite was Fusion.

11 Q And you were going to Chinese restaurant to get your
12 girlfriend food, right?

13 A Yeah.

14 Q Why didn't you go to Fusion?

15 A Fusion, she didn't want Fusion at the time --

16 Q You just said --

17 A -- but her favorite is Fusion, though. Just because
18 her favorite may be Fusion, that don't mean that's what
19 she wanted that particular day, sir.

20 Q All right.

21 A All right.

22 Q So you go over to Kendall even though Laswan says my
23 favorite is Fusion --

24 A Yeah.

25 Q -- you decide to get her some chicken food or, excuse

1 me, Chinese food from way up in Helena?

2 A Yeah.

3 Q And you've got the Kyocera on you, because you don't
4 have a phone that works. You dropped it in the water,
5 remember?

6 A Yes. I dropped it in the pool.

7 Q Okay. And so when you're talking to law enforcement,
8 you're talking to Ryan Dickert, he says any explanation
9 why this phone is hitting this tower up on Kendall Road
10 near this ATM. Do you have any explanation why it's
11 hitting that tower at 7:21 p.m.? Do you have any
12 explanation why it's hitting that tower at 6:57 p.m.? And
13 you said, oh, yeah. Yeah. Yeah, I do have an explanation
14 for that. I was picking up Chinese food for my girlfriend
15 at the Chinese restaurant in that parking lot. Do you
16 remember that?

17 A No. I didn't say anything about a parking lot, but I
18 did say I was going to, actually, my exact words. I said
19 I had went, I had got the Chinese food. Like it says in
20 your recording that you got.

21 Q We'll play it. We'll play it.

22 A Yeah. I'm pretty sure you will.

23 Q Go ahead.

24 A Quit cutting me off. Like I said, I had used the
25 words I went, got Chinese food. Like I told you I, it was

1 a mischoice of words when I said I went to go get. Like,
2 you know, I should have said I went to go get. I had said
3 I got. Like I told you, I never went into the store.

4 Q Okay. But you don't disagree with me when you're
5 explaining you said, I got my girl some food from the
6 Chinese restaurant there. You don't disagree with that?

7 A Like a misplace of words. I said I got, I went to, I
8 went to, like I say in there, I should have say I went to
9 go get. Like I say, once you got Robert Dennis and not so
10 much as Ryan Dickert, but like once you got Robert Dennis,
11 like I say, they, they talking at the same time, they
12 talking at the same time, they trying to get me to come up
13 with a timeframe about where I was at certain times. I'm
14 doing the best of my knowledge of that. Also, like I say,
15 it's not like I'm just coming up with things, like coming
16 up with things to indicate like why or what reason that I
17 be around this area. Like, even when Mr. Dickert here
18 says, well, they got surveillance, they got surveillance.
19 It's not like soon as they, like y'all keep recalling,
20 like soon as they said anything about surveillance, I
21 said, well, I didn't go in. I didn't go, no, it wasn't
22 that --

23 THE COURT: Slow down. Slow down.

24 A It wasn't the fact, there wasn't a fact that I was
25 coming up with anything or trying to lie. It's just a

1 brief time had went by and I just told them that I didn't
2 get the food. Far as like, like, they accusing me of a
3 serious, a serious charge and something, like I keep
4 telling you, it something I ain't do. Like, I might have
5 used, I might have misused some words before, like, my
6 knowledge of like, to the best of my knowledge of what I
7 did that day. I gave it to him and as far as like I told
8 them I had nothing to do with attacking Ms. Wicker. Like,
9 I keep telling you that and that's the honest truth.

10 Q That in no way answered my question.

11 A Well, that's what I said.

12 Q All right. Well, but my question again was, did you
13 not tell them that you went and got food from the
14 restaurant? I know you're going to say it's a mischoice
15 of words, is what you keep saying, but you did tell them
16 that, correct?

17 A Yes. I told them that I went to the Chinese place to
18 get some food.

19 Q Okay. But the Chinese place, that is not Laswan's
20 favorite place?

21 A No. That's not my baby's favorite place.

22 MR. VERNER: Your Honor, respectfully, ask, when he's
23 talking about Chinese questions, for at least five
24 minutes, Your Honor.

25 THE WITNESS: Can I get some, can I get some water?

1 THE COURT: Sure. Mr. Verner, can you get your
2 client some water?

3 MR. VERNER: I can, Your Honor.

4 MR. SCOTT: Can I ask you some questions while he
5 gets the water?

6 THE COURT: Just, just wait. Just wait. All right.
7 Now proceed, Solicitor.

8 Q Do you understand why this Chinese restaurant, the
9 location of it is important for law enforcement? Do you
10 understand why? Yes or no?

11 A Yes.

12 Q Okay. State's Exhibit number 6 clearly illustrates
13 why it's important, does it not?

14 A Yes.

15 Q Okay. Because in that driveway or rather in that
16 parking lot where the Chinese parking lot where the
17 Chinese restaurant is --

18 A Yes.

19 Q -- what is there?

20 A There's the ATM there.

21 Q Right. And the exact time 7:31 p.m., Ms. Wicker was
22 tied up and down and in the back of that pickup truck in
23 that parking lot. Do you understand that?

24 A Yes, sir.

25 Q And there was a man who was driving that pickup truck

1 in that parking lot at the exact same time your phone is
2 pinging off that tower in that area. Do you understand?

3 A I understand.

4 Q Okay. So that is why the Chinese restaurant is
5 important. That is why your testimony regarding it is
6 important. Do you understand?

7 A Yes, I understand.

8 Q And that's why I'm trying to ask you what I consider
9 very simple questions. Okay. So the answer was you first
10 tell them, I was there to get food for Laswan. Correct?

11 A Yes.

12 Q And your first answer was, I got the food. And then
13 that's when Ryan Dickert said, well, that will be easy to
14 establish and corroborate. All we have to do is pull the
15 surveillance from inside the store. Correct? Did he not
16 say that?

17 A Yes, sir.

18 Q Okay.

19 A Ryan Dickert does say that.

20 Q And is it not true that after he said that, that is
21 when you changed your story and said, well, I didn't go
22 inside, because I didn't have money, and I just remembered
23 before I went in.

24 A Yeah. Not just right after that. Like I done
25 explained before to you, like it wasn't, like when Ryan,

1 Mr. Ryan Dickert said that, it wasn't like someone just
2 because he said something about some surveillance that I
3 changed my story far as like changing my story
4 immediately. Like there was plenty more conversations
5 going that went on far as them over-talking, and then I
6 tell them, well, I didn't go in.

7 Q But that's, okay. Well, you agree that that's why,
8 here's the testimony just to play it as it happened that
9 day and as you explained, correct?

10 A Yeah, you can play it.

11 (Whereupon, a video was published to the jury.)

12 Q And, again, this is the second failed attempt to get
13 something. And did Jose give you a ride back to Fox Briar
14 after you couldn't get the food?

15 A Correct.

16 Q He did?

17 A Correct.

18 Q All right. Did you ask him to borrow some money or
19 anything like that?

20 A No. It's not that I didn't have any money. I just
21 had the wrong card.

22 Q He could have loaned you some cash, I guess. Did you
23 ask him that?

24 A I got my own money.

25 Q But you're up in Helena attempting again trying to

1 get Chinese food for Laswan. He could have loaned you
2 money, but you did not ask?

3 A I didn't need to ask Jose for nothing. I told him I
4 ain't got the right card. It was fine.

5 Q Anybody ever --

6 A It was fine.

7 Q Anybody ever told you you have a distinctive voice?

8 A No. I ain't never heard that I ever have a
9 distinctive voice, a distinctive face.

10 Q You do?

11 A Yeah. They say I'm handsome.

12 Q What about when you have a mask over it?

13 A I never had no mask. If you indicating like I told
14 you once and like I told everybody, I never had no mask
15 on. I never attacked Ms. Wicker. I wouldn't do such a
16 thing, if that's what you getting at.

17 Q All right. You're coming back to Fox Briar and
18 you're empty handed, because you went all the way to
19 Helena with no bankcard or Bojangles card, and did you see
20 Laswan at that time?

21 A Repeat your question.

22 Q All right. After you left Kendall Road empty handed,
23 because you didn't get Chinese food, right?

24 A Correct.

25 Q You went back to Fox Briar, and did you see Laswan at

1 Fox Briar at that point?

2 A No, and not at that point. She was in the house.

3 Q But, well, did you go in the house?

4 A No. I did not just return to Laswan house once I got
5 from the Chinese food. I let her know that I didn't have
6 the bankcard, so she just agree that I can get the food
7 later. Like I said, get the food later.

8 Q Well, you didn't go, what'd you, you sat out on the
9 front porch or what?

10 A No, I didn't. And no, I didn't even go to her house.
11 Like I said, I just went back up to the street.

12 Q Up the street where?

13 A I told you I be at T.J.'s, my cousin house, the
14 majority of the time. If I'm not at Laswan house on Fox
15 Briar, I'm at my cousin T.J. house. That's pretty much
16 all, I even got a aunt that stays across the street from
17 Laswan, actually, but I don't even be over there like
18 that.

19 Q Now, earlier, you went back to Fox Briar. Okay. So,
20 well, that's T.J.'s house on Fox Briar?

21 A T.J. stays on Fox Briar. Correct.

22 Q That's where you went after, Jose dropped you off at
23 T.J.'s at this point?

24 A Yeah.

25 Q Okay. T.J. Gallman. And then did you, at some

1 point, did you go back to Laswan's house?

2 A Yes. Around that time, like I said, when I asked
3 them do they, what they want to do later on, like, she and
4 I indicated like her mother was going to watch the kids,
5 and I asked her did she want to get a room. Like I said,
6 like, the reason why, the reason I wasn't like staying
7 there, like I say, I can't do what I wanted to do with
8 Laswan at her mom house. So I asked her whether she
9 wanted to get a room, so we decided on that.

10 Q Did I understand correctly earlier, you and Laswan
11 took two separate cabs to get to the hotel?

12 A Well, the first time, like I say, I met with her, I
13 went with her in the cab the first time. Like I say, I
14 was in the cab with her just to know, like, what room she
15 in. And, like I said, I left out. It wasn't like two
16 different cabs. It wasn't no two, it wasn't no two
17 different cabs.

18 Q Okay. You used your Wi-Fi phone to call, to get a
19 cab?

20 A Yes.

21 Q Whose Wi-Fi, T.J.'s?

22 A Correct.

23 Q And you and Laswan took the same cab to the hotel is
24 what you're saying?

25 A Yeah. And just when I can, just when I can know what

1 room it was, and then I, like I say, I met up with her
2 later on.

3 Q Why didn't you stay with her?

4 A Because I had to go do something.

5 Q Where'd you go?

6 A I went to the store and I had went to go do
7 something. Like, I'm grown. Like, that's my girlfriend,
8 but I mean I'm, I ain't with her 24/7.

9 Q But the whole point of the hotel is to spend some
10 private time?

11 A Yeah, to spend some time. But, like I said, the time
12 was, like, look, we got to that hotel room. Like I said
13 we just had got the, like I don't know if it's relevant or
14 whatnot, but far as like, yes, we had just got there. I
15 ain't like, like I told you, what I wanted to do with
16 Laswan, I can't do at her mama's house. It's like just
17 when we get to the hotel room, try to start having sex
18 with her. I had stuff that I had wanted to do. It's not
19 all about that. I wanted to spend time and, like I said,
20 I wanted to have sex with her. You know, I love her. So,
21 but as far as like just because I got there, just because
22 I got there, it wasn't like I had just got to stay there,
23 sir, if anything. But you correct about, yes, I wanted to
24 spend time with her and everything. You correct about
25 that.

1 Q And you had some better things to do than to spend
2 some private time with your girlfriend?

3 A No. I had to go do something. Like I say, I went to
4 the store. I had to go do something. I can't remember.
5 It was a long period of time ago.

6 Q What'd you have to go do?

7 A It was a long time, it was a long period of time.

8 Q What did you have to go do, though, that was so
9 pressing?

10 A And at that time, like I say, I went to the store. I
11 went to the store. I talked to a friend for a brief
12 second, they knew where I was, that's it, as far as I
13 recall.

14 Q All right. What store did you go to? What store did
15 you go to?

16 A The store right there by the, I think it was the
17 Little Cricket right there, the Little Cricket.

18 Q You got to repeat that. I didn't hear a thing you
19 just said.

20 A I say I think it was the store and the, it was the
21 Little Cricket store. It was the Little Cricket store.

22 Q Did you have your ID that time?

23 A I told you I didn't have my ID. Like I say, look, I
24 don't know how you know how Newberry work, but this might
25 be another problem for the law enforcement. Like you wait

1 outside a store, anybody will go in there and get you what
2 you want.

3 Q Okay. Did you have your Bojangles card?

4 A No.

5 Q So they paid for your stuff, too?

6 A No. Like I say, I had cash at the time. Laswan, by
7 that time, I'm with Laswan. Laswan had money and she had
8 gave me a few dollars, but it's irrelevant.

9 Q All right. 9:00 o'clock, though, she checks in and
10 you walk, walk to a Little Cricket?

11 A Yes. The Little Cricket is right there beside the
12 motel.

13 Q And then you talked to a friend?

14 A Yeah.

15 Q And you get something from the store, and then when
16 did you go back to the hotel?

17 A A little, not too long after.

18 Q Okay. And then I have that y'all went to McDonald's
19 at 11:00 o'clock?

20 A Excuse me. What'd you say?

21 Q Y'all went to a McDonald's at 11:00 o'clock?

22 A Yes, I did. It was around 11:00 o'clock, because
23 the, excuse me. Because the, it must have been 11:00
24 o'clock, because that's when they quit serving inside and
25 you got to use the drive-thru.

1 Q Okay. That didn't work either, because they were, or
2 did you get food there?

3 A No. We didn't get no food.

4 Q Why didn't you use the drive-thru?

5 A I ain't got no car.

6 Q Oh, they won't take your order if you don't have a
7 car?

8 A They might have would, but I ain't 'bout to walk
9 through no drive-thru trying to get some food. I don't
10 rock like, I don't, I wouldn't do nothing like that. I
11 wouldn't, I wouldn't do anything like that.

12 Q Is that embarrassing or something?

13 A I mean, not embarrassing, but I just, it's a
14 drive-thru. If it was a walk-thru, I would have walked
15 thru, but they call it drive-thru.

16 Q All right. And you walked to McDonald's to get food,
17 because you're hungry, because the Chinese thing didn't
18 work and but your pride won't let you go to the drive-in.
19 So you went to Walmart to get food, right, at midnight,
20 correct?

21 A Correct.

22 Q Okay. Well, that's not embarrassing walking to
23 Walmart in the middle of the night?

24 A Nah, it wasn't embarrassing.

25 Q Okay. Did you eat at Walmart? Did you bring, tote

1 the food back to the hotel? How'd you do that?

2 A I got the food. I toted the food back. I bought a
3 shirt. Me and my baby, me and Laswan.

4 Q What inspired you to buy a red shirt at midnight on
5 September 21st or September the 22nd if it's past
6 midnight?

7 A Basically, like I said, me and my baby, me and Laswan
8 were just lingering in Walmart. When I was over there, I
9 grabbed a red color. I like the color red. I just
10 grabbed a red shirt.

11 Q Okay.

12 A Plus, like I said, like I needed another shirt
13 anyway.

14 Q Better idea to be in the hotel where that girlfriend
15 is?

16 A Yes, I was. After that time, it late. It late. I
17 been doing what I wanted to do with Laswan and like --

18 Q When'd you do that?

19 A Yeah. Huh?

20 Q When'd you do that? You're at the store with
21 cigarettes. You're at McDonald's --

22 A Uh-huh.

23 Q -- at 11:00.

24 A Yeah. But, like I say, at the point of like the time
25 before 11:00 o'clock, like I told you, before McDonald's

1 like I was pretty sure I was with Laswan. I had been with
2 her. And then, like I say, like I stated to you, like far
3 as like, if I may say this, like that's why I tell you
4 like exactly evidence, like Walmart got cameras. Like,
5 Mr. Dickert said, like surveillance, surveillance,
6 surveillance. If he would have got that surveillance from
7 Walmart, you would clearly see me and my baby, you would
8 clearly see me and Laswan go in there and what I bought
9 and everything. Like, you would have clearly see that.

10 Q What would that have shown us? At midnight, you're
11 in Walmart. I want to know where you are at 7:00. I want
12 to know where you are at 10:20. That's what I want to
13 know.

14 A Yeah.

15 Q Do you have any explanation why your phone's pinging
16 within 400 meters? You understand it's about a 1,000 feet
17 away from the Cadillac.

18 A Uh-huh.

19 Q This in a ninety-acre vacant lot.

20 A Yeah.

21 Q Why is your phone there at 10:20?

22 A But, I know, like I told you like, I don't know why
23 my phone was there. I wasn't there.

24 THE COURT REPORTER: What'd you say?

25 A As far as like the time you talking about, I don't,

1 me being even in that area.

2 Q I still didn't understand you. Why would your phone
3 be in that area?

4 A I told you, sir, like I don't know. Like, I don't,
5 but my phone wasn't in that area far as like I recall
6 everywhere I went. There's no way my phone could be in--

7 Q So the expert was wrong?

8 A No, far as like the expert says like it shows a
9 radius or whatever hit off towers or whatnot. But far as
10 like I indicated, like it wasn't me like be in that area.
11 I ain't got a phone.

12 Q All right.

13 MR. SCOTT: All right. Mr. Wise, thank you for your
14 honest answers. I appreciate that. If your lawyer has
15 any other questions, wait one more question then.

16 Q You're sure you can't open this phone for us?

17 A You keep going on about a phone. Turn it on, sir.
18 Let me give it a shot. Let me give it a shot. You keep
19 going on about this phone. Let's go.

20 Q I'm thinking maybe if you do your birthday. If you
21 do Laswan and your anniversary.

22 A Let's check it out. I remember my birthday. I
23 remember that. Let's see, let's see is that the code. I
24 ain't touched a cellphone in so long. I'm putting in
25 Laswan birthday. It say wrong PIN. Try my birthday,

1 0813. That's the wrong PIN. Try my son's. No, it
2 wasn't, it ain't the birthdays. It ain't my son birthday,
3 her's, or mine's. Like I told you, I really don't
4 remember. Here you go. I tried for you, though, because
5 you kept going on about it, Mr. Scott.

6 Q You understand we'd like to see what's in the phone,
7 do you not? You can understand why we'd like to see that?

8 A I mean --

9 Q Thank you for your effort though.

10 A And you, you welcome. You welcome.

11 MR. SCOTT: That's all the questions I have.

12 THE COURT: Okay. Any redirect, Mr. Verner.

13 REDIRECT EXAMINATION

14 By Mr. Verner:

15 Q Anthony, did you rob Ms. Wicker?

16 A No, sir.

17 Q Have you been mistakenly identified as the man--

18 MR. SCOTT: No. That's not a proper question.

19 THE COURT: I'm going to allow it. Go ahead and ask
20 him.

21 A No, sir. I never robbed Ms. Wicker. I never robbed
22 Ms. Wicker. It's just mistaken identify. Like, like Ms.
23 Kathy said and Ms. Wicker said, like, they seen me a week
24 prior to the incident, so maybe that's the image, because
25 they say this man had dreads or whatnot before. Like, I

1 never attacked Ms. Wicker. I never would do such a thing,
2 and I'm, I'm, like I say, I'm not no, like I say, I'm not
3 perfect, but I'm not nowhere near will do such anything to
4 a violent crime. I got my own grandmother. Like I say,
5 it's not like I'm lost or anything. It's not like I don't
6 work or I don't got no type of, I go to church just like
7 Ms. Wicker and her family do. Like it's nothing
8 different. I wouldn't do such a thing. I would never do
9 such a thing, and I never attacked Ms. Wicker.

10 MR. VERNER: Come on down. Step down. Your Honor,
11 we rest. We renew the motion for a directed verdict on
12 the counts.

13 THE COURT: So noted. Now, Solicitor. Any rebuttal
14 case?

15 MR. SCOTT: No, Your Honor.

16 THE COURT: Okay. All right. The evidentiary record
17 in this case is now closed. Mr. Foreman, ladies and
18 gentlemen of the jury, I'm going to ask that you go back
19 to the jury room just very briefly so I can talk with the
20 lawyers as far as the remainder of this case. What we
21 have left to do is the lawyers will make their closing
22 arguments to you, and I will charge you the law applicable
23 to this case. So what I need to determine is whether or
24 not we want to go ahead and take a lunch break or not. So
25 if you'll go back to the jury room. Again, no discussion

1 among yourselves about this case, and we'll get you back
2 out in a just a minute.

3 (Whereupon, the jury was excused from open court.)

4 THE COURT: Okay. Let me see the lawyers in the
5 back.

6 (Whereupon, a short break was taken and the Court and
7 Attorneys had a meeting in-chambers.)

8 THE COURT: Okay. Let's go back on the record. An
9 issue has arisen that there was possibly some sort of
10 non-verbal communication between an individual and a
11 couple of the jurors. The surveillance video has been
12 viewed, not by the Court but by the lawyers, and it really
13 doesn't show much. But there was some concern that there
14 may have been some sort of nonverbal communication during
15 the break between some jurors and an individual. So what
16 I'm going to do and certainly, Mr. Verner, you can put
17 your objection on the record in just a moment, that when
18 we bring the jury out, I'm going to ask them all has there
19 been from the start on Monday all the way up until now, at
20 any time has there been any communication or attempts to
21 communicate with them verbally or nonverbally by anybody
22 involved in this case, any, on either side, any witnesses,
23 family members, anybody whatsoever. And if there is an
24 affirmative response, then I will question them
25 individually, even though I anticipate I will not have

1 one. Now, Mr. Verner, you object to the Court doing that.

2 MR. VERNER: Yes, sir; I do. Now, just, I share the
3 Court's concern about the integrity of the jury. But my
4 concern is that there is really nothing to justify what I
5 think is putting a fall on the jury and interjecting
6 concerns and possibly the prejudice that will fall against
7 my client that of, outside of the deliberation process.
8 For the record, my understanding is that the elected
9 Solicitor Stumbo, who I do have great respect for, texted
10 a message to his staff saying keep an eye out on two young
11 black male jurors, that they seemed to have had a brief
12 interaction with my client's, the Defendant's girlfriend
13 and, period. The Court, and we've heard from the Bailiff
14 in-camera who said that he was, he was with them out in
15 the parking lot. He was particularly watching them, and
16 he indicated to the Court he saw no such interaction,
17 either verbal or non-verbal. The surveillance tape does
18 not support the allegation and there is a Court, a deputy
19 who's assigned to security who also indicated that at best
20 he saw maybe a head nod or some kind of non-verbal
21 communication in passing. But that's pretty flimsy
22 allegation to have the jury start worrying about things
23 outside of the court and start thinking, and I believe if
24 it does come to their deliberation, it'll prejudice my
25 client.

1 THE COURT: Well, as I told the lawyers back
2 in-chambers, I can't ignore what an officer of the Court
3 has informed, has informed the Court via the text message
4 to Solicitor Daniel. I can't ignore that, nor would I
5 ignore the same sort of pause if you were to offer that,
6 Mr. Verner, to the Court. So I can't ignore it, even
7 though I understand exactly and appreciate the version of
8 what took place. Our Bailiff, and I see where there could
9 maybe be prejudice if I refer to, if I just single out the
10 two African-American jurors and specifically ask them
11 about possible conflict with your client's girlfriend. I
12 could see that, but I'm stating it very generally, both
13 sides, and so I'm going to handle it in that fashion. And
14 just as a scheduling note, as I've explained, we're going
15 to go ahead and order them lunch and lunch will be
16 prepared while you're making your closing arguments. I'll
17 allow them to eat lunch before they begin their
18 deliberations, bring them out for the charge, and we'll go
19 from there. Okay. All right. Madam Bailiff?

20 (Whereupon, the jury came into open court at
21 approximately 12:55 p.m.)

22 THE COURT: Okay. Let the record reflect, the jury
23 is back in the jury room, I mean, back in the courtroom
24 rather. Ladies and gentlemen, what we're going to do,
25 we've gone ahead and ordered lunch. I know the clerk has

1 informed you that we're going to provide you with lunch
2 and since we're well within the lunch hour, we've gone
3 ahead and ordered lunch for you. The lawyers will, in
4 just a moment, do their closing arguments, and then we
5 will take a break. Hopefully, the food will be here by
6 then. Let you go ahead, all fourteen of you, eat lunch.
7 Don't start deliberations, but then after you've eaten
8 lunch, bring you back out for the Court's charge on the
9 law, and then at that time, I will tell you to begin your
10 deliberation. So that's kind of the plan, scheduling
11 plan. But I want to deal with one other, I need to ask
12 all fourteen of you if, at any time, beginning with Monday
13 all the way up until now, has anybody communicated on
14 either side, witnesses, family, law enforcement, anybody;
15 has anybody attempted to communicate with any of you,
16 either verbally or nonverbally, and, again, this starts on
17 Monday all the way up until today. If anybody has, again,
18 it's both sides. If anybody has, I just need for you to
19 raise your hand. Okay.

20 (There was no response.)

21 THE COURT: Seeing none, Solicitor Scott, you ready
22 to make the closing argument?

23 MR. SCOTT: I believe so, Your Honor.

24 THE COURT: Okay. You may proceed.

25 MR. SCOTT: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. SCOTT: Ladies and gentlemen, the fear, panic,
3 terror, confusing, all these things and more racing
4 through the mind of Benzena Wicker. The pain there, we
5 heard her collarbone had been broken. The ride was
6 uncomfortable. Her wrists tied together. Her ankles
7 binded laying in the floorboard or backseat of an F150.
8 But, maybe worse of all, the anxiety, the uncertainty of
9 what the next few minutes, the next few hours would bring
10 had to have been unbearable. Would her mother come home
11 to find her missing or worse, find her dead on the floor?
12 What about her two daughters, her son, would she ever
13 speak with them again. Ever get a chance to see those
14 grandchildren, that great-grandchild celebrate another
15 birthday. Thankfully, Ms. Benzena, she's not an ordinary
16 victim or not at least in my opinion. I have a lot of
17 victims that I represent in this Court. Not a typical
18 victim, I would say. Don't let her sweet demeanor fool
19 you. This God-fearing woman is tough, and you got to be
20 tough to survive something like this. Widow, Charles,
21 thirty-year Army veteran, a military man, tough as nails.
22 Did three stints in Vietnam. You don't think some of that
23 rubbed off on her. What we're here for is to figure out
24 how did this sweet, mild-mannered God-fearing,
25 seventy-three-year-old woman, daughter, sister, mother,

1 grandmother, great-grandmother, how did she come to be in
2 such an undignified situation, such a terrible position,
3 such a horrifying predicament? How did she find herself
4 there, bound, wrists together, ankles together, pillowcase
5 over her head in her deceased husband's pickup truck lying
6 on the floorboard while her abductor blared music.

7 September 21st, we heard the defendant say that's an
8 ordinary day. Well, it starts off that way for Benzena
9 Wicker. It was ordinary for a Wednesday. You know, she
10 had that routine. Wednesdays were a little bit different,
11 her mother at the time was a hundred years old, but her
12 mother like from time to time to go to her home in
13 Clinton, and Ms. Wicker was able to do that with the help
14 of her brother. See, her brother lives up in Greenville.
15 Obviously, Ms. Wicker, Benzena, lives in Newberry.

16 Clinton is, I guess, somewhat in between the two, so six
17 days a week, Ms. Benzena has her mother. On Wednesdays
18 they have this arrangement that she gets in the Cadillac,
19 because that's the car that the elderly mother can most
20 easily get into. That makes sense. It's a little bit
21 more difficult to climb up and get into that truck.

22 Benzena would drive her mother to Clinton. She meets her
23 brother there, and she spends a little bit of time there
24 in the Clinton home with her mother. After that, she
25 would leave. Her brother would stay with the mother, and

1 Ms. Benzena would come back here to Newberry. And
2 Wednesday was also significant, because that's when she
3 would have Wednesday church study and this particular
4 Wednesday, they were preparing for, I think it's, Rainbow
5 Tea. I never heard of that. I've never heard of such a
6 thing. Maybe some of y'all have. But my understanding is
7 each member who intends to raise money for the church, for
8 whatever charity, has a color assigned to them and part of
9 what they do is they get all these supplies together and
10 have a tea party on Sunday and, again, all of this is for
11 charity, all of this is to raise funds. So she was
12 assigned purple. She goes to the Dollar Tree. She
13 collects her wares for Sunday, and she intends on going to
14 church that night to set up her table. Everything is
15 pretty routine at this point. She says sometime between
16 5:40-6:15, she gets to her home here on Green Meadows.
17 She pulls around to the back, she pulls around to the back
18 like she does customarily, and the F150 is typically
19 parked under this carport here. What Ms. Wicker likes to
20 do now that Charles is not around to use the truck every
21 day, she likes to occasionally crank it up, get the
22 gasoline flowing through it, the oil moving through it,
23 and she'll take it to church. Okay. When she doesn't
24 drive the pickup, because it's difficult for her mother to
25 get into. But when she is alone as she is on Wednesdays,

1 as a lot of people on Green Meadows know, she's alone on
2 Wednesdays, and a lot of people on Green Meadows knows she
3 has a hundred-year-old mother. She opens the car door and
4 perhaps one of the most terrifying things we can imagine
5 occurs. There was a man laying in the back seat with a
6 mask on, with a hood on, with long dreads, long sleeves
7 and gloves and what does the man do. What is the first
8 thing he does but rears up and kicks this
9 seventy-three-year-old mother, daughter, grandmother,
10 great-grandmother directly in her chest and the effect it
11 had was to fracture her collarbone. He's not done,
12 though. After she hits the railing, he drags her to the
13 front of the car. She's dropping her purse. It's
14 chaotic. Give me your keys. Give me your keys. Gets her
15 keys. Takes her up to this backdoor here. Open the door.
16 Open the door. Can you imagine the panic? Can you
17 imagine the panic going through Ms. Wicker's mind at that
18 moment? Can you imagine her heart racing? Can you
19 imagine trying to fumble with your own keys, something
20 that's as easy as can be any day of the week, suddenly
21 becomes an exercise, the most complicated thing you can
22 do, because when panic sets in, the most easy thing
23 becomes difficult. She can't get the key. He grabs them
24 from her. Pins her down on these steps right here. He's
25 got this seventy-three-year-old woman pinned down while he

1 goes through her keys. He finds the key he needs. He
2 enters the home, the home of Ms. Wicker. He enters that
3 home without any consent whatsoever, obviously, and he
4 drags her in against her will. And in this area, the
5 testimony was in between this living room and this day
6 room in this house she shared with her husband for so many
7 years, such happy memories there, it became a house of
8 terror. A struggle ensues. She's not just any victim.
9 Perhaps not the smartest thing in the world, but she does
10 struggle with him. She fights back until something
11 occurs. He grabs a hammer that she was reaching for and
12 holds it over her head as if to bash her brains in and
13 says, if you ever want to see that mother of yours again,
14 you'll stop fighting me. At the same time, she's asked
15 for her ATM card. He's asking where's her cash, where's
16 her cash. She said, it's in my purse. I dropped it
17 outside. She's panicked. What little fight she had, what
18 little power she had to fight back and stop this man from
19 whatever he's going to do, she must acquiesce at this
20 point. She doesn't want to die. She doesn't want that
21 mother to come home and find her dead on the floor, the
22 mother this intruder knows about. She stops fighting.
23 Take whatever you want. Take the money. I dropped my
24 purse in front of the truck. Take what money I have.
25 Take my ATM card. Take what you will. He is ripping the

1 necklace off her neck. He's pulling her rings off. And
2 then there is the moment where he has another comment that
3 shows familiarity with this woman. He says, well, you
4 know what, I know your husband died recently, as he takes
5 away the band that used to be on Charles' finger that she
6 now wears around her neck, I'm not going to take it. I
7 know your husband died recently. Through the panic, these
8 are things that you remember. These are things you
9 remember through the chaos and the terror, these are
10 things that you remember and she very clearly remembers
11 these things, because isn't that odd? How would this
12 intruder know these things about her? He takes the phone
13 cord, cuts it, ties around her wrists, ties around her
14 ankles, throws her on the couch there and takes this
15 pillowcase? And you see the cords, here and there. He
16 takes the pillowcase and puts it on her head and secures
17 it somehow. I can't breathe, Mister. I cannot breathe.
18 And Mr. Wise is nice enough to cut the hole in there so
19 she can breathe more easily. We'll give him some credit
20 for that. So now she's got the pillowcase over her head,
21 and she can't see anymore. She can no longer see the man
22 that she had described as wearing a hoodie with a red
23 shirt underneath. The man with the dreadlocks that came
24 out from under the hoodie. The slender black male in his
25 mid-twenties. She can't see him anymore. What would you

1 do if somebody did this to your mother? My mother threw
2 me away. My mother abandoned me. You remember these
3 things. Some things stick out. You remember them. We
4 see the wedding ring, again, it has a lot of, because the
5 intruder knew her husband had recently died. I don't know
6 if it would be a bad omen for him to take that but for
7 whatever reason and since I know your husband has died,
8 I'm leaving these here. What is the PIN number to the
9 ATM? Sir, please don't do this. Don't do this. God
10 loves you. God forgives you. I love you, and I forgive
11 you. Shut up. Shut up. Don't say anything else. What
12 is the PIN number? She gives it to him thinking that will
13 satisfy him. He'll be gone. Seemingly, he is. At first,
14 it appears that way. She hears the door shut. He's
15 leaving. She's still bound. She's got the pillowcase
16 over her head, so she has to trust her senses. This woman
17 who worked as a teacher for years, worked with the Whitten
18 Center dealing with the blind and deaf for years suddenly
19 became herself blind and suddenly loss the use of her
20 hands and her feet and so there she is laying in the dark
21 on the floor in the silence listening. Is he gone? Is he
22 really gone for good, please, please let it be over. It's
23 not. And we know that, because he comes back in and no,
24 no, no, no. I can't leave you here. I've already thrown
25 your phone in the toilet. I've already cut the cords to

1 your landline, but two things could happen if I leave you
2 here. You could escape, run out, alert somebody that I've
3 just taken your car and they could find me and catch me.
4 Or you could just have, just give me a bogus ATM number.
5 No, you're coming with me. Come on, Ms. Wicker. He drags
6 her back out. All right. This woman now has her ankles
7 bound together. Her wrists are bound together. He's
8 dragging a seventy-three-year-old woman back outside into
9 this pickup truck that we see here. Used his knee, she
10 described how he used his knee to push her on up there.
11 He's kind of a little guy, but he did have, it took him
12 some effort, only slightly larger than Ms. Wicker, and we
13 know a slender male, 120-140 pounds, five-five, somewhere
14 in there. Does that sound familiar to any of you, that
15 description. Mr. Wise was able to get her in the car. He
16 drives her around for a while. Y'all remember at one
17 point that she talked about going down a gravel road. She
18 knew she was on the Interstate at one point. You can hear
19 the big eighteen-wheelers passing by. At one point, he
20 hit the running strips on the side. She remembered going
21 over to railroad tracks. I don't know if he had a plan or
22 not, but he's riding around. At some point, do you
23 remember, she's on the gravel road or a dirt road, I don't
24 remember exactly what the testimony was, but the car
25 stopped, and he's been blaring this music that's confusing

1 her. Just making the ride very difficult for somebody in
2 her situation, as if it could be any more difficult, and
3 then you remember she heard a female voice he was talking
4 to. Do you remember that? And she's trying to lift her
5 head and listen and he sees that and he pushes her head
6 down and turns the volume back up. She didn't see
7 anything. What would be the chance that Ms. Laswan
8 Anderson could have been speaking with Mr. Wise at that
9 time? I don't know. I don't know. I do know I'd love to
10 have the contents of that cellphone. I'd love to. Law
11 enforcement would love to. When they received the
12 cellphone off of Mr. Wise out of his pocket, he would not
13 provide the PIN number. Ms. Anderson would not provide
14 the PIN number, and you've seen them this week outright
15 refuse to provide the PIN number. I don't know. I can't
16 tell you what's the contents of that phone. I don't know.
17 The fact is we can't get into it. It sure would be nice.
18 Anyway, she hears a woman's voice, and we don't know who
19 it is. I submit to you that's a fair hypothesis that it
20 could have been Laswan Anderson's voice. We don't know.
21 He drives the truck, you got to know where this is on
22 Kendall Road. It's, there was an old grocery store
23 parking lot there or an old grocery store that's a parking
24 lot. It's got a liquor store there, this ATM, and then
25 the great Chinese restaurant we hear about. We know,

1 without any doubt, \$500.00 dollars was taken out of
2 Benzena Wicker's account at 7:31. That's important, and
3 we know that. It's a fact. It's been testified to. It's
4 right here before our eyes, and we know that's her pickup
5 truck. Now, he got her phone, I mentioned that, dumped in
6 the commode. He gets back to the house after he's taking
7 \$500 out, drags her back in. This is the point where he
8 begins taking the TV's, and he goes a step further before
9 he's got the phone cords tied around her ankles, around
10 her wrists, and then the pillowcase, but now he decides to
11 kind of, I guess, more security tie her up, because I
12 think he knows now that he's going to leave soon. So he
13 takes the duct tape and goes around her wrists and her
14 ankles. Takes the TV's, four to five TV's out of the
15 house, and leaves her there. And he has one final ruse
16 and that is, yeah, I'm leaving somebody with you. Don't
17 you move. You stay right here. He pretends to talk to
18 the imaginary person, but we know nobody is there. He
19 pretends to talk. Watch her. Don't let her move. Let me
20 know if she moves. And then he leaves and she hears the
21 door shut and this time, she hears the Cadillac crank up,
22 and he's gone. He's gone out into the night. And we know
23 dispatch, we know about 10:30 p.m. nighttime, they
24 received a 911 call and it's Ms. Benzena Wicker and she's
25 across the street now at Kathy's house, Kathy Tapia, and

1 you guys heard from her and they're getting this
2 information. So we know that this ordeal lasted nearly
3 five hours. 5:40 to 6:15, she gets home. She knows,
4 because she's got the 6:30 church service, church Bible
5 study. And then we know at 10:30, the call comes into
6 dispatch. Nearly five hours or so. This
7 seventy-three-year-old woman is going through this ordeal.
8 She has heard his voice on and off through this time.
9 Initially, as I've said, it's daytime when the attack
10 occurs. She gets this, you know, view of him. You
11 understand they're fighting at arms-length at first and
12 she's trying to stop him and she's fighting him, and then,
13 you know, kind of everything goes dark once he puts the
14 pillowcase over her head. But she's still got that voice,
15 and that voice that she'll never forget. You know, I wish
16 she could. I wish I could wave, you know, and help her
17 forget this whole thing, but she won't and that's just the
18 fact of it. A victim of something like that, you never go
19 to your house again, you never step out of your car
20 without thinking something really terrible is going to
21 happen. You never take a key and put it in a hole without
22 the thought going through your mind there's somebody in
23 here waiting for me and that's the curse, and sadly,
24 there's nothing you can do about it. Ms. Wicker begins to
25 provide information to law enforcement at this time. The

1 description, black male with a slight build,
2 lighter-skinned, dreadlocks, clothing, what he had done,
3 the voice, and the Cadillac with the TV's. She tells them
4 it's OnStar. We got OnStar on the car and that's helpful,
5 because you know what, they would have never found that
6 Cadillac, or at least not that night. I don't know when
7 they would have ever found it. I don't, and you
8 understand what OnStar is? It provides GPS coordinates to
9 where it is. This is an old outbuilding to this
10 lumberyard and the car was found back here in the woods.
11 And what Captain Dennis had testified to, he could see the
12 tire tracks of somebody pulling in here and driving
13 through the interior of the building and coming out on the
14 far end. At night in the dark, somebody did this. I'll
15 submit to you that would show familiarity with that area.
16 That's what it looked like that night and this car had
17 gone back through here and pulled around through this
18 dilapidated building and that's where it came to be. In
19 fact, it was so dark out there and so secluded, even
20 though these had, they had these GPS coordinates, they
21 still couldn't find it. They had to call OnStar back and
22 say, hey, hit the panic button on this thing and so the
23 horn would go off and we can find this Cadillac. That's
24 how they found it. Based on the description, based on the
25 area they were in, they decided, and based on the theory

1 from Ms. Wicker that this is somebody who knows me. This
2 is somebody who kind of knew my routine for Wednesdays.
3 This is somebody who knows about my mother. This is
4 somebody who knows about my husband, who lives nearby. So
5 they tell them the description based on people in the
6 neighborhood. They get on Law Track, okay? They've got a
7 database and they look for people who live near Ms. Wicker
8 who would fit this description. Anthony Wise is one of
9 the first names that pops up. Okay. So he's a person of
10 interest. That's why they want to speak with him the next
11 day. And, Anthony, you know, your name kind of popped up
12 on this thing. Where have you been? Where were you
13 yesterday? And this is right over here at probation.
14 That was the first time they spoke with him and that was
15 when he said he was cool, calm, and collected. He said
16 that he felt like he could leave at any time, and then his
17 lawyer said, well, wait, wait. You know, you didn't
18 really think you could get up and leave? Oh, well, yeah,
19 yeah. I didn't. I didn't. That was against my will.
20 But they did let him go, but not before they got his phone
21 number. What phone were you using yesterday, Mr. Wise?
22 What's the phone number? You remember I keep talking
23 about a 404 number, because I don't have the stupid thing
24 memorized, but the 404 number, the one that goes to the
25 Kyocera, we're all so interested in. He gives them that

1 phone number. Using that, they go ahead and talk to SLED.
2 SLED begins, because they're not going to arrest a guy
3 just because he fits the description physically. They're
4 going to do their police work and go a little bit deeper
5 into it. Sadly, they had to put him on notice that he was
6 a person of interest, because, I don't know, I don't know
7 what happened to the mask. I don't know, you know, what
8 else could have been lost that, that was a necessary evil
9 in this case, because they needed the phone. They needed
10 him to confirm that yes, he had been using that phone the
11 day before and he admits it and we got the audio, which
12 says I had the Kyocera yesterday. That is when they began
13 to see some very interesting patterns. That is when it
14 crystalizes that this is the guy. We got the guy we
15 looking for, because here we see his phone being used over
16 here at the incident location. He's got a very good
17 reason for that. His grandmother, who is his adoptive
18 mother, lives down the street a short distance away.
19 That's plausible. I understand that. And I understand
20 that it's normal to him he doesn't have a key to the
21 residence and he doesn't use that Wi-Fi, but we don't deny
22 that his grandmother does live a short distance from Ms.
23 Benzena Wicker and he's there. He's there in that area at
24 5:45 p.m. He's there in that area at 6:21 p.m. Y'all
25 remember the ranges Ms. Benzena Wicker talked about when

1 she got home sometime between 5:40 and 6:15. I don't
2 know, because I had church at 6:30. Well, that's just
3 interesting, though, isn't it? His phone is pinging in
4 that area at that same time. Isn't that interesting? And
5 then what else? Where else did they plot him? Way up
6 here right at the ATM. And guess when it was there? At
7 6:57 p.m./7:21 p.m. Does that sound familiar, 7:31 is
8 when this photo was taken. Right in those times when the
9 cellphone that he claimed to have been using the entire
10 day, the one he associates with is using the tower way up
11 here that services that ATM. Because you got, I don't
12 want to get too far into it, but did you understand the,
13 like a Mercedes symbol is kind of how I put it. That
14 represents 120 degrees each if you look at a cellphone
15 tower. Maybe you'll look at them different after this
16 trial and all, but because a cellphone table, there's
17 going to be 120 degrees. It's going to pick up you guys
18 phone. Right now, it's facing you in that red. They are
19 going to have a different sector of that same tower. They
20 are going to have a different sector. So each cellphone
21 tower will have three different areas that they will
22 cover. If you understand what I'm telling you and what
23 the expert told you is without any doubt, the tower that
24 is right here is servicing that wedge where the ATM is.
25 Not this one. Not that one. The one where the ATM is.

1 And they're going to say, ah, yeah, well, that was within
2 5,000 meters. That's a long way. The expert testified.
3 He's not saying it's 5,000 meters. He's saying it's
4 anywhere between zero meters and 5,000 meters. We can't
5 tell you if it's two feet away from that tower or 5,000
6 meters out. He's saying these rural areas, they have to
7 service a lot further area. Now, I don't want you to get
8 confused about that. There was some, I would say rather
9 confusing cross-examination by the defense regarding that,
10 but that's the fact. They can't tell you whether it's
11 5,000 or zero meters, but what they can tell you in an
12 expert opinion beyond any doubt is that that phone was in
13 the same area as that ATM using the same sector of that
14 cellphone tower at 6:57 and 7:21. Now, here's the other
15 thing, the Cadillac, where it's found, we would have
16 Wilson, this black line is Wilson Road and the Cadillac
17 was found right here at the, as we talked about, it's
18 about a ninety-acre tract of land. It is an old abandoned
19 lumberyard, and you can see. You're going to have aerials
20 where you can take a look. It's wooded and there's all
21 woods around it. There's a railroad track right here, and
22 then the Cadillac is found here, and then there's just
23 woods. That particular cellphone due to its location was
24 able to more accurately, the cell tower, more accurately
25 depict the location. What did he say? It was pinging

1 within 400 meters of the Cadillac. Okay. Do you know
2 what time that was? Between 10:21 and 10:24 at 400
3 meters. A meter is about three and a third foot,
4 something like that. So like 1200 feet or so away. Very
5 close. Very close. With that in mind, they need to
6 re-interview Mr. Wise at this point, because not only do
7 they have the description of him, they've also got this
8 interesting information, this phone he's been using are in
9 these places of interest, great interest. Because they're
10 trying to find somebody who is capable of tying up, using
11 a hammer to threaten violence on, breaking into somebody's
12 house, attacking and kidnapping a seventy-three-year-old
13 woman. This is an important case. Bring him back in.
14 Along with this information, they arrest him. Take him in
15 and inform him that he's being accused of doing these
16 things now. Not only is he a person of interest, he's
17 being arrested for it. Bring him in. I don't want to,
18 you know, I'm not a law enforcement agent. Hindsight is
19 20/20, but, you know, they went ahead and played their
20 card. They went ahead and told him, we got these
21 coordinates on you where your phone is giving him the
22 reason or an opportunity rather to explain away these
23 things, and he does a very less than impressive
24 performance in explaining. And you saw what he did today.
25 I suspect or rather, I'm surprised, when Laswan Anderson's

1 hand hit that Bible, that it didn't burst into flames.
2 Likewise, I'm surprised that it didn't do the same when
3 Mr. Wise's hand hit that Bible. Because what you heard
4 was ridiculous. Not only was it a complete and utter
5 fabrication, it was an outright lie. Did any of it make
6 sense to you whatsoever? Sir, your phone is pinging up
7 here on Kendall Road. Why would that be? Why would your
8 phone be up there at this time? Oh, oh, yeah, I got, I
9 got some Chinese food. You got Chinese food. Okay.
10 Yeah. Yeah. My girlfriend wanted Chinese food up at the
11 Chinese restaurant up there. Okay. So he knows, he knows
12 he's got to explain why he was at that ATM. And so he
13 comes up with this stupid excuse that makes no sense. I'm
14 getting food for my girlfriend. Okay. Yeah, I got food.
15 I got food. Okay. That's great. Let's go get the
16 surveillance. Let's go pull the video. And that'll
17 confirm the story that'll clear you now. What time were
18 you, I don't really know what time. That's fine. We'll
19 just pull up for the entire day we if we need to. We'll
20 go through ten hours of footage. That's fine. Oh, well.
21 Oh, yeah, yeah. I didn't go inside. Well, wait a minute.
22 You just said you got food. Yeah, yeah, I didn't go
23 inside. He never tells them the whole story about the
24 Bojangles card he fed y'all, but he does backtrack and
25 once they kind of tell him, you know, that'll clear things

1 up. Oh, yeah, yeah. That's right. I didn't go inside.
2 Okay. Fair enough. And where were you at this time? Oh,
3 I was at the Fast Track. Yeah, yeah, I was at the Fast
4 Track. Okay. What were you doing? Getting cigs. Let's
5 go get the surveillance on that. Oh, I didn't go inside
6 the store. And the first time we heard about him not
7 having his I.D. or surveillance in front of you guys, but
8 that's his story, and he's entitled to his story. You're
9 not entitled and you shouldn't believe it, though. You're
10 not obligated to believe it rather. So hey, if that makes
11 sense to you and that's believable to you, you're the
12 jury. You understand, I know y'all have seen this picture
13 a lot. This is Ms. Wicker's home right here. Now, I
14 would say that this is out towards Prosperity, a lot of
15 mobile homes, fairly big lots. You know, they're not
16 bunched up on top of each other. Ms. Wicker knows her
17 neighbors and, especially, she and Kathy have a good
18 relationship, as well, and very familiar with one another
19 and their routines. This is where Mr. Wise claims to be
20 his residence. You know, his mother's house he says, but
21 it's his residence. That's where he keeps his clothes.
22 That's where he goes from time to time. He doesn't have a
23 key. He doesn't use the Wi-Fi, but that is an address he
24 gives law enforcement as being his. And you see how close
25 it is. He testified himself that he was familiar with Ms.

1 Wicker's home. Not the inside, but he had been there and
2 he had met her deceased husband, and they had seen him
3 there. He doesn't drive. He walks around a lot. And
4 just a week before, they watched him when he walked in
5 very close proximity to them. Ms. Benzena was standing
6 here on the road and Kathy across the street and they're
7 talking to one another, and he just ambles right past
8 them. Walks past them in close proximity. The interview
9 is recorded, another piece of evidence and you've heard
10 him discuss, I guess, or rather explain his whereabouts,
11 and his explanation, even in court, has always been
12 something influx. It changes, you know, excuse or
13 explanation. Did you see how quickly he would shift when
14 I'd ask him a question. He doesn't want to be caught in
15 any one story. He wants his story to be able to be
16 manipulated and varied. Well, you said earlier it was at
17 7:00 o'clock. Oh, well, it could have been later. It
18 could have been a couple of hours later. It could have
19 been. You can't catch him in one story, because he
20 doesn't want to be caught in one story. He's got a, I
21 guess, a version that he can shift at will, and he has
22 done that before your very eyes. One thing he cannot do
23 is disguise that voice of his. Have you heard anybody
24 talk like him before? I have not. You heard it. He sort
25 of melds his sentences together. The words flow into one

1 another. He doesn't break in between words. At least
2 four or five times, we had to stop the testimony so the
3 court reporter could understand a thing he said. He talks
4 very rapidly. It's a unique accent to say that or a
5 unique way of speaking. Do you know who else, the victim
6 in this case who heard him speaking to her throughout the
7 night, sometimes threatening and sometimes arguably
8 sympathetic when he left the husband's ring, and she very
9 clearly got to hear that unique speaking pattern, that
10 speech patter. And so when Ryan Dickert recorded his
11 interview, she said, if I ever hear that voice again, I'd
12 recognize it. He says, okay. Well, let's play it for
13 you. He played her a little bit of it and right off the
14 bat, that's him. That's him. She said she almost passed
15 out. When I see yawns, I know I'm getting long winded,
16 but there's a lot to cover here guys. I know, but I, I
17 only get one shot at this. Ms. Wicker gets one shot at
18 this. If I can't convince you, this is it. I'm not
19 trying to be long winded, I promise you, but there's so
20 much to cover. This is so important to me. This is so
21 important for this county. This is so important for Ms.
22 Wicker. Now, I'm not trying to be long winded, I promise
23 you. I promise you. There's so much to cover, and I
24 won't, I get one shot. When I sit down, that's it, and so
25 he can stand up and muddy everything up he wants and spill

1 whatever cockamamie excuse he wants to and my fear when I
2 sit down is, I hope they don't believe that. When I
3 picked you guys, I don't know you guys. I got limited
4 information about you, but what I hope is I get logical
5 people, reasonable people who care about this case.
6 That's all, that's all I can ask for. I don't need rocket
7 scientists. I don't need surgeons. I need people who
8 have a heart and who can listen and who understand things
9 and can apply logic and rational thinking. That's it.
10 What makes sense? What does not make sense? So I'm going
11 to try to hurry up here. I see some heavy eyes. I see
12 some yawning. The voice, though. She recognizes the
13 voice immediately. She almost falls out of her chair.
14 That's him. The crimes he's charged with, guys, burglary
15 first. Okay. I'm going to cover that first. The Judge
16 is going to give you all these instructions but,
17 essentially, here's what it is, okay. This is crime
18 number one you guys need to consider. If you go into
19 somebody's house without consent and with intent to commit
20 a crime inside, that's a burglary first, okay. There are
21 aggravating factors that you can consider. Enter that
22 dwelling. A dwelling is a house. Somebody where somebody
23 or someplace, where somebody goes to sleep at night. We
24 don't really know where that is for Mr. Wise here, but we
25 certainly know Ms. Wicker, is her home, the house we've

1 been talking about all week. If you going up to Ms.
2 Wicker's house, she never gave this consent to come in her
3 house, especially not with a mask on and with an intent to
4 commit a crime therein and either that entering or
5 remaining occurred in the nighttime.

6 We know he entered during the daytime, okay, 5:46:15.
7 He entered during the daytime, but we also know he stayed
8 into the nighttime, okay. That's one you can consider,
9 but it's and/either. Either that, if you say, well, I
10 don't know maybe he left at daybreak. He was there at
11 night. You heard when she finally got free and ran across
12 the street, it was 10:30 at that time. She said maybe she
13 lay there for thirty minutes before he left, so we know
14 it's nighttime. Well, let's say this. Let's say I hadn't
15 proven this thing to you beyond a reasonable doubt. There
16 is another way you can find burglary first. If you enter
17 somebody's house without consent with intent to commit a
18 crime, inside and once in the dwelling, you're armed with
19 a deadly weapon, he had that hammer, or you cause physical
20 injury, he broke her collarbone, or threaten the use of a
21 dangerous instrument. If you want to see your mother
22 tomorrow, you'll stop fighting with me. You'll give me
23 that ATM number. You'll give me that cash. You'll stop
24 fighting me. The hammer. This is burglary first, that is
25 what he's being, that's what is alleged to have happened.

1 That is what he's being tried for. Does that make sense?
2 Do you understand what I'm trying to, nighttime. Even if
3 you don't go there in the nighttime, if you stay into the
4 nighttime without consent, that's burglary first.
5 Kidnapping, this is a true kidnapping. We've had them
6 before where somebody kind of tells the person, you're
7 coming with me. You know, but they're not bound or
8 anything, but just by words and actions, they feel like I
9 better follow this person or else, you know, something bad
10 could happen. This is a true kidnapping. Almost a
11 Hollywood-style kidnapping where the person is bound by
12 the wrists, by the ankles, they are threatened, and they
13 have a pillowcase put over their head and force is used to
14 get them from point A to point B. That is a true
15 kidnapping case, and here's what the law says, unlawfully
16 seized, confined, inveigled, decoy, kidnap, abduct or
17 carry away any other person by any means whatsoever
18 without legal authority. That's just what the statute
19 says. What it means is to take somebody against their
20 will from point A to point B. Do you think Mrs. Wicker
21 asked to be toted up to Kendall Road and have her ATM
22 used. Do you think she asked to be driven all over
23 Newberry while she is taped up. I don't think so. That's
24 what kidnapping is. That's what he's accused of. That's
25 what I'm going to ask you guys to find him guilty of, as

1 well as the burg first. Armed robbery, and here's what
2 the defense is going to say, it wasn't armed robbery. He
3 picked up the hammer once he was inside. Do you know what
4 the law says. If you're taking something from somebody by
5 force, if at any time, at any time you arm yourself with a
6 weapon that can be used and it can be deadly. You don't
7 think a hammer can be deadly. If at any time you arm
8 yourself with an instrument such as this, you are taking
9 the force, you are taking TV's, you're taking ATM cards,
10 you're taking cash, you rip the jewelry off people's
11 necks, that's an armed robbery. Okay? That's the theory
12 of the State and that's the law. Taking or carrying away
13 the personal goods of another while armed with a deadly
14 weapon and with the threat of violence. If you ever want
15 to see your mother again, give it up. Give me that ATM
16 number. It's an armed robbery. That's what he's charged
17 with and that's what I'm asking you guys to find him
18 guilty of in conjunction with the burg first, and in
19 conjunction with the kidnapping and armed robbery.
20 Finally, assault and battery first degree. There's a
21 couple of ways he committed assault and battery, first
22 degree that night. Initially, while he's kidnapping her,
23 while he's ambushing her, he kicks her in her chest and
24 breaks her collarbone. That is an assault and battery
25 first degree. If you unlawfully injure another person and

1 the act occurred during the commission of a robbery or a
2 kidnapping, that is an assault and battery first degree.
3 You got the medical bills that show her collarbone was
4 fractured. You got her testimony. You got people saying
5 that, she was in such pain when they found her, she
6 couldn't even sit up straight on the couch, and you got
7 pictures, too, that sort of indicate that. It's
8 incredibly painful to break your collarbone, and hers was
9 broken that night. He's guilty of assault and battery
10 first. There's another way he committed if that's not
11 good enough for you, because there's an or. If you offer
12 or attempt to injure another person with the present
13 ability to do so and that act occurred during the
14 commission of robbery, burglary, or kidnapping, that's
15 also assault and battery first. So when he's brandishing
16 that hammer threatening to strike her with it while she's
17 being held against her will, that, too, is assault and
18 battery first degree beyond a reasonable doubt, okay. We
19 understand, you know, the defense attorney actually led
20 him to saying, got up there and said, this is just a
21 mistaken identity, isn't it? I don't think there's any
22 question that these things happened. The whole defense is
23 you got the wrong person. It is some other person that
24 lives in this neighborhood, some other person that knows
25 these details, some other person that matches all of the

1 physical descriptions of the Defendant. Some other person
2 who was up at that ATM when it was being stolen from.
3 Some other person that was at the incident location at the
4 time this act occurred. You got the wrong guy, because it
5 was some other person that, who was also within 400 meters
6 of that Cadillac when it was being dropped off. All of
7 these are just, this is the Defense theory, a wild
8 coincidence. He is the most unlucky sole you could
9 imagine. You got the wrong guy. How about this? How
10 about let's not reward him, because he took precautions of
11 covering up most of his hair. How about let's not reward
12 him for putting a mask over his face when he did this so
13 he couldn't be identified by his face. How about let's
14 not reward him, because he comes up with every stupid
15 excuse in the world why his phone would be at these
16 locations. How about that? How about let's use some
17 logic. How about let's use some reason. How about let's
18 use some common sense. They're going to say the State
19 hasn't met their burden of proof and that's what I'm, and
20 burden of proof is beyond a reasonable doubt. You guys
21 may have heard that. It's the highest standard in the
22 legal word. You know in these civil cases, they say,
23 well, jury, if you think the plaintiff is right, you know,
24 in the civil realm, it's money on the line when somebody
25 sues another person. They say if you think the plaintiff

1 is a little bit more right than the defendant, you should
2 rule in favor of the plaintiff and vice versa. If you
3 think the Defendant's a little more right than the
4 plaintiff, rule in favor of the defendant. Every trial
5 I've ever done in my life has been one that I had to prove
6 beyond a reasonable doubt and that's the ideas that
7 everybody accused of a crime gets a very fair trial, gets
8 every, you know, a lot of things are weighed in their
9 favor. If there's any doubt, it should be weighed in the
10 favor of the defendant. That's how the criminal judicial
11 system works and that's a good thing. I'm telling you
12 that's a good thing. What does beyond a reasonable doubt
13 mean, though. It does not mean that I have to prove this
14 case to you where you don't have a doubt about anything.
15 It doesn't not mean you have to be one-hundred percent
16 certain about everything. I can't think of one time I'm
17 one-hundred percent certain about. Well, people say death
18 and taxes, I guess, still not one-hundred percent certain
19 about it. What else are we a hundred percent certain
20 about? Nothing. You know, I'm not a hundred percent
21 certain I'm not going to go home tonight and somebody's
22 going to attack me in my driveway. I don't know. I don't
23 know. I don't know that I'll wake up tomorrow morning. I
24 really don't, at least not with a hundred percent
25 certainty. I don't have to prove this case to you with a

1 hundred percent certainty, because, as you know, there's
2 all kinds of things we can't answer. There's all kinds of
3 things that people are unwilling to give us answers to.
4 What does beyond a reasonable doubt require. It doesn't
5 indicate you can't hold some doubts after hearing all of
6 the evidence and, again, the Judge is going to read this
7 to you, and this is part of his instructions. There are
8 very few things in this world that you know to be true
9 with absolute certainty. The law does not require proof
10 that overcomes every possible doubt. He's going to say
11 firmly convinced twice when he reads the instruction on
12 reasonable doubt. If at the end of this testimony, the
13 end of all this that you've heard the last few days, if
14 you're firmly convinced of his guilt, the crimes alleged
15 to have been done, you must find him guilty. You took an
16 oath to do that. You took an oath to listen to the
17 evidence and apply it to the law and if that evidence
18 shows one result, you took an oath that you would convict
19 or acquit based on the evidence. Guys, I've come to the
20 end. Again, just with a few exceptions, I really can't
21 stand back up here. You know, if I sit down and say, oh,
22 I forgot to tell them or I forgot to, you know, say this
23 or that, I really don't get an opportunity to do that.
24 But what I ask you again is what makes sense. You guys
25 are educated people. You're smart people. You're

1 employed people. You're people who make up this
2 community. You're the voice of this community. You get
3 to do things like look at the evidence and say what makes
4 sense and what doesn't and you get to, another thing you
5 get to do and the Judge will tell you this, you get to
6 judge credibility. So if 73-year-old Benzena Wicker was
7 standing up here and she was testifying to what happened
8 and she was telling you everything that happened to her
9 that night, and she was shedding a tear as she was
10 remembering being thrown in the back of that car, and she
11 was recounting this very painful, very terrifying day of
12 her life. If you looked at her and said, I think she's a
13 liar. I don't believe it. Well, first of all, I would
14 find that very difficult to believe. I submit to you the
15 opposite. That's one thing you get to judge. Likewise,
16 you get to compare that to Laswan Anderson when she was up
17 there. I submit to you she didn't fare as well and that's
18 one thing you can consider. Was she truthfully under oath
19 testifying to you or was she playing you for fools.
20 Easiest thing in the world. Give that four-digit PIN,
21 please. What about Mr. Wise when he testified today? Did
22 you notice that unique voice of his how sometimes it would
23 trail off when he really couldn't answer a very simple
24 question. It's the easiest thing in the world to remember
25 everything, because it's the truth. But when you concoct

1 stories, you sometimes forget what the story is you're
2 supposed to be sticking to and that's why you'll see these
3 deviations in his stories. Even between when his defense
4 attorney was talking to him, when I was talking to him,
5 because it's very difficult to remember if it didn't
6 actually happen what the story's supposed to be. I'm
7 asking you just to do what justice demands. The only
8 thing that would be justice in this case, the only thing
9 that would occur with Ms. Benzena Wicker on September 21st
10 of last year, the only thing and the only thing I'm asking
11 you to do is find Mr. Wise guilty of those four crimes.
12 That's burg first, that's burglary first, kidnapping,
13 armed robbery, and assault and battery first degree.
14 Thank you.

15 THE COURT: Thank you, Solicitor. Mr. Verner, you
16 ready, sir?

17 MR. VERNER: May it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 MR. VERNER: Mr. Foreman and members of the jury, I
20 am from Newberry, all of my life, I graduated school, I've
21 never lived anywhere but this street that this courthouse
22 is on down College Street down towards the college. I am
23 offended. I am upset about this crime happening to Ms.
24 Wicker as much as anybody, but my concern as public
25 defender is, and I think probably Mrs. Wicker and I share

1 this is we don't want for someone else to mistakenly pay
2 the price for something that somebody else did. That is
3 my concern and I submit to you as the jury, that is your
4 only role. The role of the jury is to find the truth. We
5 don't know it. Nobody was there. And your burden is find
6 out whether the State has enough evidence to put somebody,
7 to make somebody pay the consequences for what somebody
8 else may have done. The Solicitor says I'm going to call
9 this lady a liar by putting up a defense and that's just
10 absolutely untrue. Nobody's saying this thing didn't
11 happen. The question is whether the right man has been
12 identified for it. And here's the first concern we have
13 is what was Ms. Wicker's opportunity to observe this man
14 who attacked her, a very bad man who attacked her. Well,
15 she said in the beginning, she was struck by surprise. I
16 was opening the car door and he kicked me in the chest and
17 knocked me down, and then he got on me and he dragged me
18 in the house. As he's opening the keys to my door, he
19 has, he's down and he's got his knees on me holding me
20 down as he's turning the key. He drags me in the house.
21 He's apparently behind her, because she says she pushes
22 him and she falls down between the chairs. She grabs the
23 hammer, she grabs a hammer and somehow takes a hold of
24 him, and he immediately pulls the hammer out of her hand
25 and said, lady, let go of me, and makes a threat to her.

1 She immediately says that he drags her to the couch, ties
2 her up, puts a bag over her head and ransacks the house.
3 That is her only opportunity to observe this man. I
4 understand it is a terrifying situation. This is the man
5 she would have observed, on top of the opportunity at that
6 no time was she staring at the man for any period of time,
7 this is the man she saw, and this is Anthony Wise's mug
8 shot. He's the man behind here, but the man she saw had
9 a, she testified had a hoodie pulled down over his head
10 and had a white Jason or a hockey mask over his face. She
11 said she saw somehow the glimpse of a red shirt. That is
12 the man. That is the face that she would have seen. On
13 the same night she was robbed, she didn't tell Ms. Tapia.
14 She didn't tell law enforcement. She said nothing about
15 seeing highlights yellow dreads. She said, I remember he
16 had long hair. I submit to you if this is the man who is
17 attacking you and you get a good look at him, I would say
18 the first thing I would notice is he had yellow hair, he
19 had, because this is the only thing that's sticking out of
20 his shirt. If he had yellow dreadlocks, that is the exact
21 first thing anybody would recognize. She just remembers
22 he had long, he was a young black man and had dreadlocks,
23 long hair. She absolutely did not tell anybody that he
24 had, that that comes from nowhere. How does, and I am
25 sure and there's no question in my mind, she sincerely

1 believes that the right man is being charged. I promise
2 you she's not testifying falsely. In her heart, she
3 believes that law enforcement has caught the right man,
4 but she didn't identify him. She gave no descriptive
5 features of him at all other than he was a young black man
6 with dreads. Nothing about yellow dreads. That's the
7 face she would have seen. Law enforcement does Law Track
8 and they put in there, you know, black men, age range,
9 dreadlocks, and they get a list of three possible suspects
10 from their Law Track. They said, well, Anthony Wise lives
11 in that neighborhood. Law enforcement determines
12 immediately that that is who we think, you know, lives in
13 the neighborhood. That is our immediate first suspect.
14 That comes from nobody but law enforcement typing up the
15 demographics. No more talking to her. In here in
16 somewhere is that mugshot. Do you have number 5? Two
17 days later, Anthony Wise is arrested. The next day, they
18 talk to him and question him and then that following day
19 after that, he's arrested, but they never go back to her
20 other than after they interview him after he's in, after
21 he's already in custody, he's been interviewed, and the
22 deputy will tape the tape. Within a few days, the
23 newspaper is out. This man, this picture is in the State
24 paper. This is the picture and the same picture that's in
25 the State paper. That is the same picture I drew over

1 with the Magic Marker. Do you think Ms. Wicker may have
2 had a chance to see this photograph in the State paper?
3 Do you think she's following the case or has any kind of
4 interest in it? Do you think that, it's in the Observer.
5 Do you think that she might be looking at this local paper
6 and seeing this picture and it might, the headline says
7 this is the man who attacked this woman in her home. Do
8 you think this might reinforce her identification of him?
9 Yeah, now, I'm sure that she's got the right man and she
10 now has, and it's on TV. It's on all the local news.
11 This picture is circulated throughout the community. Ms.
12 Wicker sees it and I'm not saying she's lying, but now
13 this is the picture she sees on TV of the man who attacked
14 her, because law enforcement produced it. This is the
15 picture she sees in the paper, in the Observer. She's
16 got, and everybody can see for the first time these yellow
17 tips, and she's now got it in her head that maybe he's got
18 yellow tips. Just, it is not until this picture is widely
19 broadcast that Mrs. Wicker can put that the man had yellow
20 hair and match it to the man who attacked her, and it
21 might be. It might be the same man, but it might not be.
22 It might be possibly because law enforcement tells her
23 we've arrested him, he's in jail, these are the
24 photographs of the man who attacked you and even a person
25 of good-faith can say, you know, that's him. You know,

1 now that I'm thinking about it a little bit more clearly,
2 it matches my memory a little bit better, and I think
3 somebody can do that in good-faith. But that is the man
4 she saw and the question is whether or not the man who
5 attacked her that had yellow dreads, which she never told
6 anybody until this testimony today, or this week. Ms.
7 Tapia said she didn't tell us that, and the officers
8 testified as she told us that that night, we would have
9 put it in our report. How did she come up with it, must
10 be somebody in her neighborhood? She was attacked and
11 remember she said, well, who could do this? You know, I
12 don't, I didn't know his face, but I started thinking
13 about everybody in the neighborhood and some people were
14 too young, some were too old and the reason I think
15 Anthony attacked me is because he was the only person in
16 the right age group to have been the man and that's
17 basically how she came up with the identification and add
18 to the fact that she had just seen him a few days walking
19 him beforehand. She's got his face in her mind and
20 because she has her face in his mind, she attaches it to
21 this man. The next day, the investigator comes with this
22 tape. Y'all go by your own, it appeared that at times
23 that was a completely inaudible. You're going to base a
24 conviction of somebody for first degree burglary, armed
25 robbery, kidnapping on a deputy playing from his cellphone

1 a confession of somebody they say they've already arrested
2 on the front porch outside of somebody, of somebody she's
3 never spoken to before, of someone she's never met before,
4 of someone she's never even said hey to, someone she's
5 never heard before and for one time only, a deputy brings,
6 well, this is the guy we've arrested. And she says, well,
7 it sounds like him, or more, it sounds like him, and I'm
8 sure she meant it. Is that what you're going to base a
9 conviction of somebody in Newberry, the deputy saying this
10 is the guy we've arrested, and you've never heard him
11 before, you've never met him before, no acquaintance with
12 you at all. We've arrested him. These are portions of
13 his confession. And you're going to base a conviction on
14 that, sitting on the front porch listening to an audiotape
15 which, my God, I couldn't understand half of it standing
16 here and y'all may have. I clearly heard the deputy
17 speaking loud. And just somehow that that voice is so
18 distinctive that it can be no other person than that voice
19 that the officers played of the man we arrested. I submit
20 to you that is just very weak evidence to base a burglary
21 first degree conviction. And kind of unfortunate argument
22 from the prosecutor was saying, you know, we don't even
23 know that Anthony really lives in that neighborhood
24 either. I don't know what the point of that is,
25 particularly when they bring in a police report from

1 August 6th where he is in the neighborhood and the police
2 respond to his house. You know, you've got the Solicitor
3 on this side of the aisle saying Anthony probably doesn't
4 even live in this neighborhood, and you just heard him
5 yesterday bring in this police report about how Laswan was
6 made to leave his house at that location. The only point
7 that the Solicitor is trying to is he's trying to make
8 Anthony look shiftless. That's not a point about fact.
9 That's a point about trying to make somebody look
10 shiftless, make him look bad to you, and then that will
11 affect your judgment. An absolute red herring. And so
12 what is the only evidence that the State has? They've got
13 a woman who never mentions yellow hair robbed by a man
14 with a mask, with a hoodie, and they've got these phone
15 records. One, they've got his girlfriend's phone being
16 used from the same neighborhood that he lives in. I'm
17 unconvinced that that's enough to convict somebody, that
18 you use the phone in the neighborhood you live in. Two,
19 they've got his phone or her phone or the 404 phone
20 pinging within 5,000 meters of the cell tower in Helena.
21 You know, I'm going to trigger a cellphone tower here.
22 Let's try something real quick. Siri, how many miles are
23 in 5,000 meters? Sorry, Charles, but it's not possible to
24 convert meters to Brazilian reals. It was and that worked
25 yesterday. That worked perfect for me when I practiced

1 that earlier. There are 3.11 miles in a, I should have
2 practiced it in the courtroom, but on the way home, that
3 worked like a charm, I swear, but if y'all dispute that,
4 look at it. 3.11 miles in 5,000 meters which is what the
5 expert testified to. They've got him somewhere within 3.1
6 miles of Helena. We're within 3.1 miles. 3.1 miles is
7 further than the interstate, we are in Pomaria part of
8 Newberry. And then, third, and then here's the one that
9 they think is the strongest, and it probably is if you
10 look at it on paper. They believe that he's within 400,
11 the phone pings and they're saying the NELOS is a 400,
12 within 400 meters which is four football fields, a little
13 bit longer than that, from where the house is located.
14 Here is, but the Azimuth of 2500 meters. But the NELOS is
15 that separate little point where they're saying you can
16 begin to circle to identify. Here's my problem with you
17 basing a conviction based on that. The expert witness,
18 they want you to put somebody in jail for what this expert
19 is talking about, a NELOS circle when he doesn't know what
20 NELOS stands for. He doesn't, he's not the one who comes
21 up with the number. That is a, comes from some other
22 source and he says, they send it to me. I don't even know
23 what a damn NELOS is. But, you know, they sent it to me,
24 therefore, it must be true. And that is their expert
25 witness. Where the Azimuth had it somewhere on Wilson

1 Road within 2500 meters, but he's got a NELOS circle. I
2 don't know what NELOS circle is. Their expert witness
3 doesn't know what NELOS stands for. He doesn't know how
4 to determine, how to get that himself. And if you look at
5 it, you'll get the evidence back in there. If you look at
6 where the car is found, it's in the same neighborhood that
7 Ms. Wicker lives. It's in that same general part of town
8 which he just happens to live in. So if you look at that
9 picture, you will see Laswan's house is just from, not
10 very far from that location and that they've got his
11 statement that they've put three or four or five of those
12 versions in. But the best they can do is after talking
13 to, for over an hour in a very threatening, that's not a
14 friendly conversation to have. They point out for trial
15 three or four different versions where he's slightly
16 inconsistent. You know, he can't give an exact time. And
17 here's part of my problem I think what the Solicitor is
18 doing and the Judge is going to tell you. He's going to
19 say, well, why don't you have witnesses come here today
20 who say exactly where you were on such and such a date?
21 That is a hard thing to do even a few weeks after the
22 event. If I were in jail and before I get to a lawyer and
23 before I start preparing for defense, it is weeks and
24 months have gone by and you've got to get a casual friend
25 to say, do you remember exactly where I was at such and

1 such a date and time? You can't do that, and the Judge is
2 going to charge you, and it's unfair for the Solicitor to
3 even argue that, because the burden is on the State and
4 the Judge is going to tell you that. If there is a
5 question about witnesses, there is only one party who has
6 to bring them in. It's their party. They have the burden
7 of producing witnesses, not Anthony. It is almost
8 impossible for anybody, I don't care how God-fearing you
9 are good, to prove that you didn't do something and that's
10 why it's on the burden to prove you did do something, I
11 can't remember what I was doing four weeks ago, three
12 weeks ago. God forbid if a friend of mine came up and
13 said, well, do you remember exactly what we were doing on
14 an innocuous Wednesday evening? I might have, yeah, I
15 remember you vaguely coming by, but when you're getting
16 into months, they are shifting a burden to him to prove he
17 didn't do a crime and that puts us in a just impossible
18 bind which Judge Hocker is going to tell you we don't have
19 to be in legally anyway, because the burden always falls
20 on the State to produce witnesses. They've got
21 investigators, they've got staffs, they've got resources,
22 they've got money. We know, I'm the public defender. We
23 know this is not a resource-equal case. The State has the
24 resources. The State has the burden. Don't let them
25 shift the burden on somebody ever to prove you're not

1 guilty, because you can't do it, and I don't care what the
2 case is and I don't care what the resources are. You
3 can't provide you didn't do something. The State can
4 prove you did something. And that dovetails into another
5 problem that I had with the State's argument which were
6 these insinuations that Laswan is a co-conspirator or
7 she's also a criminal in the case, which is just nothing
8 but character attack. They've got zero, zero evidence
9 that connects Laswan with doing anything. They've got the
10 vague allegation that Ms. Wicker said that I saw a female
11 at some point, but I don't know if it was somebody at a
12 store or somebody he saw in a parking lot. It was clearly
13 somebody he didn't, and by he, the man, didn't see until
14 she says, remember, he was on the Interstate for about 30
15 minutes before he ran into some woman. Based on that, the
16 Solicitor is prepared to call Laswan a dirty criminal and
17 that is, if they will call her a criminal based on that
18 evidence alone, which is zero, do you think that they
19 might share the same feeling about Anthony Wise who they
20 have some evidence on. Do you think that they may rush to
21 judgments? They've got zero evidence on Laswan and yet,
22 he's not afraid to come up here and put her name as being
23 a co-conspirator or, you know, somebody involved in an
24 armed robbery and that is just really an unfortunate
25 allegation, too. What we do know is that when Anthony and

1 his girlfriend, Laswan, were arrested, the first thing law
2 enforcement does is we immediately separate people and we
3 interview them separately. They both say, we went to the
4 hotel that night. Laswan says it and she's interviewed in
5 an entirely different room. Anthony says it. Captain
6 Dennis says, well, we'll call that bluff. We will go to
7 the hotel room. Just like these videos. You know, if you
8 going to say you there, we've got the resources to send
9 investigators there and double-check it. And they do and
10 low and behold, they've actually got the check-in where
11 they did show up at the hotel and, certainly, Laswan who
12 independently without being in the presence of Anthony,
13 both testified we went to the hotel room and they've got
14 the check-in slip to prove it and we know they were there.
15 Because the probation agent took Anthony, remember the
16 next day, he took Anthony back to that hotel room that
17 day. You've got a clocked in at 9:05. They were at the
18 Econo Lodge. If that is true at all, then we know Anthony
19 for a fact cannot be the one who did it, because Mrs.
20 Wicker testified that it took her about thirty minutes
21 after the man left to get across the street and call the
22 police, which is also what Ms. Tapia said was that, when
23 she, that night she said he left about thirty minutes ago.
24 That would mean, and she's testified that she was in, it
25 started about six o'clock. She was in the car for about

1 three hours before they came back home and that, it was
2 probably an hour before they even left. And the car
3 wasn't found until late in the evening. If it is possible
4 that they checked into the hotel room at 9:05, we know for
5 a fact Anthony cannot be guilty, and that is at least a
6 reasonable doubt and law enforcement that same day pulled
7 the tickets or no, they were calling their bluff and it
8 turns out that they did actually checked, that you've got
9 the records. I don't want to get into the business of
10 defending people who are not my clients, but I do want to
11 stress this on at least the armed robbery charge. I do
12 have some concerns about that charge, as well, and I won't
13 defend people who are not here, but it does appear to be
14 as a neutral person that this was an unarmed home invasion
15 and that it was an unarmed robbery. I understand it was
16 possibly as bad as any armed robberies, but that man
17 attacked her without any weapons. He was unarmed at the
18 time. Mrs. Wicker testified she grabbed a hammer to
19 defend herself and she's justified. Absolutely. I'll try
20 to get something worse than that. All the man did was
21 disarm here and take the hammer away from her and say, if
22 you don't let go of me, I'm going to hurt you or kill you.
23 She said she never saw the hammer again. The State wants
24 to, now, I don't blame them from doing it, but just in a
25 dispassionate way, they are trying to bump an unarmed

1 robbery into an armed robbery. There is no question it
2 was a vicious robbery, but the man was not armed. He did
3 not use the weapon to, other than to take it out of her
4 hands. And just to close, reasonable doubt is the
5 standard that the Judge, the prosecutor told you about is
6 the standard. He says it's not a hundred percent
7 standard. That's right. It's not. He says that you can
8 have some doubts and put somebody in prison. I quibble
9 about that, because you cannot have any possible
10 reasonable doubts and put somebody in prison. Reasonable
11 just means could it have, could it be possibly true. If
12 you hesitate to convict somebody, even for a second, he's
13 charged with a crime. I'm not a hundred percent sure, but
14 I think he probably is, but I'm not, I hesitate for a
15 second to act to convict him. That is a reasonable doubt.
16 I mean, we're not, there is nobody coming after you who's
17 going to fix your verdict today. People tell me that
18 somebody's going to look at what we did and fix things.
19 No. I'm telling you now, that's not the criminal system
20 we have. Nobody can correct a finding of fact of the
21 jury. I've got a lot of respect for Judge Hocker from
22 Laurens County. He is bound, he is basically a referee.
23 He has to make sure that only proper evidence comes in and
24 proper arguments are made. He is really kind of the least
25 important person in this courtroom today, because I can at

1 least argue what I think the facts show, as can the State.
2 The Judge is bound, he cannot even do that. He cannot
3 come back and correct your findings of fact about guilt
4 and nobody, there is no cavalry coming after you today.
5 If you get it wrong today, that is it. And so I just
6 don't want y'all to think that we can take a chance on
7 somebody and that somebody will fix what we do. That's
8 not how it works. Your finding is your finding today.
9 There's no cavalry if you get it wrong. If you convict
10 somebody who could possibly be mistaken, and I've
11 submitted to you there is plenty of evidence in this
12 record to know that it is possible, it is realistically
13 possible that Anthony has been misidentified for somebody
14 else for a lot of reasons. There's nobody who can fix an
15 injustice like that.

16 THE COURT: Thank you, Mr. Verner.

17 MR. SCOTT: Argument just briefly. I'm not allowed
18 to shift the burden. It is my burden. I did ask would be
19 hearing from, I did ask would we hear from Ernie. I asked
20 these things, because I'm curious if these people saw
21 these things and can account for these things. I'd like
22 to speak with them. I've never been given a name. I've
23 never been given their numbers and yet another reason why
24 this cellphone can provide so many answers if somebody is
25 willing to come unlock it. We could have the identities

1 of these people. We could have their contact information.
2 We could summon the Court, because he doesn't have to
3 bring them. But if we know about them, we can bring them
4 in here and they can tell about what they know. We're not
5 given an opportunity and that brings me to Laswan. I've
6 never said she committed a crime. You did not hear that
7 from me. That was the defense attorney. I've never
8 labeled her a co-conspirator. You never heard that. I
9 would submit to you she's not telling everything she knows
10 about the case. They keep talking about her being
11 arrested. Do you know she was never booked in at the
12 jail? Never called her a co-conspirator, but I do submit
13 to you she knows more than she's telling us. The phone,
14 all I want is the phone. Can't provide it to me. All I
15 want's the PIN number. I'll look through it for you. You
16 know what, if we have that, I bet with those coordinates
17 on that phone, I bet we could find to a GPS coordinate
18 where they were at these times, if we could only access
19 them. We won't get to them. And the testimony was they
20 checked into the hotel at 9:00. Who do we know checked in
21 at 9:00? We know Laswan Anderson did, and we know they
22 were separate. He even testified they were separate, so
23 they did not check in at 9:00. You aren't going to find a
24 receipt that's got Anthony Wise's name on it. Laswan
25 checked in at 9:00. Anthony was doing other things. By

1 the way, if they're in the hotel at 9:00 way up here. If
2 you'll look, this is the courthouse right here, guys.
3 We're just a couple of blocks from that Economy Inn where
4 they were, right? They said it's by the McDonald's,
5 right. This is where the courthouse is, okay? Here's
6 Wilson Road. Tell me this. If they're in that hotel at 9
7 o'clock, he's with her, why is the phone pinging down here
8 by the Cadillac, 400 meters away? Why is that? He's not
9 at the hotel. The common sense shows that. They can tell
10 you whatever they want, but they can't fight the evidence.
11 Here it is. You're going to have it. You're going to
12 take it back there. I ask you don't convict on his voice
13 alone. I never asked you to do that. He said that would
14 be a travesty if you did it. Don't convict on his voice
15 alone. Don't convict alone on the, his build or his hair.
16 Don't convict on that alone either. Don't convict on the
17 fact that his cellphone is in the area where the ATM is
18 when that ATM withdrawal is being done. Don't convict on
19 that alone either, okay? Don't convict on the fact that
20 he is in the area at the time the attack happens with his
21 phone pinging in that area. Don't convict on that alone
22 either. Lastly, don't convict only on the fact that he is
23 in 400 meters from this rural area where the Cadillac is
24 found between 10:21 and 10:24 and he's telling you today
25 under oath he is way up here at 9:00 o'clock at the hotel.

1 Don't convict on that alone either. Don't convict on
2 Laswan Anderson's testimony where she's clearly covering
3 for him. Don't convict solely on his rambling, bumbling,
4 nonsensical testimony from the stand under oath. Don't
5 convict on that alone either. Take it all together. Take
6 it all together. Look at the picture and find him guilty
7 based on all the evidence and not one piece alone. Thank
8 you.

9 THE COURT: Thank you, Solicitor. All right. Mr.
10 Foreman, ladies and gentlemen of the jury, I assume that
11 the food is here.

12 CLERK OF COURT: Yes, sir. I'm going to get it now.

13 THE COURT: Okay. The food is here. Go back to the
14 jury room. Please do not begin your deliberations. Have
15 you a good lunch. We'll give you about thirty minutes for
16 lunch, so no rush on that, and don't begin any discussions
17 about this case, and then after lunch, bring you back out.
18 I will charge you on the law in the case, and then
19 instruct you to begin your deliberations. So if you'll go
20 back to the jury room and we'll bring you lunch here in
21 just a minute.

22 (Whereupon, the jury was excused from open court for
23 a lunch break.)

24 THE COURT: Okay. We'll be in recess for about
25 thirty minutes.

1 (Whereupon, a short break was taken.)

2 THE COURT: Solicitor, in your closing you mentioned
3 nighttime on your burglary one, I am not charging
4 nighttime. The reason for that is, is that I don't recall
5 there being any evidence when the attacker left Ms.
6 Wicker's home under the pretense that somebody was sitting
7 their watching her, I don't ever remember it being
8 established what time that was, whether it was nighttime
9 or daytime. And we don't know how long Ms. Wicker was in
10 the home before she leaves to go across the street. So,
11 that was not in the draft of the charge and I want to make
12 that clear.

13 MR. SCOTT: I feel like, at one point didn't she say,
14 thirty minutes or so, and she was unclear. And here is, I
15 know the testimony was immediately after she ran over they
16 called 911, that was at 9:36 or so, 10:36 rather.

17 THE COURT: Right.

18 MR. SCOTT: So, if you back up--

19 THE COURT: I don't remember, I mean, if she said
20 thirty minutes I don't recall that. So, I was not, I was
21 not planning, I don't want to keep this jury, they are
22 really patient.

23 MR. VERNER: I agree with the Court's ruling.
24 However, she did indicate or at least I argued in my
25 closing, I thought she indicated that he left about thirty

1 minutes.

2 THE COURT: To be quite candid with you. If I am
3 going to charge that, I am going to send this jury home
4 and we will charge them in the morning. We have left them
5 back there now for well over an hour, which was not my
6 original intention. And so if you insist it in there, Mr.
7 Verner doesn't have any objection to it, I am not going to
8 keep them waiting any longer. I will send them home and
9 we will charge them in the morning.

10 MR. SCOTT: That's fine, Your Honor.

11 THE COURT: I am not saying that to put any pressure
12 on you.

13 MR. SCOTT: I would rather not prolong this any more.
14 And if you bring them out and say, we just kept you here
15 for a couple of hours for no reason, send them home, I
16 don't want to do that.

17 THE COURT: Because we will have to redo, we will
18 have to redo the charge, add to it, that is going to take
19 a while longer to print it out. And I just don't want to
20 keep them back there any more. But now, I will be
21 certainly willing to charge that. I just, it was not in
22 the draft charge we discussed yesterday and I understand
23 it, oversee things.

24 MR. SCOTT: My oversight. So it would say, it would
25 have the, what causes physical injury, let's just go with

1 it, Judge, that is fine with me.

2 THE COURT: Right.

3 MR. SCOTT: I am fine, let's go ahead and charge them
4 today.

5 THE COURT: Are you sure?

6 MR. SCOTT: Yes, sir.

7 THE COURT: Let's bring them out.

8 (Whereupon, the jury came into open court at
9 approximately 3:45 p.m.)

10 THE COURT: Let the record reflect the jury is back
11 in the courtroom. Ladies and gentlemen, I apologize to
12 you, we had a little miscommunication with another court,
13 one of the lawyers had to be over in another court and we
14 just had some miscommunication on how long I was willing
15 to allow that lawyer to be over in another court. So I
16 apologize for keeping you back in that jury room for about
17 an hour and fifteen minutes. It was just a
18 misunderstanding, unavoidable and I apologize for that.
19 Hopefully the pizza will make up that a little bit, okay.

20 Ladies and gentlemen, I am now going to charge you
21 the law applicable to this case and you must consider the
22 charge as a whole and not focus on some portions to the
23 exclusion of other portions. Once again, the indictments
24 charge the Defendant with four criminal offenses, robbery,
25 kidnapping, burglary first degree, assault and battery

1 first degree. I remind you that the fact that the
2 Defendant was arrested, charged and indicted in this case
3 is not evidence of guilt in this case and cannot be
4 considered by you as evidence of guilt in this case nor
5 does it create any presumption or inference of guilt.
6 These documents are simply the formal written instruments
7 which contain the charges made against the Defendant.
8 These are the formal documents by which this case is
9 brought into this court.

10 The indictments in this case allege four different
11 offenses against the Defendant. Each indictment charges a
12 separate and distinct offense. You must decide each
13 indictment separately on the evidence and the law
14 applicable to it uninfluenced by your decision as to any
15 of the other indictments. The Defendant may be convicted
16 or acquitted on any or all of the offenses charged. You
17 will be asked to write a separate verdict of not guilty or
18 guilty as to each indictment and there is a verdict form,
19 Mr. Foreman, that I will show you at the conclusion of my
20 charge, very simple.

21 The Defendant has exercised his constitutional right
22 and has pled not guilty to these four indictments. And
23 therefore, that plea of not guilty puts the burden on the
24 State to prove the Defendant guilty. A person charged
25 with committing a criminal offense in South Carolina is

1 never required to prove himself innocent. I charge you
2 that it is an important rule of the law that the Defendant
3 in a criminal trial, no matter what the seriousness of the
4 charge may be, will always be presumed to be innocent of
5 the crime for which the indictment was issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations but it accompanies the Defendant
10 throughout the entire trial unless you reach a verdict of
11 guilt based on evidence satisfying you of that guilt
12 beyond a reasonable doubt. This presumption of innocence
13 is like a robe of righteousness placed about the shoulders
14 of the Defendant which remains with the Defendant unless
15 it has been stripped from the Defendant by evidence
16 satisfying you of the Defendant's guilt beyond a
17 reasonable doubt. This presumption of innocence is not
18 merely a legal theory, it is not just a legal phrase that
19 we use. It is a substantial right to which every
20 Defendant is entitled unless you, the jury, are satisfied
21 from the evidence of the Defendant's guilt beyond a
22 reasonable doubt.

23 Now, concerning reasonable doubt. Some of you may
24 have served as jurors in civil cases where you were told
25 that it is only necessary to prove that a fact is more

1 likely true than not true, such as by the greater weight
2 or the preponderance of the evidence. However, in
3 criminal cases the State's proof must be more powerful
4 than that. It must be beyond a reasonable doubt. Proof
5 beyond a reasonable doubt is proof that leaves you firmly
6 convinced of the Defendant's guilt. There are very few
7 things in this world that we know with absolute certainty.
8 And in criminal cases the law does not require proof that
9 overcomes every possible doubt. If, based on your
10 consideration of the evidence, you are firmly convinced
11 that the Defendant is guilty of the crimes charged then
12 you must find the Defendant guilty. If on the other hand,
13 you think there is a real possibility that the Defendant
14 is not guilty, you must give the Defendant the benefit of
15 the doubt and find him not guilty.

16 Once again, and I remind you that during this trial
17 you and I have had certain duties to perform. As the
18 trial Judge it has been my responsibility to preside over
19 the trial of this case and I also have the duty to rule on
20 the admissibility of the evidence offered during the
21 trial. You are to consider only the competent evidence
22 before you. If there was any testimony ordered stricken
23 from the record in this case during this trial you must
24 disregard that testimony. You are only to consider the
25 testimony which has been presented from the witness stand,

1 any exhibits which have been made a part of the record in
2 this case and any stipulations of counsel.

3 I have the additional duty to charge you the law
4 applicable to this case as I am doing right now. As the
5 presiding Judge I am the sole Judge of the law of this
6 case and it is your duty as jurors to accept and apply the
7 law as I now state it to you. If you already have some
8 idea as to what the law is or what the law ought to be and
9 it does not agree with what I now tell you the law is, you
10 must abandon your idea because you are sworn to accept and
11 apply the law exactly as I state it to you.

12 I also remind you that in every case tried in this
13 court before a jury the jury becomes the sole and
14 exclusive judge of the facts in a case. A trial Judge
15 cannot intimate, state, comment on or make any statement
16 to a trial jury about the facts in a case. Since you, the
17 jury, are the sole judge of the facts in this case you are
18 not to infer from what I have said during the progress of
19 this trial in ruling upon the admissibility of evidence or
20 otherwise or anything that say now during the course of
21 this instruction to you that I have any opinion about the
22 facts in this case. The law does not allow me to have an
23 opinion about the facts in this case. This is a matter
24 solely for you, the jury, to determine. As jurors, it is
25 your duty to determine the effect, value and weight of the

1 evidence presented during this trial.

2 There are two types of evidence, ladies and gentlemen
3 of the jury, which are generally presented during a trial,
4 that being direct evidence and circumstantial evidence.

5 Direct evidence directly proves the existence of a fact
6 and does not require deduction. Circumstantial evidence
7 is proof of a chain of facts and circumstances indicating
8 the existence of a fact. Crimes may be proven by

9 circumstantial evidence. The law makes no distinction
10 between the weight or value to be given to either direct
11 or circumstantial evidence. However, to the extent the
12 State relies on circumstantial evidence all of the
13 circumstances must be consistent with each other and when
14 taken together point conclusively to the guilt of the
15 accused beyond a reasonable doubt. If these circumstances
16 merely portray the Defendant's behavior as suspicious the
17 proof has failed. The State has the burden of proving the
18 Defendant guilty beyond a reasonable doubt. And this
19 burden rests with the State regardless of whether the
20 State relies on direct evidence, circumstantial evidence
21 or some combination of the two.

22 Necessarily, ladies and gentlemen, you must determine
23 the credibility of witnesses who have testified in this
24 case and the evidence presented. Credibility simply means
25 believability. It becomes your duty as jurors to analyze

1 and to evaluate the witnesses and the evidence and
2 determine the credibility of the witnesses and the
3 evidence. In determining the credibility of the witnesses
4 who have testified in this case you may believe one
5 witness over several witnesses or several witnesses over
6 one witness. You may believe a part of the testimony of a
7 witness and reject the remaining part of the testimony of
8 that same witness. You may believe the testimony of a
9 witness in its entirety or reject the testimony of a
10 witness in its entirety. You may consider whether any
11 witness has exhibited to you any interest, bias, prejudice
12 or other motive in the case. You may also consider the
13 appearance and manner of a witness while on the witness
14 stand.

15 Now, and I have explained this to you, I believe it
16 was yesterday concerning expert witnesses. The rules of
17 evidence ordinarily do not permit witnesses to testify to
18 opinions or conclusions. An exception to this rule exists
19 for the witness we call expert witnesses. A witness who
20 by education, experience and the like has become an expert
21 in some art, science, profession or calling may state an
22 opinion as to relevant and material matter in which the
23 witness claims to be an expert. And may also state the
24 reasons for the opinion. You should consider any expert
25 opinion received in evidence in this case and like any

1 other evidence give it the weight you think it deserves.
2 And if you decide that the opinion of an expert witness is
3 not based on sufficient education and experience or if you
4 conclude that the reasons given in support of the opinion
5 are not sound, or that the opinion is outweighed by other
6 evidence you may disregard the opinion from the expert
7 entirely. An expert witness' testimony is to be given no
8 greater weight than that of other witnesses simply because
9 the witness is an expert. Furthermore, you are not
10 required to accept an expert's opinion even though it is
11 not contradicted.

12 Now, ladies and gentlemen, in order to establish
13 criminal liability criminal intent is required. The
14 mental state required to be proven by the State for a
15 particular crime might be purpose, intent, knowledge,
16 recklessness or criminal negligence. Criminal intent must
17 be proven by the State beyond a reasonable doubt.
18 Criminal intent is always a matter that must be determined
19 by the jury from the circumstances surrounding the
20 situation. Now, there is no way to prove intent to a
21 mathematical certainty. There is no way medical science
22 can dissect a person's brain and determine what the person
23 had in mind. So what the law says is that criminal intent
24 may be inferred from the circumstances shown to have
25 existed. This is how you make a determination of whether

1 or not the element requiring intent was present. It is
2 not necessary to establish intent by direct and positive
3 evidence. But intent may be established by inference in
4 the same way as any other fact by taking into
5 consideration the acts of the parties and all the facts
6 and circumstances in the case. Criminal intent is a
7 mental state, a conscious wrongdoing. It is up to you to
8 determine what the Defendant intended to do based on the
9 circumstances shown to have existed. Criminal intent can
10 arise from action or a failure to act. It may arise from
11 negligence, recklessness or an indifference to duty or to
12 consequences that is considered by the law to be the
13 equivalent of criminal intent.

14 Now, an issue in this case is the identification of
15 the Defendant as the person who committed the crime
16 charged, crimes charged. The State has the burden of
17 proving identity beyond a reasonable doubt. You must be
18 satisfied beyond a reasonable doubt of the accuracy of the
19 identification of the Defendant before you may convict the
20 Defendant. Identification testimony is an expression or
21 belief or impression by a witness. You must determine the
22 accuracy of the identification of the Defendant. You must
23 consider the believability of each identification witness
24 in the same way as any other witness. You may consider
25 whether the witness had an adequate opportunity to observe

1 the offender at the time of the offense. This will be
2 affected by things like how long or short a time was
3 available, how far or close the witness was, the lighting
4 conditions, and whether the witness had the chance to see
5 or know the person in the past. Once again, I instruct
6 you the burden of proof on the State extends to every
7 element of the crime charged, and this specifically
8 includes the burden of proving beyond a reasonable doubt
9 the identity of the Defendant as the person who committed
10 the crimes. If after examining the testimony in evidence
11 you have a reasonable doubt as to the accuracy of this
12 identification you must find the Defendant not guilty.

13 Now, it is alleged that the Defendant made a
14 statement and that this statement has been admitted into
15 evidence in this case. Now while the Court has determined
16 that the statement is admissible I instruct you, ladies
17 and gentlemen, that you make the ultimate decision whether
18 or not the Defendant made the statement. If the Defendant
19 did make a statement you must determine whether the
20 statement was made by the Defendant voluntarily and of his
21 own free will. This means that the statement was not
22 caused by pressure, force, fear, threats, coercion or
23 intimidation or by hope or a promise of leniency or a
24 reward of any kind. In determining whether the statement
25 was voluntary you should consider both the characteristics

1 of the Defendant and the details of the questioning. Some
2 of the factors that you may consider are the age of the
3 Defendant; the Defendant's education or lack of education;
4 the Defendant's mental ability or capacity; the
5 Defendant's I.Q. or intelligence; the Defendant's
6 background and environment; the place and length of
7 detention; the nature of the questioning; and the advice
8 or lack thereof to the Defendant of his constitutional
9 rights including, but not limited to the right to remain
10 silent; that any statement could be used against him in a
11 court of law; the right to have a lawyer present; that if
12 he could not afford a lawyer a lawyer would be appointed
13 to represent him without any cost; and that he could stop
14 making a statement at any time. You must carefully
15 consider all of the surrounding circumstances before you
16 give any weight to an alleged statement. The State has
17 the burden of proving beyond a reasonable doubt that the
18 alleged statement was voluntary. If you determine it was,
19 you may give the statement any further consideration that
20 you deem proper and necessary. You must decide what
21 weight, if any, should be given to the statement. If you
22 determine the statement was not the free and voluntary
23 statement of the Defendant you should not consider it at
24 all.

25 Now, let me describe for you or define for you and

1 explain for you the four offenses that the Defendant has
2 been charged with. The order that I explain this to you
3 is of no significance whatsoever. First of all, armed
4 robbery. In order to prove this offense, the State must
5 prove beyond a reasonable doubt that the Defendant took
6 personal property from the person or presence of another
7 person. Property is in the presence of a person if it is
8 within the person's reach, inspection, observation or
9 control so that the person could, if not overcome with
10 violence or prevented by fear, keep possession of the
11 property. The State must also prove beyond a reasonable
12 doubt that the Defendant carried the property away
13 intending to permanently deprive the owner of the property
14 and to keep the property for the Defendant's own use. The
15 slightest removal of the property or the complete
16 possession of the property, even for an instant, by the
17 Defendant is sufficient to show a taking and carrying away
18 of the property. In taking and carrying away of the
19 property must have been done with violence or by putting
20 the owner of the property in fear of violence. Finally,
21 the State must prove beyond a reasonable doubt that the
22 Defendant was armed with a deadly weapon during the
23 robbery. A deadly weapon is any article, instrument or
24 substance which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a deadly

1 weapon depends on the facts and circumstances in the case.
2 It is for you to decide in this case, beyond a reasonable
3 doubt, whether or not a deadly weapon was used. Ordinary
4 objects may become deadly weapons when the facts show that
5 they have been used or attempted to be used to inflict
6 serious bodily harm or death.

7 The second offense is first degree burglary. The
8 Defendant is charged with first degree burglary. The
9 State must prove beyond a reasonable doubt that the
10 Defendant entered a dwelling without consent. A dwelling
11 is any building or portion of a building in which a person
12 ordinarily sleeps. A building constructed as a dwelling
13 that has never been occupied cannot be considered a
14 dwelling for purposes of a burglary. But a building is a
15 dwelling even if the residents are temporarily absent from
16 the building. In order to prove that the Defendant
17 entered the dwelling the State does not have to show that
18 the Defendant's entire body entered the dwelling. The
19 slightest entry is sufficient. It may be any part of the
20 body such as a hand or foot or even an instrument such as
21 a hook or other instrument. In addition, the State does
22 not have to prove that force was used to gain entry. If a
23 person enters a building by use of deception, artifice,
24 trick or misrepresentation to get consent to enter this is
25 an entry without consent. Next, the State must prove

beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary. On the other hand, if the Defendant intended to commit a crime at the time of the entry it is burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. Finally, the State must prove beyond a reasonable doubt that when entering, while in the dwelling or when fleeing the Defendant or an accomplice was armed with a deadly weapon. I have already defined for you a deadly weapon. Or, number two, when entering, while in the dwelling or when fleeing the Defendant or an accomplice caused physical injury to anyone not participating in the crime. Or, three, when entering while in the dwelling or when fleeing the Defendant or an accomplice used or threatened to use a dangerous object.

The next offense, assault and battery in the first degree. A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person and the act occurred during the

1 commission of a robbery, burglary, kidnapping or theft or
2 a person may also commit the offense of assault and
3 battery in the first degree if the person unlawfully
4 offers or attempts to injure another person with the
5 present ability to do so. And the act either is
6 accomplished by means likely to produce death or great
7 bodily injury; or occurred during the commission of a
8 robbery, burglary, kidnapping or theft. Great bodily
9 injury means bodily injury which causes a substantial risk
10 of death or which causes serious, permanent disfigurement
11 or protracted loss or impairment of the function of a
12 bodily member or organ.

13 And lastly, ladies and gentlemen, kidnapping. The
14 Defendant is charged with kidnapping. The State must
15 prove beyond a reasonable doubt that the Defendant
16 knowingly and unlawfully seized, confined, inveigled,
17 decoyed, kidnapped, abducted or carried away another
18 person without the authority of law. To do a thing
19 unlawfully is to do it willfully against the law.
20 Knowingly means with knowledge, consciously, not
21 accidentally. Seize means to take hold of suddenly or
22 forcibly. Confine means to limit, restrict or enclose
23 within bounds, imprison or shut or keep in. Inveigle
24 means to lure, entice, or lead astray by false
25 representations, promises or deceitful means. Decoy means

1 to lure by, or as if by, decoy. A decoy is something to
2 entice a person into a trap. Kidnap is to remove a person
3 against his will by unlawful force or by fraud. Abduct
4 means to carry off secretly or by force for an illegal
5 purpose. Carry away means to remove. The State does not
6 have to prove that the Defendant did all of these things.
7 Instead if you find beyond a reasonable doubt that the
8 Defendant did any of those things you may find the
9 Defendant guilty of kidnapping. Something done without
10 authority of law is something which the law does not
11 sanction, permit, allow, condone, or provide justification
12 for. Kidnapping does not have to be for any personal or
13 monetary gain for any illegal purpose but may be for any
14 reason whatsoever.

15 Now, ladies and gentlemen, I have realized that that
16 was a whole lot I just read to you. And because of that I
17 am going to give you a copy of what I just read to you for
18 you to carry back to the jury room, Mr. Foreman, and for
19 you to use in whatever manner that you feel like is proper
20 and necessary to engage in your deliberations and reach a
21 verdict.

22 Now, your verdict as to each charge must be unanimous
23 among the twelve of you. When you have reached a verdict
24 on each charge you are to notify the bailiff by knocking
25 on the door. Now, I am going to come down and show you

1 this verdict form. Mr. Foreman, this is just the name of
2 the case, it has a list of the four indictment numbers.
3 And, again, the order of the four charges is of no
4 significance. The fact that guilty is placed first and
5 the not guilty is of no significance. But as to the first
6 charge which is kidnapping. If you decide that the
7 Defendant is guilty then you put your initials on that
8 line and if you find him not guilty put your initials on
9 that line. And likewise you do the same for the next
10 charge which is armed robbery, the third charge being
11 burglary first degree and the fourth charge being assault
12 and battery first degree, if you will place your initials
13 on the appropriate verdict line, sign it, it has already
14 been dated for you. Now, I am going to ask that the 14 of
15 you go back to your jury room, do not begin your
16 deliberations. I need to check with the lawyers to make
17 sure that my charge has been proper and that I don't need
18 to recharge you anything. And we also need to get all of
19 the exhibits together. If I don't bring you back out and
20 the bailiff brings you the exhibits that will be your cue
21 for two things to happen. One, I will need for the two
22 alternates to exit the jury room, as you will not
23 participate in the deliberations. And the second is for
24 you to begin your deliberations. So the 14 of you go
25 back, don't start discussing the case yet and let me check

1 with the lawyers to make sure that the charge is proper.
2 Okay.

3 (Whereupon, the jury was excused from open court.)

4 THE COURT: Does the State have any exceptions or
5 objections to the Court's charge?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: And Mr. Verner, other than the two
8 requests that I denied that you put on the record
9 yesterday evening, any objections or exceptions to the
10 Court's charge?

11 MR. VERNER: Respectfully, Your Honor, I would object
12 to the Court giving them an already dated verdict which
13 could imply to the jury they needed to come up with a
14 verdict today. And that time would not be on the jury.

15 THE COURT: Well, how do you want me to correct that.
16 I can mark through the 18th and put blank and get them
17 back out here and say you put the date on when you have
18 reached a verdict.

19 MR. VERNER: I don't need that they need to be
20 brought back out, but just erase it and just say--

21 THE COURT: If I just take a pen and mark through 18
22 and put a line that will indicate the date, is that
23 satisfactory?

24 MR. VERNER: And either the Court can go in the jury
25 room itself or the Clerk can just tell them that, that

1 whenever you sign the verdict is when you date, the
2 verdict would be. My preference, Your Honor.

3 THE COURT: All right. The exhibits are together,
4 off the record, lawyers come up and make sure we have got
5 everything.

6 (Whereupon, the jury starts deliberations at
7 approximately 4:15 p.m.)

8 (Whereupon, the alternates were excused from the
9 trial of the case at approximately 4:17 p.m.)

10 THE COURT: Gentlemen, I understand the jury has
11 reached a verdict. Bring the jury out. Okay.

12 (Whereupon, the jury came into open court with the
13 verdict at approximately 5:12 p.m.)

14 THE COURT: Let the record reflect the jury is back
15 in the courtroom. Mr. Foreman, the information that I
16 have received is that you have reached a verdict. Is that
17 correct?

18 MR. FOREMAN: Yes, Your Honor, we have.

19 THE COURT: Without telling me what the verdict is,
20 is the verdict on each indictment unanimous among the
21 twelve of you?

22 MR. FOREMAN: Yes, sir.

23 THE COURT: Okay, if you will hand the verdict form
24 to the bailiff, please and she will hand it to me.

25 (Whereupon, the Bailiff hands the verdict form to the

1 Court.)

2 THE COURT: Madam Clerk, if you will publish the
3 verdict, please.

4 CLERK OF COURT: The State of South Carolina versus
5 Anthony Maurice Wise. As to indictment number
6 2016-GS-36-706 which charges the Defendant with
7 kidnapping. We, the jury, find the Defendant guilty.

8 As to indictment number 2016-GS-36-708 which charges
9 the Defendant with armed robbery. We, the jury, find the
10 Defendant not guilty.

11 As to indictment number 2016-GS-36-709 which charges
12 the Defendant with burglary first degree. We, the jury,
13 find the Defendant guilty.

14 As to indictment number 2016-GS-36-201 which charges
15 the Defendant with assault and battery first degree. We,
16 the jury, find the Defendant guilty.

17 Signed, William Chapman, Foreperson. Ladies and
18 gentlemen of the jury, if this is your verdict please
19 indicate by raising your right hand.

20 (Whereupon, all jurors raised their hand.)

21 THE COURT: Let the record reflect that all twelve
22 jurors raised their right hand. Does the Defense wish for
23 individual polling of the jury?

24 MR. VERNER: Yes sir, let's poll the jury.

25 THE COURT: Okay, Madam Clerk, if you would

1 individually poll the jury.

2 CLERK OF COURT: Kendra W. Wilson, if this is your
3 verdict indicate by raising your right hand.

4 (Whereupon, Ms. Wilson raised her right hand.)

5 Keema M. Praylow, if this is your verdict please
6 indicate by raising your right hand.

7 (Whereupon, Ms. Praylow raised her right hand.)

8 Jamie S. Smith, if this is your verdict please
9 indicate by raising your right hand.

10 (Whereupon, Ms. Smith raised her right hand.)

11 Mary C. Bowers, if this is your verdict please
12 indicate by raising your right hand.

13 (Whereupon, Ms. Bowers raised her right hand.)

14 Courtney R. Alston, if this is your verdict please
15 indicate by raising your right hand.

16 (Whereupon, Ms. Alston raised her right hand.)

17 Kevon A. Fant, if this is your verdict please
18 indicate by raising your right hand.

19 (Whereupon, Mr. Fant raised his right hand.)

20 William C. Chapman, if this is your verdict please
21 indicate by raising your right hand.

22 (Whereupon, Mr. Chapman raised his right hand.)

23 Curtis J. Gray, if this is your verdict please
24 indicate by raising your right hand.

25 (Whereupon, Mr. Gray raised his right hand.)

1 Sherri K. Gentry, if this is your verdict please
2 indicate by raising your right hand.

3 (Whereupon, Ms. Gentry raised her right hand.)

4 Debbie T. McCullough, if this is your verdict please
5 indicate by raising your right hand.

6 (Whereupon, Ms. McCullough raised her right hand.)

7 Gerald S. Johnson, if this is your verdict please
8 indicate by raising your right hand.

9 (Whereupon, Mr. Johnson raised his right hand.)

10 Katie Delesandro, if this is your verdict please
11 indicate by raising your right hand.

12 (Whereupon, Ms. Delesandro raised her right hand.)

13 THE COURT: Let the record reflect that all twelve
14 jurors raised their right hands in response to the
15 individual polling. Ladies and gentlemen of the jury, let
16 me thank you for your jury service. The verdict that you
17 have reached in this case matters not to me. What matters
18 is that you, the jury, performed your duty conscientiously
19 and responsibly and that you took this jury service
20 importantly. And I believe that you did. And I told you,
21 I guess on Monday, to kind of, the days are kind of
22 getting mixed up a little bit, but I told you it is very
23 important to be attentive because I don't permit taking
24 notes. And it is tough sometimes to sit there for an
25 hour, two hours at a time and to be focused, to be clear

1 minded and be attentive but you did that. So, that is
2 what I appreciate. Again, the verdict that you reached in
3 this case matters not to me. But I appreciate your
4 service, I appreciate your patience with us, I know that
5 this afternoon you might have gotten a little antsy
6 sitting back there ready to get to work and I understand
7 that. And I hope that even though this is not easy
8 serving on a jury and making such important decisions as
9 you were asked to make in this case I hope that you found
10 this to be a good experience in a sense that you have
11 learned something that you didn't already know and that
12 you were a part of a very important process. And that I
13 hope also that some time down the road that you will have
14 an opportunity again to sit on a jury, whether it is in
15 the criminal arena or whether it is in the civil arena. I
16 am going to come down, I like to shake the hands of my
17 jurors as you exit. You are simply free to speak to
18 anybody about this case if you decide to, you don't have
19 to, that is up to you. Mr. Foreman, you need to remain
20 for just a moment because you have to sign the back of the
21 four indictments indicating the verdict. Also, understand
22 that the clerk does have your paychecks for this week so
23 we will give that to you. Certainly this is late on
24 Thursday afternoon, so we have no further, I will be
25 working here tomorrow but we will be doing other things

1 that do not require a jury. So with that said you are
2 free to leave and I will shake your hands as you exit.

3 (Whereupon, the jury was excused from open court at
4 approximately 5:19 p.m.)

5 THE COURT: All right, this is the sentencing phase
6 of the State versus Anthony Maurice Wise. Just note for
7 the record, Mr. Verner has been granted ten days by the
8 Court to file any posttrial motions that he believes are
9 appropriate and necessary in this case. Solicitor Scott,
10 as you know how to handle these especially after trial, I
11 will give the State first to present whatever and whomever
12 as it relates to sentencing. And then likewise give the
13 same opportunity to the Defense. Solicitor Scott,
14 Solicitor Daniel, I will be glad to hear from y'all.

15 MR. SCOTT: Thank you, Your Honor. Thank you for
16 your patience and hearing us this week. The record of the
17 Defendant, CDV in 2014 along with an obstruction of
18 justice. That appears to be the Magistrate level,
19 obstruction of justice charge. Simple possession of
20 marijuana from that same year. And then 2015 in this
21 courtroom he plead to three counts of distribution of
22 marijuana. From that charge he received a suspended YOA.
23 He was operating under that probation during the crime
24 that led to this trial this week. Ms. Benzene Wicker is
25 the only family member that cares to speak. Judge, I

1 don't have to really say this but let them know that I
2 recognize it. Obviously I say this a lot of times, but
3 this really could have been worse. You have a 73-year-old
4 woman who is, you know, drug around this very traumatic
5 situation. The panic, the fear, the trauma that she is
6 going through during a five hour ordeal. If we look at
7 the timing she says between 5:40/6:15 she gets home and
8 then we know that after 10:30 is when the 911 call is in.
9 It is just, I can't fathom it at my age going through that
10 ordeal. And he has done this to a 73-year-old woman who
11 he knew to be widowed, he knew to be the caregiver to a
12 one-hundred year old mother. The callous, cold nature of
13 that, I just, I think that needs to be addressed in
14 sentencing. From the State's point of view he deserves
15 every year he gets. I think that the callousness of that
16 crime was displayed at trial. Your Honor, Benzene Wicker
17 who is probably going to be full of more grace than I am
18 cares to address the Court.

19 THE COURT: Ms. Wicker, will be glad to hear from
20 you, Ma'am.

21 MS. WICKER: To the Judge and my Solicitors that
22 helped me and to the Public Defender, Mr. Wise, Ms.
23 Anderson, I thank you all for working and bringing this to
24 an end. Although I was physically, mentally, emotional,
25 financially abused. But through it all, Maurice, I pray

1 the Lord that you will take God in your right hand and go
2 forward, for God love you and so do I and I forgive you
3 for what you have done. May God bless you. And please
4 take your hand out of the devil. Thank you.

5 THE COURT: Thank you, Ms. Wicker. I appreciate you
6 saying that. I know it was not easy for a victim of a
7 serious crime and ordeal that you went through to be able
8 to follow God's command and offer forgiveness. So I
9 appreciate that. Solicitor Scott, anything further from
10 the State's side?

11 MR. SCOTT: That's all, Your Honor.

12 THE COURT: Mr. Verner, will be glad to hear from you
13 and anybody on your side.

14 MR. VERNER: May it please the Court, Your Honor.
15 Anthony is 24 years old, Your Honor. He has been in jail
16 since September 23rd of 2016. As the Court has heard his
17 only prior substantive criminal history is the three
18 counts of distribution of marijuana. And that was, I
19 think, two years ago. So, awfully young man to be in such
20 awfully bad trouble. I am struck, horrible home invasion
21 situation. It does appear to me it started out, as the
22 jury as accepted it, it is unarmed but a home invasion.
23 But there was no bringing guns or knives to the scene.
24 Obviously, it is egregious but it appeared to me that
25 there was no criminal intent to harm Ms. Wicker beyond the

1 emotional damage done that day. It does sound at times
2 that the man was, in this case as the jury has found
3 Anthony, was almost reluctant at times to take things from
4 her. I just hope the Court understands he is a
5 24-year-old young man, not a real lengthy history of
6 getting in trouble, made a terrible decision. We hope the
7 Court gives him, I know he has taken away some life from
8 Mrs. Wicker but I hope the Court gives him some life when
9 he comes home.

10 THE COURT: Thank you, Mr. Verner.

11 MR. VERNER: Anthony, you don't have to say anything
12 but if you do you can.

13 MR. WISE: Ms. Wicker, I want to tell you, I am not
14 the man that attacked you. I have got a grandmother of my
15 own, I would never do such a thing. That is all I got to
16 say.

17 THE COURT: All right, anything further?

18 MR. VERNER: Laswan, you don't have to but if you
19 want to say something you may.

20 MS. ANDERSON: I don't know, like as far as the whole
21 case, I did tell it to the best of my ability. But as far
22 as I know Anthony, I first came here, like I told you
23 guys, about 18 months ago. I left everything with my
24 kid's father from an extremely abusive relationship. He
25 basically is the person that got me out of that. My kid's

1 father was never, ever punished for that. And maybe there
2 is just something that went wrong as far as this is
3 concerned. It is unfortunate because he is young, he has
4 kids. Like he helps with my kids. Like, there is all
5 kinds of discrepancies or whatever in the case and I
6 understand he has been found guilty but I do think that it
7 is unfortunate for everybody here. Because like we both
8 have grandparents. My grandmother raised me. Like I
9 would never meet with a guy, you know, I would never
10 associate with somebody that does anything like that. And
11 I do feel sorry for Ms. Wicker, like I have never met her
12 before. But if something did that with my grandmother
13 like I would be highly upset, like it wouldn't even be a
14 question of what I would, want to even do. But for him to
15 be punished like a high extend for whatever may be found I
16 just feel like it wouldn't be reasonable. You know, but
17 at the end of the day it is up to the Court and I do feel
18 that he is a good man, he really is.

19 THE COURT: Thank you, Ma'am. I have calculated
20 credit at 240 days, is that satisfactory?

21 MR. VERNER: September 23rd of last year, Your Honor,
22 I don't know the day count.

23 MR. SCOTT: That sounds accurate. We will take 240.

24 MR. VERNER: Thank you, Your Honor.

25 THE COURT: Everybody be at ease. Ma'am, you can go

1 back to your seats. It will take a few minutes to fill
2 out the sentencing sheets.

3 Okay, Mr. Wise, when a jury comes back and renders a
4 verdict of guilty I accept that verdict as absolute
5 one-hundred percent fact. Okay. I realize your position
6 in this matter but they came back and found of these three
7 out of four offenses and I take that as the fact that you
8 are guilty of three out of four offenses. Okay. You have
9 got two, the way I see this, kind of two competing factors
10 here. One, a set of very egregious facts insofar as what
11 took place and the ordeal that Ms. Wicker has to endure
12 for over a four to five hour period of time versus your
13 age. Recognizing that I have complete and absolute
14 authority to sentence you to life in prison, I am not
15 going to do that. But understand that I have the
16 authority under the burglary first to sentence that.
17 Understanding that the other two offenses, the kidnapping
18 carries 30; assault and battery, 10. So what I tried to
19 do is fashion something that is in the middle taking into
20 account that there is some egregious set of facts and
21 seriousness of the charges versus your age and not that
22 you are necessarily entitled to have some light at the end
23 of the tunnel, I am providing you some light. So what I
24 have tried to do is kind of go in the middle on this. On
25 the assault and battery it will be a 10 year sentence. On

1 the other two offenses it will be a 22 year sentence.
2 Credit for 240 days. Those will run concurrent with each
3 other. Good luck to you.

4 MR. VERNER: Judge, i don't want to add on to it.
5 You acknowledge this is a probation, I have explained to
6 him this is a probation violation.

7 THE COURT: Right. Probation will terminate, the
8 current probation will terminate.

9 MR. VERNER: Thank you.

10 THE COURT: Let me see the lawyers back in-chambers.
11 Let me put one other thing on the record. Again, I have
12 already thanked Ms. Wicker for her willingness to forgive.
13 I think, I think her position in this matter did have an
14 effect on the sentencing that I imposed. Anyways. Let me
15 see the lawyers for just a moment.

16 MR. VERNER: Thank you for the hearing.

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the days of May 15th through May 18th, 2017.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
18

19 September 21, 2017

20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

FORM 5

STATE OF SOUTH CAROLINA)
 IN THE COURT OF COMMON PLEAS)
 County of Newberry)

IN THE COURT OF COMMON PLEAS

Anthony Maurice Wise 372713)
 Full name and prison number (if any) of Applicant)

v.)

APPLICANT)
 State of South Carolina)
 POST-CONVICTION RELIEF)

APPLICATION FOR

POST-CONVICTION RELIEF

2019-CP-36-00368

INSTRUCTIONS B 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 Newberry County Detention Center
Currently at Broad River Correctional
2. Name and location of Court which imposed sentence Eight Circuit
Newberry County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping - 2016 GS 36-00106
 - (b) Assault and Battery 1st degree 2017-GS36-0020
 - (c) Burglary 1st- 2016 GS 36-00709

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Judgment of conviction

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. 1 Court of Appeals
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Dismissed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. 4-17-19
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of counsel "SEE ATTACHED"
 (b) Violation of Sixth Amendment "SEE ATTACHED"
 (c) Jury falling asleep, never read me my rights, didn't get me video film.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Didn't call my witness to trial,
 (b) wouldn't release my lawyer after I wrote bar association, attorney didn't talk with me until a week before trial, after I've wrote many time in my 9 months of being lock up
never called my witness
allowed victim family in the chamber

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) 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) lack of representation

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(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? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Charles Verner

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Sentencing

iii. Plea arrangement

18. State clearly the relief you seek in filing this application.

Case overturn

Reverse for new trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Newberry

I, Anthony Maurice Wise, 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.

SWORN to and subscribed before me this 15thday of July, 19 2019

Crystal Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Anthony Maurice Wise, 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 therefor.

Anthony Maurice Wise
Applicant

SWORN or affirmed to and subscribed before me this

15th day of July, 19 2019

Crystal Jones
Notary Public

My Commission Expires: July 22nd, 2026

ATTACHMENT(S)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
Ineffective Assistance of Appellant Counsel
- (b) Violation Of Due Process Clauses
- (c) Fair Trial Provisions

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

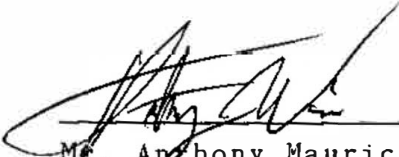
- (a) Applicant contends that counsel (1) did not take enough time to meet him; (2) did not adequately consider the grave nature of the indictments and failed to meet with and inform Applicant in a manner that would allow Applicant to make informed decisions regarding his defense;

Applicant contends that the Appellant counsel was wrong for submitting an Anders Brief and then withdraw without Effective Assistance of Counsel on Direct Review.

- (b) The Confrontation Clause of the Sixth Amendment of the United States Constitution requires that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Also in GREGORY, the supreme court held " '[e]vidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.'" State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941).

- (c) A jury instruction violates Due Process if it is likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the State's burden of proof on an element of the offense. Especially while the Jury kept falling asleep.

sign this 15th Day of July, 2019


Mr. Anthony Maurice Wise
SCDC# 372713 Broad River C.I.
4460 Broad River Road
Columbia, South Carolina
29210

cc:

LEGAL MAIL

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Anthony Maurice Wise, #372713

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019-CP-36-00368

**RETURN, MOTION FOR MORE
DEFINITE STATEMENT, AND
PARTIAL MOTION TO DISMISS**

The State ("Respondent"), making its Return to the application for Post-Conviction Relief filed on July 22, 2019, would respectfully show this Court:

I. Procedural History

Anthony Wise ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. During its December 2016 term, the Newberry County Grand Jury indicted Applicant for kidnapping (2016-GS-36-00706), first-degree burglary (2016-GS-36-709), and armed robbery (2016-GS-36-708). During the May 2017 term, the Newberry County Grand Jury indicted Applicant for first-degree assault and battery (2017-GS-36-00201). Charles V. Verner, Esquire, ("Counsel") represented Applicant. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On May 15-18, 2017, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. The jury found Applicant guilty on all counts, except for armed robbery. Applicant was sentenced to twenty-two years' imprisonment for kidnapping, twenty-two years' imprisonment for

first-degree burglary, and ten years' imprisonment for first-degree assault and battery, to be served concurrently. Applicant subsequently timely filed a notice of appeal. An Anders brief was filed by Susan B. Hackett ("Appellate Counsel"), Appellate Defender, on Applicant's behalf. By an unpublished Opinion, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Wise, Op. No. 2019-UP-141 (S.C. Ct. App. filed April 17, 2019).

III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant makes several allegations, which Respondent interprets as the following:

- (1) Ineffective Assistance of Trial Counsel
 - a. Failure to prepare Applicant's case
- (2) Ineffective Assistance of Appellate Counsel
 - a. "Appellate Counsel was wrong for submitting an Anders brief."
- (3) Violation of Due Process Clause
- (4) "Fair Trial Provisions"
 - a. "A jury instruction violates Due Process if it is likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the State's burden of proof on an element of the offense. Especially while the Jury kept falling asleep."

As requested relief, Applicant requests a new trial.

Attached to this Return and incorporated by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate record including the trial transcript, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Trial Counsel

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges

ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id.

Respondent submits Applicant can satisfy neither requirement of the Strickland test for the ineffective assistance of trial counsel allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegation of Ineffective Assistance of Appellate Counsel

Applicant asserts Appellate Counsel was ineffective for filing an Anders brief. However, Applicant wholly fails to state with any specificity facts to support this general allegation, including how Appellate Counsel was deficient for filing an Anders brief and what meritorious issue Appellate Counsel allegedly should have raised on appeal. Based on this, it is impossible for Respondent to discern how exactly Applicant believes Appellate Counsel was ineffective. Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of appellate counsel.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). However, the right to appellate counsel does not extend to a discretionary appeal. See Evitts v. Lucey, 469 U.S. 387, 394 (1985) (stating the right to appellate counsel “is limited to the first appeal as of right . . .”). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (emphasis added). “For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy” Jones v. Barnes, 463 U.S. 745, 754 (1983).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. Thus, the question becomes (1) whether appellate counsel's performance was deficient, and (2) whether the applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273,

276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). As for proving prejudice from appellate counsel's lack of pursuing a discretionary appeal, "[The applicant] must prove prejudice by showing he would have prevailed on appeal had a writ been filed by counsel and granted by [the Supreme Court]." Id.

As discussed above, it is impossible for Respondent to adequately respond to Applicant's allegation of ineffective assistance of appellate counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

VI. Summary Dismissal of Remaining Allegations

Respondent submits Applicant's third and fourth allegations should be dismissed for failing to state a cognizable claim under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Applicant fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))). Since Applicant has failed to make even a *prima facie* showing, Respondent would submit these allegations should be dismissed pursuant to Rule

12(b)(6), SCRCP, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

IV. Motion for More Definite Statement as to Ineffective Assistance of Appellate Counsel

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which his claim of ineffective assistance of appellate counsel is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to his allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing, Amended Allegations, and Partial Summary Dismissal

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held only as to the allegations of ineffective assistance of trial counsel. Respondent further requests Applicant, through counsel, amend the application to provide required specificity for the aforementioned allegation of ineffective assistance of appellate counsel. Respondent further requests Applicant's third and fourth claims be dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act.

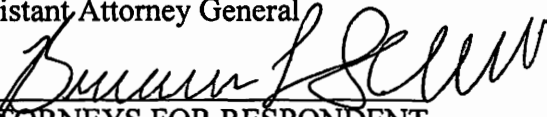
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Dec. 17, 2019

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No.: 2019-CP-36-00368

Anthony M. Wise, #372713,

Applicant,

v.

State of South Carolina.

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on July 22, 2019, to add the following:

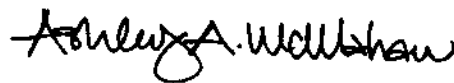
1. Ineffective Assistance of Counsel of Charles V. Verner, Esquire:

- a. While trial counsel objected to information being presented to the jury that the Applicant was on probation (ROA page 123, line 21 – page 124, line 8); testimony that the Applicant was on probation was not objected to in the ROA page 385, lines 20-21.)
- b. Trial counsel did not object to the foundation for the hospital and phone records.
- c. No objections from trial counsel to hearsay from Kathy Tapia ROA page 259, line 13 – page 260, line 15); Deputy Michael Claytor ROA page 298, line 5 – page 299, line 16); and Ryan Dickert ROA page 316, line 21 – page 317, line 22).
- d. Gives in to 911 call coming in, ROA page 269, lines 21-25.
- e. Failed to object to a “voice lineup” that only included one person’s voice as unduly suggestive. See ROA page 63, line 25 – pages 66, line 5; page 196 line 23 – page 198, line 9; page 345, line 6 – page 246, line 8.
- f. Did not object to references to “Law Track” throughout the trial, particularly ROA pages 322 & 377.

- g. Failed to object to the state's closing mentioning victim impact evidence (ROA page 652 & 662) as well as the state's Golden Rule violation in closing (ROA page 655).

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

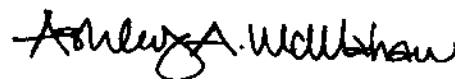
November 26, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 26th Day of November, 2022.



ASHLEY A. MCMAHAN, ESQUIRE

Attorney for Applicant

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3 COUNTY OF NEWBERRY) 2019-CP-36-00368
4
5 STATE OF SOUTH CAROLINA,)
6 Respondent,)
7 vs.) TRANSCRIPT OF RECORD
8 WISE, ANTHONY MAURICE,)
9 Applicant.)

10

11

November 28, 2022

12

Abbeville, South Carolina

13

B E F O R E:

14

HONORABLE R. SCOTT SPROUSE, JUDGE

15

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

16

Danielle Dixon, Esquire
Attorney for the State

17

18

Ashley A. McMahan, Esquire
Attorney for the Applicant

19

20

21

22

Lisa G. Amick
Court reporter

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

(AW) - Denotes Applicant's Witness
(SW) - Denotes State's Witness

(AW) Anthony Wise

Direct examination by Ms. McMahan: 7
Cross examination by Ms. Dixon: 16

(SW) Charles Verner

Direct examination by Ms. Dixon: 21
Cross examination by Ms. McMahan: 28
Redirect examination by Ms. Dixon: 40
Recross examination by McMahan: 42

Certificate of Reporter 48

EXHIBITS

(No exhibits introduced.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MS. DIXON: May it please the Court. Danielle Dixon,
2 assistant attorney general for the State of South Carolina.
3 This is the case of Anthony Maurice Wise, docket number 2019-
4 CP-36-00368. Mr. Wise is serving a 22-year sentence. In
5 December of 2016, the Newberry County Grand Jury indicted him
6 for kidnaping, that's indictment number 2016-GS-36-706, and
7 first-degree burglary, 2016-GS-36-709. In May of 2017, the
8 Newberry Grand Jury indicted him for assault and battery first
9 degree, that's indictment number 2017-GS-36-201. All of these
10 charges arose from an incident that occurred in September 21st
11 of 2016, Your Honor, this was a home invasion, well,
12 technically he, the perpetrator was in the victim's vehicle and
13 came out of the vehicle, attacked her, took her inside, bound
14 her feet and her hands with duct tape, covered her head with a
15 pillow case, put her in the back of her car, drove her around,
16 took her to the ATM, took out \$500.00. This occurred over
17 several hours. She was eventually able to get away and ran to
18 the neighbor's house where her neighbor found her still bound
19 in duct tape. So those charges all arose from that incident.
20 He was tried before a jury, the Honorable Donald B. Hocker
21 presided over that, that was May 15th through 18th, 2017. He
22 was represented by Charles Verner. Dale Scott and Tyler Daniel
23 represented the State. He was found guilty by the jury and
24 indicted and sentenced to concurrent terms of 22 years each for
25 the kidnaping and the burglary first, and 10 years for assault

1 and battery. He did file a direct appeal, it was perfected by
2 Susan Barbara Hackett, she filed an Anders brief. On April
3 17th, 2019, the Court of Appeals dismissed it, and the
4 remittitur was sent May 3rd, 2019. He then filed this PCR
5 application, it was timely, it was filed July 22nd, 2019, the
6 State filed a return, a motion for a more definite statement
7 and a partial motion to dismiss. Your Honor, we did receive
8 very late amendments and I would move to strike them all at
9 this time, and I will say they were emailed to my co-counsel
10 here on Saturday, which is, you know, two days after
11 Thanksgiving, part of the Thanksgiving holiday. I saw them for
12 the first time this morning. I have been diligently trying to
13 prepare just in case, but I do think it puts us at a
14 significant disadvantage to receive them so late. I will note
15 for the record this is a 700 plus page transcript, there were
16 eight amendments and some of them contain multiple allegations
17 within the same amendment and it is a lot to just dump on
18 somebody at the last minute.

19 THE COURT: Yes, ma'am?

20 MS. MCMAHAN: I'm happy to respond to that, Your
21 Honor. First off, based on the Love case, we're allowed to
22 bring up any type of issues we want during a PCR and they need
23 to be ruled on. So even if this is struck, I can still bring
24 these issues up, just based on the Love case. Secondly, I'm
25 raising issues that are all referenced just in the transcript.

1 Nothing out of the ordinary here, these are all just references
2 to the transcript. I'm very detailed in my references, and I
3 think at a minimum anyway, Your Honor's going to have to review
4 the entire record and determine if some of these issues, you
5 know, they obviously happened, so to determine if the outcome
6 of the trial would have been different otherwise.

7 MS. DIXON: And Your Honor, in reply, I did reread
8 Love this morning, and that's 428(SC)231 and I believe if you
9 take a look at that case, you'll see that the thing that the
10 Supreme Court most weighed on was a single amendment, it was
11 what they considered a straight forward single amendment and
12 they do focus most of their opinion talking about this was one
13 single straight forward amendment. Here we have eight, we have
14 eight that makes specific references throughout a 700 plus page
15 transcript. This is not something that we can suddenly on the
16 fly prepare for.

17 MS. MCMAHAN: Also, Your Honor, I'm not required to
18 do an amended application. I could have just said all this out
19 loud during the hearing. I just did this for the benefit of
20 the Attorney General's Office to have it in writing and to have
21 it filed.

22 THE COURT: Okay. Well, I will allow them in, but
23 again, I'm going to have to read the transcript or look at the
24 transcript in its entirety. If there are any surprise issues
25 that the Attorney General needs additional time to prepare for,

1 I can leave the record open to accommodate if the State has any
2 issues that are not anticipated through the transcript. But it
3 appears as though from what's been filed that these are matters
4 that are directly out of the transcript. So we'll go from
5 there and then if there's the need to leave the record open at
6 the end, I can do that.

7 MS. DIXON: Thank you, Your Honor.

8 MS. MCMAHAN: Judge, at this time, I keep wanting to
9 say the State, the applicant calls Mr. Wise to the stand.

10 THE COURT: Okay.

11 THE CLERK: Put your left hand on the Bible and raise
12 your right. Do you swear or affirm that the testimony you're
13 about to give the Court will be the truth?

14 MR. WISE: I do.

15 THE CLERK: You may be seated.

16 DIRECT EXAMINATION

17 BY MS. MCMAHAN:

18 Q Mr. Wise, did you file this PCR application?

19 A Yes, ma'am.

20 Q Okay. And you went to trial on these charges, correct?

21 A Yes, ma'am.

22 Q And who represented you during the trial?

23 A Charles Verner.

24 Q And when was he appointed as your attorney?

25 A As soon as, like, when I got locked up and they

1 indicted me and whatnot, you know, since then. I seen him like
2 two weeks before I actually went to trial, I been knowing he
3 was my appointed...

4 Q Attorney.

5 A Yeah, my appointed attorney.

6 Q Okay. So let's back up. So when were you arrested?

7 A 2016, September 23rd.

8 Q And so shortly after that, you knew that Mr. Verner was
9 your attorney?

10 A Yes, yes, ma'am.

11 Q When did you first see him at the jail?

12 A I ain't see him till like a couple of weeks before I went
13 to trial.

14 Q Okay. So how long from the time you were arrested until
15 the time you went to trial, how long was that?

16 A Probably about seven months.

17 Q Did you write him any letters in the meantime?

18 A I would write him on the kiosk, trying to get a bond, I
19 was write him on the kiosk.

20 Q And you mean the kiosk within the jail?

21 A It's in the jail, that's how we get in contact with the
22 lawyers, with Charles Verner.

23 Q Okay. And would you see Mr. Verner talk to other
24 people and not to you or ---

25 A No, I'll hear days he'll come, but I was not able

1 to see him, but he'll come up there to the jail and talk to
2 other inmates.

3 Q Okay. So when you guys first met, what did you guys start
4 talking about?

5 A Well, when we first met, he basically showed me a picture,
6 a picture that a ATM took, he showed me some fingerprints and
7 showed me this map, GPS thing and the conversation was it was
8 basically, the exact words that he said was like basically they
9 don't got much. And I was like whatever they got, I didn't do
10 anything in the first place, but he was showing me pictures,
11 and just the evidence that they had at that time.

12 Q So he went over the discovery with you?

13 A Yes, ma'am.

14 Q And what was presented at trial, is that consistent with
15 what you guys talked about?

16 A Yes, yes, ma'am.

17 Q Okay. And let's just go over kind of your PCR
18 application.

19 A Okay.

20 Q So tell me exactly, like, kind of what your initial issues
21 are with Mr. Verner?

22 A Ineffective of assistant trial counsel, also due process
23 for the suggested voice lineups.

24 Q Let's back up a little bit here. So it's ineffective
25 assistant of counsel, one of those issues relates to that?

1 A Yes, ma'am.

2 Q Okay. Is your claim about Mr. Verner is that he was
3 ineffective in how the voice lineup was handled at trial?

4 A Yes. How he let it be presented as evidence.

5 Q Okay. And, and that was that your interview that you had
6 initially done?

7 A Yes.

8 Q Was presented to the victim ---

9 A Yes.

10 Q --- for a voice identification?

11 A Yes.

12 Q The victim could not see, right?

13 A No. They said they had a mask, that what he said.

14 Q Okay. So whoever it was had a mask on ---

15 A Yes.

16 Q --- they interviewed you and they played that interview
17 for ---

18 A Yes. They played it on they cell phone and that's what it
19 says in the transcript.

20 Q Okay. So and it was your voice during the interview, the
21 initial interview?

22 A Yes, ma'am.

23 Q Okay. Were any other voices or any other things played
24 for her to pick from?

25 A No, ma'am.

1 Q Okay. Were you aware if Mr. Verner ever objected to any
2 of that?

3 A No, he didn't object to anything about that.

4 Q Okay. What other were some of your main issues with ---

5 A Those are my issues. Like, the jury was falling asleep, I
6 told Charles Verner that while this was going on and he failed
7 to object to anything. But the Judge himself said something to
8 him, that's also on the transcript. He seen him dozing off,
9 falling asleep.

10 Q So there was, was it one juror or was it more than one
11 juror?

12 A It was two.

13 Q So there were two jurors that had been falling asleep, and
14 the Judge said something to them?

15 A Yes, ma'am. It's in the transcript.

16 Q Did Mr. Verner make an objection or a motion for a new
17 trial for that?

18 A No, ma'am.

19 Q Did you have a conversation with him about that, like,
20 during the trial or anything?

21 A During the trial I told him they was asleep and he
22 really didn't say anything about that, they were dozing
23 off, a lady and a man.

24 Q Okay. So prior to trial, you met with him about your
25 case. Did you guys talk about any possible defenses you may

1 have or whether or not you should take a plea deal or anything
2 like that?

3 A I mean, basically, it really wasn't, in that same day,
4 Dale Scott was there, he came into the, the room that we was in
5 and he was talking to him about a plea. I was, like, well, he
6 wanted me to plea, and I was like I'm not going to plea because
7 I didn't do anything. And then he kept going on saying like,
8 talking junk, just was saying, basically, I ain't worried about
9 it, you going to prison, that jury's going to believe the
10 victim.

11 Q When you say you were talking in the room, you were
12 talking in a room with Mr. Verner?

13 A Yeah ---

14 Q It was like off the Courthouse, off the Courtroom?

15 A Yeah, it was in jail at Newberry County Detention Center.

16 Q Oh, okay. So this happened at the detention center and
17 Mr. Scott came in to ---

18 A Yeah, he was there ---

19 Q --- the room at the detention center?

20 A Yeah. He was there in addition.

21 Q And he talked about you wanting to plea ---

22 A Yeah.

23 Q --- and you told him ---

24 A No, I didn't want to plea, I didn't do anything.

25 The evidence that they had and from what I told him

1 since the first day I was arrested that I didn't do anything.

2 Q This was always going to be a trail for you?

3 A Yes, ma'am.

4 Q And then you said Mr. Scott started talking smack to you?

5 A Yeah, yeah, as far as being argumentative, and then
6 basically said I'm not worried anyway, the jury's going to love
7 the victim.

8 Q And so that was just before you had the trial, though?

9 A Yes, ma'am.

10 Q How long before? A couple days, like a week before?

11 A A couple weeks.

12 Q Okay. And then what did you and Mr. Verner talk about
13 after that happened?

14 A Basically, he was, I mean, you know, his exact words were
15 like don't be hard, like, you're sure you want to go to trial,
16 yes, I'm sure I want to go to trial. And he was like most
17 trials are basically, guilty, guilty, but I told him I ain't do
18 nothing, I ain't do it, it's as simple as that.

19 Q Okay. So the whole thing is I didn't do it, I'm not going
20 to plead to it?

21 A Yeah. I'm not going to plead to it.

22 Q Okay. And then what else did Mr. Verner do or not
23 do that you felt like he should have done?

24 A Also, during the trial I will say Mr. Verner basically
25 allowed Dale Scott to at that time, my girlfriend at the time,

1 basically, he conspired that me and a co-defendant basically
2 saying that they was a co-defendant during the trial as far as
3 like they had anything to do with this crime, too.

4 Q Wait a minute. You're saying Mr. Scott was referencing
5 throughout your trial ---

6 A Yes.

7 Q --- that this was a conspiracy?

8 A No. Basically, you know, my girlfriend was in the back,
9 and he said, basically, like, she was there with me.

10 Q Oh, so you're talking about she was there with you?

11 A Yep.

12 Q Did she testify at all for the State?

13 A Yeah. She got on the stand, too.

14 Q Okay. So he kept talking about how she ---

15 A Yeah.

16 Q --- referencing that you thought that she was a co-
17 defendant?

18 A Yeah, co-defendant.

19 Q But she wasn't on trial?

20 A No.

21 Q Was she ever charged with anything?

22 A No, never charged with anything, never a suspect,
23 never nothing.

24 Q Okay. And then, so what else between you and Mr. Verner
25 did you have issues with?

1 A I asked him, basically, also as far as, like, he was
2 allowing the evidence in, like, the victim gave a description
3 of the assailant. I used to have long dreads, basically, it was
4 bleached blonde, and like it was, the victim had said the hair
5 was black, like black like my hair, completely black. I had
6 bleached blonde dreads; I don't see why he didn't object to
7 that and let all the circumstantial evidence be allowed in the
8 trial because the trial was based off of the voice and a cell
9 phone ping.

10 Q Okay. So you felt like at that point Mr. Verner should
11 have objected to the fact that the victim was saying that the
12 person had black hair?

13 A Yes. And he said he referenced, like, he pointed it out,
14 he said that but he didn't object to it. He just acknowledged
15 it.

16 Q Okay. Anything else you'd like the Court to know about?

17 A One more thing. They had an expert, an expert witness,
18 said he was an expert witness for 13 years, this is in the
19 transcript, too, he was trying to say something about a
20 Nelos system. Basically, he didn't even know what the
21 Nelos system was, and like, his testimony was heavy because
22 again the evidence was phone pings, that was the evidence
23 that they claimed to have, but he didn't know how they
24 get the coordinates at all. Basically, the only thing that he
25 said was somebody sent them to him and I guess if they

1 accurate, they right. He don't even know how they come up with
2 them.

3 Q So did you feel that Mr. ---

4 A Ineffective for allowing that in because he was an expert
5 witness, this case was based on, like I said, voice and GPS,
6 and he clearly didn't even know what the GPS coordinates were.

7 Q And that expert was supposedly to help you guys or for the
8 State?

9 A It was for the State.

10 Q Anything else you want Judge Sprouse to know?

11 A No, ma'am.

12 Q Okay. Answer any questions that the attorneys may have.

13 CROSS EXAMINATION

14 BY MS. DIXON:

15 Q How are you today, Mr. Wise?

16 A I'm fine, how are you?

17 Q Doing well. Before we get started, I just want to make
18 sure that you understand the type of relief that the Court
19 can order today. Now, if the Court gives you relief today,
20 then what that means is you're going to be, all of the
21 charges come back, you can face a new trial. Do you understand
22 that?

23 A Yes, ma'am.

24 Q And do you know what your charges were, do you remember
25 what they were?

- 1 A Yes, ma'am.
- 2 Q What were they?
- 3 A I was, assault and battery high and aggravated and first-
- 4 degree burglary and kidnaping.
- 5 Q And kidnaping. And do you know what the potential
- 6 sentence is for burglary first?
- 7 A I'm going to say life in prison, zero to 30, assault and
- 8 battery, zero to ten.
- 9 Q Zero to ten, zero to 30, and 15 to life, correct?
- 10 A Yes, ma'am.
- 11 Q So you would agree with me that, or well, let me ask this,
- 12 if you are subsequently retried and convicted of all these
- 13 charges, you know the maximum amount of time that you could
- 14 face in prison?
- 15 A Life in prison.
- 16 Q Life plus 40 years.
- 17 A Yes, ma'am.
- 18 Q And what's your current sentence?
- 19 A 22, 22 years.
- 20 Q 22 years. And knowing that, do you wish to proceed today?
- 21 A Yes, ma'am.
- 22 Q Okay. And you would agree that your lawyer reviewed
- 23 discovery with you? I think you said on direct exam that
- 24 he came and reviewed discovery.
- 25 A Yes, ma'am.

1 Q Okay. Is there anything, scratch that. Now, your primary
2 concerns are that, let's see, he didn't object to the voice
3 identification being only a single voice?

4 A Yes. That's one of them, yes, ma'am.

5 Q Do you recall him raising that issue prior to trial?

6 A No, ma'am.

7 Q Do you recall that you testified not during your defense
8 case in chief but prior to trial you testified? Do you recall
9 that at all?

10 A No, ma'am.

11 Q You don't recall him arguing prior to trial that this
12 might violate a case called Neil v. Biggers?

13 A No, ma'am. That was before, after the color of the dreds,
14 the hair color thing, that's what I think you might be talking
15 about.

16 Q You don't recall him talking about the voice
17 identification ---

18 A No, no.

19 Q --- to, prior to trial?

20 A No. I'm sure of that.

21 Q Okay. And then tell us about the cell phone pings, you
22 mentioned there were cell phone pings.

23 A As I said, they was talking about cell phone pings, they
24 were tracking cell phone, tracking a cell phone, I guess,
25 basically, it was a cell phone and basically it was a cell

1 phone within a two mile radius and he had had a ping here and a
2 ping there, it was like three or four pings.

3 Q Do you remember the locations of the pings?

4 A The location of the pings was, one of them was when I was,
5 when I was in the neighborhood of the victim, that's where my
6 mom stays.

7 Q Okay. What about the other two locations?

8 A Like I said the other two locations, they said it was,
9 they was talking about the one about the food restaurant and
10 they was talking about a cell phone got pinged, pinged by where
11 they found the car.

12 Q So where they found the car, where the victim's house was,
13 and then you mentioned the Chinese food restaurant, but do you
14 recall that there was an ATM where the perpetrators took her
15 money was actually in the same parking lot?

16 A Oh, no, I remember the Chinese restaurant, but yeah, I
17 remember something in my case about the ATM.

18 Q And whose phone was that?

19 A That was my girlfriend's phone.

20 Q That was your girlfriend's phone. So somebody using your
21 girlfriend's phone on the day of these crimes pinged in the
22 areas ---

23 A Yeah.

24 Q --- where all, where the ATM was located, where the
25 victim's house was located and where the victim's car

1 was also found, is that correct?

2 A I say ---

3 Q And you would agree that was your girlfriend's phone?

4 A That's what the evidence says, basically, black and white,
5 that's what they told me, it was my girlfriend's phone.

6 Q It was, okay.

7 A But also during the time that the, like, the pings, I had
8 evidence, I told them I was at the hotel, they thought I was
9 lying, so they went back and pulled the receipt from the hotel
10 which it shows that I was there at the time that they said the
11 phone was pinging.

12 Q Do you recall your girlfriend's testimony?

13 A Not quite, I mean, ---

14 Q What was her testimony about the hotel when you were
15 there, when you were not there?

16 A I can't even say, I know she said I was with her at the
17 hotel ---

18 Q The entire time?

19 A No, I left and went to the store ---

20 MS. DIXON: No further questions.

21 A --- they know that. You know, that's what she said.

22 MS. DIXON: No further questions.

23 THE COURT: Any redirect?

24 MS. MCMAHAN: None, Your Honor.

25 THE COURT: Okay. Thank you, Mr. Wise.

1 MS. MCMAHAN: Your Honor, the applicant rests.

2 MS. DIXON: The State calls Charles Verner to the
3 stand.

4 THE CLERK: Do you swear or affirm your testimony
5 you're about to give the Court will be the truth?

6 MR. VERNER: Yes.

7 THE CLERK: You may be seated.

8 DIRECT EXAMINATION

9 BY MS. DIXON:

10 Q How are you today?

11 A Hello.

12 Q Before we get started real quick. How long have you been
13 practicing law?

14 A Graduated, well, I was admitted into the bar in November
15 of '95, and I've been a public defender in some aspect, I've
16 been the head public defender or the only public defender in
17 Newberry since 2005, and I've been doing criminal defense since
18 1998.

19 Q And what percentage of your practice is only criminal law?

20 A 90, 95 percent.

21 Q Okay. And do you recall representing Mr. Wise?

22 A I do.

23 Q Do you recall how you got involved in this case?

24 A I believe he was in jail and he's somebody we would have
25 picked up from the jail.

1 Q And do you recall how many times y'all met?

2 A Off the top of my head, no. The, I, I did, and when I'm
3 in the jail without internet, I don't have records or anything,
4 but the, just from my looking at the notes, I started, he got
5 arrested probably in October, late September of the year. And
6 I do show that his mother and girlfriend started coming in
7 regularly in March.

8 Q Okay.

9 A So that seems to be about the time I must have gotten
10 discovery. I have notes of them coming in and meeting with me
11 and going over ---

12 Q Okay. Do you remember what the discovery was, what
13 State's evidence was?

14 A It was the lady's statement, obviously, you got an eye
15 witness or a victim slash witness, but the, I guess, the, the
16 damning evidence would be the GPS type location of his cell
17 phone, or his cell phone in his name or his girlfriend's name
18 that puts him in the neighborhood where the lady was attacked
19 which we can understand because he's got family members, mom
20 lives in that neighborhood, girlfriend lived just off of that
21 neighborhood. Also pings in the location in general, in the
22 vicinity where the ATM was, the lady was forced to take money
23 out of the ATM, and he did give a statement to law enforcement
24 admitting to being at that shopping center but going to a
25 restaurant. And then it also pings him in the general location

1 of where the car was abandoned on the other side of town, not
2 exact locations, but I think he's within a mile of all three
3 locations, and they're all three at different parts of
4 Newberry, Newberry County.

5 Q Did the times correlate?

6 A At the exact same time.

7 Q And did you review all this with Mr. Wise?

8 A Yes.

9 Q And did you discuss with him the elements that the State
10 needed to prove the indictments, things of that nature, what
11 charges he was facing?

12 A We did.

13 Q And did he have any defenses?

14 A He had two possible alibi-ish witness, his girlfriend,
15 Laswan, did actually come and testify, and they did get a hotel
16 room, I'm not sure why because they had a, well, they got a
17 hotel room because they had other family members staying and
18 they wanted to get some space to themselves. She did testify
19 he was gone for hours at a time, and in fact, the police came
20 to the hotel room looking for him. And I think, initially, it
21 came to some force, but she was in a hotel room, she said he
22 had been there, and he obviously had rented the room, but he'd
23 been gone for hours. And then he also had a, not so much an
24 alibi, but he said he was at a cousin's house listening, using
25 a cousin's wi-fi to get on his phone while the cousin was at

1 work. So the cousin would not have been there witnessing him,
2 but just that he would have been at his cousin's house on his
3 phone using the wi-fi.

4 Q Did you engage in any plea negotiations with the State?
5 Were they willing to negotiate, how did that go?

6 A The State's offer was straight up to first degree
7 burglary, it was 15 to 30.

8 Q Okay.

9 A And that would have been conveyed, he was aware of the
10 State's offer.

11 Q Okay. And do you feel like you've had adequate time to
12 prepare for the trial?

13 A I believe so.

14 Q Did you discuss with him his Constitutional Rights he
15 would have at trial?

16 A Yes.

17 Q And then just in general, they raised some allegations
18 about you not objecting to different things in the transcript.
19 Are there reasons that you might not object during the trial, a
20 trial strategy reason for example that you wouldn't object to
21 everything that came up?

22 A Well, that's true, I don't object to everything, that
23 technically violates the rules of evidence if I think it does
24 more damage or the damage is minimal, maybe they didn't hear
25 it, or it was just a word said in passing. So I don't object

1 to every file, if it hurts, I should. I did, the lady
2 identified him by voice tape, and I did file a Neil v. Biggers
3 motion that was pretrial, and the Judge admitted the
4 identification of his voice as evidence. And we looked over
5 the transcripts, I raised the Neil v. Biggers that she should
6 not be allowed to identify him based on his voice. The Judge
7 let it in, it's an inarticulate objection when the Court, when
8 the State sought to have her identify it in Court, I did
9 object, the, but then the grounds for it were, what, in a bench
10 conference. I don't remember what was said at the bench
11 conference and we should have, or I should have had the Court
12 at one of the breaks relate what was said at the bench hearing.
13 The, but the, but I did object to the voice identification
14 pretrial ---

15 Q And for clarity, at the pretrial did the Judge consider
16 the Neil v. Biggers issue as to voice identification?

17 A The Court found it was not a Neil v. Biggers fact pattern
18 and even if it was that it was admissible as not unduly
19 suggestive. And then I think, I read the application, it was
20 an objection that it was talked about that he was on probation
21 at the time. I did object 403 and other grounds not to put
22 that in, it obviously did come in and it probably would have
23 been hard to keep out because one of the Miranda witnesses and
24 where he was arrested by a probation agent at the probation
25 department, so it probably would have been, and to some extent

1 we tried to use that to his benefit too, that being monitored
2 and ---

3 Q Gotcha.

4 A --- all; so, supervised.

5 Q So could that be strategy maybe to say ---

6 MS. MCMAHAN: Objection, leading.

7 THE COURT: Okay. Rephrase your question.

8 Q Could there be a strategy ---

9 MS. MCMAHAN: Objection, leading.

10 THE COURT: Overruled.

11 A Well, yeah, I mean, obviously, I objected to it coming in
12 in the first place, so my general hunch is I did not want it to
13 come in, but obviously, the strategy when it came up is not to
14 overly emphasize it to the jury and to mitigate it or to try to
15 help to some extent. But you know, as I said, I don't object,
16 so in my opinion when you sometimes object it does more damage
17 than what the actual, what you feel like the infraction is.

18 Q Okay. And then there's in the amended application,
19 there's some allegation that you didn't object to references to
20 LawTrac. Are you familiar with LawTrac and do you know what it
21 is?

22 A LawTrac is a service that the police subscribe to. It has
23 people's phone numbers and addresses in it. The sources are
24 not necessarily criminal convictions, although I'm sure that
25 that would be part of it. But the, the, your driver's license

1 address at the DMV, your phone number at the DMV, public
2 sources of information can be in LawTrac, but when the sheriffs
3 are looking for somebody, they can go to LawTrac which is a
4 service they subscribe to to find them or when they're serving
5 divorce papers or civil process, if I'm looking for somebody,
6 it would be like one of the paid online services to get
7 people's addresses. But the investigator testified, I objected
8 to that coming in, too, that they shouldn't be allowed to
9 reference it, but the Judge let it in and actually the
10 investigator, as I recall, did in my questions explain that,
11 basically, everybody's information is in LawTrac whether you've
12 been in trouble or not, it's just a public service.

13 Q So for example, I would probably have a profile ---

14 A If you've applied for a driver's license, you're in
15 LawTrac.

16 Q So it's not limited to criminal offenses?

17 A No. And that was brought up at trial, that, you know,
18 credit, people who apply for credit cards will be in
19 LawTrac. I think their service is now as described to
20 me as, like Trellis, which is basically public records.
21 Although, I'm sure that there are also some non, LawTrac is
22 not a public service, but I'm sure probation department
23 or arrest records might be in there, too. But a lot of the,
24 the DMV would probably be the bulk of the sources.

25 Q Okay. They also raised an issue that you did not

1 object to the foundation of hospital records and phone records.

2 Do you recall any issues, let me back that up. Had you

3 objected, what do you think the outcome would have been?

4 A Well, the, the hospital records which were really not
5 material at all, the prosecutors and I met before trial and
6 marked exhibits that would be admissible. I did not make, they
7 had the hospital employee available to come, and she actually,
8 I believe, did come to Court with the hospital records to
9 testify. We went ahead and just pre-marked exhibits, but I did
10 not insist on a custodian of records testifying. The, as far
11 as the phone records, I did actually make the statement who
12 issued the subpoena testify, and then also the expert witness
13 who relied on the phone records would testify. So the, so
14 those witnesses would have testified. I did make them
15 establish a foundation.

16 Q And then do you recall objecting to the 911 call?

17 A I did object to the 911 call as inadmissible hearsay. The
18 Court overruled it and allowed the phone call to come in.

19 Q Alright. I think ---

20 MS. DIXON: No further questions, thank you.

21 THE COURT: Cross examination?

22 MS. MCMAHAN: Yes, Your Honor. One second, please.

23 CROSS EXAMINATION

24 BY MS. MCMAHAN:

25 Q Mr. Verner, so the times in the closing arguments

1 that I think Dale was referencing the victim impact, how this
2 was going to affect the victim and his golden rule stuff, for
3 three of those, you did not object to those, was that a
4 strategic decision or?

5 A Dale Scott, I did review, I had a chance to look at the
6 transcript on those specific, they just, they weren't
7 inflammatory. The first incidents I saw highlighted just, he's
8 kind of, I would say fluffing, but he's, he's saying good
9 things about the victim, she's a tough old lady, she didn't let
10 this, she was still able to keep her bearings and see what she
11 saw and escape and whatnot. It just wasn't objectionable; it
12 was a fair inference of the facts in closing arguments. The, I
13 assume the second thing that you've highlighted indicated that
14 she goes to church, but the prosecutor didn't really say that
15 she's virtuous or that type woman, he just said she was coming
16 home from church. She goes to church regularly and she knows
17 what time she gets home, so that was fair that she knew the
18 timing. And I did review the third one, and it, it's
19 rhetorical, I agree it's rhetorical arguments, but I think it's
20 also fairly within inferences of, of facts in the case and did
21 not in my opinion become objectionable. And I do object during
22 opening and closing arguments when I think the prosecutor's
23 crossing the line.

24 Q So the, some of this is, obviously, rests on the fact that
25 the phone was pinging. With the phone ping, was that done

1 contemporaneously right after this, while it was happening or
2 was this done, like, after the fact?

3 A Well, the, it would be contemporaneous. Obviously, the
4 reports were compiled after the fact, months after the fact,
5 but the phone records put him, you know, they can track it by
6 the time frame, so contemporaneously with the lady being taken
7 to the ATM, he would have pinged in the same time frame and of
8 course, they know what time the lady withdrew the money from
9 the ATM ---

10 Q Yeah.

11 A --- because of the, the bank record. But his phone would
12 have pinged contemporaneously at that time frame.

13 Q I guess my question is were the cops at the time pinging
14 his phone?

15 A No, no, it's completely, entirely after the fact.

16 Q So did you feel a need to argue like an unreasonable
17 search warrant or anything or no search warrant related to the
18 phone ping?

19 A I don't know, off the top of my head, I don't know if I
20 challenged the, I want to say I must have challenged to some
21 extent the subpoena and the phone records coming in because I
22 remember arguing about the source of the phone numbers. And
23 the LawTrac, I don't, I don't know if I moved to suppress, but
24 basically, the, the phone registered to his girlfriend who she
25 said she actually testified uses the phone. The police got a

1 subpoena for the phone records, and they compiled the report.

2 I cannot remember whether I moved to suppress it or not.

3 Obviously, I know I addressed it because I talk about the
4 sources of the numbers.

5 Q And you did earlier say that you had made the records
6 person testify about the phone records, right?

7 A I don't, the SLED agent, obviously, testified ---

8 Q Yeah.

9 A --- and the Newberry agent who issued the subpoena
10 testified. I don't recall anybody from the phone company
11 themselves testifying. It kind of depends on how far back of a
12 foundation you want to establish, but nobody from AT&T flew in
13 and said I'm the custodian of records ---

14 Q Okay.

15 A --- I think I just had a certified copy of the report or
16 the, what was issued by subpoena, but the, but I would not, not
17 object to the foundation of something that the police were
18 introducing, that they had found themselves.

19 Q Yes.

20 A You know, the custodian of the hospital records is a
21 little bit different ---

22 Q Yes.

23 A --- issue.

24 Q So back to the voice thing, you said you had argued that
25 under Neil v. Biggers, was there any thought that maybe you'd

1 argue it in a way that, hey, technically you're using this as
2 kind of an item, you know, line up, a photo lineup and instead
3 we're dealing with voices and so you should present more than
4 one voice of this person to choose from instead of just playing
5 this one interview of my client to her?

6 A I, I, Judge Griffith is a very intelligent Judge, I
7 disagree with Judge Griffith's rule, I think it is a Neil v.
8 Biggers identification. The, and he did address it as a Neil
9 v. Biggers, if it is Neil v. Biggers, I find that it's not
10 unduly suggestive, so he did include the Biggers language. I
11 think it is a Neil v. Biggers identification, it's an out of
12 Court identification of a single audio used to identify
13 somebody who's a known source giving a confession or a
14 statement, so I do think Neil v. Biggers is probably the
15 proper, closest comparison. I am disappointed that the
16 appellate division didn't file an Anders brief.

17 Q Gotcha. And as for the LawTrac stuff, there was some,
18 obviously, some testimony about, you know, these come from
19 public records. But I don't recall any testimony about this is
20 only available to law enforcement.

21 A Maybe it came pretrial, maybe I already did that. But
22 LawTrac, my understanding, only police officers can go onto
23 LawTrac.

24 Q Okay.

25 A Like the solicitors' system or, I think LawTrac is

1 exclusive to police.

2 Q So the DMV, those, everybody else's records can only be
3 accessed by sheriff and law enforcement as well. Not everybody
4 can go in and just find someone's DMV records, right?

5 A Well, I can subpoena somebody's records from DMV as a
6 private citizen, but LawTrac is exclusively a government type
7 service. I don't think you can subpoena LawTrac.

8 Q It's not a public service?

9 A It's not a public service, it's only available, from my
10 understanding, for cops.

11 Q But that, okay. But do you recall any actual testimony
12 being brought up about that?

13 A No, I don't. But I, I'm pretty sure that LawTrac is what
14 they call proprietary software, that you have to have a license
15 and you have to be a certified law enforcement agency.

16 Q And then the issue of probation. And I know you talked
17 about this earlier too, that, you know, maybe, can be a double-
18 edged sword here, but you obviously objected the one time that
19 it was referenced that he was on probation, you did not the
20 second time when the officer referenced he was on probation at
21 the time ---

22 A Right.

23 Q --- is that something you just ditched strategically,
24 you don't remember?

25 A Well, like I, that's a little bit cloudy. I did

1 object to the Court, I did make a pretrial motion that the
2 State not be allowed to bring up that he's on probation, and
3 the Court denied it. I didn't see in the transcript where I
4 objected when it actually came up at trial. And I don't know
5 if that's strategy or I just missed it, but obviously, the
6 second time it came up would have been too late. The, and I
7 do, it was possible I didn't hear it the first time it came up
8 or it's just as possible that it, it would have been hard to
9 keep out the fact that he was on probation because his
10 probation agent was a witness, he was at the probation
11 department when he was arrested, he was Mirandized by the
12 probation agent, so ---

13 Q Or you could have just referenced the fact that he just
14 happened to be at the probation office ---

15 A I wouldn't have moved to exclude it if I didn't want it to
16 come in, so I agree that I obviously, at that time, I did not
17 want it to come in. And I think the girlfriend also gave a
18 statement, something about speaking to a probation agent or the
19 ---

20 Q How far away is the probation office from where the
21 assault occurred?

22 A Probation office would have been downtown Newberry, the, I
23 think the lady, the victim lives somewhere towards Prosperity
24 down the CR Koon Highway towards Prosperity. A lot of this
25 would have happened in the Prosperity area. The Chinese

1 restaurant's on the other side of town towards the, Laurens, so
2 the, three different parts of Newberry. Now, and then the
3 probation agent office would have been downtown, not
4 particularly close to any of them.

5 Q So would it have been possible then to make a motion just
6 have him reference that, you now, he was Mirandized by a law
7 enforcement officer?

8 A Well, I did move to suppress the probation agent
9 testifying or mentioning that he was on probation.

10 Q But not that he was a probation agent, particularly?

11 A I think that he would have come in as a probation agent --
12 -

13 Q Could he have been referenced as just as law enforcement
14 because he's technically in law enforcement instead of a
15 probation agent during the trial?

16 A I don't know that he's law enforcement, I know he's got
17 the powers of arrest. I don't consider probation department
18 law enforcement, but they're very close cousins, they're
19 kissing cousins, but I would not have changed his title. I
20 just wouldn't dwell on it.

21 Q Okay. And then, like, you're having the argument about
22 the 911 call and essentially you just kind of acquiesced at
23 some point after the Judge kind of gives a whole colloquially
24 about it, and then you just say, thank you, Your Honor,
25 because I think you were challenging, so if you're, it looks

1 like there's some argument back and forth as to the issue with
2 that, whether or not there was a hearsay exception?

3 A That's right. I, I know we've had arguments about, and I
4 object to every single case, I don't usually tell the Court
5 thank you when the Court rules against me, I would just say, I
6 understand, I try not to say thank you for adverse rulings, but
7 the ---

8 Q Well, his last line is, so why not go ahead and allow them
9 in and then it's just, thank you, Your Honor?

10 A Well, I think that thank you means I lost ---

11 Q Okay.

12 A --- I understand. As I said, and I'm not trying to be
13 facetious, but I typically don't say thank you when I lose an
14 argument, I'll say I understand, or I want to protect the
15 record. The, just the, so it isn't confusing, but we moved, I,
16 I didn't think that the 911 call was worthy of coming in as a
17 hearsay exception, it wasn't from the victim, it was from a
18 third party. I made the arguments that I thought were
19 reasonable why it shouldn't come in, the Judge disagreed, the
20 Judge allowed it to come in.

21 Q Okay.

22 A In the grand scheme of things, I don't think that the 911
23 call was particularly damaging in terms of ---

24 Q It wasn't particularly material, I guess, of guilt or
25 innocence?

1 A Right. It was cumulative at best, but it certainly wasn't
2 emotional, and screaming ---

3 Q .Okay.

4 A --- or anything that clearly identified a suspect, it was
5 just ---

6 Q Very straightforward kind of ---

7 A --- a 911 call that if anything just, oh, what's the word
8 when you say the same thing -

9 Q Repetitive?

10 A --- somebody, repetitive, or ---

11 Q Yeah.

12 A --- cumulative.

13 Q And then there were a couple people that did testify that,
14 you know, at least a page or two worth of hearsay about what
15 the victim said to them?

16 A That's right. And I did look at those and just, the, I
17 don't really consider that hearsay in terms of when you
18 interview the victim about the general details of what
19 happened. She had already testified, it was just cumulative,
20 and it wasn't really, it didn't help the State in any regards
21 to establish identity of the culprit.

22 Q Well, Ms. Tapia?

23 A Is that the neighbor?

24 Q I think, this is on 269, Your Honor. Her question is what
25 did Vanisha say to you at this point and then she just talks

1 about she's been kidnapped; she talks around a lot about what
2 the victim had told her ---

3 A Right.

4 Q --- and then she talks, then the question is did she
5 identify the perpetrator to you, and then she says, well, me
6 and her did sit there and talk because I tried to calm her down
7 and I asked him if she knew him, and she said, seemed like a
8 young fellow, so she's going off through this entire
9 conversation that she's had with her and it's all hearsay. So
10 ---

11 A That is correct. But the, they don't come up with any
12 identification, she, the lady said it was a young black guy
13 with dreds in a neighborhood that is predominantly black or at
14 least, that part of Newberry is probably 50/50 or fairly
15 diverse. But, but a young black guy with dreds is not a very
16 meaningful identification to me in Newberry where we've got a
17 lot of young black guys with dreds.

18 Q And so you said at this point the victim had already
19 actually testified before the neighbor?

20 A I don't want to say that for a fact, but I know she had
21 probably at pretrial, but the ---

22 Q If the transcript shows that she did in fact testify
23 before then, would you dispute that?

24 A No. I was, I would defer to the transcript. I just
25 found it cumulative hearsay that was ---

1 Q Already presented?

2 A Nobody was really challenging that the lady had been
3 robbed, it was just a question of identification.

4 Q Okay.

5 MS. MCMAHAN: Court's indulgence, Your Honor.

6 Q Do you recall any jurors falling asleep?

7 A No. Maybe I'm confusing it with the last PCR. Jurors
8 being sleepy after lunch on a Wednesday, or a Thursday is not a
9 very rare occurrence. The, if I would see a juror asleep, I
10 would usually try to unobtrusively draw the Court's attention
11 to him or myself. But no, I don't remember. And some jurors
12 just sit with their eyes closed, so I mean ---

13 Q And in this situation if the Judge did actually kind of
14 say something to them, would you dispute that?

15 A No. It happens frequently.

16 Q And jurors falling asleep, could that be helpful or bad
17 for you or do you have a thought on that?

18 A My general, and it's not hard, I misread jurors all the
19 time. I see jurors smile at me that I swear are on my side and
20 they vote guilty. So I mean, I've got a poor juror perception.
21 My general perception is bored jurors sometimes are better for
22 the Defense because they just want to go. They're at the point
23 where they're just, want to go home.

24 Q It seems like after today we've learned there's a lot
25 of jurors in Newberry that like to kind of nod off

1 a little bit?

2 A Well, Newberry feeds them lunch, you know, 2:00 after
3 lunch is a tough time to sit in a chair and listen to people
4 like us.

5 MS. MCMAHAN: Court's indulgence. Nothing further,
6 Your Honor.

7 THE COURT: Any redirect?

8 MS. DIXON: Just real quick, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. DIXON:

11 Q You were asked a few questions about the, whether you
12 moved to suppress the search warrant for the phone. Do you
13 recall whose phone it was in? Who owned that cell phone?

14 A I remember he had multiple numbers in LawTrac. I thought
15 we, it was his girlfriend's phone and his girlfriend testified
16 he uses my phone. The, I'm not a hundred percent, but the best
17 of my recollection is it technically would have been listed
18 under his girlfriend's name.

19 Q So it wasn't his phone?

20 A I don't believe ---

21 Q So ---

22 A --- it was, the phone that actually pinged I don't believe
23 was actually his ownership unless, you know, he had loaned her
24 money or ---

25 Q Right. So do you believe he had a Fourth Amendment

1 expectation of privacy in a cell phone that was not his own
2 phone?

3 A Yes. If you had a phone on you and somebody else owned it
4 and it was taken from you in the search, I would be raising the
5 Fourth Amendment.

6 Q Going on to the 911 call, and she brought up the fact that
7 you said thank you at the end. I'm going to hand you the
8 transcript so you can look at it, and I think it's page 269,
9 line 25 where you kind of said, thank you after the Judge
10 rules. You flip back to page 263 on line 5, that's where you
11 kind of begin the objection. Can you kind of ---

12 A I don't know, oh, this is the 911, okay. The solicitor,
13 Your Honor, I'd offer this at the time State's number 7, the
14 911 call for admission into evidence, the Court, okay, Mr.
15 Verner, I object for a couple of reasons, Your Honor. And the
16 Court, well, let's deal with it, and excuses the jury and then
17 we go into several pages of 911 argument.

18 Q So you did in fact argue those to the Court?

19 A Yes. I, I, I don't like 911 calls going in, I always
20 object to them, and I clearly objected, and we argued about it
21 for, it looked like about 10 pages of, 7, 8, 9 pages of
22 argument. The Courts disagree with me, and the Courts almost
23 routinely allow 911 calls come in.

24 Q Alright. Thank you.

25 MS. DIXON: There's nothing further.

1 THE COURT: Anything further from this witness?

2 MS. MCMAHAN: Just one quick question.

3 RECROSS EXAMINATION

4 BY MS. MCMAHAN:

5 Q What were the color of Mr. Wise's dreds at the time?

6 A I've got a photograph of him that I took at the time
7 when he was booked in. And he had long dreds that were frosted
8 blonde, frosted, I wouldn't say blonde, but I would say frosted
9 tips. And we raised that and argued that he had basically
10 blonde or highlight, highlighted hair. It is predominantly
11 black hair, black dreds, but it is frosted. I have a
12 photograph I saved from his booking page, but the, but he, he
13 had predominantly black hair, but it was very, it was, at the
14 time he was arrested certainly had frosted tips on each of the
15 dreds.

16 MS. MCMAHAN: Nothing further, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Verner, you can
18 step down.

19 MS. DIXON: The State has no further witnesses.

20 THE COURT: Okay. Any reply?

21 MS. MCMAHAN: None, Your Honor.

22 THE COURT: Alright. I'll allow summations, State go
23 first.

24 MS. DIXON: Your Honor, we would submit that
25 Applicant has failed to meet his burden of proof here.

1 The standard, of course, under Strickland is whether counsel
2 was constitutionally ineffective. We submit he had not shown
3 deficiency or prejudice in any regard. First of all, he, there
4 was testimony he met with him, in fact, the applicant admitted
5 that he reviewed the discovery with him. The State's case was
6 the State's case, he did go to trial, he challenged it, he put
7 up the best defense he could which was the alibi defense. Of
8 course, it did not, you know, the jury has the option to
9 believe or disbelieve whomever they want, and in this case,
10 they chose to believe the victim. In terms of the amended
11 application, we submit he's articulated a trial strategy in not
12 wanting to object every time there may be something that's
13 technically objectionable. We would also say in terms of the
14 failure to object to foundation, I would just note that the
15 transcript itself, when you go to page 5, it does actually show
16 there was an AT&T records custodian affidavit and a hospital
17 custodian's affidavit. He's testified that those witnesses
18 were present, able to testify if necessary to authenticate
19 those records, so no prejudice even, I would submit no
20 deficiency, but also no prejudice in that regard. In terms of
21 the hearsay objections, the first one I would submit is an
22 excited utterance. If you look at that, and that's page 259 to
23 260 of the record, this is the neighbor testifying about when
24 the victim came knocking on her door at 10:30 at night still
25 bound with duct tape, and her testimony is she was not herself,

1 she was to pieces, I tried to calm her down, like, clearly, she
2 was hysterical, this had just happened, this would be an
3 excited utterance, it would not be objectionable hearsay. The
4 remaining stuff that they've listed is basically law
5 enforcement testifying to the identification, the way that the
6 victim described the perpetrator, and so that's stuff we
7 believe would come in just as part of the police investigation.
8 The 911 call, he did object, there's ample, that's reflected in
9 the transcript. The same to the voice lineup. It was raised
10 pretrial, pages 119 to 20, and he did object at page 195 to it
11 coming in, or to the in-court identification, rather. The
12 references to LawTrac we submit that's not prejudicial, that's
13 a database that frankly every single one of us in here is on,
14 it's not limited to criminal defendants or people who have been
15 arrested, so there's really nothing inherently prejudicial
16 about your name being in this database. And then in terms of
17 the closing argument, we would just submit that this doesn't
18 rise to the level of violating any kind of golden rule argument
19 and the standard is that it so infected the trial with
20 unfairness as to make the resulting conviction a denial of due
21 process, and we just think that any references to the victim
22 here do not rise to that level.

23 THE COURT: Thank you, ma'am.

24 MS. MCMAHAN: Judge, as to our amended application
25 and anything else that was raised today, we ask that those

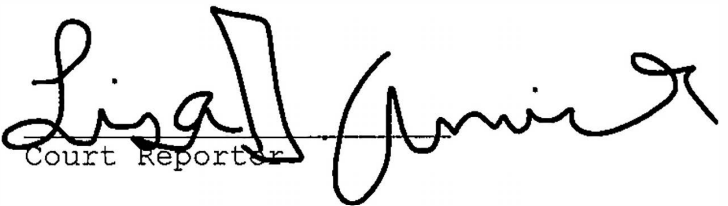
1 issues be ruled upon. As to, regarding the hearsay, now,
2 whether or not someone's testifying as how somebody looks or
3 seems at the time that the incident occurs, obviously, that
4 would come in because that's the present sense impression, but
5 that wasn't objected to. The remainder of the testimony was
6 nothing but what this individual told me. She told me this,
7 she told me that, this is how she described it, so that was all
8 hearsay. And if you're going to bring it in you can bring it
9 in other ways, but just not in the manner in which it was
10 brought. So there's three individuals with at least three
11 pages plus worth of testimony that was nothing but hearsay, it
12 was not objected to, therefore, it wasn't preserved for appeal.
13 The second thing was he, and I say he, I apologize, Mr. Verner
14 did essentially just give in to the 911 call coming in so there
15 was no, I think, contemporaneous objection with that in order
16 to preserve that for appeal. The argument of the voice lineup
17 is not necessarily just Neil v. Biggers, but if you're going to
18 use a voice as identification, the argument is hey, if you're
19 going to use voice, that's fine instead of like a photo lineup,
20 but when you get a photo lineup you get all these individuals
21 that look very similar to each other. So if you're going to
22 identify someone from a voice, the argument should be, hey, you
23 need to present more than one voice and not a woman's voice if
24 we're talking about a dude, you need to submit some other
25 people's voices because if, as she says she will never forget

1 the voice, and that is the appropriate way to do it.
2 Obviously, one voice is unduly suggestive. References to
3 Lawtrac as we talked about before, there was no, nothing
4 presented that this was not a public information system. You
5 know, a lot of these, while a lot of these database are public
6 stuff, you know, random individuals, I can't just call up the
7 DMV and be like I'd like Judge Sprouse's DMV records, thank you,
8 maybe I could if I had a Cert - H. Pinckney (1) App. 179
9 subpoena for a case, but I certainly couldn't just, you know,
10 call up the general counsel up there and be like please give me
11 Judge Sprouse's DMV information, that's only available to law
12 enforcement. So I don't think that was appropriately addressed
13 during the trial that, you know, these are not people who have
14 been arrested before or that have been approached by law
15 enforcement, but rather, you know, approach it more like you
16 would CODIS where you just say known or unknown person or that
17 kind of thing so that there's no expectation that these are
18 just criminals that we're referencing. In either event, that
19 wasn't objected to, that wasn't preserved for appeal. The
20 reference to him being on probation, obviously, making a motion
21 that you know, we've done it before in other trials where you
22 referred a particular individual by, you know, in this
23 situation you could substitute law enforcement for a probation
24 agent just for purposes of that trial to reference that. You
25 know, he was Mirandized by someone from law enforcement versus
being at the probation

1 agent's office because he's on probation. I think that was
2 unduly suggestive to the jury that, you know, obviously, he's
3 already a criminal, he's already been charged so in that event,
4 you know, look, he's another criminal now. And then the last
5 one, the closing arguments, I do believe Mr. Scott, while he's
6 tapped danced very close to the line, I think he tapped right
7 over it and that those were golden rule arguments that should
8 have been objected to and preserved for appeal.

9 THE COURT: Thank you. Well, counsel, I want to
10 review the transcript and materials submitted. I'll take this
11 under advisement and have my law clerk email you. Thank you.

12 (Whereupon proceedings were concluded at 4:28 pm.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF NEWBERRY)
78 I, the undersigned Lisa G. Amick, Official Court Reporter
9 for the Eighth Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate, and
11 complete transcript of record of all proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Abbeville, South Carolina,
14 on the 28th day of November 2022.15 I do further certify that I am neither of kin, counsel,
16 nor interest to any party hereto.17 June 8, 2023
1819 
20 Court Reporter21 My commission expires: June 30th, 2025
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Anthony Maurice Wise, #372713,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019-CP-36-00368

ORDER OF DISMISSAL

FILED
NEWBERRY COUNTY
CLERK OF COURT
2023-11-06 10:11:42
ELIZABETH P. FOLK

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Anthony Maurice Wise (Applicant) on July 22, 2019. On November 28, 2022, an evidentiary hearing convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-two-year-sentence. In December 2016, the Newberry County Grand Jury indicted Applicant for kidnapping (2016-GS-36-706) and first-degree burglary (2016-GS-36-709). In May 2017, the Newberry County Grand Jury indicated Applicant for first-degree assault and battery (2017-GS-36-201). These charges arose from a home invasion and kidnapping of Beneza Wicker (Victim), which occurred on September 21, 2016.

On May 15-18, 2017, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. Charles Verner represented Applicant, and Dale Scott and Tayler Daniel represented the State. The jury convicted Applicant of kidnapping, first-degree burglary, and first-degree assault

PLS

and battery but acquitted him of armed robbery. Judge Hocker sentenced Applicant to concurrent terms of twenty-two years each for kidnapping and burglary, and ten years for assault and battery.

Applicant filed a direct appeal, which was perfected by Susan Barber Hackett. On April 17, 2019, the Court of Appeals dismissed his appeal pursuant to Anders. The remittitur was sent May 3, 2019.

Summary of Trial Testimony

At trial, Victim testified she returned home and parked her Cadillac next to her truck; as she was moving items from her Cadillac to her truck, someone “lunge[d] up out of . . . the seat of the car,” hit her in the chest, and kicked her. (Tr. 159). The assailant drug her inside her house, tied her hands and feet with a telephone cord, and demanded money. (Tr. 159-70). He then put a pillowcase over her head, drug her to the backseat of her truck, and drove to the ATM, where he demanded her pin-number. (Tr. 170-71, 174-77). After returning Victim to her home, the assailant put duct tape around her hands and feet and left with her televisions and her Cadillac. (Tr. 177-84). Although Victim could not see the assailant’s face because he was wearing a mask, she noticed he had dreadlocks and believed he was someone she had seen in her neighborhood. (Tr. 191-94). She testified the assailant knew details about her such as the fact her husband was deceased and she cared for her elderly mother. (Tr. 191-92). After the assailant left, Victim ran to her neighbor’s home and they called 911. (Tr. 186, 259-61).

Law enforcement entered Victim’s description of the assailant into Law Track, and Applicant’s name “popped up” as living in the same neighborhood and matching the description provided by Victim. (Tr. 299-300). Police later arrested Applicant and recovered his girlfriend’s phone from his pocket; the GPS data on the phone showed it was in the general vicinity of Victim’s home at the time of the home invasion, Victim’s ATM machine at the time her ATM card was used, and the lumber yard where her Cadillac was subsequently recovered. (Tr. 301-02, 322, 325-28, 333-35, 341, 384, 412-13, 434-35). Victim later listened to a recording of Applicant’s voice and identified him as the assailant based on his voice. (Tr. 345-46).

Current Application

Applicant timely commenced this PCR application on July 22, 2019, asserting trial counsel was ineffective for failing to prepare Applicant’s case, and appellate counsel was ineffective for

submitting an Anders brief. Applicant also raised due process violations related to the jury charge.

Prior to the hearing, Applicant filed an amended application asserting trial counsel was ineffective for the following:

- a. While trial counsel objected to information being presented to the jury that Applicant was on probation (ROA pg. 123 ln. 21-124 ln. 8); testimony that the Applicant was on probation was not objected to in the ROA pg. 385 ln. 20-21.
- b. Trial counsel did not object to the foundation for the hospital and phone records.
- c. No objections from trial counsel to hearsay from Kathy Tapia ROA pg. 259 ln. 13 – pg. 260 ln. 15); Deputy Michael Claytor ROA pg. 298, ln. 5 – pg. 299 ln. 16); and Ryan Dickert ROA pg. 316 ln. 21 – pg. 317 ln. 22).
- d. Gives in to 911 call coming in, ROA pg. 269 ln. 21-25.
- e. Failed to object to a ‘voice lineup’ that only included one person’s voice as unduly suggestive. See ROA pg. 63 ln. 25 – pg. 66 ln. 5; pg. 196 ln. 23-pg. 198 ln. 9; pg. 345 ln. 6 – pg. 246 ln. 8.
- f. Did not object to references to “Law Track through the trial, particularly ROA pgs. 322 & 377.
- g. Failed to object to the state’s closing mentioning victim impact evidence (ROA pg. 652 & 662) as well as the State’s Golden Rule violation in closing (ROA pg. 655).

At the hearing, Applicant proceeded on the allegations in the amended application. Before this Court are the records of the Newberry County Clerk of Court regarding the underlying convictions, the trial transcript, the records from Applicant’s direct appeal, and Applicant’s records from the Department of Corrections.

Testimony Presented at the Evidentiary Hearing

During the PCR hearing, Applicant testified trial counsel was appointed when Applicant was first arrested, but counsel did not meet with him until two weeks before trial. Applicant

acknowledged they reviewed discovery, and the information presented at trial was consistent with the discovery they reviewed. When asked about defenses, Applicant responded that trial counsel wanted him to plead guilty, but Applicant didn't want to plead because he didn't do anything. He averred his trial was based on the voice identification and cell phone GPS locations.

Trial counsel testified he was appointed in October 2016; he recalled Applicant was not very talkative at first and did not engage in conversations until a month or two before trial. Trial counsel did not recall if he moved to suppress the phone records; however, he testified law enforcement can use cell phone records to track an individual and recalled a SLED expert testified about the cell phone records and the phone records were certified. Trial counsel stated the phone belonged to Applicant's girlfriend rather than Applicant, but he would have raised a 4th Amendment argument anyway if he believed the phone had been illegally searched.¹

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the

¹ Other portions of the PCR testimony are included where relevant below.

adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625.

Failed to object to testimony regarding probation

Applicant asserts trial counsel was ineffective for failing to object to a reference that he was on probation during Captain Robert Dennis’s trial testimony. This Court finds Applicant has failed to prove counsel was ineffective in this regard.

During direct examination, Captain Dennis testified law enforcement learned that Applicant used a 404-phone number that belonged to his girlfriend. (Tr. 383-84). According to Captain Dennis, SLED plotted the GPS coordinates of the phone and learned it was in the general vicinity of Victim’s home at the time of the home invasion, Victim’s ATM machine at the time her ATM card was used, and the lumber yard where Victim’s Cadillac was subsequently recovered. (Tr. 384-85). The solicitor then asked, “And armed with that information on September 23rd, what did you do?” (Tr. 385). Captain Dennis explained SLED tracked the location of the

phone while law enforcement attempted to locate Applicant; law enforcement ultimately found Applicant walking with his girlfriend near the probation office and arrested him. (Tr. 385-86).

At the PCR hearing, trial counsel recalled raising the issue of probation pretrial. Trial counsel further testified that objecting sometimes does more damage than good.

This Court finds Applicant did not prove trial counsel was deficient for not objecting to the passing mention of probation during Captain Dennis's testimony. Initially, trial counsel *did* successfully object to information about Applicant's probation being entered into evidence. (Tr. 123-24). Further, this Court finds counsel articulated a valid reason for not objecting to the passing reference of the probation office here in that an objection may have caused more damage than good. During Captain Dennis's direct examination, nothing about the question posed by the solicitor—"And armed with that information on September 23rd, what did you do?"—would have alerted trial counsel that Captain Dennis was about to mention the probation office. Once Captain Dennis unexpectedly mentioned that Applicant was near the probation office, trial counsel's only remedy was to move to strike the testimony—which would have further highlighted the testimony to the jury—or to move for a mistrial—which this Court finds would likely *not* have been granted. Due to the unexpected nature of this testimony and the fact an objection may have highlighted the testimony to the jury, this Court finds trial counsel's failure to object did not fall below prevailing professional norms, and Applicant failed to prove deficiency. See Strickland, 466 U.S. at 589 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.").

Further, Applicant did not prove prejudice. Captain Dennis did not testify Applicant was on probation; he merely testified law enforcement found Applicant walking with his girlfriend near

the probation office. Even if the jury concluded from this passing statement that Applicant was on probation, this Court finds it is not reasonably likely this affected the outcome of the trial. Notably, the State's evidence against Applicant included the GPS data from his girlfriend's phone showing it was in the area of Victim's home near the time of the home invasion; the area of Victim's ATM machine near the time it was used; and the area where Victim's Cadillac was subsequently recovered. When confronted with the fact his girlfriend's phone was in the area of Victim's ATM machine, Applicant initially stated he was getting his girlfriend Chinese food in that area. However, when police indicated they could check surveillance cameras to verify his story, Applicant changed his story and indicated he never went inside to purchase food. (Tr. 336). Finally, Victim identified Applicant's voice from a recording. Based on the evidence presented by the State, it is not reasonably likely the outcome would have been different had trial counsel objected to Captain Dennis's brief mention that Applicant was walking near the probation office when he was arrested. Thus, Applicant has not shown prejudice.

*Failed to object to lack of foundation
for hospital and phone records*

Next, Applicant avers counsel was ineffective for not objecting to the lack of foundation for Victim's hospital records and Applicant's girlfriend's phone records. This Court finds Applicant has failed to prove counsel was ineffective in this regard.

First, this Court finds Applicant failed to prove counsel was ineffective for failing to object to the foundation of Victim's hospital records.² Trial counsel explained the hospital records were not material to the primary issue before the jury, which was whether Applicant was the person who assaulted and kidnapped Victim. This Court finds counsel articulated a valid reason for not

² At trial, the State submitted an affidavit from a records custodian at the hospital, and counsel indicated he did not plan to object to foundation. (Tr. 122).

objecting to the lack of foundation for the hospital records and thus was not deficient in this regard. Likewise, Applicant has failed to prove prejudice. At the PCR hearing, Applicant did not attempt to enter the hospital records into evidence, leaving this Court to merely speculate about the records themselves and whether the outcome would have been different had counsel objected to the foundation of the records. Cf. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). This Court thus finds Applicant failed to prove counsel was ineffective in this regard.

Likewise, Applicant failed to prove counsel was ineffective for failing to object to the foundation of the cell phone records. At trial, the State submitted an affidavit from an AT&T records custodian for the phone records; trial counsel explained he did not intend to object to the foundation. At the PCR hearing, Applicant failed to set forth a valid, viable challenge to the foundation or to otherwise show that the information in the affidavit (and what the witness would have been available to testify to) was insufficient to establish the low threshold for authenticity. See State v. Hall, 437 S.C. 107, 117, 876 S.E.2d 328, 333-34 (Ct. App. 2022) (“The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic.”). Had the affidavit itself been insufficient to establish foundation, for example, Applicant could have introduced the affidavit into evidence at the PCR hearing to show this Court what argument counsel could have raised. Although it was the State’s burden at trial to establish the foundation for the records, it was Applicant’s burden at the PCR hearing to overcome the presumption that counsel rendered effective assistance. See Strickland, 466 U.S. at 689 (“[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances,

the challenged action might be considered sound trial strategy.”). Applicant has offered no viable argument to support any challenge to the foundation of the cell phone records and has failed to overcome the presumption that counsel was effective. Thus, Applicant has not shown deficiency.

Likewise, in the absence of something more, this Court is left to speculate about what argument counsel could have raised to challenge the foundation of the phone records, especially when the threshold for establishing foundation is so low. Again, it is Applicant’s burden to prove his case. Applicant did not show reasonable likelihood exists that the outcome would have been different had counsel challenged the foundation for these records and thus did not prove prejudice.

Failed to object to hearsay testimony

In his amended application, Applicant highlighted three instances of alleged hearsay that he believed counsel should have objected to. First, during the testimony of Victim’s neighbor Kathy Tapia, Applicant averred counsel should have objected to the following:

Q: And what is [Victim] saying at this point?

A: That she had been kidnapped and drove around Newberry for quite a while and they had took her TVs and ATM card and went and got money out of her account and that he had really pulled o her. She went for a struggle with him. I mean, even some of her hair was missing in her head.

Q: Did she identify this perpetrator to you?

A: Well, me and her did sit there and talk, because I tried to calm her down. And I asked her did she know him and she said, it seemed like the young fellow that was walking the street. Because, I’m outside all the time. So I see people walking the street. . . . I know a lot of people on our road. . . . And so I told her, I asked her, I said, do you know who did this. And she said, I think it was the young boy that me and you just seen the other day with the dreadlocks. He had long dreadlocks and about this far going down those dreadlocks all around his head is like a blonde, but it’s not a blond like would be in my hair. It’s just a light darker blond like. And I said, do you think it’s the young fellow then. And she said, yes. She said but I can’t swear to it. I can’t swear to it And I’m like, okay. That’s all

I'm asking. I'm not going to keep on, because she wasn't herself. She couldn't tell me from one minute to the next really. I mean, she was to pieces.

(Tr. 259-60). Next, Applicant asserted counsel should have objected to the following during

Deputy Michael Claytor's testimony:

Q: What physical description [of the perpetrator] did you get from [Victim]?

A: The actual physical description was she told me he was about five-six or shorter with dreadlocks, a black male with a white plastic mask over his face is what she told me. During the interview, she also gave me a couple of other indicators of ways that we may could find the identity of him. She told me that she, I asked her who he, who he was and if she knew him. She actually said, you know, I think he lives right down the street. And I said, okay, but what makes you think this. And she said, she says, well, he knew my routine. You know, he knew that I was going to go to that truck, get in that truck to go to church on Wednesday, because I do every Wednesday about the same time. She also said another thing that made her think that, you know, he was from the neighborhood and that she knew him, was he told her that he was not going to hurt her. I'll actually read her exact words He says, I'm not going to hurt you because I know your mother is a hundred years old and you have to take care of her. And then he stated to her that his mother gave him away. While I was there at the house, I also learned that the guy that they were thinking who it was, which ended up being [Petitioner], was possibly adopted. I learned that while I was there at the house as well.

Q: Okay. So part of his identity was she thought he was somebody that lived in the neighborhood—

A: Yes, sir.

Q: —and also made statements. The perpetrator made statements to [Victim] that indicated a familiarity with her?

A: Yes, sir.

(Tr. 298-99). Finally, Applicant asserted counsel should have objected to the following during

Investigator Ryan Dickert's testimony:

[Victim] gave me the story, which is very similar to what you've heard, that she had been with her mother all day Come back home and was getting ready for church. Got out of her vehicle, which is a Cadillac, walked around. There is a ramp. I believe you've seen the photograph of that. Walked around the ramp to the back of the house and was attempting to put the items inside the passenger or the rear-driver's side door, she opened the door. At that point in time, a male or a subject appeared and startled her and she was kicked, struck in the chest and she fell back against the railing of the ramp that leads to the back porch. She attempted to start screaming. She said the subject got out of the truck, grabbed her by the mouth area. Indicated that she knew he had on gray leather gloves, which she thought were like a driving-type glove just due to the glove being in her mouth. She said a struggle was ensued outside. That she was drug to the back porch area, she was held down, he took her keys, opened up the house, took her inside. Once inside, she kind of broke free from him, ran towards, I guess, the front of the house, which would be the living room area. He ended up tripped her or somehow or another knocking her down or she may have fallen down, but she knew she fell down and, she was fighting for her life. That's what she indicated. She was fighting for her life. She was in fear of her life.

(Tr. 316-17). This Court finds Applicant failed to prove counsel ineffective in this regard.

Initially, this Court finds trial counsel articulated a valid reason for not objecting to the foregoing testimony and thus was not deficient. When questioned about why he did not object, trial counsel stated he did not consider all of it hearsay. He further averred the "hearsay" testimony about Victim identifying the assailant was cumulative and did not help the State establish the assailant's identity. He explained a description of "a young black guy with dreads" was not meaningful because there were a lot of African-American guys with dreads in Newberry County. This Court finds the foregoing testimony is credible and constitutes a valid reason for not objecting.

Further, this Court finds the testimony fit the excited utterance exception to the general rule prohibiting hearsay. See Rule 803(2) (providing "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the hearsay rule). All three witnesses testified to statements made

by Victim immediately after her abduction and kidnapping, which was undoubtedly a startling event. Further, the testimony indicates Victim was still under the stress of excitement caused by the kidnapping when she made these statements. For example, Tapia testified Victim was “beating on [Tapia’s] front door” and “was whiter than white” and “to pieces.” (Tr. 258). Tapia further testified Victim “still had duct tape, still had some electric tape on her” and “wasn’t herself at all.” (Tr. 258). Tapia stated she “tried to calm her down” but Victim “wasn’t herself,” “couldn’t tell me from one minute to the next really,” and “was to pieces.” (Tr. 259-60). Deputy Claytor testified Victim was “really upset” and it “took [him] a second to get her calmed down a little bit to let her know everything is okay.” (Tr. 295). Likewise, Investigator Dickert stated Victim was “kind of slumped on the couch” when he arrived and “[a]ppeared to be very distraught, in pain.” (Tr. 316). He stated he assisted in removing the duct tape from her. (Tr. 316). Investigator Dickert testified Victim “was fighting for her life” and “was in fear of her life” during the attack. (Tr. 317). Because these statements fit the excited utterance exception, counsel was not deficient in not objecting. Further, and for the same reason, Applicant has failed to prove prejudice from counsel’s failure to object to this testimony based on hearsay. This claim is thus denied.

“Gives in” to 911 call coming in

In his application, Applicant asserts trial counsel “gives in” to the 911 call coming in to evidence. At the PCR hearing, trial counsel testified he objected to the 911 call, but the trial court disagreed with him and allowed the call into evidence. Trial counsel averred the 911 call was ultimately cumulative and not material.

This Court finds Applicant has failed to show trial counsel was ineffective in this regard. First, as trial counsel testified, trial counsel *did* challenge the admissibility of the 911 call both prior to trial and when the State moved to enter it into evidence. (Tr. 123, 263-71). Counsel argued

the call was hearsay, not relevant, and unfairly prejudicial pursuant to Rule 403, SCRE. (Tr. 263-71). After sending the jury out, the Court listened to the call and overruled counsel's objections. (Tr. 263-71). This Court finds counsel's objection to the 911 call did not fall below prevailing professional norms; thus, Applicant has not shown deficiency.

Likewise, Applicant has not shown prejudice. Specifically, it is Applicant's burden to prove his allegations. Applicant has not set forth an objection or argument counsel should have raised that would make it reasonably likely the outcome would have been different. Likewise, Applicant did not enter the 911 call into evidence at this PCR hearing, leaving this Court to speculate about how prejudicial the call actually was. Thus, Applicant has not shown prejudice.

Failed to object to voice lineup as unduly suggestive

At the PCR hearing, Applicant averred counsel was ineffective for not objecting to the voice lineup, which had only one voice. Trial counsel, however, recalled raising that issue pretrial. He stated he disagreed with the trial court's finding that the voice identification did not raise a Neil v. Biggers issue. This Court finds Applicant has failed to prove counsel was ineffective.

"In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification." State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012). "Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Id.

Here, counsel raised this issue pre-trial during a Neil v. Biggers hearing, but the trial court disagreed with him that the voice identification raised a Neil v. Biggers issue. This Court finds counsel's objection in this regard was within prevailing professional norms and was not deficient.

Further, at the PCR hearing, Applicant did not set forth what additional argument counsel should have raised. Thus, Applicant did not prove deficiency. See Strickland, 466 U.S. at 689 (“[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.”). Likewise, Applicant did not set forth any argument that would have made it reasonably likely the outcome would have been different and thus did not prove prejudice.

~~Failed~~ to object to references to “Law Track”

In his application, Applicant asserted counsel was ineffective for not objecting to references to Law Base throughout trial. At trial, Captain Dennis, Lieutenant Claytor, and Investigator Dickert all testified law enforcement entered Victim's description of the assailant into Law Track, and Applicant's name “popped up” as living in the same neighborhood and matching the description provided by Victim. (Tr. 299-300, 321-22, 377). At the PCR hearing, trial counsel explained Law Track is a program used by law enforcement that has information about individual's addresses and other information. He explained it is not limited to criminal arrests; rather, it is a more broad database.

This Court finds Applicant did not prove counsel was ineffective in this regard. First, this Court finds the references to Law Base were made in passing, and counsel's failure to object to these passing references did not fall below prevailing professional norms. Thus Court further finds Applicant did not articulate what argument counsel should have raised and thus did not meet his burden of proving deficiency. See Strickland, 466 U.S. at 689 (“[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances,

the challenged action might be considered sound trial strategy.”). Finally, Applicant did not set forth any argument counsel could have raised and thus failed to prove a reasonable likelihood exists that the outcome would have been different had counsel objected. Thus, this allegation is denied.

*Failed to object to victim impact evidence and
Golden Rule violation during closing argument*

In his application, Applicant asserted counsel was ineffective for not objecting to the victim impact evidence and Golden Rule arguments during the State’s closing argument. Trial counsel explained he would object during an opening statement and closing argument if it became objectionable, but he believed the State’s closing argument was a fair inference of the facts and was not inflammatory or objectionable.

“A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.” Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009). “The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Id. “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Id. at 516, 680 S.E.2d at 915. “The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

This Court finds Applicant has failed to prove counsel was ineffective in this regard. First, counsel articulated a valid reason for not objecting in that he believed the closing argument was a fair inference of the facts and not inflammatory or objectionable. Applicant did not meet his burden in overcoming the presumption that counsel rendered effective assistance. Although

Applicant cited to three pages in the thirty pages of the State's closing argument, he did not indicate with specificity *which* statements he believed were inflammatory or objectionable. Thus, Applicant did not meet his burden of proving counsel was deficient.

Further, Applicant failed to prove prejudice. This Court finds, upon reviewing the State's closing argument as a whole, that any statements on the three pages listed in Applicant's amended applicant did not so infect Applicant's trial with unfairness as to make the resulting conviction a denial of due process. This Court notes the State's closing spanned thirty pages of the transcript; Applicant only cited to three pages in the first third of the closing argument to support his argument that the State made improper arguments. Viewed as a whole, nothing in these three pages so infected Applicant's trial with unfairness as to make the resulting conviction a denial of due process. Further, this Court finds it is not reasonably likely the outcome would have been different had counsel objected to these statements. Here, the State submitted compelling evidence of Applicant's guilt, which included the GPS data from his girlfriend's phone showing it was in the area of Victim's home near the time of the home invasion; the area of Victim's ATM machine near the time it was used; and the area where Victim's Cadillac was subsequently recovered. Overall, this Court finds Applicant did not prove any resulting prejudice from counsel's failure to object to the States' closing argument; thus, this claim is denied.

Conclusion

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

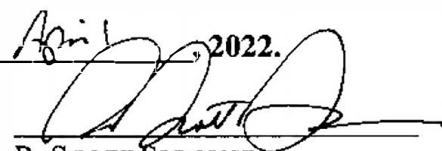
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203,

SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 4 day of April, 2022.


 R. SCOTT SPROUSE
 Presiding Judge
 Eighth Judicial Circuit

Wallula, South Carolina

WITNESSES

Ryan Dickert
Newberry County Sheriff

WARRANT NUMBER

2016A3610100440

TRUE BILL

M. Koon

Foreman of the Grand Jury

Date: *12/5/16*

VERDICT

Guilty

[Signature]

Foreman

5/16/17

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

December Term, 2016

Indictment # 2016GS36-00706

THE STATE

vs.

Anthony Maurice A Wise

INDICTMENT FOR

Kidnapping

§16-03-0910

CDR: 0095

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF NEWBERRY****Kidnapping
§16-03-0910**

At a Court of General Sessions, convened on the 5th day of December, 2016, the Grand Jurors of Newberry County present upon their oath:

That Anthony Maurice A Wise did, on or about September 21, 2016, in Newberry County, willfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct or carry away without authority of law, in violation of Section 16-3-910 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 cases made and provided.



Assistant Solicitor

WITNESSES

Ryan Dickert
Newberry County Sheriff

WARRANT NUMBER

2017D3600100003

TRUE BILL

MPK/UM

Date: *5/12/17* Foreman of the Grand Jury

VERDICT

Guilty

W. C.
Foreman

5/18/17

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

May Term, 2017

Indictment # 2017-GS-36-06201

THE STATE

vs.

Anthony Maurice A Wise

INDICTMENT FOR

Assault / Assault & Battery, 1st degree

§16-03-0600

CDR: 3412

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR**Assault / Assault & Battery, 1st degree
§16-03-0600**

At a Court of General Sessions, convened on the 12th day of May, 2017, the Grand Jurors of Newberry County present upon their oath:

That Anthony Maurice A Wise did, on or about September 21, 2016, in Newberry County, willfully and unlawfully injure another person, and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, or did offer or attempt to injure another person with the present ability to do so and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, to wit; the victim being one Benzena Wicker, in violation of the provisions of Section 16-3-600(C)(1) 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 cases made and provided.



Assistant Solicitor

WITNESSES

Ryan Dickert
Newberry County Sheriff

WARRANT NUMBER

2016A3610100443

TRUE BILL

MPKoon

Date: *12/5/16* Foreman of the Grand Jury

VERDICT

Guilty

[Signature]
Foreman

5/18/17

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

December Term, 2016

Indictment # 2016CS36-00709

THE STATE

vs.

Anthony Maurice A Wise

INDICTMENT FOR

BURGLARY- FIRST DEGREE

§16-11-0311

CDR: 0079

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****BURGLARY- FIRST DEGREE
§16-11-0311**

At a Court of General Sessions, convened on the 5th day of December, 2016, the Grand Jurors of Newberry County present upon their oath:

That Anthony Maurice A Wise did, on or about September 21, 2016, in Newberry County, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight there from, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by _____, in violation of Section 16-11-311 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 cases made and provided.



Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
STATE VS.
Anthony Maurice A Wise

AKA: _____
Race: AFRICAN AME Sex: M Age: 24
DOB: _____ SS#: _____

Address: _____
City, State, Zip: Newberry, SC
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

INDICTMENT/CASE#: 2016GS36-00A/W#: 2016A3610100440Date of Offense: 9/24/2016S.C. Code §: 16-03-0910CDR Code #: 0095**RECEIVED**

MAY 31 2017

SC Court of Appeal

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Daniel Taylor

Daniel, Taylor

SC Bar# 106588

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ Two; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16-65-36-709
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit 240 Days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$
§ 14-1-206 (Assessments 107.5 %) _____ \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Copy Holstad

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2167Sentence Date: 5/18/17

STATE OF SOUTH CAROLINA

✓ COUNTY OF Newberry
 STATE VS.
Anthony Maurice A Wise
 AKA: _____
 Race: AFRICAN AME Sex: M Age: 24
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Newberry, SC
 DL#: _____ SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault & Battery, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS36-00201
 A/W#: 2017D3600100003
 Date of Offense: 9/21/2016
 S.C. Code § : 1 03-0600
 CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 1 03-0600 of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 16-588
Daniel, Taylor SC Bar# _____ Defendant [Signature] Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16-65-36-709
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 240 Days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____
 § 14-1-206 (Assessments 107.5 %) _____ \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Beverly Brubaker
 Court Reporter: Gary Holston
 SCCA/217 (07/2016)

Presiding Judge [Signature]
 Judge Code: 2167
 Sentence Date: 5/18/17

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
STATE VS.
Anthony Maurice A Wise

AKA:

Race: AFRICAN AME Sex: M Age: 24DOB: SSA

Address:

City, State, Zip: Newberry, SCDL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary (After June 20, 1985) - First degreeINDICTMENT/CASE#: 2016GS36-00709A/W#: 2016A3610100443Date of Offense: 9/21/2016S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant'sThe plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daniel Taylor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ TWO; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 240 Days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date: