

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi Curtis, Circuit Court Judge

Case No. 2022-001326
(2022-CP-22-00684)

Stanley Moultrie,

Petitioner,

vs.

The State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STANLEY DELANOR MOULTRIE,

APPELLANT

APPELLATE CASE NO 2016-001830

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2015-GS-22-00458, 00459

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

August 22-24, 2016

STANLEY DELANOR MOULTRIE,)

Defendant.)

B E F O R E :

Honorable D. Craig Brown
Georgetown County Courthouse
Georgetown, South Carolina

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

James Austin Thomas, Esquire
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Jeffrey T. Lucas, III, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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1 **(AUGUST 22, 2016 - DAY ONE)**

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the Jury.)

4 MOTIONS:

5 THE COURT: Mr. Moultrie, you can be seated, sir.

6 THE COURT: All right. Let me hear from whoever.

7 MR. LUCAS: I'll go forward, Your Honor.

8 THE COURT: Tell me your name, please, sir?

9 MR. LUCAS: My name is Jeffrey Lucas.

10 THE COURT: All right.

11 MR. LUCAS: I'm an attorney with Axelrod & Associates out
12 of Myrtle Beach.

13 THE COURT: Yes, sir.

14 MR. LUCAS: We're here today on a motion to have Mr.
15 Moultrie evaluated prior to the trial which is scheduled to
16 begin today.

17 Your Honor, I started with Axelrod & Associates in
18 January. The very first case that came to me that Mr. Axelrod
19 dropped on my desk was that of Stanley Moultrie.

20 THE COURT: Being when?

21 MR. LUCAS: January of 2015.

22 THE COURT: So you've had the case since January 2015?

23 MR. LUCAS: No, I take that back, January 2016.

24 THE COURT: Okay.

25 MR. LUCAS: Since January of 2016, I've had

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MOTIONS

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1 communications with my office. I talked with Mr. Axelrod and
2 there was communications that came through the previous
3 attorney, Mr. Leon Parrot, all of which expressed some concern
4 about Mr. Moultrie's mental status. Hearing that, after I had
5 collected the evidence and gone through things, I went and I
6 saw Mr. Moultrie. We talked about the evidence, talked about
7 everything and then Mr. Moultrie went a step further and he
8 explained to me some things that happened to him when he was a
9 child.

10 THE COURT: I'm sorry, what was that last thing you said,
11 sir?

12 MR. LUCAS: Some things that happened to him when he was
13 a child.

14 THE COURT: Okay.

15 MR. LUCAS: He explained to me that while he was
16 attending, I believe J.B. Beck Middle School here in
17 Georgetown at thirteen years of age, he was raped by his P.E.
18 teacher. Now, as you would expect, this was a bit shocking to
19 me. We knew that there was a concern about his mental status,
20 but I never heard it firsthand until that point.

21 THE COURT: When was that? When was that point that you
22 learned that?

23 MR. LUCAS: That point was probably February ---

24 THE COURT: Okay.

25 MR. LUCAS: --- 2016. Now, Your Honor, I returned to my

MOTIONS

1 office and really dug into the case file and what I came
2 across was a letter from Stanley Moultrie that we received.
3 It was addressed to the Solicitor. We received that on
4 October 9th of 2015. Your Honor, may I approach?

5 THE COURT: Yes.

6 MR. LUCAS: Your Honor, this is the letter that I came
7 across in Mr. Moultrie's file. What you'll see in the
8 highlighted portion on that first page, close to the bottom,
9 he states, I experienced a sexual assault by my P.E. teacher
10 that would ultimately change my life. Because of shame and
11 guilt, thinking that I caused it, I grew confused and
12 isolated. And then he goes further and he says, when I may
13 the attempt to tell, it wasn't something that was openly
14 discussed or openly talked about and I think he was told to
15 just go away.

16 On page two, Your Honor, in the middle, he says I'm still
17 wounded and I have a lot of scars -- which I could only
18 assume was scars or scares -- from my past. And then close to
19 the bottom, I don't want anyone to live with the pain I lived
20 with.

21 On the next page, Your Honor, page four at the top, it's
22 had a lasting effect on me that would result in drinking
23 and drug use to numb the feel, but I will never escape the
24 feeling of him touching me. I grew more bitter because I
25 would always think how could the school system allow him to

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1 teach knowing the way he was. I can't imagine how many other
2 kids that he assaulted. Not knowing where to turn, counseling
3 is out of the question because I didn't want to offend or
4 disrespect my parents. So I lived with the pain and anger
5 that drove me to behavior I regret every second of the day.

6 Again, Your Honor, I received -- this letter was received
7 by my office in October of 2015. That is some time ago, much
8 -- months and months before this case hit the trial roster.

9 Your Honor, in May of 2016, at a competency hearing,
10 competency hearing to get an order to have him evaluated was
11 with the Honorable Judge Culbertson in Horry County and I
12 presented this same argument.

13 THE COURT: And when was that, in May?

14 MR. LUCAS: That was May 25th of 2016.

15 THE COURT: Okay.

16 MR. LUCAS: At that hearing, the Judge, feeling that
17 there was not enough information to move forward, this letter
18 was not presented. He allowed me to withdraw the motion and
19 try to collect more information, which is exactly what I did.
20 I immediately made a request to the South Carolina Department
21 of Corrections which Mr. Moultrie had been at for some time
22 prior. That request was for all medical records. Your Honor,
23 what I received while medical records, have very little when
24 it came to mental health. And the reason for that, Your
25 Honor, in my opinion, I believe it's because the Department of

1 Corrections treated him generally but then any in depth mental
2 health work was done outside of SCDC.

3 If I may approach, Your Honor, what I have here is a
4 record from SCDC, but you see in the second portion of mental
5 health where I've highlighted there, it says that outpatient
6 mental health was done at area and outpatient sites, meaning
7 Your Honor, that Mr. Moultrie was evaluated but not through
8 SCDC. So, I wasn't able to collect those records. Now, Your
9 Honor ---

10 THE COURT: Where was he treated outside of SCDC?

11 MR. LUCAS: That we don't know, Your Honor.

12 THE COURT: Your client couldn't convey that to you?

13 MR. LUCAS: No, I talked with Mr. Moultrie. Since time
14 has passed, he does not remember the name of the doctors or
15 where it was done. But he does, he has conveyed to me that he
16 was treated at SCDC but these doctors were not a part of SCDC.

17 Now, Your Honor, on January -- on July 6th or excuse me,
18 July 6th, which is prior to the moment when this case hit the
19 trial roster, I received another letter from Mr. Moultrie.
20 This letter, Your Honor -- may I approach?

21 THE COURT: Yes.

22 MR. LUCAS: This letter, Your Honor, is close to a mirror
23 image of the previous letter with one important, I think,
24 important addition is on the -- on the final page, Your Honor.
25 It says this letter specifies who the P.E. teacher was that

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1 did this. It said there at the top Mr. Harold Brown ripped my
2 life for me. All of my memories from Georgetown and
3 especially in J.B. Beck Middle School are dark, dark and
4 painful, even after I entered high school. I would have
5 multiple jobs. And he indicates there that he had seven
6 different jobs. And after the seven jobs, Mr. Harold Brown
7 would show up at every single job. So essentially what he's
8 indicating, Your Honor, is that he -- this was a -- it had a
9 huge impact on him not only in middle school but in high
10 school. And he also indicates in those two letters these are
11 dark memories, dark events that affects his way of thinking.

12 Your Honor, the only way that I believe appropriate to
13 move forward is to have Mr. Moultrie evaluated. He needs the
14 evaluation both under McNaughten to determine if at the time
15 these events occurred, if he understood the difference between
16 moral and legal right and wrong, and then also, under *State v.*
17 *Blair*, which is competency. Is he competent to stand trial?
18 Now, Your Honor, I'm just an attorney. I'm just Stanley
19 Moultrie's attorney; I don't know. But the one thing I do
20 know that is every time I sit across from him, I talk with
21 him, I get this -- this feeling in the pit of stomach,
22 something is not right. He has to be evaluated. I'm no
23 doctor. I can't diagnose it.

24 Your Honor, we are prepared to move forward with trial,
25 but I feel that we can't do that until he's been evaluated for

1 both criminal responsibility and competency to stand trial.
2 Once that is done and the reports come back, we are very
3 willing to immediately try this case if the State wishes to do
4 so. But until it's done, Your Honor, I don't know that --
5 that, that we'll be able to move forward because I just -- I
6 have this -- my personal opinion and, again, I'm not a doctor,
7 but there is something wrong with Stanley Moultrie and only a
8 doctor will be able to diagnose that and pinpoint what the
9 problem is.

10 Thank you, Your Honor.

11 THE COURT: Yes, sir?

12 MR. THOMAS: Your Honor, Austin Thomas on behalf of the
13 State. Just if I could touch on the timeline a little bit.
14 The State served with Mr. Moultrie with notice of intent to
15 seek life without parole in April of this year. In May of
16 this year, the competency motion was filed in Horry County on
17 some pending charges that Mr. Moultrie has there and that, as
18 counsel said, that was -- the Judge indicated that he wasn't
19 -- essentially wasn't going to grant the motion on the merits
20 of the motion and allow Counsel to withdraw at that time. The
21 first motion to be filed here was just last week, Your Honor.

22 As far as the motion itself goes, as Your Honor is aware,
23 the burden is on the moving party to show that there is a lack
24 of mental capacity -- and I'd understand if the proceedings
25 against him to assist in their own defense. Your Honor, in

State v Moultrie - 2015-GS-22-458,459
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15

1 this case, essentially what Defense is saying is that it is a
2 feeling in the pit of the stomach of Defense counsel as to
3 maybe there's something off here because of something tragic
4 that may or may not have happened sometime long ago. There
5 are several cases I think are very much on point here, one
6 being *State v. Burgess*, that is 356 S.C. 572, also *State v.*
7 *Colden* that is 372 S.C. 428. Your Honor, I have a copy of
8 those cases and I'll be happy to pass those up.

9 THE COURT: All right.

10 MR. THOMAS: Your Honor, *State v. Burgess* sort of sets
11 forth the factors to consider on ruling on this motion and
12 that is evidence of irrational behavior, demeanor at trial and
13 any prior medical opinion on his or her competence to stand
14 trial. Your Honor, there's been no such evidence on any of
15 those three prongs presented here today. And that's in *State*
16 *v. Burgess* that was a situation where the case was called to
17 trial and the Defense presented evidence -- now, it was they
18 actually read an affidavit to the Court from a doctor that
19 stated the Defendant's IQ was somewhere between the likes of
20 56 and 66, but the Court held, after they voir dired the
21 Defendant themselves and were satisfied themselves, noting
22 that his demeanor in the courtroom was very appropriate and
23 the lack of any medical opinion regarding his competence to
24 stand trial.

25 And it's worth noting too, Your Honor, that in this

1 particular case, this is a Defendant that's been through the
2 criminal justice system many times on serious charges, the
3 exact same charge as he's here today before Your Honor on and
4 there's been no issue with competency in any of those cases.

5 Your Honor, back to *State v. Burgess*, that was a case
6 where the -- there's actually a doctor that opined that the
7 Defendant exhibit borderline mental retardation in that case
8 and that he needed further medical procedures. So, in that
9 case, basically with all of that going on which could
10 ostensibly somehow have some relation to competency to stand
11 trial like what we have here, which is a feeling in the gut of
12 Defense counsel. And also in that case worth noting that
13 Defense counsel stated that it had issues with communicating
14 with the Defendant in that case. I haven't heard such issues
15 in this case.

16 *Colden* is a similar case that actually states the factors
17 of *Burgess* and it is very much the same fact pattern, but in
18 that case there is no evidence of any sort of mental issues in
19 that case presented. That was based solely on Defense
20 counsel's representations to the Court that they were having
21 some issues communicating with their client.

22 Your Honor, the State is willing and able to offer some
23 testimony here today from Lieutenant Clarey, who is the head
24 of the detention center where the Defendant has been housed
25 for some time now. Also we have his statement to law

State v Moultrie - 2015-GS-22-458,459

17

JOANN CLAREY - DIRECT BY THOMAS

1 enforcement on February 19th of 2015. Your Honor, in that
2 statement, the Defendant demonstrates a great ability to
3 communicate, articulate, he sounds intelligent, displays
4 knowledge of the court judicial system. He talks about a past
5 about plea deal he accepted and how some charges were
6 dismissed and he pled to a lesser included offense. I think
7 the letter demonstrates that this is a Defendant that has
8 capacities to communicate with counsel and understand the
9 proceedings and everything going on around him. But, Your
10 Honor, if you would the State would like to call Lieutenant
11 Clarey to the stand at this time?

12 THE COURT: All right. Call him, excuse me, call her.
13 Put your left hand on the Bible and raise your right hand to
14 be sworn.

15 JOANN CLAREY, HAVING BEEN SWORN

16 TESTIFIES AS FOLLOWS:

17 CLERK: Thank you.

18 THE COURT: Please have a seat a state your full name for
19 the record and spell your last name, please.

20 MS. CLAREY: Joann Clarey, C-L-A-R-E-Y.

21 DIRECT EXAMINATION OF JOANN CLAREY BY MR. THOMAS:

22 Q: Lieutenant Clarey, where do you work?

23 A: Georgetown County Detention Center.

24 Q: And what do you do there?

25 A: I'm a Classification Lieutenant..

1 Q: And what are your duties included in that job?

2 A: I classify people when they first come into jail to
3 decide what housing units they should go to, like I do like
4 gang affiliations, mental illness, medical problems, enemies,
5 things of that nature, and the nature of their crime.

6 Q: In that role, do you have much contact with the inmates?

7 A: Yes.

8 Q: How much contact?

9 A: A lot. I can't elaborate because they write to me, they
10 want to see me about different things.

11 Q: Do you know Mr. Stanley Moultrie?

12 A: Yes, I do.

13 Q: And how long have you known him?

14 A: Since he came to the detention center.

15 Q: About what time was that?

16 A: I want to think January of last year, January or
17 February, maybe later on than that. I didn't ---

18 Q: Of 2015?

19 A: 2015.

20 Q: So, have you had an opportunity to observe him and
21 interact with him?

22 A: A lot, yes.

23 Q: Have you had to make any special arrangement --
24 arrangements for him in any way?

25 A: No.

State v Moultrie - 2015-GS-22-458,459

19

JOANN CLAREY - DIRECT BY THOMAS

1 Q: What if any issues have you had with Mr. Moultrie?

2 A: None.

3 Q: Has he exhibited any bazaar or irrational behavior during
4 your time there?

5 A: No, sir.

6 Q: Any problems with any other inmates or detention facility
7 members?

8 A: I think one time he wasn't real happy about being moved
9 in his cell, something about his cell mate, but that was last
10 year. I mean it was no big issue.

11 Q: Anything out of the ordinary -- anything that stood out
12 to you about him?

13 A: No, sir.

14 Q: Describe, describe Mr. Moultrie and your, you know,
15 contacts you've had with him?

16 A: Well, I tried -- I've tried to help Mr. Moultrie out.
17 I've notarized a lot of his -- a lot of his stuff and I also
18 do a lot of property releases for him to a gentleman that's on
19 the outside that was trying to help him with his case.

20 Q: Have you had any problems communicating with him?

21 A: None.

22 Q: Does he appear to have any problems communicating with
23 you?

24 A: No.

25 Q: Is he being treated for any mental issues over there at

1 the detention center to your knowledge?

2 A: Not to my knowledge.

3 Q: Thank you. Please answer any questions the Court has for
4 you.

5 THE COURT: Mr. Lucas, do you have any cross examination?

6 MR. LUCAS: Just very briefly, Your Honor.

7 CROSS EXAMINATION OF JOANN CLAREY BY MR. LUCAS:

8 Q: Good morning.

9 A: Good morning.

10 Q: Ma'am, you're not a -- are you trained in anything
11 medical?

12 A: No, sir.

13 Q: No?

14 A: No, sir, I work very closely with medical because I'm
15 classification.

16 Q: Okay.

17 A: The -- when I go to house people, I have to look at their
18 medical, you know, on intake, and then if the nurse is having
19 -- the nurse or the doctor has a issue with somebody, they
20 come to me because we have to discuss housing.

21 Q: So, you can't offer any type of medical information as to
22 what's wrong with him?

23 A: No, sir.

24 Q: Did he ever tell you anything about this situation; have
25 you ever heard that?

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JOANN CLAREY - CROSS BY LUCAS

1 A: No, sir, and we have something called the Prison Rape
2 Elimination Act that they signed upon coming into the jail and
3 it asks on there, in fact it's the very last question, if
4 you've ever been a victim of a sexual assault.

5 Q: But it's -- based on your opinion, it's understandable,
6 correct?

7 A: Uh-huh (affirmative response), oh, yes.

8 Q: Someone wouldn't come out and just ---

9 A: He would not be the first, that is correct. Uh-huh
10 (affirmative response).

11 Q: So, he would not be the first and not report prior sexual
12 abuse?

13 A: That is correct.

14 Q: Thank you. No further questions.

15 THE COURT: Any redirect?

16 MR. THOMAS: No, sir, Your Honor.

17 THE COURT: You may step down.

18 A: Thank you.

19 THE COURT: Anything further from the State?

20 MR. THOMAS: Your Honor, Mr. Moultrie's letter that the
21 Court has and also the statement which I would like to pass up
22 to the Court if the Court wants -- if the Court has any
23 questions about that, if the Court please, I'd like to pass up
24 this statement.

25 THE COURT: All right. Let me hold it.

1 COURT REPORTER: Would you like this marked as a Court's
2 Exhibit?

3 THE COURT: For right now, it's fine.

4 COURT'S EXHIBIT NUMBER ONE

5 MARKED FOR IDENTIFICATION

6 THE COURT: How long is the statement?

7 MR. THOMAS: Your Honor, it is probably about a forty-
8 minute statement, but if you -- it's broken up into three
9 parts and if you listen to the beginning of the second part,
10 it gets right into, I think, issues that are pertinent to this
11 motion.

12 THE COURT: Does the State have a copy or the Clerk's
13 office have an indictment for which he is charged?

14 MR. THOMAS: Your Honor, I believe we do.

15 THE COURT: Anything further from the State at this time?

16 MR. THOMAS: No, sir, Your Honor.

17 THE COURT: Mr. Lucas, anything further?

18 MR. LUCAS: Just, Your Honor, that -- may I approach?
19 These are -- this is Defendant's motion to have Stanley
20 evaluated. I don't know that I provided it at the beginning.
21 I believe it went out in email, but this -- and it has been
22 filed, Your Honor.

23 THE COURT: I have some questions, Mr. Moultrie, if you'd
24 stand please, sir?

25 STANLEY MOULTRIE, HAVING BEEN SWORN

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23

1 TESTIFIES AS FOLLOWS:

2 THE COURT: You are -- you can put your hand down. You
3 are Stanley Delanor Moultrie?

4 MR. MOULTRIE: Yes, Your Honor.

5 THE COURT: How old are you, sir?

6 MR. MOULTRIE: Forty-nine.

7 THE COURT: How far did you go in school?

8 MR. MOULTRIE: I graduated high school.

9 THE COURT: Here in Georgetown County?

10 MR. MOULTRIE: Yes, sir.

11 THE COURT: What types of jobs have you held?

12 MR. MOULTRIE: Courier jobs, cook, warehousing.

13 THE COURT: Prior to your arrest, with whom did you live?

14 MR. MOULTRIE: Where did I live at, sir?

15 THE COURT: With whom did you live?

16 MR. MOULTRIE: With myself, sir, and my wife.

17 THE COURT: Okay. And how long had you been married,
18 sir?

19 MR. MOULTRIE: Since 2001.

20 THE COURT: All right. And did you -- do you have in
21 children?

22 MR. MOULTRIE: No, sir, no biological kids, no, sir.

23 THE COURT: Okay. Did you have any formal education
24 beyond high school?

25 MR. MOULTRIE: No, Your Honor.

1 THE COURT: Your lawyer has raised an issue here
2 pertaining to your mental health. You sat in the courtroom
3 today and he has indicated that you received some type of
4 treatment at SCDC; is that correct?

5 MR. MOULTRIE: Yes, it is, Your Honor.

6 THE COURT: Prior to going to SCDC, have you ever
7 received any outpatient mental health treatment?

8 MR. MOULTRIE: When I was in the military, Your Honor, I
9 tried to seek help then.

10 THE COURT: Okay. How long were you in the military?

11 MR. MOULTRIE: Three years.

12 THE COURT: And what branch of military were you in?

13 MR. MOULTRIE: I was in the Army, Your Honor.

14 THE COURT: And to what level of rank did you achieve?

15 MR. MOULTRIE: Specialist.

16 THE COURT: And during your period in the military, where
17 were you stationed?

18 MR. MOULTRIE: Fort Riley, Kansas.

19 THE COURT: And when were you discharged from the
20 military?

21 MR. MOULTRIE: October 1988.

22 THE COURT: And for what reason were you discharged from
23 the military?

24 MR. MOULTRIE: My First Sergeant -- reenlistment code and
25 end everything was an R4, but I couldn't come in because when

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25

1 I tried to get help and talk to the Major about seeking help
2 for my condition, I told him the things I was going through
3 and so he wouldn't allow me to reenlist until I seek further
4 help before I could come back in. I can't remember the
5 Major's name at the time, but that was the reenlistment code
6 they gave me, so I couldn't come -- I couldn't reenlist in the
7 military in the condition that I was in.

8 THE COURT: Until you sought help?

9 MR. MOULTRIE: Until I sought help, yes, sir.

10 THE COURT: And you chose not to seek help?

11 MR. MOULTRIE: At the time when I came home and I find
12 out Mr. Harold Brown had been killed, and at the moment, it
13 just was the things that had been going and I just at that
14 moment I couldn't -- my mother and father at the time, I don't
15 think they didn't have the resources to get me the help that I
16 needed and it was just -- it was just something that really
17 affected me so that when I told my mother at the time that it
18 happened and she told me, she said, well, son -- because my
19 mother is a teacher as well and my father both taught school,
20 and when I approached her and, you know, need some help and
21 she said, well, sweetie, you know, just don't pay him
22 attention because everybody don't see it that that way. But,
23 you know, over the years, I thought my mother and father knew
24 about it but my mother had never told my father until -- until
25 I told him right before he passed, about six months before he

1 passed in 2013. And at the time, Your Honor, it was just in
2 Georgetown, there wasn't any programs available and just
3 wasn't anything, anybody that I go to because the whole
4 community knew that this guy was just waiting and Your Honor,
5 that's just the way it occurred.

6 THE COURT: Well let me ask you this, your lawyer has
7 handed up a couple of letters that you apparently wrote to the
8 Solicitor; is that correct?

9 MR. MOULTRIE: Yes, it is, Your Honor.

10 THE COURT: Did you write these letters on your own?

11 MR. MOULTRIE: Yes, I did; yes, I did, Your Honor.

12 THE COURT: All right. While you've been incarcerated
13 here in Georgetown County Detention Center, have you ever
14 requested any mental health treatment?

15 MR. MOULTRIE: Yes, I have, Your Honor, yes I have.

16 THE COURT: And that should be documented at Georgetown
17 County Detention Center?

18 MR. MOULTRIE: It is documented, Your Honor, and I asked,
19 I think it was two months ago, or a month ago, they actually
20 had me sit with the -- I guess it was on the monitor, I talked
21 to a guy that was in North Carolina, a counselor in North
22 Carolina because -- Ms. Stephanie, I think was the nurse and
23 she got me hooked up to talk to him, but it was prior to that
24 probably over the course of this year, from the beginning of
25 this year, we have different nurses come to the institution

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1 and I tried to do a written request because I didn't want
2 anybody to find out what I was talking about, you know, it was
3 just hard for me trust anybody, you know. And so when I
4 finally get them to accept me -- she was able to get me in
5 touch with a guy that I could sit down and talk to and I told
6 them I really needed my medication. And that's what I put on
7 the -- that I really needed to seek some help because I was
8 having these moments coming up again. And so she got me as
9 help as best she could.

10 THE COURT: Let me ask you this, you just mentioned about
11 being on some type of medication?

12 MR. MOULTRIE: Yes, Your Honor.

13 THE COURT: Were you previously on any kind of medication
14 for mental health?

15 MR. MOULTRIE: Yes, Your Honor.

16 THE COURT: Prescribed by whom?

17 MR. MOULTRIE: Prescribed by the doctor, I'm not exactly
18 sure ---

19 THE COURT: What doctor?

20 MR. MOULTRIE: It was in Department of Corrections. He
21 came in ---

22 THE COURT: What kind of medication was it?

23 MR. MOULTRIE: I was Wellbutrin and Effexor. That's the
24 only medications they would give us in the Department of
25 Corrections at that time. Prior to my pre-sentencing, being

1 detained, I was in Lexington County Jail for four years and
2 there they had me on Valiums, Vistarils, Seroquel for a little
3 while, and because my anxiety was so bad, it ran my blood
4 pressure high and I was on Clonidine and Lopressor for three
5 years while -- three years while I was in the ---

6 THE COURT: Mr. Lucas, let me ask you something, have you
7 -- you handed up to me, which I'm gonna mark as a Court's
8 Exhibit here, a document that apparently came from the
9 Department of Corrections Division of Health Services,
10 highlighted on here outpatient mental health. Did you request
11 medical records or anything from Department of Corrections
12 pursuant to what your client has told me here today concerning
13 treatment that he received from the Department of Corrections?

14 MR. LUCAS: Your Honor, I just did -- when I requested
15 the records from SCDC, I did a, a general HIPPA release of all
16 medical records.

17 THE COURT: And this was all they sent you?

18 MR. LUCAS: That -- it was about three hundred pages. It
19 was documents talking about, you know, some things about
20 dental and things of that nature. There are some records
21 indicating that he was on Wellbutrin and the medications he
22 made reference to.

23 THE COURT: All right. Well, you've handed me up, and
24 please, ma'am, Madam Court Reporter, mark this as a Court's
25 Exhibit.

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1 COURT'S EXHIBIT NUMBER TWO

2 MARKED FOR IDENTIFICATION

3 THE COURT: You've handed me up one piece of paper out of
4 say three hundred you received from the Department of
5 Corrections. Were there any other documents within those
6 three hundred pages that were pertinent to his mental health
7 treatment? You bear the burden of proving that he needs this
8 evaluation here today. Now were there any other pertinent
9 documents in there that you need me to take into
10 consideration?

11 MR. LUCAS: Your Honor, the only records that are
12 pertinent to what he just attested to were listing some of the
13 medications. But as far as mental health goes, it did not get
14 any more extensive than essentially what you're looking at.

15 THE COURT: Mr. Moultrie, let me ask you this. How many
16 times have you been to the Department of Corrections, sir?

17 MR. MOULTRIE: Twice, Your Honor.

18 THE COURT: And for what period, how long?

19 MR. MOULTRIE: The first incarceration was eight years
20 and ten months. The second incarceration was ten years and
21 two months.

22 THE COURT: Okay. Mr. Moultrie, during the period of
23 time that you've been incarcerated -- well let me change that.
24 You understand what the lawyers over here at this table do ---

25 MR. MOULTRIE: Yes, sir.

1 THE COURT: --- for the State? Tell me what they're here
2 for?

3 MR. MOULTRIE: To prosecute.

4 THE COURT: All right. And, and Mr. Lucas, who is
5 standing there to your right, what is he here for?

6 MR. MOULTRIE: To defend me, Your Honor.

7 THE COURT: All right. Now, Mr. Lucas has come and met
8 with you at the jail on how many different occasions?

9 MR. MOULTRIE: Twice, Your Honor.

10 THE COURT: Twice?

11 MR. MOULTRIE: Yes, Your Honor.

12 THE COURT: And is he ---

13 MR. LUCAS: Three times.

14 THE COURT: Three times since January of this year?

15 MR. MOULTRIE: Yes, Your Honor.

16 THE COURT: And how long were those meetings you had with
17 your lawyer?

18 MR. MOULTRIE: I'd say, fifteen, twenty minutes each
19 time, thirty

20 THE COURT: During the course of the time that you met
21 with your lawyer, did you have an opportunity to go through
22 the evidence with him?

23 MR. MOULTRIE: Of?

24 THE COURT: The State, the evidence that the State has in
25 this case?

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1 MR. MOULTRIE: No, Your Honor.

2 THE COURT: Do you understand who has to -- who bears the
3 burden of proving your guilt; you understand that?

4 MR. MOULTRIE: No, Your Honor. Where they have to prove
5 it like that?

6 THE COURT: Yes, sir. Do you have to prove your
7 innocence?

8 MR. MOULTRIE: Yes, Your Honor.

9 THE COURT: That's what you think?

10 MR. MOULTRIE: Yes, Your Honor, my attorney does.

11 THE COURT: Mr. Lucas, have you had trouble communicating
12 with your client when you went and met with him?

13 MR. LUCAS: Your Honor, we -- I haven't had any
14 communication -- he speaks very well, easy to communicate
15 with.

16 THE COURT: Is there any -- at any point in time, has
17 there been any issue concerning his inability to understand
18 your discussions with him?

19 MR. LUCAS: Your Honor, I believe that he appears to
20 understand the discussions.

21 THE COURT: Has he been able to assist you in discussing
22 his case with you?

23 MR. LUCAS: Generally, yes, Your Honor.

24 THE COURT: Do you have any specifics as to when he could
25 not assist you?

1 MR. LUCAS: Your Honor, when -- when we -- in the times
2 that we have talked, when he's explained to me some of the
3 things that happened and his mindset during the time that they
4 happened, that is the point where ---

5 THE COURT: That's not what I'm asking; I'm asking during
6 the period of time that you've met with your client, has there
7 been any issues or concerns that you have about his ability to
8 understand your discussions with him; and, two, assist you in
9 the defense of his case?

10 MR. LUCAS: Your Honor, generally, no.

11 THE COURT: Okay.

12 MR. LUCAS: If I may, Your Honor?

13 THE COURT: Yes, sir.

14 MR. LUCAS: It sounds like what we're addressing is the
15 *Blair* issue of him understanding what's happening. That is
16 not as much an issue as whether or not he understands what has
17 happening at the time was right or wrong and that is what I
18 believe with my all my talks that I've had with him, what I
19 believe the issue truly is. I don't know what his mental
20 state is with regards to that. That's why, Your Honor, we are
21 motioning to have him evaluated because ---

22 THE COURT: Well, here -- here's where I am -- all right?

23 MR. LUCAS: Okay.

24 THE COURT: --- which is somewhat disturbing to me. You
25 kind of laid out, Mr. Lucas, the time -- Mr. Moultrie, you can

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1 be seated, sir. Okay. And I may have some more questions for
2 you in a minute, okay. Thank you.

3 You laid out the timeline as far as when you represented
4 Mr. Moultrie ---

5 MR. LUCAS: Yes, Your Honor.

6 THE COURT: --- since January of this year. Was Mr.
7 Axelrod appointed or retained in this case?

8 MR. LUCAS: He was retained.

9 THE COURT: Okay. When was he retained?

10 MR. LUCAS: He was retained sometime prior to me
11 beginning.

12 THE COURT: Well, I assumed that, but you don't have any
13 idea -- I mean, you told me he had dumped it on your desk in
14 January of this year?

15 MR. LUCAS: Yes, Your Honor.

16 THE COURT: And I would assume that he was retained at
17 some point before then but you can't tell me when you were --
18 he was retained?

19 MR. LUCAS: I cannot. I ---

20 THE COURT: Well, let me ask this, Where is Mr. Axelrod
21 this morning?

22 MR. LUCAS: California, Your Honor.

23 THE COURT: All right. You sent me, and I will bring --
24 I meant to bring it this morning when I went by my office
25 before I came down here, but I don't know what specific date

1 that you forwarded me your motion last week pertaining to this
2 evaluation.

3 MR. LUCAS: Yes, Your Honor.

4 THE COURT: But I specifically -- and I responded to you
5 and never heard back from you again on that. I didn't ask you
6 to respond to me, but I specifically told you that I didn't
7 have jurisdiction to hear this matter until I got here this
8 morning. Okay? As a visiting judge, my term of court starts
9 when I get here today. But, I specifically told you I wanted
10 you and Mr. Axelrod here because I had questions for both of
11 you.

12 MR. LUCAS: I understand.

13 THE COURT: Never any response from you then that he was
14 out of state, in California, or anything.

15 Mr. Moultrie, can you tell me, stand back up please, sir.
16 Can you tell me when Mr. Axelrod -- when you retained Mr.
17 Axelrod, if you know?

18 MR. MOULTRIE: No, Your Honor, because he was ---

19 THE COURT: Well, let me ask this, hold on just a second.
20 Can the State tell me when you first received Rule 5 and Brady
21 from Mr. Axelrod?

22 MR. THOMAS: Yes, sir, Your Honor, it was October 14th of
23 2015.

24 THE COURT: Okay. Assuming, Mr. Moultrie, that Mr.
25 Axelrod was retained in October, you said October when?

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1 MR. THOMAS: 14th of 2015.

2 THE COURT: Okay. October 2015; how many times did you
3 meet with Mr. Axelrod?

4 MR. MOULTRIE: Just one time, Your Honor.

5 THE COURT: Okay. Mr. Lucas, you weren't able to get any
6 records from -- Mr. Moultrie, you can be seated again, sir.
7 Thank you.

8 You weren't able to get any other records or produce any
9 records or medical testimony here today concerning your
10 client's mental health and mental wellbeing? Did you request
11 any records from say -- and I don't know what they call it
12 here in Florence and surrounding, it's Pee Dee Mental Health
13 -- were you able to try or do any kind of further
14 investigation concerning possible mental health records from
15 other agencies within and around this area?

16 MR. LUCAS: I was not, Your Honor.

17 THE COURT: Mr. Moultrie, have you lived in -- you said
18 you went to school here and graduated from Georgetown High
19 School?

20 MR. MOULTRIE: Yes, Your Honor.

21 THE COURT: Other than being in the military, have you
22 lived anywhere else?

23 MR. MOULTRIE: No, Your Honor.

24 THE COURT: Okay. Did you request, Mr. Lucas, any kind
25 of medical records from the military?

1 MR. LUCAS: I did not, Your Honor. We made the general
2 request to SCDC for the medical records. This was -- the
3 purpose of the initial ---

4 THE COURT: You can be seated again, Mr. Moultrie. Thank
5 you.

6 MR. LUCAS: The purpose of the initial hearing was to get
7 -- to get him evaluated by people who are in a better position
8 to get these records. We made the general request for medical
9 records to see what they had.

10 THE COURT: Mr. Lucas, are you telling me that you could
11 not request those records or make an effort to request them?

12 MR. LUCAS: Not that we -- not that we couldn't request
13 them, Your Honor, but we felt that SCDC indicating to us that
14 he was treated elsewhere ---

15 THE COURT: Did those records not convey to you where he
16 was treated elsewhere?

17 MR. LUCAS: They did not, Your Honor. As you saw in the
18 record that I produced, they indicate merely that he was
19 treated outside of SCDC, nothing more than that.

20 THE COURT: I thought you told me that those doctors came
21 to SCDC and treated him?

22 MR. LUCAS: Well, they -- according to what Mr. Moultrie
23 has told me, he was treated by doctors that were not part of
24 SCDC. I'm not ---

25 THE COURT: Well, I understand that.

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1 MR. LUCAS: I do not know if they were from there or
2 somewhere else.

3 THE COURT: But you couldn't find out if any of the three
4 hundred pages of records that you had, there was no reference
5 to who those doctors were?

6 MR. LUCAS: There was not, Your Honor.

7 THE COURT: Okay.

8 MR. LUCAS: That's why I -- I dove into those records and
9 took every single record trying to find somewhere where we
10 could make that additional request, but we were unable to find
11 it and that, Your Honor, is what I believe an evaluation will
12 establish.

13 THE COURT: Let me ask this question of you, Mr. Lucas?

14 MR. LUCAS: What's that, Your Honor?

15 THE COURT: After I received your email along with your
16 motion last week and I told you that I was in a mandatory
17 judicial conference last week.

18 MR. LUCAS: Yes, sir.

19 THE COURT: And in my response to you, I indicated that
20 you -- it was something that needed to be taken up by the
21 Chief Administrative Judge ---

22 MR. LUCAS: Correct.

23 THE COURT: --- until I got here at least anyway. But I
24 had an opportunity to talk with Judge Hyman after I had gotten
25 your email because he was at the conference as well.

1 MR. LUCAS: Yes, sir.

2 THE COURT: Can you tell me why that the Judge -- Judge
3 Hyman, conveyed to me that you were in front of him the week
4 before at least several times, why this matter was never
5 brought up to him then?

6 MR. LUCAS: Your Honor, this, this matter, between from
7 May 25th when the -- Judge Culbertson allowed me the motion to
8 be withdrawn and we then began working to find records.
9 Between that time, this case only hit the trial roster roughly
10 two weeks ago.

11 THE COURT: Okay. That was during the period of time
12 that you were in front of Judge Hyman.

13 MR. LUCAS: Yes, Your Honor, I agree with -- I agree with
14 actually what you're saying, but at that time, we didn't have
15 the time nor essentially the assets to make that request at
16 that time. By the time we knew that we had to go to the Chief
17 Administrative Judge ---

18 THE COURT: Well, I understand that you've been with that
19 firm only for since January; is that correct?

20 MR. LUCAS: Yeah, eight months, Your Honor.

21 THE COURT: Okay. Anything else, Mr. Lucas?

22 MR. LUCAS: Just, Your Honor, I believe that the
23 Solicitor indicated that it wasn't an option for us to have
24 the feeling in the pit of our stomach, but, Your Honor, I
25 believe that it is. There are ---

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1 THE COURT: Do you have any case law indicating that?

2 MR. LUCAS: I do not, Your Honor.

3 THE COURT: Okay.

4 MR. LUCAS: I just know that my opinion of Stanley's
5 mental status, that directly impacts him, and I believe that
6 in order for the judicial system to operate properly and
7 follow his rights as the Defendant that he needs to be
8 evaluated. This is not made in an attempt to postpone trial.
9 If this case has to hit the next trial roster, so be it. We
10 will be prepared to do it. We'll be prepared on that day.
11 However, I cannot in good conscious ethically move forward
12 without having Mr. Moultrie evaluated. Thank you.

13 THE COURT: Mr. Moultrie, can you stand up please, sir,
14 let me just, I want to say a couple of things to you, okay?

15 MR. MOULTRIE: Yes, sir.

16 THE COURT: And I'm gonna step down. I want to read in
17 full the letters that you've indicated you wrote to the
18 Solicitor's office as well as a couple of cases that were
19 handed up here. By no stretch of the imagination, I want you
20 to understand this, okay, if what happened to you as stated in
21 these letters, in fact happened to you, that's awful. Okay.
22 That's all I can say. I'm gonna make these letters that you
23 wrote part of the record, okay?

24 MR. MOULTRIE: Yes, Your Honor.

25 THE COURT: And I don't want you to think for a minute

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1 that me in hearing this out, the questions that I've asked
2 here today, are in any way insensitive, so to speak, to your
3 plight if that in fact happened to you. I want you to
4 understand that. Okay?

5 MR. MOULTRIE: Yes, Your Honor.

6 THE COURT: But as a Judge, it's my job, based upon
7 what's presented to me and what the law says to make these
8 rulings. Okay?

9 MR. MOULTRIE: Yes, Your Honor.

10 THE COURT: So I want you to understand that. What I'm
11 gonna do -- anything further from the State at this time?

12 MR. THOMAS: No, sir.

13 BY THE COURT:

14 THE COURT: Let me ask you this, Mr. Lucas, when did Mr.
15 Axelrod leave, leave the State?

16 MR. LUCAS: Approximately, I don't know the exact date,
17 but three weeks ago. We were protected. Mr. Axelrod was
18 protected the first two weeks of August ---

19 THE COURT: Okay.

20 MR. LUCAS: --- for that purpose. However, you know, and
21 unfortunately he did not take into account that Georgetown
22 would also be called.

23 THE COURT: Is there any particular reason you didn't
24 respond to me when I told you to have him here this morning?

25 MR. LUCAS: No particular reason, Your Honor. I just saw

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BY THE COURT

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1 it and I knew that I would be able to explain to you today why
2 Mr. Axelrod ---

3 THE COURT: But you can't specifically answer questions
4 that I may have posed to him concerning this issue.

5 MR. LUCAS: I cannot, Your Honor.

6 THE COURT: Okay. All right. I'm gonna stand --
7 anything further from the State at this time, Mr. Moultrie you
8 can be seated, sir.

9 MR. THOMAS: No, sir, Your Honor.

10 THE COURT: All right. I'm gonna stand down for a few
11 minutes.

12 MR. LUCAS: Thank you, Your Honor.

13 **(RECESS - 10:36 A.M.)**

14 *******OFF THE RECORD*******

15 **(On the Record - 11:18 A.M.)**

16 COURT'S EXHIBIT NUMBER THREE

17 MARKED FOR IDENTIFICATION

18 THE COURT: Mr. Lucas, let me ask you a couple of
19 questions.

20 MR. LUCAS: Yes, Your Honor.

21 THE COURT: I don't think my Court Reporter got them
22 back. These letters you handed up that were written by your
23 client, in looking at these letters, it only appears that --
24 they appear to be the same letter except for the second letter
25 you handed me up, which was page four that you highlighted.

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BY THE COURT

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1 MR. LUCAS: Yes, sir.

2 THE COURT: Otherwise, the letters seem to be the same.
3 Is that correct or were the copies mixed up?

4 MR. LUCAS: No, that is correct, Your Honor. I believe
5 in the second letter, which was received in July of this year,
6 he added prior to this year and prior to being on the trial
7 roster, he added the actual name of the person who allegedly
8 committed the crimes against him.

9 THE COURT: Okay. All right. Mr. Moultrie, you
10 understand what charges you're facing here?

11 MR. MOULTRIE: Yes, Your Honor.

12 THE COURT: You understand that you're charged with an
13 armed robbery which carries ten to thirty years; you
14 understand that?

15 MR. MOULTRIE: Yes, Your Honor.

16 THE COURT: You understand that you've been charged with
17 kidnapping as well; you understand that?

18 MR. MOULTRIE: Yes, Your Honor.

19 THE COURT: And you understand that carries up to thirty
20 years?

21 MR. MOULTRIE: Yes, Your Honor.

22 THE COURT: And you've also been charged with possession
23 of a wepping, excuse me, weapon, during the commission of a
24 violent crime; do you understand that?

25 MR. MOULTRIE: Yes, Your Honor.

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BY THE COURT

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1 THE COURT: Which I believe carries up to five years; is
2 that right, Mr. Solicitor?

3 MR. THOMAS: Yes, sir, Your Honor.

4 THE COURT: And Mr. Lucas, you've discussed these charges
5 with your client?

6 MR. LUCAS: Yes, Your Honor.

7 THE COURT: The elements of those charges?

8 MR. LUCAS: I have; we have discussed that.

9 THE COURT: And in your opinion, does he understand that?

10 MR. LUCAS: He understands the elements of the charge,
11 Your Honor, but beyond that, as far as his mental state at the
12 time they were committed, we don't know. That's what we're
13 here for, Your Honor, to make that determination.

14 THE COURT: Let me ask you this, Mr. Lucas, based upon
15 what you just said here.

16 MR. LUCAS: Yes, sir.

17 THE COURT: Is there anyone -- well, strike that.

18 All right. Anything further from the State at this time?

19 MR. THOMAS: No, Your Honor. Well, just that the Defense
20 hasn't put forth any evidence here to deal with the competency
21 of McNaughton issues. I think the evidence that the State has
22 presented actually shows that he is competent and he does
23 understand, you know, right from wrong, both the statement,
24 the testimony from Lieutenant Clarey and also the letters that
25 Your Honor has.

1 RULING OF THE COURT:

2 THE COURT: All right. Based upon what I've heard here
3 today, I am going to respectfully deny Defense counsel's
4 motion for a mental evaluation. The Defendant bears the
5 burden of proving by a preponderance of the evidence that he
6 is entitled to such inquiry under *State v. Davis* as to whether
7 or not the Defendant understands the charges against him and
8 the possible penalties, if he were convicted, is able to
9 assist his counsel with his defense, understands the role of
10 the various courtroom officers and responds appropriately to
11 inquiries and to his counsel instructions. Counsel for
12 Defendant has presented no evidence, no evidence other than
13 this one-page document, which has been marked as Court's
14 Exhibit Number Two, that the Defendant had prior or referred
15 out-patient mental health. Counsel conveyed to the Court
16 after inquiry from the Court that he received approximately
17 three hundred pages of documents from the Department of
18 Corrections pursuant to his inquiry, none of which were
19 pertinent to the Defendant's mental health or his mental
20 wellbeing. Furthermore, during my colloquy of questioning of
21 the Defendant in this courtroom, the Defendant has responded
22 appropriately to any and every question that I have asked of
23 him. Furthermore, his demeanor within this courtroom has been
24 appropriate as required. Furthermore, there has been no
25 evidence that the Defendant has not been able to communicate

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RULING OF THE COURT

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1 with his counsel intelligently. Furthermore, the Court has
2 reviewed the two letters which have been marked as a Court's
3 Exhibit. I think both of them are marked as Court's Exhibit
4 Three, which reflect the Defendant's -- probably if not the
5 most legible letter I've seen from someone in jail, it ranks
6 at the top of letters that I've seen written by Defendants
7 from jail. Furthermore, within those letters, and Defendant
8 answered these questions, these questions of me anyway, was
9 the fact that he attended and completed high school even after
10 the alleged incident that he eludes to within these letters.
11 Furthermore, since being incarcerated, he conveyed to the
12 Solicitor that he has attended and completed some type of
13 recovery program or at least that's the way the Court read the
14 letters, which was a twelve-step program, while being
15 incarcerated at the local detention center. The Defendant
16 further understands and has conveyed to this Court his
17 understanding of the role of both the Prosecutor and the
18 Defense in this case. There has been no evidence in this
19 courtroom by virtue of the officer that testified here today
20 of any irrational behavior or demeanor by this Defendant. One
21 thing I, I did not ask Officer Clarey who testified nor was it
22 asked by either of the attorneys, it was specifically asked
23 concerning any mental health, but was not asked of her of any
24 disciplinary matters that may have -- the Defendant may have
25 faced while being incarcerated.

1 The Court reviewed the case of *State v. Burgess*, 356 S.C.
2 572, as well as *State v. Colden*, 372 S.C. 428. *State v.*
3 *Burgess* sets forth three elements of which the Court can view
4 in determining whether or not a Defendant would be entitled to
5 an evaluation. Those elements are irrational behavior, excuse
6 me, irrational behavior, demeanor and medical testimony. And
7 those cases go on to say, the presence of just one, the
8 presence of just one, may justify the Trial Court in ordering
9 an evaluation. Again, there's been no irrational behavior in
10 here, his demeanor has been appropriate throughout.
11 Furthermore, the Court viewed the statement, video statement
12 by the Defendant. Further viewing to determine whether or not
13 there was any irrational behavior and how his demeanor was
14 expressed during questioning by law enforcement. Further,
15 there's been no medical testimony concerning prior mental
16 health treatment. There has been no difficulty whatsoever
17 with the Court conversing with the Defendant and, again, he is
18 logically and intelligently not only when answering my
19 questions but he did so as well when answering questions of
20 law enforcement when he was being questioned.

21 Based upon what I have placed on the record, I do again
22 respectfully deny Defendant's motion for an evaluation at this
23 time. Let me add this as well. In this case of *State v.*
24 *Colden*, again, which is 372 S.C. 428, which was an opinion
25 written by Judge Anderson. In that particular case, the

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RULING OF THE COURT

1 attorney for the Defendant contended -- well, excuse me -- the
2 Defendant contended that because his attorneys opined their
3 conversations with him had been disjointed and confused, that
4 there had been difficulty communicating with him in that he
5 frequently gave nonresponsive answers and rambled on. The
6 Defendant asserted in that case that that alone, that that
7 alone should have entitled him to an evaluation. None of
8 that, none of that even exists in the case before the Court
9 here today. In fact, in that case, even though the lawyers
10 conveyed such to the Court at that time, the Court, the Trial
11 Court refused or denied counsel's motion for evaluation which
12 was affirmed by the Court of Appeals.

13 In the case before me, in considering whether or not to
14 order an evaluation, the only thing really that this Court has
15 to go upon is that one page from the Department of
16 Corrections, which all it has out -- highlighted is outpatient
17 mental health and a gut feeling as stated by Defense Counsel.
18 That alone, that alone is not sufficient under the law of this
19 Court to order an evaluation and that's my ruling but your
20 objection is so noted for the record.

21 MR. LUCAS: Yes, Your Honor, I would respectfully take
22 exception to the ruling.

23 THE COURT: And your objection is so noted for the
24 record.

25 MR. LUCAS: Thank you, Your Honor.

1 THE COURT: All right. What else do we have at this
2 time?

3 MR. THOMAS: Your Honor, I believe there are two
4 additional pending motions.

5 THE COURT: Hold on a minute, please, sir. Hold on a
6 minute.

7 MR. THOMAS: One being the Defense Motion to Suppress.

8 THE COURT: Well, let's do this. It's my understanding
9 that Judge Culbertson is waiting to finish qualifying the jury
10 on what we're doing up here because I assume that Defense
11 counsel wants to go down there for that portion of
12 qualification. We will stand down at this time for you all go
13 down for that qualification and, after that is done, we can
14 move forward with selecting a jury and not swearing them, but
15 selecting a jury, excusing them depending on what we have
16 pending for the balance of the day, if possible. It's my
17 understanding in looking at the trial list that there were
18 some pleas that maybe were gone take place this afternoon; is
19 that right?

20 MR. RICHARDSON: Your Honor, there I believe are gonna be
21 three pleas and then one additional motion.

22 THE COURT: Okay. Well, what we'll do is we'll,
23 depending on what time they finish qualifying that jury, we'll
24 move forward with selecting this jury and we can cut them
25 loose for the balance of the afternoon, finish any and all

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BY THE COURT

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1 pretrial motions this afternoon, start the trial of the case
2 in the morning and we'll handle whatever else matters you all
3 have whether they're guilty pleas or whatever. How about
4 that? Okay?

5 MR. RICHARDSON: Thank you, Your Honor.

6 THE COURT: We'll stand down. If you all will let me
7 know or somebody will let me know when the jury is finished
8 being qualified. Okay.

9 **(RECESS - 11:34 A.M.)**

10 *******OFF THE RECORD*******

11 **(On the Record - 12:41 P.M.)**

12 (REPORTER'S NOTE: Jury Venire enters courtroom. 12:41 P.M.)

13 BY THE COURT:

14 THE COURT: Thank you. Be seated please. Good
15 afternoon, ladies and gentlemen, my name is Craig Brown. I am
16 Circuit Judge. I am a Circuit Judge from the big town of
17 Florence, South Carolina. I had the opportunity to drive over
18 here this morning from Florence. What we're going to do here
19 this morning or this afternoon now before I give you all a
20 break for lunch is we're going to move forward with selecting
21 a jury here in just a few minutes.

22 At this time, I am going to recognize the State. Call
23 your case please, sir?

24 MR. THOMAS: This the State of South Carolina versus
25 Stanley Delanor Moultrie. This is indictment 2015-GS-22-483,

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BY THE COURT

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1 kidnapping; indictment 2015-GS-22-459, armed robbery. Your
2 Honor, the State is not going forward on possession of weapon
3 during commission of a violent crime.

4 THE COURT: Hand me the indictments, please.

5 Now, ladies and gentlemen, the State of South Carolina
6 has called the case of State versus Stanley Delanor Moultrie.
7 Mr. Moultrie is charged by indictment with the offense of
8 armed robbery as well as the offense of kidnapping.

9 Mr. Thomas, what did you say with regards to the other
10 indictment?

11 MR. THOMAS: Your Honor, the State will be nolle prosequing
12 possession of a weapon during a violent crime.

13 THE COURT: All right. Ladies and gentlemen, the
14 indictment for kidnapping reads as follows: That Stanley
15 Delanor Moultrie did in Georgetown County on or about January
16 20, 2015 unlawfully seize, confine inveigle, decoy, kidnap,
17 abduct or carry away one Joyce Messinger without authority of
18 law in violation of Section 16-3-910 of the South Carolina
19 Code of Laws.

20 The offense of armed robbery, the indictment reads as
21 follows: That Stanley Delanor Moultrie did in Georgetown
22 County on or about January 20, 2015, while armed with a deadly
23 weapon, to wit, a knife, take and carry away personal property
24 of Shoe Show from or in the immediate presence of Joyce
25 Messinger with intent to deprive Joyce Messinger of possession

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VOIR DIRE

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1 by use of force, threats or intimidation in violation of
2 Section 16-11-330(a) South Carolina Code of Laws.

3 Now, ladies and gentlemen, there are some questions that
4 I must ask of you to determine whether or not you're qualified
5 to serve on this jury, but before I ask those questions of
6 you, let me emphasize to you, ladies and gentlemen, the
7 indictments that I just read to you are simply the charging
8 documents by which this case is brought into this court. They
9 are in no sense evidence in this case at all. The Defendant,
10 ladies and gentlemen, has pled not guilty to each of these
11 charges. Therefore, the State of South Carolina bears the
12 burden of proving his guilt as to each of these charges beyond
13 a reasonable doubt.

14 VOIR DIRE:

15 Now, first question, ladies and gentlemen, is there any
16 member of the jury panel that has ever been related by blood,
17 connected by marriage, had a close personal, business or
18 social relationship with Mr. Stanley Delanor Moultrie, Ms.
19 Joyce Messinger? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: All right. Is there any member -- let me ask
22 this question. Is there any member of the jury panel that has
23 previously -- let me start over with that question. Is there
24 any member of the jury panel or your immediate family
25 currently or previously ever been employed at the Shoe Show

1 located here in Georgetown County? If so, please stand.

2 (REPORTER'S NOTE: No response.)

3 THE COURT: All right. The following, ladies and
4 gentlemen, is a list of potential witnesses in this case.
5 Please listen very carefully to this list. Joyce Messinger,
6 Keith Small, Jason Ward, Noel Smith, Caleb Sierra, Ronald
7 Walker, Amy Milligan, Kristin Foulkes, Jeremiah Beam, Steven
8 Clothier, Breana Woods, Daniel English, Matt Stanley. Is
9 there any member of the jury panel that's ever been related by
10 blood, connected by marriage, had a close personal, business
11 or social relationship with any of the potential witnesses in
12 this case? If so, please stand.

13 Yes, ma'am, your name and number. please?

14 JUROR 166: 166, Donna James.

15 THE COURT: Okay. Hold on just a minute. Whom off of
16 that list do you know, Ms. James?

17 JUROR 166: Jason Ward and Keith Small.

18 THE COURT: Jason Ward?

19 JUROR 166: Yes, sir.

20 THE COURT: And in what capacity do you know him?

21 JUROR 166: Well, he's kin to my husband, not no kin to
22 me, but he's kin to my husband.

23 THE COURT: So, you're related to him by marriage?

24 JUROR 166: By marriage.

25 THE COURT: How close of kin is he to your husband?

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VOIR DIRE

1 JUROR 166: Cousins, very close.

2 THE COURT: First cousin, second cousin?

3 JUROR 166: First cousins.

4 THE COURT: All right. I'm gonna set you aside for the
5 trial of this case. Any objection by the State?

6 MR. THOMAS: No, sir, Your Honor.

7 THE COURT: Defense Counsel?

8 MR. LUCAS: No objection.

9 THE COURT: Thank you for letting me know that, Ms.

10 James.

11 Yes, sir, your name and number, please? Now you need to
12 stay with me, Ms. James. That doesn't mean you get to go yet.

13 JUROR 166: I'll just go over there.

14 THE COURT: Oh okay.

15 JUROR 166: I wasn't leaving.

16 THE COURT: Just stay right there with me, okay?

17 JUROR 166: I'm good.

18 JUROR 124: Juror 124, Derrick Grant. Judge, I have a
19 close personal relationship with Jason Ward.

20 THE COURT: Hold on a minute. Say that again.

21 JUROR 124: Real personal relationship me and Jason Ward.

22 THE COURT: You know Jason Ward?

23 JUROR 124: Yes, sir.

24 THE COURT: In what capacity?

25 JUROR 124: We high school teammates.

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VOIR DIRE

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1 THE COURT: Well, I usually don't ask this question, but
2 how long you been out of high school?

3 JUROR 124: Judge, about twenty years.

4 THE COURT: Over the last twenty years, have you had any
5 contact with him?

6 JUROR 124: Yes, we both ---

7 THE COURT: You engaged -- I'm sorry. Go ahead.

8 JUROR 124: We both work for the City of Georgetown.

9 THE COURT: You both still do?

10 JUROR 124: Yes, sir.

11 THE COURT: Do you engage in social activities together?

12 JUROR 124: No, sir.

13 THE COURT: Can you approach a minute, please, sir, with
14 the lawyers as well?

15 (REPORTER'S NOTE: A sidebar conference was held on the record
16 in the presence of but out of hearing of the Jury.)

17 THE COURT: What do you do for the City of Georgetown?

18 JUROR 124: I'm a water, utilities mechanic.

19 THE COURT: Okay. Other than when you went to school
20 twenty years ago, how often do you see him in your work
21 capacity?

22 JUROR 124: Well, I see him often. I mean ---

23 THE COURT: Do you know any ---

24 JUROR 124: visual.

25 THE COURT: Okay. Anything other than what I've said

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VOIR DIRE

1 about this case, do you have knowledge about it whatsoever?

2 JUROR 124: No, sir.

3 THE COURT: The fact that you know him and if you were
4 selected as a juror in this case, do you believe you could be
5 fair and impartial to both the State and the Defense?

6 JUROR 124: Yes, sir.

7 THE COURT: All right. I'm gonna let you stay with us.

8 JUROR 124: All right.

9 MR. LUCAS: What was his name again?

10 THE COURT: 124, Mr. Derrick Grant.

11 MR. LUCAS: Thank you.

12 (REPORTER'S NOTE: End of sidebar.)

13 THE COURT: All right. If at this time, if the attorneys
14 will introduce themselves those by the State and then followed
15 by Defense Counsel.

16 MR. THOMAS: My name is Austin Thomas. I'm an Assistant
17 Solicitor in the Fifteenth Judicial Circuit. I worked for a
18 couple of years in Horry County and now I work here in
19 Georgetown County.

20 THE COURT: Hold on. Hold on a minute, Mr. Lucas.

21 MR. RICHARDSON: I'm a Alicia Richardson, Deputy
22 Solicitor here in Georgetown County.

23 THE COURT: Go ahead, sir.

24 MR. LUCAS: My name is Jeffrey Lucas. I'm an attorney
25 out of Myrtle Beach. I have worked for Stewart Axelrod and

VOIR DIRE

1 Axelrod and Associates.

2 MR. MOULTRIE: Stanley Moultrie.

3 MS. TYLER: My name is Tarah Tyler and I'm a legal
4 assistant for Axelrod & Associates.

5 THE COURT: All right. Thank you all.

6 All right. Has any member of the jury panel ever had a
7 close personal, business, social relationship with any of the
8 attorneys involved in this case or previously been represented
9 by any of the attorneys involved in this case? If so, please
10 stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: All right. Has any member of the jury panel
13 or their immediate family ever been the victim of a violent
14 crime? If so, please stand.

15 Hold on, you in the back, sir, please stand as well.

16 Hold on a second. Hold on a second.

17 Yes, sir, your name and number first in front, please?

18 JUROR 42: Your Honor, Richard Butts, Juror 42.

19 THE COURT: Okay. Just tell me -- was it you or someone
20 in your family?

21 JUROR 42: My daughter.

22 THE COURT: All right. The fact that you stood in
23 response to that question, if you were selected as a juror in
24 this case, do you believe you could be fair and impartial to
25 both the State and the Defense?

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1 JUROR 42: Yes, sir, Your Honor.

2 THE COURT: Thank you. You may be seated. In the far
3 back, yes, sir, your name and number?

4 JUROR 178: My names is James Kelly, Juror Number 178.

5 THE COURT: All right. Was it you or an immediate family
6 member?

7 JUROR 178: It was my daughter.

8 THE COURT: All right.

9 JUROR 178: She was assaulted ---

10 THE COURT: Hold on a minute. Hold on a minute. The
11 fact that you stood in response to that question, if you were
12 selected as a juror in this case, do you believe you could be
13 fair and impartial to both the State and the Defense?

14 JUROR 178: No.

15 THE COURT: All right. I'm gonna set you aside for the
16 trial of this case. Tell me your number again.

17 JUROR 178: 178.

18 THE COURT: All right. Thank you, sir. Yes, ma'am, your
19 name and number in the back; please stand down -- can you
20 stand down for just a second please, ma'am. Your name in the
21 back, please.

22 JUROR 28: Latoya Branch, Juror 28.

23 THE COURT: All right. Was it you or an immediate family
24 member?

25 JUROR 28: Myself.

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VOIR DIRE

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1 THE COURT: The fact that you stood indicating it was you
2 that had been the victim of a violent crime, if you were
3 selected as a juror in this case, could you be fair and
4 impartial to both the State and the Defense?

5 JUROR 28: Yes.

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

7 All right. Ma'am, you in front in the red, name and
8 number.

9 JUROR 117: Melinda Geathers, 117.

10 THE COURT: Was it you or an immediate family member?

11 JUROR 117: Myself.

12 THE COURT: All right. The fact that you stood in
13 response to that question, if you were selected as a juror in
14 this case, could you be fair and impartial to both the State
15 and the Defense?

16 JUROR 117: Yes, sir.

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

18 All right. Has any member of the jury panel formed or
19 expressed an opinion about any issue or matter involved in
20 this case? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: All right. Is any member of the jury panel
23 aware of any bias or prejudice toward either the State or the
24 Defendant in this case? If so, please stand.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

1 THE COURT: All right. Is there any member of the jury
2 panel who has -- who is a member of or contributor to any
3 group which has as its primary concern the promotion of law
4 enforcement, they might include MADD, SADD or CAVE, Citizens
5 Against Violent Crime? If so, please stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: All right. Does any member of the jury panel
8 know of any reason, any reason whatsoever, why he or she
9 should not serve as a juror in this case with particular
10 emphasis being placed upon your ability to be fair and
11 impartial to both the State and the Defense? If so, please
12 stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: All right. Does the State have any
15 additional voir dire?

16 MR. THOMAS: No, sir, Your Honor.

17 THE COURT: Defense Counsel?

18 MR. LUCAS: No, sir, Your Honor.

19 THE COURT: Was there someone in the back raising their
20 hand a minute ago? Hold on a minute. Stand up and tell me
21 your name and number first. Don't just blurt out something.

22 JUROR 8: Ta'jha Anderson, Juror Number 8. I was asking
23 you to repeat the last question you just said.

24 THE COURT: Absolutely, yes, sir.

25 Is there any member of the jury panel that knows of any

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JURY SELECTION

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1 reason, any reason whatsoever why he or she should not serve
2 as a juror in this case with particular emphasis being placed
3 upon your ability to be fair and impartial to both the State
4 and the Defense? If so, please stand. That was my question,
5 sir.

6 All right. Anybody respond to that question?

7 (REPORTER'S NOTE: No response.)

8 THE COURT: All right. At this time, anything further
9 from the State?

10 MR. THOMAS: No, sir, Your Honor.

11 THE COURT: Defense Counsel?

12 MR. LUCAS: Nothing further, Your Honor.

13 JURY SELECTION:

14 THE COURT: All right. Madam Clerk, if you would
15 generate a list for me please. Five and ten on the strikes.

16 THE COURT: One or two alternates sufficient for the
17 State?

18 MR. THOMAS: Your Honor, we probably need two.

19 THE COURT: All right. Is that sufficient, Mr. Lucas,
20 for you?

21 MR. LUCAS: It is sufficient. No objection to that, Your
22 Honor.

23 THE COURT: Okay. Just strike through those on your
24 regular list and as you go down that list, skip over them
25 please, ma'am.

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JURY SELECTION

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1 CLERK: Okay, ladies and gentlemen, I'm getting ready to
2 call your juror number and your name, if you can bring your
3 belongings when you come and when I call your name, please
4 come to the middle of the floor and please face Defense and
5 Plaintiff table and they will decide whether you go into the
6 jury box or you'll return to your seat. Okay? But please
7 bring all of your belongings when you come.

8 Juror Number 337, Diedrich Waterman.

9 What says from the State?

10 MR. THOMAS: Please present the juror.

11 CLERK: What says the Defense?

12 MR. LUCAS: Please strike the juror from the trial of
13 this case.

14 CLERK: Please return to your seat.

15 Juror Number 328, Chelice Vereen.

16 What says the State?

17 MR. THOMAS: Please present the juror.

18 CLERK: What says the Defense?

19 MR. LUCAS: What was the number again?

20 CLERK: 328.

21 MR. LUCAS: Please swear the juror in the trial of this
22 case.

23 CLERK: Please carry your belongings to the jury box.

24 Thank you.

25 Juror Number 190, Debra Lentz.

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JURY SELECTION

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1 THE COURT: Juror 190, Debra Lentz.

2 CLERK: What says the State?

3 MR. THOMAS: Please present the juror.

4 CLERK: What says the Defense?

5 MR. LUCAS: Please strike the juror from the trial of
6 this case.

7 CLERK: Please return to your seat.

8 Juror Number 117, Melinda Geathers.

9 What says the State?

10 MR. THOMAS: Please present the juror.

11 CLERK: What says the Defense?

12 MR. LUCAS: Please strike the juror.

13 CLERK: Please return to your seat.

14 Juror Number 118, Tommy Gibson.

15 What says the State?

16 MR. THOMAS: Please present the juror.

17 CLERK: What says the Defense?

18 MR. LUCAS: Please swear the juror for the trial of this
19 case.

20 CLERK: Please go to the jury box. Thank you.

21 Juror Number 98, Kiontae Etchison.

22 What says the State?

23 MR. THOMAS: Please present the juror.

24 CLERK: What says the Defense?

25 MR. LUCAS: Please swear the juror for the trial of this

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1 case.

2 CLERK: Please enter the jury box.

3 Juror Number 174, Jamie Kabanuk.

4 What says the State?

5 MR. THOMAS: Please present the juror.

6 CLERK: What says the Defense?

7 MR. LUCAS: Please swear the juror, Your Honor.

8 CLERK: Please enter the jury box.

9 Juror Number 46, Danny Carlson.

10 What says the State?

11 MR. THOMAS: Please present the juror.

12 CLERK: What says the Defense?

13 MR. LUCAS: 46?

14 CLERK: Yes.

15 MR. LUCAS: Please strike the juror from the trial of
16 this case.

17 CLERK: Please return to your seat.

18 Juror Number 216, Alice Memahon.

19 What says the State?

20 MR. THOMAS: Please present the juror.

21 CLERK: What says the Defense?

22 MR. LUCAS: Please strike the jury.

23 CLERK: Please return to your seat.

24 Juror Number 161, Jena Hughes.

25 What says the State?

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JURY SELECTION

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1 MR. THOMAS: Please present the juror.

2 CLERK: What says the Defense?

3 MR. LUCAS: Please swear the juror for the trial of this
4 case.

5 CLERK: Please enter the juror box.

6 Juror 184, Wilbur Lang.

7 What says the State?

8 MR. THOMAS: Please excuse the juror.

9 CLERK: Please return to your seat.

10 Juror Number 260, Berneda Ravenell.

11 What says the State?

12 MR. THOMAS: Please present the juror.

13 CLERK: What says the Defense?

14 MR. LUCAS: Please swear the juror for the trial of this
15 case.

16 CLERK: Please enter the juror box.

17 Juror Number 124, Derrick Grant.

18 What says the State?

19 MR. THOMAS: Please present the juror.

20 CLERK: What says the Defense?

21 MR. LUCAS: Please strike the juror from the trial of
22 this case.

23 CLERK: Please return to your seat.

24 Juror Number 96, Marthena Elder.

25 What says the State?

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JURY SELECTION

1 MR. THOMAS: Please present the juror.

2 CLERK: What says the Defense?

3 MR. LUCAS: What's the number, Clerk?

4 CLERK: .96.

5 MR. LUCAS: Please swear the juror for the trial of this
6 case.

7 CLERK: Please enter the juror box.

8 Juror Number 315, Brandon Thompson.

9 What says the State?

10 MR. THOMAS: Please present the juror.

11 CLERK: What says the Defense?

12 MR. LUCAS: Please swear the juror for the trial of this
13 case.

14 CLERK: Please enter the juror box.

15 Juror Number 253, Dewey Powell.

16 What says the State?

17 MR. THOMAS: Please present the juror.

18 CLERK: What says the Defense?

19 MR. LUCAS: Please strike the juror from the trial of
20 this case.

21 CLERK: Please return to your seat.

22 Juror Number 92, James Durst.

23 What says the State?

24 MR. THOMAS: Please present the juror.

25 CLERK: What says the Defense?

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JURY SELECTION

1 MR. LUCAS: Please strike the juror from the trial of
2 this case.

3 CLERK: Please return to your seat.

4 Juror Number 130, Shetika Greene.

5 What says the State?

6 MR. THOMAS: Please present the juror.

7 CLERK: What says the Defense?

8 MR. LUCAS: Madam Clerk, what's the number on her?

9 CLERK: 130.

10 MR. LUCAS: Please swear the juror for the trial in this
11 case.

12 CLERK: Please enter the juror box.

13 Juror Number 279, Alexander Schmalz.

14 What says the State?

15 MR. THOMAS: What was that juror number?

16 CLERK: 279.

17 MR. THOMAS: Please present the juror.

18 CLERK: What says the Defense?

19 MR. LUCAS: Please swear the juror for the trial of this
20 case.

21 CLERK: Please enter the juror box.

22 Juror Number 101, Naimdominic Evans.

23 What says the State?

24 MR. THOMAS: I'm sorry, what was that number?

25 CLERK: 101.

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JURY SELECTION

1 MR. THOMAS: Please excuse this juror.

2 CLERK: Please return to your seat.

3 Juror Number 18, Kay Beck.

4 What says the State?

5 MR. THOMAS: Please present the juror.

6 CLERK: What says the Defense?

7 MR. LUCAS: Please strike the juror from the trial of

8 this case.

9 CLERK: Please return to your seat.

10 Juror Number 53, Anthony Cokley.

11 What says the State?

12 MR. THOMAS: Please excuse the juror.

13 CLERK: Please return to your seat.

14 Juror Number 19, Ida Belin.

15 What says the State?

16 MR. THOMAS: Please present the juror.

17 CLERK: What says the Defense?

18 MR. LUCAS: Please swear the jury for the trial of this

19 case.

20 CLERK: Please enter the juror box.

21 Juror Number 212, Anissa McFadden.

22 What says the State?

23 MR. THOMAS: Please excuse this juror.

24 CLERK: Please return to your seat.

25 Juror Number 45, Gina Capps.

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JURY SELECTION

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1 What says the State?

2 MR. THOMAS: Please present the juror.

3 CLERK: What says the Defense?

4 MR. LUCAS: Please strike the juror from the trial of
5 this case.

6 CLERK: Please return to your seat.

7 Juror Number 138, Thomas Hanna.

8 What says the State?

9 MR. THOMAS: Please present the juror.

10 CLERK: Any challenges by the Defense?

11 MR. LUCAS: Please swear the juror for the trial of this
12 case.

13 CLERK: Please enter the juror box.

14 Okay. And Alternates. For our first alternate, Juror
15 Number 113, Erik Galicia.

16 What says the State?

17 MR. THOMAS: Please present the juror.

18 CLERK: What says the Defense?

19 MR. LUCAS: Please swear the juror for the trial of this
20 case.

21 CLERK: Please enter the juror box.

22 Juror Number 199, Krystal Lyles.

23 What says the State?

24 MR. THOMAS: Please present the juror.

25 CLERK: What says the Defense?

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BY THE COURT

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1 MR. LUCAS: Please strike the juror from the trial of
2 this case.

3 CLERK: Please return to your seat.

4 Juror Number 135, Taylor Guthrie.

5 THE COURT: Hold on a minute, Madam Clerk. Can you come
6 around here. I'm sorry, you're correct. Thank you. I'm
7 sorry.

8 CLERK: What says the State?

9 MR. THOMAS: Please present the juror.

10 CLERK: What says the Defense?

11 MR. LUCAS: Madam Clerk, what was her number again?

12 CLERK: 135.

13 MR. LUCAS: Please swear the juror for the trial of this
14 case.

15 CLERK: Please enter the juror box.

16 THE COURT: All right. Are there any matters of law that
17 we need to take up with regards to jury selection from the
18 State?

19 MR. THOMAS: No, sir, Your Honor.

20 THE COURT: Defense Counsel?

21 MR. LUCAS: None, Your Honor.

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, what I am
24 going to do at this time is I am going to excuse you all for
25 the balance of the day. There is some matters that we need to

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BY THE COURT

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1 take up with regards -- that I don't need you for, in essence.
2 So, rather than have you sit back there and wait while we take
3 up these matters, I'm gonna excuse you for the balance of the
4 day. I'm gonna have you -- ask that you be back here tomorrow
5 morning at 10 o'clock, at 10 o'clock. This young man in the
6 burgundy coat over here, he'll show you where you need to
7 report back to.

8 During your overnight, do not -- you know very little
9 about this case other than what I've told you, okay? Do not
10 discuss this case with anyone, anyone. Do not do any
11 independent investigation on this case. You are to decide
12 this case based solely upon the evidence and testimony that's
13 presented in this courtroom and nowhere else. Furthermore, no
14 one is supposed to talk to you about this case or try to talk
15 with you about this case. If anyone tries or attempts in any
16 way to discuss this case with you, you let the Court know
17 immediately, immediately.

18 Is there anything from the State before I release this
19 jury panel for the balance of the day?

20 MR. THOMAS: No, sir.

21 THE COURT: Defense Counsel?

22 MR. LUCAS: No, Your Honor.

23 THE COURT: This young man is gonna show you where you
24 need to report back in the morning. You all have a great rest
25 of the day and I'll see you at 10 o'clock in the morning.

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BY THE COURT

1 Okay? Those of you -- let me say this to before -- before I
2 let everyone go. A couple of you came up here with shorts on.
3 Different -- and just let me say this, shorts is not proper
4 attire in the courtroom. Okay. So, please do not wear shorts
5 when you come back up here. If you've never been up here
6 before, certainly understandable that you didn't know that
7 beforehand, but shorts is not appropriate attire in the
8 courtroom and do not, please do not wear shorts back up here.
9 You will not be allowed to come back in the courtroom. Okay?

10 Thank you all. You all have a great rest of the day and
11 I will see you -- they going this way or that way?

12 All right. Follow this gentleman here and he'll show you
13 where you're supposed to report back to in the morning.

14 (REPORTER'S NOTE: Jury exits courtroom. 1:18 P.M. The
15 following takes place outside the presence of the Jury.)

16 THE COURT: All right. Ladies and gentlemen, ladies and
17 gentlemen, those of you who are seated out in the audience,
18 while you were not selected as a juror in this particular
19 case, that does not mean you're not gonna get picked this
20 week, all right? Now, what I'm gone do is I'm gone excuse you
21 all for the balance of the day as well. Okay. What you need
22 to do is there's a telephone number -- is it on their juror
23 summons?

24 CLERK: On their card.

25 THE COURT: Okay. On the card that you had, I guess

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BY THE COURT

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1 summoning you to be here today, there should be a telephone
2 number on there. You need to call that number tonight after 6
3 o'clock and it will give you instructions as to what you are
4 to do with regards to tomorrow. Now, that will be a
5 recording. So, if you don't get around to calling that number
6 before midnight, call it. Make sure that you certainly call
7 it before 9 o'clock in the morning because it may be a message
8 on there telling you to return here at 9:30 in the morning.
9 Okay? If you don't call it and you were instructed to be here
10 and you don't return, me or whatever other judge may be up
11 here this week, Judge Culbertson, may send one of these
12 trusted deputies over here looking for you. Okay? So make
13 sure you call that number back.

14 Having said that, if something comes up, if there's an
15 emergency, you need to contact someone here in the Clerk's
16 Office. Otherwise, if you're instructed to be here and you
17 are not, we're gonna send somebody looking for you. Okay?

18 Anything from the State before I release the balance of
19 this panel?

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

21 THE COURT: All right. Thank you all. You all have a
22 great rest of the day.

23 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom.
24 1:20 P.M.)

25 THE COURT: All right. Anything further from the State

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1 before we break for lunch?

2 MR. THOMAS: No, sir, Your Honor.

3 THE COURT: Defense Counsel?

4 MR. LUCAS: Nothing further, Your Honor.

5 THE COURT: What I would -- Ms. -- bear with me just a
6 second here. It's my understanding we have a couple of pleas
7 this afternoon at least, is that right, Ms. Richardson?

8 MS. RICHARDSON: Yes, Your Honor, three pleas.

9 THE COURT: What time were they gone be back here?

10 MS. RICHARDSON: They will probably be here around 1:30.

11 We usually have them come early so they can sign ---

12 THE COURT: Okay. We'll resume at 2:30 and handle
13 whatever matters we need to handle at that time with regards
14 to this case as well as any pleas. Okay?

15 MR. THOMAS: Thank you, Judge.

16 THE COURT: Thank you.

17 **(RECESS - 1:23 P.M.)**

18 *******OFF THE RECORD*******

19 **(On the Record - 3:44 P.M.)**

20 MOTIONS:

21 THE COURT: The State ready to proceed?

22 MR. THOMAS: I think so, Your Honor.

23 THE COURT: All right. It's my understanding the State
24 has a motion concerning admissibility of certain evidence
25 during the course of this trial.

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1 MR. THOMAS: That is correct, Your Honor.

2 THE COURT: Happy to hear from you.

3 MR. THOMAS: Your Honor, I don't know if you have a copy
4 of the State's Motion in Limine?

5 THE COURT: I'm looking at it right in front of me.

6 MR. THOMAS: Your Honor, basically, factually in the
7 case that's before the Court, the State's gonna present
8 evidence that Defendant entered into the parking lot
9 containing the Shoe Show, there's another store that is next
10 to a Cato, and Walmart.

11 THE COURT: Right.

12 MR. THOMAS: He drove around that parking lot and sort of
13 cases out the Shoe Show. He then later parks his vehicle by
14 the Shoe Show, walks past the Cato into the Shoe Show where he
15 speaks with our victim in this case, Ms. Messinger, who is the
16 clerk there, the sole clerk at that Shoe Show.

17 THE COURT: Right.

18 MR. THOMAS: They speak, he walks around the store, and
19 sees a shoe that he likes and asked the clerk to go retrieve a
20 size 13 in that particular shoe for him. As soon as the clerk
21 turns around, he grabs her by the neck, the back of the neck,
22 puts a knife to her side and takes her up to -- forces her to
23 the front where the cash registers are, makes her empty the
24 cash registers, takes her to the back, makes her sit on a
25 bench and not look as he exits the store, and he exits the

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1 store.

2 There's two other very similar cases that took place; one
3 four days later in Myrtle Beach, one ten days later in
4 Charleston. The one in Myrtle Beach took place at the mall
5 there in Myrtle Beach at a Hot Topics store, which is
6 essentially a clothing store. The Defendant got there
7 somewhere early that day as the store opened. I think that
8 store opened at 10:00, the Shoe Show opened at 9:30. Both
9 stores he gets there relative or soon after opening time. In
10 this particular case, he walks in but there's another customer
11 in the store. So, he does have a conversation with the clerk
12 who's again a female working at that store by herself. After
13 that conversation, he leaves and comes back sometime later,
14 thirty minutes later, when she's there alone. And he goes up
15 to her from her side from behind, from her side sort of -- she
16 was back behind the register at this point and placed a knife
17 on her, makes her unload those registers, both cases, give him
18 -- hand him cash, he doesn't want coins, and makes the actual
19 clerk hand him the cash. Of course, he's hurrying the clerk
20 saying, don't look at my face. In both cases, he's already
21 had conversations with them. So, they do have an opportunity
22 to observe his face. But then again, after he gets the money,
23 he takes that clerk at knifepoint to the back of the store,
24 tells her, don't look at me. Also, during the course of that
25 armed robbery and the Shoe Show armed robbery, he told the

1 clerk that he used to work at that particular store location.
2 He told the Shoe Show clerk that he used to work here and told
3 the clerk over at the store in the mall there that he used to
4 work there as well. Both, both cases, he's described the same
5 way, a physical description given about six foot, same
6 description of the knife was given, the same general
7 description of so polite and then all of a sudden, bam, pulls
8 a knife and this occurs.

9 The Charleston armed robbery occurred on the 30th is the
10 most similar to the armed robbery that happened in Georgetown
11 County. It was ten days after the armed robbery here. It
12 occurred at a shoe store in Charleston, Journey's shoe store.
13 Very much like the armed robbery here, he enters into the
14 store, has a conversation with the clerk, there again a female
15 clerk working by herself, nobody else in the location. Again,
16 he walks around the store and this time selects a certain
17 shoe, a Sperry boat shoe that he asked to see in a size 13.
18 The clerk goes to check on that and again she's attacked from
19 behind by the Defendant. He puts a knife to her side, forces
20 her back to the front of the store to unload the cash out of
21 the cash register, again hurrying her the entire time saying
22 not to look at his face. Takes her to the back of the store
23 after he gets the cash and tells her to look down as he exits
24 the store out of the front of the store. Same description
25 given in that case. She's a little more accurate in the

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1 description because she said 6'3", which I believe at least
2 according to DMV that's his actual height.

3 Each case there's one sort of unique item of clothing
4 that the witness gives later. At the Shoe Show it was a blue
5 jump suit, and the Myrtle Beach armed robbery it was a, oh
6 gosh ---

7 THE COURT: Black beanie.

8 MR. THOMAS: Beanie monkey.

9 THE COURT: The black beanie with a monkey or something
10 on it.

11 MR. THOMAS: Gas monkey -- gas monkey beanie.

12 THE COURT: All right.

13 MR. THOMAS: And then in Charleston, it was a shoe. In
14 Charleston, he took the shoe that he asked to get that
15 particular size, the size 13.

16 THE COURT: Right.

17 MR. THOMAS: All those items were later found at his
18 house during execution of the search warrant. Each of these
19 investigations relied on the other. They were sharing
20 information all ways. He became the suspect in the Georgetown
21 County armed robbery after Charleston County called one of our
22 deputies here in Georgetown and asked if they had any armed
23 robberies at Shoe Shows or any shoe stores. He said yes and
24 provided him with the still shot of surveillance video outside
25 of Shoe Show which was shot of a black sedan, also a still

1 shot of the Defendant walking by Cato. He provided that
2 information, the Charleston Deputy you know looked to see what
3 time the armed robbery was, about noon there. He looked on a
4 license plate reader that was about .4 miles away from the
5 store that he robbed and they found a car that matched that
6 description. They were able to read the license plate number,
7 pulled a DMV photograph, and that's when this Defendant became
8 suspect here in Georgetown County.

9 Around the same time, he was identified, subsequent to
10 that, he was identified in Horry County by that victim there
11 and that was on the 30th late, about 11:00 P.M. on the 30th.
12 They did a search warrant that next morning on the 31st and
13 that's part of the probable cause, the identification in Horry
14 County, the fact that these three cases were so very similar
15 in nature, and then also the license plate information that we
16 got from Charleston County. That formed the basis for the
17 probable cause for the search warrant, where of course they
18 went to find items involved in all three armed robberies, Your
19 Honor.

20 According to the case law, evidence of prior bad acts may
21 be used to identify Defendant as the perpetrator, also to
22 establish a common scheme or plan. Your Honor, where there's
23 a close degree of similarity between the crime charged and a
24 prior bad act, there are plenty of cases in both the Supreme
25 Court and Court of Appeals of our state have held that those

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1 acts are admissible to demonstrate a common scheme or plan.
2 The test seems to be whether the similarities outweigh the
3 dissimilarities and that is *State v. Wallace*, Your Honor.

4 My argument in this case is simply that the similarities
5 outweigh the dissimilarities in this case. The probative
6 value outweighs any prejudice to the Defendant. This is an
7 identification case here in Georgetown County. We've got
8 identification in Charleston County, as well as, you know,
9 Horry County, Myrtle Beach armed robbery. Each of these armed
10 robberies took place in essentially the exact same fashion and
11 I would argue unique, at least in my experience unique, the
12 way the knife was used, things that were said, that asking for
13 a size 13 shoe, the manner in which he attacks each of these
14 victims in this case, brought them to the front register, and
15 then brought them back of the store, made them stay there and
16 not look at his exits out of the front of the store. My
17 argument is that they were all so similar in nature. And
18 furthermore than that, Your Honor, these investigations are so
19 interrelated that it becomes difficult and it almost would
20 look as if the State was hiding something from the jury to
21 say, well, he became a suspect in this case on such-and-such a
22 day because there was -- they got a license plate number and
23 I'll be able to explain at least how we got that -- that
24 information and the same thing with the Horry County case.

25 So, I would ask that some evidence of these other crimes

1 either and/or both, one or the other, be admissible for that
2 purpose, a common plan or scheme or identity. If not, I also
3 would like to ask the Court to please instruct what -- how far
4 the State can go as far as just explaining the investigation
5 of this case and what would be permissible to come from that
6 stand and what would not. So we don't have -- I'm gonna have
7 officers up there, I mean, walking a tight rope and I would
8 just like some clear instruction as far as where we can go and
9 where we can't go, Your Honor.

10 THE COURT: Okay. Mr. Lucas, anything in response?

11 MR. LUCAS: Yes, thank you, Your Honor. Your Honor, I'm
12 obviously of the position that any mention at all of these not
13 prior crimes, but subsequent crimes does nothing but prejudice
14 the Defendant, Mr. Moultrie. What we're doing is -- when all
15 is said and done, if this information is allowed, we will be
16 asking the jury to look at essentially three armed robberies
17 and then we're gonna ask them to, to figure out whether or not
18 he's guilty of the Georgetown robbery. The mere indication
19 that he's charged in another jurisdiction with another robbery
20 that is similar is the exact thing that Rule 403 seeks to
21 prevent.

22 And, Your Honor, the case law that I will provide to you,
23 the first, Your Honor, is the -- it's a New York case, *People*
24 *v. Mauldin*, I believe we provided this to your Law Clerk just
25 a little bit earlier. I'm not sure if you have that.

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1 THE COURT: Hold on a minute. I have it.

2 MR. LUCAS: You got it?

3 THE COURT: Yes, sir.

4 MR. LUCAS: Your Honor, that -- it's a 1901 case from New
5 York. It essentially establishes those exceptions to the
6 character evidence rule in criminal proceedings. It
7 establishes those, those exceptions. The exceptions being
8 motive, intent, absence of the mistake, identity, and common
9 scheme or plan. It lays those out. Your Honor, and those
10 exceptions were -- this case was adopted in South Carolina by
11 *State v. Lyle* which is why in South Carolina, this is known as
12 *Lyle Evidence*. I don't know, Your Honor, if the Solicitor's
13 memorandum, if *Lyle* is ever mentioned. But it's very
14 important because it establishes what is needed to prove
15 identity under the 404(b) exceptions and what does not count
16 as an exception. Specifically, Your Honor, on page 10 of the
17 *Lyle* decision, with regards to identity, close to the bottom,
18 about three-fourths of the way down, it says -- it's
19 highlighted, the mere fact that the Georgia crimes was for
20 forged checks in *Lyle* were similar in nature and parallel to
21 the methods and technique employed in their execution does not
22 serve to identify the Defendant. Mere similarity in crime is
23 not enough.

24 Your Honor, to take it a step further, I would draw your
25 attention to *State v. Stokes*, which I believe was also

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1 provided Law Clerk earlier. *State v. Stokes* explains the
2 common scheme exception that is outlined in *Lyle*, which
3 they've adopted from *Mauldin*. Now on the bottom of page 2,
4 there is highlighted, the common scheme or plan exceptions
5 requires more than mere commission of two similar crimes by
6 the same person. There must be some connection between the
7 crimes. If there is any doubt as to the connection between
8 crimes, the evidence cannot be admitted.

9 Your Honor, I would submit to you that there is no
10 connection between these charges. They are merely three
11 separate armed robberies. I'm not even sure that they're
12 similar. He's charged with a robbery, that he entered the
13 store with a knife, he told the person to look away and then
14 he left. That's not similar. That's -- what that's similar
15 to is every single robbery in the State of South Carolina.

16 Your Honor, I would submit to you that this evidence
17 cannot be used to identify Mr. Moultrie as doing anything, and
18 not only that, but a common scheme or plan doesn't exist.
19 There is no connection between -- we've got three crimes we're
20 talking about and there's no connection between the three
21 crimes. They're just three separate armed robberies. Nothing
22 ties them together. There's no common motive, intent to those
23 crimes.

24 And then, Your Honor, having said that, the 403 analysis
25 is, I mean, it cannot be stated strongly enough. 403's sole

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1 purpose is to prevent the jury from being misled from seeing
2 needless evidence, confusion of the issues. If we allow them
3 to look at three robberies, confusion of the issues is from
4 the very beginning. Now, they're looking at this, they go
5 back into their deliberation room and which robbery are they
6 supposed to focus on? That, Your Honor, is what I believe
7 Rule 403 in South Carolina Rules of Evidence adopted in the
8 federal evidence, that's what I believe 403 was put into place
9 to prevent. For those reasons, Your Honor, I would
10 respectfully request that you exclude any mention of any of
11 these subsequent allegations.

12 Thank you, Your Honor.

13 THE COURT: Anything in reply?

14 MR. THOMAS: Briefly, Your Honor. Just that what we're
15 concerned with is factual similarities between this.
16 Certainly, just the crime being similar to another crime,
17 armed robbery, armed robbery or there's a check case, a bad
18 check case and another bad check case. That is nowhere near
19 enough under *Lyle*. You have to have factual similarities,
20 very much a fact intensive inquiry.

21 Your Honor, I would direct your attention to *State v.*
22 *Patrick*, that's 318 S.C. 352, a 1995 Supreme Court case. In
23 that case, this was a burglary case and the case at hand the
24 facts are basically as follows: three men wearing gloves,
25 wigs, bandannas and ski masks. They rob a house essentially

1 by creating some sort of disturbance outside and then entering
2 the house that way. Once they get in the house, they cut the
3 lights and they communicate by Walkie Talkies, but then have
4 pistols and shotguns. Two weeks later in Georgia ---

5 THE COURT: Well, let me ask you this question before you
6 go into the -- to that. Was there anybody pursuant to that
7 burglary that specifically identified those perpetrators?

8 MR. THOMAS: Yes, sir, Your Honor. It was the -- it was
9 a female victim in that burglary actually showed up at their
10 court appearance in Georgia and identified them at that time.

11 THE COURT: Prior to that did they identify them?

12 MR. THOMAS: Prior to that, no, sir, Your Honor.

13 THE COURT: Okay. Go ahead, I didn't mean to interrupt,
14 but I wanted to ask that question.

15 MR. THOMAS: And that's what I was gonna get to. She
16 showed up at their trial, because there wasn't an arrest at
17 that point. They couldn't identify who it was. She got a
18 good look at their face, which is why she was able to identify
19 them in their subsequent trial in Georgia. But that was
20 upheld again because of the factual similarities between the
21 two armed robberies.

22 THE COURT: Let me ask you this question, Mr. Thomas.

23 MR. THOMAS: Yes, sir.

24 THE COURT: And I read your memo that you forwarded and
25 it appears from what I read and, again, I'm going simply on

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1 your memo. Okay. That on January 20, 2015, Defendant goes
2 into Shoe Show, a black male with a knife, blue jumpsuit. All
3 right? Requests a size 13 shoe, large dark handled knife,
4 silver blade, stuck it to her side and got cash, forced victim
5 in the back, told her to sit on a bench with her head down.
6 Messinger, who was the victim in that case, said the Defendant
7 was approximately six foot tall, blue jumpsuit, blue hat, thin
8 round eyeglasses. The video, according to your memo, it was
9 from Walmart and Cato's, which was in the same shopping
10 center, evidently saw this car, correct?

11 MR. THOMAS: Yes, sir, Your Honor.

12 THE COURT: All right. Investigator -- and I guess it's
13 Investigator Ward with Georgetown sent Charleston Police
14 Department, Investigator English, photos of the car. English
15 was able to obtain a tag number which came back to the
16 Defendant, correct?

17 MR. THOMAS: Yes, sir, Your Honor.

18 THE COURT: Messinger, who was the victim in the Shoe
19 Show incident, later picked out the Defendant in a photo
20 lineup; is that correct?

21 MR. THOMAS: That's correct, Your Honor, after a search
22 warrant was executed at the residence and he was picked out of
23 the photo lineup in Myrtle Beach.

24 THE COURT: Okay. So, it wasn't a situation where she
25 showed up in the court, she did an independent photo lineup

1 after this robbery?

2 MR. THOMAS: No, sir. This was a photo lineup that took
3 place on right after the search of his house, I think later
4 that night.

5 THE COURT: Okay. And there was a photo lineup prepared
6 by law enforcement ---

7 MR. THOMAS: By SLED, Your Honor.

8 THE COURT: Okay. --- wherein she picked him out, no
9 equivocation, that's him?

10 MR. THOMAS: Correct.

11 THE COURT: Okay. So my point is and part of your
12 argument been here, has been here today, the identity of him
13 as the perpetrator, right?

14 MR. THOMAS: That's correct.

15 THE COURT: Am I misreading that in the fact that she
16 actually identified him from a photo lineup, correct?

17 MR. THOMAS: Yes, sir, that's one of them.

18 THE COURT: All right. Now, you move on to the January
19 24, 2015 robbery, which was at the Hot Topic in Myrtle Beach.

20 MR. THOMAS: Yes, sir.

21 THE COURT: Same or similar type robbery, the Court
22 recognizes that, but dressed that day, according to your memo,
23 I think it was referenced as a black beanie.

24 MR. THOMAS: Correct.

25 THE COURT: But no further description of what the

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1 Defendant was wearing that day, at least not in your memo or
2 if it was, I missed it.

3 MR. THOMAS: Not in my memo, Your Honor. The witness
4 will be able to provide more of a description. I'm sorry.

5 THE COURT: Well, I mean, you're asking me to make a
6 decision, I guess -- well, and your memo in as part of your
7 argument, okay. But that was not in your memo, correct?

8 MR. THOMAS: Correct.

9 THE COURT: All right. Then you move on and again, that
10 victim, who was Foulkes and I think I'm pronouncing her name
11 properly.

12 MR. THOMAS: That's correct, Your Honor.

13 THE COURT: She picked him out of a photo lineup as well?

14 MR. THOMAS: Correct.

15 THE COURT: All right. Then we move down the line so to
16 speak to the January 30, 2015 incident, which was in
17 Charleston.

18 MR. THOMAS: Yes, sir.

19 THE COURT: Ms. Woods was the alleged victim here. The
20 only part of her physical description were as follows: forty
21 to fifty year old male, approximately 6'3" and thin rimmed
22 eyeglasses. Were there any portions of your memo that you
23 failed to mention that she may have given further description?

24 MR. THOMAS: There are, Your Honor.

25 THE COURT: Okay. But each of these three victims

1 independently identified this Defendant as the perpetrator?

2 MR. THOMAS: That's correct, Your Honor. Two on the --
3 using the same lineup prepared by SLED, and then one used a
4 lineup that was prepared by Myrtle Beach Police Department.

5 THE COURT: Would there be any difference had any or all
6 three of these alleged victims, if they were not able to pick
7 him out of a photo lineup; is there any difference?

8 MR. THOMAS: Your Honor, I think it would go to the State
9 being able to prove by clear and convincing evidence that that
10 particular bad act occurred. Other than that, though, Your
11 Honor, I don't see a difference.

12 THE COURT: Well, in each of these three independent --
13 each of these three robberies that you're arguing to get into
14 evidence here, in each of those three, each of those victims
15 independently identified this Defendant?

16 MR. THOMAS: Correct, Your honor.

17 THE COURT: Correct. Okay. What I'm asking you is let's
18 assume for argument's sake, okay, that he had had a mask on
19 and none of them could identify him; would not your argument
20 under 404(b) at that point have more credibility or weight for
21 the purposes of introducing these other acts for purposes of
22 identifying him; does that make sense?

23 MR. THOMAS: Perhaps on the identity, Your Honor.

24 THE COURT: Okay. But you're arguing identity as part of
25 your argument for me to let it in?

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1 MR. THOMAS: Correct, Your Honor, identity and common
2 scheme or plan. I don't think it makes a difference on common
3 scheme or plan.

4 THE COURT: I'm gone get to that. I'm getting -- we're
5 talking about identity right now.

6 MR. THOMAS: Yes, sir.

7 THE COURT: Okay. But my question is and you may have
8 answered it, would not your argument hold more credibility and
9 more weight, so to speak, not credibility necessarily, but
10 weight so to speak on the admissibility of these two not prior
11 bad acts, but subsequent acts, were they not able to identify
12 him?

13 MR. THOMAS: Your Honor, I believe the admission of that
14 evidence becomes more necessary for the State's case.

15 THE COURT: Okay.

16 MR. THOMAS: I'll say that. I don't think it makes the
17 any more or less probative.

18 THE COURT: All right. Anything else?

19 MR. THOMAS: No, sir, Your Honor.

20 THE COURT: Anything further from Defense counsel?

21 MR. LUCAS: Not on this matter.

22 THE COURT: Well, what I'm gonna do is I'm gonna -- you
23 cited a case for me, Mr. Thomas. Mr. Lucas, you've given me
24 about five or six cases. I'm gonna look at them and I'll let
25 you all know on that issue in the morning.

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1 What's the next issue?

2 MR. LUCAS: The next issue, Your Honor, is a motion by
3 the Defense, I believe it has been forwarded to you, but I
4 believe I can also provide a copy, if necessary.

5 THE COURT: Motion to suppress evidence?

6 MR. LUCAS: Yes, Your Honor.

7 THE COURT: I got it right here and I've read it.

8 MR. LUCAS: Your Honor, under South Carolina Code
9 Annotated, 17-13-140 ---

10 THE COURT: What code section was that?

11 MR. LUCAS: It is 17-13-140, I have a copy ---

12 THE COURT: I've got it right here. Thank you.

13 MR. LUCAS: You're welcome. It requires, right there, I
14 believe it's the third paragraph down, a warrant issued
15 hereunder shall be issued only upon affidavit sworn to before
16 the Magistrate, Municipal Judicial Officer or Judge of the
17 Court establishing the grounds for the warrant. Now if that
18 is true, a Municipal Judge or other Judicial Officer
19 aforementioned or above mentioned is satisfied with the
20 grounds for the application and issue -- a search warrant
21 should be issued. Now in this case, Your Honor, under the
22 case of -- specifically under the cases of *State v. Bakis*,
23 which is cited in the memo.

24 THE COURT: I got it right here..

25 MR. LUCAS: It essentially lays out that there are

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1 certain things that cannot be done. But the final page, Your
2 Honor, and it's cited *State v. Smith*, which is a 1990 Supreme
3 Court case and there's a -- allegedly used in a robbery which
4 was seized in his motel room pursuant to a search warrant. In
5 determining whether the issuing Magistrate had a substantial
6 basis to prove probable cause existed, this Court considered
7 the following affidavits. Now the affidavits there that I've
8 outlined, essentially what it does, it sets forth no facts as
9 to why the police believed Smith robbed the -- Now, in *Bakis*,
10 Your Honor, and in *Smith*, what they indicated mere conclusory
11 statements, which is much of the arrest warrant in this case
12 or not arrest warrant, but search warrant in this case, mere
13 conclusory statements that don't specify what exactly is going
14 on, what they're looking for, how they got that information,
15 it's not sufficient. That is what the search warrant in this
16 case of, the search warrant in this case makes reference to
17 investigations, a tag number, but they never indicate in the
18 search warrant how that information was received. Well
19 specifically, Your Honor, like here, investigators for each
20 agency collaborated all available information. That is by
21 definition a conclusory statement, collaborated all available
22 information. What information was there? The Magistrate did
23 not have that information to look at. And I go on in the
24 motion, Your Honor, and I indicate basically part by part of
25 that search warrant affidavit. And I believe that it shows,

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1 Your Honor, right there in the conclusion, the January 30th,
2 2015 search of his home proves everything here. It proves
3 that they were basically multiple unfounded, unsupported,
4 conclusory statements. And, Your Honor, without more
5 information, the Magistrate in this case in Georgetown, had
6 nothing more than, well, when we did some investigation on
7 this, these agencies determined that there was enough of this
8 and then we went and got this. That's essentially what the
9 affidavit says, and that was the ground the Magistrate had to
10 base his probable cause. It's unsubstantiated, vague, mere
11 conclusory statements that were provided to the Magistrate.
12 And for that reason, Your Honor, we would respectfully request
13 that all evidence that was seized pursuant to that warrant,
14 would not be admitted in the case against Stanley Moultrie.

15 THE COURT: All right. From the State? Mr. Thomas?

16 MR. THOMAS: Your Honor, the State's position is that the
17 affidavit is sufficient on its face. The suspect was captured
18 on video linked by clothing and his vehicle to several other
19 armed robberies in the locations of those armed robberies,
20 linked to a 2006 black-in-color Lincoln SL four-door sedan,
21 caught on camera in the vicinity of two armed robberies, and
22 this one in Georgetown and also in North Charleston. Also
23 after linking those vehicles, that he was later identified by
24 the suspect of the similar armed robbery in Myrtle Beach as
25 the perpetrator of that particular crime.

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1 Your Honor, the State would like to call at the
2 appropriate time to the stand, Captain Small. He is the
3 affiant on that search warrant for probable cause to testify
4 to those.

5 THE COURT: All right. Anything else?

6 RULING OF THE COURT:

7 THE COURT: All right. Based upon my review of
8 Defendant's motion to suppress evidence seized from the search
9 warrant, the Court is respectfully denying such motion. The
10 Court has reviewed the memo as well as the supporting case
11 law. The Court finds that the affidavit does provide
12 sufficient, sufficient detail that would warrant probable
13 cause to issue the search warrant. More specifically, the
14 suspect was captured on video, linked by clothing, automobile
15 and was identified which pointed to -- brought up the
16 Defendant. Furthermore, more importantly, the Defendant was
17 identified as a suspect in the Myrtle Beach robbery by
18 utilizing a photo. Therefore, the Court finds that there was
19 sufficient probable cause to issue the search warrant for the
20 Defendant's residence and therefore respectfully denies the
21 request -- the Defendant's request to suppress.

22 All right. Anything further at this time?

23 MR. THOMAS: Nothing from the State, Your Honor.

24 MR. LUCAS: Nothing from the Defense, Your Honor.

25 THE COURT: All right. What I will do overnight is I

RULING OF THE COURT

1 will look at these cases that you all have either handed up to
2 me, emailed to me or cited here today concerning the 404
3 issue.

4 Mr. Thomas?

5 MR. THOMAS: Yes, sir, Your Honor.

6 THE COURT: If you need time to talk to co-counsel, I
7 will give you every opportunity to talk to her, but when I'm
8 talking, please listen to me because I don't want there to be
9 any confusion as to what I'm saying up here.

10 MR. THOMAS: Yes, sir.

11 THE COURT: Do you need some time to talk to Ms.
12 Richardson?

13 MR. THOMAS: I'll talk to her at a later time, Your
14 Honor.

15 THE COURT: I mean you can do it now, just ask me and
16 then let me know, but when I'm talking, I want you to listen
17 to what I have to say so there's no confusion about it.

18 MR. THOMAS: Yes, sir, Your Honor.

19 THE COURT: Okay. What I will do again is look at what
20 you all have submitted pertaining to this 404 issue and I will
21 inform you all as to what my ruling is tomorrow morning at
22 9:30. If you all will be back here ready to go at 9:30 A.M.
23 All right.

24 Anything further from the State before we break for the
25 day?

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1 MR. THOMAS: No, sir.
2 THE COURT: Defense Counsel?
3 MR. LUCAS: Nothing, Your Honor.
4 THE COURT: All right. Thank you.

5 **(RECESS - 4:23 P.M.)**

6 *****OFF THE RECORD*****

7 **END OF DAY ONE.**

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1 **AUGUST 23, 2016 - DAY TWO**

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the Jury.)

4 BY THE COURT:

5 THE COURT: Well, let me ask you this question.

6 MR. THOMAS: Yes, sir.

7 THE COURT: Albeit my knowledge of the facts of this case
8 at this point are limited to the indictment and the facts as
9 stated within your memorandum to me. Let me ask you this and
10 I told you in Chambers yesterday before we left just to kind
11 of give you a heads up on this that I was inclined not to
12 allow this other evidence in that relates to these other armed
13 robberies. You voiced some concern to me -- or maybe not
14 concerns is the appropriate road -- but asked for some
15 direction so to speak and based upon my limited view of the
16 facts as I previously stated on what you all have conveyed to
17 me by virtue of your memos, et cetera. Correct me if I'm
18 wrong when I state this scenario, okay?

19 On January 20th, an armed robbery here at Shoe Show.

20 MR. THOMAS: Correct.

21 THE COURT: All right. From that armed robbery at Shoe
22 Show, law enforcement was able to obtain a video from Cato and
23 Walmart?

24 MR. THOMAS: Correct.

25 THE COURT: That showed in that video, an automobile that

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1 was subsequently tied to the Defendant?

2 MR. THOMAS: Correct, Your Honor.

3 THE COURT: Now, in identifying that automobile, after
4 the January 30, 2015 robbery in Charleston, Charleston Police
5 Department contacted Georgetown inquiring as to whether or not
6 any armed robberies had occurred in this area?

7 MR. THOMAS: Correct, Your Honor.

8 THE COURT: Pursuant to such contact by Charleston Police
9 Department or North Charleston, whichever one it was, a photo
10 was sent to Charleston of this automobile that was
11 subsequently tied to the Defendant and Charleston was able to,
12 via a license plate reader, come up with the license plate of
13 the very automobile that was tied to this Defendant?

14 MR. THOMAS: Correct, Your Honor.

15 THE COURT: Pursuant to that, things started falling into
16 place so to speak. A search warrant was issued, search of his
17 house, clothes and stuff tied to the other robberies more
18 specifically Hot Topic, the hat and the shoe from the
19 Charleston Shoe Store?

20 MR. THOMAS: Correct, Your Honor.

21 THE COURT: All right. My question is, and I don't want
22 to over simplify this and it's based on somewhat again, my
23 limited knowledge of the facts other than what you all have
24 conveyed to me at this point, but it seems to me that my
25 ruling is that you're not going into those other robberies.

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1 That the testimony of the investigating officer here who saw
2 the picture of the car and the video from Walmart and Cato was
3 able to subsequently, through his investigation, obtain a
4 license plate number of that very automobile that led to this
5 Defendant -- that led to the identification of this Defendant
6 by the store clerk. Is that a fair enough statement?

7 MR. THOMAS: That is, Your Honor, and the State's concern
8 is confusing the Jury as far as, you know, he's just gonna,
9 he's limited in saying through my investigation I was provided
10 with a license plate number that was tied to this Defendant.

11 THE COURT: They say he was provided with a license
12 plate, that through his investigation he was able to obtain
13 the license plate number which led to ---

14 MR. THOMAS: Your Honor, would the State be permitted to
15 have the actual officer who looked on that license plate
16 camera to find the vehicle that matched the vehicle's
17 description used in this armed robbery, using that still shot
18 of the vehicle?

19 THE COURT: The Charleston Officer?

20 MR. THOMAS: The Charleston Officer who actually found
21 that -- went on to that system and looked at every car that
22 passed through until he found the car that matched the
23 description of this vehicle and then was able to get the
24 license plate number, that officer?

25 THE COURT: Mr. Lucas?

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1 MR. LUCAS: Your Honor, much like we argued yesterday,
2 use of any information tending to relate to some charge of
3 armed robbery from another jurisdiction ---

4 MR. LUCAS: Okay.

5 THE COURT: That's not what he's asking here, Mr. Lucas.
6 He didn't ask if he could go into the armed robbery from
7 Charleston. He's asking whether or not you -- in essence he's
8 asking whether the Court will allow it and I'm asking you
9 whether or not you've got an objection. He's asking whether
10 or not he can put this officer on the stand from Charleston
11 that was able to identify this license plate off of this plate
12 reader or whatever they have in Charleston. I guess it was, I
13 don't know if it's up top or I see police cars sitting on the
14 side of the road sometimes and as you go by they reading
15 license -- I assume they're reading license plates and
16 checking for suspensions or et cetera. He's not asking
17 whether or not the officer can go into the facts of it. He's
18 asking whether or not I'm gonna allow it and I'm asking
19 whether or not you have an objection to that without him going
20 into those facts?

21 MR. LUCAS: Your Honor, the objection I would have to
22 that is, at that point, the relevance because this license
23 plate number is taken from a completely separate jurisdiction.
24 How they came across that would be simply up in the air. It
25 wouldn't -- they would not come across it if they weren't

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1 investigating it looking for that specific ---

2 THE COURT: Car.

3 MR. LUCAS: Car. For that purpose, Your Honor, I just --
4 it seems farfetched to make the argument that they were able
5 to pull a license plate number from Charleston and make it all
6 the way back to Myrtle Beach. That would be my objection to
7 that, Your Honor.

8 MR. THOMAS: And, Your Honor, it would simply be the
9 Charleston officer identifying the car that was provided to
10 him by our officer here in Georgetown on the getaway vehicle
11 to our Walmart -- our armed robbery here. So he would be
12 simply be identi -- telling me how he was able to identify
13 that vehicle in a picture which he was provided by our
14 officer.

15 THE COURT: I mean, I think it would be over Defense
16 counsel's objection. I think it would be appropriate through
17 his investigation to have contacted Charleston looking for
18 anything they could find on a car with this description in
19 this photo and him coming up with a license plate number.
20 Now, Defense counsel, and your objection is so noted, but you
21 -- I guess you can open the door to some of that stuff and you
22 have to be careful in that. That's gonna be up to you. But I
23 just believe based upon my review of the case law, based upon
24 the rule, I think allowing all of the facts pertaining to
25 these other matters would be tremendously prejudicial to this

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1 Defendant for the crime for which he's currently on trial for.
2 So, I will certainly allow the State to put up that testimony,
3 but will and do not want these officers and law enforcement
4 going down that road opening that door or creating that
5 prejudice for the Defendant. Is that fair enough?

6 MR. THOMAS: Yes, sir, Your Honor, and -- but the Defense
7 potentially could open the door to that ---

8 THE COURT: Absolutely. Absolutely. I mean, so -- what
9 about any issues pertaining to the statement by the Defendant?

10 MR. THOMAS: No, sir, Your Honor, no statement made on
11 this particular case, no statements.

12 THE COURT: So, no *Jackson v. Denno*?

13 MR. THOMAS: No, Your Honor.

14 THE COURT: All right. Anything further from the state
15 at this time?

16 MR. THOMAS: No, sir, Your Honor.

17 THE COURT: Defense Counsel?

18 MOTIONS:

19 MR. LUCAS: Your Honor, I do have one -- one additional
20 pretrial motion to sequester the witnesses in this case.

21 THE COURT: Any objection by the State?

22 MR. THOMAS: No objection, just that the victim in this
23 matter and the detective be able to remain in the courtroom.

24 THE COURT: I'll allow them to remain in the courtroom.
25 My instruction to them is that they are not to discuss their

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1 testimony nor the testimony of any other witnesses as we
2 proceed in the trial of this case. Okay.

3 MR. LUCAS: Thank you, Your Honor.

4 THE COURT: Anything else?

5 MR. THOMAS: Nothing from the State, Your Honor.

6 THE COURT: We'll stand down a few minutes. I've asked
7 the Jury to be back here at 10:00. Sir, if you'll let me know
8 when they all get here. If they get here before 10:00, we're
9 gonna rock and roll before 10:00. All right. Very good.

10 All right. We'll stand down.

11 **(RECESS - 9:41 A.M.)**

12 *******OFF THE RECORD*******

13 **(On the Record - 10:05 A.M.)**

14 THE COURT: All right. Mr. Thomas, do you have all your
15 witnesses sequestered?

16 MR. THOMAS: Yes, sir, Your Honor.

17 THE COURT: Okay. Anything from the State before I bring
18 the Jury out?

19 MR. THOMAS: Well, Your Honor, this might be a good time.
20 I've got some certified copies of convictions from the
21 Defendant's prior most serious conviction that the State is
22 using for the basis for seeking life without parole, Your
23 Honor. It might be best if we admit those now and not in
24 front of the Jury?

25 THE COURT: Mr. Lucas?

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1 MR. LUCAS: Your Honor ---

2 THE COURT: Anything?

3 MR. LUCAS: Well, I understand what the Solicitor is
4 doing to validate what he's seeking and I agree. I don't
5 think it's ---

6 THE COURT: Any objections at this time?

7 MR. LUCAS: No objection.

8 THE COURT: All right. Without objection.

9 All right. Anything else before I bring the Jury in from
10 the State?

11 MR. THOMAS: No, sir, Your Honor.

12 THE COURT: Defense Counsel?

13 MR. LUCAS: No, sir, Your Honor. I do have some --
14 obviously some motions, to renew objections once the Jury is
15 sworn.

16 THE COURT: You can renew your objections at the
17 appropriate time. Any new objections?

18 MR. LUCAS: No new objections, Your Honor, just the --
19 basically the arguments that I objected to yesterday.

20 THE COURT: Okay. Bring the Jury please, sir.

21 (REPORTER'S NOTE: Jury enters courtroom. 10:07 A.M.)

22 BY THE COURT:

23 THE COURT: Good morning, ladies and gentlemen, I hope
24 you all had a nice evening yesterday and are ready to proceed
25 here today.

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1 Mr. Bailiff, can you do me a favor?

2 BAILIFF: Yes, sir.

3 THE COURT: Can you pull that microphone that's in front
4 of Juror number 1 right there so to speak. It's distracting
5 to me to have that right in the middle of your face.

6 Madam Clerk, would you swear the Jury, please?

7 (REPORTER'S NOTE: Jury duly sworn and unanimously respond
8 affirmatively.)

9 CLERK: Thank you. Please be seated.

10 THE COURT: Ladies and gentlemen of the Jury, we are
11 about to try the case of The State of South Carolina v. Mr.
12 Stanley Delanor Moultrie. But before we begin the trial of
13 this case, I want to tell you that this trial will probably be
14 different from what you might expect. Many people do not have
15 the chance to attend actual court sessions as you're doing now
16 and may think from watching television or movies or reading
17 books, the trials are always full of high drama, intense
18 action and riveting circumstances. Now while all of these
19 things may be true at times, this trial, ladies and gentlemen,
20 is not for entertainment. It is a fundamental part of our
21 democracy, a search for the truth in an effort to make sure
22 that justice is done between the parties before the Court.
23 Searching for the truth and making sure that justice is done
24 is often slow, deliberate and repetitive. The opposite of
25 what you may have seen on television or in movies or read in

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1 books. This courtroom, ladies and gentlemen, is a place of
2 honor, dedicated to the protection and preservation of
3 citizen's rights through what many have called the greatest
4 justice system ever created. The attorneys appearing before
5 you are advocates for the parties that they represent, but
6 first and foremost, they are officers of the Court sworn to
7 uphold the integrity and fairness of our judicial system and
8 to help you in the search for the truth. You should expect
9 them to be professional, competent and ethical in the
10 representation of their clients' interest.

11 Now what I will now say to you, ladies and gentlemen, is
12 intended to serve as an introduction to the trial of this
13 case. These remarks are not a charge on the law in this case.
14 I will instruct you on the law applicable to the case at the
15 end of the trial before you retire to consider your verdict.
16 This is merely an explanation of the procedure that we will
17 follow in the trial of this case so that you may better
18 understand what may be happening.

19 Now the Defendant in this case, ladies and gentlemen, is
20 charged by an indictment filed in this Court with the crimes
21 of armed robbery and kidnapping. The elements of which will
22 be explained to you later. The indictment, ladies and
23 gentlemen, is simply the charging document by which this case
24 is brought into this Court and it is not in any sense evidence
25 of any of the allegations that it contains. The Defendant has

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1 | pled not guilty to this indictment. The State therefore has
2 | the burden of proving each of the elements of the indictment
3 | beyond a reasonable doubt and it will be your duty, ladies and
4 | gentlemen, to decide whether the State has met that burden.
5 | Your purpose as jurors is to find and determine the facts.
6 | You are the sole judge of the facts. If at any time, I make
7 | any comment regarding the facts, you must disregard it. You
8 | are to determine the facts from the testimony that you hear
9 | and the other evidence introduced here in court. It is up to
10 | you to determine the inferences which you feel may properly be
11 | drawn from the evidence. It is especially important ladies
12 | and gentlemen, that you perform your duty of determining the
13 | facts diligently and conscientiously because ordinarily, there
14 | is no way to correct an erroneous determination of the facts
15 | by a jury.

16 | On the other hand and with equal emphasis, the same law
17 | that makes you the judge of the facts makes me the judge of
18 | the law. The law as given by the Court is the only law that
19 | you may consider. You must accept and follow it even though
20 | you may disagree with it. I cannot tell you, ladies and
21 | gentlemen, what the facts are and you cannot disagree with me
22 | about what the law is or should be.

23 | Your job is to take the law as I give it to you and apply
24 | it to the facts as you find them from the testimony of the
25 | witnesses and any other evidence that is introduced. After

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1 doing that, you will render your verdict, a true and just
2 verdict, under the solemn oath that you just took as jurors.

3 Now until I tell you to begin your deliberations, you
4 must not discuss this case with anyone, including your fellow
5 jurors, friends, family members and anyone involved in the
6 case. The attorneys and parties in this case have been
7 advised that they are not to talk to you at all. So if you
8 see anyone involved in the case and they do not speak to you,
9 they are not being unfriendly. They are simply following this
10 Court's instructions.

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

1 this case to help you decide the case. You may not use
2 computers, telephones, cell phones, smart phones, tablets, the
3 internet or other tools of technology with communication
4 capabilities at any time while you are in the courtroom or
5 during your deliberations. During your breaks for meals or
6 overnight, if necessary, you may use those devices. However,
7 you must not use those devices to communicate with anyone
8 about the case until the case is over. This means you must
9 not use phone calls, emails, text messages, instant messages,
10 Twitter, or any blog, chatroom or website including Facebook,
11 Google Plus, My Space, Linked, YouTube or any social media
12 websites to send or receive information about this case. This
13 includes information about a party, a witness, an attorney or
14 a Court officer, news accounts about the case, research on
15 topics raised, any topics that you may think would be helpful
16 in deciding the case or any testimony presented by any
17 witness. During the trial, do not read, listen to or watch
18 any news reports about the case if there are any. This
19 includes anything that may be in the newspapers or on the
20 internet, radio or television. You must not consider anything
21 that you may have read or heard about this case outside of
22 this courtroom whether before or during the trial.
23 Information on television, radio, the internet or from other
24 sources might be wrong or incomplete. In our judicial system,
25 it is important that you are not influenced by anything or

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1 anyone outside of this courtroom. If you become aware of
2 another juror's violations of these instructions, please,
3 ladies and gentlemen, inform the Court immediately. It is
4 important, ladies and gentlemen, that you keep an open mind
5 and not decide any issue in the case until all of the evidence
6 has been presented, the parties have made their closing
7 arguments and I have instructed you on the law in this case.
8 It is your solemn responsibility to determine the guilt or
9 innocence of the Defendant and your verdict must be based
10 solely on the evidence as it is presented to you in this trial
11 and on the law as I instruct you during and at the close of
12 the trial.

13 Now in just a moment, the Solicitor or Prosecutor will
14 make what is called an opening statement in which the
15 Solicitor will explain to you the issues in this case or at
16 least what the Solicitor thinks the issues are in this case.
17 The attorney for the Defendant may also make an opening
18 statement although he is not required to do so. What the
19 attorneys tell you, ladies and gentlemen, during their opening
20 statements is not evidence in this case. It is only their
21 contention as to what the issues are. The evidence in this
22 case, ladies and gentlemen, will be presented to you by the
23 testimony of sworn witnesses from this witness stand and/or by
24 exhibits that may be introduced into evidence.

25 Now, ladies and gentlemen, during the course of the trial

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1 from time to time, you may hear one of the attorneys say
2 something like, Your Honor, I believe that we have a question
3 of law or a matter of law to discuss with you or, Your Honor,
4 may we approach the bench, or sometimes I myself may find it
5 necessary to excuse you from the courtroom for a short while
6 so the attorneys and I can discuss a matter of law. The
7 reason for this, ladies and gentlemen, is because you are the
8 judge of the facts in this case and sometimes when I am
9 discussing matters of law with the attorneys, it may be
10 necessary for me to make some comment as to the facts in
11 connection with ruling whether or not a particular law
12 applies. I am not supposed to tell you what I think the facts
13 are, so I'll excuse you from the courtroom while these
14 discussions take place so that in no way will you be
15 influenced by anything that I might say or do in connection
16 with the facts.

17 Now, ladies and gentlemen, in determining what the true
18 facts are in this case, you, you must decide whether or not
19 the testimony of the witnesses is believable. It will be my
20 responsibility to rule as a matter of law as to whether
21 certain testimony is admissible or not, but once the testimony
22 is admitted, whether or not you believe it, is solely for you
23 to determine. Now in deciding whether to believe a witness,
24 you have the right to consider the interest of any witness,
25 the bias of any witness, the prejudice of any witness, the

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1 opportunity for the witness to have seen the matters and
2 things about which the witness may testify, and the way the
3 witness acts on the witness stand. You have the right to
4 consider anything that is in the record that will help you
5 evaluate the testimony of the witnesses. That means that it
6 is your duty, ladies and gentlemen, to pay close attention to
7 these witnesses, to observe the witnesses, to listen to the
8 witnesses and to pay close attention to the attorneys and to
9 the Court. Please don't let your thoughts wander, but give
10 strict attention to the testimony in this case. So at the end
11 of all the testimony, after the arguments of counsel and the
12 charge on the law by the Court, you will then be in a position
13 to determine what the true facts are and to apply the law to
14 those facts and thus render a true and just verdict.

15 Now later in this case, ladies and gentlemen, a
16 foreperson will be selected to preside over deliberations in
17 the jury room. It will be the foreperson's added
18 responsibility to be the jury spokesperson here in court. It
19 will also be the foreperson's duty to write the verdict, but I
20 will give the foreperson further instructions about that at
21 the conclusion of the case.

22 Now in order to preserve everyone's rights, ladies and
23 gentlemen, I will give the parties an opportunity to object to
24 anything that I have said.

25 Any exception or objection to anything that I have said

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1 to the jury by the State?

2 MR. THOMAS: No, sir, Your Honor.

3 THE COURT: Defense Counsel?

4 MR. LUCAS: No objections, Your Honor.

5 THE COURT: Now, ladies and gentlemen, we are now going
6 to begin the trial of this case. The State is so recognized
7 for opening statement.

8 MR. THOMAS: Thank you, Your Honor.

9 OPENING STATEMENT BY THOMAS:

10 MR. THOMAS: Ladies and gentlemen, we are here today
11 because back on January 20th, 2015, that man, Stanley
12 Moultrie, robbed the Shoe Show here in Georgetown by holding
13 the clerk there at knifepoint. Now, this is a pretty well
14 thought out armed robbery, it was a relatively easy target, no
15 surveillance video, not very sophisticated in that sort of
16 sense at Shoe Show. They generally just have one clerk there.
17 In this case it was a female clerk. We'll see that Mr.
18 Moultrie got on the scene about forty-five minutes prior to
19 the Shoe Show opening at 9:30 and he goes -- Shoe Show is the
20 parking or in the same center as Walmart, and you have Cato,
21 Shoe Show, I think and now there's a Time Warner satellite
22 office there as well. He comes into the Walmart parking lot
23 about forty-five minutes prior to Shoe Show opening. He kind
24 of goes around the parking lot, goes over by where Shoe Show
25 is, goes and scopes that part of the parking lot out and ends

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1 up going back and sitting in one spot that's just directly
2 facing that Shoe Show for a long time, just to have eyes on
3 that Shoe Show.

4 Now the store opens about 9:30, he starts to move over to
5 park, kind of parks beside that strip mall that has the Shoe
6 Show and the Cato, he parked sort of back behind that strip
7 mall. He walks in and walks past Cato and enters the Shoe
8 Show at about 9:37, walks through the front door. Again it's
9 just him in there and the clerk has just opened the store.
10 The clerk has a discussion with him, he seems nice enough and
11 he's wearing a blue jumpsuit, looks like he's on his way to or
12 coming from work, clean shaven, very polite, just looking
13 around the store. Eventually he comes across a shoe and asked
14 the clerk to see that shoe in a size 13. The clerk thinks
15 she's about to make a sale, goes to look and see if he can get
16 that shoe in a size 13 and just like that, everything changes,
17 he grabs her by the back of the neck, takes out a big knife,
18 puts it to her side and takes her up to the register, gets her
19 to hand all the money to him from the register, there's two
20 registers, then takes her to the back of the store and he's
21 out of there. I think he's out -- he's taking a left on North
22 Fraser towards town about 9:45 or 9:46. About the same time
23 that the victim is calling 911, he's already on the road gone.
24 Of course by the time law enforcement gets there, he's -- he's
25 long gone at this point and that's where the investigation of

1 this case starts.

2 You have a victim who had eyes on this guy for some time
3 as he was in the store. Now he wasn't wearing a mask. A lot
4 of armed robberies you hear that, that's not the case here.
5 Of course the weapon, like I said is a knife. If you're going
6 to go in there with a mask, it's probably gonna be tough to
7 get close to your victim if you're wearing a mask because
8 they're probably not gonna let you get to close with them.
9 But she had a good look at him for some time. She had eyes on
10 his as she was walking around the store. He was the only
11 customer in there. So we got that. She gives her description
12 to the police and they get that. The police have to see what
13 they can do next. The Defendant makes a statement while he's
14 in the store that gives the police a possible -- they look
15 down that and it just ends up going nowhere. They get the
16 video, surveillance video from Walmart and also from Cato,
17 because he has to walk past Cato to get to Shoe Show. So,
18 they get those videos and now they've got something. They've
19 got the car he was in, they've got good profiles of him
20 walking by both ways to Cato, but they still don't have a
21 name, they don't have a suspect to show her. And it's about
22 ten days later on January 30th of 2015 that the case breaks
23 open with the help of a Charleston police officer and you'll
24 see about the next, I think from about 6:00 P.M. or so on the
25 30th all the way through the 31st, about thirty-six hours just

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1 everything comes together and it's a beautiful thing, at least
2 if you're a prosecutor or the older brother of two sisters
3 that work in retail sales every day.

4 Now you're gonna see all kinds of evidence in this case.
5 You're gonna hear from the clerk. You're gonna see those
6 surveillance videos. You're gonna hear from the officers from
7 Charleston hopefully. I ask that just the same thing that the
8 Judge says that you pay attention to all the evidence because
9 that -- that's what you have to work with in this case. Y'all
10 have an important job here and I want to thank y'all for
11 taking your time out of your busy schedule to be here and
12 serve. It is a service. Y'all have the most important job in
13 the courtroom but I think you'll find in this case y'all will
14 have a pretty easy decision.

15 Y'all are the most important part of this whole system,
16 it's what makes it work. Thank y'all for being here and I'm
17 honored to be able to present this case to you.

18 THE COURT: Mr. Lucas?

19 MR. LUCAS: Thank you, Your Honor.

20 OPENING STATEMENT BY LUCAS:

21 MR. LUCAS: Good morning, ladies and gentlemen. As we --
22 I was able to introduce myself to you guys yesterday, but what
23 I was not able to do was put a name to Mr. Moultrie. Now
24 you'll hear the Solicitor in this case call him the Defendant.
25 He's not just the Defendant. He's an innocent man sitting in

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1 here right now. Just like anyone of us, we're innocent until
2 proven guilty.

3 Ladies and gentlemen, Mr. Moultrie, he was born here in
4 Georgetown like many of you I would imagine. He grew up here,
5 went to school here, did well here. He's adopted. His
6 parents, Thomas and Ernestine Moultrie, great parents. They
7 were teachers here in the Georgetown County School District,
8 very successful people and, according to Stanley, very good
9 parents. He had a good life at least for the first thirteen
10 years. In 1979, when he was thirteen years old ---

11 MR. THOMAS: Your Honor, objection, Your Honor, I think
12 we have matter.

13 THE COURT: I'll let you approach over here.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury.)

16 MR. LUCAS: Before I left off, ladies and gentlemen,
17 lived here his entire life, went to middle school, J.B. Beck
18 Middle School, and I assume possibly some of you guys went to
19 J.B. Beck. He graduated high school here. He did well.
20 Immediately after graduating high school, he went into the
21 military. He was in the military for a number of years,
22 served in Desert Storm. He ultimately retired from the
23 military.

24 Ladies and gentlemen, the State is attempting to prove to
25 you that Mr. Moultrie, that Stanley did something wrong. Now,

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1 their burden is very high. It is the most difficult burden in
2 the legal system to satisfy, beyond a reasonable doubt.
3 It does not get any more difficult. Ladies and gentlemen, if
4 after the State has put up all of their evidence, you go back,
5 you consider everything that you saw. When you sit down, if
6 you have the thought in your mind that you know what, maybe
7 Stanley didn't do this. That, ladies and gentlemen, is a
8 reasonable doubt. Again, the State is gonna put up evidence.
9 They're gonna have Ms. Messinger, who is the clerk, she's
10 gonna take the stand, she's gonna say some things. The police
11 officers are gonna take the stand, they're gonna say some
12 things. But, after all that, just remember, Stanley does not
13 have to prove that he's innocent of anything. The State has
14 to prove him guilty, guilty beyond a reasonable doubt and,
15 again, you get in that room and you think, you know what,
16 maybe he didn't do it; that is a reasonable doubt. And I
17 submit to you that after you've viewed everything, there is
18 only one verdict that you can come back with and that verdict
19 is not guilty.

20 Thank you.

21 THE COURT: Call your first witness, please.

22 MR. THOMAS: The State calls Ms. Joyce Messinger to the
23 stand.

24 THE COURT: Come up here please, ma'am.

25 JOYCE MESSINGER, HAVING BEEN SWORN

1 TESTIFIES AS FOLLOWS:

2 CLERK: Would you please spell your last name for the
3 Court?

4 MS. MESSINGER: M-E-S-S-I-N-G-E-R.

5 CLERK: Thank you. Please have a seat.

6 THE COURT: All right, sir, you may move forward.

7 DIRECT EXAMINATION OF JOYCE MESSINGER BY MR. THOMAS:

8 Q: Good morning, Ms. Messinger. Please tell the Jury a
9 little about yourself. What do you do for a living?

10 A: I actually work now cleaning condos at Debordieu and I'm
11 a widow. My husband passed away in May. And I just did
12 demolition on my house.

13 Q: Where you working back in January 2015?

14 A: At the Georgetown Shoe Show.

15 Q: And what did you at Shoe Show there in Georgetown?

16 A: I was a key holder, classed as Assistant Manager, opened
17 and closed.

18 Q: If you would, go through your duties there. What was a
19 typical day working at the store?

20 A: A typical day, greeting customers, opening the store,
21 taking out trash, putting out money, and getting ready for a
22 bright sale that day.

23 Q: How long did you work at Shoe Show there in Georgetown?

24 A: A little over eighteen months.

25 Q: Ms. Messinger, do you know what you're here today for?

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1 A: Yes, sir.

2 Q: Please tell the Jury what happened and walk us through
3 the beginning of the day back on January 20th, 2015?

4 A: Okay. I went in, I opened the store, I put the money
5 out, started cleaning the advertise wall and I just was doing
6 what I do and that's prepare to sell shoes. And at 9:30, I
7 unlocked the door and about, I'd say just a few minutes later,
8 Mr. Moultrie came in and he walked over to the women's
9 section, looked down, walked down and as he was -- as if he
10 was looking for something. That's my job to recognize a
11 customer needs help. I asked him if I could help him. He
12 said no, but I'll let you know when it jumps out at me. I
13 said okay. I went back to cleaning that section. And then he
14 went down to 13's and come back up by 10's and 11's, and he
15 pulled a shoe out, a Nike. So, he asked me, he says, ma'am,
16 can you get this shoe for me in a 13; do you have it. I said
17 I will check and I seen him, you know, going around and I
18 figured he had just gotten off work or getting ready to go to
19 work because he was, you know, leisuring around, and I said
20 sure, let me go down and see if we have it on the top shelf,
21 and we didn't have it. So I turned to get the phone from the
22 register to call Conway because I live in Conway, I could've
23 brought it back the next day and when I turned around that's
24 when he grabbed my neck and the knife, the noise of him
25 snatching the knife out of his coveralls. And then he says,

1 ma'am, I don't want to hurt you; don't make me hurt you. And
2 he said just take me to the safe and I used to work in this
3 store. I said, sir, there's no safe. He said take me to the
4 money. So that's where he had a hold to me and the good Lord
5 was walking me because I had no functions at all. And he went
6 to the register and he says, open it and hand me the money. I
7 said okay and I was trying to open it because we had to put
8 our clock number in to open it as a no-sale and when I opened
9 it, I said there it is, and he said no, hand it to me. Then I
10 went to the second register, he told me you are too slow. I
11 said I'm sorry, sir. And I opened it and he had me hand the
12 money back like this and I put all the bills together, he did
13 not want change, and I put it back like that and he took it,
14 never taking the knife off of me nor his hand on my neck. And
15 I gave him the money and he said now, let's go here, and
16 that's when he just sat me down on the bench in front of the
17 employee door. And I sat there and I was looking, I had my
18 head straight, but I had my eyes up in the mirrors trying to
19 see where he was going and he started walking off, he turned
20 to me and he said don't look at me, don't look at me and he
21 said -- I said okay, sir. And as he, he said put your head
22 down and I said okay, I got it, and he put it down. I put it
23 down and I was still trying to see without moving my head to
24 cause him to come back at me and so he went on. He went on
25 out the store and I couldn't believe nobody, not a soul,

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1 walked by the store and usually we're bombarded at 9:30 and I
2 was hoping somebody would just walk in, nobody. So, when I
3 heard the door do this, I looked this way and he was gone from
4 the door. So I walked real slow up to the door to make sure
5 he wasn't anywhere right at the front, then I locked the doors
6 so he couldn't come back in. I got on the phone with 911 and
7 it was just -- once I got 911 and I heard another voice, I
8 just -- I fell apart I guess because I didn't know what else
9 to do but to tell the woman what was going on and the officers
10 got there and then it was like when I actually got 911 on the
11 phone, I was not there alone anymore and I still couldn't calm
12 down, but that is what happened that day.

13 Q: Thank you, Ms. Messinger. I want to show you what we've
14 marked for identification as State's Exhibit One. Would you
15 please take a look at that?

16 A: Yes, sir.

17 Q: What is that?

18 A: That is the 911 call and I have heard it, initialed it
19 and that's really ---

20 Q: Is this a true and accurate copy of the 911 call you made
21 that day on January 20th, 2015?

22 A: Yes, sir.

23 Q: Have you had a chance to listen to it?

24 A: Yes, sir.

25 Q: Any changes been made, any alterations?

1 A: No, sir.

2 Q: Your Honor, the State would move to enter State's, for
3 identification, Number One into evidence and to publish it to
4 the jury?

5 THE COURT: Any objection?

6 MR. LUCAS: No objection.

7 THE COURT: Without objection, so admitted as State's
8 Exhibit Number One. Permission to publish.

9 STATE'S EXHIBIT NUMBER ONE

10 ADMITTED INTO EVIDENCE

11 MR. THOMAS: Your Honor, Court's indulgence, I apologize.
12 The computer turned off on me.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: State's Exhibit Number One played for the
15 Jury. Not transcribed here.)

16 (On the Record.)

17 BY MR. THOMAS:

18 Q: Ms. Messinger, what time did you get to Shoe Show that
19 morning?

20 A: I got to Shoe Show probably about a quarter to 9:00. I
21 usually get there a little bit early so I can do certain
22 cleaning and get ready for the day.

23 Q: I know this will probably sound like a silly question,
24 but at any point in time did you feel free to leave after he
25 pulled the knife on you; did you ever feel like you were free

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1 to go or leave that situation?

2 A: No, he had a grip.

3 Q: I want to show you these photographs and see if you
4 recognize them. Ms. Messinger, if you would, please go to
5 what has been marked for State's identification purposes as
6 Number Two through Number Nine. Please go through each of
7 these photographs separately and first tell us if you
8 recognize what they are and then if you do what they are
9 photographs of?

10 A: This is the photograph of the front of the store.

11 THE COURT: Hold on a minute. And that's exhibit, tell
12 me what exhibit number you're looking at first and then you
13 can go explain it. I just want the record clear. Okay?

14 A: Okay. Exhibit Number Two is the door, front of the Shoe
15 Show that he entered. This is Exhibit Number Three, this is
16 where he was standing right in this area here when I asked him
17 if I could help him find something and this is Exhibit Number
18 Four. This is the wall that I was cleaning here for
19 advertisement and also behind here is where the registers are.
20 This is right here, this is the bench where he took me.

21 THE COURT: That's exhibit what?

22 A: I'm sorry. Exhibit Five.

23 THE COURT: Thank you.

24 A: And that is our employee door back here and this is where
25 he sat me on this very last bench and as you can see the

1 mirrors up top, that's the ones I was trying to catch
2 direction of where he went but he wouldn't let me. This is
3 Exhibit Six, this is the shoe in size 10 that he wanted in a
4 13 and that's the one that he touched. This is Exhibit Seven
5 and that's the same shoe right there and there it is again
6 Exhibit Eight and this is our registers.

7 Q: And what is that exhibit number?

8 A: That is Exhibit Number Nine.

9 Q: And all those are true and accurate representations of
10 how the store looked that day?

11 A: Yes, sir.

12 Q: And does it look like any changes have been made in any
13 of these photographs?

14 A: No, sir.

15 MR. THOMAS: Your Honor, the State would move to have
16 Exhibits Two through Nine entered into evidence?

17 THE COURT: Any objection?

18 MR. LUCAS: Your Honor, the one objection would be ---

19 THE COURT: State the grounds for your objection, please?

20 MR. LUCAS: --- foundation for the pictures; we don't
21 know who took the pictures.

22 THE COURT: Objection overruled.

23 STATE'S EXHIBITS NUMBER TWO THROUGH NINE

24 ADMITTED INTO EVIDENCE

25 MR. THOMAS: Permission to publish, Your Honor.

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1 BY MR. THOMAS:

2 Q: Ms. Messinger, how long would you say it was from the
3 time that Mr. Moultrie walked through the front door of Shoe
4 Show to the time he asked to see that shoe in that certain
5 size and then subsequently pulled the knife on you, about how
6 long a period of time was that?

7 A: I would say five to six minutes.

8 Q: Anybody else come in the store during that time?

9 A: No, sir.

10 Q: Was -- what was Mr. Moultrie wearing; do you recall?

11 A: He was wearing a blue jumpsuit, a blue cap and round
12 rimmed glasses.

13 Q: Did you get a look at his face? Was he wearing anything
14 covering his face?

15 A: No, sir. I thought he was pastor. He just came in with
16 that demeanor and when he -- it really scared me when he put
17 his hands on me.

18 Q: Ms. Messinger, at some point in time, do you recall a
19 police officer showing you any photographs of people?

20 A: Yes, sir.

21 Q: And when was that time or when were those times? Please
22 tell us about that.

23 A: They -- time went by like a week, a week and a half, two
24 weeks and they brought in some pictures and it was the
25 clothes. I ID'd the clothes; I said that was it. And the

1 first time, I'm sorry, I got to back up because they brought
2 in some and he was not in it.

3 Q: And do you remember when that was in relation to the
4 20th?

5 A: It was like three or four days later they brought those
6 in and I said that -- he's not in that. So, then probably
7 about a week, week and a half, two weeks later, they brought
8 in the pictures of the clothes and I said that's the jumpsuit.
9 They did not have the hat, the cap. It was not a hat, it was
10 a cap, a baseball cap.

11 Q: How about photographs of people?

12 A: And then they brought in a photograph lineup and it was
13 just like looking at him again and I put my finger on it and
14 they -- that is a face I will never, never forget.

15 Q: Ms. Messinger, I'm gonna show you what has been marked
16 for identification purposes as State's Exhibit Number Ten.
17 Would you please take a look at that and tell us if you
18 recognize what that is?

19 A: It was a presentation, this is where I look at the photos
20 and I ID'd Mr. Moultrie.

21 Q: Have you see that document before?

22 A: Yes, I have. My signature is on there, January 31st,
23 2015.

24 Q: Now, who provided this documentation to you?

25 A: The detectives.

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JOYCE MESSINGER - DIRECT BY THOMAS

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1 Q: Was it the person that showed you the lineup?

2 A: Yes, sir.

3 Q: I'm gonna show you now what has been marked for
4 identification as State's Exhibit Number Eleven. If you would
5 please take a minute to look at that and tell me if you
6 recognize that.

7 A: Yes, sir.

8 Q: What is it?

9 A: This is the photo lineup that I ID'd Mr. Moultrie, my
10 initials, my signature, 1/31/2015, one hundred percent
11 positive.

12 Q: Did you -- did you have any problem -- how long did it
13 take you to make that identification?

14 A: The blink of an eye.

15 Q: Did anybody suggest or hint that who you should identify
16 -- were you influenced in any manner whatsoever?

17 A: No, sir.

18 Q: Where were you shown State's Exhibit Ten and Eleven,
19 where were you shown those documents?

20 A: I signed those in the store because I was working that
21 day. They brought them in, I ID'd, I signed them, I initialed
22 them, everything was done right inside the store.

23 MR. THOMAS: Your Honor, the State moves to have Exhibits
24 Ten and Eleven entered into evidence.

25 THE COURT: Any objection?

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1 MR. LUCAS: No objection, Your Honor.

2 THE COURT: Without objection so admitted.

3 STATE'S EXHIBITS NUMBER TEN AND ELEVEN

4 ADMITTED INTO EVIDENCE

5 MR. THOMAS: Permission to publish, Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. THOMAS:

8 Q: Ms. Messinger, you did such a thorough job on your
9 direct, I don't have any more questions for you other than, Do
10 you see the man that robbed you on January 20th in court
11 today?

12 A: Yes, sir, I do.

13 Q: Please point him out to the Jury.

14 A: Right there (indicating).

15 Q: Thank you, Ms. Messinger.

16 THE COURT: Cross examination?

17 MR. LUCAS: Thank you, Your Honor.

18 CROSS EXAMINATION OF JOYCE MESSINGER BY MR. LUCAS:

19 Q: Ms. Messinger or Messinger?

20 A: Messinger.

21 Q: Messinger, okay. All right. Going -- going back a
22 little, a few steps. We heard the 911 call, correct? Now in
23 that 911 call you indicated that the person that robbed you
24 was a black male, right?

25 A: Yes, sir.

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JOYCE MESSINGER - CROSS BY LUCAS

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- 1 Q: Blue jumpsuit?
- 2 A: Yes, sir.
- 3 Q: Tall, right?
- 4 A: (Indicates affirmatively.)
- 5 THE COURT: We need a verbal response, please, ma'am.
- 6 A: He was like six -- over six foot, six foot.
- 7 Q: Okay. You indicated that he was wearing glasses,
- 8 correct?
- 9 A: Yes, sir.
- 10 Q: You indicated that he was clean shaven?
- 11 A: Yes, sir.
- 12 Q: And that he was slender?
- 13 A: Yes, sir.
- 14 Q: Now, today you've also indicated he was wearing a blue
- 15 hat, correct?
- 16 A: A cap.
- 17 Q: A cap?
- 18 A: Yes.
- 19 Q: Okay. Now, do you now -- do you know the name of the
- 20 officer that was at the door in response to your 911 call?
- 21 A: That was holding the door open?
- 22 Q: Well, that responded, that talked to you?
- 23 A: That day, I didn't get any names. I don't remember any
- 24 names.
- 25 Q: Okay. But you did talk with that officer?

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JOYCE MESSINGER - CROSS BY LUCAS

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1 A: Yes, sir. She came to me and she asked me if I needed to
2 go to the hospital, if I needed emergency assistance. I said,
3 no, I need to call my husband.

4 Q: Okay. And at that point, you also gave the officer a
5 description of the man who robbed you?

6 A: Yes, sir.

7 Q: And you told the officer at that point that it was a
8 black male, right?

9 A: Yes, sir.

10 Q: Blue jumpsuit, right?

11 A: Yes, sir.

12 Q: Glasses, right?

13 A: Yes, sir.

14 Q: And a blue hat?

15 A: Blue cap.

16 Q: A blue cap?

17 A: Right.

18 Q: Now, at some point later, I would assume it was some time
19 when you were looking at these pictures. Later you looked at
20 those pictures about two weeks later, correct?

21 A: Yes, sir.

22 Q: You wrote a statement, did you not?

23 A: Yes, sir.

24 Q: And in that statement, you indicated that it was a black
25 male, right?

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JOYCE MESSINGER - CROSS BY LUCAS

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- 1 A: Yes, sir.
- 2 Q: Blue jumpsuit, correct?
- 3 A: Yes, sir.
- 4 Q: At that point, you didn't indicate that he was very tall;
5 do you remember that?
- 6 A: I went over it so many times. He, he was tall; he was
7 over six foot.
- 8 Q: Okay. You never indicated that he was wearing glasses in
9 your written statement, correct?
- 10 A: I just mostly wrote what he said to me and -- I guess
11 you've got it in front of you.
- 12 Q: You never indicated that he was clean shaven; does that
13 sound familiar?
- 14 A: Yes, sir.
- 15 Q: You never indicated that he was slender; does that sound
16 correct?
- 17 A: Yes, sir.
- 18 Q: And never indicated that he was wearing a blue hat?
- 19 A: Not in my written statement, no.
- 20 Q: Okay. But would you agree that viewing all of those,
21 there seems to be some inconsistency; you would agree with
22 that, would you not?
- 23 A: Maybe, yes, sir.
- 24 Q: You would?
- 25 A: Because I wrote my statement the day that it happened.

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JOYCE MESSINGER - CROSS BY LUCAS

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1 I also reported it and the detective wrote it down that same
2 day and then I was like -- I never stopped and I was
3 constantly writing and I tried to remember everything, I just
4 wanted to break down. I just -- I just needed my husband with
5 me because I didn't know what else to do. I had been in
6 retail for forty-some years, never been robbed, never been
7 hurt, never nothing happened but good stuff.

8 Q: Now, let -- let's shift a little bit, Ms. Messinger, to
9 the lineups. You were provided a lineup the first time, I
10 don't have an exact date on that, but the first lineup, you
11 saw that one, correct?

12 A: Yes, sir.

13 Q: He wasn't there?

14 A: No, sir.

15 Q: Now the second lineup was provided to you on January
16 31st, several weeks after, correct?

17 A: Yes, sir.

18 Q: And this time you saw him?

19 A: Yes, sir.

20 Q: Now, in the second lineup, you expected him to be there
21 because he wasn't in the first?

22 A: No, sir. No, I didn't expect him to be there. He was
23 there.

24 Q: Ms. Messinger, you told Officer Truss at the scene that
25 he took you down the aisle and sat you on a stool, correct?

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JOYCE MESSINGER - CROSS BY LUCAS

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1 A: Yes, sir.

2 Q: But then in your written statement, it says that you --
3 or you said that you sat on a bench, correct?

4 A: It as a bench for people to try shoes on. He may've
5 called it a stool; it's a bench.

6 Q: Okay. But, Ms. Messinger, you do agree that there were
7 some inconsistencies there, correct?

8 A: In what you're reading, I guess there was.

9 Q: Okay. No further questions.

10 THE COURT: Any redirect?

11 MR. THOMAS: Briefly, Your Honor.

12 REDIRECT EXAMINATION OF JOYCE MESSINGER BY MR. THOMAS:

13 Q: Ms. Messinger, how many statements do you think you gave
14 to law enforcement?

15 A: I would say anywhere from -- that one day it was a woman
16 police officer, then a detective, and then the police chief,
17 and then I was just -- in a total of four hours, it was like
18 just echoing.

19 Q: Were some of those statements longer than the other ones?

20 A: Yes, sir, the questions were different and that's how I
21 wrote it to answer the questions, and so they would know what
22 happened.

23 Q: Have you had a chance to observe your written statement?

24 A: Yes, sir.

25 Q: About how long is it?

1 A: It's probably three paragraphs long.

2 Q: Does it fit on one page?

3 A: Yes, sir.

4 Q: Is there more information contained in that written
5 statement or the statement that you actually provided law
6 enforcement officers orally?

7 A: I'd say they're about the same.

8 Q: What, if any, parts of your statement conflict with each
9 other in this case; what, if anything actually conflicts?

10 A: Maybe descriptions because I gave them to one and they
11 didn't ask in the next one.

12 Q: So, let me get this straight. Some statements included
13 more information and some didn't include quite as much
14 information.

15 A: Yes, sir.

16 Q: But from what you're saying they didn't conflict with
17 each other, some included of had more information in them and
18 others didn't?

19 A: Yes, sir.

20 Q: Nothing further.

21 THE COURT: Any recross?

22 MR. LUCAS: Nothing, nothing further, Your Honor.

23 THE COURT: Thank you, ma'am, you may step down. Thank
24 you.

25 BY THE COURT:

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JOYCE MESSINGER - REDIRECT BY THOMAS

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1 THE COURT: Ladies and gentlemen, I didn't tell you all
2 or maybe I did. We typically run court about an hour and a
3 half or two hours between breaks. We've been going about an
4 hour and ten minutes now. Does anyone need a break? If so,
5 raise your right hands.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Okay. Call you next witness.

8 MR. THOMAS: Your Honor, waiting for him to enter the
9 courtroom.

10 The State would call Mr. Ronald Walker to the stand.

11 RONALD WALKER, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Would you please spell your last name for the
14 Court?

15 MR. WALKER: W-A-L-K-E-R.

16 CLERK: Thank you. Please have a seat.

17 THE COURT: Yes, sir, have a seat right here, please.

18 DIRECT EXAMINATION OF RONALD WALKER BY MR. THOMAS:

19 Q: Good morning, Mr. Walker?

20 A: Good morning.

21 Q: Where do you work?

22 A: Walmart in Georgetown.

23 Q: Okay. What do you do at Walmart in Georgetown?

24 A: Asset retention, the title is called Asset Protection
25 Associate, loss prevention.

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RONALD WALKER - DIRECT BY THOMAS

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1 Q: What are the duties associated with your job? Take us
2 through an average day.

3 A: Okay.

4 COURT REPORTER: Sir, can you slide up just a little bit.
5 Thank you.

6 A: My job description as an Asset Retention Associate, it
7 states, I play a vital role in safety, security and prevention
8 of shrinkage and loss profit in the store.

9 MR. LUCAS: Objection, Your Honor. We ---

10 THE COURT: State your grounds for objection, please.

11 MR. LUCAS: The objection is the witness is reading from
12 something and we don't know what this is from.

13 THE COURT: Let him have a chance to look at it, sir.

14 Any objection?

15 MR. LUCAS: No objection.

16 THE COURT: Thank you. All right. Sir, you may
17 continue, and if you want to start over, you may do that as
18 well. Okay?

19 A: My job description as an Asset Retention Associate, I
20 play a vital role in safety, security and the prevention of
21 shrinkage and loss profit in the store. I assist in the
22 protection of our company assets to include the customers,
23 associates, facility, inventory and deterrence. To sums it
24 up, keeping the store's shrinkage as low as possible.

25 BY MR. THOMAS:

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RONALD WALKER - DIRECT BY THOMAS

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1 Q: What sort of things do you do in line with your job
2 description? Take us through sort of an average day at
3 Walmart?

4 A: Actually, I walk the floor most of the days looking for
5 -- basically, keeping it real -- shoplifters; that's what I
6 do, suspicious shoplifters.

7 Q: Do you have any other tools that assist you in that
8 endeavor of finding shoplifters?

9 A: Video cameras.

10 Q: Where all does Walmart have video cameras?

11 A: We have around forty cameras on the outside on the
12 rooftop, throughout the store, except for fitting rooms and
13 the restrooms.

14 Q: Do you have an opportunity with your job to deal with
15 looking at those surveillance cameras?

16 A: Yes, I do.

17 Q: Do you have a way to copy what's seen on those
18 surveillance cameras?

19 A: Yes, I do.

20 Q: And could you just explain that process to us?

21 A: Basically, like sometimes law enforcement need a certain
22 footage of a certain department in the store or something that
23 took place in the parking lot. They'll give me the time and
24 location. I'll pull it up on the video and just burn it from
25 the hard drive onto a disc for them.

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RONALD WALKER - DIRECT BY THOMAS

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1 Q: How long is that footage saved for?

2 A: It's around -- close to about fifty days.

3 Q: And is that something that Walmart does in the ordinary
4 course of business every day?

5 A: Just about.

6 Q: Mr. Walker, I'm gonna show you what's been marked for
7 identification as State's Exhibit Number Twelve. If you
8 would, please take a look at that and tell me if you recognize
9 it.

10 A: It's my initials on it.

11 Q: Have you had an opportunity to observe what is State's
12 Exhibit Twelve?

13 A: Yes.

14 Q: And what is it?

15 A: What's on the video?

16 Q: Uh-huh (affirmative response).

17 A: It shows January the 20th of 2015 a vehicle entering
18 Walmart parking lot -- kind of going back and forth in
19 different parking space and until he finally came to a stop, I
20 think it was Row 2. The car was parked for about twenty to
21 thirty minutes. From there the car departed the parking lot,
22 went toward Wendy's to the back part of the stores, came up
23 next to Cato's where it was parked. Someone got out of the
24 vehicle, went towards Shoe Show, I saw someone going into that
25 area, into that store. Minutes later, that individual exited

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RONALD WALKER - DIRECT BY THOMAS

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1 the store, returned to the car and exited the parking lot from
2 the back part of the store.

3 Q: Thank you, Mr. Walker. Now, is this a genuine Walmart
4 video, surveillance video?

5 A: Yes, it is.

6 Q: What all kind of information is contained on the video
7 besides what you see? Is there any other information?

8 A: The date and time.

9 Q: And is that true and accurate?

10 A: Yes.

11 Q: And it's true and accurate in this case?

12 A: Yes.

13 MR. THOMAS: Your Honor, the State moves to have State's
14 Exhibit Number Twelve entered into evidence.

15 THE COURT: Any objection?

16 MR. LUCAS: No objection, Your Honor.

17 THE COURT: Without objection, Exhibit Number Twelve
18 admitted into evidence.

19 STATE'S EXHIBIT NUMBER TWELVE

20 ADMITTED INTO EVIDENCE

21 BY MR. THOMAS:

22 Q: Mr. Walker, do you have any other part in this case here
23 today?

24 A: No, I don't.

25 Q: No further questions.

1 THE COURT: Cross examination?

2 CROSS EXAMINATION OF RONALD WALKER BY MR. LUCAS:

3 Q: Mr. Walker, you indicated you have had an opportunity to
4 view that video?

5 A: Yes, I did.

6 Q: The quality of the video is -- is not top of the line, is
7 it?

8 A: I wouldn't say so, sir ---

9 Q: Top of the line -- it's just moderately blurry, correct?

10 A: Excuse me?

11 Q: Moderately blurry?

12 A: It was clear enough to see a vehicle in the parking lot.
13 It was clear enough to see someone exiting the vehicle walking
14 towards Shoe Show. It's clear enough to see someone exiting
15 the Shoe Show and walking back to the vehicle and exiting the
16 parking lot.

17 Q: But not clear enough to show what the identity of that
18 person was?

19 A: No, no, it shows that the individual appeared to have a
20 limp as he was walking -- as he exit the vehicle.

21 Q: And it wasn't clear enough to show what the exact make of
22 the car is?

23 A: No, it isn't, no.

24 Q: So, it's your testimony, you viewed it?

25 A: Right.

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RONALD WALKER - CROSS BY LUCAS

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1 Q: And you don't know -- you can't tell the make of the car?

2 A: No, I cannot.

3 Q: And you don't know who got out?

4 A: No.

5 Q: No further questions.

6 THE COURT: Any redirect?

7 MR. THOMAS: No, sir, Your Honor. The State would ask
8 that Mr. Walker be excused from his subpoena.

9 THE COURT: Any objection?

10 MR. LUCAS: No objection, Your Honor.

11 THE COURT: Mr. Walker, sir, you may step down. You're
12 free to go. You have no further responsibility here today.
13 Thank you for being here.

14 A: Thank you, Your Honor.

15 THE COURT: Call your next witness, please.

16 MR. THOMAS: Your Honor, the State would call Amy
17 Milligan. And, Your Honor, this will be another short
18 witness.

19 THE COURT: Ma'am, if you would place your left hand on
20 the Bible and raise your right hand.

21 AMY MILLIGAN, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Would you state and spell your last name for the
24 Court?

25 MS. MILLIGAN: Milligan, M-I-L-L-I-G-A-N.

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RONALD WALKER - CROSS BY LUCAS

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1 CLERK: Thank you very much. Please have a seat.

2 MS. MILLIGAN: Thank you.

3 DIRECT EXAMINATION OF AMY MILLIGAN BY MR. THOMAS:

4 Q: Hey, Ms. Milligan. Will you please tell the Jury where
5 you work?

6 A: The Cato Corporation.

7 Q: Okay. What do you do there?

8 A: District Manager.

9 Q: And what does a District Manager at the Cato Corporation
10 do?

11 A: Supervises everything involving operations and loss
12 prevention in the surrounding stores.

13 Q: And what stores are those?

14 A: I have ten stores from Myrtle Beach up to Florence,
15 Marion, Dillon, Georgetown, a couple on North Carolina.

16 Q: Where is your store in Georgetown?

17 A: In the Walmart Shopping Center.

18 Q: And what county is that in?

19 A: Georgetown County.

20 Q: Ms. Milligan, do you know why you're here today?

21 A: About some footage that I recorded.

22 Q: Do you recall being asked by law enforcement to obtain
23 some video footage from January 20th of 2015?

24 A: Yes, I do.

25 Q: And does the Georgetown location have a surveillance

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AMY MILLIGAN - DIRECT BY THOMAS

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1 video system?

2 A: Yes.

3 Q: Will you please tell the Jury about that system?

4 A: Yeah, there's five cameras in the store aiming in
5 different directions and it records all the time. I can view
6 it from home on my laptop or I can go to the store and view
7 it.

8 Q: I'm gonna show you what's been marked for identification
9 as State's Exhibit Number Eleven. Will you please take a look
10 at that and tell me if you recognize it?

11 A: Yes, I do.

12 Q: And what do you recognize that as being?

13 A: My initial that wrote on the disc that was recorded.

14 COURT REPORTER: That's thirteen, it's State's Thirteen.

15 THE COURT: That's no Number Eleven.

16 MR. THOMAS: I apologize, Your Honor, it's Thirteen.

17 THE COURT: Thank you.

18 BY MR. THOMAS:

19 Q: And have you had an opportunity to view State's Exhibit
20 Number Thirteen?

21 A: Yes.

22 Q: And what is it?

23 A: Footage from the camera at the front doors of my
24 Georgetown store.

25 Q: How were you able to get that footage onto a disc here

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AMY MILLIGAN - DIRECT BY THOMAS

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1 today? Did you do that or do you have somebody do it at your
2 direction?

3 A: No, I did it; I did it.

4 Q: And is it a true and accurate representation of the
5 footage for the times listed on the video?

6 A: Yes, it is.

7 Q: Have you made any alterations to it?

8 A: No.

9 Q: And as you testified earlier, you had a chance to view
10 the video, correct?

11 A: I have.

12 MR. THOMAS: Your Honor, State would move to have
13 Thirteen entered into evidence at this time.

14 THE COURT: Any objection?

15 MR. LUCAS: No objection, Your Honor.

16 THE COURT: Without objection, so admitted.

17 STATE'S EXHIBIT NUMBER THIRTEEN

18 ADMITTED INTO EVIDENCE

19 BY MR. THOMAS:

20 Q: Ms. Milligan, I want to show you a few more photographs.

21 THE COURT: Has Defense counsel seen those? Mr. Lucas
22 would you come forward, please, sir?

23 Any objection?

24 MR. LUCAS: No objection, Your Honor.

25 THE COURT: Thank you.

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AMY MILLIGAN - DIRECT BY THOMAS

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1 BY MR. THOMAS:

2 Q: Ms. Milligan, I'm gonna show you what's been marked as
3 State's Exhibits Fourteen through Nineteen. Will you please
4 take a minute and look through all of those? And do you
5 recognize them?

6 A: I do.

7 Q: What are they?

8 A: They're still shots of some of the footage that I
9 recorded.

10 Q: Okay. Your Honor, State would move to have Nineteen or
11 Fourteen through Nineteen entered into evidence?

12 THE COURT: Any objection, Mr. Lucas?

13 MR. LUCAS: No objection.

14 THE COURT: Without objection, so admitted.

15 STATE'S EXHIBITS NUMBER FOURTEEN THROUGH NINETEEN

16 ADMITTED INTO EVIDENCE

17 BY MR. THOMAS:

18 Q: Ms. Milligan, have you had any further involvement in
19 this case?

20 A: No.

21 Q: No further questions.

22 A: Thank you.

23 THE COURT: Cross examination?

24 CROSS EXAMINATION OF AMY MILLIGAN BY MR. LUCAS:

25 Q: Ms. Milligan, in reviewing those pictures, is it clear to

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AMY MILLIGAN - CROSS BY LUCAS

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1 you what the identity of that man is? Like do you know --
2 were you at the store that day, January 20th, 2015?

3 A: No.

4 Q: You just collected the photos?

5 A: Right, yes, sir.

6 Q: Do you know anyone that was at the store January 20th?

7 A: My employees were in the store.

8 Q: And you do not know the identity of that man?

9 A: No.

10 Q: No further questions.

11 THE COURT: Redirect?

12 MR. THOMAS: No, sir, Your Honor. The State would ask if
13 Ms. Milligan can be excused from her subpoena as well?

14 THE COURT: Any objection?

15 MR. LUCAS: No objection, Your Honor.

16 THE COURT: Ma'am, you may step down. You're free to go.
17 Thank you for being here. Have a nice day.

18 A: Thank you.

19 MR. THOMAS: Your Honor, may we approach?

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of but out of hearing of the Jury.)

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, what we're
24 going to do at this time, we're going to take a short break.
25 I'm gonna let you step to the jury room. Do not, do not

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BY THE COURT

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1 discuss the case at all. I'll get you back out here as
2 quickly as possible and we will resume the trial of this case.
3 Thank you.

4 Everybody else remain seated while the jury exits the
5 courtroom, please.

6 (REPORTER'S NOTE: Jury exits courtroom. 11:28 A.M.)

7 THE COURT: We'll stand down for a few minutes.

8 **(RECESS - 11:29 A.M.)**

9 *******OFF THE RECORD*******

10 **(On the Record - 11:44 A.M.)**

11 THE COURT: Anything from the State before we bring the
12 jury back out?

13 MR. THOMAS: No, sir, Your Honor.

14 THE COURT: Defense Counsel?

15 MR. LUCAS: Nothing, Your Honor.

16 THE COURT: Bring the Jury, please.

17 (REPORTER'S NOTE: Jury enters courtroom. 11:45 A.M.)

18 THE COURT: All jurors are seated and present?

19 BAILIFF: Yes, sir.

20 THE COURT: The State is so recognized. Call your next
21 witness please.

22 MR. THOMAS: The State calls Jason Ward.

23 JASON WARD, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Spell your last name for the Court, please.

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BY THE COURT

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1 MR. WARD: W-A-R-D.

2 CLERK: Thank you very much.

3 DIRECT EXAMINATION OF JASON WARD BY MR. THOMAS:

4 Q: Mr. Ward, where do you work?

5 A: I work at -- I'm employed at Georgetown Police
6 Department.

7 Q: And what do you do there?

8 A: I'm the Sergeant in the Criminal Investigation Division.

9 Q: And what kind of duties do you have as Sergeant of the
10 Criminal Investigation Division?

11 A: My duties kind of -- kind of range. I'm normally, day-
12 to-day I'm in charge of assigning cases, looking at reports
13 that were taken the night before and assign them out to each
14 investigator in order for them to start investigating and
15 trying to figure out what happened. Also, I'm in charge of
16 crime scenes. When we go to crime scenes, I'm in charge of
17 kind of making sure and overseeing that everything kind of
18 gets done the way it's supposed to get done and making sure
19 that case files and reports and the investigation is put
20 together in a timely manner and also in a neat manner.

21 Q: Are you familiar with the armed robbery of the Shoe Show
22 back in January of 2015?

23 A: Yes, sir, I am.

24 Q: What -- what sort of involvement did you have with that
25 case?

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JASON WARD - DIRECT BY THOMAS

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1 A: Well, it was during, I think it was on a Tuesday; it was
2 in the middle of the week. Everybody was -- in the morning
3 time, everybody was working. So kind of when it happened, my
4 investigators went out the door when the call came in and then
5 I showed up to make sure that, you know, I started kind of
6 canvassing, but I made sure that those guys were getting with
7 the victim, processing the crime scene, if there was anything
8 to be processed and helped along with that.

9 Q: So, in other words, you directed things to be done?

10 A: Yes, sir.

11 Q: What sort of things did you direct to be done on January
12 20th, 2015, the day of the ---

13 A: On January 20th, I made sure that the victim was
14 interviewed. I made sure that the store was processed,
15 photographed, and I made sure that if there was any evidence
16 in the store, that that piece of evidence was processed.

17 Q: Did you have any suspects on January 20th?

18 A: No, sir, not at the time. We also -- we'd also had to
19 get because of where it was at, we knew -- we knew we had
20 video from Walmart. So I instructed the guy to get it -- you
21 know, get the video from Walmart. We knew we had video from
22 Cato. So, another investigator was instructed to get video
23 from Cato. We tried to develop a suspect at this point.

24 Q: Mr. Ward, I want to show you what's in State's evidence
25 as Exhibit Number Twelve and Exhibit Number Thirteen. Would

1 you please take a look at those and tell me if you recognize
2 them?

3 A: Yes, sir, I do.

4 Q: Have you had an opportunity to view those?

5 A: Yes, sir.

6 Q: And what are they?

7 A: One is the video from Walmart and the other is the video
8 from Cato.

9 Q: Now, are those the surveillance videos that you just
10 testified about earlier that you requested in the course of
11 this investigation?

12 A: Yes, sir, they are.

13 Q: Do you make any notes or any other memorandum when
14 viewing those videos?

15 A: Yeah, with the Walmart one I did, I kinda jotted down
16 some times of kind of what was going on because the Walmart
17 video was about an hour long. So, just kind of move through
18 the video a little bit quicker and have start points and stop
19 points.

20 Q: And I'm gonna show you in just one minute what has been
21 marked for identification purposes only as State's Exhibit
22 Number Twenty.

23 MR. LUCAS: No objection, Your Honor.

24 Q: Just tell me if you recognize that.

25 A: Yes, sir, this is what I compared to the Walmart timeline

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1 that I typed up.

2 Q: And when did you type that up?

3 A: Last week or so.

4 Q: And what were you doing as you typed it up?

5 A: I was watching the video as I typed it.

6 Q: What kind of information did you include on there?

7 A: I included the minutes or the seconds according to the
8 video and where the suspect vehicle was at, coming in and
9 parking.

10 Q: Can you remember all the exact times things happened on
11 that video without using that document?

12 A: No, sir.

13 Q: Is that why you created that document?

14 A: Yes, sir.

15 MR. THOMAS: Your Honor, the State would ask permission
16 to publish State's Two and Thirteen and also that the witness
17 be permitted to stand down and describe what is going on in
18 State's Twelve and Thirteen. I also request that the witness
19 be able to use his notes to help him in testifying and also
20 save the Court's time so we can skip through unnecessary parts
21 of these videos.

22 THE COURT: Any exception or objection from Defense
23 Counsel?

24 MR. LUCAS: No objection, Your Honor.

25 THE COURT: Sir, you may certainly step down, thank you.

1 MR. THOMAS: Can I get the monitors on for the Jury and
2 the Court?

3 (REPORTER'S NOTE: State's Exhibit Twelve published for the
4 Jury.)

5 BY MR. THOMAS:

6 Q: Mr. Ward, the Walmart video, how was it divided?

7 A: The Walmart video, we've got fourteen different shots
8 from various camera locations throughout the parking lot.
9 When Mr. Walker downloaded, he downloaded fourteen, fourteen
10 videos.

11 Q: Will you please take us through some of those videos?

12 A: All right. We're gonna start with the first video and -
13 ---

14 MR. THOMAS: If you could make that full screen, if you
15 would.

16 A: This first video is about twenty-three seconds long, but
17 what it shows you, it's gonna show you -- it's gonna show you
18 the Defendant's vehicle pulling in from the southwest of
19 Walmart across from Bojangles', and if you look at the cursor
20 on the screen, that's the Defendant pulling in at 8:43 in the
21 morning on the day of the incident. The second video is
22 another short video. It's just a continuance of the suspect
23 vehicle pulling in, you see him coming from behind the trees
24 as he pulls into the parking area, and he's pulling in towards
25 the strip mall towards the Wendy's side of the parking lot on

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1 the north side of the parking area and parks. Number three,
2 he continues to pull in front of the Shoe Show, facing the
3 Shoe Show, and he stays parked for a few seconds and then
4 we'll skip forward to the forty second mark. At the forty
5 second mark he pulls up to another parking spot a little bit
6 closer to the Shoe Show, and he stays there, he sits there
7 until a two minute and thirty-one second timeframe. And at
8 8:46, he pulls back off, backs out and pulls off. Shot number
9 four is gonna be a continuance of that video where he's coming
10 down the aisle towards Walmart at 8:47 and he's pulling down
11 towards the main drag in front of the grocery section of
12 Walmart. Shot five, shows him getting to that intersection
13 and going left and he's gonna pull in behind Walmart at this
14 point and turn around. Shot six is a continuance where he's
15 gonna pull in, turn around and then turn back out and go back
16 out in front of the strip mall, in front of the Cato and the
17 Shoe Show. Shot seven of this video showing where he pulled
18 out from behind Walmart and now he's going back in front of
19 the Shoe Show again, and he's gonna cut through the parking
20 lot, and he's gonna swing around and park. We'll move on to
21 shot eight which is gonna be a continuance of that video. He
22 pulls around and he's going to get to a parking space in front
23 of the Shoe Show and he's gonna stay here for about forty-five
24 minutes once he gets into this parking spot and the time is
25 8:49, the true and accurate time according to Walmart. He's

1 gonna pull in here and sit right in between these cars is
2 where he pulled in at. All right. And he stays there for
3 forty-five minutes. So, we'll go to shot nine. Oh, I'm
4 sorry. Shot nine, he pulled off and he's going behind -- he's
5 pulled behind -- he's pulling behind the strip mall in between
6 Wendy's and the strip mall, in that vehicle. Shot ten, at
7 about the forty-two second mark, he pulls in and you see him
8 at the top right corner of the screen. He pulls behind the
9 strip mall and he's gonna back into a parking spot, and time
10 is 9:34. He sits, he sits in the car until the three minute
11 and twenty-five second timeframe. Sorry about that. Shot
12 number ten, at the forty-two second mark, he pulls in behind,
13 right here at the top of the screen. And then at three
14 twenty-five mark, he exits the vehicle and walks alongside the
15 building towards the breezeway where the Shoe Show is located
16 at 9:37. He enters the store at 9:37:36. Shot eleven is just
17 another view from the Walmart cam. To the right of your
18 screen you see when he walks inside the store. Shot twelve,
19 these were the same camera, but is exiting -- when he exits
20 the Shoe Show. Thirteen is the side view where he returned to
21 the vehicle and that's at the thirty-eight second mark, there
22 he goes. Mr. Moultrie then gets into his vehicle and goes
23 behind the strip mall, turns out by Wendy's and pulls out at
24 the red light in the Walmart parking lot. And shot fourteen
25 is gonna show him pulling out here and turned left onto 701 at

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1 9:46.

2 And this is a video that we got from the Cato
3 surveillance inside the store at about 9:37 we get the suspect
4 walking by the store in route to Shoe Show. Now, we're at
5 9:45, Mr. Moultrie going back down the sidewalk headed to this
6 corner of the building.

7 BY MR. THOMAS:

8 Q: Now on that software is there any way to try to make the
9 picture bigger; do you know?

10 A: No, sir, not on the Cato's; that's about as big as we can
11 get it.

12 Q: All right. I think that's all. Mr. Ward, I am gone show
13 you what has been entered into evidence already as State's
14 Exhibits Fourteen, Fifteen, Sixteen, Seventeen, Eighteen and
15 Nineteen. Please take a look at those.

16 A: Yes, sir.

17 Q: And what are they?

18 A: They are still photographs from the Cato video.

19 Q: What we just saw?

20 A: Yes, sir.

21 MR. THOMAS: Your Honor, permission to publish State's
22 Fourteen through Nineteen?

23 MR. LUCAS: No objection.

24 THE COURT: It's already in evidence; you may publish
25 them.

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1 BY MR. THOMAS:

2 Q: All right. Mr. Ward, so you got the surveillance videos.
3 Take us to your investigation from that point?

4 A: Well, at this point, we kind of got kinda limited. We
5 got -- the video evidence is all we really had to go on at
6 this time. When we interview the victim on the 20th, she
7 mentioned that the Defendant said he used to be an employee at
8 the Shoe Show. So, the first thing we did, we kind of went
9 back and found a male, a black male, that had previously
10 worked at Cato or, excuse me, Shoe Show and put -- and put
11 that suspect in a lineup to show Ms. Messinger, which she did
12 not pick out. That kind of put us in a stalemate. So, for
13 the next few days, about ten or eleven days, you know, we were
14 kinda -- kinda caught. We didn't have a whole lot to go on.
15 We thought we had pretty good video and, and, and side profile
16 of the suspect, but just didn't have any, any -- anybody to
17 put in that car or that profile. So, I spoke with a colleague
18 of mine on January 30th with Charleston Police Department and
19 sent him a picture of the vehicle and through his technology,
20 he was able to get a tag on that car through license plate
21 readers. So were able at that point to get a tag on our black
22 car, which led to name of Mr. Stanley Moultrie. That's who
23 the vehicle was registered to.

24 So at this point ---

25 BY MR. THOMAS:

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1 Q: Now, what all kind of information were you able to get
2 from having that tag number?

3 A: We were able to get the owner of the vehicle which came
4 back Stanley Moultrie. We were able to get an address and we
5 were also able to get a DMV photograph of the suspect.

6 Q: And how did that photograph coincide with the victim's
7 representations to y'all as far as his appearance and what he
8 looked like?

9 A: Pretty much spot on.

10 Q: So from there, where do you go, what do you do with that
11 information?

12 A: Well, at this point in time with this information, we
13 obtained a search warrant for Mr. Moultrie's residence. We --
14 we knew he had a black car. It was at the residence on the
15 31st and we obtained a search warrant to search his residence
16 for any evidence pertaining to this case.

17 Q: And when was that search warrant executed?

18 A: It was executed around 2 or 3 o'clock on January the
19 31st, 2015.

20 MR. THOMAS: Court's indulgence as we mark some exhibits.

21 BY MR. THOMAS:

22 Q: Mr. Ward, I have a series of photographs here. If you
23 would for each one, please first identify the exhibit number
24 that you're looking at, please tell the Jury if you recognize
25 what it is and how you recognize it and then just tell them

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1 what it is a photograph of.

2 THE COURT: Hold on a second. What are the numbers
3 through?

4 Twenty-one and through ---

5 COURT REPORTER: Fifty-three.

6 MR. THOMAS: Fifty-three. And, Your Honor, there is one,
7 Number Thirty-Seven that we're not -- that's been identified,
8 but we're not using per. agreement of the parties.

9 THE COURT: Okay.

10 MR. THOMAS: Thirty-seven

11 THE COURT: Twenty-one through Fifty-three excluding
12 Thirty-seven?

13 MR. THOMAS: Yes, sir, Your Honor.

14 A: You still want me to state each Exhibit Number?

15 THE COURT: Please. All right. Exhibit Number Twenty-
16 one, this is a ---

17 THE COURT: Hold on a minute. He wants you to look at
18 them first, if I recall correctly, look at them first, go
19 through each one of them without publishing them now to the
20 Jury.

21 A: All right.

22 BY MR. THOMAS:

23 Q: Do you recognize those?

24 A: Yes, sir, I do.

25 Q: What do you recognize -- how do you recognize them?

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1 A: These are photographs from the search warrant that we
2 executed at Mr. Moultrie's residence.

3 Q: Who took those photographs?

4 A: I did.

5 Q: And what day was that again?

6 A: January the 31st, 2015.

7 MR. THOMAS: Your Honor, State would move to have
8 Exhibits ---

9 THE COURT: Twenty-one through Fifty-three excluding
10 Thirty-seven.

11 MR. THOMAS: --- Twenty-one through Fifty-three,
12 excluding Thirty-seven entered into evidence.

13 THE COURT: Any objection?

14 MR. LUCAS: No objection, Your Honor.

15 THE COURT: Without objection, so admitted.

16 MR. THOMAS: Thank you, Your Honor.

17 STATE'S EXHIBITS NUMBER TWENTY-ONE THROUGH THIRTY-SIX AND
18 THIRTY-EIGHT THROUGH FIFTY THREE ADMITTED INTO EVIDENCE

19 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

20 MARKED FOR IDENTIFICATION

21 BY MR. THOMAS:

22 Q: If you would please just go through those, first identify
23 the exhibit number and then tell the Jury what it's a
24 photograph of?

25 A: Exhibit Number Twenty-one a photograph of the front of

1 Mr. Moultrie's residence. Number Twenty-two is the back of
2 Mr. Moultrie's residence. Exhibit Twenty-three is another
3 photograph of the backside of Mr. Moultrie's residence with
4 the black vehicle. Exhibit Twenty-four is at the back of Mr.
5 Moultrie's residence at the back of his vehicle, a picture of
6 the license plate. Exhibit Twenty-five is a photograph from
7 the front door of Mr. Moultrie's residence looking in. When
8 we gained entry that is what we saw. Exhibit Twenty-six is a
9 closet in Mr. Moultrie's residence with several hats. Exhibit
10 Twenty-seven is -- this is like a laundry room area in Mr.
11 Moultrie's residence that -- we were taking a picture of his
12 clothing. Exhibit Twenty-eight is a marker four which
13 identified the red tin can on the shelf. Exhibit Twenty-nine
14 is a photograph of what was in the tin can, which was U.S.
15 currency. Also Exhibit Thirty in the tin can was the driver's
16 license of Mr. Moultrie. Exhibit Thirty-one was another
17 photograph of the money. Exhibit Thirty-two is a pair of
18 shoes we photographed, size 13 shoe in Mr. Moultrie's closet.
19 Exhibit Thirty-three is another men's size 13 shoe that was
20 located in Mr. Moultrie's closet. Exhibit Thirty-four,
21 there's a little bit of glare, but it's a size 13 from a shoe
22 that was located in Mr. Moultrie's closet. Exhibit Thirty-
23 five is a photograph of a pair of glasses on Mr. Moultrie's
24 dresser drawer. Thirty-six, those glasses were marked as
25 evidence six on our paperwork, another picture of the glasses.

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1 Number Thirty-eight is some documentation with Mr. Moultrie's
2 name on it with the address and the residence we were at.
3 Exhibit Thirty-nine, more information, mail with Mr.
4 Moultrie's address and name on it. Exhibit Thirty is more
5 information for the residence to prove Mr. Moultrie stayed
6 there with his name on it from the Georgetown County Library.
7 Exhibit Forty-one was a photograph of the caps in the top of
8 Mr. Moultrie's closet. Exhibit Number Eight, same photograph
9 -- excuse me, Exhibit Forty-two, marker eight, top of the
10 closet. Exhibit Forty-three, photograph of Mr. Moultrie.
11 Exhibit Forty-four is inside the laundry room that I explained
12 a few exhibits back but that's the inside of the laundry room,
13 of clothes he had hanging up. Exhibit Forty-five was marked,
14 a blue jumpsuit located in Mr. Moultrie's laundry closet.
15 Exhibit Forty-six is the blue jumpsuit laid out on the floor
16 to get a full detail of the suit. Exhibit Forty-seven was
17 photographs of Mr. Moultrie's vehicle once it was brought back
18 to the police department. Exhibit Forty-eight the tag on Mr.
19 Moultrie's vehicle.

20 Q: And what is that tag number?

21 A: KNR687.

22 Q: And how were you initially provided that tag number
23 again?

24 A: Through -- through the City of Charleston, Investigator
25 English. That was Exhibit Forty-eight. Exhibit Forty-nine,

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1 the glove box. I opened the glove box in Mr. Moultrie's
2 vehicle. Exhibit Fifty was the vehicle owner's manual is what
3 this is being pulled out the glove box. Exhibit Fifty-one is
4 the money that he had paper clipped inside the owner's manual
5 inside the vehicle. Exhibit Fifty-two is a photograph of the
6 trunk of the vehicle, which shows some boots, hard hat and
7 toboggans. And Exhibit Fifty-three is another picture of the
8 contents inside the trunk and one of the pieces of contents
9 were a set of binoculars.

10 MR. THOMAS: And, Your Honor, at the appropriate time,
11 when the witness gets situated, permission to publish to the
12 Jury?

13 THE COURT: Yes, sir.

14 MR. THOMAS: Thank you.

15 BY MR. THOMAS:

16 Q: Mr. Ward, did you bring anything else with you today?

17 A: Yes, sir, I brought the evidence that was taken from the
18 residence.

19 THE COURT: Hold on just a minute.

20 Ma'am, would you view each photograph; when you view one
21 at the time, as soon as you view one, pass that one to the
22 next person. Maybe that will go a little bit quicker. Okay?
23 Thank you.

24 I'm sorry, you may continue, Mr. Thomas.

25 BY MR. THOMAS:

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1 Q: Mr. Ward, I'm gonna show you ---

2 THE COURT: I want you to hold on and let the Jury look
3 at these pictures if you're gone introduce other evidence.

4 And, ma'am, once they come back to you and you get them
5 all, give them to this young man right here and he can give
6 them to the Court Reporter.

7 While the Jury is looking at those photographs, can the
8 lawyers approach for a moment?

9 (REPORTER'S NOTE: A bench conference was held off the record
10 in the presence of but out of hearing of the Jury.)

11 THE COURT: Mr. Thomas.

12 BY MR. THOMAS:

13 Q: Mr. Ward, I'm gonna show you what has been marked for
14 identification as State's Exhibit Fifty-four and State's
15 Exhibit Fifty-five, if you'd please take a look at those and
16 tell us if you recognized what they are?

17 A: Yes, sir. These are evidence that was collected with the
18 search warrant and this is what I bagged them in once we got
19 to the police department and taped it up.

20 MR. THOMAS: Your Honor, should we go ahead and just open
21 it up and let everybody ---

22 THE COURT: Go ahead and open the bags and look inside of
23 them before you start pulling stuff out. Hold on a second.
24 Hold on a second. Now you can talk with the bag not rattling
25 around. Also my Court Reporter can get a clear indication of

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1 what's being said here.

2 A: What I observed in the bag is what's marked on the bag.

3 THE COURT: And that's exhibit number what, sir? I'm
4 sorry.

5 A: Fifty-four.

6 THE COURT: Fifty-four?

7 A: Yes, sir.

8 THE COURT: All right. Look in the next bag, please,
9 sir.

10 A: The next bag is about seven bags, bags in a bag.

11 THE COURT: All right. Go ahead, Mr. Thomas.

12 BY MR. THOMAS:

13 Q: Mr. Ward, I'm gonna show you State's evidence Forty-six.

14 A: Yes, sir.

15 Q: What is that?

16 A: A blue jumpsuit, Dickie jumpsuit.

17 Q: Did you bring that with you here today?

18 A: Yes, sir, I did.

19 Q: Is it the jumpsuit that came from Mr. Moultrie's house
20 when you executed the January 31st search warrant?

21 A: Yes, sir.

22 MR. THOMAS: Your Honor, the State would move enter the
23 jumpsuit into evidence through Mr. Ward?

24 THE COURT: Is that Exhibit Number Fifty-four?

25 A: Yes, sir.

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1 THE COURT: All right. Any objection?

2 MR. LUCAS: No objection, Your Honor.

3 THE COURT: So admitted without objection, State's
4 Exhibit Number Fifty-four.

5 STATE'S EXHIBIT NUMBER FIFTY-FOUR

6 ADMITTED INTO EVIDENCE

7 BY MR. THOMAS:

8 Q: Can you pull that jumpsuit out?

9 A: (Witness complies.)

10 Q: Now, I'm going to show you State's Evidence Twenty-nine
11 and Thirty, which appear to be photographs of the same thing.
12 Would you please tell the Jury what those are?

13 A: Yes, that's a photograph of money and the driver's
14 license of Mr. Moultrie.

15 Q: Did you bring those items with you today?

16 A: Yes, sir.

17 MR. THOMAS: Your Honor, the State would move to have
18 those items entered into evidence.

19 THE COURT: All right. Any objection?

20 MR. LUCAS: No objection.

21 THE COURT: Without objection and that's part of Exhibit
22 Fifty-five, correct?

23 A: Yes, sir.

24 STATE'S EXHIBIT NUMBER FIFTY-FIVE

25 ADMITTED INTO EVIDENCE

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1 MR. THOMAS: Your Honor, permission to publish the
2 driver's license.

3 BY MR. THOMAS:

4 Q: Did you count the money?

5 A: Yeah, I'm sure it was counted.

6 Q: Okay, Mr. Ward, so we've gotten through the search
7 warrant. What happens next in this investigation? Take us
8 home.

9 A: Once the search warrant is complete, we locate Mr.
10 Moultrie.

11 Q: When was that?

12 A: That afternoon about 6 o'clock maybe on that evening or
13 afternoon, Mr. Moultrie was located and subsequently brought
14 to the police department. At which time the photo lineup of
15 Mr. Moultrie was taken to the victim.

16 Q: Let's talk a little bit about that. Did you show the
17 photo -- photo lineup?

18 A: No, sir; I did not.

19 Q: I'm gonna show you what's been entered into evidence as
20 State's Exhibit Number Eleven. Do you recognize that?

21 A: I do.

22 Q: What is it?

23 A: That is a -- that's a photo lineup which is generated by
24 SLED, State Law Enforcement Division, and what we do to obtain
25 that is we fill out a form, email it to SLED and depending on

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1 the nature of the crime, this was kind of turned around in
2 about two or three hours, it's -- you know, it's twenty-four
3 hours to SLED, they were able to generate this lineup and get
4 it back to us.

5 Q: Who requested that lineup?

6 A: I did.

7 Q: And when did you do that?

8 A: I requested it on the 30th. Once we got his name from
9 the license plate and the address, I requested it then.

10 Q: And what did you do with it after that?

11 A: Well, I just kind of left it in my box. You know, my
12 inbox and once we got an opportunity to take it Ms. -- to the
13 victim because she lived in Conway, she wasn't working at the
14 time and we knew she was gonna be back in on Saturday
15 afternoon, and we were gonna show her the lineup when she
16 returned back to work on Saturday.

17 Q: So, who did you give the lineup to show it to her?

18 A: Investigator Sierra.

19 Q: And does he work in your office?

20 A: Yes, he did at the time, yes.

21 Q: Nothing further at this time.

22 THE COURT: Can the lawyers approach a minute, please,
23 before we go into cross examination?

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of but out of hearing of the Jury.)

1 BY THE COURT:

2 THE COURT: Now, ladies and gentlemen, what we're going
3 to do at this time, I'm not exactly sure how long cross
4 examination may take. I am going to let you go to lunch at
5 this time. Okay? When you come back we'll resume the trial
6 of this case. This officer will be on the stand and I will
7 recognize Mr. Lucas at that time for cross examination. Okay?

8 I did not tell you all this yesterday when you all were
9 picked and seated on this jury. Usually I go over a few
10 things with the jury panel that's going to be serving with me.
11 We typically run court -- I typically start around 9:30 in the
12 morning. Because I had some matters I had to deal with first
13 thing this morning, I had you come in at 10:00 as opposed to
14 9:30. When we start at 9:30, I usually go about an hour and a
15 half to two hours and then we'll take a mid-morning break just
16 like we did this morning. Then we will resume and if things
17 kind of shape up how I like them to, but that doesn't always
18 happen as you all can only imagine, I like to go to about 1
19 o'clock and take lunch at 1:00, typically about an hour-and-
20 fifteen-minute lunch break, let you all ease out of here as
21 opposed to trying to rush in and out to get back. We
22 typically resume at 2:15/2:30 and we'll go an hour and a half,
23 mid-afternoon break, and we'll resume, and try to stop, try to
24 stop sometime around 5:00. Okay. I'm not sitting up here and
25 watching that clock and as soon as it strikes 5:00 saying, all

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BY THE COURT

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1 right, we're stopping for the day. I don't operate like that.
2 If we have a witness on this witness stand and it's 5 o'clock,
3 it is my goal and my intention to try to finish that witness
4 for the day. Okay?

5 Having said that, under very, very rare circumstances
6 will I keep you here beyond 6 o'clock at night. Okay? By the
7 same token, if it is around say 4:30 in the afternoon and the
8 lawyers advise me, say, Judge, this next witness may be quite
9 lengthy, I may let you go for the balance of the day at that
10 point rather than start a witness that late in the afternoon
11 and run the risk of keeping you here beyond 6 o'clock. Okay?

12 So, one other thing I typically address, I've noticed
13 that it's not too cool in this courtroom today. I haven't
14 been too hot up here. I sit up here with this black robe as
15 part of my uniform, so to speak, along with a shirt, tie and
16 an undershirt. Usually, if I have anything to do with the
17 thermostat, it's gone be quite cool in here. Okay? I want
18 you to be comfortable while you're sitting in here. My wife
19 and I for years after we got married, and after twenty-plus
20 years, we're still married, but she and I, I wouldn't say
21 argue, but we would have a disagreement about the thermostat.
22 I like it cool and she likes it quite warm. And we finally
23 came to an agreement or conclusion and that is she agreed that
24 when she's cold, she can put on more clothes in the house, but
25 when I'm hot, I can't take off but so much. The same rule

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BY THE COURT

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1 applies in here. If you're cold, you can put on as much
2 clothing as you want to in here, but if you hot, I'm not gonna
3 let you take off but so much, okay, while you're sitting in
4 here.

5 I'm gonna let you go to lunch at this time. I'm gonna
6 ask that you be back at 2:15, at 2:15, and we will resume the
7 trial of this case as promptly at that time as possible. Same
8 instruction remains throughout. Do not, do not discuss this
9 case at all with anyone and do not do any independent
10 investigation on your own. As I told you from the outset, you
11 are to decide this case based solely upon the evidence and
12 testimony that's presented in this courtroom and nowhere else.

13 Anything from the State before I release the Jury for
14 lunch?

15 MR. THOMAS: No, sir, Your Honor.

16 THE COURT: Defense Counsel?

17 MR. LUCAS: Nothing further, Your Honor.

18 THE COURT: All right. You all free to go to lunch. I
19 will see you back at 2:15.

20 Everybody else remain seated while the jury exits the
21 courtroom, please.

22 (REPORTER'S NOTE: Jury exits courtroom. 12:43 P.M. The
23 following takes place outside the presence of the Jury.)

24 THE COURT: All right. Anything from the State before we
25 break for lunch?

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1 MR. THOMAS: Your Honor, one, one issue in scheduling of
2 witnesses. One of the witnesses the State intends to call is
3 Detective English from Charleston Police Department. He was
4 going to testify as to the tag, license tag reader. He is
5 under subpoena here in Georgetown County as well as his home
6 county in Charleston for a murder trial and they would like
7 him to be able to testify this afternoon in Charleston for
8 that murder trial. I was wondering if when we came back from
9 our break, if there is any way to go out of order to get him
10 in so he can get back on the road to Charleston. He'll be a
11 very short witness and then resume with the cross examination
12 of Mr. Ward?

13 THE COURT: Any objection to that, Mr. Lucas?

14 MR. LUCAS: No objection at this point, Your Honor.

15 THE COURT: Okay. Now what we'll do is we will -- and I
16 will instruct the jury that we're doing that out of order.

17 Sergeant Ward?

18 A: Yes, sir.

19 THE COURT: I'm gonna allow you to step down while we're
20 breaking for lunch, but you are not, you are not allowed to
21 discuss your testimony at all with anyone.

22 A: Yes, sir.

23 THE COURT: With anyone. When we resume the trial of
24 this case, I'll instruct the Jury that we're going somewhat
25 out of order in an effort to make it possible for Investigator

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1 English -- is that right?

2 MR. THOMAS: Yes, sir, Your Honor.

3 THE COURT: --- to get back to Charleston to a matter
4 down there and then we will resume cross examination. All
5 right? You may step down, sir.

6 2:15.

7 MR. LUCAS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 **(RECESS - 12:43 P.M.)**

10 *******OFF THE RECORD*******

11 **(On the Record - 2:14 P.M.)**

12 THE COURT: Thank you. Be seated please.

13 We got all the jurors?

14 BAILIFF: I don't think we have, Judge.

15 THE COURT: Okay. All right. Anything from the State
16 before I bring the jury out?

17 MR. THOMAS: Your Honor, I have the Notice of intention
18 to seek a sentence of life without parole. This was served on
19 the Defendant back on April 7th of 2016 and filed that same
20 day and served in open court during a term of court that Judge
21 Harrington was presiding over. It was filed but I don't know
22 if that's part of the Court's record, but if it's not, I'd
23 like to make it part of the Court's record.

24 THE COURT: Any objection, Mr. Lucas?

25 MR. LUCAS: No, I have no objections to that, Your Honor.

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1 COURT'S EXHIBIT NUMBER FIVE

2 MARKED FOR IDENTIFICATION

3 THE COURT: All right. Anything further from the State
4 at this time?

5 MR. THOMAS: No, sir, Your Honor.

6 THE COURT: Defense Counsel?

7 MR. LUCAS: Your Honor, what I would like to do if Your
8 Honor, would allow it, I would like to sequester Detective
9 Ward. Since we went out of order, I don't know that it would
10 be -- it will be obviously in the Defendant's best interest if
11 Detective Ward is allowed to hear what Detective English is
12 going to testify to.

13 MR. THOMAS: Your Honor, it's my understanding that both
14 the victim and the lead on the ---

15 THE COURT: All right. We're doing things a little out
16 of the ordinary here.

17 MR. THOMAS: I don't think there's any problem with doing
18 that, Your Honor.

19 THE COURT: I'm gonna ask him to step out at this time.
20 I mean, I don't want his testimony to possibly be altered
21 based upon what he may hear in here.

22 MR. THOMAS: Yes, sir, Your Honor.

23 THE COURT: Anything further?

24 MR. THOMAS: Nothing from the State, Your Honor.

25 THE COURT: Anything further, Mr. Lucas?

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BY THE COURT

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1 MR. LUCAS: Nothing further, Your Honor.

2 THE COURT: Bring us our jury please, sir.

3 (REPORTER'S NOTE: Jury enters courtroom. 2:18 P.M.)

4 THE COURT: All right. Good afternoon, ladies and
5 gentlemen. When we broke for lunch, Sergeant Jason Ward was
6 on the witness stand. Under ordinary circumstances, he would
7 have been back on the stand when you all came back out and I
8 would've recognized Defense Counsel for cross examination.
9 However, the attorneys have agreed to take a witness out of
10 order in an effort to accommodate this witness to get back to
11 a prior engagement that they have. So I'm gonna at this time
12 recognize the State to call this witness. And once we finish
13 with this witness, that's when Sergeant Ward will come back in
14 here and we will continue the cross examination of him by Mr.
15 Lucas followed by any redirect examination and possibly
16 recross. Okay?

17 You are so recognized, Mr. Thomas.

18 MR. THOMAS: Thank you, Your Honor. The State would call
19 Daniel English.

20 CLERK: Please raise your right hand.

21 DANIEL ENGLISH, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Thank you.

24 DIRECT EXAMINATION OF DANIEL ENGLISH BY MR. THOMAS:

25 Q: Good afternoon, Mr. English.

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DANIEL ENGLISH - DIRECT BY THOMAS

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- 1 A: How are you?
- 2 Q: Please tell the Jury where you work?
- 3 A: Charleston Police Department.
- 4 Q: And what do you do at Charleston Police Department?
- 5 A: I'm a detective in the Violent Crimes Division.
- 6 Q: What are some of the duties associated with that
7 position?
- 8 A: Currently my duties involve investigating aggravated
9 assaults and homicides; that's my current role.
- 10 Q: You know a fellow named Jason Ward?
- 11 A: I do.
- 12 Q: You know what he does?
- 13 A: I do.
- 14 Q: What does he do?
- 15 A: He's a Detective Sergeant for Georgetown City Police.
- 16 Q: Did you have any occasion to talk with Mr. Ward back in
17 January of 2015?
- 18 A: I did, yes, sir.
- 19 Q: And what was that conversation about?
- 20 A: During that conversation, he advised me of an armed
21 robbery he had to a shoe store in Georgetown.
- 22 Q: I'm gonna show you what has been marked for
23 identification, State's Exhibit Number Fifty-six, State's
24 Exhibit Number Fifty-seven and State's Exhibit Number Fifty-
25 eight. If you would, please look through each of those and

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DANIEL ENGLISH - DIRECT BY THOMAS

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1 tell me if you recognize them.

2 A: Yeah, I recognize these photos.

3 Q: Okay. And how do you recognize -- where do you recognize
4 them from?

5 A: So, when Sergeant Ward and myself communicated about the
6 robbery they'd had, he advised me that they had a suspect
7 vehicle identified and he sent me the photos of the suspect
8 vehicle and those are the photos he sent me.

9 MR. THOMAS: Your Honor, the State would move up Fifty-
10 six, Fifty-seven and Fifty-eight into evidence at this time.

11 THE COURT: Any objection?

12 MR. LUCAS: No objection, Your Honor.

13 THE COURT: Without objection, so admitted.

14 STATE'S EXHIBITS NUMBER FIFTY-SIX, FIFTY-SEVEN AND FIFTY-EIGHT

15 ADMITTED INTO EVIDENCE

16 MR. THOMAS: Permission to publish, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. THOMAS:

19 Q: Now, what did you do once you got those, those
20 photographs from Detective Ward or Sergeant Ward? I
21 apologize.

22 A: So when he sent me the photographs, I also looked at them
23 and what I did from that point was I reviewed what's called an
24 ALPR camera, but it's an automatic license plate reader
25 camera. I reviewed an ALPR camera and looked for vehicles

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DANIEL ENGLISH - DIRECT BY THOMAS

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1 that were captured by the camera to see if I could find a
2 vehicle that matched that description. Basically those
3 cameras capture vehicles when they pass. They capture a
4 photograph of the license plate and, obviously, the back of
5 the vehicle. So, I looked for vehicles on that ALPR camera
6 that would match the pictures that Sergeant Ward sent me.

7 Q: Now I'm gonna show you what's been marked as State's
8 Exhibit Number Fifty-nine and also State's Exhibit Number
9 Sixty. Would you please take a look at those and let me know
10 if you recognize those?

11 A: I recognize these.

12 Q: Okay. And what do you recognize those to be?

13 A: As I did the comparison like I just mentioned, I came
14 across this ALPR capture and the vehicles appeared to be
15 similar in description and this is the capture that matched
16 the suspect pictures.

17 MR. THOMAS: Your Honor, State would move to have Fifty-
18 nine and Sixty entered into evidence.

19 THE COURT: Any objection?

20 MR. LUCAS: No objection, Your Honor.

21 THE COURT: Without objection, so admitted.

22 STATE'S EXHIBITS NUMBER FIFTY-NINE AND SIXTY

23 ADMITTED INTO EVIDENCE

24 MR. THOMAS: Permission to publish, Your Honor?

25 THE COURT: Yes, sir.

1 BY MR. THOMAS:

2 Q: Now, are those Fifty-nine and Sixty are those the images
3 that you provided to Jason, I mean to Sergeant Ward in this
4 case?

5 A: Yes, sir.

6 Q: Okay. About how many vehicles do you think you had to
7 look at on that -- what did you call that camera again?

8 A: The ALPR camera.

9 Q: On the ALPR camera, about how many vehicles you think you
10 went through before you found that vehicle?

11 A: I don't have an exact number memorized. I know it was
12 more than -- I know it was more than a hundred, I believe it
13 was more than two hundred as well.

14 Q: How long did it take you to find that vehicle?

15 A: It took a while.

16 Q: No further questions.

17 THE COURT: Cross examination?

18 MR. LUCAS: Thank you, Your Honor.

19 CROSS EXAMINATION OF DANIEL ENGLISH BY MR. LUCAS:

20 Q: Detective English, good afternoon.

21 A: Good afternoon.

22 Q: So, Sergeant Ward provided you with several photographs
23 of a vehicle that he said was basically the suspect vehicle of
24 an armed robbery that happened in Georgetown?

25 A: That's correct. Yes, sir.

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DANIEL ENGLISH - CROSS BY LUCAS

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1 Q: And in all your, your years with law enforcement looking
2 at vehicles, were you able to look at those photographs and
3 say exactly like what the make of that vehicle was?

4 A: No, it was a visual comparison to make sure that the
5 photos he sent me looked similar to what I was seeing on the
6 ALPR camera.

7 Q: Okay. What about color?

8 A: I mean, you can see in the photo the suspect vehicle is
9 dark in color and you see on the ALPR captured that the
10 vehicle is dark in color.

11 Q: But we couldn't say that was definitely a black color?

12 A: I mean, no, that wasn't an exact matching, you know,
13 conversation we had. I just told him that this vehicle on the
14 ALPR camera appeared similar to the picture that he sent me
15 and, you know, he took his investigation from that point on?

16 Q: And you testified that you looked at approximately two
17 hundred, give or take two hundred photographs?

18 A: Yes, sir.

19 Q: What was the timeframe there that you looked at?

20 A: I would need to probably look at Fifty-nine and Sixty
21 again to give you an exact answer, but it was -- it was a
22 specific timeframe.

23 Q: Hours?

24 A: It was several hours, yes, sir.

25 Q: Several hours. Now, this vehicle was in no way unique?

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DANIEL ENGLISH - CROSS BY LUCAS

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1 A: I don't understand the question.

2 Q: What -- okay. Let me rephrase that. By looking at those
3 photographs that he gave you, it wasn't immediately apparent,
4 this is a very unique car?

5 A: So, I don't want to put words in your mouth as far as the
6 question you asked me, but it was visual comparison, again.
7 So basically, the photographs that he sent me showed the back
8 of the vehicle. The ALPR camera captures the back of the
9 vehicles. Visual comparison between the two will show you
10 that the back of suspect vehicle looked very similar to the
11 back of the vehicle in the ALPR capture. That information was
12 provided to Sergeant Ward, and like I said, he finished his
13 investigation from that point.

14 Q: So, in theory, this could be any one of a number of
15 vehicles?

16 A: I don't really want to say in theory. I provided him
17 with what I thought was a match and he finished up his
18 investigation from that point on. I did not send any
19 additional matches to him, if that's what you're asking.

20 Q: Kind of what I am eluding to, Detective, is we don't know
21 the exact color, correct?

22 A: Right, yes, sir; that's correct.

23 Q: We don't know the exact make of the vehicle, correct?

24 A: No, we don't.

25 Q: So at that point, it then became a may be?

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DANIEL ENGLISH - CROSS BY LUCAS

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1 A: It was a visual comparison between the suspect vehicle
2 photos and the picture that I was seeing on the ALPR camera.

3 Q: But you could not say with certainty that that license
4 plate that you picked up was the same that comes from that
5 grainy photo that was provided to you by Mr. Ward?

6 A: I never attempted to do so. We were just simply looking
7 for comparisons.

8 Q: Okay. So you don't know if that actually was the car?

9 A: I mean, in that particular moment when I forwarded him
10 the comparison, that's fair to say.

11 Q: No further questions, Your Honor.

12 THE COURT: Any redirect?

13 MR. THOMAS: No, sir, Your Honor.

14 THE COURT: Sir, you may step down. Thank you, sir.

15 A: Thank you, sir.

16 MR. THOMAS: Your Honor, may this witness be excused from
17 his subpoena. He's under subpoena for a trial in Charleston,
18 a murder case down there?

19 THE COURT: Any objection?

20 MR. LUCAS: No objection, Your Honor.

21 THE COURT: Without objection, sir, you're excused.

22 You're free to go. You have no further responsibility here.
23 Have a safe day.

24 A: Thank you, sir.

25 THE COURT: Have a good day.

1 All right. If you would at this time, Mr. Thomas, have
2 Mr. Ward come back in.

3 MR. THOMAS: Yes, sir, Your Honor.

4 Your Honor, the witness is on his way. He stepped off to
5 the restroom.

6 THE COURT: Sir, if you'll come back around. Have a seat
7 please, sir. I will remind you that you are still under oath.

8 MR. WARD: Yes, sir.

9 THE COURT: All right. Mr. Lucas, cross examination,
10 sir?

11 MR. LUCAS: Thank you, Your Honor.

12 CROSS EXAMINATION OF JASON WARD BY MR. LUCAS:

13 Q: Mr. Ward, it's Sergeant Ward, correct?

14 A: Yes, sir.

15 Q: Okay. On January 20th of 2015, did you -- did you go to
16 the Shoe Show at all?

17 A: Yes, sir, I went by. I may've walked in the store, but I
18 did go by and I spoke to my two investigators that were there.

19 Q: Okay. But you didn't respond when the call was made?

20 A: No, sir.

21 Q: Okay. Now through your investigation, you found -- you
22 came across video, surveillance video from Walmart and Cato,
23 correct?

24 A: Yes, sir.

25 Q: At that point, you were trying to match that car?

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JASON WARD - CROSS BY LUCAS

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- 1 A: Yes, sir.
- 2 Q: To someone. And you provided photos to Detective English
3 in Charleston?
- 4 A: Yes, sir.
- 5 Q: For the purpose of trying to get a match?
- 6 A: Yes, sir.
- 7 Q: And he did some comparison that took him some time and
8 then he responded back to you?
- 9 A: Yes, sir.
- 10 Q: And said we've got this possible match?
- 11 A: Yes, sir; that's correct.
- 12 Q: Now, when you talked to him about this, what did he
13 indicate to you about the possible match?
- 14 A: He talked there being a black car, sedan, and after
15 looking, I don't know, hours of video or hours of photographs,
16 it came back to -- we saw where it came back to a guy from
17 Georgetown.
- 18 Q: But the photos from the Walmart and Cato video, the still
19 shots ---
- 20 A: Uh-huh (affirmative response).
- 21 Q: --- they were pretty, pretty general photos, meaning they
22 didn't directly -- we didn't know what color the car was,
23 correct?
- 24 A: We knew it was black.
- 25 Q: We knew it was black or we knew it was dark in color?

1 A: When I looked at the video, I saw a black, a black
2 vehicle.

3 Q: Okay. But when you looked at the video, you didn't know
4 what type of vehicle it was?

5 A: Correct, I wasn't sure. I just knew it was a four-door
6 sedan type, but unknown make and model from the video.

7 Q: And did you ever -- when you sent it to Detective
8 English, did you ever indicate to him more, like what exactly
9 he was looking for or did you just send him the picture and
10 say compare?

11 A: I may have. I don't, I don't remember.

12 MR. THOMAS: Your Honor, may we approach the bench?

13 THE COURT: Yes, sir.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury.)

16 THE COURT: You may continue.

17 MR. LUCAS: Thank you, Your Honor.

18 BY MR. LUCAS:

19 Q: Sergeant Ward, you executed a search warrant on Stanley
20 Moultrie's house, correct?

21 A: Yes, sir.

22 Q: And you found some eyeglasses at his house, correct?

23 A: Yes, sir.

24 Q: You found a blue jumpsuit at his house, correct?

25 A: Yes, sir.

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JASON WARD - CROSS BY LUCAS

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1 Q: Now, with regards to this jumpsuit, it wasn't a unique
2 jumpsuit, correct?

3 A: It was a blue-in-color Dickie jumpsuit. I mean, they get
4 -- they make -- multiply when they make them.

5 Q: Yes, so it's fair to say that this jumpsuit could be at
6 any number of peoples' houses?

7 A: Well, based on our investigation, I'm not sure if that
8 would be fair to say. I mean based on, you know, the totality
9 of what we're looking at at the time. You know, you've got a
10 video, you've got still pictures, we get a tag on the car and
11 then we go to search this house and find a blue jumpsuit,
12 which was consistent with throughout the investigation.

13 Q: Now through the search warrant, I believe we went through
14 some items that are here on the floor, multiple things that
15 were found, correct?

16 A: Yes, sir.

17 Q: Driver's license?

18 A: Correct.

19 Q: Multiple pieces of paper?

20 A: Yes, sir.

21 Q: A number of hats, I believe specifically a black leather
22 hat?

23 A: Yes, sir.

24 Q: But no blue hat, correct?

25 A: We had a picture of a blue hat in one of the photographs

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JASON WARD - CROSS BY LUCAS

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1 but that hat was not collected.

2 Q: The blue hat was never seized?

3 A: No, sir.

4 MR. LUCAS: Court's indulgence, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. LUCAS:

7 Q: Sergeant Ward, when you watched these videos ---

8 A: Yes, sir.

9 Q: --- the person that exited the car and went into the Shoe
10 Show, what were they wearing, do you remember?

11 A: From the looks of the video, I could tell it was a
12 jumpsuit and then based on the victim's description is when we
13 knew it was a blue jumpsuit and a ball cap with glasses.

14 Q: But looking at Stanley Moultrie here today and looking at
15 those videos, the Walmart and Cato video, which are not the
16 best quality, Walmart especially, you cannot say with absolute
17 certainty that was Stanley Moultrie?

18 A: Mr. Counselor, I can tell you when I got the name Stanley
19 Moultrie and I researched him in DMV and pulled up his
20 driver's license picture on my computer with the glasses, with
21 the height and weight, I couldn't tell you with a hundred
22 percent certainty that was him, but I can tell you I was --
23 with high certainty I thought it was him at that point in time
24 and that's what led to the search warrants.

25 Q: But again, you cannot say that you know it was him?

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JASON WARD - CROSS BY LUCAS

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1 A: I cannot be -- I could not be a hundred percent certain.

2 MR. LUCAS: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. THOMAS: Very briefly, Your Honor.

5 REDIRECT EXAMINATION OF JUSTIN WARD BY MR. THOMAS:

6 Q: Mr. Ward, I'm gonna show you what's marked as State's
7 Exhibit Number Sixteen. Do you recall what that is?

8 A: Yes, sir, that's a still shot from Cato's.

9 Q: Looking at Mr. Moultrie here today, is there anything
10 inconsistent between his appearance here today and this Number
11 Sixteen?

12 A: No, sir, it's not.

13 MR. THOMAS: Nothing further from this witness.

14 THE COURT: Any recross?

15 MR. LUCAS: No recross, Your Honor.

16 THE COURT: Sir, you may step down. Thank you.

17 A: Thank you, Judge.

18 MR. THOMAS: Your Honor, may counsel approach?

19 THE COURT: Yes, sir.

20 MR. THOMAS: A scheduling matter.

21 (REPORTER'S NOTE: A bench conference was held off the record
22 in the presence of but out of hearing of the Jury.)

23 BY THE COURT:

24 THE COURT: All right. Ladies and gentlemen, what I am
25 -- what we're going to do at this time is I'm gonna let you go

1 home for the balance of the day. I apologize that you had to
2 come back here for thirty minutes of testimony, but I've been
3 advised the next witness that the State is going to be calling
4 is a witness that is being flown in from New York. Okay? And
5 that witness will not be here -- her flight comes in at 3:30
6 this afternoon. Rather than have you all sit up here till
7 4:15 or so or possibly even 4:30, I don't think -- I'm not
8 sure how long that witness will be, but I am not gonna have
9 you all sit up here all afternoon. I'm gonna let -- I
10 understand that you all have lives outside of this courtroom
11 and appreciate the lawyers advising me as to the status of
12 that. I'm not going to have you all sit up here for any
13 lengthy period of time sitting back there waiting. Okay? So
14 what I'm gonna do is I'm gonna let you go home for the balance
15 of the day. Do not discuss the case at all. Do not do any
16 independent research. We are going to resume the trial of
17 this case tomorrow morning at 9:30, at 9:30. So, if you'll be
18 back here tomorrow at 9:30, we'll resume the trial of this
19 case at that time -- and it is my intention to try to get this
20 case to you tomorrow, okay, we'll try to get this case to you
21 tomorrow. We'll see how things proceed once we begin back
22 tomorrow morning at 9:30.

23 All right. Any from the State at this time before I
24 release the Jury for the balance of the day?

25 MR. THOMAS: No, sir, Your Honor.

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BY THE COURT

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1 THE COURT: Defense Counsel?

2 MR. LUCAS: Nothing further, Your Honor.

3 THE COURT: Let me say this before you all go. When you
4 come back in the morning, if you'll this for me, when all of
5 you, when all of you get back here tomorrow morning, I want
6 you all to select a foreperson that will preside here in the
7 jury room and be the jury's spokesperson here in the
8 courtroom. All right. When you all, as a Jury, select the
9 foreperson, I want you to write it on a piece of paper for me,
10 okay, and when you come back out, give it to the Bailiff and
11 the Bailiff will give it to me and I will in turn advise the
12 Court who that foreperson that you all have selected to be.
13 And the foreperson will sit in this chair where the young lady
14 is in the pink, pink shirt, and that will be the foreperson's
15 seat throughout the remainder of the trial. I will tell you,
16 ladies and gentlemen, that Mr. Eric Galicia and Ms. Krystal
17 Lyles, each of whom have been selected as alternates, cannot
18 be the foreperson. Okay? So the twelve of you select who you
19 wish to serve as the foreperson during the trial of this case
20 and when you come back out in the morning and we resume the
21 trial of this case, that individual will sit in the end seat
22 where this young lady is in the pink, closest to the witness
23 stand, closest to me, okay, so to speak. All right?
24 You all have a great rest of the day and I will see you
25 all tomorrow morning at 9:30. Okay?

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom. 2:51 P.M. The
2 following takes place outside the presence of the Jury.)

3 THE COURT: All right. Anything from the State at this
4 time?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: Defense Counsel?

7 MR. LUCAS: Nothing further, Your Honor.

8 THE COURT: All right. 9:30 in the morning we'll resume
9 the trial of this case at that time.

10 Any further business from the State this afternoon?

11 MR. THOMAS: No, Your Honor.

12 *****OFF THE RECORD*****

13 (On the Record.)

14 END OF DAY TWO.

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MOTION

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1 **AUGUST 24, 2016 - DAY THREE**

2 (On the Record - 9:35 A.M.)

3 THE COURT: Thank you. Be seated, please.

4 All right. Anything from the State before I bring the
5 Jury in?

6 MR. THOMAS: Not at this time, Your Honor.

7 THE COURT: Defense Counsel?

8 MOTIONS:

9 MR. LUCAS: Your Honor, I do have one, a motion to
10 suppress the testimony that I believe the State is seeking to
11 introduce from the records custodian, I believe from Verizon.
12 My grounds for that motion, Your Honor, is at this point in
13 the trial, I don't know what relevance any records custodian
14 can provide to us. Everything that has been testified to thus
15 far has made no mention to cell phones. And then, Your Honor,
16 also this records custodian, I don't know exactly what she
17 plans to testify to, but if it's anything regarding cell
18 phones, that's getting strangely close to the possible expert
19 testimony and I don't even know the name of this girl from
20 Verizon. I haven't been able to look into her qualifications,
21 her credibility, I'm not sure. I just -- I don't see what the
22 relevancy is at this point in the trial.

23 THE COURT: All right.

24 MR. THOMAS: And, Your Honor, the records custodian is
25 gonna identify phone records that belong to Stanley Moultrie.

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MOTION

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1 He's gonna be the subscriber in the records that she
2 identifies on the stand, and she is going to identify records
3 pertaining to a number associated with Stanley Moultrie's
4 account. All his records from January 30 -- or January 1st
5 through January 30th of 2015. These records were requested
6 pursuant to our search warrant during the investigation of
7 this case. She's gonna identify those records, talk about
8 what the records contain, what the records are. You know,
9 just the information in the records. I'm not gonna qualify
10 her as an expert by any means.

11 THE COURT: Were those records provided -- I'm sorry, go
12 ahead.

13 MR. THOMAS: And, Your Honor, those records were provided
14 to Defense Counsel. And the second witness that the State
15 plans to call today will be a detective with Myrtle Beach
16 Police Department, who was there at the execution of the
17 search warrant of Mr. Moultrie's residence. He was able to
18 obtain this phone number, which is why he requested those
19 records. He was able to verify that phone number and a way
20 actually on COPLINK, which is a Myrtle Beach database.

21 Mr. Moultrie, since we're just in the presence of the
22 Court, was arrested in Myrtle Beach on January 16th of 2015.
23 That was the number provided -- he provided and that was in
24 the database. They confirmed it there. At that point, they
25 found out it was a Verizon number and requested those records.

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MOTION

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1 Mr. -- or our detective in Myrtle Beach also then transfers
2 those records in the raw form, that they're to go into
3 evidence, into a system call CellHawk. It doesn't manipulate
4 the data in any way. All it does is plot the data. It has
5 the cell tower locations and it just, you know, GPS and some
6 information that's provided along with these phone records and
7 it just plots that with the time and whatnot.

8 THE COURT: Okay. All right. Anything else, Mr. Lucas?

9 MR. LUCAS: Your Honor, I think the information that the
10 Solicitor just provided, it sounds -- it sounds eerily like
11 expert testimony. We're talking about information -- lay
12 person can't pull information out of cell phones and lay
13 persons can't track information in cell phones and as far as
14 any information that was pulled out of that cell phone, again,
15 I don't understand the relevancy of it at this point.

16 THE COURT: All right. Over Defense counsel's objection,
17 I'm gonna allow it. You certainly need to make an objection
18 at the appropriate time to insure that your client's interests
19 are protected with regards to that objection. All right?

20 MR. LUCAS: Understood, Your Honor.

21 THE COURT: Furthermore, Mr. Austin, in light or in
22 regards to the objection, the testimony will be allowed
23 provided you -- provided that you appropriately lay the
24 foundation for such testimony.

25 MR. THOMAS: Yes, sir, Your Honor.

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BY THE COURT

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1 THE COURT: All right. Bring me the Jury, please, sir.

2 (REPORTER'S NOTE: Jury enters courtroom. 9:40 A.M.)

3 BY THE COURT:

4 THE COURT: Good morning, ladies and gentlemen. I hope
5 you all had a good evening last night and are ready to proceed
6 here today. When we broke yesterday, I asked you when you
7 came back this morning to select a foreperson before you came
8 back. Did you all have an opportunity to do it? I also asked
9 you all to -- I think I asked you to write it down on a piece
10 of paper for me. That's okay.

11 Tell me your name, sir.

12 JUROR 315: Brandon Thompson.

13 THE COURT: Juror number?

14 JUROR 315: 315.

15 THE COURT: All right. Mr. Foreman, that will be your
16 seat throughout the remainder of this trial. Everyone else as
17 you come in and out of this courtroom, you all can sit in
18 whatever seat you all so desire, except my two alternates;
19 those are the only other individuals that have assigned seats
20 throughout the remainder of this trial.

21 At this time, Mr. Foreman, ladies and gentlemen of the
22 jury, we are going to continue the trial of this case. I'm
23 going to recognize the State.

24 Call your next witness please?

25 MR. THOMAS: Your Honor, the State calls Ms. Renada

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RENADA LEWIS - DIRECT BY THOMAS

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1 Lewis.

2 CLERK: Raise your right hand.

3 MS. RENADA LEWIS, HAVING BEEN SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: Would you please state your name again for the
6 Court and spell your first and last name?

7 MS. LEWIS: Renada Lewis. First name, R-E-N-A-D-A, last
8 name, L-E-W-I-S.

9 CLERK: Thank you. Please have a seat.

10 THE COURT: Before you go any further, Mr. Thomas, I did
11 not -- let's see here. When I qualified you all, ladies and
12 gentlemen, to serve as jurors in this case, the name of Ms.
13 Lewis was not provided to me as a witness in this case. Let
14 me ask this question of you all. Is there any member of the
15 jury panel that's ever been related by blood, connected by
16 marriage, had a close personal, business or social
17 relationship with Ms. Renada Lewis; if so, raise your right
18 hand?

19 (REPORTER'S NOTE: No response.)

20 THE COURT: Let the record reflect that no one on this
21 jury has raised their hand.

22 You may continue at this time, sir.

23 MR. THOMAS: Thank you, Your Honor.

24 DIRECT EXAMINATION OF RENADA LEWIS BY MR. THOMAS:

25 Q: Ms. Lewis, where are you from?

1 A: Verizon Wireless.

2 Q: What do you do at Verizon Wireless?

3 A: I'm a custodian of records.

4 Q: What does that entail? Was does a custodian of records
5 entail there at Verizon?

6 A: It means that if records are requested through with court
7 orders, subpoenas or other legal requests, I would fulfill
8 them and authenticate them, if necessary.

9 Q: What kind of records does Verizon keep?

10 A: Information about subscribers or account holders, call
11 details, information about incoming and outgoing phone calls,
12 information about text messages and data sessions.

13 Q: And how is that stored is that contemporaneously with
14 things that happen, y'all do it every once in a while; how do
15 you store all that information?

16 A: It is contemporaneously. It's at the time the events
17 take place.

18 Q: And y'all store all of that information in the ordinary
19 course of business there at Verizon?

20 A: Yes.

21 Q: Now, were you asked to bring anything with you to court
22 today?

23 A: Yes.

24 Q: First off, what were you asked to bring?

25 A: Records for a particular mobile number.

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RENADA LEWIS - DIRECT BY THOMAS

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1 Q: I'm gonna show you what has been marked as State's
2 Exhibit Number Sixty-one and please tell me if you recognize
3 that?

4 A: I do.

5 Q: And what do you recognize that to be?

6 A: It's a CD containing records that were requested.

7 Q: Okay. And what records are those?

8 A: It's subscriber information, it's phone call details,
9 it's message details, it's cell tower information.

10 Q: And for what account is that pertaining to?

11 A: The mobile number? I don't recall it off the top of my
12 head.

13 Q: Is it on the subpoena?

14 A: It is on the subpoena.

15 Q: Would that refresh your memory?

16 A: Yes.

17 STATE'S EXHIBIT NUMBER SIXTY-TWO

18 MARKED FOR IDENTIFICATION

19 Q: I'm gonna show you what's been marked for identification
20 purposes only as State's Exhibit Number Sixty-two; do you
21 recognize that?

22 A: Yes.

23 Q: And what's that?

24 A: This was a subpoena request for records.

25 Q: And that's what you received to be here today?

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RENADA LEWIS - DIRECT BY THOMAS

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1 A: Yes.

2 Q: And what information did you bring here today?

3 A: It's the subscriber information, details about the phone
4 calls, locations of cell sites pertaining to number
5 5731.

6 Q: Thank you. I've got two more things to show you. Please
7 take a look at State's Exhibit Sixty-four and also State's
8 Exhibit Sixty-three. Please look at those and tell me if
9 those are familiar to you?

10 A: They are.

11 Q: And what are those?

12 A: These are printouts of some information that's contained
13 on the CD. Specifically with State's Sixty-three, what is
14 that a printout of?

15 A: Sixty-three is a printout of details of calls from the
16 number I mentioned before from January 1st of 2015 through
17 January 31st of 2015.

18 Q: And what kinds of information is contained about those
19 calls?

20 A: Information in these records reflects the start time of
21 the phone calls, the duration of the call in seconds, which
22 cell site processed the call, which cell site terminated the
23 call, and the number that the call was made to or received
24 from.

25 Q: And when you say cell site, what do you mean, cell tower?

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RENADA LEWIS - CROSS BY LUCAS

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1 A: Cell tower.

2 Q: Okay. State's Sixty-four, what is that?

3 A: This is what's referred to as subscriber information and
4 it's the name and contact information of an account holder.

5 Q: Okay. So it has the name and information for the number
6 of the records you were told to bring here today?

7 A: Yes.

8 THE COURT: Can the lawyers approach a minute, please?

9 (REPORTER'S NOTE: A bench conference was held off the record
10 in the presence of but out of hearing of the Jury.)

11 THE COURT: Mr. Thomas, you may continue, sir.

12 MR. THOMAS: Thank you, Your Honor.

13 BY MR. THOMAS:

14 Q: Ms. Lewis, those records you brought here today to court
15 with you, I'm speaking of State's Exhibit Sixty-one, State's
16 Exhibit Sixty-three and State's Exhibit Sixty-four. Have they
17 been altered in any way?

18 A: No.

19 Q: Are they true and accurate Verizon records?

20 A: Yes, they are.

21 Q: Thank you, Ms. Lewis.

22 CROSS EXAMINATION OF RENADA LEWIS BY MR. LUCAS:

23 Q: Good morning, Ms. Lewis.

24 A: Good morning.

25 Q: I'm told you've made quite a trip today?

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RENADA LEWIS - CROSS BY LUCAS

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- 1 A: Yes.
- 2 Q: Or last night, I guess it was?
- 3 A: Yes.
- 4 Q: Okay. You just testified that there are several pieces
5 of information that you were able to identify, correct?
- 6 A: Correct.
- 7 Q: As to phone numbers?
- 8 A: Yes.
- 9 Q: Phone numbers that matched a certain person; he made
10 calls from that phone and you can track what times those phone
11 calls were made?
- 12 A: Yes.
- 13 Q: And you're able to identify where those phone calls
14 pinged from?
- 15 A: That's correct.
- 16 Q: Which gives a general ID or location of where they were?
- 17 A: Yes.
- 18 Q: Now, do you have any way to know what was said on those
19 phone calls?
- 20 A: No.
- 21 Q: You do not?
- 22 A: No.
- 23 Q: Do you have -- can you testify to the Jury as to an exact
24 location as to where those phone calls were made?
- 25 A: No.

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RENADA LEWIS - CROSS BY LUCAS

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1 Q: And based on your records, do you know if Stanley
2 Moultrie that's here today, actually had that phone when it
3 pinged?

4 A: No.

5 MR. LUCAS: Nothing further, Your Honor.

6 THE COURT: Any redirect?

7 MR. THOMAS: No, sir, Your Honor.

8 THE COURT: Ma'am, you may step down. Thank you.

9 MR. THOMAS: Your Honor, may this witness be released
10 from her subpoena so she can go back to New York?

11 THE COURT: Any objection by Defense counsel? Any
12 objection by Defense counsel?

13 MR. LUCAS: No, I apologize, Your Honor, no objection.

14 THE COURT: Ms. Lewis, you are free to go. You have no
15 further responsibilities under your subpoena. Have a nice
16 day.

17 Call your next witness please?

18 MR. THOMAS: Your Honor, the State calls Detective
19 Clothier.

20 CLERK: Sir, please raise left hand.

21 STEVEN CLOTHIER, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Would you please state your name again for the
24 Court and spell first and last name?

25 MR. CLOTHIER: My name is Steven Clothier. First name is

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 spelled S-T-E-V-E-N and my last name is Clothier, C-L-O-T-H-I-
2 E-R.

3 CLERK: Thank you very much. Please have a seat.

4 DIRECT EXAMINATION OF STEVEN CLOTHIER BY MR. THOMAS:

5 Q: Detective Clothier, where do you work?

6 A: City of Myrtle Beach.

7 Q: And what do you do for City of Myrtle Beach?

8 A: I'm currently a Sergeant on the road.

9 Q: How long have you worked there?

10 A: It will be seventeen years next month.

11 Q: What were you doing there back in January of 2015?

12 A: I was a Violent Crimes detective.

13 Q: And what was some of your duties as a Violent Crimes
14 detective?

15 A: As a Violent Crimes detective, we get called out for
16 crimes such as burglaries, assaults, rapes, homicides,
17 shootings, anything of a violent nature that includes a
18 victim.

19 Q: Are you familiar with a search warrant that was executed
20 back on January 31st of 2015 at the residence of Stanley
21 Moultrie?

22 A: Yes, sir.

23 Q: And what county was that executed in?

24 A: Georgetown.

25 Q: And please tell the Jury about your involvement in that

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 search warrant?

2 A: My involvement was I was on scene at the execution of the
3 search warrant.

4 Q: What information besides items of evidence that were
5 taken from the scene which we've discussed, what other, if
6 any, evidence or information of value did you get from the
7 execution of that search warrant?

8 A: I learned Mr. Moultrie's phone number that day.

9 Q: And what, if any, steps did you take after you learned of
10 that phone number?

11 A: Once I received that phone number, then I gave that phone
12 number to my office and they went and turned -- verified that
13 it was Mr. Moultrie's phone number.

14 Q: Okay. I'm gonna show you what's been marked for
15 identification as State's Exhibit Number Sixty-one. Do you
16 recognize what that is?

17 A: Yes, sir.

18 Q: And what is that?

19 A: These are the cell records.

20 Q: And cell records for what?

21 A: Mr. Moultrie's phone number.

22 Q: Okay. I'm gonna show you now what has been marked as
23 State's Exhibit Number Sixty-three and State's Exhibit Number
24 Sixty-four. Just take a minute to look at those and tell me
25 if you recognize those?

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1 A: I do. Number Sixty-four is the subscriber information on
2 that phone number and Exhibit Sixty-three is gonna be the
3 actual cell records from January 1st, 2015 all the way through
4 January 31st, 2015.

5 Q: Detective, when did you first receive those records?

6 A: I'm not sure.

7 Q: Do you have a general idea?

8 A: I think maybe in February.

9 Q: Of what year?

10 A: 2016 or, excuse me, 2015.

11 Q: And how did you receive those records?

12 A: By completing a search warrant for the phone number.

13 Q: And is the phone number contained in those records the
14 same phone number you completed a search warrant to obtained
15 those records for?

16 A: Yes, sir, same format.

17 Q: Is it the same phone number?

18 A: Yes.

19 MR. THOMAS: And, Your Honor, at this time, I would move
20 to have State's Sixty-one, Sixty-three and Sixty-four entered
21 into evidence.

22 MR. LUCAS: No objection, Your Honor.

23 THE COURT: Without objection, so admitted.

24 STATES EXHIBIT NUMBER SIXTY-ONE, SIXTY-THREE AND SIXTY-FOUR

25 ADMITTED INTO EVIDENCE

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 BY MR. THOMAS:

2 Q: Detective, what did you do upon receiving this
3 information from Verizon?

4 A: Once I received this information and it comes in a -- the
5 information that comes from Verizon is in an Excel
6 spreadsheet, just a format that they provide. Once I received
7 it, we utilize a program called CellHawk. CellHawk is a
8 program where you actually just take the Excel spreadsheet and
9 just kind of -- it's like a drag and drop and just move it
10 into this program and what it does is it formulates via a map
11 with all the information that's actually included in here. So
12 really there's no manipulation in the information that's
13 provided itself, it just puts it in a format that's easily
14 read and -- and looked at.

15 Q: And you did that in this case?

16 A: Yes, sir.

17 Q: Now, you were provided a lot of information from January
18 1st of 2015 all the way to the 30th. Did you do it for that
19 whole period or did you do it for a specific time?

20 A: I did for a specific time.

21 Q: And what date was that?

22 A: January 30th.

23 Q: January 30th?

24 A: 31st.

25 Q: I'm talking about what date and time did you do the

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 CellHawk analysis for? And I'll show you what's been marked
2 as or we will mark for identification as State's Sixty-five
3 and tell me if you recognize that.
4 A: Yes, sir. I recognize it.
5 Q: And what is that?
6 A: That's January 20th.
7 Q: But what is that?
8 A: I'm sorry. I'm sorry. Yes, I'm sorry. This is the
9 information that I printed out that came from CellHawk.
10 Q: Did you manipulate that in any way?
11 A: No, sir.
12 Q: Again, how did you produce that, that report?
13 A: All I did was screenshot what the program was showing.
14 Q: Okay. So you plug the data you received from the search
15 warrant?
16 A: Yes.
17 Q: Into CellHawk?
18 A: Yes.
19 Q: You don't manipulate anything and it produces it easy to
20 see format on a map?
21 A: Correct.
22 Q: And what's the purpose for doing that?
23 A: So it can show that each, each phone call that's made,
24 what it does it pinpoints where each call is made and it's
25 based on this cell record that already provides the latitude

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1 and longitude, but it just -- it shows it in an easy format.

2 Q: So, basically if I put a map on the wall of Georgetown
3 County and with the cell phone information that's in evidence,
4 put all the towers on that map and looked at the GPS
5 coordinates of where the phone calls were pinging off of, I
6 could plot this by hand?

7 A: Yes, sir.

8 Q: It would just be very tedious, correct?

9 A: Correct.

10 MR. THOMAS: Your Honor, the State would move to have
11 Sixty-five entered into evidence?

12 THE COURT: Any objection?

13 MR. LUCAS: No objection, Your Honor.

14 THE COURT: Without objection so admitted.

15 STATE'S EXHIBIT NUMBER SIXTY-FIVE

16 ADMITTED INTO EVIDENCE

17 BY MR. THOMAS:

18 Q: All right. Please take a look at State's Sixty-five and
19 tell us; just explain to us what you've got on there, what
20 you've got plotted out and what -- what it said?

21 A: Okay. What I did for the date of January 20th is -- it
22 provides all the phone calls that's made from the phone number
23 from January 20th. So I went through each phone call and just
24 screenshotted what the map shows for each phone call and it --
25 it's very simple, that' all I really did.

1 Q: And what does the map show for the phone calls that you
2 screenshotted?

3 A: It shows for the first one it shows the -- the phone
4 being on Penny Royal Road, which is the residence of Mr.
5 Moultrie and then I went through each phone call up until the
6 robbery.

7 Q: Okay. Go through them for us if you don't mind.

8 A: So at 5:22 in the morning, the -- the cell phone is
9 pinging on Penny Royal Road.

10 Q: And now I'll stop you there. Do you know exactly if it
11 was pinging from that road or that general area?

12 A: Yes, I would say that general area because I don't --
13 I'll say it's the general area.

14 Q: Okay. Go on.

15 MR. LUCAS: Objection, Your Honor, I believe the officer
16 is heading down the expert road.

17 THE COURT: State the grounds of your objection, please.

18 MR. LUCAS: The grounds for the objection are this is
19 expert testimony. He, he's talking about what he believes the
20 location of that ---

21 THE COURT: Hold on a minute. Can y'all approach a
22 minute?

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the Jury.)

25 THE COURT: You may continue, sir.

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 BY MR. THOMAS:

2 Q: If you would, go over each of those calls and tell us
3 what tower is being utilized, where that tower is.

4 A: Okay. So the first one he hit, hit off the Verizon Cell
5 Tower 1654 at 5:22 A.M. which is near Penny Royal Road.

6 Q: Okay.

7 A: And then I wrote the next data shows, the next line, the
8 next nine phone calls were still hitting off the same tower,
9 the 1654 from 6:22 A.M. through 8:22 A.M. and it's listed
10 right here on this side as far as you just click the time and
11 the map will pop up. So, the next line -- the next nine phone
12 calls were still at the same area. And then he -- then the
13 next phone call was at 8:34 A.M. and that hit off the Verizon
14 Tower 1656.

15 Q: Where is that tower in relation to the previous tower you
16 just testified about?

17 A: East, east. East from the -- from the previous phone
18 calls, east.

19 Q: Due east or is it east in north or east in south?

20 A: I'm just gonna say in east direction because I'm not
21 really sure. And then the next phone call was at 8:34 A.M. on
22 Verizon Tower 1565, and that tower was located near 17,
23 Business 17. And the next phone call was at 8:37 A.M. Verizon
24 Tower 1565, and that was still on Highway 17 but north, north
25 of the previous one. And then the next one at 9:19 is still

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 on 17 and is north.

2 Q: Hold on one second. Let's go back and talk about the
3 phone call at 8:37 and then the phone call at 9:19. Are those
4 off the same tower?

5 A: No, sir. The one at 9:19 is north; it's going north from
6 the previous phone call.

7 Q: Okay. And what other direction is that?

8 A: I'm not really sure.

9 Q: And you tell me ---

10 A: I'm sorry, I'm not good with maps.

11 Q: --- how this map is

12 A: Okay.

13 Q: Did he flip these maps around in any way or this is
14 actual -- that's really ---

15 A: I'm not sure. I just screenshotted what I had.

16 Q: Okay. So you got the addresses on there?

17 A: Correct.

18 Q: And all that information in there?

19 A: Correct.

20 Q: Okay. Go on.

21 A: So what I did is for the incident location for the
22 robbery, all I did was put a little pin showing where the
23 incident location occurred and ---

24 Q: Let me stop you right there. Was he -- at 9:19 during
25 that call, where was that tower located related to the

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STEVEN CLOTHIER - DIRECT BY THOMAS

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- 1 incident location? Are they closer or further away than the
2 other towers he was pinging off of?
- 3 A: I'm sorry, it's closer.
- 4 Q: Okay. The closest tower to the incident location?
- 5 A: Correct.
- 6 Q: Tell me this, how many phone calls were made from 8:43
7 and 9:46?
- 8 A: I don't see any.
- 9 Q: Did you just testify about one at 9:19; 8:43 and 9:46?
- 10 A: There's one at 8:37 A.M. and then one at 9:19 A.M.
- 11 Q: So there's only one phone call between the times I just
12 gave you, correct?
- 13 A: Correct.
- 14 Q: And again, what tower is that pinging off of?
- 15 A: I don't think I wrote the tower down.
- 16 Q: Well, is the tower number in the information that you
17 were provided by Verizon in evidence?
- 18 A: I'm sure it's on here.
- 19 Q: Well, can you look on there for that particular call at
20 9:19?
- 21 A: 1642.
- 22 Q: Okay. How many calls on there were made or received from
23 9:37 and 9:45?
- 24 A: None.
- 25 Q: When's the next phone call made after the 9:19 phone

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STEVEN CLOTHIER - DIRECT BY THOMAS

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1 call?

2 A: 11:44.

3 Q: Okay. Where is that -- what tower is that pinging off
4 of; what's the location of that one?

5 A: Tower 1563.

6 Q: Can you give us a general idea where that one is located?
7 I know it's on the map, but can you tell us?

8 A: It's away from the incident location.

9 Q: You're not familiar with Georgetown County, are you?

10 A: I am not, I'm sorry.

11 Q: Okay. But it's on the map -- what did you do again in
12 this case, you just plotted the information and put it onto a
13 map?

14 A: Correct.

15 Q: You didn't, a system did?

16 A: Correct. They system did.

17 Q: Okay. And all the cell tower locations are located in
18 the evidence that you were provided or documents you were
19 provided by Verizon, correct?

20 A: Correct, right here.

21 Q: They're GPS, actual GPS coordinates, the exact location
22 where they are?

23 A: Correct.

24 Q: And their number?

25 A: Correct.

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STEVEN CLOTHIER - CROSS BY LUCAS

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1 Q: And the information says on every phone call what tower
2 was being utilized?

3 A: Correct.

4 MR. THOMAS: No further questions, Your Honor.

5 THE COURT: Cross examination?

6 MR. LUCAS: Very briefly, Your Honor.

7 CROSS EXAMINATION OF STEVEN CLOTHIER BY MR. LUCAS:

8 Q: Good morning, Detective ---

9 A: Good morning.

10 Q: --- Clothier?

11 A: Clothier.

12 Q: Clothier. With regards to these pings, there's no way to
13 give an exact location, is there?

14 A: Not by my standards; I'm not an expert in location.

15 Q: Okay. And you don't know if Mr. Moultrie had the phone
16 at those times, do you?

17 A: I don't, no.

18 Q: And you can't, you can't tell the Jury anything that was
19 said during those phone calls, can you?

20 A: No, sir, I can just -- all I can say is what time it was
21 made and when it was made and what tower it hit off of and how
22 long the conversation lasted.

23 Q: But you would agree that it's possible that these phone
24 calls were made from Mr. Moultrie's phone, but it's possible
25 he didn't even have it with him, correct?

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1 A: It's his phone.

2 Q: But it's possible?

3 A: There's always a possibility.

4 Q: And again, we're talking a mere, a mere general sense at
5 this point. We don't have the exact locations of anything, do
6 we?

7 A: It's pretty accurate. The cell information is pretty
8 accurate.

9 Q: For the phone?

10 A: For the phone and where it's pinging from, correct.

11 Q: But not necessarily that Mr. Moultrie is with the phone?

12 A: Yes, it doesn't say that he has the phone with him, but
13 it is his phone.

14 MR. LUCAS: Okay. No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. THOMAS: Your Honor, the State would just ask to be
17 able to publish the State's Sixty-five to the Jury?

18 THE COURT: All right. Go ahead.

19 MR. THOMAS: And no further redirect of this witness.

20 THE COURT: Anything further, Mr. Lucas?

21 MR. LUCAS: Nothing further, Your Honor.

22 THE COURT: Sir, you may step down.

23 MR. THOMAS: And, Your Honor, members of the Jury are
24 still looking at it, it's being passed around, but at this
25 point in time, the State does intend to rest.

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1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, while you
3 all are looking at that, let me tell you all, I don't want to
4 rush you in looking at what's been handed to you right now,
5 but each of these items will go back in the jury room with you
6 all when the case does go to you. Okay? I just wanted to
7 advise you of that.

8 THE COURT: Are those papers stapled together?

9 MR. THOMAS: Yes, they are, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, the State
11 has rested its case, put up its case. What am I going to do
12 at this time, is I'm gonna excuse you to the jury room for a
13 period of time. Do not discuss the case at all. Do not
14 discuss the case at all until I instruct you to do so.
15 There's some matters of law that we need to take up with
16 regards to the case at this time. You may be back there a few
17 minutes, but I'll promise you I'll get you back out here as
18 quickly as possible. Okay. Please step in the jury room. Do
19 not discuss the case. I'll get you back out here as quickly
20 as possible.

21 (REPORTER'S NOTE: Jury exits courtroom. 10:25 A.M. The
22 following takes place outside the presence of the Jury.)

23 THE COURT: All right. Anything from Defense Counsel at
24 this time?

25 MOTIONS:

1 MR. LUCAS: Your Honor, just to state a few brief things.
2 First, at this point, the State has rested, I seek to renew
3 all my previous objections, specifically the ruling pretrial
4 on the competency evaluation; the ruling on the admissibility
5 of evidence seized on January 31st, 2015 search warrant; and
6 additionally, while all evidence was excluded under 404(b),
7 there was the additional aspect of the, of the license plate
8 number and I would renew my objection to that.

9 THE COURT: All right.

10 MR. LUCAS: Just for the record, Your Honor.

11 THE COURT: All right. Your objections are so noted for
12 the record. The Court's rulings remain the same as it
13 pertains to each.

14 MR. LUCAS: Understood, Your Honor. The next issue we
15 have, the Defense would move for a directed verdict at this
16 point and I will present to you the South Carolina Supreme
17 Court case of *State v. Heath* which outlined that a Defendant
18 is entitled to a directed verdict if the State fails to prove
19 the elements of the crime charged. Here, Your Honor, from all
20 the evidence that we've seen so far, and obviously the State
21 has rested so there will be nothing more, I don't believe
22 there is any evidence that tends to show the identity of Mr.
23 Moultrie as being a part of any of this. We had Ms. Messinger
24 who admitted on the witness stand that she understood that
25 her, her statements were inconsistent and there were problems

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1 there, and then everyone else cannot validate a belief that
2 Mr. Moultrie was the person who did this. So based on its
3 surface and the fact that the mere identity of Mr. Moultrie is
4 at issue and that hasn't been proven up to this point, under
5 *State v. Heath*, I would just motion to have a directed verdict
6 in this case.

7 THE COURT: All right. Thank you, sir.

8 Mr. Thomas, anything in response?

9 MR. THOMAS: Very briefly, Your Honor, just that Ms.
10 Messinger identified the Defendant back on January 31st, 2015.
11 She also identified him in court here yesterday, and a number
12 of other circumstantial evidence linking Mr. Moultrie to the
13 crime.

14 THE COURT: All right. Based on what I've heard here
15 over the course of this trial and, as the attorneys know, the
16 Court is required pursuant to the law to view the evidence
17 upon such motion in the light most favorable to the State.
18 Furthermore, the law requires that if there is any, any direct
19 or circumstantial evidence, substantial circumstantial
20 evidence reasonably tending to prove the guilt of the accused,
21 then the Court is required to submit the case to the jury.
22 Based upon the testimony over the course of this trial, more
23 specifically, the testimony of Ms. Messinger, who positively,
24 according to her testimony, positively identified this
25 Defendant in the armed robbery and kidnapping, the Court

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1 believes that the State, pursuant to such testimony, has
2 sufficiently provided direct evidence of his involvement.
3 Therefore, the Court is required under the law to submit the
4 case to the jury. Therefore, Defense Counsel's motion for
5 directed verdict is respectfully denied but so noted for the
6 record.

7 MR. LUCAS: Understood, Your Honor. Obviously I take
8 exception to the ruling, but I understand.

9 THE COURT: I understand, but I've made my ruling. I
10 stated on the record and you've done what you appropriately
11 need to do to protect your client's interest. Okay?

12 All right. Anything from the State, anything further
13 from the State at this time?

14 MR. THOMAS: Maybe this would be appropriate at a later
15 time, but I did have a motion in limine that I wanted the
16 Court to hear before closing arguments.

17 THE COURT: All right. Well, what I'm going to do at
18 this time, since the State has rested, I am going to advise
19 the Defendant of his right to testify and/or present a
20 defense.

21 Mr. Moultrie, sir, if you would please stand. Raise your
22 right hand.

23 STANLEY DELANOR MOULTRIE, HAVING BEEN

24 SWORN TESTIFIES AS FOLLOWS:

25 BY THE COURT:

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1 THE COURT: All right. You are Stanley Delanor Moultrie?

2 MR. MOULTRIE: Yes, Your Honor.

3 THE COURT: Mr. Moultrie, at this time, I'm going to
4 explain to you certain of your rights. If you do not
5 understand anything that I say to you, please let me know. If
6 you want me to explain anything in more detail, please let me
7 know as well. Do you understand that, sir?

8 MR. MOULTRIE: Yes, Your Honor.

9 THE COURT: All right. We have now reached the stage of
10 the trial where you may present your defense. You have the
11 right to claim the protections given to you by the Fifth
12 Amendment to the United States Constitution. That amendment
13 states in part that no person, no person shall be compelled in
14 any criminal case to be a witness against himself. This means
15 that you cannot be required to testify in this case. You have
16 the right to testify on your behalf; however, however no one
17 can make you testify. This is a personal right and no one can
18 waive this right except you. If you decide to testify, you
19 will be subjected to the same rules that govern other
20 witnesses and you may be examined and cross examined on any
21 relevant issue in this case. In addition, if you have any
22 convictions involving dishonesty or false statement or for
23 crimes punishable by imprisonment for more than a year, and
24 the Court determines that the probative value of admitting
25 this evidence outweighs the prejudicial effect to you, the

1 prosecutor will be able to introduce your record to attack
2 your credibility. If you decide to testify, this decision on
3 your part must be freely, voluntarily and intelligently made
4 with knowledge of the protections given to you by the Fifth
5 Amendment and the consequences of your decision to testify.
6 If you decide not to testify, I will instruct the jury that
7 cannot, that they cannot give the fact that you did not
8 testify any consideration whatsoever and that there is to be
9 absolutely no prejudice to you because you did not testify.
10 It is left entirely up to you whether or not you testify. You
11 may talk with your attorney, family, friends or anyone else,
12 but the final decision will be left entirely up to you. Do
13 you understand what I've explained to you, sir.

14 MR. MOULTRIE: Yes, Your Honor.

15 THE COURT: Do you have any questions about what I have
16 explained to you?

17 MR. MOULTRIE: No, Your Honor.

18 THE COURT: Have you discussed with your attorney whether
19 you should or should not testify?

20 MR. MOULTRIE: Yes, Your Honor.

21 THE COURT: Do you wish to talk to your attorney any
22 further at this time?

23 MR. MOULTRIE: No, Your Honor.

24 THE COURT: Do you wish to testify?

25 MR. MOULTRIE: I waive the right to testify, Your Honor.

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1 THE COURT: Sir?

2 MR. MOULTRIE: I waive the right to testify.

3 THE COURT: All right. Very well. All right. You may
4 be seated, sir.

5 Anything further from Defense Counsel with regards to
6 that matter?

7 MR. LUCAS: Nothing, nothing further, Your Honor.

8 THE COURT: All right. With re -- does Defense counsel
9 intent to put up any evidence?

10 MR. LUCAS: Your Honor, we do not.

11 THE COURT: Okay. All right. With regards to State's
12 motion in limine pertaining closing arguments, I'll be happy
13 to hear from you, Mr. Thomas.

14 MOTIONS:

15 MR. THOMAS: Pursuant to this Court's ruling earlier
16 regarding the license plate reader and what the State would be
17 able to get into and would not be able to get into in that
18 matter, this motion in limine is to preclude the Defense from
19 bringing things up in closing argument that cast doubt on the
20 -- on the circumstance surrounding that license plate reader.
21 In other words, something to the effect of isn't it fishy that
22 a cop from Charleston County just decides to pull up this
23 license plate on this car that looks similar to a vehicle he
24 was shown by a detective here in Georgetown County and isn't
25 it fishy that he just happens to send that over to him.

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1 Because as Your Honor knows from, from prior motions in this
2 case, that was a whole involved -- that whole situation
3 involved another investigation of a crime committed by this
4 Defendant, at least that's the State's intention, in
5 Charleston County.

6 Now the second part of that motion in limine, Your Honor,
7 would be to preclude the Defense from mentioning any -- some
8 of the things he got close to mentioning in his opening, the
9 things that may or may not have happened to this Defendant
10 when he was thirteen, some of those personal matters that
11 aren't into evidence, the family matters that aren't into
12 evidence in this case. Those are the motions, Your Honor.

13 THE COURT: Mr. Lucas?

14 MR. LUCAS: Your Honor, with regards to the Solicitor's
15 first motion, I don't have any plans on, on bringing any of
16 that in. The only thing that I would address regarding that
17 is simply the quality of the Walmart video, which the
18 detective in Charleston used, just the quality, and that was
19 it. I would -- you know, I don't have any plans of bringing
20 out anything further as far as any investigations or anything
21 like that, just the quality of videos.

22 THE COURT: That was something that you clearly went to
23 in cross examination of that officer, which is certainly
24 allowed. But as you all know under the rules in closing
25 arguments, you're allowed to argue as it pertains to those

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1 facts which are in evidence and the reasonable inferences
2 therefrom, period. That's what the rule requires and that's
3 what I will allow. And I don't -- I'm not telling you as
4 attorneys as we proceed with closing arguments and in my
5 charge to the jury, that if you feel like you need to object
6 during close argument, do what you need to -- feel like you
7 need to do to protect, protect your interest. All right. But
8 having said that as well, in the years that I've been on the
9 bench in cases that I have presided over, I can only recall
10 maybe twice where I've had lawyers objecting in closing
11 arguments, if, if that many times, but not tell -- certainly
12 by no stretch of the imagination, I mean, I'm not telling you
13 to object. If you need to object, you object and I'll make a
14 ruling on it, but you all know the rules as to what you are
15 permitted to argue and I will instruct the Jury before closing
16 arguments that what you tell them is not evidence in this
17 case, it's not evidence. Okay?

18 MR. THOMAS: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. LUCAS: Nothing further.

21 MR. THOMAS: Nothing from the State.

22 THE COURT: Anything else from the State?

23 MR. THOMAS: No, Your Honor.

24 THE COURT: Defense Counsel?

25 MR. LUCAS: Nothing further, Your Honor.

1 CHARGE CONFERENCE:

2 THE COURT: While we're in here on the record before we
3 take a break, I'm gone run through the charge real quick.
4 These are the matters to be topics, so to speak, if you want
5 to call them that, in my charge. The charge, arrest and
6 indictment not evidence in the case. Multiple charges --
7 excuse me -- and I'm just giving you highlights here:
8 Presumption of innocence; reasonable doubt; duties of judge
9 and jury, which is part of that duties of judge and jury, the
10 juries responsibility to judge the credibility of witnesses
11 and those factors as it pertains to that; direct and
12 circumstantial evidence; Defendant's decision not to testify;
13 identification; intent; and then go into the charge on the law
14 as it pertains to armed robbery as well as kidnapping; and
15 then my conclusion.

16 One thing that I do in trials that I preside over, I send
17 a copy of the charge back to the jury room, and as part of my
18 instructions, I tell the Jury that they are not -- that they
19 are to -- I'm gonna read: You must consider these instructions
20 as a whole and not follow some and ignore others is part of my
21 charge to them on that. But like I said, I do send a copy of
22 the charge back to the jury room.

23 And certainly I'm gonna give you all an opportunity at
24 the conclusion of my charge, once I send the jury back and
25 before I instruct them to begin their deliberations, I will

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CHARGE CONFERENCE

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1 give each of you an opportunity to make any objections that
2 you may have to my charge.

3 Anything from the State at this time?

4 MR. THOMAS: No, Your Honor.

5 THE COURT: Defense Counsel?

6 MR. LUCAS: Nothing further, Your Honor.

7 THE COURT: All right. Let me ask this question, How
8 long does the State intend on closing argument?

9 MR. THOMAS: Your Honor, I'm not much of a talker, so I
10 would say ten minutes.

11 THE COURT: Defense Counsel -- Defense Counsel?

12 MR. LUCAS: I think similar to that. I'm going to go
13 through the testimony, things like that, but it shouldn't take
14 an amazing amount of time to do that.

15 THE COURT: Well, I mean, one thing that I've never done
16 since I've been on the bench, and I know there are judges out
17 there that say you've got X number of minutes and they cut you
18 off when that timeframe is done; I don't do that. At least I
19 hadn't done it yet. All right? Now, during the closing
20 arguments if you get up there and you start saying the same
21 thing over and over as your argument to this Jury, I'll call
22 you to sidebar, initially, and address it with you at sidebar,
23 and if you continue to do it, then I'm gonna have you sit down
24 because we're not gone rehash over and over and over. Okay?

25 All right. We'll stand down for a few minutes and then

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BY THE COURT

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1 I'll get the Jury out. When the Jury comes back out, Mr.
2 Lucas, I'm gonna recognize you, sir. If at that time, you
3 would indicate that the Defense rests. Okay? And also at
4 that time, what you need to do, I believe to protect your
5 client's interest then, you need to just say on the record
6 that you are renewing all prior motions previously made during
7 the course -- prior to the trial and during the course of this
8 trial and I will, and I will address that at that time. I
9 will then talk to the Jury just a minute with regards to where
10 we're going from there and I'll recognize the State for
11 closing argument followed by you and then I'll give them my
12 charge on the law. Okay?

13 We'll stand down for about ten or fifteen minutes.

14 **(RECESS - 10:45 A.M.)**

15 *******OFF THE RECORD*******

16 **(On the Record - 11:10 A.M.)**

17 BY THE COURT:

18 THE COURT: All right. Anything from the State before I
19 bring the Jury out?

20 MR. THOMAS: No, Your Honor.

21 THE COURT: Defense Counsel?

22 MR. LUCAS: Your Honor, as we talked about before the
23 break, you want me to renew these motions ---

24 THE COURT: Just not ---

25 MR. LUCAS: --- once I've said the State has, I mean, the

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BY THE COURT

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1 Defense has rested?

2 THE COURT: Yes, sir.

3 MR. LUCAS: With the Jury in here?

4 THE COURT: All you're saying is, Judge, I renew all
5 prior motions made prior to trial and during trial, motions
6 and objections.

7 MR. LUCAS: Will do. Thank you, Judge.

8 THE COURT: You don't need to go into detail of what they
9 were, but just simply renew them. Okay?

10 MR. LUCAS: Understood.

11 THE COURT: All right. Bring the Jury, please, sir.

12 (REPORTER'S NOTE: Jury enters courtroom. 11:10 A.M.)

13 THE COURT: All right. All jurors are present.

14 At this time, I'm gonna recognize Defense counsel, Mr.
15 Lucas, you are so recognized.

16 MR. LUCAS: Thank you, Your Honor. At this point in
17 time, the Defense rests.

18 THE COURT: All right.

19 MR. LUCAS: We would like at this point to renew all
20 previous objections as well as all matters that were argued in
21 pretrial.

22 THE COURT: All right. Your objections or prior
23 objections as well as prior motions are so noted for the
24 record. The Court's rulings as it pertains to each of those
25 remains the same but your objections et cetera are so noted

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CLOSING BY THOMAS

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1 for the record.

2 All right. Ladies and gentlemen, you all have heard all
3 the testimony that you're going to hear in this case. That
4 which remains is closing arguments by counsel followed by my
5 charge on the law to you and then the case will be given to
6 you to make a decision on it.

7 I will remind you ladies and gentlemen, before we begin
8 closing arguments, that arguments of counsel is not evidence
9 in this case, is not evidence in this case. The order in
10 which closing arguments will go is the State will go first
11 followed by Defense counsel and then I'm gonna give you the
12 charge on the law. Okay?

13 Mr. Thomas, you are so recognized for closing argument.

14 MR. THOMAS: Thank you, Your Honor.

15 CLOSING BY THOMAS:

16 MR. THOMAS: Okay. Y'all have heard a lot of evidence
17 over these last two days and this is just my opportunity to go
18 over some of that evidence. I'm not gonna go over it all. I
19 just want to go over some of the things that I find very
20 important in this case.

21 The first thing y'all heard in this case was testimony
22 from Ms. Joyce Messinger. That was the clerk there at the
23 Shoe Show. One of the things that the Judge is gonna tell you
24 when he's doing his charge is that you, you all are the ones
25 that determine the credibility in Ms. Messinger. Some of the

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CLOSING BY THOMAS

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1 things you're gonna look at are her demeanor on the stand; how
2 was she; did she act like she was hiding something or was she
3 being straightforward with you; what was her emotional state,
4 was she disconnected, was she acting, was she playing a part?
5 What she showed on that stand was pure and genuine in every
6 aspect in every way it could possibly be. This is not acting;
7 she is about as real as it gets. The emotion you saw from
8 that stand was genuine. Just listen to the 911 tape. That's
9 -- it's been some time and she's been able to try to deal with
10 some things a little better. Listen to that 911 tape if you
11 have any questions about that. What did she say? Does the
12 story she said makes sense? Think about the testimony and
13 what happened on January 20th, 2015. Does it make sense to
14 come in here and tell y'all some story where someone came into
15 that Shoe Show, stole her purse that contained valuable
16 jewelry and cash in the amount of \$100,000 and she wants her
17 money back? Did she tell you that he stole a bunch of shoes
18 and walked out of the store? She told you what happened that
19 day. Take what she told you happened and then you got to look
20 at how does that fit in with all the other evidence in this
21 case and just start from her story from the very beginning.
22 She gets to work about 8:30. Now, the evidence shows that Mr.
23 Moultrie is coming in the parking lot and I think to be exact
24 it's 8:43. It's on the Walmart video. 8:43, he's in the
25 parking lot. She opens up the shop at 9:30. She says a few

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CLOSING BY THOMAS

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1 minutes later, Mr. Moultrie comes into the Shoe Show. Well,
2 you see on the video the suspect entered the Shoe Show, and I
3 believe it was exactly 9:37. She talks about the conversation
4 she had with Mr. Moultrie, how it was a pleasant conversation
5 and he seemed to be a nice guy. She talked about what he was
6 wearing, that blue jumpsuit, tall, six-foot, slender, glasses,
7 blue hat, clean shaven. I think at one point she said, I
8 thought he was a pastor or something. She had minutes, up to
9 three minutes, four minutes, she said minutes in the testimony
10 to observe this guy. There was no one else in the store. So,
11 he's walking around the store and eventually she comes up to
12 help him. She says she calls 911 -- after he leaves, she runs
13 and locks the door and calls 911. Matches up the time on the
14 911 call, matches with the time that he's pulling on North
15 Fraser Street on that Walmart video and back towards town.
16 Consistent to all those -- all those things.

17 The physical description which I've talked about a little
18 bit consistent with all the other physical descriptions we
19 have, consistent with this Cato video. Blue jumpsuit-- let's
20 find a good one -- see the dark hat, slender, clean shaven.
21 Now, the quality is really better on the video, a little bit
22 better than this, but this is, you know, printed off on the
23 computer but consistent in every manner. One thing I see on
24 here is there are stickers in the Cato window, so you see a
25 white reflection on a blue jumpsuit in a couple of photos --

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CLOSING BY THOMAS

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1 but it's a solid blue jumpsuit, just like she said.
2 Other things that stood out to me, her identification of
3 Mr. Moultrie. You heard her testimony and you also heard
4 Sergeant Ward's testimony about the identification and I want
5 you to pay particular attention to the timing of it. This
6 identification she made on this six-pack lineup -- and note
7 the description of everybody in this lineup, they all match
8 the description she gave of Mr. Moultrie to the police on the
9 20th, on the day. You heard her testimony. She knew
10 immediately who it was. She writes on there a hundred percent
11 positive. She wasn't looking just to pin this on somebody or
12 that someone needed to suffer for what happened to her. You
13 heard that she was shown a lineup a day or two after this
14 whole incident. And now it came from -- Sergeant Ward told
15 you that Mr. Moultrie, while he was in the store, said I used
16 to work there and he was asking about where the safe was or
17 take him to the safe. You heard that through Sergeant Ward.
18 She was shown that lineup with the last person that worked at
19 Shoe Show, that last description she gave police and there's
20 no hesitation in her denial, saying that he's not there. He's
21 not in this set of pictures. She didn't say it might be this
22 guy. The reason she didn't say that was because Stanley
23 Moultrie's picture wasn't in that lineup. She wasn't shown
24 the lineup with his picture in it until the 31st and she had
25 no problems identifying him. She's the only person that had a

1 good look at him that day on the 20th, the only person.
2 I tell you right now that Ms. Messinger's testimony is by
3 itself, if you find it credible -- which in my opinion she was
4 and for the reasons I've stated and y'all saw her up there --
5 if you find her credible, that testimony is enough by itself
6 to support a conviction in this case. All this other stuff,
7 all the other pictures of physical evidence, surveillance
8 videos, phone records, all of that is just extra, that's
9 fluff. Now it's all consistent with everything that she said,
10 but it's still just extra fluff. That's so -- that's so you
11 feel good about the decision you have to make today because
12 you should feel good about that decision.

13 And I mentioned just a second ago, the phone records that
14 came in today. Please take a look at these records. This
15 disc contains every sort of record you could imagine from Mr.
16 Moultrie's phone. It doesn't contain the contents of the
17 call, it doesn't have a recording of the call, but it has the
18 subscriber information, it has all the text information on
19 there, not contents of the text, it has all the call times,
20 the numbers that called him and he called, and what tower that
21 they were pinging off of when he made those calls. There's a
22 whole set of tower locations in here too. And that system,
23 that detective from Myrtle Beach put all these records into --
24 and this is actually what's been marked as Sixty-three, is
25 just a hard copy of those records that has all that

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CLOSING BY THOMAS

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1 information on it. This is from the 1st until the 31st, I
2 believe, of January. Of course we're worried about the 20th,
3 but that's contained in here. It's got the subscriber
4 information, Stanley Moultrie, Penny Royal Road in Georgetown,
5 South Carolina and this map that it's plotted on. And I tell
6 you, there's nothing special about this. This just makes it
7 in a format that's easy to look at. You can actually take
8 that information on that disc, on the map you can put where
9 those cell towers are and you can plot out every call, what
10 tower he's hitting off of. But this just shows movement.
11 That morning he's pinging off the tower near his house all the
12 way till 8:34, then he's moving north. I know Georgetown
13 County, I've lived here my whole life, so I can -- I'm hoping
14 y'all are all residents and y'all can see that he's moving
15 north, then he's getting on 17, still heading north on 17 and
16 then bam, 9:19. So, it's showing the movement from his house
17 towards the location. 9:19, the only call that was made
18 between the time he pulled into that parking lot and the time
19 he pulled out, the only call that was made, he's pinging off
20 the tower next to the incident location. And what happens
21 after that? He doesn't make another call until 11-something
22 and he's all the way pinging off the tower in Pawleys Island.
23 Later, he comes back through town, not pinging off that tower
24 by Walmart, pinging off of 17 and then pinging off the tower
25 next to his house. All that information is in the cell

1 record.

2 I don't have a photograph to show y'all where he was
3 holding his cell phone saying this is my number, but I'll show
4 you this. This is my cell phone; it's in my pocket. It
5 doesn't really leave my pocket unless I go to bed at night.
6 Most people have their cell phone on them all the time. And
7 again, this is fluff. No calls made from 8 or 9:37 to 9:45,
8 the time he was actually in the Shoe Show. Of course, you
9 already knew that because Ms. Messinger had told us that or
10 rather didn't tell us that he was on the phone at any time
11 during that time.

12 And I'll get away from the evidence and talk one point on
13 the law that the Judge is gonna give y'all and I want to talk
14 about kidnapping. Everybody has got a good idea about armed
15 robbery. Kidnapping, kidnapping in South Carolina is a lot
16 broader than sort of the Hollywood definition of kidnapping or
17 what you see in movies where somebody is taken and tied up and
18 placed in the back of a trunk and, and then there's a ransom
19 that goes out. It's not -- it's not all that extensive. It
20 includes that. It also includes unlawfully seizing somebody.
21 It includes confinement. It includes carrying away by any
22 means. In this case, it was knife. She wasn't free to go
23 anywhere. She was drug to the front to get the money out the
24 register, he didn't touch anything. She was drug back to the
25 back. She was told to don't look at me, look down, and he's

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1 gone. That's kidnapping. So, I just ask when the Judge does
2 give you that definition, listen to that because that's a
3 little bit -- it's a little bit different than probably the
4 common definition and street definition of kidnapping.

5 Bottom line in this case, the evidence against Moultrie
6 is very strong, very convincing. Defense counsel knows that
7 so they have done the best they can in this case to defend it.
8 They -- they've made a big deal out of that, State's Sixteen,
9 the Cato photograph saying, well, you can't say with a hundred
10 percent certainty that that's Mr. Moultrie. You can't from
11 one photograph. But, that's not how you look at evidence.
12 You don't look at one little piece of evidence here and say,
13 okay, that doesn't do it for me. One little piece of evidence
14 there, that's kind of good, but I don't like that either.
15 It's not how -- you look at everything together; you look at
16 everything together.

17 Ms. Messinger's statements, which are not inconsistent at
18 any point -- she said I guess they might be inconsistent
19 because some statements included more information. My written
20 statement that's one page long didn't include quite as much
21 information as her oral statements to the police. All
22 statements were given on the exact same day and that was the
23 20th, the same day that all this occurred. She gives a lot of
24 good information in her 911 call. She's difficult to
25 understand at times, because she was highly emotional. She

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1 gives a lot of good information there consistent with all the
2 others. She's been consistent the entire time from the 20th
3 to when she testified yesterday.

4 When you have a case like this where there's a lot of
5 evidence against the Defendant, you have to try to lean on the
6 burden of proof and the State does have the duty to prove this
7 case beyond a reasonable doubt. But beyond a reasonable doubt
8 is not beyond all doubt. It's not reasonableness. Beyond a
9 reasonable doubt when you look at all the evidence together.
10 Now, in Civil Court, if you're in a car accident, that's
11 preponderance of the evidence. That's all things equal
12 fifty/fifty. I think 50.01 I think I just believe this person
13 over here just a little bit more, so we're gonna go that way.
14 You don't want that kind of standard in criminal law because
15 the stakes are high. So, in criminal law, it's beyond a
16 reasonable doubt but the touchstone is still reasonableness.
17 There is no reasonable doubt in this case when you look at
18 everything altogether. You have to make -- you have to jump
19 towards all sorts of conclusions to even come close to finding
20 it. You have to first say that Ms. Messinger's testimony is
21 not credible, that's she's either lying or she's just not
22 capable of telling the truth. Then you got to say, well, this
23 picture -- this picture isn't Stanley Moultrie. You know,
24 just some guy that looks like him, I guess he has a
25 doppelganger here. The vehicle, yeah, the vehicle looks just

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1 like the one that was in the video at Walmart surveillance or
2 the surveillance video of the parking lot. It also just
3 happens to be the same type of vehicle Mr. Moultrie has. I
4 guess that's just another bad coincidence. The blue jumpsuit
5 found in the house, again, well, I guess, he just happened to
6 have a blue jumpsuit in the house. The lineup, I guess since
7 Ms. Messinger is not credible, she also can't pick somebody
8 out of a lineup despite already seeing a lineup that didn't
9 include Mr. Moultrie and saying from the get-go, no, he's not
10 in that lineup.

11 Then the cell phone records, you didn't have to judge
12 credibility when you're dealing with cell phone records
13 because they are what they are. It's -- those are Mr.
14 Moultrie's cell phone records. They show where he was, which
15 I guess he so happened to go over by the Bojangles' across
16 from Walmart at the time of this armed robbery. I guess
17 that's just another misfortune that happened.

18 With the evidence being what it is in this case, the
19 Defendant is hoping for one thing and one thing only today.
20 He wants you to let him off the hook. You probably noticed in
21 Defense counsel's opening that he didn't talk much about
22 evidence going on in this case. He talked about, well, Mr.
23 Moultrie comes from a good family, he's adopted, graduated
24 high school, just stuff's that's not in evidence and it's
25 really not relevant to this case. It may or may not be true.

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1 We don't have any reason to doubt those things. That was said
2 because they want you to let him off the hook. This isn't a
3 case where somebody had a little bit too much to drink and got
4 behind the wheel. This isn't a case where got into an
5 altercation and maybe somebody went a little too far. It
6 isn't a case where somebody was found with drugs in their
7 possession. He didn't harm anybody. That man entered the
8 Shoe Show, tricked a woman into coming close to him and then
9 attached her with a knife from behind. Don't let that man off
10 the hook.

11 THE COURT: Mr. Lucas?

12 MR. LUCAS: Thank you, Your Honor.

13 CLOSING BY LUCAS:

14 MR. LUCAS: I would say good morning but I think we're a
15 little bit closer to afternoon.

16 All right. Ladies and gentlemen, you know what we talked
17 about in opening. We talked about Stanley, not the Defendant,
18 just like any of us. So now you guys have the burden of
19 taking everything that you saw in the last two days and try
20 and put it together and to see what exactly it is, what's
21 connecting, what's not. And I'd start with Ms. Messinger.

22 I do not deny, nor does Stanley, nor does my
23 investigator, Ms. Tara Tyler, I do not deny that Ms. Messinger
24 was robbed. She sat there and she cried. It was upsetting
25 for her. I don't deny that. Someone robbed Ms. Messinger.

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1 The only thing that I deny is that it was Stanley Moultrie.
2 And I do not believe the State's presented anything to tell
3 you guys that it was him that was there that did that, to link
4 him. Specifically with Ms. Messinger, when -- when I was
5 talking with her, you know, it's -- I tried to not -- cross
6 examining a victim is a -- it's a tough topic. It's a tough
7 thing to do. Especially a victim that you -- I agree, I mean
8 something happened to her; there's no doubting that. But the
9 problem is was her inconsistencies. She said basically three
10 separate stories. She had the first story, she told 911, she
11 gives a general description, doesn't say anything about
12 whether he was wearing a hat or anything of that nature, and
13 then she talks to the responding officer and tells him a
14 separate story. It's a guy that not only was he wearing the
15 blue jumpsuit but now he had a blue hat. And then sometime
16 later when she's given the opportunity to write, physically
17 write a statement, she never indicates that he was wearing a
18 hat. It's those types of things that cast a shadow on some of
19 her credibility, not that she was lying, nothing like that,
20 it's just the story didn't add up. And based on her testimony
21 alone, there is not enough information, enough evidence to
22 show that it was Stanley Moultrie who entered that store and
23 robbed her. Someone did, but Stanley Moultrie was not that
24 guy. And she admitted during cross examination, she admitted
25 that there were inconsistencies. She knew, she recognized

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1 that.

2 The second person was Mr. Ronald Walker. He was the loss
3 prevention guy from Walmart, the guy that pulled those videos,
4 the guy that reviewed those videos, and then ultimately turned
5 them over to the police. He testified that the videos were
6 not only bad quality but that he couldn't identify the car.
7 He didn't know the exact make of the car and he could not
8 identify who the person was. But there's one thing that he
9 did know, he knew that the guy that walked out of the car had
10 a limp. He limped, because he had to walk a long way from
11 behind the Shoe Show and Catos store, he had to walk a long
12 way. So, he noticeably made reference to the limp. Mr.
13 Moultrie doesn't limp, not at all.

14 Then the State's transitioned this case to Amy Milligan.
15 Amy Milligan was basically the supervisor in Cato's. The only
16 reason she was here is because the video the State wanted to
17 get in. She didn't serve a purpose. There was no other
18 reason than getting the video in. That was the sole purpose;
19 they wanted the video in. She didn't give you anything that
20 you needed to answer the very question you're here for.
21 You're here to determine whether or not the State proves
22 Stanley Moultrie, beyond a reasonable doubt. She didn't allow
23 -- she didn't provide you anything that said that.

24 Now, Sergeant Ward from the Georgetown Police Department,
25 he was a big witness. He was on the stand for a long time.

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1 Actually got -- his testimony got broke up because we had to
2 do another witness in the middle there, but he was there. He
3 served the search warrant on Stanley Moultrie house, January
4 31st, 2015. He himself, from the witness stand, testified
5 that through watching the Walmart and the Cato's video, there
6 was no way to identify the car and there was no way to
7 identify that person who exited that car as being Stanley
8 Moultrie. He said that. He told you guys that he had no
9 reason to believe that that was Stanley Moultrie's car or that
10 that was Stanley Moultrie.

11 Ladies and gentlemen, I think Sergeant Ward's testimony
12 clearly indicates that there was no way to identify Stanley,
13 no way to identify his car. He was one of the most involved
14 people in this case and he couldn't tell you -- he didn't know
15 if it was Stanley, if it was some other guy, whose car it was;
16 he didn't know. But one thing he did know was some of the
17 things that were taken from Stanley's house and were seized
18 subject to that search warrant. Some of the things he
19 testified to and some of the things that you guys will get
20 when you get back to the deliberation room. They will give
21 those things to you. You can take them out, you can look at
22 them; you can do whatever you want to do with them. Anything
23 to help you decide if Stanley Moultrie is guilty of these
24 crimes.

25 A few things that kind of -- the State sought to link

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1 Stanley Moultrie somehow. A pair of glasses, a pair of
2 glasses in those bags somewhere, that they want you to believe
3 those are Stanley Moultrie's glasses. And I would respond,
4 yes, they are Stanley Moultrie's glasses, because they took
5 them from his house and they're pretty common. I'm wearing
6 glasses. I don't think -- I don't think that I've done
7 anything that someone is going to search my house and use
8 these glasses against me for some, some strange reason.

9 Stanley Moultrie is in that position. The glasses have
10 no significance to this and you'll see this. Now, the blue
11 jumpsuit, the blue jumpsuit is a big part because Ms.
12 Messinger says she thinks he was wearing a blue jumpsuit. She
13 don't know. Maybe he was -- maybe the guy that robbed her
14 was, maybe he wasn't. One thing we do know is Stanley
15 Moultrie had a blue jumpsuit. There's a blue Dickie jumpsuit.
16 I used to work at Walmart and change oil on cars. I wore the
17 exact same blue jumpsuit. They're not that unusual. And
18 Sergeant Ward testified that there are lots of them. It's not
19 that abnormal for someone to have a blue jumpsuit. But apart
20 from that, ladies and gentlemen, included in those bags, and
21 you heard testimony, just little odds and ends, things here
22 and there, pictures of, of documents that were taken from his
23 house, a picture and actually I think a physical copy of his
24 driver's license taken from his, house. Okay. It's his
25 house. Do you not expect it to be there? We're not denying

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1 the fact that it was his house, we're denying the fact of
2 things that were seized were connected in any way to the
3 robbery of the Shoe Show.

4 Now, you also heard from Detective English, I believe
5 this was late yesterday. Detective English is the officer
6 that took pictures, then he got sent from -- they were sent to
7 him from Sergeant Ward. They were pictures from the
8 Walmart/Cato videos which you'll see -- you'll get those
9 pictures. And one thing is very apparent, no way -- this car,
10 it's just a car, it's a picture of a car and it's a picture of
11 a guy and/or a girl, no one knows. There's no way to indicate
12 that that car was in fact Stanley Moultrie. The way they
13 found it, and Detective English testified this, was that he
14 watched videos. He watched videos of constantly cars just
15 running by, looking for cars that matched. Stanley Moultrie's
16 car, just like mine and just like every one of you guys, it
17 matches a lot of other cars, same color, same model. There's
18 no significance to that.

19 They used a picture from a license plate reader in
20 Charleston, which is fine, they got his tag number. There's
21 only one thing that that proves. That proves that Stanley
22 Moultrie at some point, was in Charleston. I have been in
23 Charleston in the past couple of months. My investigator
24 actually lives in Charleston. It's quite the commute. It's
25 not that unusual. What's unusual is the reason they took this

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1 picture from Detective English and then they were able to
2 match it to this blurry picture that didn't match anything.
3 It was a blurry car, no tag number, with a blurry guy or girl
4 getting out of it.

5 Now, you've heard -- you've heard from Ms. Lewis, from
6 Verizon. The only reason she was here was to identify the
7 fact that Stanley Moultrie uses Verizon, which I would say
8 probably, you know, ninety percent of us right now do. I use
9 Verizon. That's the only reason she was here. On cross
10 examination, she couldn't tell you what was said. She
11 couldn't tell you anything. She couldn't even tell you
12 Stanley Moultrie had the phone. My wife steals my phone all
13 the time. I don't know what she does. Hopefully, she doesn't
14 do anything that's gonna put me in the same situation as
15 Stanley's in; I don't know. There's just no way to say that
16 he was doing anything wrong. Okay. They mapped it. Yeah, he
17 was in Georgetown. He lives in Georgetown. He lives here.
18 His phone pinged here. The phone from Verizon. That's the
19 only purpose for Ms. Lewis to testify was to get those records
20 in.

21 Now, the final -- I think the second from last witness
22 you heard from, Detective Clothier with Myrtle Beach Police
23 Department. Okay. He does this a lot. Okay. But there was
24 one thing that you guys probably noticed, because I did, he
25 was a little mixed and confused about what was going on. He

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1 couldn't tell exact dates, couldn't recall them, he didn't
2 know what timeframe he was looking for, he didn't know any of
3 that stuff. All he knew there were some pings in Georgetown.
4 Like I said earlier, he lives in Georgetown. So what?
5 Detective Clothier admitted there was no way that he could
6 definitively match any location to Stanley Moultrie's phone,
7 much less Stanley Moultrie himself.

8 Now, ladies and gentlemen, as the Solicitor has indicated
9 to you, as I have indicated to you and the Judge will surely
10 indicate to you, Mr. Moultrie, for you guys to find him guilty
11 of these charges, it's guilt beyond a reasonable doubt. That
12 is just like I indicated in opening, that's as strict as it
13 gets. It doesn't get any more difficult to do than that. The
14 Solicitor has a tough job and it's hard to do. Now, again,
15 like I mentioned to you earlier, you guys walk back there
16 today, you sit down and you think, that's was kinda -- that
17 was kinda shaky. I don't really know who did this. That is
18 reasonable doubt. That right there requires a verdict of not
19 guilty. And I submit to you that all the testimony that
20 you've seen over the last day and a half, which to you guys
21 probably seemed like about ten days, everything that you've
22 seen doesn't show you anything; it doesn't prove anything to
23 you. All these witnesses that I just went through, they
24 didn't tell you anything to help you. You got nothing to go
25 on and that is what requires you to do just that. Sit down

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1 and think, did he do this? I don't -- maybe not. That's
2 reasonable doubt, ladies and gentlemen, and that's all I ask
3 of you. Look at this evidence that was provided by the State,
4 take a look at it with careful consideration and there's only
5 one result that you can come to. They were not able to prove
6 Stanley Moultrie was at Shoe Show. They were not able to
7 prove he was anywhere right there. They proved that he was in
8 Georgetown. He lives in Georgetown. That's it. All the
9 testimony, I don't know -- well, I take that back. You guys
10 don't have anything to go on. When you can sit down and you
11 consider this thing and you think there is a question, that
12 requires a not guilty verdict.

13 Thank you.

14 CHARGE TO JURY:

15 THE COURT: Ladies and gentlemen, it is now my duty as
16 the Trial Judge, under the constitution of this State to
17 charge and instruct you on the law applicable to this case.
18 It is your duty as jurors to accept and apply the law as I
19 will now state it to you. Furthermore, it is your exclusive
20 duty to decide all the issues of fact in this case and to
21 determine the effect, value, weight, and truth of the
22 evidence. Both the State and the Defendant have a right to
23 expect that you will carefully consider and evaluate the
24 evidence and apply the law of this case to it so that in the
25 end both the State of South Carolina and the Defendant will

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1 receive a fair and impartial trial.

2 I want you to understand, ladies and gentlemen, that when
3 I use the word Defendant, I am referring to Mr. Stanley
4 Delanor Moultrie. The charges against Mr. Moultrie alleged in
5 the indictment are armed robbery and kidnapping. Now, to
6 these charges, the Defendant has entered a plea of not guilty.
7 This plea of not guilty places the burden of proof on the
8 State to prove the guilt of the Defendant to you, the Jury,
9 beyond a reasonable doubt. I remind you, ladies and
10 gentlemen, that the fact that the Defendant was arrested,
11 charged and indicted in this case is not evidence in this case
12 and cannot be considered by you as evidence of guilt in this
13 case, nor does it create any presumption or inference of
14 guilt. The indictment is simply the charging document by
15 which this case is brought into this court and it is not
16 evidence. As I mentioned above, the indictment in this case
17 alleges two separate and distinct offenses against the
18 Defendant. You must decide each charge separately on the
19 evidence and the law applicable to it uninfluenced by your
20 decision as to any other charge. The Defendant may be
21 convicted or acquitted on any or all of the offenses charged.
22 As stated previously, you will be asked to write a separate
23 verdict of guilty or not guilty for each charge alleged in the
24 indictment.

25 Now, ladies and gentlemen, it is vital to understand that

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1 the Defendant is presumed under the law to be innocent of
2 these charges. The Defendant has no obligation to prove his
3 innocence. It is a fundamental rule of our law that a
4 Defendant, irrespective of the seriousness of the charges
5 against him, is always presumed innocent of the crimes for
6 which he is charged unless and until his guilt has been proven
7 by evidence that satisfies you, the Jury, beyond a reasonable
8 doubt.

9 The presumption of innocence is not a mere legal theory
10 or a legal phrase. The presumption of innocence is very
11 important and you need to understand that this presumption
12 accompanies the Defendant from the time of his arrest and
13 appearance in this court and continues with the Defendant even
14 after you retire to the jury room to deliberate. In other
15 words, the Defendant receives the benefit of the presumption
16 of innocence until the very end of this trial when you, the
17 Jury, will deliberate upon the evidence and decide whether the
18 State has proven his guilt beyond a reasonable doubt.

19 Now, what is a reasonable doubt in the law? A reasonable
20 doubt is the kind of doubt that would cause a reasonable
21 person to hesitate to act. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the Defendant's
23 guilt. Now, ladies and gentlemen, there are very few things
24 in this world that we know with absolute certainty. So even
25 in criminal law, the law does not require proof that overcomes

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1 every possible doubt. If based on your consideration of the
2 evidence you are firmly convinced that the Defendant is guilty
3 of the crimes charged, you must find him guilty. If on the
4 other hand you think there is a real possibility that he is
5 not guilty, you must give him the benefit of the doubt and
6 find him not guilty. Please understand, ladies and gentlemen,
7 that reasonable doubt may arise from evidence which has been
8 presented in the case or from the lack of evidence in the
9 case. It is your responsibility to determine whether or not
10 reasonable doubt exists as to the guilt of this Defendant. I
11 charge you that the Defendant is entitled to every reasonable
12 doubt arising in the whole case. If upon any issue of fact
13 essential to conviction and a verdict of guilty, you have a
14 reasonable doubt as to how that issue should be resolved, it
15 would be your duty to resolve that reasonable doubt in favor
16 of the Defendant.

17 Now during this trial, you and I have separate duties to
18 perform. As the Trial Judge, it is my responsibility to
19 preside over this trial and I also have the duty to rule upon
20 the admissibility of the evidence presented or offered during
21 the course of this trial. In that regard, you are to consider
22 only the competent evidence before you and you are to
23 disregard from your mind any testimony ordered stricken from
24 the record during the course of this trial if there was any
25 and you are to consider only the testimony which has been

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1 presented from this witness stand together with any exhibits
2 admitted into the record of this case and any stipulations of
3 counsel made into the record, if there were any.

4 Furthermore, I have the additional duty to charge you on
5 the applicable law of this case and in that regard, I am the
6 sole judge of the law of this case. It is your duty, it is
7 your duty to accept and apply the law as I state it to you.
8 If you have any preconceived ideas as to what the law is or
9 what the law ought to be and it does not agree with what I
10 tell you the law is, you are obligated, ladies and gentlemen,
11 under your oath to abandon these preconceptions because you
12 are sworn to accept and apply the law precisely as I state it
13 to you. In this trial, ladies and gentlemen, you, you are the
14 sole and exclusive judge of the facts and I am the judge of
15 the law. Do not infer that I have any opinion about the facts
16 in this case from anything that I have said during the course
17 of this trial in ruling upon the admissibility of evidence or
18 otherwise or from anything that I say during the course of
19 this charge to you. In this regard, the law simply does not
20 permit me to have an opinion about the facts. As jurors, it
21 is your duty alone to determine the effect, value, weight and
22 truth of the evidence presented during the course of this
23 trial.

24 Now, in determining what the facts in this case are, you
25 must judge the credibility which simply means the

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1 believability of the witnesses and the value of weight to be
2 given to their testimony. You alone must decide the force,
3 effect and truth of the testimony. Now, in making this
4 decision, there are many things that you may and should take
5 into consideration such as the appearance and manner of the
6 witness on the stand, a characteristic often referred to as
7 the demeanor of the witness, was the witness forthright or
8 hesitant, was the witnesses testimony consistent or did it
9 contain discrepancies, what was the ability of the witness to
10 know the facts about which he or she testified, did the
11 witness have a cause or a reason to be biased and prejudiced
12 in favor of the testimony that he or she gave, was the
13 testimony of the witness corroborated or made stronger by
14 other testimony and evidence, or was it made weaker or
15 impeached by such other testimony and evidence.

16 As jurors, please understand you have the right to
17 believe a small portion of a witness' testimony and discard
18 the larger or portion or vice versa. You may believe all of a
19 witness' testimony or none. You may believe the testimony of
20 a single witness against that of many witnesses or the other
21 way around. In exercising your mental processes and
22 attempting to decide the truth, the law simply requires that
23 you exercise your good judgment, your common sense, your sense
24 of logic and reason and your experiences in life. You then
25 apply these attributes to the evidence and apply the law as I

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1 state it to you and thus arrive at a verdict.

2 Now, ladies and gentlemen, during the course of the
3 trial, there are two types of evidence which are generally
4 presented, direct evidence and circumstantial evidence.
5 Direct evidence directly proves the existence of a fact and
6 does not require deduction. Circumstantial evidence is proof
7 of a chain of facts and circumstances indicating the existence
8 of a fact. Crimes may be proven by circumstantial evidence.
9 The law makes no distinction between the weight or value to be
10 given to either direct or circumstantial evidence. However,
11 to the extent the State relies on circumstantial evidence, all
12 of the circumstances must be consistent with each other and,
13 when taken together, point conclusively to the guilt of the
14 accused beyond a reasonable doubt. If these circumstances
15 merely portray the Defendant's behavior as suspicious, the
16 proof has failed. The State has the burden of proving the
17 Defendant guilty beyond a reasonable doubt. This burden rests
18 with the State regardless of whether the State relies on
19 direct evidence, circumstantial evidence or some combination
20 of the two.

21 Now, ladies and gentlemen, I instruct you and emphasize
22 that the fact the Defendant did not testify in this case is
23 not a factor to be considered by you in any way in your
24 deliberations and in your consideration on the question of the
25 guilt or innocence of the Defendant. It must not be

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1 considered by you in any manner whatsoever. A Defendant has
2 the constitutional right to remain silent and the assertion of
3 this right must not be considered by you in your
4 deliberations. I repeat, under your oath, you are to draw no
5 conclusion whatsoever from the fact that the Defendant in this
6 case did not testify. The fact that the Defendant did not
7 testify should not even be discussed in the jury room. The
8 burden of proof, as I have stated to you, is on the State.
9 The Defendant is not required to prove his innocence. The
10 burden of proof remains on the State to prove guilt beyond a
11 reasonable doubt.

12 Now, an issue, ladies and gentlemen, in this case, is the
13 identification of the Defendant as the person who committed
14 the crime charged. The State has the burden of proving
15 identity beyond a reasonable doubt. You must be satisfied
16 beyond a reasonable doubt of the accuracy of the
17 identification of the Defendant before you may convict the
18 Defendant. Identification testimony is an expression or
19 belief of impression by a witness. You must determine the
20 accuracy of the identification of the Defendant. You must
21 consider the believability of each identification witness in
22 the same way as any other witness. You may consider whether
23 the witness had an adequate opportunity to observe the
24 offender at the time of the offense. This will be affected by
25 things like how long or short a time was available, how far or

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1 close the witness was, the lighting conditions, and whether
2 the witness had the chance to see or know the person in the
3 past. Once again, I instruct you the burden of proof on the
4 State extends to every element of the crime charged and this
5 specifically includes the burden of proving beyond a
6 reasonable doubt the identity of the Defendant as the person
7 who committed the crime. If after examining the testimony you
8 have a reasonable doubt as to the accuracy of the
9 identification, you must find the Defendant not guilty.

10 Now, in order to establish criminal liability, ladies and
11 gentlemen, criminal intent is required. For example, the
12 mental state required to be proven by the State for a
13 particular crime might be purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal intent must be
15 proven by the State beyond a reasonable doubt. Criminal
16 intent is always a matter that must be determined by the jury
17 from the circumstances surrounding the situation. There is no
18 way, ladies and gentlemen, to prove intent to a mathematical
19 certainty. There is no way that medical science can dissect a
20 person's brain and determine what the person had in mind. So
21 the law says that criminal intent may be inferred from the
22 circumstances shown to have existed. This is how you make a
23 determination of whether or not the element requiring intent
24 was present. It is not necessary to establish intent by
25 direct and positive evidence, but intent may be established by

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1 inference in the same way as any other fact, by taking into
2 consideration the acts of the parties and all the facts and
3 circumstances of the case. Criminal intent is a mental state,
4 a conscious wrongdoing. It is up to you to determine what the
5 Defendant intended to do based on the circumstances shown to
6 have existed. Criminal intent can arise from action or a
7 failure to act. It may arise from negligence, recklessness,
8 or an indifference to duty or to consequences. That is
9 considered by the law to be the equivalent of criminal intent.

10 Now the Defendant, ladies and gentlemen, as I told you
11 before is charged with two separate offenses. The Defendant
12 is charged with armed robbery. In order to prove this
13 offense, the State must first prove beyond a reasonable doubt
14 that the Defendant took personal property from the person or
15 from the presence of another person. Properties in the
16 presence of a person if it is within the person's reach,
17 inspection, observation or control so that the person could,
18 if not overcome with violence or prevented by fear, keep
19 possession of the property. The State must also prove beyond
20 a reasonable doubt that the Defendant carried the property
21 away intending to permanently deprive the owner of the
22 property and to keep the property for the Defendant's own use.
23 The slightest removal of the property or the complete
24 possession of the property even for an instant by the
25 Defendant is sufficient to show a taking and carrying away of

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1 the property. The taking and carrying away of the property
2 must have been done with violence or by putting the owner of
3 the property in fear of violence. Finally, the State must
4 prove beyond a reasonable doubt that the Defendant was either
5 armed with a deadly weapon during the robbery or that he
6 alleged either by action or words that he was armed while
7 using a representation of a deadly weapon or any object which
8 a person present during the commission of the robbery
9 reasonably believed to be a deadly weapon. A deadly weapon is
10 any article, instrument or substance which is likely to cause
11 death or great bodily harm. Whether an instrument has been
12 used as a deadly weapon depends on the facts and circumstances
13 of each case. The following are examples of instruments which
14 may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
15 dagger, a knife, a slingshot, metal knuckles, a razor,
16 gasoline, a fire bomb or Molotov cocktail and lighter fluid.

17 The Defendant is also charged, ladies and gentlemen, with
18 the offense of kidnapping. The State must prove beyond a
19 reasonable doubt that the Defendant knowingly and unlawfully
20 seized, confined, inveigled, decoyed, kidnapped, abducted or
21 carried away another person without authority of law. To do a
22 thing unlawfully is to do it willfully against the law.
23 Knowingly means with knowledge, consciously, not accidentally.
24 Seize means to take hold of suddenly or forcibly. Confine
25 means to limit, restrict or enclose within bounds, imprisoned

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1 or shut or keep in. Inveigle means to lure, entice or lead
2 astray by false representations, promises or other deceitful
3 means. Decoy, means to lure, by or as if by decoy. A decoy
4 is something to entice a person into a trap. Kidnap is to
5 remove a person against his will by unlawful force or by
6 fraud. Abduct means to carry off secretly or by force for an
7 illegal purpose. Carry away means to remove. The State,
8 ladies and gentlemen, does not have to prove that the
9 Defendant did all of these things. Instead if you find beyond
10 a reasonable doubt that the Defendant did any of these things,
11 you may find the Defendant guilty of kidnapping. Something
12 done without authority of law is something which the law does
13 not sanction, permit, allow, condone or provide justification
14 for. The kidnapping does not have to be for any personal or
15 monetary gain for any illegal purpose, but may be for any
16 reason whatsoever.

17 Now, ladies and gentlemen, I am now drawing near the end
18 of my charge and I want you to clearly understand that you are
19 not partisans or advocates for the State of South Carolina or
20 for the Defendant. It is your duty by your joint
21 deliberations to determine the truth in this case, giving to
22 the Defendant the benefit of every reasonable doubt on each
23 and every issue. Then to the facts which you determine to be
24 true, you should take and apply the law which has been given
25 to you by this Court and thus arrive at a verdict, which

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1 speaks the truth in this case. In fact, ladies and gentlemen,
2 the word verdict, which has a Latin derivative, means a true
3 saying. Thus when you have accomplished these
4 responsibilities, you will have satisfied your oath as jurors
5 and you will have discharged your duty to this Court.

6 Now once you retire to the jury room, the bailiff will
7 give the verdict form to the foreman and when you, ladies and
8 gentlemen, when, you, the Jury, arrive at a verdict as to the
9 offenses charged in this case, the foreman will select the
10 verdict as to the charge on the verdict form. If the State
11 has failed to prove the guilt of the Defendant beyond a
12 reasonable doubt, your verdict will be not guilty. Likewise,
13 if the State has proven the guilt of the Defendant beyond a
14 reasonable doubt, your verdict will be guilty. Now, once a
15 decision has been made, the foreman, Mr. Foreman, you will
16 check whichever choice is the verdict of the Jury as to each
17 charge. The verdict, ladies and gentlemen, that you render in
18 this case must be the verdict of each and every juror. It
19 must be your unanimous verdict. All twelve jurors must agree
20 on the verdict which you authorize the foreman to write for
21 the Jury.

22 Ladies and gentlemen, I further want you to understand
23 that the order in which the choices of verdict appear on the
24 verdict form are not suggestive of any verdict on the part of
25 this Court. The verdict in this case is to be determined by

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1 you, the Jury, not the Court. Furthermore, I want you to
2 understand that even though I will give the verdict form to
3 the foreman, it is not his verdict alone. It is the verdict
4 of all twelve of you and I emphasize again that it must be
5 unanimous.

6 I'm also going to give you all, ladies and gentlemen, a
7 copy of these instructions in written form. During your
8 deliberations, you may refer to the instructions to guide your
9 decision making. You must, ladies and gentlemen, you must
10 consider the instructions as a whole and not follow some and
11 ignore others.

12 Please, Mr. Foreman, when you all return a verdict,
13 return these instructions to the Court at that time.

14 Now, what I am going to do is I am getting to ready to
15 ask you all to retire to the jury room, but do not begin your
16 deliberations until you are told to do so. The law requires
17 that I consult with the attorneys to make sure that I have not
18 left anything out of these instructions. Once I have checked
19 with the attorneys or spoken with the attorneys, the bailiff
20 will bring in a copy of these instructions along with the
21 verdict form and instruct you to begin your deliberations.

22 Also during your deliberations, should you have a
23 question, Mr. Foreman, it'll be your responsibility to reduce
24 such question to writing, sign and date, knock on the door,
25 let the bailiff know you have a question, give the piece of

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1 paper to him and he'll get it to me and I will answer the
2 question how I deem appropriate. Okay?

3 Also once you all have reached a verdict and the verdict
4 form has been filled out by the foreman, which is the
5 unanimous verdict, you will mark on the verdict form, which is
6 the unanimous verdict for each charge, sign and date the
7 verdict form, Mr. Foreman, knock on the door, let the bailiff
8 know that you all have reached a verdict and I will get you
9 back into the courtroom as quickly as possible.

10 Now before I let you retire to the jury room, does
11 everyone on the jury feel okay?

12 I will tell you, I'm not sure if you're aware of it or
13 not, I have asked the Clerk's office here to order lunch for
14 you. It should be here shortly. So, if you had a question
15 about lunch, it's being ordered for you. Okay?

16 I am going to ask you all at this time to step to the
17 jury room, but again, do not begin your deliberations until
18 you are instructed to do so. Okay?

19 (REPORTER'S NOTE: Jury exits courtroom. 12:14 P.M.)

20 THE COURT: As the jury is exiting, can the lawyers begin
21 to approach, please?

22 (REPORTER'S NOTE: The following takes place outside the
23 presence of the Jury.)

24 THE COURT: Any objection or exception to the charge from
25 the State?

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1 MR. THOMAS: No, Your Honor.

2 THE COURT: From Defense Counsel?

3 MR. LUCAS: None, Your Honor.

4 THE COURT: All right. Mr. Bailiff, here's the verdict
5 form.

6 Have you all looked at the verdict form as well?

7 MR. LUCAS: Yes, Your Honor, I looked at the verdict
8 form. I'm not sure if the Solicitor did.

9 THE COURT: Any objection by Defense Counsel?

10 MR. LUCAS: No objection, Your Honor.

11 THE COURT: All right.

12 MR. THOMAS: No objection from the State, Your Honor.

13 THE COURT: All right. Put that with the items of
14 evidence. I think that's it.

15 What is this over here, Kay?

16 COURT REPORTER: These are the exhibits that do not back
17 that were Court's Exhibits or marked for identification only.

18 THE COURT: Okay. The lawyers, y'all have been through
19 all the items of evidence which are going back?

20 MR. LUCAS: Yes, Your Honor.

21 MR. THOMAS: Correct, Your Honor.

22 THE COURT: Hold on just a minute. I got to print off a
23 couple -- there were a couple of things that needed to be
24 taken off the charge that I didn't read to them.

25 All right. The items of evidence are going back along

QUESTION FROM JURY

1 with the verdict form and the jury charge. I have instructed
2 the bailiff to remove the two alternates from the jury room.
3 I'm going to release them in the back. We'll stand at ease
4 for right now.

5 (REPORTER'S NOTE: Deliberations commence. 12:21 P.M.)

6 **(RECESS - 12:21 P.M.)**

7 *******OFF THE RECORD*******

8 **(On the Record - 1:19 P.M.)**

9 QUESTION FROM THE JURY:

10 THE COURT: Thank you. Be seated.

11 I need Mr. Lucas, where is he?

12 All right. If you'll get the Defendant back in here real
13 quick, please.

14 All right. We've gotten a note out from the foreman.
15 You may note for the record that all parties are back in the
16 courtroom now and Defendant is seated at the table with his
17 counsel.

18 The question from the juror -- Foreman of the Jury is, Is
19 it possible to view the video footage. So you need to get
20 that keyed back up to -- however long that may take. Did the
21 disc go back in the jury room?

22 MR. THOMAS: It did, Your Honor.

23 THE COURT: Okay. Mr. Little, if you'll step in there
24 and ask them to give you the disc that they want to view and
25 then we'll get it keyed up and when it's keyed up then I'll

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QUESTION FROM JURY

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1 bring them back in here. Okay?

2 BAILIFF: Does it have a number?

3 MR. THOMAS: There were two videos; Cato and Walmart.

4 THE COURT: Okay. I don't remember what number.

5 MR. THOMAS: Walmart is Twelve and Cato is Thirteen.

6 THE COURT: Twelve and Thirteen.

7 COURT REPORTER: Yes, sir.

8 THE COURT: Thank you.

9 MR. THOMAS: Your Honor, I'd like to run down stairs
10 really quick and get my computer so I can set this back up.

11 THE COURT: Okay. And I'll mark this note as Court's
12 Exhibit.

13 COURT'S EXHIBIT NUMBER SIX

14 MARKED FOR IDENTIFICATION

15 THE COURT: Mr. Thomas, I thought you were going to get
16 your computer.

17 MR. THOMAS: Alicia Richardson ran down to get it.

18 THE COURT: Oh, okay.

19 MR. THOMAS: Your Honor, we're all keyed up and ready to
20 go.

21 THE COURT: All right. Anything before I bring the Jury
22 out from the State or Defense?

23 MR. LUCAS: Nothing further from the Defense, Your Honor.

24 MR. THOMAS: No, Your Honor.

25 THE COURT: All right. Mr. Little, if you'll bring the

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QUESTION FROM JURY

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1 jury please, sir.

2 (REPORTER'S NOTE: Jury enters courtroom. 1:26 P.M.)

3 THE COURT: All right. Mr. Foreman, ladies and gentlemen
4 of the Jury, I received the note that you sent out. The State
5 is going to play this video footage for you at this time. All
6 right?

7 MR. THOMAS: Your Honor, there's the Cato video and then
8 there's also the Walmart video.

9 THE COURT: Okay. Go ahead and play it all. Go ahead
10 and play it all. I know there were different cameras from the
11 Walmart I believe if I recall correctly. Play it all. Just
12 play it all.

13 MR. THOMAS: I'll start with the first one camera.

14 THE COURT: All right.

15 (REPORTER'S NOTE: State's Exhibit 12 played for Jury.)

16 MR. THOMAS: Your Honor, could you advise the Jury if
17 there is a particular portion of the video they'd like to re-
18 watch again as I'm going through this.

19 FOREMAN: Is there is any way we can view the videos in
20 deliberation amongst ourselves, Your Honor.

21 MR. THOMAS: Your Honor, I can provide them with my
22 laptop and they are all available on there. Maybe I could
23 show the foreman how to pull them up.

24 THE COURT: Mr. Lucas?

25 MR. LUCAS: Your Honor, I don't have an objection to

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QUESTION FROM JURY

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1 that. If they feel that viewing them in the deliberation room
2 will assist them.

3 THE COURT: Back in the old days when we had VHS tapes,
4 we had a T.V. in there with a VHS recorder, you just stuck the
5 tape in. It's a little bit different -- okay.

6 Can the lawyers approach a minute, please?

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of but out of hearing of the Jury.)

9 THE COURT: Mr. Thomas is going to bring the computer
10 over to the front of you Mr. Thompson and he's going to show
11 you where these videos are on there and I will say in my
12 questioning to the lawyers is you're only authorized to look
13 at those videos. I don't know what else is on that computer.
14 I just want to make sure about that. I've never sent a
15 computer back in a jury room. You're not allowed to take
16 phones in a jury room. You're only to consider evidence as
17 presented in a courtroom -- in the courtroom and so the
18 instruction is to you, Mr. Foreman, as well as all other
19 jurors, with that which you can view of the videos that you
20 inquired about that Mr. Thomas is going to show you how to
21 access. Okay?

22 (REPORTER'S NOTE: Foreman receives computer.)

23 THE COURT: All right. I'm gonna instruct the Jury to
24 return to the jury room to continue your deliberations.

25 (REPORTER'S NOTE: Jury exits courtroom. 1:38 P.M.)

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QUESTION FROM JURY

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1 THE COURT: All right. We'll stand back at ease with
2 regards to this case.

3 **(RECESS - 1:39 P.M.)**

4 *******OFF THE RECORD*******

5 **(On the Record - 3:42 P.M.)**

6 BY THE COURT:

7 THE COURT: All right. It's my understanding that the
8 Jury -- hold on a minute. It's my understanding that the Jury
9 has reached a verdict. I say this on every case I preside
10 over prior to a verdict being returned. You're reminded to
11 keep your emotions in check whatever the verdict may be.
12 Failure to do so could result in you being held in contempt of
13 court by virtue of a fine and/or imprisonment.

14 All right. Anything from the State before I bring the
15 Jury in?

16 MR. THOMAS: No, Your Honor..

17 MR. LUCAS: Nothing from the Defense, Your Honor.

18 THE COURT: We've got a whole new crew coming in the back
19 door. All right. I'll say this again. The Jury is fixing to
20 come back with a verdict. Whatever the verdict is, make sure
21 you keep your emotions in check. Failure to do so could
22 result in you being held in contempt of court by virtue of a
23 fine and/or imprisonment.

24 All right. Now, anything further from the State?

25 MR. THOMAS: No, Your Honor.

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VERDICT OF JURY

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1 THE COURT: Defense Counsel?

2 MR. LUCAS: Nothing further, Your Honor.

3 THE COURT: Bring me the Jury, please.

4 (REPORTER'S NOTE: Jury enters courtroom. 3:44 P.M.)

5 VERDICT OF THE JURY:

6 THE COURT: Madam Clerk, can you get the verdict form
7 please?

8 Mr. Foreman, ladies and gentlemen of the Jury, have you
9 reached a verdict?

10 MR. FOREMAN: We have, Your Honor.

11 THE COURT: Madam Clerk, you want to publish it or you
12 want me to?

13 CLERK: I'll read it.

14 THE COURT: If the Defendant will stand please for the
15 verdict.

16 CLERK: Mr. Stanley Delanor Moultrie, as of the charge of
17 armed robbery, we, the Jury, unanimously find the Defendant,
18 Stanley Delanor Moultrie, guilty.

19 THE COURT: Go to the next one as to kidnapping.

20 CLERK: As to the charge of kidnapping, we, the Jury,
21 unanimously find the Defendant, Stanley Delanor Moultrie, not
22 guilty.

23 THE COURT: All right. Mr. Foreman, ladies and gentlemen
24 of the Jury, is this your verdict and is it still your
25 verdict? If so, please raise your right hand.

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BY THE COURT

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1 All right. Let the record reflect that all twelve jurors
2 have raised their right hand concerning the verdict.

3 Anything from the Defense Counsel at this time?

4 MR. LUCAS: Nothing further, Your Honor.

5 THE COURT: I'll give you an opportunity in a minute with
6 regards to any post-trial motions.

7 MR. LUCAS: Okay.

8 THE COURT: What we are going to do, does the State have
9 a sentencing sheet prepared?

10 MR. THOMAS: Yes, sir, Your Honor.

11 BY THE COURT:

12 THE COURT: All right. Ladies and gentlemen, jurors, I
13 will tell you this. At this time, I tell juries after they
14 have returned a verdict in a case that you have fulfilled your
15 responsibility as jurors. The next matter that will be taken
16 up will be sentencing and that will be conducted by myself, by
17 the Court. Okay? You all, if you so desire, you're free to
18 leave at this time, you do not have to stay. If you wish to
19 stay for sentencing, you have every right to stay for
20 sentencing as well. Throughout the trial of this case, during
21 your breaks, et cetera, I have told you not to discuss the
22 case with anyone. When I release you here today, when I
23 release you here today, you can discuss the case with anyone
24 you want to discuss the case with. However, no one and I
25 repeat, no one can make you discuss the case if you don't want

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BY THE COURT

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1 to. Okay? If someone tries to talk to you about this case
2 when you leave here today and, and you tell them you don't
3 want to talk about it and they do not leave you alone, you let
4 the Clerk's office know here and I promise you it'll be taken
5 care of. Okay?

6 If, if you want to stay for sentencing, you're certainly
7 welcome to. If you want to leave, I will give you that
8 opportunity to do so right now. Okay?

9 All right. Let's move forward. All right.

10 What I'd like for you to do, Mr. Solicitor, you can come
11 around to this podium and let's go through the Defendant's
12 record.

13 MR. THOMAS: Yes, sir, Your Honor.

14 THE COURT: Madam Court Reporter, if you would hand me
15 the notices that were made part of the record prior to the
16 commencement of this trial, Court exhibits that relate to the
17 notice of the State's intent to seek life without parole as
18 well as the prior convictions.

19 All right. Mr. Thomas, let me hear from you, sir.

20 MR. THOMAS: Your Honor, 1993, there are several
21 convictions for armed robbery he got eighteen years; following
22 getting out of prison for that, he got an accessory to felony
23 and he got three years on that; 2001, probation violation; a
24 2003, indecent exposure, he got one year; 2004, indecent
25 exposure, he got three years; 2007, attempted armed robbery,

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BY THE COURT

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1 he got twelve years, Your Honor, and he was on parole for that
2 offense when he committed the armed robbery he's found guilty
3 here today.

4 THE COURT: Okay.

5 MR. THOMAS: Those are the convictions. He has about
6 five or six pending armed robberies from Charleston County,
7 Horry County, and also Richland County, I believe, Your Honor.

8 THE COURT: All right. Let me ask -- Ms. Messinger, if
9 you'll stand where you are please, ma'am?

10 MS. MESSINGER: Yes, sir.

11 THE COURT: You don't have to tell me anything, but after
12 a verdict is returned and a verdict of guilty, I give you an
13 opportunity as I do other victims an opportunity to say
14 anything to me that you so desire, but any comments, please,
15 ma'am, direct them to the Court. Okay?

16 MS. MESSINGER: I have nothing, sir.

17 THE COURT: And do you wish to tell me anything?

18 MS. MESSINGER: No, sir.

19 THE COURT: Okay. Thank you, ma'am.

20 MS. MESSINGER: Thank you.

21 THE COURT: All right. Anything further from the State?

22 MR. THOMAS: No, Your Honor.

23 THE COURT: All right. Mr. Lucas, I'll be happy to hear
24 from you, sir, with regards to any mitigation?

25 MR. LUCAS: Your Honor, the things that I have in

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SENTENCE OF THE COURT

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1 mitigation, I think have been put forth in Court today.
2 Stanley has made in the past year or so, since I've known him
3 since I've been on this case, he has made tremendous steps
4 towards bettering his life and making changes. And at this
5 point, you know, there's been a few things he's asked of me,
6 since I've been defending him, and he's consistently said he
7 wants help. He agrees that there have been things in the past
8 that -- that had been -- that he's done, could've done or
9 whatnot but he's consist said that he accepts responsibility
10 for those or for those and just wants help. And given his
11 history, which we know of, Your Honor, apart from his criminal
12 history, his family history of being here in Georgetown and
13 things that happened with him, with those things being said,
14 Your Honor, I would just respectfully request that you have
15 mercy on Mr. Moultrie and allow him an opportunity to do the
16 things that he's been trying to do for the past several years
17 to make changes to his life.

18 Nothing further, Your Honor.

19 SENTENCE OF THE COURT:

20 THE COURT: All right. Mr. Moultrie, you, sir, you don't
21 have to say anything and I certainly do not want you to say
22 anything that could possibly affect any appellant rights that
23 you may have, but if you so wish to say anything to the Court,
24 I'll be happy to hear from you.

25 MR. MOULTRIE: Your Honor, the only thing I would like to

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SENTENCE OF THE COURT

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1 say is that my attorney did say just now is that I just -- I
2 just need help, I need help.

3 THE COURT: Well, I am going to write on this and I've
4 written on this sentence sheet, Mr. Moultrie, that you receive
5 any kind of mental health treatment that the Department of
6 Corrections deems necessary. That's all I can do. The Court
7 does find that the State properly and previously or previously
8 and properly served its notice of intention to seek a sentence
9 of life without parole and, under the statute, I do not
10 believe that the Court has any discretion in that. The Court
11 is required to impose a life sentence and therefore, that's
12 what the Court will do.

13 All right. Anything further from the State?

14 MR. THOMAS: No, Your Honor.

15 THE COURT: Defense Counsel?

16 MR. LUCAS: Nothing further, Your Honor.

17 THE COURT: All right. What I'm gonna -- what I would
18 ask that the State do is attach to this sentence sheet the
19 notice as filed and served, previously served on the Defendant
20 as well as a copy of what's been marked as Court's Exhibit
21 Number Four reflecting the prior convictions supporting
22 because armed robbery in and of itself is not -- it doesn't
23 carry life. Okay?

24 All right. Anything further from the State?

25 MR. THOMAS: No, Your Honor.

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MOTIONS

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1 MR. LUCAS: Your Honor, I would like to make the final
2 motions, we can do that with the Jury in the room.

3 THE COURT: Okay. Hold on just a minute. Hand me that
4 sentence sheet back, please. Hold on just a second, okay, Mr.
5 Lucas?

6 MR. LUCAS: Take your time, Your Honor.

7 THE COURT: All right. I wanted to look at the statute
8 again 17-25-45 clearly says that the Defendant must, must be
9 sentenced to life imprisonment if prior conviction for a most
10 serious offense and a prior conviction of armed robbery which
11 occurred back in 1993, certainly a most serious offense as
12 well as the current armed robbery which he has been convicted
13 which requires the Court to impose a life sentence.

14 Yes, sir, Mr. Lucas.

15 MOTIONS:

16 MR. LUCAS: Thank you, Your Honor. At this point, I
17 would just like to renew all previous objections to the Court,
18 specifically the pretrial motion on the competency evaluation,
19 the arguments for -- the pretrial arguments as far as the
20 search warrant on January 31st, 2015 as well as the arguments
21 seeking to suppress evidence which was, was not admitted, but
22 there were additional things that were allowed and I would
23 just renew my objections to those things, Your Honor.

24 BY THE COURT:

25 THE COURT: All right. Certainly, Mr. Lucas, all your

State v. Moultrie - 2015-GS-22-00458,00459
BY THE COURT

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1 prior objections and motions are so noted for the record. The
2 Court's rulings remain the same as previously have been stated
3 outside the presence of the Jury, which were handled during
4 the course of this trial.

5 Thank you very much. You all can take Moultrie out at
6 this time.

7 (REPORTER'S NOTE: Defendant exits courtroom.)

8 THE COURT: All right. Ladies and gentlemen of the Jury,
9 at this time I'm gonna release you for the balance of the
10 week. I want to thank you for your service. When you are
11 released here today, you don't have to come back, at least not
12 this week. Okay? Jury service is not an easy task. Okay?
13 As jurors, you have an opportunity to say what goes on in your
14 community. Jury service never, ever comes at a convenient
15 time. I want to thank you for your service to this county, to
16 the state and to this country.

17 When I practiced law, I was summons -- I was the only
18 lawyer in my office in Florence where I practiced. I grew up
19 in the big town of Hemingway and moved to the city, so to
20 speak, in Florence. My wife and I moved there years ago and
21 you'd think she's a city girl, but she's from the big town of
22 Bishopville, but when I practiced law in Florence, I was the
23 only lawyer in my office. There were two assistants that
24 worked for me, as well as a courier that worked for me. And I
25 was summoned for jury duty in City Court and I did, I tried

State v. Moultrie - 2015-GS-22-00458,00459
BY THE COURT

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1 everything I could do to get out of jury service that week.
2 Judge, I'm the only person making money in my office, I've got
3 secretaries that need to be paid, I have bills that keep
4 coming in, and that City Court Judge, she would not let me out
5 of jury duty. And I said well, I'm a lawyer, none of these
6 lawyers are gonna put me on a jury up here. Not only did I
7 get put on one, but I got put on five that week. And during
8 that week, as often was the case when I was in private
9 practice, I mean, I was in my office at 7 o'clock or earlier
10 and I was back in my office late in the afternoon when I
11 finished what I needed to do over at the courthouse, and I say
12 that to say this, our jury system in this country, it's not
13 perfect but it is the best in the civilized world. You would
14 not want me or any other judge coming into a courthouse on a
15 Monday morning looking at these deputies and saying go find me
16 the first twelve people on the street that you can find and
17 bring them up here and let's try this case no more than you
18 would want me or any or any other judge sitting up here making
19 the decisions that you twelve made in this case.

20 My further point is the system that we have in the
21 country of jury service takes sacrifice. It never comes at a
22 convenient time, but my grandfather always used to tell me
23 anything worth having takes sacrifice. It doesn't come free;
24 it takes sacrifice in some way, shape or form.

25 When I release you here today, you can't be called back

State v. Moultrie - 2015-GS-22-00458,00459
BY THE COURT

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1 up here at least to serve for the next three years. Okay? If
2 you get summoned for City Court, Magistrate's Court or Federal
3 Court, not a thing I could do to help you, you're gonna just
4 have to serve over there. Okay? I hope that if you're
5 summoned again to serve that you'll willingly serve like you
6 did today knowing that the opportunity and the privilege you
7 have to have a say so in what goes on in your community. I
8 wasn't down there. Judge Culbertson qualified you, did the
9 general qualification Monday morning, but you hear as Judges
10 and as lawyers, you just sit out there and listen to that
11 qualification process, we and they get just a small glimpse of
12 who you are, so to speak, before you serve. But if you
13 noticed and if you've paid attention, each one of you come
14 from some type of different background, do different things
15 and that's what it takes. That's what it takes to serve up
16 here. I can promise you, I can promise you, if you were
17 seated at one of these tables, whether it be in a criminal
18 case or in a civil case, you would want people such as
19 yourselves serving on juries up here and not, like I said
20 earlier, having a deputy go find the first twelve people they
21 could find and bring them up here.

22 I assume the Clerk's office will mail the check; is that
23 right?

24 CLERK: Yes, sir.

25 THE COURT: You've heard the proverbial statement, the

State v. Moultrie - 2015-GS-22-00458,00459
BY THE COURT

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1 check's in the mail; the check will be in the mail. Okay?
2 Don't go and plan on laying some large ticket item aside
3 expecting this check to be that. The truth of the matter is,
4 you've seen that, what's that credit card commercial,
5 priceless. Your service is priceless; you can't put a price
6 tag on it. It's just a small token for you being up here this
7 week, but your service to this country, community and state is
8 priceless. I want to thank you. When I release you here,
9 again, you all will be free for the remainder of the week and
10 I hope you all have a great rest of the week. Okay? Thank
11 you again.

12 THE COURT: Yes, ma'am.

13 CLERK: If you need an excuse for work, if you go
14 downstairs to the Clerk's Office, they'll get you an excuse.
15 Okay.

16 (REPORTER'S NOTE: Jury exits courtroom. 4:05 P.M.)

17 THE COURT: All right. We'll stand at ease.

18 (ADJOURNED - 4:05 P.M.)

19 **END OF DAY THREE.**

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State v. Moultrie - 2015-GS-22-00458,00459
CERTIFICATE OF COURT REPORTER

278

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Stanley Delanor Moultrie, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 22-24, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson
Official Court Reporter

January 26, 2017.

COPY
Elyse

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

HEALTH SUMMARY FOR CLASSIFICATION/ASSIGNMENT

Inmate Name: Maultrie Stanley SCDC# 135590
Institution: TCS Date: 8/12/16

MEDICAL CLASS (CHECK ONE)

- I. No medical problem; no work restrictions
- II. Medical problem(s); no work restrictions
- III. Medical problem(s) with work restrictions
- IV. Severe medical problem(s) with stringent work restrictions

MENTAL HEALTH (CHECK ONE)

- NMH No Mental Health Treatment
- MI-1 Inpatient Mental Health
- MI-2 Major Mental Illness (area mental health)
- MI-3 Outpatient Mental Health (area and outpatient sites)
- OD Other Diagnosis
- MR Mental Retarded
- SA Substance Abuse Treatment

RESTRICTION TIME FRAME (CHECK ONE)

- A. No Restrictions
- B. 14 Days
- C. 30 Days
- D. 60 Days
- E. 90 Days
- F. Permanent

I. INSTITUTIONAL ASSIGNMENT (CHECK ONE)

- A. No Restriction
- B. Chronic Infirmary Care
- C. Inpatient Psychiatric Care
- D. BRCI/WOCI Therapeutic Community
- E. Dialysis Accessible
- F. Intermediate Care Services
- G. Habilitation Unit
- H. Handicap Unit
- I. Area Mental Health Center
- J. 24 Hour Nursing Coverage
- K. Daily Nursing Coverage
- L. Outpatient Mental Health

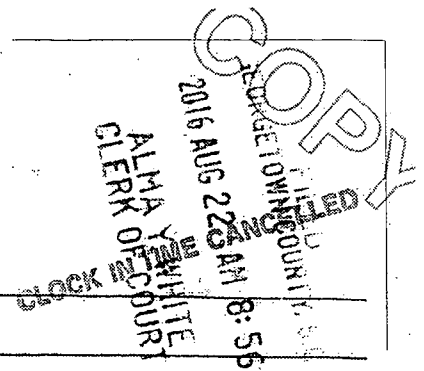
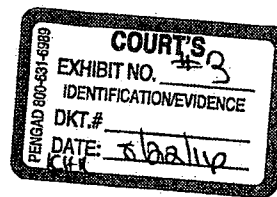
II. CELL ASSIGNMENT (CHECK ONE)

- A. No Restriction
- B. Ground Floor Only
- C. Bottom Bunk Only
- D. Ground Floor & Bottom Bunk

FILED
JULY 22 2016
CLERK OF COURT
ALMA NEWHITE
2016 AUG 22 AM 8:55
GEORGE J. BROWN COUNTY, S.C.
CLOCK TIME CANCELLED

COURT'S
EXHIBIT NO. #2
IDENTIFICATION/EVIDENCE
DKT.#
DATE 8/28/16
PENGAD 000-501-6689

SCDC# _____ NAME: _____



Solicitor;

I Pray that You will Allow me to Express
 A DEEP CONCERN! At 6 weeks old I was
 adopted by Thomas and Ernestine
 Moultrie. I couldn't have created a more
 loving set of parents. My Mother taught
 English and French, My Father History and
 Music. Very loved and respected throughout
 the community. 18 yrs in our home and
 never once heard them raise their voice
 or argue, I was truly blessed and spoiled
 being an only child. School for me was
 great. I got to brag about my parents
 all the time. I advanced through elementary
 school pretty quickly. but once I entered
 Junior High, I experienced a sexual assault
 by my P.E. Teacher that would ultimately
 change my life. BECAUSE OF SHAME AND
 guilt thinking I caused it, I grew
 confused and isolated. This lasted
 2 yrs until High school. when I made
 an attempt to tell, it wasn't something
 that was openly talked about and I
 think it was hoped to just go away,

but it had a LASTING EFFECT ON ME THAT
 WOULD RESULT IN DRINKING AND DRUG USE TO
 KNOW THE FEELING. I MANAGED TO GRADUATE
 HIGH SCHOOL AND DID PRETTY GOOD, BUT I COULD
 NEVER ESCAPE THE FEELING OF HIM TOUCHING
 ME. I GREW MORE BITTER BECAUSE I WOULD
 ALWAYS THINK HOW COULD THE SCHOOL SYSTEM
 ALLOW HIM TO TEACH KNOWING THE WAY HE
 WAS. I CAN'T IMAGINE HOW MANY OTHER
 KIDS HE ASSAULTED. NOT KNOWING WHERE TO
 TURN, COUNSELING WAS OUT OF THE QUESTION
 BECAUSE I DIDN'T WANT TO OFFEND OR
 DISRESPECT MY PARENTS. SO I LIVED WITH THIS
 PAIN AND ANGER THAT DROVE ME TO BEHAVIOR
 I REGRET EVERY SECOND OF THE DAY. OVER
 THE LAST 20 YRS, I'VE LOST BOTH PARENTS
 WHILE INCARCERATED AND THEY NEVER GOT
 TO KNOW THE PAIN I'VE HAD ALL THESE YEARS.

WHILE HERE AT GEORGETOWN COUNTY DETENTION
 CENTER, I WAS INTRODUCED TO A PROGRAM
 CALL CELEBRATE RECOVERY. IT'S A EIGHT
 PRINCIPLE 12 STEP PROGRAM THAT TRULY
 HELPS YOU FACE LIFE HEAD ON. THE DIRECTOR
 JACKEE GASS AND HIS TEAM OF COUNSELORS ARE
 VERY HONEST AND EXTREMELY HELPFUL. THEY'VE
 COACHED ME TO OPEN UP ABOUT MY PAST

And it's been liberating. Along my side the whole way has been my Pastor REV SANDER LADSON AND A DEAR FRIEND OF THE FAMILY who is now my best friend JOE GAMBLE who comes to see me EVERY week. They have given me SO much hope in believing in myself. I'm still wounded AND I HAVE ALOT OF SCARES FROM my past and now I know how to heal by helping other's AND ENCOURAGING them that they ARE NOT ALONE! Solicitor, my desire is to change and devote my time to POSITIVE THINKING, I know I CAN MAKE A difference in ALOT OF young men's lives. There ARE ALOT OF kids (Young adults) THAT don't have LEADERS that can IDENTIFY with their hurts. I CAN only pray that because OF my past I CAN OFFER guidance to many THAT would otherwise give up or give in to the evil THAT AWAITS them. I don't want anyone to live with the pain I lived with, AND IF I CAN SHARE my story I KNOW it would MAKE A difference. With the Leadership OF my Pastor AND my best friend JOE GAMBLE AND the community they have built around me, I know I CAN

be so grateful And Fully committed to be A
 part of A Life changing experience that
 helps you transform your thinking to
 Applying positive concepts to Everyday Life.

I hope that my willingness to share the
 pain of my past will enable others to step
 out of their Fears of their dark secrets
 into a Freeing relationship back with
 their Families!

Solicitor, Thank you for listening

Staniel, Michael

10/10/10

10/10/10

10/10/10

Sep. 16. 2015 12:09PM

No. 0319 P. 3

FILED
JEROME TOWN COUNTY, S.C.
2016 AUG 22 AM 8:57
ALMA W. WHITE
CLERK OF COURT
CLOCK IN

Solicitor;

I Pray that you will Allow me to Express
A DEEP CONCERN! At 6 weeks old I was
Adopted by Thomas and Earnestine
Maultrie, I couldn't have created a more
Loving set of Parents. My Mother Taught
English and French, My Father History and
Music. Very loved and respected throughout
the community. 18 yrs in our home and
never once heard them raise their voice
or argue, I was truly blessed and spoiled
being an only child. School for me was
great, I got to brag about my Parents
all the time. I advanced through elementary
school pretty quickly, but once I entered
Junior High, I experienced an sexual assault
by my P.E Teacher that would ultimately
change my life. BECAUSE OF THIS AND
quit thinking I caused it, I grew
confused and isolated. This lasted
2 yrs until High school. When I made
an attempt to tell, it wasn't something
that was openly talked about and I
think it was hoped to just go away.

And it's been liberating. Along my side the whole way has been my Pastor Rev SANDRA LADSON AND A Dear Friend of the Family who is now my best Friend JOE GAMBLE who comes to see me EVERY week. They have given me so much hope in believing in myself. ~~I'm still wounded~~ ~~AND I HAVE ALOT OF SCARES FROM MY PAST AND~~ Now I know how to heal by helping other's and encouraging them that they ARE not alone! Solicitor, my desire is to change and devote my time to Positive thinking, I know I can make a difference in ALOT of young men's lives. There are ALOT of Kids (Young adults) that don't have Leaders that can identify with their hurts. I can only pray that because of my past I can offer guidance to many that would otherwise give up or give in to the evil that awaits them. ~~I don't want anyone to live with the pain I lived with,~~ and if I can share my story I know it would MAKE a difference. With the Leadership of my Pastor and my best Friend JOE GAMBLE and the community they have built around me, I know I can

Sep. 16. 2015 12:09PM

No. 0319 P. 4

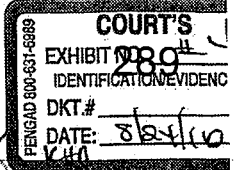
but it had a lasting effect on me that
 would result in drinking and drug use to
 numb the feeling. I managed to graduate
 High school and did pretty good, but I could
 never escape the feeling of him touching
 me. I grew more bitter because I would
 always think how could the school system
 allow him to teach knowing the way he
 was. I can't imagine how many other
 kids he assaulted, not knowing where to
 turn, counseling was out of the question
 because I didn't want to offend or
 disrespect my parents. So I lived with this
 pain and anger that drove me to behavior
 I regret every second of the day. Over
 the last 20 yrs, I've lost both parents
 while incarcerated and they never got
 to know the pain. I've had all these years.
 While here at Georgetown County Detention
 Center, I was introduced to a program
 call CELEBRATE Recovery. It's a eight
 principle 12 step program that truly
 helps you face life head on. The director
 JACKIE GASS and his team of counselors are
 very honest and extremely helpful. They've
 coached me to open up about my past

only Prosper!

Solicitor, I understand a +
J-Reuben Long there is a Program
called "LIFE Recovery", and it is a very
strick and EFFECTIVE Program and
has a very high success rate for those
that work the Program. I would be so
grateful and fully committed to be a
part of a life changing experience that
helps you transform your way of thinking
to applying positive concepts to everyday
life. I hope that my willingness to share the
pain of my Pass will enable others to step
out of their fears of divulging their dark
secrets into a freeing relationship BACK
with their family!

Solicitor, Thank You For listening

Stanley D. Alonzie
Browns Ferry Rd
Georgetown S.C. 29140



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Armed Robbery

IN THE COURT OF GENERAL SESSIONS

IND# 92 -GS-32- 2737)
A.W.# D.224980)

ARRAIGNMENT

COPY

THE DEFENDANT Stanley D. Maultrie IS PUT TO THE BAR AND ARRAIGNED, AND UPON HIS/HER ARRAIGNMENT PLEADS GUILTY AS CHARGED.
ATTEST:

Thomas H. Comerford
THOMAS H. COMERFORD, CLERK OF COURT
LEXINGTON COUNTY

Stanley D. Maultrie
DEFENDANT
DATE SIGNED 4-21-93

... SENTENCE ...

THE DEFENDANT Stanley D. Maultrie IS COMMITTED TO THE STATE DEPT. OF CORRECTIONS/COUNTY FOR A TERM OF 18 MONTHS/YEARS AND/OR TO PAY A FINE OF \$ _____; PROVIDED UPON THE SERVICE OF _____ MONTHS/YEARS AND/OR PAYMENT OF \$ _____ PLUS PAY/WAIVE COST AND ASSESSMENTS AS APPLICABLE*, THE BALANCE IS SUSPENDED WITH PROBATION FOR Counted MONTHS/YEARS.

RESTITUTION
YES / NO
TO BE PAID _____

FOR PHYSICAL INJURY \$ _____
PROPERTY DAMAGE \$ _____

TO THE CLERK OF COURT FOR _____
OTHER CONDITIONS _____

DATE 4/21/93
*COST AND ASSESSMENTS
NON-WAIVABLE \$ _____
NOT WAIVED \$ _____
TOTAL \$ 0

Julius H. Boyett
PRESIDING JUDGE
Thomas H. Comerford
THOMAS H. COMERFORD, CLERK OF COURT
LEXINGTON COUNTY

**PAY TO VICTIM'S COMPENSATION FUND IF SUBROGATED.

SA DATE 4-21-93

WHITE (CLERK OF COURT) YELLOW (JAIL) PINK (PROBATION) GOLD (DEFENDANT)

N. Tolson

WITNESSES

Sanders, WCPD

ARREST WARRANT NO. D 224980

ACTION OF GRAND JURY
TRUE BILL

Donny Lopez 10/26/92
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 95 C 2737

The State of South Carolina,

County of LEXINGTON

COURT OF GENERAL SESSIONS

October TERM 1992

THE STATE

vs.

B *26*

STANLEY D. MOULTRIE

CDR # 139

**Indictment for Armed
Robbery ~~and Robbery~~**

Donald V. Myers, Solicitor

A TRUE COPY
[Signature]
Lex. Co. C.C.F., G.S. & F.C.

ARREST WARRANT

J-224980 91-10060 G139

STATE OF SOUTH CAROLINA

County/ Municipality of West Columbia

THE STATE against

Stanley Delanor Moultrie

Address: Foxtrail Drive Columbia SC 29223

Sex: M Race: B Height: 603 Weight: 210 DL State: SC DL #: N/A DOB: Agency ORI #: 0320500 Prosecuting Agency: WCPD Prosecuting Officer: Sanders Offense: ARMED ROBBERY Offense Code: 139 Code/Ordinance Sec.

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of Richland The accused is to be arrested and brought before me to be dealt with according to law

APPROVED FOR SERVICE IN MINISTRIAL RECORDER Date: 9/23/91 9-23-91

RETURN

A copy of this arrest warrant was delivered to defendant on 27 Sept 91

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA County/ Municipality of West Columbia

AFFIDAVIT

Personally appeared before me the affiant J.D. Sanders being duly sworn deposes and says that defendant Stanley Delanor Moultrie did within this county and state on September 10, 1991 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of West Columbia) in the following particulars:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

In that on or about September 10, 1991 while at Ryan's located at 1707 Charleston Highway in the City of West Columbia, County and State aforesaid, one Stanley Delanor Moultrie along with Jerome Keith Thompson and George Alden Brown, while armed with a handgun did rob Ryan's of approximately Three Thousand one hundred nine dollars and five cents (\$3,109.05) in United States Currency; all of which constitutes the Crime of ARMED ROBBERY and is in violation of the South Carolina Code of Laws of 1976, as amended. The foregoing is based on an investigation by the West Columbia Police Department and statements made by Jerome Keith Thompson and George Alden Brown.

Sworn to and subscribed before me on September 18, 1991 Signature of Issuing Ministerial Recorder Virginia Kay Bowser

Signature of Affiant J.D. Sanders Affiant's Address 1053 Center Street West Columbia, SC 29169 Affiant's Telephone 794-0721

STATE OF SOUTH CAROLINA County/ Municipality of West Columbia

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on September 10, 1991 defendant Stanley Delanor Moultrie did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of West Columbia) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Ministerial Recorder Virginia Kay Bowser Judge's Address 1053 Center Street West Columbia, SC 29169 Judge's Telephone 794-0721 Issuing Court: Magistrate Municipal Circuit

ORIGINAL

A3P2226

Form Approved by SC Attorney General July 26, 1990 SCCA 518

292

ATTEST COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Armed Robbery

IN THE COURT OF GENERAL SESSIONS

IND# 92 -GS-32-2738)
A.W.# D221977)

ARRAIGNMENT

THE DEFENDANT *Stanley D. Moultrie* IS PUT TO THE
BAR AND ARRAIGNED, AND UPON HIS/HER ARRAIGNMENT PLEADS GUILTY AS CHARGED.
ATTEST:

Thomas H. Comerford
THOMAS H. COMERFORD, CLERK OF COURT
LEXINGTON COUNTY

Stanley D. Moultrie
DEFENDANT
DATE SIGNED 4-21-93

... SENTENCE ...

THE DEFENDANT *Stanley D. Moultrie* IS COMMITTED TO
THE STATE DEPT. OF CORRECTIONS/COUNTY FOR A TERM OF 18 ~~MONTHS~~/YEARS
AND/OR TO PAY A FINE OF \$ _____; PROVIDED UPON THE SERVICE OF _____
MONTHS/YEARS AND/OR PAYMENT OF \$ _____ PLUS PAY/WAIVE COST AND
ASSESSMENTS AS APPLICABLE*, THE BALANCE IS SUSPENDED WITH PROBATION FOR
_____ MONTHS/YEARS. *concurrent to all other sentences*

RESTITUTION FOR PHYSICAL INJURY \$ _____
YES / NO PROPERTY DAMAGE \$ _____
TO BE PAID _____

TO THE CLERK OF COURT FOR _____
OTHER CONDITIONS _____

DATE 4-21-93
*COST AND ASSESSMENTS
NON-WAIVABLE \$ _____
NOT WAIVED \$ _____
TOTAL \$ 0

John W. Bragg
PRESIDING JUDGE
Thomas H. Comerford
THOMAS H. COMERFORD, CLERK OF COURT
LEXINGTON COUNTY

**PAY TO VICTIM'S COMPENSATION FUND IF SUBROGATED.

SA DATE 4-21-93

WHITE (CLERK OF COURT) YELLOW (JAIL) PINK (PROBATION) GOLD (DEFENDANT)
LCF 652

Lex. Co. C.O.P. G.S. § 10
A TRUE COPY

N. Johnson

WITNESSES

Sanders, WCPD

ARREST WARRANT NO. D 224977

ACTION OF GRAND JURY
TRUE BILL

Donna Ray
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 92 GS 2738

The State of South Carolina,

County of LEXINGTON

COURT OF GENERAL SESSIONS

October TERM 1992

THE STATE

vs.

S *26*

STANLEY D. MOULTRIE

CDR 139

Indictment for Armed
Robbery and ~~Robbery~~

Donald V. Myers, Solicitor

A TRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

ARREST WARRANT

D- 224977 91-0059
6139

STATE OF SOUTH CAROLINA

County/ Municipality of
West Columbia

THE STATE
against

Stanley Delanor Moultrie

Address: Foxtrail Drive
Columbia, SC 29223

Phone: _____ SSN: _____
Sex: M Race: B Height: 603 Weight: 210

D. State: _____ DOB: _____ Agency ORI #: 0320500

Prosecuting Agency: WCPD
Prosecuting Officer: Sanders

Offense: ARMED ROBBERY
Offense Code: 139

Code/Ordinance Sec. _____

This warrant is certified for service in the
 County/ Municipality of Richland

APPROVED FOR SERVICE by _____ accused
is to be arrested and brought before me to be
dealt with according to law.

[Signature]
MINISTERIAL RECORDER (L.S.)
Signature of Judge

Date: 9/23/91 9-23-91

RETURN

A copy of this arrest warrant was delivered to
defendant
on 27 of Sept 91

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
West Columbia)

AFFIDAVIT

Personally appeared before me the affiant J.D. Sanders wh
being duly sworn deposes and says that defendant Stanley Delanor Moultrie
did within this County and state on September 9, 1991 violate the criminal laws of th
State of South Carolina (or ordinance of County/ Municipality of West Columbia)

in the following particulars:
DESCRIPTION OF OFFENSE:

ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

In that on or about September 9, 1991 while at Quincy's located at 1416 Charleston Highway
in the City of West Columbia, County and State aforesaid, one Stanley Delanor Moultrie
along with Jerome Keith Thompson and George Alden Brown, while armed with a handgun
did rob Quincy's of approximately One Thousand six hundred dollars (\$1,600.00) in United
States Currency; all of which constitutes the Crime of ARMED ROBBERY and is in violation
of the South Carolina Code of Laws of 1976, as amended. The foregoing is based on an
investigation by the West Columbia Police Department and statements made by Jerome
Keith Thompson and George Alden Brown.

Sworn to and subscribed before me)
on September 18, 1991)
[Signature])
Vivian Kay Bowers (L.S.))
Signature of Issuing Ministerial Recorder

[Signature]
Signature of Affiant
Affiant's Address 1053 Center Street
West Columbia, SC 29169
Telephone 794-0721

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
West Columbia)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that
on September 9, 1991 defendant Stanley Delanor Moultrie
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of West Columbia) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

[Signature])
Vivian Kay Bowers (L.S.))
Signature of Issuing Ministerial Recorder
Judge's Address 1053 Center Street
West Columbia, SC 29169
Judge's Telephone 794-0721
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

B3P226

Form Approved by
S.C. Attorney General
July 28, 1980
SCCA 518

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WITNESSES
 Georgetown Police Department

DOCKET NO. 2015-GS22-00459

The State of South Carolina
 County of Georgetown

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Erin Bailey 16G00106

COURT OF GENERAL SESSIONS
 MAY, 2015 TERM

John P. [Signature]
 CLERK OF COURT
 GEORGETOWN COUNTY

ARREST WARRANT NUMBER
 2015A2220260052
 CDR: 0139 §16-11-0330(A)
 DOI: 1/20/2015

THE STATE

vs.

STANLEY DELANOR MOULTRIE
 PENNYROYAL RD
 GEORGETOWN, SC 29440-5067
 DOB:
 SSN: B/M

ACTION OF GRAND JURY
TRUE BILL

ATTORNEY: Ronald W. Hazzard

Indictment for

David [Signature]
 Foreperson of Grand Jury
 Date: 5-27-15

ARMED ROBBERY

VERDICT
Guilty

Jimmy A. Richardson, II, Solicitor

[Signature]
 Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 27, 2015, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Stanley Delanor Moultrie did in Georgetown County on or about January 20, 2015, while armed with a deadly weapon, to wit: a knife, take and carry away personal property of Shoe Show from or in the immediate presence of Joyce Messinger with intent to deprive Joyce Messinger of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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CLERK OF COURT
GEORGETOWN COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA
 COUNTY OF Georgetown
 STATE VS.
Stanley Delanor Moultrie
 AKA:
 Race: BLACK Sex: M Age: 49
 DOB: SS#
 Address: Perinyroyal Rd
 City, State, Zip: Georgetown, SC 29440-5067
 DL#: SID#: SC00814895

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2200459
 A/W#: 2015A2220200052
 Date of Offense: 1/20/2015
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

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SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

CONVICTED OF or PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lowd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: 100320
Thomas, J. Austin SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of Life days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered. PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning, _____
 \$ _____ paid to Public Defender Fund.
 Other: _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$ 100
§ 56-5-2995 (DUI Assessment)	\$ 12
§ 56-1-286 (DUI Breath Test)	\$ 25
Proviso 61.6 (Public Def/Probation)	\$ 500
§ 14-1-212 (Law Enforce. Funding)	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$ 150
§ 50-21-114 (DUI Breath Test Fee)	\$ 50
§ 56-5-2942(J) (Vehicle Assessment)	\$ 40/ea
3% to County (if paid in installments):	\$ 3.75
TOTAL:	\$ 128.75

Other: Mental Health Treatment as deemed necessary
Defendant previously convicted of Armed Robbery (Most Serious Offense)
 Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Wendy S. Rogers Residing Judge: [Signature]
 Court Reporter: Kay H. Richardson Judge Code: 260
 SCAJ217 (07/2016) Sentence Date: 8-24-16
See attached. Life sentence imposed pursuant to 17-25-45.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

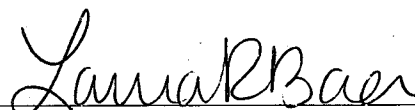
ATTORNEY FOR APPELLANT

This 8th day of January, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

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Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of January, 2018.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Georgetown County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STANLEY DELANOR MOULTRIE,

APPELLANT

APPELLATE CASE NO 2016-001830

FINAL BRIEF OF APPELLANT

RECEIVED

JAN 24 2018

SC Court of Appeals

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility?

II.

Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial?

STATEMENT OF THE CASE

On May 27, 2015, the Georgetown County Grand Jury returned indictments for armed robbery, kidnapping, and possession of a weapon during a violent crime against Appellant Stanley Moultrie in connection with the January 20, 2015 robbery of a Shoe Show Store. Prior to selection of the jury, the solicitor nolle prossed the weapons charge. R. 49, l. 24 – 51, l. 2; R. 297.

On August 22-24, 2016, Moultrie appeared for trial before the Honorable D. Craig Brown and a jury. Moultrie was represented by Jeffrey T. Lucas, III, and the State was represented by assistant solicitor James Austin Thomas. R. 1. At the outset of the case, defense counsel made a motion for a mental health evaluation, which was denied by the trial court. R. 8 – 44.

The jury returned a verdict of guilty on the charge of armed robbery and a verdict of not guilty on the charge of kidnapping. R. 267. Judge Brown imposed a mandatory sentence of life without parole, finding that the state properly noticed Moultrie of its intention to seek life without parole pursuant to the recidivist statute. R. 272 – 273; see S.C. Code Ann. § 17-25-45.

This appeal follows.

STATEMENT OF FACTS

Moultrie was accused of robbing a Shoe Show store on January 20, 2015. According to the Clerk, a black male wearing glasses, a blue cap, and a blue jumpsuit came in shortly after she unlocked the doors at 9:30 a.m. When she offered to help find something, he gave her a size ten and a half shoe and asked her to see if it was available in a size thirteen. When she turned around to go call another store to see if the shoe was available, the man grabbed her neck and pulled out a knife. She gave him the money from both cash registers, told her not look at him, and left. R. 23, l. 13 – 26, l. 12. Police obtained surveillance footage from the nearby Wal-Mart and CATO stores, which were low quality but showed a black male and dark car. R. 135 – 156. Through collaboration with Charleston officers, the officers determined that Moultrie owned a similar looking car to the one used by the robber. R. 156, l. 17 – 157, l. 14; R. 175, l. 2 – 184, l. 11. A search warrant was executed of Moultrie's house, yielding a blue jumpsuit, glasses, multiple size thirteen shoes, and cash. R. 157, l. 10 – 166, l. 5. The cashier from Shoe Show was subsequently shown a six person line-up and identified Moultrie as the robber. R. 126, l. 12 – 128, l. 6; R. 166, l. 6 – 167, l. 20. Police further obtained Moultrie's cell phone records and averred that he was in the vicinity of Shoe Show at the time of the robbery. R. 203, l. 8 – 214, l. 18.

The defense made a pre-trial motion requesting that Appellant Moultrie be evaluated for both criminal responsibility and competency. R. 8, l. 9 – 14, l. 10. Defense counsel explained that he worked for the law firm of Axelrod and Associates and that Moultrie's case was one of the first assigned to him when he began in January 2016. He learned from Mr. Axelrod that Moultrie's prior attorney, Leon Parrot, had "expressed some concern about Mr. Moultrie's mental status." R. 8, l. 9 – 9, l. 4. Defense counsel met with Moultrie in February 2016 and

believed then that “there is something wrong with Stanley Moultrie” that only a doctor can diagnose. R. 9, l. 4 – 14, l. 10.

Following a prior competency hearing in May 2016 in Horry County, counsel was permitted to withdraw his motion without prejudice and attempt to collect more information. R. 11, l. 9-19. Counsel immediately requested the Moultrie’s medical records from the South Carolina Department of Corrections (“SCDC”), looking specifically for references to the mental health treatment that Moultrie received during his prior incarcerations in SCDC. He presented a 2009 SCDC “Health Summary for Classification/Assignment” form, which indicated that Moultrie needed “outpatient mental health” treatment and an institutional placement with “daily nursing coverage.” R. 279. Counsel was unable to procure any records related to the specific treatment received or any diagnosis. R. 11, l. 20 – 12, l. 16; R. 28, l. 6 – 29, l. 14; R. 35, l. 5 – 37, l. 12. Defense counsel also provided the Court will letters written by Moultrie to the solicitor’s office, describing the sexual abuse that he experienced at the hands of his physical education teacher when he was thirteen years old. R. 12, l. 17 – 13, l. 11; R. 280 – 288.

The solicitor presented testimony from Joann Clarey, a classification lieutenant at the Georgetown County Detention Center. She said that there were no special accommodations made for Moultrie, she had not observed any “bazaar or irrational behavior” from him, and she had no difficulty communicating with Moultrie. However, she admitted that she had no medical training. R. 17, l. 15 – 21, l. 17. Judge Brown also reviewed the video interrogation of Moultrie, which took place several weeks after the alleged offense. R. 22, ll. 1-11; Court’s Ex. 1, DVD statement of defendant (on file with this Court). Judge Brown then questioned Moultrie about his age, education, work history, past mental health treatment and knowledge related to criminal proceedings. R. 22 – 34.

Moultrie was forty-nine years old at the time of trial, a high school graduate, and had worked as a courier, cook, and in a warehouse. Prior to his arrest, he lived with his wife, to whom he was married in 2001. R. 22, l. 23 – 23, l. 25. Moultrie said that in addition to the mental health counseling he received in SCDC, he received counseling while in the Army. He was discharged and unable to seek reenlistment until he sought “further help” for his “condition.” Moultrie had also requested mental health treatment while in the local detention center, which he said should be documented. Moultrie indicated that he was currently prescribed anti-depressants Wellbutrin and Effexor, and had previously been prescribed anti-psychotic Seroquel.¹ R. 24, l. 1 – 27, l. 9. Defense counsel confirmed that the medications referenced were listed in the medical records he obtained from SCDC. R. 27, l. 10 – 29, l. 14. Regarding the criminal process, Moultrie said he had been incarcerated twice before. He indicated that the attorneys for the state’s job was to prosecute and his attorney’s job was to defend him. Moultrie said that defense counsel had met with him twice for fifteen to twenty minutes each time, but counsel interjected that they had met three times. However, Moultrie said that they did not go over the state’s evidence against him and believed that he had to prove his innocence. R. 29, l. 15 – 31, l. 10. Defense counsel said that Moultrie appeared to understand their discussions and

¹ VALEANT, WELLBUTRIN XL FULL PRESCRIBING INFORMATION 1 (Dec. 2014), <http://www.valeant.com/Portals/25/Pdf/PI/Wellbutrin-XL-PI.pdf> (“WELLBUTRIN XL is an aminoketone antidepressant, indicated for the treatment of major depressive disorder (MDD) and prevention of seasonal affective disorder (SAD).”); PFIZER, INC., EFFEXOR XR FULL PRESCRIBING INFORMATION 1 (Mar. 2017), <http://labeling.pfizer.com/showlabeling.aspx?ID=100> (“Effexor XR is a serotonin and norepinephrine reuptake inhibitor (SNRI) indicated for the treatment of: Major Depressive Disorder (MDD), Generalized Anxiety Disorder (GAD), Social Anxiety Disorder (SAD), Panic Disorder (PD)”); ASTRAZENECA, SEROQUEL XR FULL PRESCRIBING INFORMATION 1 (Feb. 2017), <https://www.azpicentral.com/seroquel-xr/seroquelxr.pdf#page=1> (“SEROQUEL XR is an atypical antipsychotic indicated for the treatment of schizophrenia (1.1), Bipolar I disorder, manic or mixed episodes (1.2), Bipolar disorder, depressive episodes (1.2), Major depressive disorder, adjunctive therapy with antidepressants (1.3)”).

could not recall a specific time that Moultrie was unable to assist him. However, counsel averred that Moultrie did not appreciate whether his conduct at the time of the alleged offense was right or wrong. R. 31, l. 11 – 32, l. 21.

Judge Brown took a brief recess to consider the evidence and case law. He returned and asked Moultrie if he understood the charges and potential penalties, to which Moultrie responded that he did.² R. 42, l. 9 – 43, l. 3. Defense counsel agreed that Moultrie understood such, but argued “as his mental state at the time they were committed, we don’t know. That’s what we’re here for, Your Honor, to make that determination.” R. 43, ll. 9-13. Judge Brown denied the motion for evaluation, focusing primarily on the competency to stand trial component to the requested evaluation. R. 44, l. 1 – 47, l. 20. Counsel noted his “exception” to the court’s ruling and renewed his objection throughout the trial. R. 47, ll. 21-24; R. 216, ll. 2-4; R. 227, ll. 19-21; R. 273, ll. 16-18.

² There was no mention of the mandatory nature of the life without parole sentence in light of the State’s service of the LWOP notice. R. 42, l. 9 – 43, l. 3; see R. 14, ll. 14-15.

ARGUMENT

I. The trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility.

The purpose of defense counsel's request for a mental health evaluation was twofold, as he sought an evaluation to address both Moultrie's criminal responsibility and his competency to stand trial. R. 13, l. 24 – 14, l. 1. "The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial." Monahan v. State, 365 S.C. 130, 133, 616 S.E.2d 422, 423 (2005). "The trial judge has the discretion to order a mental health evaluation where the defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility." Id. at 133, 616 S.E.2d at 424. Such an evaluation would have been relevant to a guilty but mentally ill or insanity defense.

"It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." S.C. Code Ann. § 17-24-10(A). A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20(A). A verdict of guilty but mentally ill ("GBMI") does not absolve a defendant of guilt. State v. Hornsby, 326 S.C. 121, 126, 484 S.E.2d 869, 872 (1997). Rather, a defendant found GBMI is sentenced as provided by law for a defendant found guilty, but under the GBMI statute is entitled to immediate treatment and evaluation. Id.

Here, Moultrie's attorney requested the evaluation in order to determine his criminal responsibility. Moultrie's level of functioning during his interrogation weeks after the alleged incident provided no support for the denial of the evaluation, as the test for criminal responsibility relates to the time of the alleged offense. See Monahan, 365 S.C. at 133, 616 S.E.2d at 423. Defense counsel presented evidence that Moultrie was sexually abused as a child and had been referred for outpatient mental health treatment during his past incarceration. R. 280 – 288; R. 279. Moultrie also testified about his discharge from the army related to mental health problems and about the anti-depressant and anti-psychotic medications he had been prescribed in the past and at the time of the trial. R. 24, l. 1 – 29, l. 14. This was sufficient to warrant that a mental health evaluation be conducted so that defense counsel could determine whether there existed a valid GBMI or insanity defense. By failing to order the requisite evaluation, the trial judge prevented Moultrie from pursuing both of these potential defenses.

II. The trial judge erred in denying the defense’s motion for a mental health evaluation to determine Appellant’s competency to stand trial.

An individual’s constitutional right to due process of law, as provided in the Fourteenth Amendment to the United States Constitution, prohibits the conviction of an incompetent defendant. Medina v. California, 505 U.S. 437, (1992); Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966). Therefore, states must provide procedures adequate to protect this right. Pate, 383 U.S. at 378. South Carolina law provides that whenever a judge “has reason to believe that a person on trial before him, charged with the commission of a criminal act ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or assistant in his own defense as a result of lack of mental capacity,” the judge shall order an examination of the individual by the Department of Mental Health. S.C. Code Ann. § 44-23-410. The test for determining competency to stand trial is whether the defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” State v. Weik, 356 S.C. 76, 81, 687 S.E.2d 683, 685 (2002) (citing Dusky v. United States, 362 U.S. 402 (1960)); State v. Bell, 293 S.C. 391, 395-396, 360 S.E.2d 706, 708 (1987).

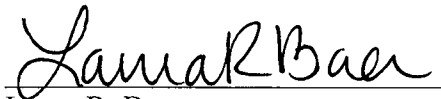
In State v. Singleton, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996), this Court held that the probation revocation judge’s failure to order competency evaluation was an abuse of discretion. In determining that the trial judge had reason to believe that a competency examination was necessary, this Court cited to trial counsel’s report that Singleton suffered symptoms suggestive of schizophrenia and was under psychiatric care at the time of the hearing, along with his mother’s testimony regarding the seriousness and duration of his mental problems. 322 S.C. at 483, 472 S.E.2d at 642. The Court further noted the trial judge’s statement at the conclusion of the hearing that indicated his belief that Singleton needed

additional treatment for his mental condition. Id. Moreover, regardless of the precise argument articulated by trial counsel, the statute imposes a duty upon the trial court to order such an examination on its own motion “‘whenever a Circuit Court ... has reason to believe’ a defendant may lack the mental capacity necessary to stand trial.” Id. at 483 n. 3, 472 S.E.2d at 642 n. 3.

Here, Moultrie averred that he had been incarcerated twice before, but there was no inquiry about whether he had been through a trial previously. The sentencing sheets admitted related to Moultrie’s prior convictions both reflect that those convictions were the result of guilty pleas. R. 289 – 296. Further, while Moultrie responded that he understood the general role of the prosecution and defense counsel, he believed that it was his burden to prove his innocence. He also said that he met with a defense counsel for a total of one hour over the span of three visits and that defense counsel did not go over the evidence against him. R. 29, l. 15 – 31, l. 10. While counsel indicated that he was generally able to communicate with Moultrie, it was obvious from the totality of the proceedings that Moultrie was able to provide only limited information regarding his mental health history, though it appeared to be extensive and dated back to his time in the military. Notably, the trial judge included on the sentencing sheet that Moultrie should receive mental health treatment as deemed necessary. R. 272, ll. 4-6; R. 299. It was thus incumbent upon the trial judge to order the competency evaluation so that a medical professional could determine whether Moultrie understood the proceedings against him and whether he could assist in his own defense as a result of lack of mental capacity.

CONCLUSION

Based on the foregoing, Appellant Stanley Delanor Moultrie respectfully requests that this Court reverse his conviction and grant him a new trial.



Laura R. Baer
Appellate Defender

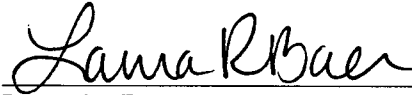
ATTORNEY FOR APPELLANT

This 24th day of January, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 24, 2018



Laura R. Baer
Appellate Defender

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2016-001830

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JAN 22 2018
SC Court of Appeals

THE STATE,RESPONDENT

v.

STANLEY DELANOR MOULTRIE,APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2016-001830

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Appellant's motion for a mental health evaluation to determine his criminal responsibility at the time of the offense where Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate an intent to introduce evidence at trial that he lacked criminal responsibility.
2. Whether the trial court properly denied Appellant's motion for a mental health evaluation to determine his competency at the time of trial where the trial judge conducted a competency hearing which did not give him any reason to believe Appellant was not fit to stand trial.

STATEMENT OF THE CASE

Stanley Delanor Moultrie (Appellant) was indicted at the May 2015 term of the grand jury for Georgetown County for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). He was represented by Stuart Axelrod and Jeffrey T. Lucas, III, Esquire, of Axelrod & Associates. Respondent (the State) was represented by Assistant Solicitor James Austin Thomas of the Fifteenth Circuit Solicitor's Office. On April 7, 2016, the State served Appellant with a notice of intention to seek a sentence of life without parole pursuant to section 17-25-45 of the South Carolina Code due to his two April 21, 1993, armed robbery convictions. On August 22-24, 2016, Appellant proceeded to trial by jury pursuant to which he was found guilty of armed robbery but was acquitted of kidnapping. He was sentenced by the Honorable D. Craig Brown to a term of life imprisonment without the possibility of parole. (R. p.297-299; R.p.271-p.272). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As described by the solicitor in his opening statement, Appellant committed an armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. The Shoe Show was located in a strip mall along with a Walmart and a Cato, both of which had surveillance cameras. Those cameras showed the robber arriving forty-five minutes before opening, scoping out the parking lot, and then parking in a spot directly facing the Shoe Show until it opened at 9:30 a.m. The robber then moved his car behind the strip mall, walked past Cato, and entered the Shoe Show at 9:37 a.m. After entering the store, the robber talked to the single female store clerk about a particular shoe and asked if she had it in a larger size. When the clerk turned to go in the back to check for his size he grabbed her by the back of the neck, put a large knife to her side, walked her to the cash registers, got her to hand him all of the money, and then walked her to the back of the store where he exited and drove away at approximately 9:45 a.m. Review of the surveillance footage and the subsequent police investigation resulted in Appellant's arrest for the armed robbery. (R.p.112-p.115).

Pretrial Motion to Have Appellant Evaluated

On August 22, 2016, the morning the case was scheduled for trial, defense counsel made a motion to have Appellant evaluated. The trial court convened a hearing at which counsel explained he had started working for Axelrod and Associates in January of 2016 and that Appellant's case was the first one dropped on his desk. He said their office had received communications from Appellant's prior attorney, Leon Parrot, Esquire, expressing concerns about Appellant's mental status. He also said that in February of 2016, Appellant told him he had been raped by his P.E. teacher at the age of 13. Counsel explained Appellant later wrote him a letter detailing the long lasting effects of that sexual assault which led to shame, guilt, drinking, drug use, and anger, all of which Appellant claimed drove him to his regrettable behavior.

Counsel said a competency hearing was originally convened before the Honorable Benjamin H. Culbertson in May of 2016; however, Judge Culbertson determined there was not enough information to go forward and allowed counsel to withdraw his motion so he would have an opportunity to collect more information about Appellant's mental health. Counsel said he then requested medical records from the South Carolina Department of Corrections (SCDC) which had "very little when it came to mental health" except to note that some outpatient mental health services were done at area outpatient sites. He did not know where Appellant had been treated outside of SCDC. Counsel described a second letter he also received from Appellant which was very similar to the first and argued he believed the only appropriate way to go forward with trial was to have Appellant evaluated "both under McNaughten [sic]¹ to determine if at the time these events occurred, if he understood the difference between moral and legal right and wrong, and then also, and under *State v. Blair*,² which is competency." Counsel said: "I get this - - this feeling in the pit of my stomach, something is not right. He has to be evaluated. I'm no doctor. I can't diagnose it." Counsel concluded by saying that in his personal opinion, "there is something wrong with [Appellant] and only a doctor will be able to diagnose that and pinpoint what that problem is." (R.p.8-p.14).

¹ "South Carolina has chosen as its insanity defense what is commonly known as the *M'Naghten* test, or the "right and wrong test." *State v. Wilson*, 306 S.C. 498, 505, 413 S.E.2d 19, 23 (1992). "The first famous legal test for insanity came in 1843, in the *M'Naghten* case. Englishman Daniel M'Naghten shot and killed the secretary of the British Prime Minister, believing that the Prime Minister was conspiring against him. The court acquitted M'Naghten 'by reason of insanity,' and he was placed in a mental institution for the rest of his life. However, the case caused a public uproar, and Queen Victoria ordered the court to develop a stricter test for insanity. The '*M'Naghten* rule' was a standard to be applied by the jury, after hearing medical testimony from prosecution and defense experts. The rule created a presumption of sanity, unless the defense proved 'at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong.'" Emanuel Francone, *Insanity Defense*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, July, 2016, https://www.law.cornell.edu/wex/insanity_defense (last visited Nov. 1, 2017). South Carolina has codified the "*M'Naghten* rule" as its insanity defense. S.C. Code Ann. § 17-24-10(A).

² 275 S.C. 529, 273 S.E.2d 536 (1981).

The solicitor responded by noting the burden was on the moving party to establish a lack of mental capacity and argued that under *State v. Burgess*³ and *State v. Colden*,⁴ Appellant had failed to do so. He further noted that Appellant had been through the criminal justice system many times on serious charges and there had been no issue with competency in those cases. The solicitor then offered a witness in regard to Appellant's competency. (R.p.15-p.17). The State called Lieutenant Joann Clarey of the Georgetown County Detention Center to the stand. She explained her job was to classify inmates at intake so she could place them in housing units based on things like gang affiliations, mental illness, medical problems, and the nature of the crime. Clarey said she had a lot of contact with inmates in general and that after Appellant came to the jail she had a lot of opportunity to observe and interact with him. She testified she had no issues with Appellant and that he did not exhibit any bizarre or irrational behavior while at the jail. Clarey said she had no problems communicating with Appellant during his stay and he did not appear to have any problems communicating with her. She said that to her knowledge, Appellant was not treated for any mental issues at the detention center. (R.p.17-p.21).

The trial court then placed Appellant under oath and asked him a series of questions. He testified he graduated from high school and had been married since 2001. When asked if he had ever received outpatient mental health treatment before his time in SCDC, Appellant said he had tried to seek help when he was in the military. He said he served for a period of time in the army, achieving the rank of specialist before being discharged in 1998. Appellant said he tried to get help and talked to his Major about his problems but was told he would not be allowed to reenlist in his current condition until he sought further help. He then confirmed he was the author of the letters previously referenced by counsel. Appellant testified he was prescribed

³ 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003).

⁴ 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).

Wellbutrin and Effexor when he served time in SCDC, and that prior to his sentencing he was given Valium, Visataril, and Seroquel for anxiety while he was in the Lexington County Detention Center. Counsel handed up documents indicating Appellant was given Wellbutrin while at SCDC. The trial court next asked Appellant about prior exposure to the criminal system and Appellant said he had been convicted and incarcerated on two prior occasions. He testified he understood the lawyers for the State were there to prosecute and that his lawyer was there to defend. Appellant testified he met with counsel two or three times since January, for about fifteen to twenty minutes at each meeting. Appellant did not initially understand the burden of proof and said he believed his attorney had to prove his innocence. (R.p.22-p.30).

Next, the trial court questioned counsel in regard to the grounds for his motion for an evaluation. Counsel said Appellant speaks very well and was easy to communicate with. He said Appellant appeared to understand their discussions and was generally able to assist in discussing the case. Counsel said there had not been any issues or concerns with Appellant's ability to understand their discussions or assist in the defense of his case. (R.p.30-p.32).

Counsel then steered the discussion towards criminal responsibility, arguing competence was "not as much an issue as whether or not he understands what [w]as happening at the time was right or wrong." The trial court questioned what efforts counsel's firm had made to get medical records from outpatient treatment facilities used by SCDC, or from the military. Ultimately, counsel stated:

I just know that my opinion of Stanley's mental status, that directly impacts him, and I believe that is order for the judicial system to operate properly and follow his rights as the Defendant that he needs to be evaluated. This is not made in an attempt to postpone trial. If this case has to hit the next trial roster, so be it. We will be prepared to do it. We'll be prepared on that day. However, I cannot in good conscious [sic] ethically move forward without having [Appellant] evaluated. Thank you.

(R.p.32-p39). The trial judge then reviewed the two letters written to counsel from Appellant and questioned Appellant in regard to whether he understood the charges against him and possible sentences. Counsel acknowledged Appellant understood the elements of the charge but argued they still did not know his mental state at the time the crimes were committed and asked the judge to order the evaluation. The solicitor argued Appellant had not put forth any evidence to suggest a problem with M’Naghten criminal responsibility. (R.p.39-p.43).

After hearing the testimony and arguments from both parties, the trial court issued a ruling from the bench denying counsel’s request for a mental evaluation. The court noted the defense bears the burden of proving by a preponderance of the evidence that a defendant is entitled to an evaluation and found Appellant presented no evidence other than the SCDC document showing a referral to outpatient mental health treatment in support of his request. The court further noted that during the colloquy Appellant responded appropriately to every question and exhibited an appropriate demeanor. The judge also noted there was no evidence Appellant had not been able to communicate effectively and intelligently with counsel, and commented on the quality of the letters Appellant had written to counsel from jail. The trial court found Appellant understood the role of the prosecutor and the defense in the case and had exhibited no irrational behavior during the proceeding. Relying on the decisions of this Court in Burgess and Colden and the similarities between those cases and this case, the trial court again recited the evidence indicating Appellant was both competent and sane. The court then commented on the lack of medical testimony concerning prior mental health treatment and denied Appellant’s request for a mental evaluation for either competency or criminal responsibility. (R.p.44-p.47).

Trial

After the trial court denied Appellant's request for a mental evaluation, the case was called for trial. Following jury qualification and jury selection, the trial court addressed additional pretrial motions before the jury was sworn. (R.p.73-p.104). The trial judge gave brief preliminary instructions and the parties made opening statements. (R.p.104-p.117).

As noted in more detail above, the solicitor opened by giving a brief description of Appellant's armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. (R.p.112-p.115). Next, Appellant opened by focusing on the presumption of innocence, the State's burden of proof, and his belief that the State would not be able to meet that burden. (R.p.115-p.117).

The State then presented its case in chief, first calling the victim, Joyce Messinger, to the stand. She described the armed robbery in detail and identified the audio recording of her 911 call which was then admitted into evidence. She also identified a series of photographs of the store and those photos were admitted into evidence. Finally, Messinger described identifying Appellant from a photographic lineup shown to her by the police. She testified she was one hundred percent sure of the identification, that she was able to recognize Appellant in "the blink of an eye," and that nobody suggested or influenced her pick. Messinger then made an in-court identification of Appellant as the man who committed the armed robbery. (R.p.117-p.128). Appellant cross-examined Messinger about minor inconsistencies in her various statements to the police but on redirect she explained she was simply asked different questions so that her answers were a little different. (R.p.128-p.135).

Next, the State called Walmart Asset Protection Associate Ronald Walker and Cato District Manager Amy Milligan to the stand to describe the video surveillance systems at their

respective establishments. They identified video recordings and still-shot images from those recordings from January 20, 2015, which showed a suspect entering and leaving the Shoe Show at the time of the armed robbery and the vehicle that suspect used before and after the incident. The videos and photographs were admitted into evidence. (R.p.135-p.147).

The State then called Sergeant Jason Ward of the Georgetown Police Department to describe the police investigation following the armed robbery, which included talking to the victim, processing the crime, and taking photographs. Ward also described how the police watched the surveillance videos and provided still photographs of the vehicle to the Charleston Police Department, which ultimately led them to determine a probable license plate for the armed robber's car and track it to Appellant. He explained the police were then able to obtain a search warrant for Appellant's residence and described the items discovered which linked Appellant to the crime. (R.p.147-p.174; p.182-p.187). Detective Daniel English of the Charleston Police Department explained how he was given the still photos from the surveillance video and was able to review hundreds of photos taken by an automatic license plate reader (ALPR) camera on January 20, 2015, to find a car that appeared to match the one used by the armed robber. (R.p.174-p.182).

Next, over Appellant's objection, the State called Renada Lewis, the custodian of records for Verizon Wireless to the stand. She explained what general information about mobile phone account holders is kept by Verizon in the regular course of business and then identified and authenticated particular records covering January of 2015 for the mobile phone number on Appellant's account. (R.p.195-p.201). Finally, the State called Detective Seven Clothier of the Myrtle Beach Policed Department to the stand. He explained he participated in the execution of the search warrant at Appellant's residence and that he learned Appellant's cell phone number at

that time. Clothier then described getting mobile phone records from Verizon for Appellant's number and how he was able to use a software program called CellHawk to plot the location of the cell towers used by Appellant's mobile phone on January 20, 2015, before and after the armed robbery. (R.p.201-p.214).

After the State rested, Appellant made a motion for a directed verdict and that motion was denied. (R.p.214-p.218). Appellant was then questioned about his right to testify and elected not to take the stand. (R.p.218-p.222). Following a brief charge conference, the parties made closing arguments. (R.p.224-p.246). The trial judge then charged the jury on the presumption of innocence, the State's burden of proof, reasonable doubt, the roles of the judge and jury, credibility of witnesses, direct evidence, circumstantial evidence, the defendant's right not to testify, identification evidence, criminal intent, and the elements of the crimes. (R.p.246-p.260).

At the end of trial, after asking to watch the video surveillance recordings, the jury found Appellant guilty of armed robbery but was acquitted of kidnapping. He was sentenced by Judge Brown to a term of life imprisonment without the possibility of parole. As a special condition of Appellant's sentence the trial court ordered: "Mental Health Treatment as deemed necessary." (R.p.297-299; R.p.266-p.272). Appellant renewed all prior motions, specifically the pretrial motion for a competency evaluation, and the trial court noted its prior rulings remained the same. (R.p.272-p.274).

ARGUMENT

I.

The trial court properly denied Appellant's motion for a mental health evaluation to determine his criminal responsibility at the time of the offense because Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate an intent to introduce evidence at trial that he lacked criminal responsibility.

Appellant argues the trial court erred in refusing to grant his motion for a mental health evaluation to determine his criminal responsibility at the time of the offense, contending he had presented sufficient evidence to warrant the evaluation so that counsel could determine whether a valid guilty but mentally ill (GBMI) or insanity defense might exist. He argues that by failing to order the requisite evaluation, the trial judge prevented him from pursuing both of these potential defenses at trial. (Brief of Appellant, p.7-p.8). The State disagrees and submits Appellant's argument is entirely without merit.

Contrary to Appellant's contentions, the trial judge committed no error in refusing to grant his motion for a mental health evaluation to determine his criminal responsibility at the time of the offense because Appellant did not offer sufficient evidence to support his request. Furthermore, the trial court had no basis for exercising its inherent discretionary authority to order an evaluation where Appellant did not interpose insanity as a defense and did not otherwise indicate any intent to introduce evidence at trial that he lacked criminal responsibility at the time of the crimes. A criminal defendant is not entitled to a mental evaluation to determine criminal responsibility simply to help him decide whether to pursue a GBMI or insanity defense. Rather, criminal defendants are presumed sane and the defendant has the burden of proving the defense of insanity by a preponderance of the evidence. A trial court's refusal to order a mental evaluation to determine criminal responsibility is in the discretion of the trial judge and nothing

prevented Appellant from seeking a mental evaluation on his own. Here, the trial judge acted well within his discretion in refusing the request given the paucity of evidence Appellant suffered from a mental disease or defect that would impact his criminal responsibility for the crime. Appellant's conviction and sentence should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Gordon*, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but instead simply determines whether the trial judge's ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added). The trial court has the inherent, discretionary authority to order a compulsory mental examination to determine a defendant's mental condition where insanity is interposed as a defense, when a defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility, or where the court believes the defendant's mental competency would be an issue at trial. *Monahan v. State*, 365 S.C. 130, 133, 616 S.E.2d 422, 424 (2005); *State v. Locklair*, 341 S.C. 353, 535 S.E.2d 420 (2000). Thus, an order for a compulsory mental examination is subject to appellate review under an abuse of discretion standard. Similarly, when requested by the defendant the ordering of a mental examination to determine criminal responsibility is in the discretion of the trial judge and the refusal to grant such an examination will not be disturbed absent a clear showing of an abuse of discretion. See *State v. Bradshaw*, 269 S.C. 642, 643-44, 239 S.E.2d 652, 653 (1977) (utilizing an abuse of discretion standard where Bradshaw's motion for a mental examination was based

upon his allegation that he did not recall anything of the incident for which he was on trial); *See also State v. Colden*, 372 S.C. 428, 440-42, 641 S.E.2d 912, 920 (Ct. App. 2007) (concluding, after a review of the record and circumstances, the trial court did not abuse its discretion in denying Colden's pretrial motion for a competency and criminal responsibility evaluation).

Law / Analysis

Criminal responsibility and competency to stand trial are separate mental health issues. *Monahan*, 365 S.C. at 133, 616 S.E.2d at 423. The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial. *Id.* "It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." S.C. Code Ann. § 17-24-10(A). "The defendant has the burden of proving the defense of insanity by a preponderance of the evidence." S.C. Code Ann. § 17-24-10(B). Indeed, a criminal defendant is presumed to be sane; the State does not have to prove sanity. *Smith v. State*, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989). However, when a defendant offers evidence of insanity, the State no longer enjoys the presumption, but must present evidence to the jury from which the jury could find the defendant sane. *Id.* If the contention of insanity is suggested, the State may present evidence of sanity in its case-in-chief rather than waiting to do so during its case in reply. *Id.*

By comparison, "A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental

disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.” S.C. Code Ann. § 17-24-20(A). “To return a verdict of ‘guilty but mentally ill’ the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).” S.C. Code Ann. § 17-24-20(B). “If a verdict is returned of ‘guilty but mentally ill’ the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty.” S.C. Code Ann. § 17-24-70. “If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.” S.C. Code Ann. § 17-24-70(A). “A verdict of GBMI [Guilty But Mentally-Ill] does not absolve a defendant of guilt. A defendant found GBMI must be sentenced as provided by law for a defendant found guilty.” *State v. Hornsby*, 326 S.C. 121, 127, 484 S.E.2d 869, 872 (1997), *citing State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992). “. . . Under the GBMI statute, *a defendant found GBMI is entitled to immediate treatment and evaluation.*” *Hornsby*, 326 S.C. at 127, S.E.2d at 872, *citing* S.C. Code Ann. § 17-24-70 (Supp. 1995) (emphasis added). The GBMI statute simply recognizes the continuum in the law regarding mental illness and provides a guide for a jury when considering whether a defendant is not guilty; not guilty by reason of insanity (incapable of determining right from wrong); guilty but mentally ill (incapable of conforming his conduct to the requirements of the law but capable of distinguishing right from wrong); or guilty (suffers no mental illness).” *Hornsby*, 326 S.C. at 126-27, 484 S.E.2d at 872.

Here, the trial judge properly denied Appellant's motion for a mental health evaluation to determine criminal responsibility because Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate any intent to introduce evidence at trial that he lacked criminal responsibility. Additionally, in regard to a defense of GBMI, any error in the trial judge's refusal to order an evaluation was entirely harmless because when Appellant was sentenced, the trial court verbally ordered that he "... receive any kind of mental health treatment that the Department of Corrections deems necessary." (R.p.272).

Although counsel argued the long lasting effects of Appellant suffering a sexual assault at the age of thirteen led to shame, guilt, drinking, drug use, and anger, all of which drove Appellant to his regrettable behavior counsel never actually argued Appellant was not criminally responsible for that behavior. Counsel noted the existence of SCDC records showing some outpatient mental health services were done at area outpatient sites, but he did not know where Appellant had been treated outside of SCDC and had no records regarding that treatment. (R.p.8-p.11). Counsel also never connected that earlier treatment to Appellant's mental state at the time of the crimes. Instead, counsel simply relied on "this feeling in the pit of my stomach" that "something is not right" to ask that Appellant be evaluated. (R.p.13). Similarly, Appellant testified he had tried to seek help when he was in the military and was not allowed to reenlist after his 1998 discharge until he sought further help, and he described medications he was given both in SCDC and the Lexington County Detention Center; however, he gave not testimony about his mental state or medications he was taking or should have been taking at the time of the crimes. (R.p.22-p.28). Finally, the evidence discussed below showing Appellant was competent at the time of trial weighs heavily against any suggestion he would not have been

criminally responsible at the time of the crimes. As recognized by the trial judge, the lack of medical testimony concerning prior mental health treatment supported the decision to deny Appellant's request. (R.p.44-p.47). That decision was not an abuse of discretion. Furthermore, at least in regard to GBMI, any possible error was harmless.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. *State v. Baccus*, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. *State v. Fletcher*, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). Prior to the imposition of the sentence the trial judge asked if the Appellant had anything to say. The Appellant stated that, after talking with his counsel, "I just - - I just need help, I need help." (R.p.272). The trial judge then told Appellant he was ordering on the sentence sheet that Appellant: "... receive any kind of mental health treatment that the Department of Corrections deems necessary. That's all I can do." (R.p.272).

In order to receive mental health treatment or identify the Appellant for services appropriate to his conditions or needs, the Appellant be screened by a trained mental health examiner in SCDC. Based upon any identified needs, SCDC would then be under judicial order to provide the appropriate treatment. In ordering screening and treatment the trial judge effectively complied with the GBMI statute and ordered immediate evaluation and treatment upon SCDC taking custody, exactly as dictated by S.C. Code § 17-24-70. Thus, in regard to GBMI, any possible error in failing to order a mental evaluation was harmless. For all of the reasons discussed above. Appellant's conviction and sentence should be affirmed.

II.

The trial court properly denied Appellant's motion for a mental health evaluation to determine his competency at the time of trial because the trial judge conducted a competency hearing which did not give him any reason to believe Appellant was not fit to stand trial.

Appellant argues the trial judge erred in denying his motion for a mental health evaluation to determine his competency to stand trial. Relying primarily on this Court's opinion in *State v. Singleton*, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996), he contends it was "incumbent on the trial judge to order the competency evaluation so that a medical professional could determine whether [Appellant] understood the proceedings against him and whether he could assist in his own defense as a result of lack of mental capacity." (Brief of Appellant, p.10). The State disagrees and submits Appellant's argument should be denied on several grounds.

Initially, the State notes Appellant does not challenge the trial court's competency determination. Rather, he challenges the decision not to order a competency evaluation. Because the trial court made a finding that Appellant was competent to stand trial and that finding has not been challenged, it is the law of the case. *Caprood v. State*, 338 S.C. 103, 112, 525 S.E.2d 514, 518 (2000); *State v. Fripp*, 396 S.C. 434, 441, 721 S.E.2d 465, 4698 (Ct. App. 2012). Consequently, any challenge to the failure to order a mental evaluation to determine competency is now moot. See *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."); *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief."). Since Appellant was found competent pursuant to the trial court's ruling, it is impossible for this Court to grant effectual

relief, and his appeal on this ground should be dismissed as moot. Even if this Court determines the claim is not moot, it is nevertheless without merit because the trial judge conducted a competency hearing which gave him reason to believe Appellant was fit to stand trial.

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any evidence*. *Id.* at 6, 545 S.E.2d at 829 (emphasis added).

Law / Analysis

The South Carolina Code provides:

Whenever a judge of the circuit court or family court *has reason to believe* that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, *the judge shall order examination* of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and intellectual disability or a related disability.

S.C. Code Ann. § 44-23-410(A)(1) (emphasis added). Despite the mandatory language that “the judge shall order examination,” our courts have consistently held the phrase “has reason to believe” tempers this language to mean it is within the trial judge’s discretion to determine whether a defendant should be given a mental evaluation. *State v. Bradshaw*, 269 S.C. 642, 644, 239 S.E.2d 652, 653 (1977); *State v. Bradley*, 343 S.C. 461, 464, 539 S.E.2d 720, 722 (Ct. App. 2000). Thus, a refusal to order a mental evaluation will only be reversed where there has been an

abuse of discretion. *State v. Singleton*, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (1996); *Bradley*, 343 S.C. at 464, 539 S.E.2d at 722.

Here, the trial court did not err in denying Appellant's motion for a mental health evaluation to determine his competency to stand trial because, after a careful review of the evidence in the record, it concluded there was no showing by Appellant that would warrant granting the motion. Instead, the trial court determined Appellant was competent to stand trial without medical evaluation because he was able to consult with his attorney, understand the court's process, understand the role of the participants, and had a factual understanding of how the trial would proceed.⁵

In considering Appellant's competency, the trial court undertook an interview process with both counsel and Appellant. The court first questioned counsel, who said Appellant did not have trouble communicating with him, appeared to understand everything being discussed with him, and was able to assist in his own defense, and said there were no times counsel could recall Appellant being unable to assist him. (R.p.31-p.32). Next, Appellant was sworn and proceeded to give testimony that accurately and succinctly explained his educational history, his employment history, his criminal history, and his military service record. (R.p.23-p.29). The Appellant also correctly identified the attorneys for the State and defense, what their individual responsibilities and roles are, and the purpose of the trial. (R.p.29-p.31). The only question Appellant incorrectly answered under examination was who had the burden of proof of proving

⁵ The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him. *Dusky v. United States*, 362 U.S. 402 (1960); *State v. Weik*, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002). Competency is required to ensure that [the defendant] has the capacity to understand the proceedings and to assist counsel. *Godinez v. Moran*, 509 U.S. 389 (1993); *Weik*, 356 S.C. at 81, 587 S.E.2d at 685. "The standard for determining whether an accused is entitled to a competency to stand trial . . . is that evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required . . ." *State v. Blair*, 275 S.C. 529, 534, 273 S.E.2d 536, 538 (1981) (citing *Drope v. Missouri*, 420 U.S. 162 (1975)).

guilt. Appellant said he and his counsel had the burden of proving his innocence, rather than that burden resting with the State. (R.p.31). However, Appellant appeared to understand this was erroneous when corrected by the trial judge. Under the relevant standard, the trial court correctly ascertained that Appellant was competent to stand trial because he had a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as a factual understanding of the proceedings against him.” *Weik*, 356 S.C. at 81, 587 S.E.2d at 685.

The trial court also asked counsel if there were any medical records showing a mental illness or history of psychiatric treatment. Counsel stated he requested any and all medical records from SCDC regarding Appellant and in over 300 pages of medical documents received, none specifically showed Appellant had been treated inside or outside for any mental illness, and only one document showed Appellant had previously taken the psychiatric medication Wellbutrin. (R.p.29). Counsel failed to request any records from the military and failed to consult with regional social services to determine if any medical records existed. (R.p.35-p.36). In short, the only history of any psychiatric treatment at SCDC that could contribute to showing a need for an evaluation was a brief mention of Appellant taking Wellbutrin and a vague reference to an outside referral for treatment.

Finally, the trial court took testimony from Lieutenant Clarey, the intake administrator of Appellant’s detention center during his pretrial confinement. She was responsible for classifying inmates by need during their incarceration, and ensuring that they were housed appropriately based on mental illness, gang affiliation, medical conditions, and nature of offenses. (R.p.18). Clarey testified she had extensive contact with the inmates, had known the Appellant since he was first incarcerated, and had significant contact with him during his incarceration. She said

did not need to make special arrangements for him and that he had no behavioral issues and had exhibited no irrational or bizarre behavior during his pretrial confinement. (R.p.18). Clarey testified Appellant had no issues communicating with staff and she was not aware of him being treated for any medical issues, including psychiatric conditions. (R.p.19-p.20).

The trial court looked for evidence of irrational behavior, considered Appellant's demeanor, and looked for any medical evidence tending to indicate that the Appellant should be evaluated for competency prior to trial. Having no *reason to believe* Appellant lacked the capacity to assist in his own defense or to understand the proceedings, S.C. Code Ann. § 44-23-410, the trial court properly refused the request for an evaluation. Indeed, the only "evidence" counsel provided the court besides the one time use of Wellbutrin and the outside referral was the feeling "in the pit of" counsel's stomach, and his "personal opinion" that "there is something wrong with Stanley Moultrie." (R.p.14-p.15). The trial judge did not abuse his discretion and did not err in refusing to order a competency hearing when there were no manifest signs or medical documentary evidence of any inability of Appellant to stand trial, particularly where Appellant's own conduct and demeanor in the courtroom failed to show any need for an evaluation.

Appellant's reliance on *Singleton* is misplaced. In *Singleton*, this Court held the trial court abused its discretion in not ordering a competency examination in conjunction with probation revocation proceedings. *Singleton*, 322 S.C. at 483, 472 S.E.2d at 642. However, this was because the lower court "denied the motion without explanation" and then stated "I urge treatment for [Singleton's] mental condition while he's incarcerated" *Id.* at 482, 472 S.E.2d at 641. Here, the trial judge conducted a competency hearing and fully explained why he was denying Appellant's motion. He then ordered: "Mental Health Treatment as deemed necessary."

In *Singleton*, the judge ordered treatment after apparently recognizing the defendant had a medical condition. In Appellant's case, the judge found Appellant had failed to provide sufficient evidence that he had a medical condition, and ordered treatment only if SCDC deemed it necessary. Thus, the cases are easily distinguishable.

Appellant's challenge to the trial court's refusal to order a mental evaluation to determine his competency to stand trial should be dismissed as moot. Alternatively, it should be denied and dismissed on the merits because the trial judge conducted a competency hearing which gave him reason to believe Appellant was fit to stand trial. There was no abuse of discretion. For all of these reasons, Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.


Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY:



J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
January 22, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2016-001830

RECEIVED
JAN 22 2018
SC Court of Appeals

THE STATE,.....RESPONDENT

v.

STANLEY DELANOR MOULTRIE,..... APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
January 22, 2018

STATE OF SOUTH CAROLINA)

County of Georgetown)

IN THE COURT OF COMMON PLEAS

Stanley Delanor Moultrie)

2019 CP2200354

Full name and prison number (if any) of Applicant)

185590)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
GEORGETOWN COURT
2019 APR 17 AM 10:55
ALMA Y. WHITFIELD
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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
Columbia, S.C.
2. Name and location of Court which imposed sentence Georgetown, S.C.
General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 GS 2200459
 - (b) _____



(c) _____

The date upon which sentence was imposed and the terms of the sentence:

(a) August 24th 2016

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals Georgetown

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Conviction affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. December 8th 2018

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. yes; Appellate Case No. 2016-~~000~~^{SDM} 001830

ii. Unpublished opinion No. 2019-49-013

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) State Misconduct

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(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? _____

(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)? Na

(d) any other petitions, motions or applications in this or any other Court? _____

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. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? YES

Competency / mentally to stand trial & criminal responsible - presented @ appeals court

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. mental competency
- ii. criminal responsibility
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct Appeals
- ii. Direct Appeals
- 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) Not reviewable on direct appeal
- (b) lawyer would not present claim
- (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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Ronald Hazard - Public Defender - arraignment & plea
Georgetown, South Carolina
- ii. Stewart Axelrod - trial & sentencing
4701 Oleander Dr. Myrtle Beach, SC, 29577
- iii. Carra R. Baer - Appeal - Division of Appellate Defense
1330 Lady Street Suite 401, Columbia, SC, 29201

(b) the proceedings at which each such attorney represented you:

- i. Arraignment & plea
- ii. trial & sentencing
- iii. Appeal
- iii. Appeal

19. State clearly the relief you seek in filing this application:

a lesser sentence

20. Are you now under sentence from any other court that you have not challenged?

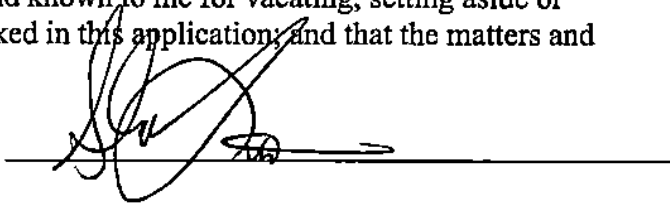
yes - charleston

* Notary

STATE OF SOUTH CAROLINA)
County of Richland)

2019CP2200354
VERIFICATION

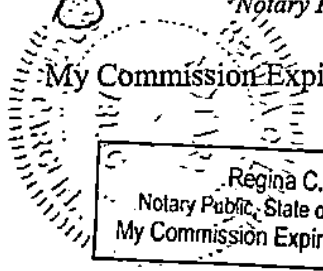
I, Stanley D. Moultrie, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 25th day of February, 2019.

Regina C. Lane (L.S.)
Notary Public

My Commission Expires: 12/31/2024



Regina C. Lane
Notary Public, State of South Carolina
My Commission Expires Dec. 31, 2024

FILED
GEORGETOWN COUNTY, S.C.
2019 APR 17 PM 11:52
ALMA Y. WHITE
CLERK OF COURT

2019CP 2200354

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Stanley D. Maultrie, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

Stanley D. Maultrie

SWORN or affirmed to and subscribed before me this 25th day of February, 2019.

[Signature]
Notary Public

My Commission Expires: 12/31/2024

Regina C. Lane
Notary Public, State of South Carolina
My Commission Expires Dec. 31, 2024

FILED
GEORGETOWN COUNTY, S.
2019 APR 17 PM 11:52
ALMA Y. WHITE
CLERK OF COURTS

10 (a). Applicant contends that trial counsel's performance fell below the standard resulting applicant's conviction was obtained illegally, violating the Constitution of The United States of America & the Constitution of South Carolina. [See: Strickland v. Washington; Chronic v. U]

11 (a) I. Trial Counsel ineffective for failing to interview (a) State's witness/alleged victim. Under the Confrontation Clause in the 6th (sixth) Amendment of the United States of America holds that a defendant has an absolute right to confront a witness(es). This process shall be conducted by defendant's counsel; to interview & investigate. Counsel failed to interview the alleged victim unaware of what she would testify to. Applicant's lawyer did not know what line of questioning to avoid, or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that.

11 (a) II. Counsel failed to communicate with the defendant as defendant wished to plead guilty & not go to trial, which is applicant's definitive right as a defendant. The case at hand was traded/passed from & to multiple solicitors and multiple defense attorney's from the retained
Firm.

LEGAL MAIL

11(a) III Counsel failed to obtain, or investigate said
Weapon or any factual evidence of its existence
Applicant contends there was no weapon or
evidence of a weapon ∴ the charge of
armed robbery is invalid. The state had
possessed the weapon but the charge remained
armed robbery. Counsel failed to challenge the
validity of the indictment. Counsel failed to
charge the courts with the lesser included offense

11(a) IV. Counsel ineffective to raise constitutional violation
of illegal search & seizure.

6

LEGAL MAIL

COUNTY OF STATE

Georgetown VS.

Stanley Delanor Moultrie

AKA:

Race: BLACK Sex: M Age: 49

DOB: SS#

Address: 2938 Pennyroyal Rd

City, State, Zip: Georgetown, SC 29440-5067

DL#: 008454989 SID#: SC00814895

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2200459

A/W#: 2015A2220200052

Date of Offense: 1/20/2015

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

100320

Thomas, J. Austin

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of life days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Mental Health Treatment as deemed necessary

Defendant previously convicted of Armed Robbery (Most Serious Offense)

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court Deputy Clerk

Wendy S. Rogers

Court Reporter: Kay H. Richardson

Presiding Judge

Judge Code: 2160

Sentence Date: 8-27-16

SCCA/217 (07/2016)

See attached. Life sentence imposed pursuant to

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

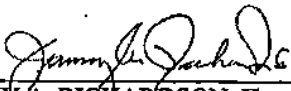
At a Court of General Sessions, convened on May 27, 2015, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Stanley Delanor Moultrie did in Georgetown County on or about January 20, 2015, while armed with a deadly weapon, to wit: a knife, take and carry away personal property of Shoe Show from or in the immediate presence of Joyce Messinger with intent to deprive Joyce Messinger of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown Police Department

DOCKET NO. 2015-GS22-00459✓

The State of South Carolina

County of Georgetown

Erin Bailey

15G00108

COURT OF GENERAL SESSIONS

MAY, 2015 TERM

ARREST WARRANT NUMBER

2015A2220200052



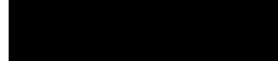
THE STATE

vs.

STANLEY DELANOR MOULTRIE

2938 PENNYROYAL RD

GEORGETOWN, SC 29440-5067



B/M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Ronald W. Hazzard

Indictment for

Ganet Langley

Foreperson of Grand Jury

Date: *5-27-15*

ARMED ROBBERY

VERDICT

Guilty

Jimmy A. Richardson, II, Solicitor

[Signature]

Foreperson of Petit Jury

Date:

2015A2220200052 ✓

STATE OF SOUTH CAROLINA
County/ Municipality of

Georgetown

FEB 10 PM 1:40

ALMA WHITE
CLERK OF COURT

15000992

Stanley Delanor Moultrie

Address: 2938 Pennyroyal Rd

Georgetown, SC 29440-5067

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 Weight: 210

State: SC DL #: 008454989
12/4/1966 Agency ORI #: SC0220200

Prosecuting Agency: Georgetown Police Department

Prosecuting Officer: Caleb Sierra - 0014

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant Stanley D. Moultrie

on 2/2/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Box 479
401 Cleland Street, Room 115
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Georgetown

Personally appeared before me the affiant Caleb Sierra who

being duly sworn deposes and says that defendant Stanley Delanor Moultrie

did within this county and state on or about 1/20/2015 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Georgetown

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 1/20/2015 at approximately 0945 hours at 1324 N Fraser St in the city limits of Georgetown, SC. The defendant, Stanley Moultrie, did commit the offense of Armed Robbery. Stanley did enter the Shoe Show and lured the victim Messinger to the back of the store. Moultrie then grabbed Messinger's neck and also put a knife to her back. Moultrie then made Messinger open the registers and give him the money. Moultrie took approximately \$300 in cash, Moultrie then forced Messinger to the stock room at knife point where he told her to stay until he left. Moultrie was positively identified by the victim in a police photo lineup, and also identified his blue jump suit that he was wearing during the incident, which was seized during a search of his residence.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Georgetown

Affiant's Address 2222 Highmarket Street
Georgetown, SC 29440-

Affiant's Telephone (843)545-4300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/20/2015 defendant Stanley Delanor Moultrie

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 2/2/2015

Signature of Issuing Judge (L.S.)
Judge's Address 2222-B Highmarket Street
Georgetown, SC 29440-2904

Robert Harry O'Donnell

Judge Code: 6217

Judge's Telephone (843)545-4020

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Scanned

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
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Name: _____
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Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

ORIGINAL



Alma Y. White
Georgetown County Clerk of Court



P. O. Box 479 • 401 Cleland St.
Georgetown, SC 29442

April 17, 2019

Office of the Attorney General
Attn: Johnny Ellis James, Jr.
P.O. Box 11549
PCR Division
Columbia, S.C. 29211

RE: Stanley Delanor Moultrie #185590
Case Number: 2019-CP-22-354

Dear Mr. James:

Attached please find a filed copy Application for Post-Conviction Relief and General Sessions's documents. Should you have any questions, please do not hesitate to contact our office.

Georgetown County Clerk of Courts Office

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Stanley D Moultrie)
 Applicant)
 Vs.)
 State of South Carolina)
 Respondent.)

COURT OF COMMON PLEAS
 FOR THE 15th JUDICIAL CIRCUIT
 2019-CP-22-354
 AMENDED PCR APPLICATION

FILED
 CLERK OF COURT
 ALMA Y. WHITE
 2021 MAR 11 AM 10:56
 GEORGETOWN COUNTY

Applicant by counsel amends the PCR application filed April 17, 2019 to include the following specific allegation of ineffective assistance of counsel.

1. Trial counsel provided ineffective assistance of counsel by failing to seek a hearing pursuant to Neil v Biggers 409 US 188 (1972) before Joyce Messinger was permitted to make an in-court identification of Applicant.
2. Trial counsel provided ineffective assistance of counsel by failing to object to the trial court's burden shifting "search for the truth" language uttered as part of the Court's opening comments to the jury (TT p. 104 lines 18-23) and jury charge (TT p. 246 line 21; TT p. 251 line 3; and TT 257 line 20 through 258 line 5)
3. Trial counsel provided ineffective assistance of counsel by failing to object to the prosecutions vouching for the credibility of its witness. (TT p. 229 lines 5-8; 232 lines 2-6)

Respectfully Submitted.


 James K Falk
 Falk Law Firm
 PO Box 38
 Charleston, SC 29402
 (843) 606-6007
 jfalklaw@gmail.com

CERTIFICATE OF SERVICE

A copy of the above was emailed this ~~30th~~¹⁰ day of ~~November, 2020~~^{March 2021}, to Chelsey Marto Esq.
at chelseymarto@scag.gov


James Falk

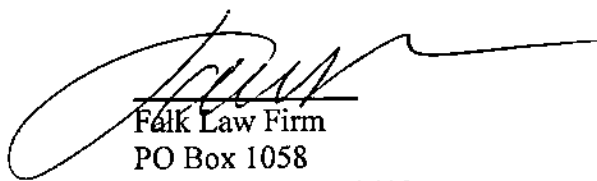
STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Stanley D Moultrie 185590)
 Applicant)
 Vs.)
 State of South Carolina)
 Respondent,)

COURT OF COMMON PLEAS
 FOR THE 15th JUDICIAL CIRCUIT
 2019-CP-22-354
 2nd AMENDED PCR

FILED
 GEORGETOWN COUNTY
 2021 MAR 11 AM 10:56
 ALMA Y. WHITE
 CLERK OF COURT

PCR Applicant Stanley Moultrie by counsel amends his PCR application filed April 27, 2019 to include the following specific allegation of ineffective assistance of counsel. This amendment is in addition to Applicant's first PCR amendment dated November 30, 2020.

1. Applicant was never personally served with timely notice of the State's intention to seek a life without parole sentencing as required by S.C. Code § 17-25-45 (H).
2. Trial counsel was ineffective for not seeking a charge on the lesser included offense of Strong Armed Robbery.


 Falk Law Firm
 PO Box 1058
 Charleston, SC 29402
 (843) 606 6007
 jfalklaw@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Stanley Delanor Moultrie,
S.C.D.C. No. 185590,

Applicant,

) Case No.: 2019-CP-22-00354
)
)

v.

State of South Carolina,

Respondent.

) **RETURN, PARTIAL MOTION TO DISMISS,**
) **AND MOTION FOR MORE DEFINITE**
) **STATEMENT**
) **(Counsel Appointed)**
)
)
)

In response to the application for post-conviction relief filed by Stanley Delanor Moultrie (Applicant) on April 17, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the May 2015 term of the Georgetown County Grand Jury for kidnapping (2015-GS-22-00458), and armed robbery (2015-GS-22-00459). Jeffrey T. Lucas, III, Esq. represented Applicant, and James Austin Thomas, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On August 22, 2016, Applicant proceeded to trial before the Honorable D. Craig Brown and a jury. The jury acquitted Applicant of kidnapping, but found him guilty of armed robbery on August 24, 2016. Judge Brown sentenced Applicant to imprisonment for the remainder of his natural life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Laura Baer, Esq., who raised the following issues:

- 1. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility?

FILED
GEORGETOWN COUNTY, S.C.
2019 JUN 16 AM 11:21
ALISA Y. WHITE
CLERK OF COURT

2. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial?

By opinion decided January 9, 2019, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Moultrie, Op. No. 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019). The Remittitur was issued on January 9, 2019.

II. STATEMENT OF THE FACTS

As described by the solicitor in his opening statement, Applicant committed an armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. The Shoe Show was located in a strip mall along with a Walmart and a Cato, both of which had surveillance cameras. Those cameras showed the robber arriving forty-five minutes before opening, scoping out the parking lot, and then parking in a spot directly facing the Shoe Show until it opened at 9:30 a.m. The robber then moved his car behind the strip mall, walked past Cato, and entered the Shoe Show at 9:37 a.m. After entering the store, the robber talked to the single female store clerk about a particular shoe and asked if she had it in a larger size. When the clerk turned to go in the back to check for his size he grabbed her by the back of the neck, put a large knife to her side, walked her to the cash registers, got her to hand him all of the money, and then walked her to the back of the store where he exited and drove away at approximately 9:45 a.m. Review of the surveillance footage and the subsequent police investigation resulted in Applicant's arrest for the armed robbery. (Tr. 112-15).

Pretrial Motion to Have Applicant Evaluated

On August 22, 2016, the morning the case was scheduled for trial, Counsel moved to have Applicant evaluated. The trial court convened a hearing at which Counsel explained he began working for Axelrod and Associates in January of 2016 and that Applicant's case was the first one dropped on his desk. He said their office had received communications from

Applicant's prior attorney, Leon Parrot, Esquire, expressing concerns about Appellant's mental status. He also said that in February of 2016, Applicant told him he had been raped by his P.E. teacher at the age of 13. Counsel explained Applicant later wrote him a letter detailing the long lasting effects of that sexual assault which led to shame, guilt, drinking, drug use, and anger, all of which Applicant claimed drove him to his regrettable behavior. Counsel said a competency hearing was originally convened before the Honorable Benjamin H. Culbertson in May of 2016; however, Judge Culbertson determined there was not enough information to go forward and allowed counsel to withdraw his motion so he would have an opportunity to collect more information about Applicant's mental health. Counsel said he then requested medical records from the South Carolina Department of Corrections (SCDC) which had "very little when it came to mental health" except to note that some outpatient mental health services were done at area outpatient sites. He did not know where Applicant had been treated outside of SCDC. Counsel described a second letter he also received from Applicant which was very similar to the first and argued he believed the only appropriate way to go forward with trial was to have Applicant evaluated "both under McNaughten [sic] to determine if at the time these events occurred, if he understood the difference between moral and legal right and wrong, and then also, and under State v. Blair,¹ which is competency." Counsel said: "I get this - - this feeling in the pit of my stomach, something is not right. He has to be evaluated. I'm no doctor. I can't diagnose it." Counsel concluded by saying that in his personal opinion, "there is something wrong with [Applicant] and only a doctor will be able to diagnose that and pinpoint what that problem is." (Tr. 8-14).

¹ 275 S.C. 529, 273 S.E.2d 536 (1981).

The solicitor responded by noting the burden was on the moving party to establish a lack of mental capacity and argued that under State v. Burgess² and State v. Colden,³ Applicant had failed to do so. He further noted that Applicant had been through the criminal justice system many times on serious charges and there had been no issue with competency in those cases. The solicitor then offered a witness in regard to Applicant's competency. (Tr. 15-17). The State called Lieutenant Joann Clarey of the Georgetown County Detention Center to the stand. She explained her job was to classify inmates at intake so she could place them in housing units based on things like gang affiliations, mental illness, medical problems, and the nature of the crime. Clarey said she had a lot of contact with inmates in general and that after Applicant came to the jail she had a lot of opportunity to observe and interact with him. She testified she had no issues with Applicant and that he did not exhibit any bizarre or irrational behavior while at the jail. Clarey said she had no problems communicating with Applicant during his stay and he did not appear to have any problems communicating with her. She said that to her knowledge, Applicant was not treated for any mental issues at the detention center. (Tr. 17-21).

The trial court then placed Applicant under oath and asked him a series of questions. He testified he graduated from high school and had been married since 2001. When asked if he had ever received outpatient mental health treatment before his time in SCDC, Applicant said he had tried to seek help when he was in the military. He said he served for a period of time in the army, achieving the rank of specialist before being discharged in 1998. Applicant said he tried to get help and talked to his Major about his problems but was told he would not be allowed to reenlist in his current condition until he sought further help. He then confirmed he was the author of the letters previously referenced by counsel. Applicant testified he was prescribed

² 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003).

³ 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).

Wellbutrin and Effexor when he served time in SCDC, and that prior to his sentencing he was given Valium, Visataril, and Seroquel for anxiety while he was in the Lexington County Detention Center. Counsel handed up documents indicating Applicant was given Wellbutrin while at SCDC. The trial court next asked Applicant about prior exposure to the criminal system and Applicant said he had been convicted and incarcerated on two prior occasions. He testified he understood the lawyers for the State were there to prosecute and that his lawyer was there to defend. Applicant testified he met with counsel two or three times since January, for about fifteen to twenty minutes at each meeting. Applicant did not initially understand the burden of proof and said he believed his attorney had to prove his innocence. (Tr. 22-30).

Next, the trial court questioned counsel in regard to the grounds for his motion for an evaluation. Counsel said Applicant speaks very well and was easy to communicate with. He said Applicant appeared to understand their discussions and was generally able to assist in discussing the case. Counsel said there had not been any issues or concerns with Applicant's ability to understand their discussions or assist in the defense of his case. (Tr. 30-32). Counsel then steered the discussion towards criminal responsibility, arguing competence was "not as much an issue as whether or not he understands what [w]as happening at the time was right or wrong." The trial court questioned what efforts counsel's firm had made to get medical records from outpatient treatment facilities used by SCDC, or from the military. Ultimately, counsel stated:

I just know that my opinion of Stanley's mental status, that directly impacts him, and I believe that is order for the judicial system to operate properly and follow his rights as the Defendant that he needs to be evaluated. This is not made in an attempt to postpone trial. If this case has to hit the next trial roster, so be it. We will be prepared to do it. We'll be prepared on that day. However, I cannot in good conscious [sic] ethically move forward without having [Applicant] evaluated. Thank you.

(Tr. 32-39). The trial judge then reviewed the two letters written to counsel from Applicant and questioned Applicant in regard to whether he understood the charges against him and possible sentences. Counsel acknowledged Applicant understood the elements of the charge but argued they still did not know his mental state at the time the crimes were committed and asked the judge to order the evaluation. The solicitor argued Applicant had not put forth any evidence to suggest a problem with M'Naghten criminal responsibility. (Tr. 39-43).

After hearing the testimony and arguments from both parties, the trial court issued a ruling from the bench denying counsel's request for a mental evaluation. The court noted the defense bears the burden of proving by a preponderance of the evidence that a defendant is entitled to an evaluation and found Applicant presented no evidence other than the SCDC document showing a referral to outpatient mental health treatment in support of his request. The court further noted that during the colloquy Applicant responded appropriately to every question and exhibited an appropriate demeanor. The judge also noted there was no evidence Applicant had not been able to communicate effectively and intelligently with counsel, and commented on the quality of the letters Applicant had written to counsel from jail. The trial court found Applicant understood the role of the prosecutor and the defense in the case and had exhibited no irrational behavior during the proceeding. Relying on the decisions of in Burgess and Colden and the similarities between those cases and this case, the trial court again recited the evidence indicating Applicant was both competent and sane. The court then commented on the lack of medical testimony concerning prior mental health treatment and denied Applicant's request for a mental evaluation for either competency or criminal responsibility. (Tr. 44-47).

Trial

After the trial court denied Applicant's request for a mental evaluation, the case was called for trial. Following jury qualification and jury selection, the trial court addressed additional pretrial motions before the jury was sworn. (Tr. 73-104). The trial judge gave brief preliminary instructions and the parties made opening statements. (Tr. 104-17).

As noted in more detail above, the solicitor opened by giving a brief description of Applicant's armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. (Tr. 112-15). Next, Applicant opened by focusing on the presumption of innocence, the State's burden of proof, and his belief that the State would not be able to meet that burden. (Tr. 115-17).

The State then presented its case in chief, first calling the victim, Joyce Messinger, to the stand. She described the armed robbery in detail and identified the audio recording of her 911 call which was then admitted into evidence. She also identified a series of photographs of the store and those photos were admitted into evidence. Finally, Messinger described identifying Applicant from a photographic lineup shown to her by the police. She testified she was one hundred percent sure of the identification, that she was able to recognize Applicant in "the blink of an eye," and that nobody suggested or influenced her pick. Messinger then made an in-court identification of Applicant as the man who committed the armed robbery. (Tr. 117-28). Applicant cross-examined Messinger about minor inconsistencies in her various statements to the police but on redirect she explained she was simply asked different questions so that her answers were a little different. (Tr. 128-35).

Next, the State called Walmart Asset Protection Associate Ronald Walker and Cato District Manager Amy Milligan to the stand to describe the video surveillance systems at their

respective establishments. They identified video recordings and still-shot images from those recordings from January 20, 2015, which showed a suspect entering and leaving the Shoe Show at the time of the armed robbery and the vehicle that suspect used before and after the incident. The videos and photographs were admitted into evidence. (Tr. 135-47).

The State then called Sergeant Jason Ward of the Georgetown Police Department to describe the police investigation following the armed robbery, which included talking to the victim, processing the crime, and taking photographs. Ward also described how the police watched the surveillance videos and provided still photographs of the vehicle to the Charleston Police Department, which ultimately led them to determine a probable license plate for the armed robber's car and track it to Applicant. He explained the police were then able to obtain a search warrant for Applicant's residence and described the items discovered which linked Applicant to the crime. (Tr. p.147-74; Tr. 182-87). Detective Daniel English of the Charleston Police Department explained how he was given the still photos from the surveillance video and was able to review hundreds of photos taken by an automatic license plate reader (ALPR) camera on January 20, 2015, to find a car that appeared to match the one used by the armed robber. (Tr. 174-82).

Next, over Applicant's objection, the State called Renada Lewis, the custodian of records for Verizon Wireless to the stand. She explained what general information about mobile phone account holders is kept by Verizon in the regular course of business and then identified and authenticated particular records covering January of 2015 for the mobile phone number on Applicant's account. (Tr. 195-201). Finally, the State called Detective Seven Clothier of the Myrtle Beach Policed Department to the stand. He explained he participated in the execution of the search warrant at Applicant's residence and that he learned Applicant's cell phone number at

that time. Clothier then described getting mobile phone records from Verizon for Applicant's number and how he was able to use a software program called CellHawk to plot the location of the cell towers used by Applicant's mobile phone on January 20, 2015, before and after the armed robbery. (Tr. 201-14).

After the State rested, Applicant made a motion for a directed verdict and that motion was denied. (Tr. 214-18). Applicant was then questioned about his right to testify and elected not to take the stand. (Tr. 218-22). Following a brief charge conference, the parties made closing arguments. (Tr. 224-46). The trial judge then charged the jury on the presumption of innocence, the State's burden of proof, reasonable doubt, the roles of the judge and jury, credibility of witnesses, direct evidence, circumstantial evidence, the defendant's right not to testify, identification evidence, criminal intent, and the elements of the crimes. (Tr. 246-60).

At the end of trial, after asking to watch the video surveillance recordings, the jury found Applicant guilty of armed robbery but was acquitted of kidnapping. He was sentenced by Judge Brown to a term of life imprisonment without the possibility of parole. As a special condition of Applicant's sentence the trial court ordered: "Mental Health Treatment as deemed necessary." (Indictments & Sentencing Sheet; Tr. 266-72). Applicant renewed all prior motions, specifically the pretrial motion for a competency evaluation, and the trial court noted its prior rulings remained the same. (Tr. 272-74).

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel ineffective for failing to interview (a) State's witness/alleged victim. Under the 6th (sixth) Amendment of the United States of America holds

that a defendant has an absolute right to confront a witness(es). This process shall be conducted by defendant's counsel; to interview and investigate. Counsel failed to interview the alleged victims unaware of what she would testify to.

Applicant's lawyer did not know what line of questioning to avoid, or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that."

- b. "Counsel failed to communicate with the defendant as defendant wished to plead guilty & not go to trial, which is Applicant's definitive right as a defendant. The case at hand was traded/passed from & to multiple solicitors and multiple defense attorney's from the retained firm."
 - c. "Counsel failed to obtain or investigate said weapon or any factual evidence of its existence. Applicant contends there was no weapon or evidence of a weapon [therefore] the charge of armed robbery is invalid. The state [nolle prossed] the weapon but the charge remained armed robbery. Counsel failed to challenge the validity of the indictment. Counsel failed to charge the courts with the lesser-included offense."
 - d. "Counsel ineffective to raise constitutional violation of illegal search & seizure."
2. "State Misconduct"

Applicant requests relief as follows:

- "a lesser sentence"

Attached to and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a

just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

B. Failure to Investigate Victim

Applicant's allegation that Counsel was ineffective in failing to investigate the victim by contacting her is without merit, and presents substantial constitutional issues regarding victim's rights.

As to deficiency, confronting the victim of an armed robbery as a defense counsel prior to trial is a facially risky proposition, as the victim may be not only uncooperative, but may be incensed by the contact. An angry, upset, fearful, or otherwise motivated victim presents a tremendous frustration to any efforts to negotiate a favorable plea deal, and a defendant generally should prefer a victim who seeks to move on with their lives over a victim who is zealously dedicated to his or her conviction and punishment. Counsel cannot reasonably be held to have provided deficient representation for not contacting the victim of a violent crime.

In order to show prejudice from this allegation, Applicant would necessarily have to present some evidence of what, if anything, Counsel could have shown if he had contacted the victim, which would necessitate subjecting the victim of an armed robbery to further questioning. Victims of crime have the right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process. S.C. Const. Art. I, § 24(A)(1). Victims of crime have the right to be reasonably protected from the

convicted and persons acting on his behalf throughout the criminal justice process. S.C. Const. Art. I. § 24(A)(6). Victims of crime have the right to a reasonable disposition and prompt and final conclusion of the case. S.C. Const. Art. I. § 24(A)(11). Victims of crime have the right to have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect their rights. S.C. Const. Art. I. § 24(A)(12).

The use of post-conviction relief proceedings as an instrument to once again harass, challenge, and confront the victims of violent crime must be unconstitutional, and thus must be zealously guarded against. The victim of this heinous robbery has the right under the South Carolina Constitution to choose, in her discretion, how to peaceably move on with her life, including the option to appear *or not appear* at the endless appeals and collateral proceedings that follow from serious convictions. But see Ex parte Littlefield, 343 S.C. 212, 221, 540 S.E.2d 81, 85 (2000) (“Once a criminal case has been resolved and the defendant is sentenced, the alleged victim loses his [or her] victim status under the Victims’ Bill of Rights.”).

Applicant has enjoyed his right to confront his accuser. The United States Supreme Court explains the right of confrontation:

The primary object of the Confrontation Clause was to prevent depositions or *ex parte* affidavits being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

Coy v. Iowa, 487 U.S. 1012, 1026 (1988) (quoting Kentucky v. Stincer, 482 U.S. 730, 736-37)

(cleaned up). The victim testified at trial and was suitably cross-examined. (Tr. 118-35).

Applicant’s right of confrontation was thus exhausted upon the verdict, and he cannot now compel the victim to again appear and testify to meet his burden, or otherwise place the State in a position to compel her appearance to rebut. Respondent denies Applicant is entitled to relief.

C. Failure to Communicate; Desire to Plead

Applicant's contention that inadequate communication by Counsel foreclosed him from pleading guilty is plainly without merit. Applicant could have, at any time, asserted to the trial court that he did not wish to proceed to trial, but instead wished to enter a guilty plea. Importantly, Applicant *does not* assert that Counsel failed to communicate a plea offer, or timely transmit his acceptance of a plea offer to the State. Respondent denies Applicant is entitled to relief.

D. Failure to Investigate the Weapon

Applicant's contention that Counsel failed to adequately investigate "or obtain" the weapon used in the case is without merit. First, Applicant's claim there was no evidence of a weapon is refuted by the record: the victim testified a knife was held to her. (Tr. 119-20). Second, even if it were not a knife, the threat and representation of a weapon alone is sufficient to sustain an indictment and subsequent conviction for armed robbery. State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009) ("Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon."); S.C. Code Ann. § 16-11-330 (" . . . or while alleging, either by action or words, he was armed while using a representation of a deadly weapon . . ."). No amount of investigation into the knife used in the robbery would have produced anything to justify instructing the jury on any lesser-included offenses of armed robbery, let alone the dismissal of the charge of armed robbery. Applicant cannot meet his burden of proof as to this allegation.

Furthermore, the record reflects Counsel proceeded at trial upon a defense strategy focused not on denying the victim was robbed at knifepoint, but by challenging whether the State met its burden of proof as to the identity of the perpetrator. Defense attorneys are not ineffective

for focusing their efforts on the best available theory of the case. Yarborough, 540 U.S. at 5.

For all of these reasons, Respondent denies Applicant is entitled to relief.

E. Failure to Challenge Search

Applicant does not offer any basis upon which to argue the search of his house, authorized by a properly issued warrant, was illegal. Respondent thus denies Applicant is entitled to relief.

F. Conclusion and Action Requested

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. RESPONSE TO CLAIM OF PROSECUTORIAL MISCONDUCT

Applicant broadly claims prosecutorial misconduct, but offers nothing further. Because Applicant fails to even attempt to establish a *prima facie* claim of prosecutorial misconduct. Thus, Respondent denies Applicant is entitled to relief, and further moves that this allegation should be summarily dismissed.

VI. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Namely, (1) how was the search of Applicant's

house illegal; and (2) in the alternative to the State's partial motion to dismiss set forth in Section V, above, in what misconduct did the prosecution allegedly engage?

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.

VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

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), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. 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), SCRPC.

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.

VIII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

IX. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss as set forth in Section V, above; grant its motion for a more definite statement as set forth in Section VI, above; and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

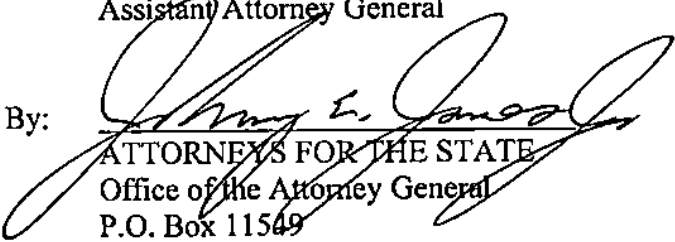
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 12, 2019

STATE OF SOUTH CAROLINA

County of Georgetown

Stanley Delano Moultrie

Full name and prison number (if any) of Applicant

185590

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019 CP2200354

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
GEOGETOWN COURT
2019 APR 17 AM 10:55
ALMA Y. WHITFIELD
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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
Columbia, S.C.
2. Name and location of Court which imposed sentence Georgetown, S.C.
General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 GS 2200459
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 24th 2016
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals Georgetown
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 8th 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. yes; Appellate Case No. 2016-~~001830~~^{SDM} 001830
- ii. unpublished opinion No. 2019-49-013
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

10.

(c) _____
State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) State Misconduct
- (c) _____

11.

State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (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? _____
- (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? _____

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. NA
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. NA
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(14.) Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? YES
Competency/mentally to stand trial & criminal responsible - presented @ appeals court

(15.) If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Mental competency
- ii. criminal responsibility
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct Appeals
- ii. Direct Appeals
- 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) Not reviewable on direct appeal
- (b) lawyer would not present claim
- (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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Ronald Hazard - Public Defender - arraignment & plea
Georgetown, South Carolina
- ii. Stewart Axelrod - trial & sentencing
4701 Oleander Dr. Myrtle Beach, SC, 29577
- iii. Candra R. Baer - Appeal - Division of Appellate Defense
1330 Lady Street Suite 401, Columbia, SC, 29201

(b) the proceedings at which each such attorney represented you:

- i. Arraignment & plea
- ii. trial & sentencing
- iii. Appeal
- iii. Appeal

19. State clearly the relief you seek in filing this application:

a lesser sentence

20. Are you now under sentence from any other court that you have not challenged?

yes - charleston

* Notary

STATE OF SOUTH CAROLINA)
County of Richland)

2019CP02200354
VERIFICATION

I, Stanley D. Moultrie, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 25th day of February, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: 12/31/2024

Regina C. Lane
Notary Public, State of South Carolina
My Commission Expires Dec. 31, 2024

FILED
36062019
2019 APR 17 PM 11:52
ALMA Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY, SC

Revised 3/2003

2019CP2200354

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Stanley D. Maultrie, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

Stanley D. Maultrie

SWORN or affirmed to and subscribed before me this
25th day of February, 2019.

[Signature]
Notary Public

My Commission Expires: 12/31/2024

Regina C. Lane
Notary Public, State of South Carolina
My Commission Expires Dec. 31, 2024

FILED
GEORGETOWN COUNTY, S.C.
2019 APR 17 PM 11:52
ALMA Y. WHITE
CLERK OF COURT

10 (a). Applicant contends that trial counsel's performance fell below the standard resulting applicant's conviction was obtained illegally, violating the Constitution of The United States of America & the Constitution of South Carolina. [See: Strickland v. Washington; Chronic v. US]

11 (a) II. Trial Counsel ineffective for failing to interview (a) States witness/alleged victim. Under the Confrontation Clause in the 6th (sixth) Amendment of the United States of America holds that a defendant has an absolute right to confront a witnesses. This process shall be conducted by defendant's counsel; to interview & investigate. Counsel failed to interview the alleged victim unaware of what she would testify to. Applicant's lawyer did not know what line of questioning to reveal or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that.

11 (a) II. Counsel failed to communicate with the defendant as defendant wished to plead guilty & not go to trial, which is applicant's definitive right as a defendant. The case at hand was traded/passed from & to multiple solicitors and multiple defense attorney's from the retained **LEGAL MAIL** Firm.



11(a) III Counsel failed to obtain, or investigate said weapon or any factual evidence of its existence. Applicant contends there was no weapon or evidence of a weapon so the charge of armed robbery is invalid. The state never processed the weapon but the charge remained armed robbery. Counsel failed to challenge the validity of the indictment, Counsel failed to charge the courts with the lesser included offense.

11(a) IV. Counsel ineffective to raise constitutional violation of illegal search & seizure.

LEGAL MAIL

Alma Y. White
Georgetown County Clerk of Court



P. O. Box 479 • 401 Cleland St.
Georgetown, SC 29442

April 17, 2019

Office of the Attorney General
Attn: Johnny Ellis James, Jr.
P.O. Box 11549
PCR Division
Columbia, S.C. 29211

RE: Stanley Delanor Moultrie #185590
Case Number: 2019-CP-22-354

Dear Mr. James:

Attached please find a filed copy Application for Post-Conviction Relief and General Sessions's documents. Should you have any questions, please do not hesitate to contact our office.

Georgetown County Clerk of Courts Office

Circuit Court Office
(843) 545-3041

Circuit Court Fax
(843) 545-3281

Family Court Fax
(843) 545-3284



STATE OF SOUTH CAROLINA

COUNTY OF Georgetown VS. Stanley Delanor Moultrie

AKA: _____

Race: BLACK Sex: M Age: 49

DOB: _____

Address: 2938 Pennyroyal Rd

City, State, Zip: Georgetown, SC 29440-5067

DL#: _____ SID#: SC00814895

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2200459

A/W#: 2015A2220200052

Date of Offense: 1/20/2015

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lowd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 100320
Thomas, J. Austin SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of life days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____

Set by SCDPPPS _____
Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Mental Health Treatment as deemed necessary
Defendant previously convicted of Armed Robbery (Most Serious Offense)
 Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 to be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Wendy S. Rogers Presiding Judge: [Signature]
Court Reporter: Kay H. Richardson Judge Code: 270
SCCA217 (07/2016) See attached. Life sentence imposed pursuant to Sentence Date: 8-27-15

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 27, 2015, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Stanley Delanor Moultric did in Georgetown County on or about January 20, 2015, while armed with a deadly weapon, to wit: a knife, take and carry away personal property of Shoe Show from or in the immediate presence of Joyce Messinger with intent to deprive Joyce Messinger of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown Police Department

DOCKET NO. 2015-GS22-00459 ✓

The State of South Carolina

County of Georgetown

Erin Bailey

15G00108

COURT OF GENERAL SESSIONS

MAY, 2015 TERM

ARREST WARRANT NUMBER

2015A2220200052

CDR: 0139 §16-11-0330(A)

DOI: 1/20/2015

THE STATE

vs.

STANLEY DELANOR MOULTRIE

2938 PENNYROYAL RD

GEORGETOWN, SC 29440-5067

DOB: [REDACTED]

SSN: [REDACTED]

B / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Ronald W. Hazzard

Indictment for

VERDICT

Guilty

ARMED ROBBERY

Janet Langley
Foreperson of Grand Jury
Date: *5-27-15*

[Signature]
Foreperson of Petit Jury
Date:

Jimmy A. Richardson, II, Solicitor

401

ARREST WARRANT ORIGINAL

2015A222020052 ✓

STATE OF SOUTH CAROLINA

County of Georgetown Municipality of

Georgetown FEB 10 AM 1:40

ALMA MATER THE STATE OF SOUTH CAROLINA CLERK OF COURT

15000992

Stanley Delanor Moultrie

Address: 2938 Pennyroyal Rd
Georgetown, SC 29440-5067

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 3 Weight: 210
State: SC DL #: _____ Agency ORI #: SC0220200

Prosecuting Agency: Georgetown Police Department
Prosecuting Officer: Caleb Sierra - 0014

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

This accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Stanley D. Moultrie on 2/2/15

Signature of Constable or Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Box 479
401 Cleland Street, Room 115
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Georgetown

Personally appeared before me the affiant Caleb Sierra who

being duly sworn deposes and says that defendant Stanley Delanor Moultrie

did within this county and state on or about 1/20/2015 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Georgetown)

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 1/20/2015 at approximately 0945 hours at 1324 N Fraser St in the city limits of Georgetown, SC. The defendant, Stanley Moultrie, did commit the offense of Armed Robbery. Stanley did enter the Shoe Show and lured the victim Messinger to the back of the store. Moultrie then grabbed Messinger's neck and also put a knife to her back. Moultrie then made Messinger open the registers and give him the money. Moultrie took approximately \$300 in cash, Moultrie then forced Messinger to the stock room at knife point where he told her to stay until he left. Moultrie was positively identified by the victim in a police photo lineup, and also identified his blue jump suit that he was wearing during the incident, which was seized during a search of his residence.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Georgetown

Affiant's Address 2222 Highmarket Street
Georgetown, SC 29440-

Affiant's Telephone (843)545-4300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/20/2015 defendant Stanley Delanor Moultrie

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Georgetown) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 2/2/2015

Signature of Issuing Judge
Robert Harry O'Donnell

Judge Code: 6217

Judge's Address 2222-B Highmarket Street

Georgetown, SC 29440-2904

Judge's Telephone (843)545-4020

Issuing Court Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Not Approved by S.C. Attorney General April 21, 2003 SCCA 619

DO NOT WRITE

402

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
ndant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



403

South Carolina Department of Corrections Classification Summary Reports

Date: Friday, May 3, 2019

Classification Summary Reports

Inmate Number

Classification Summary Report for MOULTRIE, STANLEY DELANOR :

CLASSIFICATION SUMMARY REPORT DATED 05/03/2019

SCDC# 00185590

MOULTRIE, STANLEY DELANOR

FBI# 673147NA1

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: BROAD RIVER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 999 YRS 0 MOS
SENT: 0 DAYS

VICTIM
WITNESS: SEPREQ: Y

MED
CLASS:

INST DAILY NURSING
RESTRICT: COVERAGE

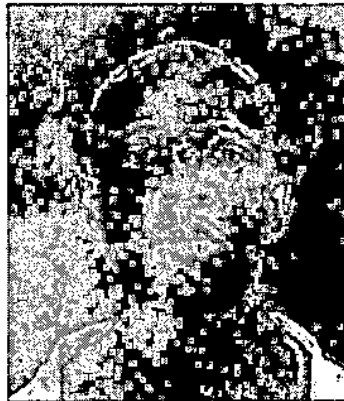
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 52



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: MLT 2045 B

PROJ MAXOUT
DATE:

PROJ PAROLE
DATE:

EWC
JOB: BARBER

ASSIGNMENT: BARBER SHOP

EWC
LEVEL: 2F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

SECURITY THREAT GROUP DESCRIPTION: NONE SECURITY THREAT GROUP STATUS: NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

10:27:37 Friday, May 03, 2019

CMTI330D
OMCOMITA
SCDC# > 185590
MOULTRIE, STANLEY DELANOR
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

05/03/19
C056427

LOC: BROAD RIVER

SCDC CLASSIFICATION...: VIOLENT
SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
PREA PERP...: NONE

PREA VICTIM...: REPORTED VICTIM
-CURRENT SENTENCE: LIFE

CONSECUTIVE SENTENCE ...:
CURRENT SENT START DATE: 02/01/2015

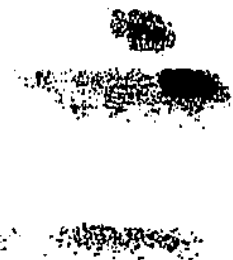
PROJECTED COMPLETION DATES
MAXOUT DATE...: 99/99/9999
YOA SIX YEAR DATE:
INITIAL PAROLE DATE: 00/00/0000

CURRENT EWC .:
CURRENT EEC .:
NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000
TOTAL EARNED WORK CREDITS ...: 000000
TOTAL EDUCATION CREDITS: 000000
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999
LABOR CREW DISQ REASON:
CURRENT OR PRIOR SEX CONDUCT CONVICT
SUPERVISED REENTRY DATE...: 00/00/00
ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1898
FAX: (803) 734-1839
www.sccourts.org

January 30, 2019

The Honorable Alma Y. White
PO Box 479
Georgetown SC 29442-0479

REMITTITUR

Re: The State v. Stanley Delanor Moultrie
Lower Court Case No. 2015GS2200459
Appellate Case No. 2016-001830

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits are being returned: Court's Exhibit #1 – DVD Statement of Defendant. Please sign the attached copy of this letter and return to acknowledge receipt of this item.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kitchings".

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Laura Ruth Baer, Esquire
Jimmy A. Richardson, II, Esquire
Taylor Davis Gilliam, Esquire
The Honorable D. Craig Brown

Receipt acknowledgement:

Name: _____ Date: _____
Appellate Case No. 2016-001830



The South Carolina Court of Appeals

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January 09, 2019

Mr. John Benjamin Aplin, Esquire
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Mr. Taylor Davis Gilliam, Esquire
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Re: The State v. Stanley Delanor Moultrie
Appellate Case No. 2016-001830

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable D. Craig Brown

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Stanley Delanor Moultrie, Appellant;

Appellate Case No. 2016-001830

Appeal From Georgetown County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2019-UP-013
Submitted November 1, 2018 -- Filed January 9, 2019

AFFIRMED

Appellate Defender Taylor Davis Gilliam and Appellate
Defender Laura Ruth Baer, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor Jimmy A. Richardson, II,
of Conway, all for Respondent

PER CURIAM: Stanley Delanor Moultrie appeals his conviction of armed
robbery, arguing the trial court erred by (1) denying his motion for a mental health

evaluation to determine his criminal responsibility and (2) denying his motion for a mental health evaluation to determine his competency to stand trial. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying his motion for a mental health evaluation to determine his criminal responsibility: *Monahan v. State*, 365 S.C. 130, 133, 616 S.E.2d 422, 424 (2005) ("The trial [court] has the discretion to order a mental health evaluation where the defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility."); *State v. Colden*, 372 S.C. 428, 435, 641 S.E.2d 912, 917 (Ct. App. 2007) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) ("[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court's] ruling is supported by any evidence."); S.C. Code Ann. § 17-24-10(A) (2014) ("It is an affirmative defense . . . that, at the time of . . . the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong."); S.C. Code Ann. § 17-24-10(B) (2014) ("The defendant has the burden of proving the defense of insanity by a preponderance of the evidence."); *State v. Smith*, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989) ("A criminal defendant is presumed to be sane; the State does not have to prove sanity."); S.C. Code Ann. § 17-24-20(A) (2014) ("A defendant is guilty but mentally ill if, at the time of . . . the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . , but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.").

2. As to whether the trial court erred in denying his motion for a mental health evaluation to determine his competency to stand trial: *Monahan*, 365 S.C. at 133, 616 S.E.2d at 423 (stating the issue of whether an individual is criminally responsible for a crime due to a mental health condition is separate from the issue of whether an individual is competent to stand trial); *id.* ("The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial."); *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) ("The question of whether to order a competency examination falls within the discretion of the trial [court] whose decision will not be overturned on appeal absent a clear showing of

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

an abuse of that discretion."); *Colden*, 372 S.C. at 435, 641 S.E.2d at 917 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 ("[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court's] ruling is supported by any evidence."); S.C. Code Ann. § 44-23-410(A) (2018) ("Whenever a [trial court] has reason to believe that a person on trial before him, charged with the commission of a criminal offense . . . , is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the [court] shall . . . order [an evaluation] . . ."); *Burgess*, 356 S.C. at 575, 590 S.E.2d at 44 ("Factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial is warranted include evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial."); *id.* at 575-76, 590 S.E.2d at 44 (finding the defendant was not entitled to a mental health evaluation when she only presented prior records of mental health treatment but failed to establish how the records addressed her competence to stand trial and when her counsel primarily relied on personal assertions).

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF GEORGETOWN) CASE NO. : 2019-CP-22-00354

3 -----

4 June 23 2021

5 **BEFORE:** The Honorable William H. Seals, Jr.

6 -----

7

8 Stanley D. Moultrie,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 APPEARANCES:

14 Chelsey F. Marto, Esquire
15 Attorney for the State of South Carolina

16 James K. Falk, Esquire
17 Attorney for the Defendant.

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22 Julie A. Kevish
23 Official Court Reporter

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June 23, 2021

P-R-O-C-E-E-D-I-N-G-S

THE COURT: I'll recognize the State.

MS. MARTO: Yes, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. MARTO: We are here today on the case of Stanley Moultrie, Case Number 2019-CP-22-00354. On May, 2015 he was indicted for kidnapping and armed robbery. He was represented at trial by Mr. Jeffrey Lucas. Mr. James Thomas prosecuted the case. Trial occurred August 22, 2016 before the Honorable D. Craig Brown and a jury. The jury acquitted him of kidnapping but found him guilty of armed robbery. On August 24, 2016 he was sentenced to life imprisonment. He filed a notice of appeal that was perfected by Laura Baer and the convictions were affirmed by written order on January 9, 2019 and the remittitur issued January 9, 2019. This application was filed April 17, 2019. The State made its return to the original allegations raised which included various ineffective assistance of counsel claims, as well as a state misconduct claim, and particularly the ineffective assistance of counsel claims were failure to interview a state's witness or alleged victim, counsel's failure to communicate with defendant as defendant wished to plead guilty and not go to trial and failed

1 to obtain or investigate the weapon or factual evidence
2 surrounding its existence, as well as failure to raise a
3 constitutional violation of an illegal search and seizure.
4 Your Honor, from my understanding, two amendments have since
5 been filed through counsel, Mr. James Falk, including raising a
6 claim of ineffective assistance of counsel for failure to seek
7 a hearing pursuant to Neil versus Biggers; trial counsel
8 provided ineffective assistance of counsel by failing to object
9 to the burden shifting of the trial Court and search for the
10 truth language uttered in the opening comments to the jury by
11 the judge and the jury charge; and trial counsel provided
12 ineffective assistance of counsel by failing to object to the
13 prosecutor's vouching for the witness' credibility; and then,
14 additionally, a second amendment was also made, the allegations
15 being Applicant was never personally served with LWOP notice in
16 a timely manner and that trial counsel was ineffective for
17 failing to seek a lesser included offense on strong armed
18 robbery. Your Honor, I do have a packet of the materials.
19 Would you like them?

20 THE COURT: Yes, ma'am. Thank you.

21 MS. MARTO: And I'll turn it to Mr. Falk.

22 THE COURT: I'll be glad to hear from you, Mr. Falk.

23 MR. FALK: Your Honor, just one thing that actually
24 my client pointed out to me just two minutes ago, and it
25 relates to the LWOP notice, and he also believes, and I haven't

1 had an opportunity to look, but if they were trying to give him
2 LWOP based on a 1993 armed robbery conviction there's a
3 question about whether or not the statute which was enacted in
4 '95, you know, whether or not that's an ex post facto kind of
5 application of a law to enhance the sentence, so that would be
6 a separate constitutional claim that was not objected to at the
7 trial court level so it couldn't have been addressed on appeal.
8 That's just something we want to add on to that right here.

9 THE COURT: Alright. I'm ready when you are.

10 MR. FALK: I'll Mr. Lucas to the stand.

11 **JEFFREY LUCAS WAS DULY SWORN AT THIS TIME AND**
12 **TESTIFIED AS FOLLOWS:**

13 **DIRECT EXAMINATION**

14 BY MR. FALK:

15 Q. State and spell your full name for the record.

16 A. My name is Jeffrey, J-E-F-F-R-E-Y, last name L-U-C-A-S.

17 Q. Mr. Lucas, can you hear me from here?

18 A. I can.

19 Q. Because, you know, sound barriers and all that stuff,
20 plexiglass. So this trial was in August of 2016. Can you sort
21 of give, what kind of practice had you had up until August of
22 2016? Can you sort of describe your experience up to that
23 point?

24 A. Up to that point I was licensed in 2014, and as far as
25 trial experience I had had some lower court trials but Mr.

1 Moultrie's trial was the biggest case I had at that point.

2 Q. Were you appointed to this case? How did you come about
3 representing Mr. Moultrie?

4 A. I was hired by Stuart Axelrod and about several months
5 before Mr. Moultrie's trial began, and Mr. Moultrie was -- I
6 had obviously studied this case, got prepared for this case,
7 talked with Mr. Moultrie a time or two, but when the trial came
8 around Mr. Axelrod was not around so I took the case on and
9 went to trial and then the results, which I'm sure you know --

10 Q. Well, let me get to there. As I recall looking at the
11 beginning of the transcript it looks as though that you
12 actually requested a continuance?

13 A. I believe so, just because it came up and I wasn't
14 prepared at that time so I did request a continuance.

15 Q. Okay. So Mr. Axelrod had already sort of made the trial
16 book for you?

17 A. No, he did not.

18 Q. So all the real trial preparation was yourself, was it
19 not?

20 A. It was.

21 Q. And how would you characterize the evidence that the
22 State had against Mr. Moultrie?

23 A. The evidence against Mr. Moultrie was from quite a few
24 different places. There were cases in Charleston County and --

25 Q. Let me interrupt you there. And I know you're entitled

1 to finish your answer but --

2 A. No, you're fine.

3 Q. They didn't talk about the Charleston County cases at
4 this trial; is that correct?

5 A. They did not.

6 Q. And there was some indication -- because there was a
7 pre-trial hearing at the beginning where the State was actually
8 trying to sort of use Lyle-type analysis to get some
9 identification testimony from other two cases; is that correct,
10 the Charleston County case, one was a subsequent one and one
11 was a prior one?

12 A. I do not remember that, but I would assume so, yes.

13 Q. Okay. Because I looked at what you did and I think you
14 did a pretty good job as far as keeping that information away.
15 So in this trial it's my reading of the transcript that the
16 State did not use any type of identification testimony from the
17 other two locations.

18 A. They did not.

19 Q. So, and that's when I interrupted you about the other
20 cases. So what they had against Mr. Moultrie was, what, was
21 there an identification from this case?

22 A. There was an identification from this case.

23 Q. There was an eyewitness identification; is that correct?

24 A. There was.

25 Q. But there was no, can you tell me what type of forensic

1 evidence there was?

2 A. As far as forensic, I do not recall that. Most of it
3 was the witness identification.

4 Q. Is it fair then to say that the State was relying
5 heavily on the identification by the eyewitness?

6 A. Yes.

7 Q. And it would appear from the transcript that you did not
8 request a hearing pursuant to Neil versus Biggers?

9 A. I did not.

10 Q. And was that a trial strategy that you were employing or
11 was it maybe based on first time trial, can't remember
12 everything?

13 A. It was a first time day trial thing and it never came to
14 my attention that the Bigger Hearing was really necessary at
15 that point.

16 Q. Because this case did have --

17 MR. FALK: May I approach the witness?

18 THE COURT: Yes.

19 (Applicant's Exhibit No. 1 was marked for identification.)

20 MR. FALK: We would ask to move this as one exhibit
21 in as Applicant's Exhibit No. 1.

22 BY MR. FALK:

23 Q. Do you recall those now?

24 A. Yes, I do recall.

25 Q. Because what I'm showing you is they were actually

1 supplied to me from the Attorney General's Office at my request
2 because that's State's Exhibit 10 and 11 in the trial, and I've
3 had that marked as our Applicant's Exhibit Number 1.

4 A. That is correct.

5 Q. So the witness, Mrs. Messinger (phonetic) picked out Mr.
6 Moultrie from that lineup; is that correct?

7 A. She did.

8 Q. And then do you recall she identified him in court,
9 also?

10 A. She did.

11 Q. Let's move on. Do you have a copy of the transcript?

12 A. I do.

13 Q. This was sort of related to this identification issue.
14 Could you look at page 152 of the transcript? If you want to
15 kind of familiarize yourself where you are in there, but it's
16 my opinion that you've got a police officer who is reviewing
17 the videos from Walmart. Jason Ward is testifying. If you
18 look at page 148, line five, it says that Jason Ward is from
19 the Georgetown Police Department.

20 A. I do see that.

21 Q. So then you see that there were like 14 different videos
22 that Walmart had. Do you sort of have the context now?

23 A. Yes, I understand the context.

24 Q. So did you consider objecting when on line 18 there
25 Jason Ward said that the defendant's vehicle pulled into the

1 parking lot?

2 THE COURT: What page are you on?

3 MR. FALK: This is page 152, line 18.

4 A. Okay.

5 Q. Because at that point nobody had identified any vehicle;
6 is that correct?

7 A. That is correct.

8 Q. And so here's the police officer telling the jury that
9 that's the defendant's car.

10 A. That is correct.

11 Q. And did you consider objecting to allowing the police
12 officer to narrate the video while the jury was watching the
13 video?

14 A. I did not consider objecting at that point, no.

15 Q. There's just two other places where this occurred on
16 page 154, line 22, and line 155, line five.

17 A. I see, and, no, I've never considered objecting to
18 those.

19 Q. Let me kind of move along here. Do you ever recall
20 receiving the LWOP notice?

21 A. I do not recall receiving the LWOP notice, no.

22 Q. Do you have any evidence whether or not Mr. Moultrie was
23 ever personally served with the LWOP notice?

24 A. I do not.

25 Q. Now, let's kind of move along, page 257. Mr. Lucas, I

1 see you in criminal court in Horry County frequently and I know
2 that you've been practicing in this field a lot since 2016.

3 Are you familiar with the Beatty case?

4 A. I'm familiar with it, but at that point in my --

5 Q. I don't think it had come down yet, honestly.

6 A. Yeah, well, no, I do not recall the Beatty case.

7 Q. Well, this is where, do you see in the charge to the
8 jury the Court is using the search for the truth language? I
9 guess it's mostly on page 258, line 1: In fact, ladies and
10 gentlemen, the word "verdict," which has a Latin derivative,
11 means a true saying, thus, when you have accomplished this
12 responsibility you have served -- up to the word, to search for
13 the truth. And did you consider objecting, because that's
14 somewhat burden shifting, charge to the jury?

15 A. I did not consider objecting at that point.

16 Q. But again, I think this case came out almost at the same
17 time or maybe even after the Beatty case. I need to go and
18 look at one other thing here. Let's look at the State's
19 closing argument. It starts on page 229, well, I guess it
20 starts on page 228: And if you could just read to yourself
21 lines five through eight.

22 A. Okay.

23 Q. Would you characterize that language as possibly the
24 State vouching for the credibility of the eyewitness?

25 A. I do, I see that now.

1 THE COURT: What page are you on again?

2 MR. FALK: That is page 229, lines five through
3 eight.

4 THE COURT: Okay.

5 Q. Could you look at page 232, lines two through six.

6 A. I do see that now.

7 Q. Would you agree that that also appeared to be him
8 vouching for the credibility of that witness?

9 A. I do, yes, now I do.

10 Q. This being your first big criminal trial?

11 A. Yes, sir.

12 Q. I'm not sure if I would have stood up and interrupted
13 somebody's closing argument, but can you see that that could
14 have possibly been prejudicial towards the client now?

15 A. I do now, yeah. In retrospect, it was extremely
16 prejudicial.

17 Q. And do you know specifically what charge they were
18 basing the LWOP notice on, which one of his priors?

19 A. I do not know which prior they were basing that on.

20 THE COURT: Did you say page 229, five through eight?

21 MR. FALK: I'm sorry.

22 THE COURT: Give me specifically those pages and
23 lines.

24 MR. FALK: So the first one is on page 229, lines
25 five through eight.

1 THE COURT: Five through eight, okay.

2 MR. FALK: And then the second one which Mr. Lucas
3 referred to was on page 232, lines two through six.

4 THE COURT: Thank you.

5 Q. Just Mr. Lucas, if you could just look at page 273. And
6 this is the Court's discussion at pages seven through 14, and
7 if you could just look through that paragraph. That talks
8 about, my interpretation, that the judge is looking to see
9 whether or not he's LWOP eligible.

10 A. What lines are those?

11 Q. Seven through 14.

12 A. I do see that now, yes.

13 Q. And one of them is, one thing that they are referring to
14 is this 1993 armed robbery conviction; is that correct?

15 A. That is correct.

16 Q. And you did not object about whether or not you could
17 enhance under LWOP for a 1993 conviction, did you?

18 A. I did not object to that, no.

19 MR. FALK: Your Honor, I have no further questions.

20 THE COURT: Cross?

21 **CROSS-EXAMINATION**

22 BY MS. MARTO:

23 Q. Morning, sir, how are you doing today?

24 A. I'm doing all right.

25 Q. Good. So from my understanding you were working

1 underneath the senior supervisor at the time, correct?

2 A. I was.

3 Q. Somebody with much more experience?

4 A. Yes, many more years more experience.

5 Q. And he talked with you about the case?

6 A. Yes, we discussed the case.

7 Q. And you did your own independent research about the
8 case, correct?

9 A. I did, correct.

10 Q. And you talked with Mr. Moultrie yourself at least once
11 or twice?

12 A. I did.

13 Q. And so you went into the trial at least having reviewed
14 the discovery and evidence with your client, correct?

15 A. I did.

16 Q. And you were pretty familiar with the evidence that the
17 State had against Mr. Moultrie?

18 A. I was.

19 Q. Now, can you lay out in a bit more detail what evidence
20 they had against Mr. Moultrie?

21 A. As far as I recall, most of what they had was the
22 eyewitness statements and the videos and the other cases that
23 were going on, you know, either prior to, when this case came
24 up, so a lot of it was witness statements and his
25 identification in the lineup.

1 Q. But there was also video evidence, correct?

2 A. There was.

3 Q. From where?

4 A. I believe there was video evidence from the parking lot,
5 I believe, of him going into the store that was ultimately
6 robbed.

7 Q. And who took that footage, what company or organization?

8 A. That, I do not know.

9 Q. You don't remember?

10 A. I don't remember.

11 Q. You do have the copy of the transcript, though, correct?

12 A. I do.

13 MS. MARTO: I beg the Court's indulgence for a
14 moment, Your Honor.

15 THE COURT: Sure.

16 Q. Would you be able to turn to page 136, 137?

17 A. I did.

18 Q. So on those pages does it lay out who took video
19 footage? Are you able to recollect?

20 A. I'm not able to recollect, no.

21 Q. Okay. Look at page 135, line 23. There was an
22 individual there testifying from Walmart, correct?

23 A. Yes, I see that.

24 Q. And then page 138, starting at line 17. Does he lay out
25 video footage that was taken from Walmart?

1 A. He does.

2 Q. Additionally, would you be able to turn to page 142, is
3 where it would start?

4 A. Okay.

5 Q. There was another individual from Cato, correct? Look
6 at line, starting at nine.

7 A. I see, yes.

8 Q. And then starting lines 20, 21: Do you know why you're
9 here today? About some footage I recorded. So there were two
10 companies that had footage at the same time of Mr. Moultrie,
11 correct?

12 A. That appeared to be the case, yes.

13 Q. Now, going back to victim identification, was the victim
14 at all unequivocal or equivocal when it came to identifying Mr.
15 Moultrie, do you remember?

16 A. Do you mean was she able?

17 Q. Was she confident or wavering?

18 A. Confident? I mean, yes. I mean, she, at the time from
19 what I remember she was very confident in his identification.

20 Q. Was the spread she was shown that had Mr. Moultrie on it
21 the first spread she was given, do you remember?

22 A. I don't recall how many spreads she got.

23 Q. Now, you stated that the Court didn't go into his
24 pending charges from other counties, did they or did they
25 during trial?

1 A. They did not.

2 Q. Specifically, do you remember any mention whatsoever of
3 them being able to trace Mr. Moultrie's car from a Charleston
4 County case at that trial?

5 A. I do not, I do not recall that.

6 Q. You don't. Would you be able to turn to --

7 MS. MARTO: One moment, Your Honor.

8 THE COURT: Sure.

9 Q. -- page 183?

10 A. Okay.

11 Q. Starting with line two: And you provided photos to
12 Detective English in Charleston? Yes, sir. For the purpose of
13 trying to get a match? Yes, sir. And so there was at least an
14 indication that Charleston County Police Department did have
15 his tags, correct? Is that what you could infer from that?

16 A. That is, yes.

17 Q. And do you remember if that was why they traced -- in
18 order to secure the search warrant that's how they were able to
19 obtain that search warrant is by tracing it from the tag in
20 Charleston? Do you recollect that?

21 A. I do not recollect that, no, I don't.

22 Q. But a search warrant was obtained, correct?

23 A. It was.

24 Q. And you had objected to that at first or at that very
25 least affidavit used to secure the search warrant?

1 A. I do not recollect that --

2 Q. You don't recollect that?

3 A. -- but I would assume so, but I'm not sure.

4 Q. Okay. Now, a search warrant was obtained, correct?

5 A. Yes.

6 Q. And they were able to find some pretty unique items in
7 Mr. Moultrie's house, is my understanding, is that correct?

8 A. (No audible response.)

9 Q. You don't recollect?

10 A. I don't recollect, no.

11 Q. You don't recollect just many, many photos taken of
12 random things in the house?

13 A. I don't recollect specifically what the photos were
14 because its been so long, but I would assume so, because I've
15 seen lots of evidence since then, and that's usually the case.

16 Q. Would you be able to turn to page 160 for me, please?

17 A. Okay.

18 Q. So they were able to find the car that matched the
19 description, correct?

20 A. Yes.

21 Q. Is that lines two through four?

22 A. Yes, they were.

23 Q. They were able to find several hats that they said could
24 be traced to the scene, line nine?

25 A. Yes, they were.

1 Q. Line 13, red tin can on the self?

2 A. Yes.

3 Q. Line 17, photograph of the money taken?

4 A. Yes.

5 Q. Line 18, shoes we photographed, size 13?

6 A. Yes.

7 Q. Now, didn't Mr. Moultrie -- from your recollection was
8 there anything particularly unique or unusual about the size 13
9 shoe involved in the case?

10 A. Not to my recollection, no.

11 Q. So you don't recollect the victim testifying that he
12 came into the store requesting a size 13 shoe?

13 A. I do not recollect that, no.

14 Q. Would you be able to flip to 119 for me?

15 A. Okay.

16 Q. So the victim is describing what happened, and then
17 starting on lines 13: And then he went down to the thirteens
18 and come back with tens and elevens and pulled out a shoe, so
19 he asked me, he says, ma'am, can you get this shoe for me in a
20 13? Do you have it? Do you recollect that now?

21 A. Now I do, yes.

22 Q. And that wasn't, from my understanding, the only time he
23 requested a size 13 shoe, correct, I think that was a common
24 denominator in the other two charges?

25 MR. FALK: Objection, Your Honor, that was not part

1 of the record in this case. The testimony about the other two
2 arrests, that was not part of the record here. So I mean, the
3 jury didn't hear that, so the fact that this -- she's trying to
4 do exactly what Judge Brown did not let the solicitor do in
5 that case is trying to bring into evidence of these other acts,
6 one before and one after.

7 MS. MARTO: Question withdrawn, Your Honor.

8 THE COURT: Sustained.

9 BY MS. MARTO:

10 Q. Now, going back to the victim's identification, how
11 certain did she say she was at trial, do you remember if she
12 wavered?

13 A. From what I remember she was pretty confident, but
14 obviously, I couldn't say how confident she was, but from what
15 I remember she seemed pretty confident at the time.

16 Q. Can you turn to page 127 for me, please, starting at
17 line 12: How long did it take to make that identification, the
18 blink of an eye? Does that sound more confident than you
19 originally remember?

20 A. Now it does, yes.

21 Q. Now, going to the lesser included jury charge, you
22 studied the law before going to trial, correct?

23 A. I did.

24 Q. The law surrounding cases similar to Mr. Moultrie's?

25 A. I did.

1 Q. But you weren't familiar with the Beatty case, correct?

2 A. At that time, no, I was not.

3 Q. My understanding was that Beatty wasn't decided until
4 2018. Would you be able to recognize an opinion that hasn't
5 been decided until almost two years before trial, or two years
6 after trial? Are you clairvoyant?

7 A. Am I clairvoyant?

8 Q. Yes.

9 A. No, I mean, I wouldn't remember, no, any cases that
10 happened two years after the trial?

11 Q. Right.

12 A. No.

13 Q. It sounds like a ridiculous question but I did want to
14 confirm.

15 A. No, I would not recollect that.

16 Q. Now, you don't remember Mr. Moultrie being served with
17 an LWOP notice, do you?

18 A. I do not.

19 Q. Would you be able to turn to page 172 in the record for
20 me, please? Starting line 17: I have the notice of intention
21 to seek a sentence of life without parole. This was served on
22 the defendant back on April 7, 2016 and filed the same day. Do
23 you recollect now, or no?

24 A. I see it in the record, but, no, I do not recollect when
25 that happened.

1 Q. Is there a reason why you didn't object to it?

2 A. No idea, but I did not object.

3 Q. Okay.

4 MS. MARTO: One moment, Your Honor.

5 Q. Now, going back to page 160, they also located starting
6 on line 23, a pair of glasses?

7 A. They did.

8 Q. And that fit the description given, correct?

9 A. That, I do not recall, no.

10 Q. But you do recognize that the person identified on the
11 lineup was, in fact, wearing glasses?

12 A. Yes, I do.

13 Q. And all of the individuals fit the description on the
14 sheet, correct, glasses?

15 A. Yes, they were all wearing glasses.

16 Q. And Mr. Moultrie is wearing glasses today, correct?

17 A. He is.

18 Q. Now, page 161, starting line 13 and 14, they also
19 located a blue jumpsuit, correct?

20 A. They did.

21 Q. And Mr. Moultrie was seen wearing a blue jumpsuit on the
22 scene?

23 A. From what I remember, yes.

24 Q. Now, concerning the judge's original instructions to the
25 jury, did you holistically find anything improper at the time

1 in the moment?

2 A. At the time in the moment, no, I did not.

3 Q. And you didn't find anything holistically wrong or
4 perhaps, like, prejudicial or burden shifting about the State's
5 closing, holistically, at the time?

6 A. At the time, no, I did not.

7 Q. They also had cell phone records on Mr. Moultrie,
8 correct, tracing him to that area around that same time, that
9 you remember?

10 A. I believe so, yes.

11 Q. Now, generally speaking, what was your trial strategy
12 going in?

13 A. Generally speaking, my trial strategy was to
14 cross-examine the witness, and given Mr. Moultrie's record,
15 obviously, I wasn't going to call Mr. Moultrie to the stand,
16 and obviously, it is not his burden to prove that he's
17 innocent. So my strategy was to try to kind of pick through
18 what the State had and what they put up, and that's what I did.

19 Q. So just to summarize, to find holes in the State's case
20 by cross-examining their witnesses?

21 A. Yes, yes, I did.

22 Q. Now, did you ever particularly in your closing argument
23 challenge the victim's credibility, do you remember?

24 A. I do not recall whether or not I challenged her
25 credibility. Obviously, it would be, you know, some level of

1 challenge because I was representing Mr. Moultrie, so I could
2 only assume that I challenged that in same way in closing.

3 Q. Now, your closing starts on page 238, line 22.

4 A. Okay.

5 Q. And so you stated that you didn't deny that she had been
6 robbed, right? Starting line 22: I do not deny, nor does
7 Stanley, nor does the investigator, I do not deny that Ms.
8 Messinger (phonetic) was robbed. She sat there and she cried.
9 It was upsetting for her, I don't deny that someone robbed Ms.
10 Messinger (phonetic) and the only thing I deny is that it was
11 Stanley Moultrie, but again, she stated that she could
12 recognize Mr. Moultrie in the blink of an eye, correct?

13 A. She did.

14 Q. And there were other unique identifying attributes about
15 him again, including the jumpsuit and the glasses, the knife?

16 A. Yes.

17 Q. Was there any question at trial, do you remember,
18 whether or not Mr. Moultrie had a knife?

19 A. I don't remember specifically, but there was a question
20 whether he had a knife, because from what I remember a lot of
21 it was hidden in some fashion, so again, I don't really
22 remember, but I think a lot of it was hidden in his jacket or
23 something of that nature, but I do not, specifically, I do not
24 remember.

25 Q. But she did state that he had a knife, correct, whoever

1 robbed her?

2 A. I believe she did, yes.

3 MS. MARTO: One moment, Your Honor.

4 Q. So in conclusion, it's safe to say that this trial was a
5 long time ago and the details for you are a bit hazy about what
6 exactly happened, does that generally sum it up?

7 A. Yeah, that generally sums it up, yeah, it was a long
8 time ago.

9 Q. And you've had many trials since then?

10 A. I have had lots of different cases.

11 Q. Some of those being armed robberies, I assuming?

12 A. Yes.

13 MS. MARTO: Thank you. No further questions, Your
14 Honor.

15 **REDIRECT EXAMINATION**

16 BY MR. FALK:

17 Q. Did you consider asking for a request for strong armed
18 robbery for a jury charge?

19 A. I did not consider a lesser included, no.

20 Q. The solicitor asked you to talk about some of the
21 photographs and she asked you about whether or not there was a
22 description of the vehicle, and that description was a black
23 vehicle, isn't that correct, that's what is in the transcript?
24 I mean, it wasn't described as a big black vehicle, it was just
25 a black vehicle; is that correct?

1 A. Of course, in the transcript, yes.

2 Q. And also, the solicitor said that there was a photograph
3 of money inside his house, but there was no identification that
4 that money came from any particular source; is that correct?

5 A. That's correct.

6 Q. And no knife was ever introduced into evidence; is that
7 correct?

8 A. That is also correct.

9 MR. FALK: Your Honor, if I could, I had some
10 concerns with what would have had been part of a Biggers
11 Hearing, and I don't know if I could address it to you because
12 it is set forth in the record, or if you want me to try to
13 bring that in through Mr. Lucas?

14 THE COURT: Why don't go ahead and just try with him
15 and then you can go further.

16 MR. FALK: Okay.

17 BY MR. FALK:

18 Q. Do you think there was reason to doubt whether or not
19 she got a good look at him, whether or not Ms. Messinger
20 (phonetic) had a good opportunity to view him?

21 A. Of course I have reasons to doubt. It could have been
22 any African American male.

23 Q. Because if you look at, let's just look at page 119,
24 lines 22 through 25. Well, actually, Mr. Lucas, if you could
25 just to yourself read her entire answer starting at 119, line

1 four through to 121, line 12. I know it's a couple pages.

2 A. Okay.

3 Q. Does it look like he came up to her and grabbed her from
4 the front or the back?

5 A. Do you have a specific line for that?

6 Q. It looks to me that it sounded like -- when I start on
7 the bottom of page 22 it sounds like -- Excuse me, 119, line
8 22, it seems to me, and I'm trying not to lead here, but it
9 seems to me she said that he came up to her and she heard
10 something, him pulling something out of his overalls and she
11 turned around, or she looked over and saw him.

12 A. Yes, you're right.

13 Q. And then it looks as though he never took his hands off
14 of her or the knife off of her, and I can see that on page 120,
15 lines 13 and 14, while he had his hand around the neck.

16 A. Yes.

17 Q. And she's describing her handing the money to him on
18 page 120, lines 13 and 14, it sounds like she's handing it
19 backwards to him, that's where I'm assuming that she's saying
20 that he grabbed her from the back.

21 A. Yes, I agree.

22 Q. And then on lines 17 and 18 she sits it on a table,
23 she's looking straight at him, she's actually trying to see him
24 through a mirror on page 120, lines 17 and 18.

25 A. I see that, too.

1 Q. And then I guess she's lying down and she's trying to
2 sort of see him out of the corner of her eye.

3 A. Yes, that is what it appears.

4 Q. Okay. Now, let's go over to page 125. And lines two
5 through seven, I think there's a question about how long was
6 Mr. Moultrie, how long was he in the store prior to the
7 confrontation? She answers that at line seven.

8 A. Yes.

9 Q. So she had about five or six minutes to look at him
10 before the confrontation?

11 A. That is correct, yes.

12 Q. And also on the glasses, look at line 11 and 12 where
13 she's describing the glasses he was wearing?

14 A. She was.

15 Q. What's her description?

16 A. Round-rimmed glasses.

17 Q. And I don't know if you've still got that exhibit up
18 there, but he's not wearing round glasses in that picture, is
19 he?

20 A. He is not. It looks like, well, actually, I know, he
21 has, like, rectangular glasses in every picture.

22 Q. Okay. And then if you look at the date, I think it's
23 exhibit ten, the written part where she signs it.

24 A. 1-31-2015?

25 Q. Yeah, and so the date of the incident was 1-20-2015; is

1 that correct?

2 A. That is correct.

3 Q. So there was 11 days in between this identification?

4 A. There was.

5 Q. Those were the issues that you could have raised at a
6 Biggers Hearing?

7 A. They were.

8 MR. FALK: Your Honor, if I could just have another
9 minute?

10 Q. If you would just go to page 104.

11 A. Okay.

12 Q. And if you look at lines 18 through 23 --

13 MR. FALK: Your Honor, I identified this passage in
14 my motion, I mean, in my amended PCR.

15 Q. -- but on page 104, lines 19 through 23, do you see any
16 more search for the truth language there?

17 A. I do see that, yes.

18 Q. Did I miss something? Did they actually bring in GPS
19 from his phone?

20 A. That, I do not recall, whether or not GPS was involved.

21 Q. Because I have to admit, I missed it and I don't see a
22 witness who might have brought that in.

23 A. I just remember the cell phone records, whether or not
24 that could be interpreted as GPS, I do not know.

25 Q. Were they in discovery or were they admitted?

1 A. The records from the cell phone?

2 Q. Yes.

3 A. That, I don't remember.

4 Q. Okay.

5 MR. FALK: One moment.

6 Q. I did notice, you did cross-examine Ms. Messinger
7 (phonetic) about her statement, and she made numerous
8 statements; is that correct? Let me go to your cross-
9 examination. Hold on. Can you look at and just sort of skim
10 over pages 130 through 132, and this is your cross-examination
11 of Mrs. Messinger (phonetic) and it appears to me that you are
12 discussing -- I mean, the record speaks for itself, but it
13 appears to me that you're highlighting some of her
14 inconsistencies in her statements?

15 A. It does, yes.

16 Q. And that, again, could have been presented to the Court
17 at a Biggers Hearing?

18 A. It could have, yes.

19 Q. No, I just, I need to assume because I'm just trying to
20 make a record.

21 A. I understand, I understand.

22 MR. FALK: I have nothing further.

23 THE COURT: Alright. Yes, ma'am?

24

25

REXCROSS-EXAMINATION

1

2 BY MS. MARTO:

3 Q. Now, concerning the fact that he was behind Ms.
4 Messinger (phonetic) from the beginning, was that her initial
5 interaction with Mr. Moultrie, him jumping her from behind, do
6 you remember?

7 A. That, I do not remember.

8 Q. Can you turn to page 119 for me, please.

9 A. Okay.

10 Q. Starting with line nine, it says that she saw him walk
11 down as if he were looking for something and that it's her job
12 to recognize a customer when he needs help, and she asked him
13 if she could help him, and then going down to 16, he asked her
14 for a size 13 shoe and asked if she had it and directed her to
15 go to the back in order to get it. Is that a fair
16 interpretation of what was described?

17 A. Yes, that's a fair interpretation of that.

18 Q. So he didn't jump her from behind, from her testimony
19 anyway? Not initially, that wasn't her initial interaction
20 with him?

21 A. Well, according to the record, you're right, he did not
22 approach her from behind.

23 Q. So at least according to the victim she was face to face
24 with him for some amount of the time it occurred?

25 A. Yes.

1 Q. Yes, okay. Now, concerning the glasses, she described
2 them as round-rimmed, and they were rectangular in the picture,
3 is that fair?

4 A. That is fair to say.

5 Q. I'm a glasses wearer and I see you are, too. Do you
6 wear the same pair of glasses every day for the rest of your
7 life, or do you change them out?

8 A. Unfortunately, I wear the same --

9 MR. FALK: Objection, relevance.

10 THE COURT: I'm going to overrule. I think it is
11 relevant. Go ahead.

12 A. Yes, I wear the same glasses every day.

13 Q. And all the people in the picture were wearing similar
14 shaped glasses, right?

15 A. Yes, they were.

16 Q. Now, concerning the cell records, it may not have -- do
17 you remember any pinging from cell towers that was introduced
18 at trial?

19 A. I do not remember.

20 Q. So starting on page 198, there was an individual
21 introduced who had records concerning -- if you look down
22 starting at line 20, the start time of phone calls, duration of
23 calls in seconds, which cell site processed the call,
24 terminated the call, number the call was made to or received
25 from, and then if you were to go to, I believe it's 201, my

1 apologies, 203, starting at line 14. Do you recognize what's
2 marked as Exhibit 61 and then down at 19, he ultimately says:
3 These are cell records. Of what? Mr. Moultrie's phone number.
4 And then you go down further, and they were ultimately admitted
5 into evidence, correct, bottom of page 204?

6 A. They were admitted into evidence, yes.

7 Q. Page 208, and then starting at the top: What does the
8 map show? The phone calls that were screenshotted. And then
9 if you wouldn't mind silently reading to yourself pages 208 and
10 209. This goes on until about page 212, but from that are you
11 able to remember whether or not cell phone pings in terms of
12 the locations were introduced at trial?

13 A. I personally don't remember, but based on the record it
14 appears that they were.

15 Q. And that was introduced by the State, correct?

16 A. It was.

17 Q. But again, the trial was so long ago that it's difficult
18 to recollect a lot of details, right?

19 A. That is correct.

20 MS. MARTO: No further questions, Your Honor.

21 THE COURT: Anything further?

22 MR. FALK: No, Your Honor, and I apologize for the
23 cell phone thing. We didn't have to go down that path and I
24 apologize.

25 THE COURT: You may step down. Thank you. Call your

1 next witness.

2 MR. FALK: I'll call Mr. Moultrie.

3 **STANLEY D. MOULTRIE WAS DULY SWORN AT THIS TIME AND**
4 **TESTIFIED AS FOLLOWS:**

5 **DIRECT EXAMINATION**

6 BY MR. FALK:

7 Q. State and spell your name for the record.

8 A. Stanley Moultrie, S-T-A-N-L-E-Y, M-O-U-L-T-R-I-E.

9 Q. Mr. Moultrie, did you hire Mr. Axelrod or was he
10 appointed to represent you?

11 A. I hired Mr. Axelrod.

12 Q. You hired him?

13 A. Yes, sir.

14 Q. If you think about the first day of trial, how long
15 before the first day of trial did you meet with Mr. Lucas, in
16 your recollection?

17 A. It was the week before, the week before.

18 Q. Did you ever receive a copy of an LWOP notice from the
19 Solicitor's Office?

20 A. No, sir, I did not.

21 Q. Can you describe your conversations with Mr. Lucas about
22 the trial strategy?

23 A. The two occasions that we did talk it was kind of brief
24 because he was, I think in his words, given the case through
25 another attorney that was with Mr. Axelrod and he had to gather

1 all of the, I guess, evidence together. Because I think his
2 words to me was that it was so disorganized he had to put
3 everything together because he was taking it from someone else.
4 He was trying to strategize, I guess, a platform. I don't
5 think he was sure as to which direction he was going to go, he
6 was trying to use one of two directions at the time, I think it
7 was the search and seizure and I think it was the criminal
8 responsibility at the time is what he was looking at.

9 Q. Since that was raised, what is that discussion about
10 criminal responsibility?

11 A. Because of my mental health status at the time, whether
12 or not I was criminally responsible at the time of the crime.
13 So I think that's what he was trying to, I guess, go in that
14 direction.

15 Q. And you and I discussed this earlier, but sort of, you
16 suffer from maybe PTSD from some prior assaults?

17 A. Yes, sir, from when I was searched and assaulted as a
18 kid in Junior high school, yes, sir.

19 Q. You know what's going on today, right?

20 A. Yes, sir, I do.

21 Q. You're aware of your surroundings right now?

22 A. Yes, sir.

23 Q. Did he tell you how he was going to sort of -- what did
24 he tell you the evidence that the State had?

25 A. It wasn't really clear as to exactly what he was saying

1 other than what was given here today. I think he was trying to
2 really capture one of two areas that he thought was the
3 strongest and work on those, from my understanding. Like I
4 said, the two times we talked was 15 minutes a piece at a time
5 so it wasn't a real lengthy conversation.

6 Q. Again, you hired Mr. Axelrod; is that correct?

7 A. Right.

8 Q. And why did you hire him?

9 A. Actually, a friend of the family knew him, and so that's
10 why they recommended me to him because he was actually handling
11 the accident case for me before he took on the criminal case.

12 Q. Did you think he had any type of experience in criminal
13 law?

14 A. Mr. Axelrod?

15 Q. Yes.

16 A. Mr. Axelrod, yes.

17 Q. And that's what you were hiring, right?

18 A. Right, Mr. Axelrod, right.

19 MR. FALK: Your Honor, I have no further questions.

20 THE COURT: Alright. State?

21 **CROSS-EXAMINATION**

22 BY MS. MARTO:

23 Q. How are you doing today, sir?

24 A. Well.

25 Q. Good. Now, you don't remember being served with an LWOP

1 notice, correct, is that what you said?

2 A. Hand delivered to me, no, ma'am, I was not.

3 Q. You don't have a copy of the transcript before you right
4 now, do you?

5 A. Not before me, no, ma'am.

6 Q. Do you think that a copy of the transcript would help
7 you refresh your recollection?

8 A. When you said on April 7th of that year I was served?

9 Q. Yes.

10 A. I remember you saying it, but no, I was not physically
11 served the notice, no, ma'am.

12 Q. Is there a reason why you didn't ask your attorney in
13 the middle of trial why he didn't object to that?

14 A. Well, at the time I didn't know that I couldn't be
15 served because that wasn't the direction he was going in. I
16 remember him saying at the time that if found guilty they're
17 probably going to be seeking a life sentence. He said, well,
18 we're not even looking at that, and obviously, I'm sure that's
19 what my attorney would say, but, no, I was never served notice
20 of that.

21 Q. So you just didn't think of it in the moment to ask him?

22 A. Why are they seeking a life sentence?

23 Q. No, why the State said that you were served with notice
24 if you weren't.

25 A. Well, ma'am, I'm sure to cover themselves, but it would

1 be on record if I had because I didn't sign off for it.

2 Q. And you thought you were going to get Mr. Axelrod to
3 represent you, correct?

4 A. During trial, yes, I did.

5 Q. Because he's a competent attorney?

6 A. Yes, ma'am.

7 Q. And that you thought that you would have a better case
8 if a competent attorney was representing you?

9 A. No. I feel Mr. Lucas is competent. I think, like you
10 said, at the time he was new to that case, did not know what to
11 and what not to object to at the time.

12 Q. What I'm getting at, sir, is you hired him because you
13 thought that he would do a good job, right, Mr. Axelrod,
14 independent of Mr. Lucas? That was the reason behind hiring
15 him, right, you had experience with him as an attorney and he
16 had done a good job for you?

17 A. Well, honestly, a friend of the family wanted me to hire
18 him because I had Mr. Ronald Hazzard in the beginning and he
19 was very competent, but they wanted to obtain Axelrod since I
20 already had him in the accident case.

21 Q. And you recognize that other attorneys beyond Mr.
22 Axelrod could do a good job for you?

23 A. Sure, yes.

24 MS. MARTO: One moment, Your Honor. No further
25 questions. Thank you.

1 REDIRECT EXAMINATION

2 BY MR. FALK:

3 Q. When did you first find out about the LWOP notice? When
4 did you first see it?

5 A. When I first seen it was in my appeal packet after I was
6 found guilty.

7 Q. I'm sorry, in your what packet?

8 A. In my appeal, once I was, my appeal packet.

9 Q. And so you got that from the indigent defense or Mr.
10 Axelrod's office?

11 A. Indigent defense.

12 MR. FALK: No further questions.

13 THE COURT: You may step down. Thank you. Call your
14 next witness.

15 MR. FALK: We have no further witnesses.

16 THE COURT: Any witnesses on behalf of the State?

17 MS. MARTO: Yes, Your Honor. The State would call
18 Mr. James Thomas to the stand, please.

19 **JAMES AUSTIN THOMAS WAS DULY SWORN AT THIS TIME AND**
20 **TESTIFIED AS FOLLOWS:**

21 DIRECT EXAMINATION

22 BY MS. MARTO:

23 Q. Please state your name and spell it for the record.

24 A. James Austin Thomas. I go by Austin, but James is
25 common spelling. J-A-M-E-S, T-H-O-M-A-S.

1 Q. How are you doing this morning?

2 A. Good, how about yourself?

3 Q. I'm doing well. Thank you for coming. So what was your
4 involvement in Mr. Moultrie's case?

5 A. Well, I moved from Horry County Solicitor's Office to
6 Georgetown and I inherited his file and I ultimately called the
7 case for trial and tried the case.

8 Q. As a prosecutor?

9 A. Correct.

10 Q. How long were you with the solicitor's office at that
11 point?

12 A. About four and a half years.

13 Q. Have you done any other armed robberies or robberies
14 before that?

15 A. I had handled many of them, I tried, I believe, three
16 armed robberies prior to that, maybe four.

17 Q. So were you the prosecutor on the case from its
18 inception, or when did you begin?

19 A. No, not from the time of the charge, I was in Horry
20 County at that time, but I did have it for at least a year, I
21 would say.

22 Q. Upon reviewing the evidence what was your perception of
23 the strength of the case?

24 MR. FALK: I would object to the relevance here. I
25 mean, his opinion of the strength of the case is not really

1 relevant to the question here. What's relevant is what the
2 jury heard and what their verdict was and I don't know whether
3 his opinion of the strength of the case really bears. I mean,
4 it's not like when I was asking Mr. Thomas trying to get his
5 idea as far as the trial strategy, excuse me, Mr. Lucas. I
6 just don't understand the relevance to the testimony.

7 MS. MARTO: Your Honor, I'm trying flesh out what
8 evidence was involved because the Biggers issue was involved.
9 We're trying to flesh out what other evidence they had in
10 locating Mr. Moultrie and particularly in regards to whether or
11 not he was prejudice like Mr. Lucas --

12 MR. FALK: Your Honor, the only answer that's
13 relevant was what was introduced. I mean, if they had other
14 evidence --

15 THE COURT: Why don't you rephrase your question and
16 make it a little more specific.

17 MS. MARTO: Sure.

18 BY MS. MARTO:

19 Q. What evidence was involved in the case?

20 A. Well, there were videos from Walmart and Cato, those
21 stores that were near the shoe store at issue in this case.
22 There were cell phone records and they were plotted out by a
23 detective in Myrtle Beach on a system called CellHawk and those
24 records had Mr. Moultrie at his residence or his phone at his
25 residence that morning over in the area of the Shoe Show that

1 was robbed and then going back to the residence right
2 afterwards. There was the identification from the victim, the
3 911 call from the victim prior to her picking Mr. Moultrie out
4 on the lineup that was produced by SLED in which in that 911
5 call she gives the description of the assailant. There was --
6 he was on video as well as his vehicle was on those videos and
7 then, of course, there were a number of other similar incidents
8 that I attempted to get into evidence under Lyle for identity,
9 so that was the evidence that I recall. Also a search warrant
10 was executed at his house so based on the description that the
11 victim gave a lot of those clothing items were found at his
12 house. There didn't appear to be anybody else that lived at
13 his residence, certainly no other male.

14 Q. What items did the search warrant reveal?

15 A. For this trial I believe we introduced a jumpsuit, I
16 believe Dickies jumpsuit that was worn by the assailant, maybe
17 photographs of glasses, size 13 shoes, as that is what he asked
18 the victim for, and then certainly there were other items
19 related to some of the other robberies.

20 Q. So to summarize that, there was more evidence beyond the
21 victim's personal identification?

22 A. Absolutely.

23 Q. Now, do you remember how confident the victim was in
24 identifying?

25 A. She was very confident, I met with her prior to trial.

1 She was certain it was Mr. Moultrie. She said she would never
2 forget his face, never get that out of her head. She was, I
3 believe, a credible witness. I believe she did a good job on
4 the stand. Certainly, I wasn't worried about her being on the
5 stand. In my conversations with her she seemed to recall the
6 incident very well and I thought she was a good witness for the
7 State.

8 Q. Did she recall a knife by chance or any other weapon
9 or --

10 A. She did, she specifically testified to the knife, and I
11 believe she testified as to where it was placed on her and went
12 into detail on all those issues. She testified that she had an
13 opportunity to speak with Mr. Moultrie for a period of time
14 before she was attacked. He was the only person in the store.
15 His M.O. was he would get to the store early when nobody else
16 was there and he would strike up a conversation with the
17 usually, female, sole employee, at a store, it would be a store
18 where there would only be one employee there, and talk and be
19 friendly and she testified how he was friendly, and then, you
20 know, it just turned when he did attack.

21 Q. Do you remember serving an LWOP notice by chance?

22 A. I don't specifically remember it. It wasn't my first
23 time serving somebody with LWOP. I know you have to serve the
24 defendant as well as his counsel so I'm confident that it was
25 done correctly unless it was something done before I got to the

1 office, which I believe I would have been at the office in
2 April. So what I would have done was I would have served him
3 in open court. I would have brought him into court with his
4 attorney and served him in open court.

5 Q. So that was your general practice?

6 A. Correct.

7 MS. MARTO: One moment, Your Honor.

8 Q. Do you recall the jury instructions given, by chance?

9 A. Not from that time, but I did review the transcript back
10 in March when it was first sent to me.

11 Q. Did you think the search for the truth language was
12 inappropriate?

13 A. Not at that time.

14 Q. Looking at it holistically, there was no burden
15 shifting?

16 A. I didn't feel so. I'm aware of the case that has come
17 out since that time, but, no, that isn't something that
18 concerned me.

19 MS. MARTO: No further questions, Your Honor.

20 THE COURT: Anything further, Mr. Falk?

21 MR. FALK: Your Honor, if we could stand down for a
22 moment. I wasn't expecting to see Mr. Thomas. There was one
23 thing I read in the transcript and I don't have it marked, but
24 I know where it is. It will just take a moment.

25 THE COURT: Take your time.

CROSS-EXAMINATION

1

2 BY MR. FALK:

3 Q. Do you have a copy of the transcript up there?

4 A. No, sir, I do not.

5 Q. Let me hand you page 101. If you could kind of just
6 look over that page and sort of familiarize yourself with where
7 you are in the process. I think you had just finished the Lyle
8 motion on the testimony about the other robberies and Judge
9 Brown made his ruling: Is there a question about is there any
10 other motions we need to make? And is there a question do we
11 need to have a hearing about the defendant's statement? Then
12 there's some type of answer. I don't have it in front of me
13 now: So we don't have to have a Jackson v. Denno motion.

14 A. Correct.

15 Q. Why didn't you bring to the Court's attention that there
16 should be a Bigger's Hearing?

17 A. I really wasn't too worried about the statement. I
18 didn't think there needed to be a Biggers Hearing at that time.
19 I thought that the lineup was very good. I thought that she
20 had a good opportunity to see him. I thought that she was very
21 certain in her identification and I didn't see it as a big
22 issue. I honestly thought that it wasn't brought up by defense
23 counsel because I believe that, I think it would have changed
24 the judge's ruling on some of the evidence I wanted to get in
25 related to the other robberies.

1 Q. But you're familiar with the State versus Liverman?

2 A. I'm not offhand, no, sir.

3 Q. It's 2012 decision. Do you want to just look over it?

4 I think the decision speaks for itself, but I think it stands
5 for the proposition that if there is a dispute about an
6 eyewitness identification the defendant is entitled to a
7 Biggers Hearing.

8 A. Okay.

9 MR. FALK: Your Honor, no, further questions.

10 THE COURT: Anything further from the State?

11 MS. MARTO: No, Your Honor.

12 THE COURT: You have a good day. Call your next
13 witness.

14 MS. MARTO: That is the conclusion of the State's
15 case, Your Honor.

16 THE COURT: Would you like to make a closing
17 statement, either of you?

18 MR. FALK: Your Honor, I believe this is a case where
19 Mr. Lucas sort of got thrown under the bus a little bit on
20 being thrown into this case at the last minute. I think the
21 case law is pretty clear with State versus Liverman. I can
22 give you that site and I can hand you that case. It's 398
23 South Carolina 130, it's a Supreme Court decision from 2012.
24 It basically follows the United States Supreme Court decision
25 Perry versus New Hampshire about the defendant's right to have

1 an in camera Biggers Hearing when there is going to be an
2 eyewitness identification. There had been a sort of split in
3 the law in South Carolina prior to Liverman where under McCleod
4 I think the case law was that Biggers Hearing was not mandatory
5 when there was evidence that the witness knew the person in
6 advance but then Liverman I think stands for the proposition
7 that based on Perry versus New Hampshire everybody's entitled
8 to, you know, you're entitled to that. I also bring two other
9 cases, one is State versus Reyes and Tappeiner versus State.
10 Reyes is 432 South Carolina 394 and Tappeiner versus state
11 which is a PCR, 416 South Carolina 239. Those are cases,
12 Tappeiner is a case where among other things the person was
13 granted PCR relief on appeal based on the bolstering argument
14 by the Solicitor in the closing argument bolstering his
15 witnesses. So I think on those primary two points of whether
16 or not he should have had a Biggers Hearing, I think the case
17 law is clear that he was entitled to this Biggers Hearing and I
18 think that there is evidence in there that Judge Brown could
19 have reached a decision favorable to the defense on that
20 Biggers, because this was some of the points I was
21 highlighting, she only saw him for six minutes prior to the
22 assault. I'm sure this was -- and it looked to me from reading
23 from that that she was focusing on looking at him out of the
24 corner of her eye and not out of a reflection out of a mirror
25 and she did misidentify the glasses. I think that if you look

1 at my exhibit there his picture in the middle seems to stand
2 out because it's all in white, it's separated. I do think the
3 picture that was presented possibly sort of led a little bit.
4 Again, I think the leading testimony -- excuse me, I guess the
5 bolstering in the closing argument is an issue, and I want to
6 also bring the Court's attention to a recent case, and I think
7 this is also a PCR case, State versus Smalls, a 2018 case, and
8 they talk about overwhelming evidence of guilt, and there is a
9 discussion in here on what is considered what the type of
10 evidence that they are talking about. They're talking about
11 whether or not there was a confession, whether there was
12 forensic evidence, that's the type of evidence that fits more
13 in the category of overwhelming evidence of guilt and if you
14 look at this case you've got this eyewitness identification
15 which may have been good, may have been bad, she didn't know
16 this person from Adam. The jury certainly did not hear any of
17 the other testimony regarding these other robberies that may
18 have occurred, but certainly that's not the issue with this
19 case. And then there was the videos, the members of the jury
20 could have seen the videos. I don't think my client's case was
21 helped any when the detective was sort of narrating and telling
22 the jury what they were seeing while the video was going on,
23 highlighting, that's Mr. Moultrie's car. So I think if you
24 don't have this eyewitness identification, I don't think you've
25 got a case that you can necessarily prove beyond a reasonable

1 doubt, and I think that prior to this eyewitness identification
2 coming in he was entitled to an in camera hearing. Now, when
3 we get to the LWOP -- if the issue was just service of the
4 LWOP, I'm not sure what the remedy would be, that may just be a
5 resentencing, however, if the issue is whether or not you can
6 use the 1993 conviction as the basis for the LWOP, then that's
7 another issue which I believe, you know, if he went back to
8 court -- it wouldn't be just a matter if he could go back and
9 get resentenced, he could not be sentenced under LWOP, so, Your
10 Honor, I think that, you know, there was plenty of meat on the
11 bone on this case. I think this is, as I said at the
12 beginning, this was a case where somebody was thrown in, he did
13 a good job, there was a lot of stuff that he did well, but I
14 think there's some fundamental things. I'm surprised that the
15 solicitor didn't make the suggestion for the Biggers Hearing
16 because in my experience, you know, it's always -- of course,
17 they're used to saying is there a Denno Hearing, is there a
18 Biggers Hearing, it's almost a reflex that's starting into a
19 criminal case and it's on the checklist, I'm surprised Judge
20 Brown didn't bring it to anyone's attention, but he was
21 entitled to it before that testimony came in and that testimony
22 was clearly prejudicial.

23 THE COURT: I guess the key here is a Biggers Hearing
24 applies to a photo lineup made out of court. An in-court
25 identification by a victim does not require a Biggers Hearing.

1 MR. FALK: But the lineup came in also.

2 THE COURT: I know, but even if that was a mistake
3 she identified him in court, and I'm just talking out loud,
4 thinking out loud. So she identified him without hesitation in
5 court on page 128, line 10, and there's a lot of evidence in
6 this case regardless of the amount placed on the Biggers
7 Hearing.

8 MR. FALK: There's evidence there's a cell phone
9 there. The solicitor --

10 THE COURT: There's witness identification, there's a
11 search warrant and all that stuff found in his house. The cell
12 phone's pinging him to the location, back to his apartment,
13 there's a lot of stuff here, but anyway, go ahead and give me
14 your closing.

15 MS. MARTO: Thank you, Your Honor. Concerning the
16 allegations raised, I'll run down the list: Pursuant to the
17 LWOP notice the transcript does reflect that one was served and
18 we did have testimony from Mr. Thomas stating that it is his
19 practice to properly serve an individual. Additionally, the
20 record does reflect that Mr. Lucas didn't object at trial to
21 the admittance of that into evidence. Concerning the lesser
22 including offense instruction, the victim did testify that a
23 knife was held on her rendering the strong armed robbery and
24 inappropriate instruction given the fact that the weapon was
25 there and there wasn't really any strong evidence to contradict

1 her testimony otherwise or render her otherwise incredible.
2 Concerning the Biggers Hearing, as Your Honor stated, there was
3 both overwhelming evidence as well as the victim was in
4 wavering her identification of Mr. Moultrie. Specifically,
5 they did show her lineup before that one, she did reject it and
6 then immediately she did identify Mr. Moultrie.

7 THE COURT: Well, take the lineup out of the picture,
8 she identified him court.

9 MS. MARTO: Correct.

10 THE COURT: Alright, so you can move on to the next.

11 MS. MARTO: Yes, she did both, Your Honor.
12 Additionally, the lineup does reflect that the individuals on
13 all of the pictures look very similar. Additionally, again, as
14 Your Honor pointed out, there was a great amount of evidence
15 that also tied him to the scene regardless of the victim's
16 testimony or whether or not the lineup was correct, including
17 the tracing -- getting the plate number from Charleston,
18 including cell phone pings, including the jumpsuit found in the
19 house in the search warrant and many other items found there,
20 two video cameras from both Walmart and Cato, and so beyond the
21 victim's identification there was quite a bit of evidence, as
22 well, implicating Mr. Moultrie. Additionally, as concerning
23 the search for the truth language, much of that has come out in
24 recent years from the State Supreme Court, specifically the
25 case Mr. Fox cited originally, came out two years after the

1 trial took place and so in order to be reasonably competent and
2 not deficient Mr. Lucas is not required to be clairvoyant in
3 terms of the way the law is going to shake out but to do the
4 best with what he had and it would be the State's position he
5 did and not objecting to the search for the truth language
6 given the fact that the law wasn't solidified on that issue
7 yet. And then concerning vouching for victim credibility, it
8 would be the State's position that the prosecutor do not
9 impermissibly mischaracterize or misrepresent the testimony
10 given by the victim in that statement, and viewed holistically
11 there is no indication that improper vouching of the
12 credibility took place. Thank you.

13 THE COURT: I'll take a look at it and study it a
14 little bit further and make a ruling.

15 MR. FALK: Your Honor, my client just wanted to
16 remind you of the vouching, which I did address on the first go
17 around. I think it's clear that his eyewitness, his main
18 witness in the case, and he's vouching for the credibility on
19 the stand and I didn't hear anything from any type of testimony
20 from Mr. Thomas as to what his thoughts were on that, but I
21 think the vouching alone puts an impermissible impression in
22 the jury's eyes as to whether or not that person was telling
23 the truth, and I'm not sure if -- I'm not sure this whole
24 situation hadn't gotten polluted once she made the in court
25 identification that she has that there and then she points to

1 him in the courtroom. I think that the case, and I'm not
2 prepared on this, but I think the case law, I mean, that
3 identification is somewhat polluted by the in-court
4 identification. You know, she's keeping looking at this
5 picture then she's pointing to that person. Your Honor, I
6 think that there could have been a 403 argument. The trial
7 Court is still the gatekeeper and there's still probably a
8 basis of whether or not before she can say that that's the
9 person that he wasn't entitled to some kind of gatekeeping
10 hearing as to whether or not that was reliable.

11 THE COURT: Mr. Moultrie, would you like to say
12 anything?

13 THE APPLICANT: No, sir.

14 THE COURT: I'll take a look at it and study it and
15 let you know.

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1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF GEORGETOWN

4 I, Julie A. Kevish, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the Court of Common
8 Pleas for Georgetown County, South Carolina, on the 23rd of
9 June, 2021.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12 June 23, 2021

13

14

Julie Kevish

15

JULIE A. KEVISH
OFFICIAL COURT REPORTER

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
))
Stanley Moultrie, #185590,)
Applicant,)
))
v.)
))
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-22-00354

ORDER OF DISMISSAL

2021 AUG 17 AM 10:39
ALMA Y. WHITE
CLERK OF COURT

FILED
JUDICIAL CIRCUIT CLERK

This matter comes before this Court by way of Applicant’s post-conviction relief application filed April 17, 2019. Respondent made its return on July 12, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on Wednesday, June 23, 2021, at Georgetown County Courthouse. James K. Falk, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Jeffrey T. Lucas, III and former Assistant Solicitor James A. Thomas also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2015, the Georgetown County Grand Jury indicted Applicant for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). Jeffery T. Lucas, III, Esquire represented Applicant. James A. Thomas prosecuted the case. On August 22-24, 2016, Applicant proceeded to trial before the Honorable D, Craig Brown, circuit court judge, and a jury. Applicant was found guilty of armed

robbery and acquitted of kidnapping.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Laura R. Baer, Esquire, who raised the following issues:

1. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility?
2. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial?

Briefing was completed on January 24, 2018. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Moultrie*, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019). The remittitur was issued on January 30, 2019.

Summary of Relevant Facts

On January 20, 2015, the victim, Joyce Messinger, was working as an assistant manager at Shoe Show in Georgetown, when Applicant entered the store shortly after opening. (Tr. 118-19). Applicant was wearing a blue jumpsuit, blue cap, and round rimmed glasses. (Tr. 125). Applicant approached Messinger asking if she could check if the store had a size 13 shoe. (Tr. 119). There was no size 13 in the shoe requested, so Messinger grabbed the phone to call the nearby Conway store to see if they had the shoes size in stock. (Tr. 119). When she turned around, Applicant grabbed her neck and she heard him snatch a knife out of his coveralls. (Tr. 119). Applicant told Messinger "I don't want to hurt you" before demanding her to go to the safe, stating he used to work at the store. (Tr. 120). Messinger told him that there was no safe, to which Applicant grabbed ahold of her and demanded she hand him the money out of the register. (Tr. 120). She handed him the bills out of both registers while he kept his hand on her neck and the knife on her the entire time. (Tr. 120). Thereafter, Applicant sat Messinger on a bench in front of the employee door. (Tr. 120). Messinger was told not to look at Applicant after attempting to look at him through the nearby mirrors. (Tr. 120). Messinger put her head down

after being directed to do so while he left the store. (Tr. 120-21). After checking that Applicant had left the scene, Messinger walked slowly to the front of the store, locked the doors, and called 911. (Tr. 121). The police shortly arrived thereafter. (Tr. 121). The exchange lasted for five or six minutes. (Tr. 125). Messinger stated she did not feel free to leave while Applicant had a knife and a grip on her. (Tr. 122-23).

Messinger was shown photographs shortly thereafter. She was initially shown photographs about four days after the incident, to which she said the perpetrator was not in any of the photographs. (Tr. 126). About a week or two after the incident she was shown another spread. (Tr. 125). Specifically, she was shown a photograph of the clothes worn, consisting of the blue jumpsuit, which she identified. (Tr. 125-26). Thereafter they brought in a second photograph lineup, where she put her finger on Applicant's picture saying "that is a face I will never, never forget." (Tr. 126, 132). She stated she recognized Applicant as the perpetrator in the "blink of an eye." (Tr. 127). She initialed and dated the lineup where she identified Applicant on January 31, 2015. (Tr. 126). Messinger identified Applicant as the person who robbed her at trial. (Tr. 128). Messinger gave several statements to the police for over four hours soon after the incident occurred. (Tr. 133).

Ronald Walker, Asset Protection Associate at Walmart, was called to testify. (Tr. 135). A video from Walmart was thereafter admitted into evidence. (Tr. 138). The video footage from January 20, 2015 showed a vehicle entering the parking lot, stopping in a spot, parking for twenty to thirty minutes before someone exited and walked into Shoe Show and then exiting the store minutes later and driving away. (Tr. 138). Beyond seeing the individual in the video walked with a limp, the video quality was too poor to tell exactly who the individual was. (Tr. 138). Amy Milligan, District Manager at the Cato Corporation also testified at trial. (Tr. 142). Video

footage and photographs taken from Cato was admitted into evidence. (Tr. 142-45).

Sergeant Jason Ward from Georgetown Police Department testified. (Tr. 148). He stated he directed the operations of everyone involved in the investigation of the incident and obtained the Walmart and Cato videos and photographs. (Tr. 148-49). Ward stated the Walmart videos showed Applicant's vehicle pulling in from the southwest of Walmart, into the parking area, in front of the Shoe Show, waits in the vehicle for a while, then exits the car, enters Shoe Show, and returned to the vehicle a few minutes later and drives away. (Tr. 152-55). In the Cato video, Applicant was shown entering the store around 9:37AM and Applicant going back down the sidewalk headed to a corner of the building at 9:45AM. (Tr. 155). The officer stated they were at a stalemate with the case for ten or eleven days before receiving a picture of the same vehicle with the tag number from Charleston Police Department concerning another armed robbery. (Tr. 156). The vehicle was traced back to Applicant and a picture of Applicant retrieved from the DMV. (Tr. 157). Officer Ward stated that, as compared to Messinger's description of the perpetrator, the photograph of Applicant was pretty much spot on. (Tr. 157).

A search warrant of Applicant's residence was retrieved and subsequently executed on January 31, 2015. (Tr. 157). Photographs obtained during the execution of the search warrant were obtained, including those of the residence itself, the vehicle, several hats, a red tin can, money, size 13 shoes, a pair of glasses, a blue jumpsuit, the vehicle's tag, binoculars in the car, and more money kept in the car. (Tr. 158-62). After the search was complete, the police located Applicant and brought him to the police department. (Tr. 166). The photograph lineup was taken to Messinger at this time, which was requested on January 30, 2015. (Tr. 166-67).

The notice of intent to seek life imprisonment without parole was admitted into evidence by the prosecutor. (Tr. 172-73). The prosecutor stated it was served on Applicant on April 7,

2016 in open court, which was filed the same day. (Tr. 172). Counsel did not object. (Tr. 172-73).

Daniel English, Detective in the Violent Crimes Division at the Charleston Police Department testified. (Tr. 174-75). English testified to speaking with Ward about the armed robbery in Georgetown, and was advised that they had a suspect vehicle identified and he sent the photographs of the vehicle. (Tr. 176). English was ultimately able to locate the vehicle after going through one to two hundred vehicles. (Tr. 178).

Cell phone records were admitted into evidence concerning what cell phone towers Applicant's cell phone pinged off of around the time of the incident. (Tr. 198-99). The records showed Applicant moving closer to the location of the incident leading up to the incident, that Applicant made no calls during the incident, and that a call was made at 11:44AM that day, which bounced off a tower further away from the incident. (Tr. 208-13).

Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel ineffective for failing to interview (a) State's witness/alleged victim. Under the 6th (sixth) Amendment of the United States of America holds that a defendant has an absolute right to confront a witness(es). This process shall be conducted by defendant's counsel; to interview and investigate. Counsel failed to interview the alleged victims unaware of what she would testify to. Applicant's lawyer did not know what line of questioning to avoid, or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that."
 - b. "Counsel failed to communicate with the defendant as defendant wished to plead guilty & not go to trial, which is Applicant's definitive right as a defendant. The case at hand was traded/passed from & to multiple solicitors and multiple defense attorney's from the retained firm."
 - c. "Counsel failed to obtain or investigate said weapon or any factual evidence of its

existence. Applicant contends there was no weapon or evidence of a weapon [therefore] the charge of armed robbery is invalid. The state [nolle prossed] the weapon but the charge remained armed robbery. Counsel failed to challenge the validity of the indictment. Counsel failed to charge the courts with the lesser-included offense.”

- d. “Counsel ineffective to raise constitutional violation of illegal search & seizure.”
2. “State Misconduct”

Applicant, through Counsel Falk, filed an amendment dated November 30, 2020,

alleging:

1. “Trial Counsel provided ineffective assistance of counsel by failing to seek a hearing pursuant to *Neil v. Biggers*, 409 U.S. 188 (1972) before Joyce Messinger was permitted to make an in-court identification of Applicant.”
2. “Trial Counsel provided ineffective assistance of counsel by failing to object to the trial court’s burden shifting ‘search for the truth’ language uttered as part of the Court’s opening comments to the jury (TT p. 104 lines 18-23) and jury charge (TT p. 246 line 21; TT p. 251 line 3; and TT 257 line 20 through 258 line 5).”
3. “Trial Counsel provided ineffective assistance of counsel by failing to object to the prosecution’s vouching for the credibility of its witnesses. (TT p. 229 lines 5-8; 232 lines 2-6).”

Applicant, through Counsel Falk, made his second PCR Amendment on March 10, 2021,

alleging:

1. “Applicant was never personally served with timely notice of the State’s intention to seek a life without parole sentencing as required by S.C. Code § 17-25-45 (H).”
2. “Trial Counsel was ineffective for not seeking a charge on the lesser included offense of Strong Armed Robbery.”

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to request a *Biggers* hearing;
 - b. Failure to object to police officer’s narration of the video of the vehicle pulling into the parking lot;
 - c. Failure to object to trial court’s burden shifting ‘search for the truth’ language;
 - d. Failure to object to prosecution’s vouching for the witnesses’ credibility; and
 - e. Failure to request a lesser-included offense instruction of strong armed robbery.
2. Applicant was not served with an LWOP notice.
3. Applicant’s 1993 conviction was improperly used as an enhancement to make Applicant LWOP eligible, even though the pertinent 1995 statute was enacted after the conviction took place.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Counsel Testimony

Counsel testified that he was licensed for about two years before trial and that, though he had appeared in magistrate's court before, Applicant's trial was the biggest case he had had up until that point. Counsel stated that Applicant retained Stuart Axelrod to handle the case several months before trial, and that he was reassigned to the case several weeks before trial. Counsel stated he studied the case and spoke with Applicant a time or two before trial. Counsel stated he requested a continuance at the beginning of trial because he was not prepared at the time. Counsel stated Axelrod did not leave him a trial book and that all trial preparation work product was his own.

Counsel stated he did not discuss the Charleston county cases at trial and, though the State attempted to use *Lyle*¹ testimony in to admit identification evidence, he did not remember the specifics as it played out in pre-trial motions and trial. Counsel stated that the bulk of the evidence against Applicant was eyewitness identification, that he did not recall any forensic evidence in the case, and that the State relied heavily on the eyewitness identification.

Counsel stated he did not request a *Biggers* hearing because of his inexperience and a belief that the hearing was unnecessary. Counsel stated he remembered a photograph lineup took place, and that he recalls the photographs themselves and that the eyewitness picked Applicant out from the lineup and then again in court.

Counsel stated he did not consider objecting to the police officer's narration of the video

¹ *State v. Lyle*, 125 S.C. 406, 118 S.E 803 (1923).

at trial, particularly as it relates to his statement identifying Applicant's vehicle as the vehicle pulling into the parking lot, even though no evidence concerning ownership of the vehicle had been entered into evidence at that point. He stated, in retrospect, he probably should have objected, but did not think of it at the time.

Counsel stated he did not recall ever receiving the LWOP notice and did not know if Applicant received it. Counsel stated he did not recall which prior conviction was used to enhance the sentence imposed. Counsel stated he did not object to the 1993 conviction being used to enhance the sentence imposed at trial.

Counsel stated he was not familiar with the case *State v. Beaty*, 423 S.C. 26, 81 S.E.2d 502 (2018) at the time of trial and was unsure whether that case was decided before the trial occurred. Regardless, he did not consider objecting to the "search for the truth" language used in the Judge's comments to the jury at that time, which the Court in *Beaty* took issue with and stated, in retrospect, he thought he should have objected.

Counsel stated he thought the State in their closing statement improperly vouched for the credibility of the witness and that, though he did not consider objecting at trial, he should have in retrospect. In totality, Counsel stated he thought his actions at trial were prejudicial to Applicant.

On cross-examination, Counsel stated he was working underneath a supervising attorney who assisted him with the case, but that he conducted his own research on the case. Counsel stated he spoke with Applicant about the case a couple of times. Counsel stated he reviewed the evidence and was familiar with it. He stated a lot of the evidence in the case was witness statements and ultimately acknowledged both Cato and Walmart videos existed of Applicant entering the store at the time of the incident. Counsel stated he remembered the victim being confident in her identification, but does not remember how many spreads were given to her. He

acknowledged all of the individuals in the spread looked reasonably similar.

After being refreshed, he stated that she was more confident than he remembered; specifically, in how she said she knew it was him within “the blink of an eye.” He stated the Charleston County cases were not brought up at trial, but that the photographs were provided to the Detective in Charleston to get the tag numbers. Counsel testified that a search warrant was obtained and that he did not recall objecting to it, but assumed he did. He stated he did not recall what was obtained off the search warrant. However, after further reviewing the transcript, he acknowledged that a car matching the description was found at his residence, along with several hats, a red tin can, money, and a size 13 shoe, which he recalled was requested at the store by Applicant after being refreshed. Also after being refreshed, he acknowledged that they found a blue jumpsuit and glasses on scene, both of which matched the description of the perpetrator.

Concerning the alleged failure to object to the “search for the truth” language, Counsel reaffirmed he was unfamiliar with the *Beaty* case. However, when told it was decided in 2018, he acknowledged he would not have known of this case since it was decided almost two years after the trial and that he is not clairvoyant. Counsel stated he does not remember Moultrie being served with an LWOP notice and, when directed to the portion of the record where the notice was admitted into evidence, Counsel reaffirmed he did not remember receiving the notice and does not remember why he did not object to the notice’s admission. Counsel stated that, when viewed holistically, he did not believe the State’s closing argument was improper. Counsel stated that, in his closing, he did not deny the victim had been robbed, only that the robber was Applicant. Additionally, Counsel testified that he did not recall whether Applicant had a knife but, instead, states this was a question because one was not recovered.

Counsel stated his trial strategy was to cross-examine the witnesses and poke holes in

their arguments. He stated he never intended to call Applicant to testify at trial because the State shouldered the burden of proof.

On re-direct, Counsel stated that he thought there was a question as to whether a knife was involved in the robbery, stating a strong armed robbery conviction would be improper without one. Counsel stated he had concerns about what the result of a *Biggers* hearing would have been, stating he had concerns about the victim's testimony, given that Applicant was behind her most of the time and that the perpetrator could have been any African American male. Counsel stated Applicant was in the store for five or six minutes. Counsel stated the description given was of someone with round rimmed glasses and Applicant's glasses are square. Counsel stated he was also concerned because eleven days passed between the crime and the identification. Counsel stated he thought these issues could have been raised at a *Biggers* hearing. Counsel stated he did not recall any location tracking by cell phone admitted into evidence at trial but did admit he remembered cell phone records existed.

On re-cross examination, Counsel conceded, according to the victim's testimony, Applicant and victim stood face to face before he jumped her. Additionally, when refreshed, Counsel stated he did not recall the admission of the cell phone records but does not question the trial transcript.

Applicant Testimony

Applicant testified on his own behalf at the hearing. Applicant stated he hired Axelrod to represent him, not Counsel. Applicant stated he met with Counsel the week before trial. Applicant testified that he did not receive an LWOP notice.

Concerning trial strategy, Applicant stated that he had brief conversations with Counsel about criminal responsibility and competence, stating he thought that the matter would be

disposed of in pre-trial motions because he has mental health issues revolving around a prior assault. However, Applicant testified that he knew why he was at trial and the evidentiary hearing. Applicant stated he did not clearly recall the evidence against him but believes Counsel planned poking holes in the State's case through cross-examination.

On cross-examination, Applicant stated he recalls hearing that he was served with an LWOP notice at trial, but did not know he had to be served, nor did he recall being served. Applicant stated he did not think to ask questions at trial about the State's statement that he was served. Applicant stated he believed he retained Axelrod so he would be represented by Axelrod, not Counsel, based upon recommendations from family friends. Applicant stated he thinks Counsel is a competent attorney but was put in a difficult position when representing him in his first trial. Applicant acknowledged that other attorneys beyond Axelrod could represent him well. On re-direct examination, Applicant stated he saw the LWOP notice in his appeals packet when Indigent Defense took over his case on appeal.

Prosecutor Testimony

The Assistant Solicitor who prosecuted the case, Mr. James A. Thomas, also testified at the hearing. The prosecutor stated he inherited the file when he moved to the Georgetown Solicitor's Office. He stated he had the case for at least a year before trial. He stated he had already handled armed robberies before this case proceeded to trial.

The prosecutor stated that there was a lot of evidence in the case, including videos from both Walmart and Cato, featuring Applicant, cell phone records existed placing him at the scene, the victim's identification of Applicant, a 911 call prior to the lineup with the description of Applicant, a lineup produced by SLED, other similar incidents in other counties that did not come in under *Lyle*, and a search warrant also returned clothing items matching the victim's

description and the video. He stated the search warrant produced certain items implicating Applicant as the perpetrator including a blue Dickey's jumpsuit, photograph of glasses, and size 13 shoes. He stated the victim was very confident in her identification of Applicant as the perpetrator, going so far as to say she would never forget his face. The prosecutor stated that he thought the victim was credible and a strong witness for the State. He testified that the victim recognized a knife during the incident and that it was placed against her throat. He also stated the victim said she spoke with Applicant during the incident and that they were the only people on scene. The prosecutor stated he did not remember serving an LWOP notice specifically, but he knew he had to serve it, because that was his standard procedure every time.

On cross-examination, the prosecutor stated he thought Counsel intentionally did not request a hearing pursuant to *Biggers*. He stated he thought this because of the degree of certainty the victim had in identifying Applicant and because the pre-trial hearing may have changed the judge's mind about evidence he wanted admitted.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696-97.

Failure to Request Biggers Hearing

The United States Constitution's Due Process clause prohibits police eyewitness identification techniques that are "so suggestive as to violate due process." *Manson v. Brathwaite*, 432 U.S. 98, 105 (1977). An identification procedure must be *both* unnecessarily suggestive and conducive to irreparable misidentification in order to violate due process. *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "Only if [the procedure] was suggestive need the court consider the second question—whether there was a substantial likelihood of irreparable misidentification." *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 447–48

(2000). Factors considered in analyzing whether or not the identification was mistaken include “the opportunity of the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of the witness’ prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

Though Counsel should have requested a *Biggers* hearing as a matter of law and, thus, was deficient for not doing so, no prejudice can be found. Moultrie fails to satisfy either prong of the *Biggers* analysis and, accordingly, Counsel was not ineffective for failing to request a *Biggers* hearing be held. First, there was no indication that police employed an unduly suggestive identification procedure. *See Perry v. New Hampshire*, 565 U.S. 228, 241 (2012) (explaining *Biggers* analysis only comes into play when there has been “improper police conduct”). Instead, two, six person spreads were shown to the victim of similar looking men, all of whom matched the description given. Additionally, there is no indication of an irreparable misidentification. To the contrary, the victim recognized none of the men in the first spread were the perpetrators. In the second spread, the victim identified Applicant with great confidence and in “the blink of an eye”. This was done within two weeks of the incident and the victim’s interaction with the perpetrator lasted five to six minutes, with some of that time being face to face. Accordingly, neither prong on the *Biggers* analysis can be satisfied by Applicant. Thus, Counsel’s failure to challenge an otherwise reliable spread did not prejudice Applicant and, instead, could have been acting in his client’s best interest, given the prosecutor’s remark about him thinking the refusal to hold the hearing was intentional, so that Applicant would only first be identified at Court during the trial, not before. Regardless, the failure to hold a *Biggers* hearing did not prejudice Applicant at trial and, accordingly, relief is denied on this ground.

Failure to Object to Officer's Narration of Video

Counsel was not ineffective for failing to object to Officer Jason Ward's narration of the video at trial. Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Counsel was not ineffective for failing to object to Officer Ward's narration of the videos played at trial of Applicant entering and exiting the shoe store, in which he implicated Applicant. (Tr. 152-55). This decision not to object did not impact the trial proceedings at all, given the overwhelming evidence against Applicant, including the video footage, search warrant results, victim identification, cell phone records, and the 911 call. Accordingly, no prejudice on this ground can be found and, accordingly, the request for relief is denied.

Failure to Object to Burden Shifting by Court

Counsel was not ineffective for failing to object to burden shifting by the Court; specifically, the use of "search for the truth" language. The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970). Our Supreme Court has cautioned trial courts against including language in jury instructions that may have the effect of lessening the State's burden of proof. The Court has discouraged instructions which urge the jury to "seek the truth," *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000), or "return to verdict that is 'just' or 'fair' to all parties." *State v. Daniels*, 401 S.C. 251,

256, 737 S.E.2d 473, 475 (2012). However, the Court has not reversed convictions in any of those cases.

In similar cases dealing with “seek for the truth” language, the Supreme Court has made clear that context matters. In *Aleksey*, the Court emphasized that the trial court's charge that the jury should “seek the truth” occurred during his instructions regarding witness credibility. It noted the charge was “prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof.” *State v. Aleksey*, 343 S.C. 20, 29, 538 S.E.2d 248, 253 (2000). It concluded there was “not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt.” *Id.*

In *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018), the Court considered a challenge to a trial judge's comments that a trial is “a search for the truth,” that the jury took an oath to “reach a fair and just verdict,” and to find the “true facts.” The Court stated that the trial judge should “refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. However, the Court did not reverse and, instead, found: “our review of the entirety of the judge's opening comments and the entire trial record convinces us that Appellant has not shown prejudice from this error sufficient to warrant reversal.” *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. Again, the Court emphasized that the comments “were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in *Aleksey*.” *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. *See also State v. Patterson*, 425 S.C. 500, 511, 823 S.E.2d 217, 224 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019) (finding trial court's remarks that the jury should “search for the truth” did not warrant

reversal); *State v. Needs*, 333 S.C. 134, 154, 508 S.E.2d 857, 867 (1998) (affirming conviction despite trial court's erroneous instruction for "jurors to seek a reasonable explanation other than the guilt of the accused" because other portions of the charge correctly emphasized the State's burden of proof beyond a reasonable doubt); *State v. Pradubsri*, 420 S.C. 629, 641, 803 S.E.2d 724, 730 (Ct. App. 2017) (affirming conviction despite use of phrase "search of the truth" during reasonable doubt instruction because "review of the record and the entire charge reveals no prejudice sufficient to warrant reversal").

Counsel was not ineffective on this ground because the court's remarks, when viewed in their totality, were not offered in a way that lessened the State's burden of proof and no prejudice to Applicant was shown. Specifically, the court's opening remarks in using the "search for the truth" language were not offered as a charge on the law but, instead, seemingly as preparation of the jury for the slow process that is the practice of law and how it differs from what is depicted on television. (Tr. 105-06). Additionally, after using this language, the Court explained the burden of proof appropriately: "[t]he State therefore has the burden of proving each of the elements of the indictment beyond a reasonable doubt and it will be your duty . . . to decide whether the State has met that burden." (Tr. 106). Thus, much like in similar cases where the court determined the court statements, even if improper, did not warrant relief, the opening remarks here, when viewed in their totality, were separated out for what was otherwise the correct statement concerning the burden of proof and did not prejudice Applicant.

Further, similar language used in the jury charge was also non-prejudicial and did not deter from the otherwise correct statement of the burden of proof in the charge. Though the jury was instructed to "determine the truth" in the case, the Court again made the burden of proof clear: that they are to "giv[e] to the Defendant the benefit of every reasonable doubt on each and

every issue.” (Tr. 257). The Court also made clear the burden of proof in the case was placed on the State to prove Applicant was the perpetrator beyond a reasonable doubt early on in the charge and that Applicant was presumed innocent until proven guilty before again stating that his guilt must be determine beyond a reasonable doubt and then delved into the definition of reasonable doubt. (Tr. 247-49). The Court repeated this burden of proof again several other times throughout the charge. (Tr. 252-57). Thus, any mention of searching for the truth in the charge was not used in shifting the burden of proof and did not have an impact on the trial results because of the clarity with which the Court laid out the burden of proof during the charge, along with the overwhelming evidence of guilt implicating Applicant. Accordingly, relief is denied on this ground.

Failure to Object to Prosecutor's Vouching for Witnesses' Credibility

Counsel was not ineffective for failing to object to the prosecutor's alleged vouching for the victim's credibility. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

“It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence.” *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (“Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.”). A prosecutor should “prosecute with earnestness and vigor” and “may strike hard blows, [but] is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88

(1935). “If a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.” *New*, 338 S.C. at 319, 526 S.E.2d at 240. “On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury’s passions or prejudice.” *Id.* “[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger* at 88.

“Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

Here, nothing the prosecutor stated rose beyond the level of fair inferences drawn from her testimony. Though the prosecutor stated that her emotions on the stand were genuine, he made clear it was the jury’s decision concerning the veracity of her statements and her credibility as a witness and to use the testimony, in conjunction with other evidence presented, when determining whether or not Applicant was guilty. (Tr. 228-29, 231-32). Though the prosecutor stated he personally found her credible, he acknowledged it was the jury’s determination to make and did not rise hedging the inference made as something other than a personal opinion. The statements did not appeal to personal biases of the jury, inflame their passions, or make improper insinuations, suggestions, or make assertions of personal knowledge. Accordingly, the statements made were not improper and, therefore, Counsel was not ineffective for failure to object to the statements.

Further, even if the statements were improper, Applicant was not prejudiced. As stated

above, the evidence against Applicant in the case was overwhelming and, thus, any improper statements made were not prejudicial to Applicant. Consequently, Counsel was not ineffective because, even if this Court found Counsel deficient, Applicant was not prejudiced by the deficiency.

Failure to Request Lesser-Included Instruction

Counsel was not ineffective for failing to request a strong arm robbery instruction. Concerning deficiency, Counsel must articulate a valid reason for employing a certain strategy, which is measured under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). Counsel is not ineffective for failing to request a lesser included offense jury instruction when there is no evidence that the defendant committed the lesser, as opposed to the greater offense. *Bozeman v. State*, 307 S.C. 172, 176, 414 S.E.2d 144, 146 (1992).

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

Armed robbery is defined as:

robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, he 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.

S.C. Code Ann. § 16-11-330 (2003).

“A deadly weapon is generally defined as ‘any article, instrument, or substance which is

likely to produce death or great bodily harm.” *State v. Scurry*, 322 S.C. 514, 517, 473 S.E.2d 61, 63 (1996) (quoting *State v. Campbell*, 287 S.C. 377, 339 S.E.2d 109 (1985)). Strong arm robbery is defined as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” *State v. Rosemond*, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003). Strong arm robbery is a lesser included offense of armed robbery. *Abney v. State*, 408 S.C. 41, 757 S.E.2d 544 (2014).

Here, Applicant was noted, by the victim, as holding a knife to her throat for the five or six minute long robbery. (Tr. 119-20). He coupled this move with stating “I don’t want to hurt you; don’t make me hurt you” before demanding she take him to the safe. (Tr. 120). This fact was never seriously contested at trial; instead, Counsel questioned the victim’s identification, pointing out inconsistencies, primarily certain omissions, between her various statements. (Tr. 128-33). Additionally, in closing, Counsel again argued the victim improperly identified Applicant as the perpetrator instead of questioning whether or not a knife was used. (Tr. 238-39). Though a knife was not ultimately retrieved, either a knife was actually used or the victim had a reasonable belief one was used against her during the course of the robbery and this fact was not brought into question during the course of the trial by the defense. Accordingly, armed robbery was the proper charge, there was no evidence presented indicating the victim did not believe a knife was used or that her belief one was being used was unreasonable. Counsel was not ineffective for failing to request the jury instruction because the instruction would have been improper and, accordingly, the instruction given does not violate the Constitution. Thus, relief is denied on this ground.

Failure to Serve LWOP Notice

Applicant’s claim that he is deserving of post-conviction relief because he was not served

with an LWOP notice lacks merit. So long as Applicant and Counsel were served with actual notice of intent to seek life without parole at least ten days before trial, the statute's requirements have been satisfied. *James v. State*, 372 S.C. 287, 294-95, 641 S.E.2d 899, 903 (2007). See S.C. Code Ann. § 17-25-45(H) (2015) ("Where a solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial.").

Applicant's claim that he was never served with an LWOP notice is refuted by the testimony of the prosecutor at the PCR hearing and the trial transcript. At trial, the prosecutor entered the LWOP notice, which he said was served April 7, 2016; two and a half months before trial. (Tr. 172). When Counsel and Applicant were directed to this portion of the record, neither were able to offer an explanation for why this statement was not objected to if they were not served with this notice. If not served, this Court finds it unlikely an objection would not have been made. Additionally, this Court finds the prosecutor's testimony that he served the LWOP notice in accordance with his standard procedure concerning LWOP notices is consistent with the record. This Court finds the record and the prosecutor's testimony readily refute this allegation. Accordingly, relief is denied on this ground.

Improper Sentencing Enhancement

Applicant's argument that his 1993 conviction was improperly used to enhance his current sentence is without merit. An individual convicted of a most serious offense who has a prior conviction of a most serious offense must be sentenced to life without parole. S.C. Code Ann. § 17-25-45(A)(1)(a). The statute makes no reference of when an individual must have been previously convicted or if convictions cannot be considered in sentencing enhancement if they occurred prior to a certain year. Armed robbery is considered a most serious offense. § 17-25-

45(C)(1). Applicant was convicted of multiple counts of armed robbery in 1993. Thus, those prior convictions coupled with the current armed robbery conviction, rendered life without parole the appropriate sentence. That the 1993 convictions occurred before the 1995 statute took effect is irrelevant. Accordingly, relief is denied on this ground.

Conclusion


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 31 day of July, 2021.


WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Maui, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Stanley Moultrie, 185590)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

**APPLICATION FOR
POST-CONVICTION RELIEF**

[This application conforms to the requirements of South Carolina Rules of Criminal Procedure, Form 5]

1. Stanley Moultrie is currently incarcerated at Broad River Correctional Institute.
2. He was convicted in the Georgetown County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any): N/A
4. (a) 2015-GS-22-00459, Armed Robbery
5. Applicant was found guilty after trial that ended on August 24, 2016, and sentenced to Life in prison.
6. Applicant was found guilty after trial.
7. Applicant did appeal from the judgment of conviction and imposition of sentence.
8. (a) (i) Applicant appealed to the South Carolina Court of Appeals.
(b) (i) The Court of Appeals affirmed the conviction and sentence.
(c) (i) The Court of Appeals affirmed on January 9, 2019.
(d) (i) *State v. Moultrie*, Appellate Case No. 2019-UP-013.
9. N/A.
10. Applicant alleges the following grounds as the bases upon which he is being held unlawfully:

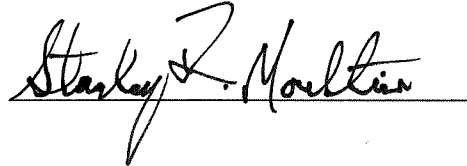
- a) Applicant requests appellate review of the denial of his first PCR case.
11. Facts in Support of the grounds set out in (10).
- a) Applicant did not knowingly and intelligently waive his right to the appeal of his PCR case; his court-appointed lawyer failed to file a notice of appeal.
12. Prior to this application, petitioner has filed:
- a) A post-conviction relief application in State Court under South Carolina Law in Georgetown County.
 - b) A post-conviction relief application in Georgetown County Court of Common Pleas.
 - c) N/A.
 - d) N/A.
13. List with respect to each petition, motion or application:
- a) The specific nature thereof:
 - i. Ineffective assistance of counsel
 - b) The name and location of the Court in which each was filed:
 - i. Georgetown County Court of Common Pleas
 - c) The disposition thereof:
 - i. PCR application was denied and dismissed with prejudice
 - c) The date of each such disposition
 - i. July 31, 2021
 - e) If known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. *Stanley Moultrie v. State of South Carolina*, 2019-CP-22-00354, Order of Dismissal

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. N/A
16. N/A
17. Petitioner was represented by an attorney for his trial, Direct Appeal and Post-Conviction Relief cases.
18. (a). the name and address of each attorney who represented you:
 - i. Jeffrey T. Lucas II, PO Box 9299, Myrtle Beach, SC 29577 for trial
 - ii. Laura Baer, South Carolina Commission on Indigent Defense, PO Box 11589, Columbia, SC 29211 for the direct appeal
 - iii. James Falk, PO Box 1058, Charleston, SC 29402 for PCR.(b) the proceedings at which each such attorney represented you:
 - i. Trial—Jeffrey T. Lucas II
 - ii. Direct Appeal—Laura Baer
 - iii. Post-Conviction Relief—James Falk
19. State clearly the relief you seek in filing this application: Applicant wants to appeal the denial of his first PCR order of dismissal.
20. Are you now under sentence from any other court that you have not challenged? No.

STATE OF SOUTH CAROLINA)
)
County of Richland)

VERIFICATION

I, Stanley Moultrie, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Handwritten signature of Stanley R. Moultrie in cursive script, written over a horizontal line.

SWORN to and subscribed before me this _____
day of _____, 2022.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Stanley Moultrie, #185590,
Applicant,

Case No. 2022-CP-22-00684

v.

RETURN

State of South Carolina,
Respondent.

FILED
GEORGETOWN COUNTY, SC
2022 AUG 31 AM 11:07
ALMA Y. WHITE
CLERK OF COURT

NOW COMES Respondent making its return to the post-conviction relief (hereafter
“PCR”) application filed on August 10, 2022 by Stanley Moultrie (hereafter “Applicant”).

Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2015, the Georgetown County Grand Jury indicted Applicant for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). Jeffery T. Lucas, III, Esquire represented Applicant. James A. Thomas prosecuted the case. On August 22-24, 2016, Applicant proceeded to trial before the Honorable D, Craig Brown, circuit court judge, and a jury. Applicant was found guilty of armed robbery and acquitted of kidnapping.

Applicant filed a timely notice of appeal, and a direct appeal was perfected by Laura R. Baer, Esquire, who raised the following issues:

1. Whether the trial judge erred in denying the defense’s motion for a mental health evaluation to determine Appellant’s criminal responsibility?
2. Whether the trial judge erred in denying the defense’s motion for a mental health evaluation to determine Appellant’s competency to stand trial?

Briefing was completed on January 24, 2018. The South Carolina Court of Appeals

dismissed Applicant's appeal by unpublished opinion. *State v. Moultrie*, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019). The remittitur was issued on January 30, 2019.

First PCR Action: (2019-CP-22-00354)

Applicant filed his first PCR application on April 17, 2019, alleging:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel ineffective for failing to interview (a) State's witness/alleged victim. Under the 6th (sixth) Amendment of the United States of America holds that a defendant has an absolute right to confront a witness(es). This process shall be conducted by defendant's counsel; to interview and investigate. Counsel failed to interview the alleged victims unaware of what she would testify to. Applicant's lawyer did not know what line of questioning to avoid, or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that."
 - b. "Counsel failed to communicate with the defendant as defendant wished to plead guilty & not go to trial, which is Applicant's definitive right as a defendant. The case at hand was traded/passed from & to multiple solicitors and multiple defense attorney's from the retained firm."
 - c. "Counsel failed to obtain or investigate said weapon or any factual evidence of its existence. Applicant contends there was no weapon or evidence of a weapon [therefore] the charge of armed robbery is invalid. The state [nolle prossed] the weapon but the charge remained armed robbery. Counsel failed to challenge the validity of the indictment. Counsel failed to charge the courts with the lesser-included offense."
 - d. "Counsel ineffective to raise constitutional violation of illegal search & seizure."
2. "State Misconduct"

Respondent made its return on July 12, 2019, requesting an evidentiary hearing be convened. Applicant, through Counsel James K. Falk, filed an amendment dated November 30, 2020, alleging:

1. "Trial Counsel provided ineffective assistance of counsel by failing to seek a hearing pursuant to *Neil v. Biggers*, 409 U.S. 188 (1972) before Joyce Messinger was permitted to make an in-court identification of Applicant."
2. "Trial Counsel provided ineffective assistance of counsel by failing to object to the trial court's burden shifting 'search for the truth' language uttered as part of the Court's opening comments to the jury (TT p. 104 lines 18-23) and jury charge (TT p.

- 246 line 21; TT p. 251 line 3; and TT 257 line 20 through 258 line 5).”
3. “Trial Counsel provided ineffective assistance of counsel by failing to object to the prosecution’s vouching for the credibility of its witnesses. (TT p. 229 lines 5-8; 232 lines 2-6).”

Applicant, through Counsel Falk, made his second PCR Amendment on March 10, 2021, alleging:

1. “Applicant was never personally served with timely notice of the State’s intention to seek a life without parole sentencing as required by S.C. Code § 17-25-45 (H).”
2. “Trial Counsel was ineffective for not seeking a charge on the lesser included offense of Strong Armed Robbery.”

An evidentiary hearing was held before the Honorable William H. Seals, Jr., circuit court judge, on Wednesday, June 23, 2021, at Georgetown County Courthouse. James K. Falk, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent. At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to request a *Biggers* hearing;
 - b. Failure to object to police officer’s narration of the video of the vehicle pulling into the parking lot;
 - c. Failure to object to trial court’s burden shifting ‘search for the truth’ language;
 - d. Failure to object to prosecution’s vouching for the witnesses’ credibility; and
 - e. Failure to request a lesser-included offense instruction of strong armed robbery.
2. Applicant was not served with an LWOP notice.
3. Applicant’s 1993 conviction was improperly used as an enhancement to make Applicant LWOP eligible, even though the pertinent 1995 statute was enacted after the conviction took place.

Judge Seals signed an order of dismissal denying Applicant PCR relief on July 31, 2021.

Applicant did not appeal.

II. Statement of Facts

On January 20, 2015, the victim, Joyce Messinger, was working as an assistant manager at Shoe Show in Georgetown, when Applicant entered the store shortly after opening. (Tr. 118-19). Applicant was wearing a blue jumpsuit, blue cap, and round rimmed glasses. (Tr. 125).

Applicant approached Messinger asking if she could check if the store had a size 13 shoe. (Tr. 119). There was no size 13 in the shoe requested, so Messinger grabbed the phone to call the nearby Conway store to see if they had the shoes size in stock. (Tr. 119). When she turned around, Applicant grabbed her neck and she heard him snatch a knife out of his coveralls. (Tr. 119). Applicant told Messinger "I don't want to hurt you" before demanding her to go to the safe, stating he used to work at the store. (Tr. 120). Messinger told him that there was no safe, to which Applicant grabbed ahold of her and demanded she hand him the money out of the register. (Tr. 120). She handed him the bills out of both registers while he kept his hand on her neck and the knife on her the entire time. (Tr. 120). Thereafter, Applicant sat Messinger on a bench in front of the employee door. (Tr. 120). Messinger was told not to look at Applicant after attempting to look at him through the nearby mirrors. (Tr. 120). Messinger put her head down after being directed to do so while he left the store. (Tr. 120-21). After checking that Applicant had left the scene, Messinger walked slowly to the front of the store, locked the doors, and called 911. (Tr. 121). The police shortly arrived thereafter. (Tr. 121). The exchange lasted for five or six minutes. (Tr. 125). Messinger stated she did not feel free to leave while Applicant had a knife and a grip on her. (Tr. 122-23).

Messinger was shown photographs shortly thereafter. She was initially shown photographs about four days after the incident, to which she said the perpetrator was not in any of the photographs. (Tr. 126). About a week or two after the incident she was shown another spread. (Tr. 125). Specifically, she was shown a photograph of the clothes worn, consisting of the blue jumpsuit, which she identified. (Tr. 125-26). Thereafter they brought in a second photograph lineup, where she put her finger on Applicant's picture saying "that is a face I will never, never forget." (Tr. 126, 132). She stated she recognized Applicant as the perpetrator in the

“blink of an eye.” (Tr. 127). She initialed and dated the lineup where she identified Applicant on January 31, 2015. (Tr. 126). Messinger identified Applicant as the person who robbed her at trial. (Tr. 128). Messinger gave several statements to the police for over four hours soon after the incident occurred. (Tr. 133).

Ronald Walker, Asset Protection Associate at Walmart, was called to testify. (Tr. 135). A video from Walmart was thereafter admitted into evidence. (Tr. 138). The video footage from January 20, 2015 showed a vehicle entering the parking lot, stopping in a spot, parking for twenty to thirty minutes before someone exited and walked into Shoe Show and then exiting the store minutes later and driving away. (Tr. 138). Beyond seeing the individual in the video walked with a limp, the video quality was too poor to tell exactly who the individual was. (Tr. 138). Amy Milligan, District Manager at the Cato Corporation also testified at trial. (Tr. 142). Video footage and photographs taken from Cato was admitted into evidence. (Tr. 142-45).

Sergeant Jason Ward from Georgetown Police Department testified. (Tr. 148). He stated he directed the operations of everyone involved in the investigation of the incident and obtained the Walmart and Cato videos and photographs. (Tr. 148-49). Ward stated the Walmart videos showed Applicant’s vehicle pulling in from the southwest of Walmart, into the parking area, in front of the Shoe Show, waits in the vehicle for a while, then exits the car, enters Shoe Show, and returned to the vehicle a few minutes later and drives away. (Tr. 152-55). In the Cato video, Applicant was shown entering the store around 9:37AM and Applicant going back down the sidewalk headed to a corner of the building at 9:45AM. (Tr. 155). The officer stated they were at a stalemate with the case for ten or eleven days before receiving a picture of the same vehicle with the tag number from Charleston Police Department concerning another armed robbery. (Tr. 156). The vehicle was traced back to Applicant and a picture of Applicant retrieved from the

DMV. (Tr. 157). Officer Ward stated that, as compared to Messinger's description of the perpetrator, the photograph of Applicant was pretty much spot on. (Tr. 157).

A search warrant of Applicant's residence was retrieved and subsequently executed on January 31, 2015. (Tr. 157). Photographs obtained during the execution of the search warrant were obtained, including those of the residence itself, the vehicle, several hats, a red tin can, money, size 13 shoes, a pair of glasses, a blue jumpsuit, the vehicle's tag, binoculars in the car, and more money kept in the car. (Tr. 158-62). After the search was complete, the police located Applicant and brought him to the police department. (Tr. 166). The photograph lineup was taken to Messinger at this time, which was requested on January 30, 2015. (Tr. 166-67).

The notice of intent to seek life imprisonment without parole was admitted into evidence by the prosecutor. (Tr. 172-73). The prosecutor stated it was served on Applicant on April 7, 2016 in open court, which was filed the same day. (Tr. 172). Counsel did not object. (Tr. 172-73).

Daniel English, Detective in the Violent Crimes Division at the Charleston Police Department testified. (Tr. 174-75). English testified to speaking with Ward about the armed robbery in Georgetown and was advised that they had a suspect vehicle identified and he sent the photographs of the vehicle. (Tr. 176). English was ultimately able to locate the vehicle after going through one to two hundred vehicles. (Tr. 178).

Cell phone records were admitted into evidence concerning what cell phone towers Applicant's cell phone pinged off of around the time of the incident. (Tr. 198-99). The records showed Applicant moving closer to the location of the incident leading up to the incident, that Applicant made no calls during the incident, and that a call was made at 11:44AM that day, which bounced off a tower further away from the incident. (Tr. 208-13).

III. Current Action before the Court

In his PCR application, Applicant, through PCR Counsel Elizabeth Franklin-Best, Esquire, alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Applicant requests appellate review of the denial of his first PCR case.
 - a. Applicant did not knowingly and intelligently waive his right to the appeal of his first PCR case, his court-appointed lawyer failed to file a notice of appeal.

Attached to and incorporated herein are Applicant's Georgetown County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, the PCR application, and the first PCR action records. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Austin Relief Issue

In his application, Applicant requests relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). "An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal." *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In *Austin*, the South Carolina Supreme Court framed the inquiry as whether the PCR applicant "requested and was denied an opportunity to seek appellate review." *Austin* at 454, 409 S.E.2d at 396. Under *Austin*, an Applicant is entitled to appeal the denial of a PCR application when they have not voluntarily waived the right to appeal. An applicant may waive the right to appeal by making a "knowing and intelligent decision not to pursue the appeal." *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010).

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396; S.C. Code Ann. § 17-27-100 (2014). Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for

belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

V. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VI. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's retained attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421

S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCPP (explaining how to amend a pleading). Pursuant to Section 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 the Court grants leave upon good cause shown. 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 withheld until the last minute resulting in undue prejudice to Respondent.

VII. Conclusion

WHEREFORE, Respondent requests an evidentiary hearing solely to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: /s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-0386

August 29, 2022

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
Stanley Moultrie, #185590,)	CASE NO. 2022-CP-22-00684
)	
Applicant,)	
)	
v.)	ORDER GRANTING BELATED APPEAL
)	PURSUANT TO <u>AUSTIN V. STATE</u>
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an Application for Post-Conviction Relief. The Court convened a hearing on September 9, 2022. The State was represented by Chelsey Marto, Esquire, of the South Carolina Attorney General’s Office. Applicant was present and represented by Elizabeth Franklin-Best, Esquire. Applicant testified on his own behalf. Prior PCR Counsel James K. Falk, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant is entitled to an Austin appeal from his first PCR Action. Findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2015, the Georgetown County Grand Jury indicted Applicant for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). Jeffery T. Lucas, III, Esquire represented Applicant. James A. Thomas prosecuted the case. On August 22-24, 2016, Applicant proceeded to trial before the Honorable D, Craig Brown, circuit court judge, and a jury. Applicant was found guilty of armed robbery and acquitted of kidnapping.

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1. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's criminal responsibility?
2. Whether the trial judge erred in denying the defense's motion for a mental health evaluation to determine Appellant's competency to stand trial?

Briefing was completed on January 24, 2018. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Moultrie, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019). The remittitur was issued on January 30, 2019.

First PCR Action: (2019-CP-22-00354)

Applicant filed his first PCR application on April 17, 2019, alleging:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel ineffective for failing to interview (a) State's witness/alleged victim. Under the 6th (sixth) Amendment of the United States of America holds that a defendant has an absolute right to confront a witness(es). This process shall be conducted by defendant's counsel; to interview and investigate. Counsel failed to interview the alleged victims unaware of what she would testify to. Applicant's lawyer did not know what line of questioning to avoid, or how to rebut. Counsel also failed to discredit and/or impeach the witness, where evidence existed to do just that."
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Respondent made its return on July 12, 2019, requesting an evidentiary hearing be

convened. Applicant, through Counsel James K. Falk, filed an amendment dated November 30, 2020, alleging:

1. "Trial Counsel provided ineffective assistance of counsel by failing to seek a hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972) before Joyce Messinger was permitted to make an in-court identification of Applicant."
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3. "Trial Counsel provided ineffective assistance of counsel by failing to object to the prosecution's vouching for the credibility of its witnesses. (TT p. 229 lines 5-8; 232 lines 2-6)."

Applicant, through Counsel Falk, made his second PCR Amendment on March 10, 2021, alleging:

1. "Applicant was never personally served with timely notice of the State's intention to seek a life without parole sentencing as required by S.C. Code § 17-25-45 (H)."
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1. Ineffective assistance of counsel for:
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2. Applicant was not served with an LWOP notice.
3. Applicant's 1993 conviction was improperly used as an enhancement to make Applicant LWOP eligible, even though the pertinent 1995 statute was enacted after the conviction took place.

Judge Seals signed an order of dismissal denying Applicant PCR relief on July 31, 2021.

Applicant did not appeal.

CURRENT ACTION BEFORE THIS COURT

In his current application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant requests appellate review of the denial of his first PCR case.
 - a. Applicant did not knowingly and intelligently waive his right to the appeal of his first PCR case, his court-appointed lawyer failed to file a notice of appeal.

Respondent made its return requesting an Austin hearing be held on August 29, 2022.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Georgetown County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, prior PCR action records and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Applicant contends that PCR Counsel was ineffective for failure to timely file a notice of appeal. "An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal." Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); Austin v. State, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In Austin, the South Carolina Supreme Court framed the inquiry as whether the PCR applicant "requested and was denied an opportunity to seek appellate review." Austin at 454, 409 S.E.2d at 396. Under Austin, an Applicant is entitled to appeal the denial of a PCR application when they have not voluntarily

waived the right to appeal. An applicant may waive the right to appeal by making a “knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010).

“The right to seek appellate review of the denial of PCR is expressly authorized by state law.” Austin, 305 S.C. at 454, 409 S.E.2d at 396; S.C. Code Ann. § 17-27-100 (2014). Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

This Court finds Applicant wanted an appeal from his prior PCR action and did not waive this right. Additionally, this Court finds Counsel informed Applicant he would file a notice of appeal if he received an order of dismissal in the action but failed to do so. Counsel testified that any failure to appeal from the PCR action was the fault of Counsel and was not an indication of Applicant’s decision to waive his right to an appeal. Accordingly, this Court find that Applicant is entitled to an Austin appeal of the denial of his PCR application.

CONCLUSION

The Court finds that the Applicant is entitled to an Austin appeal of the denial of his PCR application.

AND IT IS SO ORDERED this Monday day of Sept, 2022.

Kristi Curtis

KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sumter

, South Carolina