

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Lexington County

Honorable Kristi F. Curtis, Circuit Court Judge  
—————

NATHANIEL A. HUNTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001611  
—————

APPENDIX  
—————

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1 matters of law outside you're presence. We'll get you out  
2 shortly to continue the morning's work. Please do not  
3 discuss this case among yourselves while you're in the jury  
4 room. Thank you.

5 (Whereupon, the jury retires to the jury room at  
6 11:02 PM.)

7 **THE COURT:** I'll be glad to hear motions under Rule 19  
8 or any other related motions from the defense at this time.  
9 Mr. Phillips.

10 **MR. PHILLIPS:** Thank you, Your Honor. The Defendant  
11 would renew all pre-trial motions, as well as motions and  
12 objections that were made during the State's case during  
13 the trial at this point; specifically renewing the mistrial  
14 motion that occurred during opening statement under --  
15 violating the Defendant's right to a fair trial under the  
16 Fifth and Fourteenth amendments to the United States  
17 Constitution and Article 1, Section 3 of the South Carolina  
18 Constitution.

19 In the opening statement, the solicitor referred to a  
20 timeline of one to five, that they could pin it down to no  
21 phone activity from one to five and that there would be  
22 photographs of Mr. Hunter holding a gun. Your Honor ruled  
23 that that information -- or that evidence, excuse me, is  
24 inadmissible. In finding that the timeline and photographs  
25 were inadmissible and were not presented to the jury is

1 misleading and highly prejudicial to his right to a fair  
2 trial, so we would renew the motion for the mistrial in the  
3 opening.

4       **THE COURT:** All right, sir. Thank you. I'll note  
5 your motions and respectfully overrule them.

6       **MR. PHILLIPS:** Thank you, Your Honor.

7       And -- and we would also renew our motion for a  
8 mistrial regarding the chain of custody and the right  
9 to confrontation under the Sixth Amendment and the  
10 Fourteenth Amendment of the United States Constitution  
11 and Article 1, Section 14 of the South Carolina  
12 Constitution. In referencing State v. Hatcher, the case  
13 law shows essentially that we need to have the chain of  
14 custody as close to practicable and that the buzzwords  
15 were, you know, under the unique factual circumstances of  
16 a case -- of the actual case, and I think this is the  
17 specific case that that would be referring to because this  
18 is a unique case because where the additional chain of  
19 circumstances -- or chain witnesses are critical, in this  
20 case, as Your Honor pointed out, that this case is about  
21 DNA and the dispute from the defense's theory is all about  
22 the collection of the evidence. The State failed to call  
23 Ms. Ottenbacher from the West Columbia Police Department,  
24 who was the evidence custodian, as well as Amy Stephens,  
25 who was the first forensic technician at SLED to receive

1 the evidence, and the prejudice is enhanced because defense  
2 counsel was unable to cross-examine Charles Bramlett, who  
3 was the investigator who collected the evidence, who signed  
4 the search warrant return, who signed the evidence  
5 collection sheet and the chain of custody, who made the  
6 report, all -- which none of it referenced the cap that's  
7 the dispute of the issue.

8 Also, Your Honor, we would renew our objection to the  
9 admissibility of the cell phone extraction report as a  
10 whole. Specifically, the content of the text messages as  
11 being hearsay, as well as excluding some of the web history  
12 and allowing subsequent references of the web sites,  
13 specifically the news web sites that were listed previously  
14 which would limit cross-examination where we would be  
15 forced to open the door on something we've argued would be  
16 entirely inadmissible.

17 Further, Your Honor, just to recap the pretrial  
18 motions, the motion for continuance that the trial was  
19 unconstitutionally called before the Court based on the  
20 holding under State v. Langford, as well as our motion to  
21 suppress all evidence and related testimony to the evidence  
22 collected by Charles Bramlett, and the admission -- or  
23 Defendant's objection to the admission of the Dickerson  
24 Center video interview under the statute; Your Honor,  
25 specifically going to the primary argument that we had

1 regarding under Maryland v. Craig, the contemporaneous  
2 cross-examination and the State not showing that specific  
3 need. And then our very beginning motion for supplemental  
4 voir dire examination. And we would make the motion for a  
5 directed verdict at this time.

6 **THE COURT:** All right. Thank you. Respectfully, the  
7 motions which were cited and which have been earlier argued  
8 and ruled upon, I simply renew my earlier rulings in that  
9 regard. As to the motion for directed verdict, of course,  
10 as we all know that motion is governed by Rule 19 and the  
11 rules of criminal procedure and the case law that is cited  
12 thereunder. First of all, I must take all of the evidence  
13 in the light most favorable to the State and if there is  
14 any direct or -- unfortunately the case law still uses the  
15 word "substantial" circumstantial evidence that tends to  
16 prove the guilt of the accused, then the motion must  
17 respectfully be denied. I find that there is evidence,  
18 both direct and circumstantial, from which the jury could  
19 conclude, if they chose to believe it, the Defendant's  
20 guilt on any or all of the charges, and for that reason I  
21 must respectfully deny the motion for directed verdict at  
22 this time.

23 Mr. Phillips, would you like for me at this time to  
24 inquire of Mr. Hunter his information and knowledge  
25 regarding his right to testify or not to testify?

1           **MR. PHILLIPS:** Yes, Your Honor.

2           **THE COURT:** All right.

3           Mr. Hunter, if you'll stand right where you are,  
4 please, and raise your right hand.

5           (Whereupon, the Defendant, Nathaniel Hunter, was duly  
6 sworn by the Court.)

7           **THE DEFENDANT:** Yes, sir, Your Honor.

8           **THE COURT:** You can be seated.

9           Mr. Hunter, under our law, the United States  
10 Constitution and the South Carolina Constitution, which  
11 has a similar counterpart, the law provides that no  
12 defendant in a criminal proceeding can be compelled or  
13 forced to testify or to testify against himself. That is  
14 a right which the law gives to you. You have the right to  
15 remain silent, in other words. If you choose to exercise  
16 that right, the jury will be told that they cannot use that  
17 fact in their consideration and in their deliberation of  
18 your guilt or your innocence. They will not be allowed  
19 even to discuss that matter in the jury room. You have a  
20 right to remain silent and if you choose to exercise that  
21 right, that cannot and will not be used against you.

22           On the other hand, you have the right to testify and  
23 if you choose to testify, that is if you choose to give up  
24 the right to remain silent and if you choose to testify,  
25 then you'll be subject to the same rules that have governed

1 every other witness that you've seen take the stand during  
2 the course of this trial. Under oath you'll be asked  
3 questions by your attorneys and you'll be cross-examined by  
4 the State's attorneys. You can be impeached on any matter  
5 which is relevant in this particular case.

6 Do you understand the rights that I've explained to  
7 you concerning your right to testify and your right not to  
8 testify?

9 **THE DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Do you have any questions that you want to  
11 ask me about those rights?

12 **THE DEFENDANT:** No, Your Honor.

13 **THE COURT:** So then I take it I can assume that  
14 whether you exercise the right to remain silent or whether  
15 you choose to testify, you're doing that with the full  
16 knowledge of what the rights are and you understand them;  
17 is that right?

18 **THE WITNESS:** Yes, Your Honor.

19 **THE COURT:** All right. Thank you.

20 Mr. Phillips, do you want me to put any more questions  
21 to him?

22 **MR. PHILLIPS:** No, Your Honor, that is sufficient.  
23 And we have discussed it with him. We went through that  
24 colloquy.

25 **THE COURT:** I'm certain that you have. Since you've

1 already discussed it, can you let us know what the decision  
2 is in that regard at this time or do you need more time?

3 **MR. PHILLIPS:** He is not gonna testify, Your Honor.

4 **THE COURT:** All right, sir. Do you anticipate  
5 choosing to introduce any additional evidence?

6 **MR. PHILLIPS:** No, Your Honor.

7 **THE COURT:** All right. Okay. We will bring in the  
8 jury momentarily. That means we've got to do some other  
9 things to get ready. Probably around 11:30. At that point  
10 in time I'll allow you to rest in the presence of the jury  
11 and then we will, if you-all are prepared, to immediately  
12 go to closing arguments. The jury will get their food.  
13 It's gonna be sent in to them today, so they will not  
14 leave. Depending upon the length of your arguments, I may  
15 have to break them and separate them between each other or  
16 I might have to separate them between the arguments and the  
17 charge. That just depends on how long things are taking  
18 and the tolerance of the jury, so let me -- let me explore  
19 those things at this point in time.

20 Ms. Mayes, the State, of course, will open in this  
21 particular case. I realize that you've got to get this  
22 evidence together in some sort of a coherent fashion,  
23 although it's certainly together now as it was yesterday.  
24 About how long do you think the State would take in the  
25 presence of its closing argument?

1           **MS. MAYES:** Less than thirty minutes, Your Honor.

2           **THE COURT:** Thank you. Will you present that  
3 argument?

4           **MS. MAYES:** I will, Your Honor.

5           **THE COURT:** Okay. Mr. Phillips, about how long do you  
6 think it will take the defense in the presentation of its  
7 closing argument?

8           **MR. PHILLIPS:** Ms. Jael Gilreath will be giving the  
9 closing argument in this case and it shouldn't be over  
10 thirty minutes.

11           **THE COURT:** All right. Okay. Good.

12           **MR. PHILLIPS:** And with that, to clarify my  
13 previous -- at the beginning of the trial I was marking a  
14 lot of the exhibits as defense exhibits. In a previous  
15 trial, the judge got onto me for marking a lot of Court's  
16 exhibits without meeting with them first, so a lot of my  
17 pre-trial motions were marked as Defendant exhibits because  
18 I didn't know how Your Honor would do that and I just --  
19 for the record, I've provided all of the exhibits to you.  
20 I just wanted to clear up that because it would look weird,  
21 I know, from the appellate record.

22           **THE COURT:** As long as they're in the record, then  
23 however they're there is good enough.

24           **MR. PHILLIPS:** Thank you.

25           **MS. MAYES:** And, Your Honor, I do need to clarify one

1 matter. As to the Sprint reports, there's testimony in  
2 evidence from the Sprint custodian of records, which is a  
3 completely separate issue, that's the -- that deals with  
4 the search warrants that were issued for any cell tower  
5 activity and any phone activity, so that evidence is  
6 already in the record that there's no cell tower activity  
7 in that timeframe.

8 **THE COURT:** Right.

9 **MS. MAYES:** So that's a separate issue than the phone  
10 extraction.

11 **THE COURT:** Right.

12 **MS. MAYES:** Secondly, we had proposed the photo of  
13 the abrasion on the Defendant's nose. At this time it's  
14 for ID only.

15 **THE COURT:** I'm sorry, say that again. I couldn't  
16 hear the first part of it.

17 **MS. MAYES:** We had originally marked for ID one photo  
18 with an abrasion on the Defendant's nose. I believe  
19 there was an objection. At this time I don't think it's  
20 absolutely crucial to the State's case, so I'm not offering  
21 it. I just want to go ahead and make everyone aware of  
22 that. I know that there's one photo up there that's ID  
23 only.

24 **THE COURT:** All right. And that won't go to the jury  
25 anyway.

1           **MR. PHILLIPS:** Yes, sir.

2           **THE COURT:** All right.

3           Folks, very briefly regarding the charges, I went  
4 over this in somewhat of a superficial fashion yesterday  
5 I will sort of recount. I've got it in something of a  
6 more coherent fashion. My standard charge on reasonable  
7 doubt that I've told you. I will instruct the fact that  
8 the Defendant did not testify. The credibility of the  
9 witnesses. I will leave out the word "truthful evidence"  
10 and talk about true stated facts and I do think at some  
11 point in time the word "true" might slip out, but I'll try  
12 to eliminate that and I certainly don't want to violate  
13 Beatty, but I will use the words "true stated facts".  
14 I'll charge as to expert witness testimony. I'll charge  
15 identification. Of course, the elements of the offenses  
16 themselves from the statute and from the hornbook. I'll  
17 charge circumstantial evidence. I thought I had that one.

18           Are there any exceptions to any of those proposed  
19 charges or requests for additional charges from the State  
20 at this time?

21           **MS. MAYES:** No, sir, Your Honor.

22           **THE COURT:** All right. From the defense?

23           **MR. PHILLIPS:** Just a clarification. I know you said  
24 yesterday you do not include that language that's in the  
25 standard book about refusal to testify.

1           **THE COURT:** No, I don't use refusal or failure. I'm  
2 not sure why they have that heading. It's not really  
3 mentioned in the --

4           **MR. PHILLIPS:** I have an idea.

5           **THE COURT:** What, sir?

6           **MR. PHILLIPS:** Just my commentary.

7           **THE COURT:** Okay. But I don't use it. Thank you.  
8 Here is the -- the verdict form in final fashion for  
9 each of you to look at. You can give it whatever weight  
10 or purpose you want to. You can check it just to make  
11 sure that it's accurate. I recognize that one of you will  
12 object to the word "guilty" and other will object to the  
13 word "not guilty", but those are respectfully overruled.

14           **MR. PHILLIPS:** And as we discussed, Your Honor, this  
15 is a personal preference of mine. With Mr. Hunter being  
16 presumed innocent under the law, we believe that not guilty  
17 should come before guilty; that the first option for the  
18 jury should not be the choice of guilty when you're  
19 presumed innocent. That the burden is on the State.

20           **THE COURT:** Okay. And certainly it is. And the  
21 reason that I use it in that order -- and you can keep that  
22 copy if you want to. The reason that I go in that order is  
23 because that is the order in which I explain reasonable  
24 doubt. Proof beyond a reasonable doubt is proof that  
25 leaves you firmly convinced, et cetera. After considering

1 all of the evidence, if you're firmly convinced then you  
2 would find him guilty. If you think there's a real  
3 possibility, he's not guilty. So to maintain consistency  
4 in the order in which I explain reasonable doubt and burden  
5 of proof, I just use that same order in this fashion as  
6 well.

7 All right, folks. Is ten minutes enough, Ms. Mayes?

8 **MS. MAYES:** Ms. Grigsby is gonna pull some items.

9 **MR. PHILLIPS:** No, Your Honor. I'm glad I did hand  
10 it to Mr. Chehoski. It says charge of murder.

11 **THE COURT:** Well, that's more than a technical thing.  
12 Of all of the things I looked at yesterday, I didn't even  
13 look at that.

14 **MS. MAYES:** Your Honor, we can get with Ms. Usry and  
15 make that correction.

16 **THE COURT:** If you can do that. I thanked her this  
17 morning for that and I thought I caught the only mistake.  
18 That's a pretty big deal. Thank you, folks.

19 **MS. MAYES:** All right. If we can have fifteen  
20 minutes, Your Honor.

21 **THE COURT:** Fifteen minutes. As a former English  
22 teacher, I should have caught that.

23 **MS. MAYES:** And for the record, I do intend to state  
24 that the word "verdict" means to speak the truth.

25 **THE COURT:** Well, that's what they were told by the

1 clerk when they were sworn in, so. Thank you.

2 **MR. PHILLIPS:** And, of course, under Beatty we object  
3 to any verdict seeking any truth.

4 **THE COURT:** Right. I understand.

5 (Recess taken.)

6 **BAILIFF:** All rise.

7 **THE COURT:** All right. Are both sides ready for the  
8 jury?

9 **MS. MAYES:** Yes, sir, Your Honor.

10 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

11 **THE COURT:** The jury will be brought in as I said. I  
12 will allow you to rest in the presence of the jury and then  
13 we'll proceed immediately to closing arguments, okay?

14 Bring in the jury.

15 (Whereupon, the jury returns to the courtroom at  
16 11:45 AM.)

17 **THE COURT:** Ladies and gentlemen, as you know before  
18 I sent you out of the courtroom a while ago, the State had  
19 rested its case in chief. That means you will hear no more  
20 evidence from the State in the presentation of its case.  
21 The Defendant at this point has the opportunity to offer  
22 evidence and testimony, but as you recall from my  
23 introductory remarks he's under no obligation to offer any  
24 testimony in that regard.

25 Mr. Phillips.

1           **MR. PHILLIPS:** The defense would rest at this time.

2           **THE COURT:** Thank you.

3           Ladies and gentlemen, that means that you have now  
4 heard all of the evidence and testimony that you will hear  
5 in the trial of this case. You have yet to hear the final  
6 arguments and the charge on the law, which I will give you  
7 after that has been done. The State through Ms. Mayes will  
8 present the first of the final arguments and when she has  
9 completed presenting the argument on behalf of the State,  
10 Ms. Gilreath, on behalf of the Defendant, Mr. Hunter, will  
11 present their final argument. And after that has been  
12 done, we'll probably send you back for your lunch depending  
13 upon whether it's here or not, and then bring you out for  
14 the charge on the law. That's gonna depend on how long  
15 these things take and when the lunch gets here, but that's  
16 the order of things. After the arguments have been  
17 presented, then I will instruct you as to the law and then  
18 you will be able to go to your jury room to deliberate and  
19 reach a verdict.

20           Thank you so much for your patience and your attention  
21 throughout this trial. You have been very punctual. You  
22 have never made us wait. We have made you wait, but you've  
23 never made us wait, and you've been attentive throughout  
24 this entire process and we appreciate that. I want you to  
25 give that same attention now to the lawyers as they present

1 their final arguments.

2 Ms. Mayes.

3 **MS. MAYES:** May it please the Court?

4 **THE COURT:** Yes, ma'am.

5 **MS. MAYES:** Time will always reveal the truth. No  
6 matter what means he took to conceal it, to flee the scene  
7 and to get rid of evidence, time will always reveal the  
8 truth. In this case, through direct evidence, forensic  
9 evidence, undeniable evidence, undeniable evidence, here  
10 is a story of pure evil and the very opposite of that. A  
11 mother who will lay down her life to protect her child.  
12 A mother who will be shot again and again and again, who  
13 won't be outfought, that won't be overcome, will do  
14 anything on this earth to save her child, refuses to  
15 witness the sexual assault of her child. That's what's  
16 brought us here today. His actions, his choices, his  
17 motivation in the early morning hours of April 13, 2014,  
18 right here in Lexington County, right over there by the  
19 river at Park Place Apartments. His actions brought us  
20 here.

21 In opening arguments you heard one of his defense  
22 attorneys state the Government is on trial. No, the  
23 Government is not on trial. Nathaniel Hunter is on trial.

24 **MS. GILREATH:** Objection, Your Honor.

25 **THE COURT:** That's -- that's appropriate argument. I

1 note your objection, but there's nothing wrong with it.

2 Thank you.

3 **MS. MAYES:** This is the trial of the State of South  
4 Carolina versus Nathaniel Hunter, and right now I want to  
5 lay down exactly how this works. When you commit a crime,  
6 the State has overwhelming evidence of that crime, you're  
7 charged with that crime. The State has a responsibility  
8 to prove that crime, yes. Law enforcement, police, do not  
9 have to spend all of their time, resources and efforts  
10 chasing false leads. If that were the case, no criminals  
11 would ever be arrested and no cases would ever be  
12 prosecuted because they'd still be out there trying to  
13 chase leads about some suspect who's six-foot-one that was  
14 never even in Lexington County by any physical evidence on  
15 that night.

16 Who was in Apartment [REDACTED] that night? Who left their  
17 stocking cap behind when Larenda Simon ripped it from his  
18 head along with that hoodie? That man who sits right  
19 there. That man on trial. That's why he's arrested and  
20 that's what's brought us here today. Evidence lights the  
21 path and the evidence leads us to the truth.

22 So let's look at what we've seen and heard throughout  
23 the course of this trial. Two dozen, twenty-four,  
24 witnesses, but each of them an important piece in the  
25 puzzle. Again, this case isn't just circumstantial

1 evidence. It's forensic evidence, direct evidence, and  
2 evidence even from Larenda Simon. She would never forget  
3 his eyes. When they were fighting over that weapon, she  
4 was close enough to him to get a powder burn to the chest  
5 from that weapon, from the muzzle of that gun that's  
6 flashing, and in the flash of that muzzle over and over  
7 again, yeah, that gun's gonna have a silver gleam to it,  
8 but she's not concerned about looking at the gun, she's  
9 looking at him eye to eye exactly as she stated. And not  
10 one time did he take both of his hands off that gun because  
11 if he had done so I guarantee you she would have got that  
12 weapon from him and she would have called 9-1-1 and said  
13 come quick, I've just killed an intruder, but she didn't  
14 get that chance because he never took both those hands off  
15 that gun. He kept them on that gun and he got out of that  
16 bathroom and he ran for his life knowing he left a living  
17 witness behind.

18 And that sent him into frantic activity over the  
19 course of the following days. His DNA has been in that  
20 database for ten years, since 2004, and now all of a sudden  
21 he is frantic to get it removed. He starts making those  
22 calls on the 16th, the day before his arrest. He's calling  
23 Crystal Owens, he's calling SLED. Hey, take my DNA out of  
24 that database. What in the world? We know what's really  
25 going on here because we've seen his phone searches. He's

1 been on that phone. Right in the midst of those calls to  
2 Crystal Owens and SLED on the 16th, he's doing a search  
3 right here on the 16th at 2:39 PM, right there in the  
4 middle of the day when he's making those calls to those  
5 two that you heard from. He does a search inquiry to Ask  
6 dot com, an Internet site, as Detective Phipps testified  
7 that allows you to enter search queries and get a result.  
8 How long does forensic DNA testing take? How long does it  
9 take?

10 Well, this is about more than just him wanting his  
11 DNA out of that database. What he's really concerned about  
12 is how long it's gonna take SLED to examine that cap that  
13 he left at the crime scene and match it back to him?  
14 That's what he really wants to know, how much time does he  
15 have.

16 And then following that, South Carolina's Most Wanted  
17 Criminals and Fugitives. He's checking the warrant  
18 divisions at numerous law enforcement agencies. Is there  
19 a warrant on him yet? Town of Lexington, Crimestoppers.  
20 Still desperate to get his DNA out of the database because  
21 he's looked it up. This one right here is Rapid DNA  
22 Testing Technology Puts a Faster Finger on Crime. He knows  
23 they can do a rapid DNA test. His days are numbered.

24 So one of the things he starts to do is sell that car.  
25 You've heard from the Carolina Trader representative. On

1 the 17th, he's already trying to get \$10,000 for that car  
2 and he's driving a rental car. In his ad he states car  
3 runs really well, so we know it works. What he's really  
4 worried about? Somebody saw it near the crime scene?  
5 Somebody's gonna link him to that car? He needs the ten  
6 grand to get out of Dodge. He's done everything possible  
7 at this point to dissociate himself with that vehicle.  
8 He's driving a rental car when this officer along with a  
9 SLED agent and a Richland County officer activate their  
10 blue lights because they've traced his phone now, they  
11 know exactly where he is at. He's sitting in an apartment  
12 complex over near 277 in Richland County. And when they  
13 approach that white Versa, activate the blue lights,  
14 what's he do? Takes off running. He hits 277 and heads  
15 towards North Main. That chase extends for well over a  
16 mile before they finally pull him over.

17 That night she yanks this off of him because she won't  
18 let go and he takes off running, it comes straight off of  
19 him. Investigator Neel and Bramlett find this stocking cap  
20 right down in here. It came off with it. The difference  
21 is when he's wearing that hoodie he's got it over clothing,  
22 he's got it over gloves, and let's make no mistake about  
23 this. There is no way, as Larenda testified how prepared  
24 he was, he came in in black, in boots and he's got that  
25 half ski mask over his face, he's got that hoodie pulled

1 down, he's got his dreads most likely tucked down in the  
2 back of one of his shirts. He's well-prepared for this.  
3 Don't think for a minute that he wouldn't come into that  
4 house without gloves on. He absolutely would. Anybody,  
5 anybody, knows about fingerprint evidence. There's no way  
6 he goes to all that effort to conceal his identity and  
7 doesn't have on gloves. Of course, he does. She yanks  
8 that hoodie off. The difference is the hoodie was over  
9 clothing, a barrier, and doesn't leave his DNA behind on  
10 that. This was directly over his head. Skin cells, the  
11 friction, all of those factors that Agent Boehm testified  
12 leads to DNA evidence. All of those factors prove he was  
13 wearing this cap that night.

14 Then he's arrested on the 17th after that stop turns  
15 into a chase and ultimately those SLED agents track him  
16 down. They find this phone on him. The same phone he's  
17 still making all those frantic searches about right up  
18 until the 17th. Guess what else do they find on him?  
19 Does this look familiar? It came directly off his person  
20 the day he was arrested on the 21st, the same identical  
21 stocking cap he's wearing at the crime scene.

22 Take a look at the web history and the searches on  
23 the 17th. Moving now to Columbia Crime Topix, all this  
24 information about DNA testing, U.S. Marshall Service,  
25 Fifteen Most Wanted and Crimestoppers.

1 Knowledge of guilt. I submit there is no other reason  
2 and no other explanation for why he's suddenly so desperate  
3 to get his own DNA out of that database other than he knows  
4 he's left that evidence behind at the crime scene and  
5 they're gonna match it.

6 With that said, let's take a look at the evidence in  
7 this case. The undeniable evidence. We know that he's a  
8 DNA match to the cap from the crime scene. We know that he  
9 has an identical stocking cap on him when he's arrested.  
10 We know that Tanisha Taylor told us, Nish in those phone  
11 records, he gets home around 4 AM after this crime and does  
12 the laundry. The first thing she hears is the laundry  
13 going and when she sees him he's only got on a tank top and  
14 boxers. Again, who is it who would come home at four in  
15 the morning and their first thought is to do the laundry?

16 We see the photos of his injuries. Injuries to the  
17 head, chin, here and the bruise on the shoulder. That's  
18 how Tanisha Taylor finds him on the morning of the 13th.  
19 She'd never seen those injuries on him before. Then  
20 ultimately when he gives statements to law enforcement,  
21 his statements to law enforcement, the very first one, oh,  
22 my cousin did this. You know what's interesting about  
23 Tanisha Taylor? Maybe initially -- maybe initially he's a  
24 cousin, he's blood, maybe she was going to protect him,  
25 maybe she was gonna go forward with this story, but in the

1 end no, Tanisha Taylor, being his family had no inclination  
2 to come into this courtroom and take that stand and testify  
3 against him but for that subpoena. Tanisha Taylor has no  
4 axe to grind with him. She has no motive against him. If  
5 anything, she's protected him. She's apologized to him for  
6 telling the police about his gun, that 40 caliber Glock,  
7 but even Tanisha Taylor takes that stand and testifies  
8 under oath he came in around 4 AM and the first thing she  
9 hears is the laundry machine going. Because that's his  
10 only concern right then is washing his clothes and getting  
11 rid of any evidence and she sees him the next morning, he's  
12 got those injuries all over him. A life and death struggle  
13 led to those injuries.

14 Now let's talk about his second statement to law  
15 enforcement four days later on the 21st. You heard from  
16 Investigator Griffin and Investigator Neel his only concern  
17 in the course of that interview was wanting a deal. He  
18 cited some Richland County unrelated murder case he'd heard  
19 about and he wanted a deal like that guy got as they  
20 stated. That's not their role, they don't cut deals, and  
21 so that ended that.

22 We know from the testimony of Jill Sparks, the  
23 custodian of records for the Sprint corporation, he had no  
24 cell tower activity during the timeframe of this crime. No  
25 ingoing, outgoing calls, no ingoing, outgoing texts. The

1 phone could not be traced by any cell tower. We know as we  
2 see repeatedly through those phone searches and the calls  
3 made to Crystal Owens and Theresa Hines at the State Law  
4 Enforcement Division he's desperate to get his DNA out of  
5 that database and we know from the phone searches exactly  
6 the reason why. He's scared. He's most wanted. And,  
7 yeah, he's looking at different agencies because the tricky  
8 thing about Park Place Apartments is it sits right there by  
9 the river. The average citizen who lives in Richland  
10 County isn't gonna know whose jurisdiction that is. Is it  
11 Town of Lexington? Is it Columbia? It is Richland County?  
12 Surprise. It's West Columbia.

13 I want to address the law because the law is actually  
14 the most simple aspect of this case as Your Honor will  
15 charge you momentarily. The first charge before you is  
16 the charge of attempted murder. Attempted murder is an  
17 attempt to kill another person with malice aforethought,  
18 whether express or implied. The action occurs with the  
19 intent to kill. What's significant about this charge is  
20 the testimony that you heard from Larenda Simon herself.  
21 His words to her "I'm gonna kill you" as he's firing that  
22 weapon. That is evidence of express malice. Hatred, ill  
23 will towards another, that's malice. It doesn't have to  
24 be premeditated. It doesn't have to be thought out or  
25 planned. Even if his original intent when he broke into

1 her home was to rape her or rape -- we know, rape MINOR ,  
2 the act of shooting her doesn't have to be premeditated.  
3 There only needs to be malice aforethought that comes with  
4 the act. It can be immediately preceding the act. At the  
5 point he pulls that trigger the first time he has malice in  
6 his heart, it's malice aforethought, but he doesn't just  
7 pull the trigger one time. He pulls it at least five times  
8 and we know we've got five casings from that residence  
9 starting in the bedroom where the first shot was fired  
10 and the rest of the shots fired in that bathroom. That's  
11 proof beyond a reasonable doubt of malice aforethought and  
12 attempted murder. The fact that she survived at all is  
13 miraculous, beyond the comprehension of anyone here.

14 Burglary in the first degree. The way the South  
15 Carolina statute is written, one enters a dwelling without  
16 consent, and we know he did not have consent, and with the  
17 intent to commit a crime in the dwelling. There's no  
18 question he intended to commit a crime in there. Why else  
19 did he break in in the first place in disguise? When, in  
20 effecting entry or while in the dwelling or in immediate  
21 flight. It could be any of these things. Here it's all of  
22 them. It can be that he's armed with a deadly weapon or  
23 causes physical injury or uses or threatens the use of a  
24 dangerous instrument or displays what appears to be a  
25 knife, pistol, revolver or other firearm, or the entering

1 or remaining occurs in the nighttime. What's significant  
2 about this case? We only have to prove one of these. Here  
3 he's done them all. Proof beyond a reasonable doubt of  
4 burglary in the first degree.

5 Finally, criminal sexual conduct with a minor in the  
6 third degree. What's it mean? It means exactly what you  
7 think it does. It's when someone has lewd intent involving  
8 a child. The elements are that the Defendant is over the  
9 age of fourteen. We know and have proven that he is.  
10 Next, that he willfully and lewdly commits or attempts a  
11 lewd or lascivious act upon or with a body or its parts.  
12 We know from witnesses and from Colleen Belk with the West  
13 Columbia Police Department that the child was found nude  
14 but for this robe that Tiffany Green, the neighbor, put on  
15 her when she got there naked and she explained she didn't  
16 want to her children to see **MINOR** naked.

17 We know how this started out. Larenda and **MINOR**  
18 right there on the bed together. He has Larenda remove  
19 her underwear. She's on her period. He orders **MINOR** to  
20 take off her clothing and she does so right here on the  
21 floor by that bed. And you know that forensic interview  
22 of the six-year-old that you saw, it's real hard to have  
23 a conversation like this with a six-year-old I submit  
24 forty-eight hours after all this happened, her mom in the  
25 hospital. You saw the innocence. She's not even aware of

1 what he was doing or why he was doing it. What she said  
2 was he wanted her to do exactly like my momma did, wanted  
3 me to do the same thing my momma did, to take off her  
4 clothes. And you heard her testimony, now a nine-year-old.  
5 What does she remember about that night? Just drama and  
6 chaos and the sound of that gun going off, her momma  
7 bleeding on the floor. She saw a masked man with a hat  
8 pulled down fleeing while she's still in the bedroom.  
9 There's no way that child could ever recognize that person  
10 if she ever saw him again. The lights had been shot out,  
11 that breaker box. The person who would know him if she  
12 saw him again is the person that looked him dead the eye,  
13 Larenda Simon. Noticed the look in his eye, the sound of  
14 his voice.

15 One thing **MINOR** did remember is that gun was black.  
16 The same black 40 caliber Glock that Tanisha Taylor told  
17 the police he had when they first came and interviewed her  
18 on the 21st, that same black Glock that he had gotten rid  
19 of by the time they searched her apartment. And I submit  
20 to you the very first thing he did was get rid of Larenda  
21 Simon's phone and that Glock because those are the two  
22 things he can't be caught with. So we can go around and  
23 around and around about whatever happened to Larenda  
24 Simon's phone, but at the end of the day it's probably at  
25 the bottom of the river with that Glock. So when you look

1 at this crime, the law does not require that he ever lay a  
2 hand on that child. The attempt of the lewd and lascivious  
3 act under our law is the same as if it's fully committed  
4 with the intent of a sexual nature. That crime has been  
5 proven beyond a reasonable doubt.

6 When we talk about reasonable doubt, as Your Honor  
7 will charge you momentarily, it doesn't mean we have to  
8 come in here and discount every single scenario out there.  
9 Proof beyond a reasonable doubt is proof that leaves you  
10 firmly convinced of his guilt. Proof of his DNA at the  
11 crime scene, proof of his own knowledge of his guilt in  
12 all of his actions that he took thereafter. That's proof  
13 beyond a reasonable doubt. It doesn't mean that we have  
14 to track down every baby-sitter, every house guest, every  
15 plumber, every maintenance man that's ever been in that  
16 house to account for every print. As I said before,  
17 there's no doubt whatsoever he went in that house with  
18 gloves on. That's another false lead, that's another false  
19 trail. The great thing about being members of the jury is  
20 that you don't have to leave your common sense at home.  
21 The same common sense that you use every single day at your  
22 job and in your daily life. You get to take that back in  
23 the jury room with you. You know what's real and you know  
24 what makes sense.

25 You have before you the most noble of opportunities

1 to deliver a verdict that speaks the truth, a verdict that  
2 is fair and just and in accordance with the law. A verdict  
3 that's based on the evidence and the proof that's been  
4 demonstrated abundantly to you. And the chance to send a  
5 message to this Defendant, Nathaniel Hunter, if you commit  
6 this crime, attempt to murder a mother and leave her child  
7 orphaned, you attempt to rape that child and you come into  
8 someone's home in the middle of the night armed, you will  
9 meet justice. That crime will not go unpunished. Not  
10 anyway. Not here in Lexington County. I submit to you  
11 the correct verdict is the verdict of guilty of burglary,  
12 guilty of sexual conduct with a minor and is guilty of  
13 attempted murder. Thank you.

14 **THE COURT:** Thank you, Ms. Mayes.

15 Ms. Gilreath.

16 **MS. GILREATH:** Ladies and gentlemen, this case is  
17 about a nightmare, of a nightmare that came true. It's  
18 a nightmare a lot of people have and we're not here to  
19 discount that or minimize that or make it sound like  
20 something terrible didn't happen. You've clearly seen  
21 that -- that Ms. Simon was shot. There was a lot blood.  
22 It was a bad situation. We're not here to discount that  
23 at all, but we're here to remind you that there's another  
24 nightmare at stake here and that nightmare is the reason  
25 that you're here. Being accused of committing what

1 happened to Ms. Simon, being a part of that nightmare,  
2 that's a nightmare in and of itself. To have the  
3 Government with all their resources and all their power  
4 coming against you, saying that you did this, that's a  
5 nightmare. If you didn't do it, that's a nightmare, and  
6 that's why you're here.

7 The solicitor mentioned earlier that -- she referenced  
8 when Mr. Phillips told you guys on Monday that the State is  
9 also on trial here, the Government is also on trial here,  
10 and she said no, it's not. That's not true. It is because  
11 the State has to prove its case beyond a reasonable doubt.  
12 That's what's required. The system that was set up by the  
13 founders of this country and the Constitution to protect  
14 its citizens from overreach by the Government from creating  
15 this second nightmare, that's this. They put this system  
16 in place, they put you in place, and that's what your role  
17 is here.

18 Whenever we talk about these protections that are put  
19 into place to protect us, in this context, in the context  
20 of this nightmare, we're talking about the presumption of  
21 innocence. And at this point Mr. Hunter is still presumed  
22 innocent. He is still presumed innocent. This trial's not  
23 over, your job's not done yet, and that's what you're here  
24 for.

25 When we're talking about this presumption of

1 innocence, we drove this around a lot and I think it's  
2 something that kind of gets tossed around, loses a little  
3 bit of its meaning. I like to think of the presumption of  
4 evidence as a wall. As a big brick wall that was put in  
5 place to protect us. And when we talk about the State  
6 meeting its burden and proving beyond a reasonable doubt,  
7 we're talking about having to bust through the wall, to  
8 tear down all the bricks. Each brick in the wall is a  
9 piece of reasonable doubt. And if the State can't remove  
10 all of it, they haven't met their burden, and that's what  
11 you're here for.

12 Now how do they go about doing that? How do they go  
13 about tearing down this wall? Every case is different in  
14 terms of what reasonable doubt is, so first we have to  
15 talk about what those bricks are. What are the bricks of  
16 reasonable doubt in this case? It's gonna be different.  
17 It's gonna be different in every case. In this case, we've  
18 got a lot of testimony and we've got a lot of evidence, and  
19 the reasonable doubt is before you. The reasonable doubt  
20 has already been put in front of you, so what we're gonna  
21 talk about is how it constructs this wall and how the State  
22 has not met their burden of having to tear down this wall  
23 to prove their case to you.

24 So in this case, we'll just start -- start from the  
25 beginning. What are the bricks? What's the reasonable

1 doubt that we have? Ms. Simon told you that it was dark,  
2 it was nighttime, she was in bed, she was asleep. When she  
3 woke up and opened her eyes, it was dark. There weren't  
4 any lights on. From that point forward there weren't any  
5 lights on at any point in time. She said that. It's dark.  
6 Now there was talk about there being streetlights outside  
7 of the apartment complex in the bedroom and the amount of  
8 light that that would create. Now they're talking about  
9 the amount of light that that would create. After law  
10 enforcement responded to the scene, they told you that they  
11 waited until it was light outside to start taking pictures,  
12 to start collecting evidence. And you heard from Ms. Simon  
13 that there were blinds. I'm not sure -- there's a little  
14 bitty hole right there, but the first thing she said was it  
15 was dark. In the middle of the night, this is -- this  
16 picture, they told you this was taken after the sun had  
17 come out. This was during the day. This was not how much  
18 light would have been in that room. She told you it was  
19 dark. She told you that she only saw his eyes. That was  
20 it. His eyes. She said that the mask was never down, the  
21 hoodie wasn't off. She couldn't see anything about his  
22 eyes. She also told you that it was a struggle. That they  
23 were wrestling around for this gun. She wouldn't let him  
24 go. You can see from the pictures, from the walls, from  
25 the floor where all the blood is. This wasn't just a

1 standing still, eye to eye, back and forth. That's not  
2 what happened. That's not what she said happened. So to  
3 say that from this, being able to see in the dark only this  
4 person's eyes three years later, that's reasonable doubt.  
5 And during this time, even after the police arrested  
6 Mr. Hunter, they never gave her a photo lineup. They never  
7 asked can you identify him. I would submit probably  
8 because they didn't think that she could. Why would they  
9 submit a photo lineup to her if they're not sure she could  
10 identify him? If they had done that in 2014, back when he  
11 was arrested, wouldn't she have been able to identify his  
12 eyes then? If they had thought she could, wouldn't they  
13 have done that?

14 Now you also heard testimony that while she was at the  
15 hospital speaking with Investigator Griffin that she said  
16 that she thought she had heard this voice before. There  
17 was also information from another officer that said the  
18 voice had sounded familiar to her. Well, you've also heard  
19 testimony from her and a number of other people that no  
20 connection was ever made between her and Mr. Hunter. She  
21 also said that this person had a mask over his face the  
22 entire time. So she's hearing this voice that sounds  
23 familiar through this mask and now she's telling you that  
24 three years later the voice that she heard through the  
25 mask that sounded familiar at the time, but she didn't

1 know Mr. Hunter, so we know his voice wouldn't have been  
2 familiar to her, she's gonna tell you now that that  
3 familiar voice is someone that she still says she never  
4 met.

5         And we also know that after he was arrested they never  
6 obtained a recording of any of his statements. We know  
7 that. They did for everybody else. Everyone else they  
8 took statements from. Tanisha Taylor, Larenda Simon, they  
9 recorded theirs, but they didn't record his. If they had,  
10 they could have played it for her sometime in the past  
11 three years. I think it's common knowledge that memories  
12 get worse over time. You're more likely to remember  
13 something better closer to the time it happened. Why  
14 wouldn't they have recorded something and said if you  
15 heard his voice that many times, can't you identify it?  
16 So within the past three years they didn't -- they didn't  
17 bother to do that. Why? Again, they don't think that she  
18 can. Why would they do it? And, again, we had two times  
19 that there was information given that the voice had sounded  
20 familiar. You heard it once on the tape and you know that  
21 Investigator Griffin received that information through  
22 another officer, which means it had been said another time.  
23 It was confirmed. The voice sounded familiar.

24         Now another thing that we know happened, we know that  
25 the person that came into Larenda Simon's house took her

1 phone. We also know that law enforcement had the ability  
2 to track that phone, that they told her that they were  
3 tracking that phone, and they didn't bother to do it. We  
4 know that when they decided they were going after  
5 Mr. Hunter they did track his phone and they got him  
6 immediately. If they had done that here, they could have  
7 gotten him immediately. Maybe before as the solicitor  
8 said it might have been discarded. Who know when it was  
9 discarded. They never tracked it to see. For all we know  
10 at this point it could still be in use somewhere and they  
11 might still be able to track it. There's no way to know  
12 because they didn't follow up on it. That's reasonable  
13 doubt.

14 We also know from Larenda Simon that the person that  
15 came into her house was wearing boots. You've been here  
16 all week, you've seen all of this evidence that's been  
17 presented to you. Not one boot. Not a single one. Not  
18 a picture of a boot print, a bloody boot print, not a  
19 picture of a pair of boots that were found at Tanisha  
20 Taylor's house where Mr. Hunter was living, at his mother's  
21 house, in the cars. No boots. None. If they had found  
22 these boots surely with all this blood that's all over the  
23 floor that would have been on there. They could have  
24 identified these boots, said the person that has these  
25 boots, the person wearing these boots, that's probably our

1 guy. Because if it had Larenda Simon's blood on it and it  
2 was being worn by someone else, it's entirely possible that  
3 would have had both DNA -- both of their DNA.

4 Now I've already mentioned this before, but during  
5 the course of all of this there was some mention about  
6 apartment complexes and where one or the other had lived  
7 at different times and you heard that that was four years  
8 apart. Mr. Hunter may have -- he lived over in the West  
9 Columbia area four years prior to this. What's the  
10 connection there? There's four years in between that.  
11 I'm gonna ask you to also use your common sense just like  
12 the solicitor did. We're talking about a distance of  
13 four years. It just doesn't make sense.

14 Now there's also been talk about the gun, the  
15 appearance of the gun, and you heard Larenda Simon say  
16 twice, once in the statement that was given to Investigator  
17 Griffin and once on the stand, that the gun was silver.  
18 She didn't say that it had a flash of silver or a gleam of  
19 silver. She said the gun was silver. She said it twice.  
20 Three years later she's still telling you the gun was  
21 silver.

22 Now let's talk about **MINOR**. She's young. No one  
23 should ever have to go through this, much less a young  
24 child, but there were a couple of things that she said that  
25 were important. She told you that at one point the mask

1 was down. Larenda told you it was never down. She was  
2 never able to see any of the face. She said that mask was  
3 down at one point. That's -- that's a little bit different  
4 than it being up the whole time and if the mask was down  
5 and they're telling you that the hoodie was ripped off and  
6 snatched off of him, isn't there a little bit more that we  
7 would have known about that? She also said that it was a  
8 black gun. She said that twice. She said it was a black  
9 gun here today, she said that at the Dickerson Center.  
10 And, ladies and gentlemen, this goes back to it being dark.  
11 We've got two people who are able to see what happened and  
12 in this darkness they saw something different.

13 Now let's talk about Tanisha Taylor. I believe that  
14 the prosecutor said that Tanisha said she heard him come  
15 in. What she didn't do was ever see him leave. What she  
16 heard was him in her bedroom. She never saw him leave the  
17 house. When she went to bed, as far as she knew she told  
18 you he was at the house. She never heard him leave the  
19 house just so it's clear. She had no reason to think that  
20 he had ever left the house.

21 So at this point as far as we know Mr. Hunter's at  
22 home. You heard that that's fifteen miles away on the  
23 other side of Columbia, not in West Columbia, and the last  
24 Ms. Taylor had seen of him he was at home. Nobody ever  
25 heard or saw him leave.

1           Now there was talk about her talking about the gun  
2 and the Glock and if you listened carefully you heard that  
3 she said I think. I think it was a Glock, I think it was  
4 a Glock 40. She didn't distinguish between the different  
5 types of Glock 40's, whether it's a long barrel or a short  
6 barrel or a medium barrel. She didn't distinguish between  
7 any of that. She didn't tell you when was the last time  
8 she saw it. She also told you that when she did see it,  
9 when she did know that it was there, whenever it was there,  
10 it was kept in her bedroom in a case beside her bed. So  
11 the prosecutor would like you to believe that Ms. Taylor is  
12 saying she thinks he may have had at some point a Glock 40  
13 that we still don't know exactly what kind that might have  
14 been that she kept in her bedroom beside her bed that  
15 that's proof that he had it on this day at this time.  
16 There's no connection there.

17           We also have to talk about she talks about hearing him  
18 in there and then she hears the washing machine going, she  
19 hears something in the bathroom, and what does she say?  
20 She said I didn't think much about it. She didn't think  
21 much about it. It's not unusual. She didn't think much  
22 about it. This wasn't something that was weird and out of  
23 the ordinary. She just happened to wake up and hear it.  
24 She told you that nothing really raised any kind of a red  
25 flag for her. The next time she saw him she said it wasn't

1 unusual for him to be up late at home, nothing weird about  
2 that, nothing weird about him to her, the person who lives  
3 with him, the person who knows him best out of anybody  
4 that's testified here.

5         And when we start talking about the cut and how the  
6 cut came to be, if you noticed there were a couple of  
7 different stories about how that story came out, whether it  
8 was Mr. Hunter that told the -- I guess, his niece, her  
9 daughter, whether it was her that told the daughter. That  
10 story changed a couple of times. The last one, the one  
11 that was written in the letter that she read from that she  
12 confirmed that she had written said that her words were  
13 twisted. So even the words that she said that they're  
14 trying to use against him she herself says were twisted.  
15 She says she never said that you came home again. She just  
16 hears him up and doesn't think there's anything unusual  
17 about that. It's not like he never washed late at night.  
18 Different people have different habits. Apparently he had  
19 one of washing late at night. Why else would she have said  
20 this?

21         **MS. MAYES:** Objection, Your Honor. Arguing evidence  
22 not in the record.

23         **THE COURT:** I'll sustain the objection. It assumes  
24 facts that are not in evidence. Thank you.

25         **MS. GILREATH:** Ladies and gentlemen, she read from the

1 letter "it's not like you never wash late at night". She  
2 said it's not unusual for him to be up late at home, she  
3 didn't think much about it, and some of her words were  
4 twisted. And then what did she do? She said I'm sorry for  
5 hurting you by my stupidity.

6       Sometimes there are a lot of layers to these walls.  
7 There are a lot of bricks of reasonable doubt that are  
8 associated with the same thing. Let's talk about what she  
9 didn't see. She never saw any bloody clothes, she never  
10 saw any bloody footprints, she said she saw him in a tank  
11 top and boxers when he came in -- when he was in there.  
12 They weren't bloody. She said she never saw him cleaning  
13 the floor, never saw him cleaning blood off of anything,  
14 didn't see blood all over him, all over his clothes,  
15 there's no blood in the laundry room where the washing  
16 machine was. She never testified there was any of that.  
17 And when she was asked she said she didn't see anything  
18 that made her think something bad had happened.

19       Investigator Griffin, he was the one who testified  
20 about several things. He testified about speaking with  
21 Larenda Simon in the beginning and what did he do? He  
22 recorded it. He recorded her statement. He has a  
23 recording device that's issued to him to record statements,  
24 conversations, whatever you want to call it, to record  
25 them when he wants to, when he decides that it should be

1 recorded. He recorded hers, he recorded Tanisha Taylor's.  
2 Notice whose statement he didn't record? Nathaniel  
3 Hunter's. Why? Why did he say that? He said because --  
4 it was because he was not confessing. In fact, I believe  
5 his words were that he does not let someone give a written  
6 or recorded statement unless they are confessing. And he  
7 didn't record Nathaniel Hunter's statements. He wants you  
8 to believe that he goes in asking about a deal and all the  
9 other things that they said. That would seem pretty  
10 damning if they were said and if they're that damning, why  
11 wouldn't you want them recorded? You're gonna come tell  
12 everybody about them here, why not let everybody hear it  
13 from his mouth so that there's no question, no question  
14 whatsoever? We know that Investigator Griffin also had  
15 information that the person who did this, the person who  
16 went into Larenda Simon's house, was light-skinned. You've  
17 seen the booking photos of Mr. Hunter. You'll have them  
18 -- you'll have them with you there. I'll spare you my  
19 digging through to try to find them. You'll have them and  
20 you can see them sitting right there. They said he was  
21 light-skinned. If you remember, that was also what **MINOR**  
22 said in her statement at the Dickerson Center. She said  
23 he was light-skinned.

24 They knew that the church across the street, the  
25 church that was pointed to you on the map that was just

1 right across the street from this apartment complex, knew  
2 that it had video, they never went and watched it. What  
3 if he had watched that video and he'd seen a 1968 Buick  
4 Skylark? What if he'd watched that video and seen someone  
5 running through the parking lot bloody, throwing off a  
6 mask, whatever? Wouldn't we have more information than we  
7 do now? He didn't even bother to follow up on it. He did  
8 watch a gas station video and Mr. Hunter wasn't on that.  
9 Again, he never tracked Ms. Simon's cell phone. He knew --  
10 he knew that it had been taken by the person -- the actual  
11 person who did this and if he had tracked it as quick as  
12 he tracked Mr. Hunter's phone when he wanted to track him  
13 down, he would have gotten him. That was a conscious  
14 decision that was made. You saw that he said in his notes  
15 that he contacted SLED and then he never followed up. He  
16 never made it happen.

17 Now they also talked about that Ms. Simon was a  
18 cabdriver. Nobody has bothered to do anything with that,  
19 nobody bothered to try to follow up or get any records to  
20 see whether there was anyone interesting that might have  
21 ridden in a cab with her recently that lived in the area,  
22 whatever. They didn't follow up on it. And in all the  
23 time that was spent talking to Ms. Simon they didn't scrape  
24 under her fingernails for DNA. She told them about this  
25 struggle, this violent struggle, and how she never took her

1 hands off of him. You know that they're saying that  
2 there's scratches on Mr. Hunter's forehead and that they're  
3 trying to say that that's what this would have come from.  
4 Well, if that's what they really thought, shouldn't they  
5 have scraped under her fingernails? Wouldn't that have  
6 told us for sure? If his DNA had been under her  
7 fingernails, wouldn't that have told us? They didn't do  
8 that.

9 Investigator Neel. He testified that he and  
10 Mr. Bramlett when they were collecting the evidence that  
11 they were meticulous, they were thorough, they left no  
12 stone unturned. His words from the stand this week.  
13 Meticulous, thorough, no stone unturned. And he took  
14 pictures. He said that he took pictures of everything  
15 -- that they took pictures of everything, him and  
16 Investigator Bramlett, that they took pictures of  
17 everything. We know that's not true, don't we? We know  
18 that there's one thing they did not take a photo of, that  
19 they did not take a photo of at the scene to show where  
20 this was found, what it was in, if it was there, and that  
21 thing is the one and only link to Nathaniel Hunter. And  
22 that's important because there's three things that make up  
23 the cornerstone of this wall, and this is one of them.  
24 Where did they get it? It didn't show up in a report until  
25 over twenty-four hours later and it wasn't even logged in

1 by them, it was logged in by somebody who didn't even come  
2 to the stand and testify. Why didn't they want you to hear  
3 from her? If that's somebody who handled it and could have  
4 confirmed, yes, that's where that came from, why didn't  
5 they call her to the stand? Why didn't we hear from her?  
6 It didn't show up in a report from anyone who was said to  
7 be involved in collecting it until much later. I believe  
8 it was the 28th of April, this happened on the 13th, so  
9 we're talking fifteen days before it ever shows up. It's  
10 not in the returns of the search warrant that's got to be  
11 sent back with the list of everything collected immediately  
12 after. They're supposed to catalog everything. You heard  
13 them say that they're very careful to list every single  
14 thing. But it wasn't there. It wasn't in the initial  
15 report saying what they found. And when asked where it was  
16 found, Investigator Neel, he started out saying I believe  
17 it was found and the next time it was followed up he said I  
18 guess it was found and then finally Mr. Phillips asked him  
19 do you know --

20 **MS. MAYES:** Objection to the mischaracterization of  
21 testimony, Your Honor.

22 **THE COURT:** The jury will recall the testimony and  
23 they'll go by what they heard. Thank you.

24 **MS. GILREATH:** When he was finally asked by  
25 Mr. Phillips do you know, he specifically said the words

1 "I don't know". And this is key. This is one of the  
2 building blocks of this wall for this case. The one and  
3 only link that they're saying puts Mr. Hunter here. Not  
4 one of these other things do. So it's important that it  
5 was not in the search warrant return that had the list of  
6 the evidence collected. It wasn't in the report that was  
7 done later by the person who was said to have found it.  
8 And if they did find it, whether it was there, whether it  
9 was later, they didn't take any pictures of it. You didn't  
10 have a way to see it until they pulled something out here  
11 today. They took photos of everything else. We have  
12 photos of every area of this room. We have photos of every  
13 part of this bathroom. They took photos of the hoodie and  
14 they say this is where this was found. No photo of it.  
15 Why? If this is the key piece of evidence here, if they  
16 think this was being worn by the person who did this,  
17 wouldn't you want to document it, take a picture of it,  
18 make sure we know exactly where it was found so that three  
19 years later when somebody has to tell you where it was  
20 found we don't have to wonder, we don't have to say I guess  
21 or I don't know. If you had a picture, if you had it in a  
22 return to a search warrant, you would be more confident  
23 about that.

24 Now Investigator Neel also told you that they would  
25 have looked for hair. When asked if there was any hair, he

1 said no. He also said that there were prints, that there  
2 were fingerprints, palm prints, that actually were taken  
3 and were collected.

4 Mr. Phillips mentioned at the beginning of the week  
5 that there's two ways that the State can present its case.  
6 They can present you with everything or they can present  
7 you with what they want you to hear and it's up to you to  
8 determine which kind of case they presented because that's  
9 important here. What didn't they show you? Where are the  
10 prints? Why aren't those here? Is it because they don't  
11 match Mr. Hunter? They might be of someone else?

12 When they did a search warrant -- when Investigator  
13 Neel executed the search warrant and searched at Tanisha  
14 Taylor's house, they didn't take any photos there. They  
15 didn't take any photos of Mr. Hunter's mom's house when  
16 they searched that. And what do we know about that? When  
17 they don't take photos, when they don't record statements,  
18 it's because it doesn't link it back to this. They don't  
19 want it. When they searched Tanisha Taylor's house where  
20 Mr. Hunter was living, where Ms. Taylor said that he was in  
21 the laundry room, in the bathroom that night, they didn't  
22 find any bloody clothes, they didn't find any bloody boot  
23 prints, they didn't find any boots, they didn't find any  
24 splatters of blood, they didn't find Ms. Taylor's {sic}  
25 phone and they didn't find the gun. The same thing when

1 they searched Mr. Hunter's mom's house. They didn't find  
2 any clothes, they didn't find any blood, they didn't find  
3 any boots, no bloody boot prints, no phone, they didn't  
4 find a gun.

5 Now there's been a lot of talk about the car that  
6 Mr. Hunter -- that they said he was trying to sell, that  
7 Buick Skylark. They showed you pictures of it and you can  
8 see from the pictures that you will have with you when  
9 you're considering this case this picture that they're  
10 making such a big deal about him trying to sell using words  
11 and phrases that were told to you from the stand were  
12 perfectly normal, perfectly normal words to use if you're  
13 trying to sell a car. When they searched that, they didn't  
14 find any bloody clothes, they didn't find any bloody boot  
15 prints, they didn't find blood, they didn't find boots,  
16 they didn't find a phone that belonged to Ms. Taylor -- or  
17 Ms. Simon, they didn't find a gun. So any of the places  
18 that they searched that were Mr. Hunter's property, where  
19 he lived, what he drove, what he was in when they arrested  
20 him, the Nissan Versa, they didn't find anything. Nothing.  
21 They didn't find any bloodstains on the seats of any of the  
22 cars, they didn't find any bloody footprints or boot prints  
23 in the floorboard of the cars, they didn't find any bloody  
24 clothes, they didn't find anything from Ms. Simon's house.

25 Now they -- we mentioned earlier that Investigator

1 Neel told you they didn't find any hair. You've seen the  
2 photos, the booking photos, of Mr. Hunter back at the time  
3 he was arrested. You can see him sitting here today. You  
4 can see that at that time just like now he had very long  
5 dreads. Now the State talked about the hoodie getting  
6 ripped off and the cap getting ripped off of his head.  
7 Where's the hair? There was no hair of Mr. Hunter's found  
8 at the scene, no hair of Mr. Hunter's found in the hoodie  
9 and none found in the cap.

10 **MS. MAYES:** Objection, Your Honor.  
11 Mischaracterization of testimony.

12 **MS. GILREATH:** Your Honor, I believe that was  
13 something that was covered as to whether there was hair  
14 found in the cap.

15 **MS. MAYES:** And the SLED agent testified that there  
16 was and it was tested.

17 **THE COURT:** There was --

18 **MS. GILREATH:** Of Mr. Hunter's. There was no hair  
19 that was identified to Mr. Hunter.

20 **MS. MAYES:** No hair identified to anyone.

21 **THE COURT:** That's right. There was nothing that was  
22 identified. I don't think the testimony was that there was  
23 no hair.

24 **MS. GILREATH:** So Investigator Neel tells you there's  
25 no hair and you find out from the SLED agent there was

1 hair. They couldn't identify it to anybody, so they didn't  
2 show it to you to show that there was hair there, they just  
3 couldn't pin it to him.

4 And just like Investigator Griffin, he didn't -- even  
5 though he also interviewed Mr. Hunter, he didn't bother to  
6 record it, he didn't bother to take the audio and play it  
7 for Ms. Simon to see if she could identify it, didn't show  
8 him in a photo lineup. You have all these investigators  
9 and not once over the course of three years do they go show  
10 a photo lineup. Why?

11 And I keep mentioning them not recording his  
12 statements because that's your third pillar of this case.  
13 You've got the one link to him, the only thing that links  
14 him to the scene and the testimony in the State's case is  
15 this cap, and we've got nothing telling us where it was  
16 originally found. No photos. No one that can say for sure  
17 the moment it was seen, the moment it was pulled from the  
18 hoodie or pulled from the floor, wherever it came from, you  
19 don't have anyone that can tell you that. They didn't  
20 provide you with testimony of anyone who could tell you,  
21 yes, when it came to the West Columbia Police Department,  
22 here's where it was, here's how it was logged. They didn't  
23 present you with that and we don't have his statements.  
24 Investigator Neel told you that his training is to not  
25 record unless there's a confession and that they make the

1 decision.

2 He also told you that Mr. Hunter's house is about  
3 fifteen minutes away. They've given you the address  
4 several times. We know that it's not in West Columbia,  
5 it's about fifteen minutes away. It's not right there  
6 next to it, it's not across the street, it was fifteen  
7 minutes away. Again, I'm asking you to use your common  
8 sense here. What -- what about this makes sense? She  
9 doesn't know him. She says she doesn't know him. There's  
10 been no testimony presented to you that there's any kind  
11 of connection that they would have ever known each other,  
12 so how on earth does someone who lives fifteen minutes  
13 away just randomly show up at an apartment not knowing who  
14 lived there, not knowing what they're gonna find inside,  
15 busting in there having planned this with no other  
16 connection, and with all of that the only thing that we  
17 have is the cap and we don't really know exactly where it  
18 was found.

19 And there was a lot of talk about these calls to SLED  
20 that were made and to Crystal Owens and they're talking  
21 about him asking about the DNA and when the State first  
22 presented that testimony there wasn't a word about him  
23 saying I took a class, I took a class and I heard about  
24 it there and I wanted to see does this apply to me. They  
25 make a big deal with these phone records that have all

1 these calls and they talk about the numbers here that were  
2 called and we see that it was Columbia warrant division.  
3 You see the call to Crystal Owens. We know all of that.  
4 That's what they're saying, that the phone did this, the  
5 phone called it, and that he called and he gave his name.  
6 He gave his name, he gave his phone number, he didn't try  
7 to hide who he was. He said I took a class. And what was  
8 he told? What did Ms. Owens tell you that she told him?  
9 Call SLED, call them and ask them about it, and then he  
10 calls back after he calls SLED and says did you get a call  
11 from SLED? If he's calling and asking about this and he's  
12 told them that there's a class and then they're gonna go  
13 and arrest him, why didn't they check to see if maybe he  
14 was a student? Nobody said that they checked and he wasn't  
15 a student or he might not have taken an online class,  
16 nobody said anything about that, but she told you upfront,  
17 yeah, he says that he'd taken a class. He gave his name,  
18 gave his number, both to SLED and Crystal Owens. He  
19 wasn't trying to hide anything. If he was trying to hide  
20 something, why would he his give his name and number, the  
21 same number that they've attributed to him over and over  
22 that matches the phone that was on him? He's not giving  
23 a fake number or somebody else's number or a fake name.  
24 He's giving his own. They didn't tell you that originally.  
25 They just told you that he called asking about his DNA.

1 They didn't find out whether he was a student. And on  
2 April 16th of 2016, they told him to call SLED. And what  
3 did he do? He called SLED where they say that he gave his  
4 name and his number.

5 And then, finally, we get the DNA hit that's been  
6 talked about so much. The DNA hit that prompted them to  
7 track his phone. It was a rush case. They told you it  
8 was a rush case. They were trying to get it out quickly.  
9 They get the call from him on the 16th, then they get the  
10 hit, the DNA, on the 17th.

11 Now they talked a lot about the bullets that were  
12 fired, the kind of gun that could potentially fire these  
13 bullets. He said these particular bullets could have been  
14 fired by six different types of guns. Initially they just  
15 kept saying it could have been fired by a Glock, it could  
16 have been fired by a Glock, and then you found out actually  
17 it could have been fired by five different guns as well.  
18 They weren't telling you that. In the end, no gun was  
19 analyzed, no gun was ever found. They didn't find a gun at  
20 Tanisha Taylor's house or his mom's or in the either of the  
21 cars.

22 They talked about these cell phone records with no  
23 cell tower data, but you were also told by Ms. Sparks that  
24 those records did not show you wi-fi data, that there was  
25 no way to tell from the report that they sent whether or

1 not wi-fi was used. And we know we're talking about a time  
2 late at night between -- I guess the cell tower hours that  
3 they've mentioned are between 1 AM and 5 AM in the middle  
4 of the night. We don't know whether he was based on those  
5 records using wi-fi or not. That just tells you the calls.

6 And finally we're gonna talk just a little bit more  
7 just briefly about the DNA because, again, it's a  
8 foundation, that's a cornerstone here. Without that they  
9 don't have anything linking him to being there. That one  
10 thing and that hit came from one thing that was said to  
11 have been found there that they don't know exactly where it  
12 was found. The one thing. It's not the only thing they  
13 got. They also got the hoodie and they told you this  
14 hoodie -- that according to their report they could not  
15 exclude Larenda Simon. They told you that they couldn't  
16 include Nathaniel Hunter.

17 Now the solicitor kept talking about the wearing  
18 gloves and that he was wearing gloves. You didn't hear  
19 any testimony from anyone that he was seen wearing gloves  
20 or that he had on all these clothes under a hoodie. Nobody  
21 said that. But when the hoodie doesn't have his DNA and  
22 the hoodie is what was ripped off of this person at Larenda  
23 Simon's house and it doesn't include his DNA, well, that's  
24 not helpful. That doesn't point to him. We still only  
25 have one thing. If this hoodie had been worn by someone,

1 they told you that with ownership swabs they can check to  
2 see if there was any other DNA there. They didn't find  
3 any that matched Mr. Hunter who was said to have been  
4 wearing this, that they couldn't identify his DNA on it.

5 The cap. The one link, the one thing that they say  
6 puts him there. They talk about all this blood, Larenda  
7 Simon's blood. They talk about bleeding from the head,  
8 but where's the blood on the cap? This person's wearing  
9 this in this violent struggle in this room with all this  
10 blood everywhere, throwing around, being pinned to the  
11 floor, getting pinned in between the wall and the toilet,  
12 going from room to room and this is what this person's  
13 wearing and this person gets a cut on their head and  
14 there's not blood on it? They had a name and they have  
15 this.

16 And, ladies and gentlemen, we -- we could keep going  
17 because each individual thing here, each individual brick  
18 in this now several layers thick wall, this is reasonable  
19 doubt. The State wants you to essentially focus on one  
20 thing. They want you to look at the cap, the one thing  
21 that they can't tell you where it was found at the scene,  
22 how it was collected, that nobody can tell you for certain.  
23 They want that one thing. They don't have anything else.  
24 Every single other piece of information here is reasonable  
25 doubt and none of it points to Mr. Hunter? What is the

1 more likely thing here? What makes the most sense? That  
2 all of these other things would be wrong, that every single  
3 other piece of evidence, that nothing was found at his  
4 house, at his mom's house, in his cars, on him. Nothing  
5 was ever found that linked him to the scene. No bloody  
6 boot print. He's never cleaning blood off of a floor. No  
7 blood or DNA or bloody clothes. No nothing. All of this  
8 is wrong and this one thing is right? If they had recorded  
9 his statements, then you'd know. You'd know from his  
10 mouth. You wouldn't have to take the investigator's word  
11 for it, you didn't have to take his word for it for Tanisha  
12 Taylor, you didn't have to do it for Larenda Simon, but  
13 they're making you do that for Nathaniel Hunter. You've  
14 got to take their word for it. You can't hear it from his  
15 mouth because they didn't record it. They made a conscious  
16 decision not to do that because they knew they only had one  
17 thing. They only had one thing.

18 We've talked about a lot of things here. We've talked  
19 about a lot of different people, a lot of different pieces  
20 of evidence. What it comes down to, ladies and gentlemen,  
21 we're just back to that original question, what kind of  
22 case were you presented with? What were you shown? What  
23 were you not shown? What do they have? What do they not  
24 have? Did they show you everything or did they show you  
25 what they wanted you to see? Did they show you the hair

1 that they found? Did they show you the fingerprints? Do  
2 we have pictures of where the cap was found? Do we have  
3 pictures of Mr. Hunter's residence or of his mom's  
4 residence? No blood, no bloody footprints. Nothing. They  
5 don't have any of that.

6 In order to meet their burden, in order to tear down  
7 this wall, this presumption of innocence, these are all  
8 pieces of reasonable doubt. In order to meet it, the  
9 State has to show you that none of the rest of this stuff  
10 matters, that all of these things that point to reasonable  
11 doubt in this case, that they don't matter. But I'm asking  
12 you to use your common sense. If you think about the three  
13 pillars we talked about, the one link, the cap, we don't  
14 know where it was found. The statement. If they would  
15 have just recorded that statement we'd know what he said,  
16 they could have played it for Ms. Simon sometime earlier  
17 than three years later, we'd know what they have with this.  
18 If they'd found anything at the house, that would be  
19 different. We'd have something else. What they've got is  
20 not enough. So at this point presumption of innocence must  
21 stand. This is still presumption of innocence. They  
22 haven't removed these. They haven't explained to you why  
23 this one thing is more important than all of these others  
24 things combined.

25 We've been talking a lot of about reasonable doubt.

1 We've been throwing that word around. For someone to prove  
2 something beyond a reasonable doubt as the judge is gonna  
3 tell you, as the solicitor, we're all in agreement, you  
4 have to be firmly convinced. That doesn't just mean firmly  
5 convinced about one thing. That doesn't mean that there's  
6 just one thing that you say hum, that makes sense. You've  
7 got to be firmly convinced that none of the rest of this  
8 matters. These are your reasons to pause, to think, to ask  
9 questions. This is the time to do that. This is time to  
10 ask questions, to wonder. Ask now. Ask those questions.  
11 Express your opinion. If something doesn't make sense,  
12 raise it, ask about it. If you aren't firmly convinced  
13 that they haven't removed every single one of these bricks,  
14 then your duty, your obligation under the oath that you  
15 took Monday is to find him not guilty. Thank you.

16 **THE COURT:** Thank you, Ms. Gilreath.

17 Ms. Hope, are the sandwiches back there?

18 **THE CLERK:** Yes, sir.

19 **THE COURT:** Okay. Ladies and gentlemen, we're gonna  
20 take a lunch break for you-all right this minutes. Your  
21 lunches are in the jury room. I have yet to charge you,  
22 instruct you, as to what the law is. My instructions could  
23 take from thirty-five to forty minutes. That's too long  
24 for you to sit at one time without a break and without  
25 eating. I'm not sure about you, but my stomach has been

1 growling so loud I was afraid you weren't gonna be able to  
2 hear my charge over it anyway.

3         So your lunches are there. You've been good about  
4 waiting on us all week, so now we're gonna wait on you.  
5 You're in charge of the timeframe. When you tell us you're  
6 ready to go, we'll be ready. So you take whatever time you  
7 need to to eat your lunches and then you let us know when  
8 you're ready.

9         You have heard all of the evidence and testimony,  
10 you've heard the final arguments, but you have not yet  
11 heard the law, so you still may not discuss this case among  
12 yourselves. Please remember that. This has probably been  
13 -- there's one more time I'm gonna tell you to wait just a  
14 few minutes to begin your deliberations, that will come  
15 after my charge, but for right now please remember during  
16 the lunch hour until I give the instruction to do so do not  
17 begin to discuss this case among yourselves. Let us know  
18 when you're ready to start and we'll be ready, okay? Thank  
19 you.

20         (Whereupon, the jury retires to the jury room for a  
21 lunch recess at 1:16 PM.)

22         **THE COURT:** All right, folks. We'll stand at ease  
23 until the jury lets us know we're ready and if you-all can  
24 kind of get this -- maybe turn that screen off, I won't  
25 need it, and move the evidence around so it's not visible

1 to the jury during my instructions. Thank you.

2 (Whereupon, a luncheon recess was taken.)

3 **BAILIFF:** All rise. Court is now in session.

4 **THE COURT:** All right, folks. Are we ready for the  
5 jury?

6 **MS. MAYES:** Yes, Your Honor.

7 **THE COURT:** Is the defense ready?

8 **MR. PHILLIPS:** Yes, sir.

9 **THE COURT:** All right. Bring us the jury, please.

10 (Whereupon, the jury returns to the courtroom at  
11 2:00 PM.)

12 **THE COURT:** Good afternoon, ladies and gentlemen. I  
13 hope that your lunch was enough to sustain you for the  
14 balance of the day's work. It's the very least that the  
15 County can do for your time that you've spent with us.  
16 You're gonna be real glad that you got that free lunch when  
17 you see how small the check is that you're gonna get for  
18 your service this week. I'll tell you more about that  
19 later.

20 Ladies and gentlemen, you-all have been very patient  
21 and you've listened very attentively to the testimony in  
22 this case and the arguments that have been made on behalf  
23 of the State and the Defendant, and now it becomes my  
24 responsibility under our Constitution to instruct you as  
25 to what the law is in this case and it is your duty as

1 jurors to accept the law as I say it to you now and to  
2 apply the law to the facts of the case which you determine  
3 to exist. Because as jurors it is your exclusive duty to  
4 decide all of the issues of fact in this case and for that  
5 purpose you have to determine the effect, the value, the  
6 weight and the truth of the evidence which you have heard  
7 and seen.

8 Both the State and the Defendant have the right to  
9 expect that you will conscientiously consider and evaluate  
10 the evidence and that you will apply the law of the case  
11 to that evidence to the end that both the State and the  
12 Defendant will receive a fair and impartial trial at your  
13 hands. When I use the word "Defendant" throughout this  
14 charge, ladies and gentlemen, I'm referring to  
15 Mr. Nathaniel Antron Hunter. Mr. Hunter, as you know,  
16 has been indicted by the grand jury of Lexington County  
17 and charged in one indictment with the attempted murder  
18 of Larenda Simon in Lexington County on or about April  
19 the 13th of 2014.

20 Another indictment accuses him here in Lexington  
21 County, also at the same time, April the 13 of 2014,  
22 knowingly and willfully entering the dwelling at [REDACTED]  
23 Comanche Trail, I believe it is, Apartment [REDACTED], where  
24 Ms. Simon lived, without her consent, with the intent to  
25 commit a crime there. While he was there, he was armed

1 with a weapon and he caused physical injury to persons who  
2 are not involved and that he displayed a firearm, and that  
3 he went there in the nighttime.

4 The next indictment accuses Mr. Hunter of criminal  
5 sexual conduct with a minor in the third degree, also at  
6 the same time and place, with willfully and lewdly  
7 committing or attempting to commit a lewd and lascivious  
8 act upon MINOR, who was born on July the 10th,  
9 2007, in violation of the law.

10 And finally the last indictment accuses him of being  
11 in possession of a firearm during the commission of a  
12 violent crime on April the 13th.

13 I remind you, again, as I told you before this trial  
14 began that the indictments that I just read to you are  
15 neither evidence, nor or they proof of the charges that  
16 they contain. They're simply the charging documents, the  
17 legal documents, that tell us what this case is all  
18 about. And as you know, to the charges contained in the  
19 indictments Mr. Hunter has entered pleas of not guilty and  
20 has requested a jury trial at your hands, which he has now  
21 received. The plea of not guilty by a defendant places  
22 the burden of proof on the State to prove by evidence the  
23 guilt of the accused beyond a reasonable doubt before you,  
24 as a jury, can convict him and find him guilty.

25 The Defendant, Mr. Hunter, is presumed in law to be

1 innocent of the charges contained in these indictments. It  
2 is a cardinal and fundamental rule of our law of evidence  
3 that a defendant regardless of the number of the charges,  
4 the seriousness of the charges, the nature of the charges  
5 against him, will always be presumed innocent of those  
6 charges unless and until his guilt has been proven by  
7 evidence that satisfies of you of that guilt beyond a  
8 reasonable doubt. The presumption of innocence is not a  
9 mere legal theory, it is not an empty legal phrase. The  
10 presumption of innocence is a substantial right to which  
11 every accused, including Mr. Hunter, is entitled to  
12 receive.

13 Our Supreme Court has said that the presumption of  
14 innocence is like a robe of righteousness which is placed  
15 about the shoulders of a defendant and it remains with  
16 him and it assigns to him that class known as the innocent  
17 and that presumptive robe of righteousness continues to  
18 exist about his shoulders unless and until you reach the  
19 conclusion that it has been stripped from his person by  
20 evidence that satisfies you of his guilt beyond a  
21 reasonable doubt. The presumption of innocence accompanies  
22 a defendant from the time of his arrest and his appearance  
23 at this trial and continues to exist to his benefit even as  
24 you go into the jury room to deliberate and reach a verdict  
25 in this case. The presumption of innocence continues to

1 exist to the benefit of the defendant unless and until you  
2 reach the conclusion that the State has proven his guilt  
3 beyond a reasonable doubt.

4         So that then is the burden on the State to prove guilt  
5 beyond a reasonable doubt. Some of you may have served as  
6 jurors in other types of cases. You may have served as  
7 jurors in civil cases and if you did the judge in that  
8 case told you that it is only necessary that the party who  
9 has the burden of proof present evidence that is more  
10 convincing on that party's side than the evidence is on  
11 the other side, but in criminal cases the Government --  
12 the State's proof has to be more powerful than that. Here  
13 it must be proof beyond a reasonable doubt.

14         So what do we mean by proof beyond a reasonable doubt?  
15 Proof beyond a reasonable doubt is proof that leaves you  
16 firmly convinced of the Defendant's guilt. There are very  
17 few things in this world that you and I know with absolute  
18 certainty and in criminal cases the law does not require  
19 proof that overcomes every possible doubt and so, if based  
20 upon your consideration of the evidence, you are firmly  
21 convinced that the Defendant is guilty of the crime or  
22 crimes charged, you must find him guilty. If, on the other  
23 hand, you think there's a real possibility that he is not  
24 guilty, you must give him the benefit of the doubt and find  
25 him not guilty.

1           Now reasonable doubt might arise from evidence in the  
2 case or it might arise from the lack of evidence in the  
3 case, but you, ladies and gentlemen, have to decide whether  
4 or not reasonable doubt exists as to the guilt of this  
5 defendant. I tell you that he is entitled to every  
6 reasonable doubt which arises in the case and so if on any  
7 issue of fact which is necessary to a conviction and a  
8 verdict of guilty you have a reasonable doubt as to how  
9 that issue should be resolved, it is your duty to resolve  
10 that reasonable doubt in favor of the Defendant.

11           The Defendant, ladies and gentlemen, is not required  
12 to prove his innocence, but the State is required in law  
13 to prove every essential element of the offense charged  
14 against him by evidence that satisfies you of that guilt  
15 beyond a reasonable doubt before you can convict him and  
16 find him guilty. And in that regard, I instruct you now  
17 and I emphasize to you that the fact that the Defendant  
18 in this trial did not himself testify in his own behalf  
19 is not a factor to be considered by you in any way in  
20 your deliberation and in your consideration on the  
21 question of his guilt or innocence. It must not be  
22 considered by you in any manner whatsoever or militate  
23 against him in any respect whatsoever because the  
24 Defendant has a constitutional right to remain silent and  
25 if he chooses to assert that constitutional right, that

1 fact cannot and must not be considered by you in your  
2 deliberations. Under your oath then you are to reach no  
3 inference, draw no conclusion whatsoever, from the fact  
4 that this Defendant did not himself testify. That should  
5 not even be discussed by you in the jury room because the  
6 burden of proof, as I have told you, is upon the State.  
7 It is not incumbent upon the Defendant to prove his  
8 innocence. The burden of proof remains upon the State to  
9 prove guilt beyond a reasonable doubt and the fact that  
10 the Defendant did not testify is not a factor to be  
11 considered by you in determining his guilt or his  
12 innocence. And so if, upon the whole case, you have a  
13 reasonable doubt as to the guilt or the innocence of the  
14 Defendant, he is entitled to that reasonable doubt and  
15 would be entitled to acquittal and a verdict of not guilty.  
16 But, on the other hand, if upon the whole case, you find  
17 that the State has proven by evidence that satisfies you as  
18 a jury of the guilt of the Defendant beyond a reasonable  
19 doubt, then in such circumstances it is equally your duty  
20 to convict the Defendant and to find him guilty.

21 Now during the trial each of us, you and I, have our  
22 separate and distinct duties to perform. As the trial  
23 judge, I've got the responsibility to preside over the  
24 trial of this case and I also have the duty to rule upon  
25 or pass upon the admissibility of the evidence that has

1 been offered during the course of this trial and so you're  
2 to consider only the competent evidence before you; that  
3 is, only the testimony that has been presented from this  
4 witness chair and the exhibits and the documents that you  
5 see in front of you and that you will have with you in the  
6 jury room.

7 I have the additional duty to charge you as to what  
8 the applicable law is in the case and, of course, that's  
9 what I'm doing right now. As the presiding judge, I am the  
10 sole judge of the law in the case and it is your duty to  
11 accept and apply the law as I state it to you and that will  
12 be the correct law. If you have some preconceived idea  
13 about what you think the law is or what you would like the  
14 law to be and it does not agree with what I'm telling you  
15 now the law actually is, you are obligated under your oath  
16 to forget what you think about the law and what you would  
17 like for it to be because under your oath you are sworn to  
18 accept the law precisely as I now state it to you to be the  
19 correct law.

20 In every case tried in this court before a jury,  
21 ladies and gentlemen, you, as the jury, then become the  
22 sole and exclusive judge of the facts of the case. You're  
23 the judge of the facts and I'm the law of the law. Our  
24 Constitution has said that as a trial judge I can't comment  
25 to you upon the facts of this case, I can't make any

1 statement to you about the facts of the case, and since  
2 you're the sole judge of the facts you're not to gather  
3 from anything that I have said during this trial or  
4 anything that I say to you now that I have an opinion about  
5 the facts of the case. The law doesn't allow me to have an  
6 opinion about the facts of the case. That is solely  
7 matters for you to determine. And so, as jurors, then it  
8 is your duty, as I have told you, to determine the effect  
9 and the value and the weight and the force of the evidence  
10 presented during the course of this trial.

11 Necessarily then, you have to pass upon the  
12 credibility of the witnesses who have testified in this  
13 case. Credibility is just a legal term that we use to  
14 mean believability. It is your duty then to analyze and  
15 evaluate the evidence and to determine the evidence that  
16 convinces you that it is factual and accurate. I tell you  
17 that in determining the question of the credibility or the  
18 believability of the witnesses, you can believe a small  
19 part of the testimony of a single witness and reject a  
20 larger part of the same witness or the other way around.  
21 You can believe everything that a witness tells you or none  
22 of what a witness tells you. You may consider whether any  
23 evidence -- whether any witness, I'm sorry, has exhibited  
24 any interest or any bias or any prejudice in the case. You  
25 can consider the demeanor of the witness or the appearance

1 of the witness from the witness stand, in other words, and  
2 you can consider the opportunity for knowledge concerning  
3 those things about which the witness testified.

4 Now normally, ladies and gentlemen, the rules of  
5 evidence don't permit witnesses to testify about opinions  
6 or conclusions. However, when expert witnesses are called;  
7 that is, witnesses who because of their education and  
8 their experience and their knowledge have become expert in  
9 some field, those experts may state their opinions as to  
10 relevant and material matter in which they claim to be an  
11 expert and can also state the reasons for their opinions.  
12 You should consider any expert opinion testimony received  
13 in evidence in this case like any other evidence; that is,  
14 you give it the weight you think it deserves. If you  
15 decide that the opinion of an expert witness is not based  
16 on sufficient education and experience or you conclude that  
17 the reasons given in support of the opinion are not sound  
18 or that the opinion is outweighed by other evidence, you  
19 can disregard it entirely. An expert witness's testimony  
20 is to be given no greater weight than that of other  
21 witnesses simply because a witness is an expert. And,  
22 furthermore, you're not required to accept an expert's  
23 opinion even though it might not be contradicted. But  
24 you don't exercise these considerations arbitrarily,  
25 ladies and gentlemen, because you have to use your sound

1 judgment, your reason, your logic, your experiences in  
2 life, and that's what we ask you to do. To exercise your  
3 mental processes in determining the evidence that you  
4 consider to be true, the law simply requires that you use  
5 your good common sense, your sound judgment and your logic  
6 and reason and those experiences in life that we just  
7 talked about. You apply those abilities that each of you  
8 has and that each of you has brought into this trial and  
9 bring them to bear on the evidence that you have heard and  
10 then you determine what you consider to be believable as  
11 you determine them to be and you take and apply the law as  
12 I now state it to you to those believable facts that you  
13 find believable and arrive at a verdict which will speak  
14 the truth of this particular case.

15 Ladies and gentlemen, the Defendant in this particular  
16 case is charged with attempted murder. Let me tell you  
17 that an attempt is an effort to accomplish a crime which  
18 it does not succeed. It's an attempt which includes a  
19 specific intent to do a particular criminal act along with  
20 an act falling short of the act intended. The State has to  
21 show that there's been more than mere preparation and more  
22 than mere intent because preparation and intent is not  
23 punishable in and of itself. There has to be some overt  
24 act committed in the effort to commit the crime itself.  
25 Intent in this regard means intending the result which

1 naturally occurs or actually occurs. In other words, it  
2 is not accidentally or involuntarily done. Intent can be  
3 shown by acts and conduct of the Defendant and other  
4 circumstances from which you may naturally and reasonably  
5 infer intent.

6 And so the Defendant is charged with attempted murder.  
7 Our law says that a person who with the intent to kill  
8 attempts to kill another person with malice aforethought,  
9 either express or implied has committed the offense of  
10 attempted murder. So in order to prove this crime, the  
11 State has to prove beyond a reasonable doubt that the  
12 Defendant attempted to kill the victim with malice  
13 aforethought, either express or implied.

14 Now malice is a hatred, an ill will or hostility  
15 toward another person. It is the intentional doing of a  
16 wrongful act without just cause or excuse and with an  
17 intent to inflict an injury or under circumstances that  
18 the law will infer an evil intent. Malice aforethought  
19 does not require that malice exist for any particular time  
20 before the act is committed, but malice must exist in the  
21 mind of the Defendant just before and at the time the act  
22 is committed and, therefore, there has to be a combination  
23 of the previous evil intent and the act itself.

24 Malice aforethought can either be expressed or  
25 inferred. Now that doesn't mean that there's two types of

1 malice. That just means that malice can be expressed in  
2 more than one -- or shown in more than one way; that is,  
3 either by direct evidence or by inference from the facts  
4 and circumstances which are proven. Express malice is  
5 shown when a person speaks words which express hatred or  
6 ill will for another or when the person prepared beforehand  
7 to do the act which was later accomplished or preparing --  
8 preparation going to show that the deed was within the  
9 Defendant's mind. That would be evidence of express  
10 malice. Malice can be inferred from conduct showing a  
11 total disregard for human life. Inferred malice may also  
12 arise when the deed is done with a deadly weapon. A  
13 handgun or pistol in our law is a deadly weapon; that is,  
14 an instrument that could be used to cause death or great  
15 bodily harm.

16 If facts are proven beyond a reasonable doubt  
17 sufficient to raise an inference of malice to your  
18 satisfaction, this inference would simply be an evidentiary  
19 fact to be considered by you as a jury along with all of  
20 the other in the case which bears on the matter of malice  
21 and you can give it the weight you think it should receive.

22 A specific intent to kill is an element of attempted  
23 murder. Once again, intent means intending the result  
24 which actually occurs, not accidentally or involuntarily.  
25 Intent can be shown by acts and conduct of the Defendant

1 and other circumstances from which you can naturally and  
2 reasonably infer intent. Evidence of the character of the  
3 act, the character of the instrument used, the manner in  
4 which it was used, the purpose to be accomplished, the  
5 resulting wounds or injuries may all be considered in  
6 determining the intent with which the act was committed.  
7 Intent may also be inferred when it is shown that the  
8 Defendant voluntarily and willfully commits an act, the  
9 natural tendency of which is to destroy another life.

10 So, ladies and gentlemen, in order for the State to  
11 meet its burden of proof as to the charge of attempted  
12 murder, the State has to prove, as I have told you, that  
13 the Defendant in this case attempted to kill the victim  
14 in this case and that attempt to kill the victim was  
15 accomplished and accompanied by malice aforethought,  
16 either express or implied.

17 The Defendant is also charged with burglary in the  
18 first degree. Our statute says that a guilt -- a person  
19 is guilty of burglary in the first degree if certain  
20 elements of that statute are met, and here are the  
21 elements of the offense of burglary in the first degree,  
22 all of which have to be proven by beyond a reasonable  
23 doubt. There are three foundation elements which the  
24 State has to prove before it gets to even ask you to  
25 consider burglary in the first degree. The State has to,

1 first of all, prove to you that the Defendant entered a  
2 dwelling without consent and with the intent to commit  
3 a crime. So three elements have to be proven as a  
4 foundation for burglary in and of itself; that the  
5 Defendant entered a dwelling, an apartment building, an  
6 apartment, a residence, a place where a person sleeps is  
7 a dwelling in the law; that the Defendant entered the  
8 dwelling and, secondly, that the entering was without  
9 consent of the person who occupied the dwelling and,  
10 thirdly, that he entered with the intent to commit a  
11 crime.

12 Now if the State has met its burden of proving those  
13 three elements, that a burglary did exist, then you must  
14 next consider additional elements which they have to prove  
15 or an additional element which they have to prove, in order  
16 to establish burglary in the first degree. Now it is not  
17 essential, it is not required, that they prove all of these  
18 additional elements that I'm going to explain to you now,  
19 but they do have to, in fact, prove at least one of them  
20 beyond a reasonable doubt or else the State will not have  
21 met its burden of proof as to first degree burglary.

22 So the State has to show you that when the Defendant  
23 in going into the dwelling or while he was there or on the  
24 way out that he was armed with a deadly weapon, or, when  
25 he was going into the dwelling or while he was there or

1 while he was leaving he caused physical injury to a person  
2 not a participant in the crime, or, when effecting entry  
3 or going into it or while he was there or while he was  
4 leaving he used or threatened the use of a dangerous  
5 instrument, or, while in effecting entry, that is while  
6 going in or while he was there or while he was leaving, he  
7 displayed what appeared to be a firearm, or, that he  
8 entered or remained in the nighttime. As I've said, the  
9 State does not have to prove that he was armed with a  
10 deadly weapon and that he caused physical injury and that  
11 he used or threatened the use of a dangerous instrument  
12 and that he displayed a firearm and that he went in the  
13 nighttime. If the State proves any of those elements in  
14 addition to the three foundation elements that I explained  
15 to you earlier, the State will have met its burden of proof  
16 as to burglary in the first degree beyond a reasonable  
17 doubt. If the State fails in proving at least one of those  
18 additional elements, in addition to the three foundation  
19 elements, the State has failed to meet its burden of proof.

20 The Defendant is next charged with criminal sexual  
21 conduct with a minor in the third degree. Our law says  
22 that a person is guilty of criminal sexual conduct with a  
23 minor in the third degree if the State is able to establish  
24 the following elements, each of them, beyond a reasonable  
25 doubt. First of all, that the Defendant, the actor, is

1 over fourteen years of age and that the actor or the  
2 Defendant willfully and lewdly committed or attempted to  
3 commit a lewd or lascivious act upon or with the body or  
4 the parts of the body of a child under the age of sixteen  
5 with the intent of arousing or appealing to or gratifying  
6 the lust, the passions or the sexual desires of the actor  
7 him or herself or the child. So, once again, the State has  
8 to prove that the Defendant is more than fourteen years of  
9 age, that the child is under sixteen years of age and the  
10 Defendant willfully and lewdly committed or attempted to  
11 commit a lewd or lascivious act upon or with the body of  
12 the child with the intent of arousing or appealing to or  
13 gratifying the lust, the passions and the sexual desires of  
14 the Defendant himself or of the child. The State has to  
15 meet its burden as to each of those elements, once again,  
16 beyond a reasonable doubt before it has met its burden of  
17 proof and is entitled to a conviction on that particular  
18 charge.

19 Now, ladies and gentlemen, in order to establish  
20 criminal liability in these cases, criminal intent is  
21 required. I've already told you in a shorthand version of  
22 what criminal intent is. I'll now expand on that somewhat.  
23 For example, the mental state required to be proven by the  
24 State for a particular crime might be its purpose, its  
25 intent, knowledge, recklessness or criminal negligence and

1 so forth. Criminal intent must be proven by the State  
2 beyond a reasonable doubt. Criminal intent is always a  
3 matter that has to be determined by the jury from the  
4 circumstances surrounding the situation. In other words,  
5 there's no way that science can prove intent to a  
6 mathematical certainty. You can't take apart a person's  
7 brain and look down in there and decide what he had in  
8 mind at a particular time and so the law says that  
9 criminal intent has to be inferred by the circumstances  
10 which were shown to have existed and that's how you make  
11 the determination as to whether or not the element  
12 requiring intent was present. It's not necessary to  
13 establish intent by direct and positive evidence, but  
14 intent can be established by inference in the same way as  
15 any other evidence by taking into consideration the acts  
16 of the party and all of the facts and circumstances  
17 surrounding the situation. Criminal intent, in other  
18 words, is a mental state. It is a conscious wrongdoing.  
19 It's up to you to decide what the Defendant intended to do  
20 based on the circumstances shown to have existed.

21 Now, ladies and gentlemen, the Defendant finally is  
22 charged with possession of a weapon during the commission  
23 of or the attempt to commit a violent crime. I tell you  
24 that murder and burglary in the first degree are both  
25 violent crimes under the law and the Defendant is charged

1 with possession of a weapon during the commission of one  
2 of those or the attempt to commit one of those violent  
3 crimes. In order to meet its burden of proof as to this  
4 charge, the State has to prove beyond a reasonable doubt  
5 that the Defendant was in possession of a -- in this  
6 particular case a firearm or displayed what appeared to  
7 be a firearm and that he has also been convicted of one of  
8 the crimes of violence that I just described to you. In  
9 other words, the State has to prove the possession of the  
10 weapon and it has to prove the possession of the weapon  
11 during the commission of a crime of violence; that is, in  
12 this case during the crime of attempted murder or burglary  
13 in the first degree.

14 Now the State attempts to meet its burden of proof as  
15 to these charges by two types of evidence, direct evidence  
16 and circumstantial evidence. Direct evidence directly  
17 proves the existence of a fact, it doesn't require any  
18 deduction. Direct evidence for the most part is like  
19 eyewitness testimony. Circumstantial evidence is proof of  
20 a chain of facts which leads to a conclusion indicating the  
21 existence of another fact.

22 Now crimes can be proven by direct or circumstantial  
23 evidence. The law doesn't make any distinction between the  
24 weight or the value that you will give either to direct or  
25 circumstantial evidence; however, to the extent the State

1 relies on circumstantial evidence all of the circumstances  
2 must be consistent with each other and when taken together  
3 they must point conclusively to the guilt of the accused  
4 beyond a reasonable doubt. If the circumstances merely  
5 portray the Defendant's behavior is suspicious, then the  
6 proof has failed and so the State has the burden of  
7 proving the Defendant guilty beyond a reasonable doubt and  
8 the burden rests with the State regardless of whether it  
9 relies on direct evidence or circumstantial evidence or  
10 some combination of the two.

11 Now one of the issues in this case is the  
12 identification of the Defendant as the person who committed  
13 the crime charged and the State has the burden of proving  
14 identity beyond a reasonable doubt just as it has the  
15 burden of proving these other elements beyond a reasonable  
16 doubt and you have to be satisfied beyond a reasonable  
17 doubt as to the accuracy of the identification of the  
18 Defendant before you can convict the Defendant.

19 Identification testimony may be an expression or  
20 belief or an impression by a witness and in that case you  
21 have to determine the accuracy of the identification of  
22 the Defendant. You must consider the believability of the  
23 identification witness in the same manner as you do any  
24 other witness. You can consider whether the witness had  
25 an adequate opportunity to observe the offender at the

1 time of the offense. You can consider how long or how  
2 short the time was available, how far or close the witness  
3 was, the lighting conditions, whether the witness had the  
4 chance to see or know the person in the past. Once again,  
5 I tell you that the burden of proof on the State extends  
6 to every element of the crime charged, specifically the  
7 burden of proving beyond a reasonable doubt the identity  
8 of the Defendant as the person who committed the crime.  
9 If after listening to the evidence and testimony you have a  
10 reasonable doubt as to the accuracy of the identification,  
11 then you must find the Defendant not guilty.

12 Now, ladies and gentlemen, finally -- that's a word  
13 you've been hanging onto for a while here, finally --  
14 finally, let me tell you that you're not partisans or  
15 advocates for either the State of South Carolina or of  
16 this Defendant. You don't serve as jurors to reward your  
17 friends or punish your enemies. Obviously that would not  
18 be a system of justice at all. You've been selected by  
19 both the State and this Defendant to be fair and impartial  
20 jurors. It is your duty then by your joint deliberations  
21 to determine the facts of this case giving to this  
22 Defendant the benefit of every reasonable doubt on each and  
23 every issue and then to the facts which you determine to  
24 exist you take and apply the law which I've just given you  
25 and, thus, arrive at a verdict which reveals the true facts

1 in this particular case and once you've accomplished those  
2 things, you will have satisfied the oath that you took and  
3 you will have discharged your responsibility to the Court.

4 I'm now gonna go over the forms of the verdict with  
5 you. Mr. Mills, if you'll give this verdict form, please,  
6 to the foreman. I have written the forms on this verdict  
7 form. The order in which I have written the possible  
8 verdict form down there does not mean anything in the  
9 world. You're not to reach any conclusions or draw any  
10 inferences in any way whatsoever from the order in which  
11 I I've written them. I simply write them in the order  
12 that I find easiest to explain.

13 There are four charges. You will write four verdicts.  
14 Your verdict on one charge does not necessarily determine  
15 your verdict on another charge. The Defendant can be a  
16 convicted or acquitted on any or all of these charges  
17 depending upon your view of the evidence with one  
18 exception. He cannot be convicted of possession of a  
19 weapon unless he's also been convicted of the commission  
20 of a violent crime.

21 The verdict form reads: We, the jury, by unanimous  
22 consent find the Defendant, Nathaniel Antron Hunter, as to  
23 charge of attempted murder, the possible verdict forms are  
24 two; guilty is the verdict form that you will use if that  
25 is what you arrive at after your discussions and after

1 you've decided to your satisfaction that the State has met  
2 its burden of proof as to that charge beyond a reasonable  
3 doubt and if that's a verdict form you arrive at,  
4 Mr. Foreman, you'll indicate that by putting an X or a  
5 checkmark in the space you see that's provided there. The  
6 other possible verdict form as to that charge is: We, the  
7 jury, by unanimous consent find the Defendant, Nathaniel  
8 Antron Hunter, as to the charge of attempted murder, not  
9 guilty. That's a verdict form that you will arrive at if  
10 you find that the State has failed to meet its burden of  
11 proof as to all of the elements of that offense and if  
12 that's the verdict that you arrive at, Mr. Foreman,  
13 likewise you will indicate that by putting an X or a  
14 checkmark in the space provided.

15 As to the charge of burglary in the first degree, the  
16 possible verdict forms are the same; guilty if the State  
17 meets its burden of proof, not guilty if it fails to meet  
18 its burden of proof.

19 And as to charge of criminal sexual conduct, guilty if  
20 State meets its burden, not guilty if it fails to meet its  
21 burden.

22 And as to the charge of possession of a weapon during  
23 the commission of a violent crime, guilty if the State  
24 has proven, as I've told you, that the Defendant was in  
25 possession of a weapon during the commission of a violent

1 crime; that would either be attempted murder or burglary  
2 in the first degree. And, likewise, you will indicate  
3 your verdicts, whatever they are, by putting an X or a  
4 checkmark in the space provided.

5 Now as the verdict form suggests, and that I tell you  
6 now, the verdicts have to be unanimous. All twelve of  
7 your number have to agree as to what the verdicts will be  
8 in this particular case and, Mr. Foreman, you're not  
9 authorized to fill out the form nor to sign it until all  
10 twelve of your number have agreed as to what the verdict  
11 shall be.

12 I'm gonna send you to your jury room now. One last  
13 time I ask that you wait just one moment before you start  
14 discussing this case among yourselves. I've got to talk  
15 with the lawyers to see if I've left anything out, if I've  
16 misstated anything. If I have, I'll have to bring you  
17 back out to correct that, but if I do not have to bring  
18 you back, we will send in the items of evidence and once  
19 all of those items of evidence are brought into the jury  
20 room, that will be your signal to begin your deliberations.  
21 Not until then, please. Once those items of evidence have  
22 been brought in, you will begin your deliberations. You  
23 will deliberate until you have reached the verdicts in each  
24 case at which time, Mr. Foreman, you will fill out the  
25 verdict form and sign it, knock on the door and let the

1 bailiff know and we'll bring you out to receive your  
2 verdict, okay?

3 If you will retire to your jury room and wait just a  
4 moment until the verdicts -- I mean, until the evidence is  
5 sent in before you begin your deliberations.

6 Ms. Johnson and Mr. Kinder, if you-all will stay right  
7 where you are, please.

8 (Whereupon, the jury retires to the jury room at  
9 2:34 PM.)

10 **THE COURT:** Any exceptions or requests for additional  
11 charge, Ms. Mayes, from the State?

12 **MS. MAYES:** Your Honor, as to the identity charge,  
13 the instruction by the Court was that if they cannot -- if  
14 they did not find the identity -- I believe the word was  
15 "credible" that they must find him not guilty.

16 **THE COURT:** As to the identification witness, that's  
17 right, yes. I tried to limit it to that. As a matter of  
18 fact, the identification charge, of course, refers to a  
19 single identification witness. In this particular case,  
20 I tried to include in the fact that -- that the -- and let  
21 me see where it came.

22 **MS. MAYES:** And that's our concern, is that they could  
23 still discredit any identity and still find him guilty  
24 based on the evidence.

25 **THE COURT:** Of course they could. And that was the

1 -- I think I said to the -- somewhere I said in the  
2 preference, and my recollection is, to the extent -- I  
3 can't recall the exact question, Ms. Mayes, but what I  
4 tried to do in the case was to make sure that they knew  
5 that what -- the identification testimony that I was  
6 referring to is the expression -- and here's where I put  
7 it. Identification testimony is an expression or belief  
8 or an impression by a witness and -- and you have to  
9 determine the accuracy of the identification of the  
10 Defendant insofar as that was concerned and the  
11 believability of the identification witness itself. The  
12 point was obviously that before they believe the  
13 identification witness, the State had to be satisfied  
14 that the identification was accurate.

15 I'll -- I will be glad to clear that up because that  
16 is obviously important and to explain to them that -- that  
17 the identification testimony that I was referring to in  
18 that regard was limited to the testimony of the -- of the  
19 identification by the witness, in this case the victim  
20 herself. I don't know any way to deal with that frankly.  
21 It's an accurate statement of the law. I realize that I  
22 can't get too far away from it, of course, without being  
23 a charge on the facts of the case, but --

24 **MS. MAYES:** Your Honor, if the charge would -- would  
25 stay the same, that if the -- if the identity was not --

1 is not believed to be accurate, then they must find him not  
2 guilty, then we wouldn't want any clarification. I think  
3 that just would confuse the issue more. I guess our  
4 position is that they could completely discount altogether  
5 the testimony of the identity witness and still find him  
6 guilty based on the circumstantial evidence of the DNA at  
7 the scene.

8 **THE COURT:** They have. And -- and elsewhere in the  
9 charge I mentioned after considering all of the evidence  
10 and testimony, of course, you find him guilty -- you have  
11 to find him guilty -- I mean, if you think he's guilty,  
12 you have to find that he's guilty or words to that effect.  
13 I tried to embody into that the fact that they had to take  
14 into account all of the -- all of the testimony.

15 My tendency is to leave that alone unless the jury has  
16 a question about it. The jury -- this is an intelligent  
17 jury. They've heard -- if they get hung up back there on  
18 this issue, I'll be glad to clarify that. Frankly, without  
19 them asking I'm afraid it will create more questions than  
20 it will -- than it will resolve. I note your exception  
21 in that regard, but I'm not going to -- I'm not gonna  
22 recharge.

23 As a matter of fact, there's nothing in that charge,  
24 quite frankly, that would keep them from thinking that the  
25 -- if the DNA -- if they're convinced that the DNA is that

1 of the Defendant, I don't think there's anything in that  
2 charge that is going to keep from finding him guilty on the  
3 basis of that. In other words, they could -- they could  
4 certainly convict him on the basis of the DNA without --  
5 without, I guess, accepting the -- the identification  
6 testimony itself.

7 So I really don't know how to undo that given the  
8 nature of the identification charge itself and the facts  
9 of this particular case. I will -- I will wait to hear if  
10 the jury has a concern about that and I'll address it if  
11 they do. Thank you.

12 Mr. Phillips, any exceptions or requests for  
13 additional charges from the defense except the fact that  
14 I used truth once or twice?

15 **MR. PHILLIPS:** Just to preserve the record regarding  
16 State versus Beatty, Your Honor. Thank you.

17 **THE COURT:** All right. Thank you.

18 All right. You-all can assemble the evidence, get it  
19 together and take it in and tell them they can start.

20 Ms. Johnson and Mr. Kinder, lady and gentleman,  
21 you-all were selected as alternate jurors. You know what  
22 your role by now would be. If any of those twelve original  
23 jurors would not have been able to survive this case or if  
24 they had gotten sick or had an emergency that would keep  
25 them from showing up today and if you'd not been there,

1 we'd have had to start this case all over again because we  
2 have to have twelve people in that juror room to start the  
3 deliberations. Thankfully you were here and you've been  
4 here throughout and you knew we were gonna have enough  
5 jurors to complete the trial of this case. I'm gonna let  
6 you go now. You don't have to -- you don't have to stay  
7 any longer unless if you hang around and want to find out  
8 what's gonna happen. You've had your lunch as I understand  
9 it and so you will get a check in the mail sometime in the  
10 next couple of weeks. It's not gonna begin to pay for you  
11 for the time that you've invested with us and so add our  
12 thanks to that small check and I hope you will be  
13 compensated in a small way for that. Moreover, I hope  
14 you've gained some satisfaction out of your service this  
15 week and I hope you have gained a better appreciation of  
16 how important folks like you are to what we do. You-all  
17 are free to go. You can step right through there. And if  
18 you need a work slip from anybody, they can instruct you.

19 **THE CLERK:** Mr. Dan has them.

20 **THE COURT:** Okay. Mr. Mills has them. He can give  
21 you the forms if you want one.

22 (Whereupon, the alternate jurors were dismissed.)

23 **THE COURT:** All right.

24 **MR. PHILLIPS:** Your Honor, do you have any issue with  
25 a member of our team making sure -- telling them that she's

1 with us and they don't have to speak to her, but if they  
2 wish they would love to hear thoughts about the case? With  
3 the alternates.

4 **THE COURT:** I don't have any problem with that really.  
5 I normally reserve that to talk to the -- these folks who  
6 make the decision because most of the time the question is  
7 about how the decision was arrived at. I didn't think to  
8 share that with them, but certainly I don't mind. You can  
9 tell them the judge says I can talk with you if you want to  
10 talk with me.

11 **MR. PHILLIPS:** It's up to them, but I wanted to ask  
12 you.

13 **THE COURT:** That's right. Yes, sir. I don't mind  
14 that.

15 **MR. PHILLIPS:** And the only other matter is does Your  
16 Honor send the jury instructions back to the jury room?

17 **THE COURT:** Goodness, no. I've got this thing on  
18 notebook paper, chewing gum wrappers, and everything else.  
19 It wouldn't make any sense in the world for them to -- I  
20 wish I could. I wish I could run some of it off, but I  
21 don't -- I don't do that and, frankly, I'm not sure that I  
22 would do it if I could.

23 Here's the indictments. I'm giving these back.

24 **THE CLERK:** Yes, sir.

25 (Whereupon, the evidence was sent back to the jury at

1 2:43 PM.)

2 (Recess taken.)

3 **BAILIFF:** All rise. Court's now in session.

4 **THE COURT:** All right. If you-all will assemble the  
5 lawyers. I've got a question from the jury to deal with.

6 (Court's Exhibit Number 13 was marked for  
7 identification.)

8 **BAILIFF:** Remain seated. Court's now in session.

9 **THE COURT:** Thank you, folks. You-all can be seated.  
10 Folks, we have a question from the jury. The jury requests  
11 a copy of the statute for attempted murder or reading in  
12 court.

13 I will read the charge here in front of me. I can't  
14 send it in for several reasons. First of all, it's got an  
15 error of law in it that I've had to correct from the  
16 standard website, so I'll just read it to them. Is that  
17 okay?

18 **MS. MAYES:** Yes, sir, Your Honor. No objection.

19 **THE COURT:** All right.

20 **MR. PHILLIPS:** No objection, Your Honor.

21 **THE COURT:** Thank you. Bring us the jury.

22 (Whereupon, the jury returns to the courtroom at  
23 4:10 PM.)

24 **THE COURT:** Ladies and gentlemen, I have your  
25 question. The jury requests a copy of the statute for

1 attempted murder or reading in court. I'm prepared to  
2 read the charge -- or to recharge you on attempted murder  
3 or I will simply read you the statute.

4 Can you -- Mr. Foreman, can you tell me which or both  
5 the jury prefers?

6 **FOREPERSON:** The statute would be adequate. Yes, sir.

7 **THE COURT:** All right. It's on the way now. I  
8 brought my charge in, but the statute is coming right in  
9 the door as I speak to you, okay?

10 **THE CLERK:** (Handing.)

11 **THE COURT:** Thank you. The statute is 16-3-29. You  
12 don't need to remember that. Attempted murder. It says  
13 a person who, with the intent to kill, attempts to kill  
14 another person with malice aforethought, either expressed  
15 or implied, commits the offense of attempted murder.  
16 That's a person who, with the intent to kill, attempts to  
17 kill another person with malice aforethought, either  
18 expressed or implied, commits the offense of attempted  
19 murder.

20 I am prepared to do whatever you-all need. If that's  
21 sufficient, I won't give you any more than you asked for.

22 **FOREPERSON:** That's adequate. Yes, sir.

23 **THE COURT:** All right, sir. Thank you. If you-all  
24 will return to your jury room and continue deliberations.  
25 Let us know if you need anything further.

1           (Whereupon, the jury retires to the jury room at  
2 4:12 PM.)

3           **THE COURT:** They apparently did not want to be  
4 confused by the charge on the law and I was delighted to  
5 limit it to whatever they asked.

6           Any exceptions to that from the State, Ms. Mayes?

7           **MS. MAYES:** None from the State, Your Honor.

8           **THE COURT:** Mr. Phillips?

9           **MR. PHILLIPS:** None, Your Honor.

10          **THE COURT:** Okay. Folks, we'll stand by until we hear  
11 further.

12          (Recess taken.)

13          **BAILIFF:** All rise. Court is now in session.

14          **THE COURT:** Thank you. Thank you, folks. Y'all can  
15 be seated.

16          Ladies and gentlemen, we're advised that the jury has  
17 reached a verdict. Are both the State and the defense  
18 ready to receive the verdict?

19          **MS. MAYES:** The State is ready, Your Honor.

20          **MR. PHILLIPS:** Yes, Your Honor.

21          **THE COURT:** All right. Ladies and gentlemen, those  
22 of you who are interested spectators, let me admonish you,  
23 please. When the verdict is announced -- and we don't  
24 know what the verdict is at this point in time. I imagine  
25 there will be different emotions on either side of the

1 aisle depending upon what the verdict is. It is important  
2 that you continue to maintain the same dignity and decorum  
3 that you have throughout this trial and avoid any outward  
4 display of emotion when the jury's verdict is reached --  
5 or is announced, I should say. And if you've got some  
6 question in your mind as to whether you might be able to  
7 control your emotions when the verdict is announced in  
8 regards of what it is, then I would suggest that you leave  
9 the courtroom at this time; otherwise, of course, I'll  
10 expect you to abide by my instructions. Thank you.

11 Bring us the jury, please.

12 (Whereupon, the jury returns to the courtroom at  
13 5:03 PM.)

14 **THE COURT:** Madam Clerk.

15 **THE CLERK:** Mr. Foreman, have you reached your  
16 verdicts?

17 **FOREPERSON:** Yes, ma'am.

18 **THE CLERK:** Please pass it to the bailiff.

19 **BAILIFF:** (Handing.)

20 **THE COURT:** You may publish the verdict.

21 **THE CLERK:** Indictment 2014-GS-32-3687, 3688, 3689 and  
22 3892, the matter of the State versus Nathaniel A. Hunter.  
23 We, the jury, by unanimous consent find the Defendant,  
24 Nathaniel Antron Hunter, as to the charge of attempted  
25 murder on Indictment 2014-GS-32-3689, guilty. As to

1 the charge of burglary first degree, Indictment  
2 2014-GS-32-3687, guilty. As to the charge of criminal  
3 sexual conduct with a minor, third degree, Indictment  
4 2014-GS-32-3688, guilty. As to the charge of possession  
5 of a firearm during the commission of a violent crime,  
6 Indictment 2014-GS-32-3692, guilty. And it's so-signed by  
7 the foreperson April 28, 2017.

8 Mr. Foreman, ladies and gentlemen of the jury, if  
9 these are your verdicts, please indicate each of you by  
10 raising your right hand.

11 All hands raised, Your Honor.

12 **THE COURT:** Thank you. The record should reflect all  
13 hands were raised.

14 Does the Defendant wish polling of the jury?

15 **MR. PHILLIPS:** We do, Your Honor. And we would ask  
16 one specific question to be answered. There was a picture  
17 of the Defendant that was found inadmissible of him holding  
18 a gun that was listed over there during one of my  
19 cross-examinations that possibly was in view of the jury  
20 and we'd like that to be added when polling the jury.

21 **THE COURT:** You want to ask if a picture of the  
22 Defendant holding a gun was in the jury room? Is that  
23 what you're asking?

24 **MR. PHILLIPS:** No, no, no. I'm sorry, Your Honor.  
25 Whether it was in view of the jury when it was over by the

1 clerk. Not -- I'm not trying to in any way imply that  
2 anybody put it there for an intentional purpose, but  
3 whether any of the jurors saw this inadmissible piece of  
4 evidence.

5 **THE COURT:** I'll ask that right now.

6 Ladies and gentlemen of the jury, you've heard the  
7 question that's been raised. It refers to a picture of  
8 the Defendant holding a gun. That picture was not in  
9 evidence. Did any of you on the jury see that picture  
10 during the course of -- if any of you saw that, would  
11 you, please, raise your right hand?

12 Thank you. All right. The record will reflect that  
13 the question was answered in the negative to the Court.

14 Now, Madam Clerk, if you will poll the jury, please,  
15 using numbers.

16 **THE CLERK:** As I call your number, if you'll hold  
17 your hand where I can recognize you. I will ask you as to  
18 the verdicts, were these your verdicts and are they still  
19 your verdicts. At that time give me your response.

20 Number 211, as to the verdicts, were these your  
21 verdicts and are they still your verdicts?

22 **JUROR:** Yes, ma'am.

23 **THE CLERK:** 212, as to the verdicts, were these your  
24 verdicts and are they still your verdicts?

25 **JUROR:** Yes, ma'am.

1           **THE CLERK:** 134, as to the verdicts, were these your  
2 verdicts and are they still your verdicts?

3           **JUROR:** Yes, ma'am.

4           **THE CLERK:** 121, as to the verdicts, were these your  
5 verdicts and are they still your verdicts?

6           **JUROR:** Yes, ma'am.

7           **THE CLERK:** 116, as to the verdicts, were these your  
8 verdicts and are they still your verdicts?

9           **JUROR:** Yes.

10          **THE CLERK:** 136, as to the verdicts, were these your  
11 verdicts and are they still your verdicts?

12          **JUROR:** Yes, ma'am.

13          **THE CLERK:** 135, as to the verdicts, were these your  
14 verdicts and are they still your verdicts?

15          **JUROR:** Yes, ma'am.

16          **THE CLERK:** 120, as to the verdicts, were these your  
17 verdicts and are they still your verdicts?

18          **JUROR:** Yes, ma'am.

19          **THE CLERK:** 111, as to the verdicts, were these your  
20 verdicts and are they still your verdicts?

21          **JUROR:** Yes, ma'am.

22          **THE CLERK:** 193, as to the verdicts, were these your  
23 verdicts and are they still your verdicts?

24          **JUROR:** Yes, ma'am.

25          **THE CLERK:** 189, as to the verdicts, were these your

1 verdicts and are they still your verdicts?

2 **JUROR:** Yes, ma'am.

3 **THE CLERK:** Number 90, as to the verdicts, were these  
4 your verdicts and are they still your verdicts?

5 **JUROR:** Yes, ma'am.

6 **THE CLERK:** All jurors polled, Your Honor.

7 **THE COURT:** All right. Thank you.

8 Is there anything further before the jury is  
9 dismissed, Mr. Phillips?

10 **MR. PHILLIPS:** Nothing further, Your Honor.

11 **THE COURT:** Thank you.

12 Ladies and gentlemen of the jury, I want to thank you  
13 for your service throughout the trial of this case, for  
14 the time that you spent with us, for your punctuality and  
15 for the attention that you gave the case and for your  
16 thoughtfulness in your deliberations. I never comment  
17 upon the verdicts that you-all reach. I'm delighted that  
18 the difficult questions of this Court have to answered by  
19 folks like you and not by me. I neither condemn nor do I  
20 commend juries for the verdicts that they reach. I commend  
21 you for the quality of your service, for the attention that  
22 you gave and for the other matters which I just discussed,  
23 your thoughtfulness and your punctuality. I can tell you,  
24 ladies and gentlemen, that you only have to answer to your  
25 own conscience for the verdicts that you have reached in

1 this case. I've heard what you have heard and I can tell  
2 you that you have no need to fear your conscience for the  
3 decisions that you've made in this particular case.

4       You're gonna be free to go now and you are now free  
5 to discuss this case with anybody that you want to. The  
6 restrictions that I have given you earlier no longer apply  
7 and so if somebody should ask you about this case and if  
8 you care to discuss it with them, you have every right to  
9 do that. On the other hand, if someone asks you about this  
10 case and you do not care to discuss it, you do not have to.  
11 I'm sure that that will end the discussion right then, but  
12 if it does not, if somebody persists in trying to talk with  
13 you about this case after you've made it plain to them that  
14 you don't want to discuss it, please out find who they  
15 are, report it to the clerk, the clerk will report it to me  
16 and we'll take care of that matter for you. I doubt that  
17 there will be anything like that and I don't want to cause  
18 you any apprehension or any concern or heartburn about  
19 that. It's highly unlikely that anything like that will  
20 happen. You might be contacted about the case. If you  
21 want to talk about it, that's fine. It's fair game. You  
22 can do that.

23       Folks, we have had to expose you this week to a side  
24 of life that I hope that most of you have not ever seen  
25 before and been exposed to on your own. I trust that's the

1 case. And I trust that you will never have to be exposed  
2 to anything like this again. I appreciate the fact that  
3 you were willing to be exposed to a side of life that we  
4 have to deal with in this courtroom on a day to day basis;  
5 otherwise, we would not be able to address these sorts of  
6 things in an orderly fashion and so you have done that and  
7 you have served a valuable service in that regard and we  
8 are all grateful for that. You have gained an exemption  
9 that will not require you to serve as a circuit court judge  
10 {sic} for the next three years. You should not even get  
11 called, but if you do get called and you want to serve, you  
12 can, but you don't have to. You'll get a check in the mail  
13 sometimes in the next couple of weeks. I'm not sure. It's  
14 not gonna begin to pay you for the time that you've spent  
15 and for your emotional investment in this particular case,  
16 but please add our gratitude to that check and I hope  
17 you'll be compensated in some small way for what you've  
18 done.

19 Let me tell you that -- that I hope you never get  
20 caught up in this on a personal basis. I hope you never  
21 find yourself seated on this side of the aisle where the  
22 victims sit or on the other side of the aisle where those  
23 charged with crimes sit. I hope you nor your family  
24 members ever find yourself in this courtroom or anyone  
25 like it under the circumstances that these folks appear

1 today, the victims and the defendant and their families.  
2 And while I hope that that never does happen to you, if it  
3 ever does, if it ever does, if you find yourselves on a  
4 Monday morning where these folks found themselves on Monday  
5 morning this week and when you see the jury filing into the  
6 courtroom like you filed through the door on Monday morning  
7 of this week, when you turn around in your seats and look  
8 into the faces of the jurors that have been summoned into  
9 this courtroom to deal with the case that you have a deep  
10 abiding personal interest in, you're gonna hope that you're  
11 looking into the faces of people just like you, people who  
12 have better things to do, who have things that they would  
13 rather be doing than what they have been asked to do by  
14 people like you who are willing to put aside those things  
15 that you had to do and come into this courtroom and help us  
16 do the things that we have to do. You have given us that  
17 quality of jury and I appreciate that very much and we all  
18 do.

19 You're free to go now. We have things to deal with  
20 here. There's the matter of sentencing and things of that  
21 nature. You don't have to sit where you are. If you're  
22 interested, you can come back in the back of the courtroom  
23 and sit, but I imagine you probably want to get out of  
24 here, and that's fine if you do. And if you do, I'll thank  
25 you again.

1           If any of you have any questions, I told you during  
2 this trial that if you want to know anything about what I  
3 was doing when you were not in this courtroom, I'll be  
4 glad to tell you, but I would imagine you want to get out  
5 of here as quickly as you. I'll be around some.

6           **BAILIFF:** Some of them have expressed interest in  
7 doing that, Your Honor --

8           **THE COURT:** Well, certainly they're free to do that.

9           **BAILIFF:** -- after the sentencing.

10          **THE COURT:** Surely, yes. That's right. That's right.

11          (Whereupon, the jury was dismissed at 5:12 PM.)

12          **THE COURT:** All right. Mr. Phillips, I'll be glad  
13 now to hear any additional motions. Or, excuse me, is it  
14 Mr. Chehoski? I'm sorry.

15          **MR. CHEHOSKI:** Thank you, Your Honor.

16          At this time the Defense moves for a new trial. We  
17 are renewing all prior motions and objections,  
18 specifically, all motions for mistrial that occurred  
19 during the course of the trial.

20          Additionally, we are moving for a new trial based on  
21 the cumulative nature of our objections and motions for  
22 mistrial and the cumulative nature of those objections and  
23 the subject matter of them has resulted in -- has resulted  
24 in error in this trial that has deprived Mr. Hunter of a  
25 fair trial pursuant to Article 5, 6 and 14 of the United

1 States Constitution -- I mean, Amendment 5, 6 and 14 and  
2 Articles 1, 3 and 14 of the South Carolina Constitution.

3 **THE COURT:** All right.

4 **MR. PHILLIPS:** I'm sorry, Your Honor. The only thing  
5 I'd like to add is during the closing arguments we did  
6 have the objection that nothing was put on the record for.  
7 Later -- you said you would certainly hear from us  
8 later that the State is not on trial. There was a  
9 contemporaneous objection that was lodged. The defense's  
10 argument would be that was improper burden-shifting in  
11 violation of his right to a fair trial, as well as there  
12 was highlighted during the closing argument the extraction  
13 report, the phone calls. The extraction report was two  
14 demonstrative exhibits which enhanced the prejudice to the  
15 jury based on our prior objections. The reference to calls  
16 with probation and our arguments that that information  
17 would have been privileged under the statute and  
18 highlighted -- highlighted were the terms "forensic  
19 interview", which was also part of our prior motions.

20 **THE COURT:** I think we've addressed -- as I recall  
21 it, we've addressed all of those matters, of course,  
22 during the trial itself. I need not readdress them at  
23 this juncture. I think you all have -- the record is  
24 well-preserved on all of those issues. I simply renew my  
25 earlier rulings except for the matter during opening or

1 during the arguments that the State is not on trial here.  
2 That was a proper area of argument. The defense had said  
3 at some point in time, either -- perhaps in opening, I  
4 think that's when it occurred, that the State was really  
5 on trial, that the Defendant was not on trial. As a matter  
6 of argument, that's within the realm of argument. I find  
7 nothing burden-shifting about that, but I note your  
8 objection. I think that's the only one I have not  
9 previously ruled on. As I said, you-all have certainly  
10 preserved this record for appellate review as well as  
11 anybody. This record could not be any better preserved if  
12 it were pickled in brine and so the record is there for  
13 appellate review should that be necessary.

14 All right. Is the State ready to proceed to  
15 sentencing?

16 **MS. MAYES:** Yes, sir, Your Honor.

17 **THE COURT:** All right.

18 **MS. MAYES:** Your Honor, I will begin with the prior  
19 record of Nathaniel Hunter.

20 **THE COURT:** Yes, ma'am.

21 **MS. MAYES:** In 2003, we have the conviction for  
22 possession of implements to be used in crime, also known  
23 as burglary tools. Your Honor, we have provided to the  
24 defense a certified copy of that indictment and sentencing  
25 sheet. At that time that was a Richland County conviction.

1 He was found to have been in possession of screwdrivers,  
2 pliers, wrench. He was found in a car dressed all in black  
3 at night in a neighborhood that they did not belong, while  
4 the co-defendant could not give a clear and consistent  
5 explanation for being in, and also possessed three masks,  
6 an automatic rifle, a pistol, and co-defendant admitted  
7 they planned to use the tools to make entry into the  
8 dwelling to commit robbery therein. So, Your Honor,  
9 that's eleven years before this and from what we can  
10 determine it seems to be a continual pattern of criminal  
11 conduct thereafter.

12 Your Honor, there was mention in this trial of the  
13 River Bend Apartments. It was at the River Bend Apartments  
14 in 2010 that he was arrested for attempting or committing  
15 a lewd act upon a child, an indecent exposure and assault  
16 and battery. And ultimately, Your Honor, in that case he  
17 plead guilty to the indecent exposure. He was sentenced to  
18 three years suspended to one year probation. Following  
19 that incident, they left the River Bend Apartments, which  
20 is just maybe a couple of football fields away from the  
21 Park Place Apartments. He had, as I believe there's been  
22 some discussion about and I realize the Court can't take  
23 this into consideration in terms of sentencing, but he  
24 was out on bond for murder, burglary first degree and  
25 possession of weapon during a violent crime out of

1 Fairfield County, and I think it's safe to say that a  
2 condition of that bond would have prohibited any type of  
3 criminal activity such as this and there's no doubt he was  
4 in possession of a weapon at the time this crime was  
5 committed in violation of that bond. He also had a pending  
6 indecent exposure for which he was out on bond from  
7 Richland County at the time this crime was committed.

8 Your Honor, when he was identified as the perpetrator  
9 of this crime and arrested, we immediately moved to revoke  
10 his bond out of Fairfield County and he has been in jail  
11 since that time due to that bond revocation. To that  
12 extent, I'll also add, Your Honor, I do want to make sure  
13 the record is protected about the length of time that it  
14 took for this case to come to trial.

15 After the sudden and unexpected death of Sergeant  
16 Bramlett, we had to completely redo the original Schmerber  
17 collection. Sergeant Bramlett had done that first and  
18 original Schmerber collection after our hearing on this  
19 where DNA had been done and we were looking at potentially  
20 setting a trial date and so we had a new Schmerber hearing  
21 and we collected completely new samples and redid the DNA  
22 all over. So that, of course, amounted to some period of  
23 time.

24 He also had a change in attorneys in that Mr. Phillips  
25 left the public defender's office and then Mr. Chehoski

1 came onboard. At that point in time, Mr. Chehoski and I  
2 had another murder case that we were working on and it was  
3 just a situation where we knew that he would not be able to  
4 handle all of these cases at one time suddenly, so it was  
5 over the course of time that this trial date was selected  
6 and here we are.

7 Your Honor, I know that Ms. Simon wishes to address  
8 the Court. I also know that Detective -- or Investigator  
9 Griffin wishes to make a statement to the Court on behalf  
10 of the West Columbia Police Department, but Mr. McNair and  
11 I want to go ahead and make the record clear that in terms  
12 of plea negotiations we -- we were not able to work out a  
13 plea in this case because we were potentially looking at  
14 something in the range of thirty years and when we  
15 calculated the time period involved and his age and the  
16 credit for time served and the fact that he would be  
17 eligible for patrol after 85 percent of that sentence, it  
18 amounted to about twenty-two and a half years. And looking  
19 at his history and the fact that this is the second case  
20 that we know of that would have involved a child, we felt  
21 that at age fifty-five getting out of prison he would  
22 remain a threat to children. Your Honor, for that reason  
23 we rejected any type of plea offer in that regard.  
24 Burglary first degree carries life, Your Honor. The State  
25 is seeking a life sentence.

1           **THE COURT:** All right. I'll be glad to hear from the  
2 victim and the representatives of the officers.

3           Ms. Simon.

4           **MS. SIMON:** Good afternoon, Your Honor.

5           **THE COURT:** How are you?

6           **MS. SIMON:** My daughter considers this person -- she  
7 don't know him by name. Every night she goes to sleep  
8 she asks me is the bad man coming, is the monster coming.  
9 Every night we sleep with all lights on; living room,  
10 kitchen, hallway, TV's. Everything has to be on for her  
11 to fall asleep. Prior to this, maybe a hallway light.  
12 She never asked about a bad man coming into our house. We  
13 never had this type of situation happen to us. He took  
14 away my daughter's security at night to sleep in her bed so  
15 she can wake up early in the morning to go to sleep to do  
16 the same thing every other child gets to do. He took away  
17 a lot of stuff from my child and that's all I care about.  
18 He could have shot me a hundred times, but the point is he  
19 took away from my child the innocence that she will never  
20 get back. Your Honor, I don't want no more children going  
21 through the things that she went through. I could care  
22 less about me getting shot. I've got a cut from the top of  
23 my stomach down to the bottom. I don't care about none of  
24 that. He took away her innocence and he deserves to be in  
25 jail for the rest of his life.

1           **THE COURT:** Thank you, Ms. Simon.

2           Yes, sir.

3           **MR. GRIFFIN:** Yes, sir, Your Honor. Thomas Griffin  
4 from the West Columbia Police Department. In my time with  
5 law enforcement, this is by far one of the most heinous  
6 and evil acts I've seen. It's by far the most evil and  
7 heinous act I've had to investigate as an investigator.  
8 I'm dealing with the injuries of Ms. Simon at the hospital,  
9 as well as what was attempted to be done to her daughter.  
10 It's something that no one could ever imagine be done.  
11 Based on that, Your Honor, we know that these victims are  
12 scarred for life. They are scared for life.

13           Mr. Hunter, he appears to be in good shape, he appears  
14 to be in good physical shape. He gets to live with that.  
15 We have the victim who, like she said, is cut from the top  
16 to the bottom of her stomach, Your Honor. We have a  
17 daughter who cannot sleep at night. Just these acts were  
18 so evil, Your Honor, we just ask, as the State, we would  
19 ask that you sentence him to life.

20           **THE COURT:** Thank you.

21           **MS. MAYES:** That's all from the State, Your Honor.

22           **THE COURT:** All right. Thank you.

23           All right. I'll be glad now to hear from the  
24 Defendant or anyone on his behalf.

25           **MR. CHEHOSKI:** Thank you, Your Honor. Before we get

1 into mitigation, just a couple of issues that Ms. Mayes  
2 brought up in her presentation.

3 **THE COURT:** Okay.

4 **MR. CHEHOSKI:** First, in regard to the Langford  
5 decision, we still want to point out that this case was  
6 originally set for a trial date earlier this month and was  
7 unilaterally changed by the State without any -- any  
8 hearing in front of a judge. Secondly, there was -- in  
9 reference to any plea negotiation, there was never an  
10 offer to even consider -- for Mr. Hunter ever to even  
11 consider from the State to try to -- to avoid a trial  
12 without the specter of a life sentence hanging over his  
13 head.

14 Your Honor, as he stands before you right now,  
15 Mr. Hunter is thirty-four years old. He's a high school  
16 graduate of Eau Claire High School in Columbia. He is  
17 single. He does have a twelve-year-old daughter. In the  
18 courtroom that has been in the courtroom supporting him  
19 all week is his mother, Ms. Pauline Jones; his father,  
20 Nate Hunter; his sister, Alicia Williams Hunter; his  
21 brother, Aaron Jones, and his uncle, Mr. Charles  
22 Livingston. He's been in custody since his arrest on  
23 April 17, 2014. That is 1,107 days, Your Honor. A little  
24 more that three years. You did hear that he did take some  
25 classes at Midlands Tech. He was also in the humanitarian

1 department in charge of recycling. That was his job while  
2 there. He was also studying -- he was about six courses  
3 away from his associate's degree in computer programming.

4 Personally, Your Honor, I've known -- I've gotten to  
5 know Mr. Hunter since I came onboard in October of 2015.  
6 Mr. Hunter has always been very soft-spoken, always very  
7 polite, respectful and caring. He's -- I started and  
8 first got to know him a month before my wedding and he  
9 wished -- every time he would wish me well and wished me  
10 happy anniversary when I saw him as our first anniversary  
11 came forward. I've gotten to know his mother. I've met  
12 his mother in the community. She actually lives about  
13 three blocks from me. I met her this past February while  
14 walking her dog and just crossed paths.

15 Your Honor, again, in speaking with them he does come  
16 from a good family. He's got strong support. While he was  
17 in custody, he did have -- he did come to faith and became  
18 a Christian. His family has described him -- I believe  
19 Mr. Charles Livingston would like to address the Court at  
20 the appropriate time. They've, again, described him as  
21 a caring person, which has been consistent with my  
22 experience with him. He did enjoy working -- he did work  
23 as a car mechanic working on older cars. Again, that is  
24 corroborated by his ownership of 1967 Buick Skylark.

25 Your Honor, I also kind of want to address two things.

1 One, while Ms. Mayes did say that you can't -- you should  
2 not consider it, she did go into quite lengths about the  
3 pending charge up in Fairfield County. That is now about  
4 ten years old and Fairfield County has not seen fit to  
5 dispose of the charge through dismissal or call the case  
6 to trial at this point. Though I am not at all familiar  
7 with the details, those -- those dates are troubling and I  
8 think that if the State were to have a case they probably  
9 would have called it to trial by now.

10 Also I wanted to go into as you heard about the prior  
11 conviction in 2003. You did not hear about the details of  
12 that. It appears that he was a passenger in a car that --  
13 where the tools were found. He was not -- not the driver,  
14 not the owner of the tools, and there was no -- there was  
15 not any suggestion that he was the mastermind behind the  
16 plan or it may have just -- it could have been as simple  
17 as a mere presence versus constructive possession argument.

18 Your Honor, we are asking for mercy in this case,  
19 again, really just due to the fact that -- that we're --  
20 you know, that's what our job is.

21 I want to let Mr. Livingston address the Court and  
22 then I'll sum up.

23 **THE COURT:** All right. Mr. Livingston, if you'll come  
24 forward, please. You can -- that's right.

25 Mr. Livingston.

1           **MR. LIVINGSTON:** Good afternoon. How are you doing.

2           **THE COURT:** I'm fine. How are you?

3           **MR. LIVINGSTON:** I'm fine. Judge Cooper, I would  
4 like to thank the defense team for what they have done. I  
5 thought they did a great job with what they had to work  
6 with and I appreciate what they've done for my nephew.

7           And right now at this juncture of the trial, Your  
8 Honor, we ask that your grace and your mercy be upon  
9 Nathaniel Hunter. We're his family, we love him, we  
10 support him. I realize that you've got a job to do. I  
11 realize that the situation that had happened is -- was a  
12 terrible situation. I can't pinpoint whether he did or  
13 whether he didn't do it, but at this point I'm asking that  
14 your mercy be upon him. We're gonna be with him, we're  
15 gonna support him and we ask that you just allow us an  
16 opportunity and not to give him so much time that it would  
17 be unbearable for him and his family. And we appreciate  
18 what you and the prosecutor team have asked for and we ask  
19 that you be lenient on my nephew, Mr. Hunter. Thank you.

20           **THE COURT:** Thank you, Mr. Livingston.

21           **MR. CHEHOSKI:** Summing up, Your Honor. Again, the --  
22 while the fact of the charge do speak for itself, all of  
23 us on the defense team have sympathy for the victim. It's  
24 a nightmare. No one wants to go through that. I know  
25 Mr. Phillips, being the father of a child less than

1 one years old, Ms. Gilreath as a young woman in the  
2 community, again, that comes with its own burdens and,  
3 you know, we -- our hearts go out to the victims and we --  
4 we ask for your mercy and we'd ask for a sentence of a  
5 determinate term of years, Your Honor.

6 **THE COURT:** All right. Thank you.

7 Mr. Hunter, do you want to add anything to what's been  
8 said on your behalf?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. I'll be glad to hear from you.

11 **THE DEFENDANT:** Yes, sir. I just ask that you be  
12 lenient because -- I mean, I've been in jail three years  
13 and if I really, really felt like I was guilty of this  
14 crime, I would have been -- at least asked to negotiate  
15 for a plea deal, but being that I know I didn't commit  
16 this crime, I couldn't do that. I couldn't admit to  
17 something I didn't do. I mean, it was a lot of  
18 coincidences and lot of things that happened as far as  
19 giving away my clothes and I can't help I was a major  
20 contributor to that, but that was -- that was -- the cap  
21 was something that I had before. If someone else had that  
22 cap and I was the major contributor, then I can't -- I  
23 can't do anything about that, but I just ask that you be  
24 lenient on me and I thank you for your time and patience.  
25 And I've never been in prison before. I know I might have

1 got in trouble before, but I'm really not a bad person.

2 I'm asking that you please be lenient.

3 **THE COURT:** Thank you, Mr. Hunter.

4 Mr. Chehoski, anything else?

5 **MR. CHEHOSKI:** Nothing further from the defense,

6 Your Honor.

7 **THE COURT:** Okay. All right.

8 I have taken into account those things that were said  
9 both in aggravation and in mitigation. My sentence might  
10 not reflect that I have, but I can tell you that I have.  
11 The facts of this situation speak for themselves. I need  
12 not add nothing to it.

13 Mr. Hunter, on the charge of possession of a weapon  
14 during the commission of a violent crime, you are to be  
15 committed to the Department of Corrections for five years.

16 On the charge of criminal sexual conduct with a minor  
17 in the third degree, you are to be committed to the  
18 Department of Corrections for a period of fifteen years.

19 On the charge of attempted murder, you are to be  
20 committed to the Department of Corrections for a period of  
21 thirty years.

22 On the charge of burglary in the first degree, you  
23 are to be committed to the Department of Corrections for  
24 forty-five years.

25 These sentences all run concurrent to each other with

1 credit for time served.

2 **MS. MAYES:** Thank you, Your Honor.

3 **THE COURT:** Thank you-all, folks.

4 **MR. PHILLIPS:** Thank you, Your Honor.

5 **THE COURT:** We stand adjourned.

6 **MS. MAYES:** Thank you, Your Honor.

7 (Whereupon, the proceedings were concluded at  
8 5:36 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 24th - 28th days of April, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

September 15, 2017

ISI Stacy S. Johnson  
STACY S. JOHNSON  
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA )  
County of Lexington )  
Nathaniel Anton Hunter #372378 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

v.

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

2019-CP-32 Q 4672

FILED  
NOV 20 AM 8:08  
ISA H. COMER  
CLERK OF COURT  
LEXINGTON SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick's Correctional Institution  
386 Redemption Way McCormick, SC 29899
2. Name and location of Court which imposed sentence Lexington County Courthouse  
205 East Main Street Lexington, SC 29072
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) 2014653203687 Burglary 1st Degree 2014653203689 Attempted
  - (b) Murder, 2014653203692, possession of weapon during violent crime, 2014653203688 Criminal Sexual Conduct w Minor Under 16 3rd Degree

(c) if not also sentenced to life without parole or death 2014653203688

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 28th 2017, Burglary 1st Degree 45 years, Attempted

(b) Murder 30 years, Criminal Sexual Conduct 3rd Degree 15 years

(c) Possession of a firearm during violent crime 5 years concurrent

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. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. The Court of Appeals affirmed my conviction

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. August 28, 2019

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NIA

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

SCANNED NOV-20-2019

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of trial counsel.
- (b) Ineffective Assistance of Appellate counsel.
- (c) Great Seal missing from the laws I'm reading time for 1993 Act No. 184  
2005 Act No. 7

11. State concisely and in the same order the facts which support each of the grounds set out in (10): See Attachment.

- (a) Counsel motioned for a Jackson witness hearing when there was no reason for it.
- (b) Appellate counsel failed to raise issue that's preserved for appeal.
- (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? Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (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. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. South Carolina Court of Appeals, P.O. Box 11629 Columbia, SC 29211
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. The conviction was affirmed.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. August 28, 2019
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2019-UP-312
- 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?

N/A

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) South Carolina Great Seal Missing. Fram Over 100 hours including
- (b) Burglary 1st, Attempted Murder, Criminal Sexual Conduct 3rd Degree
- (c) Possession of weapon during a violent crime

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
Yes

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. Dayne Phillips
  - ii. Jael Gilreath 407 West Main Street Lexington, SC 29072  
Jason Chehastki 407 West Main Street Lexington, SC 29072
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Dayne Phillips represented me at my bond hearing, schmerker hearing and my continuance for my trial.
  - ii. Dayne Phillips, Jael Gilreath and Jason Chehastki represented me at my trial.
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Reverse and remand for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA )

County of Lexington )

VERIFICATION

I, Nathaniel Hunter, 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.

Nathaniel Hunter

SWORN to and subscribed before me this 14<sup>th</sup> day of November, 2019.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 8/5/2024

FILED  
2019 NOV 20 AM 8:09  
LISA H. COMER  
CLERK OF COURT  
LEXINGTON SC

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Nathaniel Hunter, 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.

Nathaniel Hunter  
Applicant

SWORN or affirmed to and subscribed before me this 14<sup>th</sup> day of November, 2019.

[Signature]  
Notary Public

My Commission Expires: 8/5/2024

FILED  
2019 NOV 20 AM 8:09  
LISA H. COMER  
CLERK OF COURT  
LEXINGTON SC

# Certificate of Service

The undersigned hereby certify that he mail  
 the foregoing Post Conviction Relief Application  
 to Lexington County by depositing the same in the  
 Clerk of Court  
 United States mail on November 14, 2019  
 Date

Nathaniel Austin  
 Name

FILED  
 2019 NOV 20 AM 8:08  
 LISA M. COHER  
 CLERK OF COURT  
 LEXINGTON SC

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 )  
 Nathaniel Antron Hunter, SCDC #327378, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-32-4672

**RETURN, PARTIAL MOTION TO  
 DISMISS, AND MOTION FOR A  
 MORE DEFINITE STATEMENT  
 (COUNSEL APPOINTED)**

In response to the post-conviction relief (PCR) action commenced by Nathaniel Antron Hunter (Applicant) on November 20, 2019, the State makes this return:

**I. FACTS & PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on April 17, 2014, following an investigation into a violent burglary, shooting, and subsequent police chase. During its December 2014 term, the Lexington County Grand Jury indicted Applicant for attempted murder (2014-GS-32-3689); first-degree burglary (2014-GS-32-3687); third-degree criminal sexual conduct (CSC) with a minor (2014-GS-32-3688); and possession of a weapon during the commission of a violent crime (2014-GS-32-3692).

On April 24, 2017 Applicant proceeded to a jury trial before the Honorable Thomas W. Cooper. Jason S. Chehoski, Esquire, Jael D. Gilreath, Esquire, and Dayne C. Phillips, Esquire (collectively, Trial Counsels) represented Applicant. Assistant Deputy Solicitor Laura Suzanne Mayes and Assistant Solicitor Robert E. McNair, III, prosecuted the case.

**A. Summary of Evidence Adduced at Trial**

Larenda Simon (Victim) and her nine-year old daughter (Child) lived in an apartment complex in West Columbia. R. 272-74. During the early morning hours of April 13<sup>th</sup>, 2014, Victim and Child were asleep in Victim's bed when Victim awoke to see a man in a ski mask and hoodie standing over her holding a gun. R. 277. The man was dressed in all black and wearing boots. R. 277. Victim began to plead with the man, telling him she did not have any money. R. 277. The man took her phone and told her to take off her panties. R. 278-79. Victim asked that Child be allowed to leave the room, and the man told Child to go into the bedroom closet. R. 279. Victim removed her panties but informed the intruder that she was menstruating. R. 280. The man then asked how old her daughter was, and told Child to come out of the closet and remove her clothes. R. 280. While holding Victim at gunpoint, the intruder began to take out his penis. R. 281. Rather than allow the man to rape her daughter, Victim jumped on the intruder and attempted to wrestle the gun from him. R. 282.

Victim and the intruder struggled over the gun, and the intruder told Victim that he was going to kill her. R. 282. As Victim tackled the intruder, the weight of her body carried the two across the hall into the bathroom. R. 282. During the struggle, the man shot Victim several times, but Victim continued to fight. R. 282-84. The intruder finally fled from the apartment, leaving Victim with gunshot wounds to her chest, arm, hand, and underarm. R. 284; 554. Victim and Child fled the apartment and sought aid from a neighbor, who called 911. R. 286-287. Victim required surgery, but survived her injuries. R. 288.

Victim described the intruder to police as around five feet and four to six inches tall. R. 442. Although Victim could not see the intruder's hands or other body parts because he was wearing a disguise, she recalled looking directly into his eyes and hearing his voice. R. 233. After

having an opportunity to look Applicant in his eyes and hear him speak during court proceedings, Victim identified him as her attacker. R. 302-03. Child testified, corroborating Victim's account. R. 395-404. Child testified that the intruder's handgun was black. R. 402.

Investigators with the West Columbia Police Department investigated the scene, R. 574-76. Police found five shell casings in the bathroom of Victim's apartment and collected four projectiles from Victim's and her neighbor's apartments. R. 593. These items were tested by a ballistics expert at the State Law Enforcement Division (SLED), who concluded they were fired from a 40 caliber pistol made by either Glock or Smith and Wesson. R. 828-29. Inside Victim's bathroom, police also discovered a black hoodie sweatshirt with a skull cap tucked inside the hood. R. 591-94. Victim testified the clothing did not belong to her. R. 298. Officers requested an expedited DNA analysis of the clothing. R. 778. SLED technicians conducted an "ownership swab" of the cap and hoodie in an attempt to extract skin and other cells deposited in the clothing over time. R. 848. DNA extracted from the skull cap matched Applicant's DNA, which was entered into the state's DNA database in 2004. R. 773; 869-70.

On April 16, three days after the burglary, Applicant called the Department of Probation, Pardon and Parole (DPPP) and SLED to request that his DNA be removed from the state's DNA database. R. 155-56; 455, l. 4-5; 768-69; 777-78. Applicant provided the agencies with his name and telephone number. R. 769. Applicant called DPPP again on April 17<sup>th</sup> to follow up on his request, and answered a return phone call at the number he provided. R. 771. Prior to trial, police searched Applicant's phone and extracted call log, text message, and internet browser data. R. 928-31. The data showed caller ID-blocked outgoing calls to the Richland County Sheriff's Office warrants division, Columbia Police Department warrants division, and SLED between April 15<sup>th</sup> and 17<sup>th</sup>. R. 936-39. The data also showed calls to a rental car company and the Carolina Trader

magazine that were not caller ID-blocked. R. 938-39. The State presented evidence showing Applicant took out an advertisement in the Carolina Trader to sell his car on April 17<sup>th</sup>. R. 568-70. The data also showed numerous internet searches related to removal of DNA from DNA databases, visits to local crime news sites, the U.S. Marshalls most wanted fugitives list, and a news article entitled "Arrest Warrant Issued for Burglary Suspect." R. 937-40. The State originally intended to offer the data to show an absence of activity on the phone during the time of the incident, but after hearing extensive, contradictory, and inconclusive testimony from both prosecution and defense experts, the court ruled the State could not introduce the data for that purpose. R. 717; 905-18.

Based on the DNA tests and Applicant's suspicious attempts to destroy his DNA sample, officers obtained an arrest warrant for Applicant. R. 454. On April 17<sup>th</sup>, SLED agents tracked Applicant to an apartment complex in Columbia near Interstate 277. R. 456-57. Police spotted Applicant leaving the apartments driving a rental car. R. 457; 462. When signaled to stop, Applicant fled. R. 457-58. Disregarding traffic signals and speed limits, Applicant led police on a three mile chase until he eventually pulled over near 2548 North Main Street, where they arrested him. R. 458. Officers observed scratch marks on Applicant's face and an abrasion on his shoulder. R. 468-70. Applicant denied involvement in the burglary, but offered the police information on an unrelated murder case in exchange for a plea deal. R. 502. When confronted with information that his DNA was found at the scene, he told officers he had given away clothes to a thrift store or a "crackhead." R. 495. When asked about the scratches on his face, he told officers that he'd gotten the scratches while play-fighting with his cousin and roommate, Tanisha Taylor. R. 496. Applicant gave officers a different phone number than he had given employees of DPPP. R. 73; 85.

Taylor denied causing the injuries. R. 796. She testified she awoke around four o'clock on the morning of the incident date and saw Applicant washing clothes. R. 793-94. Applicant was

wearing only boxer shorts and a tank top, and made a comment about the injuries to his face. R. 794-95. Applicant did not have the injuries the night before. R. 796. Taylor testified Applicant owned a black handgun which she believed to be a 40 caliber Glock. R. 799-800. After being shown a picture of Applicant holding a black handgun, Taylor testified she believed it was the same gun she saw Applicant with on prior occasions. R. 803. The trial judge prevented the State from publishing the photograph to the jury because it also showed Applicant holding a second handgun. R. 803; 837-38. Taylor testified Applicant was upset with her for telling law enforcement about the gun. R. 815. The gun was never located. R. 738.

### **B. Verdict & Subsequent Proceedings**

On April 28, 2014, the jury returned a verdict of guilty on each indictment. Judge Cooper sentenced Applicant to concurrent terms of forty-five years' imprisonment for burglary, thirty years' imprisonment for attempted murder, fifteen years' imprisonment for CSC, and five years' imprisonment for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins (Appellate Counsel) perfected the appeal by briefing the following issues:

- I. Did the trial judge err in refusing to declare a mistrial when, in opening statement, the prosecution referenced photographs of Appellant with a gun found on Appellant's phone, although, prior to opening statements, Appellant objected to the admissibility of the photographs, the trial judge withheld ruling on the admissibility of the photographs pending further testimony, and ultimately the photographs were not admitted in evidence?
- II. Did the trial judge err in admitting a witness statement recorded by police while the witness was at the hospital being prepared for surgery and included statements by treating medical personnel without conducting a Rule 403 balancing test when portions of the recording were irrelevant and any

possible probative value in the recording was substantially outweighed by the danger of unfair prejudice and the needless presentation of cumulative evidence pursuant to Rule 403, SCRE?

- III. Did the trial judge err in admitting the content of text messages derived from a cell phone extraction report?
- IV. Did the trial judge err in refusing to declare a mistrial based on the fact that the cumulative effect of the errors adversely affected Appellant's right to a fair trial?

On August 28, 2019, the Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences. *State v. Hunter*, Op. No. 2019-UP-312 (S.C. Ct. App. filed Aug. 28, 2019). The case was returned to the circuit court on September 13, 2019. Applicant commenced this PCR action on November 20, 2019.

## II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:<sup>1</sup>

1. Ineffective Assistance of Trial Counsel
  - a. "Counsel motioned for a Jackson v. Denno hearing when there was no reason for it."
2. Ineffective Assistance of Appellate Counsel
  - a. "Appellate counsel failed to raise issue that's preserved for appeal."
3. "Great Seal missing from the laws I'm serving time for 1993 Act No. 184 1995 Act No. 7."

Applicant requests relief as follows:

"Reverse and remand for a new trial."

Attached herewith and incorporated by reference are the Lexington County Clerk of Court

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<sup>1</sup> "See attachment" is written on the application under question ten. However, the undersigned did not receive any attachments with the application.

records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

### **III. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL**

#### **A. Ineffective Assistance of Trial Counsel, Generally**

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). 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), SCRCP; *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 or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance

prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

*Strickland*, however, “does not guarantee perfect representation[+]—only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an

adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's

representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant claims Trial Counsels were ineffective for moving to suppress Applicant’s statements to law enforcement under *Jackson v. Denno*.<sup>2</sup> Three investigators and Applicant testified during the *Denno* hearing. Applicant testified that his statements to law enforcement were voluntary. R. 136. The trial judge ultimately found Applicant’s statements to law enforcement were given freely and voluntarily, and were therefore admissible. R. 140-42.

As an initial matter, Applicant cannot show Trial Counsels’ were deficient for attempting to suppress his statements to law enforcement. Most importantly, however, Applicant cannot show he was prejudiced in that the result of his trial would have been different had a *Denno* hearing not been held in his case. Therefore, this claim is wholly without merit.

### **B. Conclusion and Action Requested**

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See*

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<sup>2</sup> 378 U.S. 368 (1964)

*Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

#### **IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL**

##### **A. Motion for a More Definite Statement**

Applicant contends Appellate Counsel was ineffective for failing to raise preserved issues on appeal. The State submits this claim is without merit. However, it is impossible for the State to adequately respond because Applicant has completely failed to specify which issues Appellate Counsel should have raised on appeal. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCF (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCF (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCF.

##### **B. Ineffective Assistance of Appellate Counsel, Generally**

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance

of such quality as to make appellate proceedings fair). However, “[c]ounsel is not obligated to assert all nonfrivolous issues on appeal, as ‘[t]here can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review.’” *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000) (quoting *Jones v. Barnes*, 463 U.S. 745, 752 (1983)). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Id.* (quoting *Smith v. Murray*, 477 U.S. 527, 536 (1986)).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g.*, *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his “counsel’s representation fell below an objective standard of reasonableness” in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that “counsel was objectively unreasonable” in failing to file a merits brief addressing a nonfrivolous issue and that there is “a reasonable probability that, but for his counsel’s unreasonable failure . . . , he would have prevailed on his appeal”).

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective

assistance of counsel on appeal, however, “reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal.” *Jarvis*, 236 F.3d at 164 (internal citation omitted). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

### C. Conclusion and Action Requested

The State submits Applicant can satisfy neither requirement of *Strickland*. However, as discussed above, it is impossible for the State to adequately respond to Applicant’s allegation of ineffective assistance of appellate counsel because Applicant has failed to provide any specific facts to support this allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”). Thus, the State moves to require Applicant to provide a more definite statement of this allegation pursuant to Rule 12(e), SCRPC.

### V. RESPONSE TO ALLEGATION REGARDING THE GREAT SEAL

Applicant alleges his conviction is invalid because there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184, 1995 Act No. 7. This allegation is without merit, as our Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903); *See e.g.* S.C. Op. Att’y Gen., 2017 WL 6189878 (S.C.A.G. December 1, 2017). Further, under the Enrolled Bill Rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. *Medical Soc. of South Carolina v.*

*Medical Univ. of South Carolina*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See *Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); *Commr’s of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, our Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. *State v. Toomer*, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). In *Toomer*, the Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. *Id.* Moreover, section 2-7-45 of the South Carolina Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm’n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The acts Applicant currently challenges have substantial

compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

#### **A. Conclusion and Action Requested**

In addition to being meritless, the State submits this allegation is not a cognizable PCR claim. A PCR action does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(B); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). In a PCR action, "when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993). Applicant's allegation that there is no visible impression of the Great Seal on certain Acts of which he was convicted could have been raised at trial and thereafter on appeal. Accordingly, the State moves to summarily dismiss this allegation pursuant to section 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

#### **VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State

will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1; SCRCF. *See also* Rules 15(a)-(b), SCRCF. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCF.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

## **VII. GENERAL DENIAL**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

*[Conclusion and signature on following page]*

**VIII. CONCLUSION**

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, grant its partial motion to dismiss as set forth in section V, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

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Assistant Attorney General

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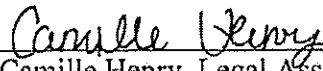
April 1, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2019-CP-32-4672
	)	
NATHANIEL A. HUNTER, #327378	)	
	)	
Applicant,	)	
	)	
vs	)	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, Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on the following person by hand delivery to the following address:

Ashley A. McMahan, Esquire  
 McMahan & Taylor, Attorneys, LLC  
 Post Office Box 5501  
 West Columbia, South Carolina 29169

DATED this the 1<sup>st</sup> day of April, 2020.

  
 \_\_\_\_\_  
 Camille Henry, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2019-CP-32-04672
Nathaniel A. Hunter, #372378,	)	
	)	
Applicant,	)	<b>AMENDED POST-CONVICTION</b>
	)	<b>RELIEF APPLICATION</b>
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on November 20, 2019, to add the following allegations:

1. Ineffective Assistance of Trial Counsels:

- a. Failure to object to the jury pool not being an adequate cross-section of the residents of Lexington County. A jury pool must represent a cross-section of the Applicant's peers. *See* U.S.C.A. Const.Amend. 6., State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011). *See also* Tr. Pp. 18-62.
- b. Failure to request sequestration of the victim during the Jackson v. Denno hearing
  - i. While the Applicant was warned about the dangers of testifying, he was never warned that his voice would be used against him during a pretrial hearing.
  - ii. The victim identified the Applicant during this hearing by his voice, counsel failed to object when the prosecutor asked her if she actually identified him while he was sitting at the table with trial counsels.
- c. Trial counsels should not have requested a Jackson v. Denno hearing because it was unnecessary as Applicant never gave a written statement.
- d. Trial counsel did not adequately move to quash Applicant's statements. When the investigators asked for a second statement from Applicant after the Applicant was arrested and when applicant had already requested the public defender represent him. *See e.g.* State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (2004) (Defendant's

- statement to police taken after arraignment where defendant requested counsel violated Sixth Amendment right to counsel.)
- e. Failure to challenge the chain of custody adequately on the DNA pursuant to SCRCrimP 6 and SCRE 801(d)(1). *See also e.g. Weldon v. State*, 436 S.C. 69870 S.E.2d 183 (S.C. Ct. App. 2021).
    - i. The nylon cap was not listed in the incident report, nor the search warrant return and there was no photograph of the cap taken. *See Tr. Pp. 784-792. See also, State v. Pulley*, 423 S.C. 371, 815 S.E.2d 461 (S.C. Sup. Ct. 2018);
    - ii. Did not adequately address Investigator Bramlett's testimony during the Schmerber hearing about the nylon cap and Bramlett testifying that the "black nylon cap" was photographed and marked separately when in fact, it was not. *Schmerber Tr p. 54, line 15 – p. 55, line 2. See also, Franks v. Delaware*, 438 U.S. 154 (1978).
    - iii. The West-Columbia person who logs the evidence in did not testify nor did Ms. Stephens from SLED. *Tr. p. 954, lines 20-25.*
  - f. Neil v. Biggers hearing request – Trial counsels failed to conduct sufficient pre-trial research and investigation to adequately evaluate and challenge the State's in-court identification of the Applicant. *See State v. Collier*, 421 S.C. 426, 807 S.E.2d 206 (S.C. Ct. App. 2017).
    - i. Furthermore, in the discovery there is a notation that the investigator asked for a photo line-up, but that photo-line up has not been produced and nor was this issue raised at the trial. If the line-up exists, it could have been favorable to the Applicant. *See Giglio v. United States*, 405 U.S. 150 (1972) and *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).
  - g. Trial counsels were ineffective for failing to adequately cross-examine the victim on key points during her testimony which also would have shown that some of her testimony was false. *See State v. Nance*, 393 S.C. 2897, 12 S.E.2d 446 (S.C. Sup. Ct. 2011) and *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959). *See also e.g. State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002) and *State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (2013).
    - i. Trial counsel did not adequately address with the victim during her testimony that she initially identified the perpetrator as a "light-skinned, black male" when the

- Applicant is not. See U.S. v. Greene, 704 F.3d 298 (4<sup>th</sup> Circ. 2013).
- h. Trial counsels were ineffective for failing to inform Applicant of his 5<sup>th</sup> Amendment right against self-incrimination and the consequences of exercising or waiving those rights. See U.S.C.A. Const.Amend. 5.
  - i. Trial counsels were ineffective when they failed to consult a touch DNA expert which resulted in an inadequate cross-examination of the State's DNA expert on the issue of touch DNA.
  - j. Trial counsel was ineffective when they did not request a curative instruction after the timeframe exhibit wasn't allowed into evidence.
  - k. Trial counsel did not object to admitting the State's DNA witness as an expert. See State v. Phillips, 430 S.C. 319, 844 S.E.2d 651(2020).
  - l. Trial counsel failed to object to the Solicitor's improper comments during their closing argument.
    - i. Prosecutor referenced dreads at p. 120, line 1-2, when no evidence the perpetrator had dreads was discussed in the trial;
    - ii. Reference to gloves and how DNA is found on page 1020, lines 3-13;
    - iii. Statement made about Applicant being worried about being seen in a car near the crime scene, Tr. p. 1019, lines 1-7.
    - iv. Tr. p. 1022 line 22 – p. 1023, line 2 – regarding his cell phone and not having activity.
  - m. Trial counsel failed to argue in closing that while the Applicant owned the black nylon cap at some point, he did not have ownership of it at the time of the incident.
  - n. Failed to argue at closing that it was unbelievable that the victim could identify the Applicant after more than three years.
  - o. Failed to argue in closing that there could be multiple guns that could match, not just the ones in evidence.
  - p. Failure to object to the trial court's instructions that stated "[i]nferred malice may also arise when the deed is done with a deadly weapon. A handgun or pistol in our law is a deadly weapon; that is, an instrument that could be used to cause death or great bodily harm." See Tr. p. 1070, lines 11-15. This jury charge was in contradiction to the holdings in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) and State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). See also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate

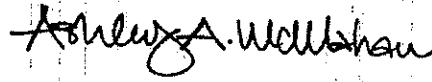
- review, it must have been raised to and ruled upon by the trial [court].)
2. Ineffective Assistance of Appellate Counsel - Arguments that were not referred to in defendant's appellate brief were abandoned, for purposes of appeal. State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997).
    - a. Failure to raise the Batson issue on appeal.
    - b. Failure to argue on appeal the issue regarding the chain of custody of the DNA.
    - c. Failed to argue on appeal the issue regarding the continuance request made before trial and the Schmerber hearing. See State v. Nelson, 431 S.C. 287, 847 S.E.2d 480 (2020).
    - d. Did not raise on appeal the preserve directed verdict issue. See State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011).
    - e. Failure to argue the trial court's denial of the Neil v. Biggers hearing.
    - f. Did not raise on appeal the voice identification of the Applicant in the courtroom.
    - g. Appellate counsel should have filed a Petition for Rehearing and a Petition for a Writ of Certiorari to the SC Supreme Court.

Because of the amount of trial and appellate counsels' errors the Court should grant the Applicant's PCR. "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

*Signature continued on next page.*

Respectfully submitted,



---

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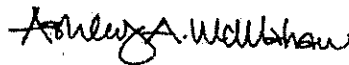
March 26, 2023

**CERTIFICATE OF SERVICE**

I certify that I have served this document via email to:

Zachary W. Jones  
Assistant Attorney General  
zacharyjones@scag.gov  
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This 26<sup>th</sup> Day of March, 2023.



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ASHLEY A. MCMAHAN  
Attorney for Applicant



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E X H I B I T S

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## P R O C E E D I N G S

1

2

3 THE COURT: Okay. I think our first matter up this  
4 morning is Nathaniel Hunter.

5 MS. MCMAHAN: Yes, Your Honor. That's 2020-CP-32-2379.

6 Mr. Hunter would like to request a continuance from the

7 Court.

8 THE COURT: Okay. Tell me the grounds.

9 MS. MCMAHAN: Mr. Hunter does not feel that he is ready  
10 to go forward at this time.

11 THE COURT: Okay. In, in what respects, sir?

12 MR. HUNTER: well, I was preparing a memorandum of law.

13 I don't have---

14 THE COURT: I'm sorry.

15 MR. HUNTER: I'm sorry.

16 THE COURT: I'm gonna need you to --.

17 MR. HUNTER: Sorry.

18 THE COURT: Thank you.

19 MR. HUNTER: Beg the Court's indulgence.

20 I don't have my DNA expert that I need here to testify  
21 to this previous State's DNA expert's testimony at my trial.

22 Also it's more issues that I need to amend. She said,  
23 when I talked to her on March the 3<sup>rd</sup>, that she was gon' --  
24 ordering some more discovery, and, when I talked to her on  
25 March 24<sup>th</sup>, she changed course and said that's (sic) she

1 wasn't gonna -- she wasn't gonna ask for a continuance. But  
2 there's, there's things in my case that, that are  
3 detrimental.

4 I haven't heard the recorded statement from the victim  
5 at the hospital, which has exculpatory -- may have  
6 exculpatory evidence on it and it's also---

7 THE COURT: I thought it was played at the trial.

8 MR. HUNTER: No, ma'am. It was---

9 THE COURT: Was it not played at the trial?

10 MR. HUNTER: It was redacted. I never got to hear the  
11 whole, the whole recorded statement and, from Investigator  
12 Griffin's testimony, he said it may be exculpatory evidence  
13 on there pertaining to the description of the suspect.

14 Also it's other issues in my case pertaining to  
15 prosecutor misconduct and with all the exculpatory  
16 information and fraud upon the Court, Your Honor.

17 THE COURT: Is this not stuff that you have set out in  
18 your new memo?

19 MR. HUNTER: Yes, ma'am, I have. But it needs to be an  
20 investigation due to the fact that, the incident report, it  
21 has my name on it and I wasn't a suspect at the time the  
22 incident report was made. I was a suspect and a person of  
23 interest four days after the crime happened.

24 And the fact that the solicitor knew and was the  
25 gatekeeper of the whole trial process and they submitted

1 those, I was arrested, indicted, and ultimately convicted  
2 with those documents.

3 THE COURT: You don't think your name was added to the  
4 incident report later at the end of the investigation---

5 MR. HUNTER: Ma'am?

6 THE COURT: ---and updated during the course of the  
7 investigation?

8 MR. HUNTER: Ma'am?

9 THE COURT: You don't think that your name was added to  
10 the incident report as the investigation progressed, sir?

11 MR. HUNTER: It's dated April 13<sup>th</sup>, the same time the  
12 crime happened.

13 THE COURT: My fear though is every time we continue  
14 this that you're going to be adding to the application every  
15 single time and at some point we've got to actually have a  
16 hearing and let you have your day in court.

17 Have y'all retained an expert---

18 MS. McMAHAN: No, Your Honor.

19 THE COURT: ---a DNA expert?

20 MS. McMAHAN: I've consulted with two but I have not  
21 retained either one.

22 THE COURT: Is there something in your discussions with  
23 the DNA, DNA expert that would warrant hiring a DNA expert?

24 MS. McMAHAN: Not with either of the conversations I've  
25 had with the experts I -- judge.

1 MR. HUNTER: Well, I beg the Court's indulgence, Your  
2 Honor.

3 But under Ard versus Catoe, Catoe, that's cite 372 S.C.  
4 318, and that's a case where a DNA expert refuted what the  
5 State's DNA expert testified to and he hired an independent  
6 expert---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. HUNTER: ---and the things that were relayed to the  
9 jury in my trial, they were not -- the jury only was misled  
10 and confused about touch DNA evidence. It was never given  
11 to the jury that touch DNA is not conclusive evidence of  
12 guilt and it's not DNA evidence demonstrating guilt if it's  
13 a reasonable explanation for its presence. So, the fact  
14 that the judge -- the jury didn't hear that, that was very,  
15 very unfair to me, Your Honor.

16 THE COURT: I'm gonna respectfully deny the request for  
17 a continuance. I see that it's already been continued at  
18 least once previously and, of course, this was a 2014 trial,  
19 was it -- or at least a 2014 case.

20 Was it not?

21 MS. MCMAHAN: It was, Your Honor. The investigation  
22 began, yeah.

23 THE COURT: So, I'm gonna respectfully deny the request  
24 for a continuance. At some point, sir, we need to go  
25 forward with your case and, and have some progression in

1 your case.

2 MR. HUNTER: Yes, ma'am.

3 THE COURT: Thank you.

4 Anything that you want to put on the record, Mr. Jones?

5 MR. JONES: Thank you, Your Honor.

6 Just that Mr. Hunter submitted a set of amended  
7 allegations dated March 26<sup>th</sup>, 2023. Those allegations  
8 I've received and I believe I'm prepared to go forward on  
9 those.

10 Today I received this memorandum of law that appears to  
11 have been prepared by Mr. Hunter himself. It's  
12 approximately 50 pages and there's accompanying printouts of  
13 a number of cases. I haven't had a chance to go through  
14 these.

15 So, I would just ask that, if a continuance -- as Your  
16 Honor has denied the continuance, I would just ask for some  
17 leave to go through these subsequent to the proceedings  
18 today, see if there's anything there that I believe the  
19 State needs to address to protect the record. And if  
20 there's a, a necessity for a, a future evidentiary  
21 proceeding to address a few of the allegations in here, to  
22 leave the record open for that. But, otherwise, I believe  
23 we're ready to go forward on the amended allegations as I  
24 received them on March 26<sup>th</sup>, 2023.

25 THE COURT: Okay. But what I would say is, because we

1 have a brand new memo that was just filed -- and this was  
2 filed or this was prepared by your client.

3 Is that correct, Ms. Shurling?

4 MS. MCMAHAN: Yes, Your Honor. I was gonna suggest  
5 maybe if we could make this a Court's Exhibit or maybe an  
6 Applicant's Exhibit just because it -- obviously we've all  
7 just received it today.

8 THE COURT: Sure.

9 MS. MCMAHAN: If we---

10 THE COURT: I'm fine to do that.

11 MS. MCMAHAN: I have no objection to what Mr. Jones is  
12 requesting.

13 THE COURT: I, I think that's fair that if there's  
14 something brand new in this memo that we're all just getting  
15 today that the State feels like you need to supplement with  
16 either testimony or additional filings, we'll give you that  
17 opportunity.

18 MR. JONES: Thank you, Your Honor.

19 THE COURT: Okay. Ms. Shurling.

20 No, I'm sorry. Ms. McMahan. I have Ms. Shurling in my  
21 head.

22 MS. MCMAHAN: Judge, Mr. Hunter would like to address  
23 the Court in regards to communications between myself and  
24 him. Given that it could be attorney/client privileged  
25 information, I would request that it be off-the-record. He

1 says it's for appeal purposes. He wants it on the record.  
2 But it could involve some attorney/client privileged  
3 information, which is the case, then, as an attorney, it  
4 should be off-the-record because it would be protected. But  
5 I'm not sure what he's gonna say.

6 MR. HUNTER: It's not.

7 THE COURT: Okay. Let's do this. Let's -- let me hear  
8 what you are about to tell me off-the-record, and then if  
9 you feel like it's something that needs to go on the record,  
10 let me hear what it is first. I don't want you to  
11 prejudice, prejudice yourself down the road by what you're  
12 about to tell me.

13 MR. HUNTER: well, I just wanted to know that---

14 (WHEREUPON, an off-the-record discussion was held at  
15 this time.)

16 THE COURT: And do we need to have him repeat it?

17 (WHEREUPON, there was no audible response at this  
18 time.)

19 THE COURT: Okay. Let's -- don't go into any -- the,  
20 the substance of any discussions that you've had with your  
21 attorney.

22 MR. HUNTER: Uh-huh. (Affirmative).

23 THE COURT: But if you want to go ahead and repeat  
24 that, let's go ahead and put that on the record.

25 MR. HUNTER: Okay. I'm stating for the record that we

1 didn't have any ineffective (sic) communication. She's been  
2 my attorney for three years and I haven't even had a  
3 conversation with her no more than 30 minutes.

4 It wasn't until she contacted me on March 24<sup>th</sup>, 2023,  
5 that she said she was starting to amend my PCR in which I  
6 didn't even have all my issues that I wanted her to amend  
7 yet. The fact that she did that is very prejudicing.

8 I just want to protect my Fourth -- my Fifth and  
9 Fourteenth Amendment rights to due process and my Article 1,  
10 Section 3 of the South Carolina Constitution because this is  
11 very detrimental in my case, the fact of (indiscernible)  
12 communication up under the, up under the general standard  
13 rules. And she can tell you herself that she -- we didn't  
14 have any communication, and under Rule .4, South Carolina  
15 Rules of Professional Conduct, communication, it says, A, a  
16 lawyer shall, Section 1, properly inform the client of any  
17 decision or circumstance with respect to with the client's  
18 informed consent as defined in Rule 1.0(g) required by these  
19 rules.

20 Number 2. Reasonably consult with the client about the  
21 means by which the client's objectives are to be  
22 accomplished.

23 3. Keep the client reasonably informed about the  
24 standards of the matter.

25 4. Promptly comply with reasonable request for

1 information.

2 5. Consult with the client about any relevant  
3 limitation on the lawyer's conduct when the lawyer knows  
4 that the client expects assistance not permitted by the  
5 Rules of Professional Conduct or other law.

6 6. A lawyer shall explain the matter to an extent  
7 reasonably necessary to permit the client to make informed  
8 decisions regarding the represent -- representation, and, 1,  
9 reasonable communication between the lawyer and the client  
10 is necessary for the client effectively to part -- to  
11 participate in the representation.

12 Your Honor, the fact that I haven't heard the recorded  
13 conversation, which may have -- which may pertain  
14 exculpatory information, I feel like that is detrimental to  
15 my case before we move forward, and I one -- I would like to  
16 state that for the record, Your Honor.

17 THE COURT: Anything that you want to say in response,  
18 Ms. Mc -- McMahan and let me just say also, first, many  
19 times your PCR attorney is not going to raise every issue  
20 that you think is relevant because they have a duty to the  
21 Court to not raise things that do not have any legal merit.

22 MR. HUNTER: Yes, ma'am.

23 THE COURT: And so it would not help your case if --  
24 let's say you have one really good issue or two really good  
25 issues---

1 MR. HUNTER: Uh-huh. (Affirmative).

2 THE COURT: ---and you raise 20 issues, and 18 of them  
3 have absolutely no legal merit --

4 MR. HUNTER: I got you.

5 THE COURT: -- then you are -- you have watered down  
6 now your chances because when the Court sees 18 things that  
7 have absolutely no merit, and then you've buried your one or  
8 two good issues in there, you have really worked to your  
9 detriment as opposed to you have two good issues and those  
10 are the issues that you raised to the Court.

11 Now, sometimes, as a lay person, it is really hard for  
12 you to discern what is a, a really good legal argument and  
13 what is not a good legal argument. If you were able to  
14 discern that on your own, we wouldn't have appointed counsel  
15 for you cause you could just do it on your own.

16 Now, that's not to say that you shouldn't be involved.  
17 You should absolutely be involved. But if I could cure  
18 myself by looking up stuff on webMD, I wouldn't need to go  
19 to the doctor's office. And, of course, I fancy myself a  
20 halfway intelligent person that I can look stuff up on  
21 webMD. But I am not a trained physician. So, I'm gonna  
22 rely on my expertise in diagnosing myself. I'm gonna go to  
23 a doctor who's had training.

24 So, again, your attorney can take input from you. But  
25 she is not going to raise issues that she knows are not

1 going to carry the day in your PCR application because those  
2 are going to end up working against you.

3 But having said that, if you -- if -- anything you want  
4 to put on the record, ma'am, with regard to just  
5 communication between you and---

6 MS. MCMAHAN: Sure, judge.

7 THE COURT: ---Mr. Hunter.

8 MS. MCMAHAN: This case was a 2019 filed PCR. I was  
9 not appointed until 2020. Shortly thereafter I sent  
10 basically what is a general letter I send all my clients  
11 once I get appointed on a PCR. There was obviously some  
12 communication between February, 2020 and when my first  
13 phonecall with him was August 6<sup>th</sup>, 2021.

14 Prior to that phonecall though I had spoken to  
15 Mr. Phillips, Mr. Chehoski, and Ms. Gilreath in July of  
16 2021. The first phonecall with Mr. Hunter was on 8/6/21. I  
17 had another one on 8/12/21. I had another one on 8/24/21.  
18 Then I had one on March 23<sup>rd</sup>, 2022. I had one on  
19 April 4<sup>th</sup>, 2022, and the note from that does say something  
20 about DNA in there.

21 I had one on September 23<sup>rd</sup>, 2022. I had another one  
22 on 3/3/2023. On 3/10, the private investigator went to see  
23 Mr. Hunter in person at the prison. And then, on 3/13, I  
24 called for a scheduled appointment that I had to talk to  
25 him. I was told that they had not act -- they had

1 accidentally not scheduled it. It was gonna be moved to the  
2 21<sup>st</sup>. I called on the 21<sup>st</sup>. They told me oh, our bad.  
3 We forgot to schedule it again. It's now moved to the  
4 20<sup>th</sup> -- to the 23<sup>rd</sup> -- 24<sup>th</sup>. But I also had one with  
5 him on March 3<sup>rd</sup>. Well, another conversation with  
6 Mr. Phillips on March 3<sup>rd</sup> of that year too.

7 So, to say that I have not reached out to him in any  
8 way is, is -- I find it to be completely inaccurate as well  
9 as I have talked to Mr. Phillips multiple times. There  
10 are -- I don't have notes from every conversation of that.  
11 But we have been in communication whenever I had any type of  
12 question about this case.

13 I have also consulted with two different DNA experts  
14 who I did not believe, in my expertise as a PCR attorney,  
15 would be helpful to the PCR.

16 THE COURT: Okay. Thank you.

17 MR. HUNTER: Well, Your Honor, I have letters right  
18 here that I wrote her. She didn't never respond back to me.

19 THE COURT: Okay. If -- are you asking me to relieve  
20 her as your attorney?

21 MR. HUNTER: I would like that, Your -- Your Honor.

22 MS. McMAHAN: I'm happy to be relieved, judge.

23 MR. HUNTER: (Indiscernible).

24 MS. McMAHAN: Not a problem.

25 THE COURT: So, what's your Plan B?

1 MR. HUNTER: Um.

2 THE COURT: Are you appointed or you're retained?

3 MS. MCMAHAN: I'm appointed.

4 MR. HUNTER: I would like another appointed attorney,  
5 Your Honor. We don't have any -- we, we -- our, our -- we  
6 are two -- we are seeing too far -- like we're, we're not  
7 seeing eye to eye and she's not responding to any of my, my,  
8 my letters. And for her to tell me that -- she's been lying  
9 to me about the DNA expert because my family spoke with  
10 Doctor Bennett, Your Honor, and he said---

11 THE COURT: Okay. Don't tell me what your expert said.  
12 Okay?

13 MR. HUNTER: Okay. Well, my family spoke with him and  
14 he said completely different from what she told me. And the  
15 fact that the things about the -- what the DNA expert can  
16 testify to weren't relayed to the jury. And the questions  
17 that were -- should of been presented to the DNA expert at  
18 trial weren't. That is a major factor in my case, Your  
19 Honor. That is very vital in my case.

20 THE COURT: The State have any position?

21 MR. JONES: The State's position is -- and, of course,  
22 I'm familiar with Ms. McMahan. She's represented many  
23 clients in PCRs. Very effectively in my opinion.

24 However, it's ultimately -- if Mr. Hunter doesn't  
25 believe that he can go forward with her and wants to relieve

1 her, you know, that's -- the State doesn't necessarily have  
2 a problem with that. However, we would ask that Your Honor  
3 make clear he needs to either relieve Ms. McMahan or defer  
4 to her judgment.

5 And if -- I also don't think that there's a need to  
6 appoint new counsel. Ms. McMahan is perfectly competent and  
7 I -- if Mr. Hunter is not satisfied with her, I don't, I  
8 don't want a situation in which we're (sic) just come back  
9 every term and get a new lawyer for Mr. Hunter because he's  
10 not satisfied with them.

11 Oh, excuse me. Beg the Court's indulgence.

12 THE COURT: Sure.

13 (Pause.)

14 MR. JONES: Your Honor, we'd just -- we leave it up to  
15 your discretion whether to relieve Ms. McMahan or not and  
16 whether to appoint new counsel if she is relieved. However,  
17 if Your Honor declines to rep -- appoint new counsel, we'd  
18 ask that we get Faretta warnings on the record.

19 Thank you.

20 THE COURT: Mr. Hunter, really the worse thing that I  
21 could do for you is to, to grant your motion in all honesty.  
22 The chances of you having any success representing yourself  
23 go way down.

24 MR. HUNTER: I would have to represent myself if, if  
25 she's relieved?

1 THE COURT: well, we'd have to appoint a new attorney.  
2 I, I would not want you to represent yourself. I think that  
3 would be a very bad idea. But I'm very reluctant to relieve  
4 her.

5 You've got a very experienced, effective attorney  
6 representing you whose put in a good bit of time. We've got  
7 the witnesses here. We have your, your memorandum that  
8 you've submitted yourself that I'm accepting as a Court  
9 Exhibit. So, I'd really like to go forward today with your  
10 application.

11 (WHEREUPON, the memorandum of Mr. Hunter was marked as  
12 Court's Exhibit No. 1 and received into evidence at this  
13 time.)

14 MR. HUNTER: with that being said, Your Honor, I don't  
15 see anything that she's submitted to me. Like I don't see a  
16 memorandum of law that she submitted or anything like that.

17 You didn't, you didn't, you didn't submit a memorandum  
18 of law you said?

19 THE COURT: well, let's hear the testimony and then  
20 we'll go from there.

21 MS. MCMAHAN: Your Honor, at this time the applicant  
22 will call Pauline Jones to the stand.

23 THE CLERK: Ms. Jones, will you come up here please?

24 You're gonna come to the right over here. Place your  
25 left-hand on the Bible and raise your right. That way, yes,

1166 Pauline Jones - Direct examination  
By Ms. McMahan

1 ma'am.

2 PAULINE JONES, being first duly  
3 sworn, testified as follows:

4 THE CLERK: Thank you, ma'am. If you would please be  
5 seated in the witness stand. And once you are seated, if  
6 you'd state your name spelling your last name for the  
7 record.

8 DIRECT EXAMINATION

9 BY MS. MCMAHAN:

10 Q. What -- what's your name?

11 Will you just let everybody know what your name is?

12 A. Huh?

13 Q. What's your name?

14 A. Pauline L. Jones.

15 Q. And you're Mr. Hunter's mother?

16 A. Yes.

17 Q. And do you remember when he got arrested for this, the  
18 first time he got arrested for it?

19 A. Yeah, I remember when he got arrested.

20 Q. Okay.

21 THE COURT: Ms. Jones, would you mind pulling your mask  
22 down?

23 I just want to---

24 MS. MCMAHAN: Your Honor, I'll step out for her---

25 THE COURT: I want to make sure that we get your

1 testimony for the record.

2 Q. You okay with me standing here?

3 A. It doesn't matter. Yes, stand on this side cause I  
4 can't hear out my ear on this side.

5 THE COURT: Yeah. Hang on just a minute.

6 MS. MCMAHAN: I'll put this wireless on.

7 well, I need -- she can't hear out of that ear. So,  
8 I'll have to stand --.

9 (Pause.)

10 Q. Okay. So you're his mom.

11 Do you remember at any point, close to the time he was  
12 arrested, him getting some clothes together to donate?

13 A. Right.

14 Q. well, tell me about that.

15 A. Okay. It been about probably two or three weeks before  
16 any of this ever happened. I told him cause he still was  
17 coming and staying at the house. But he start staying with  
18 his cousin for a while and I told him to come to the house  
19 and clean out some of these clothes out the drawers and  
20 stuff, you know, cause I needed some space for some stuff  
21 and take it -- told him to take it to the Salvation Army.

22 Q. Okay. Did he come and clean out some clothes?

23 A. Yes, he did.

24 Q. Do you remember how many bags he had with him that he  
25 cleaned out?

1168 Pauline Jones - Direct examination  
By Ms. McMahan

1 A. I estimate about two. No more than three.

2 Q. Of trash bags?

3 were they trash bags kind of full or how big were the  
4 bags?

5 A. See that what I'm saying. It probably trash -- the --  
6 it's trash bags. But see I can't give you exact. It's  
7 estimate but it wasn't no huge, huge bags.

8 Q. Okay. So you said he had about two or three bags of  
9 clothes---

10 A. No.

11 Q. ---that he took out?

12 A. And two -- yeah, in-between two and three.

13 Q. I got you.

14 You saw him carry those bags out of your house?

15 A. Yes.

16 Q. Did he put them in his car?

17 A. Yeah, he put them in the trunk of his car.

18 Q. Okay. And do you recall how -- and you said it was two  
19 or three weeks before he got arrested that he did this?

20 A. Yes, ma'am.

21 Q. Okay. Answer any questions that Mr. Jones may have for  
22 you.

23 A. Okay.

24 MR. JONES: The State has no questions for this  
25 witness. Thank you.

1 THE COURT: Okay. Thank you so much, Ms. Jones.

2 THE WITNESS: Okay. Thank you.

3 MS. MCMAHAN: Your Honor, Ms. -- can Ms. Jones be  
4 excused?

5 THE COURT: Sure. I have no objection.

6 MS. MCMAHAN: Your Honor, at this time the applicant  
7 calls Mr. Hunter.

8 THE CLERK: You can sit down if you want and I'll do  
9 that.

10 Can you raise your hand for me?

11 THE WITNESS: Uh-huh. (Affirmative).

12 NATHANIEL HUNTER, being first duly  
13 sworn, testified as follows:

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. MCMAHAN:

17 Q. Mr. Hunter, did you file this PCR application?

18 A. Yes, ma'am.

19 Q. And who were your attorneys that had represented you?

20 A. Dayne Phillips, Jason Chehoski, and Jael Gilreath.

21 Q. Who was your appellate attorney?

22 A. Kathrine Hudgins.

23 MR. JONES: Your Honor, could we ask that Mr. Hunter --

24 THE WITNESS: Oh.

25 MR. JONES: -- pull his mask down?

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By Ms. McMahan

1 Thank you.

2 THE COURT: Yes, sir.

3 THE WITNESS: Uh-huh. (Affirmative).

4 MS. MCMAHAN: Yeah.

5 Dayne Phillips, Jael Gilreath, and Jason Chehoski is  
6 your trial attorneys?

7 A. Uh-huh. (Affirmative).

8 Q. And you had Ms. Hudgins as your appellate attorney?

9 A. Correct.

10 Q. How many -- how long did you have all three of those as  
11 your attorneys?

12 Did you have any other attorneys before then?

13 A. Well, I had them since 2014. Dayne Phillips was my  
14 original attorney. He went to private practice and then he  
15 came back on my case I think approximately like a year later  
16 I want to say. Jason Chehoski was appointed to me, I want  
17 to say, 2000 what, '15, '16?

18 I don't remember correctly but --.

19 Q. Dayne was originally as your attorney and then---

20 A. In the Public Defender's Office.

21 Q. Uh-huh. (Affirmative).

22 A. Uh-huh. (Affirmative).

23 Q. So then he left to go into private practice and then  
24 Jason was appointed?

25 A. That's correct.

1 Q. And then Mr. Phillips came back to assist Mr. Chehoski  
2 at the trial.

3 Isn't---

4 A. And Jael Gilreath.

5 Q. Yeah.

6 A. That's, that's correct.

7 Q. Move a little bit closer.

8 Okay. And so how many times would you say that you  
9 have met with your attorney before you went to trial?

10 A. That's a hard one. I don't know. Eight, somewhere.

11 Q. Were -- you were in the detention center the whole  
12 time?

13 A. Yes, ma'am.

14 Q. Did you have any bond hearings?

15 A. I had one bond hearing.

16 Q. Your bond was denied at that hearing?

17 A. Yes, ma'am.

18 Q. Did you ever go back up for any other bond hearings?

19 A. No, ma'am.

20 Q. Did you ask for any bond hearing?

21 A. No, ma'am.

22 Q. And when you and Mr. Phillips first met, what did you  
23 guys talk about?

24 Do you remember?

25 A. Just the case. Just certain things about the case.

1 Things that were -- that should of been in there that  
2 weren't, DNA expert, and things of that nature.

3 Q. So, when you say things that should of been in there  
4 but weren't, what were those things?

5 A. Just like the key piece of evidence, which was a cap  
6 that the suspect was wearing at the time of the crime. He  
7 was basically telling me it wasn't in the incident report.  
8 It wasn't in the search warrant report and the supplemental  
9 report and it was no photographs of it.

10 Q. And then that -- there was a discussion about that at  
11 your trial, wasn't there, that that wasn't in any of the  
12 search warrants?

13 A. That's---

14 Q. Is that right?

15 A. That's correct.

16 Q. And there were no photos of it?

17 A. That's correct.

18 Q. And, and what kind of conversation did you guys have  
19 about a DNA expert?

20 A. At the time I didn't know anything about touch DNA.  
21 So, he's basically just said that the DNA expert -- he --  
22 well, first he needed three more things for the DNA expert  
23 to do an analysis so he can do analysis to make sure the  
24 State did everything they did.

25 So, after conferring with him again, he said that the

1 State looked like they did everything. Like it checked out.  
2 well, the State's DNA expert and it checked out. So, he  
3 wasn't gonna call them to testify.

4 Q. What did he -- what part was checking out?

5 A. I guess the swabs, the -- everything that they do, the,  
6 the procedure and protocols as far as DNA testing at SLED.

7 Q. Okay. In -- let's just start talking about your trial.  
8 what -- you said you had some issues with the jury pool.

9 Explain to everybody what your issues are about the  
10 jury.

11 A. It doesn't seem like it was a cross-section member of  
12 the community. Majority of the pool was white and every  
13 black juror that was presented the solicitor struck and I  
14 ultimately ended up with an all white jury.

15 Q. How many black people were called up as possible  
16 jurors?

17 Do you remember?

18 A. I want to say three.

19 Q. Okay. Did you have a discussion with Mr. Phillips or  
20 Mr. Chehoski about that at the time?

21 A. No, I didn't know, I didn't know, you know, anything  
22 about cross-section members. It wasn't until I started  
23 researching law on my own until I learned about that.

24 Q. Do you recall if Mr. Phillips or Mr. Chehoski or Ms.  
25 Gilreath did any objections or anything about the striking

1 of the black jurors?

2 A. Yeah. Mr. Phillips asked for a Batson charge and the,  
3 the State, they did it and I can't remember exactly what was  
4 said. But I think it was something to the nature of they  
5 didn't -- the solicitor didn't do anything wrong. Race  
6 neutral -- something about the race neutral thing.

7 Q. So---

8 A. Okay.

9 Q. ---they were telling you that the solicitor had given  
10 you a, a race neutral reason for why they had struck them?

11 A. A race explanation for why they struck them, uh-huh.  
12 (Affirmative).

13 Q. Did -- was that issue brought up on your appeal?

14 A. No, ma'am.

15 Q. Did you ever ask Ms. Hudgins to bring it up?

16 A. Yes, I did.

17 Q. Okay. But it wasn't raised on your appeal, right?

18 A. It wasn't raised.

19 Q. And what was the issue -- so there was some pretrial  
20 hearings that you guys had.

21 A. Uh-huh. (Affirmative).

22 Q. What was the issue about the sequestration of the  
23 victim during those pretrial hearings?

24 Tell the Court about that.

25 A. It was never any discussions. There was never any

1 discussions. No one -- like they warned me -- no one warned  
2 me. Dayne said what I -- whatever they say can't be used --  
3 whatever I say can't be used against me in court and that  
4 was it. But he never warned me of testifying in front of  
5 the victim. He never warned me the dangers and consequences  
6 of it.

7 Q. So, what was the result of you testifying in front of  
8 the victim?

9 A. I was ultimately allegedly identified. Well, I was  
10 identified by the victim by my eyes and voice three years  
11 after the crime took place.

12 Q. Okay. So, explain that to the Court for me.

13 How, how were you identified through your eyes and your  
14 voice I think that morning?

15 A. Well, when I got on the stand, I testified. Right  
16 after I testified, the victim confided in the victim's  
17 advocate that she recognized me by my eyes and my voice as  
18 the person -- as the suspect who committed the crime and  
19 like -- and, once again, this was three years later when  
20 ultimately it was never an identification at all prior to me  
21 testifying at the Jackson versus Denno hearing.

22 Q. So, the issue was that, you know, earlier the victim  
23 had given a statement that it was a light skinned black  
24 male?

25 A. That's right.

1 Q. That they were---

2 A. That's right. That -- which was corroborated by the  
3 victim's daughter --

4 Q. Okay.

5 A. -- whose voice sounded familiar.

6 Q. Okay. And then -- but when you get there the  
7 morning -- and you're doing the pretrial motions for this  
8 trial, suddenly she's now identified you just based on your  
9 voice and your eyes --

10 A. Correct.

11 Q. -- in court because you were doing a Jackson versus  
12 Denno?

13 A. Correct.

14 Q. Okay. And do you feel that Mr. Phillips or Mr.  
15 Chehoski or Ms. Gilreath did an appropriate job addressing  
16 that with the Court and with the jury?

17 A. No, they did not.

18 Q. You want to give some explanation about that?

19 A. Yes, I actually -- actually it's one of my arguments  
20 for issue number one on trial counsel ineffective for  
21 failing to investigate applicant's right to a Neil versus  
22 Biggers hearing.

23 Mr. Chehoski, Mr. Chehoski, he applied the wrong case  
24 law. He argued under State versus Lewis I should be granted  
25 a Neil versus Biggers hearing under -- due to reliability in

1 which that was error. He should of argued that I should of  
2 been granted a Jackson versus Denno hearing due to the  
3 reliability of the indi -- identification. That alone --  
4 the fact that it was never an identification until three  
5 years after the crime happened, that alone should of  
6 warranted a Neil versus Biggers hearing considering the fact  
7 the sus -- the victim said the suspect was a light skinned  
8 black male whose voice sounded familiar. Also -- which was  
9 also corrupt -- corroborated by the victim's daughter.

10 Also, when the victim advocate confided, the judge or  
11 the Trial Court told my counsel and the State to withhold  
12 the victim's identification of the Jackson versus Denno  
13 hearing from the jury, which is also another one of my  
14 issues.

15 That alone prejudiced me and it deprived me of my  
16 substantial rights to present a defense and a reasonable  
17 doubt in the jury's mind due to the fact that, when that  
18 happened, my counsel could not, could not question the  
19 victim and ask her are you identifying him now or are you  
20 identifying at the Jackson versus Denno hearing in which  
21 that led to false testimony because, when Mr. Chehoski asked  
22 her, on cross-examination, are she -- is she identifying me  
23 right now as he's surrounded by defense counsel, she said  
24 yes in which that was false testimony and the State failed  
25 to correct that.

1178 Nathaniel Hunter - Direct examination  
By Ms. McMahan

1 Q. And why was it false testimony?

2 A. Because that was a lie. She actually -- and I hate to  
3 use that word. But she actually testified -- she actually  
4 identified me at the Jackson versus Denno hearing.

5 If you go to my trial transcript on Page 224, Line 7  
6 through 14, it will show that and I'm arguing State versus  
7 Collier due to that cause, under State versus Collier -- I'm  
8 gonna go to---

9 THE COURT: You said Page 244?

10 THE WITNESS: 224. Line 7 through 14.

11 Q. So while you're looking up that, this also goes into  
12 the whole reason why you felt like you shouldn't of even had  
13 a Jackson versus Denno hearing?

14 A. Yes, I should of had a Jackson versus Denno hearing on  
15 identification alone.

16 Q. Just -- okay. So, you should of had really -- you're  
17 saying no Jackson v. Denno hearing. Just a Neil v. Biggers  
18 hearing.

19 A. That's it -- I mean -- say that again.

20 Q. So you were saying you shouldn't of had a Jackson  
21 versus Denno hearing because otherwise she wouldn't of  
22 ID'd---

23 A. That's right. If it was a -- if I would of been warned  
24 about the dangers of testifying I would of never testified  
25 and then ultimately I would never have been identified at

1 trial three years later---

2 Q. Okay.

3 A. ---or under State versus Collier, 421 -- that's 421  
4 S.C. 426.

5 MS. MCMAHAN: Judge, I believe I've handed that up.

6 A. 421 S.C. 426.

7 If Mr. Chehoski would of argued that case instead of  
8 the State versus Lewis case, then it was a reasonable  
9 probability I would of been afforded a, a Jackson -- a Neil  
10 versus Biggers hearing due to the fact -- and that Collier  
11 case, if -- the Court's ruled there was no evidence to  
12 support a finding that Kirkman's in-court identification of  
13 Collier resulted from anything Kirkman saw or heard during  
14 the Jackson versus Denno hearing.

15 However, in my case, there's a strong evidence to  
16 support that the victim's in-court identification of  
17 applicant result -- resulted from everything that she saw or  
18 heard during the Jackson versus Denno hearing, which was  
19 three years after the crime took place and there was  
20 absolutely no identification of me until the victim/witness  
21 advocate -- she witnessed me testify at the Jackson versus  
22 Denno hearing.

23 Q. Okay. So, had you had a Neil v. Biggers hearing, would  
24 the outcome of your trial been different?

25 A. Yes, it would of been different due to the five factors

1 of the Neil versus Biggers hearing to determine reliability  
2 of an identification.

3 1. The opportunity of the witness to view the criminal  
4 at the time of the crime.

5 The victim in my case testified that, before we go to  
6 bed -- oh, this is trial transcript Page 341, Lines 9  
7 through 14. She testified, before we go to bed, I will turn  
8 most of the lights off and leave the hallway light on. But  
9 I believe, at his point of entry, he must have turned that  
10 light off. But I'm not certain if the light was on or not.

11 The lightening (sic) conditions is a very crucial  
12 element of being able to view the criminal crime at the time  
13 of the crime, correct?

14 Q. Well, I'm asking questions.

15 A. Oh, oh, sorry. And the fact---

16 Q. So you believe that had, you know, whether or not the  
17 lighting would of affected how they would of identified the  
18 person?

19 A. Correct. Under U.S. versus Greene.

20 Q. Okay. And anything else you want to tell the Court  
21 about that issue?

22 A. Yes. Under U.S. versus Greene, 704 F.3d 298, the  
23 Courts ruled that we think the unreliability of the in-court  
24 identification was clear. First we noted that the witness'  
25 opportunity to view the perpetrator was limited. The

1 parties agree that, given a short period of time, the robber  
2 was in the bank and that he was wearing a long wig and  
3 sunglasses and Bolder had little time in which to observe  
4 him.

5 The victim's opportunity to view me and the lightening  
6 (sic) conditions rendered her in-court identification of me  
7 unreliable especially considering the fact that the suspect  
8 was wearing a mask.

9 Under U.S. versus Greene again, it says, with respect  
10 to the first factor, the relatively short period of time at  
11 issue and the fact that the robber's face and body were  
12 obscured by disguise indicated that Ms. Bolder's opportunity  
13 to view the robber was limited. So, she wouldn't have been  
14 able to satisfy the first factor in, in the Neil versus  
15 Biggers factor.

16 Also the third factor, the accuracy of the witness  
17 prior description of the criminal.

18 Q. And that's because she said lights being blacked  
19 (phonetic) out?

20 A. That's right. That's right.

21 MS. MCMAHAN: And, judge, just so you know, U.S. v.  
22 Greene is also included in those --

23 THE COURT: Thank you.

24 MS. MCMAHAN: -- cases I gave you.

25 In regards to the Jackson v. Denno hearing again

1 though, what was the issue with your trial attorneys not  
2 moving to quash your statements that you gave?

3 A. Say -- can you repeat the --?

4 Q. The statements that you gave, didn't the investigators  
5 come and ask you for a second statement?

6 A. Uh-huh. (Affirmative).

7 Q. So, what was the issue?

8 You had asked for the public defender to represent you  
9 at that time?

10 A. Yes, I was already -- I had already requested a public  
11 defender I want to say April the 18<sup>th</sup> --

12 Q. Okay.

13 A. -- that Friday.

14 Q. And then did they allow you to have the public  
15 defender?

16 A. Uh-huh. (Affirmative).

17 They already said they was gonna appoint me one, which  
18 I already had -- my rights of counsel had already attached.

19 Q. But they continued to try to ask you some---

20 A. They initiated the contact. That's right. Correct.

21 Q. Did you give a statement at that time?

22 A. No, I didn't give any statement.

23 Q. Okay.

24 A. Can I go back to this, this factor about the Neil  
25 versus Biggers?

1 Q. Oh, sure. I'm sorry.

2 A. I got one more.

3 Q. Finish your factors.

4 A. Well, the first investigator's round -- response to the  
5 crime scene was Sergeant Libertini, and the victim told the  
6 suspect -- told him the suspect was a light skinned black  
7 male who voice sounded familiar, like I said, which was  
8 corroborated by the victim's daughter. Under State  
9 versus -- while the crime was fresh in both of the victim's  
10 minds. That's under State versus Johnson, 318 S.C. 372.

11 A person in fear for his life presumably has a more  
12 accurate degree of attention to its surrounding than the  
13 mere passerby. The victim's first identification of me as a  
14 light skinned male was, in fact, accurate and reliable due  
15 to the fact that the first identification was corroborated  
16 by the victim's daughter who was also a victim of the crime.

17 Furthermore, Investigator Thomas Griffin testified on  
18 cross-examination that Sergeant Libertini relayed to him by  
19 phone that the suspect was a light skinned black male and  
20 that's on trial transcript Page 562, Lines 10 through 23. I  
21 want to make Sergeant Libertini's notes as a Court's Exhibit  
22 today.

23 Q. Well, we don't have Mr. Libertini here.

24 What particular about his notes did you want to  
25 address?

1 A. That the fact that it says that the suspect was a light  
2 skinned black male.

3 Q. That was testified to.

4 A. Okay. Yeah, that's was -- that's -- okay.

5 Under the totality of the circumstances, the victim's  
6 in-court identification was unreliable in comparison to her  
7 first identification of the suspect as being a light skinned  
8 male considering I am a very dark skinned male. Told  
9 individual -- re -- reliability is the lynchpin in  
10 determining admissibility of the identification testimony  
11 and that's under State versus Moore, 343 S.C. 282.

12 And the last factor that she wasn't able to overcome  
13 was five, length of time between the crime and the  
14 confrontation. The amount of time between the crime and the  
15 confrontation was three years. Four days after the crime I  
16 was arrested and the investigator spoke with the victim to  
17 see if the victim knew applicant and the victim responded  
18 no. That's also in my notes.

19 Could I make that a Court's Exhibit being the fact that  
20 that wasn't testified to and that was never even brought up  
21 in trial?

22 Q. So, it was never brought up in trial. It's already --  
23 we already know that. Your trial transcript's already part  
24 of the record. So --.

25 A. Okay. A photo lineup was given and the victim could

1 not identify me also four days after the crime, which makes  
2 it very unlikely that the victim could identify me three  
3 years later. The victim's in-court identification three  
4 years after the crime took place created substantial  
5 likelihood of irreparable misidentification and  
6 unreliability. Length of time between the crime and the  
7 confrontation weighs against reliability of the testimony.

8 The Supreme Court, in Neil versus Biggers, stated that  
9 a lapse of even seven months before the crime and  
10 identification would be a seriously negative factor in most  
11 cases. Here, the three years between the crime and the  
12 confrontation is an unquestionably lengthy period of time  
13 that must weigh against reliability. The three years  
14 between the crime and the confrontation is a very crucial  
15 timeframe that weighs against the memory and accuracy of the  
16 victim's in-court identification.

17 Q. Okay. So, the argument is had Mr. Chehoski adequately  
18 argued for a Neil v. Biggers hearing using State v. Collier  
19 instead of State v. Lewis that you would of had a Neil v.  
20 Biggers hearing. You would of been able to prove these  
21 factors that she was not a reliable identification witness  
22 and then, therefore, the outcome of your trial would of been  
23 different?

24 A. That's correct.

25 MS. MCMAHAN: Okay. Judge, that also goes to

1 Subsection F on the amended application.

2 Also, did -- wasn't there an issue about a photo lineup  
3 was requested?

4 A. That's right. Correct.

5 Q. Talk about that for me.

6 A. In the notes, Investigator Tom Griffin, he went to the  
7 hospital four days after the crime, and, on the second line  
8 of those notes, it says went to the hospital to see if  
9 victim knows him. Right beside that it says negative.

10 So, that means the victim was showed a picture of me or  
11 either a phone lineup because they couldn't identify me. A  
12 couple lines down later -- a couple lines up under that it  
13 says photo lineup request sent with a check beside it. So,  
14 that means a photo line-up request was sent.

15 So, if the victim could not identify me four days after  
16 the crime, I find it very unlikely that they can come to  
17 court three years later and identify me by my eyes and my  
18 voice. It just very, very, very unlikely.

19 Q. Do you feel like your attorneys adequately addressed  
20 that during trial?

21 A. They didn't.

22 Q. Okay. So, how -- what example -- what are some points  
23 that they did not address with the victim that they should  
24 have during her testimony?

25 A. Well, they should of asked her about the light skinned

1 black man, what happened to this light skinned black man  
2 cause that was very vital in my -- and, and they should of  
3 made those notes Court's Exhibits so the jury could have  
4 deliberated on them. They should of submitted those notes  
5 into evidence. The jury could of deliberated on them. It's  
6 different from the jury hearing testimony about it and being  
7 able to deliberate on it.

8 Q. You mean the notes of officer (indiscernible)?

9 A. That's right. That's correct.

10 Also, we couldn't ask her about she -- the, the first  
11 time in-court identification because a Neil versus Biggers  
12 hearing doesn't apply to an in-court -- a first time  
13 in-court identification. The problem with my case is her  
14 identification of me and what she testified to at trial was  
15 not a first time in-court identification.

16 The first time in-court identification was the pretrial  
17 identification at the Jackson versus Denno hearing, which  
18 that's another reason why I should of been granted a Neil  
19 versus Biggers hearing because the, the, the, the -- my  
20 counsel could not question her about that because the judge  
21 had ruled to withhold it from the jury.

22 Q. And did your appellate attorney bring up that issue---

23 A. They didn't bring it up on---

24 Q. ---when the judge said, said they couldn't bring it up?

25 A. They didn't bring it up.

1 Q. Okay. And what else -- is there anything else that  
2 she -- they should of adequately addressed with her during  
3 her testimony?

4 A. They should of asked her about the photo lineup. They  
5 should of asked her about the photo lineup. I got these  
6 handcuffs on. I can't, I can't really like --.

7 Q. Was -- did they accurately cross-examine her about the  
8 fact that she didn't know who it was at the hospital when  
9 she gave that statement?

10 A. Right. They didn't -- well, they didn't actually --  
11 they didn't question her anything about that. The  
12 cross-examine of -- cross-examination of the victim was very  
13 limited and he just informed me he didn't want to -- well,  
14 Mr. Chehoski informed me he didn't want to question her too  
15 much cause he didn't want to make her seem -- I guess he  
16 didn't want to badger her in front of the jury being that  
17 she was a victim.

18 But he also has a duty to represent me to his fullest  
19 extent. I'm a client who's (sic) has my life on the risk --  
20 on the line and he should of thoroughly cross-examined her.

21 Q. Was there also an issue with like the daughter's  
22 testimony and pointing out only one gun versus another gun?

23 A. That's right. That's correct. The victim told  
24 Investigator Griffin, which is in the notes also, that the  
25 sister -- the, the, the gun was a silver gun. She even

1 circled in my discovery over there -- I mean if I can  
2 show -- if you can get it for me?

3 She even circled a silver gun.

4 Q. It's part of the -- it's part of the discovery.

5 A. Oh, okay.

6 well, she even circled the silver gun saying the gun  
7 was silver. The problem with that is the solicitor got in,  
8 during her closing arguments, she relayed to the jury that  
9 the gun was black and that's completely inconsistent with  
10 what, what the victim -- it should be -- it's in the big  
11 envelope that -- yeah, that one.

12 The problem with that is the victim testified -- I mean  
13 the -- it's in the testimony I want to say that the, the,  
14 the gun was silver.

15 Q. This was what you're talking about?

16 A. Uh-huh. (Affirmative).

17 That's the, that's the gun. That's her signature right  
18 there and that's the gun that she circled.

19 Q. Okay. But she only circled one gun, right?

20 A. Correct.

21 Q. How many guns were -- did they determine were used in  
22 this particular incident?

23 A. Well, the State testified and the State, in their  
24 closing arguments, told the jury that it was a gun -- the  
25 Glock was used in the shooting. But the State's ballistics

1 expert testified that it could of came from five different  
2 guns and that wasn't related to the jury. So the jury was  
3 misled.

4 Q. The five different guns would of been the type of  
5 ammunition that was found only came back to be used as five  
6 different types of weapons.

7 Correct?

8 A. Correct.

9 Q. Okay. But that was not addressed --

10 A. That was not addressed in---

11 Q. -- addressed adequately, right?

12 A. That, that wasn't addressed either.

13 Q. So, your attorneys never said well, what other five  
14 guns?

15 A. That's right. They, they never could -- the only thing  
16 that was relayed to the jury was a Glock was used, a .40  
17 caliber Glock was used in the crime. That's the only thing  
18 that was relayed to the jury, which misled the jury once  
19 again.

20 Q. Let's go back to the DNA again. So, one of the issues  
21 is that the chain of custody on the DNA wasn't adequate.

22 what did you want to tell the Court about that?

23 A. The problem with Sergeant Bramlett's testimony at the  
24 Schmerber hearing, he testified that it was a picture of the  
25 cap with the touch DNA. what -- that was the last key piece

1 of evidence in. The fact that he testified that it was a  
2 cap, Sergeant -- Investigator Neel testified that it was not  
3 a picture of the cap and that's on -- I need my notes.

4 Q. So, at the Schmerber hearing, which that trial  
5 transcript -- that transcript's also already a part of the  
6 record.

7 A. Uh-huh. (Affirmative).

8 Q. So, at the Schmerber hearing, Investigator Bramlett  
9 gets in there and, and says that there's a photo of this hat  
10 --

11 A. Uh-huh. (Affirmative).

12 Q. -- that the DNA -- a sample of DNA was able to be taken  
13 off of?

14 A. Correct.

15 Q. But Investigator Bramlett then dies, right?

16 A. Correct.

17 Q. So, then the other investigator, during your trial,  
18 testifies that what?

19 A. It's not a picture of a cap.

20 Q. And says that there was no -- it wasn't listed on the  
21 search warrant or anything about it?

22 A. It's not in the search warrant return, the incident  
23 report. It's no picture of it in, and under the West  
24 Columbia guidelines, photograph of indoor crime scenes, it  
25 states that you must take a picture of every crime -- you

1 must take closeup pictures of every piece of evidence in  
2 which the cap was not, was not a picture of the cap.

3 Q. So, because this cap was not listed on the search  
4 warrant return, would -- had a photo of it taken or  
5 anything, the allegation is that the chain of custody can't  
6 be established for the nylon cap, right?

7 A. It can't be established due to the fact that the person  
8 who handled it, he passed away before trial. The person who  
9 collected it passed away before trial, which means that he  
10 couldn't testify. The first person he gave it to, Ms.  
11 Ottenbaucher (phonetic) at the West Columbia Police  
12 Department, the evidence, evidence custodian, she also  
13 didn't testify. The person she gave it to at SLED, Amy  
14 Stephens, the first person that she gave it to at SLED, she  
15 also didn't testify.

16 Q. And Ms. Hudgins didn't raise that issue on appeal  
17 either?

18 A. And it was objected to. We even did a suppression  
19 motion and she still didn't raise it on direct appeal.

20 Q. Okay. And, and the Schmerber issue, one of the other  
21 issues you had with that hearing was that Mr. Phillips had  
22 asked for a continuance?

23 A. Correct.

24 Q. Tell the Court about that.

25 A. Well, we asked for a continuance so we can get all the

1 necessary, necessary materials to, to give me a defense, you  
2 know, to make sure my Fifth and my Fourteenth Amendment  
3 rights weren't violated. He said he needed some more  
4 discovery, some things, and we also didn't have a DNA expert  
5 also to testify and make sure everything was right. By that  
6 time we hadn't consulted with a DNA expert -- expert yet.

7 And so it was a lot of things that we needed before  
8 that Schmerber hearing took place. But the judge ruled this  
9 is just a probable cause hearing. He even crossed the -- he  
10 even limited the cross-examination. When Mr. Phillips try  
11 to go into certain questions, he limited the  
12 cross-examination saying this is just a probable cause  
13 hearing. It's not a full blown trial. So, we can't address  
14 certain issues.

15 Q. So, that didn't allow you guys to present an -- a  
16 rebuttable expert at the Schmerber as to why they shouldn't  
17 of been allowed to get a sample of your DNA?

18 A. Correct.

19 Q. Was that issue raised on appeal?

20 A. No. No, ma'am.

21 Q. But your attorneys had asked for a continuance to  
22 request all this time in order to do that?

23 A. Correct.

24 Q. And did you think that your attorneys adequately  
25 cross-examined Investigator Bramlett during that Schmerber

1 hearing about whether or not the --

2 A. No.

3 Q. -- nylon cap---

4 A. No, he---

5 Q. ---was photographed?

6 A. No, he didn't because he had discovery and he, he, he  
7 saw -- he had discovery and he saw that it wasn't no picture  
8 of the cap in it. So, being that he was my trial counsel,  
9 he should of saw that and he should of questioned him about  
10 that.

11 Q. Okay. And so would you say that was a, a Franks v.  
12 Delaware sort of situation that you were --?

13 A. Uh-huh. (Affirmative).

14 Yeah, Franks versus Delaware.

15 Q. And was there an issue that someone from West Columbia  
16 also didn't come testify about the chain on the DNA?

17 A. Ms. Ottenbaucher, the evidence custodian. She's the  
18 person that Bramlett submitted it to in evidence.

19 Q. But she never came to testify, right?

20 A. That's correct.

21 Q. Was there someone from SLED that didn't show up to  
22 testify too?

23 A. Amy Stephens. She didn't testify either.

24 Q. And did your attorneys object to that chain of custody  
25 as being inadequate?

1 A. Correct.

2 Q. Did your appeal attorney raise that issue?

3 A. No, she didn't.

4 Q. Did they ever have a conversation with you about the  
5 Fifth Amendment right against self-incrimination?

6 A. No.

7 Q. What can you tell the Court about that?

8 A. They never warned me any consequences of testifying in  
9 the presence of the victim. They didn't sequester the, the  
10 victim due to be removed from the courtroom considering the  
11 fact that it was an in camera hearing and she wasn't  
12 testifying. No one was really suppose to be in the  
13 courtroom but me and my attorneys and the solicitor  
14 considering the fact that it's an in camera hearing for a  
15 reason out of the presence of the jury. But no one ever  
16 gave me any warnings about testifying out of the presence  
17 in -- testifying in the presence of the victim.

18 Q. And this is during the Jackson versus Denno hearing,  
19 right?

20 A. This is versus -- in the Jackson versus Denno hearing.

21 Q. So, they never had a conversation with you like hey,  
22 the victim will be there, may hear you talk and all that?

23 They never talked to you about that?

24 A. They never talked to me about any of that.

25 Q. Is there anything else you want to tell the Court about

1 that issue?

2 A. Yeah, I'm looking for it now. Give me -- let me check  
3 it.

4 Oh, I know where it's at. Wait. Yes.

5 Oh, yeah, I mean that ultimately led to me being  
6 identified in court and that identification was used against  
7 me as direct evidence when there was never identification.

8 Q. So, if you had been warned about the fact that the  
9 victim was in there and may be able to identify you, you  
10 wouldn't have (indiscernible) in here?

11 A. I would not have testified at all.

12 Q. Okay. What was the issue about your trial attorneys  
13 with the touch DNA expert and how they inadequately  
14 cross-examined the State's DNA expert about it?

15 A. Because, from doing my research, under State versus  
16 Phillips, and that is -- let me find it.

17 MS. McMAHAN: And it's also included, Your Honor. It's  
18 430 S.C. 319.

19 A. Yeah, 430 S.C. 319.

20 Okay. And Weldon versus State.

21 Well, where that's Weldon versus State?

22 It's -- where is it?

23 Where is it?

24 Where is it?

25 MS. McMAHAN: That's 436 S.C. 69.

1 A. Yeah, 436 S.C. 69.

2 Q. Okay.

3 A. Touch DNA is not conclusive evidence of guilt. It only  
4 proves that at one point in time I owned the cap. It does  
5 not say that I was at the crime scene in which the solicitor  
6 related to the jury. It's not -- touch DNA is not evidence  
7 demonstrating guilt when it's a reasonable explanation for  
8 its presence.

9 what I told in -- law enforcement that I gave those  
10 clothes away, and the fact that it was a major contributory  
11 and a minor contributor to the DNA, that was a reasonable  
12 doubt in itself to where I should not have been really  
13 arrested. I mean I, I could of got questioned. But once  
14 they saw it was nothing else, that was the only evidence at  
15 the crime scene that linked me to the crime scene.

16 There was multiple pieces of evidence. There was hair.  
17 There were fingerprints. There was nothing else linking me  
18 to that crime besides that cap. And I told them a  
19 reasonable explanation for why my DNA was on that cap. The  
20 fact that it was -- I was a major contributor and a minor  
21 contributor was not enough for reliable interpretation.

22 Q. Well, let's talk about it for a second.

23 So, the reason was essentially what your mom testified  
24 to earlier, right?

25 A. Uh-huh. (Affirmative).

1 Q. And what was that, that you had taken some clothes?

2 A. I gave some clothes away to the thrift store and which  
3 I always do that every year anyway. It's just I did it  
4 earlier this year because she was getting her house  
5 remodeled. But I also gave some to some drug users, which  
6 was testified to by Investigator Griffin, at the store up  
7 the street.

8 So, it's a reasonable probability that someone else  
9 committed this crime. But that was never related to the  
10 jury to put reasonable doubt in the jury's mind.

11 Q. So, your attorneys didn't address that like in a  
12 closing statement or on cross or anything like that?

13 A. They never addressed it.

14 Q. Okay. And, and then what was the issue with how they  
15 didn't adequately cross the State's DNA expert about it?

16 A. Because they just asked the State -- just the State's  
17 DNA expert about secondary transfer and transferring DNA for  
18 surfaces in which that had absolutely nothing to do with my  
19 case. That had no bearing on my case at all because we  
20 weren't saying anything about something being transferred.  
21 We were saying about it being left in the clothes, about the  
22 DNA being left in the clothes or the cap that was left at  
23 the scene.

24 It was not -- everything that they asked the, the, the  
25 touch DN -- I mean the touch DNA expert at trial had no

1 bearings on my case because I'm not -- I didn't dispute that  
2 the DNA was mine. I'm not saying the DNA wasn't mine. I'm  
3 saying the cap was not mine at the time of the crime being  
4 the fact that the SLED's DNA expert testified that you can't  
5 say -- she can't be positive how long touch DNA stays on a  
6 surface. She can't be positive when this -- the touch DNA  
7 got on a surface and she can't testify as to how long it  
8 stays on there.

9       So, with that being said, that was the argument. So,  
10 for all the questions that they asked the touch DNA expert  
11 really had no bearing on my case.

12 Q. Okay. Because she was saying she couldn't testify --  
13 she couldn't say how long touch DNA could stay on a -- on an  
14 article of clothing?

15 A. Uh-huh. (Affirmative).

16 Q. What was the issue with the timeframe exhibit that  
17 wasn't allowed into evidence --

18 A. Well---

19 Q. -- with the (indiscernible) you're talking about?

20 A. ---Jill Sparks, who was the Sprint custodian, she  
21 testified that it was no phone activity between 1:00 and --  
22 at 1:00AM and 5:00, 5:00AM during the timeframe of the  
23 crime. My DNA -- I mean my cellphone expert and the State's  
24 expert, they got together because my expert said that --  
25 Chris Watkins said that it was actually phone activity at

1 twelve, two, and three o'clock, which makes it possible for  
2 me to be committing the crime and using a phone at the same  
3 time.

4 The problem with that is, when they got -- when -- the  
5 State's expert, he didn't look at the thing that my expert  
6 was looking at. So, when they got together, they came to a  
7 conclusion that they needed more time to find out what  
8 actually happened.

9 So the fact that -- the judge never let them come to a  
10 conclusion. He just ultimately ruled the timeline between  
11 1:00AM and 5:00AM inadmissible. But, by that time, Jill  
12 Sparks had already testified in front of the jury that there  
13 was no activity on the phone and no one gave the jury a  
14 curative instruction concerning that.

15 Q. Well, your attorneys didn't say hey, judge, we need a  
16 curative instruction to tell the jury that you're to  
17 disregard the testimony about the time --

18 A. Correct.

19 Q. -- about the phone being off essentially for lack of a  
20 better term, which means---

21 A. Correct.

22 Q. --- (indiscernible) that Ms. Sparks had already said --?

23 A. Correct.

24 Q. Okay. And so the judge didn't give one and your  
25 attorneys didn't ask for him?

1 A. They didn't ask for one.

2 Q. And that was already---

3 A. Also---

4 Q. ---out in testimony and the jury'd already heard it?

5 A. The jury already heard.

6 Q. Okay.

7 A. To further muddy the waters, in closing arguments, the  
8 solicitor relayed to the jury -- I, I need my other papers  
9 so I can get all my page numbers.

10 Can you give me -- so that way I get these page  
11 numbers.

12 Q. Is it this one?

13 A. Hold on. Memorandum of law.

14 Q. This one says argument and motion.

15 A. Hold on. Memorandum of law.

16 Yeah, here. I got these handcuffs on. It's kind of  
17 hard though.

18 Okay. Okay. Yeah, Page 1022. Lines 1020 -- I mean  
19 Lines 22 through 25. Page 1023, Line 1.

20 The solicitor told the, the jury that it was no  
21 timeline -- it was no phone activity during -- between  
22 1:00AM and 5:00AM during the timeframe of the crime.

23 Q. That was in their closing arguments?

24 A. That was in the closing arguments at which the judge  
25 had already ruled it in -- inadmissible. The, the judge

1 ruled the timeline from 1/85 -- 1:00, 1:00AM to 5:00AM  
2 inadmissible on Page 969, Lines 1 through 25, and Page 970,  
3 Lines 1 through 2.

4 Q. So, so you're talking about again Ms. Sparks testifying  
5 that there was no act -- cellphone activity work between  
6 that time period, the judge then saying hey, well, we're,  
7 we're not gonna get into that.

8 A. Uh-huh. (Affirmative).

9 Q. We're just -- we're not gonna address the issue about  
10 there's no activity.

11 A. It's too confusing for the jury.

12 Q. But there was no curative instruction to the jury  
13 saying hey, don't talk about this?

14 A. That's right.

15 Q. Instead the solicitor brought it up in closing anyway?

16 A. That's right. And my trial counsel---

17 Q. Okay. And there was no objection?

18 A. ---failed to object -- that's right. No objection.

19 Q. So, while we're talking about the closing, there were a  
20 couple other things that you -- you'd say that your trial  
21 attorney should of objected to and didn't?

22 A. Uh-huh. (Affirmative).

23 Q. And one was a reference to gloves and how -- and DNA on  
24 Page---

25 A. Uh-huh. (Affirmative).

1 Q. ---1020, Line 3 through 13?

2 A. Yeah. Uh-huh. (Affirmative).

3 Q. And talk -- tell the Court about that.

4 A. And also on Page 1027, Line 16 through 18. The  
5 solicitor referenced to gloves four times. She relayed to  
6 the jury that the suspect came prepared. He came in all  
7 black. Don't think for a second that he wouldn't come in  
8 with gloves.

9 It was no evidence in the record to support that the  
10 suspect even had any gloves on. The victim never testified  
11 that the suspect had any gloves on him and that's another  
12 one of my issues.

13 Q. Officers never put it in your search warrant return or  
14 anything that any gloves had been found---

15 A. Correct.

16 Q. ---or anything like that?

17 A. Correct.

18 Q. So, no testimony about gloves had ever been discussed  
19 during any (indiscernible)?

20 A. Correct. That was prosecutor improper comments during  
21 closing argument.

22 Q. Okay. Okay. And, and what else?

23 was there a reference to dreads also?

24 A. Yeah. She, she told just -- on Page 1020, Line 1  
25 through 2, she told the jury that he had his dreads tucked

1 down in the back of that shirt. It was never any  
2 evidence -- even after the struggle they said happened, the  
3 victim, she never said that the suspect had dreads even  
4 after they say a hoodie was ripped off. No one ever said it  
5 was clothing up under a hoodie or anything. It was no  
6 evidence there in the record to support that. So that was  
7 also improper comments again by the solicitor.

8 Q. No one had ever referenced in the trial about any  
9 dreads or anything ever being tucked into a hoodie or  
10 anything like that?

11 A. That's correct. Trial counsel also failed to object to  
12 that too.

13 Q. Okay. And what was the issue about being seen in the  
14 car that they talked about?

15 A. Well, she said -- I was trying to sell my car and she  
16 referenced that to the jury. Page 1019 and Lines 1 through  
17 7.

18 She said what is he worried about, someone seeing him  
19 in the car?

20 What is she worried about?

21 He's trying to disassociate himself with that vehicle.

22 The car -- my car had no bearings on the case  
23 whatsoever. There is no evidence in the record to support  
24 that my car had anything to do with this case. No one said  
25 anything about a car at the crime scene. No one said my car

1 left my house that night or anything. The solicitor  
2 improper comments also misled the jury once again without  
3 any objection from my trial counsel.

4 Q. Okay. Is there anything else in closing that your  
5 attorney should of objected to?

6 A. Yes, the black gun on Page 1026, Lines 15 through 25.

7 Q. And that was because what?

8 A. Because there was no black gun in evidence. It was  
9 never any proof that the gun was black. The victims right  
10 here in -- on Page 563 and Lines 4 through 14, the victim  
11 told Investigator Griffin that the gun was silver.

12 Q. They circled a gun that was---

13 A. And they circled it.

14 Q. ---partially silver.

15 Is that correct?

16 A. Correct.

17 Q. Okay. And let's just go back a little bit back to the  
18 DNA expert.

19 Were -- was there a problem that your attorneys didn't  
20 object to the State's witness being brought by it -- as an  
21 expert?

22 A. Correct.

23 Q. And did they object to her -- that?

24 A. No, they didn't object.

25 Q. And then let's go back to closing just for a little bit

1 here. So there were a couple things that your trial  
2 attorneys didn't argue at closing.

3 So one was that what, that you owned the black cap at  
4 some point but didn't at that time of the incident?

5 A. Correct.

6 Q. And that they -- the unbelievable situation about how  
7 the victim could solely identify you three years later at  
8 trial?

9 A. Correct.

10 Q. And that there were multiple guns that could match that  
11 ammunition that was found, not just that one gun?

12 A. Correct.

13 Q. Okay. So let's talk about Ms. Hudgins and some of the  
14 issues you had with her as your appellate attorney and then  
15 we'll go back to any other issues you have to talk about.

16 A. Okay.

17 Q. So one of them was that she didn't raise a Batson issue  
18 on appeal and that she -- the custody of the DNA.

19 what are your other issues that you thought Ms. Hudgins  
20 should of raised on appeal that she didn't?

21 A. She should of raised the directed verdict motion.

22 Q. Okay. And why is that?

23 A. Cause it was two pieces of evidence that convicted me  
24 and that was the touch DNA evidence and the unreliable,  
25 tainted identification.

1 Q. Okay. And those were preserved and she didn't raise  
2 them on an appeal?

3 A. No, she didn't.

4 Q. She -- what other issues?

5 A. She's suppose to file a writ. She didn't read -- she  
6 argued the photographs -- she put that photographs in direct  
7 appeal. But she didn't argue it right. She didn't even  
8 explain to the appellate court how it prejudiced me.

9 Q. Which, which ones are you talking about?

10 A. The photographs -- when I first got arrested, they got  
11 the phone and they said it was some pictures of me with --  
12 it was some pictures in the phone with me holding some guns.  
13 So, the solicitor referenced those guns to the jury. He  
14 said we searched Mr. Hunter's phone and in those -- in that  
15 phone we find pictures of that .40 caliber Glock. And, my  
16 lawyers, we asked for a mistrial cause, you know, duties,  
17 improper comments because the judge hadn't ruled on the  
18 photographs yet.

19 Ultimately, later on, down the line, the judge ruled  
20 the photographs inadmissible, too far removed from the  
21 crime. But, by that time, the solicitor had already  
22 referenced to the jury the photographs.

23 Q. So there was that issue, the mistrial request that---

24 A. Uh-huh. (Affirmative).

25 Q. ---wasn't argued?

1 A. You know -- I mean she argued it. But she argued it  
2 wrong because they said did -- she didn't prove how it  
3 prejudiced me and she didn't even use U.S. versus Maddox,  
4 Maddox, U.S. versus Smalls, which are landmark cases due to  
5 the improper comments during opening and closings.

6 Q. Did -- you said that Ms. (indiscernible) asked for a  
7 mistrial.

8 Did they ask for a curative instruction since they  
9 weren't allowed to be admitted into evidence later on for  
10 the jury?

11 A. I want to, I want to say they asked for a curative  
12 instruction. I can't be sure. I can't be sure. I would  
13 have to look at my notes.

14 Q. Okay. But if it's in the transcript that they asked  
15 for it --

16 A. Uh-huh. (Affirmative).

17 Q. -- they asked for it?

18 A. Uh-huh. (Affirmative).

19 Q. What about -- what else with Ms. Hudgins that you  
20 thought she should of raised that she didn't raise?

21 A. She should of raised the improper comments that were  
22 not objected to.

23 Q. Okay.

24 A. She should of raised, like I say, the chain of custody.  
25 She should of raised --.

1 Q. Did she talk about their voice identification in the  
2 appeal?

3 A. No, she didn't talk about the voice identification.  
4 That was objected to also.

5 Q. You talked about a writ earlier.

6 Do you mean that she should of filed a petition for a  
7 writ of certiorari so the Supreme Court could review that?

8 A. That's correct.

9 Q. Okay. Anything else about Ms. Hudgins that you wanted  
10 to address that you felt that she didn't do correctly --  
11 adequately?

12 A. Oh, the third issue with my appeal.

13 Q. The one that she did raise?

14 A. Yeah, she did raise the text messages as hearsay. The  
15 Appellate Court ruled that -- they agree with me that, that  
16 they were not business records. But they, they ruled  
17 incorrectly when they said the text messages were, were used  
18 to, to show the relationship between me and my cousin,  
19 Taneshia Taylor, in which that was already established  
20 during the trial. So, it was no need for them to rule upon  
21 that in the trial court -- I mean in the appellate court.

22 Q. And the appellate court were saying there weren't  
23 issued to show -- to prove the truth of the matter asserted  
24 other than just that you and Ms. Taylor were related---

25 A. Correct.

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1 Q. ---and had communication with each other?

2 A. Correct. That was already established.

3 Q. And you felt that Ms. Hudgins should have taken that  
4 issue further?

5 A. Correct.

6 Q. Okay. Anything else with Ms. Hudgins?

7 A. I think that's it.

8 Q. What other issues did you want to raise about your  
9 trial attorneys?

10 A. Wait. Let me get it. Oh, my God.

11 Trial counsel were ineffective for failing to sequester  
12 the victim to be removed from the courtroom for the Jackson  
13 versus Denno hearing.

14 Q. We talked about that.

15 A. Oh yeah. Trial counsel was ineffective for failing to  
16 vigorously cross-examine the State witness at the Schmerber  
17 hearing (indiscernible) trial testimony.

18 Q. And that was because Investigator Bramlett said there  
19 was a photo of the cap but there really wasn't, correct?

20 A. Uh-huh. (Affirmative).

21 Trial counsel was ineffective for failing to request a  
22 photo lineup of applicant to be included in the applicant's  
23 discovery.

24 Q. And that was in relation to the notes from the West  
25 Columbia officer saying requested a photo lineup.

1 But you had never seen one from Mr. Phillips or Mr.  
2 Chehoski or Ms. Gilreath, correct?

3 A. That's correct. Trial counsel -- oh, yeah, they was  
4 ineffective for failing to call a touch DNA expert at trial  
5 to explain the complicated concepts of touch DNA.

6 Q. We just -- remember, we discussed that a little bit  
7 earlier.

8 A. Did you, did you discuss the failing to object to  
9 solicitor improper comments during closing arguments?

10 Q. Yes, we discussed that.

11 A. Okay. Yeah, those are it.

12 Q. Anything else that you want the Court to know today?

13 A. Uh-huh. (Affirmative).

14 It's other issues that I'm raising that---

15 Q. Okay.

16 A. ---I want to -- I mean -- well, I'm gonna amend my---

17 Q. That are in your memorandum?

18 A. Yeah. Well, no, some that I'm still amending.

19 Q. Okay.

20 A. I still got some issues that I'm still amending. So I  
21 want to speak on them and also they'll be preserved --

22 Q. Okay.

23 A. -- just in case, you know, Your Honor don't rule in my  
24 favor.

25 Q. What are those issues?

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1 A. The prosecutor engaged in prosecutor misconduct in  
2 violating the Rules of Professional Conduct.

3 Q. Okay. So how -- explain how that is --.

4 A. The incident report with my name on it, that was a  
5 false documentation because -- that was a false document  
6 because I was not a suspect at the time of the crime. I  
7 wasn't a suspect until four days later and under Uniform  
8 Crime Reporting Rule 73-30 under South Carolina Code of  
9 Regulations, it states -- where is it?

10 wait. Let me find it. Let me find it. I got it right  
11 here cause I know I had it. I had it here. 73-30. I got  
12 it wrote -- written down. So, oh, here we go. Yeah.

13 Q. So, let me just -- before you get -- judge, this is  
14 South Carolina Code of Regulations 73-30. This falls under  
15 SLED.

16 A. Uh-huh. (Affirmative).

17 Uniform Crime Reporting and it's due to the incident  
18 reports. Every law enforcement agency must send SLED a copy  
19 of each report made by any officer during the performance of  
20 his duties in responding to reported criminal violations  
21 within the jurisdiction of that agency. Reports must be  
22 sent to SLED regardless of the degree of seriousness of the  
23 reported criminal activity.

24 The reports must be recorded on standard forms approved  
25 by SLED commonly referred to as incident reports. Reports

1 must include, to the maximum extent possible, details of all  
2 offenses investigated by officers, whether actual or  
3 unfounded, to include follow-up investigations, reports of  
4 property recovered, changes in the status of any case, and  
5 other similar comments.

6 Sworn statements of witnesses need not be sent to SLED.  
7 However, information gathered from such statements should be  
8 transmitted to SLED if it changes or clarifies the status of  
9 classification of a prior report. Every law enforcement  
10 agent must send SLED a copy of each arrest document made by  
11 any officer, jailor, or other official.

12 Q. Okay.

13 A. Now---

14 Q. So, is the issue -- what's the issue with that then --  
15 that --?

16 A. The issue with that is the first original incident  
17 report that contained -- that pertains to the light skinned  
18 black man, where is that incident report because you're  
19 seeing right here in the rules it says each agency must send  
20 each, each report made by any officer.

21 Sergeant Libertini was the first officer at the scene  
22 and he doesn't have a report. It's ironic that the report  
23 that was made has my name on it, which I wasn't a suspect at  
24 the time of the crime. So, I just want to know -- it should  
25 of been an investigation into this because all of that falls

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1 up under the Sheriff's Department and the prosecutor.

2 So I just want to know why my name is on a in --  
3 incident report in which it should not have been. That  
4 lit -- that really is a false document and I have a issue on  
5 that --

6 Q. Okay.

7 A. -- and it's, it's issue number seven and it states the  
8 prosecutor failed to investigate the incident report that  
9 had applicant's full name on it that is dated April 13<sup>th</sup>  
10 and I wasn't a suspect until April 17<sup>th</sup>.

11 Q. Did your, did your attorneys address that with the  
12 prosecutor?

13 A. No, they never did and there was no reasonable  
14 explanation for investigator to include applicant's name on  
15 the incident report when it was made based upon the fact law  
16 enforcement had no knowledge or information pertaining to me  
17 whatsoever when the incident was reported. The prosecutor  
18 malfeasance prejudiced by me by violating my Fourteenth  
19 Amendment right to due process when the State used the  
20 incident report to arrest, indict, and convict me.

21 Under Rule 407, South Carolina Rules of Professional  
22 Control Conduct, Rule 8.4, it is professional misconduct for  
23 a lawyer to, A, violate or attempt to violate the Rules of  
24 Professional Conduct, knowingly assist or induce another to  
25 do so or do so through the acts of another.

1 B. Commit a criminal act that reflects adversely on  
2 the lawyer's honesty, trustworthiness, or fitness as a  
3 lawyer in other respects.

4 C. Commit a criminal act involving moral turpitude.

5 And, D, engage in conduct involving dishonesty, fraud,  
6 deceit, or misrepresentation.

7 Q. So, is it then that there's prosecutorial misconduct in  
8 violation of the Rules of Professional Conduct in that they  
9 provided an incident report with your name on it when you  
10 had not been the suspect at the time that the original  
11 incident report was created?

12 A. Correct.

13 Q. Okay. What other amended issues do you have?

14 A. Well, it's more to this right here cause --

15 Q. Okay.

16 A. -- the, the prosecutor also had withhold -- withheld  
17 exculpatory evidence.

18 Q. What exactly was that?

19 A. That was -- oh, the original incident report that they  
20 already spoke of that. They, they held the incident report.  
21 The, the original report, I never got a copy of that and  
22 that was exculpatory material.

23 Q. You never got a---

24 A. And the---

25 Q. ---copy of the lineup either, did you?

1 A. Right. I never got a copy of that lineup. But that  
2 falls under Gibson versus State and that's 334 S.C. 515 and  
3 in spec -- and it in -- cites in specific requests and  
4 general or no requests situations, favorable evidence is  
5 material and constitutional error results from its  
6 suppression by the government if there's a reasonable  
7 probability that had the evidence been disclosed to the  
8 defense, the result of the proceeding would have been  
9 different.

10 Also -- under that issue also is prosecutor's conduct  
11 violated the Rules of Professional Conduct.

12 Q. So how so?

13 A. Rule 407, South Carolina Appellate Court Rules 3.4(d),  
14 failing to make a diligent effort to comply with the  
15 discovery requests of an -- opposing a party and Rule  
16 3.8(d), failing to make a timely disclosure to the defense  
17 of known evidence or information that tends to, to negate  
18 the guilt of the accused or mitigate the offense, Rule  
19 8.4(a), violating the Rule of Professional Conduct, and  
20 8.4(e), engaging in conduct that is prejudiced to the  
21 administrator of just -- to the administration of justice.

22 The prosecutor all vio -- also violated the following  
23 rules for Lawyer Disciplinary Enforcement, Rule 4.3, South  
24 Carolina Appellate Court Rules, Rule 7(a) by -- Section 1,  
25 violating rules regarding professional conduct of lawyers,

1 Rule 7(a), Section 5, engaging in conduct tending to pollute  
2 the administration of justice or bringing the legal  
3 profession into disrepute, and Rule 7(a), Section 6,  
4 violating the oath of office taking upon admission to  
5 practice law in this state.

6 Q. And what exactly was it particularly that the  
7 prosecutors did to violate those rules?

8 A. For one, they hid the original incident report with the  
9 light skinned black man. For two, they put my name on the  
10 incident report.

11 So my question is what was relayed to the Grand Jury to  
12 get an indictment because obviously touch DNA is not enough  
13 cause it's not conclusive evidence of guilt. It's not  
14 evidence that you commit a crime. It does not place you at  
15 the crime scene.

16 So it needs to be an investigation done to see what was  
17 relayed to the Grand Jury to see if they had subject matter  
18 jurisdiction.

19 Also the prosecutor permitted fraud upon the Court.

20 Q. What -- in what particular was the fraud upon the  
21 Court?

22 A. Because the -- I didn't receive the incident report  
23 with the light skinned male and it was -- the incident  
24 report with my name on it was fabricated evidence cause I  
25 was not a suspect at the time of the crime when the crime

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1 took place and the incident report was produced.

2 Q. Any other amended issues that you wanted to address  
3 with Judge Curtis?

4 A. Yes, ma'am. Let me go -- let me look. Let's see here.  
5 Let me go through my paperwork.

6 So, with this directed verdict -- with this directed  
7 verdict, I want to reiterate a little bit. I'm just gonna  
8 read a little bit out of this.

9 This Phillip case where it's -- in this Phillips case,  
10 it's holding that the State presented considerable  
11 circumstantial evidence supporting Phillips guilt. It did  
12 not offer any evidence that conclusively proved Phillips  
13 guilt. When the evidence presented merely raises a  
14 suspicion of the accused guilt, the trial court should not refuse to grant the  
15 directed verdict motion. Suspicion implies a belief or  
16 opinion as to guilt based upon factual circumstances which  
17 do not amount to proof as in my case.

18 Under State versus Lollis, 343 S.C. 580, it says the  
19 State presented inconclusive touch DNA evidence which was  
20 the sole reason applicant got arrested and a critical factor  
21 in the jury's deliberation when the jury found applicant --  
22 when the jury found me guilty. There was no direct evidence  
23 or any substantial circumstance reasonably tending to prove  
24 the guilt of me and the case was properly -- was not  
25

1 properly submitted to the jury.

2 Therefore, I should of been granted directed verdict  
3 from the trial court especially considering the fact that  
4 the State's DNA expert testified that the DNA testing can  
5 not tell her when the DNA got on the surface of the  
6 evidence, when the D -- when the DNA got on the sample, and  
7 the testing can not tell her for how long it has been there.  
8 That's trial transcript, Line 41, Lines 7 through 16.

9 The judge in the case was more familiar with touch DNA  
10 expert testimony. The jury wasn't. The jury was just  
11 misled and confused, and under Weldon versus State, that's  
12 436 69 (sic), it says we find the presence of petitioner's  
13 DNA on a single piece of duct tape recovered from the victim  
14 does not constitute overwhelming evidence such that it  
15 precludes a finding of prejudice. Rule 403, South Carolina  
16 Rules of Record -- South Carolina Rules of Evidence, all the  
17 relevant evidence may be excluded if it's probative value  
18 substantially outweighed by the danger of unfair prejudice,  
19 confusion of the issues, or misleading the jury, or by  
20 consideration of undue delay, waste of time, or needless  
21 presentation of cumulative evidence.

22 Q. So, are you also arguing that because of all of the  
23 cumulative errors in your case that that had the effect of  
24 preventing you from having a fair trial?

25 A. Correct.

1           And under State versus Bostic, 392 S.C. 134, the  
2 evidence presented by the State raised at most a mere  
3 suspicion that Bostic committed the crime. Under several  
4 principles, the trial court should grant a directed verdict  
5 motion when the evidence presented merely raises suspicion  
6 of guilt. Furthermore, applicant's counsel, they never  
7 argued the touch DNA was insufficient to place me at the  
8 crime scene and there was no evidence as to when, when the  
9 touch DNA was left on the cap. The jury could only have  
10 guessed the touch DNA was left on the cap at the time of the  
11 crime.

12 Q.   So all this (indiscernible) goes back to ineffective  
13 assistance of appellate counsel as well?

14 A.   As well, correct. I was deprived of raising a  
15 reasonable doubt in the jury's mind in reference to the  
16 touch DNA and the victim's alleged identification of me.  
17 The State has the burden of proving the guilt of the  
18 defendant beyond a reasonable doubt in which the State did  
19 not prove in my case. There was no sufficient evidence  
20 presented at my trial to warrant a conviction for the charge  
21 of burglary in the first degree.

22           And under the identification, I went back to the Neil  
23 versus Biggers hearing -- went back to the Neil versus  
24 Biggers hearing when it says a substantial right to  
25 challenge the victim's pretrial identification of me in

1 contrast between alleged suspect and an applicant under the  
2 applicant -- under the substantial evidence rule. The right  
3 to raise a reasonable doubt in the jury's mind in reference  
4 to the inconsistent statement by the victim of applicant's  
5 identifications.

6       Lastly, it deprived me of the right to challenge the  
7 victim's credibility of her statement. All of which con --  
8 violated my constitutional right to some, some -- my  
9 substantial right to due process. And, furthermore, they  
10 failed to -- my trial counsel failed to conduct sufficient  
11 pretrial research and investigation to adequately evaluate  
12 and challenge the State's in-court identification of  
13 applicant by the victim. And I went into the Neil versus  
14 Biggers hearing again. But I'm not gonna go into that again  
15 because, you know, we already, we already established that.

16 Q.   Okay.

17 A.   The---

18 Q.   Okay. And what other amended --.

19 A.   Oh, applicant's Fifth Amendment right to a fair trial  
20 and his Fourth Amendment right to due process were violated  
21 when the trial court instructed both counsel to withhold the  
22 victim's identification of applicant at the Jackson versus  
23 Denno hearing from the jury.

24 Q.   Okay.

25 A.   Of course, you know, after I testified at Jackson

1 versus Denno hearing, the victim confided in the victim  
2 advocate that she recognized my voice as the suspect who  
3 committed the crime.

4 Now, when the judge instructed both counsels to  
5 withhold that from the jury, it deprived me of a substantial  
6 right to challenge her inconsistent statement of identify --  
7 of identification of contrast between me -- well, of, of --  
8 between alleged suspect and the applicant under substantial  
9 evidence rule. It deprived me of the right to raise a  
10 reasonable doubt in the jury's mind in reference to the  
11 inconsistent statement by the victim of my identification.  
12 Lastly, it deprived me of the right to challenge the  
13 victim's credibility of the statement.

14 See I would of been able to show the victim's  
15 credibility for identification cause I would of showed that  
16 her credibility would have been severely damaged in contrast  
17 to the prior identification that the victim gave to Sergeant  
18 Libertini that -- about the light skinned black man when I'm  
19 very darked skinned man. I could of put a reasonable doubt  
20 in the jury's mind had I been able -- if I had been afforded  
21 the opportunity to do that but I could not because --.

22 Q. Nobody ever asked the victim about that, right?

23 A. No, because the judge -- we couldn't ask the judge  
24 about the first identification -- about the pretrial  
25 identification because the, the judge already instructed

1 both counsels to withhold it from the jury. So, I couldn't  
2 go under cross-examination and say Ms. Simon, so you  
3 identified Mr. Hunter in the pretrial hearing or are you  
4 pre -- are identifying him now. We couldn't---

5 Q. And nobody else asked her about the light skinned black  
6 male?

7 A. Right. No one asked her about the light skinned black  
8 male either, either and it violated my substantial right to  
9 due process. I could of showed the jury the inconsistent  
10 identifications and there's reasonable probability that  
11 could of raised a reasonable doubt in their mind under  
12 Rutland versus State and that's 415 S.C. 570 when the  
13 Supreme Court stated, as a result, we find there's  
14 reasonable probability the outcome of the trial would have  
15 been different had trial counsel impeached Kestner as her  
16 prior inconsist -- inconsistent statements demonstrate all  
17 three witnesses to the incident attested, at some juncture,  
18 the victim was armed at the time of the shooting.

19 Moreover, had Kestner denied making the statements  
20 during cross-examination, trial counsel could have  
21 introduced this evidence, the police report, or the  
22 newspaper article which we find also have damaged -- would  
23 have damaged Kestner's credibility as to her version of  
24 events leading up to the shooting. And that's under Rule  
25 613(b), South Carolina Rules of Evidence, and this is com --

1 this case is completely identical to mine because if I was  
2 afforded the opportunity to attack the victim's credibility,  
3 there's a reasonable probability the outcome of my trial  
4 would have been different.

5 It's -- the, the victim was the State's key witness and  
6 her testimony was crucial in the State's case and we could  
7 not attack her credibility due to the trial court's error  
8 and it severely prejudiced me and that's under Rule 607 of  
9 the Federal Rules of Evidence. It provides that the  
10 credibility of a witness may be attacked by any party  
11 including the party calling the witness.

12 One method---

13 Q. Stop there cause we're not in federal court. We're in  
14 state court. So, the federal rules don't apply here but --.

15 A. Okay.

16 Q. So --.

17 A. And one method of attacking the credibility of a  
18 witness or impeaching a witness is to show that he has  
19 previously made a statement that is inconsistent with his  
20 present testimony.

21 Q. And we've addressed that, that Mr. Chehoski did not say  
22 or ask her about hey, do you remember talking about a light  
23 skinned black male --

24 A. Uh-huh. (Affirmative).

25 Q. -- (indiscernible) at the hospital?

1 A. That's under U.S. versus Ince. That's in the Fourth  
2 Circuit. That's 21 F.3d 576. Her inconsistent statement  
3 could only have helped me if I would of been able to  
4 cross-examine her due to her credibility.

5 The South Carolina Supreme Court, when -- the  
6 discussion of Rule 613(b) re -- regarding prior inconsistent  
7 statements noting that a prior inconsistent statement may be  
8 introduced as substantial evidence when a declarant  
9 testifies at trial and is subject to cross-examination.  
10 Under State versus Stokes, that's 673 S.E.2d 434 citing  
11 State versus Copeland. That's 278 S.C. 572.

12 The South Carolina, the South Carolina Supreme Court  
13 then quoted the confrontation clause from the Sixth  
14 Amendment to the United States Constitution recognizing that  
15 it provides the right of an accused to confront and examine  
16 witnesses ensuring a fair trial and that it promotes re --  
17 reliability in criminal trials and ensures that conviction  
18 will not result from testimony of individuals who can not be  
19 challenged at trial. And that's under State versus Martini  
20 (sic), 292 S.C. 437.

21 Q. Well -- but Ms. Simon was there, right?  
22 She testified?

23 A. Uh-huh. (Affirmative).

24 Q. So you -- there was an, an ability to confront her.  
25 It's just the argument is that Mr. Chehoski didn't

1 adequately confront her?

2 A. Well, we couldn't confront her because the trial court  
3 withheld the prior identification at the pretrial hearing  
4 from her. So we couldn't go into -- not just like---

5 Q. Is that something Ms. Hudgins brought up on appeal?

6 A. Hu huh. (Negative).

7 She didn't bring that up either. If I was given a  
8 chance to challenge the -- her credibility, I could of  
9 showed the inconsistent identifications of her to the jury  
10 and the victim was not a credible witness due to the fact  
11 the inconsistency of the statements, applicant's  
12 identification, and just -- it, it violated my due process  
13 and, and deprived me of a fair trial and there's a  
14 reasonable probability that, but for the trial court's  
15 unprofessional error, the result of trial would have been  
16 different.

17 Q. Okay. And, and I think we've addressed that issue with  
18 the victim pretty thoroughly at this point.

19 A. All right.

20 Q. What, what other issues did you, amended issues, did  
21 you want to bring out?

22 A. Applicant's Fifth and Fourteenth Amendment rights were  
23 violated when the State failed to correct false testimony at  
24 my trial when the victim testified.

25 THE COURT: And I think you've covered that --

1 THE WITNESS: You think so?

2 THE COURT: -- pretty adequately, yes, sir.

3 THE WITNESS: But I -- I want to cite -- can I cite  
4 some case law for it?

5 I mean just a couple cases.

6 THE COURT: I -- you don't need to give me the law on  
7 it.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: You just need to make your argument --

10 THE WITNESS: Okay. I'm sorry.

11 THE COURT: -- on what issues you're raising.

12 THE WITNESS: Okay.

13 Q. What other amended issues did you want to discuss?

14 A. Trial counsel was ineffective for failing to object to  
15 the solicitor's improper comment during closing arguments.

16 Q. I think we've already discussed all that --

17 A. Yeah. Yeah, I just might---

18 Q. -- and cited the trial pages.

19 A. ---of said all of that.

20 That's written up on. It's some amended issues that  
21 I'm still working on that I haven't amended yet and I just  
22 want to put them on the record. So --

23 Q. Yes.

24 A. -- so that way I can, I can preserve them just in case  
25 I needed to.

1 Q. Okay. What are those?

2 A. Where we at?

3 Applicant's Sixth and Fourteenth inference -- if --  
4 Sixth and -- Sixth, Sixth -- Fifth and Fourteenth Amendment  
5 rights were violated when the State failed to disclose the  
6 applicant to photo lineup and the victim's inability to  
7 identify applicant in the photo lineup.

8 MR. JONES: We've---

9 THE COURT: First of all, I need you to speak clearly  
10 into the microphone so she can hear everything that you're  
11 saying.

12 THE WITNESS: Okay.

13 Q. That was the issue about the photo lineup.

14 A. Uh-huh. (Affirmative).

15 Q. All right. You -- there was a reference to it. You  
16 were never given it. It wasn't in discovery.

17 A. Right. It wasn't in discovery. But it's in the notes  
18 that the request was sent and it's also in the notes that  
19 they went to the hospital and showed her a picture of me and  
20 she---

21 THE COURT: I'm following you with the photo lineup. I  
22 think we've already covered that.

23 THE WITNESS: Okay. I'm sorry, judge. I don't mean  
24 to, you know---

25 THE COURT: No, that's fine. You're not -- you're

1 fine.

2 THE WITNESS: Um.

3 THE COURT: I'll just tell you if we've already covered  
4 it.

5 THE WITNESS: Okay. Huh.

6 where is it?

7 Okay. So how many issues -- cause you said you amended  
8 some also, right?

9 Q. Uh-huh. (Affirmative).

10 Yes, sir, I went through all those and that -- issues  
11 while we were talking.

12 A. You never brought up the inferred malice.

13 Q. No, sir, I was gonna bring that up with Mr.---

14 A. Hu?

15 Q. I'm gonna bring that up with Mr. Chehoski.

16 A. Oh, okay.

17 Timely request.

18 So, did I say trial counsel was ineffective for failing  
19 to admit the victim's identification of a light skinned male  
20 at the crime scene into evidence for submitting into  
21 evidence?

22 Q. Uh-huh. (Affirmative).

23 we've discussed that.

24 A. Okay. well, so for these admissions to be preserved  
25 for appeal, I mean do you -- you know, just to be preserved,

1 do I need to speak on some of the issues like or I, I can't  
2 just state what the issues are, right?

3 Don't I have to speak on---

4 Q. If there's any issues---

5 A. Speak on---

6 Q. ---that you have not discussed today already --

7 A. Uh-huh. (Affirmative).

8 Q. -- that are, that are new that you want to address, we  
9 need to address them.

10 A. Uh-huh. (Affirmative).

11 Q. Is there another issue that you want to discuss that we  
12 haven't discussed yet today?

13 A. It isn't.

14 But you can amend -- you can -- I still can amend like  
15 during the ruling and things of that nature, right?

16 Like I still can --?

17 Q. Today's the time that you're presenting all your  
18 issues. So, if there's any issues that -- anything else you  
19 want Judge Curtis to know about your case today, now's the  
20 time to tell her.

21 A. Well, I mean I just want to put on the record that I  
22 feel like we should of had a DNA expert here, you know, to  
23 testify to -- not what I want them to testify to. But to  
24 testify that touch DNA is not conclusive evidence of guilt  
25 and --.

1 Q. Okay. I think when -- we addressed that earlier  
2 already.

3 A. Okay. Yeah, I think that's about -- oh, I do have one  
4 more. It's in here. I got one more.

5 Q. Okay.

6 THE WITNESS: I beg the Court's indulgence, Your Honor.

7 THE COURT: No problem.

8 THE WITNESS: Thank you.

9 Oh, yeah, I did address that. Trial counsel was  
10 ineffective for failing to cross-examine the State's key  
11 witness effectively on key points depriving applicant of his  
12 Fourteenth Amendment right to due process.

13 Q. Who was the key witness?

14 A. The victim --

15 Q. Okay.

16 A. -- Miranda Simon and we didn't go over that any.

17 Q. Yes, we did.

18 A. Okay.

19 Q. I think you addressed that fact that no one ever  
20 cross-examined her about her initial statement of  
21 identification of being a light skinned black male and also  
22 that she couldn't identify you from the photo and that no  
23 one asked her because it wasn't given to you about a photo  
24 lineup. So, you couldn't cross-examine her about that as  
25 well.

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1 A. Uh-huh. (Affirmative).

2 Okay. All right. What you had -- I think that's it.

3 Q. All right. Well, answer any questions the attorney  
4 general may have.

5 A. Okay.

6 MR. JONES: No questions, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 THE WITNESS: Okay.

9 MS. MCMAHAN: Do you need some help, Mr. --?

10 THE WITNESS: Uh-huh. (Affirmative). Yeah.

11 MS. MCMAHAN: Do you need some help getting that down?

12 THE WITNESS: Yeah, I just want to try to keep this  
13 organized. Let's -- okay.

14 MS. MCMAHAN: Okay. So go out this side please.

15 THE WITNESS: Okay. Sorry about that, Your Honor.

16 THE COURT: No, you're fine.

17 THE WITNESS: Thanks.

18 MS. MCMAHAN: Your Honor, the applicant rests.

19 THE COURT: Okay.

20 MR. JONES: Your Honor, would you mind letting us have  
21 a 10 minute recess?

22 THE COURT: No problem.

23 MR. JONES: Thank you.

24 (WHEREUPON, a short recess was taken at this time.)

25 DAYNE PHILLIPS, being first duly

1 sworn, testified as follows:

2 THE CLERK: Thank you, sir. Please be seated in the  
3 witness stand.

4 THE WITNESS: Thank you. Appreciate it.

5 MS. MCMAHAN: (Indiscernible). I'm sorry.

6 DIRECT EXAMINATION

7 BY MR. JONES:

8 Q. Thank you, Mr. Phillips.

9 A. Good morning.

10 Q. How long have you been practicing law?

11 A. I think it's 12 years now.

12 Q. And how much of that has been criminal law?

13 A. All of it.

14 Q. Do you recall how you came to represent Mr. Hunter  
15 initially?

16 A. Yes. I was working at the Lexington County Public  
17 Defender's Office. Got appointed to represent Mr. Hunter.

18 During the course of representation, prior to me  
19 leaving, I believe I did handle the Schmerber hearing while  
20 I was at the Public Defender's Office. I left the Public  
21 Defender's Office for private practice. Remember having a  
22 conversation with Jason Chehoski who took over my caseload.  
23 He had mentioned a number of kind of very tough cases that I  
24 had and I, I opened my big mouth and said hey, if you got to  
25 try one, I will do it pro bono with you and he called upon

1 that offer and here I, here I was trying the case with him  
2 and Jaeł Gilreath when it, it was called to trial.

3 Q. All right. And so ultimately all three of you were  
4 present at the trial?

5 A. We were. We---

6 Q. All right.

7 A. And we worked real hard the weeks leading up. I think  
8 Jaeł and I made two, three weeks give or take and they can  
9 correct me if I'm wrong. But within a few weeks of prior to  
10 trial we started really getting together and really prepping  
11 the trial hard and we spent a lot of hours in preparation  
12 for the trial.

13 Q. All right. The -- do you recall making a Batson motion  
14 at the -- after the jury selection?

15 A. At the, at the time I didn't. Now when I was going  
16 back and looking over everything, I, I certainly did.

17 Q. All right.

18 A. Oh, we -- when I say at the time when you called and  
19 was---

20 Q. Yes.

21 A. ---discussing the case with me as far as what I  
22 remembered from the trial. Again, during our phone  
23 conversation, I initially didn't remember it. But then  
24 after again looking at everything, I do remember moving for  
25 a Batson.

1 Q. All right. Do you recall the Jackson v. Denno hearing?

2 A. And -- I mean I do remember it.

3 Anything specific?

4 Q. Specifically did you -- do you recall why you requested  
5 a Jackson v. Denno hearing?

6 A. So one of the things, and I know prosecutors have  
7 gotten -- in cases where there are statements, and even in  
8 cases when we're not really sure there was a statement, but  
9 there was police interaction, I still like to raise the  
10 issue because I want to make sure that all statements have  
11 been presented and that we are aware.

12 There's no ambush moment to where -- it happens in a  
13 lot of trials where police officers haven't unloaded  
14 statements and you get these statements last minute, 11<sup>th</sup>  
15 hour, 12<sup>th</sup> hour, 13<sup>th</sup> hour and I wanted to ensure that every  
16 statement that could of come out at trial was about to at  
17 least come out and we could be adequately prepared for it  
18 and to confront it because sometime, again, these statements  
19 come out years later that weren't unloaded into the --  
20 prosecutors generally say well, we turn it over and -- when  
21 we get it. But we don't want to be ambushed by it through  
22 our trial strategy.

23 So, I always raise that to ensure there's no additional  
24 statements cause that can pretty much ruin your trial  
25 strategy and kill the case if there's a specific statement

1 like a confession related to the case.

2 Q. Now, do you recall the in -- involvement of  
3 Investigator Bramlett with this case?

4 A. So he's the one I believe was there collecting evidence  
5 at the crime scene. He was there with the -- he's one of  
6 the people that testified at the Schmerber hearing --

7 Q. Um.

8 A. -- and he said -- he passed I think prior to trial if  
9 that --

10 Q. All right.

11 A. -- if my memory serves.

12 Q. Yes, sir.

13 And you handled the Schmerber hearing, correct?

14 A. I did.

15 Q. Do you recall the -- making any motions regarding the  
16 chain of custody?

17 A. Not specifically. I know that was a big issue in the  
18 case. I don't have -- you know, other than just the basics.

19 Q. All right.

20 A. You'd have to refresh my recollection with some page  
21 numbers for anything specific. But, yes, just in general.

22 Q. And specifically the item of evidence that the chain of  
23 custody arguments were made, do you recall that being the  
24 black nylon cap?

25 A. Yeah. I mean that was obviously when -- in this case,

1 the nylon cap and the hoodie are two critical key pieces of  
2 evidence in the case. And so that was definitely one of  
3 the -- you know, when we have our short list of items that  
4 we must challenge. That was certainly one of them.

5 Q. All right. Now, do you recall asking for a Neil v.  
6 Biggers hearing in this case?

7 A. Again, other than generally you, you -- if you point me  
8 to a specific page number with some specifics as far as  
9 what, what you're looking for, I'd be happy to, to assist.

10 Q. Sure.

11 Beg the Court's indulgence.

12 (Pause.)

13 Q. My apologies. Appears to be a question for Mr.  
14 Chehoski there.

15 A. That's all right.

16 Q. Excuse me.

17 A. I mean yeah, I can specifically address -- think -- I'm  
18 talking -- when you were talking about the nylon cap as far  
19 as I know his mother was here and testified a minute ago.  
20 He did tell us, prior to trial or maybe it was during the  
21 trial, that he had dropped off items of clothing at  
22 either -- our memory was Good will. His mother testified  
23 Salvation Army. He could of told us Salvation Army. I'm  
24 not gonna dispute. But he did say he dropped off articles  
25 of clothing. So, I mean that, that part he did tell us.

1 Q. Did he tell you specifically anything about the cap?

2 A. Not specifically other than he had dropped off a, you  
3 know, a bunch of articles of clothing before then and that's  
4 the only explanation he could give for it.

5 Q. All right. Did he give you a timeframe for that?

6 A. Not -- nothing tight and, you know, kind of same as in  
7 the night of. We didn't have any tight timeframe that we  
8 could use to, to rebut or challenge the State's position on  
9 that cause, you know, that's one of the things we asked. We  
10 got to conduct our own independent investigation.

11 When did you drop it off. Can we get -- maybe go there  
12 and try to find out if we had a receipt or is there any way  
13 we can prove that this -- these clothes were dropped off  
14 there and, of course, we weren't able to -- none of that was  
15 able to be materialized.

16 Q. All right. What about Mr. Hunter's own testimony?

17 Was there a reason you -- did you advise him not to  
18 testify and, if so, was there a reason for that?

19 A. So, again, specifically as far as, you know, with any  
20 trial -- cause I don't have any -- necessarily specific  
21 memory. But what, what I do know is we definitely sat down  
22 with him at length many times and reviewed all of his  
23 constitutional rights.

24 One of the things I can tell you about the three of us  
25 that we were very diligent and thorough in ensuring that he

1 understood what was going on. He understood as far as the  
2 rights. I think his main issue, what he testified to, was  
3 did we tell him -- did we warn him about the victim being  
4 able to hear his voice. That I may not have done cause as  
5 far as the person hearing his voice and whether we -- she  
6 should of been sequestered, that part of it did -- I don't  
7 believe crossed our minds at that point.

8 Now, as far as do I think, you know, I -- there's no  
9 way specifically to say whether she could of remembered or  
10 didn't other than just asking the question and, you know, I  
11 think she made that pretty clear that she -- that's what  
12 she -- you know, that she was able to remember that. But we  
13 weren't given anything else from that.

14 Now, with the pretrial, if we're talking about the  
15 pretrial where he testified, then we have the issue where we  
16 were going to address that, and as far as having her  
17 sequestered, I know, you know, as a general rule of thumb,  
18 victims are not sequestered as, as far as a witness, that  
19 and the lead investigator.

20 Now, you know, in hindsight, would that have made the  
21 difference?

22 Potentially, right, I mean as far as her testimony with  
23 that one issue.

24 But, again, I think the case, as a whole, there's many  
25 more, more issues that you had to deal with such as, you

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1 know, the DNA and all the other circumstantial evidence as  
2 far as the searches and I mean there's a lot. There's a lot  
3 more to the case than that but that's certainly an issue.

4 Q. And regarding this other evidence because I believe  
5 that ties into Mr. Hunter's directed verdict allegations,  
6 can you just summarize some of the other evidence in this  
7 case?

8 A. Right.

9 So we have, we have, we have the DNA issue, which is  
10 obviously a very -- it is a big issue.

11 Now, in this case, you know, the DNA places him there.  
12 That is obviously one of the biggest things we have to deal  
13 with as defense lawyers. You're saying it's not him. Then  
14 why is, why is his DNA in that location at that time on a  
15 piece of evidence that was on the assailants.

16 And so that's obviously one of the big issues that you  
17 deal with.

18 Now, if I remember correctly, some of the other test --  
19 or some of the other evidence that we had to deal with,  
20 there were searches on the cellphone and Jael Gilreath went  
21 very deep into the cellphone stuff. But searches on the  
22 cellphone as far as how to remove his DNA out of the SLED  
23 database, how to -- or they basically searches regarding,  
24 right, like key terms regarding that crime, looking for news  
25 articles, regarding I guess seeing whether there was any

1 news articles about this offense that was close in time.

2       You had the roommate testifying that he came in around  
3 say the -- like 3:00, 4:00 in the morning that would time up  
4 with when the incident occurred and started washing clothes  
5 at like 4:00AM. He had a scratch on his forehead that kind  
6 of corresponded with the same location where the hoodie was  
7 or the nylon cap was ripped up. I think that was -- that's  
8 a very damning piece of evidence in the sense that you had  
9 DNA found in -- on that piece of evidence in the same  
10 location where he had a scratch on his forehead where it  
11 would of been and she testifies I believe that she rips it  
12 off or something of that nature.

13       He tries to sell the car. I know he said the car's not  
14 relevant. It's very relevant. He tries to sell the car  
15 very -- within a close proximity of when the crime takes  
16 place.

17       Now, we hammered a -- you know, there wasn't any  
18 evidence found back at his residence or in the car tying him  
19 to the crime scene and there wasn't any other evidence  
20 outside of that at the actual time -- crime scene tying to  
21 him. But we weren't provided any other type of -- and,  
22 again, my co-counsels can correct me if I'm wrong.

23       We didn't have any other evidence as far as any other  
24 alibi saying we can conclusively show that he was at one  
25 place or somewhere else at the time the crime occurred or we

1 would of presented that.

2 Q. All right. Thank you.

3 And that roommate of his, that was Taneshia Taylor?

4 A. Taneshia Taylor, yeah.

5 Q. All right. This -- do you, you recall -- and I can  
6 direct you to Page 563 of the transcript.

7 Do you recall bringing up the silver gun issue?

8 I apologize. We didn't go over this earlier but --.

9 A. You said 563?

10 Q. No, let me make sure that's correct.

11 Yes, sir.

12 A. Okay. All right. So, it looks like what, on Page  
13 (sic) 4 I cross and say when you spoke to her, she provided  
14 a description of the gun and he said he'll have to refer  
15 back to his interview. I say it's in the notes. I tell him  
16 it's at the bottom of the page and he says a silver medium  
17 sized gun out of the whole time. This what's she -- yeah,  
18 out of the whole time that's what she stated.

19 Looks like what, Lines 4 to 11?

20 Q. All right.

21 A. And then looks like I, I repeated that and said did she  
22 provide you the description of a silver medium sized handgun  
23 and he said that's what I had written down. So, he was  
24 pretty cagey about me trying to pin him down on stuff as far  
25 as what his notes and what he actually had in his interview

1 cause, in the pages before that, I, I questioned him. I  
2 said, you know, did she provide a description of this  
3 individual and Officer Griffin says she did, yes.

4 I said she described him as a light skinned black male.  
5 He says my notes don't display. It says that in the  
6 recorded statement. It may and then they go -- we go back  
7 and forth and eventually he does say well, that says a  
8 sergeant says a light skinned black male and that was  
9 referred to me from the sergeant at the scene. That'd be  
10 Sergeant Libertini at the time I believe.

11 And you know -- and so, again, I, I pin him down. So,  
12 the officer on the scene told you it was a light skinned  
13 black male and he says correct.

14 And so, you know, we, we certainly tied that in that  
15 the initial description was a light skin black man that was  
16 provided and then as well as the silver description of the  
17 gun being silver. So, you know, that was certainly one of  
18 the things we were trying to pin down.

19 Q. All right.

20 A. And then I think another thing I just -- while it's on  
21 my mind with -- I think -- and I think it's with this  
22 witness, Officer Griffin, that essentially, and I bring it  
23 up in opening, that they had request -- they had an audio  
24 recording of every witness interview in this case except the  
25 interrogation with or in the discussions with the defendant.

1 And so -- with Mr. Hunter.

2 So, I, I tried to make a big deal about that in the  
3 sense that as far as the officer credibility. Why would  
4 they have an audio recording of literally every other  
5 witness interview they've conducted versus the interrogation  
6 with Mr. Hunter. I think his explanation was something  
7 along the lines he wasn't telling me what I wanted to hear.  
8 They don't record lies. I said well, you don't record  
9 any -- well then somebody's not confessing essentially is  
10 what I was trying to get at.

11 So that was one of our issues and we certainly hammered  
12 that officer credibility was at issue in the sense that he  
13 chose -- specifically chose and I think he actually says it  
14 was the West Columbia Police Department's policy not to do  
15 it and he gave some ridiculous explanation for it.

16 Q. All right. So just because you couldn't suppress the  
17 statements at the Jackson v. Denno hearing doesn't mean you  
18 dropped the issue and---

19 A. No, we still, we still challenged it cause I mean  
20 that -- to me, that's a legit issue as to credibility.  
21 There's no explanation for why he would be recording even in  
22 the hospital while somebody's I think receiving treatment.  
23 Yet he can't record an interview with the defendant. I mean  
24 that -- I think that's, on its face, something that is, is a  
25 legitimate issue even public policy wise.

1 Q. All right. Thank you, Mr. Phillips. I'll turn it over  
2 to Ms. McMahan now.

3 CROSS-EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Do you, do you recall, during the trial, that Ms.  
6 Taylor testified that it wasn't an -- unusual for Mr. Hunter  
7 to wash clothes at night?

8 A. I, I believe she said something along, along those  
9 lines. I mean, again, that's -- like anything, it's an  
10 issue of fact for the jury. They hear that it's not unusual  
11 for them to do it. But you also have the timeline of the  
12 fact that he's washing clothes pretty much immediately after  
13 when it happened. You know, circumstantial evidence, chain  
14 of events. It was not good.

15 Q. And so were -- especially about DNA experts and stuff,  
16 was that done while you were still -- did you consult the  
17 DNA expert or did somebody else?

18 A. No. So -- and Jason can go into detail with this.

19 So, I had certainly listed and I think I'd started that  
20 process. I mean, from day one, I definitely believed  
21 Mr. Hunter's testimony that -- one, one of the first things  
22 we talked about when we met was me bringing up well, we're  
23 gonna need a DNA expert. In any case that's got a DNA,  
24 you're gonna want to at least have some consultation  
25 regarding the DNA to make sure there's no issues with it or

1 at least to make sure that, if there is a way to challenge  
2 it, that you have an expert to testify.

3 I do know that, by the time I got back involved after I  
4 left, Jason, I think, had already retained Doctor Ostrowski  
5 and they had several conversations. I know I was present  
6 for one of them while he had basically Doctor Ostrowski on a  
7 speakerphone if I remember correctly. And he kind of went  
8 over any -- I think he emailed Jason some sample cross  
9 questions of some issues to touch on.

10 But I mean yes, the DNA was definitely -- I mean  
11 that's -- in this case, DNA is one of the biggest issues in  
12 a case until obviously she says she recognized his voice.

13 Q. So you, so you were saying that the DNA not only just  
14 came from him I guess wearing the nylon cap but also from a  
15 scratch of---

16 A. Oh, I have no idea as far as that part of it. The DNA  
17 wasn't, during the trial, wasn't my, wasn't my area that I  
18 had. Jason had the DNA expert or the DNA part of it.

19 But certainly the fact that he has a scratch on his  
20 head and the victim testifies that she like basically rips  
21 it off of his head, I think that -- it was one of those  
22 things that I think stood out in the trial to, to the jury.

23 Q. Well, I mean at the Schmerber hearing, I guess, I guess  
24 the issue is they were able to pull a DNA profile from the  
25 nylon cap, which was inside the hoodie?

1 A. Right.

2 Q. Okay. But there was no photos of the nylon cap. There  
3 wasn't any issue -- nothing in the search warrant return  
4 about the nylon cap inside the hoodie. Just that there's a  
5 hoodie.

6 A. That sounds right. Again, I'd have to go back and look  
7 at it in detail but --.

8 Q. Well, you did ask for a continuance at the Schmerber  
9 hearing.

10 A. Yeah.

11 Q. What---

12 A. So---

13 Q. What were you wanting to do that --?

14 A. So, I'd filed a supplemental motion of discovery asking  
15 for all kinds of other records from SLED. I'd be able to  
16 challenge, you know, to properly cross-examine the witnesses  
17 regarding that. And if I remember correctly, Judge Russo  
18 essentially said, you know, I don't think it's necessary for  
19 you to -- for this hearing. I think you need that evidence  
20 for the trial. But that evidence is not critical for this  
21 hearing. That's -- if I remember right, that's -- cause I  
22 think I marked the supplemental motions of discovery as  
23 exhibits and kind of went through all that.

24 But yes, it was basically just so I could have more  
25 potential cross-examination material to show that it

1 wasn't -- that they didn't have probable cause to, to  
2 present it.

3 Q. So, I guess ultimately, you know, they had gotten this  
4 DNA profile off the cap and I guess put it into CODIS.

5 Were there any conversations with him to explain what  
6 CODIS was or lack of chain of custody on those -- that?

7 A. We certainly would of reviewed all that as far as the  
8 case prior to the hearings and everything. I don't -- yeah,  
9 I mean I don't have any specific memory of each -- anything.  
10 But I can tell you, as far as when I'm prepping a case or  
11 I'm having a hearing, we're explaining that process to him.  
12 I don't think it -- in short, I don't think it changes the  
13 outcome of the trial in any way, shape, or form.

14 Q. Do you remember how many times you met with him before  
15 you left?

16 A. I don't. And, again, it'd been some -- quite some time  
17 after I think I left before the trial came up. I think I  
18 might of left for private practice in what, 2015ish, and  
19 then this case went -- the trial wasn't -- was it '17?

20 So, I mean it was, it was a long time.

21 Q. He was arrested in 2014?

22 A. Sounds right. Yeah -- and -- yes. So -- yeah, if I  
23 leave the Public Defender's Office in say 2015, he goes to  
24 trial in April of 2017, I mean there's definitely a lot of  
25 time between when I left the Public Defender's Office and

1 then when I came back to help.

2 Q. So, what's your kind of normal first conversation you  
3 have with a client --

4 A. So---

5 Q. -- once you get appointed?

6 A. I kind of have the same thing that it carried over to  
7 the private practice.

8 I try to go over what all their constitutional rights  
9 are. I try to do the same thing in the initial conversation  
10 is all right. So here's the situation. It depends if  
11 they're out on bond or if they're incarcerated.

12 walk them through the constitutional rights as far as  
13 what to expect. Explain the procedure. Explain, you know,  
14 how I'm gonna challenge certain discovery issues. If --  
15 depending on what facts I know at that time, that's where it  
16 can be significantly different.

17 I think, in this case, if -- we already knew from the  
18 arrest warrant saying about DNA, then I can already say  
19 look, we got DNA issue here. We need to address that and  
20 here's kind of the procedure for how we're gonna do that.

21 Really just kind of -- I try to outline what they're  
22 facing, what the charge is, what their sentencing range is,  
23 what their rights are, what the procedure is to -- you know,  
24 what to expect.

25 Again, if they're incarcerated, as far as trying to see

1 about potentially scheduling a bond hearing, trying to get a  
2 motion to set bond, or a motion for modification of bond,  
3 Schmerber -- being prepared that there may be a Schmerber  
4 hearing. We got to challenge that or we got to file a  
5 supplemental motion of discovery to get more evidence on a  
6 specific thing.

7 But, yeah, just really outlining everything. I, I  
8 think the next big critical one is, once you get the  
9 evidence, I sit down with them and go through all the  
10 evidence. That's probably the two biggest meetings that you  
11 have as a criminal defense lawyer.

12 Q. So, while you were representing him, do you recall any,  
13 any offers given on this case?

14 A. Not off the top of my head. I mean the prosecutor,  
15 Suzanne Mayes, is pretty aggressive. I don't remember  
16 anything specific. There could of been. I'd have to go  
17 back and I could -- I would imagine something probably maybe  
18 it's materialized after I left in 2015 and maybe -- you  
19 know, that's something better for Jason to, to discuss.

20 But I can tell you, once we were there, I don't  
21 remember any -- the last couple weeks, I don't remember any  
22 substantive discussions about it. I mean he -- you know,  
23 and he never said he was gonna plead guilty. So --.

24 Q. Well, did he ever talk to you about wanting to know why  
25 his name was on the incident report so early or --?

1 A. No. So that came up this morning and was told to me  
2 and I don't, I don't have any memory of that specifically.

3 Do we have -- I mean could you help me out try to  
4 really understand what the issue is?

5 Q. So, in the course of an investigation, in your  
6 experience, do you find that there are addendums and stuff  
7 done to incident reports?

8 A. There's all -- all the time, supplemental motions of  
9 discovery or they'll have these supplemental incident  
10 reports that will be added to the case file.

11 Q. And do they often fill in dates of potential suspects  
12 as they're going along with the investigation?

13 A. They do and if I have had any -- and I think I know  
14 what the -- based on what he testified to, I think I  
15 understand what he's saying. If I had some belief that they  
16 had improperly put his name in there, then what I would do  
17 is file a supplemental motion of discovery asking for  
18 electronically stored information. I've done that in other  
19 cases and I'd ask for metadata on those incident reports.

20 And the metadata of incident reports would show whether  
21 they went back and changed it, you know, or went -- at what  
22 point was the version with his name on it created. I --  
23 again, I, I have no memory of it. So, obviously, at the  
24 time, I didn't have any suspicion that, you know, it was  
25 some type of a prosecutorial misconduct.

1 Q. And when you say they, do you mean the prosecutors as  
2 well as the police, police department?

3 A. Yeah. No, if I -- I don't pull punches. So if I would  
4 of saw something that I thought wasn't right, I would of  
5 raised the issue. I would of, I would of at least filed  
6 some supplemental -- that would of been in something that I  
7 would of done to start to at least try to find the answer.  
8 It would of been my supplemental, supplemental motion of  
9 discovery trying to find if I can prove it. You know, I  
10 can't just raise it without proof.

11 So I -- there would of been some trail there.

12 Q. And the metadata would of ultimately shown exactly  
13 when -- what time or when they would of put his name in as a  
14 suspect?

15 A. Right. So, you would -- you see each version of it  
16 and, and all the edits to it and the -- you know, look,  
17 realistically judges are very reluctant to, to go down that  
18 road. I've won some. I've been denied some.

19 But, yes, if you -- if I had questions as to a specific  
20 document, there is a way to challenge that and to find out  
21 that specific when -- you know, when it was done so to  
22 speak.

23 Q. Well, in the argument about, you know, that he owned  
24 the nylon cap at some point in time but not necessarily that  
25 day, was that an issue that you felt should be brought up at

1 trial or was that something that you learned about later or  
2 --?

3 A. Say that again. Just want to make sure I---

4 Q. This issue of -- that you guys should of argued that  
5 the nylon cap, while he's not disputing it belonging to him,  
6 it wasn't his on that day.

7 A. Yeah, I mean the, the problem is he -- we, we can only  
8 present what's there as far as actual evidence. You know,  
9 it's hard to -- you can't argue both things when you have --  
10 and I think Jael and I weren't even talking about it. It,  
11 it puts us in a difficult spot that we can't insert evidence  
12 through, through ourselves when, you know, if he's got to  
13 specifically testify to that. And then you have the issue  
14 where if he's saying that his DNA wouldn't be in that -- I  
15 mean it, it puts you in a very difficult position to try to  
16 challenge that without specifically saying -- you know,  
17 without having that testimony physically or specifically  
18 putting that in there.

19 If that -- does that make sense?

20 In other words, it's hard to say, as far as the, the  
21 evidence being dropped off at this specific place, he's  
22 got -- you know, he's got to testify to that.

23 Q. Well, that's gonna be my follow-up question.

24 A. Yeah.

25 Q. Would he have had to testify to that and would that

1 have been something you would of recommended that Mr. Hunter  
2 did?

3 A. Well, I -- and I have my sheet back there with his --  
4 you know, he does have a---

5 Q. He obviously has something that puts his DNA in CODIS?

6 A. Right. That makes it difficult especially when he's  
7 doing the searches to try to -- and I think he calls SLED  
8 too and he's -- he asked -- he asked somebody at SLED --  
9 cause that all came out.

10 He called somebody at SLED and he had some conversation  
11 with them about trying to remove his DNA from SLED as well  
12 and the timing is not great.

13 Q. So, do you find that Ms. Mayes, in her experience, she  
14 would of probably gone into all that if Mr. Hunter'd been on  
15 the stand?

16 A. Without a doubt. She's a very thorough, detailed  
17 prosecutor. I would say, when I was over there, you know,  
18 she was one of their best prosecutors as far as trying  
19 cases. Her and I didn't always see eye to eye on certain  
20 things. But she, she, without a doubt, wouldn't have missed  
21 anything. I haven't seen her miss much.

22 Q. And had it come to a point where Mr. Hunter needed to  
23 testify, would you have advised him against testifying or  
24 --?

25 A. Yes, for, for many, many different reasons I would of

1 said that I would believe it would be detrimental for him to  
2 testify.

3 MS. MCMAHAN: Court's indulgence.

4 THE COURT: Uh-huh. (Affirmative).

5 (Pause.)

6 Q. Did Mr. Hunter ever tell you that he's actually taking  
7 a class and that's why he had called SLED about that  
8 question?

9 A. I don't have any specific memory about it. I mean,  
10 again, if -- it was ultimately his decision. He knew he  
11 could of testified. He chose -- you know, all that's great  
12 but the timing of things is -- again, it's a circumstantial  
13 evidence that's part of it that's just so tough in the case  
14 cause the timing of everything.

15 You know, the likelihood that he happens to be doing  
16 all of that -- at least from the State's theory of things.  
17 The likelihood that all of these things are happening  
18 immediately after, like selling the car and the searches and  
19 the calling, happens immediately after this incident, it's  
20 not great. And even if you had reasonable explanations for  
21 them, it's just -- it's not good. It certainly hurt the  
22 case.

23 I mean I know we, we worked real hard. we, we did what  
24 we could.

25 Q. well, did you ever check to see when they were doing

1 the -- I guess the extraction on his phone---

2 A. Well, and actually -- let me actually address that  
3 cause I think I got burned in the media because of him on  
4 that. As far as the -- I remember he tells me before his  
5 first bond hearing that he was taking a class at Midlands  
6 Tech and I say that at the bond hearing. Then I find out,  
7 in the, the State paper, that they've checked with Midlands  
8 Tech and he's not a student at the time. They basically  
9 called me a liar in the paper because of it.

10 Q. Do you recall any information about---

11 A. Something of that, something of that -- I do now  
12 remember that. Something to that -- cause now that struck  
13 my memory cause it made me look bad in the paper. I, I know  
14 that.

15 Q. Do you recall any information or discussing anything  
16 with him about the search of this cellphone and the date  
17 range?

18 Did they search way before?

19 A. Yeah, that's really the cellphone stuff. So, the  
20 cellphone questions are really more Jael and the DNA is more  
21 Jason. So, I -- not specifically. I know --.

22 Q. I'll leave that for Jael then.

23 A. Yeah. So that she would be able to handle most of  
24 them.

25 MS. MCMAHAN: Okay. Court's indulgence, Your Honor.

1 THE COURT: Yes.

2 (Pause.)

3 MS. MCMAHAN: Nothing further, Your Honor.

4 THE COURT: Anything further from the State?

5 MR. JONES: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. JONES:

8 Q. Mr. Phillips, you mentioned that you believe there were  
9 many reasons to advise Mr. Hunter not to testify.

10 Can you explain what some of those reasons were?

11 A. We have the prior, prior record and they get into that  
12 and I think that's sometimes -- well, it's propensity  
13 evidence. There's a reason why we have rules against them  
14 coming in generally. But, with impeachment, I think they --  
15 she would of hammered that.

16 I think the other part -- I mean just in general I  
17 don't feel that he would of testified very well personally.  
18 I think the jury would of found him not credible and I felt  
19 like a lot of the things he would of said was -- would of  
20 been self-serving and not proveable.

21 And so that -- again, he -- I don't think he could of  
22 easily explained away all the circumstantial evidence  
23 pieces. Again, he, he had I'm sure answers for them. But I  
24 just don't think -- there was no way for us to I think -- we  
25 didn't have the silver bullet to where we could adequately

Dayne Phillips - Redirect examination  
By Mr. Jones

1 say this happened on this time and this date to, to disprove  
2 what was presented. You know, in addition to the DNA and as  
3 well as obviously the identification that we had.

4 Circumstantial evidence definitely kind of acted as a,  
5 as a way to kind of put the, you know, the icing of top of  
6 it. I hate to say it that way but that's -- it just, it  
7 just made the case more likely for the State --

8 Q. All right.

9 A. -- that it would of been unlikely that it wasn't him.

10 Q. All right. Thank you, Mr. Phillips.

11 No further questions.

12 THE COURT: You may step down.

13 THE WITNESS: May I be excused?

14 MS. McMAHAN: No objection.

15 MR. JONES: No objection.

16 THE COURT: Sure.

17 THE WITNESS: Thank you, Your Honor.

18 MR. JONES: Your Honor, the State calls Jael Gilreath.

19 Jael Gilreath, being first duly

20 sworn, testified as follows:

21 THE CLERK: If you would, please be seated in the  
22 witness stand.

23 DIRECT EXAMINATION

24 BY MR. JONES:

25 Q. Thank you, Ms. Gilreath.

1 I believe Mr. Phillips testified that you and he or he  
2 rejoined and you joined the representation of Mr. Hunter a  
3 few weeks prior to the trial?

4 A. That's correct. I believe the trial was in April and I  
5 think they asked me to help out in some time like early or  
6 mid March.

7 Q. And the -- Mr. Phillips also said that your portion of  
8 the trial mostly concerned the cellphone records?

9 A. That was what -- yeah, at that -- I did the majority of  
10 that. Actually I think that was what was the reason they  
11 initially asked me to was have had -- there had been a new,  
12 or maybe even the first actually, extraction of the phone  
13 that was done and they had just gotten the report. And so  
14 they had asked me to look at it and help out with that part.  
15 So that would of been, I think, mid March.

16 Q. All right. And just, in general, what is the evidence  
17 re -- related to the cellphone that we're talking about  
18 here?

19 A. Well, there were a number of issues with the cellphone  
20 that we had raised. I mean one being the, the timing.

21 From what we understood, the issue was -- is that, at  
22 the -- back in I guess 2014 when, you know, he was arrested  
23 originally, they didn't have the ability to extract the  
24 phone meaning the software couldn't get into it. The -- or,  
25 or couldn't get everything out of it. I don't remember

1 which it was.

2 But, anyways, in it -- so, in March, I guess when they  
3 were preparing for trial, they end up finding out oh, the  
4 new software can actually do the entire phone. So they had  
5 done that.

6 We consulted with an expert, had an expert who I know  
7 testified in camera on some stuff, and one of the big issues  
8 that they had -- that they raised that they actually  
9 testified about in trial that they made a big thing of was  
10 that, you know, there's all this activity on the phone the  
11 night of this incident. It stops and then there's a, a gap  
12 and then the activity starts up again.

13 And so the -- what they were basically trying to say  
14 was, you know, he's on his phone messing around and then,  
15 you know, he, he stops being on his phone because he's  
16 committing this crime and then he goes back to being on his  
17 phone. And so that was, you know, one of the primary  
18 things. And then there were some photos that we -- that  
19 they wanted to introduce that became an issue but some of  
20 those were kept out.

21 So --.

22 Q. All right. You also handled the closing arguments,  
23 correct?

24 A. I did.

25 Q. Do you recall -- and I have pages in the transcript if

1 you have a copy up there if that would help refresh your  
2 memory.

3 Do you recall challenging the credibility of the  
4 victim's identification of Mr. Hunter based on his voice and  
5 eyes?

6 A. I do. Let me --.

7 Q. Page 10 or 1032 would be what I'm looking at.

8 A. I remember doing that, yes, and I had -- after, after  
9 we talked and I was looking at the amended petition, I know  
10 that there were -- so the, the way I did that closing, I  
11 wasn't originally the one who was suppose to do the closing.

12 So, I ended up kind of writing it the night before and  
13 the one I used was kind of one I had used before, again,  
14 since I'm having to write it sort of last minute and I, I  
15 had all of these pieces of paper that were suppose to be  
16 this wall of reasonable doubt. So, there are things that I  
17 reference here that I sort of shorthand, and, at the same  
18 time, I'm putting, you know, these pieces of paper up with  
19 phrases on it.

20 So, you know, I mentioned the description. I know one  
21 of the things he raised was about the, the dreadlocks. I  
22 don't know if I ever said the phrase specifically. But it  
23 was one of the bricks that I put. When they're talking  
24 about the description, it was one of the things that I put  
25 on there. So, I -- yeah, I know it was something that I

1 raised, yes.

2 Q. Yeah.

3 similar to the issue of the officers initially  
4 reporting a light skinned individual as the perpetrator?

5 A. Right. I know that that was -- I think I mentioned  
6 that a couple of times again on --.

7 Q. There's a least a, a -- one mention on Page 1040.

8 A. Right. Yep, that's the that -- I remember, 1040, yeah.  
9 And I think I also had talked about, you know, how she  
10 hadn't identified him until like three years later and the  
11 description's conflicting with what he looks like and with  
12 what his -- the booking photo and things like that.

13 Q. All right. Thank you, Ms. Gilreath. Please answer any  
14 questions that Ms. McMahan has.

15 CROSS-EXAMINATION

16 BY MS. MCMAHAN:

17 Q. I think there was some like kind of issue regarding the  
18 experts battling back and forth.

19 Do you recall that?

20 A. Which experts?

21 Q. The State's expert and your expert.

22 A. About the phone --

23 Q. Yeah.

24 A. -- stuff?

25 I do.

1 Q. What was that issue about?

2 A. So I -- the, the big thing I remember was that the  
3 State would not give us access to the full data dump. So,  
4 what -- and this is common. This happened in I think nearly  
5 every case I had while I was a public defender over here.

6 When they have their person, usually Mike Phipps over  
7 at the Sheriff's Department back then, when he would do a, a  
8 data dump of a phone, what they would do is they would take  
9 and sort of like whittle that into a report and they would  
10 turn over the report.

11 But what you need, in order for your expert to actually  
12 see if there's either something that's been missed or, you  
13 know, exculpatory that hasn't been turned over to sort of  
14 verify and authenticate is you need the actual raw data and  
15 that's what they were refusing to give us.

16 So that was, I know, one of the first things that we  
17 raised and we'd asked -- we'd asked for a continuance and  
18 moved to compel and all those things. So, I know that was  
19 one of the first things because, you know, we've -- we have  
20 our expert do a dump but he has different software than law  
21 enforcement has.

22 So, I know that that was one of the big issues we were  
23 raising was that there were some differences in what we were  
24 seeing. But we didn't know if it just -- they didn't --  
25 they weren't putting in in their report or if they didn't

1 actually get it and our stuff was different. That's -- so  
2 it, it made it where we couldn't actually verify, you know,  
3 their -- what was in their report.

4 Q. And I think Mr. (indiscernible) referenced earlier too  
5 about -- I think it would be a Sprint person testifying  
6 about the lack of activity within a certain amount of time.

7 A. Right, that there were -- there was a gap in the hours  
8 around the time of the incident.

9 Q. And was there a dispute between the other two that --  
10 two experts about that, whether or not there was actual  
11 activity around --?

12 A. Oh, gosh. If, if you have a page number for me to  
13 remember exactly. I do remember there being something about  
14 that because what I remember was there was a question about  
15 whether it was interacting with cell towers or whether there  
16 was -- you know, it could of been connecting to internet or,  
17 you know, doing something in a way that did not interact  
18 with cell towers and that that could of been part of it. I  
19 remember that being an element of it. I don't remember---

20 Q. Do you remember---

21 A. ---the full details.

22 Q. ---though that I guess the two experts, at some point,  
23 were having a discussion together kind of about all this?

24 A. At, at the trial?

25 Q. Yeah.

1           There's some---

2   A.    I don't remember.

3   Q.    ---reference by Judge Goode about them discussing just  
4   the timeframe of when there was no activity and what the  
5   definition of the no activity was.

6   A.    Right.  But I think that's what it was about was the,  
7   the interaction with cell towers versus whether there was  
8   Internet act -- cause I remember there was something about  
9   like there were some videos I think on, I don't know,  
10   YouTube or something that I want to say were looked at  
11   during that period that they were saying there was no  
12   activity.  And I think our expert was saying it looks like  
13   maybe it was connected to the Internet.  It just wasn't  
14   using data with the cell towers.  That's---

15   Q.    So like it could of been connected---

16   A.    ---what I think it was.

17   Q.    ---to like a WiFi but not necessarily using the data  
18   from Sprint?

19   A.    Right.

20   Q.    Did you see -- feel like there was any need to ask for  
21   sort of a curative instruction about that after the Sprint  
22   lady said there was no activity but --?

23   A.    I, I don't remember cause I, I don't remember what --  
24   off -- I mean, again, I'd have to look at exactly what was  
25   said and compare.  But I, I remember -- I remember it

1 getting sort of complicated as to what they were allowing  
2 and weren't allowing to be introduced. So, I don't remember  
3 asking for a curative instruction.

4 Q. And also the searches of the phone, was there anything  
5 that you guys got that included searching the phone prior to  
6 the incident like maybe the day or two before or even  
7 further before or did they just give you like kind of what  
8 had happened and the incident range?

9 A. I remember -- yeah, I re -- I remember reading  
10 something about this. I just can't remember where.

11 Let me think. I remember that there was something  
12 about that they were only -- that's where that -- the, the  
13 raw data versus the report cause when they do the data dump  
14 they can't select we're only gonna look at this date range.

15 When they do the data dump, it's -- they get all of the  
16 data. They, they can't specify we only want to take this  
17 off of the phone. It takes everything off of the phone.  
18 The report is what -- you know, they do their searches and  
19 everything and then that narrows it down to that date range.

20 So, that's part of what that issue was is that they  
21 were only giving us that cause I know we talked about  
22 whether they're -- they made a big thing about him going,  
23 you know, to West Columbia and all this kind of stuff and we  
24 were saying, you know, you don't -- it doesn't show whether  
25 he had gone any other times or---

1 Q. Yeah.

2 A. ---anything like that.

3 Q. So like whether or not prior to this incident you've  
4 actually gone there cause they weren't giving the entire raw  
5 data---

6 A. Right.

7 Q. ---on that?

8 A. Right.

9 Q. And you said -- so, prior to this, like back -- I guess  
10 like back in 2014 there was some software but it just didn't  
11 extract it to the depth that the new software did?

12 A. I think because there's different kinds of data dumps  
13 that can be done. You know, there's logical extractions and  
14 physical extractions and I don't remember if it was that  
15 they couldn't get one at all or if it was that they were  
16 only able to do one kind because, for some phones, one was  
17 the problem and some phones -- and I wasn't on the case at  
18 all until they got this new one.

19 So, I don't remember if the issue was that -- I think  
20 the issue was that they couldn't get anything at all. But I  
21 could be complete -- I could be remembering that wrong.

22 Q. As part of your part -- work on working on the  
23 cellphone part of this, did you have any interaction with  
24 Mr. Hunter at all?

25 A. About the phone stuff?

1 Q. Yeah.

2 Did you ever talk to him about it or anything?

3 A. I'm sure we did in one of the times that we met.

4 MS. MCMAHAN: Court's indulgence.

5 (Pause.)

6 Q. Did you -- so while you were doing the -- I'm not sure  
7 who -- I was thinking you were not the main attorney on the  
8 case. I think Mr. Chehoski was but---

9 A. Right. I didn't -- I wasn't on it at all until about  
10 three or four weeks before trial.

11 Q. Okay. Did you see any reason to object to the closing  
12 arguments in the record that the solicitor made about items  
13 that necessarily weren't included in evidence?

14 A. Can you remind me which ones we're talking about?

15 Q. Yeah, it's like reference to --.

16 A. You talking about the, the dreads and the gloves---

17 Q. Yeah.

18 A. ---and whatnot?

19 I didn't object but I know that, when I did my closing,  
20 I addressed it.

21 Q. And that's -- I think you alluded to earlier you're  
22 making -- were you putting like bricks up I guess to make a  
23 wall?

24 Is that kind of what you were doing?

25 A. Yep. And I mean I still have them. So I know which

1 ones I put up and didn't cause there's, there's tack holes  
2 in the ones that I used---

3 Q. Okay.

4 A. ---and not in the ones that I didn't.

5 Q. So, you were referencing that, you know, there was no  
6 dreads even discussed and you put that kind of brick up on  
7 the wall?

8 A. Right. Exactly. Yep.

9 Q. And then about the cellphone not having activity, did  
10 you address that issue that --?

11 A. Um.

12 Q. -- kind of one of the experts truly -- there was some  
13 debate about whether or not there was any activity on the  
14 phone?

15 A. I don't -- I'm -- I imagine I did. That I don't  
16 specifically remember cause it wasn't one of the things that  
17 I remember looking at in this. But like I know the gloves,  
18 I know I'd, I'd addressed that on Page 1052. The solicitor  
19 kept talking about wearing gloves. He was wearing gloves.  
20 You didn't hear any testimony from anyone that he was seen  
21 wearing gloves. You know --

22 Q. The car?

23 A. -- so I think that was -- and the car. Yeah, I  
24 addressed that. That's Page 1046 saying that they were  
25 making a, a big deal about it. But that, you know, when

1 they searched it, they didn't find any bloody, you know,  
2 blood or evidence that it had been cleaned. They didn't  
3 find anything in it related to the crime, and that when they  
4 arrested him, he was in a totally different kind of car and  
5 --.

6 Q. So, in your closing, was it kind of your goal to kind  
7 of poke holes where you thought that the prosecutor might  
8 address more to the jury than she did?

9 Let me read this. So, in your closing, were you  
10 addressing what you thought the prosecutor would address the  
11 most to try to make---

12 A. What she had addressed?

13 Q. ---create some doubt?

14 Yeah.

15 A. Cause she went first. So I mean my, my closing was --  
16 I was doing a lot of, you know, note taking and then I had  
17 sort of all those like bricks. I had gone through our trial  
18 notes, made, you know, kind of anything that seemed like it  
19 could be a good argument. And then I all -- I sort of used  
20 a combination of that and then my notes from her closing to,  
21 you know, which things I address and how much time I spent  
22 on them.

23 Q. Do you remember if you were making any new bricks, so  
24 to speak, when you were listening to her closing?

25 A. I don't think so because I had basically had -- I mean

1 I had gone through all of our -- my trial notes. So, I had  
2 a brick for just about everything.

3 Q. Okay.

4 A. I didn't -- I don't think I used every single one  
5 because -- like I said, that -- that's how I sort of  
6 narrowed -- I mean we'd been there for several days if I had  
7 used every single one. And so I -- you know, I used  
8 everything that really went towards what she talked about in  
9 closing and then, again, like the biggest, the biggest  
10 issues.

11 MS. MCMAHAN: Okay. One moment, Your Honor.

12 THE COURT: Thank you.

13 (Pause.)

14 MS. MCMAHAN: I have no further questions, Your Honor.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MR. JONES:

18 Q. Just briefly, Ms. Gilreath.

19 Do you, do you have the transcript up in front of you?

20 A. Yeah.

21 Q. Could you turn to Page 470?

22 A. (WHEREUPON, the witness complies.)

23 You said 470?

24 Q. Yes, ma'am, 4-7-0.

25 A. Okay.

1 Q. On Line 11 on Page 470 to approximately Line 11 on Page  
2 471, I believe you're cross-examining Ms. Jill Sparks  
3 regarding the -- whether the cellphone records she testified  
4 to would show why -- any WiFi activity.

5 A. Right.

6 Q. And you elicit that they would not?

7 A. Right. I -- the first -- from that Line 11, I asked  
8 that does -- now that doesn't include anything that would  
9 happen over a WiFi connection, correct, and she said  
10 correct, WiFi does not utilize a cell tower. And so then I  
11 go into if it's not making a call or surfing the internet or  
12 anything using WiFi or if they're doing it using WiFi, it's  
13 not going to show up in the report that shows cell tower  
14 data. That's what that was about.

15 Q. And then it at the end of Page 1051 in your closing  
16 argument --.

17 A. 1051?

18 Q. Yes, ma'am.

19 A. Okay.

20 Q. The final paragraph down there. I believe you  
21 explain -- again, you make your argument based on what you  
22 were able to elicit from Ms. Sparks about how that absence  
23 of the cellphone record and her testimony doesn't mean the  
24 phone was off effectively.

25 A. Right, that -- I said that there was no way to tell

1 from the report that they sent whether or not WiFi was used

2 --

3 Q. Right.

4 A. -- and I talked about it being the middle of the night.  
5 We don't know if, you know, he was using WiFi at home or  
6 not, things like that.

7 Q. All right. Thank you, Ms. Gilreath.

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

9 THE WITNESS: Am I excused?

10 MS. MCMAHAN: No objection.

11 MR. JONES: Oh, sorry.

12 THE COURT: Yes, ma'am, thank you.

13 THE WITNESS: Thank you.

14 MR. JONES: Oh, I'm sorry. I thought --

15 THE COURT: No problem.

16 MR. JONES: -- she had more questions. Sorry.

17 MS. MCMAHAN: Oh, no, I'm sorry.

18 MR. JONES: Okay. The State would like to call Mr.  
19 Chehoski.

20 JASON CHEHOSKI, being first duly  
21 sworn, testified as follows:

22 THE CLERK: Thank you. Please be seated in the witness  
23 stand.

24 DIRECT EXAMINATION

25 BY MR. JONES:

1274 Jason Chehoski - Direct examination  
By Mr. Jones

1 Q. Thank you, Mr. Chehoski.

2 Could you explain briefly -- well, first of all, how  
3 long have you been practicing law?

4 A. A little over 21 years.

5 Q. And approximately how much of that has been criminal?

6 A. Between 12 and 13 years.

7 Q. Can you recall how you became involved in the  
8 representation of Mr. Hunter?

9 A. Yes, I was hired by the Eleventh Circuit Public  
10 Defender's Office in October of 2015. Mr. Hunter's case was  
11 part of the caseload that I inherited.

12 Q. And regarding his trial, did you handle the DNA issues?

13 A. Yes.

14 Q. Can you explain your investigation of those issues and  
15 what you ultimately decided to do?

16 A. I enlisted with -- used the help of both Ryan Ostrowski  
17 who was a D -- who's a well known DNA expert out of North  
18 Carolina. I think he was out of the Asheville area.

19 I also had -- I had several conversations with him and  
20 conversations with Arie Bax who is a, a criminal defense  
21 attorney who has a very -- who is known to have a good grasp  
22 on the DNA issues to help me get up to speed and learn the  
23 end -- learn the -- not only the basics but of the, the  
24 minutia that's helpful in cross-examination of it.

25 I don't know if we actually ever formally retained

1 Doctor Ostrowski. But I did, did speak with him at, at  
2 least on, according to my notes, at least I think four  
3 occasions.

4 Q. All right. And, ultimately, you did not decide to call  
5 him as a witness?

6 A. That's correct.

7 Q. Can you explain why that was?

8 A. All right. So, in reviewing my notes, I -- we had  
9 gotten all of the -- all of -- we'd gotten the, the results  
10 back and then we also got the supporting data of that and we  
11 sent that to him and, in his -- I think in our discussions,  
12 I don't think there was anything different that we could of  
13 added or refuted at least the, the main conclusions of it.

14 So, it -- we decided the best way was actually just to  
15 attack the findings and that leaving open that, you know,  
16 while Mr. Hunter's DNA may of been on it, there was a  
17 secondary contributor and that person, that person may --  
18 who's not Mr. Hunter, may be the actual culprit.

19 Q. And the -- did you see any grounds to object to the  
20 qualification of the State's DNA expert?

21 A. No.

22 Q. All right. Now, you cross-examined the victim,  
23 Ms. Simon, correct?

24 A. That's correct.

25 Q. Do you recall requesting a Neil v. Biggers ruling from

1 the Court?

2 A. I do not recall that.

3 Q. Okay.

4 A. If it's not in the record, I -- I'm gonna defer to the  
5 record on anything---

6 Q. Right.

7 A. ---that happened in court.

8 Q. Could you look at Page 223 of the record?

9 A. Okay.

10 Q. Your last statement down at the bottom starting with  
11 however I feel.

12 A. Yes.

13 Q. All right.

14 A. Yes.

15 Q. So, in -- at that point you did ask for a, a ruling on  
16 the reliability of Ms. Simon's identification of Mr. Hunter,  
17 correct?

18 A. Yeah, I did request a hearing.

19 Q. All right. At the -- when the identification actually  
20 happened, do you remember when that was?

21 A. I believe it was brought up immediately after by Ms.  
22 Mayes after Mr. Hunter testified in the Jackson v. Denno  
23 stage. But, again, I would, you know, if the record shows  
24 otherwise, then I would trust that.

25 Q. Okay. At the -- before the actual jury, do you recall

1 on page -- let's see. Of -- beg the Court's indulgence  
2 here.

3 THE COURT: Uh-huh. (Affirmative).

4 (Pause.)

5 Q. On Page 363 from Lines 16 to 20 --

6 A. Yes.

7 Q. -- asking Ms. Simon about that and then continuing onto  
8 Page 364 about how Mr. Hunter's sitting at the defense table  
9 surrounded by defense attorneys when she makes her in-court  
10 identification of him.

11 A. That's correct.

12 Q. All right. And what was the reasoning behind that  
13 question?

14 A. That would be to -- and you're in a courtroom. You  
15 have the prosecution on one side, on one side of it. You  
16 have the defense counsel on the other side of it and the  
17 person who's surrounded by defense counsel is the person who  
18 stands accused. I don't think it could be more suggestive  
19 that, you know, if you're gonna pick anybody out of the  
20 courtroom, it's gonna be the person who's sitting at defense  
21 table.

22 Q. All right. So, that was ultimately -- the reasoning  
23 behind that was to suggest that the identification was not  
24 reliable due to those suggestive factors?

25 A. Right.

1278 Jason Chehoski - Direct examination  
By Mr. Jones

1 Q. All right. Ultimately the Court rules against your  
2 motion for a Neil v. Biggers or to exclude that  
3 identification on Neil v. Biggers grounds, correct --

4 A. Correct.

5 Q. -- based on State v. Lewis?

6 A. I believe so, yes.

7 Q. Okay. Mr. Chehoski, to your knowledge, was there ever  
8 a photo lineup presented to the victim in this case?

9 A. Not to my knowledge.

10 Q. All right. Thank you.

11 No further questions at this moment.

12 CROSS-EXAMINATION

13 BY MS. MCMAHAN

14 Q. I think -- can you pronounce your last name for me?  
15 Can you say it for me?

16 A. Chehoski.

17 Q. Chehoski. I was saying Chehoski.

18 A. You -- you're not the first and won't be the last.

19 Q. I know how you feel. My name gets mispronounced a lot  
20 too.

21 A. Yeah.

22 Q. I think it's the southerner in me that just wants to do  
23 that long O. So just a couple questions.

24 So, you took over from Mr. Phillips when he left and do  
25 you recall how many times you might of met with Mr. Hunter?

1 A. In looking at my notes, it appears at least nine times.

2 Q. Do you have any notes about what you guys talked about?

3 A. Yes.

4 Q. What kind of things did you guys go over?

5 A. Everything from, you know, our initial meeting where  
6 I'm intro -- introducing myself to him, making sure he knows  
7 what he's charged with, what, what penalties they carry, to,  
8 you know, other times will be just to try and check in with  
9 him. They'll also be questions, you know, going over the  
10 discovery, updating him on the case as to what work we're  
11 doing on the outside.

12 Q. And during those conversations, was there a plea offer  
13 that was ever extended to him?

14 A. No plea offer was ever made. That was a -- the --  
15 there was -- I do have notes that Mr. Hunter had asked for a  
16 plea offer. But Solicitor Mayes never offered one. It  
17 would of been an open plea as charged.

18 Q. So you would just have to plead straight up?

19 So kind of like---

20 A. Yes.

21 Q. ---what he was charged -- been charged with?

22 A. Yes.

23 Q. Okay. She had never indicated she would dismiss a  
24 couple charges for a plea or anything like that?

25 A. No.

1 Q. In regards to the DNA, were you the one that you said  
2 you had retained or at least consulted with the individual  
3 out of Asheville?

4 A. Yes, Doctor Ostrowski.

5 Q. Do you remember for -- him providing you questions to  
6 specifically ask their expert?

7 A. Yes.

8 Q. Did you ask those questions?  
9 Do you recall?

10 A. I did incorporate, if not all of them, almost all of  
11 them into my cross-examination.

12 Q. So, what's the issue between like the touch DNA that  
13 we've been kind of referencing throughout---

14 A. Right.

15 Q. ---today and is, you know, like the actual DNA profile  
16 that was developed?

17 A. Well, whenever -- I guess whenever you touch an item,  
18 touching -- it -- whether it be the, the hat, if someone  
19 picked up the hat without wearing gloves, there's going to  
20 be touch DNA on, on that that might contaminate, might  
21 contaminate the DNA in it so that -- adding an extra  
22 contributor. The DNA would be fainter at the -- at least  
23 the sus -- cause the size of the sample would be so small.  
24 So the DNA would be fainter. It wouldn't re -- it wouldn't  
25 register on high -- as high on the, on the scale when they

1 do the testing.

2 Q. You mean it would, it would be less likely that they  
3 would be able to pull a full profile from it or --?

4 A. Correct. Right, you, you -- your, your peaks wouldn't  
5 be as high as it would be say from a known sample or from  
6 sweat or blood or saliva.

7 Q. So, when -- so when SLED was testing the nylon cap,  
8 what exactly did they test?

9 Did they test touch DNA or was there like blood or  
10 anything on the cap?

11 A. They too -- they -- I think they did a -- they  
12 performed a scrapping on it and that's how they collected  
13 the sample. They didn't test directly the cap. They tested  
14 the samples they got from the cap.

15 Q. They just essentially scraped the whole cap --

16 A. Correct.

17 Q. -- with something?

18 A. Correct.

19 Q. And then that's what they ultimately tested?

20 A. Correct.

21 Q. There was not a -- they just took a swab and swabbed it  
22 on one particular area or something like that?

23 A. I think the record indicated how it was collected.

24 when -- I don't think it was -- there -- I don't think it  
25 was a swab explicit -- specifically on the so -- on the cap.

1 It was -- there was a scraping and that -- and what was the  
2 product of the scraping was what was tested.

3 Q. So that could of been like what skin cells or anything  
4 like that or --?

5 A. Correct. Right.

6 Q. And -- sorry. I just lost my (indiscernible).

7 You said you, you consulted with Arie Bax.

8 was that more for like the, the law around it or just  
9 understanding the science top -- the science behind it?

10 A. It was the science and, you know, how to apply the  
11 science to make our argument under the law.

12 Q. Arie and I were in law school together. He was in my  
13 class.

14 So, when you consulted with the expert, did he indicate  
15 that he would be helpful or not to the case or --?

16 A. I -- let me make sure of this. I don't remember when  
17 we talked last.

18 I know it was in -- I want to say it was either late  
19 March, early April -- in April when we talked with him and  
20 that's when he gave the -- yeah, I spoke with him on  
21 April 18<sup>th</sup> that -- yeah, I, I believe he -- I, I don't  
22 remember what -- whether or not he, he said he would be  
23 useful. I, I think the decision was made that if Mr. Hunter  
24 wasn't gonna be testifying, which we didn't think was a good  
25 idea, then we wouldn't be putting up a case.

1 Q. And that was to preserve your argument?

2 A. It -- preserve last argument.

3 Q. And so when you were cross-examining the victim, I  
4 think you know -- obviously you've heard the issue about the  
5 light skinned black male.

6 A. Right.

7 Q. Do you -- is there a reason why you didn't particularly  
8 address that with her regarding her initial ID of who was  
9 there?

10 A. No.

11 Q. I think you had addressed the issue of lighting that  
12 Ms. Mayes had then followed up on.

13 A. Right. I don't re -- I don't remember what was going  
14 through my mind when I was doing the, doing the  
15 cross-examination of, of Ms. Simon.

16 Q. Okay. And then with the jury instructions, did you see  
17 any reason to object to the malice is inferred from a deadly  
18 weapon jury instruction that Judge Goode had given?

19 A. No, I didn't. Looking back on it, I think -- you know,  
20 it seems -- it probably would be -- that probably would be a  
21 good objection since, you know, malice was no ele -- there  
22 was no element of malice to be -- I don't think there was  
23 an element of malice to be unless -- there was attempted  
24 murder though, right?

25 I'm just trying to remember what---

1 Q. There was attempted murder.

2 A. ---attempted murder. So, malice would of been there  
3 and there's no --.

4 Q. I don't think malice is in attempted murder.

5 A. Malice is in attempted murder, yes.

6 Q. Okay. And there was the Belcher case though that says,  
7 you know, unless there's something presented and then  
8 Burdette came after that. So, so now like we don't use that  
9 jury instruction.

10 A. Right.

11 Q. Is that right?

12 A. Since then, yes.

13 Q. would you say you had been the main attorney during  
14 the -- after Dayne had left?

15 A. I was the assigned attorney, yes.

16 Q. And did you -- what was the -- did you think there  
17 was -- so let me, let me -- let me back up.

18 A. Take a breath.

19 Q. The issue about the nylon cap not being on the search  
20 warrant return and all, what -- was that issue raised and  
21 did you talk about that with Mr. Hunter?

22 A. I don't remember.

23 Q. The -- but ultimately addressed in -- kind of in the  
24 trial?

25 Do you recall if you asked---

1 A. Again---

2 Q. ---the attorney -- the investigator about that?

3 A. Again, I think Dayne was the one who did the  
4 cross-examination of the investigators.

5 Q. But, ultimately, there were no photos of that  
6 particular nylon cap that were taken at the scene, right?

7 A. If it's not in the record, then no.

8 Q. And so in -- part of the discovery references a photo  
9 lineup.

10 Did you ever see a photo lineup?

11 Were you ever given one?

12 A. I don't remember seeing one and, again, I think if  
13 there was a photo line, that would of been, that would of  
14 been textbook grounds for a Neil v. Biggers hearing.

15 Q. Which y'all never got one in discovery?

16 A. Correct.

17 Q. And how long have you been -- and I don't know if  
18 Mr. Jones asked you this question but how long have you  
19 worked at the Public Defender's Office?

20 A. I started in October of '15. The same week as the big  
21 flood.

22 Q. Oh. That's nice.

23 A. Yeah.

24 Q. Were you doing anything else before the P.D.'s office?

25 A. In -- I was in private practice doing real estate loan

1 closings from 2007 until I started. Before that I was in  
2 Spartanburg at the Public Defender's Office there from '05  
3 to '07 and I started in Richland from '01 to '05.

4 Q. Were you at the public defender or the solicitor?

5 A. Public Defender's Office in both.

6 Q. So you decided to take a break and do some contractual  
7 type stuff?

8 A. Something like that, yes.

9 Q. So you graduated sometime in 2001 as well---

10 A. 2001 is when I graduated.

11 Q. And except for that break in the real estate, you had  
12 been doing---

13 A. I've been---

14 Q. ---criminal law?

15 A. ---exclusively criminal and exclusively public  
16 defender.

17 Q. You're still working with the public defender now?

18 A. Correct.

19 Q. Court's indulgence.

20 (Pause.)

21 MS. MCMAHAN: I have no further questions.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 BY MR. JONES:

25 Q. Thank you, Mr. Chehoski. Just very briefly.

1 State v. Burdette came out in 2019, correct, or well  
2 --?

3 A. If you---

4 Q. If you don't---

5 A. I, I, I am not -- if you say so.

6 Q. Yeah.

7 A. It's like I'm --.

8 Q. All right.

9 A. That is---

10 Q. That case was tried in 2017, correct?

11 A. This case was tried, tried in 2017, yes.

12 Q. All right. And so your knowledge of the law up to that  
13 point did not include any future cases that --?

14 A. Of course.

15 Q. All right. Do you recall Mr. Hunter testifying that  
16 the detective's notes referenced a negative identification  
17 and requesting of photo lineup?

18 A. If it's in the record, sure. Again, I don't, I don't  
19 specifically recall that exact moment.

20 Q. Right.

21 But the witness said that the perpetrator was wearing a  
22 mask over his face, correct, so that she could only see his  
23 eyes and hear his voice?

24 A. Right.

25 Q. All right. Thank you, Mr. Chehoski. I think that's

Jason Chehoski - Redirect examination  
By Mr. Jones

1 all the questions I have for you.

2 A. Thank you.

3 Q. You are -- if there's no further questions, you're  
4 excused.

5 THE WITNESS: Anything else?

6 MS. MCMAHAN: Oh, no. No.

7 THE COURT: Sure.

8 MR. JONES: Your Honor, I'd like to call Kathrine  
9 Hudgins.

10 THE COURT: Okay.

11 THE WITNESS: Am I free to go?

12 THE COURT: That's fine.

13 KATHRINE HUDGINS, being first duly  
14 sworn, testified as follows:

15 THE CLERK: Thank you. Please be seated in the witness  
16 stand.

17 DIRECT EXAMINATION

18 BY MR. JONES:

19 Q. Thank you, Ms. Hudgins.

20 Just by way of background, how long have you been  
21 practicing law?

22 A. Over 30 years.

23 Q. And how much of that has been in the criminal appeals  
24 area?

25 A. Criminal appeals, I've been at Appellate Defense since

1 2006. Before that I was in private practice. I would --  
2 handled criminal appeals in federal and state court while I  
3 was in private practice and then started at the Public  
4 Defender's Office in Richland County and, before that, I was  
5 an assistant solicitor in Aiken County.

6 Q. All right. Thank you.

7 You prepared the appeal for Mr. Hunter's case, correct?

8 A. I did.

9 Q. Do you recall how many issues you raised?

10 A. I have the brief in front of me and it looks like I  
11 raised four issues to the Court.

12 Q. All right. The issues that Mr. Hunter complains of  
13 that you -- your failure to raise, I'm just gonna go by --  
14 down those one by one. The first is the Batson issue.

15 Do you recall Mr. Phillips making the Batson motion?

16 A. I didn't independently recall that. But I went back.  
17 Of course, you and I spoke and I would not have raised that  
18 because it appeared to me that the State had race neutral  
19 reasons for striking those two black jurors that they did.  
20 Unfortunately, I think Mr. Hunter is right.

21 I think there was only three black members of the jury  
22 that were pulled and two of them were struck for race  
23 neutral reasons by the State. So, I would not have raised  
24 the Batson issue based on those grounds.

25 Q. All right. What about the chain of custody of the DNA?

1 A. I went back and looked at my brief and that's actually  
2 referenced in a footnote on Page 4 of the brief. It's  
3 Footnote 1. I just didn't feel like that was really fleshed  
4 out well enough.

5 I, I did want to make a note of it cause it was  
6 something that was -- that raised some concerns on my  
7 behalf. But going back, and after I kind of fleshed out  
8 what issues I did want to raise, I decided not to raise that  
9 issue.

10 Q. All right. The failure to argue on appeal the issue  
11 regarding the continuance request made at the pretrial  
12 Schmerber hearing.

13 A. You know, the Court of Appeals or, I'm not sure, it may  
14 of been a Supreme Court case that says, you know, the denial  
15 of continuances as a grounds for reversal are about as rare  
16 as a hen's tooth sticks in my mind so that that issue was  
17 not, in my professional opinion, was not as strong as the  
18 issues that I did raise.

19 Additionally, if other information had come to the  
20 trial attorney's attention after the Schmerber hearing,  
21 additional discovery, they could of certainly challenged  
22 that again based on the new discovery.

23 Q. The failure to raise the directed verdict issue.

24 A. There were, there were certainly enough evidence for  
25 this to be sent to the jury in my opinion.

1 Q. Failure to argue the denial of the Neil v. Biggers  
2 hearing?

3 A. This one's interesting. I have argued in briefs before  
4 again to -- against the precedent of State versus Lewis  
5 which says that a first time in-court identification does  
6 not require a Biggers hearing. I think one of the other  
7 trial lawyers testified to this and I agree with them.

8 There's nothing more suggestive than the defendant  
9 sitting at defense table and allowing the witness to  
10 identify him from that especially when you have racial  
11 factors when he's the only black man sitting at defense  
12 table. I think that's very interesting. It's, you know,  
13 starkly against State versus Lewis, our case law.

14 But there is case law. I think Mr. Hunter even  
15 referenced United States versus Greene, which is a Fourth  
16 Circuit case, and other state jurisdictions which say that a  
17 Biggers hearing is required for first time in-court  
18 identifications. I did not raise it in this case. Perhaps  
19 I should have but I didn't.

20 Q. You would of been arguing against precedent?

21 A. Correct.

22 Q. Right.

23 A. That hasn't stopped me before.

24 Q. I, I understand.

25 You failed -- failure to raise the issue of the voice

1 identification of Mr. Hunter in the courtroom.

2 A. Kind of tagalongs with that same, same situation with  
3 the Neil versus Biggers and Lewis.

4 Q. And, finally, Mr. Hunter complains that you should of  
5 filed a petition for rehearing and a petition for a writ of  
6 certiorari to the S.C. Supreme Court.

7 A. You know, when I'm deciding whether to file a petition  
8 for rehearing and try to seek cert from our Supreme Court, I  
9 really look at the opinion. I look if, if it's a published  
10 or an unpublished opinion. I look to see if there are  
11 dissents in the opinion. I look to see if there's a  
12 substantial legal error in the reasoning of the Court or  
13 something that I can challenge.

14 In my professional opinion, I did not think that this  
15 was the type of case that would be granted rehearing first  
16 or that our Supreme Court would of granted cert to review  
17 the division -- decision. So, I did not seek cert or  
18 petition for rehearing.

19 Q. All right. Thank you, Ms. Hudgins.

20 CROSS-EXAMINATION

21 BY MS. MCMAHAN:

22 Q. Can you raise on appeal issues that aren't objected to?

23 A. No.

24 Q. So, in your footnote you talk about the objection  
25 coming later.

1 A. Right.

2 Q. That way -- that's why you didn't ultimately raise it  
3 because there wasn't one that was done necessarily  
4 contemporaneously with it?

5 A. It seemed like they were -- the first objection was  
6 more to the unavailability as, as I recall and then they  
7 started to talk about the chain a little bit later. I just  
8 didn't think it was as flushed out and, and I thought the  
9 chain issue, like I said, was probably not as strong as  
10 maybe the other issues.

11 Q. Okay.

12 A. I could be wrong.

13 Q. And so some of the things that Mr. Hunter was  
14 complaining about that there were no objections to the  
15 solicitor's closing when they were referencing items that  
16 weren't necessarily in evidence, that couldn't get raised on  
17 appeal because it wasn't preserved.

18 Is that correct?

19 A. That's correct.

20 Q. And if that issue had been preserved, would that have  
21 been an issue that you may have been able to raise on  
22 appeal?

23 A. Certainly something that I would consider. When I'm  
24 deciding my issues, I usually go through and look at the  
25 objections and sort of weigh the strength of the, of the

1 issue in terms of the whole case.

2 Q. So is that then the first thing you do?

3 Like you get the transcript and you go through and you  
4 just see what the objections are first?

5 A. I just, I just try to see what, what the objections  
6 were. You know, our case law is changing a little bit with  
7 contemporaneous objections. I think our appellate courts  
8 are becoming a little more fluid in, in, in that. But  
9 that's still the rule that there has to be contemporaneous  
10 objections, yes, if it wasn't objected to in a closing  
11 argument.

12 I mean they've given us a leeway with constitutional  
13 errors under State verse Frazier. But based on a closing  
14 argument, if it wasn't objected to, I would not be able to  
15 raise that.

16 Q. What about the jury instructions and specifically that  
17 malice is inferred with a deadly weapon?

18 A. If it wasn't objected to, I couldn't raise it on  
19 appeal.

20 Q. You know, obviously before Belcher you could use that  
21 malice was inferred as a jury charge, right?

22 A. Correct.

23 Q. So that had been precedent?

24 A. Correct.

25 Q. So, how does you over -- how does one overturn

1 precedent?

2 A. You challenge it that there were -- you know, Belcher  
3 challenged it and won.

4 Q. Okay. So, had the Belcher issue been preserved,  
5 Belcher/Burdette --

6 A. Correct.

7 Q. -- so that would of -- would that have been a viable  
8 issue to raise on appeal?

9 A. Perhaps, yeah.

10 Q. Okay.

11 A. I think Belcher, at the time, was a little problematic  
12 because it wanted -- it, it required a lesser included or  
13 mitigating circumstance. But, you know, the Court was  
14 struggling with inferences and it was something that was  
15 certainly on, on the radar.

16 Q. Has our state recognized cumulative errors?

17 A. That's a very good question. They certainly have in  
18 the civil context. I don't think they have come right out  
19 and said it hasn't been addressed.

20 Q. Is it something that you've ever -- that you've argued  
21 recently or anything --

22 A. Yes.

23 Q. -- for the past 10 years or so?

24 A. Yes.

25 Q. And I'm really just kind of curious your process.

1 So, so you get an appeal.

2 what's the first thing you do when you get assigned an  
3 appeal?

4 A. I order documents. So I look at what documents were  
5 introduced as exhibits and I order those exhibits and I read  
6 the transcript. And, at that point, I have sort of an  
7 overall idea of what my issues are going to be. Obviously  
8 I'm looking for objections. Then I kind of weigh out what  
9 my issues are and what are my strongest issues, what are my  
10 more weak issues, kind of determine that.

11 And then I go to do the legal research, make sure I've  
12 got the cases in line that I think are going to support my  
13 issues. Then I, I write the, the statement of facts hoping  
14 to sort of mind through those facts, anything that can help  
15 me with those issues, and then I write the, the, the  
16 arguments.

17 Q. Okay. So, obviously I guess the trial transcript gets  
18 ordered at the time shortly thereafter or the appeal gets  
19 filed, right?

20 A. That's correct.

21 Q. And you said earlier with the petition for writ of  
22 cert -- well, you'd have to file a petition for rehearing  
23 first?

24 A. Right.

25 Q. And then you can file a petition for cert.

1           You didn't see necessarily that, based on the opinion,  
2 the written opinion, which I believe is still unpublished in  
3 this one --

4 A.    It was.

5 Q.    -- that you didn't feel like there were really any  
6 legal errors that you should raise and taken any further?

7 A.    That's correct.

8 Q.    Had it been a, a published opinion, would you take it  
9 further necessarily?

10 A.    Not necessarily. Based on, on this ruling, that's just  
11 something I, I take into consideration. If there'd been a  
12 dissent --

13 Q.    Uh-huh. (Affirmative).

14 A.    -- on one of the issues, then that probably would of  
15 weighed strong in favor of rehearing and, and cert.

16 Q.    So when you're reviewing the transcript and stuff, do  
17 you take notes of issues that you see as you're going along  
18 reading the transcript?

19 A.    Yeah.

20 Q.    Were there any particular issues, in reading that  
21 transcript, that you saw that -- besides the footnote issue?

22 A.    Not really. I -- no, I liked, I liked the issues I  
23 raise in my brief. The Court didn't but --.

24 Q.    Were there any issues that -- any notes you may have  
25 made about issues that could of been raised but you didn't

1 raise because they weren't objected to?

2 A. Typically, when that happens, I will try to write to my  
3 client and say you may want to consider raising these issues  
4 on PCR if we haven't been successful on direct appeal. So,  
5 typically, if I've seen that or flagged that, I would, I  
6 would let my client know.

7 Q. How many appeals do you think you've done so far?

8 A. Oh. I, I couldn't --.

9 Q. Hundreds?

10 A. Yeah. Yes.

11 Q. How many, how many do you have pending at any given  
12 time?

13 Do you know?

14 A. I think we did a -- we just did an audit. I think  
15 we -- I think I have 76 cases pending right now.

16 Q. But they're all like kind of various states like---

17 A. I---

18 Q. ---all are---

19 A. Whether---

20 Q. Some may be initial brief may be due and --

21 A. Correct.

22 Q. -- some are just waiting to be heard?

23 A. I think that's right. Don't, don't quote me on that 76  
24 number but --.

25 Q. Well, during COVID, did that -- did that lockdown cause

1 like a backlog in some of the cases getting reviewed---

2 A. It actually---

3 Q. ---by the appellate courts?

4 A. The appellate courts never shut down during COVID. So  
5 it gave us an opportunity to catch up on our caseload. Our  
6 caseload's now building back up.

7 Q. Well, cause there were no trials obviously at that  
8 point?

9 A. Correct.

10 Q. And did that kind of change the way you filed stuff  
11 with the Courts like---

12 A. Yeah, we were.

13 Q. ---you file electronically now?

14 A. We were filing electronically, yes.

15 MS. MCMAHAN: Court's indulgence?

16 THE COURT: Uh-huh. (Affirmative).

17 (Pause.)

18 MS. MCMAHAN: I have no further questions, Your Honor.

19 THE COURT: Anything further from the State?

20 MR. JONES: Nothing further, Your Honor.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: Thank you.

23 MR. JONES: With that, Your Honor, the State rests.

24 THE COURT: Okay. Do y'all want to say anything in  
25 closing briefly?

1 MS. MCMAHAN: Judge, just briefly.

2 I think I've raised the issues that, you know, warrants  
3 some review given that Belcher issue, the photo lineup and  
4 not cross-examining Ms. Simon about that, and the, you know,  
5 the light skinned black male. I would just ask that you  
6 review all of our issues that we've presented as they are  
7 applied to the trial transcript and rule accordingly.

8 MR. JONES: And regarding those issues, specifically,  
9 I -- subject to the, the Court's earlier ruling that the,  
10 that the State will have some time to go through and, and  
11 look into those issues in particular and possibly raise a --  
12 an -- or leave the record open for some additional testimony  
13 if that's necessary -- if the State thinks it's necessary.

14 Other than that, I don't know if, if Your Honor would  
15 like any briefing?

16 A lot of these turn on legal issues.

17 THE COURT: What I would say is, if you want a -- like,  
18 you know, leave the record open for 30 days so that you can  
19 review the materials that you just got this morning, I'm  
20 glad to do that just so we have a, a definitive term --

21 MR. JONES: Yes, ma'am.

22 THE COURT: -- time period.

23 So why don't we just say that if there's anything you  
24 want me to consider, that the State has 30 days to submit  
25 anything additional.

1 MS. MCMAHAN: And, judge, just for clarification,  
2 that's for that memorandum that was entered is what you're  
3 --?

4 THE COURT: That's correct and the -- anything  
5 additional -- there were a few additional matters that he  
6 raised --

7 MS. MCMAHAN: Thank you, Your Honor.

8 THE COURT: -- from the stand as well. If -- again, if  
9 there's anything you want me to consider regarding those --

10 MR. JONES: All right.

11 THE COURT: -- with that limited scope.

12 MR. JONES: Yes, ma'am. Thank you.

13 MS. MCMAHAN: Thank you.

14 THE COURT: Okay.

15

16 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Lexington County, South Carolina, on the 3<sup>rd</sup> day of April, 2023.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 2<sup>nd</sup>, 2023



PAMELA E. GREEN, Court Reporter

State of South Carolina )  
 County of Lexington )  
 )

IN THE COURT OF COMMON PLEAS  
 In The 11th Judicial Circuit

Nathaniel A. Hunter, #372378 )  
 Applicant; )

Case No. 2019-CP-32-04672

v. )

MEMORANDUM OF LAW IN SUPPORT  
 OF APPLICATION FOR POST  
 CONVICTION RELIEF

The State of South Carolina, )  
 Respondent.)



A TRUE COPY

*[Handwritten signature]*

Lex. Co. C.C.G.P., G.S. & F.C.

INDICTMENT No.s:

- 2014-GS-32-3687
- 2014-GS-32-3688
- 2014-GS-32-3689
- 2014-GS-32-3692

Comes now, the Applicant presenting his Memorandum of Law in Support of his Application for Post Conviction Relief.

STATEMENT OF THE CASE

In December, 2014, the Lexington County Grand Jury indicted Applicant, Nathaniel Antron Hunter, for burglary first degree, criminal sexual conduct with a minor in the third degree, attempted murder, and possession of a weapon during the commission of a violent crime. On April 24, 2017, Applicant proceeded to trial before the Honorable Judge Thomas W. Cooper. Dayne C. Phillips, Jael D. Gilreath and Jason S. Chehoski represented Applicant at trial. Laura Suzanne Mayers and Robert E. McNair prosecuted the case. The jury found the Applicant guilty as charged. Judge Cooper sentenced the Applicant to forty-five years for the burglary-1st degree, fifteen (15) years for criminal sexual conduct with a minor-3rd degree, thirty (30) years for attempted murder, and five (5) years for possession of a weapon during the commission of a violent crime. All sentences were ran concurrent. A timely Notice of Intent to Appeal was served on May 4, 2017.

Grounds

Applicant was denied the right to effective assistance of counsel guaranteed by the 6th and 14th Amendments to the United States Constitution and Article 1, §3 and §14 to the South Carolina Constitution during the guilt or innocence phase of his trial.

Argument for Issue #1

Trial counsel was ineffective for failing to investigate Applicant's right to a Neil v. Biggers hearing.

Facts

In Post Conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that Applicant was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2025 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would be different. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989). A reasonable probability is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E. 2d 733 (1997). In addition, counsel must articulate a valid reason for employing a certain strategy to avoid a finding ineffectiveness.

Now comes the Applicant to show trial counsel's ineffectiveness are in part of depriving Applicant of his Sixth Amendment right to a fair trial and his FOURTEENTH Amendment right to due process by failing to investigate Applicant's right to a Neil v Biggers hearing. Such grossly unfair circumstances as to cast doubt upon factual basics upon which proof of guilt rest is sufficient state action to invoke constitutional protection. All critical stages of criminal proceedings is imperative to serve the underline importance of the role played by counsel.

The facts of the matter of this case is that prior to trial, Applicant's counsel motioned the Court for a Jackson v Denno hearing. Applicant took counsel's advice to testify at the Jackson v Denno hearing in the presence of the victim who was also the State's "key" witness, (See: Trial Transcript Page 181, lines 17-25). After Applicant testified at the Jackson v Denno hearing, the victim confided in the victim's advocate that she recognized Applicant's eyes and voice as the suspect who committed the crime, (See: Trial Transcript Page 224, lines 7-14). After the victim identified the Applicant at the pre-trial hearing, the Applicant's trial counsel addressed the trial court concerning the victim's identification of the Applicant, (See Trial Transcript Page 223, lines 6-25). Trial counsel consulted with the trial court to ask for an in-camera hearing to address the reliability of the victim's in-court identification by stating that the identification was "highly suggestive and would taint the reliability of the in-court identification". Applicant's trial counsel was in error pertaining to a Neil v Biggers hearing for Applicant considering the fact that the Court's ruled in State v Collier, 421 S.C. 426 that "there was no evidence to support a finding that Kirkman's in-court identification of Collier resulted from anything Kirkman saw or heard during the Jackson v Denno hearing." However, in Applicant's case there is strong evidence to support that the victim's in-court identification of Applicant resulted from everything that she saw or heard during the Jackson v Denno hearing, which was three years after the crime took place and there was absolutely no identification of Applicant until victim witnessed Applicant testify at the Jackson v Denno hearing, (See: Trial Transcript Page 224, lines 7-14). If not for trial counsel's error of addressing the court in reference to reliability of Neil v Biggers of the victim's in-court identification in which the trial court denied without taking into consideration the totality and complete circumstances of Applicant's case.

The evidence was clear at Applicant's Jackson v Denno hearing that warranted a Neil v Biggers hearing based upon the fact that the pre-trial identification of Applicant at the Jackson v Denno hearing was the only identification given by the victim before Applicant's trial started. If not for the trial counsel's error and the erroneous ruling by the court, there is a reasonable probability that Applicant would have been granted a Neil v Biggers hearing based totally on identification and the victim would not have been able to overcome the five (5) factors of the Neil v Biggers hearing to determine the reliability of the victim's in-court identification of Applicant due to three factors: (1), (3), and (5)

1.) The opportunity of the witness to view the criminal at the time of crime- The victim in Applicant's case testified that "before we go to bed I would turn most of the lights off and leave the hallway light on, but I believe at his point of entry he must have turned that light off, but I'm not certain if the light was on or not," (See Trial Transcript Page 34, lines 19-24). The lighting conditions is a very crucial element of being able to view the criminal at the time of the crime and the victim only had a brief period of time to view the criminal since the breaker box was struck by a bullet shutting the lights out, (See: Trial Transcript Page 341, lines 9-14). All of these circumstances render the victim's opportunity to view the criminal at the time of the crime unreliable. U.S. v Greene, 704 F.3d 298 (4th Cir.), holding "We think the unreliability of the in-court identification was clear. First, we noted that the witness's opportunity to view the perpetrator was limited. The parties agree that given the short period of time the robber was in the bank and that he was wearing a long wig and sunglasses. Bolder had little time in which to observe him." The victim's opportunity to view the perpetrator and the lighting conditions rendered the victim's in-court identification of Applicant unreliable, especially concerning the fact that the suspect in Applicant's case was wearing a mask, (See United States v Greene, 704 F.3d 298 (4th Circuit), stating [" with respect to the first factor, the relatively short time at issue and the fact that the robbers face and body were both obscured by disguised indicated that Ms. Bolder's opportunity to view the robber was relatively limited.").

3.) The accuracy of the witness's prior description of the criminal- The first investigator to respond to the crime was Sgt. Libertini who took notes from the victim in which the victim told Sgt. Libertini that the suspect was a light-skinned black male who's voice sounded familiar and this description was

also corroborated by the victim's daughter while the crime was fresh in both of the victim's mind. State v. Johnson, 318 S.C. 372, 458 S.E.2d 49,50, holding, "a person in fear for his life presumably has a more accurate degree of attention to his surroundings than a mere passerby." The victim's first identification of the suspect as a light-skinned male was in fact accurate and reliable due to the fact the first identification was corroborated by the victim's daughter who was also a victim of the crime. Furthermore, Investigator Thomas Griffin testified on cross-examination that Sgt. Libertini relayed to him by phone that the suspect was a light-skinned black male, (See: Trial Transcript Page 562, lines 10-23, also see Sgt. Libertini's Statement as Exhibit #1. Under the totality of the circumstances the victim's in-court identification was unreliable in comparison to her first identification of the suspect as being a light-skinned male, considering that Applicant is a very dark-skinned male. Reliability is the linchpin in determining the admissibility of identification testimony, State v Moore, 343 S.C. 282, 540 S.E. 2d 445.

5.) The length of time between the crime and the confrontation-The amount of time between the crime and the confrontation in Applicant's case was three years. Four days after the crime, Applicant was arrested and investigators spoke with victim to see if the victim knew Applicant and the victim responded "No". A photo line up was given and the victim could not identify the Applicant in the line-up four days after the crime, which makes it very unlikely that the victim could identify the Applicant three years later. The victim's in-court identification of the Applicant three years after the crime took place created a substantial likelihood of irreparable misidentification and unreliability. The length of time between the crime and the confrontation weighs against the reliability of the testimony. The Supreme Court in Neil v Biggers, 409 U.S. 188, 93 S.Ct. 375, stated that a lapse of even seven months between the crime and the identification "would be a seriously negative factor in most cases", here the three years between the crime and confrontation is an unquestionably lengthy period of time that most weigh against reliability. The three years between the crime and the confrontation is a very crucial time frame that weighs against the memory and accuracy of the victim's in-court identification.

If not for Applicant's trial counsel's error and the trial court's erroneous ruling, Applicant could have utilized his substantial right to challenge the victim's pre-trial identification that would have entitled Applicant to a Neil

v Biggers hearing in which the victim would not be able to overcome. Furthermore, trial counsel's ineffectiveness severely prejudiced Applicant by violating Applicant's due process and his right to a fair trial when the State used the victim's in-court identification as direct evidence against Applicant.

There is a reasonable probability that, but for counsel's unprofessional errors there is a reasonable probability that the results of the proceedings would have been different.

#### Conclusion

For the foregoing reasons, Applicant Nathaniel A. Hunter respectfully request that this Honorable Court reverse his convictions and remand for a new trial.

## Argument for issue # 2

Appellate counsel was ineffective for failing to raise the trial court's denial of Applicant's directed verdict motion on appeal:

At the closing of the state's case Applicant's counsel motioned the court for a direct verdict, see trial transcript page 1004, lines 4-5. The trial court denied Applicant's motion for a directed verdict, see trial transcript page 1004, lines 9-22, the trial court stated:

"I find that there is evidence, both direct and circumstantial, from which the jury could conclude, if they chose to believe it, the Defendant's guilt on any or all of the charges, and that reason I must respectfully deny the motion for direct verdict at that time."

This was error, Applicant was convicted on two pieces of evidence, inconclusive Touch-DNA and the tainted unreliable in-court identification of Applicant. In this case, the victim was the victim of a burglary that resulted being shot. During the struggle between the victim and the suspect, the victim pulled off the hoodie the suspect was wearing and inside a portion of the hoodie was a cap that the suspect was wearing at the time of the crime,

Investigators collected the hoodie and cap and sent it to the South Carolina Law Enforcement Division (SLED) for a DNA analysis. The DNA profile developed from hoodie did not match applicant, the DNA profile developed from the cap was a mixture of at least two individuals. The DNA profile of the major contributor matches the DNA profile of applicant, the partial DNA profile of the minor contributor was insufficient for reliable interpretation, see trial transcript pages 922, lines 15-19 and pages 923, lines 18-23.

The DNA profile developed from the cap that matches applicant was inconclusive for the following reasons:

1.) Touch-DNA is not conclusive evidence, the only thing that the touch-DNA proves is that at one point in time Applicant possessed the cap, but not at the time of the crime.

2.) Applicant was questioned by law enforcement when he was arrested and explained in detail to law enforcement that he gave away clothes including jeans, hoodies, t-shirts, shoes, caps and hats to the thrift store for charity and to people in need who hung around the corner store who were known to be drug users.

This information was testified to by investigator Thomas Griffin, see trial transcript page 135, lines 10-13, lines 20-25 and page 136, lines 1-5 and also page 551, lines 19-25. <sup>(13)</sup>

At trial SLED's DNA expert testified to the meaning of "ownership testing" stating "ownership is a terminology we use to --- as a request of who wore or own's an object", see trial transcript page 923, lines 9-11. There is clear and convincing evidence in the record to support that Applicant may have possessed the cap previously to the crime being committed, but was not the owner of the cap at the time of the crime, that is a reasonable explanation for the applicant's Touch-DNA's presence considering the cap was the only evidence at trial linking Applicant to the crime and Applicant was not a person of interest in the investigation until the DNA hit.

citing Weldon v. State, 436 S.C. 69, 870 S.E.2d 183 (2001), holding, "other than his possible acquaintance with Pearson, the DNA match from the duct tape was the only evidence at trial linking Petitioner to the crime, and there could be other reasonable explanation for its presence."

3.) Applicant counsel hired a DNA expert that did not testify at Applicant's trial, "which could have explained the complicated concepts of Touch-DNA to the jury." Touch DNA is subject to what is known as secondary transfer. This refers to the possibility that an individual or an object may serve as a conduit between a source and a final destination", State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020), holding, "secondary transfer occurs when DNA left on one surface is inadvertently transferred to another" and noting "the risk is greatest with regard to Touch-DNA."

While the state presented considerable circumstantial evidence supporting Phillips' guilt, it did not offer any evidence that conclusively proved Phillips' guilt. When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion.

Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.

State v. Lollis, 343 S.C. 580 (2001). The state presented

inconclusive Touch-DNA evidence which was the sole reason applicant got arrested and a critical factor in the jury deliberation when the jury found applicant guilty. There was no direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of applicant, and the case was not properly submitted to the jury, therefore, Applicants should have been granted a direct verdict from the trial court. Especially, considering the fact that the state's DNA expert testified that the DNA testing cannot tell her when the DNA got on the surface if the evidence, when the DNA got on the sample and the testing cannot tell her for how long it has been there, see trial transcript page 941, lines 7-16.

"This testimony from the state DNA expert was clearer to the trial court being that the trial court has more experience dealing with this type of testimony compared to the jury who was more likely misled and confused when trying to interpret the state's DNA expert testimony. The trial court even stated "this case is about DNA" see trial transcript page 976, line 16-17, ...

... when was even more of a critical reason for the trial court to grant applicant a direct verdict, since the trial court knew the Touch-DNA in applicant case was not conclusive DNA evidence and there was a reasonable explanation for its presence,

WELDON v. STATE, 436 S.C. 69, 870 S.E. 2d 183 (2001) holding, "we find the presence of petitioner's DNA on a single piece of duct tape recovered from victim does not constitute" "overwhelming evidence," such that it precludes a finding of prejudice, RULE 403 S.C.R., although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

The fact that the applicant was never identified until the pre-trial identification three years after the crime took place was very critical and that alone should have warranted applicant a NEIL v. Biggers, hearing to insure the victim's identification of applicant was reliable and fair to applicant.

There is a probability the Biggers hearing would have rendered the victim's identification inadmissible and there is a reasonable probability the trial court would have granted applicant a directed verdict, considering there was no sufficient or conclusive evidence linking applicant to the crime.

see State v. Bostick, 392 S.C. 134, 708 S.E. 2d 974 (2001), holding, "the evidence presented by the state raised at most, a mere suspicion that Bostick, committed this crime,

Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. Furthermore, Applicant's counsel never argued the Touch-DNA was insufficient to place Applicant at the crime scene and there was no evidence as to when the Touch-DNA was left on the cap, considering the fact that the state's expert could not determine how long Touch-DNA stays on a surface. Therefore, the jury could only have guessed the Touch-DNA was left on the cap at the time of the crime.

Applicant was deprived of raising a reasonable doubt in the jury mind in reference to the Touch-DNA and the victim's alleged identification of Applicant, also, the — state has the burden of proving the guilt of the defendant beyond a reasonable doubt in which the state did not prove in Applicant's case. There was no sufficient evidence presented at applicant trial to warrant a conviction for the charge of burglary in the first degree.

Appellate counsel was ineffective for failing to raise the trial court's denial of applicant's directed verdict motion on direct appeal.

If Applicant's appellate counsel would have explained on direct appeal to the court of appeals why the evidence presented by the State at Applicant's trial was insufficient, as it is explained in Applicant's memorandum of law, there is a reasonable probability the court of appeals would have reversed the trial court's decision and granted Applicant's motion for a directed verdict.

### UNRELIABLE IDENTIFICATION

1) After the crime occurred Sgt. Libertini was the first investigator on the crime scene that took notes from the victim in which the victim stated that the suspect was a light-skinned black male who's voice sounded familiar which was also corroborated by the victim's daughter while the crime was fresh in both of the victim's minds, see trial transcript page 562, lines 10-25 and page 563, line 1-3 and State v. Johnson, 318 S.C. 372, holding "a person in fear for his life presumably has a more accurate degree of attention to his surroundings than a mere passerby."

THREE YEARS later at Applicant's Jackson v Denno hearing the Applicant testified and the victim allegedly identified Applicant by his eyes and voice as the suspect who committed the crime, see trial transcript page 224, lines 7-14.

The state informed the trial court about the victim's identification of Applicant at the Jackson v. Denno hearing and the trial court informed Applicant's counsel and the state to withhold the victim's identification of Applicant at the Jackson v. Denno hearing from the jury, see trial transcript page 226, lines 23-25, page 227, line 1-25 and page 228, lines 1-7, This led to the Applicant being deprived of:

1) Applicant's substantial right to challenge the victim's pretrial identification of Applicant in contrast between the alleged suspect and the Applicant under the Substantial Evidence Rule,

2) The right to raise a reasonable doubt in the jury's mind in reference to the inconsistent statement by the victim of Applicant's identifications.

3) Lastly, it deprived Applicant of the right to challenge the victim's credibility the statement.

All of which violated the Applicant's Constitutional Right of a substantial Right to Due Process. Furthermore, Applicant counsel failed to conduct sufficient pre-trial research and investigation to adequately evaluate and challenge the states in-court identification of Applicant by the victim, SEE TRIAL TRANSCRIPT PAGE 223, LINES 6-25, PAGE 224, LINES 1-3, PAGE 225, LINE 9-25 AND PAGE 226, LINES 1-12.

That led to Applicant being denied a NEIL V. BIGGERS hearing in which the victim would not have been able to overcome the five (5) factors to determine the reliability of the victim's pre-trial identification of Applicant due to:

1) THE OPPORTUNITY OF THE WITNESS TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME.

The victim stated that it was dark inside the apartment and she believed at the suspect's point of entry he must have turned the hallway light off, which was the only light on in the apartment according to the victim, also the breaker box was struck by a bullet that shut the lights out, see trial transcript page 341, line 6-24. This made it impossible for the victim to view the suspect due to the lighting conditions which is a critical factor that enables a witness to view a criminal at the time of a crime.

The short period of time the suspect was in the apartment limited the victim's opportunity to view the perpetrator. U.S. v. GREENE, 704 F.3d 298 (4th Cir.) (Jan. 3, 2013):

Holding "with respect to the first factor... the relatively short time at issue and the fact that the robber's face and body were both obscured by disguise indicate that Ms. Bolder's opportunity to view the robber was limited."

### 3.7) THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE CRIMINAL:

The accuracy of the victim's prior description of the suspect weighs against the reliability of her testimony. Sgt. Libertini was the first investigator at the crime scene that questioned the victim and the victim stated that the suspect was a light skinned male who's voice sounded familiar, see trial transcript page 562, lines 8-23, this description of a light skinned male was also given by the victim's daughter who was also a victim while the crime was still fresh in both of the victim's minds, see STATE v. JOHNSON, 318 S.C. 372, holding, "a person in fear for his life presumably has a more accurate degree of attention to his surroundings than a mere passer by."

WEIGHING THE TOTALITY OF THE CIRCUMSTANCES, THE WITNESS IDENTIFICATION WAS ACCURATE AND RELIABLE AND WE SEE NO ABUSE OF THE TRIAL COURT'S DISCRETION."

THE FACT THAT THE DESCRIPTION WAS CORROBORATED BY THE VICTIM'S DAUGHTER AND BOTH TOLD LAW ENFORCEMENT THE SAME DESCRIPTION FURTHER ENHANCES THE CREDIBILITY OF THE VICTIM'S FIRST DESCRIPTION OF THE SUSPECT AT THE CRIME SCENE, WHICH RAISES DOUBT OF THE RELIABILITY OF THE VICTIM'S IN-COURT IDENTIFICATION OF APPLICANT.

5.) THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION:

THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION WEIGHS HEAVILY AGAINST THE RELIABILITY OF THE TESTIMONY. THREE YEARS PASSED BETWEEN THE CRIME AND THE PRE-TRIAL IDENTIFICATION OF APPLICANT BY THE VICTIM WHICH LED TO A SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION.

THE SUPREME COURT IN NEIL V BIGGERS 409 U.S. 188, 93 S.Ct. 375, DECIDED IN 1972, STATED THAT "IT IS THE LIKELIHOOD OF MISIDENTIFICATION WHICH VIOLATE A DEFENDANT'S RIGHTS TO DUE PROCESS."

Also, the Supreme Court in Biggers, states that a lapse of EVEN SEVEN MONTHS between the crime and the identification "would be a seriously negative factor in most cases." 409 U.S. at 200, 93 S.Ct. 375. Here, the three years between the crime and confrontation is an unquestionably lengthy period of time that must weigh against reliability in applicant's case, especially considering the victim couldn't identify applicant in a photo-lineup four days after the crime took place.

The victim's pre-trial identification was unreliable under the five Neil v. Biggers factors. The victim had a limited opportunity to view the suspect, given the lightning conditions, the suspect's disguise -- the suspect's brief amount of time in the apartment and the presence of the firearm.

Also, the accuracy of the prior description of the criminal in which the victim and the victim's daughter both described the suspect as a light-skinned male whose voice sounded familiar when it was determined that applicant is a very dark-skinned male and applicant and the victim don't know one another.

Moreover, three years elapsed between the crime and the in-court identification, therefore it was error to admit the victim's testimony as the

in-court identification of Applicant.

There is a reasonable probability that, but for Appellate Counsel's unprofessional errors, the results of the proceedings would have been different.

### Conclusion

For the foregoing reason, Applicant, Nathaniel A. Hunter respectfully request that this Honorable Court reverse his conviction and remand for a new trial.

Argument For Issue #3

Applicant's 5th Amendment right to a fair trial and his 14th Amendment right to due process was violated when the trial court instructed both counsels to withhold the victim's identification of Applicant at the Jackson v. Denno hearing from the jury.

At Applicant's Jackson v. Denno hearing the victim told the victim's advocate that she recognized the defendant by his eyes and voice as the suspect. (See Trial Transcript Page 224, lines 7-14.) This statement by the victim came 3 years after the crime was committed. The first statement made by the victim while the crime was still fresh in the victim's mind at the crime scene to the investigator was that "the suspect was a light-skinned male who's voice sounded familiar.", (See Trial Transcript Page 562, lines 8-23.) This discription of a light-skinned male was given by the victim's daughter who was also a victim of the crime committed, (See State v. Johnson 318 S.C. 372, holding, "a person in fear for his life presumably has a more accurate degree of attention to his surroundings that a mere passerby. Weighing the totality of the circumstances, the witness identification was accurate and reliable and we see no abuse of the trial court's discretion."

At a pretrial hearing at Applicant's trial, the trial court instructed both counsels to withhold the statement by the victim to the victim's advocate that the victim recognized Applicant as the suspect, (See Trial Transcript Page 226, lines 23-25, Page 227, lines 1-11.) This error by the trial court to withhold the identification of the Applicant and the statement made by the victim from the jury was highly prejudicial to Applicant based upon the following facts:

- 1.) It deprived Applicant of his substantial right to challenge the victim's inconsistent statement of identification of contrast between the alleged suspect and the Applicant under the Sustantial Evidence Rule.
- 2.) It deprived applicant of the right to raise a reasonable doubt in the jury's in reference to the inconsistent statement by the victim of Applicant's identification.
- 3.) Lastly, it deprived Applicant of the right to challenge the victim's

credibility of the statement.

If not for the trial court's error, Applicant would have been able to show that the victim's credibility of her identification of Applicant at the Jackson v. Denno hearing would have been severely damaged in contrast to the prior identification that the victim gave to Sgt. Libertini at the crime scene while the crime was fresh in the victim's mind and was corroborated by the victim's daughter that the suspect was a light-skinned male, when the Applicant is very dark-skinned male. Applicant substantial right to challenge the victim's credibility may have given the probability of a reasonable doubt in the jury's mind.

This is a direct violation of Applicant's constitution rights of a substantial right to due process. If the trial court would have allowed Applicant the right to present to the jury the victim's identification of Applicant at the Jackson v. Denno hearing, Applicant could have showed the jury the inconsistent identifications of Applicant and there is a reasonable probability that could have raised a reasonable doubt in the jury's mind, Rutland v. State, 415 S.C. 570 when the Supreme Court stated, "As a result, we find there is a reasonable probability the outcome of the trial would have been different had trial counsel impeached Kestner, as her prior inconsistent statements demonstrate all three witnesses to the incident attested at some juncture the victim was armed at the time of the shooting. Moreover, had Kestner denied making the statements during cross-examination, trial counsel could have introduced as evidence the police report or the newspaper article, which we find also would have damaged Kestner's credibility as to her version of events leading up to the shooting." See Rule 613(b) SCRE. This case is completely identical to Applicant's case in that if Applicant was afforded the opportunity to attack the victim's credibility there is a reasonable probability the outcome of the trial would have been different.

Furthermore, the fact that the victim was the State's "Key" witness and her testimony was crucial in the State's case and the Applicant could not attack her credibility due to the trial court's error, severely prejudiced Applicant, See Rule 607 of the Federal Rules of Evidence provides that "the credibility of a witness may be attacked by any party, including the party calling the witness." Fed. R. Evid. 607. One method of attacking the credibility of (i.e., impeaching) a witness is to show that he has previously made a statement that

is inconsistent with his present testimony, U.S. v. Ince U.S.C.A. (4th Circuit) 21 F.3d 576, 39 Fed.R.Evid.Serv. 335. The victim's inconsistent statement could only have helped Applicant's case if Applicant's counsel would have had the opportunity to show the jury the inconsistent statement of the victim, which was prohibited due to the trial court error. The South Carolina Supreme Court began with a discussion of Rule 613(b) SCRE, regarding prior inconsistent statements, noting that a pair inconsistent statement may be introduced as substantial evidence when the declarant testifies at trial and is cross-examination. State v. Stokes, 673 S.E.2d 434, 438 (S.C. 2009) citing State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982) (ECF No. 277-3 at 7) The South Carolina Supreme Court then quoted the **Confrontation Clause** from the Sixth Amendment to the United States Constitution, recognizing that it provides the right of an accused to confront and examine witness, ensuring a "fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial." Id. (quoting) State v. Martini, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987), Stokes v. Warden of Lieber Correctional Institution, United States District Court, D, South Carolina 2016 WL 11396822 (2016). If not for the trial court's error and if Applicant was given the chance to exercise his substantial right to challenge the victim's credibility, the Applicant could have showed the inconsistent identifications of Applicant to the jury and that the victim was not a credible witness due to the fact of the inconsistency of the statement of Applicant's identification. This was clearly an error that violated Applicant's Due Process and deprived Applicant of a fair trial. There is reasonable probability that, but for the trial court's unprofessional errors, the result of the trial would have been different.

Please Note: The victim in this case had opportunity to view the Applicant in a photo-lineup four days after the crime took place while the crime was fresh in the victim's mind and she was unable to identify the Applicant, State v. Washington, 323 S.C. 106, 473 S.E.2d 479 (1996). The identification of Applicant by the victim came three years after the crime took place.

#### Conclusion

For the foregoing reasons, Applicant, Nathaniel A. Hunter, respectfully request that this Honorable Court reverse his conviction and remand for a new trial.

Argument for Issue #4

Applicant's 5th and 14th Amendment rights were violated when the State failed to correct false testimony at the Applicant's trial when the victim testified.

At Applicant's trial, the victim was cross-examined by Applicant's counsel. The victim testified that she identified Applicant as he was sitting at the defense table surrounded by Applicant's trial counsel at trial. Trial Transcript, Page 363, lines 16-25 and Page 364, lines 1-2

That testimony from the victim was false due to the fact; that prior to Applicant's trial, Applicant's trial counsel asked for a Jackson v. Denno hearing in which Applicant testified out of the presence of the jury. (See Trial Transcript, Page 182-193) It was at this point the victim confided in the victim's advocate telling her that she recognized the Applicant by his eyes and voice three years after the crime was committed. (See Trial Transcript, Page 224, lines 7-14) this identification of Applicant was restricted from the jury by the trial court. When State notified the trial court 3 years after the crime was committed about the victim's identification of the Applicant at his trial. The trial court instructed the State and the Applicant's counsel to prevent the jury from knowing that the victim's actual identification of Applicant was established at Applicant's Jackson v. Denno hearing. (See Trial Transcript Page 226, lines 20-25; Page 227, lines 1-11; and Page 228, lines 2-7.

This was a miscarriage of justice. That State rendered Applicant's trial fundamentally unfair with prosecutorial misconduct when the State failed to correct the false testimony when it appeared. The Court of Appeals ruled in Riddle v. Ozmint, 369 S.C. 39 that the State can not use false testimony to obtain a conviction and due process is violated not only when the prosecution uses false testimony to support its case, but also where it uses evidence which it knows creates a false impression of a material fact. U.S. v. Bartko, 728 F.3d 327 (4th Cir.), holding a new trial is required when the government's knowing use of false testimony could affect the judgment of the jury. The State's failure to correct the victim's false testimony prejudiced Applicant in the following ways:

- 1.) It deprived Applicant of his substantial right to challenge the victim's inconsistent statements of identification of contrast between the alleged suspect and the Applicant under the substantial evidence rule.
- 2.) It deprived the Applicant of the right to raise a reasonable doubt in the jury's mind in reference to the inconsistent statements made by the victim on the Applicant's identification.
- 3.) It deprived the Applicant of the right to challenge victim's credibility on the statements she made at the Applicant's trial concerning Applicant's identification.

If the State would have corrected the victim's false testimony, the false testimony would not have been used as direct evidence against the Applicant; and it is reasonably likely that the jury's judgement would have been affected if it heard that the victim lied and misled on the stand. U.S. v Gentry, WL13172167 (2011), the victim was the State's key witness and it is reasonably likely that discovering that the victim gave false testimony could have, in the jury's eyes; tainted the entire case against Applicant.

Furthermore, had the jury been aware of the facts, however, it might have well concluded that the victim had fabricated testimony in order to curry the favor of the very representative of the State who was prosecuting the case in which she was testifying. Napue v. Illinois, 360 U.S. 264, the Supreme Court ruled in Napue that a conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process and there is also a denial of due process, when the State though not soliciting false evidence allows it to go uncorrected when it appears. This was clearly a miscarriage of justice when the trial court, the State and Applicant's counsel failed to correct the false testimony from the victim which was well known to all three parties previously mentioned, thus violating Applicant's rights to due process.

There is a reasonable probability that, but for the State's unprofessional errors, the result of the trial would have been different.

CONCLUSION

For the foregoing reasons, Applicant, Nathaniel A. Hunter, respectfully request that this Honorable court reverse his conviction and remand to the lower court for a new trial.

## ARGUMENT FOR ISSUE # 5

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S IMPROPER COMMENTS DURING CLOSING ARGUMENTS.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S STATEMENTS TO THE JURY DURING CLOSING ARGUMENTS, Smalls v. State 422 S.C. 174, 810 S.E. 2d 826 (2018) holding, the result of the trial would have been different had trial counsel objected to portions of the solicitor's closing argument.

The prosecutor's misconduct was egregious when the state constantly mentioned to the jury items that were not admitted into evidence, such as applicant's car. see trial transcript page 1018, page 24-25 and page 1019 line 1-7.

THERE WAS NO EVIDENCE IN THE RECORD TO SUPPORT THAT APPLICANT'S CAR WAS USED IN THE CRIME. THE SOLICITOR REFERENCED GLOVES, AND A BLACK GUN WHICH WAS ALSO NOT ADMITTED INTO EVIDENCE, THUS MISLEADING THE JURY. see trial transcript page 1020, lines 1-10 and page 1026, lines 15-25. LAW ENFORCEMENT NEVER RECOVERED ANY GLOVES OR A BLACK GUN DURING THEIR INVESTIGATION.

NONE OF THE MENTIONED ITEM WERE ADMITTED INTO EVIDENCE AS THE RULES GOVERNING THE ADMISSION OF EVIDENCE REQUIRE. THE COURTS HAVE HELD UNDER U.S. V. MADDOX, 156 F.3D 1280 AND U.S. V. SMITH, 74 F.3D 1267-1280, STATING; WE HAVE HELD MANY TIMES BEFORE AND WE HOLD AGAIN THAT IN CLOSING ARGUMENTS, COUNSEL MAY NOT REFER TO OR RELY UPON EVIDENCE UNLESS THE TRIAL COURT ADMITTED IT.

Applicant was prejudiced by trial counsel's FAILURE to object to the solicitor's improper comments during closing arguments in which solicitor presented NO EVIDENCE OF SAID ITEMS INTO EVIDENCE, RELAYED INADMISSIBLE EVIDENCE AND OFFERS OF PROOF IN THE HEARING OF THE JURY VIOLATING RULE 103, SCR# (c), STATE V. HORNSBY, 326 S.C. 121, 484 S.E. 2D 869-873 (1997) holding, "A DENIAL OF DUE PROCESS OCCURS WHEN A DEFENDANT IN A CRIMINAL TRIAL IS DENIED THE FUNDAMENTAL FAIRNESS ESSENTIAL TO THE CONCEPT OF JUSTICE. STATE V. WEBB, 389 S.C. 174, 697 S.E. 2D 622, STATING, "A SOLICITOR MAY NOT RELY ON STATEMENTS NOT IN EVIDENCE DURING CLOSING ARGUMENTS. (QUOTING) STATE V. HUGGINS, 325 S.C. 103, 481 S.E. 2D 144 (1997), ARGUMENTS MUST BE CONFINED TO EVIDENCE IN THE RECORD (AND) REASONABLE INFERENCE THEREFROM). STATE V. GAINES, 271 S.C. 65, 244 S.E. 2D 539, "A NEW TRIAL WILL NOT BE GRANTED UNLESS THE PROSECUTOR COMMENTS SO INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE . . . ."

... Resulting conviction a denial of due process,  
State v. Coleman, 301 S.C. 57, 389 S.E. 2d 659 (1990)  
 citing, Donnelly v. DeChristoforo, 416 U.S. 637, 94  
 S.Ct. 1868, 40 L.Ed. 2d 431 (1974).

Petitioner was prejudiced by the repetitious  
 statements by the prosecutor of the items,  
 case, gloves and gun that was not entered into  
 evidence as the rules required.

Without any objections from trial counsel, or  
 any curative instruction from the court would be  
 strong possibility that Applicant was found guilty  
 based upon the solicitor misleading of the jury  
 which influenced the jury's guilty verdict of  
 Applicant.

The solicitor's statement to the jury enhanced  
 the prejudicialness to Applicant based upon the  
 fact, the jury was misled when the solicitor  
 relayed to the jury that the gun was black, but  
 the victim told law enforcement the gun was was  
 silver; see trial transcript page 563, line 4-14,  
 the failure of Applicant's counsel to object to the  
 solicitor's improper comments was a vital error  
 on counsel's behalf that weighed against Applicant's  
 innocence.

Furthermore, the prosecutor's improper comments unfairly prejudiced applicant, depriving him of a fair trial and depriving applicant of his rights to due process.

There is a reasonable probability that, but for trial counsel's unprofessional errors, the results of the proceedings would have been different.

### CONCLUSION

For the foregoing reason, Applicant, NATHANIEL A HUNTER, respectfully request that this Honorable Court REVERSE his conviction and remand for a NEW TRIAL.

## Argument For Issue #6

THE SOLICITOR ENGAGED IN PROSECUTORIAL MISCONDUCT WHEN THE STATE REFERENCED TO THE JURY ITEMS THAT WERE NOT IN EVIDENCE DURING CLOSING ARGUMENTS, THUS MISLEADING THE JURY.

THE PROSECUTOR MADE SEVERAL BLATANTLY IMPROPER COMMENTS IN HER CLOSING ARGUMENTS TO THE JURY, DEPRIVING APPLICANT OF HIS FIFTH AMENDMENT RIGHT TO A FAIR TRIAL AND HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS. *FORTUNE V STATE*, 428 S.C. 545, 834 S.E.2d 37 (2019) HOLDING, THE SUPREME COURT HELD THAT "PROSECUTOR'S IMPROPER COMMENTS UNFAIRLY PREJUDICED DEFENDANT, DEPRIVING HIM OF A FAIR TRIAL AND WARRANTING A NEW TRIAL. THE PROSECUTOR REFERENCED APPLICANT'S CAR THAT WAS NOT IN EVIDENCE AND HAD NO RELEVANCE TO THE CASE, SEE TRIAL TRANSCRIPT PAGE 1019, LINES 1-7.

THERE WAS NO EVIDENCE IN THE RECORD TO SUPPORT THAT APPLICANT'S CAR WAS USED IN THE CRIME. THE SOLICITOR ALSO STATED "WHEN HE'S WEARING THAT HOODIE HE'S GOT IT OVER CLOTHINGS HE'S GOT IT OVER GLOVES," SEE TRIAL TRANSCRIPT PAGE 1019, LINE 20-22, THE SOLICITOR MADE A REFERENCE TO GLOVES FOUR TIMES IN HER CLOSING ARGUMENTS,

see trial transcript page 1020, lines 3-7 and page 1027, lines 16-18, there is no proof that the suspect had on gloves, the prosecutor did not state facts to the jury; but instead presented speculation to the jury. The state did not admit any gloves into evidence and intentionally misled the jury which was highly prejudicial to Applicant. The state also told the jury "he's got his deers most likely tucked down in the back of one of his shirts," see trial transcript page 1020, lines, 1-2, this statement also misled the jury since there was no evidence submitted or testimony from the victim to corroborate the prosecutor's speculation.

ON page 1020, line 8-13 the prosecutor misled the jury again when she testified to the DNA evidence and stated Applicant was wearing the cap on the night of the crime in which that was not a fact. citing *Weldon v. State*, 436 S.C. 69, 870 S.E. 2d 183. (2001), ....

... Holding, other than his possible acquaintance with PREARSON, the DNA match from the duct tape was the only evidence at trial linking PETITIONER to the crime, and there could be other reasonable explanation for it's presence.

Touch-DNA is not conclusive evidence, Touch-DNA only proves that at one point in time Applicant possessed the cap, but not at the time of the crime.

The State presented the testimony of Jill Sparks, the custodian of records for the sprint corporation, see trial transcript page 466, lines 12-21 in which she testified "there was no phone activity on Applicant's phone between 1 a.m and 5 a.m. After hearing testimony from Applicant's and the State's cell phone experts the trial court ruled the testimony from both experts would be too confusing for the jury to understand, thus ruling the timeline between 1 a.m. and 5 a.m. on the morning of the crime is inadmissible.

However, this ruling was made after Jill Sparks testified to there being no activity on Applicant's phone during the time frame of the crime, see trial transcript page 969, line 1-25 and page 970, lines 1-2.

After the trial court's ruling there was never a curative instruction given to the jury to disregard Jill Sparks testimony. State v. White, 391 S.C. 439, 639 S.E.2d 160, holding "because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review." In Applicant's case there was never a curative instruction given to the jury which was also prejudice to Applicant

After the trial court ruled the timeline of applicant's phone activity inadmissible, the prosecutor told the jury in closing arguments that Jill Sparks testified that "there was no phone activity during the timeframe of the crime", see trial transcript page 1022, lines 22-25 and page 1023, line 1.

The prosecutor purposely misled the jury by relying to the jury improper comments that she knew the trial court ruled inadmissible. The solicitor also told the jury the victim daughter said the gun was black when no gun was submitted into evidence, see trial transcript page 1026, line 15, U.S. v. Maddox, 156 F.3d 1280 and U.S. v. Smalls, 74 F.3d 1267-1280, holding, we have held many times before and we hold again that in closing arguments, counsel may not refer to or rely upon evidence unless the trial court admitted it.

The solicitor's improper comment pertaining to the black gun was misleading based upon the fact that the victim told law enforcement that the suspect had a silver medium sized gun, see trial transcript page 563, lines 4-14.

Applicant was prejudiced by trial counsel's failure to object to the prosecutor's improper comments and trial counsel's failure to submit the victim's statement to law enforcement describing the gun as silver into evidence.

The solicitor presented no evidence of said items or statements into evidence, hereby violating Rule 103 SCRE(C), when he relayed inadmissible evidence, made statements and offers of proof in the hearing of the jury during closing arguments.

State v. Hornsby, 326 S.C. 121, 484 S.E. 2d 869-873 (1997), holding, a denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.

State v. Webb, 389 S.C. 194, 697 S.E. 2d 622, stating, a solicitor may not rely on statement not in evidence during closing arguments. (quoting), State v. Huggins, 325 S.C. 103, 481 S.E. 2d 144-116 (1997), arguments must be confined to evidence in the record (and) reasonable inference there from).

State v. Grimes 271 S.C. 65, 244 S.E. 2d 539. A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.

State v. Coleman, 361 S.C. 57, 389 S.E. 2d 659 (1990) (citing) Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct 1868, 46 L.Ed. 2d 431 (1974). Applicant was prejudiced by the repetitious statements by the prosecutor of the statements that are not facts, the gun, gloves, car and the applicant's phone activity which was inadmissible evidence under Rule 103.

SCRE (c) AND Rule 407 SCAR i, Rules of Professional Conduct, Rule 8.4 (A) AND (E), it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of Justice.

There is a reasonable probability that, but for the solicitor's unprofessional errors, the results of the proceeding would have been different.

### CONCLUSION

FOR THE FOREGOING REASONS, Applicant, Nathaniel A Hunter, respectfully request that this Honorable Court REVERSE his convictions and REMAND for a NEW TRIAL.

## Argument for Issue # 1

The prosecutor engaged in prosecutorial misconduct and violated the Rules of Professional Conduct.

The prosecutor committed prosecutorial misconduct when:

1) Prosecutor misconduct - Prosecutor failed to investigate Applicant's incident <sup>REPORT</sup> that had Applicant's full name on it that is dated April 13, 2014. However, Applicant was not a suspect until April 17, 2014, which was the same day Applicant was arrested. There is no reasonable explanation for investigators to include Applicant's name on the incident report when it was made, based upon the fact law enforcement had no knowledge or information pertaining to Applicant whatsoever when the incident report was made.

The prosecutor malfeasance prejudiced Applicant by violating his fourteenth amendment due process right when the state used the incident report to arrest, indict and convict Applicant.

Under Rule 404: South Carolina Rules of Professional Conduct, Rule 8.4, it is professional misconduct for a lawyer to:

- (A) violate or attempt to violate the rules of professional conduct knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- (c) commit a criminal act involving moral turpitude;
- (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Applicant was convicted at trial three years after the incident report was produced, which was more than enough time for the prosecution to correct the falsified document, ANNAPREDDY v. PRASCHE, 996 F.3d 120 (4th Cir. 2021), holding, "citing the prosecutors and investigators alleged malfeasance, ANNAPREDDY moved to dismiss with prejudice the charges in the second superseding indictment.

The district court granted that request, finding that the government had violated ANNAPREDDY's due process rights by presenting ERRONEOUS inventory and loss calculations at his first trial without disclosing the potential for error to the defense."

2) THE PROSECUTOR WITHHELD EXCULPATORY EVIDENCE -

→ (1) When the crime was committed the first investigator at the crime scene was Sgt. Libertini, see Sgt. Libertini's statement as Exhibit # 2.

The victim's description of the suspect was a light-skinned male who's voice sounded familiar and that description of the suspect was corroborated by the victim's daughter while the crime was fresh in both of the victim's mind.

State v. Johnson, 318 S.C. 372, 458 S.E. 2d 49, 50, holding "a person in fear for his life presumably has a more accurate degree of attention to his surroundings than a mere passerby." The prosecution knowingly withheld this information when the state never produced the original incident report with the victim's description of the light-skinned male, thus violations South Carolina Code Regulations, 73-30 Uniform Crime Reporting (A); Every law enforcement agency must send SLED a copy of each report made by any officer during the performance of his duties in responding to reported criminal violations within the jurisdiction of that agency.

- Reports must be sent to SLED regardless of the degree of seriousness of the reported criminal activity.

(b) The reports must be recorded on standard forms approved by SLED, commonly referred to as incident reports. (c) Reports must include to the maximum extent possible, details of all offenses investigated by

officers, whether actual or unfounded, to include follow up investigations, reports of property recovered, changes in the status of any case and other similar comments.

"The state's failure to disclose information warrants a reversal as a Brady violation only if the omission deprived the defendant of a fair trial."

In Applicant's case the state's failure to disclose the original incident report deprived Applicant of due process as well as his right to a fair trial.

There is a reasonable probability Applicant would have submitted the incident report containing the light-skinned male into evidence, so the jury could have deliberated on it and Applicant could have established a reasonable doubt in the jury's mind.

In "specific request" and "general-or-no-request" situations, "favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, Gibson v. State, 334 S.C. 515 (1999).

2) Prosecutor failed to disclose exculpatory material regarding the investigators attempt to allow the victim to determine if she knew the suspect four days after the crime took place when investigators went to the hospital,

the victim stated she did not know and could not recognize Applicant. see Sgt. Librentini's statements as Exhibit #2. A photo - lineup was also shown to the victim in which Applicant was not identified, the result of the photo - lineup was not included in Applicant's discovery.

The prosecutor's conduct violated the following Rules of Professional conduct, Rule 407, SCAER: Rule 3.4 (d) (failing to make a diligent effort to comply with the discovery request of an opposing party);

Rule 3.8 (d) (failing to make a timely disclosure to the defense of known evidence or information that tends to negate the guilt of the accused or mitigate the offense);

Rule 8.4 (4) (violating the Rule of Professional conduct); and Rule 8.4 (E) (engaging in conduct that is prejudicial to the administration of justice);

The prosecutor has also violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCAER: Rule 7 (4) (1) (violating Rules regarding the professional conduct of lawyers); Rule 7 (4) (5) (engaging in conduct tending to pollute the administration of justice or bring the legal profession into disrepute);

and Rule 7 (4) (6) (violating the oath of office taken upon admission to practice law in this state);

A claim that the prosecution violated Brady v. Maryland by failing to disclose exculpatory material in its possession requires a demonstration that (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. (Gibson v. State, 334 S.C. 515, 514 S.E. 2d 320 1999)

### 3) Prosecutor Committed Fraud upon the Court -

This crime happened on April 13, 2014, Investigator Sgt. Libertini responded to the crime scene, see Sgt. Libertini's statement as Exhibit #2. In Sgt. Libertini's statement the victim described the suspect as a light-skinned male who's voice sounded familiar, that description of the suspect was corroborated by the victim's daughter while the crime was fresh in both of the victim's minds.

State v. Johnson, 318 S.C. 372, 458 S.E. 2d 49, 50, holding "a person in fear for his life presumably has a more accurate degree of attention to his surroundings than a mere passer by."

However, Applicant never received the incident report with the description of the light-skinned male, instead Applicant received an incident report with Applicant's name on it dated April 13, 2014. The incident report with Applicant's name on it was fabricated evidence based upon the fact Applicant was not a suspect until April 17, 2014, which was the same day Applicant was arrested.

The incident report that included Applicant's name was in Applicant's discovery, however, the original incident report with the description of the light-skinned male was not. The incident report with Applicant's name on it was used to arrest, indict and convict Applicant.

The prosecutor's actions were egregious due to the fact Applicant was not a suspect until four days after the incident report was made. The prosecutor knowingly presented the false document to Applicant's counsel when the prosecutor provided Applicant's counsel with Applicant's discovery.

The prosecutor's actions led to fraud upon the court by the prosecutor and violated Applicant's fifth amendment right to a fair trial and his fourteenth amendment right to due process. ... "Fraud upon the court is a narrow and invidious species of fraud that subverts the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud. Under Rule 407 South Carolina Rules of Professional Conduct, Rule 8.4 (d) it is professional misconduct for a lawyer to: (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The incident report in Applicant's case was presented due to the prosecutor's disregard to Rule 407, SCACR, Rule of Professional Conduct, Rule 8.4 to wit: (A) violate or attempt to violate Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (B) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (C) Engage in conduct that is prejudicial to the administration of justice.

The prosecutor has also violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR; Rule 7(A) (1) (violating rules regarding the professional conduct of lawyers; Rule 7(A)(2) (Engaging in conduct tending to pollute the administration of justice or bring the legal profession into disrepute); and Rule 7(A)(6) (violating the oath of office taken upon admission to practice law in this state).

The prosecutor's fraud upon the court pertaining to the falsified incident report prejudiced Applicant by depriving him of his fifth amendment right to a fair trial, his fourteenth amendment right to due process and violating Article 1, section 3 of the Constitution of the State of South Carolina.

There is a reasonable probability that, but for the prosecutor's unprofessional error, the results of the proceeding would have been different.

CONCLUSION

FOR THE FOREGOING REASONS, APPLICANT, NATHANIEL  
A HUNTER, RESPECTFULLY REQUEST THAT THIS HONORABLE COURT  
REVERSE HIS CONVICTIONS AND REMAND FOR A NEW TRIAL.

Argument for Issue #11

Trial counsel was ineffective for failing to inform Applicant of his Fifth Amendment rights and the consequences of exercise and waiver of those rights, depriving Applicant of his 6th Amendment Right to Counsel and Fourteenth Amendment Right to Due Process.

Applicant took counsel's advise to testify at Applicant's Jackson v. Denno hearing with Applicant's trial counsel failing to inform Applicant of his 5th Amendment rights and the consequences of exercise and waiver of those rights, (See; Trial Transcript Page 181, lines 17-25). Applicant took counsel's advice to testify at his Jackson v. Denno hearing and that violated Applicant's 5th Amendment right pursuant to the Self-Incrimination Clause of the Fifth Amendment, providing that "no person shall be compelled in any criminal case to be a witness against himself." Four days after the crime happened the victim was showed a photo-line up of Applicant and she was unable to identify the Applicant as the suspect who committed the crime, (See: Sgt. Libertini's notes as Exhibit #1). Three years later Applicant testified at his Jackson v. Denno hearing when there was no need for a Jackson v. Denno hearing considering the fact that Applicant never confessed or gave incriminating statements to law enforcement and always maintained his innocence, Jackson v Denno, 378 U.S. 368, 84 S.Ct. 1774, defendant was not entitled to a Jackson v. Denno hearing on issue of admissibility of confession, where no confession was offered, (See Trial Transcript Page 575, lines 16-18, Page 577, lines 9-18, and Page 578, lines 23-25 and page 579, lines 1-3). After Applicant testified at the Jackson v Denno hearing the victim confided in the victim's advocate that she recognized Applicant's eyes and voice as the suspect who committed the crime, (See: Trial Transcript Page 224, lines 7-14).

The State notified the trial court of the victim's identification of the Applicant's eyes and voice and the trial court instructed Applicant's trial counsel and the State to withhold the victim's identification of Applicant at the Jackson v. Denno hearing from the jury, (See: Trial Transcript Page 226, lines 23-25, Page 227, lines 1-11, and Page 228, lines 1-7), instead, when the victim was questioned on direct examination by the State, the State phrase the questions to her concerning Applicant's identification by her at the Jackson v Denno hearing as if the victim was identifying the Applicant in trial and not at the Jackson v Denno hearing, (See Trial Transcript Page 358, lines 4-25 and Page 359, lines 1-12). On cross-examination of the victim by Applicant's

counsel the victim testified that she identified Applicant as he was sitting at the defense table surrounded by counsel, (See: Trial Transcript Page 363, lines 16-25 and Page 364, lines 1-2). The victim's testimony that she first identified Applicant in trial was false due to the fact that she clearly confided in the victim's advocate after the Applicant testified at the Jackson v Denno hearing that she identified Applicant by his eyes and voice, (See: Trial Transcript Page 224, lines 7-14). Trial counsel's failure to inform Applicant of his 5th Amendment rights and the consequences of exercise and waiver of those rights deprived Applicant of his Sixth Amendment right to counsel and Fourteenth Amendment right to Due Process, Brown v. State, 340 S.C. 590, holding the PCR court ruled that a defendant's decision to testify or not must be made with knowledge of the consequences of either choice, trial counsel's failure to inform Applicant of the dangers and consequences of testifying while the victim was present at the Jackson v Denno hearing was highly prejudicial considering the fact that the victim's identification of Applicant at the Jackson v Denno hearing.

Furthermore, if Applicant's trial counsel would have warned Applicant of the consequences of testifying at the Jackson v. Denno hearing Applicant would have never testified and it would not have been an identification of Applicant since Applicant's counsel knew prior to trial that the Applicant was exercising his 5th Amendment right to not testify during the trial. The victim's identification of Applicant was used as direct evidence against Applicant when prior to the Jackson v Denno hearing and Applicant's trial there was never an identification of Applicant as the suspect until he testified at the Jackson v Denno hearing. In the case of State v. Collier, 421 S.C. 426, the court ruled "there was no evidence to support a finding that Kirkman's in-court identification of Collier resulted from anything Kirkman saw or heard during the Jackson v Denno hearing ." However, in Applicant's case there is strong evidence to support that the victim's in-court identification of Applicant resulted from everything that she saw or heard during the Jackson v Denno hearing which was three years after the crime was took place, (See: Trial Transcript Page 224, lines 7-14). Trial counsel should have informed Applicant about the dangers of testifying in the presence of the victim at the Jackson v Denno hearing and by failing to do so severely prejudiced Applicant due to the fact that the victim's in-court identification was a critical factor that resulted in the jury's conviction of Applicant. There is a reasonable probability that, but for counsel's unprofessional

errors, the results would have been different.

Conclusion

For the foregoing reasons, Applicant, Nathaniel A. Hunter, respectfully request that this Honorable Court reverse his convictions and remand for a new trial.

STATE OF SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS

Appeal from Lexington County

Honorable Thomas W. Cooper, Circuit Court Judge

Nathaniel Antron Hunter,

Applicant

v.

The State of South Carolina,

Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Memorandum of Law of Applicant in the above referenced case has been served upon Lisa M. Comer, Clerk of Court, at the Lexington County Courthouse, 205 East Main Street, Lexington, South Carolina, 29072, this March 31, 2023.

SUBSCRIBED AND SWORN TO before me  
this March 31, 2023.

1/s/ Nathaniel Antron Hunter  
Nathaniel Antron Hunter

Paul Dennis Coker

Notary Public

My Commission expires: Dec. 19, 2024

COPY

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 Nathaniel Antron Hunter, #372378 )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-32-04672

**ORDER OF DISMISSAL**

FILED  
 2023 OCT 11 AM 9:51  
 LISAM COOPER  
 CLERK OF COURT  
 LEXINGTON SC

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Nathaniel Antron Hunter (“Applicant”) on November 20, 2019, and amended on March 29, 2023. The Court convened an evidentiary hearing into the matter on April 3, 2023, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Zachary W. Jones represented Respondent. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is currently confined in the South Carolina Department of Corrections. Applicant was arrested on April 17, 2014, following an investigation into a violent burglary, shooting, and subsequent police chase. During its December 2014 term, the Lexington County Grand Jury indicted Applicant for attempted murder (2014-GS-32-3689); first-degree burglary (2014-GS-32-3687); third-degree criminal sexual conduct (CSC) with a minor (2014-GS-32-3688); and possession of a weapon during the commission of a violent crime (2014-GS-32-3692).

On April 24, 2017, Applicant proceeded to a jury trial before the Honorable Thomas W.

Cooper. Assistant Public Defenders Jason S. Chehoski and Jael D. Gilreath, along with Dayne C. Phillips, Esquire (collectively, Trial Counsel) represented Applicant. Assistant Deputy Solicitor L. Suzanne Mayes and Assistant Solicitor Robert E. McNair, III, prosecuted the case.

#### **A. Summary of Evidence Adduced at Trial**

Larenda Simon (Victim) and her nine-year old daughter (Child) lived in an apartment complex in West Columbia. R. 272-74. During the early morning hours of April 13, 2014, Victim and Child were asleep in Victim's bed when Victim awoke to see a man in a ski mask and hoodie standing over her holding a gun. R. 277. The man was dressed in all black and wearing boots. R. 277. Victim began to plead with the man, telling him she did not have any money. R. 277. The man took her phone and told her to take off her panties. R. 278-79. Victim asked that Child be allowed to leave the room, and the man told Child to go into the bedroom closet. R. 279. Victim removed her panties but informed the intruder that she was menstruating. R. 280. The man then asked how old her daughter was, and he told Child to come out of the closet and remove her clothes. R. 280. While holding Victim at gunpoint, the intruder began to take out his penis. R. 281. Rather than allow the man to rape her daughter, Victim jumped on the intruder and attempted to wrestle the gun from him. R. 282.

Victim and the intruder struggled over the gun, and the intruder told Victim that he was going to kill her. R. 282. As Victim tackled the intruder, the weight of her body carried the two across the hall into the bathroom. R. 282. During the struggle, the man shot Victim several times, but Victim continued to fight. R. 282-84. The intruder finally fled from the apartment, leaving Victim with gunshot wounds to her chest, arm, hand, and underarm. R. 284; 554. Victim and Child fled the apartment and sought aid from a neighbor, who called 911. R. 286-87. Victim required surgery, but she survived her injuries. R. 288.

Victim described the intruder to police as around five feet and four to six inches tall. R. 442. Although Victim could not see the intruder's hands or other body parts because he was wearing a disguise, she recalled looking directly into his eyes and hearing his voice. R. 233. After having an opportunity to look Applicant in his eyes and hear him speak during court proceedings, Victim identified him as her attacker. R. 302-03. Child testified, corroborating Victim's account. R. 395-404. Child testified that the intruder's handgun was black. R. 402.

Investigators with the West Columbia Police Department investigated the scene. R. 574-76. Police found five shell casings in the bathroom of Victim's apartment and collected four projectiles from Victim's and her neighbor's apartments. R. 593. These items were tested by a ballistics expert at the State Law Enforcement Division (SLED), who concluded they were fired from a .40 caliber pistol made by either Glock or Smith and Wesson. R. 828-29. Inside Victim's bathroom, police also discovered a black hoodie sweatshirt with a skull cap tucked inside the hood. R. 591-94. Victim testified the clothing did not belong to her. R. 298. Officers requested an expedited DNA analysis of the clothing. R. 778. SLED technicians conducted an "ownership swab" of the cap and hoodie in an attempt to extract skin and other cells deposited in the clothing over time. R. 848. DNA extracted from the skull cap matched Applicant's DNA, which was entered into the state's DNA database in 2004. R. 773; 869-70.

On April 16, three days after the burglary, Applicant called the Department of Probation, Pardon and Parole (DPPP) and SLED to request that his DNA be removed from the state's DNA database. R. 155-56; 455, lines 4-5; 768-69; 777-78. Applicant provided the agencies with his name and telephone number. R. 769. Applicant called DPPP again on April 17<sup>th</sup> to follow up on his request and answered a return phone call at the number he provided. R. 771. Prior to trial, police searched Applicant's phone and extracted call log, text message, and internet browser data.

R. 928-31. The data showed caller ID-blocked outgoing calls to the Richland County Sheriff's Office warrants division, Columbia Police Department warrants division, and SLED between April 15<sup>th</sup> and 17<sup>th</sup>. R. 936-39. The data also showed calls to a rental car company and the Carolina Trader magazine that were not caller ID-blocked. R. 938-39. The State presented evidence showing Applicant took out an advertisement in the Carolina Trader to sell his car on April 17<sup>th</sup>. R. 568-70. The data also showed numerous internet searches related to removal of DNA from DNA databases, visits to local crime news sites, the U.S. Marshalls most wanted fugitives list, and a news article entitled "Arrest Warrant Issued for Burglary Suspect." R. 937-40. The State originally intended to offer the data to show an absence of activity on the phone during the time of the incident, but after hearing inconclusive testimony from both prosecution and defense experts, the court ruled the State could not introduce the data for that purpose. R. 717; 905-18.

Based on the DNA tests and Applicant's suspicious attempts to destroy his DNA sample, officers obtained an arrest warrant for Applicant. R. 454. On April 17<sup>th</sup>, SLED agents tracked Applicant to an apartment complex in Columbia near Interstate 277. R. 456-57. Police spotted Applicant leaving the apartments driving a rental car. R. 457; 462. When signaled to stop, Applicant fled. R. 457-58. Disregarding traffic signals and speed limits, Applicant led police on a three-mile chase until he eventually pulled over near 2548 North Main Street, where they arrested him. R. 458. Officers observed scratch marks on Applicant's face and an abrasion on his shoulder. R. 468-70. Applicant denied involvement in the burglary but offered the police information on an unrelated murder case in exchange for a plea deal. R. 502. When confronted with information that his DNA was found at the scene, he told officers he had given away clothes to a thrift store or a "crackhead." R. 495. When asked about the scratches on his face, he told officers that he'd gotten the scratches while play-fighting with his cousin and roommate, Tanisha Taylor. R. 496. Applicant

gave officers a different phone number than he had given employees of DPPP. R. 73; 85.

Taylor denied causing the injuries to Applicant's face. R. 796. She testified she awoke around four o'clock on the morning of the incident date and saw Applicant washing clothes. R. 793-94. Applicant was wearing only boxer shorts and a tank top, and made a comment about the injuries to his face. R. 794-95. Applicant did not have the injuries the night before. R. 796. Taylor testified Applicant owned a black handgun which she believed to be a .40 caliber Glock. R. 799-800. After being shown a picture of Applicant holding a black handgun, Taylor testified she believed it was the same gun she saw Applicant with on prior occasions. R. 803. The trial judge prevented the State from publishing the photograph to the jury because it also showed Applicant holding a second handgun. R. 803; 837-38. Taylor testified Applicant was upset with her for telling law enforcement about the gun. R. 815. The gun was never located. R. 738.

#### **B. Verdict & Subsequent Proceedings**

On April 28, 2014, the jury returned a verdict of guilty on each indictment. Judge Cooper sentenced Applicant to concurrent terms of forty-five years' imprisonment for burglary, thirty years' imprisonment for attempted murder, fifteen years' imprisonment for CSC, and five years' imprisonment for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins (Appellate Counsel) perfected the appeal by briefing the following issues:

- I. Did the trial judge err in refusing to declare a mistrial when, in opening statement, the prosecution referenced photographs of Appellant with a gun found on Appellant's phone, although, prior to opening statements, Appellant objected to the admissibility of the photographs, the trial judge withheld ruling on the admissibility of the photographs pending further testimony, and ultimately the photographs were not admitted in evidence?

- II. Did the trial judge err in admitting a witness statement recorded by police while the witness was at the hospital being prepared for surgery and included statements by treating medical personnel without conducting a Rule 403 balancing test when portions of the recording were irrelevant and any possible probative value in the recording was substantially outweighed by the danger of unfair prejudice and the needless presentation of cumulative evidence pursuant to Rule 403, SCRE?
- III. Did the trial judge err in admitting the content of text messages derived from a cell phone extraction report?
- IV. Did the trial judge err in refusing to declare a mistrial based on the fact that the cumulative effect of the errors adversely affected Appellant's right to a fair trial?

On August 28, 2019, the Court of Appeals issued an unpublished opinion affirming Applicant's convictions and sentences. *State v. Hunter*, Op. No. 2019-UP-312 (S.C. Ct. App. filed Aug. 28, 2019). The case was remitted to the circuit court on September 13, 2019. Applicant commenced this PCR action on November 20, 2019.

## II. CURRENT APPLICATION

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assistance of Trial Counsel
  - a. "Counsel motioned for a Jackson v. Denno hearing when there was no reason for it."
2. Ineffective Assistance of Appellate Counsel
  - a. "Appellate counsel failed to raise issue that's preserved for appeal."
3. "Great Seal missing from the laws I'm serving time for 1993 Act No. 184 1995 Act No. 7."

Applicant requests relief as follows:

"Reverse and remand for a new trial."

Applicant amended his application on March 29, 2023, raising the following allegations:

1. Ineffective assistance of Trial Counsels
  - a. Failure to object to the jury pool not being an adequate cross-section of the residents of Lexington County.
  - b. Failure to request sequestration of the Victim during the *Jackson v. Denno* hearing.
    - i. While the Applicant was warned about the dangers of testifying, he was never warned that his voice would be used against him during a pretrial hearing.
    - ii. The Victim identified the Applicant during this hearing by his voice, counsel failed to object when the prosecutor asked her if she actually identified him while he was sitting at the table with trial counsels.
  - c. Trial counsels should not have requested a *Jackson v. Denno* hearing because it was unnecessary as Applicant never gave a written statement.
  - d. Trial counsel did not adequately move to quash Applicant's statements. When the investigators asked for a second statement from Applicant after the Applicant was arrested and when Applicant had already requested the public defender represent him.
  - e. Failure to challenge the chain of custody adequately on the DNA.
    - i. The nylon cap was not listed on the incident report, nor the search warrant return and there was no photograph of the cap taken.
    - ii. Did not adequately address Investigator Bramlett's testimony during the *Schmerber* hearing about the nylon cap and Bramlett testifying the "black nylon cap" was photographed and marked separately when, in fact, it was not.
    - iii. The West Columbia person who logs the evidence in did not testify nor did Ms. Stephens from SLED.
  - f. *Neil v. Biggers* hearing request – Trial counsels failed to conduct sufficient pre-trial research and investigation to adequately evaluate and challenge the State's in-court identification of the Applicant.
    - i. Furthermore, in the discovery there is a notation that the investigator asked for a photo line-up, but that photo line-up has not been produced and nor was this issue raised at the trial. If the line-up exists, it could have been favorable to the Applicant.
  - g. Trial counsels were ineffective for failing to adequately cross-examine the Victim on key points during her testimony which also would have shown that some of her testimony was false.
    - i. Trial counsel did not adequately address with the Victim during her testimony that she initially identified the perpetrator as a "light-skinned, black male" when the Applicant is not.
  - h. Trial counsels were ineffective for failing to inform the Applicant of his 5<sup>th</sup> Amendment right against self-incrimination and the consequences of exercising and waiving those rights.
  - i. Trial counsel were ineffective when they failed to consult a touch DNA expert which resulted in inadequate cross-examination of the State's DNA expert on the issue of touch DNA.
  - j. Trial counsel was ineffective when they did not request a curative instruction after the timeframe exhibit wasn't allowed into evidence.
  - k. Trial counsel did not object to admitting the State's DNA witness as an expert.

1. Trial counsel failed to object to the Solicitor's improper comments during their closing argument.
    - i. Prosecutor referenced dreads at p.120, line 1-2, when no evidence the perpetrator had dreads was discussed in the trial;
    - ii. Reference to gloves and how DNA is found on page 1020, lines 3-13;
    - iii. Statement made about Applicant being worried about being seen in a car near the crime scene, Tr. p. 1019, lines 1-7.
    - iv. Tr. p. 1022, line 22-p.1023, line 2 - regarding his cell phone and not having activity.
  - m. Trial counsel failed to argue in closing that while the Applicant owned the black nylon cap at some point, he did not have ownership of it at the time of the incident.
  - n. Failed to argue at closing that it was unbelievable that the Victim could identify the Applicant after more than three years.
  - o. Failed to argue in closing that there could be multiple guns that could match, not just the ones in evidence.
  - p. Failure to object to the trial court's instructions that stated "[i]nferred malice may also arise when the deed is done with a deadly weapon. A handgun or pistol in our law is a deadly weapon; that is, an instrument that could be used to cause death or great bodily harm." Tr. p. 1070, lines 11-15.
2. Ineffective Assistance of Appellate Counsel
    - a. Failure to raise the *Batson* issue on appeal.
    - b. Failure to argue on appeal the issue regarding the chain of custody of the DNA.
    - c. Failure to argue on appeal the issue regarding the continuance request made before trial and the *Schmerber* hearing.
    - d. Did not raise on appeal the preserved directed verdict issue.
    - e. Failure to argue the trial court's denial of the *Neil v. Biggers* hearing.
    - f. Did not raise on appeal the voice identification of the Applicant in the courtroom.
    - g. Appellate counsel should have filed a Petition for Rehearing and a Petition for a Writ of Certiorari to the S.C. Supreme Court.

At the outset of the evidentiary hearing, Applicant introduced a "memorandum of law" that restated most of the issues raised in the amended application. However, the memorandum also alleged that an incident report was improperly altered to list Applicant as a suspect, when he was not known to be a suspect until several days after the incident.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcripts of Applicant's trial, the records of the Lexington County Clerk of Court regarding the subject

convictions, Applicant's appellate records, the original and amended applications for post-conviction relief, and the memorandum submitted at the outset of the evidentiary hearing. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

#### **Ineffective Assistance of Trial Counsel**

Applicant's allegations of ineffective assistance of Trial 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). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.*

(citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

#### A: Jury Pool

Applicant argues Trial Counsel failed to challenge the racial composition of the jury pool, which was mostly white. Applicant also complains that the State struck every black juror, causing him to be tried by an all-white jury. Applicant contends this violated the requirement that a jury

must represent a fair cross-section of the community. The Court finds this allegation to be without merit.

“In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show that 1) the group excluded is a ‘distinctive’ group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process.” *State v. Patterson*, 324 S.C. 5, 21, 482 S.E.2d 760, 767–68 (1997). Applicant acknowledges that there were some black jurors in the jury pool, and he has not offered any evidence that black jurors were materially underrepresented relative to their proportion of the community. In addition, he has not shown any evidence of “systematic exclusion” of black jurors from the jury selection process.

The transcript reflects that, during jury selection, the State struck two black jurors. A third black juror was selected as an alternate but did not serve on the panel. Trial Counsel made a timely *Batson* motion, and the trial court demanded a racially neutral explanation from the solicitor. The solicitor explained that one of the jurors had a recent criminal domestic violence conviction and that the State had also struck a white juror due to a recent criminal conviction. The solicitor further explained that the second black juror was struck because she admitted knowing Applicant’s family and stated she was nervous. The trial court ruled that the State had articulated racially neutral reasons for striking the two black jurors and denied Trial Counsel’s *Batson* motion. (Tr. pp.46–59).

There is no indication in the record before the Court that the jury pool violated the fair cross-section requirement, and Applicant has not met his burden of proving such a violation at the evidentiary hearing. Furthermore, the transcript reflects that Trial Counsel was attentive to the

racial composition of the jury and made the appropriate *Batson* motion after the State struck two black jurors from the jury pool. The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation; accordingly, this allegation is denied and dismissed with prejudice.

**B: Victim's presence at *Jackson v. Denno* hearing**

Applicant argues Trial Counsel failed to move to sequester the Victim during the *Jackson v. Denno* hearing or to inform him that the Victim would be able to identify him by his voice if he testified at that hearing. The Court finds this allegation is without merit.

A party is not entitled to the sequestration of witnesses as a matter of right. *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008); *State v. Fulton*, 333 S.C. 359, 375, 509 S.E.2d 819, 827 (Ct. App. 1998). In addition, “[a] person must not be sequestered from a proceeding adjudicating an offense of which he was a victim.” S.C. Code Ann. § 16-3-1550(B). Furthermore, the purpose of sequestration is to prevent witnesses from shaping their testimony to match that given by other witnesses, not to prevent a witness from having an opportunity to identify the defendant in court. *See* Rule 615, SCRE (“[A] court may order witnesses excluded so that they cannot hear the testimony of other witnesses . . . .”); *see also State v. Huckabee*, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010) (holding the purpose of Rule 615, SCRE, is to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at trial). The Court finds Trial Counsel was not deficient for failing to move that the Victim be sequestered from the *Jackson v. Denno* hearing because there were no grounds for sequestration.

In addition, the Court finds Trial Counsel was not deficient for failing to anticipate and advise Applicant that, years after the offense occurred, the Victim—who had never previously been able to positively identify Applicant as the perpetrator—would be able to remember the perpetrator's voice and match it to Applicant's voice at a pre-trial *Jackson v. Denno* hearing.

Applicant is entitled to reasonable advocacy, not perfect advocacy judged with the benefit of hindsight. *Yarborough*, 540 U.S. at 6. To Counsel Chehoski's credit, after he was informed of the Victim's identification of Applicant, he immediately requested a *Neil v. Biggers* hearing to challenge the reliability of the identification, arguing that the circumstances of the *Jackson v. Denno* hearing were unduly suggestive. (Tr. p.223, lines 6–25). The trial court declined Trial Counsel's request. (Tr. p.225, line 9–p.226, line 12). Nevertheless, Counsel Chehoski elicited from the Victim on cross-examination that she first identified Applicant while he was sitting at the defense table surrounded by defense attorneys, and Counsel Gilreath argued in closing that the identification of Applicant's voice was not reliable. (Tr. p.363, line 16–p.364, line 2; Tr. p.1032, line 14–p.1033, line 23). The Court finds Trial Counsel was not deficient as to this allegation. Accordingly, this allegation is denied and dismissed with prejudice.

**C: Unnecessary *Jackson v. Denno* hearing**

Applicant argues Trial Counsel was ineffective for requesting a *Jackson v. Denno* hearing, inadvertently causing Applicant's voice to be identified by the Victim. Applicant alleges a *Jackson v. Denno* hearing was unnecessary because he never confessed. The Court finds this allegation is without merit.

At the evidentiary hearing, Counsel Phillips credibly testified that he requested a *Jackson v. Denno* hearing to ensure that the defense was made aware of any statements from Applicant that the State would attempt to introduce at trial. He testified that, in some trials, law enforcement had failed to disclose a defendant's statements until the last minute, and he wanted to avoid an ambush. He testified that it is his practice to request a pre-trial *Jackson v. Denno* hearing in most cases so that he has enough advance notice to adequately prepare for trial and to prevent any unknown inculpatory statements from coming in.

Moreover, as explained above, the Court finds Trial Counsel was not deficient for failing to anticipate that the Victim would suddenly be able to identify Applicant's voice at the hearing, three years after the crime had occurred. At the time, it was far from obvious that a *Jackson v. Denno* hearing would expose Applicant to any prejudice. Therefore, the Court finds that Trial Counsel was pursuing a valid trial strategy by requesting a *Jackson v. Denno* hearing in this case, regardless of whether Applicant's statements are characterized as "confessions" or not.<sup>1</sup> Accordingly, Trial Counsel's performance was not deficient, and this allegation must be denied and dismissed with prejudice.

#### **D: Failure to quash Applicant's statements**

Applicant argues Trial Counsel did not adequately move to quash Applicant's statements to law enforcement on the ground that Applicant was under arrest and had requested a public defender at the time his second statement was made. The Court finds this allegation is without merit.

As Applicant points out in his "Allegation C" above, Trial Counsel *did* obtain a *Jackson v. Denno* hearing to challenge the admissibility of his custodial statements to law enforcement. At the conclusion of that hearing, Counsel Phillips argued that Applicant's custodial interrogation was improper because, by the time he gave the second statement, he was represented by the public defender's office. (Tr. p.194, line 23–p.195, line 12). The trial court denied Trial Counsel's motion to suppress the statement on that ground. (Tr. p.196, line 8–p.197, line 5). Trial Counsel renewed the objection when Applicant's statements were offered into evidence before the jury. (Tr. p.518, lines 16–17).

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<sup>1</sup> Although Applicant neither admitted nor denied his guilt in his statements to law enforcement, he did state it would not help him to tell the truth, and he attempted to bargain for certain charges to be dropped in exchange for telling the truth. (Tr. p.144, line 11–p.145, line 2; p.558, lines 14–19). The Court notes that, while Applicant's statements may not be "confessions" in the colloquial sense, they did tend to inculcate him.

The Court finds Trial Counsel adequately challenged the admissibility of Applicant's statements. Although the challenge was ultimately unsuccessful, Applicant has not alleged any other grounds that would have supported Trial Counsel's motion. Accordingly, the Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this allegation. This allegation is, therefore, denied and dismissed with prejudice.

#### **E: Chain of custody**

Applicant argues Trial Counsel failed to adequately challenge the chain of custody of the nylon cap, from which the DNA evidence was obtained, on the ground that some persons in the chain of custody did not testify—namely, the West Columbia evidence custodian and Amy Stephens, one of the forensic technicians at SLED who handled the evidence. Applicant also complains that investigators never photographed the nylon cap at the crime scene or listed it in the incident report or search warrant return. The Court finds this allegation is without merit.

At the pre-trial *Schmerber* hearing, Investigator Charles Bramlett testified that he retrieved a dark-colored hoodie from the crime scene that appeared to have been pulled off of the perpetrator during the struggle. Inside the hood section of the hoodie was a nylon cap. Investigator Bramlett testified he packaged the hoodie and the cap together because he feared that removing the cap from the hoodie might cause evidence such as skin cells or hair particles to be lost.<sup>2</sup> (*Schmerber Tr.* p.51, line 15–p.53, line 3). Investigator Bramlett did not testify at Applicant's trial; however, Investigator Scott Neel testified that he was with Investigator Bramlett at the crime scene when the hoodie and cap were collected. In response to Counsel Phillips' cross-examination, Neel

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<sup>2</sup> Applicant claims Investigator Bramlett falsely testified that the nylon cap had been photographed and marked separately from the hoodie. The Court notes that Bramlett stated a "cloth" was photographed and marked separately from the hoodie, immediately after being questioned about an unrelated cloth found outside the apartment. Bramlett had already explained that the cap was found inside the hoodie and was not removed out of evidence preservation concerns, so he could not have meant that the cap was marked and photographed separately. In context, the most plausible reading of Bramlett's testimony is that the cloth outside the apartment—not the cap—was photographed and marked separately from the hoodie. (*Schmerber Tr.* p.53, line 8–p.55, line 2).

admitted the cap itself was not listed in the incident report or search warrant return; however, he explained that this was because the hoodie and cap were collected together as one item. Neel testified that the cap was logged into the computer system after it was transported to the evidence room. (Tr. p.779, line 24–p.780, line 8; p.782, line 20–p.789, line 5). The transcript reflects that Trial Counsel challenged the chain of custody of the DNA evidence on the ground that the West Columbia evidence custodian and Amy Stephens did not testify. (Tr. p.954, line 3–p.955, line 8). Trial Counsel renewed that challenge later in the trial. (Tr. p.1002, line 7–p.1003, line 7).

The Court finds Trial Counsel adequately exposed the fact that the nylon cap was not photographed at the crime scene nor listed in the incident report or the search warrant return on cross-examination of Investigator Neel. The Court further finds that Trial Counsel attempted to challenge the chain of custody on exactly the same grounds Applicant now raises in his amended PCR application. Therefore, the Court finds Applicant has not met his burden of proving Counsel was deficient as to this allegation, and this allegation is denied and dismissed with prejudice.

**F: *Neil v. Biggers* hearing request**

Applicant argues Trial Counsel failed to adequately challenge the in-court identification of the Applicant by the Victim. Applicant claims Trial Counsel should have cited *State v. Collier*, 421 S.C. 426, 807 S.E.2d 206 (Ct. App. 2017), in order to challenge the propriety of an identification made for the first time at a *Jackson v. Denno* hearing. The Court finds this allegation is without merit.

The *Collier* decision was not published until October 4, 2017, months *after* Applicant's trial concluded on April 28, 2017. Therefore, Trial Counsel could not have relied upon it to challenge the Victim's identification of Applicant. Furthermore, the *Collier* court affirmed the admission of a witness's in-court identification, despite the witness's presence at the pre-trial

*Jackson v. Denno* hearing. Even if the *Collier* decision had been available to Trial Counsel at the time of Applicant's trial, that decision does not clearly support Applicant's position.

Applicant also claims a photo line-up was shown to the Victim, and the results of the line-up "could have been favorable" to Applicant. However, no such line-up was presented at the evidentiary hearing, so Applicant's claim that it "could have been favorable" is purely speculative. Regardless, the Victim consistently reported that the perpetrator was wearing a mask and that all she could see were his eyes. Under those circumstances, a photographic line-up would be of negligible probative value. However, Trial Counsel was able to use the lack of a photographic line-up to criticize the State's case on closing argument. (Tr. p.1032, lines 5-13).

The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation. Therefore, the allegation is denied and dismissed with prejudice.

#### **G: Cross-examination of the Victim**

Applicant argues Trial Counsel failed to adequately cross-examine the Victim to expose inconsistencies in her story. Specifically, Applicant complains that Trial Counsel never questioned the Victim about her alleged statement to investigators that the perpetrator was a "light-skinned black male," whereas Applicant is a dark-skinned black male. The Court finds this allegation is without merit.

On cross-examination by Counsel Phillips, Investigator Thomas Griffin testified that he was told by a Sergeant Libertini that the suspect was a light-skinned black male. (Tr. p.562, lines 10-23). Counsel Phillips also elicited from Child that the perpetrator's skin color was lighter than the Victim's skin color. (Tr. p.461, lines 10-15). Counsel Gilreath pointed out in her closing argument that the suspect was described as light-skinned. (Tr. p.1040, lines 14-23).

Although Trial Counsel did not pose these questions to the Victim directly, the transcript

reflects that the issue of the perpetrator's skin color being described as "light" was explored and used by Trial Counsel in closing to argue to the jury that Applicant did not fit the initial description of the suspect. Additional testimony in that vein would have been merely cumulative. In addition, Applicant has failed to prove that the *Victim* ever said the perpetrator was light-skinned; the transcript merely reflects that Investigator Griffin was told that information by another officer. Investigator Griffin went on to testify that third-hand information is sometimes inaccurate. (Tr. p.601, lines 2-4). Had Trial Counsel cross-examined the *Victim* on this point, she may have denied telling investigators that the perpetrator was light-skinned; as the *Victim* did not testify at the evidentiary hearing, Applicant cannot show what her testimony on this point would have been. Finally, as explained in the Court's analysis of "Allegation F" above, the *Victim* consistently claimed the perpetrator was wearing a mask, the room was dark, and all she could see were his eyes. Under those circumstances, it would not be surprising for a witness to mistake a dark-skinned black male for a light-skinned black male.

For these reasons, the Court finds Applicant has failed to prove either deficiency of Trial Counsel or resulting prejudice as to this allegation. Accordingly, this allegation is denied and dismissed with prejudice.

#### **H: Right against self-incrimination**

Applicant argues Trial Counsel failed to advise him of his 5<sup>th</sup> Amendment right against self-incrimination. At the evidentiary hearing, Applicant clarified he was referring to the *Jackson v. Denno* hearing where his voice was heard by the *Victim*, who identified him on that basis. Applicant complains that nobody informed him the *Victim* would be able to identify him based on his voice. The Court finds this allegation is without merit. As already explained, Trial Counsel was not deficient for failing to anticipate the *Victim's* identification of Applicant by his voice. In

addition, it is well-settled that, while the 5<sup>th</sup> Amendment protects criminal defendants from being compelled to testify, it does not prevent the State from requiring a defendant to provide a voice sample for identification purposes. *See, e.g., U.S. v. Wade*, 388 U.S. 218 (1967) (holding the privilege against self-incrimination was not violated by a defendant being required to say “put the money in the bag” in a line-up); *Schmerber v. California*, 384 U.S. 757, 764 (1966) (holding the 5<sup>th</sup> Amendment “offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture”). Therefore, the Victim’s identification based on the sound of Applicant’s voice does not implicate Applicant’s 5<sup>th</sup> Amendment rights. Accordingly, the Court finds Applicant has not established either deficiency or prejudice as to this allegation.

#### **I: Touch DNA expert**

Applicant argues that Trial Counsel failed to consult a touch DNA expert prior to trial and that this alleged deficiency prejudiced him because Trial Counsel was unable to adequately cross-examine the State’s DNA expert. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant did not introduce any testimony from a touch DNA expert to substantiate this allegation, nor did he call the State’s DNA expert to demonstrate how a more thorough cross-examination might have resulted in a different outcome at trial. Therefore, Applicant has not met his burden of proving this allegation. *See Dempsey v. State* 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his trial counsel’s failure to hire an expert because he did not have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Furthermore, at the evidentiary hearing, Applicant admitted that he once possessed the cap

that was found at the scene, although he claimed that he gave it away before the crime occurred. Applicant does not deny that his DNA was found on the cap. Therefore, it is not clear how further cross-examination of the State's DNA expert, or the testimony of a DNA expert for the defense, would have changed the result of the trial.

Accordingly, the Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation.

#### **J: Curative Instruction**

Applicant argues Trial Counsel failed to seek a curative instruction after the trial court agreed to suppress part of State's Exhibit 122, a summary of cell phone activity taken from Applicant's phone. The Court finds this allegation is without merit.

At Applicant's trial, the State called Jill Sparks, custodian of records for the mobile phone company Sprint. Without objection, the State introduced a document reflecting that Sprint's records of cell tower information do not include any records of activity related to Applicant's phone number between 1:00 and 5:00 a.m. on the night of the crime. (Trial Tr. pp.464-66). On cross-examination, Counsel Gilreath elicited from Sparks that Sprint's cell tower records would not show wi-fi activity, such as browsing the internet. (Trial Tr. p.470, line 11-p.471, line 11).

Later in the trial, the State sought to introduce a summary of Applicant's cell phone activity, based on data ripped from the cell phone itself, from shortly before the crime occurred until the time of Applicant's arrest. The State argued that the information was relevant for the following reasons: first, Applicant's communications with Tanisha Taylor tended to corroborate her testimony; second, Applicant's cell phone and web browsing history after the crime showed he was trying to have his DNA removed from the government database; third, Applicant's visits to news websites concerning stories of burglaries and fugitives suggested he was trying to monitor

police investigations related to the crime; fourth, Applicant's communications with Carolina Trader and car rental services supported the State's argument that Applicant was trying to evade detection by getting rid of his car after the crime; fifth, Applicant's calls to law firms tended to show consciousness of guilt; and finally, a lapse in cell phone activity between 1:00 and 5:00 a.m. on the night of the crime suggested Applicant was not using his phone at the time the crime occurred. Following extensive argument and in-camera testimony from both parties' experts, the trial court ruled that the evidence could come in as to the first, second, third, and fourth purposes. (Trial Tr. pp.678-777; pp.958-80). However, the trial court agreed to suppress the evidence of Applicant's communications with law firms, reasoning that Applicant's exercise of the constitutional right to counsel could not be used as evidence against him. (Trial Tr. p.971, lines 4-17). The trial court also suppressed the portion of the summary purporting to show the timeline of Applicant's cell phone use, finding that the experts' testimony was inconclusive as to whether the phone was actively being used during the relevant period and that it would merely confuse the jury. (Trial Tr. p.969, lines 6-10). The court then went through the summary page-by-page marking which portions could come in and which portions had to be redacted. (Trial Tr. pp.970-80). These proceedings occurred outside the presence of the jury.

After the jury returned to the courtroom, the State admitted the summary through its expert, Investigator Michael Phipps, and the exhibit was published to the jury. (Trial Tr. p.987, lines 2-10). Phipps testified about Applicant's cell phone usage, but he did not go into the calls to law firms or the purported lapse of cell phone activity from 1:00 to 5:00 a.m. on the morning the crime occurred.

At closing argument, the solicitor relied on the testimony of Jill Sparks to argue that the Sprint cell tower records did not reflect any calls to or from Applicant's cell phone during the time

the crime occurred. However, the solicitor did not rely on any of the data ripped from Applicant's cell phone itself to argue that Applicant's phone was not in use during that period. (Trial Tr. pp.1022–23). Counsel Gilreath argued, based on Sparks' testimony, that the State could not prove Applicant's cell phone was not in use during that period because Sprint's cell tower records could only record phone calls, not wi-fi use. (Trial Tr. p.1051, line 22–p.1052, line 5).

Applicant contends Trial Counsel should have requested a curative instruction because the portion of the cell phone data extraction summary related to the State's timeframe argument was suppressed. However, the record indicates that the suppressed portion of the summary was carefully reviewed by the trial court and redacted before ever being published to the jury. Because the suppressed evidence was never seen by the jury, a curative instruction was not warranted. Moreover, the solicitor did not rely on that portion of the summary, either in direct examination of Investigator Phipps or on closing argument. The solicitor's timeframe argument during closing was properly based on the cell tower data and the testimony of Jill Sparks, which was neither objected to nor suppressed. Counsel Gilreath ably attacked the State's timeline argument by pointing out that Applicant's wi-fi use would not have shown up on Sprint's records.

The Court finds Applicant has not established any ground for seeking a curative instruction as to this issue. Accordingly, Trial Counsel's performance was neither deficient nor prejudicial, and this allegation is denied and dismissed with prejudice.

#### **K: Objection to State's DNA expert**

Applicant argues Trial Counsel failed to object to the qualification of the State's DNA witness as an expert. The Court finds this allegation is without merit. Applicant has not explained why the qualification of the State's witness as an expert was erroneous. Trial Counsel credibly testified that there were no grounds to object to the expert's qualification. Accordingly, the Court

finds Applicant has not met his burden of proof as to this allegation.

**L: Improper comments during closing argument**

Applicant argues Trial Counsel failed to object to improper comments made by the solicitor during closing argument to the jury. The Court finds this allegation is without merit. Applicant takes issue with four portions of the solicitor's closing argument:

- i. "[H]e's got his dreads most likely tucked down in the back of one of his shirts." (Trial Tr. p.1020, lines 1-2);
- ii. "Don't think for a minute that he wouldn't come into that house without gloves on. He absolutely would. Anybody, anybody, knows about fingerprint evidence. There's no way he goes to all that effort to conceal his identity and doesn't have on gloves. Of course he does." (Trial Tr. p.1020, lines 3-13);
- iii. "[H]e's already trying to get \$10,000 for that car and he's driving a rental car. In his ad he states car runs really well, so we know it works. What's he really worried about? Somebody saw it near the crime scene? Somebody's going to link him to that car? He needs the ten grand to get out of Dodge. He's done everything possible at this point to dissociate himself with that vehicle." (Trial Tr. p.1019, lines 1-7).
- iv. "We know from the testimony of Jill Sparks, the custodian of records for the Sprint corporation, he had no cell tower activity during the timeframe of this crime. No ingoing, outgoing calls, no ingoing, outgoing texts. The phone could not be traced by any cell tower." (Trial Tr. p.1022, line 22-p.1023, line 1).

Applicant contends these comments were not supported by the evidence. The Court finds the solicitor's arguments were not improper. In each case, the solicitor made a permissible inference from the evidence presented. "It is undisputed that closing argument is not merely a

time for recitation of uncontroverted facts; but rather the prosecution may make fair inferences from the evidence.” *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (“If a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.”).

The first comment, regarding dreads, was merely a possible explanation for why the Victim never described the perpetrator as having dreadlocks; the Victim herself testified that she would not have seen whether the perpetrator had dreads because he had the hood of his hoodie tied tight over his head. (Trial Tr. p.362, lines 14–20).

The comment regarding gloves was offered as a possible explanation for why the perpetrator’s fingerprints were not found at the crime scene. When a burglar does not leave any fingerprints at the scene of a crime, it is permissible to infer that the burglar was wearing gloves.

The solicitor’s suggestion that Applicant was worried about his car being seen at the crime scene was based on the evidence that Applicant had started trying to sell his car and had obtained a rental car shortly after the crime was committed. Due to the suspicious timing of Applicant’s attempts to sell his car, at the same time Applicant was trying to erase his DNA from the government database and checking for news of local burglary investigations, it was permissible to infer that the car was somehow used in connection with the crime and that Applicant was attempting to cover his tracks by getting rid of it.

Finally, the Solicitor’s reliance on Jill Sparks’ testimony was proper. Applicant never objected to Sparks’ testimony or to the Sprint cell tower records. The trial court’s later ruling limiting the State’s use of the cell phone data extraction report did not retroactively render Sparks’ testimony inadmissible, nor did it prevent the State from relying on her testimony to suggest there was a lapse in Applicant’s cell phone usage at the time the crime was being committed.

The Court finds Applicant has failed to prove that any of these comments by the solicitor were improper. Therefore, Applicant has not proved that Trial Counsel was ineffective for failing to object to them. Accordingly, this allegation is denied and dismissed with prejudice.

**M: Ownership of nylon cap**

Applicant argues Trial Counsel failed to argue that Applicant did not own the nylon cap at the time of the crime. Applicant argues there was evidence at trial that, prior to the crime, he gave some of his clothes away to a thrift store and to some drug users. The Court finds this allegation is without merit.

At the trial, Investigator Griffin testified that, during the initial interview with law enforcement, he confronted Applicant with the DNA evidence found at the crime scene. In response, Applicant claimed he had recently given "jeans, hoodies, and shirts" away "to a thrift store or a crackhead." (Trial Tr. p.551, lines 17-22). In addition, the solicitor argued in his opening statement to the jury that, when confronted with the DNA evidence, Applicant gave the excuse that he had given some clothes away to a crackhead or a thrift store. (Trial Tr. p.248, lines 9-11). Applicant did not testify at trial, nor did he go into any further detail during his testimony at the PCR hearing. Applicant's mother testified at the PCR hearing, but all she said was that she had seen Applicant carrying two or three trash bags, ostensibly containing clothing, and put them in the trunk of his car, a few weeks before he was arrested.

The Court finds Trial Counsel was not deficient for failing to pursue this line of argument during closing statements. The only evidence at trial that would have supported the argument was Applicant's self-serving statement to law enforcement, made after he had been confronted with the DNA evidence against him. The statement does not even mention the cap specifically, although it does refer to "jeans, hoodies, and shirts." The statement does not identify the thrift

store or the unnamed “crackhead” to whom Applicant purportedly gave his clothes.<sup>3</sup> Rather than rely on this argument, it appears Trial Counsel preferred to focus on the weakness of the State’s evidence connecting the cap to the scene of the crime, by pointing out that the cap was not photographed at the scene or recorded in the incident report or search warrant return. (Trial Tr. p.1042, line 9–p.1044, line 23). In accordance with the “strong presumption” that Trial Counsel’s argument strategy was not the result of “sheer neglect,” but was a legitimate tactical choice to focus on the stronger argument,<sup>4</sup> the Court finds Trial Counsel’s performance was not deficient. *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690). Accordingly, this allegation is denied and dismissed with prejudice.

**N: Identification of Applicant after three years was unbelievable**

Applicant argues Trial Counsel failed to argue at closing that, because more than three years had passed since the crime, the State’s position that the Victim could identify Applicant was unbelievable. The Court finds this allegation is without merit. Counsel Gilreath repeatedly argued that Victim’s identification of Applicant by only his eyes and voice, three years after the crime occurred, was unreliable. (Trial Tr. p.1032, lines 2–4; p.1032, line 22–p.1033, line 4; p.1033, lines 16–18). The Court finds this allegation is conclusively refuted by the record. Accordingly, this allegation is denied and dismissed with prejudice.

**O: Multiple matching guns**

Applicant argues Trial Counsel failed to argue in closing that there could be multiple guns

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<sup>3</sup> In addition, the State’s DNA expert, Agent Mary Ann Boehm, testified that cleaning an item of clothing would remove the DNA. (Trial Tr. p.927, lines 21–23). Therefore, for Applicant’s DNA to still be on the cap by the time it was found at the crime scene, it would have to have not been cleaned since the last time Applicant had worn it. It strains credulity to suggest that the cap would still have had Applicant’s DNA on it weeks after he gave it away to someone else.

<sup>4</sup> The fact that the *solicitor* chose to emphasize Applicant’s story about giving away his clothing in the State’s opening argument further indicates that, at the time of trial, the lawyers on both sides viewed Applicant’s story as a weak argument for the defense.

matching the evidence, apart from the .40 caliber Glock Applicant owned. The Court finds this allegation is without merit.

Investigators recovered projectiles and cartridge cases from the crime scene consistent with .40 Smith & Wesson caliber ammunition. The State's firearms identification expert, SLED Agent Chad Smith, examined the markings on the projectiles and made a list of seven firearms manufacturers whose products could have fired the projectiles: Bursa, Glock, Heckler and Koch, IMI, Kahr Arms, Vektor, and Walther. Agent Smith then examined the cartridge cases found at the scene and determined from microscopic examination of the firing pin impression that they had been fired from either a Glock or an early Smith & Wesson Sigma series pistol. No firearm was ever recovered in connection with the crime. (Trial Tr. pp.875-86).

Applicant's roommate, Tanisha Taylor, told investigators that she had previously seen Applicant handling and cleaning a gun, which she believed to be a .40 caliber Glock. (Trial Tr. p.855, lines 12-25). She stated the gun was black and that Applicant kept it in a plastic stand in the bedroom, but it was not there when investigators searched the residence. (Trial Tr. p.856, lines 4-19).

Applicant contends Trial Counsel did not argue in closing that there were multiple guns that could match the evidence, presumably referring to Agent Smith's testimony that the markings on the projectiles recovered from the crime scene were consistent with guns produced by seven different manufacturers.<sup>5</sup> However, Trial Counsel did make this argument in closing, pointing out Agent Smith's testimony that "these particular bullets could have been fired by six [sic] different

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<sup>5</sup> It is significant that, although the projectiles could have come from six different manufacturers, Agent Smith also determined that the firing pin impressions on the cartridge cases could only have come from two manufacturers. The Court notes that the only manufacturer who matched both the projectile markings and the firing pin impressions was Glock.

types of guns.” (Trial Tr. p.1051, lines 11–17). Accordingly, this allegation is refuted by the record and is denied and dismissed with prejudice.<sup>6</sup>

**P: Inferred malice instruction**

Applicant argues Trial Counsel failed to object to the trial court’s instruction that malice may be inferred from the use of a deadly weapon. (Trial Tr. p.1070, lines 11–15). The Court finds this allegation is without merit. While the language used by the trial court was ultimately deprecated by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), that case had not been decided at the time of Applicant’s trial in 2017. Trial Counsel cannot be found deficient for failing to anticipate a future change in the law. *See, e.g., Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993). In addition, the *Burdette* court expressly held that “today’s ruling will not apply to convictions challenged on post-conviction relief.” *Burdette*, 427 S.C. at 505, 832 S.E.2d at 583.

Prior to *Burdette*, the instruction was only held improper where there was some evidence “that would reduce, mitigate, excuse or justify” a homicide or assault with a deadly weapon, such as evidence of self-defense. *State v. Belcher*, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009). In all other murder or attempted murder cases involving the use of a deadly weapon, the permissive inference instruction was held to be proper. *Id.*

In this case, it has never been disputed that the perpetrator shot the Victim multiple times during a home invasion and attempted rape of the Victim and her six-year-old daughter. There was absolutely no evidence presented that would reduce, mitigate, excuse, or justify the shooting of the Victim; all the evidence overwhelmingly established malice. Therefore, at the time of the

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<sup>6</sup> At the evidentiary hearing, Applicant also argued Trial Counsel should have exposed the discrepancy between the Victim’s initial description of the gun as being silver and the other witnesses’ description of the gun as being black. The Court finds Trial Counsel appropriately covered this ground in cross-examination and argument. (Trial Tr. p.563, lines 4–14; p.868, lines 8–10; p.1035, line 14–p.1036, line 9).

trial, there was no ground to object to the trial court's inferred malice charge under *Belcher*. The Court accordingly finds Trial Counsel's performance was not ineffective as to this allegation. This allegation is, therefore, denied and dismissed with prejudice.

#### **Ineffective Assistance of Appellate Counsel**

Applicant's allegations of ineffective assistance of Appellate Counsel are likewise without merit. In analyzing a claim of ineffective assistance of appellate counsel, courts must apply the *Strickland* test just as they would when analyzing a claim of ineffective assistance of trial counsel. *Bennet v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Therefore, a PCR applicant alleging ineffective assistance of appellate counsel must prove counsel's performance was deficient and the applicant was prejudiced thereby. *Id.*

Appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on direct appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Counsel is not required to raise every non-frivolous issue on appeal but may select among them to maximize the likelihood of a favorable outcome. *See Bennet*, 383 S.C. at 309, 680 S.E.2d at 276. "A decision with respect to appeal is entitled to the same presumption that protects sound trial strategy." *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993). Indeed, "[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray*, 477 U.S. 527, 536 (1986). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754.

"Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Smith v. Robbins*, 528 U.S. 259, 288

(2000) (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

**A: Batson issue**

Applicant argues Appellate Counsel failed to raise the *Batson* issue on appeal. The Court finds this allegation is without merit. At the evidentiary hearing, Appellate Counsel credibly testified she believed the trial court's rejection of Trial Counsel's *Batson* challenge was proper because the State articulated a reasonable race-neutral explanation for each of the challenged strikes. The Court agrees with Appellate Counsel's assessment of the *Batson* issue and finds Applicant has failed to prove either deficiency or prejudice as to this allegation.

**B: Chain of custody**

Applicant argues Appellate Counsel failed to raise issue regarding the chain of custody of the DNA evidence on appeal. The Court finds this allegation is without merit. Appellate Counsel credibly testified she did not think the chain of custody issue was as strong or as well-supported as the other issues she ended up raising. Again, the Court agrees with Appellate Counsel's assessment of the chain of custody issue; although some members of the chain of custody did not testify, there does not appear to be a gap in the chain of custody. *See, e.g., State v Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004) (a complete chain of custody does not require the testimony of each person in the chain if the identity of each person is established). Applicant has failed to explain how the chain of custody issue was "clearly stronger" than any of the four issues raised and argued by Appellate Counsel in this case. *Robbins*, 528 U.S. at 288. Accordingly, this allegation is denied and dismissed with prejudice.

**C: Pre-trial continuance request**

Applicant argues Appellate Counsel failed to challenge the denial of Applicant's pre-trial continuance request on appeal. The Court finds this allegation is without merit. Again, Appellate Counsel credibly testified that she did not think the continuance issue was a strong one. The Court, again, agrees: "[r]eversals of refusal of a continuance are about as rare as the proverbial hens' teeth." *State v. McMillian*, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) (citing *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957)). Applicant has again failed to explain how this issue was clearly stronger than the four issues Appellate Counsel chose to raise instead. Accordingly, this allegation is denied and dismissed with prejudice.

#### **D: Directed verdict issue**

Applicant argues Appellate Counsel failed to challenge the denial of Applicant's directed verdict motion on appeal. The Court finds this allegation is without merit. On appeal from the denial of a directed verdict, the appellate court views the evidence in the light most favorable to the State; if there is any evidence from which the defendant's guilt can be fairly and logically deduced, the jury verdict will not be disturbed. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). Therefore, even if Appellate Counsel had raised the directed verdict issue to the court of appeals, Applicant could only have prevailed if there was *no* evidence from which his guilt could have been deduced, when viewed in the light most favorable to the State.

The State introduced considerable evidence of Applicant's guilt: Applicant's DNA was found on the cap recovered from the crime scene; the Victim identified Applicant's eyes and voice in court; Applicant's roommate, Tanisha Taylor, awoke to find Applicant in his underwear washing his clothes around four o'clock in the morning after the crime was committed, and she noticed he had a fresh abrasion on his forehead; Applicant falsely told investigators he received the abrasion from Taylor; Taylor saw Applicant handling what she believed to be a .40 caliber

Glock, which would have matched the cartridge cases and projectiles found at the crime scene; Applicant began trying to have his DNA removed from the government database after the crime; Applicant frequently checked the news for stories related to burglaries and fugitives in the days following the crime; Applicant tried to sell his car after the crime and began driving a rental car; and Applicant fled from police when they first attempted to perform a traffic stop. There was substantial direct and circumstantial evidence, viewed in the light most favorable to the State, from which Applicant's guilt could fairly be deduced. Therefore, a challenge to the trial court's directed verdict ruling was unlikely to succeed on appeal, and the Court finds Appellate Counsel acted reasonably in focusing her efforts on other issues. Accordingly, this allegation is denied and dismissed with prejudice.

**E: *Neil v. Biggers* hearing**

Applicant argues Appellate Counsel failed to challenge the denial of Applicant's request for a *Neil v. Biggers* hearing. The Court finds this allegation is without merit. As Appellate Counsel acknowledged at the evidentiary hearing, *State v. Lewis* was the controlling precedent by the time of Applicant's trial, and *Lewis* held that a *Neil v. Biggers* hearing is unnecessary when a witness identifies a criminal defendant for the first time in court. *See State v. Lewis*, 363 S.C. 37, 42, 609 S.E.2d 515, 518 (2005) (holding that "*Neil v. Biggers* does not apply to in-court identifications and that the remedy for any alleged suggestiveness of an in-court identification is cross-examination and argument."). Appellate Counsel credibly testified she chose to focus on other issues, rather than to argue against precedent by challenging the holding of *State v. Lewis*. The Court finds Appellate Counsel acted reasonably in making this decision; therefore, this allegation is denied and dismissed with prejudice.

**F: Voice identification issue**

Applicant argues Appellate Counsel failed to challenge the Victim's in-court identification of Applicant's voice. The Court finds this allegation is without merit. Other than the *Neil v. Biggers* issue, which has already been addressed, Applicant does not allege any other trial court error with respect to the Victim's identification of his voice. Therefore, the Court finds Applicant has not met his burden of proof as to this allegation.

**G: Failure to seek rehearing and a writ of certiorari**

Applicant argues Appellate Counsel failed to file a petition for rehearing and a petition for a writ of certiorari after the court of appeals affirmed his convictions and sentences. The Court finds this allegation is without merit. There is no right to discretionary review by the South Carolina Supreme Court. *See Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 543-44 (2006) ("We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion."). Furthermore, Applicant has failed to point out any error in the decision of the court of appeals, such that he likely would have prevailed on rehearing or on further review by the supreme court. Accordingly, Applicant has failed to prove either deficiency or prejudice as to this allegation, and it is denied and dismissed with prejudice.

**Prosecutorial Misconduct**

In the "memorandum of law" introduced at the beginning of the evidentiary hearing (Court's Exhibit 1), Applicant alleges prosecutorial misconduct related to the fact that an incident report, dated April 13, 2014, lists him as a suspect, even though he contends he was not a suspect until April 17, 2014, when he was arrested. Applicant argues this shows the prosecution falsified the incident report and perpetrated a fraud upon the court. The Court finds this allegation is meritless. Applicant has not alleged any reason to suspect the incident report was falsified, rather than merely amended once investigators matched the DNA collected at the crime scene to Applicant through

the CODIS database. (Trial Tr. p.123, lines 16–20). At the evidentiary hearing, Applicant suggested the incident report was in violation of SLED regulations, but the regulation he cited—S.C. Code of Regulations R. 73-30—states that incident reports “must include, to the maximum extent possible, . . . follow-up investigations, . . . changes in the status of any case, and similar comments.” Far from *prohibiting* the amendment of incident reports, the cited regulation appears to *require* that all incident reports be updated with the results of follow-up investigations before being submitted to SLED. Accordingly, the Court finds Applicant has failed to prove any prosecutorial impropriety as to this issue. Therefore, this allegation is denied and dismissed with prejudice.

#### Great Seal

In his original application for post-conviction relief, Applicant alleges that the laws he was convicted under, 1993 Act No. 184 and 1995 Act No. 7, are lacking the impression of the Great Seal. The Court finds this allegation is meritless. The South Carolina Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903); *see, e.g.*, S.C. Op. Att’y Gen., 2017 WL 6189878 (S.C.A.G. December 1, 2017). Further, under the Enrolled Bill Rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. *Medical Soc. of South Carolina v. Medical Univ. of South Carolina*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort County v. Jasper County*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable”).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See *Taylor v. Wilson*, 22 N.W. 119 (Neb. 1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state's constitution); *Commr's of Leavenworth Co. v. Higginbotham*, 17 Kan. 62 (Kan. 1876) ("[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.").

The Court finds the acts Applicant currently challenges were properly passed and have substantial compliance with the constitutional requirements, rendering them valid laws. Accordingly, this allegation is meritless as a matter of law and is therefore denied and dismissed with prejudice.

## II. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of October, 2023.

Kristi F. Curtis  
KRISTI F. CURTIS  
Presiding Judge  
Eleventh Judicial Circuit

Sumter, South Carolina

WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1407629

LSM

ARREST WARRANT NUMBER

2014A3221101285

ACTION OF GRAND JURY

**TRUE BILL**

*Mark G. Bassett*  
Foreperson of Grand Jury  
Date: *Dec. 8, 2014*

VERDICT,  
*Guilty*

*William Wain*  
Foreperson of Petit Jury  
Date: *4/28/17*

DOCKET NO. 2014GS3203687

**The State of South Carolina**

**County of Lexington**

COURT OF GENERAL SESSIONS

DECEMBER TERM 2014

THE STATE

vs.

Nathaniel Antron Hunter

CDR #: 0079

Indictment for

Burglary - First degree

§ 16-11-0311

**DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF LEXINGTON        )  
   )

INDICTMENT FOR  
 Burglary - First degree

§ 16-11-0311

At a Court of General Sessions, convened on DECEMBER 2014, the Grand Jurors of Lexington County present upon their oath:

That **Nathaniel Antron Hunter** did in Lexington County, South Carolina on or about April 13, 2014, knowingly and willfully enter a dwelling, to wit, [REDACTED] Comanchee Apartments [REDACTED] such being the dwelling of Lerenda Simon, without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he was armed with a deadly weapon or explosive; and/or he caused physical injury to a person who was not a participant in the crime; and/or he used or threatened the use of a dangerous instrument; and/or he displayed what was or eeeerrto be a pistol, revolver, or other firearm; and/or such entering or remaining in the dwelling occurred during the nighttime; to wit: the defendant entered the residence while armed with a firearm which resulted in gunshot wounds and physical injury to the resident, Lerenda Simon, and/or such offense occurred during the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Suzanne Mayes*  
 ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1407629

LSM

ARREST WARRANT NUMBER

2014A3221101286

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: *Dec. 8, 2014*

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: *4/28/17*

DOCKET NO. 2014GS3203688

**The State of South Carolina**

**County of Lexington**

COURT OF GENERAL SESSIONS

DECEMBER TERM 2014

THE STATE

vs.

Nathaniel Antron Hunter

CDR #: 3661

Indictment for

Criminal sexual conduct with a minor -  
third degree

§ 16-03-0655(C)

**DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
 Criminal sexual conduct with a minor - third  
 degree

§ 16-03-0655(C)

At a Court of General Sessions, convened on DECEMBER 2014, the Grand Jurors of Lexington County present upon their oath:

That **Nathaniel Antron Hunter**, a person over fourteen years of age, did in Lexington County, South Carolina, on or about April 13, 2014, willfully and lewdly commit or attempt to commit a lewd and lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the child, to wit: **MINOR**, date of birth **[REDACTED]** in violation of Section 16-3-655(C), Code of Laws of South Carolina, 1976, as amended, and previously codified as S.C. Code Section 16-15-140, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

*Suzanne Mayer*  
 ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1407629

LSM

ARREST WARRANT NUMBER

2014A3221101287

ACTION OF GRAND JURY

**TRUE BILL**

*Walter J. Bartlett*

Foreperson of Grand Jury

Date: *Dec. 8, 2014*

VERDICT

Foreperson of Petit Jury

Date:

1392

DOCKET NO. 2014GS3203689

**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2014

THE STATE

vs.

Nathaniel Antron Hunter

CDR #: 3410

Indictment for

Attempted murder

§ 16-03-0029

**DONALD V. MYERS, SOLICITOR**



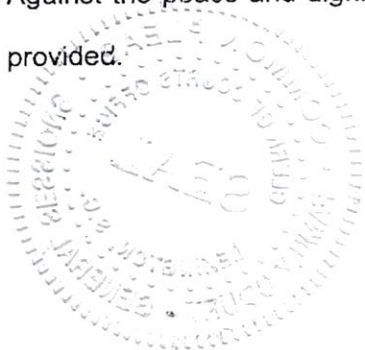
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Attempted murder
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0029

At a Court of General Sessions, convened on DECEMBER 2014, the Grand Jurors of Lexington County present upon their oath:

That Nathaniel Antron Hunter did in Lexington County, South Carolina, on or about April 13, 2014, willfully and unlawfully commit the offense of attempted murder, being a person who, with intent to kill, did attempt to kill another person with malice aforethought, either express or implied, to wit: while armed with a deadly weapon did shoot and injure one Lerenda Simon, in violation of §16-03-0029 of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Suzanne Mayo*  
 ASSISTANT SOLICITOR



WITNESSES

West Columbia Police Department

S Neel

Law Enforcement Case #: 1407629

LSM

ARREST WARRANT NUMBER

2014A3221101291

ACTION OF GRAND JURY

**TRUE BILL**

*Maisha L. Bartlett*  
Foreperson of Grand Jury  
Date: *Dec. 8, 2014*

VERDICT

Foreperson of Petit Jury  
Date:

1394

DOCKET NO. 2014GS3203692

**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2014

THE STATE

vs.

Nathaniel Antron Hunter

CDR #: 0549

Indictment for

Possession of a weapon during a  
violent crime

§ 16-23-0490

**DONALD V. MYERS, SOLICITOR**

A TRUE COPY



STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a weapon during a violent crime
COUNTY OF LEXINGTON	)	(firearm or knife)
	)	
		§ 16-23-0490

At a Court of General Sessions, convened on DECEMBER 2014, the Grand Jurors of Lexington County present upon their oath:

That **Nathaniel Antron Hunter** did in Lexington County, South Carolina on or about April 13, 2014 knowingly and willfully, possess a firearm and/or did visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: did possess and/or visibly display a firearm during the commission of the crime of burglary in the first degree (such being a residence entered during the nighttime without consent); and/or during the commission of the crime of attempted murder of Lerenda Simon; and/or during the commission of any other violent crime which occurred on this date at [REDACTED] Comanche Apartments [REDACTED], in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Suzanne Mayo*  
 ASSISTANT SOLICITOR



STATE OF SOUTH CAROLINA

1396

COUNTY OF Lexington

STATE VS.

Nathaniel Antron Hunter

AKA:

Race: Black Sex: M Age: 34

DOB: 983 SS#: [REDACTED]

Address: Belle Claire Drive

City, State, Zip: Columbia, SC 29203

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 TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
[ ] 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. (defendant's initials)
The plea is: [ ] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State.

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center,
for a determinate term of 45 days/months/years or [ ] under the Youthful Offender Act not to exceed \_\_\_\_\_ years
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on: 4/28/17
[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_
Payment Terms: \_\_\_\_\_
[ ] Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$

TOTAL \$125
Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3203687

A/W#: 2014A3221101285

Date of Offense: 4/13/2014

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

[X] CONVICTED OF or [ ] PLEADS

\_\_\_\_\_ days/hours Public Service Employment
Obtain GED [ ]
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_
May serve W/E beginning \_\_\_\_\_
Substance Abuse Counseling [ ]
Random Drug/Alcohol testing [ ]
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_
\$ \_\_\_\_\_ paid to Public Defender Fund
Other: A TRUE COPY [Signature]
Lex. Co. C.C.C.P., G.S. & P.C.

[ ] Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.
Presiding Judge [Signature]
Judge Code:
Sentence Date: 4/28/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 1397S

COUNTY OF Lexington
STATE VS. Nathaniel Antron Hunter
AKA:
Race: Black Sex: M Age: 34
DOB: 983 SS#
Address: Belle Claire Drive
City, State, Zip: Columbia, SC 29203
DL#: SID#

INDICTMENT/CASE#: 2014GS3203688
A/W#: 2014A3221101286
Date of Offense: 4/13/2014
S.C. Code §: 16-03-0655(C)
CDR Code #: 3661

SENTENCE SHEET

\*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: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on: 4/28/17
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$

TOTAL \$125
Clerk of Court/ Deputy Clerk Lisa Comer
Court Reporter S. Johnson
SCCA/217 (07/2016)

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund
Other: A TRUE COPY
Lex. Ct. C.C.C.P., G.S. & P.C.

Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code:
Sentence Date: 4/28/17

COUNTY OF Lexington
STATE VS.

INDICTMENT/CASE#: 2014GS3203689

Nathaniel Antron Hunter

A/W#: 2014A3221101287

AKA:

Date of Offense: 4/13/2014

Race: Black Sex: M Age: 34

S.C. Code §: 16-03-0029

DOB: 983 SS#

CDR Code #: 3410

Address: Belle Claire Drive

City, State, Zip: Columbia, SC 29203

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 4/28/17
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$.

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

paid to Public Defender Fund
A TRUE COPY

Other: Lex. Ct. C.C.C.P., G.S. & P.S.

Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: [Signature]
Judge Code: 054
Sentence Date: 4/28/17

TOTAL \$125
Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS. Nathaniel Antron Hunter
AKA:
Race: Black Sex: M Age: 34
DOB: 1983 SS#
Address: Belle Claire Drive
City, State, Zip: Columbia, SC 29203
DL#: SID#

INDICTMENT/CASE#: 2014GS3203692
A/W#: 2014A3221101291
Date of Offense: 4/13/2014
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

\*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: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years of under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 4/28/17
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees.

TOTAL \$125

Clerk of Court/ Deputy Clerk Court Reporter: S. Johnson

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
paid to Public Defender Fund
Other: A TRUE COPY

Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: [Signature]
Judge Code: 054
Sentence Date: 4/28/17