

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable D. Craig Brown, Circuit Court Judge

CHRISTOPHER KEITT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000441

APPENDIX

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	)	
County of Richland	)	2015-GS-40-04605
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STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	PARTIAL
	)	TRANSCRIPT OF RECORD
CHRISTOPHER KEITT,	)	
	)	
DEFENDANT,	)	

July 18, 19, 2016
Columbia, South Carolina

BEFORE:

THE HONORABLE KNOX MCMAHON, JUDGE.

APPEARANCES:

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Official Court Reporter

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(Exhibits 1 - 154 were premarked. Only those appearing below were referenced)

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Advice of rights	10	
2	Photo lineup	10	228
5	Depiction of area	172	172
154	Sketch	209	209
3	Photograph	214	214
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DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Medication form	107	
2	Nurse's record	118	

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Advice of Rights	5	
2	Photo lineup	5	

1 (WHEREUPON, Court's Exhibits Nos. 1, 2 were premarked
2 for identification only.)

3 THE COURT: All right. Is there anything from the
4 State before we take our luncheon recess, Solicitor?

5 MS. WALKER: Nothing, Your Honor.

6 THE COURT: Defense, Ms. Williams?

7 MS. WILLIAMS: I guess I'd just preserve my request
8 for the motion for attorney voir dire.

9 THE COURT: All right. Thank you. Thank you very
10 much. I will renew my previous trial ruling.

11 All right. 2:30. Court will be in recess until
12 2:30. Thank you. Thank you very much.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: All right. Solicitor, does the State
15 have any motions?

16 MS. WALKER: Your Honor, we do need to have a Denno
17 hearing and a Biggers hearing, as well.

18 THE COURT: And a what?

19 MS. WALKER: And a Biggers hearing, as well.

20 THE COURT: All right. Is that how you would like to
21 proceed, Ms. Williams, with Denno and Biggers?

22 MS. WILLIAMS: Your Honor, the Biggers, we'd ask to
23 do after everything else because the last witness that's
24 available tomorrow morning is part of that motion.

25 THE COURT: All right. So you want to start with

1 Jackson vs. Denno?

2 MS. WALKER: Yes, Your Honor.

3 THE COURT: All right. Solicitor, you may call your
4 first witness.

5 MS. WALKER: Your Honor, the State calls Investigator
6 Andrew Richburg.

7 THE COURT: Come around, be sworn, please.

8 ANDREW RICHBURG, after being duly
9 sworn, testified as follows:

10 THE CLERK: Thank you. Have a seat in the witness
11 stand, please. State your name for the record.

12 THE WITNESS: Andrew Richburg.

13 DIRECT EXAMINATION:

14 BY MS. WALKER:

15 Q Is it Investigator Richburg?

16 A Yes, ma'am.

17 Q Sir, can you tell me where you're currently employed?

18 A City of Columbia Police Department.

19 Q What is it that you do at CPD?

20 A I'm an investigator for North Region. The city is
21 broke up into five regions --

22 Q I'm sorry, I'm having a hard time understanding you.

23 A Investigator for North Region. The city is broke up
24 into five regions, and I'm -- and I get assigned cases
25 from that particular region, the north part of Columbia.

1 Q And the case that we are here for today, the State
2 vs. Christopher Keitt, did you become involved in that
3 investigation?

4 A Yes, ma'am.

5 Q Can you tell me how you became involved?

6 A My supervisor at the time, Sergeant McCracken,
7 assigned me the case and informed me of the incident and
8 dispatched me to the location.

9 Q And I guess that's -- part of your investigation, did
10 you develop a suspect in this case?

11 A Yes, ma'am.

12 Q And who was that?

13 A Christopher Keitt or Keitt.

14 Q K-E-I-T-T?

15 A Yes, ma'am.

16 Q Were you able at some point to actually make contact
17 with that individual?

18 A Yes, ma'am.

19 Q And where did you do so?

20 A He was apprehended by our fugitive team and brought
21 to Columbia Police headquarters.

22 Q And where, I guess, at CPD did you actually speak
23 with him?

24 A At Columbia headquarters, the investigations unit.

25 Q And is that -- describe the room that you're speaking

1 to him in?

2 A It's an interview room, three chairs, a table, and no
3 windows. It's just an enclosed private room.

4 Q And when you spoke to him, had you already obtained
5 warrants for his arrest?

6 A Yes, ma'am.

7 Q When you were speaking with him, did you advise
8 him -- before speaking to him, did you advise him of his
9 rights?

10 A Yes, ma'am.

11 Q I want to show you what's been marked as State's
12 Exhibit No. 1 and ask you if you recognize this?

13 A Yes, ma'am. That's an advice of rights form.

14 Q And can you read that form for the Judge, please?

15 A You want me to tell you how I presented it to the --

16 Q Well, read the form and then tell me how you
17 presented it.

18 A It's an Advice of Rights form. It has a place for a
19 location, date and time to be filled out. Then it goes
20 through one through seven steps, advisements. Number one
21 being, before we ask you any questions, you must
22 understand your rights. Number two being, you have the
23 right to remain silent. Number three being, anything you
24 say can be used against you in a court of law. Number
25 four, you have the right to talk to a lawyer for advice

1 before we ask you any questions and have him with you
2 during questioning. Number five, if you cannot afford a
3 lawyer, one will be appointed for you before questioning
4 if you wish. Number six, if you decide to answer
5 questions now without a lawyer present, you still have the
6 right to stop answering at any time. You also have the
7 right to stop answering at any time until you talk to a
8 lawyer.

9 Then number seven falls under waiver of rights. I
10 have read this statement of my rights and understand what
11 my rights are. I am willing to make a statement and
12 answer questions.

13 I do not want a lawyer at this time. I understand
14 and know what I am doing. No promises or threats have
15 been made against me, no pressure or coercion of any kind
16 has been used against me, and it's a place for him to sign
17 and print if he wants to speak and then two spots for
18 witnesses.

19 Q And did he, in fact, waive his rights?

20 A He did.

21 Q And how did you commemorate him waiving those rights?

22 A The way I presented it to him is his initials beside
23 each number, read each one individually. If he
24 understands, he initials beside them. And then after
25 reading the waiver of rights, if he wants to continue to

1 talk to us, get him to sign and print his name, which he
2 did. Then I witnessed it and another investigator.

3 Q And who was the other investigator?

4 A Hilton.

5 Q Investigator Hilton?

6 A Yes, ma'am.

7 Q Is that William Hilton?

8 A Yes, ma'am.

9 Q When you presented this advice of rights to the
10 Defendant, can you describe that process for the Judge?

11 A Show it to him and I read it to him as he follows
12 along.

13 (WHEREUPON, State's Exhibits Nos. 1, 2 were marked
14 for identification only.)

15 MS. WALKER: Your Honor, do you want to see a copy of
16 this?

17 THE COURT: Yes, ma'am. Have you had it marked?

18 MS. WILLIAMS: Yes, sir. It's been marked as State's
19 Exhibit No. 1.

20 THE COURT: All right.

21 BY MS. WALKER:

22 Q And when you were advising him of his rights, did he
23 appear to understand what you were saying?

24 A Yes, ma'am.

25 Q Did he appear to be under the influence of drugs and

1 alcohol?

2 A Not that I could tell.

3 Q Did you threaten him in any way to get him to talk to
4 you?

5 A No, ma'am.

6 Q Did you deprive him of creature comforts to get him
7 to talk to you?

8 A No, ma'am.

9 Q If he wanted to go to the bathroom, would you have
10 allowed him to go to the bathroom?

11 A Yes, ma'am.

12 Q Did he ever make any request of you during the
13 interview?

14 A He wanted to see his wife.

15 Q And did you allow him to do so?

16 A More than once, yes, ma'am.

17 Q Do you remember what time this interview took place?

18 A It's actually on the form.

19 Q Okay. I'm sorry. I'll get it back for you.

20 A I think it was three something, 15.

21 Q And in terms of -- was this a written statement? How
22 was this statement memorialized?

23 A Verbal.

24 Q It was a verbal statement?

25 A Yes, ma'am.

1 Q Was it recorded?

2 A Yes, ma'am.

3 MS. WALKER: Beg the Court's indulgence?

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MS. WALKER: Your Honor, I don't have any further
7 questions at this time.

8 THE COURT: Thank you, Solicitor.

9 Ms. Williams, Ms. Pinnock.

10 MS. PINNOCK: Thank you, Your Honor, just briefly.
11 May it please the Court.

12 CROSS-EXAMINATION:

13 BY MS. PINNOCK:

14 Q Investigator Richburg, when you said that you went
15 through the advice of rights with Mr. Keitt, you said you
16 read it to him?

17 A Right.

18 Q And then did you testify that after you finished
19 reading them, you told him to go back and read them for
20 himself and if he understood to initial?

21 A No, he has them in front of him. He follows along as
22 I read.

23 Q Okay. As you're reading, you have him initial?

24 A Yes, ma'am.

25 MS. PINNOCK: That's the only question I have. Thank

1 you.

2 THE COURT: Redirect, Solicitor?

3 MS. WALKER: No, Your Honor.

4 THE COURT: Thank you, Investigator Richburg. You
5 may step down.

6 THE WITNESS: Thank you, sir.

7 THE COURT: All right. Solicitor, you may call your
8 next witness.

9 MS. WALKER: Your Honor, our next witness is
10 Investigator Hilton, who was also present for the advice
11 of rights. He is on his way.

12 THE COURT: All right.

13 MS. WALKER: If we can move on to another pretrial
14 motion and maybe come back to him. He should be here
15 within the next five minutes, Judge.

16 THE COURT: All right. Ms. Williams, are there other
17 matters we can take up while we wait the arrival of
18 Investigator Hilton?

19 MS. WILLIAMS: Certainly, Your Honor. Number one on
20 defense pretrial motions, we'd just like to go ahead and
21 renew our Rule 5 and Brady versus Maryland motion as well
22 as Riddle V. Ozmint. We provided those to the State.
23 Just if there's been any new information provided to them,
24 we just renew that at this time.

25 THE COURT: All right. Solicitor.

1 MS. WALKER: Yes, Your Honor. I think we were in
2 contact last week with things that came up during trial
3 of -- no witness has changed their statements, but there
4 were some additions made in terms of one of the witnesses
5 saying that some stuff found in the apartment where the
6 defendant was located before his arrest did not belong to
7 her. I shared that with defense counsel.

8 I also shared the conversation that I had with the
9 victim in this case, Martin Sims, with defense counsel. I
10 think we did that both orally and via email. Other than
11 that, Your Honor, Brady and Riddle and Rule 5 have all
12 been complied with.

13 THE COURT: All right. Ms. Williams.

14 MS. WILLIAMS: That's my understanding. Those were
15 the only things. We did get those.

16 THE COURT: All right. Motion two?

17 MS. WILLIAMS: Motion two, we asked to exclude any
18 reference of interactions with law enforcement for
19 Mr. Keitt under 404(b) and Lyle.

20 My understanding is Investigator Hilton at some point
21 said -- has had some relationship with Mr. Keitt's family.
22 I believe also Investigator Valerie Moore, who potentially
23 will be testifying, is aware of the family from previous
24 calls to the family home, things like that. So we'd ask
25 that any mention of those things be excluded.

1 THE COURT: Solicitor?

2 MS. WALKER: Your Honor, Investigator Hilton knew
3 this Defendant because he was a school resource officer
4 where he went to school, so it wasn't a prior bad act
5 situation. He was just a resource officer. I think it
6 was C.A. Johnson, Your Honor.

7 In terms of Investigator Moore's testimony, she was
8 familiar with the family, but I don't think any prior bad
9 act testimony will come in other than for her to say that
10 she was familiar with the Keitt family.

11 THE COURT: All right. Well, I believe under 404(b),
12 the school resource officer and the fact that an officer
13 is familiar with a family is admissible.

14 MS. WILLIAMS: Your Honor, I'd just ask that in their
15 testimony it be made clear that how he knows Mr. Keitt is
16 because he was the school resource officer. I think
17 generally it can be an assumption or an illusion for
18 people that if law enforcement is really familiar with
19 this family or something along those lines that that
20 indicates an inference that he's been arrested or
21 something like that, which is not the case for Mr. Keitt.

22 THE COURT: All right. Solicitor?

23 MS. WALKER: When Investigator Hilton testifies, Your
24 Honor, I will make sure the jury understands he was a
25 school resource officer and that's how he knew this

1 Defendant.

2 Investigator Moore, on the other hand, knows the
3 family because she is familiar with the Keitt family
4 through the course of her law enforcement experience. But
5 I won't go into any of that.

6 The only reason it becomes relevant is because in
7 terms of talking with certain members of the family, she
8 was brought in to talk to certain members of the family
9 because she knows the family. But I won't go into the
10 specifics of how she knows them other than she was
11 familiar with the family.

12 THE COURT: All right. Well, Ms. Williams, of
13 course, a motion in limine is just that. Under State v.
14 Taylor, motion in limine, during the course of the
15 examination by Madam Solicitor of Officer Hilton or
16 Officer Moore, I can't understand when the solicitor says
17 what she is going into.

18 MS. WILLIAMS: Thank you, Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. WILLIAMS: We've already dealt with three. Your
21 Honor, motion five is motion to exclude hospital
22 photographs that the State provided of the victim at the
23 hospital.

24 None of the charges in this case actually even
25 require an injury in this case. And it's my understanding

1 that they have a doctor to talk about the injury, the
2 victim to talk about the injury. We're not contesting
3 that this man was shot in his home. So that purpose would
4 only be there to inflame the passions of the jury for this
5 gentleman as he was in the hospital.

6 THE COURT: All right. Solicitor?

7 MS. WALKER: Your Honor, at this point in time,
8 absent them opening the door, I do not intend on offering
9 pictures of the victim in the hospital.

10 THE COURT: All right. Thank you.

11 MS. WILLIAMS: Your Honor, motion six is -- we ask to
12 exclude any testimony regarding a fugitive team or hiding.
13 It is my understanding that once these warrants were
14 issued on May 15th, 2015, U.S. Marshals were part of it.
15 They understood that Mr. Keitt was at a friend's home.
16 They went there. When he came out, he didn't resist.
17 There wasn't any indication of that. He came willingly
18 with them.

19 I believe that it would give an improper inference to
20 the jury that he was fleeing or on the run or something
21 along those effects. There hasn't been anything provided
22 to us in discovery that would indicate that he was aware
23 of those until the time that they were knocking on the
24 door.

25 THE COURT: All right. Solicitor?

1 MS. WALKER: Your Honor, the warrants were taken out
2 on May 13th. He is found in the apartment of a friend's
3 girlfriend on May 15th. During that period of time, law
4 enforcement officers are looking for him, going through
5 different areas that he's known to visit to try to find
6 him. The fugitive team became involved in that process.
7 I don't know what term they would like us to use for the
8 officers who were looking for him.

9 MS. WILLIAMS: We'd ask just the warrant division or
10 law enforcement, you know, arrived to serve the warrants
11 on him. I'm not contesting that he had warrants, just
12 fugitive teams seems to indicate something a little more
13 dramatic.

14 THE COURT: All right. Solicitor?

15 MS. WALKER: Your Honor, they are the fugitive team.
16 That is the name of the individuals looking for him. I
17 don't know that we need to mislead the jury about who was
18 out there looking for him. I don't know what prejudice
19 comes about calling the law enforcement officers what they
20 are.

21 MS. WILLIAMS: And, Your Honor, I think the names
22 that law enforcement chooses to title themselves is their
23 own choice. I do believe that it's an inflammatory term.
24 And it could easily be said that law enforcement with the
25 Columbia Police Department, whatever they want to do, went

1 to go serve these warrants.

2 I don't think this needs to be something that looks
3 like it's that because of the fact that we have not gotten
4 any indication that Mr. Keitt knew about the warrants
5 until they came knocking on the door.

6 THE COURT: I think it's tempest to the teapot. I'm
7 going to allow you to use the term of whatever division
8 the officers were involved.

9 MS. WALKER: I'm sorry, Your Honor?

10 THE COURT: I'll allow you to use the term of
11 whatever division the officers worked for.

12 Now, you've got a dual approach, Ms. Williams.
13 You're also saying there's no evidence of flight?

14 MS. WILLIAMS: Yes, Your Honor. I think one of the
15 officers construes that as he was hiding from what we can
16 tell from the information. They knocked on the door and
17 when he answered it, he came out.

18 THE COURT: When he answered it what?

19 MS. WILLIAMS: He answered the door. I think they
20 had -- I think he was asleep and didn't realize what was
21 going on, but he came and he answered the door and came
22 out.

23 THE COURT: Well, I think the officer can testify --
24 Go ahead, Solicitor.

25 MS. WALKER: Your Honor, I think the testimony from

1 Investigator Hilton, what I shared with them last week, is
2 that there were multiple agencies out there knocking on
3 the door trying to get him to answer the door. Once he
4 finally does -- once they gain entry, they see him. And
5 he says to Investigator Hilton, the school resource
6 officer, If I would have known it was you out there, I
7 would have come out.

8 So I think that there is an inference that could be
9 drawn that he knew people were outside trying to get him
10 to answer the door and that he failed to do so.

11 Now, if that inference is he was scared and he didn't
12 know what was going on, that's certainly fine for
13 cross-examination. But I don't think it's something that
14 needs to be kept from the jury.

15 THE COURT: Well, that's kind of inconsistent with
16 flight. He said, If I knew it was you out there, I would
17 come out.

18 MS. WALKER: I think he said -- he's saying to the
19 investigator that he knows -- I knew there were cops out
20 there because he says to -- on his statement, Who are all
21 those people out there? There's a bunch of cops out
22 there. Y'all don't do this for normal stuff, what's going
23 on? That's what he says in the statement. But the first
24 thing he says to law enforcement once he sees Investigator
25 Hilton, who he knows is -- Oh, if I would have known it

1 was you, I would have come out. Like you, specifically.
2 So I'm not -- I think that's something that either side
3 can argue, but I don't know that it's something that
4 should be kept from the jury. I think it can be argued
5 another way.

6 MS. WILLIAMS: And, Your Honor, the sole statement we
7 were given was, Oh, if I had known it was you, I would
8 have come out. I don't think there can be -- it's a
9 negative assumption to presume that he was thinking that
10 this was law enforcement. His statement is done
11 afterwards when he's taken out and he sees all law
12 enforcement there. So he asked a number of questions in
13 his statement about what was going on, that being one of
14 them.

15 THE COURT: Well, I think the inference is that he
16 says well, if I had known it was Investigator Hilton, he
17 would have come out. And since he didn't, I think he was
18 hiding from law enforcement. I mean, I think that's the
19 inference to be drawn.

20 MS. WALKER: That's certainly what I'll be arguing,
21 Your Honor.

22 MS. WILLIAMS: Your Honor, I'll be arguing that he
23 would be -- I believe that that is an unfair inference for
24 the jury to make there and misleading because him saying,
25 Oh, if I had known it was you, I would have come out,

1 there's no kind of flight there.

2 In fact, they were knocking on the door. This wasn't
3 his home. And depending on whether they were yelling and
4 where he was in the home, there's nothing to indicate that
5 he knew what was going on and was scared of what was
6 happening. This wasn't his home.

7 THE COURT: Under State vs. Brown and Commonwealth
8 vs. Jones and State vs. Beckham, State vs. Turner, it is
9 sufficient that circumstances justify an inference that
10 accused's actions were motivated as result of his belief
11 that officers were aware of his wrongdoing and seize him
12 for that purpose.

13 Flight or evading an arrest is a circumstance to go
14 to the jury. So if he doesn't make that statement until
15 he sees Officer Hilton, the inference is that he's
16 attempting to evade arrest, then that's a circumstance
17 that goes to the jury.

18 Now, that's not a charge that goes to the jury, but
19 it can be argued to the jury. Of course, it could be
20 argued the other way to the jury, that he wasn't
21 attempting to flee, so I will allow that.

22 MS. WALKER: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 MS. WILLIAMS: Thank you.

25 THE COURT: All right. Other motions?

1 MS. WILLIAMS: Yes, Your Honor. Motion seven is to
2 suppress evidence that was located at apartment [REDACTED] at [REDACTED]
3 Alcott Drive. My understanding is that was the location
4 where they served Mr. Keitt -- well, actually, where they
5 arrested Mr. Keitt from. This is the apartment of Tiara
6 Carter, the girlfriend of Mr. Keitt's friend, Dennis
7 Sultan, who he had been staying with the previous evening.

8 It's my understanding that they found Chris' ID. I
9 don't have any issue with them finding his ID there. They
10 did, however, also recover two 38 caliber bullets, as well
11 as an orange shirt.

12 I'd say those -- they had the opportunity to provide
13 those with fingerprinting or DNA testing, nothing like
14 that was done on these. Simply, Mr. Sultan saying, Oh,
15 well, I don't remember those. They were found in a back
16 bedroom. He was a guest staying in a home. I don't think
17 there's been anything besides that he was at the home to
18 indicate that those are at all related to this case.

19 THE COURT: All right. Solicitor?

20 MS. WALKER: Your Honor, the relevance of those items
21 is that the individual that everyone describes as being
22 the man who tried to kill the victim in this case had on
23 an orange t-shirt and the weapon that was used was a gun.
24 So that's why the bullets and the orange t-shirt become
25 relevant.

1 The lack of testing, I think, Your Honor, is an
2 argument maybe for the weight of the evidence, but I don't
3 see how that's an argument for admissibility of the
4 evidence, so...

5 THE COURT: Are there ballistics, any bullets
6 recovered from the victim?

7 MS. WALKER: Your Honor, there was a projectile
8 recovered from the victim, but it was not deemed suitable
9 for testing.

10 THE COURT: You don't even know what caliber?

11 MS. WALKER: No, Your Honor.

12 THE COURT: And then the victim described the suspect
13 or others described the suspect as wearing an orange
14 shirt?

15 MS. WALKER: An orange t-shirt, Your Honor, and the
16 individual was also captured on two different surveillance
17 cameras wearing an orange t-shirt.

18 THE COURT: Is the shirt that was found at apartment
19 ■, Alcott Drive, the orange shirt, consistent with that?

20 MS. WALKER: Yes, Your Honor.

21 THE COURT: And were the bullets found in relation to
22 the orange shirt?

23 MS. WALKER: Your Honor, let me double check
24 something just because I want to be absolutely certain
25 when I tell you.

1 (Pause.)

2 Your Honor, the ID is found on the top of the
3 refrigerator. The bullets are found on the kitchen table,
4 and then the rear bedroom is where the t-shirt is found,
5 so the ID and the bullets are found in the same room.

6 MS. WILLIAMS: And, Your Honor, I recognize that it's
7 an orange shirt, and orange is consistent with that there.
8 However, nothing other than he was found in this home. I
9 mean, I don't know how many orange shirts were in there.

10 Ms. Carter or Mr. Sultan could have been a Clemson
11 fan. Their entire closet could have been filled with
12 orange shirts. It's not rare to have an orange shirt in
13 Columbia, South Carolina.

14 THE COURT: It is in my opinion.

15 MS. WILLIAMS: Yes, sir. Well, I do believe there's
16 equally, if not more garnet and black.

17 THE COURT: I agree with you.

18 MS. WILLIAMS: So I would believe that if you do find
19 some sort of relevancy under 401, it would still fall
20 under 403. I think this is going to be something that
21 could easily mislead the jury since there wasn't anything
22 done to connect this.

23 This is May where somebody ran in, did this and there
24 was a shot and a struggle with the victim. DNA from the
25 victim wasn't tested on this shirt to see if they found

1 anything like that, so that would then connect it to this
2 place. I think just an orange shirt by itself is
3 misleading.

4 THE COURT: All right. Well, I think it's relevant.
5 I think it's circumstantial evidence. There may be many
6 orange shirts. Of course, that's proper for
7 cross-examination.

8 Looking at Rule 403, although relevant evidence may
9 be excluded, when the probative value is substantially
10 outweighed by the danger of unfair prejudice, confusion of
11 the issues are misleading the jury or by consideration of
12 undue evaluation.

13 I will find that under that analysis that it is
14 not -- the probative value would not be substantially
15 outweighed under the probative.

16 I think the fact it was or wasn't tested or taken up
17 forensically is not relevant. I think it goes to the
18 quality or lack of quality of the investigation or the
19 forensic part of the investigation, but that goes to the
20 weight, the admissibility and not -- the weight and not
21 the admissibility. So that would be admissible.

22 You have no question about probable cause, correct?
23 The arrest warrant, do you?

24 MS. WILLIAMS: No, Your Honor. Like I said, the
25 orange shirt is allowed in --

1 THE COURT: And the bullets.

2 MS. WILLIAMS: And the bullets are?

3 THE COURT: Yes, ma'am.

4 MS. WALKER: Are you objecting to the ID?

5 MS. WILLIAMS: We're not objecting to the ID.

6 MS. WALKER: All right.

7 THE COURT: Any others?

8 MS. WILLIAMS: Yes, Your Honor. Again, the motion
9 that -- motion nine -- well, I guess I can do, motion
10 eight is to sequester all witnesses pursuant to Rule 615
11 at the start of the trial.

12 I do believe speaking with the State, they like
13 sequestering during pretrial. We would actually request
14 that. And, specifically, for -- we don't care about
15 anything else, but when it comes to the Biggers hearing,
16 we would ask for a separation of the lead investigator or
17 the victim or the testimony of one or the other given the
18 nature of that motion.

19 THE COURT: Solicitor?

20 MS. WALKER: Your Honor, I'm not quite sure under
21 what authority the victim can be excluded from the
22 courtroom at any time in the proceeding. It's my
23 understanding that the victim has the right to be present
24 for the entirety of the trial, including pretrial. I
25 could be mistaken about that.

1 THE COURT: I agree with you. I think that's both
2 statutory and constitutional.

3 MS. WALKER: Constitutional.

4 MS. WILLIAMS: My understanding, Your Honor, is
5 exclusion of witnesses, it's always in your discretion.

6 THE COURT: Correct.

7 MS. WILLIAMS: Yeah, so we're certainly hoping to
8 ask -- while we wouldn't normally do that, we certainly --
9 that's the only one section we're asking about because we
10 believe that it would potentially -- especially in this
11 case because the victim, other than the verbal testimony
12 that we got just recently of the conversations with the
13 prosecutor, we have no written statement from him, we have
14 no audio recorded statement like we do with others in this
15 case. In fact, we had no information from him directly at
16 all. We have just the verbal confirmation from the
17 solicitor in this case.

18 So when it comes -- and he didn't speak to -- and
19 none of that statement went to any of the information
20 about the lineup process. So we would ask that if they're
21 planning on calling him at any point during that
22 potentially that they either call him first or that we
23 have Investigator Richburg be sequestered during that
24 testimony.

25 Because we have -- there is very -- there is a huge

1 lack of recording at all when it comes to the procedures
2 that were taken for this particular lineup. We wouldn't
3 ask for it otherwise.

4 THE COURT: Article 1, Section 24 in the South
5 Carolina Constitution Bill of Rights (a)(3) indicates that
6 the victim be informed of, present in any criminal
7 proceedings which are dispositive of the charges which the
8 defendant has the right to be present.

9 So I don't think Rule 615 in my discretion trumps the
10 South Carolina constitution. The victim is always allowed
11 to be present in any criminal proceedings and dispositive
12 of the charge where a defendant has the right to be
13 present.

14 MS. WILLIAMS: Your Honor, well, then, I'd still ask
15 then Investigator Richburg be sequestered and that they
16 allow Mr --

17 THE COURT: I'm not going to allow that. I always
18 allow the chief investigating officer to remain. It's not
19 my job to tell prosecutors how to try their cases.

20 MS. WILLIAMS: I understand --

21 THE COURT: I allow the chief investigating officer
22 to be present. I allow the evidence custodian to be
23 present and I allow any expert witnesses to be present.

24 All right.

25 MS. WILLIAMS: Thank you, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. WALKER: On the point of sequestration, Your
3 Honor --

4 THE COURT: Ma'am?

5 MS. WALKER: On the point of sequestration, I just
6 wanted to say this before it slipped my mind. The
7 defendant's wife is on our witness list. I spoke with her
8 this morning. She expressed an interest and wanted to be
9 here to support her husband. I don't have any problem
10 with her staying if they are okay with her not being
11 sequestered, as well.

12 MS. WILLIAMS: We're fine with that, as well, as his
13 mother.

14 MS. WALKER: She's left.

15 THE COURT: All right. Any other motions before we
16 go back to Jackson vs. Denno?

17 MS. WILLIAMS: Do you want to do the last motion
18 besides Biggers of ours, Your Honor, motion nine?

19 THE COURT: Yes, ma'am.

20 MS. WILLIAMS: Your Honor, the accused statement is
21 on an audio recording. And I believe they gave you a
22 transcript of it last week. We'd ask that this be
23 excluded under 401 and 403 because we're not sure how it's
24 relevant.

25 Nowhere in that statement does he give an admission

1 to this. In fact, a lot of it is him asking questions of
2 what's going on and trying to get -- them saying, Well, we
3 can't tell you that until you tell what you did.

4 So I believe that, first of all, I'm not sure how
5 it's connected at all to whether it makes it more
6 probative or not that he did this.

7 THE COURT: Let me make sure I'm tracking. I'm
8 having a Jackson vs. Denno hearing on a confession that's
9 not a confession, is that what you're telling me?

10 MS. WILLIAMS: Yes, Your Honor. It's not a
11 confession.

12 THE COURT: Why am I having a hearing? That's what
13 I'm trying to track.

14 MS. WILLIAMS: Well, we don't have an issue with the
15 voluntariness of what he said under Denno. We don't think
16 he was ill treated or anything along those lines. He
17 doesn't attest that he didn't voluntarily speak with them,
18 but from listening to it and from the transcript of it, he
19 in no way admits to doing this.

20 He, in fact, is asking a lot of questions and says I
21 don't know what you're talking about, I didn't do this.
22 He's concerned about all the charges that had been put on
23 him. A number of those, for quite some time during the
24 interrogation, they wouldn't even tell him what he was
25 charged with because they needed him to give them a

1 confession, which he did not do.

2 MS. WALKER: Your Honor, the State believes that this
3 statement is relevant because as I told Your Honor, the
4 individual is described as wearing an orange t-shirt, is
5 captured on video surveillance across the street from the
6 incident location wearing an orange t-shirt.

7 He admits to being at the school initially wearing an
8 orange t-shirt. He admits to walking across the street to
9 the church where he's again captured on video surveillance
10 wearing an orange t-shirt.

11 He admits to then going across Barhamville. And when
12 they ask what happened when you get up to Barhamville, he
13 gives several iterations of what happened until finally
14 saying something along the lines of -- you know, they say,
15 Chris, just tell us what happened. And he says, I can't,
16 it's just too hard.

17 I mean, this is a long, long, long interview. And we
18 did provide a copy of the transcript to your law clerk.
19 But him putting himself wearing the clothes described by
20 witnesses as the clothes worn by shooter in the area at
21 the time of the shooting, I don't know what could be more
22 relative -- I mean, more relevant than that.

23 THE COURT: Ms. Williams?

24 MS. WILLIAMS: Actually, Your Honor -- well, I
25 disagree with her characterization of what he says. He

1 does, he's very open with them and says, Yes, I was at the
2 school. I then walked this way.

3 They asked him what he did that day. And he tells
4 them what he did that day, to include then he walked up
5 Barhamville Road, he ran into his friends and got a ride
6 with his friend and went about his day. They then tell
7 him that he's truthful all the way up to being at
8 Barhamville Road, but he's lying about everything else.
9 And they proceed to just call him a liar and he needs to
10 tell them what happened, tell them what happened.

11 Eventually, he goes, "No, I can't because this is
12 just too hard". Which, again, goes to nothing, is not an
13 admission of anything. It goes to him being told that
14 only part of what he told them was the truth and they're
15 just, basically, calling him a liar for the rest of the
16 time until he, basically, goes, Well, I don't know what
17 else to do.

18 THE COURT: All right. Well, if it's a voluntary,
19 you know, statement, the question of law and fact, that
20 would be a fact for the jury to determine the credibility
21 of the witness or the credibility of the witness's
22 statement, whether it be all or none of it. The issue is
23 whether they laid the proper foundation for voluntariness.
24 If he talks about him being about the school or
25 Barhamville Road, I assume that's the area or location

1 where the crime occurred.

2 MS. WALKER: Yes, sir.

3 THE COURT: That's circumstantial evidence where the
4 individual accused places himself in the vicinity of the
5 crime. He's in the vicinity of the crime. If the
6 perpetrator of the crime is wearing an orange shirt and he
7 puts himself in the vicinity of the crime wearing an
8 orange shirt, that's physical evidence.

9 There's many confessions where they don't just walk
10 in and sit down and say yes, I did it. It's totally
11 truthful within their statement and all and the jury can
12 interpret it and give it whatever weight they deem
13 appropriate.

14 They can determine a lot of it is just the officer's
15 trying to get him to think what they think is the truth.
16 They can believe all or none of it just like any other
17 items of evidence.

18 MS. WILLIAMS: There is something specific about --
19 in the audio statement itself. I've been looking at it.
20 His wife does come in several times and speaks with him
21 and that's on the audio tape. We would suggest that that
22 is hearsay and should not be admissible.

23 THE COURT: All right. Solicitor, what about the
24 wife's statements?

25 MS. WALKER: Your Honor, in the interview room, he

1 asks for his wife to come and talk to him. At that point,
2 Your Honor, they allow the wife to come in and talk to
3 him. I don't -- I'm not offering the wife's statements
4 for the truth of the matter asserted. I'm offering the
5 Defendant's statement. So I don't --

6 THE COURT: I mean --

7 MS. WALKER: And I did ask them last week, What do
8 you guys want redacted? And they sent me an email saying,
9 Nothing, we're fine with all of it. So I don't know -- I
10 don't understand the objection.

11 MS. WILLIAMS: All right. Yes, I spoke with them
12 last week and at that point in time, I went -- she was
13 talking about him mentioning a traffic ticket and I said,
14 you know, I really don't have any issue with that or
15 anything when it came to him. But looking at this,
16 anything that Emerald Keitt is saying, they can call her
17 to the stand and tell her -- but she -- her statements
18 were also being provided there for the truth of the matter
19 asserted of what she says.

20 In a number of her conversations, she had already
21 been spoken to by law enforcement. She's scared. She's
22 trying to tell him, Tell them what they need to know.
23 Tell them, you know, think about us, all these kind of
24 things.

25 So I believe that those would be -- as well as other

1 different things that she talks to them about. I think
2 that is hearsay, Your Honor. It's not an admission by
3 Mr. Keitt and I don't think it falls under any exception
4 to the hearsay rule.

5 THE COURT: All right. Solicitor?

6 MS. WALKER: What she says, Your Honor, is not being
7 offered for the truth of the matter asserted, but in order
8 to understand the conversation in its full context, you
9 need to understand what she says so that you can then
10 understand his responses to them so that the conversations
11 makes sense.

12 We're offering -- I would liken it to like a jail
13 phone call where both parties are talking back and forth
14 and the conversation is offered in its entirety. In order
15 to understand what he's saying, you have to understand
16 what she's saying to him, as well. So I'm not offering
17 her statements for the truth of the matter asserted as
18 much as to put his statements in context over the course
19 of that conversation.

20 THE COURT: Give me the page cites on it, the various
21 page cites of wherever it's at in the transcript.

22 MS. WILLIAMS: She comes in and out several times.
23 Beg the Court's indulgence, Your Honor. She starts on
24 Page 20.

25 THE COURT: Well, y'all decide specifically what --

1 Ms. Williams, tell the solicitor what you want
2 redacted. Give me the cites, and I'll look at it tonight.

3 MS. WILLIAMS: We'll do that, yes, sir.

4 THE COURT: The purposes of the in-camera hearing is
5 I'll take it under advisement.

6 MS. WALKER: Thank you, Your Honor.

7 MS. WILLIAMS: Thank you, Your Honor.

8 MS. WALKER: We tried to get that done last week. I
9 guess it's last minute.

10 MS. WILLIAMS: And, Your Honor, that's all defense
11 motions at this time.

12 THE COURT: Thank you.

13 All right. Do you have your other witness here,
14 Solicitor?

15 MS. WALKER: Your Honor, it's Investigator Hilton.
16 He's here for the purpose of the Denno hearing, but if
17 they're saying they're not -- they don't have a question
18 about the voluntariness of the statement, then I don't
19 know that we need to call him at this point. He is here,
20 though.

21 THE COURT: All right. Ms. Williams?

22 MS. WILLIAMS: Your Honor, after hearing Investigator
23 Richburg, we don't have -- from speaking with him, we
24 don't have any indication that there would be an issue
25 with voluntariness.

1 THE COURT: Therefore, any other witnesses?

2 MS. WALKER: Your Honor, the next thing that we
3 have -- no, Your Honor, not for that, for Denno.

4 THE COURT: All right. Are you reserving your
5 objection with regards to Denno motion, Ms. Williams?

6 MS. WILLIAMS: I'm not sure I understand the
7 question, Your Honor, because I believe it was the
8 State's --

9 THE COURT: The question is now that we have a moving
10 target, do I need to rule on Jackson vs. Denno or not? If
11 y'all concede to the voluntariness of it, I'm not going to
12 rule on it. I'm not trying to box you in whatsoever.
13 I'll do it either way. You know, I mean, I'm the judge.
14 Unless I have to rule, there are a lot of options.

15 MS. WILLIAMS: Your Honor, we don't have any
16 witnesses ourselves for the Denno. We would ask that you
17 make a ruling.

18 THE COURT: All right. Solicitor, I'll be glad to
19 hear from you on Jackson vs. Denno.

20 MS. WALKER: Your Honor, from the testimony that was
21 given through Investigator Richburg, as well as the advice
22 of rights that was handed up to Your Honor, it's clear
23 from the testimony that the Defendant's statement was
24 given after being fully advised. He wasn't threatened.
25 It was voluntary in nature. We don't see any reason for

1 this statement not to be put before the jury.

2 THE COURT: All right. And the standard I am
3 required to apply as far as the preponderance of the
4 evidence, the voluntariness of --

5 Anything you want to add?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: The standard I am required to apply under
8 Jackson vs. Denno along those lines of State vs. Parker
9 and others, it's clear that he was in custodial
10 interrogation. He was advised of his rights. And
11 reviewing State's Exhibit No. 1, he has -- indicates --
12 the testimony indicates that Mr. Keitt initialed one
13 through seven. Thereafter, number seven, waiver of
14 rights, he signed, and I don't know if he printed his name
15 or not, but the name Christopher Keitt is also printed
16 under there. It appears to be two witnesses.

17 Further, the testimony of the officer was that he did
18 not appear to be under the influence of drugs or alcohol.
19 He appeared to understand what was being said. There was
20 no threats, no deprivation. And the fact of the testimony
21 is Mr. Keitt asked to speak with and was allowed to speak
22 with his wife on more than one occasion. The statement
23 was verbal and recorded. I find that by a preponderance
24 of the evidence that it was voluntary and admissible.

25 All right. Anything further, Solicitor?

1 Ms. Williams?

2 MS. WALKER: Not on that matter, Your Honor. I think
3 the next issue is Biggers.

4 THE COURT: Ms. Williams?

5 MS. WILLIAMS: Yes, not on the Denno.

6 THE COURT: All right. Solicitor, what's the next
7 matter?

8 MS. WALKER: Neil vs. Biggers.

9 THE COURT: All right. You may call your first
10 witness.

11 MS. WALKER: Thank you, Your Honor. The State calls
12 Investigator Andrew Richburg.

13 THE CLERK: You want him to be sworn, Your Honor?

14 THE COURT: No, he's previously sworn.

15 MS. WALKER: May it please the Court, Your Honor.

16 THE COURT: Yes, ma'am.

17 ANDREW RICHBURG - CONT., after having
18 been previously sworn, continued to testify as follows:

19 DIRECT EXAMINATION:

20 BY MS. WALKER:

21 Q Investigator Richburg, I want to talk to you about
22 making contact with the victim in this case. After
23 determining a suspect in this case, what did you do?

24 A Well, once we gathered the potential suspect, we sent
25 off a request to SLED to have a photo array produced, and

1 they did that for me.

2 Q And let me show you what's been marked as State's
3 Exhibit No. 2 and ask you if you recognize this photo.

4 A This is the photo array that they did for me in
5 reference to Christopher Keitt, a six-person photo array.

6 Q And once you received this photo lineup, what did you
7 do?

8 A Once I received that, I printed it off and I went to
9 the hospital to make contact with the victim, at which
10 point, I knew that he was out -- got information he was
11 out of surgery. I met him in his room. He was in I.C.U.
12 He did have a tube in his throat.

13 Q Was he able to communicate with you verbally?

14 A Not verbally.

15 Q From your -- when you walked in, I guess, to the
16 hospital room, tell me what happened.

17 A I walked in and made eye contact with him, explained
18 to him why I was there. He could hear, he could nod. He
19 was coherent. I advised him what I was there for; that I
20 had a potential suspect. And the way I presented the
21 lineup to him is let him know that I have a six-person
22 photo array, which a photo array being six separate
23 pictures, not six pictures on one page.

24 I told him that I would show him each picture
25 individually, to look at each picture. The person who

1 committed the crime against him may or may not be in
2 there. If he did recognize anybody that was within --
3 that did commit the crime to let me know as I went through
4 the pictures, showing it one at a time.

5 Q And did you then show him the pictures one at a time?

6 A I did, starting at one, going to six.

7 Q Once you were -- when you were explaining the process
8 to him, did he appear to understand what you were saying?

9 A He did.

10 Q Once you started showing him the pictures, can you
11 tell the Judge what, if anything, happened?

12 A He was able to identify Mr. Keitt, who was, I believe
13 number three in the pictures.

14 Q Okay.

15 A He was able to identify him, acknowledged that that
16 was the person who committed the crime against him.

17 Q And how did he indicate to you that he recognized the
18 person?

19 A He pointed at him. He was able to point to him.

20 Q Which number is that?

21 A Number four.

22 Q And what, if anything, did he do to memorialize this
23 picture?

24 A Once he was able to do that, he did have his -- his
25 hand was free. I mean, he did have I.V.s and stuff, but

1 he was able to write. He wrote -- once he identified him,
2 he was able to sign and print his name and put the date of
3 the identification. And, likewise, on the coversheet, we
4 do there as a person picks it out.

5 That's the coversheet showing where we showed the
6 lineup at, 3301 Harden Street, which is the hospital. I
7 showed him six -- I showed him six pictures. My name is
8 on it.

9 He picked out number four as a black male committing
10 a crime of attempted murder at the address of the incident
11 location of [REDACTED] Barhamville Road on May the 13th, 2015.
12 He was able to sign that and put his address down, which
13 is the same address as the incident location, and I then
14 notarized that.

15 Q Okay. And whose handwriting is this in?

16 A The top -- the handwriting on the cover sheet is
17 mine, except for his signature.

18 Q Is this yours, as well?

19 A Yeah, I wrote that for him.

20 Q Okay.

21 A He was in a great deal of pain. I was trying to make
22 it as easy as possible on him.

23 Q But the signature on both -- I guess, the coversheet
24 and the actual photo, who signed that?

25 A That and the print and the date is all him.

1 Q Okay. When you were showing the victim in this case
2 this photo lineup --

3 MS. WALKER: Your Honor, may I approach with the
4 photo lineup?

5 THE COURT: Yes, ma'am.

6 BY MS. WALKER:

7 Q All right. Did you suggest to the victim in any way
8 who to pick?

9 A No, ma'am. I showed one picture at a time. I'll
10 give him time to look at it and I'll go to the next one.
11 I'll put that one down, so it only shows one person at a
12 time.

13 Q And it was him who actually picked someone out of the
14 photo lineup?

15 A Correct.

16 MS. WALKER: Beg the Court's indulgence, Your Honor.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 MS. WALKER: No further questions for this witness,
20 Your Honor.

21 THE COURT: Thank you.

22 Ms. Pinnock.

23 MS. PINNOCK: Thank you, Your Honor. May it please
24 the Court.

25 CROSS-EXAMINATION:

1 BY MS. PINNOCK:

2 Q How are you doing, Investigator?

3 A Good. Yourself?

4 Q Doing all right. Do you have your report with you up
5 there?

6 A My --

7 Q Your case notes?

8 A No, ma'am.

9 Q I want to ask you some questions. I have a copy of
10 it if you need to review it. Do you recall what time it
11 was documented you went to the hospital?

12 A I do not know the time that I went up to the
13 hospital.

14 Q Did you document it anywhere?

15 A I don't recall that. It would have had to have been
16 later in the afternoon. It was after he got out of
17 surgery.

18 Q Okay. What time did he get out of surgery?

19 A I'm not sure of the exact time.

20 Q Okay. Who contacted you to tell you that he was out
21 of surgery?

22 A I believe it was a family member. I was in contact
23 with his brother and I think it was his mother -- I think
24 I was mostly in contact with his brother at the time.

25 Q Okay. But we don't have a record of that phone call

1 either, do we?

2 A No, ma'am.

3 Q So we don't know what time that person called?

4 A Right.

5 Q So somebody called you and you went down to the
6 hospital. And that was on the 13th?

7 A The day that -- yes, ma'am.

8 Q Okay. The day that Mr. Sims was shot?

9 A Yes, ma'am.

10 Q We don't know what time, but you -- that's the day
11 that you did the photo lineup?

12 A Yes, ma'am.

13 Q All right. The date on the lineup itself is the
14 14th, though, right?

15 A I'd have to look at it.

16 Q All right.

17 MS. PINNOCK: May I approach, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. PINNOCK:

20 Q It's signed and notarized by you on the 14th?

21 A It would have been the next day, not the same day.
22 It would have been the 14th.

23 Q That you did the lineup?

24 A No, that I showed him the lineup would have been on
25 the 14th.

1 Q Okay. So not the 13th?

2 A Right.

3 Q So you didn't have this photo lineup before you got
4 the warrants? Because your report indicates that you did
5 the photo lineup, there's an ID and you took that
6 information to obtain the arrest warrants, correct?

7 A I'd have to look at my report.

8 MS. PINNOCK: Your Honor, may I approach?

9 THE COURT: Yes, ma'am.

10 BY MS. PINNOCK:

11 Q It's right before your last entry on the 15th.

12 A Do you have a copy of the warrant?

13 Q I can if you want.

14 MS. PINNOCK: Your Honor, may I approach?

15 THE COURT: Yes, ma'am.

16 THE WITNESS: Yeah, the case notes would be correct.
17 It would be on the 13th.

18 BY MS. PINNOCK:

19 Q On the 13th, okay.

20 A Yeah.

21 Q The date on --

22 A The 14th on here was apparently a misprint.

23 Q Okay. So the date that was written on picture number
24 four is wrong?

25 A Correct.

1 Q The date written that you witnessed and notarized
2 it --

3 A That was probably me telling him because he wasn't in
4 a position to look at a calendar.

5 Q Okay.

6 A So it was probably me telling him the date.

7 Q So that's not accurate information on this piece of
8 paper?

9 A It was the 13th.

10 Q So you're at the hospital on the 13th. Again, you
11 don't have any documentation about what time you were
12 there?

13 A Correct.

14 Q When you arrived, you said you went to -- he was in
15 the I.C.U. He had just gotten out of surgery. So you
16 went to his room, right?

17 A Yes, ma'am.

18 Q And you said there was tubes down his throat. Mr.
19 Sims was actually on a ventilator when you showed up?

20 A I'm not exactly sure.

21 Q But he had tubes, so he could not speak to you?

22 A Right.

23 Q Now, you said that you held the pictures up for him
24 yourself, right?

25 A Right.

1 Q How long did you hold each picture up?

2 A I hold each one up long enough for him to recognize
3 them. I don't know the exact time, but I gave him enough
4 time to examine each one.

5 Q So you're not watching a clock to make sure you hold
6 up each picture the same amount of time?

7 A No, usually, he indicates -- if he indicates no,
8 shakes his head, then I know he's had enough time to look
9 at it and I'll go to the next one.

10 Q Okay. And what exactly did you -- did you say you
11 told Mr. Sims -- because it sounded what you just
12 testified to was that when you got to the hospital, you
13 informed him that you had a possible suspect and then you
14 proceeded to show him the lineup, right?

15 A Yes.

16 Q So you informed him prior to showing him the pictures
17 that you had a suspect in mind?

18 A No, I said I had a potential suspect.

19 Q A potential suspect, okay.

20 A Yes.

21 Q And that was prior to you showing him the pictures.
22 And then you held up the pictures one by one?

23 A Yes.

24 Q You went through all six?

25 A Yes, ma'am.

1 Q And then you went back through and he indicated
2 number four?

3 A No, he confirmed on four, but I made him look at the
4 rest of them.

5 Q Okay.

6 A That's why I do each one, just to make sure a
7 hundred percent. He stopped on four. He indicated four
8 as being positive. I still showed him five and six.

9 Q Okay. Is that documented in your report?

10 A No, ma'am.

11 Q You said that you -- he couldn't speak to you,
12 obviously, but he was able to communicate with you?

13 A Right.

14 Q What did he communicate to you?

15 A Well, we just -- I introduced myself. He introduced
16 himself on the dry erase board.

17 Q Do you have any photographs or anything documenting
18 what was written on that dry erase board?

19 A No, ma'am.

20 Q There's no notes whatsoever about what happened in
21 that hospital room?

22 A No, ma'am.

23 Q Okay.

24 A It was an urgent matter.

25 Q I understand that completely, but, still, there's no

1 notes, no nothing, nobody bothered to write anything down
2 about what happened?

3 A Right.

4 Q Okay.

5 A Except what's in my case notes here.

6 Q Now, do you -- you record conversations with
7 witnesses in cases, right?

8 A Correct.

9 Q What do you use to record those?

10 A Recorder.

11 Q Little digital recorders?

12 A Right. But now, our interview rooms are recorded,
13 so, but not at the time. At that time, yeah, it was a
14 digital recorder.

15 Q Okay. There is no recording of your interaction with
16 Mr. Sims at the hospital, right?

17 A I didn't have it with me. It was at the office.

18 Q Okay.

19 A Because I use it there.

20 Q Does your cell phone record?

21 A I'm not sure at that time. We've switched over to --
22 we didn't have smart phones.

23 Q Okay. But even though you, typically, will -- it
24 will record a conversation with a witness or a suspect in
25 an investigation, there's no recording of your

1 conversation?

2 A Well, ideally, we like to speak to people at Columbia
3 Police Department headquarters. This was, you know -- we
4 couldn't do that.

5 Q But you still have the ability to record somebody
6 when they're speaking to you, correct, with a digital
7 recorder?

8 A Right.

9 Q Okay.

10 A But he wasn't speaking, so it wouldn't have picked up
11 much.

12 Q You could speak that day, right?

13 A Right.

14 Q Okay.

15 MS. PINNOCK: Beg the Court's indulgence?

16 THE COURT: Yes, ma'am.

17 BY MS. PINNOCK:

18 Q Investigator, you're familiar with DOJ, right,
19 Department of Justice?

20 A Yes.

21 Q You've heard of them?

22 A Yes, ma'am.

23 Q Okay. Were you aware that in 1999, they published
24 proper procedures for conducting photo identifications, in
25 1999?

1 A No, ma'am.

2 Q That's not taught at City of Columbia? Y'all don't
3 refer to that?

4 A No, ma'am.

5 Q So you're not aware that the Department of Justice
6 says that eyewitness identifications, it's best practice
7 to have those recorded in some form, audio, video,
8 anything?

9 A No, ma'am. Typically, it will be recorded at
10 Columbia Police Department headquarters, but due to the
11 extreme situation and he couldn't be transported to
12 headquarters?

13 Q Right. But the point, you can still record?

14 A Right.

15 Q And in 1999, the Department of Justice said that's
16 what should be done. But you're not aware of that?

17 A No, ma'am.

18 Q Are you also not aware that Department of Justice
19 said in that same publication that it's better off to do a
20 blind presentation to the witness?

21 A No, ma'am.

22 Q Are you aware that in 2014 that the National Academy
23 of Science recommended that all law enforcement officers
24 be trained with their policies and procedures? Are you
25 aware of that publication either?

1 A Trained by whose policies and procedures?

2 Q It's the National Academy of Science?

3 A Is that a procedure or that's just a recommendation?

4 Q Well, they publish best practices dealing with all
5 forms of law enforcement?

6 A Is that a law enforcement agency? I'm not familiar
7 with them.

8 Q No, it's scientific, scientists?

9 A No.

10 Q So you're not familiar with that either?

11 A No, ma'am.

12 Q Where in your report does it document Mr -- what his
13 confident was in his selection? Where in your report do
14 we have that documented?

15 A Report, it's not one.

16 Q Is it documented on the photo lineup itself?

17 A No, ma'am.

18 Q Is it documented anywhere that -- well, tell me this,
19 at what point did -- or how did he tell you he was
20 confident?

21 A He pointed it out and made a head nod that that was
22 who did it. I asked him again, I said, Is this who did
23 it? And he nodded his head yes.

24 Q How confident? Would you say one out of ten, ten out
25 of ten?

1 A He is --

2 Q At what point did he make that assertion to you?

3 A What you mean, as far as my perception? He was
4 confident.

5 Q No. As far as his ability to pick out the picture?
6 When you say he indicated that number four was the
7 picture?

8 A Yes, ma'am.

9 Q You asked him is this the person? How confident are
10 you this is the person? At what point did he do that?

11 A Did I ask him that?

12 Q Yes.

13 A I didn't.

14 Q So he never established how confident he was in his
15 selection?

16 A I asked him if that was the person who did it. He
17 identified it was.

18 Q But you never asked him if he was confident?

19 A I didn't ask him a rating, no, ma'am.

20 Q Okay.

21 MS. PINNOCK: Beg the Court's indulgence?

22 THE COURT: Yes, ma'am.

23 THE WITNESS: Do you want this back?

24 MS. PINNOCK: One second, Your Honor.

25 THE COURT: Yes.

1 (Pause.)

2 BY MS. PINNOCK:

3 Q Two more questions. Where does it indicate in your
4 report that you had Mr. Sims cleared by medical
5 professionals prior to speaking to him?

6 A It's not in the report.

7 Q You didn't talk to anybody before talking to him in
8 the emergency room?

9 A No, ma'am.

10 Q All right. Are you aware that the hospital has a
11 policy that they don't advise their patients under certain
12 medications to make legal decisions? Are you aware of
13 that?

14 A I'm sure.

15 Q Did you ask anybody about it?

16 A No, ma'am.

17 Q Are you aware of any sort of medications Mr. Sims was
18 on?

19 A No, ma'am.

20 Q And you didn't talk to any doctors or nurses prior to
21 speaking to him?

22 A No, ma'am.

23 MS. PINNOCK: That's all I have, Your Honor. Thank
24 you.

25 THE COURT: Redirect, Solicitor?

1 MS. WALKER: Thank you, Your Honor.

2 REDIRECT EXAMINATION:

3 BY MS. WALKER:

4 Q Was the victim coherent when you were talking to him?

5 A Very coherent.

6 Q Did he understand what you were saying?

7 A Yes, ma'am.

8 Q Did you suggest to him who to pick in the photo
9 lineup?

10 A No, ma'am.

11 MS. WALKER: Thank you.

12 THE COURT: Recross?

13 MS. PINNOCK: No.

14 THE COURT: Thank you very much.

15 All right. You may call your next witness,
16 Solicitor.

17 MS. WALKER: Thank you, Your Honor. The State calls
18 Martin Sims.

19 MARTIN SIMS, after being duly sworn,
20 testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: Martin Sims.

23 DIRECT EXAMINATION:

24 BY MS. WALKER:

25 Q Mr. Sims, where are you currently employed?

1 A Spring Valley High School and the United States Army
2 National Guard.

3 Q What do you do at Spring Valley?

4 A I'm a math teacher.

5 Q What grade?

6 A Ninth grade.

7 Q And were you employed at Spring Valley in May of last
8 year?

9 A I was, I am still currently.

10 Q I want to take your attention back to May 13th last
11 year. Do you remember that day?

12 A I do.

13 Q Describe to me what -- how your morning went?

14 A Just like any usual morning, I get up. You have to
15 be to work by 8:00. Around about 7:25, 7:30, I got up and
16 I went to go to work. Keep going?

17 Q Keep going.

18 A All right. So I get up to go to work. I have auto
19 start on my vehicle. I usually crank it up while I'm
20 fixing my breakfast and grabbing my bags.

21 Q Slow down, talk slowly. Are you nervous?

22 A Ma'am?

23 Q Are you nervous?

24 A A little bit.

25 Q Okay. And that's fine, just slow down a little

1 because the court reporter is going to take down
2 everything you say, okay.

3 A Understood.

4 Q Thank you, sir. So I guess as you were leaving for
5 work, who was with you?

6 A My girlfriend, Christine Claiborne.

7 Q All right. And what happened as you were getting
8 ready to go to work?

9 A So I auto start my vehicle and I walk to my vehicle
10 and I placed my belonging in there, my breakfast,
11 everything that I had in my hands. And as my car was
12 started, the keys were still on my hip, I went back to my
13 girlfriend's car, who was right behind me, to give her a
14 hug and a kiss before she went to work. And as I was kind
15 of walking, in and out of the process of walking to her
16 and as I gave her a kiss, that's when I seen the Defendant
17 walk up on the opposite side of the street smoking a
18 cigarette at the time. I kind of looked at him, gave him
19 a little head nod, like good morning. And he kind of gave
20 me a head nod back.

21 Q Let me ask you this, that day, was the sun out?

22 A Oh, yes. It was bright. Daylight savings time had
23 already kicked in, so it was very bright that morning. It
24 wasn't dark at all.

25 Q Did you have a good opportunity to view the man who

1 was walking towards you?

2 A Multiple times.

3 Q Did you, in fact, make eye contact with him?

4 A I did, multiple times.

5 Q When you say you gave him a head nod, what do you
6 mean by that?

7 A Just a common gesture walking by somebody. You don't
8 know them, so you're not going to have a conversation, but
9 a head nod, like, hello, good morning, how are you doing,
10 how ever you interpret it.

11 Q Did he reciprocate that?

12 A He did.

13 Q And after you acknowledged his presence, tell me what
14 happened.

15 A He continued to walk by, he kind of threw out his
16 cigarette in the process.

17 Q Is he coming towards you at this time or walking away
18 from you?

19 A Walking kind of at an angle. So not -- because I
20 stay on the corner lot, so walking up -- and there's a
21 sidewalk right in front of my house, but he was on the
22 opposite side.

23 So kind of across the street, and then I'm kind of
24 looking in the corner of my -- in the rear as I'm kind of
25 turning as he's going. And all of a sudden, he makes a

1 sharp turn right around the front of my vehicle. And at
2 that time, that's when he pulls a revolver out. And he
3 kind of looks at me, basically, with an act of I'm about
4 to do something. At that point, I kind of looked, I put
5 my hands up and I paused. Me and my girlfriend paused at
6 the time. And that's when he jumps in the car itself.

7 Q Hold on. Let me slow you down.

8 A Yes, ma'am.

9 Q The first time when you were looking at him and
10 making eye contact with him, did he have a gun out?

11 A The first time, no, he was just walking down the
12 street.

13 Q And he later presented the gun?

14 A Later presented the gun, when I turned and faced him.

15 Q And, I guess, you said you put your hands up. Tell
16 me what happened next.

17 A So after I faced him, like I say, so he comes around
18 and he pulls the revolver out and he hops in the car. My
19 girlfriend immediately jumps in the car. I yell to her to
20 call 9-1-1 and then I run towards my front door, going
21 into the house.

22 So as I run into the house, in passing, I kind of
23 hear the car going off, maybe he just hit the brake. I
24 hear my girlfriend yelling something and then I saw kind
25 of going -- because I'm getting robbed, I'm shaking,

1 trying to get to the door to pull the screen door open,
2 unlock the door and then I go into the door. So as I
3 go --

4 Q Slow down again.

5 A So I hold onto the door --

6 Q Hold on one second. When you said you heard --
7 describe for the Judge how remote start work on a car.
8 Because you said you heard it shut off.

9 A Yes. So when I auto start my vehicle, if the key is
10 not in the vehicle, once you hit the brake, the car cuts
11 off. So my engine cut off. That's when I kind of knew
12 that something was about to happen, and I'm going into the
13 house, rushing into the house.

14 And at that point in time, I didn't know at that time
15 that he was actually chasing me into the house. So then
16 when I turned around to shut the door, he kind of bolts
17 into the wall, which is right in front of the door, and is
18 trying to charge into the house.

19 As he's trying to charge into the house, I'm yelling
20 and screaming call 9-1-1. My two roommates are upstairs,
21 call 9-1-1, help, help, screaming at the top of my lungs.
22 And I'm pushing the door with -- fighting for my life
23 trying to get -- because now, we're tussling at the door.
24 As we're tussling at the door, I'm very close to getting
25 the door shut and locking the door.

1 At that time, I get a loud boom and a bullet comes
2 right through my front door and hits me in my chest. The
3 door flies wide open. I walk around -- I try to get
4 around to the corner, just my natural, the door is open
5 trying to get away and I'm on the ground in the middle of
6 my little living area and I'm laying on my back at this
7 time.

8 After that, I turn over and he's sitting on the --
9 he's hovering over the top of me yelling, Give me the
10 keys, give me the keys. And I'm just staring, looking,
11 once again, getting another look at him. That's probably
12 the fourth time getting a look at him, and I'm looking at
13 him and I'm just kind of staring at him, like, I'm shot.
14 What am I suppose to do now? So at that point, he fled
15 the scene and I'm sitting there knowing that I'm about to
16 die at this point.

17 Q Did he take your keys?

18 A He took my key. So after he goes out, he flees out,
19 my adrenaline gets up. I stand up just trying to make
20 myself noticeable, hoping I can get outside and scream,
21 somebody would hear me, call 9-1-1, just in case everyone
22 didn't know what was going on.

23 I walk out the front door and then I kind of get weak
24 and then I kind of fall on my front lawn as my girlfriend
25 runs towards me and tries to catch me. Now, I'm bleeding

1 all over her right there on my front lawn.

2 So as that happened, all the neighbors had came
3 outside. And my neighbor actually was a paramedic,
4 retired Army. She was a paramedic, so she came over
5 rushing. I was laying on my chest and she kept saying
6 stay calm, stay calm.

7 So then I started breathing slow, trying to stay
8 awake. I wanted to go to sleep, couldn't go to sleep
9 because I wanted to stay awake so I can know everything
10 was going on. And I just stood there. They got towels
11 and tried to patch up the bleeding until the police and
12 ambulance got there.

13 Q Do you remember the police and ambulance getting
14 there?

15 A I do remember the police and ambulance getting there.
16 Should I describe what happened when they got there?

17 Q No, you don't have to describe it right now.

18 A Okay.

19 Q At some point, you went into surgery?

20 A Yes.

21 Q And do you remember meeting Investigator Richburg?

22 A I do, yes.

23 Q Tell me about what happened when he came to see you. .

24 A When he came to see me, he introduced himself. I
25 looked at him, I seen his badge, so I knew he was an

1 investigator. And as he's -- he kind of explained to me
2 what was going on. You know, I have a potential suspect.

3 We're going to go through this lineup, let me know if
4 you see him, something along those lines, the
5 conversation. So then he goes and he kind of gives me a
6 picture. I look and then I kind of go through the lineup.

7 Then when I go -- so he shows me all the pictures,
8 but when I seen him, I knew it was him. It really brought
9 the feeling back into my feelings. The last thing I can
10 remember is him hovering over me, I will never forgot his
11 face.

12 So when I looked at him, I knew exactly who it was.
13 And at that time, he said, Are you sure? I said, Yes. He
14 said, Okay, if that's who you think it is, sign right
15 here, print, sign the date. And that's exactly what I
16 did.

17 Q Is your memory of that interaction clear?

18 A Very.

19 Q Were you coherent at the time?

20 A Very.

21 Q Do you feel as though you were in any way too
22 medicated to remember the man who shot you?

23 A No, I wouldn't have trouble with anybody.

24 Q Did the investigator ever suggest to you who you
25 should pick out of this photo lineup?

1 A No, ma'am.

2 Q The person who shot you, do you see him in this
3 courtroom?

4 A I do.

5 Q Can you point him out for me?

6 A I can. He's right there.

7 Q What is he wearing?

8 A Blue shirt and tie.

9 MS. WALKER: Beg the Court's indulgence, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. WALKER: Thank you, Martin. I don't have any
12 further questions at this time.

13 MS. PINNOCK: Beg the Court's indulgence?

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 MS. PINNOCK: Thank you. May it please the Court.

17 CROSS-EXAMINATION:

18 BY MS. PINNOCK:

19 Q Mr. Sims?

20 A Yes.

21 Q I just want to clear up a few things. So
22 Investigator Richburg, he came to your room, correct?

23 A Yes.

24 Q And you just said that before he showed you any
25 pictures, he told you that he had a suspect?

1 A Potential.

2 Q Okay. And he held up the pictures for you, correct?

3 A Yes.

4 Q It wasn't computerized? It was hard copies of
5 printed out pictures?

6 A Hard copies of printed out pictures, yeah.

7 Q All right. Okay. And you had said -- maybe I
8 misunderstood you. You said that he showed you all the
9 pictures and then you went back and confirmed it was --
10 can you explain that for me again?

11 A Okay. I went through. I identified him. He
12 continued and then I identified him again after.

13 Q Okay. And you couldn't speak, obviously?

14 A I could not speak. I had tubes down my throat.

15 Q How do you recall indicating to the investigator?

16 A Nod, pointed, every gesture that I was able to do.

17 Q Which one did you do?

18 A Both.

19 Q You nodded and pointed?

20 A Nodded and pointed.

21 Q After you made your selection, what did the
22 investigator say to you?

23 A Sign and date it for verification.

24 Q What comment did he make to you about the picture you
25 selected?

1 A What do you mean what comment did he make about it?

2 Q After you picked out number four, what did
3 Investigator Richburg tell you about picture number four?

4 A Nothing about -- before I signed it, after I signed
5 it?

6 Q Well, after you made the selection?

7 A To sign and date it, that was the comment.

8 Q Did he say anything else about it?

9 A No.

10 Q Not that you remember?

11 A No.

12 Q Do you remember what time he was there?

13 A No, I do not.

14 Q So when he got there, I just want to be clear, were
15 you writing on the board communicating with him or did he
16 just walk in, introduce himself and then y'all just jumped
17 into the lineup?

18 A I wrote on the board talking to whoever else was in
19 the room.

20 Q Who all --

21 A I had family members. My girlfriend was there the
22 entire time. Well, I think -- well, in fact, no. Because
23 when he came, we had to talk one-on-one. So I write --
24 anything I wrote on the board was describing what
25 happened.

1 Because, originally, when we started -- when we
2 started talking about it, it didn't -- he noticed how much
3 pain I was in, so then he just like okay, well -- I gave
4 him the most brief story I could give and described,
5 showed him how everything was, then he said hey, okay.
6 Then he explained to me everything that was going on as
7 far as what we're about to do as far as the lineup and
8 stuff.

9 Q Okay. So when he got there, you started trying to
10 explain to him your memory of what had happened to place
11 you in the hospital?

12 A Say it again.

13 Q When the investigator showed up initially, you said
14 you started trying to write and communicate with him about
15 what happened?

16 A Yeah.

17 Q You tried to give him a statement at that point?

18 A Did I try to give him a statement?

19 Q Ultimately, telling him what happened?

20 A Briefly, with nods and wrote on the white board.

21 Q Okay.

22 A That's about it.

23 Q And you said your other family members were there,
24 too?

25 A Say it again.

1 Q Other family members were there?

2 A In the hospital, yes. Around the curtains, in and
3 out of the curtains as me and him were talking.

4 Q Yes, sir. What time did he get there, do you know?

5 A I told you I don't know the time.

6 Q Do you know how long you were --

7 A No, I was --

8 Q -- under, unconscious prior -- after being under --

9 A Do I know how long I was unconscious? I don't know
10 how I would know, no.

11 Q Okay.

12 MS. PINNOCK: Beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 MS. PINNOCK: Thank you, Your Honor. I have no
15 further questions.

16 THE COURT: Redirect, Solicitor?

17 MS. WALKER: No, Your Honor.

18 THE COURT: Thank you very much, Mr. Sims. You may
19 step down.

20 THE WITNESS: All right. Thank you.

21 THE COURT: All right. Solicitor, you may call your
22 next witness.

23 MS. WALKER: Your Honor, the State has no more
24 witnesses.

25 THE COURT: Thank you.

1 Ms. Williams, Ms. Pinnock, does the defense intend to
2 present any evidence or testimony?

3 MS. WILLIAMS: We do, Your Honor.

4 THE COURT: Okay. You may call your first witness.

5 MS. WILLIAMS: The defense calls Dawn McQuiston.

6 THE COURT: Come around and be sworn, please.

7 DAWN MCQUISTON, after being duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand, please. State your name for the record.

11 THE WITNESS: It's Dawn McQuiston.

12 DIRECT EXAMINATION:

13 BY MS. WILLIAMS:

14 Q All right. Good afternoon, Dr. McQuiston. What's
15 your current occupation?

16 A I'm a psychology professor.

17 Q Where are you a psychology professor?

18 A At Wofford College.

19 Q How many years have you been a professor?

20 A Going on 14 years.

21 Q What type of education degrees do you have?

22 A I have a Bachelor's Degree in psychology and a
23 Master's Degree in experimental psychology and a PhD in
24 experimental psychology.

25 Q What does your faculty position consist of?

1 A I teach courses and I do research.

2 Q Do you belong to any psychological organizations?

3 A I do. I belong to the American Psychology Law
4 Society, the Society for Applied Research and Memory and
5 Cognition and the Association for Psychological Science.

6 Q Have you published any on your research and has it
7 been peer reviewed?

8 A Yes and yes.

9 Q Can you describe what peer review is?

10 A Sure. Scientists submit their work to be published
11 in an academy journal and a journal editor will send it
12 out for review. Other experts in the field review it for
13 its quality and make a recommendation about whether or not
14 it should be published and then the editor has the
15 ultimate say about it.

16 Q Based on your expertise, do you conduct peer reviews
17 for others?

18 A I do.

19 Q Do you present research at professional psychology
20 conferences?

21 A Yes.

22 Q Have you been qualified as an expert in eyewitness
23 memory before?

24 A I have, yes.

25 Q How many times?

1 A Probably 25 to 30 times.

2 Q Have you ever testified for the prosecution?

3 A I have not.

4 MS. PINNOCK: At this time, Your Honor, the defense
5 would like to qualify Dr. Dawn McQuiston as an expert in
6 eyewitness memory.

7 THE COURT: Any objection, Solicitor?

8 MS. WALKER: No, Your Honor.

9 THE COURT: All right. The doctor is qualified as an
10 expert in the field of -- I can't read my writing,
11 eyewitness identification and/or misidentification, I
12 would take it.

13 MS. WILLIAMS: Yes, Your Honor. Thank you.

14 THE COURT: Thank you.

15 BY MS. WILLIAMS:

16 Q Dr. McQuiston, is there generally an accepted theory
17 on how memory works?

18 A There is. The theory was put forth back in the 60s
19 by a couple of psychologists named Atkinson and Shiffrin.
20 And the main principles of the theory are that memory does
21 not work like a videotape. Instead, information that we
22 process, in fact, goes through a series of stages before
23 it's accepted into memory.

24 Q What's the first type of memory storage -- or stage?

25 A Sure, there's several different stages. And the

1 first would be what we call sensory memory. Those are the
2 things that are happening right now, where we're trying to
3 filter out what's relevant, retain -- or filter out what's
4 irrelevant, retain what's relevant. You can't hold
5 information in this type of memory more than a few seconds
6 at a time before -- anything that's retained, then moves
7 on to the next stage.

8 Q Well, what's the next stage?

9 A So the next stage is short term memory. We call that
10 temporary memory. And you can hold things in temporary
11 memory for about 30 seconds. In order to hang onto that
12 information, you have to rehearse it and rehearse it and
13 rehearse it. Similar to a phone number, back in the old
14 days when you had to remember someone's phone number,
15 before you could write it down, if you didn't rehearse it
16 over and over again, it was lost pretty immediately.

17 So if you don't rehearse it, it's lost. And if you
18 retain it, then it will move onto the third stage. That's
19 long-term memory. Anything in long-term memory, you
20 can -- supposedly it's there an unlimited amount of time
21 and you can recall information from long-term memory.

22 Q So people don't remember like a movie in their
23 brains, a mental movie, video?

24 A That's right. That's right.

25 Q So if it's not like that, then -- if it isn't a

1 photograph or a video going through there, what's it kind
2 of like?

3 A Sure. Instead, we tend to think of memory as being
4 reconstructive. Things that we process, there are gaps in
5 that information, there tends to be. Naturally, there are
6 gaps in what we store and we fill in those gaps with a lot
7 of different things.

8 We can fill in those gaps with information that we
9 hear, things that we might be rehearsing over and over
10 again, and these are post-event information. And so,
11 that's how any sort of memory is formed. It first starts
12 out with these gaps and then we fill in the details later.
13 Also, based on our expectations, based on our experiences,
14 et cetera.

15 Q What do scientists -- do memories, can they fade over
16 time?

17 A Sure, yes.

18 Q What do scientists mean by the term attention?

19 A Sure. Attention is a mechanism that we use filter
20 out information that we don't need and hang onto the
21 information that we need at any given moment.

22 Q And everyone has attention?

23 A Yes.

24 Q How does attention affect memory?

25 A We can only later remember what we attended to.

1 Q What are some circumstances when someone would have
2 failed to tend to some important things?

3 A Sure. Often, we don't attend to something if we
4 don't think we're going to need that information for
5 recall later on. And, also, our capacity to process
6 information or attend to it is limited. And so if there
7 are a lot of things going on at once, we can really only
8 attend to one thing at a time.

9 So you often find that people have a pretty poor
10 memory for everything that was going on. So the capacity
11 for attending to things in our environment is limited.

12 Q What do scientists mean by the term perception?

13 A Perception is another one of these mechanisms that we
14 use to process information. It specifically has to do
15 with sort of how we interact with the world, how we
16 process information visually, what we hear, what we touch,
17 different senses.

18 Q Do people make mistakes in perception?

19 A Sure.

20 Q Are there things that happen that influence the
21 quality of the information that is perceived and accepted
22 into memory?

23 A Sure, yes.

24 Q For example, does the amount of time you have to
25 experience an event affect your memory of that event?

1 A Yes.

2 Q How does that affect your memory?

3 A Sure. Of the amount of time, it has to do with how
4 much information you get. So if it's a very brief amount
5 of time, you won't get very much information and there
6 won't be much there to remember or to recall later on. If
7 it's a lengthy experience, the more time you're
8 experiencing it, the more information you get, so there
9 will be more available for later to recall.

10 Q Does the quality of the view you have during an event
11 affect your memory of that event?

12 A Yes.

13 Q How about familiarity? So are people more accurate
14 in their identification if they've previously interacted
15 with that person?

16 A Sometimes they are and sometimes they're not.

17 Q Why doesn't familiarity guarantee accuracy in
18 identification?

19 A Well, people tend to draw upon what they think that
20 they're familiar with, so if you've seen someone before,
21 that memory is easily available in your memory and so you
22 can draw upon that very, very quickly.

23 It doesn't mean it's accurate. It just means it's
24 available. It's a mental shortcut that we all take. And
25 people think -- people tend to think that they remember

1 the details of people that they've seen before, in fact,
2 better than we often, in fact, do.

3 Q What happens if, say, a suspect or a perpetrator of a
4 crime looks similar to, say, a person in the neighborhood,
5 a familiar face that you've seen around?

6 A Sure. Someone may be more likely to then identify
7 that person.

8 Q Now, does that also affect their confidence in their
9 accuracy?

10 A People tend to be even more confident when they are
11 making an identification of someone who they think they've
12 seen before than if it's a stranger identification.

13 Q So mistakes in perception, those are normal?

14 A Sure, yes.

15 Q And this happens to everyone?

16 A Yes.

17 Q Now, I'd like to draw your attention, is there a
18 phenomenon called weapon focus?

19 A There is, yes.

20 Q And what does this refer to?

21 A This is a term that researchers apply to the
22 situation where there is a weapon involved in any sort of
23 crime. The idea is that people often are focusing on that
24 weapon, regardless of what the weapon is.

25 If it's something threatening, people are focusing

1 their attention -- sort of like tunnel vision, you can
2 think of it like that, that people are often focusing so
3 much on that, it's at the expense of what else is going on
4 around them.

5 Q And this is the research that -- this is the results
6 of research that's been found?

7 A Yeah, there's been numerous studies, dozens of
8 studies that have looked at what happens when someone is
9 confronted with a weapon, any sort of thing they find
10 threatening in this type of situation. And studies find
11 that people -- sometimes they're able to even describe the
12 weapon better than they can describe the person's face
13 that was holding it or other details at the scene.

14 Overall, you find that people tend to be less
15 accurate when they're recalling the details of a crime
16 when there was a weapon involved than when there was not.
17 And, also, identification accuracy tends to suffer when
18 there was -- if there was a weapon involved versus not.

19 Q Could a person experience a heightened level of
20 stress or fear when a weapon is present?

21 A Sure.

22 Q How does the stress impair a person's memory?

23 A Stress impairs a person's memory similar to the
24 presence of a weapon. Those are, of course, interrelated.
25 Stress tends to have the effect of narrowing a person's

1 intentional focus. Again, going back to how we were
2 talking about attention, that we can only attend to one
3 thing at a time. And so what we find in research is that
4 people often are focusing on the physiological response
5 that's happening to them when they're feeling threatened
6 or fearful or in a very stressful situation. And so
7 people are often focusing on that, their attention is
8 focusing on that sometimes at the expense of other --
9 being able to really process other information.

10 Q Now, Dr. McQuiston, you were here in the courtroom
11 here today to hear the previous testimony?

12 A Yes.

13 Q So you heard the testimony of Martin Sims?

14 A Yes.

15 Q And about what happened to him on May 13th, 2015?

16 A Yes.

17 Q After hearing what he had to say about that, is there
18 anything that you would highlight as concerning that might
19 have affected his memory of the event or the suspect?

20 A Sure, some of these things that we're talking about.
21 We can say that you have to be very careful with an
22 identification when a weapon is present, when it's a
23 highly stressful, of course, situation. Those things can
24 certainly impair someone's ability to make an
25 identification under some circumstances.

1 Q Now, I also want to ask you a little about have
2 eyewitness researchers studied the confidence of witnesses
3 that they express when they make an identification?

4 A They have.

5 Q What exactly are scientists looking at when they're
6 studying this?

7 A They're looking to see whether a person's confidence
8 can be used to predict accuracy. Actually, we don't call
9 it predicting, we call it post-dicting because the
10 confidence statements comes after the identification.

11 So that's what researchers are looking at is when
12 someone makes an identification, then they gave a
13 confidence statement, say on a scale of one to seven or
14 one to ten, how confident are you, how related are those
15 two? And really can you use someone's confidence to --
16 does someone's confidence give you an indication of how
17 accurate the person is.

18 Q And what does the research generally find about that?

19 A The research shows that there's less of a
20 relationship than you would think that there is. So when
21 it comes down to it, confidence is not a great predictor
22 of accuracy. It's not that it's not a predictor at all,
23 it's just not a strong predictor of accuracy, meaning you
24 can't necessarily use someone's confidence as a cue for
25 certain to their accuracy.

1 Q Do eyewitness experts generally support -- never
2 mind.

3 How about somebody's confidence as time goes on? If
4 they're -- does that have any indication? So not -- if
5 they did a confident statement right after the lineup,
6 that would be a post --

7 A Sure.

8 Q What you would call post-identification or post?

9 A Post-dictor.

10 Q Post-diction. Do you know anything about whether
11 people are asked confidence later on, say, a year down the
12 line?

13 A Well, this is one of the reasons that it's so
14 critical to document these things happening during an
15 identification procedure because sometimes people,
16 eyewitnesses naturally become more confident over time,
17 naturally become less confident over time.

18 There's a lot of things that could happen over time.
19 So if you have that initial record, you really want to
20 always reference that. Does that answer your question?

21 Q Sure. Are there any difficulties in assessing the
22 reliability of an in-court identification?

23 A That can be problematic from my view because an
24 in-court identification is not independent from any other
25 identification that has been made. Only the first

1 identification really counts. That's the only one that's
2 truly from a witness's memory of the event.

3 An in-court identification isn't happening
4 necessarily from the person's memory of the event. It
5 could be happening from the person's memory of who they
6 picked out in the lineup. You just can't know. You can
7 never know where that identification is coming from as
8 opposed to the one that -- the first one that happens from
9 a lineup.

10 Q I want to talk to you a little about the first
11 lineups. Has there been research done on procedures for
12 lineups?

13 A Yes.

14 Q Okay. What's some of the things that the research
15 has found on that?

16 A Well, research has looked at a lot of different
17 aspects of how an eyewitness procedure is conducted, from
18 the instructions that are given to the witness to the
19 procedure that's actually used to display the photos, to
20 the impact of any kind of feedback that's been given after
21 the procedure, how well the lineup members should resemble
22 each other so not to draw a false identification. Those
23 are probably the main things.

24 Q Okay. And there have been major organizations that
25 have released recommendations on procedures for law

1 enforcement?

2 A Yes.

3 Q What are some of those?

4 A In the late 1990s, the Department of Justice spent a
5 couple of years with law enforcement, prosecutors, defense
6 attorneys and they wrote guidelines for best practices
7 based on what we knew, what researchers knew up to that
8 point and, also, how these worked in practice, which is
9 why, of course, law enforcement and attorneys were
10 involved. So they wrote these recommendations for how to
11 conduct a lineup, what the best way to do it would be.
12 That was in the late 90s, distributed to law enforcement
13 in 1999.

14 Q And some of their recommendations were to record?

15 MS. WALKER: I would object to the leading, Your
16 Honor.

17 MS. WILLIAMS: I'll rephrase, Your Honor.

18 THE COURT: We're in camera, Solicitor. Moving right
19 along, we're in camera.

20 BY MS. WILLIAMS:

21 Q Certainly, Your Honor.

22 What are some of other recommendations that they made
23 for guidelines?

24 A Sure, the instructions that are given prior to
25 looking at a lineup should be what we call unbiased, that

1 the suspect may or may not be in the lineup, so that's an
2 important recommendation. If a sequential procedure is
3 used as was described here, photos shown one at a time,
4 there's a very specific way that should be done. Same
5 thing with simultaneous lineups, how to select photos or
6 how to not select photos for a lineup. Those are some of
7 the recommendations.

8 Q What were the specifics on a sequential lineup?

9 A A specific sequential lineup are that it should be
10 conducted by someone who is not involved in the case, a
11 blind -- what we call blind or double blind procedure.
12 That way, you can avoid any possibility of suggestibility
13 happening.

14 It's -- what the research finds is that it's easier
15 to suggest, unknowingly suggest something to a witness
16 when photos are shown one at a time than when they're all
17 laid out. So conducting that procedure double blind -- if
18 you're going to do a sequential lineup, double blind or a
19 blind lineup needs to go along it.

20 Q Okay.

21 A One other thing is that those photos really should
22 only be shown one time. That's the advantage of the
23 sequential lineup. Sequential lineup has certain
24 advantages, but only if those procedures are followed.
25 And one of them is that those photos should only be shown

1 one at a time to protect what the advantage is of the
2 sequential lineup versus simultaneous array.

3 Q Okay. Is there any recommendation on how long those
4 pictures should be shown?

5 A Not necessarily.

6 Q Do they recommend anything about how those are shown
7 besides that they need to be a blind and --

8 A Sure, sure. I know that some departments are
9 adopting a computerized method of doing it, only, of
10 course, if that's available in the moment. But that's
11 another way to remove the human experience from it and
12 make it potentially less biased.

13 Q Why would it be potentially biased if a human being
14 showed them?

15 A It's the potential for any sort of suggestibility.
16 Again, it's -- any kind of bias can be conveyed without an
17 investigator knowing it in the exact same way that when
18 medical research is done, you want double blind studies in
19 medical research to avoid a medical doctor from conveying
20 anything about what he or she knows is being given to a
21 patient.

22 So you really just want to do everything that you can
23 to avoid any type of suggestibility or bias. It's not
24 something that researchers talk about in terms of an
25 officer knowing that that's what's happening, it's that

1 human beings sometimes convey these things without even
2 knowing it. There's plenty of research that shows that.

3 Q Now, you were in the courtroom for Investigator
4 Richburg's testimony here today, as well?

5 A Yes.

6 Q He testified that he came in and that he said that he
7 had a potential suspect and then showed a lineup to Martin
8 Sims?

9 A Right.

10 Q Is there anything about that that would cause you
11 concern?

12 A I just think that it's very contradictory to have
13 said I have a potential suspect, but then go on to give
14 exactly the right instruction, which is the subject or the
15 perpetrator may or may not be in the lineup. That's the
16 proper instruction to give, which, to me, contradicts the
17 statement made earlier.

18 Q Is there anything else that you heard from his
19 testimony that would cause you concern about the
20 suggestibility of the lineup?

21 A The fact that it wasn't conducted double blind.
22 That's nothing that I heard from his testimony. It's, I
23 suppose -- well, I guess that question was asked, that it
24 wasn't conducted double blind. Again, that's how
25 sequential lineups need to be presented if they're going

1 to be used.

2 Q Do you have any concerns about -- I know there were a
3 number of questions asked about what was in his report.
4 Did you get a chance to review his case notes,
5 investigator Richburg's case notes before you came here
6 today?

7 A I did not review case notes. I reviewed the
8 statement given by the two witnesses and the pictures.
9 Case notes, I don't believe case notes.

10 Q They would be a paragraph -- they would be a couple
11 pages of information where the investigator was laying out
12 what he had done?

13 A I don't believe so, I don't believe so.

14 MS. WILLIAMS: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 BY MS. WILLIAMS:

18 Q Dr. McQuiston, based on the information that you were
19 provided and in-court testimony, do you have any concerns
20 about suggestibility when it came to documentation?

21 A When it comes to documentation, certainly. There
22 isn't anything that I necessarily heard that would lead me
23 to believe, based on what was said, that it was a
24 suggestive procedure, but there's so much that was not
25 documented that that's what concerns me.

1 MS. WILLIAMS: Thank you. No further questions.

2 THE COURT: Thank you very much.

3 Solicitor?

4 MS. WALKER: Thank you, Your Honor.

5 CROSS-EXAMINATION:

6 BY MS. WALKER:

7 Q Doctor -- is it McQuiston?

8 A Yes.

9 Q You're not saying that victims of violent crime can't
10 identify their attacker?

11 A No.

12 Q In fact, your testimony here today was pretty much
13 the same as the State vs. Anthony Porterfield when you
14 testified in this courthouse for the Public Defender's
15 Office?

16 A It was probably similar.

17 Q In front of Judge McMahon, actually.

18 A Yes.

19 THE COURT: I identify.

20 MS. WALKER: You can identify.

21 THE COURT: All of it.

22 BY MS. WALKER:

23 Q Okay. I think a lot of your testimony then was about
24 two things, cross-racial identification, which you had
25 issue with, right, in terms of the reliability of it.

1 A Sure. Sure.

2 Q But in this case, you said -- you didn't really talk
3 about cross-racial identification. You're talking more
4 about whether or not someone can see someone in the
5 neighborhood and then replace that image with the person
6 who actually attacked them. Is that what you were --

7 A That's certainly a possibility.

8 Q I mean, your argument is that, for lack of better
9 phrase, all black people look alike, so if you see one
10 black man in the neighborhood, you're going to assume he's
11 the attacker. That's not what you're saying?

12 A No.

13 Q In fact, the fact that it's the same race identifying
14 one another makes it more reliable?

15 A It could be, yes.

16 Q And how much is that you're making today to be here
17 to testify?

18 A I make \$300 an hour.

19 Q Which is -- I guess you've gone up since last we met.
20 I think it was two something then?

21 A 2016.

22 Q Okay. And you said you've testified probably 30
23 times all for the defense?

24 A Yes.

25 Q And I guess it's your testimony that there's nothing

1 to you that suggests or that indicates this was a
2 suggestive lineup?

3 A What concerns me is the lack of documentation. It's
4 really hard to say whether it was. That's the --

5 Q Well, from the testimony that you heard --

6 THE COURT: Let her finish.

7 MS. WALKER: I'm sorry.

8 THE COURT: Go right ahead.

9 THE WITNESS: No, go ahead.

10 BY MS. WALKER:

11 Q From the testimony you heard, is there anything from
12 either the investigator or the victim in this case that
13 indicates to you that this was a suggestive lineup?

14 A From what I heard today, no.

15 Q Do you have notes with you?

16 A I have the notes that I was taking.

17 Q May I see those?

18 A Sure.

19 Q Thank you.

20 MS. WALKER: Beg the Court's indulgence, Your Honor?

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 BY MS. WALKER:

24 Q I'll get those right back to you.

25 A Sure.

1 Q For purposes of this hearing, again, your testimony
2 is that from what you've heard today -- and you didn't get
3 a copy of the whole case file?

4 A No, I did not.

5 Q You got what, I guess, defense counsel chose to send
6 you?

7 A Right. Things that were related specifically to the
8 identification.

9 Q Well, you don't really know because you don't know
10 what you didn't see, right?

11 A Right. Yes, yes.

12 Q But for purposes of this hearing, there's nothing
13 that you heard today that makes you think that this was a
14 suggestive lineup or either way it was created or
15 displayed?

16 A The way that it was displayed, I certainly have a
17 problem with that it wasn't -- like I said before, that it
18 wasn't a blind procedure used with the sequential lineup.

19 Q But you -- you don't think Investigator Richburg
20 suggested to -- you're not saying that he suggested to the
21 victim who to show, who to pick?

22 A I have absolutely no idea what happened.

23 Q So you have no opinion on that?

24 A No, I do have an opinion and that is that I don't
25 know if he suggested something to the witness.

1 Q So your opinion is you don't know?

2 A My opinion is that there's no way of knowing. That's
3 what I was explaining about how --

4 Q Right.

5 A -- suggestibility works. Asking the question, did
6 you suggest something is not really a proper way to
7 measure if something was suggested. Like I said, this is
8 exactly why, for example, medical research is done the way
9 that it is, that a doctor does not know who's getting the
10 placebo and who's getting the real medication --

11 Q Right.

12 A -- because you don't want for any sort of -- it's not
13 because you think that the doctor is not doing his job
14 properly, it's that people give cues. And that's how this
15 works, unfortunately, people give cues that they don't
16 even know that they're giving. So it's not about that I
17 think someone might have done something on purpose. It's
18 not about that at all.

19 Q But you don't have anything to indicate that
20 something -- I mean, when you say -- your opinion is you
21 do not know?

22 A I don't know because it wasn't written down.

23 Q So right, your opinion is you don't know?

24 A Yeah, there's no way of knowing, right.

25 Q Yeah.

1 MS. WILLIAMS: Just...

2 MS. WALKER: Thank you, Doctor.

3 THE WITNESS: Thank you.

4 MS. WALKER: I don't have any further questions, Your
5 Honor.

6 THE COURT: Redirect?

7 MS. WILLIAMS: Just briefly, Your Honor.

8 THE COURT: Briefly.

9 REDIRECT EXAMINATION:

10 BY MS. WILLIAMS:

11 Q Dr. McQuiston, the things that you'd be looking at to
12 determine whether a lineup could be suggestible or
13 potentially would be a suggestible lineup, what are those
14 things that you're looking at?

15 A The things that I would look at are the kinds of
16 instructions that are given to a witness. Is there
17 anything that suggest to a witness exactly who in the
18 lineup should be picked. So I would be looking at the
19 instructions.

20 I would look at the photos themselves to see if
21 there's anybody in the lineup that stands out relative to
22 the other members. I would look at the procedure that is
23 used, and we know that a simultaneous lineup where all the
24 photos are presented at once, there's less opportunity for
25 it to be suggestive.

1 That's the -- the issue with presenting a sequential
2 lineup is there's just more opportunity for it to be
3 presented in a suggestive manner, which is why that has to
4 be combined with a double blind procedure.

5 And then I would look to see if there was any
6 feedback that was given, which is why it's really
7 important to document a witness's confidence statement the
8 second that an identification is made. And I was unclear
9 about that in this case, how that might have been
10 documented. But it's important to document how confident
11 a person's identification is before any other words are
12 spoken.

13 Otherwise, there could be the potential for what we
14 call post-identification feedback effect where a sense of
15 confidence is inflated artificially based on something an
16 investigator might have accidentally said. So it's
17 important to get a confidence statement written down
18 before anything is said.

19 Q So the procedures here where he came in and stated
20 I'm looking for -- we've got a potential suspect, may or
21 may not be in here, what is your --

22 A I think it's bit contradictory.

23 Q Could that end up being suggestive?

24 A That's hard to -- that's hard to say on that one. I
25 think it was really good that the investigator then

1 followed that up with a person may or may not be here, but
2 that's hard to say.

3 Q The fact that he did a sequential lineup and he was
4 aware of who the suspect was, that gave you -- what's your
5 finding on that?

6 A I think that procedure has the potential to be
7 suggestive, and we will never know because it wasn't
8 videotaped, because it was not combined with a blind
9 procedure.

10 If you look at any of the recommendations made to law
11 enforcement, any of the National Academy of Science
12 report, look at how other jurisdictions might be doing it
13 around the country, the deal is that those two have to go
14 together, so that gives me great pause. And the fact that
15 it wasn't documented, we just don't know.

16 Q Okay. So, in fact, when you say documented, are you
17 referring to videotape or audio recording?

18 A Right. I mean, a video recording is, of course, the
19 best possibility. I know there's limitations with those
20 kinds of things, but if you're talking best practices,
21 that's the best practice.

22 Q And then, finally, I think you stated that getting a
23 confidence statement immediately after before anything is
24 said is important?

25 A Right.

1 Q Not getting one, would that cause you concern?

2 A Yes, I think it's -- if it wasn't documented, then
3 you have no idea where it might have come from in the
4 process or how it might have been influenced. There's
5 been tons of research showing the confidence in -- a
6 person's sense of confidence in their identification is
7 valuable.

8 It changes over time based on all kinds of things.
9 It has the potential to. So that's why you want to write
10 it down as soon as it happens so that you have
11 documentation before anything can influence it.

12 Q So the lack of documentation, whether audio, video or
13 notes going through these things, that causes you concerns
14 about suggestibility?

15 A Yes.

16 THE COURT: Recross, Madam Solicitor?

17 RE CROSS-EXAMINATION:

18 BY MS. WALKER:

19 Q Do you have any sort of documentation on your
20 findings in this case, a report or anything of that
21 nature?

22 A I wasn't asked to write a report.

23 MS. WALKER: Nothing else.

24 THE COURT: Thank you. Thank you very much. Thank
25 you for being with us.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Do you have any other avenues
3 of testimony to present this afternoon on this matter?

4 MS. WILLIAMS: No, Your Honor. We just have one
5 witness for tomorrow morning.

6 THE COURT: All right. Thank you.

7 All right. Anything further we need to take up then
8 this afternoon or just continuing with the Neil vs.
9 Biggers in the morning?

10 MS. WALKER: Your Honor, just for purposes of the
11 record, there was an offer made in this case. I just want
12 to put that on the record.

13 THE COURT: There was a what?

14 MS. WALKER: An offer was made in this case. Your
15 Honor, it was cap of 30 years. I just want to put that on
16 the record.

17 THE COURT: All right.

18 Is that correct, Ms. Williams?

19 MS. WILLIAMS: Yes, Your Honor.

20 THE COURT: All right. Thank you very much.
21 Anything from the State before we take our recess?

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: All right. We'll be in recess until
24 nine o'clock in the morning, nine o'clock.

25 MS. WILLIAMS: Thank you, Your Honor.

1 (Whereupon, the proceedings were adjourned for the
2 evening.)

3 THE COURT: All right. Good morning, Ms. Williams,
4 Ms. Pinnock, Solicitor.

5 MS. WALKER: Good morning, Judge.

6 THE COURT: I believe we were three-quarters or a
7 little further through Neil vs. Biggers hearing; is that
8 correct?

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: And the defense has another witness?

11 MS. WILLIAMS: We do, Your Honor.

12 THE COURT: All right. You may call your next
13 witness, Ms. Williams.

14 MS. WILLIAMS: Thank you, Your Honor. May it please
15 the Court. The defense calls Mr. James Stachowiak.

16 JAMES STACHOWIAK, after being duly
17 sworn, testified as follows:

18 THE CLERK: Have a seat in the witness stand, please.

19 THE BAILIFF: Watch your step, sir, thank you.

20 THE CLERK: State your name for the record. If you
21 would spell your last name, please.

22 THE WITNESS: James Stachowiak, that's
23 S-T-A-C-H-O-W-I-A-K.

24 DIRECT EXAMINATION:
25

1 BY MS. WILLIAMS:

2 Q Mr. Stachowiak, what's your occupation?

3 A I'm a physician assistant for Palmetto Health
4 Richland, Trauma Services, Palmetto Health Specialist.

5 Q How long have you been a physician's assistant?

6 A Sixteen years.

7 Q What does a physician's assistant do?

8 A Typically, our role is to work in correlation with
9 our physicians and provide care to our patients,
10 coordinating surgical needs, post-op care and any
11 discharge needs, as well.

12 Q What sort of activities do you do with that?

13 A Participate in care with patients in a hospital,
14 assessing their formularies, such as their medical
15 records, medication records, assisting with surgery if
16 they need for us to assist.

17 We help educate the patient's family, as well as the
18 patient on their medical needs at the time of discharge,
19 coordinating care with consults that we may need during
20 the stay with the patient in the hospital. And,
21 basically, overall healthcare moving forward with getting
22 the patient home.

23 Q What education do you have to have to become a
24 physician's assistant?

25 A Typically, these days, they would prefer people to

1 have a four-year degree and then go into a physician
2 assistant program. Some programs have -- schools have
3 where you start for two years and then you move into your
4 third or fourth year being a PA school.

5 I went to USC for five years, went to Midlands Tech
6 for two-and-a-half, I think, years before that, and then I
7 went to Alderson Broaddus in Phillipi, West Virginia for
8 34 months for PA school.

9 Q As a physician's assistant, do you administer
10 medications to patients?

11 A With correlation with -- discussing with my
12 attending, we do. Specifically, narcotics, we do.

13 Q So you have knowledge and training on different
14 medications?

15 A We do.

16 Q Can you tell us what is -- what's Fentanyl?

17 A Fentanyl is an opioid that is one of the strongest
18 medications we're using for pain relief. Typically, we
19 use Fentanyl in a case when a patient is going to be put
20 on a ventilator, and we use it postoperatively to keep
21 them with some pain control, but synergistic effect,
22 Propofol, as well.

23 Q So it's a pain reliever?

24 A Yes, ma'am.

25 Q Primarily. How is it different from Tylenol or Advil

1 that I can get at the pharmacy?

2 A Fentanyl is a prescription by a physician only to
3 sign for this medication. Tylenol is over-the-counter
4 medication, and Advil is an ibuprofen which is in Motrin.
5 It does help with pain control, but they work on different
6 type.

7 Q All right. Should a patient drive while on Fentanyl?

8 A No. If you -- it states that people should not drive
9 while taking narcotic medications. That's in our
10 instruction leaflet we hand out.

11 Q Why not?

12 A Sometimes that medication can cause people to be
13 sleepy, less responsive, so it's slightly difficult. It
14 could impair while driving.

15 Q Does the hospital have a policy for when patients are
16 going to give legal consent to a procedure?

17 A We have a set of standards for a patient to consent
18 to surgery depending upon their condition. If they're a
19 patient that is on a ventilator and they need surgery
20 emergently, then the consent is understood.

21 If the patient is in a unit, we can ask family
22 members who are next of kin to help with consent for
23 surgery, which we've done before. Those are typically the
24 only two ways we usually do that.

25 Q So you wouldn't get the consent directly from the

1 person on the ventilator?

2 A No, no, we would not. Typically, unless, again, it
3 was a person who was -- if they're -- yes, that's correct,
4 no.

5 Q Why is that the policy for the hospital when it comes
6 to that?

7 A Typically, because at a point in time, you have an
8 attending physician that is present and they usually are
9 able to assess the patient. They assess at that time the
10 capacity of the patient's ability to make a decision. And
11 if they're incapacitated given the medication, then they
12 won't be able to make that decision usually appropriately.

13 Q So that is a precaution to make sure?

14 A Yes, ma'am.

15 Q All right. And you mentioned another medication,
16 Propofol. What's that?

17 A Propofol is a sedative medication that we use at
18 times when people are placed on a ventilator. We use
19 Propofol instead of other medications like Versed because
20 if you stop the Propofol, it has usually a short half
21 life, which allows you to do more examination on the
22 patient, like you're trying to do a neuro check on them.
23 You hold the Propofol, you hold the Fentanyl, give it a
24 period of time to wear off and assess their capacity and
25 ability to follow commands.

1 Q Is Propofol treated the same way as Fentanyl when it
2 comes to not driving?

3 A Propofol is an -- is an I.V. medication. So they
4 don't want you -- you don't drive when you're
5 (unintelligible)

6 THE COURT REPORTER: I'm sorry. I didn't understand
7 what your answer was.

8 THE WITNESS: They shouldn't, no. No, there's no
9 driving on Propofol. That's an I.V. medication.

10 BY MS. WILLIAMS:

11 Q That's our court reporter. She's taking down
12 everything you say.

13 A I'm sorry.

14 Q All right. So would you do similar policies with
15 Propofol as you talked about with Fentanyl for legal
16 consent or informed consent?

17 A So are you asking if they're on both of them at the
18 same time or one or the other?

19 Q One or the other. What's the policy for those?

20 A At that time, the attending is to assess the
21 patient's ability to make decisions. Sometimes we do have
22 people who are on narcotic medications who make decisions
23 or have procedures, but at the same time, you always
24 correlate this information with respective family members.

25 Q All right. You talked about a ventilator. What is a

1 ventilator?

2 A A ventilator is a device that helps give the patient
3 respirations. It helps exchange the oxygen and the CO₂
4 out of a patient's body so that they're oxygenating their
5 body well. It helps them breathe. It breathes for them
6 when they're sedated heavily, and then as you lessen
7 sedation, you change the rate of a ventilator from one
8 rate to a different rate, that allows the patient to start
9 breathing on their own. And eventually, you assess the
10 patient before excavating off the ventilator and then ask
11 the patient as they come around to follow demands.

12 Q Now, with a ventilator, they have a chest down their
13 throat -- they have a tube down their throat?

14 A In a ventilator, they have an ET tube that's placed
15 just above the corotid, which allows oxygen to go down
16 both sides of the lungs.

17 Q Is that a painless procedure?

18 A Typically, the patient is sedated at the time they're
19 getting intubated. They'll usually use a rapid sequence
20 intubation, which means they're going to use Norcuron or
21 Propofol at the same time to sedate the patient and
22 intubate the patient.

23 Q And you stated that the Fentanyl and Propofol are
24 something that they use while someone is on a ventilator?

25 A Yes.

1 Q The entire time?

2 A Usually, yes, ma'am. Because one of the things with
3 a ventilator, you don't want them to be uncomfortable.
4 You don't want them bucking a ventilator because they --
5 bucking means to try to breathe over it or not sedated
6 enough to keep them restful. Usually, the only time you
7 lower the levels of medication is when you do your
8 neurologic checks on a patient.

9 Q How is Fentanyl and Propofol given to a patient?

10 A Propofol is an I.V. Fentanyl comes in other forms.
11 Fentanyl comes in a sublingual I.V., it comes in a
12 transdermal patch, but, typically, when they're on a
13 ventilator, they use the I.V. in a drip.

14 Q I'd like to draw your attention to May of 2015. Were
15 you working at Palmetto Health Richland then?

16 A Yes, ma'am.

17 Q As a physician's assistant?

18 A Yes, ma'am.

19 Q Did you have an opportunity to care for Martin Sims
20 in May of 2015?

21 A I took care of him directly for two days in a
22 surgical step down unit.

23 Q Were you the only person caring for Martin Sims?

24 A No. My attending physician rounded me each day on
25 the patient.

1 Q Were there others that were helping with the care of
2 the patient?

3 A They're in the SSU, yes. There's nursing staff that
4 cares for the patient, as well, as well as a trauma nurse
5 that works and rotates on the patients in the unit, as
6 well.

7 Q How do y'all communicate with each other about what
8 each has done?

9 A Typically, we'll communicate with direct contact from
10 the patient if they have any questions. We'll place notes
11 in the computer system, which are daily notes. And if
12 they have any concerns, they'll refer back to our daily
13 notes and if they don't find their answer, they'll give me
14 a page and we'll communicate that way.

15 Q And this is something that the staff -- the chart or
16 the daily notes, that's something that the staff does
17 regularly?

18 A Yes. The nurses also do their own daily notes, as
19 well.

20 MS. WILLIAMS: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 MS. WILLIAMS: Can I mark this?

23 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
24 identification only.)

25

1 BY MS. WILLIAMS:

2 Q Mr. Stachowiak, what is this?

3 A Okay. It's a medication administration form.

4 THE COURT: Speak up for me a little bit.

5 THE WITNESS: Sorry. This would be a medication
6 administration form.

7 THE COURT: Thank you.

8 THE WITNESS: Yes, sir.

9 BY MS. WILLIAMS:

10 Q All right. What are those for?

11 A Usually, what we call is the MAR system in our
12 computer. It keeps track of medications. And, basically,
13 allows us to see what the patients receive during the day
14 or during their stay in our system.

15 Q Why does the hospital keep this for a patient?

16 A This is necessary to keep track of what medications a
17 patient received, number one, and to see if there's any --
18 if they have any adverse reactions to medications, we
19 document it. We put it on an allergy list, basically, to
20 keep track of what a patient receives while in the
21 hospital, medication, quantity, dose, strength.

22 Q I'd like to direct your attention to page 64 of this
23 record?

24 A Okay.

25 Q What is on this page?

1 A At the top, it says, medication. It says, Percocet
2 5/0.25, below it says 5/13/2015, Fentanyl, 1350
3 micrograms, 135 cc, normal saline bag --

4 Q Okay. Sorry. I'm going to stop you right there and
5 slow you down a little bit. Sorry. Just so we can get
6 that.

7 A It's a Fentanyl drip, is what it looks like, 1350
8 micrograms in a premix bag.

9 Q So under continuous infusions --

10 A Yes, ma'am.

11 Q -- it's -- Fentanyl is the first entry?

12 A Yes, ma'am. This is an order on the 13th, so that
13 was ordered on the day he came into the hospital.

14 Q Okay. What time was that ordered?

15 A Looking at this here, it was reported at 1411, but he
16 was here before that time if I remember. He came in the
17 morning time on the 13th.

18 THE COURT: I can't quite hear you.

19 THE WITNESS: Sorry. He came in the morning time on
20 the 13th, I believe. He went to the OR, I think he was
21 post-op somewhere after 12:45, somewhere in that area.

22 BY MS. WILLIAMS:

23 Q Okay.

24 A P.m.

25 Q So 13:00, one o'clock?

1 A Yes; yes, ma'am.

2 Q Okay. Okay. If --

3 A Fentanyl. He was on Propofol, as well, on the 13th
4 at 13:18 hours.

5 Q Okay. What were the doses on these different
6 medications?

7 A Well, looking at this page here, I cannot tell you
8 what rate he was being dosed at because he was on a drip.
9 It says -- the one for Fentanyl is 75 micrograms per hour,
10 but I did not -- I can't answer that really unless -- I'm
11 just reading off of this.

12 Q So based off of this, that's what you would say the
13 dose was?

14 A I would have to because I don't have anything else in
15 front of me. Typically, you have a sheet that would have
16 information on it like a preop preliminary and the nurse
17 would document on a sheet, a paper, a format that they
18 have that goes through and documents what medications they
19 were getting during that period of time.

20 Q Is there a standard dose for what you give to a
21 patient?

22 A Not really. Every patient is different. Some people
23 may only require a little bit of medication to help them
24 remain sedated and other people may require more. You
25 know, you don't know what the patient's ability to

1 metabolize medications are. Everybody is different.

2 Q But the purpose of -- but the purpose of the Fentanyl
3 and the Propofol is to sedate them?

4 A Yes, ma'am. At this time, he should be on a
5 ventilator at this time.

6 Q All right. So we had entries of Fentanyl and
7 Propofol at 1:00. I'd like to go down these next pages
8 with you. What's the next entry that you see? I think
9 it's on page 65, what time was the next dose of Fentanyl
10 and Propofol given?

11 A 13:30 hours, Fentanyl, and it says 150 micrograms.
12 So if you go back to 64, it says, at 13:18 hours, the
13 Fentanyl is at 100 micrograms per my reading of this. So
14 it looks like they went up on his dose of Fentanyl during
15 this time.

16 Q Okay. So they're regulating it to get him?

17 A Restful, more than likely, but in this -- they do
18 neuro checks and stuff like that in between. I don't
19 know, unless you have the nurse's sheet, if they lowered
20 the dose intermittently in between. I don't know the
21 answer to that.

22 Q All right. What is a neuro check?

23 A They -- basically, when a patient is on Fentanyl and
24 Propofol, you would lower those medications intermittently
25 to assess their neurologic function. Usually, if you have

1 a head injury patient, it's one hour. It may vary. But
2 usually when they check, they lower the medications.
3 They'll give them time to wear off. Everybody is
4 different. So Propofol and Fentanyl may take a little bit
5 of time to wear off for somebody and then other people, it
6 may take a little longer. It's just how your body
7 metabolizes the medication out.

8 As they become more awake, alert, they'll ask more
9 questions, ask them to show you two fingers, thumbs up.
10 Typically, as they wake up and they become more
11 responsive, they can.

12 Sometimes they get coughing because the E tube is in
13 place, so, initially, it's a gag reflex. They'll move
14 their extremities. You'll ask them to move their arms.
15 Like, if they have a spine injury, you'll see if they can
16 move their arms and legs. That's, basically, a
17 neurological exam.

18 You find out how they respond to you as you drop the
19 dose of the medications. Typically, if they're still on
20 the ventilator and still require the ventilator, then you
21 put the medications back up to where they were.

22 Q Why do you lower the medication for these
23 neurological checks?

24 A For us, it allows us to see how the patient responds
25 appropriately. It allows us to see can they follow

1 commands for you, are they alert. I mean, we have
2 patients who try to talk a lot on the ventilator as the
3 medications are decreased or shut off, but, typically,
4 allows us to see how they're doing functionally, if
5 there's a change in their neurological exam.

6 If they come, they have a spine injury or something
7 like that, you want to know are they moving their arms or
8 legs still after the surgery is over with, that's very
9 important.

10 If they've had a head bleed, a subdural hematoma,
11 typically, you look at a patient and see how they are
12 before surgery, but you keep on neurologic checks even
13 after surgery if they had surgery or something like that.
14 You assess their neurological function to see if they can
15 follow commands and hear what you're saying to them.

16 Q And you lower the medication because you can't do
17 that while they're on the medication?

18 A We lower those medications, basically, to assess
19 their ability to learn to follow the commands for us. The
20 medications, if they're at a higher level will -- can
21 sedate a patient. So you need to know where the patient
22 is, at what level they can be at to assess them. And,
23 typically, when they do a neurological assessment, they
24 cut the medications off.

25 Q And if you were getting -- describe for me the

1 process if you needed to get an informed consent from that
2 actual person, what you guys would do if they were on
3 Propofol or Fentanyl?

4 A If they're on Propofol or Fentanyl, typically, we try
5 to contact or try to get the patient's family member or
6 closest nearest relative to give us consent for additional
7 procedures. If there's no one there to save the patient's
8 life, consent is understood.

9 Q If it's not that situation, so it's a situation where
10 it would be elective?

11 A It depends on the attending. The attending would go
12 by and see the patient. If the Propofol is weaned off,
13 the Fentanyl is weaned off, and they're following commands
14 and still on the ventilator, then it's up to the attending
15 to assess how a patient responds.

16 Q What is the attending looking -- what are they
17 assessing?

18 A They're assessing the patient's ability to see what's
19 around them, communicate. Usually, you're looking at
20 getting into the ability to make a decision. I know that
21 as the medication wears off, as Propofol wears off, as
22 Fentanyl wears off, they're able to communicate more
23 normal and, typically, get real aggravated at times and
24 we'll even have them try to pull their E tube out.

25 Q But an attending would have to determine -- an

1 attending -- what would an attending have to determine
2 before making that decision?

3 A If the -- well, the attending would determine if the
4 patient has the ability to make the decision.

5 Q Okay. I want to step back here to direct your
6 attention to page 65. So it seems from what you had --
7 earlier testimony, you said Fentanyl, Propofol both at
8 one o'clock, 1:18, and then again at 1:30 and 1:45?

9 A 1:45 is under 200 micrograms on this sheet here.

10 Q Okay. And then the next one was at 6:30 in the
11 evening?

12 A 6:36, yes, ma'am.

13 Q Okay.

14 A It looks like it's 130 -- well, hold on. 100
15 micrograms per hour, that's what it looks like at that
16 time. So they lowered the medication. And this is the
17 13th at 18:36 hours, so he's still on the ventilator, I
18 believe, during this time. I've read through these notes.
19 I know when he was extubated, but I don't know the exact
20 time, but he was extubated on the 14th midafternoon some
21 time.

22 Q Okay.

23 A Looking at the chart.

24 Q Okay. So looking through it, if you look over the
25 next several pages, when did he stop being on Fentanyl and

1 Propofol. I guess page 68?

2 A Sorry.

3 Q Okay.

4 A I'm just reading through them. 68. So let's see.

5 17:00 hours on 5/14 Fentanyl, at 1700, 175 micrograms per
6 hour.

7 THE COURT: I'm sorry, sir, I can't hear you.

8 THE WITNESS: Sorry. Fentanyl was -- at 17:00 hours
9 on 5/14/2015 at 175 micrograms an hour on this list here.
10 Between 17 -- actually, I have to say between 17:00 hours,
11 he was probably extubated some time that afternoon from my
12 memory in looking at the chart.

13 He was probably extubated somewhere between I think
14 four and six o'clock to be -- or eight o'clock because
15 they called me later that evening for a pain control
16 medication for the patient.

17 Q Okay. Well --

18 A The notes and the STICU were written by Tabitha
19 Burton, who was a resident at that time who saw him on the
20 14th and the 15th.

21 Q Okay. So he was -- just so I understand, he was on
22 the Fentanyl and Propofol up until 17:00 or five o'clock?

23 A I was -- honestly, he might have been, but if you
24 need to extubate a patient and they're doing five-on-five
25 trial, he could have been extubated before this time and

1 still stayed on his mark. Because I believe I gave the
2 order to discontinue it like 22:00 hours, something like
3 that that evening.

4 Q Okay.

5 A There was no reason to keep it on the mark, he was no
6 longer receiving it. Typically, in the unit, that's just
7 a -- I discontinue a patient order.

8 Q Okay.

9 A Sometimes it may still remain on the mark, but it
10 doesn't necessarily mean that he's receiving it at that
11 time.

12 Q Okay. Now, when a patient is on a ventilator, you
13 talked about medication, are there other precautions that
14 you take to protect the patient?

15 A Yes, ma'am. Typically, we will put a patient in
16 restraints on a ventilator. We have their airway
17 protected. We have a controlled airway. The purpose for
18 the restraint is that if they -- in a period of time, if
19 they start to become more awake as they may lessen the
20 dose of the medication, they don't want them to try to
21 reach up and try to pull the E tube out or try to
22 self-extubate themselves.

23 MS. WILLIAMS: Your Honor, may I approach?

24 THE COURT: Yes, ma'am.

25 (WHEREUPON, Defendant's Exhibit No. 2 was marked for

1 identification only.)

2 BY MS. WILLIAMS:

3 Q What is this?

4 A This looks like it would be the nurse's record for
5 charting while in the STICU. Wendy Pate is one of the
6 STICU nurses, so this is the STICU nursing chart.

7 Q Okay. So Defense Exhibit 2 is the nursing directing
8 chart or part of it?

9 A Yes, ma'am.

10 Q What is it specifically referring to?

11 A It indicates a mechanical ventilation, I.V. fluids
12 they have on here. You'll have to forgive me. I rarely
13 look at these.

14 Q What's the -- I'd like to direct your attention to
15 one section of procedure restraint behavior description.
16 What is that for?

17 A That's, basically -- it indicates the patient's
18 activity at that time, what they're doing. As it shows at
19 16:05 hours on 5/14/2015, the patient was sleeping. It's
20 indicating that he was asleep at that time.

21 Q I'd like to direct your attention to page 214?

22 A Okay.

23 Q On 5/13/2015, under restraint behavior description,
24 it says sedated and/or paralyzed. What does that indicate
25 to you?

1 A It's put in my manual form, excuse me, L-A-R-M-O.
2 Excuse me, that's at 6:00 p.m., I would have to assume
3 that that is a patient --

4 THE COURT: I'm sorry, sir. I can't hear you.

5 THE WITNESS: I'm sorry. That would have to be this
6 was a patient at 16:00 hours. It was prior to post-op at
7 that time from the PACU. But again, I don't know the time
8 in PACU, which is the postop period, in transition to the
9 STICU.

10 So this is the very beginning of the STICU nurse
11 direct charting. He arrived that he was sedated. He was
12 probably on Propofol at that time and Fentanyl.

13 BY MS. WILLIAMS:

14 Q And it stated that for 14:00, four o'clock, as well?

15 A 18:00 hours, 16:00 hours, yes, ma'am.

16 Q Okay. And it stated that he was sedated or paralyzed
17 at six o'clock in the evening?

18 A It's what it says here.

19 Q Okay. I'd like to direct your attention to page 212.
20 You had mentioned a restraint behavior description as
21 sleeping. How is that different from sedated and/or
22 paralyzed?

23 A It depends on how much medication he's receiving at
24 the time. His dose of the Fentanyl, his dose of the
25 Propofol. Sometimes immediately post-operatively, they'll

1 keep them sedated on the medication, which means he will
2 receive maybe a higher dose. But again, if they're doing
3 neuro checks on a patient, they would stop the medications
4 and reassess the patient.

5 MS. WILLIAMS: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 BY MS. WILLIAMS:

8 Q And one last question. So when you are going to get
9 any kind of -- before you make any decisions at the
10 hospital, the physician -- the attending physician is the
11 one that has to determine capacity?

12 A Yes. The attending physician determines the
13 patient's ability to make a decision. We assist care of
14 the patient, but the ultimate -- it's the attending
15 physician to determine what a patient's ability is.

16 MS. WILLIAMS: Thank you. No further questions.

17 THE COURT: Thank you, Ms. Williams.

18 Solicitor?

19 MS. WALKER: Thank you, Your Honor.

20 CROSS-EXAMINATION:

21 BY MS. WALKER:

22 Q Sir, the first time you actually saw the patient in
23 this case?

24 A Physically saw him?

25 Q Physically saw him. What day was that?

1 A It would have to be when I was in the SSU.

2 Q What day was that, do you remember?

3 A I'm sorry. I mean, it was probably around May the
4 18th, 19th, somewhere in there.

5 Q So we're talking about, I guess, five to six days
6 after he was admitted?

7 A Yes, ma'am.

8 Q And I'm sorry, I'm just trying to get --

9 A That's okay. I can't remember the days. I've looked
10 at the chart once or twice already.

11 Q Without actually seeing the patient, is there any way
12 for you to determine what his response was like?

13 A No, ma'am.

14 Q Without actually seeing the patient, is there any way
15 for you to determine whether or not he was alert?

16 A No. No, I cannot.

17 Q Without actually seeing the patient, can you
18 determine whether or not he responded appropriately to
19 questions?

20 A No, ma'am, I cannot.

21 Q You said several times that different people respond
22 differently to different medications?

23 A Yes, everybody has a different way they metabolize
24 medications, the narcotics. Some may last a long time and
25 some may last a short period of time. Also, if the person

1 may have done things in the past, like drugs, we find
2 patients who do drugs requiring more medications at times.
3 But again, I don't know the answer to that.

4 Q So if you gave, I guess, Mr. Fyall and I the same
5 amount of drugs, are we both going to be sedated?

6 A That gentleman on the end right there?

7 Q Right, or either one of them?

8 A It all depends on the person. I think you would take
9 less because of your size.

10 Q Okay. And would I become alert more quickly than
11 they would? How would that work?

12 A It all depends. Again, as medicines go in a person's
13 body and your body breaks down the medications, breaks
14 down the Fentanyl, breaks down Propofol. It's a
15 continuous infusion to keep them sedated.

16 So if you stop the medicine, depending on how your
17 body is breaking that medication down will determine how
18 long it takes. Again, it can take five minutes for some
19 people, and it can take 20 minutes sometimes. But
20 usually, you use Fentanyl or Propofol because they usually
21 wear off faster.

22 Q Those two medicines wear off faster?

23 A We don't use Versed. Versed last a lot longer. It
24 can take 30 to 45 minutes for Versed to wear off
25 sometimes.

1 Q I see. And in terms of determining a patient's
2 alertness, would that be a more appropriate question for
3 person who are actually interacting with the patient at
4 that time?

5 A Yes, ma'am.

6 MS. WALKER: I don't have any further questions.
7 Thank you.

8 THE COURT: Redirect, Ms. Williams?

9 MS. WILLIAMS: Just briefly, Your Honor.

10 REDIRECT EXAMINATION:

11 BY MS. WILLIAMS:

12 Q Just to clarify, you stated when you stop the
13 medications or pause them, that's when the effects wear
14 off?

15 A Slowly. It's not immediate. It takes a little time.

16 Q Okay.

17 A And again, if you're there -- I'm not there to see
18 the patient during that period of time, but as you stop
19 the medicine, it takes time for that medicine to wear off
20 the patient. And everybody is different.

21 Q And the purpose and the levels that you give them
22 when you're not pausing them is to keep them in a rested,
23 sedated state?

24 A Yes, ma'am. And as you wean them off the ventilator,
25 you DC the Propofol usually. The Fentanyl is the last

1 thing weaned off. They're doing five-on-five trials and
2 then they're taken off the ventilator.

3 Q And what day was Mr. Sims taken off the ventilator?

4 A From looking at the chart, to me, it appears he was
5 extubated sometime on the 14th in the late afternoon.

6 Q So would that mean that on the 13th, he had a -- he
7 was on the ventilator the entire time?

8 A To me looking at the chart, yes. Because he left
9 from PACU -- again, I don't have notes specifically from
10 PACU. I can only see what I refer to from the STICU
11 notes.

12 And looking at this, it looks like he was still on
13 the Fentanyl and Propofol, transferred from PACU to STICU
14 and remained on -- and then weaned and extubated -- from
15 the note -- from Tabitha Burton's note on the 14th and he
16 was extubated sometime late in the afternoon.

17 MS. WILLIAMS: Thank you. No further questions.

18 THE COURT: Recross, Solicitor?

19 MS. WALKER: Nothing, Your Honor.

20 THE COURT: Thank you.

21 Thank you very much. You may step down. You may be
22 excused..

23 THE WITNESS: Yes, sir. Thank you.

24 THE COURT: You may call your next witness.

25 MS. WILLIAMS: No further witnesses, Your Honor.

1 THE COURT: All right. Any further evidence or
2 testimony from the State, Solicitor?

3 MS. WALKER: No, Your Honor.

4 THE COURT: All right.

5 All right. Solicitor, I'll be glad to hear from you.

6 MS. WALKER: Your Honor, based upon the information
7 that was presented by both parties, the victim in the case
8 remembers clearly the interaction with law enforcement on
9 that day, remembers being presented the photo lineup,
10 remembers that it was in sequential order; that they went
11 through it and they went back through it; that no one was
12 overly suggestive in the way that he was presented the
13 lineup.

14 I think even their expert, the doctor from Wofford,
15 acknowledged that there was nothing that she could point
16 out that made this photo lineup overly suggestive.
17 Furthermore, Your Honor, the investigator went through and
18 also talked about the same procedure that was used.

19 I guess, the physician's assistant that just
20 testified, testified that he didn't see the patient until
21 four or five days after this day, Your Honor.

22 I think a lot of their questions may go to the weight
23 that the jury may give the photo lineup, Your Honor, but
24 I'm not sure that there's been anything raised that would
25 question its admissibility and that it was overly

1 suggestive.

2 THE COURT: Thank you. Thank you, Solicitor.

3 Ms. Williams, Ms. Pinnock?

4 MS. PINNOCK: Thank you, Your Honor. May it please
5 the Court.

6 Your Honor, I would respectfully disagree with
7 Ms. Walker's assessment of the information we have
8 regarding the suggestiveness of the lineup. The testimony
9 that was presented to Your Honor yesterday by
10 Dr. McQuiston was that she could not make an assessment on
11 the suggestibility because there was a complete lack of
12 information.

13 During the questioning of Investigator Richburg, he
14 acknowledged to the Court that he didn't write anything
15 down. There's no video of anything. There is absolutely
16 no information that was documented at the time this
17 lineup -- or this photo array was presented to Mr. Sims.
18 There's no documentation of it. And that was concerning
19 to us and we're not experts.

20 The only information we had about what happened was I
21 went to the hospital, I showed him a picture. He picked
22 this one. I got the arrest warrants. That was it.

23 I do believe that is a major concern for the way that
24 this photo array was handled. There are policies and
25 procedures in place to ensure that law enforcement

1 officers aren't being, I guess, mistakenly suggestive.

2 You know, our position is not Investigator Richburg
3 did anything purposely. You know, our position is because
4 there is no documentation of it, because, you know, there
5 is no video or audio or anything indicating to us what
6 actually happened, that it would be a -- I guess, for lack
7 of a better word, accidental suggestiveness. It was not a
8 blind presentation. It was not done on a computerized
9 system. It was -- you know, it was a single photo array
10 held up by a law enforcement officer who had the name of
11 the suspect.

12 Mr. Sims was informed that there was a possible
13 suspect prior to viewing the lineup. There is nothing
14 indicating what was said after Mr. Sims, I guess, picked
15 out number four.

16 There's just no documentation and that is concerning
17 to us that, you know, for the suggestibility standard in
18 theirs. So, Your Honor, I do believe that gets us to the
19 second prong of the test where it goes to reliability.

20 We don't have a time. Again, this goes back to a
21 lack of information. There's no time this happened.
22 There's no witnesses to this happening. There is nothing.
23 What we do know in the information we just got from
24 Mr. Stachowiak is that on May 13th, 2015, Mr. Sims was on
25 a heavy narcotic and was sedated. That is policy for the

1 hospital.

2 We were not asking him anything specific as far as
3 what Mr. Sims was doing because he did not see him on the
4 13th, but the hospital policy is that you keep patients
5 sedated because of the tubes down their throats.

6 They raised the medication throughout the day on the
7 13th, so that would only -- that's a strong suggestion
8 that by the time Investigator Richburg got to the
9 hospital, he was under heavier medication. The notes in
10 the reports are that he was sedated and/or paralyzed.

11 So, Your Honor, without knowing any of this
12 information, it's the State's burden to present to the
13 Court to prove that this statement -- that this array was
14 not suggestive in any way. I think it's lacking.

15 So, Your Honor, I don't believe after getting past
16 the first prong -- the second prong with reliability, I
17 don't think there's any way we can say that this is
18 reliable information. No attending physician was
19 consulted.

20 No nurses were consulted. Again, Mr. Sims was under
21 heavy narcotics and heavy sedation medication because he
22 was intubated, Your Honor. I do believe that goes to the
23 reliability and the credibility of the identifications
24 here, Your Honor.

25 We'd ask that you suppress the entire identification

1 because I don't believe enough information has been
2 provided to us. Again, there's a completely lack of
3 information.

4 Policies were not followed, best practice policies
5 were not followed. We have nothing to show us exactly
6 what happened, Your Honor. So that is of major concern to
7 us. I do believe that satisfies the suggestibility
8 element of Biggers.

9 THE COURT: All right. Thank you, thank you very
10 much.

11 As I recall the officer's testimony, Detective
12 Richburg, he contacted SLED for a photo array, which is
13 now marked as State's Exhibit No. 2. He contacted the
14 victim, Mr. Sims, at the hospital. He indicated that
15 there was a tube in the throat; further, that he was
16 coherent; that he could communicate with him. He did
17 indicate that he -- the detective indicated to Mr. Sims,
18 there was a quote, potential suspect, end quote.

19 He then indicated that he told Mr. Sims that the
20 individual may or may not be in the photo array. He also
21 indicated that although he said there was a particular
22 suspect, he did state what would be good procedure because
23 they may or may not be -- the individual may or may not be
24 in there, which he indicates, at best, that would only be
25 ambiguous.

1 He also indicated that he showed the photographs.
2 The photographs, of course, are of six African American
3 males, all appear to be the same age range, generally with
4 similar hair and facial hair.

5 Five out of the six photographs, the individuals are
6 wearing what appears to be either white t-shirts or a
7 white shirt. Number two has on a red t-shirt. Perhaps,
8 if that was the suspect, that would be very suggestive.
9 However, the arrays used are non-suggestive.

10 Further in Mr. Sims' testimony, obviously, he had the
11 opportunity to see the suspect on the bright morning
12 daylight. Further, there was interaction both at his
13 automobile by Mr. Sims and the suspect. Mr. Sims then
14 fled towards his home.

15 He indicates that the suspect ran after him, shot him
16 through the door, and the time the suspect was standing
17 over him, he said initially actually -- initially, even
18 before the encounter in the car, Mr. Sims indicated he
19 gave the suspect a head nod, which was reciprocated and
20 they made eye contact.

21 At that point in time, there is no weapon involved
22 whatsoever. You may get the influence of weapons
23 Dr. McQuiston testified to later on, but it's not
24 introduced at the first point of eye contact according to
25 the testimony of Mr. Sims.

1 Further, he describes how the individual walking
2 towards and walking at an angle and then he indicates that
3 the revolver was pulled out. At that period of time where
4 there was no weapon involved, Mr. Sims had the ability to
5 view the suspect, see the suspect. As I say, then at the
6 front door when they were tussling.

7 And not only that, you can see the alertness. You
8 can hear almost the alertness of Mr. Sims. At this time,
9 he is hearing and repeating to the Court exactly what he
10 says the suspect yelled, give me the keys, give me the
11 keys.

12 He then indicates, Mr. Sims, that when the officer
13 came in the room that he was coherent, that he was able to
14 communicate with the officer throughout the -- throughout
15 the process, although he could not communicate verbally.

16 The lack of documentation -- of course, there is
17 State's Exhibit No. 2, which is a photo lineup form which
18 was signed by Mr. Sims, so he had the ability to sign his
19 name. That's uncontroverted testimony, neither
20 Dr. McQuiston or the physician's assistant addressed that
21 particular issue. Further, when he is shown Exhibit No.
22 4, it is also signed by Mr. Sims, that all appears to be
23 the documentation.

24 I know of no case that requires a video recording of
25 photo lineups, verbal recording, not a lineup, photo

1 array, anything of that nature. I know of no requirement
2 for the officer to consult with any nurse, doctor, EMT,
3 paramedic, CNA or anyone else that the hospital.

4 As far as that's concerned, also, we as humans make
5 decisions every day on the mental state and the coherency
6 of the individuals that we communicate with, as did the
7 officer.

8 I further take into account the testimony of
9 Dr. McQuiston as far as the statements of memory of such
10 within her particular feel of expertise. I do note,
11 however, she never gives an opinion as to quality of this
12 identification. And further, I think under State vs.
13 Wilkins, she could not give an opinion as to the ultimate
14 question involved in this jury issue.

15 Further, the physician's assistant never saw the
16 individual, Mr. Sims, until five days later. Of course,
17 State's 2 is dated 5/14. And he says with Fentanyl and
18 Propofol that someone is less responsive. He never said
19 nonresponsive.

20 Legal consent in not driving, you can't drive with
21 two broken legs. You can still be coherent. It's really
22 not an issue. It's not even apples and oranges. It's
23 fruits and vegetables as far as that comparison. And, of
24 course, the physician's assistant never saw Mr. Sims at
25 that time. He always saw him in a post-op.

1 United States Supreme Court has developed a two-prong
2 inquiry to determine the admissibility of an out-of-court
3 identification. Neil vs. Biggers, 409 US 188 1972, first,
4 a court must first determine whether the identification
5 process was unduly suggestive. It must next determine
6 whether the out-of-court identification was nevertheless
7 so reliable that no substantial risk of misidentification
8 existed.

9 Directing me to the totality of the circumstances in
10 looking at the factors that trial courts are directed to,
11 the following factors to be considered in evaluating the
12 totality of the circumstances in whether an identification
13 is admissible, the opportunity for the witness to view the
14 criminal at the time of the crime. I think that
15 opportunity was very -- he had a very unique opportunity
16 to see him several times, both pre-criminal act, past
17 criminal act and post criminal act.

18 The witness's degree of attention is obviously very
19 high based on the contact, head nodding, the various
20 interaction between the suspect and Mr. Sims.

21 The accuracy of the witness's description, although I
22 did not hear any testimony as to that, his level of
23 certainty, Mr. Sims would have had a very high level of
24 certainty both indicated by the officer and Mr. Sims
25 indicated before the Court and the testimony. The length

1 of time between the crime and the confrontation in this
2 case is less than two days.

3 Looking back at Neil vs. Biggers, I do not think it's
4 unduly suggestive. Only then would I have to consider the
5 second question, whether there was a substantial
6 likelihood of irreparable misidentification and that it
7 would be inherent to suggest it.

8 I do not believe I even have to look at the second
9 prong now. It is not unduly suggestive. However, if I
10 were, there is obviously no substantial likelihood of
11 misidentification. Therefore, I would allow the photo
12 array related to testimony and the document into evidence
13 is a proper foundation before the trial jury.

14 All right. Anything further before we bring in our
15 jury, Solicitor?

16 MS. WALKER: Nothing from the State, Your Honor.

17 THE COURT: Ms. Williams, Ms. Pinnock?

18 MS. WILLIAMS: Nothing, Your Honor.

19 THE COURT: One matter, the Jackson vs. Denno
20 hearing, I believe I got an email from you, Ms. Williams,
21 that you withdraw any objections to the publishing -- if
22 proper foundation is laid in front of a jury of the
23 statement; is that correct?

24 MS. WILLIAMS: No, Your Honor. We are -- we have
25 withdrawn our request of redactions of the part of Emerald

1 Keitt in the statement.

2 THE COURT: Okay.

3 MS. WILLIAMS: We certainly still don't -- we still
4 maintain our objection to it under 401 and 403.

5 THE COURT: Certainly. You still have an objection,
6 but you've withdrawn any question -- the only -- you've
7 withdrawn your request for that?

8 MS. WILLIAMS: Yes, sir.

9 THE COURT: That's what I'm trying to say. And based
10 on the totality of the circumstances, I feel like I need
11 to rule. I'm not sure I would need to rule, but I would
12 rule on the standard from the State vs. Robin Parker, that
13 the statement was freely and voluntarily and knowingly
14 given, that he was in custody and was properly advised of
15 his Constitutional Rights, Court's Exhibit No. 1, and
16 based on the standard I must apply, out of a preponderance
17 of the evidence, I think it's admissible.

18 All right. Anything else from the defense,
19 Ms. Williams, before we bring our jury?

20 MS. WALKER: Nothing, Your Honor.

21 THE COURT: All right. Well, we've been out about an
22 hour. Let's take about a ten-minute recess. All right.
23 Thank you very much.

24 (WHEREUPON, a short break was taken.)

25 (WHEREUPON, State's Exhibit Nos. 2 through 154 were

1 marked for identification only.)

2 THE COURT: Good morning, Mr. Keitt. I didn't get an
3 opportunity to tell you that earlier.

4 THE DEFENDANT: Good morning.

5 THE COURT: Anything from the State before we bring
6 in our jury?

7 MS. WALKER: Nothing from the State, Your Honor?

8 THE COURT: From the defense, Ms. Williams,
9 Ms. Pinnock?

10 MS. PINNOCK: Your Honor, I failed to ask this
11 morning. On a personal note, I have childcare issues this
12 week, so I guess if at four o'clock every day, if you
13 wouldn't mind asking what witness is next and how long it
14 will take because I have to pick my daughter up. I don't
15 have anybody to pick her up.

16 THE COURT: I understand. I don't have childcare
17 anymore, but I will certainly accommodate you.

18 MS. PINNOCK: Thank you, Your Honor.

19 (WHEREUPON, pretrial charge was given to the jury but
20 not made part of this partial transcript request.)

21 OPENING STATEMENT:

22 MR. FYALL: Good morning.

23 THE JUROR: Good morning.

24 MR. FYALL: You know, there's a common saying,
25 there's no such thing as an ordinary day, that every day

1 is different. And the victim in this case, Mr. Martin
2 Sims, is living proof of that.

3 Now, on May 13th, 2015, his day was so different that
4 he's fortunate to be alive. On that day, he got up to get
5 ready for work, teach his students at Spring Valley High
6 School. And while he was doing that, just a couple of
7 blocks away, Carver-Lyon Elementary School, is the
8 Defendant. And we know he's there because we see him
9 there on audio and video wearing an orange shirt and some
10 black pants.

11 And while he's there, he tries to have a conversation
12 with his wife. He's unable to do so, and he walks across
13 the street to Emmanuel AME church where he's again seen on
14 audio and video -- I'm sorry, not audio and video, just
15 video wearing an orange shirt and black pants. Then he
16 walks across the street again to Barhamville Road. That's
17 where the victim lives.

18 By that time, the victim had gotten ready for work,
19 put on his white shirt, his purple tie, and he took his
20 keys and he used them to use the auto start on his car.
21 He put his stuff in his car, had his breakfast, then he
22 began to walk his girlfriend to her car.

23 As he's doing that, he sees the Defendant walking
24 down the street. He looks at him and they greet each
25 other. He doesn't think much of it. But, eventually, the

1 Defendant turns towards him and presents him with a gun.
2 His girlfriend runs and hides in her car, and he tries to
3 run in his house.

4 The Defendant gets in his car and tries to steal it,
5 but he can't because he doesn't have the keys. So he
6 chases the victim into his house, tries to force his way
7 into the door. They had a struggle back and forth.

8 As he's trying to get in and as the victim is trying
9 to keep him out, he pulls out that gun and shoots through
10 the door, hits the victim in the chest. He goes in his
11 house and hovers over him and demands him for the keys to
12 his car. He takes them and he leaves.

13 Upstairs, all the commotion wakes up his roommates
14 because they hear their roommate yelling, Call the police,
15 call the police. And they hear a gunshot, so they called
16 9-1-1. Meanwhile, the Defendant's girlfriend -- victim's
17 girlfriend is outside and she's on the phone.

18 And after the Defendant leaves, takes the victim's
19 car, he musters up enough strength to go outside and ask
20 for help before he collapses in front of his house. His
21 girlfriend sees him, blood soaking through his white
22 shirt.

23 A call goes out to law enforcement, and any law
24 enforcement that's available in that area, they respond.
25 EMS responds. They treat the victim the best they can.

1 They take him to the hospital.

2 As investigators are on the scene, they try to piece
3 together what happens. They look around and they notice
4 that the church, Emmanuel AME church across the street has
5 surveillance video.

6 They talk to people on the scene, including the
7 Defendant's mother, and they began to investigate the
8 Defendant's involvement in this incident. So they look up
9 the Defendant on a database that they have access to and
10 they look at his picture and they realize that he has some
11 similar features to the person they see in the video.

12 As they investigate, they then go talk to the victim
13 in the hospital. And they do what's called a photo array.
14 They show him six pictures one by one, and the victim
15 identified the Defendant, the man who approached him,
16 presented him with a gun, shot him, stole his car.

17 Then they search for the Defendant, and they find him
18 in the apartment of a friend and bring him in. And he
19 makes a statement, a statement where he admits to wearing
20 an orange shirt and black pants, where he admits to being
21 at Carver-Lyon Elementary School, where he admits to being
22 at Emmanuel AME church. He tells them he was just there
23 to use the free Wifi.

24 When they confronted him with the fact that he's on
25 video surveillance and he didn't stick around to use the

1 Wifi, he tells them a few stories. He tells them that he
2 went to his grandmother's house to change and then went
3 and hung out with his friend, Brandon. They don't believe
4 that, so then he tells them that he walked up the street
5 and saw a friend of his that he knew that went to C.A.
6 Johnson.

7 Eventually, law enforcement terminates the interview
8 and they serve him with warrants. And based on this
9 incident, the Defendant was charged with several things:
10 Attempted murder, armed robbery, burglary in the first
11 degree, discharging a firearm into a dwelling, unlawful
12 carrying of a pistol and possession of a weapon during the
13 use of a violent crime.

14 My name is Lamar Fyall, along with Meghan Walker, we
15 represent the State in this case. As Your Honor told you,
16 we have the burden of proof of proving that he is guilty
17 of those crimes beyond a reasonable doubt. And that's a
18 burden we embrace.

19 So at the end of the day when you look and weigh all
20 the evidence in this case, there's only one reasonable
21 conclusion and that's why when this trial is over, we're
22 going to ask you to find the defendant guilty of those
23 charges. Thank you.

24 THE COURT: Thank you, Solicitor.

25 Ms. Pinnock.

1 MS. PINNOCK: May it please the Court, Your Honor.

2 THE COURT: Yes, ma'am.

3 OPENING STATEMENT:

4 MS. PINNOCK: Good morning.

5 THE JUROR: Good morning.

6 MS. PINNOCK: It's true, May 13th, 2015, Mr. Martin
7 Sims was shot at his home. That's true. On that same
8 day, somebody entered his home. That's true. It's true
9 that he went to the hospital. It's true that he had
10 surgery. And it's true that he could have lost his life
11 that day. All of that is true.

12 The State does not have to -- well, this case is not
13 about whether or not those things happened to Mr. Sims.
14 This case is about whether or not Christopher was the one
15 who did those things to Mr. Sims. That's the only
16 question in this case.

17 You're going to hear testimony from a number of
18 witnesses. They're all going to come in and testify about
19 the horrible, tragic things that happened to Mr. Sims.
20 There's nobody that's going to stand up here and dispute
21 that those things happened to Mr. Sims. He was shot. He
22 was injured.

23 His car was stolen and he suffered a tragedy,
24 unimaginable tragedy, but that's not the question. The
25 question is can the State prove to you that Chris is the

1 one that committed these things against Mr. Sims. That's
2 the question.

3 Now, y'all have already heard Chris has been charged
4 with a number of charges, burglary, larceny, having a
5 weapon, attempted murder. All of those things are what
6 Chris has been charged with. And the reason that you're
7 going to hear that Chris was charged with those things is
8 because on May 13th, while law enforcement was at his
9 address after these things had happened to him, they got
10 his name.

11 Chris' mom, Ms. Beulah Keitt went to the scene
12 because she had heard that her son was shot, so she comes
13 up and wants to find out what's going on, did her son get
14 shot, was there a driveby? What happened? So they got a
15 name.

16 Mr. Fyall just told you that, you know, Chris matched
17 the description of the person who did that. He's black
18 and he's male. That's it. The only physical description
19 that Chris matches is he's black and he's a male. And
20 yes, he was wearing an orange shirt, but you've heard and
21 you will hear from witness testimony that he was wearing
22 an orange shirt, black pants, carrying another black
23 shirt. And that's not the description of the person who
24 did these things to Mr. Sims. That's not it.

25 So we know that Chris was at the school. He goes to

1 the school to a drop his children off to go to school. We
2 know that he was at the church. You can see him walking
3 through the cut between the church and the woods wearing
4 an orange shirt, black shorts and carrying a black shirt.
5 And you're going to hear the description given to law
6 enforcement was not what Chris was wearing. Physically,
7 it does not match Chris, but law enforcement picked the
8 information they wanted to make fit to him.

9 They left out the rest of the clothing. They left
10 out the description provided by Mr. Sims' girlfriend about
11 what the person's hair looked like, what the face looked
12 like, what the clothing looked like.

13 All those things were left out. The only person who
14 gave a description of what this shooter was wearing was
15 Ms. Claiborne, but they ignored her description because
16 they had a black guy wearing an orange shirt and they
17 built their case around it.

18 Their burden, the State's burden of proof is beyond a
19 reasonable doubt. It always blows my mind how we embrace
20 our burden. We welcome our burden. They don't have a
21 choice. Not only do they have to prove to you the
22 elements of the things that happened to Mr. Sims -- again,
23 nobody is saying those things did not happen. They have
24 to prove to you beyond a reasonable doubt, no hesitation
25 that Chris is the one who did it, no hesitation. That is

1 beyond a reasonable doubt. They're telling you that they
2 are embracing it. They have to do it, so hold them to it.

3 The evidence that the State is going to present to
4 you, you will hear the testimony. They're going to
5 present video, the video from the school, the video from
6 the church. The video from the church will show you that
7 Chris did not walk towards that house. It will show you
8 that. It will show you that he is not wearing the clothes
9 that Ms. Claiborne said this person was wearing.

10 They're going to give you the evidence that shows
11 it's not him, but they want you to ignore it because
12 they've got a black guy wearing an orange shirt, but
13 that's not what this person was wearing. That's not
14 Chris. Chris is -- he's there. They have to prove to you
15 that he did it.

16 Two different law enforcement officers were provided
17 the description from the eyewitness, who is not suffering
18 from an injury, who was not victimized. Two different law
19 enforcement officers, Investigator Richburg from the City
20 of Columbia Police Department, and Special Agent Delk from
21 SLED. They're going to put both of those people up. Both
22 of those people got that information, but law enforcement
23 decided they're still going to ignore it and they're still
24 going to arrest Chris.

25 Chris was the answer to their problem. He was the

1 answer to their questions. The question was, who did
2 this? They had a name. They ran with it. They got that
3 easy answer.

4 He is the easy answer, but the easy answer is not
5 always the right answer, so hold them to their burden.
6 Look at the evidence that they're going to present to you.
7 You can't pick which view you pay attention to and ignore
8 others things. This is law enforcement. They're
9 investigators. You can't cherry pick what you want to
10 have fit and hope that people ignore the rest.

11 Chris is not the person who did this. Unfortunately,
12 he is a black male wearing an orange shirt on the wrong
13 day. That's what this is, a black male wearing an orange
14 shirt on the wrong day. He is not guilty of any of the
15 crimes because he's not the one who did it.

16 THE COURT: Thank you, thank you very much.

17 Solicitor, you may call your first witness.

18 MS. WALKER: Thank you, Your Honor. The State calls
19 Christine Claiborne. She's sitting right outside.

20 (Pause).

21 THE BAILIFF: Please place your left hand on the
22 Bible, raise your right hand.

23 CHRISTINE CLAIBORNE, after being duly
24 sworn, testified as follows:
25

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please.

3 THE BAILIFF: Watch your step.

4 THE CLERK: State your name for the record.

5 THE WITNESS: Christine Claiborne.

6 DIRECT EXAMINATION:

7 BY MS. WALKER:

8 Q Good morning, Ms. Claiborne. It can be hard to hear
9 in this courtroom, so make sure you speak up, okay.

10 A Okay.

11 Q Can you tell me where you live? You don't have to
12 give me an address, just the city?

13 A Blythewood, South Carolina.

14 Q And what is it that you do for a living?

15 A I'm a teacher.

16 Q Where do you teach?

17 A Blythewood High School.

18 Q Do you know Martin Sims?

19 A I do.

20 Q And how do you know Martin?

21 A Boyfriend.

22 Q And how long have you been together?

23 A Not technically together, but I guess about a year.

24 Q About a year?

25 A Yeah.

1 Q And how long have you known him?

2 A About seven years.

3 Q I want to take your attention back to May of 2015,
4 May 13th to be exact, where were you when you woke up that
5 morning?

6 A At Martin's house.

7 Q Kind of describe to me, I guess, what were you doing
8 that morning?

9 A Woke up, got dressed to get ready for work.

10 Q And at some point, were you ready to leave Martin's
11 house?

12 A Yes.

13 Q Tell me what happened. I guess, did y'all leave
14 together or separately?

15 A Say it again.

16 Q Were y'all leaving together or separately?

17 A Together.

18 Q Together. Tell me what happened as you and Martin
19 were leaving Martin's house?

20 A We were walking out of the front door and I walked to
21 my car, he walked to his. His car being parked kind of
22 right at the intersection and my car being parked right
23 behind him. I walked to mine, put my stuff in my car. He
24 walk to his, put his stuff in his car, started his car and
25 then walked back to my car just to say bye.

1 Initially, when we first walked out of the house, I
2 saw a person walking down the street across the street in
3 a bright orange shirt, orange, red, something like that,
4 and didn't really think anything of it at first. And when
5 Martin was walking back to his car from my car, that is
6 when the gentleman walked across the street and then made
7 a quick turn right in front of his car and flashed his
8 gun.

9 And at that point, Martin backed up with his hands in
10 the air and I jumped into my car.

11 Q All right. Let me slow you down.

12 A Okay.

13 Q Where was the man? Was he coming behind you guys,
14 the man in the orange shirt, or coming towards you?

15 A He was coming towards us down the street, on the
16 opposite side of the street.

17 Q On the opposite side of the street, so he's coming
18 towards you?

19 A Uh-huh.

20 Q And at that point in time, did you see anything in
21 his hands?

22 A No.

23 Q The first time you saw him?

24 A No.

25 Q And the next time you saw him, what, if anything, did

1 you see in his hand?

2 A A gun.

3 Q And what was your reaction to seeing that gun?

4 A Panic.

5 Q What did you do?

6 A I jumped into my car and called 9-1-1.

7 Q What did Martin do?

8 A He backed up and then ran towards his house.

9 Q Was he saying anything?

10 A Call the police.

11 Q What was your next observation as Martin is running
12 inside the house?

13 A The man jumped into the car, shut the door and the
14 car didn't move because it doesn't move if the keys aren't
15 in it. Then he got out of the car and followed behind
16 Martin and chased him into the house. Before he got into
17 the house, he backed up and shot through the door.

18 Q Once he shot through the door, what happened?

19 A I got out of my car and walked behind like to put the
20 car between me and him. And he came running out of the
21 house and got into the car and made a left turn down
22 Slights Avenue. And a few seconds later, Martin came
23 stumbling out with his hands in the air, and I could see
24 he had been shot.

25 Q What did he say?

1 A He said -- he kept saying call the police when I was
2 already on the phone with 9-1-1.

3 Q And as you see him coming out with a gunshot wound,
4 could you tell where he had been shot?

5 A Yeah, it was some -- I could tell it was between --
6 near his heart, shoulder. He had a white shirt on, so
7 everything was red like from here all the way down.

8 Q And once you see that he has been shot, did you try
9 to minister any sort of aid to him?

10 A Before he -- I saw him like stumbling. It looked
11 like he was about to fall. And the first thing I thought
12 was I didn't want him to hit his head or his face on the
13 ground, so I went running towards him. But he had already
14 fallen on his chest like before I could get to him.

15 Q What did you do next?

16 A I'm on the phone just, you know, telling them what's
17 going on. I'm like trying to talk to him, keep him awake.
18 He was -- I mean, I ran in the house. I remember getting
19 towels, trying to get anything to stop the bleeding. By
20 the time I came back out, the pool of blood was actually
21 visible.

22 Q At some point, did, I guess, EMS and law enforcement
23 get there?

24 A Uh-huh, yes.

25 Q Did you speak with law enforcement?

1 A I did.

2 Q Did you give them a description of the person?

3 A I did.

4 Q What was that description?

5 A I remember saying that he was a big guy, an orange
6 shirt on, bright shirt. I couldn't tell if he had like
7 facial hair. He just looked really scrappy at the time.

8 Q Would seeing the description you gave refresh your
9 memory as to what you told law enforcement?

10 A I said he was about like, you know, 240, trying to
11 guess because I didn't really know.

12 Q Do you remember how old you said the man looked?

13 A About 30.

14 Q Do you remember the height you said the man looked?

15 A 5'10".

16 Q Did you give a complexion description of the man?

17 A Dark skin.

18 Q At some point, did you give, I guess, a more detailed
19 description to a forensic sketch artist?

20 A I did.

21 Q And when you were doing that, were you trying to be
22 as precise as possible?

23 A Very much so.

24 MS. WALKER: Beg the Court's indulgence, Your Honor.

25 THE COURT: Yes, ma'am.

1 (Pause.)

2 MS. WALKER: Thank you, Ms. Claiborne. I don't have
3 any questions for you at this time.

4 THE COURT: All right. Anything from the defense?

5 MS. PINNOCK: Thank you, Your Honor. May it please
6 the Court.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION:

9 BY MS. PINNOCK:

10 Q Good morning, Ms. Claiborne.

11 A Good morning.

12 Q I just want to start. You were giving the
13 descriptions of where your cars were parked that morning.
14 And the house that Mr. Sims used to live in, the one that
15 you had stayed at, that was on what corner?

16 A I think Slighs and Barhamville Road.

17 Q Barhamville, if we're looking at the house, goes like
18 that?

19 A (Witness indicates in the affirmative.)

20 Q Okay. How do you spell it? Bar-ham-ville?

21 A Yeah.

22 Q Okay. And you said Slighs intersection?

23 A Yeah, the house is in that corner.

24 Q Okay. So the house is right here?

25 A Yes.

1 Q And where were your cars parked exactly?

2 A Right in front of that house.

3 Q On the street? So Mr. Sims' car, it would be in
4 front of yours on the corner?

5 A Yes.

6 Q And you're directly behind him?

7 A Yes.

8 Q Okay. Thank you. So when you -- you and Mr. Sims,
9 you said come out the front door. You're both getting
10 ready to go to work. You said he puts some stuff in his
11 car. You put some stuff in your car. And then y'all are
12 just saying goodbye?

13 A Yes.

14 Q Okay. And when everything started going wrong, you
15 said this person kind of popped up, crossed the street out
16 of nowhere. The next thing you know, he had jumped in the
17 car, jumped out of the car and was chasing Mr. Sims to the
18 house?

19 A Yes.

20 Q And all that's happening pretty fast, right?

21 A Yes.

22 Q And you said the person who chased Mr. Sims went into
23 the house and exited the house in less than 20 seconds,
24 right?

25 A Yes.

1 Q So that was also very fast?

2 A Yes.

3 Q And you're outside on the phone with 9-1-1, you know,
4 calling for help because all of this is happening?

5 A Yes.

6 Q Okay. And then you said law enforcement and EMS
7 arrived. Who did you talk to -- what law enforcement
8 officer did you talk to when they arrived?

9 A I don't remember his name. I talked to a few
10 different people, so I don't remember.

11 Q Okay. But when you spoke to them, you told them at
12 that point you didn't get a good look at the person's
13 face, right?

14 A I did.

15 Q Okay. And that, again, was because -- partly because
16 of where you were and how fast things were happening?

17 A True.

18 Q Okay. But you -- you continued to talk to law
19 enforcement on the scene. They took you -- did they take
20 you to headquarters to talk to you?

21 A Yes.

22 Q Okay. And then you went and talked to Agent Delk
23 with SLED after that, right?

24 A Right.

25 Q And even though you didn't get a good look at the

1 person's face, you provided them a description, physical
2 description and a clothing description, right?

3 A Yes.

4 Q And you provided a description to Investigator
5 Richburg, right?

6 A Yes.

7 Q Okay. Again, physical and clothing?

8 A Yes.

9 Q And he was taking notes as he was talking to you,
10 wasn't he?

11 A I don't remember.

12 Q Okay. But you are sure you gave him a description of
13 the person that you saw?

14 A Yes.

15 Q And you told Investigator Richburg -- starting out
16 with him, you told him that the person was wearing an
17 orange shirt?

18 A Yes.

19 Q You told him that the person you saw was wearing
20 light-colored shorts, correct?

21 A I believe so. I don't remember.

22 Q Okay. And then again, like you said, you spoke with
23 Agent Delk later on that same morning?

24 A Yes.

25 Q And you gave her a description. And you were trying

1 to be as detailed as possible with Agent Delk, correct?

2 A Yes.

3 Q You were trying to be as detailed as possible with
4 Investigator Richburg?

5 A Right.

6 Q To provide them the information that you could
7 provide them. With Agent Delk, you talked about hair
8 length, right?

9 A Right.

10 Q You talked about complexion?

11 A Right.

12 Q You talked about, again, the clothing?

13 A Yep.

14 Q And you were able to add information, give more
15 details if you needed to add more details to your
16 description, correct?

17 A Based on my memory, yes.

18 Q I just want to talk about some of the descriptions
19 that you gave. With Agent Delk, you described the
20 person's hair as being longer, kind of scruffy looking?

21 A Yes.

22 Q You described the person as looking potentially
23 homeless?

24 A Yes.

25 Q Okay. You described the person's hair as being

1 longer and uneven?

2 A I believe so, yes.

3 Q And then when talking to her about the clothing
4 description, you described the orange shirt?

5 A Yes.

6 Q Right?

7 A Yes.

8 Q You described the person as wearing shorts?

9 A Yes.

10 Q And you told her that the shorts were either gray or
11 silver, right?

12 A Right.

13 Q And when you were finished talking to Investigator
14 Delk, she even asked you how certain you were about your
15 description, right?

16 A Right.

17 Q And you told her about a ten?

18 A Yes.

19 MS. PINNOCK: Beg the Court's indulgence?

20 THE COURT: Yes, ma'am.

21 (Pause.)

22 MS. PINNOCK: Thank you, Your Honor. I have nothing
23 further.

24 THE COURT: Redirect, Solicitor?

25 MS..WALKER: Beg the Court's indulgence, Your Honor.

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 REDIRECT EXAMINATION:

4 BY MS. WALKER:

5 Q The attorney asked you who you gave this description
6 to, right?

7 A Yes.

8 Q That was actually Investigator Montgomery, not
9 Investigator Richburg, correct? Would seeing your
10 statement refresh your memory as to who you were talking
11 to?

12 A Yes.

13 MS. WALKER: Your Honor, may I approach the witness?

14 THE COURT: Yes, ma'am.

15 BY MS. WALKER:

16 Q (Indicating.)

17 A (Nods in the affirmative.)

18 Q All right. And which investigator were you speaking
19 to at that time?

20 A Montgomery.

21 Q All right. And she said that you stated that you
22 didn't get a great look at the man with the gun?

23 A Straight-on look.

24 Q A straight-on look?

25 A Right.

1 Q Were you able to observe --

2 MS. PINNOCK: Objection, Your Honor. She's leading.

3 THE COURT: She's what?

4 MS. PINNOCK: She's leading.

5 THE COURT: All right. Overruled. You may continue.

6 MS. WALKER: Thank you, Your Honor.

7 BY MS. WALKER:

8 Q Were you able to observe enough of his features in
9 order to give a description of his physical
10 characteristics to Agent Delk?

11 A Yes.

12 MS. WALKER: Thank you. I have no further questions.

13 THE COURT: Recross from the Defendant?

14 MS. PINNOCK: No questions, Your Honor. Thank you.

15 THE COURT: Thank you very much, Ms. Claiborne. You
16 may step down.

17 THE BAILIFF: Watch your step.

18 All right. Solicitor, you may call your next
19 witness.

20 MR. FYALL: Thank you, Your Honor. The State calls
21 Carlos Osorio.

22 CARLOS OSORIO, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please.

1 THE BAILIFF: Watch your step, sir.

2 THE WITNESS: Thank you.

3 THE CLERK: State your name for the record.

4 THE WITNESS: My name is Carlos Osorio.

5 DIRECT EXAMINATION:

6 BY MR. FYALL:

7 Q Okay. Mr. Osorio, can you spell your last name for
8 the court reporter?

9 A Osorio, O-S-O-R-I-O.

10 Q Mr. Osorio, what do you do for a living?

11 A I'm currently graduate student at the University of
12 South Carolina, and I also work for a construction
13 management company, the marketing manager there.

14 Q All right. On May 13th, 2015, where were you
15 residing?

16 A [REDACTED] Barhamville Road.

17 Q Who did you live there with?

18 A My roommates, Martin Sims and Ernest Saylor.

19 Q What can you tell me about that morning?

20 A I overslept that morning. I'm normally get up around
21 6:00 a.m. and for some odd reason, you know, I didn't wake
22 up until around 7:30. It was around 7:35. The reason I
23 woke up was because I heard my roommate leaving from his
24 bedroom. Our bedrooms are right across from each other,
25 so he woke me up on his way out.

1 I woke up, got up, went to use the restroom, you
2 know, sat down. About 30 seconds later, I hear a loud
3 rumbling downstairs.

4 Q Let me pause you. You said you heard your roommate
5 get up and that's what woke you up?

6 A I woke -- yes. My other roommate was asleep at the
7 present time, and my roommate -- because our rooms are
8 right across from each other, when he closed his door, you
9 know, it woke me up. I don't know if it was him. It
10 could have been Christine, but that's what woke me up.

11 Q And the roommate whose door is connected to yours,
12 who is that?

13 A Ernest Saylor.

14 Q And so you were woken up because you heard Mr. Sims
15 getting ready to leave?

16 A Uh-huh.

17 Q Before you heard the rumbling, what else -- did you
18 hear anything else?

19 A No. I mean, again, I had just woken up. Within 20
20 seconds of me getting up using the restroom, I heard
21 rumbling downstairs.

22 Q All right. And tell me what happened after you heard
23 that rumbling?

24 A I heard somebody downstairs screaming that sounded
25 like Martin, call the police, call the police. You know,

1 I didn't really understand what was going on. And within
2 ten seconds of them screaming call the police and me
3 getting off the toilet to grab my phone to call the
4 police, I heard a loud noise downstairs. It sounded like
5 a gunshot.

6 I grabbed my phone, went into the restroom. Mine and
7 my other roommate's bedroom connect to the restroom. So
8 while I was calling the police, I woke him up. I told the
9 operator, you know, there's something going on downstairs.

10 I heard what sounded like a gunshot. At the time, I
11 wasn't really sure what was going on, so, you know, I
12 wasn't sure if someone was coming in the house or leaving.

13 About ten, 20, 15 seconds after I hear the gunshot
14 downstairs, I hear a car speed off really, really fast
15 followed by shortly after Christine screaming, you know,
16 Carlos, Ernest, help. That's when we realized I guess it
17 would be all right for us to go downstairs.

18 When we went downstairs, there was blood all over the
19 living room, and I saw my roommate, Martin, laying right
20 outside the door.

21 Q And did you stay with him once you were finally
22 outside the door?

23 A Yes. Our neighbor, actually, like from the right
24 side of our house -- I guess she might have some type of
25 nurse training. I think she might have been in the

1 military, but she instructed me to go get some towels.

2 I ran back inside the house and grabbed a stack of
3 towels and brought them to her. I didn't really want to
4 move him because I wasn't sure -- like I didn't want to
5 hurt him or anything. But shortly after the paramedics
6 showed up, it couldn't have been more than a minute.

7 Q All right. When you came outside, did you see
8 Martin's car?

9 A No, it wasn't there.

10 Q Are you familiar with how his car works?

11 A Yes.

12 Q How is that?

13 A You can start it -- it's wireless remote start.
14 Martin normally started it before he went outside the
15 house, you know, just to heat it up while he was getting
16 his lunch or whatever he was preparing that morning.
17 Right before he was about to go outside and get in his
18 car, he would normally cut it on.

19 Q Do you know if he did that that morning?

20 A I can't tell you for sure.

21 MR. FYALL: Beg the Court's indulgence.

22 (Pause.)

23 No further questions.

24 THE COURT: Thank you, Solicitor.

25 Ms. Pinnock.

1 MS. PINNOCK: Your Honor, we have no questions for
2 this witness.

3 THE COURT: Thank you. Thank you very much. You may
4 step down.

5 All right. Solicitor.

6 MS. WALKER: Thank you, Your Honor, the State calls
7 Ernest Saylor, Jr.

8 ERNEST SAYLOR, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you. Have a seat in the witness
11 stand, please. State your name for the record.

12 THE WITNESS: Ernest Elliott Saylor, Jr.

13 DIRECT EXAMINATION:

14 BY MS. WALKER:

15 Q Mr. Saylor, what city do you currently live in?

16 A I currently live in Aiken, South Carolina.

17 Q What do you do over in Aiken?

18 A I'm in the financial services arena. I sell life
19 insurance.

20 Q And do you know Martin Sims?

21 A Yes, ma'am, I do.

22 Q How do you know him?

23 A We were roommates for a couple of years through
24 college.

25 Q Fraternity brothers, as well?

1 A Fraternity brothers, as well, and Carlos, too.

2 Q Okay. And after college, did y'all continue to live
3 together?

4 A We did.

5 Q Where was that house?

6 A [REDACTED] Barhamville Road.

7 Q I want to talk to you about the morning that Carlos
8 was shot -- I'm sorry, that Martin was shot. Were you
9 home that morning?

10 A I was.

11 Q Describe that morning for me.

12 A Pretty much, I was asleep, lightly asleep, and I
13 heard some, like a loud noise downstairs towards the door.
14 Right after I heard that loud noise, I heard what sounded
15 like Martin's voice saying, call 9-1-1 right now, call
16 9-1-1 right now. And right after that, I heard another
17 loud noise, which sounded like a gunshot.

18 By this point, Carlos kind of peeps into my room, he
19 was like, Are you in there? I'm like, Yeah. So I kind of
20 like run to the bathroom. And pretty much, that was it.

21 Q Did you ever go downstairs after you ran into the
22 bathroom?

23 A Yeah, I did. Carlos was calling 9-1-1 and I was kind
24 of scared. But pretty much, we waited for a couple of
25 minutes, seemed -- well, it felt like an hour, but it was

1 probably just a couple of minutes. Then I heard Christine
2 saying, Ernie, Carlos, come downstairs. I need help. So
3 I figured it was safe at that point, so I came downstairs
4 and saw a pool of blood in the living room, pool of blood
5 kind of in the kitchen. But I saw the door was wide open,
6 so I went outside and saw Martin laying right there.

7 Q Did you ever see the man who shot Martin coming into
8 your home?

9 A No.

10 Q Did you give a statement to law enforcement?

11 A I did.

12 Q Was that on the same day?

13 A It was.

14 MS. WALKER: Thank you, sir. I don't have any
15 further questions.

16 THE COURT: Thank you. Thank you, Solicitor.

17 Ms. Pinnock, Ms. Williams.

18 MS. PINNOCK: No questions, Your Honor.

19 THE COURT: Thank you very much. You may step down.

20 All right. Solicitor, you may call your next
21 witness.

22 MR. FYALL: Thank you, Your Honor. The State calls
23 Officer Rodney Fisher.

24 RODNEY FISHER, after being duly sworn,
25 testified as follows:

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please. State your name for the record.

3 THE BAILIFF: State your name.

4 THE WITNESS: Officer Rodney Fisher.

5 DIRECT EXAMINATION:

6 BY MR. FYALL:

7 Q Officer Fisher, where are you employed?

8 A Excuse me?

9 Q Where are you employed?

10 A City of Columbia Police Department.

11 Q And how long have you been there?

12 A I've been there all together about seven years.

13 Q What region do you work in?

14 A Metro at this time.

15 Q And what region were you working in May 13th, 2015?

16 A Metro.

17 Q And can you tell me what incident you responded to
18 that morning?

19 A I respond to a shots fired, one hit.

20 Q Shots fired, one hit. And what's the protocol when
21 you received that?

22 A Code three.

23 Q Can you explain what that means?

24 A Which is respond as quickly as possible.

25 Q And did you respond?

1 A Yes.

2 Q And what address did you respond to?

3 A I responded to [REDACTED] Barhamville Road.

4 Q And what city and county is that located in?

5 A It's City of Columbia, County of Richland.

6 Q When you arrived, what did you see?

7 A I saw a victim on the ground and blood around them
8 and another female very erratic next to him.

9 Q Did you talk to anyone on the scene?

10 A Yes. I talked to the female on the scene who was
11 with the victim.

12 Q All right. What other agency responded while you
13 were there?

14 A Just Columbia and fire department, EMS.

15 Q When EMS got there, what happened?

16 A They treated the victim and transported him.

17 Q Were you able to talk to the victim at this time?

18 A No.

19 MR. FYALL: Beg the Court's indulgence.

20 (Pause.)

21 No further questions.

22 THE COURT: Ms. Pinnock.

23 MS. PINNOCK: Very briefly, Your Honor. May it
24 please the Court.

25 CROSS-EXAMINATION:

1 BY MS. PINNOCK:

2 Q How are you doing, Officer Fisher?

3 A Good.

4 Q Do you have your report with you?

5 A What is that?

6 Q Do you have your report with you?

7 A Yes, ma'am.

8 Q Okay. You just said you responded and there were
9 shots fired, one hit. It was a code three?

10 A Yes, ma'am.

11 Q That means get there. No matter where you are, get
12 there?

13 A Right.

14 Q What does your dispatch time have on your report?

15 A It has dispatch time 7:47, and I responded, arrived
16 about a minute later.

17 Q Okay. So no more than a minute, you were at this
18 house?

19 A Uh-huh.

20 Q How long after you arrived did the next officer show
21 up? Do you know?

22 A There was a bunch just right behind me. I mean, I
23 don't know exactly when there was -- within seconds.

24 Q Okay. So everybody is getting there just as they're
25 supposed to, less than a minute and everybody responded

1 how they're supposed to?

2 A Uh-huh.

3 Q Do you have -- it's okay if you don't, but do you
4 know if any -- any officers start looking for this car
5 that was called in to being taken?

6 A I'm sure they did, but I was more concerned with the
7 scene at the time to pay attention.

8 Q Yes, sir, that's understandable. So you can't say --

9 A I can't say.

10 Q -- if anybody actually circled the block?

11 A I can't say.

12 Q Okay. Thank you.

13 MS. PINNOCK: I have no further questions.

14 THE COURT: Redirect, Solicitor?

15 MR. FYALL: No, Your Honor.

16 THE COURT: Thank you. Thank you very much, Officer.
17 You may step down.

18 All right. You may call your next witness.

19 MS. WALKER: Your Honor, the State calls Alexis
20 Atkins.

21 ALEXIS ATKINS, after being duly sworn,
22 testified as follows:

23 THE CLERK: Thank you have a seat in the witness
24 stand, please.

25 THE BAILIFF: Watch your step.

1 THE CLERK: State your name for the record.

2 THE WITNESS: Alexis Atkins.

3 DIRECT EXAMINATION:

4 BY MS. WALKER:

5 Q Good morning, Ms. Atkins. Can you tell me where you
6 currently live? Don't give me your address, just your
7 city?

8 A Columbia.

9 Q In Columbia?

10 A (Witness nods.)

11 Q When you answer the questions, the court reporter
12 beside you is going to take down everything you say, so
13 make sure you say yes or no and try to speak up, okay.

14 A Yes, ma'am.

15 Q Thank you, ma'am. What is it that you do for a
16 living?

17 A I am a director at a childcare, but I am also
18 employed with the City of Columbia, crossing guard.

19 Q In May of 2015, were you a crossing guard?

20 A Correct, yes.

21 Q I guess, for which school?

22 A It was two different schools.

23 Q Which area of town?

24 A Carver-Lyon and C.A. Johnson High School, as well.

25 Q On May 13th of 2015, were you working as a crossing

1 guard?

2 A Yes.

3 Q I want to show you what's been marked as State's
4 Exhibit No. 5 and ask you if you recognize this area?

5 A I do recognize that area.

6 MS. WALKER: Your Honor, we'd like to move State's
7 Exhibit No. 5 into evidence.

8 MS. PINNOCK: No objection, Your Honor.

9 THE COURT: State's 5 into evidence.

10 MS. WALKER: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit No. 5 admitted into
12 evidence.)

13 BY MS. WALKER:

14 Q Where is your crossing guard post?

15 A (Indicated.)

16 Q Right there?

17 A Uh-huh.

18 Q That's I guess the corner of?

19 A Ithica and Barhamville.

20 Q Ithica and Barhamville?

21 A Uh-huh.

22 Q What, if anything, did you see that morning while you
23 were at the corner of Ithica and Barhamville?

24 A Can you repeat that question again?

25 Q What, if anything, on the morning of the 13th of

1 May in 2015, did you see that stood out to you?

2 A I did witness -- while I was sitting at my post, I
3 did witness an individual run across the street with a gun
4 towards two individuals on the opposite side of the
5 street.

6 Q Across which street did he run? Is that Barhamville?

7 A Yes, Barhamville.

8 Q Okay. And can you describe that individual for me?

9 A As far as I know, it was a black male. I couldn't
10 see a face due to the distance.

11 Q What was he wearing?

12 A Orange-colored shirt, couldn't describe the bottom.
13 It was a dark-colored bottom, couldn't give you a color.

14 Q You're saying the bottom --

15 A Was dark.

16 Q -- was dark?

17 A Yes.

18 Q All right. And did you give a description of some of
19 his characteristics in terms of his age and height?

20 A The age from a distance looked about my age, would
21 have been in the 20-age range. Height, about my height or
22 a little taller, in between. I know he wasn't as tall as
23 six feet or something.

24 Q So he was -- your height you gave --

25 A My height is about 5'4", 5'5", so not as tall as six

1 feet, though. So between 5'10", 5'11".

2 Q 5'4" to 5'11"?

3 A Uh-huh.

4 Q And this person is moving? Is he standing still or
5 is he moving around, the man in the orange shirt?

6 A At what point?

7 Q Well, I guess, when you first saw him, what was he
8 doing?

9 A When I first time I saw him, when I first saw him, he
10 was across the street. I didn't see him prior to that.

11 Q Okay. So is he moving away from you or towards you?

12 A No, I'm at the corner. He was on the other -- way
13 down the road further down.

14 Q Why don't we do this, do you mind stepping off the
15 witness stand?

16 A No, ma'am.

17 Q That way, I can just have you...

18 Thank you. Stand on this side for me, and speak back
19 towards the court reporter so she can take down what
20 you're saying, okay? Thank you.

21 So you said you were here?

22 A I'm here.

23 Q And where is the person coming from?

24 A Here. It's like a tree or something right here in
25 this area, right across the street from the victim's home,

1 like a tree, a big bush.

2 Q This tree is in front of Emmanuel AME Church?

3 A It's not in front of it.

4 Q Or is it beside it?

5 A It's like beside it or something.

6 Q Okay. The tree beside Emmanuel AME. The person
7 comes through here and then --

8 A I didn't see the person until the street.

9 Q Okay.

10 A So I don't know where the person came from, I just
11 know what street. That's where he was coming from, right
12 behind the tree area.

13 Q Okay. So you see the person coming from behind the
14 tree area and then where do they go?

15 A Straight across.

16 Q Okay.

17 A To the home on the corner of Slighs and Barhamville.

18 Q And once they go to that home, tell me what happens.

19 A Once the person -- well, prior to that, the two -- I
20 can see everything. The two individuals come out of the
21 home. It was male and a female coming out the home going
22 towards two cars that are parked in front of the yard.

23 The male was putting the young lady into the car
24 first. He was putting the young lady into the car, then
25 he was going towards his car. At that time, that's when

1 the individual came across the street.

2 Q And this is the individual in the orange t-shirt?

3 A Correct.

4 Q And once the individual, I guess, gets across the
5 street, what happens?

6 A At that time, the young lady is already in the car.
7 The guy then -- I guess, the guy who was with him there, I
8 guess, where he stays, he was trying to go into his car.
9 After he goes to his car, he notices the guy with the gun
10 coming towards him. He tries to run towards his house.
11 And that's when I then moved and left my situation, my
12 area and then I heard a gunshot.

13 Q Now, you said you were here. Once you saw, I guess,
14 the commotion --

15 A I was still here.

16 Q Okay, you were here?

17 A Yeah, I didn't move -- I can't leave my post due to
18 the fact that I'm on guard, so...

19 Q So once you -- so where were you initially?

20 A I'm here on the corner.

21 Q Okay.

22 A I parked right here on the side of this house right
23 here on the corner.

24 Q Did you see the gun?

25 A Yes. I saw the gun when he was walking across the

1 street.

2 Q Okay. Then you said you heard the gunshot?

3 A I heard the gunshot.

4 Q Could you still see the individuals when you heard
5 the gunshot?

6 A No, I could not see the individuals because of the
7 fact where I was standing at, the house is pushed further
8 back into the yard. All you can see is the yard and the
9 cars. I did -- the man, the guy who was going to his car,
10 he did go towards his house, both of them went towards the
11 house.

12 Q And then the gunshot happened before or after they
13 went towards the house?

14 A After.

15 Q I guess, after you heard the gunshot, tell me what
16 happened.

17 A Then I backed up, went down there and I called 9-1-1.
18 I think I was the first response to call 9-1-1.

19 Q And did you -- while you were on the phone with
20 9-1-1, did you move your car again? Did you ever leave
21 from this area again?

22 A I came back to the home.

23 Q You did go back?

24 A I did go back to the home.

25 Q Did you made contact with law enforcement while you

1 were there?

2 A Yes, I had to.

3 Q Now -- and you gave -- I guess, you gave -- did you
4 give law enforcement a statement?

5 A I did give a statement.

6 Q Thank you. You can get back up on the stand.

7 Thank you, ma'am.

8 And did you gave a description of the -- what you
9 thought the gun looked like?

10 A No, I couldn't see from the distance.

11 Q You couldn't see from a distance?

12 A I couldn't see from a distance. There's no way I
13 could tell what the gun looked like from that far of a
14 distance.

15 Q Well, let me -- if I showed you a copy of your
16 statement, would that refresh your memory?

17 A You can show me a copy of it, ma'am, but I couldn't
18 see it from the distance. It was a handgun, that's all I
19 could think of. It wasn't a long rifle or anything.
20 Handgun.

21 Q Right. But you said it was a black semiautomatic?

22 A I don't know what a black semiautomatic is. That's
23 what the police -- when the investigator came from me, he
24 gave me a description of it from the police guns.

25 Q Okay.

1 A He said was it similar to the gun I'm carrying right
2 now. If that what a semiautomatic is, yes.

3 Q Okay. The description you're giving is that it's a
4 handgun, not one of those long rifles?

5 A No, not long, no.

6 Q But you were too far away, I guess, to get a good
7 look at the gun?

8 A I was too far away. You would notice if it was a
9 long gun or a short gun.

10 Q Yeah, I completely understand what you're saying?

11 A Uh-huh.

12 Q Thank you, Ms. Atkins.

13 MS. WALKER: Thank you. I don't have any further
14 questions. Thank you for being here.

15 THE COURT: Ms. Pinnock.

16 MS. PINNOCK: May it please the Court, Your Honor.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION:

19 BY MS. PINNOCK:

20 Q Good morning, Ms. Atkins.

21 A How are you?

22 Q Just so I understand what you just said, Ms. Walker
23 showed you your -- the second page of your statement?

24 A Yes.

25 Q And there is a description where there is the Q and

1 A.

2 MS. PINNOCK: Your Honor, may I approach?

3 THE COURT: Yes, ma'am.

4 BY MS. PINNOCK:

5 Q The question and answer portion of your statement?

6 A Uh-huh.

7 Q So you're telling us you never told Investigator
8 Richburg in your own words that it was a semiautomatic
9 handgun?

10 A With my own words, he described to me several guns.

11 Q Okay.

12 A I don't know what all type of guns are.

13 Q I don't either.

14 A So when he said similar to -- I put similar to the
15 gun that the police carries because that's what he said
16 when I described the gun and that's the reason why I gave
17 that particular description.

18 Q Okay. But semiautomatic, you didn't tell him that?
19 He suggested that could be the type of gun?

20 A Yes.

21 Q And just -- I couldn't really see when you were
22 describing where you were on State's Exhibit 5. Which
23 intersection were you at?

24 A Right here.

25 Q Okay. And when you move your car, I couldn't see

1 where you were pointing at?

2 A Right here.

3 Q Okay. So you just went further down that street you
4 were already on?

5 A No, I just backed my car up.

6 Q Oh, so you were originally parked on Barhamville?

7 A I was parked on Barhamville.

8 Q And then when law enforcement arrived, that's when
9 you went to the house?

10 A No, I was there before law enforcement arrived.

11 Q And you provided a description to law enforcement
12 when you spoke to them?

13 A Description of who?

14 Q The person you saw with the gun?

15 A Yes.

16 Q And did you write your statement or did
17 Investigator --

18 A I wrote my statement --

19 Q You wrote it?

20 A -- on the back of the car.

21 Q In the back of the car?

22 A On the back.

23 Q And the description that you gave as far as age, you
24 described 18 to 28, right?

25 A Yeah, about my age, correct.

1 Q And then the height description that you provided was
2 just taller than 5'4", right?

3 A Uh-huh, I'm 5'4".

4 Q And then you said wearing an orange shirt?

5 A Yes.

6 Q With pants?

7 A Yes.

8 MS. PINNOCK: Beg the Court's indulgence?

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 MS. PINNOCK: Thank you, Your Honor. I don't have
12 any further questions.

13 Thank you, Ms. Atkins.

14 THE COURT: Redirect, Solicitor.

15 MS. WALKER: Thank you, Your Honor.

16 REDIRECT EXAMINATION:

17 BY MS. WALKER:

18 Q She asked you about the statement that you gave to
19 Investigator Richburg?

20 A Yes.

21 Q Who is it that you actually gave your statement to?

22 A I don't know how to pronounce it.

23 Q Can you just spell it out?

24 A Z-W-O-L-A-K.

25 Q Zwolak.

1 MS. WALKER: Thank you, Your Honor. I don't have any
2 further questions.

3 THE COURT: Recross?

4 MS. PINNOCK: No, Your Honor.

5 THE COURT: Thank you. Thank you very much, ma'am.
6 You may step down.

7 How long do you think your next witness will be,
8 Solicitor?

9 MS. WALKER: Your Honor?

10 THE COURT: How long do you think your next witness
11 will be?

12 MS. WALKER: It depends. Maybe 12 minutes on direct,
13 Your Honor. It's Martin Sims.

14 THE COURT: All right. Why don't we take a brief
15 recess then, a morning recess at this time.

16 Ladies and gentlemen --

17 THE BAILIFF: Everyone remain seated.

18 THE COURT: Ladies and gentlemen of the jury, we'll
19 take about a 15-minute recess. I'll remind you, during
20 this recess, do not discuss this case with anyone, your
21 fellow jurors or anyone else. Thank you very much. You
22 may now go with the bailiff.

23 (Whereupon, the jury left the courtroom at 11:32
24 a.m.)

25 THE COURT: All right. Court will be in recess 15

1 minutes.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: All right. The jury made their
4 selection. Juror No. 182 is our foreperson.

5 All right. Anything before we bring in the jury from
6 the State, Solicitor?

7 MS. WALKER: Your Honor, we were going to call Martin
8 Sims, we're actually going to call Agent Delk so she
9 doesn't have to come back after lunch. I just wanted to
10 make the Court aware.

11 THE COURT: All right. Anything from the Defense,
12 Ms. Williams, Ms. Pinnock?

13 MS. WILLIAMS: Your Honor, just to go ahead, we would
14 be objecting to the admitting into evidence the composite
15 that the forensic artist drew. Everything from discovery
16 has indicated to us that it wasn't used, it wasn't posted
17 out and a tip came in, any kind of relation there.

18 From what we've looked at the composite, it looks
19 like it resembles everyone in the lineup, not just our
20 client. Because of fact that, it wasn't actually used.
21 We have no problem talking about the description that she
22 was given by Ms. Claiborne, but the actual composite
23 itself, we feel isn't relevant because it wasn't used any
24 further that we've been told by law enforcement in this
25 investigation.

1 Further, I think it would be misleading because it's
2 a general composite that resembles, as I said, any one of
3 the gentlemen in the six-photo array. So I believe that
4 just showing his picture and the composite would be overly
5 prejudicial for its probative value since it wasn't
6 utilized by law enforcement in anything further.

7 THE COURT: Thank you.

8 Solicitor.

9 MS. WALKER: Your Honor, I think their entire theory
10 of the case is that this is a misidentification and that
11 the Defendant doesn't match the description given by
12 anyone involved in the case. So I think the -- I can
13 approach, Your Honor, if you don't mind, with a copy of
14 the sketch.

15 THE COURT: All right.

16 MS. WALKER: This is State's Exhibit No. 154.

17 This is a sketch that was drawn by Agent Delk based
18 upon the description given by Ms. Claiborne. And they've
19 attacked that no one gave a description of the person and
20 that this Defendant did not match the description that was
21 given, so the description that was given to Agent Delk
22 within hours of viewing the gunman in this case, Your
23 Honor, I think is admissible. It's relevant and I don't
24 think that the prejudicial effect outweighs its probative
25 value.

1 THE COURT: All right. This is based on the --

2 MS. WILLIAMS: Description given to Agent Delk, Your
3 Honor, from Christine Claiborne. We're not contesting
4 discussing what she was described there. We think the
5 picture itself is irrelevant.

6 As we said, again, they didn't use that any further.
7 We are not contesting that she gave a description. In
8 fact, that was brought out both in direct and cross of
9 Ms. Claiborne, that she gave a description to law
10 enforcement there at first and then also with the forensic
11 artist.

12 THE COURT: Yes, ma'am, may I finish --

13 MS. WALKER: Oh, I apologize, Your Honor.

14 THE COURT: -- what I was thinking? I want to make
15 sure I'm tracking the case. This is the forensic artist
16 rendition of the description given by Ms. Claiborne, the
17 girlfriend of Mr. Sims, correct?

18 MS. WALKER: Yes, Your Honor.

19 THE COURT: And the objection is it wasn't used and
20 is prejudicial; is that correct?

21 MS. WALKER: Yes, Your Honor.

22 THE COURT: All right. Well, I think it is relevant.
23 I think it more so goes to its weight and not its
24 admissibility further. I do not see the danger of unfair
25 prejudice, misleading the jury or in any manner

1 whatsoever.

2 The witness has testified to the description she
3 gave. The witness has testified having met with the
4 forensic artist, so it's whatever weight and value the
5 jury would like to give to -- provided the foundation is
6 laid through your next witness.

7 MS. WALKER: Thank you.

8 THE COURT: I'll over overrule the objection.

9 Anything further, Ms. Williams?

10 MS. WILLIAMS: No, Your Honor.

11 MS. WALKER: May I approach to get that?

12 THE COURT: Yes.

13 MS. WALKER: Thank you, Judge.

14 THE COURT: Are you ready for the jury, Solicitor and
15 Ms. Williams?

16 MS. WALKER: Yes, Your Honor.

17 MS. WILLIAMS: Yes, Your Honor.

18 (Whereupon, the jury entered the courtroom at 11:59
19 a.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Juror No. 182, you're our foreperson; is
22 that correct?

23 THE FOREMAN: Yes.

24 THE COURT: Thank you very much for volunteering for
25 that.

1 All right, ladies and gentlemen, we're continuing the
2 trial of the case by the presentation of evidence and
3 testimony by the State in its case in chief. Please
4 continue giving the parties your complete and undivided
5 attention.

6 Solicitor, you may call your next witness.

7 MS. WALKER: Thank you, Your Honor. Your Honor, the
8 State calls Agent Laura Delk.

9 THE BAILIFF: Face the clerk.

10 LAURA DELK, after being duly sworn,
11 testified as follows:

12 THE CLERK: Thank you have a seat, please.

13 THE BAILIFF: Watch your step.

14 THE CLERK: State your name for the record.

15 THE WITNESS: Laura Delk.

16 MS. WALKER: May it please the Court, Your Honor.

17 THE COURT: Yes, ma'am.

18 DIRECT EXAMINATION:

19 BY MS. WALKER:

20 Q Is it Agent Delk?

21 A Yes, ma'am.

22 Q Can you tell me where you're currently employed?

23 A I'm currently employed by the South Carolina Law
24 Enforcement Division in their Forensic Art unit.

25 Q Can you explain to the jury what forensic art is?

1 A Forensic art is a discipline within forensics. Our
2 primary job duties include doing composite sketches.
3 Those are like the pictures that you see on TV that have a
4 witness description or a suspect description. We
5 interview victims and witnesses that saw a suspect or
6 somebody else involved in the case and we have them
7 describe it for a composite sketch.

8 Q And can you tell me about your education and
9 background that led you into, I guess, is it forensic
10 artistry would be your field?

11 A Yes, ma'am.

12 Q Into forensic artistry.

13 A My background is actually in medical illustration.
14 There's no real clear cut path into forensic art. It's
15 primarily on-the-job training, but I do have a four-year
16 degree in art, which that's where, I guess, the artistic
17 skills come into work, but the actual interviewing skills
18 are all on the job. I learned after being employed by
19 SLED.

20 Q And can you explain the interviewing skills that
21 you've learned with your on-the-job training?

22 A Yes, we use what's called a -- the interviewing we do
23 isn't like normal police interviewing. It's cognitive
24 interviewing, so we try to get the victim or the witness
25 that we're interviewing kind of back in the timeframe,

1 back into the space they were when they saw the suspect.
2 So it's more psychologically based than a standard police
3 interview.

4 Q Can you tell me a little about some of the courses
5 that you would take to get specialized training in this
6 field?

7 A Yeah, I attended probably six or seven specialized
8 courses in forensic art. There's about 23 forensic
9 artists in the nation. And some of the more experienced
10 artists just kind of hand down their knowledge and they
11 teach classes throughout the year. So I've been to around
12 six classes since I've been employed at SLED, so the past
13 three years.

14 Q Are you a member of any organizations, professional
15 organizations?

16 A Not currently, no.

17 Q Have you been?

18 A Yes, I was a member of the Association of Medical
19 Illustrators for two years.

20 MS. WALKER: Your Honor, at this point, we offer this
21 witness as an expert in the field of forensics artistry.

22 THE COURT: Ms. Williams, Ms. Pinnock?

23 MS. PINNOCK: May I briefly voir dire?

24 THE COURT: Yes, ma'am, you may.

25 VOIR DIRE:

1 BY MS. WILLIAMS:

2 Q Agent Delk, you said that you had a four-year degree
3 in art?

4 A Yes, ma'am.

5 Q From where?

6 A Rochester Institute of Technology in Rochester, New
7 York.

8 Q And you said you've been with SLED for four years?

9 A Three years, ma'am.

10 Q Three years?

11 A Uh-huh.

12 Q Okay. And all of your training you've gotten on the
13 job for forensic, other than basic art skills?

14 A For forensic art specifically, yes.

15 Q And that was -- that consisted of six courses in
16 forensic artistry?

17 A Let me refer to my notes here. Yeah, six courses to
18 date. Yeah, we're always going for new training, so, yes.

19 Q Have you ever been qualified as an expert in forensic
20 artistry before?

21 A Not in a court, no, ma'am.

22 Q Have you done any research or peer reviews or
23 anything along those lines when it comes to forensic
24 artistry?

25 A Not at this point in my career, no, ma'am.

1 Q So you haven't taught any courses yourself at this
2 point?

3 A No, ma'am.

4 MS. WILLIAMS: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 MS. WILLIAMS: Your Honor, we have an objection if we
8 can approach?

9 THE COURT: All right. Step out, please, ladies and
10 gentlemen of the jury. Do not discuss the case.

11 (Whereupon, the jury left the courtroom at 12:06
12 p.m.)

13 MS. WILLIAMS: Your Honor, we would object to this
14 under 702. We have been given no previous -- we have no
15 idea what her opinion testimony would be. We can think of
16 no previous knowledge.

17 I have no CV on her other than what we just asked her
18 here. We haven't been given any further information about
19 what she would actually be giving an opinion on other than
20 what she personally did in this case, so I don't believe
21 she...

22 Further, Your Honor, we don't know what she can offer
23 to the jury beyond what her testimony is of what
24 description was given to her by Ms. Claiborne, and we've
25 been given no indication of what they would be trying to

1 elicit with that.

2 THE COURT: All right. Thank you.

3 Solicitor.

4 MS. WALKER: Your Honor, I think we did turn over her
5 CV to her via email.

6 The testimony from this witness, Your Honor, is that
7 there is a specialized technique that they use in terms of
8 a -- I think she called it more of a psychological exam in
9 order to gain information from witnesses to render the
10 sketch.

11 So, Your Honor, I think the opinion in this case
12 would be the sketch she actually rendered based upon the
13 information that she obtained from a specialized interview
14 that she used.

15 THE COURT: All right. Ms. Williams.

16 MS. WILLIAMS: Thank you, Your Honor. So, basically,
17 what they're saying is she's going to give an opinion to
18 support what she's going to testify she was -- the
19 description was?

20 I don't see how that's any different than her
21 describing what the description was and this is what she
22 gave at the end. When it comes to the psychological
23 testing that they have on here, we heard her mention that
24 they use a cognitive interviewing technique, but she's
25 never been qualified as an expert in court before.

1 She has been at SLED doing this type of work for
2 three years and has had six courses on forensic artistry,
3 nothing specifically stating whether those were all in
4 cognitive interviewing techniques or anything along those
5 lines.

6 They're qualifying her to talk about their cognitive
7 interviewing techniques and I don't believe the foundation
8 for that has been laid.

9 THE COURT: Well, I don't know the difference between
10 that so much and RATAC, which officers testify to on
11 techniques they use and whether it's interviewing
12 techniques or what have you.

13 As far as experts are concerned, all of them don't
14 come in here with notches on their belts, so to speak. I
15 mean, everybody has to be qualified the first time, the
16 second time, the third time.

17 The cases like State vs. Myers, we have a nurse
18 that's testifying on blood spatter expert. I think she
19 had a six-week training course. And State vs. Goode, you
20 had the Highway Patrolman qualified as an expert. I mean,
21 all that goes, really, is to the weight and not the
22 admissibility of the presentation of the testimony to the
23 jury.

24 Of course, then again, when I charge the jury --
25 every time I let an expert testify, I always charge the

1 jury that they're like any other witness. You can believe
2 all, none or part. You don't have to accept their
3 opinions even though it's uncontradicted in that regard.

4 Solicitor, explain to me the connection between the
5 cognitive interview and her expertise in the forensic
6 artist.

7 MS. WALKER: Yes, sir.

8 THE COURT: Is that part of the training?

9 MS. WALKER: The cognitive interviewing, it would be
10 the developing a composite sketch and forensic art
11 certification in the forensic composite from start to
12 finish. So part of their technique in terms of getting --
13 I thought that was elicited, in terms of getting the
14 information in order to get a reliable sketch is the
15 interview process by which they go through, which is
16 different from just, you know, how tall -- the questions
17 that law enforcement officers ask, how tall was he? How
18 big was he? What was he wearing? It's the questions that
19 they ask in terms of breaking down each facial feature in
20 order to get a composite sketch would be part of that
21 training that then produces the ultimate picture.

22 THE COURT: Ms. Williams.

23 MS. WILLIAMS: Thank you, Your Honor. You mentioned
24 that this feels similar to the RATAC forensic
25 interviewing. In those cases, the only reason they held

1 that those are -- they actually didn't qualify them as an
2 expert. They didn't require that the witness be qualified
3 as an expert for those.

4 I would ask if you're inclined to admit this that
5 they proffer the testimony first so we can see exactly
6 what is going to be said. I think if she's got particular
7 procedures or things that she does along those lines, then
8 she doesn't need to be an expert in it.

9 THE COURT: Well, in State vs. White about whether or
10 not -- and it is similar to the forensic interviews of
11 children where testimony certainly can't bump up against
12 credibility issues with Ms. Claiborne.

13 She could obviously testify to what occurred and how
14 she goes about her process and such, but there is that
15 similar line also in those cases where she can't -- cannot
16 comment upon the credibility of the witness.

17 MS. WALKER: Yes, Your Honor.

18 THE COURT: But you can ask her, you can go ahead and
19 ask her in camera, Solicitor.

20 MS. WALKER: Okay.

21 BY MS. WALKER:

22 Q In terms of the interviewing process that you use,
23 what did you call it, the term for your interviewing
24 process?

25 A It's cognitive interview process.

1 Q Can you describe that to the Judge?

2 A The cognitive interview process, we try not to use
3 leading questions. We, basically, just try to get -- you
4 know, build a rapport with the victim or the witness and
5 just try to get them almost back into the state of mind
6 that they were in when the crime or the incident occurred.
7 And then we just have them describe not only the suspect
8 or the person that they saw, the individual they saw, but
9 all the scenery around them, smells, anything. It just
10 gets them to a point where they can start to remember
11 features of the individual's face, what they were wearing.
12 Sometimes even how they hold themselves, facial features.

13 Q In terms of that interview process, can you tell me
14 about the training you had to prepare you to do that
15 actual interviewing technique?

16 A A couple of the courses that I've been in that focus
17 primarily on composite sketches, we've had experts in
18 cognitive interviewing teach us how to do just primarily
19 the cognitive interview apart from the sketching.

20 Like I said, when I'm doing my job, I'm combining
21 both of them at the same time, I'm not doing the forensic
22 art or the sketching while cognitive interview. It's kind
23 of combining two different things.

24 But, actually, my most recent course, the doctor that
25 kind of invented the cognitive interviewing process, he

1 taught our class for a day and went through the process of
2 how a cognitive interview should be handled and the
3 correct way to do it.

4 Q Do you use that interviewing process to develop the
5 sketch that you, ultimately, draw?

6 A Yes, ma'am.

7 Q Can you describe how you do that in terms of taking
8 the information you receive from that interview process
9 to, ultimately, produce an artistic rendering?

10 A Well, I have my note sheet that I fill out while the
11 person is describing the suspect, but I really just try to
12 let them lead the interview. I just have them start
13 describing and I'm jotting down notes while I'm going.
14 Sometimes I'll start drawing while they're describing
15 things. But I'm just using everything they're telling me,
16 writing it down and I'm drawing exactly what they're
17 telling me. I don't add anything or take anything away
18 from what they're telling me.

19 Q Do you make adjustments to your rendering based
20 upon -- do you show them and say how is this right and
21 adjust from there or how does that work?

22 A Usually, once I get the sketch to a point where it
23 looks good enough that it kind of looks like a person, not
24 just a rough sketch, I'll show it to them and I'll have
25 them tell me everything that's wrong with it, what's right

1 about it, what I can do to make it look more like the
2 suspect or the individual that they saw.

3 Q Is this in a digital format or are you having
4 different pieces of paper?

5 A It's a digital format. We use what's called a
6 walking tablet with a pen stylus, but it's still very
7 traditional pencil and paper technique. It's still
8 everything that I learned in art school with drawing
9 abilities.

10 I am able to pull in photo references. You know, we
11 have different binders that have pictures of people's
12 faces, noses, mouths, eyes, stuff like that. Sometimes
13 I'll incorporate those and draw over the top of them, kind
14 of like using tracing paper in a way. It's still
15 traditional drawing just a digital format.

16 Q Do you use the training and education that you've
17 described to us up to this point in order to do both the
18 interview and drawing?

19 A Yes, ma'am.

20 MS. WALKER: I don't have any further questions.

21 THE COURT: All right. Well, she hasn't given any
22 opinion.

23 MS. WALKER: I'm sorry.

24 THE COURT: In other words, what opinion are you
25 attempting to elicit from Agent Delk?

1 BY MS. WALKER:

2 Q Based upon your interviewing and the description that
3 you were given of the perpetrator in this case from
4 Ms. Claiborne.

5 A Uh-huh.

6 Q In your opinion, is this the sketch that matches the
7 information you received?

8 A Yes, ma'am.

9 Q And did you verify this with Ms. Claiborne?

10 A Yeah, after we're finished with the sketch, we have
11 them rate it on a one to ten scale on how close it looks.
12 We try not to go for perfect, but she did rate it a ten
13 out of a ten, so, yes.

14 Q I see on the, I guess, the form that you use, there
15 are different numbers and letters?

16 A Uh-huh.

17 Q I'll hand a copy of that up to the Judge. Can you
18 explain what those numbers and letters mean?

19 A Yeah, we have a series of different binders that have
20 reference material and one was cataloged by the FBI. And
21 it just has different individuals' faces. Some have faces
22 with features blocked out, such as eyes, nose, mouth.

23 We'll let the witness or the victim go through these
24 catalogs and sometimes pull out pictures that look
25 familiar or would match the person that they saw his

1 description. And that's just because sometimes people are
2 a lot better at visually recalling information, whereas
3 others are better at just verbally just telling what you
4 they look like. So we have both options to meet both
5 people.

6 Q For example, like on -- when it says eye and you
7 have, I guess that's B5-13?

8 A Yeah.

9 Q Are those B5-13 eyes?

10 A Yeah.

11 Q And mouth, HE-716?

12 A Yes. If you pull my catalog, that would have that
13 numbering system in there, I drew that mouth from there
14 unless they made any changes. Sometimes they'll say, it's
15 HE-716, but they were wider.

16 Q But in terms of your opinion based upon the number
17 and lettering chart that you used, is this the description
18 that was given to you by Ms. Claiborne?

19 A Yes, ma'am.

20 MS. WALKER: That would be the opinion testimony,
21 Your Honor, based upon the breakdown of each individual
22 facial characteristics, she was able to put that together
23 and render this sketch.

24 THE COURT: I don't think that's an opinion.

25 MS. PINNOCK: Okay.

1 THE COURT: It's not a -- I don't think the question
2 is -- well, let me see what Ms. Williams says.

3 MS. WILLIAMS: Yes, Your Honor. If anything, it's an
4 opinion on something that she herself did. I'm not sure
5 that she needs to be an expert in this. We only use
6 experts to assist the trier of fact to understand the
7 evidence better or determine a fact at issue, so...

8 THE COURT: I don't think it's an opinion where she
9 said -- I don't think we have to ask her, Solicitor, in
10 your opinion is this the sketch you introduced based on
11 your interview with the witness. That's a fact. That's a
12 reality. That's not an opinion. She's not looking at it
13 and saying that's my opinion.

14 I've used these techniques that I learned in forensic
15 artistry and cognitive interview, and I cognitively
16 interviewed Ms. Claiborne and this is the procedure I went
17 through, and this is the sketch that was produced.

18 MS. WALKER: Your Honor, the argument that the State
19 makes in that in terms of -- the process by which they
20 use, it's a numbering and lettering system you can see --

21 THE COURT: Yes, ma'am.

22 MS. WALKER: -- on the boxes of those.

23 THE COURT: I do see that.

24 MS. WALKER: So if HE-3 is a certain eye --

25 THE COURT: I understand.

1 MS. WALKER: -- format and then she matches that
2 description, then I think --

3 THE COURT: That's not her opinion. That's what she
4 did.

5 MS. WALKER: Right.

6 THE COURT: I mean, that's just -- that's no more --
7 no more -- that's not a fair statement. I didn't mean it
8 like that, to demean the particular field of expertise,
9 but that's -- I don't think she needs to be qualified as
10 an expert in forensic artistry or cognitive interviewing
11 to testify just like she did in camera.

12 MS. WALKER: Okay.

13 THE COURT: That's all I'm saying. It's kind of like
14 what Ms. Williams pointed out, Judge King's case down in
15 Sumter County where he qualified -- I can tell you that
16 lady's name in a little bit, but he qualified that lady as
17 an expert in forensic interviewing and she didn't need to
18 be. It's just what she did.

19 MS. WALKER: Okay.

20 THE COURT: So I don't -- I think what the testimony
21 she gave in camera is admissible.

22 MS. WALKER: Okay.

23 THE COURT: I won't qualify her as an expert.

24 MS. WALKER: Thank you, Your Honor.

25 THE COURT: And when I say I won't qualify her as an

1 expert, that's only because with the record before me, I
2 don't think that's necessary.

3 MS. WALKER: I understand.

4 THE COURT: All right. All right.

5 Anything further, Ms. Williams, before we bring in
6 the jury?

7 MS. WILLIAMS: No, Your Honor. Thank you.

8 THE COURT: Solicitor?

9 MS. WALKER: No, Your Honor.

10 (Whereupon, the jury entered the courtroom at 12:23
11 p.m.)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Thank you, Ms. Williams.

15 Solicitor, you may continue.

16 MS. WALKER: Thank you, Your Honor.

17 BY MS. WALKER:

18 Q The interview process that you described, what's the
19 name of it?

20 A Cognitive interviewing process.

21 Q The cognitive interviewing process. And can you
22 describe what a cognitive interviewing process is for the
23 jury?

24 A A cognitive interview process is different than a
25 normal police interview. We try not to obviously lead the

1 witness or victim in any way. It's, basically, after
2 building rapport with the victim or witness, we try to put
3 them almost in the same scenery that they were before
4 taking them back to the same memories. That's visual
5 scenery, was it daytime out, nighttime out, dark out?
6 What smells did you smell? What sounds were you hearing?
7 We kind of get them in the same environment and then ask
8 them to describe the suspect or the individual that they
9 saw?

10 Q And as they're -- as the individual or the witness is
11 describing the perpetrator, what are you doing?

12 A I'm taking notes down or drawing, depending on -- if
13 they're describing a little bit slower, I actually have
14 time to draw. If they're describing features very
15 vividly, it kind of forces me to just jot down a lot of
16 notes and draw it after they kind of slow down in their
17 description.

18 Q When you say you're drawing, what are you -- on what
19 are you drawing?

20 A We draw with a digital technique. It's still very
21 similar to the pencil and paper technique that traditional
22 artists use, with the exception that we're using a digital
23 tablet, almost like an iPad, what we call a walking
24 tablet, with a pencil stylist, but we're still actually
25 hand drawing. It's digital. You know, it's little bit

1 easier for us.

2 Q And while you're making these digital
3 representations, do you make adjustments to what you were
4 drawing based upon information you received from the
5 witness?

6 A Yes, ma'am. Every so often, I'll show the victim or
7 the witness the sketch and I'll have them make changes on
8 it. I'll tell them to tell me everything that's wrong
9 with it, everything that's right with it and then make the
10 changes, if necessary.

11 Q I want to turn your attention back to May 13th
12 of 2015, did that you come into contact with a Christine
13 Claiborne?

14 A Yes, ma'am.

15 Q And where were you when you met with Ms. Claiborne?

16 A Columbia Police Department headquarters.

17 Q Can you describe for the jury your interaction with
18 Ms. Claiborne?

19 A She came in and, as I recall, it was very recently
20 after the crime had occurred. She was a little shaken up.
21 She was nervous. Kind of spoke for the first few minutes
22 just calming her down and then went into the normal
23 cognitive interview processing and worked on the sketch
24 with her. It was over the course of two hours.

25 Q And based upon -- what information did she give you?

1 A She was able to give me enough information to do a
2 sketch, which is quite a lot. She was able to describe
3 facial features. She was able to describe clothing that
4 the suspect was wearing.

5 She went through some of the reference materials I
6 have, which is just binders of people's faces, facial
7 features, noses, mouths, different kinds of ears, all that
8 can of stuff. She was able to pick out certain features
9 that matched what she could remember which allowed me to
10 combine them with the sketch.

11 Q And in terms of his -- was she able to tell you his
12 race?

13 A Yes, ma'am.

14 Q And what was that?

15 A She said he was black.

16 Q And did she give you an approximate height?

17 A She said he was between 5'9" and 5'10".

18 Q And what about his build?

19 A She described his build as stocky.

20 Q And his weight was?

21 A She said between 225 and 250.

22 Q And his complexion? What did she say about that?

23 A She said he had a dark complexion and after -- after
24 I showed her the sketch, she had me darken the sketch even
25 further, and she did also state he had almost a homeless

1 appearance, which I think she clarified it as just not
2 very clean cut, clean-shaven face.

3 Q So not well kept?

4 A Not well kept, correct.

5 Q And based upon -- did she tell you what he was
6 wearing?

7 A At the time that she saw him, she said he was wearing
8 an orange t-shirt, shorts that were gray or silver. She
9 wasn't sure about the color of the shorts.

10 Q And his nose? Did she describe his nose?

11 A She described the nose as being fat.

12 Q And what about his mouth?

13 A The mouth, she pulled out from a photo reference and
14 it was HE-716. I'd have to pull that up to know --
15 remember exactly what that looked like.

16 Q And did she give you a description of the shape of
17 his head?

18 A Yeah, she said he was chubby, had a round-shaped head
19 and also mentioned having a big forehead. She did pull
20 out two photo references from the reference material with
21 similar head shapes that she could remember.

22 Q Based on all of the information that was given to you
23 by Ms. Claiborne, did you then -- were you able to render
24 a sketch?

25 A Yes, ma'am.

1 Q I want to show you State's Exhibit No. 154 and ask if
2 you recognize this.

3 A Yes.

4 Q And is this the sketch that you rendered?

5 A Yes, ma'am.

6 MS. WALKER: Your Honor, at this time, the State
7 seeks to move State's Exhibit No. 154 into evidence.

8 THE COURT: Ms. Williams.

9 MS. WALKER: We just renew our objection from
10 earlier.

11 THE COURT: All right. State's Exhibit 154 is in
12 evidence subject to previous objection.

13 (WHEREUPON, State's Exhibit No. 154 was admitted into
14 evidence.)

15 BY MS. WALKER:

16 Q Thank you.

17 This is the sketch that you rendered?

18 A Yes, ma'am.

19 Q Who gave you this description?

20 A Ms. Claiborne.

21 Q And on what date and what did you meet with her?

22 A It would have been May 13th. The interview process
23 began around 10:00 a.m. on May 13th, 2015.

24 MS. WALKER: Thank you, Agent Delk. I don't have any
25 further questions.

1 THE COURT: Thank you.

2 Ms. Williams.

3 MS. WILLIAMS: Thank you. May it please the Court.

4 CROSS-EXAMINATION:

5 BY MS. WILLIAMS:

6 Q Ms. Claiborne gave you a description of the suspect?

7 A Yes, ma'am.

8 Q Of who she said did this?

9 A Yes, ma'am.

10 Q She said that he was black?

11 A Yes, ma'am.

12 Q With dark complexion?

13 A Yes, ma'am.

14 Q Between 5'9" and 5'10"?

15 A Uh-huh.

16 Q That he had a homeless appearance?

17 A Uh-huh.

18 THE COURT: Can you say yes or no for me, please.

19 THE WITNESS: Okay, sorry.

20 MS. WILLIAMS: Sorry, Your Honor.

21 THE COURT: That's all right.

22 BY MS. WILLIAMS:

23 Q By homeless appearance, she meant not well kept?

24 A Yes, ma'am.

25 Q So the hair, she described as long and messy?

1 A Yes, ma'am.

2 Q And scruffier, so I guess you showed it to her and
3 she say it needed to be scruffier?

4 A Yes.

5 Q She had to add more facial hair to it?

6 A Yes.

7 Q And the description of the clothing that she gave was
8 an orange t-shirt?

9 A Yes.

10 Q And shorts that were gray or silver?

11 A Yes.

12 MS. WILLIAMS: Beg the Court's indulgence?

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 BY MS. WILLIAMS:

16 Q Now, you allowed Ms. Claiborne to tell you what was
17 wrong and what was right about the sketch throughout the
18 process?

19 A Yes.

20 Q And made changes as necessary per her instructions?

21 A Yes.

22 Q And then at the end, you conferred with her with a
23 rating of how well she believed the sketch was who she
24 remembered?

25 A Yes.

1 Q And that was ten out of ten?

2 A Yes.

3 MS. WILLIAMS: No further questions, Your Honor.

4 THE COURT: Redirect, Solicitor?

5 MS. WALKER: None, Your Honor.

6 THE COURT: Thank you very much, Agent.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You may step down.

9 All right. Solicitor, you may call your next
10 witness.

11 MS. WALKER: Your Honor, the State calls Martin Sims.

12 THE COURT: All right. Mr. Sims, if you'd come
13 around and be sworn, please.

14 MARTIN SIMS, after being duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness stand, please.
17 State your name for the record.

18 THE WITNESS: Martin Sims.

19 DIRECT EXAMINATION:

20 BY MS. WALKER:

21 Q All right. Mr. Sims, what city do you currently live
22 in?

23 A I live in Columbia, South Carolina.

24 Q Do you work?

25 A I do.

1 Q Where do you work?

2 A I'm a high school math teacher and a member of the
3 South Carolina National Guard.

4 Q Where do you teach?

5 A Spring Valley High School.

6 Q Back in May of 2015, where were you living?

7 A [REDACTED] Barhamville Road, Columbia, South Carolina.

8 Q Who were you living there with?

9 A Ernest Saylor and Carlos Osorio, my two roommates.

10 Q I want to take your attention back to the morning of
11 May 13th, 2015. What were you doing that morning?

12 A That morning, I woke up and I was getting -- my
13 regular routine, getting ready to go to work. And my
14 girlfriend was there and we both got ready at the same
15 time and kind of fixed our breakfast, got our bags and
16 stuff. And in the process of me going through house, I
17 auto started my vehicle. I auto started my vehicle and --
18 (coughing).

19 Q Hold on a second. I can't hear you.

20 A Yes, ma'am.

21 Q Go ahead.

22 A I'll slow down. In the process of me going from my
23 home to my car so that I could go to work, I hit the auto
24 start on my vehicle so that my car could warm up before I
25 went to work.

1 Q And what kind of car was that?

2 A It was a Chrysler, silver Chrysler 300, two thousand
3 seven one [sic].

4 Q You say you auto started your vehicle?

5 A Yes, ma'am.

6 Q I want to show you State's Exhibit No. 3 and ask you
7 if you recognize this.

8 A That is my -- yes, that's my home.

9 Q Is that where you lived at the time?

10 A Yes.

11 MS. WALKER: Your Honor, the State seeks to move
12 Exhibit No. 3 into evidence.

13 THE COURT: Ms. Williams, Ms. Pinnock?

14 MS. WILLIAMS: No objection, Your Honor.

15 THE COURT: State's 3 is in evidence without
16 objection.

17 (WHEREUPON, State's Exhibit No. 3 was admitted into
18 evidence.)

19 BY MS. WALKER:

20 Q Where was your car that morning?

21 A My car -- house sits on the corner lot. My car was
22 right here on the street and my girlfriend's car was right
23 behind mine, kind of more like in front of the door a
24 little bit. Like if you're looking at the door, my car
25 was right here, my car and her car.

1 Q And as you -- you said you started the car and you
2 were inside fixing your breakfast?

3 A Yes, ma'am.

4 Q And then what happened, Mr. Sims?

5 A Then I walked outside, my girlfriend walked out
6 simultaneously. I went to put my belongings in my car and
7 then after I got my car, I walked back to her car so I
8 could give her a hug and kiss before I go to work. As I
9 was --

10 Q Let me just stop you right there.

11 A Yes, ma'am.

12 Q Will you step off the witness stand?

13 MS. WALKER: Your Honor, may the witness step down
14 in?

15 THE COURT: Yes, ma'am. Thank you.

16 BY MS. WALKER:

17 Q All right. Stand on this side for me, Martin.

18 A Okay.

19 Q So that you can speak back towards the court
20 reporter.

21 THE COURT: Give me just a minute, Solicitor, so I
22 can go over there.

23 MS. WALKER: Oh, sorry, Your Honor.

24 BY MS. WALKER:

25 Q On State's Exhibit No. 3, you said -- where were you

1 standing?

2 A So my vehicle was here. Her vehicle was here. After
3 I walked out of this door, I came to my vehicle to put my
4 belongings in my car. I then walked back up the sidewalk
5 to my girlfriend's vehicle to give her a hug and a kiss
6 goodbye before she went to work. As I was doing that,
7 back in this area walking up the street -- because there's
8 a sidewalk on the other half of the street.

9 Q Let me show you State's Exhibit No. 5, do you
10 recognize this?

11 A Yes, I do.

12 Q Okay. Now, you said walking up the street. Which
13 street are we talking about?

14 A Barhamville Road. The same street as my house.

15 Q Is this your house?

16 A That's my house right there, yes.

17 Q And where on the street did you see the individual?

18 A On the opposite side walking in this direction coming
19 towards the house.

20 Q And at that point, what, if anything, did you notice
21 about the person?

22 A Well, I noticed he was fairly large. He had an
23 orange shirt on. And he was actually smoking a cigarette
24 at the time he was walking. As he walked, he kind of --
25 naturally when I see somebody, I kind of say hey, give

1 them a head nod or something like that.

2 I'm kind of a natural head nodder or waver. He
3 reciprocated back. I give him a head nod back. Then he
4 walked, kind of tossed his cigarette. So I kind of -- my
5 focus was on my girl, and I waved going by.

6 In my peripheral, I can kind of see -- if anybody
7 walks there, they kind of go straight because I do stay
8 down the street from a high school. So it wasn't all the
9 way unusual for someone to be walking. And then we kind
10 of came, I noticed that he took a sharp turn in my
11 peripheral. So I kind of turned and as I turned --

12 Q Where was he when he took this sharp turn?

13 A He took it -- so he's walking down and he cut right
14 across the street right here. So I caught him here, he
15 walks down the street, I give him a head nod, he kind of
16 waves back. And then the corner is up here, he kind of
17 cuts it kind of early a little and he turns around the
18 front of my vehicle.

19 Q And what, if anything -- you can go back up on the
20 stand. Thank you, Mr. Sims.

21 A Yes.

22 Q Once he turns and comes -- I guess, was he coming
23 closer to you at that point?

24 A Yes, once he made the turn around my vehicle and
25 started walking back towards us, he had a -- he pulled out

1 a pistol, looked like a revolver, and he kind of flashed
2 it towards us. At that point, I kind of put my hands up
3 at kind of at a stand still, just kind of in shock about
4 what's exactly about to happen.

5 So then as I stand still, it kind of more or less
6 motions backwards in a sense to see exactly what's going
7 to happen. He then turns around, he goes over to my
8 vehicle and goes into my vehicle. So my immediate
9 reaction was to -- well, I panicked.

10 My girlfriend, she jumped into her car and I
11 immediately took off to the house. As I was taking off to
12 the house, I'm running kind of very fast, kind of just not
13 knowing what's going on, just in a rush mode because I
14 feel like I'm about to be robbed -- well, I know I'm being
15 robbed at this point. I have the keys on my hip still.
16 So I pull my keys up, I'm trying to get the door. I pull
17 my screen door open. And I open the top and the bottom
18 lock. They're both locked --

19 Q Mr. Sims, slow down for me.

20 A Okay.

21 Q So we can all understand you.

22 A I understand.

23 Q And so that the court reporter can take everything
24 down, okay?

25 A Yes, ma'am.

1 Q Are you nervous?

2 A A little bit.

3 Q Does talking about this make you emotional?

4 A Very uncomfortable.

5 Q All right. So you run towards your house?

6 A Yes, ma'am.

7 Q All right. And when you get to your house, is your

8 door locked or unlocked?

9 A It's locked.

10 Q So tell me what you did once you got to your locked

11 front door?

12 A So once I got to my front door, I hear my vehicle cut

13 off. And at the same time, my girlfriend is yelling, you

14 know, he's right behind you. He's coming, something of

15 the nature.

16 Q At that point in time, do you know why your vehicle

17 is cut off?

18 A My vehicle got cut off because the key -- yeah, the

19 keys are with me and not in the range for the vehicle to

20 take off.

21 Q Okay. Go ahead.

22 A So I'm going back into the house, unlock the bottom

23 lock, unlock the top lock. At this point, I still didn't

24 know if anybody was coming after me. Because I -- just in

25 my mind, he was either in the car or had took off, just

1 kind of took the loss, took off. Then when I finally
2 opened the door and got in to turn around, I noticed that
3 he wasn't in pursuit anymore.

4 He was actually at the door. If you look at just the
5 way like -- so you have my house and the door is kind of
6 this way. So when I looked back, he kind of crashed into
7 the wall and he was going full speed to kind of brace
8 himself.

9 As he hit the wall, I was in a rush to shut the door.
10 So as I'm shutting the door, he catches it before I shut
11 it. We're pushing, tussling back and forth. I'm yelling,
12 screaming at the top of my lungs, help, somebody call
13 9-1-1, wake up, somebody call the 9-1-1, call the police,
14 call the police, everything. I'm trying to be loud, alert
15 so somebody can make contact with law enforcement to get
16 some help because he was just already out of hand and I
17 was very scared.

18 So then we're tussling back and forth, almost close
19 to shutting the door.

20 Q Slow down while you're telling the story, okay?

21 A So we're tussling back and forth at the door and we
22 are -- I'm very close to shutting the door. Before I can
23 get the door shut, all of a sudden, he pulls back, shoots
24 through my front door.

25 As I'm leaning over it, the bullet comes through my

1 door, hits me in my chest and kind of drags down and tears
2 my left lung. So at that point, once I was hit, my ear is
3 ringing.

4 Q Let me show you before you go on State's Exhibit
5 No. 79?

6 A Okay.

7 Q Do you recognize this?

8 A Yes, that's my front door.

9 MS. WALKER: Your Honor, at this point, the State
10 seeks to move Exhibit 79 into evidence.

11 MS. WILLIAMS: No objection, Your Honor.

12 THE COURT: State's 29 into evidence without
13 objection.

14 MS. WALKER: Seventy-nine, Your Honor.

15 (WHEREUPON, State's Exhibit No. 79 was admitted into
16 evidence.)

17 THE COURT: Seventy-nine into evidence, not 29.

18 BY MS. WALKER:

19 Q All right. Is this the door that you're describing?

20 A That's it, yes, ma'am.

21 Q And on what side of the door are you on?

22 A I'm on this side towards me in reference to this
23 picture. So when I'm at this point, I'm actually standing
24 right here. And as he comes through, I kind of see him
25 through that screen, bam, slams into my wall.

1 At that point, that's when we go -- and I try to shut
2 the door, but he catches it and we're kind of tussling
3 back and forth at that point in that doorway.

4 Q In this doorway?

5 A Yes, ma'am.

6 Q You said you almost had the door closed?

7 A Yes, ma'am.

8 Q And then as you were closing the door, what happened?

9 A He pulls back and shoots through the door. Once he
10 shoots through the door, it hits me. Of course, it came
11 through the door, the door flies open. I kind of fall
12 back. Blood is all over the place. My natural -- I kind
13 of tuck and kind of roll over into my living area. Once I
14 make my way out, I fall on the ground.

15 I'm kind of on my side and kind of catty rolling
16 over. I look up and I see him hovering over me saying,
17 Give me the keys. Give me keys. At this point, I'm just
18 staring because I -- I mean, I'm shot. What else do you
19 want at this point? So I'm sitting there. He searches
20 around, kind of grabs what I assume is the keys and he
21 takes off outside the house. So then now, I'm still
22 laying there --

23 Q Let me stop you there. How -- once you're on the
24 ground, he shot you?

25 A He shot me through the door and he was hovering over

1 me.

2 Q How close was he to you?

3 A Straddling me, right on top hovering over me.

4 Q So --

5 A If I could reach up, I probably could have touched
6 him.

7 Q Is he this close to you?

8 A Yes.

9 Q But he's standing over you?

10 A Over me.

11 Q Like this?

12 A Yes, hunched over me.

13 Q Hunched over you?

14 A Yes.

15 Q Are you looking at him the same way you're looking at
16 me in terms of the ability to see him?

17 A Yes.

18 Q Did you get a good look at him?

19 A A look that I won't ever forgot.

20 Q After this man who shot you runs out of your house,
21 what happens?

22 A My adrenaline is rushing, of course. I get up enough
23 energy to get up. I'm kind of holding, trying to put
24 pressure on it to keep the blood from coming out and I
25 stumble back towards my front door. I'm trying to scream,

1 but I'm losing air at this point.

2 I'm like, Call 9-1-1, call 9-1-1. Once I get to the
3 front lawn, my body just got weak and I just fell right
4 there on my front lawn. Just kind of still trying to lean
5 and put pressure, kind of hold the blood in. My
6 girlfriend was coming towards me trying to catch to
7 prevent me from falling.

8 At that point, that's when a lot of neighbors were
9 outside. And I just now trying to slow my breathing
10 because I didn't know -- I know I got hit on the chest,
11 but it was on the same side as my heart, so I didn't know
12 exactly how long I would be able to breathe, so I'm like
13 okay, let me slow down and control my breathing.

14 Then my neighbor, who was -- she's retired military.
15 She was a paramedic in the military. Came over, she kind
16 of aided me to stay calm, deep breaths. I just kind of
17 stayed on my chest until the police and the ambulance and
18 everyone else got there as everyone tried to help.

19 Q Your keys were taken from you? You said you had them
20 in your hand to unlock the door.

21 A Yes.

22 Q Do you remember where your keys were when the man
23 took them from you?

24 A When he took them me, they should have been in the
25 house at that point in time. Because when he kind of

1 hovered over me, he kind of looked and -- because then he
2 saw something and that's when he kind of dashed and he
3 took off. So I was in the house.

4 Q Now, do you remember the medics arriving?

5 A Do I remember?

6 Q When the medics, when EMS and the police --

7 A Oh, yes, yes, yes. I remember the police showed up
8 first, and then everybody was all saying flip him over,
9 flip him over. Everyone was saying don't do that. When
10 they came, then they started talking to me, asked me my
11 name, birth date, just trying to make sure I was alert.
12 Once they located the wound, they did some kind of
13 treatment, stripped my clothes off, right leg, left leg,
14 shirt off. They proceeded to roll me over so that they
15 can get me in the ambulance.

16 Q And were you transported to the hospital?

17 A I was.

18 Q Did you undergo surgery?

19 A I did.

20 Q For your gunshot wound?

21 A I did.

22 Q And after your surgery, did you meet and speak with
23 Investigator Richburg?

24 A I did.

25 Q All right. And where were you at that point?

1 A I was in the hospital when he came and spoke with me.

2 Q Do you have a clear memory of that conversation?

3 A I do.

4 Q Do you remember what kind of questions he asked?

5 A Yes. He kind of introduced himself and then he kind
6 of -- basically -- well, he looked very sorry for my
7 situation, just kind of talking to my family, had them
8 kind of all clear out. We were one-on-one. He kind of
9 said hey, we have a potential suspect, you know, I have
10 some photos, kind of that whole spiel of let me know if
11 you see him or not.

12 MS. WALKER: Objection, Your Honor.

13 THE COURT: What?

14 MS. WALKER: Objection, Your Honor, hearsay.

15 THE COURT: All right. Ask your next question,
16 Solicitor.

17 BY MS. WALKER:

18 Q Were you presented with a number of pictures?

19 A I was.

20 Q At this point in time, could you speak?

21 A I couldn't speak.

22 Q Why couldn't you speak?

23 A Because surgery -- well, when I got hit, I got hit in
24 the lung, so I had tubes that was just kind of all stuck
25 down my throat that was just kind of keeping my lungs

1 pumping and keeping, I guess, all the inflammation down
2 and everything that was forming in my system so I wouldn't
3 get stopped up.

4 Q And while you couldn't speak, could you understand?

5 A Oh, yes, I could understand.

6 Q And could you move your head and your arms?

7 A Yes, I could move them.

8 Q And you said he showed you a number of pictures?

9 A He did.

10 Q I want to show you what's been marked as State's
11 Exhibit No. 2, and ask you if you recognize this?

12 A No problem.

13 Q Do you recognize this?

14 A I do.

15 Q And when he was showing you the pictures -- I guess
16 describe how he showed the pictures to you.

17 A He presented them one by one. And then as he
18 presented them, I kind of gave him a head nod or a shake,
19 keep going or stop. And then as he kept going, flashing
20 through -- I know it wasn't the first one he showed me,
21 the picture.

22 When he pulled the individual up, the one that shot
23 me, I looked at it and I'm like I know that was him. And
24 then as I pointed him out, he was like, Okay, well, look
25 at the rest just to make sure. I kind of motioned through

1 that. So I looked at the rest of them. That's when he
2 asked me, "Are you sure this is the one?" The one I had
3 pointed out.

4 I was like, "It is."

5 He said, "If you're sure, go ahead and sign and date
6 it." That's when I signed and dated it. Date on the
7 picture right there.

8 MS. WALKER: Your Honor, the State seeks to move
9 Exhibit No. 2 into evidence.

10 MS. WILLIAMS: We renew our objections, Your Honor.

11 THE COURT: All right. State's 2 is in evidence
12 subject to previous objections.

13 (WHEREUPON, State's Exhibit No. 2 was admitted into
14 evidence.)

15 BY MS. WALKER:

16 Q You said he showed these pictures to you one at a
17 time?

18 A Yes, ma'am.

19 Q And once he shows you picture number one, what do you
20 do?

21 A No -- well, I'm speaking now, but.

22 Q You shook your head no?

23 A I shook my head no.

24 Q And when he showed you picture number two, what did
25 you do?

1 A No.

2 Q Shook it?

3 A Nodded my head again.

4 Q Once he showed you picture number three, what did you
5 do?

6 A Nodded my head again.

7 Q Once he got to picture number four, what happened?

8 A I paused. Then I shook my head.

9 Q And how did you recognize the man in picture number
10 four?

11 A I recognized him because I've seen him prior to him
12 approaching me, when he approached me and then as he
13 hovered over and he before he left. That was the
14 individual that did all that.

15 Q And did you sign and date this picture?

16 A I did print, sign and date it.

17 Q And this is your handwriting?

18 A That's my handwriting, yeah.

19 Q Then you said he showed you, just to make sure you
20 were certain, picture number five?

21 A Yeah.

22 Q And picture number six?

23 A Yeah.

24 Q And was that the extent of your contact with law
25 enforcement that day?

1 A That day, yeah.

2 Q The man who shot you -- I guess, the man who
3 approached you, pulled out a gun, chased you into your
4 home, shot you and then hovered over you, do you see him
5 in the courtroom today?

6 A I do.

7 Q Can you point him out for me?

8 A I can. He's right there, blue shirt, black tie.

9 MS. WALKER: Your Honor, may the record reflect that
10 the witness has identified the Defendant?

11 THE COURT: So reflected.

12 MS. WALKER: Thank you Martin. I don't have any
13 questions.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you, Solicitor.

16 Ms. Williams.

17 MS. WILLIAMS: May it please the Court.

18 CROSS-EXAMINATION:

19 BY MS. WILLIAMS:

20 Q Good morning. Mr. Sims, I'd like to direct your --
21 or talk to you about the morning of May 13th, 2015. You
22 were living at [REDACTED] Barhamville Road?

23 A Yes.

24 Q How long had you lived there at that point?

25 A It was almost a year at that point.

1 Q Now, you were heading to work that morning?

2 A Yes.

3 Q A regular morning?

4 A Yes.

5 Q You stated that you auto started your car?

6 A Yes.

7 Q And then walked out with your girlfriend?

8 A Yes.

9 Q All right. And first, you placed your belongings in

10 the car?

11 A I did.

12 Q And then walked over to her car to kiss her goodbye?

13 A That's correct.

14 Q And then walked back over to your vehicle?

15 A In the process. I didn't make it to my vehicle,

16 that's when the individual right there approached me.

17 Q I know you had pointed out on Defense Exhibit 3, your

18 car was like right here?

19 A Yes. In that vicinity, yes.

20 Q So like --

21 A Yes.

22 Q -- right there?

23 A Right.

24 Q And Christine's car was?

25 A Right behind mine.

1 Q Right behind it?

2 A Yes.

3 Q Okay. So you were walking back this way, heading
4 this way?

5 A Do that again.

6 Q So Christine's car is right here. You kissed her
7 goodbye and then you're walking back this way to your car?

8 A You're pointing to the grass and I was still on the
9 concrete at that time.

10 Q I'm sorry. I think I was doing the pen version.

11 A I'm right -- my vehicle is right here. I'm right
12 here.

13 Q You're on the sidewalk?

14 A Yeah, on the sidewalk. I walked back here on the
15 sidewalk.

16 Q Okay.

17 A Parallel to my door.

18 Q Okay. And then once you had said goodbye to
19 Ms. Claiborne, then you started walking back to your car?

20 A I didn't move all the way because I had kind of -- we
21 were still kind of talking. And when I seen the
22 individual crossing the street, I kind of addressed him
23 with, like I said, a head nod, as I said before. As he
24 was walking by, I kind of still -- if I had to choose
25 walking or staying in place, I would say I stayed in that

1 place in the vicinity with my girlfriend.

2 Q Okay. So approximately where were you when you
3 noticed the gentleman across the street?

4 A When I noticed him across the street, I was right
5 here by our vehicles. He was coming down.

6 Q Okay. When this person -- and then you stated that
7 this person branded -- did a quick turn?

8 A So at what point?

9 Q You're finishing up the conversation --

10 A Yeah.

11 Q -- with your girlfriend?

12 A Yeah, he's crossing the street and kind of -- I stay
13 on the corner lot, so it wasn't all the way, so the turn
14 was kind of short. So as he turned kind of short, he then
15 sped up and made a quick turn right in front of my
16 vehicle.

17 Q So he came around the front of your vehicle?

18 A Yes.

19 Q So he was coming from this direction?

20 A Yeah.

21 Q Around the car?

22 A That's correct.

23 Q Okay. At that point, you put your hands up?

24 A I kind of turned around and faced him.

25 Q And then you went and got in your car?

1 A Yes.

2 Q And that's when you ran inside?

3 A Yeah.

4 Q You stated you were in rush mode at that point?

5 A When I took off afterwards, yes.

6 Q Okay. But you weren't -- at that point, you didn't
7 really know what was going on?

8 A Not all the way.

9 Q You are unlocking your door? So then you run up to
10 your front door?

11 A Yeah.

12 Q You're unlocking the door?

13 A That's correct.

14 Q You get in the door and that's when you notice that
15 he has followed you?

16 A Yeah.

17 Q And he has followed you --

18 MS. WILLIAMS: May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. WILLIAMS:

21 Q On State's Exhibit 79, so you were inside the door --
22 where were you?

23 A Right here inside the door, close to touching it and
24 getting ready to shut it.

25 Q Okay. And the screen door was closed at that point?

1 A It closed real slow, so kind of midway.

2 Q And he had run up your sidewalk and run into the
3 wall?

4 A Yes, trying to brace himself, yeah.

5 Q And he's coming towards the door?

6 A Now, he's trying to get in at this point.

7 Q And you're pushing the door?

8 A I'm pushing the door shut.

9 Q So you're on one side of the door and he's on the
10 other?

11 A Towards the beginning when he first came, I saw him,
12 then kind of as I'm closing the door, he kind of reached
13 out and kind of got into the door to stop me from shutting
14 it. So then at that point, we were both on opposite sides
15 pushing the door.

16 Q You said that you almost got the door completely
17 shut?

18 A Almost, but I didn't.

19 Q And that's when you heard a gunshot?

20 A Yeah.

21 Q And that's when you were hit?

22 A That's correct.

23 Q And you stated that the door flew open?

24 A The door flew open once the bullet came through,
25 yeah.

1 Q And the bullet caused you to fall back?

2 A That's correct.

3 Q And then you kind of tucked and rolled to protect
4 your body?

5 A To protect my body, it didn't hurt. I just kind of
6 tucked. I don't really know the thought process for why I
7 tucked, because it hurt, so, yeah.

8 Q And you said you were on your side and you were kind
9 of turning back around when you noticed that he had fallen
10 inside?

11 A I kind of fell naturally and I kind of rolled in that
12 process, so now I'm kind of catty-turned over like that,
13 yeah.

14 Q And you said that he grabs and then -- so the keys
15 were no longer on your hip?

16 A They were no longer on my hip. I had to take them
17 off to get in the door.

18 Q And he -- and you said he must have seen where they
19 were because he looked around and then grabbed them and
20 left?

21 A Yeah, seen where they were. Is that what you said?

22 Q Yeah.

23 A Yeah.

24 Q Okay. And then he ran out?

25 A That's correct.

1 Q At this point, your adrenaline is rushing?

2 A It is.

3 Q And you are -- you're in pain?

4 A Uh-huh, that's correct.

5 Q Yes, because you have been shot. And you knew that
6 you needed to get help?

7 A That's correct.

8 Q So you managed to get up and head outside?

9 A I did.

10 Q And when you got outside, your girlfriend was there?

11 A She was.

12 Q And you ended up feeling weak and falling down in
13 your yard?

14 A That's correct.

15 Q Were you -- you were scared at that time?

16 A Terrified.

17 Q Because you didn't know how bad it was?

18 A I did not.

19 Q So you were trying to do whatever you could to get
20 help?

21 A At that point, I -- help was already there, so, yeah,
22 me being out there was as much help as I could have done
23 for myself, making myself visible.

24 Q You also -- you said you tried to slow your breathing
25 and try to keep calm?

1 A Yes, I wanted to make sure I was alert so I that
2 could listen to instruction and help for my own benefit.

3 Q And EMS drove -- police showed up pretty quickly?

4 A Yes.

5 Q And then EMS showed up after that?

6 A That's correct.

7 Q And then they did some treatment to you?

8 A Treatment, yes, kind of suppress the wound and
9 unclothe me, prepared me for transportation.

10 Q Okay. And then they took you in an ambulance to
11 Palmetto Health Richland?

12 A Yes.

13 Q Now, when you got to Palmetto Health Richland, at
14 first, they took you to the emergency room department?

15 A I'm assuming, some room.

16 Q Okay. At that point in time, did they -- they gave
17 you -- they put a tube in your chest?

18 A Yes.

19 Q Okay. And they gave you a local anesthetic for that
20 so you wouldn't feel the pain?

21 A They poked me with an I.V. several times, so yes, if
22 that's what it was.

23 Q A lot was going on?

24 A A lot.

25 Q And you, at that point in time, are still in a lot of

1 pain?

2 A I am.

3 Q Now, then the doctors told you that you needed
4 surgery?

5 A Yeah.

6 Q And they took you pretty quickly into surgery?

7 A Yeah.

8 Q For a hospital. Now, you don't remember the actual
9 surgery itself?

10 A While they --

11 Q Yeah.

12 A I was asleep.

13 Q Okay. So they gave you medication to make you not
14 remember?

15 A That's correct.

16 Q I want to direct your attention to the time after the
17 surgery. You said you had tubes all down your throat?

18 A That's correct.

19 Q To help you breathe?

20 A That's correct.

21 Q And those were attached to a ventilator, that's a
22 machine that helped you breathe?

23 A If that's what's it's called.

24 Q Now, the nurses, they gave you medications. You had
25 some I.V. bags?

1 A I.V. I was plugged up to stuff.

2 Q Okay.

3 A I'm not sure. I don't know exactly what it was.

4 Q Okay. I got you. But you remember bags, stuff
5 hanging on the side, I.V.s in your arm?

6 A I remember having the surgery and having an I.V.,
7 yes.

8 Q Now, after your surgery, Investigator Richburg
9 stopped by?

10 A Yeah.

11 Q He did?

12 A Uh-huh.

13 Q Do you remember what time?

14 A I do not.

15 Q And he told you that he had a potential suspect?

16 A Yes.

17 Q And then he got you one-on-one?

18 A Yes.

19 Q Asked your family to leave?

20 A Yes.

21 Q And then he showed you some photos?

22 A He did.

23 Q And he held them up himself?

24 A Yeah.

25 Q Okay. And you would indicate with your head?

1 A Correct.

2 Q You still had I.V.s in your arm at this point?

3 A I did until I left the hospital.

4 Q Okay. Were you still in wrist restraints, the things
5 around your wrists?

6 A No. I could move. If they were around my wrists, it
7 wasn't nothing I could tell. Not like I was going
8 anywhere any time soon. But I wasn't restrained where I
9 couldn't move.

10 Q But you wouldn't be able to pull your arm up?

11 A I don't know because I didn't try.

12 Q Well, I understand that, but that's what those are
13 there for?

14 A Were they there? Are you telling me or asking me?

15 Q I'm asking you, did you have wrist restraints on?

16 A Not that I know, no.

17 Q And so, were you writing anything at that point?

18 A Yes. Throughout that day, yes, after that, yeah.

19 Q On a dry erase?

20 A Originally, it was a pen and paper, but I got a dry
21 erase board.

22 Q Now, Investigator Richburg, he didn't ask you to
23 write a statement at that point, did he?

24 A No, ma'am.

25 Q He didn't come back the next day to get a statement?

1 A The statement, no.

2 Q And he didn't follow up with you to get a statement
3 after you left the hospital, so when you were recovered?

4 A I have not had a written statement.

5 Q And on the 13th when he came to show you those
6 pictures, did he ask you to give a description -- he
7 didn't ask you to give a description of the person before
8 he showed you the photos, did he?

9 A No, I don't think I was -- that was a question that
10 could have been asked if I couldn't speak. I don't know
11 that would make sense.

12 Q But he didn't ask you to write it down?

13 A Write down a description of him?

14 Q Yeah, since you were writing?

15 A No, ma'am.

16 MS. WILLIAMS: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 BY MS. WILLIAMS:

20 Q Mr. Sims, just one last question. Do you remember
21 the date that he came to visit you?

22 A The day that he came to visit me? I don't know the
23 time or the date because he told me, which is the date
24 that I wrote down on there.

25 Q Okay. Thank you.

1 MS. WILLIAMS: No further questions, Your Honor.

2 THE COURT: Redirect, Solicitor?

3 MS. WALKER: Thank you, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MS. WALKER:

6 Q She asked you a lot of questions about medical
7 terminology and procedures. Are you a medical doctor?

8 A I'm not.

9 Q Do you know the names of everything you underwent to
10 save your life?

11 A No, ma'am.

12 Q Do you know who shot you, though?

13 A I do know who shot you.

14 Q And who shot you?

15 A The individual right there in the blue shirt, black
16 tie.

17 Q Okay.

18 MS. WALKER: Thank you, Martin. I don't have any
19 other questions.

20 THE COURT: Recross, Ms. Williams?

21 MS. WALKER: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Sims.

23 THE WITNESS: Yes, thank you.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, perhaps now would be a good time for us to take our

1 luncheon recess.

2 I'll remind you that during this recess, you may not
3 discuss this case with others. That includes your fellow
4 jurors, lunch mates, friends or anyone else. You may not
5 read, listen to or watch any news accounts about the case.

6 You may not use your computer, cellular phone or any
7 other electronic device with communication capabilities or
8 any other method to obtain or disclose information about
9 the case.

10 The information about the case includes, but is not
11 limited to the following: Information about a party or a
12 witness, attorney, a court officer, news reports about the
13 case, past or present, should there be any, information
14 collected through juror research on any topics raised or
15 testimony offered by any witness or information collected
16 through juror research or any other topic the juror might
17 think would be helpful in deciding the case.

18 You decide the case based on the evidence, the
19 testimony and witnesses and any other items of evidence
20 offered into the courtroom. With that being said, do not
21 do any independent investigation or any investigation from
22 the internet.

23 I would ask you to please be back promptly at 2:30.
24 Please be back promptly at 2:30. I hope y'all have a
25 pleasant lunch. Thank you very much. You may go back to

1 your jury room.

2 (Whereupon, the jury left the courtroom at 1:10 p.m.)

3 THE COURT: Anything from the Defense, Ms. Williams
4 before we take our recess?

5 MS. WILLIAMS: Nothing, Your Honor.

6 THE COURT: The State?

7 MS. WALKER: No, Your Honor.

8 THE COURT: Thank you. Court will be in recess until
9 2:30.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: All right. Solicitor.

12 MS. WALKER: Your Honor, over the course of the lunch
13 break, Ms. Pinnock approached us to talk about possible
14 pleas in this case.

15 The original plea offer, Your Honor, was a cap of 30
16 years before trial started. Ms. Pinnock approached us and
17 we did speak with the victim in this case. We were able
18 to offer a negotiated 30 years for all charges in this
19 case. Your Honor, that's attempted murder, burglary in
20 the first degree, armed robbery, grand larceny, unlawful
21 carrying of a weapon, discharging a firearm into a
22 dwelling and use of a weapon during the commission of a
23 violent crime.

24 It is my understanding at this point in time from
25 speaking with both Ms. Williams and Ms. Pinnock that the

1 Defendant does want to enter pleas of guilty to all of
2 those charges.

3 (end of partial transcript request.)

4 (Whereupon, the proceedings were concluded.)

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I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 18th, 19th days of July, 2016.

July 30, 2020

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2015-GS-40-4605
		2015-GS-40-4606
		2015-GS-40-4607
		2015-GS-40-4608
		2015-GS-40-4609
		2015-GS-40-4610
		2015-GS-40-4611
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CHRISTOPHER WILBERT KEITT,	)	GUILTY PLEA
	)	
DEFENDANT,	)	

July 19, 2017
Columbia, South Carolina

BEFORE:

THE HONORABLE KNOX MCMAHON, JUDGE.

APPEARANCES:

MEGHAN WALKER, ASSISTANT SOLICITOR
Attorney for the State

REBECCA WILLIAMS, ASSISTANT PUBLIC DEFENDER
TRACY PINNOCK, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T SINDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 CHRISTOPHER KEITT, after being duly
2 sworn, testified as follows:

3 THE COURT: Ms. Williams, Ms. Pinnock, you all
4 represent Christopher Wilbert Keitt?

5 MS. WILLIAMS: We do, Your Honor.

6 MS. PINNOCK: Yes, sir.

7 THE COURT: You want me to address my questioning to
8 one of the attorneys?

9 MS. PINNOCK: Ms. Williams.

10 MS. WILLIAMS: Me.

11 THE COURT: Ms. Williams, have you explained to
12 Mr. Keitt the charges, the elements of the charges, and
13 the possible punishments and his rights including his
14 right to a jury trial?

15 MS. WILLIAMS: I have, Your Honor.

16 THE COURT: In your opinion, does he understand these
17 things?

18 MS. WILLIAMS: Yes, Your Honor.

19 THE COURT: How does he indicate he intends to plead
20 to attempted murder?

21 MS. WILLIAMS: Guilty.

22 THE COURT: Burglary in the first degree?

23 MS. WILLIAMS: Guilty.

24 THE COURT: Unlawful carrying of a pistol?

25 MS. WILLIAMS: Guilty.

1 THE COURT: All right. Possession of a weapon during
2 the commission of a violent crime?

3 MS. WILLIAMS: Guilty.

4 THE COURT: Discharging a firearm into a dwelling?

5 MS. WILLIAMS: Guilty.

6 THE COURT: Grand larceny value of \$10,000 or more?

7 MS. WILLIAMS: Guilty.

8 THE COURT: And armed robbery?

9 MS. WILLIAMS: Guilty.

10 THE COURT: Thank you. Thank you, Ms. Williams.

11 Are you Christopher Wilbert Keitt?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Before I can accept pleas of guilty, it's
14 necessary for me to determine if your pleas have been
15 given freely and voluntarily. Therefore, I need to ask
16 you some questions.

17 If you do not understand my questions, please let me
18 know. I'll try to explain them to you. If at any time
19 you wish to talk to either or both of your attorneys,
20 please let me know. I'll allow you to do so. Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: Twenty-five.

25 THE COURT: How much education do you have?

1 THE DEFENDANT: I have a GED.

2 THE COURT: Prior to your incarceration, what type of
3 work did you do?

4 THE DEFENDANT: I did -- I did a lot of things. I
5 moved furniture with United Van Lines. Basically, I have
6 been to all, every single state.

7 THE COURT: Today are you under the influence of any
8 medications, drugs or alcohol?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you aware of any physical, emotional
11 or nervous problems that keeps you from understanding what
12 you're doing today?

13 THE DEFENDANT: No.

14 THE COURT: Are you aware of any mental, physical or
15 nervous problem that keeps you from understanding what
16 you're doing here today?

17 THE DEFENDANT: No, sir.

18 THE COURT: I've been handed up seven indictments.
19 I'm going to review them with you. The indictments are
20 number 2015-GS-40-4605, 4606, 4607, 4608, 4609, 4610,
21 4611.

22 The indictments allege various criminal offenses.
23 The first indictment alleges attempted murder; that you
24 did on or about 13 May, 2015 with the intent to kill
25 attempt to kill Martin Sims with malice aforethought

1 either expressed or implied in violation of our statutes.
2 For that, you could receive a sentence of up to 30 years.
3 Do you understand me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The next indictment, as I stated, 4606
6 alleges on that same date you did commit burglary in the
7 first degree by unlawfully entering the dwelling of Martin
8 Sims at [REDACTED] [REDACTED] [REDACTED] in Columbia.

9 Were you armed with a deadly weapon at the time or
10 what appeared to be a deadly weapon with the intent to
11 commit a crime therein without consent and/or cause
12 physical harm to Martin Sims? For that, you could receive
13 a sentence of 15 years to life. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The next indictment, unlawful carrying of
16 a pistol, alleges on that same date you were in possession
17 of a pistol, such possession not being authorized by law
18 under 16-2320 -- and what is the potential punishment? Is
19 that one year or two-year statute?

20 MS. WALKER: The unlawful carrying, Your Honor, it's
21 one year.

22 THE COURT: One year, \$1,000.

23 The next indictment alleges possession of a weapon
24 during the commission of a violent crime involved in that
25 same incident on 16-23490. For that you could receive a

1 sentence of up to four years?

2 MS. WILLIAMS: Yes, Your Honor.

3 THE COURT: The next indictment, 4609, discharging a
4 firearm into a dwelling alleges on that same date you did
5 discharge a firearm in that dwelling at [REDACTED]
6 [REDACTED] in violation of 16-23440 that carries sentence of up
7 to...

8 MS. WILLIAMS: Zero to five.

9 THE COURT: Five years.

10 For grand larceny value more than \$10,000,
11 allegations at that same time, incident, you did take and
12 carry away a 2007 Chrysler 300 with the intent to deprive
13 the owner permanently of the property, convert to it your
14 own use in violation of 16-13-30(b)(2). For that you
15 could receive a sentence of up to...

16 MS. WILLIAMS: Zero to ten.

17 THE COURT: Ten years.

18 And armed robbery alleges on that same date you did
19 commit robbery by feloniously taking from the person of
20 Martin Sims by means of force or intimidation while armed
21 with a deadly weapon an automobile for which you can
22 receive a sentence of up to 30 years. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Speak up for me.

2 Now, Mr. -- you understand the offenses and the
3 possible maximum sentence?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: When you plead guilty, you give up
6 certain very important Constitutional Rights. First, you
7 give up your right to remain silent. That is your right
8 against self-incrimination, your right to say nothing at
9 all. You cannot be compelled to provide evidence against
10 yourself. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Second, you give up your right to have a
13 jury trial. That is your right to have the jury decide
14 whether or not you are guilty beyond a reasonable doubt.

15 The jury would base its decision upon evidence which
16 the State presents and on any evidence that you might wish
17 to introduce.

18 In a trial, you would be presumed to be innocent, and
19 the State would have to produce evidence that would
20 convince all 12 members of the jury that you were guilty
21 beyond a reasonable doubt. Do you understand your right
22 to a jury trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand now you're in the midst
25 of a jury trial? It has already started.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you wish to give up that right and
3 continue with your guilty plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Also, you would have the right to
6 confront and be confronted by the witnesses against you.
7 That is the right to see, hear, and have your attorneys
8 cross-examine any witnesses that may be called against you
9 during a trial and the right to subpoena, call witnesses
10 on your own. Do you understand that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that when you plead
13 guilty to these charges, you give up all these very
14 important Constitutional Rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do, Mr. Keitt?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Understanding then the nature of the
19 charges against you, attempted murder, burglary in the
20 first degree, unlawful carrying of a pistol, possession of
21 a weapon during the commission of a violent crime,
22 discharging a firearm into a dwelling, armed robbery, and
23 grand larceny of a value greater than \$10,000 and the
24 consequences of such a plea -- I understand it's a
25 negotiated sentence. However, you could receive up to --

1 you could receive a sentence of up to 100 years. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding that, do you understand
5 that when you plead guilty, you admit the truth of the
6 charges made against you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How do you plead to those charges, guilty
9 or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: Are you guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you commit those offenses?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You may have defenses to these charges,
16 Mr. Keitt. I don't know whether you do or not. Do you
17 understand that if you enter these guilty pleas, you will
18 waive or give up any defenses you might have to these
19 charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You may have given an incriminating
22 statement. As a matter of fact, we had a hearing, an in
23 camera hearing concerning the statement that you allegedly
24 gave.

25 If you plead guilty, you will understand that you

1 waive or give up the right to contest or challenge whether
2 such a statement was freely and voluntarily given in
3 accordance with your Constitutional Rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Solicitor, have there been
6 any plea negotiations in the case?

7 MS. WALKER: Your Honor, the original offer in this
8 case before the trial started was a cap of 30. Once the
9 trial started and they approached us again about possible
10 guilty pleas, it's a negotiated 30 knowing that he is
11 facing life plus whatever amount of time on the other
12 charges.

13 THE COURT: All right.

14 MS. WALKER: The victim is in agreement with that as
15 a --

16 THE COURT: Can you explain to me a negotiated
17 charge, a negotiated sentence, Ms. Walker?

18 MS. WALKER: Your Honor, my understanding of a
19 negotiated sentence is that should you choose to accept
20 it, you can neither give more time than the 30 years nor
21 can you give less time than the 30 years.

22 THE COURT: All right. Is that the full and complete
23 negotiation, Ms. Williams?

24 MS. WILLIAMS: Yes, Your Honor.

25 THE COURT: Any more to it?

1 MS. WILLIAMS: No, Your Honor.

2 THE COURT: Is that your understanding, Mr. Keitt?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Any more in your mind?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you still wish to plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone promised you anything or held
9 out any hope of reward to get you to plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anyone threatened you or used force
12 to get you to plead guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anyone used any pressure or
15 intimidation to cause you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you had enough time to make up your
18 mind?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you pleading guilty of your own free
21 will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I want to ask you about your attorneys,
24 Ms. Williams and Ms. Pinnock. Are you totally and
25 completely satisfied with the manner in which your lawyers

1 have advised you and represented you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you talked with your lawyers as
4 often and for as long as you feel necessary for them to
5 properly represent you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you need any more time to talk with
8 your lawyers?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you understood your talks with your
11 lawyers?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has your lawyer done everything for you
14 you feel like they could have done or should have done?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has your lawyer done anything in this
17 case that you think they should not have done?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you totally and completely satisfied
20 with your lawyer's services?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any complaints you want to
23 make about your lawyer, the Solicitors, or any officers
24 involved in your cases?

25 THE DEFENDANT: No, sir.

1 THE COURT: Mr. Keitt, have you understood my
2 questions?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything you would like to ask
5 me about what we've just been over?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand that you have the right
8 to appeal your guilty pleas and the sentence of the Court
9 and that you or your lawyer must do so within ten days?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, Solicitor. The facts, please?

12 MS. WALKER: Thank you, Your Honor. As you've heard
13 up to this point, the victim in this case lived here at
14 [REDACTED] [REDACTED] [REDACTED] which is located here in Richland
15 County.

16 He is a school teacher, Your Honor. He works at
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] where he teaches ninth grade
18 math. He and his girlfriend were getting ready to both
19 head to their respective jobs as teachers, and they went
20 out to their cars.

21 The victim in the case walked the girlfriend to her
22 car. His car was already started. When he went to hug
23 and kiss her goodbye, he saw a man approaching in an
24 orange t-shirt coming from -- crossing [REDACTED] [REDACTED]
25 coming towards him.

1 He looked at the individual, acknowledged him with a
2 head nod. Then he saw the individual make a sharp turn
3 towards him, present him with a gun and then try to steal
4 his car.

5 His girlfriend, Ms. Claiborne, who testified earlier
6 this morning, Your Honor, jumped into her car. The victim
7 Mr. Sims walked in, ran into his house yelling "call
8 9-1-1, call 9-1-1."

9 At that point in time, there is a struggle at the
10 door. A shot is discharged through the door, Your Honor.
11 We do have pictures, pictures of that, Your Honor, which
12 would have been presented as State's Exhibit No. 55. If I
13 can approach?

14 THE COURT: Yes, ma'am.

15 MS. WALKER: Shots fired through the door, Your
16 Honor. The victim is hit once in the chest, falls down,
17 the defendant then comes over, stands over him.

18 The victim got a good look at him again, takes his
19 keys and drives off. Your Honor, at that point law
20 enforcement officers began to arrive, as did EMS and fire
21 trucks.

22 The victim was transported to the hospital. At that
23 point, the victim's girlfriend met with a SLED sketch
24 artist who also testified earlier this morning, Your
25 Honor, and State's Exhibit No. 154 was rendered from the

1 description that was given.

2 While all of this is going on, Your Honor, Ms. Beulah
3 Keitt who is this victim's mother comes to the scene, says
4 she has heard that her son has been shot. Said, "He
5 hasn't been shot, but why do you think that?"

6 She said that's just what I heard.

7 At that point in time, they asked who her son is.
8 She gives the name Christopher Keitt. They are able to
9 then look in Alvin S. Glenn Detention Center photographs
10 and see Mr. Keitt.

11 At that point, they start going around the area
12 getting surveillance videos, Your Honor, and there are a
13 number of surveillance videos that come from the school
14 here and then from Emmanuel AME Church which is directly
15 across the street from the incident location.

16 Your Honor, the school video, this one you see an
17 individual in an orange shirt right here, Your Honor,
18 walking. You'll eventually see -- and I won't play the
19 whole video for the purposes of brevity. Mrs. Keitt walk
20 out, Ms. Emerald Keitt walks out, speaks with her husband.
21 She walks off. The defendant then goes this way towards
22 the church.

23 On the church video, Your Honor, then picks up after
24 that, and you will see a man in an orange shirt who is the
25 defendant, Your Honor, walking this way. Once he gets off

1 the camera on this angle in a few seconds, Your Honor, he
2 will be visible from this camera angle. There he is.

3 This street right here is [REDACTED]

4 Your Honor, once they have taken a look at the
5 characteristics, the build of this person, the haircut,
6 the ethnicity, they look, they compare that to the photos
7 they have and the height, weight they have of Mr. Keitt.
8 Then they start trying to locate Mr. Keitt.

9 At that point, while that is going on, they are also
10 -- the victim in this case comes out of his surgery. As
11 he testified, he does pick this defendant out of a photo
12 lineup.

13 Simultaneous to that, Your Honor, Mr. Emerald Keitt
14 is at police headquarters giving a -- making contact with
15 law enforcement saying hey, I know you guys are looking
16 for my husband. Can you tell me what's going on. Can you
17 tell me why.

18 They show her the video. She does identify this
19 defendant on this video as her husband, states that they
20 were -- there were some marital difficulty at the time
21 that he met her at the school, tried to talk to her about
22 it. She didn't want to talk. She drove off. Then she
23 hadn't heard from him since.

24 Your Honor --

25 THE COURT: This same day?

1 MS. WALKER: Yes, Your Honor.

2 At that point in time, they started looking for the
3 defendant. They eventually find him at an apartment on
4 Alcott Drive which is the home of...

5 THE COURT: This is off of [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED]

7 MS. WALKER: That's my -- I think so, Judge.

8 THE COURT: [REDACTED]

9 THE DEPUTY: Fairfield.

10 THE COURT: Fairfield, thank you.

11 MS. WALKER: I'm sorry.

12 They find him at the home of a friend's girlfriend,
13 Your Honor. They are there for several hours looking for
14 him and knocking on the door trying to get him to answer
15 the door.

16 He eventually does answer the door. They have
17 consent to search. They have a consent to search that
18 apartment, Your Honor, and upon making an arrest of this
19 defendant, they do search the apartment.

20 And in the apartment, they find this defendant's ID,
21 bullets that do not belong to the girlfriend or his friend
22 in the apartment. They also find, Your Honor,
23 significantly, the -- an orange t-shirt as is seen in the
24 video that's described by the witnesses.

25 Your Honor, at that point in time, he does make

1 contact with Investigator Hilton who was a School Resource
2 Officer at CA Johnson when he was there. He says to him,
3 "Man, if I knew this was you outside, I would have just
4 come on out."

5 They take him to CPD headquarters at which point he
6 is advised of his rights, Your Honor. He does give a
7 statement admitting to being in the area. He becomes
8 emotional, very -- during various points in his statement.

9 When they ask him questions like where -- "You know,
10 after you left the church, where did you do?" Initially
11 he gives certain statements, and then when confronting him
12 with those statements being untruthful, he says, "Man,
13 it's just too hard to talk about. The only person who is
14 going to have to deal -- it's going to be -- I need to put
15 this behind me. Ain't nobody got to deal with this shit
16 but me," about how much this hurts, talks to his wife
17 several times.

18 At some point, the interview is terminated. He was
19 charged with the crimes here. Your Honor, the armed
20 robbery for stealing the keys in the car, the grand
21 larceny for the car which did at that -- at this time has
22 a suggested retail value, Your Honor, of \$10,256.

23 The discharging of a firearm into a dwelling for
24 shooting through the door, the attempted murder for a
25 shooting, the burglary for entering the home with a weapon

1 and for causing injury to the defendant -- or to the
2 victim while he entered the home, as well as her being
3 armed while he was inside of the home, the unlawful
4 carrying because he does not have a concealed weapons
5 permit, and the use of a weapon during the commission of a
6 violent crime. Those are the underlying violent crimes.

7 Your Honor, the defendant in this case does not have
8 a prior record. He was on bond for criminal domestic
9 violence at the time of the incident.

10 THE COURT: Victim impact, Solicitor?

11 MS. WALKER: Yes, Your Honor. Additionally, Your
12 Honor, the crossing guard's testimony that you heard
13 earlier has him coming from the same general area as the
14 videos and wearing the same clothing as this defendant.

15 THE COURT: All right.

16 Mr. Sims?

17 THE VICTIM: Yes, sir.

18 THE COURT: I'll be glad to hear from you if you will
19 speak up for me, please.

20 THE VICTIM: Yes, sir, no problem. Am I speaking
21 pretty much on the impact of it, sir, correct?

22 THE COURT: (Nods in the affirmative.)

23 THE VICTIM: Okay. Well, since the incident, Your
24 Honor, I haven't been able to sleep. I had to take
25 sleeping pills. I had to go to counseling. Like I said,

1 the duration of being in the hospital, all of the pain.

2 Never will I ever have that whole feeling of being
3 safe in your own home because being in my own home even
4 though I moved, I still have to lock my front door, put a
5 bolt lock on my front door and the whole nine just because
6 of this incident from being charged.

7 Everything from because of -- it was so random. I --
8 it's just hard. I wish if it had to happen, that it was
9 from someone that I knew or targeted. That way I would
10 know exactly where it came from.

11 Because of the randomness, because I don't know the
12 individual, it all comes from, I'm terrified just to even
13 go downtown just because I don't know where a threat can
14 come from at any time just because of how this had
15 happened.

16 Basically, I don't -- my life has been changed. I
17 just wish that this never happened because I don't ever
18 think that I'll be able to completely get over it even
19 with as much counseling as I've had, as much counseling as
20 I can get.

21 I will continue to go. I eventually want to get off
22 sleeping pills and be able to sleep past four hours
23 without waking up with nightmares, having a vision of what
24 happened on May 13, 2015.

25 Other than that, Your Honor, I just live every day

1 grateful to still be here.

2 THE COURT: Thank you, Mr. Sims.

3 THE VICTIM: Yes, sir.

4 THE COURT: Anything further, Solicitor?

5 MS. WALKER: No, Your Honor.

6 THE COURT: I find there is a substantial factual
7 basis for the guilty plea. The defendant's decision to
8 enter these pleas of guilt is freely and voluntarily,
9 knowingly and intelligently made.

10 He's had the advice and counsel of two very
11 competent, experienced attorneys with whom he says he is
12 totally and well satisfied. His pleas of guilty are,
13 therefore, accepted.

14 Ms. Williams?

15 MS. WILLIAMS: Thank you, Your Honor. As Mr. Keitt
16 said, he is 25 years old. He grew up in the Waverly area.

17 His mother, Ms. Beula Keitt; one of his aunts; I
18 believe a cousin, and of course, his wife, Emerald Keitt
19 is sitting here in support of him. They have been very
20 supportive and involved this entire time.

21 I have to say I've gotten a chance to meet with his
22 children. He has three children: Two boys and a girl.
23 The eldest two are not biologically his, but I've seen
24 them treat him as their father giving me letters and
25 pictures of best dad in the world and things along that

1 line to take to him at Alvin S. Glenn, always asking for
2 him, very respectful kids.

3 He was -- we understand that he regularly was a part
4 of their life in taking them to school or picking them up
5 with his wife.

6 Your Honor, I -- this is a gentleman that because he
7 lacks a record, this has always been something that's been
8 very hard to figure out why anything like this happened.

9 I've grown to know him. He is a very calm, quiet
10 man, and one that I know this was a hard decision to make
11 and a hard process to do, and he -- I think the chance of
12 getting to see his children again before they were grown
13 was what made that so very difficult.

14 We would ask if you are -- I haven't asked his family
15 if they are inclined to speak, but if Your Honor is
16 inclined to accept the negotiation, then we'll leave it at
17 that.

18 THE COURT: All right. Thank you.

19 Ms. Pinnock, anything you'd like to say?

20 MS. PINNOCK: No, Your Honor.

21 THE COURT: Mr. -- and, of course, Ms. Williams, I'll
22 hear from anyone you want me to hear from.

23 Mr. Keitt, anything you'd like to say?

24 THE DEFENDANT: No, sir.

25 (Pause.)

1 Judge, I just want to say...

2 THE COURT: I'm sorry. Speak up for me.

3 THE DEFENDANT: I said I just want to say to
4 Mr. Martin Sims that I'm truly sorry for what happened to
5 him, and I don't know what was going through my mind.
6 I've never been this type of person. There's just been so
7 much going on at the time, and when it happened, I was
8 scared myself.

9 I want to say I'm sorry, too. I'm truly sorry.

10 THE COURT: Thank you. Thank you, Mr. Keitt.

11 (Pause.)

12 All right. 2015-GS-40-4605, attempted murder, the
13 defendant is committed to the State Department of
14 Corrections for a determinate term of 30 years.

15 Fifteen-GS-40-4606, burglary first degree, the
16 defendant is committed to the State Department of
17 Corrections for a determinate term of 15 years.

18 2015-GS-40-4607, unlawful carrying of a pistol, the
19 defendant is committed to the State Department of
20 Corrections for a determinate term of one year.

21 2015-GS-40-4608, possession of a weapon during the
22 commission of a violent crime, the defendant is committed
23 to the State Department of Corrections for a determinate
24 term of five years.

25 2015-GS-40-4609, discharging a firearm into a

1 dwelling, the defendant is committed to the State
2 Department of Corrections for a determinate term of five
3 years.

4 2015-GS-40-4610, grand larceny of a value greater
5 than \$10,000, the defendant is committed to the State
6 Department of Corrections for a determinate term of ten
7 years.

8 2015-GS-40-4611, armed robbery, the defendant is
9 committed to the State Department of Corrections for a
10 determinate term of 30 years.

11 Those are concurrent. He is given credit for all
12 time served.

13 Good luck to you, Mr. Keitt.

14 MS. PINNOCK: Thank you, Your Honor.

15 MS. WILLIAMS: Thank you, Your Honor.

16 (Whereupon, the proceedings were concluded.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
partial Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 19th day of July,
2017.

January 4, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Christopher Keitt 00368990)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
CLERK - 1
JANUARY 14:10
JEANETTE MCBRIDE
CLERK, P. & S.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Richland County General Sessions Court, 1701 Main Street, Columbia, SC 29201
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) 15GS4004605 Attempted murder
 - (b) 15GS4004606 Burglary 1st degree
 - (c) 15GS4004607 Carry Prohibited weapon
 - (d) 15GS4004608 Firearm provision
 - (e) 15GS4004609 Discharge firearm dwelling

- (f) 15GS4004610 Grand Larsony
 (g) 15GS4004611 Armed Robbery

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 7-19-16, 30 years
 (b) 7-19-16, 15 years
 (c) 7-19-16, 1 year
 (d) 7-19-16, 5 years
 (e) 7-19-16, 5 years
 (f) 7-19-16, 10 years
 (g) 7-19-16, 30 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty X
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
 i. SC 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. November 8, 2016 (Remittitur 8-22-17)
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____

- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Upon information and belief, Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Upon information and belief, Applicant felt pressured and coerced into pleading guilty
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First opportunity to present this issue

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Rebecca Williams 1701 Main Street, Columbia, SC 29201

ii. Robert Dudek P.O Box 11589, Columbia, SC 29211

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea and Sentencing

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Vacating of the conviction and sentence and a New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. W. Mills', written over a horizontal line.

Robert W. Mills
Attorney for the Applicant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 11-1-17

COUNTY OF RichlandChristopher Keith 00368990

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Robert W. MilkAddress: 1728 Marsh StreetColumbia SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP-40-6718SC Bar #: 3999Telephone #: 803-252-9648Fax #: 803-779-6002

Other:

E-mail: robertmilk@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 <u>NI</u> ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claims Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)			

Submitting Party Signature: Robert W. MilkDate: 11-1-17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

JEANETTE W. McBRIDE
Clerk of Court

VIRGINIA F. BELCHER
Chief Deputy Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, SC 29202-2766

TELEPHONE:
Phone: 803.576.1934
Fax: 803.576.1785
TDD: 803.748.4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center
1701 Main Street, Room 205
Columbia, South Carolina 29201

November 1, 2017

Jessica E. Kinard
Attorney at Law
South Carolina Attorney General Office
Post Office Box 11549
Columbia South Carolina 29211

Re: Christopher Keitt #368990
2017-CP-400-6718

Dear Ms. Kinard:

I am enclosing a copy of an Application for Post-Conviction Relief that has been filed in the Office of the Clerk of Court and assigned a civil action number 2017-CP-400-6718.

Also, I have enclosed a copy of his/her criminal records.

Sincerely,

Tonian Davis
Deputy Clerk of Court-Civil Record

Enclosures

Cc: Mr. Dan Johnson, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Christopher Keitt, #368990,	)	Case No.: 2017-CP-40-6718
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on November 1, 2017, by counsel Robert W. Mills, Esquire, would respectfully show this Court:

I. Procedural History

Christopher Keitt (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2015, the Richland County Grand Jury indicted Applicant for attempted murder (2015-GS-40-4605), first degree burglary (2015-GS-40-4606), unlawful carrying of a pistol (2015-GS-40-4607), possession of a weapon during violent crime (2015-GS-40-4608), discharging of a firearm into a dwelling (2015-GS-40-4609), grand larceny (2015-GS-40-4610) and armed robbery (2015-GS-40-4611). Rebecca Williams, Esquire represented Applicant. Assistant Solicitor Meghan Walker, Esquire prosecuted the case. On July 19, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Knox McMahon. Pursuant to a negotiated sentence between the State and the Applicant, Judge McMahon sentenced Applicant to imprisonment for concurrent terms of thirty years each for armed robbery and attempted murder, fifteen years for first degree burglary, ten years for grand larceny, five years each for possession of a weapon and discharging a firearm into a dwelling and one year for unlawful carrying of a pistol.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on August 22, 2017.

II. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Upon information and belief, Ineffective Assistance of Counsel"
2. "Upon information and belief, Applicant felt pressured and coerced into pleading guilty."

In relief, Applicant seeks "vacating of the conviction and sentence and a new trial."

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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, 466 U.S. 668. 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, an 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 an 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing

to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

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 Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

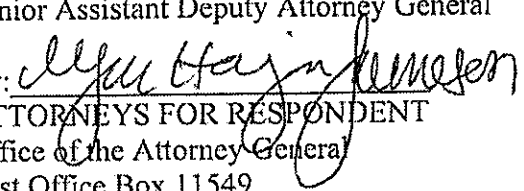
Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. Respondent also moved for Applicant's counsel to amend his application to include the specific allegations he intends to raise well in advance of an evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

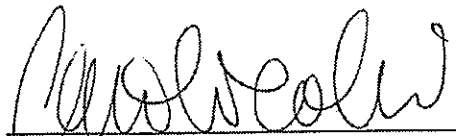
5/31, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2017-CP-40-6718
	)	
CHRISTOPHER KEITT, #368990	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert W. Mills, Esquire
 1728 Main Street, Suite 213
 Columbia, South Carolina 29201

DATED this the 31st day of May, 2018.



Caroline Collins, Administrative Coordinator
 For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	CASE NO.:
	)	2017CP4006718
CHRISTOPHER KEITT	)	
	)	
	)	
	)	
v.	)	AMENDED POST-CONVICTION RELIEF
	)	APPLICATION
	)	
	)	
THE STATE OF SOUTH CAROLINA.	)	

THE APPLICANT, Christopher Keitt, by and through his undersigned attorney, hereby amends his application filed on November 1, 2017, to include the following additional allegation:

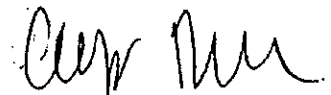
1. Ineffective Assistance of Counsel as to Rebecca S. Williams, Esquire:
 - a. Failed to convey plea offers to Applicant.
 - b. Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant.
2. Ineffective Assistance of Counsel as to Tracy Pinnoch, Esquire:
 - a. Pressured Applicant to plead guilty after two days into his trial.

Furthermore, the 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 throughout the course of the hearing that have not been specifically addressed in his Application or in this Amended Application.

Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

August 3, 2020
Rock Hill, S.C.

Respectfully submitted,



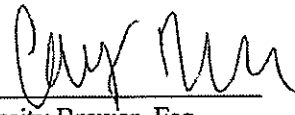
Cassity A. Brewer, Esq.

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Samuel L. Key
Assistant Attorney General
skey@scag.gov

August 5, 2020


Cassidy Brewer, Esq.

In The Court of Common Pleas
Fifth Judicial Circuit
2017-CP-40-06718

Christopher W. Keitt,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record
VIA WEBEX

January 25, 2022

B E F O R E:

The Honorable D. Craig Brown, III, Judge

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

S. Harrison Saunders, VI, Esquire
Attorney for the Applicant

Michael D. Davidson, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Christopher W. Keitt	
Direct Examination by Mr. Saunders	5
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Rebecca S. Williams	
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Tracy E. Pinnock	
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>

No exhibits introduced.

1 THE COURT: All right, Mr. Davidson, Mr. Saunders, Ms.
2 Williams, Ms. Pinnock, is everyone ready to proceed at this
3 time?

4 MR. DAVIDSON: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. SAUNDERS: Yes, Your Honor.

7 THE COURT: All right, Mr. Saunders, let me ask you
8 this before we get started any further. You talked with
9 your client about this being conducted by WebEx today?

10 MR. SAUNDERS: I did, Your Honor.

11 THE COURT: And he consents to that?

12 MR. SAUNDERS: He has indicated that he consents.

13 THE COURT: Is that right, Mr. Keitt?

14 APPLICANT: Yes, sir.

15 THE COURT: Okay. All right, Mr. Davidson, I guess if
16 you will go ahead and call the case, please.

17 MR. DAVIDSON: Thank you, Your Honor, and may it
18 please the court? This is the case of *Christopher Keitt v.*
19 *The State of South Carolina*, docket number 2017-CP-40-6718.
20 Applicant was indicted in October of 2015 for attempted
21 murder, first degree burglary, unlawful carrying of a
22 pistol, possession of a weapon during a violent crime,
23 discharging of a firearm into a dwelling, grand larceny,
24 and armed robbery. He was represented on those charges by
25 Ms. Rebecca Williams and Ms. Tracy Pinnock.

1 Applicant pleaded guilty as indicted to all charges on
2 July 19, 2016, before Judge McMahon. Judge McMahon
3 sentenced him pursuant to a negotiated agreement with the
4 state to thirty years. Applicant filed a notice of appeal,
5 but the Court of Appeals dismissed the appeal for failure
6 to provide a sufficient explanation. The remittitur was
7 sent on August 22, 2017.

8 This PCR was filed November 1, 2017, and was amended
9 on August 3, 2020. In his amendment, applicant alleges
10 ineffective assistance of counsel as to Rebecca Williams
11 for a failure to convey plea offers and failure to provide
12 and review discovery. He also alleges ineffective
13 assistance of counsel as to Tracy Pinnock for pressuring
14 him to plead guilty after two days into his trial.
15 Applicant is present and is represented by Mr. Harrison
16 Saunders.

17 And, Your Honor, I would just like to note that in
18 addition to the packet that we provided to the court, Mr.
19 Saunders provided the pretrial transcript in this both to
20 you and to myself. Although I haven't had the chance to
21 review it, I'd like to ask it be made part of the record
22 and other than that, the state is ready to proceed.

23 THE COURT: All right, Mr. Saunders.

24 MR. SAUNDERS: Thank you, Your Honor. May it please
25 the court?

C. KEITT - DIRECT EXAMINATION BY MR. SAUNDERS

5

1 THE COURT: Yes, sir.

2 MR. SAUNDERS: And, Your Honor, just with regard to
3 the transcript, that is a -- there are some pretrial
4 motions, and then it goes into the beginning of the trial,
5 and then there's a lunch break, and then the plea comes
6 after that. So, it is -- there is, there is some part of
7 the actual trial in there, and -- but most of it is
8 pretrial motions, Your Honor. Thank you.

9 DIRECT EXAMINATION BY MR. SAUNDERS:

10 Q. Mr. Keitt, can you hear me?

11 A. Yes, sir.

12 Q. Okay. I'm just going to start with my questions for
13 you, please.

14 THE COURT: Mr. Saunders. Mr. Saunders.

15 MR. SAUNDERS: Yes, sir.

16 THE COURT: I'm sorry for interrupting you. Let me
17 swear him in before you go start asking him questions,
18 okay?

19 MR. SAUNDERS: Thank you.

20 THE COURT: Mr. Keitt, if you'd, if you'd raise your
21 right hand, please, sir.

22 CHRISTOPHER W. KEITT, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 THE COURT: All right, state your -- you can put your
25 hand down, sir. State your full name for the record.

C. KEITT - DIRECT EXAMINATION BY MR. SAUNDERS

6

1 Spell your last.

2 WITNESS: Christopher Keitt, K-e-I-t-t.

3 THE COURT: I'm sorry, Mr. Saunders. You may proceed.

4 MR. SAUNDERS: It's okay. Thank you very much.

5 BY MR. SAUNDERS:

6 Q. Mr. Keitt, you were arrested on May the 15, 2015. Do
7 you remember that?

8 A. Yes, sir.

9 Q. Okay, and after you were arrested, were you
10 incarcerated at Alvin S. Glenn Detention Center?

11 A. Yes, sir.

12 Q. And did you ever get released on bond?

13 A. No, sir.

14 Q. Okay, and do you recall being appointed counsel?

15 A. Yes, sir.

16 Q. Okay, and do you recall your counsel being Rebecca
17 Williams?

18 A. Yes, sir.

19 Q. Okay.

20 THE COURT: All right, can you speak up a little bit,
21 Mr. Keitt, Keitt?

22 Q. Mr. Keitt.

23 A. Yes, sir.

24 Q. The night you were arrested, did you meet with law
25 enforcement?

C. KEITT - DIRECT EXAMINATION BY MR. SAUNDERS

7

1 A. Say that again.

2 Q. When you were -- after you were arrested or picked up
3 by the police, did you sit down with law enforcement and go
4 through an interview?

5 A. At the police station.

6 Q. Yes, sir, and during that interview, did you confess
7 to committing these crimes?

8 A. No, sir.

9 Q. Okay. Now following that interview, did you have an
10 opportunity to meet with Ms. Williams?

11 A. Sir?

12 Q. Did you have -- ever -- after that interview and
13 you're in Alvin S. Glenn Detention Center, did you have an
14 opportunity to meet with Ms. Williams, your lawyer?

15 A. Yes.

16 Q. Okay. Do you recall what y'all discussed during that
17 meeting, that first meeting when you met her?

18 A. Very first meeting?

19 Q. Yes.

20 A. She was, she was basically telling me who she was.
21 It's very hard to remember. It's been so long.

22 Q. Do you recall talking about your charges?

23 A. Yes, sir.

24 Q. Okay. Do you recall looking at any documents at that
25 time?

1 A. No, sir.

2 Q. Okay. Do you recall how long that meeting lasted?

3 A. It wasn't long.

4 Q. What do you mean by that?

5 A. Like at tops, like, fifteen to twenty minutes.

6 Q. Okay. Do you recall how the meeting ended as to --
7 and I mean what was going to go on next?

8 A. It -- they got all these people in this hallway, so
9 it's hard to hear you.

10 Q. Okay. I'm sorry. Do you recall when you -- when that
11 meeting ended, was there some game plan or advice or, or, I
12 guess, any kind of plan told to you as to what would happen
13 next in your case?

14 A. No, sir.

15 Q. Okay. Now after that meeting, do you recall a second
16 meeting with Ms. Williams?

17 A. Yes.

18 Q. Okay, and what did you discuss at that second meeting?

19 A. The second meeting was basically, like, a plea and, I
20 think, a bond reduction.

21 Q. Discussed a plea and a bond reduction, all right.
22 Were there any documents reviewed with you, discovery
23 documents or anything else?

24 A. Yeah. That was, like, like, a while after I had went
25 to court for the bond reduction.

C. KEITT - DIRECT EXAMINATION BY MR. SAUNDERS

9

1 Q. Okay. So at this meeting, tell me. What did y'all do
2 at this second meeting we're talking about?

3 A. It wasn't really much. The majority of the meeting
4 didn't really last long.

5 Q. Okay. Do you recall anything that y'all discussed?
6 You just said a plea; you just said a bond reduction. Is
7 anything else you recall discussing during that second
8 meeting?

9 A. No, sir.

10 Q. Okay, and do you recall how long that meeting lasted?

11 A. Probably been about twenty-five, twenty, twenty-five
12 or thirty minutes.

13 Q. Okay. Now, was there a -- let me ask you before I go
14 on. At the first meeting and the second meeting, was
15 anybody present other than Ms. Williams in this meeting
16 with you?

17 A. No, sir.

18 Q. Okay, and in your -- did you have a third meeting?

19 A. Yes, sir.

20 Q. All right. Do you recall what was discussed at your
21 third meeting?

22 A. Basically the trial and my -- that's when, that when I
23 think when she came with my motion of discovery.

24 Q. Okay. So, you recall looking at the discovery with
25 her?

1 A. Yes, sir.

2 Q. All right. Now, how long did this meeting last?

3 A. That meeting didn't last long. It was probably -- no,
4 that, that was a little longer than the other. Like, like,
5 forty-five minutes to an hour.

6 Q. Okay. All right. Now, so you did look at some
7 discovery?

8 A. Yes, sir.

9 Q. All right. Now, did you ever receive a copy of the
10 discovery, like to possess yourself in the jail?

11 A. No, sir.

12 Q. Okay. Did you ask for a copy?

13 A. Yes, sir.

14 Q. Okay. Were you given any reason why you were not
15 given a copy?

16 A. It was -- I think she said something about she had --
17 something about a medical something.

18 Q. There was a medical reason?

19 A. Yes.

20 Q. Okay. All right. When you went to -- well, after
21 this meeting, do you recall meeting with Ms. Williams after
22 that time, after this last, this third time we've just
23 discussed?

24 A. No. That's when, I think that's when her and Ms., Ms.
25 Pinnock came.

C. KEITT - DIRECT EXAMINATION BY MR. SAUNDERS

11

1 Q. Okay. So, I'm sorry. I just kind of confused that.

2 In the third meeting we just discussed where you're talking
3 about reviewing some discovery, was Ms. Pinnock present at
4 that meeting?

5 A. No, sir.

6 Q. Was it just Ms. Williams?

7 A. Yes, sir.

8 Q. Okay. Then now we're going on, and I want to ask you
9 about a meeting following that one we just discussed, and
10 you say that you did meet with Ms. Williams and Ms. Pinnock
11 at some point?

12 A. Yes.

13 Q. Where did that meeting take place physically? Where
14 was it?

15 A. I think we was, I think we was at the courthouse.

16 Q. All right, at the courthouse, and what did y'all
17 discuss in that meeting?

18 A. It was -- trying to remember. It was -- that's when I
19 think then I had -- I think I heard my -- I think they
20 played my baby -- I think that was my, my kid's mother, I
21 think a voice recording from her.

22 Q. They played a voice recording? What ---

23 A. Yes.

24 Q. What was this a recording of? What was she saying?

25 A. I think she was at the, the police station.

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1 Q. Okay. Do you recall what this -- what, what the
2 substance of this recording was, what was being said, and
3 why you were listening to it?

4 A. It wasn't really much she was saying on it.

5 Q. Okay. Other than that recording, do you recall
6 anything else that you discussed, reviewed, read, listened
7 to?

8 A. No, sir.

9 Q. Okay, and this meeting, what happened at the end of
10 this meeting? If it was at the courthouse, did you go in a
11 courtroom, or what happened after it?

12 A. I think that's when we were going into the trial.
13 That was picking a jury.

14 Q. Okay. All right. So, do you recall this, after
15 picking the jury, do you recall being in the courtroom with
16 your lawyers with Judge McMahon?

17 A. Yes, sir.

18 Q. Okay. Do you recall your lawyers going through a
19 series of motions?

20 A. Yes, sir.

21 Q. Okay. Do you recall your lawyers providing testimony
22 through witnesses?

23 A. Yes, sir.

24 Q. And do you recall your lawyers asking questions of
25 witnesses?

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1 A. Yes, sir.

2 Q. All right. Do you recall a witness called by your
3 lawyers that testified about eyewitness identification?

4 A. Yes, sir.

5 Q. Okay, and do you know the purpose of that witness?

6 A. Say that again.

7 Q. Do you know the purpose of them calling that witness?

8 A. Yes, sir.

9 Q. What was it?

10 A. Talking about the, the lady who basically tell, like,
11 what was the, like, miscommunication, a misjudgment of who,
12 who it would have been.

13 Q. So, that expert was -- well, the expert, did the
14 expert testify about the victim in the case making an
15 identification of you?

16 A. Yes, sir.

17 Q. Okay, and do you recall that expert witness talking
18 about how a victim could be mistaken about their
19 identification of you?

20 A. Yes, sir.

21 Q. Okay. Do you also recall some testimony that day
22 about the victim in the case being in intensive care in the
23 hospital?

24 A. Yes, sir.

25 Q. Okay, and do you recall your lawyers calling a

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1 witness, a, a our -- a physician's assistant from the
2 hospital?

3 A. Yes, sir.

4 Q. Okay. Do you know the purpose that, that they called
5 that witness?

6 A. Not really.

7 Q. All right. Do you recall your lawyers asking this
8 nurse, this physician's assistant about medications that
9 the victim was taking while in the hospital?

10 A. Yes, sir.

11 Q. Okay, and then do you recall your lawyers questioning
12 Investigator Richburg with the City of Columbia Police
13 Department?

14 A. Yes, sir.

15 Q. Okay. Do you recall them asking this -- that witness
16 about the identification, the photo lineup given to the
17 victim in the case?

18 A. Yes, sir.

19 Q. Okay. Do you recall where the victim was located when
20 he made the, the -- when he looked at the photo lineup?

21 A. Yes, sir.

22 Q. Where was that?

23 A. At the hospital.

24 Q. Okay, and then in the course of this -- while this
25 case was pending and while this, this hearing is going on,

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1 are you aware of any testimony that was given or evidence
2 that a gun was found?

3 A. No, sir.

4 Q. Are you aware of any evidence that, that showed what
5 the victim -- what, what caliber gun the victim was shot
6 with?

7 A. No, sir.

8 Q. Okay. Do you recall whether law enforcement did some
9 DNA testing?

10 A. Yes, sir, they did.

11 Q. Okay, and do you know if that DNA testing led -- or
12 DNA testing confirmed that you were involved in this crime?

13 A. No, sir.

14 Q. Okay. Do you recall what the results were?

15 A. It was -- they said it was inconclusive.

16 Q. Okay. All right. Now, you mentioned there was a
17 first meeting with Ms. Williams, a second meeting with Ms.
18 Williams, and third meeting with Ms. Williams, and a forth
19 meeting with Ms. Pinnock and Ms. Williams at the courthouse
20 on the -- at the time of trial roughly. Is that correct?

21 A. Yes, sir.

22 Q. Do you recall meeting with an investigator of the
23 public defender's office at any time you were in jail?

24 A. Yes, sir.

25 Q. Okay. Now, that investigator was working with the

1 public defender's office, right?

2 A. Yes, sir.

3 Q. Okay. What did you tell that investigator? Do you
4 recall?

5 A. I, I told him about -- I think when I told him, I
6 think I told him about when I met my wife at the, at the
7 house. Then, then I met her at the school.

8 Q. Okay. Those are events of the morning of the
9 incident?

10 A. Yes, sir, and that I, I was at my cousin house that
11 night before.

12 Q. Okay. All right. Do you recall telling the
13 investigator about where you worked at the time?

14 A. Yes, sir.

15 Q. Where did you work at the time of this incident?

16 A. Moving, moving furniture.

17 Q. Okay, moving company. Now, who did you work with at
18 the moving company?

19 A. My friend Brandon.

20 Q. Okay. Was there a uniform that you wore when you
21 worked at this moving company?

22 A. Yes, sir.

23 Q. What did that uniform consist of?

24 A. It's, it's really orange, orange and black or orange
25 and, and tan khaki.

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1 Q. Okay. On the day of the incident, May 13, 2015, that
2 morning, were you wearing an orange shirt?

3 A. Yes, sir.

4 Q. Okay. Were you wearing -- that was -- was that your
5 uniform for work that day?

6 A. Yes, sir.

7 Q. Okay. You mentioned some coworkers, a Brandon, and
8 who's Brandon?

9 A. One of my close friends who passed.

10 Q. All right. What's his last name?

11 A. Oh. Brown.

12 Q. All right. Did you, did you see Brandon Brown that
13 morning when the incident happened?

14 A. Yes, sir.

15 Q. Okay. Did you, did you talk to him?

16 A. Yes, sir.

17 Q. Okay. Did you, did you tell, did you tell the
18 investigator for the public defender's office that, that
19 you talked to Mr. Brown that morning?

20 A. Yes, sir.

21 Q. Did you do more than just talk to him? Did you go
22 ride in his vehicle with him?

23 A. Yes, sir.

24 Q. Okay. Now Mr. Brown, he worked with you at the moving
25 company, right?

1 A. Yes, sir.

2 Q. Was Mr. Brown wearing the moving company uniform that
3 morning same as you?

4 A. Yes, sir.

5 Q. Okay. Now Mr. Brown, he tragically died. When was
6 that?

7 A. It was, it was -- had -- it was, like, a couple months
8 after I got arrested.

9 Q. Okay, but you did tell the investigator for the public
10 defender's office about Mr. Brown?

11 A. Yes, sir.

12 Q. Do you know how Mr. Brown died?

13 A. I think he was shot.

14 Q. And under what circumstance? Was he, was he attacked?
15 Was he robbed? Was he robbing someone? Do you recall?

16 A. No, sir.

17 Q. Okay. All right. So moving past that, I want to go
18 to the trial. Do you recall finishing the motions in the
19 trial and then proceeding with the actual trial with the
20 jury being in the courtroom? Do you recall that?

21 A. Say that again.

22 Q. Do you recall being in the courtroom when the actual
23 trial began of your case following the pretrial hearings
24 that went on in the courtroom with the judge without the
25 jury?

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1 A. No, sir.

2 Q. Okay, you don't recall that? All right. Do you
3 recall sitting in the courtroom and a jury being in the
4 courtroom at any time?

5 A. No, sir.

6 Q. Okay.

7 A. We never made it that far.

8 Q. Well, okay. Well, I mean, okay, Christopher. Do you
9 recall at some point during your trial leaving the
10 courtroom and meeting with your lawyers?

11 A. Yes, sir. Went through, like, a little side door.

12 Q. Okay, and when you met with them, what did you
13 discuss?

14 A. That, that the judge was granting so much to where
15 that, that it was, like, if I was to lose the case, like
16 the time I would be facing.

17 Q. If you were to lose the case what?

18 A. If I was to lose the case, that the time I would be
19 facing, like all those years.

20 Q. Okay. How -- what did they tell you how much, how
21 much time you would be facing?

22 A. Up to a hundred years.

23 Q. Up to a hundred years?

24 A. Yes, sir.

25 Q. That's what you recall, a hundred years?

1 A. Yes, sir.

2 Q. Okay. Now when they told you about that, did y'all
3 discuss anything about consecutive time or concurrent time?

4 A. No, sir.

5 Q. Okay. After they told you your fate if you were
6 convicted, you were facing a hundred years, what did you
7 do?

8 A. I wanted to plea.

9 Q. All right. Up until that point, had it been your
10 choice to proceed with a jury trial?

11 A. Sir?

12 Q. Up to that point when you told them you wanted to
13 plea, your decision up to that point was you wanted to
14 proceed with a jury trial as you were doing prior to,
15 correct?

16 A. Yes, sir.

17 Q. Okay. All right. Your decision to plead guilty, was
18 it, was it -- what was it based on? Why, why did you
19 choose to plead guilty? What, what is -- what made you
20 make that choice at that time?

21 A. I, I -- it scared me. I was -- it's -- all that time.
22 I said just come with it.

23 Q. Okay, and what was ---

24 A. I'll take it.

25 Q. I'm sorry. What was the plea? What was the plea that

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1 was conveyed to you at that time?

2 A. Thirty years.

3 Q. Thirty years, all right, and, and that, that was just
4 thirty years? That, that was the total?

5 A. [No verbal response.]

6 Q. All right. Now, I'm sorry, you may have answered
7 this. Did -- was there any discussion ever with your
8 lawyers about what consecutive time is or concurrent time?

9 A. No, sir.

10 Q. Okay. So, Christopher, did you think that if you lost
11 -- did you think at that time after getting advice from
12 your lawyer that if you were found guilty of all these
13 charges at trial, that you were going to get a hundred
14 years?

15 A. Yes, sir.

16 Q. Okay, and that is what prompted you to make the
17 decision to go ahead and plead guilty and take thirty?

18 A. Yes, sir.

19 Q. What -- had there -- if you had been told that there
20 was a possibility that you wouldn't get a hundred years,
21 that you may just get thirty years after being convicted at
22 trial, would you have proceeded on with the trial?

23 A. Yes, sir.

24 Q. All right. Okay.

25 MR. SAUNDERS: Beg the court's indulgence, please.

1 THE COURT: All right.

2 MR. SAUNDERS: Okay, that's all the questions I have
3 for Mr. Keitt.

4 THE COURT: All right, Mr. Davidson.

5 MR. DAVIDSON: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. DAVIDSON:

7 Q. Good afternoon, Mr. Keitt.

8 A. Good afternoon.

9 Q. I, I believe it was your testimony that you met with
10 your attorneys only three times. Is that correct?

11 A. Three or four times.

12 Q. Three or four, and one of your allegations is that Ms.
13 Williams didn't provide you with discovery. Is that issue
14 solely based on you not getting the physical discovery?

15 A. Yeah. I had asked for it. They said it wasn't good
16 to ask.

17 Q. Okay, and she did, Ms. Williams did go over it with
18 you, though, right, in her second meeting? I think that's
19 what you testified?

20 A. It wasn't, it wasn't -- we didn't go -- we didn't
21 break down the whole, the whole motion, but we went through
22 it.

23 Q. Okay. Did you ask her any questions about that
24 discovery?

25 A. Yes, sir.

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23

1 Q. And did she answer your questions?

2 A. Yes, sir.

3 Q. Okay, and you just testified that they informed you --
4 they meaning Ms. Pinnock and Ms. Williams -- that you were
5 facing a hundred years if you lost. Is that correct?

6 A. Yes, sir, up to a hundred.

7 Q. Did they ever say that you'd spend the rest of your
8 life in jail if you were convicted?

9 A. Close to the same, to a hundred years.

10 Q. So, it's your testimony that a hundred years and the
11 rest of your life is pretty much the same thing?

12 A. Yes, sir.

13 Q. Okay, and you testified that you gave -- or you
14 mentioned Mr. Brown to the investigator, correct?

15 A. Yes, sir.

16 Q. And when you mentioned him, did you just mention him
17 because he had -- you had ridden with him that day?

18 A. I just told him the events of the day.

19 Q. Did you ever give Mr. Brown to the investigator as a
20 potential other suspect?

21 A. Sir?

22 Q. Did you ever give Mr. Brown's name to the investigator
23 as another suspect in this case?

24 A. He said, he said he was going to talk to him,
25 something like that.

1 Q. Do you know why he was going to talk to him?

2 A. He really didn't say much. He was just, like -- well,
3 he said, well, since Brandon's name was brought up, I'm
4 going to have to talk with him or with his girlfriend or
5 something.

6 Q. Okay, and you testified that whenever you were with
7 Ms. Pinnock and Ms. Williams, that you got scared when they
8 told you you were facing a hundred years. Is that correct?

9 A. Yes, sir.

10 Q. And after that conversation, you decided to plead
11 guilty. Is that correct?

12 A. Yes, sir.

13 Q. And was that decision to avoid being in jail the rest
14 of your life if you got convicted?

15 A. Yes, sir.

16 Q. So, you choose to plead guilty in order to avoid the
17 rest of your life in prison. Is that a fair statement?

18 A. Sir?

19 Q. You chose to plead guilty to avoid spending the rest
20 of your life in jail. Is that a fair statement?

21 A. Yes, sir, if I was convicted of it.

22 Q. Okay, and did you guys discuss the state's evidence
23 against you? I'll put it another way. Did you guys
24 discuss what the state was -- the state had to say that you
25 were guilty of this?

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25

1 A. Yes, sir.

2 Q. Okay, and when you chose to plead guilty, do you
3 remember telling the plea judge that you were guilty?

4 A. Sir?

5 Q. When you chose to plead guilty, do you remember
6 telling the judge that you were guilty?

7 A. Yes, sir. When, when they brought -- when they did
8 the murder plea.

9 Q. And do you recall addressing the judge and telling him
10 that you were truly sorry for what happened?

11 A. I don't recall.

12 Q. Okay, and whose decision was it to plead guilty?

13 A. Sir?

14 Q. Whose decision was it to plead guilty?

15 A. Mine.

16 Q. Okay.

17 MR. DAVIDSON: Beg the court's indulgence.

18 (A PAUSE.)

19 MR. DAVIDSON: Just a few more questions.

20 BY MR. DAVIDSON:

21 Q. Did either of your attorneys discuss how much time
22 each charge would carry if you were convicted?

23 A. No, sir.

24 Q. Okay, and do you recall the plea judge going through
25 each charge and giving you the range, the amount of years

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1 you could be convicted?

2 A. Yes, sir.

3 Q. Okay.

4 MR. DAVIDSON: No further questions, Your Honor.

5 THE COURT: All right, Mr. Saunders, any redirect?

6 MR. SAUNDERS: No, Your Honor. Thank you.

7 THE COURT: All right, any other witnesses, Mr.

8 Saunders?

9 MR. SAUNDERS: No, sir.

10 THE COURT: All right, Mr. Davidson.

11 MR. DAVIDSON: Your Honor, the state calls Ms. Rebecca
12 Williams.

13 THE COURT: All right, Ms. Williams, if you'd raise
14 your right hand, please, ma'am.

15 REBECCA S. WILLIAMS, BEING DULY
16 SWORN, TESTIFIES AS FOLLOWS:

17 THE COURT: All right. Thank you.

18 Mr. Davidson, you may begin.

19 MR. DAVIDSON: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MR. DAVIDSON:

21 Q. Good afternoon, Ms. Williams.

22 A. Hello.

23 Q. Ms. Williams, how long have you been practicing law?

24 A. It will be ten years this coming November in 2022.

25 Q. Okay, and much of that has been in criminal law?

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1 A. It was four and a half years at the public defender's
2 office, and now I teach primarily criminal law to law
3 enforcement at the academy. So, four and a half years'
4 direct practice.

5 Q. And were you appointed or retained to represent Mr.
6 Keitt?

7 A. I always worked at the public's defender's office, so
8 I was appointed.

9 Q. Do you recall when you were appointed?

10 A. From the note in the file, it looks like I was -- they
11 opened the file May 19 of 2015.

12 Q. Okay, and you were likely appointed shortly
13 thereafter?

14 A. Well, that was when they opened the file, so that
15 would have been -- I was assigned the case that day. I met
16 -- I have down the first point that I met with him was May
17 22 of 2015.

18 Q. Okay, and do you recall what you guys discussed at
19 that first meeting?

20 A. Yes. So, the first meeting I generally get a lot of
21 background information from them, as well as had initial
22 thoughts that they had, some beginning things to look at.
23 Generally don't have discovery at that point in time.

24 So, from my notes that I have from that date, I got
25 connections of, you know, family connections, who he was

1 wanting me to talk with, or communicate with his family for
2 things along those lines. We talked about his education,
3 his work history, any potential criminal history, his
4 recollection of the event. We did -- he did mention that
5 he had spoken with law enforcement and made a statement and
6 said that he did not admit to any of those things. And
7 then I have notes of what he stated happened that night,
8 with him leading up to it the night before, and then the
9 events of that morning as he recalled them at that point in
10 time.

11 Q. All right, and what did he tell you happened? What
12 was his version of events?

13 A. Yes. So, he maintained his innocence in this. He
14 said that he stayed the night with his cousin the night
15 before, and then they generally -- he met his wife to drop
16 off the kids at Carver Lion Elementary School between 7:05
17 and 7:20. His wife took the car and the -- and then went
18 to work from there. So, he walked behind the church right
19 across from the street from the elementary school to pick
20 up Wi-Fi I think is what he was thinking. He said he used
21 the Wi-Fi for about thirty to forty-five minutes. Then he
22 walked off in the direction for his grandmother's house to
23 kind of change clothes. Spent time with his grandmother.
24 Walked up Waverley Street towards Gordon Street, and that's
25 when he saw Brandon Brown and get in -- got in the car with

1 him.

2 They rode around, spent some time together for about
3 an hour or so, and he was dropped off at a Dennis Sultan's
4 house in Hillandale Apartments. He said he stayed there
5 pretty much the rest of the day until the evening, then
6 walked to a different apartment complex trying to get a
7 ride. Since he couldn't get a ride, he went back to
8 Dennis's house and stayed the night and the next morning
9 picked up a ride from there.

10 Q. And did he indicate whether the car that he got in
11 with Brandon was Brandon's car or someone else's?

12 A. No. He said he believed that it was Brandon's car,
13 that he knows it to be his car and had -- he said he had it
14 for about four or five years.

15 Q. Okay, and as far as the charges against him, do you
16 recall how Mr. Keitt came to be arrested?

17 A. From the discovery aspect of it, my remembrance of
18 this is I think they got surveillance photo basically from
19 the church, that they saw Mr. Keitt walking up there. He
20 was wearing an orange shirt. The incident location was,
21 like, up the street from the church. So, it was around the
22 time that that took place and based off of that, they got a
23 photo of him, and then they did a photo lineup with him in
24 it, which they took to the hospital where the victim was.
25 And the victim did an ID, and from there they went to go --

1 they got an arrest warrant and made charges on him.

2 Q. Okay, and an estimate is fine, but about how many
3 times did you meet with Mr. Keitt?

4 A. I can count through on the notes. I have marked down
5 here ten places where I said I had a meeting with the
6 client.

7 Q. And was that in person or over the phone?

8 A. Those would have all been in person.

9 Q. And during those meetings, did you discuss the
10 indictments and the elements of all of the offenses he was
11 charged with?

12 A. I don't have in my notes of going over the individual
13 elements of that. We certainly talked about the, the
14 charges themselves certainly and, and what -- the evidence
15 the state had. We talked about things that we were looking
16 into and the things in evidence that we were going to
17 attack and, and challenge. But I don't remember going
18 assault, you know, armed robbery, these elements. I don't
19 remember doing that with him.

20 Q. Okay, and initially when you got this case, was there
21 discussions of pleading versus going to trial?

22 A. Not initially. I think especially with Mr. Keitt,
23 since he has maintained his innocence, I wasn't going to
24 just place something on that either way initially. In my
25 notes, you know, I think I had here that in October of --

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1 so, I guess this was three or four times in. I had a
2 meeting with him. We had just had the preliminary hearing
3 the day before, so we kind of talked through that process,
4 things that were discussed in the preliminary hearing, and
5 that's when I let him know that I would be having an
6 investigator that our agency talk -- you know, hired to
7 start working on, you know, some leads and following
8 through on things. And I said from there, you know, if you
9 want, certainly we can talk, you know, about offers versus
10 trial, things like that. We'd, you know, approach the
11 solicitor once we gathered more information was -- you
12 know, initially that's the first place I talked about that.

13 I think I, you know, reached out or I spoke -- no. I
14 guess the solicitor, Assistant Solicitor Walker called me,
15 I guess, later on that week or the beginning of the next
16 week basically saying, well, you can pick your judge and go
17 straight up. That's the only offers I'm making, and so I
18 said, well, that's, you know, not an offer. So, we will,
19 you know, plan for trial. Then she said that it wouldn't
20 be called for trial for another six months at the earliest
21 at that point in time.

22 So, that was on October 28. I went and relayed that
23 information to him on November 3 there. It looks like I
24 checked back in on December 18. Went over. It says I went
25 over and next steps. So, I think that's when we talked

1 about, you know, seeing about getting, you know, bond
2 reduction things in there, or we talked about -- no, I'm
3 sorry. And I spoke with the solicitor, it says, and it
4 seems like she was trying to schedule the trial for March
5 or April at that point in time.

6 In January, went back to speak with him again. We
7 talked about another bond reduction motion and filing that,
8 and I filed. Ultimately, I think we held off on that
9 because we weren't within the six months to be able to do
10 that from the initial one, and we didn't have a change of
11 circumstances to justify one earlier than that. So, we
12 filed for that motion, our bond reduction motion in March
13 of that year. It looks like I had another meeting with him
14 on the 22nd.

15 Now, I will say it was August 7 of 2015. So, my
16 second meeting with him that I, I'd had initial discovery
17 -- you always get more things as time goes along -- but the
18 packet from the state had come in, and I do have noted that
19 we went over the discovery.

20 I will say this. You know, I think he asked about
21 getting a copy of it at that time. I always kind of
22 explain there are concerns about doing that. I think from
23 sign -- I don't have any here. I always have my clients
24 sign a release that they choose to have their discovery
25 with them in the jail so they know the risks. Mainly the

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1 risk, especially in a case like, somebody else getting
2 ahold of the information and, and, and using it to say,
3 hey, he talked to me in the jail cell and this is what he
4 said and things like that. So, it's more for the
5 protection of my client. As well as oftentimes, you know,
6 even with redactions, potentially they could get protected
7 health information or protected identifying information,
8 things like that, which is why we, you know, say it's not
9 necessarily the best thing.

10 I, I don't have a thing -- a, a, a receipt situation
11 there, and I don't have anywhere where it says that I
12 relayed this, I gave him a copy of the discovery. So, I do
13 not believe that I gave him a copy of the discovery.

14 I certainly do -- if they say no, I do want it, then I
15 go ahead and do that. So, maybe I misunderstood and after
16 he asked that and I explained, I took it as him saying
17 okay. Well, I don't want it, and I didn't have anywhere
18 that he'd asked for it again, but certainly I -- you know,
19 in most cases if somebody says they want to have it, I will
20 just have them sign the release and it's done. So, I will
21 say that I never gave him his physical copy of those things
22 there.

23 Q. Okay. Did he ask you to go over the discovery with
24 anyone else?

25 A. Yes. I remember, I think this happened around the

1 time that he was given a plea offer. It looks like in May
2 the solicitor did make an offer; it was a cap of thirty or
3 a negotiated twenty-five in front of Judge Lee. I relayed
4 that to him, and I think as part of that, he asked me to
5 speak with -- go over the discovery with his wife.

6 So, I remember, I believe it was the Memorial Monday
7 that I went to their house and went over all the videos,
8 surveillance videos, looked, talked about the discovery
9 with them at his request.

10 Q. So, you were pretty familiar with all the discovery in
11 the case?

12 A. Yes.

13 Q. And you went over that with him more than once?

14 A. I did. We went over it initially in August, and then
15 my next one is that we went over discovery again May 3 of
16 2016. There is a note that he -- I think I relayed the
17 offer of the cap of thirty and the -- or the negotiated
18 twenty-five. He asked that I go back and see if there
19 would be any other offers less, potentially something
20 closer to fifteen. However, when I went back the next day,
21 I contacted the solicitor and she said no. She was
22 standing firm. That the only offer was going to be the cap
23 of thirty or negotiated twenty-five.

24 Q. Okay, and other than those plea agreements you just
25 spoke about -- or plea offers, I'm sorry -- and the one he

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1 ultimately pled to, were there any other plea offers?

2 A. No.

3 Q. And I believe you've testified that you conveyed all
4 of the plea offers that you received to Mr. Keitt. Is
5 that...

6 A. I did.

7 Q. All right, and when Mr. Keitt began -- his trial
8 began, were you fully prepared to go forward with this
9 trial?

10 A. We were.

11 Q. Okay, and can you talk a little bit about what you did
12 to prepare for trial?

13 A. Absolutely. So, now generally at some point in time
14 when it's solidly looking like a -- it's going to be a
15 trial, I get a second seat to help assist and start
16 brainstorming, start making sure we're collecting
17 everything. Don't have when I -- exactly I asked Ms.
18 Pinnock to join on. I do have that June 29 she came with
19 me to the meeting with Mr. Keitt in preparation for trial.
20 So, she would have had the discovery and things probably --
21 I probably asked her after he formally rejected the offer
22 of the cap of thirty, negotiated twenty-five on the record,
23 which was May 30. So, I imagine I probably asked her to
24 join me at that point in time.

25 You know, besides going through the things ourselves

1 and preparing, you know, those things there, I'd already
2 gone over with -- those things before. I do have down that
3 we went over discovery with the solicitor as well to make
4 sure that we had everything that they had. It looks like I
5 spoke with my investigator about additional discovery
6 things. It looks like we met with Mr. Keitt's mom and aunt
7 as well and let them know what to expect.

8 Now, it seems that I think the following day, July 7,
9 Mr. Keitt was transported to holding. That was because
10 there were -- the surveillance footage that was in the
11 case, as well as the audio recordings, were on DVD. That
12 was something that at the time Alvin S. Glenn would not let
13 you bring back into the jail because they had attorneys
14 meet with them in the individual jail pods. So, for
15 security purposes they wouldn't allow you to do that. So,
16 we had him transported over. I had somebody in our office,
17 another attorney, go through the things that -- I think I
18 had to be in court for another matter, and had down that he
19 informed me about twenty minutes into watching his wife's
20 statement, he said he didn't need to hear any more of that,
21 and then they watched the two surveillance tapes that
22 really were the primary evidence that we wanted to make
23 sure that he had seen.

24 Q. Okay. Was there any discovery that you didn't go over
25 with him?

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1 A. Not to my knowledge, no.

2 Q. Okay, and in preparing for trial, did you prepare any
3 motions or prepare to present any witnesses?

4 A. We did. One of the main problems with this case, as
5 we saw it, was the identification, which is how they came
6 to connect with Mr. Keitt to begin with. We got all of the
7 victim's medical records from those things there. We went
8 through actually with a physician, as well as an ICU nurse,
9 and had them review the files and look at those things
10 there. We then contacted and called somebody as a witness
11 from the hospital because our understanding is hospitals
12 would not have accepted the victim's consent for medical
13 procedures while he was under the influence of the drugs
14 that they had him on. That, in addition to the fact that
15 that's where the lineup was being done.

16 We also spoke with an expert witness on eyewitness
17 misidentification since that, as far -- you know, I think
18 currently still that's the number one reason for wrongful
19 convictions, according to the Innocence Project. So, we
20 were prepared to -- we had a hearing on the unreliability
21 of the eyewitness identification in this case.

22 Q. Okay, and what was your trial strategy? I, I think
23 you just said it, but more directly what was your trial
24 strategy?

25 A. The trial strategy was that somebody else did this; it

1 wasn't Mr. Keitt. He, had maintained his innocence the
2 entire time. You know, in looking at the surveillance
3 video, unfortunately they one they provided has -- very,
4 very grainy. It's hard to see very clearly, but we thought
5 that you could see what looks like a person in an orange
6 shirt that wasn't, you know, Mr. Keitt there. That was
7 something that we were going to present, and present that
8 the victim had, because of not best practices that's been
9 used, now has this memory identification of Mr. Keitt which
10 was incorrect. So, he was in the wrong place at the wrong
11 time.

12 I will say it never sat well with me, it never made
13 any sense to me why a man who's dropping off his kids at
14 elementary school would suddenly randomly attack some
15 strange, you know, person that he doesn't know. This is a
16 man that, you know, does not have much of a record at all,
17 and it didn't make sense to me. So, that was always going
18 to be both in line with what Mr. Keitt said happened and
19 our theory of the case.

20 Q. Okay, and in light of the state's evidence and your
21 trial strategy, how, how strongly did you feel about taking
22 this case to trial?

23 A. I felt like we had good things to say. It was --
24 unfortunately, it was very disappointing when we lost the
25 hearing as to the unreliability of that eyewitness

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1 identification. I will say when we lost that, especially
2 because the victim took the stand -- we got to see the
3 demeanor of this victim: how they looked, how they came
4 off. He was a teacher. Seemed very, very reliable, and
5 I'm sure he felt very confident in the accuracy of his
6 statement, and that's the, the real danger of those things
7 is they can be extremely persuasive to a jury. So, the
8 fact that the jury is going to hear those things, you can
9 put on your expert witnesses and you can get in that
10 information there, but Mr. Keitt was still in the area. He
11 was positively testified by the victim in that case.

12 You know, there was still a strong case, that I felt
13 like it was -- it wasn't, it wasn't going to be a, you
14 know, slam dunk win for us. The state had a strong case.
15 We had some arguments absolutely to make, and that's how I
16 felt about it going in. I felt a little more nervous about
17 this stuff after seeing the victim testify and how he
18 handled himself on the stand. I felt that he was going to
19 come off extremely credible and believable to a jury.

20 Q. Okay, and after losing that motion hearing or the
21 judge ruling against you on that motion, what happened
22 then?

23 A. When we lost that, we were looking at and evaluating.
24 I don't remember which one of us, whether Ms. Pinnock or
25 myself, but we were, you know, thinking strategy going

1 forward. It was also concerning because of the judge that
2 we had. Judge McMahon was a long-time prosecutor before he
3 took the bench and was known to be a harsh sentencer once
4 things were -- once people were found guilty. So, if we
5 lost this trial, I sincerely do not, from the history of
6 Judge McMahon, do not believe he was going to get thirty.
7 From our records that we kind of kept on judges and their
8 sentencing habits, we felt it would be more along the lines
9 of fifty years.

10 Knowing that, I believe Ms. Pinnock reached out to Ms.
11 Walker to see if the original -- the, the last plea offer
12 was available. She said he could do a negotiated thirty.
13 At that point in time, we wanted to relay that to Mr.
14 Keitt, as well as our concerns about, you know, going
15 forward of those risks. I think our idea was we want to
16 make sure that he felt confident going forward, and that he
17 understood that there was a solid chance we could lose this
18 and if that was the case, we fully believed that he was
19 going to get over what that offer was. That was our, our
20 professional belief based off of our understanding of that
21 particular judge.

22 Q. Okay, and when you were relaying the information about
23 if he was convicted, were you telling him that to threaten
24 him or coerce him into pleading guilty, or were you just

25 ---

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1 A. No.

2 Q. --- giving him a realistic idea of what you thought
3 would happen?

4 A. I -- we -- our attempt, our, our purpose was to make
5 sure that he had all the options in front of him and that
6 he understood those and was confident with whatever he
7 wanted to do. I certainly would never, ever want to make
8 that the case, and if that was how he felt -- and I cannot
9 apologize enough for that, but that was not our intention
10 in that situation.

11 Q. Okay, and Mr. Keitt testified that during that
12 conversation, either you or Ms. Pinnock said he would get a
13 hundred years if he was convicted. Do you recall that?

14 A. I don't. I do not remember anything like that. I
15 think there's always -- you know, at one point I think --
16 because Judge McMahon had a way in his pleas of going,
17 like, adding everything up consecutively and saying, so,
18 you're facing all of this. And generally we try to prepare
19 people for that because that's kind of terrifying to say.
20 So, I, I do not recall whether the hundred years thing came
21 out. I remember that we talked about the offer that was
22 being made and that we believed realistically if he was
23 convicted, that he was looking more at fifty years based
24 off of what Judge McMahon said.

25 I don't recall exactly whether we talked so much about

1 consecutive versus concurrent, but I certainly do not
2 remember or recall telling him that he was going to get a
3 hundred years. I mean, realistically for somebody in their
4 early twenties, fifty years is a life sentence if you look
5 at the average life expectancy of somebody in the
6 Department of Department of Corrections. So, I mean, even
7 if he had heard it that way, I do think we -- you know,
8 that is something for us to consider.

9 I do believe that -- my impression from it is that he
10 took that deal because we wanted the opportunity -- he was
11 very scared about never getting to see his kids again.
12 With each one of the things as we went through the plea
13 questions with him, he was looking at his children's
14 pictures. Having a child now, I recognize how hard of a
15 decision that must be for someone to make.

16 I believe the thirty years, we did talk about how that
17 would be something where he would at least get to have some
18 time with his kids; he would be in a better position to get
19 out on the other side of that. That was talked about
20 there.

21 We talked about the -- our concerns about the case,
22 the strength of the state's case now that that information
23 was coming in. I don't think we talked or focused as much
24 on our strategy. I think that our strategy is the same:
25 we're going forward with the arguments that we're going to

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1 make. We can call our witnesses there, but it wasn't as
2 much of a focus at that point in time. The judge gave us a
3 very short amount of time to relay this because the trial
4 had already started, and I think he felt that we needed to
5 move forward.

6 I will state that we were allowed to have this
7 conversation in the D cell off the side of the Richland
8 County courthouse, which is a very small, compact space to
9 have that there. Mr. Keitt did not ask us for -- to check
10 on the plea offer. That was something that we did on our
11 own because, again, we wanted to make sure he had all of
12 the options.

13 Ultimately, the decision to make a plea and that risk
14 of going to trial versus taking a plea has to be the
15 defendant's, and that has to be their level of -- you know,
16 everyone's level of comfort is different. I know I
17 certainly never told him he had to take the plea, and I, I
18 don't think he was one that ever asked me what would you
19 do, but I know my standard answer to that is I can't answer
20 that because I'm not in their shoes with them.

21 You know, the focus is obviously on the plea offer and
22 the risks at that point in time. I don't recall, but I
23 would have to say it was probably more focused on that than
24 equally on rehashing our strategies and options there.

25 Q. Okay.

1 MR. DAVIDSON: Beg the court's indulgence.

2 THE COURT: Yes, sir.

3 (A PAUSE.)

4 MR. DAVIDSON: I believe that's all the questions that
5 I have. Please answer any questions that opposing counsel
6 has.

7 THE COURT: Mr. Saunders.

8 MR. SAUNDERS: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. SAUNDERS:

10 Q. Good afternoon, Ms. Williams.

11 A. Good afternoon.

12 Q. In your testimony, you mentioned Mr. Keitt's criminal
13 history being minimal, I believe you said, correct?

14 A. Yes, sir.

15 Q. Can you recall any specifics about his criminal
16 history?

17 A. From that initial meeting, I mean, I'd have to go back
18 and look at his actual record, but I remember that it, you
19 know, verified true. You know, he had a disorderly conduct
20 and a criminal domestic violence first offense charge was
21 what he told me.

22 Q. And if, if that is, in fact, the criminal record, then
23 that's pretty minimal in the scheme of things, correct?

24 A. Absolutely.

25 Q. Okay, and you agree that when a judge is sentencing a

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1 defendant, that they factor in the defendant's prior
2 record, correct?

3 A. That is true.

4 Q. Okay. Now, you mentioned that you did review
5 discovery with him, and -- but there was no discovery given
6 to him and he did, in fact, request the discovery?

7 A. I, I don't remember. I don't have in my notes of him
8 requesting it. What he said there sounds like my standard
9 response to clients initially and going I can get you a
10 copy of those things, but I really don't recommend it for
11 these reasons. And since I did not have a signed release
12 from him, I don't have anywhere in my notes that I gave it
13 to him, I would have to say that he must have mentioned it
14 to me at some point, and I have not given him the
15 discovery.

16 Q. Okay. Would you agree that a defendant having their
17 discovery and all the time they have on their hands where
18 they could review it over and over again could be helpful
19 to their defense, correct?

20 A. Yes, it could.

21 Q. They could find things that maybe we as lawyers don't
22 see, correct?

23 A. Yes.

24 Q. All right. Then you talked about the, the, the victim
25 in the case giving the identification of the defendant in

1 the hospital, correct?

2 A. Yes.

3 Q. Do you recall that victim was in ICU when, when police
4 presented him with the photo lineup, correct?

5 A. Yes.

6 Q. And he had just completed surgery?

7 A. That's correct.

8 Q. And he was on painkillers, to include Fentanyl?

9 A. That is correct.

10 Q. And part of the defense of what you and Ms. Pinnock
11 put together was you called a physician's assistant to
12 testify to talk about the effects of Fentanyl and, and how
13 they could impair you to a certain degree, correct?

14 A. That's correct.

15 Q. Okay, and I believe you said earlier that the level of
16 intoxication, so to speak, that the, the Fentanyl and maybe
17 other drugs would render someone unable to consent to
18 certain things per hospital policy?

19 A. My understanding now -- when we asked that of the
20 hospital themselves, they wouldn't give us a answer on
21 that. But I got from other medical professionals that that
22 was standard operating procedure that you would not get
23 medical consent if somebody was on Fentanyl to that -- and
24 the, the drugs to that degree.

25 Q. Okay. So, you had -- also, you hired an expert. Is

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1 it Dr. Dawn McQuiston? Is that ---

2 A. Yes. Correct.

3 Q. --- how you pronounce it? Dr. Dawn McQuiston, and
4 y'all -- or I say y'all. The public defender's office,
5 lawyers in the public defender's office have used Dr.
6 McQuiston before in cases, correct?

7 A. That's true.

8 Q. So, it would be fair to say that Dr. McQuiston was
9 respected, a respected expert in her field within the
10 public defender's office?

11 A. Yes.

12 Q. Okay. Dr. McQuiston was -- is an expert in eyewitness
13 identification, correct?

14 A. That's correct.

15 Q. She testified *in camera* in this trial about how the
16 victim could have possibly misidentified Mr. Keitt as being
17 the assailant?

18 A. Yes.

19 Q. Okay, and that was a strong part of your defense,
20 correct?

21 A. It was.

22 Q. All right. Then also there was -- do you recall there
23 being DNA samples taken from the vehicle that was stolen
24 from the victim?

25 A. Yes.

1 Q. Do you recall that vehicle being found by law
2 enforcement at some point after the crime?

3 A. Yes, it was.

4 Q. And the DNA evidence that was collected, that DNA
5 evidence did not -- was unable to be matched to Mr. Keitt,
6 correct?

7 A. That's correct.

8 Q. All right. Then there was never a gun found in this
9 case, correct?

10 A. That is my understanding.

11 Q. Okay, and the victim had a slug removed from his body,
12 correct?

13 A. That's correct.

14 Q. That slug was unable to be tested to determine what
15 type of slug it was, correct?

16 A. That's, that's my memory of it, yes.

17 Q. All right. So, law enforcement, nobody knew what
18 caliber gun was fired at the victim?

19 A. That's my understanding.

20 Q. Okay, and let's see. All right, the, the, the officer
21 in the case, Investigator Richburg, he was the one that did
22 the photo lineup in the hospital of the victim, correct?

23 A. Yes. That's correct.

24 Q. Now, you, y'all or you and Ms. Pinnock, part of your
25 case, I guess, or your strategy for this witness as to the

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1 photo lineup was not only Dr. McQuiston but there was,
2 there was also some Department of Justice standards that
3 were talked about that the City of Columbia and
4 Investigator Richburg did not adhere to?

5 A. That's correct. Best practices are that some -- I
6 mean, the best gold standard for eyewitness identification
7 would be single pictures down at a time. But also that
8 there would be an officer that was not familiar with the
9 case -- that would not know who the potential suspect in
10 the lineup was -- would be the one presenting it to help
11 prevent any kind of unconscious things from the
12 investigator that -- they don't even have to necessarily
13 mean it because they know that that is how they place down
14 things like that that could potentially trigger or, you
15 know, encourage a, a victim to pick the suspect.

16 Q. Okay. So, the state, the main part of their case is
17 that they had two video -- security videos that showed Mr.
18 Keitt in the area of the crime on the morning that the
19 crime took place?

20 A. Yes.

21 Q. Okay.

22 A. Basically ---

23 Q. --- and ---

24 A. --- for identification from the victim.

25 Q. Okay, and the -- right, the victim identified him.

1 Then there was an orange shirt found with the vic -- with
2 Mr. Keitt when he was arrested?

3 A. Yes.

4 Q. Okay, and Mr. Keitt also -- there, there were, where
5 Mr. Keitt was, was found and arrested, there were two .38
6 bullets found there, correct?

7 A. I'd have to go and look back. I don't remember that
8 specific, but it's -- that, that could be true.

9 Q. But, anyway, but, I mean -- and again, there -- this
10 is no -- there, there was no determination as to what kind
11 of bullet the victim was shot with?

12 A. Exactly.

13 Q. So, you had Dr. McQuiston. You had the Department of
14 Justice argument. You had the victim on Fentanyl, other
15 painkillers, coming out of surgery in ICU in a very
16 compromised state, and you had no DNA. You had no gun, and
17 you had a defendant with a minor criminal record. Is all
18 that correct?

19 A. That's correct.

20 Q. All right. Now, it sounds like that y'all had --
21 y'all put together a really good case.

22 A. We, we did our best. I thought we had a lot of
23 arguments to make.

24 Q. Right, and so you, I mean, you talked to Mr. Keitt
25 about trial strategy, about the good things, the bad

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1 things?

2 A. Yes.

3 Q. Okay, and he had persisted in going to trial
4 obviously?

5 A. Yes. So, I mean, we talked about it. He, he meant --
6 you know, he wasn't opposed to hearing what plea offers
7 were there. I mean, these are very serious charges. In
8 fact, you know, he was brought to the courthouse because he
9 was thinking about taking the plea offer in May, but he'd
10 always maintained his innocence and his -- I think
11 ultimately in that case, he had an opportunity to speak to
12 his wife and his mom, and his support system was very
13 adamant that he go to trial, too.

14 So, I, you know, I can't speak to what was going on in
15 his head. Just from my impressions of it, I think he
16 understood those things. He was certainly willing to
17 understand plea offers, but ultimately I think he, you
18 know, up to this point decided to go to trial.

19 Q. Okay, and so after Judge McMahon had ruled on all
20 these motions, he was not going to throw out the, the
21 identification, correct?

22 A. That's correct.

23 Q. Okay. However, you, you could have gone into this
24 same material, the ex -- Dr. McQuiston, the expert witness,
25 the physician's assistant talking about the Fentanyl, and

1 talking about the fact that he was -- that the victim was
2 in ICU, just gotten out of surgery. All of that could have
3 been brought in before the jury, correct?

4 A. Yes.

5 Q. Okay. All right. So, once we go -- let's -- I want
6 to bring you to where I believe it was a lunch recess and
7 you met with Mr. Keitt. You and Ms. Pinnock met, met with
8 Mr. Keitt. This is where Mr. Keitt talks about a hundred
9 years, okay, where he testified about, something about a
10 hundred years, that he was told that, you know. So the
11 charges, you know what attempted murder carries?

12 A. Yes. Well, attempted murder is zero to thirty.

13 Q. Right, so a max of thirty?

14 A. Uh-huh.

15 Q. Then burglary first, do you know what that carries?

16 A. Mandatory minimum fifteen years to life.

17 Q. Okay, and then armed robbery?

18 A. It's ten to thirty.

19 Q. And then discharging a firearm, firearm into a
20 dwelling?

21 A. That's zero to ten.

22 Q. Okay, and let's see. One, two, three, four. One,
23 two, three, four. Okay. So, adding up the maximum
24 sentences, it comes out, it looks to be about eighty-five
25 years or so?

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1 A. I want to make very clear. I don't have any memory of
2 telling him a hundred years.

3 Q. Okay.

4 A. I don't remember talking about it as that. I did
5 definitely mention that we felt that he would get something
6 more in line with fifty from McMahon if he was convicted at
7 trial, but I do not remember ever adding things up and
8 giving him a number of a hundred years.

9 Q. Okay. The -- and you had mentioned Judge McMahon and
10 other judges do this where, well, you realize -- and they
11 add up all the maximums and they say, well, I could give
12 you this?

13 A. Yes.

14 Q. Okay, and Judge McMahon would be one of those judges
15 that you, you sort of warned him that that was going to be
16 the case?

17 A. It, it's been a few years since I've been out in front
18 of the court, but that would be my guess that this is where
19 he's getting it. I'm trying to -- I guess it's speculation
20 on where he potentially heard that. I, I think that it's
21 not out of the realm of possibility that he heard a large
22 number. I, I just do not remember telling him a hundred
23 years.

24 Q. Now, you would agree. You practiced, you know,
25 criminal law four and a half years there at the public

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1 defender's office and handled a lot of cases, I'm certain.
2 Wouldn't you agree that if someone gets convicted at trial,
3 that they are typically not going to get consecutive
4 sentences unless there are aggravating factors?

5 A. Yeah, absolutely.

6 Q. Okay, and you, you talked about, you mentioned this
7 fifty years. I mean, fifty years is a lot less than a
8 hundred or a lot less than eighty-five that I just
9 mentioned. So, would you agree that it would be
10 unrealistic for Judge McMahon after, if Christopher Keitt
11 was convicted at trial, to give him the maximum on all of
12 the charges that he was convicted of?

13 A. I do not believe ---

14 Q. Consecutively?

15 A. Yeah. No, I do not believe he would do that, and I do
16 not remember and do not believe that I would tell Mr. Keitt
17 that.

18 Q. Okay. All right. Let's see.

19 MR. SAUNDERS: Beg the court's indulgence.

20 (A PAUSE.)

21 MR. SAUNDERS: Okay, those are all the questions I
22 have for Ms. Williams.

23 THE COURT: Any redirect?

24 MR. DAVIDSON: I just have two questions, Your Honor.

25 REDIRECT EXAMINATION BY MR. DAVIDSON:

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1 Q. Ms. Williams, the first allegation made against you by
2 Mr. Keitt ---

3 MR. DAVIDSON: Sorry if I've been saying your name
4 wrong.

5 Q. --- is that you failed to convey plea offers to him.
6 Were there any plea offers that you did not convey to him?

7 A. No. I, I think part of the problem here is apparently
8 we went out and got a plea offer that he wasn't interested
9 in, and we told him about it. So, no. I told him any and
10 all of the plea offers or the not really offer of pick your
11 judge. I told him all of those things.

12 Q. Okay, and his second offer -- or, I mean, his second
13 allegation is that you failed to physically provide him
14 with discovery and subsequently review that discovery with
15 him.

16 A. I have ---

17 Q. That -- go ahead.

18 A. Yeah, have down in my notes that we reviewed
19 discovery. I do remember going over discovery with him,
20 but no, I do not have anywhere -- I believe I did not give
21 him physical packet of his discovery. I think that could -
22 - been a misunderstanding on my part that he still wanted
23 the discovery afterwards, and so that could have been it.
24 But no, I did not give him his physical discovery.

25 Q. If he explicitly asked after you gave him advice

1 against getting discovery, would you have provided it?

2 A. Yes.

3 Q. Okay.

4 MR. DAVIDSON: No further questions, Your Honor.

5 THE COURT: Anything else, Mr. Saunders?

6 MR. SAUNDERS: Your Honor, may I just, may I ask Ms.
7 Williams about a couple things, please?

8 THE COURT: Yes.

9 MR. SAUNDERS: Thank you.

10 RECROSS-EXAMINATION BY MR. SAUNDERS:

11 Q. Ms. Williams, the Brandon Brown discussion, okay, do
12 you remember the mention of Brandon Brown?

13 A. I do, and I have it in my notes, and I remember
14 looking into it. I also -- now, I don't have this in the
15 notes, but I do remember being -- going back at a later
16 time saying is there any kind of connection, any kind of
17 contact information? Our investigators have -- we don't
18 have anything to go on and try to track this person down,
19 and Mr. Keitt wasn't able to really give us anything like
20 that. So, I think the investigator, I don't think, was
21 ever able, before Mr. Brown passed, was killed, was shot
22 and killed, to get in touch with him.

23 Now, I will say this. I saw him as more potentially
24 an alibi witness. I didn't make the connection in my brain
25 of potentially him being a third party because I did not

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1 make a connection of the uniform he'd been wearing. The
2 first of hearing the orange shirt honestly that -- from my
3 memory is today. So, it was more in line of this being a
4 potential alibi witness, you know, that could say what time
5 he picked him up, he was out of the area by the time this
6 happened, or would have made it physically impossible to
7 have, have done this, but we weren't able to get in touch
8 with him. We did make an attempt.

9 Q. Okay.

10 MR. SAUNDERS: All right. Thank you. Those are all
11 the questions I am.

12 THE COURT: All right, we're going to take a short
13 break, very short break, okay?

14 MR. SAUNDERS: Yes, sir.

15 (OFF THE RECORD.)

16 MS. PINNOCK: I apologize.

17 THE COURT: That's okay.

18 Mr. Davison, you will call her next as a witness?

19 MR. DAVIDSON: Yes, Your Honor. The state calls Tracy
20 Pinnock.

21 THE COURT: All right, Ms. Pinnock, if you'd raise
22 your right hand, please, ma'am.

23 TRACY E. PINNOCK, BEING DULY
24 SWORN, TESTIFIES AS FOLLOWS:

25 THE COURT: Please state your full name for the

1 record. Spell your last.

2 WITNESS: Tracy Pinnock, P-i-n-n-o-c-k.

3 THE COURT: All right, Mr. Davidson.

4 Thank you, Ms. Pinnock.

5 DIRECT EXAMINATION BY MR. DAVIDSON:

6 Q. Good afternoon, Ms. Pinnock.

7 A. Good afternoon.

8 Q. Ms. Pinnock, how long have you been practicing law?

9 A. I started in the public defender's office in 2008, so
10 it will be fourteen years this November.

11 Q. Okay. So, all of that time has been in criminal law?

12 A. Yes.

13 Q. And what was your role in representing Mr. Keitt?

14 A. I became involved in Mr. Keitt's case as the second
15 seat for his trial with Ms. Williams.

16 Q. Okay, and as I'm sure you're aware, he alleges that
17 you pressured him into pleading guilty two days after trial
18 started.

19 A. Yes. So ---

20 Q. Go ahead.

21 A. I was just saying yes, I'm aware of the allegation.

22 Q. So, I want to kind of keep it more narrowly focused to
23 that since that's what's alleged. Do you recall about how
24 many times you met with the applicant before trial?

25 A. According to the notes that I have from his -- from

T. PINNOCK - DIRECT EXAMINATION BY MR. DAVIDSON

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1 the case, I only have two dated notes that we met with him
2 down at the jail. I have that I was with Ms. Williams on
3 July 12 of 2016, and then my first dated set of notes is
4 from June 29 of 2016.

5 Q. And when you got involved with this case, were there
6 any plea negotiations or plea offers on the table?

7 A. Not that I recall, no.

8 Q. Okay, and I guess can you tell us a little bit more
9 about your role as far as what your duties or jobs were
10 going to be handling this case?

11 A. Well, I was brought in. I don't have the exact date
12 that Ms. Williams asked me to get involved with the case.
13 Like I said, my first time going down to the jail with her
14 to meet with Mr. Keitt was in June of 2016. Basically as a
15 second seat, we get involved when a client's case is on the
16 trial docket. That, you know, depending on the age of the
17 case, you know, the speed in which it's going to trial, you
18 know, that kind of varies when we get involved. So, I was
19 not involved when he was originally arrested.

20 The second seat is called in to assist in trial
21 preparation; you know, we split the duties as far as
22 witnesses and motions throughout the trial. So, basically,
23 you know, just the supporting role for Ms. Williams, you
24 know, any way I can help with, you know, proceeding through
25 the trial process.

1 Q. So, would Ms. Williams have asked you to get involved
2 in this case if it is going to be a plea?

3 A. No. Plea, we don't call in second seats for cases
4 that are going to be worked out. Rare occasions we do if
5 it's a, you know, larger volume case, but typically second
6 seats only get involved if it's going to trial.

7 Q. So, when you were asked to join this case, your
8 understanding was because it was going to trial?

9 A. Yes.

10 Q. And how did you assist Ms. Williams preparing for
11 trial?

12 A. She and I met, you know, and discussed the case
13 strategies, you know, legal issues, you know, issuing
14 subpoenas, trying to figure out, you know, what witnesses
15 we wanted to call, you know, cross-examination preparation.
16 I believe, according to my notes, you know, we met with Mr.
17 Keitt's family at least once prior to the trial starting.
18 You know, interviewed the doctors and nurses at the
19 hospital as part of our preparation. You know, meetings
20 with our expert, you know. So, I was, I was involved in
21 all of those things after, after she approached me about
22 it.

23 Q. And did -- is one of the things you did was go through
24 the discovery?

25 A. With -- by myself?

T. PINNOCK - DIRECT EXAMINATION BY MR. DAVIDSON

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1 Q. By yourself.

2 A. Yes.

3 Q. And did you ever go over it with Mr. Keitt?

4 A. I do not recall ever sitting down with Mr. Keitt and
5 going through it page by page in the meetings that I was
6 at. Typically, those discovery reviews happen prior to,
7 you know, second seats getting involved because the case,
8 you know, the person's case has progressed through the
9 process and we're getting close to a trial date. So, I did
10 not sit down with Mr. Keitt and go through this discovery
11 page by page.

12 Q. Did Mr. Keitt ever ask you for a copy of the
13 discovery?

14 A. No, not that I recall.

15 Q. And once trial started and you and Ms. Williams argued
16 your motion and the judge ruled against you, what happened
17 after that?

18 A. I know that we ended up talking to Mr. Keitt in the D
19 cell, the room right outside the courtroom, about pleading.
20 I don't remember how the conversation came up; I don't know
21 if it was Ms. Williams who first brought it up or if I
22 first brought it up, who approached the prosecutor. I
23 don't recall how it came up, but I do know that we sat with
24 him in the D cell for a, you know, very brief amount of
25 time and discussed possibly pleading during the break

1 versus continuing with trial.

2 Q. And I want to back up briefly to right before trial
3 started. Do you recall if there was a plea offer on the
4 table at that time?

5 A. I do not. I don't, I don't know.

6 Q. And based on his allegation, I think it's important
7 for you to kind of explain your perspective of that
8 conversation, if you would.

9 A. I, I don't have any notes written down directly from
10 that conversation. The best I can answer that question is
11 just generally how, how I have these conversations, you
12 know, if it was my client. You know, I typically lay out
13 all possible scenarios, you know, best-case scenario,
14 worst-case scenario depending on what the charges are that
15 we're dealing with. You know, the full possible range of
16 sentencing and then, you know, laying out, you know, in the
17 worst possible situation if we lose, you know, here's the
18 worst that could happen as far as sentencing goes. If we
19 win, clearly, you know, the best-case scenario is you get
20 to walk out the front door. But as far as in detail what
21 we discussed with Mr. Keitt and how we discussed it, I, I
22 don't have any memory of that.

23 Q. Okay. Do you recall threatening him?

24 A. No. I've never threatened anybody, so I can say that
25 pretty confidently. I've never threatened anybody.

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1 Q. Did you pressure him or try to coerce him, I guess?

2 A. No. My -- any time I have those conversations with,
3 with people, it's not my, I guess, intentions to, to come
4 across as, you know, coercive or, or pressuring. I try to
5 have very direct conversations with people. You know, I
6 can't say what Mr. Keitt's -- I guess when he was receiving
7 the conversation, how he was feeling at that time, but it's
8 never my goal to try to force somebody to do something.

9 Q. And was there any other location available for you to
10 have that conversation other than the D cell?

11 A. The judge could have given us permission to go down to
12 the holding cell, which is in the parking deck of the
13 courthouse. I don't recall if we asked to have Mr. Keitt
14 taken downstairs so we could talk with more space. I
15 believe it was during a short break. I don't, I don't
16 recall if it was during a lunch break or not. If it was a
17 lunch break, they would've taken Mr. Keitt downstairs just
18 automatically, but they, they did agree to move him over to
19 the D cell, but I don't recall if we asked to take him down
20 to holding.

21 Q. Okay. Did you ever express to him that he would be
22 facing a hundred years?

23 A. I don't recall any conversation about a specific
24 number, no.

25 Q. Okay, and once you conveyed the plea offer and went

1 through the scenarios, what, what happened with Mr. Keitt?

2 Did he express anything to you?

3 A. Well, I mean, he indicated at some point that he was
4 going to plea instead of proceeding with the trial. So,
5 we, you know, we would have gone back into the courtroom,
6 you know, let the solicitor know, let the judge know, and
7 then we would have taken the time at that point to get the
8 paperwork, get that filled out, and then go into the
9 courtroom for the plea.

10 Q. And had he asked you to continue or proceed with
11 trial, would you have been prepared?

12 A. Yes. We were ready to go.

13 MR. DAVIDSON: Okay, I believe that's all I have, Your
14 Honor.

15 THE COURT: Mr. Saunders?

16 MR. SAUNDERS: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MR. SAUNDERS:

18 Q. Good afternoon, Ms. Pinnock.

19 A. Good afternoon.

20 Q. You mentioned earlier 2008 you've been practicing
21 criminal law, you started practicing criminal law. Is that
22 correct?

23 A. Yes.

24 Q. All right. So, at the time of this trial, you had
25 been practicing criminal law, solely criminal law for about

T. PINNOCK - CROSS-EXAMINATION BY MR. SAUNDERS

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1 seven years?

2 A. Yes.

3 Q. All right, and in that seven-year time, you've
4 represented a lot of clients with a lot of criminal
5 charges, right?

6 A. Yes.

7 Q. Okay, and the -- you heard my questions to Ms.
8 Williams about your case, the defense for Mr. Keitt. The -
9 - Dr. McQuiston, the identification issues with ICU, the
10 medication the victim was on, et cetera, those, those were
11 some significant, I guess, defenses that y'all had worked
12 up and laid out in this case, correct?

13 A. I mean, we had a pretty solid theory that we had, you
14 know, we were able to build for Mr. Keitt. I mean, his
15 situation, you know, it -- maybe we had more to argue than
16 we do in some other situations that end, end up going to
17 trial, but we did have a solid theory that we were prepared
18 to go forward on.

19 Q. And you also had the, the, the fact was that there was
20 no DNA evidence. There was no gun found. There was no
21 identification of what type of bullet the victim was shot
22 with, correct?

23 A. You have to forgive me. I did not -- I have not gone
24 back and reviewed all of the discovery. I do recall, you
25 know, there being an issue with DNA. I do recall there not

1 being a weapon found, but as far as all the specifics of
2 Mr. Keitt's case, I, I have to apologize. I did not go
3 back and review the entire discovery packet.

4 Q. Okay, and then going to this discussion in D cell, I
5 believe you said that you don't recall the discussion
6 specifically, but your practice is to lay out best-case
7 scenario, worst-case scenario?

8 A. Yes.

9 Q. In Mr. Keitt's case, worst-case scenario would be
10 convicted of all charges and get the maximum sentence,
11 correct?

12 A. Yes.

13 Q. Consecutive sentences?

14 A. Yes.

15 Q. That would be the worst case?

16 A. Yes. That was absolute worst case.

17 Q. So, as your practice was back then and maybe still is,
18 that you may have stated the number of years that he was
19 facing should he get the worst-case scenario of the maximum
20 sentence on each charge?

21 A. I, I guess it's possible. The only hesitation I have
22 as far as the hundred years that was mentioned, when we're
23 -- when I look at any client charged with burglary first,
24 because it carries the life sentence, if I'm talking
25 maximum sentences, I typically say it carries fifteen to

T. PINNOCK - CROSS-EXAMINATION BY MR. SAUNDERS

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1 life. I typically don't put a number of years in that
2 conversation, but is it possible a specific number could
3 have been mentioned to him? Yes, it's possible. That's
4 just typically what I would do in that situation.

5 Q. Okay, and, and you know -- let's see, you know --
6 excuse me. I'm sorry. I just lost what I was looking for.
7 Well, you know attempted murder to carry thirty years,
8 correct?

9 A. Yes.

10 Q. Burglary first, fifteen to life, correct?

11 A. Yes.

12 Q. Armed robbery, ten to thirty?

13 A. Yes.

14 Q. And discharging a firearm into a dwelling, zero to
15 ten?

16 A. Yes.

17 Q. Okay, and if you take away the life, just add up the
18 numbers there, the maximum sentence -- I believe I said
19 eighty-five earlier -- but it comes out to ninety-five
20 years. Would you agree with that?

21 A. Yes. I have no reason to doubt you.

22 Q. Okay, and ninety-five is close to a hundred, correct?

23 A. Yes.

24 Q. All right. So, your knowledge at the time when you
25 are, when you are having this discussion with Mr. Keitt and

T. PINNOCK - CROSS-EXAMINATION BY MR. SAUNDERS

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1 Ms. Williams in this D cell off the courtroom is that he
2 had intended to proceed with a jury trial at that point?

3 A. Yes.

4 Q. When you entered, when you entered the room?

5 A. Yes.

6 Q. Okay, and after your discussion, he ends up accepting
7 thirty years?

8 A. Yes. That's right.

9 Q. And in that discussion, you would have given him
10 best-case scenario, walking out the front door. Worst-case
11 scenario and, and I don't -- worst-case scenario,
12 consecutive sentences based upon those numbers. You know,
13 the thirty years, the fifteen to life, the ten to thirty,
14 the zero to ten, that would have been the worst-case
15 scenario, right?

16 A. Yes.

17 Q. Okay, and that would have been the discussion in the
18 room when Mr. Keitt decided to take thirty years?

19 A. Yes.

20 Q. Okay. All right.

21 MR. SAUNDERS: Judge, I believe that is all the
22 questions I have for Ms. Pinnock.

23 THE COURT: Any redirect?

24 MR. DAVIDSON: No redirect, Your Honor.

25 THE COURT: All right. Thank you.

1 All right, anything by way of argument from any of the
2 lawyers?

3 MR. SAUNDERS: Your Honor, I would like to provide
4 argument, please.

5 THE COURT: All right. Let me hear from you, please,
6 sir.

7 MR. SAUNDERS: Your Honor, thank you. Your Honor,
8 what, what I think we've learned from this hearing is, is
9 that the state had by -- what we've learned in testimony,
10 the state had a credible schoolteacher victim that
11 identified the defendant as the assailant, and we have
12 videos that show -- security videos showing the defendant
13 at certain locations that are near the crime scene on the
14 morning of the crime scene -- on the morning the crime took
15 place. What we also have learned is that the lawyers for
16 Mr. Keitt put together a defense that included an
17 eyewitness testimony -- an eyewitness identification
18 expert, information about Department of Justice guidelines
19 and how the city violated those or did not adhere to those,
20 testimony of a physician's assistant about the condition
21 that the victim would have been in when making a photo
22 identification where he picked out the defendant. Also,
23 this -- these things that the defense put together for Mr.
24 Keitt, that, coupled with the fact that there was no weapon
25 found in this investigation, we do not -- the bullet that,

1 that entered the victim's body was never identified as a
2 certain caliber connected to any certain caliber weapon.
3 We have a D -- lack of DNA evidence. The vehicle was
4 stolen from the victim after the victim was shot; the
5 vehicle was recovered by law enforcement. DNA samples were
6 taken, and the DNA did not match up to the defendant.

7 So, Your Honor, there's a lot of, I guess, good
8 supporting evidence for the defense in this. So with that,
9 they, they go into the room and they talk to Mr. Keitt
10 during this -- during the trial where he opts to take
11 thirty years. You've heard that Ms. Pinnock says that she
12 gives her best and worst-case scenarios, and that could
13 include the maximum number of years being the maximum
14 sentence for each crime running consecutively. You have
15 also heard from Ms. Williams that that is not typical in,
16 in criminal cases after trial or a plea unless there's some
17 aggravating circumstances. And from Ms. Williams's
18 testimony, we've heard that Mr. Keitt had a very minimal
19 record and other than that, we've heard no aggravating
20 factors, whether there was threats towards the victim after
21 he was arrested or, or anything like that, any kind of
22 torture, any kind of aggravating circumstances.

23 So, we have a, we have a defendant with a minimal
24 record with no aggravating circumstances. So, I believe
25 that it's unreasonable to believe that, that, that Mr.

1 Keitt could have gotten, you know, a hundred years or
2 ninety-five years or eighty-five years, just up in that
3 range after hearing the worst-case scenario, which would
4 have been in that range.

5 Mr. Keitt listened to this; he testified that that's
6 what he heard, and if he heard a worst-case scenario, it
7 was similar to what he testified he heard. And for someone
8 who has persisted in going to trial at that point to all of
9 a sudden say, okay, I'm going to take thirty years, it
10 appears that he heard something in that room that changed
11 his mind and, and changed it significantly.

12 So, Your Honor -- oh, also there was no testimony that
13 Mr. Keitt was explained -- no one explained to Mr. Keitt
14 about consecutive and concurrent sentencing, which I think
15 is significant.

16 Your Honor, if you look at the law in this case, you
17 know, if we look at, you know, *Strickland* and the, I guess,
18 the prongs that we need to satisfy first to prove that
19 counsels' performance was deficient, well, Your Honor,
20 first the discovery. A copy of the discovery should have
21 been given to the defendant. He said he asked for one, and
22 Ms. Williams testified that, you know, it fell through the
23 cracks or something happened, and he was not provided a
24 copy of the discovery. And she agreed that had he had a
25 copy, it could have resulted in him assisting with his

1 defense. However, he sat in jail for over a year. Didn't
2 have his discovery. A lot of time on his hands. And so we
3 believe that that was significant and that that showed
4 that, that counsels' performance was deficient for not
5 giving him the discovery when they could have given him the
6 discovery. There was no standing order issued by the court
7 you can't give him discovery. There's a process that he
8 could've had the discovery at the jail.

9 So, also, Your Honor, with that performance being
10 deficient, we go to the worst-case scenario testified by
11 Ms. Pinnock. And the worst-case scenario, telling a
12 defendant the worst-case scenario and Mr. Keitt says a
13 hundred years, if you're giving consecutive sentences, each
14 one, a maximum of each one of these sentences, I mean, it,
15 it adds up to about a hundred years, Your Honor, aside from
16 the life. I mean, you've got life in prison, I mean, even,
17 even being worse. So, Your Honor, that is what Mr. Keitt
18 heard. So, I think that counsel's performance was
19 deficient in explaining the worst-case scenario without
20 giving consecutive and concurrent definitions and also
21 discussing the reality of what a judge might do because it
22 is unrealistic that a judge would give this defendant in
23 these circumstances consecutive maximum sentence.

24 Also, Your Honor, you know, when you measure, when
25 you, the court, measures the attorneys' performance by the

1 reasonableness under prevailing professional norms, Your
2 Honor, I think we, we go back to the -- giving him a copy
3 of the discovery so he can assist in his defense.
4 Reasonable to do that, and it was unreasonable for his
5 counsel not to give it to him. It was also unreasonable
6 for this counsel to tell him about the worst-case scenario
7 without breaking it down and the -- giving him the reality
8 of what could happen, what might happen, what normally
9 happens.

10 So, then when you come to the prong, the second prong
11 of counsels' deficient performance must have prejudiced the
12 applicant such that there is a reasonable probability that
13 but for counsels' unprofessional errors, the resultant
14 proceeding would have been different. Well, Your Honor, it
15 sounds like he had a pretty good defense that they put up
16 for him, and it was on -- and he had persisted in going to
17 trial. And then for those errors such as the no giving him
18 discovery and also the worst-case scenario within -- during
19 trial in that room, which, which effectively prompted him,
20 persuaded him to take the plea deal. I'm not saying that,
21 that, that -- I mean, that, that he was beaten over the
22 head. You need to take this or you're going to jail for a
23 hundred years. I think that effectively giving him a
24 worst-case scenario without explanation, to follow up to
25 give the reality of the picture of how things work was the

1 problem and was why Mr. Keitt took the thirty years because
2 he was expecting if he didn't and got convicted, he was
3 going to get a lot more than that and never see the light
4 of day.

5 So, Your Honor, I think that that's what we have here.
6 I think that the testimony has, has, has provided that
7 counsels' performance was deficient in those ways I've
8 explained. That if you measure it, reasonableness under
9 professional norms, that you would find that he was
10 deficient. And that he would have proceeded on to trial,
11 and they would have been able to flesh out these very
12 significant defenses that they, that they had put together
13 for Mr. Keitt, and the result would have been different.
14 So, Your Honor, that's what I have, and we would ask you to
15 consider that in making your decision.

16 THE COURT: Thank you, Mr. Saunders.

17 Mr. Davidson, you got anything in reply?

18 MR. DAVIDSON: Yeah. I just have a few things, Your
19 Honor. I want to remind the court as to what the
20 allegations were pled. So, what -- sorry. The first
21 allegation is that Ms. Williams failed to convey a plea
22 offer, failed to convey plea offers to the applicant and,
23 and that she failed to provide him with discovery and
24 review the discovery. And then against Ms. Pinnock, it's
25 he pressured -- or she pressured him to plead guilty after

1 two days into his trial.

2 So, addressing the allegation about plea offers, Ms.
3 Williams testified that she had -- every plea offer that
4 was given, she conveyed to the applicant. He said he did
5 not want to accept them and that he would go forward with
6 trial, which they did. He has failed to point out what
7 plea offer she failed to comply -- to convey, and so I
8 don't see how he can meet either prong because she is
9 definitely not deficient in communicating any and all plea
10 offers she got. And because he failed to provide a plea
11 offer that she failed to convey, he can't show any
12 prejudice or that the outcome would have been different.

13 As to the allegation about providing applicant
14 discovery, Ms. Williams testified that she does not recall
15 him asking for the discovery. If he did ask, she would
16 have informed him that it's not really that great of an
17 idea. She testified as to why she believes those -- that
18 to be true, and I think that's a reasonable response.

19 Also, she testified that had he asked for it, she
20 would have given it to him; that's her practice. Besides
21 applicant saying he asked her for it, I think it's
22 unreasonable to think she would have denied that,
23 especially going over all of the discovery with his family
24 when they requested or when he requested she do that. It's
25 also clear that she reviewed the discovery with him. He

1 testified he reviewed discovery with her and hasn't pointed
2 to any discovery that he did not get to go over. So,
3 again, I think that allegation fails.

4 And as to Ms. Pinnock pressuring defendant to plead
5 guilty, regardless of how strong the case was, I think it
6 was established by both Ms. Pinnock and Ms. Williams that
7 ultimately Mr. Keitt chose to plead guilty. He was induced
8 to plead guilty not because of their pressure but because
9 the thirty years would allow him to get out and have some
10 time with his kids rather than facing the maximum sentence.
11 It doesn't matter about the hundred years thing or not. He
12 was facing life. So, I, I think that it's clear that Ms.
13 Pinnock, based on her testimony and Ms. Williams's, there
14 was no pressuring here. He chose to plead guilty in order
15 to avoid potentially being sentenced to life in prison.

16 We would just ask you to deny all of his three
17 allegations, and that's all I've got.

18 THE COURT: All right. Thank you. I'll take a look
19 at this, and I'll let you all know, okay?

20 MR. SAUNDERS: Thank you very much.

21 THE COURT: Thank you.

22 MR. DAVIDSON: Thank you.

23 THE COURT: Y'all have a good afternoon.

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, **VIA
WEBEX**, ON THE 25TH DAY OF JANUARY, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 14TH, 2022

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Keitt, #368990)

2017-CP-40-6718

Applicant)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
 FILED
 2022 MAR -8 AM 9:45
 REANDED
 C.C.P. G.S. § 8-15

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant, Christopher Keitt on November 1, 2017. Respondent made its Return, Motion for a More Definite Statement, and Partial Motion to Dismiss on June 22, 2018. An evidentiary hearing into the matter was convened on January 25, 2022, via Cisco WebEx Virtual Platform before the undersigned. Applicant was present at the hearing and represented by H. Harrison Saunders, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Rebecca S. Williams and Tracy E. Pinnoch, Esquires. Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2015, the Richland County Grand Jury indicted Applicant for

DCB
 1/7/11

attempted murder (2015-GS-40-4605), first-degree burglary (2015-GS-40-4606), unlawful carrying of a pistol (2015-GS-40-4607), possession of a weapon during violent crime (2015-GS-40-4608), discharging of a firearm into a dwelling (2015-GS-40-4609), grand larceny (2015-GS-40-4610) and armed robbery (2015-GS-40-4611). Rebecca S. Williams and Tracy E. Pinnock, Esquires, represented Applicant. Assistant Solicitor Meghan Walker, Esquire prosecuted the case. On July 19, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Knox McMahon. Pursuant to a negotiated sentence between the State and the Applicant, Judge McMahon sentenced Applicant to imprisonment for concurrent terms of thirty years each for armed robbery and attempted murder, fifteen years for first degree burglary, ten years for grand larceny, five years each for possession of a weapon and discharging a firearm into a dwelling and one year for unlawful carrying of a pistol.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on August 22, 2017.

ISSUES RAISED

Applicant timely commenced this post-conviction relief action on November 1, 2017. In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Upon information and belief, Ineffective Assistance of Counsel"
2. "Upon information and belief, Applicant felt pressured and coerced into pleading guilty."

As relief, Applicant seeks "vacating of the conviction and sentence and a new trial." Applicant, through previously appointed PCR counsel, Cassity A. Brewer, Esquire, filed an amended application on August 11, 2020, alleging:

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1. Ineffective Assistance of Counsel as to Rebecca Williams, Esquire:
 - i) Failed to convey plea offers to Applicant.
 - ii) Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant.
2. Ineffective Assistance of Counsel as to Tracy Pinnock Esquire:
 - i) Pressured Applicant to plead guilty after two days into his trial

At the evidentiary hearing, PCR counsel for Applicant proceeded with the allegations as pleaded in his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the trial transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Trial Counsel

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he

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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*, 466 U.S. at 686.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove 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 v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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). 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 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.* The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, *Strickland* requires an applicant to prove "counsel made

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errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. The function of the PCR court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." *Id.* at 690. Although courts may not indulge "post hoc rationalization" for counsel's decision-making that contradicts the available evidence of counsel's actions, *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for actions. There is a "strong presumption" counsel's attention to certain issues to the exclusion of others reflects tactics rather than "sheer neglect." *Yarborough v. Gentry*, 540 U. S. 1, 8 (2003).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. *Harrington v. Richter*, 562 U.S. 86 (2011). "Surmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversarial process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689-690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, opposing counsel, and the

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judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689; *see also Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result would have been different. *Id.* at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693.

“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695-96 (explaining the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

1. Ineffective Assistance of Counsel as to Rebecca Williams, Esquire, where Counsel Williams (i) Failed to convey plea offers to Applicant and (ii) Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant.

Applicant alleges Counsel Williams was ineffective for failing to convey plea offers to Applicant and for failing to provide Applicant with discovery and review the discovery with him. However, this Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on both allegations of ineffective assistance of counsel.

i. *Failed to convey plea offers to Applicant*

Applicant alleges Counsel Williams was ineffective for failing to convey plea offers to him. However, this Court disagrees. "Defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). When alleging plea counsel was ineffective in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability that: (1) he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing *Frye*, 566 U.S. at 147); see *Lafler v. Cooper*, 566 U.S. 156, 164 (2012) (stating "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed"). An applicant must establish not just that a favorable plea offer was not communicated, but also that "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it." *Id.*

At the evidentiary hearing, Applicant failed to identify what plea offers he alleges Counsel Williams failed to convey to him. Counsel Williams on the other hand testified the solicitor offered to let Applicant plead straight up in front of the judge of his choosing. Then in May, the solicitor offered a plea offer of a thirty-year cap or a negotiated twenty-five years. Counsel Williams

testified she relayed both offers to Applicant and he did not like either offer. Counsel Williams explained that from those conversations, they planned to go to trial. Counsel Williams testified after they were unsuccessful at pretrial motions, the solicitor offered a negotiated thirty-year sentence. Counsel Williams testified they discussed the offer and the risks of losing at trial and eventually Applicant decided to choose the plea. Applicant testified he chose to plead guilty to avoid potentially spending the rest of his life in prison. This Court finds Counsel Williams testimony credible and further finds she conveyed all plea offers to Applicant. Therefore, this Court finds Counsel was not deficient. Accordingly, for the reasons stated above, the Court denies relief and dismisses the allegation with prejudice.

ii. Failed to provide Applicant with discovery in his case and subsequently to review that discovery with Applicant

Applicant claims Counsel Williams was ineffective for failing to provide him with discovery in his case. Applicant further claims Counsel Williams never went over discovery with him. However, this Court finds Applicant's own testimony refutes his claim that Counsel Williams never went over discovery with him. At the evidentiary hearing, Applicant testified they went over the discovery in his third meeting with Counsel Williams and that meeting lasted about forty-five minutes. Similarly, Counsel Williams testified that she went over the discovery with Applicant numerous times and even went over the discovery with Applicant's family. Accordingly, this Court finds Applicant's own testimony and Counsel Williams testimony to be credible and dispositive of Applicant's claim that Counsel Williams was ineffective for failing to review the discovery, and this claim is therefore denied and dismissed with prejudice.

Furthermore, Applicant alleges he asked for a copy of the discovery, but Counsel Williams never gave it to him. However, this Court finds Applicant failed to show how he was prejudiced by not receiving a copy of the discovery. At the evidentiary hearing, Applicant testified he asked

for a copy, but he never received one. However, Applicant admitted he and Counsel Williams went over the discovery and she answered all of the questions that he had. Counsel Williams testified she did not believe she provided a copy of the discovery, but she did not believe he asked for a copy. Counsel Williams testified her typical practice when a client asks for a file is to inform them of the risks associated with having the discovery in the jail and then she has a form that her client signs acknowledging the risks. Counsel Williams testified she did not have a signed form in Applicant's file. Counsel Williams testified that if Applicant did ask for a copy, then perhaps she misunderstood.

This Court finds Counsel Williams' testimony credible and therefore finds Counsel Williams was not deficient. Further, this Court finds even if Applicant asked and Counsel Williams failed to provide it to him, he cannot show any resulting prejudice as he cannot show that but for failing to have a copy of the discovery, he would not have pleaded guilty. Accordingly, for the reasons stated above, the Court denies relief and denies dismisses the allegation with prejudice.

2. Ineffective Assistance of Counsel as to Tracy Pinnock Esquire, where Counsel Pinnock Pressured Applicant to plead guilty after two days into his trial

Applicant claims Counsel Pinnock was ineffective because she pressured Applicant to plead guilty after two days into his trial. However, this court disagrees and finds Applicant's own testimony at the PCR hearing along with the record establish Applicant was not pressured by Counsel Pinnock, but rather the chance that he could spend the rest of his life in jail that caused him to choose to plead guilty in exchange for a shorter, thirty year sentence. Applicant testified he chose to plead guilty because he was scared to go to jail for the rest of his life. Furthermore, Applicant testified that it was his decision to plead guilty. Counsel Pinnock testified "No, it's not

my intention to come off as pressuring. I try to have direct conversations with people. I can't say how he was feeling at that time, but not my goal to force someone." This Court finds Applicant's testimony with regards to why he chose to plead guilty credible and contrary to the assertion his plea was coerced. Additionally, this Court finds Counsel Pinnock's testimony credible. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is denied and dismissed with prejudice.

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CONCLUSION

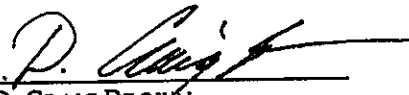
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Trial Counsel and Appellate Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 22 day of February, 2022.


 D. CRAIG BROWN
 Presiding Judge
 Fifth Judicial Circuit

DCB
11/11

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Christopher Keitt,

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

S. Harrison Saunders, VI, Esquire
The Law Office of S. Harrison Saunders, VI, LLC
3104 Devine Street
Columbia, SC 29205

This 14th day of March, 2022.


Jennifer Jernison
Administrative Coordinator for Respondent

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601178

ACTION OF GRAND JURY

TRUE BILL

Kimberly D. Humphreys
Foreperson of Grand Jury

Date:

OCT 22 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS4004605

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015

101

THE STATE

vs.

Christopher Wilbert Keitt

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 21, 2015,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015, did with the intent to kill, attempt to kill MARTIN SIMS with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601179

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 22 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004606

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

101
OCTOBER TERM 2015

**THE STATE
vs.**

Christopher Wilbert Keitt

**Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE**

**SC Code: 16-11-0311
CDR Code: 0079**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
FILED
CLERK'S
RICHLAND COUNTY
SOUTH CAROLINA

SOUTH CAROLINA
 RICHLAND COUNTY
 STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 CERTIFIED TRUE COPY

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 21, 2015,
 the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015, enter the dwelling of MARTIN SIMS located at [REDACTED] BARNHAMVILLE ROAD, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon and/or displayed what was or appeared to be a firearm and/or caused physical injury to MARTIN SIMS and/or threatened the use of said firearm in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
James H. [illegible]
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601180

ACTION OF GRAND JURY
TRUE BILL

Gumbury D. Humphries
Foreperson of Grand Jury
Date: **OCT 22 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004607

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2015

101

THE STATE
vs.

Christopher Wilbert Keitt

Indictment for
WEAPONS / UNLAWFUL CARRYING OF
PISTOL

SC Code: 16-23-0020

CDR Code: 0044

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
JAMES H. W. M. Dade
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on **OCTOBER 21 2015**,
the Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601181

ACTION OF GRAND JURY
TRUE BILL

Kimberly D. Humphries
Foreperson of Grand Jury
Date:

OCT 22 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004608

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015
101

THE STATE
vs.

Christopher Wilbert Keitt

Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised of my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Christopher Wilbert Keitt
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601182

ACTION OF GRAND JURY
TRUE BILL

Emily D. Humphries
Foreperson of Grand Jury
Date:

OCT 22 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004609

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015
101

THE STATE
vs.

Christopher Wilbert Keitt

Indictment for
WEAPONS / DISCHARGING FIREARMS
INTO A DWELLING

SC Code: 16-23-0440(A)
CDR Code: 0052

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Shane M. Wade
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER. 21, 2015,
 the Grand Jurors of Richland County present upon their oath:

DISCHARGING FIREARM INTO A DWELLING

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; or into a vehicle, aircraft, watercraft or other conveyance or equipment while it was occupied, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
Jeannette Williams
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) Andrew C Richbourg
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601183

ACTION OF GRAND JURY
TRUE BILL

Kimberly D. Humphries
Foreperson of Grand Jury
Date: **OCT 22 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004610

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015
101

THE STATE
vs.

Christopher Wilbert Keitt

Indictment for
LARCENY/GRAND LARCENY, VALUE
\$10,000 OR MORE

SC Code: 16-13-0030 (B)
CDR Code: 3421

After being fully advised as to my
legal rights, I hereby waive presentation
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James H. Wilbert
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 21, 2015,
the Grand Jurors of Richland County present upon their oath:

GRAND LARCENY OVER \$10,000

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015, take and carry away the personal goods of MARTIN SIMS, having a value of more than Ten Thousand (\$10,000.00) Dollars, described as follows: 2007 CHRYSLER 300, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. M. Brund
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Andrew C Richbourg
— Columbia Police Department

ARREST WARRANT NUMBER

2015A4021601184

ACTION OF GRAND JURY
TRUE BILL

Kimberly D. Humphries
Foreperson of Grand Jury
Date: **OCT 22 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4004611

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015
101

THE STATE
vs.

Christopher Wilbert Keitt

Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON

SC Code: 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
James H. [Signature]
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 21, 2015,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Christopher Wilbert Keitt did in Richland County on or about May 13, 2015,
commit robbery by feloniously taking from the person or presence of MARTIN
SIMS, by means of force or intimidation, goods or monies of MARTIN SIMS,
such goods or monies being described as autobomobile keys and/or Chrylser 300,
with the intent to deprive the owner permanently of such property, while armed
with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or
while alleging, either by actions or words, that he or she was armed while using a
representation of a deadly weapon or any object which a person present during the
commission of the robbery reasonably believed to be a deadly weapon. All in
violation of §16-11-330(A), SC Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James B. McBride
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA