

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Kristi F. Curtis, Circuit Court Judge

CHAVIAS JAHMAL JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000244

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,)

**TRANSCRIPT OF SCHMERBER
HEARING AND BOND
RECONSIDERATION MOTION**

v.)

2013-GS-10-07433

2013-GS-10-07434

2013-GS-10-07435

Chavis Jenkins, A/K/A)
Chavias Jahmal Jenkins,)
Defendant.)

Charleston County Courthouse
October 13, 2015

BEFORE:

HONORABLE ROGER HENDERSON, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Nina Savas
Attorney for The State of South Carolina

Luke J. Malloy, Esquire
Attorney for Chavis Jenkins

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

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EXHIBITS

(There were no exhibits marked during this plea)

1 The Court: Ms. Savas and Mr. Malloy, are you ready
2 to proceed?

3 Ms. Savas: Yes, Your Honor.

4 Mr. Malloy: Yes, Your Honor.

5 The Court: Okay. I understand we have a Schmerber
6 Motion and also a Motion concerning the bond in this
7 matter, is that correct?

8 Mr. Malloy: That's correct, Your Honor.

9 The Court: Okay. We'll go ahead and deal with the
10 Schmerber Motion first.

11 Ms. Savas: Thank you, Your Honor. The State would
12 call on Detective Christopher Terry.

13 Deputy Clerk: Do you swear or affirm to tell the
14 truth, the whole truth and nothing but the truth, so help
15 you God?

16 Mr. Terry: I do.

17 Deputy Clerk: Thank you, sir. Once seated please
18 state your last and first name and spell your last name
19 loudly and clearly into the microphone.

20 Mr. Terry: Christopher Terry, T-E-R-R-Y.

21 **Mr. Terry - Examination by Ms. Savas**

22 Q: Detective Terry, where are you currently employed?

23 A: North Charleston Police Department, Narcotics Unit.

24 Q: Okay. Where were you employed September of 2013?

25 A: North Charleston Police Department in the Detective

1 Division.

2 Q: What is your involvement in this case?

3 A: I was the case agent.

4 Q: In this case, what is the defendant's name? And if
5 you need it I can give you the arrest warrants to
6 help refresh your memory.

7 A: Sure.

8 Q: On some other charges.

9 (Ms. Savas, passes up arrest warrants to witness)

10 A: Chavis Jenkins.

11 Q: And what is he charged with?

12 A: He was charged with car jacking, kidnaping, armed
13 robbery and possession of a hand gun during the
14 commission of a violent crime.

15 Q: What was his --- and were arrest warrants taken out
16 in this case?

17 A: They were.

18 Q: And on those warrants, what day were they taken out
19 on?

20 A: They were signed by Judge Coleman on the 16th of
21 September 2013.

22 Q: Okay. And what was the date of the incident?

23 A: The incident date was September 13, 2013.

24 Q: Can you just give us a brief summary of what this
25 case is regarding?

1 A: Dispatch dispatched parole units to a female who was
2 distraught stating that she was kidnaped during ---
3 she was attempting to by herself a phone off Craig
4 list and when she met the subject, he pulled a gun
5 on her and then took her in her vehicle away from
6 where the meeting spot was. She was eventually
7 dropped off from the car where she flagged down some
8 people and called 911.

9 Q: Did the victim give a statement in this case?

10 A: She did.

11 Q: Okay. And the victim's vehicle was located,
12 correct?

13 A: It was.

14 Q: Did crime scene work up the case?

15 A: They did.

16 Q: And was anything done with the vehicle?

17 A: Yes, ma'am. The standard procedure. They checked
18 for fingerprints but more importantly conducted
19 swabs of certain parts of the vehicle for DNA
20 collection.

21 Q: Okay. And what were those swabs taken of? If you
22 need, I have the records to refresh your memory?

23 A: Yeah, to be exact, obviously. I believe the
24 steering wheel, the driver's door handle or probably
25 both door handles on both doors, the driver and

1 passenger inside and out. The gear shifter typically
2 was done I cases like that.

3 Q: Okay. And ...

4 A: I would have to look at it to be exact.

5 Q: Let me give you this.

6 A: It looks like the crime scene did a swab of the
7 steering wheel, swab of the gear shifter, swab of
8 the exterior handle from the passenger door, a swab
9 of the interior handle from the driver door. A swab
10 of the, looks like the key or the ignition. And a
11 swab was done of the victim.

12 Q: What's the victim's name?

13 A: Maria Davalia(phonetic).

14 Q: Can you explain what a DNA swab is?

15 A: It collects DNA to be prepared against know and
16 foreign DNAs lifted from crime scenes.

17 Q: What are DNA swabs taken in this case of the
18 vehicle?

19 A: The victim with her statement provided that the
20 Defendant in this case drove the car and touched her
21 in parts of the car. We relayed that to crime scene
22 and they took that information and swabbed what they
23 thought would be appropriate on parts of the
24 vehicle.

25 Q: What are they likely to show?

1 A: Obviously, it could show the victim's DNA and
2 possibly the perpetrator's DNA.

3 Q: And can you explain the process of the bucaal swab,
4 how to take a bucaal swab?

5 A: Yes. It's very simple. It's basically a large q-
6 tip. It's swabbed --- are you talking about
7 collecting of the DNA or taken from a person?

8 Q: From a person.

9 A: From a person it's just a large q-tip, approximately
10 six inches, four to six inches in length, and you
11 swab the interior persons cheek ten times on each
12 side. Then you secure it into a paper or cardboard
13 box. It has to be paper or cardboard.

14 Q: What do you do with the bucaal swabs once they are
15 taken from a suspect?

16 A: Submit it into evidence just like you would any
17 other piece of evidence in a case.

18 Q: Where does it go from there, how is tested?

19 A: Crime scene will send it to SLED and they do what
20 they do with it.

21 Q: Were these samples that were taken from the vehicle
22 sent to SLED in this case?

23 A: I believe they were. I'm not part of that process
24 but I would say they were.

25 Q: And have you been trained in taking bucaal swabs?

1 A: We've been taught how. I wouldn't say specifically
2 training. Like I said, it's simple as long as you
3 wear gloves and swab ten times on each cheek. SLED
4 did come down and get with all investigators to kind
5 of have a brief seminar over it.

6 Q: Would you be prepared to take a bucaal swab today?

7 A: Yes.

8 Q: Okay. And is a bucaal swab, in this case, necessary
9 of the defendant?

10 A: Yes.

11 Q: Why?

12 A: To determine if it is DNA. If there's foreign DNA
13 collected from that car, we'd like to know if it
14 would be a match to the defendant's DNA to further
15 substantial the evidence in the case.

16 Q: What other evidence do you have in this case?

17 A: As far as the probable cause?

18 Q: Yes.

19 A: Detective Nemick got a phone call from an informant
20 of his that he has known in the past advising him --
21 - Detective Nemick, at the time, didn't have much
22 familiar with this case, but she called and
23 explained to him that she knew the defendant and his
24 girlfriend and overheard, I believe, it was the
25 girlfriend in a bar talking about setting up a

1 Hispanic female and then robbing her of her phone.
2 This was after the incident took place. She
3 contacted Detective Nemick. Detective Nemick
4 responded and several other detectives and I guess
5 they interviewed her and then determined the hotel
6 room the defendant and girlfriend were staying in.
7 They identified the defendant as the boyfriend and
8 the girlfriend. Provided me that information, his
9 name and I then obtained a photo lineup containing
10 the defendant and showed it to the victim. I didn't
11 show it but another detective that wasn't familiar
12 with the case, showed it to the victim and she
13 positively identified the defendant as the
14 perpetrator

15 Q: Was video surveillance also taken from anywhere?

16 A: It was from the Kangaroo Gas Station next to the,
17 what was it Waffle House or Huddle House next door,
18 by Detective Redmond, I believe.

19 Q: Okay. The victim had made statements and was
20 interviewed by the North Charleston police?

21 A: You said the victim or defendant?

22 Q: The victim.

23 A: Yes.

24 Q: Was the defendant interviewed?

25 A: Yes, he was.

1 Q: Was a bucaal swab of the defendant taken at that
2 time?

3 A: No, it was not.

4 Q: Okay. Would you say that the bucaal swabs are a
5 safe and reliable method for gathering DNA?

6 A: Yes. It's common practice.

7 Q: What is your hope in taking a bucaal swab of the
8 Defendant today?

9 A: Say that again.

10 Q: What would your hope be in taking the bucaal swab of
11 the defendant today?

12 A: That his DNA would be found inside the vehicle, the
13 victim's vehicle.

14 Q: Is there also a chance that the results may come
15 back that it is not his DNA inside the vehicle?

16 A: Yes.

17 Q: And is taking this bucaal swab of the Defendant a
18 necessary part of your investigation?

19 A: Yes.

20 Ms. Savas: Nothing further, Your Honor.

21 The Court: Mr. Malloy.

22 Mr. Malloy: Thank you, Your Honor.

23 Mr. Terry - Cross Examination by Mr. Malloy:

24 Q: Good-morning, Detective Terry.

25 A: Good-morning.

1 Q: I want to talk a little bit about how Mr. Jenkins
2 was developed as a suspect in this case. You
3 indicated Officer Nemick was contacted by an
4 informant?

5 A: Yes.

6 Q: Do you know the identity of that informant?

7 A: I don't. I believe it's in the notes in the case
8 but I wasn't present during that part of the
9 investigation I just was given a follow up the
10 following day from Detective Nemick of what
11 occurred.

12 Q: You didn't see her and speak to her yourself?

13 A: No, I didn't.

14 Q: You're not familiar with that informant?

15 A: No, not personally.

16 Q: Do you know how Officer Nemick came into contact
17 with her, how she was discovered?

18 A: She gave him a phone call, I believe, is how. He
19 happened to be working the call out shift which is
20 like the midnight shift for detectives and he got a
21 phone call about it.

22 Q: This informant knew Mr. Jenkins?

23 A: Yes. Well, the girlfriend specifically. I'm not
24 sure if she knew the defendant or not but
25 specifically the girlfriend.

1 Q: So the informant knew Mr. Jenkins girlfriend?

2 A: Yes.

3 Q: How did she know her?

4 A: I believe they were just acquaintances.

5 Q: Was she able to identify Mr. Jenkins specifically
6 and his girlfriend?

7 A: Yes.

8 Q: How was she able to identify them?

9 A: I believe by name?

10 Q: Was she ever shown a photograph of either one of
11 them?

12 A: I do not know.

13 Q: You indicated that she allegedly became aware of the
14 robbery by overhearing a conversation at a bar?

15 A: Yes.

16 Q: Did her account of what you heard match up with the
17 victim's statement regarding what happened?

18 A: I believe to the extent. Like I said, at the time
19 Detective Nemick wasn't familiar with my case that
20 had occurred so he was just going with what she was
21 telling him and kind of moved into, I believe, a
22 lieutenant may have told Detective Nemick that
23 sounds like a case that Detective Terry was working.

24 Q: Okay. Did she initially indicate the victim would
25 have driven to Goose Creek after the robbery and

1 dropped off in Goose Creek?

2 A: I'm not sure. I would have to see the notes.

3 Q: Did you review the, you saw the reports in the case?

4 A: I did a while ago, I haven't since.

5 Q: Are you aware of her initially saying that Mr.
6 Jenkins girlfriend contacted her by phone?

7 A: Mr. Jenkins girlfriend contacted her by phone?

8 Q: Correct. Instead of overhearing a conversation in a
9 bar.

10 A: I don't know.

11 Q: And you're not aware of her initially saying or
12 reporting to Nemick that the victim was driven to
13 Goose Creek and dropped off?

14 A: No. That does not ring a bell to me. I'm not saying
15 that's not accurate, but it does not ring a bell.

16 Q: Did she give a written statement regarding her
17 involvement in this case?

18 A: The victim?

19 Q: No, the informant.

20 A: I don't believe so, no.

21 Q: Was she audio or videoed interviewed?

22 A: No.

23 Q: Mr. Jenkins girlfriend, Ms. Singleton was
24 interviewed after you made contact with the
25 informant, correct, or after Nemick made contact

1 with the informant?

2 A: Correct.

3 Q: She denied all involvement with the case, correct?

4 A: She did.

5 Q: She was not charged in connection with this case?

6 A: No.

7 Q: But according to your theory of the case she could
8 of been charged with an accessory or a co-
9 conspirator in this robbery, correct?

10 A: According to mine?

11 Q: Yes.

12 A: I'd have to look into it, but like I say I haven't
13 looked at this case in quite a while.

14 Q: Well, according to your theory she would have been
15 involved in setting up the Craigs list and ...

16 A: In talking to the victim ...

17 Q: Yes.

18 A: I believe the victim says she was talking to the
19 female, if I'm not mistaken.

20 Q: But Ms. Singleton was never charged in relation to
21 this crime?

22 A: No, she was not.

23 Q: Were you able to locate the Craigs list posting the
24 victim was responding to?

25 A: I'm not sure. I can't remember, I've had a lot of

1 cases that are similar to this one with Craigs list.
2 I can't say. I don't want to say one way or the
3 other and be wrong. I want to say, yes, we
4 identified it.

5 Q: You did identify it.

6 A: Or sat down with her and tried to locate it. I'm
7 not sure to be honest with you if we found it or
8 found that it was not there anymore.

9 Q: Okay. Do you know if you were able to link the
10 Craigs list posting to Mr. Jenkins or Ms. Singleton?

11 A: No.

12 Q: You indicated some video surveillance was obtained
13 in relation to this case?

14 A: Yes.

15 Q: From a neighboring gas station and the Waffle House?

16 A: Yes.

17 Q: Mr. Jenkins was unable to be identified in either
18 one of those videos, correct?

19 A: That's correct.

20 Q: Latent lifts were processed for fingerprint
21 analysis, correct?

22 A: I'll take your word for. I'm sure they were, yes.

23 Q: You can't remember if any latent lifts were
24 recovered?

25 A: I'm going to say no since I think I would know if

1 there were prints recovered from the defendant in
2 the vehicle.

3 Q: So, you're saying that there weren't any latent
4 lifts recovered?

5 A: I'm saying that there weren't any identified to the
6 defendant.

7 Q: Okay. So, latent lifts were recovered from inside
8 the vehicle, correct?

9 A: I'm not sure.

10 Q: Crime scene responded, obviously, and they recovered
11 the DNA swabs, correct?

12 A: Correct.

13 Q: And you're not aware of them recovering any
14 fingerprints ...

15 A: No, sir. Sometimes they don't find any finger
16 prints, sometimes they find finger prints but that
17 doesn't necessarily mean that they identified that
18 they belonged to anyone. I'd have to see the latent
19 print results.

20 Q: You're not aware of any --- no finger prints were
21 identified to Mr. Jenkins, correct?

22 A: Correct.

23 Q: As of now there is no forensic evidence linking Mr.
24 Jenkins to this crime, correct, to this robbery,
25 correct?

1 A: Correct.

2 Q: Mr. Jenkins made no mention regarding this robbery,
3 correct?

4 A: That's correct.

5 Q: Regarding the photo lineup, you did not conduct that
6 photo lineup, correct?

7 A: I did not.

8 Q: That was conducted by a Detective Redman?

9 A: That's correct.

10 Q: He did have prior involvement with this case before
11 conducting this lineup, correct?

12 A: I believe he got the video from the Kangaroo

13 Q: He got the video from Kangaroo, responded to the
14 scene, the initial crime scene?

15 A: I believe so.

16 Q: And from the victims account, how long was she in
17 the vehicle with the robber?

18 A: I don't recall the exact time that she said.

19 Q: Do you recall what her opportunity to view the
20 robber would have been?

21 A: No, other than she was at one point face to face
22 with him and then sat in the car with him next to
23 him.

24 Q: But you don't know approximately how long they would
25 have been in the car together?

1 A: No, I would be guessing the exact amount of time
2 they were together. I think anybody would.

3 Q: Do you know how the line up was selected or how it
4 was conducted?

5 A: You mean where did we obtain the photographs from?

6 Q: Correct.

7 A: I believe it was DMV. I think I remember looking at
8 the DMV, and the jail is a little different the way
9 they send them to us and if I'm not mistaken I think
10 it was the DMV.

11 Q: Can you testify about the procedure that was used?

12 A: I can testify about the procedure that we are to go
13 by, by policy.

14 Q: Can you testify about the procedure that was used in
15 this case?

16 A: No.

17 Q: Did you review a video of line up procedure?

18 A: I don't recall.

19 Q: You just know that she did make an identification
20 and that identification was Mr. Jenkins photo?

21 A: Yes.

22 Q: Regarding the DNA swabs, did you collect any
23 evidence from the crime scene yourself?

24 A: You mean where the vehicle was located?

25 Q: Yes, sir.

State of South Carolina vs. Chavis Jenkins

19

1 A: No. I never went to that scene.

2 Q: So you weren't involved in taking of any of the DNA
3 swabs?

4 A: No, sir.

5 Q: That would be handled by crime scene?

6 A: Yes, sir.

7 Q: So, you didn't log those into evidence, correct?

8 A: No, sir.

9 Q: Do you know where those DNA swabs are today?

10 A: No, I don't. They would either be in our evidence
11 locker or with SLED.

12 Q: Okay.

13 A: I think they would be the suspects swab gets sent to
14 SLED first. I'm not sure.

15 Q: Do you know if those swabs were of good enough
16 quality to develop a DNA profile?

17 A: No.

18 Q: So you don't know if a DNA profile has been
19 developed in regards to this case?

20 A: No.

21 Mr. Malloy: Nothing further, Your Honor.

22 The Court: Ms. Savas?

23 Ms. Savas: I have nothing further for the witness,
24 Your Honor.

25 The Court: All right. You can step down.

1 (Witness steps down from witness stand)

2 The Court: Anything else, Ms. Savas?

3 Ms. Savas: I'm sorry, Your Honor.

4 The Court: Anything else?

5 Ms. Savas: Just the argument, Your Honor. Your
6 Honor, the State ask that the Court find probable cause
7 to order the defendant, Chavis Jenkins, in this matter,
8 to provide the bucaal swab with DNA. Pursuant to this
9 case and the State believes there's enough probable
10 cause, Your Honor, that the Defendant did commit the
11 crime, that the evidence of the crime will be found with
12 a bucaal swab of the defendant and that the method used
13 is secure and reliable which is the case that is outlined
14 in the Schmerber vs. California, in re Synder and in
15 State vs. Register as involved in these hearings. The
16 Court also must balance the seriousness of the crime, the
17 importance of the evidence in the investigation and the
18 availability of the means to obtain this evidence and
19 procedure necessity. In this case there is sufficient
20 probable cause, Your Honor, because as Detective Terry
21 explained in the charges of the kidnaping and the car
22 jacking and armed robbery and possession of a weapon
23 during a violent crime, the victim was in her vehicle at
24 the time the Defendant approached and came into her car,
25 held her at gun point and drove around for a few miles

1 and leaving her somewhere on the side of the road and
2 continued driving. When officers put a BOLO on the
3 victim's car after the vehicle called 911, they located
4 the vehicle in a apartment complex. Because of the
5 victim's statements that the defendant was physically in
6 her car the crime scene had taken DNA swabs of the six
7 areas in the vehicle. The victim did do a positive ID
8 from a photo lineup. There was the informant who had
9 called into North Charleston freely and voluntarily to
10 report the crime that they had been discussing and there
11 is video surveillance from a nearby gas station that
12 helps corroborate the victim's statements and arrest
13 warrants were drawn in this case already based on a
14 couple of calls to arrest the defendant back on September
15 17, 2013. And, the evidence in this case so far that
16 they need to compare the DNA samples to are the swabs of
17 the steering wheel, the swab of the gear shifter, the
18 swab of the exterior handle from the passenger door, the
19 interior handle from the driver door and the swabs of the
20 car keys. Those were taken from a search warrant. Once
21 they had brought the car into evidence in the compound
22 and a bucaal swab of the victim Ms. Maria Davalia was
23 taken at that time. Detective Terry testified that this
24 is common practice, a very simple bucaal swab. It's
25 minimally invasive and takes only a moment and he is

1 trained to do so today. The swabs are with SLED currently
2 and the practice is to get a sample to compare those
3 swabs to. There is some understanding that the defense
4 may want a DNA profile worked up prior to that. However,
5 that is not necessarily required when there is a strong
6 enough --- between the defendant committing the crime and
7 the actual need for the bucaal swab.

8 And these are in the consideration of it being most
9 serious crimes they are statutorily most serious violent
10 crime offenses based off of 17-25-45 all three of those
11 charges and they are strike offenses, Your Honor, and
12 this defendant is possibly LWOP eligible so it is
13 extremely serious.

14 The importance of the investigation as Detective
15 Terry has stated that it is important as the forensic
16 evidence is needed and necessary to complete the
17 investigation. It may or may not show that the defendant
18 matches that DNA swab so it's both exculpatory evidence
19 as well. And, Your Honor, it is very necessary in this
20 case to provide the DNA sample and based on that the
21 State believes there is sufficient probable cause for
22 this court to move to order the defendant to provide a
23 bucaal swab today and I have a Order prepared for you as
24 well if the Court is inclined Detective Terry can do
25 that.

1 The Court: Thank you, ma'am. Mr. Malloy.

2 Mr. Malloy: Thank you, Your Honor. I'm asking you
3 to deny the State's request to obtain the bucaal swab
4 that they are requesting in this case. Going down the
5 three factors that Ms. Savas just addressed and also
6 enumerated in State vs. Bakis(phonetic) regarding
7 probable cause that Mr. Jenkins committed this crime.
8 I'd like to point to the circumstances that led to him
9 being developed as a suspect in this case. A informant
10 overhearing a conversation in a bar. She did not even
11 know Mr. Jenkins, allegedly knew his girlfriend and Your
12 Honor, I realize there has been an identification or
13 photo lineup in this case; however, that photo line up
14 was not conducted by Officer Terry, he's unable to
15 testify about the specific procedures that were used at
16 that time so we are unaware of the reliability of that
17 identification. Your Honor, I would argue that the State
18 has not established probable cause at this time.

19 Your Honor, regarding the second prone the clear
20 indication of relevant material evidence will be found.
21 There's been no testimony regarding whether or not the
22 swabs that were taken were sufficient to create a DNA
23 profile and I believe the answer is that there has not
24 been a DNA profile created to this date. This case has
25 been pending for over two years. Obviously, if they are

1 unable to create a DNA profile from a swab they've taken
2 no relevant evidence is going to come from taking a
3 bucaal swab from Mr. Jenkins because there will be
4 nothing to compare it to. I think that second prone is
5 very important in this case.

6 Regarding additional factors, this is a serious
7 allegation and there is no doubt about that. But, Your
8 Honor, regarding the importance of the evidence in the
9 investigation, they do have a photo identification that's
10 what has gotten them past the preliminary hearing stage
11 and got them to this point. They do have a case and it
12 probably would go to the jury just based on that. So,
13 Your Honor, I feel like this is a bit of a fishing
14 expedition this late in the ball game and Your Honor, I'm
15 asking you to respectfully deny the State's request for
16 the bucaal swab of Mr. Jenkins.

17 The Court: Thank you, Mr. Malloy. Ms. Savas, what
18 about the fact that DNA profile hasn't been created yet
19 after two years?

20 Ms. Savas: Yes, Your Honor, the DNA profile has
21 not been created. Typically, what they will do is take
22 all the comparisons at once; however, we did come to
23 realize that a bucaal was not taken of the defendant. In
24 cases where the Court had ordered the prior profiles to
25 be made before you take the bucaal of the defendants,

1 those Court's had determined that there is not enough
2 probable cause to do that at that time because they
3 didn't have a strong enough connection. They didn't think
4 that it was a relevant sample. In one of those cases it
5 was a blood sample that may or may not have been a blood
6 sample. In this case, it's a DNA swab. They swabbed the
7 vehicle thoroughly and it doesn't take any --- it's not
8 an intrusive manner in taking it from the defendant, so
9 it's a very quick process, Your Honor. It would ...

10 The Court: I know about the process, that's not the
11 issue.

12 Ms. Savas: Yes, Your Honor. It would be an
13 efficient to just take the swab and have them compare it
14 up there but no a DNA profile has not been made yet. It
15 is not also required in order for you to find that there
16 is sufficient probable cause.

17 The Court: Anything else, Mr. Malloy?

18 Mr. Malloy? Nothing further.

19 The Court: I am satisfied that there is sufficient
20 probable cause in this case. The serious nature of these
21 offenses as well are being considered. It bothers me
22 that a DNA profile has not be created yet, but that is
23 not absolutely necessary. So, I am going to grant your
24 motion, Ms. Savas ...

25 Mr. Savas: Thank you, Your Honor.

1 The Court: ... that he submit to the swab in this
2 matter and you can prepare me an order in this matter and
3 do it immediately since we've got an officer here that
4 can conduct that. All right. I understand we have a
5 bond issue as well.

6 Mr. Malloy: That is correct, Your Honor.

7 The Court: Let me hear from you Mr. Malloy.

8 Mr. Malloy: Thank you, Your Honor. Mr. Jenkins has
9 been incarcerated since his arrest on September 17, 2013.
10 His present bond is at \$250,000. We have been in court
11 several times to attempt to have that reconsidered. The
12 State has opposed all motions in regards to reduce his
13 bond. Your Honor, I ask you to consider several factors
14 in making your decision. I believe we do have a change
15 in circumstance. This case was on a long term trial
16 priority docket for this week, placed on the docket by
17 the solicitor's office. Only a few weeks ago, they
18 indicate that there are these DNA swabs available, which
19 I had no idea about, Your Honor. It's not mentioned
20 anywhere in the discovery that I received that DNA swabs
21 were obtained in relation to this case. Obviously, I
22 would have been forcing the issue before. A long time ago
23 before we are here today. And, Your Honor, they
24 themselves requested the continuance in the matter in
25 order to get these DNA swabs. Obviously, this case is

1 over two years old. He's been in jail the entire time.
2 The State has had ample opportunity to seek this evidence
3 before they ... my understanding is that they never even
4 asked his consent to get a bucaal swab at the time he was
5 arrested, obviously, they could have had this hearing,
6 applied for a search warrant or had this hearing long
7 ago. And, Your Honor, I'd also like to point out the
8 anticipated delay in obtaining a comparison from SLED,
9 Your Honor, my experience is it can take well over a
10 year, two from the time they get the DNA samples at the
11 time of the arrest. I know that SLED is backlogged. And
12 as you heard today, Your Honor, they haven't even
13 developed a DNA profile, Your Honor, and it may very well
14 be the swabs that they have taken from the vehicle are
15 not sufficient to develop on. So, I anticipate a very
16 long delay from this point on before we get an answer
17 from SLED regarding the results. I'd also like to point
18 out, this is not evidence that is necessarily going to
19 exonerate Mr. Jenkins and I do not --- even in the event
20 the DNA came back inclusively not that of Mr. Jenkins, I
21 don't anticipate the State just dismissing this case. I
22 anticipate the answer being well that's just somebody
23 else's DNA. Your Honor, I'd also like you to take that
24 into consideration as well. Considering these unusual
25 circumstances, the amount of pretrial detention and the

1 time that I'll anticipate for the DNA samples to come
2 back, I would request a low bond. I realize these are
3 serious charges. Mr. Jenkins is a lifelong resident of
4 Charleston. I don't think he's a flight risk. I'd ask
5 you to consider a \$25,000.00 surety.

6 The Court: Ms. Savas?

7 Ms. Savas: Thank you, Your Honor. Just to make the
8 record clear. The Defendant was previously with a
9 \$350,000.00 bond on September 18th of 2013. It was then
10 lowered to \$250,000.00. The Defendant also moved back in
11 June 6th of 2014 on another motion for reconsideration,
12 which it was denied by Judge Hughston at that time as
13 well. Yes, we did have the Schmerber hearing, yes, it is
14 delayed, which is why we did have the hearing and it is
15 something that we had to deal with. The continuance in
16 this matter was consented with by the Defendant. As for
17 the time line, we could have the results back in ninety
18 (90) days, we could fast track them with SLED so it would
19 not be an extremely length of time of detention and move
20 forth for trial. It would be beneficial for the
21 defendant to come back if it was not a match as well.
22 The two main things in consideration, Your Honor are, you
23 know, unreasonable danger to society has not changed, the
24 risk of flight has not changed in this matter. As we've
25 established they are most serious violent crimes. He is

1 LWOP eligible. He has violent prior record of
2 burglaries. And has been in possession of a weapon. So,
3 although it was, you know two years, Your Honor, he has
4 been in custody, in consideration of our position, we
5 have to take the victim into consideration and she was
6 going to be here yesterday; however, she is in class and
7 she did prepare a statement that she would like for me to
8 read to the court if I may be able to do so. She has
9 come to every other hearing that they have had and does
10 object to a bond lowering. If I may at this time read it?

11 The Court: Yes, ma'am.

12 Ms. Savas: Her name is Maria Davalia. And she had
13 said that that she is in class and she says. I just want
14 to start off by saying that I do not feel that the bail
15 should be lowered because in the first court hearing he
16 showed no remorse for kidnaping me and stealing my money,
17 pointing a gun at me during my whole ride in my own car
18 and also stole my car afterwards. When the judge asked
19 if it was him I replied yes, he said it wasn't him and he
20 said I was lying. I do not feel that he cares about what
21 he has done. I believe he is trying to make his way
22 around the system. All he cares about is a lower bond so
23 that he can be let out sooner and just go back to his
24 life like nothing happened. If he didn't show no remorse
25 about what he had done I believe in my heart as easy as

1 he has done it to me, he will do it again to another
2 vehicle, the only question is when. He also had a female
3 accomplish that was never found. He is a threat to
4 society and a heartless person. He didn't care that he
5 threatened my life. I do request that if he were to be
6 released for restraining order, I feel he may be in full
7 anger because I have put him behind bars and he may want
8 to get revenge. I sometimes wish I could forget all this
9 ever happened but I always keep it in my mind. Maybe it
10 happened to me so that I could keep him off the streets
11 because he does it to someone else. I really wish I
12 could be there for the court hearing. I'm sorry that I
13 cannot be there. Thank you for taking the time to read
14 this letter.

15 And, Your Honor, as I had mentioned as far as the
16 danger to society and the prior record of the defendant
17 does include three prior burglaries. One, which is a
18 burglary second non violent, a burglary first and a
19 burglary second violent. And, so, although we do concede
20 that it is a delay, we did postpone the trial based upon
21 the victim's wishes. We would object to lowering the
22 bond, he's already had that.

23 The Court: Thank you, ma'am.

24 Ms. Savas: Thank you, Your Honor.

25 The Court: Anything else, Mr. Malloy?

1 Mr. Malloy: Your Honor, only regarding his prior
2 record. Your Honor, nothing further.

3 The Court: Okay. It does concern me that there has
4 been such a delay in bringing this matter to trial and
5 there may be certainly a circumstantial further delay
6 based on today's hearing but I can't overlook the serious
7 nature of these offenses and considering that with his
8 record, you know, it's just a serious, you know, threat
9 to the community based on that. Despite the fact he may
10 not be a flight risk. I can't overlook the danger to the
11 society and the community. Therefore, I am going to deny
12 your motion. I think that the \$250,000.00 that has
13 already been set is appropriate under the circumstances.
14 Thank you.

15 Mr. Malloy: Your Honor, I'd like to request that we
16 be allowed to ask for reconsideration after ninety (90)
17 days.

18 The Court: I'll grant you that request.

19 Mr. Malloy: Thank you, Your Honor, I can prepare you
20 an Order.

21 The Court: Okay. That will be fine.

22 (End of hearings)
23
24
25

CERTIFICATE

This is to certify that the hearing transcript in the matter of State vs. Chavis Jahmal Jenkins, consisting of Thirty-One (31) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal
this ^{9th}~~21st~~ day of ^{November}~~August~~, 2016

Melissa R Singletary

Melissa R. Singletary
Certified Court Reporter

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(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>For the Court:</u>			
1	- Photo Line up Form (State's No. 14)	-12	
2A-	Photo Line up (State's No. 15)	-12	
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3	- DVD Interview	-30	
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1	- Photograph		-80
2	- Photograph		-80
3	- Photograph		-80
4	- Photograph		-80
5	- Photograph		-80
6	- Photograph		-80
7	- Photograph		-80
8	- Photograph		-80
9	- Photograph		-80
10	- Photograph		-80
11	- Craigslist Ad		-80
12	- Map with Margaret Drive Pin		-80
13	- Map with Stars		-80
14	- Photo Line up Form		-80

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>For the State:</u>			
15	- Photo Line up Photos 1 through 4		-80
16	- Photo Line up Photos 3 through 6		-80
17	- Blown up map		-80
18	- Kangaroo Surveillance Video		-80
19	- Photo Line up Video		-80
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23	- Aerial Photograph		-80
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30	- Walking map		-80
31	- Zoomed-in map		-80
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33	- Photograph of Kerry Street Apartments		-80
34	- Photograph of Kerry Street Apartments		-80

(All State's Exhibits were premarked for identification.)

1 Wednesday, August 24, 2016

2 THE COURT: Is the State ready?

3 MS. SAVAS: Yes, Your Honor.

4 THE COURT: The defense ready?

5 MR. MALLOY: Yes, Your Honor. I don't know if you
6 need me to put on the record my request for a continuance
7 now, right away.

8 THE COURT: I was getting ready to do that but I
9 always like to get the caption going so everyone is very
10 clear as to who is doing what.

11 This is the case of State of South Carolina vs.
12 Chavias Jenkins.

13 Ms. Savas, you represent the State?

14 MS. SAVAS: Yes, Your Honor.

15 THE COURT: And, Mr. Malloy, you are representing
16 Mr. Jenkins?

17 MR. MALLOY: Yes, Your Honor, and just to be clear
18 the spelling of his name, which has been misspelled a
19 lot, his first name, is C-h-a-v-i-a-s.

20 THE COURT: And, Mr. Malloy, you are requesting a
21 continuance?

22 MR. MALLOY: Yes, Your Honor. I am requesting a
23 continuance because I intend to call an expert in
24 eyewitness identification to aid in our case. This is
25 Professor Dawn McQuiston. She is a professor at Wofford.

1 She's unavailable to testify this week. Would be
2 available October the 10th if the continuance were to be
3 granted. I do believe that her opinion could aid the
4 jury with her knowledge of the science behind the
5 elements of eyewitness identifications and would be an
6 important part of our defense. Thank you.

7 THE COURT: And, Ms. Savas, you object to a
8 continuance; is that correct?

9 MS. SAVAS: Yes, Your Honor. The State would
10 object.

11 THE COURT: This was statused last week and you
12 indicated you were ready for trial. It's a 2013 matter.
13 Your request for a continuance is denied.

14 We are here on a Biggers hearing; is that correct?

15 MS. SAVAS: Yes, Your Honor.

16 THE COURT: And there was a potential for a Jackson
17 V. Denno but, Ms. Savas, you've indicated that there will
18 be no statements entered; is that correct?

19 MS. SAVAS: Yes, Your Honor.

20 THE COURT: So, Mr. Malloy, does that obviate the
21 need for --

22 MR. MALLOY: If they are not going to enter any
23 statements I don't see the need for it.

24 THE COURT: Okay. Great.

25 Call your first witness.

1 MS. SAVAS: Thank you, Your Honor. The State calls
2 Sergeant Joseph Niemiec.

3 THE COURT: Mr. Malloy, are you requesting the rule
4 of sequestration be invoked?

5 MR. MALLOY: What was that, Your Honor?

6 THE COURT: Are you requesting the rule of
7 sequestration be invoked for the purposes of this
8 hearing?

9 MR. MALLOY: Yes, Your Honor.

10 MS. SAVAS: With the exception of the case agent,
11 Your honor --

12 THE COURT: Correct.

13 MS. SAVAS: -- and the victim?

14 THE COURT: Correct.

15 MS. SAVAS: Thank you.

16 JOSEPH P. NIEMIEC, after having been duly
17 sworn, testified as follows:

18 THE CLERK: And for the record if you could state
19 your first and last name and spell out your last name,
20 please.

21 THE WITNESS: Joseph Paul Niemiec, N-i-e-m-i-e-c.

22 THE COURT: Ms. Savas, whenever you're ready.

23 MS. SAVAS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. SAVAS:

- 1 Q. Sergeant Niemiec, what agency do you work for?
- 2 A. North Charleston Police Department.
- 3 Q. And how long have you worked with North Charleston?
- 4 A. About 12 years.
- 5 Q. And what is your current job title?
- 6 A. Sergeant of the Property Crime Unit, detective
- 7 division.
- 8 Q. And how long have you been a sergeant?
- 9 A. Two years.
- 10 Q. And prior to being a sergeant what was your
- 11 position?
- 12 A. I was a master patrol officer also assigned to the
- 13 detective division.
- 14 Q. And on September 13, 2013 what was your position?
- 15 A. I was a master patrol officer in the detective
- 16 division, Property Crime Unit.
- 17 THE COURT: Could you repeat that again.
- 18 A. Master patrol officer of the detective division.
- 19 THE COURT: Master patrol?
- 20 A. Yes.
- 21 THE COURT: Thank you.
- 22 BY MS. SAVAS:
- 23 Q. And, Sergeant Niemiec, were you involved in this
- 24 case?
- 25 A. I was.

1 Q. And were you involved in the photo lineup process?

2 A. I was.

3 Q. And what was your role in that?

4 A. I received the name, I completed the form and I
5 ordered it via e-mail and received it back.

6 Q. Where did you -- what form are you speaking about?

7 A. A SLED identification lineup. I went ahead and
8 ordered it, and I filled it out and I sent it in, and
9 then they returned it back to me with a photo lineup.

10 Q. And what is that process from SLED?

11 A. From my understanding what SLED will do is they
12 will take the target person that we send and they will
13 find people that match that description and then produce
14 a lineup for us to show.

15 Q. And you did that in this case?

16 A. I did.

17 MS. SAVAS: Your Honor, beg the Court's indulgence.
18 Would you want these to be premarked for court's
19 exhibits?

20 THE COURT: We'll need to mark them for purposes of
21 this hearing. We can mark them as court's exhibit, but
22 however you -- are you going use the same in the trial?

23 MS. SAVAS: Yes, Your Honor.

24 THE COURT: Madam Court Reporter, do you want them
25 just marked once? What's easier for you?

1 THE COURT REPORTER: It doesn't matter, Your Honor.
2 I can mark them as court's now and then just put the
3 sticker over the top.

4 THE COURT: On the top? Okay.

5 We are going to do that, Mr. Malloy. Any objection
6 to doing it that way?

7 MR. MALLOY: No, Your Honor.

8 THE COURT: We are going to mark them court's
9 exhibit for purposes of this hearing then cover them for
10 purposes of the trial.

11 MR. MALLOY: No, Your Honor. No objection.

12 (WHEREUPON, Court's Exhibit Numbers 1, 2A, and 2B
13 were marked and made a part of the record.)

14 BY MS. SAVAS:

15 Q. Sergeant Niemiec, I'm going to show you what's been
16 premarked for identification as Court's Exhibit 2A and
17 2B.

18 May I approach the witness, Your Honor?

19 THE COURT: You may.

20 Q. Sergeant Niemiec, do you recognize these?

21 A. I do.

22 Q. How do you recognize those?

23 A. They were pictures that were sent back to me in
24 reference to requesting a photo lineup.

25 Q. So what are those, specifically?

1 A. Pictures of the -- one picture of the -- well, at
2 the time I believe the suspect, Chavias Jenkins, and then
3 the photo lineup developed by SLED.

4 Q. But you only know that from the results of this
5 trial currently?

6 A. Yes.

7 Q. At that time, you did not know who the defendant
8 was, did you?

9 A. I didn't show the lineup. So, yes, I did know.
10 That's how I ordered the lineup.

11 Q. And those are the six photos that were returned to
12 you from SLED?

13 A. That is correct.

14 Q. And what did you do with those photos?

15 A. I took these photos and I handed it to the -- I
16 believe I handed it to the case agent for review.

17 Q. Did you do anything else regarding the photo
18 lineup?

19 A. I did not, ma'am.

20 Q. Okay. Thank you.

21 MS. SAVAS: No further questions.

22 THE COURT: Mr. Malloy, any questions?

23 MR. MALLOY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MALLOY:

- 1 Q. Good afternoon, Sergeant Niemiec.
- 2 A. Good afternoon, sir.
- 3 Q. So you obtained a photo of Mr. Jenkins and you sent
- 4 the request to SLED for them to create a photo lineup,
- 5 correct?
- 6 A. Yes.
- 7 Q. You didn't actually choose the photos yourself?
- 8 A. No, I did not.
- 9 Q. Did you review the photos once they sent them back?
- 10 A. Yes, I did.
- 11 Q. And did you review them to determine if they were
- 12 similar to Mr. Jenkins in appearance?
- 13 A. Yes.
- 14 Q. All these photos are in black and white; is that
- 15 correct?
- 16 A. Yes.
- 17 Q. And did anyone else on the case view the lineup to
- 18 determine if it was suggestive in some nature?
- 19 A. Typically, we do give it to a supervisor. In this
- 20 case I cannot tell you if that was done. I know this was
- 21 -- we kind of were going very quickly when we were
- 22 getting everything, but I do believe when I got it I gave
- 23 it to the case agent and let him do a secondary review.
- 24 Q. And would that have been Detective Terry?
- 25 A. Yes.

1 Q. And the photos -- well, they are all black and
2 white. Some appear to be more distinct than others,
3 correct?

4 A. They -- to me they look like six individuals, sir.

5 Q. Well, specifically, if I can show you what's
6 already been marked as a court exhibit.

7 MR. MALLOY: I would like to put this up on the
8 screen.

9 Q. You've already reviewed Court's Exhibits 2A and 2B,
10 correct?

11 A. Yes.

12 Q. All right. This is a sheet with photos number one,
13 two, four, and five. Two and five appear to be more
14 defined than one and four, correct?

15 A. Yes.

16 Q. These you can make out facial features, correct?

17 A. I think they are about the same but I can
18 understand where you are coming from.

19 Q. At least more well lit than one and four, correct?

20 A. You could say that.

21 Q. And now I'm going to show you the other two; three
22 and six, and I will compare it to one and two, two being
23 a photo of Mr. Jenkins again. Mr. Jenkins' photo appears
24 to be more defined than three and six, correct?

25 A. I do not agree. Well, three and six? I do not

1 agree with that.

2 Q. It doesn't appear to you that the facial features
3 of Mr. Jenkins are more well lit than the other photos?

4 A. Maybe some lighting but they all look -- they look
5 pretty clear. Three, six, and two look pretty clear to
6 me.

7 Q. Also, every other photograph in this lineup, every
8 male has a goatee, correct?

9 A. It appears.

10 Q. I'll show you the other two in a second. In
11 Mr. Jenkins' photo he doesn't have a goatee, correct?

12 A. I believe he has some chin face hair that's coming
13 off, it appears to, whether that be shadow or not.

14 Q. One, three, and six clearly have goatees?

15 A. Yes.

16 Q. And then four and five, again, clearly have
17 goatees, correct?

18 A. Yes.

19 Q. And you didn't perform the photo lineup, correct?

20 A. No, I did not.

21 MR. MALLOY: No further questions of this witness,
22 Your Honor.

23 THE COURT: Redirect?

24 MS. SAVAS: No redirect, Your Honor.

25 THE COURT: All right. You may step down. Thank

1 you.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Call your next witness.

4 MS. SAVAS: The State calls Travis Repman.

5 TRAVIS REPMAN, after having been duly sworn,
6 testified as follows:

7 THE CLERK: And for the record, if you would state
8 your first and last name and spell out your last name,
9 please.

10 THE WITNESS: Travis Repman, R-e-p-m-a-n.

11 DIRECT EXAMINATION

12 BY MS. SAVAS:

13 Q. Mr. Repman, where do you currently work?

14 A. The City of Gastonia Police Department in North
15 Carolina.

16 Q. And how long have you been there?

17 A. Since November of '14.

18 Q. And what were you doing prior to that?

19 A. Working with the City of North Charleston Police
20 Department.

21 Q. And how long were you with North Charleston?

22 A. A little over seven years.

23 Q. And back in September of 2013 were you with North
24 Charleston?

25 A. Yes.

- 1 Q. And what was your job title at that time?
- 2 A. I was working in the detective bureau.
- 3 Q. And were you involved in this case?
- 4 A. Yes.
- 5 Q. And did you perform the photo lineup for the
- 6 victim?
- 7 A. Yes.
- 8 Q. Do you recall on what date you did the photo
- 9 lineup?
- 10 A. It was September 15th of '13.
- 11 Q. And where did you receive the photo lineups from?
- 12 A. I got them from the case agent, Detective Terry.
- 13 Q. And given your training and experience about how
- 14 many photo lineups have you done?
- 15 A. Dozens and dozens.
- 16 Q. And what type of photo lineup was performed in this
- 17 case?
- 18 A. Sequential. We show six photos one at a time.
- 19 Q. And given your training and experience what do you
- 20 know about that type of lineup, specifically?
- 21 A. It tends to be the most reliable form.
- 22 Q. And at that time did you know what the suspect
- 23 looked like?
- 24 A. No.
- 25 Q. Okay. And you've been properly trained in doing

1 photo lineups?

2 A. Yes.

3 Q. And during this process was it recorded on audio

4 and video?

5 A. Yes.

6 Q. And where did you do this at?

7 A. City Hall.

8 Q. And did the defendant's photo to you stand out to

9 any other photos?

10 A. No.

11 Q. And were they all -- all the photos comparable in

12 size and composition?

13 A. Yes.

14 Q. And did all the individuals in the six photos have

15 similar appearance, and age, and physical

16 characteristics?

17 A. Yes.

18 Q. And did the photo itself indicate the identity of

19 the defendant?

20 A. No.

21 Q. At this point when you did this procedure with the

22 victim did she appear to be alert and attentive at the

23 time of the procedure?

24 A. Yes.

25 Q. Was there anyone else in the interview room with

- 1 you while you did the lineup?
- 2 A. No.
- 3 Q. And were the photos in color or black and white?
- 4 A. Black and white.
- 5 Q. And were they face or full body photos?
- 6 A. They were face.
- 7 Q. Did you show any photos of the suspect to the
- 8 victim prior to this lineup showing?
- 9 A. No.
- 10 Q. Did anyone at the North Charleston Police
- 11 Department?
- 12 A. Not that I know of.
- 13 Q. Did you go over the instructions in doing the photo
- 14 lineup with the victim?
- 15 A. I did.
- 16 Q. Did you use a standard photo lineup form?
- 17 A. Yes.
- 18 Q. Did she understand the procedure?
- 19 A. Yes.
- 20 Q. I'm going to show you --
- 21 MS. SAVAS: May I approach the witness, Your Honor?
- 22 THE COURT: You may.
- 23 Q. -- what's been marked for identification as Court's
- 24 Exhibit Number 1. Officer Repman, do you recognize that?
- 25 A. I do.

- 1 Q. And what is that?
- 2 A. It's a photographic lineup form.
- 3 Q. And how do you recognize that, specifically?
- 4 A. This is the one from this particular incident.
- 5 Q. And is this the standard form that you use at North
- 6 Charleston Police Department?
- 7 A. It is.
- 8 Q. I'm going to put it up on that Elmo.
- 9 Officer Repman, what was the date that this was
- 10 conducted?
- 11 A. The 15th of September 2013.
- 12 Q. And when was the date of the incident?
- 13 A. Two days prior, the 13th.
- 14 Q. Okay. And at what time was this conducted?
- 15 A. 10:01.
- 16 Q. And the identifying witness, who was that listed
- 17 there?
- 18 A. Maria Davila.
- 19 Q. And who is she?
- 20 A. That's the victim.
- 21 Q. And what is those numbers next to her here?
- 22 A. That's her birthday.
- 23 Q. Okay. And these are the seven instructions,
- 24 correct?
- 25 A. That's correct.

- 1 Q. And did you review these with her?
- 2 A. I did.
- 3 Q. And are these her initials?
- 4 A. They are.
- 5 Q. And what does that signify?
- 6 A. That she understood and all -- and each of those
- 7 statements.
- 8 Q. And, Officer Repman, was an identification made?
- 9 A. Yes.
- 10 Q. And what is this portion down here?
- 11 A. That is her stating who she picked out and why, and
- 12 what he did.
- 13 Q. Officer Repman, I'm going to show you what's been
- 14 marked as Court's Exhibits 2A and 2B. Do you recognize
- 15 these?
- 16 A. Yes.
- 17 Q. How do you recognize those?
- 18 A. These are the photos that were shown to the victim.
- 19 Q. And which number did she choose?
- 20 A. Two.
- 21 Q. And was that marked in any way?
- 22 A. Yes.
- 23 Q. How?
- 24 A. She circled the number two, initialled it on the
- 25 front, and also dated it.

1 Q. Okay. And how certain did she appear to be on
2 number two?

3 A. She was pretty certain.

4 Q. And did she have any reaction?

5 A. As I showed the lineup, it came to the second
6 picture. She set it off to the side but did as was
7 instructed and looked at all pictures, then put it back
8 in front and said, I think this is him, and then advised
9 why it was him to her. She gave physical description and
10 characteristics of why she thought it was him, and then
11 she wrote the statement.

12 Q. Did you suggest to the victim in any way that she
13 should pick that specific photo?

14 A. No.

15 Q. Did you ever tell her that the defendant was, in
16 fact, in that photo lineup?

17 A. No.

18 Q. Did you ever tell her that she must choose a photo?

19 A. No.

20 Q. Did you ever tell her that number two was the
21 defendant?

22 A. No.

23 Q. Did you ever tell her the defendant's name?

24 A. No.

25 Q. Did you know the defendant?

1 A. No.

2 MS. SAVAS: Beg the Court's indulgence.

3 (PAUSE.)

4 MS. SAVAS: Nothing further, Your Honor.

5 THE COURT: Mr. Malloy?

6 MR. MALLOY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MALLOY:

9 Q. Good afternoon, Officer Repman.

10 A. How you doing?

11 Q. You have reviewed the photos that were presented in
12 this lineup, correct?

13 A. Yes.

14 Q. And you've reviewed Court's Exhibit 2A and 2B?

15 A. Yes.

16 Q. And these photos were given to you by the case
17 agent, Detective Terry, correct?

18 A. Correct.

19 Q. And photograph number two is Mr. Jenkins, correct?

20 A. Yes.

21 Q. His hair appears to be longer than the other
22 subjects in these photos, correct? Longer than number
23 one?

24 A. Appears to be.

25 Q. Then there's four and five. They appear to have

1 short hair?

2 A. Maybe slightly shorter.

3 Q. And then there's three and six. Appears to have
4 longer hair than them, correct?

5 A. Possibly.

6 Q. You only showed the victim one lineup?

7 A. That's correct.

8 Q. You didn't show her an additional lineup that did
9 not contain Mr. Jenkins' photo?

10 A. No.

11 Q. So you didn't show another lineup to deal with the
12 placebo effect or anything like that?

13 A. No.

14 Q. And obviously those are black and white photos that
15 were used?

16 A. Correct.

17 Q. Kind of difficult to determine skin tone using
18 black and white photos --

19 MS. SAVAS: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 A. I think that you can accurately see skin tone. I
22 think you can see whether it's darker or lighter in black
23 and white.

24 Q. Would be a lot easier to tell if you had color
25 photos, correct?

- 1 A. Not necessarily.
- 2 Q. You don't think it would be easier to tell skin
3 tone with color photos instead of black and white?
- 4 MS. SAVAS: Objection. Asked and answered.
- 5 THE COURT: Overruled.
- 6 A. No.
- 7 Q. How come color photos weren't used in this case?
- 8 A. That wasn't my decision.
- 9 Q. And Ms. Davila specifically described facial
10 features when she made her identification, correct?
- 11 A. It was -- yeah, physical characteristics. Yes.
- 12 Q. And you showed the lineup sequentially, showed one
13 photo at a time, correct?
- 14 A. That's correct.
- 15 Q. Mr. Jenkins was the second photo in the lineup?
- 16 A. He was.
- 17 Q. When you went through the entire lineup Ms. Davila
18 goes back to that photo and says it looks like him but I
19 can't be sure, correct?
- 20 A. Well, she did but then she went on to kind of
21 verify to herself why she felt it was him, and I believe
22 I came back and confirmed with her, Do you believe this
23 is him?
- 24 And she said, Yes. And then she went on and wrote
25 the statement.

- 1 Q. Correct. She was looking at the photo. She said
2 it looks like him but she wasn't sure it was him, starts
3 to describe facial features, and then you stopped her and
4 said, But you think that's him?
- 5 A. I don't believe that's what I said. I think I
6 said, Do you believe that's him --
- 7 Q. This is --
- 8 A. -- parse words, but I believe that's what I said.
- 9 Q. The lineup procedure was recorded on video,
10 correct?
- 11 A. It was.
- 12 Q. And audio?
- 13 A. It was.
- 14 Q. So we could see exactly what was --
- 15 A. Absolutely --
- 16 Q. -- said --
- 17 A. If you'd love to see it we could.
- 18 Q. Ms. Davila mentioned something about the robber
19 having facial hair, correct?
- 20 A. Correct.
- 21 Q. She mentions that number -- the photo number two
22 looks like him but mentions something about the robber
23 having facial hair, correct?
- 24 A. I believe so.
- 25 Q. And there's not much facial hair in photo number

- 1 two of Mr. Jenkins?
- 2 A. Correct.
- 3 Q. You never asked Ms. Davila how confident she was in
- 4 her identification?
- 5 A. True.
- 6 Q. You never asked her that?
- 7 A. Correct.
- 8 Q. You never asked her to give a percentage or scale
- 9 of one to 10 or anything like that?
- 10 A. No.
- 11 Q. And this lineup was conducted two days after the
- 12 robbery?
- 13 A. Yes.
- 14 Q. You had prior involvement with this case prior to
- 15 conducting the lineup, correct?
- 16 A. I did.
- 17 Q. You responded to the location where Ms. Davila's
- 18 vehicle was found, correct?
- 19 A. Yes.
- 20 Q. At that time you were briefed on the case?
- 21 A. Right.
- 22 Q. So you knew -- you knew what she told police
- 23 officers what happened, correct?
- 24 A. I knew the basics of what happened, yes.
- 25 Q. And you went to the scene of the robbery and

- 1 carjacking and you obtained surveillance video --
- 2 A. I did.
- 3 Q. -- from Kangaroo gas station, correct?
- 4 A. Yes.
- 5 Q. Which presumably shows the suspect in this case?
- 6 A. Not a face. It does not show a face of the
- 7 suspect.
- 8 Q. However, it shows who you think was the person who
- 9 robbed Ms. Davila?
- 10 A. Yes.
- 11 Q. And you worked with the other detectives in this
- 12 case?
- 13 A. I did.
- 14 Q. And North Charleston?
- 15 A. Yes.
- 16 Q. Detective Terry, who's the case agent, obviously
- 17 you worked with him a lot, correct?
- 18 A. Yes.
- 19 MR. MALLOY: Court's indulgence?
- 20 THE COURT: Yes, sir.
- 21 (PAUSE.)
- 22 MR. MALLOY: Your Honor, I'd like to play the video
- 23 of the lineup presentation. We have to get our computer
- 24 set up first. I don't know if the State's already got
- 25 theirs set up.

1 If y'all don't mind?

2 MS. SAVAS: You can use ours. It's cued up.

3 Q. Detective Repman, I want to show you the video from
4 the lineup presentation, specifically where Ms. Davila
5 makes her identification.

6 MR. MALLOY: Your Honor, I'm having this premarked.
7 It will be a court exhibit.

8 (WHEREUPON, Court's Exhibit Number 3, a DVD, was
9 marked and made a part of the record.)

10 MR. MALLOY: Your Honor, may I approach the
11 witness? May I approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. MALLOY:

14 Q. Detective Repman, I'm showing you what's been
15 premarked as Court's Exhibit Number 3. Do you know what
16 that is?

17 A. Yes.

18 Q. What is that?

19 A. That's the disk containing the photo lineup.

20 Q. From this case, correct?

21 A. Yes.

22 Q. Thank you. Detective Repman, right now we're going
23 to play the video of the lineup presentation when
24 Ms. Davila made her identification.

25 (WHEREUPON, Court's Exhibit Number 3 was played.)

1 Q. All right. So Ms. Davila selected number two,
2 pushes it to the side. She said, It looks like him but
3 I'm not so sure it's him, and she begins to describe
4 facial features, mentions the robber had scruffy facial
5 hair, which isn't present on photo number two, correct?

6 And at that point you say, But you think that's
7 him?

8 A. It was at the end of her description I said, But
9 you think that's him, as is in a question. She selected
10 that photo. I was confirming with her that she believed
11 that that was the person.

12 Q. And no other photo lineup was shown to Ms. Davila,
13 correct?

14 A. That's correct.

15 Q. Did you have any knowledge of Ms. Davila's initial
16 description of the robber?

17 A. If I could parse some of what I --

18 Q. Go ahead.

19 (The witness reviews his paperwork.)

20 A. I believe all I had as far as a description
21 physically of him was that he was a black male, with a
22 clothing description.

23 Q. Anything about height?

24 A. I don't see anything mentioned. I don't recall
25 having that knowledge.

1 Q. Anything about weight or age?

2 A. I don't recall any of that.

3 MR. MALLOY: No further questions, Your Honor.

4 THE COURT: Anything further?

5 MS. SAVAS: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY SAVAS:

8 Q. Detective Repman, can you just clarify. Did you
9 know who the defendant, what he specifically looked like
10 prior to doing this photo lineup?

11 A. No.

12 Q. Did you ever see his face?

13 A. No.

14 Q. And in those photos do they show any clothing?

15 A. No.

16 Q. And just for clarification, Detective Repman, can
17 you please read number six on that photo lineup.

18 A. People may not appear exactly as they did at the
19 time of the event because features such as clothing
20 style, hair color, hairstyle, etcetera, may change even
21 in a short period of time.

22 Q. And did the victim initial that she understood
23 that?

24 A. Yes.

25 Q. And so that is part of procedures, is to assume

1 that the hair may change?

2 A. Yes.

3 Q. And she stated the difference was acne on the
4 complexion in that photo lineup?

5 A. Yes.

6 Q. Detective Repman, did you ever tell her which photo
7 to pick?

8 A. No.

9 MS. SAVAS: Nothing further, Your Honor.

10 MR. MALLOY: No follow up.

11 THE COURT: You may step down. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Call your next witness.

14 MS. SAVAS: The State calls Maria Davila.

15 MARIA DAVILA, after having been duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat. And just for the
18 record, if you will state your first and last name and
19 spell out your last name, please.

20 THE WITNESS: Maria Davila. D, as in David -a-v,
21 as in Victor, -i-l-a.

22 DIRECT EXAMINATION

23 BY MS. SAVAS:

24 Q. Thank you, Maria. Maria, how old are you?

25 A. I'm 22.

- 1 Q. And how far did you go in school?
- 2 A. I went to, I guess community college, Centura
- 3 College for medical assistant.
- 4 Q. And you currently work?
- 5 A. At an OBGYN office.
- 6 Q. You want to speak clearly because she's going to
- 7 record everything --
- 8 A. Okay.
- 9 Q. -- that you say, okay?
- 10 Maria, are you the victim in this case?
- 11 A. Yes, ma'am.
- 12 Q. Maria, were you shown a photo lineup in this case?
- 13 A. Yes.
- 14 Q. And do you remember what date that was?
- 15 A. No.
- 16 Q. If I show you? Maria, I'm going to show you what's
- 17 been marked as Court's Exhibit Number 1. Do you
- 18 recognize this?
- 19 A. Yes.
- 20 Q. What is that?
- 21 A. The report of photo lineup.
- 22 Q. And is that your signature on that?
- 23 A. Yes.
- 24 Q. And those are your initials?
- 25 A. Yes.

- 1 Q. Maria, how long would you say that you were in
2 contact with the defendant?
- 3 A. How old I was?
- 4 Q. How long?
- 5 A. How long?
- 6 Q. The course of the incident.
- 7 A. I don't remember.
- 8 Q. Would you say it was a brief encounter or what kind
9 of encounter was it?
- 10 A. It felt forever.
- 11 Q. Maria, did you get an opportunity to see his face?
- 12 A. Yes.
- 13 Q. Was he wearing a mask?
- 14 A. No.
- 15 Q. Was he wearing anything to obstruct your view of
16 his face?
- 17 A. No.
- 18 Q. What is the closest that he stood next to you?
- 19 A. About two feet away.
- 20 Q. And was it night or daytime at that point?
- 21 A. Daytime.
- 22 Q. Okay. So was there lighting to see him?
- 23 A. Yes.
- 24 Q. Did you get a good view of his face?
- 25 A. Yes.

1 Q. And, Maria, when he approached you what -- did you
2 have another opportunity to see him, too?

3 A. Yes.

4 Q. What was that?

5 A. I looked at him straight in the face when he was
6 walking up to me.

7 Q. And then what happened after he walked up to you?

8 A. I asked him for the phone.

9 Q. And were you --

10 MS. SAVAS: Beg the Court's indulgence.

11 THE COURT: Take your time.

12 (PAUSE.)

13 BY MS. SAVAS:

14 Q. And, Maria, just briefly. So how did you come to
15 encounter the defendant?

16 A. Can you ask that question again in a different way?

17 Q. What happened that brought you to this situation?

18 A. I was in need of a phone.

19 Q. And what did you do to try to get a phone?

20 A. I was searching online on Craigslist and I came
21 across the ad.

22 Q. And what happened when you found that ad?

23 A. My husband contacted the phone number.

24 Q. Okay. And did you ever meet up to try to buy this
25 phone?

- 1 A. Yes.
- 2 Q. And that's when this happened?
- 3 A. We met up -- we scheduled to go meet up one night.
- 4 They did not show. Then the next day after that, after
- 5 we contacted them the first time is when the whole
- 6 incident happened.
- 7 Q. And what happened when the next day was there?
- 8 What happened?
- 9 A. As in?
- 10 Q. Did you go to try to meet them?
- 11 A. Yes.
- 12 Q. And where did you go?
- 13 A. I went to the Waffle House on Aviation.
- 14 Q. And what happened when you went there?
- 15 A. I was waiting for the -- it was a girl that I was
- 16 supposed to originally meet, and she told me she could
- 17 not meet me because her boss wasn't letting her out of
- 18 work.
- 19 Q. Did she send someone else to meet you?
- 20 A. That's what she told me in a message; she was going
- 21 to send her boyfriend.
- 22 Q. Did you meet a man for this?
- 23 A. Yes.
- 24 Q. What happened after that?
- 25 A. What do you mean what happened after that?

- 1 After --
- 2 Q. Did you end up seeing anyone?
- 3 A. Yes.
- 4 Q. And how did you see them?
- 5 A. They walked up to me when I was in my car and I
- 6 started to come out the car, and that's when I asked the
- 7 male to give me -- if he had the phone.
- 8 Q. And what happened when you did that?
- 9 A. He got too close to me and then that's when he went
- 10 to his pants and pulled out a gun.
- 11 Q. And what happened after that?
- 12 A. He told me to get in the car and not to do any
- 13 sudden movements or anything.
- 14 Q. Into your car?
- 15 A. In my car.
- 16 Q. Did you get in your car?
- 17 A. Yes.
- 18 Q. What did he do?
- 19 A. He told me to hop over to the passenger seat.
- 20 Q. After you did that what happened?
- 21 A. He started looking through my car. He asked me for
- 22 the phone that I was currently using. He took the money
- 23 that I was supposed to pay him for the phone that we had
- 24 originally met for.
- 25 Q. And he did this while showing the gun to you?

- 1 A. He had the gun on his hand the whole time.
- 2 Q. And did he get in the car with you?
- 3 A. Yes.
- 4 Q. And what happened after he got in the car?
- 5 A. He started driving around and. . .
- 6 Q. So when you were driving around he was in the
- 7 driver's seat?
- 8 A. Yes.
- 9 Q. And you were in the passenger seat?
- 10 A. Yes.
- 11 Q. Okay.
- 12 MR. MALLOY: Object to leading.
- 13 THE COURT: Watch your leading questions. You are
- 14 going to object -- you object, and if I sustain it then
- 15 she's just going rephrase it. So just watch your leading
- 16 questions. Thank you.
- 17 MS. SAVAS: Yes, Your Honor.
- 18 Q. So did you have a good view of him while he was in
- 19 your car?
- 20 A. Yes, the whole time.
- 21 Q. Can you describe what he looked like at that time?
- 22 A. He was a little bit heavy. I know he was bigger
- 23 than me. He was black. His hair was like an afro-like
- 24 but it was short. I can't -- I can't really describe his
- 25 features but if I see him I know that would be him.

- 1 Q. Okay. And when getting called to do the photo
2 lineup were you attentive during that process?
- 3 A. Yes.
- 4 Q. And did the officers ever tell you that the
5 defendant was in that lineup?
- 6 A. No.
- 7 Q. Did they ever tell you which number to pick?
- 8 A. No, they never did.
- 9 Q. Were they in any way suggestive about which picture
10 to pick?
- 11 A. No.
- 12 Q. Did they tell you you had to pick a picture?
- 13 A. No.
- 14 Q. Did anyone show you a picture of him at the police
15 department?
- 16 A. What --
- 17 Q. Besides that lineup.
- 18 A. No.
- 19 Q. Did you ever know this defendant before this
20 incident happened?
- 21 A. No.
- 22 Q. Did you end up picking a picture?
- 23 A. Yes.
- 24 Q. Do you remember which number it was?
- 25 A. The second photo.

1 Q. Did you immediately recognize him when you saw that
2 photo?

3 A. Yes.

4 Q. How certain were you that that was him?

5 A. Almost for sure. I recognized this photo when I
6 saw it.

7 Q. Maria, during the course of this incident would you
8 say that you were paying attention to the man pointing
9 the gun at you?

10 A. I don't understand the question.

11 Q. Would you say that you were aware of your senses
12 during this incident?

13 A. Yes.

14 Q. Okay. And was there anything viewing your ability
15 to see him?

16 A. No.

17 MS. SAVAS: Beg the Court's indulgence.

18 THE COURT: Take your time.

19 (PAUSE.)

20 BY MS. SAVAS:

21 Q. Maria, was it the same man you identified in the
22 photo lineup the man that approached you with a gun
23 outside of your car?

24 A. Yes.

25 Q. And was that the same man that also then went into

1 your car?

2 A. Yes.

3 MS. SAVAS: Nothing further.

4 CROSS-EXAMINATION

5 BY MR. MALLOY:

6 Q. Good afternoon, Ms. Davila.

7 A. Hello.

8 Q. You indicated to police the person you saw in the
9 Waffle House parking lot was wearing a hat, correct?

10 A. Yes.

11 Q. And what kind of hat was that?

12 A. I recall a green hat.

13 Q. Did the robber take the hat off at any point?

14 A. I don't remember.

15 Q. But the hat would have been covering his hair,
16 correct?

17 A. I still had a view of his hair.

18 Q. How so?

19 A. On the bottom right here (indicated).

20 Q. So kind of the bottom, like, upper neck?

21 A. Yep. I could still see it.

22 Q. And this is a hat that had a bill, a baseball hat,
23 right?

24 A. Yes.

25 Q. This would have shaded his face?

- 1 A. It didn't at all.
- 2 Q. Was it sunny on this day?
- 3 A. Yes.
- 4 Q. Does your vehicle have a sunroof in it?
- 5 A. No.
- 6 Q. And the robber entered the vehicle on the driver's
- 7 side, correct?
- 8 A. Yes.
- 9 Q. And I know you testified that this incident seemed
- 10 like it lasted forever, but can you give us an estimate
- 11 in terms of time and how long you were in the car with
- 12 the robber?
- 13 A. I don't remember.
- 14 Q. You can't give an estimate as to how long you were
- 15 driving around?
- 16 A. I just know it felt forever. I mean, when you have
- 17 your life threatened the whole time you feel like it's an
- 18 eternity.
- 19 Q. You testified that when the robber approached you
- 20 were face-to-face with him, correct?
- 21 A. Yes.
- 22 Q. And this is when you were outside the car?
- 23 A. Yes.
- 24 Q. You said he came about two feet from you?
- 25 A. Yes.

- 1 Q. When he pulled a pistol out?
- 2 A. Yes.
- 3 Q. When you are in the vehicle you were in the
- 4 passenger seat, correct?
- 5 A. Correct.
- 6 Q. He was in the driver's seat?
- 7 A. Yes.
- 8 Q. So you are looking at the side of his face,
- 9 correct?
- 10 A. Yes.
- 11 Q. Were you under the influence of any drugs or
- 12 alcohol at the time?
- 13 A. No.
- 14 Q. When you were in the vehicle obviously the robber
- 15 drove off from the Waffle House parking lot. You didn't
- 16 know where you were being taken at that point, correct?
- 17 A. Correct.
- 18 Q. So obviously you are looking ahead worrying where
- 19 he's taking you, correct?
- 20 A. I'm sorry?
- 21 Q. You are looking ahead to see where you are going?
- 22 A. I glanced at him a couple times.
- 23 Q. You glanced at him a couple times?
- 24 A. Yes.
- 25 Q. But obviously you are looking ahead because you

1 don't know where you are going. You are worried about

2 where he's taking you, correct?

3 A. Yes.

4 Q. And you give a pretty detailed description of the

5 route the robber took, correct?

6 A. Yes.

7 Q. You drove around North Charleston, basically?

8 A. Yes.

9 Q. And were you worried about trying to wave for help

10 at any point?

11 A. I thought about it.

12 Q. This is kind of high traffic area so there's a lot

13 of cars going by, correct?

14 A. I don't remember.

15 Q. Well, it's usually a high traffic area in this

16 area, correct?

17 A. Yes.

18 Q. So you are thinking about at some point trying to

19 wave for help?

20 A. Yes.

21 Q. You wanted to at least?

22 A. I wanted to.

23 Q. And you say the robber had the gun in his hand the

24 entire time?

25 A. Yes.

1 Q. Even while he was driving?

2 A. Yes, he did.

3 Q. And obviously you are focussed on the gun because
4 you are worried about getting shot?

5 A. Yes.

6 Q. And you were able to give a description of the gun
7 to the police, correct?

8 A. Yes.

9 Q. You were able to tell -- say that it looked
10 different than the gun the police had that was
11 interviewing you, correct, when you interviewed with the
12 police?

13 A. I'm sorry?

14 Q. Were you able to --

15 MS. SAVAS: Objection, relevance, the description
16 of the gun regarding the photo lineup.

17 THE COURT: Overruled. You may answer but I think
18 you need to rephrase it for the witness.

19 MR. MALLOY: I will.

20 BY MR. MALLOY:

21 Q. You give a description of the gun that the robber
22 used, correct?

23 A. Yes.

24 Q. And you give that description to the police?

25 A. Yes.

- 1 Q. And you were able to compare it to the gun the
2 police officer had who was interviewing you, correct,
3 about the color was different than the one the police
4 officer had, correct?
- 5 A. I don't remember.
- 6 Q. You don't remember that? Obviously, this was an
7 extremely frightening experience for you. You were
8 extremely frightened during the entire incident, correct?
- 9 A. Yes.
- 10 Q. You gave a description of the robber to the police
11 when they found you, correct?
- 12 A. Yes.
- 13 Q. And do you remember what your description was?
- 14 A. No.
- 15 Q. Obviously, you said it was a black male, correct?
- 16 A. Yes.
- 17 Q. You told the police he had an average build?
- 18 A. I don't know what you are asking.
- 19 Q. His build, his weight?
- 20 A. Yeah.
- 21 Q. What is average?
- 22 A. Around 200.
- 23 Q. And how tall did you say he was?
- 24 A. Around five-eight, possibly.
- 25 Q. You never told the police six-feet-tall?

- 1 A. I probably did.
- 2 Q. You give an age range of somewhere between 20 and
- 3 30 years old?
- 4 A. Yes.
- 5 Q. You said the robber had an afro style, afro
- 6 hairstyle?
- 7 A. Yes.
- 8 Q. But he was wearing a hat though, correct?
- 9 A. Yes.
- 10 Q. Did the robber have facial hair?
- 11 A. A little.
- 12 Q. Can you describe it?
- 13 A. It was like a beard but it was just small. It
- 14 wasn't a lot.
- 15 Q. It was like a goatee, maybe?
- 16 A. I don't remember.
- 17 Q. Can you describe the skin complexion of the robber?
- 18 A. Yes.
- 19 Q. What was it like?
- 20 A. As in what is -- if he was black? Is that what you
- 21 are asking or -- I don't understand what you are asking.
- 22 Q. Light or dark skin?
- 23 A. Dark skin.
- 24 Q. Did he have acne?
- 25 A. Yes.

1 Q. Were you able to describe the shape of his face,
2 his chin or anything like that?

3 A. I don't remember.

4 Q. Can you describe how he sat in the driver's seat,
5 his posture?

6 A. He maybe drove with his left hand, and then with
7 his right hand I remember him having the gun pointed
8 sideways facing toward me kind of low near his lap.

9 Q. Was he hunched over sitting in the driver's seat?

10 A. I don't understand.

11 Q. Did he have difficulty sitting in as if he was too
12 tall to sit there?

13 A. No.

14 Q. You said this was a dark green baseball hat he was
15 wearing?

16 A. Yes.

17 Q. Do you remember if it had any logo on it?

18 A. I don't remember.

19 Q. Do you remember what kind of shoes he was wearing?

20 A. White.

21 Q. Do you remember what style?

22 A. I'm sorry?

23 Q. What kind of shoes, what style of shoes?

24 A. I don't remember.

25 Q. Was he wearing sunglasses?

1 A. No.

2 Q. Do you remember him having any jewelry or
3 piercings?

4 A. No.

5 Q. When you were shown the photo lineup you looked at
6 photo number two and you said that photo looks like him
7 but you weren't so sure if it was him, correct?

8 A. Correct.

9 Q. You mentioned several facial features when you were
10 presented with the lineup, is why you selected number
11 two, correct?

12 A. Correct.

13 Q. All these photos were black and white?

14 A. Correct.

15 Q. All of them were black males, correct?

16 A. Correct.

17 Q. It's kind of hard to tell the differences in skin
18 tone with black and white photos, isn't it?

19 A. Correct.

20 Q. Probably would have been easier to tell if they
21 were in color, correct?

22 A. Correct.

23 Q. And you described the robber as having acne. When
24 you looked at photo number two you noticed that that
25 photo doesn't appear to have acne, correct?

- 1 A. I stated that I couldn't tell if it had acne
2 because the photo was black and white.
- 3 Q. You couldn't tell if the person had acne because
4 the photo was black and white?
- 5 A. Correct.
- 6 Q. The officer never asked you to give an estimate of
7 how confident you were in your identification, correct?
- 8 A. I don't remember.
- 9 Q. He didn't ask you on a scale of one to 10 how
10 confident you were, or anything like that?
- 11 A. I don't remember if he asked me or not.
- 12 Q. He didn't ask you to give a percentage, I'm a
13 hundred percent positive, or I'm 90 percent sure this was
14 the man, or anything like that?
- 15 A. I don't remember if he asked me or not.
- 16 Q. How confident were you in your identification?
- 17 A. Really confident.
- 18 Q. On a scale of one to 10?
- 19 A. Nine.
- 20 Q. And you were shown this lineup two days after you
21 were robbed, correct?
- 22 A. Correct.
- 23 MR. MALLOY: Court's indulgence.
- 24 THE COURT: Counsel, our lunch is here. We haven't
25 eaten. So I'm going to go ahead and take about 20

1 minutes, at least, so that my staff can eat. So be back
2 at 2:35.

3 MR. MALLOY: Okay. Thank you.

4 MS. SAVAS: Thank you, Your Honor.

5 THE COURT: Ma'am, I need you to step down. We are
6 going to take a break. We have other trials going on.
7 So do not discuss your testimony with anyone. You can
8 talk about scheduling with the solicitor or with the PD's
9 office but don't talk about the testimony. Okay? Step
10 down. Thank you.

11 (WHEREUPON, a lunch break was taken.)

12 THE COURT: All right. Ms. Savas, are you ready to
13 go forward?

14 MS. SAVAS: Yes, Your Honor. The State wishes to
15 proceed.

16 THE COURT: Ready to go forward?

17 MR. MALLOY: Yes, Your Honor.

18 THE COURT: Please have your witness resume the
19 stand.

20 (The witness comes forward.)

21 THE COURT: Please have a seat in the witness
22 stand. I remind you that you are still under oath.

23 MR. MALLOY: May I proceed, Your Honor?

24 THE COURT: You may.

25 CROSS-EXAMINATION

1 BY MR. MALLOY:

2 Q. Ms. Davila, I just want to clarify one point that I
3 was attempting to make earlier. When you first spoke to
4 the police after you called 911 you described the robber
5 as a black male, average build, six-feet-tall, between 20
6 and 30 years of age, correct?

7 A. Correct.

8 Q. And you did not give a description regarding his
9 hairstyle at that time?

10 A. No.

11 Q. You did not give a description of his facial hair
12 at that time?

13 A. No.

14 Q. You did not give a description of his acne?

15 A. No.

16 Q. Or whether or not he had acne at that time?

17 A. No.

18 Q. You didn't say whether he was light or dark-skin,
19 did you?

20 A. No.

21 MR. MALLOY: No further questions, Your Honor.

22 THE COURT: Ms. Savas?

23 MS. SAVAS: Thank you, Your Honor. Just briefly.

24 REDIRECT EXAMINATION

25 BY SAVAS:

- 1 Q. Maria, do you recall about the main points in the
2 route that you were in the car with him for?
- 3 A. As in the main areas?
- 4 Q. Yes.
- 5 A. Yes.
- 6 Q. So where did it start?
- 7 A. Aviation.
- 8 Q. And then where did he go from there, or a main
9 street?
- 10 A. I remember being on Ashley Phosphate Road.
- 11 Q. Okay.
- 12 A. A road off of Ashley Phosphate Road near a gas
13 station. I remember being on Rivers.
- 14 Q. Okay.
- 15 A. I remember being near two different trailer parks.
- 16 Q. Okay.
- 17 A. There's just -- I don't know what the road is
18 called but it's off Stall Road. It connects with Rivers.
- 19 Q. Do you remember where you were dropped off?
- 20 A. Yes.
- 21 Q. Where was that?
- 22 A. I believe they told me Russelldale. It was
23 somewhere under a bridge.
- 24 Q. Maria, and you signed a form at that time
25 acknowledging that you understood the procedures?

1 A. Yes.

2 MS. SAVAS: Beg the Court's indulgence.

3 THE COURT: Take your time.

4 (PAUSE.)

5 MS. SAVAS: Nothing further, Your Honor.

6 MR. MALLOY: No further questions, Your Honor.

7 THE COURT: You may step down. Thank you.

8 Any other witnesses?

9 MS. SAVAS: No, Your Honor.

10 THE COURT: Any witnesses?

11 MR. MALLOY: No witnesses, Your Honor.

12 THE COURT: All right. Happy to hear argument.

13 MR. MALLOY: Would you like to hear from me first,

14 Your Honor?

15 THE COURT: (Nodded).

16 MR. MALLOY: Thank you, Your Honor. May it please

17 the Court. Looking at the first prong of Neil V. Biggers

18 regarding the suggestiveness of the identification

19 procedure there's several points that I would like to

20 make, first being that there were black and white photos

21 used in this lineup and that came up several times during

22 the hearing and including from the victim, Ms. Davila,

23 that indicated that -- she described the robber as having

24 acne; however, you just can't really tell, you know,

25 because the photos are in black and white, hard to tell

1 skin tone, and Ms. Davila admitted that that made it more
2 difficult for her making a selection.

3 Also, I would like to point out the fact that two
4 of the photos in the lineup appear to be clearer or more
5 defined than the others and one of those is the photo of
6 Mr. Jenkins, and I would argue that the higher
7 definition, the clarity on his photo would make his
8 features stand out more compared to the others which
9 appear to be lower definition, kind of blurry photos, and
10 the victim specifically mentioned several facial features
11 when she made her identification, and I would argue that
12 the fact that Mr. Jenkins' photo was of a higher quality
13 would make his features stand out more compared to the
14 other photos in the lineup.

15 Mr. Jenkins' photo, he has longer hair than the
16 other men in the lineup. Also, the other -- the fillers
17 in the lineup also appear to have -- they all appear to
18 have full goatees. If you look at it, to me, he does not
19 have one in his photo.

20 Also, Your Honor, Officer Repman did have prior
21 involvement with this case. He responded to the scene.
22 He was briefed on the robbery. He obtained video from
23 the scene that allegedly -- or according to the State's
24 theory of the case, shows the locations where the robber
25 was before he went and robbed Ms. Davila at the Waffle

1 House. This is from the neighboring gas station, the
2 Kangaroo gas station you can see. He recovered video
3 surveillance from there and this was before he
4 administered the lineup to Ms. Davila, so he did have
5 prior involvement with the case. I note that he would be
6 an independent administrator and there is a possibility
7 that he could have subconsciously affected the lineup.

8 And, Your Honor, regarding the factors to determine
9 whether or not the lineup was otherwise reliable, I would
10 argue that the opportunity to view the witness, although
11 -- the opportunity for the victim to view the perpetrator
12 in this case although would seem to be a good amount, a
13 fair amount of time given the distance they traveled in
14 the vehicle, I will point out that she's sitting next to
15 the robber. She's not looking at him directly in the
16 face. She testified herself that she glanced over a few
17 times. There was an instance where she said they were
18 face-to-face but that was for a brief second when she was
19 confronted in the Waffle House parking lot. Not a
20 situation where she's staring directly at his face the
21 entire time.

22 Also, she is, as she admitted, looking ahead
23 wondering where she's going. There's traffic going by.
24 And, you know, she's obviously distracted during this
25 period of time. Also, there was a gun to her side and

1 she is obviously worried about that. She's not thinking
2 to herself I need to, you know, get a good look at this
3 guy so when the police show me a photo lineup I can --
4 you know, I can pick him out of it.

5 I would argue that the circumstances of this case
6 even though there was a good amount of time when they
7 were together that her degree of -- her degree of
8 attention was not necessarily on the identification
9 itself. The accuracy of the witness's prior description,
10 very limited. Black male, six-feet-tall, average build.
11 Really nothing else, and then some descriptions of
12 clothes he was hearing.

13 She testified to some more specific characteristics
14 today about hair, facial hair, but I would point out that
15 she also admitted that the robber was wearing a hat the
16 entire time and he never took it off. Hard to see what
17 kind of hairstyle he had even though she says that he had
18 some keep of afro-style hair. She's going off of just, I
19 guess his upper neck from the way that she testified.

20 The level of certainty demonstrated by the victim
21 at the time of the confrontation, I think, is very
22 important in this case. As you saw from the video she
23 looks at photo number two, pushes it to the side, and
24 looks at it again and says, This looks like him but I
25 can't be so sure.

1 That is very telling, I think, and that was two
2 days after the robbery. Obviously, you know, would be
3 the best indication of her confidence in this
4 identification would be that statement that she gave
5 while she was making the identification, and also the
6 length of time. Two days did pass from the time of the
7 robbery to the time that she was shown the photo by
8 Detective Repman. Given all those, I'm asking you to
9 suppress the identification she made from the six-pack
10 photo lineup. Thank you.

11 THE COURT: Ms. Savas?

12 MS. SAVAS: Thank you, Your Honor. May it please
13 the Court. Your Honor, the test, of course, is whether
14 the ID procedure was conducted in an unduly suggestive
15 manner. The officer had testified, Officer Repman, that
16 he did not make any suggestive comments. He did not even
17 tell her the defendant was picked in that photo lineup.
18 He did not tell her that someone was found. No one
19 showed her any prior photos of him. The victim herself
20 testified that they did not lean towards any photos in
21 that nature.

22 The color in black and white photos, black and
23 white photos are commonly used throughout the police
24 department and used and upheld in these sorts of
25 hearings.

1 As far as the lighting goes and the higher
2 quality, Sergeant Niemiec had testified that these were
3 sent by SLED. They were all very standard procedures.
4 SLED had done those. There was no difference in quality
5 or definition in the photos that they had taken;
6 therefore, the State submits that it is not a suggestive
7 photo lineup.

8 And the fact that it was done the one-by-one is
9 proven to be the least suggestive manner of all photo
10 lineups, less than the show-ups and the six-packs. So
11 that in itself, the way that the lineup was shown and
12 conducted, is proven to be one of the least suggestive
13 types of lineups.

14 As far as reliability, it's a totality of the
15 circumstances. The victim testified that she had what
16 she felt like was forever, an eternity with this
17 defendant. He approached her less than two feet, she
18 says, when she was uncomfortable with him.

19 He approached her at the Waffle House outside of
20 her car and put a gun to her. That was a straight-on
21 view. There was no mask. There was nothing blocking his
22 face. Yes, he was wearing a hat; however, she testified
23 that it was a bright, sunny day. There were no sun
24 glasses and it was not --

25 THE COURT: Slow down just a little bit.

1 MS. SAVAS: -- on his face. Yes, ma'am.

2 There was a long distance. She had testified that
3 he had picked her up at the Waffle House on Aviation,
4 gone as far north as Ashley Phosphate, which is several
5 miles, back down to Rivers, ends in Russelldale. That's
6 about a 20-minute drive, and so that is ample
7 opportunity.

8 Although it was a side profile she did look at him
9 in that car. It is very close proximity when you are
10 passenger and driver sitting with someone. That is one
11 of the most longest opportunities you may have to be in
12 that close proximity with someone. She had ample
13 opportunity with no distractions. She was looking
14 straight ahead but stated, yes, she did look at his face
15 and that close proximity when he first approached her
16 head-on.

17 As far as the prior description, well, the second
18 factor is the witness's degree to attention. In State
19 vs. Brown it was explained that a person in fear of their
20 life presumably has more of an acute degree of attention
21 to their surroundings than a passerby. She testified
22 that she was scared for her life, and in that threatening
23 situation, therefore, by nature she is paying far more
24 attention to that person that has her at gunpoint.

25 The accuracy of the witness's prior description of

1 the subject, she did provide a description about the age
2 range, black male. She had said that he was a
3 dark-skinned male, and the height, and, yes, the
4 clothing.

5 This lineup was conducted from the name. They're
6 never really conducted from a specific description of
7 someone, and SLED then makes that determination within
8 their database and their system of what looks similar to
9 that person, and that's how those are created. So
10 although she did give that description it does accurately
11 define that and it is not suggestive because there
12 weren't -- it wasn't in that picture.

13 As far as the facial hair goes, number two photo
14 does have facial hair. He does have the hair around his
15 chin, as she had described. He does have a hairstyle
16 that she had described which are all very similar in
17 composition as the other photos and individuals in those
18 photos.

19 Officer Repman, I had him explain number seven, I
20 believe it was, on that photo lineup form -- I'm sorry,
21 number six, is that part of the procedure they explain to
22 people that the hairstyles may look different, this is
23 not what they look like at that exact time of the
24 incident, and so they take that all into consideration.
25 She initialled that she understood that, and they are

1 still similar in physical appearances, and the
2 discrepancy in the amount of hair or how thick it was at
3 the time is not a determining factor of hers.

4 The third is the level of certainty. I think that
5 video goes to show how certain she was. The moment she
6 saw the second photo she pushed it aside. He continued
7 with the procedure, she went back to it. It's a
8 mischaracterization of testimony to simply say that she
9 wasn't sure. The rest of --

10 THE COURT: Is English your victim's first
11 language.

12 MS. SAVAS: Yes, ma'am.

13 And she said she wasn't sure because the scarring
14 wasn't on his face from the acne but the nose, the eyes,
15 the rest of the face, the lips, the mouth, the hair are
16 what make her also lead to believe that that was him.

17 So the qualification is, I wasn't sure because I
18 can't see the acne scarring but this is the list of
19 reasons why it is him. Detective Repman testified to
20 that. It was on that video. So it's a
21 mischaracterization to simply say she wasn't sure means
22 she did not know. She stated that she was very certain
23 that it was him and she made that instinctively
24 immediately upon seeing that picture.

25 The length of time was only two days between the

1 incident and the time that this was made. That is --
2 continues to be reliable. The courts have determined in
3 State vs. Patterson two weeks is still reliable, so two
4 days is a very short amount of time when gathering those
5 photos, and the arrest was made after that.

6 Your Honor, the State believes that it was not a
7 suggestive lineup, therefore you don't reach the second
8 prong as to the reliability and -- of that, and the
9 factors listed. However, if the Court does determine
10 that it may be suggestive it does not give rise to
11 irreparable misidentification under the totality of the
12 circumstances. Therefore, we ask the photo lineup be
13 submitted to the jury for that judgment and the motion be
14 denied.

15 THE COURT: Mr. Malloy, any response?

16 MR. MALLOY: Your Honor, I would only after hearing
17 Ms. Savas' version of the reliability factors simply
18 point to the limited description given by the victim to
19 the officers when they arrived and I think --

20 THE COURT: Tell me what you think in your analysis
21 makes this process that she was given unduly suggestive.

22 MR. MALLOY: Black and white photos, especially.
23 Black and white photos with my client's photo being --

24 THE COURT: How does that make that suggestive?

25 MR. MALLOY: It makes him stand out compared to the

1 other fillers in the lineup. It makes him stand out.

2 When looking at the lineup in whole compared to the

3 others it makes him stand out, makes his features clear.

4 Therefore, someone thinking about, you know --

5 THE COURT: What did you base that on? Because the

6 officer testified he couldn't agree with you on that.

7 MR. MALLOY: Well, I disagree with the officers and

8 we showed --

9 THE COURT: So it's not just -- it's not the

10 analysis that I have, too, it's unduly suggestive,

11 correct?

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

13 THE COURT: All right. So tell me how it's unduly

14 suggestive if the two of you couldn't even agree.

15 MR. MALLOY: Well, Your Honor, you saw it for

16 yourself.

17 THE COURT: I didn't think it was suggestive. I

18 thought that two, and whatever the ones were at the top,

19 were very well defined, equally defined.

20 MR. MALLOY: Right, but my position is that would

21 make anyone more likely to pick those two out of the

22 lineup than any of the other -- any of the fillers.

23 THE COURT: Pick which two?

24 MR. MALLOY: The ones that were brighter, including

25 Mr. Jenkins', more-well defined photos.

1 THE COURT: Well, then why shouldn't -- then she
2 had a 50 percent chance of picking your client then,
3 right?

4 MR. MALLOY: Well, then it would be the hair --

5 THE COURT: It's not unduly suggestive because it's
6 equal.

7 MR. MALLOY: Well, then beyond that the hairstyle
8 and also the facial hair, and she also gave a very
9 detailed description of the route that was taken, much
10 more detailed than the original description she gave of
11 the perpetrator with street names, neighborhoods,
12 etcetera.

13 THE COURT: So because -- Mr. Malloy, because she
14 could describe the route in the more detail than she
15 could describe the perpetrator you find that this is an
16 unreliable identification?

17 MR. MALLOY: I would argue that it goes to show
18 that her -- she's not paying attention to the driver.
19 She's not looking at him. Obviously, she's conscious of
20 him, she's scared, but she's not -- she's not visually
21 looking at him. She's not paying attention to him.
22 She's worried about where she's going. She's also
23 worried about the gun, and my position is that along with
24 the excitement of the event would make her later
25 identification, facial identification less reliable.

1 THE COURT: I disagree. Based upon the totality of
2 the circumstances, first of all, I do not find that the
3 lineup given is unduly suggestive. Even assuming that it
4 was, going to the next prong, again, under the totality
5 of the circumstances, the witness testified that she had
6 the opportunity to view the perpetrator. She delineated
7 and went through the route they went, the level of
8 certainty, the length of time.

9 Ms. Savas, my question to you was whether or not
10 English was her first language. It appears, and I don't
11 know if she's just nervous or what, but it appears that
12 she has some difficulty understanding the language and so
13 is --

14 MS. SAVAS: I apologize. I just confirmed with
15 her. It is her first language, yes.

16 THE COURT: And so based upon some of the questions
17 and the way that she asked both of you to rephrase your
18 question or ask it a different way I took that into
19 consideration in the totality of those circumstances. I
20 do not find that the process was unduly suggestive but
21 will be admitted, and as you know and I always give the
22 -- it's finally up to the jury to make that final
23 determination. I note your exception to my ruling.

24 All right. Any other pretrial motions? No Jackson
25 V. Denno; is that correct? What else?

1 MR. MALLOY: Only the issue with the tip from the
2 informant. I don't know if you want to deal with that
3 today or not.

4 THE COURT: Might as well.

5 MR. MALLOY: I think I pretty much summed up my
6 argument in chambers. My position is that the tip
7 provided to officers in this case that my client's
8 girlfriend at the time was overheard bragging about this
9 robbery or told the informant about this robbery should
10 not be admissible due to the fact that that witness is
11 unavailable, or it should not be admissible unless that
12 witness is able to be cross-examined.

13 We have been unable to find her ourselves. We've
14 been unable to, and the basis being that it would be a
15 violation of the confrontation clause for the tip to be
16 admitted without being allowed to cross-examine the
17 person who made that tip to police.

18 THE COURT: Okay. Mr. Malloy, you agree that the
19 State can inquire as to the tip being made just not what
20 the tip was?

21 MR. MALLOY: Well, my position, obviously, the
22 statements themselves are inadmissible hearsay but I
23 would object based under the Sixth Amendment Right to --
24 the Sixth Amendment Confrontation Clause even the tip
25 coming in because we have not had the opportunity --

1 THE COURT: The fact that it was a tip? You are
2 objecting the fact that there was a tip?

3 MR. MALLOY: Well, I would object to any
4 information that -- or testimony that there was a tip
5 that Mr. Jenkins was involved in this robbery which led
6 them to put him in the photo lineup.

7 THE COURT: But you are not objecting to the fact
8 that a tip was made and that led the officer to further
9 his investigation, correct?

10 MR. MALLOY: I still would object to it because it
11 sounds to the jury as if there's something else out
12 there, that they know something else that links
13 Mr. Jenkins to this case.

14 THE COURT: But you know something else is out
15 there. What indication would the jury have that there
16 was?

17 MR. MALLOY: Just the mention that the tip led them
18 to Mr. Jenkins.

19 THE COURT: All right. Ms. Savas, where is the
20 witness? Were you able to get a statement?

21 MS. SAVAS: Yes, Your Honor. I spoke with the
22 witness but she is --

23 THE COURT: Today?

24 MS. SAVAS: No, Your Honor, not today. But she is
25 claiming now, during my conversations with her, that she

1 wasn't the one that did the tip. She does not want to be
2 involved. She has made that very clear.

3 Regarding that, when she made the initial tip to
4 the officers she wanted to remain anonymous. Detectives
5 went and met with her, did get her name and met at that
6 home address -- was soon to be her home address. She is
7 since claiming that someone else used her name.

8 What happened that's -- is a big distinction is
9 officers remained with her, corroborated that tip by
10 going to the hotel where the female was that supposedly
11 was the defendant's girlfriend, bragging about this. The
12 tip, just to give you some brief background, the tip was,
13 as Mr. Malloy stated --

14 THE COURT: Well, how do you plan to get --

15 MS. SAVAS: Yes, ma'am.

16 THE COURT: You would agree that it's hearsay?

17 MS. SAVAS: Your Honor, I would disagree. I would
18 say that it is not hearsay. We would not bring in the
19 contents specifically of the tip. We agree with Your
20 Honor that that specific statement would be hearsay, yes;
21 however, in State vs. King the Court made a very clear
22 distinction that an officer may testify not to the
23 contents of the tip but that it led them to their
24 investigation of going to this place, looking for this
25 person.

1 THE COURT: So is that what you are going to limit
2 the testimony to?

3 MS. SAVAS: Yes, Your Honor. We would limit the
4 officers' testimony to say they received a tip. As a
5 result of that tip the investigation led them to the
6 hotel looking for an individual named Candace Singleton
7 in room 242. That explains the contents, and that was
8 very distinctly made in State V. King.

9 THE COURT: What's that citation?

10 MS. SAVAS: Oh, yes, Your Honor. It's 412 S. C.
11 403. In that case the cops -- the judge said that the
12 officer cannot testify to the specific number of shots
13 that were made, which is what the contents, so it was the
14 actual statement.

15 The difference is they had further cited State vs.
16 Cromer, which is 401 S. C. 340, and State vs. Weaver, 361
17 S. C. 73, and in those cases it was noted that testimony
18 of a police officer regarding conclusions from an
19 investigation is not hearsay, that they testified merely
20 what their investigation revealed and not specific
21 statements made by the people that they had interviewed.

22 And it further clarified that if an officer
23 testifies in detail about the investigative process and
24 the lot or their information that is not hearsay. So
25 it's not only that they corroborated this but it's in

1 conjunction with the rest of their investigation, so it's
2 the entire process.

3 And officers were allowed in the State vs. Weaver
4 case to even say that out of all the witnesses they spoke
5 to they had led to believe that only one suspect was
6 involved, and that was admitted in because they never
7 repeated the specific statements, they just explained
8 that was in response to a cross-examination question, but
9 it was offered to explain his investigation.

10 Since the exact statement is not made it would be
11 prejudicial to the State to not allow an investigative
12 officer to say why they went somewhere and to put it into
13 context. It would too narrowly redefine the case law to
14 say, well, you cannot even talk about that a tip was
15 made. It's common knowledge that tips are made. That
16 specific contents of why --

17 THE COURT: Let's focus on this case.

18 MS. SAVAS: Yes, Your Honor.

19 THE COURT: Who is the officer that will testify to
20 this?

21 MS. SAVAS: Sergeant Niemiec had gone to the
22 Hideaway Lounge with two other detectives and to
23 corroborate the tip.

24 THE COURT: Officer Niemiec?

25 MS. SAVAS: Yes, ma'am.

1 THE COURT: That's the one that testified earlier?

2 MS. SAVAS: Yes, ma'am.

3 THE COURT: And so he is going to testify that he
4 received a tip and based upon that tip he went to this
5 hotel room?

6 MS. SAVAS: Yes, ma'am, to look for --

7 THE COURT: And so that is what he is going to testify
8 to. Mr. Malloy, you understand how I've limited it?

9 MR. MALLOY: I do understand, Your Honor. I stand
10 by my original argument but I am now concerned with the
11 State's assertion that the person who made the statement
12 is now saying they didn't make it. This is the first
13 time that I've heard that during the course of this case.

14 MS. SAVAS: I don't plan on calling her as a
15 witness. They had the ample opportunity. It's not
16 something that was purposefully done to hide from them.
17 It was she was always wanting to remain anonymous when
18 giving the information. She was this source. It's not
19 relevant as to what that statement was because at that
20 time they corroborated that tip.

21 THE COURT: As to the original issue that we
22 started, I deny -- I'm granting part, denying part. So
23 the officer will be allowed to testify that he received a
24 tip and based upon that tip through his investigation he
25 then did whatever it is that he did. He will not be

1 allowed to say, That witness said to me. All right?

2 The two of you can work out and talk about whatever
3 it is that you feel that she needs to disclose to you.
4 If she has or hasn't, and if you need another -- you need
5 to raise another issue let me know.

6 Are there any other pretrial motions?

7 MR. MALLOY: No, Your Honor.

8 MS. SAVAS: Just in regards to that. I want, I
9 guess, to seek clarification, Your Honor. We do have a
10 detective who went to physically meet with that
11 individual that gave them the tip. He was just going to
12 testify after this decided to -- can't testify to what
13 she said but, yes, he received a tip; yes, I met with
14 this person and that information was then given to
15 detectives in this investigation. We would ask that he
16 would be allowed to testify.

17 His report was also initially given in discovery so
18 it would be very limited as to those specific questions
19 that you met this person who gave a tip, that information
20 then was relayed. That's all that we would wish to have
21 the detective testify to.

22 THE COURT: Who did she give the tip to?

23 MS. SAVAS: She had given it to a patrol officer,
24 and then Detective Wallace had gone and spoken with her
25 but since --

1 THE COURT: Then Wallace gave it to Niemiec?

2 MS. SAVAS: No. Niemiec was the one -- they had
3 received it through a dispatch call so Sergeant Niemiec
4 went out to the Hideaway Lounge to go find her. Wallace
5 then went back to the patrol officer, asked the detective
6 to try to get a written statement, which she refused to
7 provide, to remain anonymous, but the patrol officers had
8 gone.

9 THE COURT: The patrol officer called it in,
10 Niemiec went to talk to --

11 MS. SAVAS: The Hideaway. He went to go take the
12 -- he corroborated the tip, went to go find the
13 individual Candace. Detective Wallace was the one that
14 went back and spoke with the tipster.

15 THE COURT: She was spoken to twice?

16 MS. SAVAS: Yes.

17 THE COURT: Well, upon the second conversation was
18 there anything different elicited?

19 MS. SAVAS: No.

20 THE COURT: Then, first of all, how is it not
21 cumulative, and second of all, I limited it to they
22 received a tip and they went there. I don't know how him
23 talking about another tip is going to -- you work that
24 out. Let me know. If she calls the witness we'll deal
25 with it at that time.

1 MR. MALLOY: I was just about to make the argument
2 I think you are eluding to. I think that one officer
3 testifying about a tip does the trick for the State. I
4 think that another officer talking about the same thing
5 would be cumulative and it would just put it in front of
6 the jury even more, which is obviously what I'm trying to
7 prevent happening in this case given the vagueness of it.
8 Thank you.

9 THE COURT: All right. Anything else, Ms. Savas?

10 MS. SAVAS: Just briefly to bring forth, Your
11 Honor, regarding the Jackson V. Denno hearing. We
12 discussed this briefly with your clerk. We wanted to
13 bring it to your attention. We do not anticipate
14 bringing in the defendant's statement as none was made
15 after he waived his rights and said, These are big boy
16 charges. I need a lawyer.

17 However, we were anticipating on calling the
18 detective that did interview the defendant and that he
19 did waive his rights but nothing substantial was given
20 from that interview. So we did want to have that officer
21 testify that yes, prior --

22 THE COURT: And so tell me -- tell me how that
23 comes in.

24 MS. SAVAS: Yes, Your Honor. The defendant was
25 arrested, taken to North Charleston for an interview --

1 THE COURT: No. I understand. Legally how does
2 that come in?

3 MS. SAVAS: It would be during the course of their
4 investigation. It wouldn't be a Jackson V. Denno issue.

5 THE COURT: The defendant didn't say anything? Did
6 he exercise his right to remain silent?

7 MS. SAVAS: Yes, Your Honor, he ultimately did.

8 THE COURT: All right. And so you want an officer
9 to testify to that during this trial?

10 MS. SAVAS: That they did provide his Miranda
11 rights according to procedure and that they were followed
12 and that once he requested to speak to an attorney the
13 interview was ended.

14 THE COURT: All right. Ms. Savas, if that's the
15 way you want to do the testimony we'll deal with it as
16 that happens. All right?

17 MR. MALLOY: And I object to that. I think that
18 it's a Doyle violation where they are eluding to my
19 client's assertion of his right to remain silent. I
20 think even --

21 THE COURT: I'm not going to tell her how to try
22 her case. So if that's what she wants to do we'll deal
23 with it when it happens.

24 MR. MALLOY: Yes, Your Honor.

25 THE COURT: Thank you. Anything else?

1 MS. SAVAS: No, Your Honor.

2 THE COURT: Okay. We'll have the jury here at
3 9:30.

4 MS. SAVAS: Yes, ma'am.

5 THE COURT: So be ready. I think I have
6 everything. Just be ready and pay attention if my clerk
7 e-mails you. Okay? Thank you.

8 MS. SAVAS: Thank you, Your Honor.

9 MR. MALLOY: Thank you, Your Honor.

10 (WHEREUPON, the trial was recessed for the day.)

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12 THE COURT: Is there something you want to put on
13 the record?

14 MR. MALLOY: Yes, Your Honor. I would like to
15 supplement my argument I made yesterday regarding
16 excluding the tip that the State intends to introduce to
17 explain the investigation of the case. I've reviewed the
18 cases submitted by Ms. Savas, specifically State vs.
19 King, 412 S. C. 403. I think that case cites the other
20 case that she relies on. But I think the tip in this
21 situation necessarily reveals the content of the
22 out-of-court hearsay statements of the unavailable
23 witness, which I addressed yesterday. The only
24 conclusion that a jury could reach from the tip is that
25 it was -- the content was that my client was somehow

1 involved in this robbery, so we go to the direct issue in
2 this case.

3 Also, Your Honor, I am concerned by the information
4 Ms. Savas revealed yesterday regarding the tip that the
5 person who supposedly made it subsequently said they
6 didn't make it. Now it puts in issue as to whether it
7 can even be verified and that goes directly --

8 THE COURT: I'm just allowing you -- I'm not going
9 to re -- I'm not going to reargue this.

10 MR. MALLOY: I understand. And that, again, the
11 reliability of the tip goes to my argument, confrontation
12 clause argument, where I rely on the Sixth Amendment
13 Confrontation Clause. Thank you.

14 THE COURT: Anything else?

15 MS. SAVAS: Just back to what we said yesterday we
16 just reiterate that point that it's not giving specific
17 statements of the tip, therefore --

18 THE COURT: I'm sorry. I'm just allowing him --

19 MS. SAVAS: Nothing from the State.

20 THE COURT: -- an opportunity to place things on
21 the record.

22 MS. SAVAS: Yes, ma'am.

23 THE COURT: Is there anything before we bring in
24 the jury?

25 MS. SAVAS: There were two things, Your Honor, just

1 briefly. I didn't know when you wanted to do that. We
2 have pre-admitted things into evidence.

3 THE COURT: All right.

4 MS. SAVAS: At this time, we are pre-admitting
5 items number 1 through 34.

6 THE COURT: Any objection?

7 MR. MALLOY: No, Your Honor.

8 THE COURT: State's 1 through 34 into evidence
9 without objection.

10 (WHEREUPON, State's Exhibit Numbers 1 through 34
11 were admitted into evidence.)

12 MS. SAVAS: And then just briefly, Your Honor, it
13 was mentioned to us this morning that apparently on the
14 indictment the defendant's name has changed spellings.
15 It's just missing an A; however, that needed to be
16 amended.

17 THE COURT: Do you want me to make the amendment on
18 the indictment?

19 MR. MALLOY: I don't really have any objection to
20 that.

21 THE COURT: So what's the proper spelling?

22 MR. MALLOY: C-h-a-v-i-a-s, and pronounced Chavias.

23 THE COURT: Anything else?

24 MS. SAVAS: Nothing from the State.

25 MR. MALLOY: I would like to address my client's

1 bond. I would ask that he be allowed to remain out on
2 bond. He was granted a PR bond last May so he doesn't
3 have a bondsman.

4 THE COURT: Your motion is denied. Once I select
5 the jury and swear the jury he will remain in custody.
6 And does your client waive formal arraignment?

7 MR. MALLOY: Yes, we waive that.

8 THE COURT: Thank you.

9 Ms. Savas, we are going forward on 2013-GS-10-7433,
10 7434, and 7435, 7436?

11 MS. SAVAS: Yes, Your Honor.

12 THE COURT: Any objection to reading the
13 indictment?

14 MS. SAVAS: No, Your Honor.

15 MR. MALLOY: None, Your Honor.

16 THE COURT: All right. Thank you. Strikes are 5
17 and 10, Ms. Savas?

18 MS. SAVAS: Yes, Your Honor.

19 MR. MALLOY: I agree.

20 THE COURT: Thank you. Do we think we'll go --
21 we'll definitely go into tomorrow, is that correct?

22 MS. SAVAS: Yes, Your Honor, probably just briefly
23 in the morning with a few witnesses.

24 THE COURT: If anyone needs a comfort break quickly
25 do it now.

1 (WHEREUPON, a brief recess was taken.)

2 (WHEREUPON, the jury panel enters the courtroom at
3 approximately 10:18 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.
5 It's wonderful to see you again. The case that we are
6 about to begin is the case of Chavias Jenkins in
7 indictment 2013-GS-10-7433. The State alleges that in
8 Charleston County South Carolina on or about September
9 13, 2013 located at 2357 Aviation Avenue, North
10 Charleston, South Carolina the defendant did take or
11 attempt to take a motor vehicle from the victim, Maria
12 Davila, by force, violence, or intimidation while Maria
13 Davila was operating the vehicle or inside of the
14 vehicle, in violation of the Section 16-3-1075(b)(1) of
15 the South Carolina Code of Laws, 1976 as amended.
16 Mr. Jenkins has pled not guilty to that indictment for
17 carjacking.

18 The State further alleges in 2013-GS-10-7434 that
19 in Charleston County, South Carolina on or about
20 September 13, 2013 the defendant unlawfully did seize,
21 confine, inveigle, decoy, kidnap, abduct, or carry away
22 the victim, Maria Davila, without authority of law, all
23 in violation of 16-3-910 of the South Carolina Code of
24 Laws, 1976 as amended. Mr. Jenkins has pled not guilty
25 to this indictment for kidnapping.

1 The State further alleges in 2013-GS-10-7435 that
2 on or about September 13, 2013 in Charleston County,
3 South Carolina located at 2357 Aviation Avenue, North
4 Charleston, South Carolina the defendant, Chavias Jahmal
5 Jenkins, by use of force, threat or intimidation and
6 while armed with a deadly weapon, to wit, a handgun, or
7 while alleging by actions or words he was armed while
8 using a representation of a deadly weapon or any object
9 which a person present during the commission of the
10 robbery reasonably believed to be a deadly weapon, did
11 take and carry away goods and/or monies from the person
12 or immediate presence of with the intent to permanently
13 deprive the victim possession thereof in violation of
14 Section 16-11-330(a) of the South Carolina Code of Laws,
15 1976 as amended. Mr. Jenkins has plead not guilty to
16 this indictment for armed robbery.

17 The State further alleges in 2013-GS-10-7436 that
18 in Charleston County, South Carolina on or about
19 September 13, 2013 the defendant, Chavias Jahmal Jenkins,
20 possessed a handgun or visibly displayed what appeared to
21 be a handgun during the commission or attempted
22 commission of the armed robbery, a violent crime. This
23 is in violation of Section 16-23-490 of the South
24 Carolina Code of Laws, 1976 as amended. Mr. Jenkins has
25 pled not guilty to this indictment for possession of a

1 handgun during the commission of a violent crime.

2 Ladies and gentlemen, is there any member of the
3 jury panel that knows anything about this case other than
4 what I have just read to you? If so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 Mr. Malloy, if you would please stand, introduce
8 yourself, your client and any persons who will be
9 assisting you throughout this trial.

10 MR. MALLOY: Thank you, Your Honor. Good morning.
11 My name is Luke Malloy. I'm an attorney with the
12 Charleston Public Defender's Office. At the end of my
13 table here is Chavias Jenkins. I represent Mr. Jenkins.
14 And assisting me during this trial is Mary Ford. She's
15 also an attorney with the Charleston Public Defender's
16 Office.

17 THE COURT: Thank you.

18 Is there any member of the jury panel related by
19 blood, marriage, close personal friend, ever have any
20 business, personal, professional dealings or know
21 Mr. Jenkins in any way? If so, please stand.

22 (There was no response.)

23 THE COURT: Thank you. There are none.

24 Any member of the jury panel related by blood,
25 marriage, close personal friend, ever have any business,

1 personal, professional dealings or ever represented by
2 Mr. Malloy or Ms. Ford? If so, please stand.

3 (There was no response.)

4 THE COURT: Thank you. There are none.

5 Thank you. Please be seated.

6 Ms. Savas, if you would please stand, introduce
7 yourself, any persons who will be assisting you
8 throughout this trial.

9 MS. SAVAS: Thank you, Your Honor.

10 Good morning. My name is Nina Savas, and I'm
11 Assistant Solicitor here in Charleston County under
12 Scarlett Wilson. To my right is Assistant Solicitor Alex
13 Ziegler who is helping me on this case. I also have my
14 investigator with our office, Investigator Ken Barfield,
15 and our case agent is North Charleston Police Department
16 Detective Chris Terry.

17 THE COURT: Thank you. Is there any member of the
18 jury panel related by blood, marriage, close personal
19 friend, ever have any business, personal, professional
20 dealings with Ms. Savas or Mr. Ziegler? If so, please
21 stand.

22 Yes, ma'am? Your jury number and name?

23 POTENTIAL JUROR: 253. I'm Carole Swiecicki. I
24 don't personally know the attorneys but my place of
25 business, which is the Dee Norton Lowcountry Children's

1 Center, has been involved with Scarlett.

2 THE COURT: All right. Is there anything about
3 that that would affect your ability to be fair and
4 impartial in this case?

5 POTENTIAL JUROR: No, ma'am.

6 THE COURT: And your jury number?

7 POTENTIAL JUROR: 253.

8 THE COURT: Thank you.

9 Is there anyone else?

10 (There was no response.)

11 THE COURT: Thank you. There are none.

12 Any member of the jury panel related by blood,
13 marriage, close personal friend, ever have any business,
14 personal, professional dealings with the solicitor's
15 investigator, Kenny Barfield? If so, please stand.

16 (There was no response.)

17 THE COURT: Thank you. There are none.

18 Any member of the jury panel related by blood,
19 marriage, close personal friend, ever had any matters
20 handled by Detective Terry with the North Charleston
21 Police Department? If so, please stand.

22 (There was no response.)

23 THE COURT: Thank you. There are none.

24 Any member of the jury panel ever been employed by
25 or have a friend that is employed by, do any business

1 with or have any matters handled by the Ninth Circuit
2 Solicitor's Office, and there's an office in Charleston
3 and Berkeley, or the Ninth Circuit Public Defender's
4 Office, also an office in Charleston and Berkeley. If
5 so, please stand.

6 POTENTIAL JUROR: 253. The one I knew is Scarlett
7 Wilson's Office with the Ninth Judicial Circuit
8 Solicitor's Office.

9 THE COURT: And same question to you. Anything
10 about that that would affect your ability to be fair and
11 impartial in this case?

12 POTENTIAL JUROR: No, ma'am.

13 THE COURT: Do you know Mr. Ziegler, Ms. Savas,
14 Mr. Malloy, or Ms. Ford?

15 POTENTIAL JUROR: No.

16 THE COURT: Thank you.

17 Is there anyone else?

18 (There was no response.)

19 THE COURT: Thank you. There are none.

20 Ladies and gentlemen, I'm now going to call a list
21 of potential witnesses who may be called to testify. If
22 you know these individuals in any capacity please stand
23 as I call their name. Maria Davila; Candace Singleton;
24 Kleta Garrett; Sergeant Darrin Cobb with the North
25 Charleston Police Department; Officer Joshua Pierce with

1 the North Charleston Police Department; Officer Travis
2 Repman with the North Charleston Police Department,
3 formerly; Officer Sean Bauer with the North Charleston
4 Police Department; Officer Kory Morian with the North
5 Charleston Police Department; Master Patrol Officer
6 Winston Williams with the North Charleston Police
7 Department; Detective Ruben Serrudo with the North
8 Charleston Police Department; Sergeant Joseph Niemiec
9 with the North Charleston Police Department; Officer
10 Thomas Wallace with the North Charleston Police
11 Department; Detective Terry, again, the case agent with
12 the North Charleston Police Department; Detective Robert
13 Bailey, North Charleston Police Department; Alex Teachey,
14 North Charleston Police Department; Shawnta Middleton,
15 North Charleston Police Department; Charles Benton, North
16 Charleston Police Department; Al Hallman, formerly with
17 the North Charleston Police Department; Kevin Sherbine,
18 North Charleston -- excuse me, Charleston County
19 Department of Corrections; Angelica Loaiza, formerly with
20 the North Charleston Police Department; Jennifer Clayton
21 with the South Carolina Law Enforcement Division,
22 otherwise known as SLED; Doris Yarbrough with SLED; Amy
23 Stephens with SLED; Sheree Brown with SLED; Jackie Davis
24 with SLED; Kenny Barfield, Solicitor's Office; Lisa
25 Kubicko, North Charleston Police Department; Freddy

1 Gonzalez Gamboa; and Harry Long, who is an investigator
2 with the Public Defender's Office. Is there any member
3 of the jury panel that knows any of those individuals?

4 Yes, ma'am?

5 POTENTIAL JUROR: You mentioned Candace Singleton.
6 I don't know if that's Candace Singleton from Adams Run.

7 THE COURT: And I don't know.

8 Candace, do you have any idea, Ms. Savas?

9 MS. SAVAS: I am not sure where she was formerly
10 from.

11 THE COURT: All right. If it is, how do you know
12 Ms. Singleton?

13 POTENTIAL JUROR: From the neighborhood, from the
14 community, if that's the Candace Singleton.

15 THE COURT: If it is the Candace Singleton you know
16 is there anything about your relationship that would
17 affect your ability to be fair and impartial in this
18 case?

19 POTENTIAL JUROR: No.

20 THE COURT: And please tell me your name and juror
21 number.

22 POTENTIAL JUROR: Ophelia E. Williams, 285.

23 THE COURT: Thank you, Ms. Williams.

24 253?

25 POTENTIAL JUROR: Yes, 253, Carole Swiecicki. We

1 work -- I've worked cases with Detective Bailey and work
2 regularly with Detective Charlie Benton.

3 THE COURT: Is there anything about that
4 relationship that would affect your ability to be fair
5 and impartial in this case?

6 POTENTIAL JUROR: No.

7 THE COURT: And juror 253. Thank you.

8 Is there anyone else?

9 (There was no response.)

10 THE COURT: Thank you. There are none.

11 Any member of the jury panel employed by or
12 friends, family member employed with North Charleston
13 Police Department, either currently or formerly? If so,
14 please stand.

15 Yes, ma'am? Your jury number and name?

16 POTENTIAL JUROR: 279, Ashley White. My good
17 friend's husband is with North Charleston Police
18 Department, David Watson.

19 THE COURT: And is there anything about that that
20 would affect your ability to be fair and impartial in
21 this case?

22 POTENTIAL JUROR: No, ma'am.

23 THE COURT: Do you know any of the officers that I
24 called their name on the witness list?

25 POTENTIAL JUROR: No, ma'am.

1 THE COURT: And your jury number and name?

2 POTENTIAL JUROR: 279, Ashley White.

3 THE COURT: Thank you, Ms. White.

4 Anyone else?

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 Is there any member of the jury panel a former law

8 enforcement officer? If so, please stand.

9 (There was no response.)

10 THE COURT: Thank you. There are none.

11 Is there any member of the jury panel that served

12 on a jury before in any capacity? If so, please stand.

13 Mr. Lockhart, we will start with you. Jury number?

14 POTENTIAL JUROR: Jury number 156, Donald Lockhart.

15 I was an alternate in yesterday's case.

16 THE COURT: Was there anything about that

17 experience that would affect your ability to be fair and

18 impartial in this case?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: All right. Thank you, Mr. Lockhart.

21 Ms. Williams?

22 POTENTIAL JUROR: Ophelia E. Williams, 285. It's

23 been several years.

24 THE COURT: Here in Charleston County or somewhere

25 else?

1 POTENTIAL JUROR: Here.

2 THE COURT: And was it a criminal or civil case?

3 POTENTIAL JUROR: Civil.

4 THE COURT: Anything about that experience that
5 would affect your ability to be fair and impartial in
6 this case?

7 POTENTIAL JUROR: None.

8 THE COURT: All right. Thank you, Ms. Williams.
9 Yes, ma'am?

10 POTENTIAL JUROR: 263, Leanne Toumayan. I served
11 yesterday.

12 THE COURT: All right. Anything about that
13 experience that would affect your ability to be fair and
14 impartial in this case?

15 POTENTIAL JUROR: No, ma'am.

16 THE COURT: And your jury number one more time?

17 POTENTIAL JUROR: 263.

18 THE COURT: Thank you.

19 POTENTIAL JUROR: I'm 94, Debra Georgas. I served
20 yesterday.

21 THE COURT: Anything about that, Ms. Georgas, that
22 would affect your ability to be fair and impartial in
23 this case?

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: Thank you.

1 Yes, ma'am?

2 POTENTIAL JUROR: Jamie Hankins, 15 years ago.

3 THE COURT: Here in Charleston County?

4 POTENTIAL JUROR: Yes, ma'am.

5 THE COURT: And civil or criminal?

6 POTENTIAL JUROR: To be honest with you, I don't
7 even remember.

8 THE COURT: Was there anything about that
9 experience that would affect your ability to be fair and
10 impartial in this case?

11 POTENTIAL JUROR: No, ma'am.

12 THE COURT: All right. Thank you.

13 Yes, ma'am?

14 POTENTIAL JUROR: Keri Chaconas, 50, and I served
15 on a jury in Greenville County. That was several years
16 ago.

17 THE COURT: Criminal or civil?

18 POTENTIAL JUROR: I believe it was civil. I'm not
19 sure. I don't remember.

20 THE COURT: Anything about that that would affect
21 your ability to be fair and impartial in this case?

22 POTENTIAL JUROR: No, ma'am.

23 THE COURT: All right. Thank you.

24 Yes, ma'am?

25 POTENTIAL JUROR: Number 99, Mary Gladden, about 30

1 years ago in Charleston County, traffic violation.

2 THE COURT: Anything about that that would affect
3 your ability to be fair and impartial in this case?

4 POTENTIAL JUROR: No.

5 THE COURT: All right. Thank you.

6 Yes, ma'am?

7 POTENTIAL JUROR: 229, Melissa Rodgers. I served
8 yesterday.

9 THE COURT: Anything about that experience that
10 would affect your ability to be fair and impartial in
11 this case?

12 POTENTIAL JUROR: No, ma'am.

13 THE COURT: Thank you, Ms. Rodgers.

14 POTENTIAL JUROR: 253, Carole Swiecicki. In 2012 I
15 served on a criminal jury in Virginia Beach, Virginia.

16 THE COURT: Anything about that experience that
17 would affect your ability to be fair and impartial in
18 this case?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: Thank you, ma'am.

21 Yes, sir?

22 POTENTIAL JUROR: 32, Patrick Britzius. I served
23 yesterday.

24 THE COURT: Thank you. Anything about that
25 experience that would affect your ability to be fair and

1 impartial in this case?

2 POTENTIAL JUROR: No, ma'am.

3 THE COURT: Thank you.

4 POTENTIAL JUROR: Juror 4, Beth Andrews. I served
5 as an alternate yesterday.

6 THE COURT: And, Ms. Andrews, anything about that
7 experience that would affect your ability to be fair and
8 impartial in this case?

9 POTENTIAL JUROR: No.

10 THE COURT: All right. Thank you.

11 Yes, sir?

12 POTENTIAL JUROR: Juror number 48, Robert
13 Carnevale. I've served on various juries, federal and
14 municipal.

15 THE COURT: Anything about those experiences that
16 would affect your ability to be fair and impartial in
17 this case?

18 POTENTIAL JUROR: No, ma'am.

19 THE COURT: Thank you, sir.

20 Yes, ma'am?

21 POTENTIAL JUROR: 21 Pam Bingham. I served on a
22 civil case in Charleston County about five or six years
23 ago.

24 THE COURT: Anything about that experience that
25 would affect your ability to be fair and impartial in

1 this case?

2 POTENTIAL JUROR: No.

3 THE COURT: All right. Thank you.

4 Yes, ma'am?

5 POTENTIAL JUROR: Number 223, Melanie Richarson. I

6 served on a jury yesterday.

7 THE COURT: Anything about this experience,
8 Ms. Richardson, that would affect your ability to be fair
9 and impartial in this case?

10 POTENTIAL JUROR: No, Your Honor.

11 THE COURT: All right. Thank you.

12 Is there anyone else?

13 (There was no response.)

14 THE COURT: Thank you. There are none.

15 Is there any member of the jury panel that has ever
16 been a witness in a civil or a criminal case? If so,
17 please stand. You came and testified as a witness?

18 POTENTIAL JUROR: 253, Carole Swiecicki. I've been
19 an expert witness in several criminal and civil cases.
20 Criminal here in Charleston, and both criminal and civil
21 in the Norfolk, Virginia area.

22 THE COURT: Anything about that experience that
23 would affect your ability to be fair and impartial about
24 this case?

25 POTENTIAL JUROR: No, ma'am.

1 THE COURT: Thank you.

2 Is there any member of the jury panel that -- or a
3 member of your family, is part of an anti law enforcement
4 group or any other civil action group such as National
5 Action Network or Black Lives Matter? If so, please
6 stand.

7 (There was no response.)

8 THE COURT: Thank you. There are none.

9 Any member of the jury panel or a member of your
10 family a member of the victims' rights or law enforcement
11 organization such as Citizens Against Violent Crime,
12 People Against Rape, Mothers Against Drunk Driving? If
13 so, please stand.

14 POTENTIAL JUROR: 253, Carole Swiecicki. My place
15 of business is a children's advocacy center considered by
16 some to be a victims' rights organization.

17 THE COURT: Anything about that employment that
18 would affect your ability to be fair and impartial in
19 this case?

20 POTENTIAL JUROR: No, ma'am.

21 THE COURT: Thank you.

22 All right. Ladies and gentlemen, I have a series
23 of questions that I have determined that you will need to
24 answer in private. So please listen very carefully. I
25 have several questions. If you need to answer these

1 questions please come forward at the appropriate time.

2 Is there any member of the jury panel or a member
3 of your family that has ever had any criminal charges
4 adjudicated by the Charleston County Solicitor's Office?

5 Is there any member of the jury panel or member of
6 your family that has ever been represented by any member
7 of the Charleston County Public Defender's Office?

8 Is there any member of the jury panel, your
9 relative or close friend that has ever been the victim of
10 a crime?

11 Has any member of the jury panel or a member of
12 your family ever been arrested by the North Charleston
13 Police Department?

14 Is there any member of the jury panel that has any
15 relatives or close friend in prison?

16 Is there any member of the jury panel that has ever
17 been involved in a crime, specifically of violence, a
18 crime with a firearm, or a kidnapping? If so, I will
19 need you to come forward at the appropriate time.

20 Ladies and gentlemen, you have only heard the
21 indictments, what has been contained in the indictments,
22 which is simply the piece of paper that brings this case
23 into court. If you need to answer any of those previous
24 questions or if you feel that for some reason this case
25 is not the case that you can sit and listen to the facts

1 from the witness stand, apply the law as I give it to you
2 and render a verdict based only upon those things, for
3 whatever reason if you feel that you cannot be a fair and
4 impartial juror please move to the center and I'll speak
5 to you at this time.

6 THE BAILIFF: Juror 285.

7 (The following sidebar was reported.)

8 THE COURT: Ms. Williams, she's got to hear you.

9 POTENTIAL JUROR: Good morning. 285, Ophelia E.
10 Williams. I have a nephew who is pending a trial now.
11 He's at the Leeds Avenue Detention Center.

12 THE COURT: And is there anything -- who's
13 representing him?

14 POTENTIAL JUROR: It's a public defender. I don't
15 know.

16 THE COURT: Do you know any of these individuals?

17 POTENTIAL JUROR: No.

18 THE COURT: Is there anything about your nephew
19 being in custody and pending charges that would affect
20 your ability --

21 POTENTIAL JUROR: No.

22 THE COURT: And do you know what charges he's
23 pending.

24 POTENTIAL JUROR: He was up for a rape charge.

25 THE COURT: And obviously he's from Charleston

1 County?

2 POTENTIAL JUROR: Uh-huh.

3 THE COURT: Do you know who arrested him?

4 POTENTIAL JUROR: Charleston County --

5 THE COURT: Sheriff's Department?

6 POTENTIAL JUROR: Yeah.

7 THE COURT: All right. And, again, anything with

8 the fact that you had to share this with us that would

9 affect your ability to be fair and impartial?

10 POTENTIAL JUROR: No.

11 THE COURT: All right. Ms. Williams, what's your

12 jury number?

13 POTENTIAL JUROR: 285.

14 (The sidebar was concluded.)

15 THE COURT: 285, thank you, will remain.

16 THE BAILIFF: Juror 275.

17 (The following sidebar was reported.)

18 THE COURT: All right.

19 POTENTIAL JUROR: 275. I was a victim of domestic

20 violence, and my kids' father was him.

21 THE COURT: So did that happen here in Charleston

22 County or somewhere else?

23 POTENTIAL JUROR: Here in Charleston.

24 THE COURT: And was that individual prosecuted?

25 POTENTIAL JUROR: Uh-huh, my kids' father.

1 THE COURT: Is it the same person?

2 POTENTIAL JUROR: Uh-huh.

3 THE COURT: And so --

4 POTENTIAL JUROR: My kids' father.

5 THE COURT: Is there anything about what you shared
6 with us that would affect your ability to be fair and
7 impartial in this case?

8 POTENTIAL JUROR: No, ma'am.

9 THE COURT: And your jury number?

10 POTENTIAL JUROR: 275.

11 (The sidebar was concluded.)

12 THE COURT: 275 will remain. Thank you.

13 THE BAILIFF: Juror number 47.

14 (The following sidebar was reported.)

15 POTENTIAL JUROR: Sabrina Carman, 47. My family
16 was part of a -- my sister was dating a man who carjacked
17 and murdered a CSU student 16 years ago, and also part of
18 a criminal domestic violence.

19 My husband was abusive, put a gun to my head,
20 threatened to hold up an Advance Auto Parts and my boss.
21 So that's part of it. And then my finance was arrested
22 in North Charleston for driving under suspension.

23 THE COURT: You've shared a lot with us. Thank you
24 for sharing. Is there anything about what you've shared
25 with us that would affect your ability to be fair and

1 impartial in this case?

2 POTENTIAL JUROR: I don't think so.

3 THE COURT: Okay. I need a juror who's able to
4 listen to the facts from the witness stand, apply the law
5 as I give it and render a verdict based only upon those
6 things without any outside influence or emotions. Can
7 you be that juror?

8 POTENTIAL JUROR: Yes.

9 THE COURT: And your jury number?

10 POTENTIAL JUROR: 47.

11 (The sidebar was concluded.)

12 THE COURT: 47 will remain. Thank you.

13 THE BAILIFF: Juror number 156.

14 (The following sidebar was reported.)

15 THE COURT: Mr. Lockhart.

16 POTENTIAL JUROR: Victim of a crime, vehicle theft
17 and personal property theft.

18 THE COURT: Here in Charleston County?

19 POTENTIAL JUROR: No.

20 THE COURT: And was the individual prosecuted?

21 POTENTIAL JUROR: No, neither case.

22 THE COURT: And how long ago was that?

23 POTENTIAL JUROR: The vehicle theft would be 10
24 years ago. The property theft would be 6 years ago.

25 THE COURT: All right. Anything about what you've

1 shared with us that would affect your ability to be fair
2 and impartial in this case?

3 POTENTIAL JUROR: No, ma'am.

4 THE COURT: All right. Thank you, Mr. Lockhart.

5 (The sidebar was concluded.)

6 THE BAILIFF: Juror number 96.

7 (The following sidebar was reported.)

8 POTENTIAL JUROR: I'm not sure if this is super
9 important or not. My brother was arrested in North
10 Charleston many years ago, probably 15 years ago, for car
11 theft, theft of an auto, but he didn't have a trial
12 because the car was really his. They mistakenly arrested
13 him, very mildly, and sent him to jail. I think we got
14 him out within a few days or something like that.

15 THE COURT: Is there anything about what you've
16 shared with us that would affect your ability to be fair
17 and impartial in this case? You heard the witness list
18 and the charge against the defendant.

19 POTENTIAL JUROR: No. I think I would be fine.

20 THE COURT: Will you be able to listen to the facts
21 from the witness stand, apply the law as I give it and
22 render a verdict based only upon those things?

23 POTENTIAL JUROR: Yes, ma'am.

24 THE COURT: Tell me your jury number again.

25 POTENTIAL JUROR: 96.

1 (The sidebar was concluded.)

2 THE COURT: 96 will remain. Thank you.

3 THE BAILIFF: Juror number 176.

4 (The following sidebar was reported.)

5 POTENTIAL JUROR: I didn't recognize Alex at first

6 but he's my neighbor.

7 THE COURT: Okay.

8 MR. ZIEGLER: Hey.

9 THE COURT: Can you be fair and impartial in this
10 case?

11 POTENTIAL JUROR: Yeah.

12 THE COURT: But you are going to have to go home
13 tonight and see him so. . .

14 POTENTIAL JUROR: I mean, he lives around the
15 corner.

16 THE COURT: Will that affect your ability to be
17 fair and impartial in this case?

18 POTENTIAL JUROR: No.

19 THE COURT: All right. When is the last time
20 you've talked to Mr. Ziegler?

21 POTENTIAL JUROR: I can't even tell you. I mostly
22 talk to his wife, actually.

23 THE COURT: And do have a relationship with his
24 wife?

25 POTENTIAL JUROR: Not really, no. If I'm walking

1 in my neighborhood we say hello.

2 THE COURT: All right. Tell me your juror number.

3 POTENTIAL JUROR: 176.

4 (The sidebar was concluded.)

5 THE COURT: 176 will remain. Thank you so much.

6 Is there anyone else?

7 (There was no response.)

8 THE COURT: Thank you.

9 (The following bench conference was reported.)

10 THE COURT: And you want me to --

11 MS. SAVAS: Yes, Your Honor. Number 11 was, Does

12 any member of the jury panel or family members have a

13 strong opinion of North Charleston Police Department?

14 Also, number 17 was, Do any members have any strong

15 opinions on law enforcement, prosecutors and current

16 events?

17 THE COURT: All right. I think that's encompassed

18 in the general questions.

19 Any other questions?

20 MR. MALLOY: No.

21 THE COURT: Any challenges?

22 MS. FORD: I just wanted to bring to everybody's

23 attention, it wasn't anything major, but one of the

24 jurors, he hasn't stood up and I don't know his name,

25 Monday when I was at the elevators waiting to go to

1 lock-up he just kept, like, trying to talk to me, just
2 about the elevators and such. It's like, I'm going down
3 because, you know, everybody else is going up.

4 THE COURT: What was he trying to talk to you
5 about?

6 MS. FORD: Just the elevators, really. He just
7 kept trying to engage.

8 THE COURT: All right. What's his juror number
9 again?

10 POTENTIAL JUROR: It's the older man with the
11 suspenders.

12 MR. MALLOY: Yeah, he was trying to talk to the
13 attorneys during jury qualifications.

14 MS. FORD: I think he's just super friendly-like,
15 but that was the extent of our conversation.

16 THE COURT: Any challenges for cause?

17 MS. SAVAS: No.

18 THE COURT: Any challenges for cause?

19 MR. MALLOY: No.

20 THE COURT: All right. Strikes are five and 10.

21 (The bench conference was concluded.)

22 THE COURT: Ladies and gentlemen, just one final
23 question. Is there any reason that any of you feel --
24 you've heard the facts that are -- the allegations
25 contained in the indictment as well as the witnesses who

1 will come and testify. If for whatever reason you feel
2 that this is not the case for you to sit on as a fair and
3 impartial juror, please come forward at this time.

4 (There was no response.)

5 THE COURT: Thank you.

6 Madam Clerk, strikes are five and 10. Use one
7 alternate.

8 THE CLERK: Yes, ma'am.

9 Ladies and gentlemen, when I call your name and
10 number please stand, grab all your personal belongings,
11 head through those double doors right there straight to
12 the podium, turn and face both of those parties, please.

13 Juror number 289, Lynn Wincenciak.

14 (A white female came forward.)

15 THE CLERK: What say you for the State?

16 MS. SAVAS: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MR. MALLOY: Please excuse the juror.

19 THE CLERK: Ma'am, you may have a seat back in the
20 audience. You've been excused from the trial in this
21 case.

22 Juror number 202, Thomas Obrien.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MS. SAVAS: Please seat this juror.

1 THE CLERK: What say you for the defendant?

2 MR. MALLOY: Please excuse this juror.

3 THE CLERK: Sir, you may have a seat back in the

4 audience. You've been excused from the trial in this

5 case.

6 Juror number 278, Angela Webb.

7 (A female came forward, race unknown.)

8 THE CLERK: What say you for the State?

9 MS. SAVAS: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. MALLOY: Please seat this juror.

12 THE CLERK: Ma'am, if you will head up right there

13 and have a seat in the jury box. You've been selected as

14 a juror in the trial of this case.

15 Juror number 223, Melanie Richardson.

16 (An Oriental female came forward.)

17 THE CLERK: What say you for the State?

18 MS. SAVAS: Please seat this juror.

19 THE CLERK: What say you for the defendant?

20 MR. MALLOY: Please seat this juror.

21 THE CLERK: Ma'am, please have a seat in the jury

22 box. You've been selected as a juror in the trial of

23 this case.

24 Juror number 285, Ophelia Williams.

25 (A black female came forward.)

1 THE CLERK: What say you for the State?

2 MS. SAVAS: Please excuse this juror.

3 THE CLERK: Ma'am, have a seat back in the
4 audience. You have been excused from the trial in this
5 case.

6 Juror number 13, Lorena Bauer.

7 (A white female came forward.)

8 THE CLERK: What say you for the State?

9 MS. SAVAS: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. MALLOY: Please seat this juror.

12 THE CLERK: Ma'am, head up that ramp right there
13 and have a seat in the jury box. You've been selected as
14 a juror in the trial of this case.

15 Juror number 32, Patrick Britzius.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MS. SAVAS: Beg the Court's indulgence.

19 (PAUSE.)

20 MS. SAVAS: Please excuse this juror.

21 THE CLERK: Sir, you may have a seat back in the
22 audience. You've been excused from the trial in this
23 case.

24 Juror number 21, Pamela Bingham.

25 (A white female came forward.)

1 THE CLERK: What say you for the State?

2 MS. SAVAS: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MR. MALLOY: Please seat the juror.

5 THE CLERK: Ma'am, please have a seat in the jury
6 box. You've been selected as a juror in the trial of
7 this case.

8 Juror number 99, Mary Gladden.

9 (A white female came forward.)

10 THE CLERK: What say you for the State?

11 MS. SAVAS: Please seat this juror.

12 THE CLERK: What say you for the defendant?

13 MR. MALLOY: Please seat this juror.

14 THE CLERK: Ma'am, please have a seat in the jury
15 box. You've been selected as a juror in the trial of
16 this case.

17 Juror number 50, Keri Chaconas.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MS. SAVAS: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MR. MALLOY: Please seat this juror.

23 THE CLERK: Ma'am, please have a seat in the jury
24 box. You've been selected as a juror in the trial of
25 this case.

1 Juror number 157, Maia Florianodaguilar.
2 (A white male came forward.)
3 THE CLERK: What say you for the State?
4 MS. SAVAS: Please seat the juror.
5 THE CLERK: What say you for defendant?
6 MR. MALLOY: Please seat this juror.
7 THE CLERK: Sir, please have a seat in the jury
8 box. You have been selected as a juror in the trial of
9 this case.
10 Juror number 4, Elizabeth Andrews.
11 (A white female came forward.)
12 THE CLERK: What say you for the State?
13 MS. SAVAS: Please seat this juror.
14 THE CLERK: What say you for the defendant?
15 MR. MALLOY: Please excuse this juror.
16 THE CLERK: Ma'am, you may have a seat back in the
17 audience. You have been excused from the trial in this
18 case.
19 Juror number 48, Robert Carnevale.
20 (A white male came forward.)
21 THE CLERK: What say you for the State?
22 MS. SAVAS: Please seat this juror.
23 THE CLERK: What say you for the defendant?
24 MR. MALLOY: Please seat this juror.
25 THE CLERK: Sir, please have a seat in the jury

1 box. You've been selected as a juror in the trial of
2 this case.

3 Juror 121, Robert Harrington.

4 (A white male came forward.)

5 THE CLERK: What say you for the State?

6 MS. SAVAS: Beg the Court's indulgence.

7 THE COURT: Take your time.

8 (PAUSE.)

9 MS. SAVAS: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. MALLOY: Please seat this juror.

12 THE CLERK: Sir, you can have a seat in the jury
13 box. You've been selected as a juror in the trial of
14 this case.

15 Juror number 96, Mark Gibbs.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MS. SAVAS: Please excuse this juror.

19 THE CLERK: Sir, you may have a seat back in the
20 audience. You have been excused from the trial in this
21 case.

22 The State has now used three of their five strikes.

23 Juror number 20, James Bewley.

24 (A white male came forward.)

25 THE CLERK: What say you for the State?

1 MS. SAVAS: Beg the Court's indulgence.

2 (PAUSE.)

3 MS. SAVAS: Please excuse this juror.

4 THE CLERK: Sir, you may have a seat back in the

5 audience. You have been excused from the trial in this

6 case.

7 Juror number 97, Corina Gibson.

8 (A black female came forward.)

9 THE CLERK: What say you for the State?

10 MS. SAVAS: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. MALLOY: Please seat this juror.

13 THE CLERK: Ma'am, please have a seat in the jury

14 box. You have been selected as a juror in the trial of

15 this case.

16 Juror number 47, Sabrina Carman.

17 (A white female came forward.)

18 THE CLERK: What say you for the State?

19 MS. SAVAS: Please seat the juror.

20 THE CLERK: What say you for the defendant?

21 MR. MALLOY: Please excuse this juror.

22 THE CLERK: Ma'am, you may have a seat back in the

23 audience. You've been excused from the trial in this

24 case.

25 Juror number 262, Raynight Toomer.

1 (A black male came forward.)

2 THE CLERK: What say you for the State?

3 MS. SAVAS: Beg the Court's indulgence.

4 (PAUSE.)

5 MS. SAVAS: Please excuse this juror.

6 THE CLERK: Sir, please have a seat back in the

7 audience. You have been excused from the trial in this

8 case.

9 And the State has now used all their strikes.

10 Juror number 176, Jamie Mills.

11 (A white female came forward.)

12 THE CLERK: Any challenges from the State?

13 MS. SAVAS: No.

14 THE COURT: What say you for the defendant?

15 MR. MALLOY: Please excuse this juror.

16 THE CLERK: You may have a seat back in the

17 audience. You've been excused from the trial in this

18 case.

19 The defendant has now used five of their 10

20 strikes.

21 Juror number 94, Debra Georgas.

22 (A white female came forward.)

23 THE CLERK: Any challenges from the State?

24 MS. SAVAS: No challenges.

25 THE CLERK: What say you for the defendant?

1 MR. MALLOY: Please seat this juror.

2 THE CLERK: Ma'am, please have a seat in the jury
3 box. You have been selected as a juror in the trial of
4 this case.

5 Juror number 275, Olivia Washington.

6 (A black female came forward.)

7 THE CLERK: Any challenges from the State?

8 MS. SAVAS: No, ma'am.

9 THE CLERK: What say you for the defendant?

10 MR. MALLOY: Please excuse this juror.

11 THE CLERK: Ma'am, you may have a seat back in the
12 audience. You've been excused from the trial in this
13 case.

14 Juror number 222, Keith Reek.

15 (A white male came forward.)

16 THE CLERK: Any challenges from the State?

17 MS. SAVAS: No.

18 THE CLERK: What say you for the defendant?

19 MR. MALLOY: Please excuse this juror.

20 THE CLERK: Sir, you may have a seat back in the
21 audience. You have been excused from the trial in this
22 case.

23 Juror number 119, Dianne Hanlon.

24 (A white female came forward.)

25 THE CLERK: Any challenges from the State?

1 MS. SAVAS: No, ma'am.

2 THE CLERK: What say you for the defendant?

3 MR. MALLOY: Please seat the juror.

4 THE CLERK: Ma'am, please have a seat in the jury
5 box. You've been selected as a juror in the trial of
6 this case.

7 Juror number 118, Jamie Hankins.

8 (A white female came forward.)

9 THE CLERK: What say you for the State?

10 MS. SAVAS: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. MALLOY: Please excuse this juror.

13 THE CLERK: Ma'am, please have a seat back in the
14 audience. You've been excused from the trial in this
15 case.

16 Juror number 279, Ashley White.

17 (A white female came forward.)

18 THE CLERK: What say you for the State?

19 MS. SAVAS: Please seat the juror.

20 THE CLERK: What say you for the defendant?

21 MR. MALLOY: Please excuse the juror.

22 THE CLERK: Ma'am, you may have a seat back in the
23 audience. You have been excused from the trial in this
24 case.

25 And the defendant has now used both of their

1 strikes.

2 Juror number 249, Terry Smith.

3 (A black female came forward.)

4 THE CLERK: What say you for the State?

5 MS. SAVAS: Please seat this juror.

6 THE CLERK: Any challenges from the defendant?

7 MR. MALLOY: No challenges.

8 THE CLERK: Ma'am, please have a seat in the jury
9 box. You have been selected as an alternate in the trial
10 of this case.

11 Your Honor, the jury is seated.

12 THE COURT: Thank you.

13 Ladies and gentlemen, you have been selected as the
14 jury to try this case. Is there any reason at this point
15 that you feel that you would be unable to fulfil that
16 obligation? If so, please stand.

17 (No jurors stood.)

18 THE COURT: Thank you. All 13 jurors have
19 indicated that they are able to serve as jurors in this
20 case.

21 Ladies and gentlemen, please be escorted to your
22 jury room.

23 (WHEREUPON, the jury leaves the courtroom at
24 approximately 11:05 a.m.)

25 THE COURT: Thank you. Please be seated.

1 Outside the presence of the jury, any motions or
2 matters from the State?

3 MS. SAVAS: No Your Honor.

4 THE COURT: From the defense?

5 MR. MALLOY: None from the defense.

6 THE COURT: Ladies and gentlemen, you were not
7 selected to try this case. We have completed all the
8 matters for which we will need you for the week. So I
9 want to first of all thank you for your service to
10 Charleston County. We could not have done our jobs here
11 this week if you had not shown up. Some of you have been
12 with me all week and some of you now have been here more
13 than one time. So I do appreciate you being here.

14 Ladies and gentlemen, you are done so you have
15 earned your exemption for the next three years. I look
16 forward to seeing you in three years. So good luck to
17 each of you. Thank you so much. I just want to
18 personally thank you for your service to Charleston
19 County. Thank you. You are free to go.

20 (The jury panel leaves the courtroom.)

21 THE COURT: All right. We are ready to proceed?

22 MS. SAVAS: Yes, Your Honor.

23 MR. MALLOY: Your Honor, I do have one matter that
24 was just brought to my attention by Ms. Savas regarding
25 some pawn records that show that my client's girlfriend's

1 number is the same one listed on the Craigslist ad that's
2 at issue in this case. I don't think it should be
3 admissible and especially this late in the game.

4 THE COURT: I'm not sure in what context. And
5 please understand, I know very little about this case.

6 MR. MALLOY: We can deal with it when and if it
7 comes up.

8 THE COURT: All right. Please do. Thank you.
9 Anything before we bring in the jury?

10 MS. SAVAS: Nothing from the State.

11 MR. MALLOY: Nothing from the defense.

12 THE COURT: Now would again be a time if you want
13 to take your comfort break.

14 (A brief recess was taken.)

15 THE COURT: Anything before we bring in the jury?

16 MS. SAVAS: Nothing from the State, Your Honor.

17 MR. MALLOY: Nothing from the defense.

18 THE COURT: Please rise for the jury.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 11:22 a.m.)

21 THE COURT: Thank you. Please be seated.

22 Ms. Richardson, you have been selected as the
23 jury's foreperson here today, and so what that means
24 simply is if you have concerns or questions please let
25 your foreperson know. She will alert the bailiff and

1 we'll handle the matter as quickly as we can. She is
2 your spokesperson here in court.

3 Ms. Richardson, you are also responsible for
4 writing the verdict, but I'll give you further
5 instructions at the end of the trial.

6 Ladies and gentlemen, you have been given notepads
7 which signifies to the Court that you may take notes.
8 One juror's notes are no more correct or accurate than
9 another juror's notes. You may take those notes with you
10 during your deliberation.

11 If you need, at any point during your
12 deliberations, to hear testimony played back we will
13 bring you back in the courtroom and play that for you.
14 So don't feel that you have to take down word for word
15 what is happening before you.

16 Ladies and gentlemen, the exhibits that are made
17 part of the record in this case will go back with you
18 during your deliberations. So if you don't have an
19 opportunity to see those when they are being admitted
20 they will come back with you during your deliberations.

21 You may have noticed when you came in this time the
22 attorneys and the members of the audience were standing.
23 This is out of respect for your new position as judges of
24 the facts. So please come in and have a seat.

25 There are only two assigned seats;

1 Ms. Richardson's, as foreperson, and then the alternate,
2 Ms. Smith. So those two seats, you need to be in those.
3 The rest of you may sit wherever you choose.

4 Ladies and gentlemen, we must now administer an
5 oath to you.

6 Madam Clerk.

7 (The jury was given their oath.)

8 THE COURT: Thank you. Let the record reflect all
9 13 jurors have accepted the oath.

10 Ladies and gentlemen, thank you for accepting the
11 important responsibility of jury service and for your
12 contribution today to our justice system. What I now say
13 is intended to serve as an introduction to the trial of
14 this case. These remarks are not a charge on the law.

15 I will instruct you on the law applicable to this
16 case throughout the trial and at the end of the trial
17 before you retire to consider your verdict. I take this
18 opportunity to explain to you the procedures that we'll
19 follow so that you'll be able to understand what is
20 happening before you.

21 Mr. Jenkins is charged in four indictments filed in
22 this Court with the crime of carjacking, kidnapping,
23 armed robbery, and possession of a weapon during the
24 commission of a violent crime. I will explain those
25 elements of those four charges to you at a later time.

1 The indictment is simply the charge by which this
2 case is brought into the court. It is not in any sense
3 evidence of the allegations that each indictment
4 contains. The defendant has pled not guilty to each
5 indictment. The State always has the burden of proving
6 the defendant guilty beyond a reasonable doubt. It is
7 your duty, ladies and gentlemen, to determine whether the
8 State has met its burden.

9 Your purpose as jurors is to find and determine the
10 facts. You are the sole judges of the facts in this
11 case. If at any time I make any comment regarding the
12 facts in this case you must disregard that comment. It
13 is important that you perform your duty of determining
14 the facts diligently and conscientiously because
15 ordinarily there is no way to correct an erroneous
16 determination of the facts by the jury.

17 On the other hand, and with equal emphasis, the
18 same law that makes you the judges of the facts makes me
19 the judge of the law. The law as given by this Court is
20 the only law that you may follow. You must accept it and
21 follow it even though you may disagree with it.

22 Your job is to take the law as I give to it you,
23 apply it to the facts as you find them from the testimony
24 of the witnesses and the other evidence that is
25 introduced. After doing that you will render a true and

1 just verdict under the solemn oath that you just took.

2 Until I tell you that you may deliberate you must
3 not discuss this case with anyone. That does include
4 your fellow jurors, your friends, your family members or
5 anyone else.

6 Ladies and gentlemen, you may not have face-to-face
7 discussions but you also may not make any posts on
8 Facebook or any other social internet media cite. You
9 may not text about this case, blog about this case.
10 Simply put, you must not discuss this case with anyone in
11 any fashion until I tell you otherwise.

12 You must decide this case based solely on the
13 evidence that is presented here in this courtroom. You
14 must not conduct any independent research about this
15 case, you must not read, watch, listen to any news
16 accounts regarding this case should there be any. If you
17 become aware of another juror's violations you must
18 report that to me immediately.

19 It is important that you keep an open mind and not
20 decide any issue in this case until all of the evidence
21 has been presented, the parties have made their closing
22 arguments and I have instructed you on the law applicable
23 to this case.

24 It is your solemn responsibility to determine the
25 guilt or innocence of the defendant and your verdict must

1 be based upon the evidence as presented to you here and
2 on the law as I instruct you during the trial.

3 In just a moment the solicitor will make what is
4 called an opening statement in which the solicitor will
5 explain to you the issues in this case. The attorney for
6 the defendant may also make an opening statement,
7 although he is not required to do so at this time.

8 The evidence in this case will be presented to you
9 by the testimony of sworn witnesses from the witness
10 stand as well as the exhibits that are made part of the
11 record in this case.

12 From time to time you may hear one of the attorneys
13 state an objection or I might have the attorneys approach
14 or I might find it necessary to excuse you from the
15 courtroom for a short while.

16 If I have the attorneys approach please don't try
17 to read our lips or overhear what we are saying. If I
18 excuse you from the courtroom please do not think we are
19 trying to hide anything from you. Sometimes it is
20 necessary for me to make a comment on the facts in order
21 to issue a ruling on the law so I may excuse you for a
22 short while, so that in no way anything that I say or do
23 during that ruling or throughout the progress of this
24 trial that you think I have any opinion about the facts
25 in this case. The law does not allow me to have an

1 opinion about the facts in this case. This is solely a
2 matter for you to determine.

3 In determining what the true facts are in this case
4 you must decide whether or not the testimony you hear is
5 believable. It is my responsibility to determine as a
6 matter of law whether certain testimony is admitted, but
7 whether or not you believe it is solely for you to
8 determine.

9 In deciding whether to believe a witness you have
10 the right to consider the interest of a witness, the bias
11 of the witness, the prejudice of that witness, the
12 opportunity for the witness to have seen and heard the
13 things about which the witness testifies as well as the
14 way the witness acts on the witness stand. That means
15 it's your duty to pay close attention.

16 Please do not let your thoughts wander so at the
17 end of the testimony after you have heard closing
18 arguments on the behalf of counsel and I have instructed
19 you on the law applicable to this case you will be in a
20 position to determine what the true facts are, apply the
21 law to those facts and render a verdict based only upon
22 those things.

23 Ladies and gentlemen, please give your attention.
24 The solicitor will give you the opening statement.
25 Please pay attention. Thank you.

1 Ms. Savas?

2 MS. SAVAS: Thank you, Your Honor. May it please
3 the Court?

4 THE COURT: Yes, ma'am.

5 MS. SAVAS: Maria Davila is in her 20's, and back
6 in September 2013 when this incident took place she
7 desperately needed a new cell phone. So like most young
8 people her and her, at-that-time boyfriend, Freddy, when
9 they needed to buy something sort of expensive and you
10 don't have that much money because you are young, you are
11 just starting out, you turn to the internet. So
12 naturally they went to Craigslist. They've done this
13 before and typically what happens is Freddy will make the
14 initial contact and then the two of them will go meet
15 whoever to buy or sell what they are trying to get.

16 Now, they are aware of the internet. You never
17 know who's on the other end. You never know who you are
18 talking to. There's dangerous stories out there, and for
19 Maria, unfortunately, it wasn't just a story. It became
20 an absolutely horrific reality.

21 Maria is here today. She's seated in front, and
22 you will see her throughout the trial, and she will
23 bravely sit up on this stand and confront this man and
24 testify and tell her truth. She will tell that nightmare
25 of a story of what happened to her back in September.

1 On September 12, 2013, Maria was on the internet
2 and she found a Samsung Galaxy S4. Back then those were
3 the phones, back a few years ago. So she really wanted
4 it. So Freddy takes his phone, calls the number on
5 Craigslist ad and begins the conversation.

6 Freddy calls, a female answers. They talk about
7 specifics and they agree let's meet. I want to buy your
8 phone. My wife really wants this phone. So the female
9 setting up this deal suggests, okay, let's meet at the
10 Waffle House on Aviation Avenue in North Charleston.
11 That intersection over 26 and Aviation. They say, Okay.
12 We'll do it that night.

13 The night of September 12 Freddy and Maria take
14 their car and they go wait in the Waffle House parking
15 lot. Well, they waited and they waited. Nobody showed.
16 Freddy calls back this female seller. We are here.
17 Where are you?

18 Makes up an excuse. I can't make it. Let's do it
19 tomorrow around lunchtime.

20 Okay. Well, Freddy says, I have to work. It's
21 Friday. So my wife will be coming alone.

22 So the next day Maria goes back to the Waffle House
23 alone. Now, she tries to meet up at lunchtime but before
24 that she has some time in the morning so she goes to the
25 laundromat. So she takes her clothes from the

1 laundromat, folds them, puts them in her car, goes back
2 to that Waffle House. About one o'clock is when she
3 finally gets there.

4 Well, she waiting. Where is she? She now has her
5 sister-in-law's phone to use because she doesn't have
6 one. So she's texting again that female seller from that
7 phone number off Craigslist. I'm here. Where are you?
8 She doesn't see anyone.

9 I can't make it. My boyfriend is coming. He will
10 meet you. What kind of car do you have?

11 Maria gives a description of her car. It's a green
12 Jaguar. Maria looks around seeing if she notices
13 anybody. Now she is at the Waffle House. Just across
14 the street is the Kangaroo. She looks around, she
15 notices this black male in a green hat and white shirt
16 kind of wandering through the Kangaroo.

17 She asks, Is he wearing a green hat? All of a
18 sudden that black male approaches her. A little too
19 close though, makes her a little uncomfortable. Maria
20 politely asks, Okay, do you have your phone?

21 Now, at this time Maria got out of her car. She's
22 standing outside of her vehicle outside the driver's car
23 at the Waffle House. The man approaches. Do you have
24 the phone? May I see it before I give you the money?

25 He didn't have a phone. He pulls up his white

1 T-shirt and in his waistband is a gun. Then he pulls out
2 the gun and points it at her. She's terrified,
3 immediately terrified. He then forces her into her car,
4 her own car, puts her in the passenger seat and he forces
5 himself into her driver's seat, shut the door, puts it in
6 drive and begins to kidnap her and drive her around North
7 Charleston.

8 He drivers her so far they are at Aviation, and
9 we'll show you maps. He goes up to Ashley Phosphate,
10 goes back down Rivers, ends up under 526 overpass,
11 through the entire time threatening to kill her and shoot
12 her and take her life. He took her cell phone that she
13 was using from her sister-in-law, took her money, and
14 took control of that car.

15 Finally, after what felt like a very long time for
16 Maria, dumps her off under an overpass in the dangerous
17 neighborhood of Russelldale. She doesn't know where she
18 is. She has no money, she has no wallet, she has no
19 phone. He forces her out of the car and tells her, Don't
20 look back or I will kill you. Drives away.

21 Maria is scared for her life still, walks straight,
22 doesn't turn around. Some time passes by. Maria
23 remembered just before they turned that corner to that
24 bridge overpass she saw a nice looking man in his front
25 yard on his cell phone. She starts to run back and goes

1 and finds that stranger, asks him for his cell phone in
2 shear panic. May I use your phone? I need to call 911.

3 Maria calls 911 from that location. Police come.
4 They respond to the scene. Maria is in pure panic, has a
5 panic attack. They now need EMS to calm her down. EMS
6 comes. They take care of Maria. Officers take her back
7 to the police department.

8 Now, they BULO out her car, be on the lookout. Her
9 car is missing. He stole her car. Officers shortly
10 thereafter located her vehicle in the nearby neighborhood
11 of Russelldale, and it's abandoned in an apartment
12 complex, just sitting there. Officers take that vehicle
13 and they take it in for examination.

14 Now, Maria had mentioned that she was doing her
15 laundry. Well, while he was driving her car he took one
16 of her shirts and he was clever. He held it on the
17 steering so he wouldn't leave prints behind. He wiped
18 all his prints off. Well, it worked. They couldn't
19 locate any prints or touch DNA.

20 A few hours later officers then receive a tip. It
21 then takes them to the Budget Inn right near Aviation
22 Avenue. Across Aviation from the Waffle House is Fain
23 Avenue, Fain Boulevard, and that's the Budget Inn hotel.
24 It's a skeevy (phonetic) little hotel, and in there is a
25 little bar called the Hideaway Lounge.

1 They go and they locate this woman named Candace
2 Singleton. She's staying in room 242. They go there in
3 attempts to look for her. They do a bar check, make sure
4 everybody is 21 years of age at this bar. Turns out
5 Ms. Singleton doesn't have her ID. She willingly takes
6 officers up to her room. She was living there at the
7 time. I'll get me ID for you and show you I'm above 21
8 years old. Takes her back, gives them consent to enter.
9 She says, Here is my ID. This is who I am.

10 Officers in plain view locate a pill bottle and on
11 that pill bottle the prescription is labeled to
12 Mr. Chavias Jenkins, the defendant in this case. They
13 ask her who he is. That's my boyfriend. They take her
14 into the police department for questioning.

15 From that point on they make a photo lineup and
16 they call Ms. Maria back a couple days later. They call
17 her back to do this photo lineup where she instantly
18 picks out Chavias Jenkins as the man who held her at
19 gunpoint, threatened her life, took her car, took her
20 money, took the cell phone and abandoned her under 526.

21 Mr. Jenkins is ultimately charged with armed
22 robbery, kidnapping, carjacking, possession of a weapon
23 during the commission of a violent crime.

24 Now, the State must prove this beyond a reasonable
25 doubt. That is my burden to prove. That is something

1 that we don't take lightly, which is why you will hear
2 from a lot of witnesses this afternoon and into tomorrow
3 morning. Don't get caught up yet on exactly what those
4 mean. In closing arguments we will review everything
5 that we've heard and the Judge will direct you as to how
6 to apply that to this case.

7 I am confident at the end of this trial, by
8 tomorrow morning you will take Ms. Maria Davila's word
9 and you will find the defendant guilty on all charges.
10 Thank you.

11 THE COURT: Mr. Malloy?

12 MR. MALLOY: Thank, Your Honor.

13 No one denies that Maria Davila experienced an
14 extremely traumatic event on September 13, 2013. No one
15 denies that. The solicitor gave the first part of her
16 opening statement though assuming that Mr. Jenkins was
17 the one who committed the robbery.

18 I'm not going to belabor the point with the
19 elements of the charges that we're here for today or the
20 standard of proof for reasonable doubt because
21 Mr. Jenkins is not the man who committed this robbery.

22 After this horrifying experience that Ms. Davila
23 went through in September 2013 she provided this
24 description of the man who robbed her. Black male,
25 six-feet, medium build, and that's it, went on to

1 describe some clothes but didn't give any other details
2 or any other additional description of the man who robbed
3 her. Thousands of men -- hundreds, probably thousands of
4 men in North Charleston alone would fall within this
5 description.

6 And from that description, the police created a
7 photo lineup and Mr. Jenkins' photo ended up in that
8 lineup, and the only reason he is here today is because
9 his photo happened to get picked out of that lineup, and
10 this photo lineup is not as reliable as the solicitor
11 would have you believe. The lineup process is suggestive
12 in itself. It's open to human error both --

13 MS. SAVAS: Objection, Your Honor, argumentative.

14 THE COURT: Overruled.

15 Ladies and gentlemen, this is an opening statement.
16 As I indicated to you, that is not evidence. It's merely
17 what Mr. Malloy believes that the evidence will show.
18 Thank you.

19 MR. MALLOY: The photo lineup itself is not as
20 reliable as the solicitor would have you believe. It's
21 open to human error, both by the person who is selecting
22 photos out of the lineup and the person administering the
23 lineup. Maria was presented with six black and white
24 photos of black men. You'll see it.

25 Even the lineup itself shows that Mr. Jenkins'

1 photo stands out compared to the other photos in the
2 lineup, and obviously Ms. Davila wanted the robber in
3 this case to be caught. She's still affected by this
4 incident today. She wanted to aid the police in their
5 investigation, so she was going to make a selection to
6 try to help them find the robber in this case.

7 I'm not saying that Maria lied or somehow falsely
8 incriminated Mr. Jenkins in any way. I'm just saying
9 that she was mistaken, and even two days after the
10 robbery when she made her selection in the photo lineup,
11 even then she admitted she could not be sure.

12 Now, you must view this lineup, the only evidence
13 in this case that the State is relying on to bring these
14 charges before you. You must view this lineup in light
15 of the other evidence in this case or the lack thereof.
16 You must consider the scientific evidence, forensic
17 evidence, such as fingerprints and DNA.

18 If Mr. Jenkins was the robber he would have left
19 his DNA in that car and they would have been able to tell
20 whether it was his. His fingerprints would have been all
21 over the inside of the vehicle.

22 Crime scene responded to the vehicle very quickly,
23 as the solicitor said, and they did their job. They
24 collected the evidence. None of the DNA was able to be
25 matched to Mr. Jenkins and none of the fingerprints

1 matched. In fact, he was excluded as the possible person
2 to leave his fingerprints. The science doesn't lie.
3 It's not subject to human error.

4 The State's case simply does not add up to prove
5 beyond a reasonable doubt, and when you've see all the
6 evidence, when this trial is over you will not be
7 convinced that Mr. Jenkins committed this crime.
8 Thank you.

9 THE COURT: Call your first witness.

10 MS. SAVAS: Thank you, Your Honor. The State calls
11 Fred Gamboa.

12 FREDDY GONZALES GAMBOA, after having been
13 duly sworn, testified as follows:

14 THE CLERK: And for the record, if you could state
15 your first and last name and spell out your last name,
16 please.

17 THE WITNESS: Freddy Gamboa. Freddy is
18 F-r-e-d-d-y. Gamboa, G-a-m-b-o-a.

19 THE COURT: Gonzales?

20 THE WITNESS: Oh, Gonzales. G-o-n-z-a-l-e-s.

21 THE COURT: Thank you. Thank you.

22 Ms. Savas, your witness.

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

25 DIRECT EXAMINATION

- 1 BY MS. SAVAS:
- 2 Q. Morning, Mr. Gamboa.
- 3 A. Morning, ma'am.
- 4 Q. Mr. Gamboa, how are you involved in this incident?
- 5 A. I was the one that called the lady.
- 6 Q. Okay.
- 7 A. Which I don't know who she is but. . .
- 8 Q. And do you know Ms. Maria Davila?
- 9 A. Yes.
- 10 Q. How do you know her?
- 11 A. She is my wife.
- 12 Q. Okay. And were you together back in September
- 13 2013?
- 14 A. Yes.
- 15 Q. Okay. And, Mr. Gamboa, back in September 2013 you
- 16 said you had called a lady?
- 17 A. Yes.
- 18 Q. And what were you calling a lady about?
- 19 A. It was about a phone that I saw on Craigslist.
- 20 Q. Okay. So you called the phone number on the
- 21 Craigslist ad?
- 22 A. Yes.
- 23 Q. And at that time did you call off of your cell
- 24 phone?
- 25 A. Yes. It was off my cell phone.

1 Q. Do you know what company your cell phone was
2 through?

3 A. I think it was T-mobile at that time.

4 Q. Okay. And when you called this phone number you
5 said it was a female?

6 A. Yes, it was a female.

7 Q. And did you coordinate the original meeting to buy
8 this phone?

9 A. No --

10 Q. Did you set up to meet?

11 A. No. I tried to negotiate the phone with her. I
12 call -- you want me to explain?

13 Q. Yes. Go ahead.

14 A. I called the -- I call the lady, right, and tried
15 to lower the price of the phone and she said, No, that's
16 it. But I thought about it because on the ad she had
17 announced that she needed the money, and we needed the
18 phone so I called the lady and told her, Hey, listen, if
19 you lower a little bit more I have the money. You need
20 the money and we make a deal, and she agreed.

21 And then she told me, Okay, then let's do it. And
22 she told me to meet at Waffle House, right in front of
23 Waffle House. I think it was around nine.

24 I went and go ahead to the place, waited there.

25 She said that she was going to get there. Waited there,

1 she never showed up, and we kept on waiting there for
2 like an hour. And I decided to call her back. She said
3 that her dad was going to be there. And we waited a
4 little longer. She never showed up. Call her back again
5 she said her dad had left the place because she didn't --
6 he didn't see no one there.

7 After that, we left the Waffle House and we decided
8 that we was going to go the next day to get the phone.

9 Q. And when you're talking about the Waffle House, is
10 this on Aviation Avenue?

11 A. Yes.

12 Q. Okay. And did you end up rescheduling to meet with
13 her?

14 A. Yeah. We were supposed to meet the next day around
15 after I got off work but my wife kept on insisting the
16 next day that she really needed the phone and wanted the
17 phone, so I went and go ahead and called the lady again
18 and she told me that it was fine, that we could meet --
19 she could meet with my wife and --

20 Q. So she would meet with your wife alone?

21 A. Yes.

22 Q. Did you tell the female that your wife would be
23 alone?

24 A. Yeah. I told her that it was just going to be my
25 wife. I couldn't be there.

1 Q. Okay. And so the first time you tried to go
2 together, right?

3 A. Yes. The first time we went together.

4 MS. SAVAS: May I approach, Your Honor?

5 THE COURT: You may.

6 Q. Mr. Gamboa, I'll show you what's been pre-admitted
7 into evidence as State's Exhibit Number 11. Do you
8 recognize this?

9 A. Yes. That's the phone and -- oh, yeah. It was 350
10 and I think we lowered it to 265.

11 Q. Okay. And what is that picture showing?

12 A. The phone and the case.

13 Q. Okay.

14 A. She said it was going to include the case.

15 MS. SAVAS: At this time, Your Honor, may the State
16 publish Exhibit Number 11 to the jury?

17 THE COURT: You may.

18 Q. Mr. Gamboa, is this that Craigslist ad that you had
19 called the phone number from?

20 A. Yes.

21 Q. And that is the phone that you are attempting to
22 buy with your wife?

23 A. Yes, that's the one.

24 MS. SAVAS: Beg the Court's indulgence.

25 (PAUSE.)

1 MS. SAVAS: Nothing further.

2 THE COURT: Mr. Malloy?

3 MR. MALLOY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MALLOY:

6 Q. Good morning.

7 A. Morning, sir.

8 Q. The Craigslist ad that was just shown, did you
9 provide that to the police?

10 A. No.

11 Q. You didn't provide that --

12 A. No. My wife screen shot it. Yeah. I think we
13 screen shot it because we would look at phones but we
14 would lose track of which phone and which number it was
15 so she took a picture of that.

16 Q. All right. So your wife took a picture of that?

17 A. Yeah.

18 Q. And you said that initially you tried to set up a
19 meeting on Thursday. This would have been September the
20 12th, 2013, correct?

21 A. I don't remember the day.

22 Q. The day before the robbery occurred, correct?

23 A. Yeah.

24 Q. And you never saw anybody on that day, correct?

25 A. No. I think -- no, I don't think we saw anybody

1 there.

2 Q. And on the day of the robbery you were not with
3 Maria, correct?

4 A. (There was no response.)

5 Q. You did not see the man who robbed her, correct?

6 A. No. I'm trying to remember if I seen somebody that
7 night but I don't think I did, no.

8 Q. Okay. And you didn't see the person who robbed
9 Maria, correct?

10 A. No. I did not know.

11 MR. MALLOY: Thank you.

12 THE COURT: Redirect?

13 MS. SAVAS: No, Your Honor.

14 THE COURT: You may step down. Feel free to stay
15 with us but you are free to leave.

16 Call your next witness.

17 MS. SAVAS: Thank you, Your Honor. The State calls
18 Maria Davila.

19 MARIA DAVILA, after having been duly sworn,
20 testified as follows:

21 THE CLERK: And for the record, if you could State
22 your first and last name and spell out your last name,
23 please.

24 THE WITNESS: Maria Davila, D, as in David, -a-v,
25 as in Victor, -i-l-a.

1 DIRECT EXAMINATION

2 BY MS. SAVAS:

3 Q. Good morning, Maria.

4 A. Good morning.

5 Q. Maria, how old are you?

6 A. I'm 22.

7 Q. And where are you originally from?

8 A. I'm originally from Florida. I was born and raised
9 in a small town, everybody knows everybody. There's no
10 fancy restaurants or anything like that. A really small
11 town.

12 Q. And where do you currently live?

13 A. In South Carolina here.

14 Q. What city?

15 A. Summerville.

16 Q. And back in September 2013 where did you live?

17 A. Charleston.

18 Q. When did you move from Charleston to -- from
19 Florida to Charleston?

20 A. I was about -- I believe I was 14 because I
21 remember my mom was thinking about doing a whole
22 quinceanera and stuff.

23 Q. And, Maria, are you married?

24 A. Not legally but in my culture we say we are married
25 because we've been together for awhile.

1 Q. And who is your husband?

2 A. Freddy Gamboa.

3 Q. And do you have any children?

4 A. I have a little girl.

5 Q. And how old is she?

6 A. She's going to be two in January.

7 Q. And what's her name?

8 A. Sophia.

9 Q. Sophia. And, Maria, were you with Freddy back in
10 2013?

11 A. Yes.

12 Q. But Sophia was not born yet, was she?

13 A. No, not yet.

14 Q. Maria, back in 2013 were you looking for a cell
15 phone?

16 A. Yes.

17 Q. And tell us a little bit about that. How were you
18 trying to find a phone?

19 A. Me and my husband always get online. We always get
20 on Craigslist because you could find good deals there,
21 furniture or just anything. So we were looking for a
22 phone because I really needed it. I came across this ad
23 and I thought the price was good. At the time, the phone
24 was one of the ones everyone wants, and I really wanted
25 it so I kept insisting and insisting for him to call, and

1 he gave the number a call.

2 Q. And what happened after he called that phone
3 number?

4 A. We tried to negotiate the price. I know on the
5 Craigslist ad I remember it stating the person that put
6 the Craigslist ad had a house fire or something like
7 that. So we tried to negotiate that. We told her, Hey,
8 I need a phone, you need the money. Let's try to help
9 each other out in that aspect.

10 He contacted her. She disagreed with the price
11 that we offered her. Then he called her back again and
12 told her another price. She agreed. So then they made
13 an arrangement for us to meet. I believe it was that
14 same night.

15 Q. And where did you go meet?

16 A. The Waffle House on Aviation.

17 Q. And what happened when you went there?

18 A. We went, we waited. It was already dark. We were
19 waiting. She never showed. My husband called her. She
20 didn't answer. He called her again wondering what was
21 going on, why wasn't she showing up. Then she said that
22 her father had went there. He, I guess, went up to
23 someone else and tried to sell the phone to that person
24 and they said they were -- they weren't -- he contacted
25 the wrong person, I guess, so he left. So then they

1 agreed to meet up the next day.

2 Q. But that's what she had at least told your husband?

3 A. That's what she told my husband.

4 Q. So what happened when they agreed to meet the next
5 day?

6 A. My husband told her that I was going to go because
7 he was going to be working and he can't just leave work
8 like that. And I didn't have nothing to do the next day
9 so I went, did my laundry. And my husband told me that
10 he was going to meet with her after he got out of work
11 but I kept insisting, insisting, insisting, so I borrowed
12 my sister-in-law's phone to contact her to let her know
13 that I was going to go.

14 My husband let her know that I was going to go.
15 She knew I was going to go alone. I went, and I waited
16 for her. She never showed. She cancelled. She said
17 that her boss wasn't letting her out. She said she was
18 going to get out at lunchtime. That's what she told me,
19 her boyfriend was going to meet me.

20 Q. So she told you that her boyfriend was going to
21 come meet you instead of her?

22 A. Yes.

23 Q. And when you were waiting there what happened? Did
24 you see anyone?

25 A. I didn't see anyone at first but then I saw -- I

1 saw two black males. I seen one just kind of coming from
2 the Sunoco. I think it's a gas station. I don't know
3 which gas station it is, by the Waffle House. I seen one
4 ask her where was he. She didn't reply. Then I seen one
5 just going to the Waffle House, so I assumed it wasn't
6 him. Then I seen one wandering with a green hat, and
7 then I text her and asked her was he wearing a green hat
8 and that's the last time I text with her.

9 Q. Did you tell her what kind of car you were in?

10 A. Yes. She asked me. I had told her I was driving a
11 green Jaguar at the time. I didn't think much of it. I
12 thought she was just going to maybe park next to me. I
13 didn't think much of it when she asked me.

14 Q. So what happened after you told her the car and
15 then you asked if her boyfriend was wearing a green hat?

16 A. She just stopped texting me, and I seen a male
17 coming like straight at me, like walking towards my car.
18 So then I got out of the car, out my car at the time. I
19 closed the door. The car, I believe, was still on. I
20 stood next to the driver's side. He came up to me. I
21 asked him for the phone. He got so close. I could kind
22 of feel like something was wrong but I guess I didn't
23 process it, and that's when he took out his gun.

24 Q. And what went through your head when you saw his
25 gun?

1 A. I don't remember. I feel like my mind just was
2 everywhere, I guess.

3 Q. Were you scared?

4 A. Yes.

5 Q. Were you afraid that he would use the gun?

6 A. Yes.

7 Q. And what happened after he pulled out his gun and
8 pointed it at you?

9 A. He told me to get in the car. I started to get in
10 the car. He told me not to do any kind of movements or
11 anything. I was hopping into the driver's seat. He told
12 me to hop over to the passenger seat. He got in the car.
13 He started searching my car. He asked me for the phone
14 that I was using. So he took my phone, my
15 sister-in-law's phone. He took the money that I was
16 going to give him for the phone. He just started looking
17 through my car, I guess seeing what else there was in
18 there for him to take, but then that's when we drove off.

19 Q. And did he drive the car?

20 A. Yes.

21 Q. And were you sitting in the passenger seat?

22 A. The whole time.

23 Q. And what happened when he started driving?

24 A. We drove around. I remember telling him one time
25 he didn't have to do this.

1 Q. Do what?

2 A. I guess stealing my money, holding me in a hostage
3 situation.

4 Q. What did he say to you?

5 A. He told me to shut up or he was going to kill me.
6 There was a couple of times I would try to, I guess, tell
7 him things that didn't have to be the way it was
8 happening, and he would just tell me to shut up.

9 Q. And when he pulled out of the Waffle House did you
10 go on to the Main Street?

11 A. Yes.

12 Q. Did you go by any stoplights?

13 A. Yes. It was a stoplight -- I believe it's like
14 right next to the Waffle House.

15 Q. Did anything happen at that stoplight?

16 A. Yes. We pulled up next to a -- I believe it was a
17 red Fusion, the cars that the fire chiefs or fire
18 rescues, I don't know what they are, but one of them. We
19 pulled up next to them. I don't remember if we were
20 parked stopped a little bit ahead or a little bit behind
21 but I remember we weren't right next to it, and he told
22 me not to do anything stupid and not to move or anything.

23 Q. After you noticed the fire officer's car?

24 A. Yes.

25 Q. And after that what happened?

- 1 A. We proceeded to drive. I don't remember -- I
2 remember the route we went to. I don't remember the
3 orders we got there.
- 4 Q. How long would you say that he had been driving you
5 around in your car?
- 6 A. I don't remember. I mean, it felt like a long
7 time.
- 8 Q. Did he have the gun on him the whole time?
- 9 A. The whole time, yes.
- 10 Q. Where did he have it?
- 11 A. He had it on his lap but like in his hand, but low
12 goes to his lap pointing it towards me the whole time
13 when I was sitting on the passenger.
- 14 Q. So if you are in the passenger seat, he's in the
15 driver's seat, so he had it in his right hand?
- 16 A. Yes.
- 17 Q. Pointing it at you?
- 18 A. Yes.
- 19 Q. What was his left hand doing?
- 20 A. That's the hand he was using to steer.
- 21 Q. He was driving?
- 22 A. Yes.
- 23 Q. Did he take anything else in your car at that time?
- 24 A. Yes. That day I had done laundry before I went to
25 meet the -- when I was supposed to meet the lady, and I

1 remember he reached back like this (indicated) and there
2 was my basket behind him, and he got one of my shirts. I
3 remember it was my blue Folly Beach shirt.

4 Q. You remember specifically what kind of shirt it
5 was?

6 A. Yeah. It was my favorite shirt.

7 Q. Your favorite shirt. And what did he do with your
8 favorite shirt?

9 A. He started to wipe down the gear, you know where
10 you put the car in park or drive. He wiped down the door
11 on the driver's side and he wiped down the steering
12 wheel, and I believe for a few minutes he was driving
13 with the shirt on the actual steering wheel.

14 Q. So he's wiping down all the places that he had
15 touched?

16 A. Yes.

17 Q. And after he was doing that and he held you at
18 gunpoint and you're driving around did he finally stop
19 the car?

20 A. Yes. When he stopped, we stopped -- I remember it
21 was under a bridge. I didn't know the area. I've been
22 around the area but I just never knew what it was called
23 until they located me and told me the area, I think
24 Russelldale.

25 Q. And what happened when he came to this bridge?

- 1 A. He told me to get off, not to look back, and he
2 took off. I got out of the car.
- 3 Q. Did he tell you anything else?
- 4 A. He was going to kill me.
- 5 Q. How many times did he say that to you?
- 6 A. About three, three or four.
- 7 Q. Did you believe him?
- 8 A. Yes.
- 9 Q. So you thought that he could actually kill you?
- 10 A. If he wanted to he would.
- 11 Q. And what happened when you finally got out of the
12 car?
- 13 A. I got out of the car, I just walked, probably a few
14 seconds, a few minutes. I don't know. It felt long. I
15 turned around, he was gone. Then I remembered when we
16 drove by there was this black heavy-set male standing
17 outside. He saw us drive by because his head turned when
18 he was -- when we were driving by.
- 19 So I ran up to the guy and asked him for his phone
20 because I remember seeing him being on his phone, and he
21 told me, Yeah. He gave me his phone. He asked me, Is
22 that your boyfriend? Did he hit you.
- 23 And I said, No, he robbed my car, and I just called
24 911.
- 25 Q. How were you feeling at that point now when you

1 finally saw this man and called 911?

2 A. I guess reality hit. I just -- scared but in a way
3 it felt -- I don't know how to explain it.

4 Q. And when you called 911 did the police come?

5 A. Yes.

6 Q. And what happened when they came?

7 A. They came. I don't remember the first officer. I
8 remember Detective Terry because I sat in his car. He
9 kept telling me to take deep breaths and I had, like, a
10 panic attack. EMS came and then just --

11 Q. Can you describe the panic attack? What do you
12 mean by that?

13 A. My hands would shake. I felt like I couldn't
14 breathe.

15 MR. MALLOY: I'd object to relevance, Your Honor.

16 (WHEREUPON, a bench conference was had off the
17 record.)

18 THE COURT: Overruled. You may answer.

19 BY MS. SAVAS:

20 Q. What happened after the officers came?

21 A. They asked me for the description. They asked me
22 about my car, where was my car. I explained to them.
23 EMS came and I just remember them calling it in and then
24 being at the police station.

25 Q. And so you gave the officers the description of

1 your car?

2 A. Yes.

3 Q. Maria, I'm going to show you what's been marked as

4 State's Exhibit Number 11. Maria, what is this?

5 A. That's the Craigslist ad that we contacted.

6 Q. And it seems sort of far away. Maria, can you

7 please read that description of the ad.

8 A. Yes. It says Galaxy S4 Sprint, 350. In

9 Charleston. Brand new. No scratches. Ready for sale.

10 350 OBO, which stands for or best offer. The phone

11 number is (843) 642-██████. Call. I'll be up all night.

12 It's a Sprint phone. I can send you pictures, also. I

13 had a bad house fire so I have to sell it.

14 Q. And that's when you decided to negotiate and see,

15 that she seemed wanting to sell the cell phone?

16 A. Yes.

17 Q. Maria, I'm going to show you a series of pictures,

18 State's -- admitted into evidence as State's Exhibits

19 Numbers 1 through 10. Do you recognize these photos?

20 A. Yes.

21 Q. Just take a quick look at them. You can cycle

22 through them all.

23 A. It's the Waffle House that I was at, Aviation

24 Avenue that I was at, the trailer park where he turned

25 at. He just did a U-turn at the trailer park. My old

1 apartment complex. I remember the blue house when we
2 went over the little bridge. This is the road. I see
3 the bridge where I was dropped off at. There's the
4 location where I was dropped off, the bridge, and this
5 was the -- I'm not sure if they are like duplexes or
6 apartments. I don't know what it is but where that man
7 lent me his phone.

8 MS. SAVAS: At this time, Your Honor, the State
9 wishes to publish to the jury State's Exhibits 1 through
10 10.

11 THE COURT: You may.

12 Q. Maria, I'm going to take you through these photos
13 to just describe, sort of walk through and explain the
14 pictures. Maria, this is the Waffle House you were
15 talking about at Aviation?

16 A. Yes.

17 Q. And is this that gas station you mentioned?

18 A. Yes.

19 Q. And so you had parked your car along here
20 somewhere?

21 A. Yes.

22 Q. I'm going to show you what's been marked as State's
23 Exhibit Number 2. Maria, is that a close-up view of the
24 Waffle House?

25 A. Yes.

- 1 Q. And if you could point, where about did you park
2 your car that day?
- 3 A. The day of the incident I parked where the truck is
4 at but like towards the --
- 5 Q. Right here?
- 6 A. It was near -- it was the last parking spot there.
- 7 Q. Okay. And so from that spot could you see clear
8 across to that gas station?
- 9 A. Yes.
- 10 Q. And in which direction did you see that black male
11 coming?
- 12 A. He was coming from the gas station. There's like
13 this little grass area next to the Waffle House and he
14 came between that little walkway.
- 15 Q. Maria, I'm showing you State's Exhibit Number 3.
16 What is this a picture of?
- 17 A. Aviation Avenue.
- 18 Q. And is this the direction in which he took you
19 first?
- 20 A. Yes.
- 21 Q. So that's 26 east to Charleston and 26 west to
22 Columbia?
- 23 A. Yes.
- 24 Q. And, Maria, State's Exhibit Number 4, do you
25 recognize this area?

- 1 A. Yes.
- 2 Q. What is this a picture of?
- 3 A. That's the trailer park where he went into the dirt
- 4 road. He did a U-turn in there.
- 5 Q. Maria, State's Exhibit Number 5, what is this a
- 6 photo of?
- 7 A. My old apartment complex.
- 8 Q. Did you drive by that?
- 9 A. Yes.
- 10 Q. So he drove you by your own apartment complex?
- 11 A. Yes.
- 12 Q. Did he ask you any questions in regards to where
- 13 you lived?
- 14 A. Yes. I don't remember when he asked but I do
- 15 remember him asking me where did I live, and I told him
- 16 that I could not tell him.
- 17 Q. Why didn't you tell him where you lived?
- 18 A. I didn't want him to come looking for me.
- 19 Q. Maria, State's Exhibit Number 6, what is this a
- 20 picture of?
- 21 A. That's the area that's like a few minutes before I
- 22 was dropped off. We went over that -- with the blue
- 23 house that street going straight, we went over that
- 24 bridge.
- 25 Q. Maria, this is State's Exhibit Number 7. What is

- 1 this a picture of?
- 2 A. That's the street. If you see the bridge, under
- 3 the bridge is where he dropped me off. So that's that
- 4 street leading to the bridge.
- 5 Q. State's Exhibit Number 8, what's this?
- 6 A. The bridge where I was dropped off. I was dropped
- 7 off the second one.
- 8 Q. State's Exhibit Number 9, is this just a close-up
- 9 of that bridge?
- 10 A. Yes.
- 11 Q. So whereabouts would you say that he dropped you
- 12 off?
- 13 A. On the road. You see the shadowing under the
- 14 second bridge?
- 15 Q. Around here?
- 16 A. Around there. On the right side. We were heading
- 17 that direction (indicated).
- 18 Q. Which way did you walk when he told you to get out
- 19 of the car?
- 20 A. The way we were coming so he went straight and I
- 21 came back the way we drove.
- 22 Q. State's Exhibit Number 10, what is this a photo of,
- 23 Maria?
- 24 A. I'm not sure those are apartments or duplexes but
- 25 that was the area where the black male lent me his phone

1 to call 911.

2 Q. Was he in this yard over here?

3 A. Yes.

4 Q. I'm going to show you what's been admitted into
5 evidence as State's Exhibit 12, 13, 20, 21, and 22. Do
6 these look familiar to you?

7 A. Yes.

8 MS. SAVAS: At this time, Your Honor, the State
9 wishes to publish those to the jury.

10 THE COURT: You may.

11 Q. Maria, I'm going to show you what's been admitted
12 into evidence as State's Exhibit Number 13. Maria, you
13 just described those places that you went --

14 MS. SAVAS: And additionally publish, Your Honor,
15 State's Exhibits 31 and 32.

16 THE COURT: You may.

17 Q. Maria, this is Aviation, 26. Is this about the
18 area where the Waffle House was?

19 A. Yes.

20 Q. Is it about right there?

21 A. Yes.

22 Q. And you mentioned that you went up to Ashley
23 Phosphate, correct?

24 A. Correct.

25 Q. That's Ashley Phosphate. State's Exhibit 32,

- 1 Maria, that's a zoomed-in version of that Ashley
2 Phosphate area. Does that look familiar as to 26, Ashley
3 Phosphate you're referring to?
- 4 A. Yes.
- 5 Q. And you said you had turned down a street and into
6 that trailer park?
- 7 A. Yes.
- 8 Q. And that's the trailer park that you identified in
9 that photo?
- 10 A. Yes.
- 11 Q. Maria, then after you had turned around in that
12 trailer park do you remember what major road you then
13 took?
- 14 A. I remember being down Rivers Avenue, also.
- 15 Q. Rivers Avenue?
- 16 A. Yes.
- 17 Q. Okay. That's Aviation again?
- 18 A. Yes.
- 19 Q. And then, Maria, you said you were left under a 526
20 overpass, correct?
- 21 A. Correct.
- 22 Q. And I zoomed in State's Exhibit Number 31. So here
23 we are. This is near where that blue house was where he
24 had turned around, right?
- 25 A. Correct.

- 1 Q. And he had gone through there and that's the 526
2 overpass you showed with the second bridge that he left
3 you out?
- 4 A. Yes.
- 5 Q. And then you went back up to that red house on
6 Margaret Drive?
- 7 A. Yes.
- 8 Q. Maria, State's Exhibit Number 12, so it was
9 Margaret Drive, correct?
- 10 A. Correct.
- 11 Q. And the Waffle House is up here?
- 12 A. Yes.
- 13 Q. Maria, I'm showing you State's Exhibit 20, 21.
14 Maria, what kind of car did you have at that time?
- 15 A. It was a green Jaguar. I can't remember the year
16 but it was an old Jaguar.
- 17 Q. Is that your car?
- 18 A. Yeah.
- 19 Q. Maria, State's Exhibit 22, what is this a picture
20 of?
- 21 A. My laundry basket from that day.
- 22 Q. Is that the laundry that you did when you were at
23 the laundromat before going to the Waffle House?
- 24 A. Yes.
- 25 Q. Is that the laundry basket he took your favorite

- 1 blue shirt out of?
- 2 A. Yes.
- 3 MR. MALLOY: Objection. Leading, Your Honor.
- 4 THE COURT: Watch your leading questions.
- 5 MS. SAVAS: Yes, Your Honor.
- 6 BY MS. SAVAS:
- 7 Q. Maria, State's Exhibit Number 20, what is this a
- 8 picture of?
- 9 A. The inside of my car.
- 10 Q. And during this incident when he had forced you
- 11 into your own car what seat were you in?
- 12 A. Like, after he got in the car or before?
- 13 Q. Before where were you?
- 14 A. Before? When he pulled out his gun and everything
- 15 he told me to get in the car. I opened my driver door.
- 16 I proceeded to sit on the driver's side but then he told
- 17 me to hop over to the passenger side.
- 18 Q. Is that the passenger seat?
- 19 A. Yes.
- 20 Q. And where was he sitting?
- 21 A. The driver's seat.
- 22 Q. So how close do you think the driver's and the
- 23 passenger seat is in your car?
- 24 A. Had to be less than two feet.
- 25 Q. And in which direction was he pointing the gun at

1 you?

2 A. When he's sitting like this facing the steering he
3 was pointing the gun to the right of me while sitting on
4 the passenger side.

5 MS. SAVAS: At this time, Your Honor, the State
6 wishes to publish what's been admitted into evidence as
7 State's Exhibit Number 18.

8 THE COURT: You may.

9 Q. Maria, you said that you saw a black male coming
10 from the gas station, correct?

11 A. Correct.

12 Q. And what was the description that you had given
13 about that man?

14 A. He was wearing a green hat and I remember him
15 wearing a white shirt and white shoes.

16 Q. I want you to look at this screen and see if you
17 recognize anyone?

18 A. The green hat.

19 Q. Is that the man?

20 A. That's him.

21 Q. And so you were at the Waffle House across the
22 street?

23 A. Correct.

24 Q. And about when did you notice this man coming
25 towards you?

1 A. I don't remember the time. I just remember it was
2 after the last message when I asked the girl.

3 Q. And, Maria, what time does it say on this camera
4 here?

5 A. 12:46.

6 Q. And about what time do you remember, about, going
7 to the Waffle House?

8 A. I don't remember. I just know it was around
9 lunchtime because I do my laundry early in the morning
10 because it gets really busy. So I went early in the
11 morning and did my laundry. That took about two hours
12 then I went and waited.

13 Q. Maria, I'd like to show you the other camera view
14 on that. Please let us know if you recognize anybody
15 from this.

16 A. The guy with the green hat.

17 Q. Right there?

18 A. Yes.

19 Q. And what does that time say?

20 A. 12:46.

21 Q. If I were to show you your statement would that
22 refresh your memory as to the exact time that you had
23 given officers?

24 A. Yes.

25 MS. SAVAS: May I approach the witness, Your Honor.

1 THE COURT: You may.

2 Q. Maria, in here do you see about what time you had
3 mentioned to officers?

4 A. I arrived at the Waffle House at 1:05 p.m.

5 Q. Okay. Thank you. Do you know if that was exactly
6 at 1:05 p.m., Maria?

7 A. I don't remember.

8 Q. Do you remember what time you had called 911?

9 A. No.

10 MS. SAVAS: Beg the Court's indulgence.

11 (PAUSE.)

12 Q. Maria, do you remember going back to the police
13 department?

14 A. Yes.

15 Q. And what did you do when you were there?

16 A. I went and Detective Terry told me that I had to go
17 to the back and they were going to show me some photos.
18 They told me my husband couldn't come. So my husband
19 stayed out waiting. I went to the back. They showed me
20 photos and I chose one.

21 Q. Maria, I'm going to show you --

22 MS. SAVAS: May I approach the witness, Your Honor.

23 THE COURT: You may.

24 Q. -- State's Exhibits 14, 15, and 16. Do you
25 recognize these?

1 A. Yes.

2 Q. Okay.

3 MR. MALLOY: And, Your Honor, I do have an
4 objection to this being entered pursuant to my pretrial
5 motion.

6 THE COURT: Okay. Thank you.

7 BY MS. SAVAS:

8 Q. Maria, did you do the photo lineup the same day the
9 incident happened or was it another day?

10 A. It was another day.

11 Q. Do you recall what day it was?

12 A. I don't remember. I just remember I think it was
13 late because I remember I told the detective I was
14 getting ready to go to bed and he told me that he really
15 wanted me to come in, so I came in.

16 MS. SAVAS: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q. State's Exhibit Number 14, what is this paper?

19 A. This is the report of the photo lineup.

20 Q. Is there a date on there?

21 A. Yep. September 13, 2013. This was at 10:01 p.m.

22 Q. I'm showing you State's Exhibit Number 14. So,
23 Maria, this is that form for the photo lineup?

24 A. Correct.

25 Q. And is this what the officers had explained to you

1 prior to giving you the photo lineup?

2 A. Yes.

3 Q. Okay. And what is all -- what is this?

4 A. All my signatures.

5 Q. And why did you sign this paperwork?

6 A. It was to -- I had to initial it for them to show
7 that I understood each thing that they were explaining to
8 me.

9 Q. Okay. And what is this down here, Maria?

10 A. My statement.

11 Q. Okay. And did you, in fact, make an
12 identification?

13 A. Yes.

14 Q. And which photograph did you choose?

15 A. It was the photo two.

16 Q. And can you please read what you wrote there.

17 A. Individual number two I know by the incident that
18 happened he's the guy who pulled the gun on me, drove me
19 around, stole my money and sister-in-law's phone then
20 took my car.

21 Q. And what is that here?

22 A. My signature.

23 Q. Maria, showing you --

24 MR. MALLOY: Your Honor, I object. I don't believe
25 this has already been entered into evidence.

1 THE COURT: What number is that?

2 MS. SAVAS: 14, 15, and 16.

3 THE COURT: And your objection is what?

4 (WHEREUPON, a bench conference was had off the
5 record.)

6 THE COURT: Madam Court Reporter, 13, 14, and 15
7 need to be entered noting defendant's objection.

8 Fourteen, 15, and 16. Note your objection. Thank
9 you. They are in evidence.

10 MS. SAVAS: Okay.

11 THE COURT: The rest of them you don't have an
12 objection to, correct?

13 MR. MALLOY: That's correct.

14 BY MS. SAVAS:

15 Q. Maria, I'm showing you State's Exhibit Number 15.
16 What is this a photograph -- what is this showing?

17 A. The photo lineups that they were showing me.

18 Q. And what is this over here?

19 A. The photo I chose.

20 Q. And what is that?

21 A. My initials.

22 Q. What is that?

23 A. The date.

24 Q. Okay. When they called you for that photo lineup
25 did they actually tell you whether they found the

1 suspect?

2 A. No.

3 Q. Okay. And how long would you say that you had in
4 contact with the defendant?

5 A. As in how long I was with --

6 MR. MALLOY: Object to the form of the question,
7 Your Honor.

8 THE COURT: Rephrase that question.

9 BY MS. SAVAS:

10 Q. How long do you think you were with the man that
11 had robbed you?

12 A. I don't remember. I just know it felt like a very
13 long time.

14 Q. And when you were doing this photo lineup you were
15 identifying that man from that incident?

16 A. Yes.

17 Q. And was there anything ever at any point blocking
18 his face?

19 A. No.

20 Q. Was he wearing a mask?

21 A. No.

22 Q. Could you still see with his hat on?

23 A. Yes.

24 Q. And what was it like out that day?

25 A. It was really sunny. It was daylight.

1 Q. Did you get a good view of his face?

2 A. Yes.

3 Q. About how close were you to his face at one point?

4 A. Besides sitting in the car when he walked up to me
5 probably a couple feet.

6 MS. SAVAS: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q. Would you say that between you and I he was this
9 close to you?

10 A. He got a little bit closer.

11 Q. He got closer than that? So was it this close to
12 you?

13 A. Yes.

14 Q. And that's as close as he was when he held the gun
15 to you?

16 A. When he walked up to me, yes.

17 Q. Did you see his full complete face that close?

18 A. Yes, I did.

19 Q. Did you see his face when he was in the car with
20 you, too?

21 A. Yes.

22 Q. And you saw the side of his face?

23 A. Yes.

24 Q. Did you look at him while you were in the car?

25 A. Yes, I did.

- 1 Q. Did he look at you?
- 2 A. Yes, he actually did.
- 3 Q. So even in the car you were face-to-face?
- 4 A. Yes.
- 5 Q. At the time you saw the photo lineup you said that
- 6 it was late at night. Were you still awake and
- 7 attentive?
- 8 A. Yes, I was.
- 9 Q. Did the officers ever show you a picture of him
- 10 other than the photo lineups?
- 11 A. No.
- 12 Q. Did they ever tell you which number to pick?
- 13 A. No.
- 14 Q. Did they ever make any suggestions about that?
- 15 A. Never.
- 16 Q. Did they ever tell you his name at that time?
- 17 A. No.
- 18 Q. Did they tell you you had to pick a picture?
- 19 A. No.
- 20 Q. Did you ever feel forced to pick a picture?
- 21 A. No.
- 22 Q. Did you ever know this man prior to this day?
- 23 A. No.
- 24 Q. And did you recognize the number two picture you
- 25 picked?

1 A. Yes.

2 Q. How soon did you recognize it when picking it?

3 A. As soon as I saw it.

4 Q. How certain do you think you were?

5 A. One of ten, a nine, and that was just because of
6 when I seen him in person I could see the acne scarring
7 and in the photo you can't see that scarring.

8 Q. But other than just the acne on his face that
9 looked like him?

10 A. Exactly like him.

11 Q. Exactly like him.

12 MS. SAVAS: At this time, Your Honor, the State
13 wishes to publish what has been admitted into evidence as
14 State's Exhibit Number 19.

15 THE COURT: You may.

16 MS. SAVAS: Thank you.

17 Q. Maria, you were in the detective's room during the
18 photo lineup?

19 A. Yes.

20 MR. MALLOY: Your Honor, I would have to add this
21 to my previous objection.

22 THE COURT: All right. You may publish.

23 MR. MALLOY: For State's 19.

24 (WHEREUPON, State's Exhibit Number 19, a Video of
25 the Photo Lineup, was played for the jury.)

- 1 BY MS. SAVAS:
- 2 Q. Maria, is this you in the interview room?
- 3 A. Yes.
- 4 (A portion of the video was played.)
- 5 Q. So, Maria, in that picture, the second picture, is
- 6 the one you put aside?
- 7 A. Correct.
- 8 Q. And that's the one you identified him on?
- 9 A. Yes.
- 10 Q. I want to be clear. So you said for a brief
- 11 minute, I'm not sure it's him because -- why was that
- 12 reason? What was holding you back?
- 13 A. Just because of the acne that I couldn't see it in
- 14 the photo because it was just black and white.
- 15 Q. But you recognized, as you described in there, his
- 16 hair, nose, eyes, lips?
- 17 A. Everything was the same.
- 18 MS. SAVAS: Beg the Court's indulgence.
- 19 THE COURT: Yes, ma'am.
- 20 (PAUSE.)
- 21 Q. Maria, and you are sure that you got a good look of
- 22 that man that day?
- 23 A. I'm sure.
- 24 Q. And that's the same man that you picked out of the
- 25 photo lineup?

1 A. Yeah, that's him.

2 Q. And during the course of time were you in fear of
3 your life?

4 A. Yes.

5 MR. MALLOY: Objection. Relevance.

6 THE COURT: Sustained.

7 MS. SAVAS: No further questions, Your Honor.

8 THE COURT: Ladies and gentlemen, we've reached an
9 appropriate time for us to take our lunch break. Please
10 remember all my admonitions. Do not begin discussing
11 this case. Do not talk about this case with anyone or
12 post anything about this case.

13 Please take your notepads with you. We will lock
14 them up over the lunch hour. This is the clock we are
15 using. Please be back at 1:45, 1:45. Thank you.

16 Please rise for the jury.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 12:36 p.m.)

19 THE COURT: Thank you. Please be seated.

20 Ms. Davila, you may not discuss this case with
21 anyone. We are going to break for lunch. So you can
22 talk to the solicitor or the public defender concerning
23 any scheduling but you cannot discuss your testimony with
24 anyone, and that does include your husband. All right?

25 THE WITNESS: Okay.

1 THE COURT: So I'm assuming you will probably go to
2 lunch together so do not talk about this case.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: All right. Thank you. You may step
5 down.

6 THE WITNESS: Thank you.

7 THE COURT: Anything before we break for lunch?

8 MS. SAVAS: Nothing from the State.

9 MR. MALLOY: Nothing from the defense.

10 THE COURT: All right. Just so the record is
11 clear, I heard you tell me 1 through 34 you had no
12 objections.

13 MR. MALLOY: I'm sorry. I did not realize that
14 included in that was the disk and the lineup, which was
15 obviously the subject of my pretrial Biggers hearing. I
16 thought we were just looking at, like, screen shots of
17 maps and a street view from Goggle maps.

18 THE COURT: So you are objecting to 14, 15, 16, and
19 19 pursuant to the previous hearing?

20 MR. MALLOY: Correct.

21 THE COURT: All right. Is there anything else that
22 we need to note for the record concerning 1 through 34?

23 MR. MALLOY: No, Your Honor.

24 THE COURT: All right.

25 MR. MALLOY: Unless, we want to take another look.

1 MS. SAVAS: I think that's everything.

2 THE COURT: All right. See you back -- we're off
3 the record.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Ms. Davila, please come forward and
6 take the stand. I remind you that you are still under
7 oath; do you understand?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Did you comply with my instructions
10 over the lunch hour?

11 THE WITNESS: I tried. I didn't know I was past
12 the time.

13 THE COURT: Did you speak to anybody about your
14 case?

15 THE WITNESS: No, ma'am.

16 THE COURT: All right. Thank you.

17 The jury is on its way. Anything?

18 MS. SAVAS: Nothing from the State.

19 MR. MALLOY: Nothing from the defense.

20 THE COURT: Okay. Thank you.

21 Please rise for the jury.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 1:48 p.m.)

24 THE BAILIFF: The jury is all present and seated,
25 Your Honor.

1 THE COURT: Thank you. Please be seated.

2 Ladies and gentlemen of the jury, if you complied,
3 if you followed my instructions over the lunch hour
4 please raise your right hands.

5 (All hands were raised.)

6 THE COURT: Okay. All 13 jurors indicated they
7 complied with the Court's instructions over the lunch
8 hour.

9 Mr. Malloy, your witness.

10 MR. MALLOY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MALLOY:

13 Q. Good afternoon, Ms. Davila.

14 A. Good afternoon.

15 Q. You testified that you shop on Craigslist a lot?

16 A. Yes.

17 Q. And the screen shot from Craigslist that was shown
18 earlier, you provided that to the solicitor?

19 A. Correct.

20 Q. That would have been sometime last year, correct?

21 A. Correct.

22 Q. You didn't provide screen shots to the police
23 initially, correct?

24 A. No.

25 Q. And on September 13, 2013 you arrived at the Waffle

- 1 House at approximately 1:05 p.m., correct?
- 2 A. Correct.
- 3 Q. But you had to wait for a little bit. You waited
- 4 there for a little bit before the man approached you,
- 5 correct?
- 6 A. Correct.
- 7 Q. And you testified that the man who robbed you was
- 8 wearing a hat?
- 9 A. Correct.
- 10 Q. And you had said previously that that was a dark
- 11 green hat, correct?
- 12 A. Correct.
- 13 Q. And the robber never removed his hat the entire
- 14 time, not only when he approaches you but in the vehicle
- 15 he never removed the hat, correct?
- 16 A. Correct.
- 17 Q. And the robber entered the vehicle on the driver's
- 18 side?
- 19 A. Correct.
- 20 Q. Correct. Told you to scoot over to the passenger
- 21 side?
- 22 A. Correct.
- 23 Q. The robber was not wearing gloves?
- 24 A. No.
- 25 Q. You testified earlier that the robber grabbed a

- 1 blue shirt?
- 2 A. Correct.
- 3 Q. I think it was a Folly Beach shirt?
- 4 A. Correct.
- 5 Q. And started wiping everything down, right?
- 6 A. Yes.
- 7 Q. But you never said anything about that when you
- 8 gave a statement to the police back at headquarters that
- 9 day, correct?
- 10 A. Correct.
- 11 Q. In fact, you gave a written statement on the day
- 12 you got robbed?
- 13 A. Correct.
- 14 Q. You were asked to write down everything, all the
- 15 details from the robbery, correct?
- 16 A. Correct.
- 17 Q. To the best of your knowledge?
- 18 A. Correct.
- 19 Q. Not the shorter statement that the solicitor showed
- 20 earlier when you did the lineup --
- 21 A. Yes.
- 22 Q. -- but a more detailed statement about everything
- 23 that happened, correct?
- 24 A. Correct.
- 25 Q. You didn't mention anything about the robber wiping

1 things down with the shirt at that point, correct?

2 A. I don't remember.

3 Q. You don't remember whether or not you put it in
4 your statement?

5 A. Correct.

6 Q. Have you reviewed the statement that you gave?

7 A. I believe so but I don't remember.

8 Q. Would it refresh your recollection if you were able
9 to review it today?

10 A. Yes, sir.

11 MR. MALLOY: May I approach?

12 THE COURT: You may. Thank you.

13 Q. All right, Maria. I want you to review what I just
14 handed you. Is that the statement you gave on September
15 13, 2013?

16 A. Correct.

17 Q. I want you to look and see anywhere was it
18 mentioned that the robber was wiping down the steering
19 wheel.

20 A. I don't believe I mentioned that in here. I don't
21 see it.

22 Q. Okay. And you signed this statement and at the
23 bottom it says, I've read the forgoing statement or have
24 had it read to me. It's true and correct to the best of
25 my knowledge. I've given the statement freely and

1 voluntarily and have been provided a copy of my
2 statement. That's what it says at the bottom, correct?

3 A. Correct.

4 Q. Next to your signature. And you never identified
5 -- you never gave a shirt to police or you never showed
6 them the shirt, correct?

7 A. Correct.

8 Q. And you testified that the whole time the robber
9 was also holding a gun to your side, correct?

10 A. Correct.

11 Q. And when you are in the vehicle you are viewing him
12 from the side since you are in the passenger seat; is
13 that right?

14 A. Correct.

15 Q. But also you're looking ahead because you don't
16 know where you are going?

17 A. Correct.

18 Q. You are worried about where he's taking you?

19 A. Yes.

20 Q. And you gave a detailed description of the route
21 the robber took, correct?

22 A. Very familiar with the routes he was taking me.

23 Q. You are from the area?

24 A. I'm from that area.

25 Q. These are -- tend to be higher traffic areas?

- 1 A. Correct.
- 2 Q. And this is early afternoon on Friday, correct?
- 3 A. Correct.
- 4 Q. So you were also thinking probably about waving for
- 5 help?
- 6 A. Correct.
- 7 Q. You wanted to wave for help?
- 8 A. I wanted to.
- 9 Q. And also you were focussed on the gun?
- 10 A. Correct.
- 11 Q. Because you were afraid of being shot?
- 12 A. Yes.
- 13 Q. And you gave a description of the gun for police?
- 14 A. Yes.
- 15 Q. You described it as a gray gun?
- 16 A. I believe so.
- 17 Q. And this entire time he was driving with his left
- 18 hand and holding the gun with right, correct?
- 19 A. Correct.
- 20 Q. And you are glancing at him from the side?
- 21 A. Correct.
- 22 Q. Obviously, you were extremely frightened. I think
- 23 you testified earlier your mind was everywhere?
- 24 A. Yes.
- 25 Q. When you were dropped off under the bridge you ran

- 1 to the first person you saw?
- 2 A. Yes.
- 3 Q. You said this was a heavy-set black male?
- 4 A. Yes.
- 5 Q. And he saw the two of you ride by?
- 6 A. He did.
- 7 Q. And you used his phone to call 911?
- 8 A. Yes.
- 9 Q. You testified he mentioned something asking if you
- 10 were hurt, correct?
- 11 A. Correct.
- 12 Q. You initially described the robber as a black male,
- 13 average build, six-feet-tall, between 20 and 30 years of
- 14 age, correct?
- 15 A. Correct.
- 16 Q. You didn't give a description of his hair?
- 17 A. Correct.
- 18 Q. You didn't describe his skin complexion?
- 19 A. Correct.
- 20 Q. You didn't describe his skin tone?
- 21 A. Yes.
- 22 Q. That's you didn't initially provide --
- 23 A. Correct.
- 24 Q. -- a description of the skin tone?
- 25 You didn't describe the shape of his face, correct?

- 1 A. Correct.
- 2 Q. You were viewing him from the side of the vehicle.
- 3 You didn't describe his profile or the shape of his nose
- 4 or anything, correct?
- 5 A. Correct.
- 6 Q. Didn't describe his chin?
- 7 A. Correct.
- 8 Q. You didn't describe his posture, the way he was
- 9 sitting in the driver's seat?
- 10 A. I did state he seemed nervous.
- 11 Q. He seemed nervous? But you didn't say whether he
- 12 was hunched over or too tall to be sitting in the seat or
- 13 had to move it back or anything like that, correct?
- 14 A. Correct.
- 15 Q. You said he was wearing a dark green baseball cap?
- 16 A. Correct.
- 17 Q. White T-shirt?
- 18 A. Correct.
- 19 Q. Blue jeans?
- 20 A. Correct.
- 21 Q. You weren't able to give any kind of logos on any
- 22 of the clothes, right?
- 23 A. It was just a plain white T-shirt.
- 24 Q. So only the color. You were able to describe the
- 25 colors of what he was wearing?

- 1 A. Correct.
- 2 Q. I want to ask you some questions about the photo
- 3 lineup. This was two days after you were robbed?
- 4 A. Yes.
- 5 Q. Obviously, you wanted the police to catch the
- 6 person who robbed you?
- 7 A. Correct.
- 8 Q. And you wanted to help the police find this
- 9 person --
- 10 A. Correct.
- 11 Q. -- that did this to you, correct?
- 12 A. Yes.
- 13 Q. You wanted to aid them in any way you could to help
- 14 their investigation?
- 15 A. Yes.
- 16 Q. And you were shown six photographs in a lineup, all
- 17 were black men and all photos were black and white?
- 18 A. Yes.
- 19 Q. You can only see from the neck up in those photos?
- 20 A. Yes.
- 21 Q. You were never -- these men were never standing in
- 22 front of you, correct?
- 23 A. Correct.
- 24 Q. You never were able to see a photo of their entire
- 25 body, right?

1 A. Correct.

2 Q. So you didn't know how tall they were?

3 A. Correct.

4 Q. You didn't know how they were built, correct?

5 A. Correct.

6 Q. And I think you admitted yourself something about

7 the robber having acne but it's hard to tell the

8 difference in skin complexion when you're looking at

9 black and white photos, correct?

10 A. Yes.

11 Q. And you pointed to photo number two and said that

12 it looks like him but you weren't sure if it was him?

13 A. Correct.

14 Q. And you never gave a statement at that time about

15 how confident you were in your identification, correct?

16 A. Correct.

17 MR. MALLOY: No further questions.

18 THE COURT: Redirect?

19 MS. SAVAS: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. SAVAS:

22 Q. Maria, officers responded to the place you called

23 911, didn't they?

24 A. Correct.

25 Q. Do you think in your written statement that was

1 taken latter at the police department you put everything
2 that you knew in that statement?

3 A. I don't believe so.

4 Q. Do you think that you may have told Detective Terry
5 something that you didn't put in that statement?

6 A. I don't remember.

7 Q. Do you recall telling Detective Terry at the scene
8 that the robber was wiping down the steering wheel and
9 parts of the car?

10 A. I might have. I don't remember.

11 Q. Maria, did you actually see the robber wiping down
12 your car with your blue Folly Beach shirt?

13 A. Yes.

14 Q. And you are confident that you saw him do that?

15 A. I know he did.

16 Q. Okay. Maria, Mr. Malloy asked you that you didn't
17 wave for help. Did you?

18 A. No.

19 Q. Why didn't you?

20 A. I was afraid.

21 Q. What were you afraid of?

22 MR. MALLOY: Your Honor, I'll object to relevance
23 again.

24 THE COURT: Overruled.

25 A. Of him shooting me.

1 Q. Did you believe he was going to shoot you?

2 A. Yes.

3 Q. Did he threaten you that he was going to shoot you
4 if you did something?

5 A. Yes.

6 Q. Did it cross your mind to wave for help, Maria?

7 A. Yes.

8 Q. Did you feel that you were unable to do so or you'd
9 get killed?

10 A. Yes.

11 Q. Maria, how close was that gun to you?

12 A. Not even a foot away, probably. Probably a foot.

13 I mean, we were sitting right next to each other.

14 Q. Maria, Mr. Malloy said that you saw the side of his
15 face while he was in the driver's seat and you were in
16 the passenger. Did you ever see the front of his face?

17 A. Yes.

18 MR. MALLOY: I object to leading as well, Your
19 Honor.

20 THE COURT: Please watch your leading questions.
21 Thank you.

22 Q. Maria, about how many times did you see the front
23 of that man's face?

24 A. From the beginning? Is that what you are asking?

25 Q. (Nodded).

1 A. Probably four, probably even more. I remember when
2 he first walked up I was looking straight at his face
3 walking up to me, over when we were in the car. I
4 remember looking at him. I would turn and I remember
5 when I told him he didn't have to do this and I remember
6 when he asked me where did I live. I remember him
7 looking at me. He turned and looked at me. Those couple
8 of times -- to be honest, I don't remember how many
9 times, but he knows that he looked at me in that car.

10 Q. Maria, regarding the photo lineup, did you feel
11 forced to pick a picture?

12 A. No.

13 Q. Did you feel forced even if you did want the police
14 to catch this bad man?

15 A. No.

16 Q. Maria, are you confident that that number two photo
17 was the man that did this to you?

18 A. Yes. I know that's him.

19 MS. SAVAS: Nothing further, Your Honor.

20 THE COURT: Mr. Malloy?

21 RECROSS-EXAMINATION

22 BY MR. MALLOY:

23 Q. I want to take you back to that initial statement
24 you gave on September 13th. You didn't mention anything
25 about times you looked him in the face while you were in

1 the car, correct?

2 A. Correct.

3 MR. MALLOY: Court's indulgence.

4 (PAUSE.)

5 MR. MALLOY: No further questions.

6 THE COURT: You may step down. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MS. SAVAS: Thank you, Your Honor. The State calls
10 Sergeant Darrin Cobb.

11 DARRIN COBB, after having been duly sworn,
12 testified as follows:

13 THE CLERK: And for the record, if you could state
14 your first and last name and spell out your last name,
15 please.

16 THE WITNESS: My name is Darrin Cobb. The last
17 name is C-o-b-b.

18 DIRECT EXAMINATION

19 BY MS. SAVAS:

20 Q. Good afternoon. What agency do you work for?

21 A. I work for the North Charleston Police Department.

22 Q. And what is your official job title there?

23 A. I am a patrol sergeant. I'm currently a shift
24 supervisor for the north area for day shift.

25 Q. And how long have you been a sergeant?

- 1 A. Sergeant, probably six years.
- 2 Q. And as a police sergeant what are some of your job
3 duties?
- 4 A. Primarily I supervise patrol officers who answer
5 the 911 calls and do proactive patrols.
- 6 Q. And were you in the same position back on September
7 13, 2013?
- 8 A. Same job description different bureau. I currently
9 supervise the north end, and at that time I supervised
10 the central part of the city.
- 11 Q. Okay. And so at that time part of your job was to
12 answer to 911 calls?
- 13 A. Primarily supervise but a lot of times if I'm
14 closer I'll answer the calls myself.
- 15 Q. And how were you specifically involved in this
16 case?
- 17 A. I actually heard a dispatch call for a kidnapping
18 with the victim being located on Margaret Drive.
- 19 Q. Do you remember specifically that address?
- 20 A. I believe they put it out as [REDACTED] Margaret.
- 21 Q. And do you know the address from which the victim
22 was kidnapped from?
- 23 A. It was the Waffle House on Aviation Avenue. I
24 think the address is 2657, but it's definitely the Waffle
25 House on Aviation.

1 Q. If I show you a report to refresh your memory would
2 that help you?

3 A. Yes.

4 MS. SAVAS: May I approach the witness?

5 THE COURT: You may.

6 Q. Sergeant Cobb, can you see the address?

7 A. I believe it says 2357 Aviation Avenue.

8 Q. And, Sergeant Cobb, in which city is that in?

9 A. North Charleston.

10 Q. And what county?

11 A. Charleston County.

12 Q. Okay. Sergeant Cobb, when you arrived on the scene
13 on Margaret Drive what did you observe?

14 A. I located the victim standing out by the roadway
15 and I tried to interview her about what had happened.

16 Q. And can you please described her appearance.

17 A. She was excited, nervous. She started to -- when I
18 tried to question her about what happened she started to
19 hyperventilate. So I called EMS to have her checked out.

20 Q. And did EMS come to the scene to give her aid?

21 A. They did. They responded and provided her with
22 oxygen and eventually she started to calm down.

23 Q. Was there a determination whether weapons were
24 involved?

25 A. She had informed me that the subject involved, the

1 suspect in this had a black in color handgun.

2 Q. Did she give you a description of the route of the
3 kidnapping?

4 A. She did.

5 Q. And did she tell you whether anything was taken
6 from her?

7 A. She did. An amount of money. I don't remember the
8 exact amount but it was a sum of \$300, as well as her
9 telephone, in addition to her vehicle.

10 Q. And what happens if someone's car is stolen?
11 What's typical protocol?

12 A. Typical protocol upon receiving notification first
13 thing we do is we issue a BOLO, or be on lookout for,
14 which the dispatchers put over the radio channels, and if
15 it's not located immediately then we will have the
16 vehicle placed in NCIC so that if a police officer runs
17 that vehicle anywhere in the country it will show up as
18 stolen.

19 Q. Sergeant Cobb, you are familiar with the North
20 Charleston area?

21 A. I am.

22 Q. I'm going to show you what's been admitted State's
23 Exhibit Number 12. Sergeant Cobb, can you make out as to
24 -- is this area familiar to you in regard to this
25 incident?

1 A. It is.

2 Q. And what is important about this map?

3 A. Where the red dot is for Margaret Drive, that shows
4 where I came into contact with the victim.

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

6 THE COURT: Take your time.

7 (PAUSE.)

8 MS. SAVAS: Nothing further from the State.

9 THE COURT: Mr. Malloy?

10 MR. MALLOY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MALLOY:

13 Q. Good afternoon, Sergeant Cobb.

14 A. Good afternoon.

15 Q. Per your report you arrived at Ms. Davila's
16 location at 13:48 hours?

17 A. I'm not looking at the report but what I put on the
18 report should be accurate.

19 Q. Okay. Would it help you out if you were able to
20 have it in front of you right now?

21 A. Yes. It should show my dispatch and arrival times.

22 MR. MALLOY: May I approach the witness?

23 THE COURT: You may.

24 Q. Is this a copy of your report, Officer Cobb?

25 A. It is.

- 1 Q. So 13:48 hours, we're talking 1:48 p.m., correct?
- 2 A. Actually, it shows dispatched at 13:45, which is
- 3 1:45 in the afternoon, and arrival is showing at 1:50
- 4 p.m. or 13:50 hours.
- 5 Q. So dispatch is 1:45?
- 6 A. According to what I've written in here in the
- 7 report, yes. Generally, we ask for case number times.
- 8 Q. Ms. Davila made contact with someone on Margaret
- 9 Street and used their phone to call 911, correct?
- 10 A. That's my understanding, yes.
- 11 Q. Did you interview this person whose phone she used?
- 12 A. No. I don't recall interviewing anybody else. I
- 13 was trying to get information from her.
- 14 Q. Did you see this person?
- 15 A. I don't recall seeing him.
- 16 Q. You weren't able to locate anyone who witnessed
- 17 Ms. Davila being dropped off?
- 18 A. No. I don't recall finding anyone who observed
- 19 that.
- 20 Q. Pretty soon after you located Ms. Davila officers
- 21 located her vehicle, correct?
- 22 A. That's correct.
- 23 Q. That's on Kerry Street?
- 24 A. That's correct.
- 25 Q. Did you respond to that location on Kerry Street?

- 1 A. I did.
- 2 Q. This location is not far away from Margaret Street
- 3 where Ms. Davila was found, right?
- 4 A. It's the Ferndale neighborhood. It's not very far.
- 5 It's separated by Rivers Avenue.
- 6 Q. Okay. You say it's less than a mile?
- 7 A. Between the two points as a crow flies, yes.
- 8 Q. This is a pretty good distance from the Waffle
- 9 House on Aviation though?
- 10 A. Yes.
- 11 Q. Probably three miles?
- 12 A. Roughly.
- 13 Q. And her vehicle was secured in order to preserve
- 14 any potential evidence, correct?
- 15 A. I know that crime scene responded and I believe
- 16 they wound up taking the vehicle back to City Hall for
- 17 processing.
- 18 Q. Okay. Crime scene responded. While you were
- 19 present no one entered the vehicle other than crime scene
- 20 to -- or touched anything inside the vehicle, correct?
- 21 A. I don't recall anybody going into the vehicle. I
- 22 don't think I stayed until crime scene was done.
- 23 Q. And you noted in your report the driver's seat was
- 24 pulled forward as though a short person had recently been
- 25 in the vehicle?

1 A. I remember looking at that when I was looking into
2 the vehicle.

3 MR. MALLOY: No further questions.

4 MS. SAVAS: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. SAVAS:

7 Q. Sergeant Cobb, in regards to the seat being pulled
8 forward, did you actually see anyone do that?

9 A. Pull the seat forward?

10 Q. Yes.

11 A. No. No. I just remember when I got there I
12 believe Officer Bauer had located the vehicle and I
13 proceeded over there and once I was there I took a look.
14 I walked around the vehicle, not going in it but to take
15 a look.

16 MS. SAVAS: Nothing further.

17 MR. MALLOY: No follow up.

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

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Call your next witness.

22 MS. SAVAS: May he be excused?

23 THE WITNESS: May I go back to work or do I need to
24 stay?

25 THE COURT: You are excused but feel free to stay

1 with us. Thank you.

2 MR. ZIEGLER: The State calls Officer Bauer of the
3 North Charleston Police Department.

4 SEAN BAUER, after having been duly sworn,
5 testified as follows:

6 THE CLERK: And for the record if you could state
7 your first and last name and spell out your last name,
8 please.

9 THE WITNESS: Sean Bauer. The last name is spelled
10 B-a-u-e-r.

11 THE COURT: Mr. Ziegler?

12 MR. ZIEGLER: Thank you, Your Honor. May it please
13 the Court.

14 DIRECT EXAMINATION

15 BY MR. ZIEGLER:

16 Q. Good afternoon, Officer Bauer.

17 A. Good afternoon.

18 Q. What police agency are you a member of?

19 A. I am with the North Charleston Police Department.

20 Q. How long have you been with the department?

21 A. I have been with the department 10 years.

22 Q. And what sort of -- just to summarize, what roles
23 have you had with the police department?

24 A. I have been a patrol officer for most of my career
25 and I did a little stint in detectives as well.

- 1 Q. And what's your current assignment?
- 2 A. Patrol.
- 3 Q. And what was your assignment in September of 2013?
- 4 A. I was in patrol for the central bureau.
- 5 Q. Are you familiar with the incident we are here
- 6 about today?
- 7 A. I am.
- 8 Q. And at that time what was your -- what was your
- 9 normal area of patrol?
- 10 A. Usually I'm a zone five unit, which is where the --
- 11 the Tanger Outlet area, but on this particular date I was
- 12 field training another officer, at which point we tend to
- 13 go whenever calls are coming out just to try to give them
- 14 more experience.
- 15 Q. And how did you first come to be aware of this
- 16 incident that we are here about today?
- 17 A. It was a -- a vehicle was put out over the radio as
- 18 BOLO, be on the lookout for a kidnapping that occurred.
- 19 We went to the last known area where it was last, I guess
- 20 seen going toward, and we started to patrol around the
- 21 area.
- 22 Q. And what area was that?
- 23 A. I went into the Ferndale Subdivision.
- 24 Q. Are you familiar with that area?
- 25 A. Yes, sir, I am.

1 Q. And so did you ever respond to the initial scene
2 where the incident happened?

3 A. No, I did not.

4 Q. And so you've said you were patrolling once you
5 received this BOLO?

6 A. Yes.

7 Q. And so can you take us through that process. What
8 are you doing when you are patrolling?

9 A. We are just driving around looking up and down the
10 side streets trying to see anyone that matches the
11 description, and if so then investigate it further.

12 Q. And in this particular case did you locate any
13 vehicle?

14 A. Yes. It was on Kerry Street behind an apartment
15 complex -- or on the side, I should say.

16 Q. And what was the vehicle?

17 A. The vehicle was described as a green Jaguar, which
18 my trainee at the time believed he saw. We turned down
19 the alleyway to look at it closer and it was indeed a
20 green Jaguar.

21 Q. And what did you do at that point once you found
22 this vehicle?

23 A. The license plate information was provided so we
24 exited our vehicle to take a look at the license plate
25 and it was the same.

- 1 Q. So what did you conclude from that?
- 2 A. That it was the victim's vehicle.
- 3 Q. And what was the next step at that point once you
- 4 and your trainee located this vehicle?
- 5 A. We basically held it secure. We didn't touch it,
- 6 didn't go into it. Nobody was around it. We called
- 7 basically our supervisor, let him know it was there.
- 8 Q. And what observations did you make about the
- 9 vehicle when you -- as you were there?
- 10 A. I can't remember exactly, the exact specifics of
- 11 what the inside of the vehicle looked like.
- 12 Q. Did you enter the vehicle?
- 13 A. No, I didn't.
- 14 Q. Did you touch the vehicle?
- 15 A. No, sir.
- 16 Q. Did you look inside of it?
- 17 A. We did look inside of it.
- 18 Q. Did you see any items inside?
- 19 A. I believe that there were keys that were located on
- 20 the floorboard of the front passenger side but other than
- 21 that there was nothing else that I documented that was of
- 22 evidentiary value.
- 23 Q. And you said you secured the vehicle. Who were you
- 24 waiting for?
- 25 A. We were basically waiting for crime scene to arrive

1 on scene as well as detectives.

2 Q. And did they arrive?

3 A. Yes.

4 Q. Once crime scene arrived what happened? What did
5 you do?

6 A. I just stayed with them until they were done doing
7 what they needed to do with the vehicle and basically
8 just security.

9 MR. ZIEGLER: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 Q. Officer Bauer, I'm going to show you a few photos.
13 These are marked as State's Exhibit 33, 34, 21, and 13.
14 I'm just going to show you these. See if you are
15 familiar with those. You don't have to identify them
16 out loud at this point but just take a look at them.

17 A. Yes, I'm familiar.

18 MR. ZIEGLER: Your Honor, the State seeks
19 permission to publish exhibits 33, 34, 21 and 13.

20 THE COURT: You may.

21 Q. Officer Bauer, I'm going to start by publishing
22 State's Exhibit 13, and I apologize for having to turn
23 this. Can you identify on this map which star represents
24 the approximate location where you found this vehicle?

25 A. I believe it was the -- it's the star in the upper

1 right-hand corner above the 78.

2 Q. And, again, where is that? What street, what's the
3 location?

4 A. The street that the vehicle was on was Kerry
5 Street.

6 Q. Now publishing State's Exhibit 33. Do you
7 recognize this photo?

8 A. I do.

9 Q. And what does it show?

10 A. Those are the apartments that are on Kerry Street.

11 Q. And where was the vehicle located? Where did you
12 locate the vehicle on this map?

13 A. It's off to the right. You have the two buildings
14 that are together. It's off to the right in that little
15 parking area.

16 Q. Well, if we are looking at it from -- is it on the
17 -- if you are standing on -- where is Kerry Street, first
18 of all?

19 A. As you are coming up this street right here that's
20 Piedmont Avenue. Kerry Street is the first one to the
21 right. If you go down that parking lot that's off to the
22 left, the first part, that's where the vehicle was at.

23 Q. And so that's the parking lot off to the left of
24 the buildings you said?

25 A. Yes.

1 Q. Now publishing State's Exhibit 34. Are you
2 familiar with this photo and what does this show?

3 A. Yes, I'm familiar. It shows the parking lot to the
4 left of the apartment buildings where the vehicle was
5 located, towards where the vehicle was located.

6 Q. And so the vehicle was located not in this front
7 part of the apartments, you said, but off to the left
8 side?

9 A. No. Off to the left side down further.

10 Q. And do you see the white truck in that photo?

11 A. I do.

12 Q. Was it near that area that the vehicle was found?

13 A. I don't believe it was as close to that vehicle
14 but, yes, it's in the same general area.

15 Q. Okay. And just to be clear, does this photo
16 represent the scene at the time that you responded or is
17 it different?

18 A. No. This is a different photo.

19 Q. Okay. Now publishing State's Exhibit 21. Can you
20 describe in this photo where Kerry Street is and where
21 the apartment building is and what we are looking at.

22 A. The apartment building is to the left in this
23 photo. Behind the police car is Kerry Street, and right
24 now you're looking at the vehicle that was located.

25 Q. Does that appear to be the state the vehicle was in

1 when you located it?

2 A. Yes.

3 MR. ZIEGLER: May I approach the witness, Your
4 Honor.

5 THE COURT: You may.

6 Q. Officer Bauer, can you -- just to be clear for the
7 jury, can you place a mark in the approximate location
8 where the vehicle was located.

9 A. Yes.

10 (PAUSE.)

11 There. Is that good or you need more?

12 Q. Yes.

13 MR. ZIEGLER: May I publish Exhibit 33 again, Your
14 Honor.

15 THE COURT: You may.

16 Q. Just to demonstrate for the jury, have you marked a
17 location on this map?

18 A. I have.

19 Q. And with what kind of mark?

20 A. With an X.

21 Q. And is that the approximate location where the
22 vehicle was found?

23 A. Yes, I believe so.

24 MR. ZIEGLER: The State has no further questions
25 for this witness, Your Honor.

1 Q. Thank you, Officer Bauer.

2 A. Thank you.

3 THE COURT: Mr. Malloy?

4 MR. MALLOY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MALLOY:

7 Q. Good afternoon, Officer Bauer.

8 A. Good afternoon.

9 Q. You responded to the BOLO that you were looking for
10 a stolen green Jaguar, correct?

11 A. Yes.

12 Q. And you were shown an area where it was last seen?

13 A. In close abouts, yes, sir.

14 Q. And you located the vehicle on Kerry Street. You
15 located it pretty quickly, right?

16 A. It was relatively quick, yes.

17 Q. And when I say quickly I mean from the time you
18 heard the call go out to the time you found it was pretty
19 quick, right?

20 A. I'm not sure exactly how long we patrolled for it
21 before we found it.

22 Q. Your report says you arrived there -- your report
23 says at approximately 14:20 hours.

24 A. Okay.

25 Q. Does that ring a bell?

- 1 A. I referred to my supplement and it does wring a
2 bell as far as --
- 3 Q. So 2:20 p.m.?
- 4 A. Yes.
- 5 Q. And this location is not very far from Margaret
6 Street, correct, and also Ferndale?
- 7 A. I don't believe that's in Ferndale. I don't
8 believe it's that far, no.
- 9 Q. And that was where the victim was located. Are you
10 aware of that?
- 11 A. No, I'm not.
- 12 Q. You're familiar with Margaret Street?
- 13 A. Yes.
- 14 Q. And you stayed with the vehicle to make sure no one
15 entered the vehicle, correct?
- 16 A. Yes.
- 17 Q. You never saw anyone exiting the vehicle?
- 18 A. No.
- 19 Q. But while you were there no one else entered the
20 vehicle, touched anything inside, correct?
- 21 A. Not until crime scene arrived.
- 22 Q. Did you enter the vehicle?
- 23 A. No.
- 24 Q. When you found the vehicle were the doors open or
25 closed?

1 A. I believe they were closed.

2 Q. And you indicated the keys were located on the
3 passenger side floorboard?

4 A. Yes.

5 Q. And the vehicle was turned off?

6 A. Yes.

7 Q. Did you find any witnesses or anyone who saw a
8 person exiting the vehicle and leaving it there?

9 A. I did not.

10 MR. MALLOY: No further -- Court's indulgence, Your
11 Honor.

12 (PAUSE.)

13 Q. Did you canvas those apartments to ask about this
14 incident?

15 A. I did not, no.

16 Q. You didn't go door-to-door asking if anybody had
17 seen --

18 A. No.

19 Q. -- the vehicle there or anything like that,
20 correct?

21 A. No.

22 Q. All right. Thank you.

23 MR. ZIEGLER: No further questions, Your Honor.

24 THE COURT: You may step down. You are free to
25 leave but feel free to stay with us.

1 Call your next witness.

2 MS. SAVAS: Your Honor, the State calls Detective
3 Travis Repman.

4 TRAVIS REPMAN, after having been duly sworn,
5 testified as follows:

6 THE CLERK: And for the record, if you'll state
7 your first and last name and spell out your last name,
8 please.

9 THE WITNESS: Travis Repman, R-e-p-m-a-n.

10 DIRECT EXAMINATION

11 BY MS. SAVAS:

12 Q. Good afternoon, Officer Repman.

13 A. Good afternoon.

14 Q. Where are you currently employed?

15 A. The City of Gastonia Police Department.

16 Q. And how long have you been there?

17 A. Just under two years.

18 Q. And what is your title with them there?

19 A. I'm a police officer.

20 Q. And where were you employed prior to Gastonia?

21 A. The City of North Charleston Police Department.

22 Q. How long were you with North Charleston?

23 A. A little over seven years.

24 Q. And what were some of the positions that you held
25 there?

1 A. I was on the speed team for about four years, and
2 in the detective bureau.

3 Q. What exactly -- just a quick brief overview of the
4 speed team.

5 A. We did proactive enforcement and street vice
6 interactions involving narcotics activity.

7 Q. And then after that you went to the detectives
8 bureau?

9 A. Yes.

10 Q. And back in September 2013 what was your position
11 with North Charleston?

12 A. I was in the detective bureau, persons unit.

13 Q. What are some of your duties as a person's unit
14 detective?

15 A. We investigated the violent crimes in the City of
16 North Charleston, specifically homicides, robberies,
17 carjackings, violent assaults.

18 Q. And how were you involved in this case?

19 A. The case came out and I responded to the scene on
20 Margaret Street and Liberty Park.

21 Q. And when you went to Margaret Street what did you
22 observe there?

23 A. I met with -- well, I first saw Detective Terry.
24 He was interviewing the victim. So I left him, you know,
25 to do that and I went to another officer, it was Sergeant

1 Cobb, and he kind of filled me in on what happened.

2 Q. And what were you tasked with in this case?

3 A. Later on I was requested by the detective sergeant
4 to go and obtain video where the incident had happened.

5 Q. And where did you go to get video?

6 A. The Kangaroo gas station on Aviation.

7 Q. And why did you go to the Kangaroo on Aviation?

8 A. The incident occurred at the Waffle House, which is
9 in the -- virtually the same parking lot.

10 Q. Officer Repman, I'm showing you --

11 MS. SAVAS: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 Q. -- State's Exhibits 24 and 29. Do you recognize
14 these?

15 A. I do.

16 MS. SAVAS: At this time, Your Honor, the State
17 wishes to publish to the jury State's Exhibits 24 and 29.

18 THE COURT: You may.

19 Q. Officer Repman, what is this an aerial photo of?

20 A. That is the Kangaroo gas station at the bottom of
21 the screen with the red box is on the top. That's the
22 fuel area right there, and then the Waffle House is over
23 there to the -- yes. Right.

24 Q. And this is Kangaroo that you went to obtain video?

25 A. That's correct.

- 1 Q. And was this the Waffle House from the incident?
- 2 A. Yes.
- 3 Q. And what street is this?
- 4 A. That's Aviation.
- 5 Q. I'm showing you what's been marked as State's
- 6 Exhibit 29. What is this a photo of?
- 7 A. That's the Kangaroo.
- 8 Q. And is that that Waffle House then, too?
- 9 A. Yes.
- 10 Q. Okay. Officer Repman, did you obtain video from
- 11 the Kangaroo?
- 12 A. I did.
- 13 Q. And what was the significance of that video?
- 14 A. Well, it was found out that the suspect had been in
- 15 the parking lot area and you could observe based on the
- 16 general description and where his movements led him to
- 17 the Waffle House.
- 18 Q. And in those surveillance videos do they often have
- 19 timestamps on them?
- 20 A. Yes.
- 21 Q. And in your training and experience are they always
- 22 accurate or maybe a couple minutes off? How does that
- 23 work?
- 24 A. It just depends on how frequently they keep up with
- 25 it. A lot of those places not only the workers change

1 often but a lot of them don't even have access to the
2 video so it's one of those things that it may or may not.

3 Q. Okay. So it would not be precisely accurate as far
4 as time goes?

5 A. Chances are they are not.

6 Q. Okay. After you obtained that video did you
7 attempt to get any other video?

8 A. I did.

9 Q. Where from?

10 A. The Waffle House.

11 Q. Did you get anybody from there?

12 A. No.

13 Q. Why not?

14 A. It was only interior video. There was nothing on
15 the outside.

16 Q. What did you do after that?

17 A. I immediately went back to the detective bureau and
18 turned the video back in.

19 Q. Did you go anywhere else in that area?

20 A. I apologize. I did.

21 Q. Where did you go?

22 A. I went to the Budget Inn on Fain Street.

23 Q. Officer Repman, I'll show you what's State's
24 Exhibit 23, 25, 26, 27, 28. Do you recognize these?

25 A. Yes.

1 MS. SAVAS: At this time, Your Honor, the State
2 wishes to publish to the jury State's Exhibits 23, and
3 28, 27, 26, 25, and 30.

4 THE COURT: You may.

5 MS. SAVAS: Thank you.

6 Q. Officer Repman, State's Exhibit Number 23, what
7 does this depict?

8 A. You have the on and off ramp from the interstate
9 onto --

10 Q. This?

11 A. Correct, onto Aviation. In the lower half of the
12 screen you can see the Kangaroo and the Waffle House?

13 Q. Is there anything up here?

14 A. That's -- this is Fain Street and then the Budget
15 Inn is at the top of the map.

16 Q. And did you go to that Budget Inn?

17 A. I did.

18 Q. Why did you go there?

19 MR. MALLOY: Objection.

20 THE COURT: What's the basis?

21 MR. MALLOY: Pursuant to my pretrial motion.

22 THE COURT: Overruled. Pursuant to the -- make
23 sure you stay within my ruling.

24 MS. SAVAS: Yes, Your Honor.

25 Q. Why did you -- you may answer the question.

1 A. Can you repeat the question?

2 Q. Why did you go to the Budget Inn?

3 A. Because when I reviewed the video the suspect
4 appeared to come from the Fain Street area, and that's
5 the only location near the incident that anyone can be
6 housed close by.

7 Q. And in the video, you are saying the Kangaroo
8 surveillance video?

9 A. Correct.

10 Q. And you are saying the subject, the man in the
11 green hat and white shirt?

12 A. Yes.

13 Q. And can you sort of explain the thought process of
14 going to the nearby hotel?

15 MR. MALLOY: Objection. Again, same basis.

16 THE COURT: You may continue.

17 A. The thought process is when you are investigating a
18 crime with an unknown suspect that's the first thing you
19 want to look for is where is your person coming from, and
20 then you can go there to follow your leads to find out
21 who they are. So if I have a video that's showing me
22 possibly that my suspect is coming from that location,
23 the closest location there that anyone could be staying
24 is, you know, the Budget Inn, in this incident.

25 Q. Officer Repman, I'm going to show you State's

- 1 Exhibit 25. What is this a photograph of?
- 2 A. The Budget Inn.
- 3 Q. And what street is that on?
- 4 A. Fain.
- 5 Q. And is there anything significant as far as someone
- 6 walking around in this photo, the possibility of them
- 7 walking?
- 8 A. The sidewalk.
- 9 Q. That sidewalk?
- 10 A. Yes.
- 11 Q. State's Exhibit 26, what is this a photo of?
- 12 A. That's Fain Street.
- 13 Q. State's Exhibit 27, what is this a photo of?
- 14 A. That's Fain Street and at the top you can see the
- 15 Waffle House.
- 16 Q. State's Exhibit 28, what is this a photo of?
- 17 A. The Waffle House, and just to the right that red
- 18 structure is the Kangaroo.
- 19 Q. Officer Repman, is that sidewalk continuous from
- 20 the Budget Inn to the Waffle House?
- 21 A. It is.
- 22 Q. Officer Repman, do you believe that's walking
- 23 distance?
- 24 A. Yes.
- 25 Q. Approximately how far would you say?

1 A. It's not even a mile.

2 Q. State's Exhibit Number 30, Officer Repman, does
3 this accurately describe what you -- does this accurately
4 depict your description of possibly walking from the
5 Budget Inn to Waffle House, and Kangaroo?

6 A. Yes.

7 Q. Officer Repman, I show you what's State's Exhibit
8 Number 17. Can you recognize this?

9 A. Yes.

10 MS. SAVAS: Okay. At this time, Your Honor, the
11 State wishes to publish to the jury State's Exhibit 17.

12 THE COURT: You may.

13 MS. SAVAS: Thank you, Your Honor. Your Honor, the
14 State requests permission for the witness to leave the
15 stand to describe --

16 THE COURT: I will let you but you need to speak
17 loudly because your back is going to be to my court
18 reporter now so you need to speak very loudly.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Thank you. You may step down.

21 (The witness stepped down from the witness stand.)

22 BY MS. SAVAS:

23 Q. Officer Repman, can you please point out to the
24 areas of significance in this photo for the jury.

25 A. At the bottom you have the Waffle House here, and

1 this is the Kangaroo gas station, the parking lot that
2 goes in between. This is Fain Street here, and this is
3 the Budget Inn highlighted in blue.

4 Q. And so it is your -- through your investigation
5 that the suspect came from that Budget Inn and then
6 walked that area of the Waffle House; is that accurate?

7 A. At that point in time I felt that that was a good
8 place to begin.

9 Q. Thank you. You may take a seat.

10 (The witness returned to the witness stand.)

11 Q. Officer Repman, did you do anything else in this
12 case?

13 A. I did.

14 Q. What was that?

15 A. Two days later I showed a photographic lineup.

16 Q. Would that -- do you recall what that date was?

17 A. It was September 15 of 2013.

18 Q. And in your experience as an officer and detective
19 how many photo lineups have you done?

20 A. Dozens.

21 Q. Do you get trained on specifically the procedures
22 of performing a photo lineup?

23 A. Yes.

24 Q. And in this case who did you do the photo lineup
25 to?

- 1 A. The victim.
- 2 Q. And what was her name?
- 3 A. I don't recall her name.
- 4 Q. And, Officer Repman, in doing that photo lineup
- 5 what type of lineup was it?
- 6 A. It was a sequential double-blind lineup.
- 7 Q. Can you sort of just explain what that means, what
- 8 kind of lineup that is.
- 9 A. You have your subject along with five fillers. The
- 10 photos are presented one-by-one to the witness, or victim
- 11 in this case. Double-blind means that I don't know who
- 12 the person is and obviously they don't until possibly
- 13 they see the person in that lineup.
- 14 Q. And what is the significance in doing it one at a
- 15 time?
- 16 A. It's believed that this is the --
- 17 MR. MALLOY: Objection. He's not qualified as an
- 18 expert.
- 19 THE COURT: Overruled.
- 20 A. It's believed that this is the most reliable false
- 21 positive way to show a lineup.
- 22 Q. What do you mean by false positive?
- 23 A. When you have somebody that's gone through a
- 24 traumatic event such as this, you know, they are
- 25 frightened, they are scared, you know, it's an

1 eyewitness. You want to give the best chance to have the
2 right person selected.

3 Q. Officer Repman, in your training do you require
4 your witnesses to give a specific percentage or numeric
5 scale?

6 A. No.

7 Q. Why not?

8 A. Because that person is so afraid at the time and
9 when you are looking at these different photos although
10 you may pick the right person out and you feel it's the
11 right person you still may never believe a hundred
12 percent in your head that that's them because you don't a
13 hundred percent know that person.

14 Q. And in doing this photo lineup with the victim was
15 that recorded?

16 A. Yes.

17 Q. Okay. And in that photo lineup did you know who
18 the defendant was in that lineup?

19 A. No.

20 Q. So that made it double blind?

21 A. Correct.

22 Q. And all those proper procedures were followed?

23 A. Yes.

24 Q. You mentioned that you gathered that surveillance
25 video with the suspect on it. Did you see that -- see

1 his face at that time?

2 A. No. It was a long -- he was in the parking lot for
3 our camera.

4 Q. So would you have been able to identify him in that
5 photo lineup?

6 A. No.

7 Q. And were all of the photos the same size and
8 composition?

9 A. Yes.

10 Q. And were they color or black and white?

11 A. Black and white.

12 Q. And did the defendant's photos stand out in any way
13 to the other photos?

14 A. No.

15 Q. Did they -- all the individuals appear to have the
16 same appearance, age, and physical characteristics?

17 A. Yes.

18 Q. And did the photo itself identify the defendant in
19 any way?

20 A. No.

21 Q. Did you ever tell the victim who the defendant was?

22 A. No.

23 Q. Did you ever make any suggestions to her of which
24 photo to pick?

25 A. No.

1 Q. Did you ever tell her that she must, in fact, pick
2 a photo?

3 A. No.

4 Q. Did she appear to be attentive and alert during
5 this procedure?

6 A. Yes.

7 Q. Did she understand your explanation of the
8 procedure?

9 A. Yes.

10 MS. SAVAS: Your Honor, I wish to publish State's
11 Exhibit 14.

12 THE COURT: You may.

13 MR. MALLOY: Your Honor, I do object pursuant to my
14 pretrial motion.

15 THE COURT: All right.

16 Q. Officer Repman, what is this?

17 A. That is the North Charleston Police Department
18 photographic lineup form.

19 Q. Okay. And can you briefly explain what this form
20 is for?

21 A. It maintains that you keep the integrity within
22 policy and within law when you show a lineup.

23 Q. And do you read this to the witness at that time?

24 A. Yes.

25 Q. And what is the significance of the witness putting

1 their initials on it?

2 A. That signifies that she understood every --

3 MR. MALLOY: Objection, speculation.

4 THE COURT: Overruled.

5 A. It signifies that she understood everything that I
6 read to her.

7 Q. And can you please read number six aloud. Do you
8 need it closer?

9 A. I can read it. Thank you.

10 People may not appear exactly as they did at the
11 time of the event because features such as clothing
12 style, hair color, hairstyle, etcetera may change even in
13 a short period of time.

14 Q. And in your training and experience why is that
15 included in there?

16 A. Because sometimes the photos that you use aren't
17 current, necessarily. They may be, you know, a couple
18 years, a couple months. I mean, we can all get a haircut
19 and things like that within a day's time.

20 Q. And given your training and experience in doing
21 photo lineups would an individual be able to change
22 possibly their hairstyle but the witness may still
23 identify that person?

24 A. Absolutely.

25 Q. And did she, in fact, identify someone in this?

- 1 A. Yes.
- 2 Q. And which photo; do you recall?
- 3 A. Number two.
- 4 Q. And when she identified the second photo is there
- 5 anything that's significant that you recall about her
- 6 doing that?
- 7 A. As I showed the photo lineup when I came to number
- 8 two she set it to the side but she followed the rules and
- 9 continued to look at each of the next four photos, and
- 10 she went back and explained why she had put this one to
- 11 the side and why she felt that it was the person.
- 12 Q. So did she specifically explain to you why she
- 13 chose that number two photo?
- 14 A. Yes.
- 15 Q. And did she say possibly that she wasn't sure about
- 16 a specific thing?
- 17 A. She did. She was a bit unsure.
- 18 Q. Okay. Do you recall what specifically she was
- 19 unsure of?
- 20 A. She was talking about the -- his face in this area
- 21 (indicated).
- 22 Q. And would that be difficult to see in a black and
- 23 white photo?
- 24 A. Yes.
- 25 Q. But would that change one's ability to make an

1 identification?

2 A. No.

3 Q. And in the number two photo who was that
4 individual?

5 A. The suspect.

6 Q. Do you know his name?

7 A. I don't.

8 Q. Is that the defendant in this case?

9 A. Yes.

10 Q. And in getting that photo lineup who did you get
11 that from?

12 A. Detective Terry.

13 MS. SAVAS: Beg the Court's indulgence.

14 THE COURT: Take your time.

15 (PAUSE.)

16 MS. SAVAS: Nothing further from the State.

17 THE COURT: Mr. Malloy?

18 MR. MALLOY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MALLOY:

21 Q. Good afternoon, Detective Repman.

22 A. Afternoon.

23 Q. So prior to conducting the photo lineup in this
24 case you did respond to the scene where the victim --
25 where Ms. Davila was located, correct?

- 1 A. That's correct.
- 2 Q. At that time you were briefed on this incident, so
- 3 you knew about the robbery?
- 4 A. Right.
- 5 Q. And you went to the Kangaroo gas station, which was
- 6 close to the Waffle House?
- 7 A. That's correct.
- 8 Q. You obtained video from that location?
- 9 A. Correct.
- 10 Q. And the significance of the video is the timing of
- 11 when an individual can be seen in the parking lot,
- 12 correct?
- 13 A. Correct. It corroborates a person was in the
- 14 parking lot at the same time with the vehicle leaving.
- 15 Q. Okay. And this person's loitering kind of on the
- 16 edge of the parking lot, correct?
- 17 A. That's correct.
- 18 Q. It's not significant in that you can describe the
- 19 -- obviously, you can't see the person's face?
- 20 A. No.
- 21 Q. And it's not significant in that you can see the
- 22 clothes they are wearing, correct?
- 23 A. Correct.
- 24 Q. And it's not significant in that the individual you
- 25 believe is the robber is not seen entering and exiting

- 1 the gas station, correct?
- 2 A. You can see him walk to the parking lot, yes.
- 3 Q. But the significance is somewhat on the edge of the
- 4 parking lot in between the Kangaroo and the Waffle House
- 5 about the same time that Ms. Davila reported she was
- 6 contacted and robbed, correct?
- 7 A. Correct.
- 8 Q. But you can't actually see the robbery --
- 9 A. No.
- 10 Q. -- occur in the video? And you indicated you can
- 11 see the robber coming from Fain Street?
- 12 A. He's walking from that direction. It's the only
- 13 logical place.
- 14 Q. And that is -- you say that's why you went to the
- 15 Budget Inn to take those photos, correct?
- 16 A. Yes.
- 17 Q. There's several other hotels on Fain Street though,
- 18 correct?
- 19 A. Not on Fain Street.
- 20 Q. Several other hotels in the area though?
- 21 A. Right, but that is the one that we commonly have
- 22 criminal element coming from is the Budget Inn.
- 23 Q. You later on were asked to conduct the photo lineup
- 24 in this case?
- 25 A. Yes.

- 1 Q. And you only did one, correct?
- 2 A. Correct.
- 3 Q. You didn't show Ms. Davila another lineup that
- 4 didn't contain Mr. Jenkins' photo, correct?
- 5 A. That's correct.
- 6 Q. Which would be like the placebo effect, right?
- 7 A. That's not something we typically do.
- 8 Q. You just only show one?
- 9 A. That's correct.
- 10 Q. And obviously all these photos are in black and
- 11 white?
- 12 A. Yes.
- 13 Q. And there was indication that Ms. Davila was having
- 14 difficulty with certain features because they were in
- 15 black and white, correct?
- 16 A. I'm not sure if that's why she was having the
- 17 difficulty but she had -- if you see the video she does
- 18 say that there's something missing from here on the face.
- 19 Q. Right, so hard to tell in black and white photo?
- 20 A. Yes.
- 21 Q. And she did indicate at one point that she was not
- 22 sure when she made her selection, correct?
- 23 A. She did.
- 24 MR. MALLOY: No further questions.
- 25 THE COURT: Any redirect?

1 MS. SAVAS: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. SAVAS:

4 Q. Just briefly, Officer Repman. Although the victim
5 had mentioned that she wasn't -- that she had a bit of
6 uncertainty did she, in fact, make a positive
7 identification?

8 A. Yes.

9 MS. SAVAS: Nothing further.

10 MR. MALLOY: No follow up.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, Your honor.

13 THE COURT: You are free to go but feel free to
14 stay with us.

15 THE WITNESS: Thank you.

16 THE COURT: Madam Foreperson, we can take a break
17 if it's an appropriate time, if you all need a break.

18 THE FORELADY: I think we are ready for a break,
19 ma'am.

20 THE COURT: All right. Please remember all my
21 admonitions. You can take your notepads with you or
22 leave them in your chair.

23 Please rise for the jury.

24 Madam Foreperson, if you'll just let us know when
25 you are ready we'll bring you back in. Thank you.

1 THE FORELADY: Thank you.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 2:54 p.m.)

4 THE COURT: Thank you. You may be seated. We'll
5 take just a short break. I don't know how long they will
6 be.

7 MS. SAVAS: Thank you.

8 THE COURT: Thank you.

9 (WHEREUPON, a brief recess was taken.)

10 THE COURT: Anything before we bring in the jury
11 from the State?

12 MS. SAVAS: Just briefly, Your Honor. We are
13 attempting to locate one of our witnesses, Ms. Candace
14 Singleton. She was here. My investigator called her.
15 She is with the defendant. Not currently right now but
16 they are still in a relationship together, and so we are
17 just trying to find her. So we know that she was here
18 today, that she should be called this afternoon.

19 THE COURT: Okay.

20 MS. SAVAS: That's the only thing.

21 THE COURT: We'll go until 5:00, 5:15, so plan
22 accordingly.

23 MS. SAVAS: Yes, ma'am.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 3:04 p.m.)

1 THE BAILIFF: The jurors are all present, Your
2 Honor.

3 THE COURT: Call your next witness.

4 MS. SAVAS: Thank you, Your Honor. The State calls
5 Sergeant Joseph Niemiec.

6 JOSEPH NIEMIEC, after having been duly
7 sworn, testified as follows:

8 THE CLERK: And for the record, please state your
9 first and last name and spell out your last name.

10 THE WITNESS: Joseph Niemiec, N-i-e-m-i-e-c.

11 THE COURT: Ms. Savas.

12 MS. SAVAS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. SAVAS:

15 Q. Sergeant Niemiec, where are you currently employed?

16 A. North Charleston Police Department.

17 Q. And what is your official job title?

18 A. Sergeant, detective division.

19 Q. And which unit within that division?

20 A. Property crime unit.

21 Q. And how long have you been a property crime
22 sergeant?

23 A. Two years.

24 Q. And what was your job duties before that?

25 A. I was a master patrol officer for the detective

1 division, Property Crime Unit.

2 Q. And what is that?

3 A. I was just basically the team leader of Property
4 Cream Unit, so I was the highest ranking detective in
5 that unit.

6 Q. And in September 2013 what was your job title then?

7 A. Master patrolman of the Property Crime Unit,
8 detective division.

9 Q. And what were some duties as part of that?

10 A. Generally investigating, working with other units,
11 coordinating the team in investigations, and assisting
12 the sergeant as well as conducting my own investigations.

13 Q. And were you involved in this case?

14 A. I was.

15 Q. And how were you involved?

16 A. I was involved by receiving some information --

17 MR. MALLOY: Objection, pursuant to my pretrial
18 motion.

19 THE COURT: Overruled. You may answer.

20 A. I received some information that led me to the
21 Hideaway Lounge and the Budget Inn.

22 Q. And what were you doing when you were there?

23 A. Looking for Candace Singleton.

24 Q. And you know specifically where you were supposed
25 to look?

- 1 A. They said that she was possibly in room 242 but she
2 could also be in the Hideaway Lounge.
- 3 Q. And just briefly, what's the Hideaway Lounge?
- 4 A. The Hideaway Lounge is a bar that's actually
5 attached to the Budget Inn. So Budget Inn is back here
6 and the Hideaway Lounge sits right in front.
- 7 Q. I want to show you a picture. Sergeant Niemiec,
8 I'm going to show you what's been marked as State's
9 Exhibit 25. What is this a photo of?
- 10 A. The Budget Inn.
- 11 Q. And is the Hideaway Lounge within this?
- 12 A. Yes, it is. Right on the farther side.
- 13 Q. On this side?
- 14 A. Yes.
- 15 Q. Okay. And where is that located?
- 16 A. Off of Fain Street near Aviation.
- 17 Q. And what did you do when you went into the Hideaway
18 Lounge?
- 19 A. We conducted a bar check.
- 20 Q. What's that?
- 21 A. So we went in to check the identification of inside
22 to see who was -- to see if everyone was over the age of
23 21, in reference to the information that we received.
- 24 Q. And did everyone provide an ID to you?
- 25 A. Yes. Everyone but one person.

1 Q. And who was that?

2 A. That would be Candace Singleton. At the time she
3 provided her name as Candace Middleton.

4 Q. And what did you do once she was unable to provide
5 information?

6 A. When she presented herself as Candace Middleton
7 basically what I knew I talked to her for a minute, asked
8 her for identification. She said she lived --

9 MR. MALLOY: Objection, hearsay.

10 THE COURT: Is there an exception?

11 MS. SAVAS: No, Your Honor.

12 THE COURT: Rephrase.

13 MS. SAVAS: Yes.

14 THE COURT: Sustained as to hearsay.

15 MS. SAVAS: Thank you.

16 BY MS. SAVAS:

17 Q. Officer Niemiec, did Ms. Singleton ultimately
18 provide her identification to you?

19 A. Yes, after I went to room 242.

20 Q. And did you have consent to enter her room?

21 A. I did.

22 Q. Who granted it to you?

23 A. She did.

24 Q. And when you were in her room did you notice
25 anything of significance?

1 A. Yes. When I was in her room I noticed a plain --
2 excuse me, a prescription pill bottle.

3 MR. MALLOY: Your Honor, I object to this testimony
4 as hearsay as well.

5 THE COURT: Overruled as to hearsay.

6 A. When I went in the room I saw a pill bottle with
7 the name Chavias Jenkins.

8 Q. And did you come to learn who Chavias Jenkins is?

9 A. Yes, the boyfriend of Candace Singleton.

10 Q. And did you ultimately take Ms. Singleton to the
11 police department?

12 A. I did.

13 Q. And why did you do that?

14 A. To further question her in reference to this, in
15 reference to the crime that we were investigating.

16 Q. And did she provide you with any information?

17 A. While there, yes, ma'am, she talked. She was in
18 the interview room for quite a while.

19 Q. And did she mention whether she lived at the
20 Hideaway Lounge?

21 MR. MALLOY: Objection, hearsay.

22 THE COURT: He can answer that yes or no.
23 Overruled on that question.

24 A. Yes.

25 Q. Did she mention whether she lived alone or with

1 someone?

2 A. She lived with someone.

3 Q. And who was that person?

4 A. Chavias Jenkins.

5 Q. And did she mention about any financial difficulty
6 she may have been having?

7 MR. MALLOY: Objection --

8 THE COURT: All right. Counsel, approach.

9 MR. MALLOY: Objection to hearsay.

10 (WHEREUPON, a bench conference was had.)

11 BY MS. SAVAS:

12 Q. Sergeant Niemiec, in preparation for this case at
13 my direction did you do a search warrant?

14 A. I did.

15 Q. And what was that for?

16 A. For the phone number provided in the Craigslist ad.

17 Q. And did you obtain any results from that search
18 warrant?

19 A. Yes, a very limited amount.

20 Q. And was there anything significant about that
21 search warrant?

22 A. The search warrant was for AT&T. I found out that
23 the phone number was a Cricket phone number, and the only
24 results that I had was from AT&T numbers that called the
25 phone or call the phone and that they didn't store

1 anything more than that because at the time -- the time
2 delay of the search warrant.

3 Q. So to get any results from the phone data it would
4 have to be another AT&T customer?

5 A. Yes, another AT&T customer would have had to
6 contact that phone for us to have had it at that time.

7 Q. Were you able to obtain any subscriber information
8 from that?

9 A. I was not able to obtain any subscriber
10 information.

11 Q. During your course of this investigation did you
12 come across anything linking the Craigslist ad phone
13 number to Ms. Singleton?

14 A. I did.

15 Q. And, Sergeant Niemiec, did you prepare a photo
16 lineup in this case?

17 A. I did prepare a photo lineup in the case.

18 Q. Can you please explain that process.

19 A. Yes. When I receive a target person, I would say,
20 a person that I want to get the photo lineup for I do a
21 document and I sent that off to SLED. SLED then uses the
22 DMV database and other things. They put up a photo
23 lineup together of people that are similar to the target
24 person that I look for and then they send that photo
25 lineup back to us through e-mail.

1 Q. And who was the target person in your photo lineup?

2 A. It was Chavias Jenkins.

3 Q. And when you sent that to SLED did they submit the
4 photos back in color or black and white?

5 A. They come in both, color and black and white.

6 Q. And can you please explain the process of once you
7 receive those photo lineups what do you do with them.

8 A. We look at the photo lineups and we determine, you
9 know, do they look -- do they meet standard, are they
10 similar of type people. They don't have to be exact but
11 are they around about the same type of people. And then
12 at this point once we evaluate them we go ahead and give
13 them to either the case agent or we go ahead and give
14 them to a -- prepare to give them to a blind person to be
15 able to show them.

16 Q. And given your training and experience was it your
17 determination that this was a suitable photo lineup?

18 A. I did.

19 Q. And when you go to SLED do they go off of a general
20 description or is it specifically a name?

21 A. No. They go over general description. So if they
22 receive my picture they would try to find five other
23 people that kind of sort of looked like me.

24 Q. But when submitting the initial photo lineup you
25 submit a name?

1 A. I submit only a name, yes.

2 Q. Then SLED's internal system makes that
3 determination?

4 A. Yes, they do.

5 Q. So if a victim were to give a description you would
6 still not be able to submit a photo lineup, would you?

7 A. No. We do not do any type of photo lineups based
8 on description. So if the person provided me a
9 description of a person or whatever it is I will not
10 produce that to them. I would have to have a specific
11 name to give them so they produce the photo then match
12 it.

13 Q. And what did you do with the photo lineup after you
14 got it?

15 A. I provided it to Detective Terry for him to find a
16 blind viewer.

17 MS. SAVAS: Beg the Court's indulgence.

18 (PAUSE.)

19 Q. Sergeant Niemiec, was this defendant, Chavias
20 Jenkins, in fact, in that lineup?

21 A. He was.

22 MS. SAVAS: Nothing further from the State.

23 THE COURT: Mr. Malloy?

24 MR. MALLOY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. MALLOY:

2 Q. Good afternoon, Sergeant Niemiec.

3 A. Good afternoon, sir.

4 Q. You just testified that you requested a lineup to
5 be composed in this case, correct?

6 A. Yes, sir.

7 Q. And the lineup you received were all black and
8 white photos, correct?

9 A. Yes.

10 Q. Have you reviewed today the lineup in preparation
11 for this trial or if I showed it to you would you
12 recognize it?

13 A. Of course.

14 MR. MALLOY: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q. I'm handing the witness what's been marked State's
18 Exhibit 15 and 16.

19 A. Thank you.

20 Q. Do you recognize that, Sergeant Niemiec?

21 A. I do.

22 Q. Is that the lineup that you prepared in this case?

23 A. Yes.

24 MR. MALLOY: May I have permission to publish
25 State's 15 and 16?

- 1 THE COURT: You may.
- 2 Q. Sergeant Niemiec, I'm showing you this lineup, and
3 this is the lineup that you received in this case,
4 correct?
- 5 A. Yes, sir.
- 6 Q. Okay. Photo number two is that of Chavias Jenkins,
7 correct?
- 8 A. Yes.
- 9 Q. He appears to have longer hair than the other
10 individuals on this sheet?
- 11 A. Yes, sir.
- 12 Q. And he also appears to have longer hair than photos
13 number three and six, correct?
- 14 A. Yes. Everybody seems to have different lengths of
15 hair.
- 16 Q. The other individuals appear to have distinctive
17 goatees. You see three and six?
- 18 A. Yes.
- 19 Q. Four and five. Mr. Jenkins looks like he might
20 have a mustache but not as distinctive.
- 21 A. There's definitely some stuff going on here but I
22 would agree.
- 23 Q. Number one, kind of hard to tell. It's a little
24 blurry, correct?
- 25 A. Yes.

1 Q. Photos two and five, two being Mr. Jenkins, both of
2 these appear to be higher definition than the other
3 photos. Would you agree with that?

4 A. If that's your opinion. When I looked at the photo
5 lineup they appeared to -- it's not about -- it's not
6 about the exactness. It's about similarity. Six twins
7 is not really, you know, possible.

8 Q. I realize we're not looking for exactly the same
9 but similar. Number two doesn't look more defined than
10 number one to you?

11 A. Two and one, I would say one is a little more
12 blurry, yes.

13 Q. Two's got a little better lighting.

14 A. I say two looks clearer, yes.

15 Q. Compared to four, four is a little blurry compared
16 to number two.

17 A. And I apologize but I can't agree. I think four,
18 five, two all look pretty clear to me, in my opinion.

19 Q. You don't think number two appears to be clearer
20 than three and six?

21 A. I do not. They all look pretty clear, as clear as
22 they are going to be coming from the type of copier and
23 printer and everything else we can get.

24 Q. Obviously, it could have been clearer with color
25 photos, correct?

- 1 A. So color photos is not always the best way to go.
2 Sometimes there's different color backgrounds. I don't
3 know in this case if there was. A lot of times there
4 could be different color backgrounds and so forth which
5 would be unfortunate because that would also distinguish
6 the lineup and provide the viewer something different, so
7 a lot of times we do do black and white. Sometimes
8 that's the best quality we can get so that's what we will
9 do.
- 10 Q. But you also do color sometimes, correct?
- 11 A. It all depends.
- 12 Q. And you can see skin tone and complexion probably
13 better in color photos than black and white?
- 14 A. Sometimes but in this -- if I may? Obviously, if I
15 may, sometimes when you are looking at photos like this
16 in color the definition does matter. So when you're
17 looking at the photos and you have them in color those
18 things that we see subtly in these photographs will,
19 like, stick out; and so therefore, you get a bunch of --
20 it really does show difference. So black and white kind
21 of tones that down a lot and it helps so that they make
22 them look not the same but similar.
- 23 Q. All right. I want to ask you a little bit about
24 the Budget Inn and Hideaway Lounge. You talked about
25 that in your direct testimony.

1 A. Yes.

2 Q. Are you aware there's other hotels in the area,
3 correct?

4 A. Yes.

5 Q. Specifically on Fain Street?

6 A. No.

7 Q. And when you went there you made contact with
8 Candace Singleton, correct?

9 A. Yes.

10 Q. And you subsequently searched her room?

11 A. Yes. Well, we went and we requested consent
12 because she went in there to get her ID, and so we went
13 in there with her, yes.

14 Q. You didn't recover any firearms in her room?

15 A. We didn't do that kind of search. We kind of went
16 inside, you know, because at this time we are running --
17 at this time we are going there based on information that
18 we've been provided so we are just there trying to verify
19 the information that we've got. So we kind of go there
20 and make contact. She shows her ID.

21 We said can we come in to see where her ID is
22 because obviously we don't want her digging around stuff
23 because if she is a bad person she could get something.
24 So she gives us consent, we go in. She produced the ID,
25 and at that point I'm kind of in her room and she's

1 allowed me to be in there and we can kind of look around
2 but we are not poking a prodding a great deal.

3 Q. Had you been briefed on this case?

4 A. All I knew about this case at this time is that the
5 crime that occurred, but that is all I knew at the time.

6 Q. So you knew about the carjacking, armed robbery --

7 A. Yeah. Yes. So when I came in -- just so you
8 understand, when I came in I'm working the second shift
9 so the day shift is cleared and I believe I'm working --
10 in fact, I know I'm working the second shift, so I
11 actually receive the information. I contact the
12 detectives that worked earlier that day and then I say,
13 Hey, what's going on with this? What do you have?

14 And they provide me a brief synopsis of what they
15 had. It was very brief. Just that the crime occurred,
16 who the victim was and kind of the general description of
17 who we are looking for, and that's really all we knew,
18 Craigslist ad.

19 Q. But so you didn't look -- you said you weren't
20 looking for any firearms?

21 A. No. We are not. We are not poking and prodding.

22 Q. You didn't look for any clothes that matched what
23 the robber was reportedly wearing?

24 A. We kind of just did a glance over but, like I said,
25 you know, I didn't go into great deal in that because at

1 this time we're just -- we're just valuating what we were
2 provided.

3 Q. And you subsequently interviewed Ms. Singleton at
4 police headquarters?

5 A. Yes.

6 Q. She was not charged in reference to this
7 carjacking, armed robbery?

8 A. No, she was not.

9 MR. MALLOY: Court's indulgence.

10 (PAUSE.)

11 MR. MALLOY: No further questions.

12 THE COURT: Any redirect?

13 MS. SAVAS: Just briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. SAVAS:

16 Q. Sergeant Niemiec?

17 A. Yes, ma'am.

18 Q. SLED gave you those photos back from the photo
19 lineup?

20 A. Yes.

21 Q. And then in your training and experience you made
22 the decision that that was a quality photo lineup to
23 present?

24 A. Absolutely.

25 MR. MALLOY: Object to the speculation here.

1 THE COURT: Overruled.

2 MS. SAVAS: Nothing further.

3 THE COURT: Mr. Malloy?

4 MR. MALLOY: No follow up.

5 THE COURT: You may step down. You may leave but
6 feel free to stay with us.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Call your next witness.

9 MS. SAVAS: The State calls Officer Wallace.

10 THOMAS WALLACE, after having been duly
11 sworn, testified as follows:

12 THE CLERK: And for the record if you would please
13 state your first and last name and spell out your last
14 name, please.

15 THE WITNESS: Thomas Wallace, W-a-l-l-a-c-e.

16 THE COURT: Ms. Savas.

17 MS. SAVAS: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. SAVAS:

20 Q. Good afternoon, Officer Wallace.

21 A. Good afternoon.

22 Q. Officer Wallace, where do you work?

23 A. North Charleston Police Department.

24 Q. And what is your job title there?

25 A. I'm a police officer assigned to the Harbor Unit.

1 Q. And what do you do in the Harbor Unit?

2 A. I'm a captain on one of the boats.

3 Q. And how long have you been with North Charleston?

4 A. Just over 10 years.

5 Q. And in September 2013 were you with North

6 Charleston?

7 A. I was. I was with the property bureau detectives.

8 Q. So you were a property detective at that time?

9 A. Yes, ma'am.

10 Q. And were you involved in this case?

11 A. Yes, ma'am.

12 Q. Officer Wallace, how were you involved in this

13 case?

14 MR. MALLOY: Your Honor, objection. May I

15 approach?

16 THE COURT: You may.

17 (WHEREUPON, a bench conference was had off the

18 record.)

19 THE COURT: You may continue, Ms. Savas?

20 MS. SAVAS: Thank you, Your Honor.

21 BY MS. SAVAS:

22 Q. Officer Wallace, how are you involved in this case?

23 A. I was told to go meet a concerned citizen about --

24 MR. MALLOY: Objection.

25 THE COURT: I'm going to allow that. Note your

1 exception.

2 Q. Can you finish that sentence, briefly?

3 A. I was told to go meet a concerned citizen about
4 information she had of the crime.

5 Q. And was that information then subsequently relayed
6 to officers in this case?

7 A. Yes, ma'am.

8 Q. And you physically met this person?

9 A. Yes, ma'am.

10 MS. SAVAS: Nothing further.

11 THE COURT: Mr. Malloy?

12 MR. MALLOY: No cross, Your Honor.

13 THE COURT: Officer Wallace, you can stay with us
14 or you are free to leave. Thank you.

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: Call your next witness.

17 MS. SAVAS: The State would request to approach or
18 for a brief recess.

19 THE COURT: Well, you may approach.

20 (WHEREUPON, a bench conference was had off the
21 record.)

22 THE COURT: Ladies and gentlemen, there's a matter
23 that I must take up outside of your presence. Do not
24 begin your deliberations. Do not discuss this case
25 amongst yourselves.

1 Please rise for the jury.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 3:32 p.m.)

4 THE COURT: Thank you. Be seated.

5 I would suggest you see if Officer Hallman can get
6 here.

7 MS. SAVAS: Yes, Your Honor.

8 THE COURT: Thank you.

9 MS. SAVAS: Your Honor, may we go speak to that
10 witness?

11 THE COURT: Yes. Is there no one else in your
12 office that can assist you in getting another witness
13 ready to go --

14 MS. SAVAS: We will do that, yes, ma'am, right now.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: Do you have a plan, Ms. Savas?

17 MS. SAVAS: Yes, Your Honor. We asked about
18 Mr. Hallman. He is in Moncks Corner and the only one
19 operating the store and can't close it but we were going
20 the move forward with Ms. Singleton. We just tried
21 clarifying something up but we are just going to put her
22 on the stand, Your Honor.

23 THE COURT: All right. And then she's your last
24 witness for the day?

25 MS. SAVAS: Yes, ma'am.

1 THE COURT: Let's bring them back in.

2 MR. MALLOY: Your Honor, I do have one matter
3 before the jury comes in --

4 THE COURT: All right.

5 MR. MALLOY: -- regarding prior convictions of this
6 witness.

7 MS. SAVAS: She has several. I need to ask her
8 about them.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 3:39 p.m.)

11 THE BAILIFF: The jury is all present, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Call your next witness.

14 MS. SAVAS: Thank you, Your Honor. The State calls
15 Candace Singleton.

16 CANDACE SINGLETON, after having been duly
17 sworn, testified as follows:

18 THE CLERK: For the record, will you state your
19 first and last name and spell out your last name, please.

20 THE WITNESS: Candace Singleton, S-i-n-g-l-e-t-o-n.

21 THE COURT: Ms. Savas.

22 MS. SAVAS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. SAVAS:

25 Q. Ms. Singleton, where do you currently reside?

- 1 A. [REDACTED] Nassau Street, Charleston, South Carolina
2 29403.
- 3 Q. And, Ms. Singleton, back in September 2013 where
4 were you staying?
- 5 A. The Budget Inn hotel.
- 6 Q. Ms. Singleton, I'm going to show you what's been
7 marked as State's Exhibit Number 25. Do you recognize
8 this?
- 9 A. That's the Budget Inn hotel.
- 10 Q. And that's where you were staying?
- 11 A. Yes, ma'am.
- 12 Q. Ms. Singleton, were you staying alone or did you
13 stay with somebody?
- 14 A. I was staying with somebody.
- 15 Q. And who was that?
- 16 A. Well, I'm sorry. Somebody was staying with me.
- 17 Q. Okay.
- 18 A. As it was in my name.
- 19 Q. Okay. And who was that?
- 20 A. Chavias Jenkins.
- 21 Q. And who is he in relation to you?
- 22 A. My boyfriend.
- 23 Q. How long have y'all been together?
- 24 A. Since 2012.
- 25 Q. Y'all still together?

1 A. Yeah.

2 Q. Ms. Singleton?

3 A. Uh-huh.

4 Q. You have some prior convictions -- do you have

5 prior convictions?

6 A. Yes, I do.

7 Q. You ever been charged with filing a false police

8 report?

9 MR. MALLOY: I object.

10 THE COURT: Counsel approach.

11 (WHEREUPON, a bench conference was had off the

12 record.)

13 BY MS. SAVAS:

14 Q. Ms. Singleton, you also were convicted of a breach

15 of trust?

16 A. Yes. That was dismissed.

17 Q. No. I'm saying convicted, ma'am.

18 A. Not to my knowledge. I got all my papers as far as

19 it being dismissed.

20 Q. November 27, 2007 you were convicted of a breach of

21 trust with fraudulent intent?

22 A. Yes, ma'am. That was dismissed.

23 Q. Ms. Singleton, you were either convicted, which

24 means you were found guilty, or it was dismissed. I'm

25 asking you on November 27, 2007 you had a conviction for

1 that charge.

2 A. I was --

3 Q. Yes or no.

4 A. -- arrested for it but I was not convicted because
5 it was dismissed.

6 Q. Ms. Singleton, you were also convicted of three
7 financial transaction card frauds?

8 A. Uh-huh.

9 MR. MALLOY: Your Honor, I object to leading.

10 THE COURT: Overruled.

11 Q. Ms. Singleton, you said that you were with
12 Mr. Jenkins back in 2013?

13 A. Yes.

14 Q. And you are still with him today?

15 A. Yes.

16 Q. In fact, you came to this trial with him, right?

17 A. Yes.

18 Q. Ms. Singleton, back in 2013 officers came to the
19 Hideaway Lounge where you were at, right?

20 A. Correct.

21 Q. And when you went there you actually provided them
22 with a fake name at first, right?

23 A. Incorrect.

24 Q. Did you tell them your name was Candace Middleton?

25 A. Singleton. He doubled my name. I said Singleton.

- 1 He asked me where I stay and I said the hotel but I don't
2 have an ID because the tip was for underage drinker at
3 the hotel, at the bar I was at.
- 4 Q. You actually don't know what tip you are talking
5 about.
- 6 A. That's what he said. He said the tip was that
7 there was an underage drinker at the Hideaway. I was in
8 the Hideaway when the police came into the Hideaway.
- 9 Q. So then, Ms. Singleton, you took them to the room,
10 right?
- 11 A. Yes, I did.
- 12 Q. You were in room 242 that time?
- 13 A. Yes, ma'am.
- 14 Q. And that's where you lived with your boyfriend,
15 Chavias Jenkins?
- 16 A. I was by myself at that time.
- 17 Q. But that's where y'all stayed?
- 18 A. Correct.
- 19 Q. And when they went in there they found a pill
20 bottle with Chavias' name on it, right?
- 21 A. Correct.
- 22 Q. And you told them that's your boyfriend?
- 23 A. Correct.
- 24 Q. And you weren't working at this time, were you?
- 25 A. No, I wasn't.

- 1 Q. And Chavias wasn't working either at that time, was
2 he?
- 3 A. Yes, he was.
- 4 Q. Wasn't he laid off recently at that time?
- 5 A. No.
- 6 Q. Didn't you tell officers that he was laid off?
- 7 A. I don't recall me telling them that he was laid
8 off.
- 9 Q. Do you remember meeting me last week --
- 10 A. Yep.
- 11 Q. Do you remember telling me that he was laid off?
- 12 A. I told you the same thing I just said just now
13 because you was recording me.
- 14 Q. Did you at that time tell me that he was laid off?
- 15 A. No, I didn't.
- 16 Q. Do you remember telling officers that you went to
17 the Cricket store that day, they asked you about?
- 18 A. Yes, and to the plasma center.
- 19 Q. You go to the plasma center to try to get some
20 money?
- 21 A. Yeah.
- 22 Q. And you went to the Cricket store to have your
23 phone reset, right?
- 24 A. Wrong. I got my phone fixed because it was
25 freezing.

- 1 Q. Okay. Ms. Singleton, you didn't have a working car
2 at that time, did you?
- 3 A. Correct.
- 4 Q. Neither did Mr. Jenkins, did he?
- 5 A. Correct.
- 6 Q. So you had to walk places?
- 7 A. No. I got friends that have cars.
- 8 Q. All right. Ms. Jenkins, you told them that you
9 went to the pawnshop that day, too?
- 10 A. No.
- 11 Q. You tell them that you go to the pawnshop?
- 12 A. Who?
- 13 Q. The officers.
- 14 A. No, I did not.
- 15 Q. Do you go to the pawnshop?
- 16 A. No, I did not.
- 17 Q. Have you ever gone to a pawnshop?
- 18 A. In my life, yes.
- 19 Q. Okay. Ms. Singleton, do you use the phone number
20 (843) 642-[REDACTED]?
- 21 A. Uh-uh.
- 22 THE COURT: Is that a no? I need you to answer.
- 23 A. Oh, no, ma'am. No, ma'am. I'm sorry.
- 24 Q. You ever give that phone number at a pawnshop so
25 you could get your money?

- 1 A. No, ma'am.
- 2 Q. Never gave it to the Moneyman Pawn on McMillan?
- 3 A. No, ma'am.
- 4 Q. Ever gave it to the other Moneyman Pawn?
- 5 A. No, ma'am.
- 6 Q. Ms. Jenkins, did you unfortunately have a house
7 fire back then?
- 8 A. Ms. Singleton, yes.
- 9 Q. I'm sorry. Ms. Singleton. But on your Facebook
10 you go by Candace Jenkins, right?
- 11 A. Correct.
- 12 Q. Yeah. Do you love Mr. Jenkins?
- 13 A. Yes, I do.
- 14 Q. You actually call yourself his wife out on
15 Facebook, right?
- 16 A. Correct.
- 17 Q. You get in arguments with his other girlfriends on
18 Facebook, right, around that?
- 19 MR. MALLOY: Objection, relevance.
- 20 THE COURT: Sustained.
- 21 Q. Ms. Singleton, you made jail calls to Mr. Jenkins,
22 correct?
- 23 A. No. The jail calls were made to me.
- 24 Q. Okay. Did you get a tattoo on your hand, Ms. --
- 25 A. Uh-huh.

- 1 Q. -- Singleton?
- 2 A. I got two.
- 3 Q. What is it?
- 4 A. His and his momma's name.
- 5 Q. Because you are just that close, right?
- 6 A. Uh-huh.
- 7 Q. You got a gun symbol on it, too, you said?
- 8 A. A gun symbol? No.
- 9 Q. Ms. Singleton, he actually asked you to look up
- 10 stuff about this case for him, didn't he, at the library?
- 11 A. Yeah.
- 12 Q. You would also write Mr. Jenkins letters, right, at
- 13 the jail?
- 14 A. Correct.
- 15 Q. Ms. Singleton, would you say that you had a
- 16 hardship financially back then?
- 17 A. No.
- 18 Q. Do you remember telling officers that you were just
- 19 trying to survive?
- 20 A. Yeah. Everybody is trying to survive.
- 21 Q. Ms. Jenkins, you actually --
- 22 A. Ms. Singleton.
- 23 Q. Ms. Singleton. My apologies. I actually don't
- 24 want to -- do you want to be here?
- 25 A. I mean, I'm here.

1 Q. Do you want to be here?

2 A. I'm here.

3 Q. It's a yes or no. Do you want to be here?

4 A. Yes.

5 Q. Did you want to speak with me?

6 A. No.

7 Q. But you want to be here to support Mr. Jenkins,
8 right?

9 A. Correct.

10 Q. Okay.

11 MS. SAVAS: Beg the Court's indulgence.

12 Q. Ms. Singleton, you are here in support of

13 Mr. Jenkins, right?

14 MR. MALLOY: Asked and answered.

15 THE COURT: Sustained.

16 Q. Ms. Singleton, would you want to help Mr. Jenkins
17 any way you could?

18 A. Yep.

19 Q. Because you love him?

20 A. Yep.

21 MS. SAVAS: No further questions.

22 THE COURT: Mr. Malloy?

23 MR. MALLOY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MALLOY:

- 1 Q. Good afternoon, Ms. Singleton.
- 2 A. Hey, Mr. Malloy.
- 3 Q. Let me make one thing clear. Were you involved in
- 4 this carjacking, armed robbery in any way?
- 5 A. No. I was incarcerated.
- 6 Q. You were questioned by officers about it?
- 7 A. Yeah.
- 8 Q. But you were never charged in relation to this
- 9 case?
- 10 A. No, sir.
- 11 MS. SAVAS: Objection. Relevance, Your Honor.
- 12 THE COURT: Counsel, approach.
- 13 (WHEREUPON, a bench conference was had off the
- 14 record.)
- 15 BY MR. MALLOY:
- 16 Q. Ms. Singleton, you were never charged in reference
- 17 to this carjacking, armed robbery, correct?
- 18 A. Correct.
- 19 Q. But you remember the date, September 13, 2013?
- 20 A. Correct.
- 21 Q. You spoke with the police officers about it?
- 22 A. Correct.
- 23 Q. You and Chavias were -- you were boyfriend and
- 24 girlfriend at the time?
- 25 A. Uh-huh.

- 1 THE COURT: Is that a yes?
- 2 A. Yes. I'm sorry.
- 3 Q. But and he had stayed with you at the hotel
- 4 previously, right?
- 5 A. Correct.
- 6 Q. But on September 13, 2013 he was not staying with
- 7 you?
- 8 A. No.
- 9 Q. He had not been there for several days, correct?
- 10 A. No. He wasn't there for several days.
- 11 Q. And why is that?
- 12 A. We got into an argument.
- 13 Q. You got into an argument?
- 14 A. Uh-huh.
- 15 Q. And where was he staying at that time?
- 16 A. When he left me he went with his mom. She was
- 17 moving.
- 18 Q. And where does his mother live?
- 19 A. She stays in Goose Creek.
- 20 Q. And you did not see or hear from Mr. Jenkins or
- 21 Chavias on September 13, did you?
- 22 A. Correct.
- 23 Q. You did not?
- 24 A. I didn't.
- 25 Q. The solicitors contacted you about this case in

- 1 preparation for trial, correct?
- 2 A. Correct.
- 3 Q. And she came to meet with you?
- 4 A. Correct.
- 5 Q. She had an investigator with her, correct?
- 6 A. Correct.
- 7 Q. Did you feel like she was trying to pressure you?
- 8 A. Correct.
- 9 Q. To changing what you had to say about this?
- 10 A. Yeah.
- 11 Q. And you've already said you don't want to be here
- 12 today?
- 13 A. I don't but I'm here.
- 14 Q. You and Chavias are still in a relationship?
- 15 A. Correct.
- 16 Q. You are only here today because the solicitor
- 17 subpoenaed you, correct?
- 18 A. Correct.
- 19 MR. MALLOY: No further questions.
- 20 THE COURT: Redirect?
- 21 MS. SAVAS: Briefly, Your Honor.
- 22 REDIRECT EXAMINATION
- 23 BY MS. SAVAS:
- 24 Q. Ms. Singleton, you are here to support Mr. Jenkins,
- 25 right?

1 A. Correct.

2 Q. You pregnant with his child?

3 A. Incorrect. I don't know yet.

4 Q. You don't know yet?

5 A. Correct.

6 Q. Ms. Singleton, did I ever tell you what to say?

7 A. No.

8 MS. SAVAS: Okay. No further questions.

9 THE COURT: Mr. Malloy?

10 MR. MALLOY: No follow up.

11 THE COURT: Is this witness free to leave?

12 MS. SAVAS: Yes, Your Honor.

13 THE COURT: You may step down. Feel free to stay

14 with us but you are also free to leave. Thank you,

15 Ms. Singleton.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MS. SAVAS: Your Honor, that's all I have for

19 today.

20 THE COURT: Ladies and gentlemen, we will end at

21 this time. Please remember all my admonitions. Do not

22 begin your deliberations, do not discuss this case

23 amongst yourselves. You're likely going to go home and

24 whoever is at home with you is going to say, What did you

25 do today? Don't discuss this case with anyone. There

1 will be time, I'll let you know when you can. Please
2 take your notepads with you. We'll lock them up over the
3 evening hour and give them back to you.

4 Ladies and gentlemen, tomorrow is Friday so I'm
5 attempting to make sure that we are concluded on Friday
6 so please be back at 8:30 in the morning. I know that's
7 early. Is there anyone who cannot get here at 8:30?

8 (There was no response.)

9 THE COURT: All right. Thank you. I'll see you
10 back at 8:30. Thank you.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 4:00 p.m.)

13 THE COURT: Thank you. Be seated.

14 We'll have a charge conference, so we are at ease.
15 Please be here at 8:30. I suggest you have all your
16 witnesses here at 8:30.

17 MS. SAVAS: Yes, ma'am.

18 (WHEREUPON, the trial was recessed for the day.)

19 Friday, August 26, 2016

20 THE COURT: Are we ready?

21 MS. SAVAS: No, Your Honor. Apparently, they don't
22 let people in the courthouse before 8:30, so we have some
23 witnesses that are coming up.

24 DEPUTY CARTER: That's not factual, Your Honor.
25 Just like these gentlemen down there, we warned everybody

1 that's coming to 4-B they are to direct them up.

2 MS. SAVAS: That's if they ask. We didn't tell
3 them to ask. I didn't know they had to --

4 I'm not trying to say anything against you, of
5 course.

6 They didn't know to specifically ask so I'm
7 assuming they are downstairs since no one is here, but we
8 have Angelica on Skype.

9 THE COURT: Where is your victim advocate? Why is
10 that person not down there escorting them up?

11 DEPUTY CARTER: Your Honor, they are making
12 announcements.

13 THE COURT: Ms. Savas, we know that the courthouse
14 is 8:30. I specifically indicated that we were starting
15 promptly at 8:30. You should have made arrangements to
16 get them up here.

17 MS. SAVAS: Yes, ma'am.

18 THE COURT: Who are we waiting on?

19 MS. SAVAS: We are waiting on our victim, we are
20 waiting on our SLED agent, and Ms. Angelica is on standby
21 for Skype. We also do, Your Honor, need to bring to your
22 attention we have an additional witness this morning that
23 we did not foresee yesterday; however, they are on their
24 way. They should be here.

25 THE COURT: So are we ready -- do you have somebody

1 to start with?

2 MS. SAVAS: We have Ms. Angelica. If I may just go
3 call my investigator really quick before we start to just
4 to confirm. I've been trying to get ahold of him.

5 MR. MALLOY: And, Your Honor, I'm going to have an
6 issue with the additional witness that Ms. Savas just
7 eluded to.

8 THE COURT: Who is the witness and why do you have
9 a problem? Is the witness on the witness list?

10 MS. SAVAS: No, Your Honor, they're not. This
11 is --

12 THE COURT: Then how are we going to do that?

13 MS. SAVAS: Well, Your Honor --

14 THE COURT: Do you want me to voir dire the jury to
15 see if they know that witness? It's a little late.

16 MS. SAVAS: Well, Your Honor, according to Rule
17 613, a prior statement of a witness, because
18 Ms. Singleton lied yesterday on the stand to her phone
19 number in the pawnshop we are now seeking to admit
20 extrinsic evidence that she did use that phone number at
21 the pawnshop. We have the pawnshop manager here,
22 custodian of records providing pawn slips from
23 Ms. Singleton using that phone number.

24 This is a crux of our case, absolute necessity in
25 linking that phone number to Ms. Singleton, and so we

1 need that witness and we have the proper witness as the
2 custodian of those records, and if we do not get that
3 allowed in the State would be highly prejudiced, that
4 it's the theory of our case and we did not foresee
5 Ms. Singleton lying. And I specifically asked here about
6 the pawn shops --

7 THE COURT: Mr. Barfield, we are without witnesses.
8 Could you be of assistance to go help them upstairs?

9 MR. BARFIELD: Okay.

10 THE COURT: Thank you.

11 MR. BARFIELD: Yes, ma'am.

12 THE COURT: Ms. Savas, when did you decide that you
13 were going to call that witness?

14 MS. SAVAS: Last night, Your Honor, and as soon as
15 we did that I e-mailed Mr. Malloy immediately.

16 THE COURT: Did you let us know?

17 MS. SAVAS: I just let your clerk know when we came
18 in this morning, Your Honor.

19 THE COURT: When did you let Mr. Malloy know?

20 MS. SAVAS: Last night.

21 THE COURT: And why didn't you let me know?

22 MS. SAVAS: I'm sorry, Your Honor.

23 THE COURT: Ms. Savas, I've made this abundantly
24 clear before we started this on Wednesday that we are
25 running out of time. I reiterated that issue with you

1 yesterday when we ended early because of your failure to
2 properly schedule witnesses.

3 MR. MALLOY: And, Your Honor, I move the Court for
4 a mistrial. This is the first time I have received any
5 information regarding a connection between Candace
6 Singleton and the Craigslist ad. I have asked for this
7 -- any information connecting Ms. Singleton or my client
8 to the Craigslist ad for the two years that I have had
9 this case. I have been told repeatedly there is nothing
10 that they are able to connect between the Craigslist ad
11 and my client or Ms. Singleton. This is totally out of
12 left field for us. We are not prepared to deal with this
13 new information that the State is seeking to introduce.

14 THE COURT: I thought there was always some issue
15 that that was the phone number, that that's been the
16 issue, is that that's --

17 MR. MALLOY: No. No, Your Honor. I was not aware
18 of anything linking them to that phone number until Nina
19 mentioned something about it yesterday as the jury was
20 walking in. It didn't come up yesterday because
21 Ms. Singleton denied any use of the phone. But we have
22 had no notice of that whatsoever, despite my repeated
23 requests. And she's always denied that that was her
24 phone number. She's denied previously that that was her
25 phone number so Ms. Savas, she knew that she was going to

1 deny that on the stand and she did elicit this testimony
2 from her yesterday.

3 Keep in mind, this is the State's witness. This is
4 not my witness. And, Your Honor, we've obviously already
5 locked ourself into a defense. We are well into the
6 trial and simply not prepared to deal with this.

7 THE COURT: Ms. Savas?

8 MS. SAVAS: Your Honor, they had equal access to
9 this witness, in fact, as a hostile witness. It's not
10 technically our witness. She's actually with
11 Mr. Jenkins. They have every access and opportunity to
12 this witness, and it's always been the State's contention
13 throughout this entire investigation as well as the
14 police that that phone number belongs to Ms. Singleton.
15 Has she denied that? Yes.

16 I showed them yesterday pawn slips that came to our
17 attention. We are now properly --

18 THE COURT: Did you show her pawn slips?

19 MS. SAVAS: I showed them pawn slips yesterday from
20 the police database. It has always been our contention
21 that is her phone number. I have never said that --

22 THE COURT: My question was did you show her,
23 Ms. Singleton, the pawn slips?

24 MS. SAVAS: No, Your Honor, because they came from
25 a police database so she wouldn't know what it was. So

1 this morning we have the original pawn slips from the
2 pawnshop owner. I have asked her --

3 THE COURT: Wouldn't she have received the pawn
4 slip or --

5 MS. SAVAS: She knows that. They are her pawn
6 slips. Yes, ma'am. When she goes --

7 THE COURT: Well, now, you haven't given her an
8 opportunity to deny that's her signature.

9 MS. SAVAS: Your Honor, that's -- when I asked her
10 the question when she went to -- had she gone to the pawn
11 stores?

12 Yes.

13 Did you provide them with that phone number on
14 McMillan Avenue?

15 No.

16 Now we are admitting -- it's not for impeachment
17 purposes at this point. It's extrinsic evidence at this
18 point that we can now put in since she had lied about
19 that, that specific piece of evidence through the proper
20 custodian of records. This is not new information --

21 THE COURT: The jurors are here. All right.

22 MS. SAVAS: Yes, ma'am.

23 THE COURT: Do you have a witness ready?

24 MS. SAVAS: Yes, ma'am.

25 THE COURT: All right. Let's get started.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 8:40 a.m.)

3 THE BAILIFF: The jury is all present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Call your next witness?

6 MS. SAVAS: Thank you, Your Honor. The State calls
7 Angelica Loaiza.

8 ANGELICA LOAIZA, after having been duly
9 sworn, testified as follows:

10 THE CLERK: Just for the record, if you could state
11 your first and last name and spell out your last name,
12 please.

13 THE WITNESS: Angelica Loaiza. My last name is
14 L-o-a-i-z-a.

15 DIRECT EXAMINATION

16 (VIA SKYPE)

17 BY MS. SAVAS:

18 Q. Ms. Loaiza, where do you work?

19 A. Excuse me?

20 Q. Where do you work?

21 A. I work at City of Miami Police Department.

22 Q. And were you formerly with the North Charleston
23 Police Department?

24 A. Yes, I was.

25 Q. And how long were you with them?

- 1 A. I was with them for three years.
- 2 Q. And were you working there September 2013?
- 3 A. Yes, I was.
- 4 Q. And what was your job there?
- 5 A. I was a crime scene tech.
- 6 Q. And what would you do as the crime scene tech?
- 7 A. As a crime scene tech I would process crime scene
- 8 calls.
- 9 Q. Okay. And did you have special training and
- 10 certificates in order to do that job?
- 11 A. Yes, I did.
- 12 Q. And how were you involved in this case?
- 13 A. I was dispatched to [REDACTED] Kerry Street in reference
- 14 to a kidnapping and robbery.
- 15 Q. And what was at that location?
- 16 A. At that location I located the victim's car. It
- 17 was a green in color vehicle, S-type Jaguar.
- 18 Q. Okay. And what did you do with that vehicle?
- 19 A. Once I got to the scene I photographed the vehicle
- 20 and I also processed it for fingerprints and DNA.
- 21 Q. And can you just briefly explain how you processed
- 22 those prints?
- 23 A. We use a black powder which --
- 24 THE COURT: We are having --
- 25 Q. One second, Angelica.

1 THE COURT: The background feedback is preventing
2 my court reporter from taking down the record accurately.

3 A. I'm sorry?

4 Q. Ms. Loaiza, can you hear me?

5 A. Yes.

6 Q. Can you just briefly explain how you process
7 fingerprints.

8 A. We use a black powder with a fiberglass brush. So
9 what we do is we process it so we can go ahead and have
10 visual fingerprints.

11 Q. And you did that on this car?

12 A. Yes, I did.

13 Q. How many times would you say in your career you've
14 done that?

15 A. I've done it many of times, pretty much for the
16 four years that I've been a crime scene investigator
17 there I process almost every day.

18 Q. And what kind of fingerprints, what type did you
19 process?

20 A. What type of fingerprint?

21 Q. Yes.

22 A. Latent prints.

23 Q. And what are latent prints?

24 A. They are prints that -- that somebody pretty much
25 -- what it is --

1 Q. Can you just talk -- I know this is difficult, a
2 little slower.

3 A. Sure. There's three types of fingerprints which is
4 latent, patent and plastic. In this case they were
5 latents, which was known to the naked eye. So we use a
6 black powder that makes an adhesive so it can be visible
7 to the naked eye.

8 Q. Okay. And in your experience if someone were to
9 wipe down prints would that make it difficult for you to
10 process?

11 MR. MALLOY: Objection. She's not qualified as an
12 expert.

13 THE COURT: Sustained.

14 Q. Ms. Loaiza, once you gathered those prints what did
15 you do with them?

16 A. Well, we go ahead and forward it to the latent
17 examiner.

18 Q. Do you know who that was?

19 A. Al Hallman.

20 Q. And how many total did you do?

21 A. Seven.

22 Q. And you also did touch DNA?

23 A. Correct.

24 Q. Can you just briefly explain what that is.

25 A. Touch DNA, what it does is we used like a Q-tip and

1 distilled water and --

2 THE COURT: Stop.

3 Q. She got down to the part where you said a Q-tip and
4 distilled water.

5 A. So what we do is that once we use that we swab
6 whatever we think the subject has touched.

7 Q. Whatever you think the subject touched. And did
8 you also take a buccal swab?

9 A. Yes.

10 Q. What is that?

11 A. A buccal swab is the same thing pretty much like
12 the Q-tip applicator. It's like a foam type and we use
13 it to collect evidence.

14 Q. And who did you do that from in this case?

15 A. From the victim.

16 Q. And why did you do that?

17 A. Due to the fact that it's her vehicle so obviously
18 her DNA is going to come out so it's going to be a known
19 standard.

20 Q. And what do you do with all these things when you
21 are done?

22 A. Once I'm done I take them back to our office. We
23 package it, secure it and give it to property.

24 Q. And was everything, to the best of your knowledge,
25 followed by procedure in proper custody and control?

1 A. Yes, ma'am.

2 MS. SAVAS: Nothing further.

3 THE COURT: Mr. Malloy?

4 MR. MALLOY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MALLOY

7 Q. Good morning, Ms. Laoiza.

8 A. Good morning.

9 Q. You testified a little bit about your experience in
10 crime scene. You worked in North Charleston for four
11 years?

12 A. You are breaking up. I'm sorry.

13 Q. You worked in crime scene for four years in North
14 Charleston?

15 A. Three years.

16 Q. Three years. But you were training in the methods
17 of recovering or conducting crime scene investigation,
18 correct?

19 A. Correct.

20 Q. And you were trained how to collect fingerprints
21 and DNA, obviously?

22 A. Yes.

23 Q. And when you respond to the crime scene you want to
24 be as thorough as possible, correct?

25 A. Correct.

1 Q. You want to be able to collect as much evidence as
2 possible to aid the detectives in their investigation,
3 correct?

4 A. Correct.

5 Q. And when you arrived at the scene in this case you
6 were briefed on the robbery, correct?

7 A. Correct.

8 Q. So you knew the robber had entered the vehicle --
9 the victim said the robber entered the vehicle from the
10 driver's side, correct?

11 A. I'm sorry. You came in and out.

12 Q. You knew that the victim told police that the
13 robber entered the vehicle from the driver's side,
14 correct?

15 A. I don't think --

16 THE COURT: You need to repeat that from the
17 beginning.

18 Q. Were you aware that the -- did the police tell you
19 that the robber entered the vehicle from the driver's
20 side?

21 THE COURT: Okay. Mr. Malloy, the last response
22 she needs to repeat. We cannot hear it, for the record.

23 MR. MALLOY: My previous question?

24 THE COURT: Yes.

25 Q. I'm going to have to repeat a previous question,

- 1 Angelica.
- 2 A. Correct. Go ahead.
- 3 Q. Did the officers -- were you told that the driver
- 4 entered the vehicle from the driver's side -- I mean, the
- 5 robber entered the vehicle from the driver's side, by the
- 6 officers?
- 7 A. Let me go back to my records.
- 8 THE COURT: Can you repeat that?
- 9 A. Yes, from the driver's side.
- 10 Q. The robber entered the vehicle from the driver's
- 11 side. That's what you were told, correct?
- 12 A. Yes.
- 13 Q. So you were trying to collect evidence that the
- 14 driver would have left, since the robber was the last
- 15 person in the driver's seat, correct?
- 16 A. Correct.
- 17 Q. So you are looking at the steering wheel, is that
- 18 right?
- 19 A. Things that he might have touched?
- 20 Q. Yes. Correct. Things that he might have touched.
- 21 A. Yes.
- 22 Q. The steering wheel, the gear shifter?
- 23 A. Correct.
- 24 Q. Also, the driver's side door, correct?
- 25 A. Yes.

1 Q. And you are also looking on the driver's side for
2 fingerprints, correct?

3 A. Correct.

4 Q. Because the robber would have left those behind; is
5 that right?

6 A. Correct.

7 MR. MALLOY: Court's indulgence.

8 THE COURT: Yes.

9 BY MR. MALLOY:

10 Q. And you also took pictures of the vehicle, correct?

11 A. Yes.

12 Q. And you photographed keys on the passenger side
13 floorboard of the vehicle, correct?

14 A. Correct.

15 Q. And the car was turned off when you were there,
16 correct?

17 A. Correct.

18 Q. And, specifically, you pulled fingerprints from the
19 driver's side door, correct?

20 A. You're breaking up.

21 Q. You pulled a lift from the driver's side door; is
22 that right?

23 A. Okay. Give me just a second --

24 Q. You need me to repeat?

25 A. Give me just a second. Let me look at my report.

1 (PAUSE.)

2 A. I don't have a place of where the --

3 THE COURT: Can you repeat?

4 Q. I was asking did you obtain a fingerprint lift from
5 the driver's side door?

6 A. Okay. They were just developed on the driver's
7 door, the driver's door frame, the passenger door frame,
8 passenger side rear door frame, driver handle, and
9 passenger door interior handle.

10 Q. So three lifts taken from the driver's side,
11 correct?

12 A. Yes.

13 Q. And you were looking here because these are places
14 the driver would likely leave fingerprints, correct?

15 A. From the driver? I can't say that's from the
16 driver, no.

17 Q. Well, you also took DNA swabs from the interior of
18 the vehicle?

19 A. Correct.

20 Q. One of those swabs from the main car key, correct?

21 A. Correct.

22 Q. Another from the steering wheel?

23 A. Correct.

24 Q. Another from the gear shifter?

25 A. Correct.

- 1 Q. One from the interior handle from the driver door?
- 2 A. Correct.
- 3 Q. And another from the exterior handle of the
- 4 passenger door?
- 5 A. No.
- 6 Q. What's that?
- 7 A. One from the exterior passenger door?
- 8 Q. Yes.
- 9 A. No.
- 10 Q. So you took -- how many swabs did you take in all,
- 11 altogether?
- 12 A. Hold on. Four.
- 13 Q. Four?
- 14 A. Yes.
- 15 Q. And, again, you chose these locations because they
- 16 are likely to be places the driver would have left DNA?
- 17 A. I'm sorry. I took five.
- 18 Q. You took five swabs?
- 19 A. Yes.
- 20 Q. And you chose these places because they are likely
- 21 to be where the driver would have left their DNA?
- 22 A. From what I was advised they came from the driver's
- 23 side so that's usually where I would be notified to take
- 24 the DNA from.
- 25 Q. Okay. You never located a blue Folly Beach shirt,

- 1 did you, in the vehicle?
- 2 A. No, I did not.
- 3 Q. There's no shirt like that in any of the
- 4 photographs you took?
- 5 A. Excuse me?
- 6 Q. There's no shirt like that in any of your
- 7 photographs, correct?
- 8 A. Correct.
- 9 Q. You were not asked to take a DNA swab from a blue
- 10 Folly Beach shirt, were you?
- 11 A. No.
- 12 Q. If you knew -- if you were told that the robber had
- 13 held a shirt in the vehicle you would have tried to get a
- 14 DNA swab from that, correct?
- 15 A. If it was on the scene and part of the actual scene
- 16 I would forward it to SLED for further analysis.
- 17 Q. Right. If the robber had touched a shirt. If you
- 18 were told a robber had touched a shirt that's something
- 19 you might be able to collect a DNA swab from, correct?
- 20 A. Correct.
- 21 Q. And you submitted all this to North Charleston so
- 22 that it could go to be analyzed by SLED and the experts
- 23 in North Charleston, correct?
- 24 A. What we do is once we secure it and pack it we
- 25 forward it to property.

1 Q. Thank you.

2 MR. MALLOY: Court's indulgence.

3 (PAUSE.)

4 MR. MALLOY: No further questions.

5 THE COURT: Redirect?

6 MS. SAVAS: No, Your Honor.

7 THE COURT: Thank you.

8 MS. SAVAS: Thank you, Ms. Loaiza. We are done.

9 THE COURT: Call your next witness.

10 MS. SAVAS: The State calls Al Hallman.

11 AL HALLMAN, after having been duly sworn,

12 testified as follows:

13 THE CLERK: And for the record, if you could please

14 state your first and last name and spell out your last

15 name, please.

16 THE WITNESS: Al Hallman, H-a-l-l-m-a-n.

17 DIRECT EXAMINATION

18 BY MS. SAVAS:

19 Q. Morning, Mr. Hallman.

20 A. Good morning.

21 Q. It's good to have you here in person.

22 A. Thank you.

23 Q. Mr. Hallman, where are you currently employed?

24 A. I am currently one of the assistant managers at

25 Angler Sporting Goods in Moncks Corner.

1 Q. And were you formerly with North Charleston Police
2 Department?

3 A. Yes, I was.

4 Q. Did you retire from there?

5 A. I did.

6 Q. But you're still working?

7 A. Oh, yeah. I work more now than I did before I
8 retired.

9 Q. Okay. And how long were you with North Charleston?

10 A. Approximately 27 years.

11 Q. And when you retired what position did you retire
12 from?

13 A. When I retired I was a road supervisor and I
14 retired in late December of 2012 and then early January
15 of 2013. I went back in the forensics unit as a forensic
16 investigator.

17 Q. And what are some of your job duties as a forensic
18 investigator?

19 A. Mine were -- well, when I was with the police
20 department as a police officer I was supervisor of the
21 forensics unit for about 18 years. When I went back as a
22 civilian forensic investigator our duties were to respond
23 to all types of crime scenes, whether it be burglaries,
24 fatality wrecks, robberies, homicides, anything.

25 We respond to those scenes and our responsibility,

1 we are to document the scene as it was when we arrived
2 with photography and charts, if necessary, to collect and
3 preserved any items of evidence that might be pertinent
4 to a case, and to basically just process the entire scene
5 from the inside out and try to determine or collect
6 evidence to be used to determine the suspect.

7 Q. And did you have specialized training or
8 certifications?

9 A. Yes, I did.

10 Q. And what were some of those?

11 A. Through my career I went through numerous basic and
12 advanced training courses all around the nation that
13 dealt with fingerprint examinations, advanced ridgeology,
14 which is the study of the skin on your hands and your
15 feet, homicide investigation, shooting reconstruction.
16 Many of them I can't remember but it was just multiple --
17 it was a constant training process the entire time I was
18 in there.

19 Q. And did you use special equipment for fingerprint
20 work specifically?

21 A. Fingerprint work we use all kinds of equipment. We
22 use alternate light sources, chemical die treatments,
23 superglue fuming chambers, phosphorus dusts of different
24 shades and color, magnetic brushes. I mean, the whole
25 works, static dust lifters, everything.

1 Q. And about how many times did you say that you've
2 done fingerprint analysis?

3 A. Tens of thousands.

4 Q. And did you receive a special education? Did you
5 -- what is your educational background?

6 A. No. I'm a high school graduate that went right
7 into the military. Once I got out of the military I went
8 right into police work.

9 Q. Okay. And have you testified in court as an expert
10 in fingerprint and palm print analysis?

11 A. Yes, I have.

12 Q. About how many times?

13 A. Well over a hundred.

14 MS. SAVAS: Your Honor, at this time the State
15 moves that Mr. Al Hallman be admitted as an expert in the
16 field of fingerprint and palm print examination.

17 THE COURT: Any objection?

18 MR. MALLOY: No objection.

19 THE COURT: Ladies and gentlemen, normally a person
20 cannot give opinion testimony. Typically, when a person
21 testifies they must testify as to either what they heard
22 or saw or sensed by smell or something of this nature.
23 There is an exception in our law to someone who is
24 qualified, based upon their education and experience they
25 are permitted to give their opinion in certain areas if

1 they are qualified.

2 This witness will be qualified in the area as an
3 expert in fingerprint and palm print analysis to give
4 opinion testimony in that area. That does not mean that
5 you must accept his opinion. It is simply evidence for
6 you to use in any way that you see fit and give it the
7 weight and credibility that you think it deserves.

8 Ms. Savas?

9 MS. SAVAS: Thank you, Your Honor.

10 BY MS. SAVAS:

11 Q. Mr. Hallman, can you explain how you do a
12 fingerprint analysis.

13 A. Well, it's a multistep process. Basically, we
14 start by identifying a piece of evidence that is believed
15 to contain latent print images on the surface of this
16 item, and what I mean by latent, latent is, I believe, a
17 Latin word that means invisible to the naked eye, which
18 is basically what a fingerprint is until it's processed.

19 We'll take that piece of evidence and we'll process
20 it through one of the processes that I mentioned just a
21 few minutes ago to hopefully develop any kind of ridge
22 detail, and what I mean by ridge is if you look at the
23 fingertips of your fingers and your palms on your hand
24 it's made up of thousands, upon thousands, upon thousands
25 of individual ridges of skin, and what I mean, a ridge is

1 a raised portion of your skin followed by what's called
2 furrow, which is the down ridge portion, and it just goes
3 like this right here (indicated) up and down, up and down
4 all around the palms and fingers of your hands.

5 Within those ridges are what we refer to as points
6 of identification. And the points of identification we
7 are looking for when we are examining prints is an ending
8 ridge where a ridge is just simply flowing through the
9 finger and then stops and then breaks and then goes on.
10 That's identifying point.

11 There's also what's called dots, which is just a
12 little bitty fragment of a ridge, and then there's what's
13 called bifurcations and trifurcations. What those are is
14 a bifurcation, by means like bicycle. It's one ridge
15 that splits into two. And, of course, trifurcation, one
16 ridge splits into three. Very, very identifiable points
17 within a fingerprint and a palm print.

18 Just the tip of your finger can contain anywhere
19 from 75 to 250 or more individual points of
20 identification and the points that I'm talking about
21 right now are what we refer to as level two. There are
22 three levels of fingerprint identification. One is
23 identifying the pattern, which could be a looping pattern
24 or a hurricane looking whorl pattern, or just a nice
25 fluid arching pattern.

1 Level two is the points of identification that I
2 was just talking about, and then level three, if we need
3 to go that route, is the actual study of the skin pores
4 on each individual ridge, which now you are talking
5 microscopic, of course, and that's a whole nother ball
6 game, but we process these pieces of evidence to
7 hopefully to develop ridge detail.

8 Once that ridge detail is developed we examine it
9 through magnifying glasses and if need be, you know, a
10 magnifier, magnification through a computer. And if
11 there are identifying characteristics within that then
12 we'll pursue it further.

13 If we see some prints that may be referred to as
14 smears or just they don't contain a whole lot of
15 identifying characteristics then we'll just move on from
16 there. But that's how we process items of evidence for
17 fingerprints then go further into the fingerprint
18 analysis for it.

19 Q. And is there a certain number of characteristics
20 that you may need or points of identification to actually
21 make a good print?

22 A. No. That's a farce that's been running through the
23 law enforcement community for many, many, many years.
24 They say you have a certain number of points you have to
25 get before it's an identification. No. It's basically

1 what the examiner is comfortable with to call it an
2 identification or not call it an identification.

3 I've testified to a fingerprint one time with four
4 points of identification on it. They were so unique that
5 there was no way that it could belong to anybody else.
6 And the reason I say that is fingerprint, the study of
7 fingerprints and the chances of two people in the world
8 living or dead having the exact, exact identified or
9 identical print as each other has been referred to as one
10 in 10 to the 47th power. That's one in 10 and 47 zeros.
11 So basically that's probably twice the number of people
12 that are on the earth and ever been on there. It's not
13 happening. It's totally impossible.

14 Q. And how is it possible for someone to leave a
15 fingerprint?

16 A. Simply the -- your hands excrete oils all the time
17 and the palms of your hands and the underside of your
18 fingers or the soles of your feet and your toes on the
19 bottom are the only two parts of your skin that come in
20 contact with a surface and leave a ridge detailed latent
21 print. And it doesn't matter what the surface is. You
22 are going to leave something on any given surface. It
23 doesn't mean it's identifiable. It doesn't even mean
24 it's recoverable but there's always something there
25 whenever you hands and your feet come in contact with any

1 given surface.

2 Q. Okay. So to that point specifically it's possible
3 that someone touches something and leaves a fingerprint
4 but it just may not be able to be lifted?

5 A. Absolutely.

6 Q. Okay.

7 A. More so than not. Yeah, being able to recover
8 fingerprints is very difficult. There are many, many,
9 many elements that can come into play that can cause us
10 not to be able to get a good fingerprint. Weather
11 conditions, heat will evaporate a print very, very
12 quickly depending on how hot it is, rain, substrates
13 coming in contact with the surface where the latent print
14 was placed like --

15 MR. MALLOY: Objection. He's testifying outside of
16 his expertise.

17 THE COURT: Overruled.

18 A. You know, a substrate coming in contact with the
19 surface where the prints are like a rag or a shirt or
20 somebody bumping into the surface or someone else coming
21 behind someone and actually touching the surface. A lot
22 of things that come in contact with that surface can
23 actually remove, alter or destroy a latent print image.

24 Q. So you said specifically a T-shirt would be able to
25 remove or alter a fingerprint lift from someone?

1 A. Oh, yeah, absolutely. It's just like a rag, just
2 wiping the surface down or something like that.

3 Q. So all it would take is just someone to wipe the
4 surface with a shirt?

5 A. Yes, ma'am, or bump into it, or anything. Yes,
6 ma'am.

7 Q. And are there certain surfaces that are not
8 conducive for leaving a print or lifting a print?

9 A. Oh, yes, ma'am.

10 Q. What surface?

11 A. Rocks, concrete, very porous wood. You can
12 actually leave an image on there but it's a rarity to see
13 anything within those items. Real course rubber or
14 clothe or something like that.

15 Now, I have gotten prints off of cloth before but
16 like I said, again, it was rare. The most conducive
17 substrates for a latent print to be left are something
18 real smooth and shiny like glass, shiny metal, plastic.
19 Things like that are real conducive to leaving prints.

20 Q. Along that point of a rubber I'm going to show you
21 what's been admitted as State's Exhibit Number 20.
22 Mr. Hallman, this steering wheel here appears to be
23 rubber, correct?

24 A. It appears to be something on that steering wheel,
25 yes, ma'am.

1 Q. Would that be one of those porous surfaces that you
2 were describing that would be difficult to lift a print?

3 A. Yes, very difficult.

4 Q. Would it be most especially difficult if somebody
5 wiped that with a T-shirt?

6 A. Oh, yes, absolutely.

7 Q. What about other spots on a car like sort of that
8 door frame area, that rubbery door frame in a car?

9 A. Yeah. Anything that's porous or is multi-leveled,
10 I guess you can say, yeah, it's very, very difficult to
11 get a print. You almost need something like this counter
12 right here to get a good identifiable print.

13 Q. But that doesn't mean someone didn't touch it,
14 right?

15 A. No --

16 MR. MALLOY: Objection to leading.

17 THE COURT: Overruled.

18 A. No, ma'am. And an example of that is if a crime
19 scene investigator were brought into the courtroom this
20 morning here and they processed this area right here for
21 my prints they are not going to get them. I have not
22 touched anything on this surface of this table just for
23 this explanation, but that doesn't mean I'm not sitting
24 here, and that doesn't mean that my arms have not been on
25 the counter. It just means that my hands have not come

1 in contact with it.

2 Q. And you mentioned weather conditions. If it's a
3 sunny humid September day would that make it difficult?

4 A. It depends on the time factor and the heat. The
5 hotter it gets the quicker the oils left in a latent
6 print will evaporate. If it rained the rain will
7 naturally distort anything that's left on the surface as
8 well.

9 Q. What would make a print -- let me rephrase that,
10 Mr. Hallman, when you make an analysis what are the sort
11 of the results that you can come up with?

12 A. Either you have an identification, which must be
13 verified by another competent latent print examiner, you
14 have prints that are classified as insufficient for
15 identification, and what that means is there's just
16 nothing there that you can identify. It could be a
17 smear, it could be an elbow print, just nothing there to
18 identify. We call that insufficient for identification
19 and we'll follow that up with no analysis performed, and
20 what that means is once we've looked at it, it's not
21 identifiable, we move on. No more analysis.

22 If you've got a latent print that does contain some
23 identifiable characteristics but not enough to affect an
24 identification we would say -- or to affect an entry into
25 one of our computer systems then we list that as

1 insufficient for the entry into that system and then
2 we'll follow that up with how many identifiable
3 characteristics may exist, should a suspect be developed
4 and we sit down with the print cards and do a one-on-one
5 analysis from that point.

6 Q. You were talking about the computer system. Can
7 you just briefly go into when that's compared. Is it
8 more difficult or is it difficult for the computer system
9 to perfectly match up a print?

10 A. Well, the computer system doesn't do that. What
11 our system does is we'll enter a latent fingerprint. The
12 points of identification, which I told you about earlier,
13 we'll enter those points into the computer system and
14 we'll do a submission on it.

15 What the computer is going to do is going to come
16 back and give us the 20 closest respondents that the
17 computer thinks match. The criteria that I entered into
18 the computer, you know, it's going to tell me here's the
19 20 prints that I think might be the one that you just
20 entered, then it's my turn again.

21 What I will do then is start comparing each of
22 those 20 respondents one at a time to the latent print on
23 the computer enlarged so we can definitely see the
24 points. If I go through all 20 respondents and there's
25 no identification then time to move on to the next one.

1 If I do have a print that's identified or I see
2 some points that are relating to the latent print that
3 I'm looking at I'll pull those out and now we'll do a
4 hardcore one-on-one comparison for each point that exists
5 on that print.

6 If there's one point in the latent print that is
7 not in the respondent it's not an ID. The thing about
8 fingerprint work is it's an exact science. Either it is
9 or it isn't.

10 Q. And when you are saying even one point that means
11 you have to have at least that one point of good -- that
12 means all the points that you see have to be of such good
13 quality that if one isn't that great you don't make an
14 identification?

15 A. Not that if it's not that great. If there is one
16 point that's not in one that is in the other it's a non
17 ID.

18 Q. And if something is excluded, specifically, what
19 does that mean?

20 A. I don't --

21 Q. If a print or a person is excluded.

22 A. Oh. What that means is if I have been presented
23 with a set of fingerprint images taken from a specific
24 individual and placed next to me along with the latent
25 print and I compare that latent print to the 10 images on

1 that card, print card and it does not have anything
2 within it that's an identifiable match then that person
3 is what we call excluded from the investigation and we
4 proceed from there.

5 Q. I'm going to ask you sort of a basic question.
6 Mr. Hallman, if that is saying that that print, that tiny
7 print was lifted from a tiny portion of a surface, right,
8 so that is only saying that that person is excluded from
9 that specific tiny portion of that larger surface, right?

10 A. That's correct.

11 Q. So it doesn't mean that if, for instance, to be
12 specific --

13 MR. MALLOY: Object to leading, Your Honor.

14 THE COURT: Sustained. Rephrase your question.

15 Q. If someone touches a door frame but a print is
16 lifted on a specific portion of that door frame does that
17 mean they didn't touch the door frame?

18 A. No.

19 Q. Does that mean they didn't touch the door handle?

20 A. Absolutely not.

21 Q. Does that mean they didn't touch the steering --

22 MR. MALLOY: Objection to leading again.

23 THE COURT: Overruled.

24 A. No.

25 Q. Does that mean they didn't touch a shifter in a

1 car?

2 A. No.

3 Q. So it's possible for me to sit in my car, touch my
4 steering wheel ten and two or whatever I choose to sit
5 but if --

6 MR. MALLOY: Leading.

7 THE COURT: Ms. Savas, please watch your leading
8 questions. Thank you.

9 Q. Is it possible for me to touch my own steering
10 wheel, drive here to work and then a crime scene tech
11 lift a print but not find my print on my own steering
12 wheel?

13 A. Absolutely.

14 Q. So in your results through your experience if
15 someone is simply excluded it doesn't mean they didn't
16 touch that surface?

17 A. No. It means they are excluded from that one
18 particular latent fingerprint.

19 Q. And about how big is a little piece of latent
20 fingerprint that you get?

21 A. They could be real small. I mean, you can take
22 your finger and just touch like that and you are going to
23 get a size -- I don't know, maybe the size of a diamond
24 on a ring, that even that little bit is going to contain
25 five, 10, 20 points.

1 Q. So would you say that the determination of whether
2 someone touched that surface is whether -- so the
3 determination is made not on the surface but that
4 specific print within that surface?

5 A. Yes. We do not cancel out because of a particular
6 substrate. We cancel out the prints.

7 Q. So you would not be able to determine whether
8 someone touched a door if their print was excluded from
9 that door?

10 A. No. Absolutely not. That doesn't mean they didn't
11 touch the door. It just means the print I'm looking at
12 is not theirs.

13 Q. And did you do the -- did you review the prints in
14 this case?

15 A. I did.

16 Q. And in your results, can you just explain what they
17 were.

18 A. Sure. There were seven cards presented to me, and
19 a white placard card is simply a piece of white
20 photograph paper that when we lift a fingerprint off a
21 surface with lifting tape it is reapplied to this white
22 placard card so that you can see the latent print real
23 well, and that helps us when we start doing our
24 comparisons. But I was presented with seven of these
25 white cards bearing latent impressions.

1 On card number one there was a good latent print
2 that was entered into our computer system. No
3 identifications were made.

4 On card two there was a partial palm print. It too
5 was entered into our computer. No identifications were
6 made. Same with latent card number three. It was a palm
7 print. I entered that into our computer system. No
8 identifications.

9 Card number four had two latent print images on it.
10 The first one, number 4.1, was entered into our system.
11 No identifications. The second, one number 4.2 --

12 Q. Just real briefly, Mr. Hallman. I'm sorry to cut
13 you off. Can you just explain what was number four. Do
14 you know what position that was?

15 A. No. I have no idea.

16 Q. Okay.

17 A. It's not listed on my report where the card was
18 lifted from.

19 Q. Okay.

20 A. 4.2 did not have any -- enough characteristics or
21 identifying points to enter into our computer system;
22 however, it could be identified if compared to the person
23 that left the print. There wasn't enough detail there to
24 make an identification.

25 Card number 5.1 was entered into the computer

1 system. No identifications. Card number six was again
2 not suitable for entry into our computer system but there
3 was identifiable ridge detail within the latent print
4 that could be identified to the person that left the
5 print, should I have that person's card in front of me.
6 And card number seven was like a smear. It was
7 insufficient for any type of identification and no
8 further analysis was performed.

9 Q. Now, Mr. Hallman, you submitted those results at
10 the end of this analysis, correct?

11 A. Yes.

12 Q. And are you aware that after you had done that in
13 preparation for this trial your former colleague,
14 Ms. Kubicsko, had then re-examined?

15 A. I think that she was asked to do that but I don't
16 know that personally, no.

17 Q. Okay.

18 A. I haven't talked to Lisa in a long time.

19 Q. Okay. Are you aware of her results from that
20 examination?

21 A. No.

22 Q. Okay. If I were to show you her results would you
23 be able to --

24 A. Absolutely.

25 MS. SAVAS: Beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 (PAUSE.)

3 MS. SAVAS: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 (Ms. Savas handed a document to the witness.)

6 A. Okay.

7 Q. Mr. Hallman, is that the same sort of analysis that
8 you perform?

9 A. Yes, it's the same --

10 Q. It's standard?

11 A. Yes. It's the same format that we go by. It's a
12 generalized format, yes.

13 Q. And, Mr. Hallman, was there any identifications to
14 be able to be made on those?

15 A. No identifications were affected.

16 Q. But, again, Mr. Hallman, does that mean that
17 someone did not touch that surface?

18 A. No.

19 Q. Okay.

20 A. Absolutely not.

21 Q. So, again, even if someone was excluded it doesn't
22 mean that they didn't touch that specific part of the
23 car?

24 A. No. They were not excluded from touching that
25 object. They were simply -- that latent print was

1 excluded.

2 Q. And in your training and experience is it common
3 that you find that someone does touch something but you
4 are just not able to actually get a lifted print and
5 identify it?

6 A. Oh, that happens quite often, yes.

7 Q. Would you say more often than not?

8 A. No. It happens and it happens a lot but I'm
9 hardheaded. I like to get my prints when I start
10 processing something.

11 Q. Okay.

12 A. But there have been instances where I have seen an
13 absolutely perfect latent print on a piece of glass and
14 no matter what I did I could not develop that print or
15 lift it. It's just -- it depends on the substrate that
16 the print is on, it depends on how long it's been there,
17 it depends on if it came in contact with anything. There
18 are so many factors that came into play.

19 Q. So you are very cautious about making a judgment
20 call?

21 A. Oh, absolutely. We don't judge anything. It's
22 either fact or it's not to be.

23 Q. And just again, if someone were to wipe it down
24 with a shirt that would prevent --

25 A. That would basically erase it.

1 MS. SAVAS: Beg the Court's indulgence.

2 (PAUSE.)

3 Q. Just briefly, Mr. Hallman. If someone else touches
4 that same area where that print is lifted causing, like,
5 an overlay would that make it difficult?

6 A. That makes it extremely difficult to have two
7 individual different prints on top of each other. That's
8 extremely, extremely difficult.

9 Q. And you said you have to specifically compare to
10 another print available to you?

11 A. I don't --

12 Q. To compare prints you have to have another person
13 to compare to, right?

14 A. Yes.

15 Q. From the lifting of the print to actual person's
16 print?

17 A. Correct.

18 Q. So it is possible that if you are just comparing it
19 to one person that may be someone else's print --

20 A. If that one person that I'm comparing to is
21 excluded then it is definitely someone else's print.

22 Q. Okay. So could that mean that it could be someone
23 else was in that vehicle possibly?

24 A. It could be or it could just simply be someone who
25 is not in the computer system at the time. Unless I've

1 got that person's print card to compare one-on-one to
2 then there's no way to affect that identification and if
3 we don't know who the suspect is then there's no way to
4 even go forward from that.

5 MS. SAVAS: Nothing further.

6 THE COURT: Mr. Malloy?

7 MR. MALLOY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MALLOY:

10 Q. Good morning, Mr. Hallman.

11 A. Morning.

12 Q. You testified a little bit about the conditions
13 that are conducive to obtaining fingerprints.

14 A. Correct.

15 Q. And you mentioned the amount of time that goes by,
16 correct?

17 A. Yes, sir.

18 Q. So in the more time that goes by is it less likely
19 to be able to obtain a fingerprint?

20 A. Yes, sir. The factors that I mentioned earlier
21 just simply diminish your chances of getting any kind of
22 fingerprints, yes.

23 Q. But if not much time goes by after someone touched
24 a surface and the lifter lifted fairly quickly it's more
25 likely to get a print?

- 1 A. Yeah. That's what we look for. That's what we
2 call the perfect scenario.
- 3 Q. And you mentioned weather conditions can affect it,
4 like rain. Rain can wash away prints, correct?
- 5 A. Absolutely.
- 6 Q. So when it's not raining, sunny day more likely the
7 print is going to stay there, correct?
- 8 A. More likely, yes.
- 9 Q. And of the -- seven prints were given to you in
10 this investigation, correct?
- 11 A. Yes, sir. Well, I'm sorry. Seven cards with
12 prints on them, not seven prints.
- 13 Q. Five of those cards produced identifiable
14 fingerprints, correct?
- 15 A. No. Six. Yes, six of the seven were identifiable.
16 Five of the seven were suitable for entry into the
17 computer system.
- 18 Q. Okay. Thank you.
- 19 A. Yes, sir.
- 20 Q. And of those five they did not generate a match in
21 the computer system, correct?
- 22 A. They did not. No, sir.
- 23 Q. And I believe Ms. --
- 24 A. Kubicsko?
- 25 Q. Well, you knew where I was getting at. I believe

1 Ms. Savas handed you a report from Ms. Kubicsko, correct,
2 your former colleague?

3 A. Correct.

4 Q. Do you have that report in front of you now?

5 A. No, sir, I do not.

6 MR. MALLOY: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 Q. Is that the report that Ms. Kubicsko generated for
10 this case?

11 A. Yes, sir. It is.

12 Q. Marked L1 through L7 are the seven white placard
13 cards you already mentioned?

14 A. Correct.

15 Q. And then there's a listing that's labeled K1, and
16 that is labeled inked, 10 palm print cards of Chavias
17 Jenkins, correct?

18 A. Yes, sir.

19 Q. Followed by a birth date, correct?

20 A. Yes, sir.

21 Q. And those are labeled specifically where the card
22 came from. One is interior handle passenger side door,
23 correct?

24 A. That's card number one, yes.

25 Q. Card number two, passenger side rear door frame,

- 1 correct?
- 2 A. Correct.
- 3 Q. Card number three, driver door frame?
- 4 A. Correct.
- 5 Q. Card number four, passenger door frame?
- 6 A. Yes, sir.
- 7 Q. Card number five, driver door?
- 8 A. Correct.
- 9 Q. Card number six, driver door frame?
- 10 A. Correct.
- 11 Q. And all of those are compared to what's labeled as
- 12 K1, which is a fingerprint from Ms. Jenkins, correct?
- 13 A. Well, K1, the K stands for known and what K1 is is
- 14 a known set of impressions from Mr. Jenkins.
- 15 Q. Mr. Jenkins, correct?
- 16 A. Yes.
- 17 Q. And all of the cards that were compared to his
- 18 known print excluded him as the person who left that
- 19 print?
- 20 A. Yes, it did.
- 21 MR. MALLOY: Court's indulgence.
- 22 THE COURT: Take your time.
- 23 (PAUSE.)
- 24 MR. MALLOY: No further questions.
- 25 MS. SAVAS: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. SAVAS:

3 Q. Mr. Hallman, is it possible that those prints were
4 left by, say, the owner of the vehicle?

5 A. Sure. It could have been.

6 MR. MALLOY: Objection, speculation.

7 THE COURT: Sustained.

8 MS. SAVAS: Nothing further.

9 THE COURT: You may step down. Feel free to stay
10 with us.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Call your next witness.

13 MR. ZIEGLER: The State calls Ms. Jennifer Clayton.

14 JENNIFER CLAYTON, after having been duly
15 sworn, testified as follows:

16 THE CLERK: And for the record if you'll state your
17 first and last name and spell out your last name, please.

18 THE WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

19 DIRECT EXAMINATION

20 BY MR. ZIEGLER:

21 Q. Good morning, Ms. Clayton.

22 A. Morning.

23 Q. Who are you employed by?

24 A. I am currently employed by the South Carolina Law
25 Enforcement Division, also known as SLED.

1 Q. Did you travel to testify today?

2 A. Yes, I did. Our offices are located in Richland
3 County.

4 Q. Thank you. What is your position at SLED?

5 A. I am currently a forensic DNA analyst.

6 Q. And can you describe what you do every day at SLED
7 as a forensic DNA analyst.

8 A. Yes. When a crime is committed evidence is often
9 left behind that may contain DNA and this DNA is then
10 collected and submitted to our agency for analysis. I
11 attempt to develop a DNA profile from the evidence that's
12 submitted and then if a suitable profile is developed I
13 try to develop a profile from known standards. These are
14 samples that are taken directly from an individual so I
15 know the profile from that standard came from that
16 particular individual and then I make a comparison
17 between any suitable evidence samples and known standards
18 to determine if the individual that donated the standard
19 could have donated DNA to the item of evidence.

20 Q. And what is your -- that's your job day-to-day.
21 What is your training and education to do that job?

22 A. I earned a Bachelor's of Science in Biology from
23 the University of North Carolina, Chapel Hill. I've also
24 taken classes at NC State and USC. I completed an
25 internship with the North Carolina State Bureau of

1 Investigations Molecular Biology Department. That's the
2 equivalent of SLED's DNA Department. I originally hired
3 on with SLED as a forensic technician in the DNA
4 Department and I worked as a technician for two years
5 before I was hired as an analyst.

6 Once I was hired as an analyst I had to complete a
7 one-year training program under another qualified analyst
8 and work casework under his supervision before I was
9 allowed to work casework on my own.

10 Q. And in this casework, I know you are not going to
11 be able to pinpoint this number but can you estimate the
12 number of analyses you've done of particular DNA samples?

13 A. I would estimate that I've probably worked between
14 six and seven hundred cases so that would be well over a
15 thousand samples.

16 Q. And have you ever testified in court before as an
17 expert?

18 A. Yes, I have.

19 Q. About how many times have you testified in court
20 about your forensic DNA analyses?

21 A. Approximately 40 times.

22 MR. ZIEGLER: Your Honor, the State moves to admit
23 Ms. Clayton as an expert in forensic DNA analysis.

24 THE COURT: Any objection?

25 MR. MALLOY: No objection.

1 THE COURT: She will be so qualified as a witness.

2 BY MR. ZIEGLER:

3 Q. Ms. Clayton, can you please explain DNA, explain
4 how DNA works and kind of the summary of the science
5 behind it, what you do.

6 A. DNA is a long chain chemical. It's found in every
7 cell in the body with the exception of red blood cells,
8 and we inherit half of our DNA from our mother and half
9 of our DNA from our father.

10 In forensic DNA analysis we are able to develop
11 what's called DNA profile from this DNA, and with the
12 exception of identical siblings no two individuals are
13 going to have the same DNA profile. This makes it useful
14 because as I said before we can in some cases develop a
15 DNA profile from evidence and then develop DNA profile
16 from a known standard and compare the two to determine if
17 the individual could have left DNA behind on an item.

18 Q. And how does one leave DNA on a surface or item?

19 A. There's a number of ways. They can leave a body
20 fluid behind such as blood, semen, or saliva. They can
21 also leave behind what's known as touch DNA.

22 The human body is -- constantly has cells dying off
23 and they are being replaced by new cells and so when
24 those old cells die off or are dying the body sheds those
25 cells, so when we handle an item, for instance, if we

1 pick up a glass or grab a door handle some of those cells
2 may be left behind on the door handle and they would
3 contain DNA.

4 Samples like blood and saliva typically contain a
5 lot of DNA and we have a very high success rate of
6 developing a good usable profile from those items. With
7 touch DNA the success rate is much lower because one, not
8 as much DNA is left behind, and two, often times the DNA
9 is damaged because it's in cells that were damaged cells,
10 they were exposed to cleaners and ultraviolet light,
11 those types of things. So the success rate is lower on a
12 sample that contains touch DNA versus one that has blood
13 or saliva on it.

14 Q. So you've testified that it's tougher to develop a
15 profile that's touch DNA. I'd like to focus in on touch
16 DNA. If a sample of touch DNA is left on a surface what
17 are the ways that that can be disturbed?

18 A. Well, DNA can be damaged by a lot of things. It
19 can be damaged by ultraviolet light that's damaging to
20 DNA. Excessive heat can damage DNA. Cleaners such as
21 detergents can damage DNA. Mold, bacteria can start to
22 break down DNA. So there's a lot of things that can
23 damage DNA, and just age. As I said before, cells start
24 dying off and due to the exposure of these things over
25 time the DNA will be damaged over time from exposure to

1 various things.

2 Q. And what about if someone actually manipulates a
3 surface, wipes it with something? Does that have any
4 affect?

5 A. Oh, certainly. If you wipe off a surface it can
6 remove DNA. If you, you know, use something that's damp
7 or has a cleaner on it that would remove even more of the
8 DNA.

9 Q. Are you familiar with the case that we are here on
10 today?

11 A. Yes.

12 Q. And did you conduct an analysis in this case?

13 A. Yes, I did.

14 Q. Are you familiar with the items that you analyzed?

15 A. Yes.

16 Q. Do you know what those items were? Do you need a
17 copy of your report?

18 A. I have one with me, if I can refer to that.

19 (PAUSE.)

20 I received a swab from a steering wheel, a swab
21 from a gear shifter, and a swab from an interior door
22 handle from a driver door.

23 Q. And what were the results from your analysis of
24 those three items?

25 A. For item one, which was the swab from the SLED --

1 from the steering wheel, and that's SLED item number one,
2 the swab of the steering wheel, the partial DNA profile
3 developed from this item is insufficient for comparison.

4 So what that means is that I developed a very, very
5 small amount of information. There just wasn't enough
6 DNA present on the item to develop a good usable profile.
7 The little bit that was there was too small an amount of
8 information to make a reasonable comparison to any known
9 standards so analysis stopped at that point.

10 For items two and three, SLED items two and three,
11 that's the swab from the gear shifter and the swab from
12 the interior door handle of the driver door, no DNA
13 profile was developed from those two items, item two and
14 three, so there was nothing for comparison for those two
15 items.

16 Q. Is it accurate to say that you did not identify
17 these items with any known standards?

18 A. That is correct. Once it was determined that no
19 DNA profile was developed or the profile was not suitable
20 for comparison analysis stopped at that point. No
21 profile was developed from any standards for comparison
22 because there were no comparisons to be done.

23 Q. And are these results where you don't develop a
24 sufficient profile, is that common or uncommon with touch
25 DNA?

1 A. With touch DNA it's very common to either develop
2 no result or develop a result that's just not suitable
3 for comparison.

4 Q. How uncommon is it to -- I mean, is it a majority
5 of cases or --

6 A. Based on some numbers that we pulled, based on
7 samples that we worked in-house and ones that we sent to
8 outsourcing labs as well I believe what we came up with
9 is that we get a usable profile about five percent of the
10 time. So about 95 percent of the time with touch DNA we
11 are not going to get a usable profile that's suitable for
12 comparison.

13 MR. ZIEGLER: Court's indulgence, please, Your
14 Honor.

15 (PAUSE.)

16 MR. ZIEGLER: No further questions for this
17 witness, Your Honor.

18 Q. Thank you, Ms. Clayton.

19 CROSS-EXAMINATION

20 BY MR. MALLOY:

21 Q. Good morning, Ms. Clayton.

22 A. Morning.

23 Q. You examined three swabs in relation to this case,
24 one from steering wheel, one from gear shifter, one from
25 interior handle of driver door, correct?

- 1 A. That's correct.
- 2 Q. You weren't able to generate a match, correct?
- 3 A. There was no profile suitable for comparison on
- 4 these three items, that's correct.
- 5 Q. You were not provided a swab labeled car key?
- 6 A. No, I was not.
- 7 Q. And you were not provided a swab labeled exterior
- 8 handle, passenger-side door?
- 9 A. No, I was not.
- 10 Q. And you were not given a swab labeled blue Folly
- 11 Beach T-shirt?
- 12 A. No, I was not.
- 13 Q. And you testified a little bit about the conditions
- 14 that are conducive to leaving touch DNA. If someone was
- 15 holding a shirt with their bare hand they could leave
- 16 touch DNA on that shirt, correct?
- 17 A. It's possible, yes.
- 18 Q. Also, you testified that certain types of DNA are
- 19 easier to obtain, like from blood, correct?
- 20 A. Correct.
- 21 Q. Or saliva?
- 22 A. Correct.
- 23 Q. Sweat would be something that would likely leave a
- 24 DNA sample behind, correct?
- 25 A. It can. It's actually -- sweat facilitates the

1 transfer of skin cells to an item because there's going
2 to be more friction between a damp hand or skin surface
3 and another item so it can facilitate the transfer of
4 touch DNA.

5 MR. MALLOY: Court's indulgence.

6 (PAUSE.)

7 MR. MALLOY: No further questions.

8 MR. ZIEGLER: No further questions, Your Honor.

9 THE COURT: You may step down. Feel free to stay
10 with us but you are free to go back to Columbia.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you.

13 Call your next witness.

14 MS. SAVAS: The State calls Joseph Gomez.

15 MR. MALLOY: Objection. Your Honor, may we
16 approach?

17 THE COURT: You may.

18 (WHEREUPON, a bench conference was had off the
19 record.)

20 THE COURT: Ladies and gentlemen, there's a matter
21 I must take up outside of your presence. Do not begin
22 your deliberations. Do not discuss this case amongst
23 yourselves.

24 Please rise for the jury.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 9:46 a.m.)

2 THE COURT: Thank you. Be seated.

3 All right. What's the issue, Mr. Malloy?

4 MR. MALLOY: Your Honor, the issue is that I've
5 just been provided these two Money Man Pawn slips. I'm
6 now looking at them for the first time. And as I said
7 earlier, I renew my request for a mistrial based on just
8 receiving this information now despite our repeated
9 request of any link between Ms. Singleton and the
10 Craigslist number; the significance being that this would
11 tend to show that -- the States offering this to show
12 that this -- the number on the Craigslist ad is the same
13 that a Ms. Singleton used at the Money Man Pawn, and I'm
14 noticing there's no ID, there's no copy of an I. D.
15 attached to these, but this is extremely detrimental to
16 our case. Again, we are not prepared to deal with this
17 additional information which we are just receiving.

18 Ms. Savas has stated pretty much the entire time by
19 her own admission that all she had is the identification.
20 That's how we have prepared our defense. And I will just
21 -- I would ask -- either move for a mistrial or ask this
22 not be allowed just in the interest of fair ness.

23 THE COURT: When did you receive that, Ms. Savas?

24 MS. SAVAS: Just this morning. My investigator
25 brought it in from the witness outside. I didn't have a

1 copy.

2 THE COURT: So just so I understand, what are you
3 attempting to do with this witness?

4 MS. SAVAS: Yes, Your Honor. This witness, he
5 would be able to say that Ms. Singleton had used that
6 phone number at the pawnshop and given that as her
7 contact information.

8 Yesterday she lied on the stand, and when I
9 specifically asked her regarding that specific pawnshop
10 she said she never provided that information. So
11 according to Rule 613, Your Honor, we are seeking to
12 admit extrinsic evidence and --

13 THE COURT: All right. Did you ask Ms. Singleton
14 under the rules the specific time and place that it's
15 indicated on that pawn ticket?

16 MS. SAVAS: I asked Ms. Singleton if she had given
17 that contact number to the pawnshop on McMillan Avenue,
18 and she said no. I do not recall if she had a specific
19 time. If Your Honor would such request that we recall
20 her, she is present here today to specifically ask her
21 that, then we would be able to do that, Your Honor.
22 However, I do not think it's necessary as the witness has
23 been given sufficient notice --

24 THE COURT: I think it's necessary under the rules,
25 time and place, she has the opportunity to deny the

1 statement.

2 MS. SAVAS: Yes, Your Honor. I believe she denied
3 it that she went in --

4 THE COURT: I don't recall the testimony of a
5 specific time or place or that you approached her with
6 any sort of pawn ticket giving her the opportunity to
7 deny that.

8 MS. SAVAS: Yes, Your Honor. We will recall --

9 THE COURT: Is that a correct assessment and
10 recollection of her testimony?

11 MS. SAVAS: Yes, Your Honor.

12 THE COURT: So now you want to come in the last day
13 of trial after you've already had an opportunity to
14 present this information on direct and get another bite
15 at this apple after we discussed what was going to be
16 presented here today?

17 MS. SAVAS: Yes, Your Honor --

18 THE COURT: When did you contact the pawnshop?

19 MS. SAVAS: Last night, Your Honor.

20 THE COURT: What time?

21 MS. SAVAS: About six o'clock. It was right when
22 they were closing. Your Honor, we do not believe it's
23 necessarily a second bite at the apple. We did not
24 foresee Ms. Candace lying specifically about that when I
25 asked her and we think --

1 THE COURT: Well, Ms. Savas, why would you -- you
2 must have known that she was not going to tell you the
3 truth or you wouldn't have gone down that line of
4 questioning.

5 MS. SAVAS: No. I actually, Your Honor, thought
6 that she would at least admit to that if I confronted her
7 with that specifically. I did not foresee --

8 THE COURT: How did you know she had a pawn ticket
9 out there?

10 MS. SAVAS: The detectives have provided it to me
11 and given it to them yesterday, Your Honor.

12 THE COURT: The detectives have provided what to
13 you?

14 MS. SAVAS: In their database they pulled pawn slip
15 records and as part of the investigation they have
16 located those and I gave them to Mr. Malloy yesterday.

17 THE COURT: When?

18 MS. SAVAS: Yesterday.

19 THE COURT: Yesterday is 24 hours, Ms. Savas.

20 MR. MALLOY: As the jury was coming in.

21 MS. SAVAS: In the morning, Your Honor.

22 THE COURT: So you had that information, knew that
23 it was out there before you put her on the stand?

24 MS. SAVAS: Yes, Your Honor.

25 THE COURT: All right. Thank you. I don't know

1 that you -- well, you did not lay -- under my reading of
2 the rules you did not lay the proper foundation to give
3 her the opportunity to deny that particular incident, so
4 I am not going to allow this testimony. I am not going
5 to allow you to recall her at this late hour. Mr. Malloy
6 is objecting. You knew or had reason to know what this
7 information was.

8 Based upon that ruling, Mr. Malloy, are you still
9 requesting a mistrial?

10 MR. MALLOY: No, Your Honor. Thank you.

11 THE COURT: All right.

12 MS. SAVAS: Your Honor, I do not, with all due
13 respect, Your Honor --

14 THE COURT: I think you are treading very
15 carefully.

16 MS. SAVAS: Yes, Your Honor. But, Your Honor, with
17 all due respect, ma'am, we did not rest our case. We are
18 entitled to recalling our witnesses. If we recall
19 Ms. Singleton under your ruling then we would be
20 sufficient to give her notice under 613(b); therefore, we
21 would be able to add our extrinsic evidence to do that,
22 Your Honor. It is extremely prejudicial to the State --

23 THE COURT: First of all, it's up to me to allow
24 you to recall her.

25 MS. SAVAS: Yes, Your Honor.

1 THE COURT: Second of all, you then -- I didn't
2 need to, based upon my prior ruling, need to address the
3 fact that this has not been provided to Mr. Malloy in
4 discovery. You have an ongoing duty to provide
5 discovery; do you agree?

6 MS. SAVAS: Yes, Your Honor.

7 THE COURT: And you think that you have complied
8 with that ongoing duty?

9 MS. SAVAS: Yes, Your Honor.

10 THE COURT: By providing it to him last evening?
11 We went over yesterday in my chambers who you were going
12 to call --

13 MS. SAVAS: Yes, Your Honor.

14 THE COURT: I think it's disingenuous for you to do
15 what you are doing today.

16 MS. SAVAS: I apologize, Your Honor, that's not my
17 intent. I did not know in your chambers that we would be
18 doing that --

19 THE COURT: Either you knew yesterday when you told
20 Mr. Malloy about the pawn records or you are not being
21 honest with the Court at this time. You either knew
22 about the pawn records before you called Ms. Singleton.

23 MS. SAVAS: Yes, Your Honor. I provided those to
24 Mr. Malloy; however, I did not know that she was actually
25 going to lie.

1 THE COURT: But when she was on the stand you knew
2 she was not honest you.

3 MS. SAVAS: After she testified, yes, Your Honor,
4 and I did not know that I could --

5 THE COURT: And we met after she testified.

6 MS. SAVAS: Yes, Your Honor.

7 THE COURT: So you had the information that you
8 could have impeached her with, given her the opportunity
9 to deny that statement and you did not. You had those
10 documents available to you.

11 MS. SAVAS: I did not have the original pawn slips,
12 no, Your Honor. I had contacted the Money Man Pawn
13 because I thought we would need the original record and
14 have a record custodian bring that in afterwards, and I
15 had not been in touch with Money Man Pawn to do that.
16 All we had is the police statements --

17 THE COURT: But you intended to do that after you
18 left my chambers; is that correct?

19 MS. SAVAS: No, Your Honor.

20 THE COURT: When did you come up with this idea?

21 MS. SAVAS: About six o'clock last night, Your
22 Honor.

23 THE COURT: All right. I don't know how you can
24 call her back and still comply with my ruling that you
25 have not complied with discovery -- I'm finding that you

1 have not complied with discovery so I'm not allowing you
2 to introduce those pawn tickets.

3 MS. SAVAS: Your Honor, I understand that's your
4 ruling and I respect that; however, I would just like to
5 clarify --

6 THE COURT: Okay. So when you say however you are
7 negating what I just ruled.

8 MS. SAVAS: No, ma'am.

9 (PAUSE.)

10 MS. SAVAS: Your Honor, may we have a brief recess?

11 THE COURT: You may.

12 (WHEREUPON, a brief recess was taken.)

13 THE COURT: Mr. Jenkins, please stand.

14 Please place him under oath.

15 CHAVIAS JENKINS, after having been duly
16 sworn, testified as follows:

17 THE COURT: Mr. Jenkins, at this time I'm going to
18 explain to you certain of your rights. If you do not
19 understand anything I say please let me know and if you
20 need me to explain anything in further detail please let
21 me know. Do you understand?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: We've reached the stage of the trial
24 where you may present your defense. You have the right
25 to claim the protections given to you by the Fifth

1 Amendment to the Constitution of the United States.

2 This amendment states in part that no person shall
3 be compelled in any criminal case to be a witness against
4 himself. This means that you cannot be required to
5 testify. You do have the right to testify on your own
6 behalf; however, no one can make you testify. This is a
7 personal right and no one can waive this right except
8 for you.

9 If you decide to testify you will be subject to the
10 same rules that govern other witness and you may be
11 examined and cross-examined on any relevant issues in
12 this case. If you have any convictions involving
13 dishonesty or false statement or for crimes punishable by
14 imprisonment for more than one year and I determine that
15 the probative value of admitting this evidence outweighs
16 its prejudicial effect to you the solicitor will be able
17 to introduce your record to attack your credibility.

18 Are there convictions that you would be able to
19 use, Ms. Savas?

20 MS. SAVAS: Yes, Your Honor. There is a burglary
21 second degree violent, a burglary second degree
22 nonviolent, and a false information to police.

23 THE COURT: Okay. Mr. Malloy, you've gone over his
24 record and you agree that there would be at least those
25 that would be admissible to impeach his credibility?

1 MR. MALLOY: Yes, Your Honor.

2 THE COURT: We may just have to limit it a certain
3 way but he does have convictions that would qualify.

4 MR. MALLOY: I believe we discussed two felonies
5 and a false info to police would be admissible to
6 impeach.

7 THE COURT: Mr. Jenkins, do you understand that
8 those would be allowed to impeach your credibility should
9 you testify?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If you decide to testify this decision
12 on your part must be freely, voluntarily and
13 intelligently made with the knowledge of the protections
14 given to you by the Fifth Amendment and the consequences
15 on your decision to testify.

16 If you decide not to testify I will instruct the
17 jurors that they cannot give the fact that you did not
18 testify any consideration whatsoever and there is to be
19 absolutely no prejudice to you because you did not
20 testify. It is left entirely up to you whether or not
21 you testify. You may talk with your attorney, either
22 together or separately, your friends, your family or
23 anyone else but the final decision is left entirely up to
24 you. Have you understood what I've explained to you?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you have any questions about what
2 I've explained to you?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Have you discussed with your attorneys
5 whether or not you should testify?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you need any additional time to meet
8 with them before you make this decision?

9 THE DEFENDANT: No.

10 THE COURT: Do you wish to testify?

11 THE DEFENDANT: No, Your Honor.

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

13 Mr. Malloy, do you have any additional witnesses?

14 MR. MALLOY: I do not.

15 THE COURT: And so I'll bring the jury in.

16 Ms. Savas, you are going to rest.

17 Then, Mr. Malloy, you will rest.

18 And then you're prepared for your closing,

19 Ms. Savas?

20 MS. SAVAS: Yes, Your Honor.

21 THE COURT: And then Mr. Malloy --

22 MR. MALLOY: Yes, Your Honor.

23 THE COURT: -- will have the final close. Please
24 come look at the verdict forms.

25 MR. MALLOY: And we would like to do a brief

1 directed verdict, as well, just for time wise.

2 THE COURT: Yes. Come look at the verdict forms.
3 They are the same as I showed you yesterday but I just
4 want you to look at them.

5 MR. MALLOY: This is my proposed charge.

6 THE COURT: If you'll mark that.

7 (WHEREUPON, Court's Exhibit Number 4, Defendant's
8 Proposed Jury Charge, was marked and made a part of the
9 record.)

10 THE COURT: Any objection to the verdict forms from
11 the State?

12 MS. SAVAS: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. MALLOY: No, Your Honor.

15 THE COURT: And I'm going to allow you directed
16 verdict -- Ms. Savas, do you have any additional requests
17 for charges?

18 MS. SAVAS: No, Your Honor.

19 THE COURT: And there's no lesser includes that you
20 are requesting, correct?

21 MS. SAVAS: No, Your Honor.

22 THE COURT: And, Mr. Malloy, you marked as Court's
23 4 the identification charge you were requesting?

24 MR. MALLOY: Yes, Your Honor.

25 THE COURT: And I sent you over the evening hours

1 the ID charge that I would be charging today. Did you
2 receive that?

3 MR. MALLOY: I did.

4 THE COURT: And so noting your exception are there
5 any other requests to charge?

6 MR. MALLOY: I would request a spoliation charge.

7 THE COURT: And we had brief conversation regarding
8 that. That has to do with two swabs of DNA?

9 MR. MALLOY: Correct. Five swabs were originally
10 taken from the crime scene. Only three were compared at
11 SLED, and my position is that failure to produce is
12 enough to get a spoliation charge that inferences can be
13 drawn against the party who fails to produce the
14 evidence, from the failure to produce the evidence.

15 THE COURT: Was it just not tested or have they
16 been destroyed or something else?

17 MS. SAVAS: They are actually here, Your Honor.
18 The defense has seen them. They were not destroyed, they
19 were not failure to produce. They just simply weren't
20 tested nor were they requested to be tested by the
21 defense or anyone else.

22 THE COURT: I decline to charge a spoliation charge
23 based upon that assertion. Anything further?

24 MR. MALLOY: Nothing further, Your Honor.

25 THE COURT: And, again, you are not requesting any

1 lesser included?

2 MR. MALLOY: No, we are not.

3 THE COURT: Directed verdict motion? I'm sorry,
4 Mr. Malloy, at the close of the State's case. They've
5 rested. So we've kind of done a few things out of order
6 so it's actually at the close of the State's --

7 MR. MALLOY: She's already rested. Okay. I'm
8 sorry. Your Honor, at this time the defense does move
9 for a directed verdict.

10 Also, we renew all previous motions and objections,
11 including my original request for a continuance, the
12 Biggers hearing pretrial, and my pretrial motion in
13 limine to exclude the tip that the officers used in this
14 investigation. That was the Sixth Amendment
15 Confrontation Clause argument.

16 But, Your Honor, we also move for a directed
17 verdict based on the State not producing evidence to each
18 element of the crimes charged today, not produced -- they
19 haven't produced anything -- haven't recovered anything
20 that was stolen or shown exactly what was taken from the
21 victim in the case, and I would move for a directed
22 verdict based on that. Thank you.

23 THE COURT: All right. Ms. Savas?

24 MS. SAVAS: Thank you, Your Honor. May it please
25 the Court. Your Honor, in the directed verdict motions

1 the burden of proof is viewing in the light most
2 favorable to the State. Your Honor shall consider only
3 existence or nonexistence of the evidence, not its
4 weight. There's been a substantial amount of
5 circumstantial evidence and direct evidence in this case,
6 Your Honor.

7 It has been testified to that this occurred on
8 September 13, 2013. A photographic lineup was done with
9 a positive identification of this defendant, Mr. Chavias
10 Jenkins. It occurred at 2357 Aviation Avenue, the City
11 of North Charleston in Charleston County at the Waffle
12 House.

13 There are four charges, Your Honor; armed robbery,
14 and the State has met those elements that there was a
15 taking and carrying away of the victim's personal
16 property, to which she testified was her cash, her
17 sister-in-law's cell phone and the actual stealing of her
18 car by the defendant when he drove away with the vehicle.

19 THE COURT: Let me stop you, Ms. Savas.

20 MS. SAVAS: Yes, Your Honor.

21 THE COURT: Mr. Malloy, you indicated that there
22 was not testimony that anything was taken? Is that what
23 I heard you to say?

24 MR. MALLOY: Your Honor, I was referring to nothing
25 was recovered of the items taken, nothing has been

1 presented by the State, the stolen cell phone, money or
2 anything of that nature.

3 THE COURT: In which charge -- what element --

4 MR. MALLOY: That would be applicable to armed
5 robbery.

6 THE COURT: But what element requires that
7 something be recovered?

8 MR. MALLOY: Your Honor, I was just supporting that
9 for the lack of evidence for my directed verdict motion.
10 I do agree there was some testimony from the victim about
11 items being taken.

12 THE COURT: Okay. All right.

13 MS. SAVAS: Additionally, Your Honor, they did
14 recover the stolen vehicle at Kerry Street in the
15 apartment complex abandoned. It was used by the force
16 and threats of this defendant when he showed the victim a
17 firearm, and the elements would be that there should be a
18 firearm or whether the victim reasonably believed to be a
19 firearm. She testified to that. And the taking of her
20 car and her personal belongs.

21 Second, the carjacking. The defendant did, there's
22 testimony, take her car that she was driving, the Jaguar,
23 by force, violence, and intimidation when he pointed a
24 firearm, forced her into the car, forced himself into the
25 car and drove her around without her permission, and she

1 was in that vehicle at that time, and he did not have
2 permission to do so by the law or the victim herself.

3 The third charge is kidnapping. It's an unlawful
4 seizure of taking this victim in the car by force without
5 that authority as well, and possession of a weapon during
6 the commission of a violent crime is a firearm that the
7 victim testified to, the dark-in-color handgun that was
8 used when he had held her up at the Waffle House and
9 continued to threaten her life throughout the course of
10 the events. Your Honor, in light most favorable to the
11 State the State has presented sufficient direct and
12 substantial circumstantial evidence to submit this charge
13 to the jury.

14 MR. MALLOY: Your Honor, for the record, I'd also
15 assert that the State hasn't proven Mr. Jenkins as the
16 perpetrator of the crime for the purposes of all the
17 charges and I would like to add that to my directed
18 verdict motion as well.

19 THE COURT: All right. In ruling under Rule 19 in
20 ruling on a motion for directed verdict I must view the
21 evidence and all reasonable inferences in the light most
22 favorable to the State. I am concerned only with the
23 existence or non existence of the evidence.

24 The defendant is charged with carjacking,
25 kidnapping, armed robbery, and possession of a weapon

1 during the commission of a violent crime. The State must
2 prove -- in order to prove carjacking that the defendant
3 took or attempted to take a motor vehicle from another
4 person by force or violence or by intimidation while the
5 person was operating or in the vehicle.

6 Ms. Davila testified that the defendant approached
7 her while she was standing next to her vehicle, pointed a
8 gun and then she got into the driver's seat and was
9 directed to move over to the passenger seat.

10 The charge of kidnapping, the State must prove that
11 the defendant knowingly or unlawfully seized, confined,
12 inveigled, kidnapped, or carried away another person.
13 She further testified that when the defendant entered her
14 car he proceeded to drive away and she was riding in the
15 passenger seat against her will.

16 On the count of armed robbery the State must prove
17 at the defendant took personal property within the reach,
18 inspection, control, that he carried the property away
19 intending to permanently deprive the owner of its use,
20 and that the defendant was armed with a deadly weapon
21 during the robbery. Ms. Davila testified that while in
22 the car the defendant took the cell phone she was using
23 and the money in her possession.

24 And as to the possession of a weapon during the
25 commission of a violent crime, she testified that the

1 defendant was in possession of a gun or what appeared to
2 her to be a gun. Viewed in the light most favorable to
3 the State I deny your motion for a directed verdict.

4 Further, Mr. Malloy, the Court stands by all
5 previous rulings and will not change any of the previous
6 rulings. I note your exception. Anything further?

7 MR. MALLOY: Nothing further, Your Honor.

8 THE COURT: All right. I'll give you 15 minutes.
9 Come back at 11:00 to do your closings. All right.
10 Thank you.

11 (WHEREUPON, a brief recess was taken.)

12 THE COURT: Anything before we bring in the jury,
13 Ms. Savas?

14 MS. SAVAS: No, Your Honor.

15 THE COURT: Mr. Malloy?

16 MR. MALLOY: No, Your Honor.

17 THE COURT: All right. Let's bring in the jury.

18 Remember, Ms. Savas, you'll need to rest in front
19 of the jury.

20 And then, Mr. Malloy, you'll need to rest in front
21 of the jury, and just for purposes of the record this is
22 just in front of the jury. You've already made your
23 motions at the close of the State's case outside of the
24 presence of the jury.

25 (WHEREUPON, the jury enters the courtroom at

1 approximately 10:57 a.m.)

2 THE BAILIFF: Jurors are all present, Your Honor.

3 THE COURT: Thank you. Please be seated.

4 Ms. Savas?

5 MS. SAVAS: The State rests, Your Honor.

6 THE COURT: Thank you.

7 Mr. Malloy?

8 MR. MALLOY: The defense rests.

9 THE COURT: Ladies and gentlemen, you have now
10 heard all the testimony that you will hear in this case
11 and received into evidence all the exhibits that will be
12 made part of the record in this case.

13 We have now reached the stage of the trial where
14 you will hear closing arguments on behalf of counsel. In
15 this case, Ms. Savas will give her closing argument and
16 then Mr. Malloy will give his. After that, I will
17 instruct you on the law applicable to this case and then
18 you will retire to consider your verdict.

19 Please remember, just as I indicated to you what
20 was contained in opening statements is not evidence
21 neither is what is contained in the attorneys' closing
22 arguments. It is their contention as to what the
23 evidence has shown you. Please remember, I will instruct
24 you on the law applicable to this case. Please give your
25 strict attention.

1 Ms. Savas?

2 MS. SAVAS: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, ma'am.

5 MS. SAVAS: A traumatic event, a horrifying
6 experience. These are the exact words that Mr. Malloy
7 used to describe in his opening what happened to Maria on
8 that day. Those are the exact descriptions of what his
9 client, Mr. Chavias Jenkins, did to Maria on September
10 13, 2013.

11 One of the scariest things that can happen to us in
12 today's society is strangers over the internet; Facebook,
13 Craigslist, Twitter, Tinder, all these social media acts.
14 One of the scariest things is never knowing who is on the
15 other end, and it is something that we are made aware of,
16 it is something we tell our children the dangers of.
17 Those are the stories.

18 Well, on September 13, 2013 it became Maria's
19 reality and it is the reality that is before the 12 of
20 you today of exactly what happened. That danger is
21 Maria's truth.

22 Maria and her husband, Freddy, are good people.
23 They are very kind people. You saw them testify. Like
24 most people in their 20's, may not have a lot of money so
25 for the big expensive things, as Maria explained, you go

1 online to Craigslist, something you do frequently.

2 Maria needed a cell phone so they went to
3 Craigslist. They found one that she wanted. It was a
4 decent price so they decided to go ahead, like many times
5 they've done, and buy it on Craigslist. This is the ad.
6 This is the phone.

7 Freddy testified that they were supposed to go
8 together. They usually go together. Unfortunately, she
9 no-showed. The female seller, Candace Singleton,
10 Candace, Candace didn't show up. Candace chose to meet
11 at the Waffle House. Okay? They both drive together.
12 They park and they wait.

13 Freddy is calling off his phone. She makes up some
14 excuse. Who knows why she didn't show up. We don't know
15 why. We don't need to know why. Makes up some excuse
16 and they reschedule. Freddy, verbatim said, My wife will
17 meet you tomorrow alone.

18 Well, isn't that the perfect opportunity, a young
19 female alone. Every female's fear, every husband's fear,
20 every parent's fear, going alone to meet someone you
21 don't know. Well, for all Maria knew it's one o'clock in
22 the afternoon in broad daylight. What could happen?

23 So she goes alone. But that morning she goes to
24 the laundromat. Takes her time there, puts her laundry
25 back in her car and goes and meets Candace, or tries.

1 Yet again, she doesn't show up. So Maria doesn't have a
2 phone so she uses her sister-in-law's phone, she said.
3 So she texted Candace, Where are you? Why aren't you
4 here? Tries to figure out what's happening.

5 She makes up an excuse I can't go because my
6 boyfriend will be there to meet you. Her boyfriend.
7 Chavias is Candace's boyfriend. Maria says okay.
8 Candace asks Maria, What kind of car do you drive?

9 She told her, I have a green Jaguar.

10 Another good opportunity, a Jaguar. Sure. So she
11 sits there and waits. She's looking. She says she saw
12 other people walk by then she noticed the guy lurking in
13 the Kangaroo across, green hat, white shirt.

14 Tells her the car. Does your boyfriend have a
15 green hat? Immediately, he comes up to her. So now she
16 stepped outside of her car, standing outside the driver's
17 door, and he gets closer, and closer, and closer. To
18 where I was up there we were probably this close. This
19 is how close the man who put a gun in her face was to
20 her. She asked politely, Do you have the cell phone?

21 He doesn't give her a cell phone but pulls up his
22 white shirt and shows his gun, pulls it out and points it
23 directly at her and says, Get in the car.

24 This close. You can see my face, I can see your
25 face. Terrified. Terrified in tears she gets in there.

1 She get into the driver's seat. Nope, move over.

2 Another biggest fear a female can have is having
3 someone force themselves into your car and you are stuck
4 in it and now this man with a gun, she doesn't know
5 what's going to happen. How many times did she say on
6 that stand she thought she was going to die and be killed
7 by Chavias.

8 He pushes her over, gets in the car, puts it in
9 drive. He takes her money, takes her cell phone, and
10 starts to drive. They pull out of the parking lot and
11 they go around onto Aviation and there's a red light.
12 Poor Maria sees a fire truck there, one of those cars,
13 fire chief cars. Maybe, maybe, maybe, maybe this will
14 save me. No. What does he say? Don't do anything or I
15 will kill you.

16 She can't do anything. Mr. Malloy asked her, Why
17 didn't you wave? You know why she didn't wave? Because
18 she told him why, because he would have killed her.
19 That's why she didn't wave for help, because Chavias
20 threatened to shoot her.

21 He starts driving around, all over North
22 Charleston. The maps show you how far he took her. This
23 was about one o'clock. Now, on the time stamps from the
24 surveillance videos say about 12:45. Officer Repman
25 testified that can be a few minutes off. Ms. Maria

1 testified it was about one clock, right, which still
2 fits. And you'll take these back with you.

3 So here we are. This is Aviation down here, this
4 is Ashley Phosphate. He takes her all the way from
5 Aviation on Rivers Avenue up to Ashley Phosphate to about
6 here. You know, Maria's truth that she spoke, she knows
7 it so clearly, unfortunately.

8 It was very difficult to bring her the exact
9 images. You saw her testify on the stand briefly close
10 her eyes because she was remembering exactly what
11 happened that day, and that's how you know she's telling
12 the truth, because she was picturing it in her head.
13 Because when I was speaking with her, yes, this was us
14 getting onto the highway. Yes, this is that trailer park
15 he turned around on near Ashley phosphate. She picked
16 these images out.

17 Another scary part that he decided to do, Where do
18 you live? Where do you live?

19 This is where she lived. She even drove by it. He
20 drove by it. He drove her in her own car at gunpoint by
21 her apartments but still bravely did not tell him where
22 she lived, in fear of her life that he would come back to
23 get her she said. Drove by her apartments.

24 Drove back down 78. Here is Rivers Avenue. This
25 was the trailer park. Continued down here to Rivers

1 Avenue. That's Aviation. And now he's below here. This
2 is 526. And this area here is a more detailed map that
3 you'll take back with you. There's these side streets.

4 She remembers the blue house just before he forced
5 her out of the car. The blue house. This little bridge
6 she pointed out to. This is when it got difficult on the
7 stand, this picture. That second one is when he told her
8 to get out of the car. Not only did he tell her to get
9 out of the car he said, Get out of the car and don't look
10 back or I will kill you.

11 When I asked her how many times he threatened to
12 kill her she said about three or four. He had the gun
13 pointed at her like this for nearly the entire car ride
14 she said.

15 He drove away with her car. She was left abandoned
16 under 526 overpass in the dangerous area over there of
17 Russelldale. Doesn't know anybody, doesn't really know
18 the area but thankfully, thankfully she remembers this
19 house. At this house there was a man on his cell phone.
20 The man even knew she was in distress because when she
21 approached him she ran up panicked.

22 He goes, What happened? Did your boyfriend beat
23 you up? He knew something was wrong. Thankfully he had
24 his cell phone and from that point she called 911.

25 Officers testified that they came -- about 1:45

1 that dispatch call came in. So from one o'clock is when
2 Maria went to the Waffle House and met him until 1:45
3 when they received the 911 call. Forty-five minutes.
4 Forty-five minutes she had a gun to her threatening her
5 life. Forty-five minutes she didn't know whether she
6 would be dead or alive. She didn't know what was going
7 to happen next.

8 EMS was called. Sergeant Cobb testified that he
9 was one of the initial responding officers. Maria was
10 absolutely distressed, panicked, had a panic attack she
11 said. Her hands were shaking, she couldn't control her
12 breathing. Detective Terry was trying to calm her down
13 in her car, trying to take deep breaths, deep breaths,
14 here's some oxygen. She said that's when reality set in,
15 what actually happened, because mostly to us that's a
16 surreal moment. But, again, that was her reality.

17 The car was later found abandoned. Officer Bauer
18 testified in a nearby apartment complex. Okay. This is
19 where she was dropped off, under 526. Right here is
20 where that car was located. Up here is Aviation.

21 Now, the car, I'm going to briefly talk about this
22 car because it's really not something to hone in on.
23 Don't get distracted, okay. Mr. Hallman testified today,
24 and he did a great job at testifying because one of the
25 main points that Mr. Malloy had made in his opening was

1 that there were no fingerprints, we don't have forensics,
2 therefore there's not a case.

3 Well, ladies and gentlemen, this isn't CSI. Okay?
4 We don't have forensics. I'm not going tell you that we
5 do. But I was very specific this morning when I was
6 asking Mr. Hallman questions, and I specifically said --
7 actually, he brought it up. He said there's certain
8 things that people can do to remove their fingerprints
9 and one of them he was saying using a shirt.

10 Well, Maria testified that Chavias was at least
11 clever enough to take the blue Folly Beach shirt out of
12 her laundry basket in the backseat and use it to drive
13 and wipe everything down. That's a very good
14 description. Her favorite shirt she said. Blue Folly
15 Beach shirt.

16 Mr. Hallman testified that, yes, taking a T-shirt
17 can wipe away your fingerprints. Ms. Clayton testified,
18 yes, that can wipe away your touch DNA.

19 The other very critical part, if you are going to
20 try to pick apart Mr. Hallman's testimony, this is the
21 most important thing that you can come from it. I tried
22 to ask it specifically. When someone touches the car
23 door, the inside frame, the steering wheel, when they
24 lift fingerprints, I said, how small is a fingerprint?

25 It's tiny, it's microscopic. It doesn't mean that

1 he didn't touch the whole car. So, yeah, door frame,
2 passenger door, driver's side door, steering wheel, gear
3 shifter. The defendant may have been excluded,
4 insufficient for examination, didn't come back as
5 identifiable. Does that mean that he never touched it?
6 Absolutely not, is what he said. Absolutely not.

7 There is one thing for certain, that I can touch
8 anything but it doesn't mean you're going to find my
9 prints. So because Chavias was clever enough to take her
10 blue shirt and wipe it down there were no prints left,
11 but not only that we don't know if there were prints on
12 the rest of the car. It's just the lift.

13 Don't get confused. A lift is a tiny backer, a
14 tiny little paper. That thing that Angelica Loaiza did,
15 that's it. It doesn't mean he didn't touch the car. It
16 doesn't mean his print isn't a millimeter over from that
17 point where they lifted it.

18 The odds are very little that you come back with
19 these things. He said it happens quite frequently. He
20 wasn't surprised at all. Mr. Hallman has been doing this
21 decades. It's pretty normal. Ms. Clayton testified it's
22 pretty normal to see that we don't get those results
23 back. But it doesn't mean he wasn't there.

24 Mr. Hallman took it upon himself to say I'm
25 standing in this witness stand but you are not gong to

1 get any of my DNA from it. Well, you just saw from your
2 two eyes that Mr. Hallman testified about nine o'clock
3 this morning. Does that mean he wasn't there because a
4 piece of paper and examination?

5 Maria saw with her own two eyes Chavias Jenkins
6 wipe her car down at gunpoint. Does that mean that
7 Chavias wasn't in her car? Does that mean I don't
8 believe you when you tell me Mr. Hallman was sitting in
9 that seat? Why would we not believe Maria? It doesn't
10 mean he wasn't there. It simply means the little prints
11 that they got couldn't come back.

12 It's my burden to show. Yes, I asked them to
13 re-examine them because it's my burden. It's the State's
14 burden to prove the case, no one else's but mine, and I
15 take that seriously because this is very serious.

16 We have to try. Juries like all the information
17 possible. I have to present the best case possible, but
18 I can explain to you it doesn't really mean anything.
19 It's not that sufficient because his prints weren't
20 there or his touch DNA weren't there. Don't get
21 distracted by that. The rubber on the steering wheel. I
22 showed him an exact picture of the car. Very porous,
23 very difficult to get these things. Those are all the
24 factors to think about.

25 You then heard from Officer Repman. He came from

1 North Carolina to testify for us here. He was the one
2 that got that surveillance video. Green hat, white
3 shirt, about this time. Maria, we played the video. She
4 said, That's him. That's him. That was the man with the
5 green hat, white shirt. That's the man I picked out of
6 the lineup. That's Chavias Jenkins. That's him on the
7 TV. You saw it.

8 Officer Repman not only went and got the video --
9 unfortunately, there's no Waffle House video. It would
10 be nice but they didn't have any of the exterior. That's
11 no one's fault. Officer Repman took it upon himself to
12 go over to the Budget Inn on Fain Boulevard. No one told
13 him to do this. He took it upon himself because he said
14 part of my investigation duties are to take your leads.

15 Well, when he's thinking as a detective, he's been
16 doing this for years and years in that area, where could
17 someone come from? I'm seeing the video. Fain. What is
18 over there? Budget Inn. He went and said this is
19 walking distance. I showed a map. I said, Why did you
20 go there?

21 Well, because it's walking distance. This it is
22 Budget Inn. This is where Candace Singleton and Chavias
23 Jenkins were living together. That's it. That's the
24 Hideaway Lounge in this bar -- in this hotel. This is
25 the map. Okay. This is Aviation. This is the Kangaroo.

1 So from that surveillance video you see Mr. Jenkins
2 coming about this direction, he said. Point four miles,
3 approximately eight-minute walk. Now, I have those
4 pictures with Officer Repman showing a sidewalk, and what
5 that does is show you specifically how Chavias got there
6 that day. He walked.

7 Candace said they didn't have a car. She didn't
8 have a car. Chavias didn't have a car. Walk. Leave and
9 walk around. That's not a bad walk, eight minutes, less
10 than 10 minutes. That's going from about here to the end
11 of Broad street.

12 So he takes the sidewalk and goes right here to the
13 Budget Inn. He goes from there to there that day. The
14 Waffle House, Candace set it up. They didn't make the
15 suggestion. Candace did because they always go there.
16 They can walk there. Chavias knows that. Candace knows
17 that location. It's a simple walk. Sure, sure we'll
18 meet you there. It comes together. These are things to
19 put this story together. It makes sense.

20 This is the next photo. This is that Kangaroo.
21 Okay? This is the sidewalk. Going over here is Fain.
22 This is Aviation. You see the defendant walking from
23 about this direction. This is a Kangaroo where he starts
24 walking and this is the Waffle House.

25 So that is how Maria said she was parked about

1 here. That is how she saw the guy in the green hat in
2 this direction. Okay? I did this so you could see from
3 the start where everybody was.

4 A photo lineup. The defense was asking questions
5 to try to make people think it was a bad photo lineup;
6 however, every single officer testified that it was a
7 good photo lineup. In their years and decades of work
8 and practice and training it was a good photo lineup. It
9 was a quality photo lineup. Is it in black and white?
10 Yes. Sergeant Niemiec testified it's actually better
11 than color.

12 Officer Repman testified that in his training
13 there's different ways to do photo lineups. You can do a
14 six-pack, you can do the show-ups. The one-by-one method
15 is the least suggestive method. You are going to take
16 Maria's video back when she picked out Chavias; put the
17 first one down, put the second one down, immediately puts
18 it to the side. Instantly recognized it. Instantly.
19 Followed their directions, kept going. She kept going
20 back. This is him.

21 Now, be very wary and cautious of a
22 mischaracterization of testimony. I'm not sure. It's
23 not where it ended. I'm not sure because I couldn't see
24 the scarring from his acne that I saw so detailed on his
25 face that day when he almost killed me in this picture,

1 but the eyes, the nose, the lips, the mouth, the face,
2 the hair, that's him.

3 It doesn't mean she wasn't certain. It means she
4 gave a more detailed description of the man than what
5 that photo lineup allowed because that's how close she
6 was. She saw every scar, every wrinkle, everything on
7 that man's face. That is the certainty in her
8 identification. That is how certain she was.

9 One of the most difficult parts in this trial,
10 actually, was when I asked was that the man that you
11 picked from the green hat, and she had already been
12 crying and she had tears in her eyes and looked past me
13 and looked directly at Chavias and says, He knows what he
14 did to me.

15 I told you in my opening she would bravely testify,
16 one of the bravest things someone can do and still sit
17 here today, sit here today crying right now with her
18 husband. That's some strength. It's to show that man
19 three years later here we are. It is still that
20 emotional for her three years later because she relives
21 it, relives it. That's her truth.

22 Now, truth, okay. Anything that we say in these is
23 not evidence. The Judge will instruct you on the rules
24 of law. What she will talk about is credibility of a
25 witness and what you can do and why you have 12 people is

1 because you take the 12 different experiences, life
2 encounters with other people and you use them with your
3 common sense.

4 You believe or you don't believe what people say on
5 the stand. You can believe all their testimony, parts of
6 their testimony, or none of their testimony. You are
7 allowed to say, I think she was lying at that part. I
8 think she was actually telling the truth at that part.
9 So, of course, I mean Candace Singleton.

10 Candace Singleton. Now, I had to call Candace
11 Singleton. I know she lied. She lied on the stand. She
12 lied to me, she lied to you. She lied before this
13 Court --

14 MR. MALLOY: Objection.

15 THE COURT: What's the basis?

16 MR. MALLOY: Testifying outside the record.

17 THE COURT: Ladies and gentlemen, please remember,
18 I instructed you what is contained in closing arguments
19 is not evidence. You are the finders of fact. This is
20 merely Ms. Savas' contention as to what the evidence has
21 shown you.

22 Ms. Savas.

23 MS. SAVAS: Thank you, Your Honor.

24 She has a criminal record. Yeah, I know. It was
25 interesting because Candace would agree with me to

1 certain points and there was always a point when I asked
2 a little bit further, a little more specific and she
3 would say no. Nope. No. No, I don't. No. Just enough
4 to not incriminate herself or the beloved Chavias.

5 Yes, they are together. We know they are together.
6 She may be pregnant with his baby. She was together with
7 him living in 2013 at the Hideaway, and they are still
8 together to this day. She has a tattoo on his hand.
9 They are together and she will be loyal until the end
10 because she came here, yes, under my subpoena but she
11 told me I came to support him. Why are you here?

12 To support him.

13 Yeah. You want to meet with me?

14 No.

15 Okay. You don't have to. But let's show the bias.
16 That's his girlfriend. I may have called her as a
17 witness, that's his people. What is that old saying?
18 Show me a man's friend and I show you the man. How about
19 the girlfriend? How about the future mother of his
20 children? How about the people that he decides to lay
21 with at night? That's the link.

22 Now, Candace said she lives on Nassau Street. She
23 said now she does. Back then they were in the Hideaway
24 Lounge. This is very important in the Craigslist ad.
25 These are the details that she actually wasn't clever

1 enough to lie about. In the Craigslist add, and Maria
2 test -- and Freddy testified, this was their negotiation
3 point. In the Craigslist ad it says, I had a bad house
4 fire so I have to sell it. I had a bad house fire.

5 Freddy testified that he used the house fire as a
6 negotiation. Well, if you really need the money, well,
7 we really need a cell phone. He said that.

8 Had a bad house fire. Candace Singleton sat on the
9 stand and actually agreed with me when I said, Didn't you
10 tell me that you had a house fire?

11 Yes, I had a house fire back then.

12 Well, what are the odds? It's not a coincidence,
13 okay? It's not coincidences. That because this is her.
14 She's trying to cover her tracks. But there's one that
15 she didn't actually think about, a house fire.

16 Candace said she now lives on Nassau Street.

17 Candace, did you have this phone number, (843) 642- [REDACTED] ?

18 No.

19 Oh, because you mean the phone that you called them
20 off of and then you were using?

21 I asked Sergeant Niemiec, did you have a link to
22 that phone number --

23 MR. MALLOY: Objection. Outside the record.

24 THE COURT: All right. Counsel, approach.

25 (WHEREUPON, a bench conference was had off the

1 record.)

2 THE COURT: Ladies and gentlemen, you will have the
3 opportunity, you are, again, the finders of the fact of
4 any and all of the evidence in this case. Ladies and
5 gentlemen, again, this is Ms. Savas' opportunity to
6 present to you in a closing argument what she believes
7 the evidence has shown you. Thank you.

8 MS. SAVAS: Thank you, Your Honor.

9 Sergeant Niemiec testified that that phone number
10 was linked to Candace Singleton. He said yes on that
11 stand. Yes. She said no. Of course she's going to lie
12 about that fact. She said Chavias is my boyfriend. I
13 had a house fire. I had a Cricket phone. I went to
14 Cricket.

15 Sergeant Niemiec, I asked him also to do a search
16 warrant in an attempt to get more information from this
17 said phone number. Unfortunately, AT&T doesn't actually
18 keep records like that at this point in time unless they
19 are through other AT&T subscribers. That phone number
20 went back to a Cricket phone number.

21 Candace said she went to Cricket and she had to get
22 her phone fixed that day. Cricket phone, phone number,
23 fire, boyfriend. Okay? The reason we couldn't trace
24 even deeper the phone exchanges specifically between
25 Freddy and Maria is because, as they testified, they

1 didn't have AT&T phones. AT&T at this point will only do
2 between AT&T subscribers for some reason. It's outside
3 of our control. However, phone, Cricket, phone number,
4 Candace, house fire, boyfriend.

5 Now, officers were at the Hideaway Lounge looking
6 for Candace, and when they went to her room that's how
7 they got the name Chavias Jenkins. It's because his
8 medicine bottle was on the nightstand there in the room
9 somewhere. At a certain point Officer Wallace, who
10 testified yesterday, he said he received a tip. He met
11 this person in person --

12 MR. MALLOY: Objection.

13 THE COURT: What's the basis?

14 MR. MALLOY: Nothing in the record about this.

15 THE COURT: Once again, ladies and gentlemen, this
16 is the closing argument. Please limit it -- you are the
17 finders of fact.

18 Ms. Savas, you may continue.

19 MS. SAVAS: Thank you, Your Honor.

20 He said, Yes, I went and met with someone and that
21 information was relayed as the course of this
22 investigation.

23 Officers go to the Hideaway Lounge, look
24 specifically for Candace Singleton in room 242. They
25 find Candace Singleton. They go to room 242. They find

1 the pill bottle with Chavias Jenkins' name.

2 She says he wasn't there that day. Of course she
3 does. Why would she admitted that he was there. She
4 knows what they were looking for, but would you really
5 leave your medicine bottle behind if you were going to be
6 gone for a few days? It doesn't even matter. That
7 story, she lied about that part.

8 They were coordinating. That was her deal, was to
9 set it up, talk as a nice little female selling phone to
10 a nice other little female and then her boyfriend comes
11 with a car and carjacks her, robs her at gunpoint and
12 takes all her money.

13 I'll briefly touch upon the charges in this case.
14 Again, the Judge will instruct you but it's my duty to
15 prove the elements. You will get an explanation of these
16 in detail but I try to do this to sort of briefly give
17 you an overview.

18 In this case the defendant is charged with armed
19 robbery, carjacking, kidnapping, and possession of a
20 weapon during the commission of a violent crime. This is
21 little. I'm sorry. Armed robbery. To prove armed
22 robbery the State has to show the taking, the carrying
23 away of personal property of another with the intent to
24 deprive them of that property by force, threats,
25 intimidation while armed with a deadly weapon or while

1 the victim reasonably believes there was a deadly weapon.

2 So we don't even need a gun.

3 Do we have a gun? No. They never found a gun, but
4 Maria could describe that gun. It was in her face for 45
5 minute. But even if there wasn't a gun the fact that she
6 believed a gun he's still guilty of armed robber. So we
7 don't need a gun.

8 The taking away. Chavias Jenkins held her at
9 gunpoint and took her things while she was in her car.
10 She testified he took her cash, her sister-in-law's cell
11 phone, rummaged through her car and took the actual car.

12 The carrying away. He drove away from her. He
13 dumped her under the overpass, abandoned her there and
14 said, Don't look back or I'm going to kill you.

15 Personal property were those items; the car, the
16 cell phone, the cash. They were her property. With the
17 intent to deprive with possession. He took them. He
18 never came back.

19 By use of force, threats or intimidation. These
20 are the points that were the toughest for Maria to
21 describe, the times that he held her at gunpoint at the
22 Waffle House, the time that he said he was going to kill
23 her time, and time, and time again.

24 While armed with a deadly weapon. She said it was
25 a dark grayish-black colored gun. So he's found guilty

1 of armed robbery.

2 Carjacking. Very basic. Okay? Taking of
3 another's motor vehicle by force, violence or
4 intimidation while that person is in or operating the
5 vehicle. Okay? Chavias forced Maria back into her car.
6 Nope, not the driver's seat. Scoot over to the passenger
7 seat, and then he jumped in her seat and drove her car.
8 That was her green Jaguar. Okay?

9 By force, violence, intimidation. Again, the
10 gunpoint, the threatening to kill her and shoot her,
11 while the person is in her car. She was sitting in her
12 car. She was in her passenger seat. Guilty of
13 carjacking. There's two separate things. The taking of
14 the car and driving her and then stealing all those
15 items, the cash, the cell phone, the car. Okay?

16 Kidnapping. Maria was kidnapped. Unlawful
17 seizure, confining, carrying away or asportation, in her
18 car, of a person by any means without the authority of
19 law. It is most certainly clear that Chavias Jenkins had
20 no right to be in her car and to kidnap her and drive her
21 around for 45 minutes at gunpoint. Okay?

22 He forced the victim in her car, drove her across
23 town. She did not give him permission. She did not know
24 him. She's never seen him before, and he held her at
25 gunpoint. Of a person, Ms. Maria, by any means in her

1 car at gunpoint, no explanation by law. No authority.

2 Things. That can be incidental to another crime.

3 So, yes, because he was committing the act of carjacking

4 it's still kidnapping. Okay?

5 The act of armed robbery, you still find him guilty

6 of kidnapping. It's when one person is deprived of their

7 freedom and continues until that's restored. So the very

8 moment that he held her at gunpoint, put her in that car

9 is the moment that he kidnapped her, up until the point

10 that he dumped her off under 526, and that is practically

11 certain to follow from the conduct.

12 Obviously, you force someone in a car you are

13 kidnapping them. Okay? Even if it's not original

14 intent. So let's say that maybe he didn't think that he

15 was actually going to kidnap her and drive around. It

16 doesn't matter. The fact is he did it.

17 Now, we don't know why he did this. It's going to

18 be very hard to answer that question because people don't

19 normally do that. So don't search for why. It is not

20 your job to find out why these things were done. It is

21 to determine that, in fact, it was done, what was done,

22 not why. You won't know why but you don't need why to

23 find guilty verdicts. So he's guilty of kidnapping.

24 Possession of a weapon during the commission of a

25 violent crime is the handgun. So the violent crimes by

1 the State of South Carolina are determined to be armed
2 robbery, kidnapping, and carjacking. Okay? So the fact
3 that he had that gun or what she thought to be a gun in
4 those situations he's then guilty with the firearm. It's
5 a separate charge but it comes from the same incidents.
6 So he's guilty.

7 Beyond a reasonable doubt. This is something that
8 I'm sure people get very nervous as to how to evaluate.
9 Be very clear, and the Judge will instruct you as well,
10 there are very few things that we know for certain in
11 this world. We do not need one hundred percent certainty
12 to render guilty verdicts. It's not all doubts.

13 We don't need to get past all doubts. Okay? Just
14 a reasonable doubt. What would a reasonable person
15 think? Would a reasonable person listening to poor Maria
16 on the stand pick him out of the photo lineup and then
17 look him in the eyes and say he knows what he did to me?
18 Yes. Absolutely.

19 After your evaluation of all the evidence in this
20 case I am confident that you will believe Maria's story
21 and rely on her photo lineup identification because it
22 was solid, and she was certain, and it was a good photo
23 lineup because there are 12 of you in person to determine
24 she was telling the truth. That was her identification,
25 because when I stand this close to you for 45 minutes you

1 are going to know who I am. Maria knew.

2 Chavias Jenkins kidnapped, carjacked, robbed her at
3 gunpoint that day and threatened to shoot her on several
4 occasions, and we ask that you render guilty verdicts on
5 all charges. Thank you.

6 THE COURT: Mr. Malloy?

7 MR. MALLOY: Thank you, Your Honor. Was Maria
8 Davila forced to endure a horrifying, traumatic
9 experience that still affects her until today? Yes. Was
10 she kidnapped? Yes. Was she carjacked? Yes. And was
11 she robbed? Yes. Was Chavias Jenkins the man who did
12 these crimes to her? No. Therefore, he is not guilty.

13 Again, Ms. Savas gives her closing assuming that
14 Mr. Jenkins did this. That is not for you to assume and
15 that is a false assumption. The only evidence the State
16 relies on to prove their case against Chavias Jenkins is
17 Maria's identification. Just because Maria Davila picked
18 Mr. Jenkins' photo out of a lineup does not mean he
19 committed the robbery. It is not reliable enough to be
20 sure beyond a reasonable doubt.

21 Right after she was robbed the description Maria
22 gave was black male, six-feet, medium build, between 20
23 and 30 years of age. No details. It's not like she
24 testified there. No details. And the reason that she
25 didn't provide any details is because she wasn't focussed

1 on the robber during this terrible experience.

2 He approached her very quickly in the Waffle House
3 parking lot. They were only face-to-face for an instant
4 and then there was the gun. Immediately, that's where
5 her focus goes. She's focussed on the gun because of
6 course she's worried about being shot.

7 She was also worried about where the robber was
8 taking her. She wasn't focussed on his face. Look for
9 yourselves. She gave a very detailed description of the
10 route that was taken by the robber of the places they
11 went. She was able to identify roads, neighborhoods,
12 stores but she wasn't focussed on his face.

13 When she was in the car with the robber she can
14 only view him from the side. She could only glance at
15 him. She said she only was able to do this -- she only
16 did this a few times.

17 She said it felt like forever. I'm sure it did.
18 The solicitor says 45 minutes. I don't think it was that
19 long. Judging from the time she said she arrived and the
20 time the police arrived she said she had to wait for a
21 little bit in the Waffle House parking lot.

22 The robber is wearing a hat, so you couldn't see
23 his hair. She couldn't tell what kind of hairstyle he
24 had. The hat would have been shading his face. She had
25 said the robber's hat was dark green. Then she pointed

1 to a man in the video from the gas station that the State
2 showed you. If you look at that video that man is not
3 wearing a dark green hat. He's wearing a light turquoise
4 hat. That's not the guy.

5 As you recall, you can't see who that is in the
6 video. You can't see the robbery occur. It really has
7 no significance at all.

8 She said that her mind was everywhere. She wasn't
9 thinking I need to get a good look at the man so when the
10 police show me a photo lineup I can pick him out. That's
11 not what was going through her mind. She's worried about
12 what is going to happen next.

13 She's thinking about waving for help. The
14 solicitor mentioned or mischaracterized the point I was
15 trying to get at. I was not asking her why didn't you
16 wave for help. The point I'm making is that's what she's
17 thinking. She's thinking how can I get help? How can
18 someone help me? She's not looking at the robber's face.
19 She's not staring to the guy next to her. She's looking
20 around outside the vehicle.

21 Two days later she's asked to pick a photo out of a
22 lineup. You saw the photos are in black and white, all
23 black males. Can't tell how tall they are or how they
24 are built. Mr. Jenkins' photo stands out. You can see
25 it for yourself. It's in evidence. He has a different

1 hairstyle than the other men in the lineup. He has
2 different facial hair. His photo is clear. It's more
3 defined. It makes him stand out.

4 The officers who put this lineup together, they
5 were not experts. They disagree with me on whether it
6 mattered whether the photo were in black and white.
7 Well, use your common sense. Black and white photos are
8 not going to be as clear or accurate as color photos.
9 It's harder to see the faces. Maria said it herself.
10 It's hard to tell because they are black and white. They
11 could easily use color photos instead.

12 The lineup procedure is subject to human error.
13 Maria wanted the police to catch the man that robbed her.
14 She wanted to aid them. Of course she's going to make an
15 identification from the lineup. Chavias was one of six
16 and unfortunately for him he got picked.

17 The most important testimony that you heard in this
18 trial came from Maria herself. When she picked Chavias'
19 photo from the lineup she says that looks like him but I
20 can't be so sure. Watch the video again. That's what
21 she says. She admitted it on the stand. Looks like him
22 but I can't be so sure. That is reasonable doubt.

23 She wasn't asked how confident she was at that time
24 and she wasn't confident enough to point over here to
25 Mr. Jenkins during the trial and say that's the man who

1 robbed me. She never did that. Had every opportunity
2 to. I'm not so sure, two days after the robbery. That's
3 just not good enough. If she wasn't sure then how can we
4 be sure today? How can you be convinced beyond a
5 reasonable doubt that she made the correct identification
6 when she is unsure herself?

7 You must view this in light of the scientific
8 evidence in the case. The State tried to downplay the
9 scientific evidence, their own experts. These people are
10 professionals, the crime scene person, the fingerprint
11 analysis, DNA analysis. These people are professionals,
12 the crime scene people.

13 Angelica Loaiza said she did exactly the way she
14 was trained. She was as thorough as can be. She
15 collected as many fingerprints as she could, collected as
16 many DNA swabs as she could.

17 The science doesn't lie. It's not subject to human
18 error. If Mr. Jenkins was the robber they would have
19 been able to match fingerprints in the car then.
20 Instead, all the fingerprints that there were recovered
21 excluded him as the person who left them there.

22 And you heard crime scene specifically looked in
23 places where the driver would have left their
24 fingerprints, when they collected the evidence. That's
25 exactly where they are looking. If Mr. Jenkins committed

1 this robbery they would have got his fingerprints and
2 matched them.

3 Mr. Hallman, fingerprint analysis, testified about
4 perfect conditions when someone would leave -- for
5 obtaining fingerprints. He mentioned a day with rain
6 would cause fingerprints to go away. This was a sunny
7 day. No rain at all. The vehicle was recovered almost
8 immediately. And they also agreed a short amount of
9 time, sunny day. Those are perfect conditions for
10 obtaining fingerprints. They had everything they needed.

11 And the State characterized the evidence in a way
12 that I find to be confusing. Just because his
13 fingerprints weren't recovered doesn't mean he touched
14 the inside of the vehicle. It's like a double negative,
15 very confusing way to explain something that's so
16 straightforward. Let me translate that for you. We
17 can't prove it's him. That's what that really means.

18 Mr. Jenkins would have also left his DNA there and
19 they would have been able to match it to him. This is a
20 hot day. Ms. Davila testified the robber was sweating --
21 or that he was nervous. He would have been sweating.
22 Jennifer Clayton from SLED said sweat is a perfect thing
23 to get touch DNA from, leaves a lot of DNA behind.

24 Ms. Davila testified yesterday that the robber was
25 wiping down the interior of the vehicle with a shirt.

1 The robber was not wearing gloves. Everybody is clear on
2 that, but that he was wiping down the interior of the
3 vehicle with her shirt. She mentioned nothing about this
4 in her initial statement to the police. This would have
5 been a very important fact to include in her statement.

6 She wrote down everything. They asked her to write
7 down everything, to be as truthful as she could possibly
8 be. She signed it as being true and complete to the best
9 of her knowledge. Nothing about it. But today -- or
10 yesterday she brought it up. Obviously since then she's
11 been meeting with the State and the solicitor in
12 reference to this case, in reference to her testimony.
13 They know that forensic evidence in this case is a
14 problem for them so they have to come up with something.

15 No blue Folly Beach shirt was ever recovered. Look
16 at the crime scene photos. It's nowhere to be found. It
17 was never tested for DNA. It was never sent to SLED.
18 Jennifer Clayton said if someone with bare hands held a
19 shirt it's a possibility that DNA would be left behind.
20 Even if the robber was trying to cover up he would not
21 have been able to escape without leaving any DNA or
22 fingerprints.

23 And Maria said the robber was driving the car with
24 his left hand and holding a gun with his right the entire
25 time they were in the car. Driving with left hand, gun

1 with right. Use your common sense. How can someone hold
2 a gun in one hand, drive with the other and wipe down the
3 entire interior of the vehicle at the same time? There's
4 no way. It's impossible.

5 Her vehicle was found very, very quickly. It was
6 not far from where Maria was dropped off. There was not
7 enough time to cover up fingerprints or wipe away DNA
8 before the police arrive and secure the scene. Officer
9 Cobb testified that the driver's seat was pulled forward
10 as if someone short was driving. I don't know about you
11 but I would not consider six-feet to be short.

12 Now, you need to ask yourself what is missing?
13 Gun, never found a gun that was involved in this case.
14 Never recovered the cell phone that Maria used. Never
15 recovered any clothes that were similar to what the
16 robber was wearing. The State's not produced any of
17 these things.

18 Detective Niemiec went to Candace Singleton's room
19 and yes Candace Singleton is Chavias' girlfriend and was
20 at the time. We all agree about that. And he tried to
21 make excuses about why none of these things were found.
22 He said the officers just glanced around. They didn't
23 really conduct a search.

24 Well, Sergeant Niemiec was briefed on this case.
25 He knew what he was looking for. He was looking close

1 enough to find a pill bottle with Chavias Jenkins' name
2 on it. He would have certainly noticed a gun. If there
3 was a gun, there was a stolen cell phone, a green hat, a
4 white T-shirt, jean shorts he would have seen those,
5 too. He knew to look for those two, and trust me, he
6 would have seized them. They weren't there. None of it
7 was there.

8 No eyewitnesses in this case other than Ms. Davila.
9 The entire incident took place in a highly populated area
10 in North Charleston. No one from the Waffle House, no
11 one from cars passing by, no one where Ms. Davila was
12 dropped off. No explanation of how Mr. Jenkins could
13 have disappeared in the Russelldale community.

14 Officers arrived there very quickly. They would
15 have been able find him. But there are no records
16 connecting Chavias Jenkins or Candace Singleton to the
17 Craigslist ad. The police worked these cases a lot.
18 They know how to search the internet for records and
19 evidence. There's a phone number on that Craigslist ad.
20 No records tying that to Candace Singleton or Chavias
21 Jenkins.

22 I want to point out a few shortcomings of the
23 investigation. They didn't bother to canvas the
24 apartments where the vehicle was located, see if there
25 was any witnesses who may have seen someone leaving the

1 car there. They didn't canvas the area where the robber
2 dropped Ms. Davila off, but they know at least one person
3 saw the robbery, other than Ms. Davila.

4 They didn't bother to speak to the man whose phone
5 Ms. Davila used to call 911. Even though, even though he
6 saw the robber drive by didn't bother to speak to him.
7 They simply closed the case after Maria picked Chavias'
8 photo out of the lineup.

9 Also, five DNA swabs collected from the crime
10 scene, five. Only three were tested by the experts at
11 SLED. One of the ones that did not get tested, that
12 inexplicitly did not get tested, was from the key to the
13 vehicle, and we know the robber touched this key because
14 when the vehicle was found it was turned off and the keys
15 were on the floorboard.

16 For some reason this sample didn't make it to
17 SLED. No reason given. They could have shown that it
18 wasn't Mr. Jenkins' DNA. We don't know how. Can you
19 trust this investigation to determine the fate of a man?
20 How can you trust this investigation to determine
21 Mr. Jenkins' fate?

22 I want to talk about Candace Singleton. She's a
23 State's witness. Yes, Mr. Jenkins' girlfriend but a
24 State's witness. According to their theory of this case
25 she should be charged with the same crimes that

1 Mr. Jenkins is. She would be an accomplice to the armed
2 robbery but she wasn't charmed with anything because
3 there's not enough evidence to support their theory of
4 the evidence.

5 MS. SAVAS: Objection, Your Honor.

6 THE COURT: What's the basis?

7 MS. SAVAS: Relevance.

8 THE COURT: Ladies and gentlemen, just as I
9 instructed you previously, please remember this is
10 Mr. Malloy's contention as to what the evidence has shown
11 you.

12 Please confine your argument to what the evidence
13 has been. Thank you.

14 MR. MALLOY: There isn't enough evidence to charge
15 Candace Singleton and the State's case against Chavias
16 does not make sense.

17 The solicitor seems to think that Ms. Singleton is
18 hiding something. She let the officers in her room the
19 day of the robbery to look around. Would someone who is
20 trying to cover up a robbery just let police officers
21 come look around their hotel room? I don't think so.

22 She testified at the time of the robbery Chavias
23 was not staying with her in that area. She remembers
24 because she was questioned by police. That's how she
25 remembers this day. She remembers specifically that he

1 was not staying with her on this day. She didn't talk to
2 him, didn't see him. They had had an argument a couple
3 days earlier so he went to stay with his mom in Goose
4 Creek for a while.

5 Even though Candace was a State's witness they
6 brought her here and embarrassed her with her past.
7 She's had hardships, house fire, and she said at one
8 point everybody is just trying to survive.

9 She's had some troubles with the law. That has
10 nothing to do with this case. The solicitor has
11 contacted her multiple times regarding this case. She
12 said she felt like she was under pressure to change her
13 story in some way. The State seems to think she's trying
14 to hide something. She's not.

15 The State brought this in front of you to confuse
16 you, her past. They somehow want to make you think that
17 Candace Singleton's trouble makes it likely that she --
18 makes it more likely that Chavias committed this crime.
19 That is not the case. It has nothing to do with the
20 robbery that we are here for today.

21 Now, she testified about a tip that led them to
22 Ms. Singleton. No one came and testified about that. No
23 one took an oath. No statement was provided, no recorded
24 conversations. That is not evidence for you to consider.

25 The State seems to make a big deal out of the

1 Budget Inn and the Hideaway Lounge, fairly close to
2 Waffle House where this incident occurred. Keep in mind
3 there's several hotels in this area and the police didn't
4 canvas any of those.

5 These are things the State is using to try to make
6 up for the gaps in their case. The State's case simply
7 does not add up to proof beyond a reasonable doubt. You
8 seen nothing that shows for certain that Chavias Jenkins
9 committed this crime.

10 Ladies and gentlemen, this is the most important
11 day in Chavias' life. He sits before you an innocent
12 man. His fate rests in the balance. Your decision must
13 be your own. Do not compromise if you believe the State
14 has not proven their case.

15 This was a terrible thing that happened to Maria
16 Davila but you cannot base your decision on how this
17 event has affected her. If you are not convinced that
18 Mr. Jenkins was the man who committed this robbery then
19 your verdict must be not guilty.

20 He sits before you an innocent man as he was on
21 September 13, 2013. I'm asking you to allow him to leave
22 this courtroom as that, an innocent man. Thank you.

23 THE COURT: Ladies and gentlemen, I'm now going to
24 instruct you on the law applicable to this case. Please
25 pay close attention because ordinarily I do not send a

1 copy of my instructions back to you.

2 As you know, Madam Foreperson, you are responsible
3 for writing the verdict.

4 I remind you that during this trial you and I have
5 had certain duties to perform. As the trial judge, it is
6 my responsibility to preside over the trial of this case
7 and I also have the duty to rule on the admissibility of
8 the evidence offered during this trial. You are to
9 consider only the competent evidence before you.

10 If there was any testimony ordered stricken from
11 the record you must disregard that testimony. You are to
12 consider only the testimony that has been presented from
13 the witness stand, as well as the exhibits that have been
14 made part of the record in this case.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge I am the
17 sole judge of the law in this case. It is your duty as
18 jurors to accept the law and apply the law as I state it
19 now. If you have any idea as to what the law is or what
20 the law ought to be and it does not agree with what I'm
21 about to tell you, you must abandon your own idea because
22 you are sworn to accept the law and apply the law exactly
23 as I state it to you now.

24 In every case tried in this Court before a jury the
25 jury becomes the sole and exclusive judges of the facts.

1 A trial judge may not make any comment to a trial jury
2 about the facts in this case. You, the jury, are the
3 sole judges of the facts in this case.

4 You are not to infer from anything that I have said
5 or done throughout the progress of this trial that I have
6 any opinion about the facts in this case. The law does
7 not allow me to have an opinion about the facts in this
8 case. This is solely a matter for you to determine.

9 The indictments in this case charge the defendant
10 with carjacking, kidnapping, armed robbery, and
11 possession of a handgun during the commission of a
12 violent crime. I remind you that the fact that the
13 defendant was arrested, charged, and indicted in this
14 case is not evidence in this case and cannot be
15 considered by you as evidence of guilt in this case nor
16 does it create any presumption or inference of guilt.

17 The document is the written formal instrument which
18 contains the charge made against the defendant. The
19 indictment is the formal document by which this case is
20 brought into this court.

21 Just as the indictments in this case are not
22 evidence any terminology or labels used to refer to the
23 individuals involved in this case cannot be considered by
24 you as evidence. For example, the use of the word
25 defendant and victim are merely labels and may not be

1 considered by you as evidence.

2 The indictments in this case allege four different
3 offenses against the defendant. The indictments are
4 2013-GS-10-7433 carjacking, indictment 2013-GS-10-7434
5 for kidnapping, 2013-GS-10-7435 armed robbery,
6 2013-GS-10-7436 possession of a handgun during the
7 commission of a violent crime.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on
10 the evidence and the law applicable to it. You will be
11 asked to write a separate verdict of guilty or not guilty
12 for each indictment.

13 The defendant has pled not guilty to each
14 indictment. A person charged with committing a criminal
15 offense in South Carolina is never required to prove
16 himself innocent.

17 I charge you it is an important rule of law that
18 the defendant in a criminal trial no matter what the
19 seriousness of the charge may be will always be presumed
20 to be independent of the crime for which the indictment
21 was issued unless guilt has been proven by evidence
22 satisfying you of that guilt beyond a reasonable doubt.

23 This presumption of innocence does not end when you
24 begin your deliberations but it accompanies the defendant
25 throughout the trial until you reach a verdict of guilt

1 based upon the evidence satisfying you of that guilt
2 beyond a reasonable doubt.

3 The State has the burden of proving the defendant
4 guilty beyond a reasonable doubt. Some of you may have
5 served as jurors before in civil cases where you were
6 told that it is only necessary to prove that a fact is
7 more likely true than not true, such as by a greater
8 weight or preponderance of the evidence.

9 In criminal cases the State's proof must be more
10 powerful than that. It must be beyond a reasonable
11 doubt. Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the defendant's guilt. In
13 criminal cases the law does not require proof that
14 overcomes every possible doubt.

15 If based upon your consideration of the evidence
16 you are firmly convinced that the defendant is guilty of
17 the crime charged you must find the defendant guilty. If
18 on the other hand you think there's a real possibility
19 that the defendant is not guilty you must give the
20 defendant the benefit of the doubt and find him not
21 guilty.

22 There are two types of evidence that are generally
23 presented in a trial; direct evidence and circumstantial
24 evidence. Direct evidence directly proves the existence
25 of a fact and does not require deduction. Circumstantial

1 evidence is proof of a chain of facts and circumstances
2 indicating the existence of a fact. Crimes may be proven
3 by circumstantial evidence.

4 The law makes no distinction between the weight or
5 value to be given either direct or circumstantial
6 evidence; however, to the extent the State relies on
7 circumstantial evidence all of the circumstances must be
8 consistent with each other and when taken together point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray
11 the defendant's behavior as suspicious the proof has
12 failed.

13 The State has the burden of proving the defendant
14 guilty beyond a reasonable doubt. This burden rests with
15 the State regardless of whether the State relies on
16 direct evidence, circumstantial evidence, or a
17 combination of the two.

18 Necessarily, you must determine the credibility of
19 the witnesses who have testified in this case.
20 Credibility simply means believability. It becomes your
21 duty as jurors to analyze and to evaluate the evidence
22 and determine which evidence convinces you of its truth.

23 In determining the believability of witnesses who
24 have testified in this case you may believe one witness
25 over several witnesses or several witnesses over one

1 witness. You may believe a part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. You may believe the testimony of a
4 witness in its entirety or reject the testimony of a
5 witness in entirety. You may consider whether the
6 witness has exhibited to you any interest, bias,
7 prejudice, or other motive in this case, and you may also
8 consider the appearance and manner of a witness while
9 that witness was on the witness stand.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify to opinions or to conclusions. An
12 exception to this rule exists with witnesses we call
13 expert witnesses. A witness who by education and
14 experience has become expert in some art, science,
15 profession or calling may state an opinion as to a
16 relevant and material matter in which the witness claims
17 to be an expert and may also state the reasons for that
18 opinion. You should consider any expert opinion received
19 in evidence in this case and like any other evidence give
20 it the weight you think it deserves.

21 If you decide that the opinion of an expert witness
22 is not based on sufficient education and experience or if
23 you conclude that the reasons given in support of the
24 opinion are not sound or that the opinion is outweighed
25 by other evidence you may disregard the opinion entirely.

1 An expert witness's testimony is to be given no
2 greater weight than that of other witnesses simply
3 because the witness is an expert. Further, you are not
4 required to accept an expert's opinion even though it is
5 not contradicted.

6 A person who has a past criminal record is
7 competent to testify during a trial. A past record does
8 not affect the ability of that witness to testify. The
9 past record may only be considered by you, if at all, in
10 determining the witness's believability. Remember, you
11 are the sole judges of the facts in this case and of the
12 believability of any and all of the witnesses.

13 An issue in this case is the identification of the
14 defendant as the person who committed the crime charged.
15 The State has the burden of proving identity beyond a
16 reasonable doubt. You must be satisfied beyond a
17 reasonable doubt of the accuracy of the identification of
18 the defendant before you may convict the defendant.

19 Identification testimony is an expression of belief
20 or impression by a witness. You must determine the
21 accuracy of the identification of the defendant. You
22 must consider the believability of each identification
23 witness in the same way as any other witness. You may
24 consider whether the witness had an adequate opportunity
25 to observe the offender at the time of the offense. This

1 will be affected by things like how long or short a time
2 was available, how far or close the witness was, the
3 lighting conditions, and whether the witness had a chance
4 to know or see the person in the past.

5 Once again, I instruct you, the burden of proof on
6 the State extends to every element of the crime charged
7 and this specifically includes the burden of proving
8 beyond a reasonable doubt the identity of the defendant
9 as the person who committed the crime. If after
10 examining the testimony you have a reasonable doubt as to
11 the accuracy of the identification you must find the
12 defendant not guilty.

13 In order to establish criminal liability criminal
14 intent is required. For example, the mental state
15 required to be proven by the State for a particular crime
16 might be purpose, intent, knowledge, recklessness or
17 criminal negligence. Criminal intent must be proven by
18 the State beyond a reasonable doubt.

19 Criminal intent is always a matter that must be
20 determined by the jury from the circumstances surrounding
21 this situation. There is no way to prove intent to a
22 mathematical certainty. The law says that criminal
23 intent may be inferred from the circumstances shown to
24 have existed. This is how you make a determination of
25 whether or not the element requiring intent was present.

1 It is not necessary to establish intent by direct
2 and positive evidence but intent may be established by
3 inference in the same way as any other fact by taking
4 into consideration the acts of the parties and all the
5 facts and circumstances of this case.

6 Criminal intent is a mental state. It is a
7 conscious wrongdoing. It is up to you to determine what
8 the defendant intended to do based upon the circumstances
9 shown to have existed. Criminal intent can arise from
10 action or a failure to act. It may arise from
11 negligence, recklessness or an indifference to duty or to
12 consequences that is considered by the law to be the
13 equivalent of criminal intent.

14 The defendant is charged with carjacking. In order
15 to prove carjacking the State must prove beyond a
16 reasonable doubt that the defendant took or attempted to
17 take a motor vehicle from another person by force and
18 violence or by intimidation while the person was
19 operating the vehicle or while the person was in the
20 vehicle.

21 The defendant is charged with armed robbery. In
22 order to prove this offense the State must first prove
23 beyond a reasonable doubt that the defendant feloniously
24 or unlawfully took personal property from the person or
25 presence of another person.

1 Property is in the presence of another person if it
2 is with the person's reach, inspection, observation or
3 control so that the person could if not overcome with
4 violence or prevented by fear keep possession of the
5 property. The State must also prove beyond a reasonable
6 doubt that the defendant carried the property away
7 intending to permanently deprive the owner of the
8 property and to keep the property for the defendant's own
9 use. The slightest removal of the property or the
10 complete possession of the property even for an instant
11 by the defendant is sufficient to show a taking and
12 carrying away of the property.

13 The taking and carrying away of the property must
14 have been done with violence or by putting the owner of
15 the property in fear of violence.

16 Finally, the State must prove beyond a reasonable
17 doubt that the defendant was armed with a deadly weapon
18 during the robbery. A deadly weapon is any article,
19 instrument or substance which is likely to cause death or
20 great bodily harm.

21 Whether an instrument has been used as a deadly
22 weapon depends upon the facts and circumstances of each
23 case. The following are merely examples of instruments
24 which may be deadly weapons; a pistol, a shotgun, a
25 rifle, a dirk, a dagger, metal knuckles, or a razor.

1 The defendant is charged with kidnapping. The
2 State must prove beyond a reasonable doubt that the
3 defendant knowingly and unlawfully seized, confined,
4 inveigled, decoyed, kidnapped, abducted or carried away
5 another person without authority of law.

6 To do a thing unlawfully means to do it willfully
7 against the law. Knowingly means with knowledge,
8 consciously not accidentally. Seize means to take hold
9 of suddenly or forcibly. Confine means to limit,
10 restrict or enclose within bounds, imprison or shut or
11 keep in. Inveigle means to lure, entice or lead astray
12 by false representations, promises or other deceitful
13 means. Decoy means to lure by as if by decoy. A decoy
14 is something to entice a person into a trap.

15 Kidnap is to remove a person against his or her
16 will by unlawful force or by fraud. Abduct means to
17 carry off secretly or by force for an illegal purpose.
18 Carry away means to remove.

19 The State does not have to prove that the defendant
20 did all of these things. Instead, if you find beyond a
21 reasonable doubt that the defendant did any of these
22 things you may find the defendant guilty of kidnapping.

23 Something done without authority of law is
24 something which the law does not sanction, permit, allow,
25 condone or provide justification for. The kidnapping

1 does not have to be for any personal or monetary gain for
2 any illegal purpose but may be for any reason whatever.

3 The defendant is charged with possession of a
4 handgun during the commission of or attempt to commit a
5 violent crime. The State must prove beyond a reasonable
6 doubt that the defendant was in possession of a firearm
7 or visibly displayed what appeared to be a firearm during
8 the commission of a violent crime.

9 A firearm means any machine gun, automatic rifle,
10 revolver, pistol or any weapon which will -- is designed
11 to or may be readily converted to expel a projectile.

12 In order to find the defendant guilty of possession
13 of a handgun during the commission of a violent crime you
14 must first find the defendant guilty of either committing
15 a violent crime or attempting to commit a violent crime.
16 Carjacking, kidnapping and armed robbery are violent
17 crimes under the laws of South Carolina. The State must
18 prove beyond a reasonable doubt that the weapon further
19 advanced or helped in the commission of the crime.

20 I instruct you and emphasize the fact that the
21 defendant did not testify in this case is not a factor to
22 be considered by you in any way in your deliberation and
23 in your consideration on the question of the guilt or
24 innocence of the defendant. It must not be considered by
25 you in any manner whatsoever.

1 A defendant has the constitutional right to remain
2 silent and the assertion of this right must not be
3 considered by you in your deliberations. I repeat, under
4 your oath you are to draw no conclusion whatsoever from
5 the fact that the defendant did not testify.

6 Madam Foreperson, the fact that the defendant did
7 not testify should not even be discussed in the jury
8 room.

9 The burden of proof, as I have stated to you, is on
10 the State. The defendant is not required to prove his
11 innocence. The burden of proof remains on the State to
12 prove the guilt beyond a reasonable doubt.

13 Ladies and gentlemen, I am now going to go over the
14 verdict forms with you. There's absolutely no
15 significance in the way that I'm going to show you the
16 verdict forms or what is contained on the verdict form.
17 It is simply something has to go on the paper first.

18 The State of South Carolina, County of Charleston
19 vs. Chavias Jahmal Jenkins, indictment number
20 2013-GS-10-7433, this is the indictment for carjacking.
21 We, the jury, find the defendant not guilty, or we, the
22 jury, find the defendant guilty of carjacking.

23 Madam Foreperson, it is your responsibility to
24 complete the verdict form. Once you have made a
25 unanimous decision you will sign that verdict form, date

1 it.

2 Ladies and gentlemen, it must be unanimous, meaning
3 all 12 of you must agree.

4 In indictment number 2013-GS-10-7434, we, the jury,
5 find the defendant not guilty, or we, the jury, find the
6 defendant guilty of kidnapping.

7 Once again, Madam Foreperson, once your jury has
8 reached a unanimous decision you will sign that verdict
9 form and date it indicating that you have reached a
10 unanimous decision as to the kidnapping indictment.

11 Case number 2013-GS-10-7435, we, the jury, find the
12 defendant not guilty, or we, the jury, find the defendant
13 guilty of armed robbery.

14 Once again, Madam Foreperson, this indictment must
15 be a unanimous decision, meaning all 12 of you must
16 agree. Once you have reached a unanimous decision you
17 will sign that verdict form, date it indicating that you
18 have reached a unanimous decision.

19 Case number 2013-GS-10-7436, we, the jury, find the
20 defendant not guilty, or we, the jury, find the defendant
21 guilty of possession of a handgun during the commission
22 of a violent crime.

23 Once again, Madam Foreperson, you must reach a
24 unanimous decision on this indictment. Once you have
25 done so, please sign the verdict form indicating that you

1 have reached a unanimous decision, all 12 of you have
2 agreed, date the verdict form.

3 Once you have completed all four verdict forms you
4 will alert the bailiff indicating that you have reached a
5 verdict on all four indictments. Once you do that we
6 will receive you back into the courtroom.

7 Ladies and gentlemen, this is the last time that I
8 will say this to you, do not begin your deliberations.
9 Do not discuss this case amongst yourself. We'll be
10 gathering those verdict forms and the evidence to go back
11 to you. Once we have don't that the bailiff will bring
12 those to you indicating that you may then begin your
13 deliberations.

14 Ladies and gentlemen, to my first 12, is there any
15 reason that you cannot go into the jury room and complete
16 the deliberations for this case? If there's any reason
17 my first 12 could not accomplish that please raise your
18 hand.

19 (No hands were raised.)

20 THE COURT: Thank you.

21 Madam Alternate, you have completed your service at
22 this time to this case but I'm going to ask that you stay
23 with us until I have taken the evidence and the verdict
24 form and indicated to the first 12 that they can begin
25 their deliberations.

1 Please remember my admonitions, don't discuss this
2 case with anyone until I tell you that you may. Please
3 take all your belongings with you.

4 Please rise for the jury.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 12:24 p.m.)

7 THE COURT: Thank you. Please be seated.

8 Any objections, corrections to the charge as read,
9 from the State?

10 MS. SAVAS: No, Your Honor.

11 MR. MALLOY: Only renew my request for the jury
12 charge which has been made a court's exhibit.

13 THE COURT: All right. Thank you. And no
14 objection to the items that are admitted into evidence
15 going back, correct?

16 MS. SAVAS: No, Your Honor.

17 MR. MALLOY: And, Your Honor, I do renew my request
18 for a spoliation charge as well.

19 THE COURT: All right. Thank you.

20 All right. We have the verdict forms. If you'll
21 please come and assist the court reporter.

22 If I give a laptop into the jury room is there any
23 objection to them playing the video?

24 MS. SAVAS: No.

25 THE COURT: Mr. Malloy?

1 MR. MALLOY: There's nothing else on there, right?

2 MS. SAVAS: On which video? On those?

3 MR. ZIEGLER: Which one?

4 MR. MALLOY: Either one for them, other than the

5 Kangaroo --

6 MR. ZIEGLER: We would have to stop at a point

7 where we stopped during the trial because there is more

8 video.

9 MS. SAVAS: No anything different of like --

10 MR. ZIEGLER: Other than what's in the lineup.

11 MR. MALLOY: Is there anything in addition to the

12 lineup, though? Like, I know there was a video of her

13 initial interview. Is that on there, too?

14 MS. SAVAS: I don't think so.

15 MR. ZIEGLER: No. I don't believe so.

16 MS. SAVAS: I think that's just the lineup disk.

17 THE COURT: All right. Thank you. Thank you.

18 (All evidence was checked by the attorneys for

19 preparation in being delivered to the jury.)

20 THE COURT: Let's do this. Keep the videos out.

21 Let's look while -- right now if you'll just look and

22 make sure there's nothing else on there then we'll make a

23 determination. Okay? But everything else can go back,

24 right? Thank you.

25 (WHEREUPON, the evidence and verdict forms were

1 taken back to the jurors, and they were instructed to
2 begin their deliberations at approximately 12:28 p.m.)

3 THE COURT: Mr. Malloy, do you have any posttrial
4 motions or any other motions?

5 MR. MALLOY: Your Honor, I do. Your Honor, I only
6 renew all previous objections and motions.

7 THE COURT: All right. Ms. Savas, do you have any
8 additional arguments to add?

9 MS. SAVAS: No, Your Honor.

10 THE COURT: The Court stands by all previous
11 rulings. Thank you.

12 (WHEREUPON, court was recessed while awaiting a
13 verdict from the jury.)

14 (WHEREUPON, the following occurred at approximately
15 2:47 p.m.)

16 (WHEREUPON, Court's Exhibit Number 5, a Note from
17 the Jury, was marked and made a part of the record.)

18 THE COURT: The jury has sent a note. The jury
19 would like to view the videotape of the victim picking
20 out defendant's photo. Jury would like to view video
21 from gas station, Maria's testimony, end of testimony
22 with prosecutor. So do you have the videotape, the video
23 of the victim picking out defendant's photo?

24 Mr. Malloy, the jury would like to view the
25 videotape of victim picking out the defendant's photo.

1 Any objection to replaying the video?

2 MR. MALLOY: No objection to that, Your Honor.

3 THE COURT: So you have the entire video of that?

4 MR. ZIEGLER: From the point where Detective Repman
5 walks in the room, to the point where we stopped during
6 the trial.

7 THE COURT: And then the video from the gas
8 station. There were several views.

9 MR. ZIEGLER: Two different views.

10 THE COURT: And so you will play both views.

11 Any objection to that, Mr. Malloy?

12 MR. MALLOY: No, Your Honor.

13 THE COURT: All right. Then Maria's testimony, end
14 of testimony with prosecutor.

15 MR. MALLOY: A little confused by that. What
16 exactly is the end of the testimony?

17 THE COURT: So I'll need some clarification unless
18 you just want to play her entire testimony again.

19 MR. MALLOY: Would rather clarify.

20 THE COURT: All right. Let's bring them in.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 2:51 p.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: Thank you. Please be seated.

25 Ladies and gentlemen of the jury, we have received

1 your note and it has been marked for purposes of the
2 record as Court's Exhibit Number 5.

3 Madam Foreperson, I just need a little
4 clarification. We are going to play the entirety of the
5 victim picking out the defendant's photo videotape.

6 THE FORELADY: Yes.

7 THE COURT: We are going to play the entirety of
8 the video from the gas station. There's two separate
9 views.

10 THE FORELADY: Yes.

11 THE COURT: So we'll play that. Could you be more
12 specific as to what it is exactly you need regarding
13 Maria's testimony?

14 THE FORELADY: When Maria pointed out the
15 defendant.

16 THE COURT: And --

17 THE FORELADY: During the solicitor's
18 interrogation.

19 THE COURT: Right. And so there's always a direct,
20 typically, and a redirect. Do you remember if it was the
21 first opportunity for the solicitor to question or the
22 second?

23 THE FORELADY: Can I confer?

24 THE COURT: You may.

25 And then, Counsel, I'm going to need you to

1 approach.

2 THE FORELADY: We believe it was the first.

3 THE COURT: All right.

4 (WHEREUPON, a bench conference was had.)

5 THE COURT: All right. Mr. Ziegler, you have the
6 video cued up for the first request, the victim picking
7 out the defendant's photo; is that correct?

8 MR. ZIEGLER: Yes, Your Honor.

9 THE COURT: All right. So we are going to play
10 that video first, and then we will play the video from
11 the gas station, and then we will begin -- we will start
12 Maria's testimony from the beginning on direct with the
13 solicitor and when you have heard, Madam Foreperson, what
14 it is that you need --

15 THE BAILIFF: She has an additional clarification.

16 (A note was handed to the Court.)

17 THE COURT: All right. And when you have heard
18 what it is that you are requesting if you will just
19 signify to the Court that you have heard what you needed
20 to hear. We intend to play the entirety of the testimony
21 until you tell us to stop.

22 THE FORELADY: Thank you.

23 THE COURT: All right. Let me see this note.
24 Counsel?

25 (Counsel approached the bench to view the note.)

1 THE COURT: This will be Court's 6.

2 (WHEREUPON, Court's Exhibit Number 6, a Note from
3 the Jury, was marked and made a part of the record.)

4 THE COURT: So this is the clarification of what
5 they needed?

6 THE FORELADY: Yes. Yes, Your Honor.

7 THE COURT: I'm going to go ahead, we'll play the
8 two videos then it may be that I need to send you back in
9 order for -- we don't have it on a transcript and so what
10 I need -- and then that way I've got to confirm with the
11 court reporter, we'll bring that up specifically since
12 you have let us know a specific statement that you want
13 to hear then at that point that's where we will begin the
14 testimony. So it will take us a while to get to that
15 space.

16 All right, Mr. Ziegler.

17 (WHEREUPON, State's Exhibit Numbers 18 and 19 were
18 played for the jury.)

19 MR ZIEGLER: That's all that was played.

20 THE COUR: Okay. All right. Ladies and gentlemen,
21 we are going to need just a few moments. We'll receive
22 you back in the courtroom as soon as we find that place.
23 Thank you.

24 Please rise for the jury.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 3:03 p.m.)

2 (WHEREUPON, the Court and Court Reporter review
3 testimony at the bench.)

4 THE COURT: Were you all able to hear any of that?

5 MR MALLOY: I did.

6 MS. SAVAS: Yes.

7 THE COURT: So I think that's what it is.

8 MR. MALLOY: Could I just hear that one more time?

9 THE COURT: You can. Just come up.

10 You're welcome to come up as well.

11 (Further reviewing of testimony took place with the
12 Court Reporter.)

13 THE COURT: Mr. Malloy, to the best of my
14 recollection what they are requesting is Ms. Savas'
15 redirect.

16 MR. MALLOY: Okay.

17 MS. SAVAS: Yes, Your Honor.

18 MR. MALLOY: Well, the "how many times he looked at
19 me," that's not something they are asking. I don't know
20 if that should be included in what we replay. "How many
21 times I looked at him in his face, he looked at me. He
22 looked over at me this many times," that's not what they
23 are asking.

24 THE COURT: Well, this is where it gets difficult
25 because I don't know if they are just saying that's to

1 get us to where we need to find that testimony or if they
2 just want -- if they just want to hear those words spoken
3 then I don't know why we need to hear it because they've
4 heard the words so. . .

5 MS. FORD: Perhaps, they might think it's on video
6 so maybe they are looking to see if she pointed at him.
7 I don't know. I mean, I don't know.

8 THE COURT: I explained to them that it's audio and
9 that's --

10 MS. SAVAS: I think playing that portion that she
11 had picked out would be appropriate regarding that
12 question. I think that's what they were looking for.

13 THE COURT: I need you to be more specific.

14 MS. SAVAS: That last question when she had --

15 MR. ZIEGLER: Well, there's a time when she said
16 "he knows he looked at me."

17 THE COURT: The only thing I know is to just get
18 into the question that she asks, that Ms. Savas asks then
19 the victim responds.

20 MR. MALLOY: And is it my short recross or my
21 short --

22 THE COURT: We can't have it both ways. I was
23 either going to play -- you just told me that what --

24 MR. MALLOY: You're limiting it to --

25 THE COURT: To what they asked for.

1 MR. MALLOY: Just that question and answer?

2 THE COURT: Correct.

3 MS. SAVAS: Yes, Your Honor.

4 THE COURT: Let's bring them back in.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 3:17 p.m.)

7 THE COURT: Thank you. Be seated.

8 (WHEREUPON, the requested testimony was played back
9 for the jury.)

10 THE COURT: All right. Madam Foreperson, is that
11 what you were asking requesting?

12 THE FORELADY: With the Court's indulgence, could
13 you please replay it, please?

14 (WHEREUPON, the requested testimony was played back
15 for the jury again.)

16 THE FORELADY: Thank you, Your Honor. That's
17 appreciated.

18 THE COURT: Thank you. Please retire to your
19 deliberations.

20 Please rise for the jury.

21 (WHEREUPON, the jury leaves the courtroom at
22 approximately 3:19 p.m. to continue their deliberations.)

23 THE COURT: Thank you. Be seated. Anything you
24 wish to place on the record, Ms. Savas?

25 MS. SAVAS: No, Your Honor.

1 THE COURT: Mr. Malloy?

2 MR. MALLOY: Nothing, Your Honor.

3 THE COURT: All right. Thank you. We'll be at
4 ease.

5 (WHEREUPON, court was in recess while awaiting a
6 verdict from the jury.)

7 THE COURT: Anything before we bring in the jury
8 from the State?

9 MS. SAVAS: No, Your Honor.

10 THE COURT: From the defendant?

11 MR. MALLOY: No, Your Honor.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 3:29 p.m.)

14 THE BAILIFF: All jurors are present.

15 THE COURT: Thank you. Please be seated.

16 I understand you have reached a verdict. If you
17 will please fold the verdict form and hand it to the
18 bailiff.

19 (PAUSE.)

20 THE COURT: Please rise.

21 THE CLERK: State of South Carolina in the Court of
22 General Sessions for the Ninth Judicial Circuit, County
23 of Charleston. Case number 2013-GS-10-7433, the State of
24 South Carolina vs. Chavias Jahmal Jenkins. We, the jury,
25 find the defendant guilty of carjacking. Signed

1 Ms. Foreperson, August 26, 2016.

2 In the State of South Carolina, in the Court of
3 General Sessions for the Ninth Judicial Circuit, County
4 of Charleston. Case number 2013-GS-10-7434, the State of
5 South Carolina vs. Chavias Jahmal Jenkins. We, the jury,
6 find the defendant guilty of kidnapping. Signed

7 Ms. Foreperson, August 26, 2016.

8 State of South Carolina in the Court of General
9 Sessions for the Ninth Judicial Circuit, County of
10 Charleston. Case number 2013-GS-10-7435, the State of
11 South Carolina vs. Chavias Jahmal Jenkins. We, the jury,
12 find the defendant guilty of armed robbery. Signed

13 Ms. Foreperson, August 26, 2016.

14 State of South Carolina, Court of General Sessions
15 for the Ninth Judicial Circuit, County of Charleston.
16 Case number 2013-GS-10-7436. We, the jury, find the
17 defendant guilty of possession of a handgun during the
18 commission of a violent crime. Signed Ms. Foreperson,
19 August 26, 2016.

20 Madam Foreperson, ladies and gentlemen of the jury,
21 if this is your verdict, please raise your right hand.

22 Please let the record reflect all jurors raised
23 their right hands.

24 THE COURT: Thank you. Anything further required
25 of the jury?

1 MR. MALLOY: Your Honor, we request that the jurors
2 be polled individually.

3 THE COURT: All right. Please have a seat.

4 Madam Clerk, please use the jury numbers.

5 THE CLERK: Ladies and gentlemen of the jury, when
6 I call your number, please stand. I'm going to ask you
7 two questions; is this your verdict, is it still your
8 verdict. Please answer yes or no.

9 Juror number 278, is this your verdict?

10 JUROR NUMBER 278: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR NUMBER 278: Yes.

13 THE CLERK: Thank you.

14 Juror number 223, is this your verdict?

15 JUROR NUMBER 223: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR NUMBER 223: Yes.

18 THE CLERK: Thank you.

19 Juror number 13, is this your verdict?

20 JUROR NUMBER 13: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR NUMBER 13: Yes.

23 THE CLERK: Thank you.

24 Juror number 21, is this your verdict?

25 JUROR NUMBER 21: Yes.

1 THE CLERK: Is it still your verdict?
2 JUROR NUMBER 21: Yes.
3 THE CLERK: Thank you.
4 Juror number 99, is this your verdict?
5 JUROR NUMBER 99: Yes.
6 THE CLERK: Is it still your verdict?
7 JUROR NUMBER 99: Yes.
8 THE CLERK: Thank you.
9 Juror number 50, is this your verdict?
10 JUROR NUMBER 50: Yes.
11 THE CLERK: Is it still your verdict?
12 JUROR NUMBER 50: Yes.
13 THE CLERK: Thank you.
14 Juror number 157, is this your verdict?
15 JUROR NUMBER 157: Yes.
16 THE CLERK: Is this still your verdict?
17 JUROR NUMBER 157: Yes.
18 THE CLERK: Thank you.
19 Juror number 48, is this your verdict?
20 JUROR NUMBER 48: Yes.
21 THE CLERK: Is this still your verdict?
22 JUROR NUMBER 48: Yes.
23 THE CLERK: Thank you.
24 Juror number 121, is this your verdict?
25 JUROR NUMBER 121: Yes.

1 THE CLERK: Is it still your verdict?
2 JUROR NUMBER 121: Yes.
3 THE CLERK: Thank you.
4 Juror number 97, is this your verdict?
5 JUROR NUMBER 97: Yes.
6 THE CLERK: Is it still your verdict?
7 JUROR NUMBER 121: Yes.
8 THE CLERK: Thank you.
9 Juror number 94, is this your verdict?
10 JUROR NUMBER 94: Yes.
11 THE CLERK: Is it still your verdict?
12 JUROR NUMBER 94: Yes.
13 THE CLERK: Thank you.
14 Juror 119, is this your verdict?
15 JUROR NUMBER 119: Yes.
16 THE CLERK: Is it still your verdict?
17 JUROR NUMBER 119: Yes.
18 THE CLERK: Thank you.
19 Your Honor, the jury has been polled and the
20 verdict stands.
21 THE COURT: All right. Thank you.
22 Anything further, Mr. Malloy, from the jury?
23 MR. MALLOY: Nothing, Your Honor.
24 THE COURT: Anything from the jury?
25 MS. SAVAS: No, Your Honor.

1 THE COURT: Ladies and gentlemen, this completes
2 your service to this case. Please go back to your jury
3 room. I will be there in just a few moments to
4 personally thank you for your service to Charleston
5 County.

6 Please rise.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 3:35 p.m.)

9 THE COURT: Thank you. Please be seated.

10 Are you prepared to go forward on the sentencing at
11 this time?

12 MS. SAVAS: Your Honor, we would ask for a brief
13 moment just to speak with the victim to see if she would
14 like to speak.

15 THE COURT: All right. Do you have your sentencing
16 sheets?

17 MS. SAVAS: Yes, Your Honor.

18 THE COURT: Mr. Malloy, are you prepared to go
19 forward with sentencing at this time?

20 MR. MALLOY: Your Honor, I am prepared to go
21 forward on the sentencing.

22 THE COURT: All right. I'm going to go release the
23 jury.

24 MR. MALLOY: I do have a posttrial motion. I'm not
25 sure when you want to hear it.

1 THE COURT: All right. I'll hear it before
2 sentencing but I'm going to take a recess. You all get
3 ready for sentencing. Thank you.

4 (WHEREUPON, a brief recess was taken.)

5 THE COURT: All right. Ms. Savas?

6 MS. SAVAS: Thank you, Your Honor. May it please
7 the Court. Your Honor, there has been lengthy testimony
8 as to the extent of these crimes. The victim had
9 testified in detail -- the victim has testified in detail
10 as to the events that happened, and one of the most
11 important things about this case and in speaking with the
12 officers involved is that this is a true victim
13 situation. She does not know the defendant. They do not
14 know each other.

15 This was not a drug deal gone bad. This is a true
16 victim. And I believe it is very important that -- to
17 take note of that in the sentencing because, as I
18 mentioned throughout my case, one of most fearful things
19 that we have today is the anonymity behind the internet
20 and it is a fear of peoples', and this is what happened
21 in this case.

22 We very rarely have a situation where it's a true
23 victim in that sense and the officers and the North
24 Charleston Police Department have requested for an active
25 time sentence of course and one in the higher end because

1 of that. They said that very rarely do they come across
2 these situations.

3 And, Your Honor, Ms. Maria did not know what was
4 going to happen to her that day. And throughout the
5 testimony it was shown that this was planned out. This
6 was a scheme that he had devised with Candace Singleton.
7 This was their plan. He set out to do that, picked a
8 vulnerable young, single female alone to do this to.

9 They never had a cell phone. They brought the gun.
10 This is what he was going to do, was to rob her.
11 Unfortunately, it went further than that and for about 45
12 minutes he had drove her around at gunpoint and
13 threatened her life on multiple occasions. This is one
14 of the most serious things someone can do besides the
15 actual act of murder.

16 Your Honor, the victim does wish to speak at the
17 appropriate time and she has testified at length as to
18 the events so I will not go into the facts again. Your
19 Honor, the State is requesting the maximum sentence of 30
20 years. That is because given the defendant's prior
21 record, which if I may read?

22 THE COURT: You may.

23 MS. SAVAS: His juvenile is in 1999, a weapon on
24 school grounds; in 2001, two counts of unlawful carrying
25 of a firearm; in 2004, a burglary second degree

1 nonviolent where he received a YOA sentence; in 2005, he
2 was again charged with a burglary second degree violent.
3 He was sentenced to 10 years suspended to five years
4 active time with five years probation.

5 He then violated that in 2011. In 2009 he was
6 convicted of a DUI first, a driving under suspension and
7 giving false information; and in 2011 was that probation
8 violation for that burglary second.

9 Your Honor, this is a clear pattern of conduct that
10 got increasingly worse. He had started with firearms so
11 he is known and dangerous. He then committed two acts of
12 burglary back-to-back and then violated that probation
13 for that burglary violent charges later and continued to
14 commit crimes.

15 Having those burglary charges and the firearm
16 charges he then commits this act of armed robbery,
17 carjacking, kidnapping, and possession of a weapon during
18 a violent crime. It is a defendant such as this, this
19 course of action is when things begin to escalate and
20 that has been a clear conduct in his behavior.

21 No matter how many times of probation or sentenced
22 to prison he continues to do these acts of violence.
23 And, again, it was on an innocent stranger and a true
24 victim in this case. It is not something that the State
25 says lightly is requesting the 30-year sentence; however,

1 this is one of those absolute situations where it is
2 applicable and under the law it may be applied because of
3 the situations, the totality of the circumstances of what
4 occurred on that day.

5 It was thought and planned out. This was not an
6 accident. This was not something that was just conjured
7 in the moment. It was a plan and scheme and they knew
8 what they were doing, Your Honor. And for those reasons
9 and his extreme violent record and history of firearms we
10 would ask for that maximum sentence of 30 years.

11 At the appropriate time Ms. Davila wishes to
12 address Your Honor.

13 THE COURT: Happy to here from her.

14 MS. DAVILA: Good afternoon, Your Honor. Thank
15 you. I just want to say thank you for seeing the case
16 and giving me the opportunity to speak. I don't really
17 know what to say at this time. I never been in this
18 situation, never thought I would. I just hope and pray
19 that you take into consideration what Ms. Savas is
20 requesting. When she said, you know, I don't think -- I
21 don't ever believe that Mr. Jenkins has remorse or he'll
22 ever regret what he did. This was all planned from the
23 beginning. I'm sorry. I'm just so nervous.

24 THE COURT: Take your time.

25 MS. DAVILA: After the incident, about a year or

1 so, I was always paranoid, always afraid. Even with him
2 being in bars or out of bars I don't know if I'll ever be
3 safe. I'm sorry, Your Honor.

4 THE COURT: Take your time.

5 MS. DAVILA: I just want to say thank you again.
6 That's all I have to say.

7 THE COURT: Thank you.

8 Anything further from the State?

9 MS. SAVAS: No, Your Honor.

10 THE COURT: Mr. Malloy, I'm happy to hear from you.

11 MR. MALLOY: Thank you, Your Honor.

12 THE COURT: Regarding sentencing.

13 MR. MALLOY: Chavias served 972 days on this charge
14 before Your Honor granted him a PR bond earlier this year
15 due to several motions that I made. They were based on
16 the age of the case and his prolonged incarceration.

17 Since he was released this past May it has been
18 remarkable how quickly he's gotten back on feet. He has
19 a job at Bank's Construction. Before he was arrested on
20 this charge he worked at Sander's Construction. Your
21 Honor, after he got out he got right back to work. He's
22 the father of five children, Your Honor.

23 After the status conference on the case I met with
24 him. He was concerned about what he was going to wear to
25 court because he had just spent a lot of money buying his

1 kids things for back to school. We provided him a suit
2 during this trial but every conversation I've had with
3 him it's been all about work and all about the kids.

4 I am the third attorney that Mr. Jenkins has had
5 during the course of this case. I think I've represented
6 him longer than the other two but I can tell you I've
7 gotten pretty close with him during my representation of
8 him. I'll say he's a very well written client.

9 I have a thick folder back in my office of letters
10 he's written me and it's not the type that you often get
11 from clients at the jail. They are mostly very
12 intelligent letters discussing the case, the law, and
13 it's remarkable how you can actually tell how his writing
14 skills increase from the time that he was first
15 incarcerated to the time that he was released.

16 Most recently he was enrolled in the GED class at
17 the jail. I have an e-mail from Andrew Grimes, who
18 represented him before I did, and this e-mail was sent to
19 him by Chavias' GED counselor at the jail, and if I can
20 just read one line. She says that Chavias is doing well
21 in class. He's pleasant, hardworking and goal driven.
22 Any support I may provide him is what he has earned. And
23 my interaction with him reflect the same, Your Honor.

24 I do realize obviously today he's going to get some
25 prison time. I'm asking you to sentence him on the lower

1 end of the spectrum. It's hard to provide much
2 mitigation regarding the facts of this case. I will say,
3 obviously, you heard my defense and we spoke about this
4 at length during the case, especially given the facts of
5 the case it's very hard to provide mitigation, especially
6 when your client denies involvement altogether.

7 We have advised him not to address the Court. We
8 will be, of course, filing an appeal in this matter.
9 He's joined by his mother, Angela Sharpe; also his
10 cousin, Aaron Burch; his brother, Chad, was here
11 yesterday. The whole family has just been extremely
12 courteous to me during my entire representation of
13 Chavias. His brother said that he didn't think he could
14 take today, the anticipation of what was going to happen.
15 I do believe his mother, Ms. Angela Sharpe, would like to
16 address, Your Honor, if you would allow.

17 THE COURT: All right. I'm be happy to hear her.
18 Ma'am, I need you to state your full name for the record
19 and please spell your last name.

20 MS. SHARPE: My name is Angela Sharpe, S-h-a-r-p-e.
21 I'm the mother of Chavias Jenkins. He's my oldest son.
22 He has five kids like the attorney says. He has a
23 daughter 12 years old that's very ill. He has a set of
24 triplet boys that are 11 years old, and he has a baby boy
25 that is four, and I've been through this procedure trying

1 to help out since he's been in jail and back out.

2 I also have several illnesses and like I said he's
3 me eldest son. I have two other kids, also. Chavias has
4 had mistakes in the past but he has shown me that he can
5 be a productive citizen. I honestly don't think he did
6 this and I apologize to you, the victim, and hope that
7 one day you find the person --

8 THE COURT: I need you to address the Court, ma'am.
9 Thank you.

10 MS. SHARPE: And I ask you to please be lenient on
11 my son. Can you please be lenient on him for me, for his
12 kids, and most of all for him. That's all I got to say.

13 THE COURT: Thank you, Ms. Sharpe.

14 Mr. Jenkins, do you wish to address the Court?

15 THE DEFENDANT: No.

16 THE COURT: All right. Please stand. Anything
17 else, Mr. Malloy?

18 MR. MALLOY: No nothing else in mitigation, Your
19 Honor.

20 THE COURT: Okay. Ms. Ford, anything you wish to
21 tell the Court?

22 MS. FORD: No, Your Honor.

23 THE COURT: Mr. Malloy, you've indicated, too, told
24 your client his right to appeal?

25 MR. MALLOY: I have, Your Honor.

1 THE COURT: Mr. Jenkins, you have the right to
2 appeal this conviction but you or your attorney must do
3 so within 10 days. So you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Malloy, did you advise your client
6 that the carjacking is a violent and a most serious
7 offense?

8 MR. MALLOY: Yes. We've discussed this during my
9 representation. We haven't discussed it today but
10 obviously when we were discussing offers in the past we
11 went through all of the collateral consequences and
12 sentencing ranges.

13 THE COURT: Did you advise your client that
14 carjacking carries up to 20 years?

15 MR. MALLOY: Yes.

16 THE COURT: Did you advise Mr. Jenkins that
17 kidnapping is a violent and a most serious offense?

18 MR. MALLOY: Yes.

19 THE COURT: And that that carries up to 30 years?

20 MR. MALLOY: I did.

21 THE COURT: Are you requesting the sex offender
22 registry, Ms. Savas?

23 MS. SAVAS: No, Your Honor.

24 THE COURT: All right. So I will make a finding --
25 I did not hear any indication that this was of a sexual

1 nature. Do you agree, Mr. Malloy?

2 MR. MALLOY: I do agree.

3 THE COURT: So I will make that finding because
4 that specifically has to be on the sheet. Mr. Malloy,
5 did you advise Mr. Jenkins that armed robbery is a
6 violent and a most serious offense?

7 MR. MALLOY: Yes, Your Honor.

8 THE COURT: And that it's a mandatory minimum of 10
9 years?

10 MR. MALLOY: Yes, Your Honor.

11 THE COURT: Up to 30 years?

12 MR. MALLOY: Uh-huh.

13 THE COURT: Did you advise Mr. Jenkins that
14 possession of a weapon during the commission of a violent
15 crime carries five years?

16 MR. MALLOY: Yes, Your Honor.

17 THE COURT: And that he must serve all five years?

18 MR. MALLOY: Yes, Your Honor.

19 THE COURT: Do you agree that it can run
20 concurrent?

21 MR. MALLOY: Yes, Your Honor. I am requesting you
22 to run your sentencing concurrent on these charges given
23 they all stem from the same incident.

24 THE COURT: Ms. Savas, do you agree that the
25 possession of a firearm during the commission of a

1 violent crime can run concurrent to the other charges?

2 MS. SAVAS: Yes, Your Honor.

3 THE COURT: All right. Thank you.

4 Mr. Jenkins, again, you understand your right to
5 appeal?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You understand the sentence range that
8 I may impose upon you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Anything that you wish to tell me
11 before I impose sentence?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: It's the order of the Court on
14 2013-GS-10-7436 that you be committed to State Department
15 of Corrections for a term of five years. I'll give you
16 credit -- actually I don't think that you receive credit
17 for that. You'll have to serve the five, according to
18 the statute.

19 It's the order of the Court on 2013-GS-10-7433, on
20 the carjacking indictment, that you serve 20 years in the
21 Department of Corrections. I will give you credit for
22 972 days.

23 It's the order of the Court on indictment
24 2013-GS-10-7434 that you be committed to the State
25 Department of Corrections for a term of 22 years. I'll

1 give you credit for 972 days.

2 It's the order of the Court on 2013-GS-10-7435 that
3 you be committed to State Department of Corrections for a
4 term of 22 years. I'll give you credit for 972 days. I
5 have made a finding that the kidnapping was not of a
6 sexual nature therefore you are not to be placed on the
7 sex offender registry. Good luck to you, sir. They will
8 all run concurrent.

9 THE COURT: Anything further, Mr. Malloy?
10 Mr. Malloy, anything further?

11 MR. MALLOY: Nothing further, Your Honor.

12 THE COURT: All right. Anything further from the
13 State?

14 MS. SAVAS: No, Your Honor.

15 THE COURT: All right. That concludes this matter.
16 Thank you all. Thank you all.

17 Good luck to you, Ms. Davila.

18 (WHEREUPON, the trial of this case was concluded.)

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the trial of the captioned
8 case in Circuit Court on the 24th through 26th days of
9 August 2016

10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13 April 4, 2017

14 s/Sharon L. Vizer

15 SHARON L. VIZER

16 CIRCUIT COURT REPORTER

17

18

19

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA

County of

Charleston

Chavias Jenkins #309361

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2019-CP-10-4491
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFFILED
2019 AUG 26 PM 4:48
JULIE J. HARRIS, CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention 386 Redemption Way
Mccormick, SC 29889
2. Name and location of Court which imposed sentence Charleston County
Court of General Sessions for the Ninth Judicial Circuit
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-10-7433 Carjacking, 2013-GS-10-7434
 - (b) Kidnapping, 2013-GS-10-7435 Armed Robbery,

(c) 2013-GS-10-7436 Possession of a Weapon

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Aug 26, 2016 Carjacking 20 years, AR
 (b) 22 years, Kidnapping 22 years, Possession of a
 (c) Weapon during the commission of a Crime 5 years.

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. The South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. May 17, 2019

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Ineffective assistance of Counsel.
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See Amendments.
 (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? Appeal
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N
 ii. _____
 iii. _____
 iv. A
 (b) the name and location of the Court in which each was filed:
 i. N
 ii. _____
 iii. A
 iv. _____

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ✓
 (b) your trial, if any? ✓
 (c) your sentencing? ✓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Luke Malloy, Assistant Public Defender.
Mary Ford, Assistant PD,
 ii. Chief Appellant Defender Robert Michael
Dudek
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Luke Malloy, Trial counsel in GS court
 ii. Robert Michael Dudek, Appellate Defendant in
the Court of Appeals
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate and RELEASE.

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Chavias Jenkins, 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.

Chavias Jenkins

SWORN to and subscribed before me this 20th
day of August, 2017.

Stephanie Marshall (L.S.)
Notary Public

My Commission Expires: May 12, 2021



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Chavias Jenkins #309361, 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.

Chavias Jenkins
Applicant

SWORN or affirmed to and subscribed before me this
20th day of August, 2019.

Stephanie Marshall
Notary Public

My Commission Expires: May 12, 2021



August ⁴⁵⁹~~20~~ - 2019

Chavias Jahmal Jenkins #309361
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

RE: Chavias Jahmal Jenkins V. State of S.C

Dear Honorable Clerk,

Please stamp the clock and file
application and serve a copy back to me for
my files.

cc: file.

E/ Chavias Jenkins

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Chavias Jenkins, #309361

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-4491

**RETURN AND MOTION
FOR MORE DEFINITE STATEMENT**

FILED
2020 FEB 11 AM 11:42
JULIE J. ARNETT
CLERK OF COURT

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on August 26, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In December 2013, the Charleston County Grand Jury indicted Applicant for carjacking (2013-GS-10-07433), kidnapping (2013-GS-07434), and armed robbery (2013-GS-10-07435). Luke Malloy, Esquire, and Mary Ford, Esquire represented Applicant at trial. Assistant Solicitors Nina Savas, Esquire and Alex Ziegler, Esquire prosecuted the case. On August 24, 2016, Applicant proceeded to trial before the Honorable Kristi L. Harrington and a jury. The jury convicted Applicant. Judge Harrington sentenced Applicant to imprisonment for twenty-two years.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed his appeal on May 1, 2019. The remittitur was returned to the circuit court on May 17, 2019.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, the trial transcript, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits 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 (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 v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing

Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of

Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. 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), SCRCP.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

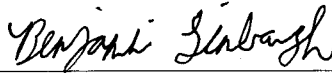
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

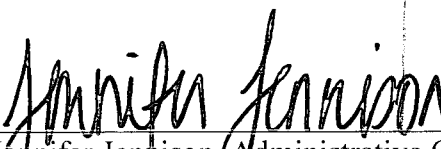
February 6, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Chavias Jenkins, #309361	)	
	)	Case No.: 2019-CP-10-4491
Applicant,	)	
	)	
v.	)	Certificate of Service by Mail
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 Post Office Box 1058
 Charleston, SC 29402

DATED this 6th day of February, 2020.



 Jennifer Jennison, Administrative Coordinator
 For Respondent

2020 FEB 11 AM 11:42
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY

FILED

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS	
	)		
COUNTY OF CHARLESTON	)	FOR THE 9TH JUDICIAL CIRCUIT	
	)		
Chavais Jenkins 309361	)		
Applicant	)	2019-CP-10-4491	
Vs.	)		
State of South Carolina	)	AMENDED PCR	
Respondent,	)		
	)		

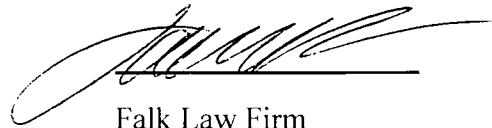
2021 APR - 7 AM 10:33
JULIE J. AMISTON
CLERK OF COURT
FILED

In reply to the State's Return and Motion for a More Definite Statement, Applicant Chavais Jenkins amends the PCR application filed August 26, 2019 to add the additional specific allegations of ineffective assistance of counsel.

1. At page 70 of the Record on Appeal the State advised the court that the witness that supplied the initial anonymous tip to law enforcement claimed that she never provided the tip and that someone was using her name. Applicant is informed and believes that this subsequent statement by the witness should have been disclosed to defense counsel and the failure to do so constitutes a violation of the State's discovery obligations under *Brady v Maryland*.
2. Counsel failed to object to hearsay testimony from Maria Davila that were attributed to Candace Singleton. Page 145 line 16-22.
3. Counsel failed to object to the hearsay statements uttered at page 191 line 25 through 192 line 9.
4. Counsel failed to object to Travis Repman's bolstering testimony regarding the reliability of method law enforcement used in presenting the photo lineup to the victim. (Page 218 lines 20-21).
5. Counsel failed to object to Travis Repman's speculative testimony at page 224 line 2.
6. Counsel failed to object to Joseph Niemiec's hearsay testimony at page 235 lines 1-4.
7. Counsel provided ineffective assistance of counsel by allowing Angelica Loaiza testify via Skype as opposed to requiring her to appear live.
8. Counsel provided ineffective assistance of counsel by failing to object to hearsay testimony by Al Hallman regarding a finger print analysis report prepared by a non-testifying expert witness. Page 301 line 12 – 302 line 8.

9. Counsel failed to object to the state's bolstering comments regarding the testimony of its expert witness. 345 Lines 21-346 line 2.

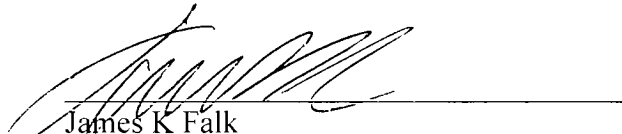
Respectfully Submitted



Falk Law Firm
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on April 4, 2021 a copy of this was emailed and mailed to Benjamin Limbaugh at blimbaugh@scag.gov and PO Box 11549, Columbia, SC 29211.



James K Falk
Attorney for Applicant

SOL
AA
GS
AC

STATE OF SOUTH CAROLINA

County of ☒ Charleston ☐ Berkeley

Chavias Jenkins

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2019-CP-10-04491

467

ORDER

BY DC

CLERK OF COURT

2022 APR 13 AM 11:53

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby granted denied under advisement, based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

X 5. Other: Continued

6. The court further orders:

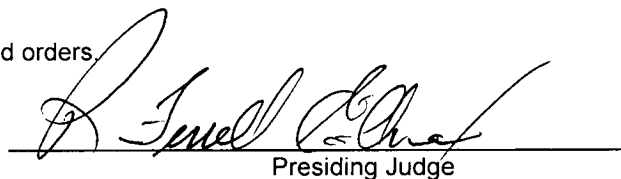
 The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within days.

 Both sides are directed to submit proposed orders to the court and to serve the orders on each other within days.

 The court does not request proposed orders.

IT IS SO ORDERED.

Date: 4/5/2022
Charleston, S.C.


Presiding Judge

Court Reporter: Yvestre Torres

Attorney for State: Lauren T. Mims/Samantha Weidauer

Attorney for Defendant: James K. Falk

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Chavias Jenkins, SCDC #309361,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2019-CP-10-04491

ORDER OF CONTINUANCE

2022 APR 13 AM 11:53
JULIE J. ANTONIO
CLERK OF COURT
BY DEA

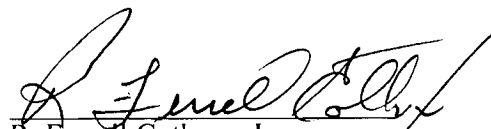
This matter comes before the Court by way of a post-conviction relief application filed by Chavias Jenkins. An evidentiary hearing into this matter was scheduled to be held on April 4, 2022, via the Cisco WebEx virtual platform before the Honorable R. Ferrell Cothran, Jr.

Applicant's counsel, James K. Falk, requested this matter be continued until the next available term of court in the Ninth Circuit because he has a scheduling conflict and cannot appear on Applicant's behalf. Specifically, Mr. Falk is scheduled to try a sexually violent predator case set to begin April 4, 2022, in Clarendon County, thus conflicting with the PCR term as scheduled.

Therefore, this Court finds the matter should be continued until the next appropriate term of court for post-conviction relief matters in the NINTH Judicial Circuit.

AND IT IS SO ORDERED this 5th day of April, 2022.

Manning, South Carolina


R. Ferrell Cothran, Jr.
Presiding Judge
NINTH Judicial Circuit

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2019-CP-10-4491
	)	
	)	
CHAVIAS JENKINS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 23, 2022
Charleston, South Carolina

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE

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

JAMES K. FALK, ESQ.
Attorney for the Applicant

SAMANTHA J. WEIDAUER, ESQ.
Attorney for the Respondent

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided to: S.C. Attorney General]

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No exhibits were introduced

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

PROCEEDINGS

[Whereupon, an off the record bench conference is held]

THE COURT: We're here on Chavias Jenkins verses State; Mr. Falk for the Applicant and Ms. Weidauer for the State. Ms. Weidauer, can you give us a little procedural background maybe?

MS. WEIDAUER: Yes, Your Honor. This is Chavias Jenkins v State. The case number is 2019-CP-10-4491. In December of 2013 the Charleston County Grand Jury indicted Applicant for carjacking, kidnapping, armed robbery and possession of a weapon during the commission of a violent crime. Luke Malloy and Mary Ford represented Applicant at trial. Assistant Solicitors Nina Savas and Alex Zeigler prosecuted the case.

On August 24th, 2016 Applicant proceeded to trial before the Honorable Kristi L. Harrington and a jury. The jury convicted Applicant of all charges and Judge Harrington sentenced Applicant to imprisonment for an aggregate sentence of 22 years.

Applicant subsequently filed a timely notice of appeal. Robert M. Dudek of the Office of Appellate Defense perfected the appeal. South Carolina Court of Appeals dismissed Applicant's appeal on May 1st 2019 and the remittitur was returned to the Circuit Court on May

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 17th, 2019. This application was filed August 26th of
2 2019 and this hearing follows.

3 THE COURT: All right. Mr. Falk?

4 MR. FALK: Your Honor, I just really sort of
5 realized this issue. One of the issues that we're
6 raising in this PCR is the fact that at his trial one of
7 the witnesses testified by Skype. I mean it's our
8 contention that the ability to waive the right to
9 confront the witness in the courtroom that 6th Amendment
10 right rests with the defendant and not necessarily with
11 trial counsel. That's a decision that he would have to
12 make.

13 Then I realized now we're in this PCR hearing and
14 the main witness for the State is Mr. Malloy, and he's in
15 effect our main case is going to be Mr. Malloy and we're
16 forced to go through his testimony by Skype or by WebEx.
17 I asked Mr. Jenkins how he wanted to go forward and he
18 said that he would rather go forward when Mr. Malloy
19 would be in the courtroom as opposed to having to having
20 to put forth his case over WebEx.

21 And so at this time although we are prepared to go
22 forward and this is somewhat of -- I hate that this is
23 coming up at the last minute. I just didn't really
24 appreciate this issue until the last minute. We're
25 asking for a continuance until some time that Mr. Malloy

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 can be in the courtroom.

2 THE COURT: Angelica, she was a fact witness in the
3 case?

4 MS. WEIDAUER: She was the crime scene tech.

5 MR. FALK: Oh, I'm sorry. Yes, she was the crime
6 scene tech.

7 THE COURT: Do you want to be heard on that?

8 MS. WEIDAUER: The State's position would be that
9 we communicated to Mr. Falk that this was going to be via
10 WebEx. These allegations are not new. I think the
11 amended PCR was filed April 20, '21.

12 So the State in the interest of judicial economy
13 kind of expedited these older PCR cases and would like
14 this case to go forward today. We do understand that
15 this is Mr. Jenkins one bite at the apple so we would
16 note our objection for the record but would leave that to
17 the Court.

18 THE COURT: And Mr. Malloy is in the state of
19 Virginia?

20 MS. WEIDAUER: Virginia; that is my understanding.

21 THE COURT: Permanently relocated?

22 MS. WEIDAUER: I am not sure on that.

23 THE COURT: Let's ask him. Mr. Malloy, can you
24 hear me okay? Mr. Malloy?

25 MR. MALLOY: Yes, Your Honor.

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 THE COURT REPORTER: I can't hear him.

2 THE COURT: Sir, if I can get you to raise your
3 right hand.

4 [Whereupon, the witness is duly sworn by the Court]

5 THE COURT: Mr. Malloy, I just have a couple of
6 questions for you sir as an initial matter.

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Chavias Jenkins v State
Post-Conviction Relief Hearing-Luke Malloy-Examination by the Court
June 23, 2022

1 LUKE MALLOY,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 EXAMINATION
5 BY THE COURT:
6 Q. You are currently and physically in the state of
7 Virginia, is that correct?
8 A. That's correct.
9 Q. Are you now living in Virginia?
10 A. Yes, I am.
11 Q. So it's currently your permanent residence?
12 A. Yes, it is.
13 THE COURT: Is there anything else you want me to
14 ask him pertaining to his residency?
15 MR. FALK: Can you ask him if he still a member of
16 the South Carolina Bar?
17 Q. [The Court] Are you still a member of the South
18 Carolina Bar, sir?
19 A. Yes, ma'am.
20 Q. Okay. We're just trying -- we have an initial issue
21 about your testimony via WebEx that we're trying to
22 resolve. Is it possible for you to turn on any
23 additional light or lamp where you are? You're a little
24 dim.
25 A. This is, I've got the lights on and this is about as

Chavias Jenkins v State
Post-Conviction Relief Hearing-Luke Malloy-Examination by the Court
June 23, 2022

1 good as I can do unfortunately. I'm in my office. I
2 know I've got a background light behind me if that's an
3 issue.

4 Q. Okay. And are you at ---

5 A. --- I may be able to do some lights around if you
6 need me to but we'll see what effect it will give.

7 Q. Are you on a laptop or are you on a PC?

8 A. I'm on a PC.

9 Q. If there is any way you can put a lamp a little
10 closer to you? Because of the lights behind you your
11 face is kind of in the shadow.

12 A. I'll see what I can do.

13 Q. Okay. Thank you.

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Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 THE COURT: So the issue is this and let me just
2 address Mr. Jenkins on a couple of issues. The issue is
3 if he is outside of the jurisdiction of our Court's
4 subpoena power I cannot tell you Mr. Jenkins if we don't
5 go forward today via WebEx I can't tell you when we would
6 be able to get him here to have him testify in person.
7 So it could be a substantial delay in getting him here in
8 person. So, you need to consider that fact.

9 The second issue is that I see that you went to
10 trial on a charge of carjacking that carries up to 20
11 years, a charge of kidnapping that carries up to 30
12 years, and a charge of armed robbery which carries from
13 10 to 30 years, and then also possession of a weapon
14 during a violent crime which carries five years.

15 So the potential sentence that you could get if
16 convicted on all those counts is 85 years. Judge
17 Harrington gave you 22 years, gave you credit for 972
18 days and ran all of those concurrent so that your total
19 sentence is 22 years.

20 But you understand in this action I cannot reduce
21 your sentence. I can do one of two things. I can grant
22 your application. If you win and you are granted an
23 application it means that your case goes back to zero.
24 That means the State can still try you on each of these
25 offenses. They can still seek a maximum. They can ask

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 the judge to sentence you consecutively. If I deny the
2 application that means that you just continue to serve
3 out the remainder of your sentence. So, you understand
4 if you win this all bets are off and you can be retried
5 on each of these charges.

6 MR. JENKINS: Yes ma'am, I do.

7 THE COURT: And have you discussed that with your
8 attorney?

9 MR. JENKINS: Yes.

10 THE COURT: And do you need any more time to
11 discuss it with him before you make your decision about
12 whether to go forward today?

13 MR. JENKINS: No, ma'am.

14 THE COURT: And are you satisfied with what Mr.
15 Falk has done for you in this case?

16 MR. JENKINS: Yes, ma'am.

17 THE COURT: And is it your decision to go forward
18 today with this application?

19 MR. JENKINS: Yes, ma'am.

20 THE COURT: Okay.

21 [Whereupon, Mr. Falk confers with his client]

22 MR. JENKINS: I would like for him to show up in
23 person.

24 THE COURT: Okay. And you understand I don't have
25 the authority to subpoena him so I can't tell you we

Chavias Jenkins v State
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1 would do it next week or next month. I don't know when
2 we could get him here to testify. You understand that?
3 It would be a delay until I don't know when.

4 MR. JENKINS: I'd rather be face.

5 THE COURT: I understand your position. I do think
6 that the Supreme Court has given us a good bit of
7 latitude to allow witnesses to testify via WebEx. So,
8 I'm going to respectfully deny your request for a
9 continuance to allow him to appear in person.

10 I do think that this is substantially different from
11 a witness testifying during a criminal trial who is
12 trying to establish the elements for the State's case.
13 So, I'm going to allow the testimony to go forward by
14 WebEx.

15 MR. FALK: Your Honor, if I could? The point of us
16 having this WebEx here is so that a person can testify by
17 video so that we can see him. I can see his eyes but I
18 can't see his mouth. The Court noted that it is dark.

19 THE COURT: Yes. I mean I think you can see him
20 well enough to appreciate and be able to hear and see his
21 expressions and everything else. It's not ideal lighting
22 but I think it's sufficient to allow us to go forward.

23 MR. FALK: Thank you.

24 THE COURT: Thank you. Mr. Malloy, can I just --
25 we're trying to work out some technical issues. Can I

Chavias Jenkins v State
Post-Conviction Relief Hearing
June 23, 2022

1 just get you to say a few words and let's see if you
2 appear as the only person on the screen.

3 [Off the record momentarily]

4 THE COURT: Okay. I think we're good now. Mr.
5 Falk, go right ahead.

6 [Off the record momentarily]

7 THE COURT: I need to swear the witness. Mr.
8 Malloy, one more time can I get you to raise your right
9 hand?

10 [Whereupon, the witness is duly sworn by the Court]

11 [Off the record momentarily]

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Chavias Jenkins v State
Post-Conviction Relief Hearing-Luke Malloy-Direct Examination by Mr. Falk
June 23, 2022

1 MR. FALK: So, I'm calling my first witness, Luke
2 Malloy. And he has been sworn?

3 THE COURT: He has.

4 - - - - -

5 LUKE MALLOY,

6 Having been first duly sworn,

7 Was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FALK:

10 Q. Mr. Malloy, how did you become involved in Mr.
11 Jenkins case?

12 A. I was employed with the Charleston County Public
13 Defender's office at the time. His previous attorney was
14 Andrew Grimes. He was an attorney in our office who
15 passed away. After Andrew passed the case just
16 reassigned to me.

17 THE COURT: Let's stop just a minute. It's
18 difficult for us to hear.

19 [Off the record momentarily addressing audio issues]

20 Q. [Mr. Falk] All right. So you testified that you
21 picked up the case after Mr. Grimes passed, is that
22 correct?

23 A. Yes.

24 Q. How long had you had the case before it went to
25 trial?

Chavias Jenkins v State
Post-Conviction Relief Hearing-Luke Malloy-Direct Examination by Mr. Falk
June 23, 2022

1 A. I believe the case was assigned to me in 2014,
2 November of 2014 or September of 2014. So, I had it
3 about two years.

4 Q. Okay. And why don't you kind of just so we get an
5 understanding what were the facts? What were the
6 allegations in this case? What was this case about?

7 A. Sure. This was a Craig's List carjacking and armed
8 robbery; armed robbery carjacking where an individual,
9 the victim in the case saw he purchased a cell phone from
10 Craig's List.

11 She responded to an ad on Craig's List. She
12 corresponded with an individual who was purportedly
13 selling a cell phone that way. They arranged for a date
14 and time to meet.

15 I believe it was at the Waffle House in North
16 Charleston in the parking lot. And while she was there
17 intending to meet the person to purchase the cell phone
18 an individual approached her vehicle, brandished a
19 firearm and proceeded to rob her phone and some other
20 items. And also in the act actually took control of the
21 vehicle and drove around with the victim in the vehicle.

22 THE COURT REPORTER: Took a what?

23 MR. FALK: Took control of the vehicle.

24 THE WITNESS: That's correct.

25 Q. [Mr. Falk] Just to clarify you said somebody took

Chavias Jenkins v State
Post-Conviction Relief Hearing-Luke Malloy-Direct Examination by Mr. Falk
June 23, 2022

1 control of the vehicle and drove around?

2 A. Yes.

3 Q. Were there any, so is that essentially what the case
4 was about an armed robbery and a carjacking?

5 A. Those were the factual allegations. The general
6 allegations regarding what occurred during this incident.

7 Q. And was there a co-defendant?

8 A. There was not a co-defendant.

9 Q. Can you tell me what was your trial strategy going
10 into this trial?

11 A. My trial strategy was that this had to be a case of
12 misidentification. We weren't disputing what allegedly
13 occurred. But we were disputing that it was Mr. Jenkins
14 that committed the act.

15 [Off the record momentarily]

16 Q. Okay. Can you tell me a little bit about this issue
17 that got raised regarding the witness that changed their
18 testimony that shows up on page 70 of the trial
19 transcript? And I think we were talking about the
20 discovery so could you go back there.

21 A. Sure. So in the discovery we received there is a
22 report that after the incident occurred while they were
23 trying, while they had not developed a suspect, if my
24 memory serves me there was a report that after this
25 occurred while they were trying to -- and while they had

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1 not --

2 THE COURT REPORTER: I'm having a really hard time
3 understanding what he is saying.

4 MR. FALK: Mr. Malloy, the court reporter can't
5 pick you up.

6 THE COURT: Hang on. Let's go off the record for
7 just a minute.

8 [Off the record momentarily]

9 MR. FALK: We're back on the record?

10 THE COURT: Yes, sir.

11 Q. [Mr. Falk] I think what we were talking about is I
12 think you had summarized what the facts of the case were,
13 sort of what the allegations were and I asked you
14 whether or not there was a co-defendant. I had asked you
15 -- oh, I know where we were.

16 We were talking about this statement where one of
17 the witnesses changed their statement and that shows up
18 on page 70 of the trial transcript. And I think we were
19 talking about the discovery so could you go back there?

20 A. Sure. So, during the investigation an individual
21 who was identified as Keyetta Garrett [phonetic] made a
22 report to the North Charleston Police Department that a
23 Candice Singleton was bragging about this incident in a
24 bar. And that she and her boyfriend were perpetrators of
25 the armed robbery and the carjacking.

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1 Q. And when did you get, when were you made aware of
2 that statement?

3 A. I was made aware that there was this report from
4 this individual by through discovery. It was listed in
5 one of the police officer's reports.

6 Q. But then at some point she said that she didn't make
7 the statement and somebody else was using her name?

8 A. Sure. And that was at least my understanding from
9 the State when we appeared for the trial. I had
10 specifically asked if there were any statements from this
11 individual. We tried to locate the individual ourselves;
12 we were unsuccessful.

13 And I learned, initially I was told by the State
14 that she was uncooperative and didn't give a statement;
15 didn't give a written statement. All I know is there was
16 a phone call and she was uncooperative.

17 Then I learned of -- the State mentioned that she
18 had recanted when we appeared to try the case. And
19 that's what referenced in the record at page 70.

20 Q. And when did you become aware that she had recanted?

21 A. The day of trial as shown in the record.

22 Q. Okay. And how did that affect your preparation for
23 this case?

24 A. Well, I felt that that might, my goal was to keep
25 out her tip to law enforcement altogether. I made a

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1 pretrial motion to exclude based on hearsay and also a
2 6th Amendment confrontation clause. I do feel that it
3 added to the unreliability of the alleged tip.

4 But the judge admitted it for a limited purpose.
5 She didn't admit the statements that were alleged to have
6 been made. She excluded those pursuant to my pretrial
7 motion.

8 She only admitted that there had been a tip, which
9 was also over my objection. But we really didn't get
10 into the details during the trial as to what the
11 substance was of what she told law enforcement.

12 Q. But you did not become aware of that until like
13 prior to when you started picking the jury?

14 A. That's correct.

15 Q. Okay. And what was the explanation that the State
16 gave for the late disclosure of the information?

17 A. I understood it as I said the State had said she had
18 been generally uncooperative beyond this initial tip that
19 she gave to law enforcement.

20 I thought it may have been due to the fact that she
21 had recently, very recently changed or recanted or said
22 she had never made a tip.

23 Even the day before trial -- I'm not sure what the
24 timeline would have been but the first I learned of this
25 would have been when we were preparing for trial.

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1 Q. Would your trial preparation have been any different
2 had you known this?

3 A. Well like I said we were not able to locate this
4 individual. She was beyond our reach. My goal was not
5 to necessarily get into the details of what she said and
6 then impeach what she had said.

7 My goal was to keep it out altogether pursuant to
8 hearsay and also the confrontation clause and just
9 general unreliability and the fact that we were not able
10 to confront her. My goal was to keep out this tip
11 altogether.

12 I guess the only difference it could have made was I
13 could have tried to elicit testimony that she had now
14 recanted. But like I said the details of what she had
15 originally said didn't come into the trial anyway.

16 Q. Thank you. Can you tell me what role Maria Davila
17 [phonetic] played in this case?

18 A. She was the victim.

19 Q. And Candice Singleton?

20 A. She was a State's witness who was identified to be
21 in a relationship with Mr. Jenkins at some point.

22 Q. And can you look on page 145 of the transcript?

23 [Whereupon, the witness reviews document]

24 A. I'm there.

25 Q. And lines 17 to 21 can you just sort of read over

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1 that?

2 [Whereupon, the witness complies]

3 A. Okay.

4 Q. And so that's Maria Davila [phonetic] testifying, is
5 that correct?

6 A. Yes.

7 Q. And who is the she that she references in that?

8 A. The she is the female she was corresponding
9 communicating with regarding the purchase of the cell
10 phone.

11 Q. You would agree that Ms. Davila [phonetic] is
12 testifying about what somebody told her at that point is
13 that correct?

14 A. Yes.

15 Q. And did you consider whether or not that should be
16 an objection based on hearsay?

17 A. Yes, I do think it's objectionable on the grounds of
18 hearsay. But you know we really weren't disputing this.
19 We really weren't disputing that this conversation
20 occurred, which is the reason I didn't object to hearsay
21 at that time.

22 Q. Thank you. Now who is, what role did Darwin Cobb
23 play in this case?

24 A. I believe that was one of the police officers.

25 Q. If you look on page 189 of the transcript lines 20

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1 through 25 to refresh your memory of his role.

2 A. Okay.

3 [Whereupon, the witness reviews document]

4 Q. So, he's a North Charleston police officer. Was he
5 the first one to respond?

6 A. Yes, I believe he was one of the responding
7 officers, yes.

8 Q. And if you look at page 191 lines 22 through 25 and
9 maybe keep on going down through line 9 on the next page.

10 [Whereupon, the witness reviews document]

11 Q. Do you see that testimony?

12 A. Yes.

13 Q. Who is Officer Cobb talking about? Who is the she
14 that he is talking about there?

15 A. The victim.

16 Q. And did you consider whether or not that was a
17 hearsay statement?

18 A. I agree that it is objectionable on the grounds of
19 hearsay. I didn't object because again we weren't
20 disputing what she was alleging in terms of what
21 happened.

22 Q. Okay. Now I want to go and talk about an issue that
23 was raised maybe somewhat on appeal but let's talk about
24 the testimony from Travis Repman --

25 THE COURT REPORTER: Travis?

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1 MR. FALK: R-E-P-M-A-N.
2 Q. [Mr. Falk] And let me just see where his first page
3 is.
4 [Whereupon, Mr. Falk reviews documents]
5 Q. Yes, so can you -- he's introduced on page 208.
6 [Whereupon, the witness reviews document]
7 A. Okay.
8 Q. Do you recall what his role was in this case now?
9 A. I believe he presented the photo lineup to the
10 victim.
11 Q. Okay. And can you look at his testimony on page
12 218?
13 [Whereupon, the witness reviews document]
14 A. Okay.
15 Q. And that's where he is talking about the process
16 that they were using?
17 A. Yes.
18 Q. If you could look at line 20.
19 [Whereupon, the witness complies]
20 Q. Now first of all you objected to his testimony.
21 What was the ground for your objection there?
22 A. The grounds for my objection were that he was
23 essentially giving an opinion as to the accuracy of the
24 lineup procedure although he had not been qualified as an
25 expert as such.

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1 Q. Okay. So your objection was that he was not an
2 expert but he was qualifying, testifying as one?

3 A. That's correct.

4 Q. But when Officer Repman said it is believed that
5 this is the most reliable false positive way to show a
6 lineup would you not agree that he is now bolstering the
7 lineup?

8 A. I agree with that.

9 Q. Was that covered by, do you think that that's
10 covered by your objection -- you didn't object to that
11 statement as being bolstering, is that correct?

12 A. That's correct.

13 Q. Now let's look at a little bit more of his testimony
14 on 223 sort of at the end, line 25 on 223 carrying over
15 onto page 224.

16 [Whereupon, the witness reviews document]

17 A. I'm sorry; where are you looking?

18 Q. Ms. Savas asked a question on line 25 on page 223.
19 And the question was but would that change one's ability
20 to make an identification and his answer was no.

21 Did you consider whether or not that was certainly a
22 speculative response? I mean...

23 A. I think it is speculative and I think it was the
24 subject of my previous objection that I made and was
25 overruled. So I felt that I'd already raised the issue

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1 for the Court and the Court had already made its
2 decision.

3 Q. But you will admit that you didn't preserve that
4 issue again by objecting again?

5 A. I did not make another objection at that point.

6 Q. Now I want to -- hold on for a moment please.

7 [Whereupon, Mr. Falk reviews documents]

8 Q. Can you look at, what was Joseph Niemiec's role in
9 this case?

10 A. He was involved in the investigation. I believe he
11 searched Ms. Singleton's apartment. And he was involved
12 in developing Mr. Jenkins as a suspect.

13 Q. And then would you look at the testimony starting on
14 line 24 on page 234 carrying over to when you objected on
15 line 9 on 235?

16 [Whereupon, the witness reviews document]

17 A. Okay. I'm on page 234.

18 Q. So, you made a hearsay objection ---

19 MS. WEIDAUER: --- objection, Your Honor. This is
20 not alleged in his amended -- are we on page 234?

21 MR. FALK: I am trying to get to Niemiec's
22 testimony. It's 235. I'm just saying ---

23 MS. WEIDAUER: --- 235, 1 through 4.

24 Q. [Mr. Falk] It starts a little bit on the last line
25 of the previous page. So on 234 there is a question did

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1 she mention whether she lived alone or with somebody?

2 And then you go on then picking up the testimony on 235
3 lines 1 through 4.

4 A. Okay.

5 Q. And so you would agree that is also hearsay
6 testimony?

7 A. I would.

8 Q. And you made an objection to that is that correct?

9 A. I did.

10 Q. Did the Court rule on the objection?

11 A. The Court did it said; the Court answered that he
12 could answer yes or no but overruled my objection and
13 allowed him to answer yes or no.

14 Q. Where on the record does it show that the objection
15 was overruled?

16 A. Page 234 line 23.

17 Q. Okay. But I'm talking about the testimony that
18 starts on page 235 down to your objection I guess where
19 you made an objection on line 7.

20 [Whereupon, the witness reviews document]

21 A. Sure. Okay.

22 Q. You made a hearsay objection on line 9.

23 A. Okay.

24 Q. And what was the Court's ruling?

25 A. The Court -- I know we had a bench conference ---

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1 Q. --- would you agree that ---

2 A. --- I think the Court at that time sustained my
3 objection but it was not on the record; but it was at a
4 bench conference. It's the bench conference mentioned at
5 line 10.

6 Q. Okay. We'll move on. Here's kind of the issue that
7 we have here that we're talking about today. The
8 testimony from Angelica was it Louisa [phonetic]?

9 A. Yes.

10 Q. What was her role in this case? And she starts
11 testifying on page 271.

12 [Whereupon, the witness reviews document]

13 A. She was the crime scene tech. She gathered
14 evidence, forensic evidence from the vehicle, from the
15 victim's vehicle and where it was located after she had
16 called the police and after the perpetrator had fled the
17 scene.

18 Q. And was there -- what kind of discussion was had
19 about allowing her to testify via Skype?

20 A. I was made aware in preparation for the trial that
21 she was out of state and they were seeking to have her
22 testify via Skype. I think this would have been in the
23 days maybe a week or two at the most leading up to the
24 trial.

25 Q. And what kind of conversation did you have with Mr.

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1 Jenkins about this witness testifying by Skype?

2 A. I do not recall if I had a conversation with Mr.
3 Jenkins about that.

4 Q. So do you think he was aware that this witness was
5 testifying via Skype prior to the start of the trial?

6 A. I just can't remember if I specifically told him
7 that that would be happening.

8 Q. And did you consider not allowing the witness to
9 testify via Skype or objecting to the witness testifying
10 via Skype?

11 A. I did. I realized that could have been the basis
12 for an objection. However, I felt like this witness was
13 favorable to our defense.

14 A big part of our defense was that the crime scene
15 had responded immediately. They gathered evidence and
16 specifically fingerprints and none of those matched Mr.
17 Jenkins. So I felt that her testimony was helpful to our
18 defense.

19 Q. But you would agree there is no colloquy between the
20 Court and the defendant about whether the defendant was
21 going to waive his 6th Amendment right to allow the
22 witness to testify via Skype?

23 A. There was not.

24 Q. Let me talk about this testimony from Al Holman
25 [phonetic] that's on page 301.

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1 [Whereupon, the witness reviews document]

2 Q. I'm just trying to find where he starts testifying.
3 So Al Holman [phonetic] starts testifying at line 283 if
4 you need to sort of refresh on who he was.

5 [Whereupon, the witness reviews document]

6 A. Okay.

7 Q. Now if you go on to page 302 it looks like the
8 Solicitor was presenting Mr. Holman with a document?

9 [Whereupon, the witness reviews document]

10 A. What line are we on?

11 Q. Hang on for a minute Mr. Malloy.

12 [Whereupon, Mr. Falk reviews documents]

13 Q. So I was asking you about a document. Do you know
14 what that document was?

15 A. I'm not sure but I think it may have been
16 fingerprint analysis card where a human analysis was done
17 regarding points on fingerprints.

18 Q. And that fingerprint card was not, that analysis was
19 not done by Mr. Holman [phonetic] but it was done by Ms.
20 Kubicsko, is that right?

21 A. Yes. I think Holman did his own but I think there
22 were two analyses done in this case.

23 Q. But it's clear he is testifying to somebody else's
24 report is that not correct?

25 A. That's correct.

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1 Q. Did you consider objecting to that testimony?

2 A. While I think it is objectionable I did not object
3 because I think it just bolstered the fact that the
4 fingerprints were not matched to our client.

5 Q. But you would agree that that expert is really
6 testifying as a conduit for a non-testifying expert would
7 you not?

8 A. Yes, I agree.

9 Q. I'm almost done Mr. Malloy; hang on please. If we
10 can, go to page 345?

11 [Whereupon, the witness reviews document]

12 Q. If you could look at starting at line 21 on page
13 345.

14 [Whereupon, the witness reviews document]

15 A. Okay.

16 Q. This is in the State's closing argument is it not?

17 A. It is.

18 Q. Okay. Were you concerned when the Solicitor now is
19 saying what a great job one of her own witnesses did
20 testifying.

21 A. Now I look at it it is concerning but this is
22 closing argument; I didn't usually object during closing.

23 And she was, this was regarding the point that was
24 again was, I mean they were not, they recovered
25 fingerprints, they compared fingerprints to Mr. Jenkins

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1 and the fingerprints didn't match. So I didn't feel like
2 this incident arose to the level of making an objection.
3 And normally of course in closing the response from the
4 Court is this is not evidence; this is arguments.

5 This wasn't evidence; it's just closing argument.
6 So while objectionable I did not feel that it rose to the
7 level that I needed to object during closing argument.

8 Q. Thank you.

9 MR. FALK: One moment please to talk to my client?

10 [Whereupon, Mr. Falk confers with his client]

11 [Whereupon, Mr. Falk and Ms. Weidauer confer]

12 [Whereupon, Mr. Falk reviews documents]

13 MR. FALK: Your Honor, may I approach?

14 THE COURT: Uh Huh.

15 [Whereupon, an off the record bench conference is
16 held]

17 [Whereupon, Mr. Falk confers with his client]

18 Q. [Mr. Falk] Mr. Malloy, can you look at the
19 transcript on page 233 and its Niemic's testimony,
20 Officer Niemic's testimony.

21 [Whereupon, the witness reviews document]

22 A. Okay.

23 Q. Starting on line 19 just sort of read ahead to
24 halfway down the next page to just sort of refresh where
25 we are in the case.

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1 [Whereupon, the witness reviews document]
2 Q. Are you ready?
3 A. I am.
4 Q. Okay. So that's testimony that Officer Niemiec went
5 into Room 242?
6 A. Yes.
7 Q. And what did they find in that room?
8 A. They found a pill bottle with Chavias Jenkins name
9 on it.
10 Q. Okay. What else was recovered from the room?
11 A. I believe there were some clothes.
12 Q. Wasn't that the shirt was also recovered from there?
13 A. Yes.
14 Q. And is that the shirt, was that the same shirt that
15 he allegedly wiped the car down with or is that part of
16 the Solicitor's argument?
17 A. I do not recall the shirt matching what the
18 perpetrator was wearing. I think the State made that
19 argument in the end but I didn't recall that being the
20 case but that's just from my recollection.
21 Q. Well, did you know that where Mr. Jenkins was living
22 at this time? Wasn't he living in that room also?
23 A. I know that was the allegation; that's what the
24 investigation concluded.
25 Q. And that's what Singleton actually says isn't that

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1 right?

2 A. Yes, that's correct.

3 Q. Did you consider whether or not the search of that
4 room was a 4th Amendment issue, a search and seizure
5 issue as far as...

6 A. I feel like it would be, we would have standing, we
7 would have an issue with standing regarding asserting the
8 -- I think we would have an issue with standing regarding
9 a 4th Amendment argument for that room.

10 Q. Okay.

11 A. A 4th Amendment argument to suppress the evidence
12 found of her room.

13 Q. But there was evidence that Mr. Jenkins was also
14 living in that room?

15 A. Yes, that's correct.

16 Q. And certainly that would be an issue that we
17 couldn't have taken up on appeal because there was no
18 preservation of a possible objection to that, is that
19 right?

20 A. That is correct and I can't recall from my
21 conversations with Mr. Jenkins if he admitted or not that
22 he was living in the room at the time. I don't recall
23 that.

24 But I know an argument could have been made I
25 suppose that he had a right to privacy and it was

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1 violated because he was living in the room.

2 MR. FALK: No further questions.

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1 CROSS-EXAMINATION

2 BY MS. WEIDAUER:

3 Q. Good afternoon Mr. Malloy. Can you hear me?

4 A. Yes, I can.

5 Q. So we started with some of these preliminary
6 questions earlier and I just want to make sure that we
7 clarify for the record a couple of things regarding your
8 representation.

9 How long have you been practicing law and you can
10 include South Carolina and Virginia in that timeframe.

11 A. Now? I've been practicing about 11 years.

12 Q. Okay. And how much of that has been criminal law?

13 A. I've practiced criminal law for about 5 and a half
14 years for the Charleston County Public Defender's Office.

15 Q. Okay. And you testified earlier that you were
16 appointed in this case and you were appointed a couple of
17 years before this trial happened, is that correct?

18 A. That's correct.

19 Q. Okay. During that time you did receive discovery
20 pursuant to Rule 5 and Brady from the State, correct?

21 A. Yes.

22 Q. And those discovery materials did include the
23 original and it wasn't a written statement from the
24 tipster but it included the information regarding the
25 tip, is that correct?

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1 A. That's correct.

2 Q. Okay. And you had the ability to review in full
3 that discovery with Applicant?

4 A. I did.

5 Q. Okay. And based on that discovery and your
6 understanding of the State's evidence in the case you
7 were able to craft a defense strategy, is that correct?

8 A. I was.

9 Q. And that was mistaken identity I believe you said?

10 A. Yes.

11 Q. And you would have had discussions with Applicant
12 about that?

13 A. Yes.

14 Q. And what would those discussions look like? How
15 would you have explained your approach to this case to
16 him?

17 A. Well, that was really the only approach we ever
18 discussed. It was clear that we didn't really have, the
19 defense had to be that it wasn't him and there was no
20 other defense. And Mr. Jenkins asserted that himself
21 from day one. So all of our discussions revolved around
22 that.

23 And I did share discovery with Mr. Jenkins,
24 discussed it with him on numerous occasions, discussed
25 our strategy on numerous occasions. Mr. Jenkins is a

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1 very intelligent individual. He used his time to study
2 the law and we had a lot of conversations about the law
3 and how it applied to his case.

4 Q. And you would characterize those conversations as
5 meaningful.

6 A. Yes.

7 Q. Okay. And prior to today you've been made aware of
8 the allegations the Applicant has made and raised against
9 you in this matter.'

10 A. I have.

11 Q. Okay. With the exception of the 4th Amendment of
12 failure to object ---

13 A. --- I was not made aware of that issue.

14 Q. Okay. If you have your amended application in front
15 of you I'm going to just march down I think for
16 clarification, for clarity of the record rather and go
17 through each of these allegations that the Applicant has
18 made today.

19 I'm going to skip over one because I think that --
20 do you feel like your position is represented in the
21 trial transcript; I should ask you that.

22 A. It is.

23 Q. Okay. And you also filed a motion for a new trial
24 and part of that motion for a new trial was on the basis
25 that there was failure to disclose that exculpatory

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1 statement is that correct?

2 A. That's correct.

3 Q. Okay. And that motion for a new trial was
4 ultimately denied is that correct?

5 A. It was.

6 Q. And you mentioned earlier that all that came in was
7 that there was a tip; none of the substance or the
8 statements made during or in that tip came in at trial,
9 correct?

10 A. That's correct.

11 Q. Okay. As far as allegation two goes, and that is on
12 page 145 if you'd like to reference it, counsel's failure
13 to object to hearsay testimony from Maria Davila
14 [phonetic] that was attributed to Candice Singleton.

15 [Whereupon, the witness reviews document]

16 A. Okay.

17 Q. So, and I don't want to mischaracterize what I
18 believe you testified to earlier so correct me if you're
19 [sic] wrong but you testified to earlier I believe that
20 you did not object to that because you were not concerned
21 about the victim's story, is that correct?

22 A. That's right.

23 Q. All right. And you had no concerns strategically
24 that her story could hurt defendant?

25 A. For the most part we were not disputing her

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1 recollection of her conversations with the person
2 regarding the Craig's List ad.

3 Q. And your defense was that this wasn't Applicant and
4 this wasn't his girlfriend that responded or that put up
5 this Craig's List ad and that perpetrated this crime is
6 that correct?

7 A. That's correct.

8 Q. Okay. So in any way do you see this statement on
9 145 and again that is lines 16-22 do you feel that's in
10 any way contradictory to your defense at trial?

11 A. No.

12 Q. Okay. Marching on to allegation number three.
13 That's at page 191 if you'd like to flip to that.

14 [Whereupon, the witness reviews document]

15 Q. That allegation states failure to object to hearsay
16 statements uttered at page 191. And those are in
17 reference to a statement that Darren Cobb [phonetic] made
18 on direct examination.

19 She had informed me that the subject involved the
20 suspect in this had a black in color handgun. Did she
21 give you a description of the route of the kidnapping?
22 She did.

23 And did she tell you whether anything was taken from
24 her. She did. An amount of money; I don't remember the
25 exact amount. It was the sum of 300 dollars as well as

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1 her telephone in addition to her vehicle.

2 Would it be safe to assume that you had the same
3 reasoning as you did in allegation number two for not
4 objecting?

5 A. Yes, that's correct.

6 Q. And that was because it did not conflict with your
7 defense strategy. This was a defense saying this was not
8 Applicant so victim's story really didn't matter, is that
9 correct?

10 A. That's correct.

11 Q. Okay. And through cross-examination do you recall
12 eliciting testimony from this officer that officer did
13 not see Applicant or locate any witnesses who saw
14 Applicant drop off the victim? And that's at page 194 if
15 you'd like to refresh.

16 [Whereupon, the witness reviews document]

17 A. Yes. I did draw that, I did bring that out on
18 cross.

19 Q. Okay. So you were able to narrow that down that
20 this was just the victim's story that wasn't corroborated
21 by an officer who saw Applicant in any capacity.

22 A. Yes.

23 Q. We're going to move on to allegation number four,
24 counsel failed to object to Travis Repman's bolstering
25 testimony regarding the reliability of the method law

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1 enforcement used in presenting the photo lineup. That's
2 on page 218.

3 [Whereupon, the witness reviews document]

4 A. Okay.

5 Q. And can you just clarify for the record why you
6 objected above on line 19 but did not object below?

7 A. I felt like I had already raised the issue to the
8 Court for the Court's consideration. And the Court had
9 made its ruling; it overruled that objection. And I felt
10 that I would have gotten the same response to these
11 additional questions.

12 Q. Okay. Is there sometimes a reason why you may not
13 object even when you know something is objectionable?

14 A. Sure. Out of risk of annoyance and annoying the
15 jury and potentially annoying the judge for that matter.

16 Q. Okay. Let's move to page 224. I believe Mr. Falk
17 says this starts on page 223 actually line 25 and goes
18 through page 224 line 2.

19 [Whereupon, the witness reviews document]

20 Q. Do you recall a strategic reason for not objecting
21 there?

22 A. I'm sorry; where are we?

23 Q. I apologize; page 223, we're starting at line 25 and
24 then you're just going to carry through page 224 line
25 two; so just those three lines.

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1 [Whereupon, the witness reviews document]

2 A. I felt that was the same objection I'd already made
3 and it had been overruled.

4 Q. Okay. And do you recall through cross-examination
5 being able to elicit testimony about the victim's
6 statements during that photo lineup?

7 A. I do.

8 Q. Okay. And you disagree that the testimony you were
9 able to elicit regarded -- she testified that something
10 was missing from Applicant or the photo lineup of
11 Applicant's face. Do you recall that?

12 A. I do.

13 Q. Okay. And do you also recall asking on cross
14 whether victim indicated she was not sure when she made
15 her selection?

16 A. I did.

17 Q. Okay ---

18 A. --- cross-examine her on that point.

19 Q. Okay. So knowing that you did not perceive Officer
20 Repman's testimony to be particularly harmful to your
21 defense. Is that fair?

22 A. I felt it to be harmful. I felt that it was
23 prejudicial but that was my way of -- there were some
24 helpful things that I was able to elicit namely that she
25 was not 100 percent sure in her identification. There

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1 was indication of uncertainty.

2 Q. Okay. Let's move to allegation number six. And
3 this is going to be at page 235.

4 [Whereupon, the witness reviews document]

5 Q. You are not disputing that Applicant and Candice
6 were in a relationship at this trial, correct?

7 A. I was not.

8 Q. Okay. And Candice was a favorable witness to you is
9 that correct?

10 A. She was.

11 Q. Okay. So on page and it starts on page 234 really
12 where on direct Ms. Savas is asking Joseph Niemiec
13 whether Candice mentioned she lived alone or with
14 somebody.

15 And where he answered she lived with somebody. And
16 who is that person? Chavias Jenkins.

17 Would you have had a reason to object to that
18 information even though it may be objectionable?

19 A. I did object on line 21 where she mentioned where
20 she lived. I objected several times.

21 Q. And specifically to, and I think he is narrowing it
22 down to just specifically those lines 25 through 4. So
23 on page 234 line 25 through page 235 line 4.

24 [Whereupon, the witness reviews document]

25 A. I'm sorry, I need to read this. What lines again?

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1 Q. Okay. Its page 234 line 25; just that bottom line,
2 and then carry on through the next page line 1, 2, 3, and
3 4.

4 [Whereupon, the witness reviews document]

5 A. I felt that I had just made a hearsay objection and
6 the line of questioning was allowed to continue. So I
7 felt that it would have been overruled. But I don't
8 think we were really disputing that there was a
9 connection between Candice Singleton and Mr. Jenkins.

10 Q. Okay. Although it may be hearsay it wasn't harmful
11 to your case because that wasn't in dispute; that wasn't
12 part of your defense strategy was to show that there was
13 no connection.

14 A. That's correct.

15 Q. Okay. Allegation number seven has to do with
16 Angelica -- and I don't know how to say the last name --
17 Louisa [phonetic] testifying via Skype. She testified
18 before; she was the crime scene tech, correct?

19 A. Yes.

20 Q. And at the trial you did not -- though in retrospect
21 you've now testified that maybe you should have thought
22 more into that or objected. But at the time of trial you
23 did not have an issue with her testifying virtually, is
24 that correct?

25 A. That's correct.

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1 Q. And why not? Why did you not have an issue at the
2 time of trial if you can ---

3 A. --- I felt that her testimony was helpful to us and
4 I wanted to highlight the fact that law enforcement
5 responded and collected evidence. They compared evidence
6 to Mr. Jenkins fingerprints. They also collected DNA and
7 none of it matched.

8 Q. And were you worried that there was anything that
9 you could not adequately get across to the jury or cross-
10 examine her on via Skype?

11 A. I did not have that concern at the time. In
12 hindsight maybe it would have been more effective if she
13 was there in person.

14 But at the time I also didn't have her under
15 subpoena; she was an out of state witness and I wanted
16 her testimony to get in one way or the other.

17 Q. Okay.

18 A. And that was with the circumstances that was the
19 situation was presented. I would rather her have
20 testified via Skype than not testify at all.

21 Q. Okay. Let's move on to allegation number eight.
22 And this is failure to object to some testimony on page
23 301 if you'd like to flip there.

24 [Whereupon, the witness reviews document]

25 Q. Failure to object to hearsay testimony by Al Holman

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1 regarding a fingerprint analysis report. You testified
2 earlier that you actually believe this bolstered your
3 case a little bit that there was no direct evidence
4 linking Applicant to this crime, is that correct?

5 A. Yes.

6 Q. And do you recall on cross you were able to elicit
7 that there were multiple I think six fingerprint lifts or
8 cards that were actually produced for analysis.

9 A. Yes.

10 Q. Okay. And you were able to elicit that and confirm
11 that none of those fingerprints analyzed by Mr. Holman or
12 by Ms. Kubiscko produced a match to Applicant.

13 A. Yes.

14 Q. And on 308, and I'd just like to note this for the
15 Court; you can turn there as well Luke lines 17 through
16 19.

17 [Whereupon, the witness reviews document]

18 Q. You questioned Mr. Holman and all of the cards that
19 were compared to his known print excluded him as the
20 person who left that print. Answer, yes it did.

21 Do you recall that on cross?

22 A. Yes.

23 Q. Let's move on to allegation number nine. And that
24 is at page 345? The allegation is failure to object to
25 the State's bolstering comments regarding testimony of

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1 its expert witness.

2 [Whereupon, the witness reviews document]

3 Q. Do you have a general practice for making objections
4 during closing? Some attorneys do so.

5 A. I usually do not object during closing.

6 Q. Okay. And that's just generally you don't object.
7 So what would make you object during a closing argument?

8 A. Well, if I felt that something was -- well, I did
9 object in this case several times regarding rulings that
10 the Judge had made.

11 And I felt that the State's closing argument was
12 coming close to mentioning evidence that was suppressed
13 by those rulings. Matters that I think would arise to
14 the level of a mistrial yes, I would object to that.

15 Q. You mentioned you did object. You objected three
16 separate times during closing. Does that sound right?

17 A. Yes.

18 Q. Okay. And just for purposes of the record those are
19 on 353, 355, and 357. So as a general practice you're
20 not against objecting if the State's closing rises to or
21 presents a matter worth objecting to, correct?

22 A. That's correct.

23 Q. Okay. And I believe during direct you testified
24 that you didn't object because this wasn't harmful to
25 your case, is that correct?

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1 A. That's correct.

2 Q. Okay. And because you objected in three other
3 places the jury was actually able to hear three
4 additional times that they were the fact finders and that
5 this was just the State's closing argument, is that
6 correct?

7 A. That's correct.

8 Q. And the State's version of the facts and of the
9 evidence is that correct?

10 A. That's correct.

11 Q. Okay. And during this the subject of this
12 allegation, those lines, the State actually concedes that
13 there are no fingerprints; we don't have forensics, is
14 that correct?

15 A. Yes.

16 Q. And I know that you were not aware of allegation
17 number 10 and that's regarding the 4th Amendment issue.
18 Did you ever discuss with Mr. Jenkins possibly making a
19 4th Amendment argument regarding search of the room, the
20 hotel room?

21 A. I don't recall.

22 Q. Okay. You do not recall ever discussing that or
23 thinking about that or considering making that objection,
24 is that correct?

25 A. I don't recall any discussions about it. I can't

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1 remember specifically whether Mr. Jenkins disputed that
2 he was living with Ms. Singleton at that location at the
3 time. But I do recall thinking that we had an issue with
4 standing to assert a 4th Amendment argument for the
5 search of that room.

6 Q. Okay. And that was because Ms. Singleton was living
7 there?

8 A. We did not have standing to assert it on her behalf
9 that's for sure.

10 Q. Right. And she consented to the search.

11 A. Allegedly.

12 Q. Okay.

13 MS. WEIDAUER: Beg the Court's indulgence for one
14 moment.

15 [Whereupon, Ms. Weidauer reviews documents]

16 Q. [Ms. Weidauer] Do you recall Ms. Singleton
17 testifying that she was staying at the Budget Inn hotel
18 during direct?

19 A. I do recall that.

20 Q. Oh, you do recall that? Okay. And then she goes on
21 to talk about how she was contacted by police right in
22 the Hideaway Lounge I believe it is at that Budget Inn,
23 is that correct?

24 A. Yes.

25 Q. Okay. And she talks about that she took them to the

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1 room. And this is on page 254 if you'd like to
2 reference, and that she was in this room 242 at the time
3 where she lived with Chavias and that's where they
4 stayed.

5 [Whereupon, the witness reviews document]

6 A. Okay.

7 Q. And considering that testimony and her introduction
8 to the cops and that she went back to the room to get her
9 I.D. based on this tip and for the underage drinker do
10 you believe that that I guess in relation to allegation
11 number 10 do you think that would have hurt your chances
12 of even making a standing argument or a 4th Amendment
13 issue argument?

14 A. I think she's testifying that okay -- yes, she does
15 testify that's where they stayed. She says she was by
16 herself at the time but when asked if that's where they
17 stayed and she said correct. So yes, that would have,
18 that would have established, so she does say that Mr.
19 Jenkins was staying with her at the time.

20 Q. Okay.

21 MS. WEIDAUER: Nothing further, Your Honor.

22 THE COURT: Okay. Anything further, Mr. Falk?

23 MR. FALK: No redirect.

24 THE COURT: Thank you, sir. There is no further
25 redirect so you are excused.

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1 THE WITNESS: . Thank you.

2 THE COURT: Thank you.

3 THE WITNESS: I just want to make sure am I free to
4 go for the day?

5 [Whereupon, Ms. Weidauer and Mr. Falk confer]

6 THE COURT: Yes. Thank you.

7 THE WITNESS: Thank you.

8 [Whereupon, the video testimony ends and the witness
9 is excused]

10 THE COURT: Anything further, Mr. Falk?

11 MR. FALK: No, Your Honor.

12 THE COURT: Ms. Weidauer?

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1 MS. WEIDAUER: The State would call Nina Savas to
2 the stand.

3 [Whereupon, Ms. Savas comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 THE CLERK OF COURT: Please state your name for the
7 record and spell your last name.

8 THE WITNESS: Nina Savas, S-A-V-A-S.

9 - - - - -

10 NINA SAVAS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WEIDAUER:

15 Q. Good afternoon Ms. Savas, how are you?

16 A. Good, thank you.

17 Q. Let's start with some introductory questions
18 regarding your practice. How long have you been
19 practicing law in the state of South Carolina?

20 A. I was barred in 2013.

21 Q. 2013 so about nine years?

22 A. Yes.

23 Q. Okay. And how much of that has been in criminal
24 law?

25 A. I started with the Solicitor's office as an

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1 Assistant Solicitor in spring 2014 and I'm still there
2 today so a little over eight years.

3 Q. And you were the Solicitor assigned to this case, is
4 that correct?

5 A. For the trial, yes.

6 Q. For the trial. And did you have a second chair in
7 this case?

8 A. Yes.

9 Q. And who was that?

10 A. Alex Zeigler.

11 Q. Can you tell the Court the extent of Mr. Zeigler's
12 involvement in this case?

13 A. He was just there to assist in the courtroom but I
14 was the decision maker and was the first chair.

15 Q. Okay. Can you briefly describe the State's evidence
16 in the case and what you intended to put up and did put
17 up ultimately at trial?

18 A. In this case it was the carjacking and an armed
19 robbery so our main witness was the victim, Ms. Davila
20 [phonetic].

21 And then we had a couple of other officers that were
22 involved in the investigation. But there wasn't really
23 any forensic evidence. It was mostly witness testimony.

24 Q. Okay. And in this case you had the chance to put
25 together a Rule 5 packet, correct?

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1 A. There was another Prosecutor who originally had the
2 case, Mr. Culver Kidd, and he had sent discovery back in
3 2013.

4 Q. Okay. And included in that discovery was there
5 information regarding a tip?

6 A. Yes. That was in the initial packet.

7 Q. Okay. And can you -- do you recall what that tip,
8 information in that packet would have included?

9 A. The details I'd have to look at it but it was that
10 someone had called and her name was Kita Grider
11 [phonetic], I'd have to look, and they met her at this
12 address.

13 And she said that there was a female that bragged
14 about the incident happening with her boyfriend and they
15 used a .45 caliber handgun during the incident and they
16 were at the Hideaway Lounge and gave the room number.

17 She had flagged down a patrol officer, which is how
18 the tip came to be to the North Charleston Police
19 Department.

20 Q. Okay. And you're aware of the allegations raised in
21 this amended post-conviction relief application, correct?

22 A. Yes.

23 Q. Okay. And this first allegation references an
24 alleged Brady violation for failure to disclose a
25 subsequent statement made by this witness. Did you have

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1 subsequent communications with that tipster after that
2 initial disclosure?

3 A. Yes. It was difficult to reach her and I finally
4 managed to get someone on the phone. I was never able to
5 verify their identity. I never met her in person nor did
6 we ever subpoena this person for trial.

7 Q. Okay. And is it your understanding that after this
8 tip was made and officers responded to the tip they were
9 able to corroborate the tip?

10 A. Yes. They corroborated the tip by going
11 simultaneously to that location where Officer Niemiec had
12 seen Candice Singleton at that time and that she did go
13 back to that same room that the tipster had mentioned.
14 So, everything was corroborated in real time during the
15 initial investigation.

16 Q. Okay. And during this subsequent conversation did
17 the tipster provide any additional information that you
18 believed was favorable information for the accused?

19 A. No.

20 Q. Okay. And did they provide any conflicting
21 information from the original tip?

22 A. No.

23 Q. And is it your assertion there was not any
24 information provided during your phone conversation
25 pertaining to guilt or innocence?

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1 A. Correct.

2 Q. And just to clarify you never met in person with
3 this tipster; you had a phone call.

4 A. Correct.

5 Q. And you characterized her as uncooperative?

6 A. Yes. She was uncooperative from the beginning with
7 law enforcement. She didn't want to write a statement,
8 would not cooperate through the investigation and was not
9 cooperative with the State in preparation either.

10 Q. Okay. And at trial do you recall defense counsel
11 being concerned that this tipster had recanted?

12 A. Yes. We had discussed it on the record.

13 Q. Okay. And do you recall the limitations that the
14 Court put on the State regarding what you could get into
15 regarding this tip?

16 A. Yes. The State never sought to admit any of the
17 substantive. We followed State v King the case law that
18 specifically states tips cannot, cops do not discuss the
19 content but they can say a tip was made and where it led
20 them during the investigation. So the Judge did limit
21 that and the State agreed with that.

22 We never intended to put any substance into that nor
23 call the tipster. As I mentioned she was never even
24 subpoenaed; never met her in person so it's not necessary
25 for our case.

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1 Q. And would there have been a reason, I know you
2 didn't subpoena her, would there have been a reason why
3 she was on the witness list at any point in time?

4 A. I used to always put everyone on the witness list
5 that's mentioned in initial reports just in case
6 something were to come up; just a precautionary measure.
7 But I never intended to call her.

8 Q. And do you recall whether as the first chair if she
9 was on your pared down witness list of who you intended
10 to call at trial?

11 A. She was not. She was never on my list.

12 Q. Okay. Following trial there was a motion for a new
13 trial, is that correct?

14 A. Yes.

15 Q. Do you remember the substance of that motion for a
16 new trial in reference to this allegation?

17 A. Yes.

18 Q. Okay. Can you kind of elaborate for the Court if
19 you can?

20 A. Mr. Malloy had brought up the point that the tipster
21 information was discussed at trial. I submitted and
22 filed a written response on the record in which I fleshed
23 that argument out.

24 So it's already fleshed out in a post-trial motion
25 and ruled upon and denied by the Judge at that time. As I

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1 mentioned in that motion the person on the phone never
2 recanted. They never said the context of the tip never
3 changed. So I wouldn't personally characterize it as a
4 recantment [sic]. She knew the content of the tip. She
5 said that she knew Candice and everything was consistent
6 as far as the substance.

7 In a fleeing moment she said someone must have used
8 my name; I don't want to be involved. But she did verify
9 the address where the officers met the initial tipster.
10 But I could not verify that person's identity on the
11 phone.

12 So we already fleshed this out post-trial and to me
13 it was inconsequential the fact that she didn't want to
14 be cooperative, which often times happens. So I took
15 that as she just didn't want to be involved and wanted to
16 remain anonymous.

17 Q. And from the brief conversation you had you stated
18 or testified she was in your opinion wholly unwilling to
19 help or to come testify in any capacity?

20 A. Yes.

21 Q. Okay. I want to ask you briefly about allegation
22 number seven and that is counsel provided ineffective
23 assistance of counsel by allowing Angelica Louisa
24 [phonetic] to testify via Skype as opposed to requiring
25 her to appear live. Can you elaborate or recall any

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1 conversations that you had with Mr. Malloy prior to
2 trial?

3 A. Mr. Malloy and I always had really good
4 communication. We were in constant communication. And
5 so Angelica relocated to Miami, Florida. So I had
6 brought that up to him.

7 I'm not sure when or the full context of that
8 conversation and the Court had allowed us to do her
9 testimony by Skype. She was just a crime scene tech.
10 She did not do any analysis so it was not anything of
11 major testimony.

12 Q. Okay. And if Mr. Malloy would have indicated that
13 she -- did he indicate in any way rather that he needed
14 her there or ---

15 A. --- I don't recall and we never made flight
16 arrangements for her or travel arrangements. So we
17 always kind of went forward knowing the fact that she
18 would be via Skype.

19 Q. Okay. And if he would have asked to have her in
20 person or would have objected to having her testify via
21 Skype would you have attempted to arrange that?

22 A. Sure. Yes.

23 Q. I'd just like to ask is there anything else that you
24 think because being accused of prosecutorial misconduct
25 is a major allegation that you think in reference to the

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1 Rule 5 Brady v Maryland allegation that this Court needs
2 to know.

3 A. That's something that I do take very seriously in my
4 practice. Personally I'm always of give everything over
5 to defense. Like I said Luke and I had a good
6 relationship. He was constantly sending me quick emails
7 asking questions and I was always diligent in responding.
8 We had an open line of communication.

9 So there is nothing that I would ever intentionally
10 do and I believe we fleshed that out pretrial, during the
11 trial, and post-trial motions and the defendant also had
12 the opportunity on appeal.

13 So, it's my position personally that is a big
14 accusation to make and it is not one that I take lightly
15 but I do my due diligence in turning everything over
16 according to procedure.

17 Q. Okay. Thank you. Please answer any questions that
18 Mr. Falk has for you.

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1 CROSS-EXAMINATION

2 BY MR. FALK:

3 Q. Just so I can get clear here. So when you're on
4 page 69 of the transcript that's where there is a
5 reference to a telephone call?

6 [Whereupon, the witness reviews document]

7 A. Yes, sir.

8 Q. When did it occur relative to the start of the
9 trial?

10 A. I don't recall but I know it was very, it was within
11 the same timeframe because we had difficulty in reaching
12 her. I had attempted.

13 Luke had asked me before if I had managed to get a
14 hold of her and I was not. So, it was right around that
15 exact same timeframe. But I don't remember specifically.

16 Q. What does that mean? Was it within that month? Was
17 it within that week?

18 A. Probably within a couple of days.

19 Q. Okay. Thank you.

20 A. Yes, sir.

21 MS. WEIDAUER: No redirect, Your Honor.

22 THE COURT: Thank you. You can step down.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25

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1 THE COURT: Anything further from the State?

2 MS. WEIDAUER: Nothing further, Your Honor. The
3 State rests.

4 THE COURT: Anything further, Mr. Falk?

5 MR. FALK: No, Your Honor.

6 THE COURT: Anything that y'all want to be heard
7 on?

8 MS. WEIDAUER: If there are any specific questions
9 you have, I know that you have some other things to do
10 before we have another hearing this afternoon, otherwise
11 I'm fine with submitting briefs if necessary in lieu of
12 closing arguments.

13 THE COURT: I'm going to take it under advisement.
14 If there is anything that you want to submit regarding
15 that issue you're welcome to since we sprung that on you
16 here at the 11th hour. But I really just leave that up
17 to you.

18 MS. WEIDAUER: Thank you, Your Honor.

19 MR. FALK: Your Honor, if I may just to make a
20 brief point.

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Post-Conviction Relief Hearing-Closing Argument-Remarks by Mr. Falk
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1 CLOSING ARGUMENT

2 BY MR. FALK:

3 Regarding Travis Repman's testimony that was
4 objected to you know this being basically an I.D. case
5 Mr. Malloy testified that it was an I.D. case. So
6 anything that would cause some doubt regarding the
7 identification is obviously very important in this case.

8 And it's my opinion that the only issue that Mr.
9 Malloy preserved was whether or not the person was an
10 expert. But still experts can't sort of, aren't
11 permitted to wildly speculate beyond and they can't
12 bolster you know other testimony that comes in.

13 So even though there may have been an objection to
14 the fact that he was an expert, certainly the objections
15 were not renewed, and they certainly weren't on the
16 grounds that the testimony was bolstering or speculative.

17 THE COURT: Thank you.

18 *****END OF TRANSCRIPT OF RECORD*****
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Certificate of the Court Reporter
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is to the best of my ability, a true, accurate,
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the Court of Common Pleas
for Charleston County, South Carolina on the 23rd day of
June, 2022.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

January 22, 2023

Joyce C. Rueger, CVR-M
Court Reporter

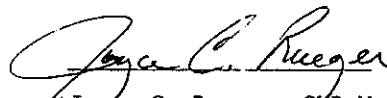
Chavias Jenkins v State
Certificate of the Court Reporter
June 23, 2022

C E R T I F I C A T E

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January 22, 2023


Joyce C. Rueger, CVR-M

Court Reporter

AH
GS
AG
SOL

STATE OF SOUTH CAROLINA

County of ☒ Charleston ☐ Berkeley

CHAVIAS JENKINS

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2019-CP-10-04491

533

ORDER

BY DGR

JULIE J. ARMSTRONG
CLERK OF COURT

2022 JUN 23 PM 4:00

FILED

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

(14) ✓ 1. The application for post-conviction relief is hereby: _____ denied _____ granted ✓ under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied
_____ under advisement, based upon the _____ statute of limitations and/or _____ the successive
nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

5. Other: _____

6. The court further orders:

_____ The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.

_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

_____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 6/23/22
Charleston, S.C.

Kristen Link
Presiding Judge

334
Court Reporter: JOYCE RUEGER

Attorney for State: **SAMANTHA WEIDAUER**

Attorney for Defendant: JAMES K. FALK

Revised 12/10/04

Ag
GS
Sol
Atty

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Chavias Jenkins, #309361,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) Case No. 2019-CP-10-4491

ORDER OF DISMISSAL

FILED
2024 JAN 25 PM 3:26
CLERK OF COURT
WCL

This matter comes before this Court by way of Applicant Chavias Jenkins's Amended Application for post-conviction relief application filed on April 4, 2021, asserting various allegations of ineffective assistance of counsel. Prior to the Amended Application, Applicant had filed for post-conviction relief on August 26, 2019. Respondent had made a Return to the original application on February 6, 2020 and requested an evidentiary hearing.

An evidentiary hearing was convened on June 23, 2022, at the Charleston County Courthouse. Applicant was present and represented by James K. Falk ("PCR Counsel"). Samantha J. Weidauer represented Respondent. After reviewing the record and hearing the testimony at the PCR hearing, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined pursuant to orders filed with the Charleston County Clerk of Court. In December 2013, the Charleston County Grand Jury indicted Applicant for carjacking (2013-GS-10-07433), kidnapping (2013-GS-10-07434), armed robbery (2013-GS-10-07435), and possession of a weapon during a violent crime (2013-GS-10-07436). Attorneys Mary Ford and Luke Malloy of the Ninth Circuit Public Defender's Office were appointed to represent Applicant.

Assistant Solicitors Nina Savas and Alex Zeigler of the Ninth Circuit Solicitor's Office prosecuted the case. On August 24, 2016, Applicant proceeded to trial before the Honorable Kristi L. Harrington. The jury convicted Applicant of all charges. Judge Harrington sentenced Applicant to imprisonment for an aggregate sentence of twenty-two years. Per the court's order, the sentences run concurrently and, at sentencing, the Applicant received credit for time served.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the Office of Appellate Defense perfected the appeal. After considering the Applicant's brief, the South Carolina Court of Appeals decided Applicant's case without oral argument, and dismissed Applicant's appeal on May 1, 2019. The remittitur was returned to the circuit court on May 17, 2019. This action follows.

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In his Amended Application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Applicant believes the State failed in its discovery obligations under Brady v. Maryland by not disclosing to defense counsel that the witness who supplied the initial anonymous tip to law enforcement later claimed she did not provide the tip and that someone was using her name;
2. Counsel failed to object to hearsay testimony from Victim Maria Davila at page 145, lines 16-22 of the trial transcript (the "Transcript");
3. Counsel failed to object to hearsay statements uttered at page 191, line 25 through page 192, line 9 of the Transcript;
4. Counsel failed to object to Travis Repman's speculative testimony at page 224, line 2 of the Transcript;
5. Counsel failed to object to Travis Repman's bolstering testimony regarding the reliability of the method law enforcement used in presenting the photo lineup to Victim;
6. Counsel failed to object to Joseph Niemiec's hearsay testimony at page 235, lines 1-4 of the Transcript;

7. Counsel allowed Angelica Loaiza to testify via Skype versus requiring her to appear live;
8. Counsel failed to object to Al Hallman's hearsay testimony regarding a fingerprint analysis report prepared by a non-testifying expert witness and
9. Counsel failed to object to the State's bolstering comments regarding the testimony of its expert witness at page 345, line 21 to page 346, line 2 of the Transcript.

At the PCR hearing, PCR counsel also questioned trial counsel about whether he raised a Fourth Amendment issue related to the search of the hotel room. (PCR Tx. 30-33).

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of The Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this

constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984).

To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1 (e), SCRCPP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, the “ultimate focus of inquiry must be on fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record, including the Clerk of Court records regarding the Applicant’s convictions, trial transcript, and transcript from the evidentiary hearing. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof to establish he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80 (2014).

First Allegation: Regarding the Anonymous Tip

Applicant alleges the State failed in its discovery obligations under Brady v. Maryland by not disclosing to Counsel that a witness who supplied an initial anonymous tip to law enforcement later claimed she did not provide the tip and that someone was using her name. At the PCR hearing, Counsel testified the discovery included information that Keyetta Garrett had reported to police that Applicant’s girlfriend “was bragging about this incident in a bar.” Counsel stated he attempted to locate Garrett but was unable, and the solicitor initially told him Garrett was uncooperative and did not provide a written statement. At trial, the solicitor relayed that Garrett did not want to be involved and had indicated someone else provided the tip but used her name. At trial, the alleged

tipster was not on the witness list and did not testify. Further, neither the substance of the tip nor any of the statements made during the tip came in at Applicant's trial.

Post-trial, Counsel made a motion for a new trial saying that he should have been told earlier than trial that the witness had recanted. Counsel testified that the fact the caller recanted and became uncooperative did not impact his trial strategy, but he still made a motion for a new trial on that ground. The motion was denied.

Applicant has failed to show wrongdoing by the solicitor who, Counsel agrees, provided discovery. This allegation was raised under "failing to provide exculpatory evidence." Further, Applicant has shown no prejudice resulted when the witness did not testify at trial and neither the substance nor any of the statements made in the tip came in at trial—especially given that Counsel stated at trial that the fact the caller became uncooperative did not impact his strategy. Thus, this Court finds Counsel was not deficient and Applicant did not prove prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Second Allegation: Counsel failed to object to Hearsay Testimony from Maria Davila

Applicant alleges Counsel was ineffective for failing to object to testimony from the victim, Maria Davila ("Victim"), at page 145, line 16-22 of the Transcript. This testimony concerned Victim's plan to meet someone who wanted to purchase a phone from her. At lines 16-19, Victim testified "I went, and I waited for her. She never showed. She cancelled. ... she told me, her boyfriend was going to meet me." At line 20 she was asked: "So she told you her boyfriend was going to meet you instead of her?", to which Victim responded "Yes".

Counsel testified that he did not object for strategic reasons. The statement was not objectionable because the defense was not disputing what happened in terms of that conversation. Defense's point was that it was a case of mistaken identity: that it was not the Applicant or his

girlfriend that responded or that put up the initial Craigslist ad soliciting a phone. So, Counsel did not find the statement in any way contradictory to his defense at trial.

This Court finds Counsel's testimony on this issue credible. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Third Allegation: Counsel failed to object to Hearsay by Cobb

Applicant alleges Counsel was ineffective for failing to object to testimony from an officer involved in the case, Sergeant Darrin Cobb ("Cobb") at page 191, line 25 through page 192, line 9. The testimony involved what Victim reported to law enforcement about the incident, which was that the person who did the crime had a black handgun and took about \$300 from her, in addition to her telephone and vehicle.

Counsel testified that he did not object for strategic reasons. The statement was not objectionable because Applicant was not disputing these facts. His point was that it was a case of mistaken identity: that it was not Applicant that took Victim's car, phone, and money with a gun.

This Court finds Counsel's testimony on this issue credible. Counsel did not object based on his trial strategy. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Fourth Allegation: Counsel failed to object to Speculative testimony by Repman

Applicant alleges Counsel was ineffective for failing to object to what he calls speculative testimony from an officer involved in the case, Detective Travis Repman (“Repman”) at page 224, line 2. After being directed to the Transcript and reviewing the testimony, Counsel indicated that the statement was the subject of an objection he had already made at trial and been overruled on.

This Court finds Counsel’s testimony on this issue credible. Counsel testified he felt the issue was covered by a previous objection he had made and been overruled on. He further said, “I felt that I’d raised the issue for the Court and the Court had already made its decision.” Therefore, he did not object again on what he saw as the same point. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Fifth Allegation: Counsel failed to object to allegedly bolstering testimony by Repman

Applicant alleges Counsel was ineffective for failing to object to testimony from Repman at page 218, lines 20-21. Repman explained the type of line up used in the case was a “double-blind” lineup, which means “[y]ou have your subject along with five fillers. The photos are presented one-by-one to the witness, or victim in this case. Double-blind means that I don’t know who the person is and obviously they don’t until possibly they see the person in that lineup.” Repman then was asked a follow up question. The question “What is the significance of doing it one at a time?”, was objected to by Counsel and the objection was overruled. Repman then

responded, at lines 20-21, “It’s believed that this is the most reliable false positive way to show a lineup.” It is this statement that is objected to.

Counsel testified that he had objected on this issue and he felt that the statement was covered by his objection. He further noted, “I felt like I had already raised the issue to the Court for the Court’s consideration. And the court had made its ruling; it overruled the objection. And I felt I would have gotten the same response [if I raised the same objection] to these additional questions. Further, there’s an annoyance factor, you potentially annoy the judge and jury [for the same answer].”

This Court finds Counsel’s testimony on this issue credible. Counsel felt the issue was covered by his previous objection, which had just been ruled on, as reflected on line 19 of page 218. The witnesses answer then immediately followed at lines 20-21. Therefore, he did not object again on what he saw as the same point. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Sixth Allegation: Counsel failed to object to Hearsay by Niemiec

Applicant alleges Counsel was ineffective for failing to object to testimony from an officer involved in the case, Sergeant Joseph Niemiec (“Niemiec”) at page 235, lines 1-4 of the Transcript. Counsel testified (and the Transcript reflects at page 234, lines 21-23 and page 235, line 7) that he had already objected to this line of questioning. Counsel testified the Court ruled on his first objection by saying the witness could answer yes or no, but overruled the objection and that the

second objection was sustained. Counsel also testified he did not think the statement he was alleging was hearsay was harmful.

The questions and answers at page 235, lines 1-4 are:

Q: Did she [Candice Singleton] mention she lived alone or with someone?

A: She lived with someone.

Q: And who was that person?

A: Chavias Jenkins [Applicant].

Counsel further indicated that the defense was not disputing a connection between Candace Singleton and Applicant so “although it may be hearsay,” it was not harmful to the case.

This Court finds Counsel’s testimony on this issue credible. Counsel felt that he did object, and a ruling was obtained. Trial strategy did not involve him continuing to object when there was no dispute of any connection between Singleton and Applicant. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement which Counsel indicated was not harmful to the case. Therefore, this allegation must be denied and dismissed with prejudice.

Seventh Allegation: Counsel failed to object to Loaiza testifying via Skype

Applicant alleges Counsel was ineffective by allowing Angelica Loaiza (“Loaiza”), a former crime scene tech with North Charleston Police Department and, at the time of trial, resident of Miami to testify via Skype as opposed to requiring her to appear live.

Counsel testified “I realized that could have been the basis for an objection. However, I felt like this witness was favorable to our defense. A big part of our defense was that the crime

scene had responded immediately. They gathered evidence and specifically fingerprints and none of those matched [Applicant]. So I felt that her testimony was helpful to our [mistaken identity] defense.” He further testified that she was an out-of-state witness that he did not have under subpoena and that he wanted her testimony that in addition to not finding fingerprints of Applicant, they also collected DNA and none of it matched, and that furthered the mistaken identity defense.

This Court finds Counsel’s testimony on this issue credible. Counsel did not object for strategic reasons. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the testimony which did not link back to Applicant. Therefore, this allegation must be denied and dismissed with prejudice.

Eighth Allegation: Counsel failed to object to Hearsay by Hallman

Applicant alleges Counsel was ineffective for failing to object to testimony by Al Hallman (“Hallman”) at page 301, line 12 to page 302, line 8 of the Transcript. Hallman, retired at the time of trial, had worked for the North Charleston Police Department for 27 years and had approximately 18 years’ experience as a forensics investigator and supervisor. At trial Hallman was asked about a fingerprint analysis done by someone else and the resulting conclusion.

Counsel testified that he did not object for strategic reasons. While Counsel knew Hallman was testifying to someone else’s report, he wanted the results of the report in evidence. He noted “While I think it is objectionable, I did not object because it just bolstered the fact that the fingerprints were not matched to [Applicant].” There were six latent prints removed from Victim’s car sent for analysis and Counsel was able to elicit from Hallman and confirm that none of the

fingerprints were a match to Applicant. Counsel indicated that this bolstered his position that there was no direct evidence linking Applicant to the crime.

This Court finds Counsel's testimony on this issue credible. Counsel did not object based on his trial strategy. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Ninth Allegation: Counsel failed to object to allegedly bolstering comments by the State

Applicant alleges Counsel was ineffective for failing to object to allegedly bolstering comments by the State reflected at page 345, line 21 to page 346, line 2 of the Transcript. The comments at issue were made during the State's closing argument, in which the solicitor suggested (at the points cited above) that the jury not place too much emphasis on there not being fingerprints found in the car.

Counsel testified that (1) fingerprints were recovered and the State's analysis revealed they did not match Applicant's; (2) the State's comments were not evidence, it was closing argument; and (3) he did not object because he did not feel the comment was harmful to his case. He further testified that he had objected three times on other issues raised during the State's closing argument, demonstrating his willingness to object to matters in the State's closing argument that he believed merited such action. He considered the contested matter and did not feel he needed to object to the statements.

Counsel testified that he did not object for strategic reasons. The statement was not harmful and did not rise to the level where he felt he needed to object. This Court finds Counsel's testimony

on this issue credible. Counsel has many years of experience in criminal defense law, trying cases to a jury, evaluating the various factors that go into trial strategy, was not opposed to objecting when he felt the need, and did object multiple other times during trial, including three times during the solicitor's closing argument. He did not feel an objection was warranted here. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Tenth Allegation: Counsel failed to object to an allegedly Improper Search

At the PCR hearing, Applicant (through counsel) asked Counsel if he had considered whether the search of the hotel room raised a Fourth Amendment issue. Counsel averred that he did not believe he had standing to raise a Fourth Amendment argument for the room, which was in Singleton's name. (PCR 32). Although he agreed there was evidence that Applicant was also living in the room, he did not recall whether Applicant admitted he lived in the room. He speculated that "an argument could have been made, I suppose, that he had a right to privacy and it was violated because he was living in the room." (PCR 32-33). On cross-examination, he agreed that Singleton allegedly consented to the search of the room. He further testified that Singleton testified at trial that she took law enforcement to the room, where she was staying with Applicant.

This Court finds Applicant failed to prove Counsel was ineffective for not raising a Fourth Amendment search issue. Initially, Singleton testified she took the officers to the room, where she was staying with Applicant. (Tr. 254). Thus, evidence showed that law enforcement had valid consent to search the room. The issue of whether Applicant *also* lived in the room is inapposite

because Singleton—who testified she lived in the room—had authority to consent to the search.¹ See State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999) (providing any person with an equal right to use or occupy property may consent to its search); cf. State v. Laux, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001) (“The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched.”); id. at 377, 544 S.E.2d at 277 (“Whether an individual has actual authority to consent to a search is not, however, necessarily dispositive. In Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990), the United States Supreme Court held a consent to search may be valid if based upon apparent authority.”). Based on Singleton’s testimony, Singleton had apparent and actual authority to consent to the search. Thus, Applicant did not prove Counsel was deficient for failing to challenge the search of the room. Likewise, Applicant did not show it was reasonably likely any evidence would have been suppressed had Counsel challenged the search on this basis. Thus, this claim is denied.

CONCLUSION

After careful consideration of Applicant’s Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys Falk and Weidauer, and the testimony of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant’s requested relief in this matter.

¹ Notably, the only basis the State had for introducing evidence was to *link* Applicant to the room, which was in close proximity to the crime itself.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order by his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 17 day of Jan., 2024.



KRISTI CURTIS
Presiding Judge
Ninth Judicial Circuit



, South Carolina

CDD20130907069 **550**

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013031734

ARREST WARRANT NUMBER

2013A1021001811

DATE OF ARREST

September 17, 2013

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury
Date:

DEC 10 2013

VERDICT

guilty

Forfeiture of Petit Jury

Date:

INDICT

DOCKET NO. **2013GS1007433**

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

CHAVIAS
CHAVIS

JAHMAL JENKINS

DOB: 1985

B/M

Indictment for

Carjacking

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Carjacking

That in Charleston County, South Carolina, on or about September 13, 2013, located at 2357 Aviation Avenue, North Charleston, South Carolina, the Defendant, did take or attempt to take a motor vehicle from the victim, Maria Davila, by force, violence or intimidation while Maria Davila was operating the vehicle or inside of the vehicle; in violation of Section 16-3-1075(B)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013031734

ARREST WARRANT NUMBER

2013A1021001812

DATE OF ARREST

September 17, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 10 2013

VERDICT

guilty

Foreperson of Petit Jury

INDICT

DOCKET NO. 2013GS1007434

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

Chavias
KH

CHAVIS JAHMAL JENKINS

DOB: 1985

B/M

Indictment for

Kidnapping

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

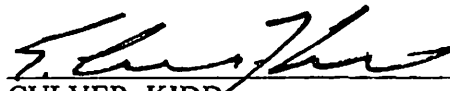
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about September 13, 2013, the Defendant, CHAVIS JAHMAL JENKINS, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Maria Davila, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

CDD2013090554

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013031734

ARREST WARRANT NUMBER

2013A1021001814

DATE OF ARREST

September 17, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 10 2013

VERDICT

guilty

Foreperson of Petit Jury

Date:

8/26/2016

INDICT

DOCKET NO. 2013GS1007436

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

CHAVIS JAHMAL JENKINS

DOB: 1985-

B/M

Indictment for

Possession of a Handgun During the
Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

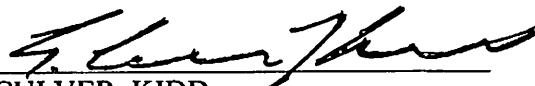
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession of a Handgun During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about September 13, 2013, the Defendant, CHAVIS JAHMAL JENKINS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013031734

ARREST WARRANT NUMBER

2013A1021001813

DATE OF ARREST

September 17, 2013

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury
Date:

DEC 10 2013

VERDICT

guilty

Foreperson of Petit Jury

8/26/2016
Date:

INDICT

DOCKET NO. 2013GS1007435

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

K. Chavis

JEFFREY JAHMAL JENKINS

DOB: 1985

B/M

Indictment for

Armed Robbery

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

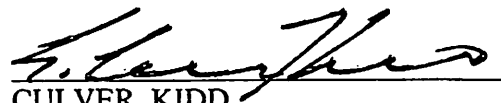
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about September 13, 2013, in Charleston County, South Carolina, located at 2357 Aviation Avenue, North Charleston, South Carolina, the Defendant, Chavis Jahmal Jenkins, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, or while alleging, either by action 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, did take and carry away goods and/or monies from the person or immediate presence of with the intent to permanently deprive the victim of possession thereof; in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

COUNTY OF CHARLESTON
STATE VS.

CHAVIAS JAHMAL JENKINS

AKA: Chavis Jahmal Jenkins, Chavias Jahmal Jenkins

Race: Black/African American

Sex: M

DOB: 1985

SS#

Address: Lindy Creek Road

City, State, Zip: Goose Creek, SC 29445-0000

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Carjacking

In violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Nina L. Sayas, Assistant Solicitor 100888
SC Bar #

Defendant

Luke Malloy 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-10-7434 + 7435 + 7436☒ 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. 972 days☐ The Defendant is to be placed on 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 HearingTotal: \$ 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/Prob) \$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) \$ 3.75TOTAL \$ 128.75INDICTMENT/CASE#: 2013GS1007433
A/W: 2013A1021001811
Date of Offense: 09/13/2013
S.C. Code §: 16-03-1075(B)(1)
CDR Code #: 2599

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk: Christine DaurigCourt Reporter: Sharon VizerPresiding Judge: Judge Code: 215Sentence Date: 8/26/2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.CHAVIAS JAHMAL JENKINSAKA: Chavis Jahmal Jenkins, Chavias Jahmal JenkinsRace: Black/African AmericanDOB: 5SS#: [REDACTED]Sex: MAddress: [REDACTED] dy Creek RoadCity, S: Goose Creek, SC 294DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Nina L. Savas 100888
Nina L. Savas, Assistant Solicitor SC Bar #

Defendant

Luke Mallory 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ 100.00; provided that upon the service of 20 days/months/years and or payment
of \$ 100.00; plus costs and assessments as applicable*; the balance is suspended with probation for 20
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-10-7433 & 7435 & 7436☒ 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. 9-12 days☐ The Defendant is to be placed on 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: \$ 100.00 plus 20% fee: 20.00 \$ 120.0020 days/hours Public Service EmploymentPayment Terms: 20Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. 20May serve W/E beginning 20Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 100.00 Beginning 20\$ 100.00 Paid to Public Defender FundOther: Not a sexual offense
No sexual offender registryRecipient: 20*Fine: 20\$ 20.00

§14-1-206 (Assessments 107.5%)

\$ 20.00

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ 100.00

§56-5-2995 (DUI Assessment)

\$12

\$ 12.00

§56-1-286 (DUI Breath Test)

\$25

\$ 25.00

Proviso 61.6 (Public Def/Prob)

\$500

\$ 500.00

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ 150.00

§50-21-114 (BUI Breath Test Fee)

\$50

\$ 50.00

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ 40.00

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75Clerk of Court/Deputy Clerk: Christine DargyCourt Reporter: Sharon VizerPresiding Judge: [Signature]Judge Code: 2191Sentence Date: 2/20/2016

560
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.

CHAVIAS JAHMAL JENKINS

AKA: Chavis Jahmal Jenkins, Chavias Jahmal Jenkins

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: Andy Creek Road

City, S: Goose Creek, SC 2944

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or

☐ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS

☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted,

☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

_____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Nina L. Savas
Nina L. Savas, Assistant Solicitor

100888

SC Bar #

Defendant

Luke Malloy
Attorney for Defendant

100169

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-10-7433, 7434, + 7435

☒ 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. not applicable

☐ The Defendant is to be placed on 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: Must serve all five years

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/Prob) \$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) \$ \$ _____

TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine Pavy

Court Reporter: Sharon Vizer

Presiding Judge: [Signature]

Judge Code: 4151

Sentence Date: 7/26/2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.CHAVIAS JAHMAL JENKINSAKA: Chavis Jahmal Jenkins, Chavias Jahmal JenkinsRace: Black/African AmericanSex: MDOB: 1985SS#: [REDACTED]Address: Lindy Creek RoadCity: Goose Creek, SC 2944DL# 036SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Armed RobberyIn 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☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nina L. Savas 100888
Nina L. Savas, Assistant Solicitor SC Bar #

Defendant

Luke Malloy 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 25 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2013-GS-10-7433, 7434, 7436☒ 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 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

Total: \$ _____ plus 20% fee: \$ _____

☐ Ordered PTUP _____

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 \$ 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/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk: Christie DawgCourt Reporter: Sharon VizerPresiding Judge: [Signature]Judge Code: 215Sentence Date: 1/26/2016